

Subdivision 101 Subdivision Regulation and Review in Montana

**MAP 2009 Conference – Red Lodge
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Realtor Credit

- Must sign the sign-in sheet
- Must attend all 4 sessions to get credit from the Montana Board of Realty

Presentation Outline

- Introduction to Subdivision Regulation
- Describe Subdivision Review
- Discuss Subdivision design issues
- Overview of Legislative Changes
- Contacts

Montana Subdivision and Platting Act

- Citation: 76-3 MCA
- Enacted: 1973
- Title 76- Land Resources and Use
- Chapter 3 – Local Regulation of Subdivision
- Significant change in 1993 – from 20 to 160 acres

Purpose of Regulation

- Promote public health, safety and welfare
- Prevent overcrowding of land
- Lessen traffic congestion
- Provide public improvements
- Develop in harmony with natural environment
- Promote preservation of open space
- Promote cluster development
- Protect private property interests
- Establish uniform monumentation and land transfer

What is Subdivision?

- Subdivision – a land division that:
 - Creates one or more parcels for conveyance
 - Parcels less than 160 acres that cannot be described as a $\frac{1}{4}$ aliquot part of a US government section
 - All parcels whether contiguous or not
 - To sell, rent, lease, or otherwise convey
 - Condominiums, RV spaces and mobile home spaces

Plat or COS?

- Plat
 - surveyed drawing depicting lots, rights of way, and easements
 - Approved by governing body
- Certificate of Survey
 - drawing of a field survey for the purpose of disclosing facts pertaining to boundary locations
 - No governing body approval (tracts)

Subdivision Exemptions

...certain divisions of land...unless purpose is to evade
MCA 76-3-201-210

- 201
 - Court order
 - Mortgage
 - construction, improvement or refinancing exempt parcel
 - Not exempt from zoning
 - Subsurface mineral
 - Cemetery lots
 - Life estate
 - Agricultural rent or lease
 - Located outside of state jurisdiction
 - Rights of way or utility sites

Subdivision Exemptions

...continued...

- 203
 - Condominiums constructed on land divided in compliance with parts 5 & 6 of chapter, and
 - express contemplation of condominium construction, and
 - complied with park dedication requirements; - OR -
 - In compliance with local zoning regulations
- 207 – surveying required
 - Relocate common boundary outside platted subdivision
 - Family transfer (outside platted subdivision, once per county)
 - Exclusively for agricultural purposes (outside platted subdivision, mutual approval to reverse)
 - Five or fewer platted lots boundary relocation
 - Aggregation of parcels or lots
- Etc.

Types of Subdivisions

- First Minors
- Subsequent Minors
- Majors
- Condominiums
- RV and Mobile Home Spaces

First Minor Subdivision

- 5 or fewer lots from Tract of Record, &
- Tract of Record has not been Subdivided, or Created by a Subdivision, or Resulted from a Tract of Record that has had > 5 parcels created by exemption, &
- Legal and physical access to all lots is provided.

Review Criteria

- Effects on: MCA 76-3-608(3)(a)
 - agriculture and agricultural water user facilities
 - the natural environment
 - wildlife and wildlife habitat
 - public health and safety
 - local services
- Compliance with:
 - Survey requirements outlined in MCA 76-3-401 et seq.
 - Local subdivision regulations and local review process
 - Local zoning regulations
- Provision of easements for utilities
- Provision of legal and physical access to each parcel
- Consistency with adopted plans and policies (Growth Policy, Neighborhood Plan)

Subdivision Processes

- Expedited First Minor Subdivision Review Process (optional)
- First Minor Subdivision Review Process
- Expedited Subsequent Minor Subdivision Review Process (optional)
- Cluster Development Process (optional)
- Major Subdivision Review Process

First Minor Review Procedure

1. PreApplication Consultation
2. Preliminary Plat Submittal
 - 35 working days for Public Process Review.
 - Summary of probable impacts based on primary criteria.
 - No public hearing.
3. Final Plat Submittal

Major Review Procedure

1. PreApplication Consultation
2. Preliminary Plat Submittal
 - 60 or 80 working days for Public Process Review.
 - Environmental Assessment.
 - At least one public hearing.
3. Final Plat Submittal

PreApplication Consultation

- Written request by Subdivider.
- 30 days to hold PreApplication consultation.
- Identify applicable state laws.
- Identify applicable local regulations.
- Identify applicable growth policy provisions.
- Provide Agency list.
- Time limit for Preliminary Plat submittal.

