

RESOLUTION 2019 - 39

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF  
LEWIS AND CLARK COUNTY, MONTANA TO AMEND THE SUBDIVISION REGULATIONS  
FOR LEWIS AND CLARK COUNTY**

**WHEREAS**, local governing bodies are required to adopt subdivision regulations, pursuant to Section 76-3-501, MCA; and

**WHEREAS**, the Lewis and Clark County Community Development and Planning staff (Staff), upon the direction of the Board of County Commissioners (Commission) and the Helena/Lewis and Clark County Consolidated Planning Board (Board), proposed amendments to the Subdivision Regulations adopted on December 13, 2016, (Regulations), all in accord with the provisions of the Montana Subdivision and Platting Act (Title 76, Chapter 3, MCA); and

**WHEREAS**, after due and proper notice the Board conducted public hearings on March 19, 2019 and on April 16, 2019, to review the proposed Staff amendments and to hear the public comment thereon; and

**WHEREAS**, on April 16, 2019, the Board recommended the Commission adopt amendments to the Regulations as proposed by Staff and with the correction of two identified scrivener's errors in proposed Chapter IV.B.1; and

**WHEREAS**, after due and proper notice the Commission conducted a public hearing on May 14, 2019, to review the proposed amendments and to hear the public comment thereon; and

**WHEREAS**, on May 14, 2019, the Commission considered the Staff recommendations, Planning Board's recommendation, and public comment received; and

**WHEREAS**, the Commission adopted amendments to the Regulations.

**NOW THEREFORE BE IT RESOLVED** by the Board of County Commissioners that the Subdivision Regulations as amended by Commission action, which amendments are documented in Exhibit A, are adopted, as of May 14, 2019.

**INTRODUCED** at a Regular meeting of the Board of County Commissioners on May 14, 2019 by Commissioner Susan Good Geise.

**PASSED AND APPROVED BY THE BOARD OF COUNTY COMMISSIONERS** on this 14th day of May, 2019.



*Paulette J. DeHart*  
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Paulette J. DeHart, Clerk to the Board

LEWIS AND CLARK COUNTY  
BOARD OF COMMISSIONERS

*Jim McCormick*  
\_\_\_\_\_  
Jim McCormick, Chair





**EXHIBIT A:**  
**Amendments to the December 13, 2016**  
**Lewis and Clark County Subdivision Regulations**

The amendments are presented with a page number, chapter, and section to facilitate review. Amendments to the Subdivision Regulations proposed by Community Development and Planning Staff (Staff) are underlined text, while deletions are indicated with ~~striketrough text~~. Staff has added explanatory notes after most proposed changes indicated by [*bold italic text in brackets*]. Staff recommends that the amendments be reviewed in consultation with the December 13, 2016 Subdivision Regulations which are available online at <https://www.lccountymt.gov/cdp/subdivision-regulation/current-regulations.html>

**CHAPTER I: GENERAL PROVISIONS**

**Page I-1-2, Lewis and Clark County 2016 Subdivision Regulations**

**C. Purpose**

These regulations provide criteria and procedures to govern the review of subdivision applications in Lewis and Clark County. These regulations are intended to comply with the provisions of the Montana Subdivision and Platting Act. In the event any of these regulations conflict with the specific requirements of the Montana Subdivision and Platting Act, the governing body shall follow the requirements of the Act, rather than the conflicting provisions in these regulations.

Land use regulations are the primary way to carry out the Growth Policy. Lewis and Clark County regulates land development and construction through a variety of technical standards resulting in permits and approvals for specific projects. To ensure County regulations are effective and warrant a high degree of public trust and confidence, regulations must be equitable, reasonable, easy to understand, and responsibly administered.

The purposes of these regulations are to promote the public health, safety, and general welfare and to provide for:

1. The orderly development of the jurisdictional area;
2. The coordination of roads within subdivided land with other roads, both existing and planned;
3. The dedication of county road easements and public utility easements;
4. Provision of standard physical and legal road access to all lots in a subdivision, including obtaining of necessary easements;
5. The avoidance or minimization of congestion in the streets and the improvement of roads to county road standards;



6. The provision of adequate open spaces for light, air, parks, and recreation;
7. The provision of adequate transportation, potable water, drainage, and sanitary facilities;
8. The protection and rights of all citizens;
9. The avoidance of subdivisions that would involve unnecessary environmental degradation;
10. The avoidance of subdivisions that would cause danger or injury to public health, safety and general welfare by reason of natural hazard, or the lack of adequate or sufficient water, sanitation, drainage, standard access, transportation, utilities, or other public services;
11. The avoidance of subdivisions that would require an excessive expenditure of public funds for the supply of public services;
12. The manner and form of preparing and filing any plat or certificate of survey for subdivided lands;
13. The promotion of cluster development approaches that minimize costs to local citizens, and promote effective and efficient provision of public services; and
14. The administration of these regulations by defining the powers and duties of approving authorities including procedures for the review and approval of all proposed plats and site plans of subdivisions covered by these provisions; and
15. Provide for phased developments.

