



SUBDIVISION REGULATIONS

Ordinance No. 1707

Adopted: December 19, 2011

\$10.00

CITY OF KALISPELL

TITLE 28

SUBDIVISION REGULATIONS

**Ordinance No. 1707
Adopted December 19, 2011**

Prepared by:

**Kalispell Planning Department
201 1st Avenue East
Kalispell, Montana 59901
Telephone: (406) 758-7940
Fax: (406) 758-7739
www.kalispell.com/planning**

TABLE OF CONTENTS

CHAPTER 28.1 - GENERAL PROVISIONS.....	5
28.1.01 TITLE:	5
28.1.02 AUTHORITY:	5
28.1.03 PURPOSE:	5
28.1.04 APPLICABILITY:	6
28.1.05 JURISDICTION:	6
28.1.06 SEVERABILITY:	6
CHAPTER 28.2 - APPLICATION PROCEDURE.....	7
28.2.01 PERMISSION TO ENTER:	7
28.2.02 PRE-APPLICATION CONFERENCE:	7
28.2.03 APPLICATION AND REVIEW PROCESS:	8
28.2.04 REVIEW OF SUBDIVISION APPLICATION – Major and minor subdivisions:	8
Element Review:	8
Sufficiency Review:	9
28.2.05 PRELIMINARY PLAT:	10
28.2.06 PRELIMINARY PLAT PROCESS - MAJOR SUBDIVISION:	11
28.2.07 PRELIMINARY PLAT PROCESS - MINOR SUBDIVISION:	19
28.2.08 PRELIMINARY PLAT PROCESS - MINOR SUBDIVISION PRELIMINARY PLAT WAIVER:	25
28.2.09 FINAL PLAT PROCESS:	25
28.2.10 CORRECTING OR AMENDING FILED FINAL PLATS:	32
28.2.11 PROCEDURE FOR SUBDIVISIONS CREATED BY LEASE OR RENT (MANUFACTURED HOME PARKS, CAMPGROUNDS).....	33
CHAPTER 28.3 - DESIGN STANDARDS.....	34
28.3.01 SUBDIVISIONS TO COMPLY WITH DESIGN STANDARDS:	34
28.3.02 NATURAL ENVIRONMENT TO BE PRESERVED:	34
28.3.03 LANDS UNSUITABLE FOR SUBDIVISION:	35
28.3.04 PLANNING CONSIDERATIONS:	35
28.3.05 FLOODPLAIN PROVISIONS:	36
28.3.06 WETLANDS, PONDS AND SLOUGHS:	37

28.3.07	WATERCOURSE SETBACK:	37
28.3.08	WATER RIGHTS – TRANSFER TO THE CITY:.....	40
28.3.09	HIGHWAY SOUND MITIGATION:	41
28.3.10	GEOTECHNICAL REVIEW:.....	41
28.3.11	LOTS:.....	42
28.3.12	BLOCKS:	43
28.3.13	SUBDIVISION ACCESS:	44
28.3.14	STREETS AND ROADS – DESIGN STANDARDS:.....	45
28.3.15	ALLEYS:	51
28.3.16	SIDEWALKS/BIKE PATHS:.....	51
28.3.17	DRAINAGE FACILITIES:.....	53
28.3.18	TEMPORARY EROSION AND SEDIMENTATION CONTROL:	53
28.3.19	SOLID WASTE:.....	53
28.3.20	WATER AND SANITARY SEWER SYSTEMS:.....	53
28.3.21	UTILITIES/EASEMENTS:	53
28.3.22	PARK LAND:	54
28.3.23	FIRE PROTECTION:.....	57
28.3.24	MAIL BOXES/FACILITIES:	57
28.3.25	WAIVER OF RIGHT TO PROTEST SID FOR ROADWAY IMPROVEMENTS IN ADJACENT AREAS:.....	58
CHAPTER 28.4 - MANUFACTURED HOME PARKS, RECREATIONAL		59
VEHICLE PARKS AND CAMPGROUNDS.....		59
28.4.01	SUBDIVISION CREATED BY RENT OR LEASE DEFINED:	59
28.4.02	EXEMPTION FROM SURVEY AND FILING REQUIREMENTS:.....	59
28.4.03	PROCEDURES:.....	59
28.4.04	GENERAL STANDARDS FOR SUBDIVISIONS CREATED BY RENT OR LEASE:.....	60
28.4.05	PARK LAND DEDICATION:.....	61
28.4.06	STREETS:	61
28.4.07	MANUFACTURED HOME PARK STANDARDS:	61
28.4.08	RECREATIONAL VEHICLE PARK AND CAMPGROUND STANDARDS:	63

CHAPTER 28.5 - EVASION CRITERIA FOR LAND EXEMPT FROM SUBDIVISION REVIEW	64
28.5.01 PURPOSE:	64
28.5.02 CRITERIA TO DETERMINE WHETHER A PROPOSAL IS AN ATTEMPT TO EVADE THE MONTANA SUBDIVISION AND PLATTING ACT:	64
28.5.03 REMAINING PARCELS OF LAND:	64
CHAPTER 28.6 - MONUMENTATION	65
CHAPTER 28.7 - ADMINISTRATION.....	67
28.7.01 VARIANCES:.....	67
28.7.02 ENFORCEMENT.....	68
28.7.03 PENALTY FOR VIOLATION:	68
28.7.04 SCHEDULE OF FEES:	68
28.7.05 AMENDMENT PROCEDURE:	69
28.7.06 APPEALS:	69
CHAPTER 28.8 - SUBDIVISION IMPROVEMENTS GUARANTEE.....	71
28.8.01 SUBDIVISION IMPROVEMENTS AGREEMENTS PROCESS:	71
28.8.02 FAILURE TO SATISFACTORILY COMPLETE IMPROVEMENTS:	72
28.8.03 ACCEPTABLE FORMS OF IMPROVEMENTS GUARANTEES:	73
CHAPTER 28.9 - DEFINITIONS	75
APPENDIX A	87
PRELIMINARY PLAT	87
I. CONTENTS OF THE PRELIMINARY PLAT:.....	87
II. SUPPLEMENTS TO THE PRELIMINARY PLAT:	88
APPENDIX B	91
ENVIRONMENTAL ASSESSMENT	91
GENERAL INSTRUCTIONS	91
PART I – PROPERTY DESCRIPTION.....	91
PART II - SUMMARY OF PROBABLE IMPACTS	93
PART III - COMMUNITY IMPACT REPORT	95
APPENDIX C.....	98
FINAL ENGINEERING PLANS SUBMITTAL	98
I. CONTENTS OF THE FINAL ENGINEERING AND R/W IMPROVEMENTS PLAN.....	98

APPENDIX D 100

 FINAL PLAT..... 100

 I. CONTENTS OF THE FINAL PLAT:..... 100

 II. CERTIFICATIONS ON FINAL PLAT: 102

 III. ATTACHMENTS ACCOMPANYING FINAL PLAT: 102

APPENDIX E 104

 SAMPLE FORMS AND CERTIFICATIONS 104

 I. IRREVOCABLE LETTER OF CREDIT: 104

 II. CERTIFICATE OF DEDICATION - FINAL PLAT: 105

 III. CONSENT TO DEDICATION BY ENCUMBRANCES, IF ANY: 105

 IV. CERTIFICATE OF SURVEYOR - FINAL PLAT: 106

 V. CERTIFICATE OF FINAL PLAT APPROVAL - CITY: 106

 VI. CERTIFICATE OF WAIVER OF PARK LAND DEDICATION AND ACCEPTANCE
 OF CASH IN LIEU THEREOF: 107

 VII. CERTIFICATE AUTHORIZING THE GOVERNING BODY TO WAIVE PARK
 DEDICATION USING THE OVER FIVE ACRE EXEMPTION OF THE MONTANA
 SUBDIVISION AND PLATTING ACT: 107

 VIII. CERTIFICATE OF EXAMINING LAND SURVEYOR WHERE REQUIRED - FINAL
 PLAT: 108

 IX. CERTIFICATE OF FILING BY CLERK AND RECORDER: 108

 X. CERTIFICATE OF COUNTY TREASURER: 108

 XI. CERTIFICATE OF WAIVER OF PROTEST PARTICIPATION IN SPECIAL
 IMPROVEMENT DISTRICT 109

 XII. PRIVATE STREET NOTATION 109

APPENDIX F 110

 SUBDIVISION IMPROVEMENT AGREEMENT 110

CHAPTER 28.1 - GENERAL PROVISIONS

28.1.01 TITLE:

These Regulations shall be known as the "Subdivision Regulations of the City of Kalispell, Montana".

28.1.02 AUTHORITY:

Authorization for these Regulations is contained in the "Montana Subdivision and Platting Act" (Title 76, Chapter 3, Montana Codes Annotated).

28.1.03 PURPOSE:

The purpose of these Regulations is 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 land for roadways and for public utility easements;
4. The improvement of roads;
5. The provision of open spaces for travel, light, air and recreation;
6. The provision of proper physical and legal access, including obtaining necessary easements.
7. The provision of adequate transportation, water, drainage, and sanitary facilities;
8. The avoidance or minimization of congestion;
9. The avoidance of subdivision which would involve unnecessary environmental degradation;
10. The avoidance of danger or injury by reason of natural hazard or the lack of water, drainage, access, transportation or other public services
11. The avoidance of excessive expenditure of public funds for the supply of public improvements and services;

12. The manner and form of making and filing of any plat for subdivided lands;
13. The administration of these Regulations by defining the powers and duties of approving authorities including procedures for the review and approval of all plats of subdivisions covered by these provisions.

28.1.04 APPLICABILITY:

These Regulations shall apply to all land developments which are described as subdivisions under 76-3-103(15) M.C.A., as amended. These will include:

1. Division of land which creates one or more parcels containing less than 160 acres;
2. Re-subdivision of previously subdivided land;
3. Manufactured home parks;
4. Recreational vehicle campgrounds;
5. Townhouse developments;

28.1.05 JURISDICTION:

These Regulations apply to the subdivision of land within the City of Kalispell, Montana.

If a proposed subdivision lies within three miles of the City of Kalispell, the Flathead County, Montana, Board of Commissioners must submit the preliminary plat to the City Council or its designee for review and comment.

These Regulations supplement all other Regulations and where they are in conflict with other laws, regulations, ordinances or resolutions, the more restrictive requirements shall apply. Other regulations include but are not limited to zoning regulations, floodplain regulations, building codes, development codes and fire codes.

28.1.06 SEVERABILITY:

If a court of competent jurisdiction holds any word, phrase, clause, sentence, paragraph, section, or other part of these regulations invalid, that judgment will affect only the part held invalid.

CHAPTER 28.2 - APPLICATION PROCEDURE

28.2.01 PERMISSION TO ENTER:

The governing body or its designated agent(s) or affected agencies identified during the pre-application meeting may investigate, examine, and evaluate the site of the proposed subdivision to verify information provided by the subdivider and to subsequently monitor compliance with any conditions if the preliminary plat is approved conditionally. The submission of a subdivision application constitutes a grant of permission by the subdivider for the governing body, its agents and affected agencies to enter the subject property. This consent applies to members of the public attending a noticed public meeting for a site visit.

28.2.02 PRE-APPLICATION CONFERENCE:

Prior to submittal of a subdivision application, the subdivider shall request a pre-application meeting with the Kalispell Planning Department.

- A. The pre-application meeting shall follow the format provided for on the pre-application worksheet. A copy of the worksheet can be obtained from the planning department.
- B. The meeting shall occur within 30 calendar days after the subdivider submits a written request for the meeting to the Kalispell Planning Department.
- C. At the pre-application meeting the planning staff shall:
 1. Identify, for informational purposes, the state laws, local regulations and growth policy provisions that may apply to the subdivision review process;
 2. Provide the subdivider or the subdivider's agent with a list of public utilities, local, state and federal agencies, and any other entities that may be contacted for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond.
 - a. If, during review of the application, the planning staff or the planning board contacts a public utility, agency, or other entity that was not included on the original list, the planning staff shall notify the subdivider or subdivider's agent of the contact and the timeframe for response; and
 3. Identify particular additional information the planning staff anticipates will be required for review of the subdivision application pursuant to Section 28.2.02. This does not limit the ability of the

planning staff to request additional information at a later time.

4. Determine if an environmental assessment as provided for in Appendix B is required or if parts or all the assessment are to be waived.
 - a. Minor subdivisions and subdivisions proposing less than 30 residential dwelling units are to be considered for waiver unless environmental issues, advisory agency or neighborhood concerns require a portion or all of an environmental assessment to be completed for the project.
- D. Unless the subdivider submits the subdivision application as provided in Section 28.2.02 of these regulations within 90 days of the pre-application meeting, the subdivider must request a second pre-application meeting prior to submitting the application.

28.2.03 APPLICATION AND REVIEW PROCESS:

The subdivision application and review process is comprised of the following two phases in accordance to Title 76, Chapter 3, M.C.A.:

- A. Preliminary plat.
- B. Final plat.

28.2.04 REVIEW OF SUBDIVISION APPLICATION – For both major and minor subdivisions the review process is as follows:

Element Review:

- A. Within five (5) working days of receipt of a subdivision application, the Planning Department shall determine whether the application contains all of the materials required by Section 28.2.02, Pre-Application Meeting, and by Appendix A (Contents of the Preliminary Plat), or Appendix B (Environmental Assessment), of these regulations, as applicable, and shall notify the subdivider, or the subdivider's agent if authorized by the subdivider in writing to receive such notification, of the Planning Department's determination.
 1. If the Planning Department determines that elements are missing from the application, the Planning Department shall identify those elements in the notification and no further action shall be taken on the application until the missing elements are submitted.

2. The subdivider may correct the deficiencies and resubmit the application.
3. If the subdivider corrects the deficiencies and resubmits the application, the Planning Department shall have five (5) working days to notify the subdivider or the subdivider's agent whether the application contains all the materials required by Section 28.2.02 and by Appendix A or Appendix B of these regulations, as applicable.
4. This process shall be repeated until the subdivider submits an application containing all the materials required by Section 28.2.02 and by Appendix A or Appendix B of these regulations, as applicable, or the application is withdrawn.

Sufficiency Review:

- A. Within fifteen (15) working days after the Planning Department notifies the subdivider or the subdivider's agent that the application contains all of the required elements as provided in subsection A, the Planning Department shall determine whether the required elements contain detailed, supporting information that is sufficient to allow for the review of the proposed subdivision under these regulations and shall give written notification to the subdivider of the subdivision of the Planning Department's determination.
 1. If the Planning Department determines that the information in the application is not sufficient to allow for review of the proposed subdivision, the Planning Department shall identify the insufficient information in its notification and no further action shall be taken on the application until the material is resubmitted.
 2. The subdivider may correct the deficiencies and resubmit the application or withdraw the application.
 3. If the subdivider corrects the deficiencies and resubmits the application, the Planning Department shall have fifteen (15) working days to notify the subdivider or the subdivider's agent whether the resubmitted application and required elements contain detailed, supporting information that is sufficient to allow for review of the proposed subdivision under these regulations.
 4. This process shall be repeated until the subdivider submits an application that contains detailed, supporting information that is sufficient for review of the proposed subdivision under the provisions of these regulations, or the application is withdrawn.

- B. A determination that an application contains sufficient information for review as provided in this subsection does not ensure that the proposed subdivision will be approved or conditionally approved by the governing body and does not limit the ability of the Planning Department, Planning Board or City Council to request additional information during the review process.
- C. Once the Planning Department has determined that the application is sufficient, the Planning Department shall schedule a public hearing and publish notice of the time and place of the hearing
- D. The review period of sixty (60) working days or eighty (80) working days if the proposed subdivision contains 50 or more lots begins once the Planning Department has given notice of sufficiency to the subdivider or the subdivider's agent. Notification constitutes the date when the reviewing agent or agency has sent the notice to the subdivider.
- E. Within 60 working days or eighty (80) working days if the proposed subdivision contains 50 or more lots the governing body shall approve, conditionally approve or deny the proposed subdivision according to Section 28.2.06.D of these regulations, unless the subdivider and the subdivision administrator agree to an extension or suspension of the review period.
- F. Subdivision review and approval, conditional approval or denial shall be based on those regulations in effect at the time a subdivision application and preliminary plat is deemed to contain sufficient information for review. If regulations change during the element or sufficiency review, the determination of whether the application contains the required elements and sufficient information, and the subdivision review, shall be based on the new regulations.

28.2.05

PRELIMINARY PLAT:

Subdivisions are grouped into three categories for review purposes. Each category is described and referenced below:

A. Major Subdivision:

A subdivision containing six (6) or more lots/spaces/units, as well as the second or successive minor subdivision where a cumulative total of six (6) or more lots/spaces/units is proposed from the original "tract of record" in existence on July 1, 1973. See Section 28.2.06.

B. Minor Subdivision:

A subdivision containing five (5) or fewer lots/spaces/units. And this plat and all previous minor plats proposed from the original "tract of record" in

existence on July 1, 1973 do not exceed a total of five (5) lots/spaces/units. See Section 28.2.07.

C. Minor Subdivision - Waiver of Preliminary Plat:

A minor subdivision which, because of its minimal impacts, has the preliminary plat requirements waived. See Section 28.2.08.

28.2.06 PRELIMINARY PLAT PROCESS - MAJOR SUBDIVISION:

A subdivision containing six (6) or more lots/spaces/units, as well as the second or successive minor subdivision where a cumulative total of six (6) or more lots/spaces/units is proposed from the original tract of land.

A. APPLICATION:

Complete applications must be received at least 30 days prior to the Planning Board meeting at which the plat will be presented. The subdivider shall submit the following to the Kalispell Planning Department:

1. Preliminary plat application (form available at Kalispell Planning Department).
2. Copies of the preliminary plat and one reproducible set of supplemental information (See Appendix A).
3. Application fee as established by the Kalispell City Council.
4. One reduced copy of the preliminary plat not to exceed 11" by 17" in size suitable for photocopier use.
5. Additional information requested during the pre-application process.

B. ACTION BY THE PLANNING STAFF:

Upon receipt of the submitted documents, the Kalispell Planning Department shall review them to determine their completeness pursuant to section 2.04. If the submitted documents and information are found to be incomplete or insufficient, the applicant shall be notified of the deficiencies and informed that the application will not be formally accepted for processing until the missing items are submitted pursuant to section. Upon receipt of the complete application, the Kalispell Planning Department shall:

1. Distribute copies of the submitted application for review and comment to the appropriate departments, agencies and utility companies, as deemed necessary by the Planning Department;

2. Set a date for public hearing by the Kalispell City Planning Board. Applications must be received at least 30 days prior to the Planning Board meeting at which the plat will be presented. The notice of such hearing shall be published in a newspaper of general circulation in the City not less than 15 days prior to the date of the hearing, exclusive of the date of notice and the date of hearing. The subdivider and each property owner of record immediately adjoining the land included in the plat shall be notified of the hearing by registered or certified mail not less than 15 days prior to the date of the hearing, exclusive of the date of notice and the date of hearing;
3. Review the submitted plat and supplemental information to determine compliance with these Regulations and prepare its report which shall include comments received from other departments, agencies and utility companies, findings of fact concerning the public interest and recommendations;
4. Submit the application, staff report and associated agency and public comments to the Planning Board members and to the subdivider at least five (5) days prior to the meeting;
5. Present the application and staff report at the hearing.

