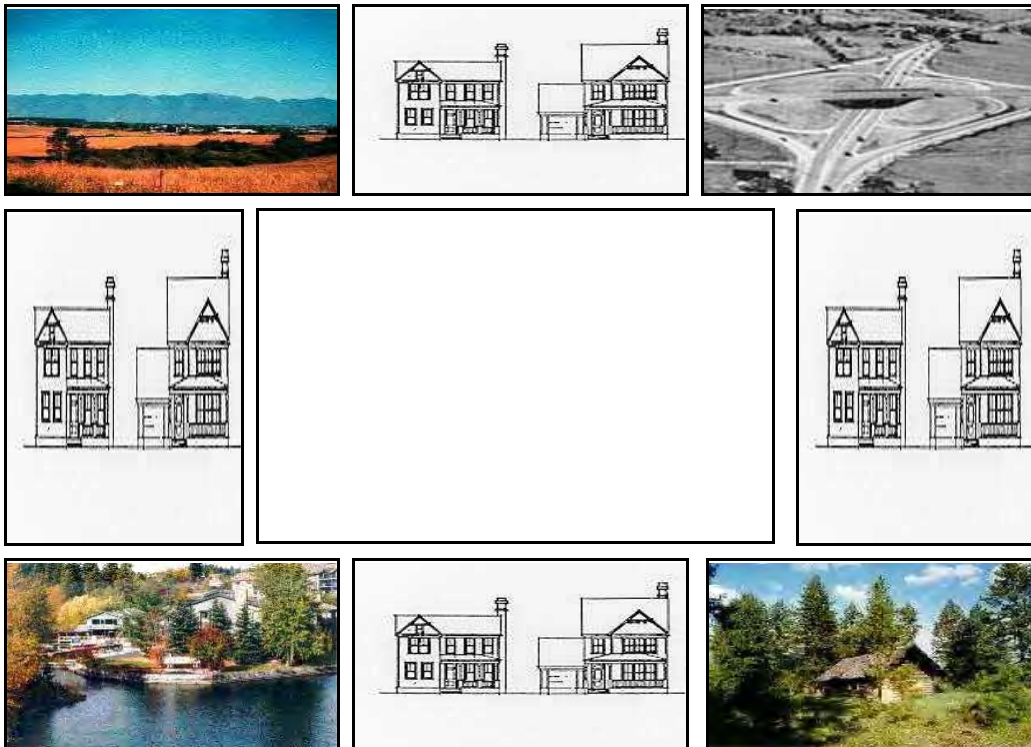


# PLANNING FOR GROWTH IN MONTANA



## **Final Report to the 56th Legislature of the State of Montana**

**Legislative Environmental Policy Office  
Environmental Quality Council Growth Study Subcommittee  
January 1999**

Planning for Growth  
Final Report to the 56th Montana Legislature  
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# Table of Contents

<b>Chapter 1: Why Plan for Growth?</b> .....	<b>1</b>
<b>Chapter 2: Planning and Land Use Tools Available in Montana</b> .....	<b>15</b>
<b>Chapter 3: Planning for Growth -- What Have We Learned?</b> .....	<b>25</b>
<b>Chapter 4: Resources for Planning</b> .....	<b>71</b>
<b>Chapter 5: Toward Better Planning for Growth in Montana Communities: Council Findings and Recommendations</b> .....	<b>78</b>

## List of Illustrations

Figure 1-A	Montana Population, 1890-1997 .....	3
Figure 1-B	Population Growth in Montana, 1960-1997 .....	4
Table 1-A	Population Growth in Montana, 1960-1997 .....	4
Figure 1-C	Rate of Population Change among Montana Counties, 1990 to 1997 .....	6
Table 1-B	Population Growth among Growing Counties in Montana, 1990-1997 .....	7
Table 1-C	Growing Cities and Towns Population Increase, 1990-1996 .....	8
Table 1-D	Growth Trends in Montana's Counties .....	10
Figure 2-A	The Local Planning Enabling Act .....	15
Figure 2-B	Steps in the County Planning Process .....	16
Figure 2-C	Minimum Requirements for Local Subdivision Regulations .....	19
Table 2-A	Status of Master Plans for 14 Growing Counties .....	23
Table 2-B	Types of Zoning in Growing Counties .....	24
Table 3-A	Number of Subdivisions Reviewed Per Year by Selected Montana Counties ..	26
Table 4-A	Resources Required to Prepare or Update Master Plans .....	71

Table 4–B	Annual Budgets for County Planning Departments .....	72
Table 4 –C	Use of Planning Mill Levy by Montana’s Growing Counties, FY 1997 .....	73

# Chapter 1: Why Plan for Growth?

## **A. Introduction -- Environmental Quality Council Study**

The Environmental Quality Council (EQC) is a state legislative committee created by the 1971 Montana Environmental Policy Act. It is a seventeen member bipartisan committee consisting of six state senators, six state representatives, four citizen members, and one representative from the Governor's office. One of the EQC's statutory responsibilities is to encourage conditions under which people can coexist with nature in "productive harmony."

### **1. Our Montana Environment . . . Where Do We Stand?**

The EQC conducted a study of trends in segments of the natural environment during the 1995-1997 interim. The result was the production of a document titled Our Montana Environment Where Do We Stand? (EQC, 1996). Using available data, the report documented trends in population, economic conditions, land use, agriculture, forests, wildlife, waste, energy, minerals, remediation, water quality, water quantity and outdoor recreation between 1975 and 1995. Trends documented in the report that relate to growth and changes in land use are highlighted below.

- Between 1975 and 1995, the population density in 12 counties increased by more than 25 percent. Most of those counties were in the western third of the state.
- Slightly more than half of Montanans live in urban areas. This ratio did not change significantly between 1970 and 1990.
- The number of water wells increased by more than 10 percent in 23 counties between 1990 and 1995.
- More than 11,000 subdivision proposals to create 34,000 residential parcels were reviewed by the Montana Department of Environmental Quality in the ten years prior to publication of the report.
- Between 1978 and 1996, state acreage in conservation easements increased from 840 acres to almost 500,000 acres. More than half of the increase occurred during the last five years of this period.
- The number of farms and ranches decreased by approximately 11 percent between 1990 and 1995.
- Between 1974 and 1994, lands in agriculture decreased by 3.1 million acres, dropping from 66.9 percent to 64.2 of the state's land area. The largest reductions in acres of land

used for agriculture occurred in the northwest corner of the state as well as in counties in the southwest and south central regions that have experienced large population growth.

## **2. EQC Growth Study Subcommittee**

At the beginning of the next interim (1997-1998) the EQC had received three requests from legislators to address growth issues. The EQC decided to make the topic of growth a priority in its workplan. In September 1997 the EQC appointed a 6-member Growth Study Subcommittee to investigate the issues that arise from growth related concerns and make recommendations to the full Council. This report is the result of that effort.

Past and current state policy empowers local governments with the authority to address growth, and it mandates the process by which the authority is used within their jurisdictions. Much is authorized, but unless the authority is exercised locally, little is required.

One of the few state mandates is the requirement that local governments review and decide upon subdivision applications. During the course of its deliberations, the Subcommittee determined that, in high growth areas of the state, local resources dedicated to growth concerns were being consumed by the subdivision review process. Additionally, much of the Legislature's past efforts have been devoted to issues involving state subdivision policies.

In March 1998, the Subcommittee adopted this goal for the study:

*Change the discussion of growth from a discussion of subdivision review to one of the planning process. Try to provide incentives for the adoption and implementation of comprehensive planning.*

The Growth Study Subcommittee goal is consistent with the EQC's statutory responsibility to encourage conditions under which people can coexist with nature in productive harmony.

The process for development of this report included the following steps:

- A survey was distributed to local government officials.
- Nine Growth Study Subcommittee meetings were held to hear panel presentations and testimony from the public and to discuss issues.
- Staff conducted research that included contacting numerous local government officials and others interested in growth.
- Growth Study Subcommittee members prioritized issues to be addressed during the 1997-1998 interim.

- A draft report that presented options for action was distributed to more than 200 individuals and organizations for review and comment in October 1998.
- Tentative findings and recommendations were presented to participants at two Montana growth conferences held in November 1998.
- The EQC adopted final findings and recommendations in December 1998.

Given the unequal distribution of population and population growth in Montana, legislative policy decisions that may apply equally to all areas of the state need careful consideration. Although this report focuses primarily on the trends and issues in the fastest growing areas, the Growth Study Subcommittee was careful to take into consideration regional differences in its analysis and development of recommendations.

## **B. Growth Trends**

This section will address growth trends in Montana and focus on geographic areas that have experienced growth.

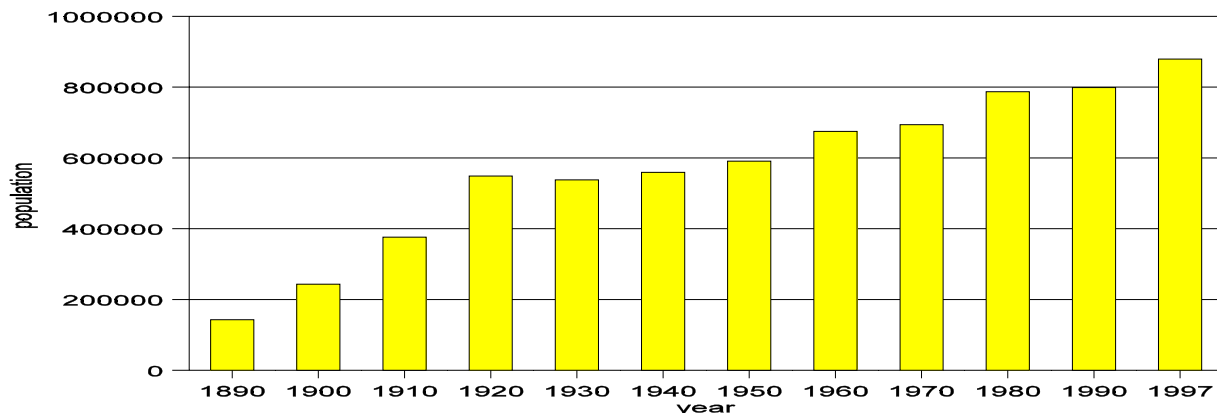
### **1. Statewide Population Trends**

#### **Historic trends**

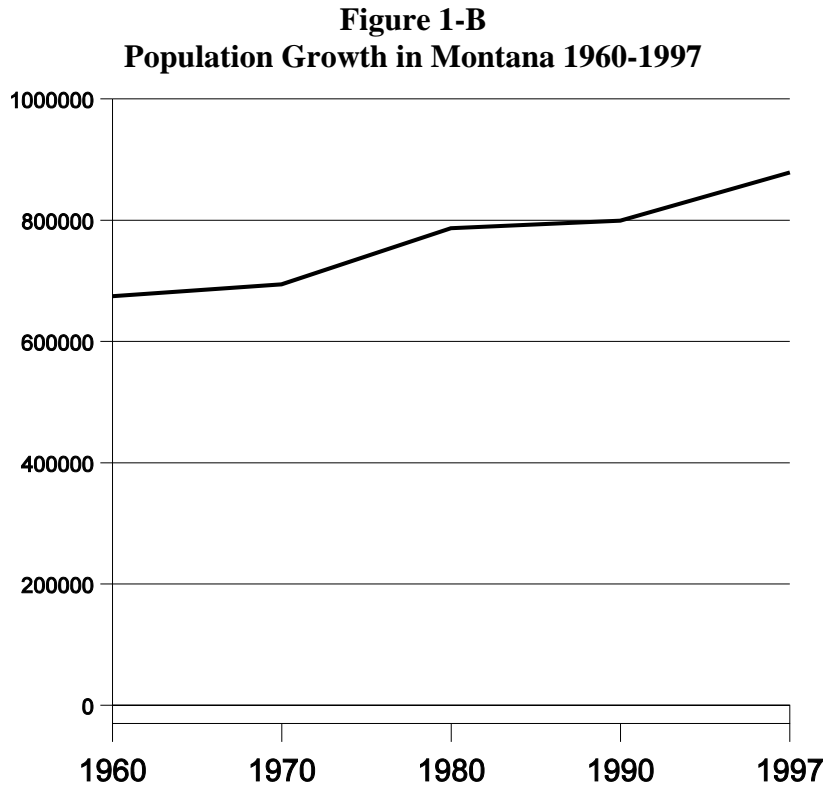
In the first half of the 1990's, Montana experienced an overall increase in population growth as part of a growing trend of the nation's "rediscovery of the west." Measured in terms of decades, the state has experienced growth cycles before, followed by periods of stability or stagnation.

**Figure 1-A** shows Montana's population growth since 1890.

**Figure 1-A  
Montana Population 1890-1997**



Montana has seen a combination of stagnation and bursts of growth in population since 1960. **Figure 1-B** illustrates this growth. Numbers are provided in **Table 1-A**.



**Table 1-A**  
**Population Growth in Montana: 1960-1997**

Year	1960	1970	1980	1990	1997
Population	674,767	694,409	786,690	799,065	878,810

Source: U.S. Bureau of the Census data compiled by Montana Census and Economic Information Center, Montana Department of Commerce (CEIC), 1995.

Montana's population increased by 10 percent between 1990 and 1997 (U.S. Census, 1998). This rate is higher than the national growth rate of 7.6 percent during the same period, but less than most other Rocky Mountain states. Idaho (20%), Utah (almost 20%), Colorado (18%), and New Mexico (14%) all experienced higher rates of growth.

The majority of these new residents moved to Montana from other states. Between 1990 and 1997, the net migration to Montana from other states was more than 49,000 people. A survey conducted by the Montana Bureau of Business and Economic Research in 1995 found that half



of the people migrating to Montana from other states had preexisting ties to Montana (EQC, 1996).

### **Current population figures**

Montana's population was estimated to be 878,810 on July 1, 1997. Montana is ranked 44th among states in population. There are six people per square mile in Montana. Only two states (Wyoming and Alaska) have fewer people per square mile.

### **Projected growth**

The rate of population growth is projected to slow down during the next seven-year period (1998-2005), with an estimated increase ranging from 6.3 percent to 9.5 percent (CEIC, 1998).

## **2. Local Population Trends**

### **Counties**

Population growth is not uniform throughout the state. While counties in eastern Montana are generally shrinking in population, the intermountain valleys of western Montana are becoming more densely populated. **Figure 1-C** (see page 6) shows the population change by county. Seventeen counties grew faster than the statewide average (10 percent or more) during the period from 1990 to 1997.

**Table 1-B** provides 1990 and 1997 population numbers, increases from 1990 to 1997, and the projected rate of increase from 1998 to 2005 for these 17 counties. It is important to note that a significant percentage increase may not translate to a large number of people. For example, in Golden Valley County, a 15 percent increase amounts to 139 people. Therefore, counties with a population increase of fewer than 500 people during the period from 1990 to 1997 are not included in the list of most rapidly growing counties discussed throughout this report.

Even within counties, the location of growth is not uniform. The EQC Growth Study Subcommittee distributed a survey to counties and cities in late 1997. Of the counties listed in Table 1-B, seven indicated that growth was occurring in rural areas, five indicated that growth was occurring primarily within towns, and four indicated that growth was occurring on the outskirts of towns. One county did not respond to the survey.

Population growth is projected to slow down for all of these counties. Projections depend on the assumptions used and actual changes in population may be different from these projections. Communities should evaluate population projections in light of economic conditions and other factors.

For a copy of the *Montana County Population Map*, please contact the EQC Office.

**Table 1-B  
Population Growth  
Growing Counties in Montana  
1990-1997**

<b>County</b>	<b>Population 1990</b>	<b>Population 1997 (Estimated)</b>	<b>Increase 1990-1997 (%)</b>	<b>Increase 1990-1997 (#)</b>	<b>Projected Increase 1998-2005 (%)</b>
Big Horn	11,337	12,617	11.3	1,280	5.0
Broadwater	3,318	4,083	23.1	765	9.9
Carbon	8,080	9,425	16.6	1,345	5.9
Flathead	59,218	71,707	21.1	12,489	14.1
Gallatin	50,463	61,111	21.1	10,648	11.8
Golden Valley	912	1,051	15.2	139	2.9
Jefferson	7,939	9,878	24.4	1,939	13.5
Lake	21,041	25,341	20.4	4,300	12.5
Lewis and Clark	47,495	53,251	12.1	5,756	11.1
Madison	5,989	6,899	15.2	910	6.5
Mineral	3,315	3,725	12.4	410	4.6
Missoula	78,687	88,818	12.9	10,131	9.7
Musselshell	4,106	4,605	12.2	499	4.5
Ravalli	25,010	34,554	38.2	9,544	17.8
Sanders	8,669	10,253	18.3	1,584	8.5
Stillwater	6,536	7,835	19.9	1,299	11.6
Yellowstone	113,419	125,771	10.9	12,352	8.4

Source: U.S. Bureau of the Census and NPA Data Services data compiled by CEIC.

**Major cities**

Cities that have grown more than ten percent between 1990 and 1996 are shown in **Table 1-C**.

**Table 1-C  
Growing Cities and Towns  
Population Increase  
1990-1996**

<b>Range</b>	<b>City or Town (County)</b>	<b>Growth Rate (%)</b>	<b>Population 1996</b>
<b>10 to 20 %</b>	Harlem (Blaine)	10.7	976
	Sheridan (Madison)	10.9	723
	Superior (Mineral)	11.0	978
	Virginia City (Madison)	11.3	158
	East Helena (Lewis and Clark)	11.8	1,720
	Alberton (Mineral)	11.9	396
	Deer Lodge (Powell)	12.0	3,782
	Livingston (Park)	12.1	7,509
	Billings (Yellowstone)	12.4	91,195
	Red Lodge (Carbon)	12.6	2,204
	Twin Bridges (Madison)	12.6	421
	Hot Springs (Sanders)	12.9	464
	Roundup (Musselshell)	13.3	2,049
	Helena (Lewis and Clark)	13.7	27,982
	Melstone (Musselshell)	14.5	190
	Fromberg (Carbon)	16.2	430
	Bridger (Carbon)	16.6	807
	Thompson Falls (Sanders)	16.8	1,540
	West Yellowstone (Gallatin)	17.1	1,069
	Joliet (Carbon)	17.4	613
St. Ignatius (Lake)	17.4	913	
Missoula (Missoula)	19.3	51,204	
Clyde Park (Park)	19.5	337	
<b>20 to 30 %</b>	Columbus (Stillwater)	20.6	1,897

Range	City or Town (County)	Growth Rate (%)	Population 1996
	Boulder (Jefferson)	20.7	1,589
	Plains (Sanders)	21.1	1,201
	Ronan (Lake)	21.3	1,877
	Townsend (Broadwater)	22.6	2,004
	Three Forks (Gallatin)	23.1	1,481
	Whitehall (Jefferson)	24.3	1,326
	Bozeman (Gallatin)	25.9	28,522
	Ennis (Madison)	29.4	1,000
<b>30 to 40 %</b>	Polson (Lake)	31.1	4,316
	Kalispell (Flathead)	31.6	15,678
	Whitefish (Flathead)	32.6	5,793
	Manhattan (Gallatin)	33.5	1,380
	Columbia Falls (Flathead)	34.3	3,922
	Darby (Ravalli)	36.2	851
<b>More than 40 %</b>	Belgrade (Gallatin)	41.6	4,846
	Broadview (Yellowstone)	42.9	190
	Winifred (Fergus)	44.0	216
	Pinesdale (Ravalli)	46.7	983
	Hamilton (Ravalli)	48.3	4,059
	Stevensville (Ravalli)	60.9	1,965

Note: This table shows cities and towns with a 1996 population greater than 100 people that grew faster than 10% between 1990 and 1996.

Source: U.S. Bureau of the Census data compiled by CEIC, October 1998.

The EQC Growth Study Subcommittee survey asked about changes in population growth and where these changes are occurring. **Table 1-D** summarizes the information provided by counties that responded to the survey. Twelve counties did not respond to the survey.

**Table 1-D  
Growth Trends in Montana's Counties**

<b>Trend</b>	<b>PopulationTrend</b>	<b>County</b>
<b>Growing</b>	Population has grown during the past 5 years and is expected to grow in the next 5 years.	Big Horn, Beaverhead, Broadwater, Carbon, Custer, Fergus, Flathead, Gallatin, Golden Valley, Jefferson, Lake, Lewis and Clark, Lincoln, Madison, Missoula, Park, Ravalli, Sanders, Stillwater, Yellowstone
<b>Expected to Grow</b>	Population has remained stable during the past 5 years but is expected to grow during the next 5 years.	Anaconda-Deer Lodge, Butte-Silver Bow, Carter, Mineral, Powell, Powder River, Sweet Grass, Teton
<b>Leveling</b>	Population has grown during the past 5 years but will remain stable during the next 5 years.	Judith Basin
<b>Stable</b>	Population has remained stable during the past 5 years and is expected to remain stable in the next 5 years.	Cascade, Chouteau, Daniels, Hill, Liberty, Prairie, Richland, Treasure, Wheatland
<b>Expected to Decline</b>	Population has remained stable but is expected to decline in the next 5 years.	Valley
<b>Declining</b>	Population has declined during the past 5 years and is expected to decline in the next five years.	Dawson, McCone, Rosebud, Sheridan, Wibaux

Source: EQC Growth Study Subcommittee Survey, 1997-98.

### **3. Other Indicators of Growth**

#### **Subdivision**

Between 1990 and 1997, the number of subdivisions reviewed under the Sanitation in Subdivisions Act increased by 184 percent (DEQ, 1998). The number of lots created and reviewed under this Act more than tripled.

## **Housing**

Between 1990 and 1996, the number of housing units permitted for construction in Montana per year more than doubled -- an increase of 119 percent (Commerce, 1997). The total number of housing units increased by 3.3 percent during that same time period (CEIC, 1997a).

Additional indicators of growth and changes in land use are summarized in a previous section entitled "Our Montana Environment . . . Where Do We Stand?"

## **C. Why is Planning Important?**

Local governments may be challenged by the consequences of growth. Population growth may result in demands for infrastructure such as roads and sewer systems, increased conflicts among land uses, and a greater number of regulatory reviews, such as review of subdivisions. All of these can result in increased costs for local governments.

At the same time, developers and property owners may be concerned about local government restrictions that may increase their costs. Furthermore, when government decisions are not predictable, the risk associated with development proposals increases. Residents may want to find ways to preserve specific aspects of the character of their community. The availability of affordable housing is another concern.

The thoughts of some Montanans who commented on the draft report are highlighted below.

### **Why Plan for Growth -- What Montanans Have to Say:**

*Many communities find that their land use policies are written after the fact as a consequence of subdivision review, rather than in advance through a thoughtful process of community planning.*

*Montana's subdivision statutory scheme was never intended to be the ad hoc planning mechanism it is today. The planning scheme should provide the certainty that [a] subdivision applicant requires before investing in land division activity.*

*All areas could benefit from reasonable planning that seeks to protect private property values and rights while allowing for tolerable growth rates.*

*Subdivision review alone has not been an effective tool for addressing wildlife issues. Planning would provide a community with the ability to better evaluate how to balance the overall needs of wildlife for habitat with the needs of humans [for] housing, and provide a better tool for considering the cumulative effects on wildlife.*

*Our existing system, where a developer really doesn't know whether he can develop a property until after he purchases the land and goes through the subdivision process discourages reasonable developers. Most counties have vague master plans and little or no zoning.*

## 1. Benefits of Planning

What follows are some of the benefits of planning.

- Reduces increases in taxes and fees through more efficient provision of services.
- Fosters wise and thoughtful investments in major public facilities, such as roads, water and sewer systems, solid waste, and fire protection.
- Makes communities safer and healthier by encouraging well-designed streets, protecting water quality, and deterring development in unsuitable areas such as floodplains, wetlands, fault zones, and unstable slopes.
- Helps to make a community more attractive to investment by businesses and industries.
- Protects special community values, such as historic, cultural, scenic and natural features, or rural, agricultural character.
- Builds public consensus and greater understanding of issues within the community.
- Promotes affordable housing.
- Identifies growth patterns that minimize the cost to provide local services and infrastructure.
- Maintains property values for residential, commercial, and industrial properties by preventing nearby incompatible or degrading uses.
- Ensures that adequate amounts of suitable land are available for residential, commercial, and industrial growth (Commerce 1994b).

## 2. What Can Go Wrong if We Don't Plan for Growth?

The potential consequences of not planning for future community growth and the provision of public services are described below.

### **Loss of potential business development**

Failure to provide adequate public facilities or plan for the expansion of community infrastructure can lead to an inability to attract new business ventures and employment opportunities. Communities often find themselves competing with each other to attract or retain desirable businesses. Undersized water or sewer systems, insufficient housing, inadequate transportation options, outdated or overcrowded educational facilities, and a lack of recreational and cultural opportunities can all influence a community's success in attracting new enterprises.



### **Uncertainty surrounding potential development**

In the absence of effective land use planning or regulations, the outcome of development proposals that are subject to governmental review is uncertain. This is particularly true in the case of local review of subdivisions. Each proposal is reviewed for its potential impacts on the community and its environment. Citizens may review these proposals for conformance with their particular vision of how growth should occur in the community and how the proposal affects them as an individual. The existence of a clear community plan, implementing ordinances, and regulations may reduce controversies and improve the predictability of local siting decisions for developments.

### **Increased costs resulting from sprawl development**

A number of studies have found that the cost of providing services is significantly higher in areas of sprawl development (Sonoran Institute, 1993). The costs for providing roads, sewers, mail delivery, fire protection, and other government services in compact communities are one-third to one-half of the costs for serving low density sprawl developments (New Mexico, 1997).

