

## **V. DESIGN AND IMPROVEMENT STANDARDS**

All subdivisions approved by the Commission must comply with the provisions of this section, except where granted a variance pursuant to Section VIII-B, Variances. The Commission may not grant variances from the provisions of Section V-A-5 Floodplain Provisions. For subdivisions created by rent or lease, planned unit developments, and condominiums, refer to Sections VI and VII of these regulations.

### **V-A. General Standards**

#### **V-A-1. Conformance**

The design and development of a subdivision should be consistent with and conform to resolutions, zoning regulations, and these Regulations.

#### **V-A-2. Natural Environment**

The design and development of subdivisions shall, insofar as it is possible preserve or enhance the natural terrain, prominent ridgelines, natural drainage, floodplain, existing topsoil, trees and other natural vegetation.

#### **V-A-3. Lands Unsuitable for Subdivision**

Land which the Commission determines is unsuitable for subdivision because of natural or human caused hazards such as flooding, land slides, excessive slope, rock falls, snow avalanches, subsidence, high water table, polluted or non-potable water; or because of unreasonable burdens on the general public such as the requirements for the excessive expenditure of public funds, environmental degradation, and congestion in the roads shall not be subdivided for building or residential purposes unless the hazards or excessive public burdens are eliminated or will be overcome by appropriate design and construction plans certified by a registered engineer.

#### **V-A-4. Re-Vegetation**

All areas disturbed during construction shall be revegetated with vegetation types approved by the Weed Control Supervisor. All disturbed areas shall be reseeded and/or revegetated and maintained with techniques and schedules approved by the Weed Control Supervisor.

#### **V-A-5. Construction Setbacks from Perennial Streams and Waterbodies**

The river, stream, pond, and lake frontage property in Carbon County is among the most desirable for new development. It is also recognized that the frontage is of major ecological importance for wildlife habitat and protection of water quality.

The minimum construction setbacks may be specified in order to protect riparian areas, wetland, trout spawning areas, critical wildlife habitat, fragile areas, or important historical or archaeological sites.

The following are factors that may be considered a basis for establishing construction setbacks in new subdivisions:

- a. The width of the riparian area;
- b. The location of critical wildlife habitat on the land proposed for subdivision;
- c. Protection of riverbank stability, trees, water quality, and trout spawning areas;
- d. The location of an important historic or prehistoric site on the property; and
- e. To protect the viewshed.

The Planning Board and Commission may consult with the appropriate agencies, (including but not limited to the Montana Department of Fish, Wildlife, and Parks; the Environmental Protection Agency; United States Fish and Wildlife Service; the United States Forest Service; the Carbon County Conservation District; and the State Historic Preservation Office), prior to recommending a setback.

Any mitigation measures proposed by the subdivider shall be considered prior to the establishment of a setback.

#### **V-A-6. Floodplain Provisions**

- a. General. Land subject to being flooded by a 100-year flood event as defined by Title 76, Chapter 5, MCA, or other land determined by the Commission to be subject to flooding may not be subdivided for building or residential purposes or other uses that may increase or aggravate flood hazards to life, health or welfare, or that may be prohibited by state or local floodplain or floodway regulations. Land deemed to be subject to flooding by the Commission may include (but is not limited to) land subject to 100-year flooding, 500-year flooding, shallow flooding, groundwater rise, historically flooded lands located in proximity to a watercourse.
- b. Flood Hazard Evaluation Required. If any portion of a proposed subdivision is within 2,000 horizontal feet and 20 vertical feet of a perennial stream draining an area of 25 square miles or more, and no official floodway delineation or floodway studies of the stream have been made, the subdivider must furnish survey data to the Floodplain Management Section of the Water Resources Division of the Montana Department of Natural Resources and Conservation. Survey data must comply with the Standards for Flood Hazard Evaluations contained in Appendix H of these regulations. After the Floodplain Management Section of the Water

Resources Division has prepared a report delineating the floodway, the subdivider must submit it to the Planning Office along with the Environmental Assessment required for the preliminary plat.

- c. Waiver. The Commission may waive the flood hazard evaluation requirement where the subdivider contacts the Water Resources Division, DNRC, and that agency states in writing that data indicates that the proposed subdivision is not in the flood hazard area as defined in this Section. In considering a waiver, the Commission shall consult with the Carbon County Floodplain Administrator.
- d. Subdivision of Land within a 100-year Delineated Floodplain. Where the 100-year floodplain has been delineated and mapped in a County approved study, the following standards shall apply to all proposed subdivisions:
  - i. When feasible subdivision roads, bridges, and utilities shall not be located within the 100 year floodplain.
  - ii. Lots with any area proposed to be within the 100-year floodplain shall designate a building lot on the plat. Any building lot or improvement located within 100-year floodplain must be permitted and constructed before final plat approval or covered by a subdivision improvement agreement.
  - iii. Land within the 100-year floodplain may be used for open space, wildlife habitat, recreation, and parks.
- e. Plat Map Requirements. New developments within any land located in 100-year flood hazard areas designated by the regulatory study (FEMA State of Montana or County-approved study) shall field survey the base flood elevation and show the limits on the plat map. Base flood data and the boundary of the base flood and floodway through the subdivision shall also be shown on the plat map.

