

SENATE BILL NO. 382

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A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA LAND USE PLANNING ACT;
REQUIRING COUNTIES AND CITIES THAT MEET CERTAIN POPULATION THRESHOLDS TO UTILIZE THE
LAND USE PLAN, MAP, ZONING REGULATIONS, AND SUBDIVISION REGULATIONS PROVIDED IN THE
ACT; REQUIRING PUBLIC PARTICIPATION DURING THE DEVELOPMENT, ADOPTION, OR AMENDMENT
OF A LAND USE PLAN, MAP, ZONING REGULATION, OR SUBDIVISION REGULATION; PROVIDING
STRATEGIES TO MEET POPULATION PROJECTIONS; PROVIDING FOR CONSIDERATION OF FACTORS
SUCH AS HOUSING, LOCAL FACILITIES, ECONOMIC DEVELOPMENT, NATURAL RESOURCES,
ENVIRONMENT, AND NATURAL HAZARDS WHEN DEVELOPING A LAND USE PLAN, MAP, AND ZONING
REGULATION; PROVIDING FOR A PROCEDURE TO REVIEW SUBDIVISIONS AND APPROVE FINAL
PLATS; PROVIDING FOR A LOCAL GOVERNING BODY TO COLLECT FEES; PROVIDING AN APPEALS
PROCESS, ENFORCEMENT MECHANISMS, AND PENALTIES; PROVIDING DEFINITIONS; REPEALING
SECTIONS 7-21-1001, 7-21-1002, AND 7-21-1003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. Short Title. [Sections 1 through 37] may be cited as the "Montana Land
Use Planning Act".

NEW SECTION. Section 2. Legislative purpose, findings, and intent. (1) It is the purpose of
[sections 1 through 37] to promote the health, safety, and welfare of the people of Montana through a system of
comprehensive planning that balances private property rights and values, economic efficiency in public services
and infrastructure, protection of the environment, natural resources, and recreation, and a diversified and
sustainable economy.

- 1 (2) The legislature finds that coordinated and planned growth within cities and counties will
2 encourage, support, and protect:
- 3 (a) sufficient housing units for the state's growing population that are attainable for citizens of all
4 income levels;
- 5 (b) the provision of adequate public services and infrastructure in the most cost-effective manner
6 possible, shared equitably among all residents, businesses, and industries;
- 7 (c) the natural environment, including wildlife and wildlife habitat, sufficient and clean water, and
8 healthy air quality;
- 9 (d) agricultural, forestry, and mining lands for the production of food, fiber, and minerals and their
10 economic benefits;
- 11 (e) the state's economy and tax base through job creation, business development, and the
12 revitalization of established communities;
- 13 (f) persons, property, infrastructure, and the economy against natural hazards, such as flooding,
14 earthquake, wildfire, and drought; and
- 15 (g) local consideration, participation, and review of plans for projected population changes and
16 impacts resulting from those plans.
- 17 (3) It is the legislature's intent that the comprehensive planning authorized in [sections 1 through
18 37]:
- 19 (a) provides the broadest and most comprehensive level of collecting data, identifying and
20 analyzing existing conditions and future opportunities and constraints, acknowledging and addressing the
21 impacts of development on each jurisdiction, and providing for broad public participation;
- 22 (b) serves as the basis for implementing specific land use regulations that are in substantial
23 compliance with the local land use plan;
- 24 (c) provides for local government approval of development proposals in substantial compliance
25 with the land use plan, based on information, analysis, and public participation provided during the development
26 and adoption of the land use plan and implementing regulations; and
- 27 (d) allows for streamlined administrative review decisionmaking for site-specific development
28 applications.

1

2 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 37], unless the context or
3 subject matter clearly requires otherwise, the following definitions apply:

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

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

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

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

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

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

18 (7) "Division of land" means the segregation of one or more parcels of land from a larger tract held
19 in single or undivided ownership by transferring or contracting to transfer title to a portion of the tract or properly
20 filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to
21 [sections 1 through 37]. The conveyance of a tract of record or an entire parcel of land that was created by a
22 previous division of land is not a division of land.

23 (8) "Dwelling unit" means a residential structure in which a person or persons reside.

24 (9) "Examining land surveyor" means a registered land surveyor appointed by the governing body
25 to review surveys and plats submitted for filing.

26 (10) "Final plat" means the final drawing of the subdivision and dedication required by [sections 1
27 through 37] to be prepared for filing for record with the county clerk and recorder and containing all elements
28 and requirements set forth in [sections 1 through 37] and in regulations adopted pursuant to [sections 1 through

1 37].

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

4 (12) "Land use plan" means the land use plan and future land use map adopted in accordance with
5 [sections 1 through 37].

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

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

10 (15) "Local government" means a county, consolidated city-county, or an incorporated municipality
11 to which the provisions of [sections 1 through 37] apply.

12 (16) "Manufactured housing" means a dwelling for a single household, built offsite in a factory on or
13 after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a
14 pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-
15 built homes, and is in compliance with the applicable prevailing standards of the United States department of
16 housing and urban development at the time of its production. A manufactured home does not include a mobile
17 home or housetrailer, as defined in 15-1-101.

18 (17) "Ministerial permit" means a permit granted upon a determination that a proposed project
19 complies with the zoning map and the established standards set forth in the zoning regulations. The
20 determination must be based on objective standards, involving little or no personal judgment, and must be
21 issued by the planning administrator.

22 (18) "Planning administrator" means the person designated by the local governing body to review,
23 analyze, provide recommendations, or make final decisions on any or all zoning, subdivision, and other
24 development applications as required in [sections 1 through 37].

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

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

1 governing body.

2 (21) "Public utility" has the meaning provided in 69-3-101, except that for the purposes of [sections
3 1 through 37], the term includes a county water or sewer district as provided for in Title 7, chapter 13, parts 22
4 and 23, and municipal sewer or water systems and municipal water supply systems established by the
5 governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44.

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

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

14 (24) "Subdivision guarantee" means a form of guarantee that is approved by the commissioner of
15 insurance and is specifically designed to disclose the information required in [section 33].

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

19

20 **NEW SECTION. Section 4. Planning commission.** (1) (a) Each local government shall establish, by
21 ordinance or resolution, a planning commission.

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

24 (c) (i) Any combination of legally authorized planning boards, zoning commissions, planning and
25 zoning commissions, or boards of adjustment existing prior to [the effective date of this act] may be considered
26 duly constituted under [sections 1 through 37] as a planning commission by agreement of the governing bodies
27 of each jurisdiction represented on the planning commission.

28 (ii) If more than one legally authorized planning board, zoning commission, or planning and zoning

1 commission exists within a jurisdiction, the governing bodies of each jurisdiction may agree to:

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

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

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

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

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

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

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

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

20 (3) (a) Except as set forth in subsection (3)(b), the planning commission shall review and make
21 recommendations to the local governing body regarding the development, adoption, amendment, review, and
22 approval or denial of the following documents:

23 (i) the land use plan and future land use map as provided in [section 7];

24 (ii) zoning regulations and map as provided in [sections 18 through 24];

25 (iii) subdivision regulations as provided in [sections 25 through 33]; and

26 (iv) any other legislative land use planning document the local governing body designates.

27 (b) In accordance with [section 36], the planning commission shall hear and decide appeals from
28 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 [section 36].

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

NEW SECTION. Section 5. Applicability and compliance. (1) A county with a population at or exceeding 70,000 in the most recent decennial census shall comply with the provisions of [sections 1 through 37].

(2) A municipality within a county identified in subsection (1) with a population at or exceeding 5,000 in the most recent decennial census shall comply with the provisions of [sections 1 through 37].

(3) (a) Except as provided in subsection (3)(b), any local government that meets the population thresholds of subsections (1) or (2) on [the effective date of this act] shall comply with the provisions of [sections 1 through 37] within 3 years of [the effective date of this act].

(b) A local government that has adopted a growth policy within 5 years prior to [the effective date of this act] shall comply with the provisions of [sections 1 through 37] within 5 years of the date that the growth policy was adopted or within the deadline established in subsection (3)(a), whichever occurs later.

(c) A local government that meets the population thresholds of subsections (1) or (2) on any decennial census completed after [the effective date of this act] shall comply with the provisions of [sections 1 through 37] by December 31 of the fifth year after the date of the decennial census.

(4) (a) A local government that does not meet the population thresholds set forth in subsections (1) or (2) may decide to comply with the provisions of [sections 1 through 37] by an affirmative vote of the local governing body. After an affirmative vote, the governing body shall comply with the provisions of [sections 1 through 37] by December 31 of the fifth year after the date of the vote.

