POWELL COUNTY

SUBDIVISION REGULATIONS

Prepared by:

County of Powell
Deer Lodge, Mont.

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RESOLUTION 2006- _____

OF THE
POWELL COUNTY BOARD OF COUNTY COMMISSIONERS
TO ADOPT
SUBDIVISION REGULATIONS FOR POWELL COUNTY

WHEREAS, Title 76-3-501 *et seq*, MCA, provides for adoption of Subdivision Regulations (Regulations) and establishes certain provisions for such Regulations, and

WHEREAS, the provisions of 76-3-501 are met by the following provisions in the proposed Powell County Subdivision Regulations.:

1. Review and approval process for subdivisions provides for orderly development of lands in the county, and parallel application of county zoning and development regulations aids avoidance of congestion, overcrowding, or degradation of water quality and quantity;

2. Requiring compliance with the county road plan and the ability to conditionally approve subdivisions provides for coordination of planned roads with existing roads and for improvement of roads;

3. Dedication of road and utility easements is required;

4. Requirement to dedicate lands or in-lieu payments for parks and for compliance with the county road standards provides for adequate open space;

5. Design and Improvement Standards provide for transportation and drainage; and water and sewer facilities are reviewed by DEQ or other reviewing authority;

6. Design and Improvement Standards prevent or minimize danger of injury to health, safety, or welfare by reason of natural hazard or lack of water, drainage, access, or public services; and

WHEREAS, consistent with the Powell County Growth Policy, the Regulations:

1. Aid in providing adequate transportation by requiring compliance with the County Road Standards;

2. Encourage preservation of the natural environment by requiring consideration of natural topography, drainage, topsoil, and vegetation;

3. Protect the natural riparian environment by prohibiting subdivision for residential purposes in any 100-year floodway, and parallel zoning regulations require set-backs on all perennial streams;

4. Protect human health and safety by prohibiting subdivision for residential purposes on lands that are unsuitable because of natural- or human-caused hazards that have not been eliminated or that cannot be overcome by approved design and construction techniques, and by requiring measures to prevent and control domestic-caused fires and wildfires;

5. Protect surface and ground water quality by requiring DEQ or other approval of water and sewage systems, and requiring solid waste disposal to be in compliance with DEQ regulations;

6. Provide for management of noxious weeds by requiring an approved weed control plan;

7. Further many purposes and policies of the Growth Policy by requiring that design and development of a subdivision must conform to the Zoning and Development Regulations; and

WHEREAS, each of the Commissioners believes the attached Regulations are consistent with the requirements of Title 76 of the MCA, and

WHEREAS, the Powell County Planning Board has held public meetings in the Powell County communities of Ovando and Helmville on June 22, Racetrack on June 26, Garrison and Gold Creek on June 27, and Avon and Elliston on June 29, 2006, to receive public comment concerning the Regulations, and

WHEREAS, on August 15, 2006, the Commissioners, with notice published in the *Silver State Post* newspaper on July 26 and August 2, 2006, held a public hearing in the City of Deer Lodge to receive public comments; and

WHEREAS, each of the Commissioners has reviewed the comments of those commenting at the meetings and at the hearing and believes that, while there were some comments opposing any regulation of private land use, the majority of the people commenting favored reasonable planning, policies, and regulation for conserving open space and rural lifestyle, water quality and quantity, and other resources of Powell County, and

WHEREAS, the Regulations promote reasonable planning, allow for the conservation of open space and rural lifestyle and provide for the protection of water quality and quantity and other resources of Powell County, and

WHEREAS, the Planning Department has submitted its report containing findings and its recommendation that the Regulations be adopted, and the Planning Board has submitted its resolution documenting that the Regulations are consistent with Title 76 of the MCA and with the Powell County Growth Policy and recommending adoption of the Regulations, those documents being incorporated in and made a part of this Resolution,

and each Commissioner has reviewed those findings, recommendations and the resolution, and

WHEREAS, the requirements and procedures contained in the Regulations are required and authorized by Title 76, MCA, and

WHEREAS, the Commissioners have considered the requirements of the law, good planning concepts, needs of future generations, and comments of the county residents, and

WHEREAS, each of the Commissioners has considered the comments heard at the public hearing, and

WHEREAS, the Board of Commissioners on August 15, 2006, meeting in the City of Deer Lodge in open session, voted their intent to adopt the Regulations, and

WHEREAS, on September 28, 2006, with a quorum present and voting, the Powell County Board of County Commissioners voted to adopt the attached Subdivision Regulations for Powell County,

NOW THEREFORE, BE IT RESOLVED, that the Board of County Commissioners does adopt the attached Subdivision Regulations for Powell County.

Signed this 28th day of September, 2006

POWELL COUNTY BOARD OF COMMISSIONERS

Gail Jones, Chair

Dwight O'Hara, Member

Rem Mannix, Member

ATTEST:

Karla Rydeen
Clerk and Recorder

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CHAPTER I – GENERAL PROVISIONS

I-A. Title – These regulations will be known and may be cited as, "The Subdivision Regulations of Powell County," hereinafter referred to as "these regulations."

I-B. Authority – Authorization for these regulations is contained in Title 76, Chapter 3, Montana Code Annotated.

I-C. Purpose – The purposes of these regulations are to promote the public health, safety and general welfare by regulating the subdivision of land; to prevent the overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements; to require development in harmony with the natural environment; to promote preservation of open space; to promote approaches that minimize costs to local citizens and that promote effective and efficient provision of public services; to protect the rights of property owners, neighboring property owners and residents, and the general public; and to require uniform monumentation of land subdivisions and transferring interests in real property by reference to a plat or certificate of survey, 76-3-102, MCA.

I-C-1. – These regulations are intended to comply with Title 76, Chapter 3, Part 5, MCA, and the provisions of the Powell County Growth Policy, and are intended to promote:

a. The orderly development of the jurisdictional area.

b. The coordination of roads within subdivided land with other roads, both existing and planned.

c. The dedication of land for roadways and for public utility easements.

d. The improvement of roads.

e. The provision of proper physical and legal access, including obtaining necessary easements.

f. The provision of adequate open spaces for travel, light, air and recreation.

g. The provision of adequate transportation, water, drainage and sanitary facilities.

h. The avoidance or minimizing of congestion.

i. The avoidance of subdivisions that would involve unnecessary environmental degradation.

j. The avoidance of danger or injury by reason of natural hazard or the lack of water, drainage, access, transportation or other public improvements.

k. The avoidance of excessive expenditure of public funds for the supply of public improvements and services.

l. The manner and form of making and filing of any plat for subdivided lands.

m. The administration of these regulations by defining the powers and duties of approving authorities, including procedures for the review and approval of all plats of subdivisions covered by these provisions.

I-D. Jurisdiction – These regulations govern the subdivision of land within the jurisdictional area of the County Commissioners of Powell County, excluding the City of Deer Lodge.

If a proposed subdivision lies within one mile of a third class city or town or within two miles of a second-class city or within three miles of a first class city, the County Commissioners must submit the preliminary plat to the city or town governing body or its designated agent for review and comment. If a proposed subdivision lies partly within an incorporated city or town, the preliminary plat must be submitted to, and approved by, both the city or town and the county governing bodies.

If a proposed subdivision is located in a rural school district, the County Commissioners shall provide a summary of the information contained in the subdivision application and preliminary plat to school district trustees.

When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality will combine public hearings and otherwise coordinate the subdivision review process and annexation procedures whenever possible.

These regulations supplement all other regulations, and where they are at variance with other laws, regulations, ordinances or resolutions, the more restrictive requirements apply. Other regulations include, but are not limited to, zoning regulations, floodplain regulations, building codes, development codes and fire codes.

I-E. Severability – If a court of competent jurisdiction holds any word, phrase, clause, sentence, paragraph, chapter or other part of these regulations invalid, that judgment will affect only the part held invalid.

CHAPTER II – GENERAL PROCEDURES

II-A. Preliminary Plats

II-A-1. Construction Timing – Construction work shall not occur on a proposed subdivision until the County Commissioners have given conditional approval of the preliminary plat.

II-A-2. **Transfers of Title** – Except as noted below, a final subdivision plat must be filed for record with the Clerk & Recorder before title to the subdivided land can be sold or transferred in any manner. After the preliminary plat of a subdivision has been approved or conditionally approved, the subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following conditions are met, 76-3-303, MCA:

a. That under the terms of the contracts the purchasers of lots in the proposed subdivision make any payments to an escrow agent, which must be a bank or savings and loan association chartered to do business in the State of Montana;

b. That under the terms of the contracts and the escrow agreement the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the Clerk & Recorder;

c. That the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the Clerk & Recorder within two years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments made under the contract;

d. That the contracts contain the following language conspicuously set out therein: "The real property which is the subject hereof has not been finally platted, and until a final plat identifying the property has been filed with the Clerk & Recorder, title to the property cannot be transferred in any manner;"

e. That the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

II-A-3. **Permission to Enter** – County officials and the county's agents may investigate, examine and evaluate the site of the proposed subdivision to verify information provided by the subdivider and to subsequently monitor compliance with any conditions if the preliminary plat is approved conditionally. The submission of a subdivision application constitutes a grant of permission by the subdivider to enter the subject property. This consent applies to members of the public attending a noticed meeting for a site visit.

II-A-4. Pre-application Process

a. Prior to submittal of a subdivision application, the subdivider shall request a pre-application meeting with the Planning Department. The meeting shall occur within 30

days after the subdivider submits a written request for the meeting to the Planning Department.

b. At the time of the pre-application meeting request, the subdivider shall provide to the Planning Department a sketch of the proposed subdivision showing the layout of the proposed features in relation to existing site conditions.

   i. The sketch may be a freehand sketch drawn directly on a print of a topographic map of the area proposed for division at a scale of 1 inch to 400 feet or larger that is adequate to show the property and must include the following:

      A. Information on the current status of the site, including:

         1. location;

         2. approximate tract and lot boundaries of existing tracts of record;

         3. description of general terrain;

         4. natural features on the land, including water bodies, floodplains geologic hazards and soil types;

         5. existing structures and improvements;

         6. existing utility lines and facilities serving the area to be subdivided;

         7. existing easements and rights of way;

         8. existing zoning or development regulation standards;

         9. existing conservation easements;

         10. existing covenants or deed restrictions.

      B. Documentation on the current status of the site, including:

         1. ownership information, such as a deed, option to buy or buy-sell agreement, including permission to subdivide;

         2. water rights, including location of Agricultural Water Facilities;

         3. any special improvement districts; and

         4. rights of first refusal for the property.

   ii. Information on the proposed subdivision, including:

A. tract and proposed lot boundaries;

B. proposed public and private improvements;

C. location of utility lines and facilities;

D. easements and rights of way; and

E. parks and open space, and proposed conservation easements.

c. At the pre-application meeting:

i. the Planning Department shall identify, for informational purposes, the state laws, local regulations and Growth Policy provisions that may apply to the subdivision review process, including, but not limited to, zoning regulations, floodplain regulations, building codes and fire codes;

ii. the Planning Department shall provide the subdivider with a list of public utilities, local, state and federal agencies, and any other entities that have an interest in the proposed subdivision and that may be contacted for comment by the Planning Department or Planning Board on the subdivision application. The Planning Department shall also identify the timeframes that the public utilities, agencies and other entities are given to respond; and

iii. the Planning Department shall identify particular additional information it anticipates will be required for review of the subdivision application. This does not limit the ability of the Planning Department to request additional information at a later time.

d. Unless the subdivider submits a subdivision application within 180 days of this pre-application meeting, the subdivider must request a new pre-application meeting prior to submitting the subdivision application.

II-A-5. Subdivision Application and Preliminary Plat Submittal

a. The subdivider shall submit to the Planning Department a subdivision application that contains and addresses the following topics and materials. At the pre-application meeting, the Planning Department may advise the subdivider of additional topics and materials that will be required in the application.

1. A completed and signed Subdivision Application Form;
2. The required review fee;
3. A preliminary plat with four 24- x 32-inch copies and 10 11- x 17-inch copies;
4. A Vicinity Sketch;
5. A topographic map;

6. A grading and drainage plan;
7. Engineering plans for all Public and Private Improvements;
8. Overall development plan if development is in phases;
9. Abstract of Title (or Title Report);
10. Lienholders' acknowledgement of subdivision;
11. Documentation of legal and physical access;
12. Documentation of existing easements, including those for Agricultural Water User Facilities;
13. Existing covenants and deed restrictions;
14. Existing water rights;
15. Existing mineral rights;
16. Names and addresses of all adjoining property owners;
17. Proposed road plans and profiles;
18. Encroachment permits from Montana Department of Transportation or the local jurisdiction;
19. Proposed easements;
20. Proposed disposition of water rights;
21. Proposed disposition of mineral rights;
22. Parkland dedication calculations;
23. Summary of probable impacts;
24. Transportation impact analysis or transportation plan;
25. Fire risk rating analysis and fire prevention plan;
26. Weed management plan and re-vegetation plan;
27. Property owners' association documents, including draft articles of incorporation, declaration and bylaws;
28. FIRM or FEMA panel map and letter identifying floodplain status;
29. Required water and sanitation information;
30. A form of Subdivision Improvements Agreement, if proposed;
31. Letter requesting a revocation of agricultural covenants;
32. Letter indicating locations of cultural or historic resources;
33. Variance request or approval;
34. Re-zoning application or approval;
35. Flood hazard evaluation;
36. Letter identifying and proposing mitigation for potential hazards or other adverse impacts as identified in the pre-application meeting and not covered by any of the above required materials; and
37. Such additional relevant and reasonable information as identified by the Planning Department during the pre-application meeting that is pertinent to the required elements of this chapter.

b. Form and contents of preliminary plats should be the same for final subdivision plats.

