

APPENDIX E: ROAD IMPACT FEE REGULATION

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1. LEGISLATIVE FINDINGS

The Commissioners of Gallatin County, Montana, find that:

- 1.1 The protection of the health, safety, and general welfare of the citizens of the County requires that the road system of the County be expanded and improved to accommodate continuing growth within the County.
- 1.2 All types of new development for which specific waivers have not been defined in this Regulation will generate traffic that will require expansions and improvements to the County Major Road System.
- 1.3 The creation of an equitable Road Impact Fee system would enable the County to impose a proportionate share of the costs of required road expansions and improvements on those developments that create the need for them.
- 1.4 That County Road and Fire Impact Fee Study prepared by James Duncan and Associates dated September 1995 sets forth a reasonable methodology and analysis for determining the impacts of new development on the County's Major Road System and for determining the cost of acquiring or constructing those road expansions and improvements required to serve new development.
- 1.5 The County hereby adopts the assumptions, levels of service, and capital improvement plans related to roads and referenced in the County Road and Fire Impact Fee Study as part of its current plans for the County's Major Road System.
- 1.6 The Road Impact Fee described in this Regulation is based on that County Road and Fire Impact Fee Study, and does not exceed the costs of acquiring additional rights-of-way and acquiring or constructing those road expansions and improvements required to serve the new developments that will pay the Road Impact Fee.
- 1.7 All of the road expansions and improvements listed in the County Road and Fire Impact Fee Study will benefit all new development in the County, and it is therefore appropriate to treat all of the unincorporated areas of the County as a single benefit area for purposes of calculating, collecting, and spending the Road Impact Fees.
- 1.8 There is both a rational nexus and a rough proportionality between the traffic impacts created by new development covered by this Regulation and the Road Impact Fee that such development will be required to pay.

- 1.9 This Regulation creates a system by which the Road Impact Fees paid by different developments will be used to provide Road Improvements benefiting the development that paid the fee within a reasonable period of time after the fee is paid.
- 1.10 Section 76-3-501, MCA, authorizes the County to require a subdivider 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.

2. AUTHORITY AND APPLICABILITY

- 2.1 Authority for the adoption of this Regulation is found in the Montana Subdivision and Platting Act, sections 76-3-101 et. seq., MCA.
- 2.2 The provisions of this Regulation shall apply to all of the land within Gallatin County, but shall not apply to any land located within the corporate limits of any city or town in Gallatin County.

3. INTENT

- 3.1 This Regulation is adopted to help implement the Gallatin County Plan and any future updates to or replacement of that Plan.
- 3.2 The intent of this Regulation is to ensure that new development bears a proportionate share of the cost of Road Improvements, to ensure that such proportionate share does not exceed the cost of Road Improvements required to serve such new developments, and to ensure that funds collected from such new developments are actually used to construct Road Improvements that benefit such new developments.
- 3.3 It is not the intent of this Regulation to collect any money from any new development in excess of the actual amount necessary to offset new demands for Road Improvements created by that new development.
- 3.4 It is not the intent of this Regulation that any monies deposited in the Impact Fee Fund created by this Regulation ever be commingled with monies from a different Impact Fee Fund or ever be used for a type of facility or equipment different from that for which the fee was paid.
- 3.5 As used in this Regulation, the term “Road Improvements” means the planning, land acquisition, engineering design, construction, construction inspection, equipment purchases, and financing costs associated with new or expanded facilities or equipment, that expand the capacity of the County’s Major Road System and that have an average useful life of at least 10 years,

but not including maintenance, operations, or improvements that do not expand capacity.

4. IMPOSITION OF ROAD IMPACT FEES

- 4.1 A subdivider who submits a complete application for preliminary plat approval after the effective date of this Regulation shall pay a Road Impact Fee in the amount specified in this Regulation prior to final plat approval. The effective date of this Regulation is May 1, 1997.
- 4.2 The duty to pay such Road Impact Fee shall be attached as a condition to any preliminary plat approval of a subdivision.

