

FLATHEAD COUNTY DEVELOPMENT CODE

**SUBDIVISION
REGULATIONS**

FLATHEAD COUNTY, MONTANA

ADOPTED RESOLUTION NO. 2077
JULY 12, 2007
ON FILE
PERMANENT FILE NO. 200700021530
RECORDS OF FLATHEAD COUNTY, MONTANA

EFFECTIVE DATE:
AUGUST 1, 2007

Used until January 14, 2009

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RESOLUTION NO. 2077

WHEREAS, the Board of Commissioners has the authority under Section 76-3-501, MCA, to adopt subdivision regulations in conformance with the requirements of the Montana Subdivision and Platting Act;

WHEREAS, the Board of Commissioners of Flathead County, Montana, has previously adopted and enforced subdivision regulations pursuant to that Section;

WHEREAS, the Flathead County Planning and Zoning Office, over a period of several months, conducted weekly meetings with local area surveyors, professional engineers, planning board members and anyone else who wanted to attend for the purpose of drafting Subdivision Regulations (Chapter 4), General Provisions (Chapter 1) and Definitions (Chapter 2) of the Flathead County Development Code;

WHEREAS, proposed Subdivision Regulations (Chapter 4), General Provisions (Chapter 1) and Definitions (Chapter 2) of the Flathead County Development Code were made available for public inspection at the Office of the Clerk and Recorder, at the Flathead County Planning and Zoning Office, and on-line at the Flathead County Planning and Zoning Office's page on the Flathead County website;

WHEREAS, in accordance with Section 76-3-503, MCA, the Board of Commissioners of Flathead County, following publication of legal notice on March 4 and March 11, 2007, held a public hearing on March 28, 2007 to consider the proposed Subdivision Regulations (Chapter 4), General Provisions (Chapter 1) and Definitions (Chapter 2) of the Flathead County Development Code;

WHEREAS, the Board of Commissioners of Flathead County, following publication of legal notice on April 28 and May 5, 2007, held a public hearing on May 15, 2007 to consider the proposed Subdivision Regulations (Chapter 4), General Provisions (Chapter 1) and Definitions (Chapter 2) of the Flathead County Development Code;

WHEREAS, the Board of Commissioners of Flathead County held workshops on April 11, May 29, June 6, and June 28, 2007 to consider comments submitted and to make changes to the proposed Subdivision Regulations (Chapter 4), General Provisions (Chapter 1), and Definitions (Chapter 2) of the Flathead County Development Code;

WHEREAS, the Board of Commissioners of Flathead County has considered the proposed Subdivision Regulations (Chapter 4), General Provisions (Chapter 1) and Definitions (Chapter 2) of the Flathead County Development Code, the public testimony given at the hearings and submitted written comments.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of Flathead County, Montana, that the proposed revision of the Flathead County Subdivision Regulations is hereby adopted and that the Subdivision Regulations (Chapter 4), General Provisions (Chapter 1) and Definitions (Chapter 2) of the Flathead County Development Code attached hereto shall take effect on August 1, 2007 and shall replace the Flathead County Subdivision Regulations previously adopted by Flathead County.

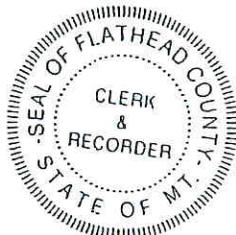
DATED this 12th day of July, 2007.

BOARD OF COUNTY COMMISSIONERS
Flathead County, Montana

By Joseph D. Breneman
Joseph D. Breneman, Chairman

By Gary D. Hall
Gary D. Hall, Member

By Dale W. Lauman
Dale W. Lauman, Member



ATTEST:
Paula Robinson, Clerk

By Diana Kile
Diana Kile, Deputy

CHAPTER 4 – SUBDIVISION REGULATIONS TABLE OF CONTENTS

		Page
4.0	GENERAL PROVISIONS	
4.0.1	Purpose.....	4-5
4.0.2	Jurisdiction and Coordination.....	4-5
4.0.3	Amendment of Regulations.....	4-5
4.0.4	Violation and Penalties.....	4-5
4.0.5	Local Regulations More Stringent than State Regulations.....	4-5
4.1	GENERAL PROCEDURES	
4.1.1	Construction Timing.....	4-7
4.1.2	Transfers of Title.....	4-7
4.1.3	Permission to Enter.....	4-7
4.1.4	Appeals.....	4-7
4.1.5	Restrictive Covenants.....	4-7
4.1.6	Subdivision Variances.....	4-8
4.1.7	Subdivision Variance Procedure.....	4-8
4.1.8	Subdivision Variance Statement of Facts.....	4-8
4.1.9	Variances from Floodway Provisions Not Authorized.....	4-8
4.1.10	Public hearings and Notices – In General.....	4-8
4.1.11	Application Deadline and Fees.....	4-9
4.2	FIRST MINOR SUBDIVISIONS	
4.2.1	First Minor Subdivision Pre-application Process.....	4-10
4.2.2	First Minor Subdivision Application and Preliminary Plat Submittal.....	4-10
4.2.3	First Minor Subdivision Exceptions.....	4-10
4.2.4	First Minor Subdivision Element and Sufficiency Reviews.....	4-10
4.2.5	First Minor Subdivision Applicable Regulations.....	4-11
4.2.6	First Minor Subdivision Time-Period for Approval, Conditional Approval or Denial.....	4-11
4.2.7	First Minor Subdivision Public Agency and Utility Review.....	4-11
4.2.8	First Minor Subdivision Water and Sanitation – Special Rules.....	4-12
4.2.9	First Minor Subdivision Consideration and Evidence.....	4-12
4.2.10	First Minor Subdivision Commission Decision.....	4-13
4.2.11	First Minor Subdivision - Subdivider’s Preference for Mitigation.....	4-13
4.2.12	First Minor Subdivision Documentation of Commission Decision.....	4-13
4.2.13	First Minor Subdivision Preliminary Plat Terms of Approval.....	4-14
4.2.14	First Minor Subdivision Amended Application and Preliminary Plat.....	4-14
4.2.15	First Minor Subdivision Final Plat Submittal and Review.....	4-15
4.2.16	First Minor Subdivision Final Plat Approval.....	4-16
4.2.17	First Minor Subdivision Final Plat Filing.....	4-16
4.2.18	Amending Filed First Minor Subdivision Plats.....	4-17
4.2.19	First Minor Subdivision; Subdivision Improvements Agreement.....	4-17
4.2.20	First Minor Subdivision Late-Comers Agreement.....	4-17

4.3	SUBSEQUENT MINOR SUBDIVISIONS	
4.3.1	Subsequent Minor Subdivision Review and Approval Procedures.....	4-18
4.4	MAJOR SUBDIVISIONS	
4.4.1	Major Subdivision Pre-application Process.....	4-19
4.4.2	Major Subdivision Application and Preliminary Plat Submittal.....	4-19
4.4.3	Waiver of Major Subdivision Environmental Assessment.....	4-19
4.4.4	Major Subdivision Element and Sufficiency Review.....	4-19
4.4.5	Major Subdivision Applicable Regulations.....	4-20
4.4.6	Time Period for Major Subdivision Approval, Conditional Approval or Denial.....	4-20
4.4.7	Major Subdivision Public Agency and Utility Review.....	4-21
4.4.8	Major Subdivision Water and Sanitation – Special Rules.....	4-21
4.4.9	Major Subdivision Amended Application and Preliminary Plat.....	4-21
4.4.10	Phased Major Subdivision Plat Submittals.....	4-22
4.4.11	Major Subdivision Public Hearing, Consideration and Recommendation.....	4-23
4.4.12	Mid-Process Resubmitted Applications.....	4-24
4.4.13	Major Subdivision Preliminary Plat Amendment following Public Hearing.....	4-25
4.4.14	Major Subdivision Determination of New Information.....	4-26
4.4.15	Subsequent Public Hearing.....	4-26
4.4.16	Major Subdivision Preliminary Plat Consideration and Evidence.....	4-27
4.4.17	Major Subdivision - Subdivider's Preference for Mitigation.....	4-28
4.4.18	Major Subdivision Commission Decision.....	4-28
4.4.19	Major Subdivision Preliminary Plat Commission Documentation of Decision.....	4-28
4.4.20	Major Subdivision Preliminary Plat Terms of Approval.....	4-28
4.4.21	Major Subdivision Final Plat Submittal.....	4-29
4.4.22	Major Subdivision Final Plat Application Contents.....	4-29
4.4.23	Major Subdivision Final Plat Review.....	4-29
4.4.24	Major Subdivision Final Plat Approval.....	4-30
4.4.25	Major Subdivision Final Plat Filing.....	4-30
4.4.26	Amending Filed Major Subdivision Plats.....	4-30
4.4.27	Major Subdivision Public Improvements; Guaranty.....	4-31
4.4.28	Major Subdivision Late-comers Agreement.....	4-31
4.5.	SUBDIVISIONS CREATED BY LEASE OR RENT	
4.5.1	General.....	4-32
4.5.2	Exemption from Survey and Filing Requirement.....	4-32
4.5.3	State Health Approval.....	4-32
4.5.4	Procedures.....	4-32
4.5.5	General Standards for Subdivisions Created by Lease or Rent.....	4-33
4.5.6	Manufactured Home Park Standards.....	4-34
4.5.7	Recreational Vehicle Park and Campground Standards.....	4-34

4.6.	CONDOMINIUMS	
4.6.1	General Guidance for Condominiums	4-37
4.6.2	Condominium Development Standards	4-38
4.6.3	Condominium Exemption from Subdivision Regulations	4-38
4.6.4	Unit Ownership Act	4-38
4.7	SUBDIVISION DESIGN STANDARDS	
4.7.1	Subdivision Design Standard Compliance	4-39
4.7.2	Conformance with Existing Regulations	4-39
4.7.3	Natural Environment	4-39
4.7.4	Lands Unsuitable for Subdivision	4-39
4.7.5	Planning Considerations	4-40
4.7.6	Landscape Requirements	4-40
4.7.7	Lots	4-42
4.7.8	Blocks	4-43
4.7.9	Payment for Extension of Public Improvements	4-43
4.7.10	Floodplain Provisions	4-43
4.7.11	Wetlands Provisions	4-43
4.7.12	Groundwater Provisions	4-44
4.7.13	Drainage Facilities	4-45
4.7.14	Dust Control and Air Pollution	4-45
4.7.15	Roadway Classification	4-46
4.7.16	Access	4-47
4.7.17	Road Design and Construction Standards	4-48
4.7.18	Roadway Improvements	4-50
4.7.19	Alleys	4-50
4.7.20	Walkways and Pedestrian/Bicycle Paths and Easements	4-51
4.7.21	Water Supply Systems	4-51
4.7.22	Sewage Treatment	4-51
4.7.23	Solid Waste	4-51
4.7.24	Utilities	4-52
4.7.25	Parkland Dedication	4-55
4.7.26	Weed Control	4-55
4.7.27	Fire Protection	4-56
4.7.28	High or Extreme Fire Hazard Areas	4-56
4.7.29	Mail Box Facilities	4-57
4.7.30	School Bus Stops	
4.8	DIVISIONS OF LAND EXEMPT FROM SUBDIVISION REVIEW	
4.8.1	Purpose	4-58
4.8.2	Procedure and General Requirements	4-59
4.8.3	Criteria for Review of Exemption	4-59
4.8.4	Definitions	4-63
	APPENDICES	
App A	Subdivision Pre-application Process	4-A1
App B	Application and Preliminary Plat Supplements	4-A3

App C	Environmental Assessment.....	4-A9
App D	First Minor Subdivision Impact Criteria Report.....	4-A21
App E	Contents of Final Plat.....	4-A24
App F	Sample Forms and Certificates.....	4-A28
App G	Subdivision Improvement Agreement.....	4-A36
App H	Subdivision Roadway Late-comers Agreement.....	4-A45
App I	Standards for Flood Hazard Evaluation.....	4-A49

4.0 General Provisions

4.0.1 Purpose

The purpose of this Chapter is to provide standards and procedures for the acceptance, processing, public input, and final action on subdivision and other land division applications and to require uniform monumentation of land subdivisions and transferring interests in real property by reference to a plat or certificate of survey or other land survey monument.

4.0.2 Jurisdiction and Coordination

These Regulations govern the subdivision of land within the jurisdictional area of the Flathead County Board of County Commissioners (Commission). The Commission may enter into land use inter-local agreements with cities and other jurisdictional agencies to guide land use decision making.

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

4.0.3 Amendment of Subdivision Regulations

Before the Commission amends these Regulations it will hold a public hearing on the proposed amendment. Notice of the time and place of the public hearing must be published in a newspaper of general circulation in the county not less than 15 days or more than 30 days before the date of the hearing.

4.0.4 Violation and Penalties

Any person, firm, corporation, or other entity that violates any of the provisions of these Regulations is guilty of a misdemeanor violation. Each sale, lease, or transfer, or offer of sale, lease, or transfer of each separate parcel of land in violation of any provision of these Regulations shall be deemed a separate and distinct offense. The foregoing is not deemed a limitation on any other action for enforcement.

4.0.5 Local Regulations More Stringent Than State Regulations

These regulations may be more stringent than comparable state regulations and guidelines if the Commission makes a written finding, after a public hearing and public comment and based on evidence in the record that:

- a. These Regulations are needed to promote and protect the health, safety, welfare and environment of Flathead County and its citizens.
- b. These Regulations are needed to mitigate the potential harm to the public health and the environment and measures contained in these Regulations are achievable under current technology(s).

- c. The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the Commission's conclusion. The written finding must also include information from the hearing record regarding costs to the regulated community that are directly attributable to the proposed local standard or requirement.

4.1 General Procedures

4.1.1 Construction Timing

The subdivider is discouraged from engaging in construction of improvements prior to approval of the preliminary plat. On-site improvements shall not be considered in the decision to approve, conditionally approve or deny the preliminary plat.

- a. There shall be no site disturbance of any area within 100 feet of a stream or riparian area prior to preliminary plat approval.

4.1.2 Transfers of Title

Except as noted below, a final subdivision plat must be filed of record with the Flathead County Clerk and Recorder (Clerk and Recorder) before title to the subdivided land can be sold or transferred in any manner. After the preliminary plat of a subdivision has been approved or conditionally approved, the subdivider may enter into contracts to sell lots in the proposed subdivision. No title or ownership transfer of any lot shall occur until after filing and recording the final subdivision plat.

4.1.3 Permission to Enter

The Commission or its designated agent(s) or agency shall investigate, examine, and evaluate the site of the proposed subdivision to verify information provided by the subdivider. The submission of a subdivision application constitutes a grant of permission by the subdivider to enter the subject property. Staff will make every effort to contact the subdivider and schedule an appointment prior to entering the property.

4.1.4 Appeals

A decision of the Commission regarding a proposed subdivision may be appealed to the district court pursuant to 76-3-625, MCA. A party who is aggrieved by a decision of the Commission to approve, conditionally approve, or deny an application and preliminary plat may, within 30 days after notification of the decision, appeal to the district court. The petition must specify the grounds upon which the appeal is made.

4.1.5 Restrictive Covenants

No covenants shall be allowed to satisfy any preliminary subdivision plat conditions of approval.

4.1.6 Subdivision Variances

The subdivider may request a variance from design standards set forth in Section 4.7 (Subdivision Design Standards) of these Regulations when, due to the characteristics of land proposed for subdivision, strict compliance with these standards would result in undue hardship and would not be essential to the public welfare. A variance shall not be granted if it would have the effect of nullifying the intent and purpose of these Regulations. The Commission shall not approve a variance unless it finds that all of the following are met:

- a. The variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.
- b. Due to the physical surroundings, shape, or topographical conditions of the property involved, strict compliance with the regulations will impose an undue hardship on the

owner. Undue hardship does not include personal or financial hardship, or any hardship that is self imposed.

- c. The variance will not cause a substantial increase in public costs, now or in the future.
- d. The variance will not place the subdivision in nonconformance with any adopted growth policy, neighborhood plan or zoning regulations.
- e. The variance is consistent with the surrounding community character of the area.

4.1.7 Subdivision Variance Procedure

The subdivider shall include with the submission of the preliminary plat a written statement describing and justifying the requested variance. The Flathead County Planning Board (Planning Board) will consider the requested variance and recommend its approval or denial to the Commission. In granting variances, the Commission may impose reasonable conditions to secure the objectives of these Regulations.

4.1.8 Subdivision Variance Statement of Facts

When a variance is granted by the Commission, the motion of approval of the proposed subdivision must contain a statement describing the variance and the facts and conditions upon which the issuance of the variance is based.

4.1.9 Variances from Floodway and Floodplain Provisions Not Authorized

The Commission shall not approve any subdivision variance within a Floodway.

4.1.10 Public Hearings and Notices – In General

The Planning Board shall hold a public hearing on all land use applications when a hearing is required by these Regulations. The Commission may refer a proposed preliminary major subdivision back to the Planning Board for a subsequent public hearing if new information becomes available that was not considered in the previous public hearing. In both cases the following applies:

- a. Notice of the times and dates of the hearings shall be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearings.
- b. At least 15 days prior to the date of the hearing, notice of the hearing shall be given by certified mail to the each property owner of record whose property is within 150 feet from the subject site. Where the proposed subdivision abuts a public right-of-way, or rivers less than 150 feet in width, the properties across such right-of-way or water course shall be considered as adjacent.
- c. The Planning and Zoning Office shall post notices at conspicuous places on the site of the land division or use application.
- d. Public hearing notices shall be posted on the Planning and Zoning website at least 15 days prior to the date of the hearing.

- e. In order to allow sufficient time for reasonable comment, should new information or the comment at a public hearing extend so long that the Planning Board determines that its decision would be affected by the members' fatigue, or should natural events occur which preclude the completion of the public hearing or Planning Board deliberations, the Planning Board, by majority vote of those present, may continue the hearing to a stated date within 14 days or the next available meeting, whichever comes first. This continued hearing is not a subsequent hearing, nor does it extend the time limits stated in these regulations without subdivider approval.

4.1.11 Application Deadlines and Fees

All application fees for preliminary and final applications and plats will be due at the time of the subdivision application. The fee schedule and application deadlines will be reviewed annually and set by the Commission.

- a. No application fees will be refunded once an application is accepted by the Planning and Zoning Office and sufficiency review has been completed.
- b. If an application is terminated prior to sufficiency review the Planning and Zoning Office will refund one-half of the application fee.
- c. Application submittal deadlines will be scheduled by the Planning and Zoning Office and posted annually. All application submittals will be logged into the Planning and Zoning Office as of the date of next scheduled deadline for review and processing.

4.2 First Minor Subdivisions

4.2.1 First Minor Subdivision Pre-application Process

Prior to submittal of the first minor subdivision application, the subdivider shall request, in writing, a pre-application meeting with the Planning and Zoning Office. The Planning and Zoning Office and subdivider shall follow the pre-application process identified in Appendix A (Subdivision Pre-application Process). Condominium developments containing five or fewer units shall be reviewed and processed pursuant to Section 4.6.

4.2.2 First Minor Subdivision Application and Preliminary Plat Submittal

The subdivider shall submit to the Planning and Zoning Office a first minor subdivision application containing all of the following materials:

- a. A completed original copy of the First Minor Subdivision Preliminary Plat Application Form and information required in Appendix B (Application and Preliminary Plat Supplements) and the required fee.
- b. Such additional relevant and reasonable information as may be required to adequately assess whether the proposed first minor subdivision complies with these Regulations and the Montana Subdivision and Platting Act.

4.2.3 First Minor Subdivision Exceptions:

The following do not apply to first minor subdivisions:

- a. Preparation of an environmental assessment.
- b. Public hearing requirements.
- c. Parkland dedication.

4.2.4 First Minor Subdivision Element and Sufficiency Reviews

The Planning and Zoning Office shall complete the element and sufficiency review for a first minor subdivision following the procedures below:

- a. Element Review: Within five working days of receipt of a first minor subdivision application, the Planning and Zoning Office shall determine whether the application contains all of the materials required by Section 4.2.2 and shall notify the subdivider in writing of the determination within five working days.
 - i. The application contains all the information needed to conduct a sufficiency review.
 - ii. If elements are missing from the application, the Planning and Zoning Office shall identify those elements in the notification and no further action shall be taken on the application until the missing elements are submitted.

- iii. If the deficiencies and missing elements are not corrected and submitted to the Planning and Zoning Office within 60 days following the deficiency letter date, the Planning and Zoning Office will terminate the application and file.
- b. Sufficiency Review: The Planning and Zoning Office shall determine whether the application and required elements contain detailed, supporting information for review within 15 working days of the date of element completeness notification and shall notify the subdivider of its determination as follows:
 - i. The application information is sufficient to continue review and processing.
 - ii. The information is not sufficient to allow for review. The Planning and Zoning Office shall identify the insufficient information in its notification and no further action shall be taken on the application until all material is resubmitted and determined to be sufficient.
- c. The subdivider shall correct the deficiencies within six months from the date of the original application submittal date. If the subdivider corrects the deficiencies the Planning and Zoning Office shall have five days to notify the subdivider whether the application contains all materials required by Section 4.2.2.
- d. If the deficiencies are not corrected within six months following the original application date the Planning and Zoning Office shall terminate the application and file.
- e. A determination that an application contains sufficient information for review does not ensure that the proposed first minor subdivision will be approved or conditionally approved by the Commission and does not limit the ability of the Planning and Zoning Office or the Commission to request additional information during the review process.

4.2.5 First Minor Subdivision Applicable Regulations

First minor subdivision review shall occur under those Regulations in effect at the time a preliminary plat is deemed to contain sufficient information for review. If Regulations change during the element and/or sufficiency review by the Planning and Zoning Office, the element and sufficiency reviews shall be based on the changed regulations.

4.2.6 Time Period for First Minor Subdivision Approval, Conditional Approval, or Denial

Within 35 working days following the determination of sufficiency, the Commission shall approve, conditionally approve or deny the proposed first minor subdivision. The review period of 35 working days begins once the Planning and Zoning Office has given notice to the subdivider that the first minor subdivision application is sufficient for review. Notification constitutes the date when the Planning and Zoning Office has sent the notice to the subdivider.

4.2.7 First Minor Subdivision Public Agency and Utility Review

Review and comment by public agencies or utilities shall not delay the Commission's action on the first minor subdivision application beyond the 35 working day review period. The Commission shall make these comments available to the subdivider and to the general public upon request.

4.2.8 First Minor Subdivision Water and Sanitation-Special Rules

The Commission shall approve, conditionally approve or deny a proposed first minor subdivision application based on the water and sanitation information or public comment only if the action is based on existing subdivision, zoning or other regulations that the Commission has the authority to enforce.