#### **V-A-7. Improvement Design**

Engineering and survey plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the Commission must be prepared by a professional engineer or a professional land surveyor as their respective licensing laws allow in accordance with the MSPA and these Regulations.

#### **V-A-8. Lots**

Lot size, width shape, and orientation shall be appropriate for the location and contemplated use of the subdivision. Lot designs with irregular shapes, narrow necks, points and flag shapes shall be permitted only when the subdivider can demonstrate that the proposed lot designs are necessary due to topography or other physical constraints. Each lot shall contain a satisfactory building site and conform

to zoning regulations, and to the regulation of MDEQ. Slopes in excess of 25 percent (25%) shall be presumed unsuitable for building sites unless otherwise proved by the subdivider with designs and plans stamped and certified by a Professional Engineer.

- a. No lot shall be subdivided by a dedicated right-of-way or easement, which would reduce the buildable area to a size less than required by these and other adopted regulations.
- b. No lot may be divided by a municipal or county boundary line.
- c. Each lot must abut and have access to a public or private street or road.
- d. Corner lots must have driveway access to the same street or road that provides access to interior lots.
- e. Corner lots must be designed to provide acceptable sight distances for safe vehicular movement.
- f. No lot with less than 200 feet average width, may have an average depth greater than three times its average width.
- f. Side lot lines must be at substantially right angles to street or road lines and radial to curved street or road lines.
- g. Double frontage lots are prohibited except when they are essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography or orientation.

**V-A-9. Blocks**

- h. Blocks shall be designed to assure traffic safety and ease of traffic control and circulation, to accommodate the special needs of the use contemplated, and to take advantage of the limitations and opportunities of the topography.
- i. Block length shall not be designed, unless otherwise impractical, to be more than one thousand two hundred feet (1,200') or less than four hundred feet (400') in length.
- j. Blocks shall be wide enough to allow for two tiers of lots unless a narrower configuration is essential to provide separation of residential development from traffic arteries, or to overcome specific disadvantages of topography and orientation, or unless the Commission approves a design consisting of irregularly shaped blocks indented by cul-de-sacs.

- k. Rights-of-way for adequate and safe pedestrian access, not less than 10 feet wide, must be provided where deemed essential to provide circulation to schools, playgrounds, shopping, transportation, and other community facilities.

#### **V-A-10. Roads and Streets**

##### **a. General Design**

- i. Roads. The arrangement, type, extent, width, grade, and location of all roads (including but not limited to county and private, must be considered in their relation to existing and planned streets, topographical conditions, public convenience and safety, and the proposed uses of the land to be served by them. All internal subdivision roads and all roads accessing the subdivision shall be brought up to county standard.
- ii. Design. The road standards in these Regulations shall apply to all construction, reconstruction, and paving of roads. Roads must meet the design specifications in Table 1.
- iii. Relation to Un-Subdivided Areas. When a new subdivision adjoins unsubdivided Land (lands or parcels not created by a recorded subdivision plat) and access to the un-Subdivided land must pass through the new subdivision, the subdivider shall provide rights-of-way and construct county standard roads so as to allow suitable access to the un-Subdivided Land.

This requirement may be waived by the Commission when the Planning Office finds that one of the following criteria is met:

1. Topography or other physical conditions would make it impracticable to provide access to adjacent un-subdivided land.
2. Adequate public access is otherwise available to the adjacent un-subdivided property.
3. When the adjoining un-subdivided property is under public ownership.

This requirement shall be waived by the Commission if the adjoining un-subdivided property is subject to a conservation easement or other legally restrictive covenant as confirmed by the County Attorney or a Civil Attorney for Carbon County.

- iv. Relation to Subdivided Areas. The subdivider shall arrange the roads to provide for the continuation of roads between adjacent subdivided properties (lands or parcels created by a recorded subdivision plat) when such continuation is necessary for the convenient movement of traffic,

connection of neighborhoods, effective provision of emergency services, and provision of utilities.

- v. Turnaround Required. No dead end roads shall be permitted without an approved turnaround. Where streets terminate the subdivider shall provide a cul-de-sac. A “T” turnaround may be allowed for roads that serve five (5) lots or less. Cul-de-sacs and “T” turnarounds shall conform to the design specifications in Table 1. Where it is planned that a dead-end road will be extended in the future, a temporary cul-de-sac or “T” turnaround shall be provided.
- vi. Ownership. All roads must either be dedicated to the public or be private roads, with public or private access, to be owned and maintained by an approved property owners’ association. The following certificate of dedication must be included on the face of the plat:

*(I), (We) the undersigned property owner(s) do hereby certify that (I) (We) have caused to be surveyed, subdivided and planned into lots , parcels, blocks, roads and alleys, and other divisions and dedications , as shown by this plan hereunto included the following described tract of land ( insert description) . The above described tract of land is to be known and designated as \_\_\_\_\_, Carbon County, Montana, and the lands included in all roads, avenues, alleys, and parks or public squares shown on said plat are hereby granted and donated to the use of the public forever. The roadways dedicated to the public are accepted for public use but the county accepts no responsibility for maintaining the same. The owner(s) agree(s) that the County has no obligation to maintain the roads hereby dedicated to the public use.*

