

## CHAPTER 5 | AMENDMENTS AND REVIEW

### AMENDMENTS

#### Need for Balance

A growth policy must balance consistency with responsiveness to the needs of the community. If the policy is not consistent, it will have little value as a planning tool, nor provide an adequate basis for implementation actions, nor have the confidence of the community.

If the policy is not responsive, policies and actions are continued that no longer address community needs, and less than optimal guidance for future actions is provided.

This Plan was prepared based on information and circumstances as understood at this time. The nature of planning for the future is imprecise. As situations change it is important that the Plan be reviewed, and when necessary updated, to accommodate future events.

State law requires review and consideration of the need for amendments through Section 76-1-601(3) (f), of the Montana Code Annotated which reads:

“(f) an implementation strategy that includes:

- (i) a timetable for implementing the growth policy;
- (ii) a list of conditions that will lead to a revision of the growth policy; and
- (iii) a timetable for reviewing the growth policy at least once every 5 years and revising the policy if necessary;”

The required review, if properly done, will help to ensure that the information upon which the Plan is based is accurate and timely and that the goals and objectives of the Plan reflect the desires of the community.

Matters other than the passage of time may require the review of a growth policy. Assumptions regarding population growth, land uses, and other subjects are necessarily embedded in the Plan. Significant changes in the rates or the interaction of these items will cause a need for review of the Plan. A review may find that no changes are needed. Specific thresholds for when these reviews need to occur are:

- Passage of five years since formal public review of the Plan;
- A change, up or down, in the annual growth rate of more than 50 percent;

Evaluating the existing growth policy text and maps is an essential part of any review. New inventory maps should be made available for consideration during the review process if the new map would display previously unavailable data. When updated baseline information has been prepared the review should consider the

review triggers presented in the sidebar. Periodic formal and informal review processes for implementation policies as well as the growth policy are desirable.

Appendix F contains more detailed information concerning criteria for amendment of this Plan and the procedures to be followed in pursuing amendments.

## **REVIEW TRIGGERS AND AMENDMENT CRITERIA**

### **Review Triggers**

1. Are the community's goals current and valid?
2. Have the community conditions or legal framework materially changed?
3. Where have problems appeared since the last review?
4. Does the Plan meet the current needs of the community?
5. Can this Plan be modified to better serve the needs and desires of the community?

### **Amendment Criteria**

1. The proposed amendment must cure a deficiency in the growth policy, or improve the growth policy, to better respond to the needs of the general community;
2. The proposed amendment should not create inconsistencies within the growth policy, either between the goals and the maps or between different goals and objectives.
3. The proposed amendment must be consistent with the overall intent of the growth policy;
4. The proposed amendment may not adversely affect the community as a whole or significant portion by:
  - a. Significantly altering land use patterns and principles in a manner contrary to those established by this Plan,
  - b. Requiring unmitigated improvements to streets, water, sewer, or other public facilities or services, thereby impacting development of other lands,
  - c. Adversely impacting existing uses because of unmitigated impacts on facilities and services, or
  - d. Negatively affecting the livability of the area or the health and safety of the residents.

## **APPENDIX F**

A consistent and clear process for amending the growth policy is important. The Bozeman Community Plan was formed on the basis of significant community outreach efforts and the input of many persons and groups. Alterations to the growth policy should also provide a significant opportunity for public participation and understanding of the proposed changes. Amendments to the growth policy must meet the same statutory standards as the original adoption, including public input and review, public hearings, review by the Planning Board and approval by the City Commission, and written Findings of Fact.

Therefore, prior to the adoption of any amendment to the Plan, the public process must be provided. A fundamental requirement for public participation is time for individuals to become aware of proposed amendments and to study the proposed changes. A minimum active public review period of three months is to be expected. This Plan has been prepared to balance a wide variety of interests. Changes to the Plan must continue the balance of needs and interests. This Plan has been prepared to be internally consistent. Internal consistency meets one of the fundamental purposes of community planning-- coordination between government programs and policies. All amendments must be carefully evaluated to ensure that changes do not create conflicts between goals, maps, or implementation tools. If a proposed amendment would cause conflicts within the Plan, additional amendments must be identified and reviewed so that any conflicts are resolved.