- a. For a proposed first minor subdivision that will create one or more lots containing less than 20 acres, the Commission shall require approval by the Montana Department of Environmental Quality as a condition of approval of the final plat.
- b. The Commission shall collect public comments submitted regarding water and sanitation information and shall make any comments submitted or a summary of the comments submitted available to the subdivider within 30 days after conditional approval or approval of the first minor subdivision application and preliminary plat. It is recommended that public comment related to sewer and water be submitted in writing at least five days prior to the Commission meeting.
- c. The subdivider shall, as part of the application for sanitation approval, forward the comments or the summary provided by the Commission to the:
 - i. Reviewing authority provided in Title 76, Chapter 4, MCA, for subdivisions that will create one or more lots containing less than 20 acres.
 - ii. Flathead County-City Health Department for proposed subdivisions that will create one or more lots containing 20 acres or more and less than 160 acres.

4.2.9 First Minor Subdivision Consideration and Evidence

The Commission shall not approve a first minor subdivision application unless the proposed first minor subdivision complies with all of the following:

- a. Assures easements required by the Commission are shown on the final plat.
- b. Conforms to all applicable design standards set forth in Section 4.7 (Subdivision Design Standards) and other provisions of these Regulations, unless the subdivider secures a variance pursuant to Section 4.1.6.
- c. Assures legal and physical access to each lot within the subdivision and the notation of that access on the applicable plat and any instrument transferring the lot.
- d. Assures that all required public improvements will be installed before final plat approval, unless a subdivision improvement agreement is approved by the Commission.
- e. Regarding the disclosure and disposition of surface water rights, if the proposed first minor subdivision will create lots averaging fewer than five acres in size, the subdivider shall:

- i.. Reserve all or a portion of the appropriated 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.
 - ii. 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, 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; or
 - iii. Reserve and sever all surface water rights from the land.
- f. Complies with zoning and other applicable regulations authorized by law.

4.2.10 First Minor Subdivision Commission Decision

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

- a. The first minor subdivision application, supporting information and preliminary plat. A decision to deny can not be made solely on impacts to educational services.
- b. Statement of probable impacts as contained in Appendix D (First Minor Subdivision Impact Criteria) and other provisions of these Regulations.
- c. An officially adopted growth policy, regional or neighborhood plan.
- d. Agency and public comments and staff report.

4.2.11 First Minor Subdivision – Subdivider's Preference for Mitigation

No later than five working days before the meeting at which the Commission is to consider the first minor subdivision application and preliminary plat, the subdivider shall submit in writing to the Planning and Zoning Office comments on and responses to the staff findings and recommendations. This document may include the subdivider's alternative proposals, if any, for mitigating the impacts identified in the recommendations. The Commission shall consult with the subdivider and shall give due weight and consideration to the subdivider's expressed preferences. The Planning and Zoning Office shall forward the subdivider's mitigation recommendations to the Commission within two working days when received.

4.2.12 First Minor Subdivision Documentation of Commission Decision

In reviewing the first minor subdivision application, the Commission shall issue written Findings of Fact that discuss and weigh the proposed first minor subdivision's impacts. The Commission shall send the subdivider a letter, with the appropriate signature, and make the letter available to the public. The letter shall:

- a. Contain information regarding the appeal process for the denial or imposition of conditions.

- b. Identify the regulations and statutes that are used in reaching the decision to approve or deny, or impose conditions and explain how they apply to the decision.
- c. Provide the facts and conclusions that the Commission relied on in making its decision and reference documents, testimony or other materials that form the basis of the decision.
- d. Provide the conditions that apply to the preliminary plat approval that must be satisfied before the final plat may be approved.

4.2.13 First Minor Subdivision Preliminary Plat Terms of Approval

The term of the approval or conditional approval of the first minor subdivision application and preliminary plat is to be a period of three calendar years beginning on the date of approval or conditional approval.

- a. At the end of this period the Commission may, at the request of the subdivider, extend preliminary plat approval for a period not to exceed one year. The subdivider must give written notice at least 30 days prior to the end of the three year period.
- b. After the application and preliminary plat are approved, the Commission may not impose any additional conditions as a prerequisite to final plat approval.
- c. The Commission may withdraw approval of an application and preliminary plat if it determines that information provided by the subdivider, which was material to the approval or conditional approval, is inaccurate.
- d. If the final plat is not filed within the three-year time period, unless granted a one year extension, the preliminary plat expires and file terminates and is subject to a new application. The determination made under the expired approved preliminary plat shall not be binding on a subsequent application.

4.2.14 First Minor Subdivision Amended Application and Preliminary Plat

If the subdivider changes the first minor subdivision application or preliminary plat before the Commission makes its decision regarding the preliminary plat, the subdivider shall submit the amended application or amended preliminary plat to the Planning and Zoning Office for review.

- a. Within five working days of receiving the amended application or preliminary plat, the planning director shall determine whether the changes to the subdivision application or preliminary plat are material and would create additional impacts which the application does not address.
- b. The 35 working day review period is suspended while the planning director and Commission consider the amended application or preliminary plat.
 - i. If the planning director determines the changes are not material, the 35 working day review period resumes when the Planning and Zoning Office sends notice of the decision to the subdivider.

- ii. If the planning director determines the changes are material, the subdivider is required to schedule a new pre-application meeting and submit a new application and fees. The original application fee shall not be refunded or transferred to the new application.
- c. The following changes, although not an exhaustive list, may be considered material:
 - i. Configuration or number of lots.
 - ii. Road layout.
 - iii. Water and/or septic proposals.
 - iv. Configuration of park land, open spaces or natural areas.
 - v. Easement provisions.
 - vi. Designated access.
- d. Any subdivider whose subdivision application has been deemed by the planning director to be materially changed may appeal the decision to the Commission. If appealed, the subdivider shall request a hearing, and may submit additional evidence to show that the changes to the preliminary plat are not material
 - i. If the Commission concludes that the evidence and information demonstrate the changes to the subdivision application are material, the subdivider shall be required to submit a new subdivision application and preliminary plat pursuant to Section 4.2.14(b)(2).
 - ii. If the Commission concludes that the evidence and information demonstrate the changes to the subdivision application are not material, the 35 working day review period resumes as of the date of the decision.

4.2.15 First Minor Subdivision Final Plat Submittal and Review

The first minor subdivision final plat and all supplementary documents must be submitted to the Planning and Zoning Office no less than 30 working days prior to the expiration of the preliminary plat approval, or an approved extension of time pursuant to Section 4.2.13.

- a. The first minor subdivision final plat must conform to the preliminary plat as previously reviewed and approved by the Commission and incorporate all required modifications imposed at the time of preliminary plat approval.
- b. The first minor subdivision final plat including all supplementary documents shall be submitted with the following:
 - i. A complete final plat application and fee.

- ii. The final plat format and attachments as identified in Appendix E (Content of Final Plat) and Appendix F (Sample Forms and Certificates).
 - iii. A written explanation of how each of the conditions of the preliminary plat approval has been satisfied.
- c. The Planning and Zoning Office shall not accept, begin processing, or schedule any actions on a final plat submittal until a complete application and fee have been received. Final plat applications shall not be considered complete until all conditions of preliminary approval have been satisfied.
- d. The first minor subdivision final plat shall be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the Clerk and Recorder.

4.2.16 First Minor Subdivision Final Plat Approval

The Commission shall examine every first minor subdivision final plat and, within 45 working days of its submission to the Planning and Zoning Office, shall approve it if it conforms to all conditions of preliminary plat approval and these Regulations.

- a. If the final plat is approved, or conditionally approved, the Commission shall certify its approval on the face of the final plat. When applicable, a certificate of the Commission expressly accepting any dedicated land, easements, or improvements shall be filed with the final plat.
- b. If the final plat is denied, the Commission shall write a letter stating the reason for denial and forward a copy to the subdivider. The Commission shall return the final plat to the subdivider within 10 working days of the denial.
- c. If the final plat differs substantially from the approved preliminary plat, the Commission shall return the final plat to the Planning and Zoning Office for additional review or deny the plat based on inconsistency with the preliminary plat.

4.2.17 First Minor Subdivision Final Plat Filing

The final first minor subdivision plat shall not be altered in any manner except as provided in Section 4.2.18.

- a. The Clerk and Recorder shall not accept and file an approved final plat if it is not accompanied by the Commission's certification and the documents specified in the Montana Uniform Standards for Monumentation, Certificates of Survey, and Final Subdivision Plats.
- b. The first minor subdivision final plat must be filed with the Clerk and Recorder within 30 working days of Commission approval and not altered in any way.

4.2.18 Amending Filed First Minor Subdivision Plats

Changes that materially alter any portion of an approved filed first minor subdivision plat, its land divisions or improvements, or that will modify the approved use of land within the subdivision, must be made by filing an amended plat showing all alterations. Any alteration, unless exempt pursuant to 76-3-207, MCA, must be approved by the Commission and be for the purposes of public health, welfare and safety.

- a. An amended plat is subject to Section 4.2 for reviewing first minor subdivisions. The Commission shall not approve an amended final plat without the written consent of the owners and/or lenders of all lots which will be modified by the proposed amendment.
- b. The Commission shall not approve an amended plat that will place a lot in non-conformance with these Regulations unless the Commission holds a public hearing on the amendment and issues a written variance from the standards pursuant to Section 4.1.6 (Subdivision Variances).
- c. The amended final first minor subdivision plat submitted for approval must comply with the requirements for final subdivision plats, Contents of Final Plat (Appendix E).

4.2.19 First Minor Subdivision, Subdivision Improvements Agreement; Guaranty

The subdivider must have installed all required improvements or have entered into a subdivision improvements agreement guaranteeing the construction and installation of all required improvements pursuant to 76-3-507 MCA. A model subdivision improvement agreement and procedures is provided in Appendix G (Subdivision Improvement Agreement).

4.2.20 First Minor Subdivision Late-comers Agreement

For improvements that a subdivider constructs beyond those directly attributable to the first minor subdivision, the subdivider may request a Late-comers Agreement (Appendix H). The agreement would put into place a mechanism to reimburse a portion of the capital construction costs the subdivider incurs which are not directly attributable to impacts caused from the subdivision. Payback funds would be exacted from future subdividers who directly benefit from the fronted capital improvements.

4.3 Subsequent Minor Subdivisions

4.3.1 Subsequent Minor Subdivision Review and Approval Procedures

A proposed subsequent minor subdivision application and plat shall be reviewed as a major subdivision. All the procedures and requirements pursuant to Section 4.4 (Major Subdivisions), of these Regulations shall be followed for subsequent minor subdivisions, with the following exceptions:

- a. A subsequent minor subdivision shall be subject to a public hearing requirement as identified in Section 4.1.10. Notice of the proposed subdivision shall be given by certified mail to each property owner whose property is within 150 feet of the proposed subsequent minor subdivision, and posted on site at least 15 days prior to when it is to be considered by the Commission in a regularly scheduled meeting.

4.4 Major Subdivisions**4.4.1 Major Subdivision Pre-application Process:**

Prior to submittal of the major subdivision application, the subdivider shall request in writing a pre-application meeting with the Planning and Zoning Office. The subdivider and the Planning and Zoning Office shall follow the pre-application process identified in Appendix A (Subdivision Pre-application Process). Condominium developments containing six or more units shall be reviewed and processed pursuant to Section 4.6.

4.4.2 Major Subdivision Application and Preliminary Plat Submittal:

The subdivider shall submit to the Planning and Zoning Office a major subdivision application containing the following materials:

- a. A completed original copy of the Planning and Zoning Office Major Subdivision Preliminary Plat Application Form and information required in Appendix B (Application and Preliminary Plat Supplements) and the required fee.
- b. Such additional relevant and reasonable information required to adequately assess if the proposed major subdivision complies with these Regulations and the Montana Subdivision and Platting Act.

4.4.3 Waiver of Major Subdivision Environmental Assessment

The requirement for preparing Section 2, Impact Criteria Report, of the environmental assessment (Appendix C) may be waived when all the following conditions are met:

- a. The proposed major subdivision is totally within an area covered by a growth policy neighborhood plan which addresses the impact criteria and is adopted pursuant to Section 76-1-601(4), MCA.
- b. The neighborhood plan area is zoned according to the neighborhood plan.
- c. The Commission has adopted a strategy for development, maintenance and replacement of public infrastructure pursuant to the growth policy.
- d. The proposed major subdivision contains fewer than 10 lots and less than 20 acres.

4.4.4 Major Subdivision Element and Sufficiency Review

The Planning and Zoning Office shall complete the element and sufficiency review for a major subdivision as follows:

- a. Element Review: Within five working days of receipt of a major subdivision application, the Planning and Zoning Office shall determine if the application contains all materials required by Section 4.4.2 and notify the subdivider in writing of the determination within five working days.
 - i. The application contains all information needed to conduct a sufficiency review.

- ii. If elements are missing from the application, the Planning and Zoning Office shall identify those elements in the notification and no further action shall be taken on the application until the missing elements are submitted.
 - iii. If the deficiencies and missing elements are not corrected and submitted to the Planning and Zoning Office within 60 days following the deficiency letter date, the Planning and Zoning Office shall terminate the application and file.
- b. Sufficiency Review: The Planning and Zoning Office shall determine whether the application and required elements contain detailed, supporting information acceptable for review within 15 working days of the element completeness notification, and shall notify the subdivider of its determination:
 - i. The application information is sufficient to continue review and processing.
 - ii. The information is not sufficient to allow for review of the proposed major subdivision. The Planning and Zoning Office shall identify the insufficient information in its notification, and no further action shall be taken on the application until all material is resubmitted and determined to be sufficient.
- c. The subdivider shall correct the deficiencies within six months from the date of the original application submittal date. If the subdivider corrects the deficiencies the Planning and Zoning Office shall have five working days to notify the subdivider whether the application contains all the materials required by Section 4.4.2.
- d. If the deficiencies are not corrected within six months following the deficiency letter date the Planning and Zoning Office shall terminate the application and file.
- e. A determination that an application contains sufficient information for review does not ensure that the proposed major subdivision will be approved or conditionally approved by the Commission and does not limit the ability of the Planning and Zoning Office, Planning Board or the Commission to request additional information during the review process.

4.4.5 Major Subdivision Applicable Regulations

Major Subdivision review shall occur under those Regulations in effect at the time a preliminary plat is deemed to contain sufficient information for review. If Regulations change during the element and/or sufficiency review by the Planning and Zoning Office, the element and sufficiency reviews shall be based on the new Regulations.

4.4.6 Time Period for Major Subdivision Approval, Conditional Approval, or Denial

Within 60 working days the Commission shall approve, conditionally approve or deny the proposed major subdivision. The review period of 60 working days begins once the Planning and Zoning Office has given notice to the subdivider that the major subdivision application is sufficient for review. Notification constitutes the date when the Planning and Zoning Office has sent the notice to the subdivider.

4.4.7 Major Subdivision Public Agency and Utility Review

Review and comment by public agencies or utilities may not delay Commission action on the major subdivision application beyond the 60 working day review period. The Commission shall make these comments available to the subdivider and to the general public upon request.

4.4.8 Major Subdivision Water and Sanitation-Special Rules

The Commission may approve, conditionally approve or deny a proposed major subdivision application based on the water and sanitation information or public comment only if the approval, conditional approval or denial is based on existing subdivision, zoning or other regulations that the Commission has the authority to enforce.

- a. For a proposed major subdivision that will create lots containing less than 20 acres, the Commission shall require approval by the Montana Department of Environmental Quality as a condition of approval of the final plat.
- b. The Commission shall collect public comments submitted regarding water and sanitation information and shall make available any comments submitted, or a summary of the comments submitted, to the subdivider within 30 days after conditional approval or approval of the major subdivision application and preliminary plat. It is recommended that public comment related to sewer and water be submitted in writing at least five working days prior to the Commission meeting.
- c. The subdivider shall, as part of the application for sanitation approval, forward the comments or the summary provided by the Commission to:
 - i. Reviewing authority provided in Title 76, Chapter 4, MCA, for subdivisions that will create one or more lots containing less than 20 acres, and.
 - ii. Flathead City County Health Department for proposed subdivisions that will create one or more lots containing 20 acres or more and less than 160 acres.

4.4.9 Major Subdivision Amended Application and Preliminary Plat

If the subdivider changes the major subdivision application or preliminary plat after the Planning and Zoning Office makes a determination of sufficiency pursuant to Section 4.4.4, but before the Planning Board public hearing, the subdivider shall submit the amended application to the Planning and Zoning Office for review.

- a. Within five working days of receiving the amended application or preliminary plat, the planning director shall determine whether the changes to the subdivision application or preliminary plat are material. The 60 working day review period is suspended while the planning director and Commission consider if the changes to the major subdivision application or preliminary plat are material and would create additional impacts which the application does not address.
 - i. If the planning director determines the changes are not material, the 60 working day review period resumes when the Planning and Zoning Office sends notice of the decision to the subdivider.

- ii. If the planning director determines the changes are material, the subdivider is required to schedule a new pre-application meeting and submit a new application and fees. The original application fees shall not be refunded or transferred to the new application.
- b. The following changes, although not exhaustive, may be considered material:
 - i. Configuration or number of lots.
 - ii. Road layout.
 - iii. Water and/or septic proposals.
 - iv. Configuration of park land, open spaces or natural areas.
 - v. Easement provisions.
 - vi. Designated access.
- c. Any subdivider whose major subdivision application or preliminary plat has been deemed materially changed by the planning director may appeal the decision to the Commission. If appealed, the subdivider shall request a hearing, and may submit additional evidence to show that the changes to the preliminary plat are not material. The Commission may or may not agree to hear the appeal.
 - i. If the Commission concludes the evidence and information demonstrate changes to the major subdivision application or preliminary plat are material, the subdivider shall be required to resubmit the subdivision application and preliminary plat pursuant to Section 4.4.9(a)(ii).
 - ii. If the Commission concludes that the evidence and information demonstrate the changes to the subdivision application or preliminary plat are not material, the 60 working day review period resumes as of the date of the decision.

4.4.10 Phased Major Subdivision Plat Submittals

The subdivider, as part of the preliminary plat application, may propose to phase a proposed major subdivision over time. Phasing must be identified at preliminary plat application submittal. Phasing must be approved at the time of preliminary plat approval.

- a. Each phase must be filed sequentially, according to the phasing plan, and be fully capable of functioning with all the required improvements in place in the event the future phases are not completed or completed at a much later time.
- b. A phasing plan must be submitted and must include the following:
 - i. A plat delineating each phase and a general time frame for each phase.

- ii. A public facilities improvement plan showing which improvements will be completed with each phase.
- c. The Commission may require that parkland requirements, pursuant to Section 4.7.26, for the entire subdivision be met prior to approval of the first phase final subdivision plat. Parkland dedication for each phase shall not be deferred until a later phase.
- d. The preliminary plat of a phased subdivision shall have the following time limits:
 - i. If a major subdivision is part of an approved planned unit development which contains a specific phasing plan complete with time lines, such phasing plan shall be binding.
 - ii. For all other major subdivisions, on final plat approval of the first phase, final plats for each successive phase must be filed within two years of the previous final plat approval. Failure to meet this time frame will cause the remainder of the preliminary plat to become void, and no additional final phased plats shall be accepted. A one year extension for a phased final plat may be requested by the subdivider.
- e. Modifications to an approved phasing plan which do not materially change the impacts on adjoining property may be approved or denied by the planning director. Changes which materially change impacts to adjacent property owners shall be approved or denied by the Commission.

4.4.11 Major Subdivision Public Hearing, Consideration and Recommendation

After the major subdivision application is deemed to have all the required elements containing detailed, supporting information that is sufficient to allow for review and public comment, the Planning Board shall schedule and hold a public hearing on the subdivision application pursuant to Section 4.1.10.

- a. The Planning Board shall base its recommendation to approve, conditionally approve, or deny the major subdivision application and preliminary plat based on the following if applicable:
 - i. These Regulations, including but not limited to, the design standards set forth in Section 4.7 (Subdivision Design Standards).
 - ii. Applicable zoning regulations.
 - iii. Other applicable regulations.
 - iv. The subdivision application and preliminary plat.
 - v. The environmental assessment.

- vi. An officially adopted growth policy or neighborhood plan.
 - vii. Agency and public hearing comment and information.
 - viii. Planning staff report.
 - ix. Any additional information authorized by law.
- b. The Planning Board shall not approve a preliminary major subdivision plat that will place a lot in non-conformance with design standards contained in Section 4.7 (Subdivision Design Standards) and other provisions of these Regulations unless the subdivider secures a subdivision variance pursuant to Section 4.1.6.
- c. Within 10 working days after the public hearing, the Planning Board shall submit the following in writing to the subdivider and to the Commission:
- i. All public comments.
 - ii. Findings of Fact that discuss and weigh the subdivision's compliance with these regulations and its impact to the physical, biological and human environment.
 - iii. A recommendation for approval, conditional approval (including any recommended conditions and/or mitigation measures), or denial of the subdivision application and preliminary plat.
- d. The Planning Board or Planning and Zoning Office shall collect public comment given regarding the water and sanitation information and forward all comments regarding water and sanitation to the Commission and to the agencies responsible for reviewing the application for water and sanitation. It is recommended that public comment related to sewer and water be submitted in writing at least five working days prior to the public hearing.

4.4.12 Mid-Process Resubmitted Applications

The subdivider may, following the Planning Board's public hearing, request revisions to the application and preliminary plat. Mid-process resubmitted applications will be based on feedback and recommendations from the Planning Board, the public and other agencies, and Planning and Zoning Office.

- a. Within five working days following the Planning Board public hearing the subdivider shall notify the Planning and Zoning Office in writing with a request to submit a revised application and preliminary plat. The letter must include a waiver to the 60 day subdivision review process and statutory timeframe until the revised application is resubmitted and a second hearing public hearing is held by the Planning Board.
- b. If no written request to resubmit the application and preliminary plat is received by the Planning and Zoning Office within five working days, the application will continue to be processed and forwarded to the Commission for final action.

- c. Within 90 working days following receipt of the letter to request a mid-process correction, the subdivider will provide the Planning and Zoning Office a revised application and preliminary plat. The application fee shall be 50 percent of the original fee plus mailing costs to adjacent property owners for public notice. The original application will terminate after 90 days if the subdivider does not submit a revised application and preliminary plat.
- d. The revised application will be scheduled for the next available Planning Board public meeting where a new public hearing will be held.
- e. The public hearing shall be conducted pursuant to Subsection 4.1.10 and all adjacent property owners will be re-noticed.
- f. The original 60 day subdivision process timeframe shall resume starting five working days after the second public hearing date and action by the Planning Board.

