

# APPENDIX P

## Montana Subdivision and Platting Act

**76-3-101. Short title.** This chapter may be cited as the "Montana Subdivision and Platting Act".

**76-3-102. Statement of purpose.** It is the purpose of this chapter to:

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

**76-3-103. Definitions.** As used in this chapter, unless the context or subject matter clearly requires otherwise, the following definitions apply:

- (1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.
- (2) "Cluster development" means a subdivision with lots clustered in a group of five or more lots that is designed to concentrate building sites on smaller lots in order to reduce capital and maintenance costs for infrastructure through the use of concentrated public services and utilities, while allowing other lands to remain undeveloped.
- (3) "Dedication" means 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.
- (4) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter. 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.
- (5) "Examining land surveyor" means a registered land surveyor appointed by the governing body to review surveys and plats submitted for filing.
- (6) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this chapter and in regulations adopted pursuant to this chapter.
- (7) "Governing body" means a board of county commissioners or the governing authority of a city or town organized pursuant to law.

(8) "Immediate family" means a spouse, children by blood or adoption, and parents.

(9) "Minor subdivision" means a subdivision that creates five or fewer lots from a tract of record.

(10) "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

(11) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

(12) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing body.

(13) "Public utility" has the meaning provided in [69-3-101](#), except that for the purposes of this chapter, the term includes county or consolidated city and county water or sewer districts as provided for in Title 7, chapter 13, parts 22 and 23, and municipal sewer or water systems and municipal water supply systems established by the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44.

(14) "Subdivider" means a person who causes land to be subdivided or who proposes a subdivision of land.

(15) "Subdivision" means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to the parcels may be sold or otherwise transferred and includes any resubdivision and a condominium. The term also means an area, regardless of its size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or mobile homes will be placed.

(16) (a) "Tract of record" means an individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office.

(b) Each individual tract of record continues to be an individual parcel of land unless the owner of the parcel has joined it with other contiguous parcels by filing with the county clerk and recorder:

(i) an instrument of conveyance in which the aggregated parcels have been assigned a legal description that describes the resulting single parcel and in which the owner expressly declares the owner's intention that the tracts be merged; or

(ii) a certificate of survey or subdivision plat that shows that the boundaries of the original parcels have been expunged and depicts the boundaries of the larger aggregate parcel.

(c) An instrument of conveyance does not merge parcels of land under subsection (16)(b)(i) unless the instrument states, "This instrument is intended to merge individual parcels of land to form the aggregate parcel(s) described in this instrument" or a similar statement, in addition to the legal description of the aggregate parcels, clearly expressing the owner's intent to effect a merger of parcels.

**History:** En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part); amd. Sec. 140, Ch. 370, L. 1987; amd. Sec. 2, Ch. 272, L. 1993; amd. Sec. 1, Ch. 503, L. 1997; amd. Sec. 3, Ch. 348, L. 2001; amd. Sec. 1, Ch. 298, L. 2005; amd. Sec. 10, Ch. 214, L. 2011; amd. Sec. 9, Ch. 379, L. 2013.

**76-3-104. What constitutes subdivision.** A subdivision comprises only those parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section when the parcels have been segregated from the original tract. The subdivision plat must show all the parcels whether contiguous or not.

**76-3-105. Violations.** Any person who violates any provision of this chapter or any local regulations adopted pursuant thereto shall be guilty of a misdemeanor and punishable by a fine of not less than \$100 or more than \$500 or by imprisonment in a county jail for not more than 3 months or by both fine and imprisonment. Each sale, lease, or transfer of each separate parcel of land in violation of any provision of this chapter or any local regulation adopted pursuant thereto shall be deemed a separate and distinct offense.

**76-3-201. Exemption for certain divisions of land -- fees for examination of division. (1)**

Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter may not apply to any division of land that:

(a) 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 this state pursuant to the law of eminent domain, Title 70, chapter 30;

(b) subject to subsection (3), 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;

(c) creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;

(d) creates cemetery lots;

(e) is created by the reservation of a life estate;

(f) is created by lease or rental for farming and agricultural purposes;

(g) is in a location over which the state does not have jurisdiction; or

(h) is created for rights-of-way or utility sites. A subsequent change in the use of the land to a residential, commercial, or industrial use is subject to the requirements of this chapter.

(2) Before a court of record orders a division of land under subsection (1)(a), the court shall notify the governing body of the pending division and allow the governing body to present written comment on the division.

(3) An exemption under subsection (1)(b) applies:

(a) to a division of land of any size;

(b) if the land that is divided is not conveyed 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. A transfer of the divided land, by the owner of the property at the time that the land was divided, to any party other than those identified in this subsection (3)(b) subjects the division of land to the requirements of this chapter.

(c) to a parcel that is created to provide security as provided in subsection (1)(b). The remainder of the tract of land is subject to the provisions of this chapter if applicable.

(4) The governing body may examine a division of land to determine whether or not the requirements of this chapter apply to the division and may establish reasonable fees, not to exceed \$200, for the examination.

**76-3-202. Repealed.** Sec. 14, Ch. 379, L. 2013.

**76-3-203. Exemption for certain condominiums.** Condominiums, townhomes, or townhouses, as those terms are defined in [70-23-102](#), constructed on land subdivided in compliance with parts 5 and 6 of this chapter or on lots within incorporated cities and towns are exempt from the provisions of this chapter if:

(1) the approval of the original subdivision of land expressly contemplated the construction of the condominiums, townhomes, or townhouses and any applicable park dedication requirements in [76-3-621](#) are complied with; or

(2) the condominium, townhome, or townhouse proposal is in conformance with applicable local zoning regulations when local zoning regulations are in effect.

**History:** En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part); amd. Sec. 1, Ch. 534, L. 2001; amd. Sec. 1, Ch. 229, L. 2007; amd. Sec. 4, Ch. 373, L. 2011.

**76-3-204. Repealed.** Sec. 14, Ch. 379, L. 2013

**76-3-205. Exemption for airport land and state-owned lands -- exception.** (1) A division of land created by lease or rental of contiguous airport-related land owned by a city, a county, the state, or a municipal or regional airport authority is not subject to the requirements of this chapter if the lease or rental is for onsite weather or air navigation facilities, the manufacture, maintenance, and storage of aircraft, or air carrier-related activities.

(2) A division of state-owned land is not subject to the requirements of this chapter unless the division creates a second or subsequent parcel from a single tract for sale, rent, or lease for residential purposes after July 1, 1974.

**76-3-206. Exemption for conveyances executed prior to July 1, 1974.** This chapter shall not be applicable to deeds, contracts, leases, or other conveyances executed prior to July 1, 1974.

**76-3-207. Divisions or aggregations of land exempted from review but subject to survey requirements and zoning regulations -- exceptions -- fees for examination of division.** (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions or aggregations of tracts of record of any size, regardless of the resulting size of any lot created by the division or aggregation, are not subdivisions under this chapter but are subject to the surveying requirements of [76-3-401](#) for divisions or aggregations of land other than subdivisions and are subject to applicable zoning regulations adopted under Title 76, chapter 2:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

(b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes;

(d) for five or fewer lots within a platted subdivision, the relocation of common boundaries;

(e) divisions made for the purpose of relocating a common boundary line between a single lot

within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(f) aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are established. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(2) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, a division, redesign, or rearrangement of lots that results in an increase in the number of lots or that redesigns or rearranges six or more lots must be reviewed and approved by the governing body before an amended plat may be filed with the county clerk and recorder;

(b) a change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to review under parts 5 and 6 of this chapter.