Any changes being proposed to either the text or the maps contained in the Bozeman Community Plan must comply with all of the defined criteria shown in the sidebars. The burden of proof for the desirability of a proposed amendment and its compliance with the criteria lies with the applicant. Unless all criteria are successfully met by demonstrable facts, an amendment shall not be approved.

### **Who May Initiate Amendments**

1. City Commission
2. Landowner of affected property
3. Interested members of the public
4. Planning Board and City Staff may suggest amendments to the City Commission

## ZONING AMENDMENT REVIEW

*Zoning establishes many of the standards and review processes for the use of land. Amendments to zoning change those rules with far reaching consequences. Therefore, zoning amendments are reviewed deliberately and in public. Review must be fair to all, allow for identification and resolution of concerns, and provide meaningful opportunities for participation.*

### Intent and Background

Sections 76-2-301, *et seq.*, Montana Code Annotated, authorizes local governments to adopt zoning. As each community uses zoning differently, the authorization identifies certain purposes and processes but leaves most of the details to each community. Chapter 38, Unified Development Ordinance, City of Bozeman municipal code has the local details. Here's a statute that attempts to explain the purposes of municipal zoning:

"76-2-301. Municipal zoning authorized. For the purpose of promoting health, safety, morals, or the general welfare of the community, the City or town council or other legislative body of cities and incorporated towns is hereby empowered to regulate and restrict the height, number of stories, and size of buildings and other structures; the percentage of lot that may be occupied; the size of yards, courts, and other open spaces; the density of population; and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes."

### What does it mean to be zoned?

It means the City has adopted standards and procedures for the development and use of property within the City. Zoning indicates the character of an area by applying use and development standards to an individual property. Essentially, zoning addresses compatibility between uses. There is a lot more to it but in a broad brush that's the essence. Chapter 38 of the Bozeman Municipal Code is the zoning code. The City applies standards and procedures to individual properties through the zoning map. The City will not modify those standards and procedures without public notice and participation. The City does not represent or commit to anyone that the standards and procedures will not change.

### How is zoning applied to property?

The zoning map shows the designation that applies to each property. The zoning map covers all area within the boundaries of the City. The zoning district map assigns a designation to each property in the City. Once applied, the standards and procedures for each district apply to land designated within each district until

the City amends the map or text of Chapter 38. Since 1935, the City has adopted a change to the zoning map or text 500 times including replacing the entire code 19 times. The most recent overall replacement took effect in March 2018.

#### Who can change the zoning text or map?

As a legislative action, amendments are made through a process called a “map” or a “text” amendment. There is a defined public process for such changes to occur. See X.4 for a summary of that process. Only the City Commission can approve an amendment and only after notifying the public of the possible change and giving people a chance to participate in the change. The City Commission, Zoning Commission, a citizen, or landowner(s) can initiate amendments as stated in 38.260, BMC.

#### What is needed to justify a change in a zoning district map or text?

A change to the zoning text or map is a legislative action. The City Commission can initiate or approve amendments when they believe they are appropriate. In determining whether to begin a City initiated amendment the Commission can consider broad legislative factors such as the passage of time, changes in the needs of the community, outside actions like court decisions or new laws, whether the existing map or text is reaching the intended outcome, and changes like installation of new infrastructure. Some examples include:

- a. State or federal law changes that the zoning must address or with which it is in conflict.
- b. Court decisions changing the interpretation of meaning of law that interacts with zoning.
- c. Change in circumstances: the current zoning does not comply with the City’s adopted Community Plan (i.e. its growth policy) policies within the Growth Policy have changed, land is annexed, or infrastructure is newly available.
- d. an owner requests the change and the request meets required standards.

Items a and b are most likely to generate changes in the text; items c and d are more likely to generate changes in the zoning map.

In considering zone map amendments, The City’s the longstanding practice is to consider item d as an adequate justification in itself for consideration of a zoning map change. In doing so, applicant/property owner must demonstrate the requested change meets the required criteria and guidelines for an amendment.

The City’s zoning establishes what responsibilities exist, such as controlling stormwater, and requires people to meet those responsibilities. Zoning also addresses the balance of interests between adjacent properties by defining

districts where similar uses can be compatible and providing for transitions and buffers between zoning districts where the City determines it necessary to control impacts and prevent the use of one person's property right from inappropriately impacting another. When such protections are in place it is appropriate for the land owner to have opportunity to ask for changes to zoning. If an owner does not show that criteria and guidelines are successfully met the City Commission can choose not to approve the change. This does not prevent the City from initiating a change on its own.

