

CHAPTER 6

FINAL PLAT AND SUBDIVISION IMPROVEMENT GUARANTEES

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6.1 Purpose and Intent

~~An important role of these regulations is~~ It is the purpose and intent of this chapter to create a clear and consistent record of ~~the~~ divisions of land, and any amendments ~~as well as a record of the~~ vacations and adjustments that may occur to subdivision plats, and supplemental plans and documents. ~~It is further~~ The purpose and intent of this chapter is to establish ~~the procedures, roles, and responsibilities for creating a clear record. From time to time, errors may be discovered on the face of a recorded plat~~ distinctions between subdivision plats and the supplemental sheets and documents that regularly accompany plats. ~~It is the further intent of the County of Missoula to establish reasonable standards and procedures to correct such errors in order to protect the interests of affected property owners. The County of Missoula recognizes two classifications of errors and sets forth the following procedures to correct them~~ This chapter creates criteria and procedures for approving amendments to plats and supplemental plans and documents. It also is the purpose and intent of this chapter to ~~establish standards and procedures for subdividers to~~ ensure the timely construction and installation of infrastructure and other improvements.

6.2 Final Plat

6.2.1 Applicability

The submittal, review, alteration, and vacation of all final plats, condition of approval sheets, and supplemental plans and documents shall comply with the standards of this section. The standards of this section also apply in certain circumstances when final plans are required, in lieu of final plats, for condominium, and mobile home or RV parks.

6.2.2 Submittal

A final plat/~~plan~~ shall be submitted to the Planning Office that includes the plat, condition of approval sheets and all submittal items required by supplemental documents required in Chapter 7, Submittal Requirements, and any additional items required by the

preliminary plat/plan conditions of approval. incorporates all modifications required as a result of the Submittal items shall document compliance with all conditions of preliminary plat/plan review approval.

6.2.2.1 Plats

Final plats are the drawings that show the creation of lots, parcels, blocks, streets, alleys and other elements of a subdivision, pursuant to the definition in Chapter 2, Definitions.

6.2.2.2 Supplemental Information

Condition of Approval Sheets and other supplemental plans that regularly accompany plats contain planning related information such as overlay maps of natural resources, plans and specifications for facilities and improvements, and other information related to conditions of approval. Examples of supplemental documents and information that also regularly accompany plats include homeowners' documents, Conditions Covenants and Restrictions, various agreements required by these regulations for maintenance or the construction of facilities and improvements and similar documents.

6.2.3 Acceptance Sufficiency

Within 15 working days of the submittal, the Planning Office shall determine if the final plat, including any accompanying condition of approval sheets, and other supplemental sheets and documents, is sufficiently complete to commence review. ~~The official application acceptance date of the final plat shall be the date on which the final plat, in the proper form, together with all the required supplemental materials and appropriate fees, is received by the Planning Office. All conditions for preliminary plat approval must be met in order for the final plat application packet to be complete.~~

Review Fees

Before the final plat will be sufficient and officially accepted for review, the applicant shall pay a final plat review fee as established by the governing body.

6.2.3.1 Written Notice

The Planning Office shall notify the subdivider of the determination by written or emailed communication.

6.2.3.2 Insufficient

If the Planning Office determinates the final plat submittal is insufficient, the procedural steps for notification of the subdivider, resubmittal and review shall conform to Section 5.7.8, Sufficiency Review.

6.2.4 Review

The Planning Office director shall review the final plat for substantive compliance with the approved preliminary plat. If the director determines that there is a material change in

the final plat from what was approved as a preliminary plat or determines that there are conditions which have not been met, the director shall require that a new final plat application be submitted. (See flow diagram on the following page for final plat procedure.)

6.2.4.1 ResubmittalMinor Deviations

The planning director shall forward the final plat, condition of approval sheets, and any supplemental sheets and documents even if there are minor and immaterial deviations from the preliminary plat/plan. The Planning Director may give consideration to minor changes that encourage environmental and public health and safety improvements. Deviations shall be deemed minor and immaterial if they comply with the following criteria:~~If the original deadline established for the duration of the preliminary approval period is still in effect, then the subdivider will have additional time in which to resubmit the final plat for approval.~~

- A. Maintain the basic configuration and number of lots;
- B. Maintain overall patterns for pedestrian and vehicular travel~~road and~~pathway layouts;
- C. Maintain the basic plans for water and wastewater;
- D. Do not significantly alter easement provisions;
- E. Maintain designated primary and secondary accesses;
- F. Maintain consistency with the Missoula County Growth Policy and other adopted county plans;
- G. Maintain compliance with these regulations;
- H. Preserve the intent and effect of all conditions of the preliminary plat/plan approval;
- I. Maintain the protections and safeguards provided by these regulations; and
- A-J. Avoid a new impact or an increase of a previously recognized and mitigated impact on neighboring land or the overall community.

6.2.4.2 AppealMaterial Change

~~A determination of the director may be appealed to the Board of County Commissioners~~If the planning director determines that the final plat, condition of approval sheets or other supplemental documents contain material changes from the approved preliminary plat/plan, or determines that a condition of approval has not been fully met, a new final plat submission shall be required.

6.2.4.3 Appeal

The determination of the planning director may be appealed to the Board of County Commissioners pursuant to Section 5.11, Appeals of Administrative Decisions.

6.2.4.4 Review Agencies

In addition to the Planning Office review for compliance, the final plat, conditions of approval sheets, and the supplemental documents shall be distributed to departments subject to Resolution 2016-004.

Info Box

Outside agencies may be involved in review of elements related to the final plat, depending upon conditions of subdivision approval. See Missoula County Resolution 2016-004 for review responsibilities of county departments: <http://gis.co.missoula.mt.us/propertyinformation/Handlers/Documents.ashx?did=2WuP%2Fcyu52kgDdLFvGzTDw%3D%3D>

6.2.4.5 Surveyor

The county's examining land surveyor shall review final plats and certificates of survey for errors and omissions in calculations or drafting before the governing body's approval. Any necessary corrections shall be completed before the plat is recorded with the Missoula County Clerk and Recorder. A certificate shall be placed on the plat for the examining land surveyor's signature verifying the review for technical completeness.