5. COMPUTATION OF AMOUNT OF ROAD IMPACT FEE

- 5.1 A subdivider required to pay a Road Impact Fee may choose to have the County determine the amount of such fee pursuant to either section 5.2 or 5.3 below.
- 5.2 Unless the subdivider requests that the County determine the amount of such fee pursuant to Section 5.3, the County shall determine the amount of the Road Impact Fee by applying a fixed fee of one thousand five hundred and ninety-six dollars (\$1,596) per lot or parcel shown on the final map of the subdivision or on the zoning permit application. Such fee amount includes credits for expected future receipts of federal highway funds and expected future receipts of gas tax revenues applied to the Road Improvements required to serve new development.
- 5.3 A subdivider may prepare and submit to the County an independent fee calculation study for the proposed development prepared by qualified professional traffic engineers and/or economists. Any such study must: (a) use the service units and unit construction costs stated in the County Road and Fire Impact Fee Study; (b) be performed in compliance with any criteria for such studies previously established by this Regulation or by the County; (c) show the traffic engineering and economic methodologies and assumptions used, including but not limited to those forms of documentation listed in Sections 5.3.1 and 5.3.2 below; and (d) be acceptable to the County pursuant to Section 5.3.3 below; and (e) is submitted and decided upon by the County prior to submittal of final plat application for the subdivision. (*Resolution 2005-168*)
 - 5.3.1 Traffic engineering studies must include documentation of trip generation rates, trip lengths, any percentage of trips from the site that represent net additions to current trips from the site, the percentage of trips that are new trips as opposed to pass-by or divert-link trips, and any other trip data for the proposed land use.

5.3.2 Economic studies must include documentation of any special factors that the subdivider believes will reduce the traffic volumes otherwise attributable to the development.

5.3.3 The County shall consider all such documentation and any independent fee calculations submitted by the subdivider, but shall not be required to accept any such study or documentation reasonably deemed to be inaccurate or unreliable, and may request that the subdivider submit additional or different documentation for consideration. Any independent fee calculation study submitted by a subdivider may be accepted, rejected, or accepted with modifications by the County as the basis for calculating Road Impact Fees.

5.3.4 Upon acceptance or acceptance with modifications of an independent fee calculation study and documentation, the County shall use the following formula to determine the fee:

New Lane Miles = [(One Way Average Daily Trips x Primary Trip Factor x Average Trip Length)/(390 Vehicles per Day per Lane).]
(390 is the weighted average of current use rates per lane for paved and gravel roads from County Road and Fire Impact Fee Study)

Cost = New Lane Miles x \$ 55,300.
(\$55,300 is the weighted average of cost per lane mile of paved and gravel roads from County Road and Fire Impact Fee Study)

Street Impact Fee = Cost x .617 (representing the same 38.3% credit for expected state and federal highway funding and gas tax revenues used to calculate the Fee in Section 6.2)

where: “One Way Average Daily Trips” means one-half of the average daily trip ends on a weekday.

“Primary Trip Factor” means that percentage of average daily trips to or from the development that are primary trips, as opposed to pass-by or divert-link trips.

“Average Trip Length” means the average distance per trip traveled on public roads in the County.

- 5.4 If the subdivider is applying for a re-subdivision of an approved subdivision or an amendment to a final subdivision plat for which a Road Impact Fee has previously been paid, then the fee shall be the net positive difference between the fee applicable at the time of the current application for subdivision approval or amendment and any amount previously paid as an impact fee for road facilities.

6. PAYMENT OF ROAD IMPACT FEES

- 6.1 A subdivider required to pay a road impact shall pay such fee to the County prior to the final approval of any subdivision of land or enter into an Improvements Agreement and provide security for said agreement pursuant to Gallatin County Subdivision Regulation Section 8.B.1.g. Improvements Agreements.
- 6.2 All monies paid by a subdivider pursuant to this Regulation shall be identified as Road Impact Fees and shall be promptly deposited in the Road Impact Fee Fund described in Section 7.

7. ROAD IMPACT FEE FUND

- 7.1 A Road Impact Fee Fund is hereby created for the County.
- 7.2 The Road Impact Fee Fund shall contain only those Road Impact Fees collected pursuant to this Regulation and any interest which may accrue from time to time on such amounts.
- 7.3 Interest earned on monies in the Road Impact Fee Fund shall be considered part of such fund, and shall be subject to the same restrictions on use applicable to the Road Impact Fees deposited in such fund.
- 7.4 The County's reasonable costs to calculate and document Road Impact Fees, credits against those fees, and refunds of those fees pursuant to this Regulation shall be considered as expenses of reviewing subdivision plats, and shall be included in the County's fees for the review of such plats pursuant to authority granted in Section 76-3-602, MCA.

8. USE OF FUNDS

- 8.1 The monies in the Road Impact Fee Fund shall be used only (a) to acquire land for and/or acquire or construct any Road Improvements including planning, land acquisition, engineering design, construction, construction inspection, equipment purchases and financing costs associated with new or expanded facilities or equipment within the County; or (b) to pay debt service on any portion of any future bond issue used to finance Road

Improvements to the extent that such Improvements expand the capacity of the County's Major Road System; or (c) as described in sections 10 or 11.8 of this Regulation.