(3) (a) Subject to subsection (3)(b), a division of land may not be made under this section 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.

(b) (i) If a division of land includes centrally assessed property and the property taxes applicable to the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property shall ensure that the prorated real property taxes and special assessments are paid on the land being sold before the division of land is made.

(ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection (3)(b) as a partial payment of the total tax that is due.

(4) The governing body may examine a division or aggregation of land to determine whether or not the requirements of this chapter apply to the division or aggregation and may establish reasonable fees, not to exceed \$200, for the examination.

**History:** En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(6); amd. Sec. 1, Ch. 379, L. 1985; amd. Sec. 1, Ch. 569, L. 1989; amd. Sec. 4, Ch. 272, L. 1993; amd. Sec. 3, Ch. 366, L. 1993; amd. Sec. 3, Ch. 468, L. 1995; amd. Sec. 2, Ch. 436, L. 2003; amd. Sec. 2, Ch. 563, L. 2003; amd. Sec. 1, Ch. 252, L. 2005; amd. Sec. 12, Ch. 446, L. 2009; amd. Sec. 1, Ch. 351, L. 2013.

**76-3-208. Repealed.** Sec. 14, Ch. 379, L. 2013.

**76-3-209. Exemption from surveying and platting requirements for lands acquired for state highways.** 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](#) and are exempted from the surveying and platting requirements of this chapter. 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.

**76-3-210. Repealed.** Sec. 23, Ch. 446, L. 2009.

**76-3-301. General restriction on transfer of title to subdivided lands.** (1) Except as provided in [76-3-303](#), every final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. The clerk and recorder of the county shall refuse to accept any plat for record that fails to have the approval of [76-3-611](#)(1) in proper form unless the plat is located in an area over which the state does not have jurisdiction.

(2) The clerk and recorder shall notify the governing body or its designated agent of any land division described in [76-3-207](#)(1).

(3) If transfers not in accordance with this chapter are made, the county attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions of this chapter. The cost of the action must be imposed against the party not prevailing.

**76-3-302. Restrictions on recording instruments relating to land subject to surveying requirements.** (1) Except as provided in subsection (2), the county clerk and recorder of any county may not record any instrument that purports to transfer title to or possession of a parcel or tract of land that is required to be surveyed by this chapter unless the required certificate of survey or subdivision plat has been filed with the clerk and recorder and the instrument of transfer describes the parcel or tract by reference to the filed certificate or plat.

(2) Subsection (1) does not apply when the parcel or tract to be transferred:

(a) is in a location in which the state does not have jurisdiction; or

(b) was created before July 1, 1973, and the instrument of transfer for the parcel or tract includes a reference to a previously recorded instrument of transfer or is accompanied by documents that, if recorded, would otherwise satisfy the requirements of this subsection. The reference or document must demonstrate that the parcel or tract existed before July 1, 1973.

(3) The reference or documents required in subsection (2) do not constitute a legal description of the property and may not be substituted for a legal description of the property.

**76-3-303. Contract for deed permitted if buyer protected.** Notwithstanding the provisions of [76-3-301](#), 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:

(1) 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;

(2) 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 county clerk and recorder;

(3) the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the county clerk and recorder within 2 years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments the purchaser has made under the contract;

(4) the county treasurer has certified that no real property taxes assessed and levied on the land to be divided are delinquent; and

(5) the contracts contain the following language conspicuously set out: "The real property that is the subject of this contract has not been finally platted, and until a final plat identifying the

property has been filed with the county clerk and recorder, title to the property may not be transferred in any manner."

**History:** En. Sec. 9, Ch. 500, L. 1973; amd. Sec. 7, Ch. 334, L. 1974; amd. Sec. 1, Ch. 553, L. 1977; R.C.M. 1947, 11-3867(4); amd. Sec. 2, Ch. 379, L. 1985; amd. Sec. 2518, Ch. 56, L. 2009.

**76-3-304. Effect of recording complying plat.** The recording of any plat made in compliance with the provisions of this chapter shall serve to establish the identity of all lands shown on and being a part of such plat. Where lands are conveyed by reference to a plat, the plat itself or any copy of the plat properly certified by the county clerk and recorder as being a true copy thereof shall be regarded as incorporated into the instrument of conveyance and shall be received in evidence in all courts of this state.

**76-3-305. Vacation of plats -- utility easements.** (1) Any plat prepared and recorded as provided in this part may be vacated either in whole or in part as provided by [7-5-2501](#), [7-5-2502](#), [7-14-2616](#)(1) and (2), [7-14-2617](#), [7-14-4114](#)(1) and (2), and [7-14-4115](#). Upon vacation, the governing body or the district court, as provided in [7-5-2502](#), shall determine to which properties the title to the streets and alleys of the vacated portions must revert. The governing body or the district court, as provided in [7-5-2502](#), shall take into consideration the previous platting; the manner in which the right-of-way was originally dedicated, granted, or conveyed; the reasons stated in the petition requesting the vacation; the parties requesting the vacation; and any agreements between the adjacent property owners regarding the use of the vacated area. The title to the streets and alleys of the vacated portions may revert to one or more of the owners of the properties within the platted area adjacent to the vacated portions.

(2) However, when any poleline, pipeline, or any other public or private facility is located in a vacated street or alley at the time of the reversion of the title to the vacated street or alley, the owner of the public or private utility facility has an easement over the vacated land to continue the operation and maintenance of the public utility facility.

**76-3-306. Covenants run with the land.** All covenants shall be considered to run with the land, whether marked or noted on the subdivision plat or contained in a separate instrument recorded with the plat.

**76-3-307. Donations or grants to public considered a grant to donee.** Every donation or grant to the public or to any person, society, or corporation marked or noted on a plat is to be considered a grant to the donee.

**76-3-401. Survey requirements for lands other than subdivisions.** All divisions of land for sale other than a subdivision after July 1, 1974, into parcels which cannot be described as 1/32 or larger aliquot parts of a United States government section or a United States government lot must be surveyed by or under the supervision of a registered land surveyor. Surveys required under this section must comply with the requirements of [76-3-406](#).

**76-3-402. Survey and platting requirements for subdivided lands.** (1) Every subdivision of land after June 30, 1973, must be surveyed and platted in conformance with this chapter, including the requirements of [76-3-406](#), by or under the supervision of a registered land surveyor.



(2) Subdivision plats must be prepared and filed in accordance with this chapter and regulations adopted pursuant to this chapter.

(3) All division of sections into aliquot parts and retracement of lines must conform to United States bureau of land management instructions, and all public land survey corners must be filed in accordance with Corner Recordation Act of Montana (Title 70, chapter 22, part 1).

Engineering plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the governing body must be prepared and filed by a registered engineer or a registered land surveyor, as their respective licensing laws allow, in accordance with this chapter and regulations adopted pursuant to this chapter.

**76-3-403. Monumentation.** (1) The board of professional engineers and professional land surveyors shall, in conformance with the Montana Administrative Procedure Act, prescribe uniform standards for monumentation and for the form, accuracy, and descriptive content of records of survey.

(2) It is the responsibility of the governing body to require the replacement of all monuments removed in the course of construction.

