

SENATE BILL NO. 121

INTRODUCED BY F. MANDEVILLE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA LAND USE PLANNING ACT; CLARIFYING THAT A LOCAL GOVERNMENT MAY MAKE DECISIONS ON DEVELOPMENT APPLICATIONS; CLARIFYING PUBLIC NOTICE REQUIREMENTS; PROVIDING ADDITIONAL OPPORTUNITY FOR PUBLIC COMMENT FOR PROPOSED DEVELOPMENTS; ALLOWING A CITY TO RETAIN EXTRATERRITORIAL ZONING AUTHORITY; AMENDING LAND DIVISIONS EXCLUDED FROM SUBDIVISION REVIEW; CLARIFYING THE NOTICE OF ADEQUATE STORMWATER DRAINAGE AND MUNICIPAL FACILITIES FOR CERTAIN CITIES; ALLOWING A CITY TO REMAIN A MEMBER ON CERTAIN PLANNING BOARDS; ALLOWING FOR A PUBLIC HEARING BEFORE A PLANNING COMMISSION HEARS AN APPEAL; ~~REVISING~~ PROVIDING DEFINITIONS; AMENDING SECTIONS 2-3-102, 2-3-104, 7-2-4734, 76-2-310, 76-4-125, 76-4-127, 76-25-103, 76-25-104, 76-25-106, 76-25-301, 76-25-305, 76-25-408, 76-25-410, AND 76-25-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-3-102, MCA, is amended to read:

"2-3-102. Definitions. As used in this part, the following definitions apply:

(1) "Agency" means any board, bureau, commission, department, authority, or officer of the state or local government authorized by law to make rules, determine contested cases, make a decision on development applications, or enter into contracts except:

- (a) the legislature and any branch, committee, or officer thereof;
- (b) the judicial branches and any committee or officer thereof;
- (c) the governor, except that an agency is not exempt because the governor has been designated as a member thereof; or
- (d) the state military establishment and agencies concerned with civil defense and recovery from hostile attack.

(2) "Agency action" means the whole or a part of the adoption of an agency rule, the issuance of a license or order, the award of a contract, the approval of a development application, or the equivalent or denial thereof of any of these.

(3) "Development application" means a formal request submitted to a local government entity to obtain approval for a development proposal pursuant to Title 76, chapter 25, part 3 or 4.

~~(3)~~(4) "Rule" means any agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public; or

(b) declaratory rulings as to the applicability of any statutory provision or of any rule."

Section 2. Section 2-3-104, MCA, is amended to read:

"2-3-104. Requirements for compliance with notice provisions. An agency ~~shall be~~is considered to have complied with the notice provisions of 2-3-103 if:

(1) an environmental impact statement is prepared and distributed as required by the Montana Environmental Policy Act, Title 75, chapter 1;

(2) a proceeding is held as required by the Montana Administrative Procedure Act;

~~(3)~~ an agency adopts and implements the public participation plan required in 76-25-106 for the purposes of agency actions taken in accordance with Title 76, chapter 25;

~~(3)~~(4) a public hearing, after appropriate notice is given, is held pursuant to any other provision of state law or a local ordinance or resolution; or

~~(4)~~(5) a newspaper of general circulation within the area to be affected by a decision of significant interest to the public has carried a news story or advertisement concerning the decision sufficiently prior to a final decision to permit public comment on the matter."

SECTION 3. SECTION 7-2-4734, MCA, IS AMENDED TO READ:

"7-2-4734. Standards to be met before annexation can occur. A municipal governing body may

1 extend the municipal corporate limits to include any area that meets the following standards:

2 (1) The area must be contiguous to the municipality's boundaries at the time the annexation
3 proceeding is begun.

4 (2) No part of the area may be included within the boundary of another incorporated municipality.

5 (3) The area must be included within and the proposed annexation must conform to a growth
6 policy adopted pursuant to Title 76, chapter 1, or a land use plan adopted pursuant to Title 76, chapter 25.

7 (4) (a) If fire protection services in the area to be annexed have been provided by a fire district
8 organized under Title 7, chapter 33, part 21, the plan must:

9 (i) include provisions for coordinating the transfer of fire protection services to the municipality and
10 compensating the district, if necessary, for equipment and district expenses; or

11 (ii) describe the municipality's plans to annex to the rural fire district pursuant to 7-33-4115.

12 (b) Upon transfer of fire protection services to a municipality under subsection (4)(a)(i), the existing
13 boundaries of a rural fire district may be altered or the fire district may be dissolved as provided in 7-33-2401."

14
15 **Section 4.** Section 76-2-310, MCA, is amended to read:

16 **"76-2-310. Extension of municipal zoning and subdivision regulations beyond municipal**
17 **boundaries -- termination of authority for extension.** (1) ~~Except as provided in 76-2-312 and except in~~
18 ~~locations where a county has adopted zoning or subdivision regulations, a~~ A city or town council or other
19 legislative body that has adopted a growth policy pursuant to chapter 1 or a land use plan pursuant to chapter
20 25 for the area to be affected by the regulations may extend the application of its zoning or subdivision
21 regulations beyond its limits in any direction subject to the following limits:

22 (a) up to 3 miles beyond the limits of a city of the first class as defined in 7-1-4111;

23 (b) up to 2 miles beyond the limits of a city of the second class; and

24 (c) up to 1 mile beyond the limits of a city or town of the third class.

25 (2) (a) The authority granted to a city or town to apply zoning beyond its limits pursuant to
26 subsection (1) is terminated when the county in which the city or town is located adopts zoning regulations for
27 the area pursuant to Title 76, chapter 2.