C. ACTION BY THE PLANNING BOARD:

The Planning Board shall:

1. Review the application, Kalispell Planning Department staff report, comments from other departments and other supplemental information;
2. Hold public hearing(s) and receive public comments;
3. Prepare and adopt written findings of fact. Such findings of fact shall be based on the consideration of the following:
 - a. Effects on agriculture and agricultural water user facilities;
 - b. Effects on local services;
 - c. Effects on the natural environment;
 - d. Effects on wildlife and wildlife habitat;
 - e. Effects on public health and safety;

- f. Conformance with the following:
 - (1) These regulations;
 - (2) The City of Kalispell Zoning Ordinance;
 - (3) The Kalispell Growth Policy;
 - (4) The Montana Subdivision and Platting Act.
4. Based on the above findings, make a recommendation to the Kalispell City Council to approve, conditionally approve or deny the preliminary plat. The Planning Board, at its discretion, may not make a recommendation;
 - a. A positive recommendation may incorporate reasonable conditions of mitigation to reasonably minimize potentially significant adverse impacts identified above;
 - b. When requiring conditions of mitigation, the Board shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider;
 - c. A subdivision shall not be denied based solely on its impact on educational services.
5. Within 10 working days after the public hearing, the planning board shall submit the following in writing to the subdivider and the governing body:
 - a. Recommended findings of fact based on the evidence in subsection 28.2.06.C.3 above that discuss and consider the subdivision's compliance with and impact on subsection 28.2.06.C.3(a-f) of these regulations;
 - b. A recommendation for approval, conditional approval (including any recommended conditions and/or mitigation measures), or denial of the subdivision application and preliminary plat;
 - c. A recommendation for approval or denial of any requested variances.(see Section 28.7.01); and
 - d. A finding as to whether any public comments or documents presented for consideration at the planning board's public hearing constitute information or analysis of information that the public has not had a reasonable opportunity to

examine and on which the public has not had a reasonable opportunity to comment.

D. ACTION BY THE CITY COUNCIL:

Upon receipt of the Planning Board recommendation, the City Council shall:

1. Review the application, Planning Board recommendation, staff report, public comments, and other related information, and thereupon, shall adopt the written findings of fact as presented by the Planning Board or make and adopt new written findings of fact. Such findings shall be based on the following:
 - a. Effects on agriculture and agricultural water user facilities;
 - b. Effects on local services;
 - c. Effects on the natural environment;
 - d. Effects on wildlife and wildlife habitat;
 - e. Effects on public health and safety;
 - f. Conformance with the following:
 - (1) These regulations;
 - (2) The City of Kalispell Zoning Ordinance;
 - (3) The Kalispell Growth Policy;
 - (4) The Montana Subdivision and Platting Act.
2. Based on the above findings, the Council shall then approve, conditionally approve, or deny the preliminary plat within 60 working days or 80 working days if the proposed subdivision contains 50 or more lots of the Planning Department's notice of sufficiency to the subdivider or the subdivider's agent, unless the subdivider consents to an extension of the review period. A subdivision shall not be denied based solely on its impacts on educational services.
3. All comments and documents regarding the subdivision shall be submitted to the subdivision administrator, rather than to the City Council directly, to be forwarded to the City Council.

4. If new information or analysis of information, that has never been submitted as evidence or considered by the planning board, has been submitted to the City Council, the Council shall proceed as set forth in subsection (a) below.
 - a. If the City Council determines that public comments or documents presented at the public hearing constitute new information or an analysis of information regarding the subdivision application that the public has not had a reasonable opportunity to examine and on which the public has not had a reasonable opportunity to comment, the City Council shall determine whether the public comments or documents are relevant and credible with regard to the governing body's decision, pursuant to subsections (c) and (d) below.
 - b. If the City Council determines the information or analysis of information is either not relevant or not credible, then the shall approve, conditionally approve, or deny the proposed subdivision without basing its decision on the new information or analysis of information; or
 - c. If the City Council determines the new information or analysis of information is relevant and credible, then the City Council shall direct the planning board to schedule a subsequent public hearing.
 - d. The planning board shall consider only the new information or analysis of information that may have an impact on the findings and conclusions that the City Council will rely upon in making its decision on the proposed subdivision.
5. New information or analysis of information is considered to be relevant if it may have an impact on the findings and conclusions that the City Council will rely upon in making its decision on the proposed subdivision.
6. New information or analysis of information is considered to be credible if it is based on one or more of the following:
 - a. Physical facts or evidence;
 - b. Corroborated personal observations;
 - c. Evidence provided by a person with professional competency in the subject matter; or

d. Scientific data.

7. If a subsequent public hearing is held pursuant to subsection D.4.c above, it must be held within 45 days of the City Council's determination request of a subsequent hearing. Only the new information or analysis of information shall be considered at the subsequent public hearing.

a. Notice of the time, date and location of the subsequent hearing shall be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the subsequent hearing.

b. At least 15 days prior to the date of the subsequent hearing, notice of the subsequent hearing shall be given by certified mail to the subdivider and each adjoining landowner to the land included in the preliminary plat.

c. The notice shall be posted at a conspicuous place on the site of the proposed subdivision.

(1) If a subsequent public hearing is held, the review periods per section 28.2.04.B will be suspended as of the date of the City Council's decision to schedule a subsequent hearing. The 60-working day or 80 working day review period resumes on the date of the City Council's next scheduled public meeting for which proper notice for the public meeting on the subdivision application can be provided.

E. CITY COUNCIL APPROVAL:

1. Upon approving the preliminary plat, the Council shall provide the subdivider with one copy of a dated and signed statement of approval along with one signed copy of the plat. A signed approval statement and a signed copy of the plat shall be returned to the Kalispell Planning Department and the third signed copy of the preliminary plat shall be retained in the file in the City Manager's office;

2. A positive recommendation may incorporate reasonable conditions of mitigation to reasonably minimize potentially significant adverse impacts identified above;

3. If conditions are placed on the preliminary plat, the reason for imposition of the condition(s), evidence justifying imposition of the condition(s) and information regarding the appeal process as

provided for in Section 28.7.06 of these regulations shall also be provided in writing to the subdivider.

4. When requiring conditions of mitigation, the Council shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider;
5. A subdivider may be required to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public roads, sewer lines, water supply lines and storm drains to a subdivision but the costs must reasonably reflect expected impacts attributable to the subdivision.
6. The Council may not require a subdivider to pay or guarantee payment for part or all of the costs of constructing or extending capital facilities related to education.
7. A preliminary plat shall be in force for three years.
 - a. A preliminary plat or a phase of a phased preliminary plat approval may be extended by council for an additional two year period as follows:
 - (1) The owner shall submit a written request for extension to the Planning Department 30 days prior to the expiration date.
 - (2) The request shall document the existence of an unusual hardship.
 - b. If a final plat has not been filed at the end of the additional 2 year period, the owner may appeal to the city council for one final extension not to exceed two years as follows:
 - (1) The owner shall submit a written request for a preliminary plat extension plan to the planning department 60 days prior to expiration of the last extension. The request shall document:
 - i. The existence of an unusual hardship.
 - ii. That a significant public good would be accomplished through the extension as

opposed to a specific economic hardship related to the owner.

- iii. That there are no changes to the immediately abutting properties that would be adversely affected by the approval process; and
 - iv. Because of the lapsed time since original approval, that the preliminary plat is not in conflict with recently changed policies or regulatory schemes adopted by the city that would be undermined by the further time extension.
8. After the preliminary plat is approved, the City Council may not impose any additional conditions as pre-requisite to final plat approval providing said approval is obtained within the original or extended approval period as provided in Subsection E(7) above;
9. The subdivider shall not proceed with any construction work on the proposed subdivision, including grading and excavation relating to public improvements until such time that an approval or conditional approval is granted by the City Council. Construction may be commenced upon approval of the preliminary plat subject to any required conditions of approval. Upon approval of the preliminary plat, the subdivider may proceed with the preparation and submission of the final plat for approval by the City Council. Prior to final plat approval, lots may not be sold - See Section 28.2.09.
10. The governing body may withdraw approval or conditional approval of an application and preliminary plat if it determines that information provided by the subdivider, and upon which the approval or conditional approval was based, is inaccurate.

Note: If preliminary plat approved, proceed to Section 28.2.09, Final Plat Application.

F. CITY COUNCIL DENIAL:

1. If the City Council denies the preliminary plat it shall forward one copy of the plat to the subdivider accompanied by a letter from the City Manager stating the reason for disapproval, evidence justifying the denial and information regarding the appeal process provided for

in Section 28.7.06 of these regulations. A subdivision shall not be denied based solely on its impact on educational services.

28.2.07 PRELIMINARY PLAT PROCESS - MINOR SUBDIVISION:

A subdivision containing five (5) or fewer lots/spaces/units where all lots/spaces/units have proper access, and this plat and all previous minor plats from this tract of land do not exceed a total of five (5) lots/spaces/units shall be considered a minor subdivision.

A. APPLICATION:

The subdivider shall submit the following to the Kalispell Planning Department:

1. Preliminary plat application form available at Kalispell Planning Department;
2. Copies of the preliminary plat and one reproducible set of supplemental information as provided for in Appendix A;
3. Application fee as established by the Kalispell City Council.
4. One reduced copy of the preliminary plat not to exceed 11" by 17" in size suitable for photocopier use.
5. Additional information requested during the pre-application process.
6. Sufficient documentary evidence from the public records demonstrating that the subdivision will be the first minor subdivision from a tract of record.

B. ACTION BY PLANNING STAFF:

Upon receipt of the submitted documents, the Kalispell Planning Department shall review them to determine their completeness pursuant to Section 28.2.04. If the submitted documents and information are found to be incomplete or insufficient, the applicant shall be notified of the deficiencies and informed that the application will not be formally accepted for processing until the missing items are submitted pursuant to Section 28.2.04. Upon receipt of the complete application, the Kalispell Planning Department shall:

1. Distribute copies of the submitted application for review and comment to the appropriate departments, agencies and utilities companies, as deemed necessary by the Planning Department;

2. Review the submitted plat and supplemental information to determine compliance with these Regulations and prepare its report which shall include comments received from other departments, agencies and utility companies, written findings of fact concerning the public interest and a recommendation;
3. Submit the application, staff report and associated agency and public comments to the City Council and to the subdivider at least five (5) days prior to the meeting;
4. Present the application and staff report at the City Council Meeting.

C. ACTION BY CITY COUNCIL:

1. The Kalispell City Council shall review the application, staff report and other related information and, thereupon, shall prepare and adopt written findings of fact. Such findings shall be based on the following criteria:
 - a. Effects on agriculture and agricultural water user facilities;
 - b. Effects on local services;
 - c. Effects on the natural environment;
 - d. Effects on wildlife and wildlife habitat;
 - e. Effects on public health and safety;
 - f. Conformance with the following:
 - (1) These regulations;
 - (2) The City of Kalispell Zoning Ordinance;
 - (3) The Kalispell Growth Policy;
 - (4) The Montana Subdivision and Platting Act.
2. Based on the above findings, the Kalispell City Council shall then approve, conditionally approve or deny the preliminary plat application within 35 working days from the date a completed application was filed with the Kalispell Planning Department unless the subdivider consents to an extension of the review period in writing.

3. All comments and documents regarding the subdivision shall be submitted to the subdivision administrator, rather than to the City Council directly, to be forwarded to the City Council.
4. If new information or analysis of information, that has never been submitted as evidence or considered by the planning board, has been submitted to the City Council, the Council shall proceed as set forth in subsection (a) below.
 - a. If the City Council determines that public comments or documents presented at the public hearing constitute new information or an analysis of information regarding the subdivision application that the public has not had a reasonable opportunity to examine and on which the public has not had a reasonable opportunity to comment, the City Council shall determine whether the public comments or documents are relevant and credible with regard to the governing body's decision, pursuant to subsections (c) and (d) below.
 - b. If the City Council determines the information or analysis of information is either not relevant or not credible, then the shall approve, conditionally approve, or deny the proposed subdivision without basing its decision on the new information or analysis of information; or
 - c. If the City Council determines the new information or analysis of information is relevant and credible, then the City Council shall direct the planning board to schedule a subsequent public hearing.
 - d. The planning board shall consider only the new information or analysis of information that may have an impact on the findings and conclusions that the City Council will rely upon in making its decision on the proposed subdivision.
5. New information or analysis of information is considered to be relevant if it may have an impact on the findings and conclusions that the City Council will rely upon in making its decision on the proposed subdivision.
6. New information or analysis of information is considered to be credible if it is based on one or more of the following:
 - a. Physical facts or evidence;
 - b. Corroborated personal observations;

- c. Evidence provided by a person with professional competency in the subject matter; or
 - d. Scientific data.
7. If a subsequent public hearing is held pursuant to subsection D.4.c above, it must be held within 45 days of the City Council's determination request of a subsequent hearing. Only the new information or analysis of information shall be considered at the subsequent public hearing.
- a. Notice of the time, date and location of the subsequent hearing shall be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the subsequent hearing.
 - b. At least 15 days prior to the date of the subsequent hearing, notice of the subsequent hearing shall be given by certified mail to the subdivider and each adjoining landowner to the land included in the preliminary plat.
 - c. The notice shall be posted at a conspicuous place on the site of the proposed subdivision.
 - (1) If a subsequent public hearing is held, the 35-working day review period is suspended as of the date of the City Council's decision to schedule a subsequent hearing. The 35-working day review period resumes on the date of the City Council's next scheduled public meeting for which proper notice for the public meeting on the subdivision application can be provided.

D. CITY COUNCIL APPROVAL:

- 1. Upon approving the preliminary plat, the Council shall provide the subdivider with one copy of a dated and signed statement of approval along with one signed copy of the plat. A signed approval statement and a signed copy of the plat shall be returned to the Kalispell Planning Department, and the third signed copy of the preliminary plat shall be retained by the City;
- 2. A positive recommendation may incorporate reasonable conditions of mitigation to reasonably minimize potentially significant adverse impacts identified above;

3. If conditions are placed on the preliminary plat, the reason for imposition of the condition(s), evidence justifying imposition of the condition(s) and information regarding the appeal process as provided for in Section 28.7.06 of these regulations shall also be provided in writing to the subdivider.
4. When requiring conditions of mitigation, the Council shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider;
5. A subdivider may be required to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public roads, sewer lines, water supply lines and storm drains to a subdivision but the costs must reasonably reflect expected impacts attributable to the subdivision.
6. The Council may not require a subdivider to pay or guarantee payment for part or all of the costs of constructing or extending capital facilities related to education.
7. A preliminary plat shall be in force for three years.
 - a. A preliminary plat or a phase of a phased preliminary plat approval may be extended by council for an additional two year period as follows:
 - (1) The owner shall submit a written request for extension to the Planning Department 30 days prior to the expiration date.
 - (2) The request shall document the existence of an unusual hardship.
 - b. If a final plat has not been filed at the end of the additional 2 year period, the owner may appeal to the city council for one final extension not to exceed two years as follows:
 - (1) The owner shall submit a written request for a preliminary plat extension plan to the planning department 60 days prior to expiration of the last extension. The request shall document:

- i. The existence of an unusual hardship.
 - ii. That a significant public good would be accomplished through the extension as opposed to a specific economic hardship related to the owner.
 - iii. That there are no changes to the immediately abutting properties that would be adversely affected by the approval process; and
 - iv. Because of the lapsed time since original approval, that the preliminary plat is not in conflict with recently changed policies or regulatory schemes adopted by the city that would be undermined by the further time extension.
8. After the preliminary plat is approved, the City Council may not impose any additional conditions as prerequisite to final plat approval providing said approval is obtained within the original or extended approval period as provided above in Subsection D(7);
9. The subdivider shall not proceed with any construction work on the proposed subdivision, including grading and excavation relating to public improvements, until such time that an approval or conditional approval is granted by the City Council. Construction may be commenced upon approval of the preliminary plat subject to any required conditions of approvals. Upon approval or conditional approval of the preliminary plat, the subdivider may proceed with the preparation and submission of the final plat for approval by the City Council. Prior to final plat approval, lots may not be sold. See Section 28.2.09.
10. The governing body may withdraw approval or conditional approval of an application and preliminary plat if it determines that information provided by the subdivider, and upon which the approval or conditional approval was based, is inaccurate.

Note: If preliminary plat is approved, proceed to Section 28.2.09 - Final Plat Application.

E. CITY COUNCIL DENIAL:

1. If the City Council denies the preliminary plat, it shall forward one

copy of the plat to the subdivider accompanied by a letter from the City Manager stating the reason for disapproval, evidence justifying the denial, and information regarding the appeal process provided for in Section 28.7.06 of the regulations. A subdivision shall not be denied based solely on its impact on educational services.

**28.2.08 PRELIMINARY PLAT PROCESS - MINOR SUBDIVISION
PRELIMINARY PLAT WAIVER:**

- A. Based on information and discussion at the pre-application conference, the requirement for a preliminary plat may be waived by the Planning Director. The subdivider must request the waiver in writing and the Planning Director must determine:
1. The plat contains five (5) or fewer lots;
 2. There is no public dedication of streets or public or private parkland;
 3. All lots have legal and physical access conforming to these regulations;
 4. Each lot has a suitable building site and there are no environmental hazards present;
 5. Municipal sewer and water are adequate and in place;
 6. The subdivision complies with these regulations and current zoning regulations;
 7. No significant effects are anticipated on agriculture and agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat and the public health and safety.
- B. When Preliminary Plat has been waived, the City Council shall adopt findings of fact for approval based on 1-7 above concurrent with final plat approval.

Note: If the preliminary plat is waived, proceed to Section 28.2.09 - Final Plat Application.

28.2.09 FINAL PLAT PROCESS:

A. PURPOSE:

The purpose of the final plat is to review the proposed subdivision for proper final engineering and subdivision design, to provide for dedication of lands required for public use, for the construction of public improvements, and for conformance with the preliminary plat. The final plat shall incorporate all

modifications required in its preliminary review.

B. PHASING OF FINAL PLAT SUBMITTALS:

The applicant, as part of the preliminary plat approval, may propose to delineate on the preliminary plat two or more final plat filing phases and establish the schedules of the preliminary plat review and approval.

1. Each phase must be free-standing, that is, fully capable of functioning with all the required improvements in place in the event the future phases are not completed or completed at a much later time.
2. If the applicant proposes a phased subdivision, a phasing plan must be submitted which outlines:
 - a. A plat delineating each phase and a general time frame for each phase,
 - b. Public improvements phasing plan showing which improvements will be completed with each phase.
3. The preliminary plat of a phased subdivision shall have time limits:
 - a. If a subdivision is part of an approved planned unit development (PUD) which contains a specific phasing plan complete with time lines, such phasing plan shall be binding.
 - b. For all other subdivisions, upon final plat approval of the first phase, final plats for each successive phase must be filed within two years of the previous final plat approval. Failure to meet this time frame will cause the preliminary plat to void.
4. When phasing was not indicated in the preliminary plat approval, the applicant shall submit to the Kalispell Planning Department a phasing plan complying with B(1,2) above and Appendix A, Contents of Preliminary Plat -II(D) Phased Projects. Said phasing plan shall be approved by the Kalispell Planning Department (subject to appeal to the City Council) prior to submittal of the Final Plat Application for the first phase.
5. Minor modifications to an approved phasing plan which do not change impacts on the adjoining property may be approved or denied by the Planning Director.

C. SALE OF THE LOTS PRIOR TO FINAL PLAT:

1. A final subdivision plat must be approved and filed for record with the County Clerk and Recorder before title to the subdivided land can be sold or transferred in any manner, except after the preliminary plat of a subdivision has been approved or conditionally approved, the subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following conditions are met:
 - a. That under the terms of the contracts, the purchasers of the lots in the proposed subdivision make any payments to an escrow agent which must be a bank or savings and loan association chartered to do business in the State of Montana;
 - b. That under the terms of the contracts and the escrow agreement, the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the County Clerk and Recorder;
 - c. That the contracts and the escrow agreement provide that, if the final plat of the proposed subdivision is not filed with the County Clerk and Recorder within the period of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments made under the contract;
 - d. That the contracts contain the following language conspicuously set out therein: "The real property which is subject hereof has not been finally platted, and until a final plat identifying the property has been filed with the County Clerk and Recorder, title to the property cannot be transferred in any manner".