4.4.13 Major Subdivision Preliminary Plat Amendment following Public Hearing

If the subdivider does not request a mid-process correction pursuant to Section 4.4.12, and makes changes to the major subdivision plat or application following the Planning Board's public hearing but before the date when the Commission considers the application and plat, the subdivider shall submit an amended application or preliminary plat to the Planning and Zoning Office for review. The 60 working day review period shall be suspended until a determination is made regarding whether the changes to the proposed major subdivision plat are material.

- a. Within five working days of receiving the amended application or preliminary plat, the planning director shall determine if the changes to the subdivision application or preliminary plat are material.
 - i. If the planning director determines that the changes are not material, the 60 working day review period resumes when the Planning and Zoning Office sends notice of the decision to the subdivider.
 - ii. If the planning director determines the changes are material, the subdivider is required to schedule a new pre-application meeting and submit a new application and fees. The original application fees shall not be refunded or transferred to the new application.
- b. Any subdivider whose major subdivision application or preliminary plat has been deemed materially changed by the planning director may appeal the decision to the Commission. If appealed, the subdivider shall request a hearing, and may submit additional evidence to show that the changes to the preliminary plat are not material. The Commission may or may not agree to hear the appeal.
 - i. If the Commission concludes that the evidence and information demonstrate changes to the major subdivision application or preliminary plat are material, the

subdivider shall be required to resubmit the application and preliminary plat pursuant to Section 4.4.13(b)(ii).

- ii. If the Commission concludes that the evidence and information demonstrate changes to the resubmitted subdivision application or preliminary plat are not material, the 60 working day review period resumes as of the date of the decision.
- iii. By appealing the decision of the planning director the subdivider agrees to suspension of the 60 working day review period.

4.4.14 Major Subdivision Determination of New Information

If new and additional information is presented following the Planning Boards' public hearing regarding the proposed major subdivision, the Commission shall determine if the new information constitute the need for a subsequent public hearing. New information is considered to be information or analysis of information not considered by the Planning Board at the public hearing.

- a. The Commission shall consider if the public or the subdivider was provided a reasonable opportunity to examine and comment on the new information.
- b. If the Commission determines that public comments or documents presented constitute new information the Commission shall either:
 - i. Approve, conditionally approve, or deny the proposed major subdivision without basing its decision on the new information if the Commission determines the information is either irrelevant or not credible; or
 - ii. Direct the Planning Board to schedule a subsequent public hearing pursuant to Section 4.4.15 for consideration of only the new information that may have an impact on the findings and conclusions that the Commission will rely on to make its decision on the proposed subdivision.
- c. The Commission shall consult with the Planning and Zoning Office in the determination of new information.

4.4.15 Subsequent Public Hearing

When a subsequent public hearing is scheduled for a major subdivision preliminary plat, it must be held within 45 days of the Commission's determination to schedule a subsequent hearing pursuant to Section 4.1.10. Only the new information shall be considered at the subsequent public hearing.

- a. If a subsequent public hearing is scheduled, the 60 working day review period is suspended as of the date of the Commission's decision to schedule a subsequent hearing and resumes five working days following the subsequent public hearing.

- b. The Commission shall not consider any information regarding the major subdivision application that is presented after the subsequent hearing when making its decision to approve, conditionally approve, or deny the proposed major subdivision.

4.4.16 Major Subdivision Preliminary Plat Consideration and Evidence

The Commission shall not approve a major subdivision application unless the proposed major subdivision complies with all of the following:

- a. Assures easements for the location and installation of any planned utilities, roadways, pedestrian and bike trails, or other easements required by the Commission or Planning Board shall be shown on the final plat.
- b. Conforms to all applicable design standards set forth in Section 4.7 (Subdivision Design Standards) and other provisions of these Regulations unless the subdivider secures a variance pursuant to Section 4.1.6.
- c. Assures legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel.
- d. Assures that all required public improvements shall be installed before final plat approval, or that their installation after final plat approval shall be guaranteed as provided by Section 4.4.28.
- e. Regarding the disclosure and disposition of surface water rights. If the proposed major subdivision will create lots averaging fewer than five acres in size the subdivider shall:
 - i.. Reserve all or a portion of the appropriated 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.
 - ii. 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, 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; and
 - iii. Reserve and sever all surface water rights from the land.
- f. Complies with zoning and other applicable regulations authorized by law.

4.4.17 Major Subdivision - Subdivider's Preference for Mitigation

No later than three working days before the meeting at which the Commission is to consider the major subdivision application and preliminary plat, the subdivider may submit in writing to the Planning and Zoning Office comments on and responses to the staff findings and recommendations. This document shall include the subdivider's alternative proposals, if any, for mitigating the impacts identified in the recommendations. The Commission shall consult with the subdivider and shall give due weight and consideration to the subdivider's expressed

preferences. The Planning and Zoning Office shall forward the subdivider's mitigation recommendations to the Commission within two working days when received.

4.4.18 Major Subdivision Commission Decision

In making its decision to approve, conditionally approve, or deny a proposed major subdivision the Commission shall consider the following, as applicable:

- a. The major subdivision application, supporting information, and preliminary plat.
- b. An officially adopted growth policy or neighborhood plan.
- c. The environmental assessment.
- d. Agency and public hearing(s) comments.
- e. Planning Board recommendations and Findings of Fact.
- f. Neighborhood and land use advisory committee recommendations.
- g. Planning staff report.
- h. Any additional information that is allowed by statute or these Regulations pertaining to the proposed major subdivision.

4.4.19 Major Subdivision Preliminary Plat Commission Documentation of Decision

In reviewing the major subdivision application, the Commission shall issue written Findings of Fact that discuss and weigh the proposed major subdivision's impacts identified pursuant to Section 4.4.18. The Commission shall send the subdivider a letter, with the appropriate signature, and make the letter available to the public. The letter shall:

- a. Contain information regarding the appeal process for the denial or imposition of conditions.
- b. Identify the regulations and statutes used to reach the decision to approve, deny, or impose conditions and explain how they apply to the decision.
- c. Provide the facts and conclusions the Commission relied on to make its decision and reference documents, testimony, or other materials that form the basis of the decision.
- d. Provide the conditions that apply to the preliminary plat approval that must be satisfied before the final plat may be approved.

4.4.20 Major Subdivision Preliminary Plat Terms of Approval

The term of the approval or conditional approval of the major subdivision application and preliminary plat is to be a period of three calendar years.

- a. The Commission may, at the request of the subdivider, extend its approval for a period of one year. The subdivider must give written notice to the Planning and Zoning Office requesting an extension at least 30 days prior to the end of the three-year period.
- b. After the application and preliminary plat are approved, the Commission shall not impose any additional conditions for final plat approval.
- c. The Commission may withdraw approval of an application and preliminary plat if it determines that information provided by the subdivider, and upon which was material to the approval or conditional approval, is inaccurate.
- d. If the final plat is not filed within the three year time frame or granted a one year extension, the preliminary plat expires and is subject to a new application. The determination made under the expired preliminary plat approval shall not be binding on a subsequent application.

4.4.21 Major Subdivision Final Plat Submittal

The major subdivision final plat and all supplementary documents must be submitted to the Planning and Zoning Office at least 45 working days prior to the expiration of preliminary plat approval, or an approved extension of time as pursuant to Section 4.4.20. Final plat certificates shall be consistent with Appendix F (Sample Forms and Certificates).

4.4.22 Major Subdivision Final Plat Application Contents

The major subdivision final plat submitted for approval must conform to the preliminary plat as previously approved by the Commission and must incorporate all required modifications and comply with all conditions imposed at the time of preliminary plat approval. The major subdivision final plat and accompanying documents must comply with the Montana Uniform Standards for Monumentation, Certificates of Survey, and Final Subdivision Plats.

- a. The submittal shall include, as applicable, the following:
 - i. A final plat application and fee.
 - ii. All required major subdivision final plat information (Appendix E).
 - iii. A written explanation of how each of the conditions of the preliminary plat approval has been satisfied.

4.4.23 Major Subdivision Final Plat Review

The Planning and Zoning Office shall review the major subdivision final plat to confirm that all conditions and requirements for final plat approval have been met. The Planning and Zoning Office shall not accept, begin processing, or schedule any actions on a major subdivision final plat submittal until a complete application and fee have been received.

- a. Major subdivision final plats shall be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the Clerk and Recorder.

The examining 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. Insignificant and nonmaterial changes which have a minimal impact on the scale or scope of the project or neighborhood shall be noted in the report to the Commission.

4.4.24 Major Subdivision Final Plat Approval

The Commission shall examine the final subdivision final plat and, within 45 working days of its submission to the Planning and Zoning Office, approve it if it conforms to the conditions of preliminary plat approval and is within scheduled deadlines of approval.

- a. If the final major subdivision plat is approved, the Commission shall certify its approval on the face of the final plat. When applicable, a certificate of the Commission expressly accepting any dedicated land, easements, or improvements shall be filed with the final plat.
- b. If the major subdivision final plat is denied, the Commission shall write a letter stating the reason for denial and forward a copy to the subdivider. The Commission shall return the final plat to the subdivider within 10 working days of the action. The subdivider may then make any necessary corrections and resubmit the major subdivision final plat for approval.

4.4.25 Major Subdivision Final Plat Filing

The Clerk and Recorder may file an approved major subdivision final plat only if it is accompanied by Commission certification and the documents specified in the Montana Uniform Standards for Monumentation, Certificates of Survey, and Final Subdivision Plats.

- a. The approved major subdivision final plat shall not be altered in any manner except as provided in Section 4.4.26.
- b. The subdivision final plat must be filed with the Clerk and Recorder within 30 days of Commission approval.

4.4.26 Amending Filed Major Subdivision Plats

Changes that materially alter any portion of an approved filed major subdivision plat, its land divisions or improvements, or that will modify the approved use of land within the subdivision, shall be made by filing an amended plat showing all alterations. Any alteration, unless exempt pursuant to Section 4.4.27, must be approved by the Commission.

- a. An amended plat is subject to the procedures for reviewing a major subdivision. The Commission shall not approve an amended final plat without the written consent of the owners and/or lenders of all lots which will be modified by the proposed amendment.
- b. The Commission shall not approve an amendment that will create a non-conforming lot according to the design standards contained in Section 4.7 (Subdivision Design Standards) and these Regulations.

4.4.27 Major Subdivision Public Improvements Agreement; Guaranty

As a condition of approval of the major subdivision final plat, the subdivider must have installed all required improvements or have entered into a subdivision improvements agreement (Appendix G) guaranteeing the construction and installation of all required improvements.

4.4.28 Major Subdivision Late-comers Agreement

For improvements that a subdivider constructs beyond those that are directly attributable to the major subdivision, the subdivider may request a Late-comers Agreement (Appendix H). The agreement would put into place a mechanism to reimburse a portion of the capital construction costs the subdivider incurs which are not directly attributable to impacts caused from the subdivision. Payback funds would be exacted from future subdivider who directly benefit from the fronted capital improvements.

4.5 Subdivisions Created For Lease or Rent

4.5.1 General

A subdivision created for rent or lease, including but not limited to, manufactured home parks, recreation vehicle parks, or campgrounds, is any tract of land divided by renting or leasing portions under single ownership is covered under this Section. Proposed subdivisions created for lease or rent must be under single lot or parcel. Any subdivision created for lease or rent which is converted to condominium use must be reviewed pursuant to Section 4.6 (Condominiums).

4.5.2 Exemption from Survey and Filing Requirement

Manufactured home parks, recreation vehicle parks and campgrounds are exempt from the surveying and filing requirements of the Montana Subdivision and Platting Act but must be submitted for review and approved by the Commissioners before portions may be rented or leased.

4.5.3 State Health Approval

If a subdivision that will provide multiple spaces for recreational camping vehicles or mobile homes is also known as a "trailer court," "work camp," "youth camp," or "campground" as those terms are defined in Section 50-52-102, MCA, the Commission will not grant final approval of the subdivision until the subdivider obtains a license for the facility from the State of Montana.

4.5.4 Procedures

The subdivider shall submit to the Planning and Zoning Office the preliminary plans, profiles, tentative grades, and specifications for proposed improvements. The plan must show the lot layout and the proposed location of mobile homes, recreational vehicles, camp sites or other units on the lot. The layout plan shall also show all existing and proposed buildings and structures, roads, parking and recreational areas.

- a. Subdivisions created by lease or rent comprised of six or more spaces or units shall comply with and be processed in accordance to the preliminary plat procedures stated in Section 4.4 (Major Subdivisions) of these Regulations.
- b. Subdivisions created by lease or rent comprised of five or fewer spaces or units shall comply with and be processed in accordance with the preliminary plat procedures stated in Section 4.2 (First Minor Subdivisions) of these Regulations.
- c. In lieu of filing a final plat, the subdivider shall submit to the Planning and Zoning Office four blue line copies and one reproducible mylar copy of a plat conforming to the requirements for final plats (Appendix E). The plan shall be reviewed to assure it conforms to the approved preliminary plat and the conditions of preliminary plat approval are met. The approved plan shall be maintained in the Planning and Zoning Office and with the Clerk and Recorder.
- d. Before any portion of the development may be rented or leased, the subdivider shall have installed all required improvements.
- e. In case of a phased development, unit spaces in each phase shall be rented or leased only after all improvements pertaining to that phase are completed. The Commission may provide for inspection of all required improvements in order to assure conformance with the

approved construction plans and specifications.

4.5.5 General Standards for Subdivisions Created by Lease or Rent

All subdivisions created by rent or lease shall comply with all applicable provisions of Section 4.7 (Subdivision Design Standards). The following standards also apply:

- a. Road requirements:
 - i. Entrance roads leading into subdivisions for lease or rent shall maintain safe site distances and posted no parking along these safe site distances.
 - ii. Roads within the subdivision shall be private unless otherwise required by the Commission.
 - iii. Easements in excess of the roadway width shall not be required for private roads.
 - iv. Roads must be designed to provide safe access to public roads; and
 - v. Roads within the development must be designed to provide safe traffic circulation and parking.
 - vi. Cul-de-sacs are required on all dead-end roads for emergency turn around.
- b. The development may be required to maintain fire control equipment in good working order of such type, size and number and located within the development as prescribed by the appropriate fire department.
- c. The Commission may require, including but limited to, the additional improvements:
 - i. Storage facilities on the lot or in compounds located within a reasonable distance.
 - ii. A central area storage for parking of boats, trailers or other recreational vehicles.
 - iii. A landscape site plan which is acceptable to the Planning and Zoning Office.
 - iv. An off-road area for mail delivery and school bus stops.
 - v. Sidewalks or paths.
 - vi. Curbs and gutters.
 - vii. Road lighting.
 - viii. Management regulations.
 - ix. Centralized solid waste containers.

- x. Fencing and screening.

4.5.6 Manufactured Home Park Standards

All manufactured home parks shall comply with the following standards in addition to the requirements of Section 4.5.5:

- a. Road requirements:
 - i. One-way roads must be at least a 15 foot wide travel surface.
 - ii. Two-way roads must be at least a 24 foot wide travel surface.
 - iii. Roads must be designed to allow safe placement and removal of mobile homes.
- b. Lot requirements:
 - i. Manufactured home lots shall be arranged to permit safe and practical placement and removal of manufactured homes.
 - ii. The minimum lot width shall not be less than 50 feet and the minimum lot area shall be 5,000 square feet for single-wide manufactured homes and 6,000 square feet for double-wide manufactured homes. Triple-wide mobile homes shall have minimum lot widths of 10,000 square feet.
 - A. All manufactured homes shall be located at least 25 feet from any property boundary line abutting a public road or highway right-of-way and at least 15 feet from the other outer boundaries of the park.
 - B. The mobile home pad, all buildings, structures and manufactured homes shall be at least 10 feet from the road providing access to it.
 - C. A manufactured home shall not occupy more than one third of the lot area. The total area occupied by a manufactured home and its roofed accessory buildings and structures shall not exceed two-thirds of the area of the lot.
 - D. No manufactured home or its attached structures, such as awnings or carports shall be located within 20 feet of any other manufactured home or its attached structures.
 - E. No detached structure, such as a storage shed, shall be located within five feet of any manufactured home or its attached structures.
 - F. The Commission shall require that the mobile home pad be improved to provide adequate support for the placement and tie-down of the mobile home.

- c. A minimum of two parking spaces shall be provided for each manufactured home lot. In addition, guest parking at the ratio of one space for every five units. Each parking space shall measure 9 feet by 20 feet.
- d. The limits of each manufactured home lot shall be clearly marked on the ground by permanent flush stakes, markers or other suitable means. Location of lot limits on the ground shall be approximately the same as shown on the approved plans.
- e. Each manufactured home shall be skirted within 30 days after it is moved on a lot within the manufactured home park. The skirting shall be of fire resistant material complementary to that of which the manufactured home exterior is constructed.
- f. All electrical lines serving the subdivision shall be underground, designed and constructed in accordance to the most recent edition of the "National Electrical Code".
- g. Where oil or propane gas heating of a manufactured home is necessary, a fuel storage facility shall be provided on the manufactured home site not to exceed a three hundred (300) gallon capacity. The storage facility shall extend no higher than six feet above ground level and shall be located and screened to blend with its surroundings.
- h. All gas systems serving the subdivision shall be designed and constructed in accordance with the most recent edition of the "National Fuel Gas Code" and the "Standard for the Storage and Handling of Liquefied Petroleum Gases".
 - i. A readily accessible and identifiable shutoff valve controlling the flow of gas to the entire gas piping system shall be installed near the point of connection of the liquefied petroleum gas container.
 - ii. Each manufactured home lot shall have an accessible, listed gas shutoff installed. The valve shall not be located under a manufactured home. Whenever a manufactured home lot outlet is not in-use, the shutoff valve shall be plugged to prevent accidental discharge.
- i. A comprehensive site plan that includes road and pad lay-out, amenities, perimeter fencing if proposed, and site landscaping (entrance and perimeter buffering) shall be submitted with the application.

4.5.7 Recreational Vehicle Park and Campground Standards

All recreational vehicle parks and campgrounds shall comply with the following standards in addition to the requirements of Section 4.5.5.

- a. Road Requirements:
 - i. A minimum 12 foot travel surface shall be provided for one-way roads if such road:
 - A. Has no on-road parking.

- B. Serves 25 or less spaces.
- b. If two way roads are proposed the following shall apply:
 - i. 20 foot travel surface if no on-road parking is proposed.
 - ii. 28 foot travel surface if parking is proposed on one side of the road.
 - iii. 36 foot travel surface if parking is proposed on both sides of the road.
 - iv. Minimum centerline curvature radius of 45 feet.
- c. The recreation vehicle spaces shall meet the following standards:
 - i. Minimum lot (space) width of 25 feet.
 - ii. Minimum lot (space) area of 1,500 square feet.
- d. The distance between the recreational vehicles shall not be less than 15 feet. This includes any fold-out or pop-out portion or awnings attached to the vehicle.
- e. Spaces in recreational vehicle parks must be arranged to allow safe movement of traffic and access to spaces.
- f. No recreational vehicle space shall be located less than 25 feet from any public road or highway right-of-way.
- g. The density of a recreational vehicle park must not exceed 25 recreational vehicle spaces per acre of gross site area.
- h. At least one private 5,000 square foot functional recreational area shall be provided and developed with at least a minimum level of tot lot amenities for children as approved by the County Parks Director.

4.6 Condominiums

4.6.1 General Guidance for Condominiums

All condominium developments are subdivisions subject to the terms of the Montana Subdivision and Platting Act and these Regulations. Condominium developments must include two or more residential units within the same building.

- a. Condominium development shall be reviewed under the procedures identified below:
 - i. If the proposed condominium development contains five or fewer dwelling units, it shall be processed pursuant to Section 4.2 (First Minor Subdivisions).
 - ii. If the proposed condominium development contains six or more dwelling units, it shall be processed pursuant to Section 4.4 (Major Subdivisions).
 - iii. Condominium “lock off units” and subdivisions originally created for lease or rent pursuant to Section 4.5 converting to condominium ownership shall be reviewed per this Section.
 - iv. If the proposed condominium development is located on more than one lot the subdivider shall aggregate all lots into a single lot under a single ownership.
- b. In lieu of filing a final plat, the subdivider shall submit four blue line copies and one reproducible mylar copy of the plat to the Planning and Zoning Office.
 - i. The plat shall be labeled “Revised Preliminary Plat” and conform to all requirements for final plats pursuant to Appendix E (Contents of Final Plat).
 - ii. The revised preliminary plat shall show all existing and proposed buildings and structures, roads, parking and recreation areas.
 - iii. The revised preliminary plat shall conform to the approved preliminary plat and meet the conditions of approval of the preliminary plat.
- c. All parkland dedication provisions pursuant to Section 4.7.25 shall be met.
- d. Final approval will not be granted until the subdivider has met all conditions of preliminary plat approval and has installed all required improvements or entered into a subdivision improvements agreement (Appendix G).
- e. The Clerk and Recorder shall not process or record any condominium title transactions or deeds if the planning director or county attorney determines a condominium project has not met the requirements of Section 4.6.3 or has not been reviewed pursuant to this Section.
- f. The approved plat shall be maintained in the Planning and Zoning Office and in the Office of the Clerk and Recorder. The subdivider shall provide the Planning and Zoning Office with a copy of the recorded Declaration of Unit Ownership. The Declaration of Unit Ownership will reflect where these copies are maintained.

4.6.2 Condominium Development Standards

Condominium development shall comply with all applicable standards contained in Section 4.7 (Subdivision Design Standards) and these Regulations.

- a. Condominium developments shall meet all applicable standards of the Montana Department of Environmental Quality and Flathead County-City Health Department.
- b. In unzoned areas all buildings and structures in a condominium project shall be located at least 20 feet from a road right-of-way or easement and at least 15 feet from all other site boundaries. No detached primary structure shall be located closer than 15 feet to another detached primary structure. (Note: All distances are measured from the roof line or farthest projecting point of the building or structure.)

4.6.3 Condominium Exemption from Subdivision Regulations

Condominiums constructed on land subdivided in compliance with these Regulations are exempt from review pursuant to Section 4.6.1 if any of the following conditions are met:

- a. The approval of the original subdivision of land or subdivision expressly contemplated the construction of the condominiums. The number of units and impact of condominiums identified and contemplated in a subdivision must have been reviewed as part of the subdivision application or conditional use permit.
- b. The condominium proposal is in conformance with local zoning regulations.
- c. Conversion of existing structures into condominiums where the conversion is not intended to circumvent the review and approval process and where no alterations and additions are made to existing structures to accommodate conversion of existing units into condominiums.

4.6.4 Unit Ownership Act

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

4.7 Subdivision Design Standards

4.7.1 Subdivision Design Standards Compliance

All subdivisions shall comply with design standards included in this Section, unless a subdivision variance from any particular section is requested in writing and is granted by the Commission pursuant to Section 4.1.6 of these Regulations or unless it is a Planned Unit Development (PUD). Engineering and survey plans, specifications, design details and reports shall be prepared by a licensed professional engineer or licensed surveyor as their respective license laws allow in accordance with the Montana Subdivision and Platting Act and these Regulations.