6.2.5 Governing Body Decision

The governing body shall review and approve the final plat, including any supplemental sheets and supplemental documents if they conform to the approved preliminary plat/plan as conditioned and the county treasurer certifies that all tax assessments have been paid.

6.2.5.1 Minor Deviations

The governing body ~~shall examine each final subdivision plat and shall~~ may approve ~~the a final plat only if it conforms to the conditions of approval set forth on the preliminary plat and contains the documents and materials described previously in these regulations~~ and the supplemental sheets and documents if there are minor and immaterial deviations that comply with the criteria in *Subsection 6.2.4.1, Minor Deviations.*

~~B. Changes~~

6.2.5.2 Additional Conditions

The governing body may not impose additional conditions as a prerequisite to final plat approval if the final plat has been submitted prior to the deadline for the submittal and the previously approved preliminary plat/plan is valid.

~~6.2.5.26.2.5.3~~ **Denial**

~~If the final plat is disapproved, the reasons for disapproval shall be stated in the records of the~~The governing body shall deny approval of a final plat if it determines the plat and any supplemental sheets and information do not conform to the approved preliminary plat/plan or it determines a condition of preliminary plat/plan approval is not fulfilled. This denial and any resubmittal does not extend the time for which a preliminary plat/plan approval is effective or the time by which a final plat shall be approved and a copy of the reasons forwarded to the subdivider and the Planning Office. The subdivider may make the necessary corrections and resubmit the final plat for approval.

~~6.2.5.36.2.5.4~~ **Withdraw Approval**

The governing body may withdraw approval or disapproval of a preliminary plat if it determines that information provided and upon which such decision was based is false or inaccurate.

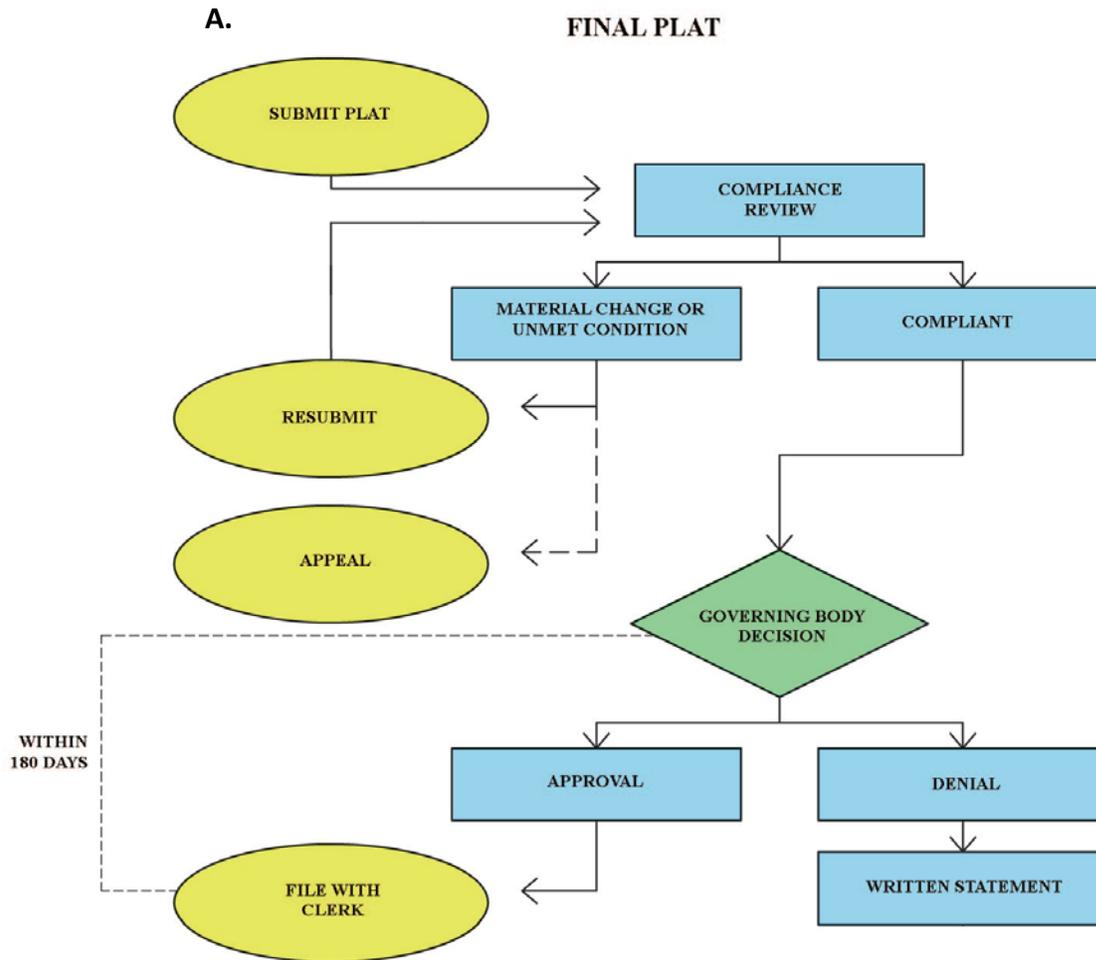
~~6.2.5.46.2.5.5~~ **Written Statement**

~~If the final plat is disapproved or a decision is withdrawn, the written statement shall include the reasons for the decision, evidence on which the decision is based, and a description of the process to appeal the decision. If the governing body withdraws approval or disapproves a final plat, it shall issue a written statement to the subdivider. The statement must include:~~

Reason: The reason for the denial;

Evidence: The evidence that justified the denial; and,

Information: Information regarding the appeal process for the denial.



