

From: [Dan Stone](#)
To: [Jen Gress](#)
Cc: [Colin Woodrow](#); [Corey Aldridge](#)
Subject: Subdivision Regulations: State Law Changes
Date: Friday, May 27, 2022 1:58:13 PM

Hi Jen,

Missoula Urban Transportation District supports changes to the City subdivision regulations that establishes a process for phased subdivision review. We have found that existing ambiguity in how phased subdivisions are reviewed and approved has led to instances where only certain phases of a subdivision are required to petition into the Missoula Urban Transportation District. In some areas of Missoula, this has created a patchwork of properties that pay into MUTD that are surrounded by phases of the same development that are not in the Transportation District. This leads to an inequitable distribution of taxes and loss of revenue for Mountain Line.

Requiring phasing information as part of the preliminary plat review will help ensure that all phases of a subdivision meet the same conditions for approval, including petitioning into the Missoula Urban Transportation District, if applicable.

MUTD has no comment on the other proposed subdivision regulation changes.

Thank you,

Dan Stone

Transit Planner

He/Him

Mountain Line (MUTD)

406.215.2457

dstone@mountainline.com

Mountain Line



Benefits Us All.
mountainline.com



Date: 5/26/2022

To: Jen Gress, Associate Planner

From: Parks & Recreation Department through David Selvage, Park Systems & Services Supt.

Cc: Donna Gaukler, P&R Director

Nathan McLeod, Senior Landscape Architect

Jim Nugent, City Attorney

RE: Parks & Rec review and comment on proposed subdivision code amendments

Thank you for opportunity to review.

Article 2 Definitions

2-20 Definitions

.83 Phased Development

A subdivision application and preliminary plat that at the time of submission consists of independently platted development phases that are scheduled for reviewed on a schedule proposed by the subdivider.

Edit

3-040 Grading, Drainage, and Erosion Control

.3 Grading and Drainage Systems

A. Major subdivisions that are located outside the designated drainage area must install storm drains or deliver storm water runoff to the nearest suitable drainage channel or storm drain main line. ~~Discharge intensity is limited to ten-year, one-hour storm events. Rainfall intensity must be derived from the 24-hour storm duration.~~ The plan must be approved by the city engineer.

Clarify - The new language (as did the former language) lacks context as to what/how rainfall intensity is to be used or applied, e.g., "The design of the system shall be based onRainfall intensity, Additionally the term "24-hour storm duration" would need to be defined. Likely the added language needs to be in a different/new section describing drainage plan requirements and assumptions.

4-010 General Provisions for all Major and Minor Subdivisions

.1 Pre-application Meeting

A. A pre-application meeting must occur within 30 days after the subdivider submits a written request to ~~the Office of Planning and Grants Development Services.~~

Also noted at subsection 4-010.4

Inconsistency/Clarify - should "Development Service" be referenced as CPDI? or does this refer to Missoula County Development Services? Also noted at several additional locations where "Development Services" is used and not identified to be changed to "CPDI."

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.13 Mitigation of Impacts

B. The City Council must consider the following in determining the appropriate mitigation. The final decision on the weight to give the factors below lies solely with the City Council:

(1) Whether ~~unmitigated~~ impacts of a proposed development ~~are unacceptable~~ may be deemed unmitigable, precluding approval of the plat.

Edit: adding the words "may be deemed" unmitigable in place of the deleted word "are" appears to require City Council's make findings that clarify how or why an impact is unmitigable.

.14 City Council Decision and Documentation

(3) Unless otherwise provided by law, the governing body may review but does not have approval authority of the development covenants (governing documents) of the subdivision or amendments to the development covenants unless the development covenants directly and materially impact a condition of subdivision approval.

Edit: The above could provision be more clearly and precisely written to say:

(3) The governing body may review applicable development covenants (governing documents) of the subdivision or amendments when such provision of the covenants directly and materially impact a condition of subdivision approval.

4-051 Expedited Review Procedure

.1 Applicability

A subdivision qualifies for the expedited review process if the proposed subdivision is within the Missoula city limits.

Clarify:

The *explanation* notes says

This entire section is new in response to SB 161 (2021). This bill allows an expedited review for proposed subdivisions that are within city limits and meet certain requirements, such as compliance with zoning, design standards and other subdivision regulations without the need for variances of any kind as well as plans for onsite development of, or extension to, public infrastructure.

As written the plan language provides that all proposed subdivisions within the Missoula City Limits are eligible.

P&R recommends redrafting the language to specify the conditions that must be met – Sectio 4-051.1 (A) would be revised to state:

- A A subdivision qualifies for an expedited review process if all the following criteria are met:
- 1) the proposed subdivision is within the Missoula city limits, and
 - 2)

4-070 Preliminary and Final Plats

.1 Non-Phased development

B. (2) A preliminary plat shall be in force for a period of three years, **unless the governing body has approved an extension for a mutually agreed upon time per 4-070.1B.**

Edit: recommend revising language to read: A preliminary plat shall be in force for a period of three years, **unless the governing body has approved an extension per 4-070.1B**

Also noted "Development Services" is specified instead of CPDI at numerous locations following



**TYLER R. GERNANT
CLERK & TREASURER
200 WEST BROADWAY
MISSOULA MT 59802-4292
(406) 258-4752**

TO: Jen Gress, Associate Planner, CPDI, City of Missoula

FROM: Missoula County Clerk & Treasurer

DATE: May 26th, 2022

RE: Subdivision Regulations: State Law Changes

Please find the attached files containing the Missoula County Clerk & Treasurer's comments regarding the proposed City of Missoula subdivision regulation changes.

The memo seeking comments stated that these amendments have a narrow scope related to legislative changes and correcting obvious mistakes or inconsistencies so as not to duplicate efforts during the Comprehensive Code Reform process. The attached include substantial and substantive comments relating to the proposed changes yet also areas of the subdivision regulations not currently identified by the City for amendment.

You will find that the attached comments relate directly to inconsistencies between the current regulations and statute, areas where currently adopted processes are out of compliance with subdivision regulations, and language within the regulations that prohibits logistical changes that have recently been adopted by the City or are forthcoming prior to the Comprehensive Code Reform process.

The comments provided are also limited to only those items which directly impact the statutory requirements of the office of the Clerk & Treasurer or where the enforcement of the regulations is left to the Clerk & Treasurer. The remainder of our comments will be provided during the Comprehensive Code Reform process.

Please reach out if any of the comments or proposed language require clarification from the Clerk & Treasurer. Additionally, I request that the Missoula County Clerk & Treasurer be added as an affected agency on subsequent distributions related to City regulation changes.

Please include tgernant@missoulacounty.us and recording@missoulacounty.us in all correspondence.

Thank you,



Tyler R. Gernant
Clerk & Treasurer
Missoula County
tgernant@missoulacounty.us
406.258.4752

Attachments:

C&T_Comments_Missoula City Sub Regs.pdf

C&T_Subdivision Regulations State Law Changes Public Comment.pdf

Step 5	CPDI – staff report.	Maximum 35 business days, statutory limit. MCA 76-3-604.
Step 6	City Council – public hearing.	
Step 7	LUP – post public hearing discussion.	
Step 8	City Council – Final Consideration.	

Explanation:

This entire section is new in response to SB 161 (2021). This bill allows an expedited review for proposed subdivisions that are within city limits and meet certain requirements, such as compliance with zoning, design standards and other subdivision regulations without the need for variances of any kind as well as plans for onsite development of, or extension to, public infrastructure. Projects that meet these criteria are exempt from specific review requirements like an environmental assessment and consideration of the primary review criteria. If a proposed development is meeting all the regulations and is appropriately planning for public infrastructure, the consideration of a proposed subdivision should be very straightforward. A public hearing is still required whether a project is a minor or major subdivision and notice of the proposed subdivision will be a legal ad and posted on the Engage Missoula website. The decision on an expedited review is accomplished within 35 business days from the time the proposed subdivision is considered sufficient to the final decision by City Council. This is the same amount of time it takes for minor subdivision (35 days) and a savings of time (between 70 and 80 days) for major subdivision.