28 (b) The authority granted to a city or town to apply its subdivision regulations beyond its limits

pursuant to subsection (1) is terminated when the county in which the city or town is located adopts subdivision regulations for the area pursuant to Title 76, chapter 3.

~~(2)(3)~~ When two or more noncontiguous cities have boundaries so near to one another as to create an area of potential conflict in the event that all cities concerned should exercise the full powers conferred by 76-2-302, 76-2-311, and this section, then the extension of zoning or subdivision regulations, or both, by these cities must terminate at a boundary line agreed upon by the cities."

Section 5. Section 76-4-125, MCA, is amended to read:

"76-4-125. Land divisions excluded from review. (1) A subdivision excluded from the provisions of chapter 3 or chapter 25 must be submitted for review according to the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to review:

(a) the exclusions cited in 76-3-201, ~~and 76-3-207(1)(f), and 76-25-402(1)(a) through (h);~~

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision;

(c) divisions made for purposes other than the construction of water supply or sewage or solid waste disposal facilities as the department specifies by rule;

(d) as certified pursuant to 76-4-127:

(i) new divisions subject to review under ~~the Montana Subdivision and Platting Act~~ chapter 3 or chapter 25;

(ii) divisions or previously divided parcels recorded with sanitary restrictions; or

(iii) divisions or previously divided parcels of land that are exempt from ~~the Montana Subdivision and Platting Act~~ review under 76-3-203, ~~or 76-3-207(1)(a), (1)(b), (1)(d), (1)(e), or (1)(f), or 76-25-402(1)(i), (1)(m), or (1)(n);~~

(e) subject to the provisions of subsection (2), a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer if:

(i) the remainder is served by a public or multiple-user sewage system approved before January

1, 1997, pursuant to local regulations or this chapter; or

(ii) the remainder is 1 acre or larger and has an individual sewage system serving a discharge source that was in existence prior to April 29, 1993, and, if required when installed, the system was approved pursuant to local regulations or this chapter; and

(f) the sale of cabin or home sites as provided for and subject to the limitations in 77-2-318(2).

(2) Consistent with the applicable provisions of 50-2-116, a local health officer may require that, prior to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated from the remainder referenced in subsection (1)(e)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield.

(3) A previously divided parcel that meets the eligibility criteria for an existing exemption from this part may use the exemption in lieu of obtaining a certificate of subdivision approval if the appropriate document, exemption certificate, certificate of survey, or subdivision plat filed with the county clerk and recorder cites the applicable exemption in its entirety.

(4) At the request of the owner, the original certificate of subdivision approval shall be reissued for a parcel previously approved under this part if:

(a) the parcel was subsequently divided without review and approval under this part; and

(b) the unapproved parcels are aggregated to return to the original divided parcel as originally approved."

Section 6. Section 76-4-127, MCA, is amended to read:

"76-4-127. Notice of certification that adequate storm water drainage and adequate municipal facilities will be provided. (1) To qualify for the exemption from review set out in 76-4-125(1)(d), the certifying authority shall send notice of certification to the reviewing authority that adequate storm water drainage and adequate municipal facilities will be provided for the subdivision. For a subdivision subject to Title 76, chapter 3 or 25, the certifying authority shall send notice of certification to the reviewing authority prior to final plat approval.

(2) The notice of certification must include the following:

(a) the name and address of the applicant;

(b) a copy of the preliminary plat included with the application for the proposed subdivision or a final plat when a preliminary plat is not necessary or, for a subdivision not subject to Title 76, chapter 3 or 25, a copy of the certificate of survey map or amended plat map or a declaration and floor plan, including the layout of each unit proposed to be recorded under Title 70, chapter 23, part 3;

(c) the number of parcels in the subdivision;

(d) a copy of any applicable zoning ordinances in effect;

(e) how construction of the sewage disposal and water supply systems or extensions will be financed;

(f) the relative location of the subdivision to the city or the county water and/or sewer district boundaries of the certifying authority;

(g) certification that adequate municipal or county water and/or sewer district facilities for the supply of water and disposal of sewage and solid waste will be provided. Facilities for subdivisions subject to 76-3-507 or 76-25-413 must be provided within the time that section provides required by the governing body under 76-3-507 or 76-25-413, as applicable.

(h) if water supply, sewage disposal, solid waste, or storm water drainage facilities are not municipally owned, certification from the facility owners that adequate facilities will be available; and

(i) certification that the certifying authority has or will review and approve plans to ensure adequate storm water drainage.

(3) A municipality may be authorized to act as a reviewing authority under this section and may self-approve the municipality's own exemption."

SECTION 7. SECTION 76-25-103, MCA, IS AMENDED TO READ:

"76-25-103. Definitions. As used in this chapter, unless the context or subject matter clearly requires otherwise, the following definitions apply:

(1) "Aggrieved party" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.

(2) "Applicant" means a person who seeks a land use permit or other approval of a development

1 proposal.

2 (3) "Built environment" means man-made or modified structures that provide people with living,
3 working, and recreational spaces.

4 (4) "Cash-in-lieu donation" is the amount equal to the fair market value of unsubdivided,
5 unimproved land.

6 (5) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for
7 the purpose of disclosing facts pertaining to boundary locations.

8 (6) "Dedication" means the deliberate appropriation of land by an owner for any general and public
9 use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the
10 public use to which the property has been devoted.

11 (7) "Division of land" means the segregation of one or more parcels of land from a larger tract held
12 in single or undivided ownership by transferring or contracting to transfer title to a portion of the tract or properly
13 filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to
14 this chapter. The conveyance of a tract of record or an entire parcel of land that was created by a previous
15 division of land is not a division of land.

16 (8) "Dwelling " means a building designed for residential living purposes, including single-unit, two-
17 unit, and multi-unit dwellings.