6.2.6 Dedication Filing Deadline

~~Final plat approval shall not constitute acceptance of dedicated lands. Land dedications shall be accepted by specific resolution of the governing body and noted on the final plat.~~ An approved final plat, condition of approval sheet, and any supplemental documents shall be filed within 180 calendar days of the governing body’s approval. Final plat approval shall be void if the plat is not filed within 180 days of approval.

6.2.7 Filing Deadline Extension

~~Within 180 days of approval of the final plat by the governing body, one signed copy of the final plat on a stable base polyester film or equivalent and one signed paper copy of the final plat shall be filed with the Missoula County Clerk and Recorder.~~ Notwithstanding Section 6.2.6, Filing Deadline, a subdivider may request and the governing body may grant an extension to the filing deadline provided the reason for the extension is beyond the subdivider’s control and the governing body determines that the plat will be filed after according to the agreed upon extension.

6.2.7.1 ~~Transfers~~Written Request

~~Except as provided for in Chapters 1 – 6 of these regulations, every final plat must be filed for recording with the County Clerk and Recorder before title to the subdivided land may be sold or transferred.~~The subdivider shall submit to the Planning Office a written request for the extension that includes the reason for the extension. The request shall be submitted at least 10 working days prior to the filing deadline.

6.2.7.2 ~~No Changes~~Stay

~~After recording, the plat shall not be altered in any manner except as provided by these regulations.~~The counting of days toward the filing deadline shall be stayed until the governing body acts on the request.

6.2.7.3 Examples

Examples of acceptable circumstances include but are not limited to the following:

~~A. —~~**Governmental Delay:** Delay in review by a governmental agency;

~~B.A. —~~**Temporary Constraints**

~~Temporary delay by a governmental agency in the physical constraints on installation of subdivision or construction of public improvements;~~or,

~~C.B. —~~**Requirements Funding Delay**

~~Timing Time of SID / RSID or bonding requirements in the formation or operation of an SID/RSID or bond measure.~~

6.2.7.4 Maximum Extension

The governing body may extend the filing period for no more than 180 calendar days. The governing body may grant one addition extension for no more than 180 calendar days.

6.2.8 ~~Filing Extension~~Effects of Approval

~~To be considered for an extension of the filing date, the subdivider must submit a letter setting forth the reasons for the request.~~

6.2.8.1 ~~Beyond Control~~Dedications

~~The established limit of 180 days should be adhered to and an extension granted only when circumstances beyond the control of the subdivider prevent the subdivider from filing the plat. Such circumstances may include:~~Final plat approval shall ~~not~~ constitute acceptance of dedicated lands, and the certification of the governing body shall include acceptance language, if applicable. In specific instances, Land dedications ~~shall~~ may be ~~accepted~~ required by specific resolution of the governing body that is referenced in a note on the final plat.

- ~~D. — **Governmental Delay:** Delay in review by a governmental agency;~~
- ~~E. — **Temporary Constraints:** Temporary physical constraints on installation of subdivision public improvements; or,~~
- ~~F. — **Requirements:** Timing of SID / RSID or bonding requirements.~~

6.2.8.2 Decision Transfers

~~A final plat must be filed with the Missoula County Clerk and Recorder before title to any land in the subdivision can be sold or transferred, except as exempted in *Section 1.7.4, Transfers of Title*. The governing body shall act upon the request within 10 days of receipt of the request for the extension. The extension period shall be no more than an additional 180 days.~~

6.2.8.3 Voided Changes

~~If the filing date is not met, and there has been no request for extension prior to the filing date, the final plat approval will be considered void. After the final plat is recorded, the governing body may approve changes to the final plat, condition of approval sheet, and supplemental documents pursuant to *Section 6.6, Amendments Adjustments to Filed Plats and Related Documents*.~~

~~6.2.9 — Review Responsibilities~~

~~It shall be the responsibility of the following departments to check final subdivision plats and accompanying documents, prior to signing the plats, for the elements enumerated here and to perform the actions similarly enumerated here.~~

~~6.2.9.1 — Department of Public Works~~

~~The Examining Land Surveyor shall determine:~~

~~A. — Errors~~

~~That all errors and omissions in calculations and drafting in the survey have been corrected, pursuant to §66-3-611, MCA;~~

~~B. — Monumentation~~

~~That field monumentation conforms to policy;~~

~~C. — Uniform Standards~~

~~That the contents of the plat conform to the Uniform Standards for Final Subdivision Plats;~~

~~D. — Access Permit~~

~~That a copy of the State Highway Access permits, if required, accompanies the plat;~~

~~E. — Engineering Plans~~

~~That engineering, road, and drainage plans conform to the standards set forth in these regulations; and,~~

~~**F. — Costs**~~

~~That cost estimates are provided for all public and private improvements, including roads, drainage structures, curbs and gutters, sidewalks, bridges, deferred monumentation, and community sewer and water systems, for purposes of determining the amount of the Improvements Guarantee; or provide a letter certifying acceptance of the required public or private improvements if the subdivider chooses to install the improvements prior to the filing of the final plat.~~

~~**6.2.9.2 — Health**~~

~~The Health Authorities shall determine:~~

~~**A. — Requirements**~~

~~That all local and state health requirements can be or have been met; and,~~

~~**B. — DEQ**~~

~~That a certificate of approval from the Montana Department of Environmental Quality has been obtained and accompanies the plat.~~

~~**6.2.9.3 — Attorney**~~

~~The County Attorney shall determine:~~

~~**A. — Liens**~~

~~That the platting report shows that no liens or encumbrances remain on the land being platted or that written consent to plat the land has been provided by all owners of the land, lien holders, and/or claimants who have been identified in the platting report; and,~~

~~**B. — Guarantees**~~

~~That, if the subdivider has not already installed the required improvements or if the improvements have not been approved and accepted by the Public Works Director prior to plat filing, the Improvements Guarantee is adequate in amount and reliability.~~