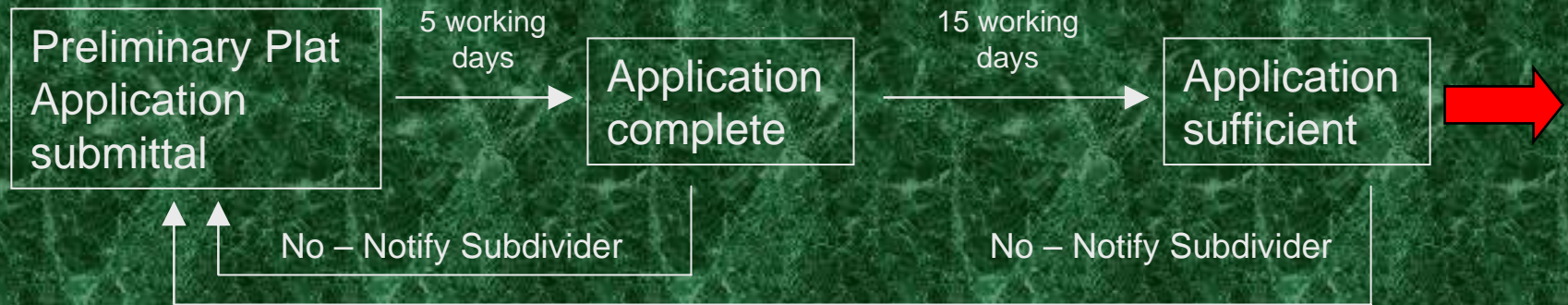
Preliminary Plat Submittal Review Timeline

1. Element Completeness Review
 - 5 working days.
2. Sufficiency Review
 - 15 working days.
3. Public Process Review (timeframe begins from date application determined sufficient)
 - 35 working days for a First Minor, or
 - 60 working days for 49 lots or less, or
 - 80 working days for 50 lots or more.

Failure to Comply to Timeline

- The governing body shall pay to the subdivider a financial penalty of \$50 per lot per month or a pro rata portion of a month, not to exceed the total amount of the subdivision review fee collected by the governing body for the subdivision application, until the governing body denies, approves, or conditionally approves the subdivision.

Preliminary Plat – Completeness / Sufficiency



- Two step process
- Strengthens agency review ability to insist on adequate submittals
- Requires clear submittal requirements
- Must notify subdivider if governing body “agent” contacts any entity not on list given at pre-app

Roles

- **Reviewing “agent” (typically staff)**
- **Planning Board – Recommends**
- **Governing Body – Final decision**

New Information to Governing Body

1. Previously available, irrelevant, not credible?
2. Never before available, relevant, credible?
 - If #1, make a decision without considering information.
 - If #2, send back to Planning Board for another hearing to consider ONLY new information.
 - 45 days for new PB hearing; review deadline is suspended and resumes at next noticed Commission meeting.

Written Decision Statement (Findings of Fact and Order)

- Required.
- List of Conditions.
- Statutes and Regulations used.
- Facts and Conclusions used.
- References to documents, testimony or materials that form the basis.
- Explanation of Appeal Process.
- 30 working days to provide to applicant.

