

# CHAPTER 5

## PROCEDURES FOR

### SUBDIVISION REVIEW, PRELIMINARY PLAT, VARIANCES, AND APPEALS

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<b>5.1</b>	<b>Purpose and Intent</b>	<b>5.8</b>	<b>General Procedures</b>
<b>5.2</b>	<b>Applicability</b>	<b>5.9</b>	<b>Adjustments to Preliminary Plats and Related Documents</b>
<b>5.3</b>	<b>Minor, Major Defined</b>	<b>5.10</b>	<b>Review Criteria, Special Restrictions on Decisions</b>
<b>5.4</b>	<b>Minor Subdivision Review</b>	<b>5.11</b>	<b>Variances</b>
<b>5.5</b>	<b>Administrative Minor Subdivision Review</b>	<b>5.12</b>	<b>Appeals of Administrative Decisions</b>
<b>5.6</b>	<b>Major Subdivision Review</b>		
<b>5.7</b>	<b>Subdivisions Proposed for Annexation</b>		

#### **5.1 Purpose and Intent**

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The purpose and intent of this chapter is to establish clear, consistent, and predictable procedures for administering these regulations. It is the further purpose and intent to require the minimum submittal requirements, early comment and collaboration regarding subdivision design concepts, and the shortest review procedures necessary to ensure applications comply with these regulations, and to provide the opportunity for all stakeholders to participate in transparent procedures.

#### **5.2 Applicability**

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##### **5.2.1 All Subdivisions**

The review of all subdivisions and divisions of land not exempted in *Chapter 8, Divisions of Land Exempt From Review*, and all variances and appeals of administrative decisions related to these regulations shall comply with the procedures of this chapter.

##### **5.2.2 Mobile Home and RV Parks**

If a mobile home or recreational vehicle park is initially approved with rental spaces and at a later date, the park owner proposes to sell individual mobile home spaces or recreational vehicle spaces as lots, an application shall be resubmitted for review as a subdivision of land before any lot is offered for sale and all applicable requirements of these regulations shall apply.

##### **5.2.3 Applicable Regulations**

The review and approval, conditional approval, or denial of subdivisions and any related variances or administrative appeals shall be based on the regulations in effect at the time

a subdivision application and preliminary plat/plan is deemed to contain sufficient information for review.

#### **5.2.4 Amended Regulations**

If these regulations are amended prior to completion of the sufficiency review of a proposed subdivision, the determination of whether the application contains the required elements and sufficient information, and the review of the subdivision plat/plan and any related variance or administrative appeal, shall be based on the amended regulations.

### **5.3 Minor, Major Defined**

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#### **5.3.1 Minor Subdivisions**

Minor subdivisions, including condominiums, townhouses, mobile home and recreational vehicle parks, consist of five or fewer lots or units. Montana law identifies procedures for reviewing “first minor” and optional procedures for “subsequent minor” subdivisions. For the purpose of these regulations, all subdivisions creating 5 or fewer lots or units are considered to be and will be reviewed as minor subdivisions.

#### **5.3.2 Minor Subdivisions, Administrative**

A minor subdivision meeting the description of 5.3.1, *Minor Subdivisions* that also meets the applicability requirements of *Section 5.5.1 Administrative Minor Applicability* will be reviewed as an administrative minor subdivision.

#### **5.3.3 Major Subdivisions**

Major subdivisions, including condominiums, townhouses, mobile home and recreational vehicle parks, consist of 6 or more lots or units.

### **5.4 Minor Subdivision Review**

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#### **5.4.1 Minor Subdivision Procedure**

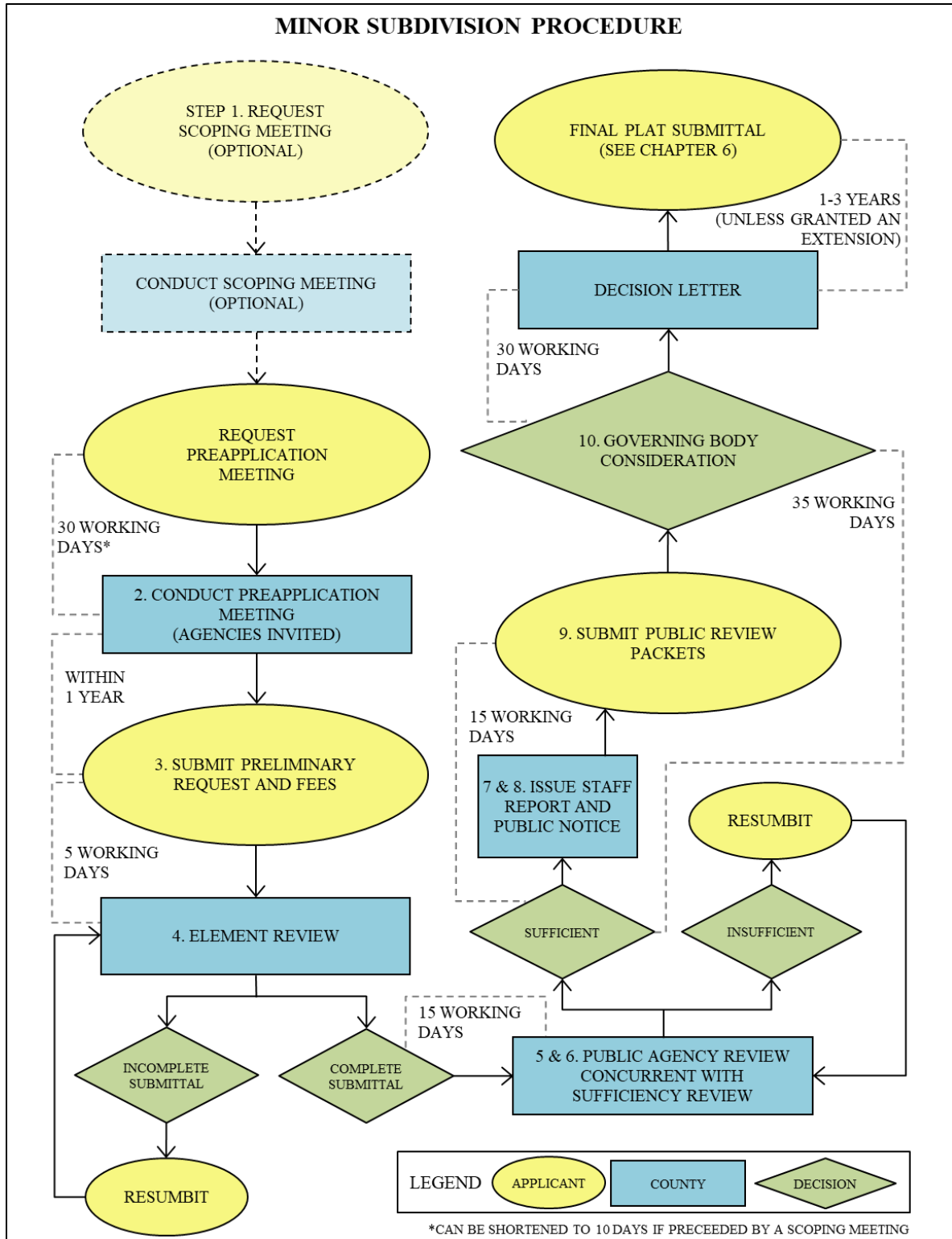
The review of minor subdivisions as defined in *Section 5.3.1, Minor Subdivisions*, including condominiums, mobile home and recreational vehicle parks shall include the steps listed below. (See flow diagram below for Minor Subdivision Procedure.)

Step 1	Optional Scoping Meeting	(see Section 5.8.2)
Step 2	Preapplication Meeting	(see Section 5.8.3)
Step 3	Preliminary Submittal	(see Section 5.8.5)
Step 4	Element Review	(see Section 5.8.6)
Step 5	Public Agency Review	(see Section 5.8.7)
Step 6	Sufficiency Review	(see Section 5.8.8)
Step 7	Staff Review, Staff Report	(see Section 5.8.9)
Step 8	Public Meeting Notice	(see Section 5.8.10)
Step 9	Governing Body Submittal	(see Section 5.8.13)
Step 10	Governing Body Consideration	(see Section 5.8.15)

Step 11	Extension of Preliminary Plat, when proposed	(see Section 5.8.17)
Step 12	Phased Developments, when proposed	(see Section 5.8.18)
Step 13	Amended Application, when proposed	(see Section 5.8.19)
Step 14	Subdivider's Preference for Mitigation, when applicable	(see Section 5.8.15.6)
Step 15	Mitigation, when applicable	(see Section 5.8.15.7)

#### **5.4.2 General Procedures**

Each procedural step listed above shall be implemented pursuant to the detailed description of the step in *Section 5.8, General Procedures*.



## **5.5 Administrative Minor Subdivision Review**

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### **5.5.1 Administrative Minor Applicability**

The review of administrative minor subdivisions as defined in *Section 5.3.2, Minor Subdivisions, Administrative*, including condominiums, mobile home and recreational vehicle parks shall include the steps listed below. (See flow diagram below for Administrative Minor Subdivision Procedure.) Minor subdivisions meeting all of the following requirements must be processed according to the administrative minor review process:

- A.** Is in an area of Missoula County that is zoned pursuant to the Missoula County Zoning Regulations effective July 1, 2022, including Legacy Districts listed in Appendix A with the exception of the Miscellaneous Legacy Districts; and
- B.** Has a will-serve letter for both water and sewer service from a municipal water and/or sewer service or by a county water and/or sewer district created under §76-13-2203. MCA; and
- C.** Has existing legal and physical access to each proposed lot; and
- D.** Does not require a variance to any of the contents of these subdivision regulations.

### **5.5.2 Powers of Subdivision Administrator**

The subdivision administrator shall assume all decision-making authority of the governing body on a preliminary plat referenced in this chapter except as noted in *Section 5.8.16.9. Appeals of Subdivision Administrator's Decision*, and *Section 5.12 Appeals of Administrative Decisions*.

### **5.5.3 Public Meetings on Administrative Subdivisions**

Except as noted in *Section 5.8.16.9, Appeals of Subdivision Administrator's Decision* and *5.12, Appeals of Administrative Decisions*, no public meetings or public hearings referenced in this chapter will be held on a preliminary plat or a related process for an administrative minor subdivision.

### **5.5.4 Appeals**

Any appeal of the subdivision administrator's decision to approve, conditionally approve, or deny an administrative minor subdivision must follow the procedures in *Section 5.8.16.9, Appeals of Subdivision Administrator's Decision*. All other appeals of decisions of a Subdivision administrator regarding an administrative minor subdivision shall follow the procedures in *Section 5.12, Appeals of Administrative Decision*.