***[STAFF NOTES ON PROPOSED CHANGES: Additional language needed to ensure compliance with Montana Subdivision and Platting Act (MSPA) following the 2017 Montana Legislative Session as result of adoption of HB 445 regarding phased developments.]***

## CHAPTER II: ADMINISTRATIVE PROVISIONS

### Page II-5, Lewis and Clark County 2016 Subdivision Regulations

#### ~~E. Restrictive Covenants~~

~~The County may not approve a subdivision proposal that violates restrictive covenants or deed restrictions governing use of the affected property, unless the covenants are amended prior to or as part of the subdivision review process. Any change to restrictive covenants must follow the procedures outlined in the specific covenants in question. This provision pertains to both covenants put in place by the County, as well as those held by the private landowners. The property owner is responsible for supplying private covenants to the County with the subdivision application.~~

***[STAFF NOTES ON PROPOSED CHANGES: This regulation indicates that the County may not approve a subdivision proposal that violates restrictive covenants or deed restrictions governing use of the affected property unless they are amended prior to or as part of the subdivision review process. This regulation places the County in the position of interpreting and applying private covenants which the County didn't write, is not subject too, and has no mechanism to enforce. The enforcement and administration of private covenants will, and should, remain a matter between private landowners.]***

## CHAPTER III: PROCEDURES FOR SUBDIVISIONS

### Page III-5-7 Lewis and Clark County 2016 Subdivision Regulations

#### 1. Pre-application Procedures

The applicant (who may be the subdivider or, with the subdivider's written permission, the subdivider's agent) shall contact the Community Development and Planning Department to schedule a meeting with County planning and Environmental Health staff. The pre-application meeting shall take place prior to submitting the required subdivision application. The pre-application conference shall take place not more than thirty (30) calendar days from the date that the Community Development and Planning Department receives a complete submittal package from the Applicant. This meeting is required and must be held not more than one hundred eighty (180) calendar days prior to submittal of a subdivision application.

The purpose of this meeting is to identify the state laws, local regulations, and the applicable goals and objectives of the Lewis and Clark County Growth Policy that may apply to the subdivision review process, including, but not limited to: zoning regulations, floodplain regulations, and other applicable regulations. The planning staff may notify the applicant of the option of concurrent review of the subdivision by the local government and the Montana Department of Environmental Quality.

The applicant shall provide a to-scale sketch plan of the proposed subdivision for review and discussion. The sketch plan may be a freehand sketch made directly on a print of a topographic map. The sketch plan shall be legibly drawn; show the layout of proposed features in relation to existing site conditions, and the scale dimensions shall be noted on the sketch. A sketch plan shall be provided for each phase if a phased development is proposed.

The sketch plan shall include pertinent information such as the following:

- a) approximate tract and lot boundaries of existing tracts of record, with scale dimensions noted;
- b) location of easements, existing rights-of-way, proposed county roads, conservation easements, utilities, parks and open spaces; and
- c) a description of general terrain, natural features (including water bodies, floodplains, geologic hazards and soil types), existing structures and improvements, and proposed public improvements.

The applicant shall provide documentation of:

- a) ownership information, such as a deed, option to buy or buy-sell agreement; including permission to subdivide;
- b) water rights, including location of agricultural water facilities;
- c) any applicable rural or special improvement districts
- d) existing zoning, covenants or development regulations standards,

- e) rights of first refusal for the property; and
- f) the most recent certificate of survey or subdivision plat or deed on file with the Clerk and Recorder's Office.

The Applicant shall receive a list of public utilities, local, state, and federal agencies, and any other entities that have an interest in the proposed subdivision and that may be contacted for comment on the subdivision application. The Applicant shall be notified about the time frames that public utilities, agencies, and other entities are given to respond.

The Applicant shall be notified of any particular additional information that may be required for review of the subdivision application. This does not limit the ability of the planning staff to request additional information at a later time.