- vii. Access. To facilitate traffic, the provision of emergency services, and the placement of utility easements, the subdivider shall provide all subdivisions with six (6) or more lots with two (2) means of physical access. The subdivider may be required to provide a second access for minor subdivisions if the following conditions exist: the maximum cul-de-sac length standard is exceeded or topography or physical conditions so warrant. Residential driveways shall not have direct access to primary highways. Any vehicular access onto a state highway shall be approved by the MDOT.
- viii. Through Traffic. Local streets must be designed so as to discourage through traffic.
- ix. Frontage Roads. Whenever a subdivision abuts or contains an existing or proposed arterial highway or major thoroughfare, the Commission may require frontage roads or other treatment as may be necessary to adequately protect residential properties and to separate arterial and local traffic.

- x. Half Streets. Half streets are prohibited except when they are essential to the development of the subdivision and when the Commission is satisfied that the other half of the street will be dedicated to the public when the adjoining property is subdivided. When an existing half street is adjacent to a tract to be subdivided, the other half of the street must be platted within the new subdivision.
- xi. Sight Distance. The alignment of all streets and roads must provide adequate sight distances as specified in Table 1.
- xii. Intersections. The following requirements apply to intersections:
  - a) roads must intersect at 90 degree angles except when topography prohibits this alignment. In no case may the angle of an intersection be less than 60 degrees to the center line of the roadway being intersected.
  - b) two roads meeting a third street from opposite sides must be offset as specified in Table 1.
  - c) no more than two roads may intersect at one point.
  - d) intersections of local roads with major arterials or highways must be avoided.
  - e) intersections must be designed to provide adequate visibility for traffic safety based on the designed operating speeds of the intersecting roadways.
  - f) hilltop intersections are prohibited, unless no alternatives exist. Intersections on local roads within 100 feet of a hilltop are prohibited. Intersections on arterial and collector roads within 200 feet of a hilltop are prohibited. If no alternative to a hilltop intersection exists, additional traffic control devices will be required.
  - g) the grade of approaches to major highways may not exceed three percent.
- xiii. Names. Names of new streets or roads aligned with existing streets must be the same as those of the existing streets. Proposed street names may not duplicate or cause confusion with existing street names.

**b. Improvements**

- (i) Permit Required. Any work on a Carbon County road requires a permit application and approval through the Carbon County Commissioner's office. Application materials are available from the County Commissioner's office.
- (ii) Standards. All roadway improvements including pavement, shoulders, swales, curbs, gutters and drainage must be constructed in accordance with the specifications and standards prescribed in these Regulations.
- (iii) Subgrades. Roadway subgrades must be free of topsoil, sod, vegetation or organic matter, soft clay, and other substandard materials. Subgrades must be properly rolled, shaped, and compacted, and must be approved by the County Road Supervisor.
- (iv) Cut and Fill Slopes. Cut and fill slopes should be laid back to a 3:1 (Run : Rise) angle of repose to prevent erosion.
- (v) Fill Sections. For compaction of subgrades, fill sections should be placed in layers and compacted to 90 percent relative density. Water should be applied to obtain optimum moisture content for proper compaction.
- (vi) Clearing and Grubbing. The road right-of-way or easement should be cleared two feet beyond the toe of the fill and the top of the cut as illustrated in Figure A. Brush, stumps, logs, debris, and boulders should be removed from the right-of-way or easement and disposed of in a suitable manner, such as by burning or burying. The proper authorities should be consulted for permits and regulations on the chosen means for disposal. Topsoil must be stripped whenever terrain will permit and stockpiled for use in reclaiming borrow areas and cut and fill slopes.
- (vii) Switch Backs. Switch backs should be avoided, but if terrain makes them necessary they should consist of:
  - a. Fifty (50) feet minimum turning radius;
  - b. Six (6) percent maximum grade through curves;
  - c. Eight (8) percent maximum grade on straightaways; and
  - d. Road surface width increased by four (4) feet through curves.
- (viii) Gravel Road Standards.
  - a. Base course material shall be placed not less than nine (9) inches in depth.