### **5.5.5 Administrative Minor Subdivision Review Procedure**

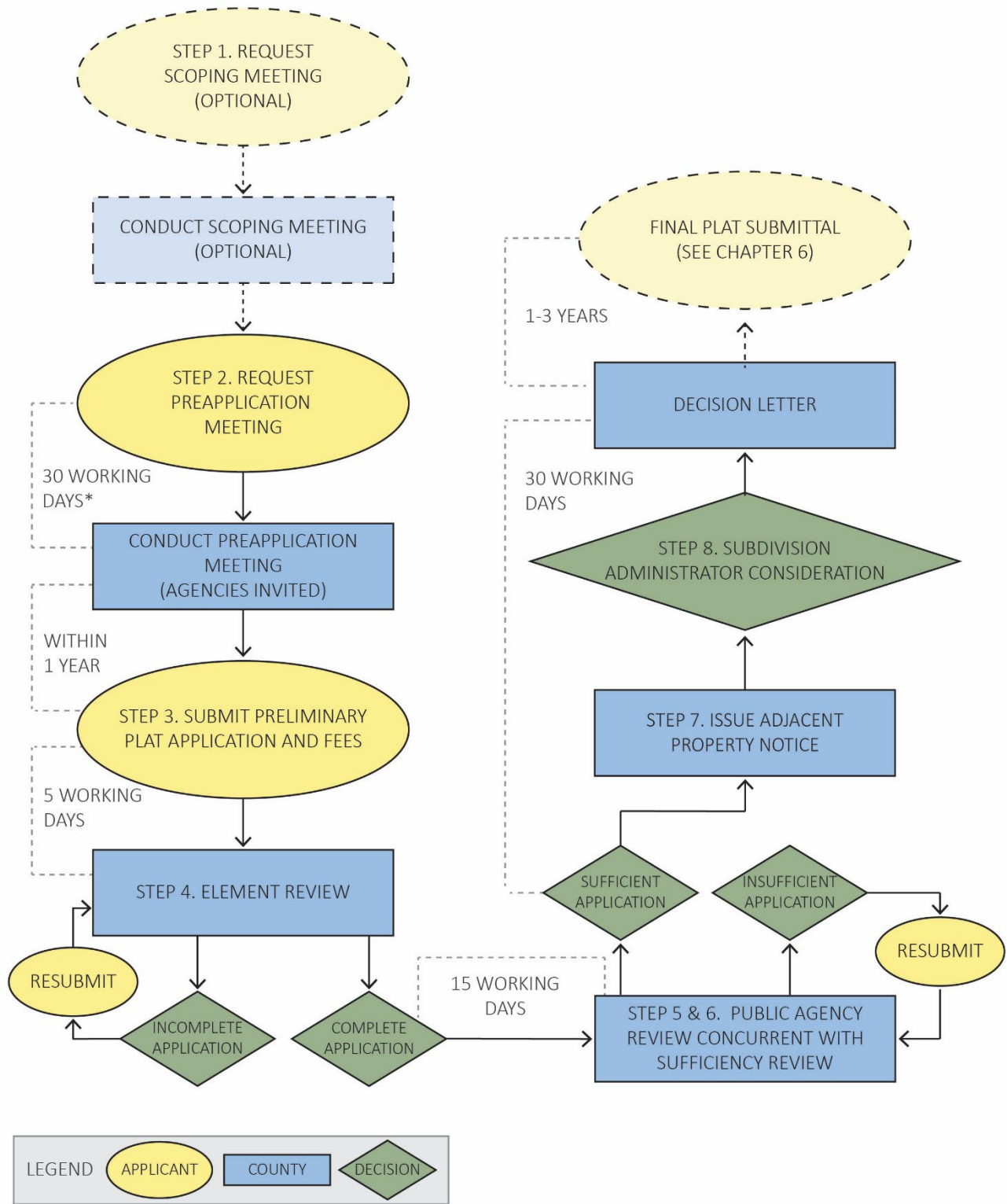
Step 1	Optional Scoping Meeting	(see Section 5.8.2)
Step 2	Preapplication Meeting	(see Section 5.8.3)
Step 3	Preliminary Submittal	(see Section 5.8.5)
Step 4	Element Review	(see Section 5.8.6)
Step 5	Public Agency Review	(see Section 5.8.7)
Step 6	Sufficiency Review	(see Section 5.8.8)

- Step 7 Adjacent Property Notification, Administrative Minor Subdivisions (see Section 5.8.11)
- Step 8 Administrative Decision, Administrative Minor Subdivision (see Section 5.8.16)
- Step 9 Extension of Preliminary Plat, when proposed (see Section 5.8.17)
- Step 10 Phased Development, when proposed (see Section 5.8.18)
- Step 11 Amend Application, when proposed (see Section 5.8.19)
- Step 12 Mitigation, when applicable (see Section 5.8.16.4)

#### **5.5.6 General Procedures**

Each procedural step listed above shall be implemented pursuant to the detailed description of the step in *Section 5.8, General Procedures* or otherwise noted in this section.

## ADMINISTRATIVE MINOR SUBDIVISION PROCEDURE



## **5.6 Major Subdivision Review**

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### **5.6.1 Major Subdivision Procedure**

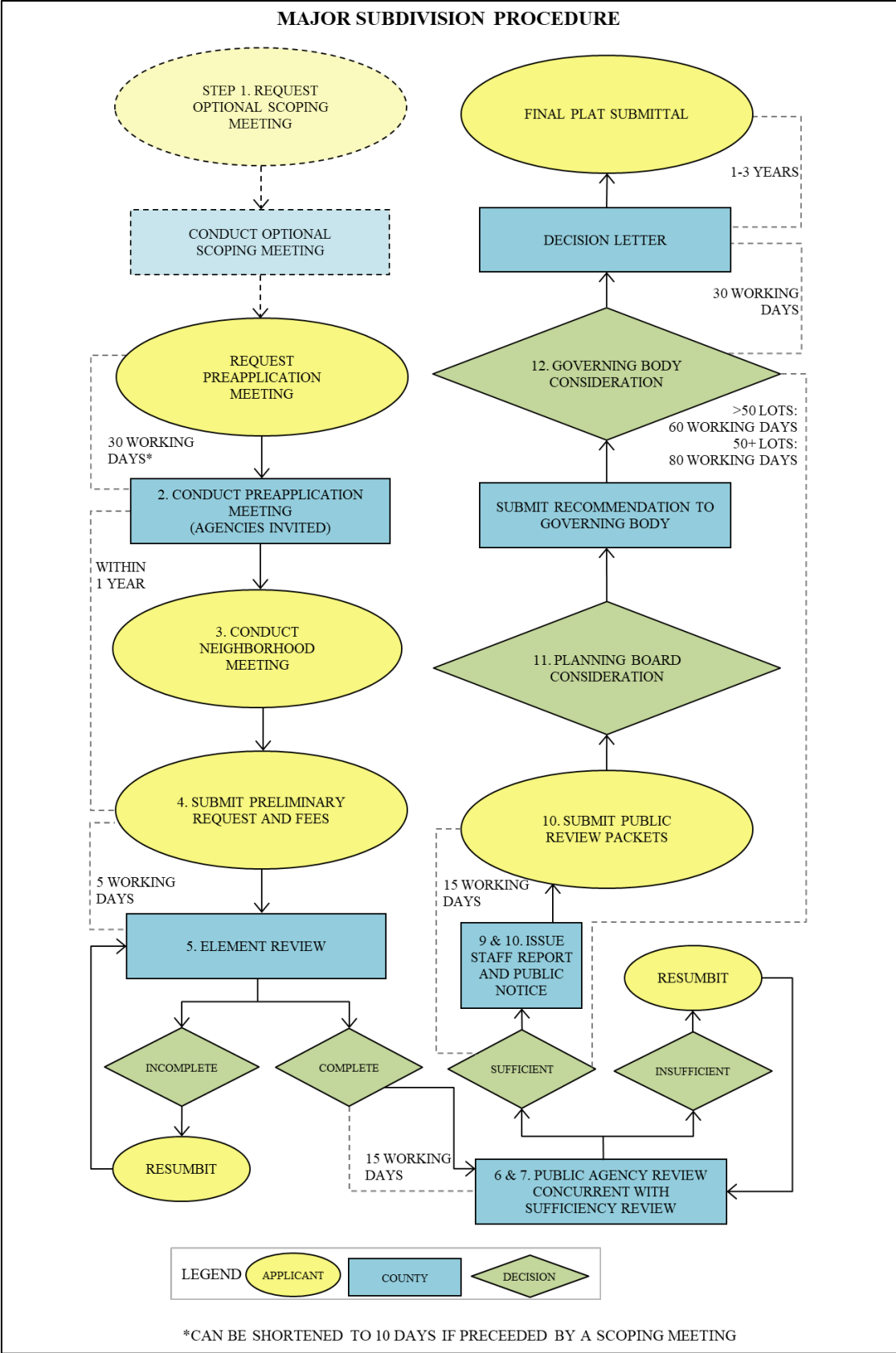
The review of major subdivisions as defined in *Section 5.3.3, Major Subdivisions*, including condominiums, mobile home and recreational vehicle parks shall include the steps listed below. (See flow diagram below for Major Subdivision Procedure.)

Step 1	Optional Scoping Meeting	(see Section 5.8.2)
Step 2	Preapplication Meeting	(see Section 5.8.3)
Step 3	Neighborhood Meeting	(see Section 5.8.4)
Step 4	Preliminary Submittal	(see Section 5.8.5)
Step 5	Element Review	(see Section 5.8.6)
Step 6	Public Agency Review	(see Section 5.8.7)
Step 7	Sufficiency Review	(see Section 5.8.8)
Step 8	Staff Review, Staff Report	(see Section 5.8.9)
Step 9	Public Hearing Notice	(see Section 5.8.12)
Step 10	Governing Body Submittal	(see Section 5.8.13)
Step 11	Planning Board Consideration	(see Section 5.8.14)
Step 12	Governing Body Consideration	(see Section 5.8.15)
Step 13	Extension of Preliminary Plat, when proposed	(see Section 5.8.17)
Step 14	Phased Development, when proposed	(see Section 5.8.18)
Step 15	Amended Application, when proposed	(see Section 5.8.19)
Step 16	Subdivider's Preference for Mitigation, when applicable	(see Section 5.8.15.6)
Step 17	Mitigation, when applicable	(see Section 5.8.15.7)

### **5.6.2 General Procedures**

Each procedural step listed above shall be implemented pursuant to the detailed description of the step in *Section 5.8, General Procedures*.





# 5.7 Subdivisions Proposed for Annexation

## 5.7.1 Applicability

The review of a subdivision that is proposed for annexation shall comply with the procedural steps in this section, in addition to the steps that are required pursuant to *Section 5.4.1, Minor Subdivision Procedure*, or *Section 5.6.1, Major Subdivision Procedure*, whichever is applicable.

## 5.7.2 Entire Parcel Annexed

If the entire property containing the subdivision is proposed for annexation the subdivider shall submit a subdivision application to the City of Missoula.

### Info Box

State statutes prescribe a process for the city to follow that includes coordinating the reviews of the proposed annexation and the proposed subdivision.

## 5.7.3 Part of Parcel Annexed

If only a part of the property containing the subdivision is proposed for annexation, leaving a remaining part of a parcel of less than 160 acres in the unincorporated county, the following procedural steps shall apply.