4-070 Preliminary and Final Plats

.1 Non-Phased development

A. Effective Period of Preliminary Plat Approval

~~The City Council must provide the subdivider with a dated and signed statement of approval as required by MCA 76-3-610, as amended. The subdivider must submit the final plat for the entire area shown on the preliminary plat, or request an extension of the approval period by the City Council, prior to the submital deadline for final plat review. If the final plat has not been submitted or if no extension has been requested before the deadline, the preliminary plat is void/expired.~~

A.(1) ~~The City Council may withdraw approval of an application and preliminary plat if it determines that information provided by the subdivider, and upon which the approval or conditional approval was based, is materially inaccurate.~~

B. (2) ~~A preliminary plat shall be in force for a period of three years, unless the governing body has approved an extension for a mutually agreed upon time per 4-070.1B.~~

C. (3) ~~After the application and preliminary plat are approved, the City Council may not impose any additional conditions as prerequisite to final plat approval.~~

Summary of Comments on Article 1

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Author: sdscott Subject: Highlight Date: 5/26/2022 2:31:14 PM

Author: sdscott Subject: Sticky Note Date: 5/26/2022 2:35:19 PM

The phrasing of "must submit", "submittal deadline", etc. has been problematic for Final Plats to date. We recommend either including a definition for "submitted", outlining what constitutes "submittal", or adding language such as -- "To be considered 'submitted' a final plat must be provided to CPDI along with the documents indicated by the approving departments"

This would allow for the Subdivision & Survey Tracker to provide the determination of what needs to be included and when a plat is considered 'submitted'.

Author: sdscott Subject: Highlight Date: 5/26/2022 2:31:18 PM

(2) Proposed phased development is subject to Section 5-020.14.

(3) At the time of the request for a preapplication meeting, the subdivider shall provide Development Services a preliminary plat of the full subdivision indicating all independent platted development phases in accordance with 4-010.1B(4). Phases are required to be submitted sequentially.

B. Phased development Review for Each Phase:

(1) Application

Written notice must be provided to Development Services expressing the desire of a subdivider to commence with a phase. Prior to submitting the final plat submittal packet for a particular phase, a public hearing will be held to determine whether any changed primary review criteria impacts, or new information exist, that create new potentially significant adverse impacts for the phase or phases commencing.

The written notice shall include an application packet with the following:

- (a) Cover letter stating the applicant's intent to commence with improvements prior to submitting the final plat submittal packet for a phase;
- (b) Final plat drawing for the particular phase;
- (c) Typical road sections for this phase;
- (d) Current approved Phasing Plan diagram and schedule;
- (e) A revised phasing plan diagram with a revised legend, showing the new schedule, for any proposed changes to the phasing plan layout or schedule; and
- (f) A narrative addressing whether there is new information or new regulations that apply to the subdivision and whether the findings of fact and conclusions of law at the time of preliminary plat approval are still valid.

C. Phased Development Deadlines:

- (1) Proposed phase deadlines may extend beyond the standard preliminary plat approval deadline of three calendar years (MCA 76-3-610) for a time agreed upon between the developer and the governing body. Phase deadlines must be in writing and signed by the subdivider and governing body.
- (2) All phases must be submitted for review and approved, or denied, within 20 years of the preliminary plat approval of the phased development application.
- (3) The subdivider shall submit the final plat for each phase no later than the final plat submittal deadline in the approved phasing plan. Following the public hearing approval for that phase, the phase approval is good for up to three years.

D. Public Hearing:

Explanation:

Sections 4-070.4A.-D. were amended in response to HB 245 (2017) which revised a governing body's responsibilities concerning the submission and evaluation of a final plat. Amendments provide for time limits and notification procedures. Planning staff have been applying State Law amendments from 2017 based on direct reference to the Montana Code Annotated (MCA) even if not incorporated into the local regulations.

Author: sdscott Subject: Highlight Date: 5/26/2022 2:36:42 PM

Author: sdscott Subject: Sticky Note Date: 5/26/2022 2:37:24 PM

See the comment provided in the comprehensive file. Exhibit 7/3 will be abandoned August 1. Should no longer be referenced in the regulations.

E. City Council Review and Action on Final Plat

- (1) If a determination is made under section 4-070.4B(1), that the final plat contains the information required, the City Council shall review and approve or deny the final plat within 20 working days.

Explanation:

HB 245 (2017) was instrumental in establishing time limits for final plat review and approval. The above amendment clarifies City Council has 20 working days to act on the plat. With the addition of this paragraph the rest of the section will be renumbered appropriately.

F. Recordation

It is the responsibility of the following departments to check final plats and accompanying documents, prior to signing the plats, for the elements enumerated here and to perform the actions similarly enumerated here:

- (5) CPDI Development Services:
- (8) The Clerk and Recorder may not accept a plat for filing unless:
 - (a) The city engineer, the health authorities, the city attorney, ~~Development Services~~CPDI, and the Mayor have signed the plat, and
 - (b) The plat is accompanied by the required documents shown on the checklist (Exhibit 7.3). The checklist must bear the initials of the officials listed in 4-070.4F(8)(a).

5-020 Subdivision Application Form and Preliminary Plat Supplements

A completed subdivision application (~~Exhibit 2 — contact OPG to get a copy~~) must accompany the preliminary plat. See Fees, Forms and Applications on the City's website. The subdivision application must be complete and contain:

- .6 **Primary Review Criteria Report and Summary of Probable Impacts**
Information required by the City Council necessary to perform an adequate review pursuant to the *Montana Subdivision and Platting Act* that includes specific information relating to the State primary review criteria as required by MCA 76-3-608(3), and identify the adverse impacts and describe proposed avoidance and mitigation efforts resulting from the proposed development for each of the following criteria:

5-050 Final Plat Requirements**.3 Required information**

- M.** All monuments to be of record must be adequately described and clearly identified on the plat. Where additional monuments are to be set subsequent to the recording of the plat, the location of such additional monuments must be shown by a distinct symbol noted on the plat. All monuments or other evidence found during retracements that would influence the position of any corner or boundary indicated on the plat must be clearly shown. (See [Exhibit 4: Monumentation](#).)

.5 Final Plat Supplements, pursuant to MCA 76-3-504(d)

- i.** Certificates, acknowledgments, and descriptions include the following:
- (2)** ~~A certificate of a title abstractor subdivision guarantee (MCA 76-3-612(3)) issued by an authorized title insurer or its title insurance producer, showing the names of the owners of record of the land to be subdivided and the names of lien-holders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lien-holders or claimants of record against the land.~~

Explanation:

HB 292 included a change of terminology from an "abstract of title" to a "subdivision guarantee" and included clarifying language of who a subdivision guarantee is issued by. This amendment will clarify those items in our regulations.

6-010 General

- 4.** The variances will not in any manner violate the provisions of the zoning ordinance or any variance granted to those regulations or the [Missoula County-City Growth Policy](#);

7-020 Minor Errors

- .3** The property owners petitioning for the amendment or correction of a filed subdivision plat must pay all related direct costs incurred by the City of Missoula, including filing fees according to the final plat filing fee schedule. (see [Exhibit 1](#)).

7-030 Major Errors

- .1** Major errors may include but are not limited to:
- D.** Other items of a similar nature as determined by the city engineer and director of [Development ServicesCPD](#);
- .2** Major errors must be reviewed by the city engineer and the director of [Development ServicesCPD](#). All corrected plats must be certified as stated under [4- 070.4F](#); and
- .3** The property owners petitioning for the amendment or correction of a filed

~~C. divisions by sale, gift, or agreement to buy or sell where parties-the landowner enters into a covenant running-with the City Council that runs with the land and revocable-only-by mutual consent-of the City Council and the property owner. provides that the divided land will be used exclusively for agricultural purposes;~~

~~(1) when an agricultural covenant exists and a change of use is requested for anything other than agricultural purposes, the division of land that received an exemption through 8-030.1C will be subject to subdivision review. However, the City Council, in its discretion, may revoke the covenant provided and the division may proceed without subdivision review if:~~

~~(a) The original lot lines are restored through aggregation of the covenanted land prior to or in conjunction with the revoking of the covenant; or~~

~~(b) A government or public entity seeks to use the land for public purposes as defined in the City Council's review criteria pursuant to 76-3-504(1)(b).~~

~~(2) If the City Council proposes to revoke a covenant pursuant to subsection (D)(2), a public hearing will be held. Within 15 business days of the hearing, the City Council shall issue written findings of fact and a decision based on the record. If the City Council approves the revoking of the covenant the approval must be recorded with the clerk and recorder.~~

~~(4)(3) The revocation of a covenant pursuant to this section does not affect sanitary restrictions imposed under Title 76, chapter 4.~~

Explanation:

A review of MCA 76-3-207 language showed us the word "and" is not included. We are removing "and" from section 8-030.1B.

Explanation:

HB 124 revised language pertaining to agricultural covenants under the subdivision and platting act. These amendments clarify that a change in use for anything other than agricultural purposes subjects a division of land that received an exemption under 76-3-207(1)(c) to subdivision review. The law also allows the City Council to revoke exemptions under certain guidelines and conditions. Planning staff have been applying State Law amendments from 2019 based on direct reference to the Montana Code Annotated (MCA) even if not incorporated into the local regulations.

.6 Parcels of land 160 acres in size or larger:

~~C. The affidavit must state whether legal or insurable access to each parcel being created from a city or state road exists:~~

~~(2) If legal or insurable access is said to exist, a title commitment for insurable access (or title abstract subdivision guarantee and legal opinion) from a public road to each parcel must accompany the affidavit.~~

Explanation:

The words "abstract of title" have been changed to "subdivision guarantee" by HB 292. Our regulations will reflect this change.