- b. Surface material shall be placed not less than three (3) inches in depth and shall consist of the following mixture:
- (ix) Improved Road Material Standards. (See also Table 1, Figure 1)
- a. Crushed or screened base, 9" minimum depth.
  - b. Crushed cushion aggregate, 1" minus, 4" minimum depth.
  - c. Plant-mix bituminous surface, 3" minimum depth.
- (x) Roadway Drainage. Streets and roads must be designed to ensure proper drainage. This may require surface crowning, culverts, curbs and gutters, drainage swales and storm drains.
- a. Road Surface. The road surface shall be sloped with a crown of -2% to -6%, depending on the type of soil in the subgrade. Poorly drained subgrade soil (heavy clay, for instance) will require a steeper crown than if the subgrade material is well-drained sand and gravel.
  - b. Drainage Ditches. Drainage ditches along the sides of gravel roads shall have a minimum grade of 0.4%, and may have grades up to 8.0% where lined with established grasses or rip rap, or where velocity control devices are provided. Plain soil and unlined ditches should not exceed a Run: Rise ratio of 1:1/2:1 (See Figure 1).
  - c. Culverts. Culverts are required where roads cross any ditch or watercourse. They are also needed at intersections with other roads and at designed intervals underneath elevated portions of roadways to prevent ponding. It is preferable to provide drainage at frequent intervals rather than concentrating water into one large conduit. Culverts should be sized to the maximum expected flow in fifty years for a given location, with consideration to the size of the watershed, permeability of the soil, vegetation and slope of drainage ditch. They should be of sufficient length to allow construction of a driving surface consistent with the width of adjacent sections of the roadway. Installation of the culverts should be in accordance with generally accepted standards, with attention given to the details of bedding, compaction, and erosion control.

The following are considered to be acceptable culvert materials:

- (a) Corrugated galvanized steel (AASHTO M36 OR M218);
    - (b) Corrugated aluminum (AASHTO M196); or
    - (c) Corrugated polyethylene pipe (AASHTO M252 and M294).
  - d. Roadway drainage features shall not cause discharge which will in any way adversely affect neighboring property.
- (xi). Reclamation of Disturbed Areas. In order to protect the land from erosion and the spread of noxious weeds disturbed areas must have their vegetation reestablished. Disturbed areas, cut and fill slopes and borrow areas must be covered with topsoil, mulched and planted with appropriate vegetation as required in the designed by the subdivider and approved by the Weed District. The choice of species and techniques for installation shall be as specified in the approved Noxious Weed and Revegetation Plan for the subdivision.

If noxious weed growth appears on private roads, immediate steps must be taken by the property owners' association to remove or treat the infestation to prevent spreading.

- (xii) Preservation of Existing Vegetation. Existing trees and other vegetation shall be preserved where possible. Plants may be required for buffering, screening, or soil erosion protections and are subject to approval by the Commission.
- (xiii) Easements. Where access from a public road to the subdivision will cross properties not owned by the subdivider, the subdivider must obtain proper easements of sufficient width to satisfy the requirements of Table 1.

Easements must be granted by each property owner in a signed and notarized document (Appendix I contains a model road access easement).

The location of any road easement must be shown on the preliminary and final plat. The existence of easements must be noted on the face of the final plat and on any deeds or other instruments conveying lots within the subdivision.

- (xiv) Bridges. Bridges shall be considered an integral part of any subdivision roadway system and, where required, shall meet the minimum standards for minor collectors (secondary roads) and local roads as specified by the American Association of State Highway and Transportation Officials (AASHTO)

- (xv) Lighting. Street lights shall be required in subdivisions proposed within or adjacent to areas with existing street lighting. Street lighting may be required in other areas when necessary to protect public safety.
- (xvi) Signs. Street or road signs and traffic control devices of the size, shape, and height as specified by standards must be placed at all intersections. Traffic control devices shall conform to the standards contained in the *Manual on Uniform Control Devices* available from the Montana Department of Transportation.
- (xvii) Paving. Paving is recommended and may be required if it is deemed necessary in order to control erosion, dust, and preserve the natural environment.
- (xviii) Rights-of-Way Maintenance. All road shoulders shall be mowed and kept clear of all flammable materials.
- (xix) Guardrails. Guardrails may be required due to the topography of the subdivision and course of the right-of-way and any potential hazards adjacent to the driving surface.

**c. Improvements Completion and Certification**

- (i) Prior to Final Plat. All roadway improvements shall be completed to the filing of a final plat or shall be guaranteed by the subdivider through an acceptable guaranty.
- (ii) Major Subdivisions. All roadway improvements that access or are within major subdivisions (six (6) lots or more) shall be designed by and constructed under the supervision of a registered professional engineer as required by the laws of the State of Montana. When required by the Road Supervisor as-builts shall be submitted to the Road Department after completion.
- (iii) Minor Subdivisions. Roadway improvements that access or are within minor subdivisions shall be designed and constructed under the supervision of a registered professional engineer as required by the laws of the State of Montana only when County Officials have made a determination that, due to site-specific characteristics, it would be in the public interest to require engineering design and construction supervision of the improvements as required by the laws of the State of Montana. Factors which County Officials shall consider when making this determination include:
  - a. topography (grade, slopes, and side slopes);

- b. soil type;
  - c. presence of surface water or high ground water;
  - d. visibility and alignment;
  - e. existing roadbed and surface material (where present);
  - f. anticipated traffic loads;
  - g. proposed maintenance arrangements; and
  - h. other site-specific factors.
- (iv) Certification of Improvements. Roadway improvements which have been designed by and constructed under the supervision of a registered professional engineer shall, upon completion of their construction, be certified by the engineer as meeting the standards herein as a condition of filing the final or minor subdivision plat. Engineering certification shall also be a condition of the County's issuance of a Satisfaction of Improvements Guarantee in the event the improvements were not constructed and certified prior to the filing of the final or minor subdivision plat. NOTE: Under certain conditions, the County may not issue a Satisfaction of Guarantee until a up to a one year period has passed to evaluate the performance of the guaranteed improvement.

