

1 \_\_\_\_\_ BILL NO. \_\_\_\_\_

2 INTRODUCED BY \_\_\_\_\_  
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PLANNING, ZONING, AND  
5 SUBDIVISION REGULATION LAWS; PROVIDING ADDITIONAL GROWTH POLICY AND ZONING  
6 REGULATION CRITERIA AND ELEMENTS; ALLOWING THE RESIDENTS OF AN UNINCORPORATED  
7 AREA TO PETITION THE BOARD OF COUNTY COMMISSIONERS TO CREATE A COUNTY PLANNING  
8 BOARD; REQUIRING ADDITIONAL PUBLIC INPUT BEFORE A HEARING ON THE ADOPTION OF ZONING  
9 AND SUBDIVISION REGULATIONS; ALLOWING REGISTERED VOTERS TO CALL FOR THE REVOCATION  
10 OF ZONING REGULATIONS; ALLOWING THE BOARD OF APPEALS TO HEAR ADDITIONAL  
11 ARGUMENTS; PROVIDING ADDITIONAL METHODS FOR GRANTING VARIANCES TO ZONING AND  
12 SUBDIVISION REGULATIONS; SUPERSEDING THE UNFUNDED MANDATE LAWS; PROVIDING  
13 DEFINITIONS; AMENDING SECTIONS 50-60-901, 70-17-203, 76-1-102, 76-1-103, 76-1-104, 76-1-601, 76-2-  
14 203, 76-2-205, 76-2-216, 76-2-221, 76-2-223, 76-2-227, 76-3-103, 76-3-211, 76-3-501, 76-3-503, 76-3-504, 76-2-  
15 3-506, 76-3-511, 76-3-604, 76-3-605, 76-3-608, 76-3-615, 76-3-620, 76-3-621, 76-6-103, 76-8-101, AND 90-1-  
16 103, MCA; REPEALING SECTIONS 76-3-509 AND 76-6-102, MCA; AND PROVIDING AN IMMEDIATE  
17 EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

18  
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20  
21 **Section 1.** Section 50-60-901, MCA, is amended to read:

22 **"50-60-901. Purpose -- rulemaking.** (1) The purpose of this part is to provide specific rulemaking  
23 authority to the department of labor and industry for the purposes of 76-3-504(1)(e)(5).

24 (2) By October 1, 2009, the department shall adopt rules identifying appropriate construction  
25 techniques that may be used by a local government in mitigation of identified fire hazards pursuant to 76-3-  
26 504(1)(e)(5). Rules adopted under this section may not be construed to be part of the state building code as  
27 provided in 50-60-203. The adoption, amendment, or repeal of a rule under this section is of significant public  
28 interest for the purposes of 2-3-103."

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**Section 2.** Section 70-17-203, MCA, is amended to read:

**"70-17-203. Covenants that run with land.** (1) Except as provided in 70-1-522 and 70-17-212, every covenant contained in a grant of an estate in real property that is made for the direct benefit of the property or some part of the property then in existence runs with the land.

(2) Subsection (1) includes:

(a) covenants of warranty, for quiet enjoyment, or for further assurance on the part of the grantor and covenants for the payment of rent or of taxes or assessments upon the land on the part of a grantee;

(b) conservation easements pursuant to 76-6-209;

~~(c) a dedication of open space as provided in 76-3-509; and~~

~~(d)~~(c) wind easements pursuant to Title 70, chapter 17, part 4.

(3) A covenant for the addition of some new thing to real property or for the direct benefit of some part of the property not then in existence or annexed to the property, when contained in a grant of an estate in the property and made by the covenantor expressly for the covenantor's assigns or to the assigns of the covenantee, runs with the land so far as the assigns mentioned are concerned."

**Section 3.** Section 76-1-102, MCA, is amended to read:

**"76-1-102. Purpose.** (1) It is the object of this chapter 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; and that property rights and individual preferences for housing and~~ land use are respected.

(2) In accomplishing this objective, it is the intent of this chapter that the planning board shall serve in an advisory capacity to presently established boards and officials."

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

2           **"76-1-103. Definitions.** As used in this chapter, the following definitions apply:

3           (1) "Best evidence" means evidence that provides the best empirically based explanatory power, the  
 4 most compelling, equitable argument, and the least bias.

5           (2) "City" includes incorporated cities and towns.

6           ~~(2)~~(3) "City council" means the chief legislative body of a city or incorporated town.

7           ~~(3)~~(4) "Governing body" or "governing bodies" means the governing body of any governmental unit  
 8 represented on a planning board.

9           ~~(4)~~(5) "Growth policy" means a comprehensive development plan, master plan, or comprehensive  
 10 plan that was adopted pursuant to this chapter before October 1, 1999, or a policy that was adopted pursuant to  
 11 this chapter on or after October 1, 1999.

12           ~~(5)~~(6) "Land use management techniques and incentives" include but are not limited to zoning  
 13 regulations, subdivision regulations, and market incentives.

14           ~~(6)~~(7) "Market incentives" may include but are not limited to an expedited subdivision review process  
 15 authorized by 76-3-609, reductions in parking requirements, and a sliding scale of development review fees.

16           ~~(7)~~(8) "Mayor" means mayor of a city.

17           ~~(8)~~(9) "Neighborhood plan" means a plan for a geographic area within the boundaries of the  
 18 jurisdictional area that addresses one or more of the elements of the growth policy in more detail.

19           ~~(9)~~(10) "Person" means any individual, firm, or corporation.

20           ~~(10)~~(11) "Planning board" means a city planning board, a county planning board, or a joint city-county  
 21 planning board.

22           ~~(11)~~(12) "Plat" means a subdivision of land into lots, streets, and areas, marked on a map or plan, and  
 23 includes replats or amended plats.

24           (13) "Property right" means the interest of an individual to use their property to the highest and best  
 25 use, provided that it does not materially interfere with public health, safety, or welfare.

26           ~~(12)~~(14) "Public place" means any tract owned by the state or its subdivisions.

27           ~~(13)~~(15) "Streets" includes streets, avenues, boulevards, roads, lanes, alleys, and all public ways.

28           ~~(14)~~(16) "Utility" means any facility used in rendering service that the public has a right to demand."

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2           **Section 5.** Section 76-1-104, MCA, is amended to read:

3           **"76-1-104. Procedure to establish county planning board -- protest.** (1) Before a county planning  
4 board may be created, the board of county commissioners shall, by resolution, give public notice of their intent  
5 to create ~~such a~~ planning board and of a public hearing ~~thereon on it~~ by publication of notice of time and place  
6 of hearing on ~~such the~~ resolution in each newspaper published in the county not less than 15 or more than 30  
7 days prior to the date of hearing.

8           (2) The board of county commissioners shall, by resolution, give public notice of their intent to create  
9 a planning board as provided in subsection (1) if a majority of the electors that meet the qualifications provided  
10 in subsection (3) sign a petition for the creation of a planning board.

11           (3) An elector is eligible to sign a petition as allowed in subsection (2) if the elector resides:

12           (a) in the county;

13           (b) outside the limits of the jurisdictional area of an existing city-county planning board established  
14 pursuant to 76-1-504 through 76-1-507;

15           (c) outside of the incorporated limits of each city and town in the county; and

16           (d) in an area that conforms to a reasonably definable geographic or development pattern.

17           ~~(2)~~(4) A resolution creating a county planning board shall may not be adopted by the board of county  
18 commissioners if disapproved in writing, not later than 60 days after ~~such the~~ hearing, by a majority of the  
19 qualified electors of the county residing outside the limits of the jurisdictional area of an existing city-county  
20 planning board established pursuant to 76-1-504 through 76-1-507 and outside the incorporated limits of each  
21 city and town in the county."

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23           **Section 6.** Section 76-1-601, MCA, is amended to read:

24           **"76-1-601. Growth policy -- contents.** (1) A growth policy may cover all or part of the jurisdictional  
25 area.

26           (2) The extent to which a growth policy addresses the elements listed in subsection (3) is at the full  
27 discretion of the governing body.