Many public services such as roads, utilities, school bus routes, water, sewer, and weed control are linear in design and costs increase as they are extended to distant or scattered developments. In other cases, new capital facilities (schools, police and fire protection, parks) may need to be developed. The cost of providing these services is at the core of many subdivision debates. It might seem that these new developments would and could pay for the additional costs imposed upon the community by providing an expanded tax base. However, studies conducted by the Local Government Center at Montana State University (MSU) have shown that property tax and other revenue from residential development does not cover the costs local governments incur for providing services (Haggerty, 1997). This is particularly true for educational facilities.

The MSU study found that between 62 and 68 percent of the total county expenditures for Gallatin and Broadwater Counties were attributed to education. As residential developments expand into new areas, student populations may also shift. School boards in Helena and Missoula have recently faced the issue of closure of existing neighborhood schools with declining enrollments and the expansion or construction of additional schools in newly developed neighborhoods. The state of Maine discovered that despite a decrease of 27,000 students, the state spent \$338 million in new elementary and secondary school construction and additions between 1975 and 1995 in fast growing communities and in rural areas while existing older schools went under-utilized (Maine, 1997).

### **Shift in commercial activity from downtown core areas to arterial suburban areas**

Community planning can have impacts on the location of retail and commercial centers and transportation patterns within a community. The location of regional shopping centers or national retailers in Montana has significantly altered traffic patterns and infrastructure design needs in Billings, Missoula and Bozeman.

### **Lost opportunities and irreversible decisionmaking**

Developments established in winter range for wildlife and on ridge line view sheds are examples of intangible costs and impacts to a community that extend far into the future. Through planning, communities can identify areas that have important community values.

### **Conflicts due to incompatible uses and costs of mitigation and litigation**

Areas that are not subject to community planning and land use regulation often become embroiled in administrative or judicial conflicts between competing interests that can cost a community more than just money. Permitting decisions for commercial or industrial activities that may conflict with the community vision of residential neighbors can result in neighborhood animosity and mistrust of government officials. Also, costs for government review in terms of responding to demands for public meetings and investigation into potential human and environmental impacts may be substantial.

In areas without current plans and zoning regulations, citizen opposition can result in permitting approval which is conditioned with sometimes costly requirements intended to mitigate potential impacts or conflicts with adjoining land use or neighborhoods. It can also result in permit denial. In either case, litigation is possible with added costs to the parties involved. The Montana Association of Counties has recently retained legal counsel to assist local governments in avoiding litigation and in preparing legal defenses.

Changes in land use from agriculture to residential have resulted in conflicts. The EQC's Water Policy Subcommittee evaluated issues that were raised in a case study in the Gallatin Valley. A Gallatin Valley water user explained to the subcommittee that he believed his ability to use his water right was adversely affected by a new subdivision. (More information about this case study is presented in the EQC report Montana's Water Policy, 1997-1998.)

In some areas of Montana, new subdivisions and rural homes are being built in areas where ground water may be present in useable amounts only as a result of the irrigation practices of the last 100 years. Concerns have been raised that the water supply in these areas will disappear as a result of continued subdivision of irrigated land.

### **Unnecessary capital expenses**

Communities that wait to respond to needs on an emergency basis are susceptible to spending limited budget resources unproductively. Rebuilding a community road transportation system on top of a failing water, sewer, or storm drainage system can result in unnecessary costs. The construction of inadequate public facilities which are rapidly obsolete due to a need to accommodate additional unplanned growth may be avoided or minimized with adequate community planning.

## Chapter 2: Planning and Land Use Tools Available in Montana

### A. Introduction

This chapter provides an overview of tools that can be used to address growth and that have been authorized or required by the Montana Legislature. Section E provides a brief summary of how these tools have been used by local governments. **Appendix 1** describes tools that are available to local governments and highlights those activities that are required.

### B. Planning and Zoning Authorities

#### 1. Planning

The Local Planning Enabling Act (Title 76, Chapter 1, MCA) authorizes counties, cities, and towns to appoint a planning board to prepare comprehensive plans or master plans. The terms comprehensive plan and master plan are generally used interchangeably in Montana.

Plans provide a foundation for the development of infrastructure and land use regulations. Master plans must be adopted before a city or county can adopt zoning regulations except upon citizen petition. Montana law requires that local governments be guided by and give consideration to the general policy and pattern of development set out in the master plan in the:

- (1) authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;
- (2) authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities;
- (3) adoption of subdivision controls;
- (4) adoption of zoning ordinances or resolutions. (76-1-605, MCA)

#### Contents of plan

Montana law (76-1-601, MCA) specifies a broad list of items that *may* be included in a master plan. These items are summarized below:

#### Figure 2-A

##### **The Local Planning Enabling Act** (76-1-101 through 76-1-606, MCA)

##### **Purpose**

. . . to promote the orderly development of its governmental units and its environs. (76-1-101, MCA)

. . . to encourage local units of government to improve the present health, safety, convenience, and welfare of their citizens and to plan for the future development of their communities to the end that highway systems be carefully planned; that new community centers grow only with adequate highway, utility, health, educational, and recreational facilities; that the needs of agriculture, industry, and business be recognized in future growth; that residential areas provide healthy surroundings for family life; and that the growth of the community be commensurate with and promotive of the efficient and economical use of public funds. (76-1-102, MCA)

##### **Exceptions**

. . . nothing in this chapter may be considered to authorize an ordinance, resolution, or rule that would prevent the complete use, development, or recovery of any mineral, forest, or agricultural resource by the owner thereof. (76-1-113, MCA)

- Surveys and studies of existing conditions and the probable future growth of the city or county.
- Maps, plats, charts, and descriptive material presenting basic information and information about the location, extent and character of several items listed in the law (e.g., land use, population density, infrastructure, etc.) .
- Reports, maps, charts, and recommendations setting forth plans for the development, redevelopment, improvement, extension, and revision of the subjects and physical situations of the city or county so as to accomplish the objectives set out in sections 76-1-101 and 76-1-102, MCA (see **Figure 2-A**).
- A long-range development program of public works projects (capital improvements plan).
- Recommendations setting forth the development, improvement, and extension of areas, if any, to be set aside for use as trailer courts and sites for mobile homes.

### **The planning process**

The planning board serves in an advisory capacity to the governing body (i.e., county commission, city council, or town council). The planning board is required to recommend a proposed plan. The governing body must adopt, revise or reject the proposed plan or any of its parts. The governing body may choose to submit the proposed plan to a vote of citizens within the jurisdiction. Citizens may adopt, revise or repeal a master plan by initiative or referendum. The steps of the planning process for counties are illustrated in **Figure 2-B**.

## **2. Zoning**

Land use regulations, including zoning regulations, may be used to implement parts of a plan and can be used to influence several aspects of development:

**Figure 2-B:**

### **Steps in the County Planning Process**

- ① County commissioners create planning board after public notice and hearing.
- ② Planning board prepares and proposes a master plan.
- ③ Planning board gives notice and holds a public hearing on the proposed master plan.
- ④ Planning board must recommend the proposed master plan and any proposed ordinances and resolutions for implementation to the county commissioners.
- ⑤ County commissioners must adopt, revise or reject the plan or any of its parts. They may submit the plan to a vote of qualified electors.

- ♦ Quality
- ♦ Location
- ♦ Density
- ♦ Timing
- ♦ Cost

Traditional zoning regulates the location of land uses in order to prevent or minimize land use conflicts between property owners. The basic objective of traditional zoning is to separate incompatible uses of land. The jurisdiction is divided into districts and land use restrictions are tailored to each zone.

Under Montana law, local governments can also use development permit regulations to influence land use. Development permit regulations usually address the character or quality rather than the location of new development. For example, development permit regulations may address access by emergency vehicles, effects on agriculture or buffering or screening of adjacent uses.

Local governments in Montana have the authority to adopt zoning regulations under Title 76, Chapter 2.

It is important to note that the law allows local governments to choose what level and type of zoning they desire and also provides several opportunities for public involvement. Citizens can participate in the process of determining what type of regulations are needed and how stringent these regulations should be in order to protect the values of their community. Furthermore, there must be a process for appeal. The Montana Supreme Court has ruled that an appellate body must be established in order for the zoning ordinance to be valid (*Shannon v. City of Forsyth*). Local zoning authorities are described in more detail below.

### **Citizen-petition (Part 1) zoning**

Citizen-petition zoning is authorized by the County Planning and Zoning District Act (76-2-101 through 76-2-112, MCA). Some counties adopt zoning regulations under the County Zoning Enabling Act (see below) when citizens present a petition. When petitioned by 60 percent of the freeholders in an area 40 acres or more, a county may create a planning and zoning district and adopt land use regulations for the district whether or not the county has adopted a master plan. The board of county commissioners is required to hold a public hearing before establishing the zoning district. Establishment of a zoning district is prohibited if freeholders representing 50 percent of the titled property ownership in the district protest within 30 days.

Once a district is established, the county board is required to appoint a planning and zoning commission. The planning and zoning commission prepares a development pattern. The development pattern is a document that shows the commission's recommendations for development of the district. It identifies restrictions that will be applied, such as building height or setback requirements. Once the development pattern is adopted, the commission drafts recommended land use regulations that are consistent with the pattern. The county board may revise the recommended regulations and adopt final regulations.

Citizen-petition zoning may not "regulate lands used for grazing, horticulture, agriculture, or the growing of timber." (76-2-109, MCA).

### **County-initiated (Part 2) zoning**

Counties are authorized to adopt traditional zoning or development permit regulations by the County Zoning Enabling Act (76-2-201 through 76-2-228, MCA). Key requirements of the Act are highlighted below.

- Counties must have adopted master plans and the regulations must be consistent with the plan.
- The planning board must recommend regulations. A zoning commission may be appointed to amend regulations.
- Protest by 40 percent of the freeholders or by freeholders of agricultural or forest land representing 50 percent of the titled property ownership prevents adoption of the zoning regulations.
- Regulations (except for interim regulations) may not prevent the complete use, development, or recovery of agricultural, mining or timber products (76-2-209, MCA). Sand and gravel opencut mines are required to comply with zoning regulations.
- A Board of Adjustment must be established to hear and decide on applications for variances, special exceptions and appeals from zoning decisions (Commerce, 1994b).

Counties are allowed to adopt interim land use regulations as an emergency measure pending adoption of a master plan or zoning regulations. The interim regulations may be adopted for one year and extended for another year.

### **Cities and towns**

The Municipal Zoning Enabling Act (76-2-301 through 76-2-328, MCA) authorizes cities and towns to adopt zoning or development permit regulations to regulate the size, height, and location of buildings and other structures, regulate densities, and divide the municipality into zoning districts to regulate the location of various uses (Commerce, 1994b). Key requirements of the Act are highlighted below.

- The city or town must have adopted a master plan and the regulations must be consistent with the plan.
- A zoning commission must be appointed.
- Extraterritorial regulations are authorized if the territory to be zoned is included in the plan and the area has not been zoned by the county.

- A Board of Adjustment may be established (Commerce, 1994b).

## **C. Subdivision Review**

### **Authorities**

Two statutes govern land subdivisions and the development of condominiums, mobile home courts and recreational vehicle parks: the Montana Subdivision and Platting Act and the Montana Sanitation in Subdivisions Act. In general, the Subdivision and Platting Act provides for local review and the Sanitation in Subdivision Act provides for state review.

#### **1. Montana Subdivision and Platting Act**

The Montana Subdivision and Platting Act (76-3-101 through 76-3-614, MCA) requires counties, cities and towns to adopt and enforce local subdivision regulations. Subdivision regulations are the only general land use regulations that local governments are required to adopt under state law.

Local governments must review and approve, conditionally approve or disapprove land divisions creating parcels less than 160 acres in size, mobile homes, recreational vehicle parks, or condominiums. The law provides for several exemptions. Local governments may regulate the design of subdivisions, and prohibit subdivisions in areas that are unsuitable because of health or safety hazards (e.g., flooding, high water table, steep slopes or other natural or man made health or safety hazards).

The Act sets out a list of minimum considerations that the local regulations must address (see **Figure 2-C**).

### **Figure 2-C: Minimum Requirements for Local Subdivision Regulations**

Minimum requirements for local regulations adopted pursuant to the Montana Subdivision and Platting Act are established in section 76-3-504, MCA. These requirements are summarized below.

- Require the subdivider to submit an environmental assessment to the governing body for major subdivisions.
- Establish procedures for the submission and review of subdivision plats.
- Prescribe the form and contents of preliminary plats and documents that accompany the final plats.
- Provide for the identification of areas that are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome.
- Prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency.
- Proscribe standards for: the design and arrangement of lots, streets, and roads, grading and drainage, water supply and sewage, and solid waste disposal that meet the requirements in the regulations adopted by the Montana Department of Environmental Quality.
- Provide procedures for the administration of the park and open-space requirements of the Act.
- Provide for the review of preliminary plats by affected public utilities and those agencies of local, state, and federal government having a substantial interest in a proposed subdivision.

The Act (76-3-608 (3), MCA) also specifies criteria that must be considered in reviewing the subdivision and weighed in written findings of fact:

- The effect on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety.
- Compliance with the survey requirements and local subdivision regulations.
- The provision of easements for the location and installation of any planned utilities.
- The provision of legal and physical access to each parcel within the subdivision. This information must be noted on the applicable plat and any instrument of transfer concerning the parcel.

Master plans can play an important role in subdivision review. As noted previously, if a master plan has been adopted, local governments are required to consider and be guided by the general policy and pattern of development set out in the master plan in the development and adoption of subdivision regulations. Governing bodies can choose to adopt ordinances or resolutions requiring that subdivision plats conform to an adopted master plan. Local governments are required to review preliminary plats for conformance to the master plan, if it has been adopted.

If the master plan includes certain elements specified in the law, minor subdivisions that conform to the plan are exempt from the review criteria set out in subsection 76-3-608 (3)(a), MCA and summarized above (first bullet). The master plan must contain housing, transportation and land use elements sufficient for the governing body to protect public health, safety and welfare; and a discussion of physical constraints on development that exist within the area encompassed by the proposed subdivision.

If a planning board has been appointed, the governing body must seek the advice of the planning board in subdivision review (76-1-107, MCA). The planning board usually holds the public hearing, takes testimony, receives public comment, and makes a recommendation to the governing body.

The law provides for different review procedures for minor subdivisions (five or fewer parcels) and major subdivisions. These procedures are summarized in the following sections.

### **Major subdivisions**

Once an application has been submitted, subdivision review involves two phases: preliminary review and final review. Local governments have 60 days to review preliminary plats for major subdivisions. A public hearing is required prior to making a decision. Once a preliminary subdivision plat is approved, the approval remains in effect for a specified period of time and the governing body cannot impose any additional conditions as a prerequisite to final plat approval.



## Minor subdivisions

**First minor subdivision.** A public hearing and environmental assessment are not required for the first minor subdivision from a tract of record<sup>1</sup>. The governing body has 35 days to make a decision on the application.

**Subsequent subdivisions.** Local governments are required to establish procedures for summary review of subsequent subdivisions from a tract of record. The law does not specify the amount of time allowed for review; an advisory guidance document prepared by the Montana Department of Commerce indicates that the review should be completed in less than 60 days (Commerce, 1995). State law does not require submission of a preliminary plat or a public hearing if a plat is eligible for summary review (76-3-601, MCA).

## 2. Sanitation in Subdivisions Act

The Montana Sanitation in Subdivisions Act (76-4-101 through 76-4-135, MCA) requires the Montana Department of Environmental Quality (DEQ) to review and approve plans for the provision of water, sewage disposal, solid waste disposal, and drainage facilities related to subdivisions. The DEQ is required to review subdivisions that create parcels of less than 20 acres. Review of subdivisions that involve less than 6 parcels can be delegated by the DEQ to local governments.

The types of developments subject to review under the Sanitation in Subdivisions Act parallel those required to be reviewed under the Subdivision and Platting Act, with one major addition. Most parcels that are exempt from local review are still subject to sanitation approval under the Sanitation in Subdivisions Act. Not only are such parcels subject to review by the DEQ, any remaining parcels of less than 20 acres that result from the use of the exemptions must receive sanitation approval as well. Subdivisions within master planning areas and for which municipal water and waste disposal services will be provided are not subject to sanitary restrictions.

The law required the DEQ to develop a joint application form for review under the Sanitation in Subdivisions Act and the Subdivision and Platting Act. Subdividers have the option of submitting the joint form and requesting concurrent review by the DEQ and the local government.

Before the DEQ will approve a subdivision, it must be convinced that:

- The water supply system will serve the needs of the proposed subdivision.

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<sup>1</sup> The term "tract of record" is defined in 76-3-103 (16):  
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.

- The sewage treatment and disposal system will operate without causing a health hazard and without polluting surface water or ground water.
- Solid waste will be disposed of in accordance with state laws and rules.
- Proper storm water drainage will be provided and the storm water will not pollute state waters.

The DEQ has adopted rules pursuant to the Sanitation in Subdivisions Act (ARM 17.36.101 *et seq.*) The rules require that proposed plans be reviewed within 60 days unless an environmental impact statement is required, in which case action must be taken within 120 days.

The DEQ is authorized to collect fees to cover the department's cost for reviewing plats and subdivisions.

## **D. Other Land Use Management Authorities**

### **1. Floodplain Regulations**

The Montana Floodplain and Floodway Management Act (Title 76, Chapter 5, MCA) requires that local governments adopt floodplain regulations if the Montana Department of Natural Resources and Conservation (DNRC) has delineated 100 year floodplains within their jurisdiction. Regulations that are at least as stringent as state rules must be adopted within six months of transmittal of the floodplain delineation from the DNRC.

Residential, commercial and industrial structures are prohibited in the floodway, which is the portion of the floodplain that carries flood waters. Landfills, septic systems and storage of toxic, flammable or explosive materials are prohibited in the flood fringe. A permit is required for construction within the 100 year floodplain.

### **2. Lakeshore Regulations**

If there is a natural lake that is at least 160 acres in size and that meets certain other criteria within their jurisdiction, local governments are required to adopt regulations governing issuance of permits for work within lakes or lakeshores (75-7-207, MCA). Lakeshores include the land within 20 horizontal feet of the mean annual high water mark. Criteria for review are established in section 75-7-208, MCA. The regulations must favor issuance of the permit unless a public nuisance is created or there are impacts on:

- Water quality.
- Fish and wildlife habitat.
- Navigation and other lawful recreation.
- Visual impacts discordant with natural scenic values.

## **E. How are Planning Authorities Used by Local Governments in Montana?**

### **1. Planning**

Forty-four of Montana's fifty-six counties have adopted master plans. **Table 2-A** shows the status of master plans for the 14 fastest growing counties identified in Chapter 1. Only one of the growing counties has not adopted a master plan. However, three plans are at least ten years old.

**Table 2-A**  
**Status of Master Plans for 14 Growing Counties**

<b>Status of Master Plan</b>	<b>County</b>
1 to 4 years old	Big Horn, Flathead, Madison, Missoula, Stillwater
5 to 9 years old	Gallatin, Jefferson, Lewis and Clark, Yellowstone
10 to 14 years old	Lake
15 years old or older	Carbon, Broadwater, Ravalli
None	Sanders

Source: Montana Department of Commerce (Commerce, 1998b)

Lewis and Clark County is in the process of updating its plan. Ravalli County voters recently defeated a proposed update of their plan.

Most of the faster growing cities and towns have adopted or updated their master plans in the last five years (Commerce, 1998b).

### **2. Zoning**

Twenty-six of Montana's fifty-six counties have adopted some type of zoning regulations (Commerce, 1998b). More than half of the 14 rapidly growing counties have citizen-petition zoning. Four of these counties have county-initiated zoning. **Table 2-B** shows the types of zoning used in Montana's faster growing counties.

**Table 2-B  
Types of Zoning in Growing Counties**

<b>Type of Zoning</b>	<b>Counties</b>
Citizen Petition (Part 1)	Flathead, Gallatin, Jefferson, Lake, Lewis and Clark, Missoula, Ravalli, Stillwater, Yellowstone
County (Part 2)	Flathead, Jefferson, Lake, Missoula
None	Big Horn, Broadwater, Carbon, Madison, Sanders

Source: County staff

Nearly all of the faster growing cities and towns have adopted zoning regulations (Commerce 1998b).

## Chapter 3: Planning for Growth -- What Have We Learned?

The Growth Study Subcommittee conducted a survey of local governments and area boards of realtors and also received advice from a variety of panelists at its meetings. After reviewing this advice, the subcommittee selected the topics that are addressed in this chapter. The following information is presented for each topic:

- Background information.
- Successful and unsuccessful examples from Montana communities.
- Information about activities in other states.
- Issues.

Findings and recommendations are presented in Chapter 5.

### **A. Beyond Subdivision Review: Planning and Zoning**

#### **1. Background Information**

Chapter 2 provides an overview of planning and land use authorities authorized in Montana law. There are essentially three basic tools available to assist local governments in planning for growth within their communities:

- The authorized creation of *master plans* which can address a variety of elements within a community including plans for transportation, parks, capital construction of public infrastructure needs, and many others.
- The authorized adoption of *zoning regulations* to aid in the implementation of plan elements.
- The mandatory adoption of *subdivision regulations* to address orderly development within a community.

Because of its importance, the adoption of a capital improvements plan is often considered a fourth and separate planning tool, but the authority for establishing these plans, like park plans, transportation plans and others, all derive from the same basic planning statute.

Community decisions about growth often come in the form of proposals for new subdivisions or some other proposed development. As indicated in Chapter 2, cities are more likely to have adopted plans and regulations that address these proposals. The level of predictability for the public, government officials, and developers is increased given the presence of specific rules and regulations regarding what is acceptable as well as where and how. Counties are less likely to have adopted plans and zoning regulations and are often limited to addressing development proposals through their subdivision regulations.

Since the threshold for determining the significance of impacts is not clearly defined in the subdivision law, decisions to approve or deny proposals are often contentious and sometimes litigated. The predictability of the outcome of planning decisions based only on the subdivision review process can be tenuous for all concerned. In many communities, absent the guidance of a clearly written plan and implementing regulations, growth "planning" takes place during subdivision review, *one proposal at a time*.

## 2. The Relationship between Subdivision Review and Planning and Zoning in Montana

### Subdivision reviews leave little time for planning

Local governments often report that they are so busy with subdivision review that they do not have time for planning. This trade-off may be best illustrated by a Madison County Planning Board proposal for a six month moratorium to allow time to update the county's comprehensive plan. Planning staff were too busy reviewing subdivisions to make progress on the comprehensive plan. The county commission chose to contract with an additional planner to work on the comprehensive plan instead of imposing a moratorium.

The consolidated planning board for the City of Helena and Lewis and Clark County must sometimes meet weekly for months at a time just to address subdivision reviews. The Ravalli County Planning Board meets twice monthly and its agenda is filled with subdivision reviews. Planning directors from both counties note that subdivision review alone represents a significant time commitment for planning board members who are volunteers.

Table 3-A shows the number of subdivisions reviewed by six counties in a year.

**Table 3-A**  
**Number of Subdivisions Reviewed Per Year**  
**by Selected Montana Counties**

County	Total Reviewed	Major (≥6 lots)	Minor (≤5 lots)	Number of Lots Created	Total Acreage
Flathead (FY '97)	48	16	32	NA	1,682
Jefferson (FY '97)	19	5	14	150	NA
Madison (FY '97 or '98)	37	1	36	121	2,347

Missoula (FY '98)	47	NA	NA	916	1,134
Stillwater (CY '97)	27	3	24	182	1,335

NA-Not available

Note: The numbers provided refer to the total number of subdivisions and not the total number of reviews conducted by the county. Each subdivision may be reviewed more than once during a one-year period.

County staff were asked if the number of subdivision reviews had increased due to a 1993 amendment to the Subdivision and Platting Act that changed the definition of a subdivision from parcels containing less than 20 acres to parcels containing less than 160 acres. Jefferson County reported that subdivision reviews tripled following the law change and Stillwater County reported a 10-fold increase. Flathead County planning staff indicated that it was difficult to distinguish the effect of the change in the law from the effect of real estate market fluctuations.

### **How planning and zoning affect the subdivision review process**

EQC staff asked representatives of five local governments if they require subdivision plats to conform to their master plan. Of these, four governing bodies (two counties and two cities) require subdivision plats to conform to the plan. Regardless of the requirement, three of the five local governments indicated that the plan is too general to guide subdivision review. Montana Department of Commerce staff have indicated that this is typical for Montana counties. One county planning board found it difficult to use the plan as a regulatory tool because there are no criteria for denial of a subdivision. The county is in the process of updating the plan to make it more specific.

A lawsuit (*Jackson v. Sweet Grass County*) was filed against Sweet Grass County when the county commissioners denied a proposed subdivision because it did not comply with the master plan. The proposed minor subdivision would create five lots on 33.7 acres in an area where 40 acre lots are preferable. The lawsuit is currently on hold as a result of a request for an extension from the plaintiff. In another case, the neighbors sued, claiming that the governing body did not follow the master plan when it conditionally approved a subdivision.

Cities are more likely to have zoning; consequently, the role of the plan may be less important. The City of Missoula requires substantial compliance with the comprehensive plan or mitigation. They can deny a subdivision if it does not comply with the plan and if there is no mitigation. Missoula planning staff report that zoning regulations provide more guidance than the comprehensive plan in the subdivision review process.

The City of Helena requires subdivisions to conform to the comprehensive plan. Staff feel that it is helpful to review proposed subdivisions in light of the goals and objectives contained in the plan, particularly since the implementing regulations are not always updated at the same time as the plan. Helena has both planning and zoning. Staff indicate that the level of controversy

surrounding subdivision varies substantially according to the location. Subdivisions proposed on steep slopes are the most controversial.