### 5.7.3.1 Joint Review

The proposed subdivision shall be reviewed by both Missoula County and the City of Missoula.

### 5.7.3.2 Coordination

The administrator of the county subdivision regulations shall meet with city representatives to discuss the proposed subdivision and any overlapping issues and make a recommendation to both governing bodies on coordinating a joint review by the county and city.

### 5.7.3.3 Direction from Governing Bodies

The Missoula County Planning Director, or designee, shall meet with city officials to direct the administrators to the preferred method of coordinating a joint review, including possible joint preapplication meetings and joint meetings of the planning boards and governing bodies.

### 5.7.3.4 Approvals

Approval by both the county and city governing bodies is required for the subdivision to be approved. All requests for modifications to the subdivision will require approval by both the county and city governing bodies until the subdivision is entirely annexed.

## **5.8 General Procedures**

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### **5.8.1 Applicability**

When a procedural step is required by *Section 5.4.1, Minor Subdivision Procedure*, or *Section 5.6.1, Major Subdivision Procedure*, the step shall be implemented pursuant to the detailed description of the step in this section.

### **5.8.2 Scoping Meeting**

A subdivider may request and attend a scoping meeting for a proposed subdivision.

#### **5.8.2.1 Initiation**

The subdivider may request and attend a scoping meeting by submitting a written or emailed request. The request is encouraged to be conceptual and not include finalized lot boundaries. Required materials for a scoping meeting include sketch plan, legal description, and information on property ownership. The Planning Office may distribute conceptual sketch plans or development concepts to potential review agencies to allow them to comment and ask questions. Meeting notes taken by staff may also be distributed for comment following the scoping meeting.

#### **5.8.2.2 Meeting**

The Planning Office may distribute the digital submission to potential review agencies to allow them to comment and ask questions.

#### **5.8.2.3 Purpose of Meeting**

The scoping meeting is intended to explore various design concepts in light of development challenges and opportunities on the site in question.

### **5.8.3 Preapplication Meeting**

A subdivider must attend a preapplication meeting for a proposed subdivision.

#### **5.8.3.1 Initiation**

The subdivider shall submit to the Planning Office a written or emailed request for a preapplication meeting prior to submitting a subdivision application. The request must include a digital submission that describes and illustrates the proposed subdivision.

#### **5.8.3.2 Meeting**

The preapplication meeting shall occur within 30 working days of the Planning Office receiving the request for a meeting and the digital submission. The Planning Office may distribute the digital submission to potential review agencies to allow them to comment and ask questions. The Planning Office shall work with review agencies to resolve any conflicting comments, prepare a comprehensive summary of the review comments, and then schedule a preapplication meeting with the subdivider.

#### **5.8.3.3 Submittal Requirements**

At the time of the request for the preapplication meeting, the subdivider shall provide the Planning Office 1 digital copy and 1 paper copy if requested by staff of the items listed in *Section 7.2, Preapplication Submittal Items* and the required fee. If the subdivision is to be phased, a preliminary phasing plan and schedule shall be submitted.

#### **5.8.3.4 Purpose of Meeting**

The review and comments by the reviewing agencies and the meeting between the Planning Office and subdivider shall accomplish the following purposes:

##### **A. Challenges and Opportunities**

A conceptual discussion of the challenges and opportunities for the proposed subdivision to accomplish the goals of the subdivider and the county.

##### **B. Applicable Regulations**

An identification, for informational purposes only, of federal, state, and local laws and regulations, and growth policy provisions that may apply to the proposed subdivision.

##### **C. Subdivision Layout**

A discussion of land constraints, regulatory restrictions, and ideas that may affect the subdivision layout and design.

##### **D. Application Materials**

An identification of the submittal items required in the subdivision application and preliminary plat/plan. This discussion will not limit the opportunity for the Planning Office or other reviewing agencies to request additional information at a later time if necessary to determine compliance with these regulations.

#### **5.8.3.5 Review Agencies**

The Planning Office shall maintain a list of public utilities, those agencies of local, state, and federal agencies, and any other entities that may be contacted for comment on the subdivision application and timeframes that the public utilities, agencies, and other entities are given to respond. The Planning Office shall provide the digital submission from the subdivider to any or all agencies on this list and request review and comments consistent with the purposes of the preapplication meeting described in *Section 5.8.3.4, Purpose of Meeting*. This list, and any neighborhood associations and/or the community council for the area containing the proposed subdivision, shall be provided to the subdivider at the time of sufficiency review.

#### **5.8.3.6 Additional Agency**

If the Planning Office contacts an agency or utility other than those identified at the preapplication meeting, the Planning Office must advise the subdivider of

the agency contacted and advise the subdivider of the estimated time period for a response from the agency.

**5.8.3.7 Time Limit**

A subdivision application must be submitted within 1 year after the date of the preapplication meeting.

**5.8.4 Neighborhood Meeting (Major Subdivisions)**

After the preapplication meeting and prior to the preliminary submittal, the subdivider shall meet with residents of the neighborhood and/or the community council for the area containing the proposed subdivision.

**5.8.4.1 Posted Notices**

The subdivider shall post notices of the meeting in at least 3 locations that are within 300 feet of the proposed subdivision, including locations in public rights-of-way or other locations clearly visible to the greatest number of neighborhood residents.

**5.8.4.2 Mailed Notices**

At least 15 working days in advance of the meeting, the subdivider shall mail notices of the meeting to the Planning Office, owners of land within 300 feet of the proposed subdivision excluding the widths of road or railroad rights-of-way and rivers, and to any landowner association and/or the community council identified by the Planning Office.

**5.8.4.3 Meeting Minutes**

Minutes of the meeting detailing comments and suggestions from the attendees and the applicant's responses shall be submitted to the Planning Office as part of the preliminary submittal.

**5.8.5 Preliminary Submittal**

After the preapplication meeting, the subdivider shall submit to the Planning Office 1 paper copy and 1 digital copy of the subdivision application and preliminary plat/plan. The submittal shall contain the items from *Section 7.4, Preliminary Plat/Plan Submittal Requirements* and required fees in accordance with the currently adopted fee schedule. If the subdivision is to be phased, the submittal shall include a phasing plan pursuant to *Section 5.8.18, Phased Developments*.

**5.8.6 Element Review**

Within 5 working days of receiving the subdivision application and review fee, the Planning Office shall determine whether the application contains all of the elements required by these regulations.

**5.8.6.1 Written Notice**

The Planning Office shall notify the subdivider of the determination with a written or emailed communication.

#### **5.8.6.2 Missing Elements**

If the Planning Office determines elements are missing from the application, the Planning Office shall identify the missing elements in a written or emailed notification to the subdivider. No further action shall be taken until the application is resubmitted with the missing elements.

#### **5.8.6.3 Resubmittal**

Once the subdivider resubmits an application that includes the previously missing elements, the Planning Office shall have 5 working days to notify the subdivider if the application contains all of the required elements.

#### **5.8.6.4 Elements Complete**

This process shall be repeated until the subdivider submits an application containing all of the elements required by these regulations as determined by the Planning Office.

#### **5.8.6.5 Review Period**

The 5-day review period commences on the first working day after the application or resubmittal is submitted to the Planning Office. The Planning Office is in compliance with this review period if the written notification is post-marked or an electronic communication is transmitted within 5 working days of the commencement of the review period.

### **5.8.7 Reviewing Agencies and Interested Parties**

The subdivider shall distribute the digital subdivision application and preliminary plat/plan to the applicable review agencies and interested parties, and request review and comments. The request shall include a date by which the comments must be submitted to the Planning Office to be incorporated into the application review by the Planning Office. The Planning Office shall facilitate this distribution by providing a list of the applicable review agencies, any neighborhood or landowner associations or community councils for the area containing the subdivision.

#### **5.8.7.1 Eligibility**

Applications deemed complete pursuant to *Section 5.8.6.4, Elements Complete*, are eligible for sufficiency review under *Section 5.8.8, Sufficiency Review*. The Planning Office shall encourage concurrent agency and interested party review under *Section 5.8.7, Reviewing Agencies and Interested Parties*.

#### **5.8.7.2 Comments**

The Planning Office shall oversee that all comments related to the subdivision are made available to the public for review online and available in person. Neighborhood associations and community councils are encouraged to post review comments reflecting comments they have received as well.

**5.8.7.3 Staff Review**

The Planning Office shall work with the review agencies to integrate all review comments into a single comprehensive written summary. The written summary shall be submitted to the subdivider.

**5.8.7.4 Resubmittal**

The subdivider is allowed to revise the application and preliminary plat/plan in response to the review comments and resubmit the digital application to the Planning Office.

**5.8.7.5 Planning Office Review**

The Planning Office shall oversee the distribution of any revised digital application to the review agencies and request additional review and comment. The Planning Office also shall compare the resubmitted application and preliminary plat/plan to the written summary to determine if they conform to these regulations.

**5.8.8 Sufficiency Review**

Within 15 working days of concluding that all required elements have been submitted, the Planning Office shall determine whether the application contains sufficient information to review the proposed subdivision.

**5.8.8.1 Written Notice**

The Planning Office shall notify the subdivider of the determination with a written or emailed communication.

**5.8.8.2 Insufficient Information**

If the Planning Office determines that the information in the application is not sufficient to review the proposed subdivision, the Planning Office shall identify in the notification the additional information needed to correct the deficiencies.

**5.8.8.3 Resubmittal**

If the subdivider resubmits an application including additional information to correct the deficiencies, the Planning Office shall have 15 working days to notify the subdivider whether the application contains information sufficient to review the proposed subdivision.

**5.8.8.4 Application Sufficient**

This process shall be repeated until the subdivider submits an application that is deemed sufficient by the Planning Office.

**5.8.8.5 Review Period**

The 15-day review period commences on the first working day after the Planning Office determines the application to contain all required elements, or the first working day after resubmittal if applicable. The Planning Office is in compliance

with this review period if the written notification is post-marked or an electronic communication is transmitted within the 15-day review period.

**5.8.8.6 Limitation of Sufficiency**

A determination of sufficiency concludes that an application is sufficiently complete to commence review. It does not:

**A. No Guarantee**

Guarantee that the proposed subdivision will be approved or conditionally approved by the governing body; or,

**B. Additional Information**

Limit the ability of the reviewing agencies, Planning Office, Planning Board or governing body to request additional information during the review process if the information is necessary to determine compliance with these regulations.

**5.8.9 Staff Review, Staff Report**

Upon completing the public agency review, the Planning Office, working with other review agencies as necessary, shall evaluate the application for compliance with these regulations and prepare a staff report. The staff report shall contain the information listed below.

**5.8.9.1 Recommendation**

A recommendation for approval, approval with conditions, or denial of the proposed subdivision based upon these regulations and comments from review agencies. If the recommendation is for approval with conditions, the staff report shall detail the recommended conditions and/or any applicable mitigation measures.