To provide transparency in decision making, accountability, and public participation the zone map or text amendment process requires public notice and hearings. Before any action to approve an amendment, the Commission must address the criteria, which provide guidance in deciding whether an amendment is acceptable.

### Review Criteria for Zoning Amendments and Their Application

This section includes the four criteria and five guidelines for zoning amendments. These are from state law. It gives an overview of how those criteria and guidelines apply during the review of individual zoning amendments.

Section 76-2-304 of state law establishes the criteria, section (1), and guidelines, section (2), for the creation and amendment of zoning. Due to the range of subjects the applicability of any individual criterion may be of more or less importance. The City Commission must find the applicable criteria are either met or not applicable. Below is the state statute that provide the criteria and guidelines for zoning decisions:

76-2-304. Criteria and guidelines for zoning regulations.

1. Zoning regulations must be:
  - a. made in accordance with a growth policy; and
  - b. designed to:
    - i. secure safety from fire and other dangers;
    - ii. promote public health, public safety, and the general welfare; and
    - iii. facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.
2. In the adoption of zoning regulations, the municipal governing body shall consider:
  - a. reasonable provision of adequate light and air;
  - b. the effect on motorized and nonmotorized transportation systems;

- c. promotion of compatible urban growth;
- d. the character of the district and its peculiar suitability for particular uses; and
- e. conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

#### How the criteria and guidelines are applied

Under state law, zoning regulations must be “made in accordance with a growth policy.”

This criterion gives the Commission latitude; for zoning map amendments a correlation to the future land use map is essential. Beyond that, policy statements such as goals and objectives are weighed. In a text amendment, policy statements weigh heavily as the standards being created or revised implement the growth policy’s aspirations and intent. The City must balance many issues in approving urban development. So, it is not unusual if there is some tension between competing priorities, even if there is no explicit contradiction of policy.

As shown in the state statute, zoning must also “be designed to:

- a) secure safety from fire and other dangers;
- b) promote public health, public safety, and the general welfare; and
- c) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

For a map amendment, all three of the above elements are addressed primarily by the City’s long range facility Plans, the City’s capital improvements program, and development standards adopted by the City. The standards set minimum sizing and flow requirements, require dedication of parks, provision of right of way for people and vehicles, keep development out of floodplains, and other items to address public safety, etc. It is often difficult to assess these issues in detail on a specific site.

For example, at the time of annexation, the final intensity of development is unknown and it may be many years before development occurs and the impacts are experienced. The availability of other Planning and development review tools must be considered when deciding the degree of assurance needed to apply an initial zoning at annexation.

The City’s building codes reduce reliance on zoning to address other elements of public safety. For example, requirements for fire sprinklers for larger buildings are addressed in the building codes but not in the zoning code. In addition, the

subdivision review process lays out the backbone for public infrastructure. This includes most water, sewer, stormwater, and street facilities. Development review under zoning procedures gives a final check on infrastructure capacity when there is a known intended intensity of use and condition of facilities.

Considering what infrastructure is already present, such as in infill situations, or whether placing one zoning district next to another may reduce travel distances and increase walkability, are also factors that can play into this criterion. It is not only about production of more but also of best use of public facilities. If a proposed change to the map is contrary to the facility Plans, or causes substantial inadequacy over the long term, then denial of the amendment may be warranted.

2) In the adoption of zoning regulations, the municipal governing body shall consider:

**a) reasonable provision of adequate light and air;**

Bozeman has established generally applicable standards for setbacks, park dedication, on-site open space, and building design standards to address this requirement. This is done during the creation of the zoning text. Therefore, when considering changes to the map, this issue is addressed for all districts. In addition, the building codes have standards for ingress and egress, ventilation, and related subjects that further support delivery of adequate light and air. Care is needed if the City revises the standards themselves.