18 (9) "Dwelling unit" means one or more rooms designed for or occupied exclusively by one
19 household.

20 (10) "Examining land surveyor" means a registered land surveyor appointed by the governing body
21 to review surveys and plats submitted for filing.

22 (11) "Final plat" means the final drawing of the subdivision and dedication required by this chapter
23 to be prepared for filing for record with the county clerk and recorder and containing all elements and
24 requirements set forth in this chapter and in regulations adopted pursuant to this chapter.

25 (12) "Four-unit dwelling" or "fourplex" means a building designed for four attached dwelling units in
26 which the dwelling units share a common separation, such as a ceiling or wall, and in which access cannot be
27 gained between the units through an internal doorway, excluding common hallways.

28 (13) "Immediate family" means a spouse, children by blood or adoption, and parents.

(14) "Irrigation district" means a district established pursuant to Title 85, chapter 7.

(15) "Jurisdictional area" or "jurisdiction" means the area within the boundaries of the local government. For municipalities, the term includes those areas the local government anticipates may be annexed into the municipality over the next 20 years.

(16) "Land use permit" means an authorization to complete development in conformance with an application approved by the local government.

(17) "Land use plan" means the land use plan and future land use map adopted in accordance with this chapter.

(18) "Land use regulations" means zoning, zoning map, subdivision, or other land use regulations authorized by state law.

(19) "Local governing body" or "governing body" means the elected body responsible for the administration of a local government.

(20) "Local government" means a county, consolidated city-county, or an incorporated municipality to which the provisions of this chapter apply as provided in 76-25-105.

(21) "Manufactured housing" means a dwelling for a single household, built offsite in a factory that is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home or housetrailer, as defined in 15-1-101.

(22) "Ministerial permit" means a permit granted upon a determination that a proposed project complies with the ~~zoning map~~ applicable regulations and ~~the-meets all~~ established standards set forth in the ~~zoning-applicable~~ regulations. The determination must be based on objective standards, involving little or no personal judgment, and must be issued by the planning administrator.

(23) "Multi-unit dwelling" means a building designed for five or more attached dwelling units in which the dwelling units share a common separation, such as a ceiling or wall, and in which access cannot be gained between the units through an internal doorway, excluding common hallways.

(24) "Permitted use" means a use that may be approved by issuance of a ministerial permit.

(25) "Planning administrator" means the person designated by the local governing body to review, analyze, provide recommendations, or make final decisions on any or all zoning, subdivision, and other

development applications as required in this chapter, or a person designated and supervised by the planning administrator to perform the duties.

(26) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

(27) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing body.

(28) "Public utility" has the meaning provided in 69-3-101, except that for the purposes of this chapter, the term includes a county water or sewer district as provided for in Title 7, chapter 13, parts 22 and 23, and municipal sewer or water systems and municipal water supply systems established by the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44.

(29) "Single-room occupancy development" means a development with dwelling units in which residents rent a private bedroom with a shared kitchen and bathroom facilities.

(30) "Single-unit dwelling" means a building designed for one dwelling unit that is detached from any other dwelling unit.

(31) "Subdivider" means a person who causes land to be subdivided or who proposes a subdivision of land.

(32) "Subdivision" means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to the parcels may be sold or otherwise transferred and includes any resubdivision and a condominium. The term also means an area, regardless of its size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or mobile homes will be placed.

(33) "Subdivision guarantee" means a form of guarantee that is approved by the commissioner of insurance and is specifically designed to disclose the information required in 76-25-413.

(34) "Substantial compliance" means:

(a) with respect to the amendment of an adopted land use plan, that all facets of the proposed amendments, when taken together, comply, not strictly and rigidly but substantially, with the densities,

standards, and community intent for development of the community as set forth in the jurisdiction's adopted land use plan;

(b) with respect to the adoption or amendment of a zoning map, zoning regulation, or subdivision regulation, that all facets of the proposed map, regulation, or amendment, when taken together, comply, not strictly and rigidly but substantially, with the densities, standards, and community intent for development of the site as set forth in the jurisdiction's applicable adopted land use plan; and

(c) with respect to the proposed development of a particular site, that all facets of the proposed development, when taken together, comply, not strictly and rigidly but substantially, with the densities and standards for development of the site as set forth in the jurisdiction's applicable adopted zoning regulations, zoning map, and subdivision regulations.

~~(34)~~(35)"Tract of record" means an individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office.

~~(35)~~(36)"Three-unit dwelling" or "triplex" means a building designed for three attached dwelling units in which the dwelling units share a common separation, such as a ceiling or wall, and in which access cannot be gained between the units through an internal doorway, excluding common hallways.

~~(36)~~(37)"Two-unit dwelling" or "duplex" means a building designed for two attached dwelling units in which the dwelling units share a common separation, such as a ceiling or wall, and in which access cannot be gained between the units through an internal doorway."

Section 8. Section 76-25-104, MCA, is amended to read:

"76-25-104. Planning commission. (1) (a) Each local government shall establish, by ordinance or resolution, a planning commission.

(b) Any combination of local governments may create a ~~multi-jurisdiction~~ multijurisdictional planning commission or join an existing commission pursuant to an interlocal agreement.

(c) (i) Any combination of legally authorized planning boards, zoning commissions, planning and zoning commissions, or boards of adjustment existing prior to May 17, 2023, may be considered duly constituted under this chapter as a planning commission by agreement of the governing bodies of each

jurisdiction represented on the planning commission.

(ii) If more than one legally authorized planning board, zoning commission, or planning and zoning commission exists within a jurisdiction, the governing bodies of each jurisdiction may agree to:

(A) designate, combine, consolidate, or modify one or more of the authorized boards or commissions as the planning commission; or

(B) create a new planning commission pursuant to this section and disband the existing boards and commissions.