(b) A local government that votes pursuant to subsection (4)(a) to comply with the provisions of [sections 1 through 37] may subsequently decide to not comply with the provisions of [sections 1 through 37] by an affirmative vote.

(5) A local government that complies with [sections 1 through 37] is not subject to any provision of Title 76, chapters 1, 2, 3, or 8.

1 **NEW SECTION. Section 6. Public participation.** (1) (a) A local government shall provide continuous
2 public participation when adopting, amending, or updating a land use plan or regulations pursuant to [sections 1
3 through 37].

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

6 (i) dissemination of draft documents;

7 (ii) an opportunity for written and verbal comments;

8 (iii) public meetings after effective notice;

9 (iv) electronic communication regarding the process, including online access to documents,
10 updates, and comments; and

11 (v) an analysis of and response to public comments.

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

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

16 (i) general public notice and participation in the adoption, amendment, or update of a land use
17 plan or regulation; and

18 (ii) notice of written comment on applications for land use permits pursuant to [sections 1 through
19 37].

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

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

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

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

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

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

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

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

NEW SECTION. Section 7. Adoption or amendment of land use plan and future land use map.

(1) The local governing body shall adopt or amend by resolution a land use plan and future land use map in accordance with [sections 7 through 17] only after consideration by and on the recommendation of the planning commission.

(2) Prior to making a recommendation to the governing body to adopt or amend a land use plan and future land use map, the planning commission shall:

(a) provide public notice and participation in accordance with [section 6]; and

(b) accept, consider, and respond to public comment on the proposed land use plan and future land use map. All public comment must be part of the administrative record transmitted to the governing body.

(3) After meeting the requirements of subsection (2), the planning commission shall make a final recommendation to the governing body to adopt, modify, or reject the proposed land use plan and future land use map or any amendment to the proposed land use plan and future land use map.

1 (4) The governing body shall incorporate any existing neighborhood, area, or plans adopted
2 pursuant to Title 76, chapter 1, that meet the requirements of [sections 1 through 37] into the land use plan and
3 future land use map.

4 (5) (a) The governing body shall consider the recommendation of the planning commission to
5 adopt, modify, or reject the proposed land use plan and future land use map or any amendment to the
6 proposed land use plan and future land use map.

7 (b) After providing public notice and participation in accordance with [section 6], the governing
8 body may adopt, with any revisions the local governing body considers appropriate, or reject the land use plan
9 and future land use map or any amendment to the proposed land use plan and future land use map proposed
10 by the planning commission.

11 (6) An amendment to a land use plan or future land use map may be initiated:

12 (a) by majority vote of the governing body;

13 (b) on petition of at least 15% of the electors of the local government jurisdiction to which the plan
14 applies, as registered at the last general election; or

15 (c) by a property owner applying for a zoning, subdivision, or other land use permit.

16 (7) (a) After the initiation of an amendment to a land use plan or future land use map allowed in
17 subsection (6), the planning commission shall make a preliminary determination of whether the proposed land
18 use plan or future land use map amendment results in new or increased impacts to or from local facilities,
19 services, natural resources, natural environment, or natural hazards from those previously described and
20 analyzed in the assessment conducted in the development of the land use plan.

21 (b) If the planning commission finds new or increased impacts from the proposed land use plan or
22 future land use map amendment, the local government shall collect additional data and conduct additional
23 analysis necessary to provide the planning commission with the opportunity to consider all potential impacts
24 resulting from the amendment before proceeding under subsection (2).

25 (8) The governing body may not amend the land use plan or future land use map unless:

26 (a) the amendment is found in substantial compliance with the land use plan; and

27 (b) the potential impacts resulting from development in substantial compliance with the proposed
28 amendment have been made available for public review and comment and have been fully considered by the

1 governing body.

2

3 **NEW SECTION. Section 8. Update of land use plan or future land use map.** (1) After a local
4 government adopts a land use plan and future land use map in accordance with [section 7], the land use plan
5 and future land use map must be reviewed by the planning commission every fifth year after adoption to
6 determine whether an update to the land use plan and future land use map must be performed. The planning
7 commission shall:

8 (a) make a preliminary determination regarding the existence of new or increased impacts to or
9 from local facilities, services, natural resources, natural environment, or natural hazards from those previously
10 described and analyzed when the land use plan and future land use map were previously adopted;

11 (b) provide public notice and participation in accordance with [section 6]; and

12 (c) accept, consider, and respond to public comment on the review of the land use plan and future
13 land use map. All public comment must be part of the administrative record transmitted to the governing body.

14 (2) (a) If the planning commission finds new or increased impacts under subsection (1), the
15 planning commission shall recommend an update to the land use plan, future land use map, or both.

16 (b) If the planning commission finds no new or increased impacts under subsection (1), the
17 planning commission shall make a recommendation to the governing body that no update to the land use plan
18 or future land use map is necessary.

19 (3) After receiving the recommendation of the planning commission, the governing body may direct
20 that an update of the land use plan, future land use map, or both be completed or may readopt the current land
21 use plan, future land use map, or both.

22 (4) (a) In developing, drafting, and considering an update to the land use plan or future land use
23 map, the planning commission shall follow the process set forth in [section 7] with respect to the changes
24 proposed to the land use plan or future land use map.

25 (b) If the planning commission finds new or increased impacts resulting from the land use plan or
26 future land use map, the local government shall collect additional data and conduct additional analysis
27 necessary to provide the governing body and the public with the opportunity to comment on and consider all
28 potential impacts resulting from an update to the land use plan or future land use map.

(5) At any time before an update is required after a review under subsection (1), the local governing body may direct that an update to the land use plan or future land use map be prepared for consideration by the planning commission and for recommendation to the governing body.

(6) Once an update to the land use plan or future land use map is adopted or the land use plan or future land use map is readopted, the information and analysis contained within the land use plan and future land use map must be considered accurate for the purposes of making site-specific development decisions in substantial compliance with the land use plan and future land use map.

NEW SECTION. Section 9. Existing conditions and population projections. (1) The land use plan must include, at a minimum, inventories and descriptions of existing conditions of housing, local services and facilities, economic development, natural resources, environment, and hazards, and land use within the jurisdictional boundaries of the land use plan.

(2) As set forth in [sections 10 through 17], the land use plan must include, at minimum, a description, map, and analysis of how the jurisdiction will accommodate its projected population over the next 20 years and the expected impacts of the development in the areas of housing, local services and facilities, economic development, natural resources, environment, and hazards.

(3) The inventories and descriptions in the plan must be based on up-to-date surveys, maps, diagrams, charts, descriptive material, studies, and reports necessary to explain and supplement the analysis of each section of the land use plan.

(4) (a) A jurisdiction shall use demographics provided by:

- (i) the most recent decennial census or census estimate of the United States census bureau; and
- (ii) population projections for a 20-year period based on permanent and seasonal population estimates:

- (A) provided by demographics published by the department of commerce;
- (B) generated by the local government; or
- (C) produced by a professional firm specializing in projections.

(b) When a population projection is not available, population projections for the jurisdiction must be reflective of the area's proportional share of the total county population and the total county population growth.

1

2 **NEW SECTION. Section 10. Housing.** (1) A local governing body shall identify and analyze existing
3 and projected housing needs for the projected population of the jurisdiction and provide regulations that allow
4 for the rehabilitation, improvement, or development of the number of housing units needed, as identified in the
5 land use plan and future land use map, including:

6 (a) a quantification of the jurisdiction's existing and projected needed housing types, including
7 location, age, condition, and occupancy required to accommodate existing and estimated population
8 projections;

9 (b) an inventory of sites, including zoned, unzoned, vacant, underutilized, and potential
10 redevelopment sites, available to meet the jurisdiction's needed housing types;

11 (c) an analysis of any constraints to housing development, such as zoning, development
12 standards, and infrastructure needs and capacity, and the identification of market-based incentives that may
13 affect or encourage the development of needed housing types; and

14 (d) a detailed description of what actions the jurisdiction may take to accommodate the projected
15 needed housing types identified in subsection (1)(a).

16 (2) The housing section of the land use plan and future land use map may incorporate by
17 reference any information or policies identified in other housing needs assessments adopted by the governing
18 body.

19 (3) If, after performing the analysis required in subsection (1), the local government determines
20 that the total needed housing types may not be met due to lack of resources, development sites, infrastructure
21 capacity, or other documented constraints, the local government shall establish the minimum number of
22 housing units that may be rehabilitated, improved, or developed within the jurisdiction over the 20-year planning
23 period and the actions the local government may take to remove constraints to the development of those units
24 over that period.

25 (4) Progress toward the construction of the housing units identified as needed to meet projected
26 housing needs during the 20-year planning period of the land use plan must be documented at each fifth year
27 review of the land use plan as required in [section 8].