28           (3) A growth policy must include:

- 1 (a) community goals and objectives;
- 2 (b) maps and text describing an inventory of the existing characteristics and features of the
- 3 jurisdictional area, including:
  - 4 (i) land uses;
  - 5 (ii) population;
  - 6 (iii) housing needs;
  - 7 (iv) economic conditions;
  - 8 (v) local services;
  - 9 (vi) public facilities;
  - 10 (vii) natural resources;
  - 11 (viii) sand and gravel resources; ~~and~~
  - 12 (ix) housing affordability;
  - 13 (x) housing preferences;
  - 14 (xi) potential economic and social impact of land use regulations and growth patterns on various types
  - 15 of businesses;
  - 16 (xii) potential impact of growth and land use regulations on property rights;
  - 17 (xiii) an analysis of current lot sizes and their potential to be subdivided or developed;
  - 18 (xiv) an analysis of the economic impact of various density requirements in cities and unincorporated
  - 19 areas;
  - 20 (xv) discussion of a regulatory approach that will least interfere with property use and value while still
  - 21 achieving necessary regulatory goals; and
  - 22 ~~(ix)~~(xvi) other characteristics and features proposed by the planning board and adopted by the
  - 23 governing bodies;
  - 24 (c) projected trends for the life of the growth policy for each of the following elements:
    - 25 (i) land use;
    - 26 (ii) population;
    - 27 (iii) housing needs;
    - 28 (iv) economic conditions;

- 1 (v) local services;
- 2 (vi) natural resources; and
- 3 (vii) other elements proposed by the planning board and adopted by the governing bodies;
- 4 (d) a description of policies, regulations, and other measures to be implemented in order to achieve
- 5 the goals and objectives established pursuant to subsection (3)(a);
- 6 (e) a strategy for development, maintenance, and replacement of public infrastructure, including
- 7 drinking water systems, wastewater treatment facilities, sewer systems, solid waste facilities, fire protection
- 8 facilities, roads, and bridges;
- 9 (f) an implementation strategy that includes:
  - 10 (i) a timetable for implementing the growth policy;
  - 11 (ii) a list of conditions that will lead to a revision of the growth policy; and
  - 12 (iii) a timetable for reviewing the growth policy at least once every 5 years and revising the policy if
  - 13 necessary;
- 14 (g) a statement of how the governing bodies will coordinate and cooperate with other jurisdictions that
- 15 explains:
  - 16 (i) if a governing body is a city or town, how the governing body will coordinate and cooperate with the
  - 17 county in which the city or town is located on matters related to the growth policy;
  - 18 (ii) if a governing body is a county, how the governing body will coordinate and cooperate with cities
  - 19 and towns located within the county's boundaries on matters related to the growth policy;
- 20 (h) a statement explaining how the governing bodies will:
  - 21 (i) define the criteria in 76-3-608(3)(a); and
  - 22 (ii) evaluate and make decisions regarding proposed subdivisions with respect to the criteria in 76-3-
  - 23 608(3)(a);
- 24 (i) a statement explaining how public hearings regarding proposed subdivisions will be conducted;
- 25 and
- 26 (j) an evaluation of the potential for fire and wildland fire in the jurisdictional area, including whether or
- 27 not there is a need to:
  - 28 (i) ~~delineate the wildland-urban interface; and~~

- 1           ~~(ii)~~ adopt regulations requiring:
- 2           ~~(A)~~(i) defensible space around structures;
- 3           ~~(B)~~(ii) adequate ingress and egress to and from structures and developments to facilitate fire
- 4 suppression activities; and
- 5           ~~(C)~~(iii) adequate water supply for fire protection;
- 6           (k) an analysis of how the evidence presented in the growth plan is the best evidence available and
- 7 how future growth plans will explicitly consider alternative evidence;
- 8           (l) an analysis of how potential changes may manifest with regard to land use regulations and growth
- 9 management practices discussed in the growth policy; and
- 10           (m) a broad social, economic, and environmental analysis of the potential immediate and indirect
- 11 impacts of implementing the growth policy.
- 12           (4) A growth policy may:
- 13           (a) include one or more neighborhood plans. A neighborhood plan must be consistent with the growth
- 14 policy.
- 15           (b) establish minimum criteria defining the jurisdictional area for a neighborhood plan;
- 16           (c) establish an infrastructure plan that, at a minimum, includes:
- 17           (i) projections, in maps and text, of the jurisdiction's growth in population and number of residential,
- 18 commercial, and industrial units over the next 20 years;
- 19           (ii) for a city, a determination regarding if and how much of the city's growth is likely to take place
- 20 outside of the city's existing jurisdictional area over the next 20 years and a plan of how the city will coordinate
- 21 infrastructure planning with the county or counties where growth is likely to take place;
- 22           (iii) for a county, a plan of how the county will coordinate infrastructure planning with each of the cities
- 23 that project growth outside of city boundaries and into the county's jurisdictional area over the next 20 years;
- 24           (iv) for cities, a land use map showing where projected growth will be guided and at what densities
- 25 within city boundaries;
- 26           (v) for cities and counties, a land use map that designates infrastructure planning areas adjacent to
- 27 cities showing where projected growth will be guided and at what densities;
- 28           (vi) using maps and text, a description of existing and future public facilities necessary to efficiently

1 serve projected development and densities within infrastructure planning areas, including, whenever feasible,  
2 extending interconnected municipal street networks, sidewalks, trail systems, public transit facilities, and other  
3 municipal public facilities throughout the infrastructure planning area. For the purposes of this subsection  
4 (4)(c)(vi), public facilities include but are not limited to drinking water treatment and distribution facilities, sewer  
5 systems, wastewater treatment facilities, solid waste disposal facilities, parks and open space, schools, public  
6 access areas, roads, highways, bridges, and facilities for fire protection, law enforcement, and emergency  
7 services;

8 (vii) a description of proposed land use management techniques and incentives that will be adopted to  
9 promote development within cities and in an infrastructure planning area, including land use management  
10 techniques and incentives that address issues of housing affordability;

11 (viii) a description of how and where projected development inside municipal boundaries for cities and  
12 inside designated joint infrastructure planning areas for cities and counties could adversely impact:

13 (A) threatened or endangered wildlife and critical wildlife habitat and corridors;

14 (B) water available to agricultural water users and facilities;

15 (C) the ability of public facilities, including schools, to safely and efficiently service current residents  
16 and future growth;

17 (D) a local government's ability to provide adequate local services, including but not limited to  
18 emergency, fire, and police protection;

19 (E) the safety of people and property due to threats to public health and safety, including but not  
20 limited to wildfire, flooding, erosion, water pollution, hazardous wildlife interactions, and traffic hazards;

21 (F) natural resources, including but not limited to forest lands, mineral resources, sand and gravel  
22 resources, streams, rivers, lakes, wetlands, and ground water; and

23 (G) agricultural lands and agricultural production; and

24 (ix) a description of measures, including land use management techniques and incentives, that will be  
25 adopted to avoid, significantly reduce, or mitigate the adverse impacts identified under subsection (4)(c)(viii).

26 (d) include any elements required by a federal land management agency in order for the governing  
27 body to establish coordination or cooperating agency status as provided in 76-1-607.

28 (5) The planning board may propose and the governing bodies may adopt additional elements of a



1 growth policy in order to fulfill the purpose of this chapter."

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3 **Section 7.** Section 76-2-203, MCA, is amended to read:

4 **"76-2-203. Criteria and guidelines for zoning regulations.** (1) Zoning regulations must be:

5 (a) made in accordance with the growth policy; and

6 (b) designed to:

7 (i) secure safety from fire and other dangers;

8 (ii) promote public health, public safety, and general welfare; ~~and~~

9 (iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other

10 public requirements; and

11 (iv) allow a property owner to use and enhance the value of property with limited interference while still

12 considering the public good.

13 (2) In the adoption of zoning regulations, the board of county commissioners shall consider:

14 (a) reasonable provision of adequate light and air;

15 (b) the effect on motorized and nonmotorized transportation systems;

16 (c) compatible urban growth in the vicinity of cities and towns that at a minimum must include the

17 areas around municipalities;

18 (d) the character of the district and its peculiar suitability for particular uses; ~~and~~

19 (e) conserving the value and use of buildings and land and encouraging the most appropriate use of

20 land throughout the jurisdictional area;

21 (f) property rights and the impact of zoning regulations on property values and use;

22 (g) the broad social, economic, and environmental impact of specific zoning and land use regulations;

23 and

24 (h) the regulatory burden of land use and zoning regulations on business and property value and use.

25 ~~(3) Zoning regulations must, as nearly as possible, be made compatible with the zoning ordinances of~~

26 ~~nearby municipalities."~~

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28 **Section 8.** Section 76-2-205, MCA, is amended to read:

1           **"76-2-205. Procedure for adoption of regulations and boundaries.** (1) The board of county  
2 commissioners shall observe the following procedures in the establishment or revision of boundaries for zoning  
3 districts and in the adoption or amendment of zoning regulations:  
4           (2) Before a public hearing is held, the board of county commissioners shall:  
5           (a) conduct a detailed social, economic, and environmental analysis of the impact of proposed zoning  
6 regulations; and  
7           (b) mail to each property owner within the boundaries of a proposed zoning district:  
8           (i) a map of the boundaries of the proposed zoning district; and  
9           (ii) a survey to seek public input and to determine factors, including but not limited to:  
10           (A) lot sizes;  
11           (B) restrictions on land use, building, or other material restrictions; and  
12           (C) social, economic, and environmental considerations.  
13           ~~(4)~~(3) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the  
14 zoning district must:  
15           (a) state:  
16           (i) the boundaries of the proposed district;  
17           (ii) the general character of the proposed zoning regulations;  
18           (iii) the time and place of the public hearing;  
19           (iv) that the proposed zoning regulations are on file for public inspection at the office of the county clerk  
20 and recorder;  
21           (b) provide a clear summary of proposed changes and include a reference to the complete proposed  
22 plan made available electronically through the use of a website or by written document that is made freely  
23 available to the general public;  
24           ~~(b)(c)~~ be posted not less than 45 days before the public hearing in at least five public places, including  
25 but not limited to public buildings and adjacent to public rights-of-way, within the proposed district; ~~and~~  
26           ~~(c)(d)~~ be published once a week for 2 weeks in a newspaper of general circulation within the county;  
27 and  
28           (e) be sent by registered mail to each property owner residing within the boundaries of the proposed

1 zoning district.