~~**6.2.9.4 — Planning Office**~~

~~The Planning Office shall determine that all conditions for preliminary approval have been met:~~

~~**A. — Covenants**~~

~~The original, executed covenants are ready for filing, if covenants were submitted as part of the plat application and were submitted for review;~~

~~B. Owners' Association~~

~~The Property Owner's Association Articles of Incorporation and Bylaws with proof of filing of the Articles of Incorporation with the Secretary of State, if these Articles and Bylaws were part of the plat application and were approved in the review;~~

- ~~1. That the Articles of Incorporation and Bylaws bear the certification of the attorney who prepared or reviewed them and that such attorney is licensed to practice law in the State of Montana;~~
- ~~2. That they contain the applicable provisions required by these regulations and any provisions upon which plat approval was based or conditioned; and,~~
- ~~3. That the provisions do not conflict.~~

~~C. Parks~~

~~That the park requirement is met by:~~

- ~~1. Certificate of Dedication of parkland to the public or common area to a Property Owner's Association in perpetuity; or,~~
- ~~2. Cash payment in lieu of dedication as noted on the face of the plat; or,~~
- ~~3. An appropriate waiver (if one was granted).~~

~~D. Floodplain~~

~~That, where applicable, floodway and flood fringe designations are shown on the plat;~~

~~E. Preliminary Approval~~

~~Verify that the final plat conforms to the preliminary approval and any conditions thereto; and,~~

~~F. Regulations~~

~~That the plat conforms to all applicable provisions of these regulations.~~

~~6.2.9.5 Treasurer~~

~~The County Treasurer shall certify that no real property taxes or RSIDs assessed and levied on the land to be subdivided are delinquent, pursuant to §66-3-611, MCA.~~

~~6.2.9.6 Governing Body~~

~~The governing body shall sign the plat when all other department officials have signed the plat.~~

6.2.9.7 Clerk

The Clerk and Recorder shall not accept a plat for filing unless:

A. Sign-Offs

The Examining Land Surveyor, the Health Authorities, and County Attorney, the Planning Office, and the Board of County Commissioners have signed the plat; and,

B. Documents

The plat is accompanied by required documents shown on the attached checklist, which checklist must bear the initials of the officials listed above.

6.3 Provisions for Public and Private Improvements and Maintenance

6.3.1 Payment for Extension of Public Improvements

The governing body may require ~~the a~~ subdivider to ~~pay or guarantee payment for~~ physically extend, or pay for part or all of the costs ~~of to extending extend, public capital facilities related to the public health and safety, including but not limited to public roads and transportation facilities, sewer lines, water supply lines, and storm drains to a subdivision where the facilities are necessary for public health and safety. The costs must reasonably reflect the expected impacts.~~ Public facilities required of the subdivider must be directly attributable to the subdivision.

6.3.1.1 ~~Commence Construction in Two Years~~ Type of Facilities

Facilities that may be required for public health and safety include but are not limited to motorized and non-motorized transportation facilities, sewer lines, water supply lines, fire suppression facilities, and storm drains. ~~Failure to begin substantial construction of required public improvements within 2 years of final approval shall constitute grounds for the governing body to act against the subdivider's Improvements Agreement and Guarantee.~~

6.3.1.2 Pay Back Provision

If the subdivider is required to over build public capital facilities for benefit other subdivisions or landowners, either immediately or in the future, the county may approve a pay back provision in which the subdivider will be reimbursed from assessments of, or payments from, other users of the facilities. The reimbursement shall approximate the costs attributed to the over build that exceeds the needed capacity for the subdivision.

6.3.2 ~~Subdivision Private~~ Improvements Agreement

~~As a condition for granting approval of the final plat, the subdivider shall provide a Subdivision Improvements Agreement guaranteeing the construction and installation of all required improvements within 2 years after the final plat approval.~~ The subdivider shall

construct all improvements within and along the frontage of the proposed subdivision that are required by these regulations.

6.3.3 Alternative MethodsTiming of Improvements

~~The required guarantee may include one or more of the following security arrangements acceptable to the governing body.~~

6.3.3.1 Private or Public Escrow AgreementsBefore Final Plat

Construction or installation of certain improvements the governing body determines to be necessary for public health and safety may be required before final plat approval. These improvements may be off site of the proposed subdivision, requiring their extension to the subdivision, and within the subdivision~~Subdividers deposit cash, a note, a bond, or some other instrument readily convertible into cash within the county or with a financial institution approved by the governing body in an account payable to the county.~~

A. Amount

~~The amount of the deposit shall cover the cost of installing any incomplete public improvements. The account shall be subject to an agreement between the subdivider and the financial institution and the county.~~

B. Release

~~The agreement shall include a provision to release funds to subdividers as the improvements are completed, if appropriate. The agreement must specify that funds cannot be released without the governing body's approval.~~

C. Property of County

~~The agreement must specify that if the subdividers fail to complete the improvements within 2 years, the funds become the property of the county.~~

D. Associated Costs

~~The subdivider shall bear all costs associated with the guarantee.~~

6.3.3.2 Irrevocable Letter of CreditCommence Within 2 Years

Substantial installation or construction of public and private improvements not required before final plat approval shall commence within ~~two~~ years of final plat approval. The installation or construction shall continue on a timely schedule to completion~~Subdividers may secure a letter of credit from a financial institution.~~

A. Amount

~~The amount of the credit must be sufficient to cover the costs of installing any incomplete public improvements.~~

B. Creditor's Pledge

~~The letter must pledge that the creditor will pay the costs of improvements should the subdivider default and that the credit cannot be revoked without the governing body's approval.~~

C. Funds to County

~~The letter must state that the funds guaranteed will automatically be turned over to the county if the improvements are not installed in accordance with specifications within 2 years.~~