II-A-6. Review Process – For both minor and major subdivisions, the initial review process is as follows:

a. Element Review

i. Within five working days of receipt of a subdivision application and fee, the Planning Department shall determine whether the application contains all of the applicable materials required by Chapter II-A-5 and shall give written notice to the subdivider of the Planning Department's determination.

A. If the Planning Department determines that elements are missing from the application, the Planning Department shall return the application and identify those elements in the notification, and no further action shall be taken on the application by the Planning Department until the application is resubmitted.

B. The subdivider may correct the deficiencies and resubmit the application.

C. If the subdivider corrects the deficiencies and resubmits the application, the Planning Department shall have five working days to notify the subdivider whether the resubmitted application contains all the materials required by Chapter II-A-5, as applicable.

D. This process shall be repeated until the subdivider submits an application containing all the materials required by Chapter II-A-5, or the application is withdrawn.

b. Sufficiency Review

i. Within 15 working days after the Planning Department notifies the subdivider that the application contains all of the required elements as provided in subsection (a) above, the Planning Department shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow for the review of the proposed subdivision under these regulations and shall give written notification to the subdivider of the Planning Department's determination.

A. If the Planning Department determines that the information in the application is not sufficient to allow for review of the proposed subdivision, the Planning Department shall identify specific required information in its notification and return the application to the subdivider, and no further action shall be taken on the application until the material is resubmitted.

B. The subdivider may correct the deficiencies and resubmit the application, or withdraw the application.

C. If the subdivider corrects the deficiencies and resubmits the application in accordance with (i)(B) above, the Planning Department shall have 15 working days to notify the subdivider whether the resubmitted application and required elements contain detailed, supporting information that is sufficient to allow for review of the proposed subdivision under these regulations.

D. This process shall be repeated until the subdivider submits an application that contains detailed, supporting information that is sufficient for review of the proposed subdivision under the provisions of these regulations, or the application is withdrawn.

ii. A determination that an application contains sufficient information for review as provided in this subsection (b) does not ensure that the proposed subdivision will be approved or conditionally approved by the County Commissioners and does not limit the ability of the Planning Department, Planning Board or the County Commissioners to request additional information during the review process.

iii. A determination of sufficiency by the Planning Department pursuant to this subsection does not limit the DEQ from requiring additional water and sanitation information as part of the DEQ review of water and sanitation information.

c. Applicable Regulations

Subdivision review and approval, conditional approval or denial shall be based on those regulations in effect at the time a subdivision application and preliminary plat is deemed to contain sufficient information for review. If regulations change during the element or sufficiency review, the determination of whether the application contains the required elements and sufficient information, and the subdivision review, shall be based on the new regulations.

II-B. Final Plats

II-B-1. **Final Plat Contents** – The final plat submitted for approval must conform to the preliminary plat as previously reviewed and approved by the County Commissioners and must incorporate all required modifications and comply with all conditions imposed at the time of subdivision application and preliminary plat approval. The final plat and accompanying documents must comply with the Montana Uniform Standards for Final Subdivision Plats, Appendix A. Final plats of subdivisions approved for phased development shall be filed sequentially in accordance with the approval.

II-B-2. **Final Plat Initial Review**

a. Final Plat Submittal

The final plat approval application form and all supplementary documents must be submitted to the Planning Department at least 30 working days prior to the expiration of preliminary plat approval. The submittal shall include, as applicable:

i. the final plat application;

ii. the final plat review fee;

iii. a statement from the project surveyor or engineer outlining how each condition of approval has been satisfied;

iv. a Title Report or updated Abstract of Title dated no less than 30 days prior to the date of submittal;

v. the DEQ or local Environmental Health Department approval;

vi. the final Grading and Drainage Plan, including all road plans and profiles, state or local encroachment permits, and the Traffic Impact Analysis (if required);

vii. all engineering plans;

viii. any homeowner association documents, including bylaws, covenants, and/or declarations;

ix. two Mylar and two paper 24" x 32" copies of the final plat, completed in accordance with the Uniform Standards for Final Subdivision Plats, 24.183.1107, ARM.

b. Review by Planning Department

i. The Planning Department shall review the final plat to ascertain that all conditions and requirements for final plat approval have been met. The Planning Department will not accept, begin processing, or schedule any actions on a final plat submittal until a complete application and fee, and copies of the final plat have been received. Final plat applications will not be considered complete by the Planning Department until all conditions of preliminary approval have been satisfied.

ii. If the Planning Department determines that the final plat differs from the approved or conditionally approved preliminary plat, the applicant shall be required to submit an amended application pursuant to Chapter II-B-5 of these regulations.

iii. The Planning Department shall 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 & Recorder. When the survey data shown on the plat meets the conditions pursuant to these regulations, the examining land surveyor shall certify the compliance in a printed or stamped signed certificate on the plat.

II-B-3. **Restrictive Covenants** – Approval, Content and Enforcement by County Commissioners

a. New subdivisions must be consistent with any existing covenants running with the land.

b. The County Commissioners may require that some or all restrictive covenants governing the use of land within the subdivision, whether proposed by the subdivider or required by the County Commissioners, be subject to enforcement by the county, and that they may not be terminated or amended without approval of the County Commissioners.

c. If common property is to be deeded to a property owners' association or homeowners' association, the covenants and by-laws which govern the association must, at a minimum, provide for the:

   i. Formation of a property owners' association or homeowners' association concurrently with the filing of the final subdivision plat. Articles of Incorporation shall be filed with the Secretary of State's office and with the Planning Department;

   ii. Mandatory membership for each property owner. Purchasers of property may also be required to sign a waiver of right to protest the formation of a maintenance district to maintain improvements;

   iii. Perpetual reservation of the common property when required under 76-3-621(6)(a), MCA;

   iv. Payment of liability insurance premiums, local taxes, and the cost of maintaining recreational or other facilities;

   v. Placement of liens on the property of lot owners who are delinquent in the payment of association fees and assessments;

   vi. Adjustment of assessments to meet changing needs;

   vii. Means of enforcing the covenants, and of receiving and processing complaints;

   viii. Transition of control of the association from the Declarant to the homeowners.

   ix. Dissolution of the association and modification of the covenants and restrictions after obtaining the County Commissioners' approval of the change; and

   x. Regular maintenance of roads, parks, buildings, drainage facilities and other facilities controlled by the association.

II-B-4. Public Improvements Agreement; Guaranty – If public improvements are a condition of approval of the final plat, prior to submitting the final plat application, the subdivider must have installed all required improvements or have entered into a subdivision improvements agreement guaranteeing the construction, installation and maintenance of all required improvements, 76-3-507, MCA. The guarantee shall be in the form of a surety performance bond, an escrow account or a letter of credit as agreed to by

the commissioners. No construction or placement of structures on the lots may occur until required public improvements related to public health and safety, such as roads or firefighting facilities, have been installed and engineering plans have been filed. The agreement shall require that all required pubic improvements shall be completed within one year of final plat approval.

If the subdivider chooses to enter into a subdivision improvements agreement, guaranteeing the public improvements through a bond or letter of credit, three bids for the cost of installation of the public improvements shall be obtained by the subdivider. The amount of the guarantee shall be calculated by multiplying 200 percent by the highest bid. As the public improvements are installed, the subdivider shall provide a letter to the Planning Department indicating such, and including a copy of the engineered plans. The county engineer or consulting engineer designated by the County Commissioners shall review and certify all public improvements have been installed in conformance with the plans and specifications. Prior to the release of the guarantee, a copy of the plans, stamped by the project surveyor or engineer in accordance with their licensing provisions, shall be filed in the Clerk & Recorder's office with reference to the final subdivision plat.

II-B-5. Amending Approved Preliminary Plats Before Final Plat Approval

a. If the subdivider proposes to change the preliminary plat after the preliminary plat approval but before the final plat approval, the subdivider shall submit the proposed changes to the Planning Department for review.

    i. Within five working days of receiving the proposed changes, the Planning Department shall determine whether the changes to the preliminary plat are material.

    ii. If the Planning Department determines the changes are not material or can satisfactorily resolve the issue, the Planning Department shall accept the changes and notify the subdivider and the Planning Board of its decision.

    iii. If the Planning Department determines the changes are material, the Planning Department shall advise the Planning Board. If the Planning Board determines the changes are material, it shall require the subdivider to schedule a new pre-application meeting and resubmit the application, and require payment of a new application fee. Otherwise, proceed in ii, above.

b. The following changes, although not an exhaustive list, may be considered material:

    i. configuration or number of lots;

    ii. road layout;

    iii. water and/or septic proposals;

iv. configuration of park land or open spaces;

v. easement provisions;

vi. designated access; or

vii. change to conditions of approval.

c. A subdivider whose proposed changes to the preliminary plat have been deemed material by the Planning Board may appeal the decision to the County Commissioners by written notice within 10 working days. The subdivider may request a hearing, and may submit additional evidence to show that the changes to the preliminary plat are not material.

d. If the subdivider and Planning Board determine that a condition of approval is illegal or impossible to comply with due to circumstances outside the subdivider's control, economic hardship notwithstanding, the condition may be reviewed by the County Commissioners through a properly noticed public hearing in order to determine if the condition may be waived or amended.

II-B-6. Final Plat Approval

a. Approval by the County Commissioners

The County Commissioners shall examine every final subdivision plat and shall approve it if it conforms to the conditions of preliminary plat approval and to the terms of Title 76, Chapter 3, MCA, and these regulations, or deny it pursuant to (ii) below.

i. If the final plat is denied, the County Commissioners shall write a letter stating the reason for denial and forward a copy to the subdivider. The County Commissioners will return the final plat to the subdivider within 10 working days of the action. The subdivider may then make any necessary corrections and resubmit the final plat for approval.

ii. If the final plat is approved, the County Commissioners shall certify its approval on the face of the final plat. When applicable, a certificate of the County Commissioners expressly accepting any dedicated land, easements or improvements will be filed with the final plat.

b. Inaccurate Information

The County Commissioners may withdraw approval of a final plat if it determines that material information by the subdivider is inaccurate.

II-B-7. **Final Plat Filing** – After it is approved, the final plat may not be altered in any manner except as provided in Chapter II-B-8. The Clerk & Recorder may not accept any plat for filing that does not bear the County Commissioners' approval in proper form or that has been altered. The Clerk & Recorder may file an approved plat only if it is accompanied by the documents specified in the Montana Uniform Standards for Monumentation, 24.183.1101, ARM, and Final Subdivision Plats, 24.183.1107, ARM.

II-B-8. **Amending Filed Plats**

a. Changes that materially alter any portion of a filed plat, its land divisions or improvements, or that will modify the approved use of land within the subdivision, must be made by filing an amended plat showing all alterations. Any alteration that increases the number of lots or modifies six or more lots, or abandons or alters a public road right-of-way or parkland dedication must be reviewed and approved by the County Commissioners.

b. An amended plat is subject to the procedures for reviewing major or minor subdivisions, as appropriate. The County Commissioners may not approve an amended final plat without the written consent of the owners and lienholders of all lots that will be modified by the proposed amendment.

c. The County Commissioners may not approve an amendment that will place a lot in non-conformance with the standards contained in Chapter VI of these regulations or with Powell County Zoning & Development Regulations unless the County Commissioners hold a public hearing on the amendment and issue a written variance from the standards pursuant to Chapter XI, Variances.

d. The final amended plat submitted for approval must comply with the requirements for final subdivision plats under the Uniform Standards for Final Subdivision Plats, 24.183.1107, ARM.

CHAPTER III – REVIEW AND APPROVAL PROCEDURES FOR MINOR SUBDIVISIONS

Subdivisions containing five or fewer parcels shall be reviewed as set forth in this chapter.

First minor subdivisions shall be reviewed pursuant to Chapter III-A and subsequent minor subdivisions shall be reviewed pursuant to Chapter III-B of these regulations.

III-A. First Minor Subdivisions – Review – The pre-application process and initial review process set forth in Chapter II, General Procedures, apply to this chapter.

III-A-1. Application and Preliminary Plat Submittal

a. The subdivider shall submit to the Planning Department a subdivision application containing the materials identified in Chapter II-A-5 of these regulations and in the pre-application meeting, and

b. sufficient documentary evidence from the public records demonstrating that the subdivision will be the first minor subdivision from a tract of record;

III-A-2. Exceptions – The following do not apply to first minor subdivisions:

a. parkland dedication;

b. public hearing requirements; and

c. review of the subdivision application for the impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety, if the subdivision is proposed in a jurisdictional area that has adopted zoning regulations that address those impacts.