- 8.2 Monies in the Road Impact Fee Fund shall be considered to be spent or encumbered in the order collected, on a first-in/first-out basis.
- 8.3 No monies from the Road Impact Fee Fund shall be spent for periodic or routine maintenance of any facility of any type or to cure deficiencies in facilities existing on the effective date of this Regulation.

9. WAIVERS OF ROAD IMPACT FEES

- 9.1 The County shall waive the Road Impact Fee for any lot meeting the existing use or the agriculture covenant criteria.

1. Existing use:

- a) The lot is developed with at least one dwelling unit/structure.
- b) The use of the lot will produce no greater demand on road impacts that would have been produced if such land had not been subdivided.

2. Agriculture covenant:

- a) A covenant has been placed on the lot that the lot will be used exclusively for agricultural purposes, no building or structure requiring water or sewer facilities shall be utilized on the lot.
- b) The covenant runs with the land and is revocable only by mutual consent of the County Commission and the property owner through the subdivision process.
- c) The impact fee in place at the time of the revocation shall be paid.

Such waiver shall be granted prior to final approval of the subdivision. A request for a waiver made after the approval shall be invalid.

- 9.2 Subdividers otherwise required by this Regulation to pay a Road Impact Fee may request a full or partial waiver of that requirement if one of the following can be demonstrated:

- 1. A full waiver may be received if the subdivider has provided a contribution towards the cost of acquiring or constructing the capital facilities and/or equipment required to serve the lot(s) in an amount that equals or exceeds the Road Impact Fee otherwise required by this Regulation.

2. A partial waiver may be received if the subdivider has provided a contribution towards the cost of acquiring or constructing the capital facilities.

Any such claim for waiver must be made no later than the time when the subdivider applies for final approval of the subdivision, and any request for a waiver not made at or before such time shall be invalid.

- 9.3 The County Planning Director, after consulting with the County Road and Bridge Department, shall determine validity, subject to an application for subdivision review, or any waiver or claim for a waiver pursuant to the criteria set forth in section 9.1 or 9.2. Final determination of validity shall be made at final approval of subdivision.

10. REFUNDS OF ROAD IMPACT FEES PAID

- 10.1 Any monies in the Road Impact Fee Fund that have not been spent or encumbered within 10 years after the date on which such fee was paid shall, upon application of the then current owner of the land for which the Fee was paid, be returned to such owner with interest at the rate of ten percent (10%) per annum since the date of payment. In order to be eligible to receive such refund, the then owner of the land shall be required to submit an application for such refund within six months after the expiration of such 10 year period, or such claim shall be waived. When the right to a refund exists due to a failure to encumber or spend fees within such 10 year period, the County shall provide written notice of entitlement to a refund to current owner of the land for which the Fee was paid. The County shall also publish such notice within 30 days after the expiration of the 10 year period from the date the Road Impact Fee was paid. The published notice shall contain the heading 'Notice of Entitlement to an Impact Fee Refund'.

11. CREDITS AGAINST ROAD IMPACT FEES

- 11.1 After the effective date of this Regulation, all mandatory or voluntary right-of-way dedications for Road Improvements by a subdivider, and all mandatory or voluntary acquisition or construction of Road Improvements by a subdivider, and all payments to any approved Rural Improvement Area for Road Improvements, shall result in a pro rata credit against the Road Impact Fees otherwise due for such development, except that no such credit shall be awarded for: (a) land dedications for or construction of, site-related improvements as defined in Section 11.2 of this Regulation; or (b) any voluntary right-of-way dedications not accepted by the County; (c) any voluntary acquisition or construction of Road Improvements not approved in

writing by the County prior to commencement of the acquisition or construction; or (d) any mandatory or voluntary dedication, construction, or acquisition of a type of Road Improvement not included in the calculation of the Road Impact Fee in the County Road and Fire Impact Fee Study.