Article 5. Submittal Requirements 5-1

5-010 Preliminary Plat Requirements 5-1

5-020 Subdivision Application Form and Preliminary Plat Supplements 5-2

5-030 Additional Requirements for Major Subdivisions 5-11

5-040 Submittal Requirements for Subdivisions Created for Lease or Rent 5-11

5-050 Final Plat Requirements 5-11

Article 6. Variances 6-1

6-010 General 6-1

6-020 Variances for Innovative Energy Savings Authorized 6-1

6-030 Procedure 6-1

6-040 Conditions 6-1

6-050 Statement of Facts 6-1

Article 7. Error Corrections and Adjustments 7-1

7-010 Purpose 7-1

7-020 Minor Error 7-1

7-030 Major Errors 7-1

7-040 Plat Adjustments 7-2

Article 8. Exempt Land Divisions 8-1

8-010 General 8-1

8-020 Divisions Exempt from Review, Survey and Plat Filing 8-1

8-030 Divisions and Aggregations Exempt from Plat Filing and Review 8-2

8-040 Exemption Procedures 8-4

8-050 Certificates of Survey 8-8

Article 9. Public and Private Improvements 9-1

9-010 Subdivision Improvements Agreement 9-1

9-020 Payment for Extension of Public Improvements 9-2

9-030 Warranty of Improvements 9-2

Supplemental Administrative Materials (SAMS)

- [Exhibit 1](#) Subdivision Action Fee Schedule
- Exhibit 2 Subdivision Review Application Form (available at the Office of Planning & Grants)
- [Exhibit 3](#) Element Review Check List
- [Exhibit 4](#) Standards for Monumentation
- [Exhibit 5](#) Riparian/Wetland Habitat and Community Types
- [Exhibit 6](#) Wildland/Urban Interface Guidelines
- [Exhibit 7](#) **Final Plat and Treasurer's Checklist**
- [Exhibit 8](#) List of Acronyms used in Subdivision Regulations

Summary of Comments on C&T_Comments_Missoula City Sub Regs.pdf

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Author: sdscott Subject: Highlight Date: 5/25/2022 4:36:44 PM

Author: sdscott Subject: Sticky Note Date: 5/25/2022 4:38:05 PM
 We would encourage eliminating this Exhibit per the comment in 4-070.4.F(8)(b)

property has been filed with the County Clerk and Recorder title to the property cannot be transferred in any manner; and

- E. That the County Treasurer has certified that no ~~real~~ property taxes assessed and levied on the land to be divided ~~are~~ delinquent.

1-080 Repeal

The current subdivision regulations of the City of Missoula, Montana addressing the same provisions are amended and superseded by this subdivision resolution, upon the effective date of this subdivision resolution.

1-090 Conflicting Provisions

If the requirements of this subdivision resolution conflict with any other requirements, ordinances, regulations, restrictions, or limitations, the more restrictive requirements or those that impose the highest standard controls.

1-100 Severability

If any section, subsection, sentence, clause, phrase, or word of these regulations is for any reason held to be invalid or unconstitutional, such decision does not affect the validity of the remaining portions of these regulations. The City Council hereby declares that it would have passed these regulations and each section, sub-section, sentence, clause, phrase and word thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or words have been declared invalid or unconstitutional, and if for any reason these regulations should be declared invalid or unconstitutional, then the remaining regulation provisions will be in full force and effect.

1-110 Violations

Any person who violates any of the provisions to the *Montana Subdivision and Platting Act* and these regulations is guilty of a misdemeanor and punishable by a fine of not less than \$100.00 or more than \$500.00 or by imprisonment in the county jail for not more than three months or by both fine and imprisonment. Each sale, lease, or transfer of each separate parcel of land in violation of any provision of the *Montana Subdivision and Platting Act* or these regulations is deemed a separate and distinct offense, as required by MCA 76-3-105, as amended.

1-120 Appeals

A decision of the City Council rejecting or approving a proposed subdivision plat may be appealed to the District Court within 30 days of the date that such decision is issued in writing. The application must specify the grounds upon which the appeal is made. An appeal may be made by the subdivider, a contiguous landowner, an owner of land within the City of Missoula who can establish a likelihood of material injury to property or its value, the City Council, or the County Commissioners. In order to file an appeal, the plaintiff must be aggrieved by the decision, demonstrating that a specific personal and legal interest, as opposed to a general interest has been or is likely to be specifically and injuriously affected by the decision.

1-130 Amendments

Before the City Council amends these regulations it must hold a public hearing and must give public notice of its intent to amend these regulations and of the public hearing by publishing notice of the time and place of the hearing in a newspaper of general circulation in the county not less than 15 nor more than 30 days prior to the date of the hearing.

- .20 Certificate of Survey**
A drawing of a field survey prepared by a registered land surveyor for the purpose of disclosing facts pertaining to boundary locations and monumentations, as required by MCA 76-3-103, as amended.
- .21 Cluster Development**
Subdivisions that comply with the "cluster development" parcel and building standards of [20.05.050](#) (Table 20.05-3) of the *Zoning Ordinance* and [3-180](#) of these regulations.
- .22 Comprehensive Plan, Master Plan, or Growth Policy**
A *Comprehensive Development Plan*, *Master Plan*, or *Comprehensive Plan* that was adopted pursuant to MCA Title 76, Chapter 1, before October 1, 1999, or a policy that was adopted pursuant to MCA Title 76, Chapter 1, on or after October 1, 1999.
- .23 Condominium**
A form of individual ownership with unrestricted right of disposal of one or more units in a multiple-unit project, with the land and all other parts of the project held in common ownership or use with owners of the other units.
- .24 Conservation Development**
Subdivisions that comply with the "conservation development" parcel and building standards of [20.05.050](#) (Table 20.05-3) of the *Zoning Ordinance* and [3-180](#) of these regulations.
- .25 Conservation Easement**
An easement or restriction, running with the land and assignable, whereby an owner of land voluntarily relinquishes to the holder of such easement or restriction any or all rights to construct improvements upon the land or to substantially alter the natural character of the land or to permit the construction of improvements upon the land or the substantial alteration of the natural character of the land, except as this right is expressly reserved in the instruments evidencing the easement or restriction.
- .26 Construction**
Any grading, excavation, cutting or filling of material or other disturbance that results in a travel-way for motorized or non-motorized vehicles or the site for a building, structure or landscaping.
- .27 Contiguous Tract**
A parcel of land abutting another individual parcel of land; tracts separated only by a public right-of-way is to be construed as abutting and therefore contiguous.
- .28 Courtyard**
A common area landscaped outdoor living space surrounded by walls, fences, or structures.

Author: sdscott Subject: Highlight Date: 5/25/2022 4:42:33 PM

Author: sdscott Subject: Sticky Note Date: 5/25/2022 4:45:38 PM
Inconsistent with the definition provided in the Unit Ownership Act. We recommend referring to the "definition as provided in the Unit Ownership Act" (MCA 70-23)

.119 Subsidized
Financing provided by the US Department of Housing and Urban Development (HUD) or the Montana Board of Housing (MBOH) for the express purpose of providing housing to low- to moderate-income households.

.120 Surveyor (Registered Land Surveyor)
A person licensed in conformance with MCA Title 37, Chapter 67 to practice surveying in the State of Montana.

.121 Swale
A drainage channel or depression designed to direct water flow.

.122 Topography
General term to include characteristics of the ground surface such as plains, hills, mountains, degree of relief, steepness of slope, and other physiographic features.

.123 Townhouse Lot
Arrangement under which individuals own their own units and hold separate title to the land beneath the unit but jointly own the common areas and facilities.

.124 Tract of Record
A parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the County Clerk and Recorder's Office, as stated in MCA 76-3-103, as amended.

.125 Trail
A path designed for non-motorized travel.

.126 Urban Growth Area (UGA)
An Urban Growth Area (UGA), as described within the *Missoula Urban Comprehensive Plan* (Chapter 6).

.127 Vicinity Sketch
A map at a scale suitable to locate the proposed subdivision, showing the boundary lines of all adjacent properties and streets and other information necessary to determine the general location of the proposed subdivision.

.128 Well Isolation Zone
Well isolation zone means the area within a 100-foot radius of a water well.

.129 Wet Meadow
A herbaceous wetland on mineral soil. Generally, wet meadows occur in seasonally flooded basins and flats. Soils are usually dry for part of the growing season.

Author: sdscott Subject: Cross-Out Date: 5/25/2022 4:50:42 PM
"Townhouse Lot" is not used in these regulations. Only "Townhouse".