## **2. Subdivision Application Submissions and Distribution**

The applicant shall submit for review and approval a subdivision application and preliminary plat of the proposed subdivision that conforms to the requirements of these regulations. The preliminary plat and subdivision application shall be prepared in compliance with the requirements listed in Appendix B, and conform to design and improvement of these regulations, including the fire standards in Appendix K and the road standards contained in the Lewis and Clark County Public Works Manual.

If any design features or improvements do not conform with/to these standards, the applicant shall submit a written request for variances with the preliminary plat subdivision application, pursuant to the process in these regulations.

The applicant shall submit a written expressed preference for fulfilling the requirement for parkland dedication or cash donation with the preliminary plat subdivision application, as stipulated in these regulations (see Chapter XI for more details).

The applicant may set forth in the preliminary plat subdivision application a plan for phased development, including filing of the final plat in a phased manner (see Chapter IV for more details).

***[STAFF NOTES ON PROPOSED CHANGES: Additional language needed to ensure compliance with Montana Subdivision and Platting Act (MSPA) following the 2017 Montana Legislative Session as result of adoption of HB 445 regarding phased developments.]***

## **Page III-14, Lewis and Clark County 2016 Subdivision Regulations**

### **8. Governing Body Meeting on a Major Subdivision Application**

The governing body shall hold a public meeting on a proposed major subdivision. Notice of the time, date, and location of the meeting shall be given not less than fifteen (15)



calendar days prior to the date of the meeting. The applicant and each property owner of record immediately adjoining the land included in a plat shall be notified of the meeting by certified or registered mail, not less than fifteen (15) calendar days prior to the date of the meeting. For subdivisions that involve non-residential uses, all property owners within five hundred (500) feet of the project property boundary shall be sent a notice by certified or registered first class mail. The planning staff shall post notice of the meeting at a conspicuous place on the boundary of the proposed subdivision.

***[STAFF NOTES ON PROPOSED CHANGES: Additional language needed for clarity of existing procedures. This language should have been recommended in the previous amendments that consolidated the review process for major, minor, and subsequent minor subdivisions into one chapter.]***

### **Page III-14 - 18, Lewis and Clark County 2016 Subdivision Regulations**

**9. ~~8.~~ Subsequent Public Hearings on New Evidence Provided After the Planning Board Hearing**

**10. ~~9.~~ Governing Body Meeting on a Minor Subdivision Application**

**11. ~~10.~~ Subsequent Public Meetings on New Evidence Provided after the Public Meeting on a Minor Subdivision.**

**12. ~~11.~~ Governing Body Hearing on Subsequent Minor Subdivision Application**

**13. ~~12.~~ Subsequent Public Hearings on New Evidence Provided after the Public Hearing on a Subsequent Minor Subdivision**

***[STAFF NOTES ON PROPOSED CHANGES: Numbering change to sections.]***

### **Page III-19, Lewis and Clark County 2016 Subdivision Regulations**

**14. ~~13.~~ Governing Body Action on Subdivision Application**

The proposed subdivision will be considered at a regularly scheduled meeting of the governing body. ~~Notice of the time, date and location of the public meeting shall be given not less than fifteen (15) calendar days prior to the date of the meeting by publication in a newspaper of general circulation in the county and by certified or registered mail to the applicant and each property owner of record immediately adjoining the land included in the subdivision application. The planning staff shall post notice of the public meeting on the boundary of the proposed subdivision.~~

***[STAFF NOTES ON PROPOSED CHANGES: Duplicate information that is addressed in other sections of this chapter is proposed to be deleted. This deletion should have been recommended in the previous amendments that consolidated the review process for major, minor, and subsequent minor subdivisions into one chapter. Numbering change to section.]***

## **Page III-22-25, Lewis and Clark County 2016 Subdivision Regulations**

**15. ~~14.~~ Subdivision Application Approval Period**

**16. ~~15.~~ Process for Modifying the Conditions of Approval, Approval Statement, or Preliminary Plat for a Subdivision Application**

**17. ~~16.~~ Construction Timing**

**18. ~~17.~~ Inspections and Certification**

**19. ~~18.~~ Transfers of Title**

***[STAFF NOTES ON PROPOSED CHANGES: Numbering change to sections.]***

## **Page III-27-29, Lewis and Clark County 2016 Subdivision Regulations**

### **C. Final Plat Review Process**

#### **2. Final Plat Application**

An application for final plat review (available at the County Planning Department), together with three (3) 11" x 17" paper copies of the final plat and one (1) copy of supplements, shall be submitted to the Planning Department. An electronic copy of the final plat, application, and supplements (read only PDF) must also be submitted. A final plat application must be submitted before the expiration of the subdivision application approval period, or extension thereof. No final plat application shall be accepted, processed nor any action on a final plat be scheduled until a complete application and fee, and copies of the final plat have been received. A final plat application will not be considered complete until all conditions of preliminary approval have been satisfied. Portions of an approved preliminary plat will not be considered with a final plat application unless the portion has been reviewed as a part of a phased development and the portion represents the entire phase.

