



Chapter 5

SUBDIVISION

REVIEW

This growth policy provides the conceptual platform and policy guidance to address many of Missoula County's land use, conservation and development opportunities and challenges. One of the ways to address these challenges is to craft and implement subdivision regulations that follow the policy guidance of this document, with the understanding that subdivision regulations are limited in nature and are only one tool in the growth management toolbox.

In accordance with MCA 76-1-601(3) (h-i), this chapter is intended to address state legal requirements that require an explanation of how the Board of Missoula County Commissioners will define the primary subdivision review criteria in MCA 76- 3-608(3)(a) and evaluate and make decisions on proposed subdivisions with respect to the primary review criteria. This chapter is also intended to provide guidance to subdividers and their agents, community members, reviewers and decision makers regarding:

- What might constitute an impact under the primary review criteria
- What appropriate mitigation might be when an impact from a proposed subdivision is anticipated
- When the impacts of a proposed subdivision are too great for the

Policy Guidance:

Note: While each of the following objectives can be achieved in part through updating Missoula County's subdivision regulations and through the review of subdivision applications, they are intended to also be achieved through other means.

- **Objective 1.1:** Develop and implement regulatory and non- regulatory strategies to conserve vital natural resources and environmental functions.
- **Objective 8.2:** Provide opportunities for varied land uses in and around existing communities.
- **Objective 9.1:** Support increased infrastructure capacity, services and amenities in and around existing communities, where appropriate.

preliminary plat application to be approved.

This chapter also addresses how public hearings on proposed subdivisions are conducted.



Policy Guidance:

- **Objective 10.1:** Facilitate the development of a variety of housing types including housing that is affordable to all segments of the population.
- **Objective 11.1:** Discourage development in hazardous areas and areas where public and emergency responder safety is compromised.
- **Objective 12.3:** Encourage development of community facilities that promote health and wellness for all age groups.
- **Objective 15.1:** Provide simple, clear and flexible land use and development regulations, procedures and forms.
- **Objective 16.1:** Maintain compatible policies, coordinated services and regular communication with the City of Missoula.

Primary Review Criteria for Subdivisions

Under the Montana Subdivision and Platting Act, preliminary subdivision applications are evaluated for several criteria including compliance with state subdivision law, local subdivision regulations, the growth policy, area and issue plans, and local zoning. All subdivisions must comply with state and local law (including zoning), and should substantially comply with the growth policy and any area and issue plans adopted as amendments.

The main focus of this chapter is the primary criteria for subdivisions that are provided in state law. The primary criteria are:

- Agriculture
- Agricultural water user facilities
- Local services
- Natural environment
- Wildlife
- Wildlife habitat
- Public health and safety

Each local government in Montana is given the responsibility to define these criteria and examine subdivisions for their impact on the criteria. Local governments may also require mitigation measures to alleviate or lessen the subdivision's expected impacts.



As a way to reduce the need for mitigation and in order to provide clear and consistent expectations to subdividers, the Missoula County Subdivision Regulations include design standards that address items such as roads, parks, utilities, building on steep slopes, fire protection requirements, easements, etc. These design standards are intended to address many of the primary criteria in the sense that when a subdivision complies with the design standards (as well as applicable provisions of state and local law and adopted plans and policies), the subdivision should effectively avoid or mitigate most of the potentially significant adverse impacts.



However, the design standards in the subdivision regulations do not address all of the primary criteria in detail. For example, they do not include design standards for areas of important wildlife habitat such as elk winter range. This is why subdivision proposals must also be reviewed based on their unique site characteristics, setting, design, and proposed land uses according to the criteria.

Evaluating a Subdivision for Potentially Significant Adverse Impacts, Appropriate Mitigation

When preparing a subdivision application, and unless exempted under the law, the subdivider must identify the anticipated likely impacts under the primary criteria. When significant adverse impacts can be expected, the subdivider must propose realistic ways

to mitigate the impacts. Significant adverse impacts are ones that could damage human health, safety or welfare, the natural environment, or the effectiveness of community functions or resources. Impacts may be on- or off-site, be long-term, or likely to generate additional demands that the community or service providers are not currently prepared to meet.