6.3.3.3 Performance or Property BondsCounty Action

Failure to begin substantial construction within ~~two~~ years of final plat approval, or failure to continue construction to a timely completion, shall constitute grounds for the governing body to act against the subdivider's Subdivision Improvements Agreement and Financial Guarantee~~The subdivider may provide a surety bond to guarantee the funds to complete public improvements, subject to any requirements of the bonding company.~~

A. Amount

~~The bond shall be payable to the county and shall be in an amount sufficient to cover the costs of installing any incomplete public improvements.~~

B. Completion

~~The bond shall remain in effect until the improvements have been completed and accepted for dedication.~~

C. Associated Costs

~~The subdivider shall bear all costs associated with the provision of the guarantee.~~

6.3.3.4 Special Improvement Districts (SIDs/RSIDs)

~~The county may agree to sell bonds or by some other means raise the funds necessary to finance improvements until costs can be recovered through assessments against lot purchasers in the subdivision. To establish this type of guarantee, the subdividers and owners of the property to be subdivided (if other than the subdivider) must enter into an agreement with the governing body.~~

A. ~~No Transfer~~

~~The agreement must specify that no property will be sold, rented, or leased until a special improvement district is formed and that the subdividers and owners will allow the governing body to create a SID/RSID for the property without protest.~~

B. ~~Waive Protest~~

~~If the governing body requires that a property owner waive a right to protest the creation of an SID or an RSID for capital improvement projects, the governing body shall identify the specific capital improvements for which protest is being waived. A waiver of a right to protest shall expire 20 years after the date that the final subdivision plat is filed with the County Clerk and Recorder, unless an earlier date is approved by the governing body.~~

6.3.3.5 ~~Encumbrance Upon Real Property~~

~~The county may agree to accept as collateral lots within the subdivision or other real property owned by the subdivider.~~

A. ~~No Encumbrances~~

~~Real property will be acceptable as collateral if the subdivider owns the property free and clear of all encumbrances.~~

B. ~~80% Equity~~

~~The estimated amount of the improvements guarantee is no greater than 80% of the subdividers' equity in the property.~~

C. ~~Beneficiary~~

~~If appropriate, the subdivider shall prepare the Improvements Guarantee Agreement and a Montana Trust Indenture naming Missoula County as the beneficiary.~~

D. ~~Waive Incremental Release~~

~~The subdivider must provide a waiver of any right to incremental release of security, unless multiple parcels are provided as security.~~

E. ~~Associated Costs~~

~~All costs associated with the guarantee shall be the responsibility of the subdivider.~~

6.3.4 Incremental Payment or Guarantee Plan Subdivision Improvements Agreement

The subdivider shall enter into a Subdivision Improvements Agreement with the governing body that details the construction schedule of all private and public facilities and improvements required by these regulations or by a condition of approval. This

Agreement shall be accompanied with a financial guarantee as identified in this section if the final plat will be filed before improvements are completed. (See Section 7.7.3, Subdivision Improvements Agreement, for required content in this Agreement.)The governing body may agree to an incremental payment or guarantee plan. The improvements incurred in a prior increment must be satisfied before the development of future increments is approved.

6.3.5 Release of Money or Property Held Under Alternative Guarantee Methods

When a financial guarantee is required, the subdivider shall propose and the governing body may approve ~~one~~1 or a combination of more than ~~one~~1 of the following guarantee methods.As improvements are completed, the subdivider may apply to the governing body for a release of part or all of the collateral.

6.3.5.1 ~~List Deficiencies~~ Private or Public Escrow Agreements

The subdivider deposits cash, a note, bond, or some other instrument readily convertible into cash with the county or with a financial institution approved by the governing body in an account payable to the county.If the governing body determines that any of the improvements are not constructed in substantial compliance with specifications, they furnish the subdivider with a list of specific deficiencies and shall be entitled to withhold collateral sufficient to ensure compliance.

A. Amount

The amount of the deposit shall cover 125% of the cost of installing or constructing any incomplete private and public improvements. The amount shall be increased ~~three~~3% percent for each year of a multi-year construction schedule to offset inflation. The account shall be subject to an agreement between the subdivider and the financial institution and the county.

B. Release

The agreement shall include a provision to release funds to the subdivider as the improvements are completed and approved by the county, if ~~applicable~~appropriate. The agreement must specify that funds cannot be released without the governing body's approval.

C. Property of County

The agreement must specify that the funds become the property of the county for the purpose of completing the improvements if the subdivider fails to complete the improvements within the approved construction schedule.

D. Associated Costs

The subdivider shall bear all costs associated with providing the guarantee.

6.3.5.2 ~~Withdraw Funds~~ Irrevocable Letter of Credit

~~If the governing body determines that the subdivider will not construct any or all of the improvements in accordance with all of the specifications, or has reason to believe that the subdivider cannot complete the improvements, the governing body may withdraw such funds from the collateral as may be necessary to construct the improvements in accordance with the specifications contained on the plat and in the approval of the subdivision.~~ The subdivider secures a letter of credit from a financial institution.

A. Amount

The amount of the credit must be sufficient to cover 125% of the costs of installing or constructing any incomplete private and public improvements. The amount shall be increased ~~3%~~ ~~three percent~~ for each year of a multi-year construction schedule to offset inflation.

B. Creditor's Pledge

The letter must pledge that the creditor will pay the costs of improvements should the subdivider default and that the credit cannot be revoked without the governing body's approval.

C. Funds to County

The letter must state that the funds guaranteed will be automatically turned over to the county if the improvements are not installed in accordance with the approved construction schedule.

D. Associated Costs

The subdivider shall bear all costs associated with providing the guarantee.

6.3.5.3 Bonds

The subdivider provides a surety bond to guarantee the funds to complete private and public improvements, subject to any requirements of the bonding company.

A. Amount

The bond shall be payable to the county and shall be in an amount sufficient to cover 125% of the costs of installing or constructing any incomplete private or public improvements. The amount shall be increased ~~3%~~ ~~three percent~~ for each year of a multi-year construction schedule to offset inflation.