2 ~~(2)(4)~~ At the public hearing, the board of county commissioners shall give the public an opportunity to  
3 be heard regarding the proposed zoning district and regulations.

4 ~~(3)(5)~~ After the public hearing, the board of county commissioners shall review the proposals of the  
5 planning board and shall make any revisions or amendments that it determines to be proper.

6 ~~(4)(6)~~ The board of county commissioners may pass a resolution of intention to create a zoning  
7 district and to adopt zoning regulations for the district.

8 ~~(5)(7)~~ The board of county commissioners shall publish notice of passage of the resolution of intention  
9 once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:

10 (a) the boundaries of the proposed district;

11 (b) the general character of the proposed zoning regulations;

12 (c) that the proposed zoning regulations are on file for public inspection at the office of the county  
13 clerk and recorder;

14 (d) that for 30 days after first publication of this notice, the board of county commissioners will receive  
15 written protests to the creation of the zoning district or to the zoning regulations from persons owning real  
16 property within the district whose names appear on the last-completed assessment roll of the county.

17 ~~(6)(8)~~ Within 30 days after the expiration of the protest period, the board of county commissioners  
18 may in its discretion adopt the resolution creating the zoning district or establishing the zoning regulations for  
19 the district. However, if 40% of the real property owners within the district whose names appear on the last-  
20 completed assessment roll or if real property owners representing 50% of the titled property ownership whose  
21 property is taxed for agricultural purposes under 15-7-202 or whose property is taxed as forest land under Title  
22 15, chapter 44, part 1, have protested the establishment of the district or adoption of the regulations, the board  
23 of county commissioners may not adopt the resolution and a further zoning resolution may not be proposed for  
24 the district for a period of 1 year.

25 (9) At the election of at least 15% of the registered voters residing within the boundaries of a zoning  
26 district approved under this part, the board of county commissioners shall call for a referendum to revoke one or  
27 more of the elements of the adopted plan."

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1           **Section 9.** Section 76-2-216, MCA, is amended to read:

2           **"76-2-216. Wholly surrounded county property -- change of use -- hearing.** (1) If a county parcel  
3 for which zoning regulations have been adopted is wholly surrounded by municipal property and a change of an  
4 allowed use in the county zoning district occurs, the county governing body shall notify the municipality and all  
5 owners of municipal property within 300 feet of the county property of the change of use.

6           (2) Upon request of either the municipality or at least 10% of the property owners in the municipality  
7 who have received the notice, the county governing body shall hold a hearing on the change of use.

8           (3) If the county governing body determines, based on testimony provided at the hearing, that the  
9 regulations in the county district are no longer ~~as compatible as possible~~ with the municipal zoning ordinances  
10 ~~as provided in 76-2-203(3)~~, the county governing body may initiate a revision to the zoning district or  
11 amendments to the regulations as provided in this part."  
12

13           **Section 10.** Section 76-2-221, MCA, is amended to read:

14           **"76-2-221. Board of adjustment.** (1) The board of county commissioners shall provide for the  
15 appointment of a board of adjustment and in the regulations and restrictions adopted pursuant to the authority  
16 of this part shall provide that the board of adjustment may, in appropriate cases and subject to appropriate  
17 conditions and safeguards, make special exceptions to the terms of the zoning resolution in harmony with its  
18 general purposes and intent and in accordance with the general or specific rules of this part.

19           (2) The board of adjustment shall adopt rules in accordance with the provisions of any resolution  
20 adopted pursuant to this part. Meetings of the board of adjustment must be held at the call of the presiding  
21 officer and at times that the board may determine. The presiding officer or in the presiding officer's absence the  
22 acting presiding officer may administer oaths and compel the attendance of witnesses.

23           (3) The board of adjustment shall consider:

24           (a) the social, economic, and environmental impact of regulation; and

25           (b) viable alternatives and best evidence presented by property owners whose property use or value  
26 has been substantially impaired by regulation.

27           (4) As used in this section, "best evidence" means evidence that provides the best empirically based  
28 explanatory power, the most compelling, equitable argument, and the least bias."

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**Section 11.** Section 76-2-223, MCA, is amended to read:

**"76-2-223. Powers of board of adjustment.** (1) The board of adjustment shall have the following powers:

(a) to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this part or of any resolution adopted pursuant ~~thereto~~ to this part;

(b) to hear and decide special exceptions to the terms of the zoning resolution ~~upon which said that~~ the board is required to pass under such the resolution;

(c) to authorize upon appeal in specific cases ~~such a~~ variance from the terms of the resolution as will not be that is not contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the resolution will result in unnecessary hardship and so that the spirit of the resolution ~~shall~~ must be observed and substantial justice done; and

(d) to hear petitions for variance from a property owner whose property is substantially hindered in use and value who can provide best evidence for a less-restrictive approach that achieves substantially the same effect while reducing the hindrance to the use and value of the property.

(2) In exercising the above-mentioned powers, the board of adjustment may, in conformity with the provisions of this part, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.

(3) As used in this section, "best evidence" means evidence that provides the best empirically based explanatory power, the most compelling, equitable argument, and the least bias."

**NEW SECTION. Section 12. Zoning regulation derivations -- provision for granting variances.**

(1) Zoning regulations adopted under this part may be derived from general goals and regulations as well as specific regulations that apply to a specific parcel and achieve a tangible regulatory purpose.

(2) A property owner's interest in the use and value of the property shall:

(a) supersede general goals when a variance is sought; and

- 1 (b) not supersede a specific regulation.
- 2 (3) The governing body holds a rebuttable presumption that a specific regulation is the least restrictive
- 3 measure required to achieve intended purposes based on best evidence as it applies to a parcel.
- 4 (4) A property owner may seek a variance based on specific or general regulations if the property
- 5 owner:
- 6 (a) can prove the regulation substantially impairs the use or value of the property;
- 7 (b) offers a viable alternative approach based on best evidence that achieves substantially the same
- 8 effect of the regulation; or
- 9 (c) can prove that the regulation is not based on best evidence.
- 10 (5) As used in this section, the following definitions apply:
- 11 (a) "General goal" or "general regulation" means a goal or regulation that may be intangible or that
- 12 may not relate directly to the property in question clearly and readily ascertainable. Examples of a general goal
- 13 or regulation include but are not limited to:
- 14 (i) the amount of open space;
- 15 (ii) the preservation of view sheds or their equivalent; or
- 16 (iii) the character of the community.
- 17 (b) "Specific regulation" means a regulation designed for a specific parcel and may include but is not
- 18 limited to a regulation regarding:
- 19 (i) lot size restriction based on tangible considerations of water availability, services, and fire
- 20 mitigation;
- 21 (ii) set back requirements;
- 22 (iii) use restrictions; and
- 23 (iv) ingress and egress requirements.
- 24 (c) "Substantial impairment" means an impairment of the use or value of the property as judged by a
- 25 reasonable person to be greater than a de minimis amount.

26

27 **Section 13.** Section 76-2-227, MCA, is amended to read:

28 **"76-2-227. Appeals -- board of county commissioners or board of adjustment to court of record**

1 -- **county commissioners may establish appeal process.** (1) (a) The board of county commissioners may  
2 establish in the zoning regulations a process for an appeal of a decision by the board of adjustment to the  
3 board of county commissioners by any person or persons, jointly or severally, aggrieved by a decision of the  
4 board of adjustment or an officer, department, board, or bureau of the county.

5 (b) The process, if established, must provide that an appeal to the board of county commissioners be  
6 initiated by presenting to the board of county commissioners a petition, duly verified, setting forth that the  
7 decision is illegal, in whole or in part, and specifying the grounds of the illegality.

8 (c) The petition must be presented to the board of county commissioners within 30 days after the filing  
9 of the decision of the board of adjustment, and a final decision must be made within 60 days of receipt of the  
10 petition.

11 (d) The board of county commissioners may:

12 (i) remand the special exception to the board of adjustment;

13 (ii) reverse or affirm, wholly or partly, the decision of the board of adjustment; or

14 (iii) modify the decision of the board of adjustment.