Some Montana counties have found that there is less controversy during the subdivision review process when neighborhood plans and implementing regulations have been adopted. Seven neighborhood plans have been adopted recently in Flathead County (see "Citizen Participation" and "Neighborhood Planning"). Because the neighboring homeowners and the potential developers both know what type of development is allowed and the neighbors have actively participated in the decisionmaking process, controversy is more focused on site-specific issues. One participant noted that the level of controversy is reduced "to a degree;" however, because the subdivision regulations are so broad there is still controversy regarding land use issues. Ravalli County staff report that the subdivision review process is much less controversial in neighborhoods with citizen-petition zoning, which can be considered a form of neighborhood planning.

### **3. Issues**

#### **Subdivision review vs. for planning for growth**

The review of subdivisions plays an important role in a community's response to growth; however, subdivision review is not a sufficient tool for planning for growth. Subdivision review is by nature reactive. Local governments must respond to a proposal to develop a specific piece of land within a short time frame. Neither the process nor the time frame allow for an evaluation or discussion of whether or not population growth is occurring, current land use trends, or where growth is desirable and most cost-effective.

Subdivision regulations do not affect land that is already subdivided or land exempt from the requirements of the Subdivision and Platting Act. Twenty-nine percent (by area) of the land divisions in Gallatin County since 1993 have been exempt from subdivision review. Several local governments have raised concerns about their inability to address the cumulative effects of minor subdivisions under the Subdivision and Platting Act.

In contrast, through the planning process communities can: determine where growth is most desirable and cost effective; identify lands most desirable for "open space" to preserve specific attributes and develop strategies to protect those lands; evaluate infrastructure costs, develop a capital improvements program, and determine who should pay for infrastructure and how; and address numerous other issues that are not specific to a particular subdivision. For example, through the planning process, a community can inventory such factors as availability of affordable housing or land available for recreation and can take actions to address any deficiencies.

The cumulative effects of minor subdivisions can be considered in the planning process. Furthermore, land use issues involving parcels of land that are exempt from the subdivision regulations or undeveloped lands that are already subdivided can be dealt with through planning



and zoning. A sufficiently detailed plan and implementing regulations offer predictability to the developer and neighboring landowners.

Planning allows local governments to make use of a variety of tools, not just regulatory tools.

*How can we encourage citizens and communities to plan for growth rather than relying on the subdivision process to address their growth-related concerns?* The EQC's recommendations are presented in Chapter 5.

### **Litigation**

Lawsuits challenging subdivision reviews have increased. Some feel this is due to the enactment of section 76-3-625, MCA in 1995. This provision allows developers to sue the governing body to recover actual damages if the governing body has made an arbitrary or capricious final decision. Others assert that participants (developers and citizens) are becoming more sophisticated and citizens are more interested in participating in the process to protect the character of their community. The level of concern may have increased as more and more land is developed. Furthermore, some governing bodies have been denying more subdivisions than they had in the past.

The Montana Association of Counties (MACo) has retained legal counsel to defend counties that participate in an insurance pool. The MACo counsel is defending 14 cases filed since the Subdivision and Platting Act was amended in 1995. Of these, four involve neighbors contesting approval, seven challenge a decision to deny a proposed subdivision, and three challenge conditions attached to approval. All of these cases were filed under the appeal provision referenced above. None have gone to trial.

### **The family conveyance exemption**

The Growth Study Subcommittee heard testimony from several local governments regarding the family conveyance exemption. This phrase refers to an exemption from the subdivision review process for:

divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family (76-3-207 (1)(b), MCA).

Planners from Jefferson, Ravalli, and Flathead Counties indicated that landowners are making use of this exemption to subdivide property without going through subdivision review and then selling the property. In Flathead County approximately 250 lots are subject to review under the subdivision regulations each year, while 170 to 200 are exempt from the requirements due to family conveyance. They tracked the lots created in 1995 by family transfer and found that by 1997, 51 percent had been transferred to another owner. One planner suggested that the law be

changed to prohibit sale of a parcel for five years if that parcel was subdivided without review due to the family conveyance exemption.

As noted in the previous section, planning and zoning are two tools available to address subdivisions that are exempt from the subdivision review process.

### **The trade-off between subdivision review and planning**

Why do subdivision reviews keep local governments from dedicating more resources to planning? Factors that may contribute to this problem include the following:

- Subdivision regulations are mandatory and comprehensive plans are not.
- Lawsuits challenging subdivision reviews have increased.
- The law establishes a mandatory time frame for review of subdivisions: 35 days for minor subdivisions and 60 days for major subdivisions. In comparison, the review time in Oregon is 120 days. Minnesota authorizes 60 days plus a 60 day extension. If a Minnesota governing body does not act on an application within the time allowed, the application is considered approved. Some other states allow the local government to determine the review time.
- The number of subdivisions has increased in growth areas. Some local government planners feel that this increase is due to the change in the definition of subdivision that makes more subdivisions subject to review. Others point out that it is difficult to separate the effect of growth and real estate market fluctuations from the effect of the change in law.
- Resources for planning are limited. This topic is discussed further in Chapter 4. Some planners also noted that it is costly (in terms of time and money) to change the subdivision regulations each time that the Legislature amends the Subdivision and Platting Act.
- Neighborhood plans and zoning regulations to implement those plans are not widespread outside of cities in Montana. As a result, citizens may try to affect land use decisions and limit growth through the subdivision review process.

### **Using the plan in the subdivision review process**

A plan and implementing regulations can be used to provide clear guidance regarding land use and can help to focus the subdivision review process on site-specific issues. However, if the plan is not clear and implementing regulations are not adopted, a local government may be vulnerable to lawsuits regardless of whether it approves or denies a plat. Developers and neighboring residents also face more uncertainty regarding what will be considered an acceptable or unacceptable development.

### **Subdivision approval - A question of where...or a question of how?**

What is the purpose of reviewing and permitting subdivisions? Is it a matter of consumer protection in assuring that the purchaser obtains a useable, buildable lot that can be accessed and

serviced by amenities that provide for basic human health, safety, and welfare needs? Or is it a matter of land use policy whereby local citizens through their governing bodies decide whether or not a proposed land use is appropriate?

### **Citizen involvement in subdivision review**

Local government officials report that citizen participation in hearings on proposed subdivisions is increasing. This process can sometimes be frustrating to everyone involved. Residents are disappointed when they feel that the governing body's decision on a proposed subdivision changes the character of their community. Residents may also view the subdivision review process as a mechanism for limiting growth. Developers are unhappy when approval of a proposed subdivision is delayed or denied due to citizen opposition. Planning boards and governing bodies must devote more time to subdivision review, leaving even less time for planning processes that give citizens an opportunity to participate in these types of decisions in a positive and meaningful way. At the same time, citizens may bring valuable site-specific information to the review process.

The City of Helena has established summary review procedures that allow the city commission (the governing body) to act on minor subdivisions; this approach eliminates the planning board hearing so there is one hearing rather than two. Helena also elected to hold only one hearing before the planning board on major subdivisions unless the city commission chooses to hold a hearing. Another option is to amend the Subdivision and Platting Act (76-3-605, MCA) to permit a variety of options for public involvement (e.g., submission of written comments).

The following questions were raised during the Growth Study Subcommittee's study process:

- Are there ways that local governments can streamline the public involvement process?
- Should public involvement be restricted to site-specific or technical issues (e.g., soil types, fire protection)?
- What is the role of the public meeting? Is it an opportunity for citizens to "vote" as to whether or not they favor a subdivision (the "applause meter" approach) or is it an opportunity to hear comments on evidence related to the criteria for approval or denial of a subdivision?
- How can the public be encouraged to comment on evidence that is relevant to criteria for approval or denial of subdivisions pursuant to the Subdivision and Platting Act rather than addressing broader concerns that are most appropriately dealt with in the planning and zoning process? Do local governments have adequate tools to address this problem through education and changes in procedures? Should the law be amended to identify specific issues that can be raised?

## **B. Citizen Involvement**

### **1. Background Information**

Decisions that affect land use are controversial by nature.

Development of a plan and implementing regulations that are supported by the community can present a significant challenge to local governments. For example, in Flathead County, the Cooperative Planning Coalition spent \$500,000 on a plan only to have it defeated by the voters (see below for more information about this process).

The experience of Montana local governments indicates that, even with the best citizen involvement programs, controversy may not go away. However, good communication and meaningful involvement of citizens is critical to successful planning and zoning. Educating citizens about planning and zoning and how to participate in the process is an essential aspect of citizen involvement.

The controversy over individual subdivision decisions may be diminished when a plan and implementing regulations have been developed by the community and adopted by the local government. The planning process provides citizens with an opportunity to decide where and how growth should occur. Citizens are less likely to protest individual decisions on subdivisions when local plans and regulations reflect community values.

Specific techniques that have been used in Montana and elsewhere are described below.

#### **Consensus building**

The Montana Consensus Council has assisted local governments with designing and implementing consensus-building processes for planning, zoning and subdivision review. The Consensus Council defines "consensus" as "an approach to decision making in which all people who have a stake in a particular issue jointly decide how to address it and "consensus building" as "a learning process where people share knowledge, ideas, and experiences through cooperative, face-to-face interaction as they seek to jointly solve a problem." According to the Consensus Council, anyone who might be affected by an agreement, who is needed to successfully implement it, or who could undermine the agreement, needs to be included in the process. A consensus-building process may or may not result in an agreement.

The Montana Consensus Council has developed a framework for resolving land-use disputes with dispute resolution and consensus building techniques (Consensus Council 1998). The Consensus Council has also published case studies that describe the use of consensus building techniques in planning, zoning and subdivision review (Consensus Council 1997a and 1998 a and b).

### **Community visioning**

Community visioning has been described as "a process through which a community imagines the future it most desires and then plans to achieve it." The term *visioning* is used in many ways and is sometimes even used to refer to comprehensive planning. Community visioning can be a preliminary phase in the planning process. During this phase, community members work together to define a unique and ideal future image for their community. An advantage of this approach is that it emphasizes areas of agreement and results in a positive statement. For example, a vision could identify where growth will occur.

Some communities have conducted a visual preference survey at the beginning of this process. A visual preference survey entails asking people to rate pictures of different kinds of development to indicate what they like and what they dislike.

The "Oregon Model" of community visioning includes four steps (Ames, 1997):

**Where are we now?** -- Developing a profile of the community in its current state, defining current issues and concerns, and articulating shared community values.

**Where are we going?** -- Determining the community's future -- based on demographic, economic, environmental and social trends -- if it continues on its current course with no major changes in direction.

**Where do we want to be?** -- Development of a preferred scenario showing what the community could look like in the future if it chooses to respond to identified trends and emerging issues in a manner that is consistent with its core values. A formal vision statement is developed.

**How do we get there?** -- Identification of short term strategies and actions, parties responsible for implementing those actions, and timetables and benchmarks for monitoring progress.

### **Neighborhood Planning**

Neighborhood planning and zoning involves bringing local landowners together to solve problems or to work toward a shared vision. (Neighborhood planning is discussed in more detail in part C. of this chapter.) Neighborhood planning has been a successful approach to getting citizens involved in planning for the following reasons:

- The plan is initiated, worked out and agreed to by those most affected -- neighborhood residents.
- Neighborhood planning often begins in response to a perceived problem such as new or proposed development or inadequate infrastructure. Residents are aware of and familiar with the problem and are motivated to participate in order to prevent something from happening that will affect them.

- Residents may be more willing to participate because the plan is more likely to result in tangible results.
- It may be easier for residents within a neighborhood to communicate with each other, (e.g., at school events or over the fence) making it easier to share information with those who don't take the time to actively participate in the decisionmaking.

## 2. Citizen Involvement in Montana

### Plan defeated in Flathead County

A planning process in Flathead County illustrates that money, a citizen participation program that involves myriad public meetings, and high-technology tools are not enough to ensure a successful planning process. Beginning in 1993, the broad-based Cooperative Planning Coalition raised \$500,000, primarily from private donations, to pay for development of a new master plan. This effort was described as a "grassroots" effort. Coalition members included representatives of environmental organizations, major industries, ranchers, realtors, homebuilders and others. The Coalition hired Design Workshop, a consulting firm based in Aspen, Colorado. The Coalition found that residents were not participating in public meetings so they conducted a survey of all 33,000 homes in the county. Design Workshop used geographic information system (GIS) technology to inventory natural and cultural features, combined this information with public values determined from the survey, and created a Resource Priority Map based on the survey results. More than 250 public meetings, including numerous neighborhood meetings, were held over a two-year period.

Despite all of this "public involvement," opposition to the plan grew. Building permit regulations were adopted by the county (independently) near the end of the planning process. Opposition to county-wide building permit regulations resulted in a referendum and the proposed regulations were rejected by a large margin.

Planning board members were directly threatened with lawsuits and indirectly threatened with physical violence by citizens who made reference to guns. The plan became an election issue and a plan opponent was elected county commissioner. Ultimately the plan was put to a public vote in 1996 and defeated by 56 percent of the voters.

Proponents of the Cooperative Planning Coalition effort felt the process provided for extensive public involvement. Letters to the editor following a heated public meeting referred to "hundreds of public meetings," an "open process," and an "exhaustive public process" that spanned two years. The authors of these letters indicated that they felt opponents had waited too long to participate, despite numerous opportunities, and also that opponents were attempting to undermine the democratic process. Why was the plan voted down? Participants in the process give the following reasons:

- The plan tried to deal with too large of an area (the entire county), including areas where citizens were not concerned about growth. Citizens in the areas that were not growing did not want to deal with what they thought were unnecessary regulations. Most of the opposition from the master plan occurred in rural areas. Voters in Bigfork, Lakeside, Kalispell and Whitefish approved the plan.
- An out-of-state consultant from Aspen, Colorado was hired to put together the plan and to conduct the public involvement process. The consultant was not present in the community everyday. Furthermore, this factor may have fueled suspicions of a hidden agenda. One plan opponent indicated that he felt the plan came from outside of the state.
- The initial time frame for the process was less than one year. As a result, participants were educated briefly about potential implementing tools (e.g., transfer of development rights, performance zoning) and then asked which tools should be considered in a single meeting. Consequently, a long list of tools were included in the draft implementation strategy without any evaluation as to whether or not they were viable. Concern grew about the draft implementation strategy. Although this section was deleted from the plan before it was adopted by the county commissioners and put to a vote of the people, some residents were concerned about a hidden agenda or "secret plan."
- Opponents organized an effective opposition process, with much of the debate taking place on talk radio and in the newspaper. Some participants felt that the information presented by some of the organized opponents was misleading. Some opponents lumped the plan with communism and the "new world order." Some participants noted that the plan that was ultimately voted on was not substantially different from the plan adopted in 1987 that remained in place.
- The vote on the plan took place during a primary election ballot and voter turnout was low.

Some participants also noted that factors outside of the planning process may have contributed to the opposition. For example, frustration over proposed building permit regulations and other federal and state government decisions may have fueled opposition to the plan.

### **Neighborhood planning and zoning in Flathead and Jefferson Counties**

Following the defeat of the county-wide master plan, Flathead County turned to neighborhood planning and zoning. Seven neighborhood plans have been successfully adopted. More information about neighborhood planning and zoning is presented in section C.

Neighborhood planning and zoning is not unique to Flathead County. Concern about a proposal to burn hazardous waste in a cement plant in Jefferson County stimulated interest in zoning as a way to control land use and development in North Jefferson County. In another part of the county, a proposed development led residents of the Milligan Canyon area to establish an

agricultural zoning district. These are two examples where concern about a proposed local land use change prompted an interest in zoning.

### **Citizen involvement in Stillwater County**

In some Montana counties a public vote on the plan has been requested at the *end* of the planning process. In Flathead County, the proposed master plan was defeated as a result of a vote. Stillwater County turned this idea around and asked residents to vote at the beginning of the planning process. Voting initiated a successful planning and citizen participation process that resulted in adoption of the plan with no opposition during the public hearing. The cost of developing the plan was \$40,000.

Citizens were asked to "vote" twice. Before the primary election, the results of citizen surveys that had been conducted in the past were reviewed to identify issues. Nine issues were identified. Residents were provided with a statement describing current conditions relevant to that issue and asked to fill in a blank space to indicate what they liked and disliked. They were also asked to make suggestions. Before the general election, statements were formulated based on the input received during the primary election. Voters were asked to indicate whether or not they agreed or disagreed with the statements. The poll was also published in the newspaper and made available to anyone who wanted to vote.

Stillwater County held a series of community meetings prior to the public hearing to educate people and talk about the issues. They advertised meetings in the newspaper, on television and through posted notices.

### **Picture Helena! Community visual preference survey guides zoning regulations in Helena**

The City of Helena conducted a visual preference survey to determine what the citizens of Helena want the city to look like as it grows and develops. More than 500 area residents were asked to rate 200 slide images of different types of development. Picture Helena! was a successful effort to get residents involved in the process early. Helena Planning Director Kathy Macefield indicated that the visual preference survey was a useful tool for making people aware of the process and how they could participate. In general, citizens may find it difficult to relate to abstract zoning proposals. The results of the visual preference survey were used in developing the parking chapter of the zoning regulations; these regulations were adopted without opposition. They are in the process of using the results of the visual preference survey to update two more chapters of the zoning regulations.

### **Consensus building and collaborative problem solving in Jefferson, Ravalli and Carbon Counties**

The Jefferson County Planning Board enlisted the assistance of the Montana Consensus Council to facilitate a consensus process used to reach agreement on zoning regulations. Representatives of agriculture, business and industry, realtors and developers, local schools, the local fire department, environmental advocates and residents were appointed to the North Jefferson County Zoning Committee in 1996. The Committee recommended that the zoning district be



divided into ten land use classifications, prepared a rough map showing the classifications and defined key terms. Eventually ten zoning districts were created. Only one of the ten districts was nullified by protest from the residents.

The Ravalli County Planning Board began revising the county's comprehensive plan in 1993. After seven public workshops, the Board developed a draft plan. They asked the Montana Consensus Council to facilitate a public involvement process for review and revisions of the draft plan. This process did not always go smoothly. There were rumors that members of the review group were carrying guns to meetings. One member allegedly threatened a county commissioner and the county responded by enacting an ordinance that prohibited citizens from bringing firearms into public buildings. The Consensus Council helped the group to work through this crisis, but there was still a great deal of disagreement over many parts of the draft plan. Ultimately, they abandoned the goal of seeking consensus and focused on providing input and guidance. The draft plan was put on hold after the planning board completed their review of the document in September 1994 so that county staff could focus on revising the county's subdivision regulations.

The Consensus Council concluded that simply seeking citizen input and advice is often insufficient to build agreement on a land-use plan. Furthermore, they suggested that the stakeholders should be allowed to help design the process to foster a sense of ownership and legitimacy. One participant in the Ravalli County process noted that development of a master plan is not required; therefore, some participants did not feel that it was necessary to reach agreement on the plan.

In early 1992, the Beartooth Front Community Forum was formed by Red Lodge residents concerned about the impacts of growth, including a lack of affordable housing. They sought the assistance of the Arizona-based Sonoran Institute. The Institute conducted a community forum attended by 160 people representing a cross-section of the town's 2,000 residents. They developed a shared vision and also identified potential problems. After prioritizing the problems they launched broad-based citizen action committees to find solutions. A Beartooth Front Community Forum land use committee grew out of this effort. The land use committee helped to raise part of the funds needed to hire a planner. Seventy to 100 citizens met monthly to discuss topics. As a result, the Red Lodge Master Plan was adopted in December of 1995. One of the most important challenges faced by the group was the need to keep all interested parties engaged in and directing the process. For example, local ranchers are less likely to participate in the town-oriented forums, so organizers must work at being inclusive (Sonoran Institute, 1997 and Consensus Council, 1995).

### **3. Citizen Involvement in Other States**

#### **Citizen participation in Oregon**

Oregon's administrative rules require governing bodies that develop comprehensive plans to adopt and publicize a citizen involvement program. Federal, state and regional agencies are

required to coordinate their planning efforts with affected governing bodies and also to make use of existing citizen involvement programs. The term citizen is used broadly and includes corporations, government agencies and interest groups as well as individuals. The citizen involvement program must: provide for widespread citizen involvement, assure effective two-way communication with citizens, provide an opportunity for citizens to be involved in all phases of the planning process, assure that technical information is available in an understandable form, assure that citizens receive a response from policy-makers and ensure funding for citizen involvement (Oregon, 1996).

### **Community visioning and consensus building**

Both the State of Washington and the Oregon Visions Project, a committee of the Oregon Chapter of the American Planning Association, have produced guides to community visioning. The chairman of the Oregon Visions Project, Steven C. Ames, described case studies in Oregon in a recent presentation (Ames, 1997). For example, the City of Newberg, Oregon (population 14,700) worked with a neighboring jurisdiction to develop a vision for the entire Chehalem Valley. The vision has been continually referenced by the city in its subsequent planning and decisionmaking activities.

According to Ames, one of the most common criticisms of vision planning is a perceived lack of tangible results. He recommends that action planning be built into the vision planning effort to avoid this problem. This criticism was corroborated by a recent evaluation of a \$4.4 million collaborative visioning project in Atlanta (Helling, 1998). One year after completion of the collaborative visioning process, progress had been made on only 11 of the 41 initiatives and some of those actions were meetings. Some participants were disappointed in the lack of tangible results. As one participant put it:

This process has given the false impression to the public that something is being done, when in fact, all that has resulted . . . has been the agreement that we need to continue to have more meetings.

Despite the lack of tangible results, participants felt that the process was valuable. Sixty-four percent of those who responded to a survey felt that the process had resulted in a significant accomplishment. The author concluded that the process fostered interaction, but not planning or action, because process objectives, rather than outcome objectives, were identified. Furthermore, stakeholders were not allowed to reconsider the purpose of Vision 2020. This is consistent with the Montana Consensus Council's finding in the Ravalli County case study.

The evaluation of the Atlanta process also yields some observations about consensus building. Many participants believed that the requirement for consensus led to general and bland results and noted that it gave special interests veto power over visionary reform.

## **C. Neighborhood Planning and Zoning**

### **1. Background Information**

Neighborhood planning has become popular in Montana and throughout the nation. This trend appears to parallel the growing popularity of local watershed planning. Neighborhood planning takes place on a small enough scale that participants are familiar with the area, the issues, and the options and it is easier to identify small, achievable steps that can be taken.

The Local Planning Enabling Act does not specifically authorize the development of neighborhood plans which are also referred to as local vicinity plans. Local governments adopt neighborhood plans either as a component of a jurisdiction-wide master plan or under their zoning authority.

In *Allen v. Flathead County*, the court ruled that, in order for a comprehensive plan to support zoning under the County Zoning Enabling Act, the plan must be for an entire jurisdictional area. Based on this ruling, it appears that counties may pursue neighborhood planning in two situations: when they have adopted a master plan for the entire jurisdiction; or when citizens have petitioned to form a planning and zoning district under the County Planning and Zoning Act. Cities must have adopted a master plan in order to pursue neighborhood planning.

### **2. Neighborhood Planning and Zoning in Montana**

County-initiated zoning is rare in Montana and most zoning regulations outside of cities are adopted as a result of a citizen petition. Zoning that occurs as a result of a citizen petition is a form of neighborhood planning. Neighbors become concerned about a potential problem; if enough signatures are collected, regulations are adopted to address their concerns.

#### **Neighborhood planning a success in Flathead County**

Flathead County has found neighborhood planning and zoning to be a very successful approach in areas where citizens want to plan and there are a group of committed citizens who are willing to knock on doors and commit time to the effort.

Seven different neighborhoods ranging in size from four to 60 square miles have adopted neighborhood plans and implementing regulations following the defeat of the county-wide comprehensive plan. The plan and implementing regulations are intertwined. When they are adopted, the county's master plan is amended and zoning regulations are adopted under the County Zoning Enabling Act.

Neighborhood plans often get started when people in a neighborhood are unhappy with something that has occurred, for example, a new development. They decide to take action to ensure that it does not happen again. Although neighborhoods often organize around a single issue, Flathead County Planning Director Tom Jentz has come to the conclusion that success is most likely if participants are willing to look beyond a single issue.

The subdivision review process becomes less controversial once neighborhood plans and implementing regulations are adopted. Both the homeowner and the developer know what type of development will be allowed. Citizens may protest the subdivision, but they are much more likely to focus on site specific issues, such as steep slopes.

Neighborhood planning was not successful in two areas of Flathead County. One area did not have a core group of people interested in planning. In another area, attention was focused on a single issue and residents eventually lost interest.

### **Ranchers preserve agricultural land in Jefferson County**

A proposed new development in Jefferson County led local residents of the Milligan Canyon area to establish an agricultural zoning district. The ranchers who initiated this effort agreed that they would not force people into the zoning district. Although people feared zoning, they believed it was the only tool that could be instituted quickly and effectively in order to preserve the land use as agricultural. All of the local landowners in the area agreed on goals for the area and signed a petition to establish an agricultural zoning district. They adopted the Milligan Canyon Boulder Valley Local Vicinity Plan, which is an amendment to the Jefferson County Comprehensive Plan. Interim zoning regulations were adopted while the plan and final regulations were being developed. Although a petition was signed, the zoning regulations were adopted under "part 2" (Title 76, Chapter 2, Part 2, MCA).

