

## CHAPTER 4 – SUBDIVISION REGULATIONS

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## **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-de-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.