Author: sdscott Subject: Highlight Date: 5/25/2022 4:47:27 PM

Author: sdscott Subject: Sticky Note Date: 5/25/2022 4:49:57 PM
This definition mirrors the Unit Ownership Act. Changes to the Act will occur next legislative session. We recommend changing the definition to "definition as provided in the Unit Ownership Act"

neighborhood group and minutes from the meeting detailing comments and suggestions.

Author: sdscott Subject: Cross-Out Date: 5/25/2022 4:51:43 PM

.3 Subdivision Application and Preliminary Plat Submittal

~~Two paper copies~~ of the following information and documents, and the appropriate subdivision review fee, must be supplied by the subdivider to the Development Services:

Author: sdscott Subject: Sticky Note Date: 5/25/2022 4:54:33 PM

The Subdivision & Survey Tracker being adopted by the City will lead to solely digital submissions. Remove language referencing paper in favor of language like the following comment.

Author: sdscott Subject: Inserted Text Date: 5/25/2022 4:54:18 PM

- A. The completed subdivision application.
- B. The preliminary plat of the proposed subdivision that contains the information and supplements required by [Article 5](#) and that conforms to the design and improvement standards established in [Article 3](#).
- C. Any additional information as identified by the Development Services during the pre-application meeting.

.4 Subdivision Application Review Process – Element Review

A subdivision application is considered to be received on the date of delivery to Development Services when accompanied by the review fee. Within five business days of receiving the application and the review fee, the Office of Planning and Grants must determine whether the application contains all of the elements required by [4-010.3](#).

- A. If the Development Services determines there are items missing from the application, the Development Services must identify those missing elements in a written notification to the subdivider. No further action may be taken on the application until the missing elements are submitted.
 - (1) Upon the re-submittal of the application, the Development Services has five business days to notify the subdivider whether the resubmitted application contains all of the required elements.
 - (2) This process must be repeated until the subdivider submits an application containing all of the materials required by [4-010.3](#) as determined by the Development Services.
- B. The five-business day review period will be considered met if the determination notice is postmarked within five business days of receiving the application and review fee.
- C. Upon receipt of the notice from the Development Services indicating that all elements of the application are complete, the subdivider must provide one copy of the application, or the relevant portions of the application, to the reviewing agencies and homeowner or landowner associations, appropriate neighborhood councils, or other neighborhood organizations identified by the Development Services.

.5 Subdivision Application Review Process – Sufficiency Review

- A. The Development Services will determine whether the application contains detailed supporting information sufficient to allow for the review of the proposed subdivision. Notice to the subdivider of the determination must be dated and in writing and must be provided by the Development Services within 15 business days from the date of the Development Services notice that all elements of the application are complete. The 15-business day

4-040  **Review Procedure for Condominium or Townhouse Proposals**

- .1 When division of land takes place in a condominium or townhouse proposal, the subdivision must be reviewed under the procedures contained in this article. If a total of five or fewer lots and units are proposed, it must be reviewed as a minor subdivision. If a total of six or more lots and units are proposed, it must be reviewed as a major subdivision.
- .2 Where no division of land is created by a condominium proposal, the subdivision must be reviewed under the procedures as follow:
 - A. **Review and Approval**

Any condominium development must meet all the requirements described in this article and are exempt from the surveying and filing requirements of the *Montana Subdivision and Platting Act*. Proposals must be submitted for review and approved by the City Council before portions thereof may be conveyed. The developer must submit a completed application form and a preliminary plan of the proposed development. Approval will be based upon the primary review criteria in [4-010.14](#).
 - B. **Improvement**

Before any portion of a condominium development may be conveyed the developer must have installed all required improvements as per [Article 9](#). Preliminary plans, profiles, tentative grades and specifications for proposed improvements must be submitted to Development Services for its approval prior to the construction of improvements. Development Services may provide for inspection of all required improvements in order to assure conformance with the approved construction plans and specifications.
 - C. **Final Plan Review**

~~In lieu of filing a final plat, the developer must submit a plan conforming to the requirements for preliminary plats specified in [5-010](#). The plan must show the lot layout and the typical location of the condominiums on the lot. The developer must submit the plan to Development Services. The plan will be reviewed to assure that it conforms to the approved preliminary plan. The approved plan must be maintained in Development Services.~~
- .3 A condominium or townhouse proposal, if constructed on land subdivided in compliance with State law (MCA Title 76, Chapter 3, Parts 5 and 6) or on lots within incorporated cities and towns, is exempt from the provisions of the chapter if:
 - A. The proposal is a conversion of an existing rental-occupancy residential building or office building to individual condominium or townhouse ownership;
 - B. The approval of the original subdivision of land where the condominium or townhouse proposal will be constructed expressly contemplated the construction of the condominiums or townhouse and included applicable park dedication as required by MCA 76-3-621; or
 - C. The condominium or townhouse proposal is in conformance with applicable local zoning regulations when local zoning regulations are in effect.

 Author: sdscott Subject: Sticky Note Date: 5/25/2022 5:04:21 PM
This section is silent on Community Land Trusts which are, per the Unit Ownership Act, neither Condominiums or Townhomes.

 Author: sdscott Subject: Cross-Out Date: 5/25/2022 4:57:09 PM

 Author: sdscott Subject: Sticky Note Date: 5/25/2022 5:03:17 PM
This section does not follow the particulars of the Unit Ownership Act or of current practice of the City. Condos/Townhomes are exempt from preliminary platting requirements. The site and floor plan requirements submitted with declarations are prescribed for in 70-23-306.

C. Application Acceptance Date

The official application acceptance date of the final plat is the date on which the final plat, in the proper form, together with all the required supplemental material and appropriate fees, is received by Development Services. All conditions for preliminary plat approval must be met in order for the final plat application packet to be complete.

D. Review Fee

Before the final plat will be officially accepted for review, the applicant must pay a review fee for the final plat as established by the City Council (see [Exhibit 1](#)).

E. City Council Review and Action on Final Plat

- (1) The City Council must notify the subdivider of approval or disapproval within ten days of their action. Notification of final plat approval must contain the filing deadline date. The City Council must examine the final subdivision plat and approve it if it conforms to the conditions of approval set forth in the preliminary plat and to the terms of the *Montana Subdivision and Platting Act* and these regulations, ~~and if the city treasurer certifies that no real property taxes or special assessments, such as SIDs levied on the land to be subdivided are delinquent.~~ The City Council may not disapprove a final plat if it conforms to the approved preliminary plat and if the subdivider has completed all required changes and met or exceeded all standards and requirements of these regulations. Approval must be certified by the City Council on the face of the final plat.
- (2) If the final plat is disapproved, the reasons for disapproval must be stated in the records of the City Council and a copy of the reasons forwarded to the applicant and to the Development. The statement must include:
 - (a) The reason for the denial or condition;
 - (b) The evidence that justifies the denial or the condition imposed; and
 - (c) Information regarding the appeal process for the denial or condition imposed.
- (3) The applicant may make the necessary corrections and then re-submit the final plat for approval. The City Council may withdraw approval or disapproval of a plat if it determines that information provided and upon which such decision was based is false or inaccurate.
- (4) Final plat approval does not constitute acceptance of dedicated lands. Land dedications must be accepted by specific resolution of the City Council and noted on the final plat. Failure to begin substantial construction of required public improvements within two years of final approval constitutes grounds for the City Council to act against the subdivider's improvements agreement and guarantee according to its provisions.

- filing a final plat.
- (5) Development Services:
- (a) That all conditions for preliminary approval have been met;
 - (b) That original, executed covenants are ready for filing, if covenants were submitted as part of the plat application and were submitted for review;
 - (c) That the accompanying documents include copies of the Property Owners Association Articles of Incorporation and Bylaws, with proof of filing with the Secretary of State, if these articles and bylaws were part of the plat application and were approved in the review, that the articles and bylaws bear the certification of the attorney who prepared or reviewed them that such attorney is licensed to practice law in the State of Montana, that they contain the applicable provisions required by these regulations and any provisions upon which plat approval was based or conditioned, and that the provisions do not conflict;
 - (d) That the park requirement is met by either:
 - i. Certificate of dedication of parkland to the public or common area to a property owners' association in perpetuity; or,
 - ii. Cash payment in lieu of dedication as noted on the face of the plat; or,
 - iii. An appropriate waiver (if one was granted);
 - (e) That, where applicable, a zoning change has been obtained and is certified on the face of the plat;
 - (f) That, where applicable, floodway and floodfringe designations are shown on the plat; and
 - (g) That the plat conforms to all applicable provisions of these regulations.
- (6) The County Treasurer must certify that no real property taxes or SIDs assessed and levied on the land to be subdivided are delinquent, pursuant to MCA 76-3-611, as amended.
- (7) The City Council may not sign the plat until all department officials have signed the plat.
- (8) The Clerk and Recorder may not accept a plat for filing unless:
- (a) The city engineer, the health authorities, the city attorney, Development Services, and the Mayor have signed the plat; and
-  ~~The plat is accompanied by the required documents shown on the checklist (Exhibit 7). The checklist must bear the initials of the officials listed in 4-070.4F(8)(a).~~

Author: sdsccott Subject: Sticky Note Date: 5/26/2022 8:37:37 AM
The City has eliminated the checklists for certificates of survey and amended plats in favor of the checklist generated by the digital review process. Final Plat checklists as shown in Exhibit 7 are going to be eliminated August 1, 2022.