## **3. Benefits and Concerns**

### **Benefits of neighborhood planning**

- The plan is initiated, worked out, and agreed to by those most affected -- neighborhood residents. When an agreement has been reached by neighbors, they are committed to the plan. This has many benefits with respect to implementing the plan. One benefit is that neighbors are less likely to protest a subdivision based on concerns about the proposed land use.
- It is easier to identify achievable steps that can be agreed to and implemented when dealing with a smaller geographic area. People are familiar with the area and can focus on solutions specific to their neighborhood. In contrast, policies developed for a large county area are likely to be more broad and general in order to address the different situations in various neighborhoods. The array of issues addressed is more narrow at the neighborhood level so there is less potential for disagreement.
- Local residents shift their attention from fighting government to developing solutions.

## Concerns about neighborhood planning

- Neighborhoods may emphasize neighborhood interests at the expense of county-wide interests, such as siting a landfill or an airport facility.
- Neighborhood planning can be exclusionary.
- What will happen if all neighborhoods plan, and none of them allow industry or mobile homes?
- Neighborhood planning is not the best approach to address all elements of planning. For example, transportation issues and capital improvements planning may be better addressed on a larger scale.

## 4. Issues

Neighborhood planning is not specifically addressed in state law. Nonetheless, neighborhood planning is taking place under current state law. A number of issues have been identified.

- Would it be beneficial to specifically identify neighborhood plans as one of the activities authorized under the Local Planning Enabling Act?
- Should state law clearly define the role of neighborhood plans with respect to master plans and discuss how neighborhood plans should be developed or is this best determined at the local level?
- Should local governments be allowed to adopt neighborhood plans when a master plan has *not* been adopted?
- Should a minimum area be established for neighborhood plans? Are there other characteristics (in addition to area) that characterize a neighborhood? (Stillwater County used existing elementary school district boundaries for neighborhood boundaries in its master plan.)
- How can exclusionary initiatives be discouraged or restricted?

## **D. Preserving Open Space**

### **1. Background Information**

#### **What is "open space?"**

The term "open space" is ambiguous. The term has a variety of definitions in practice and is often undefined. The Growth Study Subcommittee chose to use a very broad definition to describe open space initiatives in this report:

Open space is land used or valued: for renewable and nonrenewable resource production, for environmental resource management, for recreation, for reserved areas for future development, for visual aspects and viewshed values, or for its historical, cultural, or archeological significance.

The term "open space" is defined in state law:

- (3) "Open-space land" means any land which is provided or preserved for:
- (a) park or recreational purposes;
  - (b) conservation of land or other natural resources;
  - (c) historic or scenic purposes; or
  - (d) assisting in the shaping of the character, direction, and timing of community development. (76-6-104, MCA)

Open space initiatives may seek to preserve land for some or all of the purposes described in these definitions. Examples of features that may or may not be addressed include the following:

- Wildlife habitat.
- Scenic values.
- Recreational resources.
- Productive agricultural and forest land.
- Historic sites.
- Ecologically sensitive areas.

#### **Planning and zoning**

A master plan is a tool that can be used to establish policies and priorities related to preserving open space, agricultural lands and other areas. Areas important to wildlife habitat and other values can be identified. Communities can use the planning process to specify which areas should receive the highest priority for protection. It is also important to identify where development should occur. The plan can be used in conjunction with other tools in order to maximize the effectiveness of those tools. Zoning provides a framework for transfer of development rights. Planning and zoning can be used to restrict the density of development, to encourage clustering or to designate which land uses are allowed in certain areas.

For example, zoning regulations can encourage cluster development by allowing landowners to cluster new development on one portion of the property, leaving the bulk of the property for agricultural use or open space. The master plan and implementing zoning regulations can be

used to establish criteria, such as a minimum amount of open space. Local governments may protect the open space or agricultural use through conservation easements, deed restrictions or other mechanisms.

### **Acquisition of land or rights to its use**

Land can be acquired outright or its use can be restricted through a variety of mechanisms that are arranged through a voluntary agreement with a willing landowner. These tools can be used by government agencies or private, nonprofit land trusts. Mechanisms available include: sale, outright donation, bargain sale, limited development, land exchanges, conservation easements purchase and transfer of development rights. Two of these options are described in more detail below.

**Conservation easements.** A conservation easement is a voluntary legal agreement that a landowner can enter into to restrict the amount and type of development that may take place on his or her property. Restrictions are developed with the agreement of the landowner and are unique to each parcel. Montana law (76-6-101 through 76-6-211, MCA) authorizes government agencies and qualified private organizations to acquire conservation easements. Both term easements and perpetual easements are permitted. Conservation easements must be reviewed by the local planning authority prior to recording.

Easements may be donated as a charitable gift. Donors of conservation easements may be entitled to a reduction in income and/or estate taxes. Easements may also be sold.

**Transfer of development rights.** Under this option, the right to develop the land is separated from other property rights. Development rights may be bought and sold. Transfer of development rights is usually accomplished under zoning regulations. *Sending* and *receiving* areas are established. *Sending* areas are zoned for low density development and *receiving* areas are zoned for high density development. Landowners in sending areas may sell their development rights to landowners in receiving zones.

### **Dedication of park lands**

The Subdivision and Platting Act (76-3-606 and 76-3-607, MCA) requires subdividers to dedicate cash or land equivalent to a specified percentage of the land to be developed. The law establishes the percentage of land to be dedicated for different categories according to the proposed parcel size. The law provides for several exemptions from this requirement including: minor subdivisions; land divided into parcels larger than five acres; subdivision into parcels that are all nonresidential; subdivisions that do not create parcels except when that subdivision provides permanent multiple spaces for recreational camping vehicles, mobile homes or condominiums; or subdivisions that create only one parcel.

## 2. Preserving Open Space in Montana

### Planning

Some Montana counties have statements regarding preserving agricultural land in their master plans. Often the term "agricultural land" is undefined and specific areas are not delineated.

The master plan for Sweet Grass County establishes a policy of preserving agricultural land; however, not everyone agrees on what that means. A five-lot minor subdivision was proposed that would convert marginal grazing land to residential land. Some county residents argued that the land was agricultural and should not be developed. Others feel that there is a big difference between the productivity of an irrigated meadow and marginal grazing land. If they don't allow development on marginal grazing land, where will it occur? The county is in the process of revising the plan to make the language more specific. The county may consider using criteria such as tax classification or whether or not the land is irrigated.

### Zoning

Agricultural zoning districts have been established in Jefferson County, Park County, and Sweet Grass County. An agricultural zoning district in the Milligan Canyon/Boulder Valley area of Jefferson County encompasses 84,000 acres and is believed to be the largest agricultural zoning district in the country. The regulations prohibit creation of a parcel of less than 640 acres within the agricultural zoning district.

Ranchers in Park County formed the 66,000 acre Mission Creek/West Boulder Zoning District. The regulations prohibit the creation of new parcels of less than 320 acres. A one time split-off of one to 40 acres is allowed for parcels that were 80 acres or larger at the time the regulations were enacted. Although 80 percent of the landowners signed a petition supporting creation of the district, a lawsuit challenging approval of the district has been filed by landowners residing within the district.

### Open space initiatives

**Gallatin County Open Space Task Force.** Gallatin County appointed an Open Space Task Force to develop options and make recommendations for the definition, identification, protection, and acquisition and/or preservation of open space and its attendant uses in Gallatin County. Options recommended by the Task Force include:

- Updating the county master plan.
- Cluster development.
- Conservation easements.
- Purchase of development rights.
- Private and public land banking.
- Voluntary zoning districts.
- Community-generated planning.
- Transfer of development rights.



- Parks districts.
- Park dedication through subdivision.
- Urban growth boundary.
- Right to farm statement.
- Community supported agriculture.
- Good neighbor policy.
- Technical education/assistance.
- Tax relief for agricultural producers.

Funding mechanisms were also identified. Most recommendations can be implemented without legislation; however, some of the recommendations and funding options require action by the Montana Legislature.

The Open Space Task Force adopted a working definition of "open space." Furthermore, the Task Force developed criteria and a quantitative matrix to be used for identification of open space in the county.

**Open space bonds.** Voters in both Missoula and Helena approved issuance of \$5 million bonds to be used to protect open space.

#### **Other tools**

**Conservation easements.** More than 500,000 acres (as of 1996) of private land in Montana have been protected through conservation easements acquired by land trusts as well as government agencies (EQC, 1996).

**Transfer of development rights.** This tool has been used in the Middle Cottonwood, Bridger Canyon, and Springhill Zoning Districts in Gallatin County.

### **3. Preserving Open Space, Agricultural Lands and Other Areas in Other States**

#### **Farmland Protection in Oregon**

Oregon statutes call for "preservation of a maximum amount of the limited supply of agricultural land." This is implemented through the statewide planning program. Counties must inventory agricultural land, designate it in their comprehensive plan, adopt policies to preserve it, and zone it for Exclusive Farm Use (EFU). All 36 Oregon counties have applied EFU zoning to their agricultural land, covering over 15 million acres.

"Agricultural land" is defined using the Natural Resources Conservation Service Soil Capability Classification System. Different soil classifications are specified for western and eastern Oregon. Other lands suitable for farm use may also be considered agricultural lands. State administrative rules set forth criteria to be considered in defining agricultural lands. Land within urban growth boundaries may not be designated as agricultural lands. Certain types of new dwellings are allowed on land zoned EFU.

In 1992, there were approximately 32,000 farms in Oregon, less than one percent fewer than in 1987. Gross sales of agricultural products in Oregon have increased by about five percent per year since 1985 (Oregon, 1995).

### **Utah's Critical Lands Conservation Committee**

Utah Governor Mike Leavitt created the Utah Critical Lands Conservation Committee in 1996. The purpose of the Committee is to assist local governments in the preservation and conservation of open space by encouraging them to identify lands critical to agriculture, wildlife habitat, watershed management, and recreation. The Committee identifies locally initiated open land and conservation projects to submit to the Legislature for authorization. In addition to the statewide initiative, the Governor requested that individual counties and cities convene local Open Lands Committees and implement local general plans.

The Committee first inventoried state land that was not necessary to agency missions and identified whether partnerships could be formed to preserve the land as open space. In addition, the Committee published Land Conservation in Utah, Tools, Techniques, and Initiatives (Utah, 1997). This tool book outlines steps for a community to follow to establish local open space planning and conservation and lists state conservation efforts and approaches, private organization conservation efforts, federal conservation programs, and local conservation tools and techniques.

### **Wyoming's Open Space Guide Book**

As part of Wyoming Governor Geringer's open space initiative, his natural resources subcabinet published a guidebook on ways to conserve Wyoming's open lands. Titled Ways to Conserve Wyoming's Wonderful Open Lands: A Guide Book, the document was a result of a collaborative process involving diverse groups including the Wyoming Stockgrower's Association, the Wyoming Nature Conservancy, the Wyoming Farm Bureau Federation, the Greater Yellowstone Coalition and Colorado's Cattleman's Association. The Guidebook interprets open space to mean different things to different people. It may have economic market value, but also social, cultural, and spiritual values. The Guidebook then looks into the forces, both internal and external, that drive rural sprawl. In determining the consequences of the loss of open space, the Guidebook notes the private and public benefits of open space and the costs of development. After the policy introduction, the Guidebook lists specific tools, landowner tools, regulatory techniques, and University, state, and federal open lands activities.

### **Great Outdoors Colorado (GOCO)**

In 1992, Colorado passed a constitutional amendment directing funds from the state lottery to help preserve, protect, enhance, and manage the state's wildlife, park, river, trail and open space heritage. Beginning in fiscal year 1999, lottery proceeds are distributed as follows (Colorado Lottery, 1998) :

- 40 percent distributed on a per capita basis to local governments through the Conservation Trust Fund.

- 10 percent allocated to the Colorado Department of Parks and Outdoor Recreation.
- 50 percent (up to \$35 million) goes to Great Outdoors Colorado to pay for open space, state and local parks, wildlife, and trails as well as local planning for these programs. These funds are now divided equally among the following categories: open space projects, state parks, the Colorado Division of Wildlife, and local governments.

Since 1994, Great Outdoors Colorado has accomplished the following (Great Outdoors Colorado, 1998):

- Awarded \$138 million in grants for 990 projects.
- Awarded \$21.2 million for open space projects.
- Helped to conserve 60,528 acres of open space.
- Awarded \$4.8 million for planning and capacity building projects. Examples of planning and capacity building projects include: a cooperative effort by Colorado Open Lands, Denver, Aurora and Arapahoe County to preserve open space along the eastern half of the Denver Metro area; an inventory of natural features for Montezuma County's Agricultural Lands, Open Space and Wildlife Comprehensive Plan; and training for new land trust board members and staff of the Cattleman's Land Trust.

GOCO has been successful with leveraging contributions from partners. For example, the \$21.2 million awarded for open space projects leveraged an additional \$77.8 million.

### **Colorado Cattlemen's Land Trust**

In response to farm and ranch lands being lost at alarming rates -- 90,000 acres per year -- as well as the disappearance of agricultural communities, the Colorado Cattlemen's Association created the Colorado Cattlemen's Agricultural Land Trust. The Trust was formed in 1995 to help farmers and ranchers keep their land in food production and advance private land conservation consistent with private property rights. Its mission is to preserve agriculture and promote awareness of land preservation techniques. Along those lines, the Trust publishes Keeping the Family in the Family Ranch: Traditional Values, New Perspective. The publication includes examples of farmers and ranchers who have used a variety of tools to accomplish their individual goals and keep agricultural land in food production.

The Colorado Cattlemen's Agricultural Land Trust held conservation easements covering 22,163 acres as of October 1998 (Sherrod, 1998).

## **4. Issues**

### **Park dedication**

Ravalli, Missoula, and Gallatin Counties have all expressed concerns about the change in law that created an exemption from the park dedication requirement for minor subdivisions. The Ravalli County planner noted that the county park fund lost 80 percent of its income when the

law was changed to establish this exemption. In Gallatin County, 70 percent of the land area subdivided in the last five years was exempt from the park dedication requirement. Should the exemptions be eliminated or modified?

The Subdivision and Platting Act allows local governments to adopt local park dedication requirements when density requirements have been adopted in the master plan or zoning regulations. Local dedication requirements may not exceed 0.03 acres per dwelling unit. This is a smaller area than is required under the statewide provisions in the law. The Gallatin County Open Space Task Force recommended that the law be amended to allow local governments the flexibility to adopt subdivision regulations that require dedication of a larger area than is allowed under state law. Should local governments have this flexibility? Alternatively, should the dedication requirements be increased statewide?

### **Septic requirements**

The Growth Study Subcommittee heard testimony from developers and local government representatives that Montana Department of Environmental Quality (DEQ) regulations present a barrier to cluster development. The DEQ's subdivision rules generally require a minimum one acre lot per dwelling unit when septic systems or individual drinking water wells will be installed. An exception may be made if the DEQ finds that no sanitary problems will occur. Developers explained that they were forced to spread out dwellings to meet this requirement rather than clustering the dwellings in one area. The DEQ staff have indicated DEQ's subdivision rules do not prohibit clustering, but compliance with mixing zone and nondegradation requirements generally results in widely spaced houses.

The DEQ has established a cluster development team to address this issue. The team is charged with: determining when and where cluster development is advantageous; reviewing subdivision and water quality laws and regulations to identify impediments to cluster development; and determining if changes are necessary to promote cluster development.

### **Establishing a clear purpose for "open space" initiatives**

The term open space is often used broadly to address a variety of attributes. Many of the tools described can be used to accomplish several objectives and this may be appropriate. However, problems can occur when the objectives of a program are unclear and goals refer to undefined terms such as "agriculture" and "open space." Sweet Grass County provides an example of how "preserving agricultural land" means different things to different people. One citizen may view rocky, marginal grazing land as the most suitable land for development, while another may view the same land as agricultural land that should be preserved. If the goal of an initiative is to preserve land for production of food (crops and livestock), communities may want to consider establishing criteria to identify what those lands are (e.g., soils, potential for irrigation, etc.).

## **E. Facilitating Development In and Around Urban Areas**

### **1. Background Information**

The costs associated with sprawl are discussed in Chapter 1. It is more expensive to provide services to scattered development than to development clustered in one area. Citizens may wish to preserve open space or productive agricultural and/or forest lands in certain areas. For these reasons and others, local governments may seek to encourage development in and around urban areas. Communities may identify areas that are particularly suitable for growth during the planning process and may wish to encourage growth in specific areas.

Government policies and other factors may provide disincentives to development in and around urban areas. Therefore, an essential element of promoting infill development is the identification of barriers followed by the development of strategies to remove those barriers.

It is important to recognize that there are several factors that affect a citizen's decision to locate in a certain area and different factors are more or less important to different people. Some people place a very high priority on living in rural areas; this may be particularly true in Big Sky country.

Tools that can be used to promote development in and around urban areas are described below.

#### **Urban growth boundaries**

Urban growth boundaries delineate areas including and surrounding cities and towns where local governments have determined that growth should occur. Establishing boundaries requires careful planning. For example, concerns have been raised that the boundary established around Minneapolis-St. Paul has become "too tight," and may be causing sprawl (Anton, 1996).

#### **Zoning**

Traditional zoning regulations can present a barrier to infill development. Local governments may need to evaluate their zoning regulations to determine if there are barriers to infill development, such as large-lot zoning or separation of commercial and residential uses. Allowing mixed uses and planned unit developments may be conducive to infill development.

#### **Mapping**

Identifying sites suitable for development using maps with or without GIS technology.

#### **Facilitating the permitting process**

Neighborhood support can help to facilitate the permitting process. Local governments can work with developers and neighborhoods to create support for infill development. They can also work with developers to remove barriers to permitting.

## **Infrastructure**

Local government investment in infrastructure can make housing more affordable and can encourage development in certain areas. A capital improvements plan can be useful in guiding development and also showing developers where infrastructure will be in place.

## **Coordination between local governments**

Local governments can work together to minimize the effects of differences in regulations, taxes and fees on location decisions.

## **2. Encouraging Growth in Urban Areas in Montana**

### **Missoula**

Missoula's Urban Comprehensive plan includes an Urban Growth Area. Incentives will be provided to encourage development in and around the city. For example, if development occurs close to the city, the public sector will participate in the cost of extending the infrastructure; if the land to be developed is far from existing services, the private sector must pay all of the costs.

### **Sweet Grass County**

The Sweet Grass County plan encourages residential growth around the town of Big Timber and other communities. However, Big Timber is challenged to pay for the cost of infrastructure for residents within the town and is not able to extend services to the "doughnut area"-- the area just outside of the city limits. Big Timber has considered establishing impact fees to pay for infrastructure. County citizens are concerned that impact fees will drive residents out of Big Timber and might serve to work against the goals in their plan.

## **3. Encouraging Growth in Urban Areas: Other States**

### **National Governors Association**

The National Governors Association (NGA) is working on an initiative to ensure that state funding plans do not encourage urban sprawl. The effort began after several states concluded that they were inadvertently subsidizing sprawl. The NGA is planning to issue a brief on this issue.

### **Oregon**

Oregon cities are required to establish an *urban growth boundary*. Cities are required to consider seven factors in establishing the boundaries and are required to cooperate with the surrounding county or counties. The process of establishing an urban growth boundary entails making population projections, identifying the amount of vacant land available within the city and determining the amount of vacant land needed to accommodate additional growth. For cities with vacant land available, the urban growth boundary is congruent with city boundaries; in other cities, the boundaries extend beyond the city limits (Oregon, 1995).

## **Maryland**

Maryland concluded that state and local taxpayers have unknowingly and unintentionally subsidized the services for residents who decide to live in sprawling development. Maryland's new initiative establishes priority funding areas that include: municipalities, other existing communities, industrial areas and planned growth areas designated by counties. As of October 1, 1998, the state is prohibited from funding "growth related" projects outside of priority funding areas. Examples of growth related projects include highways, sewer and water construction, housing and economic development assistance (Maryland, 1997).

## **4. Issues**

Planning for infrastructure and paying for infrastructure are critical elements of encouraging development in and around urban areas. These issues are discussed in sections H and I of this chapter.

### **Disincentives**

Government policies may discourage growth in urban areas and encourage sprawl. As noted previously, a number of factors working together affect location decisions. Examples of policies that have been identified by various parties as providing incentives for sprawl are provided below. The Growth Study Subcommittee has not evaluated these policies to determine their impact.

- Spreading the cost of services among all taxpayers equally when low-density developments are more expensive to serve (Longman, 1998).
- Federal subsidies for construction of highways artificially reduce the cost of living in and commuting from a sprawl development (Longman, 1998).
- Zoning regulations that separate housing from other land uses encourage sprawl by geographically segregating residential development from work, entertainment and shopping. Barriers to changing zoning regulations are discussed in more detail below.
- The United States Department of Agriculture, Rural Development has two home loan programs that restrict eligibility to loans for homes in rural areas. Rural areas include open country and communities with populations of less than 10,000 that are rural in character and not closely associated with urban areas (USDA Rural Development, 1998).
- The capital gains provisions of the federal tax code prior to enactment of the Taxpayer Relief Act encouraged homeowners to purchase larger, newer more expensive homes on larger parcels of land, rather than existing homes closer to older neighborhoods and urban centers. The Environmental Law Institute concluded that the Taxpayer Relief Act of 1997 will reduce the rate of exurban sprawl (State Environmental Monitor, 1998).

- Under Montana law, nonproductive agricultural land parcels between 20 and 160 acres are taxed much less than other residential land. It is possible for a landowner to pay more than twice the amount of property tax as a neighbor whose parcel of land is ten times larger, even if neither person is using their land for agricultural purposes.

### **Barriers to changing zoning regulations**

As noted previously, zoning regulations can provide an incentive or disincentive to encourage development in and around urban areas. The Growth Study Subcommittee heard testimony from developers and some local government officials that state zoning law requirements present a barrier to changing regulations to encourage infill development. The Municipal Zoning Enabling Act requires a super majority (three-fourths) vote of the members of the city or town council to override a protest of 20 percent of the neighboring landowners. A developer in Missoula talked about the difficulty of getting a planned unit development<sup>2</sup> approved under these conditions and noted that developers may not be willing to take the risk. Proposed changes to Missoula's zoning regulations to encourage infill development have failed twice.

This provision may result in sacrificing the goals of the community for the interests of neighboring landowners. Should the law be modified to remove this barrier?

## **F. Impact Fees**

### **1. Background Information**

#### **What are impact fees and development exactions?**

Impact fees are a type of development exaction. A development exaction is a tool that can be used to ensure that new development pays for the additional burden on public facilities resulting from that development. It may be used to pay for the necessary costs of new or expanded public facilities that are reasonably related to the development. Impact fees are charges assessed by local governments according to a formula. Other exactions are negotiated on a case-by-case basis with the developer.

Local governments throughout the country are increasingly using impact fees to pay for the costs of public facilities. This trend has been attributed to the following factors: reduced federal funds for public facilities; property tax limits; and increased concern about the impacts of growth (Washington State, 1992).

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<sup>2</sup> With planned unit developments a developer can use flexibility in the layout of a development. This tool allows developers to emphasize affordable housing and open space by providing smaller, clustered individual lots.



### **Do Montana local governments have the authority to assess impact fees?**

Yes. The Subdivision and Platting Act provides express authority for impact fees in two places, sections 76-3-510 and 76-3-621, MCA. Key provisions of these laws are highlighted below.

- In general, impact fees may be used to pay for **capital costs, not operation and maintenance costs**. Specifically, impact fees may be used to pay 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" (76-3-510, MCA). There is one exception (see following bullet).
- Local governments are allowed to require subdividers to make a cash payment in lieu of dedication of a portion of the subdivided land for use as **parks and playgrounds**. According to state law, local governments can use up to 50 percent of the dedicated money for **park maintenance** (76-3-621, MCA).
- Impact fees can only be used to pay for costs that "reasonably reflect the expected **impacts directly attributable to the subdivision**."
- Assessment of impact fees to pay for schools is **prohibited**.

Local governments also have *implied* authority to assess impact fees under the planning and zoning enabling laws as well as the Subdivision and Platting Act. An attorney for the Montana Department of Commerce, Richard M. Weddle, has reviewed the legal status of development exactions and impact fees (Weddle, 1998). In light of two important U.S. Supreme Court decisions<sup>3</sup>, Weddle advised local governments to weigh the following criteria when considering exactions or impact fees:

- The development in question will create a specific need for additional public facilities or improvements.
- The regulatory scheme under which the fee or exaction would be imposed is intended, at least in part, to prevent or mitigate the types of impacts on public facilities or the public health and safety that the development is expected to have.
- The objective of the regulatory scheme is a legitimate governmental purpose.
- The proposed fee or exaction is proportionate to the need for additional public facilities or mitigating measures reasonably attributable to the development.
- The fee (if applicable) will actually be expended to mitigate the particular impact on public facilities or the public health and safety attributable to the development.

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<sup>3</sup> Dolan v. Tigard (1994) and Nollan V. California Coastal Commission (1987).

A sufficiently detailed capital improvements plan is essential to provide a foundation for satisfying some of these criteria.

## **2. Impact Fees at Work in Montana**

Development exactions are far more common than impact fees in Montana. Only four local governments have assessed impact fees. The City of Bozeman assesses impact fees under its zoning authority. The fees are collected when building permits are issued and are used to address impacts on streets, fire protection, and water and sewer systems, where these services are available. Although the impact fees were controversial, no one has filed a lawsuit challenging the fees that were established in late 1995. Gallatin County collects impact fees from the subdivider at the time the plat is filed; the fees are collected to address impacts on roads and fire protection services.

## **3. Impact Fees in Other States**

According to the American Planning Association (APA, 1997), impact fees are used most widely for sewer and water facilities, and parks and roads. They have also been used to pay for schools, libraries and public facilities. Approximately half of the states have enacted enabling legislation for impact fees.