28 (5) The amount of detail provided in the analysis beyond the minimum criteria established in this

section is at the discretion of the local governing body.

NEW SECTION. Section 11. Local services and facilities. (1) The land use plan must:

(a) determine the existing and anticipated levels of public safety and emergency services necessary to serve the projected population of the jurisdiction, including law enforcement, fire protection, emergency management system agencies, and local health care organizations;

(b) contain an inventory and map of existing fire protection, law enforcement, and emergency service jurisdictional areas and anticipated response times, a description of mutual aid or cooperative service agreements, and the location of hospitals or clinics in the jurisdiction;

(c) identify capital and service improvements for fire, law enforcement, emergency services, and health services for the jurisdictional area necessary to meet the projected population;

(d) determine the existing capacity, existing deficiencies, planned expansion, and anticipated levels of utility services necessary to serve the projected population in the jurisdiction, including water, wastewater, and storm water systems, solid waste disposal, and other utility services, as identified by the local government;

(e) contain an inventory and map of all utility service areas, system networks, and facilities;

(f) identify local utility capital and service improvements for the jurisdictional area necessary to meet the projected population;

(g) determine the existing capacity, existing deficiencies, planned expansion, and anticipated improvements to the transportation network serving the jurisdictional area necessary to serve the projected population in the jurisdiction;

(h) contain an inventory and classification map of all existing and planned roads within the jurisdictional area, including major highways, secondary highways, and local routes, all non-motorized routes, including bike lanes and pedestrian thoroughfares, and all public transit systems and facilities; and

(i) identify planned capital and service transportation improvements necessary to serve the projected population.

(2) The local government shall:

(a) coordinate with school districts within the jurisdiction to determine the existing capacity of,

1 planned expansion of, and anticipated improvements necessary for the local K-12 school system to serve the
2 projected population in the jurisdiction; and

3 (b) request that the local school district provide any inventory and maps of existing K-12
4 educational facilities within the jurisdictional area and identify any capital and service improvements necessary
5 to meet the projected population.

6 (3) The local government may include an analysis of existing capacity and service levels, planned
7 expansions of, and anticipated improvements necessary to provide other services to the projected population in
8 the jurisdiction.

9 (4) The local government may incorporate by reference any information or policies identified in
10 other relevant local services or facilities assessments adopted by the local governing body, such as a capital
11 improvements plan or an impact fee study.

12 (5) The amount of detail provided in the analysis beyond the minimum criteria established in this
13 section is at the discretion of the local governing body.

14
15 **NEW SECTION. Section 12. Economic development.** (1) The land use plan must:

16 (a) assess existing and potential commercial, industrial, and institutional enterprises in the
17 jurisdiction, including the types of sites and supporting services needed by the enterprises;

18 (b) summarize job composition and trends by industry sector, including existing labor force
19 characteristics and future labor force requirements, for existing and potential enterprises in the jurisdiction;

20 (c) assess the extent to which local characteristics, assets, and resources support or constrain
21 existing and potential enterprises, including access to transportation to market goods and services, and assess
22 historic, cultural, and scenic resources and their relationship to private sector success in the jurisdiction;

23 (d) inventory sites within the jurisdiction, including zoned, unzoned, vacant, underutilized, and
24 potentially redeveloped sites, available to meet the jurisdiction's economic development needs;

25 (e) assess the adequacy of existing and projected local facilities and services, schools, housing
26 stock, and other land uses necessary to support existing and potential commercial, industrial, and institutional
27 enterprises; and

28 (f) assess the financial feasibility of supporting anticipated economic growth in the jurisdiction.

(2) The local government may incorporate by reference any information or policies identified in other relevant economic development assessments.

(3) The amount of detail provided in the analysis beyond the minimum criteria established in this section is at the discretion of the local governing body.

NEW SECTION. Section 13. Natural resources, environment, and hazards. (1) The land use plan must:

(a) include inventories and maps of natural resources within the jurisdiction, including but not limited to agricultural lands, agricultural water user facilities, minerals, sand and gravel resources, forestry lands, and other natural resources identified by the local government;

(b) describe the natural resource characteristics of the jurisdictional area, including a summary of historical natural resource utilization, data on existing utilization, and projected future trends;

(c) include an inventory, maps, and description of the natural environment of the jurisdictional area, including a summary of important natural features and the conditions of and real and potential threats to soils, geology, topography, vegetation, surface water, groundwater, aquifers, floodplains, scenic resources, wildlife, wildlife habitat, wildlife corridors, and wildlife nesting sites within the jurisdiction; and

(d) include maps of, identify factors related to, and describe natural hazards within the jurisdictional area, including flooding, fire, earthquakes, steep slopes and other known geologic hazards and other natural hazards identified by the jurisdiction, with a summary of past significant events resulting from natural hazards that includes:

(i) a description of land use constraints resulting from natural hazards;

(ii) a description of the efforts that have been taken within the local jurisdiction to mitigate the impact of natural hazards; and

(iii) a description of the role that natural resources and the environment play in the local economy.

(2) The local government may incorporate by reference any information or policies identified in other relevant assessments of natural resources, environment, or hazards.

(3) The amount of detail provided in the analysis beyond the minimum criteria established in this section is at the discretion of the local governing body.

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2 **NEW SECTION. Section 14. Land use and future land use map.** (1) A land use plan must include
3 a future land use map and a written description of the proposed general distribution, location, and extent of
4 residential, commercial, mixed, industrial, agricultural, recreational, and conservation uses of land and other
5 categories of public and private uses, as determined by the local government.

6 (2) The future land use map must reflect the anticipated and preferred pattern and intensities of
7 development for the jurisdiction over the next 20 years, based on the information, analysis, and public input
8 collected, considered, and relevant to the population projections for and economic development of the
9 jurisdiction and the housing and local services needed to accommodate those projections, while acknowledging
10 and addressing the natural resource, environment, and natural hazards of the jurisdiction.

11 (3) The future land use map may not confer any authority to regulate what is not otherwise
12 specifically authorized in [sections 1 through 37].

13 (4) The future land use map and the written description must include:

14 (a) a statement of intent describing the jurisdiction's applicable zoning, subdivision, and other land
15 use regulations;

16 (b) descriptions of existing and future land uses, including:

17 (i) categories of public and private use;

18 (ii) general descriptions of use types and densities of those uses;

19 (iii) general descriptions of population; and

20 (iv) other aspects of the built environment;

21 (c) geographic distribution of future land uses in the jurisdiction, anticipated over a 20-year
22 planning period that specifically demonstrate:

23 (i) adequate land to support the projected population in all land use types in areas where local
24 services can be adequately and cost-effectively provided for that population;

25 (ii) adequate sites to accommodate the type and supply of housing needed for the projected
26 population; and

27 (iii) areas of the jurisdiction that are not generally suitable for development and the reason, based
28 on the constraints identified through the land use plan analysis; and

(d) areas of or adjacent to the jurisdiction subject to increased growth pressures, higher development densities, or other urban development influences.

(5) To the greatest extent possible, local governments shall create compatibility in the land use plans and future land use map in those areas identified in subsection (4)(d).

(6) The land use plan may:

(a) provide information required by a federal land management agency for the local governing body to establish or maintain coordination or cooperating agency status; and

(b) incorporate by reference any information or policies identified in other relevant assessments adopted by the local governing body, such as a pre-disaster mitigation plan or wildfire protection plan.

(7) The amount of detail provided in the analysis beyond the minimum criteria established in this section is at the discretion of the local governing body.

NEW SECTION. Section 15. Area plans. (1) A local governing body may adopt area plans for a portion of the jurisdiction to provide a more localized analysis of all or any part of a land use plan. An area plan may include but is not limited to a neighborhood plan, a corridor plan, or a subarea plan.

(2) The adoption, amendment, or update of an area plan must follow the same process as a land use plan provided for in [sections 7 through 17] and may be adopted as an amendment to the land use plan.

(3) The area plan must be in substantial compliance with the land use plan. To the extent an area plan is inconsistent with the land use plan, the land use plan controls.

NEW SECTION. Section 16. Issue plans. (1) A local governing body may adopt issue plans for all or part of a jurisdiction that provide a more detailed or thorough analysis for any component of the land use plan.

(2) The adoption, amendment, or update of an issue plan must follow the same process as a land use plan provided for in [sections 7 through 17].

(3) If an issue plan covers the jurisdictional area of the land use plan, the issue plan may serve as the detailed analysis required in the land use plan.