**76-3-404. Certificate of survey.** (1) Except as provided in [70-22-105](#), within 180 days of the completion of a survey, the registered land surveyor responsible for the survey, whether the surveyor is privately or publicly employed, shall prepare and submit for filing a certificate of survey in the county in which the survey was made if the survey:

(a) provides material evidence not appearing on any map filed with the county clerk and recorder or contained in the records of the United States bureau of land management;

(b) reveals a material discrepancy in the map;

(c) discloses evidence to suggest alternate locations of lines or points; or

(d) establishes one or more lines not shown on a recorded map, the positions of which are not ascertainable from an inspection of the map without trigonometric calculations.

(2) A certificate of survey is not required for any survey that is made by the United States bureau of land management, that is preliminary, or that will become part of a subdivision plat being prepared for recording under the provisions of this chapter.

(3) Certificates of survey must be legibly drawn, printed, or reproduced by a process guaranteeing a permanent record and must conform to monumentation and surveying requirements promulgated under this chapter.

**76-3-405. Administration of oaths by registered land surveyor.** (1) A registered land surveyor may administer and certify oaths when:

(a) it becomes necessary to take testimony for the identification of old corners or reestablishment of lost or obliterated corners;

(b) a corner or monument is found in a deteriorating condition and it is desirable that evidence concerning it be perpetuated;

(c) the importance of the survey makes it desirable to administer an oath to the surveyor's assistants for the faithful performance of their duty.

(2) A record of oaths must be preserved as part of the field notes of the survey and noted on the certificate of survey filed under [76-3-404](#).

**History:** En. Sec. 17, Ch. 500, L. 1973; R.C.M. 1947, 11-3875; amd. Sec. 11, Ch. 266, L. 1979; amd. Sec. 2519, Ch. 56, L. 2009.



**76-3-406. Surveys affecting irrigation districts -- additional survey requirements.** (1) (a) A surveyor who completes a survey identified in subsection (2) that establishes or defines a section line and creates a parcel that crosses the established or defined section line so that an irrigation district assessment boundary is included in more than 1 section shall note on the survey the acreage of the farm unit or created parcel in each section.

(b) The surveyor shall notify the appropriate irrigation district of the existence of the survey and the purpose of the survey.

(2) The requirements of subsection (1) apply only to surveys for which the surveyor determines that, based on available public records, the survey involves land:

(a) traversed by a canal or ditch owned by an irrigation district; or

(b) included in an irrigation district.

(3) For purposes of this section, "irrigation district" means a district established pursuant to Title 85, chapter 7.

**76-3-407 through 76-3-410 reserved.**

**76-3-411. Board to prescribe standards.** The board of professional engineers and professional land surveyors shall, in conformance with the Montana Administrative Procedure Act, prescribe uniform standards governing certificates of survey and final subdivision plats.

**History:** En. Sec. 1, Ch. 258, L. 2009

**76-3-501. Local subdivision regulations.** The governing body of every county, city, and town shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for:

(1) the orderly development of their jurisdictional areas;

(2) the coordination of roads within subdivided land with other roads, both existing and planned;

(3) the dedication of land for roadways and for public utility easements;

(4) the improvement of roads;

(5) the provision of adequate open spaces for travel, light, air, and recreation;

(6) the provision of adequate transportation, water, and drainage;

(7) subject to the provisions of [76-3-511](#), the regulation of sanitary facilities;

(8) the avoidance or minimization of congestion; and

(9) the avoidance of subdivisions that would involve unnecessary environmental degradation and danger of injury to health, safety, or welfare by reason of natural hazard, including but not limited to fire and wildland fire, or the lack of water, drainage, access, transportation, or other public services or that would necessitate an excessive expenditure of public funds for the supply of the services.

**History:** En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(part); amd. Sec. 1, Ch. 378, L. 1985; amd. Sec. 17, Ch. 471, L. 1995; amd. Sec. 2, Ch. 298, L. 2005; amd. Sec. 2, Ch. 443, L. 2007.

**76-3-502. Repealed.** Sec. 4, Ch. 236, L. 1981.

**76-3-503. Hearing on proposed regulations.** Before the governing body adopts subdivision regulations pursuant to [76-3-501](#) or [76-3-509](#), it shall hold a public hearing on the regulations and shall give public notice of its intent to adopt the regulations and of the public hearing by publication of notice of the time and place of the hearing in a newspaper of general circulation in the county not less than 15 or more than 30 days prior to the date of the hearing.

**76-3-504. Subdivision regulations -- contents.** (1) The subdivision regulations adopted under this chapter must, at a minimum:

(a) list the materials that must be included in a subdivision application in order for the application to be determined to contain the required elements for the purposes of the review required in [76-3-604](#)(1);

(b) except as provided in [76-3-509](#), [76-3-609](#), or [76-3-616](#), require the subdivider to submit to the governing body an environmental assessment as prescribed in [76-3-603](#);

(c) establish procedures consistent with this chapter for the submission and review of subdivision applications and amended applications;

(d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(e) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development. The regulations must prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques or other mitigation measures authorized under [76-3-608](#)(4) and (5). Approved construction techniques or other mitigation measures may not include building regulations as defined in [50-60-101](#) other than those identified by the department of labor and industry as provided in [50-60-901](#).

(f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(g) prescribe standards for:

(i) the design and arrangement of lots, streets, and roads;

(ii) grading and drainage;

(iii) subject to the provisions of [76-3-511](#), water supply and sewage and solid waste disposal that meet the:

(A) regulations adopted by the department of environmental quality under [76-4-104](#) for subdivisions that will create one or more parcels containing less than 20 acres; and

(B) standards provided in [76-3-604](#) and [76-3-622](#) for subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres; and

(iv) the location and installation of public utilities;

(h) provide procedures for the administration of the park and open-space requirements of this chapter;

(i) provide for the review of subdivision applications by affected public utilities and those agencies of local, state, and federal government identified during the preapplication consultation conducted pursuant to subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review may not delay the governing body's action on the application beyond the time limits specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body.

(j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:

(i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;

(ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

(iii) reserve and sever all surface water rights from the land;

(k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in the subdivision that:

(A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

(B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

(C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.

(ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

(A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(B) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(l) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

(m) require the subdivider to describe, dimension, and show public utility easements in the subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility services within the subdivision.

(n) establish whether the governing body, its authorized agent or agency, or both will hold public hearings;

(o) establish procedures describing how the governing body or its agent or agency will

address information presented at the hearing or hearings held pursuant to [76-3-605](#) and [76-3-615](#);

(p) establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions provided in [76-3-201](#) or [76-3-207](#) is an attempt to evade the requirements of this chapter. The regulations must provide for an appeals process to the governing body if the reviewing authority is not the governing body.

(q) establish a preapplication process that:

(i) requires a subdivider to meet with the authorized agent or agency, other than the governing body, that is designated by the governing body to review subdivision applications prior to the subdivider submitting the application;

(ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

(iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local, state, and federal government, and any other entities that may be contacted for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during the review of the application, the agent or agency designated by the governing body contacts a public utility, agency, or other entity that was not included on the list originally made available to the subdivider, the agent or agency shall notify the subdivider of the contact and the timeframe for response.

(iv) requires that a preapplication meeting take place no more than 30 days from the date that the authorized agent or agency receives a written request for a preapplication meeting from the subdivider; and

(v) establishes a time limit after a preapplication meeting by which an application must be submitted;

(r) require that the written decision required by [76-3-620](#) must be provided to the applicant within 30 working days following a decision by the governing body to approve, conditionally approve, or deny a subdivision;

(s) establish criteria for reviewing an area, regardless of its size, that provides or will provide multiple spaces for recreational camping vehicles or mobile homes.

