

City of White Sulphur Springs Subdivision Regulations

February 2025 City Council Version

This version of the City Subdivision Regulations contains the edits requested by the City Council during a public hearing held on February 24, 2025.

Please note that the specific chapter and section numbers will be inserted into the final regulations upon adoption by the City Council and receiving guidance from American Legal Publishers the provider of the City's online codes.

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TITLE 11. SUBDIVISION REGULATIONS

Chapter 1. GENERAL PROVISIONS

11.1.1 Title.

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

11.1.2 Authority.

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

11.1.3 Effective Date and Applicability.

These regulations shall take effect on [INSERT DATE]. Review and approval, conditional approval, or denial of a proposed subdivision may occur only under the regulations in effect at the time a subdivision application is determined to contain sufficient information for review as provided in Section ????? (76-3-604(9), MCA).

11.1.4 Purpose and Intent.

A. Purpose

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

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

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. Subject to the provisions of 76-3-511, MCA, the 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.

11.1.5 Jurisdiction.

These regulations govern divisions of land and other subdivision-related activities within the City of White Sulphur Springs, including land proposed for subdivision outside the municipal boundaries but are proposed to be annexed into the municipal boundaries of the City of White Sulphur Springs. Please note that the City Council cannot render a decision on an preliminary plat application until the subject property is annexed into the City.

11.1.6 Conflicts with Regulations.

- A. When a conflict is found to exist within these regulations, the more specific provision of these regulations shall be followed in lieu of a more general provision.
- B. These regulations supplement all other regulations and ordinances. Other regulations may include, but are not limited to, zoning codes, floodplain regulations, buildings for lease or rent regulations, building and fire codes and others. Where these regulations conflict with other laws, regulations, ordinances, or resolutions, unless otherwise expressly stated, the more restrictive requirements generally apply. However, where these regulations conflict with zoning regulations, the zoning regulations apply, regardless of which is stricter.

11.1.7 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.

11.1.8 Amendment of these Regulations.

These regulations may be amended by the City Council. Before the City Council adopts amendments to these regulations it shall hold a public hearing on the regulations and shall give public notice of its intent to adopt the regulations and of the public hearing. Notice shall be published in a newspaper of general circulation in Meagher County not less than 15 or more than 30 calendar days prior to the date of the hearing. See 76-3-503, MCA.

11.1.9 Enforcement of these Regulations.

Any person, corporation, or other entity that violates any of the provisions of the MSPA 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. (76-3-105, MCA)

If land transfers are not made in accordance with the MSPA, as implemented by these regulations, the City Attorney and/or County Attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions. (76-3-301, MCA)

11.1.10 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 Attorney as may be necessary, shall be responsible for such interpretation, and shall look to the overall intent of these regulations and the MSPA for guidance. The Administrator shall provide such interpretations in writing upon request.

Chapter 2. Definitions

11.2.1 Terms and definitions.

Chapter 11.2 gives definitions of certain terms used in these regulations. . Terms and phrases used in these regulations which are not specifically defined shall have their common meaning when appropriate for its context and to promulgate the purposes and intents of these regulations. When a question arises concerning application of any term or phrase, it shall be the duty of the Administrator to ascertain all pertinent facts and make an official interpretation in writing upon written request. Thereafter such interpretations shall govern. All interpretations shall be on file at the City offices. Any appeal of the Administrator's official written interpretation shall be reviewed by the City Council.

11.2.2 Application of 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, . The singular number includes the plural. Words used in the present include the future. Gender neutral language will be employed, thus all neutral terms contemplate the masculine, the feminine and non-binary. The word "person" includes bodies politic and corporate, partnerships, associations and corporations. The word "shall" is always mandatory, and the word "may" indicates use of discretion in making decisions. For, definitions of words used within these regulations but not found in this chapter, the definition used in the latest version of the Webster's Dictionary shall apply. If a definition in this chapter conflicts with a definition referenced or found in Title 76, Chapter 3, Montana Code Annotated, the definition referenced or found in Title 76, Chapter 3, Montana Code Annotated shall control.

11.2.3 Terms defined; definitions of same.

Access (legal and physical).

Legal access: Each lot in a subdivision either abuts a public (town, 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).

Administrative Minor Subdivision.

A subdivision meeting the requirements of subsection 76-3-609(6) MCA.

Administrator.

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

Agriculture.

The use of land for growing, raising, or marketing of plants or animals to produce food, feed, and fiber commodities. Agricultural land also includes land considered by the Natural Resources Conservation Service to have a soil of agricultural importance and lands devoted to a soil conservation or rangeland management program. Agriculture does not include gardening for personal use, keeping of house pets, kenneling, or landscaping for aesthetic purposes.

Agricultural water user facilities.

Those facilities which provide water for agricultural land or provide water for the production of agricultural products. These facilities include, but are not limited to, ditches, canals, pipes, head gates, tanks, drains, reservoirs, ponds, and developed springs used for agricultural purposes.

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).

Common element (condominiums).

A common element is defined as all portions of the property except the units. Examples of common elements include walkways, lighting in common hallways, garbage collection areas, swimming pools, landscaping, club houses, and more.

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(MDEQ):

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 White Sulphur Springs Zoning Ordinance.

Shared: A vehicular access serving two lots or dwelling units. Shared 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 White Sulphur Springs Zoning Ordinance.

Dwelling unit.

A building or portion of a building designed for a single household with cooking, eating, sleeping, and living facilities that include connection to City water and sewer services.

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.

Expedited Subdivision Review.

An expedited review process for subdivisions that meet the requirements for the review process. (Section 76-3-628 MCA).

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 White Sulphur Springs, the White Sulphur Springs 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. (76-1-103(4) MCA). The "growth policy" referred to in these regulations is the Consolidated City of White Sulphur Springs-Meagher County Growth Policy.

Half street.

A proposed street with half the required right-of-way width for its functional classification, located on the bounding edge of a parcel or lot.

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 provided to the public by local government entities or public utilities such as transportation systems, including non-motorized facilities, parking, law enforcement, fire protection, drainage structures, water supply, sanitary sewage disposal, solid waste disposal, recreation, parks, libraries, or schools.

Lot:

A parcel, plot, or other land area created by subdivision for sale, rent, or lease and shown as an individual unit of ownership on the most recent plat or other record of subdivision.

Lot types.

Corner lot means a lot situated at the junction of and abutting on two or more 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.

Manufactured house or home.

A single-family dwelling, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States Department of Housing and Urban Development at the time of its production. A manufactured home does not include a mobile home, as defined in 15-1-101 MCA and as defined below; further, a manufactured home does not include a mobile home or house trailer constructed before the federal Manufactured Home Construction and Safety Standards went into effect on June 15, 1976.[76-2-302(4) MCA]

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 Chapter 1.16 of these regulations.

Minor Subdivision: A subdivision that creates five or fewer lots from a tract of record. [Section 76-3-103(9) MCA].

- a. ADMINISTRATIVE MINOR SUBDIVISION:** A subdivision meeting the requirements of subsection 76-3-609(6) MCA.

- b. FIRST MINOR SUBDIVISION:** A proposed subdivision of a tract of record that:
 - i.** has not been subdivided or created by a subdivision; or
 - ii.** has not resulted from a tract of record that has had more than five parcels created from that tract of record under Section 76-3-201 or 76-3-207 MCA since October 1, 2003. [Section 76-3-609(2) MCA]
- c. 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 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 since October 1, 2003. [Section 76-3-609(2) MCA].

Mobile home.

Forms of housing known as "trailers", "house trailers", or "trailer coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to them; or any trailer, house trailer, or trailer coach up to 8 feet in width or 45 feet in length used as a principal residence. The term includes such units whether or not the unit has been constructed in conformance with Federal Manufactured Home Construction and Safety Standards after June 15, 1976.

Mobile 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 home park.

A tract of land designed and developed to accommodate two or more mobile homes, each occupying a portion of the site on a purchase, lease, or rental basis, and each provided with the necessary utilities and other amenities so that the total development serves as a suitable environment for long-term residential occupancy.

Mobile home pad.

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

Montana Department of Environmental Quality Minimum Standards.

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, chemical, and biological factors that exist within or influence a geographic area or community. These factors include, but are not limited to, geology, soils, topography, climate, surface water, groundwater, floodplain, vegetation, and objects or places of cultural, historic, or 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.

Phased development.

A subdivision application and preliminary plat that at the time of submission consists of independently platted development phases that are scheduled for review on a schedule proposed by the subdivider.

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(11) MCA).

Planning Board.

A Planning Board formed pursuant to MCA Title 76, Chapter 1. In the jurisdictional area of the City of White Sulphur Springs, the Planning Board is the WHITE SULPHUR SPRINGS AND MEAGHER COUNTY MONTANA CONSOLIDATED 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(12) MCA).

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

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(13) 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.

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).

Amended plat.

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

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.

Primary access.

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

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 street.

A street (or 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. In general terms, new subdivisions with conventional lots do not include private streets; new private streets are typically in private developments such as RV parks, mobile home parks, and condominium and townhouse developments with multiple buildings where the City of White Sulphur Springs's conventional pattern of blocks and lots is not continued. Only the City Council can accept dedication or acquire a new street for public use or allow it to be private.

Public health and safety.

A condition of well-being, reasonably free from danger, risk, or injury, for a community at large, or for all people, not merely for the welfare of a specific individual or a small class of persons. Allowable standards established by Federal, State, and local policies, codes, and regulations shall be the primary means for defining the limits of acceptable public health and safety.

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 street.

A street (or road) 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 governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44. (76-3-103(14) MCA).

Recreational vehicle (RV).

A vehicular-type portable structure without permanent foundation, which is built on a single chassis; which is designed to be self-propelled or permanently towable by a light duty truck; primarily designed as temporary living accommodations for recreational, camping, and travel use including, but not limited to, travel trailers, truck campers, camping trailers, and self-propelled motor homes.

Recreational Vehicle Park (RV Park).

A plot of ground upon which two or more sites are located, established, or maintained for occupancy by the general public as temporary living quarters for travel, recreation or vacation purposes.

Recreational vehicle space (RV 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 or facility 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”.

Subdivider.

A person who causes land to be subdivided or who proposes a subdivision of land (76-3-103(15), 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(16) MCA).

Subdivision guarantee.

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.

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 October 1, 2003.

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).

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). In White Sulphur Springs, a “townhome” or “townhouse” is also specifically defined as a residential dwelling unit which is part of a group of two or more such units separated by a common party wall, having no doors, windows, or other provisions for interior human passage or visibility between the units. The terms “townhouses” and “townhomes” may be used interchangeably.

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(17) 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.

Variance.

A request submitted by a subdivider to deviate from any of the design standards found in Chapter ?????. Variances cannot be granted for deviations from statutorily required review processes.

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 not domesticated or tamed.

Wildlife habitat.

An area containing the complex of environmental conditions essential to wildlife for feeding and forage, cover, migration, breeding, rearing, nesting, or buffers from those areas. It also includes areas essential to the conservation of species protected by the Endangered Species Act or of special interest or concern to the State of Montana.

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Chapter 3. OVERVIEW AND CATEGORIES OF SUBDIVISIONS / SUBDIVISIONS FOR RENT OR LEASE

11.3.1 Overview.

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

11.3.2 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 an aliquot part of a United States government section (76-3-104, MCA), and that does not qualify as an exemption as described in Chapter 11.3.3 – 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. (76-3-103, MCA)

11.3.3 Subdivision Categories: Major and Minor Subdivisions.

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

A. Major Subdivisions

Any subdivision consisting of six or more lots shall be reviewed as a major subdivision.

B. Minor Subdivisions

Any subdivision which contains five or fewer lots shall be reviewed as a minor subdivision, regardless of whether it is a first minor subdivision or a subsequent minor subdivision.

C. General Procedural Differences for Major and Minor Subdivisions

There are general procedural differences between Major Subdivisions and Minor Subdivisions which are listed below. Additional specific differences are identified in the appropriate portions of these regulations throughout.

1. *Major Subdivision Process*

- a. Review period of 60 working days for subdivisions with less than 50 lots, and 80 working days for subdivisions with 50 lots or more (76-3-604, MCA);
- b. Environmental Assessment, along with Community Impact Report, and a Summary of Probable Impacts are all required (76-3-603, MCA); and
- c. A public hearing with the Planning Board requiring adjacent property notification is required. (76-3-605, MCA)

2. Minor Subdivision Process

- a. Review period of 35 working days (76-3-609, MCA);
- b. A Summary of Probable Impacts is required, but not an Environmental Assessment or Community Impact Report;
- c. A public meeting with the Planning Board for subdivisions intended to create three to five lots. For subdivisions intended to create two lots, no meeting with the Planning Board is required; and
- d. No adjacent property owner notifications, except as may be done as a courtesy or through basic noticing procedures.

3. Administrative Minor Subdivisions, 76-3-609(6), MCA.

- a. First and subsequent minor subdivisions must be reviewed using the administrative process if the proposed subdivision:
 - i. is located in an area that is subject to and complies with City zoning regulations;
 - ii. has a will-serve letter for City water and sewer service;
 - iii. has existing legal and physical access to each lot; and
 - iv. does not require a variance to any of the contents of the City subdivision regulations.
- b. An administrative minor subdivision meeting the requirements of this section is exempt from:
 - i. Providing a summary of probable impacts based on criteria described in 76-3-608(3) and an environmental assessment required in 76-3-603, MCA;
 - ii. review under the criteria described in 76-3-608(3)(a), MCA; and
 - iii. the requirements of 76-3-209(2) through (5), MCA.
- c. The subdivision administrator appointed by the governing body shall:
 - i. assume all decision-making authority of the governing body provided in 76-3-608, MCA;
 - ii. approve, conditionally approve, or deny an administrative minor subdivision and issue a written statement pursuant to 76-3-620, MCA within 30 working days of a determination by the reviewing agent or agency that the application contains required elements and sufficient information for review; and
 - iii. immediately on a determination that the application meets the application requirements, notify by first-class mail of the pending application:
 - 1. each property owner of record whose property is immediately adjoining the land included in the preliminary plat; and
 - 2. each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat.
- d. If a party identified in 76-3-625(3), MCA objects to a subdivision administrator's decision to approve, conditionally approve, or deny an administrative minor subdivision, the party may request, in writing, that the subdivision administrator forward the application on to the City Council. The City Council shall sustain the subdivision administrator's decision based on the record as a whole unless the

decision was arbitrary, capricious, or unlawful. The City Council has 15 working days from the receipt of the request to review a decision to approve, conditionally approve, or deny the administrative minor subdivision and make a final determination.

- e. Other Requirements: All the requirements of Title 76, chapter 3, except those exempted apply to an administrative minor subdivision.

4. Expedited Subdivision Review Process (76-3-623. MCA)

A subdivision application, regardless of the number of lots, which meets the requirements provided in this section is entitled to the expedited review process at the applicant's request.