15 (2) Any person or persons, jointly or severally, aggrieved by a decision of the board of county  
16 commissioners or the board of adjustment may present to a court of record a petition, duly verified, setting forth  
17 that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be  
18 presented to the court within 30 days after the filing of the decision in the office of the appropriate board.

19 (3) Upon presentation of a petition, the court may allow a writ of certiorari directed to the board of  
20 county commissioners or the board of adjustment to review the decision of the board and shall prescribe in the  
21 writ the time within which a return must be made and served upon the relator's attorney, which may not be less  
22 than 10 days and may be extended by the court. The allowance of the writ may not stay proceedings upon the  
23 decision appealed from, but the court may, upon application, on notice to the board of county commissioners or  
24 the board of adjustment, and on due cause shown, grant a restraining order. The board of county  
25 commissioners or the board of adjustment may not be required to return the original papers acted upon by it,  
26 but it is sufficient to return certified or sworn copies of the original papers or of portions of the original papers  
27 that may be called for by the writ. The return must concisely set forth other facts that may be pertinent and  
28 material to show the grounds of the decision appealed from and must be verified.

1 (4) If, upon the hearing, it appears to the court that testimony is necessary for the proper disposition  
2 of the matter, the court may take evidence or appoint a referee to take evidence as it may direct and report the  
3 evidence to the court with the referee's findings of fact and conclusions of law, which constitute a part of the  
4 proceedings upon which the determination of the court must be made.

5 (5) The court may reverse or affirm, wholly or partly, or may modify the decision brought up for  
6 review.

7 (6) An established and accepted variance taken from one petition for variance constitutes compliance  
8 of other property owners who have substantially similar conditions that meet the applicable regulatory goal. The  
9 county is responsible for providing the burden of proof to determine that a variance is not applicable in  
10 subsequent cases."  
11

12 **Section 14.** Section 76-3-103, MCA, is amended to read:

13 **"76-3-103. Definitions.** As used in this chapter, unless the context or subject matter clearly requires  
14 otherwise, the following definitions apply:

15 (1) "Best evidence" means evidence that provides the best empirically based explanatory power, the  
16 most compelling, equitable argument, and the least bias.

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

19 ~~(2)~~(3) "Cluster development" means a subdivision with lots clustered in a group of five or more lots  
20 that is designed to concentrate building sites on smaller lots in order to reduce capital and maintenance costs  
21 for infrastructure through the use of concentrated public services and utilities, while allowing other lands to  
22 remain undeveloped.

23 ~~(3)~~(4) "Dedication" means the deliberate appropriation of land by an owner for any general and public  
24 use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the  
25 public use to which the property has been devoted.

26 ~~(4)~~(5) "Division of land" means the segregation of one or more parcels of land from a larger tract held  
27 in single or undivided ownership by transferring or contracting to transfer title to a portion of the tract or properly  
28 filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to



1 this chapter. The conveyance of a tract of record or an entire parcel of land that was created by a previous  
2 division of land is not a division of land.

3 ~~(5)~~(6) "Examining land surveyor" means a registered land surveyor appointed by the governing body  
4 to review surveys and plats submitted for filing.

5 ~~(6)~~(7) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to  
6 be prepared for filing for record with the county clerk and recorder and containing all elements and  
7 requirements set forth in this chapter and in regulations adopted pursuant to this chapter.

8 ~~(7)~~(8) "Governing body" means a board of county commissioners or the governing authority of a city  
9 or town organized pursuant to law.

10 ~~(8)~~(9) "Immediate family" means a spouse, children by blood or adoption, and parents.

11 ~~(9)~~(10) "Minor subdivision" means a subdivision that creates five or fewer lots from a tract of record.

12 ~~(10)~~(11) "Phased development" means a subdivision application and preliminary plat that at the time of  
13 submission consists of independently platted development phases that are scheduled for review on a schedule  
14 proposed by the subdivider.

15 ~~(11)~~(12) "Planned unit development" means a land development project consisting of residential  
16 clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land  
17 uses built in a prearranged relationship to each other and having open space and community facilities in  
18 common ownership or use.

19 ~~(12)~~(13) "Plat" means a graphical representation of a subdivision showing the division of land into lots,  
20 parcels, blocks, streets, alleys, and other divisions and dedications.

21 ~~(13)~~(14) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the  
22 layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a  
23 governing body.

24 ~~(14)~~(15) "Public utility" has the meaning provided in 69-3-101, except that for the purposes of this  
25 chapter, the term includes county or consolidated city and county water or sewer districts as provided for in Title  
26 7, chapter 13, parts 22 and 23, and municipal sewer or water systems and municipal water supply systems  
27 established by the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44.

28 ~~(15)~~(16) "Subdivider" means a person who causes land to be subdivided or who proposes a

1 subdivision of land.

2 ~~(16)~~(17) "Subdivision" means a division of land or land so divided that it creates one or more parcels  
3 containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States  
4 government section, exclusive of public roadways, in order that the title to the parcels may be sold or otherwise  
5 transferred and includes any resubdivision and a condominium. The term also means an area, regardless of its  
6 size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or  
7 mobile homes will be placed.

8 ~~(17)~~(18) (a) "Tract of record" means an individual parcel of land, irrespective of ownership, that can be  
9 identified by legal description, independent of any other parcel of land, using documents on file in the records of  
10 the county clerk and recorder's office.

11 (b) Each individual tract of record continues to be an individual parcel of land unless the owner of the  
12 parcel has joined it with other contiguous parcels by filing with the county clerk and recorder:

13 (i) an instrument of conveyance in which the aggregated parcels have been assigned a legal  
14 description that describes the resulting single parcel and in which the owner expressly declares the owner's  
15 intention that the tracts be merged; or

16 (ii) a certificate of survey or subdivision plat that shows that the boundaries of the original parcels have  
17 been expunged and depicts the boundaries of the larger aggregate parcel.

18 (c) An instrument of conveyance does not merge parcels of land under subsection ~~(17)(b)(i)~~ (18)(b)(i)  
19 unless the instrument states, "This instrument is intended to merge individual parcels of land to form the  
20 aggregate parcel(s) described in this instrument" or a similar statement, in addition to the legal description of  
21 the aggregate parcels, clearly expressing the owner's intent to effect a merger of parcels."  
22

23 **Section 15.** Section 76-3-211, MCA, is amended to read:

24 **"76-3-211. Agricultural covenant -- change in use.** (1) A change in use for anything other than  
25 agricultural purposes subjects a division of land that received an exemption under 76-3-207(1)(c) to subdivision  
26 review under parts 5 and 6 of this chapter. However, the governing body, in its discretion, may revoke the  
27 covenant provided for in 76-3-207(1)(c) for the purposes of this chapter and the division may proceed without  
28 subdivision review if:

1 (a) the original lot lines are restored through aggregation of the covenanted land prior to or in  
2 conjunction with the revoking of the covenant; or

3 (b) a government or public entity seeks to use the land for public purposes as defined in the  
4 governing body's review criteria pursuant to 76-3-504~~(4)(p)~~(16).

5 (2) If a governing body proposes to revoke a covenant pursuant to subsection (1)(b), the governing  
6 body shall hold a public hearing. Within 15 days of the hearing, the governing body shall issue written findings  
7 of fact and a decision based on the record. If the governing body approves the revoking of the covenant, the  
8 approval must be recorded with the clerk and recorder.

9 (3) The revocation of a covenant pursuant to this section does not affect sanitary restrictions imposed  
10 under Title 76, chapter 4."  
11

12 **Section 16.** Section 76-3-501, MCA, is amended to read:

13 **"76-3-501. Local subdivision regulations.** (1) The governing body of every county, city, and town  
14 shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing  
15 for:

- 16 ~~(4)~~(a) the orderly development of their jurisdictional areas;
- 17 ~~(2)~~(b) the coordination of roads within subdivided land with other roads, both existing and planned;
- 18 ~~(3)~~(c) the dedication of land for roadways and for public utility easements;
- 19 ~~(4)~~(d) the improvement of roads;
- 20 ~~(5)~~(e) the provision of adequate open spaces for travel, light, air, and recreation;
- 21 ~~(6)~~(f) the provision of adequate transportation, water, and drainage;
- 22 ~~(7)~~(g) subject to the provisions of 76-3-511, the regulation of sanitary facilities;
- 23 ~~(8)~~(h) the avoidance or minimization of congestion; and
- 24 ~~(9)~~(i) the avoidance of subdivisions that would involve unnecessary environmental degradation and  
25 danger of injury to health, safety, or welfare by reason of natural hazard, including but not limited to fire and  
26 wildland fire, or the lack of water, drainage, access, transportation, or other public services or that would  
27 necessitate an excessive expenditure of public funds for the supply of the services.