**b) the effect on motorized and nonmotorized transportation systems;**

This guideline looks at the anticipated change that may occur due to the amendment. It does not require there to be less of an impact than from the existing condition whether it be text or map that is the focus. The City relies upon its long-range transportation Plan to evaluate transportation needs over the long term for motorized vehicles as well as bikes and pedestrians. The park and trail Plan also considers options for extending the trail network. Plans are periodically updated to keep them applicable to current conditions.

Review of development proposals as subdivisions or site development looks at the transportation, park and trail, and facility Plans, considers existing conditions, and then requires additional on and off-site improvements needed to meet the additional demand expected from



new development. Development creates or funds many of the City's local streets, intersection upgrades, and trails. Therefore, although a text or map amendment may allow more intense development than before, compliance with the adopted Plans and standards will provide adequate capacity to offset that increase. The City's development standards require on-site parking for bicycles and motor vehicles and pedestrian circulation within each site. Articles 38.4 and 38.5 of the UDC regulate parking and circulation. If the Commission considers a substantial change to the standards it must examine the cumulative impacts.

The capacity of a street to handle traffic can be viewed differently by local residents, traffic engineers, and Planners. The long-range transportation Plan establishes the standards for what is "too much" on each class of road. The impact of additional development is not excessive so long as the Planned capacity of the road is not exceeded. New development contributes to the creation of additional capacity through dedication of right of way, construction or reconstruction of streets, payment of impact fees, and other contributions as may be applicable to a specific project. These requirements may mitigate the impacts of additional development. Development that is more intense requires greater transportation capacity. So, it is good, but not required, to have more intensive districts near arterial and collector roads.

**c) promotion of compatible urban growth;**

This guideline focuses on what happens at the edge of the City, as well as what occurs in the heart of the City. Section 38.700.040, BMC defines the factors considered in determining compatibility. This definition explicitly rejects uniformity as being necessary for compatibility. Compatibility is considered *within* districts, as well as *between* districts. The determination of compatibility happens at several levels, including: 1) what uses are allowed within each district; 2) creation of standards for new development to lessen impacts to adjacent land/persons; 3) creation of building and site design standards; and 4) application of future land use areas through the community Plan and development of the zoning map.

When the Commission considers a text amendment, the majority of the focus is on items 1 - 3, above. What combination of uses under what conditions can work well together? There is a wide range of

possible answers for each community to consider. Some communities take a highly prescriptive worst-case view and try to restrain all possible points of perceived conflict. This tends to create a very homogenous community with little interest or scope for creativity. Bozeman takes a different approach. The worst-case scenario is recognized as unlikely but possible. Development standards deal with the majority of cases, while restraining extraordinary problems. An example is stormwater management where a certain minimum level of control is required but there are many acceptable alternatives to address the issue.

When considering zoning map amendments, the Commission first looks at the future land use map created by the growth policy. See discussion under Criterion 1(a) above. That Planning process looks at a very high level at various policies to identify community priorities. In Bozeman's case, those policies consistently emphasize quality of development, infill in a manner that allows for additional intensification over time, connecting land development to other community priorities like multi-modal transportation, cost efficient user-pays provision of facilities, and reasonable incremental development at the City edge. These, and other, policies influence the layout of the future land use map.

The City creates standards under items 1-3 so that when one district is adjacent to another, and is consistent with the growth policy, any physical conflicts will be minimal if present at all. The City's zoning policy encourages continued development of mixed uses. This is seen in the older areas of the City, which were built before zoning. The City uses the broad scope of its development standards to enable differing uses to be successful near each other. This shows on the zoning map where districts providing a wide diversity of uses are intermixed.

**d) the character of the district and its peculiar suitability for particular uses; and**

The second element of this guideline reflects the application of the statutory criteria to a wide diversity of purposes and communities. Some land has a unique physical attribute that makes it more appropriate for one use than another. That attribute may be inherent in the land itself or due to proximity to something else. For example, the City's land adjacent to the East Gallatin River is well suited for the Public Lands and Institutions district because it supports both

recreational functions in Story Mill Park and an essential water treatment role next to the Water Reclamation Facility.

The character of a district is seen from a couple different viewpoints. First, when considering an amendment to the text, the integration of a proposed change is evaluated with the other standards, purposes, and criteria of site review. If the new change conflicts with other text, then the new change should be rejected, or other revisions made, so that the overall standards for a given district support one another.

