

MODEL RESOLUTION NO. 2011- __

RESOLUTION AMENDING THE _____ COUNTY SUBDIVISION REGULATIONS (date adopted) TO REFLECT LEGISLATIVE CHANGES TO THE MONTANA SUBDIVISION AND PLATTING ACT IN 2007, 2009 AND 2011.

NOTE: Those changes in red are from the 2011 legislative session.

WHEREAS, _____ County updated its subdivision regulations to include the legislative changes made in 2005; and,

WHEREAS, since that update further legislative changes were made in 2007, 2009 and 2011; and

WHEREAS, ___ County now wishes to update its subdivision regulations in accordance with current law.

NOW, THEREFORE, BE IT RESOLVED, the following changes are made to the _____ County Subdivision Regulations: 2011; and

WHEREAS, _____ County now wishes to update its subdivision regulations in accordance with current law.

NOW, THEREFORE, BE IT RESOLVED, the following changes are made to the _____ County Subdivision Regulations:

DEFINITIONS

~~66. TOWNHOUSE LOT: Arrangement under which units share a common wall, and individuals own their own units and hold separate title to the land beneath the unit. TOWNHOME or TOWNHOUSE means property that is owned subject to an arrangement under which persons own their own units and hold separate title to the land beneath their units, but under which they may jointly own the common areas and facilities.~~

II-A-4. Pre-application Process

a. Prior to submittal of a subdivision application, the subdivider shall request a pre- application meeting with the subdivision administrator. The subdivision administrator is the authorized agent designated by the governing body to review subdivision applications. The meeting shall occur within 30 days after the

subdivider submits a written request for the meeting to the subdivision administrator.

II-B-4. Public Improvements Agreement: Guaranty

As a condition of approval of the final plat, the subdivider must have installed all required improvements or have entered into a subdivision improvements agreement guaranteeing the construction, installation, and maintenance of all required improvements [76-3-507, MCA]. The County Commissioners may require up to 100% completion of improvements related to public health and safety, such as roads, fire fighting facilities and installation of utilities, before agreeing to the use of a subdivision improvements agreement. This requirement applies to preliminary plats approved prior to the adoption of these regulations. If 100% completion is required, engineering plans must be filed before approval of the final plat. ~~No construction or placement of structures on the lots may occur until improvements related to public health and safety, such as roads or fire fighting facilities, have been installed and engineering plans have been filed.~~ A model subdivision improvements agreement and alternative methods of guaranteeing public improvements, the procedures and requirements for securing an agreement, and suggested conditions for maintenance are available from the Subdivision Administrator.

III-A-6. Minor Subdivision Governing Body Decision and Documentation

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b. Consideration – Standards

In approving, conditionally approving, or denying a ~~first~~ minor subdivision application, the governing body shall consider subsection (a) above and whether the proposed subdivision complies with:

...

iv. the MSPA, including but not limited to the following impacts:

...

E. impact on wildlife ~~and wildlife habitat~~; and

F. impact on wildlife habitat; and

~~F.G.~~ impact on public health and safety.

...

e. ii. When the governing body approves, denies or conditionally approves the proposed subdivision, it shall within 30 working days following the oral decision send the subdivider a letter with the appropriate signature,

and make the letter available to the public. The letter shall:

...

f. Subdivision Application and Preliminary Plat Approval Period

i. Upon approval or conditional approval of the preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. The approval shall be in force for no more than three calendar years.

A. At least 30 days prior to the expiration of the preliminary plat approval, the governing body may, at its discretion and at the written request of the subdivider, extend its approval for a period of one additional year. At the request of the subdivider, extend the approval for a mutually agreed-upon period of time. Any mutually agreed-upon extension must be in writing and dated and signed by the members of the governing body and the subdivider or the subdivider's agent. The governing body may issue more than one extension.

IV-A-8. Governing Body Decision and Documentation

...

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iv. the MSPA, including but not limited to the following impacts:

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E. impact on wildlife ~~and wildlife habitat~~; and

F. impact on wildlife habitat; and

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and make the letter available to the public. The letter shall:

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IV-A-1. Subdivision Application and Preliminary Plat Submittal

The subdivider shall submit to the governing body or to the agent or agency ~~designated~~ authorized by the governing body a subdivision application containing the materials identified in Section II-A-5 and in the pre-application meeting.