III-A-3. Review Process

a. Time Period for Approval, Conditional Approval or Denial

Within 35 working days, the County Commissioners shall approve, conditionally approve or deny the proposed subdivision, unless the subdivider and the Planning Department agree in writing to an extension or suspension of the review period, not to exceed one year. The review period of 35 working days begins once the Planning Department has given notice to the subdivider that the subdivision application is sufficient for review. Notification constitutes the date when the reviewing agent or agency sends the notice to the subdivider.

b. Public Agency and Utility Review

Review and comment by public agencies or utilities may not delay the County Commissioners' action on the subdivision application beyond the 35-working day review period. The Planning Department will make these comments available to the subdivider and to the general public upon request. If, during the review of the application, the Planning Department or the Planning Board contacts a public utility, agency, or other entity that was not included on the list provided during the pre-application meeting, the Planning Department shall notify the subdivider of that contact and the timeframe for response.

III-A-4. Planning Board Consideration and Recommendation

a. Recommendation

i. Consideration-Standards

In recommending approval, conditional approval or denial of the subdivision application and preliminary plat, the Planning Board shall base its recommendation on compliance of the subdivision application and preliminary plat with the following:

A. these regulations, including but not limited to the standards set forth in Chapter VI;

B. applicable zoning regulations;

C. Chapter III-A-6(a) and (b)(iv) of these regulations; and

D. other applicable regulations.

ii. Consideration-Evidence

In recommending approval, conditional approval or denial of the subdivision application and preliminary plat, the Planning Board may consider, without limitation, the following (as applicable):

A. the subdivision application and preliminary plat;

B. the summary of probable impacts and mitigation;

C. the officially adopted Growth Policy;

D. Planning Department's staff report and recommendation; and

E. any additional information authorized by law.

iii. Written Recommendation

Within 10 working days after the Planning Board meeting, the Planning Board shall submit the following, in writing, to the subdivider and the County Commissioners:

A. recommended findings of fact based on the evidence in subsection (a)(i) and (a)(ii), above, of these regulations;

B. a recommendation for approval, conditional approval (including any recommended conditions and/or mitigation measures), or denial of the subdivision application and preliminary plat; and

C. a recommendation for approval or denial of any requested variances (See Chapter XI).

b. Water and Sanitation Information

The Planning Department shall collect public comment regarding the water and sanitation information required by Title 76, Chapter 3, MCA, and these regulations. The Planning Board shall forward all comments regarding water and sanitation to the County Commissioners.

III-A-5. Subdivider's Preference for Mitigation – No later than seven working days before the meeting at which the County Commissioners are to consider the subdivision application and preliminary plat, the subdivider is encouraged to submit in writing to the Planning Department the subdivider's comments on and responses to the Planning Board's recommendations. The County Commissioners will consult with the subdivider and will give due weight and consideration to the subdivider's expressed preferences, 76-3-608(5)(b), MCA.

III-A-6. Commissioners Decision and Documentation

a. Prerequisites to Approval

The County Commissioners may not approve or conditionally approve a subdivision application and preliminary plat unless the proposed subdivision:

i. provides easements for the location and installation of any planned utilities, both on and off site;

ii. provides legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel;

iii. assures that all required public or private improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by Chapter II-B-4 of these regulations;

iv. assures that the requirements of 76-3-504(1)(k) regarding watercourse and irrigation easements as set forth in Chapter VI-O have been considered and will be accomplished before the final plat is submitted; and

v. assures that the requirements of 76-3-504 (1)(j), MCA, regarding the disclosure and disposition of water rights as set forth in Chapter VI-P have been considered and will be accomplished before the final plat is submitted.

b. Consideration – Standards

In approving, conditionally approving, or denying a first minor subdivision application, the County Commissioners shall consider subsection (a) above and whether the proposed subdivision complies with:

i. these regulations, including but not limited to, the standards set forth in Chapter VI;

ii. applicable zoning regulations;

iii. other applicable regulations;

iv. Title 76, Chapter 3, MCA, including but not limited to the following impacts:

A. impact on agriculture;

B. impact on agricultural water user facilities;

C. impact on local services;

D. impact on the natural environment;

E. impact on wildlife and wildlife habitat; and

F. impact on public health and safety.

v. proposed mitigation.

c. Consideration – Evidence

In making its decision to approve, conditionally approve, or deny a proposed first minor subdivision the County Commissioners may consider and weigh the following, as applicable:

i. the subdivision application and preliminary plat;

ii. the summary of probable impacts and mitigation;

iii. the officially adopted Growth Policy;

iv. Planning Board staff report and recommendations;

v. Planning Board recommendation; and

vi. any additional information authorized by law.

Notwithstanding the foregoing, the County Commissioners may not consider any information regarding the subdivision application that is presented after the public hearing or subsequent hearing, if any, when making its decision to approve, conditionally approve or deny the proposed subdivision.

d. Water and Sanitation-Special Rules

i. Water and sanitation information provided in the application, and public comment given about this information during the review process may be used as a basis for a conditional approval or denial of a subdivision only if the County Commissioners find that information provided in the application or submitted during public comment indicates the proposal does not comply with previously adopted subdivision, zoning, floodplain or other regulations.

ii. For a proposed subdivision that will create one or more parcels containing less than 20 acres, the County Commissioners shall require approval by the DEQ as a condition of approval of the final plat. This approval applies to the development of lots at the time of the approval and is no guarantee that a source of water or a location for a septic system or drain fields will be available when the lots are actually developed.

iii. For a proposed subdivision that will create one or more parcels containing 20 acres or more, the County Commissioners shall condition approval of the final plat upon the subdivider demonstrating that there is an adequate water source and at least one area for a septic system and a replacement drain field for each lot. This demonstration, which must be approved by the Tri-County Sanitarian, is to evaluate the ability to develop lots at the platting stage and is no guarantee that a source of water or a location for a septic system or drain fields will be available when the lots are developed.

iv. Public comments gathered at the hearing regarding water and sanitation information, or a summary of the comments submitted, shall be made available to

the subdivider within 30 days after conditional approval or approval of the subdivision application and preliminary plat.

v. The subdivider shall, as part of the subdivider's application for sanitation approval, forward the comments or summary provided by the Planning Department to:

A. DEQ, as provided in Title 76, Chapter 4, MCA, for subdivisions that will create one or more parcels containing less than 20 acres; or

B. Tri-County Sanitarian/Powell County Health Department for subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres.

e. Documentation of Decision

i. In rendering its decision to approve, conditionally approve, or deny the proposed subdivision the County Commissioners shall issue written findings of fact that discuss and weigh the proposed subdivision's compliance with the above subsections.

ii. When the County Commissioners approve, deny or conditionally approve the proposed subdivision, they shall send the subdivider a letter, with the appropriate signature, and make the letter available to the public. The letter shall:

A. contain information regarding the appeal process for the denial or imposition of conditions;

B. identify the regulations and statutes that are used in reaching the decision to approve, deny, or impose conditions and explain how they apply to the decision;

C. provide the facts and conclusions that the County Commissioners relied upon in making its decision and reference documents, testimony or other materials that form the basis of the decision; and

D. provide the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved.

E. set forth the time limit for approval, pursuant to subsection (f) below.

f. Subdivision Application and Preliminary Plat Approval Period

i. Upon approval or conditional approval of the preliminary plat, the County Commissioners shall provide the subdivider with a dated and signed statement of approval. The approval shall be in force for no more than one calendar year.

A. At least 30 days prior to the expiration of the preliminary plat approval, the County Commissioners may, at its discretion and at the written request of the subdivider, extend its approval for a period of one additional year.

B. The County Commissioners may extend the approval for more than one year if that approval period is included as a specific condition of a written subdivision improvements agreement between the County Commissioners and the subdivider, provided for in Chapter II-B-4.

ii. After the application and preliminary plat are approved, the County Commissioners may not impose any additional conditions as a prerequisite to final plat approval unless the preliminary plat approval expires at which time a new application will be required.

iii. The County Commissioners may withdraw approval or conditional approval of an application and preliminary plat if it determines that information provided by the subdivider, and upon which the approval or conditional approval was based, is inaccurate.

III-A-7. Amended Applications

a. If the subdivider changes the subdivision application or preliminary plat before the County Commissioners make their decision, the subdivider shall submit the amended application or preliminary plat to the Planning Department for review.

i. Within five working days of receiving the amended application or preliminary plat, the Planning Department shall determine whether the changes to the subdivision application or preliminary plat are material.

ii. The 35 working day review period is suspended while the Planning Department considers the amended application or preliminary plat.

iii. If the Planning Department determines the changes are not material or can satisfactorily resolve the issue, the 35 working day review period resumes when the Planning Department mails notice of the decision to the subdivider.

iv. If the Planning Department determines the changes are material, the Planning Department shall advise the Planning Board. If the Planning Board determines the changes are material, it shall require the subdivider to schedule a new pre-application meeting, resubmit the application and require payment of a new application fee.

b. By making changes to a pending subdivision application or preliminary plat, the subdivider consents to suspension of the review period as provided in subsection (a)(ii).

c. The following changes, although not an exhaustive list, may be considered material:

   i. configuration or number of lots;

   ii. road layout;

   iii. water and/or septic proposals;

   iv. configuration of park land or open spaces;

   v. easement provisions; and

   vi. designated access.

d. A subdivider whose subdivision application or preliminary plat has been deemed materially changed by the Planning Department may appeal the Planning Department's decision to the Planning Board. The subdivider may request a hearing, and may submit additional evidence to show that the changes to the preliminary plat are not material.

   i. The 35 working day review period is suspended until the Planning Board decision on the appeal is made.

   ii. If the Planning Board concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are material, the Planning Board shall require the subdivision application and preliminary plat to be resubmitted pursuant to subsection (a)(iv).

   iii. If the Planning Board concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are not material, the 35-working day review period resumes as of the date of the decision.

   iv. By appealing the decision of the subdivision administrator, the subdivider agrees to suspension of the 35-working day review period provided in subsection (d)(i).

III-A-8. **Final Plat** – The final plat must include the contents, and be submitted and reviewed in accordance with the appropriate requirements contained in Chapter II-B, Final Plats.

III-B. First Minor Subdivisions – Subsequent Minors – A Subsequent Minor Subdivision is any subdivision, regardless of survey plat designation, with five or fewer lots that is not a first minor subdivision. Subsequent Minor Subdivisions shall be reviewed in accordance with Chapter III-A, except in addition, the Planning Board shall notice and hold one public hearing, and the preliminary plat application review period shall be 60 working days.

CHAPTER IV – REVIEW AND APPROVAL PROCEDURES FOR MAJOR SUBDIVISIONS

IV-A. Major Subdivisions – Review – Subdivisions that qualify for major subdivision review are those divisions of land containing six or more lots, or subdivisions of five or fewer lots that do not otherwise qualify for review as first minor subdivisions under 76-3-609, MCA, and these regulations.

The pre-application process and initial review process set forth in Chapter II, General Procedures, apply to this chapter.

IV-A-1. Application and Preliminary Plat Submittal

a. The subdivider shall submit to the Planning Department a subdivision application containing the materials identified in Chapter II-A-5 and in the pre-application meeting.

b. The subdivider shall provide sufficient documentary evidence from the pubic records defining the tract of record as of July 1, 1973 that is being subdivided.

c. The subdivider shall submit a summary of probable impacts.

IV-A-2. Review Process

a. Time Period for Approval, Conditional Approval or Denial

Within 60 working days, the County Commissioners shall approve, conditionally approve or deny the proposed subdivision according to Chapter IV-A-7 of these regulations, unless the subdivider and the subdivision administrator agree to an extension or suspension of the review period, or a subsequent public hearing is held pursuant to Chapter IV-A-5 of these regulations. A subdivision application is deemed submitted for review, and the 60 working day period begins when the subdivision administrator notifies the subdivider or the subdivider's agent in writing that the application contains sufficient information to conduct the review.

b. Public Agency and Utility Review

Review and comment by public agencies or utilities may not delay the action on the subdivision application beyond the 60 working day review period. The Planning Department will make these comments available to the subdivider and to the general public upon request. If, during the review of the application, the subdivision administrator or the Planning Board contacts a public utility, agency, or other entity that was not included on the list provided during the pre-application meeting, the subdivision administrator shall notify the subdivider of the contact and the timeframe for response.

IV-A-3. Hearing, Notice, Consideration and Recommendation

a. Hearing

After the subdivision application is deemed to have all the required elements and to contain detailed, supporting information that is sufficient to allow for review, and the Planning Department has prepared a staff report, the Planning Board shall schedule and hold a public hearing on the subdivision application.

b. Notice

i. The Planning Board shall give notice of the time, date and location of the hearing by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing.

ii. At least 15 days prior to the date of the hearing, the Planning Board shall give notice of the hearing by certified mail to 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.

c. Recommendation

i. Consideration-Standards

In recommending approval, conditional approval or denial of the subdivision application and preliminary plat, the Planning Board shall base its recommendation on compliance of the subdivision application with the following:

A. these regulations, including but not limited to the standards set forth in Chapter VI of these regulations;

B. applicable zoning regulations;

C. Title 76, Chapter 3, MCA, including but not limited to 76-3-608(3), MCA, as delineated in Chapters IV-A-8(a) and (b)(iv) of these regulations; and

D. other applicable regulations.

ii. Consideration-Evidence

In recommending approval, conditional approval or denial of the subdivision application and preliminary plat, the Planning Board may consider, without limitation, the following:

A. the subdivision application and preliminary plat;

B. the summary of probable impacts and mitigation ;

C. the officially adopted Growth Policy;

D. Planning Department's staff report and recommendation;

E. information provided at public hearing(s); and

F. any additional information authorized by law.

iii. Written Recommendation

Within 10 working days after the public hearing, the Planning Board shall submit the following in writing to the subdivider and the County Commissioners:

A. recommended findings of fact based on the evidence in subsection (b)(i) and (b)(ii) above, of these regulations; and

B. a recommendation for approval, conditional approval or denial of the subdivision application and preliminary plat;

C. a recommendation for approval or denial of any requested variances; and

D. a finding as to whether any public comments or documents presented for consideration at the Planning Board's public hearing constitute information or analysis of information that the public has not had a reasonable opportunity to examine and on which the public has not had a reasonable opportunity to comment.

c. Water and Sanitation Information

The Planning Department shall collect public comment regarding the water and sanitation information required by Title 76, Chapter 3, MCA, and these regulations and shall forward all comments regarding water and sanitation to the County Commissioners.