- 11.2 For purposes of this Regulation, site related improvements include all (a) access roads leading to the proposed development; (b) driveways and roads within the development; (c) acceleration, deceleration, right, or left turn lanes leading to any road and driveway within the development; and (d) traffic control devices for roads and driveways within the development.
- 11.3 In order to obtain a credit against Road Impact Fees otherwise due, a subdivider must (a) submit a written agreement or offer to dedicate to the County specific parcels of land, or to construct specific Road Improvements in accordance with all applicable state or County design and construction standards; or (b) submit written evidence of the payment of fees for Road Improvements to an approved Rural Improvement District; and (c) must specifically request a credit against such Road Impact Fees. Such written agreement, offer, or evidence must be made on a form provided by the County, must contain a statement under oath of the facts that qualify the subdivider to receive a credit, must be accompanied by documents evidencing those facts, and must be filed not later than the time when a subdivider applies for final approval of the first subdivision required for the development, or the claim for the credit shall be invalid.
- 11.4 The credit due to a subdivider who submits such a request shall be calculated by the County and documented by the County as follows:
 - 11.4.1 Credit for qualifying right-of-way dedications shall, at the subdivider's option, be valued at (a) one hundred percent (100%) of the most recent assessed value for such land as shown in the records of the County Assessor; or (b) that fair market value established by a private appraiser acceptable to the County in an appraisal paid for by the subdivider.
 - 11.4.2 In order to receive credit for acquisition or construction of Road Improvements, the subdivider shall submit acceptable engineering drawings, specifications, and construction cost estimates to the County. The County shall determine the amount of credit due based on the information submitted, or, if it determines that such information is inaccurate or unreliable, then on alternative engineering or construction costs acceptable to the County.
 - 11.4.3 Credit for payments to an approved Rural Improvement Area for Road Improvements shall be valued at the full amount of such payments.

- 11.5 Approved credits shall become effective at the following times:
- 11.5.1 Approved credits for dedications of rights-of-way shall become effective when the right-of-way has been conveyed to the County in a form acceptable to the County and at no cost to the County and has been accepted by the County Commissioners. When such conditions have been met, the County shall note that fact in its records. Upon request of the subdivider, the County shall send the subdivider a letter stating the number of credits available to the subdivider.
 - 11.5.2 Approved credits for the construction of Road Improvements shall generally become effective when (a) all required construction has been completed and has been accepted by the County; and (b) a suitable maintenance and warranty bond has been received and approved by the County; and (c) all design, construction, inspection, testing, bonding, and acceptance procedures have been completed in compliance with all applicable County and state procedures. However, approved credits for the construction of Road Improvements may become effective at an earlier date if the subdivider posts security in the form of a performance bond, irrevocable letter of credit, or escrow agreement and the amount and terms of such security are accepted by the County. At a minimum, such security must be in the amount of the approved credit or an amount determined to be adequate to allow the County to construct the improvements for which the credit was given, whichever is higher. When such conditions have been met, the County shall note that fact in its records. Upon request of the subdivider, the County shall send the subdivider a letter stating the number of credits available to the subdivider.
 - 11.5.3 Credits for payments to an approved Rural Improvement Area for Road Improvements shall be effective immediately upon review and approval of the evidence of such payment submitted by the subdivider. When such conditions have been met, the County shall note that fact in its records. Upon request of the subdivider, the County shall send the subdivider a letter stating the number of credits available to the subdivider.
- 11.6 Approved credits may be used to reduce the amount of Road Impact Fees otherwise, until the amount of the credit is exhausted. Each time a request to use credits from a mandatory or voluntary dedication, acquisition, or construction is presented to the County, the County shall reduce the amount of the Road Impact Fee otherwise due from the subdivider, and shall note in the County records the amount of credit remaining, if any. Upon request of the subdivider, the County shall send the subdivider a letter stating the number of credits available to the subdivider.

- 11.7 Approved credits shall only be used to reduce the amount of Road Impact Fees otherwise due under this Regulation, and shall not be paid to the subdivider in cash or in credits against any other impact fees for a different type of facility or service or against any other monies due to the County, except as described in Section 11.8 of this Regulation.
- 11.8 If the amount of approved credits exceeds the amount of Road Impact Fees otherwise due under this Regulation, the subdivider may request in writing that the County provide for reimbursement of any excess credits to the subdivider in cash instead of transferable credits. Such written request must be filed not later than the time when an application is made for final approval of the first subdivision required for the development, or the claim for the credit shall be invalid. Upon receipt of such written request, those credits described in Section 11.4 shall not be issued, and the County may, at its discretion: (a) arrange for the reimbursement of such excess credits from the Road Impact Fee Fund from Fees paid by others; or (b) arrange for reimbursement of such excess credits through the issuance of a promissory note payable in not more than ten (10) years and bearing interest equal to the interest rate paid by the County for its long-term debt.
- 11.9 Credits may be transferred from one owner to another by any written instrument clearly identifying the credits issued under section 11.4 of this Regulation that are to be transferred, provided that such instrument is signed by both the transferor and transferee and that the document is delivered to the County for registration of the change in ownership.