(2) In order to accomplish the purposes described in [76-3-501](#), the subdivision regulations adopted under [76-3-509](#) and this section may include provisions that are consistent with this section that promote cluster development.

**History:** En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(2), (3); amd. Sec. 1, Ch. 236, L. 1981; amd. Sec. 17, Ch. 274, L. 1981; amd. Sec. 238, Ch. 418, L. 1995; amd. Sec. 18, Ch. 471, L. 1995; amd. Sec. 1, Ch. 201, L. 1999; amd. Sec. 21, Ch. 582, L. 1999; amd. Sec. 5, Ch. 348, L. 2001; amd. Sec. 3, Ch. 527, L. 2001; amd. Sec. 1, Ch. 564, L. 2001; amd. Sec. 11, Ch. 599, L. 2003; amd. Sec. 3, Ch. 298, L. 2005; amd. Sec. 1, Ch. 302, L. 2005; amd. Sec. 1, Ch. 317, L. 2007; amd. Sec. 3, Ch. 443, L. 2007; amd. Sec. 13, Ch. 446, L. 2009; amd. Sec. 1, Ch. 109, L. 2013; amd. Sec. 10, Ch. 379, L. 2013.

**76-3-505. Repealed.** Sec. 16, Ch. 298, L. 2005.

**76-3-506. Provision for granting variances.** (1) Subdivision regulations may authorize the governing body, after a public hearing on the variance request before the governing body or its designated agent or agency, to grant variances from the regulations when strict compliance will result in undue hardship and when it is not essential to the public welfare.

(2) Any variance granted pursuant to this section must be based on specific variance criteria

contained in the subdivision regulations.

(3) A minor subdivision as provided for in [76-3-609](#)(2) is not subject to the public hearing requirement of this section.

**History:** En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(6); amd. Sec. 14, Ch. 446, L. 2009.

**76-3-507. Provision for security requirements to ensure construction of public improvements.** (1) Except as provided in subsections (2) and (4), the governing body shall require the subdivider to complete required improvements within the proposed subdivision prior to the approval of the final plat.

(2) (a) In lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body shall at the subdivider's option allow the subdivider to provide or cause to be provided a bond or other reasonable security, in an amount and with surety and conditions satisfactory to the governing body, providing for and securing the construction and installation of the improvements within a period specified by the governing body and expressed in the bonds or other security. The governing body shall reduce bond or security requirements commensurate with the completion of improvements.

(b) In lieu of requiring a bond or other means of security for the construction or installation of all the required public improvements under subsection (2)(a), the governing body may approve an incremental payment or guarantee plan. The improvements in a prior increment must be completed or the payment or guarantee of payment for the costs of the improvements incurred in a prior increment must be satisfied before development of future increments.

(3) Approval by the governing body of a final plat prior to the completion of required improvements and without the provision of the security required under subsection (2) is not an act of a legislative body for the purposes of [2-9-111](#).

(4) The governing body may require a percentage of improvements or specific types of improvements necessary to protect public health and safety to be completed before allowing bonding or other reasonable security under subsection (2)(a) for purposes of filing a final plat. The requirement is applicable to approved preliminary plats.

**History:** En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(7); amd. Sec. 4, Ch. 468, L. 1995; amd. Sec. 3, Ch. 503, L. 1997; amd. Sec. 15, Ch. 446, L. 2009.

**76-3-508. Repealed.** Sec. 4, Ch. 236, L. 1981.

**76-3-509. Local option cluster development regulations and exemptions authorized.** (1) If the governing body has adopted a growth policy that meets the requirements of [76-1-601](#), the governing body may adopt regulations to promote cluster development and preserve open space under this section.

(2) Regulations adopted under this section must:

(a) establish a maximum size for each parcel in a cluster development;

(b) subject to subsection (3)(d), establish a maximum number of parcels in a cluster development; and

(c) establish requirements, including a minimum size for the area to be preserved, for preservation of open space as a condition of approval of a cluster development subdivision under regulations adopted pursuant to this section. Land protected as open space on a long-term basis

must be identified on the final subdivision plat, and the plat must include a copy of or a recording reference to the irrevocable covenant prohibiting further subdivision, division, or development of the open space lots or parcels, as provided in Title 70, chapter 17, part 2.

(3) Regulations adopted under this section may:

(a) establish a shorter timeframe for review of proposed cluster developments;

(b) establish procedures and requirements that provide an incentive for cluster development subdivisions that are consistent with the provisions of this chapter;

(c) authorize the review of a division of land that involves more than one existing parcel as one subdivision proposal for the purposes of creating a cluster development;

(d) authorize the creation of one clustered parcel for each existing parcel that is reviewed as provided in subsection (3)(c); and

(e) establish exemptions from the following:

(i) the requirements of an environmental assessment pursuant to [76-3-603](#);

(ii) review of the criteria in [76-3-608\(3\)\(a\)](#); and

(iii) park dedication requirements pursuant to [76-3-621](#).

(4) Except as provided in this section, the provisions of this chapter apply to cluster development subdivisions.

**History:** En. Sec. 6, Ch. 348, L. 2001; amd. Sec. 2, Ch. 137, L. 2011.

**76-3-510. Payment for extension of capital facilities.** (1) A local government may require a subdivider to pay or guarantee payment for part or all of 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. The costs must reasonably reflect the expected impacts directly attributable to the subdivision. A local government may not require a subdivider to pay or guarantee payment for part or all of the costs of constructing or extending capital facilities related to education.

(2) All fees, costs, or other money paid by a subdivider under this section must be expended on the capital facilities for which the payments were required.

**History:** En. Sec. 8, Ch. 468, L. 1995; amd. Sec. 1, Ch. 405, L. 2009; amd. Sec. 16, Ch. 446, L. 2009.

**76-3-511. Local regulations no more stringent than state regulations or guidelines.** (1) Except as provided in subsections (2) through (4) or unless required by state law, a governing body may not adopt a regulation under [76-3-501](#) or [76-3-504\(1\)\(g\)\(iii\)](#) that is more stringent than the comparable state regulations or guidelines that address the same circumstances. The governing body may incorporate by reference comparable state regulations or guidelines.

(2) The governing body may adopt a regulation to implement [76-3-501](#) or [76-3-504\(1\)\(g\)\(iii\)](#) that is more stringent than comparable state regulations or guidelines only if the governing body makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement protects public health or the environment; and

(b) the local standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the governing body's conclusion. The written



finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a regulation of the governing body adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable state regulations or guidelines may petition the governing body to review the regulation. If the governing body determines that the regulation is more stringent than comparable state regulations or guidelines, the governing body shall comply with this section by either revising the regulation to conform to the state regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged regulation. The governing body may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the governing body for a regulation review under subsection (4)(a) if the governing body adopts a regulation after January 1, 1990, in an area in which no state regulations or guidelines existed and the state government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted governing body regulation.

**History:** En. Sec. 5, Ch. 471, L. 1995; amd. Sec. 278, Ch. 42, L. 1997; amd. Sec. 2, Ch. 302, L. 2005; amd. Sec. 107, Ch. 2, L. 2009.

**76-3-601. Submission of application and preliminary plat for review -- water and sanitation information required.** (1) The subdivider shall present to the governing body or to the agent or agency designated by the governing body the subdivision application, including the preliminary plat of the proposed subdivision, for local review. The preliminary plat must show all pertinent features of the proposed subdivision and all proposed improvements and must be accompanied by the preliminary water and sanitation information required under [76-3-622](#).

(2) (a) When the proposed subdivision lies within the boundaries of an incorporated city or town, the application and preliminary plat must be submitted to and approved by the city or town governing body.