All public improvements must be inspected and certified, as meeting the applicable standard and the approved design plans, by an engineer registered in the State of Montana.

~~The planning staff will review the final plat application materials and determine the completeness and sufficiency of the application. The planning staff has five (5) working days to determine whether the application contains all of the listed information found in Appendix D of these regulations and information required to verify compliance with the preliminary approval conditions and shall give written notice to the applicant or, with the applicant's written permission, the applicant's agent of the planning staff's determination of completeness. If information is missing from the application, planning staff shall identify the needed information in the written notification. The applicant must provide all missing information before the completeness review process will restart from the beginning.~~

~~Within fifteen (15) working days after the applicant has been notified in writing that the final plat application contains all the required elements, planning staff shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow review of the final plat, and shall give written notification to the applicant or, with the applicant's written permission, the applicant's agent of the determination by staff. If planning staff determines that information in the application is not adequate for review of the final plat, the insufficiencies of the application shall be identified in the written notification. The applicant must provide all insufficient information before the sufficiency review process will restart from the beginning.~~

~~A thirty five (35) working day review period for final plat reviews commences on the first working day after planning staff determines that the final plat application is complete and sufficient.~~

~~The final plat may constitute only that portion or phase of the approved preliminary plat the subdivider wishes to file, provided that such portion conforms to all requirements of these regulations and is approved by the governing body in writing. Improvements in a prior increment must be completed or the payment or guarantee of payment for the costs of the improvements incurred in a prior increment must be satisfied before development of future increments (see Standards for Final Plats, Appendix D).~~

The planning staff shall review the final plat application materials and determine the completeness and sufficiency of the application. The planning staff has twenty (20) working days to determine whether the application contains all of the listed information found in Appendix D of these regulations and information required to verify compliance with the preliminary approval conditions and shall give written notice to the subdivider or, with the subdivider's written permission, the subdivider's agent of the planning staff's determination of completeness and sufficiency. If information is missing from the application, planning staff shall identify the needed information in the written notification. The subdivider must provide all missing information before the completeness and sufficiency review process will restart from the beginning. The subdivider or the subdivider's agent and the governing body or the Planning Department may mutually agree to extend the twenty (20) working day review period.

~~The final plat must have a certification by the County Treasurer that all taxes and special assessments assessed and levied (currently due or delinquent) are paid on the land proposed for subdivision.~~

### 3. Final Plat Review

The final plat will be reviewed by the Planning Department and the survey review committee to ascertain that all conditions and requirements for final plat approval have been met. Any significant change to the final plat may require the applicant subdivider request a modification of conditions of approval from the governing body.

The final plat must have a certification by the County Treasurer that all taxes and special assessments assessed and levied (currently due or delinquent) are paid on the land proposed for subdivision.

~~All public improvements must be inspected and certified, as meeting the applicable standard and the approved design plans, by an engineer registered in the State of Montana.~~

The governing body requires that all final plats be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the clerk and recorder. The subdivider shall bear the cost of this review. When the survey data shown on the plat meet the requirements set forth by the Montana Subdivision and Platting Act and the Montana Uniform Standards for Monumentation and Final Subdivision Plats, the examining land surveyor shall so certify on the plat. No land surveyor having a financial or personal interest in a plat shall act as an examining land surveyor in regard to that plat.

The subdivider shall make any corrections or revisions to the final plat as noted by the planning staff and/or the examining land surveyor. Then one (1) opaque mylar copy, one (1) reproducible mylar copy, one (1) paper copy, and one (1) digital copy, ~~when available,~~ of the final plat shall be prepared and submitted to the Planning Department. A digital copy of the final plat shall be submitted in an electronic file format, such as JPG, PNG, TIF, or GIF, and at a resolution to facilitate visual clarity for use in multiple situations, such as presentation projections, staff reports, and agreements.

The governing body will provide for the review of the abstract or certificate of title of the land in question by the County Attorney. The subdivider shall bear the cost of these documents.