Author: sdsccott Subject: Inserted Text Date: 5/26/2022 8:38:09 AM
The plat is accompanied by the required documents as indicated by the approving departments on the approval checklist prescribed by the filing office.

- G. Timeframe for Filing Final Plat
- (1) Within 180 days of approval by the City Council, one signed copy of

~~the final plat on a stable base polyester film and one signed paper copy of the final plat~~ must be filed with the County Clerk and Recorder.

- (2) Except as provided for in [1-070](#), every final plat must be filed for record with the County Clerk and Recorder before title to the subdivided land may be sold or transferred.
- (3) After recording, the plat may not be altered in any manner, except as provided by these regulations.

H. Final Plat Filing Extension

- (1) To be considered for an extension of the filing date, the subdivider must submit a letter setting forth the reasons for the request. The established limits of 180 days should be adhered to and an extension granted only when circumstances beyond the control of the subdivider prevent him/her from filing the plat. Such circumstances may include:
 - (a) Delay in review by a government agency;
 - (b) Temporary physical constraints on installation of subdivision public improvements; or
 - (c) Timing of SID or bonding requirements.
- (2) The City Council must act upon the request within 21 business days of receipt of the request for the extension. The extension period may be no more than an additional 180 days.
- (3) If the filing date is not met, and there has been no request for extension prior to the filing date, the final plat approval will be considered void. If the original deadline established for the duration of the preliminary approval period is still in effect, then the subdivider will have additional time in which to resubmit the final plat for approval.

4-080 Vacating Recorded Plats

To remove or vacate a plat from county records under the provisions of MCA Title 76-3-305, 7-5-2501, 7-5-2502, 7-14-2616(1), (2), 7-14-2617, 7-14-4114 (1), (2), and 7-14-4115, the following procedure must be followed:

- .1 A petition for vacating the plat must be presented to the City Council specifically identifying the plat and stating that petitioners are the owners of all the land described in the plat and that no rights of any person have intervened since the filing of plat that would be adversely affected by the cancellation or annulment of the plat;
- .2 The City Council must hold a public hearing on the plat vacation. Notice of the public hearing should be given by certified mail to the landowners and anyone else with an interest in the land (including mortgage holders);
- .3 Public notice of the hearing must be given by posting in three public places and publishing in a newspaper of general circulation in the county at least one week prior to the hearing on the petition; and
- .4 The determination of the City Council should be based on public interest factors, including those that would be relevant to vacating public roads. If the plat is to be

Author: sdscott Subject: Cross-Out Date: 5/26/2022 8:39:45 AM

Author: sdscott Subject: Sticky Note Date: 5/26/2022 8:40:15 AM

The requirement for a 'Mylar' copy was eliminated in April of 2022 with the approval of Development Services and the City Attorney. They are no longer accepted by the Clerk & Recorder.

Author: sdscott Subject: Inserted Text Date: 5/26/2022 8:49:54 AM

in the format prescribed by the filing office.

Author: sdscott Subject: Sticky Note Date: 5/26/2022 8:53:33 AM

This brings the regulations in step with ARM for plats and surveys. The Clerk & Recorder will be adopting digital submissions for plats and surveys on Jan 1, 2023. The suggested language complies with Uniform Standards and allows for changes without the need for regulation updates.

Article 5. Submittal Requirements

5-010	Preliminary Plat Requirements	5-1
5-020	Subdivision Application Form and Preliminary Plat Supplements.....	5-2
5-030	Additional Requirements for Major Subdivisions.....	5-11
5-040	Submittal Requirements for Mobile Home Community or Recreational Vehicle Park Subdivisions	5-11
5-050	Final Plat Requirements	5-11

5-010 Preliminary Plat Requirements

.1 Preparation

The preliminary plat and accompanying documents must be prepared by a registered land surveyor licensed to practice in the State of Montana.

.2 Format

- A. ~~All plats must be the standard size of 24 inches by 36 inches overall, including a 1.5 inch margin on the binding side, and should be folded to approximately 9 inches by 12 inches;~~ and
- B. Each sheet must show the number of that sheet and the total number of sheets included.

.3 Identifying Information

The following information must be clearly indicated on the plat or on separate sheets referenced on the face of the plat:

- A. Subdivision or development name;
- B. Legal description;
- C. North arrow;
- D. Scale used on the plat;
- E. Name of owners of record and subdivider; and
- F. Date plat was drawn.

.4 Survey Information

The following information must be shown on the preliminary plat or must be contained in a written statement or supplementary drawing accompanying the plat, pursuant to MCA 76-3-504, as amended:

- A. The exterior boundaries of the platted tract;
- B. The approximate location of all section corners or legal subdivision corners of sections pertinent to the subdivision boundaries. Township, range, principal meridian, section and quarter section if portion of a section, or other general legal description;
- C. All lots and blocks designated by number and the area and approximate dimensions of each lot;

Author: sdscott Subject: Inserted Text Date: 5/26/2022 10:49:30 AM
Plats must be submitted in the format as prescribed by the filing office

Author: sdscott Subject: Sticky Note Date: 5/26/2022 10:51:54 AM

- P. Provide information regarding compliance with the parkland dedication requirements of [3-080](#), as described in the subdivision application.

5-030 Additional Requirements for Major Subdivisions

.1 Environmental Assessment

The subdivider must provide an environmental assessment that addresses the requirements of MCA 76-3-603, and must include narratives describing the environment, coordination of roads, land dedication, road improvements, open space, sanitation and congestion. The following sections from [5-020](#) must be included as part of the environmental assessment: primary review criteria report, summary of probable impacts, and community impact report. The environmental assessment must include proposed avoidance and mitigation efforts that will be used to reasonably minimize potentially significant adverse impacts.

5-040 Submittal Requirements for Mobile Home Community or Recreational Vehicle Park Subdivisions

.1 Preparation

The subdivider must provide the plan and accompanying documents. If the data include engineering plans and specifications, certification of a professional engineer licensed to practice in the State of Montana must also be included.

.2 Preliminary Plans for Mobile Home Community or Recreational Vehicle Park Subdivisions

- A. Required information: see [5-010.3](#) and [5-010.4](#), where applicable; and
- B. Preliminary plan supplements: see [5-020](#).

5-050 Final Plat Requirements

.1 Preparation

The final plat must be prepared by a professional land surveyor. All engineering plans, specifications, and reports required in connection with the preliminary plat approval must be prepared and certified by a professional engineer.

.2 Format

- A. ~~All plats must be the standard size of 24 inches by 36 inches overall, including a 1.5 inch margin on the binding side.~~
- B. Each sheet must show the number of that sheet and the total number of sheets included; and
- C. Final subdivision plats must be legibly drawn with permanent ink or printed or reproduced by a process guaranteeing a permanent record. A poorly drawn or illegible plat or a plat of insufficient quality to assure acceptable recordation must be rejected.

.3 Required Information

The final plat submitted for approval must show or contain the following on the face of the plat or on separate sheets referenced on the face of the plat. (In accordance with ARM 24.183.1107 as amended.)

Author: sdscott Subject: Inserted Text Date: 5/26/2022 10:55:07 AM
Plats must be submitted in the format as prescribed by the filing office

Author: sdscott Subject: Sticky Note Date: 5/26/2022 10:55:19 AM
Again, standardizing language with ARM.

- O. Certification of the subdivider that final plat conforms to the preliminary plat as previously reviewed and approved by the City Council.
- P. When any private access is proposed, certification that the city is not required to improve or maintain the access ~~must be provided~~, and the certification must be so noted on the plat. ~~A County Approach Permit is required when a private road intersects with a county road.~~
- Q. Notary block.
- R. A memorandum of any oaths administered under 76-3-405, MCA;
- S. The dated, signed, and acknowledged consent to the subdivision of the owner of the land to be subdivided. For purposes of these regulations, when the parcel of land proposed for subdivision is being conveyed under a contract-for-deed, the terms "property owner," "landowner," and "owner" mean the seller of the land under the contract-for-deed;
- T. The landowner's certificate of dedication of streets, alleys, avenues, roads, highways, parks, playground easements, or other public improvements;
- U. The landowner(s)' certification statement(s) as follows:
- (1) A statement that federal, state, and local plans, policies, regulations, and/or conditions of subdivision approval that may limit the use of the property, including the location, size, and use are shown on the Conditions of Approval sheet or as otherwise stated.
 - (2) A statement that buyers of property should ensure that they have obtained and reviewed all sheets of the plat and all documents recorded and filed in conjunction with the plat and that buyers of property are strongly encouraged to contact the local planning department and become informed of any limitations on the use of the property prior to closing.
 - (3) A statement that all or part of the required public improvements have been installed and/or security requirements pursuant to 76-3-507, MCA, secure the future construction of any remaining public improvements to be installed.
- V. A certificate of the governing body accepting any dedicated land, easements, or improvements;
- W. Space for the clerk and recorder's filing information with a minimum two-inch by four-inch blank space below the clerk and recorder's filing information for the recording numbers of the documents listed in .5.
- X. In addition to showing the location of the utility easements, the final plat must include the following statement:

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

covenants, zoning regulations, easements, or other documents as allowed by law or by local regulations.