IV-A-4. Subsequent Public Hearing

a. The County Commissioners shall determine whether public comments or documents presented for consideration at the public hearing constitute either:

i. information or analysis of information that was presented at the Planning Board hearing on the subdivision application that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment, or that the new information is not relevant or credible, in which case

the County Commissioners shall proceed to its decision whether to approve, conditionally approve or deny the proposed subdivision; or

ii. new information or analysis of information that has never been submitted as evidence or considered by the Planning Board, and is relevant and credible, in which case the County Commissioner shall proceed as set forth in subsection (b) below.

b. If the County Commissioners determines that public comments or documents presented at the public hearing constitute new information or an analysis of information regarding the subdivision application that the public has not had a reasonable opportunity to examine and on which the public has not had a reasonable opportunity to comment, and that the new information is relevant and credible, shall hold a new hearing.

i. The County Commissioners shall consider only the new information or analysis of information that may have an impact on the findings and conclusions that they will rely on in making its decision on the proposed subdivision.

ii. Notice of the time, date and location of the subsequent hearing shall be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the subsequent hearing.

iii. At least 15 days prior to the date of the subsequent hearing, notice of the subsequent hearing shall be given by certified mail to the subdivider, each adjoining landowner to the land included in the preliminary plat, and each purchaser under contract for deed of property adjoining the land included in the preliminary plat.

c. The 60 working day review period is suspended as of the date of the County Commissioners' decision to schedule a subsequent hearing. The 60 working day review period resumes on the date of the County Commissioners' next scheduled public meeting for which proper notice for the public meeting on the subdivision application can be provided.

d. New information or analysis of information is considered to be relevant if it may have an impact on the findings and conclusions that the County Commissioners will rely upon in making its decision on the proposed subdivision.

e. New information or analysis of information is considered to be credible if it is based on one or more of the following:

i. physical facts or evidence;

ii. corroborated personal observations;

iii. evidence provided by a person with professional competency in the subject matter; or

iv. scientific data.

f. If a subsequent public hearing is held pursuant to subsection (b)(ii) above, it must be held within 45 days of the County Commissioner's determination to request a subsequent hearing. Only the new information or analysis of information shall be considered at the subsequent public hearing.

i. Notice of the time, date and location of the subsequent hearing shall be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the subsequent hearing.

ii. At least 15 days prior to the date of the subsequent hearing, notice of the subsequent hearing shall be given by certified mail to the subdivider and each adjoining landowner to the land included in the preliminary plat.

g. If a subsequent public hearing is held, the 60 working day review period is suspended as of the date of the County Commissioners' decision to schedule a subsequent hearing. The 60 working day review period resumes on the date of the County Commissioners' next scheduled public meeting for which proper notice for the public meeting on the subdivision application can be provided.

IV-A-5. Subdivider's Preference for Mitigation – No later than seven working days before the meeting or hearing at which the County Commissioners are to consider the subdivision application and preliminary plat, the subdivider is encouraged to submit in writing to the subdivision administrator the subdivider's comments on and responses to the Planning Board's recommendations. The County Commissioners will consult with the subdivider and will give due weight and consideration to the subdivider's expressed preference.

IV-A-6. County Commissioners' Decision and Documentation

a. Prerequisites to Approval

The County Commissioner may not approve or conditionally approve a subdivision application and preliminary plat unless the proposed subdivision:

i. provides easements for the location and installation of any planned utilities;

ii. provides legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel;

iii. assures that all required public or private improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by Chapter II-B-4 of these regulations;

iv. assures that the requirements of 76-3-504(1)(k), MCA, regarding watercourse and irrigation easements as set forth in Chapter VI-O have been considered and will be accomplished before the final plat is submitted;

v. assures that the requirements of 76-3-504(1)(j), MCA, regarding the disclosure and disposition of water rights as set forth in Chapter VI-P have been considered and will be accomplished before the final plat is submitted; and

vi. provides for the appropriate park dedication or cash-in-lieu.

b. Consideration-Standards

In approving, conditionally approving, or denying a subdivision application and preliminary plat, the County Commissioners shall consider subsection (a) above and whether the proposed subdivision complies with:

i. these regulations, including, but not limited to, the standards set forth in Chapter VI;

ii. applicable zoning regulations;

iii. other applicable regulations;

iv. Title 76, Chapter 3, MCA, including but not limited to the following impacts:

A. impact on agriculture

B. impact on agricultural water user facilities

C. impact on local services

D. impact on the natural environment

E. impact on wildlife and wildlife habitat;

F. impact on public health and safety; and

G. proposed mitigation.

c. Consideration-Evidence

In making its decision to approve, conditionally approve, or deny a proposed subdivision, the County Commissioners may consider and weigh the following, as applicable:

i. the subdivision application and preliminary plat;

ii. the summary of probable impacts and mitigation;

iii. the officially adopted Growth Policy;

iv. comments, evidence and discussions at the public hearing(s);

v. Planning Department staff report and recommendations;

vi. Planning Board recommendation; and

vii. any additional information authorized by law.

Notwithstanding the foregoing, the County Commissioners may not consider any information regarding the subdivision application that is presented after the public hearing or subsequent hearing, if any, when making its decision to approve, conditionally approve, or deny the proposed subdivision.

d. Water and Sanitation-Special Rules

i. Water and sanitation information provided in the application, and public comment given about this information during the review process may be used as a basis for a conditional approval or denial of a subdivision only if the County Commissioners find that information provided in the application or submitted during public comment indicates the proposal does not comply with previously adopted subdivision, zoning, floodplain or other regulations.

ii. For a proposed subdivision that will create one or more parcels containing less than 20 acres, the County Commissioners shall require approval by the DEQ as a condition of approval of the final plat. This approval applies at the time when given of the approval and is no guarantee that a source of water or a location for a septic system or drain fields will be available when the lots are actually developed.

iii. For a proposed subdivision that will create one or more parcels containing 20 acres or more, the County Commissioners shall condition approval of the final plat upon the subdivider demonstrating and providing concurrence from the County Sanitarian that there is an adequate water source and at least one area for a septic system and a replacement drain field for each lot. This demonstration to the local reviewing authority is to evaluate the ability to develop lots at the platting

stage and is no guarantee that a source of water or a location for a septic system or drain fields will be available when the lots are actually developed.

iv. The Planning Department shall collect public comments submitted regarding water and sanitation information and shall make any comments submitted or a summary of the comments submitted available to the subdivider within 30 days after conditional approval or approval of the subdivision application and preliminary plat.

v. The subdivider shall, as part of the subdivider's application for sanitation approval, forward the comments or the summary provided by the Planning Department to the:

A. reviewing authority provided in Title 76, chapter 4, MCA, for subdivisions that will create one or more parcels containing less than 20 acres; and

B. local health department or board of health for proposed subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres.

e. Documentation of Decision

i. In rendering its decision to approve, conditionally approve, or deny the proposed subdivision, the County Commissioners shall issue written findings of fact that discuss and weigh the proposed subdivision's compliance with the preceding subsections.

ii. When the County Commissioners approve, deny, or conditionally approve the proposed subdivision, it shall send the subdivider a letter, with the appropriate signature, and make the letter available to the public. The letter shall:

A. contain information regarding the appeal process for the denial or imposition of conditions;

B. identify the regulations and statutes that are used in reaching the decision to approve, deny, or impose conditions and explain how they apply to the decision;

C. provide the facts and conclusions that the County Commissioners relied upon in making their decision and reference documents, testimony, or other materials that form the basis of the decision; and

D. provide the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved.

E. set forth the time limit for approval, pursuant to subsection (f) below.

f. Subdivision Application and Preliminary Plat Approval Period

i. Upon approval or conditional approval of the preliminary plat, the County Commissioners shall provide the subdivider with a dated and signed statement of approval. The approval shall be in force for no more than one calendar year.

A. At least 30 days prior to the expiration of the preliminary plat approval, the County Commissioners may, at its discretion and at the written request of the subdivider, extend its approval for a period of one additional year.

B. The County Commissioners may extend the approval for more than one year if a longer approval period is included as a specific condition of a written Subdivision Improvements Agreement between the County Commissioners and the subdivider, provided for in Chapter II-B-4 of these regulations.

ii. After the application and preliminary plat are approved, the County Commissioners may not impose any additional conditions as a prerequisite to final plat approval unless the preliminary plat approval expires, at which time a new application shall be required.

iii. The County Commissioners may withdraw approval or conditional approval of an application and preliminary plat if it determines that information provided by the subdivider, and upon which the approval or conditional approval was based, is inaccurate.

IV-A-7. Amended Applications

a. If the subdivider changes the subdivision application or preliminary plat after the Planning Department makes a determination of sufficiency pursuant to Chapter II-A-6 but before the Planning Board hearing, the subdivider shall submit the amended application to the Planning Department for review.

i. Within five working days of receiving the amended application or preliminary plat, the subdivision administrator shall determine whether the changes to the subdivision application or preliminary plat are material.

ii. The 60 working day review period is suspended while the Planning Department considers whether the changes to the subdivision application or preliminary plat are material.

iii. If the Planning Department determines the changes are not material or can satisfactorily resolve the issue, the 60 working day review period resumes when the Planning Department mails notice of the decision to the subdivider.

iv. If the Planning Department determines the changes are material, the Planning Department shall advise the Planning Board. If the planning Board determines the changes are material, it shall require the subdivider to schedule a new pre-application meeting, resubmit the application as a new subdivision application and require payment of a new application fee.

b. If the subdivider changes the subdivision application or preliminary plat after the Planning Board hearing, the subdivider shall submit the amended application or preliminary plat to the Planning Department for review.

i. Within five working days of receiving the amended application or preliminary plat, the subdivision administrator shall determine whether the changes to the subdivision application or preliminary plat are material pursuant to subsection (d) below.

ii. The 60 working day review period is suspended while the Planning Department considers whether the changes to the subdivision application or preliminary plat are material.

iii. If the Planning Department determines the changes are not material, the 60 working day review period resumes when the subdivision administrator mails notice of the decision to the subdivider.

iv. If the Planning Department determines the changes are material, it shall refer the matter to the Planning Board. The Planning Board shall either:

A. require the subdivider to begin the subdivision review process again, starting with the pre-application meeting, and require payment of a new application fee; or

B. schedule a new Planning Board hearing to take comment on the amended application or preliminary plat. Notice of the Planning Board's determination to schedule a new hearing shall be provided as set forth in Chapter IV-A-3 of these regulations. A supplemental staff report shall be prepared to address the changes to the original application.

v. If a new Planning Board hearing is held pursuant to subsection (b)(iv)(B) above, the 60 working day review period is suspended for the time period between notice of the subdivision administrator's determination and 10 working days after the date of the second Planning Board hearing.

c. By making changes to a pending subdivision application or preliminary plat, the subdivider consents to suspension of the review period as provided in subsections (a)(ii) and (b)(ii).

d. The following changes, although not an exhaustive list, may be considered material:

i. configuration or number of lots;

ii. road layout;

iii. water and/or septic proposals;

iv. configuration of park land or open spaces;

v. easement provisions; and

vi. designated access.

e. A subdivider whose subdivision application or preliminary plat has been deemed materially changed by the Planning Board may appeal the decision to the County Commissioners by written notice within 10 working days. The subdivider may request a hearing, and may submit additional evidence to show that the changes to the preliminary plat are not material.

i. The 60 working day review period is suspended until the County Commissioner's decision on the appeal is made.

ii. If the County Commissioners concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are material, the County Commissioners shall determine whether the subdivision application should be resubmitted or scheduled for rehearing in front of the Planning Board pursuant to subsections (b)(iv)(A) or (B).

iii. If the County Commissioners concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are not material, the 60 working day review period resumes as of the date of the decision.

iv. By appealing the decision of the Planning Board, the subdivider agrees to suspension of the 60 working day review period provided in subsection (i) above.

IV-B. Major Subdivisions – Final Plats – The final plat must have the contents, and be submitted and reviewed in accordance with the appropriate requirements contained in Chapter II-B, Final Plats.

CHAPTER V – DIVISIONS OF LAND EXEMPT FROM SUBDIVISION REVIEW

V-A. Purpose – Title 76, Chapter 3, MCA, provides that certain divisions of land, which would otherwise constitute subdivisions, are exempt from local subdivision review and approval, unless the use of the exemption is an attempt to evade Title 76, Chapter 3, MCA. The exemptions are found in Title 76, Chapter 3, Part 2, MCA. These regulations address the more commonly used exemptions.

V-B. General Criteria to Determine Whether a Proposal is an Attempt to Evade Title 76, Chapter 3, MCA – The Planning Board, when determining whether an exemption is claimed for the purpose of evading Title 76, Chapter 3, MCA, shall consider all of the surrounding circumstances. These circumstances include 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 is completed and any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review.