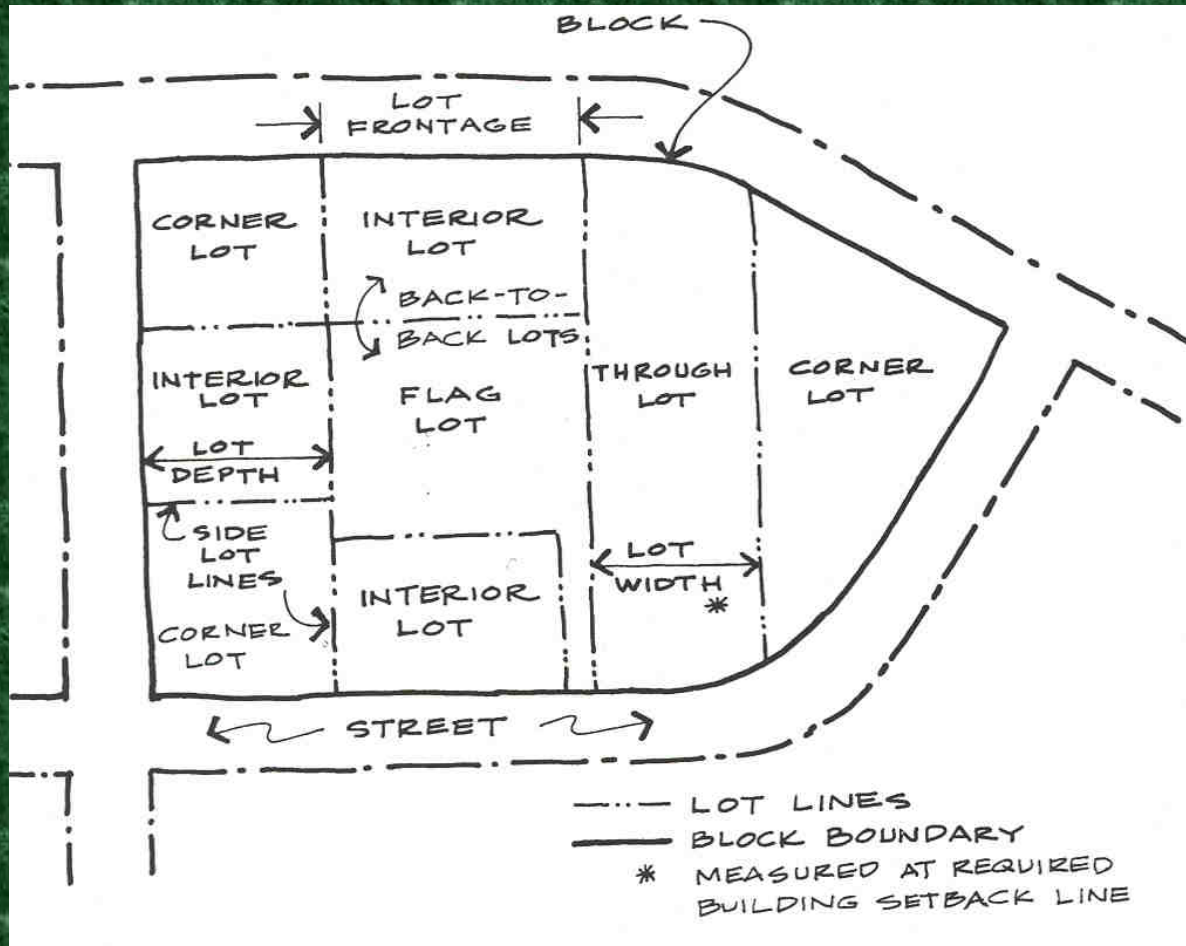
Frequent issues

- Urban / Rural interface
 - Compatible development
 - irrigation rights
 - livestock
 - road usage
 - wells and septic
 - life style conflicts
- Wildland / Urban fire concerns
 - Defensible space
 - Adequate access
 - Water supply
- Neighborhood connectivity
 - Connecting neighborhoods without encouraging cut-through traffic