**5.8.9.2 Basis for Recommendation**

A summary of the evaluation of the proposed subdivision, including compliance with the applicable regulations and submittal requirements, and recommended findings of fact and conclusions of law.

**5.8.9.3 Variances**

An evaluation of any requested variance, recommended findings of fact and conclusions of law, and a recommendation to approve, approve with conditions, or deny the variance.

**5.8.9.4 Public Comment**

Copies of any agency or public comments received by the Planning Office.

**5.8.10 Public Meeting Notice (Minor Subdivisions)**

After determining sufficient an application for a minor subdivision, the Planning Office shall mail or electronically transmit notices of the public meeting at which the governing body will review the proposed subdivision.



#### **5.8.10.1 Notice Recipients**

The notice shall be mailed or electronically transmitted to the subdivider, the owners of all parcels that adjoin the proposed subdivision including parcels that may be separated from the subdivision by roads, railroad rights-of-way or rivers, and to homeowner or landowner associations, community councils, or other neighborhood organizations identified by the Planning Office. The notice shall be mailed at least 15 calendar days prior to the Board of County Commissioners public meeting.

#### **5.8.10.2 Notice Content**

The notice shall indicate the timeframe for review of the application and the date, time, and location of the public meeting at which the governing body will review the application. Basic information on the proposal shall be indicated, including any variances.

### **5.8.11 Public Notice (Administrative Minor Subdivisions)**

After determining sufficient an application for an administrative minor subdivision, the Planning Office shall transmit notices of the review of the administrative minor subdivision.

#### **5.8.11.1 Notice Recipients**

Notice by first-class mail of the pending application shall be mailed to 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.

#### **5.8.11.2 Notice Content**

The notice shall indicate the timeframe for review of the application. Basic information on the proposal shall be indicated, including the procedure to appeal the Subdivision Administrator's decision.

### **5.8.12 Public Hearing Notice (Major Subdivisions)**

After determining sufficient an application for a major subdivision, the Planning Office shall transmit notices of the public hearings at which the Planning Board and governing body will review the proposed subdivision. Notices shall be provided in accordance with this section.

#### **5.8.12.1 Newspaper**

A public hearing notice shall be published in a newspaper of general circulation in the county no fewer than 15 calendar days prior to both the public hearing before the Planning Board and governing body.

#### **5.8.12.2 Certified Mail**

Notice of the public hearings shall be sent by certified mail to the subdivider, owners of all parcels that adjoin the proposed subdivision including parcels that may be separated from the subdivision by roads, railroad rights-of-way, or rivers, and each purchaser who is under contract for deed of property for any such adjoining the land. Homeowner or landowner associations, community councils, or other neighborhood organizations identified by the Planning Office shall be contacted by standard mail. The notice shall be mailed at least 15 calendar days prior to the Planning Board public hearing.

#### **5.8.12.3 Sign on Property**

Notice of the public hearing shall be posted on the property at a location visible to the greatest number of people at least 15 calendar days prior to the Planning Board public hearing. A notice must be posted by the planning department in a conspicuous place on the site at least 15 working days prior to the public hearing.

#### **5.8.12.4 Notice Content**

The notice shall indicate the timeframe for review of the application and the dates, times, and location of the public hearings at which the application will be reviewed. Basic information on the proposal shall be indicated, including any variances. The notice also shall explain that public comment may be submitted in writing to the Planning Office or made in person at the public hearings before the Planning Board and/or governing body.

### **5.8.13 Governing Body Submittal**

The subdivider shall provide one (1) hard copy and one (1) digital copy of the application to the Planning Office no more than 15 working days before the first public meeting or public hearing at which the application will be reviewed. Additional hard copies may be requested by the Planning Office if deemed necessary.

#### **5.8.13.1 Comment Letters**

The supporting materials accompanying the application shall include agency comments received and the subdivider's response to them.

### **5.8.14 Planning Board Consideration (Major Subdivisions)**

Upon receipt from the Planning Office of an application for a subdivision and the staff report, the Planning Board shall consider the application pursuant to this section.

#### **5.8.14.1 Staff Report**

The staff report shall be provided to the subdivider and Planning Board and made available to the general public no less than 5 working days prior to the Planning Board public hearing.

#### **5.8.14.2 Public Hearing**

The Planning Board shall conduct a public hearing on the proposed major subdivision for which public notice shall be provided pursuant to *Section 5.8.12, Public Hearing Notice*.

**5.8.14.3 Planning Board Consideration, Recommendation**

The Planning Board shall consider the application for subdivision including any requested variance. Upon the close of the public hearing, the Planning Board shall decide upon a recommendation to approve, approve with conditions, or deny the application. The Planning Board recommendation shall be based on the review criteria and special restrictions established in *Section 5.10, Review Criteria, Special Restrictions on Decisions*, and *Section 5.11, Variances*, when variances are requested.

**5.8.14.4 Submittal to Governing Body**

Planning Board's recommendation for subdivision approval, conditional approval, or denial shall be submitted to the Board of County Commissioners in writing within 10 working days of the close of the public hearing. The staff report and planning board report shall be provided to the governing body no later than 5 working days prior to the Board of County Commissioners' meeting. The full list of materials submitted to the governing body shall be pursuant to *Section 5.8.15.2, Staff Report*, and *Section 5.8.15.3, Planning Board Report*.

**5.8.15 Governing Body Consideration**

Upon receipt from the Planning Office of an application for a subdivision, the staff report, and a Planning Board recommendation in the case of a major subdivision, the governing body shall consider the application pursuant to this section.

**5.8.15.1 Timing of Decisions**

The governing body shall reach a decision to approve, approve with conditions, or deny a subdivision application in accordance with the following time limitations.

**A. Minor Subdivisions**

A decision on a minor subdivision shall be made within 35 working days of the Planning Office determining the application sufficient.

**B. Major Subdivision Less Than 50 Lots**

A decision on a major subdivision with less than 50 lots shall be made within 60 working days of the Planning Office determining the application sufficient.

**C. Major Subdivision 50 or More Lots**

A decision on a major subdivision with 50 or more lots shall be made within 80 working days of the Planning Office determining the application sufficient.

**D. Extensions**

Notwithstanding the time limitations established by this section, the subdivider and governing body may agree to an extension of the review period not to exceed 1 year, or the governing body may extend the review period pursuant to *Section 5.8.15.5, Existence of New Information*, or *Section 5.8.19 Amended Application*.

**E. Agency and Utility Review Not Delay Action**

Review and comment by public agencies or utilities may not delay the governing body's decision.

**5.8.15.2 Staff Report**

The staff report shall be provided to the subdivider and Board of County Commissioners and made available to the general public no later than 5 calendar days prior to the Board of County Commissioners' meeting. The staff report shall be provided along with the Planning Board Report pursuant to *Section 5.8.15.3, Planning Board Report*.

**5.8.15.3 Planning Board Report**

Staff shall prepare a detailed summary which may include any key points of the discussion, recommendations, motions, conditions or amendments to conditions, amendments to findings and conclusions, and any additional rationale for Planning Board recommendations to be forwarded on the governing body. This summary, along with a record of Planning Board proceedings, shall be provided to the subdivider and Board of County Commissioners and made available to the general public no later than 5 calendar days prior to the Board of County Commissioners' meeting.

**5.8.15.4 Public Meeting, Public Hearing**

**A. Minor Subdivisions**

The governing body shall conduct a public meeting on a proposed minor subdivision and any related variance request, for which public notice shall be provided pursuant to *Section 5.8.10, Public Meeting Notice*.

**B. Major Subdivisions**

The governing body shall conduct a public hearing on the proposed major subdivision and any related variance request, for which public notice shall be provided pursuant to *Section 5.8.11, Public Notice*.

**C. Variances**

The governing body shall conduct a public hearing, pursuant to *Section 5.11, Variances*, to consider any variance request associated with a major subdivision.

#### **5.8.15.5 Existence of New Information**

**A. Determination**

The governing body shall determine whether public comments or other information presented to the governing body at a hearing on a subdivision application constitutes relevant, new information regarding a subdivision application or a substantial change to the design of the subdivision that has never been submitted as evidence or considered by either the governing body or the Planning Board hearing and has a substantial effect on the governing body's consideration of the application.

**B. Determination of Relevance and Credibility**

If the governing body has determined new information exists per *Section 5.8.15.5.A, Determination*, the governing body will determine whether the new information is relevant and credible based on the following criteria:

**1. Relevant Information**

New information or the analysis of the information is considered relevant if it is determined the information constitutes a substantial change to the design of the subdivision substantially impacting the analysis of potentially significant adverse impacts impacting the governing's body findings of facts, conclusions, and any proposed conditions.

**2. Credible Information**

New information or analysis of the information is considered credible if it is based on:

- A.** Physical facts or evidence; or,
- B.** Corroborated personal observations; or,
- C.** Scientific data.

**C. Subsequent Public Hearing**

If the governing body determines new information has been received which is relevant and credible, it shall hold a subsequent public hearing. The governing body shall conduct the hearing at its first regularly scheduled meeting for which proper public hearing notice can be provided, but in no case later than 45 working days of the determination, unless the governing body and applicant agree upon an alternative date for the hearing.

**D. Notice**

Notice for a subsequent public hearing shall be provided in accordance with *Section 5.8.12, Public Hearing Notice*.

**E. Review Period Suspended**

If a subsequent public hearing is scheduled, the review period (60 or 80 days, whichever is applicable) is suspended as of the date of the governing