NEW SECTION. Section 17. Implementation. (1) The land use plan and future land use map is not

1 a regulatory document and must include an implementation section that:

2 (a) establishes meaningful and predictable implementation measures for the use and development
3 of land within the jurisdiction based on the contents of the land use plan and future land use map;

4 (b) provides meaningful direction for the content of more detailed land use regulations and future
5 land use maps; and

6 (c) requires identification of those programs, activities, actions, or land use regulations that may be
7 part of the overall strategy of the jurisdiction for implementing the land use plan.

8 (2) The implementation section of the land use plan must include:

9 (a) if the local jurisdiction does not have current zoning regulations, a schedule by which zoning
10 regulations and a zoning map will be adopted in accordance with the deadlines set forth in [section 5];

11 (b) if the local jurisdiction has current zoning regulations, an analysis of whether any
12 inconsistencies exist between current zoning regulations and the land use plan and future land use map,
13 including a map of the inconsistencies. If inconsistencies exist, the local government shall identify:

14 (i) specific implementation actions necessary to amend the zoning regulations and the zoning
15 map to bring the zoning regulations and zoning map into substantial compliance with the land use plan and
16 future land use map;

17 (ii) a schedule for amending the zoning regulations and zoning map to be in substantial
18 compliance with the land use plan and future land use map, in accordance with the deadlines set forth in
19 [section 5];

20 (iii) a schedule for adopting a capital improvements program or for amending an existing capital
21 improvements program to be in substantial compliance with the land use plan and future land use map;

22 (iv) a schedule for expanding or replacing public facilities and the anticipated costs and revenue
23 sources proposed to meet those costs, which must be reflected in a jurisdiction's capital improvement program;

24 (v) if applicable, a schedule for updating the plan for extension of services required in 7-2-4732 to
25 be in substantial compliance with the land use plan; and

26 (vi) a schedule for implementing any other specific actions necessary to achieve the components of
27 the land use plan, including a timeframe or prioritization of each specific public action; and

28 (c) procedures for monitoring and evaluating the local government's progress toward meeting the

1 implementation schedule.

2

3 **NEW SECTION. Section 18. Authority to adopt local zoning regulations.** (1) (a) A local
4 government subject to [sections 1 through 37], within its respective jurisdiction, has the authority to and shall
5 regulate the use of land in substantial compliance with its adopted land use plan by adopting zoning
6 regulations.

7 (b) The governing body of a county or city has the authority to adopt zoning regulations in
8 accordance with [sections 18 through 24] by an ordinance that substantially complies with 7-5-103 through 7-5-
9 107.

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

12 (a) uses of land;

13 (b) density of uses;

14 (c) types of uses;

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

16 (e) development standards mitigating the impacts of development, as identified and analyzed
17 during the land use planning process and review and adoption of zoning regulations pursuant to [sections 1
18 through 37].

19 (3) The local government shall incorporate any existing zoning regulations adopted pursuant to
20 Title 76, chapter 2, into the zoning regulations meeting the requirements of [sections 1 through 37].

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

24 (5) The local government may provide for the issuance of permits as may be necessary for the
25 implementation of [sections 1 through 37].

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

1 for the supply of the services.

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

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

8 (7) The zoning regulations and map must prohibit development in areas located within the
9 floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to
10 flooding by the governing body.

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

15
16 **NEW SECTION. Section 19. Encouragement of development of housing.** (1) The zoning
17 regulations authorized in [section 18] must include a minimum of five of the following housing strategies,
18 applicable to the majority of the area, that allow for residential development in the jurisdictional area or that are
19 adopted as programs applicable to the entire jurisdiction:

20 (a) allow for at least two residential units per lot on a majority of land zoned to allow for residential
21 development;

22 (b) permit housing units to be incorporated in a wider range of development by adopting mixed-use
23 zoning;

24 (c) zone for higher density housing near transit stations, places of employment, higher education
25 facilities, and other appropriate population centers, as determined by the local government;

26 (d) provide reduced parking requirements;

27 (e) reduce or eliminate local fees for developments that include housing units;

28 (f) allow for internal or detached accessory dwelling units in all residential zones;

- 1 (g) allow for single room occupancy developments;
- 2 (h) create or support a community land trust program and rezone land trust lots to allow for higher
- 3 residential densities;
- 4 (i) reduce or eliminate impact fees for accessory dwelling units;
- 5 (j) allow for triplex or fourplex residential units per lot;
- 6 (k) reduce or eliminate minimum lot sizes;
- 7 (l) reduce or eliminate aesthetic, material, shape, bulk, size, height, floor area, and other massing
- 8 requirements;
- 9 (m) provide for zoning that specifically allows or encourages the development of tiny houses, as
- 10 defined in Appendix Q of the International Residential Code as it was printed on January 1, 2023;
- 11 (n) reduce or eliminate setback requirements; or
- 12 (o) allow residential development in all areas zoned to allow office, retail, or commercial
- 13 development as a permitted use.

14 (2) To meet the requirements of this section, a strategy allowed in subsection (1) must be

15 measured in comparison to regulations adopted by a local government on or after January 1, 2021.

16 (3) If the adoption of a housing strategy allowed in subsection (1) subsumes another housing

17 strategy allowed in subsection (1), only one strategy may be considered to have been adopted by the local

18 government.

19

20 **NEW SECTION. Section 20. Limitations on zoning authority.** (1) A local government acting

21 pursuant to [sections 18 through 24] may not:

- 22 (a) treat manufactured housing units differently from any other residential units;
- 23 (b) include in a zoning regulation any requirement to:
 - 24 (i) pay a fee for the purpose of providing housing for specified income levels or at specified sale
 - 25 prices; or
 - 26 (ii) dedicate real property for the purpose of providing housing for specified income levels or at
 - 27 specified sale prices, including a payment or other contribution to a local housing authority or the reservation of
 - 28 real property for future development of housing for specified income levels or specified sale prices;

1 (c) prevent the erection of an amateur radio antenna at heights and dimensions sufficient to
2 accommodate amateur radio service communications by a person who holds an unrevoked and unexpired
3 official amateur radio station license and operator's license, "technician" or higher class, issued by the federal
4 communications commission of the United States;

5 (d) establish a maximum height limit for an amateur radio antenna of less than 100 feet above the
6 ground;

7 (e) subject to subsection (2) and outside of incorporated municipalities, prevent the complete use,
8 development, or recovery of any mineral, forest, or agricultural resources identified in the land use plan, except
9 that the use, development, or recovery may be reasonably conditioned or prohibited within residential zones;

10 (f) except as provided in subsection (3), treat the following differently from any other residential
11 use of property:

12 (i) a foster home, kinship foster home, youth shelter care facility, or youth group home operated
13 under the provisions of 52-2-621 through 52-2-623, if the home or facility provides care on a 24-hour-a-day
14 basis;

15 (ii) a community residential facility serving eight or fewer persons, if the facility provides care on a
16 24-hour-a-day basis; or

17 (iii) a family day-care home or a group day-care home registered by the department of public
18 health and human services under Title 52, chapter 2, part 7;

19 (g) except as provided in subsection (3), apply any safety or sanitary regulation of the department
20 of public health and human services or any other agency of the state or a political subdivision of the state that is
21 not applicable to residential occupancies in general to a community residential facility serving 8 or fewer
22 persons or to a day-care home serving 12 or fewer children; or

23 (h) prohibit any existing agricultural activities or force the termination of any existing agricultural
24 activities outside the boundaries of an incorporated city, including agricultural activities that were established
25 outside the corporate limits of a municipality and thereafter annexed into the municipality.

26 (2) Regulations that condition or prohibit uses pursuant to subsection (1)(e) must be in effect prior
27 to the filing of a permit application or at the time a written request is received for a preapplication meeting
28 pursuant to 82-4-432.

(3) Except for a day-care home registered by the department of public health and human services, a local government may impose zoning standards and conditions on any type of home or facility identified in subsections (1)(f) and (1)(g) if those zoning standards and conditions do not conflict with the requirements of subsections (1)(f) and (1)(g).

NEW SECTION. Section 21. Adoption and amendment of zoning regulations. (1) (a) The governing body shall adopt or amend a zoning regulation or map only after consideration by and on the recommendation of the planning commission.

(b) An amendment to an adopted zoning regulation or map may be initiated:

(i) by majority vote of the governing body;

(ii) on petition of at least 15% of the electors of the local government jurisdiction to which the regulations apply, as registered at the last general election; or

(iii) by a property owner applying for any zoning, subdivision, or other land use permit.

(2) Prior to making a recommendation to the governing body to adopt or amend a zoning regulation or map, the planning commission shall:

(a) provide public notice and participation in accordance with [section 6];

(b) accept, consider, and respond to public comment on the proposed zoning regulation, map, or amendment. All public comment must be part of the administrative record transmitted to the governing body.

