

# BOZEMAN<sup>MT</sup>

## THE COMMUNITY DEVELOPMENT BOARD OF BOZEMAN, MONTANA

### CDB AGENDA

**Monday, September 11, 2023**

General information about the Community Development Board is available in our [Laserfiche repository](#).

*If you are interested in commenting in writing on items on the agenda please send an email to [agenda@bozeman.net](mailto:agenda@bozeman.net) or by visiting the [Public Comment Page](#) prior to 12:00pm on the day of the meeting.*

*Public comments will also be accepted in-person and through video conference during the appropriate agenda items.*

*As always, the meeting will be streamed through the [Commission's video page](#) and available in the City on cable channel 190.*

*For more information please contact Anna Bentley, [abentley@bozeman.net](mailto:abentley@bozeman.net)*

#### **A. Call Special Meeting to Order - 6:00 pm**

*This meeting will be held both in-person and also using an online video conferencing system. You can join this meeting:*

*[Via Video Conference:](#)*

*Click the Register link, enter the required information, and click submit.*

*Click Join Now to enter the meeting.*

*Via Phone: This is for listening only if you cannot watch the stream, channel 190, or attend in-person*

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*+1 346 248 7799*

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#### **B. Disclosures**

#### **C. Changes to the Agenda**

#### **D. Consent Items**

- D.1 [Design recommendation regarding Boulder Creek Apartments Phase 2 site plan proposal for a total of 48 apartment homes in three apartment buildings in Boulder Creek Subdivision Phase 1, southeast of the corner of Abigail Lane and West Oak Street., Application 22118\(Garber\)](#)

#### **E. Public Comments**

*This is the time to comment on any matter falling within the scope of the Community Development Board. There will also be time in conjunction with each agenda item for public comment relating to that item but you may only speak once per topic.*

*Please note, the Community Development Board cannot take action on any item which does not appear on the agenda. All persons addressing the Community Development Board shall speak in a civil and courteous manner and members of the audience shall be respectful of others. Please state your name and place of residence in an audible tone of voice for the record and limit your comments to three minutes.*

*General public comments to the Board can be found in their [Laserfiche repository folder.](#)*

#### **F. Action Items**

- F.1 [Annexation Application 23127 requesting Annexation of Two Parcels Approximately 40.12 acres and Adjacent Right of Way for Hidden Valley Road and Amendment to the City Zoning Map for the Establishment of a Zoning Designation of R-5 \(Residential Mixed Use High Density District\). Subject Site is Located on East and South of Hidden Valley Road about One-Quarter Mile East of Harper Puckett Road, Application 23127.](#)(Cramblet)
- F.2 [Chapter 38, Unified Development Code, Bozeman Municipal Code to Repeal and Replace the Entire Chapter with New Zoning and Subdivision Regulations Consistent with the Montana Land Use Planning Act, Application 21381](#)(Bentley)

#### **G. FYI/Discussions**

#### **H. Adjournment**

This board generally meets the first and third Monday of the month from 6:00 pm to 8:00 pm. *Citizen Advisory Board meetings are open to all members of the public. If you have a disability and require assistance, please contact the City for ADA coordination, 406.582.2306 (TDD 406.582.2301).*

# Memorandum

**REPORT TO:** Community Development Board

**FROM:** Danielle Garber, Associate Planner  
Brian Krueger, Development Review Manager  
Erin George, Assistant Community Development Director  
Anna Bentley, Community Development Director

**SUBJECT:** Design recommendation regarding Boulder Creek Apartments Phase 2 site plan proposal for a total of 48 apartment homes in three apartment buildings in Boulder Creek Subdivision Phase 1, southeast of the corner of Abigail Lane and West Oak Street., Application 22118

**MEETING DATE:** September 11, 2023

**AGENDA ITEM TYPE:** Community Development - Quasi-Judicial

**RECOMMENDATION:** Recommend approval of the site plan application 22118 with conditions to the Community Development Director as presented and provide design recommendations and Board Member discussion.

Recommended motion: Having reviewed and considered the application materials, public comment, and all information presented, I hereby adopt the findings presented in the staff report for application 22118 and move to recommend approval of the application with conditions of approval and subject to all applicable code provisions.

**STRATEGIC PLAN:** 4.2 High Quality Urban Approach: Continue to support high-quality planning, ranging from building design to neighborhood layouts, while pursuing urban approaches to issues such as multimodal transportation, infill, density, connected trails and parks, and walkable neighborhoods.

**BACKGROUND:** This review is in front of the Community Development Board in their capacity as the Design Review Board (DRB). The Bozeman Municipal Code (BMC) 38.230.040 sets the thresholds for projects that need the review of the DRB, or Community Development Board, and this project exceeds those thresholds by 3 dwelling units and 2 parking spaces. The DRB was established to provide design recommendations regarding larger proposals to the review authority.

Per BMC 2.05.3000 – Established Powers and Duties “The community development board established pursuant to Resolution No. 5330 shall act as the design review board for all purposes under this Code. The design review board (DRB) is established to evaluate aesthetic considerations of larger and more complex proposals which are likely to produce significant community impact and to provide recommendations regarding such proposals to the review authority, subject to the provisions of [chapter 38](#).”

[Chapter 38, Article 3](#) provides code provisions regarding those aesthetic considerations. Those include *Form and Intensity Standards (38.320)*, *Zone Specific Provisions (38.330)*, and *Overlay District Standards (38.340)*. [Chapter 38, Article 5](#) also contains code provisions regarding aesthetic considerations. These include, *Block Frontage (38.510)*, *Site Planning and Design Elements (38.520)*, *Building Design (38.530)*, *Parking (38.540)*, *Landscaping (38.550)*, *Signs (38.560)*, and *Lighting (38.570)*. Sections 5, and 7a through 7g of the staff report attached discuss these code provisions.

The property has been annexed, zoned, and subdivided with previous review by the Planning Board, Zoning Commission, and City Commission and approval is in place. Discussion of land use policy, zoning, and community design is irrelevant to this meeting. The purpose of this meeting is the proposed design contained in the applications.

The application proposes a residential development of 48 dwelling units in three buildings, providing 92 off-street parking spaces and associated site improvements. The project will consist of one 12-unit apartment building, and two 18-unit apartment buildings on lots 3 and 4, Block 5, of Boulder Creek Subdivision Phase 1. The property is zoned R-4, residential high-density district. A site plan application for Boulder Creek Apartments Phase 1 with similarly designed buildings and 54 dwelling units in three buildings was approved in 2022. Phase 1 is currently approved for construction in lots 1 and 2, Block 5 directly to the south.

There are currently no remaining corrections from engineering and all community design requirements including transportation facilities and access, grading, drainage, utilities, and easements are found to be adequate with conditions and code provisions.

The full application can be viewed at this Laserfiche Link:

[Application 22118 Boulder Creek Apartments Phase 2 Site Plan](#)

Some materials in the submittal relevant to the DRB's duties include:

[022 C001 Cover Sheet](#)

[032 C300 Overall Site Plan](#)

[019 L101 Overall Landscape Plan](#)

[020 L102 Notes & Plant Schedule](#)

[021 L201 Landscape Details](#)

[004 A3 Exterior Elevations Building 1 - 12 Unit](#)

[005 A3.1 Exterior Elevations Building 1](#)

[010 A3 Exterior Elevations Building 2 - 18 Unit](#)

[011 A3.1 Exterior Elevations Building 2](#)

[007 A1L Photometric Plan](#)

**UNRESOLVED ISSUES:** None

**ALTERNATIVES:** As identified by the Community Development Board

**FISCAL EFFECTS:** Unknown at this time

Attachments:

[22118 Staff Report.pdf](#)

Report compiled on: January 4, 2023

Application No.	22118	Type	Site Plan		
Project Name	Boulder Creek Apartments Phase 2 Site Plan				
Summary	Residential development of 48 dwelling units in three buildings, providing 92 off-street parking spaces and associated site improvements. The project will consist of one 12-unit apartment building, and two 18-unit apartment buildings on lots 3 and 4, Block 5, of Boulder Creek Subdivision Phase 1. The property is zoned R-4, residential high-density district. Boulder Creek Apartments Phase 1 with 54 dwelling units in three buildings was approved in 2022 and currently approved for construction in lots 1 and 2, Block 5 to the south.				
Zoning	R-4	Growth Policy	Urban Neighborhood	Parcel Size	2.47 Acres
Overlay District(s)	None				
Street Address	TBD Abigail Lane, Bozeman				
Legal Description	Boulder Creek Sub Phase 1, S04, T02 S, R05 E, Block 5, Lots 3-4, Plat J-633; City of Bozeman, Gallatin County, Montana.				
Owner	Rosa Johnson Development, 2264 Jackrabbit Lane, Unit B Bozeman, MT 59718				
Applicant	Same as Owner				
Representative	Morrison-Maierle, Inc, PO Box 1113, Bozeman, MT 59718				
Staff	Planner	Danielle Garber		Engineer	Simon Lindley
Noticing	Public Comment Period		Site Posted	Adjacent Owners	Newspaper Legal Ad
	8/16/2023 to 9/7/2023		8/16/2023	8/16/2023	N/A
Advisory Boards	Board		Date	Recommendation	
	Development Review Committee		08/10/2023	The application is adequate, conforms to standards, and is sufficient for approval with conditions and code provisions	
	DRB		9/11/2023	TBD	
Recommendation	The application is adequate, conforms to standards, and is sufficient for approval with conditions and code provisions as noted below.				
Decision Authority	Director of Community Development			Date: 9/21/2023	

Full application and file of record: Community Development Department, 20 E. Olive St., Bozeman, MT 59715

## **FINDINGS OF FACT AND APPEAL PROVISIONS CERTIFICATE**

A) PURSUANT to Chapter 38, Article 2, Bozeman Municipal Code (BMC), and other applicable sections of Ch.38, BMC, public notice was given, opportunity to submit comment was provided to affected parties, and a review of the Site Plan described in this report was conducted. The applicant proposed to the City a Site Plan (SP) to permit 48 dwelling units in three buildings, providing 92 vehicle parking spaces and associated site improvements. The purposes of the Site Plan review were to consider all relevant evidence relating to public health, safety, welfare, and the other purposes of Ch. 38, BMC; to evaluate the proposal against the criteria of Sec. 38.230.100 BMC, and the standards of Ch. 38, BMC; and to determine whether the application should be approved, conditionally approved, or denied.

B) It appeared to the Director that all parties and the public wishing to examine the proposed Site Plan and offer comment were provided the opportunity to do so. After receiving the recommendation of the relevant advisory bodies established by Ch. 38, Art. 210, BMC, and considering all matters of record presented with the application and during the public comment period defined by Ch. 38, BMC, the Director has found that the proposed Site Plan would comply with the requirements of the BMC if certain conditions were imposed. Therefore, being fully advised of all matters having come before them regarding this application, the Director makes the following decision.

C) The Site Plan has been found to meet the criteria of Ch. 38, BMC, and is therefore approved, subject to the conditions listed in this report and the correction of any elements not in conformance with the standards of the Title. The evidence contained in the submittal materials, advisory body review, public testimony, and this report, justifies the conditions imposed on this development to ensure that the Site Plan complies with all applicable regulations, and all applicable criteria of Ch. 38, BMC. On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, Anna Bentley, Director of Community Development, approved with conditions this Site Plan for and on behalf of the City of Bozeman as authorized by Sec. 38.200.010, BMC.

D) This Director of Community Development's project decision may be appealed by filing a documented appeal with and paying an appeal fee to the Clerk of the Commission for the City of Bozeman within 10 working days after the date of the final decision as evidenced by the Director's signature, following the procedures of Sec. 38.250.030, BMC.

## **DIRECTOR OF COMMUNITY DEVELOPMENT**

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## **CONDITIONS OF APPROVAL**

1. The applicant is advised that unmet code provisions, or code provisions that are not specifically listed as conditions of approval, does not, in any way, create a waiver or other relaxation of the lawful requirements of the Bozeman Municipal Code or state law.
2. The applicant must file the revised SID waiver with the County Clerk and Recorder's office executed Waivers of Right to Protest Creation of Special Improvement Districts (SID's) on City standard record form. The applicant must provide a copy of the recorded SID waiver prior to final site plan approval.

## **CODE PROVISIONS**

1. BMC 38.410.130 – Water rights. Cash-in-lieu of water rights (CILWR) must be paid prior to final site plan approval.
2. BMC 38.420.030.C – Cash-in-lieu of parkland. The applicant must replace the parkland-tracking table with the table provided to the applicant or amend the existing table to match the format provided. Estimated in-lieu value is \$33,976.80; final value must be determined and paid prior to final site plan approval.
3. BMC 38.240 Part 4 – Subdivision Exemptions. The amended plat for the boundary line realignment between lots 3 and 4 must be recorded prior to final plan approval.

## **ADVISORY COMMENTS**

1. No sub-phasing or occupancy phasing is proposed with this application. The applicant acknowledged on 9/27/22 that no buildings entitled with this application may be granted a final certificate of occupancy until all buildings, and all site improvements are completed. Landscaping may be financially guaranteed to accommodate seasonality.