Issues continued

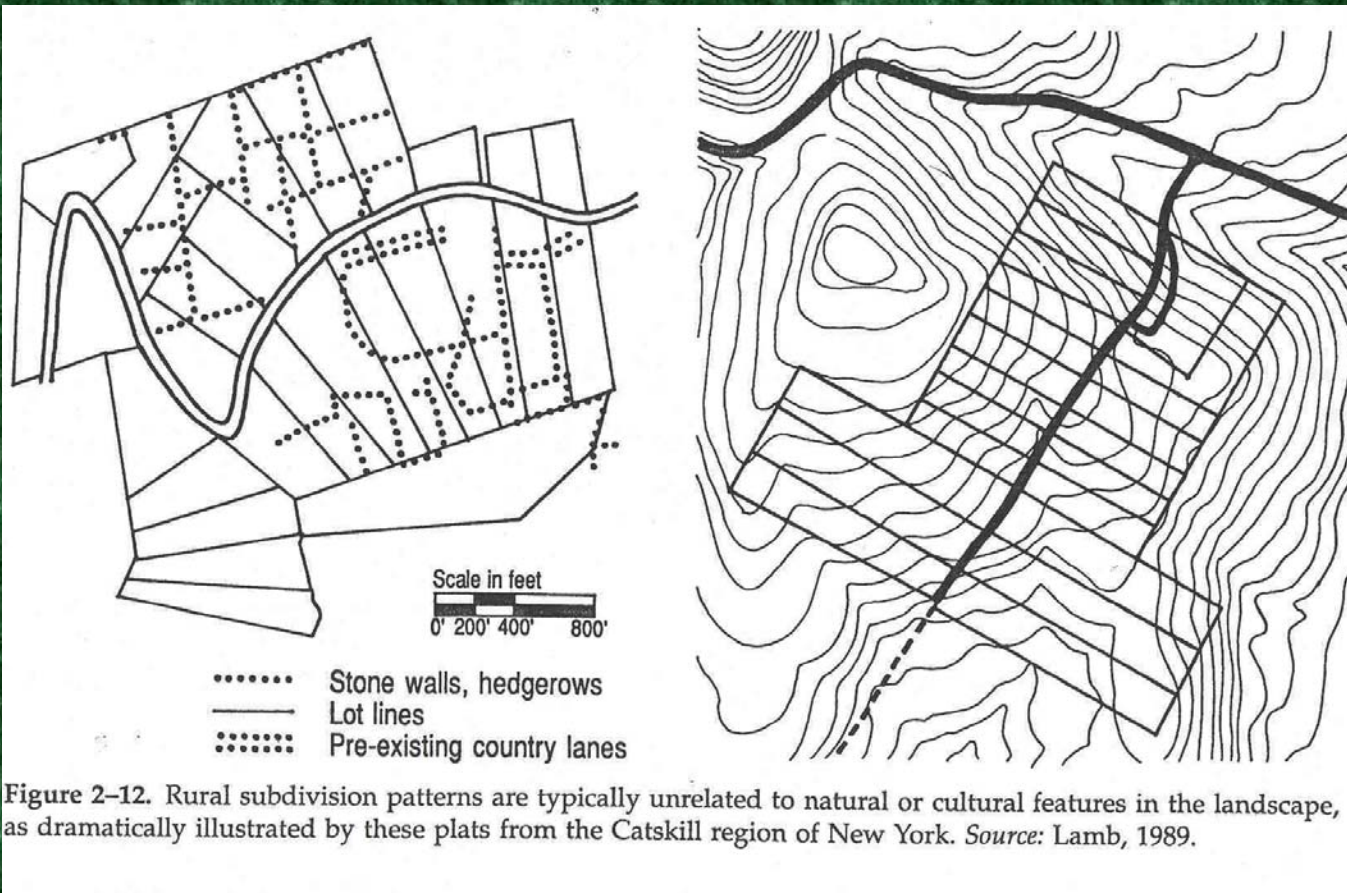
- Variances
 - Strict compliance results in undue hardship
 - Not detrimental to public health & safety
 - Criteria contained in regulations
- Parkland dedication and improvements
 - Suitability of land for a park - Accessibility
 - Land versus cash
 - Improvements and financing mechanisms
- Roads
- Storm water drainage