An article in The Western Planner (Stowell, 1994) reviewed impact fee enabling laws in five western states (Arizona, Idaho, Nevada, New Mexico, and Washington). Four of five the states require a capital improvement plan before an impact fee is imposed. The article noted that legal battles were still occurring in these states despite the enabling legislation. In Washington, only local governments that plan under the Growth Management Act are allowed to assess impact fees. Washington law allows communities to grant exemptions from impact fees for low-income housing. Public funds equivalent to the cost impact of the exemption must be provided; local governments cannot make up the difference by charging other developers (Washington State, 1992).

The American Planning Association (APA, 1997) has ratified a policy guide on impact fees. In order to provide a solid framework for the assessment of impact fees, the APA encourages local governments to adopt capital improvement programs that are consistent with an adopted comprehensive plan that considers other funding alternatives.

## **4. Benefits and Concerns**

Considerable controversy surrounded the adoption of impact fees by the City of Bozeman and Gallatin County. Some argued that impact fees are "anti-growth," while others maintained that the fees are "pro-growth." Proposed fees for Bozeman were reduced to address concerns that the fees were too high. A petition drive in 1998 led to more debate. Voters approved a ballot measure that would increase the fees to 90 percent of the cost of the impact of new development

on specific types of infrastructure (see above "Impact Fees at Work in Montana"). The costs were determined in studies conducted for the City of Bozeman in 1995 and 1996.

Benefits and concerns that have been identified in Montana communities or by organizations in other states are listed below. Some of the benefits identified are the same as the concerns. This may be a reflection of differences in philosophy about who should pay for the costs of new development, as well as a lack of information or conflicting information about the effects of impact fees. For example, many factors affect the price of housing and the location of development and industry; therefore, the specific "impact" of impact fees is the subject of controversy.

### **Benefits**

Potential benefits of impact fees that have been identified include:

- They place the burden of paying for additional public facility costs on those who benefit most.
- They can be an effective tool for ensuring adequate infrastructure to accommodate growth.
- They make it possible for developers to proceed with projects instead of waiting for public facilities to be constructed at some later date.
- They enable local governments to commit to constructing public facilities in a systematic manner.
- Developers know the costs up front and know that developments with similar impacts will be treated the same.

### **Concerns**

Concerns about impact fees that have been identified include the following:

- They are passed on to the home buyer; therefore, they unnecessarily increase the cost of housing.
- When impact fees are assessed in an isolated jurisdiction, there may be a cost discrepancy that results in sprawl.
- Establishment and administration of impact fees that reflect the costs of the development can be a complicated and technical process. The analysis required to support impact fees

is expensive. Separate accounting of funds for each subdivision is required and if the project is abandoned, the impact fees must be repaid.

- They are inequitable because new development does not benefit from existing facilities. Newcomers must continue to pay property taxes for infrastructure.
- Impact fees are subject to legal challenge.
- Impact fees will drive business and industry out of the jurisdiction.

## 5. Issues

Issues that have arisen surrounding impact fees generally fall into the following categories:

**Effects.** Will the impact fee drive up the cost of housing, keep business and industry out of the jurisdiction, or encourage sprawl in another area?

**Equitableness.** Is it more equitable to make new development pay its own way or for the entire community to share the costs of public facilities?

**Fee structure.** Are the fees set at the appropriate amount to pay the costs of the impact of the development? Do they cover the full cost? Are they so high that they will have adverse effects?

**Legal authority.** Will the impact fees be challenged in court? Is it worth the expense of establishing the fees if they may be struck down and the local government may have to refund the money collected? How do local governments pay for costs that they are prohibited from recovering?

In response to a broad question in the EQC growth survey that asked if the authority and tools vested in local governments are adequate to manage the impacts of growth and development, ten of the local governments that responded indicated that the authority to assess impact fees was inadequate or unclear. Three of these local governments were specifically concerned about the lack of authority to assess impact fees to pay for schools.

As noted previously, the Subdivision and Platting Act specifically prohibits local governments from requiring subdividers to pay for schools (76-3-510, MCA). Local governments may not deny a subdivision based solely on the proposed development's anticipated impact on the provision of educational services (Commerce, 1995). However, they must identify a proposed subdivision's adverse impacts on educational services and may require the subdivider to take reasonable steps to mitigate these impacts.

Ravalli County has experienced overcrowding in its schools districts as a result of growth. County planners ask developers to voluntarily contribute a fair and reasonable amount that is

equal to the impacts of the subdivision. A recent article in the Missoulian evaluated voluntary contributions by developers and found that the response was poor in all but one of the seven school districts (Rider, 1998).

At the November 13, 1997, meeting of the EQC Growth Study Subcommittee, Missoula Mayor Kadas suggested that it would be helpful to waive impact fees in certain areas to encourage growth in those areas. A local government could waive impact fees in certain areas if the infrastructure was already developed.

## **G. Geographic Information Systems (GIS)**

### **1. Background Information**

A Geographic Information System (GIS) is a computer system for assembling, storing, manipulating, and displaying data which contains physical locations of features and information about those features. A GIS can be useful in developing and implementing comprehensive plans and land use regulations. A GIS is useful in two very different ways: it provides the ability to analyze spatial information in an efficient manner; it can also be used to produce maps which enhance citizens' understanding of land use.

### **2. GIS in Use in Montana**

#### **Butte-Silver Bow County**

Butte-Silver Bow's GIS database has been very useful for planning, zoning and subdivision review. The ability to tie together various pieces of information related to subdivision review (location of water, sewer, etc.) has helped the county to make better decisions. Zoning maps have been useful in illustrating exactly what type of development is permitted where. Participants in the regulatory processes find the regulations more understandable when they are displayed on a map. The county has also used the database to answer questions; for example, how many buildable lots are available? The county has been getting more and more requests from realtors for site-specific maps.

Butte-Silver Bow County worked with the local Montana Department of Revenue office to digitize cadastral (plat) maps. This effort was key to making the GIS useful for planning, zoning and subdivision decisions.

The county received funding for its GIS from ARCO in order to facilitate Superfund cleanup. The county has also established an internal enterprise fund. Several county departments use and support the system.

Butte-Silver Bow has established a partnership with Anaconda-Deer Lodge and Madison Counties.

## **Yellowstone County**

Yellowstone County also has land ownership information and zoning restrictions in its GIS database which is available on the Internet. The GIS database was used to develop the West End Study Plan.

## **Gallatin County**

Gallatin County has found GIS to be useful in helping citizens and local officials to understand current conditions and also to consider what the county should look like in the future as the county updates its master plan.

**Four Corners Area Assessment.** GIS data collection was one of the elements of this neighborhood planning project initiated by the Gallatin County Planning Board. Data were collected in the following categories: existing land use, parcel data, pollution sources, school districts, projected land use, ground water contours, soils, transportation systems, floodplains, water wells, fire districts, public land survey system and hydrography.

Maps were produced along with self-explanatory information designed to inform participants about current and projected conditions. The maps were displayed at a community open house attended by more than 100 residents. Residents were also able to query GIS data using ArcView. A follow-up community planning workshop was attended by more than 60 residents. The purpose of the workshop was to develop a shared vision of the future. GIS presentations were also a significant part of this meeting (Armstrong, 1998).

**Demonstration Project.** Gallatin County is participating in a National Spatial Data Infrastructure Community Demonstration Project that involves pooling growth-related data to help local officials explore future growth patterns. As part of this project, the county may receive a \$145,000 grant to upgrade their maps so they can provide more specific information.

Planning Director Dale Beland views public involvement as an important aspect of this project. Five public computers will be set up in areas, such as libraries, where people can easily access them and look at pictures of future growth scenarios. This will help citizens to become more informed and better able to participate in the county's planning process.

A key element of this project is the establishment of a data sharing partnership with federal, state and local government agencies.

## **Montana Geographic Information Council**

Governor Marc Racicot created the Montana Geographic Information Council by executive order. The purpose of the Council is to provide policy level direction and promote efficient and effective use of resources for matters related to geographic information. The Governor charged the Council with promoting cooperation among federal, state, and local agencies, and the private sector in addressing geographic data and information needs in Montana. The Council is scheduled to sunset in September 1999.

### **Montana Local Government Geographical Information Services Coalition**

The Montana Local Government Geographical Information Services Coalition is a coalition of local governments formed to facilitate and advance the implementation and development of GIS technology in city and county government through communication and data sharing. The members meet quarterly to discuss topical issues. Some specific issues that the Coalition has discussed in the past are mapping, planning, road maintenance, and information technology.

The Montana State University Geographic Information and Analysis Center provides technical and logistical support to the Coalition.

### **Montana Cadastral Mapping Project**

The Montana Cadastral Mapping Project seeks to develop a coordinated statewide digital database of landownership information. Goals of the project are to:

- Establish a public/private partnership for project coordination.
- Provide a geospatial cadastral (landownership) database which can be accessed by users.
- Develop a shared landownership base on which users can accurately register other information (e.g., soils, land use) for their own application needs.
- Establish mapping standards that provide uniformity for common uses, yet allow flexibility for individual applications.

The database will tie parcels to the Montana Department of Revenue's (DOR's) geo-code, enabling local governments to produce planning maps using the DOR's Computer Assisted Mass Appraisal (CAMA) data.

The Land Record Modernization Work Group of the Montana Geographic Information Council is overseeing this project. The Work Group includes representatives of state, local and federal governments.

The project is seeking a combination of state, private and federal funding. The proposed state share is 25 percent of the total project cost.

### **Natural Resource Information System (NRIS)**

The Natural Resource Information System (NRIS) is a program of the Montana State Library that serves as a clearinghouse and referral service for natural resources information, including GIS data. Local governments can obtain base layers that are useful for a GIS from NRIS. Available information includes the location of streams, roads, wildlife habitat, boundaries, aquifers and water wells.

NRIS also serves an important function as the state's "metadata" coordinator. The term *metadata* refers to "data about data" or documentation (e.g., source, date, scale, etc.) that will help a user determine how the data can and should be used.

### **3. Issues**

#### **Coordination**

Careful coordination among GIS data developers and between developers and users is essential to ensure that data can be shared and that data are useful to the end user. The earth is round and there are different ways of dealing with this factor; consequently, data compatibility is a challenge. The Montana Geographic Information Council was established to address the need for coordination. Data creation represents the largest cost of a GIS system. Coordination can help to minimize duplication of effort and result in cost savings. In this case, coordination is more than a friendly exchange of information; it is a significant effort that involves development of standards and documentation of data.

#### **Resources**

Not all local governments have the necessary resources to acquire GIS hardware and software and also develop data layers. ESRI, a geographic information software company, offers local government start up grants for software. A 911-type funding system for data development has been proposed. Other options to make this tool more accessible include contracts for services between counties or contracts between local governments and the state. The coordination efforts described in the previous section can help to make data more affordable. State initiatives to make data available through the state library's NRIS clearinghouse are also important.

## **H. Coordination between Local Governments**

### **1. Background Information**

Decisions made by a city can affect growth in the county and vice versa. In some areas of Montana there is little or no coordination between the city and the county. For example, even though Sweet Grass County wants to encourage growth around Big Timber, the two planning boards do not work together.

An area of particular concern is the "doughnut" area. These areas may some day be annexed to the city in order to take advantage of water, sewer and other services. Without coordinated planning and zoning, the doughnut area could be developed in a way that is incompatible with a city's master plan or with the infrastructure already in place. Density may not be sufficient for water and sewer, making it difficult to serve areas of new growth in an effective and efficient manner. Furthermore, counties may wish to encourage growth in the areas around cities.

In some areas, there is a need for coordination between counties. Missoula and Ravalli Counties, as well as Jefferson and Lewis and Clark Counties, are two areas of the state where coordination between counties may be beneficial.

The Local Planning Enabling Act authorizes local governments to form a joint or consolidated planning board with other local governments through an interlocal agreement. For example, a



city and a county could jointly address planning; two counties could also use this mechanism to coordinate their efforts. If a *consolidated* board is formed, the existing planning boards for each entity are dissolved and the consolidated board assumes the duties of those boards. Local governments that have chosen to establish consolidated planning boards include the City of Helena and Lewis and Clark County as well as the City of Missoula and Missoula County. If a *joint* board is formed, each entity would continue to have its own planning board; the authority and responsibility of the joint planning board is set forth in the interlocal agreement.

When a city decides to create a planning board, the law provides county commissioners with an opportunity to choose to establish a city-county planning board. The jurisdiction of the city-county planning board may extend up to 4 ½ miles beyond the city boundaries if the city and county so choose. The boundaries may be extended further upon petition of residents of the area under consideration. A city may adopt extraterritorial zoning regulations if the area to be zoned is included in the master plan and the area has not been zoned by the county.

## **2. Interaction between Cities and Counties in Montana**

### **City of Great Falls and Cascade County**

The City of Great Falls and Cascade County have taken a "common sense" approach to cooperation and coordination. The city-county planning board is comprised of four members appointed by the city, four appointed by the county and one Conservation District representative. The board's jurisdiction extends to the doughnut area around the city. If Cascade County is confronted with a situation, such as a large scale development, that might affect Great Falls, they notify the city. In a similar situation, the city reciprocates.

Great Falls and Cascade County share one planning staff member. They cooperate in computer mapping using a geographic information system (GIS). When they buy hardware and software they ensure that it is compatible. In addition to land use planning, they work together in other areas, such as transportation planning.

Great Falls is in the process of developing a comprehensive plan. Where the plan addresses broad issues such as environmental quality, wildlife habitat, economic development and agriculture, they intend to consider impacts beyond the jurisdiction's borders.

### **City of Missoula and Missoula County**

Urban residential development extends beyond the city limits of Missoula; consequently, cooperation between the city and the county is very important. An Urban Growth Area has been established that extends approximately four and ½ miles beyond the city limits. A comprehensive plan was recently adopted for this area. City and county subdivision regulations have been revised so they are similar.

The city and the county have several mechanisms for coordination:

- A consolidated city-county planning board was established by inter-local agreement. The entire county is included in the jurisdiction of this planning board.
- A Planning Policy Committee was established that includes two county commissioners, the president of the city-county planning board, the mayor of Missoula and the president of the city council.
- A Growth Management Task Force comprised of city and county representatives was established to guide the development of the Missoula Urban Comprehensive Plan.
- A "conference committee" comprised of all county commissioners, all city council members and the mayor met when it was necessary for each jurisdiction to consider adoption of the comprehensive plan. Each jurisdiction voted on the plan. If a majority in each jurisdiction agreed, it was adopted. If the two jurisdictions did not agree, there was a process for making separate amendments to the plan, but it was not necessary to use this process.

The city and the county still face problems as a result of differing policies and procedures. For example, the county enforces different standards for infrastructure, such as sidewalks. The city is concerned that the difference in standards will result in incompatible infrastructure in areas that may eventually be annexed.

### **Gallatin County and Belgrade, Bozeman and Manhattan**

The Gallatin County Planning Board and the city-county planning boards for Belgrade, Bozeman and Manhattan formed a Planning Roundtable in 1998. The Roundtable will assist with the development of the "Valley Plan," a land use policy plan that integrates the plans of all jurisdictions. The Valley Plan is expected to be completed by July 1, 1999.

Extraterritorial zoning in the doughnut area around the city of Bozeman has been controversial. Some residents of the area have complained because they can't vote for the city officials who make zoning decisions. The county intends to adopt zoning regulations for the doughnut area that are comparable to the city's regulations. One option that has been considered is to transfer the decisionmaking authority to the county, yet still retain review by city staff in order to ensure consistency between jurisdictions.

### **City of Helena, Lewis and Clark County and Jefferson County**

Coordination between the City of Helena and Lewis and Clark County is accomplished in a number of ways. The two governments have a consolidated planning board. Other boards and committees with representatives of both bodies include the Transportation Coordinating Committee, the Historic Preservation Commission, and the Land Conservation Development Advisory Committee. Elected officials from both entities meet once a month to discuss issues of

common concern, including planning and transportation. They have formed a joint committee to examine infrastructure issues. Helena also recognizes the importance of coordinating with Jefferson County, which shares a border with the city. Jefferson County is represented on the Land Conservation Development Advisory Committee.

### **3. City-County Coordination in Other States**

#### **Washington State**

The Washington Growth Management Act requires counties that plan under the act to adopt county-wide planning policies in cooperation with cities to ensure that city and county comprehensive plans are consistent. One specific component of this law is a requirement that towns, cities and counties coordinate with each other to designate Urban Growth Areas. For example, Thurston County and the City of Olympia jointly adopted the component of their comprehensive plans that addressed the Olympia Urban Growth Area. The county also developed joint plans with other cities to address the unincorporated portions of their Urban Growth Areas. Furthermore, Thurston County and the cities of Olympia, Lacey and Tumwater adopted a memorandum of understanding establishing a framework for joint zoning regulations to be administered by the county in each city's unincorporated Urban Growth Area.

#### **Oregon**

Cities and counties in Oregon coordinate planning and zoning in urban growth areas through *urban growth management* agreements. The agreements address the following types of issues:

- Which entity will administer land use regulations in the area outside of the city?
- What standards for public services and facilities should be applied?
- How should the area be zoned until it is urbanized? What interim controls are needed to protect the area's potential for urban development?

The Oregon Department of Land Conservation and Development asserts that urban growth boundaries have been highly effective in the following ways: holding down the costs of public services and facilities; saving farmland from urban sprawl; better coordination of city and county land use planning; and greater certainty for landowners and developers (Oregon, 1995).

Local governments and special districts that provide urban services to an area within an urban growth boundary with more than 2,500 people are required to adopt *urban service agreements*. Urban services include: sewers, water, fire protection, parks, open space, recreation, streets, roads and mass transit.

### **4. Issues**

#### **Annexation**

Annexation can be initiated by a city or by residents outside of the city. Four local governments that responded to the EQC Growth Survey indicated that annexation powers were too limited or

unclear. For example, there are many exemptions from the provision that allows cities to annex areas that are wholly surrounded; some argue that the exemptions make this provision nearly useless.

## **Planning**

Cities and counties have a variety of tools available to them to facilitate cooperative planning. State law enables, but does not require, counties to work with cities.

## **Infrastructure**

Development in areas, such as cities, that already have services, is more cost-effective than scattered development. For this reason and others, some counties wish to encourage development near existing cities. Simply maintaining the existing infrastructure presents a challenge to cities (see "Infrastructure and Capital Improvements Plans"). Some cities, including Helena and Bozeman, are concerned about providing for services that are used by nonresidents who do not pay for them. For example, people who live outside the city and travel into the city for employment, shopping and other services use roads, parks and other facilities. Is there a need to establish a mechanism for counties to help contribute to these costs?

Schools are a very costly part of the infrastructure, but planning for schools is a separate function from other infrastructure planning activities. Should there be more coordination. If so, how?

# **I. Infrastructure Development and Capital Improvement Planning**

## **1. Background Information**

### **Capital improvements plans**

Planning for infrastructure development is an important element of planning for growth. The Local Planning Enabling Act authorizes planning boards to develop capital improvements plans (CIP's).

Capital improvements are major high cost public facilities such as public water and sewer systems, schools, roads, bridges, fire stations, parks and public buildings. The location, timing and capacity of infrastructure improvements by local government can affect the pattern of growth as well as the cost to the taxpayers for providing these facilities. Furthermore, development of infrastructure is needed to provide for growth, whether it is accomplished by the public sector or the private sector.

Development of a capital improvements plan involves the following steps:

- Assessing the need for new facilities in light of the master plan and anticipated projected future growth.
- Identifying costs and possible funding sources.
- Establishing priorities.

- Setting a timeline for financing and construction.

A capital improvements plan for a city would typically address public water and sewer systems, roads, bridges, fire stations, recreation facilities and public buildings. A capital improvements plan for a county would most likely address roads, bridges, recreation facilities and fire protection.

### **Infrastructure funding**

State and federal grant and loan programs are available to help supplement local government financing mechanisms to pay for the costs of infrastructure. The Montana Department of Commerce maintains a Public Works Money Database to help local governments and others to identify funding sources.

## **2. Planning for Capital Improvements in Montana**

Only two of the 14 fastest growing counties identified in Chapter 1 (Big Horn and Gallatin Counties) have a current capital improvements plan. Another county is developing a plan. Since cities bear most of the responsibility for infrastructure, cities are more likely to develop capital improvements plans. Cities and towns in growing counties with current capital improvements plans include: Townsend, Red Lodge, Bozeman, Manhattan, West Yellowstone, Missoula, Roundup, Hamilton, Thompson Falls and Columbus. Helena and Stevensville are developing capital improvements plans. However, a number of cities and towns in growing counties have no capital improvements plans. These include: Hardin, Columbia Falls, Kalispell, Whitefish, Belgrade, Whitehall, Polson, Ronan, East Helena, Ennis, Sheridan, Virginia City, Superior, Darby, Hot Springs, Billings and Laurel.

### **Bozeman**

Bozeman has a capital improvements plan which is updated annually. Planning staff find the plan to be useful for budgeting, development of impact fees, and providing information to developers and citizens regarding when and where infrastructure development will occur.

### **Missoula**

The Missoula Urban Comprehensive Plan emphasizes the capital improvements plan as a mechanism for deciding where future growth will be encouraged.

## **3. Benefits and Concerns**

Benefits of capital improvements planning include the following:

- Local governments can evaluate the most cost-effective way to develop facilities, thereby limiting the cost to citizens (through taxes, fees, etc.) for providing those services.

- When capital improvements plans are done in coordination with master plans, they can help to ensure that infrastructure development decisions help and do not hinder the master plan's goals and objectives.
- Capital improvements plans can help to identify where development is most cost-effective.
- Capital improvements plans provide the framework needed to assess development impact fees and exactions.
- Developers know when and where infrastructure will be developed.
- Cities and towns can use the capital improvements plan to schedule the annexation of new territory.
- Capital improvements plans provide documentation needed to obtain financial assistance.

Concerns about capital improvements planning generally relate to: decisions made in the planning process and whether or not they are equitable; and how the capital improvements plan is used. The capital improvements plan may be used as a basis for imposing impact fees and development exactions.

#### **4. Issues**

##### **Paying for infrastructure**

The nation's infrastructure is deteriorating; this is also a problem in Montana. Local governments are faced with costs to fix deteriorating infrastructure as well as costs to upgrade facilities to comply with new government regulations, such as the requirements of the federal Safe Drinking Water Act. State and federal grant and loan programs help to pay for these costs, but the money available falls short of meeting the demand. Finding ways to pay for new infrastructure to serve new areas of development in addition to maintaining, upgrading and replacing existing infrastructure is a key challenge faced by local governments that are planning for growth.

##### **Encouraging capital improvements planning**

This tool is not well utilized in Montana. Should the state provide incentives to encourage capital improvements planning?

## **J. Incentives to Plan for Growth**

### **1. Background Information**

The EQC Growth Study Subcommittee found that subdivision review often takes precedence over planning for growth. The subcommittee concluded that incentives should be provided to encourage planning for growth. Incentives to plan for growth in other states are presented below.

### **2. Incentives to Plan for Growth in Other States**

#### **Oregon**

Senate Bill 100, passed by the Oregon Legislative Assembly in 1973, created a statewide program for land use planning through a partnership between the state and local jurisdictions. It set planning standards, created a state agency to administer them (the Department of Land Conservation and Development, or DLCDD), and established grants to help local governments meet the standards.

Oregon's statewide planning program is based on 19 mandatory "goals" that apply to cities, counties, and state agencies in planning and managing land use. The goals have been adopted as administrative rules and state staff review local plans to ensure compliance with state goals.

State law requires each city and county to have a comprehensive plan and the zoning and land-division regulations needed to put the plan into effect. Each plan includes a factual (inventory) element and a policy element (including a map of future land uses).

SB 100 also created a volunteer, seven-member commission, appointed by the Governor and confirmed by the Senate, to head the planning program -- the Land Conservation and Development Commission. Geographic representation must cover all of Oregon's five Congressional districts. The state also has a special "court" (the Land Use Board of Appeals) that reviews appeals of land use decisions.

Oregon provides grants to local governments for: inventories of resources, writing plans, implementing plans and programs and conducting periodic reviews. Approximately \$3.3 million was budgeted for local grants in the 1995-1997 biennium. With the exception of coastal zone management funds from the federal government (\$373,000), grants are funded out of the general fund.

Additional grant funds (\$4.6 million) for local transportation system plans and implementation measures, land use plan changes which help meet transportation needs, and urban growth management strategies were provided through the Transportation and Growth Management Program. Funding sources for these grants were: federal Intermodal Surface Transportation Efficiency Act funds and the state lottery.

## Washington

The Washington Legislature passed the Growth Management Act (GMA) in 1990. The GMA requires the more populous and faster growing cities and counties to adopt comprehensive plans. Zoning decisions made by local governments must be consistent with the plans adopted by cities and counties.

The following jurisdictions are required to prepare comprehensive plans:

- Counties with a population of 50,000 or more that experienced a greater than 10% population increase between 1985 and 1995.
- Counties with a population of 50,000 or more that experienced a greater than 17% increase in population in a ten-year period ending after 1995.
- Any county that has experienced population growth greater than 20% in the past ten years, regardless of its population.
- Any city within one of the above counties.

Jurisdictions required to prepare comprehensive plans shall:

- Adopt a county-wide planning policy (counties only).
- Designate critical areas, agricultural, forest, and mineral resource lands.
- Adopt development regulations conserving the agricultural, forest, and mineral lands and protecting critical areas.
- Designate and take other actions related to urban growth areas (counties only).
- Adopt a comprehensive plan and development regulations that implement the plan.