D. BUILDING PERMITS

No building permits shall be issued on a property with an approved preliminary plat until the final plat is approved and recorded or the preliminary plat is withdrawn.

E. FINAL ENGINEERING PLAN APPROVALS

1. Prior to submitting a final plat application, engineering plans for all public infrastructure and utilities shall be submitted to the city for approval in accordance with the conditions of the approved preliminary plat.

2. The subdivider shall utilize the R/W and Utility application form found in Appendix C in submitting the required documents for review to the Kalispell Planning Department.
3. The R/W and Utility Plans application must be approved prior to the start of construction of any improvements in conjunction with the subdivision unless written approval has been granted by the planning department to allow specific work.
4. Review of R/W and Utility Plans application:
 - a. Once the required numbers of engineering plans have been submitted and the fees paid, the planning department shall distribute the plans to the appropriate city departments for their review, comments and approval.
 - b. Each department will have 30 calendar days to review the plans and either:
 - (1) Approve the plans; or
 - (2) Provide comments and request additional information that will lead to plan approval.
 - c. Approval of comment letters from the reviewing city departments shall be submitted to the planning department within the 30 day review period.
 - d. The planning department will then forward the approval or comment letters to the subdivider and when appropriate to the design engineer.
 - e. If revisions to submitted plans are required, the subdivider or applicants engineer shall revise the plans as necessary to address all the comments received on the plans.
 - f. Once revisions are completed by the applicant, the revised plans shall be re-submitted to the planning department.
 - (1) The revised sets of R/W and Utility plans shall be reviewed again in accordance to the procedures set out in 4a. – c. above.
 - (2) This process shall be repeated until the subdivider submits plans that are approved by each department, or the application is withdrawn.

5. Plan approval: The planning department shall notify the subdivider and the engineer of plan approval in writing once all departments have approved the plans and the plans meet all the subdivision's conditions of approval.
6. The applicant may proceed with the final plat application once the necessary infrastructure is installed.

F. FINAL PLAT APPLICATION:

1. After receiving the preliminary plat approval or conditional approval, the subdivider may proceed with the preparation and submission of the final plat of the proposed subdivision. All required improvements shall either be installed, or the subdivider shall enter into a subdivision improvements agreement with the City Council prior to the filing of the final plat guaranteeing the installation of remaining improvements (See Appendix F, Subdivision Improvements Agreement);
2. A complete application for final plat approval shall be submitted to the Kalispell Planning Department at least 60 days prior to the expiration date of the preliminary plat. (Because of processing time, complete final plat applications submitted less than 60 days prior to expiration face the possibility of expiring prior to City Council review and final action). The submittal shall include the following:
 - a. Written application form provided by Kalispell Planning Department;
 - b. Application review fee as set by the Kalispell City Council;
 - c. One opaque and 1 mylar copy, or 2 mylar copies; 4 blueline copies; one 11" x 17" reduced copy, a digital copy of the final plat and three blueprint copies and of the final plat prepared in accordance with Appendix D;
 - d. All attachments to the final plat as specified in Appendix D.
 - e. Certification by the subdivider indicating which required improvements have been completed on the site or are subject to an attached subdivision improvements agreement in conformance with Appendix F securing the future construction of public improvements to be installed.

G. ACTION BY THE PLANNING OFFICE:

1. The Kalispell Planning Department shall review the submitted plat and documents with regards to:
 - a. Compliance with the approved preliminary plat;
 - b. Compliance with the conditions of approval imposed by the City Council;
 - c. Compliance with the City of Kalispell Subdivision Regulations;
 - d. Compliance with the Montana Subdivision and Platting Act.
2. If the Kalispell Planning Department determines that the submitted final plat and attachments are complete and in substantial compliance with 1(a-d) above, it will review and make its recommendation to the City Council.
3. The City Council must approve the completed final plat application and recommendation prior to actual expiration of the preliminary plat.
4. The final plat must conform to the preliminary plat map and conditions of preliminary plat approval.
 - a. Insignificant changes which have a minimal impact on the scale or scope of the project or immediate neighborhood shall be so noted in the Kalispell Planning Department report to the City Council.
 - b. Changes which either the Planning Director or the City Council determines to be substantial shall be returned to the Planning Board for re-hearing and consideration as amendments to the original preliminary plat following procedures outlined in either Sections 28.2.6 or 28.2.07. Substantial changes would include:
 - (1) Moving ingress-egress points;
 - (2) Re-arranging five (5) or more lots;
 - (3) Increasing the number of lots;

- (4) Significant relocation of buildings, parking facilities or common areas;
- (5) Requesting a deletion or substantial change to any condition of written approval except when a condition of approval is effectively changed as a result of new or modified governmental regulations.

H. ACTION BY THE CITY COUNCIL:

1. The City Council shall approve the final plat if:
 - a. The final plat conforms to:
 - (1) The conditions of approval set forth on the preliminary plat;
 - (2) The Montana Subdivision and Platting Act;
 - (3) The City of Kalispell Subdivision Regulations and in particular Appendix D;
 - b. The final plat substantially conforms to the approved preliminary plat;
 - c. The subdivider has installed all the required improvements or has entered into a written subdivision improvements agreement with the City of Kalispell pursuant to Appendix F of these Regulations.
2. If the final plat is disapproved, the reasons for disapproval shall be stated in the minutes of the City Council and a copy forwarded to the subdivider.
3. The City Council may withdraw approval of a plat if it determines that information provided by the subdivider, and upon which such approval was based, is inaccurate.
4. The acceptance of land dedications shall be made by specific action of the City Council and shall be noted on the plat.
5. The City Council shall approve or deny a final plat application within 30 days after receiving the Kalispell Planning Department recommendation, unless the subdivider waives in writing the right to have such a decision within the prescribed time limit. The City Council shall notify in writing the subdivider and the Kalispell Planning Department of its approval or denial of the final plat.

I. FINAL PLAT FILING:

The subdivider shall have 30 days from the date of the approval of the final plat to file the approved final plat and documents as described in Appendix D with the County Clerk and Recorder.

28.2.10 CORRECTING OR AMENDING FILED FINAL PLATS:

A. Correcting Filed Final Plats:

Correction of drafting or surveying errors that in the City Council's opinion will not materially alter the plat, its land division, or the improvements to less than the standards contained herein, may be made by the submission of a corrected final plat for the City Council's approval. The plat shall be entitled "Corrected Plat of the (name of subdivision) Subdivision" and the reason for the correction shall be stated on the face of the plat.

B. Amending Filed Final Plats:

1. Changes that materially alter the final plat or any portion thereof or its land divisions or improvements shall be made by the filing of an amended plat showing all alterations. Within a platted subdivision, any division of lots which result in an increase in the number of lots, or which redesigns or rearranges six or more lots, must be reviewed and approved by the City Council and an amended plat must be filed with the County Clerk and Recorder.
2. The amended plat shall be subject to procedural requirements for major and minor subdivisions (Sections 28.2.04 through 28.2.07). Amended plats shall be subject to all standards contained in these Regulations.
3. The final amended plat submitted for approval shall comply with the final plat requirements of Section 28.2.08 and Appendix D with the exception that the title shall include the word "Amended" ("Amended Plat of the [name] Subdivision" or "[Name] Subdivision, Amended").
4. The relocation of common boundaries and the aggregation of lots within platted subdivision where five (5) or fewer of the original lots are affected are exempt from approval procedures as a subdivision. In such case, an amended plat shall be prepared following the requirements of Appendix D, except that in place of the City Council's approval, the landowner certifies that the approval of the City Council is not required pursuant to Section 76-3-207(1), M.C.A., as amended.

**28.2.11 PROCEDURE FOR SUBDIVISIONS CREATED BY LEASE OR RENT
(MANUFACTURED HOME PARKS, CAMPGROUNDS)**

- A. Subdivisions created by lease or rent, such as manufactured home and recreational vehicle parks, are exempt from the surveying and filing requirements of the Montana Subdivision and Platting Act, but must be submitted for review and approved by the Kalispell City Council before portions thereof may be leased or rented.
- B. Manufactured home parks and recreational vehicle campgrounds comprised of six (6) or more dwelling units, lots, or spaces shall comply with and shall be processed in accordance to the procedure stated in Sections 28.2.06, and Chapter 28.4 of these Regulations.
- C. Manufactured home parks and recreational vehicle parks comprised of five (5) or fewer dwelling units, lots, or spaces shall be reviewed under Sections 28.2.07 or 28.2.08 and Chapter 28.4 of these Regulations.

CHAPTER 28.3 - DESIGN STANDARDS

28.3.01 SUBDIVISIONS TO COMPLY WITH DESIGN STANDARDS:

- A. All subdivisions shall comply with the following:
 - 1. The City of Kalispell Standards for Design and Construction,
 - 2. The design standards included in this chapter, and
 - 3. The Kalispell Zoning Ordinance.
- B. Variance/PUD exceptions granted:
 - 1. A variance from a particular section of this chapter may be requested in writing pursuant to Section 28.7.01 of these Regulations.
 - 2. When a subdivider proposes to utilize the Planned Unit Development provisions of the Kalispell Zoning Ordinance, individual variances to these design standards are not necessary as long as the provisions of the PUD process are adhered to under the zoning regulations.
- C. All engineering and survey plans, specifications, design details and reports required by the City shall be prepared by a licensed professional engineer or registered surveyor as their respective license laws allow.

28.3.02 NATURAL ENVIRONMENT TO BE PRESERVED:

- A. The design and development of subdivisions shall contain satisfactory building sites which are properly related to topography and which preserve:
 - 1. The natural terrain,
 - 2. Natural drainage,
 - 3. Existing top soil,
 - 4. Trees and other existing natural vegetation, and
 - 5. Wildlife and fish habitats.
 - 6. Floodplain
- B. Plantings may be required for buffering, screening, or soil erosion protection and are subject to approval by the City Parks Director.

28.3.03 LANDS UNSUITABLE FOR SUBDIVISION:

- A. Lands where there is evidence of the following possible hazard conditions occurring shall not be subdivided for building or residential purposes unless the hazards are eliminated or mitigated by approved design and construction plans.
1. Flooding,
 2. High water table (seasonal high water table of less than 5 feet to surface),
 3. High voltage lines,
 4. High pressure gas lines,
 5. Landslides,
 6. Rock falls,
 7. Slopes in excess of 25% grade,
 8. Subsidence,
 9. Polluted or non-potable water supply,
 10. Air or vehicular traffic hazards or congestion,
 11. Any other features that may be detrimental to the health, safety or general welfare of existing or future residents.
- B. Development that would place unreasonable burdens on the general public including excessive expenditure of public funds or environmental degradation shall not be subdivided.

28.3.04 PLANNING CONSIDERATIONS:

Subdivision design shall take into account the following planning considerations:

- A. Analyzing topography in relation to slope stability. (Type of soils/steepness of grades.)
- B. Setting aside land in the floodplain for uses which will not:
1. Aggravate the flood hazard;
 2. Be endangered by flooding;

3. Endanger the health, safety and welfare of the public.
- C. Locating and reserving land area in floodplains, natural or scenic areas, schools, parks, open space, road rights-of-way and easements according to good planning and engineering practices and principles.
- D. Providing for the continuation of streets into adjacent subdivisions or yet to be developed lands unless there is an alternate design approved by the City Engineer.
- E. Properly situating multiple land uses within the subdivision to provide the maximum convenience to the residents and intended users.
- F. Identifying lands subject to hazardous conditions such as landslides, rock falls, subsidence, high water table, open quarries, floods and polluted or non-potable water supply.
- G. Providing a development plan for the remainder of the site when only a portion of an ownership is to be subdivided and developed. Such a plan shall show at a minimum: proposed roadways, residential lot location, and parks or common areas.
- H. Compliance with the following adopted documents:
 1. Kalispell Growth Policy
 2. Kalispell Area Transportation Plan
 3. Kalispell Parks and Recreation Master Plan
 4. Relevant adopted neighborhood or sub-area plans
 5. Kalispell water, sewer and storm water facilities plans

28.3.05 FLOODPLAIN PROVISIONS:

- A. Land located in a designated floodplain.
 1. Land located in the floodway of a 100 year flood frequency as defined by Title 76, Chapter 5, M.C.A., or land deemed subject to flooding as delineated by the most current floodplain maps available and adopted by the City of Kalispell, shall not be subdivided for building or residential purposes, or proposed for other uses that may increase the danger to life, health or property caused by flooding.

28.3.06 WETLANDS, PONDS AND SLOUGHS:

Land located in wetlands, ponds or sloughs shall not be subdivided for building or residential purposes or other uses that may increase or aggravate hazards to life, health or welfare, or that may be prohibited by state regulations unless these issues are mitigated.

A. Wetlands defined:

1. Wetlands are areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated or hydric soil condition based on the following:
 - a. The duration the area is inundated or saturated by surface or ground water and under normal circumstances support a prevalence of vegetation typically adapted for life in saturated or hydric soil condition; and/or
 - b. If vegetation is absent, soils or hydrology that indicate wetland areas.
 - c. This definition does not include man made wetlands and drainage facilities.

B. Setback

1. A minimum 100-foot setback shall be provided around the entire wetland or that portion which is located on the property to be subdivided.
2. Proposed lot boundaries will be located at or beyond the 100-foot setback.

28.3.07 WATERCOURSE SETBACK:

Where a development is crossed by or is adjacent to a watercourse, the developer shall mitigate the impacts of the development on the watercourse through the use of setbacks and limitations on adjacent development. This mitigation may be increased in areas of significant floodplain, adjacent wetlands or for bank stabilization. Proposed lot boundaries will be located at or beyond the minimum setback.

A. Purpose:

1. Supporting the riparian habitat.
2. Protect water quality.
3. Protecting the stream/river channel and banks
4. Maintaining an effective sediment filter which helps maintain water quality.
5. Protect adjacent property from natural water course morphology.

B. Minimum Setbacks:

1. A minimum 200 foot setback shall be provided for “impaired streams”. (Currently Ashley Creek and the Whitefish, Stillwater and Flathead Rivers).
2. A minimum 100 foot setback shall be provided for Spring Creek and Trumbull Creeks.
3. A minimum 50 foot setback shall be provided for all other water courses such as intermittent or ephemeral streams. The USGS 7 ½ minute quadrangle map shall be used as a reference followed by an on-site inspection by planning department staff to assist in determining if setbacks are warranted. The water course must have a defined bed or channel and associated riparian vegetation to be considered for the minimum setback. A swale does not constitute an intermittent or ephemeral stream.

C. Setback measurements:

1. All watercourse setbacks shall be measured from the ordinary high water mark. When no ordinary high water mark is discernible, setbacks shall be measured from the top of the stream bank.

D. Permitted uses within the setback:

1. On-site storm water treatment facilities as approved by the Public Works Department.

2. Trails and trail-related improvements (benches, trail signage, bridges and other crossings) subject to the following provisions:
 - a. Improvements must be constructed to minimize bank instability, sedimentation, nutrient and pollution runoff.
 - b. Trails shall be aligned to minimize damage to plant and wildlife habitat; and
 - c. Trails crossing water courses must receive appropriate local, state and federal permits.
 3. Streets, sidewalks, utility lines or similar public construction for the purpose of crossing a watercourse subject to the following provisions:
 - a. Crossings shall be minimized to the greatest extent feasible;
 - b. Crossings with direct angles (90 degrees) shall be used to the greatest extent feasible instead of oblique crossing angles;
 - c. Construction shall be capable of withstanding 100-year flood events;
 - d. A bank stabilization plan shall be prepared and approved by the City prior to site preparation and installation of the improvement(s).
 - e. Streets shall allow passage of vehicular traffic per the current Kalispell Standards for Design and Construction.
 4. Control of noxious weeds and activities required within limits outlined in an approved noxious weed control plan.
 5. Park lands, park play facilities, open space and associated recreational facilities.
 6. Agricultural fences, irrigation facilities and other ag. related activities.
- E. Prohibited uses within the setback:
1. Fill material.

2. Parking lot development.
 3. Streets except for water course crossings.
 4. Residential, commercial or industrial primary and accessory structures.
- F. The developer may request a reduction in the setbacks listed in Section 28.3.07.B by providing the planning department with sound scientific information and reasonable mitigation to address potential impacts. In the case of bank stabilization a geotechnical report shall be required. The review and approval, conditional approval or denial of the requested reduction shall be in accordance with Section 28.7.01 (Variances) of these regulations.

28.3.08 WATER RIGHTS – TRANSFER TO THE CITY:

For any subdivision that exceeds five acres in gross area, the transfer of water rights shall be addressed at the time of preliminary plat as provided in 76-3-504 (1(j)) MCA.

- A. The following options will be considered:
1. Where a homeowners association or other private or commercial entity is proposed as part of the subdivision that will be charged with maintaining open space, park lands, a golf course, agricultural pursuits or similar uses that will require non-potable water for irrigation, and the use of water for a closed loop thermal heat pump, existing water rights may be transferred from the developer, as directed by the city council, to that entity commensurate with the proposed need.
 2. The city council may request that water rights be transferred to the city based on the city's need to provide municipal service to the area.
 3. The water right may be severed from the land and extinguished.
- B. If water rights associated with the proposed subdivision are to be transferred from the developer, they shall be transferred to the respective entities at the time of filing a final plat. For phased projects the water rights associated with each phase shall be transferred at the time of filing of the particular final plat

28.3.09 HIGHWAY SOUND MITIGATION:

Where a proposed residentially zoned (R or RA zone) subdivision abuts an existing or planned major arterial road capable of generating noise in excess of 60 dBA, design provisions shall be incorporated into the subdivision to mitigate the noise impacts.

- A. Noise mitigation techniques shall be utilized to reduce the noise impacts to 60 dBA at the lot line.
- B. Upon submitting a preliminary plat the application shall include the proposed noise mitigation method(s) to be used.
- C. Noise mitigation techniques shall include one or more of the following options:
 - 1. Increased setbacks from the noise generator using open space or parklands.
 - 2. The use of non-noise sensitive land uses (storage units, parking areas, office uses, commercial uses, or light industrial uses as anticipated by the underlying zoning ordinance) buffering the sensitive land uses from the noise generator.
 - 3. Earth berms.
 - 4. Fences or walls less than 6 ½ feet in height
 - 5. Placement of streets, storm water detention facilities or other required subdivision infrastructure to buffer the noise sensitive land use and the noise generator.
- D. Sound walls over 6 ½ feet in height are specifically prohibited as a noise mitigation tool.

28.3.10 GEOTECHNICAL REVIEW:

A geotechnical report shall be required for all major subdivisions. The report may be waived by the City Engineer based on a letter from a professional engineer with geotechnical practice.

- A. This report shall be completed by a professional engineer with geotechnical practice and be submitted with the preliminary plat application.
- B. Said report must find that development of the pertinent lots would pose no significant geological hazards to either these lots or neighboring properties.

- C. The applicant is required to comply with all recommendations of said report.
- D. In addition, a statement shall be placed on the final plat noting those specific lots as enumerated in the geotechnical report which may either be:
 - 1. Subject to steep terrain and that the driveway access shall be approved by the City Engineer as suitable prior to the start of combustible construction, or
 - 2. Subject to significant fill and foundations and driveways should be designed accordingly.

28.3.11 LOTS:

Each lot shall contain a satisfactory building site which is properly located to topography and conforms to the Kalispell zoning and floodplain ordinances and these Regulations. The proposed lots shall meet the following standards:

- A. No single lot shall be divided by a municipal boundary line.
- B. Each lot shall abut and have legal and physical access (minimum 20 feet wide) to a public or private street or road.
- C. Alleys and emergency secondary access roads shall not be used to provide the primary means of access to a lot.
- D. Driveway Standards:
 - 1. Each building (lot) must be able to be accessed by a driveway, minimum 10 foot wide with a maximum 7% slope.
 - 2. Corner lots must be designed to allow a driveway to be constructed at least 35 feet from the edge of pavement of an intersecting street.
- E. Flag lots shall only be utilized when all other methods of lot development are unacceptable.
 - 1. Flag lots are to be used in "infill" situations within developed areas and are not considered appropriate in areas of new development.
 - 2. A flag lot should not be developed adjacent to another flag lot. However, if no other alternative exists, both lots shall share a common driveway that meets fire dept. access standards.
 - 3. The flag access road shall not exceed 150' measured from edge of public R/W to the beginning of the buildable portion of the lot.