B. Completion

The bond shall remain in effect until the improvements have been completed and approved by the county.

C. Associated Costs

The subdivider shall bear all costs associated with the providing the guarantee.

6.3.5.4 Special Improvement Districts

The governing body may agree to sell bonds or by some other means raise the funds necessary to finance public capital improvements until costs can be recovered through assessments against lot purchasers in the subdivision. To establish this type of guarantee, the subdivider and owners of the property to be subdivided must include in the Subdivision Improvements Agreement the following specifications.

A. No Transfer

No property will be sold, rented or leased until a special improvement district is formed and the subdivider and owners will allow the governing body to create a SID/RSID for the property without protest.

B. Waive Protest

Each property owner within the subdivision waives the right to protest the creation of an SID/RSID for capital improvement projects, and the governing body shall identify the specific capital improvements for which protest is waived. A waiver of a right to protest shall expire 20 years after the date the final plat is filed with the Missoula County Clerk and Recorder, unless the governing body approves an earlier date.

6.3.5.5 Encumbrance Upon Real Property

The subdivider encumbers as collateral lots within the subdivision or other real property owned by the subdivider.

A. Value

The value of the collateral shall be great enough to cover 125% of the costs of installing or constructing any incomplete private and public improvements. The value shall be increased ~~three percent~~ three percent for each year of a multi-year construction schedule to offset inflation.

B. Appraisal

The value of the collateral shall be determined by an appraisal completed within the ~~six~~ six months prior to final plat approval by an appraiser licensed to practice in the State of Montana.

C. No Encumbrances

Real property will be acceptable as collateral if the subdivider owns the property free and clear of all encumbrances.

D. 80% Equity

The estimated amount of the improvements guarantee is no greater than 80% of the subdividers' equity in the property.

E. Beneficiary

If appropriate, the subdivider shall prepare the Improvements Guarantee Agreement and a Montana Trust Indenture naming Missoula County as the beneficiary.

F. Waive Incremental Increase

The subdivider must provide a waiver of any right to incremental release of the security, unless multiple parcels are provided as security.

G. Associated Costs

The subdivider shall bear all costs associated with providing the guarantee.

6.3.6 Incremental Payment or Guarantee Plan ~~Provisions for Maintaining New Roads~~

The governing body may agree to incremental payments or incremental guarantees when the increments correspond with a phased construction schedule~~For all new roads created through the subdivision approval process, corresponding SIDs/RSIDs must be created by the subdivider in order to provide for adequate maintenance of such roads.~~

6.3.6.1 Plat Note

~~A statement shall be included on the subdivision plat that acceptance of a deed for a lot within the subdivision shall constitute the assent of the owners to any future SID/RSID, based on benefit, for upgrading and/or maintaining the streets within the subdivision, including but not limited to paving, curbs, and gutters, non-motorized facilities, street widening, and drainage facilities. The acceptance of a deed may be used in lieu of their signatures on an SID/RSID petition.~~

6.3.7 Release of Money or Property Held Under Guarantee~~Warranty of Improvement~~

As improvements are completed, the subdivider may apply to the governing body for release of part of the financial guarantee or collateral. Upon completion of all private and public improvements, all financial guarantees and collateral shall be released to the subdivider~~The subdivider shall provide a one-year warranty for all improvements required of the subdivision. The warranty must commence at the time the improvements are inspected and accepted by the governing body.~~

6.3.7.1 Inspections

Prior to the release of any financial guarantee or collateral, the improvements for which the release is requested shall be inspected and approved by the county for compliance with approved plans and specification.

6.3.7.2 List Deficiencies

If the governing body determines that any of the improvements are not constructed in substantial compliance with specifications, the subdivider shall be provided a list of specific deficiencies and the governing body shall be entitled to withhold guaranteed funds or collateral sufficient to ensure compliance.

6.3.7.3 Withdraw Funds

If the governing body determines that the subdivider will not construct any or all of the improvements in accordance with all of the specifications, or has reason to believe that the subdivider cannot complete the improvements, the governing body may withdraw funds from the financial guarantee or collateral in an amount sufficient to construct the improvements in accordance with the specifications contained in the conditions of subdivision approval.

6.3.8 Provisions for Maintaining New Roads

The subdivider may be required to establish an SID/RSID to provide for adequate maintenance of all roads established in an approved subdivision.

6.3.8.1 Plat Note

A statement shall be included on the subdivision plat or condition of approval sheet stating that acceptance of a deed for a lot within the subdivision shall constitute the assent of the owners to any future SID/RSID, based on benefit, for upgrading and/or maintaining the streets within the subdivision, including but not limited to paving, curbs and gutters, non-motorized transportation facilities, street widening and drainage facilities. The acceptance of a deed may be used in lieu of their signatures on an SID/RSID petition.

6.3.8.2 Developer Responsibility

If required to establish an SID/RSID, the developer shall maintain the new roads until the SID/RSID is capable of maintaining the roads. A written agreement shall document this responsibility and describe the method to transfer the maintenance responsibility to the SID/RSID or Homeowner's Association and the acceptance of the responsibility.

6.3.9 Warranty of Improvements~~**Provisions for Maintaining New Roads**~~

The subdivider shall provide a ~~one~~ year warranty for all private and public improvements required by these regulations and any conditions of subdivision approval. The warranty must commence at the time the improvements are approved by the governing body.

6.4 Vacating Recorded Plats

To remove or vacate a plat from the county ~~of record under the provisions of MCA, §66-3-305, §6-5-2501, §6-5-2502, §6-14-2616(1), §6-14-2616(2), §6-14-2616, §6-14-4114(1), §6-14-4114(2), and §6-14-4115~~land records, the following procedure must be used:

6.4.1 Petition

A petition for vacating the plat must be presented to the governing body specifically identifying the plat to be vacated and stating that petitioners are the owners of all ~~the~~ land ~~described~~ in the plat to be vacated and that no rights of any person have intervened since the ~~filing of~~ plat was filed which would be adversely affected by the cancellation or annulment of the plat.