V-C. Divisions of Land Entirely Exempt from the Requirements of These Regulations and 76-3-201, MCA – The Planning Board will examine the divisions of land set forth in this chapter to determine whether or not the requirements of Title 76, Chapter 3, MCA, and these regulations apply to the division. The fee for this examination is set forth in Chapter X-A. The requirements of these regulations and Title 76, Chapter 3, MCA, do not apply unless the method of disposition is adopted for the purpose of evading these regulations or Title 76, Chapter 3, MCA, or as otherwise specifically provided, when:

V-C-1. A division of land is 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 the state pursuant to the law of eminent domain, Title 70, Chapter 30, MCA. Before a court of record orders a division of land, the court shall notify the County Commissioners of the pending division and allow them to present written comments on the subdivision.

V-C-2. A division of land is created to provide security for mortgages, liens or trust indentures for the purpose of construction, improvements to the land being divided or refinancing purposes.

a. This Exemption Applies:

i. to a division of land of any size;

ii. if the land that is divided is only conveyed to the financial or lending institution to which the mortgage, lien or trust indenture was given, or to a purchaser upon foreclosure of the mortgage, lien or trust indenture. A transfer of the divided land, by the owner of the property at the time the land was divided, to any party other than those identified in the preceding sentence subjects the division of land to the requirements of Title 76, Chapter 3, MCA, and these regulations.

iii. to a parcel that is created to provide security under this subsection. The remainder of the tract of land, if applicable, is subject to the provisions of Title 76, Chapter 3, MCA, and these regulations.

b. 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 person 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.

c. Use of Exemption

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 small parcel of the tract because the smaller tract is required as security for a building construction loan.

d. Required Materials

When this exemption is to be used, the landowner must submit to the subdivision administrator:

i. a statement of how many interests within the original tract will be created by use of the exemption;

ii. the deed, trust indenture or mortgage for the exempted interest, which states that the interest 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 interest is conveyed; and

iv. a signed statement from a lending institution that the creation of the interest is necessary to secure a loan.

e. Rebuttable Presumptions

The use of this exemption is presumed to have been adopted for the purpose of evading the Act if:

i. it will create more than one new building site;

ii. the financing is not for construction or improvements on the exempted parcel, or for re-financing;

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 interest will not be initially obtained by the lending institution if foreclosure occurs;

v. there exists a prior agreement to default or a prior agreement to purchase only a portion of the original tract;

vi. it appears that the principal reason the interest is being created is to create a building site and using the interest to secure a loan is a secondary purpose; or

vii. the division of land is created for the purpose of conveyance to any entity other than the financial or lending institution to which the mortgage, lien or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien or trust indenture.

V-C-3. A division of land creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;

V-C-4. A division of land creates cemetery lots;

V-C-5. A division of land is created by the reservation of a life estate;

V-C-6. A division of land is created by lease or rental for farming and agricultural purposes;

V-C-7. A division of land is in a location over which the state does not have jurisdiction; or

V-C-8. A division of land is created for public rights-of-way or public utility sites. A subsequent change in the use of the land to a residential, commercial or industrial use is subject to the requirements of Title 76, Chapter 3, MCA, and these regulations.

V-D. Divisions of Land Which May be Exempt from Review and Surveying

V-D-1. **Generally, condominiums** are subject to review as subdivisions, but under certain circumstances they may be exempt from review, provided they are constructed on land divided in compliance with these regulations and Title 76, Chapter 3, MCA, and:

a. The approval of the original division of land expressly contemplated the construction of the condominiums and 76-3-621, MCA, is complied with; or

b. The condominium proposal is in conformance with applicable zoning regulations.

V-D-2. Generally, subdivisions created by rent or lease are exempt from the surveying and filing requirements of Title 76, Chapter 3, MCA, and these regulations, but must be submitted for review and approved by the Planning Board before portions may be rented or leased.

a. When the land upon which an improvement is situated has been subdivided in compliance with Title 76, Chapter 3, MCA, the sale, rent, lease or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land and is not subject to Title 76, Chapter 3, MCA, or these regulations;

b. The sale, rent, lease, or other conveyance of one or more parts of a building, structure or other improvement, whether existing or proposed, is not a division of land and is not subject to the requirements of Title 76, Chapter 3, MCA, or these regulations.

V-D-3. A division of land created by lease or rental of contiguous airport-related land owned by a city, county, the state, or a municipal or regional airport authority is not subject to Title 76, Chapter 3, MCA, or these regulations, 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.

V-D-4. A division of state-owned land is not subject to Title 76, Chapter 3, MCA, or these regulations 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.

V-D-5. Title 76, Chapter 3, MCA, and these regulations do not apply to deeds, contracts, leases or other conveyances which were executed prior to July 1, 1974.

V-D-6. Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with 60-2-209, MCA, and are exempted from the surveying and platting requirements of Title 76, Chapter 3, MCA, and these regulations. A survey or plat for the recordation of an instrument transferring title to a remainder that was created when the state obtained property for a highway right-of-way is not required, 44 A.G. Op. 25 (1992). 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.

V-E. Divisions of Land Exempt from Review but Subject to Survey Requirements and Zoning Regulations – Unless the method of disposition is adopted for the purpose of

evading these regulations or Title 76, Chapter 3, MCA, the following divisions of land are not subdivisions under these regulations and Title 76, Chapter 3, MCA, but are subject to the surveying requirements of 76-3-401, MCA, and zoning regulations adopted under Title 76 chapters 2 or 3. A division of land may not be made under this chapter unless the County Treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid. The County Clerk & Recorder may not accept any plat for recording that fails to have the approvals specified in 76-3-611(1), MCA, in proper form. All surveys and requests for exemption shall be submitted to the Planning Department.

V-E-1. Relocation of Common Boundary, 76-3-207(1)(a), MCA

a. Statement of Intent

   The intended purpose of this exemption is to allow a change in the location or the elimination of a boundary line between adjoining properties outside of a platted subdivision and to allow a one-time transfer of a tract to effect that relocation or elimination without subdivision review.

b. Required Information

   Certificates of survey claiming this exemption must clearly distinguish between the existing boundary location and, in case of a relocation, the new boundary. This must be accomplished by representing the existing boundary with a dashed line and the new boundary, if applicable, with a solid line. The appropriate certification set forth in Uniform Standards for Certificates of Survey, 24.183.1104 (1)(f), ARM, must be included on the certificate of survey. Certificates of survey showing the relocation of common boundary lines must be accompanied by a deed from adjoining property owners for the entire newly described parcel(s) or that portion of the tract(s) that is being affected.

c. Use of Exemption

   The proper use of the exemption for relocating common boundary lines is to establish a new boundary between adjoining parcels of land outside of a platted subdivision, without creating an additional parcel. The exemption may not be used if the division of land would result in the permanent creation of one or more additional parcels of land.

d. Rebuttable Presumptions

   The use of this exemption is presumed to have been adopted for the purpose of evading Title 76, Chapter 3, MCA, if:

   i. the reviewing agent determines that the documentation submitted according to this chapter does not support the stated reason for relocation; or

ii. the proposed relocation creates a parcel of less than 160 acres which, prior to the relocation, included more than 160 acres.

V-E-2. A Gift or Sale to a Member of the Immediate Family, 76-3-207(1)(b), MCA

a. Statement of Intent

The intent of this exemption is to allow a landowner to convey one parcel outside of a platted subdivision to each member of his or her immediate family, without local subdivision review. A single parcel may be conveyed to each member of the immediate family under this exemption in each county where the landowner owns property. The term "immediate family" means the spouse, children (by blood or adoption), or parents of the grantor, 76-3-103(8), MCA. This exemption may be used only by grantors who are natural people and not by non-corporal legal entities such as corporations, partnerships and trusts.

b. Required Information

A certificate of survey (or recording of an instrument of conveyance) that uses 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, Uniform Standards for Certificates of Survey, 24.183.1104(1)(f), ARM. Also, the certificate of survey or instrument of conveyance must be accompanied by a deed or other conveying document.

c. Use of Exemption

One conveyance of a parcel to each member of the landowner's immediate family is eligible for exemption from subdivision review under Title 76, Chapter 3, MCA, and these regulations. However, the use of the exemption may not create more than one new parcel per eligible family member.

d. Physical and legal access must be provided to protect public health and safety.

e. Rebuttable Presumptions

i. Any proposed use of the family gift or sale exemption to divide a tract that was previously created through the use of an exemption will be presumed to be adopted for purposes of evading Title 76, Chapter 3, MCA.

ii. The use of the family gift or sale exemption to divide tracts that were created as part of an overall development plan with such characteristics as common roads, utility easements, restrictive covenants, open space or common marketing or

promotional plan raises a rebuttable presumption that the use of the exemption is adopted for purposes of evading Title 76, Chapter 3, MCA.

V-E-3. Divisions of Land Proposed for Agricultural Use Only, 76-3-207(1)(c), MCA

a. Statement of Intent

This exemption is intended to allow a landowner to create a parcel for gift, sale or agreement to buy and sell, outside a platted subdivision, without local review if the parcel will be used only for the production of livestock or agricultural crops and no residential, commercial or industrial buildings, which require water or sewer, will be built on it.

b. Required Information

A certificate of survey that uses this exemption to create a parcel for agricultural use only requires a covenant running with the land in accordance with 76-3-207(1)(c), MCA, and a signed and acknowledged recitation of the covenant on the face of the survey, Uniform Standards for Certificates of Survey, 24.183.1104(f)(iii), ARM. The certificate of survey must be accompanied by a separate, recordable, document reciting the covenant. The covenant must be approved by the County Commissioners.

c. Use of Exemption.

i. "Agricultural purpose," for purposes of these evasion criteria, means the use of land for raising crops, livestock or timber and specifically excludes residential structures and facilities for commercially processing agricultural products. Agricultural lands are exempt from review by the DEQ, provided the applicable exemption under the Sanitation in Subdivisions Act is properly invoked by the property owner.

ii. Any change in use of the land for anything other than agricultural purposes subjects the parcel to review as a minor subdivision.

iii. Residential, commercial, industrial, institutional or public structures, including facilities for commercial processing of agricultural products, may not be utilized, constructed or erected on parcels created under this exemption unless the covenant is revoked with the approval of the County Commissioners.

d. Rebuttable Presumptions.

The following conditions must be met or the use of the exemption will be presumed to have been adopted for the purpose of evading Title 76, Chapter 3, MCA:

i. The parties to the transaction must enter into a covenant running with the land and revocable only by mutual consent of the County Commissioners and the property

owner that the divided land will be used exclusively for agricultural purposes. The covenant must be signed by the property owner, the buyer and the members of the County Commissioners.

ii. The landowner must demonstrate that the planned use of the exempted parcel is for agricultural purposes and that no residential, commercial or industrial buildings have been or will be built on it.

iii. The parcel must contain 160 acres or more in accordance with the criteria for an agricultural designation under 15-7-202, MCA.

V-E-4. Relocation of Common Boundaries Involving Platted Subdivisions, 76-3-207 (1)(d), (e) and (2)(a), MCA

a. Statement of Intent

i. Title 76, Chapter 3, MCA, allows certain revisions to subdivisions platted since July 1, 1973, which include relocation of common boundaries and the aggregation of lots for five or fewer lots within a platted subdivision or the relocation of a common boundary between a single lot in a platted subdivision and adjoining land outside a platted subdivision (but a restriction or requirement on either continues to apply), without review.

ii. If a change is made to a platted subdivision which results in an increase in the number of lots or redesigns or rearranges six or more lots, the County Commissioners must review and approve the amended plat and an amended plat must be filed with the Clerk & Recorder.

b. Use of exemption

Relocation of a common boundary between a single lot in a platted subdivision and adjoining land outside a platted subdivision 76-3-207(1)(e), MCA, is allowed, because no additional parcels are created. Subdivision review is not necessary because the relocation does not create any additional division of land.

c. Rebuttable presumption

i. If the resulting lots are inconsistent with the approved subdivision and the uses in it, the use of the exemption will be presumed to have been adopted for the purpose of evading Title 76, Chapter 3, MCA.

ii. If the resulting lots do not comply with existing zoning, covenants and or deed restrictions, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.

V-F. Procedures and Review of Subdivision Exemptions

V-F-1. Submittal – Any person seeking exemption from the requirements of Title 76, Chapter 3, MCA, shall submit to the subdivision administrator (1) a certificate of survey or, if a survey is not required, an instrument of conveyance, and (2) evidence of, and an affidavit affirming, entitlement to the claimed exemption. 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, Uniform Standards for Certificates of Survey, 24.183.1104, ARM.

V-F-2. Review – When a division of land for which an exemption is claimed is submitted to the Planning Department, the Planning Department shall provide the documents to the County Attorney, Clerk & Recorder and other officials for review and comment. The Planning Department shall then refer the matter to the Planning Board with his or her recommendations and reasons therefor.

a. The Planning Board shall consider all of the surrounding circumstances when determining whether an exemption is claimed for the purpose of evading Title 76, Chapter 3, MCA. 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 is completed and any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review.

b. The Planning Board shall decide whether the use of the exemption is intended to evade the purposes of Title 76, Chapter 3, MCA, and shall explain in writing the reasons for the determination and shall provide a copy to the applicant.