4. The net area of the flag lot shall not include any portion of the “pole” access strip that measures less than 30 feet in width.
- F. Each lot shall have a building site suitable for intended development.
1. Residential minimum building sites are as follows:
 - a. Single family/duplex - min. 30' x 30' site
 - b. Townhouse - min. 30' x 40' site
 2. Building sites shall be existing undisturbed terrain of 25% or less slope.
- G. No lot shall have an average depth greater than three times its average width unless the average lot width is greater than 200 feet.
- H. Side lot lines shall be substantially right angles to street or road center lines and radial to curved street or road center lines.
- I. Through lots are prohibited except where essential to provide separation of development from major arterial streets or to overcome specific topographic or orientation difficulties.
- In such cases, a planting screen easement of a minimum width of 10 feet, across which there shall be no right-of-way access, shall be provided along the line of lots abutting the major traffic arterial or specific topographic or orientation difficulty.
- J. Lots shall be numbered consecutively throughout the subdivision. Phases and blocks shall also be consecutively numbered.

28.3.12**BLOCKS:**

- A. 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.
1. Blocks shall be wide enough to allow for two tiers of lots except where essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography and orientation.
 2. Block lengths shall be not less than 250 feet or more than 600 feet.
 3. Right-of-way, not less than 20 feet wide, for pedestrian walks/trails shall be required where deemed essential to provide:

- a. Access to common facilities such as schools, parks, open space, rivers, streams and lakes; or
- b. When necessary to break up excessively long blocks (in excess of 600 feet in length) that are allowed to address unusual topography or road situations.

28.3.13 SUBDIVISION ACCESS:

- A. Where access to the subdivision will be by an easement across privately owned property, the subdivider must provide evidence that the necessary easement has been acquired and that the easement encompasses the nature and intensity of the use which will result from development of the subdivision.
- B. Any public or private street or road providing ingress and egress to a subdivision shall meet the street design standards and specifications stated in Section 28.3.14 of these Regulations.
- C. A subdivision shall provide for the obvious and convenient extension of future streets to lands beyond the subdivision:
 - 1. R/W shall be extended and developed to connect with existing streets that are stubbed to the proposed subdivision property.
 - 2. R/W extensions shall also be stubbed out at regular block length intervals along the boundaries of the subdivision unless limited or prohibited by physical features or conflicting land uses.
 - 3. Such extensions do not have to be improved if:
 - a. They do not connect to already developed streets, and
 - b. They do not provide primary access to any lots.
- D. No residential subdivision shall gate its street off from public access.
- E. Accesses into a subdivision shall be determined based on the following:
 - 1. A single access into a subdivision is acceptable in the following situations:
 - a. The primary access road is less than 1,000 feet and,
 - b. The subdivision contains less than 50 units.

2. A second full access or multiple accesses are required in the following situations:
 - a. The primary access road exceeds 1,000 feet; or
 - b. The subdivision serves 50 or more residential lots or 100 or more residential dwelling units; or
 - c. Where the Fire Chief determines that safe and convenient access and emergency vehicle circulation dictate.

Note: A loop drive, with one access point, shall not qualify as providing additional access.

28.3.14 STREETS AND ROADS – DESIGN STANDARDS:

- A. All public R/W improvements including pavement, curbs, gutters, boulevard treatment and drainage systems shall be:
 1. Designed in accordance with the adopted Standards for Design and Construction, Kalispell, Montana.
 2. The design shall be approved by the City Engineer,
 3. All work, upon completion, shall be certified by a licensed Professional Engineer that it is in compliance with these regulations, and
 4. All work shall comply with Table 1 below.

TABLE 1
STANDARDS FOR SUBDIVISION STREETS

Street	R/W Ownership	R/W (1)	Travel Surface Min.	Sidewalk	Lots Served Max.	Dwellings Served Max.	Through Street	Infill tech. only	Max. Grade
Local-1	Private	10	10	none	1	0 (utility)	No		8%
Local-2	Private	20	10	(None)	2	2	No	Yes	8%
Local-3	Private	30	20	One side	3	6	No	Yes	8%
Local-4	Private	40	20	each side with lots served	4	8	No	Yes	8%
Local-5	Private or Public	50	24	Both sides	5	20	No	Yes	8%
Local-6	Public	60	28	Both sides	6+	n/a	Yes		8%
Collector	Public	60	34	Both sides	n/a	n/a	Yes		8%
Arterial	Public	80	(2)	Both Sides	n/a	n/a	Yes		8%

¹ Terrain and design constraints may dictate greater right-of-way; all road disturbances must be accommodated within the right-of-way.

² Design approved by the City Engineer/Kalispell Design and Construction Standards.

B. Local streets shall be designed to allow for continuation to adjacent properties with right-of-way spacing consistent with block lengths.

C. Permanent dead-end streets are discouraged and used sparingly when all other design alternatives fail due to topography or existing improvements.

1. Dead-end streets shall not exceed 600 feet as measured from center centerline intersection to center of cul-de-sac or center of approved turn-around.

2. Such a street shall terminate in a turnaround feature approved by the fire chief as follows:

a. Cul-de-sac for streets up to 600 feet long.

(1) Back of curb radius - 47 ft. min.

(2) Min outside R/W radius - 58 ft. min.

b. Hammerhead for streets up to 150 feet long.

- (1) Hammerhead travel surface shall extend 40 feet to the right and left of centerline of the primary street.
 - (2) The travel surface in the hammerhead shall be a minimum of 20 feet wide.
 - (3) Other turn around design as approved.
 - (4) May be waived if dead-end street is less than 110 feet long.
- D. Temporary dead end streets where a future street is proposed shall comply with (C) above.
- E. Location of collector and arterial streets shall comply with the Kalispell City Growth Policy and Kalispell Area Transportation Plan.
- F. Minor Arterial design standards

The following roads are or are intended to function as minor arterial streets in the future:

- Reserve Drive (Both east and west of Highway 93)
- Stillwater Road
- West Spring Creek Road
- Three Mile Drive
- Four Mile Drive
- Farm to Market Road
- Foys Lake Road
- Airport Road
- Cemetery Road
- Willow Glen Drive
- Whitefish Stage Road
- Rose Crossing

To protect the functional aspects of these roads and the neighboring subdivisions one of the following standards shall be met when a proposed residentially zoned (R or RA zone) subdivision abuts one of the above roads.

1. Lots shall be oriented inward with the rear lot lines of the lots adjacent to the road right-of-way.
 - a. A uniform fence or wall design shall be included with the preliminary plat application with the approved fence or wall design installed by the developer
 - b. The creation of a homeowners association shall be included with the preliminary plat application to address

maintenance of the sidewalk or bike path and maintenance of the boulevard landscaping along the subdivision's frontage of the arterial street.

- c. In lieu of creating a homeowners association the developer may request a park maintenance district for maintenance of the sidewalk or bike path and landscape boulevard to be performed by the city.
2. A local street, approximately parallel to the arterial right-of-way, with the back of curb at a minimum distance of 50 feet from the arterial right-of-way. The distances between the local street and arterial street may be increased or decreased with regards to topography and the requirements of approach grades and grade separations.
 - a. Lots along the local street shall be designed to permit future homes to face the street.
 - b. The land between the arterial right-of-way and local street right-of-way shall be irrigated and landscaped. Landscaping shall include a mix of trees and ground cover and one or more earth berms with a 4:1 slope and a minimum height of 3 feet above street grade.
 - c. The creation of a homeowners association shall be included with the preliminary plat application to address maintenance of the landscaping between the two right-of-ways, sidewalk or bike path and maintenance of the boulevard landscaping along the arterial right-of-way.
 - d. In lieu of creating a homeowners association the developer may request a park maintenance district for maintenance of the landscaping between the two right-of-ways, sidewalk or bike path and maintenance of the boulevard landscaping along the arterial right-of-way to be performed by the city.
- G. Collector Street design standards: To protect the functional aspects of the street the following standards shall be met when a proposed residentially zoned (R or RA zone) subdivision is adjacent to an existing or future collector street or includes a collector street within the subdivision:
1. Individual driveways are prohibited except in infill situations. Access to off-street parking spaces and/or garages shall be from an alley.

2. Lots shall be designed to orient the front of the house to the collector street.
- H. When a subdivision abuts or contains a railroad right-of-way or a controlled access highway, a street approximately parallel to and on each side of such right-of-way at a distance suitable for an appropriate use of the intervening land may be required. Such distances shall also be determined with regards to the requirements of approach grades and future grade separations.
- I. Collector streets shall be designed to afford access to arterial or other collector streets or for street continuation to adjoining areas.
- J. Residential driveways shall avoid direct access onto collectors and shall not have direct access to arterial streets or State or Federal Highways.
- K. Dedication of half streets are discouraged but will be reviewed on a case by case basis and only when there is reasonable assurance that the adjoining right-of-way can be obtained in the foreseeable future.
- L. When a subdivision abuts an existing local, collector or arterial street, this street shall be upgraded as follows:
1. If the required R/W for the abutting street is deficient, the subdivider shall provide at a minimum one-half of the required R/W to bring the road up to a minimum standard for the design classification of street.
 2. The subdivider shall at a minimum bring the abutting road profile up to city standards including sidewalk, boulevard, street trees, curb and gutter on the subdivision side of the street.
 3. The subdivider shall upgrade the travel surface to the centerline of the street but in no event shall the overall street travel surface be less than the minimum required travel surface for a full street.
- M. Traffic Calming Techniques as provided below shall be incorporated into subdivisions when determined to be necessary to achieve enhanced pedestrian safety and improved design; when addressing design challenges caused by unusually long, straight or wide streets or when addressing intersections with a mix of traffic and pedestrians:
1. Bulb outs at intersections or mid blocks to accommodate pedestrian crossings.
 - a. Bulb outs should provide a maximum 20 foot wide vehicle travel lane.

2. Use of color or texture differentiated crosswalks.
 - a. This can be achieved by using colored, textured or stamped concrete or concrete, brick or asphalt.
 3. Incorporating sweeps or minor curves in a roadway to break up long straight stretches of internal roadway for any straight stretch of road in excess of 900 feet.
 4. Incorporating speed humps or raised pedestrian crossings into roadway designs.
 5. Providing center islands either for landscaping or at intersections and pedestrian crossings as areas of refuge for pedestrians.
 6. Restricting the width of proposed travel surfaces where the proposed width exceeds the minimum design standards of the city.
 7. Roundabouts.
- N. In minor subdivisions where lot access is provided by existing streets, City Council may require waiver of protest to a special improvement district (SID) to upgrade the street in lieu of actual street improvements, in order to avoid upgrading small sections of existing streets, or may allow payment in lieu of street improvements. Such payment will be subject to approval by the department responsible for the operation and maintenance of said improvement.
- O. Street intersections shall be in accordance with the Kalispell Design and Construction Standards.
- P. All streets shall be named. Names of new streets aligned with existing streets shall be same as those of existing streets. Proposed street names shall not duplicate or cause confusion with existing street names and shall be taken from an approved list located in the City Engineer's Office.
- Q. Street light installations are required to provide lighting on all streets within the subdivision.
- R. Street or road signs and traffic control devices of the size, shape and height as approved by the City Engineer shall be placed at all intersections by the developer. Traffic control devices shall be consistent with the latest addition of "Manual of Uniform Traffic Control Devices".
- S. Transportation Impact Study (TIS) requirements.

1. Subdivisions generating 300 or more average daily trips to the city street system shall complete a traffic impact study (TIS) in accordance with the Kalispell Design and Construction Standards.
2. The TIS shall be submitted with the application materials.
3. Prior to submitting a TIS, the applicant and/or engineer shall have a scoping meeting with the public works department.

28.3.15 ALLEYS:

- A. Alleys (public or private) may be required in any development.
- B. Alleys in residential areas are required whenever:
 1. Single family lots of less than 50 feet width are proposed,
 2. Duplex or townhouse development creating a street frontage density of 40 feet/unit or smaller on average is proposed for any block.
 3. Lots are adjacent to an existing or future collector street.
- C. Alleys design standards:
 1. Commercial alleys shall have a minimum 20 foot R/W and 20 foot paved width.
 2. Residential alleys shall have a minimum 16 foot R/W and a minimum 12 foot paved width.
 3. Alleys shall be open at both ends.

28.3.16 SIDEWALKS/BIKE PATHS:

- A. Sidewalks are required in the following situations unless modified by these regulations:
 1. In all residential subdivisions.
 2. In all commercial subdivisions.
 3. Whenever a subdivision abuts an arterial or collector street, along that portion of the street.
 4. To connect existing sidewalks to adjacent trail systems.

5. To connect existing public sidewalks with adjacent public or private sidewalk systems serving individual public or commercial uses.
 6. At the end of cul-de-sacs where deemed appropriate to provide continued pedestrian access to lands beyond.
- B. Sidewalks shall be required on both sides of the street.
1. The exception would be an exterior road to the subdivision in which the developer would only be required to construct the sidewalk on his side of the street.
- C. The minimum width of the sidewalk shall be 5 feet
- D. The minimum width of a asphalt surfaced bike path is 10 feet
- E. The minimum width of a concrete bike path is 8 feet.
- F. Residential sidewalks shall be separated from the street by a landscaped boulevard or open space.
- G. A minimum 2 inch sleeve shall be placed under the sidewalk serving each residential lot for the purpose of allowing the convenient extension of irrigation lines to the boulevard. The sleeve shall be installed 5 feet on either side of the edge of the driveway. In the absence of a driveway, the developer shall place a stamp in the concrete indicating the location of the sleeve.
- H. A bike path may be required in lieu of a sidewalk in areas where there is an existing or proposed bike path in order to provide an extension of the path. Conversely, where an existing bike path parallels a street, a sidewalk would not be required along that side of the street.
- I. Where actual sidewalk or bike path construction is premature, in the City's opinion, a cash-in-lieu payment to the City equivalent to the cost of the sidewalk or bike path may be made. The City shall review the cash-in-lieu proposal prior to acceptance.
- J. Sidewalks or bike paths, in instances where a bike path takes the place of a sidewalk along the adjacent street, shall be kept clear of snow, debris, bushes, etc. by the adjacent property owner or by an owners association if one is created for that purpose.
- K. The entity responsible for bike path maintenance shall be identified at the time of preliminary plat approval.

- L. Bike paths and sidewalks shall be designed per the AASHTO guidelines.

28.3.17 DRAINAGE FACILITIES:

- A. All storm water drainage improvements shall be designed in accordance with the Kalispell Design and Construction Standards.

28.3.18 TEMPORARY EROSION AND SEDIMENTATION CONTROL:

- A. Prior to the construction of improvements in the subdivision, the subdivider shall be responsible for obtaining a storm water permit from the public works department.

28.3.19 SOLID WASTE:

- A. The subdivider shall assure the provisions for collection and disposal of solid waste will meet the minimum requirements of the City of Kalispell.
- B. If solid waste disposal is not to be the responsibility of individual lot or dwelling owners within the subdivision, the subdivider shall provide an off-street area for solid waste collections which will be aesthetically screened from general public view and conveniently accessible to collection vehicles subject to approval by the City Engineer.
- C. The location and means for solid waste collections and disposal shall be subject to approval by the City Engineer.

28.3.20 WATER AND SANITARY SEWER SYSTEMS:

- A. All water and sanitary sewer facilities shall:
 - 1. Comply with the Kalispell Standards for Design and Construction, the Flathead City-County Health Department, and Montana Department of Environmental Quality.
 - 2. Be designed by a Professional Engineer licensed in the State of Montana.
 - 3. Be approved by the City Engineer.

28.3.21 UTILITIES/EASEMENTS:

- A. It is the responsibility of the developer to construct or extend all roadways and utilities from the existing facilities to the far property line of the

development or as otherwise specified by the City Engineer.

- B. It is the developer’s responsibility to obtain and provide the City with all easements and R/W necessary to extend roadways and utilities to the far property line of the development.
- C. All new utilities shall be placed underground.
- D. All public utilities shall be within a public right-of-way or easement to permit free and unobstructed access.
- E. Underground private utilities shall be located on private property.
- F. A 10 foot wide utility easement shall be reserved along the front lot line and side street lot line of each residential lot for the placement of privately owned underground utilities. Where alleys are provided or required, the utility easements shall be provided in the alley right-of-way.
- G. No underground private utilities, except service sweeps to the street lights and water and sewer service lines shall be placed in the boulevard between the back of curb and sidewalk or within a sidewalk.
- H. In addition to showing the location of the utility easements on the plat, the following statement shall 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, telecommunication, 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.”

Developer’s Signature

28.3.22

PARK LAND:

- A. Park Dedication Requirements:
 - 1. A subdivider shall dedicate to the City a cash or land dedication equal to 0.03 acres per dwelling unit.
 - 2. The City Council, Planning Board, and Parks and Recreation Department, giving due weight and consideration to the expressed preference of the subdivider shall determine whether the park dedication must be a land donation, cash donation or a

combination of both. When a combination of land and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation.

B. Exceptions To Park Dedication:

1. Park dedication shall not be required for:
 - a. Lots created greater than 5 acres in size;
 - b. Non-residential lots;
 - c. A subdivision where lots are not created except when that subdivision provides permanent multiple spaces for recreational camping vehicles or mobile homes;
 - d. A subdivision in which only one additional lot is created.
 - e. The first minor subdivision from a tract of record.
2. A subdivision which provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values shall be allowed to reduce the parkland requirement based on the amount of qualifying land placed in long term protection.

C. Criteria For Parkland Dedication:

1. The City Council, in consultation with the Planning Board, Parks and Recreation Department, and the subdivider, may determine suitable locations for parks, playgrounds and open space.
2. Land dedicated for park or playground purposes shall:
 - a. Be useable land,
 - b. Shall serve residents of the entire subdivision,
 - c. Shall be of appropriate shape and size, and
 - d. Shall have convenient access by public or private roads meeting City standards and specifications.
3. The following lands shall not be considered appropriate for park purposes:
 - a. Average cross slope of the park site is greater than 10%;

- b. More than five percent of the park site has an average cross slope greater than 25%;
- c. More than 25% of the park site is in a designated 100-year floodplain;
- d. More than 10% of the park site is wet, swampy or marshy;
- e. Is less than one acre in area;
- f. Is an undeveloped open space area within a subdivision which does not have appropriate size, dimensions, or access to serve as a park;
- g. Is in a floodway;
- h. Is located within the first 50% of setback area of a riparian area setback from any river, stream or wetland;
- i. Commercial or for-fee recreational facilities such as golf courses, athletic clubs, etc., unless the residents of the affected development are offered substantially reduced fees or free use and access.

D. Cash In Lieu of Park Land:

- 1. Where, because of size, topography, shape, location, or other circumstances, the dedication of land for parks and playgrounds is undesirable, the City may, for good cause shown, make an order to be endorsed and certified on the plat accepting a cash donation in lieu of the dedication of land that would have been dedicated.
 - a. It shall be the responsibility of the subdivider to provide satisfactory evidence of the fair market value.
 - b. For the purpose of this section, the fair market value is the value of undivided, unimproved land at the time of filing of final plat.
 - c. When the subdivider and the City are unable to agree upon the fair market value, the City may require that the fair market value be established by an appraisal done by a qualified real estate appraiser of its choosing.
 - d. The appraisal fee shall be the responsibility of the subdivider.

2. The governing body may use the dedicated money to acquire, develop or maintain parks or recreational areas or for the purchase of public open space or conservation easements only if:
 - a. Such area is within the city limits,
 - b. Such area is within a reasonably close proximity to the proposed subdivision.
 - c. The project is in accordance with the Parks and Recreation Comprehensive Master Plan.
3. The City may not use more than 50% of the dedicated money for park maintenance.