28 (2) Subdivision regulations adopted under this part may be derived from general goals and

1 regulations as well as specific regulations that apply to a specific parcel and achieve a tangible regulatory  
2 purpose.

3 (3) A property owner's interest in the use and value of the property:

4 (a) must supersede general goals when a variance is sought; and

5 (b) may not supersede a specific regulation.

6 (4) The governing body holds a rebuttable presumption that a specific regulation is the least-  
7 restrictive measure required to achieve the intended purpose based on best evidence as it applies to a parcel.

8 (5) When adopting regulations allowed in this section, the governing body shall use the best evidence  
9 available and create a rebuttable presumption that adopted regulations are based on the best evidence.

10 (6) As used in this section, the following definitions apply:

11 (a) "General goal" or "general regulation" means a goal or regulation that may be intangible or that  
12 may not relate directly to the property in question clearly and readily ascertainable. Examples of a general goal  
13 or general regulation include but are not limited to:

14 (i) the amount of open space;

15 (ii) the preservation of view sheds or their equivalent; or

16 (iii) the character of the community.

17 (b) "Specific regulation" means a regulation designed for a specific parcel and may include but is not  
18 limited to a regulation regarding:

19 (i) lot size restriction based on tangible considerations of water availability, services, and fire  
20 mitigation;

21 (ii) setback requirements;

22 (iii) use restrictions; and

23 (iv) ingress and egress requirements."

24

25 **Section 17.** Section 76-3-503, MCA, is amended to read:

26 **"76-3-503. Hearing on proposed regulations.** (1) Before the governing body adopts subdivision  
27 regulations pursuant to 76-3-501 ~~or 76-3-509~~, it shall hold a public hearing on the regulations and shall give  
28 public notice of its intent to adopt the regulations and of the public hearing by publication of notice of the time

1 and place of the hearing in a newspaper of general circulation in the county not less than 15 or more than 30  
2 days prior to the date of the hearing.

3 (2) All residents of a jurisdiction pursuing subdivision regulations must be provided by mail a notice  
4 and summary of the proposed regulations in addition to a reference to where the detailed proposal may be  
5 accessed, which may include a website administered by the governing body."  
6

7 **Section 18.** Section 76-3-504, MCA, is amended to read:

8 **"76-3-504. Subdivision regulations -- contents.** ~~(1)~~The subdivision regulations adopted under this  
9 chapter must, at a minimum:

10 ~~(a)~~(1) list the materials that must be included in a subdivision application in order for the application to  
11 be determined to contain the required elements for the purposes of the review required in 76-3-604(1);

12 ~~(b)~~(2) except as provided in ~~76-3-509~~, 76-3-609, or 76-3-616, require the subdivider to submit to the  
13 governing body an environmental assessment as prescribed in 76-3-603;

14 ~~(c)~~(3) establish procedures consistent with this chapter for the submission and review of subdivision  
15 applications and amended applications;

16 ~~(d)~~(4) prescribe the form and contents of preliminary plats and the documents to accompany final  
17 plats;

18 ~~(e)~~(5) provide for the identification of areas that, because of natural or human-caused hazards, are  
19 unsuitable for subdivision development. The regulations must prohibit subdivisions in these areas unless the  
20 hazards can be eliminated or overcome by approved construction techniques or other mitigation measures  
21 authorized under 76-3-608(4) and (5). Approved construction techniques or other mitigation measures may not  
22 include building regulations as defined in 50-60-101 other than those identified by the department of labor and  
23 industry as provided in 50-60-901.

24 ~~(f)~~(6) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-  
25 year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

26 ~~(g)~~(7) prescribe standards for:

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

28 ~~(ii)~~(b) grading and drainage;

1           ~~(iii)~~(c) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that  
2 meet the:

3           ~~(A)~~(i) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions  
4 that will create one or more parcels containing less than 20 acres; and

5           ~~(B)~~(ii) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more  
6 parcels containing 20 acres or more and less than 160 acres; and

7           ~~(iv)~~(d) the location and installation of public utilities;

8           ~~(h)~~(8) provide procedures for the administration of the park and open-space requirements of this  
9 chapter;

10           ~~(j)~~(9) provide for the review of subdivision applications by affected public utilities and those agencies  
11 of local, state, and federal government identified during the preapplication consultation conducted pursuant to  
12 subsection ~~(4)(e)~~ (17) or those having a substantial interest in a proposed subdivision. A public utility or agency  
13 review may not delay the governing body's action on the application beyond the time limits specified in this  
14 chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of  
15 the application by the governing body.

16           ~~(j)~~(10) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the  
17 subdivider to:

18           ~~(j)~~(a) reserve all or a portion of the appropriation water rights owned by the owner of the land to be  
19 subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have  
20 a legal right to the water and reserve and sever any remaining surface water rights from the land;

21           ~~(j)~~(b) if the land to be subdivided is subject to a contract or interest in a public or private entity formed  
22 to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement  
23 administered through a single entity that specifies administration and the rights and responsibilities of  
24 landowners within the subdivision who have a legal right and access to the water; or

25           ~~(iii)~~(c) reserve and sever all surface water rights from the land;

26           ~~(k)~~(11) ~~(j)~~(a) except as provided in subsection ~~(4)(k)(ii)~~ (11)(b), require the subdivider to establish  
27 ditch easements in the subdivision that:

28           ~~(A)~~ (i) are in locations of appropriate topographic characteristics and sufficient width to allow the

1 physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of  
2 water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit  
3 of an irrigation district or other private or public entity formed to provide for the use of the water right on the  
4 subdivision lots;

5 ~~(B)~~ (ii) are a sufficient distance from the centerline of the ditch to allow for construction, repair,  
6 maintenance, and inspection of the ditch; and

7 ~~(C)~~ (iii) prohibit the placement of structures or the planting of vegetation other than grass within the  
8 ditch easement without the written permission of the ditch owner.

9 ~~(#)~~ (b) Establishment of easements pursuant to this subsection ~~(4)(k)~~ (11) is not required if:

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

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

19 ~~(#)~~ (12) require the subdivider, unless otherwise provided for under separate written agreement or filed  
20 easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery  
21 ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to  
22 lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with  
23 historic and legal rights;

24 ~~(#)~~ (13) require the subdivider to describe, dimension, and show public utility easements in the  
25 subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient  
26 width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of  
27 public utility services within the subdivision.

28 ~~(#)~~ (14) establish whether the governing body, its authorized agent or agency, or both will hold public

1 hearings;

2 ~~(e)~~ (15) establish procedures describing how the governing body or its agent or agency will address  
 3 information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

4 ~~(f)~~ (16) establish criteria that the governing body or reviewing authority will use to determine whether  
 5 a proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207 is an attempt to  
 6 evade the requirements of this chapter. The regulations must provide for an appeals process to the governing  
 7 body if the reviewing authority is not the governing body.

8 ~~(g)~~ (17) establish a preapplication process that:

9 ~~(i)~~ (a) requires a subdivider to meet with the authorized agent or agency, other than the governing  
 10 body, that is designated by the governing body to review subdivision applications prior to the subdivider  
 11 submitting the application;

12 ~~(ii)~~ (b) requires, for informational purposes only, identification of the state laws, local regulations, and  
 13 growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

14 ~~(iii)~~ (c) requires a list to be made available to the subdivider of the public utilities, those agencies of  
 15 local, state, and federal government, and any other entities that may be contacted for comment on the  
 16 subdivision application and the timeframes that the public utilities, agencies, and other entities are given to  
 17 respond. If, during the review of the application, the agent or agency designated by the governing body  
 18 contacts a public utility, agency, or other entity that was not included on the list originally made available to the  
 19 subdivider, the agent or agency shall notify the subdivider of the contact and the timeframe for response.

20 ~~(iv)~~ (d) requires that a preapplication meeting take place no more than 30 days from the date that the  
 21 authorized agent or agency receives a written request for a preapplication meeting from the subdivider; and

22 ~~(v)~~ (e) establishes a time limit after a preapplication meeting by which an application must be  
 23 submitted;

24 ~~(f)~~ (18) require that the written decision required by 76-3-620 must be provided to the applicant within  
 25 30 working days following a decision by the governing body to approve, conditionally approve, or deny a  
 26 subdivision;

27 ~~(g)~~ (19) establish criteria for reviewing an area, regardless of its size, that provides or will provide  
 28 multiple spaces for recreational camping vehicles or mobile homes.



1           ~~(2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted~~  
 2 ~~under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster~~  
 3 ~~development."~~

4

5           **Section 19.** Section 76-3-506, MCA, is amended to read:

6           **"76-3-506. Provision for granting variances.** (1) Subdivision regulations may authorize the  
 7 governing body, after a public hearing on the variance request before the governing body or its designated  
 8 agent or agency, to grant variances from the regulations when strict compliance will result in undue hardship or  
 9 a substantial impairment to property use or value and when it is not essential to the public welfare.