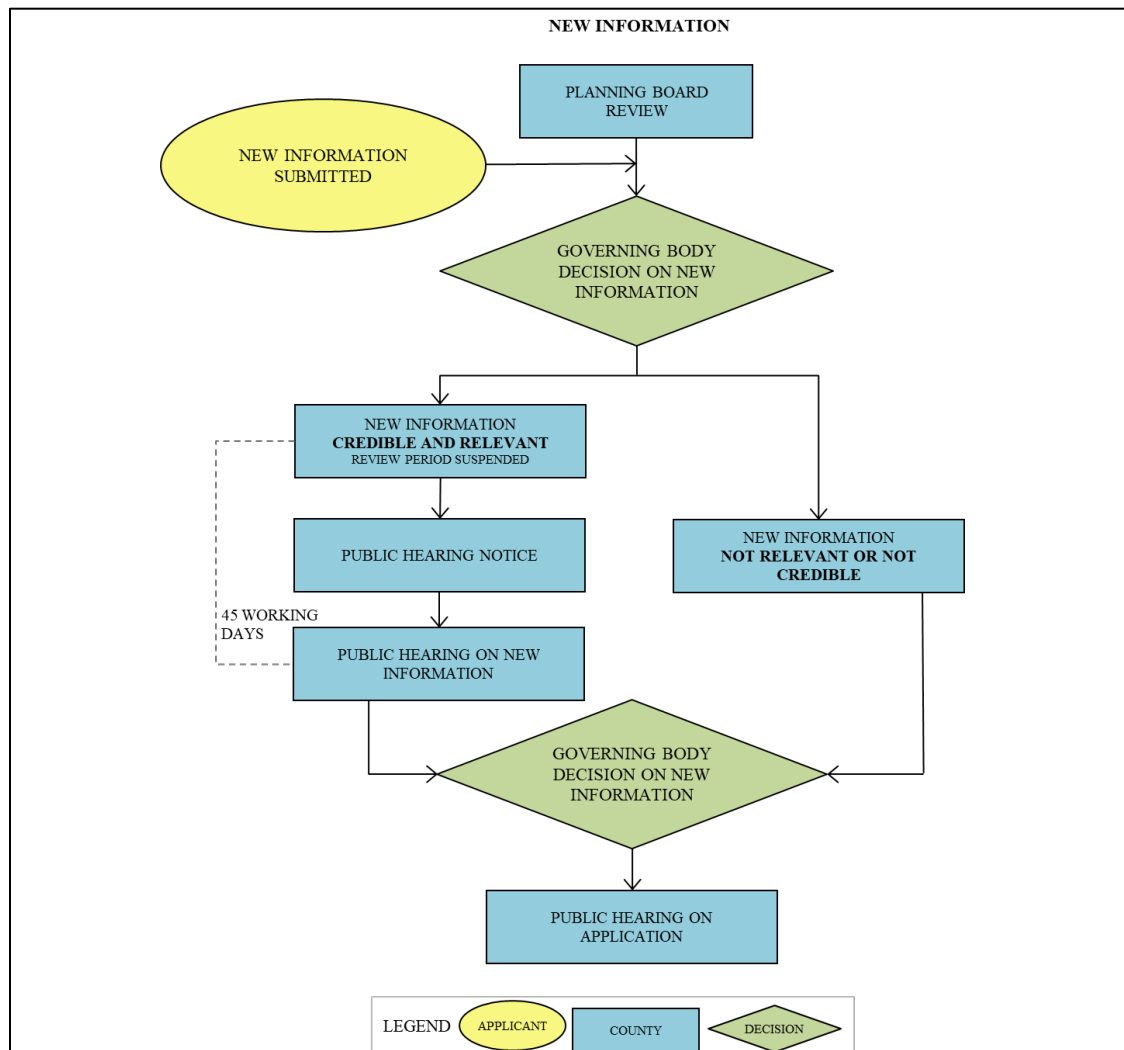
body's decision to schedule a subsequent hearing. After the subsequent hearing, the time limit of 60- or 80-working days resumes at the governing body's next scheduled public meeting for which proper notice for consideration of the subdivision application can be provided.

**F. New Information**

Only the new information or the analysis of the information shall be considered at a subsequent public hearing.

**G. No New Information**

The governing body shall not consider any additional information that is presented after the subsequent public hearing when deciding to approve, conditionally approve, or deny the proposed subdivision.



**5.8.15.6 Mitigation**

The governing body may require the subdivider to design the subdivision to reasonably minimize potentially significant adverse impacts identified during the

review of the subdivision application without unreasonably restricting a landowner's ability to develop the land. The governing body shall issue written findings to justify the reasonable mitigation required under this section. No mitigation measures shall be considered for an application that has been denied.

**A. Considerations**

The governing body shall consider whether unmitigated impacts of a proposed development are unacceptable, precluding approval of the plat/plan.

**B. Subdivider's Preference for Mitigation**

The subdivider may submit written comments or testimony on the public record to the governing body that respond to the Planning Board's recommendations, in the case of a major subdivision, or staff recommendations in the case of a minor subdivision. This submission may include proposals for mitigating any impacts identified in the recommendations.

**C. Consultation**

The governing body will consult with the subdivider and give due weight and consideration to the subdivider's expressed preference for mitigating impacts.

**5.8.15.7 Governing Body Consideration, Decision**

The governing body shall consider the application for subdivision, including any requested variance. After the close of the public hearing in the case of a major subdivision (and after subsequent hearing for new information, if applicable), or at the public meeting for a minor subdivision, the governing body shall decide to approve, approve with conditions, or deny the application. The decision shall be based on the review criteria and special restrictions established in *Section 5.10, Review Criteria, Special Restrictions on Decisions*, and *Section 5.11, Variances* when variances are requested.

**5.8.15.8 Appeals**

In accordance with [§76-3-625\(2\)](#), MCA, a party who is aggrieved by a decision of the governing body to approve, conditionally approve, or deny a proposed preliminary plat or final subdivision plat may, within 30 days after the decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made.

**5.8.15.9 Water, Wastewater Public Comment**

The governing body shall collect any public comments regarding water and wastewater information and submit them, or a summary of them, to the subdivider within 30 calendar days of granting approval or conditional approval of the subdivision application and preliminary plat/plan.

#### **5.8.15.10 Decision Letter**

Upon reaching a decision the governing body shall provide the subdivider a letter and any supporting materials within 30 working days of the decision. The letter shall include the following information:

**A. Decision**

The decision to approve, approve with conditions, or deny the subdivision, dated and with appropriate signature of the governing body;

**B. Conditions**

Any conditions of approval for the preliminary plat/plan that shall be satisfied before the final plat may be approved;

**C. Time Period**

The effective time period of the preliminary plat/plan approval of 3 calendar years from the date of the governing body decision and any requirements for possible extensions;

**D. Variances**

The decision to approve, approve with conditions, or deny any requested variances, and a statement describing the facts and conclusions upon which the decision is based;

**E. Findings**

Findings of fact and conclusions that weigh the review criteria in *Section 5.10, Review Criteria, Special Restrictions on Decisions*;

**F. Basis for Denial, Conditions**

The facts and conclusions, documents, testimony, or other materials that the governing body relied on to deny the application or impose conditions, when applicable;

**G. Regulations**

Identification of the regulations and statutes that were relied upon to deny the application or impose conditions, when applicable; and,

**H. Appeals**

Information on the appeal process for denial or imposition of conditions.

#### **5.8.15.11 Effect of Decision**

**A. Effective Period of Preliminary Plat**

Preliminary plat/plan approval shall be in effect for 3 years. This effective period may be extended pursuant to *Section 5.8.17, Extension of Preliminary Plat*, or a phasing plan amendment is approved pursuant to *Section 5.8.18, Phased Developments*.



**B. No New Conditions**

After the application and preliminary plat/plan are approved, the Board of County Commissioners may not impose new conditions as a prerequisite to final plat approval, unless addressing new information or changed impacts when a request is reviewed pursuant to *Section 5.8.18, Phased Development* or *Section 5.9.5, Adjustment Procedure*.

**C. Withdraw Decision**

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

**5.8.15.12 Appeal**

A decision of the governing body denying or approving a proposed subdivision plat/plan may be appealed to the district court within 30 calendar days from the date the written decision in accordance with the provisions of §76-3-625, MCA.

**5.8.16 Subdivision Administrator Consideration of Administrative Minor Subdivisions**

After determining an application sufficient for an administrative minor subdivision, the Subdivision administrator shall consider the application pursuant to this section.

**5.8.16.1 Timing of Decisions**

The Subdivision administrator shall reach a decision to approve, approve with conditions, or deny the administrative minor subdivision with the following time limitations.

**A. Decision**

A decision on an administrative minor subdivision shall be made within 30 working days of the Planning Office determining the application sufficient.

**B. Extensions**

Notwithstanding the time limitations established by this section, the subdivider and Subdivision administrator may agree to an extension of the review period not to exceed 1 year.

**C. Agency and Utility Review Not Delay Action**

Review and comment by public agencies or utilities may not delay the Subdivision Administrator's decision.

**5.8.16.2 Staff Report**

Upon completing the public agency review, the Planning Office, working with other review agencies as necessary, shall evaluate the application for compliance with these regulations and prepare a staff report. The staff report shall contain the information listed below:

**A. Recommendation**

A recommendation for approval, approval with conditions, or denial of the proposed subdivision based upon these regulations and comments from review agencies. If the recommendation is for approval with conditions, the staff report shall detail the recommended conditions and/or any applicable mitigation.

**B. Basis for Recommendation**

A summary of the evaluation of the proposed subdivision, including compliance with the applicable regulations and submittal requirements and recommended findings of fact and conclusions of law.

**C. Public Comment**

Copies of any agency or public comments received by the Planning Office.

**5.8.16.3 Existence of New Information**

**A. Determination**

The subdivision administrator shall determine whether public comments on a subdivision application constitute:

**1. Reasonable Opportunity**

Information or an analysis of information that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment; or,

**2. Never Considered**

New information that has never been submitted as evidence or considered by which the subdivision application was considered.

**B. Determination of Relevance and Credibility**

If the subdivision administrator has determined new information exists per *Section 5.8.16.3.A.2, Never Considered*, the subdivision administrator will determine whether the new information is relevant and credible based on the following criteria:

**1. Relevant Information**

New information or the analysis of the information is considered relevant if it may impact the findings and conclusions the governing body will rely upon to make a final decision on the proposed subdivision.

**2. Credible Information**

New information or analysis of the information is considered credible if it is based on the following:

- a. Physical facts or evidence; or,

- b. Corroborated personal observations; or,
- c. Scientific data.

**C. Effect of New Information**

If the subdivision administrator determines new information has been received that is relevant and credible, it shall consider the information in their decision to approve, conditionally approve, or deny the proposed subdivision.

**5.8.16.4 Mitigation**

The subdivision administrator may require the subdivider to design the subdivision to reasonably minimize potentially significant adverse impacts identified during the review of the subdivision application without unreasonably restricting a landowner's ability to develop the land. The subdivision administrator shall issue written findings to justify the reasonable mitigation required under this section. No mitigation measures shall be considered for an application that has been denied.

**A. Considerations**

The subdivision administrator shall consider whether unmitigated impacts of a proposed development are unacceptable, precluding approval of the plat/plan.

**B. Subdivider's Preference for Mitigation**

The subdivider's preference for mitigation of an administrative minor subdivision shall be addressed by an appeal of the subdivision administrator's decision described in 5.8.16.9.

**5.8.16.5 Subdivision Administrator Consideration, Decision**

The subdivision administrator shall consider the application for an administrative minor subdivision and shall decide to approve, approve with conditions, or deny the application based on the review criteria and special restrictions established in *Section 5.10, Review Criteria, Special Restrictions on Decisions*.

**5.8.16.6 Water, Wastewater Public Comment**

If required, the subdivision administrator shall collect any public comments regarding water and wastewater information and submit them, or a summary of them, to the subdivider within 30 calendar days of granting approval or conditional approval of the subdivision application and preliminary plat/plan.

**5.8.16.7 Decision Letter**

Within 30 working days of the Planning Office determining the application sufficient, the subdivision administrator shall provide the subdivider a letter and any supporting materials of the decision. The letter shall include the following information:

**A. Decision**

The decision to approve, approve with conditions, or deny the subdivision, dated and with the appropriate signature of the subdivision administrator;

**B. Conditions**

Any conditions of approval for the preliminary plat/plan that shall be satisfied before the final plat may be approved;

**C. Time Period**

The effective time period of the preliminary plat/plan approval of 3 calendar years from the date of the governing body's decision and any requirements for possible extensions;

**D. Findings**

Findings of fact and conclusions that weigh the review criteria in *Section 5.10, Review Criteria, Special Restrictions on Decisions*;

**E. Basis for Denial, Conditions**

The facts and conclusions, documents, testimony, or other materials that the subdivision administrator relied on to deny the application or impose conditions, when applicable;

**F. Regulations**

Identification of the regulations and statutes that were relied on to deny the application or impose conditions, when applicable; and,

**G. Appeals**

Information on the appeal process for denial or imposition of conditions.