28.3.23 FIRE PROTECTION:

- A. All subdivisions shall be planned, designed, constructed, and maintained so as to minimize the risk of fire and to permit effective and efficient suppression of fires.
- B. A statement shall be placed on the face of the final plat as follows: “All house numbers will be visible from the street, either at the driveway entrance or on the house”.
- C. The City may impose additional requirements which it may deem necessary based on the consideration of size, location, density, and nature of the subdivision.

28.3.24 MAIL BOXES/FACILITIES:

- A. A common mail delivery site shall be provided with the design and location approved by the local postmaster of the U.S. Postal Service.
- B. The roadside face of such facility shall be offset from the edge of the traveled roadway a minimum of eight feet.
- C. A minimum pullout area for at least 2 vehicles shall be provided.
- D. Sidewalk access shall be provided to the site.
- E. The facility shall not block any portion of the sidewalk.
- F. The mail delivery site shall be designed and constructed to be ADA accessible.

28.3.25 WAIVER OF RIGHT TO PROTEST SID FOR ROADWAY IMPROVEMENTS IN ADJACENT AREAS:

A. On the face of each final plat the following statement shall be placed:

The owners hereby waive the right to protest the creation of an SID for the purpose of financing improvements to area roads which will specifically benefit this subdivision.

CHAPTER 28.4 - MANUFACTURED HOME PARKS, RECREATIONAL VEHICLE PARKS AND CAMPGROUNDS

28.4.01 SUBDIVISION CREATED BY RENT OR LEASE DEFINED:

A subdivision created by rent or lease, such as manufactured home parks, recreation vehicle parks, or campgrounds, is any tract of land divided by renting or leasing portions thereof. It is owned, however, as one parcel under single ownership.

28.4.02 EXEMPTION FROM SURVEY AND FILING REQUIREMENTS:

Manufactured home parks, recreation vehicle parks and campgrounds are exempt from the surveying and filing requirements of the Montana Subdivision and Platting Act but must be submitted for review and approved by the Kalispell City Council before portions thereof may be rented or leased. Approval shall be based upon the criteria and standards included in these Regulations.

28.4.03 PROCEDURES:

- A. Manufactured home parks, recreational vehicle parks and campgrounds comprised of six (6) or more spaces, units or lots, shall comply with and shall be processed in accordance to the procedures stated in Section 28.2.06 of these Regulations.
- B. Manufactured home parks, recreational vehicle parks and campgrounds comprised of five (5) or less spaces, units or lots, shall comply with the processing requirements stated in Sections 28.2.07 or 28.2.08.
- C. In lieu of filing a final plat, the subdivider shall submit to the Kalispell Planning Department four blue line copies and one digital copy of a plat labeled "Revised Preliminary Plat" conforming to the requirements for preliminary plats contained in Appendix A along with supplemental information. The revised preliminary plat shall show the lot layout and the typical location of the manufactured home, recreational vehicle, or other unit on the lot. The revised preliminary plat shall also show all existing and proposed buildings and structures, streets, parking and recreational area. The revised preliminary plat shall be reviewed to assure that it conforms to the approved preliminary plat and the conditions of approval of the preliminary plat. The approved revised preliminary plat shall be maintained in the Kalispell Planning Department Office and in the Office of the Clerk of the Council, City of Kalispell, Montana.
- D. Before any portion of a rental or lease subdivision may be rented or leased, the subdivider shall have installed all required improvements. In case of a phased development, unit spaces in each phase shall be rented or leased only

after all improvements pertaining to that phase are completed. Preliminary plans, profiles, tentative grades and specifications for proposed improvements shall be submitted to the City for review and approval prior to the construction of improvements. The City may provide for inspection of all required improvements in order to assure conformance with the approved construction plans and specifications.

- E. Manufactured home parks, recreational vehicle parks and campgrounds are required to be licensed by the Montana Department of Environmental Quality.
- F. If a subdivision that will provide multiple spaces for recreational camping vehicles or mobile homes is also a “trailer court,” “work camp,” “youth camp,” or “campground” as those terms are defined in section 50-52-102, MCA, the governing body will not grant final approval of the subdivision until the subdivider obtains a license for the facility from the Montana Department of Public Health and Human Services under Title 50, Chapter 52, MCA.

28.4.04

GENERAL STANDARDS FOR SUBDIVISIONS CREATED BY RENT OR LEASE:

- A. Subdivisions created by rent or lease shall comply with all the provisions of Chapter 28.3, Design Standards, except where modified by this Chapter.
- B. The City Council may require:
 - 1. Storage facilities on the lot or in compounds located within a reasonable distance.
 - 2. A central area storage for parking of boats, trailers or other recreational vehicles.
 - 3. Landscaping to serve as a buffer between the development and adjacent properties.
 - 4. An off-street area for mail delivery.
 - 5. Sidewalks.
 - 6. Curbs and gutters.
 - 7. Street lighting.
 - 8. Management regulations.

28.4.05 PARK LAND DEDICATION:

The City Council may waive park land dedication and cash donation requirements if the subdivider agrees to develop at least one-ninth of the area of the development as park or playground.

28.4.06 STREETS:

- A. No on-street parking shall be permitted on the entrance street for a distance of 100 feet from the point of entrance.
- B. Streets within the subdivision shall be private unless otherwise required by the City Council and shall comply with the street design standards in Section 28.3.14.
- C. Rights-of-way in excess of the roadway width shall not be required for private streets.
- D. Streets shall be adapted to the topography and site conditions and shall have suitable alignment and gradient for traffic safety and drainage.

28.4.07 MANUFACTURED HOME PARK STANDARDS:

- A. Lot requirements:
 - 1. All lots of manufactured home spaces in a manufactured home park shall meet the following requirements:
 - a. Manufactured home lots shall be arranged to permit the safe and practical placement and removal of manufactured homes.
 - b. The minimum lot width shall not be less than 50 feet and the minimum lot area shall be 5,000 square feet for single-wide manufactured homes and 6,000 square feet for double-wide manufactured homes.
- B. Minimum standards:
 - 1. All manufactured homes shall be located at least 25 feet from any property boundary line abutting upon a public street or highway right-of-way and at least 15 feet from the other outer boundaries of the park.
 - 2. All buildings, structures and manufactured homes shall be located at least 10 feet from the street providing access to it.

C. Lot coverage:

A manufactured home shall not occupy more than one-third of the lot area. The total area occupied by a manufactured home and its roofed accessory buildings and structures shall not exceed two-thirds of the area of the lot.

D. Distance between manufactured homes:

No manufactured home nor its attached structures, such as awnings or carports, shall be located within 20 feet of any other manufactured home or its attached structures.

E. Detached accessory structures:

No detached structure, such as a storage shed, shall be located within five feet of any manufactured home or its attached structures.

F. Parking spaces required:

A minimum of two parking spaces shall be provided for each manufactured home lot. In addition, guest parking at the ratio of one space for each five lots and vehicle storage parking at the ratio of one space per each 10 lots shall be provided. Each parking space shall measure 9 feet by 20 feet.

G. Marking of manufactured home lots:

The limits of each manufactured home lot shall be clearly marked on the ground by permanent flush stakes, markers or other suitable means. Location of lot limits on the ground shall be approximately the same as shown on the approved plans.

H. Manufactured homes to be skirted:

Each manufactured home shall be skirted within 60 days after it is moved upon a lot within the manufactured home park. Said skirting shall be of a fire resistant material complementary to that of which the manufactured home exterior is constructed and shall be attached to the manufactured home.

I. Electrical systems:

All electrical lines serving the subdivision shall be buried underground.

28.4.08

RECREATIONAL VEHICLE PARK AND CAMPGROUND STANDARDS:

The provisions of this chapter shall apply to recreational vehicle parks and campgrounds, except as follows:

A. Roadway width:

The following standards shall govern the roadway widths:

1. A minimum 10 feet roadway width shall be provided for one-way streets or roads within the park/campground, provided such street:
 - a. Does not exceed 500 feet in length;
 - b. Has no on-street parking;
 - c. Serves 25 or less spaces.
2. Otherwise the following shall apply:
 - a. 24 feet if no on-street parking is proposed;
 - b. 28 feet if parking is proposed on one side of the street;
 - c. 36 feet if parking is proposed on both sides of the street.
 - d. Minimum centerline curvature radius of 45 feet.

B. Recreational vehicle space:

The lots or recreation vehicle spaces shall meet the following standards:

1. Minimum lot (space) width = 25 feet.
2. Minimum lot (space) area = 1,500 square feet.

C. Distance between recreational vehicles:

The distance between the recreational vehicles shall not be less than 15 feet. This includes any fold-out or pop-out portion or awnings attached to the vehicle.

CHAPTER 28.5 - EVASION CRITERIA FOR LAND EXEMPT FROM SUBDIVISION REVIEW

28.5.01 PURPOSE:

The Montana Subdivision and Platting Act (MSPA) provides that certain divisions of land, which would otherwise constitute subdivisions, are exempt from local subdivision review and approval, unless the use of the exemption is an attempt to evade the MSPA. The exemptions are found in Part 2 of Title 76, Chapter 3. These regulations address the more commonly used exemptions.

28.5.02 CRITERIA TO DETERMINE WHETHER A PROPOSAL IS AN ATTEMPT TO EVADE THE MONTANA SUBDIVISION AND PLATTING ACT:

The governing body and its agents, when determining whether an exemption is claimed for the purpose of evading the MSPA, shall consider all of the surrounding circumstances. These circumstances include the nature of the claimant's business, the prior history of the particular tract in question, the proposed configuration of the tracts if the proposed exempt transaction is completed and any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review.

28.5.03 REMAINING PARCELS OF LAND:

- A. Occasionally parcels of land are created after the rest of the land has been subdivided or after an exemption is used to divide the land. The term "remainder" has been used to refer to that portion of an original tract which is not itself created for transfer but which is left after other parcels are segregated for transfer.
- B. A "remainder" less than 160 acres in size, contiguous to a proposed subdivision, will be considered a lot in that subdivision and will not evade review as a "remainder." If an exemption by a certificate of survey is used, the remaining tract of land is a separate parcel which must be surveyed.
- C. A landowner claiming that a parcel is a "remainder" shall present evidence that the parcel is in fact intended to be retained and not to be transferred. Examples of such evidence include the existence of the landowner's residence on the parcel or building plans for a structure to be built by or for the landowner.

CHAPTER 28.6 - MONUMENTATION

- 28.6.01** The terms "Monument" and "Permanent Monument", as used in these Regulations, shall mean any structure of masonry, metal or other permanent material placed in the ground, which is exclusively "identifiable" as a monument to a survey point, expressly placed for surveying reference.
- 28.6.02** All permanent control monuments set to control or mark the boundaries of any division shall be not less than one-half inch diameter by 24 inches in length with a cap not less than one and one-quarter inch diameter marked in a permanent manner with the name and/or registration number of the registered land surveyor in charge of the survey. A cap of the above dimensions may be set firmly in concrete.
- 28.6.03** Prior to filing any subdivision plat for record, the land surveyor shall confirm the location of sufficient monuments to reasonably assure the perpetuation or re-establishment of any corner or boundary of re-tracement of the survey. The surveyor shall clearly identify on the face of the plat or certificate of survey, all monuments used in the survey, and the description shall be sufficient to identify the monuments without reference to another record of survey.
- 28.6.04** All monuments must be set prior to filing a plat or certificate of survey except those monuments which will be disturbed by the installation of improvements. Such monuments may be set subsequent to filing if the surveyor certifies that they will be set before a specified date.
- 28.6.05** The plat or certificate shall clearly show the relationship of all adjacent monuments of record and the relationship of the monuments of record to monuments set after filing.
- 28.6.06** Monuments not less than three-eighths inch in diameter and 18 inches in length and marked with the name and/or registration number of the registered land surveyor in charge of the survey, shall be set at the following locations:
- A. At each corner and angle point of all lots, blocks or parcels of land created.
 - B. At every point of intersection of the outer boundary of the subdivision with an existing or created right-of-way line.
 - C. At every point of curve, point of tangency, point of reversed curve, or point of compounded curve on each right-of-way line established.
- 28.6.07** When the placement of a required monument at its proper location is impractical, the surveyor may set a reference monument near that point. Such a reference monument has the same status as other monuments of record if its location is properly shown. Where any point requiring monumentation shall be confirmed by the land surveyor if used, and if so confirmed, shall likewise be considered a monument of record when properly shown and described on the plat filed.

28.6.08

If the land surveyor uses any previously established monument, he must confirm the location of the monument. If properly confirmed and shown and described on the filed plat, such a monument shall be considered a monument of record.

CHAPTER 28.7 - ADMINISTRATION**28.7.01 VARIANCES:****A. Hardship:**

The City Council may grant variances from Chapters 28.3 & 28.4 of these regulations when because of particular physical surroundings, shape, or topographical conditions of a specific property, strict compliance would result in undue hardship and when it would not be essential to the public welfare. Such variances must not have the effect of nullifying the intent and purpose of these regulations. The governing body shall not approve variances unless it makes findings based upon the evidence in each specific case that:

1. The granting of the variance(s) will not be detrimental to the public health, safety or general welfare or injurious to other adjoining properties;
2. The conditions on which the request for a variance(s) is based are unique to the property on which the variance is sought and are not applicable generally to other property;
3. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result, as distinguished by a mere inconvenience, if the strict letter of these Regulations is enforced;
4. The variance(s) will not cause a substantial increase in public costs; and
5. The variance(s) will not, in any manner, vary the provisions of any adopted zoning regulations, or Growth Policy.

B. Procedure:

The subdivider shall include with the submission of the preliminary plat, a written statement describing the requested variance and the facts of hardship upon which the request is based. The planning board and City Council shall consider each requested variance at the public meeting or hearing on the preliminary plat.

C. Conditions:

In granting variances, the City Council may require such conditions as will, in its judgment, secure substantially the objectives of these Regulations.

D. Statement of facts:

When any such variance is granted, the motion of approval of the proposed subdivision shall contain a statement describing the variance(s) and the facts and conditions upon which the issuance of the variance(s) is based.

28.7.02 ENFORCEMENT

The final plat shall be filed for record with the County Clerk and Recorder before title to the subdivided land can be sold or transferred in any manner or offered for sale or transfer.

- A. If illegal transfers or offers of any manner are made, the City of Kalispell shall commence action to enjoin further sales, transfers, or offers of sale or transfer and compel compliance with all provisions of the Montana Subdivision and Platting Act and these Regulations.
- B. The cost of such action shall be imposed against the person transferring or offering to transfer the property.

28.7.03 PENALTY FOR VIOLATION:

Any person who shall violate any of the provisions of the Montana Subdivision and Platting Act or these Regulations may be either:

- A. Charged with a misdemeanor punishable by a fine of not less than \$100.00 nor more than \$500.00 or by imprisonment in jail for not more than three months or by both fine and imprisonment. Each sale, lease or transfer of each separate parcel of land in violation of any provision of the Montana Subdivision and Platting Act or these Regulations shall be deemed a separate and distinct offense.
- B. Charged with a civil infraction to be prosecuted under the provisions of Chapter 1, Article 2 of the Kalispell City Code which remedies may include fines as well as an order of abatement.

28.7.04 SCHEDULE OF FEES:

In order to cover costs of reviewing plans, advertising, holding public hearings, and other expenses incidental to the approval of a subdivision, the subdivider shall pay a non-refundable fee at the time of application. The fee schedule will be established by the Kalispell City Council.

28.7.05 AMENDMENT PROCEDURE:

Before the City Council amends these Regulations, they shall:

- A. Hold a public hearing.
- B. Publish a notice advertising the public hearing in a newspaper of general circulation in the city not less than 15 days nor more than 30 days prior to the date of the hearing.
- C. The Council may ask for a recommendation from the Planning Board prior to the council hearing.
- D. The Council may direct the Planning Board to hold a public hearing prior to Council action.

28.7.06 APPEALS:

- A. A person who has filed with the governing body an application for a subdivision under the MSPA and these regulations may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to the MSPA that is arbitrary or capricious.
- B. A party identified in subsection (D) below who is aggrieved by a decision of the governing body to approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision or a final subdivision plat may, within 30 days after the decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made.
- C. For the purposes of this section, “aggrieved” means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.
- D. The following parties may appeal under the provisions of subsection (B) above:
 - 1. The subdivider;
 - 2. A landowner with a property boundary contiguous to the proposed subdivision;
 - 3. A private landowner with property within the county or municipality where the subdivision is proposed if that landowner

can show a likelihood of material injury to the landowner's property or its value;

4. The county commissioners of the county where the subdivision is proposed

CHAPTER 28.8 - SUBDIVISION IMPROVEMENTS GUARANTEE**28.8.01 SUBDIVISION IMPROVEMENTS AGREEMENTS PROCESS:**

All conditions imposed by the City Council at the time of approval of the preliminary plat shall be completed prior to the approval of the final plat. However, the City Council, at its discretion, may allow a subdivider to defer completion of certain required improvements in which case the following procedures and requirements shall apply:

- A. The subdivider shall enter into a subdivision improvements agreement with the city, found in Exhibit E of these regulations, which guarantees the outstanding conditions will be completed.
- B. The subdivider shall certify that at least 2/3 (based on value of completed work) of all required improvements are designed and completed.
- C. The subdivider shall not be allowed to bond for:
 1. Public water or sewer infrastructure improvements including fire hydrants or lift stations which are necessary to serve any lot being final platted.
 2. Roadway improvements including sub base and base work which are necessary to provide an all weather access road to any lot being final platted.
- D. All conditions of approval shall be completed within the time schedule provided in the subdivision improvements agreement. The initial term of an agreement shall not exceed 12 months from date of city council approval however, the City Manager, upon request by the subdivider may extend the agreement in increments not to exceed 12 months if:
 1. The subdivider demonstrates a reasonable hardship exists which is not solely financial, and
 2. The conditions do not place a health or safety burden on existing lots.
 3. The improvements are not necessary for the convenient enjoyment or use of lots which are in the process of developing or being utilized.
- E. The subdivider shall submit plans, specifications and cost estimates, prepared by a registered professional engineer, for the completion of all remaining improvements.
- F. The projected improvements cost shall be 125% of the current costs for completing the improvements.

- G. Upon completion of required improvements, the subdivider shall file with the City a statement certifying that:
1. All required improvements are complete;
 2. The improvements are in compliance with the minimum standards specified by the City Council;
 3. The subdivider knows of no defects in these improvements;
 4. The improvements are free and clear of any encumbrance or liens;
 5. All applicable fees and surcharges have been paid.
- H. The subdivider shall also file with the City:
1. Copies of final construction plans, road profiles, proposed grades, and specifications for improvements, and
 2. Copies of final as-built plans, profiles, grades and specifications for improvements.
 3. A two year warranty bond guaranteeing all new city infrastructure.
- I. The subdivider will provide for inspection of all required public improvements by a registered professional engineer before the City releases the subdivider from the subdivision improvements agreement.
- J. Upon completion of the inspection, the inspecting engineer shall file with the City a statement certifying that the improvements have been completed in the required manner.
- K. Only after the inspecting engineer certifies that improvements are complete and free from defect, and after receipt of other statements detailed above, the City shall release the subdivider from the subdivision improvements agreement.

28.8.02**FAILURE TO SATISFACTORILY COMPLETE IMPROVEMENTS:**

- A. If the City determines that any improvements are not constructed in compliance with the specifications, it shall furnish the subdivider with a list of specific deficiencies and may withhold collateral sufficient to ensure proper completion.
- B. If the City council determines that the subdivider will not construct any or all improvements to required specifications, or within the time limits, it may withdraw

collateral and use these funds to construct the improvements and correct any deficiencies to meet specifications. Unused portions of these funds shall be returned to the subdivider or crediting institution.