- a. Requirements to be eligible for the expedited review process:
 - i. Subdivision is within an area that is served by City water and sewer services and is subject to the City's adopted growth policy and zoning regulations;
 - ii. Subdivision complies with the City's zoning regulations and complies with the City's design standards and other subdivision regulations; and
 - iii. Subdivision application includes plans for the onsite development of or extension to public infrastructure in accordance with adopted City ordinances and regulations.
- b. A subdivision application that meets the requirements provided in 4.a above is exempt from:
 - i. the preparation of an environmental assessment as required in 76-3-603; and
 - ii. review under the criteria listed in 76-3-608(3)(a).
- c. Application Review. The subdivision application must be reviewed for:
 - i. required elements and sufficiency of information as provided in 76-3-601(1) through (3) to determine whether the application complies with City zoning regulations and complies with the City design standards and other subdivision regulations; and
 - ii. application includes plans for the onsite development of or extension to public infrastructure in accordance with adopted ordinances and regulations.
- d. City Council Review. The City Council shall:
 - i. hold a hearing and approve, conditionally approve, or deny the subdivision application within 35 working days of a determination by the subdivision administrator that the application contains required elements and sufficient information for review as provided in Sections 1.10.050 and 1.10.060 of these regulations. If the subdivision application includes a request for variance or deviation from subdivision regulations the time for holding a hearing must be extended to a total of 45 working days. The governing body may delegate to the Planning Board the requirement to hold a public hearing on the subdivision application as required in this section.
 - ii. provide notice for the hearing by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing;
 - iii. grant preliminary plat approval unless public comment or other information demonstrates the application does not comply with:

1. adopted City zoning regulations, design standards, and other requirements of the City subdivision regulations adopted pursuant to statute including any criteria for granting variances or deviations from subdivision regulations; or
2. adopted City ordinances or regulations for the onsite development of or extension to public infrastructure; and
- iv. provide to the applicant and the public a written statement within 30 days of the decision to approve or deny a proposed subdivision that provides:
 1. the facts and conclusions that the City Council relied on in making its decision to approve or deny the application; and
 2. preliminary plat approval conditions that must be satisfied before the final plat may be approved.

11.3.4 Subdivisions Created by Rent or Lease.

The following subsections describe subdivisions created by rent or lease: areas regardless of size that provide or will provide multiple spaces for rent or lease on which recreational camping vehicles or mobile homes will be placed. In the City of White Sulphur Springs, these types of developments may be categorized as Recreational Vehicle Parks (RV Parks) and Mobile Home Parks (see definitions).

A. Overview

This subsection establishes the criteria and requirements for RV Parks and Mobile Home Parks that are in addition to or different from those for other types of conventional subdivisions that are outlined in the subdivision regulations.

B. Process

All RV Parks and Mobile Home Parks shall be reviewed as major or minor subdivisions, based on the number of rent or lease lots/spaces proposed.

C. Review Criteria

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

1. DPHHS approval is required prior to final plat application;
2. No creation of a parcel for an RV Park 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;
3. DEQ approval is required per 76-4-102(16), MCA, even when the rental spaces are 20 acres or greater; and
4. No mobile home may be moved into the City of White Sulphur Springs which does not meet the standards specified in 42 USC 5401 (HUD Code), et. seq., and regulations adopted thereunder.

D. Submittal Requirement

The requirements of Chapter ???? apply, and the following clarifies other submittal requirements unique to RV Parks 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. Site Plan: A detailed site plan drawn to scale is required, delineating all mobile home and RV spaces. Site plans requiring more than one page will be numbered and include a total number of pages.
3. Site Plan Contents: The site plan shall include the following information:
 - a. Locations and dimensions of any service building, cabin, cooking shelter, or other structure that will be available for public use or use by multiple renters or lessees, including showers and restrooms;
 - b. 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;
 - c. 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 RV or mobile home spaces;
 - d. Location and dimensions of RV pads and mobile home pads, demonstrating compliance with the subdivision design standards and applicable zoning standards;
 - e. Parkland areas per 76-3-621(3)(c), MCA; and
 - f. RV park areas and mobile home park areas shall be delineated if both are proposed.

E. Design Standards

All RV Parks and Mobile Home Parks must comply with the Design Standards in Chapter ???? of these regulations and the City of White Sulphur Springs Ordinance 9.6.129. The following general exceptions and additions apply to RV Parks and Mobile Home Parks:

1. *Street Requirements*

There shall be no public right-of-way dedications required for interior access to rent/lease sites within RV Parks and Mobile Home Parks. Streets may be developed for the use of the renters/lessees and guests and owned and maintained by the property owner. Streets within recreational vehicle parks must be designed to provide safe traffic circulation and parking. For the City to accept street dedications, the streets shall meet the dedication requirements.

2. *Spaces*

- a. The density of a recreational vehicle park must not exceed 25 recreational vehicle spaces per acre of gross site area.
- b. Spaces shall be arranged to permit the safe and practical movement of traffic and the access to spaces for RVs/mobile homes.
- c. The prohibition on through or double-frontage lots in Chapter ???? does not apply as long as the access streets accommodate this through the use of one-way streets or wider streets to accommodate turns.
- d. The boundary limits of each rent/lease space shall be permanently marked on the ground with stakes or another acceptable form of marker which shall be maintained by the landowner sufficient to identify rent/lease areas.
- e. Recreational vehicles must be separated from each other and from other structures by at least 15 feet. Any accessory structures such as attached awnings must, for purposes of this separation requirement, be considered part of the recreational vehicle.
- f. No recreational vehicle space may be located less than 25 feet from any public street or highway right-of-way.

3. *Parkland Dedication (76-3-621, MCA)*

Parkland dedications are calculated based on the areas of the spaces for rent or lease. Parkland is typically preferred on-site within the development to allow for recreational areas for occupants of the parks. These areas shall remain in private ownership and shall not be dedicated to the public unless expressly accepted by the City Council. Maintenance of private park areas shall be the responsibility of the RV Park or Mobile Home Park owner. The City Council may accept cash-in-lieu of requiring the park area similar to other subdivisions, as long as the city has a formally adopted parks plan that establishes the needs and procedures for use of the money pursuant to 76-3-621(5)(b)(ii), MCA, and the occupants of the RV Parks and Mobile Home Parks have sufficient recreational areas in reasonably close proximity.

4. *Adjacent Land Buffer (RV Parks)*

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 RV Park from the adjacent uses. Such buffers shall follow applicable requirements and guidance provided by the City Zoning Ordinance.

5. *Storage Areas (Mobile Home Parks)*

When deemed appropriate based on housing density, the size of the development and other site-specific circumstances, the City Council may require that a common area be provided in a mobile home park for storage or parking for boats, trailers, or other recreational vehicles, which shall not be calculated as part of the parkland dedication. If such a common area is included, it shall be restricted for storage only and no

structure, vehicle, boat, RV, or other container may be used for human occupancy on site.

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Chapter 4. PRELIMINARY PLAT REVIEW

11.4.1 Overview.

This chapter details the review process for preliminary plat applications (see Figures 1, 2, 3 and 4 for the process for major and minor subdivisions).

11.4.2 Main Steps.

The main steps in the preliminary plat review process are as follows; the following subsections 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

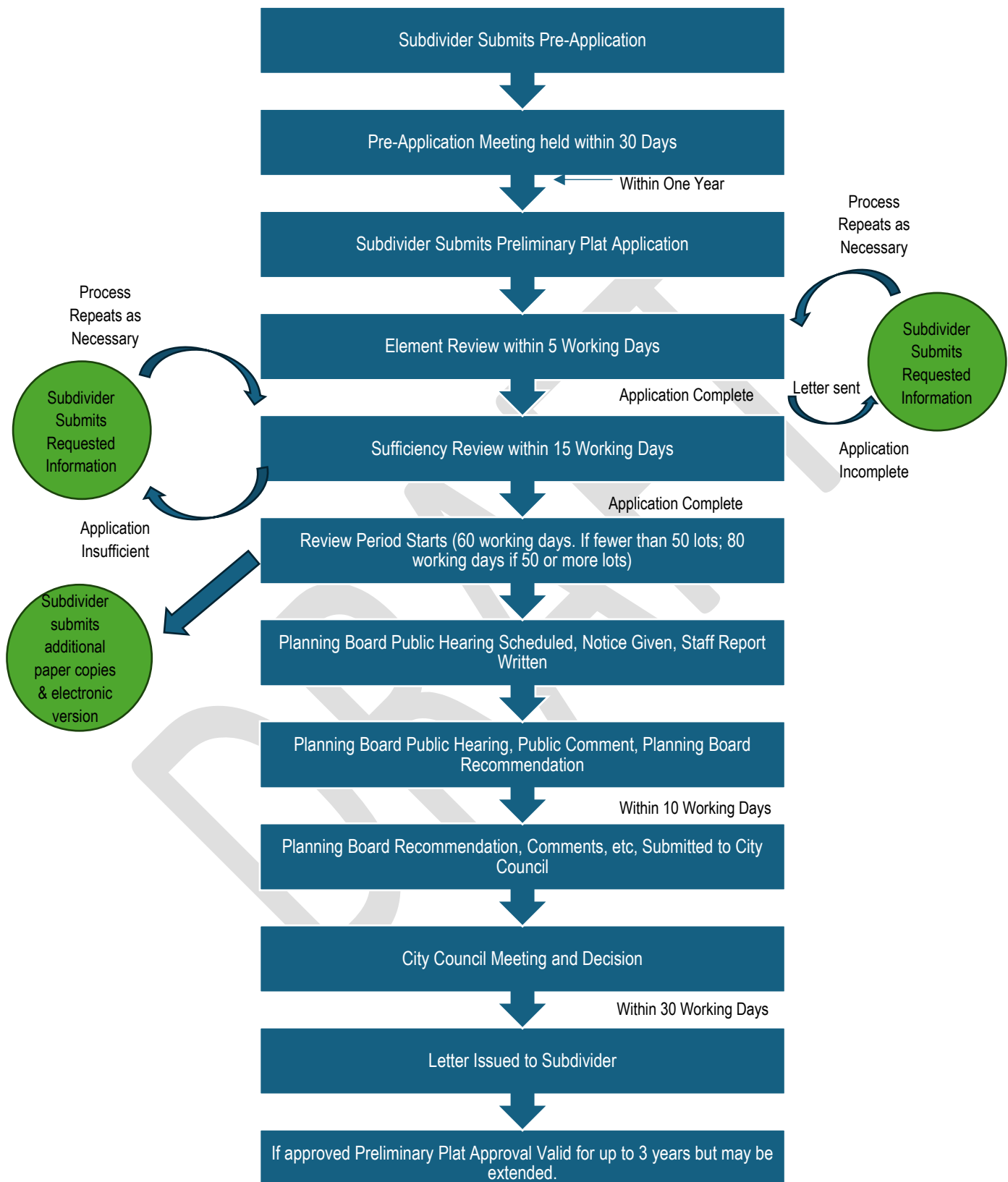
Step 7: Planning Board Hearing and Recommendation (Major Subdivisions only)

Step 8: City Council Hearing and Decision

The following flowcharts show the typical preliminary plat review process for Major Subdivisions, Minor Subdivisions, Administrative Minor Subdivisions and Expedited Subdivisions.

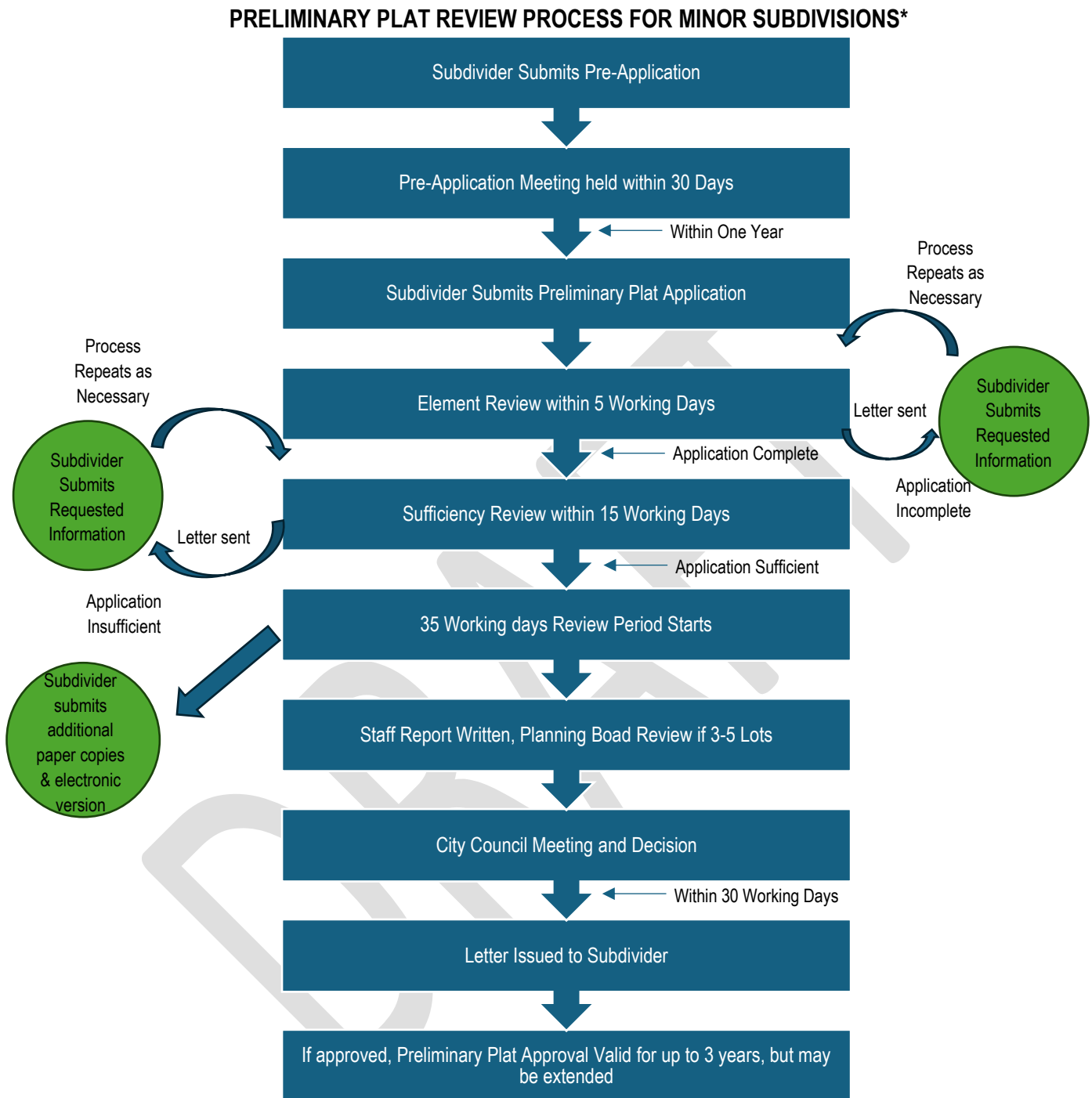
Figure 1: Flowchart of the preliminary plat review process for Major Subdivisions

PRELIMINARY PLAT REVIEW PROCESS FOR MAJOR SUBDIVISIONS*



*Other steps often occur during preliminary plat review; these are the primary steps.