***[STAFF NOTES ON PROPOSED CHANGES: Additional language needed to ensure compliance with Montana Subdivision and Platting Act (MSPA) following the 2017 Montana Legislative Session as result of adoption of HB 445 regarding phased developments and HB 245 regarding timelines for review of a final plat application.***

***Additional language is needed to enhance Staff's ability to present a subdivider's final plat with a high degree of visual clarity.]***

## **Page III-29, Lewis and Clark County 2016 Subdivision Regulations**

### **5. Final Plat Approval or Denial**

The governing body shall examine the ~~major~~ subdivision final plat and shall approve or deny the plat within ~~thirty-five~~ twenty (20) working days after the ~~applicant~~ subdivider has submitted a complete and sufficient final plat application and has demonstratively met all of the conditions of approval set forth in the preliminary subdivision approval and the subdivider or the subdivider's agent has been notified. The subdivider or the subdivider's agent and the governing body or the Planning Department may mutually agree to extend the twenty (20) working day review period.

The subdivision final plat shall conform in all major respects to the subdivision application and preliminary plat or phased preliminary plat previously reviewed and approved by the governing body, and shall incorporate all modifications required to comply with preliminary approval conditions.

The governing body shall approve a subdivision final plat if it conforms to the approved subdivision application and preliminary plat or phased preliminary plat, and if the ~~applicant~~ subdivider has met all required modifications or conditions, and met or exceeded all standards and requirements of these regulations. Approval shall be certified by the governing body on the face of the final plat.

If the subdivision final plat is denied, the reasons for denial shall be stated in the records of the governing body, and a copy shall be sent to the ~~applicant~~ subdivider. The governing body shall return the opaque mylar copy, the reproducible copy, and digital, when available, to the ~~applicant~~ subdivider within ten (10) working days of the action. The ~~applicant~~ subdivider may then make the necessary corrections and resubmit the final plat for approval.

The governing body may withdraw approval of a plat if it determines that information provided by the subdivider, and upon which such decision was based, is inaccurate.

***[STAFF NOTES ON PROPOSED CHANGES: The proposed amendments replace an existing completeness and sufficiency review procedure for final plat applications that is now codified in state law following the 2017 Montana Legislative Session as result of adoption of HB 245 regarding timelines for review of a final plat application. This will continue to ensure that submitted final plat applications are ready for review and that staff processes them in a timely manner. Additional amendments needed to incorporate review of a preliminary plat phase (HB 445) and to provide consistent language.]***

## **CHAPTER IV: PROCEDURES FOR MINOR SUBDIVISIONS-PHASED DEVELOPMENTS**

*[STAFF NOTES ON PROPOSED CHANGES: Chapter IV was previously titled “Procedures for Minor Subdivisions”; however, the content of the chapter was repealed with the December 13, 2016 amendments and incorporated into Chapter III. This chapter will now include procedures for phased developments as described in Section 76-3-617, MCA following the 2017 Montana Legislative Session and the adoption of HB 445 regarding phased developments.]*

### **Page IV-1, Lewis and Clark County 2016 Subdivision Regulations**

#### **A. Introduction**

##### **1. Phased Developments**

Phased developments are a subdivision application and preliminary plat that at the time of submission consists of independently platted development phases that are scheduled for review on a schedule proposed by the applicant.

#### **B. Phased Development Application Review Process**

##### **1. Phased Development Application and Schedule**

Except as otherwise provided by this chapter, subdivision applications and preliminary plats for phased developments must comply with all pre-application procedures, applicable submittal requirements, design standards, and are subject to the review procedures of these regulations for all phases of the development. A phased development subdivision application and preliminary plat must also include a schedule for when the applicant intends to submit for review each phase of the development pursuant to Section B.2.a of this chapter. The applicant may change the schedule for review of each phase of the development upon approval of the governing body, after a public hearing is held as provided in Section B.2.d of this chapter, if the change does not negate conditions of approval or otherwise adversely affect public health, safety, or welfare.

##### **2. Procedure**

**a. Prior to the commencement of infrastructure plan review for public improvements required by the governing body for each phase or phases, the applicant must provide written notice to the governing body indicating the intent to commence with a phase(s). The written notice must include an analysis of the phase(s) as it relates to the primary review criteria of Section 76-3-608(3), MCA, the current subdivision regulations, other applicable regulations and standards, and previously approved findings of fact, conclusions, and conditions of approval. The written notice must include required review fees.**