28.8.03 ACCEPTABLE FORMS OF IMPROVEMENTS GUARANTEES:

The subdivider shall provide one or more of the following financial security guarantees as approved and accepted by the City Council. The financial guarantee shall equal the amount of the projected cost of installing all required improvements as described in Section 28.8.01. The City shall reduce the bond requirements commensurate with the completion of improvements.

A. Escrow account:

The subdivider shall deposit cash, or collateral readily convertible to cash at face value, either with the City Council or in escrow with a bank. The use of collateral other than cash, and the selection of the bank where the funds are to be deposited must be approved by the City Council.

Where an escrow account is to be used, the subdivider shall give the City Council an agreement with the bank guaranteeing the following:

1. That the funds in the escrow account are to be held in trust until released by the City Council and may not be used or pledged by the subdivider as security for any other obligation during that period.
2. That should the subdivider fail to complete the required improvements; the bank shall immediately make the funds in escrow available to the City Council for completing these improvements.

B. Letter of credit:

Subject to City Council approval, the subdivider shall provide the City Council with a letter of credit from a bank or other reputable institution or individual certifying the following:

1. That the creditor guarantees funds in an amount equal to the projected cost, as approved by the City Council, of completing all required improvements;
2. That if the subdivider fails to complete the specified improvements within the required period, the creditor will immediately pay to the City of Kalispell upon presentation of a sight draft without further action, an amount of cash necessary to finance the completion of those improvements, up to the limit of credit stated in the letter;
3. That the letter of credit may not be withdrawn or reduced in amount until

released by the City Council.

C. Sequential development:

The city may approve an incremental payment or guarantee plan. The 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.

D. Special improvement district:

The City Council may enter into an agreement with the subdivider, and the owners of the property proposed for subdivision if other than the subdivider, that the installation of required improvements will be financed through a special improvement district created pursuant to Title 7, Chapter 12, M.C.A. The agreement must provide that no lots within the subdivision will be sold, rented or leased, and no contract for the sale of lots executed before the improvement district has been created.

The subdivider, or other owners of the property involved, must also petition the City Council to create a special improvement district, which constitutes a waiver by the subdivider or the other owners of the property of the right to protest or petition against the creation of the district under Section 7-12-4110, M.C.A. This waiver must be filed with the County Clerk and Recorder and will be deemed to run with the land.

E. Surety performance bond:

The bond shall be executed by a surety company authorized to do business in the State of Montana and acceptable as a surety to the City Council and countersigned by a Montana agent. The bond shall be payable to the City of Kalispell. The bond shall be in effect until the completed improvements are accepted by the City Council.

F. Other acceptable guarantee(s):

The City Council, at its discretion, may accept any other reasonable guarantee not stated herein, to ensure satisfactory completion of the improvements.

CHAPTER 28.9 - DEFINITIONS

Whenever the following words and phrases appear in these Regulations, they shall be given meaning attributed to them by this Section. When not inconsistent with the context, words used in the present tense shall include the future, the singular shall include the plural and the plural the singular, the word "shall" is always mandatory, and the word "may" indicates a use of discretion in making a decision.

28.9.01 ADJOINING LANDOWNER (ADJACENT PROPERTY OWNER):

The owner of record of a parcel of land that is contiguous, at any point, or land that is separated from the parcel by a road, watercourse or deeded right-of-way.

28.9.02 AGRICULTURE:

All aspects of farming or ranching including the cultivation or tilling of soil; dairying; the production, cultivation, growing, harvesting of agricultural or horticultural commodities; raising of livestock, bees, fur-bearing animals or poultry; and any practices including, forestry or lumbering operations, including preparation for market or delivery to storage, to market, or to carriers for transportation to market.

28.9.03 AGRICULTURAL WATER USER FACILITIES:

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

28.9.04 BLOCK:

A group of lots, tracts or parcels bounded by public streets, railroads, natural features, platted or unplatted lands or a combination thereof.

28.9.05 CERTIFICATE OF SURVEY:

A drawing of a field survey prepared by a registered land surveyor for the purpose of disclosing facts pertaining to boundary locations.

28.9.06 CITY:

The City of Kalispell in Flathead County, Montana.

28.9.07 CITY COUNCIL:

The City Council of the City of Kalispell, Montana.

28.9.08 CLERK AND RECORDER:

The Clerk and Recorder for Flathead County, Montana.

28.9.09 COMMON AREA:

That portion of a subdivision which is reserved for the common use and maintenance of some or all residents. Such a use may include: common mail box facilities, parks, trails, storm water management areas, boulevards and/or infrastructure.

28.9.10 COUNTY:

Flathead County, Montana.

28.9.11 COUNTY COMMISSIONERS:

The Board of County Commissioners of Flathead County, Montana.

28.9.12 COVENANT:

An agreement, in writing, of two or more parties by which any one of the parties pledges to the others that something is done or shall be done.

28.9.13 DEDICATION:

The deliberate appropriation of land by an owner for any general and public use, reserving no rights to the owner which are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

28.9.14 DEVELOPER:

An owner or any person with authorization from the owner, who intends to improve or to construct improvements upon his property. Same as Subdivider.

28.9.15 DIVISION OF LAND:

The segregation of one or more parcels of land from a larger tract or held in single or undivided ownership by transferring, or contracting to transfer, title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcel(s) pursuant to the Montana Subdivision and Platting Act. Provided that where required by the Act, the land upon which an improvement is situated has been subdivided in compliance with the Act, the sale, rent, lease or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land and is not subject to the terms of the Act.

28.9.16 DWELLING UNIT:

One or more rooms designed for, or occupied by, one household for living or sleeping purposes and containing kitchen and bathroom facilities for use solely by one household. All rooms comprising a dwelling unit shall have access through an interior door to other parts of the dwelling unit.

28.9.17 EASEMENT:

A right to use land, other than as a tenant, for a specific purpose; such right being held by someone other than the owner.

28.9.18 ENGINEER (REGISTERED PROFESSIONAL ENGINEER):

A person licensed in conformance with the Montana Professional Engineer Registration Act (Title 37, Chapter 67, M.C.A.) to practice engineering in the State of Montana.

28.9.19 EXAMINING LAND SURVEYOR:

A registered land surveyor duly appointed by the governing body to review surveys and plats submitted for filing.

28.9.20 FIRST MINOR SUBDIVISION:

A proposed minor subdivision from a tract of record that has not been subdivided or created by a subdivision under the MSPA, or has not resulted from a tract of record that has had more than five parcels created from that tract of record under 76-3-201 or 76-3-207, MCA, since July 1, 1973. [76-3-609(2), MCA].

28.9.21 FLOODPLAIN:

The area adjoining a watercourse or drainage way which would be covered by the flood water of a flood of 100 year frequency. A 100 year flood has a one percent chance of occurring in any given year.

28.9.22 FLOODWAY:

The channel of a watercourse or drainage way and those portions of a floodplain adjoining the channel which are reasonably required to carry and discharge the floodwater of any watercourse or drainage way.

28.9.23 GOVERNING BODY:

The City Council, City of Kalispell, Flathead County, Montana.

28.9.24 GROWTH POLICY:

A general long-range plan officially adopted for the Kalispell City Planning Jurisdiction in Flathead County, Montana. Previously known as the Master Plan or Comprehensive Plan.

28.9.25 IMPROVEMENT AGREEMENT:

A contractual agreement that may be required by the governing body to ensure the construction of such improvements as required by local subdivision regulations. The improvement agreement may require collateral to secure the construction of such improvements, such as the deposit of certified funds, irrevocable letters of credit, performance bonds, private or public escrow agreements, or similar financial guarantees.

28.9.26 HAMMER HEAD TURN-AROUND:

A "T" shaped turn-around used at the end of a dead end street which provides three point turn around capability.

28.9.27 IMPROVEMENTS:

Any structure or facility constructed to serve common use by the residents of a subdivision or the general public. The improvements may include parks, streets and roads, parking areas, sidewalks, trails, curbs and gutters, street lighting, utilities and systems for water supply, sewage disposal and drainage.

28.9.28 LEGAL ACCESS:

Where the subdivision abuts a public (city, county or state road) or where the subdivider has obtained adequate and appropriate easements across all necessary properties from a public road to the subdivision.

28.9.29 LOT:

A parcel of land, tract or lot on file and of record in the office of the Clerk and Recorder, Flathead County, Montana, space or other land area created by subdivision for sale, rent, lease or other purpose.

28.9.30 LOT MEASUREMENT:

- A. Lot Depth: The depth (or length) of a lot shall be:
1. If the front and rear lines are parallel, the shortest distance between the lines.
 2. If the front and rear lines are not parallel, the shortest distance between the midpoint of the front lot line and the midpoint of the rear lot line.
 3. If the lot is triangular, the shortest distance between the front lot line and a line

parallel to the front lot line, not less than 10 feet long lying along the rear of the lot but still wholly within the lot.

- B. Lot Rear: The rear property line of a lot is that lot line opposite to the front property line. Where the side property lines of a lot meet in a point, the rear property line shall be assumed to be a line not less than 10 feet long, lying within the lot and parallel to the front property line. In the event that the front property line is a curved line then the rear property line shall be assumed to be a line not less than 10 feet long, lying within the lot and parallel to a line tangent to the front property line at its midpoint.
- C. Lot Front: The front property line of a lot shall be determined as follows:
 - 1. Corner Lot: The front property line of a corner lot shall be the shorter of the two lines adjacent to the streets as platted, subdivided or laid out. Where the lines are equal, the front line shall be that line which is obviously the front by reason of the prevailing custom of the other buildings on the block. If such front is not evident, then either may be considered the front of the lot, but not both.
 - 2. Interior Lot: The front property line of an interior lot shall be the line bounding the street frontage.
 - 3. Through Lot: The front property line of a through lot shall be that line which is obviously the front by reason of the prevailing custom of other buildings in the block. Where such front property line is not obviously evident, the Zoning Administrator shall determine the front property line. Such a lot over 200 feet deep shall be considered, for the purpose of this definition, as two lots, each with its own frontage.
- D. Lot Area: The total horizontal area within the confines of the boundary lines of a lot. Where street easements are located within or bordering a parcel, lot area computation shall not include that area contained within the easement.
- E. Lot Side: The side property lines of a lot are those lot lines connecting the front and rear property lines of a lot.

28.9.31 LOT TYPES:

- A. Corner Lot: A lot located at the intersection of two streets.
- B. Interior Lot: A lot with frontage on only one street.
- C. Irregular Lot (Flag Lot): An irregularly shaped lot typified by being almost entirely land-locked and having limited access and/or no direct frontage. Access to a public or private street is typically by an extended strip of land either deeded or by easement.

- D. Irregular Lot (Pie Lot): An irregularly shaped lot which at the front lot line contains minimal frontage and a substandard lot width but as the depth increases, side lot lines rapidly expand to a legal width.
- E. Through Lot: A lot with double frontage where the front lot line faces one public street and the rear lot line faces another public street.
- F. Sublot: A lot intended to contain an attached, single-family residence. A townhouse lot. (See zoning def.)

28.9.32 MANUFACTURED HOME:

A single family dwelling, built off-site in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding materials that are customarily used on site-built homes, and is in compliance with the applicable prevailing standards of the United States Department of Housing and Urban Development at the time of its production.

28.9.33 MANUFACTURED HOME LOT:

A designated portion of a manufactured home park designed for the accommodation of one manufactured home and its accessory buildings or structures for the exclusive use of the occupants.

28.9.34 MANUFACTURED HOME PARK:

A parcel of land under single ownership on which two or more spaces are rented or leased for the placement of manufactured homes. The space size requirements, setbacks, and other such dimensions of a mobile home park shall be established by the City of Kalispell Subdivision Regulations.

28.9.35 MAJOR SUBDIVISION:

A subdivision that creates six or more lots/spaces/units, as well as the second or successive minor subdivision where a cumulative total of six (6) or more lots/spaces/units is proposed from the original "tract of record" in existence on July 1, 1973.

28.9.36 MINOR SUBDIVISION:

A subdivision that creates five or fewer lots/spaces/units and this plat and all previous minor plats proposed from the original "tract of record" in existence on July 1, 1973 do not exceed a total of five (5) lots/spaces/units.

28.9.37 MONUMENT (PERMANENT MONUMENT):

A structure of masonry, metal or other permanent material placed in the ground, which is exclusively identifiable as a monument to a survey point, expressly placed for surveying reference.

28.9.38 NATURAL VEGETATIVE BUFFER

Areas along water bodies that are vegetated with many plant species including grasses, shrubs and trees. The natural term refers to plant species that are naturally found along local riparian areas and allowed to grow and establish plant communities that are found along undisturbed banks. These areas are not manicured landscapes, but are allowed to grow in a natural state.

28.9.39 OPEN SPACE:

Any part of a lot unobstructed from the ground upward. Any area used for parking or maneuvering of automotive vehicles or storage of equipment or refuse shall not be deemed open space.

28.9.40 OVERALL DEVELOPMENT PLAN:

The plan for a subdivision design for a single tract proposed to be subdivided in stages.

28.9.41 PHYSICAL ACCESS:

A constructed road that conforms to the local subdivision standards providing access from a public (city, county or state) road to the subdivision.

28.9.42 PLANNED UNIT DEVELOPMENT (PUD):

A land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use. A PUD allows for flexibility of design, setting or density, in exchange for improved overall site design.

28.9.43 PLANNING BOARD:

The Kalispell City Planning Board, formed pursuant to Title 76, Chapter 1, M.C.A.

28.9.44 PLAT:

A graphic representation of a subdivision prepared by a licensed surveyor showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications:

A. Preliminary plat:

A neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision which furnishes a basis for review by the governing body.

B. Final plat:

The final drawing of the subdivision and dedication required to be prepared for filing for record with the County Clerk and Recorder and containing all elements and requirements set forth in these Regulations and the Montana Subdivision and Platting Act (Title 76, Chapter 3, M.C.A.).

C. Amended plat:

The final drawing of any change to a platted subdivision filed with the County Clerk and Recorder required to be prepared for filing for record with the County Clerk and Recorder and containing all elements and requirements set forth in these Regulations and the Montana Subdivision and Platting Act (Title 76, Chapter 3, M.C.A.).

D. Vacation of plat:

A plat which has been voided under the provisions of MCA 76-3-305, 7-5- 2501, 7-5-2502, 7-14-2616 (1) and/or (2), 7-14-2617, 7-14-4114 (1) and/or (2), and 7-14-3115.

28.9.45 POND:

A permanent or seasonal body of open water generally smaller and shallower than lakes.

28.9.46 PUBLIC HEALTH AND SAFETY:

The prevailing healthful, sanitary condition of well being for the community at large. Conditions that relate to public health and safety include but are not limited to: disease control and prevention; emergency services; environmental health; flooding, fire or wildfire hazards, rock falls or landslides, unstable soils, steep slopes, and other natural hazards; high voltage lines or high pressure gas lines; and air or vehicular traffic safety hazards.

28.9.47 PUBLIC UTILITY:

A county or consolidated city and county water or sewer district, as provided for in Title 7, chapter 13, parts 22 & 23 MCA.

28.9.48 RECREATIONAL VEHICLE PARK:

A place used for public camping where persons can rent space to park individual camping trailers, pick-up campers, motor homes, travel trailers, or automobiles for transient dwelling purposes.

28.9.49 RECREATIONAL VEHICLE SPACE:

A designated portion of a recreational vehicle park designed for placement of a single recreational vehicle and the exclusive use of its occupants.

28.9.50 REGISTERED LAND SURVEYOR:

A person licensed in conformance with the Montana Professional Engineers' Registration Act (Title 37, Chapter 67, M.C.A.) to practice surveying in the State of Montana.

28.9.51 RIGHTS-OF-WAY:

A linear public way established or dedicated for public purposes by a duly recorded plat, deed, easement, grant, prescription, condemnation, governmental authority or by operation of law, intended to be occupied by a street, non-motorized vehicle path, railroad, electric transmission lines, water line, sanitary sewer line, storm sewer line, or other similar uses.

28.9.52 SIDEWALK:

A paved walkway designed to provide for safe and convenient circulation of pedestrians.

28.9.53 SLOUGH:

Sloughs or old meander channels are generally narrow, shallow water bodies that are either connected to or were previously connected to a river system. Typically they contain stagnant water, are generally influenced by ground water and provide wetlands habitat.

28.9.54 STATE:

State of Montana.

28.9.55 STREET TYPES:

For purposes of these Regulations, street types are defined as follows:

A. Alley:

A service way, open to public travel and dedicated to public use, affording a secondary means of vehicular access to abutting property and not intended for general traffic circulation.

B. Arterial:

A street or road having the primary function of moving traffic and the secondary function of providing access to adjacent land. Arterials generally carry relatively large volumes of traffic. Arterials have two to four lanes of traffic and provide limited access to abutting property.

C. Collector:

A street or road having the equally important functions of moving traffic and providing access to adjacent land. Collector streets have two traffic lanes and two parking lanes.

D. Cul-de-Sac:

A street having only one outlet for vehicular traffic and terminating in a turn-around area.

E. Dead End Street:

A street having only one outlet for vehicular traffic.

F. Frontage Access (Service Road):

A local or collector street, usually parallel and adjacent to an arterial or major collector, which provides access to abutting properties and controls traffic access to arterials or collectors.

G. Half-Street:

A portion of the width of a street, usually along the outside perimeter of a subdivision, where the remaining portion of the street must be located on adjacent property.

H. Local Streets:

A street or road having the primary function of providing access to abutting properties, and the secondary function of moving traffic. Local streets having two traffic lanes may have one or two parking lanes.

I. Loop:

A local street which begins and ends on the same street, generally used for access to properties.

J. Private:

A street or road which provides primary access to a lot or property but is not owned or maintained by a government agency.

K. Secondary Access/Emergency Access Road:

A local road whose primary function is to serve as an alternate access in or out of a development in emergency situation for both emergency vehicles and the public. Such roads may be built to a lesser standard than typically required for subdivision roads, but if constructed to a lesser standard, it does not qualify as a primary access road or as providing legal access to a lot.

28.9.56 SUBDIVIDER:

Any person, firm or corporation, or other entity who causes land to be subdivided or who proposes a subdivision of land.

28.9.57 SUBDIVISION:

A division of land or land so divided, which creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased or otherwise conveyed, and includes any re-subdivision and further includes any condominium or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles, or manufactured homes.

28.9.58 SUBSEQUENT MINOR SUBDIVISION:

Any subdivision of five or fewer parcels that is not a first minor subdivision.

28.9.59 SWALE:

A drainage channel or shallow depression designed to direct surface water flow.

28.9.60 TOWNHOUSE:

A building or structure that has two or more dwelling units erected in a row as a single building, and where the owner of each unit may exclusively own the land underneath the unit in addition to jointly owning the common areas in the development.

28.9.61 TRACT:

Land area proposed to be subdivided.

28.9.62 TRACT OF RECORD:

A parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the County Clerk and Recorder's Office.

28.9.63 VICINITY SKETCH:

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

28.9.64 WILDLIFE:

Those animals that are not domesticated or tamed, or as may be defined in a Growth Policy.

28.9.65 WILDLIFE HABITAT:

The place or area where wildlife naturally lives or travels through.