**5.8.16.8 Effect of Decision**

The effect of the subdivision administrator's decision shall follow procedures in *Section 5.8.15.11, Effect of Decision*.

**5.8.16.9 Appeals of Subdivision Administrator's Decision**

If a party identified in §76-3-625(3) MCA objects to a subdivision administrator's decision to approve, conditionally approve, or deny an administrative minor subdivision, the party may request in writing that the subdivision administrator forward the application to the governing body. The governing body shall sustain the subdivision administrator's decision based on the record as a whole unless the decision is arbitrary, capricious, or unlawful. The governing body has 15 working days from the receipt of the request to review a decision to approve, conditionally approve, or deny the administrative minor subdivision and make a final determination. Appeals of a governing body's decision to approve,

conditionally approve, or deny a proposed preliminary plat for an administrative minor subdivision shall be in accordance with *Section 5.8.15.12, Appeal*.

#### **5.8.17 Extension of Preliminary Plat Approval**

When a subdivider requests an extension beyond the original three-year effective period of an approved preliminary plat/plan established in *Section 5.8.15.11.A, Effective Period of Preliminary Plat* it shall not be extended beyond 6 years from the original date of plat/plan approval.

##### **5.8.17.1 Applicability**

All subdivisions without a phasing plan that request an extension shall be subject to this section.

##### **A. Preliminary Plat Approval prior to November 4, 2016**

Subdivisions approved prior to November 4, 2016, the effective date of a previous regulation update shall use that date as the adjusted approval date, from which the maximum extension shall be determined.

##### **B. Extensions for Phased Developments**

Phasing schedules are not subject to this section but may be extended or modified in accordance with *Section 5.8.18.5, Phasing Plan Extensions*, or *Section 5.8.18.7, Modifications to Phase Boundaries or Filing Sequence*.

##### **5.8.17.2 Written Request**

The subdivider shall submit a written request to extend the effective period prior to the expiration of the preliminary plat/plan approval. The counting of days toward expiration shall be stayed until the governing body's decision pursuant to *Section 5.8.17.4, Decision*. The request shall demonstrate compliance with the criteria in *Section 5.8.17.3, Criteria*.

##### **5.8.17.3 Criteria**

The governing body shall decide to approve or deny the requested extension based on the following criteria provided by the applicant:

##### **A. Changed Circumstances**

Circumstances affecting the timing of final plat/plan submittal and/or review have changed and are beyond the control of the subdivider;

##### **B. Meet New Deadline**

The subdivider can meet the new deadline despite the changed circumstances;

**C. Commissioners' Decision**

All aspects of the governing body's decision on the preliminary plat/plan, including the findings of fact, conclusions, and conditions will continue to be valid if the extension is granted;

**D. No Change**

No significant changes in the general area of the subdivision have occurred, or are expected to occur within the extension period, that would change the evaluation of the preliminary plat/plan; and,

**E. Facilities**

The planning and provision of public facilities and services in the area of the subdivision will not be disrupted if the extension is granted.

**5.8.17.4 Decision**

The Board of County Commissioners shall approve or deny a request for an extension within a mutually agreed-upon timeline and only consider facts pertinent to the extension of time before a final plat is filed.

**5.8.17.5 Void**

If the final plat has not been submitted and no extension has been requested before the expiration of the preliminary plat/plan approval, the preliminary plat/plan shall be considered void.

**5.8.18 Phased Developments**

An application for a subdivision plat/plan may include a phasing plan in which final plats will be submitted in phases. Each phase of the subdivision shall require a separate final plat. There is no opportunity to request a phasing plan after a subdivision has obtained preliminary plat/plan approval.

**5.8.18.1 Applicability**

Requests pursuant to *Section 5.8.18, Phased Developments* shall apply to all subdivisions, regardless of the approval date.

The appropriate review process is determined by whether the preliminary approval date lands before May 8, 2017, or on/after May 8, 2017, the effective date of [§76-3-617, MCA](#).

**5.8.18.2 Phasing Plans shall include:**

**A. Map**

A phasing map shall delineate each phase and designate specific lots and improvements included in each phase. The phasing map shall include the entire land area included in the preliminary plat/plan.

**B. Schedule**

The map shall include a legend that identifies the sequential order and the projected schedule for filing the final plat for each phase.

#### **5.8.18.3 Criteria**

The review and approval, approval with conditions, or denial of a phasing plan shall be based on the following criteria provided by the applicant:

##### **A. Comply with Regulations**

The first phase, and each subsequent phase when evaluated in conjunction with the prior phase(s), shall comply with these regulations;

##### **B. Functional**

The first phase, and each subsequent phase when evaluated in conjunction with the prior phase(s), shall contain fully functional systems of access, non-motorized facilities, stormwater management, fire suppression, potable water, wastewater, and other infrastructure and service delivery independent of and without reliance on a future or subsequent phase;

##### **C. Incremental Completion**

Required improvements for all prior phases shall be completed or secured with a financial guarantee before the commencement of any improvements in a later phase.

##### **D. Facilities**

The planning and provision of public facilities and services in the area of the subdivision will not be disrupted by the timing of the phases.

#### **Info Box**

Plans, including but not limited to construction plans, are approved by Missoula County Public Works for compliance with those rules, regulations, and specifications in place at the time of review. Plan updates may be required at the time a final plat is filed in order to maintain compliance and address

**Table 5.8.18**  
**Public Process After Preliminary Approval**

	Legal Ad		Adjacent Property Notice	Agency Comment	Governing Body	Potential for New Conditions
	Minor (0-5 lots)	Major (6+ lots)	Minor or Major	Minor or Major	Minor or Major	Minor or Major
Preliminary Plat Extension, Section 5.8.17				✓	✓	
Phasing Plan Extension, Section 5.8.18.4				✓	✓	✓
Modifications to Phase Boundaries or Filing Sequence, Section 5.8.18.7				✓	✓	✓
Adjustments Procedure Sections 5.9		✓	✓	✓	✓	✓
<b>Note to Accompany Table:</b> These processes can happen independently of or in conjunction with, one another. For more details about the public process required for preliminary plat and related document adjustments, see <i>Section 5.9</i> .						

#### 5.8.18.4 Phasing Plan Extension

##### A. Length of Extensions

A mutually agreed-upon extension for the phases within a preliminarily approved phased development shall be at least 1 year, but not more than 3 years, from the date of the request.

##### B. Extensions for Multiple Phases

No phase may be extended beyond 3 years from the date of the request.

##### C. Compliance

Extension requests shall comply with *Section 5.8.18.5, Maximum Extension Schedules* and, if applicable, *Section 5.8.18.7, Modifications to Phase Boundaries or Filing Sequence*.



#### **5.8.18.5 Maximum Extension Schedule**

When multiple extensions are requested pursuant to *Section 5.8.18.4, Phasing Plan Extension*, preliminary approval shall not be extended beyond the appropriate extension schedule below.

##### **A. Subdivisions Approved Before May 8, 2017**

Subdivisions approved prior to November 4, 2016, the effective date of a previous regulation update shall use that date as the adjusted approval date, from which the maximum extension schedule shall be determined.

###### **1. Minor Subdivisions, 1-5 Lots/Units**

The final plat for all phases of minor subdivision shall be recorded within 9 years of approval of the subdivision.

###### **2. Major Subdivisions, 6 – 20 Lots/Units**

The final plat for all phases of a subdivision with between 6 and 20 lots or units shall be recorded within 12 years of approval of the subdivision.

###### **3. Major Subdivisions, 21 – 49 Lots/Units**

The final plat for all phases of a subdivision with between 21 and 49 lots or units shall be recorded within 18 years of approval of the subdivision.

###### **4. Major Subdivisions, 50 Lots/Units or More**

The final plat for all phases of a subdivision with 50 or more in the subdivision shall be recorded within 21 years of approval of the subdivision.

##### **B. Subdivisions Approved On or After May 8, 2017**

The final plat for all phases of a subdivision must be submitted for review and approved, conditionally approved, or denied within 20 years of the date of preliminary plat approval by the governing body.

#### **5.8.18.6 Criteria, Phased Development Extensions**

The review and approval, approval with conditions, or denial of a phasing plan extension shall be based on the following criteria provided by the applicant:

##### **A. Comply with Regulations**

The first phase, and each subsequent phase when evaluated in conjunction with the prior phase(s), shall comply with these regulations;

**B. Meet New Deadline**

The subdivider can meet the new deadline despite the changed circumstances;

**C. Commissioners' Decision**

All aspects of the governing body's decision on the preliminary plat/plan, including the findings of fact, conclusions, and conditions will continue to be valid if the extension is granted;

**D. Functional**

The first phase, and each subsequent phase when evaluated in conjunction with the prior phase(s), shall contain fully functional systems of access, non-motorized facilities, stormwater management, fire suppression, potable water, wastewater, and other infrastructure and service delivery independent of and without reliance on a future or subsequent phase;

**E. Incremental Completion**

Required improvements for all prior phases shall be completed or secured with a financial guarantee before the commencement of any improvements in a later phase.

**F. No Change**

No significant changes in the general area of the subdivision are expected to occur within the time period of the phases that would change or alter the evaluation of the preliminary plat/plan; and, including but not limited to original subdivision findings of fact, and testimony or supporting documentation for those findings; and,

**G. Facilities**

The planning and provision of public facilities and services in the area of the subdivision will not be disrupted by the timing of the phases.

**Info Box**

Plans, including but not limited to construction plans, are approved by Missoula County Public Works for compliance with those rules, regulations, and specifications in place at the time of review. Plan updates may be required at the time a final plat is filed in order to maintain compliance and address infrastructure needs and use.

**5.8.18.7 Modifications to Phase Boundaries or Filing Sequence**

Modifications to previously approved phase boundaries or the sequence for filing final plats shall require review by the governing body.

**A. Procedure for Phased Developments Approved before May 8, 2017**

**1. Public Meeting**

Proposed modifications shall be acted on by the Board of County Commissioners at a regularly scheduled public meeting. Agency comments on proposals may be requested by the Planning Office.

**2. Decision**

The Board of County Commissioners shall approve, approve with conditional, or deny a modification request within a mutually agreed-upon timeline and only consider facts pertinent to the modification request before a final plat is filed.

**B. Procedure for Phased Developments Approved on or After May 8, 2017**

**1. Applicability**

This section applies to modifications to phase boundaries or modifications to the filing sequence when the modification affects a phase proposed to be platted more than five years from the date of preliminary plat approval. Modifications to a phase proposed to be platted less than five years from the date of preliminary plat approval follow the procedures for phased developments approved before May 8, 2017.