- D. Land use restrictions and encumbrances related to the approval by the governing body may not be deleted or amended without prior written consent by the governing body.
- E. Certification of zoning change, when applicable.
- F. Floodway, floodfringe, or floodplain delineation lines on the face of the plat, when applicable.
- G. No build zones, Riparian Resource and Buffer Areas, steep slope areas with slopes at or greater than 25% shall be shown with bearings and distances.

.5 Final Plat Supplements, pursuant to MCA 76-3-504(d)

- A. State Highway Access Permit: a copy of the State Highway Access Permit is required when a new street will intersect with a State highway.
- B. Final road and drainage plans: all engineering plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the City Council and certification of the professional engineer.
- C. Boulevard landscaping plan: a Right-of-Way Landscaping Permit is required in accordance with MMC 12.32 and is available from the urban forester.
- D. Public Improvements Agreement, pursuant to MCA 76-3-507, as amended: certification by the subdivider that all or part of required public improvements have been installed and/or that a subdivision improvements agreement exists that is acceptable to the city attorney and City Council, securing the future construction of public improvements. (See [9-010](#).) The City Council may require a percentage of improvements or specific types of improvements necessary to protect public health and safety to be completed before allowing bonding or other reasonable security per MCA 76-3-507 for purposes of filing a final plat.
- E. Covenants and restrictions: copies of covenants and restrictions encumbering each lot.
- F. Where appropriate, a copy of the property owners' association articles of incorporation, together with proof of filing with the Secretary of State and the bylaws. The property owners' association documents, covenants, and restrictions referred to above must bear the certification of the attorney who prepared or reviewed them that such attorney is licensed to practice law in the State of Montana and, further, that the documents contain the applicable provisions upon which plat approval was based or conditioned and that the provisions do not conflict.
- G. ~~Preliminary commitment for title insurance or platting report, disclosing all title owners and lienholders.~~
- H. Certificate of approval by the Department of Environmental Quality.
- I. ~~Certificates, acknowledgments, and descriptions include the following:~~

Author: sdsccott Subject: Inserted Text Date: 5/26/2022 10:57:41 AM
Platting Report

Author: sdsccott Subject: Sticky Note Date: 5/26/2022 10:58:26 AM
"Platting Report" is included in the definitions. The additional language creates confusion as these other terms have different meanings across the title industry.

Author: sdsccott Subject: Cross-Out Date: 5/26/2022 10:56:56 AM

Author: sdsccott Subject: Sticky Note Date: 5/26/2022 10:57:16 AM
The Treasurer's certification should be the only item under I.

- (1) Certification by the County Treasurer that all taxes and fees levied and assessed against the property have been paid; and
- (2) ~~A certificate of a title abstracter showing the names of the owners of record of the land to be subdivided and the names of lien holders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lien holders or claimants of record against the land.~~

 Author: sdscott Subject: Cross-Out Date: 5/26/2022 10:56:53 AM

 Author: sdscott Subject: Cross-Out Date: 5/26/2022 10:56:19 AM

 Author: sdscott Subject: Sticky Note Date: 5/26/2022 10:56:44 AM
This is redundant from .5.G

Article 7. Error Corrections and Adjustments

7-010	Purpose	7-1
7-020	Minor Error.....	7-1
7-030	Major Errors.....	7-1
7-040	Plat Adjustments.....	7-2

7-010 Purpose

From time to time, errors may be discovered on the face of a recorded plat. It is the intent of the City of Missoula to establish reasonable standards and procedures to correct such errors in order to protect the interests of affected property owners. The City of Missoula recognizes two classifications of errors and sets forth the following procedures to correct them.

7-020 Minor Error

- .1 Minor errors may include but are not limited to:
 - A. Typographical and spelling errors or transpositions;
 - B. Incorrect seals;
 - C. Incorrect dates;
 - D. Monumentation incorrectly noted, drawn, or missing;
 - E. Incorrect or missing interior bearings and/or dimensions on the drawing;
 - F. Missing or incorrectly displayed arrows or symbols;
 - G. Street name changes;
 - H. **Title of plat already in use;** and
 - I. Other items of a similar nature as determined by the city engineer;
- .2 Minor errors must be **reviewed by the city engineer.** Appeal of the city engineer's decision is to the City Council. An Affidavit of Correction is to be prepared and signed by a professional engineer or registered land surveyor on forms **approved by the city attorney** and is to be recorded with the County Clerk and Recorder; and
- .3 The property owners ~~petitioning for the amendment or correction of a filed subdivision plat~~ must pay all related direct costs incurred by the City of Missoula, including filing fees according to the final plat filing fee schedule (see [Exhibit 1](#)).

7-030 Major Errors

- .1 Major errors may include but are not limited to:
 - A. Additions to or deletions from the legal description or dedicatory language that are not typographical in nature;
 - B. Incorrect certificates or signatures;
 - C. Missing certificates, seals, or signature blocks; and

- Author: sdscott Subject: Sticky Note Date: 5/26/2022 11:01:51 AM
7-020 & 7-030 do not follow current practice as written.
- Author: sdscott Subject: Highlight Date: 5/26/2022 11:16:02 AM
- Author: sdscott Subject: Sticky Note Date: 5/26/2022 11:16:37 AM
This is a major error with significant changes to the recording & post-recording processes.
- Author: sdscott Subject: Highlight Date: 5/26/2022 1:32:14 PM
- Author: sdscott Subject: Sticky Note Date: 5/26/2022 1:33:05 PM
Does not occur in current practice
- Author: sdscott Subject: Highlight Date: 5/26/2022 1:32:23 PM
- Author: sdscott Subject: Sticky Note Date: 5/26/2022 1:34:35 PM
Does not occur in current practice. The Clerk & Recorder and Examining Land Surveyor generally review and approve.
- Author: sdscott Subject: Cross-Out Date: 5/26/2022 1:33:56 PM
- Author: sdscott Subject: Sticky Note Date: 5/26/2022 1:34:02 PM
The error correction procedure is not initiated through property owner petition, but most often City or County staff (Clerk & Recorder or Examining Land Surveyor).

D. Other items of a similar nature as determined by the city engineer and director of Development Services;

.2 Major errors must be reviewed by the city engineer and the director of Development Services. All ~~corrected plats~~ must be certified as stated under [4-070.4E](#); and

.3 The **property owners petitioning** for the amendment or correction of a filed subdivision plat must pay all related direct costs incurred by the City Council, including filing fees according to the final plat filing fee schedule (see [Exhibit 1](#)).

7-040 Plat Adjustments

.1 Plat adjustments are those changes that, in the opinion of the City Council, may affect the precise dimensions of lots or buildings and the siting of buildings but that do not affect the basic character or arrangement of buildings, lots, or blocks, the density of the development, the open space requirement, or street design.

.2 Plat adjustments must be reviewed by the City Council. An Affidavit of Correction must be prepared and signed by a professional engineer or registered land surveyor on forms approved by the city engineer or an amended plat is required and must be recorded with the County Clerk and Recorder.

.3 The property owners petitioning for the amendment or correction of a filed subdivision plat must pay all related direct costs incurred by the City Council, including filing fees according to the final plat filing fee schedule (see [Exhibit 1](#)).