APPENDIX A

PRELIMINARY PLAT

I. CONTENTS OF THE PRELIMINARY PLAT:

The preliminary plat may be comprised of one (1) or more sheets. Each sheet shall be either 18" x 24" or 24" x 36" in size and shall be drawn to a scale not less than 200 feet to an inch. The following information shall be shown on the face of the preliminary plat:

- A. Name and location of the subdivision, scale and north point;
- B. Location of all section corners or subdivision corners pertinent to the subdivision boundary;
- C. Exterior boundaries of the tract to be subdivided including bearings and distances sufficient to locate the exact area proposed for subdivision;
- D. All lots and blocks designated by numbers, approximate dimensions scaled to the nearest foot, and the area of each lot estimated to the nearest 0.1 acre;
- E. Ground contours for the tract in accordance to the following requirements:

<u>Where the Average Slope of the Entire Site Is</u>	<u>Contour Intervals for the Entire Plat Shall Be</u>
Under 10%	Two (2) feet
10% - 15%	Five (5) feet
Over 15%	Ten (10) feet

If a uniform contour interval is not practical, the contour interval may be changed for steep areas, if such a change is clearly identifiable through shading or other appropriate graphic technique;

- F. All existing and adjoining streets and alleys, avenues, roads and highway, and width of the right-of-way with existing and proposed street names and access points from the nearest public roads;
- G. Any existing and proposed utilities, utility easements and right-of-way easements located or proposed to be located on or adjacent to the tract, including description of their width and purpose;
- H. Location, boundaries, dimensions and areas of any parks or areas dedicated for common or public use;

- I. Location and size of existing buildings, structures and improvements, if to be retained;
- J. Designated one hundred year (100-year) floodway and/or floodplain area, if any;
- K. Location and size of all natural and environmental features on the site including rivers, streams, springs, ponds, wetlands and lakes.

II. SUPPLEMENTS TO THE PRELIMINARY PLAT:

A. VICINITY MAP(S):

One or more vicinity map(s) showing:

- 1. Ingress and egress to the subdivision from the adjoining or nearest public roads;
- 2. Any rivers, streams, creeks or wetlands adjoining or in the vicinity of the proposed subdivision;
- 3. All tracts, lots or land parcels adjoining the proposed subdivision together with the name and address of the owner of each tract, lot or land parcel verified by the County Clerk and Recorder or a title company. Where the subdivision abuts a public right-of-way, or water course less than 150 feet in width, the properties across such right-of-way or water course shall be considered as adjacent.
- 4. Names of any adjoining platted subdivisions and/or numbers of adjoining Certificates of Survey on record in the Office of the Clerk and Recorder.
- 5. Location of any buildings, railroads, power lines, towers, roads, and other land uses.
- 6. Any existing or proposed zoning.

B. COMMON AREA MANAGEMENT PLAN:

If any common area is proposed to be part of the subdivision, the subdivider shall submit a plan for long term management of these areas. If common property and/or facilities within the subdivision are to be maintained by an association of the property owners, the subdivider shall submit a draft of the restrictions which will govern the association. These restrictions shall, at a minimum, provide that:

- 1. The property owners association will be formed prior to sale of any lots within the subdivision;
- 2. Membership is mandatory for all property owners in the subdivision;

3. The association is responsible for any liability insurance, payment of taxes on common property and maintenance of common use areas and facilities;

C. ENVIRONMENTAL ASSESSMENT:

An environmental assessment report shall accompany the preliminary plat, unless exempted pursuant to subsections 1, 2 and 3 of this section. Appendix "B" of these Regulations provides the format of and the considerations and criteria to be address in the environmental assessment.

The requirement for submittal of the "environmental assessment" may be partially or completely waived by the planning staff at the time of the pre-application meeting when the proposed subdivision is:

1. Totally within the Kalispell Growth Policy boundary area adopted pursuant to Title 76, Chapter 1, M.C.A., wherein zoning regulations have been adopted pursuant to Part 3 of Chapter 2, Title 76 (or 76-2-301), M.C.A. and a long range development program of public works projects pursuant to 76-1-601, M.C.A., has been adopted;
2. The first minor subdivision created from a tract of record;
3. In an area for which a growth policy has been adopted pursuant to Chapter 1, Title 76, M.C.A., and the proposed subdivision is in compliance with the plan, or if the subdivision contains fewer than ten (10) parcels and less than 20 acres, the Planning Board may exempt the subdivider from the completion of all or any portion of the environment assessment.

D. PHASED PROJECTS:

The applicant, as part of the preliminary plat approval, may propose to delineate on the preliminary plat two or more final plat filing phases and establish the schedules of the preliminary plat review and approval.

1. Each phase must be free-standing, that is, fully capable of functioning with all the required improvements in place in the event the future phases are not completed or completed at a much latter time.
2. A phasing plan must be submitted which includes:
 - a. A preliminary plat that clearly numbers and shows each individual phase,
 - b. A time frame for the development of each phase,

- c. A street and utility extension plan for each phase. Said plan is premised on the understanding that each phase is intended to be free standing on its own merits should additional phases not occur.
 - (1) As such, certain streets and utility extensions may be required to be extended beyond a particular phase for safety and service purposes.
 - (2) Temporary dead end streets are not allowed. Where a street temporarily dead ends, a temporary cul-de-sac may be required. If said street exceeds cul-de-sac standards for length or is critical to the traffic flow of the area, it may be required to be extended beyond the immediate phase.

APPENDIX B

ENVIRONMENTAL ASSESSMENT

GENERAL INSTRUCTIONS

This Environmental Assessment format shall be used by the applicant as a guide in compiling a thorough description of the potential impacts of the proposed subdivision. Each question pertinent to the proposal must be addressed in full (both maps and text); those questions not applicable shall be so stated. Incomplete Environmental Assessments will not be accepted.

The sources of information for each section of the Assessment shall be identified. All Environmental Assessments shall contain the signature, date of signature and mailing address of the owner of the property and the person, or persons, preparing the report.

PART I – PROPERTY DESCRIPTION

1. Surface Water

Locate on a plat overlay or sketch map:

- A. Any natural water systems such as streams, rivers, intermittent streams, lakes or marshes (also indicate the names and sizes of each).
- B. Any artificial water systems such as canals, ditches, aqueducts, reservoirs, and irrigation systems (also indicate the names, sizes and present uses of each).
- C. Time when water is present (seasonally or all year).
- D. Any areas subject to flood hazard, or in delineated 100 year floodplain.
- E. Describe any existing or proposed stream bank alteration from any proposed construction or modification of lake beds or stream channels. Provide information on location, extent, type and purpose of alteration, and permits applied for.

2. Groundwater

Using available data, provide the following information:

- A. The minimum depth to the water table or to the historic water table and identify dates when depths were determined. What is the location and depth of all aquifers which may be affected by the proposed subdivision? Describe the location of known aquifer recharge areas which may be affected.
- B. Describe any steps necessary to avoid depletion or degradation of groundwater recharge areas.

3. Topography, Geology and Soils

- A. Provide a map of the topography of the area to be subdivided, and an evaluation of suitability for the proposed land uses. On the map identify any areas with highly erodible soils or slopes in excess of 15% grade. Identify the lots or areas affected. Address conditions such as:
 - i Shallow bedrock
 - ii Unstable slopes
 - iii Unstable or expansive soils

iv Excessive slope

- B. Locate on an overlay or sketch map:
 - i Any known hazards affecting the development which could result in property damage or personal injury due to:
 - a. Falls, slides or slumps -- soil, rock, mud, snow.
 - b. Rock outcroppings
 - c. Seismic activity.
 - d. High water table
- C. Describe measures proposed to prevent or reduce these hazards.
- D. Describe the location and amount of any cut or fill more than three feet in depth. Indicate these cuts or fills on a plat overlay or sketch map. Where cuts or fills are necessary, describe plans to prevent erosion and to promote vegetation such as replacement of topsoil and grading.

4. Vegetation

- A. On a plat overlay or sketch map:
 - i. Indicate the distribution of the major vegetation types, such as marsh, grassland, shrub, coniferous forest, deciduous forest, mixed forest.
 - ii. Identify the location of critical plant communities such as:
 - a. Stream bank or shoreline vegetation
 - b. Vegetation on steep, unstable slopes
 - c. Vegetation on soils highly susceptible to wind or water erosion
 - d. Type and extent of noxious weeds
- B. Describe measures to:
 - i. Preserve trees and other natural vegetation e.g. locating roads and lot boundaries, planning construction to avoid damaging tree cover.
 - ii. Protect critical plant communities e.g. keeping structural development away from these areas, setting areas aside for open space.
 - iii. Prevent and control grass, brush or forest fires e.g. green strips, water supply, access.
 - iv. Control and prevent growth of noxious weeds

5. Wildlife

- A. Identify species of fish and wildlife use the area affected by the proposed subdivision.
- B. On a copy of the preliminary plat or overlay, identify known critical wildlife areas, such as big game winter range, calving areas and migration routes; riparian habitat and waterfowl nesting areas; habitat for rare or endangered species and wetlands.
- C. Describe proposed measures to protect or enhance wildlife habitat or to minimize degradation (e.g. keeping buildings and roads back from shorelines; setting aside wetlands as undeveloped open space).

6. Land Use

- A. Describe the existing historical use of the site.
- B. Describe any comprehensive plan recommendations and other land use regulations on and adjacent to the site. Is zoning proposed? Is annexation proposed?
- C. Describe the present uses of lands adjacent to or near the proposed development. Describe how the subdivision will affect access to any adjoining land and/or what measures are proposed to provide access.
- D. Describe the basis of the need for the subdivision. How much development of a similar nature is, or is not, available in the area?
- E. Describe any health or safety hazards on or near the subdivision (mining activity, high voltage lines, gas lines, agricultural and farm activities, shooting ranges, septage disposal operations, etc.) Any such conditions should be accurately described and their origin and location identified.
- F. Describe any on-site uses creating a nuisance (unpleasant odor, unusual noises, dust, smoke, etc.). Any such conditions should be accurately described and their origin and location identified.

PART II - SUMMARY OF PROBABLE IMPACTS

Summarize the effects of the proposed subdivision on each topic below. Provide responses to the following questions and provide reference materials as required:

1. Effects on Agriculture

- A. Is the proposed subdivision or associated improvements located on or near prime farmland or farmland of statewide importance as defined by the Natural Resource Conservation Service? If so, identify each area on a copy of the preliminary plat.
- B. Describe whether the subdivision would remove from production any agricultural or timber land.
- C. Describe possible conflicts with nearby agricultural operations, e.g., residential development creating problems for moving livestock, operating farm machinery, operating septage disposal sites, maintaining water supplies, controlling weeds or applying pesticides; agricultural operations suffering from vandalism, uncontrolled pets or damaged fences.
- D. Describe possible nuisance problems which may arise from locating a subdivision near agricultural or timber lands.
- E. Describe effects the subdivision would have on the value of nearby agricultural lands.

2. Effects on Agricultural Water User Facilities

- A. Describe conflicts the subdivision would create with agricultural water user facilities, e.g. residential development creating problems for operating and maintaining irrigation systems, and whether agricultural water user facilities would be more subject to vandalism or damage because of the subdivision.
- B. Describe possible nuisance problems which the subdivision would generate with regard to agricultural water user facilities, e.g. safety hazards to residents or water problems from irrigation ditches, head gates, siphons, sprinkler systems, or other agricultural water user facilities.

3. Effects on Local Services

- A. Indicate the proposed use and number of lots or spaces in each:
- Residential, single family
 - Residential, multiple family
 - Types of multiple family structures and number of each, e.g. duplex, 4-plex
 - Planned unit development (No. of units)
 - Condominium (No. of units)
 - Mobile Home Park
 - Recreational Vehicle Park
 - Commercial or Industrial
 - Other (Please describe)
- B. Describe the additional or expanded public services and facilities that would be required of local government or special districts to serve the subdivision.
- i. Describe additional costs that would result for services such as roads, bridges, law enforcement, parks and recreation, fire protection, water, sewer and solid waste systems, schools or busing, (including additional personnel, construction, and maintenance costs).
 - ii. Who would bear these costs, e.g. all taxpayers within the jurisdiction, people within special taxing districts, or users of a service?
 - iii. Can the service providers meet the additional costs given legal or other constraints, e.g. statutory ceilings on mill levies or bonded indebtedness?
 - iv. Describe off-site costs or costs to other jurisdictions may be incurred, e.g. development of water sources or construction of a sewage treatment plant; costs borne by the municipality.
- C. Describe how the subdivision allows existing services, through expanded use, to operate more efficiently, or makes the installation or improvement of services feasible, e.g. allow installation of a central water system, or upgrading a rural road.
- D. What are the present tax revenues received from the unsubdivided land?
- i. By the County
 - ii. By the municipality if applicable
 - iii. By the school(s)
- E. Provide the approximate revenues received by each above taxing authority if the lots are reclassified, and when the lots are all improved and built upon. Describe any other taxes that would be paid by the subdivision and into what funds.
- F. Would new taxes generated from the subdivision cover additional public costs?
- G. How many special improvement districts would be created which would obligate local government fiscally or administratively? Are any bonding plans proposed that would affect the local government's bonded indebtedness?

4. Effects on the Historic or Natural Environment

- A. Describe and locate on a plat overlay or sketch map known or possible historic, paleontological, archaeological or cultural sites, structures, or objects that may be affected by the proposed subdivision.
- B. How would the subdivision affect surface and groundwater, soils, slopes, vegetation, historical or archaeological features within the subdivision or on adjacent land? Describe plans to protect these sites.

- i. Would any stream banks or lake shorelines be altered, streams rechanneled or any surface water contaminated from sewage treatment systems, run-off carrying sedimentation, or concentration of pesticides or fertilizers?
 - ii. Would groundwater supplies likely be contaminated or depleted as a result of the subdivision?
 - iii. Would construction of roads or building sites require cuts and fills on steep slopes or cause erosion on unstable, erodible soils? Would soils be contaminated by sewage treatment systems?
 - iv. Describe the impacts that removal of vegetation would have on soil erosion, bank, or shoreline instability.
 - v. Would the value of significant historical, visual, or open space features be reduced or eliminated?
 - vi. Describe possible natural hazards the subdivision could be subject to, e.g., natural hazards such as flooding, rock, snow or land slides, high winds, severe wildfires, or difficulties such as shallow bedrock, high water table, unstable or expansive soils, or excessive slopes.
- C. How would the subdivision affect visual features within the subdivision or on adjacent land? Describe anticipated efforts to visually blend the proposed development with the existing environment, e.g. use of appropriate building materials, colors, road design, underground utilities, and revegetation of earthworks.

5. Effects on Wildlife and Wildlife Habitat

- A. Describe what impacts the subdivision or associated improvements would have on wildlife areas such as big game wintering range, migration routes, nesting areas, wetlands, or important habitat for rare or endangered species.
- B. Describe the effect that pets or human activity would have on wildlife.

6. Effects on the Public Health and Safety

- A. Describe any health or safety hazards on or near the subdivision, such as natural hazards, lack of water, drainage problems, heavy traffic, dilapidated structures, high pressure gas lines, high voltage power lines, or irrigation ditches. These conditions, proposed or existing, should be accurately described with their origin and location identified on a copy of the preliminary plat.
- B. Describe how the subdivision would be subject to hazardous conditions due to high voltage lines, airports, highways, railroads, dilapidated structures, high pressure gas lines, irrigation ditches, and adjacent industrial or mining uses.
- C. Describe land uses adjacent to the subdivision and how the subdivision will affect the adjacent land uses. Identify existing uses such as feed lots, processing plants, airports or industrial firms that could be subject to lawsuits or complaints from residents of the subdivision.
- D. Describe public health or safety hazards, such as dangerous traffic, fire conditions, or contamination of water supplies that would be created by the subdivision.

PART III - COMMUNITY IMPACT REPORT

Provide a community impact report containing a statement of estimated number of people coming into the area as a result of the subdivision, anticipated needs of the proposed subdivision for public facilities and services, the increased capital and operating cost to each affected unit of local

government. Provide responses to each of the following questions and provide reference materials as required.

1. Education and Busing

- A. Describe the available educational facilities that would serve this subdivision.
- B. Estimate the number of school children that will be added by the proposed subdivision. Provide a statement from the administrator of the affected school system indicating whether the increased enrollment can be accommodated by the present personnel and facilities and by the existing school bus system. If not, estimate the increased expenditures that would be necessary to do so.

2. Roads and Maintenance

- A. Estimate how much daily traffic the subdivision, when fully occupied, will generate on existing streets and arterials.
- B. Describe the capability of existing and proposed roads to safely accommodate this increased traffic.
- C. Describe increased maintenance problems and increased cost due to this increase in volume.
- D. Describe proposed new public or private access roads including:
 - i. Measures for disposing of storm run-off from streets and roads.
 - ii. Type of road surface and provisions to be made for dust.
 - iii. Facilities for streams or drainage crossing (e.g. culverts, bridges).
 - iv. Seeding of disturbed areas.
- E. Describe the closing or modification of any existing roads.
- F. Explain why road access was not provided within the subdivision, if access to any individual lot is directly from arterial streets or roads.
- G. Is year-round access by conventional automobile over legal rights-of-way available to the subdivision and to all lots and common facilities within the subdivision? Identify the owners of any private property over which access to the subdivision will be provided.
- H. Estimate the cost and completion date of the system, and indicate who will pay the cost of installation, maintenance and snow removal.

3. Water, Sewage, and Solid Waste Facilities

- A. Briefly describe the water supply and sewage treatment systems to be used in serving the proposed subdivision, e.g. methods, capacities, locations.
- B. Provide information on estimated cost of the system, who will bear the costs, and how the system will be financed.
- C. Where hook-up to an existing system is proposed, describe estimated impacts on the existing system, and show evidence that permission has been granted to hook up to the existing system.
- D. All water supply and sewage treatment plans and specifications will be reviewed and approved by the Department of Environmental Quality (DEQ) and should be submitted using the appropriate DEQ application form.
- E. Describe the proposed method of collecting and disposing of solid waste from the development.
- F. If use of an existing collection system or disposal facility is proposed indicate the name and location of the facility.

4. Fire and Police Protection

- A. Describe the fire and police protection services available to the residents of the proposed subdivision including number of personnel and number of vehicles or type of facilities for:
 - i. Fire protection -- is the proposed subdivision in an existing fire district? If not, will one be formed or extended? Describe what fire protection procedures are planned?
 - ii. Law Enforcement protection –is the proposed subdivision within the jurisdiction of a County Sheriff or municipal police department
- B. Can the fire and police protection service needs of the proposed subdivision be met by present personnel and facilities? If not, describe the additional expenses that would be necessary to make these services adequate, and who would pay the costs?

5. Parks and Recreation Facilities

- A. Describe park and recreation facilities to be provided within the proposed subdivision and other recreational facilities that will serve the subdivision.
- B. List other parks and recreation facilities or sites in the area and their approximate distance from the site.
- C. If cash-in-lieu of parkland is proposed, state the purchase price per acre or current market value (values stated must be no more than 12 months old).

6. Payment for Extension of Capital Facilities

- A. Indicate how the subdivider will pay for the cost of extending capital facilities resulting from expected impacts directly attributable to the subdivision.