V-F-3. Appeals

a. Any person whose proposed use of an exemption has been denied by the Planning Board may appeal the Planning Board's decision to the County Commissioners and may submit additional evidence to show that the use of the exemption in question is not intended to evade Title 76, Chapter 3, MCA, or these regulations, and, thereby rebut a presumption.

b. If the County Commissioners conclude that the evidence and information overcome the presumption that the exemption is being invoked to evade Title 76, Chapter 3, MCA, or these regulations, it may authorize the use of the exemption in writing. A certificate of survey or an instrument of conveyance claiming an exemption from subdivision review, which otherwise is in proper form, and which the County Commissioners have approved, may be filed.

V-G. Remaining Parcels of Land – A "remainder" less than 160 acres in size, contiguous to a proposed subdivision, will be considered a lot in that subdivision and will not evade review

as a "remainder." If an exemption by a certificate of survey is used, the remainder is a separate parcel that must be surveyed.

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

V-H. Identification Codes –To assist in the implementation of this review process and to monitor those parcels by exemption the Clerk & Recorder may cause the following identification codes to be added to the numbering of recorded certificates of survey filed.

CO … Court order, 76-3-201(1)(a), MCA
ME … Mortgage Exemption, 76-3-201(1)(b), MCA
LE … Life Estate, 76-3-201(1)(e), MCA
RB … Relocation of Common Boundary, 76-3-207(1)(a), MCA
FC … Family Conveyance, 76-3-207(1)(b), MCA
AE … Agricultural Exemption, 76-3-207(1)(c), MCA
OS … Occasional Sale (used prior to April 6, 1993)
AL … Aggregation of Lots, 76-3-207(e), MCA

CHAPTER VI – DESIGN AND IMPROVEMENT STANDARDS

All subdivisions approved by the County Commissioners must comply with the provisions of this chapter, except where granted a variance pursuant to Chapter XI, Variances. The County Commissioners may not grant variances from the provisions of Chapter VI-E, Floodplain Provisions. For subdivisions created by rent or lease, planned unit developments and condominiums, refer to Chapters VII, VIII and IX of these regulations.

VI-A. Conformance with Regulations – The design and development of a subdivision, as well as a remainder, must conform with any applicable zoning or other regulations.

VI-B. Extension of Capital Facilities – A subdivider must pay or guarantee payment in a manner agreed to by the County Commissioners for the costs of extending capital facilities related to public health and safety including but not limited to public roads, sewer lines, water supply lines, and storm drains to a subdivision, or shall provide such facilities. Any agreed payment or guarantee of payment must reasonably reflect the proportional impacts or expected impacts directly attributable to the subdivision. The subdivider shall not be required to pay for capital facilities related to education.

VI-C. Natural Environment – The design and development of subdivisions must provide satisfactory building sites, which are properly related to topography, and should, to the extent possible, preserve the natural terrain, natural drainage, existing topsoil, trees and other existing vegetation.

VI-D. Lands Unsuitable for Subdivision – Land that the County Commissioners determines is unsuitable for subdivision because of natural or human caused hazards may not be subdivided for building or residential purposes unless the hazards are eliminated or will be overcome by approved design and construction techniques. Such land includes but is not limited to land that is unstable for any reason, of excessive slope or that is contaminated.

VI-E. Floodplain Provisions – 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 County Commissioners 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.

If any portion of a proposed subdivision is within 2,000 horizontal feet and 20 vertical feet of a live stream draining an area of 25 square miles or more, and no official floodway delineation or floodway studies of the stream have been made, the subdivider shall provide in detail to the floodplain Management Section of the Water Resources Division of the Montana Department of Natural Resources and Conservation, a flood hazard evaluation, including the calculated 100 year frequency water surface elevations and/or 100 year floodplain boundaries. This detailed evaluation must be performed by a licensed professional engineer experienced in this field of work. The subdivider shall be responsible for assuring the DNRC submits its report to the Planning Department. The evaluation must follow the "guidelines for

obtaining 100-year flood elevations in approximate Zone A or unmapped areas," which may be found at the following Web site: www.mtfloods.org.

The above requirement is waived if the subdivider contacts the Water Resources Division and that agency states in writing that available data indicate that the proposed subdivision is not in a flood hazard area. The DNRC may require additional information that must follow the above guidelines to ensure no flood hazards.

VI-F. Improvement Design – Engineering and survey plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the County Commissioners must be prepared by a professional engineer or a professional land surveyor as their respective licensing laws allow in accordance with Title 76, Chapter 3, MCA, and these regulations.

VI-G. Lots

V-G-1. Each lot must contain a satisfactory building site and conform to health department regulations, applicable zoning regulations and these regulations.

a. No lot may be divided by a municipal or county boundary line.

b. No lot may be divided by a public road, alley or utility right-of-way or easement.

c. Each lot must abut and have access to a public or private street or road. Alleys may not be used to provide the primary access to a lot.

d. Corner lots must have driveway access to a street or road that provides access to interior lots and must provide acceptable sight distances for safe vehicular movement.

e. No lot may have an average depth greater than three times its average width.

f. Side lot lines must be at substantially right angles to street or road lines and radial to curved street or road lines.

g. Through lots are prohibited except when they are essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography or orientation.

VI-H. Blocks

VI-H-1. Requirements

a. Blocks must be designed to assure traffic safety and ease of traffic control and circulation, to accommodate the special needs of the use contemplated, and to take advantage of the limitations and opportunities of the topography.

b. Unless impractical, block length must not be more than 1,600 feet.

c. Blocks must be wide enough to allow for two tiers of lots unless a narrower configuration is essential to provide separation of residential development from traffic arteries, or to overcome specific disadvantages of topography and orientation, or unless the County Commissioners approve a design consisting of irregularly shaped blocks indented by cul-de-sacs.

d. Rights-of-way for adequate and safe pedestrian access, at least 10 feet wide, must be provided where deemed essential to provide circulation to schools, playgrounds, shopping, transportation and other community facilities.

VI-I. Streets and Roads

See Powell County Road Standards

VI-J. Drainage Facilities

VI-J-1. Requirements

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

b. A grading and drainage plan as required by Chapter II-A-5 is subject to approval by the County Commissioners.

c. Curbs and gutters or swales will be required based on the character of the area, density of development and nature of adjoining properties. Curbs and gutters of adjoining properties must be extended in conformance with current specifications of local and state authorities.

d. Culverts and bridges of adequate size must be provided and installed by the subdivider where drainage channels intersect any street or road right-of-way or easement. All culverts and bridges must be constructed and installed according to applicable local and state standards. Culverts and other drainage facilities must be of adequate slope to inhibit icing.

e. The subdivider must provide suitable drainage facilities for any surface run-off affecting the subdivision. These facilities must be located in street rights-of-way or in perpetual easements of appropriate widths.

f. Drainage systems must not discharge into any sanitary sewer facility.

g. Drainage systems must be designed and certified by a professional engineer.

h. The County Commissioners may require the subdivider to grant easements to prevent encroachment or disruption of drainageways or facilities. Drainage easements must be shown on the plat, and a signed statement granting the easements must appear on the plat.

VI-K. Water Supply Systems

VI-K-1. Requirements

a. For subdivisions that will create one or more parcels containing less than 20 acres, the proposed method of supplying domestic water to each lot in the subdivision must comply with the design standards adopted by the Montana DEQ and contained in 17.36.301, 17.36.302, 17.36.303, and 17.36.305, ARM. By this reference these DEQ standards are incorporated into and made a part of these regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in 17.36.101, ARM.

b. The County Commissioners may not approve the final plat of a subdivision containing lots of less than 20 acres in size, unless the subdivision has been approved by DEQ or other authorized reviewing authority under Sanitation in Subdivisions, 76-4-101 et seq., MCA.

c. Any water supply system must provide adequate and accessible water for fire protection as required by the County Commissioners.

VI-L. Sewage Treatment Systems

VI-L-1. Requirements

a. For subdivisions that will create one or more parcels containing less than 20 acres, the proposed method of disposing of sewage from each lot in the subdivision must comply with the design standards adopted by the DEQ and contained in 17.36.301, 17.36.302, 17.36.312, ARM, and 17.36.320 through 17.36.326, ARM. By this reference these DEQ standards are incorporated into and made a part of these regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in 17.36.101, ARM.

b. For subdivisions that will create one or more parcels containing less than 20 acres, the subdivision must have been approved by DEQ or other authorized reviewing authority under Sanitation in Subdivisions, 76-4-101 et seq., MCA, before the County Commissioners can approve the final plat.

c. For subdivisions containing parcels containing 20 acres or more, the subdivider shall have demonstrated that there is an adequate water source and at least one area for a

septic system and a replacement drain field for each lot before the County Commissioners may approve the final plat.

VI-M. Solid Waste

VI-M-1. Requirements

a. For subdivisions that will create one or more parcels containing less than 20 acres, the proposed method of supplying domestic water to each lot in the subdivision must comply with the standards adopted by the DEQ and contained in 17.36.309, ARM. By this reference this DEQ standard is incorporated into and made a part of these regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in 17.36.101, ARM.

b. Before the County Commissioners will approve the final plat of a subdivision containing lots of less than 20 acres in size, the subdivision must have been approved by the DEQ or other authorized reviewing authority under Sanitation in Subdivisions, 76-4-101, et seq., MCA.

c. For subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres, the proposed method of storing and disposing of solid waste generated within the subdivision must comply with the local environmental health department regulations.

VI-N. Utilities

VI-N-1. Requirements

a. The subdivider must provide adequate and appropriate easements for the construction and maintenance of utilities within the subdivision. The subdivider must obtain any easements necessary to extend utilities to the subdivision.

b. Utilities must be placed underground, wherever practical. Underground utilities, if placed in a street right-of-way, must be located between the roadway and the right-of-way line to simplify location and repair of lines. Underground facilities must be installed after the street has been brought to grade and before it is surfaced.

c. Where practical, overhead utility lines must be located at the rear property line.

d. The subdivider must design utility facilities in cooperation with utility firms. These facilities are subject to all applicable laws, rules and regulations of the appropriate regulatory authorities.

e. Utility easements located between adjoining lots must be centered on lot lines. If easements are placed in the street, they must be located between the roadway and the right-of-way line.

f. Utility easements must be 15 feet wide unless otherwise specified by a utility company or County Commissioners.

g. When a utility is to be located in an existing, dedicated right-of-way, a notice of utility occupancy must be obtained from the County Commissioners, or local or state highway department.

h. In addition to showing the location of utility easements on the plat with dashed lines, the following statement must appear on the final plat:

   "The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric power, gas, cable television, water or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair and removal of their lines and other facilities, in, over, under and across each area designated on this plat as 'Utility Easement' to have and to hold forever."

VI-O. Water Course and Irrigation Easements

VI-O-1. Requirements

a. The subdivider shall establish within the subdivision ditch easements that:

   i. 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 people and land 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;

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

   iii. prohibit the placement of structures, fencing or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.

b. The subdivider shall, unless otherwise provided under separate written agreement or filed easement, show on the preliminary and final plat, and file and record with the Clerk & Recorder, ditch easements for the unobstructed use and maintenance of existing water delivery ditches, pipelines and facilities in the proposed subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights.

VI-P. Disposition of Water Rights

VI-P-1. 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:

a. reserved all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer these water rights to a single entity for use by landowners within the subdivision who have a legal right to the water, and reserved and severed any remaining surface water rights from the land;

b. established a landowner's water use agreement administered through a single entity if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide for the use of a water right on the subdivision lots. This agreement must specify how the water rights will be administered and describe the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

c. reserved and severed all surface water rights from the land proposed for subdivision.

VI-Q. Park Land Dedication – Cash in Lieu – Waivers – Administration

VI-Q-1. Except as provided below, the final plat of a residential subdivision must show that the subdivider has dedicated to the County Commissioners a cash or land donation equal to:

a. 11 percent of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;

b. 7.5 percent 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 percent 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 percent of the area of the land proposed to be subdivided into parcels larger than three acres and not larger than five acres.

VI-Q-2. A park dedication is not required for:

a. minor subdivisions;

b. subdivision lots larger than five acres;

c. nonresidential subdivision lots;

d. subdivisions in which parcels of land will not be created, other than subdivisions that will provide permanent multiple spaces for recreational camping vehicles, mobile homes or condominiums; or

e. subdivisions which will create only one additional parcel.

VI-Q-3. The County Commissioners, in consultation with the subdivider and the Planning Board or Park Board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation. The land dedicated for park use may be inside or outside the boundaries of the proposed subdivision.

VI-Q-4. The County Commissioners will waive the park dedication requirement if it determines that:

a. i. 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 people who will ultimately reside in the development; and

ii. the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under this chapter;

b. i. 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

ii. the provision of this long-term protection will result in the reduction of the area of the land proposed to be subdivided by an amount equal to or exceeding the area that would have had to be dedicated under subsection (a) above;

c. the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (d)(i) and (ii) above, is reduced by an amount equal to or exceeding the area of the dedication required under subsection (a); or

d. i. 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 people who will ultimately reside in the subdivision; and

ii. the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under Chapter VI-Q-1.

VI-Q-5. The local County Commissioners may waive the park dedication requirement if:

a. the subdivider provides land outside the subdivision that affords long-term protections of critical wildlife habitat, cultural, historical or natural resources, agricultural interests, or aesthetic values; and

b. the area of land to be subject to long-term protection, as provided in subsection (e)(i), equals or exceeds the area of dedication required under subsection (a) above.