(b) When the proposed subdivision is situated entirely in an unincorporated area, the application and preliminary plat must be submitted to and approved by the governing body of the county. However, if the proposed subdivision lies within 1 mile of a third-class city or town, within 2 miles of a second-class city, or within 3 miles of a first-class city, the county governing body shall submit the application and preliminary plat to the city or town governing body or its designated agent for review and comment. If the proposed subdivision is situated within a rural school district, as described in [20-9-615](#), the county governing body shall provide a summary of the information contained in the application and preliminary plat to school district trustees.

(c) If the proposed subdivision lies partly within an incorporated city or town, the application and preliminary plat must be submitted to and approved by both the city or town and the county governing bodies.

(d) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall coordinate the subdivision review and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible.

(3) The provisions of [76-3-604](#), [76-3-605](#), [76-3-608](#) through [76-3-610](#), and this section do not



limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to [7-3-4444](#).

**History:** En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 1, Ch. 89, L. 1981; amd. Sec. 4, Ch. 506, L. 1995; amd. Sec. 23, Ch. 582, L. 1999; amd. Sec. 67, Ch. 7, L. 2001; amd. Sec. 4, Ch. 298, L. 2005; amd. Sec. 3, Ch. 302, L. 2005; amd. Sec. 2, Ch. 109, L. 2013.

**76-3-602. Fees.** The governing body may establish reasonable fees to be paid by the subdivider to defray the expense of reviewing subdivision applications.

**History:** En. Sec. 10, Ch. 500, L. 1973; R.C.M. 1947, 11-3868; amd. Sec. 5, Ch. 298, L. 2005.

**76-3-603. Contents of environmental assessment.** When required, the environmental assessment must accompany the subdivision application and must include:

(1) for a major subdivision:

(a) a description of every body or stream of surface water that may be affected by the proposed subdivision, together with available ground water information, and a description of the topography, vegetation, and wildlife use within the area of the proposed subdivision;

(b) a summary of the probable impacts of the proposed subdivision based on the criteria described in [76-3-608](#); and

(c) a community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing; roads and maintenance; water, sewage, and solid waste facilities; and fire and police protection; and

(d) additional relevant and reasonable information related to the applicable regulatory criteria adopted under [76-3-501](#) as may be required by the governing body;

(2) except as provided in [76-3-609](#), for a minor subdivision, a summary of the probable impacts of the proposed subdivision based on the criteria described in [76-3-608](#).

**History:** En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(4); amd. Sec. 2, Ch. 236, L. 1981; amd. Sec. 5, Ch. 468, L. 1995; amd. Sec. 6, Ch. 298, L. 2005.

**76-3-604. Review of subdivision application -- review for required elements and sufficiency of information.** (1) (a) A subdivision application is considered to be received on the date of delivery to the reviewing agent or agency and when accompanied by the review fee submitted as provided in [76-3-602](#).

(b) Within 5 working days of receipt of a subdivision application, the reviewing agent or agency shall determine whether the application contains all of the listed materials as required by [76-3-504](#)(1)(a) and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of the reviewing agent's or agency's determination. If the reviewing agent or agency determines that elements are missing from the application, the reviewing agent or agency shall identify those elements in the notification.

(2) (a) Within 15 working days after the reviewing agent or agency notifies the subdivider or the subdivider's agent that the application contains all of the required elements as provided in subsection (1), the reviewing agent or agency 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 the provisions of this chapter and the local regulations

adopted pursuant to this chapter and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of the reviewing agent's or agency's determination.

(b) If the reviewing agent or agency determines that information in the application is not sufficient to allow for review of the proposed subdivision, the reviewing agent or agency shall identify the insufficient information in its notification.

(c) A determination that an application contains sufficient information for review as provided in this subsection (2) does not ensure that the proposed subdivision will be approved or conditionally approved by the governing body and does not limit the ability of the reviewing agent or agency or the governing body to request additional information during the review process.

(3) The time limits provided in subsections (1) and (2) apply to each submittal of the application until:

(a) a determination is made that the application contains the required elements and sufficient information; and

(b) the subdivider or the subdivider's agent is notified.

(4) After the reviewing agent or agency has notified the subdivider or the subdivider's agent that an application contains sufficient information as provided in subsection (2), the governing body shall approve, conditionally approve, or deny the proposed subdivision within 60 working days or 80 working days if the proposed subdivision contains 50 or more lots, based on its determination of whether the application conforms to the provisions of this chapter and to the local regulations adopted pursuant to this chapter, unless:

(a) the subdivider and the reviewing agent or agency agree to an extension or suspension of the review period, not to exceed 1 year; or

(b) a subsequent public hearing is scheduled and held as provided in [76-3-615](#).

(5) (a) If the governing body fails to comply with the time limits under subsection (4), the governing body shall pay to the subdivider a financial penalty of \$50 per lot per month or a pro rata portion of a month, not to exceed the total amount of the subdivision review fee collected by the governing body for the subdivision application, until the governing body denies, approves, or conditionally approves the subdivision.

(b) The provisions of subsection (5)(a) do not apply if the review period is extended or suspended pursuant to subsection (4).

(6) If the governing body denies or conditionally approves the proposed subdivision, it shall send the subdivider a letter, with the appropriate signature, that complies with the provisions of [76-3-620](#).

(7) (a) The governing body shall collect public comment submitted at a hearing or hearings regarding the information presented pursuant to [76-3-622](#) 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.

(b) The subdivider shall, as part of the subdivider's application for sanitation approval, forward the comments or the summary provided by the governing body to the:

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

(ii) 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.

(8) (a) For a proposed subdivision that will create one or more parcels containing less than 20 acres, the governing body may require approval by the department of environmental quality as a

condition of approval of the final plat.

(b) For a proposed subdivision that will create one or more parcels containing 20 acres or more, the governing body may condition approval of the final plat upon the subdivider demonstrating, pursuant to [76-3-622](#), that there is an adequate water source and at least one area for a septic system and a replacement drainfield for each lot.

(9) (a) Review and approval, conditional approval, or denial of a proposed subdivision under this chapter may occur only under those regulations in effect at the time a subdivision application is determined to contain sufficient information for review as provided in subsection (2).

(b) If regulations change during the review periods provided in subsections (1) and (2), the determination of whether the application contains the required elements and sufficient information must be based on the new regulations.

**History:** En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 1, Ch. 236, L. 1999; amd. Sec. 24, Ch. 582, L. 1999; amd. Sec. 4, Ch. 527, L. 2001; amd. Sec. 7, Ch. 298, L. 2005; amd. Sec. 5, Ch. 302, L. 2005; amd. Sec. 2, Ch. 405, L. 2009; amd. Sec. 3, Ch. 109, L. 2013.

**76-3-605. Hearing on subdivision application.** (1) Except as provided in [76-3-609](#) and [76-3-616](#) and subject to the regulations adopted pursuant to [76-3-504\(1\)\(o\)](#) and [76-3-615](#), at least one public hearing on the subdivision application must be held by the governing body, its authorized agent or agency, or both and the governing body, its authorized agent or agency, or both shall consider all relevant evidence relating to the public health, safety, and welfare, including the environmental assessment if required, to determine whether the subdivision application should be approved, conditionally approved, or denied by the governing body.

(2) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall hold joint hearings on the subdivision application and annexation whenever possible.