Missoula County reviews the subdivider's application and proposed mitigation to determine if mitigation is warranted and whether proposed mitigation sufficiently eliminates or reduces the impacts. The commissioners may require the subdivider to design the proposed subdivision to reasonably minimize potentially significant adverse impacts.

There is not a set formula to determine a significant adverse impact and sufficient mitigation for a given project because each subdivision proposal, its site and surroundings contain unique characteristics. However, in determining

whether a proposed subdivision creates a significant adverse impact, and if mitigation is appropriate, Missoula County will:

- Consider the significance of the adverse impacts
- Consult with a subdivider about his/her perspectives and preferences for mitigation
- Consult with public agencies, service providers and other experts to determine whether mitigation should be required and what types of mitigation would be effective at reducing or eliminating the impacts
- Review previous projects for mitigation requirements and their effectiveness

Whether proposed by a subdivider or required by Missoula County, mitigation measures should always be:

- Related to the expected impacts (i.e., directly address the unique circumstances)



- Roughly proportional in extent to the expected impacts
- Timely (i.e., instituted prior to or concurrent with the expected impacts in order to prevent or lessen the detrimental effects)
- Effective

Under Montana law, when requiring mitigation, a governing body must consult with the subdivider and give due weight and consideration to the subdivider's preference for mitigation, but it is recognized that in some instances the unmitigated impacts of a subdivision may be unacceptable and will preclude approval of the subdivision. This happens when the Board of County Commissioners determines that mitigation measures cannot adequately reduce or eliminate the likely significant adverse impacts.

Definitions and Potential Mitigation Measures

Below is a definition for each of the primary criteria, items that may be considered during evaluation, and potential mitigation measures.

Agriculture

Definition

The use of land for growing, raising, or marketing of plants or animals to produce food, feed, and fiber commodities. Examples of agricultural activities include, but are not limited to, cultivation and tillage of the soil; dairying; growing and harvesting of agricultural and horticultural commodities; and the raising of livestock, bees, fur-bearing animals, or poultry. Agriculture does not include gardening for personal use, keeping of house pets, kenneling, or landscaping for aesthetic purposes.

Note: Integral to the term agriculture is agricultural land, which means: land having soils of agricultural importance, including prime farmland, prime farmland if irrigated, and farmland of statewide and local importance, as defined by the Natural Resources Conservation Service.

Evaluating a subdivision's impact on agriculture

Missoula County seeks to conserve agricultural lands, preserve options for local agriculture, accommodate a growing population, provide for the co-existence of agriculture and development, and preserve agricultural infrastructure. The items below may be considered when evaluating a proposed subdivision's potentially significant adverse impacts on agricultural activities and resources. This list is illustrative and not exhaustive.

- Soils of prime, prime if irrigated, statewide, and local importance
- Historic and current agricultural use, productivity and profitability
- Impact on productivity and operations of adjacent farm and ranch operations due to increased population, traffic, domestic pets, noxious weeds and other factors

- Impact on community-wide agricultural operations and markets

When significant adverse impacts are likely, appropriate mitigation measures may include:

- Treating noxious weeds on the property and developing a long-term weed management plan
- Clustering homes and development on lesser quality soils or restricting future development on on-site or off-site agricultural land
- Contributing to an established and effective agricultural land conservation program
- Adopting covenants that notify lot buyers of the potential implications of living adjacent to agricultural operations such as odors, noise, chemical use, etc.
- Requiring building setbacks between residential structures and agricultural operations
- Adequately fencing the perimeter boundaries of subdivisions in livestock areas to prevent conflicts in an open range state
- Adopting covenants that require pets to be restrained
- Other mitigation measures

proposed by the subdivider, the county or other interested parties

Agricultural Water User Facilities

Definition

Those facilities which provide water for irrigation or stock watering to agricultural lands for the production of agricultural products. These facilities include, but are not limited to, water supply and drainage ditches, canals, pipes, sprinkler systems, and head gates.