Counties not meeting the criteria invoking GMA requirements can choose to plan and develop regulations. The law provides that if a county chooses to pursue GMA planning, the cities within the county are automatically included.

According to the law, a comprehensive plan must be internally consistent and must include the following:

- Maps and text used to develop the plan.
- Land use, housing, capital facilities, utilities, and transportation elements.
- A rural element for lands not designated for urban growth, agriculture, forest or mineral resources.
- A process for identifying and siting essential public facilities.

Although not required by law, administrative rules recommend that strong consideration be given to including the following elements in a comprehensive plan:

- Economic development.
- Environmental protection (including critical areas).



- Natural resource lands (where applicable).
- Design.

State administrative rules also authorize these additional components of a comprehensive plan:

- Conservation.
- Solar energy.
- Recreation.
- Subarea plans if they are consistent with the overall plan.
- Other elements, items, or studies dealing with other subjects related to the physical development within the jurisdiction.

The Legislature amended the GMA in 1994, creating three Growth Management Hearing Boards that hear and decide petitions that allege that either an agency is not in compliance with the GMA (and a few other programs), or that the 20-year growth management planning projections adopted by the Office of Financial Management should be adjusted. A Board may adjust a population projection for purposes of growth management planning.

The Washington Department of Community, Trade and Economic Development's Growth Management Services Program provides the following services:

- Technical assistance to communities with growth management planning.
- Financial assistance to communities to help implement GMA requirements.
- Guidance to local governments on effective implementation of the GMA.
- Review of new and amended GMA documents.
- Assistance in resolving disputes.
- Analysis, maintenance, and dissemination of statewide growth management data.
- Assistance to local governments with integrating planning and environmental review procedures.
- Coordination of state actions and policies related to the GMA.
- Staff support to the Governor and Land Use Study Commission.
- Staff support for ongoing legislative review and refinement of the GMA.
- Information on growth management news and progress.

Washington provides the following financial incentives for planning under the Growth Management Act:

- Grants to cities and counties for GMA implementation.
- Only cities and counties that plan under the GMA are allowed to assess impact fees. Impact fees may be used to pay for public streets and roads, public parks, open space and recreation facilities, school facilities, and fire facilities that are not part of a fire district.

- Cities and counties required to plan under the GMA are authorized to levy an additional 0.25 percent real estate excise tax without voter approval. Local governments that choose to plan may levy such a tax after voter approval. Revenues can be used solely for development of capital facilities identified in the adopted capital facilities plan.

## Chapter 4: Resources for Planning

### A. Money

#### 1. Cost of Planning

**Table 4-A** shows recent costs to develop or update master plans for several jurisdictions.

**Table 4-A**  
**Resources Required to Prepare or Update Master Plans**

Locality	Year(s)	Cost	Time Spent
City of Helena	1991-94	\$60,200	3 years
Stillwater County	1996-97	\$40,000	2 years
Bozeman (plan update)	1999-2000	\$100,000 (budgeted)	1½ years (anticipated)
Whitefish	1994-96	\$15-20,000 est.	2 years
Kalispell	1996-98	\$15-20,000 est.	2 years
Butte–Silver Bow	1994-1995	\$88,260	1½ years
Great Falls	1997-99	\$315,000–\$330,000 <sup>1</sup> (budgeted)	2 years (anticipated)
Gallatin County	1993	\$30,000	1–1½ years
Jefferson County	1993	\$25,000	1½–2 years
Flathead County	1993-94	\$500,000	2 years

1. Includes \$50,000 donated by ARCO for a master plan for the Smelter Hill site.

**Table 4-B** shows the annual costs of operating the planning department for six Montana counties.

**Table 4-B  
Annual Budgets for County Planning Departments**

County	Total Budgeted (FY 1998)	Estimated Additional Needs for Adequate Planning (per year)
Flathead	\$494,000	unknown
Gallatin	\$258,000	\$25,000
Jefferson	Planning Dept.: \$38,580 Planning Board: \$6,395	\$20,000
Madison	\$48,100	\$50,000
Missoula	\$1.1 Million	\$66,000
Stillwater	\$81,175	\$80,000

## 2. Sources of Funding

Funding mechanisms that may be used by local governments to pay for planning activities are summarized below. It should be noted that the Montana Constitution was amended by the voters in November 1998 to require a referendum on any new tax or fee or increase in an existing tax or fee.

### Property taxes

Local governments may fund planning activities from the general fund. In addition, the Local Planning Enabling Act authorizes local governments to levy property tax mills for planning. The maximum tax levy varies according to the class of the county or city and is specified in the law (76-1-405, MCA).

However, the property tax freeze put in place by Initiative 105 in 1986 limited the use of this option. The law is complex and there are several exceptions. In general, the effect of Initiative 105 was to prohibit local governments from levying more property taxes than it levied in 1986, unless the voters approve the tax increase by election. The law has since been amended to establish the ceiling at the 1996 level. The total amount of revenue and also the number of mills were capped. Some local governments were "frozen" at 0 mills for the planning special levy. Consequently, local governments are limited in their ability to take advantage of the planning mill levy. In general, decisionmakers would have to agree that another expenditure could be cut or voters would have to approve an increase in taxes in order to increase the level of funding for planning generated from property taxes.

**Table 4-C** shows how the planning mill levy has been used in Montana's most rapidly growing counties.

**Table 4 –C**  
**Use of Planning Mill Levy by Montana's Growing Counties**  
**FY 1997**

<b>County</b>	<b>Maximum Mills Without Freeze</b>	<b>Mills Assessed</b>	<b>Mill Levy Revenue</b>
Big Horn	2.0	0	0
Broadwater	6.0	0	0
Carbon	3.0	0	0
Flathead	2.0	1.264	\$131,550
Gallatin	2.0	2.00	\$45,398
Jefferson	4.0	0.47	\$11,835
Lake	3.0	1.454	\$53,093
Lewis and Clark	2.0	2.00	\$69,760
Madison	4.0	0.17	\$4,800
Missoula	2.0	2.00	\$289,508
Ravalli	2.0	0.90	\$40,550
Sanders	3.0	0.00	0
Stillwater	3.0	0.00	0
Yellowstone	2.0	0.77	\$188,717 <sup>1</sup>

Source: County Finance Officials, Montana Department of Commerce, Montax

Notes: With the exception of Yellowstone County, figures provided are for the county *exclusive* of municipalities. Revenues are estimated.

1. Includes City of Billings.

### **Fees**

Fees may be assessed to pay for the costs of review of development proposals. Local subdivision and zoning regulations typically contain a fee schedule. However, fees generally do not cover all of the cost of reviewing development proposals.

### **Formula funds**

State and federal formula funds, such as payments-in-lieu-of-taxes may be used to pay for planning programs. There are many competing demands for the use of these funds.

### **Grants and donations**

**State county land planning grants.** State grants are available to counties for planning under the County Land Planning Fund Program administered by the Montana Department of Commerce. The program is funded from the Montana coal severance tax. County land planning programs are just one activity funded out of a state special revenue fund. State law requires that 8.36 percent of the coal severance tax revenues be allocated to this fund. The Legislature determines how the funds will be allocated among the following programs: local impacts, county land planning, library services, conservation districts and the Montana Growth through Agriculture Act.

Each county receives an equal amount of the funds available from the County Land Planning Fund, up to \$3,000 per county. If funds in excess of \$3,000 per county are available, they are distributed to counties using a formula based on land area and population. For fiscal year 1999, the total funds available are estimated to be \$198,693. Grant awards range from \$3,098 for Wibaux County to \$5,857 for Yellowstone County.

The planning grant has a very small impact on large counties with large planning departments. For example, it contributes less than one percent of the cost of running Flathead County's planning department. It contributes approximately seven percent of Madison County's budget.

**CDBG Technical Assistance Grants .** The Montana Department of Commerce administers the Community Development Block Grant (CDBG) program. Approximately \$100,000 is allocated annually for small technical assistance grants that can be used to pay for planning activities that address needs for housing or public facilities. However, it should be noted that the \$100,000 allocation is used to pay for several other activities besides land use planning. Federal funding criteria give a higher priority to public health and safety. Consequently, the demand for these grants is greater than the funds available.

Under this program, matching grants of up to \$10,000, may be awarded to counties, cities and towns. For example, Sanders County received a \$10,000 grant to prepare a comprehensive plan and develop a needs assessment. Lake County received a \$7,500 grant to rewrite the county general plan. Other communities received small grants for preparation of capital improvements plans.

**Forest Service grants.** The U.S. Forest Service has a limited amount of money available for economic development planning for communities located within 100 miles of a national forest that have at least a 15 percent economic dependency on income derived from natural resource industries.

**Other grant programs.** Grants may be available from private foundations or companies for specific, special projects. For example, grants might be available for inventorying habitat for a particular species, for conducting a visual preference survey, or starting up a GIS system. Grants are not a funding source for the day-to-day operation of a planning department.

**Donations.** Local governments or others may seek donations from landowners or businesses. Madison County solicited donations from landowners and conservation organizations to help pay for the county's GIS mapping effort. A fund-raising organization raised the bulk of the \$500,000 spent on the Cooperative Planning Coalition's effort to develop a comprehensive plan for Flathead County. The county contributed \$50,000 to this effort.

### **3. Issue**

Planning has the potential to save money by encouraging growth in a way that is more cost-effective. Local governments find it difficult to allocate money for planning in light of the property tax freeze created by Initiative 105. Are new funding mechanisms needed to allow local governments to invest in planning so that they can minimize taxes and fees resulting from new growth over the long term?

## **B. Technical Assistance and Information**

### **1. Montana Department of Commerce**

#### **Technical assistance and informational materials**

The Montana Department of Commerce (DOC) provides information and one-on-one assistance through the Community Technical Assistance Program (CTAP). The CTAP provides two basic types of technical assistance (as directed by state law):

- Planning and development technical assistance.
- Technical assistance and information on federal and state financial assistance and other assistance for local governments.

Planning technical assistance represents only a portion of the services required and provided. There are approximately 2.2 full-time equivalent (FTE) professional staff directly available to assist local governments, development groups and citizens. Prior to July 1, 1998, there were approximately 1.7 FTE professional staff available.

The department has developed an array of instructional aides to assist local governments with planning. The aides include videotapes, publications, regional meetings and workshops which address topics in the following areas: planning, subdivision and surveying regulations and procedures, zoning, grants and financing, and other topics of interest to local governments. Twenty-six workshops or meetings were conducted in fiscal year 1998.

The Growth Study Subcommittee heard testimony from local government officials about the importance of the technical assistance provided by the DOC.

## **Data**

The Census and Economic Information Center in the DOC disseminates detailed demographic and economic information for Montana and its local areas. The Center receives data from the U.S. Bureau of Census, the U.S. Bureau of Economic Analysis, other federal and state agencies, and data sources in the private sector. The Montana County Statistical Reports, a compendium of statistics on demographic and socioeconomic data for the state of Montana and each of the 56 counties, is produced by the Center. The statistics encompass the following subject categories: population, social indicators, education, housing, employment, income and poverty, government finances, health and social services, agriculture, and business and industry. The Center also provides census maps.

### **2. Montana Association of Counties**

The Montana Association of Counties (MACo) is an organization formed to serve Montana's 56 counties. Three professional staff field questions from counties concerning planning, land use and other topics of interest to local governments.

### **3. Montana League of Cities**

The Montana League of Cities is an organization formed to assist Montana's cities and towns. A professional staff person provides information to municipal officials. The League sponsors an annual meeting during which training is provided.

### **4. Montana Association of Planners**

Montana planners have an association which provides an opportunity to share information and experiences. The association sponsors an annual conference and other learning opportunities.

### **5. Montana Consensus Council**

The Montana Consensus Council is available to conduct on-site consultations with citizens and officials in local communities to discuss growth-related issues, examine alternative ways to respond to the challenges, and where appropriate, help communities design public forums to build understanding and agreement on growth-related issues.

The Consensus Council also designs and teaches community problem solving workshops to improve participants' understanding of best practices for responding to growth and the role of consensus processes in addressing these situations.

Montana Consensus Council publications explain how to solve public policy issues by consensus; case studies illustrating the application of these techniques to growth issues in



Montana communities are also available. A handbook on resolving land use disputes is being developed.

The Consensus Council has helped several local governments with planning and other land use issues. Examples include:

- North Jefferson County (zoning).
- Ravalli County (planning).
- City of Helena (subdivision review).
- Gallatin County (incentives for open space).
- Beaverhead County Community Forum (land use and growth management).

## 6. **Natural Resource Information System (NRIS)**

The Natural Resource Information System (NRIS) is a program of the Montana State Library that serves as a clearinghouse and referral service for natural resources information. There are three programs within NRIS:

- **Geographic Information System.** Provides maps, map data, analytical services and technical assistance to the growing number of users of computerized mapping programs.
- **Water Information System.** Provides information on water quantity and quality, water rights and riparian areas.
- **Natural Heritage Program.** A computer-assisted inventory of Montana's biological resources, with an emphasis on rare or endangered plant and animal species and biological communities.

## 7. **Montana Department of Revenue**

The Montana Department of Revenue can provide the following data that are useful for planning:

- Land ownership.
- Value and acreage of a specific parcel.
- Land use as identified by the property tax code (e.g., predominately irrigated, grassland, etc.).
- Geocode (location).
- Lots created in each county during a given year.

For some counties, the department may be able to track the property tax code, noting not only the number of lots created, but also whether the land use on a specific lot has changed.

## **Chapter 5:**

# **Toward Better Planning for Growth in Montana Communities**

## **Council Findings and Recommendations**

The EQC'S findings and recommendations are presented below.

### **A. Effective Planning for Growth: Key Findings**

#### **1. Moving Beyond Subdivision Review**

- a.** Subdivision regulations are not an appropriate or efficient mechanism to address growth for the following reasons:
- Subdivision review is reactive -- local governments must respond to a proposal to divide a specific piece of land within a short time frame.
  - Neither the process nor the time frame allow for capital improvements planning or for an evaluation or discussion of: whether or not population growth is occurring, current land use trends, or where growth is desirable and most cost-effective.
  - Subdivision regulations do not affect land that is already subdivided or land exempt from the requirements of the Subdivision and Platting Act.
- b.** Planning (including capital improvements planning), zoning and subdivision review are tools that complement each other and that should be used together. More emphasis should be placed on planning and implementing regulations. Some Montana urban communities and a few rural areas have successfully addressed growth through planning and zoning.
- c.** Neither developers or neighboring landowners are satisfied when citizens look to the subdivision process as a means for deciding where growth should occur. Citizens may not understand the role of planning versus subdivision review. Furthermore, if there isn't a current plan or an ongoing planning process, the subdivision review process may offer the only opportunity for citizens to participate in decisions affecting land use. Decisions regarding where growth should occur and what type of land use should be permitted should take place during the development of plans and zoning regulations.
- d.** The subdivision review process should focus on: ensuring that development is compatible with the existing plan, review of site-specific characteristics, design review, and ensuring that adequate infrastructure will be in place.

- e. In most jurisdictions, subdivision review takes precedence over planning due to several factors: subdivision review is required, planning is not; plans are vague and it is difficult to apply vague plans to the subdivision review process; mandatory timeframes for subdivision review; limited resources for planning; increased participation (including litigation) in the subdivision review process; and increased subdivision activity.

## **2. Citizen Involvement**

- a. Decisions that affect land use are controversial; therefore, an effective citizen involvement program is an essential element of a successful planning effort. There is at least one example in Montana where a significant amount of money, time and effort was spent on developing a plan only to have it rejected by voters.
- b. Communities in Montana have been successful in developing and adopting plans when citizen opinions are solicited at the very beginning of the process and opportunities for involvement are present throughout the process.
- c. Neighborhood planning has proven to be a successful tool for getting citizens effectively involved in growth issues in several Montana communities.
- d. Development of a plan and implementing regulations that are accepted by the citizens takes time.
- e. When local governments have adopted an adequate plan, the process of subdivision review should be a technical review process and should not be political.

## **3. Neighborhood Planning and Zoning**

- a. Neighborhood planning and zoning has been successful in many areas of Montana when it is:
  - initiated by citizens in a neighborhood; and
  - adopted under the authority of the laws enabling master plans and county (Part 2) zoning.
- b. If a master plan has not been adopted, citizen-petition zoning can be exclusionary. Furthermore, provisions governing zoning districts within a jurisdiction may be inconsistent with each other.

## **4. Open Space**

- a. A number of mechanisms exist in current law to preserve open space. Funding is needed in order to make use of some of these options.

- b. Decisions to protect open space or productive agricultural or forest land should occur under the guidance of a master plan so that the community can ensure that the appropriate areas are protected and may also provide for growth to occur in a cost-effective manner.
- c. Preserving "open space" and/or "agricultural land" means many things to many people. Vague policies may lead to conflict. Communities that develop policies to preserve open space or productive agricultural or forest land should be specific about what aspects they wish to protect.

## **5. Facilitating Development in and Around Urban Areas**

- a. Development in areas where services already exist is usually more cost effective than random development. Development in and around urban areas should be encouraged.
- b. There are a number of disincentives to development in and around urban areas. Possible disincentives include: zoning regulations, impact fees, tax policies, lack of funding for infrastructure, subsidies for infrastructure and services in areas that are more expensive to serve, and other subsidies.
- c. Planning for and paying for development of infrastructure is a key element of encouraging development in and around urban areas.
- d. Cities and towns may find it difficult to raise money to pay for their own infrastructure needs and may not be able to extend infrastructure into the county. The law could be amended to make it clear that counties are authorized to make financial contributions to municipal infrastructure.

## **6. Impact Fees**

- a. Development exactions, including impact fees, are a tool that local governments can use to ensure that new development pays for at least some of the additional burden on public facilities resulting from that development.
- b. Local governments have express authority to collect specific types of development exactions under the Subdivision and Platting Act. Local governments have implied authority to assess impact fees under the planning and zoning enabling laws as well as the Subdivision and Platting Act.
- c. The effects of impact fees are controversial. Some argue that they encourage sprawl by making it less costly to locate outside of the jurisdiction where impact fees are assessed. Others argue that they discourage sprawl by providing a mechanism to pay for infrastructure.

- d. There has been considerable controversy concerning the level of impact fees and the use of those fees.

## **7. GIS**

- a. Geographic information systems (GIS's) have been useful for planning, zoning and subdivision review.
- b. The Montana Cadastral Mapping Project could significantly aid local governments with the use of GIS's in planning, zoning and subdivision reviews by providing a geo-code identified database of parcels that can be linked to other land use data. It should be noted that the quality of the database will depend on the quality of the records used.
- c. Continued coordination among local governments, state and federal agencies and other parties is needed to ensure that data collected by various entities are compatible.
- d. Resources and opportunities for sharing existing resources are needed in order to enable communities that are planning for growth to make use of GIS technology. Making data available through the Natural Resources Information System (NRIS) clearinghouse and other mechanisms will help to minimize the costs of using GIS.

## **8. Coordination Between Local Governments**

- a. Coordination between cities, towns and counties is critical in order to ensure that development is orderly and compatible and also to encourage growth in and around urban areas.
- b. There are several mechanisms that enable cities and towns to work together with counties to address growth issues. These mechanisms are being used in several locations. Mechanisms authorized by state law include joint, consolidated and city-county planning boards. Some local governments coordinate less formally.
- c. State law enables, but does not require, coordination between local governments. There is little coordination between local governments in some areas.

## **9. Funding**

- a. Planning can save money by encouraging growth to occur in a way that is more cost-effective with respect to provision of infrastructure and services. However, some local governments have not placed a high priority on planning and have not allocated sufficient funds to plan for growth. Local governments should be encouraged to place a higher priority on planning for growth.

- b. More funding options are needed to encourage local governments to invest in planning.

## **B. Recommendations for Action by the Legislature**

The EQC's recommendations for action by the Legislature are consistent with the goal statement for the Growth Study Subcommittee: they focus on promoting and facilitating effective planning for growth as well as implementation of growth policies.

The Growth Study Subcommittee received several suggestions regarding revision of the Subdivision and Platting Act. At the same time, several representatives of local government cautioned against revising the law. They noted that revising subdivision regulations to comply with state law is costly.

The EQC concluded that more emphasis must be placed on planning and implementation measures rather than relying on subdivision review alone to address growth. Furthermore, better planning and effective implementation of those plans should improve both the process and the outcome of subdivision review. Therefore, the EQC chose to focus on planning and related implementation measures first. The EQC did identify some concerns about the Subdivision and Platting Act and is recommending that these issues be studied during the 1999-2000 interim.

Legislation drafted by request of the EQC is included in **Appendix 2**. Legislative Council (LC) bill draft numbers corresponding to the appropriate bill draft are provided in parentheses in the text that follows.

### **1. Growth Policies (LC 475)**

Current law allows local governments to adopt master plans and provides a long list of primarily descriptive elements that *may* be included in the plan. The EQC proposes to change the term "master plan" to "growth policy" and to establish minimum requirements for the growth policy. These new minimum requirements are different from the old requirements; they are oriented toward the future and toward action. They provide a framework for implementation activities, including capital improvements planning and subdivision regulations.

Neighborhood planning has been successful in several Montana communities. The EQC proposes to encourage and specifically authorize neighborhood planning in communities that have adopted growth policies.

The Subdivision and Platting Act requires the governing body to evaluate proposed subdivisions with respect to the effect on the following "public interest" criteria: agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety. The EQC wants to encourage communities to address these issues "up front" in the process of developing growth policies. The proposed legislation would require communities that adopt growth policies to describe how the governing body will define the

public interest criteria and also how the governing body will evaluate proposed subdivisions in light of these criteria and make decisions.

The EQC also proposes to allow communities that have addressed these criteria up front through the development of growth policies and implementing regulations to designate geographic areas where they will waive review of these criteria for proposed subdivisions *under certain conditions*. This provision would provide communities with an opportunity to encourage growth in specific areas.

Specifically, the EQC proposes to:

- Change the term "master plan" and "comprehensive plan" to "growth policy" in the planning, zoning and subdivision laws (Title 76, Chapters 1-3).
- Amend the Local Planning Enabling Act to replace the section of current law that addresses plan contents with a baseline standard for growth policies that includes the following elements at a minimum:
  - a. Community goals and objectives.
  - b. An inventory of the community's existing characteristics and features including but not limited to: land uses, population, housing needs, economic conditions, local services, public facilities, and natural resources.
  - c. Projections of trends for the characteristics and features addressed above.
  - d. A description of policies and regulations to be implemented in order to achieve the goals and objectives of the growth policy.
  - e. A strategy for development, maintenance and replacement of public infrastructure.
  - f. An implementation strategy including a time frame for implementing and updating the policy. The growth policy must identify conditions that will "trigger" an update of the policy. In addition, the policy must be reviewed at least once every five years and revised, if necessary.
  - g. An explanation of how the governing body will coordinate and cooperate with other jurisdictions (i.e., cities with surrounding counties and vice versa).
  - h. An explanation of how the governing body will conduct public hearings on proposed subdivisions.
  - i. A statement explaining how the governing body will evaluate and make decisions regarding proposed subdivisions with respect to the public interest criteria established in section 76-3-608 (3)(a), MCA and also how the governing body will define those criteria.

The EQC's proposed legislation authorizes local governments to include any additional elements in their growth policies as long as those elements are related to the broad purpose of the Local Planning Enabling Act.

- Amend the planning and zoning enabling laws to make it clear that a neighborhood plan can be adopted by the governing body if a growth policy has been adopted that covers the entire jurisdiction. The proposed law would allow, but not require, the governing body to establish minimum criteria that define a neighborhood for the purposes of neighborhood planning.
- Amend the law to require urban renewal plans (authorized under current law) to be consistent with the growth policy, if one has been adopted.
- Amend the Subdivision and Platting Act to allow local governments to choose to waive the requirement for review of subdivisions with respect to the public interest criteria established in 76-3-608 (3) (a), MCA under the following conditions:
  - a. the governing body has adopted a growth policy (master plan) that: addresses the public interest criteria, evaluates the effect of subdivision on the criteria and identifies geographic areas where review of the public interest criteria will be waived ;
  - b. the governing body has adopted zoning regulations under part 2 or part 3 of Title 76, Chapter 2; and
  - c. the zoning regulations and growth policy address the public interest criteria.

Master plans adopted before October 1, 1999, would not be affected by this proposal. Local governments have until October 1, 2000, to adopt zoning regulations based on a master plan that is adopted under the current law before October 1, 1999.

## **2. Enabling Planning Boards to Spend More Time on Planning (LC 475)**

The Growth Study Subcommittee found that planning boards are often so busy with subdivision review that they have little time for planning. The EQC's proposed legislation would address this issue in two ways:

- Amend the law to *enable, but not require*, planning boards to delegate to staff their responsibility to review and provide advice to the governing body on proposed *minor* subdivisions.
- Amend the provisions relating to summary review of minor subdivisions to establish an expedited review process for jurisdictions that have adopted growth policies as well as county ("Part 2") or municipal zoning regulations. Unless local regulations provide otherwise, a public hearing and review of the public interest criteria would not be required for subdivisions eligible for summary review.



### **3. Funding for Growth Policies**

The EQC concluded that more funding options are needed to encourage local governments to invest in the development of growth policies so that communities can encourage growth to occur in a way that is more cost-effective with respect to provision of infrastructure and services. The EQC recommends that the Legislature provide additional state funds to local governments for planning *and* authorize additional funding authority for local governments. More details are provided below.

