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December 1, 2009

TO: Education and Local Government Committee (ELG)

FR: Helen Thigpen, Staff Attorney

RE: What Constitutes a Compensable Taking Under the Fifth Amendment of the United States Constitution and Article II, section 29, of the Montana Constitution?

All takings claims, whether they stem from outright condemnation of land or a regulation, have their origin in the Fifth Amendment of the U.S. Constitution. However, there are unique conceptual and procedural differences between the types of takings claims. There are also categorical rules that apply to each type of claim. This paper provides a brief overview of takings concepts and summarizes the major categories of governmental actions that have been held to constitute compensable takings. The following information should not be considered an exhaustive review of every governmental activity that might constitute a compensable taking. Takings claims present numerous issues and turn on the unique facts presented in each case. When addressing a takings issue, it is best to start by determining whether the type of property at issue is compensable under current takings law. The next step is to determine whether a taking has actually occurred. These steps are summarized in the following discussion and should be considered when addressing takings issues in Montana.

Background

The Takings Clause of the Fifth Amendment of the U.S. Constitution provides that private property shall not "be taken for public use without just compensation." The Takings Clause, which applies directly to the states through the 14th Amendment, restricts a government's power to physically appropriate or condemn private property through eminent domain proceedings. In addition, the Takings Clause restricts a government's power to limit the use or value of private property through regulatory means such as zoning. The latter category asks whether a particular governmental action is so burdensome that it is tantamount to a physical occupation. This type of taking, if established, is known as a regulatory taking and may be compensable.

As noted by the U.S. Supreme Court, the Fifth Amendment "does not prohibit the taking of private property, but instead places a condition on the exercise of that power." *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 536 (2005), (citing *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304, 314 (1987). The oft-cited justification for compensation under the Fifth Amendment is that the government should be barred "from forcing some people alone to bear public burdens

which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. U.S.*, 364 U.S. 40 (1960).

Like the Takings Clause of the Fifth Amendment, Montana's Constitution prohibits the taking of private property without just compensation. Article II, section 29, of the Montana Constitution provides that "[p]rivate property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made to or paid into court for the owner." Over the years, takings issues have been the source of significant litigation in Montana and, thus, there are numerous Montana cases that deal with takings issues.

Several federal cases set the parameters of takings law in general. Since Montana courts will look to these decisions for guidance on takings issues, they must be considered along with relevant Montana law. These cases are addressed throughout the following discussion.

Takings analysis

Takings claims in Montana undergo a two-part analysis that focuses on (1) whether the owner's property, or interest in that property, is the type that may be compensated; and (2) whether the government's action resulted in a taking of that property within the meaning of the Fifth Amendment and Article II, section 29.

1. Compensable property interests

First, to establish an unconstitutional taking the property owner must establish that he or she possesses a "cognizable property interest in the subject of the alleged taking." *Kafka v. Mont. Dep't of Fish, Wildlife & Parks*, 2008 MT 460, ¶ 32, 348 Mont. 80, 201 P.3d 8. In other words, the owner must demonstrate that the type of property interest is one that can be compensated under the Fifth Amendment and Article II, section 29. Property interests are not defined by the Takings Clause. Instead, they are formed "by existing rules or understandings that stem from an independent source such as state law." *Kafka*, ¶ 33 (emphasis added).

Property interests are set forth in section 70-1-104, MCA. Under this section, ownership may exist in inanimate things capable of manual delivery, domestic animals, obligations, products of labor or skill such as the goodwill of a business or trademarks, and other rights created or granted by law. However, the Montana Supreme Court has stated that the existence of a property interest hinges on the person's relationship to the alleged property, including the person's right "to exclude, use, transfer, or dispose of the property." *Kafka*, ¶ 33. Importantly, while a property interest may be one that is listed in section 70-1-104, MCA, it does not necessarily follow that the interest is a compensable interest under the Fifth Amendment or Article II, section 29.

It is well-established that for purposes of the Fifth Amendment and Article II, section 29, property interests exist in real and personal property. It is rarely disputed that an owner must be compensated for the value of these items if an unlawful taking has been established. The more controversial issues relate to whether items such as government-issued licenses and intangible business assets such as the going concern value or goodwill of a business are property interests for which compensation may be owed.