(3) Notice of the hearing must be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing. The subdivider, each property owner of record whose property is immediately adjoining the land included in the preliminary plat, and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat must also be notified of the hearing by registered or certified mail not less than 15 days prior to the date of the hearing.

(4) When a hearing is held by an agent or agency designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or denial of the proposed subdivision. This recommendation must be submitted to the governing body in writing not later than 10 working days after the public hearing.

**History:** En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 2, Ch. 89, L. 1981; amd. Sec. 21, Ch. 526, L. 1983; amd. Sec. 25, Ch. 582, L. 1999; amd. Sec. 8, Ch. 298, L. 2005; amd. Sec. 5, Ch. 455, L. 2007.

**76-3-606. Repealed.** Sec. 11, Ch. 468, L. 1995.

**76-3-607. Repealed.** Sec. 11, Ch. 468, L. 1995.

**76-3-608. Criteria for local government review.** (1) The basis for the governing body's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision meets the requirements of this chapter. A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts on educational services or based solely on parcels within the subdivision having been designated as wildland-urban interface parcels under [76-13-145](#).

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) except when the governing body has established an exemption pursuant to subsection (6) of this section or except as provided in [76-3-509](#), [76-3-609](#)(2) or (4), or [76-3-616](#), the impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements within and to the proposed subdivision for the location and installation of any planned utilities; and

(d) the provision of legal and physical access to each parcel within the proposed subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(4) The governing body may require the subdivider to design the proposed subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3). The governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the subdivision.

(b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

(6) A governing body may conditionally approve or deny a proposed subdivision as a result of the water and sanitation information provided pursuant to [76-3-622](#) or public comment received pursuant to [76-3-604](#) on the information provided pursuant to [76-3-622](#) only if the conditional approval or denial is based on existing subdivision, zoning, or other regulations that the governing body has the authority to enforce.

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

(8) A governing body may not approve a proposed subdivision if any of the features and improvements of the subdivision encroach onto adjoining private property in a manner that is not otherwise provided for under chapter 4 or this chapter or if the well isolation zone of any proposed well to be drilled for the proposed subdivision encroaches onto adjoining private property unless the owner of the private property authorizes the encroachment. For the purposes of this section, "well isolation zone" has the meaning provided in [76-4-102](#).

(9) If a federal or state governmental entity submits a written or oral comment or an opinion regarding wildlife, wildlife habitat, or the natural environment relating to a subdivision application for the purpose of assisting a governing body's review, the comment or opinion may be included in the governing body's written statement under [76-3-620](#) only if the comment or opinion provides scientific information or a published study that supports the comment or opinion. A governmental entity that is or has been involved in an effort to acquire or assist others in acquiring an interest in the real property identified in the subdivision application shall disclose that the entity has been involved in that effort prior to submitting a comment, an opinion, or information as provided in this subsection.

**History:** En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(4); amd. Sec. 5, Ch. 272, L. 1993; amd. Sec. 6, Ch. 468, L. 1995; amd. Sec. 26, Ch. 582, L. 1999; amd. Sec. 7, Ch. 348, L. 2001; amd. Sec. 10, Ch. 298, L. 2005; amd. Sec. 6, Ch. 302, L. 2005; amd. Sec. 6, Ch. 455, L. 2007; amd. Sec. 1, Ch. 406, L. 2009; amd. Sec. 17, Ch. 446, L. 2009; amd. Sec. 1, Ch. 409, L. 2011; amd. Sec. 1, Ch. 112, L. 2013; amd. Sec. 2, Ch. 195, L. 2013.

**76-3-609. Review procedure for minor subdivisions -- determination of sufficiency of application -- governing body to adopt regulations.** (1) Minor subdivisions must be reviewed as provided in this section and subject to the applicable local regulations adopted pursuant to [76-3-504](#).

(2) If the tract of record proposed to be subdivided has not been subdivided or created by a subdivision under this chapter or has not resulted from a tract of record that has had more than five parcels created from that tract of record under [76-3-201](#) or [76-3-207](#) since July 1, 1973, then the proposed subdivision is a first minor subdivision from a tract of record and, when legal and physical access to all lots is provided, must be reviewed as follows:

(a) Except as provided in subsection (2)(b), the governing body shall approve, conditionally approve, or deny the first minor subdivision from a tract of record within 35 working days of a determination by the reviewing agent or agency that the application contains required elements and sufficient information for review. The determination and notification to the subdivider must be made in the same manner as is provided in [76-3-604](#)(1) through (3).

(b) The subdivider and the reviewing agent or agency may agree to an extension or suspension of the review period, not to exceed 1 year.

(c) Except as provided in subsection (2)(d)(ii), an application must include a summary of the probable impacts of the proposed subdivision based on the criteria described in [76-3-608](#)(3).

(d) The following requirements do not apply to the first minor subdivision from a tract of record as provided in subsection (2):

(i) the requirement to prepare an environmental assessment; and

(ii) the requirement to review the subdivision for the criteria contained in [76-3-608](#)(3)(a) if the minor subdivision is proposed in the portion of a jurisdictional area that has adopted zoning regulations that address the criteria in [76-3-608](#)(3)(a).

(e) The governing body or its authorized agent or agency may not hold a public hearing or a



subsequent public hearing under [76-3-615](#) for a first minor subdivision from a tract of record as described in subsection (2).

(f) The governing body may adopt regulations that establish requirements for the expedited review of the first minor subdivision from a tract of record. The following apply to a proposed subdivision reviewed under the regulations:

(i) except as provided in subsection (2)(d), the provisions of [76-3-608](#)(3); and

(ii) the provisions of Title 76, chapter 4, part 1, whenever approval is required by those provisions.

(3) Except as provided in [76-3-616](#) and subsection (4) of this section, any minor subdivision that is not a first minor subdivision from a tract of record, as provided in subsection (2), is a subsequent minor subdivision and must be reviewed as provided in [76-3-601](#) through [76-3-605](#), [76-3-608](#), [76-3-610](#) through [76-3-614](#), and [76-3-620](#).

(4) The governing body may adopt subdivision regulations that establish requirements for review of subsequent minor subdivisions that meet or exceed the requirements that apply to the first minor subdivision, as provided in subsection (2) and this chapter.

(5) (a) Review and approval, conditional approval, or denial of a subdivision under this chapter may occur only under those regulations in effect at the time that a subdivision application is determined to contain sufficient information for review as provided in subsection (2).

(b) If regulations change during the period that the application is reviewed for required elements and sufficient information, the determination of whether the application contains the required elements and sufficient information must be based on the new regulations.

**History:** En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(6); amd. Sec. 2, Ch. 579, L. 1985; amd. Sec. 2, Ch. 256, L. 1987; amd. Sec. 7, Ch. 468, L. 1995; amd. Sec. 2, Ch. 236, L. 1999; amd. Sec. 11, Ch. 298, L. 2005; amd. Sec. 7, Ch. 455, L. 2007; amd. Sec. 18, Ch. 446, L. 2009.

**76-3-610. Effect of approval of application and preliminary plat.** (1) Upon approving or conditionally approving an application and preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval must be in force for not more than 3 calendar years or less than 1 calendar year. At the end of this period the governing body may, at the request of the subdivider, extend its approval for a mutually agreed-upon period of time. Any mutually agreed-upon extension must be in writing and dated and signed by the members of the governing body and the subdivider or subdivider's agent. The governing body may issue more than one extension.

(2) Except as provided in [76-3-507](#), after the application and preliminary plat are approved, the governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat approval if the approval is obtained within the original or extended approval period as provided in subsection (1).

