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January 18, 2010

RE: Subdivision Regulations Draft

To: Mayor John Engen
Missoula Office of Planning & Grants

Cc: Missoula City Council
Missoula Consolidated Planning Board
Zoning Advisory Board

To whom it may concern:

The Missoula Organization of REALTORS® is appreciative of the opportunity to comment on the draft of the Subdivision Regulations Update. Many of our comments are questions of interpretation and policy and we appreciate your attention to those matters. We do express concern however, because as we reviewed the document, there were several instances where requirements were being changed before policy decisions had been made. Please review the following comments regarding the Subdivision Regulations Update.

Page 1-3 .2 If the proposed subdivision lies within 3 miles of the city, the board of county commissioner must submit the preliminary plat to the ~~City governing body~~ city council.
This sounds similar to the “donut rule”, is that still in effect? If not, what does this language do?

Page 1-4 1-130 Amendments-
Consider adding language including the addition of the subdivision application and exhibits in order to ensure that the city council is consistent

Page 2-6 .33 Driveway-
The amended language, as an example would limit access to a four-plex on one lot or to a house built on four lots. MOR suggests modifying the language to allow for increased flexibility.

Page 2-10 .62 Low Impact Development-
This tool, if we are correct in our interpretation, could be a positive thing for Missoula. Can you provide us with examples of the potential benefits to ensure we're on the same page? Also, could this be made a requirement instead of just a tool for developments? Finally, are drywells still allowed? If not, when was that decision made?



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- Page 2-13 .95 Riparian Resource Area-
Suggestion 1) exclude man-made waterways, i.e. irrigation ditches. The maintenance needed to keep them running is in direct conflict with riparian preservation.
Suggestion 2) due to the stricter riparian regulations as specified on Page 3-37 the definition of Riparian Resource Area be less inclusive so that situations such as Sonata Park do not become common.
- Page 2-17 Suggestion: Include a definition of Variance.
- Page 3-1 .1 B Why is “Uniform” removed?
- Page 3-2 .2 A (1) Land located **within** the floodway, ~~of a 100-year flood event~~ as defined by Title 76, Chapter 5, MCA, or other land determined by the city council to be subject to flooding...
Suggest that language be altered to direct city council to make their determination on “other land” based on an the recommendation from an accredited resource. MOR is concerned that the city council lacks the scientific background to adequately make a determination without additional resources.
- Page 3-5 J. Local streets must be designed to discourage future use as collector streets.
This addition is in conflict with the city’s requirement for subdivisions to allow for future connectivity whenever possible. How should this be interpreted?
- K. Gates, walls, or other obstructions that impede pedestrian or vehicular access to residential subdivisions when traveling on approved rights of way are prohibited. This provision is not intended to prohibit fences on or around individual lots within residential subdivisions.
While this has not been a building type utilized in Missoula to date, what is the rationale behind banning them? Where did this recommendation come from? Has a policy decision occurred at city council?
MOR suggests adding the word public before rights of way to allow for gates on privately owned/maintained roads.
- Page 3-9 .3 Public Roads within UGA-
Does the city have the authority to set standards for roads within the UGA that are in the county?
- Page 3-11 C. ...This waiver of the right to protest formation of an SID/RSID expires 20 years after the date the final subdivision plan is recorded with the county clerk and recorder.
Is this enough of a change to meet the legislative requirement?
- Page 3-13 8. A. ...unless a better street design or circulation pattern is provided and a variance is approved in accordance with Article 6.
Why would the city require a variance for providing a better design?
- Page 3-16 L. Trail easements and right of way widths must be a minimum of 20 feet. ~~Hillsides may require~~ aAdditional width may be required in hillside areas to accommodate switchbacks for trails, etc.
MOR suggests that there be an additional option apart from a minimum of 20 feet in order to allow





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for better trail design and reduce the weed problem in rights of way. Possibly in situation where covenants do not allow for high fencing in order to avoid some of the problems that may occur with narrower rights of way.

Page 3-19 30-030 .1 E. Double frontage or through lots are prohibited. ~~except where essential to provide separation of residential development from traffic arterials or to overcome specific disadvantages of topography or orientation.~~

What is the problem being solved by removing this language? MOR feels that there should be allowances for situations that that would benefit from this option.

.2 A. (1) The street must be designed to create a block pattern. ~~except where topographic or other conditions necessitate another configuration.~~

Again, what problem is being solved by removing this language? MOR feels that it is important for our regulations to accommodate a variety of development styles. Banning types of development that don't conform to the current trend in our subdivision regulations can cause them to become antiquated more quickly.

Would a corner lot be considered to have double frontage as prohibited in .1 E?

Page 3-24 ~~B. Wells with 350 gpm well and a minimum of 2000 gallon storage; or~~ Why is this being removed?