**Table 1 Figure A**

<b>Table 1-Road Design Standards for Subdivisions</b>			
	<b>Community Roads</b>	<b>Multi-Residence</b>	<b>Private Driveway</b>
	6 or more lots	2-5 lots	1 lot
<b>Right of Way/Easement Width</b>	60'	60'	40'
<b>Driving Surface Width<sup>1</sup></b>	24'	22'	16'
<b>Cattle Guards</b>	Same width as driving surface		
<b>Maximum Grade less than 100'</b>	8%	10%	10%
<b>Maximum Grade for more than 100'</b>	8%	8%	8%
<b>Maximum Grade within 50' of intersection</b>	3%	5%	5%
<b>Minimum Site Distance</b>	PER AASHTO REQ.	PER AASHTO REQ.	PER AASHTO REQ.
<b>Turning/curve radius</b>	107'	107'	40'
<b>Minimum Intersection offset</b>	200'	150'	75'
<b>Cul de Sac</b>			
Max. length	1000'	1000'	1000'
Outside R/W Radius	60'	60'	45'
Outside Roadway Radius	45'	45'	45'
<b>T- Turnaround</b>			
Minimum backup lengths (2 required)		30 ft.	30 ft.
<b>Bridges</b>			
Curb to Curb Width <sup>2</sup>	Same width as driving surface plus two feet on each side		
AASTO Design Load	20 tons	20 tons	20 tons
Minimum Vertical Clearance	15'	15'	15'
<b>Tunnels</b>			
Curb to Curb Width	Same width as driving surface plus two feet on each side		
Minimum Vertical Clearance	15'	15'	15'

<sup>1</sup> Where parking will be permitted add eight feet on each side to be parked. If guardrail installation is required add two feet to each side with guardrail.

<sup>2</sup> Width of the bridge roadway surface shall match the width of the driving surface of the roadway system it joins, unless the driving surface is less than required, in such case a 100' transition zone shall be installed to meet the existing road system.

### **V-A-11. Drainage Facilities**

- a. The drainage system and facilities required for any surface run-off affecting the subdivision is subject to approval by the Commission. Subdivisions containing lots less than 20 acres in size must also be reviewed and approved under Title 76, Chapter 4, MCA, by the Montana Department of Environmental Quality.
- b. Curbs and gutters or swales will be required based on the character of the area, density of development, and nature of adjoining properties. Curbs and gutters of adjoining properties must be extended in conformance with current specifications of local and state authorities.
- c. Culverts and bridges of adequate size must be provided and installed by the subdivider where drainage channels intersect any street or road right-of-way or easement. All culverts and bridges must be constructed and installed according to applicable local and state standards. Culverts and other drainage facilities must be large enough to accommodate potential run-off from upstream drainage areas.
- d. The subdivider must provide suitable drainage facilities for any surface run-off affecting the subdivision. These facilities must be located in road rights-of-way or in perpetual easements of appropriate widths.
- e. Drainage systems must not discharge into any sanitary sewer facility.
- f. Drainage systems must be designed and certified by a professional engineer.
- g. The Commission may require the subdivider to grant easements to prevent encroachment or disruption of drainage ways or facilities. Drainage easements must be shown on the preliminary and final plat and a signed statement granting the easements must appear on the plat.

### **V-A-12. Water Supply Systems**

- a. The proposed method of supplying domestic water to each lot in the subdivision must comply with the design standards adopted by the Montana Department of Environmental Quality (DEQ) and contained in the Administrative Rules of Montana (ARM) 17.36.301, 17.36.302, 17.36.303, and 17.36.305. By this reference, these DEQ standards are incorporated into and made a part of these Regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in ARM 17.36.101.
- b. Before the Commission will approve the final plat of a subdivision containing lots of less than 20 acres in size, the subdivision must have been approved by

DEQ or other authorized reviewing authority under the Sanitation in Subdivisions Act, sections 76-4-101 *et seq.*, MCA.

- c. Any central water supply system must provide adequate and accessible water for fire protection.

#### **V-A-13. Sewage Treatment Systems**

- a. The proposed method of disposing of sewage from each lot in the subdivision must comply with the design standards adopted by the Montana Department of Environmental Quality (DEQ) and contained in the Administrative Rules of Montana (ARM) 17.36.301, 17.36.302, 17.36.312, and 17.36.320 through 17.36.326. By this reference, these DEQ standards are incorporated into and made a part of these regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in ARM 17.36.101.
- b. In addition, before the Commission will approve the final plat of a subdivision containing lots of less than 20 acres in size, the subdivision must have been approved by DEQ or other authorized reviewing authority under the Sanitation in Subdivisions Act, sections 76-4-101 *et seq.*, MCA.