Figure 2: Flowchart of the preliminary plat review process for Minor Subdivisions



*Other steps often occur during preliminary plat review; these are the primary steps.

Figure 3: Flowchart of the preliminary plat review process for Administrative Minor Subdivisions

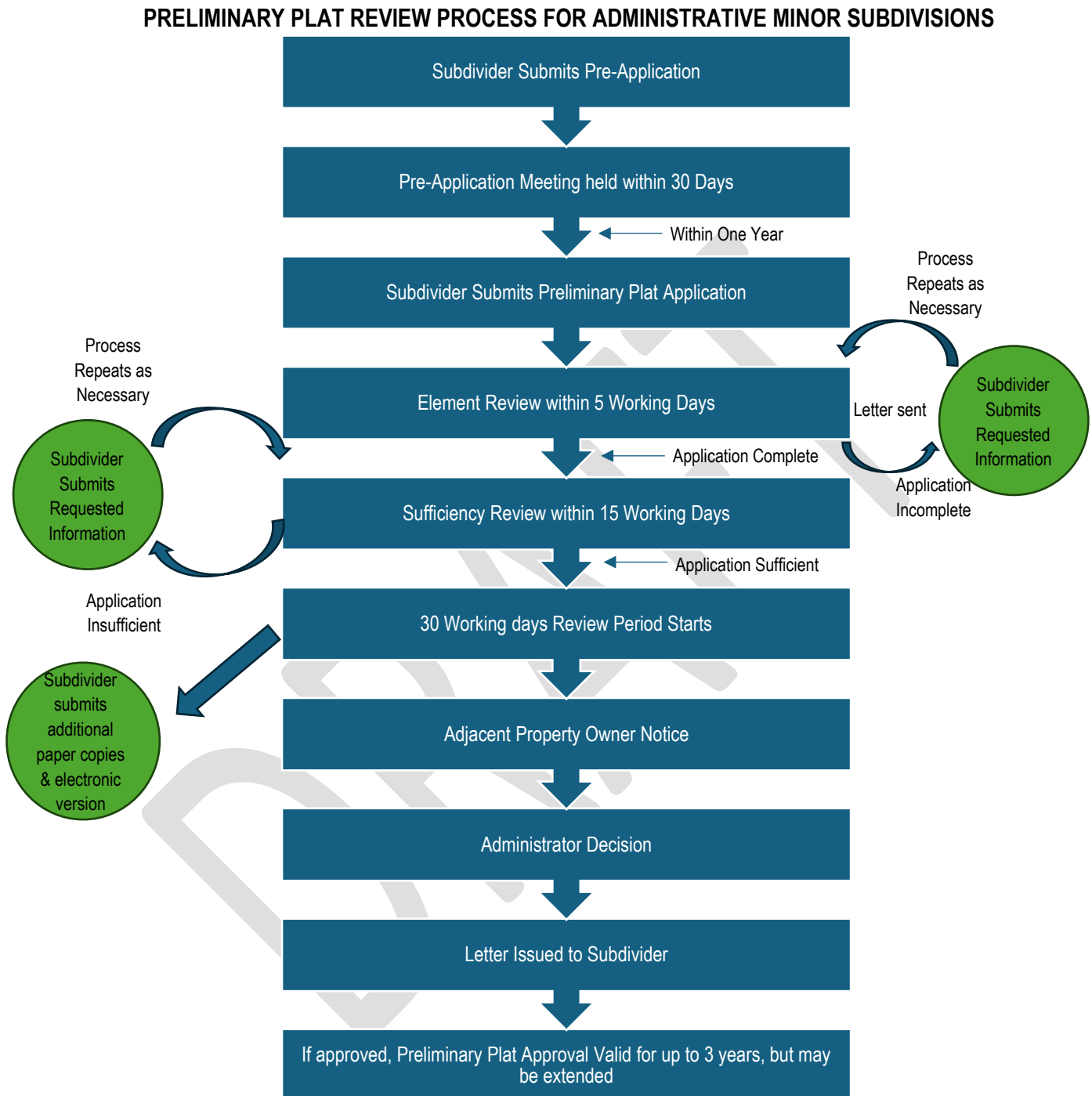
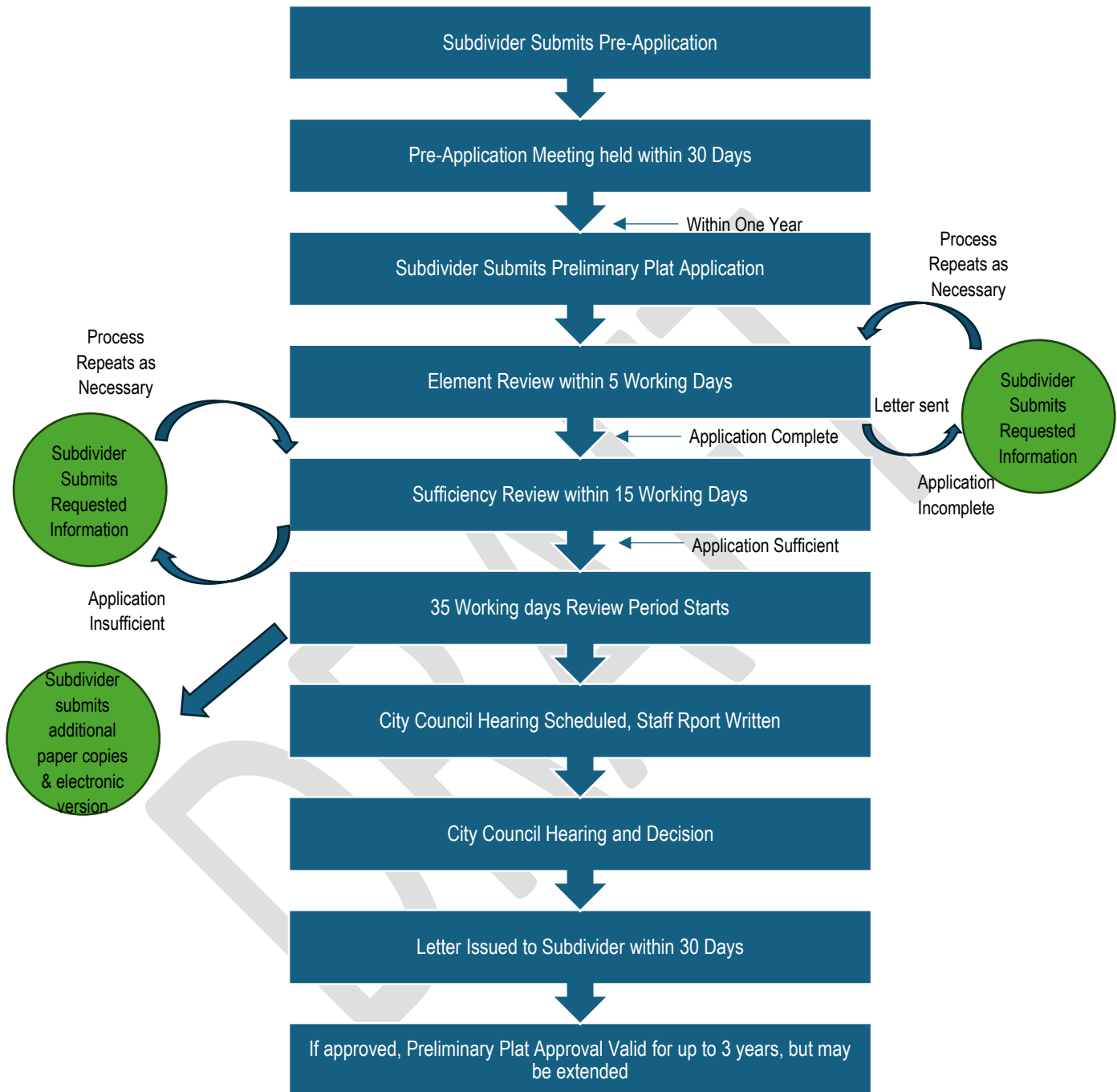


Figure 4: Flowchart of the preliminary plat review process for Expedited Subdivisions

PRELIMINARY PLAT REVIEW PROCESS FOR EXPEDITED SUBDIVISIONS



11.4.3 Pre-application.

A pre-application meeting to explain the subdivision application and review process is required [76-3-504(1)(q)(i),MCA]. 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 the Administrator by the subdivider filling out and submitting a pre-application request form in addition to the required pre-application materials.

A. Pre-application Submittal

1. The subdivider shall submit a completed Pre-Application Form (see Administrative Materials A, "Subdivision Pre-Application Request Form", found in Appendix B: Supplemental Administrative Materials).
2. 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. [76-3-504(1)(q)(iv), MCA]
3. The Administrator may notify and invite 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. to the pre-application meeting. 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, at the meeting, or following the meeting.

B. Pre-application Meeting

The subdivider or their representative is required to attend the pre-application meeting, either in person or via other means acceptable to the Administrator. 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 [76-3-504(1)(q)(ii), MCA];
2. Provide the subdivider with a comprehensive list of the information, documents, fees as adopted by resolution of the City Council, 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 the subdivider must contact prior to submitting the preliminary plat application and the timeframes that the public utilities, agencies and other entities must be given to respond[(See: a list of agencies that the Administrator may use to create the list is included as Administrative Materials K "List of Agencies for Contact", found in Appendix B: Supplemental Administrative Materials); (Note: other agencies and entities may be included on the pre-application list at the Administrator's discretion)];
; 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 the Administrator's ability to require additional or different information at a later time.

C. Pre-application Duration

Within one year 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 one year, 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 one extension for up to one year. 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. If the subdivision regulations are updated or revised prior to the subdivider submitting a preliminary plat application, another pre-application meeting may be required by the Administrator.

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.

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:

- a. 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
- b. Activities approved in advance and in writing by the Administrator that qualify as actions that are not subdivision-related.

The City of White Sulphur Springs 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.

2. *Enforcement*

A violation of the restrictions in this section subjects the subdivider to the enforcement provisions and penalties in subsection 1.04.090. Restoration of any resource alteration, as described above, may be required as a condition of subdivision approval.

11.4.4 Preliminary Plat Application Submittal.

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

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 an Adobe 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 (see Administrative Materials B, "Subdivision Preliminary Plat Application") - the form shall be signed by the property owner(s) and subdivider.
2. All applicable information included in the Preliminary Plat Application form checklist of information required to accompany the application.
3. Preliminary Plat/Plan and Supplemental Plats/Plans, as necessary to show required information.
4. Review Fee, pursuant to fee schedule adopted by Resolution.
5. Tract of Record - The application shall specify and provide documentation of the legal existence of the tract(s) of record being divided.
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, and all wells, drainfields, utilities, water/sewer lines, riparian areas; and ponds, lakes, and other waterbodies.
10. Narrative Summary - Narrative summary of the proposed subdivision.
11. Plan for Phased Development - The subdivider's phasing plan, including a proposed schedule for when the subdivider plans to submit for review each phase of the development and which improvements are proposed to be installed with review and final plat approval of each phase.

12. Subdivision Guarantee - The subdivision guarantee must be dated within 30 days of application submittal. Copies of all filed documents referenced in the subdivision guarantee 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. Any necessary variances to the zoning standards must be reviewed and approved by the Board of Adjustment, and a copy of the approval(s) must be submitted with the Preliminary Plat Application.
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 ????, "Design Standards."
17. Summary of Probable Impacts (minor subdivisions) (for format, see Administrative Materials C, "Summary of Probable Impacts".
18. Environmental Assessment (major subdivisions) (for format, see Administrative Materials D, "Environmental Assessments).
19. Proposed Mitigation - Description of any proposed mitigation for significant impacts or requested variances.
20. Agency Comment - A list of agencies contacted by subdivider and all correspondence.
21. Adjoining Property Owners - Names and addresses of all adjoining property owners.
22. Proposed Street Plans.
23. Traffic Impact Study – Required where the subdivision will add more than 750 vehicle trips per day (this or a similar study may also be required by the Montana Department of Transportation or other agency; where such studies are required, they shall be included with the preliminary plat application for a subdivision, but where required by these regulations, studies that do not conform to these regulations must be supplemented with information required by these regulations). (For example, see Administrative Materials H, "Contents of Traffic Impact Studies", found in Appendix B: Supplemental Administrative Materials)
24. Grading Plan - For any areas proposed for surface disturbance, including streets and utilities.
25. 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.
26. Water and Sanitation as required in 76-3-622, MCA.

27. Solid Waste Management plans.
28. Irrigation - Information for existing and proposed irrigation on or adjacent to the subdivision, including any proposal to remove water rights from the property.
29. Utilities - Description of existing and proposed utilities, and a description and/or map of existing utilities nearest locations.
30. Proposed Parkland - Proposal to meet parkland dedication requirement when applicable as identified by statute
31. Plans pertaining to fire suppression.
32. Vegetation management plan and/or landscaping plan, when required.
33. Mineral Rights - Status of existing mineral rights (as known) and proposed disposition of those rights.
34. Assessment of Cultural and Historic Characteristics.
35. Draft Property Owners' Association Documents, including draft articles of incorporation, declaration and bylaws, and covenants, but only those that directly and materially impact a condition of subdivision approval.
36. Mail delivery proposal that complies with United States Postal Service requirements.

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.

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 shall be submitted with the application. The subdivider's contacts with agencies do not preclude the Administrator, Planning Board, or City Council from contacting the same agencies or others during preliminary plat application review.

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, streetlights, 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.

C. Submitting the Application

1. *When a Subdivision Lies Entirely within the Incorporated Municipality*

If the proposed subdivision lies entirely within the City of White Sulphur Springs, the application and preliminary plat must be submitted to the Administrator for the City.

Major subdivisions will be sent to the City- County planning board for review and recommendation to the City Council. The City Council will render a decision on all subdivision applications. (76-3-601, MCA).

2. When a Subdivision Lies Partly within the Incorporated Municipality and Partly in the County

- a. If the proposed subdivision lies partly within the City of White Sulphur Springs and partly within the unincorporated area of Meagher 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. [76-3-601(2)(c), MCA]
- b. The following is recommended to coordinate review:
 - i. Administrators for the County and municipality meet 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 City for annexation and subdivision. If this alternative is selected, the local governments shall share all reports and meeting/hearing notices. The City 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 City approve of the subdivision to be annexed, the County shall first approve the subdivision with the condition of annexation; and the City shall then approve the annexation and the subdivision.