(c) make a preliminary determination as to whether the zoning regulation and map as proposed or as amended would be in substantial compliance with the land use plan, including whether the zoning regulation or map:

(i) accommodates the projected needed housing types identified in [section 10];

(ii) contains five or more specific strategies from [section 19] to encourage the development of housing within the jurisdiction;

(iii) reflects allowable uses and densities in areas that may be adequately served by public safety, emergency, utility, transportation, education, and any other local facilities or services identified by the local government in [section 11];

(iv) allows sufficient area for existing, new, or expanding commercial, industrial, and institutional

enterprises the local government has identified in [section 12] for targeted economic growth in the jurisdiction;

(v) protects and maximizes the potential use of natural resources within the area, as identified in [section 13];

(vi) minimizes or avoids impacts to the natural environment within the area, as identified in [section 13]; and

(vii) avoids or minimizes dangers associated with natural hazards in the jurisdiction, as identified in [section 13]; and

(d) preliminarily determine whether the proposed zoning regulation, map, or amendment results in new or increased impacts to or from local facilities, services, natural resources, natural environment, or natural hazards from those previously described and analyzed in the assessment conducted for the land use plan.

(3) If the planning commission finds new or increased impacts from the proposed regulation, map, or amendment, as provided in subsection (2)(d), the local government shall collect additional data and conduct additional analysis necessary to provide the planning commission and the public with the opportunity to comment on and consider all potential impacts resulting from adoption of the zoning regulation, map, or amendment.

(4) After meeting the requirements of subsections (2) and (3), the planning commission shall make a final recommendation to the governing body to approve, modify, or reject the proposed zoning regulation, map, or amendment.

(5) (a) The governing body shall consider each zoning regulation, map, or amendment that the planning commission recommends to the governing body.

(b) After providing public notice and participation in accordance with [section 6], the governing body may adopt, adopt with revisions the governing body considers appropriate, or reject the zoning regulation, map, or amendment as proposed by the planning commission.

(c) The governing body may not condition an amendment to a zoning regulation or map.

(d) The governing body may not adopt or amend a zoning regulation or map unless the governing body finds that:

(i) the regulation, map, or amendment is in substantial compliance with the land use plan; and

(ii) the impacts resulting from development in substantial compliance with the proposed zoning

1 regulation, map, or amendment have been made available for public review and comment and have been fully
2 considered by the governing body.

3 (6) After the zoning regulation, map, or amendment has been adopted by the governing body,
4 there is a presumption that:

5 (a) all permitting in substantial compliance with the zoning regulation, map, or amendment is in
6 substantial compliance with the land use plan; and

7 (b) the public has been provided a meaningful opportunity to participate.

8
9 **NEW SECTION. Section 22. Effect on zoning regulations and map.** (1) After the adoption of a
10 zoning regulation, map, or amendment pursuant to [section 21], any application proposing development of a
11 site is subject to the process set forth in this section.

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

14 (b) Except as provided in subsections (2)(a) or (2)(c), when a proposed development lies entirely
15 in an unincorporated area, the application must be submitted to and approved by the county.

16 (c) If a proposed development lies within an area subject to increased growth pressures, higher
17 development densities, or other urban development influences identified by either jurisdiction in [section 14], the
18 jurisdiction shall provide other impacted jurisdictions the opportunity to review and comment on the application.

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

21 (3) Zoning compliance permits and other ministerial permits may be issued by the planning
22 administrator or the planning administrator's designee without any further review or analysis by the governing
23 body, except as provided in [section 36].

24 (4) If a proposed development, with or without variances or deviations from adopted standards, is
25 in substantial compliance with the zoning regulations or map and all impacts resulting from the development
26 were previously analyzed and made available for public review and comment prior to the adoption of the land
27 use plan, zoning regulation, map, or amendment thereto, the application must be approved, approved with
28 conditions, or denied by the planning administrator and is not subject to any further public review or comment,

except as provided in [section 36].

(5) (a) If a proposed development, with or without variances or deviations from adopted standards, is in substantial compliance with the zoning regulations and map 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 or zoning regulations, the planning administrator shall proceed as follows:

(b) request that the applicant collect any additional data and perform any additional analysis necessary to provide the planning administrator and the public with the opportunity to comment on and consider the impacts identified in subsection (5)(a);

(c) collect any additional data or perform additional analysis the planning administrator determines is necessary to provide the local government and the public with the opportunity to comment on and consider the impacts identified in subsection (5)(a); and

(d) provide notice of a 15-business day written comment period during which the public has the reasonable opportunity to participate in the consideration of the impacts identified in subsection (5)(a).

(6) (a) Any additional analysis or public comment on a proposed development described in subsection (5) must be limited to only 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 of the land use plan or zoning regulations.

(b) The planning administrator shall 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 [section 36].

(7) 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 propose an amendment to the regulations or map and follow the process provided for in [section 21].

NEW SECTION. Section 23. Zoning and annexation. (1) A municipality may review and consider a proposed annexation in conjunction with the proposed zoning for the property to be annexed following the procedures set forth in [section 22].

(2) The joint public process authorized in subsection (1) fulfills the notice and public hearing requirements for a proposed annexation required in Title 7, chapter 2, parts 42 through 47.

1

2 NEW SECTION. Section 24. Interim zoning ordinances. (1) A local government, to protect the
3 public safety, health, and welfare and without following the procedures otherwise required prior to adopting a
4 zoning regulation, may adopt an interim zoning ordinance as an urgency measure to regulate or prohibit uses
5 that may conflict with a zoning proposal that the governing body is considering or studying or intends to study
6 within a reasonable time.

7 (2) Before adopting an interim zoning ordinance, the governing body shall first hold a public
8 hearing upon notice reasonably designed to inform all affected parties. A notice must be published in a
9 newspaper of general circulation at least 7 days before the public hearing.

10 (3) An interim zoning ordinance takes effect immediately on passage and approval after first
11 reading

12 and may be in effect no longer than 1 year from the date of its adoption.

13 (4) A local government may not act under the authority provided for in this section until the local
14 government has adopted a land use plan and zoning regulations pursuant to [sections 1 through 37].

15

16 NEW SECTION. Section 25. Authority to adopt local subdivision regulations -- limitations. (1)
17 Within its respective jurisdiction, a local government shall regulate the creation of lots in substantial compliance
18 with its adopted land use plan and zoning regulations by adopting subdivision regulations.

19 (b) The governing body of a county or city has the authority to adopt subdivision regulations in
20 accordance with [sections 25 through 33] by an ordinance that substantially complies with 7-5-103 through 7-5-
21 107.

22 (2) The subdivision regulations must provide a process for the application and consideration of
23 subdivision exemptions, certificate of survey, preliminary plats, and final plats as necessary for the
24 implementation of [sections 1 through 37].

25 (3) (a) A local governing body may not require, as a condition for approval of a subdivision under
26 this [sections 25 through 33]:

27 (i) the payment of a fee for the purpose of providing housing for specified income levels or at
28 specified sale prices; or

(ii) the dedication of real property for the purpose of providing housing for specified income levels or at specified sale prices.

(b) A dedication of real property prohibited in subsection (3)(a)(ii) includes a payment or other contribution to a local housing authority or the reservation of real property for future development of housing for specified income levels or specified sale prices.

(4) The local governing body may not change, in the subdivision regulations or in the process for subdividing, any timelines or procedural requirements for an application to subdivide other than provided for in [sections 25 through 33].

(5) Subdivisions under [sections 1 through 37] must follow the uniform standards governing certificates of survey and subdivision plats adopted by the board of professional engineers and professional land surveyors.