**History:** En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 1, Ch. 223, L. 1981; amd. Sec. 1, Ch. 190, L. 1983; amd. Sec. 12, Ch. 298, L. 2005; amd. Sec. 19, Ch. 446, L. 2009; amd. Sec. 1, Ch. 252, L. 2011.

**76-3-611. Review of final plat.** (1) The governing body shall examine each final subdivision plat and shall approve the plat only if:

(a) it conforms to the conditions of approval set forth on the preliminary plat and to the terms of this chapter and regulations adopted pursuant to this chapter; and

(b) the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid.

(2) (a) The governing body may require that final subdivision plats and certificates of survey be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the county clerk and recorder. When the survey data shown on the plat or certificate of survey meets the conditions pursuant to this chapter, the examining land surveyor shall certify the compliance in a printed or stamped certificate on the plat or certificate of survey. The certificate must be signed by the surveyor.

(b) A land surveyor may not act as an examining land surveyor in regard to a plat or certificate of survey in which the surveyor has a financial or personal interest.

**History:** En. Sec. 9, Ch. 500, L. 1973; amd. Sec. 7, Ch. 334, L. 1974; amd. Sec. 1, Ch. 553, L. 1977; R.C.M. 1947, 11-3867(part); amd. Sec. 1, Ch. 273, L. 1981; amd. Sec. 1, Ch. 293, L. 1995.

**76-3-612. Abstract of title required for review process.** (1) The subdivider shall submit with the final plat a certificate of a title abstracter showing the names of the owners of record of the land to be subdivided and the names of lienholders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lienholders or claimants of record against the land.

(2) The governing body may provide for the review of the abstract or certificate of title of the land in question by the county attorney where the land lies in an unincorporated area or by the city or town attorney when the land lies within the limits of a city or town.

**History:** En. Sec. 7, Ch. 500, L. 1973; amd. Sec. 5, Ch. 334, L. 1974; R.C.M. 1947, 11-3865; amd. Sec. 186, Ch. 575, L. 1981.

**76-3-613. Index of plats to be kept by county clerk and recorder.** (1) The county clerk and recorder shall maintain an index of all recorded subdivision plats and certificates of survey.

(2) This index shall list plats and certificates of survey by the quarter section, section, township, and range in which the platted or surveyed land lies and shall list the recording or filing numbers of all plats depicting lands lying within each quarter section. Each quarter section list shall be definitive to the exclusion of all other quarter sections. The index shall also list the names of all subdivision plats in alphabetical order and the place where filed.

**History:** En. Sec. 15, Ch. 500, L. 1973; R.C.M. 1947, 11-3873.

**76-3-614. Correction of recorded plat.** When a recorded plat does not definitely show the location or size of lots or blocks or the location or width of any street or alley, the governing body may at its own expense cause a new and correct survey and plat to be made and recorded in the office of the county clerk and recorder. The corrected plat must, to the extent possible, follow the plan of the original survey and plat. The surveyor making the resurvey shall endorse the corrected plat referring to the original plat and noting the defect existing therein and the corrections made.

**History:** En. Sec. 16, Ch. 500, L. 1973; R.C.M. 1947, 11-3874.



**76-3-615. Subsequent hearings -- consideration of new information -- requirements for regulations.** (1) The regulations adopted pursuant to [76-3-504](#)(1)(o) must comply with the provisions of this section.

(2) The governing body shall determine whether public comments or documents presented to the governing body at a hearing held pursuant to [76-3-605](#) constitute:

(a) information or analysis of information that was presented at a hearing held pursuant to [76-3-605](#) that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment; or

(b) new information regarding a subdivision application that has never been submitted as evidence or considered by either the governing body or its agent or agency at a hearing during which the subdivision application was considered.

(3) If the governing body determines that the public comments or documents constitute the information described in subsection (2)(b), the governing body may:

(a) approve, conditionally approve, or deny the proposed subdivision without basing its decision on the new information if the governing body determines that the new information is either irrelevant or not credible; or

(b) schedule or direct its agent or agency to schedule a subsequent public hearing for consideration of only the new information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.

(4) If a public hearing is held as provided in subsection (3)(b), the 60-working-day review period required in [76-3-604](#)(4) is suspended and the new hearing must be noticed and held within 45 days of the governing body's determination to schedule a new hearing. After the new hearing, the 60-working-day time limit resumes at the governing body's next scheduled public meeting for which proper notice for the public hearing on the subdivision application can be provided. The governing body may not consider any information regarding the subdivision application that is presented after the hearing when making its decision to approve, conditionally approve, or deny the proposed subdivision.

**History:** En. Sec. 9, Ch. 298, L. 2005.

**76-3-616. Exemption for certain subdivisions.** (1) A subdivision that meets the criteria in subsection (2) is exempt from the following requirements:

(a) preparation of an environmental assessment as required by [76-3-603](#);

(b) a public hearing on the subdivision application pursuant to [76-3-605](#); and

(c) review of the subdivision for the criteria listed in [76-3-608](#)(3)(a).

(2) To qualify for the exemptions in subsection (1), a subdivision must meet the following criteria:

(a) the proposed subdivision is entirely within an area inside or adjacent to an incorporated city or town where the governing body has adopted a growth policy that includes the provisions of [76-1-601](#)(4)(c);

(b) the proposed subdivision is entirely within an area subject to zoning adopted pursuant to [76-2-203](#) or [76-2-304](#) that avoids, significantly reduces, or mitigates adverse impacts identified in a growth policy that includes the provisions of [76-1-601](#)(4)(c); and

(c) the subdivision proposal includes a description of future public facilities and services, using maps and text, that are necessary to efficiently serve the projected development.

**History:** En. Sec. 4, Ch. 455, L. 2007.

**76-3-617 through 76-3-619 reserved.**

**76-3-620. Review requirements -- written statement.** In addition to the requirements of [76-3-604](#) and [76-3-609](#), following any decision by the governing body to deny or conditionally approve a proposed subdivision, the governing body shall, in accordance with the time limit established in [76-3-504](#)(1)(r), prepare a written statement that must be provided to the applicant, that must be made available to the public, and that:

(1) includes information regarding the appeal process for the denial or imposition of conditions;

(2) identifies the regulations and statutes that are used in reaching the decision to deny or impose conditions and explains how they apply to the decision to deny or impose conditions;

(3) provides the facts and conclusions that the governing body relied upon in making its decision to deny or impose conditions and references documents, testimony, or other materials that form the basis of the decision; and

(4) provides the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved.

**History:** En. Sec. 2, Ch. 224, L. 1995; amd. Sec. 13, Ch. 298, L. 2005; amd. Sec. 20, Ch. 446, L. 2009.

**76-3-621. Park dedication requirement.** (1) Except as provided in [76-3-509](#) or subsections (2), (3), and (6) through (9) of this section, a subdivider shall dedicate to the governing body a cash or land donation equal to:

(a) 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;

(b) 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than 1 acre;

(c) 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger than 3 acres; and

(d) 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.

(2) When a subdivision is located totally within an area for which density requirements have been adopted pursuant to a growth policy under chapter 1 or pursuant to zoning regulations under chapter 2, the governing body may establish park dedication requirements based on the community need for parks and the development densities identified in the growth policy or regulations. Park dedication requirements established under this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03 acres per dwelling unit.

(3) A park dedication may not be required for:

(a) land proposed for subdivision into parcels larger than 5 acres;

(b) subdivision into parcels that are all nonresidential;

(c) a subdivision in which parcels are not created, except when that subdivision provides permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums;

(d) a subdivision in which only one additional parcel is created; or

(e) except as provided in subsection (8), a first minor subdivision from a tract of record as described in [76-3-609](#)(2).