- a. In areas which are zoned and for which the PUD provisions exist in applicable zoning regulations, the subdivider shall conform to the procedures and specifications of the applicable zoning regulations. Individual variances to these Regulations are not necessary when the application is accompanied by a PUD plan.

4.7.2 Conformance with Existing Regulations

The design and development of subdivisions shall conform to all applicable zoning, lake shore and floodplain regulations, etc. and all provisions of these Regulations.

4.7.3 Natural Environment

The design and development of subdivisions shall contain satisfactory building sites which are properly related to topography and shall preserve the natural terrain, natural drainage, existing top soil, trees, native vegetation, wildlife, and fish habitats to the extent possible. The design and development of subdivisions should not result in increased pollution to surface or groundwater supplies.

4.7.4 Lands Unsuitable for Subdivision

Lands on which there is evidence of hazards such as flooding, snow avalanches, rock falls, land slides, steep slopes in excess of 30% or more grade, subsidence, high hazard fire areas, high water table, polluted or non-potable water supply, high voltage lines, high pressure gas lines, air or vehicular traffic hazards or congestion, or other features which may be detrimental to the health, safety or general welfare of existing or future residents, or where development would place unreasonable burdens on the general public including the requirements of excessive expenditure of public funds or environmental degradation shall not be subdivided for building or residential purposes unless the hazards are eliminated or will be overcome by approved design and construction plans.

4.7.5 Planning Considerations

The subdivision design shall take into consideration the following planning considerations:

- a. Particular consideration shall be given to topography in relation to slope stability.
- b. Land subject to flooding shall be set aside for uses which will not aggravate the danger of flood hazard, will not be endangered by flooding, or endanger the general health, safety, and welfare of the residents.
- c. The subdivision plan shall be designed to permit continuation of roads into adjacent subdivisions unless there is justification for an alternate design.

- d. Multiple land uses within the subdivision must be properly separated to avoid land development compatibility issues and provide the maximum convenience to the residents.
- e. Land division activities in areas subject to hazardous conditions such as land slides, rock falls, possible subsidence, shallow water table of four feet or less, open quarries, floods and polluted or non-potable water supply shall be strongly discouraged or prohibited.
- f. Where a subdivision is traversed by an irrigation channel or ditch, an easement or right-of-way shall be required to parallel the lines of the watercourse at a sufficient width to allow for maintenance and vegetative buffer.
- g. Require a maximum of one residential unit per five acres in areas where the highest seasonal groundwater is within eight feet of the surface, if not connecting to a municipal, community or public sewer system or unless scientific evidence demonstrates that a different density is appropriate.
- h. When only a portion of a parcel or tract of land under a common ownership is to be subdivided, the subdivider may be required to provide a plan of development showing in a general fashion proposed roadways, residential lot locations and densities and other parks and common areas

4.7.6 Landscape Requirements

The Commission may impose landscaping requirements on the subdivider or homeowner. In general, landscape plans shall consist of over-story coniferous or broadleaf trees with an under-story of shrubs and grasses. Plant materials shall be warranted for one year following installation. All landscape site plans shall be approved by the Planning and Zoning Office.

4.7.7 Lots

Each lot shall contain a satisfactory building site which is properly located in regards to topography and conforms to City/County Health Department, zoning, floodplain, and lake shore regulations and these Regulations. The proposed lots shall meet the following standards:

- a. No lot shall be divided by a municipal or county boundary line.
- b. No lot shall be divided by a street, road, alley, right-of-way, or emergency access easement.
- c. Each lot shall abut and have vehicle access onto an internal subdivision road. Exceptions will require a variance to these Regulations.
- d. Direct driveway access onto a collector or arterial road should only be considered when no other reasonable alternative exists. Existing encroachment permits do not preclude requiring alternative locations for access to individual lots.
- e. Each building site shall be able to be accessed by a minimum 12 foot wide driveway with a maximum 10 percent slope and a maximum 5 percent slope for the initial 20 feet from the primary access road to the lot.

- f. Corner lots shall have a driveway access to the same road as interior lots and shall have sufficient area to provide acceptable site distances for traffic safety.
- g. Each lot shall have a building site (minimum 40 foot by 40 foot square pad) on existing undisturbed terrain of less than 25 percent slope. Where a building site is not obvious, and when the average slope of a lot exceeds 15 percent, minimum two foot ground contour intervals shall be shown on the preliminary plat for the building pad and driveway, and a statement shall be placed on the final plat noting the specific lots which may be subject to steep terrain and that the driveways shall be approved by the local Fire Marshal or Fire Chief as suitable access prior to the start of combustible construction.
- f. Any building pad which exceeds 25 percent, but less than 30 percent, in cross slope shall be required to undergo a geo-technical soils analysis conducted by a licensed professional engineer prior to final plat approval. The soils analysis must prove that development of this lot would pose no significant geological hazards to either this lot or neighboring properties. The applicant is required to comply with the recommendations of the analysis.
- g. The Commission may require that portions of a subdivision lot which abut a river, stream or lake and contain slopes of 30 percent or greater be protected via the placement of a conservation easement or deed restriction from development. The construction of any dwellings, buildings or other structures, road work or major vegetative clearance shall be prohibited.
- h. Land within the 100-Year floodplain shall not be subdivided for building purposes creating a lot or parcel whose only building site lies within the 100-Year floodplain. No subdivision of property shall create infrastructure or allow for buildings within the floodway of a 100-Year frequency.
- i. No lot shall have an average depth greater than three times its average width unless the average lot width is more than 200 feet. _____
- j. Side lot lines shall be substantially right angles to road easements and radial to curved road or cul-de-sac easements.
- k. All lots in unzoned areas shall adhere to the following:
 - i. A minimum average width of 60 feet.
 - ii. Lakeshore and river front lots shall have a minimum average width of 100 feet with a minimum 100 foot of frontage on the river or lake measured at the high water line.
 - iii. A minimum frontage of 30 feet abutting the local or primary road access and having access to that road.
 - iv. In areas where the seasonally high groundwater is within eight feet of the surface, lots shall be a minimum size of five acres, if not connecting to municipal or public

- sewer system or unless scientific evidence demonstrates that a different density is appropriate.
- v. Lot sizes shall be based on direction in the Growth Policy and applicable neighborhood plan.
 - l. Through lots or reverse lots are prohibited except where essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography or orientation.
 - m. A planting screen easement of a minimum width of 10 feet, across which there shall be no right-of-way or easement access, shall be provided along the line of lots abutting a traffic artery, other disadvantageous situations, or non-compatible uses.
 - n. Only one active approved preliminary plat is permitted on an individual lot or parcel at a time. Any existing approved preliminary plat shall be withdrawn and file terminated at the time of approval of the second preliminary plat.

4.7.8 Blocks

Each block shall conform to the following:

- a. Blocks shall be designed to assure traffic safety and ease of traffic control and circulation to accommodate the special needs of the use contemplated and to take advantage of the limitations and opportunities of the topography.
- b.. Blocks shall be wide enough to allow for two tiers of lots except where essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography and orientation or unless the Commission approves a design consisting of irregularly shaped blocks due to cul-de-sacs.

4.7.9 Payment for Extension of Public Improvements

The Commission shall require the subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities related to the public health and safety, including but not limited to public roads and transportation facilities, sewer lines, water supply lines, and storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly attributable to the subdivision (76-3-510, MCA).

- a. The Commission may not require a subdivider to pay or guarantee payment for part or all of the costs of constructing or extending the capital facilities related to education.
- b. For road improvements the “direct impact” formula shall be based on the ratio of the total proposed subdivision vehicle trips divided by the total of the existing traffic count plus the proposed subdivision vehicle trips. This ratio shall be applied to the length of public or private road(s) to be extended or improved.
- c. The most obvious travel route due to convenience or obvious destination shall be used for determining traffic flows/counts accessing and within a proposed subdivision.

4.7.10 Floodplain Provisions

Land located in the floodway of a flood of 100 year frequency as defined by Title 76, Chapter 5, M.C.A., or land deemed subject to flooding as delineated by the most current floodplain maps available and adopted by Flathead County, shall not be subdivided for building or residential purposes, or other uses that may increase flood hazard to life, health or property.

- a. If any portion of a proposed subdivision is within 2,000 horizontal feet and 20 vertical feet of a live stream draining an area of 25 square miles or more and no official floodway delineation or floodway studies of the stream have been made, the subdivider shall furnish survey data to the Water Resources Division of the Montana Department of Natural Resources and Conservation.
- b. Survey data shall comply with the Standards for Flood Hazard Evaluation (Appendix I).
- c. Survey data shall comply with the Standards of Flood Hazard Evaluation as contained in Appendix F of these Regulations. After the Water Resources Division has prepared a report delineating the floodway, the subdivider shall submit it to the Flathead County Planning & Zoning Office along with the Environmental Assessment required for the preliminary plat.
- d. The County Commission shall waive this requirement where the subdivider contacts the Water Resources Division and that agency states in writing that available data indicates that the proposed subdivision is not in a flood hazard area.

4.7.11 Wetlands Provisions

Land located in wetlands shall not be subdivided for building or residential purposes or other uses that may increase or aggravate wetland hazards to life, health or welfare, or that may be prohibited by state wetland regulations. Wetlands are areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil condition. (40 CFR Part 230.41(a)(1)). Wetlands are determined based on the following:

- a. The duration the area is inundated or saturated by surface or ground water and under normal circumstances support a prevalence of vegetation typically adapted for life in saturated soil condition.
- b. If vegetation is absent, soils or hydrology that indicate wetland areas.

4.7.12 Groundwater Provisions

Surface areas where monitored groundwater elevation is four feet or less to the surface, generally from March 15 through June 30, during average precipitation years, shall not be subdivided for residential or development purposes, unless municipal or public sewer service is available or a properly engineered private community waste water treatment system is constructed.

- a. Land shall be deemed subject to high groundwater and unsuitable for development based on the following:

- i. Areas historically inundated with high ground water.
 - ii. Soil types as determined from test pit data which do not provide adequate percolation and absorption or indicate oxidation reduction or mottling.
 - iii. Other relevant information indicating areas of seasonal or periodic high ground water levels.
- b. The subdivider shall provide groundwater elevation monitoring data as required by Department of Environmental Quality and Flathead County Health Department with the preliminary plat application.
 - c. Land deemed to be subject to high groundwater shall be identified in a written analysis of the project area's likelihood to experience subsurface flooding due to rising groundwater by a licensed professional engineer or hydrologist and mapped accordingly.
 - d. In areas where seasonally high groundwater is within eight feet of the surface lots shall be a minimum size of five acres, if not connecting to municipal, community or public sewer system or unless scientific evidence demonstrates that a different density is appropriate.

4.7.13 Drainage Facilities

During the construction of improvements in the subdivision, the subdivider shall be responsible for installing temporary and/or permanent erosion and sedimentation control facilities to control surface runoff. No silt laden or contaminated water or excess shall flow to downstream areas or lakes. These controls shall be in accordance with the Flathead County Lake and Lakeshore Protection Regulations and the Montana Department of Environmental Quality regulations.

- a. A conceptual "storm water management plan" which identifies measures and locations to minimize the potential for surface water pollution is required with the preliminary application submittal. The plan shall include temporary (Best management Practices) and permanent storm water pollution control measures following the format of the Montana Department of Environmental Quality and be submitted at the time of preliminary plat application.
- b. All drainage systems and facilities required for any surface runoff created by the subdivision or exterior access road system from the subdivision shall be designed to meet requirements of the Montana Department of Environmental Quality and Flathead County Road and certified by a licensed engineer.
- c. Drainage structures shall be designed so there is no net increase in surface water runoff from a site after development than what naturally occurred before development. This may require on-site storm water detention or retention facilities.
- d. The subdivider shall provide suitable drainage facilities for any surface runoff affecting the subdivision. These facilities shall be located in road easements or in perpetual easements of appropriate width and are subject to approval by the Commission.

- e. Drainage systems shall not discharge into any sanitary sewer facility.
- f. Any runoff leaving the proposed subdivision discharges into a stream or lake shall meet all Flathead County Lake and Lakeshore Protection Regulations and comply with Montana Department of Environmental Quality standards.
- g. All areas disturbed during development of the subdivision shall be revegetated in accordance with a plan approved the Flathead County Weed Board.

4.7.14 Dust Control and Air Pollution

The Commission shall require dust mitigation measures. Effective control of particulate matter (dust) on activities that are part of the subdivision process, including off-site roadways and other required on-site construction, is in the county’s interest and promotes public health and safety. Any subdivider’s activity that disturbs the top layer of soil shall provide dust control applications, including, but not limited to, daily watering of unpaved roadways during actual construction, dust control applications, and soil binding agents on un-paved roadways and other site disturbance areas. Subdivision construction operations which leave mud and soil carryout onto paved roadways creating re-entrained dust and/or hazardous driving conditions shall immediately remove the carryout material from the roadway surface by washing or sweeping.

- a. A “dust control plan” which identifies measures to minimize fugitive dust during site construction and development activities is required with the preliminary application submittal. The dust control plan shall be submitted with the preliminary plat application and approved by the Planning and Zoning Office.
- b. The dust control plan shall be implemented prior to soil disturbing construction activities.
- c. The “dust control plan” shall also include post-construction dust mitigation measures.

4.7.15 Roadway Classification

The purpose of a functional roadway classification system is to provide for the safe and efficient movement of people and motor vehicles. The system classifies transportation facilities according to an appropriate integrated network. The classification is intended to link land use development with transportation facilities for optimum utilization of both. Roadways shall have one of the following classifications:

- a. Local Roads - Roadways used for direct access to residential, commercial or industrial lots, or other abutting properties in areas of lower traffic volumes at low speeds. These roads are typically located within a subdivision and through traffic movements are intentionally discouraged. Posted speed limits on local roads typically range from 25 mph to 35 mph and are designed for less than 2,000 vehicles per day.
- b. Collector Roads – Collector roads serve the dual functions of distributing traffic between local roads and arterial roads and provide primary access to subdivisions and other abutting properties. Higher traffic volumes and speeds are normal. Collector roads connect arterial networks and also connect residential areas to commercial and other areas. Collector roads

may be either county public or private roads. Posted speed limits on collectors typically range from 25 mph to 45 mph and can carry between 2,000 and 5,000 vehicles per day.

- c. Arterial Roads – The roadway system serving as the principal network for through traffic flow. Arterial roads connect areas of principal traffic generation and important highways. Arterial roads should be public county roads. Posted speed limits on arterials typically range from 25 mph to 55 mph and can carry between 5,000 and 10,000 vehicles per day.
- d. Secondary Access Roads – Secondary roads function as emergency ingress/egress to a subdivision. These roads shall connect to other roads and highways, but are not intended to serve as primary access or carry daily traffic.

Note: A primary access road is defined as providing direct access to the subdivision and can be a local, collector, or arterial road, but not a secondary access road.

4.7.16 Access

Each lot shall have legal and physical access provided and must abut and have access to a public or private road. Alleys and secondary access roads shall not be used to provide the primary means of access to a lot.

- a. The Commission may require a second or multiple primary access roads to a subdivision when the proposed subdivision generates more than 100 vehicle trips per day
- b. Secondary access roads shall meet standards of the Flathead County Road and Bridge Departments' "Minimum Standards for Design and Construction Manual". Secondary access roads shall not function now or in the future as the primary access for an existing or proposed subdivision unless upgraded to current arterial, collector, or local road standards pursuant to the Flathead County Road and Bridge Departments' "Minimum Standards for Design and Construction Manual".
- c. Proposed subdivisions accessed by a U.S. Forest Service or Montana Department of Natural Resources and Conservation road or easement shall have written authorization from the U.S. Forest Service or Montana Department of Natural Resources and Conservation, respectively, for use to the subdivision. This includes both primary and secondary road access.
- d. When a new subdivision adjoins unsubdivided land (lands or parcels not created by a recorded subdivision plat) and access to the unsubdivided land must pass through a new subdivision, the subdivider may be required to provide rights-of-way or easements and provide an easement to the adjacent unsubdivided property.
 - i. This requirement may be waived by the Commission when the road department finds that topography or other physical conditions would make it impractical to provide access to adjacent unsubdivided property.

- ii. This requirement may be waived by the Commission if the adjoining property does not require such access and is subject to a conservation easement, deed restriction or other legally restrictive covenant as confirmed by the County Attorney's Office.
- e. All roads shall be designated as public access easements and shall be shown and described as such on the face of the final plat. All roads within a subdivision shall be maintained by the property owners within the subdivision. The Commission accepts no responsibility for development or maintenance of roads unless accepted by the Commission for maintenance. To ensure a proper maintenance mechanism is in place, an approved road users' agreement and a property owners' association shall be formed which shall require each property owner to bear their pro-rata share for road maintenance within the subdivision and for any integral access roads lying outside the subdivision. Individual lots accessing internal local roads within the subdivision are granted encroachment permits upon the filing of the final plat.
 - i. For a re-subdivision of an existing lot within a subdivision the road user's agreement shall be amended to include the proposed resubdivided lot(s).

4.7.17 Road Design and Construction Standards

All roadway improvements including approaches, pavement, curbs, gutters, traffic control devices, and drainage systems shall be constructed in accordance with the Flathead County Road and Bridge Departments' "Minimum Standards for Design and Construction Manual" and these Regulations.

- a. All construction drawings and plans, specifications and associated engineering reports for all roadways, whether public or private, shall be submitted to the road and bridge department for review and approval prior to actual construction of any road.
- b. The subdivider must provide the road and bridge department one set of "As-Built" drawings, approved by the road and bridge department and reduced to 11 inch by 17 inch sheets, which are signed and dated by a professional engineer for road improvements constructed as part of the subdivision upon completion and approval of the road improvements.
- c. Construction plans for local roads within a proposed subdivision shall be designed and certified by a licensed professional engineer.
- d. Residential driveways shall not have direct access to arterial roads, collector roads or highways, unless approved by the road department or Montana Department of Transportation. The road and bridge department shall not approve an approach permit to an arterial or collector road if the parcel or lot abuts a local road.
- e. Collector roads shall be designed to afford easy access to arterial or other collector roads or to provide connectivity to adjoining areas.
- f. When a subdivision abuts a controlled access highway, a frontage road, or an alternative internal road design may be required. Such roadways and distances from the development to the highway shall be determined regarding requirements of approach grades and future grade separations.

- g. Dead-end roads are prohibited except with a cul-de-sac or hammerhead turn-around. Where future road extension is proposed an approved temporary turnaround shall be provided.
- h. Half streets or roads are prohibited except where essential to the development of the subdivision and where the Commission is assured that it will be possible to require the dedication of the other half of the roadway when an adjoining property is subdivided.
- i. The alignment of all roads must provide adequate sight distances.
- j. Roadway intersections shall meet the following requirements:
 - i. Two primary or secondary roads meeting a third road from opposite sides shall meet the same point, or their centerlines shall be offset at least 125 feet for local roadways and 300 feet for arterials or collector roads.
 - ii. No more than two roads shall intersect at one point.
 - iii. Intersections of local roads with arterials shall be kept to a minimum.
 - iv. All roads shall be named in accordance with County Resolution #1626. Names of new roads aligned with existing roads shall be the same as those of existing roads. Proposed road names shall not duplicate or cause confusion with existing road names and shall be approved by the Flathead County Address Coordinator.
 - v. Roadway signs and traffic control devices of the approved size, shape, and height shall be placed at all intersections by the developer. Traffic control devices shall be consistent with the latest edition of "Manual of Uniform Control Devices".
 - vi. Locations of collector and arterial roads shall comply with the approved Growth Policy or any other applicable road or highway plan adopted by the Commission.

4.7.18 Roadway Improvements

All road improvements including approaches, gravel, pavement, curbs, gutters, sidewalks and drainage systems shall be constructed in accordance with the specifications and standards prescribed in the Flathead County Road and Bridge Departments' "Minimum Standards for Design and Construction Manual".

- a. The internal road system for residential subdivisions shall be paved.
- b. An unpaved road (private or County) that provides access from the subdivision to the paved County or State roadway and the combined Average Daily Traffic (ADT) volume is 100 daily trips or more will be paved per the methodology identified in Section 4.7.9 and improvements made pursuant to needed improvements identified in the Traffic Impact Study.

Note: Trips per day shall be calculated based on 10 vehicle trips per day per lot for single family residential units. Multiple family residential units, commercial and other land use development ADT shall be based on the figures from the most current volume of the Institute of Traffic Engineers (ITE) Trip Generation Manual.

- c. All roads will be paved when a proposed subdivision is located within any Air Pollution Control District established by the Flathead City-County Health Department.
- d. All internal roads in commercial and industrial subdivisions shall be paved.
- e. A subdivider may request an alternative paving application. The request shall be reviewed and approved by the road and bridge department and fire district prior to action by the Commission.
- f. Subdivisions which will contribute 100 or more vehicle trips per day to the County road system shall have a Traffic Impact Study completed by a licensed professional engineer. The study shall indicate the expected increase in traffic movements on the existing roadways and adjacent major intersections serving the development, and shall determine the existing conditions on roadways and major intersections likely to be impacted by the proposed subdivision.
 - i. The Traffic Impact Study should present an objective technical analysis in a straight forward and logical manner that leads the reviewer through the analytical process to the resulting conclusions and recommendations. Sufficient detail must be provided so the reviewer is able to follow the path and methodology of the study. All assumptions shall be documented, published sources referenced as necessary, and stamped by a licensed professional engineer. At a minimum the study should include all of the following:
 - A. The study's purpose and goals.
 - B. A description of the site and the study area.
 - C. A description of the existing conditions in the area of the site (existing roadway geometrics, traffic counts, crash analysis, existing intersection Level of Service (LOS), existing roadway capacity analysis).
 - D. The anticipated nearby land developments and transportation improvements.
 - E. Analysis and discussion of trip generation, distribution, and modal splits.
 - F. The traffic assignment resulting from the proposed subdivision.
 - G. The projection and assignment of future traffic volumes.

- H. An assessment of the traffic impacts attributable to the development. If the level of service on the roadways and intersections is not impacted and maintains a minimum Level of Service "C", no improvements are required.
- I. Recommendations for site access and transportation improvements.

4.7.19 Alleys

Alleys may be required or allowed by the Commission. If required or allowed, alleys shall contain a minimum 16-foot driving surface, a minimum 20 foot easement, and be open at both ends. Alleys shall be available for public use but privately maintained.