3. When a Subdivision is in an Unincorporated Area and Proposed to be Annexed [76-3-601(2)(d)]

- a. If the subdivider proposes to annex a subdivision located in the unincorporated Meagher County into the City of White Sulphur Springs, the subdivider shall submit the proposal to the Administrator of the municipality and the municipality shall proceed with review for annexation and subdivision.
- b. The municipality shall notify the County Administrator of the proposed annexation and subdivision.

- c. The municipality shall coordinate subdivision and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible.
- d. 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 or a formal intention to annex is adopted.

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. 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.

11.4.5 Element Review.

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 the following process:

1. A subdivision application is considered to be received on the date of delivery to the Administrator with the required review fee, as adopted by resolution of the City Council. [76-3-604(1)(a)MCA]
2. Within five working days of receiving the application and review fee, the Administrator shall determine if the application contains all of the applicable materials. [76-3-604(1)(b) MCA]
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. [76-3-604(1)(b) MCA]
5. The subdivider shall correct deficiencies and submit the required elements.
6. This process shall be repeated until the Administrator determines the subdivider has submitted an application containing all the required elements [76-3-604(3) MCA], 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 notifying the subdivider the application is incomplete, the Administrator may send written notice via certified mail to the subdivider that the application will be terminated if the items are not addressed within 30 days.

B. Amendments to the Application During Element Review

If the subdivider alters the application during element review, the application will be reviewed according to 1.16.060.A. If not determined to be material, the application will be reviewed according to 1.10.050.A, which triggers an additional five-day review period.

11.4.6 Sufficiency Review.

A. Process

Once the Administrator determines an application contains the required elements, the Administrator reviews it according to the following process 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:

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. [76-3-604(2)(a) MCA]
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 standards and if the subdivision's impacts on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety and other applicable review criteria can be effectively evaluated by the City of White Sulphur Springs without substantial outstanding questions remaining.
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. [76-3-604(2) MCA]
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. [76-3-604(3)MCA]
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 may send written notice via certified mail to the subdivider that the application will be terminated if the items are not addressed within 30 days.

B. Amendments to the Application during Sufficiency Review

If the subdivider alters the application during sufficiency review, the application will be reviewed according to 1.16.060.A.

C. Effect of Determining an Application Sufficient

1. *Decision timeframes*

Once the application has been deemed sufficient, the local government's statutory deadlines for a decision begin. [76-3-604(4) MCA] 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:

- a. 35 working days: Minor Subdivisions [76-3-609(2)(a) & (4) MCA]
- b. 60 working days: Major subdivisions with fewer than 50 lots [76-3-604(4) MCA]
- c. 80 working days: Major subdivisions with 50 or more lots [76-3-604(4) MCA]

2. *Extensions or suspensions*

The time period may be extended or suspended by up to one year upon mutual consent of the subdivider and the Administrator. [76-3-604(4)(a) MCA] 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.

3. *Additional copies*

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

- a. Minor Subdivisions Creating Two Lots: One electronic copy in PDF format, and eight paper copies, each in a three-ring binder with tabs for each section.
- b. Major Subdivisions and Minor Subdivisions Creating Three to Five Lots: One electronic copy in PDF format, and 15 paper copies, each in a three-ring binder with tabs for each section.

D. Additional Information

A determination that an application contains sufficient information for review as provided in this section does not guarantee 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.

11.4.7 Agency Comments.

As part of the subdivider's preparation of the Preliminary Plat Application under Section ??????? of these regulations, the subdivider shall solicit comments from the public utilities, agencies and other entities identified by the Administrator during the pre-application process under Section ?????. A list of agencies that the Administrator may use to create the list is included as Administrative Materials K "List of Agencies for Contact", found in Appendix B: Supplemental

Administrative Materials. Other agencies and entities may be included on the pre-application list at the Administrator's discretion. The purposes of the Administrator providing this list and for the subdivider to solicit comments are: 1) to direct the subdivider to appropriate entities that may have a stake in the subdivision, and 2) to ensure the subdivider reasonably has opportunities to address the entities' concerns and requirements during the early planning stages of the subdivision. All comments received by the subdivider or City of White Sulphur Springs concerning a subdivision proposal shall be incorporated into the subdivision files maintained by the City.

A. Agencies That May Be Contacted During Preliminary Plat Review

1. The Administrator may contact the agencies identified during the pre-application meeting according to 1.10.030.B, or any other entity. If the Administrator contacts any entities during the review process, the Administrator shall notify the subdivider of the contact and the timeframe for response. [76-3-504(1)(q)(iii) MCA]
2. The Planning Board and City Council may also contact the agencies identified during the pre-application meeting according to 1.10.030.B, or any other entity. If the Planning Board or City Council contact additional entities during the review process, the Planning Board or City Council, or Administrator on behalf of the Planning Board or City Council, shall notify the subdivider of the contact and the timeframe for response. [76-3-504(1)(q)(iii)MCA]

B. Comments Received

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

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. [76-3-608(9) MCA]

1.10.080 Staff Report

This section discusses the report prepared by the Administrator to assess the proposed subdivision for compliance with the regulations and how it relates to the review criteria. The staff report is submitted to the Planning Board for major subdivisions and minor subdivisions to create three to five lots and the City Council for all subdivisions.

A. Contents

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

The staff report shall contain:

1. Any recommended conditions that should be applied to the preliminary approval (see 1.10.080.B, "Conditions of Approval" below) including conditions to ensure compliance with applicable regulations and those recommended for mitigation measures, or the reasons for any recommendation for 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 ??? and the review criteria in Chapter ????
3. Any applicable recommendations pertaining to any requested variances (based on review criteria for variances in Chapter ????) including any conditions of approval, and a summary of facts forming the basis of the recommendation;
4. A recommended time period within which the preliminary plat approval will be in force, if approved, of not less than one calendar year or more than three calendar years, and any recommendations regarding extensions (refer to Chapter ??? for review criteria for determining time periods and extensions) [76-3-610(1)]; 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.

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 ??? and each condition required for subdivision approval must identify a specific, documentable, and clearly defined purpose or objective related to the primary criteria set forth in 76-3-608(3) that form the basis for the condition.

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.

11.4.8 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.

A. Public Information

1. Once the application is submitted to the Administrator, it is public information.

2. 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.

B. Timing of Comments

Although identified as a separate step in the process, in fact, because applications are public information, various forms of public review may occur at any time during the preliminary plat review process. Establishing it as a separate 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.

C. Soliciting Public Comments

Major subdivisions shall have a public hearing by the Planning Board. Such hearings shall be noticed as identified in 1.10.100.B.1 below. Public comment will be accepted at public hearings and minutes taken.

Meetings for review of minor subdivisions shall be noticed as public meetings before the Planning Board and/or City Council. Notice of meetings shall be posted at least 48 hours in advance. Public comment will be accepted at public meetings.

11.4.9 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 regarding a subdivision application. The Planning Board review only applies to major subdivisions and minor subdivisions of three to five lots, having delegated its responsibilities for two-lot minor subdivisions to the Administrator, as authorized under 76-1-107(2) MCA.

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 seven days prior to the scheduled meeting or hearing.

B. Planning Board Public Hearing

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:

- a. 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. [76-3-605(3) MCA]

- b. 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 be notified of the hearing by registered or certified mail not less than 15 days prior to the date of the hearing. [76-3-605(3) MCA]
- c. The notices described above shall also include descriptions of any requests for variances that are being considered with the application.
- d. 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.
- e. In the event 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.

2. Public Hearing

The public hearing, held by the City/ County 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 noticed, or it must be postponed and noticed again. According to the meeting agenda, the public hearing is open for persons to speak for or against the project, or to hear 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. See Appendix A for additional information about how public hearings are to be conducted.

C. Planning Board Public Meeting

The Planning Board shall review all minor subdivision applications for three to five lots at an open public meeting and make a recommendation to the governing body in accordance with subsection ?????? below. Public notice in accordance with Section ?????? above is not required. Instead, the meeting shall be posted at least 48 hours in advance.

D. Planning Board Recommendation

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.

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 ??????); except that the Planning Board is making recommendations, and the City Council is making decisions.

3. *Planning Board Written Recommendation*

Within 10 working days after Planning Board review, the Planning Board or Administrator working on behalf of the Planning Board shall submit to the subdivider and the City Council the following information in writing [76-3-605(4) MCA]:

- a. Recommendation for approval, conditional approval (including any recommended conditions and/or mitigation measures), or denial of the subdivision application and preliminary plat. If the Planning Board recommends conditional approval of the proposed subdivision, each condition required for subdivision approval must identify a specific, documentable, and clearly defined purpose or objective related to the primary criteria set forth in 76-3-608(3) that form the basis for the condition.;
- b. Disclosure of any preferences for mitigation expressed by the subdivider to the Planning Board;
- c. Recommended findings of fact based on review of the submittal requirements and analysis of the impacts in the review criteria (see Chapters ???????);
- d. Recommendation for approval or denial of any requested variances (based on review criteria for variances in Chapter ??????), 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;
- e. 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 (See Chapter ?????? for review criteria for determining time periods and extensions);
- f. Summary of public comments received, including any public comments regarding water and sanitation information; and
- g. Staff report as altered by the Planning Board.
- h. The Administrator shall compile the items listed above after the Planning Board hearing or meeting and submit them 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.

E. 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 ???????A shall apply.

11.4.10 New Information after the Planning Board Hearing.

Only applicable to major subdivisions, this section explains what to do if new information is submitted to the City Council after the Planning Board has held its public hearing(76-3-615, MCA).

A. Handling new information

1. If an amended application was not submitted to the subdivision administrator following the public hearing, but relevant new information or substantial changes to the design of the subdivision are presented to the City Council following the Planning Board's public hearing regarding the proposed major subdivision, the City Council shall determine whether public comments or other information presented constitute relevant, new information or a substantial change to the design of the subdivision which would have a substantial effect on the City Council's consideration of the subdivision application and constitutes the need for a subsequent public hearing.
2. If the City Council determines that the information presented constitutes the information described in subsection A.1. above, the City Council may:
 - a. approve, conditionally approve, or deny the proposed subdivision without basing its decision on the new information if the City Council determines that the new information is either irrelevant or not credible or the change to the design of the subdivision does not substantially impact the analysis of potentially significant adverse impacts; or
 - b. schedule or direct its agent or agency to schedule a subsequent public hearing for consideration of only the new information including a substantial change to the design of the subdivision for purposes of considering its findings of fact and conclusions and any proposed conditions of approval in light of the new information that the City Council will rely on in making its decision on the proposed subdivision.

B. Subsequent Public Hearing

1. If directed by the City Council pursuant to Subsection A above, the Planning Board shall hold a subsequent public hearing for consideration of new information (76-3-615(4) MCA).
 - a. At the subsequent hearing, the Planning Board shall consider only the new relevant information or substantial change to the design of the subdivision that may have an impact on the findings of fact and conditions of approval that will have a substantial effect on the City Council's consideration of the application.
2. If a subsequent public hearing is held pursuant to Section 1.10.110, it must be held within 45 days of the City Council's determination to schedule a subsequent hearing.
 - a. Notice of the time, date and location of the subsequent hearing shall be posted according to Subsection 1.10.110.B of these regulations.
3. If a subsequent public hearing is held, the applicable review period is suspended as of the date of the City Council's decision to schedule a subsequent hearing. The applicable review period resumes on the date of the subsequent public hearing.

11.4.11 City Council Decision

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 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 meeting.

B. 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.

C. 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 ????.

D. Decision on Variances

If a variance is requested, the City Council shall review the request for compliance with the criteria in Chapter ????, 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.

E. 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 for mitigation. [76-3-608(5)(b) MCA] The City Council is not, however, required to accept the subdivider's preferred mitigation. [76-3-608(5)(a) MCA] 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 Sections ??? and ????

F. 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. If the City Council conditionally approves the proposed subdivision, each condition required for subdivision approval must identify a specific, documentable, and clearly defined purpose or objective related to the primary criteria set forth in 76-3-608(3) that form the basis for the condition.;
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 three 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 ???), 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(s) by the City Council.

G. Appeals (76-3-625 MCA)

1. 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 governing body or a regulation adopted pursuant to this chapter within 180 days of the final action, decision, order, or adoption of a regulation. The City Council's decision, based on the record as a whole, must be sustained unless the decision being challenged is arbitrary, capricious, or unlawful.
2. A party identified in subsection (5) below 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 may, within 30 days from the date of the written decision, appeal to the district court in the county in which the property involved is located to challenge the approval, imposition of conditions, or denial of the preliminary plat.

3. A party identified in subsection (5) below who is aggrieved by any other final decision of the governing body regarding a subdivision may, within 30 days from the date of the written decision, appeal to the district court in the county in which the property involved is located to challenge the decision.
4. Any petition for appeal must specify the grounds upon which the appeal is made. The governing body's decision, based on the record as a whole, must be sustained unless the decision being challenged is arbitrary, capricious, or unlawful.
5. The following parties may appeal under the provisions of subsections (2), (3) and (4) above:
 - a. the subdivider;
 - b. a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;
 - c. the county commissioners of the county where the subdivision is proposed; and
 - d. (i) a first-class municipality, as described in 7-1-4111, if a subdivision is proposed within 3 miles of its limits;
 - e. (ii) a second-class municipality, as described in 7-1-4111, if a subdivision is proposed within 2 miles of its limits; and
 - f. (iii) a third-class municipality or a town, as described in 7-1-4111, if a subdivision is proposed within 1 mile of its limits.
6. 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 5. PHASED DEVELOPMENTS

11.5.1 Overview

1. A subdivider applying for phased development review shall submit with the phased development application an overall phased development preliminary plat on which independent platted development phases must be presented (76-3-617, MCA). The phased development application must contain the information required pursuant to Section 11.5.1 of these regulations for all phases of a development and a schedule for when the subdivider plans to submit for review each phase of the development.

