

SUBDIVISION REVIEW

Primary Review Criteria

The Montana Subdivision and Platting Act (76-3-101 through 76-3-625, Montana Code Annotated) requires that a subdivision proposal be evaluated for compliance with six primary review criteria, in addition to state and local law. The primary review criteria are a subdivision's anticipated:

- Effect on agriculture
- Effect on agricultural water user facilities
- Effect on the natural environment
- Effect on wildlife and wildlife habitat
- Effect on local services, and
- Effect on public health and safety

The criteria are general and a subdivision's potential impact on each of them is open to individual interpretation. Nowhere in state law are they defined: it is up to local officials to define and use the review criteria to the best of their ability. The purpose of this section of the Lake County Growth Policy is to define the primary review criteria in order to provide guidance to developers, the public and public officials so that the subdivision process is more predictable and efficient.

No two subdivision proposals are the same and the process requires a degree of flexibility in order for decision makers to exercise sound judgement. While most impacts to the review criteria may be mitigated, in some instances the probable impacts of a subdivision may be deemed too great for the project to be approved. As always, the decision makers will attempt to balance the rights of the developer with the good of the community when reviewing subdivision proposals.

The following paragraphs list the primary review criteria and define how staff, the Lake County Planning Board and the Board of County Commissioners will use them to evaluate subdivision proposals. Also included are potential mitigation measures that may be attached to subdivision proposals as conditions of preliminary approval.

1. Effect on agriculture

The economy and culture of Lake County are intimately tied to agricultural use of the land. A subdivision proposal may have an unacceptable effect on agriculture if, at a minimum, it fails to control noxious weeds on the property, fails to minimize road dust, fails to take steps to preserve good and prime irrigable soils, fails to keep livestock from entering the subdivision boundaries, fails to buffer residential development from surrounding agricultural operations and fails to take steps to keep pets from harassing livestock.

If a subdivision proposal complies with all of the other applicable requirements and includes substantial measures to minimize the impact on agricultural operations and resources, it is likely to be found to have no significant impact on agriculture. Such

measures include treating noxious weeds on the property and entering into a weed management agreement with Lake County, chip-sealing, paving or dust coating roadways on and potentially leading to the property, taking steps to preserve agricultural soils such as clustering homes and development on non-irrigated land, adequately fencing the perimeter boundaries in livestock areas, and adopting covenants that require pets to be restrained and requiring adequate building setbacks and vegetated buffers.

2. Effect on agricultural water user facilities

One of the primary reasons the agricultural land of Lake County is productive is the presence of irrigation facilities. A subdivision proposal may have an unacceptable effect on agricultural water user facilities if it does not comply with the irrigation provisions of the Lake County Subdivision Regulations and, at a minimum, it fails to set up a reasonable mechanism for delivering irrigation water to the lots, does not include sufficient easements for ditch and system maintenance, or is likely to result in the disruption of service to downstream users. If the proposal complies with the subdivision regulations, includes measures to limit the impacts to downstream users and meets the requirements of representatives of the Flathead Irrigation Project, the proposal is likely to be viewed as having no significant impact on agricultural water user facilities. All proposals for subdivision of land under the Flathead Irrigation Project must include a letter of review from that agency.

3. Effect on the natural environment

The term natural environment encompasses a number of things, including, but not limited to, ground water, surface water, wetlands, scenic views and air quality. A subdivision proposal may have an unacceptable effect on the natural environment if, after qualitative and quantitative review, it is found likely to jeopardize the existing environmental quality in an area. In cases where unanswered questions exist regarding potential impacts to water or air quality, the developer may be required to pay for a third party assessment of the impacts.

Proposals that are found to have significant potential to impact environmental quality will be required to mitigate the impacts. In some cases, the potential impacts will be too great for mitigation measures. All proposals are required to comply with the applicable federal, state, local and tribal regulations. In those cases where no mitigation measures are required, and in those cases where mitigation measures are required and then implemented, the proposal is likely to have no significant impact on the natural environment.

Mitigation measures may include, but are not limited to, advanced-treatment individual septic systems or approved public/municipal sewer hook-ups where extension of services is possible, developing multi-party water systems instead of numerous individual wells, providing for native vegetative buffers and building setbacks along waterways and riparian corridors, locating development outside of flood plains and off of steep slopes, leaving view corridors open for off-site property owners, buffering the view of new development from surrounding landowners, including measures to prevent toxic chemicals from entering the aquifer, managing stormwater runoff in light of below-

ground conditions, compliance with state and local standards, having chip-sealed or paved roads and preventing air emissions that violate established standards.

4. Effect on wildlife and wildlife habitat

There are a number of areas of Lake County that are designated as important habitat for bears, waterfowl, upland game birds and other animals. A subdivision proposal may have an unacceptable effect on wildlife and wildlife habitat if it is to develop land that wildlife inhabit and does not include measures to prevent human-wildlife conflict or ensure wildlife will continue to inhabit the area. In cases where unanswered questions exist regarding potential impacts to wildlife and wildlife habitat, the developer may be required to pay for a third party assessment of the anticipated impacts.

If the proposal includes measures to limit the potential impacts and complies with all applicable federal, state, local and tribal requirements, the proposal is likely to be judged as having no significant impact to wildlife and wildlife habitat. Mitigation measures include, but are not limited to, preserving vegetative cover along riparian corridors, requiring significant building setbacks from bodies of water, reducing development density in areas of important habitat, and developing covenants that educate lot buyers and reduce the potential for human-wildlife conflict.

5. Effect on local services

For the purposes of subdivision review, local services include, but are not limited to, sewer and water, roads, telecommunications, schools, electricity and solid waste disposal. A subdivision proposal may have an unacceptable effect on local services if it requires services that are not available in location, condition or capacity to serve the development. If a subdivider demonstrates that sewer and water facilities are available and includes acceptable provisions to pay for or share payment for the extension and service of public facilities (with the exception of educational facilities as per 76-3-510, MCA), the proposal is likely to be viewed as having an acceptable effect on local services.

6. Effect on public health and safety

Protecting public health and safety is the primary purpose of government. A subdivision proposal may have an unacceptable effect on public health and safety if it is located in an area that cannot be effectively served by emergency responders or is located in an area that is prone to natural or man-made hazards. Some examples are development on steep slopes and in high fire hazard areas or areas not served by a fire district. If steps are taken to ensure that the residents of a subdivision can be adequately served by emergency responders, the dangers posed by natural or man-made hazards are mitigated, and the proposal complies with state and local regulations, a subdivision proposal is likely to be viewed as having little impact on public health and safety.

Some mitigation measures that may be required are engineered structural designs on steep slopes, building roads to and within the subdivision to county-standards, developing water facilities for volunteer fire departments, aiding public safety and emergency response organizations with paying for the costs of serving new

development, constructing emergency or secondary ingress and egress, implementing additional urban-wildland interface development guidelines and other measures.