VI-Q-6. Subject to the approval of the County Commissioners and acceptance by the school district trustees, a subdivider may dedicate a land donation provided under subsection (a) above, to a school district, adequate to be used for school facilities or buildings.

VI-Q-7. The County Commissioners will administer funds dedicated to the public under this chapter in accordance with 76-3-621, MCA.

VI-Q-8. For the purposes of this park dedication requirement:

a. "cash donation" means the fair market value of the unsubdivided, unimproved land; and

b. "dwelling unit" means a residential structure in which a person or people reside.

VI-R. Fire Protection

VI-R-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 peoples' property and forested areas. Measures must include:

a. The placement of structures so as to minimize the potential for flame spread and to permit adequate access for firefighting equipment.

b. The presence of adequate firefighting facilities on site, including an adequate water supply and water distribution system.

c. The availability, through a fire protection district or other means, of fire protection services adequate to respond to fires that may occur within a subdivision.

VI-S. Special Requirements for Subdivisions Proposed in Areas of High Fire Hazard

VI-S-1. For areas identified as wildfire hazard areas by the United States Forest Service, the Montana Department of Natural Resources and Conservation, a local fire protection authority or a local growth policy, the following apply:

a. A Fire Prevention and Control Plan must accompany the submission of any application for preliminary plat approval.

b. The Fire Prevention and Control Plan must include the following items:

   i. an analysis of the wildfire hazards on the site, as influenced by existing vegetation and topography;

   ii. a map showing the areas that are to be cleared of dead, dying or severely diseased vegetation;

   iii. a map of the areas that are to be thinned to reduce the interlocking canopy of trees;

   iv. the identification of roads, driveways and bridges that are sufficient for emergency vehicle access and fire suppression activities. Slopes of all roads and driveways must be provided.

c. At least two entrances/exits must provide escape routes for residents and access to the subdivision by firefighting vehicles. Bridges providing access to the subdivision must be built to a design load of 20 tons and constructed of non-flammable materials. Road rights-of-way must be cleared of slash.

d. Building sites may not be located on slopes greater than 25 percent or 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).

e. The Fire Prevention and Control Plan must be implemented before the County Commissioners will approve the final plat and will be considered part of the subdivider's obligations for land development. The local fire chief, or designee, will inspect and approve the implementation of the Fire Prevention and Control Plan. The Plan will not be considered fully implemented until the fire chief has given written notice to the Planning Department that the Plan has been completed as approved.

f. Provisions for the maintenance of the Fire Prevention and Control Plan shall be included in the covenants, conditions and restrictions for the development. A property owners' association must be formed and designated to enforce the covenants, conditions and restrictions.

g. Open space, park land and recreation areas (including green belts, riding or hiking trails) should be located, where appropriate, to separate residences and other buildings from densely forested areas.

h. A water supply of sufficient volume for effective fire control must be provided as required by the County Commissioners.

VI-T. Noxious Weeds – A weed control plan shall be developed and implemented for every new subdivision. An agreement with the Powell County Weed Board shall be signed and notarized by the subdivider, and the agreement must be recorded with the final plat.

CHAPTER VII – SUBDIVISIONS CREATED FOR RENT OR LEASE; AREAS THAT WILL PROVIDE MULTIPLE SPACES FOR MOBILE OR MANUFACTURED HOMES OR RECREATIONAL VEHICLE PARKS

VII-A. Definition – A subdivision created by rent or lease, including a mobile or manufactured home or recreational vehicle park, is any tract of land divided by renting or leasing portions of it. The land is owned, however, as one parcel under single ownership, which can include a number of people owning property in common. Plans, not plats, are submitted to the subdivision administrator for review. The plan shows spaces, not lots. The plan must comply with applicable zoning.

VII-B. Procedures for Review

VII-B-1. Review and Approval – Subdivisions which will provide multiple spaces for recreational camping vehicles or mobile homes, and subdivisions created for rent or lease are exempt from the surveying and filing requirements of Title 76, Chapter 3, MCA. However, these subdivisions must be submitted for review and approved by the County Commissioners before portions of the subdivision may be rented or leased.

a. Submittal

The subdivider shall submit a completed application in accordance with Chapter II-A-5 and a plan of the proposed development, conforming to the requirements for preliminary plats.

b. Review

The procedure used to review subdivisions for rent or lease will depend on the number of spaces within the proposed subdivision. Proposed subdivisions containing six or more spaces must be reviewed pursuant to Chapter IV of these regulations. Proposed subdivisions containing five or fewer spaces must be reviewed pursuant to Chapter III of these regulations. The subdivider shall submit to the subdivision administrator the preliminary plans, profiles, tentative grades and specifications for proposed improvements. The plan must show the space layout and the proposed location of the mobile homes, recreational vehicles, or other units on the land included in the plan.

VII-B-2. Improvements – The subdivider shall install all required improvements before renting or leasing any portion of the subdivision. The Planning Department will inspect all required improvements in order to assure conformance with the approved construction plans and specifications.

VII-B-3. Final Plan Review – In lieu of filing a final plat, the subdivider shall submit a final plan to the Planning Department complying with the requirements of Final Plats in Chapter II. The final plan will be reviewed to assure that it conforms to the approved

preliminary plan. The approved plan shall be maintained in the Clerk & Recorder's office.

VII-B-4. DPHHS License – If a subdivision that will provide multiple spaces for recreational camping vehicles or mobile homes is also a "trailer court," "work camp," "youth camp" or "campground," as those terms are defined in 50-52-102, MCA, the County Commissioners will not grant final approval of the subdivision until the subdivider obtains a license for the facility from the Montana Department of Public Health and Human Services under Title 50, Chapter 52, MCA.

VII-C. Subdivisions for Lease or Rent – Land subdivision created by rent or lease will be reviewed under the procedures described in Chapter IV, Major Subdivisions, or Chapter III, Minor Subdivisions, as may be appropriate, except that the subdivider shall submit an unsurveyed final plan drawn to scale, rather than a final plat, following the Final Plat procedure in Chapter II.

VII-C-1. Design Standards – Subdivisions created by rent or lease must comply with the provisions of Chapter VI.

VII-C-2. Additional Provisions – The County Commissioners may require provision for:

a. storage facilities on the lot or in compounds located within a reasonable distance;

b. a central area for storage or parking of boats, trailers or other recreational vehicles;

c. landscaping or fencing to serve as a buffer between the development and adjacent properties;

d. an off-street area for mail delivery; and

e. street lighting.

VII-D. Mobile or Manufactured Homes – Developments that are subject to subdivision review because they will provide two or more spaces for mobile or manufactured homes will be reviewed under Design Standards, below.

VII-D-1. Design Standards – Subdivisions created for Mobile or Manufactured Homes must comply with the provisions of Chapter VI.

VII-D-2. Mobile or Manufactured Home Spaces

a. Mobile or Manufactured Home Spaces - Mobile or manufactured home spaces must be arranged to permit the safe and practical placement and removal of mobile homes.

b. All mobile or manufactured homes must be located at least 25 feet from any property boundary line abutting upon a public street or highway right-of-way and at least 15 feet from other boundary lines of the park.

c. The mobile or manufactured home pad must be located at least 10 feet from the street that serves it.

d. The size of the mobile or manufactured home pad must be suitable for the general market to be served and must fit the dimensions of anticipated mobile or manufactured homes.

e. A mobile or manufactured home pad may not occupy more than one-third (1/3) of the area of its space. The total area occupied by a mobile home and its roofed accessory buildings and structures may not exceed two-thirds (2/3) of the area of a space.

f. The County Commissioners may require that the mobile or manufactured home pad be improved to provide adequate support for the placement and tie-down of the mobile home.

g. No mobile or manufactured home or its attached structures, such as awnings and carports, may be located within 20 feet of any other mobile home or its attached structures.

h. No detached structure, such as a storage shed, may be located within five feet of any mobile or manufactured home or its attached structures.

i. A minimum of two off-street parking spaces must be provided on or adjacent to each mobile or manufactured home space. The driveway must be located to allow for convenient access to the mobile or manufactured home and be a minimum of 10 feet wide.

j. One guest parking space must be provided for each 10 mobile or manufactured home spaces. Group parking may be provided.

k The limits of each mobile or manufactured home space must be clearly marked on the ground by permanent flush stakes, markers or other suitable means. Location of space limits on the ground must be approximately the same as those shown on the approved plans. Precise engineering of space limits is not required either on the plans or on the ground.

l. Each mobile or manufactured home must be skirted within 30 days after it is moved to a space within the mobile or manufactured home park. The skirting must be of a fire-resistant material similar to that of the mobile or manufactured home exterior.

VII-D-3. Streets – Streets within a mobile or manufactured home park must meet the standards specified in Powell County Road Standards. Streets must be designed to allow safe placement and removal of mobile homes.

a. Streets must be designed to provide safe access to public roads.

b. Roads within the mobile or manufactured home park must be designed to provide safe traffic circulation and parking.

VII-D-4. Electrical Systems – Electrical systems must be designed and installed in accordance with the applicable Montana state electrical standards.

VII-D-5. Gas Systems

a. Gas equipment and installations must be designed and constructed in accordance with the applicable or Montana state gas standards, the applicable provisions of the "National Fuel Gas Code" (NFPA Pamphlet 54-1981) and the "Standard for the Storage and Handling of Liquefied Petroleum Gases" (NFPA Pamphlet 58-1981).

b. A readily accessible and identified shutoff valve controlling the flow of gas to the entire gas piping system must be installed near to the point of connection of the liquefied petroleum gas container.

c. Each mobile or manufactured home lot must have an accessible, listed gas shutoff installed. This valve must not be located under a mobile home. Whenever the mobile home lot gas outlet is not in use, the shutoff valve must be plugged to prevent accidental discharge.

VII-E. Recreational Vehicle Park – Developments which are subject to subdivision review because they will provide two or more spaces for recreational camping vehicles will be reviewed under Design Standards, below.

VII-E-1. Design Standards – Subdivisions created for Recreational Vehicle Park Standards must comply with the provisions of Chapter VI.

VII-E-2. Recreational Vehicle Spaces

a. Spaces in recreational vehicle parks must be arranged to allow for the safe movement of traffic and access to spaces.

b. Roads within recreational vehicle parks must be designed to provide safe traffic circulation and parking.

c. 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.

d. No recreational vehicle space may be located less than 25 feet from any public street or highway right-of-way.

e. The density of a recreational vehicle park must not exceed 25 recreational vehicle spaces per acre of gross site area.

CHAPTER VIII – PLANNED UNIT DEVELOPMENT

VIII-A. Planned Unit Development (PUD) – The County Commissioners have adopted a growth policy that meets the requirements of 76-1-601, MCA; that encourages innovative subdivision developments; and further adopt the following to promote PUD subdivisions that promote open space preservation, provide efficiency of development, and limit county costs for providing infrastructure and services.

VIII-A-1. The following apply to subdivisions proposed under this chapter:

a. Open space must be preserved in quantity and manner as provided for PUDs in the Powell County Zoning & Development Regulations.

b. The number and size of lots must comply with the requirements and restrictions for PUDs as provided in the Powell County Zoning & Development Regulations.

c. Multiple adjacent tracts of record may be aggregated to create a single parcel for the purpose of creating a PUD.

VIII-A-2. Park dedication requirement for PUDs created under this chapter shall be waived if the provisions of 76-3-621(6), MCA, are met.

VIII-A-3. Authority

a. A PUD must be authorized by a Conditional Use Permit (CUP) issued pursuant to the Powell County Zoning & Development Regulations.

b. A PUD shall be reviewed as a subdivision in accordance with, and must meet all requirements of, these subdivision regulations.

CHAPTER IX – CONDOMINIUMS

IX-A. Procedures – Unless exempted by 76-3-203, MCA, all condominium developments are subdivisions subject to the terms of Title 76, Chapter 3, MCA.

IX-A-1. Review Where Land Will Not be Divided – If no division of land will be created by a condominium subdivision, the subdivision must be reviewed under the procedures contained in Chapter VII, Subdivisions Created For Rent or Lease; Areas That Will Provide Multiple Spaces for Mobile or Manufactured Homes or Recreational Vehicle Parks, with the following exception: final approval will not be given until the subdivider has either installed all required improvements, or has entered into a subdivision improvements agreement pursuant to Chapter II-B-4 Public Improvements Agreement; Guaranty.

IX-A-2. Condominium Subdivisions Involving Land Divisions – If a proposed condominium development will involve a division of land, the subdivision must be reviewed under the procedures contained in chapters II-B, Final Plats, and IV-A, Major Subdivisions – Review.

IX-B. Design Standards – Condominium developments must comply with applicable standards contained in Chapter VI, Design and Improvement Standards.

IX-C. Unit Ownership Act – Condominium developments must comply with all provisions of the Unit Ownership Act, 70-23-102 through 70-23-703, MCA.

CHAPTER X – ADMINISTRATIVE PROVISIONS

X-A. Fee Schedule – These fees, payable to the Planning Department, are established by County Commission resolution.

CHAPTER XI – VARIANCES

The governing body may grant variances from Chapter VI, Design and Improvement 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. A variance will not be granted if it would have the effect of nullifying the intent and purpose of these regulations.