10           (2) Any variance granted pursuant to this section must be based on specific variance criteria  
 11 contained in the subdivision regulations.

12           (3) A minor subdivision as provided for in 76-3-609(2) is not subject to the public hearing requirement  
 13 of this section.

14           (4) A property owner may seek a variance based on specific or general regulations if the property  
 15 owner:

16           (a) can prove the regulation substantially impairs the use or value of the property;

17           (b) offers a viable, alternative approach based on best evidence that achieves substantially the same  
 18 effect of the regulation; or

19           (c) can prove that the regulation is not based on best evidence.

20           (5) As used in this section, "substantial impairment" means an impairment of the use or value of the  
 21 property as judged by a reasonable person to be greater than a de minimis amount."

22

23           **Section 20.** Section 76-3-511, MCA, is amended to read:

24           **"76-3-511. Local regulations no more stringent than state regulations or guidelines.** (1) Except  
 25 as provided in subsections (2) through (4) or unless required by state law, a governing body may not adopt a  
 26 regulation under 76-3-501 or ~~76-3-504(1)(g)(iii)~~ 76-3-504(7)(c) that is more stringent than the comparable state  
 27 regulations or guidelines that address the same circumstances. The governing body may incorporate by  
 28 reference comparable state regulations or guidelines.

1 (2) The governing body may adopt a regulation to implement 76-3-501 or ~~76-3-504(1)(g)(iii)~~ 76-3-  
 2 504(7)(c) that is more stringent than comparable state regulations or guidelines only if the governing body  
 3 makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

- 4 (a) the proposed local standard or requirement protects public health or the environment; and
- 5 (b) the local standard or requirement to be imposed can mitigate harm to the public health or  
 6 environment and is achievable under current technology.

7 (3) The written finding must reference information and peer-reviewed scientific studies and other  
 8 relevant scientific analysis that provides the best evidence of the specific and broad impacts contained in the  
 9 record that forms the basis for the governing body's conclusion. The conclusion must be based on the best  
 10 evidence available and create a rebuttable presumption that the evidence used is the best evidence for the  
 11 regulation. The written finding must also include information from the hearing record regarding the costs to the  
 12 regulated community that are directly attributable to the proposed local standard or requirement.

13 (4) (a) A person affected by a regulation of the governing body adopted after January 1, 1990, and  
 14 before April 14, 1995, that that person believes to be more stringent than comparable state regulations or  
 15 guidelines may petition the governing body to review the regulation. If the governing body determines that the  
 16 regulation is more stringent than comparable state regulations or guidelines, the governing body shall comply  
 17 with this section by either revising the regulation to conform to the state regulations or guidelines or by making  
 18 the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12  
 19 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to  
 20 comply with the challenged regulation. The governing body may charge a petition filing fee in an amount not to  
 21 exceed \$250.

22 (b) A person may also petition the governing body for a regulation review under subsection (4)(a) if  
 23 the governing body adopts a regulation after January 1, 1990, in an area in which no state regulations or  
 24 guidelines existed and the state government subsequently establishes comparable regulations or guidelines  
 25 that are less stringent than the previously adopted governing body regulation."  
 26

27 **Section 21.** Section 76-3-604, MCA, is amended to read:

28 **"76-3-604. Review of subdivision application -- review for required elements and sufficiency of**

1 **information.** (1) (a) A subdivision application is considered to be received on the date of delivery to the  
2 reviewing agent or agency and when accompanied by the review fee submitted as provided in 76-3-602.

3 (b) Within 5 working days of receipt of a subdivision application, the reviewing agent or agency shall  
4 determine whether the application contains all of the listed materials as required by 76-3-504(1)~~(a)~~ and shall  
5 notify the subdivider or, with the subdivider's written permission, the subdivider's agent of the reviewing agent's  
6 or agency's determination. If the reviewing agent or agency determines that elements are missing from the  
7 application, the reviewing agent or agency shall identify those elements in the notification.

8 (2) (a) Within 15 working days after the reviewing agent or agency notifies the subdivider or the  
9 subdivider's agent that the application contains all of the required elements as provided in subsection (1), the  
10 reviewing agent or agency shall determine whether the application and required elements contain detailed,  
11 supporting information that is sufficient to allow for the review of the proposed subdivision under the provisions  
12 of this chapter and the local regulations adopted pursuant to this chapter and shall notify the subdivider or, with  
13 the subdivider's written permission, the subdivider's agent of the reviewing agent's or agency's determination.

14 (b) If the reviewing agent or agency determines that information in the application is not sufficient to  
15 allow for review of the proposed subdivision, the reviewing agent or agency shall identify the insufficient  
16 information in its notification.

17 (c) A determination that an application contains sufficient information for review as provided in this  
18 subsection (2) does not ensure that the proposed subdivision will be approved or conditionally approved by the  
19 governing body and does not limit the ability of the reviewing agent or agency or the governing body to request  
20 additional information during the review process.

21 (3) The time limits provided in subsections (1) and (2) apply to each submittal of the application until:

22 (a) a determination is made that the application contains the required elements and sufficient  
23 information; and

24 (b) the subdivider or the subdivider's agent is notified.

25 (4) After the reviewing agent or agency has notified the subdivider or the subdivider's agent that an  
26 application contains sufficient information as provided in subsection (2), the governing body shall approve,  
27 conditionally approve, or deny the proposed subdivision within 60 working days or 80 working days if the  
28 proposed subdivision contains 50 or more lots, based on its determination of whether the application conforms

1 to the provisions of this chapter and to the local regulations adopted pursuant to this chapter, unless:

2 (a) the subdivider and the reviewing agent or agency agree to an extension or suspension of the  
3 review period, not to exceed 1 year; or

4 (b) a subsequent public hearing is scheduled and held as provided in 76-3-615.

5 (5) (a) If the governing body fails to comply with the time limits under subsection (4), the governing  
6 body shall pay to the subdivider a financial penalty of \$50 per lot per month or a pro rata portion of a month, not  
7 to exceed the total amount of the subdivision review fee collected by the governing body for the subdivision  
8 application, until the governing body denies, approves, or conditionally approves the subdivision.

9 (b) The provisions of subsection (5)(a) do not apply if the review period is extended or suspended  
10 pursuant to subsection (4).

11 (6) If the governing body denies or conditionally approves the proposed subdivision, it shall send the  
12 subdivider a letter, with the appropriate signature, that complies with the provisions of 76-3-620.

13 (7) (a) The governing body shall collect public comment submitted at a hearing or hearings regarding  
14 the information presented pursuant to 76-3-622 and shall make any comments submitted or a summary of the  
15 comments submitted available to the subdivider within 30 days after conditional approval or approval of the  
16 subdivision application and preliminary plat.

17 (b) The subdivider shall, as part of the subdivider's application for sanitation approval, forward the  
18 comments or the summary provided by the governing body to the:

19 (i) reviewing authority provided for in Title 76, chapter 4, for subdivisions that will create one or more  
20 parcels containing less than 20 acres; and

21 (ii) local health department or board of health for proposed subdivisions that will create one or more  
22 parcels containing 20 acres or more and less than 160 acres.

23 (8) (a) For a proposed subdivision that will create one or more parcels containing less than 20 acres,  
24 the governing body may require approval by the department of environmental quality as a condition of approval  
25 of the final plat.

26 (b) For a proposed subdivision that will create one or more parcels containing 20 acres or more, the  
27 governing body may condition approval of the final plat upon the subdivider demonstrating, pursuant to 76-3-  
28 622, that there is an adequate water source and at least one area for a septic system and a replacement

1 drainfield for each lot.

2 (9) (a) Review and approval, conditional approval, or denial of a proposed subdivision under this  
3 chapter may occur only under those regulations in effect at the time a subdivision application is determined to  
4 contain sufficient information for review as provided in subsection (2).

5 (b) If regulations change during the review periods provided in subsections (1) and (2), the  
6 determination of whether the application contains the required elements and sufficient information must be  
7 based on the new regulations."  
8

9 **Section 22.** Section 76-3-605, MCA, is amended to read:

10 **"76-3-605. Hearing on subdivision application.** (1) Except as provided in 76-3-609 and 76-3-616  
11 and subject to the regulations adopted pursuant to 76-3-504(4)(e)(15) and 76-3-615, at least one public hearing  
12 on the subdivision application must be held by the governing body, its authorized agent or agency, or both and  
13 the governing body, its authorized agent or agency, or both shall consider all relevant evidence relating to the  
14 public health, safety, and welfare, including the environmental assessment if required, to determine whether the  
15 subdivision application should be approved, conditionally approved, or denied by the governing body.