**2. Written Notice**

The subdivider shall provide written notice to the Planning Office that describes the request and addresses the criteria in *Section 5.8.18.7.C Criteria, Modification*, summarizes the primary criteria impacts, as described in *Section 5.10.2.11, Impacts [...]* and *Appendix E, Review Criteria* including any changed impacts and information regarding new potentially significant adverse impacts for the phase or phases.

**3. Submittal Timing**

The written notice shall be submitted to the Planning Office at least 90 calendar days prior to the final plat deadline of an affected phase. The counting of days toward preliminary plat expiration shall be stayed until the governing body's decision pursuant to *Section 6.2.5.5, Written Statement/Governing Body Decision*.

**4. Hearing Timing**

The governing body shall hold a public hearing within 30 working days of receiving the written notice from the subdivider in accordance with [§76-3-617, MCA](#).

**5. Hearing Content/New Conditions**

The governing body shall determine whether any changed primary criteria impacts or new information exists that creates new potentially significant adverse impacts for the phase or phases. The governing body may impose necessary, additional conditions only if it determines based on a review of the primary criteria that the existing conditions of approval are inadequate to mitigate the potentially significant impacts identified during the original review based on changed circumstances.

**6. Decision**

The Board of County Commissioners shall approve, approve with conditions, or deny a modification request and only consider facts pertinent to the modification request before a final plat is filed.

**7. Written Findings**

The governing body shall issue supplemental written findings of fact no more than 20 working days after the hearing. The written statement shall document any changed primary review criteria impacts or information regarding new significant adverse impacts, and any necessary additional conditions to mitigate adverse impacts.

**C. Criteria, Modifications**

Requests to modify phase boundaries or the filing sequence for an approved phasing plan shall be based on the following criteria provided by the applicant:

**1. Comply with Regulations**

The first phase, and each subsequent phase when evaluated in conjunction with the prior phase(s), shall comply with these regulations;

**2. Commissioners' Decision**

All aspects of the governing body's decision on the preliminary plat/plan, including the findings of fact, conclusions, and conditions will continue to be valid if an extension is granted;

**3. Functional**

The first phase, and each subsequent phase when evaluated in conjunction with the prior phase(s), shall contain fully functional systems of access, non-motorized facilities, stormwater management, fire suppression, potable water, wastewater, and other infrastructure

**Info Box**

Plans, including but not limited to construction plans, are approved by Missoula County Public Works for compliance with those rules, regulations, and specifications in place at the time of review. Plan updates may be required at the time a final plat is filed in order to maintain compliance and address infrastructure needs and use.

and service delivery independent of and without reliance on a future or subsequent phase;

**4. Incremental Completion**

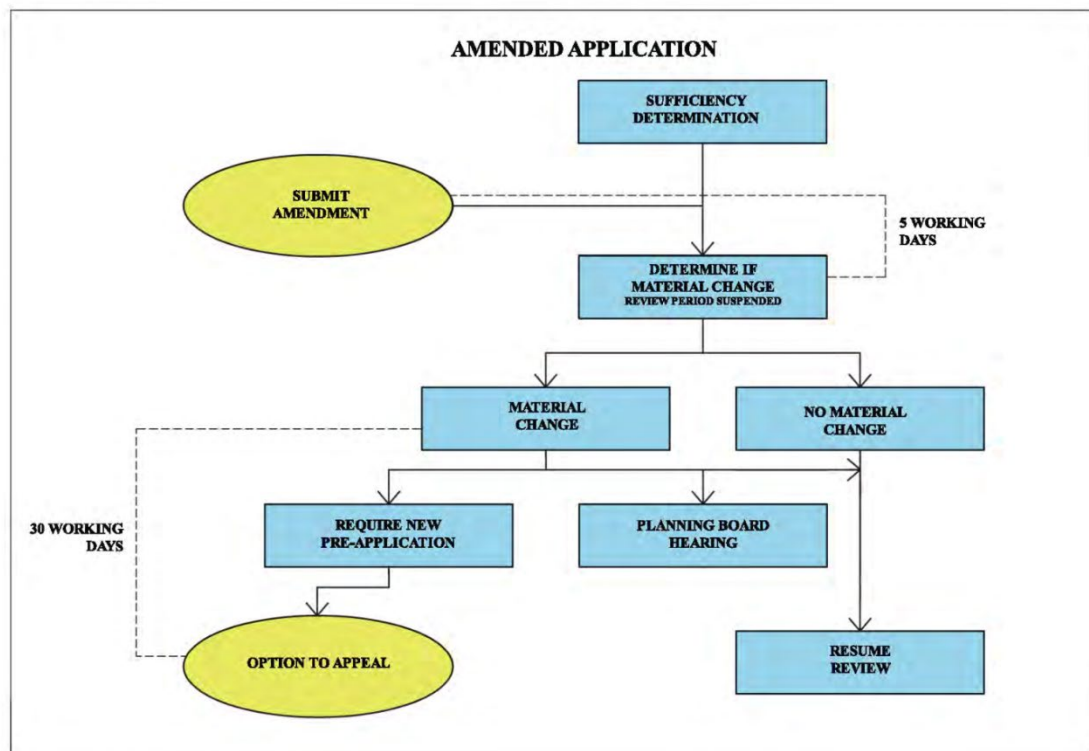
Required improvements for all prior phases shall be completed or secured with a financial guarantee before the commencement of any improvements in a later phase, pursuant to *Section 6.4, Provisions for Public and Private Improvements and Maintenance*.

**5. No Change**

No significant changes in the general area of the subdivision are expected to occur within the time period of the phases that would change alter the evaluation of the preliminary plat/plan; and, including but not limited to original subdivision findings of fact, and testimony or supporting documentation for those findings; and,

**6. Facilities**

The planning and provision of public facilities and services in the area of the subdivision will not be disrupted by the timing of the phases.



#### **5.8.19 Amended Application**

If the subdivider changes the subdivision application or preliminary plat/plan after the Planning Office made a determination of sufficiency but before a public hearing with the Planning Board for major subdivisions or public meetings with the governing body for minor subdivisions, the subdivider shall submit the amended application to the Planning Office for review.

##### **5.8.19.1 Material Determination**

Within 5 working days of receiving the amended application or preliminary plat/plan, the Planning Office shall determine whether the changes to the subdivision application or preliminary plat/plan are material.

##### **5.8.19.2 Material Determination**

Within 5 working days of receiving the amended application or preliminary plat/plan, the Planning Office shall determine whether the changes to the subdivision application or preliminary plat/plan are material.

##### **5.8.19.3 New Material Effect on Administrative Minor Subdivision**

Amendments to an application for an administrative minor subdivision shall not result in the application no longer meeting the applicability requirements in Section 5.5.1, *Applicability* or the original administrative minor application must be withdrawn, and a new application for a minor subdivision in Section 5.4, *Minor Subdivision* must be submitted.

##### **5.8.19.4 Review Suspended**

The review period shall be suspended while the Planning Office considers whether the changes to the subdivision application or preliminary plat/plan are material.

##### **5.8.19.5 Not Material**

If the Planning Office determines the changes are not material, the review period resumes on the date of the determination, and the Planning Office shall notify the subdivider of the decision by mail or electronic transmittal.

##### **5.8.19.6 Material**

If the Planning Office determines the changes are material, it may either require the subdivider to schedule a new pre-application meeting and resubmit a new subdivision application or schedule a new public hearing with the Planning Board for a major subdivision, or proceed with the review period, based upon the significance of the changes. Changes to the following features of a preliminary plat/plan, although not an exhaustive list, may be considered material changes:

- A. Configuration or the number of lots;
- B. Road layout and infrastructure construction plans;
- C. Water and/or septic proposals;
- D. Configuration of park land or open spaces;
- E. Easement provisions; and,
- F. Designated access.

#### **5.8.19.7 Appeal**

A subdivider whose subdivision application and preliminary plat/plan has been deemed by the Planning Office to be materially changed may appeal the decision pursuant to *Section 5.12, Appeals of Administrative Decisions*.

## **5.9 Adjustments to Preliminary Plats and Related Documents**

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### **5.9.1 Purpose and Intent**

The purpose and intent of this section is to accommodate the modest changes to supplemental plans, documents, or boundary lines of an approved preliminary plat/plan or the conditions of approval of a preliminary plat/plan. The changes become necessary and practical as a result of changing conditions in the community or the neighborhood of the subdivision, or new information. It is the intent that these changes maintain the intent of the previous approval.

### **5.9.2 Preliminary Plat/Plan Adjustment Defined**

A preliminary plat/plan adjustment grants minor relief from conditions of approval or facilitates minor changes to the details of an approved preliminary plat/plan when the nature of the adjustment and the absence of an impact on neighboring properties or the community warrant a process for submittal, review, and a decision by the governing body.

### **5.9.3 Applicability**

Any adjustment requested pursuant to *Subsection 5.9.2, Preliminary Plat/Plan Adjustment Defined*, is subject to this section, including all subdivisions approved prior to the effective date. Adjustments may be approved for the following elements of an approved preliminary plat/plan pursuant to this section:

#### **5.9.3.1 Conditions/Plans**

Conditions of subdivision approval and approved plans.

#### **5.9.3.2 Supplemental Sheets, Documents**

Information on supplemental sheets or documents.

#### **5.9.3.3 Approval Sheets**

Conditions of Approval sheets.

**5.9.3.4 CCR**

Approved or filed covenants, conditions and restrictions.

**5.9.3.5 Boundaries**

Boundary lines for lots, easements, rights-of-way.

**5.9.4 Criteria**

Preliminary plat/plan adjustments shall comply with the following criteria:

**5.9.4.1 Minor Nature**

The preliminary plat/plan adjustment is minor when viewed in the context of the neighborhood and overall community, and its effect is generally limited to the subdivision.

**5.9.4.2 Comply with Regulations**

The preliminary plat/plan adjustment shall not cause the approved subdivision to fall into noncompliance with these regulations or any other applicable law, regulation, or code.

**5.9.4.3 Protections**

The preliminary plat/plan adjustment will not reduce the protections or safeguards provided by these regulations, including but not limited to protection of natural resources, neighboring properties, and the overall community.

**5.9.4.4 No Impacts**

The preliminary plat/plan adjustment shall not create any new impact or increase a previously recognized and mitigated impact on the neighboring land or the overall community.

**5.9.4.5 Growth Policy**

The preliminary plat/plan adjustment shall not cause the approved subdivision to become inconsistent with the currently adopted *Missoula County Growth Policy*.

**5.9.4.6 Consistent with Findings**

The preliminary plat/plan adjustment shall be fundamentally consistent with the findings of fact and conclusions of law adopted for the preliminary plat/plan, except in certain situations where the circumstances giving rise to the adjustment justify revised findings and conclusions of law.

**5.9.4.7 Not Incremental**

The preliminary plat/plan adjustment is not part of a series of such adjustments and variances for the same subdivision, nor is it the first in a potential series of adjustments and variances.