(d) (i) A local government subject to this chapter may continue to be represented on an existing city-county planning board, joint city-county planning board, or consolidated city-county planning board as authorized under Title 76, chapter 1, with other local governments and share in the membership duties and costs of the board.

(ii) A local government's continued participation in a planning board as set forth in subsection (1)(d)(i) is solely for the purposes set forth in Title 76, chapter 1.

(2) (a) (i) Each planning commission must consist of an odd number of no fewer than three voting members who are confirmed by majority vote of each local governing body.

(ii) Each jurisdiction must be equally represented in the membership of a ~~multi-jurisdiction~~ multijurisdictional planning commission.

(b) The planning commission shall meet at least once every 6 months.

(c) Minutes must be kept of all meetings of the planning commission, and all meetings and records must be open to the public.

(d) A majority of currently appointed voting members of the planning commission constitutes a quorum. A quorum must be present for the planning commission to take official action. A favorable vote of at least a majority of the quorum is required to authorize an action at a regular or properly called special meeting.

(e) The ordinance, resolution, or interlocal agreement creating the planning commission must set forth the requirements for appointments, terms, qualifications, removal, vacancies, meetings, notice of meetings, officers, reimbursement of costs, bylaws, or any other requirement determined necessary by the local governing body.

(3) (a) Except as set forth in subsection (3)(b), the planning commission shall review and make

recommendations to the local governing body regarding the development, adoption, amendment, review, and approval or denial of the following documents:

- (i) the land use plan and future land use map as provided in 76-25-201;
- (ii) zoning regulations and map as provided in Title 76, chapter 25, part 3;
- (iii) subdivision regulations as provided in Title 76, chapter 25, part 4; and
- (iv) any other legislative land use planning document the local governing body designates.

(b) In accordance with 76-25-503, the planning commission shall hear and decide appeals from any site-specific land use decisions made by the planning administrator pursuant to the adopted regulations described in subsection (3)(a). Decisions of the planning commission may be appealed to the local governing body as provided in 76-25-503.

- (4) The planning commission may be funded pursuant to 76-1-403, ~~and 76-1-404,~~ and 76-1-406."

SECTION 9. SECTION 76-25-106, MCA, IS AMENDED TO READ:

"76-25-106. Public participation. (1) (a) A local government shall provide continuous public participation when adopting, amending, or updating a land use plan or regulations pursuant to this chapter.

(b) Public participation in the adoption, amendment, or update of a land use plan or implementing regulations must provide for, at a minimum:

- (i) dissemination of draft documents;
- (ii) an opportunity for written and verbal comments;
- (iii) public meetings after effective notice;
- (iv) electronic communication regarding the process, including online access to documents, updates, and comments; and
- (v) an analysis of and response to public comments.

(2) A local government shall document and retain all public outreach and participation performed as part of the administrative record in accordance with the retention schedule published by the secretary of state.

(3) (a) A local government may decide the method for providing:

- (i) general public notice and participation in the adoption, amendment, or update of a land use

1 plan or regulation; and

2 (ii) notice of written comment on applications for land use permits pursuant to this chapter.

3 (b) All notices must clearly specify the nature of the land use plan or regulation under
4 consideration, what type of comments the local government is seeking from the public, and how the public may
5 participate.

6 (c) The local government shall document what methods it used to provide continuous participation
7 in the development, adoption, or update of a land use plan or regulation and shall document all comments
8 received.

9 (d) The department of commerce established in 2-15-1801 and functioning pursuant to 90-1-103
10 shall develop a list of public participation methods and best practices for use by local governments in
11 developing, adopting, or updating a land use plan or regulations.

12 (4) Throughout the adoption, amendment, or update of the land use plan or regulation processes,
13 a local government shall emphasize that:

14 (a) the land use plan is intended to identify the opportunities for development of land within the
15 planning area for housing, businesses, agriculture, and the extraction of natural resources, while
16 acknowledging and addressing the impacts of that development on adjacent properties, the community, the
17 natural environment, public services and facilities, and natural hazards;

18 (b) the process provides for continuous and extensive public notice, review, comment, and
19 participation in the development of the land use plan or regulation; and

20 (c) the final adopted land use plan, including amendments or updates to the final adopted land use
21 plan, comprises the basis for implementing land use regulations in substantial compliance with the land use
22 plan; and

23 ~~(d) the scope of and opportunity for public participation and comment on site-specific development~~
24 ~~in substantial compliance with the land use plan must be limited only to those impacts or significantly increased~~
25 ~~impacts that were not previously identified and considered in the adoption, amendment, or update of the land~~
26 ~~use plan, zoning regulations, or subdivision regulations.~~

27 (5) The local governing body shall adopt a public participation plan detailing how the local
28 government will meet the requirements of this section."

1

2 **Section 10.** Section 76-25-301, MCA, is amended to read:

3 **"76-25-301. Authority to adopt local zoning regulations.** (1) (a) A local government subject to this
4 chapter, within its respective jurisdiction, has the authority to and shall regulate the use of land in substantial
5 compliance with its adopted land use plan by adopting zoning regulations.

6 (b) The governing body of a county or city has the authority to adopt zoning regulations in
7 accordance with this part by an ordinance that substantially complies with 7-5-103 through 7-5-107.

8 (c) (i) A municipality shall adopt zoning regulations for the portions of the jurisdictional area outside
9 of the boundaries of the municipality that the governing body anticipates may be annexed into the municipality
10 over the next 20 years.

11 (ii) Unless otherwise agreed to by the applicable jurisdictions, zoning regulations on property
12 outside the municipal boundaries may not apply or be enforced until those areas are annexed or are being
13 annexed into the municipality.