#### **State funding**

- The EQC recommends that the Legislature appropriate \$1 million each fiscal year for grants to local governments to be used for the development or implementation of growth policies (master plans) that meet the minimum requirements described above (see "Growth Policies"). This appropriation would be sufficient to pay for at least 80 grants to local governments during the next biennium.
- Cities, counties, towns and their planning boards would be eligible to receive grants for 50 percent of the cost of developing or implementing a growth policy, up to a maximum of \$25,000 for each local government.
- The EQC is proposing legislation (LC 479) that would appropriate bed tax revenues to pay for the grant program described in the previous bullets. The majority of bed tax revenues are currently statutorily appropriated for use by the Montana Department of Commerce for tourism and film industry promotion activities. The proposed legislation would require the department to use \$1 million of its appropriation for grants to local governments for development and implementation of growth policies.
- The EQC also supports use of the general fund to pay for the grant program.

#### **Local funding**

The EQC recommends that the Legislature authorize additional funding authority for local governments that can be used to develop growth policies. Options include: a local option sales tax, a local option bed tax, or an increase in the special mill levy for planning. If the Legislature authorizes any of the options listed, the EQC recommends that local governments be authorized to use the revenues to pay for development and implementation of growth policies.

The EQC encourages local governments to use local funding mechanisms to pay for planning. The EQC agreed to propose an amendment to any bill that would authorize a local option sales tax. The amendment would encourage local governments that establish a sales tax to use some of the revenues for adequate planning for growth within their jurisdiction.

#### **4. Other Resources -- Geographic Information Systems**

- The EQC recommends that the Legislature appropriate funds for the Cadastral Mapping Project.
- The EQC supports continued funding for metadata coordination and clearinghouse functions provided by the Natural Resources Information System (NRIS) of the state library.

#### **5. Reduce Barriers to Changing Municipal Zoning Regulations (LC 477)**

Traditional zoning regulations can sometimes discourage infill, cluster development or innovative designs. The current law requires a super majority (three-fourths) vote of the members of the city or town council to override a protest of 20 percent of the neighboring landowners. Panel members who spoke to the Growth Study Subcommittee stated that the current law is a barrier to changing zoning regulations in order to facilitate infill, cluster development or innovative designs.

The EQC recommends that the Municipal Zoning Enabling Act be amended to require three-fifths of the members of the city or town council to override a protest of 40 percent of the neighboring landowners. The proposed legislation would make it somewhat easier to change the zoning regulations, while still preserving the neighboring landowners' right to protest.

#### **6. Authorize County Contributions to Infrastructure (LC 478)**

The EQC proposes to amend the law to clearly authorize counties to voluntarily pay for some of the costs of infrastructure within cities and towns. The EQC wants to facilitate the use of this option to encourage growth in and around urban areas.

### **C. Recommendations for Action by the Executive Branch**

- The EQC supports the continuation of the Montana Geographic Information Council (MGIC) either through an extension of the executive order or by establishing the Council in state law.
- The EQC supports continued efforts to coordinate with local governments on the Cadastral Mapping Project through the Land Records Modernization Work Group of the Montana Geographic Information Council. The EQC further recommends that the Work Group consult with local governments that do not currently have a cadastral database in order to ensure that the database will be useful to them.

- The EQC encourages the MGIC to explore opportunities for making GIS tools and data available to counties that do not already have GIS technology.

## **D. Recommendations for Action by the EQC during the 1999-2000 Interim**

### **1. Education**

We recommend that the EQC work with the Montana Department of Commerce to develop materials to educate citizens about the benefits of planning and the costs of not planning as well as the difference between planning, zoning and subdivision review during the next interim. The materials should emphasize financial costs as well as other factors.

### **2. Evaluation**

We recommend that the EQC evaluate the following and make recommendations, if appropriate, during the next interim:

- The exemption from subdivision review for family conveyance. Options that could be considered include:
  - a. Eliminate the exemption.
  - b. Prohibit sale of a parcel subdivided using this exemption for a period of time (e.g., 2 years, 5 years).
  - c. Do nothing.
  - d. Other options identified by the EQC.
- The cumulative effects of minor subdivisions.
- The citizen-petition zoning statute.
- Park dedication requirements and other ways to pay for community parks, trails and pathways. Topics that have been identified include:
  - a. Disposal of undeveloped park lands.
  - b. Park dedication for minor subdivisions.
  - c. Obtaining and maintaining useful park lands through the park dedication requirement.
  - d. Local government flexibility.
  - e. Maintaining park lands.

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**Appendix 1**  
**Land Use Management Tools for Local Governments**

## Land Use Management Tools for Local Governments

Tool	Counties	Cities and Towns
Master (Comprehensive) Plan	Authorized to adopt <sup>1</sup> Required in order to adopt zoning regulations under County Zoning Enabling Act <sup>3</sup>	Authorized to adopt <sup>1</sup> Required in order to adopt zoning regulations under Municipal Zoning Enabling Act <sup>4</sup>
Development Pattern	Required to adopt for planning and zoning districts formed by petition of property owners <sup>2</sup>	
Subdivision Regulations	Required to adopt and enforce <sup>5</sup>	Required to adopt and enforce <sup>5</sup>
Zoning or Development Permit Regulations	Authorized to adopt for all or part of county if master plan adopted <sup>3</sup> AND/OR Authorized to adopt for planning and zoning district established upon petition of 60 % of property owners within an area <sup>2</sup>	Authorized to adopt if master plan adopted. May adopt extraterritorial zoning regulations for limited areas beyond boundaries if not regulated by county. <sup>4</sup>
Interim Zoning Regulations	Authorized to adopt pending adoption of master plan or final zoning regulations <sup>3</sup>	Authorized to adopt pending adoption of master plan or final zoning regulations <sup>4</sup>
Capital Improvements Plans	Authorized to develop plans for development of public works <sup>1</sup>	Authorized to develop plans for development of public works <sup>1</sup>
Floodplain Regulations	Required to adopt regulations related to development within the floodplain or floodway within 6 months of transmittal of floodplain information from DNRC <sup>6</sup>	Required to adopt regulations related to development within the floodplain or floodway within 6 months of transmittal of floodplain information from DNRC <sup>6</sup>

	Required
	Required under certain conditions

- <sup>1</sup> Local Planning Enabling Act (76-1-101 through 76-1-606, MCA)
- <sup>2</sup> County Planning and Zoning District Act (76-2-101 through 76-2-112, MCA)
- <sup>3</sup> County Zoning Enabling Act (76-2-201 through 76-2-228, MCA)
- <sup>4</sup> Municipal Zoning Enabling Act (76-2-301 through 76-2-328, MCA)
- <sup>5</sup> Montana Subdivision and Platting Act (76-3-101 through 76-3-625, MCA)

## Land Use Management Tools for Local Governments

Tool	Counties	Cities and Towns
Conservation Easements	Authorized to acquire and review conservation easements; may work with organizations and property owners to preserve lands through conservation easements <sup>7</sup>	Authorized to acquire conservation easements; may work with organizations and property owners to preserve lands through conservation easements <sup>7</sup>
Lakeshore Regulations	Required to adopt regulations re: issuance or denial of permits to work within lakeshore protection zone <sup>8</sup>	Required to adopt regulations re: issuance or denial of permits to work within lakeshore protection zone <sup>8</sup>

	Required
	Required under certain conditions

<sup>6</sup> Floodplain and Floodway Management (76-5-101 through 76-5-406, MCA)

<sup>7</sup> Open-Space Land and Voluntary Conservation Easement Act (76-6-101 through 76-6-211, MCA)

<sup>8</sup> Lakeshores (75-7-201 through 75-7-211, MCA)

**Appendix 2**  
**Legislation Proposed By Request of the**  
**Environmental Quality Council**

## SENATE BILL NO. 97

INTRODUCED BY S. STANG, V. COCCHIARELLA, L. GROSFIELD

BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL

AN ACT GENERALLY REVISING THE LAWS RELATING TO LOCAL PLANNING AND SUBDIVISION REVIEW; CHANGING THE TERMS "MASTER PLAN", "COMPREHENSIVE PLAN", AND "COMPREHENSIVE DEVELOPMENT PLAN" AS USED IN TITLE 76 TO "GROWTH POLICY"; REQUIRING CERTAIN ELEMENTS AND AUTHORIZING ADDITIONAL ELEMENTS TO BE ADDRESSED IN GROWTH POLICIES; REQUIRING URBAN RENEWAL PLANS TO BE CONSISTENT WITH GROWTH POLICIES; MODIFYING PROVISIONS RELATING TO SUMMARY REVIEW OF SUBDIVISIONS; MODIFYING PROVISIONS RELATING TO REVIEW OF MINOR SUBDIVISIONS BY PLANNING BOARDS; MODIFYING PROVISIONS RELATING TO EXEMPTION FROM THE ENVIRONMENTAL ASSESSMENT REQUIREMENT FOR SUBDIVISIONS; AUTHORIZING GOVERNING BODIES TO ESTABLISH AN EXEMPTION FROM REVIEW OF CERTAIN CRITERIA FOR SUBDIVISIONS WHEN CERTAIN REQUIREMENTS ARE MET; AMENDING SECTIONS 7-2-4734, 7-15-4206, 7-15-4213, 76-1-103, 76-1-106, 76-1-107, 76-1-110, 76-1-601, 76-1-602, 76-1-603, 76-1-604, 76-1-605, 76-1-606, 76-2-201, 76-2-203, 76-2-206, 76-2-304, 76-2-310, 76-2-311, 76-3-210, 76-3-504, 76-3-505, 76-3-601, 76-3-604, 76-3-605, 76-3-608, 76-3-621, 76-4-111, 76-4-122, 76-4-123, 76-4-124, 76-4-127, AND 76-9-104, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

**Section 1.** Section 7-2-4734, MCA, is amended to read:

**"7-2-4734. Standards to be met before annexation can occur.** A municipal governing body may extend the municipal corporate limits to include any area ~~which~~ that meets the following standards:

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

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



(3) ~~It~~ The area must be included within and the proposed annexation must conform to a ~~comprehensive plan as prescribed in~~ growth policy adopted pursuant to Title 76, chapter 1.

(4) No part of the area may be included within the boundary, as existing at the inception of ~~such the~~ attempted annexation, of any fire district organized under any of the provisions of part 21, chapter 33, if the fire district was originally organized at least 10 years prior to the inception of ~~such~~ attempted annexation. However, a single-ownership piece of land may be transferred from a fire district to a municipality by annexation as provided in 7-33-2127."

**Section 2.** Section 7-15-4206, MCA, is amended to read:

**"7-15-4206. Definitions.** The following terms, wherever used or referred to in ~~this part or~~ part 43 ~~or this part,~~ shall have the following meanings unless a different meaning is clearly indicated by the context:

(1) "Agency" or "urban renewal agency" ~~shall mean~~ means a public agency created by 7-15-4232.

(2) "Blighted area" ~~shall mean~~ means an area ~~which that~~ is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime; substantially impairs or arrests the sound growth of the city or its environs; retards the provision of housing accommodations; or constitutes an economic or social liability ~~and/or or~~ is detrimental or constitutes a menace to the public health, safety, welfare, and morals in its present condition and use, by reason of:

(a) the substantial physical dilapidation; deterioration; defective construction, material, and arrangement; ~~and/or or~~ age obsolescence of buildings or improvements, whether residential or nonresidential;

(b) inadequate provision for ventilation, light, proper sanitary facilities, or open spaces as determined by competent appraisers on the basis of an examination of the building standards of the municipality;

(c) inappropriate or mixed uses of land or buildings;

(d) high density of population and overcrowding;

(e) defective or inadequate street layout;

(f) faulty lot layout in relation to size, adequacy, accessibility, or usefulness;

(g) excessive land coverage;

(h) unsanitary or unsafe conditions;

(i) deterioration of site;

(j) diversity of ownership;

- (k) tax or special assessment delinquency exceeding the fair value of the land;
  - (l) defective or unusual conditions of title;
  - (m) improper subdivision or obsolete platting;
  - (n) the existence of conditions ~~which~~ that endanger life or property by fire or other causes; or
  - (o) any combination of ~~such~~ the factors listed in this subsection (2).
- (3) "Bonds" ~~shall mean~~ means any bonds, notes, or debentures (including refunding obligations) ~~herein~~ authorized to be issued pursuant to part 43 or this part.
- (4) "Clerk" ~~shall mean~~ means the clerk or other official of the municipality who is the custodian of the official records of ~~such~~ the municipality.
- (5) "Federal government" ~~shall include~~ means the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.
- (6) "Local governing body" ~~shall mean~~ means the council or other legislative body charged with governing the municipality.
- (7) "Mayor" ~~shall mean~~ means the chief executive of a city or town.
- (8) "Municipality" ~~shall mean~~ means any incorporated city or town in the state.
- (9) "Neighborhood development program" means the yearly activities or undertakings of a municipality in an urban renewal area or areas if the municipality ~~shall elect~~ elects to undertake activities on an annual increment basis.
- (10) "Obligee" ~~shall include~~ means any bondholder or agent or trustee for any bondholder or lessor demising to the municipality property used in connection with an urban renewal project or any assignee or assignees of ~~such~~ the lessor's interest or any part ~~thereof~~ of the interest and the federal government when it is a party to any contract with the municipality.
- (11) "Person" ~~shall mean~~ means any individual, firm, partnership, corporation, company, association, joint-stock association, or school district and ~~shall include~~ includes any trustee, receiver, assignee, or other person acting in a similar representative capacity.
- (12) "Public body" ~~shall mean~~ means the state or any municipality, township, board, commission, district, or any other subdivision or public body of the state.
- (13) "Public officer" ~~shall mean~~ means any officer who is in charge of any department or branch of the government of the municipality relating to health, fire, building regulations, or to other activities concerning dwellings in the municipality.
- (14) "Real property" ~~shall include~~ means all lands, including improvements and fixtures ~~thereon~~ on the land, and all property of any nature appurtenant ~~thereto~~ to the land or used in connection

~~therewith~~ with the land, and every estate, interest, right, and use, legal or equitable, ~~therein~~ in the land, including terms for years and liens by way of judgment, mortgage, or otherwise.

(15) "Redevelopment" may include:

(a) acquisition of a blighted area or portion ~~thereof~~ of the area;

(b) demolition and removal of buildings and improvements;

(c) installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this part in accordance with the urban renewal plan; and

(d) making the land available for development or redevelopment by private enterprise or public agencies (including sale, initial leasing, or retention by the municipality itself) at its fair value for uses in accordance with the urban renewal plan.

(16) "Rehabilitation" may include the restoration and renewal of a blighted area or portion ~~thereof~~ of the area in accordance with an urban renewal plan by:

(a) carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements;

(b) acquisition of real property and demolition or removal of buildings and improvements ~~thereon~~ on the property ~~where~~ when necessary to eliminate unhealthful, unsanitary, or unsafe conditions; to lessen density; to reduce traffic hazards; to eliminate obsolete or other uses detrimental to the public welfare; to otherwise remove or prevent the spread of blight or deterioration; or to provide land for needed public facilities;

(c) installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this part; and

(d) the disposition of any property acquired in ~~such~~ the urban renewal area (including sale, initial leasing, or retention by the municipality itself) at its fair value for uses in accordance with ~~such~~ the urban renewal plan.

(17) "Urban renewal area" means a blighted area ~~which~~ that the local governing body designates as appropriate for an urban renewal project or projects.

(18) "Urban renewal plan" means a plan, ~~as it exists from time to time~~, for one or more urban renewal areas or for an urban renewal project, ~~which~~. The plan:

(a) ~~shall~~ must conform to ~~the~~ any comprehensive plan ~~or parts thereof for the municipality as a whole~~ and the growth policy if one has been adopted pursuant to Title 76, chapter 1; and

(b) ~~shall~~ must be sufficiently complete to indicate, on a yearly basis or otherwise:

(i) ~~such any~~ land acquisition, demolition, and removal of structures; redevelopment; improvements; and rehabilitation ~~as may be~~ that is proposed to be carried out in the urban renewal area;

(ii) zoning and planning changes, if any, including changes to the growth policy if one has been adopted pursuant to Title 76, chapter 1;

(iii) land uses, maximum densities, building requirements; and

(iv) the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

(19) "Urban renewal project" may include undertakings or activities of a municipality in an urban renewal area for the elimination and for the prevention of the development or spread of blight and may involve redevelopment in an urban renewal area, rehabilitation or conservation in an urban renewal area, or any combination or part ~~thereof~~ of redevelopment, rehabilitation, or conservation in accordance with an urban renewal plan."

**Section 3.** Section 7-15-4213, MCA, is amended to read:

**"7-15-4213. Review of urban renewal plan by planning commission.** (1) Prior to its approval of an urban renewal project, the local governing body shall submit the urban renewal project plan to the planning commission of the municipality for review and recommendations as to its conformity with the comprehensive plan or parts ~~thereof~~ of the plan for the development of the municipality as a whole and with the growth policy if a growth policy has been adopted pursuant to Title 76, chapter 1.

(2) The planning commission shall submit its written recommendations with respect to the proposed urban renewal plan to the local governing body within 60 days after receipt of it the plan."

**Section 4.** Section 76-1-103, MCA, is amended to read:

**"76-1-103. Definitions.** As used in this chapter, the following definitions apply:

(1) "City" includes incorporated cities and towns.

(2) "City council" means the chief legislative body of a city or incorporated town.

(3) "Governing body" or "governing bodies" means the governing body of any governmental unit represented on a planning board.

(4) ~~"Master plan"~~ "Growth policy" means ~~a~~ and is synonymous with, a comprehensive development plan, ~~master plan, or comprehensive plan~~ or any of its parts such as a plan of land use and zoning,

of thoroughfares, of sanitation, of recreation, and of other related matters that meets the requirements of 76-1-601.

(5) "Mayor" means mayor of a city.

(6) "Neighborhood plan" means a plan for a geographic area within the boundaries of the jurisdictional area that addresses one or more of the elements of the growth policy in more detail.

~~(6)~~(7) "Person" means any individual, firm, or corporation.

~~(7)~~(8) "Planning board" means a city planning board, a county planning board, or a joint city-county planning board.

~~(8)~~(9) "Plat" means a subdivision of land into lots, streets, and areas, marked ~~upon the earth and represented on paper on a map or plan,~~ and includes replats or amended plats.

~~(9)~~(10) "Public place" means any tract owned by the state or its subdivisions.

~~(10)~~(11) "Streets" includes streets, avenues, boulevards, roads, lanes, alleys, and all public ways.

~~(11)~~(12) "Units of government" means any federal, state, or regional unit of government or any county, city, or town.

~~(12)~~(13) "Utility" means any facility used in rendering service ~~which~~ that the public has a right to demand."

**Section 5.** Section 76-1-106, MCA, is amended to read:

**"76-1-106. Role of the planning board.** (1) To ~~assure~~ ensure the promotion of public health, safety, morals, convenience, or order; or the general welfare and for the sake of efficiency and economy in the process of community development, the planning board shall prepare a ~~master plan~~ growth policy and shall serve in an advisory capacity to the local governing bodies establishing the planning board.

(2) The planning board may also propose policies for:

(a) subdivision plats;

(b) the development of public ways, public places, public structures, and public and private utilities;

(c) the issuance of improvement location permits on platted and unplatted lands; or

(d) the laying out and development of public ways and services to platted and unplatted lands."

**Section 6.** Section 76-1-107, MCA, is amended to read:

**"76-1-107. Role of planning board in relation to subdivisions and plats.** (1) ~~The~~ Except as provided in subsection (2), the governing body of any city, town, or county ~~which~~ that has formed

a planning board and adopted a ~~comprehensive plan~~ growth policy pursuant to this chapter and subdivision regulations pursuant to ~~this chapter~~ and chapter 3 shall seek the advice of the appropriate planning board in all matters pertaining to the approval or disapproval of plats or subdivisions.

(2) The planning board may delegate to its staff its responsibility under subsection (1) to advise the governing body on any or all proposed minor subdivisions."

**Section 7.** Section 76-1-110, MCA, is amended to read:

**"76-1-110. Cooperation with planning board by state and local governments.** Whenever the board undertakes the preparation of a ~~master plan~~ growth policy, the departments and officials of state, city, county, and separate taxing units operating within lands under the jurisdiction of the board shall make available, upon the request of the board, ~~such~~ information, documents, and plans as that have been prepared or, upon the request of the board, shall provide ~~such~~ any information as that relates to the board's activity."

**Section 8.** Section 76-1-601, MCA, is amended to read:

**"76-1-601. Master plan Growth policy -- contents.** (1) The planning board shall prepare and propose a ~~master plan~~ growth policy for the entire jurisdictional area. The plan may propose ordinances or resolutions for possible adoption by the appropriate governing body. ~~The plan may~~

(2) A growth policy must include:

~~(1) careful and comprehensive surveys and studies of existing conditions and the probable future growth of the city and its environs or of the county;~~

~~(2) maps, plats, charts, and descriptive material presenting basic information, locations, extent, and character of any of the following:~~

~~(a) history, population, and physical site conditions;~~

~~(b) land use, including the height, area, bulk, location, and use of private and public structures and premises;~~

~~(c) population densities;~~

~~(d) community centers and neighborhood units;~~

~~(e) blighted and slum areas;~~

~~(f) streets and highways, including bridges, viaducts, subways, parkways, alleys, and other public ways and places;~~

- ~~(g) sewers, sanitation, and drainage, including handling, treatment, and disposal of excess drainage waters, sewage, garbage, refuse, and other wastes;~~
- ~~(h) flood control and prevention;~~
- ~~(i) public and private utilities, including water, light, heat, communication, and other services;~~
- ~~(j) transportation, including rail, bus, truck, air, and water transport and their terminal facilities;~~
- ~~(k) local mass transit, including motor and trolley bus, street, elevated, or underground railways; and taxicabs;~~
- ~~(l) parks and recreation, including parks, playgrounds, reservations, forests, wildlife refuges, and other public grounds, spaces, and facilities of a recreational nature;~~
- ~~(m) public buildings and institutions, including governmental administration and service buildings, hospitals, infirmaries, clinics, penal and correctional institutions, and other civic and social service buildings;~~
- ~~(n) education, including location and extent of schools, colleges, and universities;~~
- ~~(o) land utilization, including areas for manufacturing and industrial uses, concentration of wholesale business, retail business, and other commercial uses, residential uses, and areas for mixed uses;~~
- ~~(p) conservation of water, soil, agricultural, and mineral resources;~~
- ~~(q) any other factors which are a part of the physical, economic, or social situation within the city or county;~~
- ~~(3) reports, maps, charts, and recommendations setting forth plans for the development, redevelopment, improvement, extension, and revision of the subjects and physical situations of the city or county set out in subsection (2) so as to substantially accomplish the object of this chapter as set out in 76-1-101 and 76-1-102;~~
- ~~(4) a long-range development program of public works projects, based on the recommended plans of the planning board, for the purpose of eliminating unplanned, unsightly, untimely, and extravagant projects and with a view to stabilizing industry and employment and the keeping of such program up-to-date for all separate taxing units within the city or county, respectively, for the purpose of assuring efficient and economic use of public funds;~~
- ~~(5) recommendations setting forth the development, improvement, and extension of areas, if any, to be set aside for use as trailer courts and sites for mobile homes:~~
  - (a) community goals and objectives;

(b) maps and text describing an inventory of the existing characteristics and features of the jurisdictional area, including:

(i) land uses;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) public facilities;

(vii) natural resources; and

(viii) other characteristics and features proposed by the planning board and adopted by the governing bodies;

(c) projected trends for the life of the growth policy for each of the following elements:

(i) land use;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) natural resources; and

(vii) other elements proposed by the planning board and adopted by the governing bodies;

(d) a description of policies, regulations, and other measures to be implemented in order to achieve the goals and objectives established pursuant to subsection (2)(a);

(e) a strategy for development, maintenance, and replacement of public infrastructure, including drinking water systems, wastewater treatment facilities, sewer systems, solid waste facilities, fire protection facilities, roads, and bridges;

(f) an implementation strategy that includes:

(i) a timetable for implementing the growth policy;

(ii) a list of conditions that will lead to a revision of the growth policy; and

(iii) a timetable for reviewing the growth policy at least once every 5 years and revising the policy if necessary;

(g) a statement of how the governing bodies will coordinate and cooperate with other jurisdictions that explains:



(i) if a governing body is a city or town, how the governing body will coordinate and cooperate with the county in which the city or town is located on matters related to the growth policy;

(ii) if a governing body is a county, how the governing body will coordinate and cooperate with cities and towns located within the county's boundaries on matters related to the growth policy;

(h) a statement explaining how the governing bodies will:

(i) define the criteria in 76-3-608(3)(a); and

(ii) evaluate and make decisions regarding proposed subdivisions with respect to the criteria in 76-3-608(3)(a); and

(i) a statement explaining how public hearings regarding proposed subdivisions will be conducted.

(3) A growth policy may:

(a) include one or more neighborhood plans. A neighborhood plan must be consistent with the growth policy.

(b) establish minimum criteria defining the jurisdictional area for a neighborhood plan;

(c) address the criteria in 76-3-608(3)(a);

(d) evaluate the effect of subdivision on the criteria in 76-3-608(3)(a);

(e) describe zoning regulations that will be implemented to address the criteria in 76-3-608(3)(a); and

(f) identify geographic areas where the governing body intends to authorize an exemption from review of the criteria in 76-3-608(3)(a) for proposed subdivisions pursuant to 76-3-608.

(4) The planning board may propose and the governing bodies may adopt additional elements of a growth policy in order to fulfill the purpose of this chapter."

**Section 9.** Section 76-1-602, MCA, is amended to read:

**"76-1-602. Public hearing on proposed master plan growth policy.** (1) Prior to the submission of the proposed ~~master plan~~ growth policy to the governing bodies, the board shall give notice and hold a public hearing on the ~~plan~~ growth policy.