- b. Within thirty (30) working days of receipt of the written notice, analysis, and required fee, the governing body shall hold a public hearing as provided in Section B.2.c of this chapter to determine whether any changed primary criteria impacts (see Section 76-3-608(3), MCA) or new information exists that creates new potentially significant adverse impacts for the phase or phases.
- c. Notice of the time and date of the hearing shall be given by publication in a newspaper of general circulation in the county not less than fifteen (15) calendar days prior to the date of the hearing. The applicant, each property owner of record immediately adjoining the land included in the preliminary plat and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat shall be notified of the public hearing by certified or registered mail, not less than fifteen (15) calendar days prior to the date of the hearing. For phased developments that involve non-residential uses, all property owners of record within five hundred (500) feet of the project property boundary shall be sent a notice by first class mail. The planning staff shall post notice of the hearing at a conspicuous place on the boundary of the proposed phased development.
- d. Notwithstanding the provisions of Section 76-3-610 (2), MCA, the governing body shall issue supplemental written, dated and signed findings of fact within twenty (20) working days of the public hearing and may impose necessary, additional conditions to minimize potentially significant adverse impacts identified in the review of each phase of the development for changed primary review criteria impacts or new information.
- e. The required conditions of approval must be met before final plat approval for each particular phase and the approval in accordance with Section 76-3-611, MCA, is in force for not more than three (3) calendar years or less than one (1) calendar year from the date of the signed supplemental findings of fact. The governing body may approve phased developments that extend beyond the time limits set forth in Section 76-3-610, MCA but all phases of the phased development must be submitted for review in accordance with Section B.2.b-e of this chapter and approved, conditionally approved, or denied within twenty (20) years of the date the overall phased development was approved by the governing body.
- f. Except as otherwise provided by this chapter, final plat applications and final plats for an individual phase or phases of a phased development shall comply with all applicable submittal requirements, design standards, and review procedures of these regulations.

***[STAFF NOTES ON PROPOSED CHANGES: New language needed to ensure compliance with Montana Subdivision and Platting Act (MSPA) following the 2017 Montana Legislative Session as result of adoption of HB 445 regarding phased developments.]***

# CHAPTER XI: GENERAL DESIGN AND IMPROVEMENT STANDARDS

## Page XI-1, Lewis and Clark County 2016 Subdivision Regulations

### A. Introduction

The general design and improvement standards listed below are intended to help protect the health, safety, and general welfare of Lewis and Clark County residents, conserve natural resources, and comply with applicable state statutes.

1. All subdivisions must be designed and developed by the Applicant to provide satisfactory building sites that properly relate to topography and must avoid or mitigate any significant adverse impacts on:
  - agriculture;
  - agricultural water users;
  - local services;
  - natural environment;
  - wildlife;
  - wildlife habitat; and
  - public health, safety and general welfare.
2. All subdivision applications must also be in compliance with:
  - survey requirements of the Montana Subdivision and Platting Act;
  - these local Subdivision Regulations; and,
  - the review procedures contained in these Subdivision Regulations.
3. All subdivisions must provide easements within and to the subdivision for the location and installation of any planned utilities.
4. All subdivisions must provide legal and physical access to each parcel within the subdivision with notation of that access on the plat and any instrument of transfer concerning each parcel.
5. All subdivisions approved by the governing body shall comply with the provisions of this chapter, except where granted a variance pursuant to Chapter II, section B.
6. Each phase of a phased development must meet all the general design and improvement standards of these regulations as if it were a subdivision without phases.
- ~~6.7.~~ Certain types of subdivisions may have additional or alternative development standards set forth in these regulations. For procedures for subdivisions created by rent, lease, or other conveyance refer to Chapter VI. For planned unit developments refer to Chapter IX., and for condominiums and townhouses refer to Chapter X.

***[STAFF NOTES ON PROPOSED CHANGES: Additional language needed to ensure compliance with Montana Subdivision and Platting Act (MSPA) following the 2017***



**Page XI-2, Lewis and Clark County 2016 Subdivision Regulations**

**B. Conformance**

The design and development of a subdivision shall be consistent with any applicable adopted land use controls, ~~existing covenants~~, zoning ordinances, health department requirements, and other applicable, adopted resolutions, and regulations. Where no zoning regulations are in effect, maximum density and minimum lot size shall be established by the subdivider in consultation with local and state health authorities and the County Planning Department.

***[STAFF NOTES ON PROPOSED CHANGES: Wording changes are proposed to make this section consistent with the amendment to Section II.E. This language places the County in the position of interpreting and applying private covenants which the County didn't write, is not subject too, and has no mechanism to enforce. The enforcement and administration of private covenants will, and should, remain a matter between private landowners.]***

## APPENDIX A: DEFINITIONS

### Page A-9, Lewis and Clark County 2016 Subdivision Regulations

**PHASED DEVELOPMENT:** A subdivision application and preliminary plat that at the time of submission consists of independently platted development phases that are scheduled for review on a schedule proposed by the applicant.