6.4.2 Public Hearing

The governing body must hold a public hearing on the plat vacation. ~~Notice of the public hearing should be given by certified mail to the landowners and anyone else with an interest in the land (including mortgage holders).~~

6.4.3 Public Notice

Public notice of the hearing must be given by posting in 3 public places and publishing in a newspaper of the general circulation in the county at least 1 week prior to the hearing on the petition. Notice of the public hearing also shall be delivered by certified mail to everyone with an interest in the subdivision to be vacated, including the landowners and mortgage holders

6.4.4 ~~Determination~~Decision

The ~~determination of the~~ governing body's decision to approve or deny the petition for plat vacation ~~should shall~~ be based on public interest factors, including those that ~~would be~~ are relevant to vacating public roads. The governing body shall consider the following in making its ~~determination~~decision:

6.4.4.1 ~~Previous Pattern of~~ Platting

The pattern of any platted lots in the area and how the requested vacation may affect these lots;

6.4.4.2 Original ROW

The manner in which any right-of-way to be vacated was originally dedicated, granted or conveyed;~~A central area for storage or parking of boats, trailers, or other recreational vehicles.~~

6.4.4.3 Reasons

The reasons stated in the petition requesting the vacation; and.

6.4.4.4 Neighbor Agreement

Any agreement between the adjacent property owners regarding the use of the vacated area.

6.4.5 Streets, Alleys

~~If the plat is to be vacated, the order of the vacation shall designate to which properties the title to~~ A decision to vacate a subdivision shall designate to which properties land previously platted as streets and alleys must revert and that interior streets may pass to the adjoining landowners, with each adjoining landowner taking title to the center of the street.

6.5 ~~Error Corrections and Plat Adjustment Procedure~~

Final plats and certificates of survey shall be reviewed by the Examining Land Surveyor for errors and omissions in calculations or drafting before the plat is recorded with the Missoula County Clerk and Recorder. Any errors on the plat or the certificate of survey shall be resolved pursuant to this section.

6.5.1 Classification of Errors

The Examining Land Surveyor shall determine if any errors are minor or major errors.

6.5.2 Minor Errors:

Minor errors may include but are not limited to:

~~6.5.1.1~~ 6.5.2.1 Typographical and spelling errors or transpositions;

~~6.5.1.2~~ 6.5.2.2 Incorrect seals;

~~6.5.1.3~~ 6.5.2.3 Incorrect dates;

~~6.5.1.4~~ 6.5.2.4 Monumentation incorrectly noted, drawn, or missing;

~~6.5.1.5~~ 6.5.2.5 Incorrect or missing interior bearing(s) and/or dimensions(s) on the drawing;

~~6.5.1.6~~ 6.5.2.6 Missing or incorrectly displayed arrows or symbols;

~~6.5.1.7~~ 6.5.2.7 Street name changes;

~~6.5.1.8~~ 6.5.2.8 Title of plat already in use; and,

~~6.5.1.9~~ 6.5.2.9 Other items of a similar nature as determined by the Examining Land Surveyor.

~~6.5.2.6.3~~ 6.5.3 **Review Procedure for Correcting Minor Errors**

Corrections of minor errors may shall be reviewed approved for decision by the Examining Land Surveyor.

6.5.2.1 Appeal

~~Appeal of the Examining Land Surveyor's decision is to the governing body.~~

6.5.2.26.5.3.1 Affidavit

An Affidavit of Correction ~~shallis to~~ be prepared and signed by a professional land surveyor on forms approved by the County Attorney and ~~shallis to~~ be recorded with the Office of the Missoula County Clerk and Recorder.

6.5.2.36.5.3.2 Fees

~~The~~ property owners ~~who may~~ petition ~~the county~~ing for ~~athe amendment or~~ correction of a filed subdivision plat shall pay all ~~direct and~~ related ~~direct~~ costs incurred by the ~~cCounty to process the correction of Missoula~~, including filing fees according to the ~~currently adopted~~ fee schedule.

6.5.36.5.4 Major Errors

Major errors may include but are not limited to:

6.5.3.16.5.4.1 Legal Description

Additions to or deletions from the legal description of dedicatory language that are not typographical in nature;

6.5.3.26.5.4.2 Incorrect Certificates

Incorrect certificates or signatures;

6.5.3.36.5.4.3 Missing Certificates

Missing certificates, seals, or signature blocks; and,

6.5.3.46.5.4.4 Similar Items

Other items of a similar nature as determined by the Examining Land Surveyor and Director of the Planning Office.

6.5.46.5.5 Review Procedure for Correcting Major Errors

Major errors shall be reviewed by the Examining Land Surveyor and the Planning Office Director.

6.5.4.16.5.5.1 Corrected Plat Certified

All corrected plats shall be ~~certified reviewed in accordance with as stated~~ in ~~Section 6.2.94, Review Responsibilities.~~

6.5.4.26.5.5.2 Fees

The property owners petitioning for the amendment or correction of a filed subdivision plat shall pay all related direct costs incurred by the ~~cCounty of~~ ~~Missoula~~, including filing fees according to the ~~currently adopted~~ fee schedule.

