

Review Guidance

Findings of Fact

- A. **First, find the facts, not the conclusions.** Facts are determined based on the evidence, with reference to the criteria for review established by existing law (statute and regulations). Evidence can come from staff report, public comment, agency comment, and Board members' experiences.
- a. If the board agrees with all staff's findings, the board can adopt staff report FXX-XX-XX as findings of fact, by making a motion would be "to adopt staff report FXX-XX-XX as finding of fact."
 - b. If the board does not agree with one or more of the staff reports findings of fact, then the board can modify the findings using the following steps.
 1. A motion is made "to adopt staff report FXX-XX-XX as finding of fact" and that motion is seconded.*
 2. Board discussion regarding the staff reports findings of fact. This can be done by the board going through the criteria for review and identifying possible issues with the findings of fact.
 3. If the board disagrees with one of the findings of fact a subsequent motion shall be made to amend or add a finding. A board member makes the subsequent motion "to amend the findings of fact as follows..." The new or amended finding must be based on evidence to support the change in the finding and the evidence must be cited in the new or amended finding.

For example, The staff report may find no impact on wildlife habitat but during the public hearing, an FWP representative gives testimony that the area where the subdivision is located is critical moose habitat. The board might find that the agency's comments are important to their decision and would amend the finding to state the impact on wildlife is unacceptable *because* the area is a critical habitat for moose.
 4. The subsequent motion to amend the findings shall be seconded and approved by a roll call vote.
 5. The board goes back to the original motion. The chair will re-state the original motion as "to adopt staff report FXX-XX-XX as findings of fact as amended" and call for a roll call vote.
- * If the Board or any member of the Board knows that they don't want to adopt the staff's report as findings and have their own findings ready, the first motion can be "to adopt the following as findings of fact...(state the findings based on each criterion and the evidence presented)."

Conditions of Approval

B. Second make a recommendation to the Flathead County Board of Commissioners with or without conditions of approval. Remember that conditions must be linked to findings of fact. Options for a recommendation include the following:

- a. To recommend approval: “I move to forward a positive recommendation to the Flathead County Board of Commissioners on (insert file number and name).”
- b. To recommend approval with conditions: “I move to forward a positive recommendation to the Flathead County Board of Commissioners on (insert file number and name) with (staff’s conditions)/(the following conditions).”
- c. To recommend denial: “I move to forward a negative recommendation to the Flathead County Flathead County Board of Commissioners on (insert file number and name).”
- d. To recommend denial when the board would like to recommend conditions in the event that the commissioners determine that the application should be approved: “I move to forward a negative recommendation to the Flathead County Flathead County Board of Commissioners on (insert file number and name) and recommend the following conditions be forwarded to the commissioners in the event that the commissioners determine that the subdivision should be approved.”

After a motion and seconded on a recommendation to the Commissioners, the board discussion regarding the proposal and the possible conditions of approval can occur. If new findings were created, staff’s conditions may be adopted with revisions, or new conditions may be adopted.

During board discussion, a board member can make a subsequent motion, “to amend the condition as follows...” The subsequent motion to amend the conditions shall be seconded and approved by a roll call vote.

When there is no more discussion, the chair re-states the original motion, adding “as amended” if the conditions were amended, and calls a roll call vote.

Criteria For Local Government Review

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

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

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

(a) except when the governing body has established an exemption pursuant to subsection (6) or except as provided in **76-3-509**, **76-3-609**(2) or (4), or **76-3-616**, the specific, documentable, and clearly defined impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety, excluding any consideration of whether the proposed subdivision will result in a loss of agricultural soils;

(b) compliance with:

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

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

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

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

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

(4) The governing body may require the subdivider to design the proposed subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3) but may not require a set-aside of land or monetary contribution for the loss of agricultural soils. Pursuant to **76-3-620**, the governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

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

(b) When requiring mitigation under subsection (4) and consistent with **76-3-620**, a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

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

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

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

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

(10) Findings of fact by the governing body concerning whether the development of the proposed subdivision meets the requirements of this chapter must be based on the record as a whole. The governing body's findings of fact must be sustained unless they are arbitrary, capricious, or unlawful.