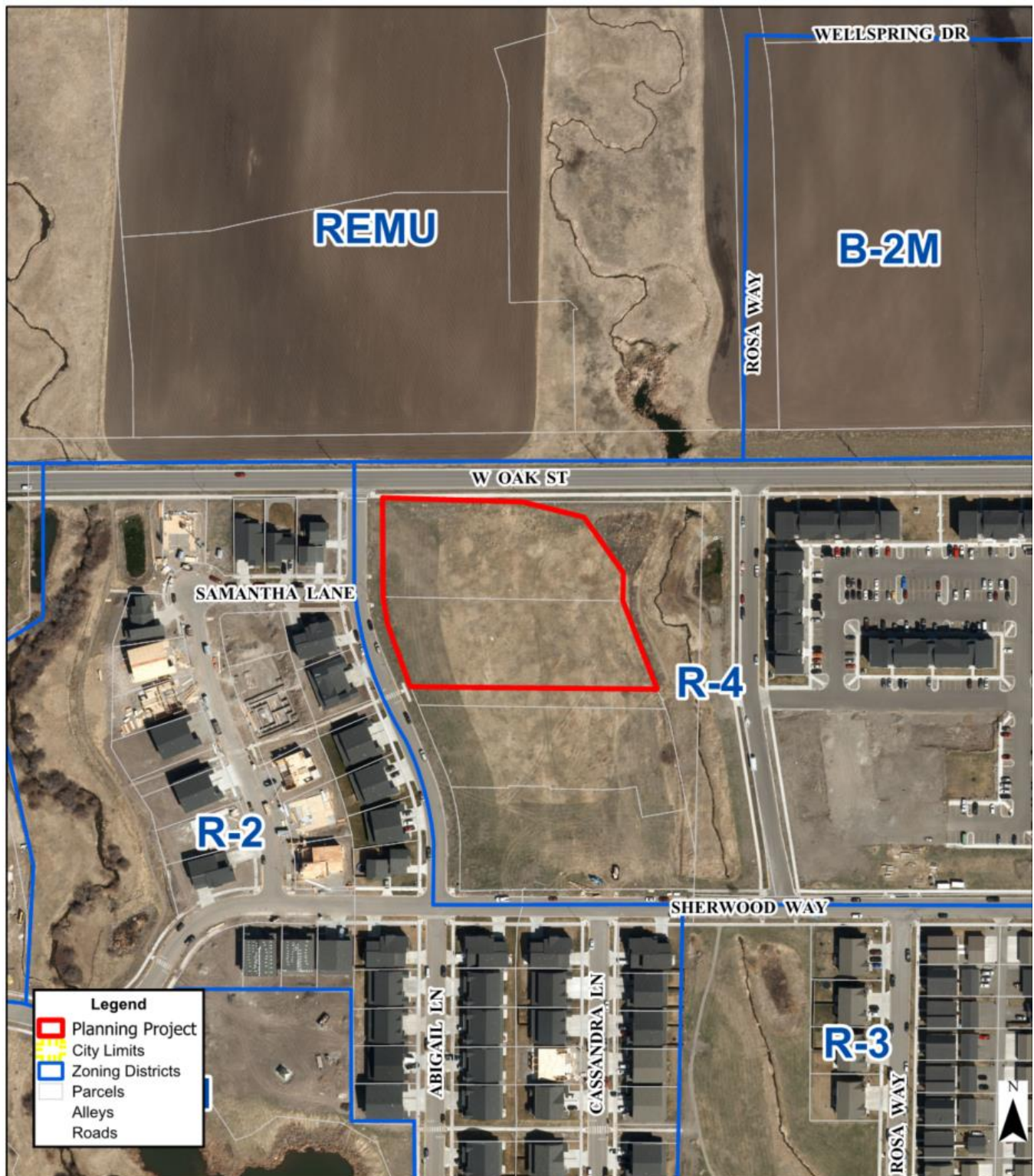


Figure 1: Current Zoning Map

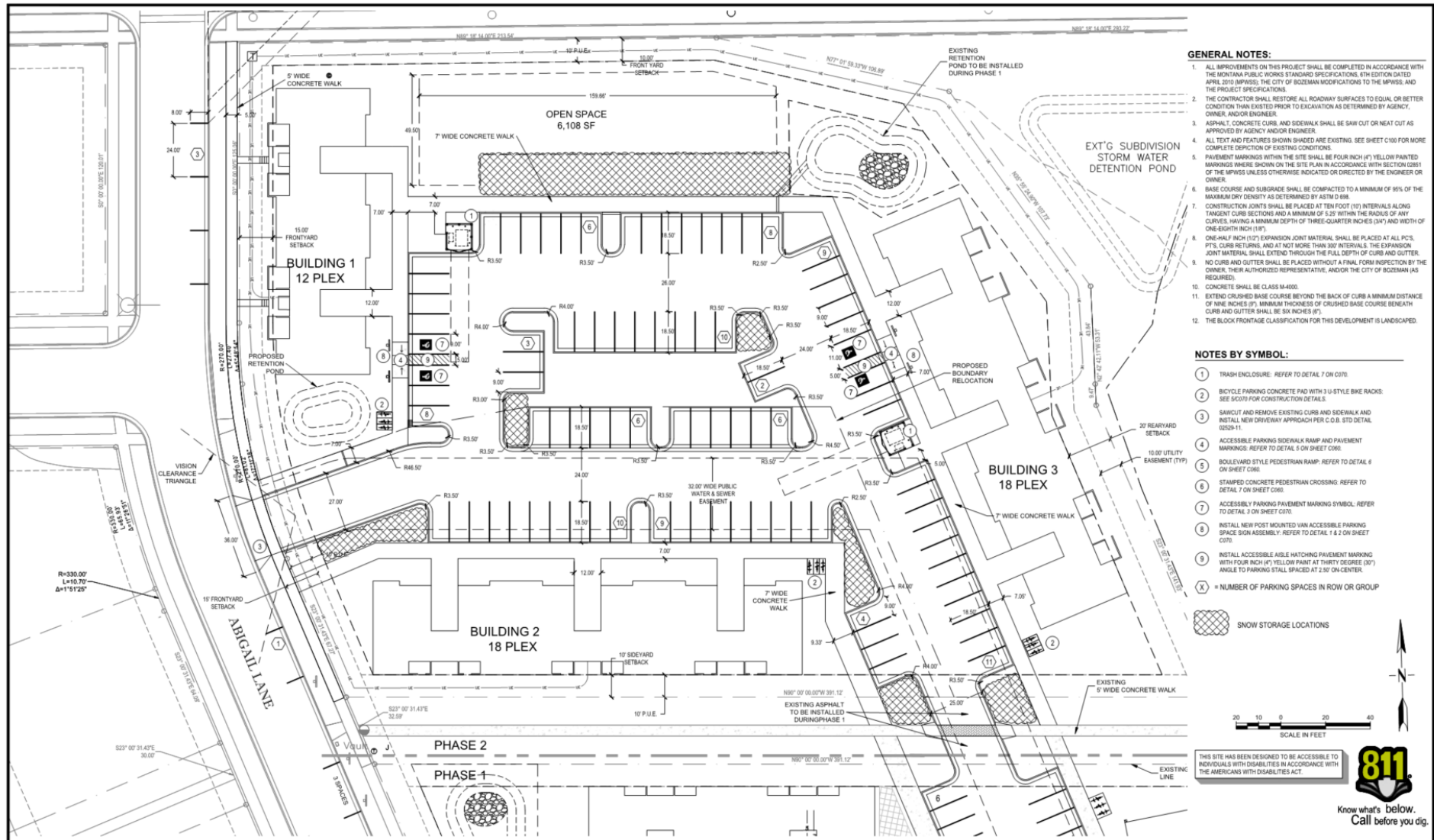
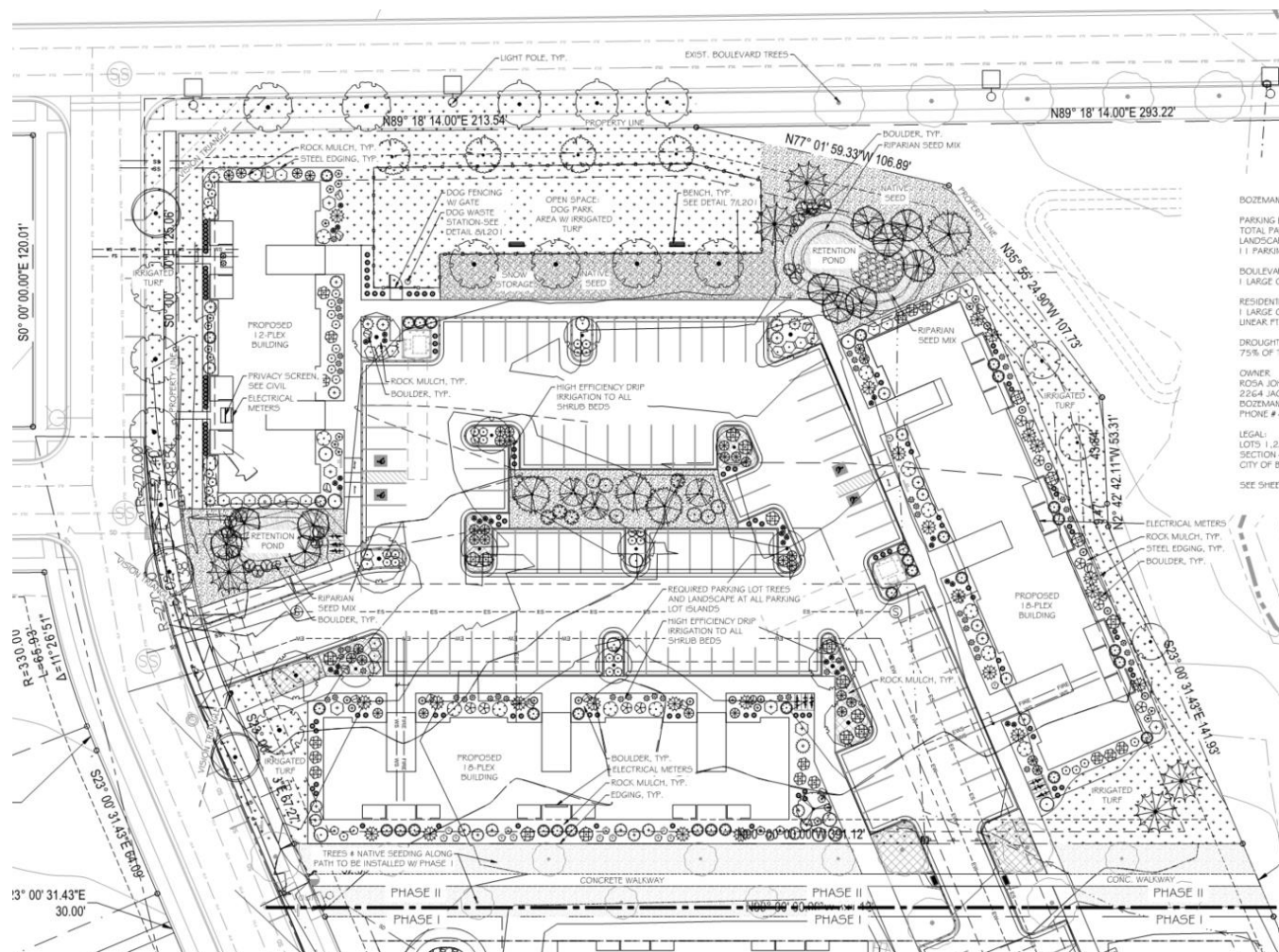


Figure 2: Proposed Site Plan





### Figure 3: Landscape Plan



**Figure 4: Elevations 12-Plex (One Building)**

Abigail Lane Building 1: "Rear" Faces Street Frontage, "Front" Faces Interior Parking



**Figure 5: Elevation 18-Plex (Two Buildings)**

Buildings 2 and 3: "Rear" Faces property line, "Front" Faces Interior Parking

## ANALYSIS AND FINDINGS

Analysis and resulting recommendations based on the entirety of the application materials, municipal codes, standards, plans, public comment, and all other materials available during the review period. Collectively this information is the record of the review. The analysis in this report is a summary of the completed review.

### Plan Review, Section 38.230.100, BMC

In considering applications for plan approval under this title, the Director of Community Development shall consider the following:

<b>1. Conformance with Article 1 - Consistency with the City's adopted Growth Policy 38.100.040.D</b>		<b>Meets Code?</b>
Growth Policy Land Use	Urban Neighborhood	Yes
Zoning	R-4, Residential High Density District	Yes
Comments: The project conforms to the requirements of the R-4 zoning district. The 2020 Community Plan designation of Urban Neighborhood correlates with the R-4 zoning district. The proposed project conforms to this designation by providing urban density homes within city limits in proximity to existing and developing parks, commercial nodes, and schools.		
<b>2. Conformance with Article 1 - All other applicable laws, ordinances, and regulations (38.100.080)</b>		
Condominium ownership		No
Comments: Additional steps will be required including but not limited to review of building permits and infrastructure plans. The Building Division of the Department of Community Development will review the requirements of the International Building Code for compliance at the time of building permit application.		
<b>3. Conformance with Article 2, including the cessation of any current violations (38.200.160)</b>		<b>Meets Code?</b>
Current Violations	None	Yes
Comments: There are no current violations on the property.		
<b>4. Conformance with Article 2 - Submittal material (38.220) requirements and plan review for applicable permit types (38.230)</b>		<b>Meets Code?</b>
Site Plan		Yes
Submittal requirements 38.220.100		Yes
Phasing of development 38.230.020.B	No. of phases: 1	Yes
Comments: Per advisory comment 1, the applicant acknowledged on 9/27/22 that no buildings entitled with this application may be granted a final certificate of occupancy until all buildings, and all site improvements are completed. Landscaping may be financially guaranteed to accommodate seasonality.		
Special use Permit 38.230.120		NA
Comments: No special uses are proposed.		
<b>5. Conformance with Article 3 - Zoning Provisions (38.300)</b>		<b>Meets Code?</b>
Permitted uses 38.310	Apartment Buildings	Yes
Form and intensity standards 38.320		
Zoning: R-4	Setbacks (feet)	Structures
		Parking / Loading
		Yes



	Front	Block Frontage / 10-15'	Block Frontage / 15'	
	Rear	20	20	
	Side	5	5	
	Alley	NA	NA	
Comments: Multi-household buildings are subject to block frontage standards. Abigail is a designated landscaped block frontage with a minimum building placement setback of 10-feet. The buildings are proposed 15-feet from the front property line, with 2' 8" tall split face CMU screening walls projecting 5-feet from the building, but not into the 10-foot utility easement. The rear setback of 20-feet is met along the east property line, with allowable encroachment of the ground level CMU patio screening walls. It is not permissible for upper level patios to encroach into front, side, or rear setbacks. No upper level patios are proposed to encroach into any setbacks. A side setback is present along the south property line, with a 5-foot setback required from the 30-foot pedestrian easement. A 10-foot setback is proposed from that property line with Building 2. A 10-foot setback from the Oak Street property line is provided. No buildings are proposed to front on Oak, but an open space area is provided along that frontage. A subdivision exemption application to modify the lot lines between the two subject lots is under review and must be recorded prior to final plan approval.				
Lot coverage	16.2%	Allowed	50%	Yes
Building height	38-feet both building types	Allowed	50 Feet	Yes
Comments: Building heights for both the 12-unit and 18-unit buildings are 38-feet from grade, with varying roof pitches including and between 3:12 and 10:12. Maximum heights for single household structures in R-4 at these roof pitches allows 50-feet. Lot coverage is also met with the proposed project.				
Applicable zone specific or overlay standards 38.330-40				NA
Comments: NA, the proposed project is not subject to zone specific or overlay district standards.				
General land use standards and requirements 38.350				Yes
Comments: Allowable setback encroachments are met.				
Applicable supplemental use criteria 38.360				NA
Supplemental uses/type	NA			NA
Comments: NA, the proposed projects is not subject to any supplemental use criteria.				
Wireless facilities 38.370				NA
Affordable Housing 38.380.010				NA
Affordable housing plan				NA
Comments: No wireless facilities are proposed. No affordable housing incentives are requested.				
<b>6a. Conformance with Article 4 - Community Design Provisions: Transportation Facilities and Access (38.400)</b>				<b>Meets Code?</b>
Streets 38.400.010				Yes
Street and road dedication 38.400.020				NA
Access easements				Yes
Level of Service 38.400.060	Yes	Transportation grid adequate to serve site		Yes
Comments: Adjacent streets exist to serve the site, no additional dedication is needed. No new traffic impact study was required by the Engineering Division however, a peak-hour trip generation letter was provided by the Applicant to ensure that the proposed project would not exceed the original assumed trip estimates reviewed with the subdivision. Level of service standards for arterial and collector streets serving the site was evaluated by engineering. A Waiver of Right to Protest Creation of Special				

Improvement Districts (SID's) for future transportation improvements is a required condition of approval ensuring participation in funding of future infrastructure improvements that may be required to offset impacts created by development of the property.	
Sidewalks 38.400.080	Yes
Comments: Sidewalks are to be provided along the primary street frontages. The midblock crossing sidewalk and landscaping must be completed with phase 1.	
Drive access 38.400.090	Access to site: 2
Fire lanes, curbs, signage and striping	Yes
Comments: Two drive accesses are proposed, one from Abigail Lane and one from the phase 1 development to the south; engineering evaluated both drive accesses for spacing and design standards.. This connection to the adjacent property is proposed to be constructed with phase 3 of the phase 1 project.	
Street vision triangle 38.400.100	Yes
Transportation pathways 38.400.110	Yes
Pedestrian access easements for shared use pathways and similar transportation facilities	Yes
Public transportation 38.400.120	NA
Comments: No new pedestrian easements are proposed with this project. A pedestrian transportation pathway within an existing easement will be constructed with phase 1.	
<b>6b. Conformance with Article 4 – Community Design Provisions: Community Design and Elements (38.410)</b>	<b>Meets Code?</b>
Neighborhood centers 38.410.020	NA
Comments: This project does not trigger neighborhood center requirements.	
Lot and block standards 38.410.030-040	NA
Midblock crossing: rights of way for pedestrians alternative block delineation	Yes
Comments: A previously platted midblock crossing will be improved with phase 1.	
If the development is adjacent to an existing or approved public park or public open space area, have provisions been made in the plan to avoid interfering with public access to and use of that area	Yes
Provisions for utilities including efficient public services and utilities 38.410.050-060	Yes
Easements (City and public utility rights-of-way etc.)	Yes
Water, sewer, and stormwater	Yes
Other utilities (electric, natural gas, communications)	Yes
CIL of water	Yes
Comments: Requirements were reviewed by engineering. CIL of water rights is required prior to final plan approval. Easements have been provided for utilities and stormwater.	
Municipal infrastructure requirements 38.410.070	Yes
Comments: Municipal water, sanitary sewer, and storm sewer systems proposed with this project have been reviewed by engineering.	
Grading & drainage 38.410.080	Yes
Location, design and capacity of stormwater facilities	Yes
Stormwater maintenance plan	Yes
Landscaping: native species, curvilinear, 75% live vegetation 38.410.080.H	Yes
Comments: Location, design and capacity of stormwater facilities was reviewed by engineering. All drainage ponds are proposed to be landscaped according to depth and grade.	
Watercourse setback 38.410.100	NA



Watercourse setback planting plan 38.410.100.2.f		NA
<b>6c. Conformance with Article 4 – Community Design Provisions: Park and Recreation Requirements (38.420)</b>		<b>Meets Code?</b>
Parkland requirements 38.420.020.A	CIL required	Yes
Cash donation in lieu (CIL) 38.420.030		Yes
Improvements in-lieu		NA
Comments: The applicant must provide a final estimation and pay CIL of parkland prior to final plan approval.		
Park Frontage 38.420.060		NA
Park development 38.420.080		NA
Recreation pathways 38.420.110		NA
Park/Recreational area design		NA
Comments: No parks are proposed with this application. Public parks exist directly to the southeast, and the southwest that can be accessed via sidewalk and existing recreation paths. A new park is proposed in the Northwest Crossing Development to the north and will be developed in phases.		
<b>7a. Conformance with Article 5 – Project Design: Block Frontage Standards (38.510)</b>		<b>Meets Code?</b>
Block frontage classification	Landscaped & Special Residential	Yes
Departure criteria	None requested	NA
Comments: This proposed project is meeting the landscaped block frontage standards for Abigail Lane including building placement, building entrances, façade transparency, weather protection, and parking location. The buildings are placed 15-feet from the property line, meeting the 10-foot setback requirement. The primary frontage for this application is Abigail Lane, no buildings are proposed along the Oak Street frontage, but an open space designed as a “dog park” has been proposed there. The applicant is providing a 10-foot landscaped setback between ground level living spaces and interior walkways meeting the front setback option in 38.510.030.J.2.		
<b>7b. Conformance with Article 5 – Project Design: Site Planning and Design Elements (38.520)</b>		<b>Meets Code?</b>
Design and arrangement of the elements of the plan (e.g., buildings, circulation, open space and landscaping, etc.) so that activities are integrated with the organizational scheme of the community, neighborhood, and other approved development and produce an efficient, functionally organized and cohesive development		Yes
Relationship to adjacent properties 38.520.030		NA
Non-motorized circulation and design systems to enhance convenience and safety across parking lots and streets, including, but not limited to paving patterns, pathway design, landscaping and lighting 38.420.040		Yes
Comments: Interior sidewalks are proposed along the perimeter of the parking area that will allow for direct access to an open space area and trash enclosures. All interior frontages of buildings are proposed with pedestrian facilities that connect throughout the site and to the public sidewalk network. Adequate pedestrian access will also be provided to the phase 1 lots to the south and to the Boulder Creek Subdivision open space that will connect to both north-south and east-west trails.		
Design of vehicular circulation systems to assure that vehicles can move safely and easily both within the site and between properties and activities within the general community 38.420.050		Yes
Internal roadway design 38.520.050.D		NA
Comments: NA		

On-site open space 38.520.060		
Total required	7,200 square feet	Yes
Total provided	9,170 square feet	Yes
Comments: Private ground level patios with low privacy fencing are provided for each ground level unit and total 1,280 square feet. Upper level patios that are recessed into the building, and meet the minimum area and dimension requirements of this section make up 1,782 square feet of open space. Shared open space located at the north side of the property makes up the balance required and totals 6,108 square feet. The amenities in the shared open space consist of two benches, irrigated fenced in turf, and a dog waste station. The application meets the minimum requirements for usable residential open space.		
Location and design of service areas and mechanical equipment 38.520.070		Yes
Comments: Mechanical equipment is proposed in the wall on each unit's patio. The area the condensing units occupy is deducted from the provided open space on each patio. Meters are to be screened by privacy screens. Solid waste will be collected via shared dumpsters within a covered solid waste enclosure that meets the requirements of this section.		
7c. Conformance with Article 5 – Project Design: Building Design (38.530)		Meets Code?
Compatibility with, and sensitivity to, the immediate environment of the site and the adjacent neighborhoods and other approved development 38.530.030		Yes
Building massing and articulation 38.530.040		Yes
Building details, materials, and blank wall treatments 38.530.050-070		Yes
Comments: The apartment buildings are meeting the building design standards of this section including articulation, materials, and details. Changes in roofline, materials, and windows/patios are used for articulation. Primary building materials include 24 Ga. Corrugated metal, horizontal Hardie lap siding, horizontal fir siding, asphalt roofing, and standing seam roofing.		
7d. Conformance with Article 5 – Parking (38.540)		Meets Code?
Parking requirements 38.540.050	Yes	Yes
Parking requirements residential 38.540.050.A.1	96 spaces	
Reductions residential 38.540.050.A.1.b	4 on-street	
Parking requirements nonresidential 38.540.050.A.2	NA	
Reductions nonresidential 38.540.050.A.2.c	NA	
Provided off-street	92 spaces	
Provided on-street	4 on-street available	
Bicycle parking 38.540.050.A.4	9 req., 12 provided	
Comments: This project proposes 48 two-bedroom units with a total of 96 parking spaces required. Parking is proposed within a shared surface parking lot. Each stall provided off-street meets the stall, aisle, and driveway design requirements of Section 38.540.020. On-street parking provides a residential reduction of 4 spaces. Bike parking will be provided at racks adjacent to each proposed building with inverted U racks. Bicycle parking areas meet the length and width dimensions for each stall and utilize the sidewalk to meet circulation requirements.		
Loading and uploading area requirements 38.540.080		NA
First berth – minimum 70 feet length, 12 feet in width, 14 feet in height		NA
Additional berth – minimum 45 feet length		NA
Comments: NA		
7e. Conformance with Article 5 – Landscaping (38.550)		Meets Code?
Mandatory landscaping requirements 38.550.050		Yes
Drought tolerant species 75% required	Yes	

Parking lot landscaping	Yes	
Additional screening	NA	
Street frontage	Yes	
Street median island	NA	
Acceptable landscape materials	Yes	
Protection of landscape areas	NA	
Irrigation: plan, water source, system type	Yes	
Residential adjacency	NA	
Comments: The provided landscaping plan conforms to standards.		
Landscaping of public lands 38.550.070		Yes
Comments: Street trees will be provided along the three street frontages.		
7f. Conformance with Article 5 – Signs (38.560)		Meets Code?
Allowed SF/building 38.560.060	NA	NA
Proposed SF/building	NA	NA
Comments: NA		
7g. Conformance with Article 5 – Lighting (38.560)		Meets Code?
Site lighting (supports, cutoff, footcandles, temperature) 38.570.040		NA
Building-mounted lighting (supports, cutoff, footcandles, temperature) 38.570.040.B		Yes
Comments: No site lighting is proposed. Building mountain wall packs meet minimum standards.		
8. Conformance with Article 6 – Natural Resource Protection		Meets Code?
Floodplain regulations 38.600		NA
Wetland regulations 38.610		NA
Comments: NA		
9. Relevant Comment from Affected Parties (38.220)		Meets Code?
Public Comment		Yes
Comments: A public notice period was conducted meeting the requirements of this section and detailed on page 1 of this report. No public comment was received.		
10. Division of Land Pertaining to Subdivisions (38.240-Part 4)		Meets Code?
Subdivision exemptions		Yes
Required easements		Yes
Comments: A subdivision exemption application to modify the lot lines between the two subject lots is adequate and must be recorded prior to final site plan approval. Adequate original easements have been provided to engineering for water, sewer, and stormwater infrastructure.		

# Memorandum

**REPORT TO:** Community Development Board

**FROM:** Elizabeth Cramblet, Associate Planner  
Chris Saunders, Community Development Manager  
Erin George, Deputy Director of Community Development  
Anna Bentley, Director of Community Development

**SUBJECT:** Annexation Application 23127 requesting Annexation of Two Parcels Approximately 40.12 acres and Adjacent Right of Way for Hidden Valley Road and Amendment to the City Zoning Map for the Establishment of a Zoning Designation of R-5 (Residential Mixed Use High Density District). Subject Site is Located on East and South of Hidden Valley Road about One-Quarter Mile East of Harper Puckett Road, Application 23127.

**MEETING DATE:** September 11, 2023

**AGENDA ITEM TYPE:** Community Development - Legislative

**RECOMMENDATION:** Having reviewed and considered the staff report, application materials, public comment, and all information presented, I hereby adopt the findings presented in the staff report for application 23127 and move to recommend approval of the Harper's Corner Zone Map Amendment, with contingencies required to complete the application processing.

**STRATEGIC PLAN:** 4.2 High Quality Urban Approach: Continue to support high-quality planning, ranging from building design to neighborhood layouts, while pursuing urban approaches to issues such as multimodal transportation, infill, density, connected trails and parks, and walkable neighborhoods.