Page 3-27 C. For purposes of these regulations, appraisals are valid only if prepared within 6 months of the date that a complete final plat application is submitted for approval.

If the appraisal number is needed for submittal, than it is very likely that additional appraisals would be necessary in order to meet this requirement. MOR suggests that the appraisal be prepared within 6 months of the date that the subdivision application is deemed complete.

.8 B Riparian resource areas and adjacent buffers associated with irrigation or roadside ditches. As mentioned previously, man-made waterways should be excluded from riparian area requirements as the maintenance needed to keep them running is in direct conflict with riparian preservation.

.8 D Stormwater retention or detention ponds that are designed to hold stormwater runoff from less than 100-year events; and

MOR believes that with proper planning a retention or detention area could provide dual duty as a recreational property. In order to best use the land we have, it would be beneficial to allow for and encourage that scenario.



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- Page 3-28 The city council ~~shall~~may waive the park dedication requirement if it finds the following: MOR requests that the city does not change the language.
- Page 3-37 .3 Designation of Riparian Resource Area
MOR has many comments and concerns about these changes. We would like to request a meeting with OPG and local decision makers to discuss this section in detail.
- Page 3-42 .3 In first chart, the grey area in the first column, “Slope of Subdivided Area (%)”[1], MOR suggests that it be the Slope of Lotted Area.
- .6 Grading
What happens to a property that has been graded previously without a permit? Do you need a permit on a property that has not been subdivided?
- Page 3-44 3-150 Cluster and Conservation Development Standards
Is this just a tool available to a subdivider or could it be required?
- Page 4-7 (2) The city council may require a percentage of improvements or specific types of improvements necessary to protect public health and safety to be completed before allowing bonding or other reasonable security per MCA 76-3-507 for purposes of filing a final plat.
What does this addition protect against that isn’t already in place? What is the purpose?
Language has also been added to Page 4-18 (4) (b) and Page 5-13 .4 D
- Page 4-10 4-030 .1 Time Period for Approval or Denial
While the legislature allows local governments to extend their timelines to this specified amount, it does not require it. MOR suggests that they are not modified.
- Page 4-14 4-070 .2 Phasing
Why has the city’s attitude towards subdivision extensions changed? There should be a policy discussion and decision before the regulations are modified.
- Page 4-16 .4 B. Determination of Compliance
A definition of “Material Change” should be included in definitions to correlate with this section.
- Page 5-3 .5 Access: Information pertaining to access to the property, including when applicable, copies of easements, agreements, and access permits or applications for permits; sufficient to demonstrate the existence of perpetual, legal access. For major subdivisions the information must be provide for any access routes required by 3-020.
Do you have to have the access or is proof that there is an agreement to purchase the access acceptable? Would a letter of intent suffice?
- Page 5-5 .11 D. Typo, the 15.01-20% should in fact be 15-20%
- Page 5-7 .14 A. (2) a map legend that lists each phase and the specific final plat filing deadlines for each phase.





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After the first phase is filed, what is the benefit for requiring specific deadlines for each additional phase?

Page 5-10 (5) A maintenance and monitoring plan must be submitted outlining how the riparian resource area will be maintained. The approved management plan must be implemented in perpetuity and may not be altered without city council approval.

MOR recommends that the city exclude man-made waterways, i.e. irrigation ditches. Creation of a plan would be pointless as the maintenance needed to keep them running is in direct conflict with riparian preservation

M. If the property contains “prime farmland” or “prime farmland if irrigated,” provide a soils assessment for the entire property performed by a soil scientist that includes at a minimum a soil texture analysis, measurements of topsoil depth and water-holding capacity. The assessment must include a discussion of how texture and depth compare to that of the predominant soil type of agricultural importance found on the site according to the Natural Resources Conservation Services.

The city has yet to determine a policy on Agricultural Preservation. The inclusion of this requirement is a substantive change. MOR requests that it be removed until the time that a policy is determined for the city on the preservation of agricultural resources. Please see attached letter from attorney William VanCanagan on this issue in Missoula County.

Page 6-1 6-010 .6 The hardship has not been created by the applicant or the applicant’s agent or assigns. MOR requests that this be excluded from the changes as it is not solving a specific problem and offers little benefit to the city or property owners.

Once again, thank you for the opportunity to comment on these proposed changes to Missoula’s subdivision regulations. Considering the comments and types of changes the draft is proposing, we encourage the city to not rush this process and we look forward to the opportunity to discuss our concerns and questions with you further. Ruth Link, MOR Public Affairs Director, will contact you in a few days to schedule a time to discuss the changes to riparian protection.

Sincerely,

Kim Bennett Buchanan
 Chair of the Government Affairs Committee



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