(2) At least 10 days prior to the date set for hearing, the board shall publish in a newspaper of general circulation in the jurisdictional area a notice of the time and place of the hearing."

**Section 10.** Section 76-1-603, MCA, is amended to read:

**"76-1-603. Adoption of master plan growth policy by planning board.** After consideration of the recommendations and suggestions elicited at the public hearing, the planning board shall by

resolution recommend the proposed ~~master plan~~ growth policy and any proposed ordinances and resolutions for its implementation to the governing bodies of the governmental units represented on the board."

**Section 11.** Section 76-1-604, MCA, is amended to read:

**"76-1-604. Adoption, revision, or rejection of ~~master plan~~ growth policy.** (1) The governing bodies shall adopt a resolution of intention to adopt, revise, or reject the proposed ~~plan~~ growth policy or any of its parts.

(2) If the governing bodies adopt a resolution of intention to adopt the proposed ~~plan~~ growth policy or any of its parts, they ~~may, in their discretion;~~ may, in their discretion, submit to the qualified electors of the jurisdictional area ~~included within~~ covered by the proposed ~~plan~~ growth policy at the next primary or general election or at a special election the referendum question of whether or not the ~~plan~~ growth policy should be adopted. A special election must be held in conjunction with a regular or primary election. Except as provided in this section, the provisions of Title 7, chapter 5, part 1, apply to the referendum election.

(3) The governing bodies may adopt, revise, or repeal a ~~master plan~~ growth policy under this section.

(4) The qualified electors of the jurisdictional area included within the ~~master plan~~ growth policy may by initiative or referendum, as provided in 7-5-131 through 7-5-137, adopt, revise, or repeal a ~~master plan~~ growth policy under this section."

**Section 12.** Section 76-1-605, MCA, is amended to read:

**"76-1-605. Use of adopted ~~master plan~~ growth policy.** After adoption of the ~~master plan~~ growth policy, the city council, ~~the~~ board of county commissioners, or other governing body within the territorial jurisdiction of the board ~~shall~~ must be guided by and give consideration to the general policy and pattern of development set out in the ~~master plan~~ growth policy in the:

(1) authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;

(2) authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities;

(3) adoption of subdivision controls; and

(4) adoption of zoning ordinances or resolutions."

**Section 13.** Section 76-1-606, MCA, is amended to read:

**"76-1-606. Effect of master plan growth policy on subdivisions and plats.** (1) ~~Where~~ When a ~~master plan growth policy~~ has been approved, the city council may by ordinance or the board of county commissioners may by resolution require subdivision plats to conform to the provisions of the ~~master plan growth policy~~. Certified copies of ~~such the~~ ordinance ~~shall~~ must be filed with the city or town clerk and with the county clerk and recorder of the county.

(2) ~~Thereafter:~~

(a) When the city council has adopted an ordinance pursuant to subsection (1), a plat involving lands within the corporate limits of the city and covered by ~~said master plan~~ the growth policy ~~shall~~ may not be filed without first presenting it to the planning board, which shall make a report to the city council advising as to compliance or noncompliance of the plat with the ~~master plan growth policy~~. The city council ~~shall have~~ has the final authority to approve the filing of ~~such a~~ a plat within the city limits.

(b)(3) When the board of county commissioners has adopted a resolution pursuant to subsection (1), a plat involving lands outside the corporate limits of the city and covered by ~~said master plan a growth policy~~ shall may not be filed without first presenting it to the planning board, which shall make a report to the board of county commissioners advising as to compliance or noncompliance of the plat with the ~~master plan growth policy~~. The board of county commissioners ~~shall have~~ has the final authority to approve the filing of ~~such the~~ the plat.

(4) The planning board may delegate to its staff its responsibility to report to the city council or the board of county commissioners under subsection (2) or (3).

(3) ~~Nothing herein contained shall~~

(5) This section may not be interpreted to limit the present powers of ~~the~~ city or county governments.

(6) The requirements of this section must be met ~~but shall be an additional requirement~~ before any plat may be filed of record or entitled to be recorded."

**Section 14.** Section 76-2-201, MCA, is amended to read:

**"76-2-201. County zoning authorized.** For the purpose of promoting the public health, safety, morals, and general welfare ~~of the people in cities and towns and counties whose governing bodies have adopted a comprehensive development plan for jurisdictional areas pursuant to chapter 1, the boards~~ a board of county commissioners ~~in such counties~~ that has adopted a growth policy for the

entire jurisdictional area pursuant to chapter 1 ~~are~~ is authorized to adopt zoning regulations for all or parts of ~~such the jurisdictional areas~~ area in accordance with the provisions of this part."

**Section 15.** Section 76-2-203, MCA, is amended to read:

**"76-2-203. Criteria and guidelines for zoning regulations.** ~~(1) The zoning~~ Zoning regulations shall must be made in accordance with ~~a comprehensive development plan~~ the growth policy and shall must be designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote public health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

~~(2) Such zoning~~ Zoning regulations shall must be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout ~~such the~~ the jurisdictional area.

~~(3) The zoning~~ Zoning regulations shall must, as nearly as possible, be made compatible with the zoning ordinances of the municipality within the jurisdictional area."

**Section 16.** Section 76-2-206, MCA, is amended to read:

**"76-2-206. Interim zoning map or regulation.** (1) ~~If a~~ The board of county commissioners may adopt an interim zoning map or regulation as an emergency measure in order to promote the public health, safety, morals, and general welfare if:

(a) the purpose of the interim zoning map or regulation is to classify and regulate those uses and related matters that constitute the emergency; and

(b) the county is:

(i) is conducting or in good faith intends to conduct studies within a reasonable time; or

(ii) has held or is holding a hearing for the purpose of considering any of the following:

(A) a master plan growth policy; or

(B) zoning regulations; or

(C) an amendment, extension, or addition to either a growth policy or to zoning regulations pursuant to this part, ~~the board of county commissioners in order to promote the public health, safety, morals, and general welfare may adopt as an emergency measure a temporary interim zoning map or~~

~~temporary interim zoning regulation, the purpose of which shall be to classify and regulate uses and related matters as constitutes the emergency.~~

(2) ~~Such~~ An interim resolution ~~shall~~ must be limited to 1 year from the date it becomes effective. The board of county commissioners may extend ~~such~~ the interim resolution for 1 year, but not more than one ~~such~~ extension may be made."

**Section 17.** Section 76-2-304, MCA, is amended to read:

**"76-2-304. Purposes of zoning.** (1) ~~Such~~ Zoning regulations ~~shall~~ must be made in accordance with a ~~comprehensive plan~~ growth policy and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) ~~Such~~ Zoning regulations ~~shall~~ must be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout ~~such~~ the municipality."

**Section 18.** Section 76-2-310, MCA, is amended to read:

**"76-2-310. Extension of municipal zoning and subdivision regulations beyond municipal boundaries.** (1) ~~The local~~ Except as provided in 76-2-312 and except in locations where a county has adopted zoning or subdivision regulations, a city or town council or other legislative body ~~which that~~ has adopted a master plan growth policy pursuant to chapter 1 may extend the application of its zoning or subdivision regulations, or both, beyond its limits in any direction but not in a county which has adopted such regulations within the contemplated area. subject to the following limits:

~~(2) (a) A~~ up to 3 miles beyond the limits of a city of the first class as defined in 7-1-4111; may not extend the application of its zoning or subdivision regulations, or both, more than 3 miles beyond its limits;

(b) up to 2 miles beyond the limits of a city of the second class may not so extend more than 2 miles beyond its limits;; and

(c) up to 1 mile beyond the limits of a city or town of the third class may not so extend more than 1 mile beyond its limits.

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

**Section 19.** Section 76-2-311, MCA, is amended to read:

**"76-2-311. Administration of regulations in extended area.** (1) ~~Any~~ A city or town council or other legislative body may ~~thereafter~~ enforce ~~such~~ regulations adopted pursuant to 76-2-310 in the area to the same extent, as if ~~such~~ the property were situated within its corporate limits, until the county board adopts a ~~master plan~~ growth policy pursuant to chapter 1 and accompanying zoning or subdivision resolutions, ~~or both, which~~ that include the area.

(2) As a prerequisite to the exercise of this power, a city-county planning board whose jurisdictional area includes the area to be regulated must be formed or an existing city planning board must be increased to include two representatives from the unincorporated area ~~which~~ that is to be affected. These representatives ~~shall~~ must be appointed by the board of county commissioners. ~~Such representation, however, shall~~ Representation must cease when the county board adopts a ~~master plan~~ growth policy pursuant to chapter 1 and accompanying zoning or subdivision resolutions, ~~or both, which~~ that include the area."

**Section 20.** Section 76-3-210, MCA, is amended to read:

**"76-3-210. Subdivisions exempted from requirement of an environmental assessment.** (1) Subdivisions totally within a master planning area jurisdictional area that has adopted all of the following are considered to be in the public interest and are exempt from the requirement of an environmental assessment:

- (a) a growth policy adopted pursuant to chapter 1 wherein;
- (b) zoning regulations pursuant to ~~part 3 of chapter 2 or 76-2-201 or chapter 2, part 3;~~ and
- (c) a ~~long-range development program of strategy for development, maintenance, and replacement of public works projects~~ infrastructure pursuant to 76-1-601 ~~have been adopted are deemed to be in the public interest and exempt from the requirement of an environmental assessment.~~

(2) (a) ~~When a~~ A planning board established pursuant to chapter 1 may exempt a proposed subdivision within its jurisdictional area from the requirement for completion of any portion of the environmental assessment if:

(i) the subdivision is proposed in an area for which a ~~master plan~~ growth policy has been adopted pursuant to chapter 1 and the proposed subdivision will be in compliance with the ~~plan~~ growth policy; or

(ii) when the subdivision will contain fewer than 10 parcels and less than 20 acres, a ~~planning board~~ established pursuant to chapter 1 and having jurisdiction over the area involved may exempt the subdivider from the completion of all or any portion of the environmental assessment.

(b) When ~~such~~ an exemption is granted under this subsection (2), the planning board shall prepare and certify a written statement of the reasons for granting the exemption. A copy of this statement ~~shall~~ must accompany the preliminary plat of the subdivision when it is submitted for review.

(c) Where ~~no~~ a properly established planning board having jurisdiction ~~exists~~ does not exist, the governing body may grant exemptions as specified in this subsection (2)."

**Section 21.** Section 76-3-504, MCA, is amended to read:

**"76-3-504. Minimum requirements for subdivision regulations.** The subdivision regulations adopted under this chapter ~~shall~~ must, at a minimum:

(1) except as provided in 76-3-210 or 76-3-609(3), require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(2) establish procedures consistent with this chapter for the submission and review of subdivision plats;

(3) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(4) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

(5) prohibit subdivisions for building purposes 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;

(6) prescribe standards for:

(a) the design and arrangement of lots, streets, and roads;

(b) grading and drainage;

(c) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that, at a minimum, meet the regulations adopted by the department of environmental quality under 76-4-104;

(d) the location and installation of utilities;

(7) provide procedures for the administration of the park and open-space requirements of this chapter;

(8) provide for the review of preliminary plats by affected public utilities and those agencies of local, state, and federal government having a substantial interest in a proposed subdivision. A utility or agency review may not delay the governing body's action on the plat beyond the time limits specified in this chapter, and the failure of any agency to complete a review of a plat may not be a basis for rejection of the plat by the governing body."

**Section 22.** Section 76-3-505, MCA, is amended to read:

**"76-3-505. Provision for summary review of minor subdivisions.** (1) Local subdivision regulations must include procedures for the summary review and approval of subdivision plats containing five or fewer parcels when proper access to all lots is provided, when no land in the subdivision will be dedicated to public use for parks or playgrounds, and when the plats have been approved by the department of environmental quality whenever approval is required by part 1 of chapter 4; however, reasonable local regulations may contain additional requirements for summary approval.

(2) (a) Except when required by local subdivision regulations, proposed subdivisions eligible for summary review under this section that are located entirely within the jurisdictional area covered by a growth policy adopted pursuant to chapter 1 and zoning regulations adopted pursuant to chapter 2, part 2 or 3, are exempt from:

(i) the requirement to hold a hearing on the preliminary plat pursuant to 76-3-605; and

(ii) review by the governing body of the criteria in 76-3-608(3)(a).

(b) The governing body shall approve, conditionally approve, or disapprove a proposed subdivision that is eligible for review under this subsection (2) within 35 days of submission of the subdivision application."

**Section 23.** Section 76-3-601, MCA, is amended to read:

**"76-3-601. Submission of preliminary plat for review.** (1) Except when a plat is eligible for ~~summary approval~~ expedited review pursuant to 76-3-505, the subdivider shall present to the



governing body or to the agent or agency designated by the governing body the preliminary plat of the proposed subdivision for local review. The preliminary plat must show all pertinent features of the proposed subdivision and all proposed improvements.

(2) (a) When the proposed subdivision lies within the boundaries of an incorporated city or town, the preliminary plat must be submitted to and approved by the city or town governing body.

(b) When the proposed subdivision is situated entirely in an unincorporated area, the preliminary plat must be submitted to and approved by the governing body of the county. However, if the proposed subdivision lies within 1 mile of a third-class city or town, ~~or~~ within 2 miles of a second-class city, or within 3 miles of a first-class city, the county governing body shall submit the preliminary plat to the city or town governing body or its designated agent for review and comment. If the proposed subdivision is situated within a rural school district, as described in 20-9-615, the county governing body shall provide an informational copy of the preliminary plat to school district trustees.

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

(d) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall coordinate the subdivision review and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible.

(3) The provisions of 76-3-604, 76-3-605, ~~and~~ 76-3-608 through 76-3-610, and this section do not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to 7-3-4444."

**Section 24.** Section 76-3-604, MCA, is amended to read:

**"76-3-604. Review of preliminary plat.** (1) The governing body or its designated agent or agency shall review the preliminary plat to determine whether it conforms to the local ~~master plan~~ growth policy if one has been adopted pursuant to chapter 1, to the provisions of this chapter, and to rules prescribed or adopted pursuant to this chapter.

(2) The governing body shall approve, conditionally approve, or ~~reject~~ disapprove the preliminary plat within 60 days of its presentation unless the subdivider consents to an extension of the review period.

(3) If the governing body ~~rejects~~ disapproves or conditionally approves the preliminary plat, it shall forward one copy of the plat to the subdivider accompanied by a letter over the appropriate signature

stating the reason for ~~rejection~~ disapproval or enumerating the conditions ~~which~~ that must be met to ~~assure~~ ensure approval of the final plat."

**Section 25.** Section 76-3-605, MCA, is amended to read:

**"76-3-605. Hearing on preliminary plat.** (1) ~~The~~ Except as provided in 76-3-505, the governing body or its authorized agent or agency shall hold a public hearing on the preliminary plat and shall consider all relevant evidence relating to the public health, safety, and welfare, including the environmental assessment if required, to determine whether the plat should be approved, conditionally approved, or disapproved by the governing body.

(2) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall hold joint hearings on the preliminary plat and annexation whenever possible.

(3) Notice of ~~such~~ the hearing ~~shall~~ must be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing. The subdivider, each property owner of record, and each purchaser under contract for deed of property immediately adjoining the land included in the plat ~~shall~~ must also be notified of the hearing by registered or certified mail not less than 15 days prior to the date of the hearing.

(4) When a hearing is held by an agent or agency designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or disapproval of the plat. This recommendation must be submitted to the governing body in writing not later than 10 days after the public hearing."

**Section 26.** Section 76-3-608, MCA, is amended to read:

**"76-3-608. Criteria for local government review.** (1) The basis for the governing body's decision to approve, conditionally approve, or disapprove a subdivision is whether the preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the subdivision meets the requirements of this chapter. A governing body may not deny approval of a subdivision based solely on the subdivision's impacts on educational services.

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) except when the governing body has established an exemption pursuant to subsection (7) or except as provided in 76-3-505, the effect on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements for the location and installation of any planned utilities; and

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

(4) The governing body may require the subdivider to design the subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3). The governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the plat.

(b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

(6) (a) When a minor subdivision is proposed in an area where a master plan growth policy has been adopted pursuant to chapter 1 and the proposed subdivision will comply with the plan growth policy, the subdivision is exempt from the review criteria contained in subsection (3)(a) but is subject to applicable zoning regulations.

(b) In order for a master plan growth policy to serve as the basis for the exemption provided by this subsection (6), the plan growth policy must, ~~at a minimum, contain:~~

~~(i) housing, transportation, and land-use elements sufficient for the governing body to protect public health, safety, and welfare; and~~

~~(ii) a discussion of physical constraints on development that exist within the area encompassed by the proposed subdivision meet the requirements of 76-1-601.~~

(7) The governing body may exempt subdivisions that are entirely within the boundaries of designated geographic areas from the review criteria in subsection (3)(a) if all of the following requirements have been met:

(a) the governing body has adopted a growth policy pursuant to chapter 1 that:

(i) addresses the criteria in subsection (3)(a);

(ii) evaluates the effect of subdivision on the criteria in subsection (3)(a);

(iii) describes zoning regulations that will be implemented to address the criteria in subsection (3)(a); and

(iv) identifies one or more geographic areas where the governing body intends to authorize an exemption from review of the criteria in subsection (3)(a); and

(b) the governing body has adopted zoning regulations pursuant to chapter 2, part 2 or 3, that:

(i) apply to the entire area subject to the exemption; and

(ii) address the criteria in subsection (3)(a), as described in the growth policy."

**Section 27.** Section 76-3-621, MCA, is amended to read:

**"76-3-621. Park dedication requirement.** (1) Except as provided in subsections (2), (3), and (6), a subdivider shall dedicate to the governing body a cash or land donation equal to:

(a) 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;

(b) 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than 1 acre;

(c) 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger than 3 acres; and

(d) 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.

(2) When a subdivision is located totally within an area for which density requirements have been adopted pursuant to a ~~master plan~~ growth policy under ~~Title 76~~, chapter 1; or pursuant to zoning regulations under ~~Title 76~~, chapter 2, the governing body may establish park dedication requirements based on the community need for parks and the development densities identified in the ~~plans~~ growth policy or regulations. Park dedication requirements established under this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03 acres per dwelling unit.

(3) A park dedication may not be required for:

(a) a minor subdivision;

- (b) land proposed for subdivision into parcels larger than 5 acres;
  - (c) subdivision into parcels that are all nonresidential;
  - (d) a subdivision in which parcels are not created, except when that subdivision provides permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums; or
  - (e) a subdivision in which only one additional parcel is created.
- (4) The governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation.
- (5) (a) In accordance with the provisions of subsections (5)(b) and (5)(c), the governing body shall use the dedicated money or land for development, acquisition, or maintenance of parks to serve the subdivision.
- (b) The governing body may use the dedicated money to acquire, develop, or maintain, within its jurisdiction, parks or recreational areas or for the purchase of public open space or conservation easements only if:
- (i) the park, recreational area, open space, or conservation easement is within a reasonably close proximity to the proposed subdivision; and
  - (ii) the governing body has formally adopted a park plan that establishes the needs and procedures for use of the money.
- (c) The governing body may not use more than 50% of the dedicated money for park maintenance.
- (6) The local governing body shall waive the park dedication requirement if:
- (a) (i) the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and
  - (ii) the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection (1);
- (b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and

(ii) the area of the land proposed to be subdivided, by virtue of providing long-term protection provided for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1); or

(c) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1).

(7) For the purposes of this section:

(a) "cash donation" is the fair market value of the unsubdivided, unimproved land; and

(b) "dwelling unit" means a residential structure in which a person or persons reside."

**Section 28.** Section 76-4-111, MCA, is amended to read:

**"76-4-111. Exemption for certain condominiums and subdivisions.** (1) Condominiums constructed on land divided in compliance with the Montana Subdivision and Platting Act and this part are exempt from provisions of this part.

(2) Whenever a parcel of land has previously been reviewed under either department requirements or local health requirements and has received approval for a given number of living units for rental or lease, the construction of the same or a fewer number of condominium units on that parcel is not subject to the provisions of this part, provided that no new extension of a public water supply system or a public sewage disposal system is required as defined in this part.

(3) Subdivisions located within ~~master planning~~ jurisdictional areas that have adopted growth policies pursuant to chapter 1 and first- or second-class municipalities that will be provided with municipal facilities for the supply of water and disposal of sewage and solid waste are not subject to the provisions of this part; except that, if the municipal facilities for water supply or sewage disposal to serve the subdivision constitute either an extension of a public water supply system or a public sewage disposal system, the subdivision must be reviewed in accordance with the provisions of 76-4-105, 76-4-124, and 76-4-127."

**Section 29.** Section 76-4-122, MCA, is amended to read:

**"76-4-122. Filing or recording of noncomplying map or plat prohibited.** (1) The county clerk and recorder ~~shall~~ may not file or record any map or plat showing a subdivision unless it complies with the provisions of this part.

(2) A county clerk and recorder may not accept a subdivision plat for filing until one of the following conditions has been met:

(a) whenever reviewing authority approval is necessary, the person wishing to file the plat has obtained approval of the local health officer having jurisdiction and has filed the approval with the reviewing authority, and the reviewing authority has indicated by stamp or certificate that it has approved the plat and plans and specifications and that the subdivision is not subject to ~~no~~ a sanitary restriction ~~whenever reviewing authority approval is necessary~~; or

(b) whenever reviewing authority approval is not necessary, the person wishing to file the plat has obtained a certificate from the governing body that the subdivision is inside ~~a master planning area~~ the jurisdictional area of a growth policy adopted pursuant to chapter 1 or a class 1 or class 2 municipality and will be provided with municipal facilities for the supply of water and disposal of sewage and solid waste."

**Section 30.** Section 76-4-123, MCA, is amended to read:

**"76-4-123. Review and approval required outside master planning areas and class 1 and class 2 municipalities.** Outside ~~master planning~~ jurisdictional areas that have adopted growth policies adopted pursuant to chapter 1 and class 1 and class 2 municipalities as provided in 76-4-124, a person may not file a subdivision plat with a county clerk and recorder, make disposition of a lot within a subdivision, erect any facility for the supply of water or disposal of sewage or solid waste, erect a building or shelter in a subdivision ~~which~~ that requires facilities for the supply of water or disposal of sewage or solid waste, or occupy a permanent building in a subdivision until the reviewing authority has indicated that the subdivision is not subject to ~~no~~ a sanitary restriction."

**Section 31.** Section 76-4-124, MCA, is amended to read:

**"76-4-124. Type of review and approval required within master planning areas and class 1 and class 2 municipalities.** (1) Within ~~master planning~~ jurisdictional areas that have adopted growth policies adopted pursuant to chapter 1 or within a class 1 or class 2 municipality as defined in 7-1-4111, a subdivision, including a development of condominiums, is not subject to sanitary restrictions when the local governing body certifies that municipal facilities for the supply of water and disposal of sewage and solid waste will be provided for the subdivision as provided in 76-4-127. In this case, reviewing authority approval is not necessary.

(2) To the extent that municipal facilities for the supply of water or disposal of sewage or solid waste are not to be provided for a subdivision as certified to by the governing body, the person wishing to subdivide must obtain reviewing authority approval as provided in 76-4-122(2)(a)."

**Section 32.** Section 76-4-127, MCA, is amended to read:

**"76-4-127. Notice of certification that water and waste services will be provided by local government.** (1) When a subdivision is reviewed under the provisions of 76-4-124, the local governing body shall, within 20 days after receiving preliminary plat approval under the Montana Subdivision and Platting Act, send notice of certification to the reviewing authority that a subdivision has been submitted for approval and that municipal facilities for the supply of water and disposal of sewage and solid waste will be provided for the subdivision.

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

(a) the name and address of the applicant;

(b) a copy of the preliminary plat or a final plat ~~where~~ when a preliminary plat is not necessary;

(c) the number of proposed parcels in the subdivision;

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

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

(f) a copy of the ~~master plan~~ growth policy, when applicable, if one has not yet been submitted to the reviewing authority;

(g) the relative location of the subdivision to the city or town; and

(h) certification that adequate municipal facilities for the supply of water and disposal of sewage and solid waste are available or will be provided within 1 year after the notice of certification is issued."

**Section 33.** Section 76-9-104, MCA, is amended to read:

**"76-9-104. Zoning -- effect on shooting ranges.** A planning district ~~master plan~~ growth policy, recommendation, resolution, rule, or zoning designation may not:

(1) prevent the operation of an existing shooting range as a nonconforming use;

(2) prohibit the establishment of new shooting ranges, but it may regulate the construction of shooting ranges to specified zones; or

(3) prevent the erection or construction of safety improvements on existing shooting ranges."

**Section 34. Name change -- directions to code commissioner.** Except for [section 4 of this act], wherever a reference to "master plan", "comprehensive plan", or "comprehensive development plan" appears in legislation that is enacted or amended by the 1999 legislature and when any of those



terms refer to the plan authorized by Title 76, chapter 1, the code commissioner is directed to change the term to an appropriate reference to a "growth policy".

**Section 35. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 36. Transition -- applicability.** A governing body that adopts a master plan pursuant to Title 76, chapter 1, before October 1, 1999, may adopt zoning regulations that are consistent with the master plan pursuant to Title 76, chapter 2, part 2 or 3, until October 1, 2001. The requirements for a growth policy in [section 8], amending 76-1-601, apply to the adoption of zoning regulations pursuant to Title 76, chapter 2, part 2 or 3, after October 1, 2001.

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**Latest Version of SB 97** (*SB0097.ENR*)