Second, when considering an amendment to the zoning map both the actual and possible built environment are evaluated. If the amendment is accompanying an annexation request there is often a substantial change in use that will occur. In this case, the Commission must look at what the growth policy recommends for the area, as there is less built context to provide guidance. A zoning district change for land already within the City requires greater consideration of the current actual and possible environment. Most of Bozeman has zoning that allows more development than the current owners utilize. This reflects many personal preferences and economic decisions.

There is no specified distance in state law or local code outside of the boundary of a map amendment that describes the "district" to be considered. The City provides direct notice to landowners out to 200 feet from the outer boundary of the area to be given a new zoning designation by the map amendment. This is notice, not the distance that dictates the extent of the analysis. Impacts from a zoning change may be less or more than 200 feet depending on the nature of the change and what already exists. State law recognizes that persons owning land within 150 feet have a unique interest in the decision to rezone and gives them the ability to protest the zoning. It is notable that the protest does not stop a rezoning but requires a greater majority of the Commission to approve. If there is adequate reason for the change, it can go forward.

Nothing in the zoning amendment or site review criteria requires the Commission restrict one owner because an adjacent owner chooses to not use all zoning potential. The City is not obligated to enforce or recognize any privately imposed restrictions, such as a covenant, on land. Such restrictions are not subject to the same public notice or participation requirements as City actions.

Landowners have both rights and obligations. To find that an amendment application should be approved, the application materials and review need show the amendment meets the required criteria for approval. This is a very site specific evaluation and can consider, but is not obligated to give preference to, what adjacent owners have chosen to do with their property. When evaluating compliance with criteria it is appropriate to consider all the options allowed by the requested district and not only what the present applicant describes as their intentions.

The City Commission must consider several items in its decision on a zone map amendment. First, the Commission must consider the nature of the dominant uses allowed in a district compared with adjacent properties. For example, are they both residential or is one residential and another non-residential. Bozeman has an existing pattern of diverse zoning districts in proximity to each other. Second, the Commission should consider differences in allowed intensity between the districts such as differences in height, setbacks, or lot coverage. The greater the difference the more likely conflict is possible. An incremental change between R-1 and R-2 for example, has the same setbacks, and very similar maximum heights. Next, the Commission must decide whether a larger community benefit exists such as locating a fire station where it will serve the adjacent property but is different from the surrounding zoning. Finally, the Commission must ask what separates one zone from another? The City strives to locate zoning boundaries along visible and natural dividing lines such as streets, trail corridors, creeks, or parks. At a minimum, zoning boundaries should follow property boundaries. The greater the physical separation the less likely there may be a conflict. A local street, typically 60 feet wide, when combined with the standards for site development, is generally considered an adequate separation even for substantially different districts.

**e) conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.**

There are two elements to this guideline. First, conserving the value of buildings applies to changes that may lessen the functional utility of a property. Changes that increase opportunities on a property are unlikely to fail this test. Some reduction in value can happen with adequate justification. Requiring a development to mitigate impacts on its site that lowers development potential is acceptable. The need for that mitigation must be demonstrated.

Assertions that allowing a more intensive zoning may lessen values on adjacent properties is best addressed under the guideline regarding the character of the district. The financial value of land changes constantly based on many factors. Properties considered undesirable at one time may be sought after as circumstances change or the reverse. Value may be primarily in the eye of the beholder and not supported by neutral and objective evaluation. There is no defined decline in financial value or utility that proves an automatic failure of this guideline.

Encouraging the most appropriate use of land connects back to criterion 1(a) and the growth policy and guideline 2(d) and peculiar suitability for particular uses. The future land use map and policies of the growth policy should merge to establish priorities for land use that consider whether a given location is genuinely unique. There are circumstances where combinations of uses such as high density housing close to employment, community amenities, and transportation reinforce each other.

## **PUBLIC REVIEW AND HEARING PROCEDURES**

An amendment to the zoning text or map can be initiated by a property owner or by the City Commission. Division 38.260, BMC has the requirements for initiating an amendment. A general outline of the public hearing process for an application follows. As a legislative process, the City Commission has discretion in making their decision.