(4) The governing body, 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.

(5) (a) In accordance with the provisions of subsections (5)(b) and (5)(c), the governing body shall use the dedicated money or land for development, acquisition, or maintenance of parks to serve the subdivision.

(b) The governing body may use the dedicated money to acquire, develop, or maintain, within its jurisdiction, parks or recreational areas or for the purchase of public open space or conservation easements only if:

(i) the park, recreational area, open space, or conservation easement is within a reasonably close proximity to the proposed subdivision; and

(ii) the governing body has formally adopted a park plan that establishes the needs and procedures for use of the money.

(c) The governing body may not use more than 50% of the dedicated money for park maintenance.

(6) The local governing body shall waive the park dedication requirement if:

(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 persons 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 subsection (1);

(b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and

(ii) the area of the land proposed to be subdivided, by virtue of providing long-term protection provided for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1);

(c) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1); 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 persons 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 subsection (1).

(7) The local governing body may waive the park dedication requirement if:

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

(b) the area of the land to be subject to long-term protection, as provided in subsection (7)(a), equals or exceeds the area of the dedication required under subsection (1).

(8) (a) A local governing body may, at its discretion, require a park dedication for:

(i) a subsequent minor subdivision as described in [76-3-609\(3\)](#); or

(ii) a first minor subdivision from a tract of record as described in [76-3-609\(2\)](#) if:

(A) the subdivision plat indicates development of condominiums or other multifamily housing;

(B) zoning regulations permit condominiums or other multifamily housing; or

(C) any of the lots are located within the boundaries of a municipality.

(b) A local governing body that chooses to require a park dedication shall specify in regulations the circumstances under which a park dedication will be required.

(9) Subject to the approval of the local governing body and acceptance by the school district trustees, a subdivider may dedicate a land donation provided in subsection (1) to a school district, adequate to be used for school facilities or buildings.

(10) For the purposes of this section:

(a) "cash donation" is the fair market value of the unsubdivided, unimproved land; and

(b) "dwelling unit" means a residential structure in which a person or persons reside.

(11) A land donation under this section may be inside or outside of the subdivision.

**History:** En. Sec. 9, Ch. 468, L. 1995; amd. Sec. 27, Ch. 582, L. 1999; amd. Sec. 8, Ch. 348, L. 2001; amd. Sec. 1, Ch. 469, L. 2003; amd. Sec. 2, Ch. 333, L. 2005; amd. Sec. 1, Ch. 264, L. 2007; amd. Sec. 21, Ch. 446, L. 2009.

**76-3-622. Water and sanitation information to accompany preliminary plat.** (1) Except as provided in subsection (2), the subdivider shall submit to the governing body or to the agent or agency designated by the governing body the information listed in this section for proposed subdivisions that will include new water supply or wastewater facilities. The information must include:

(a) a vicinity map or plan that shows:

(i) the location, within 100 feet outside of the exterior property line of the subdivision and on the proposed lots, of:

(A) flood plains;

(B) surface water features;

(C) springs;

(D) irrigation ditches;

(E) existing, previously approved, and, for parcels less than 20 acres, proposed water wells and wastewater treatment systems;

(F) for parcels less than 20 acres, mixing zones identified as provided in subsection (1)(g); and

(G) the representative drainfield site used for the soil profile description as required under subsection (1)(d); and

(ii) the location, within 500 feet outside of the exterior property line of the subdivision, of public water and sewer facilities;

(b) a description of the proposed subdivision's water supply systems, storm water systems, solid waste disposal systems, and wastewater treatment systems, including:

(i) whether the water supply and wastewater treatment systems are individual, shared, multiple user, or public as those systems are defined in rules published by the department of environmental quality; and

(ii) if the water supply and wastewater treatment systems are shared, multiple user, or public, a statement of whether the systems will be public utilities as defined in [69-3-101](#) and subject to the jurisdiction of the public service commission or exempt from public service commission jurisdiction and, if exempt, an explanation for the exemption;

(c) a drawing of the conceptual lot layout at a scale no smaller than 1 inch equal to 200 feet

that shows all information required for a lot layout document in rules adopted by the department of environmental quality pursuant to [76-4-104](#);

(d) evidence of suitability for new onsite wastewater treatment systems that, at a minimum, includes:

(i) a soil profile description from a representative drainfield site identified on the vicinity map, as provided in subsection (1)(a)(i)(G), that complies with standards published by the department of environmental quality;

(ii) demonstration that the soil profile contains a minimum of 4 feet of vertical separation distance between the bottom of the permeable surface of the proposed wastewater treatment system and a limiting layer; and

(iii) in cases in which the soil profile or other information indicates that ground water is within 7 feet of the natural ground surface, evidence that the ground water will not exceed the minimum vertical separation distance provided in subsection (1)(d)(ii);

(e) for new water supply systems, unless cisterns are proposed, evidence of adequate water availability:

(i) obtained from well logs or testing of onsite or nearby wells;

(ii) obtained from information contained in published hydrogeological reports; or

(iii) as otherwise specified by rules adopted by the department of environmental quality pursuant to [76-4-104](#);

(f) evidence of sufficient water quality in accordance with rules adopted by the department of environmental quality pursuant to [76-4-104](#);

(g) a preliminary analysis of potential impacts to ground water quality from new wastewater treatment systems, using as guidance rules adopted by the board of environmental review pursuant to [75-5-301](#) and [75-5-303](#) related to standard mixing zones for ground water, source specific mixing zones, and nonsignificant changes in water quality. The preliminary analysis may be based on currently available information and must consider the effects of overlapping mixing zones from proposed and existing wastewater treatment systems within and directly adjacent to the subdivision. Instead of performing the preliminary analysis required under this subsection (1)(g), the subdivider may perform a complete nondegradation analysis in the same manner as is required for an application that is reviewed under Title 76, chapter 4.

(2) A subdivider whose land division is excluded from review under [76-4-125](#)(2) is not required to submit the information required in this section.

(3) A governing body may not, through adoption of regulations, require water and sanitation information in addition to the information required under this section unless the governing body complies with the procedures provided in [76-3-511](#).

**History:** En. Sec. 4, Ch. 302, L. 2005; amd. Sec. 1, Ch. 165, L. 2013.

**76-3-623 through 76-3-624 reserved.**

**76-3-625. Violations -- actions against governing body.** (1) A person who has filed with the governing body an application for a subdivision under this chapter may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to this chapter that is arbitrary or capricious.

(2) A party identified in subsection (3) who is aggrieved by a decision of the governing body

to approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision or a final subdivision plat may, within 30 days from the date of the written decision, appeal to 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.

(3) The following parties may appeal under the provisions of subsection (2):

(a) the subdivider;

(b) a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;

(c) the county commissioners of the county where the subdivision is proposed; and

(d) (i) a first-class municipality, as described in [7-1-4111](#), if a subdivision is proposed within 3 miles of its limits;

(ii) a second-class municipality, as described in [7-1-4111](#), if a subdivision is proposed within 2 miles of its limits; and

(iii) a third-class municipality or a town, as described in [7-1-4111](#), if a subdivision is proposed within 1 mile of its limits.

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

**History:** En. Sec. 10, Ch. 468, L. 1995; amd. Sec. 14, Ch. 298, L. 2005; amd. Sec. 22, Ch. 446, L. 2009.