The Montana Supreme Court's opinion in *Kafka* (cited above) clarified many of these issues. In *Kafka*, several game farm owners filed a claim against the State alleging that the passage and enforcement of I-143 – a citizen initiative that prohibited game farm operators from imposing fees to shoot alternative livestock – resulted in the taking of various property interests. Specifically, the operators alleged that the State, pursuant to the Fifth Amendment and Article II, section 29, unlawfully "took" the operator's state-issued licenses, real property, improvements, going concern value, goodwill, and livelihoods. With respect to the licenses, the Court noted that a license is defined as a right or privilege granted by a sovereign authority to engage in a certain activity that would otherwise be unlawful. *Kafka*, ¶ 38. According to the Court, a compensable interest in a government-issued license may exist if the license is transferable, exclusive and free of express statutory language that precludes the formation of a property right. *Kafka*, ¶ 42. In this case, however, the game farm licenses could not be considered compensable property interests because the licenses lacked the most essential component of a property right – the right to exclude others from operating in the game farm industry.

With respect to the goodwill and going concern value claims, the Court noted the general principle that intangible business interests have never been held to be compensable property interests for purposes of the Takings Clause unless the government has also physically appropriated the property or ousted the owner. The Court concluded that under current takings jurisprudence, an alleged taking of a business's goodwill or going concern value is not, standing alone, compensable because the alleged taking relates to collateral interests incidental to ownership. A claim regarding these interests is essentially a claim for an expectation of future profitability. According to the Court, the Fifth Amendment relates to property; it does not relate to collateral interests that may be incident to ownership. *Kafka*, ¶ 58. While I-143 significantly frustrated the operator's business expectations by eliminating the right to charge a fee for shooting alternative livestock, the Court held that a loss of future profitability was not a compensable taking.

In a case prior to *Kafka*, the Montana Supreme Court addressed a similar issue related to whether an individual had a protectable property interest in operating a business as a bar. In *Germann v. Stephens*, 2006 MT 130, 332 Mont. 303, 137 P.3d 545, the City of Whitefish adopted an emergency temporary ordinance that prohibited new establishments from selling on-premise alcoholic beverages within the City without first receiving a conditional use permit. The ordinance was enacted after the claimant sought to transfer a liquor license to a premise that was located near a local school. The claimant argued that she had a protectable interest to operate her business as a bar because a previous zoning ordinance allowed her to do so. The Montana Supreme Court stated that the previous zoning ordinance could not authorize her to operate a bar or a casino. Rather, that authorization would have to come from the Department of Revenue and the Montana Gambling Control Division. In addition, the Court stated that when a claimant alleges that a property interest exists because of a state law, it will determine whether "a reasonable expectation of entitlement exists based largely on the language of the statute relied upon and the extent to which the legislature couched the entitlement in mandatory terms." *Germman*, ¶ 28. Because the Legislature vested the Department of Revenue with significant discretion to determine whether an individual qualifies for a liquor license and because the license was a privilege, not a right, the Court determined that the operator did not have a protectable property interest for purposes of the Fifth Amendment.

2. Takings categories – determining whether a government action constitutes a taking

After a Montana landowner has established a compensable *property interest*, he or she must then establish that the governmental action constitutes an unlawful taking. *Kafka*, ¶ 32. The following section outlines the major categories of compensable takings claims that have evolved under the Takings Clause of the Fifth Amendment and Article II, section 29.

a. Condemnation or physical appropriation

The Fifth Amendment and Article II, section 29, require payment of compensation when the government has acquired private property for a public use through formal condemnation proceedings or through a physical appropriation. The most typical example of this type of taking is when a governmental entity takes private property for a public highway or easement through formal condemnation proceedings. Another example is when the government takes physical possession of private property. *See* e.g. *U.S. v. Pewee Coal Co.*, 341 U.S. 114 (1951) (government seizure and subsequent operation of a coal mine to prevent a national strike of coal miners constituted a taking under the Fifth Amendment). Because of the strong interest in condemnation rules and procedures, a more detailed discussion follows.