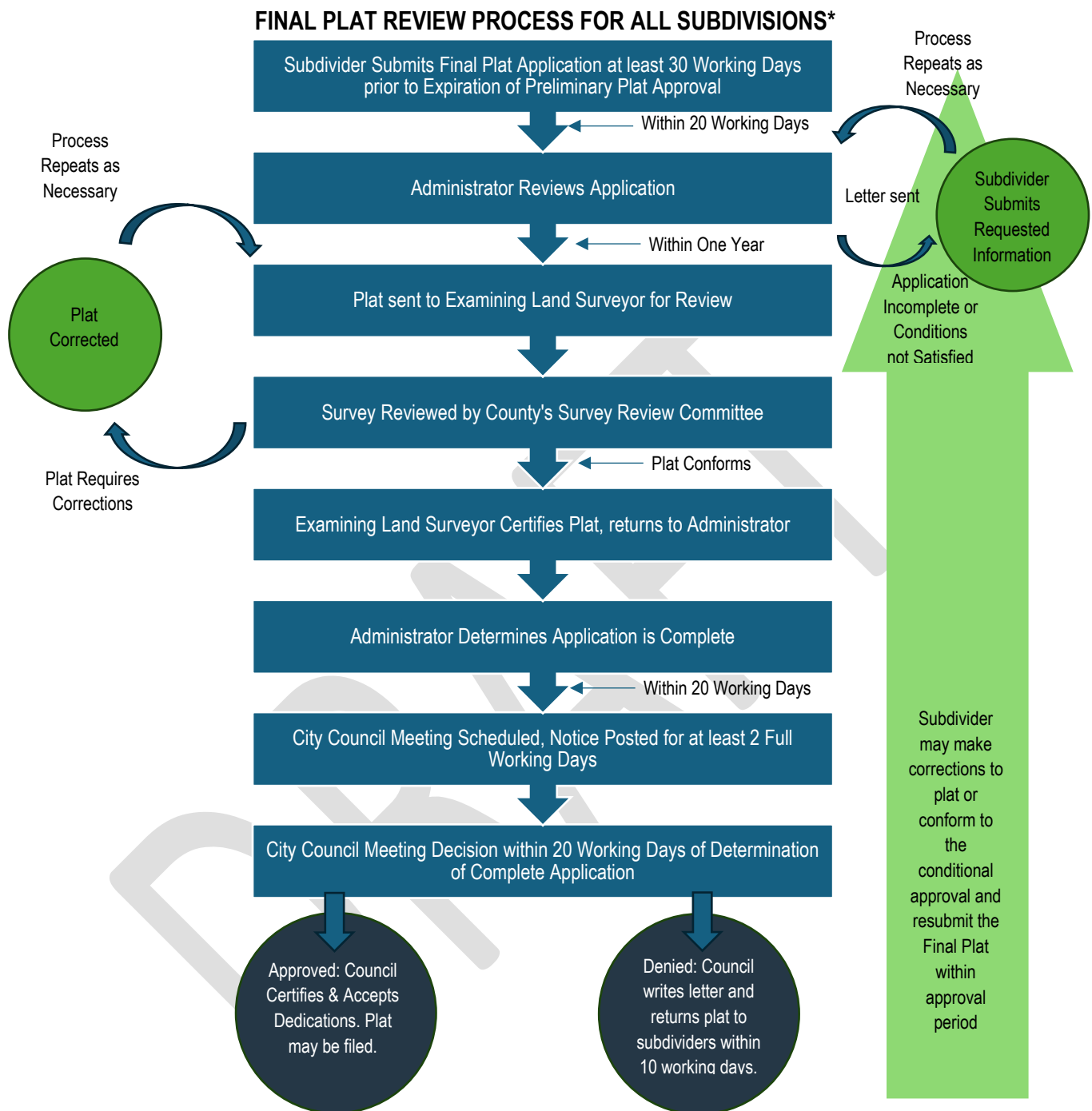
The subdivider may change the schedule for review of each phase of the development upon approval of the City Council after a public hearing as provided below in Subsection (c) if the change does not negate conditions of approval or otherwise adversely affect public health, safety, and welfare.

- a. The phased development application must be reviewed in conformity with Sections 1.04, 1.08 and 1.10 of these regulations. In addition, each phase of the phased development must be reviewed as provided below in Subsection (c) and (d).
- b. The City Council may approve phased developments that extend beyond the time limits set forth in these regulations, but all phases of the phased development must be submitted for review and approved, conditionally approved, or denied within 20 years of the date the overall phased development preliminary plat is approved by the governing body.
- c. For any phase of the approved subdivision submitted for final plat approval within 5 years after the date of preliminary approval of the subdivision, no further public hearing is required before submittal for final plat approval. Final plat approval shall be in accordance with Section 1.14.
- d. For any phase of the approved subdivision submitted for final plat approval more than 5 years after the date of preliminary plat approval of the subdivision, the subdivider shall provide written notice to the governing body not more than 1 year or less than 90 calendar days in advance of submitting the final plat application and the City Council shall hold a public hearing pursuant to Section 1.10.110 within 30 working days after receipt of the written notice from the subdivider.
- e. At the public hearing the City Council shall determine whether changed circumstances justify amending any conditions of approval. The City Council may amend or impose additional conditions of approval only if it determines, based on a review of the primary criteria, that the existing conditions of approval are inadequate to mitigate the potential significant adverse impacts during the original review based on changed circumstances.
- f. The City Council shall issue supplemental written findings of fact within 20 working days of the hearing.
- g. Any additional conditions must be met before final plat approval for each remaining phase and the approval in accordance with Section 1.14 is in force for not more than

- 3 calendar years or less than 1 calendar year within the maximum time frame provided above in Subsection (b).
- h. The governing body may impose a reasonable periodic fee, as adopted by resolution of the City Council, for the review under Subsection (c), above, of the phases in the phased development.
 - i. Modifications to an approved phasing development plan prior to final plat approval shall be reviewed according to the procedures in Section 1.10.100.D.

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Figure 5: Flowchart for the review process of all Final Plats



*Other steps often occur during final plat review; these are the primary steps.

Chapter 6. FINAL PLATS

This chapter details the review process for final plat applications. Once the final plat is approved by the City Council with all other approvals in place, the subdivider can record the subdivision.

11.6.1 Final Plat Application

A. Timing of 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 3 for the review process for all final plats).

A final plat application is not considered to be submitted to and received by the Administrator until delivered to the Administrator accompanied by all required review fees, as adopted by resolution of the City Council. [76-3-611(3) MCA]

B. Submittal Requirements

To file for final plat approval, a Final Plat Application form (see Administrative Materials E, "Subdivision Final Plat Application", found in Appendix B), 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, as adopted by resolution of the City Council;
3. A statement outlining how each condition of approval has been satisfied;
4. A subdivision guarantee dated no older than 30 calendar days prior to the date of submittal of the final plat application;
5. Certification from the Meagher County Treasurer that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid. (For example, see Administrative Materials F, "Sample Certificates");
6. 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;
7. The DEQ and/or local health department/sanitarian approval;
8. The final grading and drainage plan and engineering plans, including street plans and profiles (as required) and engineer certification(s) of improvements that have been installed, as necessary;
9. Any maintenance agreements, declarations of covenants, and property owner association documents, including bylaws;
10. A certificate of dedication of any public improvements, rights-of-way, and easements;

11. A copy of the approved state highway permits when a new road or driveway will intersect with a state highway;
12. When required, a weed management plan approved by the County Weed Department, along with a description of what measures have been taken to implement the plan and fight noxious weed infestations;
13. As applicable, the deed to be recorded with the final plat to transfer parkland and any other public dedications to the City of White Sulphur Springs;
14. A subdivision improvements agreement, financial guarantee and supporting documentation securing the future construction for all incomplete improvements to be installed (if applicable). See also subsection 1.18.010.D.3 and Administrative Materials G, "Model Subdivision Improvements Agreement and Instructions, Examples of Forms of Improvements Guarantees", found in Appendix B: Supplemental Administrative Materials;
15. One 11" x 17" and four 24" x 36" versions (two mylar and two paper) of the final plat, completed in accordance with the Uniform Standards for Final Subdivision Plats as hereby adopted by the City Council and as required by the Meagher County Clerk and Recorder's Office; and
16. Any other information or documents required by the preliminary plat approval letter.

C. Administrator Review

The purpose of this subsection (C) is to provide for a review by the Administrator prior to review by the City Council to ensure that the final plat conforms to the conditions of approval set forth on the preliminary plat and to the terms of these regulations and the MSPA prior to final plat approval. To fulfill that purpose, the Administrator shall complete a review of the final plat application according to 76-3-611MCA and the following:

1. Within 20 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. If the application is not complete, the Administrator shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of the determination in writing within 20 working days of the application being submitted. In the written notification, the Administrator shall identify the defects in the final plat submittal. The Administrator shall not schedule a meeting with the City Council until the application is complete.
3. The Administrator, working on behalf of the City Council per these regulations, 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. If the Administrator, working on behalf of the City Council, determines that an examining land surveyor must review the final plat and hasn't done so prior to the final plat application being submitted, the Administrator shall identify this requirement in its notification.

4. If the Administrator determines the final plat differs materially from the approved or conditionally approved preliminary plat, or conditions are demonstrated as not satisfied, the subdivider shall be required to submit amendments pursuant to 1.16.060.B, or is required to correct final plat materials or furnish more information in accordance with preliminary plat approval.
5. If the subdivider subsequently resubmits a final plat and/or supplemental information, the 20 working day time limits provided in subsections (C)(1) and (2) above apply to each submission of the final plat, fees, or supplemental information until a written determination is made that the final plat contains the information required for final plat approval and the subdivider or subdivider's agent is notified.
6. Once the Administrator determines that the final plat application contains the information required for final plat review and action by the City Council, the Administrator shall schedule a meeting on the final plat with the City Council and the City Council shall review and approve or deny the final plat within 20 working days of that determination. The Administrator shall forward the applicable material to the City Council for review in advance of the meeting.
7. The subdivider or the subdivider's agent and the City Council or Administrator may mutually agree to extend the review periods provided for in this section.

11.6.2 City Council Decision

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 to the review criteria in Section 1.16.030.
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 preliminary plat approval period, original or extended.

B. Filing the Final Plat

After receiving approval, the final plat may not be altered prior to recording. The Meagher 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, which are hereby adopted by reference in latest form and as may be amended from time to time. When the final plat and associated materials are delivered to the Meagher County Clerk & Recorder's Office, a letter from the City of White Sulphur Springs must accompany the materials and acknowledge that the final plat may be recorded. The letter should include a list of items that the City Council requires to be recorded with the final plat.

11.6.3 Amending Final Plats

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. Review fee, as adopted by resolution of the City Council.;
2. Narrative Summary - summary of the proposed changes, reason for the changes, and how they differ from what was previously submitted; and
3. 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.

B. Administrator Review

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

Chapter 7. SUBDIVISION REVIEW CRITERIA AND APPLICATION AMENDMENT PROCEDURES

11.7.1 Overview

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

11.7.2 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.

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.

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. The 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:

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 may be found in Appendix A, which are adopted in the City of White Sulphur Springs Growth Policy, as required by 76-1-601(3)(h) MCA. The impacts must be specific, documentable, and clearly defined per 76-3-608 (3)(a) MCA.

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.

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:

- a. Compliance with the Design Standards in Chapter 2000 is required, except as provided by these regulations (e.g., through variance requests and approval per the criteria).
- b. Special Provisions for RV and Mobile Home Parks: RV and mobile home parks shall meet the additional design standards and requirements primarily included in 2000.
- c. All subdivisions must demonstrate they are designed to comply with applicable zoning.
- d. All subdivisions shall demonstrate compliance with other applicable regulations, such as the ARMs for sanitation and water supply, public health ordinances, floodplain regulations, etc.
- e. 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.

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. *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.

6. Legal and Physical Access [76-3-608(d) MCA]

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

C. Requiring Reasonable Mitigation

The City Council may require the subdivider to design the proposed subdivision through conditions of preliminary plat approval to reasonably minimize potentially significant adverse impacts identified through evaluation of the review criteria identified in 1.16.020.B. [76-3-608(4)MCA] The City Council shall issue written findings to justify the reasonable mitigation required [76-3-608(4) MCA]. 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. [76-3-608(5) MCA]

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. [76-3-608(5) MCA]

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 **or** 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. [76-3-608(6) MCA]

F. Additional Provisions

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 the 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. [76-3-608(7) MCA]

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 Title 76, Chapter 3 or Chapter 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. [76-3-608(8)MCA]

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. [76-3-608(9) MCA]

11.7.3 Criteria for Approval or Denial of Final Plats

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.

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 1.16.020 of these regulations.
2. The subdivision shall conform to the conditions of approval set forth on the preliminary plat, to the terms of the MSPA, and these regulations, which have been adopted pursuant to the MSPA. [76-3-611(1)(a)MCA]
3. The subdivider shall submit with the final plat a subdivision guarantee dated within 30 days prior to date of final plat submittal. The subdivision guarantee 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. (76-3-612 MCA)
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. (For example, see Administrative Materials G, "Model Subdivision Improvements Agreement and Instructions, Examples of Forms of Improvements Guarantees", found in Appendix B: Supplemental Administrative Materials)

5. The final plat shall include the County Treasurer's certification that all real property taxes and special assessments assessed and levied on the land have been paid. [76-3-611(1)(b) MCA] (For an example, see Administrative Materials F, "Sample Certificates", found in Appendix B: Supplemental Administrative Materials)
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 Meagher 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. [76-3-611(2)(a) MCA]

11.7.4 Variances

This section explains how to process variances and the criteria they shall be reviewed by.

A. Variances Authorized

The City Council may grant variances from Chapter ?????, 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. (76-3-506 MCA)

B. Submittal Requirements

The subdivider shall include in the preliminary plat application a Subdivision Variance Application and fees for each subdivision design standard that the proposed subdivision does not meet. The preliminary plat application shall include (for each variance request):

1. Review fee, as adopted by resolution of the City Council.;
2. Completed variance application form; (See Administrative Materials L, "Variance Request Form", found in Appendix B: Supplemental Administrative Materials)
3. Explanation of the design standard(s) pertaining to the variance request; and
4. A summary of the reason for the variance request addressing each of the review criteria.

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.

D. City Council Decision

The City Council shall review each variance request to the review criteria in 1.16.040.C. The City Council will not grant any variance to the requirements of Section 1.18.020.D (Flood Hazards) of these regulations.

1. *Conditions*

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

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.

11.7.5 Extensions of Preliminary Plat

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.

B. Criteria

1. *Significant Changes in Regulations*

The City Council shall not issue extensions if the subdivision regulations or other relevant regulations (e.g., zoning or DEQ 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.

2. *Maximum Time for Each Extension*

Extensions shall be for no longer than three-year increments. (76-3-610 MCA)

C. Extensions to be in Writing

At the end of the preliminary plat approval period, the City Council may, at the request of the subdivider, extend its approval for a mutually agreed-upon period of time, not to exceed three years from the previous approval period. 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. (76-3-610 MCA)

D. Additional Conditions; Limitations

Except as provided in 76-3-507 MCA, after the preliminary plat application is approved, the City Council, city boards, and city staff may not impose any additional conditions as a prerequisite to final plat approval if the approval is obtained within the original or extended approval period as provided herein. [76-3-610(2) MCA]

11.7.6 Amending Preliminary Plats and Application Materials

A. Amending Preliminary Plat or Application Materials before Planning Board Hearing or City Council Meeting

This section is applicable to any changes made to an application after it is determined to be sufficient for review but before Planning Board review 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 1.16.060.B below. If changes are made to minor subdivisions or major subdivisions following the City Council's decision, see Section 1.16.060.C.