6.5.5 Appeal

6.5.6

The Examining Land Surveyor's decision may be appealed to the Board of County Commissioners pursuant to *section 5.11, Appeals of Administrative Decisions.*

6.5.6 Plat Adjustments

~~Plat adjustments are those changes which, in the opinion of the governing body, may affect the precise dimensions of lots or buildings and the siting of buildings but which do not affect the basic character or arrangement of buildings, lots, or blocks, the density of the development, the open space requirement, or the street design.~~

6.5.6.1 Review Procedure for Plat Adjustments

~~Plat adjustments shall be reviewed by the governing body.~~

A. Affidavit

~~An Affidavit of Correction shall be prepared and signed by a professional engineer or professional land surveyor on forms approved by the County Attorney or an amended plat shall be required and shall be recorded with the Office of the Missoula County Clerk and Recorder.~~

B. Fees

~~The property owners petitioning for the amendment or correction of a filed subdivision plat shall pay all related direct costs incurred by the County of Missoula, including filing fees according to the fee schedule.~~

6.6 Adjustments to Filed Plats and Related Documents

6.6.1 Purpose and Intent

The purpose and intent of this section is to accommodate the modest changes to plat elements, supplemental plans/documents that accompany a filed plat, or the conditions of approval of a filed plat. The changes become necessary and practical as result of changing conditions in the community or the neighborhood of the subdivision, or new information. It is the intent that these changes maintain the intent of the previous approval.

6.6.2 Adjustment Defined

An adjustment grants minor relief from conditions of approval or facilitates minor changes to the details of a filed plat when the nature of the adjustment and the absence of an impact on neighboring properties or the community warrant a process for submittal, review and a decision by the governing body.

6.6.3 Applicability

Any adjustment requested pursuant to *Subsection 6.6.2, Adjustment Defined*, is subject to this section. Adjustments may be approved for the following elements of a filed plat pursuant to this section:

6.6.3.1 Plat Elements

Elements of filed plats.

6.6.3.2 Conditions

Conditions of subdivision approval.

6.6.3.3 Supplement Sheets, Documents

Information on supplemental sheets or documents.

6.6.3.4 Approval Sheets

Conditions of Approval sheets.

6.6.3.5 CCR

Filed covenants, conditions and restrictions.

Info Box

Many covenant provisions are unrelated to subdivision approval by the Board of County Commissioners, and are not subject to this process. These sections of the covenants may be amended without governing body approval. Check the “amendments” section of the covenants.

6.6.4 Criteria

Filed adjustments shall comply with the following criteria:

6.6.4.1 Minor Nature

The adjustment is minor when viewed in the context of the neighborhood and overall community, and its effect is generally limited to the subdivision.

6.6.4.2 Comply with Regulations

The adjustment shall not cause the approved subdivision to fall into noncompliance with these regulations or any other applicable law, regulation or code.

6.6.4.3 Protections

The adjustment will not reduce the protections or safeguards provided by these regulations, including but not limited to protection of natural resources, neighboring properties, and the overall community.

6.6.4.4 No Impacts

The adjustment shall not create any new impact or the increase of a previously recognized and mitigated impact on the neighboring land or the overall community.

6.6.4.5 Growth Policy

The adjustment shall not cause the approved subdivision to become inconsistent with the currently adopted *Missoula County Growth Policy*.

6.6.4.6 Consistent with Findings

The adjustment shall be fundamentally consistent with the findings of fact and conclusions of law adopted for the filed plat, except in certain situations where the circumstances giving rise to the adjustment justify revised findings and conclusions of law.

6.6.4.7 Not Incremental

The requested adjustment is not part of a series of such adjustments and variances for the same subdivision, nor is it the first in a potential series of adjustments and variances.

6.6.4.8 Changes to Subdivided Area

The requested adjustment stems from environmental or contextual changes to the area proposed for subdivision since recording of the plat.

6.6.4.9 Economic Changes

Economic changes since recording of the plat may not be considered under this section.

6.6.5 Procedure

6.6.5.1 Initiation

The subdivider shall submit to the Planning Office a written or emailed request for a filed plat adjustment. The request must include a digital submission that describes and illustrates the proposed adjustment.

6.6.5.2 Pre-submittal Meeting

The Planning Office shall schedule a pre-submittal meeting with the subdivider within 10 working days of receipt the request. The purpose of the meeting is to identify the submittal materials that will be needed to determine compliance with this section.

6.6.5.3 Submittal

After the pre-submittal meeting, the subdivider shall submit to the Planning Office 1 paper copy and 1 digital copy of the materials identified in the pre-submittal meeting.

6.6.5.4 Staff Review, Report

The Planning Office may distribute the requested adjustment to public agencies for review and comment, if applicable, and then perform a review and prepare a staff report pursuant to *section 5.7.9, Staff Review, Staff Report.*

6.6.5.5 Minor Subdivisions

Proposed amendments to minor subdivisions shall be subject to a public meeting before the Board of County Commissioners, noticed in accordance with *Section 5.7.11, Public Meeting Notice.*

6.6.5.6 Major Subdivisions

Proposed amendments to major subdivisions shall be subject to review by the Missoula Consolidated Planning Board and the Board of County Commissioners. Major subdivisions shall be noticed in accordance with *Section 5.7.12, Public Hearing Notice.*

6.6.5.7 Planning Board Consideration (major subdivisions)

Upon receipt from the Planning Office of a subdivider's request for an adjustment, the Planning Board shall consider the adjustment pursuant to *Section 5.7.13, Planning Board Consideration.*

6.6.5.8 Governing Body Consideration, Decision

Upon receipt from the Planning Office of a subdivider's request for an adjustment, the staff report, and a Planning Board recommendation in the case of a major subdivision, the governing body shall consider the requested adjustment. After the close of the public hearing in the case of a major subdivision, or at the public meeting for a minor subdivision, the governing body shall decide to approve, approve with conditions, or deny the requested adjustment.

6.6.5.9 Written Statement

A written statement of the decision shall be placed in the records of the governing body and forwarded to the subdivider and Planning Office. If the requested administrative adjustment is **denied**, the written statement shall include the reasons for the decision, evidence on which the decision is based, and a description of the process to appeal the decision.

6.6.6 Record Documents

Any recorded documents that are modified by an adjustment shall be revised and then filed with the Clerk and Recorder within **60** calendar days of the governing body's approval. The approved adjustment shall be void if the applicable documents are not filed within **60** days of approval.