The government's right to seize or "condemn" private property stems from the doctrine of eminent domain. In Montana, eminent domain is defined as the "right of the state to take private property for public use." Section 70-30-101, MCA. Under this provision, the State's right of eminent domain may be exercised in the manner provided in Montana law. As noted above, the government's power to take private property is restricted by constitutional and statutory provisions. The Fifth Amendment is the most obvious restriction on the government's right of eminent domain. As noted above, this restriction is also found in Article II, section 29, of the Montana Constitution, which states that "[p]rivate property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made to or paid into court for the owner." Article II, section 29, also provides that "[i]n the event of litigation, just compensation shall include necessary expenses of litigation to be awarded by the court when the private property owner prevails."

There are additional restrictions on an entity's power of eminent domain in Montana.[1] For example, under section 70-30-111, MCA, private property cannot be condemned through eminent domain unless the condemner has shown, by a preponderance of the evidence, that the *public interest* requires the taking.[2] To show that the public interest requires the taking, the condemner must demonstrate the following:

(1) the use is a public use pursuant to section 70-30-102, MCA;
(2) the taking is necessary to the public use;

[1] Although private entities do not have an inherent right to condemn private property through eminent domain, the Legislature has granted certain non-governmental entities this right. Rural electric cooperatives, for example, have the power to exercise eminent domain. Section 35-20-104, MCA.

[2] "A preponderance of the evidence" is the burden of proof generally required in civil trials. It is typically defined as evidence that is sufficient "to incline a fair and impartial mind to one side rather than the other." Blacks Law Dictionary 1301 (Bryan A. Garner ed., 9th ed., West 2009). In quantifiable terms, a preponderance of the evidence is 51% or greater.

(3) if the use is already being used as a public use, that the proposed use is a *more necessary* public use; and
(4) an effort to obtain the property interest was made through the submission of a written offer and that offer was rejected.

The public use requirement set forth in subsection (1) is established by demonstrating that the use is authorized by section 70-30-102, MCA. There are currently 45 public uses set forth in section 70-30-102, MCA. For example, a public use includes a public building and "all other public uses authorized by the legislature of the state," "canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city or town," and "projects to raise the banks of streams, remove obstructions from streambanks, and widen, deepen, or straighten stream channels." Section 70-30-102(2), (4),(5), MCA.

The Legislature is solely responsible for determining the public uses for which eminent domain may be exercised. These uses have been a significant source of controversy over the years and, thus, the Legislature has tried to add, delete, or amend the uses to reflect changing attitudes and perceptions about eminent domain. What constitutes a public use became particularly controversial after the U.S. Supreme Court's decision in *Kelo v. New London*, 545 U.S. 469 (2005).

In *Kelo*, the City of New London, Connecticut, sought to use its power of eminent domain to condemn private property in a distressed area of town for economic development purposes. The area, known as Fort Trumbull, had an unemployment rate that was nearly double that of the state and had been significantly affected by the closure of a nearby military installation. In an effort to revitalize the area, the City reactivated a private nonprofit organization and adopted a development plan for the area. As part of the plan, Pfizer Corporation announced that it would build a new research facility in the Fort Trumbull area that would employ a significant number of people. The proposed $300 million research facility was also anticipated to draw numerous new businesses to the area. Overall, the City projected that the development would increase revenue and revitalize the Fort Trumbull area. While the City was able to purchase many of the properties in the area, a few landowners refused to sell their properties for the development. The City then initiated condemnation proceedings against the landowners to obtain the properties pursuant to a Connecticut law that defined economic development projects as a public use for purposes of eminent domain.

Ultimately, the right of the City to condemn the property was appealed to the U.S. Supreme Court. In a 5-4 decision, the Court upheld the City's use of eminent domain to seize private property that it planned to sell to private developers for the Fort Trumbull revitalization project. Although the landowners argued that the City could not take private property to sell to private developers because it was not a public use within the meaning of the Fifth Amendment, the Court determined that it had a long history of deferring to these types of legislative judgments and that the Court had never established a rigid test for what constitutes a public use or public purpose. The Court also noted that promoting economic development was a well-accepted governmental function and that the City was not taking the land to benefit a certain group of private individuals. Rather, the City was specifically following a "carefully formulated development plan" that sought to benefit the larger community. Importantly, the Supreme Court emphasized that nothing in the *Kelo* decision precluded any state from

placing additional restrictions on "its exercise of the takings power." *Kelo*, 545 U.S. at 489.