#### **V-A-14. Solid Waste**

- a. The proposed method of storing and disposing of solid waste generated within the subdivision must comply with the standards adopted by the Montana Department of Environmental Quality (DEQ) and contained in the Administrative Rules of Montana (ARM) 17.36.309. By this reference, this DEQ standard is incorporated into and made a part of these regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in ARM 17.36.101.
- b. In addition, before the Commission will approve the final plat of a subdivision containing lots of less than 20 acres in size, the subdivision must have been approved by the Montana Department of Environmental Quality or other authorized reviewing authority under the Sanitation in Subdivisions Act sections 76-4-101, *et seq.*, MCA.

#### **V-A-15. Utilities**

- a. The subdivider must provide adequate and appropriate easements for the construction and maintenance of utilities within the subdivision. The subdivider must obtain any easements necessary to extend utilities to the subdivision. All utilities must be extended to each lot line before final plat approval or be supported by a SIA and appropriate financial guarantee.

- b. Utilities must be placed underground, wherever practical. Underground utilities, if placed in a street right-of-way, must be located between the roadway and the right-of-way line to simplify location and repair of lines. Underground facilities must be installed after the street has been brought to grade and before it is surfaced.
- c. Where practical, overhead utility lines must be located at the rear property line.
- d. Utility facilities must be designed by utility firms in cooperation with the subdivider. These facilities are subject to all applicable laws, rules, and regulations of the appropriate regulatory authorities.
- e. Utility easements located between adjoining lots must be centered on lot lines. If easements are placed in the street, they must be located between the roadway and the right-of-way line.
- f. Utility easements must be 20 feet wide unless otherwise specified by a utility company or the Commission.
- g. When a utility is to be located in an existing, dedicated right-of-way, the subdivider shall obtain a Carbon County Road Work permit, or notice of utility occupancy from MDOT in a state highway.
- h. In addition to showing the location of utility easements on the preliminary and final plat with dashed lines, the following statement must appear on the final plat:

“The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, telegraph, 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.”

#### **V-A-16. Mail Delivery**

If mail delivery will not be to each individual lot within the subdivision, and mail service is available to the subdivision the subdivider shall provide an off-road area for mail delivery within the subdivision in cooperation with the United States Postal Service. It shall not be the responsibility of the County to maintain or plow any mail delivery area constructed within a County road right-of-way. Mail delivery may not be provided in certain areas of the County. In such instances, the only mail service available would be provided through a rented post office box at the closest post office.

### **V-A-17. Noxious Weeds**

Noxious weeds shall be controlled as directed by the Weed Control Board in accordance with the Montana County Noxious Weed Control Act.

- a. Prior to application for subdivision and preliminary plat approval, the subdivider shall design a Noxious Weed Control and Revegetation Plan, and the subdivider shall submit the Plan, to the Weed Control Supervisor for a first minor subdivision and to the Weed Control Board for a subsequent minors and major subdivisions for approval. This plan ensures the control of noxious weeds upon approval of the subdivision application and preliminary plat and the revegetation of any lands disturbed during the construction of subdivision improvements.
- b. The subdivider shall submit the approved plan at the time of application for subdivision and preliminary plat approval.
- c. The subdivider shall ensure that after final plat approval the property owner(s) and/or property owners' association shall be responsible for the control of County declared noxious weeds by placing the following covenant on the property:

“The control of noxious weeds by the Association on those areas for which the association is responsible and the control of noxious weeds by individual owners on their respective lots shall be as set forth and specified under the Montana Noxious Weed Control Act (MCA 7-22-2101 through 22-2153) and the rules and regulations of the Carbon County Weed Control District. The landowner shall be responsible for the control of state and county-declared noxious weeds on his or her lot. Both unimproved and improved lots shall be managed for noxious weeds. In the event a landowner does not control the noxious weeds, after 10 days notice from the Property Owners Association, the Association may cause the noxious weeds to be controlled. The cost and expense associated with such weed management shall be assessed to the lot and such assessment may become a lien if not paid within 30 days of the mailing of such assessment.”

### **V-A-18. Water Course and Irrigation Easements** [76-3-504(1)(j), (k), MCA]

- a. Except as noted in b., below, the subdivider shall establish within the subdivision ditch easements that:
  - (1). are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or below ground pipelines for the delivery of water for irrigation to persons and land legally entitled to the water

under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

- (2). are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and
  - (3). prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.
- b. The subdivider need not establish irrigation easements as provided above if:
- (1). the average lot size in the proposed subdivision will be one acre or less and the subdivider provides for disclosure, in a manner acceptable to the Commission, notifying potential buyers that lots within the subdivision are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable to the lots; or
  - (2). the water rights have been removed from the land within the subdivision or the process has been initiated to remove the water rights from the subdivided land; and
  - (3). the fact the water rights have been or will be removed from the land within the subdivision is denoted on the preliminary plat. If the removal of water rights has not been completed at the time the final plat is filed, the subdivider shall provide written notification to prospective buyers of the subdivider's intention to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.
- c. The subdivider shall, unless otherwise provided under separate written agreement or filed easement, show on the preliminary and final plat, and file and record with the County Clerk and Recorder, ditch easements for the unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the proposed subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights.