Design Considerations



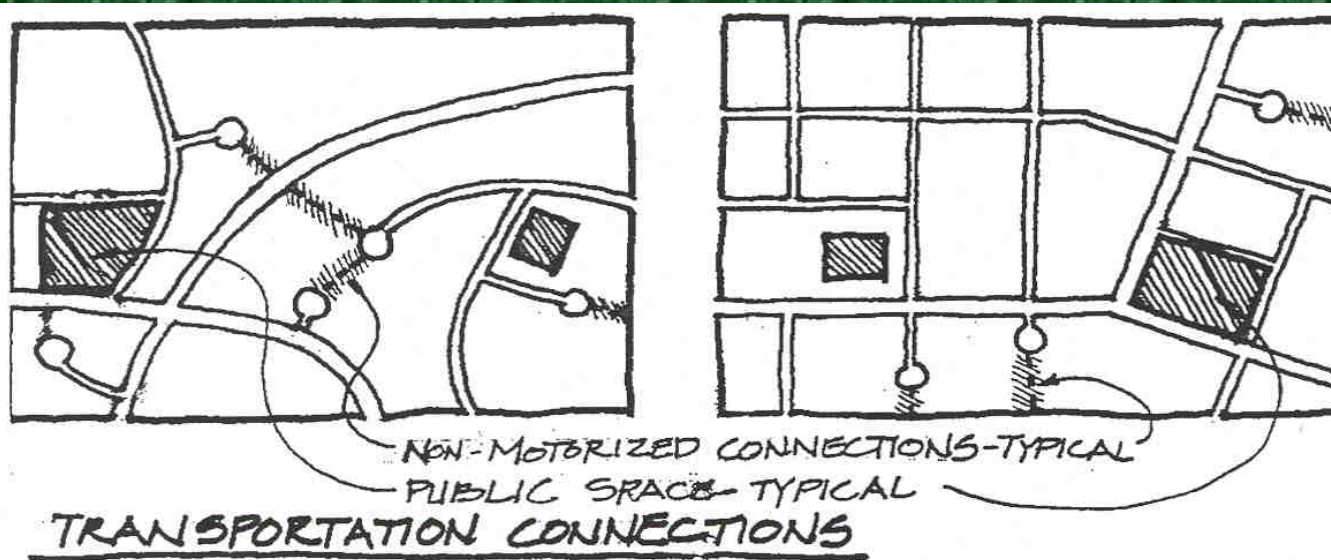
- Legal and physical access
- Lot size conforms to zoning or sanitation
- Limited driveways on arterials, some collectors
- Useable lots that meet setbacks

Design Considerations



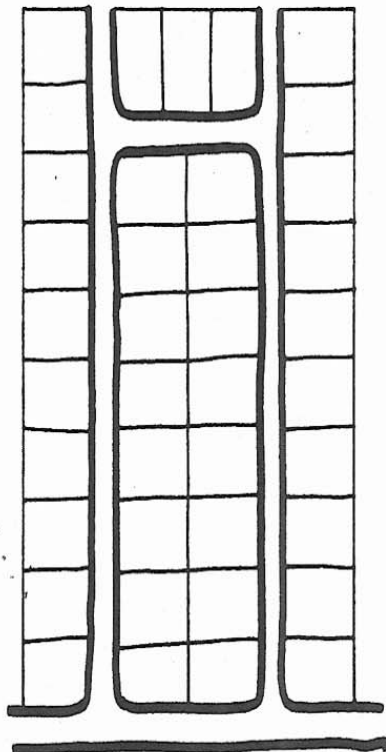
- Topography
- Road grades
- Buildable area
- Amount of cut & fill
- Consider existing features

Design Considerations

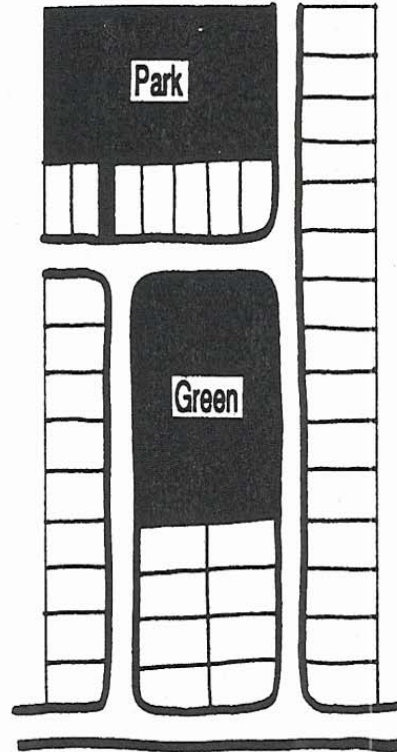


- Street connectivity
- Pedestrian connections
- Parkland placement
- Lots should not be split by roads