**BACKGROUND:** The proposed application includes annexing two parcels totaling approximately 40.12 acres into the City limits plus adjacent right-of-way and establish initial zoning of R-5 (Residential Mixed Use High Density District). The property is currently zoned 'Agriculture Suburban' (AS) within the county. Zoning north, south, and west of the site is within the county. South of the site is zoned Agriculture Suburban (AS), west of the size is unzoned, and north is zoned Residential Manufactured Home (R-MH). On the eastern side of the project site, a parcel received approval to annex by the City Commission with an initial zone district request of Residential Emphasis Mixed Use (REMU).

Nearby municipal zoning to the north about a quarter mile is REMU (Residential Emphasis Mixed Use)(Silo Annexation). East of the site about a half mile is zoned R-4 (Residential High Density) and south about a half mile is zoned R-1, R-3, R-4 and R-5. The Future Land Use Map in the Bozeman

Community Plan (BCP) 2020 designates the property as 'Urban Neighborhood' which includes R-5 as an implementing zone district. The property is bordered by Hidden Valley Road to the west and north. The proposed annexation would bring in additional right-of-way to build out Hidden Valley Road to the City's collector standard adjacent to the subject property as would be required with future development. Additionally, the project will bring in additional right-of-way to align and eventually connect with Catamount Street (classified as a Minor Arterial in the Bozeman Transportation Master Plan-TMP) that will eventually run along the southern border of the project site and additional right-of-way to align and eventually connect with Ferguson Avenue (classified as a Collector Street in the TMP) that is approximately one half mile south of the subject site.

**UNRESOLVED ISSUES:** There are no identified conflicts on this application at this time. As noted in analysis of annexation criteria, the ability to meet certain goals is dependent on another project.

**ALTERNATIVES:**

1. Recommend approval of the application;
2. Recommend modifications to the requested zoning;
3. Recommend deny the application based on findings of non-compliance with the applicable criteria contained within the staff report; or
4. Open and continue the public hearing on the application, with specific direction to staff or the applicant to supply additional information or to address specific items.

**FISCAL EFFECTS:** No unusual fiscal effects have been identified. No presently budgeted funds will be changed by this Annexation or Zone Map Amendment.

Attachments:

[23127 Harper's Corner Annx-ZMA CDB SR.pdf](#)

Report compiled on: September 5, 2023

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***23127 Staff Report for the Harper's Corner Annexation and ZMA***

**Public Hearing Dates:** Zoning Commission – September 11, 2023

City Commission – October 3, 2023

**Project Description:** Annexation application 23127 requesting annexation of approximately 40.12 acres and adjacent right of way for Hidden Valley Road and amendment to the City Zoning Map for the establishment of a zoning designation of R-5 (Residential Mixed-Use High Density District).

**Project Location:** East and south of Hidden Valley Road about one quarter mile east of Harper Puckett Road and legally described as Tracts 1 and 2 equaling approximately 40.12 acres on COS No. 408A as the SE ¼ of the SW ¼ of Section 27, Township 1 South, Range 5 East, Principal Meridian, Gallatin County, Montana.

**Recommendation:** Meets standards for approval with terms of annexation and contingencies.

**Recommended Zoning Commission Motion:** Having reviewed and considered the staff report, application materials, public comment, and all information presented, I hereby adopt the findings presented in the staff report for application 23127 and move to recommend approval of the Harper's Corner Zone Map Amendment, with contingencies required to complete the application processing.

**Recommended City Commission Annexation Motion:** Having reviewed and considered the staff report, application materials, public comment, and all information presented, I hereby adopt the findings presented in the staff report for application 23127 and move to approve the Harper's Corner Annexation subject to the terms of annexation and direct staff to prepare an annexation agreement.

**Recommended City Commission Zoning Motion:** Having reviewed and considered the staff report, application materials, public comment, recommendation of the Zoning Commission, and all information presented, I hereby adopt the findings presented in the staff report for application 23127 and move to approve the Harper's Corner Zone Map Amendment with contingencies of approval necessary to complete adoption of an implementing ordinance.

**Report:** September 5, 2023

**Staff Contact:** Elizabeth Cramblet, Associate Planner

Lance Lehigh, City Engineer

**Agenda Item Type:** Action - **Legislative**

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## ***EXECUTIVE SUMMARY***

This report is based on the application materials submitted and public comment received to date. This report addresses both the zoning amendment for Zoning Commission as well as the annexation and the zoning amendment for the City Commission. Application materials available at [Harper's Corner, Application 23127](#).

### ***Unresolved Issues***

There are no identified conflicts on this application at this time. As noted in analysis of annexation criteria, the ability to meet certain goals is dependent on another project.

### ***Project Summary***

The proposed application includes annexing two parcels totaling approximately 40.12 acres into the City limits plus adjacent right-of-way and establish initial zoning of R-5, Residential Mixed-Use High Density district. The property is currently zoned "Agriculture Suburban" (AS) within the county. Zoning north, south, and west of the site is within the county. South of the site is zoned Agriculture Suburban (AS), west of the site is unzoned, and north is zoned Residential Manufactured Home (R-MH). On the eastern side of the project site, a parcel received approval to annex by the City Commission with an initial zone district request of Residential Emphasis Mixed-Use (REMU).

Nearby municipal zoning to the north about a quarter mile is REMU (Silo Annexation), Residential Emphasis Mixed-Use. East of the site about a half mile is zoned R-4 (Residential High Density) and south about a half mile is R-1, R-3, R-4 and R-5. The Future Land Use Map in the Bozeman Community Plan (BCP) 2020 designates the property as "Urban Neighborhood" which includes the R-5 district as an implementing zoning district. The property is bordered by Hidden Valley Road to the west and north. The proposed annexation would bring in additional right of way to build out Hidden Valley Road to the City's collector standard adjacent to the subject property as would be required with future development. Additionally, the project will bring in additional right of way to align and eventually connect with Catamount Street (classified as a Minor Arterial in the Bozeman Transportation Master Plan-TMP) that will eventually run along the southern border of the project site and additional right of way to align and eventually connect with Ferguson Avenue (classified as a Collector Street in the TMP) that is approximately one half mile south of the subject site.

There is currently an existing single household dwelling with associated outbuildings and a septic system on each parcel. Directly north of the subject site is a mobile home park located in the county. Further north and west of the site are rural residential uses, and vacant land directly south and east of the subject site. The vacant 86-acre parcel east of the site received approval by the City Commission (December 6, 2022) to annex and establish an initial zone district of REMU (Application 22113-Project Eighty-6).

In determining whether the criteria applicable to this application are met, Staff considers the entire body of plans and regulations for land development. Standards which prevent or mitigate possible negative impacts are incorporated in many locations in the municipal code but are principally in Chapter 38, Unified Development Code. References in the text of this report to Articles, Divisions, or in the form xx.xxx.xxx are to the Bozeman Municipal Code.

### *Alternatives*

1. Recommend approval of the application;
2. Recommend modifications to the requested zoning;
3. Recommend deny the application based on findings of non-compliance with the applicable criteria contained within the staff report; or
4. Open and continue the public hearing on the application, with specific direction to staff or the applicant to supply additional information or to address specific items.










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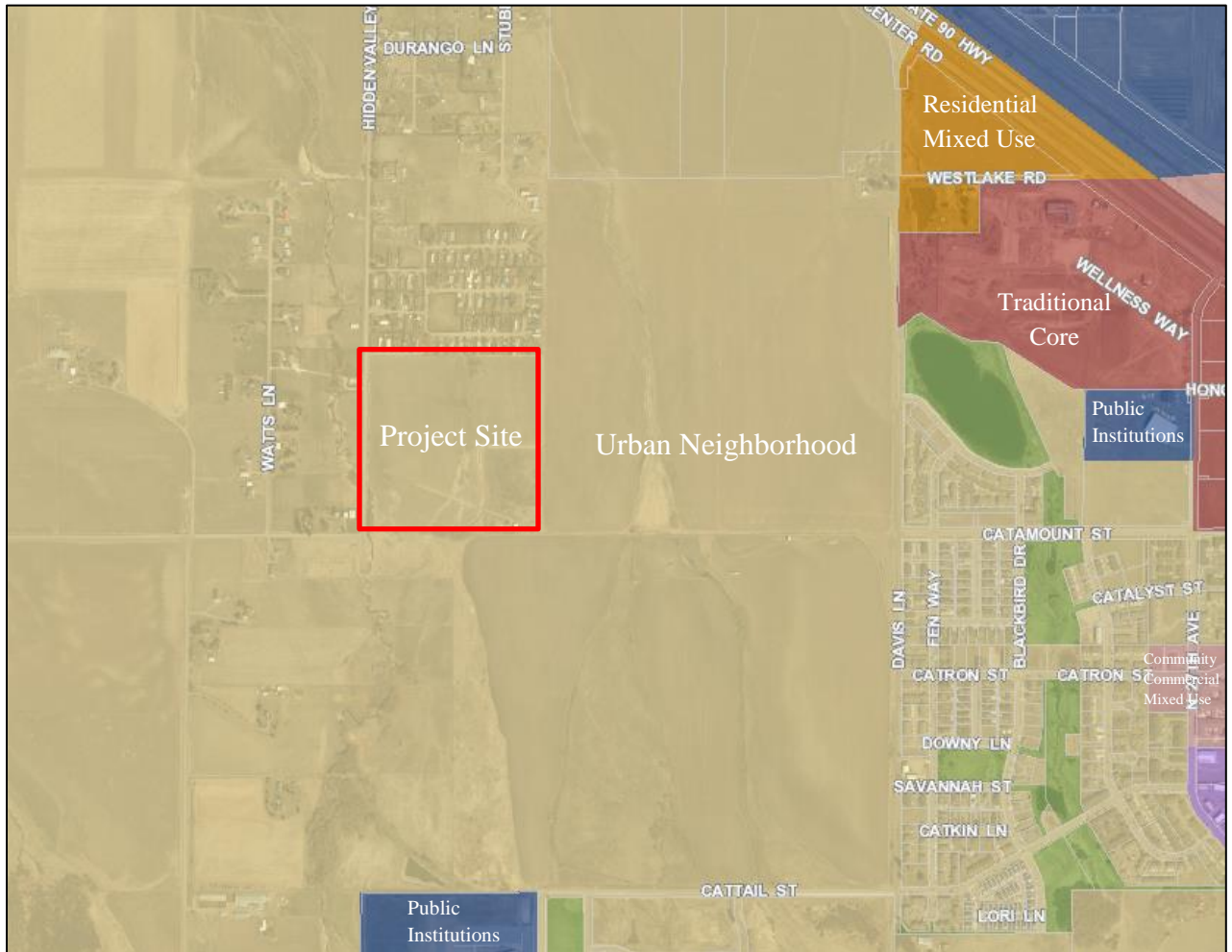
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**SECTION 1 - MAP SERIES:**



Map 1: Project Vicinity Map

	Application Received
	On Hold
	Initial Review
	In Review
	Public Notice
	Final Review
	Approved

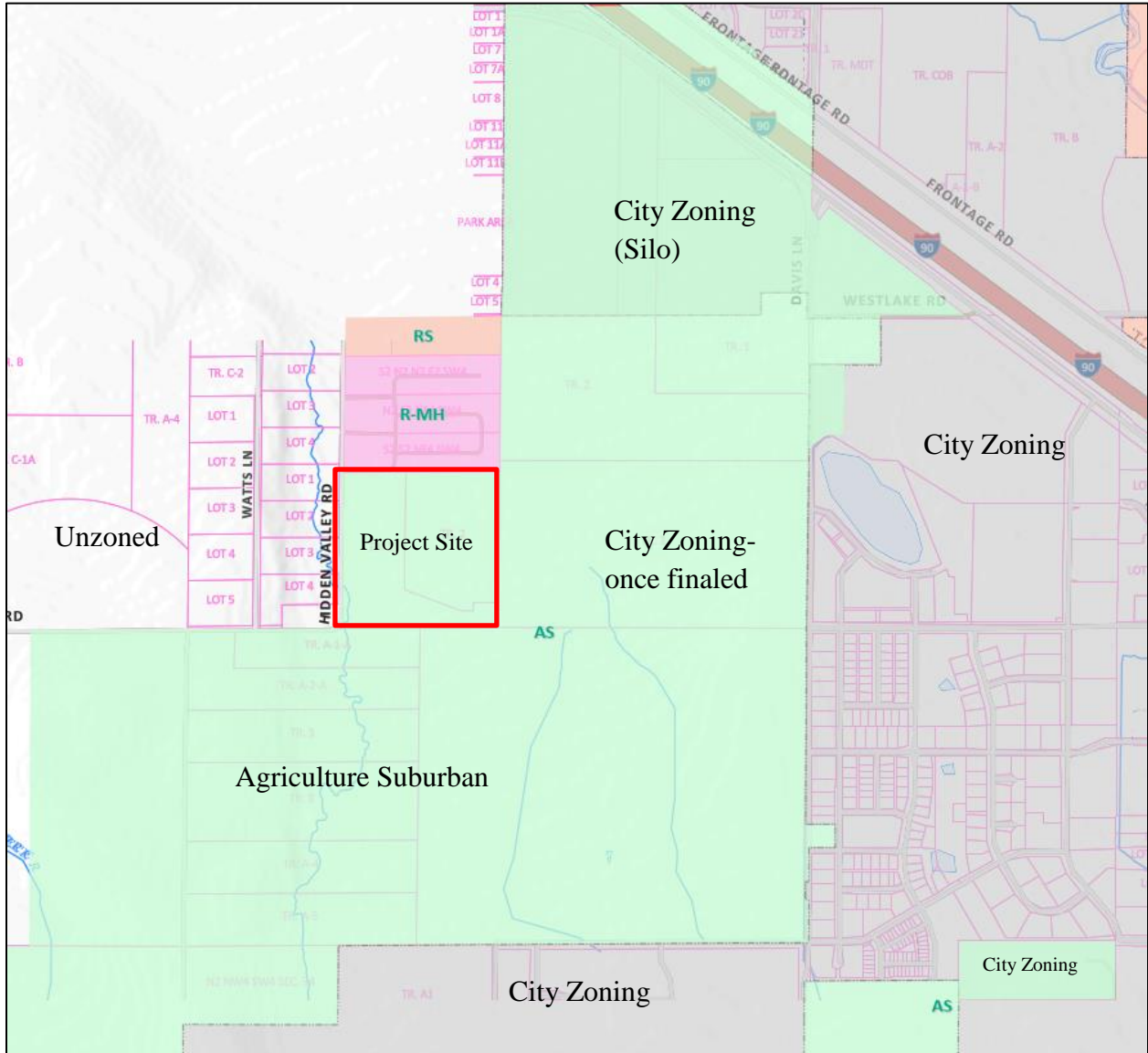


Map 2: BCP 2020 Future Land Use Map





### Map 3: Existing City Zoning



Map 4: Existing County Zoning (grey and labeled areas are within city)

## ***SECTION 2 - RECOMMENDED TERMS OF ANNEXATION***

The following terms of annexation are recommended to enable the application to comply with the City's Annexation Policy and the requirements of state law for the provision of services.

### **Recommended terms of annexation:**

1. The documents and exhibits to formally annex the subject property must be identified as the Harper's Corner Annexation.
2. An Annexation Map, titled Harper's Corner Annexation Map with a legal description of the property and including any adjoining un-annexed rights-of-way and/or street access easements must be submitted by the applicant for use with the Annexation Agreement. The map must be supplied as a PDF for filing with the Annexation Agreement at the County Clerk & Recorder, and a digital copy for the City Engineer's Office. This map must be acceptable to the Director of Transportation and Engineering and City Engineers Office, and must be submitted with the signed Annexation Agreement.
3. Ferguson Avenue is classified as a Collector in the Bozeman Transportation Master Plan (TMP), which has a minimum right-of-way ROW width of 90 feet. The applicant must provide their respective portion of the ROW necessary to follow the alignment shown in the transportation plan as a public street and utility easement where Ferguson Avenue is adjacent to or crosses the property. The City is in agreement with the proposed easement alignment presented in the application. The applicant is advised the easement must be provided and executed by the landowner prior to the adoption of Resolution of Annexation.
4. Catamount Street is classified as a Minor Arterial in the Bozeman Transportation Master Plan (TMP), which has a minimum right-of-way ROW width of 100 feet. The applicant must provide their respective portion of the ROW necessary to follow the alignment shown in the transportation plan as a public street and utility easement where Catamount Street is adjacent to or crosses the property. The City is in agreement with the proposed easement alignment presented in the application. The applicant is advised the easement must be provided and executed by the landowner prior to the adoption of Resolution of Annexation.
5. Hidden Valley Road is classified as a Collector in the Bozeman Transportation Master Plan (TMP), which has a minimum right-of-way ROW width of 90 feet. The applicant must provide their respective portion of the ROW necessary to follow the alignment shown in the transportation plan as a public street and utility easement where Hidden Valley Road is adjacent to or crosses the property. The City is in agreement with the proposed easement alignment presented in the application. The applicant is advised the easement must be provided and executed by the landowner prior to the adoption of Resolution of Annexation.
6. The applicant must execute all contingencies and terms of said Annexation Agreement with the City of Bozeman within 60 days of the distribution of the annexation agreement from the City to the applicant or annexation approval shall be null and void.

7. The Annexation Agreement must include the following notices:
  - a. The Annexation Agreement must include notice that, prior to development, the applicant will be responsible for preparing a storm water master plan in conjunction with future development. The storm water master plan shall address maintenance and operations until and unless the City affirmatively assumes responsibility for maintenance and operations of stormwater facilities within the area of the annexation.
  - b. The Annexation Agreement must include notice the City will, upon annexation, make available to the Property existing City services only to the extent currently available, or as provided in the Agreement.
  - c. The Annexation Agreement must include notice that, prior to future final development approval, the applicant will be responsible for transfer of water rights or a payment in lieu as required by the Bozeman Municipal Code.
  - d. The Annexation Agreement must include notice that there is no right, either granted or implied, for Landowner to further develop any of the Property until it is verified by the City that the necessary municipal services are available to the property.
  - e. The Annexation Agreement must include notice that, prior to development, the applicant will be responsible for installing any facilities required to provide full municipal services to the properties in accordance with the City of Bozeman's infrastructure master plans and all City policies that may be in effect at the time of development.
  - f. The Annexation Agreement must include notice that utility easements may be required to be provided by the landowner at the time of development to ensure necessary municipal services are available to the property.
  - g. The Annexation Agreement must include notice that charges and assessments may be required after completion of annexation to ensure necessary municipal services are available to the property.
  - h. The Annexation Agreement must include notice that the City will assess system development and impact fees in accordance with Montana law and Chapter 2, Article 6, Division 9, Bozeman Municipal Code.
8. The applicant must contact Griffin Nielsen with the City's Engineering Department to obtain an analysis of cash-in-lieu water rights for the proposed annexation. The determined amount must be paid prior to the adoption of Resolution of Annexation, if applicable.
9. All procedural terms necessary to establish the Annexation Agreement in conformance with state law and municipal practice will be included with the final Annexation Agreement.
10. The applicant must properly abandon the existing on-site septic tank and leach field prior to connection to the City sanitary sewer system. The applicant must report the abandonment to the City Water and Sewer Superintendent for inspection, and the applicant must report the abandonment to the Gallatin County Health Department. In addition to

abandonment of the septic tank and leach field, the applicant must demonstrate that the sanitary sewer service to the septic tank has been completely disconnected from the old septic system prior to connection to the City sanitary sewer system.

11. The applicant must completely disconnect the on-site well from the house prior to connection to the City water system to protect the City's system from cross contamination. The applicant must contact the City Water and Sewer Superintendent to inspect the disconnection prior to connection of water service from future development to the City water system.
12. If they do not already exist the applicant must provide and file with the County Clerk and Recorder's office executed Waivers of Right to Protest Creation of Special Improvement Districts (SIDs) for the following as part of the Annexation Agreement:
  - a. Street improvements to Catamount Street from Davis Lane to Harper Puckett including lighting, signalization, paving, curb/gutter, sidewalk, and storm drainage,
  - b. Street improvements to Ferguson Avenue from E. Valley Center to Cattail Street including lighting, signalization, paving, curb/gutter, sidewalk, and storm drainage,
  - c. Street improvements to Hidden Valley Road from E. Valley Center to Catamount Street including lighting, signalization/channelization, paving, curb/gutter, sidewalk, and storm drainage.
  - d. Intersection improvements at Harper Puckett Road and Catamount Street including lighting, signalization/channelization, paving, curb/gutter, sidewalk, and storm drainage.
  - e. Intersection improvements at Davis Lane and Catamount Street including lighting, signalization/channelization, paving, curb/gutter, sidewalk, and storm drainage,
  - f. Intersection improvements at Catamount Street and Ferguson Avenue including lighting, signalization/channelization, paving, curb/gutter, sidewalk, and storm drainage,
  - g. Intersection improvements at Hidden Valley Road and Catamount Street including lighting, signalization/channelization, paving, curb/gutter, sidewalk, and storm drainage,

The document filed must specify that in the event an SID is not utilized for the completion of these improvements, the developer agrees to participate in an alternate financing method for the completion of the improvements on a fair share, proportionate basis as determined by square footage of property, taxable valuation of the property, traffic contribution from the development, or a combination thereof. The applicant must provide a copy of the SID waiver prior to the adoption of Resolution of Annexation.