***[STAFF NOTES ON PROPOSED CHANGES: New language needed to ensure compliance with Montana Subdivision and Platting Act (MSPA) following the 2017 Montana Legislative Session as result of adoption of HB 445 regarding phased developments.]***

## APPENDIX B: SUBDIVISION APPLICATION FORM, CONTENTS, AND SUPPLEMENTS

### Page B-1, Lewis and Clark County 2016 Subdivision Regulations

#### 1. Preliminary Plat Form

A legible preliminary plat or site plan shall be submitted at a scale sufficient to minimize the number of sheets while maintaining clarity and shall be on one or more sheets at least 11 X 17 inches in size. The preliminary plat must show all pertinent features of the proposed subdivision and the location of all proposed improvements. An electronic copy (*read only* PDF) must also be submitted. In addition to a PDF copy, the preliminary plat or site plan must be submitted in an electronic file format, such as JPG, PNG, TIF, or GIF, and at a resolution to facilitate visual clarity for use in multiple situations such as, presentation projections, staff reports, legal notices, and agency and public comment requests.

***[STAFF NOTES ON PROPOSED CHANGES: Additional language is needed to enhance Staff's ability to present an applicant's preliminary plat or site plans with a high degree of visual clarity.]***

#### 2. Preliminary Plat Contents

The preliminary plat or site plan submitted for approval shall show or contain on the face of the plat or site plan or on separate sheets referenced on the face of the plat or site plan the following information. If the subdivision application is for a phased development, a preliminary plat or site plan for all phases and one for each individual phase must be submitted. (Five ~~blue~~line copies shall be provided for major or subsequent minor subdivisions, three copies for first minor subdivisions.) A current topographic map, an aerial photograph or a location map of the largest scale available, with an outline of the subdivision clearly indicated thereon may be used to provide the information required below and in Subdivision Application Supplements:

***[STAFF NOTES ON PROPOSED CHANGES: Additional language needed to ensure compliance with Montana Subdivision and Platting Act (MSPA) following the 2017 Montana Legislative Session as result of adoption of HB 445 regarding phased developments. Preliminary plats have not been traditionally submitted as "blueines" in Lewis and Clark County for many years and Staff is recommending removal of this outmoded language.]***

### 3. Subdivision Application Supplements

For a major or subsequent minor subdivision, five copies of a complete subdivision application, including a copy in an electronic form (*read only* PDF) shall be supplied to the County Planning Department. For a first minor subdivision, three copies of a complete application, including a copy in an electronic form (*read only* PDF) shall be submitted to the County Planning Department. In addition to PDF copies, the planning staff may request additional electronic copies of maps or images in an electronic file format, such as JPG, PNG, TIF, or GIF, and at a resolution to facilitate visual clarity for use in multiple situations such as, presentation projections, staff reports, legal notices, and agency and public comment requests.

The following shall be supplied with and considered a part of the subdivision application:

- b. ~~When a tract of land is to be subdivided in phases, the subdivider must provide an overall development plan indicating intent for the development of the remainder of the tract.~~ A phased development subdivision application must include a schedule for when the applicant intends to submit for review each phase of the development pursuant to Chapter IV, Section B.2.a of these regulations. In addition, the applicant shall graphically show and describe the location and type of improvements to be completed for each phase and describe how these improvements comply with these regulations, function independently of subsequent phases, and provide for future connectivity of subsequent phases of the phased development.
- e. Preliminary grading and drainage plan with accurate dimensions, courses and elevations, showing the proposed grades of streets and drainage improvements for the entire development. If a phased development is proposed, this information must be included for each phase.
- j. A determination of the amount of cash payment in-lieu of park dedication, if proposed. If a phased development is proposed, this information must be included for each phase. See Chapter XI, Section R. Parkland for determining cash-in-lieu of parkland.
- o. Detailed traffic impact study certified by an engineer, licensed in the State of Montana, based upon the current editions of Institute of Transportation Engineers (ITE) standards and the *Highway Capacity Manual* that provides for the following:
  - existing traffic volumes;
  - existing traffic conditions: lanes, traffic control, access control, etc.;

- projected traffic volumes (based upon ITE standards) of internal, adjacent, and off-site roads within the traffic impact corridor as described in Chapter XI.H.3;
- projected traffic distribution and assignment on adjacent, and off-site roads within the traffic impact corridor as described in Chapter XI.H.3;
- traffic analysis, including existing and projected Levels of Service (LOS) etc. of internal, adjacent, and off-site roads and intersections within the traffic impact corridor as described in Chapter XI.H.3; and
- conclusions and recommendation.