4.7.20 Walkways and Pedestrian/Bicycle Paths and Easements

Easements for pedestrian and bicycle paths not less than 10 feet wide, on both sides adjacent to all arterial and public collector roads shall be required to provide connectivity and public access to common facilities such as schools, parks, playgrounds, streams and lakes, or when necessary to provide for pedestrian safety.

- a. The minimum width of the walkway shall be four feet if a boulevard separates the walkway from the road and five feet if the walkway abuts the road.
- b. The minimum paved width for a pedestrian/ bicycle path shall be eight feet.
- c. All walkway and pedestrian/bicycle path improvements shall be constructed to the most current American Association of State highway Transportation Officials (AASHTO) standards and maintained by a Property Owners Association.

4.7.21 Water Supply Systems

All water supply systems required by the Commission shall meet the minimum standards of Flathead County, the Flathead City-County Health Department, Montana Department of Environmental Quality, and the Montana Department of Conservation and Natural Resources.

- a. Where a proposed subdivision is not required to be connected to or provide a public water system and the growth policy or neighborhood plan has indicated the area within five years will be connected to a public system, the water system must be designed to be compatible with and designed to the same standards as the public water system to allow for future extension of and connection to the public water system.
- b. The Commission shall require proof of water rights at the time of final plat review.
- c. The Commission may require community water systems in areas where availability of ground water is limited.
- d. The subdivider shall present evidence that the water supply is available in quantity and quality and shall provide documentation at the time of preliminary plat submittal pursuant to 76-3-622, MCA.

4.7.22 Sewage Treatment

All sewage treatment systems required by the Commission shall meet the minimum standards of Flathead County, the Flathead City-County Health Department, and the Montana Department of Environmental Quality.

- a. For subdivisions that will create one or more parcels containing less than 20 acres, the subdivision must have approval by the Montana Department of Environmental Quality and the Flathead City-County Health Department, under the Sanitation Act, sections Title 76, Chapter 4, MCA, before the Commission can approve the final plat.
- b. For those lots which range in size from 20 acres to 160 acres and on-site sewer and water facilities is not sought prior to final plat review, a disclaimer shall be placed on the face of the final plat stating this plat has not been reviewed or approved for individual sewer or water facilities or for stormwater drainage.
- c. Where the subdivision is within the service area of a public or community sewer system, the subdivider shall install complete sanitary sewer system facilities in accordance with the City or appropriate Sewer District and the Department of Environmental Quality requirements prior to final plat approval.
- d. The Commission may require advanced wastewater treatment systems in areas of high groundwater and other environmental constrained locations.
- e. The Commission may require sewer lines to be installed in anticipation of an expansion of a municipal sewer system prior to final plat approval.

4.7.23 Solid Waste

The subdivider shall assure the provisions for collection and disposal of solid waste meet the minimum requirements of Flathead County and the Montana Department of Environmental Quality.

- a. The method of solid waste collection and disposal will be determined between the subdivider and private waste hauler and shall specify whether the collection and disposal of the solid waste generated by future occupants within the subdivision will either be centralized collection and disposal or individual curb side pick up by lot.
- b. If solid waste pick up and disposal is not curb-side pick-up, the subdivider shall provide an off street area within the subdivision for solid waste collection or be waived in writing by the solid waste pick-up provider. The collection area will be screened from general public view and conveniently accessible to collection vehicles.
- c. All subdivisions may be required to incorporate wildlife (bear) proof trash containers.

4.7.24 Utilities

Easements shall be provided for all utilities. All new utilities shall be placed underground. Except for sewer and water lines underground utilities, if placed in the road right-of-way or easement, shall be located between the roadway and the right-of-way or easement line to simplify location and repair of lines. These underground facilities shall be installed after the road has been brought to

grade and before it is surfaced to eliminate so far as practicable the necessity for disturbing such surfacing for the connection of individual services.

- a. Utility lines shall be designed by utility firms in cooperation with the subdivider, subject to all applicable laws and all rules and regulations of any appropriate regulatory authority having jurisdiction over such facilities.
- b. Utility easements shall be located along side and rear lot lines wherever necessary and, if placed in the road easement, located between roadway and the road easement line or as otherwise requested by the utility company involved.
- c. Utility easements shall be 10 feet wide unless otherwise specified by a utility company or the Commission.
- d. Where a utility is to be located in an existing dedicated easement, a notice of utility occupancy must be obtained from the appropriate public agency administering the easement.

4.7.25 Parkland Dedication

The subdivider shall either dedicate a cash donation or land for parkland dedication. The governing body will administer funds dedicated to the public in accordance with Section 76-3-621, MCA.

- a. Parkland dedication may not be required for:
 - i. Minor subdivisions.
 - ii. Subdivision lots created greater than five gross acres in size.
 - iii. Non-residential subdivision lots.
 - iv. Subdivisions in which parcels of land will not be created, other than subdivisions that will provide permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums.
 - v. Subdivisions which create only one additional lot.
- b. The Commission, Planning Board or Park Board, in consultation with the subdivider, may determine suitable locations for parks and recreational purposes, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the parkland dedication must be a land donation, cash donation, or a combination of both. When a combination of land and cash donation is required, the cash donation may not exceed the proportional amount covered by the parkland donation. The dedicated parkland for parks and recreational use may be inside or outside the boundaries of the proposed subdivision.

For the purposes of this park dedication requirement “cash donation” means the fair market value of the unsubdivided, unimproved land, and “dwelling unit” means a residential structure in which a person or persons reside.

- c. The Commission may waive the parkland dedication requirement if it determines that one of the following applies:
 - i. The proposed subdivision provides for a planned unit development or other development with land permanently set aside for parkland sufficient to meet the needs of the residents of the development and equals or exceeds the area of the required parkland dedication pursuant to Subsection (d).
 - ii. The subdivider proposes to dedicate parkland, within the subdivision and maintained by the home owners association in an amount equal to or exceeding the area required pursuant to Subsection (d).
 - iii. The proposed subdivision provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values and will result in the reduction of the area of the land proposed to be subdivided by an amount equal to or exceeding the area of the required parkland dedication pursuant to Subsection (d).
 - iv. The subdivider provides parkland outside the subdivision to be set aside sufficient to meet the needs of the residents of the development and the area of the parkland and any improvements set aside equals or exceeds the area of dedication required under Subsection (d).
 - v. The area of the land proposed to be subdivided, by virtue of a combination of the provisions of the above Subsections, is reduced by an amount equal to or exceeding the area of the parkland dedication required under Subsection (d).
- d. Parkland cash or land donation dedication requirements shall be based on the following formula:
 - i. 11% of the combined gross area of the land proposed to be subdivided into parcels of 1/2 acre and smaller;
 - ii. 7.5% of the combined gross area of the land proposed to be subdivided into parcels larger than 1/2 acre and not larger than one acre;
 - iii. 5% of the combined gross area of the land proposed to be subdivided into parcels larger than one acre and not larger than three acres; and
 - iv. 2.5% of the combined gross area of the land proposed to be subdivided into parcels larger than three acres and not larger than five acres.
- e. The Commission may accept a cash donation in lieu of the dedication of parkland that would have been dedicated.

- f. It shall be the responsibility of the subdivider to provide satisfactory evidence of the parkland fair market value of the unimproved land. The subdivider shall provide a current appraisal from a Certified General Appraiser (CGA), dated no more than six months prior to final plat application submittal, to set the baseline value of the parkland cash donation. The appraisal fee shall be the responsibility of the subdivider. The Planning and Zoning Office shall determine the actual parkland donation based on the baseline appraisal at that time.
- g. Land dedicated for public parks or recreational purposes shall be useable land, shall be of appropriate shape and size and shall have convenient access by public roads meeting all appropriate County standards and specifications. Proposed public parkland with any of the following limitations may not be considered appropriate for park purposes:
 - i. Where more than five percent of the site has an average cross slope greater than 25 percent.
 - ii. Where more than 50 percent of site has an averages cross slope greater than two to six percent.
 - iii. Where more than one percent of the park site is swampy or marshy.
 - iv. Where the site is less than five acres in size, except in cases of providing public access to water based recreation.
 - v. Where the site is an undeveloped open space area within a subdivision which does not have appropriate size, dimensions, or access to serve as a park.
 - vi. Where proposed sites have been utilized in the past for industrial or other uses which could have hazardous waste implications.
- h. Proposed parkland with any of the following assets shall be considered highly desirable, regardless of size:
 - i. Any area which is along a river, lake or provides public access to a water body.
 - ii. Any area which is connected to and/or provides linkage to a trail system.
- i. The Commission 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.
 - ii. The Commission has formally adopted a park plan that establishes the needs and procedures for use of the money.

- j. The Commission may not use more than 50 percent of the dedicated money for park maintenance.
- k. Subject to approval by the Commission and acceptance by local school district trustees, a subdivider may dedicate a land donation provided in Subsection (d) to a school district.
- l. No home-owners' park, accepted by the Commission to satisfy parkland requirements, may be sold by the home owner's association without Commission approval. If approved, the home owners association must provide cash-in-lieu fees to the County pursuant to Subsection (f) above based on the present value of the unsubdivided land.

4.7.26 Weed Control

A Weed Control Plan shall be developed and implemented for every subdivision. The Weed Control Plan shall be approved by the County Weed Supervisor and implemented before the Commission will approve the final subdivision plat. The County Weed Supervisor may inspect the subdivision and approve the implementation of the plan. The Weed Control Board may charge an initial fee for plan review and a per lot inspection fee.

4.7.27 Fire Protection

All subdivisions shall be planned, designed, constructed, and maintained so as to minimize the risk of fire and to permit effective and efficient suppression of fires.

- a. Subdivisions with a public water system that are within the five year service area of a city or within one mile from the corporate limits of a city, if no such service area has been established, shall be designed in accordance with the adopted standards of that city and the distribution system shall be designed for fire flow capabilities as required by that city.
- b. In subdivisions containing more than five lots, fire protection requirements as deemed necessary by the local fire district or local fire authority shall be incorporated into the subdivision. Such measures may include but are not limited to the provision of adequate on-site water supply/storage. Typically when on-site storage is required, at a minimum a tanker recharge facility or its equivalent would be required with a capacity based on the ratio of 2500 gallons per unit/lot. Said facility would be located near a street intersection or cul-d-sac within easy access. Such facility would be maintained entirely and kept in a constant state of readiness by the local subdivision.
- c. A note on the final plat shall be included which states: "Address numbers shall be posted at the commencement of construction and be clearly visible at all times thereafter. Numbers shall be placed in the driveway entrance and at any subsequent divergent points of access for shared driveways. All address numbers shall be displayed on a contrasting background using a minimum four-inch numeral height".
- d. The County Commissioners may impose additional fire protection requirements which it may deem necessary based on the consideration of size, location, density, and nature of the subdivision.

4.7.28 High or Extreme Fire Hazard Areas

High or extreme fire hazard areas include heads of draws, excessive slopes, dense forest growth, or other hazardous wildfire components. For subdivisions proposed in areas subject to high wildfire hazard as determined by the U.S. Forest Service, Montana Department of State Lands, or Flathead County Community Wildfire Fuel Reduction Plan the following standards shall apply:

- a. The County Commissioners shall require multiple accesses into a subdivision in high hazard fire areas:
 - i. Where the primary access is over 1,500 feet long, or;
 - ii. Where the primary access road is over 1,000 long and it serves 20 residential lots/dwelling units/spaces.
- b. Road right-of-way shall be cleared of slash.
- c. Building sites shall be prohibited on any slope that exceeds 30% when located in areas where the general slope characteristic exceeds 30% and at the apex of "fire chimneys" (topographic features, usually drainage ways or swales, which tend to funnel or otherwise concentrate fire toward the top of steep slopes).
- d. Open space, park land and recreation areas (including green belts, riding or hiking trails) should be located, where appropriate, to separate residences and other buildings from densely forested areas.
- e. A water supply of sufficient volume for effective fire control shall be provided in accordance to the following standards:
 - 1. A minimum of 500 gallons per minute for lots one acre or larger.
 - 2. A minimum of 750 gallons per minute for higher densities.
 - 3. Where no central water system exists, the local fire chief may recommend other solutions including but not limited to the provision of tanker recharge facilities and the sprinkling of individual buildings.
- f. The following statements shall be placed on the Final Plat:
 - 1. Only Class A and Class B fire-rated roofing materials are allowed.
 - 2. Defensible Space Standards shall be incorporated around all primary structures.

4.7.29 Mail Box Facilities

A common mail delivery site shall be provided with the design and location to be approved by the local post master of the U.S. Postal Service. The roadside face of such facility shall be offset from

the edge of the traveled roadway a minimum of eight feet and a minimum pull off area for at least one vehicle shall be provided.

4.7.30 School Bus Stops

The Commission shall, at the request of the school district, require that school bus stops be incorporated into the preliminary plat design to accommodate school children.

4.8 Divisions of Land Exempt from Subdivision Review**4.8.1 Purpose**

The State of Montana provides that certain divisions of land, which would otherwise constitute subdivisions, are exempt from local subdivision review and approval, unless the transactions are an attempt to evade the Montana Subdivision and Platting Act (Title 76, Chapter 3, M.C.A.). The Commission adopted Resolution 509 as Criteria for Local Determination of Evasion of the Subdivision and Platting Act.

- a. The exemptions from subdivision review under Sections 76-3-201 through 76-3-207, M.C.A., are intended to relieve a landowner from the requirements of local review when the division of land either creates no additional building sites (agricultural exemption or boundary line adjustment) or creates so few building sites that only minimal impact will likely result. The purpose of the exemptions is not to provide a means of creating numerous building sites without subdivision review, but rather to deal with the exceptional circumstances when plenary subdivision review is unnecessary.
- b. The proper use of an exemption will not compromise or conflict with the purpose of the Subdivision and Platting act which is to:
 - i. To promote the public health, safety, and general welfare by regulating the subdivision of land.
 - ii. To prevent overcrowding of land.
 - iii. To lessen congestion in the streets and highways.
 - iv. To provide for adequate light, air, water supply, sewage disposal, park and recreational areas, ingress and egress, and other public requirements.
 - v. To require development in harmony with the natural environment.
 - vi. To promote preservation of open space.
 - vii. To promote cluster development approaches which minimize costs to local citizens.
 - viii. To promote effective and efficient provision of public services.
 - ix. To protect the rights of property owners.
- c. The likelihood that land development problems will occur greatly increases when building sites are created without public review and are further divided without review.
- d. The Commission has the authority and duty to evaluate and determine from all the circumstances whether the proposed division of land is based on a purpose to evade subdivision review requirements.

- e. It is in the best interest of Flathead County to establish procedures, criteria and requirements for the review of certificates of survey claiming an exemption to the Act.

4.8.2 Procedure and General Requirements

Any person seeking exemption from the requirements of the regulations and from the requirements of the Act, shall furnish evidence of entitlement to the claimed exemption. The landowner shall sign a statement provided by the County and intended to provide all the information required by this resolution. The statement shall be filed with the Certificate of Survey, unless otherwise not required, creating the parcels subject to exemption.

- a. For those parcels for which an exemption from subdivision review is claimed, a paper copy of the Certificate of Survey, in final form, and the required statement shall be submitted to the Clerk and Recorder. The Clerk and Recorder shall have five working days to review the submitted documents. The Clerk and Recorder shall review the submitted documents with representatives of the Planning and Zoning Office, Flathead City-County Health Department and the County Attorney's Office.
- b. If the Clerk and Recorder determines that the claimed exemption may constitute an evasion of the Act under these Regulations, the Clerk and Recorder shall notify the landowner or surveyor within five days stating in writing the reason leading to such a determination. Thereafter, the landowner may withdraw the instrument or may request in writing within 30 days of the date of written notification to the landowner by the Clerk and Recorder that he/she be given a hearing before the Commission. The Planning and Zoning Office shall receive a copy of the notification to the landowner.
- c. If the Clerk and Recorder does not make such determination and the instrument otherwise complies with all laws, the instrument is eligible for recording.
- d. Upon receipt of the written request for hearing, the Commission shall set a time and place for the hearing and inform the landowner thereof. The Planning and Zoning Office shall provide an evaluation and recommendation on the subject instrument. At the hearing, the landowner may present any additional evidence in support of the claim of exemption. The Commission shall approve or disapprove the proposed exemption within 30 days of the receipt of the request for hearing. The Commission shall provide written notification of its decision to the landowner or surveyor and the Clerk and Recorder. If the proposed exemption is approved, the Commission shall notify the Clerk and Recorder that the instrument is deemed not to be an evasion of the Act. If the proposed exemption is disapproved, the Commission shall instruct the Clerk and Recorder not to file the exemption instrument.

4.8.3 Criteria for Review of Exemption

The question of whether an exemption is claimed "for the purpose of evading" review under the Act shall be decided by the Commission taking into consideration all of the surrounding circumstances which may include but are not limited to the nature of the claimant's business, the prior history of the particular tract in question, the proposed configuration of the tracts if the proposed exempt transactions are completed and any pattern of development by use of exempt

land divisions which will result in the equivalent of a subdivision without local government review.

- a. Pattern of development: The scope of review of a pattern of development shall apply to the creation of a division of land or multiple divisions of land by use of or proposed use of an exemption(s).
 - i. Original Tract Less Than 20 Acres: It is presumed that a pattern of development occurs whenever more than three parcels (i.e., two exempt parcels and a remaining parcel) have been divided from the original tract of less than 20 acres regardless of ownership by use of exemptions of the Act.
 - ii. Original Tract 20 Acres Or More: It is presumed that a pattern of development occurs whenever more than four parcels under 20 acres (i.e., three exempt parcels and a remaining parcel) have been divided from the original tract of 20 acres or more, regardless of ownership, by use of exemptions of the Act.
 - iii. A pattern of development may be evidenced by the use of exemption(s) contiguous to platted lots where common roads are shared or the exempted tracts have similar shape or size to the platted lots, or the exempted tracts are being created by the same landowner who created the platted lots.
- b. Exemption as a gift or sale to a member of the immediate family: The proper use of the exemption as a single gift or sale in each county to each member of the immediate family is to convey one parcel of land to a member of the landowner's immediate family for the benefit of the grantee.
 - i. A deed transferring the property to the grantee must be recorded along with the recording of the Certificate of Survey.
 - ii. A proposed division of land as a family transfer may be declared to be an evasion of the Act if it is determined that one or more of the following conditions exist:
 - A. The proposed new parcel would result in a pattern of development.
 - B. The division is made for the purpose of speculation by the grantor or for resale for the benefit of the grantor by using the grantee as a "straw person".
 - C. The transfer is the second or subsequent family transfer of property owned by the grantor to the same member of the immediate family.
 - D. The name of the grantee and relationship to the grantor do not appear on the face of the proposed Certificate of Survey.
 - E. The grantee is also one of the grantors.

- c. Relocation of Common Boundary Lines: The proper use of the exemption for relocating common boundary lines is to establish a new boundary between adjoining parcels of land.
 - i. Certificates of Survey showing the relocation of common boundary lines must be accompanied by a quit claim or warranty deed or recordable agreement from adjoining property owners for the entire newly described parcel(s) or that portion of the tract(s) that is being affected.
 - ii. A proposed relocation of common boundary lines may be considered an evasion of the Act if it is determined that:
 - A. The documentation submitted does not support the stated reason for relocation.
 - B. It creates a parcel of less than 160 acres which, prior to the relocation had more than 160 acres.
- d. Security for Financing: The proper use of the exemption is to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes.
 - i. Prior to filing any COS or upon the filing of any other document purporting to create a division of land under one-hundred and sixty acres by use of exemption, the COS shall be reviewed under the procedure set forth in Section 4.8.2. Any other document shall be reviewed under the procedure set forth in Section 4.8.2 (a).
 - ii. A proposed transfer based on the assumption to provide construction security may be determined to be for the purpose of evading the Act under the following conditions:
 - A. It will create more than one parcel from the original tract under one hundred and sixty acres.
 - B. The financing is for construction or improvements on land other than the exempted parcel.
 - C. The person named in the “statement explaining who would have possession of the remainder parcel if the title to the exempted parcel is conveyed” is anyone other than the landowner.
 - D. Title to the exempted parcel is not initially obtained by the lending institution or mortgagee if foreclosure occurs.
 - E. There exists a prior agreement to default or a prior agreement to purchase only a portion of the original tract.

- F. There is more than one construction mortgage, lien or trust indenture that proposes to or would create more than one new parcel on the tract.
- G. The mortgagee, lien holder or beneficiary is not a lending institution.
- iii. When the security for construction financing exemption is to be used, documents shall be submitted, in addition to such other documents as may be required, to the Clerk and Recorder:
 - A. Explaining how many parcels within the original tract will be created upon foreclosure/default.
 - B. Explaining who will have title to and possession of the remainder of the original tract after title to the exempted parcel is conveyed.
 - C. Including a signed statement from a lending institution or mortgagee that the creation of the exempted parcel is necessary to secure a construction loan for buildings or other improvements on the parcel.
- iv. At the time of the deed creating the division of land is filed, all instruments/documents including the statements shall be presented to the Clerk and Recorder.
- v. Certificates of Survey and land transfer documents must be accompanied by the following:
 - A. A statement explaining how many parcels within the original tract will be created upon foreclosure/default;
 - B. A statement explaining who will have title to and possession of the remainder of the original parcel after title to the exempted parcel is conveyed; and
 - C. A signed statement from a lending institution or mortgagee that the creation of the exempted parcel is necessary to secure a construction loan for buildings or other improvements on the parcel.
- vi. Once the loan for construction mortgage, lien or trust indenture has been satisfied, the exemption is no longer applicable and the boundaries delineating the exempt parcel are extinguished and the acreage previously identified reverts back into the acreage of the initial parcel. This will be accomplished by the filing of the warranty deed for the initial parcel when the conditions of the contract are satisfied, in the event that the parcel is being purchased in that matter.
- e. Court Order: The proper use of the exemption is a division of land created by order of any court of record in this state or by operation of law or that, in the absence of

agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain, Title 70, chapter 30.;

- i. A Certificate of Survey using this exemption must be accompanied by a copy of the court order.
- ii. Before a court of record orders a division of land, the court shall notify the governing body of the pending division and allow the County to present written comment on the division.