**5.9.4.8 Changes to Subdivided Area**

The requested adjustment stems from environmental or contextual changes to the area since preliminary plat approval.

**5.9.4.9 Economic Changes**

Economic changes since recording of the plat may not be considered under this section.

**5.9.4.10 Administrative Minor Subdivisions**

The preliminary plat amendment of a subdivision approved as an administrative minor subdivision cannot change the subdivision layout, design, or conditions of approval so it no longer meets the applicability requirements for an Administrative Minor Subdivision in section 5.5.1, *Applicability*.

**5.9.5 Adjustment Procedure**

**5.9.5.1 Initiation**

The subdivider shall submit to the Planning Office a written or emailed request for a preliminary plat/plan adjustment. The request must include a digital submission that describes and illustrates the proposed adjustment.

**5.9.5.2 Scoping Meeting**

The Planning Office shall schedule a scoping meeting with the subdivider per *section 5.8.2, Scoping Meeting*. The purpose of the meeting is to identify the submittal materials that will be needed to determine compliance with this section.

**5.9.5.3 Submittal**

After the scoping meeting, the subdivider shall submit to the Planning Office 1 paper copy and 1 digital copy of the materials identified in the scoping meeting.

**5.9.5.4 Agency Comment and Staff Review**

The Planning Office may distribute the requested adjustment to public agencies for review and comment, if applicable, and then perform a review and prepare a staff report pursuant to *Section 5.8.9, Staff Review, Staff Report*.

**5.9.5.5 Public Meeting**

Proposed amendments to filed subdivisions shall be subject to a public meeting before the Board of County Commissioners. A legal ad is required for amendments to major subdivisions.

**5.9.5.6 Governing Body Consideration, Decision**

Upon receipt from the Planning Office of a subdivider's request for a preliminary plat/plan adjustment and the staff report, the governing body shall

consider the requested adjustment. After the close of the public meeting, the governing body shall decide to approve, approve with conditions, or deny the requested adjustment.

#### **5.9.5.7 Written Statement**

A written statement of the decision shall be placed in the records of the governing body and forwarded to the subdivider and Planning Office. If the requested adjustment is denied, the written statement shall include the reasons for the decision, evidence on which the decision is based, and a description of the process to appeal the decision.

## ***5.10 Review Criteria, Special Restrictions on Decisions***

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### **5.10.1 General Considerations**

The governing body's decision to approve, conditionally approve, or deny a proposed subdivision shall be based on review of the subdivision application, preliminary plat/plan in the case of a proposed final plat, these regulations, the MSPA, any applicable environmental assessment, public comments, Planning Board recommendation in the case of a major subdivision, staff report, and other information that may be submitted in relation to the subdivision.

### **5.10.2 Review Criteria**

In addition to the general considerations in *Section 5.10.1, General Considerations*, the governing body's decision to approve, conditionally approve, or deny a proposed subdivision shall be based on the review criteria in this section.

#### **5.10.2.2 Subdivision Regulations**

The subdivision regulations in effect at the time the application is determined to contain sufficient information for review, including but not limited to *Chapter 3, General Design Standards for All Subdivisions*, and *Chapter 4, Specific Standards for Certain Subdivisions*.

#### **5.10.2.3 Zoning**

Any zoning applicable to the land proposed for subdivision.

#### **5.10.2.4 Other Regulations**

Other regulations applicable to the land proposed for subdivision, including but are not limited to ARMs for sanitation and water supply, public health regulations, and floodplain regulations.

#### **5.10.2.5 Adopted Plans**

Adopted plans, such as the growth policy, transportation plans, capital improvements plans, pre-disaster mitigation plans, or community wildfire

protection plans. Because plans are not regulatory, no variance for non-conformance with a plan shall be required, nor can denial or a condition of approval be based solely on plan conformance.

**5.10.2.6 Survey Requirements**

Survey requirements established in Part 4 of the MSPA and the ARMs for final plats.

**5.10.2.7 Legal and Physical Access**

The provision of legal and physical access to each lot within the proposed subdivision.

**5.10.2.8 Utility Easement**

The provision of easements within the proposed subdivision or off-site for planned utilities.

**5.10.2.9 Improvements**

The approval and installation of improvements required before final plat approval or the required assurances and guarantees for any improvements that will be required after final plat approval.

**5.10.2.10 Extending Capital Facilities**

Extending capital facilities related to public health and safety, including but not limited to public roads, sewer lines, water supply lines, and storm drains.

**5.10.2.11 Impacts to Agriculture, Agricultural Water User Facilities, Local Services, Natural Environment, Wildlife, Wildlife Habitat, and Public Health and Safety**

Any identified adverse impacts to agriculture, agricultural water user facilities, local services, natural environment, wildlife, wildlife habitat, and public health and safety, and appropriate mitigation. Administrative minor subdivisions and minor subdivisions located in areas with zoning regulations that address these impacts shall be exempt from this subdivision provision

**5.10.3 Special Restrictions on Decisions**

The governing body's decisions on proposed subdivisions shall comply with the following restrictions.

**5.10.3.1 Capital Facilities for Education**

Costs of constructing or extending capital facilities related to education shall not be imposed on the subdivider.

**5.10.3.2 Water and Sanitation Concerns**

Conditional approval or denial based on water or sanitation concerns can be imposed only when based on existing subdivision, zoning, or other regulations for which the governing body has the authority to enforce.

#### **5.10.3.3 SID/RSID Waivers**

A required waiver of the right to protest the creation of a Special Improvement District (SID) or Rural Special Improvement District (RSID) shall specify the capital improvement to which the waiver applies. Furthermore, a waiver shall be valid for no longer than 20 years from the date the final plat is filed with the County Clerk and Recorder.

#### **5.10.3.4 Encroachments**

Subdivision approval shall not be granted if any feature or improvement of the subdivision, including well isolation zones for wells proposed on the subdivision lots, will encroach onto adjoining private property unless the encroachment is authorized under the Montana Sanitation in Subdivisions Act and the owner of the adjoining property provides permission.

#### **5.10.3.5 Governmental Agency Comments**

Conditional approval or denial of a subdivision shall not cite comments or opinions from a state or federal governmental entity on wildlife, wildlife habitat, or the natural environment unless the governmental entity provides scientific information or a published study that supports the comments or opinions.

#### **5.10.3.6 Education or Wildland Urban Interface**

Denial of a subdivision shall not be based solely on projected impacts to educational services or a proposed location in a wildland urban interface area as defined in §76-13-145, MCA.

#### **5.10.3.7 Failure of Agency to Respond**

Denial of a proposed subdivision shall not be based on a failure of an agency to review or comment on the proposed subdivision.

### **5.11 Variances**

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#### **5.11.1 Findings**

The governing body may grant a variance from these regulations upon making all of the required findings of this section.

##### **5.11.1.1 Undue Hardship**

Strict compliance with these regulations will cause undue hardship for the applicant. Undue hardship must exist due to the physical surroundings, particular shape, or topographical conditions of the subject property. Costs or financial considerations shall not be the sole reason for determining an undue hardship.

##### **5.11.1.2 No Threat**

The granting of the variance does not result in a threat to the public safety, health, or welfare, and is not injurious to persons or property.

#### **5.11.1.3 Unique Conditions**

The conditions upon which the variance is based are unique to the subject property and are not applicable generally to other property.

#### **5.11.1.4 No Violation**

The variance will not in any manner violate the provisions of the Missoula County Zoning Resolution or conflict with the Missoula County Growth Policy.

#### **5.11.1.5 Public Cost**

The variance will not cause an increase in public costs.

#### **5.11.1.6 Not Created by Applicant**

The hardship has not been created by the applicant or the applicant's agent.

### **5.11.2 Procedure**

#### **5.11.2.1 Submittal**

When requesting a variance, the subdivider shall identify each standard of these regulations for which a variance is sought. The subdivider also shall submit a response to each of the required findings listed in *Section 5.11.1, Findings* for each variance requested.

#### **5.11.2.2 Consolidation of Applications**

When practical an application for a variance may be processed concurrently with the application for the proposed subdivision. However, the vote on the requested variance shall be a separate vote from the vote on the proposed subdivision application and plat/plan.

#### **5.11.2.3 Public Hearing**

The governing body shall conduct a public hearing on a variance application associated with a major subdivision for which public notice shall be provided pursuant to *Section 5.8.12, Public Hearing Notice*. No public hearing is required for a variance associated with a minor subdivision.

#### **5.11.2.4 Decision, Conditions**

Upon the close of the public hearing in the case of a major subdivision, or at the public meeting for a minor subdivision, the governing body shall decide to approve or deny the requested variance. In approving a variance, the governing body may attach conditions to achieve the purpose and intent of the regulation that is varied.

## **5.12 Appeals of Administrative Decisions**

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Final decisions of the Planning Office or other county employee in the administration of these regulations may be appealed by an aggrieved person or agency to the Board of County Commissioners. For the purposes of this section, an aggrieved person or agency shall be either a person or agency that has submitted the application or has been adversely affected by a decision on an application.

### **5.12.1 Applicability**

For the purposes of this section, final decisions are written decisions on the following matters: determinations on the applicability of exemptions; conclusions on element or sufficiency review; approvals or denials of plans for grading, drainage, revegetation; the processing of amended applications, and decisions on major and minor plat errors. Decisions that are incorporated into recommendations to the governing body are not final decisions that can be appealed.

### **5.12.2 Procedure**

Appeals shall be filed and acted upon in accordance with the following procedures.

#### **5.12.2.1 Submittal**

The appeal shall be in writing and submitted to the Planning Office within 30 working days of the written decision.

#### **5.12.2.2 Contents of Appeal**

The appeal shall include a description of the decision prompting the appeal, the date of the decision, the basis of the appeal, and all other supporting materials the appellant considers relevant to the appeal.

#### **5.12.2.3 Assemble Record**

Upon receipt of the appeal, the Planning Office, or other county employee whose decision is being appealed shall assemble the record related to the appeal, including but not limited to the initial application materials and documents, meeting notes, and correspondence. The record and the appellant's submittal shall be forwarded to the Board of County Commissioners.

#### **5.12.2.4 Public Meeting**

The Board of County Commissioners shall hold a public meeting on the appeal within 30 working days of the appellant's submittal to the Planning Office. At the public meeting, the appellant or appellant's agent may state the grounds for the appeal and provide any information the appellant considers relevant to the appeal. The county employee whose decision is being appealed, or any other county employee, may provide information as well.

#### **5.12.2.5 Decision**

The Board of County Commissioners shall affirm, affirm with conditions, or reverse the decision being appealed.

#### **5.12.2.6 Timing**

The Board of County Commissioners shall decide on the appeal within 30 working days of the close of the public meeting on the appeal.

**5.12.3 Suspension of Proceedings**

An appeal shall suspend the review of the application until the Board of County Commissioners has acted upon the appeal, and the applicant's filing of the appeal constitutes the applicant's written consent to extend all applicable deadlines for the number of days of the suspension.