16 (2) When a proposed subdivision is also proposed to be annexed to a municipality, the governing  
17 body of the municipality shall hold joint hearings on the subdivision application and annexation whenever  
18 possible.

19 (3) Notice of the hearing must be given by publication in a newspaper of general circulation in the  
20 county not less than 15 days prior to the date of the hearing. The subdivider, each property owner of record  
21 whose property is immediately adjoining the land included in the preliminary plat, and each purchaser under  
22 contract for deed of property immediately adjoining the land included in the preliminary plat must also be  
23 notified of the hearing by registered or certified mail not less than 15 days prior to the date of the hearing.

24 (4) When a hearing is held by an agent or agency designated by the governing body, the agent or  
25 agency shall act in an advisory capacity and recommend to the governing body the approval, conditional  
26 approval, or denial of the proposed subdivision. This recommendation must be submitted to the governing body  
27 in writing not later than 10 working days after the public hearing."  
28

1           **Section 23.** Section 76-3-608, MCA, is amended to read:

2           **"76-3-608. Criteria for local government review.** (1) The basis for the governing body's decision to  
3 approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application,  
4 preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or  
5 additional information demonstrates that development of the proposed subdivision meets the requirements of  
6 this chapter. A governing body may not deny approval of a proposed subdivision based solely on the  
7 subdivision's impacts on educational services or based solely on parcels within the subdivision having been  
8 designated as wildland-urban interface parcels under 76-13-145.

9           (2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as  
10 applicable.

11           (3) A subdivision proposal must undergo review for the following primary criteria:

12           (a) except when the governing body has established an exemption pursuant to subsection (6) of this  
13 section or except as provided in ~~76-3-509~~, 76-3-609(2) or (4), or 76-3-616, the impact on agriculture,  
14 agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public  
15 health and safety;

16           (b) compliance with:

17           (i) the survey requirements provided for in part 4 of this chapter;

18           (ii) the local subdivision regulations provided for in part 5 of this chapter; and

19           (iii) the local subdivision review procedure provided for in this part;

20           (c) the provision of easements within and to the proposed subdivision for the location and installation  
21 of any planned utilities; and

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

24           (4) The governing body may require the subdivider to design the proposed subdivision to reasonably  
25 minimize potentially significant adverse impacts identified through the review required under subsection (3).

26 The governing body shall issue written findings to justify the reasonable mitigation required under this  
27 subsection (4).

28           (5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under

1 subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is  
2 recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable  
3 and will preclude approval of the subdivision.

4 (b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider  
5 and shall give due weight and consideration to the expressed preference of the subdivider.

6 (6) A governing body may conditionally approve or deny a proposed subdivision as a result of the  
7 water and sanitation information provided pursuant to 76-3-622 or public comment received pursuant to 76-3-  
8 604 on the information provided pursuant to 76-3-622 only if the conditional approval or denial is based on  
9 existing subdivision, zoning, or other regulations that the governing body has the authority to enforce.

10 (7) A governing body may not require as a condition of subdivision approval that a property owner  
11 waive a right to protest the creation of a special improvement district or a rural improvement district for capital  
12 improvement projects that does not identify the specific capital improvements for which protest is being waived.  
13 A waiver of a right to protest may not be valid for a time period longer than 20 years after the date that the final  
14 subdivision plat is filed with the county clerk and recorder.

15 (8) A governing body may not approve a proposed subdivision if any of the features and  
16 improvements of the subdivision encroach onto adjoining private property in a manner that is not otherwise  
17 provided for under chapter 4 or this chapter or if the well isolation zone of any proposed well to be drilled for the  
18 proposed subdivision encroaches onto adjoining private property unless the owner of the private property  
19 authorizes the encroachment. For the purposes of this section, "well isolation zone" has the meaning provided  
20 in 76-4-102.

21 (9) If a federal or state governmental entity submits a written or oral comment or an opinion regarding  
22 wildlife, wildlife habitat, or the natural environment relating to a subdivision application for the purpose of  
23 assisting a governing body's review, the comment or opinion may be included in the governing body's written  
24 statement under 76-3-620 only if the comment or opinion provides scientific information or a published study  
25 that supports the comment or opinion. A governmental entity that is or has been involved in an effort to acquire  
26 or assist others in acquiring an interest in the real property identified in the subdivision application shall disclose  
27 that the entity has been involved in that effort prior to submitting a comment, an opinion, or information as  
28 provided in this subsection.

1 (10) Findings of fact by the governing body concerning whether the development of the proposed  
2 subdivision meets the requirements of this chapter must be based on the record as a whole. The governing  
3 body's findings of fact must be sustained unless they are arbitrary, capricious, or unlawful."  
4

5 **Section 24.** Section 76-3-615, MCA, is amended to read:

6 **"76-3-615. Subsequent hearings -- consideration of new information -- requirements for**  
7 **regulations.** (1) The regulations adopted pursuant to 76-3-504(4)(e)(15) must comply with the provisions of this  
8 section.

9 (2) The governing body shall determine whether public comments or documents presented to the  
10 governing body at a hearing held pursuant to 76-3-605 constitute:

11 (a) information or analysis of information that was presented at a hearing held pursuant to 76-3-605  
12 that the public has had a reasonable opportunity to examine and on which the public has had a reasonable  
13 opportunity to comment; or

14 (b) new information regarding a subdivision application that has never been submitted as evidence or  
15 considered by either the governing body or its agent or agency at a hearing during which the subdivision  
16 application was considered.

17 (3) If the governing body determines that the public comments or documents constitute the  
18 information described in subsection (2)(b), the governing body may:

19 (a) approve, conditionally approve, or deny the proposed subdivision without basing its decision on  
20 the new information if the governing body determines that the new information is either irrelevant or not  
21 credible; or

22 (b) schedule or direct its agent or agency to schedule a subsequent public hearing for consideration  
23 of only the new information that may have an impact on the findings and conclusions that the governing body  
24 will rely upon in making its decision on the proposed subdivision.

25 (4) If a public hearing is held as provided in subsection (3)(b), the 60-working-day review period  
26 required in 76-3-604(4) is suspended and the new hearing must be noticed and held within 45 days of the  
27 governing body's determination to schedule a new hearing. After the new hearing, the 60-working-day time limit  
28 resumes at the governing body's next scheduled public meeting for which proper notice for the public hearing



1 on the subdivision application can be provided. The governing body may not consider any information regarding  
2 the subdivision application that is presented after the hearing when making its decision to approve, conditionally  
3 approve, or deny the proposed subdivision."  
4

5 **Section 25.** Section 76-3-620, MCA, is amended to read:

6 **"76-3-620. Review requirements -- written statement.** In addition to the requirements of 76-3-604  
7 and 76-3-609, following any decision by the governing body to deny or conditionally approve a proposed  
8 subdivision, the governing body shall, in accordance with the time limit established in 76-3-504(4)(r)(18),  
9 prepare a written statement that must be provided to the applicant, that must be made available to the public,  
10 and that:

- 11 (1) includes information regarding the appeal process for the denial or imposition of conditions;
- 12 (2) identifies the regulations and statutes that are used in reaching the decision to deny or impose  
13 conditions and explains how they apply to the decision to deny or impose conditions;
- 14 (3) provides the facts and conclusions that the governing body relied upon in making its decision to  
15 deny or impose conditions and references documents, testimony, or other materials that form the basis of the  
16 decision; and
- 17 (4) provides the conditions that apply to the preliminary plat approval and that must be satisfied  
18 before the final plat may be approved."  
19

20 **Section 26.** Section 76-3-621, MCA, is amended to read:

21 **"76-3-621. Park dedication requirement.** (1) Except as provided in ~~76-3-509~~ or subsections (2), (3),  
22 and (6) through (9) of this section, a subdivider shall dedicate to the governing body a cash or land donation  
23 equal to:

- 24 (a) 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;
- 25 (b) 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and  
26 not larger than 1 acre;
- 27 (c) 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger  
28 than 3 acres; and

1 (d) 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not  
2 larger than 5 acres.

3 (2) When a subdivision is located totally within an area for which density requirements have been  
4 adopted pursuant to a growth policy under chapter 1 or pursuant to zoning regulations under chapter 2, the  
5 governing body may establish park dedication requirements based on the community need for parks and the  
6 development densities identified in the growth policy or regulations. Park dedication requirements established  
7 under this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03 acres per  
8 dwelling unit.

9 (3) A park dedication may not be required for:

10 (a) land proposed for subdivision into parcels larger than 5 acres;

11 (b) subdivision into parcels that are all nonresidential;

12 (c) a subdivision in which parcels are not created, except when that subdivision provides permanent  
13 multiple spaces for recreational camping vehicles, mobile homes, or condominiums;

14 (d) a subdivision in which only one additional parcel is created; or

15 (e) except as provided in subsection (8), a first minor subdivision from a tract of record as described  
16 in 76-3-609(2).