4.8.4 Definitions

The following definitions, in combination with those contained in the Montana Subdivision and Platting Act and those contained in the Flathead County Development Code, shall apply:

- a. Act: Montana Subdivision and Platting Act.
- b. Grantee: The person or entity who buys or otherwise receives the title to or possession of the parcel which has been segregated from the original tract.
- c. Grantor: The person(s), individual(s) or entity who sells, rents leases or otherwise conveys the title to or possession of the parcel which has been segregated from the original tract.
- d. Landowner: The owner of the property or his/her agent.
- e. Original Tract: All tracts of land held in single and undivided ownership 20 calendar years prior to the date of submission of the proposed Certificate of Survey for review under these criteria, as indicated by the official records filed with the Flathead County Clerk and Recorder.
- f. ~~Regulations: Flathead County Subdivision Regulations.~~

Appendix A
Subdivision Pre-application ProcessGeneral Instructions

Prior to submittal of a subdivision application, the subdivider shall request a pre-application meeting with the Planning and Zoning Office by submitting a Preapplication Request Form and attachments. The Planning and Zoning Office shall notify the subdivider within five working days of the meeting date and time. The pre-application meeting shall occur within 30 days after the request is submitted.

- a. At the time of the pre-application meeting request, the subdivider shall provide the Planning and Zoning Office with a concept plan of the proposed subdivision showing the layout of the proposed features in relation to existing site conditions. The concept plan must include the following:
 - i. Information on the current status of the site, including:
 - A. General Location
 - B. Approximate boundaries of existing tract
 - C. Wildlife range
 - D. Natural features
 - E. Existing structures and public improvements
 - F. Steep slopes (25% or greater)
 - G. Existing utility lines and facilities.
 - H. ~~Known easements and rights of way.~~
 - I. Wetlands
 - J. Drainages and swales
 - K. Water resources (rivers, streams, lakes)
 - L. 100-year floodplain
 - M. Documentation of original tract of record as of July 1, 1973
 - ii. Information on the proposed subdivision, including:
 - A. Tract and lot boundaries.

- B. Public improvements.
 - C. Location of utility lines and facilities.
 - D. Easements and rights of way.
 - E. Any parks, common areas, or open space.
- b. At the subdivision preapplication meeting the Planning and Zoning Office shall:
- i. Identify, for informational purposes, the state laws, local regulations and growth policy provisions that may apply to the subdivision review process.
 - ii. Provide the subdivider with a list of public utilities, local, state and federal agencies, and other entities that may have a substantial interest in the proposed subdivision and be contacted for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond.
 - iii. Identify particular additional information the Planning and Zoning Office anticipates will be required for review of the subdivision application. This does not limit the ability of the Planning and Zoning Office to request additional information at a later time.
- c. The Planning and Zoning Office may require additional relevant and reasonable information to adequately assess whether the proposed subdivision complies with these regulations and the Montana Subdivision and Platting Act. Any request for additional information shall be in writing within 10 working days following the preapplication meeting. ~~The subdivider will be notified if the Planning and Zoning Office notifies a public utility, agency or other entity that was not on the original list of contacts.~~
- d. Unless the subdivider submits the subdivision application as provided in Section 4.2.2 or 4.4.2 within six months of the preapplication meeting, the preapplication is void. The subdivider may request one six-month extension by submitting a written request prior to expiration of the preapplication.
- e. The information submitted as part of the preapplication meeting shall be retained and used for review purposes by the Planning and Zoning Office.

Appendix B
Application and Preliminary Plat Supplements

Part 1 - Application Supplements

In addition to a subdivision application and requirements of these Regulations the following information, including one reproducible set of all application information, must be supplied and considered part of the subdivision application:

- a. A fee simple property deed or other instrument showing title and ownership for the property being subdivided. No subdivision application is allowed on a parcel or tract of land which is not recorded or recognized by the county assessor.
- b. A copy of each certificate of survey or subdivision plat pertaining to the subject parcel filed or recorded since July 1, 1973.
- c. If the proposed subdivision is a major or subsequent minor, an environmental assessment which meets the requirement of Appendix C (Environmental Assessment). An environmental assessment may be waived, if all of the conditions of Section 4.4.3 are met.
- d. If the subdivision is a first minor subdivision a summary of probable impacts, Appendix D (First Minor Subdivision Impact Criteria), including any mitigation of impacts.
- e. When applicable, a Fire Prevention and Control Plan for subdivisions in High or Extreme Fire hazard areas, pursuant to Section 4.7.28.
- f. If applicable, a Flood Hazard Evaluation pursuant to Section 4.7.10.
- g. Copies of easements or proposed easements to provide legal primary, and secondary if required, access to the subdivision. ~~If any access easement is provided through federal or state lands the land management agency shall approve the easement in writing.~~
- h. Copies of any existing Road Approach Permits if proposing to use an existing access onto a County road or State highway.
- i. When a tract of land is to be subdivided in phases, the subdivider shall provide an overall development plan indicating intent for the development of the entire tract. Each phase must be fully capable of functioning with all the required improvements in place in the event that future phases are not completed.
- j. A copy of any existing covenants and restrictions on any lands to be subdivided.
- k. If common property is to be deeded to a property owners association, a draft of the covenants and restrictions which will govern the common property.

- l. Drafts of proposed covenants and restrictions are encouraged to be submitted, if applicable.
- m. If required, an approved "Will Serve Letter" or agreement from utilities (e.g. public water and sewer districts) providing a guaranteed commitment the subdivision will be provided with service for build out of the development.
- n. All water and sanitation information required pursuant to Section 4.2.8 or 4.4.8.
- o. A description of the proposed subdivision's water supply systems, storm water systems, solid waste disposal systems, and wastewater treatment systems, including 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 Montana Department of Environmental Quality.
- p. Evidence of suitability for new onsite wastewater treatment systems which include:
 - i. A soil profile description from a representative drain field site identified on the vicinity map that complies with standards published by the Montana Department of Environmental Quality.
 - ii. Demonstration that the soil profile contains a minimum of four feet of vertical preparation distance between the bottom of the permeable surface of the proposed wastewater treatment system and a limiting layer.
 - iii. In cases in which the soil profile or other information indicates that ground water is within five feet of the natural ground surface, evidence that the ground water will not exceed the minimum vertical separation distance.
- q. For new water supply systems, unless storage tanks are proposed, evidence of ~~adequate water availability which includes information from:~~
 - i. Well logs or testing of onsite or nearby wells.
 - ii. Published hydrogeological reports.
 - iii. As otherwise specified by rules adopted by the Montana Department of Environmental Quality.
- r. Evidence of sufficient water quality in accordance with rules adopted by the Montana Department of Environmental Quality.
- s. 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, MCA related to standard

mixing zones for ground water, source specific mixing zones, and non-significant 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. The subdivider may perform a complete non-degradation analysis in the same manner as is required for an application that is reviewed by the Department of Environmental Quality.

- t. Where applicable, information regarding the disposition of water rights. This includes copies of any water rights owned by the land owner to be reserved and/or transferred. The subdivider shall:
 - i. Reserve all or a portion of the appropriated 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.
 - 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.
 - iii. Reserve and sever all surface water rights from the land.
- u. Certified mailing receipts are required to document that the subdivider has submitted copies of the preliminary plat and environmental assessment, if applicable, and water and sanitation information to the utilities and environmental agencies identified during the preapplication meeting pursuant to the Subdivision Regulations.
- v. An adjoiners list of all tracts, lots, or land parcels adjoining the proposed subdivision together with the name and address of the owner of each tract, lot, or land parcel certified by the clerk and recorder, GIS Office or title company, generated not more than 30 days prior to the application submittal. Where the proposed subdivision abuts a public right-of-way, or rivers less than 150 feet in width, the properties across such right-of-way or water course shall be considered as adjacent.

Note: Adjoiner lists shall be valid for a six month period. If the origination date of the adjoiners list is older than six months of the scheduled public hearing the Planning and Zoning Office shall require a new adjoiners list before the application is scheduled for a public hearing.

- w. A Latecomers Agreement for future payback of public improvements, such as road, sewer, water or utilities, if applicable.
- x. A clear written description of directions to the subject site for vehicle travel.
- y. One or more vicinity map(s) on 11" x 17" paper. Vicinity maps shall be clear, concise and reproducible, showing the following:
 - i. The locations of the proposed subdivision in relation to the nearest town, highway, or road system.
 - ii. Vehicle access to the subdivision from the adjoining or nearest public roads.
 - iii. Names of any adjoining platted subdivisions and/or numbers of adjoining Certificates of Survey on record in the Office of the Clerk and Recorder.
 - iv. Location of any buildings, railroads, power lines, towers, roads, and other land uses.
 - v. Any existing or proposed zoning.
 - vi. All rivers, streams, wetlands, springs or other surface water adjoining or in the vicinity of the proposed subdivision.
 - vii. Any rock outcroppings, geologic fault hazards, and areas of shallow ground water less than eight feet from the surface.
 - viii. Areas of high fire hazards.
 - ix. Areas of 100 year flood plain.
- z. ~~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 Montana Department of Environmental Quality.~~
- aa. A complete stormwater drainage plan which includes a description of temporary and permanent measures for the disposal of storm run-off from roads within the subdivision and an indication whether storm run-off will enter state waters.
- bb. A description of any existing or proposed stream bank or shoreline alterations, and any proposed construction or modification of lake beds or stream channels. Provide information on location, extent, type, and purpose of alteration.
- cc. A description of all existing and proposed easements or rights-of-way for utilities, or other purposes on or adjacent to the proposed subdivision, including:

- i. A description of each easement width.
 - ii. The approximate on-site location, size and depth of existing water and sewer mains, fire hydrants, gas, electric and telephone lines as well as the nearest off-site location of the above named utilities.
 - iii. All on-site utility descriptions shall be referenced to the preliminary plat.
- dd. If applicable, a request for a variance to these Regulations.

Part 2 - Preliminary Plat Form and Contents

The subdivider shall submit a legible plat at a scale sufficient to minimize the number of sheets and maintain clarity. The plat shall consist of one or more sheets either 18 x 24 inches or 24 x 36 inches in size. Additional copies of the plat measuring 11 x 17 inches in size and 8.5 x 11 inches in size shall be included. The following shall be included on the preliminary plat:

- a.. Name and location of the subdivision, scale, scale bar, north arrow and date of preparation.
- b. The approximate exterior boundaries and location of all section corners or subdivision corners of sections pertinent to the subdivision boundary including bearings and distances sufficient to locate the exact area proposed for subdivision.
- c. All lots and blocks designated by numbers, approximate dimensions scaled to the nearest foot, and the area of each lot estimated to the nearest 0.1 acre.
- d. Ground contours for the tract shall be shown in accordance to the following requirements:

<u>Where the Average Slope of the Entire Site Is</u>	<u>Contour Intervals for the Entire Plat Shall Be</u>
Under 10%	Two (2) feet
10% - 15%	Five (5) feet
Over 15%	Ten (10) feet

If a uniform contour interval is not practical, the contour interval may be changed for steep areas, if such a change is clearly identifiable through shading or other appropriate graphic technique. For building pads and driveways see Section 4.7.7 for additional topography requirements.

Note: The planning director may waive the topography requirement if the subdivider can demonstrate that the elevation difference over the entire

subdivision is less than 20 feet and the average lot size is 20 acres or greater and not in a 100-year floodplain. Note: Averaging lot size includes cluster development and Open Space commitments.

- e. All existing and adjoining roads and alleys, avenues, roads and highway, and width of the easement with existing and proposed road names and access points from the nearest public roads.
- f. Any existing and proposed utilities located on or adjacent to the proposed subdivision, including utility easements and right-of-way easements located or proposed to be located on or adjacent to the tract.
- g. Location, boundaries, dimensions and areas of any parks or areas dedicated for common or public use.
- h. Location and size of existing buildings, structures and improvements, if to be retained.
- i. Designated one hundred year (100-year) floodplain and/or floodway area, if any.
- j. Location and size of all natural and environmental features on the site including all surface water bodies, wetlands, springs and areas of shallow ground water eight feet or less.
- k. For each lot where the obvious building area is in question (general topography of the lot or immediate topography adjacent to the primary access road averages 25%) show:
 - i. A typical building pad (measuring a minimum 40 foot square).
 - ii. The building pad must be able to be accessed by a minimum 10 foot wide private-drive with a maximum developed grade of 10%. Note that the initial 20 feet of driveway surface shall not exceed 5% slope. (Section 4.4.7)
 - iii. The driveway and building pad shall be identified on the preliminary plat using minimum 2-foot contour intervals for clarity.
 - iv. Any building pad which exceeds 25% in cross slope shall be required to receive a favorable report and comply with the recommendations of a geo-technical soils analysis conducted by a licensed engineer prior to final plat approval.

Appendix C Environmental Assessment

General Instructions

It shall be the responsibility of the subdivider to submit the information required by this Section with the preliminary plat. This Environmental Assessment format shall be used by the applicant in compiling a thorough description of the potential impacts for the proposed subdivision. Each question pertinent to the proposal must be addressed in a full comprehensive and systematic fashion (both maps and text). Incomplete Environmental Assessments will not be accepted.

The Environmental Assessment will be objectively measured to assure that all mandatory elements are included and that, based upon objective standards, all prospective impacts are adequately addressed. If, at any time during the application process, material information comes to light that is not addressed in the Environmental Assessment, the subdivider shall be required to amend the environmental Assessment to adequately address the issue. In the event the 60 working day review period is suspended and will not resume until the revised Environmental Assessment has been submitted and reviewed to the same stage in the application process that the original application was at the point the additional information became to light.

Environmental Assessment Contents

There are three major sections to the Environmental Assessment (76-3-603, MCA). The sources of information for each section of the Assessment shall be identified. All Environmental Assessments shall contain the signature, date of signature and mailing address of the owner of the property and the person, or persons, preparing the report and citation and a copy of all supporting information.

Section 1 – Resource Assessment

- a. Surface Water:
 - i. Locate on the preliminary plat all surface water and the delineated 100 year floodplains which may affect or be affected by the proposed subdivision including:
 - A. All natural water systems such as perennial and intermittent streams, lakes and ponds, rivers, or Marshes; and
 - B. All artificial water systems such as canals, ditches, aqueducts, reservoirs, irrigation or drainage systems.
 - ii. Describe all surface waters which may affect or be affected by the proposed subdivision including name, approximate size, present use, and

time of year when water is present and proximity of proposed construction (e.g. buildings, sewer systems, roads) to surface waters.

- iii. Describe any existing or proposed stream bank or shoreline alterations or any proposed construction or modification of lake beds or stream channels. Provide information on location, extent, and purpose of alteration. If any construction or changes are proposed which require a 310 Permit from the Flathead County Conservation District the subdivider shall acknowledge that the permit is required and will be obtained prior to final plat.
 - iv. If wetlands are present, the subdivider shall provide a wetlands investigation completed by a qualified consultant, using the most current U.S. Army Corps of Engineers' Wetlands Delineation Manual. If the investigation indicates the presence of jurisdictional wetlands, a wetlands delineation shall be shown on the preliminary and final plats. If any construction or changes are proposed which require a 404 Permit, the subdivider shall acknowledge that the permit is required and will be obtained.
- b. Ground Water:
- i. Establish the seasonal minimum and maximum depth to water table, dates on which these depths were determined, and the location and depth of all known aquifers which may be affected by the proposed subdivision. The high water table shall be determined from tests taken during the period of the highest groundwater elevations, typically spring and early summer. Any area of high groundwater within eight feet of the surface shall be located on the preliminary plat.
 - ii. Describe any steps necessary to avoid the degradation of ground water and ~~ground water recharge areas.~~
- c. Geology/Soils:
- i. Locate on the preliminary plat any known geologic hazards affecting the subdivision which could result in property damage or personal injury due to rock falls or slides, mud, snow; surface subsidence (e.g., settling or sinking); and seismic activity.
 - ii. Explain what measures will be taken to prevent or materially lessen the danger of future property damage or personal injury due to any of the hazards referred to above.
 - iii. Explain any unusual soil, topographic or geologic conditions on the property which limit the capability for building or excavation using

ordinary and reasonable construction techniques. The explanation should address conditions such as shallow bedrock, high water table, unstable or expansive soil conditions, and slope. On the preliminary plat identify any slopes in excess of 25 percent.

- iv. Identify any soils constraints, including expansive soils, hydric soils, or any soils which limit sanitary facilities. Explain special design considerations and methods needed to overcome the soil limitations.
 - v. Describe the location and amount of any cut or fill three or more feet in depth. These cuts and fills should be indicated on a plat overlay or sketch map. Where cuts or fills are necessary, describe any plans to prevent erosion and to promote re-vegetation such as replacement of topsoil and grading.
- d. Vegetation:
- i. On a sketch map indicate the distribution of the major vegetation types such as marsh, grassland, shrub, coniferous forest, deciduous forest, mixed forest, including critical plant communities such as stream bank or shore line vegetation; vegetation on steep, unstable slopes; vegetation on soils highly susceptible to wind or water erosion.
 - ii. Identify and sketch map any locations of noxious weeds and identify the species of weeds and explain measures to control weed invasion.
 - iii. Describe any protective measures to preserve trees and critical plant communities (e.g., design and location of roads, lots and open spaces).
- e. Wildlife:
- ~~i. Describe species of fish and wildlife which use the area affected by the proposed subdivision.~~
 - ii. Identify on the preliminary plat any known critical or "key" wildlife areas, such as big game winter range, waterfowl nesting areas, habitat for rare or endangered species, or wetlands.
 - iii. Describe any proposed measures to protect or enhance wildlife habitat or to minimize degradation (e.g., keeping building and roads back from shorelines; setting aside marshland as undeveloped open space).
 - iv. It is recommended that the subdivider discuss the impact of the proposed development on fish and wildlife with the Department of Fish, Wildlife and Parks (FWP) and incorporate any recommendations from the agency to mitigate wildlife impacts.

- f. Agriculture and Timber Production:
- i. On a sketch map locate the acreage, type and agricultural classifications of soils.
 - ii. Identify and explain the history of any agricultural production of the by crop type and yield.
 - iii. Describe the historical and current agricultural uses which occur adjacent to the proposed subdivision and explain any measures which will be taken to avoid or limit development conflicts with adjacent agricultural uses.
 - v. If timbered, identify and describe any timber management recommendations which may have been suggested or implemented by the U.S. Forest Service in the area of this proposal.
- g. Historical Features:
- i. Describe and locate on a plat overlay or sketch map any known or possible historic, paleontological, archeological or cultural sites, structures, or objects which may be affected by the proposed subdivision.
 - ii. Describe any plans to protect such sites or properties.
 - iii. Describe the impact of the proposed subdivision on any historic features, and the need for inventory, study and/or preservation and consultation with the State Historic Preservation Office (SHPO).
- h. Visual Impact:
- i. ~~Describe any efforts to visually blend development activities with the existing environment (e.g., provisions for appropriate building materials, colors, road design, and underground utilities and re-vegetation or earthworks).~~
 - ii. Describe and locate on a sketch map areas of important view sheds (e.g. slopes greater than 25 percent) and methods to preserve the aesthetic values of these areas.
- i. Air Quality:
- i. Describe any anticipated impact to air quality caused from dust or other air pollutants and any means to mitigate the impact to air quality.

- j. Area Hazards
 - i. Describe and locate on a plat overlay or sketch map any hazardous concerns or circumstances associated with the proposed subdivision site, including, but not limited to:
 - A. Any part of the proposed subdivision that is located within a “High or Extreme Fire Hazard Area”.
 - B. Any potential hazardous materials contained on site. In some cases a “Environmental Site Assessment” may be required.

Section 2 - Impact Criteria Report

- a. Impacts on Agriculture:
 - i. Proposed subdivisions that are contiguous to urbanized areas are presumed to have a minimal impact on agriculture.
 - ii. Proposed subdivisions located on prime farmland are presumed to have an impact on agriculture. Describe the impact(s) and measures to mitigate the impact(s) or a statement of why no impact is anticipated and provide documentation to support the statement.
- b. Impact on Agricultural Water User Facilities:
 - i. Proposed subdivisions located on land with agricultural water user facilities or adjoining an agricultural water use facility are presumed to have an impact on agricultural water user facilities. Describe the impact(s) and measures to mitigate the impact(s) or a statement why no impact is anticipated and provide documentation to support the statement.
 - ii. Proposed subdivisions that involve the abandonment or transfer of water rights from the property being subdivided, or that involve the abandonment or removal of agricultural water user facilities are presumed to have an impact on agricultural water user facilities. Describe the impact(s) and measures to mitigate the impact(s) or a statement why no impact is anticipated and provide documentation to support the statement.
 - iii. Proposed subdivisions that will alter access for maintenance of agricultural water user facilities are presumed to have an impact on agricultural water user facilities. Describe the impact(s) and measures to mitigate the impact(s) or a statement why no impact is anticipated and provide documentation to support the statement.

- iv. Proposed subdivisions that will alter the movement or availability of water are presumed to have an impact on agricultural water user facilities. Describe the impact(s) and measures to mitigate the impact(s) or a statement why no impact is anticipated and provide documentation to support the statement.
- c. Impact on Local Services:
- i. Proposed subdivisions that will use existing public utilities are presumed to have a minimal impact on local services.
 - ii. Proposed subdivisions that require the extension of public facilities are presumed to have an impact on local services. Describe the impact(s) and measures to mitigate the impact(s) or a statement why no impact is anticipated and provide documentation to support the statement.
- d. Impact on Natural Environment:
- i. Proposed subdivisions that will use existing utilities are presumed to have a minimal impact on the natural environment except as otherwise provided in subsection (v) below. If an impact exists pursuant to subsection (v) describe the impact(s) and measures to mitigate the impact(s) or a statement why no impact is anticipated and provide documentation to support the statement.
 - ii. Proposed subdivisions in locations with riparian areas, rivers, streams, lakes, or other natural surface waters are presumed to have an impact on the natural environment. Describe the impact(s) and measures to mitigate the impact(s) or a statement why no impact is anticipated and provide documentation to support the statement.
 - iii. Proposed subdivision on land with a high water table (eight feet or less from the surface), wetlands, or groundwater recharge areas are presumed to have an impact on the natural environment. Describe the impact(s) and measures to mitigate the impact(s) or a statement why no impact is anticipated and provide documentation to support the statement.
 - iv. Proposed subdivisions in locations with evidence of soils with building or site development limitations as defined by the soil survey, or are proposed on slopes greater than 25 percent are presumed to have an impact on the natural environment. Describe the impact(s) and measures to mitigate the impact(s) or a statement why no impact is anticipated and provide documentation to support the statement.
 - v. Proposed subdivisions on land with historical, cultural, archeological, or paleontological features are presumed to have an impact on the natural

environment. Describe the impact(s) and measures to mitigate the impact(s) or a statement why no impact is anticipated and provide documentation to support the statement.