14 (iii) A municipality subject to this chapter may continue to apply, administer, and enforce
15 extraterritorial zoning regulations pursuant to the provisions of 76-2-310 and 76-2-311.

16 (2) Local zoning regulations authorized in subsection (1) include but are not limited to ordinances
17 prescribing the:

18 (a) uses of land;

19 (b) density of uses;

20 (c) types of uses;

21 (d) size, character, number, form, and mass of structures; and

22 (e) development standards mitigating the impacts of development, as identified and analyzed
23 during the land use planning process and review and adoption of zoning regulations pursuant to this chapter.

24 (3) The local government shall incorporate any existing zoning regulations adopted pursuant to
25 Title 76, chapter 2, into the zoning regulations meeting the requirements of this chapter.

26 (4) The local government shall adopt a zoning map for the jurisdiction in substantial compliance
27 with the land use plan and future land use map and the zoning regulations adopted pursuant to this section,
28 graphically illustrating the zone or zones that a property within the jurisdiction is subject to.

(5) The local government may provide for the issuance of permits as may be necessary for the implementation of this chapter.

(6) (a) The zoning regulations and map must identify areas that may necessitate the denial of a development or a specific type of development, such as unmitigable natural hazards, insufficient water supply, inadequate drainage, lack of access, inadequate public services, or the excessive expenditure of public funds for the supply of the services.

(b) The regulations must prohibit development in the areas identified in subsection (6)(a) unless the hazards or impacts may be eliminated or overcome by approved construction techniques or other mitigation measures identified in the zoning regulations.

(c) Approved construction techniques or other mitigation measures described in subsection (6)(b) may not include building regulations as defined in 50-60-101 other than those identified by the department of labor and industry as provided in 50-60-901.

(7) The zoning regulations and map must mitigate the hazards created by development in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body. If the hazards cannot be mitigated, the zoning regulations and map must identify those areas where future development is limited or prohibited.

(8) The zoning regulations must allow for the continued use of land or buildings legal at the time that any zoning regulation, map, or amendment thereto is adopted, but the local government may provide grounds for discontinuing nonconforming uses based on changes to or abandonment of the use of the land or buildings after the adoption of a zoning regulation, map, or amendment."

SECTION 11. SECTION 76-25-305, MCA, IS AMENDED TO READ:

"76-25-305. Effect on zoning regulations and map. (1) After the adoption of a zoning regulation, map, or amendment pursuant to 76-25-304, any application proposing development of a site is subject to the process set forth in this section.

(2) (a) When a proposed development lies entirely within an incorporated city, or is proposed for annexation into the city, the application must be submitted to and approved by the city.

(b) Except as provided in subsections (2)(a) or (2)(c), when a proposed development lies entirely

1 in an unincorporated area, the application must be submitted to and approved by the county.

2 (c) If a proposed development lies within an area subject to increased growth pressures, higher
3 development densities, or other urban development influences identified by either jurisdiction in 76-25-213, the
4 jurisdiction shall provide other impacted jurisdictions the opportunity to review and comment on the application.

5 (d) If the proposed development lies partly within an incorporated city, the application and
6 materials must be submitted to and approved by both the city and the county governing bodies.

7 (3) ~~Zoning compliance permits and other ministerial permits may be issued by the planning
8 administrator or the planning administrator's designee without any further review or analysis by the governing
9 body, except as provided in 76-25-503.~~

10 (4) ~~After accepting a complete application proposing development of a site, the planning
11 administrator shall make an initial determination of whether:~~

12 (a) ~~If a proposed development, with or without variances or deviations from adopted standards, is
13 in substantial compliance with the zoning regulations or map; and~~

14 (b) ~~all impacts resulting from the proposed development were previously analyzed and made
15 available for public review and comment prior to in the adoption, amendment, or update of the land use plan,
16 zoning regulation, or zoning map, or amendment thereto.~~

17 (4) (a) ~~If the planning administrator makes an initial determination that the proposed development,
18 with or without variances or deviations from adopted standards, meets the requirements of subsections (3)(a)
19 and (3)(b), the planning administrator shall provide public notice of the initial determination in accordance with
20 76-25-106(3)(a) and (3)(b) and a 15-business-day written public comment period during which the public must
21 have an opportunity to comment on the initial determination.~~

22 (b) ~~Unless public comment received on or before the last day of the comment period provided in
23 subsection (4)(a) supports a determination that the proposed development fails to meet the requirements of
24 subsections (3)(a) and (3)(b), the planning administrator shall issue written findings stating the results of the
25 public comment and a final written decision approving, approving with conditions, or denying the application,
26 which may be appealed as provided in 76-25-503.~~

27 (c) ~~If public comment received on or before the last day of the comment period provided in
28 subsection (4)(a) provides evidence that the proposed development fails to meet either one or both of the~~

1 requirements of subsections (3)(a) or (3)(b), the planning administrator shall proceed with further review of the
2 application as set forth in subsection (5)., ~~the application must be approved, approved with conditions, or~~
3 ~~denied by the planning administrator and is not subject to any further public review or comment, except as~~
4 ~~provided in 76-25-503.~~

5 (5) (a) If a the planning administrator makes an initial determination or public comment received
6 under subsection (4)(c) provides evidence that the proposed development, with or without variances or
7 deviations from adopted standards, fails to meet either one or both of the requirements of subsections (3)(a) or
8 (3)(b) is in substantial compliance with the zoning regulations and map but may result in new or significantly
9 increased potential impacts that have not been previously identified and considered in the adoption of the land
10 use plan or zoning regulations, the planning administrator shall proceed as follows:

11 (b)(a) request that the applicant collect any additional data and perform any additional analysis
12 necessary to provide the planning administrator and the public with the opportunity to comment on and consider
13 the lack of substantial compliance with the zoning regulations or zoning map and any new or significantly
14 increased potential impacts identified in subsection (5)(a) not previously identified and considered in the
15 adoption, amendment, or update of the land use plan, zoning regulations, or zoning map;

16 (e)(b) collect any additional data or perform additional analysis the planning administrator determines
17 is necessary to provide the local government and the public with the opportunity to comment on and consider
18 the lack of substantial compliance with the zoning regulations or zoning map and any new or significantly
19 increased potential impacts identified in subsection (5)(a) not previously identified and considered in the
20 adoption, amendment, or update of the land use plan, zoning regulations, or zoning map; and

21 (d)(c) provide public notice of the planning administrator's initial or revised initial determination in
22 accordance with 76-25-106(3)(a) and (3)(b) of and a 15-business day written comment period during which the
23 public has the reasonable must have the opportunity to participate in the consideration of the impacts identified
24 in and comment on the data collected and analysis performed pursuant to subsection-subsections (5)(a) and
25 (5)(b).

26 (6) (a) Any additional data, analysis, or public comment, or consideration on a proposed
27 development described in subsection (5) must be limited to only the lack of substantial compliance with the
28 zoning regulations or map and any new or significantly increased impacts potentially resulting from the

proposed development, to the extent the impact was not previously identified or considered in the adoption, or amendment, or update of the land use plan, or zoning regulations, or zoning map.

(b)(7) ~~The~~ After the public comment period provided in subsection (5) has ended, the planning administrator shall issue written findings stating the results of the public comment and a final written decision approving, approving with conditions, or denying the application, which may be appealed approve, approve with conditions, or deny the application. The planning administrator's decision is final and no further action may be taken except as provided in 76-25-503.

(7)(8) If an applicant proposes to develop a site in a manner or to an extent that the development is not in substantial compliance with the zoning regulations or map, the applicant ~~shall~~ may propose an amendment to the regulations or map and follow the process provided for in 76-25-304.

(9) Ministerial permits may be issued by the planning administrator without any discretionary review or analysis, and may be appealed as provided in 76-25-503."

SECTION 12. SECTION 76-25-408, MCA, IS AMENDED TO READ:

"76-25-408. Local review procedure for divisions of land. (1) An applicant may request a preapplication submittal and response from the planning administrator prior to submitting a subdivision application. The preapplication review must take place no more than 30 business days from the date that the planning administrator receives a written request for a preapplication review from the subdivider.

(2) On receipt of an application for an exemption from subdivision review under 76-25-402 that contains all materials and information required by the governing body under subsection (5), the local government:

(a) shall approve or deny the application within 20 business days;

(b) may not impose conditions on the approval of an exemption from subdivision review except for conditions necessary to ensure compliance with the survey requirements of 76-25-412(1); and

(c) may require the certificate of survey to be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before filing with the county clerk and recorder. The examining land surveyor shall certify compliance in a printed or stamped certificate signed by the surveyor on the certificate of survey. A professional land surveyor may not act as an examining land surveyor in regard to a certificate of

1 survey in which the surveyor has a financial or personal interest.

2 (3) (a) When a proposed subdivision lies entirely within an incorporated city or is proposed for
3 annexation into the city, the application and preliminary plat must be submitted to and approved by the city.

4 (b) Except as provided in subsection (3)(c), when a proposed subdivision lies entirely in an
5 unincorporated area, the application and preliminary plat must be submitted to and approved by the county.

6 (c) If the proposed subdivision lies within an area subject to increased growth pressures, higher
7 development densities, or other urban development influences identified by either jurisdiction in 76-25-213, the
8 jurisdiction shall provide other impacted jurisdictions the opportunity to review and comment on the application.

9 (d) If the proposed subdivision lies partly within an incorporated city, the application and
10 preliminary plat must be submitted to and approved by both the city and the county governing bodies.

11 (4) A subdivision application is considered received on the date the application is delivered to the
12 reviewing agent or agency if accompanied by the review fee.

13 (5) (a) The planning administrator has 20 business days to determine whether the application
14 contains all information and materials necessary to complete the review of the application as set forth in the
15 local subdivision regulations.

16 (b) The planning administrator may review subsequent submissions of the application only for
17 information found to be deficient during the original review of the application under subsection (5)(a).

18 (c) A determination that an application contains sufficient information for review as provided in
19 subsection (5)(a) does not ensure approval or conditional approval of the proposed subdivision and does not
20 limit the ability of the planning administrator to request additional information during the review process.

21 (6) A subdivider may propose a phasing plan for approval with a preliminary plat. The phasing plan
22 must include a phasing plan and map that demonstrates what lots will be included with each phase, what public
23 facilities will be completed with each phase, and the timeline for the proposed phases.

24 (7) After accepting a complete application proposing subdivision of a site, the planning
25 administrator shall make an initial determination of whether:

26 ~~(7)——(a) If an application proposes a subdivision of a site that the proposed subdivision,~~ with or
27 without variances or deviations from adopted standards, is in substantial compliance with the zoning and
28 subdivision regulations; and

(b) ~~all impacts resulting from the development proposed subdivision were previously analyzed and made available for public review and comment prior to in the adoption, amendment, or update of the land use plan, zoning regulations, and subdivision regulations, or any amendment thereto.~~

(8) (a) If the planning administrator makes an initial determination that the proposed subdivision, with or without variances or deviations from adopted standards, meets subsections the requirements of (7)(a) and (7)(b), the planning administrator shall provide public notice of its initial determination in accordance with 76-25-106(3)(a) and (3)(b) and a 15-business-day written public comment period during which the public must have an opportunity to comment on the initial determination.