17 (4) The governing body, in consultation with the subdivider and the planning board or park board that  
18 has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and  
19 consideration to the expressed preference of the subdivider, may determine whether the park dedication must  
20 be a land donation, cash donation, or a combination of both. When a combination of land donation and cash  
21 donation is required, the cash donation may not exceed the proportional amount not covered by the land  
22 donation.

23 (5) (a) In accordance with the provisions of subsections (5)(b) and (5)(c), the governing body shall  
24 use the dedicated money or land for development, acquisition, or maintenance of parks to serve the  
25 subdivision.

26 (b) The governing body may use the dedicated money to acquire, develop, or maintain, within its  
27 jurisdiction, parks or recreational areas or for the purchase of public open space or conservation easements  
28 only if:

- 1 (i) the park, recreational area, open space, or conservation easement is within a reasonably close
- 2 proximity to the proposed subdivision; and
- 3 (ii) the governing body has formally adopted a park plan that establishes the needs and procedures for
- 4 use of the money.
- 5 (c) The governing body may not use more than 50% of the dedicated money for park maintenance.
- 6 (6) The local governing body shall waive the park dedication requirement if:
- 7 (a) (i) the preliminary plat provides for a planned unit development or other development with land
- 8 permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will
- 9 ultimately reside in the development; and
- 10 (ii) the area of the land and any improvements set aside for park and recreational purposes equals or
- 11 exceeds the area of the dedication required under subsection (1);
- 12 (b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical,
- 13 or natural resources; agricultural interests; or aesthetic values; and
- 14 (ii) the area of the land proposed to be subdivided, by virtue of providing long-term protection provided
- 15 for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication required
- 16 under subsection (1);
- 17 (c) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of
- 18 subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication
- 19 required under subsection (1); or
- 20 (d) (i) the subdivider provides for land outside of the subdivision to be set aside for park and
- 21 recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and
- 22 (ii) the area of the land and any improvements set aside for park and recreational uses equals or
- 23 exceeds the area of dedication required under subsection (1).
- 24 (7) The local governing body may waive the park dedication requirement if:
- 25 (a) the subdivider provides land outside the subdivision that affords long-term protection of critical
- 26 wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and
- 27 (b) the area of the land to be subject to long-term protection, as provided in subsection (7)(a), equals
- 28 or exceeds the area of the dedication required under subsection (1).

- 1 (8) (a) A local governing body may, at its discretion, require a park dedication for:
- 2 (i) a subsequent minor subdivision as described in 76-3-609(3); or
- 3 (ii) a first minor subdivision from a tract of record as described in 76-3-609(2) if:
- 4 (A) the subdivision plat indicates development of condominiums or other multifamily housing;
- 5 (B) zoning regulations permit condominiums or other multifamily housing; or
- 6 (C) any of the lots are located within the boundaries of a municipality.
- 7 (b) A local governing body that chooses to require a park dedication shall specify in regulations the
- 8 circumstances under which a park dedication will be required.
- 9 (9) Subject to the approval of the local governing body and acceptance by the school district trustees,
- 10 a subdivider may dedicate a land donation provided in subsection (1) to a school district, adequate to be used
- 11 for school facilities or buildings.
- 12 (10) For the purposes of this section:
- 13 (a) "cash donation" is the fair market value of the unsubdivided, unimproved land; and
- 14 (b) "dwelling unit" means a residential structure in which a person or persons reside.
- 15 (11) A land donation under this section may be inside or outside of the subdivision."

**Section 27.** Section 76-6-103, MCA, is amended to read:

**"76-6-103. Purposes.** ~~In accordance with the findings in 76-6-102, the~~ The legislature states that the purposes of this chapter are to:

- 20 (1) authorize and enable public bodies and certain qualifying private organizations voluntarily to
- 21 provide for the preservation of native plants or animals, biotic communities, or geological or geographical
- 22 formations of scientific, aesthetic, or educational interest;
- 23 (2) provide for the preservation of other significant open-space land anywhere in the state either in
- 24 perpetuity or for a term of years; and
- 25 (3) encourage private participation in such a program by establishing the policy to be utilized in
- 26 determining the property tax to be levied upon the real property which is subject to the provisions of this
- 27 chapter."

1           **Section 28.** Section 76-8-101, MCA, is amended to read:

2           **"76-8-101. Definitions.** As used in this part, the following definitions apply:

3           (1) "Building" means a structure or a unit of a structure with a roof supported by columns or walls for  
4 the permanent or temporary housing or enclosure of persons or property or for the operation of a business.  
5 Except as provided in 76-3-103~~(46)~~(17) the term includes a recreational camping vehicle, mobile home, or cell  
6 tower. The term does not include a condominium or townhome.

7           (2) "Department" means the department of environmental quality provided for in 2-15-3501.

8           (3) "Governing body" means the legislative authority for a city, town, county, or consolidated city-  
9 county government.

10           (4) "Landowner" means an owner of a legal or equitable interest in real property. The term includes  
11 an heir, successor, or assignee of the ownership interest.

12           (5) "Local reviewing authority" means a local department or board of health that is approved to  
13 conduct reviews under Title 76, chapter 4.

14           (6) "Supermajority" means:

15           (a) an affirmative vote of at least two-thirds of the present and voting members of a city or town  
16 council;

17           (b) a unanimous affirmative vote of the present and voting county commissioners in counties with  
18 three county commissioners;

19           (c) an affirmative vote of at least four-fifths of the present and voting county commissioners in  
20 counties with five commissioners;

21           (d) an affirmative vote of at least two-thirds of the present and voting county commissioners in  
22 counties with more than five commissioners; or

23           (e) an affirmative vote of at least two-thirds of the present and voting members of the governing body  
24 of a consolidated city-county government.

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

27

28           **Section 29.** Section 90-1-103, MCA, is amended to read:

1           **"90-1-103. Functions of department of commerce -- community development.** (1) The

2 department of commerce shall:

3           (a) cooperate with and provide technical assistance to county, municipal, state, and regional planning  
4 commissions, zoning commissions, parks or recreation boards, community development groups, community  
5 action agencies, and similar agencies created for the purposes of aiding and encouraging orderly, productive,  
6 and coordinated development of the communities of the state;

7           (b) assist the governor in coordinating the activities of state agencies that have an impact on solution  
8 of community development problems and implementation of community plans;

9           (c) serve as a clearinghouse for information, data, and other materials that may be helpful or  
10 necessary to local governments to discharge their responsibilities and provide information on available federal  
11 and state financial and technical assistance;

12           (d) carry out continuing studies and analyses of the problems faced by communities within the state  
13 and develop those recommendations for administrative or legislative action as appear necessary. In carrying  
14 out the studies and analyses and in providing technical assistance to communities, the department shall pay  
15 particular attention to the planning and financing of public facilities and to the problems of metropolitan,  
16 suburban, and other areas in which economic and population factors are rapidly changing.

17           (e) administer the federal community development block grant program and adopt rules to implement  
18 the program.

19           (2) In partial fulfillment of its duties under subsection (1), by January 1, 2003, the department shall  
20 have developed and published examples of subdivision regulations that provide incentives for and remove  
21 disincentives to cluster development. ~~The examples need not be limited to the local option cluster development~~  
22 ~~regulations authorized in 76-3-509 and may include any cluster development regulations that are authorized~~  
23 ~~under Title 76, chapter 3.~~ In developing the examples of regulations, the department shall seek the advice of  
24 interested parties. The department shall provide technical assistance to local governments that are developing  
25 cluster development regulations, as provided in subsection (1)(a)."

26

27           NEW SECTION. Section 30. Repealer. The following sections of the Montana Code Annotated are  
28 repealed:

1 76-3-509. Local option cluster development regulations and exemptions authorized.

2 76-6-102. Intent, findings, and policy.

3

4 NEW SECTION. Section 31. Unfunded mandate laws superseded. The provisions of [this act]  
5 expressly supersede and modify the requirements of 1-2-112 through 1-2-116.

6

7 NEW SECTION. Section 32. Codification instruction. [Section 11] is intended to be codified as  
8 an integral part of Title 76, chapter 2, part 2, and the provisions of Title 76, chapter 2, part 2, apply to [section  
9 11].

10

11 NEW SECTION. Section 33. Effective date. [This act] is effective on passage and approval.

12

13 NEW SECTION. Section 34. Retroactive applicability. [Sections 5 and 6] apply retroactively, within  
14 the meaning of 1-2-109, to existing growth policies adopted pursuant to Title 76, chapter 1, and zoning  
15 regulations adopted pursuant to Title 76, chapter 2. Existing growth policies and zoning regulations must be  
16 reviewed and revised if necessary to incorporate the additional requirements of [sections 5 and 6] no less than  
17 3 years after the passage of [this act].

18

- END -