Evaluating a subdivision's impact on agricultural water user facilities

The items below may be considered when evaluating a proposed subdivision's potential impact on agricultural water user facilities. This list is illustrative and not exhaustive.

- Access for maintenance, including



appropriate easements as well as unimpeded physical access

- Changes to the water supply or drainage system
- Changes to water quality or quantity
- Runoff into irrigation ditches
- Availability of irrigation water
- Transfer or removal of water rights
- Whether precautions are necessary to prevent injury to children who may be attracted to play in the water
- Liability resulting from proximity of development to agricultural water user facilities (e.g., blowouts, flooding, artificially high groundwater)

When significant adverse impacts are likely, appropriate mitigation measures may include:

- Providing easements of appropriate width in appropriate locations for ongoing access
- Taking steps to ensure downstream water users are not impacted by the subdivision
- Providing protective safety measures
- Setting up a functional mechanism for delivery of water to the lots in



the subdivision and management of irrigation water or transferring or removing water rights

- Requiring sufficient setbacks from ditches
- Meeting the requirements of the irrigation district for installation and maintenance of facilities
- Other mitigation measures proposed by the subdivider, the county or other interested parties

Local Services

Definition

Any and all services and related facilities that local government entities or public utilities may provide, both currently and in the future, such as motorized and non-motorized transportation facilities and systems, parking, law enforcement, fire protection, drainage structures, water supply, sanitary sewage disposal, solid waste disposal, electrical, internet,



telephone and natural gas facilities, recreation, parks, libraries, or schools.

Evaluating a subdivision's impact on local services

Developers and new users should pay a proportional share of the costs necessary to serve new development. The items below may be considered when evaluating a proposed subdivision's potential impact on local services. This list is illustrative and not exhaustive.

- Whether the existing quality or level of services available in the community will be positively or detrimentally impacted by the subdivision
- Whether local services of sufficient quality are or will be available in reasonable proximity to the subdivision
- Whether the cost of providing services to the subdivision will be borne primarily by the subdivider and future owners or the community as a whole
- Whether local services will be provided either prior to or concurrent with development of the subdivision (i.e., when demand occurs)

When significant adverse impacts are likely, appropriate mitigation measures

may include:

- Requiring a subdivider to extend (or pay a proportional share for extending) local services of sufficient quality or level to the subdivision prior to or concurrent with demand, so that the existing level of service provided to the community will not be negatively impacted
- Requiring future lot purchasers to waive the right to protest the formation of improvement districts related to specific improvements made necessary by the subdivision
- Other mitigation measures proposed by the subdivider, the county or other interested parties

Natural Environment

Definition

The system of physical, chemical, and biotic factors that exist within or influence a geographic area or community. These factors include, but are not limited to, geology, soils, topography, climate, surface water, groundwater, floodplain, wildlife habitat, flora and fauna, and objects or places of cultural, historic, or aesthetic significance. Natural environment also includes aesthetic, cultural, and historical resources that relate to the landscape and history of an area.

Evaluating a subdivision's impact on the natural environment

Missoula County's natural landscape has played a key role in its history, culture and economy. It is important to protect these features, landscapes and resources, while accommodating population growth and change. The items below may be considered when evaluating a proposed subdivision's potential impact on the natural environment. This list is illustrative and not exhaustive.

- Riparian or wetland areas
- Vegetation cover and type
- Infestation of noxious weeds
- Unique or important wildlife habitats
- Surface and ground water quality and quantity
- Natural landforms
- Air quality
- Stream bank stability and erosion potential
- Open spaces/scenic resources
- Objects or places of historic or cultural significance

When significant adverse impacts are

likely, appropriate mitigation measures may include:

- Conserving riparian and wetland areas and other important vegetation and habitat types
- Managing noxious weeds
- Incorporating design features such as building setbacks, vegetative buffers and storm water facilities to protect water quality and limit soil erosion
- Designing developments to fit into the natural landscape, including clustering development
- Conserving iconic scenic resources
- Conserving objects and places of historic or cultural significance
- Other mitigation measures proposed by the subdivider, the county or other interested parties



Wildlife

Definition

A mammal, bird, reptile, amphibian, fish, mollusk, crustacean, or other animal that is native to the area and is not domesticated or tamed. The definition does not include feral animals, which are animals that have escaped captivity and become wild (including dogs, cats, and Eurasian ferrets).