If changes are made to a subdivision application or preliminary plat prior Planning Board review 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 1.16.070.
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.

B. Amending Preliminary Plat or Application Materials 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 1.10.110; and

2. 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 1.16.070.
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 according to 1.16.070 and not new information according to Section 1.10.110, 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 according to 1.16.070 but constitutes new information, follow the procedures in 1.10.110 to determine if a subsequent hearing is required.
6. If the Administrator determines the changes are material according to 1.16.070, 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 1.10.110 upon confirmation from the Administrator that the application has the required elements and is sufficient for review.

C. Amending an Approved Preliminary Plat or Application Materials after Preliminary Approval

If the subdivider proposes to change the preliminary plat (or application materials, including any changes that result from the proposed amendment, as well as necessary changes to conditions of approval) 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 shall review the changes as follows:

1. Within five working days of receiving the proposed changes, the Administrator shall determine whether the changes to the preliminary plat are material pursuant to 1.16.070.
2. If the Administrator determines the changes are material, the Administrator may either require review by the Planning Board for majors or three to five lot minors, 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.

D. Amending Conditions of Preliminary Plat Approval

Any change, amendment or modification that necessitates an amendment to any condition of preliminary plat approval shall be processed according to this section. 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. For the amendment(s) to be considered under this subsection (D), the subdivider must submit factual information to support a claim that a condition of approval is illegal or impossible to meet.

11.7.7 Determining a Material Change

A. Changes to a Preliminary Plat Application:

Change(s) made to a preliminary plat application may be considered material if:

1. It is determined to impact the element review or sufficiency review of the preliminary plat application under Section 1.10.050 and Section 1.10.060 of these regulations.
2. It has a specific, documentable, and clearly defined impact on the primary review criteria in Section 1.16.030.
3. It brings the proposal out of conformance with the zoning or the design standards in these regulations.
4. It impacts the accuracy of other information provided in support of a preliminary plat application.
5. It changes any of the following information:
 - a. The configuration or number of lots;
 - b. Required or proposed park land or open spaces;
 - c. Water and/or wastewater treatment system proposals;
 - d. Easement provisions, access, and streets; and
 - e. Proposed land uses or covenants only if they directly and materially impact a condition of subdivision approval.

B. Changes to an Approved Preliminary Plat:

Change(s) made to an approved preliminary plat application may be considered material if:

1. They impact the configuration or number of lots;
2. They impact required or proposed park land or open spaces;
3. They impact the water and/or wastewater treatment system proposals;
4. They impact the easement provisions, access, and streets
5. They impact an approved variance;
6. They impact the proposed land uses or covenants only if they directly and materially impact a condition of subdivision approval.; or
7. They impact the conditions of approval.

C. 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 1.10.110.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.

11.7.8 Amending Final Plat Approvals

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 ????.

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 ????.

1. *Exception*

Once the final plat is approved, changing the proposed land use cannot be considered a material change, but a change to a condition of approval that reflects a requirement for a particular land use can be.

C. Result of a Material Change

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 ????.

2. Material Changes Requiring a Public Meeting or Hearing

Material changes not meeting ??????? 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 ????), its land divisions, or improvements, must be reviewed and approved using the procedure described in ??????. A material change may include changes to conditions of approval such as to proposed covenants and easements, significant changes in lot sizes, changes in water, wastewater or storm water proposals etc.

3. Additional Requirements

- a. 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.
- b. The City Council may not approve an amendment that will place a lot in non-conformance with the design standards contained in Chapter ????? 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 ???? and Section ?????.
- c. The City Council may not approve an amendment that will place a lot in non-conformance with any existing zoning unless the appropriate zoning board has granted a zoning variance to the applicable standard.
- d. 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 8. DESIGN STANDARDS

11.8.1 General Standards

A. Conformance with Standards

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 ????? and Section ????? The City Council may not grant variances from the provisions of Section ?????, “Flood Hazards”, below. For additional, specific standards for subdivisions for rent or lease (RV Parks and Mobile Home Parks), refer also to Section ????? of these regulations.

B. Conformance with other Regulations

The design, improvements, and development of all subdivisions must conform with all other City, State and Federal regulations that pertain to the development of land for residential and commercial uses.

C. Easements

Easements created for the subdivision shall include text that describes who is granting the easement, who is the recipient or beneficiary of the easement, responsibilities and restrictions on the lot owner, who or what entities are responsible for maintenance or other responsibilities related to the purpose of the easement, and term of the easement.

D. Improvement Design and Responsibilities

1. *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.

2. *Completion of Improvements*

Subject to 76-3-510 MCA and (3) below, 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 exception to this requirement is when the City of White Sulphur Springs or other public entity has adopted plans for improvements consistent with subdivision improvements, in which case 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.

3. *Subdivision Improvements Agreements; Financial Security*

- a. Before final plat approval, the subdivider must have installed all required improvements or have entered into a subdivision improvements agreement

guaranteeing the construction and installation of all required improvements (MCA 76-3-507).

- b. The City Council may require 50 percent of all improvements, or 100 percent of any improvements necessary to protect public health and safety, to be completed before allowing bonding or other reasonable security for purposes of filing a final plat. The requirement is applicable to approved preliminary plats. [MCA 76-3-507(4)] In these circumstances, the preliminary plat approval letter provided by the City Council shall identify the improvements that are required to be installed prior to final plat approval, including those related to protecting public health and safety, of which 100 percent of the improvements shall be installed.
- c. No construction or placement of structures on the lots may occur until improvements related to public health and safety, such as streets or firefighting facilities, have been installed and engineering plans have been filed.
- d. A model subdivision improvements agreement, alternative methods of guaranteeing subdivision improvements, and the procedures and requirements for securing an agreement are attached to these regulations as Administrative Materials G, "Model Subdivision Improvements Agreement and Instructions, Examples of Forms of Improvements Guarantees", found in Appendix B: Supplemental Administrative Materials.
- e. If the subdivider chooses to enter into a subdivision improvements agreement, guaranteeing the improvements through a bond or letter of credit, three bids for the cost of installation of the improvements shall be obtained by the subdivider. The amount of the guarantee shall be 125 percent of the highest bid.
- f. As the improvements are installed, the subdivider shall provide a letter to the City Council indicating such and include a copy of the engineered plans certifying all public improvements have been installed in conformance with the approved plans and specifications. Prior to the release of the guarantee, a copy of the plans, stamped by the project surveyor or engineer in accordance with their respective licensing provisions, shall be filed at the Meagher County Clerk and Recorder's Office with reference to the final subdivision plat.

4. 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. (For an example, see Administrative Materials I, "Sample Latecomers Agreement", found in Appendix B: Supplemental Administrative Materials)

5. *Dedication and Maintenance of Subdivision Improvements*

All public improvements that serve subdivisions shall be dedicated to and accepted and maintained by the City of White Sulphur Springs or other public entity, with the exception of private improvements for mobile home parks and RV parks (and condominium and townhouse developments, which are exempt from the MSPA and this chapter). Exceptions may also be made for improvements serving a limited number of lot or unit owners, such as shared driveways and similar improvements that are not expected to serve the general public or numerous lot or unit owners. Such shared facilities may be maintained as governed by a legally enforceable private agreement between the two lot or unit 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 White Sulphur Springs, and shall be recorded along with the final plat. A Sample Shared Use and Maintenance Declaration is included in Supplemental Administrative Materials J, "Sample Shared Use and Maintenance Declaration", found in Appendix B: Supplemental Administrative Materials. All dedications and maintenance of improvements to the City of White Sulphur Springs 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.

E. Waiver of Right to Protest Special Improvement Districts

When a "Waiver of Right to Protest SID" is required per the following provisions, as a mitigation measure or condition of preliminary plat approval, the waiver shall identify the specific capital improvements for which the protest is being waived. A waiver of a right to protest may 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. [76-3-608(7) MCA] The waiver shall be filed with the final plat in at least one of the following forms (preferably all forms): as condition of subdivision approval that gets filed with the plat, as a requirement noted on the final plat, or as an acknowledgment on a document signed by the subdivider.

F. Notice to Lot Purchasers

When notice to lot purchasers is required as mitigation or as a condition of preliminary plat approval, the noticing shall be made in covenants and in purchase agreements. If the subdivision has no covenants to file, the subdivider shall be required, as a condition of approval, to submit all required notices and restrictions in a document to be filed and recorded with the final plat.

G. Disturbance Prior to Approvals

There shall be no surface disturbance or preparation of ground for streets, other subdivision improvements, or building sites requiring earth moving, ditches, or any other disturbance until all approvals required for the disturbance have been received.

11.8.2 Environmental Considerations

A. Lands Unsuitable for Subdivision

Subdivisions shall not result in development of areas that are hazardous or detrimental to public health, safety, or welfare, or that may result in an excessive expenditure of public funds. Potential hazards may render portions or all of the subdivision unsuitable for building sites, roads, water, and sewer infrastructure, and other improvements necessary for the subdivision. Land that the City Council determines is unsuitable for subdivision because of natural or human caused hazards such as flooding, landslides, excessive slope, rock falls, snow avalanches, subsidence, high water table, polluted or non-potable water; or because of unreasonable burdens on the general public such as the requirements for the excessive expenditure of public funds, environmental degradation, and congestion in the roads shall not be subdivided for building or residential purposes unless the hazards or excessive public burdens are eliminated or will be overcome by appropriate design.

B. Natural Environment

The design and development of subdivisions shall, insofar as it is possible, preserve or enhance the natural terrain, prominent ridgelines, natural drainage, floodplain, existing topsoil, trees and other natural vegetation.

If a navigable stream or wetland would be affected, the subdivider shall obtain all necessary and applicable permits from local, state, and federal agencies (e.g., local floodplain permit, 310 permits from conservation district, 404 permits from the US Army Corps of Engineers).

C. Flood Hazards

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 governing body to be subject to flooding, may not be subdivided for building or residential purposes or other uses that may increase or aggravate flood hazards to life, health or welfare, or that may be prohibited by state or local floodplain or floodway regulations. The following, therefore, apply to areas subject to subdivision review in the vicinity of adopted 100-year floodplains.

1. Areas where the Base Flood Elevation has been identified

In areas where the Base Flood Elevation (BFE) has been identified as part of any flood studies or maps adopted by FEMA or DNRC:

- a. 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.
- b. The City may, at any time, adopt floodplain management regulations. 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.

- c. Interpretation of Floodplain Boundary: If the property owner believes all or part of the subject property has been inadvertently included in the 100-year floodplain identified as part of flood studies and maps adopted by FEMA or DNRC, the property owner may seek amendments through processes required by FEMA and/or DNRC, as applicable.

2. Areas where the Base Flood Elevation has not been identified

In areas where the BFE has not been identified as part of flood studies and maps adopted by the governing body (which includes Approximate Zone A 100-year floodplains), the subdivider shall:

- a. If all or a portion of the subdivision is 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 where no official floodway delineation or floodway studies have been made, the subdivider shall:
 - i. Identify the area less than 1,000 horizontal feet and less than 10 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
 - ii. 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.
- b. Base Flood Elevation Study: If the subdivider chooses to complete a study to determine the BFE, the following shall apply:
 - i. 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 Water Resources Division of the Montana Department of Natural Resources and Conservation (DNRC) for comment. The governing body shall not delay the preliminary plat review process to wait for comments. Any comments received by the City of White Sulphur Springs shall be forwarded to the subdivider; and
 - ii. 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.

D. Disturbed Areas

- 1. All areas disturbed during construction of subdivision related improvements shall be revegetated following the provisions of city codes, or in the absence of city codes, following the county noxious weed program. All disturbed areas shall be reseeded and/or revegetated and maintained with techniques approved in consultation with the Meagher County Weed Coordinator as necessary prior to final plat approval.
- 2. If over one acre is to be disturbed in the construction of public improvements required for final plat, the applicant shall obtain permit coverage under the General Permit for Storm Water Discharges Associated with Construction Activity with the Department of Environmental Quality's Water Protection Bureau (commonly referred to as a

SWPPP). The applicant shall submit with the final plat application a copy of the confirmation letter from DEQ which includes an authorization number demonstrating DEQ is in receipt of a complete Notice of Intent Package.

E. Wildlife and Wildlife Habitat

Subdivisions shall be designed to avoid or minimize adverse impacts on wildlife and wildlife habitat, and human/wildlife conflicts.

F. Cultural Resources

Subdivisions shall be designed to avoid or minimize adverse impacts on cultural and historical features. The Administrator may require an evaluation by the Montana State Historical Preservation Office for preliminary plat review or the City Council may include a condition to require such information prior to final plat approval.

11.8.3 Subdivision Layout

A. Lots

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. A through lot means any lot which abuts two or more streets other than a corner lot, which abuts two intersecting streets.
8. All lots shall be developable in compliance with any City of White Sulphur Springs Zoning Ordinance, as applicable.

B. Blocks

Subdivisions creating a new area or neighborhood in the City of White Sulphur Springs shall be laid out using a development pattern with blocks similar to the City of White Sulphur Springs's current development pattern, which provides traffic control, safety,

areas for snow storage 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.

C. Relation to Existing Streets and Neighborhoods

The subdivider shall arrange new streets for their continuation to adjacent streets and neighborhoods and for the convenient dispersal and movement of traffic, connection of neighborhoods, effective provision of emergency services and utilities. Proposed road plans and profiles as required by Section ????? are subject to approval by the City Engineer or Public Works Department.

D. 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 easements for the logical continuation of the subdivision street(s) and utilities to the adjacent land. This requirement may be waived through the approval of a variance by the City Council when one of the following criteria is met:

1. Topography or other physical conditions would make it impracticable to provide access to adjacent un-subdivided land.
2. When the adjoining unsubdivided property is under public ownership.
3. If the adjoining un-subdivided property is subject to a conservation easement or other legally restrictive covenant as confirmed by the City Attorney.

11.8.4 Water, Sewer, Solid Waste, and Grading and Drainage

A. 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 White Sulphur Springs 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 White Sulphur Springs and the DEQ. The subdivider must submit plans and specifications for the proposed facilities to the City of White Sulphur

Springs and to the DEQ and must obtain their approvals prior to undertaking any construction. The City of White Sulphur Springs may consult with contracted agents to ensure adequacy.

B. 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 White Sulphur Springs 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 White Sulphur Springs and the DEQ. The subdivider must submit plans and specifications for the proposed facilities to the City of White Sulphur Springs and to the DEQ and must obtain their approvals prior to undertaking any construction. The City of White Sulphur Springs may consult with contracted agents to ensure adequacy.

C. Solid Waste

The subdivider must provide for disposal of solid waste that meets the minimum standards of the DEQ, the City of White Sulphur Springs 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.

D. Grading and Drainage

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 White Sulphur Springs, 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.
4. All storm sewer facilities and drainage plans are subject to any adopted city codes.