APPENDIX C

FINAL ENGINEERING PLANS SUBMITTAL

I. CONTENTS OF THE FINAL ENGINEERING AND R/W IMPROVEMENTS PLAN

- A. Prior to submitting a final plat application the applicant shall submit the following in accordance with the conditions of the approved preliminary plat:
1. Three complete sets of final engineering plans for all proposed public infrastructure listed below:
 - a. Street Improvements, including roadway, curb and gutter, boulevard, sidewalk, pedestrian trail and all improvements associated with and immediately adjacent to the right-of-way.
 - b. Water System Improvements, including all pipes, valves, fittings, hydrants and all components associated with the water system.
 - c. Sanitary Sewer System Improvements, including all pipe, valves, fittings, lift station(s) and all components associated with the sewer system.
 - d. Storm Water System Improvements, including all pipe, inlets, cleanouts, manholes, detention basins, retention basins, water quality treatment facilities and all components associated with the storm water system.
 - e. Street Light Plan, including the location of all pedestals, lights, boxes and all components associated with the street light plan.
 2. Three copies of the Overall Municipal Utility Plan showing all components of individual utilities on a single sheet. The plan shall be of sufficient size to clearly show all municipal utilities, and shall be no smaller than D-size (26" X 24"), unless allowed the City engineer.
 3. Boulevard landscape plan.
 4. Parks and open space plan if required.
 5. In addition, any conditions of preliminary plat approval which involve construction in the public R/W or which modifies any public infrastructure or public utility work must be integrated into the submittal package.
 6. Engineering plans submitted for review and approval shall meet the standards and specifications provided in the current editions of the following documents:
 - a. Montana Public Works Standards;
 - b. City of Kalispell Standards for Design and Construction;
 - (1) Any discrepancies between the Montana Public Works Standard Specification and the City of Kalispell Standards for Design and Construction shall be resolved in favor of the City Of Kalispell Standards for Design and Construction.
 - c. Manual on Uniform Traffic control Devices;

- d. Montana Department of environmental Quality, circulars 11& 2;
 - e. City of Kalispell Subdivision regulations;
 - f. City of Kalispell Storm Water Management Plan;
 - g. City of Kalispell Water Facility Plan;
 - h. City of Kalispell Storm Water Facility Plan;
 - i. City of Kalispell Area Transportation Plan;
 - j. AASHTO Guide for the Development of Bicycle Facilities;
 - k. AASHTO guide for the Planning, Design and Operation of Pedestrian Facilities;
 - l. U.S. soil conservation Service, National Engineering Handbook – Hydrology;
 - m. ADA Standards for Accessible Design, U.S. Department of Justice.
7. Incomplete applications and the piecemeal of application materials will not be accepted without previous approval from the Planning Director.

APPENDIX D**FINAL PLAT****I. CONTENTS OF THE FINAL PLAT:**

A final plat may not be approved by the Council nor filed by the County Clerk and Recorder unless it complies with the following requirements:

- A. The final plat shall conform to the preliminary plat previously reviewed and approved by the city council incorporating all conditions imposed by the council at the time of preliminary plat approval.
- B. Final plats shall be legibly drawn with permanent ink or printed or reproduced by a process guaranteeing a permanent record and shall be 24 inches by 36 inches and shall include a 1-1/2 inch margin on the binding side;
- C. Whenever more than one sheet must be used to accurately portray the land subdivided, each sheet must show the number of that sheet and the total number of sheets included. All certifications shall be shown or referenced on one sheet.
- D. The final plat submitted for approval shall show or contain, on its face or on separate sheets, referenced on the plat:
 1. A title block indicating the quarter sections, section, township, range, principal meridian and county of the subdivision. The title plat shall contain the words "plat" and subdivision";
 2. Name(s) of the owner(s) of the land surveyed and the names of any adjoining platted subdivisions and numbers of any adjoining certificates of survey previously recorded and tied thereto;
 3. North point;
 4. Scale bar (scale shall be sufficient to legibly represent the required data on the plat submitted for filing);
 5. All monuments found, set, reset, replaced or removed describing their kind, size, location and giving other data relating thereto;
 6. Witness monuments, basis for bearing, bearings and length of lines;
 7. The bearings, distance and curve data of all perimeter boundary lines shall be indicated. When the subdivision is bounded by an irregular shoreline or body of water, the bearings and distances of a meander traverse shall be given;
 8. Data on all curves sufficient to enable the re-establishment of the curves on the ground. This data shall include:
 - a. Radius of curve;
 - b. Arc length;

- c. Notation of non-tangent curves.
9. Lengths of all lines shall be shown to at least tenths of a foot, and all angles and bearings shown to at least the nearest minute;
10. The location of all section corners or legal subdivision corners of sections pertinent to the subdivision boundary;
11. All lots and blocks in the subdivision, designated by number, the dimensions of each lot and block, the area of each lot and the total acreage of all lots (excepted parcels marked "Not included in this Subdivision" or "Not included in this Plat" as appropriate and the boundary completely indicated by bearings and distances).
12. All easements, streets, alleys, avenues, roads and highways; their widths, bearings, the width and purpose of all rights-of-way and the names of all streets, roads, and highways;
13. The location, dimensions and areas of all parks, common areas and all other grounds dedicated for public or common use. Where cash has been accepted in lieu of land dedications, it shall be so stated on the final plat and the amount of cash donated stated thereon;
14. Gross and net acreage of the subdivision;
15. A legal description of the perimeter boundary of the tract surveyed;
16. All monuments to be of record must be adequately described and clearly identified on the plat. Where additional monuments are to be set subsequent to the filing of the plat, the location of such additional monuments shall be shown by a distinct symbol noted on the plat. All monuments or other evidence found during re-tracements that would influence the positions of any corner or boundary indicated on the plat must be clearly shown;
17. The signature and seal of the registered land surveyor responsible for the survey. The affixing of his/her seal constitutes a certification by the surveyor that the final plat has been prepared in conformance with the Montana Subdivision and Platting Act (Sections 76-3-101 through 76-3-614, M.C.A.), and the regulations adopted pursuant thereto;
18. Memorandum of oaths administered pursuant to Section 76-3-405 M.C.A., has been filed with the County Clerk and Recorder;
19. House numbers (addresses) shall be assigned and shall be so indicated on each lot.

II. CERTIFICATIONS ON FINAL PLAT:

The following certifications shall appear on the face of the final plat:

- A. Certification by the subdivider dedicating streets, parks or playground, or other public improvements, or stating cash donations in lieu of dedication, when applicable;
- B. Certification by the subdivider allowing usage of the easements for the purpose designated on the plat;
- C. Certification by the licensed land surveyor who prepared the final plat and related documents;
- D. Certification of examining land surveyor where applicable;
- E. Certification by the City Council expressly accepting any dedicated land and improvements. Acceptance of dedication shall be ineffective without such certification;
- F. Certification by the City Attorney;
- G. Certification by the City Council that the final subdivision plat is approved, except where the plat shows changes to a filed subdivision plat which are exempt from local government review under Section 76-3-207(1)(e), M.C.A. Where an amended plat qualifies for such a waiver the plat must contain a statement that pursuant to Section 76-3-207(1)(e), M.C.A., approval by the local governing body is not required for relocation of common boundary lines or aggregation of lots.

III. ATTACHMENTS ACCOMPANYING FINAL PLAT:

The following original documents shall be submitted (signed and notarized where appropriate) when applicable, to the City as part of the final plat application process. Said original documents must accompany the approved final plat when filed with the County Clerk and Recorder:

- A. A cover letter from the subdivider or his agent, listing each specific condition and elaborating on how that condition was met.
- B. Certification by a licensed title abstractor showing the names of the owners of record of land to be subdivided and the names of any lien holders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lien holders or claimants of record against the land (must not be over 90 days old at time of Kalispell Planning Department final plat application acceptance).
- C. Copies of any open space or common area management plan including copies of articles of incorporation and by-laws for any property owners' association.

- D. Certification by the Montana Department of Environmental Quality that it has approved the plans and specifications for sanitary facilities.
- E. Certification by the subdivider indicating which required public improvements have been installed and a copy of any subdivision improvements agreement securing the future construction of any additional public improvements to be installed.
- F. Copies of final plans, profiles, grades and specifications for improvements, including a complete grading and drainage plan, with the certification of a registered professional engineer that all required improvements which have been installed are in conformance with the attached plans.
- G. Copy of the state highway permit when a new street or road access will intersect with a state highway.
- H. A certification from the County Treasurer's Office stating that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid.
- I. A compact disc or other acceptable digital media shall be submitted containing an electronic file of the plat.

APPENDIX E

SAMPLE FORMS AND CERTIFICATIONS

I. IRREVOCABLE LETTER OF CREDIT:

Letter of Credit No.
Dated:
Expiration Date:
Amount:

Kalispell City Council
City of Kalispell
P.O. Box 1997
Kalispell MT 59901

We hereby establish in your favor an irrevocable letter of credit up to the aggregate amount of \$_____ at the request of (Name of Subdivider).

If (Name of Subdivider) fails to complete the specified improvements in the (Name of Subdivision) within the time period set forth in the attached Improvements Agreement, we will pay on demand your draft or drafts for such funds, to the limit of credit set forth herein, as are required to complete said improvements. All drafts must indicate the number and date of this letter of credit and be accompanied by a signed statement of an authorized official that the amount is drawn to install improvements not installed in conformance with the Improvements Agreement and specifying the default or defect in question.

All drafts must be presented prior to the expiration date stated above, and this letter of credit must accompany the final draft for payment.

This letter may not be withdrawn or reduced in any amount prior to its expiration date except by your draft or written release.

(Name of Lending Institution)

(Signature and Title of Authorized Official)

+++

II. CERTIFICATE OF DEDICATION - FINAL PLAT:

(I) (We), the undersigned property owner(s), do hereby certify that (I) (We) have caused to be surveyed, subdivided and platted into lots, blocks, streets and alleys, as shown by the plat hereto annexed, the following described land in the City of Kalispell, Montana, to-wit:

(Exterior boundary description of area contained in plat and total acreage)

The above described tract of land is to be known and designated as (Name of Subdivision), and the lands included in all streets, avenues, alleys, and parks or public squares shown on said plat are hereby granted and donated to the use of the public forever.

Dated this ____ day of _____, 20__.

(Acknowledged and notarized signatures of all record owners of platted property.)

+++

III. CONSENT TO DEDICATION BY ENCUMBRANCES, IF ANY:

(I) (We), the undersigned encumbrancer(s), do hereby join in and consent to the annexed plat and release (my) (our) respective liens, claims and encumbrances as to any portion of said lands shown on such plat as being dedicated to the use of the public forever.

Dated this ____ day of _____, 20__.

(Acknowledged and notarized signatures of all encumbrances of record.)

+++

IV. CERTIFICATE OF SURVEYOR - FINAL PLAT:

State of Montana)
) ss.
County of _____)

I, (Name of Surveyor), a registered Land Surveyor do hereby certify that I have performed the survey shown on the attached plat of (Name of Subdivision); that such survey was made on (Date of Survey); that said survey is true and complete as shown and that the monuments found and set are of the character and occupy the positions shown thereon.

Dated this ____ day of _____, 20__.

(Seal)

(Signature of Surveyor)

Registration No.

(Address)

+++

V. CERTIFICATE OF FINAL PLAT APPROVAL - CITY:

The City Council of the City of Kalispell, Montana, does hereby certify that it has examined this subdivision plat and, having found the same to conform to law, approves it, and hereby accepts the dedication to public use of any and all lands shown on this plat as being dedicated to such use, this ____ day of _____, 20__ at ____ o'clock.

by (Signature of City Clerk)
City Clerk

(Signature of Mayor)
Mayor

+++

VI. CERTIFICATE OF WAIVER OF PARK LAND DEDICATION AND ACCEPTANCE OF CASH IN LIEU THEREOF:

I, (Name of City Clerk), of Kalispell, Montana, do certify that the following order was made by the City Council of Kalispell at a meeting thereof held on the ____ day of _____, 20__ , and entered into the proceedings of said Body to-wit: "Inasmuch as the dedication of park land within the platted area of (Name of Subdivision) is undesirable for the reasons set forth in the minutes of this meeting, it is hereby ordered by the Kalispell City Council that land dedication for park purposes be waived and that cash in lieu of park land, in the amount of _____dollars (\$), be accepted in accordance with the provisions of 76-3-621, M.C.A."

In witness whereof, I have hereunto affixed the seal of The City of Kalispell, Montana this day of _____, 20 ____.

(Seal)

(Signature of City Clerk)

VII. CERTIFICATE AUTHORIZING THE GOVERNING BODY TO WAIVE PARK DEDICATION USING THE OVER FIVE ACRE EXEMPTION OF THE MONTANA SUBDIVISION AND PLATTING ACT:

I (Name of City Clerk), City Clerk of Kalispell, Montana, do certify that the following order was made by the Kalispell City Council at a meeting thereof held on the ____day of _____, 20 __, and entered into the proceedings of said body to wit: "The park land dedication and cash in lieu of land requirements do not apply as all lots in this subdivision exceed five (5) acres in size in accordance with 76-3-621 M.C.A."

VIII CERTIFICATE OF EXAMINING LAND SURVEYOR WHERE REQUIRED - FINAL PLAT:

I, (Name of Examining Land Surveyor), acting as an Examining Land Surveyor for (City or County), Montana, do hereby certify that I have examined the final plat of (Name of Subdivision) and find that the survey data shown thereon meet the conditions set forth by or pursuant to Title 76, Chapter 3, Part 4, M.C.A.

Dated this ____ day of _____, 20

(Signature)

(Name of Surveyor)

Seal of Examining Land Surveyor

Registration No. _____

(City or County)

+++

IX. CERTIFICATE OF FILING BY CLERK AND RECORDER:

STATE OF MONTANA)
) ss.

County of _____)

File for record this ____ day of _____, 20 __, at ____ o'clock.

(Signature of Clerk and Recorder)

County Clerk and Recorder

_____, Montana

+++

X. CERTIFICATE OF COUNTY TREASURER:

I hereby certify, pursuant to Section 76-3-611(1)(b), M.C.A., that no real property taxes and special assessments assessed and levied on the land described below and encompassed by the proposed (Name of Subdivision) are delinquent:
(legal description of land)

Dated this ____ day of _____, 20 __.

(Signature of County Treasurer)

Treasurer

(seal)

County, Montana

+++

XI. CERTIFICATE OF WAIVER OF PROTEST PARTICIPATION IN SPECIAL IMPROVEMENT DISTRICT

Waiver of Protest

Participation in Special Improvement District

_____ (Owner) hereby waives any and all right to protest which it may have in regards to any attempt to be made by a local governmental entity, to initiate a Special Improvement District which includes _____ Subdivision, shown on the plat therefore, for any of the purposes related to roads, water facilities and systems, and sewer facilities and systems, set forth in Sections 7-12-2102 and 7-12-4102, M.C.A.; provided however that _____ understands that (he/she/it/they) retains the ability to object to the amount of assessment imposed as a result of the formation of a Special Improvement District, including the right to object on the basis that the property is not benefited by the Special Improvement District. _____ agrees that this covenant shall run to, with and be binding on the title of the real property described above and shall be binding on the heirs, assigns, successors in interest, purchasers, and any and all subsequent holders or owners of the real property shown on the subdivision plat for _____ Subdivision.

XII. PRIVATE STREET NOTATION

The internal streets shown on the final plat are intended to be privately owned and maintained and open to the public, including parking. Because of the limited use of the street and the street's configuration, they are not suitable for all-season maintenance by the public authority. The owners (and successors in interest) of the lots described in this plat will provide for all-season maintenance of the private street by creation of a corporation or association to administer and fund the maintenance. This dedication is made with the express understanding that the private street(s) will never be maintained by any government agency or public authority. It is understood and agreed that the value of each described lot in this plat is enhanced by the private nature of said street. Thus, the area encompassed by said private street will not be separately taxed or assessed by any government agency or public authority.

APPENDIX F

SUBDIVISION IMPROVEMENT AGREEMENT

Return to:
Theresa White
Kalispell City Clerk
P.O. Box 1997
Kalispell, MT 59903

SUBDIVISION IMPROVEMENT AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, by and between the CITY COUNCIL, CITY OF KALISPELL, MONTANA, Party of the First Part and hereinafter referred to as the CITY, and

_____,
(Name of Developer)
a _____
(Individual, Company or Corporation)
located at _____,
(Street Address/P. O. Box) (City, County, State, Zip)
Party of the Second Part and hereinafter referred to as DEVELOPER.

WITNESSETH:

THAT WHEREAS, the Developer is the owner and developer of a new subdivision known as

(Name of Subdivision)
located at _____
(Location of Subdivision) and,

WHEREAS, the City has conditioned it's approval of the final plat of _____, upon the conditions as set forth (Name of Subdivision) in the Preliminary Plat of the Subdivision being completed and all improvements, as cited in "Exhibit A" have not been completed at this time, and the Developer wishes to bond for the completion of those improvements set forth in "Exhibit A"; and

WHEREAS, the City's Subdivision Regulations require that a subdivider shall provide a financial security of 125% of the estimated total cost of construction of said improvements as evidenced by an estimate prepared by a licensed public engineer included herewith as "Exhibit B"; and

WHEREAS, the estimated total cost of construction of said improvements is the sum of

\$ _____.

NOW THEREFORE, in consideration of the approval of the final plat of said Subdivision by the City, the Developer hereby agrees as follows:

1. The Developer shall deposit as collateral with the City a Letter of Credit, or other acceptable collateral as determined by the City Council, in the amount of \$ _____. Said Letter of Credit or other collateral shall have an expiration date of at least sixty (60) days following the date set for completion of the improvements, certifying the following:

a. That the creditor guarantees funds in the sum of \$ _____ the estimated cost of completing the required improvements in _____.
(Name of Subdivision)

b. That if the Developer fails to complete the specified improvements within the required period, the creditor will pay to the City immediately, and without further action, such funds as are necessary to finance the completion of those improvements up to the limited of credit stated in the letter;

2. That said required improvements shall be fully completed by _____, 20_____.

3. That upon completion of the required improvements, the Developer shall cause to be filed with the City a statement certifying that:

a. All required improvements are complete;

b. That the improvements are in compliance with the minimum standards specified by the City for their construction and that the Developer warrants said improvements against any and all defects for a period of two (2) years from the date of acceptance of the completion of those improvements by the City;

c. That the Developer knows of no defects in those improvements;

d. That these improvements are free and clear of any encumbrances or liens;

e. That a schedule of actual construction costs has been filed with the City; and,

f. All applicable fees and surcharges have been paid.

4. The Developer shall cause to be filed with the City copies of final plans, profiles, grades and specifications of said improvements, with the certification of the registered professional engineer responsible for their preparation that all required improvements have been installed in conformance with said specifications.

IT IS ALSO AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS, TO-WIT:

That the Developer shall provide for inspection of all required improvements by a registered professional engineer before the Developer shall be released from the Subdivision Improvement Agreement.

That if the City determines that any improvements are not constructed in compliance with the specifications, it shall furnish the Developer with a list of specific deficiencies and may withhold collateral sufficient to insure such compliance. If the City determines that the Developer will not construct any or all of the improvements in accordance with the specifications, or within the required time limits, it may

withdraw the collateral and employ such funds as may be necessary to construct the improvement or improvements in accordance with the specifications. The unused portions of the collateral shall be returned to the Developer or the crediting institution, as is appropriate.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals the day and year herein before written.

(Name of Subdivision/Developer/Firm)

by _____
(Title)

STATE OF MONTANA
COUNTY OF _____

On this _____ day of _____, 20____, before me, a Notary Public for the State of Montana, personally appeared _____, known to me to be the _____ of _____, whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal this day and year first above written.

Notary Public for the State of Montana
Printed Name _____
Residing at _____
My Commission Expires _____

MAYOR, CITY OF KALISPELL

ATTEST:

MAYOR

CITY CLERK

EXHIBIT A

Conditions of approval as fixed to the preliminary plat by the City Council, Kalispell, Montana.

EXHIBIT B

This agreement specifically includes the following improvements, their projected construction completion date and estimated construction costs.

CHECK APPROPRIATE IMPROVEMENTS	CONSTRUCTION COMPLETION DATE	ESTIMATED CONSTRUCTION COSTS	PERCENTAGE COMPLETE
Street Grading/Paving			
Street Base			
Sidewalks			
Curbs and Gutters			
Sanitary Sewers			
Mains			
Other ()			
On-Site Sewage			
Facilities			
Water Systems			
Mains			
Other ()			
On-Site Water Supply			
Water Storage Tanks			
Fire Hydrants			
Storm Sewer or Drainage Facilities			
Street Signs			
Street Lighting			
Street Monuments			
Survey Monument Boxes			

	CHECK APPROPRIATE IMPROVEMENTS	CONSTRUCTION COMPLETION DATE	ESTIMATED CONSTRUCTION COSTS	PERCENTAGE COMPLETE
Landscaping/ Boulevard trees				
Other ()				
			SUBTOTAL	_____
			FEES	_____
			TOTALS COSTS	_____
			TOTAL COLLATERAL (TOTALS COSTS X 125%)	_____