XI-A. Variances Authorized

XI-A-1. The governing body shall not approve a variance unless it finds that:

a. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties;

b. 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;

c. The variance will not cause a substantial increase in public costs; and

d. The variance will not place the subdivision in nonconformance with any adopted zoning regulations.

XI-A-2. Variances from Floodway Provisions Not Authorized – The governing body will not by variance permit subdivision for building purposes in areas located within the floodway of a flood of 100-year frequency as defined by Title 76, Chapter 5, MCA.

XI-A-3. Procedure – The subdivider shall include with the submission of the preliminary plat a written statement describing and justifying the requested variance. The Planning Board will consider the requested variance and recommend its approval or denial to the governing body.

XI-A-4. Conditions – In granting variances, the governing body may impose reasonable conditions to secure the objectives of these regulations.

XI-A-5. Statement of Facts – When a variance is granted, the motion to approve the proposed subdivision must contain a statement describing the variance and the facts and conditions upon which the issuance of the variance is based.

CHAPTER XII – ENFORCEMENT

XII-A. Unlawful Transfers – Except as provided in 76-3-303, MCA, and these regulations, every final subdivision plat must be filed for record with the Clerk & Recorder before title to the subdivided land can be sold or transferred in any manner. If unlawful transfers are made, the county attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions of Title 76, Chapter 3, MCA, and these regulations. The cost of this action shall be imposed against the party not prevailing.

XII-A-1. Violation and Penalties – Any person, firm, corporation or other entity who violates any of the provisions of Title 76, Chapter 3, MCA, or these regulations is guilty of a misdemeanor punishable by a fine of not less than $100 nor more than $500 or by imprisonment in jail for not more than three months or by both fine and imprisonment. Each sale, lease, or transfer, or offer of sale, lease, or transfer of each separate parcel of land in violation of any provision of Title 76, Chapter 3, MCA, or these regulations shall be deemed a separate and distinct offense.

XII-A-2. Appeals

a. A person who has filed with the Planning Department an application for a subdivision under Title 76, Chapter 3, MCA, and these regulations may bring an action in district court to recover actual damages caused by a final action, decision, or order of the County Commissioners or a regulation adopted pursuant to Title 76, Chapter 3, MCA, that is arbitrary or capricious.

b. A party identified in subsection (d) below who is aggrieved by a decision of the County Commissioners to approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision or a final subdivision plat may, within 30 days after the decision, appeal to 3rd District Court in Powell County. The petition must specify the grounds upon which the appeal is made.

c. For the purposes of this chapter, “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.

d. The following parties may appeal under the provisions of subsection (b) above:

   i. the subdivider;

   ii. 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;

   iii. the City of Deer Lodge if a subdivision is proposed within 1 mile of its limits.

CHAPTER XIII – AMENDMENT OF REGULATIONS

Before the County Commissioners amend these regulations, they will hold a public hearing on the proposed amendment. Notice of the time and place of the public hearing must be published in a newspaper of general circulation in the county not less than 15 days or more than 30 days before the date of the hearing.

CHAPTER XIV – DEFINITIONS OF TERMS USED IN THESE REGULATIONS

ADJOINING LANDOWNER OR ADJACENT PROPERTY OWNER: The owner of record of a parcel of land that is contiguous, at any point, or land that is separated from the parcel by a road, watercourse or deeded right-of-way.

AGRICULTURE: Any use of land for the production of crops or livestock, or other animals including ranching, farming, dairying, grazing, pasturage, husbandry of poultry, forestry, horticulture and floriculture; "agriculture" includes:

a. Any buildings, structures, machinery, equipment and practices associated with such production.

b. Those accessory facilities and activities necessary to load, transport, store or dispose of agriculture products produced solely by the owner or operator on the premises.

c. Any land classified as agricultural by the Powell County Assessor at the time of application.

"Agriculture" does not include commercial agricultural uses, as defined in these regulations, nor does it include "game farms."

AGRICULTURAL WATER USER FACILITIES: Those facilities which provide water for irrigation or stock watering to agricultural lands for the production of agricultural products. These facilities include, but are not limited to, ditches, head gates, pipes, and other water conveying facilities.

ARM: Administrative Rules of Montana

BLOCK: A group of lots, tracts or parcels within well-defined and fixed boundaries.

CERTIFICATE OF SURVEY: A drawing of a field survey prepared by a professional land surveyor for the purpose of disclosing facts pertaining to boundary locations.

COMPREHENSIVE PLAN, MASTER PLAN OR GROWTH POLICY: means a comprehensive development plan, master plan, or comprehensive plan that was adopted pursuant to Title 76, Chapter 1, MCA, before October 1, 1999, or a policy that was adopted pursuant to Title 76, Chapter 1, MCA, on or after October 1, 1999.

CONDOMINIUM: A form of individual ownership with unrestricted right of disposal of one or more units in a multiple unit project, with the land and other parts of the project held in common ownership or use with owners of the other units, pursuant to Title 70, Chapter 23, MCA.

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

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

DEQ: The Montana Department of Environmental Quality.

DIVISION OF LAND: The segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to Title 76, Chapter 3, MCA. 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.

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, Title 37, Chapter 67, MCA, to practice engineering in the State of Montana.

FIRST MINOR SUBDIVISION: A proposed minor subdivision from a tract of record that has not been subdivided or created by a subdivision under Title 76, Chapter 3, MCA, or has not resulted from a tract of record that has had more than five parcels created from that tract of record under 76-3-201 or 76-3-207, MCA, since July 1, 1973, 76-3-609(2), MCA.

FLOOD: The water of any watercourse or drainage which is above the bank or outside the channel and banks of such watercourse or drainage, 76-5-103 (8), MCA.

FLOOD OF 100 YEAR FREQUENCY: A flood magnitude which has a one percent chance of occurring in any given year, or is a flood magnitude which is expected to recur on the average of once every 100 years, 76-5-103 (9), MCA.

FLOODPLAIN: The area adjoining the watercourse or drainage that would be covered by the floodwater of a flood of 100 year frequency, 76-5-103 (10), MCA.

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

IMPROVEMENT AGREEMENT: A contractual agreement that may be required by the County Commissioners to ensure the construction of such improvements as required by local subdivision regulations. The 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.

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, Uniform Standards for Certificates of Survey, 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: Local services are defined as any and all services that local governments, public or private utilities are authorized to provide for the benefit of their citizens.

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

LOT MEASUREMENT:

a. Lot Depth - The length of a line drawn perpendicularly to the front lot line and extending to the rear lot line.

b. Lot Width - The average width of the lot.

c. Lot Frontage - The width of the front lot line.

d. Lot Area - The area of a lot determined exclusive of street, highway, alley, road, or other rights-of-way or access easements.

LOT TYPES:

a. Corner Lot: A lot located at the intersection of two streets.

b. Interior Lot: A lot with frontage on only one street.

c. Through or Double-Frontage Lot: A lot whose front and rear lines both abut on streets.

d. Flag Lot: A lot of irregular shape, the bulk of which is normally situated to the rear of other lots, having as its frontage and access a drive connecting it to a street.

MAJOR SUBDIVISION: A subdivision that creates six or more lots.

MINOR SUBDIVISION: A subdivision that creates five or fewer lots

MOBILE OR MANUFACTURED HOME: A structure, transportable in one or more sections, which, when erected on site, is 320 or more square feet, and is built on a permanent chassis. These homes are designed to be used for residential purposes, with or without a permanent foundation when connected to the required utilities, and contain the necessary plumbing,

heating, air-conditioning and electrical systems. A home that does not meet the minimum size requirements stated above, is a manufactured home if it either (1) is certified as such by HUD pursuant to the federal Manufactured Home Construction and Safety Standards Act, 41 U.S.C Section 778 5401. et. seq., as amended, or (2) complies with the NFPA 501BANSI A 119.1 (1973, 1974 and 1975 editions).

MOBILE OR MANUFACTURED HOME SPACE: A designated portion of a parcel of land designed for the accommodation of one mobile home and its accessory buildings or structures for the exclusive use of the occupants.

MOBILE OR MANUFACTURED HOME PARK: A tract of land that provides or will provide spaces for two or more mobile or manufactured homes.

MOBILE OR MANUFACTURED HOME PAD: That area of a mobile home space which has been prepared for the placement of a mobile or manufactured home.

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY MINIMUM STANDARDS: Minimum standards promulgated by the Montana Department of Environmental Quality, pursuant to Title 76, Chapter 4, Part 1, MCA.

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.

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

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

OVERALL DEVELOPMENT PLAN: The plan of a subdivision design 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 or any combination thereof that comprises 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, 76-3-103 (10), MCA.

PLANNING BOARD: For matters affecting lands within any joint city-county planning area, planning board means the city-county Planning Board; for matters affecting lands in Powell County outside of any joint city-county planning area, Planning board means the Powell County Planning Board.

PLANNING DEPARTMENT: That unit in the Powell County government that contains staff that receives and processes applications for subdivisions and land use permits, develops findings of fact and recommendations for Planning Board and County Commissioner action, monitors subdivisions and permitted land uses for compliance, and acts as staff to the 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.

a. Preliminary Plat: A neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnishes a basis for review.

b. Final Plat: The final drawing of the subdivision and dedication required to be prepared for filing for record with the Clerk & Recorder containing all elements and requirements set forth in these regulations and Title 76, Chapter 3, MCA.

c. Amended Plat: The final drawing of any change to a filed platted subdivision, or any lots within a filed platted subdivision.

d. Vacated Plat: A plat which has been voided under the provisions of 76-3-305, 7-5-2501, 7-5-2502, 7-14-2616 (1) and/or (2), 7-14-2617, 7-14-4114 (1) and/or (2), and 7-14-3115, MCA.

PRE-APPLICATION SKETCH (OR DRAWING): A legible drawing showing approximate boundaries, dimensions, areas, distances and other pertinent information of a proposed subdivision, all as more particularly set forth in Chapter II-A-4(b).

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

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

PUBLIC ROAD OR STREET: A road or street is public if its right-of-way has been dedicated or acquired for public use.

PRIVATE IMPROVEMENT: Private improvements are the same types of improvements as defined under public improvements, except the structure or facility has not been dedicated to the public or otherwise acquired by a government entity for public use.

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

RECREATIONAL CAMPING VEHICLE: A vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own motor power or is mounted on or drawn by another vehicle.

RECREATIONAL VEHICLE PARK: A tract of land available to and principally used by the public for camping, where people can park recreational vehicles for camping and sleeping purposes.

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

REVIEWING AUTHORITY: The DEQ or local Board of Health or Sanitarian as authorized under Title 76, Chapter 4, MCA.

RIGHTS-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, non-motorized vehicle path, railroad, electric transmission lines, water line, sanitary sewer line, storm sewer line, or other similar uses.

STATE: The State of Montana.

STREET TYPES: For purposes of these regulations, street types are defined as follows (SEE Powell County road standards):

a. Alley: A public or private way reserved as a secondary means of access to the rear or side of lots that abut on and are served by public roads.

b. Arterial: A street or road having the primary function of moving traffic with emphasis on a high level of mobility for through movement and the secondary function of providing access to adjacent land. Arterials generally carry relatively large volumes of traffic. Arterials have two to four lanes of moving traffic and should provide only limited access to abutting property.

c. Collector: A street or road having the equally important functions of moving traffic and providing access to adjacent land. Collector streets have two moving traffic lanes and up to two parking lanes.

d. Local Streets: A street or road having the primary function of serving abutting properties, and the secondary function of moving traffic. Local streets have two moving lanes of traffic, up to two parking lanes, and provide access to abutting properties.

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

f. Cul-de-sac: A street having only one outlet for vehicular traffic and terminating in a turn-around area.

g. Loop: A local street which begins and ends on the same street, generally used for access to properties.

h. Frontage Access (Service Road): A local or collector street, usually parallel and adjacent to an arterial or major collector, which provides access to abutting properties and controls traffic access to arterials or collectors.

SUBDIVIDER: Any person, firm or corporation, or other entity which causes land to be subdivided or which 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 Planning Department written notification that the landowner's agent is authorized to act on the landowner's behalf and to receive notices.

SUBDIVISION: A division of land or land so divided which 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 in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any re-subdivision and further includes a condominium or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes 76-3-103(16), MCA.

SUBSEQUENT MINOR SUBDIVISION: Any subdivision of five or fewer parcels that is not a first minor subdivision.

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

SURVEYOR (EXAMINING LAND SURVEYOR): A professional land surveyor duly appointed by the County Commissioners to review surveys and plats submitted for filing.

SWALE: A drainage channel or depression designed to direct surface water flow.

TITLE REPORT (ABSTRACT OF TITLE, SUBDIVISION GUARANTEE, OR PLATTING REPORT): A report from a title service company on the condition of title to the property proposed for subdivision, which identifies the owners of record of the property, lien holders, encumbrances, easements and restrictions of record, and all other conditions of title of public record, and accompanied by a guarantee of the accuracy of the report from the title insurance agent or its underwriter.

TOPOGRAPHY: General term to include characteristics of the ground surface such as plains, hills, mountains, slopes, and other physiographic features.

TOWNHOUSE LOT: 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 Clerk & Recorder's office, 76-3-103(17)(a), MCA.

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 the proposed subdivision.

WILDLIFE: Those animals that are not domesticated or tamed, or as may be defined in the Growth Policy.

WILDLIFE HABITAT: The place or area where wildlife naturally lives or travels through.