[Subsections b, c and d are deleted]

IV-A-2. Time Period for Approval, Conditional Approval or Denial

a. Governing Body Review.

Within 60 working days, or 80 working days for proposals containing 50 or more lots, the governing body shall approve, conditionally approve or deny the proposed subdivision according to Section IV-A-8 of these regulations, unless the subdivider and the subdivision administrator agree to an extension or suspension of the review period, or a subsequent public hearing is held pursuant to Section IV-A-7 of these regulations. The review period of 60 or 80 working days begins the day after the subdivision administrator notifies the subdivider or the subdivider's agent in writing that the subdivision application is sufficient for review.

b. Public Agency and Utility Review

Review and comment by public agencies or utilities may not delay the governing body's action on the subdivision application beyond the 60- or 80-working day review period. The governing body will make these comments available to the subdivider and to the general public upon request. If, during the review of the application, the subdivision administrator or the planning board contacts a public utility, agency, or other entity that was not included on the list provided during the pre-application meeting, the subdivision administrator shall notify the subdivider of the contact and the timeframe for response.

V-D. Divisions of Land Which May be Exempt from Review and Surveying

a. Generally condominiums, townhomes, or townhouses are subject to review as subdivisions, but under certain circumstances they may be exempt from review, provided they are constructed

on land subdivided in compliance with these regulations [or on lots within incorporated cities and towns,] and

i. The approval of the original subdivision of land expressly contemplated the construction of the condominiums, townhomes, or townhouses and 76-3-621, MCA, is complied with; or

ii The condominium, townhome, or townhouse proposal is in conformance with applicable zoning regulations ~~where~~ when local zoning regulations are in effect.

V-E-5. Aggregation of Lots or Parcels [76-3-207(1)(f), MCA]

a. Statement of Intent

Aggregation of parcels on a certificate of survey or of lots on a subdivision plat is allowed provided the boundaries of the original parcel or lot are eliminated and the boundaries of the larger aggregated parcel or lot are established.

b. Use of exemption

This exemption may be used without a boundary line relocation but a restriction or requirement on the original platted lot or original unplatted parcel continues to apply. A notarized statement on the amended plat or certificate of survey must reflect these restrictions/requirements, including any applicable zoning, covenants and/or deed restrictions.

c. Rebuttable presumption

i. If a resulting lot is inconsistent with the approved conditions of

subdivision approval, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.

- ii. If the resulting lot or parcel does not comply with existing zoning, covenants, and/or deed restrictions, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.
- iii. If the amended plat or certificate or survey does not show fewer lots of parcels than originally, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.

X-A. Cluster Development, Option I

- a. As authorized by 76-3-509, MCA, the following apply to subdivisions proposed under this section:
 - i. An area of open space must be preserved that is at least as large as the area that will be developed.
 - ii. ~~Open space must be preserved through an irrevocable conservation easement, granted in perpetuity as provided in Title 76, Chapter 6, prohibiting further subdivision of the parcel.~~ Land protected as open space on a long-term basis must be identified on the final subdivision plat, and the plat must include a copy of or a recording reference to the irrevocable covenant prohibiting further subdivision, or development of the open space lots or parcels, as provided in Title 70, chapter 17.

XI-B-1. Variances Authorized

The governing body may grant variances from Section VI, Design and Improvements Standards, of these regulations when, due to the characteristics of land proposed for subdivision, strict compliance with these standards would result in undue hardship and would not be essential to the public welfare. A variance will not be granted if it would have the effect of nullifying the intent and purpose of these regulations.

The Planning Board or the County Commissioners will conduct a public hearing on any variance request for all major subdivisions prior to taking action on the preliminary plat application.

X-C-3. Appeals

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- b. A party identified in subsection (d) below who is aggrieved by a decision of the governing body to approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision or a final subdivision plat may, within 30 days after the written decision, appeal to the district court in which the property involved is located. The petition must specify the grounds upon which the appeal is made.

UNANIMOUSLY ADOPTED and passed this ____ (date) ____.

BOARD OF COUNTY COMMISSIONERS

ATTEST:

[For a copy of this Resolution electronically, e-mail Tara DePuy at attorney@riverworks.net.]