Author: sdscott Subject: Highlight Date: 5/26/2022 1:40:16 PM

Author: sdscott Subject: Sticky Note Date: 5/26/2022 1:40:29 PM
Does not occur in current practice

8-030 Divisions and Aggregations Exempt from Plat Filing and Review

The following divisions and aggregations of tracts of record of any size, regardless of the resulting size of any lot created by the division or aggregation, as described in MCA 76-3-207, are exempt from plat filing and review, but must be surveyed and are subject to applicable zoning regulations adopted under MCA Title 76, Chapter 2:

- .1 Outside platted subdivisions:
 - A. relocating common boundaries outside of platted subdivisions;
 - B. divisions for purpose of a single gift or sale in each county to each member of the landowner's immediate family; and
 - C. divisions by sale, gift, or agreement to buy or sell where parties enter into a covenant running with the land and revocable only by mutual consent of the City Council and the property owner that the divided land will be used exclusively for agricultural purposes;
- .2 Inside platted subdivisions, the relocation of common boundaries of five or fewer lots must be surveyed and an amended plat filed, but is exempt from subdivision review;
- .3 Aggregation of parcels or lots when a Certificate of Survey or subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are established. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas;
- .4 Divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas;
- .5 Restrictions: a division of land may not be made under this section unless the County Treasurer has certified that no real property taxes assessed and levied on the land to be divided are delinquent;
- .6 ~~Parcels of land 160 acres in size or larger:~~
 - A. ~~Review for suitable access.~~
 - B. ~~All divisions of land consisting of parcels 160 acres or larger, whether by Certificate of Survey or aliquot part description, must be accompanied by an affidavit for creating parcels 160 acres or larger completed by the landowner or his/her authorized representative prior to recording the survey or deed creating the tracts.~~
 - C. ~~The affidavit must state whether legal or insurable access to each parcel being created from a city or state road exists:~~
 - (1) ~~If legal or insurable access to each parcel being created does not exist at the time of offering the affidavit, then the access must be determined to be unsuitable by the City Council; and~~

Author: sdscott Subject: Cross-Out Date: 5/26/2022 1:42:42 PM

Author: sdscott Subject: Sticky Note Date: 5/27/2022 11:16:02 AM

The entirety of section .6 is not permitted through the MSPA and should be removed. Further, the enforcement mechanism for this requirement would lie on the Clerk & Recorder rejecting these potential deeds which we are not permitted to do in this scenario. Additionally, we are unaware of any properties within City jurisdiction to which this regulation would apply.

- ~~(2) If legal or insurable access is said to exist, a title commitment for insurable access (or title abstract and legal opinion) from a public road to each parcel must accompany the affidavit.~~
- ~~D. The affidavit must state whether the accesses are constructed to City of Missoula street standards as set forth in these regulations:~~
- ~~(1) If the accesses have been constructed to the City of Missoula street standards, the city engineer must review and inspect the accesses and certify to the City Council the results of the investigation;~~
 - ~~(2) If the accesses will be constructed by the subdivider at a future date and the subdivider wishes to receive a determination of suitable access prior to filing the deeds or surveys, an improvements agreement, together with adequate security, must be made with the City of Missoula and plans for road construction must be approved by the city engineer, according to the requirements of these regulations for subdivision plats; and~~
 - ~~(3) If the accesses have not been constructed to the City of Missoula street standards, then the City Council must determine that the accesses are unsuitable.~~
- ~~E. Following their determination, the City Council must deliver a copy of the determination of the review to the County Clerk and Recorder. The determination must be attached to or referenced on the survey or deed:~~
- ~~(1) If access is found to be suitable, the following statement must appear on the survey or deed or in a separate document referenced thereon:
Pursuant to its review under MCA 76-3-609, the City Council has determined that the accesses and easements to the parcels consisting of 160 acres or larger that are created herein are suitable for the purposes of providing appropriate services to the land such as fire protection, school busing, ambulance, and snow removal. This determination does not guarantee the provision of these services. City street maintenance will be provided only when the roads are accepted by the City Council's resolution; and~~
 - ~~(2) If access is found to be unsuitable, the following statement must appear on the survey or deed or in a separate document referenced thereon:
Pursuant to its review under MCA 76-3-609, the City Council has determined that the accesses and easements to the parcels consisting of 160 acres or larger that are created herein are unsuitable for the purposes of providing appropriate services such as fire protection, school busing, ambulance, and snow removal. Consequently, landowners should expect that such services may not be provided.~~
- ~~F. The City Council, upon application of the landowner, may re-determine the suitability of access and easements and, in that event, must deliver a copy of such determination to the Clerk and Recorder to be reflected on the Certificate of Survey or Deed of Conveyance.~~

Author: sdscott Subject: Cross-Out Date: 5/26/2022 1:42:56 PM

5 Author: sdscott Subject: Sticky Note Date: 5/26/2022 1:47:44 PM

The entirety of section. 6 is not permitted through the MSPA and should be removed. Further, the enforcement mechanism for this requirement would lie on the Clerk & Recorder rejecting these potential deeds which we are not permitted to do in this scenario.

- ~~G. Any person wishing to transfer a parcel 160 acres or larger who does not want a determination of suitable access, may so stipulate on the face of the deed or Certificate of Survey and waive the determination prescribed above. The stipulation must state:~~

~~*The parcels consisting of 160 acres or larger that are created herein are unsuitable for the purposes of providing appropriate services such as fire protection, school busing, ambulance, and snow removal. Consequently, landowners should expect that such services may not be provided.*~~

8-040 Exemption Procedures

- .1 Any person seeking exemption from the requirements of the *Montana Subdivision and Platting Act*, other than the six listed in [8-030](#), must complete and sign before a notary public an appropriate exemption affidavit, which must be printed on the Certificate of Survey, if one is filed.
- .2 Any person seeking an exemption listed in [8-030](#) must request a determination of his or her entitlement to use the exemptions claimed prior to submitting a Certificate of Survey or deed for review and/or recording by submitting a completed affidavit and sketch of the proposed divisions to the designated review agent in Development Services.
- .3 **Types of Exemptions**
 - A. **Agriculture Exemption**

A division made for lease or rental for farming or agricultural purposes or divisions made outside platted subdivisions by sale, gift, or agreement to buy and sell where the parties to the transaction enter into a covenant running with the land and revocable only by mutual consent of the City Council and the property owner that the divided land will be used exclusively for agricultural purposes. Any change in use of the land from agricultural purposes subjects the land to the provisions of the regulations.
 - B. **Family Transfer Exemption**

A division made outside of platted subdivisions for the purpose of a single gift or sale in each county to each immediate family member including spouse, children, or parents.
 - C. **Lot Aggregation**

A division of land that redesigns, rearranges or aggregates multiple lots into fewer lots.
 - D. **Relocation of Common Boundary Exemption**

A division of lots that redesigns or rearranges lots within a platted subdivision but does not result in an increase in the total number of lots.
 - E. **Security Interest Exemption**

A division of land to provide security for construction mortgages, liens, or trust indentures.

Author: sdscott Subject: Cross-Out Date: 5/26/2022 1:43:09 PM

Author: sdscott Subject: Sticky Note Date: 5/26/2022 1:47:48 PM

The entirety of section 6 is not permitted through the MSPA and should be removed. Further, the enforcement mechanism for this requirement would lie on the Clerk & Recorder rejecting these potential deeds which we are not permitted to do in this scenario.

Author: sdscott Subject: Cross-Out Date: 5/26/2022 1:48:04 PM

Author: sdscott Subject: Sticky Note Date: 5/26/2022 1:50:01 PM

This is being deleted in 8-020.1(B)

.4 Procedure

- A. All affidavits, surveys, deeds or other documents claiming entitlement to use an exemption must be submitted first to the designated review agent in Development Services;
- B. The use of exemptions under any of the circumstances listed in [8-040.4E](#) must be referred to the City Council for their determination on whether the use of exemptions is an evasion of the Subdivision Act;
- C. All other circumstances must be certified on the affidavit as having been reviewed by the designated review agent and notice given to the applicant and the County Clerk and Recorder;
- D. For exemptions referred to the City Council:
 - (1) The City Council must conduct a hearing to allow the claimant an opportunity to present evidence showing that he/she is entitled to claim exemptions from the requirements of the Subdivision Act;
 - (2) The City Council will notify the claimant of the date, time, and place of the hearing and may exercise its subpoena power to require the testimony or physical evidence in the possession of any person having knowledge of the proposed divisions, prior, or future divisions and transfers;
 - (3) The City Council will review the circumstances outlined in [8-040.4E](#) and [8-040.4F](#) surrounding the divisions and transactions, and must make written findings of fact and a determination that the claimant is or is not entitled to the exemption claimed, and must so notify the claimant and the County Clerk and Recorder;
 - (4) If the City Council determines that the claimant is not entitled to the exemption claimed and if the landowner proceeds to file the survey in question or to transfer title to or possession of tracts described by the survey, the City Council may direct the Director of Development Services to enforce the provisions of the Subdivision Act. Nothing stated herein prevents the Director of Development Services from taking any other appropriate action provided for in the Subdivision Act;
- E. The use of exemptions under any of the following circumstances requires review and hearing before the City Council to provide the claimant an opportunity to prove his/her entitlement to use the exemptions:
 - (1) General (applicable to all exemptions): For purposes of this part, "subsequent division" includes only those divisions made using the "family gift" and "remainder parcel" exemptions:
 - (a) Subsequent division of a tract created after July 1, 1974, in which more than one type of exemption (including the use of a "remainder parcel" exemption) is claimed by the same applicant or an applicant having a family or business relationship with another claimant;
 - (b) Subsequent division of a tract created after July 1, 1974, in which the proposed division will be to a common road, sewer, or water system or subject to restrictive covenants with other tracts

Author: sdscott Subject: Highlight Date: 5/26/2022 2:01:09 PM

Author: sdscott Subject: Sticky Note Date: 5/26/2022 2:05:37 PM
This is not occurring. Either remove or include the Clerk & Recorder in future notices via the Subdivision & Survey Tracker.