**V-A-19. Disposition of Water Rights** [76-3-504(1)(i), MCA]

If a subdivision will create lots averaging less than five acres in size, the subdivider shall submit evidence with the final plat that the subdivider has:

- a. reserved all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer these water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserved and severed any remaining surface water rights from the land;
- b. if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide for the use of a water right on the subdivision lots, established a landowner's water use agreement administered through a single entity. This agreement must specify how the water rights will be administered and describe the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or
- c. reserved and severed all surface water rights from the land proposed for subdivision.

**V-A-20. Park Land Dedication – Cash in Lieu – Waivers -- Administration**

- a. Except as provided below, the final plat of a residential subdivision must show that the subdivider has dedicated to the Commission a cash or land donation equal to:
  - (1). 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;
  - (2). 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than one acre;
  - (3). 5% of the area of the land proposed to be subdivided into parcels larger than one acre and not larger than three acres; and
  - (4). 2.5% of the area of the land proposed to be subdivided into parcels larger than three acres and not larger than five acres.
- b. A park dedication may not be required for:
  - (1). Minor subdivisions.
  - (2). Land proposed for subdivision into parcels larger than five acres.
  - (3). Subdivision into parcels that are all nonresidential.
  - (4). A subdivision in which parcels are not created, except when that subdivision provides permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums.

- (5). A subdivision in which only one additional parcel is created.
- c. The Commission, in consultation with the subdivider and the Planning Board or Park Board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation.
    - (1). A “cash donation” is the fair market value of the unsubdivided, unimproved land.
    - (2). Where cash has been accepted in lieu of land dedication it shall be stated on the plat.
    - (3). Where cash has been accepted in lieu of land dedication, the Commission shall record in the minutes of the meeting upon the proposed subdivision why the dedication of land for parks and playgrounds was undesirable.
    - (4). The subdivider shall provide a current appraisal of the fair market value by a certified real estate appraiser of their choosing. The appraisal fee shall be the responsibility of the subdivider.
  - d. All subdivisions shall be considered residential subdivisions and park dedication requirements shall be satisfied unless there are adopted zoning restrictions which prohibit residential development or it can be shown that the subdivider has immediate plans for non-residential development.
  - e. Land dedicated for parkland and recreational purposes shall not be used for the location of water supply and sewage disposal facilities, or storm water detention. Fire fill site ponds may be located within a dedicated park; however, the surface area of the pond cannot count towards the required park dedication.
  - f. Park Fund 76-3-621, MCA
    - 5) The local governing body shall waive the park dedication requirement if:
      - (a) (i) the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and

- (ii) the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection (1);
- (b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and
- (ii) the area of the land proposed to be subdivided, by virtue of providing long-term protection provided for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1); (c) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1); or
- (d) (i) the subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and
- (ii) the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under subsection (1).

quality of life and recreational opportunities for Carbon County and its residents.

g. Waiver 76-3-621, MCA

(7) The local governing body may waive the park dedication requirement if:

- (a) the subdivider provides land outside the subdivision that affords long-term protection of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and
- (b) the area of the land to be subject to long-term protection, as provided in subsection (7)(a), equals or exceeds the area of the dedication required under subsection (1).

**V-A-21. Fire Protection**

**Fire Protection.** It is the intent of these regulations that all subdivisions be planned, designed, constructed and maintained so as to minimize the risk of fire, and to permit the effective and efficient suppression of fires in order to protect persons, property, and forested areas. All subdivisions shall have the availability, through a fire protection district, of fire protection services adequate to respond to fires that may occur within the subdivision as

determined by the Board of Commissioners. Buildings may be prohibited in subdivisions or portions of subdivisions in which subdivision review finds that adequate fire protection cannot be provided.

**Local Fire Department Review.** All proposed subdivisions must be submitted by the developer or the developer's agent to the fire authority having jurisdiction in order to solicit comments. A Subdivision Fire Inspection fee must be provided to cover the cost of the review.

**Fire Risk Mitigation Requirements.** New subdivisions shall provide for mitigation of any additional fire risk identified during subdivision review. All new subdivisions are required to demonstrate that a 100-foot radius defensible space exists around any proposed building site. Additional mitigation may be required based on risk determination.

**Fire Risk Mitigation for Minor Subdivisions Located in High Fire Risk Areas.** Minor subdivisions located in areas identified as a high fire risk area must provide additional mitigation as follows:

- Provide a minimum of two (2) accesses that meet the road design standards of Section V-A-10.
- Provide covenants requiring all buildings to be constructed of fire-resistant material.

**Fire Risk Mitigation for Major Subdivisions Located in High Fire Risk Areas.** Major subdivisions (6 or more lots), or subsequent subdivisions which will result in a subdivision with a total of 6 or more lots, located in areas identified as a high fire hazard risk area must provide additional mitigation as follows:

- Provide covenants requiring all buildings to be constructed of fire-resistant material
- Provide an on-site water supply by connecting to a municipal water supply meeting National Fire Protection Association (NFPA) standards or the current fire code adopted by the State of Montana, or by constructing a 30,000 gallon year round water source with approved 6" and 2½" dry hydrant type fittings capable of flowing 1000gpm located not more than one half road mile from any proposed structure (one quarter mile if the subdivision contains more than 50 lots).