NEW SECTION. Section 26. Exemptions to subdivision review. (1) The following divisions of land, if made in substantial compliance with zoning regulations adopted pursuant to [sections 18 through 24], are not subject to the requirements of [sections 1 through 37]:

(a) subject to subsection (2), the creation of four or fewer new lots or parcels from an original lot or parcel:

(i) by order of a court of record in this state;

(ii) by operation of law; or

(iii) that, in the absence of agreement between the parties to a sale, could be created by court order in this state pursuant to the law of eminent domain, Title 70, chapter 30;

(b) subject to subsection (3), the creation of a lot to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing, if the land that is divided is not conveyed to any entity other than the financial or lending institution to which the mortgage, lien, or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture;

(c) the creation of an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;

(d) the creation of cemetery lots;

- 1 (e) the reservation of a life estate on a portion of a tract of record;
- 2 (f) the lease or rental of a portion of a tract of record for farming and agricultural purposes;
- 3 (g) the division of property over which the state does not have jurisdiction;
- 4 (h) the creation of rights-of-way or utility sites;
- 5 (i) the creation of condominiums, townhomes, townhouses, or conversions, as those terms are
- 6 defined in 70-23-102, when any applicable park dedication requirements as set forth in [sections 18 through 24]
- 7 are complied with;
- 8 (j) the lease or rental of contiguous airport-related land owned by a city, a county, the state, or a
- 9 municipal or regional airport authority;
- 10 (k) subject to subsection (4), a division of state-owned land, unless the division creates a second
- 11 or subsequent residential parcel from a single tract for sale, rent, or lease after July 1, 1974;
- 12 (l) the creation of lots by deed, contract, lease, or other conveyance executed prior to July 1,
- 13 1974;
- 14 (m) the relocation of common boundary lines between or aggregations of adjoining properties
- 15 within a municipality or in a platted subdivision approved under [sections 1 through 37] that does not result in an
- 16 increase in the number of lots;
- 17 (n) a single gift or sale in each county to each member of the landowner's immediate family; or
- 18 (o) subject to subsection (5), the creation of lots by deed, contract, lease, or other conveyance in
- 19 which the landowner enters into a covenant with the governing body that runs with the land that provides that
- 20 the divided land must be used exclusively for agricultural purposes.
- 21 (2) Before a court of record orders a division of land under subsection (1)(a), the court shall notify
- 22 the governing body of the pending division and allow the governing body to present written comment on the
- 23 division.
- 24 (3) A transfer of divided land by the owner of the property at the time that the land was divided to
- 25 any party other than those identified in subsection (1)(b) subjects the division of land to the requirements of
- 26 [sections 1 through 37].
- 27 (4) Instruments of transfer of land that is acquired for state highways may refer by parcel and
- 28 project number to state highway plans that have been recorded in compliance with 60-2-209 and are exempted

1 from the surveying and platting requirements of [sections 1 through 37]. If the parcels are not shown on
2 highway plans of record, instruments of transfer of the parcels must be accompanied by and refer to
3 appropriate certificates of survey and plats when presented for recording.

4 (5) The governing body, in its discretion, may revoke the covenant provided for in subsection (1)(o)
5 without subdivision review if the original lot lines are restored through aggregation of the covenanted land prior
6 to or in conjunction with the revoking of the covenant.

7
8 **NEW SECTION. Section 27. Adoption and amendment of subdivision regulations.** (1) (a) The
9 governing body shall adopt or amend subdivision regulations only after consideration by and on the
10 recommendation of the planning commission.

11 (b) An amendment to adopted subdivision regulations may be initiated:

12 (i) by majority vote of the governing body;

13 (ii) on petition of at least 15% of the electors of the local government jurisdiction to which the
14 regulations apply, as registered at the last general election; or

15 (iii) by a property owner applying for any zoning, subdivision, or other land use permit or approval.

16 (2) Prior to making a recommendation to the governing body to adopt or amend subdivision
17 regulations, the planning commission shall:

18 (a) provide public notice and participation in accordance with [section 6];

19 (b) accept, consider, and respond to public comment on the proposed subdivision regulation or
20 amendment to a subdivision regulation. All public comment must be part of the administrative record
21 transmitted to the governing body.

22 (c) make a preliminary determination as to whether the subdivision regulation or amendment to a
23 subdivision regulation is in substantial compliance with the land use plan and zoning regulations, including
24 whether the regulation or amendment:

25 (i) enables the development of projected needed housing types identified in the land use plan and
26 zoning regulations;

27 (ii) reflects applicable strategies from the land use plan and zoning regulations to encourage the
28 development of housing within the jurisdiction;

1 (iii) facilitates the adequate provision of public safety, emergency, utility, transportation, education,
2 and any other local facilities or services for proposed development, as identified in the land use plan and zoning
3 regulations;

4 (iv) reflects standards that provide for existing, new, or expanding commercial, industrial, and
5 institutional enterprises identified in the land use plan and zoning regulations for economic growth;

6 (v) protects and maximizes the potential use of natural resources within the area, as identified in
7 the land use plan and zoning regulations;

8 (vi) contains standards that minimize or avoid impacts to the natural environment within the area,
9 as identified in the land use plan and zoning regulations; and

10 (vii) contains standards that avoid or minimize dangers associated with natural hazards in the
11 jurisdiction, as identified in the land use plan and zoning regulations; and

12 (d) preliminarily determine whether the proposed subdivision regulation or amendment to a
13 subdivision regulation results in new or increased potential impacts to or from local facilities, services, natural
14 resources, natural environment, or natural hazards from those previously described and analyzed in the
15 assessments conducted for the land use plan and zoning regulations.

16 (3) If the planning commission finds new or increased potential impacts from the proposed
17 regulation or amendment to a regulation pursuant to subsection (2)(d), the local government shall collect
18 additional data and conduct additional analysis necessary to provide the planning commission and the public
19 with the opportunity, pursuant to [section 6], to comment on and consider all potential impacts resulting from
20 adoption of the subdivision regulation or amendment to a subdivision regulation.

21 (4) After meeting the requirements of subsection (2), the planning commission shall make a final
22 recommendation to the governing body to approve, modify, or reject the proposed subdivision regulation or
23 amendment to a subdivision regulation.

24 (5) (a) The governing body shall consider each subdivision regulation or amendment to a
25 subdivision regulation that the planning commission recommends to the governing body.

26 (b) After providing public notice and participation in accordance with [section 6], the governing
27 body may adopt, adopt with revisions that the governing body considers appropriate, or reject the subdivision
28 regulation or amendment to a subdivision regulation as proposed by the planning commission.

(c) The governing body may not adopt or amend a subdivision regulation unless the governing body finds:

(i) the subdivision regulation or amendment to a subdivision regulation is in substantial compliance with the land use plan and zoning regulations; and

(ii) the impacts resulting from development in substantial compliance with the proposed subdivision regulation or amendment to a subdivision regulation have been made available for public review and comment, which have been fully considered by the governing body.

(6) After the subdivision regulation or amendment to a subdivision regulation has been adopted by the governing body, there is a presumption that:

(a) all subdivisions in substantial compliance with the adopted regulation or amendment are in substantial compliance with the land use plan and zoning regulations; and

(b) the public has been provided a meaningful opportunity to participate.

NEW SECTION. Section 28. Contents of local subdivision regulations. (1) The subdivision regulations adopted under [sections 25 through 33] are limited to the following requirements:

(a) the date the regulations initially become effective under [sections 1 through 37] and the effective dates and the ordinance numbers for all subsequent amendments;

(b) design standards for all subdivisions in the jurisdiction, which may be incorporated by reference or may be based on the information and analysis contained in the land use plan and zoning regulations, including:

(i) standards for grading and erosion control;

(ii) standards for the design and arrangement of lots, streets, and roads;

(iii) standards for the location and installation of public utilities, including water supply and sewage and solid waste disposal;

(iv) standards for the provision of other public improvements; and

(v) legal and physical access to all lots;

(c) when a subdivision creates parcels with lot sizes averaging less than 5 acres, a requirement that the subdivider:

- 1 (i) reserve all or a portion of the appropriation water rights owned by the owner of the subject
2 property, transfer the water rights to a single entity for use by landowners within the subdivision who have a
3 legal right to the water, and reserve and sever any remaining surface water rights from the land;
- 4 (ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed
5 to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement that is
6 administered through a single entity and that specifies administration and the rights and responsibilities of
7 landowners within the subdivision who have a legal right and access to the water; or
- 8 (iii) reserve and sever all surface water rights from the land;
- 9 (d) except as provided in subsection (2), a requirement that the subdivider establish ditch
10 easements that:
- 11 (i) are in locations of appropriate topographic characteristics and sufficient width to allow the
12 physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of
13 water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit
14 of an irrigation district or other private or public entity formed to provide for the use of the water right on the
15 subdivision lots;
- 16 (ii) unless otherwise provided for under a separate written agreement or filed easement, provide
17 for the unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the
18 subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the
19 subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;
- 20 (iii) are a sufficient distance from the centerline of the ditch to allow for construction, repair,
21 maintenance, and inspection of the ditch; and
- 22 (iv) prohibit the placement of structures or the planting of vegetation other than grass within the
23 ditch easement without the written permission of the ditch owner;
- 24 (e) criteria that the planning administrator must use to determine whether a proposed method of
25 disposition using the exemptions provided in [sections 1 through 37] is an attempt to evade the requirements of
26 [sections 1 through 37];
- 27 (f) a list of the materials that must be included in order for the application to be determined
28 complete;

(g) subject to subsection (4), identification of circumstances or conditions that may necessitate the denial of any or specific types 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;

(h) subject to subsection (5), a list of public utilities and agencies of local, state, and federal government that the local government must seek input from during review of an application and for what information or analysis; or

(i) subject to subsection (6), requirements for the dedication of land, cash-in-lieu thereof, or a combination of both for parks and recreation purposes, not to exceed 0.03 acres per dwelling unit.