Evaluating a subdivision's impact on wildlife

Missoula County wildlife has intrinsic value and is also important to our culture, quality of life and economy. Missoula County intends to conserve important wildlife habitat through non-regulatory and regulatory means. Wildlife and wildlife habitat are closely related; a loss of habitat may result in the loss of wildlife. Therefore, while these two criteria are listed separately, they may be evaluated as one during the review of subdivision proposals. The items below may be considered when evaluating a proposed subdivision's potential impact on wildlife. This list is illustrative and not exhaustive.

- Potential for human/wildlife conflict including pets, fencing, and wildlife attractants such as gardens, apiaries, chickens, garbage and barbecue grills



- Water quantity or quality for aquatic species

When significant adverse impacts are likely, appropriate mitigation measures may include:

- Requiring covenants to make lot purchasers aware of the presence of wildlife and include measures to reduce the likelihood of conflict
- Designing the subdivision to reduce the likelihood of conflict by clustering building lots in non-vital areas, including building setbacks and vegetative buffers along water bodies or at nesting sites and maintaining travel corridors
- Lessening the density of development in important wildlife areas
- Requiring setbacks and other measures to maintain water quality for aquatic species
- Other mitigation measures proposed by the subdivider, the county or other interested parties

Wildlife Habitat

Definition

Geographic areas that contain physical or biological features essential to

wildlife for feeding and foraging, cover, migration, breeding, rearing, nesting, or buffers from those areas. It also includes areas essential to the conservation of species protected by the Endangered Species Act or those of concern to the Confederated Salish and Kootenai Tribes or the State of Montana. Some of the most important types of wildlife habitat in Missoula County include, but are not limited to, big game winter range, grizzly bear habitat, travel corridors, bald eagle nesting sites, and riparian and wetland areas.

Evaluating a subdivision's impact on wildlife habitat

Important wildlife habitat is a critical resource to the culture, history and well-being of Missoula County residents and is necessary for the survival of wildlife. Missoula County intends to conserve important wildlife habitat through regulatory and non-regulatory means. The following items may be considered when evaluating a proposed subdivision's potential impact



on wildlife habitat. This list is illustrative and not exhaustive.

- Loss of habitat or winter range
- Encroachment into migration routes
- Active and inactive nesting or denning sites
- Water quantity or quality for aquatic species
- Spawning areas

When significant adverse impacts are likely, appropriate mitigation measures may include:

- Designing the subdivision to maintain the quality and function of important winter range, habitat and migration routes, which may include measures like clustering building lots in non-vital areas, no-build areas, building setbacks and vegetative buffers along water bodies and nesting sites, and maintaining travel corridors
- Covenants to make lot purchasers aware of the presence of important wildlife habitat and that include appropriate measures to reduce the likelihood of compromised quality or habitat loss
- Lessening the density of development in important wildlife areas

- Enhancement of habitat areas to offset impacts
- Limiting outdoor construction to certain times of year to avoid creating disturbances during critical nesting times
- Other mitigation measures proposed by the subdivider, the county or other interested parties

Public Health and Safety

Definition

A condition of well-being, reasonably free from danger, risk or injury. Assessment of public health and safety should consider the community at large, not merely for the welfare of a specific individual or a small class of persons. Conditions that relate to public health and safety include, but are not limited to, flood hazards, geologic hazards, dam failures, avalanches, air quality, water



quality, toxic or hazardous substance exposure, fire or wildfire hazards, proximity to high voltage power lines or high pressure gas lines, noise, air or vehicular traffic hazards, and threats to life, health, safety, and wellness.