13. The land owners and their successors must pay all fire, street, water, and sewer impact fees at the time of connection; and for future development, as required by Chapter 2. Bozeman Municipal Code, or as amended at the time of application for any permit listed herein.



**Advisory Comments for Applicant and Owner for Future Development**

1. The subject property is located within the City's identified Baxter Creek Sewer Drainage Basin, which currently does not have any wastewater infrastructure to service the proposed annexation. The applicant is advised that the City does not allow private lift stations or sanitary sewer basin jumps. Therefore, all sanitary sewer flows must be routed to the drainage basin that serves the area as identified in the City of Bozeman Wastewater Collection Facilities Plan. The applicant is advised that the City's wastewater facility plan identified the need for a future sanitary lift station (Hidden Valley Lift Station) and force main to service the Baxter Creek Sewer Basin. Upon future development, the applicant is advised all wastewater generated by the development must flow into the Hidden Valley Lift Station, and that a use of private lift stations will not be permitted. Municipal sanitary sewer improvements must be designed in coordination with any road improvements, if applicable. Specific sanitary sewer infrastructure improvements will be reviewed with future development applications. The applicant is advised to closely coordinate any future development and sanitary sewer infrastructure improvements with the City's engineering department (Bob Murray, Senior City of Bozeman Capital Engineer), as the new Valley Center Lift Station and force main is in the early phases of design. The applicant is advised that the Valley Center Lift Station may be incorporated into a City payback district, in which the subject property would reside.
2. The subject property is located outside of the City's current service area for municipal water. In addition, the subject property is located within a new pressure zone as identified within the City's adopted water facility plan. Upon future development, water main extension along with pressure reduction, such as pressure reducing valves, would be required to service the subject development. The applicant is advised a minimum of two points of service must be in place to satisfy City standards. Municipal water improvements must be designed in coordination with any road improvements. Specific water infrastructure improvements will be reviewed with future development applications. See Bozeman WFPD for more information.  
[Bozeman Water Facility Plan Update](#)
3. To facilitate traffic movement, the provision of emergency services and the placement of utility easements, all developments must be provided with a second means of access. If, in the judgement of the development review committee (DRC), a second dedicated right-of-way cannot be provided for reasons of topography or other physical conditions, the developer must provide an emergency access, built to the standards detailed in these regulations. The applicant is advised that the surrounding arterial and collector street infrastructure network that would service the subject property has not yet been constructed. Additional development of the arterial and collector street network in the vicinity of the subject property will be required to accommodate proposed traffic demands anticipated within an R-5 zoned district in order to provide adequate, safe, and sufficient access for vehicular, pedestrian, emergency, and multi-modal forms of transportation upon future

development of the property. Given the present conditions, multiple options for offsite improvements to the arterial and collector street network could be employed to satisfy City requirements and cannot be predicted at the time of annexation and will be reviewed with future development applications.

4. Half streets are prohibited except when they are essential to the development, are beneficial to the City, or when the review authority is satisfied that the half street will be dedicated to the public after the adjoining property is developed. The applicant is advised that upon future development both Catamount Street and North Ferguson Avenue would need to be constructed to satisfy City standards as defined within the transportation master plan. Any required right-of-way ROW or public street and utility easement acquisition from offsite property owners is the applicant's responsibility.
5. The proposed project is located in an area that is known to have seasonally high groundwater. The applicant must demonstrate that seasonal high groundwater will not impact the function or maintenance of future proposed facilities. Industry guidance recommends a three-foot minimum separation from the bottom of the proposed facility to the underlying groundwater table. The applicant must provide local seasonal high groundwater elevations to support the future development designs.

### ***SECTION 3 - RECOMMENDED CONTINGENCIES OF ZONE MAP AMENDMENT***

Please note that these contingencies are necessary for the City to complete the process of the proposed amendment. These contingencies only apply in the event that the related annexation request has previously been approved.

#### **Recommended Contingencies of Approval:**

1. The applicant must submit a zone amendment map, titled Harper's Corner Annexation Zone Map Amendment, acceptable to the Director of Transportation and Engineering, as a PDF which will be utilized in the preparation of the Ordinance to officially amend the City of Bozeman Zoning Map. Said map shall contain a metes and bounds legal description of the perimeter of the subject property including adjacent rights-of-way for Hidden Valley Road, and total acreage of the property.
2. The Ordinance for the Zone Map Amendment shall not be drafted until the applicant provides an editable metes and bounds legal description prepared by a licensed Montana surveyor.
3. That all documents and exhibits necessary to establish the amended municipal zoning designation of R-5 (Residential Mixed-Use High Density District) shall be identified as the Harper's Corner Annexation Zone Map Amendment.

4. All required materials shall be provided to the Department of Community Development within 60 days of a favorable action of the City Commission or any approval shall be null and void.

## ***SECTION 4 - RECOMMENDATION AND FUTURE ACTIONS***

### ***Annexation***

Having considered the criteria established for an annexation, the Development Review Committee (DRC) recommends approval of the requested annexation.

The City Commission will hold a public meeting on the annexation on October 3, 2023. The meeting will begin at 6 p.m. Instructions on joining the meeting will be included on the meeting agenda.

### ***Zone Map Amendment***

Having considered the criteria established for a zone map amendment, the Staff recommends approval as submitted. The Zone Map Amendment (ZMA) is in conjunction with an annexation request. **Staff's recommendation and staff responses are predicated on approval of the annexation, application 23127.**

The Development Review Committee (DRC) considered the amendment. The DRC did not identify any infrastructure or regulatory constraints that would impede the approval of the application.

The Community Development Board acting in their capacity as the Zoning Commission will hold a public hearing on this ZMA on September 11, 2023 and will forward a recommendation to the Commission on the Zone Map amendment. The meeting will begin at 6 p.m. Instructions on joining the meeting will be included on the meeting agenda.

The City Commission will hold a public hearing on the zone map amendment on October 3, 2023. The meeting will begin at 6 p.m. Instructions on joining the meeting will be included on the meeting agenda.

## ***SECTION 5 - ANNEXATION STAFF ANALYSIS AND FINDINGS***

In considering applications for approval of the requested annexation, the advisory boards and City Commission shall consider the following:

**Commission Resolution No. 5076 Criteria**

**Commission Resolution No. 5076 Goals**

**Goal 1: The City of Bozeman encourages annexations of land contiguous to the City.**

Goal Not Met without action by another landowner. Currently the property in question is not contiguous to property within the City limits, however, the 80 acre parcel contiguous to the subject site on the east side is a recently approved annexation and zone map amendment application (Project Eighty-6) by the City Commission (December 2022), that is approximately 1,323 lineal feet. Once Project Eighty-6 finalizes its process and a resolution of annexation is passed, then the Harper's Corner project will be contiguous.

**Goal 2: The City encourages all areas that are totally surrounded by the City to annex.**

Goal Not Met. The subject property is not wholly surrounded in its entirety.

**Goal 3: The City encourages all properties currently contracting with the City for City services such as water, sanitary sewer, and/or fire protection to annex.**

Goal Neutral. The subject property is currently occupied. It is not currently contracting with the City for water, sewer or fire protection services. Future development will be required to connect with City services.

**Goal 4: The City of Bozeman requires annexation of all land proposed for development lying within the existing and planned service area of the municipal water and sewer systems as depicted in their respective facility plans, any land proposed for development that proposes to utilize municipal water or sewer systems.**

Goal Met. The subject property lies within the planned service area of the municipal water and sewer services. Future proposed developments will be required to utilize municipal water and sewer systems as discussed in Recommended Terms of Annexation #7.e. above. The location of existing sewer and water services is shown on the two maps below. Existing sewer and water lines are located at Catamount and Davis Lane about one half mile from the southeast corner of the subject site. Both services are planned for future expansion that will include the Harper's Corner property on Hidden Valley Road and Ferguson Avenue.



Map of wastewater collection system (dark green) within the city



Map of water distribution system (blue) within the city

**Goal 5: The City encourages annexations within the urban area identified on the future land use map in the current Bozeman Growth Policy.**

Goal Met. As shown in Section 1, the subject property is planned as 'Urban Neighborhood' and is within the urban area of the growth policy. See the discussion under Criterion A of Section 6 of the report for more information on the growth policy.

**Goal 6: The City of Bozeman encourages annexations to make the City boundaries more regular rather than creating irregular extensions which leave unannexed gaps between annexed areas or islands of annexed or unannexed land.**

Goal Not Met. The proposed annexation will create a peninsula to the west, however, the 80 acre parcel contiguous to the subject site on the east side is a recently approved annexation and zone map amendment application (Project Eighty-6) by the City Commission, that is approximately 1,323 lineal feet (see Goal 1). Project Eighty-6 is currently in the process of finalizing the Annexation Agreement.

**Goal 7: The City of Bozeman encourages annexations which will enhance the existing traffic circulation system or provide for circulation systems that do not exist at the present time.**

Goal Met. The subject property will provide additional right of way for Hidden Valley Road to the west which is designated by the City as a Collector street. Easements or future easements for Ferguson Avenue and Catamount Street are required by the terms of annexation (see Terms of Annexation #3, #4, #5 above). Although the improvements will not happen at the time of annexation, future development will be required to install these improvements as their frontage requirements. Upon future development, Hidden Valley Road will need to be constructed to the City's adopted standards adjacent to the subject property. Future development within the annexing area will create a local street network to provide local services and will also provide connections back to the existing street network to the east connecting to Catamount Street.

**Goal 8: The City prefers annexation of parcels of land larger than five (5) acres in size, but will allow annexation of smaller parcels if factors such as topographic limitations, sanitary disposal needs, fire access, maintenance of public facilities, etc., justify a smaller annexation.**

Goal Met. The subject property is approximately 40 acres

**Goal 9: The City seeks to obtain water rights adequate for future development of the property with annexation.**

Goal Met. After annexation, the subject property will be bound to the provisions of [38.410.130](#) which requires evaluation of water adequacy and provision of water if needed at time of development. The municipal code section requires water rights or an equivalent to be provided. Exact timing and amounts will be evaluated during development review. There are several methods to address the requirements of 38.410.130. The annexation agreement will provide

notice of this requirement, see Recommended Terms of Annexation #7. The landowner will consent to this requirement by signature on the annexation agreement.

**Goal 10: The City of Bozeman encourages annexations for City provision of clean treated water and sanitary sewer.**

Goal Met. The subject property is located within the City's planned water and sewer service area. See Goal 4 above. Any future development will be required to connect to the City systems.

Per Term of Annexation 7.e., the Annexation Agreement required to finalize the annexation requires the applicant to design extensions of services to meet the City's adopted infrastructure standards. These include provisions for minimum water pressure and volumes, adequate sewer flows by volume, gravity flow of sewers, and other standards necessary to protect public health and safety and ensure functional utilities.

**Resolution No. 5076 Policies**

**Policy 1: Annexations must include dedication of all easements for rights-of-way for collector and arterial streets, adjacent local streets, public water, sanitary sewer, or storm or sewer mains, and Class I public trails not within the right of way for arterial or collector streets. Annexations must also include waivers of right to protest the creation of special or improvement districts necessary to provide the essential services for future development of the City.**

Criterion Met. As discussed in Section 5, Goal 7, additional right of way is being included for Hidden Valley Road, Catamount Street, and Ferguson Avenue. The Recommended Terms of Annexation include requirements for this right of way provision. See Terms of Annexation #3, #4 & #5.

**Policy 2: Issues pertaining to master planning and zoning must be addressed prior to or in conjunction with the application for annexation.**

Criterion Met. The subject property is planned for Urban Neighborhood. No change to the growth policy is required. The application includes a request for initial zoning of R-5. See the zone map amendment section of this report for analysis of the zone map amendment criteria.

**Policy 3: The application for annexation must be in conformance with the current Bozeman Growth Policy. If a Growth Policy Amendment is necessary to accommodate anticipated uses, the amendment process must be initiated by the property owner and completed prior to any action for approval of the application for annexation.**

Criterion Met. The property is designated "Urban Neighborhood" on the future land use map. No growth policy amendment is required. See discussion under zone map amendment Criterion A.

**Policy 4: Initial zoning classification of the property to be annexed will be determined by the City Commission, in compliance with the Bozeman Growth Policy and upon a recommendation of the City Zoning Commission, simultaneously with review of the annexation petition.**

The City Zoning Commission will review the requested zoning district designation on October 3, 2023. The Community Development Board's recommendation, acting in their capacity as the Zoning Commission, will be passed along to the City Commission for review and consideration along with the annexation request on September 11, 2023.

**Policy 5: The applicant must indicate their preferred zoning classification as part of the annexation petition.**

Criterion Met. The applicant has requested a zoning designation of R-5, Residential Mixed-Use High Density district. See Section 6 of this report for analysis of the requested zoning.

**Policy 6: Fees for annexation processing will be established by the City Commission.**

Criterion Met. The appropriate application processing and review fees accompanied the application.

**Policy 7: It is the policy of the City that annexations will not be approved where unpaved county roads will be the most commonly used route to gain access to the property unless the landowner proposes a method to provide for construction of the road to the City's street standards.**

Criterion Met. The subject property is accessed on the west by Hidden Valley Road which is a collector street and paved to the edge of the subject property. Upon future development, Hidden Valley Road will need to be constructed to the City's standards adjacent to the subject property.

**Policy 8: Prior to annexation of property, the City will require the property owner to acquire adequate and usable water rights, or an appropriate fee in lieu thereof, in accordance with Section 38.410.130 of the municipal code, as amended.**

Criterion Met. The property owner shall provide usable water rights, or cash in-lieu of water rights thereof, in an amount to be determined by the Director of Transportation and Engineering, as outlined by Section 38.410.130 of the municipal code. The calculated amount will be determined by the Director of Transportation and Engineering, and based on the zoning designation approved by the City Commission. Terms of annexation #7 & #8 requires notice of this requirement to be part of the annexation agreement. Satisfaction of this requirement will occur with future development.

**Policy 9: Infrastructure and emergency services for an area proposed for annexation will be reviewed for the health, safety and welfare of the public and conformance with the City's adopted facility plans. If the City determines adequate services cannot be provided to ensure public health, safety and welfare, the City may require the property owner to**



**provide a written plan for accommodation of these services, or the City may reject the petition for annexation. Additionally, the parcel to be annexed may only be provided sanitary sewer service via the applicable drainage basin defined in the City Wastewater Collection Facilities Plan.**

Criterion Met. The area proposed for annexation will be adjacent to the City (once Project Eighty-6 is receives final approval). City infrastructure and emergency services can be extended to the subject property. The property is located adjacent to existing service areas of the Hyalite Fire District and Gallatin County Sherriff. The property is located within a half mile of the City's water and sewer service areas by Davis Lane and Catamount Street. Expansion of municipal utility and park facilities to serve the development will occur during the development process. As noted above, the annexation agreement will require future development to meet municipal standards.

**Policy 10: The City may require annexation of any contiguous property for which city services are requested or for which city services are currently being provided. In addition, any person, firm, or corporation receiving water or sewer service outside of the City limits is required as a condition of initiating or continuing such service, to consent to annexation of the property serviced by the City. The City Manager may enter into an agreement with a property owner for connection to the City's sanitary sewer or water system in an emergency conditioned upon the submittal by the property owner of a petition for annexation and filing of a notice of consent to annexation with the Gallatin County Clerk and Recorder's Office. The contract for connection to city sewer and/or water must require the property owner to annex or consent to disconnection of the services. Connection for purposes of obtaining City sewer services in an emergency requires, when feasible as determined by the City, the connection to City water services.**

Criterion Met. Currently there is an existing single family dwelling with outhouses serviced by an existing septic system. City services are not currently being provided to this property. Future development will be required to hook up to City services and the owner will need to abandon the existing septic and well (see Terms of Annexation #10 and #11). This annexation is not a result of an emergency condition requiring connection.

**Policy 11: The annexation application shall be accompanied by mapping to meet the requirements of the Director of Transportation and Engineering (formerly Public Works). Where an area to be annexed can be entirely described by reference to a certificate of survey or subdivision plat on file with the Gallatin County Clerk and Recorder the mapping may be waived by the Director of Transportation and Engineering.**

Criterion Met. Mapping to meet the requirements of the Director of Transportation and Engineering must be provided with the Annexation Agreement. Mapping requirements are

addressed in Recommended Term of Annexation 2. The map must include adjacent right of way and therefore cannot be described solely by reference to platted lands.

**Policy 12: The City will assess system development/ impact fees in accordance with Montana law and Chapter 2, Article 6, Division 9, Bozeman Municipal Code.**

Neutral. The annexation does not require immediate payment of fees. The annexation agreement will provide notice of obligations to pay impact fees at times of triggers as required in ordinance.

**Policy 13: Public notice requirements: Notice for annexation of property must be coordinated with the required notice for the zone map amendment required with all annexation. The zone map amendment notice must contain the materials required by 38.220.410, BMC.**

Notices of the public hearing have been mailed, published in the Bozeman Daily Chronicle twice, and posted on the site as required. See Appendix A for more details.

**Policy 14: Annexation agreements must be executed and returned to the City within 60 days of distribution of the annexation agreement by the City, unless another time is specifically identified by the City Commission.**

Criterion Met. This policy will be implemented only if the Commission acts to grant approval. If the application is denied then no annexation agreement will be necessary.

**Policy 15: When possible, the use of Part 46 annexations is preferred.**

Criterion Met. This annexation is being processed under Part 46 provisions.

**Policy 16: Where a road improvement district has been created, the annexation does not repeal the creation of the district. The City will not assume operations of the district until the entirety of the district has been annexed. Any funds held in trust for the district will be used to benefit the district after transfer to the City. Inclusion within a district does not lessen the obligation to participate in general city programs that address the same subject.**

Neutral. No road improvement district is associated with this application.

**Policy 17: The City will notify the Gallatin County Planning Department and Fire District providing service to the area of applications for annexation.**

Criterion Met. The necessary agencies were notified and provided copies of the annexation and zoning application information.

**Policy 18: The City will require connection to and use of all City services upon development of annexed properties. The City may establish a fixed time frame for connection to municipal utilities. Upon development, unless otherwise approved by the City, septic systems must be properly abandoned and the development connected to the**

**City sanitary sewer system. Upon development, unless otherwise approved by the City, water wells on the subject property may be used for irrigation, but any potable uses must be supplied from the City water distribution system and any wells disconnected from structures. The property owner must contact the City Water and Sewer Superintendent to verify disconnects of wells and septic systems.**

Criterion Met. Terms of annexation #11 requires full compliance with this policy. There is an existing home onsite. If approved and prior to any new development, all septic systems and water use for human consumption will be severed and abandoned. All future development will be required to connect to city services.

## ***SECTION 6 - ZONE MAP AMENDMENT STAFF ANALYSIS AND FINDINGS***

In considering applications for approval under this title, the advisory boards and City Commission must consider the following criteria (letters A-K). As an amendment is a legislative action, the Commission has broad latitude to determine a policy direction. The burden of proof that the application should be approved lies with the applicant.

A zone map amendment must be in accordance with the growth policy (criteria A) and be designed to secure safety from fire and other dangers (criteria B), promote public health, public safety, and general welfare (criteria C), and facilitate the provision of transportation, water, sewerage, schools, parks and other public requirements (criteria D). Therefore, to approve a zone map amendment the Commission must find Criteria A-D are met.

In addition, the Commission must also consider criteria E-K, and may find the zone map amendment to be positive, neutral, or negative with regards to these criteria. To approve the zone map amendment, the Commission must find the positive outcomes of the amendment outweigh negative outcomes for criteria E-K.

In determining whether the criteria are met, Staff considers the entire body of plans and regulations for land development. Standards which prevent or mitigated negative impacts are incorporated throughout the entire municipal code but are principally in Chapter 38, Unified Development Code.