Author: sdscott Subject: Highlight Date: 5/26/2022 2:07:15 PM

Author: sdscott Subject: Sticky Note Date: 5/26/2022 2:09:14 PM
There is no such as exemption as a "remainder parcel exemption". Case law (Braach v Missoula County); MCA recognize that there is no such thing as a "remainder" parcel.

Author: sdscott Subject: Inserted Text Date: 5/26/2022 2:06:43 PM
transfer

Author: sdscott Subject: Sticky Note Date: 5/26/2022 2:07:06 PM
Make language consistent with the exemption as defined in MCA.

Author: sdscott Subject: Highlight Date: 5/26/2022 2:06:06 PM

Author: sdscott Subject: Sticky Note Date: 5/26/2022 2:06:23 PM
Same as above

- (8) Proposed configuration of the tract after the transaction is completed; and
- (9) The transaction is not substantial.

8-050 Certificates of Survey

A Certificate of Survey may not be filed by the County Clerk and Recorder unless it complies with the following requirements:

- .1 Certificate of Survey must be ~~drafted to standards that assure acceptable micro-filing quality and must be drawn with permanent ink or printed or reproduced by a process guaranteeing a permanent record and must be 18 inches by 24 inches overall to include a 1.5 inch margin on the binding side;~~
- .2 ~~One signed cloth backed, one signed paperback and one signed reproducible copy on a stable base polyester film or equivalent must be submitted;~~
- .3 Each sheet must show the number of that sheet and the total number of sheets included. All certifications must be shown or referenced on one sheet;
- .4 The Certificate of Survey must show or contain on its face or on separate sheets referenced on its face the following information only:
 - A. A location box including the quarter section, section, township, range, principal meridian and county of the surveyed land must be shown in lower right portion. Space in the lower right hand corner must be provided on the Certificate of Survey for the clerk and recorder's filing information. A Certificate of Survey may not bear the title "plat," "subdivision," or any title other than "Certificate of Survey."
 - B. Names of the owners of the land surveyed and the names of any adjoining certificates of survey previously recorded and ties thereto;
 - C. Date survey was completed and a purpose of survey quoting appropriate exemption must be shown in lower right hand corner above filing information;
 - D. North point;
 - E. Scale bar (scale must be sufficient to legibly represent the required data on the Certificate of Survey submitted for filing);
 - F. All monuments found, set, reset, replaced, or removed describing their kind, size, location and giving other data related thereto and must be tied in by bearing and distance;
 - G. The location of any corners of sections or divisions of sections pertinent to the survey and must be tied in by bearing and distance;
 - H. Witness monuments, basis of bearing, bearings and length of lines;
 - I. The bearings, distances and curve data of all perimeter boundary lines must be indicated. When the parcel surveyed is bounded by an irregular shoreline or a body of water, the bearings and distances of a meander traverse must be given;

Author: sdscott Subject: Inserted Text Date: 5/26/2022 2:14:06 PM
submitted in the format as prescribed by the filing office;

Author: sdscott Subject: Sticky Note Date: 5/26/2022 2:14:39 PM
Again, making this language consistent with ARM and to comply with current City practice and Clerk & Recorder requirements.

- J. Data on all curves sufficient to enable the re-establishment of the curves on the ground. This data must include:
 - (1) Radius of curve;
 - (2) Arc length; and
 - (3) Notation of non-tangent curves;
 - K. Lengths of all lines shown to at least tenths of a foot and all angles and bearings shown to at least the nearest minute;
 - L. A legal description of the perimeter boundary of the tract surveyed;
 - M. All parcels created by the survey, designated by a number or letter, and the dimensions and area of each parcel. (Excepted parcels must be marked "Not included in this survey.")
 - N. The signature and seal of the registered land surveyor responsible for the survey. The affixing of his seal constitutes a certification by the surveyor that the Certificate of Survey has been prepared in conformance with the Subdivision Act (MCA sections 76-3-101 through 76-3-614) and the regulations adopted pursuant thereto; and
 - O. Memorandum of oaths administered pursuant to MCA section 76-3-405.
- .5 Procedures for divisions of land exempted from public review as subdivision. Certificates of Survey for divisions of land meeting the criteria set out in MCA section 76-3-207, must meet the following requirements:
- A. Certificates of Survey of a division of land that would otherwise be a subdivision but that is exempted from public review under MCA section 76-3-207 may not be filed by the County Clerk and Recorder unless it bears the acknowledged certificate of the property owner stating that the division of land in question is exempted from review as a subdivision and citing the applicable exemption;
 - B. Where the exemption relied upon requires that the property owner enter into a covenant running with the land, the Certificate of Survey may not be filed unless it bears a signed and acknowledged copy of the covenant;
 - C. For an exemption as a gift or sale to a member of the immediate family, the Certificate of Survey must also indicate the name of the grantee, the relationship of the grantee to the landowner, and the parcel to be conveyed to the grantee; and
 - D. For an exemption as a relocation of a common boundary line, the Certificate of Survey must bear the signatures of all landowners whose parcels are changed by the relocation. The Certificate of Survey must show that the exemption was used only to change the location of a boundary line dividing two parcels, and must clearly distinguish the prior boundary location (shown, for example, by a solid line or notation).
- .6 Procedures for filing Certificates of Survey of divisions of land entirely exempted from the requirements of the Act. The divisions of land described in MCA sections 76-3-201, 76-3-105, and 76-3-209, are not required to be surveyed nor must a Certificate of Survey or subdivision plat thereof be filed with the County Clerk and Recorder. A Certificate of Survey of such a division may, however, be

Author: sdscott (s)	Subject: Inserted Text	Date: 5/26/2022 2:16:06 PM
Author: sdscott multiple	Subject: Inserted Text	Date: 5/26/2022 2:15:06 PM
Author: sdscott	Subject: Sticky Note	Date: 5/26/2022 2:15:32 PM

Boundary line relocations may contain more than two parcels.

From: [Aaron Wilson](#)
To: [Jen Gress](#)
Cc: [Troy Monroe](#); [Ben Weiss](#); [Jon Sand](#); [Deborah Postma](#)
Subject: RE: Subdivision Regulations: State Law Changes
Date: Tuesday, May 24, 2022 8:07:40 AM

Hi Jen,

No additional comments from PW&M Planning. Thanks for the opportunity to review!

-Aaron

From: Jen Gress <GressJ@ci.missoula.mt.us>
Sent: Tuesday, May 17, 2022 10:39 AM
To: Jim Nugent <NugentJ@ci.missoula.mt.us>; Marty Rehbein <RehbeinM@ci.missoula.mt.us>; Grp. Fire Bureau <firebureau@ci.missoula.mt.us>; Shannon Therriault <stherriault@missoulacounty.us>; Donna Gaukler <GauklerD@ci.missoula.mt.us>; Nathan McLeod <McLeodN@ci.missoula.mt.us>; Grant Carlton <CarltonG@ci.missoula.mt.us>; Jaeson White <WhiteJ@ci.missoula.mt.us>; Jeremy Keene <KeeneJ@ci.missoula.mt.us>; Ellen Buchanan <buchanane@ci.missoula.mt.us>; caldridge@mountainline.com; cwoodrow@mountainline.com
Cc: John Engen <EngenJ@ci.missoula.mt.us>; Grp. City Council and City Web Site <Council@ci.missoula.mt.us>; Dale Bickell <BickellD@ci.missoula.mt.us>; Mary McCrea <McCreaM@ci.missoula.mt.us>; Montana James (she/her) <jamesm@ci.missoula.mt.us>; Aaron Bowman <bowmana@ci.missoula.mt.us>; Aaron Wilson <wilsona@ci.missoula.mt.us>; Eran Pehan <PehanE@ci.missoula.mt.us>; Walter Banziger <BanzigerW@ci.missoula.mt.us>
Subject: Subdivision Regulations: State Law Changes

City Agencies,

Please find attached a memo requesting comment regarding changes to the City Subdivision Regulations (Subdivision Regulations: State Law Changes). Please provide comment **through email** to me by **Friday, May 27, 2022**. Thank you for your input.

--Jen

Jen Gress, Associate Planner
Community Planning, Development & Innovation
Community Development Division
(406)552-6626
JGress@ci.missoula.mt.us



Promoting equitable growth and a resilient, sustainable community.