- e. Impacts on Wildlife and Habitat:
 - i. Proposed subdivisions that are contiguous to urbanized areas are presumed to have a minimal impact on wildlife and wildlife habitat.
 - ii. Proposed subdivisions in locations with riparian areas, wetlands, rivers, streams, lakes, or other natural surface waters are presumed to have an impact on wildlife and wildlife habitat. Describe the impact(s) and measures to mitigate the impact(s) or a statement why no impact is anticipated and provide documentation to support the statement.
 - iii. Proposed subdivisions in an area with rare or endangered species, as identified by state or federal agencies, are presumed to have an impact on wildlife. Describe the impact(s) and measures to mitigate the impact(s) or a statement why no impact is anticipated and provide documentation to support the statement.
 - iv. Proposed subdivisions on and or adjacent to land identified by state or federal agencies as critical habitat are presumed to have an impact on wildlife and wildlife habitat. Describe the impact(s) and measures to mitigate the impact(s) or a statement why no impact is anticipated and provide documentation to support the statement.
- f. Impacts on Public Health and Safety
 - i. Proposed subdivisions that are contiguous to urbanized areas and utilize available public facilities are presumed to have a minimal impact on public health and safety.
 - ii. Proposed subdivisions located in an area identified as an extreme or high fire hazard area by a fire district are presumed to have an impact on public health and safety. Describe the impact(s) and measures to mitigate the impact(s) or a statement why no impact is anticipated and provide documentation supporting the statement.
 - iii. Proposed subdivisions on land with high pressure gas lines or high voltage lines are presumed to have an impact on public health and safety. Describe the impact(s) and measures to mitigate the impact(s) or a statement why no impact is anticipated and provide documentation to support the statement.

- iv. Proposed subdivisions on land or adjacent to Superfund or hazardous waste sites are presumed to have an impact on public health and safety. Describe the impact(s) and measures to mitigate the impact(s) or a statement why no impact is anticipated and provide documentation to support the statement.
- v. Proposed subdivisions on or adjacent to abandoned landfills, gravel pits, mines, wells, waste sites, or sewage treatment plants are presumed to have an impact on public health and safety. Describe the impact(s) and measures to mitigate the impact(s) or a statement why no impact is anticipated and provide documentation to support the statement.

Part 3 - Community Impact Report

- a. Water Supply:
 - i. Describe how water will be provided for household use and fire protection and the number of gallons needed to meet the needs of the anticipated final population.
 - ii. Indicate whether the plans for water supply meet state standards for quality, quantity and construction criteria.
 - iii. If the subdivider proposes to connect to an existing water system:
 - A. Identify and describe that system.
 - B. Provide written evidence that permission to connect to that system has been obtained.
 - C. State the approximate distance to the nearest main or connection point.
 - D. State the cost of extending or improving the existing water system to service the proposed development.
 - E. Show that the existing water system is adequate to serve the proposed subdivision.
 - iv. If a public water system is to be installed, discuss:
 - A. Who is to install that system and when it will be completed.
 - B. Who will administer and maintain the system at the beginning of subdivision development and when subdivision is completed.

- C. Provision of evidence that the water supply is adequate in quantity, quality, and dependability (75-6-102 MCA).
- v. If individual water systems are to be provided, describe the adequacy of supply of the ground water for individual wells or cisterns and how this was determined.
- b. Sewage Disposal:
 - i. Describe the proposed method of sewage disposal.
 - ii. Indicate the number of gallons of effluent per day which will be generated by the proposed subdivision at its full occupancy, whether the proposed method of sewage disposal is sufficient to meet the anticipated final needs of the subdivision and whether it meets state standards.
 - iii. If the development will be connected to an existing public sewer system, include:
 - A. A description of that system and approximate distance from the nearest main or connection point to the proposed subdivision.
 - B. Written evidence that permission to connect to that system has been obtained.
 - iv. If a new public sewage disposal system, as defined under 75-6-102 MCA, is to be installed, discuss:
 - A. When the system will be completed, and how it will be financed.
 - B. Who is to administer and maintain the proposed system at the beginning of subdivision development and when development is completed.
- c. Solid Waste Disposal:
 - i. Describe the proposed system of solid waste collection and disposal for the subdivision including:
 - A. Evidence that existing systems for collection and facilities for disposal are available and can handle the anticipated additional volume.
 - B. A description of the proposed alternative where no existing system is available.

- C. Whether the proposed method of solid waste disposal meets solid waste standards.
- d. Roads:
- i. Describe any proposed new public or private access roads or substantial improvements of existing public or private access roads.
 - ii. Discuss whether any of the individual lots or tracts have access directly to arterial or collector roads; and if so, the reason access was not provided by means of a road within the subdivision.
 - iii. Explain any proposed closure or modification of existing roads.
 - iv. Describe provisions considered for dust control on roads.
 - v. Indicate who will pay the cost of installing and maintaining dedicated and private roadways.
 - vi. Discuss how much daily traffic will be generated on existing local and neighborhood roads and main arterial, when the subdivision is fully developed.
 - vii. Indicate the capacity of existing and proposed roads to safely handle any increased traffic. Describe any anticipated increased maintenance that will be necessary due to increased traffic and who will pay the cost of maintenance.
 - viii. Explain whether year round access by conventional automobile will be available over legal rights of way to the subdivision and to all lots and common facilities within the subdivision.
- e. Utilities:
- i. Include a description of:
 - A. The method of furnishing electric, natural gas or telephone service, where provided.
 - B. The extent to which these utilities will be placed underground.
 - C. Estimated completion of each utility installation.
 - D. The subdivider shall provide a written statement from the companies that the proposed subdivision can be provided with service.

f. Emergency Services:

- i. Describe the emergency services available to the subdivision such as:
 - A. Is the proposed subdivision in an urban or rural fire district? If not, will one be formed or extended? In absence of a fire district, what fire protection procedures are planned?
 - B. Police protection.
 - C. Ambulance service/Medical services.
 - D. Give the estimated response time of the above services.
 - E. Can the needs of the proposed subdivision for each of the above services be met by present personnel and facilities?

g. Schools:

- i. Identify the School Districts and describe the available educational facilities which would service this subdivision.
- ii. Estimate the number of school children that will be generated from the proposed subdivision.
- iii. The subdivider shall discuss the impact of the proposed development on the provision of educational services with the administrator(s) of the appropriate school system(s). The subdivider shall provide a written statement outlining whether the increased enrollment can be accommodated by the present personnel and facilities and by the existing school bus system, any recommendations of the administrator(s), and any mitigation planned to overcome any adverse impacts of the proposed development on the provision of educational services.

h. Land Use:

- i. Describe comprehensive planning and/or land use regulations covering the proposed subdivision or adjacent land and if located near the jurisdictional area of an incorporated city or town, whether annexation is proposed.
- ii. Describe how the subdivision will affect access to any public lands. Where public lands are adjacent to or near the proposed development, describe present and anticipated uses for those lands; (e.g., grazing, logging, recreation, etc.).

- iii. Describe the effect of the subdivision on adjacent land use.
 - iv. Describe any health or safety hazards on or near the subdivision, such as mining activity or potential subsidence, high pressure gas lines, dilapidated structures or high voltage power lines. Any such conditions should be accurately described and their origin and location identified. List any provisions that will be made to mitigate these hazards.
- i. Housing:
- i. Indicate the proposed use(s) and number of lots or spaces in each:
 - A. For residential indicate the type of dwelling unit.
 - B. For all other uses the type and intensity of use (e.g. industrial, commercial, etc.).
 - j. Parks and Recreation Facilities:
 - i. Describe park and recreation facilities to be provided within the proposed subdivision and other recreational facilities which will serve the subdivision.

Appendix D
First Minor Subdivision Impact Criteria Report

General Instructions

The Montana Subdivision and Platting Act (76-3-608 MCA) sets criteria, including but not limited to, factors that are representative of impacts on the criteria listed below. Each impact must be addressed in a comprehensive and systematic fashion. The impact criteria are based on a presumption that there will be impacts, unless noted to have a minimal impact. For each of the criterion describe the impact(s) and measures to mitigate the impact(s) or a statement why no impact is anticipated and provide documentation to support the statement. If any of the criteria impacts are not applicable it shall be noted; with an explanation as to why it is not applicable. Incomplete impact reports will not be accepted.

The source(s) of information for each criteria impact shall be identified as part of the analysis. All impact analyses shall contain the name of the property, owner of the property and the person(s) preparing the criteria impact report.

Impact Criteria

- a. Impacts on Agriculture:
 - i. Proposed first minor subdivisions that are contiguous to urbanized areas are presumed to have a minimal impact on agriculture.
 - ii. Proposed first minor subdivisions and its improvements located on prime farmland are presumed to have an impact on agriculture.
- b. Impact on Agricultural Water User Facilities:
 - i. Proposed first minor subdivisions and its improvements located on land ~~with agricultural water user facilities or adjoining an agricultural water use facility~~ are presumed to have an impact on agricultural water user facilities.
 - ii. Proposed first minor subdivisions and its improvements that involve the abandonment or transfer of water rights from the property being subdivided, or that involve the abandonment or removal of agricultural water user facilities are presumed to have an impact on agricultural water user facilities.
 - iii. Proposed first minor subdivisions and its improvements that will alter access for maintenance of agricultural water user facilities are presumed to have an impact on agricultural water user facilities.

- iv. Proposed first minor subdivisions and its improvements that will alter the movement or availability of water are presumed to have an impact on agricultural water user facilities.
- c. Impact on Local Services
- i. Proposed first minor subdivisions that will use existing utilities are presumed to have a minimal impact on local services.
 - ii. Proposed first minor subdivisions that require the extension of public facilities are presumed to have an impact on local services.
- d. Impact on Natural Environment
- i. Proposed first minor subdivisions and its improvements that will use existing utilities are presumed to have a minimal impact on the natural environment except as otherwise provided in subsection (v) below.
 - ii. Proposed first minor subdivisions and its improvements in locations with riparian areas, rivers, streams, lakes, or other natural surface waters are presumed to have an impact on the natural environment.
 - iii. Proposed first minor subdivisions and its improvements on land with a high water table eight feet or less from the surface), wetlands, or groundwater recharge areas are presumed to have an impact on the natural environment.
 - iv. Proposed first minor subdivisions and its improvements in locations with evidence of soils with building or site development limitations as defined by the soil survey, or are proposed on slopes greater than 25 percent are presumed to have an impact on the natural environment.
 - v. Proposed first minor subdivisions and its improvements on land with historical, cultural, archeological, or paleontological features are presumed to have an impact on the natural environment.
- e. Impacts on Wildlife and Habitat
- i. Proposed first minor subdivisions and its improvements that are contiguous to urbanized areas are presumed to have a minimal impact on wildlife and wildlife habitat.

- ii. Proposed first minor subdivisions and its improvements in locations with riparian areas, wetlands, rivers, streams, lakes, or other natural surface waters are presumed to have an impact on wildlife and wildlife habitat.
 - iii. Proposed first minor subdivisions and its improvements in an area with rare or endangered species, as identified by state or federal agencies, are presumed to have an impact on wildlife.
 - iv. Proposed first minor subdivisions and its improvements on and or adjacent to land identified by state or federal agencies as critical habitat are presumed to have an impact on wildlife and wildlife habitat.
- f. Impacts on Public Health and Safety
- i. Proposed first minor subdivisions and its improvements that are contiguous to urbanized areas and utilize available public facilities are presumed to have a minimal impact on public health and safety.
 - ii. Proposed first minor subdivisions and its improvements located in an area identified as a high fire hazard area by a fire district are presumed to have an impact on public health and safety.
 - iii. Proposed first minor subdivisions and its improvements on land with high pressure gas lines or high voltage lines are presumed to have an impact on public health and safety.
 - iv. Proposed first minor subdivisions and its improvements on land or adjacent to Superfund or hazardous waste sites are presumed to have an impact on public health and safety.
 - v. Proposed first minor subdivisions and its improvements on or adjacent to ~~abandoned landfills, gravel pits, mines, wells, waste sites, or sewage treatment plants~~ are presumed to have an impact on public health and safety.
 - vi. Proposed first minor subdivisions and its improvements adjacent to or in an area of influence are presumed to have an impact on public health and safety.

Appendix E
Contents of Final PlatGeneral Instructions

The final plat submitted for approval shall conform to the preliminary plat previously approved by the Commission and shall incorporate all conditions imposed at the time of conditional approval. The final plat shall conform to the Montana Subdivision and Platting Act and the Montana Uniform Standards for Monumentation, Certificates of Survey, and Final Subdivision Plats.

- a. A final plat may not be approved by the Commission nor filed by the Clerk and Recorder unless it complies with the following requirements:
 - i. Final plats shall be legibly drawn with permanent ink or printed or reproduced by a process guaranteeing a permanent record and shall be 24 inches by 36 inches and shall include a 1-1/2 inch margin on the binding side.
 - ii. Whenever more than one sheet must be used to accurately portray the land subdivided, each sheet must show the number of that sheet and the total number of sheets included. All certifications shall be shown or referenced on one sheet.
- b. The final plat submitted for approval shall show or contain, on its face or on separate sheets, referenced on the plat:
 - i. A title block indicating the quarter sections, section, township, range, principal meridian and county of the subdivision. The title plat shall contain the words "plat" and subdivision".
 - ii. Name(s) of the owner(s) of the land surveyed and the names of any adjoining platted subdivisions and numbers of any adjoining certificates of survey previously recorded and tied thereto.
 - iii. North point.
 - iv. Scale bar (scale shall be sufficient to legibly represent the required data on the plat submitted for filing).
 - v. All monuments found, set, reset, replaced or removed describing their kind, size, location and giving other data relating thereto.
 - vi. Witness monuments, basis for bearing, bearings and length of lines.
 - vii. The bearings, distance and curve data of all perimeter boundary lines shall be indicated. When the subdivision is bounded by an irregular shoreline or

body of water, the bearings and distances of a meander traverse shall be given.

- c. Data on all curves sufficient to enable the re-establishment of the curves on the ground. This data shall include:
 - a. Radius of curve;
 - b. Arc length;
 - c. Notation of non-tangent curves.
- d. Lengths of all lines shall be shown to at least tenths of a foot, and all angles and bearings shown to at least the nearest minute.
- e. The location of all section corners or legal subdivision corners of sections pertinent to the subdivision boundary.
- f. All lots and blocks in the subdivision, designated by number, the dimensions of each lot and block, the area of each lot (gross and net) and the total acreage of all lots. (excepted parcels marked "Not included in this Subdivision" or "Not included in this Plat" as appropriate, and the boundary completely indicated by bearings and distances.
- g. All easements, roads, alleys, avenues, and highways; their widths, bearings, the width and purpose of all rights-of-way and the names of all roads and highways.
- h. The location, dimensions and areas of all parks, common areas and all other grounds dedicated for public or common use. Where cash has been accepted in lieu of land dedications, it shall be so stated on the final plat and the amount of cash donated stated thereon.
- i. Gross and net acreage of the subdivision.
- k. A legal description of the perimeter boundary of the tract surveyed.
- l. All monuments to be of record must be adequately described and clearly identified on the plat. Where additional monuments are to be set subsequent to the filing of the plat, the location of such additional monuments shall be shown by a distinct symbol noted on the plat. All monuments or other evidence found during retracements that would influence the positions of any corner or boundary indicated on the plat must be clearly shown.
- m. The signature and seal of the registered land surveyor responsible for the survey. The affixing of his/her seal constitutes a certification by the surveyor that the final plat has been prepared in conformance with the Montana Subdivision and Platting

Act (Sections 76-3-101 through 76-3-614, M.C.A.), and these Regulations.

- n. Memorandum of oaths administered pursuant to Section 76-3-405 M.C.A., has been filed with the Flathead County Clerk and Recorder.
- o. House numbers (addresses) shall be assigned by the Flathead County Address Coordinator.
- p. The following certifications shall appear on the face of the final plat:
 - i. Certification by the subdivider dedicating roads, parks or playground, or other public improvements, or stating cash donations in lieu of dedication, when applicable.
 - ii. Certification by the subdivider allowing usage of the easements for the purpose designated on the plat.
 - iii. Certification by the licensed land surveyor who prepared the final plat and related documents.
 - iv. Certification of examining land surveyor where applicable.
 - v. Certification by the County Commissioners expressly accepting any dedicated land and improvements. Acceptance of dedication shall be ineffective without such certification.
 - vi. Certification by the County Attorney.
 - vii. Certification by the County Commissioners that the final subdivision plat is approved, except where the plat shows changes to a filed subdivision plat which are exempt from local government review under Section 76-3-207(1)(e), M.C.A. ~~Where an amended plat qualifies for such a waiver the~~ plat must contain a statement that pursuant to Section 76-3-207(1)(e), M.C.A., approval by the local governing body is not required for relocation of common boundary lines or aggregation of lots.
 - viii. Waiver of right to protest participation in Special Improvement District (See Appendix F, Sample Forms and Certifications).
- q. The following original documents shall be submitted (signed and notarized where appropriate) when applicable, to the County as part of the final plat application process. Said original documents must accompany the approved final plat when filed with the County Clerk and Recorder:
 - i. Certification by a licensed title abstractor showing the names of the owners of record of land to be subdivided and the names of any lien holders 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 lien holders or claimants of record against the land (must not be over 90 days old at time of Flathead County Planning & Zoning Office final plat application acceptance).
- ii. Copies of any deed restrictions relating to public improvements.
 - iii. Certification by the Montana Department of Environmental Quality that it has approved the plans and specifications for sanitary facilities.
 - iv. Copies of articles of incorporation and by-laws for any property owners' association.
 - v. Certification by the subdivider indicating which required public improvements have been installed and a copy of any subdivision improvements agreement securing the future construction of any additional public improvements to be installed.
 - vi. Copies of final plans, profiles, grades and specifications for improvements, including a complete grading and drainage plan, with the certification of a registered professional engineer that all required improvements which have been installed are in conformance with the attached plans.
 - vii. Copy of the state highway permit when a new road access will intersect with a state highway.
 - viii. A certification from the County Treasurer's Office stating that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid.

Appendix F
Sample Forms and Certificates

General Instructions

The following are sample forms and certificates to be used for the preparation of final subdivision application and plats. Sample forms and letters include:

- a. Grant of Easement Letter
- b. Irrevocable Letter of Credit
- c. Certificate of Dedication
- d. Certificate of Surveyor – Final Plat
- e. Certificate of Final Plat
- f. Consent to Dedication of Encumbrances
- g. Certificate of Examining Land Surveyor Where required
- h. Declaration of Covenants
- i. Certificate of Filing by Clerk and Recorder
- j. Certificate of County Treasurer
- k. Wavier of Protest – Participation in Special Improvement District
- l. County Attorney Certificate

~~In addition to showing the location of the utility easement on the plat with dashed lines, the following statement shall appear on the final plat:~~

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

b Irrevocable Letter of Credit:

Letter of Credit No.
Dated:
Expiration Date:
Amount:

Board of Commissioners
Flathead County
800 South Main
Kalispell MT 59901

We hereby establish in your favor an irrevocable letter of credit up to the aggregate amount of \$_____ at the request of (Name of Subdivider).

If (Name of Subdivider) fails to complete the specified improvements in the (Name of Subdivision) within the time period set forth in the attached Improvements Agreement, we will pay on demand your draft or drafts for such funds, to the limit of credit set forth herein, as are required to complete said improvements. All drafts must indicate the number and date of this letter of credit and be accompanied by a signed statement of an authorized official that the amount is drawn to install improvements not installed in conformance with the Improvements Agreement and specifying the default or defect in question.

All drafts must be presented prior to the expiration date stated above, and this letter of credit must accompany the final draft for payment.

This letter may not be withdrawn or reduced in any amount prior to its expiration date except by your draft or written release.

(Name of Lending Institution)

(Signature and Title of Authorized Official)

c. Certificate of Dedication - Final Plat:

(I) (We), the undersigned property owner(s), do hereby certify that (I) (We) have caused to be surveyed, subdivided and platted into lots, blocks, roads and alleys, as shown by the plat hereto annexed, the following described land situated in Flathead County Montana, to-wit:

(Exterior boundary description of area contained in plat and total acreage)

The above described tract of land is to be known and designated as (Name of Subdivision), and the lands included in all roads, avenues and alleys shown on said plat are hereby granted and donated to the use of the public forever. The roadways dedicated to the public are accepted for public use, but the County accepts no responsibility for maintaining the same. The owner(s) agree(s) that the County has no obligation to maintain the roads hereby dedicated to the public use.

Dated this ____ day of _____, 20__.

(Acknowledged and notarized
signatures of all record
owners of platted property.)

d. Certificate of Surveyor - Final Plat:

State of Montana)
) ss.
County of _____)

I, (Name of Surveyor), a registered Land Surveyor do hereby certify that I have ~~performed the survey shown on the attached plat of (Name of Subdivision);~~ that such survey was made on (Date of Survey); that said survey is true and complete as shown and that the monuments found and set are of the character and occupy the positions shown thereon.

Dated this ____ day of _____, 20__.

(Seal)

(Signature of
Surveyor)
Registration No.
(Address)

e. Certificate of Final Plat Approval - County:

The County Commission of Flathead County, Montana, does hereby certify that it has examined this subdivision plat and, having found the same to conform to law, approves it, and hereby accepts the dedication to public use of any and all lands shown on this plat as being dedicated to such use, this _____ day of _____, 20__ at _____ o'clock.

Signature of Clerk and Recorder

Signature of Chairman
County Commissioner

Seal of County

f. Consent to Dedication by Encumbrances, If Any:

(I) (We), the undersigned encumbrancer(s), do hereby join in and consent to the annexed plat and release (my) (our) respective liens, claims and encumbrances as to any portion of said lands shown on such plat as being dedicated to the use of the public forever.

Dated this _____ day of _____, 20__.

(Acknowledged and notarized signatures of all encumbrances of record.)

g. Certificate of Examining Land Surveyor Where Required - Final Plat:

I, (Name of Examining Land Surveyor), acting as an Examining Land Surveyor for Flathead County, Montana, do hereby certify that I have examined the final plat of (Name of Subdivision) and find that the survey data shown thereon meet the conditions set forth by or pursuant to Title 76, Chapter 3, Part 4, M.C.A.

Dated this _____ day of _____, 20__.

(Signature)
(Name of Surveyor)

(Seal of Examining Land Surveyor)

Registration
No.
Flathead County

- h. **Declaration of Covenant:** (To be shown on or filed with final plat where the five acre, single family dwelling exemption applies.)

THIS DECLARATION made on the date hereafter set forth, by (Name of Subdivider).

WITNESETH

THAT WHEREAS, Declarant is the owner of certain property known as (Name of Subdivision) in Flathead County, State of Montana, which is more particularly described in attached Exhibit A.

NOW, THEREFORE, (Name of Subdivider) hereby declares that all of the properties described above shall be held, sold, and conveyed subject to the following covenant which shall run with the real property and be binding on all parties having any right, title, or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall bind each owner thereof. The covenant may be revoked for any or all parcels within the subdivision by mutual consent of the owners of the parcels in question and the governing body of Flathead County.