### **Section 76-2-304, MCA (Zoning) Criteria**

#### **A. Be in accordance with a growth policy.**

Criterion Met. [The Bozeman Community Plan \(BCP\) 2020](#), Chapter 5, p. 73, in the section titled *Review Criteria for Zoning Amendments and Their Application*, discusses how the various criteria in 76-2-304 MCA are applied locally. Application of the criteria varies depending on whether an amendment is for the zoning map or for the text of Chapter 38, BMC. The first criterion for a zoning amendment is accordance with a growth policy.

## **Future Land Use Map**

The proposed amendment is a change to the zoning map. Therefore, it is necessary to analyze compliance with the future land use map. Chapter 3 of the BCP 2020 addresses the future land use map. The introduction to that chapter discusses the importance of the chapter. Following are some excerpts.

*“Future land use is the community’s fundamental building block. It is an illustration of the City’s desired outcome to accommodate the complex and diverse needs of its residents.”*

*“The land use map sets generalized expectations for what goes where in the community. Each category has its own descriptions. Understanding the future land use map is not possible without understanding the category descriptions.”*

The area of this application is within the anticipated growth area of the City. As shown on the maps in Section 1, on the excerpt of the current future land use map, the property is designated as Urban Neighborhood. The Urban Neighborhood designation description reads:

*“This category primarily includes urban density homes in a variety of types, shapes, sizes, and intensities. Large areas of any single type of housing are discouraged. In limited instances, an area may develop at a lower gross density due to site constraints and/or natural features such as floodplains or steep slopes. Complementary uses such as parks, home-based occupations, fire stations, churches, schools, and some neighborhood-serving commerce provide activity centers for community gathering and services. The Urban Neighborhood designation indicates that development is expected to occur within municipal boundaries. This may require annexation prior to development.*

*Applying a zoning district to specific parcels sets the required and allowed density. Higher density residential areas are encouraged to be, but are not required or restricted to, proximity to commercial mixed use areas to facilitate the provision of services and employment opportunities without requiring the use of a car.”*

The correlation between the future land use map of the growth policy and the zoning districts is presented in Table 4 of the Bozeman Community Plan 2020. As shown in the following Correlation with Zoning Table excerpt, the R-5 district is an implementing district of the Urban Neighborhood category.

## CORRELATION WITH ZONING

The zoning districts which implement each future land use category are shown in relation to each future land use category in chart below. For zoning district intent, see [38.300](#). For permitted uses, see [38.310](#).

### Urban Neighborhood

R-S, R-1, R-2, R-3, R-4, R-5, R-O, REMU

RMH, B-1, PLI



## Goals and Policies

A zoning amendment is also evaluated against the goals and policies of the BCP 2020. Most of the goals and policies are not applicable to this application. Relevant goals and objectives have been identified by staff. Conflict with the text of the growth policy hasn't been identified.

The Short Term Action list on page 63 of the BCP 2020 describes 14 items to implement the growth policy. The first two relate to direct changes to the zoning map in support of listed goals and objectives. These include increasing the intensity of zoning districts in already developed areas. Beginning on page 71 of the BCP 2020 in the section titled Zoning Amendment Review, the document discusses how the City implements zoning for new areas, amendments to areas, and revisions to existing text. This section includes a discussion of when the City may initiate a zoning change to a more intensive district to increase development opportunities. This section demonstrates that the City, as a matter of policy, is supportive of more intensive zoning districts and development. It is inconsistent with this approach to zone at annexation for lower intensities than what infrastructure and planning documents will support. This policy approach does not specify any individual district but does lean towards the more intensive portion of the zoning district spectrum.

*N-1.1 Promote housing diversity, including missing middle housing.*

*N-1.3 Revise the zoning map to lessen areas exclusively zoned for single-type housing.*

*Goal N-3: Promote a diverse supply of quality housing units.*

The requested R-5 district supports all three of the above as it authorizes a wide range of housing types, lot sizes, and services to create a mix of housing, including "Missing Middle" housing as one of the critical components of affordable housing.

*Goal DCD-1: Support urban development within the City.*

The proposed zoning is occurring in conjunction with an annexation. Any future development will be required to occur at urban densities and will be within the City. If the City Commission declines the annexation then the requested R-5 zoning will not occur.

*DCD-1.11 Pursue annexations consistent with the future land use map and adopted facility plans for development at urban intensity.*

The proposed zoning is consistent with the future land use map and is within the current facilities plans.

*Goal RC-3: Collaborate with Gallatin County regarding annexation and development patterns adjacent to the City to provide certainty for landowners and taxpayers.*

Gallatin County has been notified of the proposed annexation.

*RC-3.3 Prioritize annexations that enable the incremental expansion of the City and its utilities.*

The property in question is contiguous to the City limits on the east on over 1,320 lineal feet (once Project Eighty-6 receives final approval). It adds approximately 40 acres to the City limits that is available for urban development.

**B. Secure safety from fire and other dangers.**

Criterion Met. The existing buildings are constructed of unknown quality, fire, and safety measures. Any removal and replacement must meet the development standards of the City. Fire protection water supply will be provided by the City of Bozeman water system. The property is not within any delineated floodplain nor does it have other known natural hazards. Upon annexation the subject property will be provided with City emergency services including police, fire and ambulance. Future development of the property will be required to conform to all City of Bozeman public safety, building and land use requirements. The City provides emergency services to adjacent properties and no obstacles have been identified in extending service to this parcel.

**C. Promote public health, public safety, and general welfare.**

Criterion Met. The proposed zoning designation will promote general welfare by implementing the future land use map and identified policies in the BCP 2020. Public health and safety will be positively affected by requiring new development to connect to municipal sanitary sewer and water systems, which will prevent groundwater pollution and depletion by wells and septic systems.

As noted in Criterion B, further development and redevelopment must be in accordance with modern building, access, stormwater, pedestrian circulation, ingress and egress to the site, and full connection to the greater transportation network for users ensuring the promotion of public health, safety and general welfare.

**D. Facilitate the provision of transportation, water, sewerage, schools, parks and other public requirements.**

Criterion Met. This property is included in future planning areas for transportation, parks, sewer, and water. The City conducts extensive planning for municipal transportation, water, sewer, parks, and other facilities and services provided by the City. The adopted plans allow the City to consider existing conditions and identify enhancements needed to provide



additional service needed by new development. The City implements these plans through its capital improvements program that identifies individual projects, project construction scheduling, and financing of construction.

As stated in 38.300.020.C, the designation of a zoning district does not guarantee approval of new development until the City verifies the availability of needed infrastructure. All zoning districts in Bozeman enable a wide range of uses and intensities. At time of future subdivision or site plan review the need for individual services can be more precisely determined. No subdivision or site plan is approved without demonstration of adequate capacity.

38.300.020.C, "Placement of any given zoning district on an area depicted on the zoning map indicates a judgment on the part of the city that the range of uses allowed within that district are generally acceptable in that location. It is not a guarantee of approval for any given use prior to the completion of the appropriate review procedure and compliance with all of the applicable requirements and development standards of this chapter and other applicable policies, laws and ordinances. It is also not a guarantee of immediate infrastructure availability or a commitment on the part of the city to bear the cost of extending services."

See also comments under Criterion C.

The applicant has been advised that the subject property is located within the Baxter Creek Sewer Drainage Basin, which currently does not have any wastewater infrastructure to service the subject site and that prior to any future development, the applicant is advised all wastewater generated by the development must flow into the Hidden Valley Lift Station, which is currently in the early phases of design and is not yet developed.

All future construction must extend services in conjunction with subdivision and site development. Those extensions must meet current standards and will advance this standard.

#### **E. Reasonable provision of adequate light and air.**

Criterion Met. The R-5 zoning designation has requirements for setbacks, height, and lot coverage which provide for the reasonable provision of adequate light and air. Any future development of the property will be required to conform to City standards for setbacks, height, lot coverage, and buffering. The criterion is not about personal preferences but about protection of public health and safety. The adopted standards address protection of public health and safety.

In addition to the zoning standards, adopted building codes contain more detailed requirements for air circulation, window placement, and building separation that further ensure the intent of this criterion is satisfied.

#### **F. The effect on motorized and non-motorized transportation systems.**

Criterion Met. The proposed zoning will allow for a higher density of uses than is currently allowed under Gallatin County zoning. The Gallatin County zoning is an agricultural

protection zone which requires 20 acres per home. The site is presently occupied by a single household dwelling with outhouses. Any development under Bozeman R-5 zoning will generate more traffic, on foot, bicycle, or vehicle, than the existing single family lot.

To meet the adopted standards of [38.400](#), (External Link) when a development is proposed, it will be responsible for frontage improvements along Hidden Valley Road as well as Catamount Street and Ferguson Avenue when triggered. Future development will be required to provide these improvements which will enhance the city's motorized and non-motorized transportation systems. Local streets will be laid out and constructed as development proceeds. Sidewalks and bike facilities are minimum standards and will be constructed as needed.

#### **G. Promotion of compatible urban growth.**

Criterion Met. The intent of the R-5 zone is to provide for mixed-use and high density residential development through a variety of housing types to serve the varying housing needs of the community's residents. The subject property is adjacent to low-density residential uses to the southwest and west. There is an undeveloped parcel within the city limits zoned REMU that received approval in December 2022, and a mobile home park directly north of the site. The R-5 district allows for a wide range of residential uses which allows for consideration of existing development to the north and west. In addition, the proposed zoning is in accordance with the Bozeman Community Plan's future land use designation of Urban Neighborhood.

Use of this mixed-use and high density residential is appropriate for areas adjacent to a variety of land uses and can stand along to develop its own neighborhood character, as described in residential intent and purpose statement. Surrounding county zoning and unzoned properties to the north, west and south includes low to medium residential density, and vacant land. West of project site is now zoned Residential Emphasis Mixed Use (REMU) that will contain a wide mix of housing types. In addition, the proposed zoning is in accordance with the Bozeman Community Plan's future land use designation of Urban Neighborhood.

#### **H. Character of the district.**

Criterion Met. Section 76-2-302, MCA says "...legislative body may divide the municipality into districts of the *number, shape, and area* as are considered best suited to carry out the purposes [promoting health, safety, morals, or the general welfare of the community] of this part." Emphasis added.

This proposal amends the zoning map and not the text. Therefore, no element of this amendment modifies the standards of any zoning district. The character of the districts as created by those standards remains intact.

As noted above, the City Commission has latitude in considering the geographical extents of a zoning district. Application of any municipal zoning district to the subject property will alter the existing agricultural character of the subject property. It is not expected that zoning freeze the character of an area in perpetuity. Rather, it provides a structured method to consider

changes to the character. The intent and purpose of the R-5 district is available in [38.300.100.E](#) (External Link) and in Appendix B of this report.

The City has defined compatible development as:

*“The use of land and the construction and use of structures which is in harmony with adjoining development, existing neighborhoods, and the goals and objectives of the City's adopted growth policy. Elements of compatible development include, but are not limited to, variety of architectural design; rhythm of architectural elements; scale; intensity; materials; building siting; lot and building size; hours of operation; and integration with existing community systems including water and sewer services, natural elements in the area, motorized and non-motorized transportation, and open spaces and parks. Compatible development does not require uniformity or monotony of architectural or site design, density or use.”*

The City has adopted many standards to identify and avoid or mitigate demonstrable negative impacts of development. These will support the ability of future development in R-5 to be compatible with adjacent development and uphold the residential character of the area. As noticed in the growth policy under discussion of this criterion a local street is considered an adequate separation between different uses and districts to minimize impacts, see page 77.

The existing character of the site is a single household large lot. Any change in zoning will modify the essential character of the property. To the east is a vacant lot but recently received approval by the Commission to annex and establish a REMU zone district which will allow a variety of high density housing. To the west is low density housing in the county and north is a mobile home park. Directly south is a vacant lot within the county. The zoning amendment is in conjunction with annexation of the property. Annexation and urban zoning will change the character of the application site. However, the requested zoning is consistent with adjacent urban zoning. The urban zoning will be separated by a public street from the low density, unzoned area to the west. It will not be separated from the mobile home park to the north and vacant lot to the south. It is appropriate to zone the annexing area consistent with the current growth policy and other standards of the City. The amendment does not alter the allowed uses or standards within the adjacent unzoned low density subdivision or the mobile home park to the north.

#### **I. Peculiar suitability for particular uses.**

Neutral. The property is within the City's planning area for land use and utility extensions. There is frontage on Hidden Valley Road, a collector street. Upon future development, Hidden Valley Road will be constructed to municipal Street Standard adjacent to the property. Municipal utilities and emergency services can be extended to the area. The proposed R-5 zoning designation is suitable for the property's location and adjacent uses.

**J. Conserving the value of buildings.**

Criterion Met. There is one single family dwelling with associated outbuildings on each of the two subject properties. The amendment is for the zoning map and does not alter allowed uses on adjacent properties.

**K. Encourage the most appropriate use of land throughout the jurisdictional area.**

Criterion Met. The proposed R-5 zoning designation will encourage the most appropriate use of land as the property is near residential uses. Upon future development, there will be access to the city's services, including streets, thus the site is able to support a higher intensity of uses as allowed within the R-5 zoning district. Furthermore, the proposed R-5 zoning designation is consistent with the BCP 2020 future land use map designation of "Urban Neighborhood".

***PROTEST NOTICE FOR ZONING AMENDMENTS***

IN THE CASE OF WRITTEN PROTEST AGAINST SUCH CHANGES SIGNED BY THE OWNERS OF 25% OR MORE OF THE AREA OF THE LOTS WITHIN THE AMENDMENT AREA OR THOSE LOTS OR UNITS WITHIN 150 FEET FROM A LOT INCLUDED IN A PROPOSED CHANGE, THE AMENDMENT SHALL NOT BECOME EFFECTIVE EXCEPT BY THE FAVORABLE VOTE OF TWO-THIRDS OF THE PRESENT AND VOTING MEMBERS OF THE CITY COMMISSION.

**The City will accept written protests from property owners against the proposal described in this report until the close of the public hearing before the City Commission.**

Pursuant to 76-2-305, MCA, a protest may only be submitted by the owner(s) of real property within the area affected by the proposal or by owner(s) of real property that lie within 150 feet of an area affected by the proposal. The protest must be in writing and must be signed by all owners of the real property. In addition, a sufficient protest must: (i) contain a description of the action protested sufficient to identify the action against which the protest is lodged; and (ii) contain a statement of the protestor's qualifications (including listing all owners of the property and the physical address), to protest the action against which the protest is lodged, including ownership of property affected by the action. Signers are encouraged to print their names after their signatures. A person may in writing withdraw a previously filed protest at any time prior to final action by the City Commission. **Protests must be delivered to the Bozeman City Clerk, 121 North Rouse Ave., PO Box 1230, Bozeman, MT 59771-1230.**

***APPENDIX A - NOTICING AND PUBLIC COMMENT***

Notice was published in the Bozeman Daily Chronicle on August 26<sup>th</sup> and September 2<sup>nd</sup>, 2023. The notice was posted on site and notices mailed by the applicant as required by [38.220](#) (External Link) and the required confirmation provided to the Planning Office. Notice was provided at least 15 and not more than 45 days prior to any public hearing.

As of the writing of this report on September 5, 2023, no written comments have been received on this application. Any received comments will be made available through the City's [Laserfiche](#) system.

## ***APPENDIX B - PROJECT GROWTH POLICY AND PROPOSED ZONING***

### **Adopted Growth Policy Designation:**

The property is designated as "Urban Neighborhood" in the Bozeman Community Plan 2020.

"This category primarily includes urban density homes in a variety of types, shapes, sizes, and intensities. Large areas of any single type of housing are discouraged. In limited instances, an area may develop at a lower gross density due to site constraints and/or natural features such as floodplains or steep slopes. Complementary uses such as parks, home-based occupations, fire stations, churches, schools, and some neighborhood-serving commerce provide activity centers for community gathering and services. The Urban Neighborhood designation indicates that development is expected to occur within municipal boundaries. This may require annexation prior to development.

Applying a zoning district to specific parcels sets the required and allowed density. Higher density residential areas are encouraged to be, but are not required or restricted to, proximity to commercial mixed use areas to facilitate the provision of services and employment opportunities without requiring the use of a car."

### **Proposed Zoning Designation and Land Uses:**

The applicant has requested zoning of R-5, Residential Mixed-Use High Density district whose intent is to:

*Mixed-Use High Density District (R-5).* The intent of the R-5 residential mixed-use high density district is to provide for high-density residential development through a variety of compatible housing types and residentially supportive commercial uses in a geographically compact, walkable area to serve the varying needs of the community's residents. These purposes are accomplished by:

1. Providing for a mixture of housing types, including single and multi-household dwellings to serve the varying needs of the community's residents.
2. Allowing offices and small scale retail and restaurants as secondary uses provided special standards are met.

Use of this zone is appropriate for areas adjacent to mixed-use districts and/or served by transit to accommodate a higher density of residents in close proximity to jobs and services.

The Zoning Correlation Table on Page 58 of the Bozeman Community Plan 2020 correlates zoning districts with the Growth Policy's land use categories, demonstrating that the proposed zoning designation of R-4 correlates with the Growth Policy's future land use designation of

“Urban Neighborhood”.

## CORRELATION WITH ZONING

The zoning districts which implement each future land use category are shown in relation to each future land use category in chart below. For zoning district intent, see [38.300](#). For permitted uses, see [38.310](#).

### Urban Neighborhood

R-S, R-1, R-2, R-3, R-4, R-5, R-O, REMU  
RMH, B-1, PLI



### Residential Mixed Use

R-3, R-4, R-5, R-O, REMU, B-1, PLI



### Community Commercial Mixed Use

R-O, REMU, B-1, B-2, B-2M, UMU, NEHMU  
PLI



### Traditional Core

B-2M, B-3, PLI



### Regional Commercial & Services

B-2, B-2M, UMU, PLI



### Maker Space Mixed Use

BP, M-1, NEHMU, PLI



### Industrial

M-1, M-2, BP, PLI



### Parks & Open Lands

PLI



### Public Institutions

PLI



#### LEGEND

- Low Density Housing
- Moderate Density Housing
- Medium Density Housing
- High Density Housing & Mixed Use
- Neighborhood & Community Commercial & Business
- Office
- Downtown Business & Mixed Use
- Large Commercial & Business
- Maker Space
- Manufacturing & Artisan
- Public Lands, Parks, & Open Space
- Educational Facilities
- Civic Buildings & Institutions



### ***APPENDIX C - OWNER INFORMATION AND REVIEWING STAFF***

**Owner/Applicant:** Russell Hosner LLC, PO Box 10190, Bozeman MT 59719

**Representative:** WGM Group, 109 E Main St. Suite B, Bozeman MT 59715

**Report By:** Elizabeth Cramblet, Associate Planner, Community Development Department

### ***FISCAL EFFECTS***

No unusual fiscal effects have been identified. No presently budgeted funds will be changed by this Annexation or Zone Map Amendment.

### ***ATTACHMENTS***

The full application and file of record was electronically submitted and can be viewed at the [Community Development Department](#). Select 'Project Documents' and navigate to application 21442 to view the full application. Digital access is also available at the Community Development Department at 20 E. Olive Street, Bozeman, MT 59715.

Application materials direct link:

[Application 23127, Harper's Corner](#)

# Memorandum

**REPORT TO:** Community Development Board

**FROM:** Chris Saunders, Community Development Manager  
Erin George, Community Development Deputy Director  
Anna Bentley, Community Development Director

**SUBJECT:** Chapter 38, Unified Development Code, Bozeman Municipal Code to Repeal and Replace the Entire Chapter with New Zoning and Subdivision Regulations Consistent with the Montana Land Use Planning Act, Application 21381

**MEETING DATE:** September 11, 2023

**AGENDA ITEM TYPE:** Community Development - Legislative

**RECOMMENDATION:** Receive the draft document, zoning map, and information on the upcoming schedule of public hearings prior to conducting those public hearings and making a recommendation to the City Commission on the complete repeal and replacement of Chapter 38, Unified Development Code and ask questions of presenters.

**STRATEGIC PLAN:** 4.2 High Quality Urban Approach: Continue to support high-quality planning, ranging from building design to neighborhood layouts, while pursuing urban approaches to issues such as multimodal transportation, infill, density, connected trails and parks, and walkable neighborhoods.

**BACKGROUND:** **General Background.** The [Bozeman Community Plan 2020](#) [External PDF] (BCP) was adopted in November 2020. It is the City's plan for land use and development. On December 21, 2021, the City Commission adopted [Resolution 5368](#) [External Link PDF]. The resolution set priorities for municipal actions over the next two years. Priorities include replacing Chapter 38, Unified Development Code, BMC to “facilitate increased housing density, housing affordability, climate action plan objectives, sustainable building practices, and a transparent, predictable and understandable development review process.” This directive provides for implementation of the BCP as called for in Chapter 4 of the BCP.