(2) A land donation under this section may be inside or outside of the subdivision.

(3) The regulations may not require ditch easements if:

(a) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land that the lots may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(b) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(4) (a) The regulations must prohibit development in circumstances or conditions identified in subsection (1)(g) unless the hazards or impacts may be eliminated or overcome by approved construction techniques or other mitigation measures identified in the subdivision regulations.

(b) Approved construction techniques or other mitigation measures described in subsection (4)(a) 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.

(5) If a proposed subdivision is situated within a rural school district, as described in 20-9-615, the local government shall provide a copy of the application and preliminary plat to the school district.

- 1 (6) (a) A park dedication may not be required for:
- 2 (i) land proposed for subdivision into parcels larger than 5 acres;
- 3 (ii) subdivision into parcels that are all nonresidential;
- 4 (iii) a subdivision in which parcels are not created, except when that subdivision provides multiple
- 5 permanent spaces for recreational camping vehicles, mobile homes, or condominiums; or
- 6 (iv) a subdivision in which only one additional parcel is created.
- 7 (b) Subject to the approval of the local governing body and acceptance by the school district
- 8 trustees, a subdivider may dedicate a land donation provided in subsection (6)(a) to a school district to be used
- 9 for school facilities or buildings.
- 10

11 NEW SECTION. **Section 29. Local review procedure for preliminary plats.** (1) An applicant may

12 request a preapplication submittal and response from the planning administrator prior to submitting a

13 subdivision application. The preapplication review must take place no more than 30 business days from the

14 date that the planning administrator receives a written request for a preapplication review from the subdivider.

15 (2) On receipt of an application for an exemption from subdivision review under [section 26] that

16 contains all materials and information required by the governing body under subsection (5), the local

17 government shall:

- 18 (a) approve or deny the application within 20 business days; and
- 19 (b) may not impose conditions on the approval of an exemption from subdivision review except for
- 20 conditions necessary to ensure compliance with the survey requirements of [section 25(5)].

21 (3) (a) When a proposed subdivision lies entirely within an incorporated city or is proposed for

22 annexation into the city, the application and preliminary plat must be submitted to and approved by the city.

23 (b) Except as provided in subsection (3)(c), when a proposed subdivision lies entirely in an

24 unincorporated area, the application and preliminary plat must be submitted to and approved by the county.

25 (c) If the proposed subdivision lies within an area subject to increased growth pressures, higher

26 development densities, or other urban development influences identified by either jurisdiction in [section 14], the

27 jurisdiction shall provide other impacted jurisdictions the opportunity to review and comment on the application.

28 (d) If the proposed subdivision lies partly within an incorporated city, the application and

1 preliminary plat must be submitted to and approved by both the city and the county governing bodies.

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

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

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

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

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

15 (7) (a) If an application proposes a subdivision of a site that, with or without variances or deviations
16 from adopted standards, is in substantial compliance with the zoning and subdivision regulations and all
17 impacts resulting from the development were previously analyzed and made available for public review and
18 comment prior to the adoption of the land use plan, zoning regulations, and subdivision regulations, or any
19 amendment thereto, the planning administrator shall issue a written decision to approve, approve with
20 conditions, or deny the preliminary plat.

21 (b) The application is not subject to any further public review or comment, except as provided in
22 [section 36].

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

25 (8) (a) If an application proposes subdivision of a site that, with or without variances or deviations
26 from adopted standards, is in substantial compliance with the zoning and subdivision regulations but may result
27 in new or significantly increased potential impacts that have not been previously identified and considered in the
28 adoption of the land use plan, zoning regulations, or subdivision regulations, or any amendments thereto, the

1 planning administrator shall proceed as follows:

2 (i) request the applicant to collect additional data and perform additional analysis necessary to
3 provide the planning administrator and the public with the opportunity to comment on and consider the impacts
4 identified in this subsection (8)(a);

5 (ii) collect additional data or perform additional analysis that the planning administrator determines
6 is necessary to provide the local government and the public with the opportunity to comment on and consider
7 the impacts identified in this subsection (8)(a); and

8 (iii) provide notice of a written comment period of 15 business days during which the public must
9 have a reasonable opportunity to participate in the consideration of the impacts identified in this subsection
10 (8)(a).

11 (b) Any additional analysis or public comment on the proposed development is limited to only new
12 or significantly increased potential impacts resulting from the proposed development to the extent that the
13 impact was not previously identified in the consideration and adoption of the land use plan, zoning regulations,
14 subdivision regulations, or any amendments thereto.

15 (9) Within 30 business days of the end of the written comment period provided in subsection
16 (8)(a)(iii), the planning administrator shall issue a written decision to approve, conditionally approve, or deny a
17 proposed subdivision application.

18 (10) The basis of the decision to approve, conditionally approve, or deny a proposed preliminary
19 plat is based on the administrative record as a whole and a finding that the proposed subdivision:

20 (a) meets the requirements and standards of [sections 1 through 37];

21 (b) meets the survey requirements provided in [section 25(5)];

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

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

27 (11) (a) The written decision must identify each finding required in subsection (10) that supports the
28 decision to approve, conditionally approve, or deny a proposed preliminary plat, including any conditions placed

on the approval that must be satisfied before a final plat may be approved.

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

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

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

(a) be provided to the applicant;

(b) be made available to the public;

(c) include information regarding the appeal process; and

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

(13) The planning administrator's decision is final, and no further action may be taken except as provided in [section 36].

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

NEW SECTION. Section 30. Effect of preliminary plat approval. (1) (a) An approved or conditionally approved preliminary plat must be in effect for not more than 5 calendar years and not less than 1 calendar year.

(b) At the end of the period, the planning administrator may, at the request of the subdivider, extend the approval once by written agreement.

(c) On receipt of a request for an extension, the planning administrator shall determine whether the preliminary plat remains in substantial compliance with the zoning and subdivision regulations. If the preliminary plat is no longer in substantial compliance with the zoning or subdivision regulations, the extension may not be granted.

(d) After a preliminary plat is approved, the local government may not impose any additional conditions as a prerequisite to final plat approval if the approval is obtained within the original or extended

1 approval period.

2 (e) Any subsequent requests by the subdivider for extension of the approval must be reviewed and
3 approved by the governing body.

4 (2) An approved or conditionally approved phased preliminary plat must be in effect for 20
5 calendar years.

6

7 **NEW SECTION. Section 31. Local review procedure for final plats.** (1) The following must be
8 submitted with a final plat application:

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

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

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

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

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

20 (c) The planning administrator may review subsequent submissions of the final plat only for
21 information found to be deficient during the original review of the final plat under subsection (3)(a).

22 (d) A determination that the application for a final plat contains sufficient information for review as
23 provided in subsection (3)(a) does not ensure approval of the final plat and does not limit the ability of the
24 planning administrator to request additional information during the review process.

25 (4) Once a determination is made under subsection (3) that the final plat contains the information
26 required under subsection (1), the governing body shall review and approve or deny the final plat within 20
27 business days.

28 (5) The subdivider or the subdivider's agent and the governing body or its reviewing agent or

agency may mutually agree to extend the review periods provided for in this section.

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

(b) After 5 years have elapsed since approval of a phased preliminary plat, the planning administrator shall review each remaining phase to determine if a phase 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 or subdivision regulations, or review and approval of the phased preliminary plat. If the planning administrator identifies any new or significantly increased potential impacts not previously identified and considered, the planning administrator shall proceed as set forth in [section 29(8)].

(c) If necessary to mitigate impacts identified in subsection (6)(b), the planning administrator may impose conditions on any phase before final plat approval is sought.

NEW SECTION. Section 32. Filing and recordation of plats and certificates of survey. (1) (a)

Except as provided in subsection (1)(b), every final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land may be sold or transferred in any manner. The clerk and recorder of the county may not accept any plat for record that has not been approved in accordance with [section 31] unless the plat is located in an area over which the state does not have jurisdiction.

(b) After the preliminary plat of a subdivision has been approved or conditionally approved, the subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following contract conditions are imposed and met:

(i) the purchasers of lots in the proposed subdivision make payments to an escrow agent, which must be a bank or savings and loan association chartered to do business in the state of Montana;

(ii) the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder;

(iii) if the final plat of the proposed subdivision is not filed with the county clerk and recorder within the approval period of the preliminary plat, the escrow agent shall immediately refund to each purchaser any payments the purchaser has made under the contract;

1 (iv) the county treasurer has certified that no real property taxes assessed and levied on the land to
2 be divided are delinquent; and

3 (v) the following language is conspicuously set out in each contract: "The real property that is the
4 subject of this contract has not been finally platted, and until a final plat identifying the property has been filed
5 with the county clerk and recorder, title to the property may not be transferred in any manner".