**On-Site Water Supply Design and Improvement Standards.** All on-site water supply systems must be acceptable to the fire authority having jurisdiction and follow the following design standards:

- A municipal water supply system must meet National Fire Protection Association (NFPA) standards or the current fire code adopted by the State of Montana. When this option is proposed for a subdivision outside of municipal limits and annexation is not proposed, the subdivider must enter into an agreement with the municipality to use municipal water for fire mitigation within the subdivision and meet any conditions imposed by the municipality for use of the water.
- An approved 30,000 gallon year round water source with approved 6” and 2½” dry hydrant type fittings capable of flowing 1000gpm. All tanks will be new or certified by a professional engineer. Installation of these tanks shall be supervised by a professional engineer. The Board of Commissioners may require as-builts be provided and filed with the subdivision plat, and/or a pump test be conducted to ensure proper operation.
- If fire hydrants that are not part of an municipal water system or an existing maintenance district are proposed, the subdivider shall form a fire hydrant maintenance district as provided in 7-12-4601, MCA, or annex into an existing fire hydrant maintenance district.

**Fire Risk Determination.** The fire authority having jurisdiction may, as part of their comments on the proposed subdivision, make a determination that the subdivision is located in a high fire risk area. This determination shall be based on one or more of the following criteria:

- The proposed subdivision is located in an area identified as Wildland Urban Interface.
- The proposed subdivision is located in an area with a high density of fuels and/or slopes greater than 25%.
- The proposed subdivision contains a density of more than one (1) lot per three (3) acres.
- The proposed subdivision is located more than ten (10) miles from a fire station.

**Additional Fire Risk Mitigation.** The fire authority having jurisdiction may, at their discretion, request additional mitigation measures, including, but not limited to road improvements or additional water supply requirements, in areas with special hazards, limited access, or located more than five road miles from

a fire station. The fire authority having jurisdiction will make their recommendations to the Board of Commissioners.

**Alternative Fire Risk Mitigation Features or Systems** –Alternative fire protection technologies, means, features, or systems may be utilized when reviewed by the fire protection authority having jurisdiction and where they provide fire protection equivalent to or greater than required. The fire protection authority having jurisdiction will make recommendations to the Board of Commissioners. Alternative fire risk mitigation proposals must be reviewed as variance requests pursuant to Section VIII of these regulations.

#### **V-A-22. Law Enforcement and Fencing Requirements**

Each subdivision shall be reviewed by the local law enforcement authority. The developer shall provide local law enforcement with a packet for comment before the subdivision is submitted to the county. The developer shall incorporate any reasonable comments from law enforcement into the proposed subdivision.

**Historical location and ownership/responsibility of perimeter fencing will transfer to all subsequent owners of any subdivision lots. It is the responsibility of the subdivision lot owner to avoid harmful interactions with historical agricultural practices and neighbors outside of the subdivision.**

#### **V-A-23. Restrictive Covenants – Approval, Content and Enforcement by Commission**

- a. The Commission may require that some or all restrictive covenants governing the use of land within the subdivision, whether proposed by the subdivider or required by the Commission, contain the following language: “This (These) covenant(s) were required for the approval of the preliminary plat and may not be repealed or amended without the prior written consent of the Carbon County Commission.”
- b. The Commission may require that restrictive covenants it has required as a condition of plat approval contain the following language: “The Carbon County Commission is a party to this restrictive covenant and may enforce its terms.”
- c. If common property is to be deeded to a Property Owners’ Association, the covenants and by-laws, which govern the association, must, at a minimum, provide for the:
  - (i) Formation of a property owners’ association concurrently with the filing of the final subdivision plat;

- (ii) Mandatory membership for each property owner. Purchasers of property may also be required to sign a waiver of right to protest the formation of a maintenance district to maintain improvements (as specified per 76-3-608(7), MCA);
- (iii) Perpetual reservation of the common property when required under 76-3-621(6)(a), MCA;
- (iv) Payment of liability insurance premiums, local taxes, and the cost of maintaining recreational or other facilities;
- (v) Placement of liens on the property of lot owners who are delinquent in the payment of association fees and assessments;
- (vi) Adjustment of assessments to meet changing needs;
- (vii) Means of enforcing the covenants, and of receiving and processing complaints;
- (viii) Dissolution of the association and modification of the covenants and restrictions only after obtaining the Commission's approval of the change; and
- (ix) Regular maintenance of roads, parks, buildings, drainage facilities, and other facilities controlled by the association.

**V-A-24. Waiver of Right to protest creation of Rural Improvement District**

The governing body may require that a property owner waive a right to protest the creation of a special improvement district or rural improvement district for capital improvement projects. The governing body must specify the specific capital improvement for which protest is being waived. A waiver of a right to protest may not be valid for a period longer than 20 years after the date that the final subdivision plat is filed with the county clerk and recorder. Notice of the waiver of right to protest shall be placed on the face of the plat.

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