The City Commission budgeted funds for the work and a contract with Code Studio was completed in June 2022 to support the City in changing regulations. Substantial progress has been made on the project and the formal public review process is underway. Recommendations from advisory boards culminating with formal Community Development Board public

hearings will occur in September and October.

As explained to the Board in July 17th, some elements of the UDC replacement are necessary to comply with Senate Bill 382, the Montana Land Use Planning Act (the Act) which took effect on May 17, 2023. Bozeman must follow the Act in its planning, subdivision, and zoning activities. The recording for the July 17th meeting is not available as of the writing of this material due to a technology problem. The same materials are linked below.

Bozeman already uses many of the required practices of the Montana Land Use Planning Act as part of its daily activities, but some changes are needed to fully implement the state requirements. A more detailed summary and the full text of the Act are available through the July 25th City Commission agenda packet and are attached. Key elements of change from the Act include:

1. Which state enabling legislation applies for updated and future regulations.
2. Changing processes, extent, and methods of public participation.
3. Required content and extent of planning information to be prepared.
4. Process changes for amendments to zoning map, regulations text, and land use plan.
5. Changes to development review processes and approval authority for subdivisions and zoning projects.
6. Changes to review processes for variances and appeals.

Extensive public outreach has been included throughout the UDC replacement project based on Bozeman's commitment to public engagement, and also to account for the new requirements of the Act. A [website](#) [External Link] was created on August 11, 2022, to provide continuous information to the public, accept public comment, and support interaction and discussion on ideas. Additionally, the City Commission conducted six work sessions to evaluate issues and give direction. Links to those work sessions are available through the attached file. The City conducted extended public engagement and outreach throughout the development of the draft regulations using many different methods to reach as much as possible of the community. Community input helped to shape the draft. A [report on public engagement](#) [External PDF] conducted before the draft was released to the public has been prepared. A summary of key public engagement opportunities is provided as an attachment.

Major areas of changes with the UDC replacement include:

- Compliance with revised and new state law - These are primarily process changes and are discussed in the attachment regarding SB 382.
- Layout and usability enhancements including changed organization, layout, and increased graphics.
- Sustainability including facilitation of electric vehicle charging, urban

agriculture allowances, support for recycling and composting, clarification of provisions for solar energy, support for density, local service commercial, walkability, and bicycle facilities.

- Revisions and simplification for non-residential parking including some removal of parking requirements.
- Consolidation of and revision of residential zoning districts, removal of two non-residential zoning districts, and creation of one zoning district.
- Revisions to requirements for transportation studies and standards.

See the attached top edits list for additional details.

**Public Hearing Process.** Before new codes can be adopted, a formal public review and comment process must happen. For zoning and subdivision regulations this is a two step process. First, the Community Development Board (assigned the state law responsibilities for advising on zoning and subdivision regulation) must conduct public hearings, consider what the public says, consider the criteria in state law to adopt zoning and subdivision regulations, and review the draft regulations. After doing all this work the Community Development Board must make a recommendation to the City Commission regarding the proposed regulations. They are not required to approve of the proposed regulations but must make a recommendation to approve, approve with revisions, or to not approve. Once this process is completed, the City Commission must also conduct public hearings and consider all the same issues and material as the Community Development Board plus the recommendation of the Board. Input from the public can come in through this process. People can comment multiple times and in different forms.

The draft of the proposed regulations and the zoning map were released to the public on August 14, 2023. The draft was released well in advance of the public hearings to provide the public opportunity to review and consider the proposal and prepare to participate in the public hearings. The anticipated schedule for the Community Development Board hearings is:

- Sept 11th Community Development Board public meeting – Overview presentation of draft document and map and outline of formal public hearings process to come
- Sept 18th Community Development Board public hearing
- Oct 10th Community Development Board public hearing continued as needed
- Oct 16th Community Development Board public hearing - vote and recommendation on both map and text

If the Board is able to arrive at a recommendation earlier all the meetings listed above may not be needed.

At the September 11th meeting, Staff and Code Studio will provide an overview of the code and zoning map following a general outline of:

- Staff - project purpose
- Code Studio - layout and formatting, zoning districts, and revised standards
- Staff - changes to processes for subdivision and site development
- Staff - zoning map
- Staff - upcoming public process, how the public may participate

The staff report analyzing compliance with required state law criteria for adoption of zoning and subdivision regulations is planned to be provided with the packet for the September 18th public hearing. A summary of the most significant changes to the map and regulations from those being entirely replaced is attached to this agenda item.

**Public Hearing Materials.** The Community Development Board will consider the entire replacement of both the text and the zoning map. Both are available through [Engage.Bozeman.net/udc](https://Engage.Bozeman.net/udc) [External Link], the project website. Additional materials on frequently asked questions, public engagement and input, and previous meetings have been added throughout the course of the project and made available to anyone on demand. Due to the large file sizes and graphical formatting, it is easier to review the materials on a larger screen. Links to the two parts follow:

- [Proposed Chapter 38, Unified Development Code](#) [External PDF]. The draft has been updated as of September 7th to correct typographic errors and omissions. A listing of each change follows the cover page of the document.
- [Proposed zoning map](#) [External link]. This link takes you to a separate website that allows you to compare the existing and proposed zoning maps. Instructions are available at the site on how to use it.

A copy of the notice published for this item is also attached.

**UNRESOLVED ISSUES:** None at this time, the public hearing process may identify needed revisions to the text or map.

**ALTERNATIVES:** None at this time.

**FISCAL EFFECTS:** Funding for the code replacement has been budgeted.

Attachments:

[UDC Top Edits Handout 8-23-2023.pdf](#)

[21381 UDC Replacement Web Notice 8-23-2023.pdf](#)

[Key Dates List - CDB 9-6-2023.pdf](#)

[SB382\\_City\\_Commission\\_summary\\_July\\_25\\_2023.pdf](#)  
[September 6, 2023 List of Key Outreach .pdf](#)  
[SB382\\_-\\_Montana\\_Land\\_Use\\_Planning\\_Act.pdf](#)

Report compiled on: September 7, 2023








# Bozeman Development Code Replacement

## Top Edits Handout






Edited Aug 23, 2023

Public Review Draft regulations and zoning map available at [engage.bozeman.net/udc](https://engage.bozeman.net/udc).












### Top Formatting, Layout, and Organization Edits






	Each zoning district portrayed in two parts, one portion for lot information, and one portion for building information with high level key standards. <i>Divisions 38.210, 38.220, 38.230</i>
	Standards in each district connected by hyperlinked references to Rules of Interpretation which provide additional details applicable to each standard. <i>Example 38.210.020</i>
	Increased graphics to illustrate standards. <i>Example 38.260.110</i>
	Wording revised to use less technical and formal language.
	Document reorganized to place administrative processes at the end and district and use information in the beginning. <i>Article 7 - Permits, Legislative Actions And Procedures</i>

### Top Process Edits











	Administrative decision maker assigned to all site development including preliminary plats. - <i>Section 38.700.010</i>
	Replacement of criteria required for adoption or amendments to the text or zoning map. - <i>Division 38.770</i>
	Administrative appeals process changed to two step, first to planning commission and then to city commission. - <i>Section 38.760.030</i>
	Noticing of individual site development projects reduced to comply with state law; noticing for text and map amendments increases. - <i>Division 38.730</i>
	Review of individual site development or subdivision no longer includes advisory body input. <i>Divisions 38.740 and 38.750</i>

### Top Standards Edits

		Consolidated the existing RS, R1, R2, and R3 zoning districts to the RA zoning district - <i>Sections 38.200.020, 38.300.020</i>
		Deleted the R-O and UMU zoning districts - <i>Section 38.200.020</i>
		Removed residential minimum lot size requirement - <i>Division 38.210</i>
		Minimum residential density increased with some exceptions for existing lots - <i>Division 38.210</i>
		Non-residential parking – simplified, mixed uses given more flexibility – <i>Section 38.530.040</i>
		Non-residential parking – Some areas do not require minimum parking, removal of parking alternatives – <i>Section 38.530.040</i>
		Alternate method to define building heights from fixed heights to stories – <i>Section 38.260.100</i>

		Short and long term bicycle parking standards established – <i>Section 38.530.070</i>
		Revised the building height transitions between zoning districts – <i>Section 38.260.070</i>
		Transportation impact study content, functional standards, and mitigation criteria – <i>Sections 38.400.060, 38.710.050</i>
		Block frontage has been mostly merged into the basic district standards and rules of interpretation – <i>Article 2 and Division 38.520</i>

### Top Zoning Map Edits

		Replacement of the R-O zoning district with alternate districts
		Creation of the B-3C zoning district (Downtown along Main and between Grand and Rouse)
		Show the RA district (consolidation of previous RS, R1, R2, and R3 districts)
		Consolidated the existing RS, R1, R2, and R3 zoning districts to the RA zoning district - <i>Sections 38.200.020, 38.300.020</i>
		Show the RB district (renamed from R4) and the RC district (renamed from R5)
		Public Land and Institutions (PLI) applied for parks and schools previously shown as other zones
		B-2M replacing some areas of B2 along the Main Street corridor

### Other code amendment projects underway or pending

- Wetland regulation update
- Water conservation standards and procedures
- Short term rental Phase 2
- Park standards updates

### Bonus edit information – These were completed with earlier amendments in the past year

- Update floodplain regulations to best professional practice
- Planned development zones replaced planned unit development and focuses on current community priorities
- Affordable housing incentives updated for state law changes
- Accessory dwelling standards changed to allow ground floor placement and remove parking

Source of amendment key:



Revision to comply with state law



Revision to advance local adopted planning documents

## **NOTICE OF PUBLIC HEARINGS TO REPEAL AND ENTIRELY REPLACE CHAPTER 38, UNIFIED DEVELOPMENT CODE, OF THE BOZEMAN MUNICIPAL CODE.**

**What:** The City of Bozeman gives notice of public hearings to consider the entire replacement of the Unified Development Code (UDC), Chapter 38 BMC. The replacement includes both the text of the code and the zoning map. The UDC establishes the procedures and standards for review, development, and redevelopment of land within the City. Details are provided below. The complete text of the proposed revised UDC and zoning map are available at the project website, [engage.bozeman.net/udc](https://engage.bozeman.net/udc).

**Why:** The City adopts its local land development regulations within a legal framework established by the State of Montana. The 2023 Legislature adopted a new legal framework for land use planning and regulation that applies to Bozeman and completely replaces the laws that governed earlier regulations. Bozeman must update and replace its regulations to comply with the new Montana Land Use Planning Act. In addition, the revised UDC aids in continuing implementation of the City's adopted land use plan, housing plan, sustainability plans, and other issue plans. These three plans were adopted in 2020 and implementation has been ongoing. Improvements for user convenience such as increased graphics, simplified language, and document reorganization are also included.

The land use plan and supporting issue plans address how the City of Bozeman intends to grow, the impacts of development and various ways to mitigate impacts of additional development.

**State law limits 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 to only 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. Therefore, it is important that people participate during this consideration of the replacement UDC, which will implement zoning and subdivision regulations consistent with the City's land use plan and other adopted issue plans.**

**When and Who:** On Monday, **September 11, 2023**, at 6:00 p.m., the **Community Development Board** acting in their capacity as the **Zoning Commission and Planning Board** (Planning Commission) will hold an introductory **public meeting** regarding the replacement of Chapter 38, Unified Development Code, in the Commission Room at City Hall, 121 N. Rouse Ave. Bozeman MT. Members of the public will also be able to participate remotely via a virtual platform. Instructions for joining the virtual meeting will be included on the meeting agenda which is published on the City's website at least 48 hours prior to the meeting. The agenda is available at <https://www.bozeman.net/meetings>.

On Monday, **September 18, 2023**, at 6:00 p.m., the **Community Development Board** acting in their capacity as the **Zoning Commission and Planning Board** (Planning Commission) will conduct a **public hearing** to receive public testimony and consider a recommendation on the replacement of Chapter 38, Unified Development Code, in the Commission Room at City Hall, 121 N. Rouse Ave. Bozeman MT. Members of the public will also be able to participate remotely via a virtual platform. Instructions for joining the virtual meeting will be included on the meeting agenda which is published on the City's website at least 48 hours prior to the meeting. The agenda is available at <https://www.bozeman.net/meetings>.

If needed, the public hearing may be continued and considered further on additional days, including October 10<sup>th</sup> and October 16<sup>th</sup>. Continued meetings will also occur on 6 pm at the same location and via virtual platform.

Separate notice will be provided for public hearings before the City Commission.

**How:** The replacement will be implemented by adoption of an ordinance by the City Commission after receiving a recommendation from the Community Development Board, considering public comments, and considering the criteria for adopting regulations under the Montana Land Use Planning Act. The regulations must be consistent with the adopted land use plan, the Bozeman Community Plan 2020 and associated issue plans, which are the basis for implementing regulations.

The public may comment orally at the public hearings or in writing at or prior to the public hearings regarding compliance of this application with the required criteria established in the Montana Land Use Planning Act, Section 21(2) and Section 27(2). The Montana Land Use Planning Act is available at <https://leg.mt.gov/bills/2023/billpdf/SB0382.pdf>. Comments should identify the specific criteria of concern along with facts in support of the comment. During the notice period the City will continue review the proposed replacement UDC for compliance with applicable regulations, refine language in response to public comments, and provide analysis of criteria and comments.

The Community Development Board must provide a recommendation on the proposal. As part of their recommendation, they may suggest alternate text or zoning map designations from what is initially included in the public review draft.

**The City Commission will also hold a public hearing to consider the proposed replacement UDC. The City Commission may act to approve, modify, or reject the proposal or continue the public hearing to another date. The City Commission may revise any of the proposed actions referred to in this notice during the public hearing process. At this time, the City Commission is expected to begin their review on October 24, 2023.**

The complete text of the proposal and draft zoning map is available through the project website, [engage.bozeman.net/udc](https://engage.bozeman.net/udc), or the Department Community Development, 20 E Olive Street, Bozeman MT 59715; 406-582-2260. **The proposal may be revised as the public review process proceeds.**

The City invites the public to comment in writing and to attend the public hearings. Written comments are encouraged and may be directed to City of Bozeman, Department of Community Development, PO Box 1230, Bozeman, MT 59771-1230 or emailed to [agenda@bozeman.net](mailto:agenda@bozeman.net). **Please reference Application 21381 in all correspondence.**

For those who require accommodations for disabilities, please contact Mike Gray, City of Bozeman ADA Coordinator, 582-3232 (voice), 582-3203 (TDD).

**Details:** The proposed text and map are complete replacements of all previously adopted text and zoning maps. There will be differences in zoning districts, allowed uses, development standards and processes, and the zoning map. Many elements of the new and old regulations and zoning map are similar if not identical. However, to implement policies from adopted planning documents, like the Bozeman Community Plan 2020, and the new legal framework established

by the Montana Land Use Planning Act, many proposed elements are different. Key differences are identified below. This is not an exhaustive list because the changes are too numerous to list individually, and everyone is encouraged to study the entire document and zoning map to understand the full scope and nature of the new regulations.

**Formatting, layout, and organization** – These proposed changes are unique to Bozeman’s UDC.

- Each zoning district is portrayed in two parts, one part for lot information, and one part for building information with key standards identified at a high level. *See divisions 38.210, 38.220, 38.230.*
- The key standards in each district are connected by hyperlinked references to Rules of Interpretation which provide additional details applicable to each standard. *See for example section 38.210.020.*
- Increased use of graphics to illustrate standards. *See for example section 38.260.110.*
- Wording is revised to be less technical and formal.
- Document has been reorganized to place administrative processes at the end and district and use information in the beginning. *See Article 7 for administrative processes.*

**Changes to Processes** – These process changes are a result of changes in state law.

- Administrative decision maker assigned to all site development review and decision making, including variances and preliminary plats, instead of the City Commission, and removing requirements for public meetings. *See section 38.700.010.*
- Replacement of criteria required for adoption or amendments to the UDC text or zoning map. The criteria previously used to evaluate additions or changes to the UDC, under Montana Code Annotated 76-2-304 no longer apply and the state has removed the protest provisions for zoning amendments. *See division 38.770.*
- Administrative appeals process has changed and now has two steps, first an administrative decision may be appealed to the planning commission and second, a decision of the planning commission may be appealed to the city commission. *See section 38.760.030.*
- Public notice of individual site development projects and opportunity to comment has been substantially reduced to comply with state law; public comment will be in writing, the time period for public notice and opportunity to comment for text and map amendments increases and continues to have public hearings. *See division 38.730.*
- Review of individual site development or subdivision no longer includes advisory body input. *See divisions 38.740 and 38.750.*

**Changes to Development Standards and Zoning Districts** – These are in part a result of changes in state law and in part implementation of local adopted policies.

- The City has renamed most residential districts to avoid confusion with the same terms being used for different purposes in the building code. An important change is consolidation of the existing RS, R1, R2, and R3 zoning districts to the new RA zoning district. *See sections 38.200.020 (lot and building standards) and 38.300.020 (uses within each zoning district.) for the new standards.*
- The names and definitions of most residential uses have been changed to match with definitions used in state law. *See sections 38.300.020 and article 8.*

- Deleted the R-O and UMU zoning districts. These districts were replaced on the zoning map by best fit alternative districts and vary by location. *See section 38.200.020 and the zoning map.*
- The number and type of zoning districts, along with allowed land uses have changed. *See divisions 38.200 and 38.300*
- Removed a requirement that residential lots have a minimum size per home. *See division 38.210.*
- The minimum residential density in residential districts increased, some exceptions to compliance are provided for existing lots. *See division 38.210 and section 38.260.030*
- Parking for everything except housing – The requirements are simplified, mixed uses given more flexibility, and the required quantity of parking generally is decreased. Some areas no longer require minimum parking, several alternatives to providing vehicle parking have been removed, including the former SID 565. Parking categories will be consistent with the names of land uses. Standards for physical configuration of parking have few changes. *See sections 38.300.020 and 38.530.040.*
- Set a new method to define building heights. Changed from fixed height in feet to a set number of stories in all districts. This provides both site specific flexibility in building design and a general overall structure and maximum height limits. *See section 38.260.100.*
- Short- and long-term bicycle parking standards are established that replace the existing requirements that previously linked bicycle parking amounts to the number of motor vehicle parking spaces. *See section 38.530.070.*
- Revised the building height transitions between zoning districts. Require a greater number of circumstances for a building height transition to provide a less abrupt difference in building heights between adjacent zoning districts. *See section 38.260.070.*
- Replace the information required with a transportation impact study, modify functional standards for how streets are allowed to carry traffic, and revise mitigation criteria and methods for when development must off-set the impacts on streets from additional development. *See sections 38.400.060 and 38.710.050.*
- Merge most development standards previously presented as Block Frontage in the existing Article 5 into the individual zoning district standards and the associated rules of interpretation Article 2 and Division 38.520.

**Changes to the zoning map** – A zoning map must implement the future land use map from the Bozeman Community Plan 2020 and shows where the standards described in the text apply.

- The R-O district was deleted from the zoning text. This requires replacement of the R-O zoning district on the zoning map with alternate districts. Due to the many different locations, uses, and future planned uses where R-O used to be, the replacement zoning districts vary by location.
- Creation of the B-3C zoning district to reflect the unique characteristics and historic nature of that area. (Generally, between the alleyway north of Main Street and Babcock and between Grand and Rouse)
- Show the RA district (consolidation of the previous RS, R1, R2, and R3 districts) on the zoning map.
- Show the RB (renamed from R4) and RC (renamed from R-5) districts.



- Apply the Public Land and Institutions (PLI) zoning district for all parks and schools which were previously shown as other zoning districts.
- The B-2M zoning district replaces most areas of B2 along the Main Street corridor, at Kagy and S 19<sup>th</sup>, the corner of Baxter and Davis, along College Street, and other select locations.