11.8.5 Local Services

A. Utilities

1. All subdivision lots shall be provided electrical utilities, natural gas, water, sewer, and access to internet if such utilities are available.

2. All new utility lines shall be placed underground where practical or as determined by the installing utility company.
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.

B. Mail Delivery

Mail delivery for the proposed subdivision shall be designed in consultation with the USPS as either delivery to individual lots, mail cluster box units (CBUs) within the subdivision, post office boxes, or a combination. The method of mail delivery must be clarified at preliminary plat. The City Council may require USPS approval for CBUs prior to final plat.

C. Fire Protection

The City of White Sulphur Springs and immediate vicinity are within the Wildland Urban Interface (WUI). The design of subdivisions needs to consider subdivision layout, access, signage, vegetation management, and landowner education. The following standards shall apply to all subdivisions:

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, and forested areas.
2. All subdivisions in the City of White Sulphur Springs must be within the service area of the White Sulphur Springs Volunteer Fire Department or other public fire authority.
3. Subdivisions shall comply with applicable adopted 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. Installation of fire hydrants for subdivisions shall adhere to the municipal codes applicable to the subdivision. Hydrants should be provided at each street intersection and at intermediate points between intersections as recommended by the state Insurance Services Office. Generally, hydrant space may range from 350- to 600-feet depending on the area being served. The Administrator, in consultation with the City Engineer and appropriate City staff, will evaluate the specific fire protection water supply needs of the subdivision and make a determination as to the location, spacing and number of fire hydrants needed within the subdivision.
5. Building sites shall be prohibited on slopes greater than thirty percent (30%) and at the apex of "fire chimneys" (topographic features, usually drainageways or swales, which tend to funnel or otherwise concentrate fire toward the top of steep slopes).
6. Open space, park land and recreation areas including greenbelts, riding, or hiking trails should be located, where appropriate, to separate residences and other buildings from densely forested areas.
7. All major subdivisions and subsequent minor subdivisions shall have two access routes meeting the street standards found in these regulations. At the discretion of the City Council, one of the access routes may be constructed as an emergency access route meeting a lower street standard. Circumstances may require accesses to exceed transportation standards. For example, the City Council may choose to disallow subdivisions without two accesses in and out of them, to assure more than one escape route for residents and at least two access routes by emergency vehicles.
8. All streets shall be identified with approved noncombustible, reflective street signs that meet City standards.
9. Rights-of-way and subdivisions shall be cleared of slash prior to final plat approval and maintained clear of slash.
10. A vegetation management plan may be required to be developed for all properties within the subdivision, including open space areas; which will be discussed with the subdivider at or following the pre-application meeting. This plan shall be reviewed and approved by the City Council during preliminary plat review after review and comment by the local fire authority. The intent of the plan is to reduce fuel loading and provide continuous maintenance of the fuel load. It shall address the following:

- a. Protection of life and property.
 - b. Reduction of the potential for a fire to spread.
 - c. Providing safe areas for emergency responders to effectively fight fires.
 - d. Provision of defensible space around access ways and structures.
 - e. Ensuring appropriate and healthy vegetation types and minimal fuel loads into the future.
11. A map of fire protection features shall be submitted to the Volunteer Fire Chief or designee for review and approval prior to final plat approval. This map will show access streets, hydrants, water supply points, and any other pertinent items. It shall also be made a component of any homeowners' association covenants.

D. Park Land Dedication; Cash in Lieu; Waivers; Administration (76-3-621 MCA)

1. Except as provided below, the final plat of a residential subdivision must show that the subdivider has dedicated to the City of White Sulphur Springs a cash¹ 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; or
 - d. Subdivisions which create only one additional parcel.
3. When allowed by subsection (2) above, in accordance with MCA 76-3-621(8)(a), the City Council requires park dedication for minor subdivisions within the municipal boundaries.

¹ Cash donations may only be used subject to a park plan being formally adopted by the City Council in accordance with subsection (D)(9) and 76-3-621(5)(b)(ii), MCA to allow for legal use of cash donations by the City Council.

4. The City Council, in consultation with the subdivider and the Planning Board or established 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.
5. The land dedicated for park use may be inside or outside the boundaries of the proposed subdivision.
6. 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;
 - 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;
 - c. The area of the land proposed to be subdivided, by virtue of a combination of the provisions of 6(a) and (b) above, is reduced by an amount equal to or exceeding the area of the dedication required; 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.
7. 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 [76-3-621(7)(a) MCA]; and
 - b. The area of the land to be subject to long-term protection equals or exceeds the area of dedication required. [76-3-621(7)(b) MCA]
8. Subject to the approval of the City Council and acceptance by the school district trustees, a subdivider may dedicate a land donation provided to a school district adequate to be used for school facilities or buildings. [76-3-621(9)MCA]
9. The City Council will administer funds dedicated to the public under this section in accordance with 76-3-621(5) MCA. In accordance with 76-3-621(5)(b)(ii) MCA, the City Council may only use dedicated money to acquire, develop, or maintain, within its

jurisdiction, parks or recreational areas or for the purchase of public open space or conservation easements if the park, recreational area, open space, or conservation easement is within a reasonably close proximity to the proposed subdivision, and the City Council has formally adopted a park plan that establishes the needs and procedures for use of the money. In addition, the City Council may not use more than 50% of the dedicated money for park maintenance. As such, cash dedications in-lieu of land dedications may only be used to meet park dedication requirements where a formal park plan has been adopted by the City Council.

10. For the purposes of this section, “cash donation” means the fair market value of the unsubdivided, unimproved land.
11. For subdivisions that include a land dedication(s) to meet the park dedication requirement, the final plat submittal shall include a deed transferring the parkland to the City of White Sulphur Springs, which shall be deemed suitable for recording at the Meagher County Clerk & Recorder’s Office with the final plat.
12. Any cash dedication in-lieu of land dedication to meet the park dedication requirements shall be paid prior to final plat approval.

11.8.6 Transportation.

A. Arrangement

1. *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, and the delivery of emergency services, public convenience and safety, and the proposed uses of the land to be served by them. Street design shall substantially follow a rectangular pattern.

2. *Applicability*

All off-site and on-site streets providing the primary access to a proposed subdivision and subdivision lots shall be designed and constructed to meet the standards found in these regulations or any separate street and roadway standards adopted by the City Council, except as allowed by variance.

3. *Relationship to Undeveloped Areas*

Street design for subdivisions adjacent to unsubdivided or undeveloped areas shall be designed to allow for the continuation of the rectangular block pattern into the undeveloped or unsubdivided areas. In situations where future development of adjacent land is planned or expected in a reasonably near future as determined by the City Council, dead-ends and cul-de-sacs intended to provide future connections to the planned or expected future development are allowed, or may be required by the City Council, and do not require a variance.

The requirement for continued streets to unsubdivided or undeveloped areas may be waived through the approval of a variance by the City Council when one of the following criteria is met:

- a. Topography or other physical conditions would make it impracticable to provide access to adjacent un-subdivided land.
- b. When the adjoining unsubdivided property is under public ownership.
- c. If the adjoining un-subdivided property is subject to a conservation easement or other legally restrictive covenant as confirmed by the City Attorney.

B. Street Design

1. General

Table 1: Road Standards for Subdivisions			
Minimum Design Standards		Collector	Local Road
1	Minimum right-of-way Width		
	a. level terrain	60'	60'
	b hilly terrain	60'	60'
2	Minimum Roadway Width	26'	24'
3	Minimum Curb Radius or Edge Pavement at Intersections	25'	15'
4	Maximum Grades	8%	10%
5	Approaches Onto Public Roads		
	Minimum Sight Distance	200'	150'
	Maximum Grade for 20'	5%	5%
6	Curvature		
	Design Speed	30 mph	20 mph
	Minimum Radius	250'	150'
7	Turn Arounds		
	Maximum Dead End Road Length		1000'
	Cul-De-Sac Outside ROW Radius		40'
	Cul-De-Sac Roadway ROW Radius		35'
	"T" Turn Arounds Leg Length		30'
8	Bridges		
	Roadway Width	26'	24'
	Design Capacity	20 Tons	20 Tons
	Vertical Clearance	14.5 '	14.5'

a. 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 and constructed 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.

b. 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.

c. Dead-end Streets

The following provisions apply to dead-end streets:

- i. Except for local residential streets and collectors within phases of subdivisions that will provide continuation of streets in future development at the satisfaction of the City Council, and within private developments, dead-end streets and cul-de-sacs are prohibited.
- ii. Alleys are not allowed to dead-end and must be served by other streets at both ends.
- iii. When a dead-end street is allowed, the street shall have an approved turnaround. Where dead-end streets terminate, the developer shall provide either a cul-de-sac bulb or "T" turnaround at the terminus. Cul-de-sacs shall have a full diameter of 100' and "T" turnarounds and modified "T" turnarounds shall have minimum backup legs of 35 feet as measured from the edge of driving lanes of the street. The turnarounds shall include surface widths consistent with the main part of the street, but parking may be prohibited by the City Council.
- iv. 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.
- v. 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.

2. Intersections

The following requirements shall apply to street intersections:

- a. Streets shall be laid out so as to intersect as nearly as possible at right angles. except when topography prohibits this alignment. No street shall intersect any other street at less than a 60-degree angle.
- b. The intersection of more than two streets at one point shall be avoided.
- c. 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 private development streets and 300 feet for collectors or arterials.
- d. Intersection design must provide acceptable visibility for traffic safety as dictated by the designed operating speeds on the individual streets.

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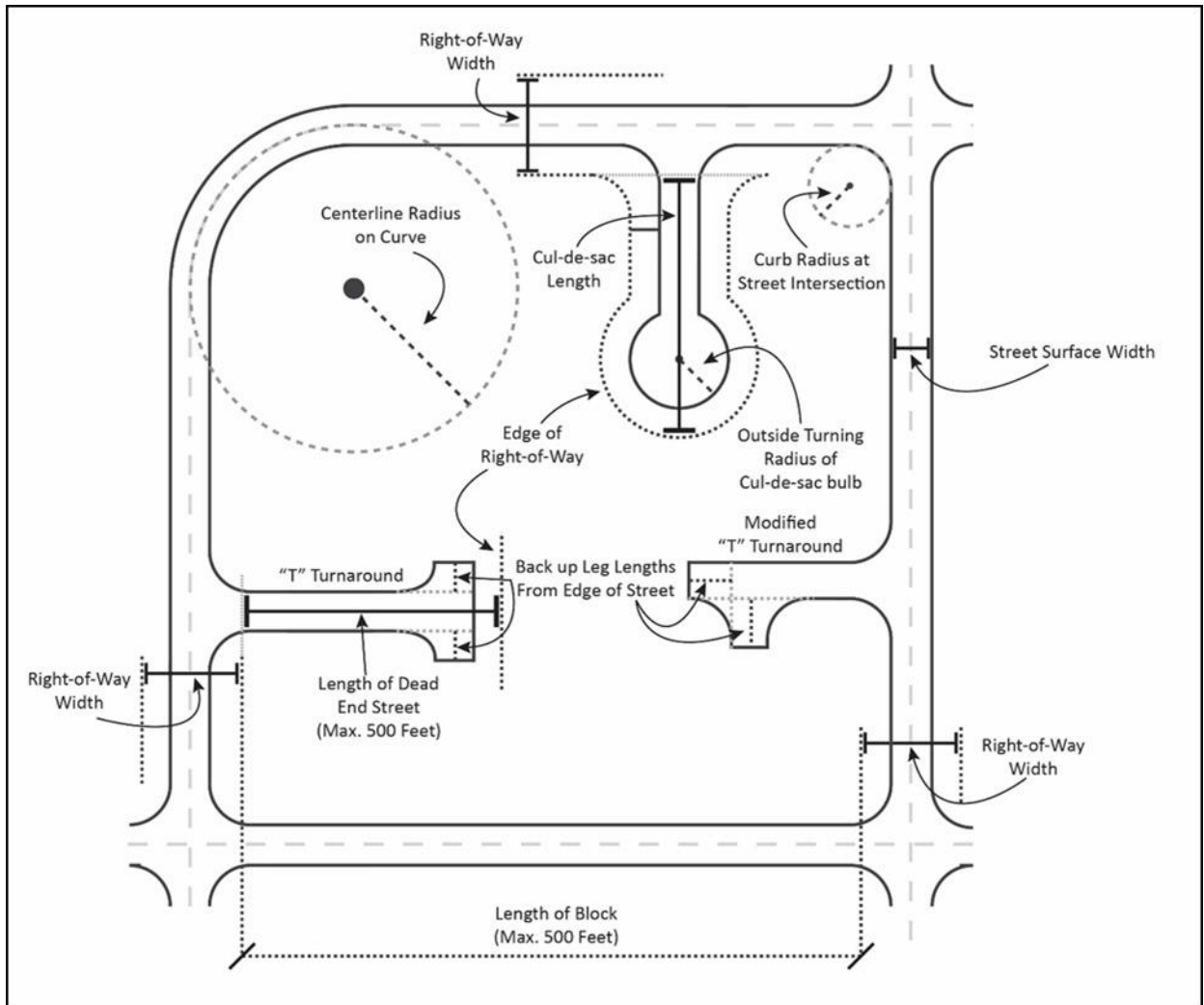


Figure 6: Intersection and street design details

C. 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 construction of public bridges or culverts. Culvert construction shall comply with applicable state law and regulations and federal laws and regulations (if applicable). For public bridge and culvert construction falling within the jurisdiction of the Meagher County Board of County Commissioners under Mont. Code Ann. § 7-14-2201, et seq., the preliminary plat application shall include the subdivider's proposal to ensure construction complies with state law and regulations and federal law and regulations (if applicable), along with comments on the construction from the Board. All proposals for the construction of public bridges and culverts within the jurisdiction of Meagher County are subject to the approval of the Meagher County Board of County Commissioners and the White Sulphur Springs City Council prior to final plat approval. All proposals for the construction of culverts not within the jurisdiction of Meagher County are subject to the approval of the White Sulphur Springs City Council prior to final plat approval. Pursuant to Mont. Code Ann. § 7-14-2201(4) "public bridges" means public bridges located in towns or cities.
2. Bridges and culverts shall be designed by a registered engineer to be appropriately sized in accordance with the drainage.
3. Bridges must be designed and constructed to meet the current edition of the American Association of State Highway and Transportation Officials (AASHTO) Load Resistance and Factor Design (LRFD) Design Specifications and the AASHTO Policy on Geometric Design of Highways and Streets. Permits for construction over waterways, including USACE 404 and state permits, may be required.
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.

D. Street Names and Addresses

1. All street names must be approved by the City Council pursuant to the City of White Sulphur Springs's addressing system.
2. All lots and units shall be subject to the City of White Sulphur Springs's addressing system. Address numbers are assigned according to City code and shall be visibly posted on each lot prior to final plat approval and be maintained by the future property owner.