In response to *Kelo*, numerous states enacted (or attempted to enact) legislation that limited the types of uses that could constitute a public use for purposes of the Takings Clause. In Montana, for example, the 2007 Legislature enacted SB 363, which provided that "private property may be acquired for urban renewal through eminent domain only if the property was determined to be a blighted area." SB 363 also provided that private property could not be acquired for urban renewal through eminent domain if the purpose of the project was to increase government tax revenue. See also section 70-30-102, MCA.

While the Legislature is solely responsible for determining public uses, the Montana Supreme Court has stated that district courts are responsible for determining whether each of the factors set forth in section 70-30-111, MCA, have been sufficiently established. As noted above, section 70-30-111(1), MCA, requires the condemner to establish that the use is authorized as a public use in section 70-30-102, MCA. In addition, the taking must also be *necessary* to the public use.

The issue of whether the taking is necessary to the public use has been a significant source of litigation of over the years. In making this determination, courts will look at the individual circumstances of each case. *Montana Power Company v. Bokma*, 153 Mont. 390, 397, 457 P.2d 769, 774 (1969). Generally, a use will be determined to be necessary when it is "reasonable, requisite, and proper for the accomplishment of the end view under the particular circumstances of the case." *Bokma*, 153 Mont. at 389, 457 P.2d at 774. The term "reasonable, requisite, and proper" has not been specifically defined, but it is generally understood to mean that the proposed taking must be reasonable and required by the specific circumstances. While this is by no measure an extensive review of the interpretation of the necessity requirement, it provides a starting point for understanding the type of evidence that would need to be established. Nevertheless, it is clear that for Fifth Amendment purposes, compensation must be provided when the government has taken private property through eminent domain. Generally, compensation is measured by the fair market value of the property at the time of the condemnation action.[3]

For a more thorough discussion of eminent domain, please see the publication titled *Eminent Domain in Montana* published by the Legislative Environmental Policy Office. This document was originally developed in 2001 but was recently updated (see the link below to access the document online).[4] Because this publication provides significant information about eminent domain, the following discussion will focus on the other categories of takings claims that may result in compensation under the Fifth Amendment and Article II, section 29.

b. Regulatory takings

A regulatory taking, as opposed to eminent domain, occurs when a government regulation is considered so burdensome that it is tantamount to a physical invasion. *See Lingle*, 544 U.S. at 537. A regulatory taking is also commonly referred to as

[3] Generally, fair market value is the price at which a willing selling and buyer would agree to exchange the property.
[4] http://leg.mt.gov/css/Publications/Environmental/default.asp

"inverse condemnation" because it occurs when the property owner claims that a governmental action has diminished the usefulness or value of his or her property through a particular activity. It is *inverse* because the property owner is requesting compensation under the Takings Clause from the government. As explained above, eminent domain is the formal process by which a governmental entity condemns private property.

The U.S. Supreme Court first recognized regulatory-type takings in *Pennsylvania Coal v. Mahon*, 260 U.S. 393 (1922). In that case, the Court stated that "while property may be regulated to some extent, if the regulation 'goes too far' it will be considered a taking." *Pennsylvania Coal*, 260 U.S. at 415. In *Pennsylvania Coal*, however, the Supreme Court also recognized that "government could hardly go on if to some extent values incident to property could not be diminished without paying for every such change in the general law." *Pennsylvania Coal*, 260 U.S. at 413.

The difficulty with regulatory takings, of course, is determining when a governmental action is so burdensome that it constitutes a taking for purposes of the Fifth Amendment. The U.S. Supreme Court has established two categories of claims that will generally usually be considered takings under the Fifth Amendment.

The first results when a government regulation causes a physical invasion of the owner's property. A physical invasion, no matter how slight, will typically require the government to compensate the owner. *See Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982) (state law that required certain landowners to allow cable companies to install cable equipment in apartments constituted a taking for which compensation was required).