Phased developments must complete a traffic impact study as described above for the entire phased development and for each phase of the development.

In lieu of using the Institute of Transportation Engineers (ITE) *Trip Generation Manual* (latest edition), specific trip generation studies that have been conducted for a particular land use for the purposes of estimating peak-hour and average daily traffic trip-generating characteristics may be utilized. The Lewis and Clark County Public Works Director (or his/her designee) shall approve the use of these studies prior to their inclusion in a traffic impact analysis. A site-specific trip generation study must be certified by an engineer licensed in the State of Montana.

- t. A fire protection plan that states how the Fire Protection Standards (Chapter XI.S and Appendix K) of the Lewis and Clark Subdivision Regulations will be addressed. If a phased development is proposed, this information must be included for each phase.

***[STAFF NOTES ON PROPOSED CHANGES: Additional language is needed to enhance Staff's ability to present an applicant's projects with a high degree of visual clarity. Only items with amendments (b., e., j., o., and t.) are shown. Additional language needed to ensure compliance with Montana Subdivision and Platting Act (MSPA) following the 2017 Montana Legislative Session as result of adoption of HB 445 regarding phased developments.]***

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### 5. Presentation of Subdivision Application and Supplements

The preliminary plat or site plan, subdivision application and supplements shall be submitted in an organized format with a cover sheet, table of contents, identification tabs for each section and shall be bound in a three-ring binder or with a comb binder. Five bound copies shall be submitted for major or subsequent minor subdivision applications and three bound copies shall be submitted for first minor subdivision applications. The Applicant shall also provide planning staff with a copy in an electronic form (*read only PDF*). In addition to PDF copies, the preliminary plat or site plan must

be submitted in an electronic file format, such as JPG, PNG, TIF, or GIF, and at a resolution to facilitate visual clarity for use in multiple situations such as, presentation projections, staff reports, legal notices, and agency and public comment requests. Planning staff may request additional electronic copies of maps or images from the subdivision application supplements in a similar format for the same purpose. The materials submitted in electronic format shall utilize folder and file names reflective of their content.

***[STAFF NOTES ON PROPOSED CHANGES: Additional language is needed to enhance Staff's ability to present an applicant's preliminary plat or site plans and application supplements with a high degree of visual clarity.]***

**APPENDIX I: CRITERIA FOR REVIEW OF CLAIMED EXEMPTIONS FROM PROVISIONS OF SUBDIVISION AND PLATTING ACT**

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**SECTION D. EXEMPTION CRITERIA**

- 4. EXEMPTION TO PROVIDE SECURITY FOR CONSTRUCTION MORTGAGES, LIENS, OR TRUST INDENTURES [Section 76-3-201(2)(1)(b), MCA]:
  - a. The construction mortgage exemption is used to segregate land for the purpose of providing security for construction mortgages, liens, or trust indentures.
  - b. There is a rebuttable presumption that a proposed use of this exemption, or a division of land by use of this exemption, is subject to subdivision review, if after July 1, 1973:
    - (1) The proposed division, by its location or configuration could become or create three or more parcels that were subdivided from the original tract; or
    - (2) The applicant has used exemptions to create parcels from the original tract or other tracts; or
    - (3) The proposed division of land has been previously denied under any other exemption; or
    - (4) Upon foreclosure of the security, three or more parcels would be created.
    - (5) There is no evidence of foreclosure of the mortgage, lien, or trust indenture.
  - c. Except as provided in subsection D.4.d., a transfer of the divided land, by the owner of the property at the time that the land was divided, to any party other than the financial or lending institution to which the mortgage, lien, or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture subjects the division of land to the requirements of these regulations.
  - d. If a parcel of land was divided pursuant to subsection D.4. and one of the parcels created by the division was conveyed by the landowner to another party without foreclosure before October 1, 2003, the conveyance of the remaining parcel is not subject to the requirements of these regulations.

***[STAFF NOTES ON PROPOSED CHANGES: Additional language needed to ensure compliance with Montana Subdivision and Platting Act (MSPA) following the 2017 Montana Legislative Session as result of adoption of SB 219 regarding mortgage exemptions.]***

## **TABLE OF CONTENTS, CHAPTERS I-XI, AND ALL APPENDICIES**

Update the table of contents and all footers of chapters and appendices to reflect the amendments and to correct any existing errors in footer content.

***[STAFF NOTES ON PROPOSED CHANGES: The table of contents and footers of each chapter and appendix will require updates to reflect the amendments upon adoption and the footer for Chapter III should be amended to reflect the current chapter title.]***