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## **Anticipated Key Dates in Bozeman Unified Development Code Replacement Public Review**

### ***Document distribution***

Aug 14th – Public Review draft document posted for public access to Engage.Bozeman.net/udc

Aug 23rd -24th – Two in-person open houses for public overview of the draft and questions/answers

23<sup>rd</sup> – Fire Station 3 Community Room – 1705 Vaquero Parkway, 5:30-7

24<sup>th</sup> – City Hall, City Commission Room – 121 N. Rouse Avenue, 11:30-1:30

August 28th – Code Connect on-line through Engage.Bozeman.net/udc for remote overview and questions/answers

### ***Advisory Boards Other Than Community Development Board***

Sustainability Board – project overview August 9<sup>th</sup>

Sustainability Board – Recommendation September 13<sup>th</sup>

Historic Preservation Advisory Board – project overview August 16<sup>th</sup>

Historic Preservation Advisory Board – Recommendation September 21<sup>st</sup> (tentative)

Transportation Advisory Board – project overview August 23<sup>rd</sup>

Transportation Advisory Board – Recommendation September 27<sup>th</sup>

Economic Vitality Board – project overview September 6<sup>th</sup>

Economic Vitality Board – Recommendation October 4<sup>th</sup>

InterNeighborhood Council – project overview/Q&A September 14<sup>th</sup> (No recommendation to be requested due to the nature of the board)

### ***Community Development Board***

Public meetings/hearings as currently scheduled

- Sept 11th Community Development Board – Overview presentation of draft document and map
- Sept 18th Community Development Board public hearing
- Oct 10th Community Development Board public hearing
- Oct 16th Community Development Board public hearing - vote and recommendation on both map and text

### ***City Commission***

Public meetings/hearings as currently scheduled

- Oct 24th City Commission – Overview presentation
- Nov 14th City Commission public hearing

- Nov 21st City Commission public hearing
- Nov 28th City Commission public hearing - provisional adoption text and map
- Dec 19th City Commission final adoption – text and map

## Summary of Senate Bill 382, Montana Land Use Planning Act, and Impacts on Unified Development Code Replacement

Bozeman implements land use planning, subdivision, and zoning as authorized by the State of Montana. The City adopted zoning in 1934 and adopted its first community master plan in 1958. The City has entirely replaced zoning and subdivision regulations 20 times since initial adoption. The City again is repealing and readopting the entire zoning regulations and map as well as its subdivision regulations.

The 2023 Legislature adopted Senate Bill 382, the Montana Land Use Planning Act (the Act) which took effect immediately upon signing on May 17, 2023. The Act has not yet been codified so we cannot yet refer to standard statutory citations. Some communities within large counties must follow the Act and others may choose to. Bozeman is required to follow the Act in its planning, subdivision, and zoning activities. This agenda item is an overview of the bill and impacts that will affect the replacement of the Unified Development Code. This will create many implications for development review practices. Bozeman already uses many of the required practices as part of its daily activities, but some changes are needed to fully implement the bill.

1. Per Section 5, paragraph 4, of the Act, Bozeman is no longer subject to Title 76, chapters 1, 2, 3, or 8 MCA once we have adopted regulations in compliance with the Act. This means the Act has replaced all the governing laws Bozeman has used in the past to establish the composition, roles, and characteristics of the planning board and growth policy. Such as the Montana Subdivision and Platting Act and zoning enabling acts. These older statutes have been in place for at least 50 years, were not well coordinated at the state level, and created a lot of overlapping review and work for all participants. The intention of the Act is to coordinate planning and development review actions to prevent duplicative processes and provide a more seamless review process.

The Act changes the duties of the Community Development Board, removes requirements for the Community Development Board to consider any subdivision reviews, limits governing body reviews to only final subdivision plats, removes the existing criteria and protest provisions for zoning adoption and amendments, changes notice and public engagement requirements, and other changes.

An additional consequence is various bills in the 2023 Legislature that amend Title 76, chapters 1, 2, 3, or 8 MCA subdivision and planning enabling legislation do not apply to Bozeman once SB 382 implementing regulations are adopted. Some elements of those bills have been included in Senate Bill 382. As the City is required to implement SB 382 there is some overlap between the different legislation but only to the extent that SB 382 governs.

2. Public participation. Bozeman has a strong culture of public engagement. The City has established the Engage Bozeman website as an overall engagement portal for large City projects. Section 6 describes the requirements for public engagement. The methods and timing of outreach needs to be identified in a public participation plan at the beginning of a process and can vary by community and subject. This is a much more extensive requirement than is in the prior enabling acts.

The Act places substantial emphasis on the public engaging early and often during the planning process and creation of regulations. Public outreach needs to be an on-going process during development of plans and regulations. Not all activities require the same degree of outreach. The exact nature of outreach needs to be the subject of a public participation plan at the beginning of a process and can vary by community and subject.

The Act requires early identification and evaluation of the impacts of development and public engagement at the beginning of a review or plan development. Once an issue has been raised and evaluated then the issue considered settled. Any subsequent application relying on those findings and conclusions are not subject to further public comment but are subject to any regulations based on those earlier findings and conclusions.

If an application has impacts greater than expected with the land use and issue plans, notice is limited to only those impacts and public comment is only received in writing; there are not public hearings for subdivisions or zoning projects. Sections 22 and 29 describe the limitations.

3. Land Use and Issue Plans. The Act requires preparation of a Land Use Plan. This replaces the term growth policy. There are many similarities between the two types of documents. A Land Use Plan has more detailed content to be addressed. See Section 7, 9-14, and 17 of the Act for the detailed contents. Section 15 authorizes area plans. These are the same as neighborhood plans like the Downtown plan and allows more localized analysis. Bozeman's planning practice has followed the more detailed approach required in the new statute.

Section 16 authorizes a community to adopt Issue Plans. An issue plan is a separate document that analyzes a specific subject within the scope of a Land Use Plan and can provide the needed information for statutory compliance. The City has many of these types of plans now such as the transportation and sewer facility plans. Those plans continue forward as currently established. See page 19 of the Bozeman Community Plan 2020 for a list of these plans and other documents.

As the existing growth policy and facility plans are updated, they will be reviewed and adopted consistent with the requirements of the Act. One change in this process by the Act is that the Planning Commission (Community Development Board) has a responsibility to review all Issue Plans and make a recommendation to the City Commission regarding their adoption and consistency with the Land Use Plan. The Community Development Board recently performed this function for the PRAT plan.

4. Encourage development of housing. Housing availability and cost is a nationwide challenge. Bozeman has been active for many years in working to support construction of all housing and especially housing at lower cost ranges. Some communities have not materially updated their development standards for many decades. Section 19 of the Act requires a local government subject to the Act to include at least five strategies applicable to a

## Summary of Senate Bill 382, Montana Land Use Planning Act, and Impacts on Unified Development Code Replacement

majority of the jurisdictional area where residential development is permitted. Staff will provide an analysis with the UDC update identifying which of the strategies have been selected and to which percentage of the area they apply. Many of the alternatives, like accessory dwellings, are things that Bozeman has been doing for years. Some options are issues actively under development as part of the UDC update prior to passage of SB 382.

5. Amendment process changes. The former enabling acts had specific criteria for amendments to zoning and subdivision regulations that the public and decision makers have seen many times in staff reports. The zoning criteria were referred to as the Lowe criteria after a notable court case. None of those criteria carried forward into the Act. New criteria have been established for zoning and subdivision regulations. These criteria will be the standards against which the UDC replacement will be evaluated for all future amendments as well to regulations or zoning map. Sections 21 and 27 contain these requirements. The law also changes who may initiate amendments.

One key change in the zoning amendment process is that there is no protest provision. The prior protest provisions gave some members of the community more influence on land use decisions than others. With removal of the protest provision all input carries the same weight and must be considered solely on the merits of the information presented. All decisions to approve or deny any amendment will be a simple majority of the City Commission.

Public notice and comment during the amendment process is limited only to those areas not previously settled with adoption of a Land Use Plan or Issue Plan. If the amendment is consistent with the analysis and conclusions of the earlier documents it is not a proper subject for public notice or comment per the Act.

6. Development review processes. SB 382 changes development processes so that both subdivision and zoning site specific reviews are required to be administrative decisions with no advisory board participation. The planning commission's role will be limited to the initial adoption and amendments to the land use plan and development regulations with final decision by city commission. As noted in item 2 above, public notice for both subdivision and zoning applications are restricted by the bill. Sections 22 and 29 describe the limitations.

The City Commission will still be the body that approves final plats. The City Commission recently approved amendments to Chapter 2, BMC that allows the City Manager to accept and grant easements. This has simplified review processes.

The Act requires that a Land Use Plan include a future land use map for areas where growth outside of the City is expected. The Bozeman Community Plan 2020 already has this map. Zoning to implement the future land use map is required even though it may not be in effect until annexation is completed. The draft regulations are expected to include designated districts that will be applicable upon annexation without further action to

## Summary of Senate Bill 382, Montana Land Use Planning Act, and Impacts on Unified Development Code Replacement

amend the zoning map. This action will substantially speed up the process of annexing property and will provide greater predictability to all. If an applicant wishes a different zoning district they can apply for a different district in conjunction with the annexation application.

7. Variances. The required criteria and process for variances, both subdivision and zoning, have been completely replaced and are now the same for both processes. Floodplains continue to have some criteria unique to them. A board of adjustment is no longer allowed to consider variances. All variances are now administrative reviews subject to the standard appeal processes. Variances do not require public hearings and may or may not require public notices depending on whether it is determined that the variance is within the impacts identified with prior planning work.

Variances are still subject to high scrutiny and criteria to ensure they are only used appropriately. The standards and procedures for variances in the Act do not affect the deviation and departure processes that are uniquely Bozeman creations and are adopted for different reasons than variances.

8. Appeals. State law now provides a more complete process description for review of appeals. The board of adjustment is abandoned and no longer hears appeals. Appeals now have two administrative steps from the planning administrator (Director of Community Development) to the Planning Commission, and from the Planning Commission to the City Commission. As with current law, appeals from the City Commission go to District Court.



## **Key past public engagement timeline and resources**

**8/11/2022** Engage Bozeman website for project goes live - <https://engage.bozeman.net/udc>

### **City Commission Work Sessions**

#### **9/13/2022 City Commission Work Session #1**

[Meeting minutes](#) [External Link PDF], [meeting video](#) beginning at 1:49:24 [External Link Video] – Formatting and layout recommendations and direction

#### **10/18/2022 City Commission Work Session #2**

[Meeting minutes](#) [External Link PDF], [meeting video](#) beginning at 2:30:23 [External Link Video] – Residential districts recommendations and direction

#### **11/15/2022 City Commission Work Session #3**

[Meeting minutes](#) [External Link PDF], [meeting video](#) beginning at 3:11:40 [External Link Video] – Sustainability recommendations and direction

#### **2/14/2023 City Commission Work Session #4**

[Meeting video](#) beginning at 3:31:30 [External Link Video] – Commercial district and transitions

#### **2/28/2023 City Commission Work Session #5**

[Meeting video](#) beginning at 2:09:50 [External Link Video] – Discussion and direction on non-residential parking amendments

#### **4/11/2023 City Commission Work Session #6**

[Meeting video](#) beginning at 40:29 [External Link Video] – Discussion and direction on transportation amendments

#### **7/25/2023 City Commission**

[Meeting video](#) beginning at 21:35 [External Link Video] – Overview of Senate Bill 382 and UDC update. Highlights of key changes and upcoming schedule for public release and outreach.

### **Community Development Board Work Sessions**

#### **9/12/2023 Community Development Board Work Session #1**

Discussion of project overall approach, outreach, formatting

#### **11/7/2022 Community Development Board Work Session #2**

Presentation on work done to date. Residential districts.

#### **11/21/2022 Community Development Board Work Session #3**

Presentation on work done to date. Sustainability.

**1/9/2023 Community Development Board Work Session #4**

Residential Districts recommendations, direction from Commission, and further refinement.

**2/27/2023 Community Development Board Work Session #5**

Discussion on transitions and consolidation/revision/deletion of non-residential and mixed use districts.

**4/17/2023 Community Development Board Work Session #6**

Discussion on transportation level of service and traffic impact studies

**5/1/2023 Community Development Board Work Session #7**

Discussion on parking, residential district metrics (including density and open space), and strategy for changing B-2 to B-2M

**6/26/2023 Community Development Board Work Session #8**

Economics of neighborhood commercial – consideration of uses and densities needed to create local service effectively. Information in support of the use and district discussions for the UDC update.

**7/3/2023 Community Development Board Work Session #9**

Review and recommendation to the City Commission on the Park Recreation and Active Transportation Plan replacing Park Recreation Open Space and trail Plan

**7/17/2023 Community Development Board Work Session #10**

Overview of Senate Bill 382 and effects on UDC update, Feedback on district layout, transitions, commercial parking consolidated table, and zoning map viewer for comparison of new/old map.

**8/7/2023 Community Development Board Work Session #11**

UDC public process overview and change highlights.

**Code Connect Online Participation**

**10/27/2022 Code Connect #1**

Public [e-meeting](#) [External Link] to present summary of Commission direction on residential districts and have public question and answer.

**12/1/2022 Code Connect #2**

Public [e-meeting](#) [External Link] to present summary of Commission direction on sustainability and have public question and answer.

**3/28/2023 Code Connect #3**

Public [e-meeting](#) [External Link] to present summary of Commission direction on commercial zoning districts and district transitions and have public question and answer.

**4/20/2023 Code Connect #4**

Public [e-meeting](#) [External Link] to present summary of Commission direction regarding parking and transportation and have public question and answer.

**8/28/2023 Code Connect #5**

Public [e-meeting](#) [External Link] to present the proposed regulations and map and have public question and answer.

**Open Houses**

Aug 23rd -24th – Two in-person open houses for public overview of the draft and questions/answers

23<sup>rd</sup> – Fire Station 3 Community Room – 1705 Vaquero Parkway, 5:30-7

24<sup>th</sup> – City Hall, City Commission Room – 121 N. Rouse Avenue, 11:30-1:30



AN ACT CREATING THE MONTANA LAND USE PLANNING ACT; REQUIRING CITIES THAT MEET CERTAIN POPULATION THRESHOLDS TO UTILIZE THE LAND USE PLAN, MAP, ZONING REGULATIONS, AND SUBDIVISION REGULATIONS PROVIDED IN THE ACT; ALLOWING OTHER LOCAL GOVERNMENTS THE OPTION TO UTILIZE THE PROVISIONS OF 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:

**Section 1. Short Title.** [Sections 1 through 38] may be cited as the "Montana Land Use Planning Act".

**Section 2. Legislative purpose, findings, and intent.** (1) It is the purpose of [sections 1 through 38] 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, public services and infrastructure, the human environment, natural resources, and recreation, and a diversified and sustainable economy.

- (2) The legislature finds that coordinated and planned growth will encourage and support:
- (a) sufficient housing units for the state's growing population that are attainable for citizens of all income levels;
  - (b) the provision of adequate public services and infrastructure in the most cost-effective manner possible, shared equitably among all residents, businesses, and industries;
  - (c) the natural environment, including wildlife and wildlife habitat, sufficient and clean water, and healthy air quality;
  - (d) agricultural, forestry, and mining lands for the production of food, fiber, and minerals and their economic benefits;
  - (e) the state's economy and tax base through job creation, business development, and the revitalization of established communities;
  - (f) persons, property, infrastructure, and the economy against natural hazards, such as flooding, earthquake, wildfire, and drought; and
  - (g) local consideration, participation, and review of plans for projected population changes and impacts resulting from those plans.
- (3) It is the legislature's intent that the comprehensive planning authorized in [sections 1 through 38]:
- (a) provides the broadest and most comprehensive level of collecting data, identifying and analyzing existing conditions and future opportunities and constraints, acknowledging and addressing the impacts of development on each jurisdiction, and providing for broad public participation;
  - (b) serves as the basis for implementing specific land use regulations that are in substantial compliance with the local land use plan;
  - (c) provides for local government approval of development proposals in substantial compliance with the land use plan, based on information, analysis, and public participation provided during the development and adoption of the land use plan and implementing regulations; and
  - (d) allows for streamlined administrative review decisionmaking for site-specific development applications.

**Section 3. Definitions.** As used in [sections 1 through 38], unless the context or subject matter clearly requires otherwise, the following definitions apply:

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

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

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

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

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

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

(7) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to [sections 1 through 38]. The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land.

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

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

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

(11) "Final plat" means the final drawing of the subdivision and dedication required by [sections 1

through 38] to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in [sections 1 through 38] and in regulations adopted pursuant to [sections 1 through 38].

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

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

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

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

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

(17) "Land use plan" means the land use plan and future land use map adopted in accordance with [sections 1 through 38].

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

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

(20) "Local government" means a county, consolidated city-county, or an incorporated municipality to which the provisions of [sections 1 through 38] apply as provided in [section 5].

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

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



issued by the planning administrator.

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

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

(25) "Planning administrator" means the person designated by the local governing body to review, analyze, provide recommendations, or make final decisions on any or all zoning, subdivision, and other development applications as required in [sections 1 through 38].

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

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

(28) "Public utility" has the meaning provided in 69-3-101, except that for the purposes of [sections 1 through 38], the term includes a county water or sewer district as provided for in Title 7, chapter 13, parts 22 and 23, and municipal sewer or water systems and municipal water supply systems established by the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44.

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

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

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

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

mobile homes will be placed.

(33) "Subdivision guarantee" means a form of guarantee that is approved by the commissioner of insurance and is specifically designed to disclose the information required in [section 34].

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

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

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

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

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

(c) (i) Any combination of legally authorized planning boards, zoning commissions, planning and zoning commissions, or boards of adjustment existing prior to [the effective date of this act] may be considered duly constituted under [sections 1 through 38] as a planning commission by agreement of the governing bodies of each jurisdiction represented on the planning commission.

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

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

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

(2) (a) (i) Each planning commission must consist of an odd number of no fewer than three voting

members who are confirmed by majority vote of each local governing body.

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

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

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

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

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

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

- (i) the land use plan and future land use map as provided in [section 7];
- (ii) zoning regulations and map as provided in [sections 18 through 24];
- (iii) subdivision regulations as provided in [sections 25 through 34]; and
- (iv) any other legislative land use planning document the local governing body designates.

(b) In accordance with [section 37], the planning commission shall hear and decide appeals from any site-specific land use decisions made by the planning administrator pursuant to the adopted regulations described in subsection (3)(a). Decisions of the planning commission may be appealed to the local governing body as provided in [section 37].

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

**Section 5. Applicability and compliance.** (1) A municipality with a population at or exceeding 5,000 located within 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 38].

(2) (a) Except as provided in subsection (2)(b), any municipality that meets the population thresholds of subsection (1) on [the effective date of this act] shall comply with the provisions of [sections 1 through 38] within 3 years of [the effective date of this act].

(b) A municipality 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 38] within 5 years of the date that the growth policy was adopted or within the deadline established in subsection (2)(a), whichever occurs later.

(c) A municipality that meets the population thresholds of subsection (1) on any decennial census completed after [the effective date of this act] shall comply with the provisions of [sections 1 through 38] by December 31 of the third year after the date of the decennial census.

(3) (a) A local government that is not required to comply with the provisions of [sections 1 through 38] may decide to comply with the provisions of [sections 1 through 38] 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 38] by December 31 of the fifth year after the date of the vote.

(b) A local government that votes pursuant to subsection (3)(a) to comply with the provisions of [sections 1 through 38] may subsequently decide to not comply with the provisions of [sections 1 through 38] by an affirmative vote.

(4) A local government that complies with [sections 1 through 38] is not subject to any provision of Title 76, chapters 1, 2, 3, or 8.

**Section 6. Public participation.** (1) (a) A local government shall provide continuous public participation when adopting, amending, or updating a land use plan or regulations pursuant to [sections 1 through 38].

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

- (i) dissemination of draft documents;
- (ii) an opportunity for written and verbal comments;
- (iii) public meetings after effective notice;

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

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

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

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

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

(ii) notice of written comment on applications for land use permits pursuant to [sections 1 through 38].

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

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

(d) The department of commerce established in 2-15-1801 and functioning pursuant to 90-1-103 shall develop a list of public participation methods and best practices for use by local governments in 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, agriculture, 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.

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

(4) The governing body shall incorporate any existing neighborhood, area, or plans adopted pursuant to Title 76, chapter 1, that meet the requirements of [sections 1 through 38] into the land use plan and future land use map.

(5) (a) The governing body shall consider the recommendation of the planning commission 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.

(b) After providing public notice and participation in accordance with [section 6], the governing

body may adopt, with any revisions the local governing body considers appropriate, or reject the land use plan and future land use map or any amendment to the proposed land use plan and future land use map proposed by the planning commission.

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

(a) by majority vote of the governing body;

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

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

(7) (a) After the initiation of an amendment to a land use plan or future land use map allowed in subsection (6), the planning commission shall make a preliminary determination of whether the proposed land use plan or future land use map 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 in the development of the land use plan.