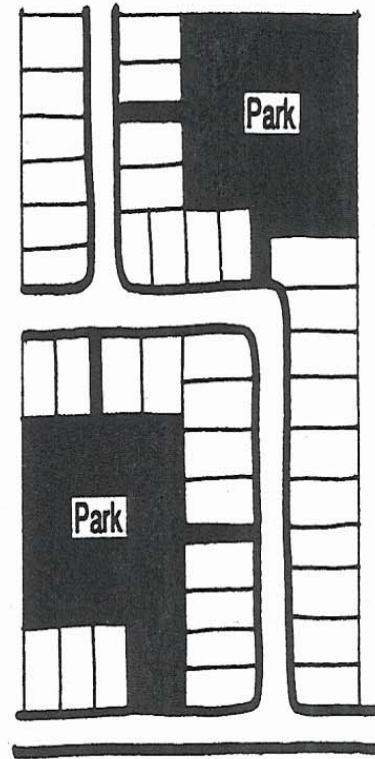
Design Alternatives



39 lots
2500 feet of road



39 lots
2250 feet of road



39 lots
1650 feet of road

Design Alternatives

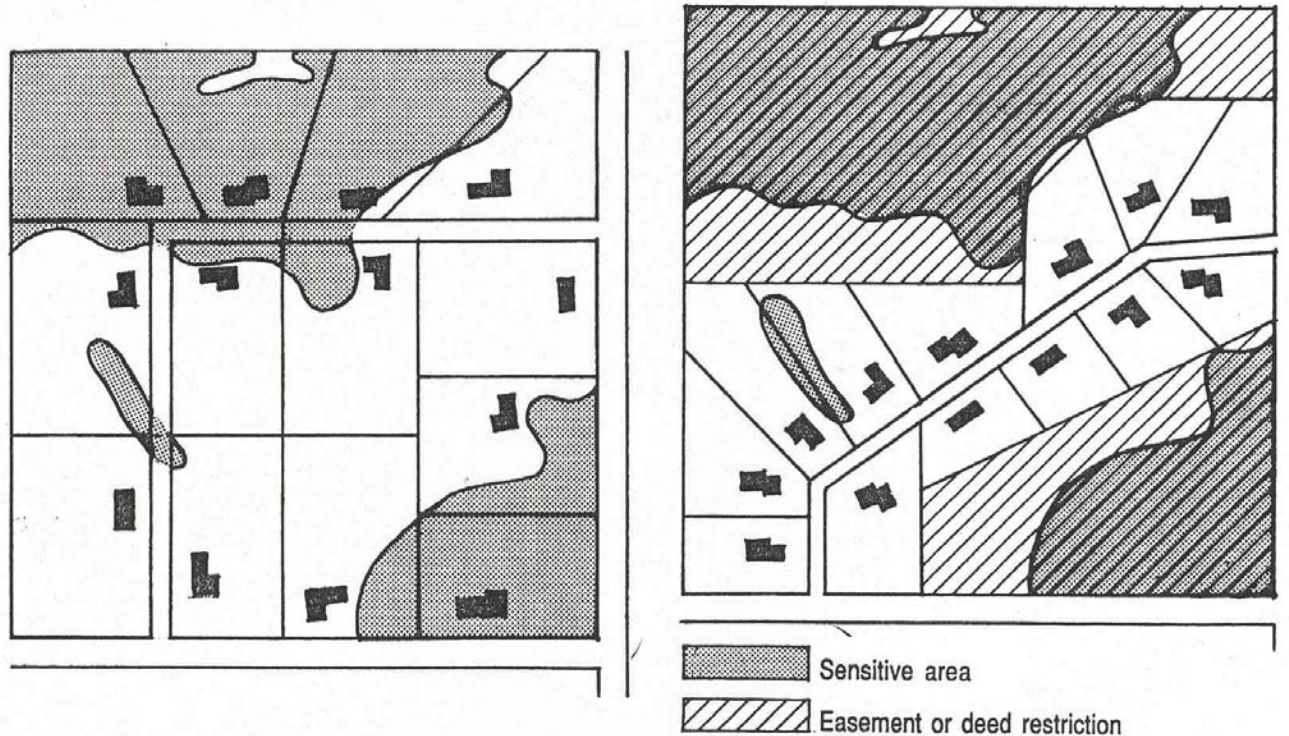


Figure 2-13. Conventional two-acre lot subdivision with homes located on sensitive but buildable land, compared with improved layouts protecting those resource areas, as encouraged by new regulations adopted by the Maine Department of Environmental Protection.