Evaluating a subdivision's impact on public health and safety

Missoula County will strive to protect public health, safety and welfare as our communities grow and change. The items below may be considered when evaluating a proposed subdivision's potential impact on public health and safety. This list is illustrative and not exhaustive.

- Potential to increase effects of natural or man-made hazards
- Flooding
- High ground water
- Geologic hazards such as seismic activity, swelling soils, subsidence, improper drainage, adverse geological formations or topography, potential for avalanches, rock falls or land slides
- Air quality
- Drinking water quality and quantity
- Toxic or hazardous substances
- High voltage power lines

- High pressure gas lines
- Air or vehicular traffic hazards or congestion
- Provision of emergency services, including access and response time
- Wildland fire potential
- Compatibility of development with the built and natural environment

When significant adverse impacts are likely, appropriate mitigation measures may include:

- Building outside areas prone to natural or manmade hazards
- Using construction techniques that mitigate or eliminate the threat of hazards
- Building where adequate water supplies are available, including water sources sufficient for fire fighting
- Providing emergency services with water supply, storage and related facilities
- Building roads to and within the subdivision to appropriate standards and ensuring multiple accesses for safe ingress and egress in the event of an emergency



- Providing areas for outdoor exercise, including open space, parkland and trails
- Reducing vegetative fuels, providing fire breaks, and otherwise designing the subdivision to withstand wildfire, including maintenance agreements among future lot owners
- Requiring covenants, plat notations and other documents that inform lot purchasers of the risks of wildfire and other hazards and measures they can take to protect their lives and property
- Ensuring the design of subdivision provides for the safety of first responders
- Lessening the density of development in areas prone to natural or manmade hazards
- Providing non-motorized transportation systems to serve the subdivision
- Other mitigation measures proposed by the subdivider, the county or other interested parties

Public Hearings on Preliminary Plat Applications

Public hearings are required for major subdivisions (six or more lots or units). Public hearings provide the opportunity for people who have an interest in or may be impacted by a subdivision to voice their interests and concerns.

Both the Planning Board and Board of County Commissioners will follow the procedures below when holding a public hearing. More specific information regarding board member conflict of interest, voting and other matters can be found in the planning board's bylaws. More specific information regarding what happens when new information is submitted at a public hearing, the county commissioners' decision-making process, and other matters can be found in the Missoula County Subdivision Regulations.

Public hearings will be conducted as follows:

1. Notice of the public hearing will be published in a newspaper and sent by certified mail at least 15 days prior to a public hearing as described in the Missoula County Subdivision Regulations and 76-3-605, MCA.
2. A quorum, consisting of five or more Planning Board members or two or more County Commissioners, is required for official action. When a quorum is not present, no action on the item will be taken and the hearing will be rescheduled to the next available meeting date for which public notice requirements can be met.
3. At the hearing a staff member will give a summary of the staff report pointing out key issues, findings and recommendations, followed by board members being given the opportunity to ask questions of staff.
4. The subdivider and her/his representative will be given the opportunity to provide a summary of the subdivision proposal and address the key issues, findings, and recommendations. In the case of a hearing before the Board of County Commissioners, the subdivider may also discuss her/his preference for mitigation. Board members will then be given the opportunity to ask questions of the subdivider.
5. The presiding officer will ask for public comments from proponents, opponents and others, followed by the subdivider being given the opportunity for rebuttal. In the interest of time, the presiding



officer may limit the amount of time members of the public are given to speak so long as everyone desiring to speak has a reasonable opportunity.

6. The presiding officer will close the public hearing for board deliberation. During this time board members may ask questions of the subdivider, staff and any members of the public. Due to late hour or other extraordinary circumstances, a public hearing may be closed and continued to a later date.
7. The board will deliberate and make a recommendation (Planning Board) or decision (Board of County Commissioners) on the application.
8. Prior to voting on the subdivision application, board members will review the subject matter contained in the public comments and discuss whether and how the comments impacted their decisions.
9. Planning board recommendations and commissioner decisions will be supported by written findings of fact and conclusions of law.