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

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

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

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

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

(a) make a preliminary determination regarding the existence of new or increased impacts to or



from local facilities, services, natural resources, natural environment, or natural hazards from those previously described and analyzed when the land use plan and future land use map were previously adopted;

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

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

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

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

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

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

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

**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.

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

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

- (b) an inventory of sites, including zoned, unzoned, vacant, underutilized, and potential redevelopment sites, available to meet the jurisdiction's needed housing types;
  - (c) an analysis of any constraints to housing development, such as zoning, development standards, and infrastructure needs and capacity, and the identification of market-based incentives that may affect or encourage the development of needed housing types; and
  - (d) a detailed description of what actions the jurisdiction may take to accommodate the projected needed housing types identified in subsection (1)(a).
- (2) The housing section of the land use plan and future land use map may incorporate by reference any information or policies identified in other housing needs assessments adopted by the governing body.
- (3) If, after performing the analysis required in subsection (1), the local government determines that the total needed housing types may not be met due to lack of resources, development sites, infrastructure capacity, or other documented constraints, the local government shall establish the minimum number of housing units that may be rehabilitated, improved, or developed within the jurisdiction over the 20-year planning period and the actions the local government may take to remove constraints to the development of those units over that period.
- (4) Progress toward the construction of the housing units identified as needed to meet projected housing needs during the 20-year planning period of the land use plan must be documented at each fifth year review of the land use plan as required in [section 8].
- (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.

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

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

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

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

(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.

**Section 12. Economic development.** (1) The land use plan must:

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

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

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

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

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

(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.

**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.

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

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

and addressing the natural resource, environment, and natural hazards of the jurisdiction.

(3) The future land use map may not confer any authority to regulate what is not otherwise specifically authorized in [sections 1 through 38].

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

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

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

(i) categories of public and private use;

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

(iii) general descriptions of population; and

(iv) other aspects of the built environment;

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

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

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

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

(d) a statement acknowledging areas within the jurisdiction known to be subject to covenants, codes, and restrictions that may limit the type, density, or intensity of housing development projected in the future land use map; and

(e) 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)(e).

(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.

**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.

**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.

**Section 17. Implementation.** (1) The land use plan and future land use map is not a regulatory document and must include an implementation section that:

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

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

(c) requires identification of those programs, activities, actions, or land use regulations that may be

part of the overall strategy of the jurisdiction for implementing the land use plan.

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

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

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

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

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

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

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

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

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

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

**Section 18. Authority to adopt local zoning regulations.** (1) (a) A local government subject to [sections 1 through 38], within its respective jurisdiction, has the authority to and shall regulate the use of land in substantial compliance with its adopted land use plan by adopting zoning regulations.

(b) The governing body of a county or city has the authority to adopt zoning regulations in

accordance with [sections 18 through 24] by an ordinance that substantially complies with 7-5-103 through 7-5-107.

(c) A municipality shall adopt zoning regulations for the portions of the jurisdictional area outside of the boundaries of the municipality that the governing body anticipates may be annexed into the municipality over the next 20 years. Unless otherwise agreed to by the applicable jurisdictions, zoning regulations on property outside the municipal boundaries may not apply or be enforced until those areas are annexed or are being annexed into the municipality.

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

- (a) uses of land;
- (b) density of uses;
- (c) types of uses;
- (d) size, character, number, form, and mass of structures; and
- (e) development standards mitigating the impacts of development, as identified and analyzed during the land use planning process and review and adoption of zoning regulations pursuant to [sections 1 through 38].

(3) The local government shall incorporate any existing zoning regulations adopted pursuant to Title 76, chapter 2, into the zoning regulations meeting the requirements of [sections 1 through 38].

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

(5) The local government may provide for the issuance of permits as may be necessary for the implementation of [sections 1 through 38].

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

(b) The regulations must prohibit development in the areas identified in subsection (6)(a) unless

the hazards or impacts may be eliminated or overcome by approved construction techniques or other mitigation measures identified in the zoning regulations.

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

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

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

**Section 19. Encouragement of development of housing.** (1) The zoning regulations authorized in [section 18] must include a minimum of five of the following housing strategies, applicable to the majority of the area, where residential development is permitted in the jurisdictional area:

- (a) allow, as a permitted use, for at least a duplex where a single-unit dwelling is permitted;
- (b) zone for higher density housing near transit stations, places of employment, higher education facilities, and other appropriate population centers, as determined by the local government;
- (c) eliminate or reduce off-street parking requirements to require no more than one parking space per dwelling unit;
- (d) eliminate impact fees for accessory dwelling units or developments that include multi-unit dwellings or reduce the fees by at least 25%;
- (e) allow, as a permitted use, for at least one internal or detached accessory dwelling unit on a lot with a single-unit dwelling occupied as a primary residence;
- (f) allow for single-room occupancy developments;
- (g) allow, as a permitted use, a triplex or fourplex where a single-unit dwelling is permitted;

- (h) eliminate minimum lot sizes or reduce the existing minimum lot size required by at least 25%;
  - (i) eliminate aesthetic, material, shape, bulk, size, floor area, and other massing requirements for multi-unit dwellings or mixed-use developments or remove at least half of those requirements;
  - (j) provide for zoning that specifically allows or encourages the development of tiny houses, as defined in Appendix Q of the International Residential Code as it was printed on January 1, 2023;
  - (k) eliminate setback requirements or reduce existing setback requirements by at least 25%;
  - (l) increase building height limits for dwelling units by at least 25%;
  - (m) allow multi-unit dwellings or mixed-use development as a permitted use on all lots where office, retail, or commercial are primary permitted uses; or
  - (n) allow multi-unit dwellings as a permitted use on all lots where triplexes or fourplexes are permitted uses.
- (2) If a local government's existing zoning ordinance adopted pursuant to Title 76, chapter 2, before [the effective date of this act] does not contain a zoning regulation that is listed as a regulation to be eliminated or reduced in subsection (1), that strategy is considered adopted by the local government.
- (3) If the adoption of a housing strategy allowed in subsection (1) subsumes another housing strategy allowed in subsection (1), only one strategy may be considered to have been adopted by the local government.

**Section 20. Limitations on zoning authority.** (1) A local government acting pursuant to [sections 18 through 24] may not:

- (a) treat manufactured housing units differently from any other residential units;
- (b) include in a zoning regulation any requirement to:
  - (i) pay a fee for the purpose of providing housing for specified income levels or at specified sale prices; or
  - (ii) dedicate real property for the purpose of providing housing for specified income levels or at specified sale prices, including 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;
- (c) prevent the erection of an amateur radio antenna at heights and dimensions sufficient to

accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

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

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

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

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

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

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

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

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

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

**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, as related to an application for any zoning, subdivision, or other land use permit or approval.

(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



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

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

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

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

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

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

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

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

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

(3) Zoning compliance permits and other ministerial permits may be issued by the planning administrator or the planning administrator's designee without any further review or analysis by the governing body, except as provided in [section 37].

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

except as provided in [section 37].

(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 37].

(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].

**Section 23. Zoning and annexation.** (1) A municipality shall review and consider a proposed annexation in conjunction with the zoning regulations for the property to be annexed adopted pursuant to [section 18(1)(c)] 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.

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

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

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

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

(4) A local government may not act under the authority provided for in this section until the local government has adopted a land use plan and zoning regulations pursuant to [sections 1 through 38].

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

(b) The governing body of a county or city has the authority to adopt subdivision regulations in accordance with [sections 25 through 34] by an ordinance that substantially complies with 7-5-103 through 7-5-107.

(c) A municipality shall adopt subdivision regulations for those portions of the jurisdictional area outside the boundaries of the municipality that the governing body anticipates may be annexed into the municipality over the next 20 years. Unless otherwise agreed to by the applicable jurisdictions, subdivision regulations on property outside the municipal boundaries may not apply or be enforced until the areas are annexed or being annexed into the municipality.

(2) The subdivision regulations must provide a process for the application and consideration of subdivision exemptions, certificates of survey, preliminary plats, and final plats as necessary for the implementation of [sections 1 through 38].

(3) (a) A local governing body may not require, as a condition for approval of a subdivision under this [sections 25 through 34]:

(i) the payment of a fee for the purpose of providing housing for specified income levels or at 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 34].

**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 38]:

(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;
  - (e) the reservation of a life estate on a portion of a tract of record;
  - (f) the lease or rental of a portion of a tract of record for farming and agricultural purposes;
  - (g) the division of property over which the state does not have jurisdiction;
  - (h) the creation of rights-of-way or utility sites;
  - (i) the creation of condominiums, townhomes, townhouses, or conversions, as those terms are defined in 70-23-102, when any applicable park dedication requirements as set forth in [sections 18 through 24] are complied with;
  - (j) the lease or rental of contiguous airport-related land owned by a city, a county, the state, or a municipal or regional airport authority;
  - (k) subject to subsection (4), a division of state-owned land, unless the division creates a second or subsequent residential parcel from a single tract for sale, rent, or lease after July 1, 1974;
  - (l) the creation of lots by deed, contract, lease, or other conveyance executed prior to July 1, 1974;
  - (m) the relocation of common boundary lines between or aggregations of adjoining properties that does not result in an increase in the number of lots;
  - (n) a single gift or sale in each county to each member of the landowner's immediate family; or
  - (o) subject to subsection (5), the creation of lots by deed, contract, lease, or other conveyance in which the landowner enters into a covenant with the governing body that runs with the land that provides that the divided land must be used exclusively for agricultural purposes.
- (2) Before a court of record orders a division of land under subsection (1)(a), the court shall notify the governing body of the pending division and allow the governing body to present written comment on the division.
- (3) A transfer of divided land by the owner of the property at the time that the land was divided to any party other than those identified in subsection (1)(b) subjects the division of land to the requirements of [sections 1 through 38].
- (4) Instruments of transfer of land that is acquired for state highways may refer by parcel and project number to state highway plans that have been recorded in compliance with 60-2-209 and are exempted

from the surveying and platting requirements of [sections 1 through 38]. If the parcels are not shown on highway plans of record, instruments of transfer of the parcels must be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

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

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

(b) An amendment to adopted subdivision regulations 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, as related to an application for any zoning, subdivision, or other land use permit or approval.

(2) Prior to making a recommendation to the governing body to adopt or amend subdivision regulations, 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 subdivision regulation or amendment to a subdivision regulation. All public comment must be part of the administrative record transmitted to the governing body.

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

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

(ii) reflects applicable strategies from the land use plan and zoning regulations to encourage the

development of housing within the jurisdiction;

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

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

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

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

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

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

(3) If the planning commission finds new or increased potential impacts from the proposed regulation or amendment to a regulation pursuant to 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, pursuant to [section 6], to comment on and consider all potential impacts resulting from adoption of the subdivision regulation or amendment to a subdivision regulation.

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

(5) (a) The governing body shall consider each subdivision regulation or amendment to a subdivision regulation 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 that the governing body considers appropriate, or reject the subdivision

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.

**Section 28. Contents of local subdivision regulations.** (1) The subdivision regulations adopted under [sections 25 through 34] are limited to the following requirements:

(a) the date the regulations initially become effective under [sections 1 through 38] 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:

- (i) reserve all or a portion of the appropriation water rights owned by the owner of the subject property, transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water, and reserve and sever any remaining surface water rights from the land;
- (ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement that is administered through a single entity and that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

- (iii) reserve and sever all surface water rights from the land;

- (d) except as provided in subsection (2), a requirement that the subdivider establish ditch easements that:

- (i) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

- (ii) unless otherwise provided for under a separate written agreement or filed easement, provide for the unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

- (iii) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

- (iv) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner;

- (e) criteria that the planning administrator must use to determine whether a proposed method of disposition using the exemptions provided in [sections 1 through 38] is an attempt to evade the requirements of [sections 1 through 38];

- (f) a list of the materials that must be included in order for the application to be determined

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.

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

**Section 29. Local review procedure for divisions of land.** (1) An applicant may request a preapplication submittal and response from the planning administrator prior to submitting a subdivision application. The preapplication review must take place no more than 30 business days from the date that the planning administrator receives a written request for a preapplication review from the subdivider.

(2) On receipt of an application for an exemption from subdivision review under [section 26] that contains all materials and information required by the governing body under subsection (5), the local government:

- (a) shall approve or deny the application within 20 business days;
- (b) may not impose conditions on the approval of an exemption from subdivision review except for conditions necessary to ensure compliance with the survey requirements of [section 33(1)]; and
- (c) may require the certificate of survey to be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before filing with the county clerk and recorder. The examining land surveyor shall certify compliance in a printed or stamped certificate signed by the surveyor on the certificate of survey. A professional land surveyor may not act as an examining land surveyor in regard to a certificate of survey in which the surveyor has a financial or personal interest.

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

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

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

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

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

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

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

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

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

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

(b) The application is not subject to any further public review or comment, except as provided in [section 37].

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

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

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

(ii) collect additional data or perform additional analysis that 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 this subsection (8)(a); and

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

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

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

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

(a) meets the requirements and standards of [sections 1 through 38];

(b) meets the survey requirements provided in [section 33(1)];

(c) provides the necessary easements within and to the proposed subdivision for the location and

installation of any planned utilities; and

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

(11) (a) The written decision must identify each finding required in subsection (10) that supports the 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 37].

(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.

**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 approval period.

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

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

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

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

(b) a plat that meets the survey requirements provided in [section 33(1)]; and

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

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

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

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

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

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

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

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

(6) 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.

(7) (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 (6).

(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 (7)(b), the planning administrator may impose conditions on any phase before final plat approval is sought.

**Section 32. Filing and recordation of plats and certificates of survey.** (1) (a) Except as provided in subsection (1)(b), every final plat or certificate of survey must be filed for record with the county clerk and recorder before title to the land may be sold or transferred in any manner. The clerk and recorder of the county may not accept any final plat or certificate of survey for record that has not been approved in accordance with [sections 25 through 34] unless the final plat or certificate of survey 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;

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

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

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

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

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

(3) (a) The county clerk and recorder shall maintain an index of all recorded and filed subdivision

plats and certificates of survey.

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

(4) The recording of any plat made in compliance with the provisions of [sections 1 through 38] must serve to establish the identity of all lands shown on and being part of the plat. When lands are conveyed by reference to a plat, the plat itself or any copy of the plat properly certified by the county clerk and recorder as being a true copy thereof must be regarded as incorporated into the instrument of conveyance and must be received in evidence in all courts of this state.

(5) (a) Any plat prepared and recorded as provided in [sections 25 through 34] may be vacated 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) and (2), and 7-14-4115. Upon vacation, the governing body or the district court, as provided in 7-5-2502, shall determine to which properties the title to the streets and alleys of the vacated portions must revert. The governing body or the district court, as provided in 7-5-2502, shall take into consideration:

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

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

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

**Section 33. Survey requirements.** (1) Divisions of land under [sections 1 through 38] must follow the uniform standards governing monumentation, certificates of survey, and subdivision plats prescribed and adopted by the board of professional engineers and professional land surveyors.

(2) All division of sections into aliquot parts and retracement of lines must conform to United States bureau of land management instructions, and all public land survey corners must be filed in accordance with Title 70, chapter 22, part 1. Engineering plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the governing body must be prepared and filed by a registered engineer or a registered land surveyor, as their respective licensing laws allow, in accordance with [sections 25 through 34] and regulations adopted pursuant to [sections 25 through 34].

(3) All divisions of land for sale other than a subdivision created after July 1, 1974, divided into parcels that cannot be described as 1/32 or larger aliquot parts of a United States government section or a United States government lot must be surveyed by or under the supervision of a registered land surveyor. Surveys required under this section must comply with the requirements of subsection (8).

(4) Except as provided in 70-22-105, within 180 days of the completion of a survey, the professional land surveyor responsible for the survey, whether the surveyor is privately or publicly employed, shall prepare and submit for filing a certificate of survey in the county in which the survey was made if the survey:

- (a) provides material evidence not appearing on any map filed with the county clerk and recorder or contained in the records of the United States bureau of land management;
- (b) reveals a material discrepancy in the map;
- (c) discloses evidence to suggest alternate locations of lines or points; or
- (d) establishes one or more lines not shown on a recorded map, the positions of which are not ascertainable from an inspection of the map without trigonometric calculations.

(5) A certificate of survey is not required for any survey that is made by the United States bureau of land management, that is preliminary, or that will become part of a subdivision plat being prepared for recording under the provisions of [sections 1 through 38].

(6) It is the responsibility of the governing body to require the replacement of all monuments removed in the course of construction.

- (7) (a) A registered land surveyor may administer and certify oaths when:
- (i) it becomes necessary to take testimony for the identification of old corners or reestablishment of lost or obliterated corners;
  - (ii) a corner or monument is found in a deteriorating condition and it is desirable that evidence concerning it be perpetuated; or
  - (iii) the importance of the survey makes it desirable to administer an oath to the surveyor's assistants for the faithful performance of their duty.
- (b) A record of oaths must be preserved as part of the field notes of the survey and noted on the certificate of survey filed under subsection (4).
- (8) (a) (i) A surveyor who completes a survey identified in subsection (8)(b) that establishes or defines a section line and creates a parcel that crosses the established or defined section line so that an irrigation district assessment boundary is included in more than one section shall note on the survey the acreage of the farm unit or created parcel in each section.
- (ii) The surveyor shall notify the appropriate irrigation district of the existence of the survey and the purpose of the survey.
- (b) The requirements of subsection (8)(a) apply only to surveys for which the surveyor determines that, based on available public records, the survey involves land:
- (i) traversed by a canal or ditch owned by an irrigation district; or
  - (ii) included in an irrigation district.

**Section 34. Public improvements and extension of capital facilities.** (1) Except as provided in subsections (1)(a) and (1)(c), the governing body shall require the subdivider to complete required improvements within the proposed subdivision prior to the approval of the final plat.

(a) (i) In lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body shall, at the subdivider's option, allow the subdivider to provide or cause to be provided a bond or other reasonable security, in an amount and with surety and conditions satisfactory to the governing body, providing for and securing the construction and installation of the improvements within a period specified by the governing body and expressed in the bonds or other security. The governing body shall reduce

bond or security requirements commensurate with the completion of improvements. Failure of the local government to require the renewal of a bond does not waive the subdivider's responsibility to complete the required improvements prior to the approval of the final plat.

(ii) In lieu of requiring a bond or other means of security for the construction or installation of all the required public improvements under subsection (2)(a)(i), the governing body may enter into a subdivision improvements agreement with the subdivider that provides for an incremental payment, guarantee plan, or other method of completing the necessary improvements to serve the development as set forth in the preliminary plat approval.

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

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

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

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

**Section 35. Variances.** (1) All land use regulations must include a process for the submission and review of variances.

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

- (3) Variance applications must be considered and approved or approved with conditions before application or in conjunction with application for a zoning permit or subdivision approval.
- (4) The granting of a variance must meet all of the following criteria:
  - (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 37].

**Section 36. 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 38] to defray the expense of performing the review.

**Section 37. Appeals.** (1) Appeals of any final decisions made pursuant to [sections 1 through 38] 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. The appellant has the burden of proving that the appealed decision was made in error.

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

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

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

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

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

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

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

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

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

(7) Nothing in [sections 1 through 38] is subject to any provision of Title 2, chapter 4.

**Section 38. Enforcement and penalties.** (1) A local government may, by ordinance, establish civil penalties for violations of any of the provisions of [sections 1 through 38] or of any ordinances adopted under the authority of [sections 1 through 38].

(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 38] or of any ordinances adopted under the authority of [sections 1 through 38] 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.

**Section 39. 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.

**Section 40. Codification instruction.** [Sections 1 through 38] are intended to be codified as an integral part of Title 76, and the provisions of Title 76 apply to [sections 1 through 38].

**Section 41. Effective date.** [This act] is effective on passage and approval.



**Section 42. Applicability.** [This act] applies to local governments that currently meet the population thresholds in [section 5].

- END -

I hereby certify that the within bill,  
SB 382, originated in the Senate.

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Secretary of the Senate

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2023.

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2023.

SENATE BILL NO. 382

INTRODUCED BY F. MANDEVILLE, D. FERN, S. VINTON, M. BERTOGLIO, L. BREWSTER, M. HOPKINS, E.  
BOLDMAN, G. HERTZ, C. FRIEDEL, J. KARLEN

AN ACT CREATING THE MONTANA LAND USE PLANNING ACT; REQUIRING CITIES THAT MEET CERTAIN POPULATION THRESHOLDS TO UTILIZE THE LAND USE PLAN, MAP, ZONING REGULATIONS, AND SUBDIVISION REGULATIONS PROVIDED IN THE ACT; ALLOWING OTHER LOCAL GOVERNMENTS THE OPTION TO UTILIZE THE PROVISIONS OF 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.