Design Alternatives

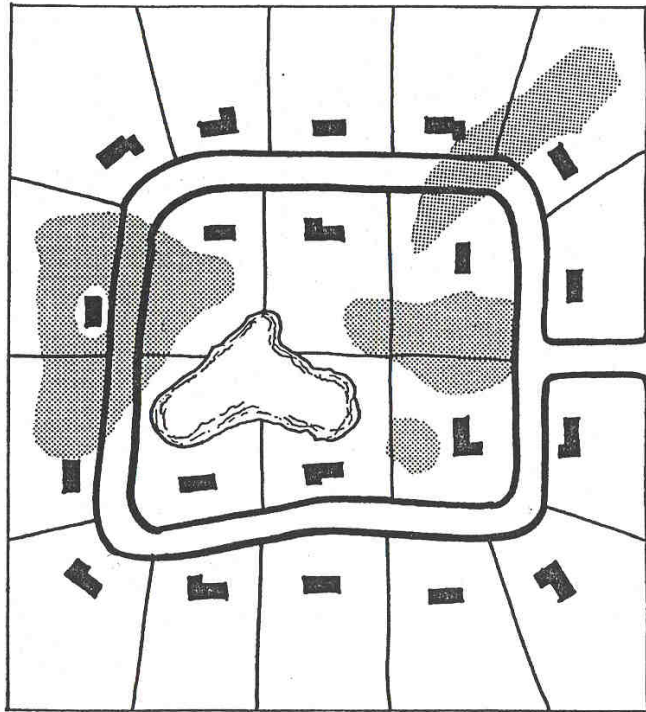


Figure A (rated by 25% as "rural")

44 acre parcel
20 lots (2 acres each)
No open space
No pond access except from four lots

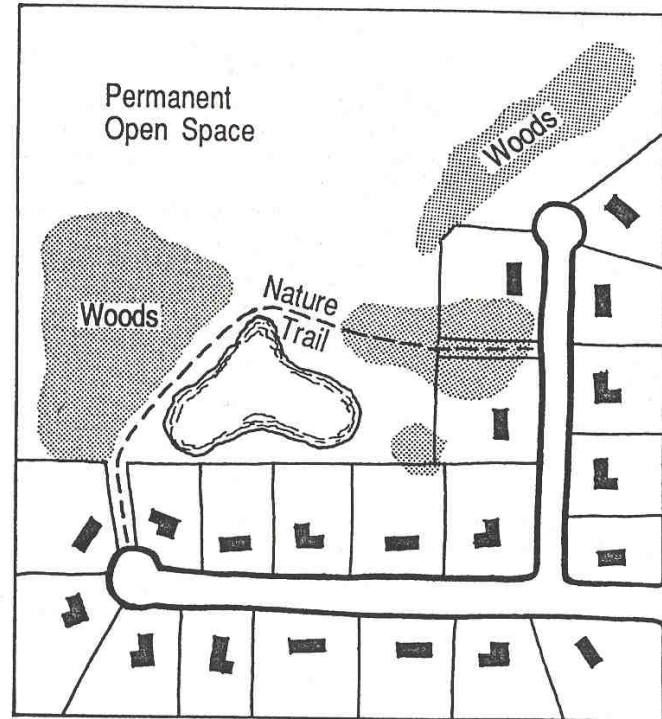


Figure B (rated by 75% as "rural")

44 acre parcel
20 lots (3/4 acre each)
25 acres of open space
Pond access for all residents

2009 Legislative Changes

SB 305

- 80-day review of 50 lots or more
- Penalty for failure to comply with timeline

SB 310

- Waiver of right to protest must identify the specific capital improvements
- 20 years from final plat recordation

HB 486

- Written decision provided within 30 working days
- Public hearing on variances, except First Minor
- May require installation of some capital facilities prior to final plat
- Specificity on use of capital facilities security
- No exemption from Review Criteria; except first minor subdivisions in zoning that address Review Criteria
- A first minor subdivision as defined in 76-3-609(2) is not subject to ANY public hearing requirement, including variances; NOTE this should not include variances from “legal and physical access”
- Park dedication requirements for first minor subdivisions

Recent Legislative Changes

- Required PreApplication process
- Minor subdivision definition
- Completeness and sufficiency review
- May deny based on water and sanitation information (MCA 76-3-608)
- Park dedication for school land
- Park dedication option for minors
- Condominium exemption

Resources

- CTAP

http://comdev.mt.gov/CDD_ctap.asp

- Model Subdivision Regulations 2006
(these do not include the 2007 or 2009 Legislative Changes)

<http://www.montanaplanners.org/news.htm>

- Montana Association of Planners

<http://www.montanaplanners.org>