E. 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 White Sulphur Springs. Typically, a minimum of two street lights per block on each side of the street shall be required except in residential areas where street lights are only required at intersections of streets or crosswalks across streets. All street lighting shall be downward-pointed and

side-shielded to prevent glare and sky glow. Street lights may be a height of no more than 25 feet.

F. Traffic Impact Studies Required and Off-site Street Improvements

1. *Traffic Impact Studies Required*

A traffic impact study completed by a professional engineer licensed in the State of Montana is required for the following subdivisions:

- a. For all subdivisions that will generate more than 750 ADT.
- b. Traffic impact studies that are required by the Montana Department of Transportation (MDT) for any access or approach onto a MDT roadway shall be submitted with the preliminary plat application.
- c. Traffic studies for streets outside the jurisdiction of MDT shall be completed using the format found in Administrative Materials H, "Contents of Traffic Impact Studies", found in Appendix B: Supplemental Administrative Materials)

2. *Off-site Street Improvements*

The City Council shall require off-site street improvements when the improvements are proportional to the direct impact of the subdivision. Off-site street improvements shall be based on the recommendations of the traffic impact study required according to J.1 above and as agreed to by the agency with jurisdiction over the street (i.e., MDT or City Public Works).

11.8.7 Water Rights and Water Conveyance Facilities

A. Documentation of Water Rights

The subdivider shall document all existing appropriated water rights and/or any contract or interest in a public or private entity providing water on/to the land to be subdivided.

B. Distribution of Water Rights

1. *Subdivisions with Lots Averaging Less Than 5 Acres*

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 addressed the following:

- a. Requirements for Reserving and Transferring Water Rights

The owner of the land to be subdivided can either:

- i. reserve and sever all surface water rights from the land; or
- ii. transfer all or a portion of the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water. After transfer to the single entity, the subdivider shall reserve and sever any remaining surface water rights from the land.

- b. Contract or Interest in an Entity Providing Water

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:

- i. Landowners' Water Use Agreement - The subdivider shall establish a landowners' 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; and
- ii. Approval from Entity Providing Water - The entity providing the water shall approve the proposed changes related to the subdivision and the landowners' water use agreement.

2. Subdivisions with Lots Averaging 5 Acres or More

If the subdivision creates lots averaging five acres or more in size, the subdivider shall provide irrigation easements as identified in (C) below or shall reserve and sever all irrigation water rights/shares from the property.

C. Irrigation Easements

1. Easements Requirements

Except as provided in subsection (2) below, the subdivider shall establish irrigation easements that meet all the following requirements.

a. Sufficient Location for Placement and Maintenance

Easements 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. Easement Measurement from Ditch Centerline

Easements are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch.

c. Structures and Certain Vegetation Prohibited

Easements 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. Exemptions from Irrigation Easement Requirements

The subdivider need not establish irrigation easements as provided above if:

- a. No easement is required if the average lot size is 1 acre or less and the subdivider provides for disclosure in a document to be recorded with the final plat that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

- b. No easement is required if the water rights are removed 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. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions. This notification shall be included in a document to be recorded with the final plat.

3. Easements to be Filed and Recorded

- a. Plat and Written Easements Required - The subdivider shall show the easement on the preliminary and final plat, and file and record the easements with the county clerk and recorder with the final plat.
- b. Language Required in the Easement - The easement document to be filed with the plat must include the following language: "The ditch easement is for the unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the 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."

Chapter 9. EXEMPTIONS

11.9.1 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 White Sulphur Springs 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 White Sulphur Springs.

11.9.2 General Procedures for Exemptions

A. Advisory Examination

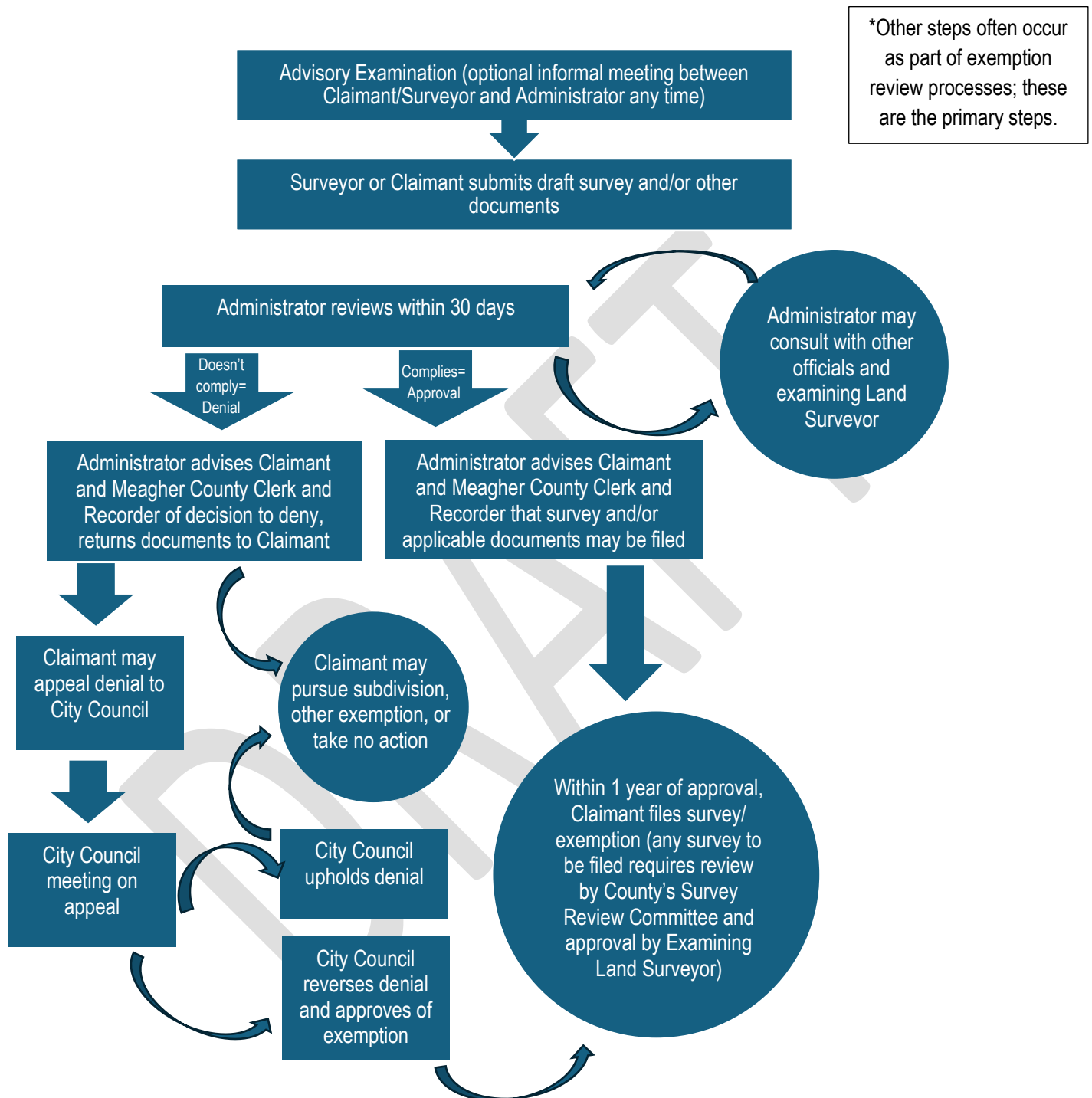
Landowners or their representatives are encouraged to meet with the Administrator to discuss whether a proposed exemption is in compliance with the MSPA and the criteria of this chapter prior to submitting documents claiming an exemption.

B. Submittal and Administration

1. Any person ("claimant" herein) claiming an exemption listed under Section ?????, subsections A through F, shall submit to the City of White Sulphur Springs 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 5 for the general procedural steps). Additional submittal requirements specific to certain types of exemptions are listed in Section ??????, subsections A through F.
2. The Administrator shall review the document(s) and may consult with the City Attorney, Public Works Department, and other staff and officials (e.g., the Meagher County Clerk & Recorder, examining land surveyor, Montana DEQ, City Council, etc.). The exemption shall be examined within 20 working days of the receipt of an application (76-3-207(4)(c) MCA) containing all materials and information required by the City Council to complete the examination under regulations adopted pursuant to 76-3-504(1)(p) MCA; and the City Council may not impose conditions on the approval of a division of land under this section except for conditions necessary to ensure compliance with the survey requirements of Title 76, chapter 3, part 4."
3. If the Administrator finds the proposed use of the exemption complies with the statutes and applicable criteria, the Administrator shall advise the claimant and the Meagher 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 Meagher 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 Meagher 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 how 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 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 7: Flowchart for the typical exemption review process



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 subsection (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 ???? below.

D. Requirements for Exemptions

1. All parcels and the use of all parcels created or amended through the use of an exemption shall comply with an existing zoning ordinance as applicable, 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 White Sulphur Springs may not require lots resulting from exempt divisions to comply with Chapter 1.18, 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 ???? and ???? 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 agricultural purposes, or relocation of common boundaries) may not be made unless the Meagher 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 Meagher County Treasurer may accept the amount of the tax prorated as a partial payment of the total tax that is due.

11.9.3 Specific Exemptions

A. Family Transfers.

Divisions 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 and 76-3-207(2)(b) MCA).

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.

2. *Requirements*

- a. 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.
- b. For purposes of this exemption, "immediate family member" means a spouse, child by blood or adoption, and parent of the grantor.
- c. Filing of any certificate of survey (or recording of an instrument of conveyance) that would use this exemption to create a parcel for conveyance to a family member must show the name of the grantee, relationship to the landowner, and the parcel to be conveyed under this exemption, and the landowner's certification of compliance.
- d. 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.
- e. If located within a subdivision approved by the City Council, the lot size created is allowed within the subdivision.
- f. A restriction or requirement within the subdivision continues to apply to the lot(s) being created.
- g. Complies with the lot sizes required by the zoning regulations of the City.
- h. Tract is not transferred or conveyed from the immediate family member or spouse to another party for a time period of two (2) years from the day the certificate of survey is filed with the County Clerk and Recorder (76-3-207(5) MCA).

3. *Review Criteria*

- a. Any proposed use of a family transfer exemption to divide a tract of record that was created through use of an exemption may be deemed an attempt to evade the MSPA.
- b. 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 streets, utility easements, restrictive covenants, open space or common marketing or promotional plan, or with a need to create such characteristics may be deemed an attempt to evade the MSPA.

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).

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.

2. *Requirements*

- a. Agricultural purposes: For purposes of this exemption, the term “agricultural purposes” means the use of land for raising crops or livestock, and specifically excludes residential, commercial, and industrial uses and structures, as well as any facilities for commercially or industrially processing agricultural products.
- b. 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.
- c. 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, except as specifically allowed herein.
- d. Any change in use of the newly created agricultural parcel for anything other than agricultural purposes subjects the parcel to subdivision review. [76-3-211(1) MCA] However, pursuant to 76-3-211(1)(a) MCA, the City Council, in its discretion, may revoke the covenant provided for in 76-3-207(1)(c) MCA for the purposes of the MSPA and the division may proceed without subdivision review if:

- i. The original lot lines are restored through aggregation of the covenanted land prior to or in conjunction with the revoking of the covenant; or
 - ii. A government or public entity seeks to use the land for 'public purposes' as defined below, which is the definition adopted "in the governing body's review criteria pursuant to 76-3-504(1)(p) MCA". For purposes of this subsection, applicable to removal of agricultural covenants for public purposes, such "public purposes" as defined for these review criteria shall be defined as the "public uses" enumerated in 70-30-102 MCA that are public uses enumerated as acceptable uses of land for which the right of eminent domain may be exercised.
- e. If the City Council proposes to revoke a covenant pursuant to subsection (B)(2)(d) above, the City Council shall hold a public hearing. Within 15 days of the hearing, the City Council shall issue written findings of fact and a decision based on the record. If the City Council approves the revoking of the covenant, the approval must be recorded with the clerk and recorder. [76-3-211(2) MCA]
 - f. The revocation of a covenant pursuant to this section and 76-3-211 MCA does not affect sanitary restrictions imposed under Title 76, chapter 4.
 - g. The use of the agricultural exemption may not create more than one remaining parcel of less than 160 acres.

C. Relocations of Common Boundaries and Aggregation of Lots.

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

1. *Statement of Intent*

The intent of these exemptions is to allow a change in the location of one or more boundary lines 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.

2. *Requirements*

- a. 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.
- b. 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.
- c. 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.
- d. When certificates of survey are filed with the Meagher 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.

D. Exemptions to Provide Security for a Construction Mortgage, Lien or Trust Indenture.

76-3-201(1)(b) MCA, commonly known as “mortgage exemptions”.

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.

2. *Requirements*

- a. 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).
- b. 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:
 - i. A statement of how many parcels within the original tract would be created by use of the exemption;
 - ii. 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);
 - iii. 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;
 - iv. 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

- v. Documentation that the lending institution is a financial or lending institution registered to do business in the State of Montana.
- c. The use of this exemption may be deemed an attempt to evade the MSPA if:
 - i. It will create more than one building site;
 - ii. The financing is not for construction on the exempted parcel;
 - iii. 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;
 - iv. Title to the exempted parcel will not be initially obtained by the lending institution if foreclosure occurs; or
 - v. 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.

E. Court Ordered Divisions.

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

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.

2. *Requirement*

Pursuant to 76-3-201(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 White Sulphur Springs to present written comments on the division.

F. Condominiums, Townhomes, or Townhouses:

(76-3-203 MCA).

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.

2. *Exemption*

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

- a. 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 1.18.050.D of these regulations are complied with; or

- b. The condominium, townhome or townhouse proposal is in conformance with applicable local zoning regulations when local zoning regulations are in effect.

3. *Requirements*

- a. To use the exemption, a Declaration of Unit Ownership must include an exhibit containing certification from the City of White Sulphur Springs that the condominiums or townhouses are exempt from review under 76-3-203 MCA (See 70-23-301 MCA). In order to ensure maintenance of common areas in townhouse developments are addressed pursuant to the Zoning Ordinance, Declarations are required for townhouse developments to comply with zoning.
- b. Only the City of White Sulphur Springs has the authority to determine whether a division of land is exempt from subdivision review. The act of recording a declaration does not establish the declaration's validity simply because the Meagher County Clerk and Recorder's Office accepted and recorded it.
- c. To obtain City of White Sulphur Springs 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 ???? above; however, an exemption claimed pursuant to 76-3-203 MCA is not subject to examination under the Exemption Evasion Criteria of subsection ???? above.

G. Exemptions not requiring action by the City of White Sulphur Springs.

The exemptions listed in this subsection (G) are presumed 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 White Sulphur Springs for examination under the General Procedures for Exemptions as outlined in Section ??? above. However, if a survey is to be filed with the Meagher 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 are 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 rights-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 chapter:
 - 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.