6 (2) (a) Subject to subsection (2)(b), no division of land may be made unless the county treasurer
7 has certified that all real property taxes and special assessments assessed and levied on the land to be divided
8 have been paid.

9 (b) (i) If a division of land includes centrally assessed property and the property taxes applicable to
10 the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate
11 the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed
12 property shall ensure that the prorated real property taxes and special assessments are paid on the land being
13 sold before the division of land is made.

14 (ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection
15 (2)(b) as a partial payment of the total tax that is due.

16 (3) (a) The county clerk and recorder shall maintain an index of all recorded subdivision plats and
17 certificates of survey.

18 (b) The index must list plats and certificates of survey by the quarter section, section, township,
19 and range in which the platted or surveyed land lies and must list the recording or filing numbers of all plats
20 depicting lands lying within each quarter section. Each quarter section list must be definitive to the exclusion of
21 all other quarter sections. The index must also list the names of all subdivision plats in alphabetical order and
22 the place where filed.

23 (4) The recording of any plat made in compliance with the provisions of [sections 1 through 37]
24 must serve to establish the identity of all lands shown on and being part of the plat. When lands are conveyed
25 by reference to a plat, the plat itself or any copy of the plat properly certified by the county clerk and recorder as
26 being a true copy thereof must be regarded as incorporated into the instrument of conveyance and must be
27 received in evidence in all courts of this state.

28 (5) (a) Any plat prepared and recorded as provided in [sections 25 through 33] may be vacated

1 either in whole or in part as provided by 7-5-2501, 7-5-2502, 7-14-2616(1) and (2), 7-14-2617, 7-14-4114(1)
2 and (2), and 7-14-4115. Upon vacation, the governing body or the district court, as provided in 7-5-2502, shall
3 determine to which properties the title to the streets and alleys of the vacated portions must revert. The
4 governing body or the district court, as provided in 7-5-2502, shall take into consideration:

- 5 (i) the previous platting;
- 6 (ii) the manner in which the right-of-way was originally dedicated, granted, or conveyed;
- 7 (iii) the reasons stated in the petition requesting the vacation;
- 8 (iv) the parties requesting the vacation; and
- 9 (v) any agreements between the adjacent property owners regarding the use of the vacated area.

10 The title to the streets and alleys of the vacated portions may revert to one or more of the owners of the
11 properties within the platted area adjacent to the vacated portions.

12 (b) Notwithstanding the provisions of subsection (5)(a), when any poleline, pipeline, or any other
13 public or private facility is located in a vacated street or alley at the time of the reversion of the title to the
14 vacated street or alley, the owner of the public or private utility facility has an easement over the vacated land to
15 continue the operation and maintenance of the public utility facility.

16
17 **NEW SECTION. Section 33. Public improvements and extension of capital facilities.** (1) Except
18 as provided in subsections (1)(a) and (1)(c), the governing body shall require the subdivider to complete
19 required improvements within the proposed subdivision prior to the approval of the final plat.

20 (a) (i) In lieu of the completion of the construction of any public improvements prior to the approval
21 of a final plat, the governing body shall, at the subdivider's option, allow the subdivider to provide or cause to be
22 provided a bond or other reasonable security, in an amount and with surety and conditions satisfactory to the
23 governing body, providing for and securing the construction and installation of the improvements within a period
24 specified by the governing body and expressed in the bonds or other security. The governing body shall reduce
25 bond or security requirements commensurate with the completion of improvements. Failure of the local
26 government to require the renewal of a bond does not waive the subdivider's responsibility to complete the
27 required improvements prior to the approval of the final plat.

28 (ii) In lieu of requiring a bond or other means of security for the construction or installation of all the

1 required public improvements under subsection (2)(a)(i), the governing body may enter into a subdivision
2 improvements agreement with the subdivider that provides for an incremental payment, guarantee plan, or
3 other method of completing the necessary improvements to serve the development as set forth in the
4 preliminary plat approval.

5 (b) Approval by the governing body of a final plat prior to the completion of required improvements
6 and without the provision of the security required under subsection (1)(a) is not an act of a legislative body for
7 the purposes of 2-9-111.

8 (c) The governing body may require a percentage of improvements or specific types of
9 improvements necessary to protect public health and safety to be completed before allowing bonding, other
10 reasonable security, or entering into a subdivision improvements agreement for purposes of filing a final plat.
11 The requirement is applicable to approved preliminary plats.

12 (2) (a) A local government may require a subdivider to pay or guarantee payment for part or all of
13 the costs of extending capital facilities related to public health and safety, including but not limited to public
14 roads, sewer lines, water supply lines, and storm drains to a subdivision. The costs must reasonably reflect the
15 expected impacts directly attributable to the subdivision. A local government may not require a subdivider to
16 pay or guarantee payment for part or all of the costs of constructing or extending capital facilities related to
17 education.

18 (b) All fees, costs, or other money paid by a subdivider under this subsection (2) must be
19 expended on the capital facilities for which the payments were required.

20
21 **NEW SECTION. Section 34. Variances.** (1) All land use regulations must include a process for the
22 submission and review of variances.

23 (2) The application for a variance must be for relief from land or building form design standards or
24 subdivision design and improvement standards.

25 (3) Variance applications must be considered and approved or approved with conditions before
26 application or in conjunction with application for a zoning permit or subdivision approval.

27 (4) The granting of a variance must meet all of the following criteria:

28 (a) the variance is not detrimental to public health, safety or general welfare;

(b) the variance is due to conditions peculiar to the property, such as physical surroundings, shape, or topographical conditions;

(c) strict application of the regulations to the property results in an unnecessary hardship to the owner as compared to others subject to the same regulations and that is not self-imposed;

(d) the variance may not cause a substantial increase in public costs; and

(e) the variance may not place the property in nonconformance with any other regulations.

(5) Additional criteria may apply if the variance is associated with a floodplain or floodway pursuant to the requirements of Title 76, chapter 5.

(6) Variance requests must be reviewed and determined by the planning administrator. The planning administrator's decision is final and no further action may be taken except as provided in [section 36].

NEW SECTION. Section 35. Fees. The governing body may establish reasonable fees to be paid by an applicant for a zoning permit, subdivision application, appeals, or any other review performed by the local government pursuant to [sections 1 through 37] to defray the expense of performing the review.

NEW SECTION. Section 36. Appeals. (1) Appeals of any final decisions made pursuant to [sections 1 through 37] must be made in accordance with this section.

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

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

(b) An appeal under subsection (3)(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) The planning commission shall hear the appeal de novo. The planning commission is not bound by the decision that has been appealed, but the appeal must be limited to the issues raised on appeal.

1 The appellant has the burden of proving that the appealed decision was made in error.

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

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

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

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

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

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

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

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

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

23 (7) Nothing in [sections 1 through 37] is subject to any provision of Title 2, chapter 4.

24

25 **NEW SECTION. Section 37. Enforcement and penalties.** (1) A local government may, by
26 ordinance, establish civil penalties for violations of any of the provisions of [sections 1 through 37] or of any
27 ordinances adopted under the authority of [sections 1 through 37].

28 (2) Prior to seeking civil penalties against a property owner, a local government shall provide:

(a) written notice, by mail or hand delivery, of each ordinance violation to the address of the owner of record on file in the office of the county recorder;

(b) a reasonable opportunity to cure a noticed violation; and

(c) a schedule of the civil penalties that may be imposed on the owner for failure to cure the violation before expiration of a time certain.

(3) A local government may, in addition to other remedies provided by law, seek:

(a) an injunction, mandamus, abatement, or any other appropriate action provided for in law;

(b) proceedings to prevent, enjoin, abate, or remove an unlawful building, use, occupancy, or act; or

(c) criminal prosecution for violation of any of the provisions of [sections 1 through 37] or of any ordinances adopted under the authority of [sections 1 through 37] as a misdemeanor punishable by a fine not to exceed \$500 per day for each violation.

(4) In any enforcement action taken under this section or remedy sought thereunder, the parties shall pay their own costs and attorney fees.

NEW SECTION. Section 38. Repealer. The following sections of the Montana Code Annotated are repealed:

7-21-1001. Legislative findings and purpose.

7-21-1002. Definitions.

7-21-1003. Local government regulations -- restrictions.

NEW SECTION. Section 39. Codification instruction. [Sections 1 through 37] are intended to be codified as an integral part of Title 76, and the provisions of Title 76 apply to [sections 1 through 37].

NEW SECTION. Section 40. Effective date. [This act] is effective on passage and approval.

NEW SECTION. Section 41. Applicability. [This act] applies to local governments that currently meet the population thresholds in [section 5].