The second occurs when a regulation has removed all economically beneficial use from the owner's property. This type of claim is premised on the notion that from the landowner's perspective, the government regulation is essentially the same as a physical invasion and thus requires compensation. The total takings rule, as it is commonly known, developed from the U.S. Supreme Court's decision in *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992), where the claimant challenged the enforcement of the South Carolina Coastal Zone Management Act. Among other things, this Act required those owning property in areas designated as "critical areas" to obtain permits before they could put their properties to a new or different use. The petitioner in the case, David Lucas, subsequently purchased two undeveloped lots that were located in one of these areas. Because of the Act, the petitioner was effectively barred from constructing residential buildings on the lots. Lucas subsequently sued to recover compensation from the government. Upon addressing the issue, a trial court in South Carolina found that the development prohibition constituted a taking because it rendered the property valueless. The U.S. Supreme Court upheld the trial court's decision and concluded that a taking occurs when an owner of real property has been required to give up "all economically beneficial uses" as a result of government regulation. *Lucas*, 505 U.S. at 1019. In sum, a regulation that totally renders a property valueless is generally considered a compensable taking for purposes of the Fifth Amendment.

These two regulation-based takings – permanent physical invasions and total deprivations of economically beneficial uses – represent "categorical takings." It is well established that a categorical taking has not occurred when property retains economic

value. Nevertheless, the government may still be required to provide compensation for economic injuries to the property interest.

The U.S. Supreme Court's analysis in *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978), represents the first departure from categorical takings claims. The premise for extending takings beyond the categorical claims is that in some situations, compensation may be owed when "fairness and justice" require it, even though the property at issue has not lost all economic value. *Penn Central Transportation*, 438 U.S. at 123.

In *Penn Central*, the U.S. Supreme Court established three factors for determining whether a taking has occurred in these situations: (1) the character of the governmental action; (2) the extent to which the regulation interferes with distinct investment-backed expectations; and (3) the economic impact of the regulation on the claimant. Courts may consider each of these factors, but one or more factors may be dispositive in certain cases. Each factor is considered in more detail below.

i. Character of the governmental action

This first factor focuses primarily on whether the governmental action amounts to a physical invasion or instead "merely affects property interests through some public program adjusting the benefits and burdens of economic life to promote the common good . . ." *Lingle*, 544 U.S. at 539. Whether an action is akin to a physical invasion is a high standard, and it is well-settled law that the government "may execute laws or programs that adversely affect recognized economic values without its action constituting a 'taking.'" *Penn Central*, 438 U.S. at 124.

To help make this determination, courts will inquire into the magnitude or character of the burden imposed by the regulation and whether it is functionally comparable to government appropriation or invasion of private property. *Kafka,* ¶ 71 *(see also Lingle,* 544 U.S. at 540). Regulatory takings turn more on the magnitude of the economic impact and the degree to which it interferes with legitimate property interests. For example, in the *Kafka* decision noted above, the Montana Supreme Court found that while the business owners had a compensable property interest in the alternative livestock, no taking had occurred because the intrusion upon the livestock was minimal. *Kafka*, ¶ 87. Specifically, the Court noted that the animals were not seized by the adoption or enforcement of I-143 because they could still be sold out of state for any use, including fee shooting. As such, the alleged taking was not consistent with the characteristics of a physical invasion.

ii. Interference with distinct investment-backed expectations

The second factor, which measures the extent to which the regulation interferes with distinct investment-backed expectations, weighs heavily in favor of owners who can "demonstrate that they bought their property in reliance on a state of affairs that did not include the challenged regulatory regime." *Rose Acre Farms, Inc. v. United States*, 373 F.3d 1177, 1190 (Fed. Cir. 2004). Courts have clarified that the investment-backed expectation must be reasonable, with the test for reasonableness being whether a similarly situated person would have had the same expectation.

In *Kafka*, the Montana Supreme Court determined that this expectation "must be more

than a unilateral expectation or an abstract need." *Kafka* ¶ 72. When considering the game farm owner's assertion that I-143 interfered with the owner's investment-backed expectations, the Court reasoned that because the game farm industry was already highly regulated and speculative, compensation was not required.

iii. Economic impact of the regulation

Under the third factor, a court will measure the impact of the regulatory change by considering the change in the fair market value of the property that resulted from the regulation. *Kafka*, ¶ 72. While no specific standard has been set, there is general consensus that the claimant must have suffered a very substantial reduction in property value for a court to find a regulatory taking. In Montana, the Supreme Court has further clarified that it will look at the magnitude of the impact on the parcel as a whole and not to the subunits of a particular property interest. *Kafka*, ¶ 72.