(b) Unless public comment received on or before the last day of the comment period provided in subsection (8)(a) supports a determination that the proposed subdivision fails to meet either one or both of the requirements of subsections (7)(a) or (7)(b), the planning administrator shall issue written findings stating the results of the public comment and a final written decision approving, approving with conditions, or denying the application, which may be appealed as provided in 76-25-503.

(c) If public comment received on or before the last day of the comment period in subsection (8)(a) provides evidence that the proposed subdivision fails to meet either one or both of the requirements of subsections (7)(a) or (7)(b), the planning administrator shall proceed with further review of the application as set forth in subsection (9).

~~shall issue a written decision to approve, approve with conditions, or deny the preliminary plat.~~

(b) ~~— The application is not subject to any further public review or comment, except as provided in 76-25-503.~~

(c) ~~— The decision by the planning administrator must be made no later than 15 business days from the date the application is considered complete.~~

~~(8)(9) (a) If an application proposes the planning administrator makes an initial determination or public comment received under subsection (8)(c) provides evidence that a proposed subdivision of a site that, with or without variances or deviations from adopted standards, is in substantial compliance with the zoning and subdivision regulations but may result in new or significantly increased potential impacts that have not been previously identified and considered in the adoption of the land use plan, zoning regulations, or subdivision regulations, or any amendments thereto, fails to meet either one or both of the requirements of subsections~~

1 (7)(a) or (7)(b), the planning administrator shall proceed as follows:

2 (i)(a) request the applicant to collect any additional data and perform any additional analysis
3 necessary to provide the planning administrator and the public with the opportunity to comment on and consider
4 the impacts identified in this subsection (8)(a) lack of substantial compliance with the zoning and subdivision
5 regulations and any new or significantly increased potential impacts not previously identified and considered in
6 the adoption, amendment, or update of the land use plan, zoning regulations, and subdivision regulations;

7 (ii)(b) collect any additional data or perform any additional analysis that the planning administrator
8 determines is necessary to provide the local government and the public with the opportunity to comment on and
9 consider the impacts identified in this subsection (8)(a) lack of substantial compliance with the zoning and
10 subdivision regulations and any new or significantly increased potential impacts not previously identified or
11 considered in the adoption, amendment, or update of the land use plan, zoning regulations, and subdivision
12 regulations; and

13 (iii)(c) provide public notice of the planning administrator's initial or revised initial determination in
14 accordance with 76-25-106(3)(a) and (3)(b) of and a written comment period of 15 business days during which
15 the public must have a reasonable an opportunity to participate in the consideration of the impacts identified in
16 this subsection (8)(a) and comment on the data collected and analysis performed pursuant to subsections
17 (9)(a) and (9)(b).

18 (b)(10) Any additional data, analysis, or public comment, or consideration described in subsection (9)
19 on the proposed development is must be limited to only the lack of substantial compliance with the zoning and
20 subdivision regulations and any new or significantly increased potential impacts resulting from the proposed
21 development subdivision to the extent that the impact was not previously identified in the consideration and
22 adoption, amendment, or update of the land use plan, zoning regulations, zoning map, or subdivision
23 regulations, or any amendments thereto.

24 (9)(11) Within 30 business days of the end of the written comment period provided in subsection
25 (8)(a)(iii) (9)(c), the planning administrator shall issue written findings stating the results of the public comment
26 and shall issue a written decision to approve, conditionally approve, or deny a proposed subdivision application,
27 which may be appealed as provided in 76-25-503.

28 (40)(12) The basis of the decision to approve, conditionally approve, or deny a proposed preliminary

1 plat is based on the administrative record as a whole and a finding that the proposed subdivision:

2 (a) meets the requirements and standards of this chapter;

3 (b) meets the survey requirements provided in 76-25-412(1);

4 (c) provides the necessary easements within and to the proposed subdivision for the location and
5 installation of any planned utilities; and

6 (d) provides the necessary legal and physical access to each parcel within the proposed
7 subdivision and the required notation of that access on the applicable plat and any instrument of transfer
8 concerning the parcel.

9 ~~(14)~~(13)(a) The written decision must identify each finding required in subsection ~~(10)~~ (12) that supports
10 the decision to approve, conditionally approve, or deny a proposed preliminary plat, including any conditions
11 placed on the approval that must be satisfied before a final plat may be approved.

12 (b) The written decision must identify all facts that support the basis for each finding and each
13 condition and identify the regulations and statutes used in reaching each finding and each condition.

14 (c) When requiring mitigation as a condition of approval, a local government may not unreasonably
15 restrict a landowner's ability to develop land. However, in some instances, the local government may determine
16 that the impacts of a proposed development are unmitigable and preclude approval of the subdivision.

17 ~~(12)~~(14)The written decision to approve, conditionally approve, or deny a proposed subdivision must:

18 (a) be provided to the applicant;

19 (b) be made available to the public;

20 (c) include information regarding the appeal process; and

21 (d) state the timeframe the approval is in effect.

22 ~~(13) — The planning administrator's decision is final, and no further action may be taken except as~~
23 ~~provided in 76-25-503.~~

24 ~~(14)~~(15)Any changes to an approved preliminary plat that increases the number of lots or redesigns or
25 rearranges six or more lots must undergo consideration and approval of an amended plat following the
26 requirements of this section.

27 (16) Ministerial permits may be issued by the planning administrator without any discretionary
28 review or analysis, and may be appealed as provided in 76-25-503."