TO WIT:

No parcels within (Name of Subdivision) may be resubdivided into parcels containing less than five acres and only single family dwellings and their associated out-buildings may be constructed within the boundaries of the subdivision, and only one such dwelling may be constructed on any present or future parcel or lot within the constructed subdivision. For the purpose of this restriction "single family dwelling" shall mean a building under roof designed and intended for use and occupancy as a residence by a single family.

The governing body of Flathead County is deemed to be a party to and may enforce this covenant.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands this (date) day of (month), (year).

(Signature of Subdivider)

Acknowledgement and notarization
of signature

i. **Certificate of Filing by Clerk and Recorder:**

STATE OF MONTANA)

County of _____) ss.

File for record this _____ day of _____, 20 __, at _____ o'clock.

(Signature of Clerk and Recorder)

County Clerk and Recorder

_____, Montana

j. **Certificate of County Treasurer:**

I hereby certify, pursuant to Section 76-3-611(1)(b), M.C.A., that no real property taxes and special assessments assessed and levied on the land described below and encompassed by the proposed (Name of Subdivision) are delinquent:

(legal description of land)

Dated this _____ day of _____, 20 __.

(seal)

(Signature County Treasurer)

_____ County,
Montana

k. **Waiver of Protest – Participation in Special Improvement District**

_____ (Owner) hereby waives any and all right to protest which it may have in regards to any attempt to be made by a local governmental entity, to initiate a Special Improvement District which includes _____ Subdivision, shown on the plat therefore, for any of the purposes set forth in Sections 7-12-2102 and 7-12-4102, M.C.A.; provided however that _____ understands that (he/she/it/they) retains the ability to object to the amount of assessment imposed as a result of the formation of a Special Improvement District.

_____ agrees that this covenant shall run to, with and be binding on the title of the real property described above and shall be binding on the heirs, assigns, successors in interest, purchasers, and any and all subsequent holders or owners of the real property shown on the subdivision plat for _____ Subdivision.

1. **County Attorney Certificate**

CERTIFICATE OF COUNTY ATTORNEY:

This plat has been examined by the Office of the County Attorney according to Section 76-3-612(2), MCA, relying upon

Title Report No. _____ and approved based on information submitted by the developer or his agent.

Dated this _____ day of _____, 20____.

By: _____
Office of the Flathead County Attorney

Appendix G
Subdivision Improvement Agreement

General Instructions

The model subdivision improvement agreement is intended to be used in situations where improvements required for final approval or conditional approval to be extended beyond the three year preliminary subdivision plat approval. A subdivider may request a subdivision improvement agreement to guarantee the construction of improvements in a timely manner.

Procedures

A subdivider requesting a subdivision improvement agreement shall follow the following procedures:

- a. The subdivision improvement agreement must be complete and submitted with the application for final plat.
- b. The term of the agreement in Section 2 is no more than one (1) year following final plat approval.

SUBDIVISION IMPROVEMENT AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, by and between the FLATHEAD COUNTY BOARD OF COMMISSIONERS of Flathead County, Montana, Party of the First Part and hereinafter referred to as the COUNTY, and

(Name of Developer)

a

(Individual, Company or Corporation)

located _____ at _____
(Street Address/P. O. Box) (City, County, State, Zip)

Party of the Second Part and hereinafter referred to as DEVELOPER.

WITNESSETH:

THAT WHEREAS, the Developer is the owner and developer of a new subdivision known _____ as

(Name of Subdivision)

located at

_____ (Location of Subdivision)

and,

WHEREAS, the County has conditioned its approval of the final plat of _____, upon the conditions as set forth (Name of Subdivision)

in the Preliminary Plat of the Subdivision being completed and all improvements, as cited in "Exhibit A" have not been completed at this time, and the Developer wishes to bond for the completion of those improvements set forth in "Exhibit A"; and

WHEREAS, the County's Subdivision Regulations require that a subdivider shall provide a financial security of 125% of the estimated total cost of construction of said improvements as evidenced by an estimate prepared by a licensed public engineer included herewith as "Exhibit B"; and

WHEREAS, the estimated total cost of construction of said improvements is the sum of \$ _____.

NOW THEREFORE, in consideration of the approval of the final plat of said Subdivision by the County, the Developer hereby agrees as follows:

1. The Developer shall deposit as collateral with the County a Letter of Credit, or other acceptable collateral as determined by the Flathead County Board of Commissioners, in the amount of \$ _____. Said Letter of Credit or other collateral shall have an expiration date of at least sixty (60) days following the date set for completion of the improvements, certifying the following:

a. That the creditor guarantees funds in the sum of \$ _____ the estimated cost of completing the required improvements in _____ (Name of Subdivision)

b. That if the Developer fails to complete the specified improvements within the required period, the creditor will pay to the County immediately, and without further action, such funds as are necessary to finance the completion of those improvements up to the limit of credit stated in the letter;

2. That said required improvements shall be fully completed by _____, 20____.

3. That upon completion of the required improvements, the Developer shall cause to be filed with the County a statement certifying that:

a. All required improvements are complete.

- b. That the improvements are in compliance with the minimum standards specified by the County for their construction and that the Developer warrants said improvements against any and all defects for a period of one (1) year from the date of acceptance of the completion of those improvements by the County.
 - c. That the Developer knows of no defects in those improvements.
 - d. That these improvements are free and clear of any encumbrances or liens.
 - e. That a schedule of actual construction costs has been filed with the County.
 - f. All applicable fees and surcharges have been paid.
4. The Developer shall cause to be filed with the County copies of final plans, profiles, grades and specifications of said improvements, with the certification of the registered professional engineer responsible for their preparation that all required improvements have been installed in conformance with said specifications.

IT IS ALSO AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS,
TO-WIT:

That the Developer shall provide for inspection of all required improvements by a registered professional engineer before the Developer shall be released from the Subdivision Improvement Agreement.

That if the County determines that any improvements are not constructed in compliance with the specifications, it shall furnish the Developer with a list of specific deficiencies and may withhold collateral sufficient to insure such compliance. If the County determines that the Developer will not construct any or all of the improvements in accordance with the specifications, or within the required time limits, it may withdraw the collateral and employ such funds as may be necessary to construct the improvement or improvements in accordance with the specifications. The unused portions of the collateral shall be returned to the Developer or the crediting institution, as is appropriate.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals the day and year herein before written.

(Name of Subdivision/Developer/Firm)

by _____

(Title)

STATE OF MONTANA
COUNTY OF _____

On this _____ day of _____, 20____, before me, a Notary Public for the State of Montana, personally appeared _____, known to me to be the _____ of _____, whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal this day and year first above written.

Notary Public for the State of Montana
Residing at _____
My Commission Expires _____

FLATHEAD COUNTY BOARD OF COMMISSIONERS ATTEST:

Paula Robinson
Clerk and Recorder

By: _____
Chairperson

By: _____
Deputy

++++++

EXHIBIT A

Conditions of approval as fixed to the preliminary plat by the Flathead County Board of Commissioners.

ACCEPTABLE FORMS OF IMPROVEMENTS GUARANTEES

Comment:

The following are acceptable means of guaranteeing subdivision improvements agreements, although others may also be acceptable. The irrevocable letter of credit is often the preferable guaranty because it is usually feasible for a subdivider to secure, and the local government can readily obtain funds to complete the required improvements should the subdivider fail to install the required improvements. A suggested irrevocable letter of credit and commentary are included as part of this Appendix. The other common guaranties are also explained below.

The subdivider shall provide one or more of the following financial security guarantees in the amount of 100 percent of the estimated total cost of installing all required improvements.

- a. **Letter of Credit** - Subject to governing body approval, the subdivider shall provide the governing body a letter of credit from a bank or other reputable institution or individual certifying the following:
 - i. That the creditor guarantees funds in an amount equal to the cost, as approved by the governing body, of completing all required improvements.
 - ii. That if the subdivider fails to complete the specified improvements within the required period, the creditor will immediately pay to the governing body upon presentation of a sight draft without further action, an amount of cash necessary to finance the completion of those improvements, up to the limit of credit stated in the letter.
 - iii. ~~That this letter of credit may not be withdrawn, or reduced in amount, until released by the governing body.~~
- b. **Escrow Account** - The subdivider shall deposit cash, or collateral readily convertible to cash at face value, either with the governing body or in escrow with a bank. The use of collateral other than cash, and the selection of the bank where funds are to be deposited must be approved by the governing body. Where an escrow account is to be used, the subdivider shall give the governing body an agreement with the bank guaranteeing the following:
 - i.. That the funds in the escrow account are to be held in trust until released by the governing body and may not be used or pledged by the subdivider as security for any obligation during that period.

- ii. That, should the subdivider fail to complete the required improvements, the bank shall immediately make the funds in escrow available to the governing body for completing these improvements.

- c. **Property Escrow** - The subdivider may offer as a guarantee land or other property, including corporate stocks or bonds. The value of any real property to be used, accounting for the possibility of a decline in its value during the guarantee period, must be established by a licensed real estate appraiser or securities broker, as applicable, at the subdivider's expense. The governing body may reject the use of property as collateral when the property value is unstable, when the property may be difficult to sell, or when other factors exist which will inhibit the exchange of the property for an amount of money sufficient to complete required improvements. When property is offered as an improvement guarantee, the subdivider shall:
 - i.. Enter an agreement with the escrow agent instructing the agent to release the property to the governing body in the case of default. The agreement must be placed on file with the county clerk and recorder.
 - ii. File with the governing body an affidavit affirming that the property to be used as a guarantee is free and clear of any encumbrances or liens at the time it is to be put in escrow.
 - iii. Execute and file with the governing body an agreement stating that the property to be placed in escrow as an improvement guarantee will not be used for any other purpose, or pledged as a security for any other matter until it is released by the governing body.

- d. **Sequential Development** - Where a subdivision is to be developed in phased portions, the governing body may, at its discretion, waive the use of a guarantee ~~on the initial portion, provided that the portion contains no more than 25 lots, or~~ 50 percent of the total number of lots in the proposed subdivision, whichever is less. The governing body may grant final plat approval to only one portion at a time. The plat approval for each succeeding portion will be contingent upon completion of all improvements in each preceding portion and acceptance of those improvements by the governing body. Completion of improvements in the final portion of the subdivision must be guaranteed through the use of one of the other methods detailed in this section.

- e. **Surety Performance Bond** - The bond must be executed by a surety company authorized to do business in the State of Montana and acceptable as a surety to the governing body and countersigned by a Montana agent. The bond must be payable to the County (City) of _____. The bond must be in effect until the completed improvements are accepted by the governing body.

- f. **Special Improvements District** - The governing body may enter into an agreement with the subdivider, and the owners of the property proposed for subdivision if other than the subdivider, that the installation of required improvements will be financed through a special or rural improvement district created pursuant to Title 7, Chapter 12, MCA. This agreement must provide that no lots within the subdivision will be sold, rented, or leased, and no contract for the sale of lots executed, before the improvement district has been created. If the proposed subdivision lies in an unincorporated area, the subdivider, or other owners of the property involved must also petition the board of county commissioners to create a rural improvement district pursuant to Section 7-12-2102, MCA.
- i. An agreement to finance improvements through the creation of a special improvement district, or a petition to create a rural improvement district, constitutes a waiver by the subdivider or the other owners of the property of the right to protest, or petition against, the creation of the district under either Section 7-12-2109 or Section 7-12-4110, MCA. This waiver must be filed with the county clerk and recorder and will be deemed to run with the land.

Comment:

Local officials should be cautious in accepting special improvement districts or rural improvement districts as forms of improvements guaranties. In a number of cases in Montana, the subdivider has been unable to pay the assessments, and the city or county has had to bear the cost of completing the required improvements. These problems occur most frequently where improvement districts are formed as a means to provide improvements on raw land, and local officials may want to avoid creating improvement districts for undeveloped property.

Local officials should consult a bond underwriter before accepting an improvement district as a form of improvements guaranty.

Letters of credit may be revocable, so it is important to express that the letter of credit is irrevocable. Because the letter of credit does not incorporate the subdivision improvement agreement, the issuer of the credit cannot raise objections to the demand for payment. If the letter of credit specifies that the local government need only present a signed statement or affidavit that the subdivider is in default, the local government need not present proof of default or signed statements from any other party.

Under the letter of credit the local government is committed to use the funds for completion of the improvement.

It is important that the expiration date of the letter of credit allows the local government a reasonable amount of time after the improvements completion deadline to inspect the improvements and, if defects are found, prepare proper drafts and present a notice of default to the lending institution.

Lending institutions may be reluctant to issue letters of credit to be in force for long periods of time. Typically, improvements can be completed in 18-24 months, and an additional 1 year warranty period is appropriate to allow the local government to monitor for defects or failures. Following the warranty period an additional 90 days is reasonable to give local officials time to submit any drafts and documentation to draw funds, if necessary.

A "sight draft" commits the payor to make payment at the time the draft is presented, or on sight. Other types of drafts allow a waiting period or approval before the payor must make the payment.

MODEL

IRREVOCABLE LETTER OF CREDIT

Letter of Credit No. ____

Name of Local Government

Date

Address

Gentlemen:

We hereby establish in your favor our Irrevocable Letter of Credit # ____ for the account of (Subdivider), available by your drafts at sight up to an aggregate amount of \$ _____. Should (Subdivider) default or fail to complete the improvements under the terms specified in the attached subdivision improvements agreement for (name of subdivision) we shall pay on demand your sight draft or drafts for such funds, to the limit of credit set forth herein, as are required to complete said improvements.

All drafts must be presented prior to expiration date and this Letter of Credit must accompany the final draft for payment. Drafts drawn hereunder must be by sight draft marked:

“Drawn under (lending institution) , Letter of Credit #
dated (date of Letter of Credit) ,” and the amount drawn endorsed on the
reverse
hereof by the lending institution.

Unless otherwise stated, this Letter of Credit is subject to the Uniform Customs and Practices for Commercial Documentary Credits (1983 Revision) International Chamber of Commerce. We hereby agree with the drawers, endorsers and bona fide holders of the drafts drawn under and in compliance with the terms of this Credit that these drafts will be duly honored upon presentation to the drawee.

This letter of credit may not be withdrawn or reduced in any amount prior to its expiration date except by your draft or written release.

 (Lending Institution)

 (Signature and Title of Official)

Appendix H
Subdivision Roadway Late-comers Agreement

General

This model roadway late-comers agreement is intended to be used in situations where roadway improvements on County maintained roads or easements are required to mitigate the expected impacts which are directly attributable to a proposed subdivision. The extension of roadway improvements are pursuant to 76-3-510, MCA and are required to protect the public health, safety and welfare of Flathead County and its citizens.

**FLATHEAD COUNTY
LATECOMERS AGREEMENT**

THIS AGREEMENT is entered into as of the _____ day of _____, 20____, by and between the Flathead County Board of County Commissioners, Party of the First Part and hereinafter referred to as COUNTY, and

("Name of DEVELOPER")

a _____

(Individual, Company or Corporation)

located at

(Street Address/P.O. Box)

(City, County, State, Zip Code)

Party of the Second Part and hereinafter referred to as DEVELOPER.

WITNESSETH:

THAT WHEREAS, the DEVELOPER is the owner and developer of a new subdivision known as _____

(Name of Subdivision)

located at

_____, and
(Location of Subdivision)

WHEREAS, the COUNTY owns and maintains a public roadway system that serves properties within the unincorporated Flathead County for the benefit of the public.

WHEREAS, the COUNTY has conditioned its' approval of the final plat of the subdivision,

(Name of Subdivision)

upon the conditions as set forth in the preliminary Plat of the Subdivision and all its improvements being completed pursuant to the Conditional Approval set forth in "Exhibit A".

WHEREAS, the DEVELOPER has completed roadway improvements to COUNTY standards on COUNTY maintained roadways or easements pursuant to the Conditional Approval set forth in "Exhibit A" which will benefit properties in addition to those developed by the DEVELOPER.

WHEREAS, the COUNTY and DEVELOPER have identified certain properties that may eventually benefit from the roadway improvements set forth in "Exhibit B", and

WHEREAS, the DEVELOPER seeks reimbursement from properties that may eventually benefit from the roadway improvements as these properties are developed as set forth in Exhibit "C".

THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Entitlement to Reimbursement. The COUNTY agrees that DEVELOPER has installed the roadway improvements to COUNTY standards for which the COUNTY'S existing policies entitle the DEVELOPER to seek reimbursement from future property developers who benefit from such facilities:

a. Roadway Improvements:

Based on evidence and information submitted by DEVELOPER, the COUNTY agrees that the DEVELOPER shall be entitled to seek reimbursement, for the facilities described above in the amount of _____ DOLLARS as set forth in Exhibit "C".

2. Identification of Properties. The parties agree that the properties identified on Exhibit "B," attached hereto and incorporated herein by reference, are those properties from which DEVELOPER is entitled to seek reimbursement for roadway improvements to COUNTY maintained roadways or easements, and the reimbursement that DEVELOPER is entitled to seek is the amount set forth on Exhibit "C" with respect to each property.

3. COUNTY Effort to Collect. The COUNTY agrees that it shall exercise its best, good faith efforts to assist DEVELOPER in collecting reimbursement as set forth herein. The COUNTY will exercise its best, good faith efforts to decline to allow the properties described on Exhibit "B" to subdivide or develop for which DEVELOPER is entitled to seek reimbursement unless and until such properties have deposited with the COUNTY the appropriate amount of reimbursement, as described on Exhibit "C." Other than exercising its best, good faith efforts to obtain reimbursement from those properties

identified on Exhibit "B," the COUNTY shall have no further obligation to reimburse DEVELOPER for the roadway improvements. The COUNTY shall not incur liability for any unauthorized development within the properties identified in "Exhibit "B" and the COUNTY shall not be obligated to pay to DEVELOPER any amount of reimbursement as set forth therein until the COUNTY has actually collected such amount from the properties described on Exhibit "B." DEVELOPER acknowledges that the COUNTY has entered into this Agreement as an accommodation and as a convenience to DEVELOPER, and the COUNTY does not guaranty that any amount of reimbursement will be collected for DEVELOPER; nor will the COUNTY be liable if it fails, through negligence or otherwise, to collect from a particular property.

4. Payment to Developer. Within thirty (30) days of the COUNTY'S collection of reimbursement from one of the property owners described on Exhibit "B," the COUNTY shall remit such amount to the DEVELOPER, less a service charge equal to seven (7) percent of the amount collected (but in no event exceeding \$500.00) to defray the COUNTY'S costs of administering this Agreement.

5. Term; Incorporation of Policies. This Agreement shall be in effect for a period of fifteen (15) years, after which time it shall automatically terminate. DEVELOPER shall have no right to reimbursement from any properties described on Exhibit "B" after the termination of this Agreement; nor shall the COUNTY have any further obligation to monitor or identify properties that benefit after the termination of this Agreement.

6. Attorneys' Fees. In the event of any litigation to enforce or interpret the provisions of this Agreement, or to remedy a breach thereof, the prevailing party shall be entitled to reasonable attorneys' fees as fixed by the court.

7. Entire Agreement. This Agreement contains the entire agreement of the parties hereto, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. There are no representations, agreements, arrangements, or understandings, oral or written, between the parties hereto relating to the subject matter contained in this Agreement which are not fully expressed herein. The provisions of this Agreement may be waived, altered, amended or repealed in whole or in part only upon the written consent of all parties to this Agreement.

8. Governing Law. The construction of this Agreement, and the rights and liabilities of the parties hereto, shall be governed by the laws of the State of Montana.

9. Forum. Any litigation to enforce or interpret the provisions of this Agreement or the parties' rights and liabilities arising out of this Agreement or the performance hereunder shall be maintained only in the courts in the County of Flathead, Montana.

10. Successors in Interest. This Agreement shall inure to the benefit of, and shall be binding upon, the assigns, successors in interest, personal representatives, estate, heirs, and legatees of each of the parties hereto.

11. Notices. All notices, requests, payments, demands and other communications required or permitted to be given under this Agreement shall be in writing and shall either be delivered in writing personally or be sent by telegram or by regular or certified first-class mail, postage prepaid, deposited in the United States mail, and properly addressed to the party at his address set forth on the signature page of this Agreement, or at any other address that such party may designate by written notice to the other party.

IT IS ALSO AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS, TO WIT:

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year herein before written.

Dated: _____

DEVELOPER

By:

Address: _____

Dated: _____

FLATHEAD COUNTY

By:

Chairperson

ATTEST:

County Clerk and Recorder

Appendix I

Standards for Flood Hazard Evaluation

General Instructions

Where the subdivider is required by the governing body to provide data for use in defining the 100 year floodway of a stream subject to flooding, the following information shall be submitted to the Floodplain Management Section of the Water Resources Division, Montana Department of Natural Resources and Conservation.

- a. A copy of the plat showing contour intervals of no greater than five feet.
- b. The location and elevation of a temporary benchmark established with the subdivision and referenced to mean sea level with appropriate elevation adjustment.
- c. A minimum of four surveyed valley cross sections of the stream according to the following requirements:
 - i. Cross sections shall include the stream channel and floodplain on both banks and shall be normal to direction of flow.
 - ii. At least one cross section shall be taken at a point on the stream from which it could be extended through the subdivision.
 - iii. Three cross sections shall be taken downstream from the subdivision, no more than 1,000 feet apart, but in no case may vertical drop between cross sections exceed 5.0 feet. The cross section farthest downstream should be located at a natural constriction or bridge crossing if possible. Cross sections shall be taken at any location between the subdivision and lowest cross section.
 - iv. Distances between cross sections are to be determined by stadia and these distances and locations of cross sections shall be shown on the location map.
 - v. The overbank cross sections are to be extended to obtain a vertical rise of 15 feet above the water surface.
- d. If a U.S. Geological Survey gauging station is within the reach of the stream under study, the elevation of any convenient foot mark shall be surveyed and clearly indicated on the location map.
- e. Descriptions and sketches of all bridges within the reach, showing unobstructed waterway opening and elevations.
- f. Color photographs clearly depicting the vegetation of both overbanks and the material composition of the banks and channel bottom shall be submitted for each

cross section.

- g. Cross sections plotted on cross section paper of ten divisions to the inch using any convenient, identified scale for vertical and horizontal distance. The water surface at the time of survey shall be plotted on each cross section.
- h. A profile sheet prepared on cross section paper at ten divisions to the inch showing the observed water surface profile, location of cross sections, subdivision boundaries, riverbank profile and thalweg (lowest point of the channel bottom).
 - i. A location map, such as U.S. Geological Survey seven and one-half (7-1/2) minute quad or similar map, showing the proposed subdivision, the locations of the valley cross sections and any gauging stations.
- i. These requirements may vary, so the Supervisor of the Floodplain Management Section of the Water Resources Division of the Montana Department of Natural Resources and Conservation should be contacted.