In the *Kafka* decision, the Montana Supreme Court noted that a taking had not occurred because evidence showed that the lands at issue still retained substantial economic value. In fact, some of the lands had appreciated in value. As such, the claimants were unable to demonstrate that the passage of I-143 resulted in a reduction in the fair market value of the property.

The Montana Supreme Court applied the factors set forth in *Penn Central* in *McElwain v. County of Flathead*, 248 Mont. 231, 811 P.2d 1267 (1991). In *McElwain*, a landowner challenged a 100-foot setback between a septic drain field and a flood plain on the Flathead River. At the time the land was purchased, county regulations prohibited septic systems from being built within 100 feet of the river. In 1984, the county adopted new flood plain regulations that required a 100-foot setback between the septic system drain field and a flood plain. The owner applied for a variance to build an underground septic system, but the request was denied. As a result, the owner claimed that her property was damaged by the enactment of the septic regulations and that she was entitled to compensation for the reduction in value to her property. After applying the *Penn Central* factors, the Montana Supreme Court concluded that the regulations did not deprive the owner of the economically viable use of her property. The Court reasoned that while the property's value may have been reduced, the reduction in value alone was not a taking within the meaning of the Fifth Amendment. The Court focused on the remaining economic viability of the property and concluded that the owner was still able to use the property as a residence, even though the property could not be located as close to the river as she would have liked.

c. Moratoria and temporary takings

Finally, it should also be noted that moratoria and temporary takings claims will generally also be analyzed under the *Penn Central* factors discussed above. In *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002), for example, the U.S. Supreme Court applied the *Penn Central* factors to address whether an imposition of a 32-month moratorium that restricted development around Lake Tahoe constituted a taking. The Tahoe Regional Planning Agency imposed the moratorium so that it could develop a comprehensive plan for the area because of the notable decrease in the water quality of Lake Tahoe due to significant development in the area. As a result, certain property owners and real estate agents initiated a claim against the planning agency, alleging that the moratorium on

development constituted a taking. The trial court agreed with the property owners and concluded that the moratorium constituted a categorical taking because it deprived the owners of all economically viable use of their properties. The appeals court reversed.

On appeal, the U.S. Supreme Court affirmed the appeals court's decision and held that the 32-month development moratorium did not constitute a compensable taking. The Court reached its decision, in part, by determining that whether a taking has occurred depends upon the property owner's expectations, the actual impact of the regulation, the public interests involved, and the reasons for the moratorium. The Court also determined that the categorical rule set forth in *Lucas* did not apply since *Lucas* applied to a permanent deprivation of all beneficial uses, not a temporary deprivation as was the case with the 32-month moratorium. As a result, the Court analyzed the case under the *Penn Central* factors and concluded that a taking had not occurred.

Again, the absence of a categorical rule for temporary takings or moratoria does not mean that a compensable taking never occurs in these situations. The U.S. Supreme Court in *Tahoe Sierra* specifically noted that delays lasting longer than 1 year should be viewed with suspicion. *Tahoe-Sierra Preservation Council*, 535 U.S. at 341. Whether these types of takings are compensable depend on the facts and circumstances presented in each case.

Conclusion

Takings claims are currently analyzed pursuant to the federal and state cases discussed above. However, given the numerous issues and frequent court challenges associated with takings claims, the analysis is subject to change. For example, the takings analysis in Montana would be significantly altered by the passage of a proposed initiative to enact a law known as the "Private Property Rights Preservation Act." The stated purpose of the initiative, in its current form, is to protect "property from being taken or damaged by government action without just compensation." It would define a taking "as any governmental action that causes a 25% or more diminution in fair-market value." Legal staff for the Legislative Services Division have reviewed the initiative for compliance with the bill drafting manual and other factors set forth in section 13-27-202(2), MCA, and it has been forwarded from the Secretary of State to the Attorney General for review.

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