1

2 **SECTION 13.** SECTION 76-25-410, MCA, IS AMENDED TO READ:

3 **"76-25-410. Local review procedure for final plats.** (1) The following must be submitted with a final
4 plat application:

5 (a) information demonstrating the final plat conforms to the written decision and all conditions of
6 approval set forth on the preliminary plat;

7 (b) a plat that meets the survey requirements provided in 76-25-412(1); and

8 (c) confirmation the county treasurer has certified that all real property taxes and special
9 assessments assessed and levied on the land to be subdivided have been paid.

10 (2) The final plat may be required to be reviewed for errors and omissions in calculation or drafting
11 by an examining land surveyor before filing with the county clerk and recorder. The examining land surveyor
12 shall certify compliance in a printed or stamped certificate signed by the surveyor on the final plat. A
13 professional land surveyor may not act as an examining land surveyor in regard to a plat in which the surveyor
14 has a financial or personal interest.

15 (3) A final plat application is considered received on the date the application is delivered to the
16 governing body or the agent or agency designated by the governing body if accompanied by the review fee.

17 (4) (a) Within 10 business days of receipt of a final plat, the planning administrator shall determine
18 whether the final plat contains the information required under subsection (1) and shall notify the subdivider in
19 writing.

20 (b) If the planning administrator determines that the final plat does not contain the information
21 required under subsection (1), the planning administrator shall identify the final plat's defects in the notification.

22 (c) The planning administrator may review subsequent submissions of the final plat only for
23 information found to be deficient during the original review of the final plat under subsection (4)(a).

24 (d) A determination that the application for a final plat contains sufficient information for review as
25 provided in subsection (4)(a) does not ensure approval of the final plat and does not limit the ability of the
26 planning administrator to request additional information during the review process.

27 (5) Once a determination is made under subsection (4) that the final plat contains the information
28 required under subsection (1), the governing body shall review and approve or deny the final plat within 20

1 business days.

2 (6) The subdivider or the subdivider's agent and the governing body or its reviewing agent or
3 agency may mutually agree to extend the review periods provided for in this section.

4 (7) (a) For a period of 5 years after approval of a phased preliminary plat, the subdivider may apply
5 for final plat of any one or more phases following the process set forth in subsections (1) through (6).

6 (b) After 5 years have elapsed since approval of a phased preliminary plat, the planning
7 administrator shall review each remaining phase to determine if a phase may result in new or significantly
8 increased potential impacts that have not been previously identified and considered in the adoption of the land
9 use plan, zoning or subdivision regulations, or review and approval of the phased preliminary plat. If the
10 planning administrator identifies any new or significantly increased potential impacts not previously identified
11 and considered, the planning administrator shall proceed as set forth in 76-25-408(8) (9).

12 (c) If necessary to mitigate impacts identified in subsection (7)(b), the planning administrator may
13 impose conditions on any phase before final plat approval is sought."

14

15 **Section 14.** Section 76-25-503, MCA, is amended to read:

16 **"76-25-503. Appeals -- public hearing and notice.** (1) Appeals of any final decisions made pursuant
17 to this chapter must be made in accordance with this section.

18 (2) For a challenge to the adoption of or amendment to a land use plan, zoning regulation, zoning
19 map, or subdivision regulation, a petition setting forth the basis for the challenge must be presented to the
20 district court within 30 days of the date of the resolution or ordinance adopted by the governing body.

21 (3) (a) Any final administrative land use decision, including but not limited to approval or denial of a
22 zoning permit, preliminary plat or final plat, imposition of a condition on a zoning permit or plat, approval or
23 denial of a variance from a zoning or subdivision regulation, or interpretation of land use regulations or map
24 may be appealed by the applicant or any aggrieved person to the planning commission.

25 (b) An appeal under subsection (3)(a) must be submitted in writing within 15 business days of the
26 challenged decision, stating the facts and raising all grounds for appeal that the party may raise in district court.

27 (c) (i) The planning commission shall hold a public hearing to hear the appeal de novo. The
28 planning commission is not bound by the decision that has been appealed, but the appeal must be limited to

the issues raised on appeal. The appellant has the burden of proving that the appealed decision was made in error.

(ii) Notice of the appeal must be published as provided in 7-1-2121 or 7-1-4127, as applicable.

(d) A decision of the planning commission on appeal takes effect on the date when the planning commission issues a written decision.

(4) (a) Any final land use decision by the planning commission may be appealed by the applicant, planning administrator, or any aggrieved person to the governing body.

(b) An appeal under subsection (4)(a) must be submitted in writing within 15 business days of the challenged decision, stating the facts and raising all grounds for appeal that the party may raise in district court.

(c) (i) The governing body shall hold a public hearing to hear the appeal de novo. The governing body is not bound by the decision that has been appealed, but the appeal must be limited to the issues raised on appeal. The appellant has the burden of proving that the appealed decision was made in error.

(ii) Notice of the appeal must be published as provided in 7-1-2121 or 7-1-4127, as applicable.

(d) A decision of the governing body on appeal takes effect on the date when the governing body issues a written decision.

(5) (a) No person may challenge in district court a land use decision until that person has exhausted the person's administrative appeal process as provided in this section.

(b) Any final land use decision of the governing body may be challenged by presenting a petition setting forth the grounds for review of a final land use decision with the district court within 30 calendar days after the written decision is issued.

(c) A challenge in district court to a final land use decision of the governing body is limited to the issues raised by the challenger on administrative appeal.

(6) Every final land use decision made pursuant to this section must be based on the administrative record as a whole and must be sustained unless the decision being challenged is arbitrary, capricious, or unlawful.

(7) Nothing in this chapter is subject to any provision of Title 2, chapter 4."

NEW SECTION. Section 15. Effective date. [This act] is effective on passage and approval.

1

2 NEW SECTION. SECTION 16. TERMINATION. [SECTIONS 11 THROUGH 13] TERMINATE JUNE 30, 2027.

3 - END -