12. MISCELLANEOUS PROVISIONS

- 12.1 Nothing in this Regulation shall restrict the County from requiring a subdivider to construct reasonable project improvements required to serve the subdivider's project, whether or not such improvements are of a type for which credits are available under Section 11.
- 12.2 At least once during each fiscal year of the County, the County Planning Director shall present to the County Commissioners a proposed capital improvement program for the County Major Road System, and such capital improvement program shall assign monies from the Road Impact Fee Fund to specific projects for the expansion or improvement of the County Major Road System and related expenses. Any monies, including any accrued interest, not assigned to specific projects within such capital improvements program or not expended pursuant to section 10 or 11.8 of this Regulation shall be retained in the Road Impact Fee Fund until the next fiscal year.
- 12.3 The Road Impact Fee stated in Section 5.2 of this Regulation shall be adjusted annually to reflect the effects of inflation on those costs for Road Improvements set forth in the County Road and Fire Impact Fee Study.

Beginning on January 1, 1999, and on January 1 of each following year unless and until the fee in Section 5.2 is revised or replaced by action of the County Commissioners, the fee amount in section 5.2 shall be adjusted by multiplying such amount by a fraction, the numerator of which is the U.S. Consumer Price Index for all Urban Consumers for all Items published by the U.S. Department of Labor, Bureau of Labor Statistics, for the area for the most recent period for which figures are available, and the denominator of which is the Consumer Price Index for All Items for the same area for the period one year prior to the period reflected in the numerator. Such adjustments in the amount of such fee shall become effective immediately upon calculation by the County, and shall not require additional action by the County Commissioners to be effective.

- 12.4 The Road Impact Fees described in this Regulation and the administrative procedures of this Regulation shall be reviewed at least once every three fiscal years to ensure that: (a) the traffic and cost assumptions underlying such fees are still valid; (b) the resulting Fees do not exceed the actual cost of acquiring land for Road Improvements and/or acquiring or constructing Road Improvements required to serve new development; (c) the monies collected or to be collected in the Road Impact Fee Fund have been and/or are expected to be spent for Road Improvements; and (d) such Road Improvements will benefit those developments for which the fees were paid.
- 12.5 If a Road Impact Fee has been calculated and paid based on a mistake or misrepresentation, it shall be recalculated. Any amounts overpaid by a subdivider shall be refunded by the County to the subdivider within thirty (30) days after the County's acceptance of the recalculated amount, with interest at the rate of ten percent (10%) per annum since the date of such overpayment. Any amounts underpaid by the subdivider shall be paid to the County within thirty (30) days after the County's acceptance of the recalculated amount, with interest at the rate of ten percent (10%) per annum since the date of such underpayment. In the case of an underpayment, the County shall not issue any additional permits or approvals for the project for which the Road Impact Fee was previously paid until such underpayment is corrected, and if amounts owed to the County are not paid within such thirty (30) day period, the County may also repeal any permits or approvals issued in reliance on the previous payment of such Road Impact Fees and refund such fees to the then current owner of the land.
- 12.6 In order to promote the economic development of the County and the provision of affordable housing in the County, the County Commissioners may agree to pay some or all of the Road Impact Fees imposed on one or more subdivided lots or parcels from other funds of the County that are not restricted to other uses. Any such decision to pay Road Impact Fees on behalf of a subdivider shall be at the discretion of the County Commissioners and shall be made pursuant to goals and objectives previously adopted by the

County Commissioners to promote economic development and/or affordable housing.

- 12.7 Knowingly furnishing false information to any official of the County charged with the administration of this Regulation on any matter relating to the administration of this Regulation, including without limitation the furnishing of false information regarding the expected size of a proposed subdivision or expected traffic impacts from a proposed subdivision, shall be a violation of this Regulation.
- 12.8 If any portion of this Regulation is determined to be invalid, unenforceable, or unconstitutional for any reason by any court of competent jurisdiction, that portion shall be treated as an independent provision of this Regulation, and such determination shall not affect the validity, enforceability, or constitutionality of any other portion of this Regulation.
- 12.9 The section titles used in this Regulation are for convenience only, and shall not affect the interpretation of any portion of the text of this Regulation.
- 12.10 The County shall keep a copy of the County Road and Fire Impact Fee Study prepared by James Duncan and Associates dated September 1995 on file in the offices of the County Planning Department, and shall maintain accurate records of the Road Impact Fees paid, including the name of the person paying such fees, the project for which the fees were paid, the date of payment of each fee, the amounts received for each fee, and any other matters that the County deems appropriate or necessary to the accurate accounting of such fees, and such records shall be available for review by the public during County business hours.
- 12.11 This Regulation shall become effective on May 1, 1997.