An important part of the amendment review process is the opportunity to offer comments on the proposal. Any interested person or group may give comments. The public hearing process formally provides this opportunity. Persons for, against, or merely seeking information about the proposal may speak to the appointed or elected officials who must review the request. The required public hearings on a zoning amendment are by the Zoning Commission and the City Commission. The Zoning Commission gives a recommendation to the City Commission regarding the proposed amendment's compliance with the review criteria. The typical format for a public hearing on a zoning amendment is as follows:

1. The public hearing are advertised as required by state law and Division 38.220 of the City of Bozeman Municipal Code. Written public comments may be submitted to the City prior to the beginning of the public hearing.
2. The public hearing will be conducted at the time and place advertised.
3. Announcement of the request by the Mayor or the Chair.

4. Report on the review by the Department of Community Development, including an analysis of compliance with the growth policy, review criteria, and a recommendation of approval or denial.
5. Presentation by applicant and applicant's representative(s). In the event the amendment is initiated by the City, this is usually the same as step 4 above.
6. Questions from the City Commission or Zoning Commission to staff or applicant.
7. The public hearing is opened with persons able to speak for, against, or to seek additional information from applicant or staff. A time limit may be established for each speaker. Commenters may also submit comments in writing. The public is encouraged to provide in their comments a factual basis related to specific review criteria for their support or opposition to an amendment.
8. When all persons have had opportunity to speak, the public hearing will be closed and the City Commission or Zoning Commission will then return discussion of the project to themselves.
9. The City Commission or Zoning Commission will evaluate the application materials, the staff report, public written and spoken testimony, and the amendment review criteria and procedures. The City Commission or Zoning Commission may inquire of staff, applicants, or the public for clarification or additional information in order to complete their evaluation.
10. A majority vote of a defined Zoning Commission quorum is adequate to render a decision.
11. The Zoning Commission will forward a recommendation to the City Commission.
12. After the City Commission has conducted their public hearing, they make their decision on the record established during the public hearing. This includes the application materials, staff report, Zoning Commission recommendation, public comments, and all other relevant material presented during the review.
13. When the City Commission has rendered their decision the process for a formal two-step ordinance adoption as required in state law is required before any amendment is final.

14. An approval or denial of amendment may be appealed to District Court after a final decision has been rendered. Appeals are subject to the requirements of state law.

## **SUBDIVISION REVIEW**

*Subdivisions set the "bones" for a community by establishing the locations for roads, parks, and lots for development. How a subdivision is designed and reviewed can impact Bozeman's citizens for many years to come. Review must be fair to all, allow for identification and resolution of concerns, and provide meaningful opportunities for participation.*

### **Intent and Background**

Local governments in Montana must review proposed subdivisions. Section 76-3-101 *et seq.* Montana Code Annotated governs the review of subdivisions. Section 76-3-501 *et seq.* MCA requires all municipal and county governments to establish subdivision review regulations and establishes the minimum requirements for those regulations. In addition, Section 76-1-601 MCA requires that a growth policy discuss and address various elements of the subdivision review process. This chapter meets the requirement. Title 76, Chapter 3 MCA contains the requirements and restrictions upon both public and private parties for subdivision review and platting. For full information on this subject interested parties are referred to Title 76, Montana Code Annotated, and Division 38.240 Unified Development Ordinance, City of Bozeman municipal code.

Creation of a subdivision often precedes or accompanies a change in the use of that land. A subdivision generally remains in perpetuity and continues to influence the location and intensity of land uses within and adjacent to the subdivision. Therefore, subdivisions are strongly connected to the comprehensive Planning process and may significantly advance or hinder public goals. Because of this strong influence all subdivisions must comply with the Bozeman growth policy. The subdivision and zoning regulations adopted by the City to direct and govern the review and use of land must also conform to the Bozeman growth policy.

### **Review Participants**

Many agencies and review bodies review subdivisions. Reviews are conducted by each agency as needed. The purpose of these reviews is to verify compliance with law and identify concerns which may require mitigation. These entities may include, but are not limited to:

- City staff
- Recreation and Parks Advisory Board

- Private Utilities such as power and telecommunications
- MT Fish, Wildlife, and Parks
- MT Dept. of Transportation
- Pedestrian & Traffic Safety Committee
- Irrigation companies
- Planning Board
- Gallatin County

### Definitions and Review Procedures

This section defines the six state established primary criteria for subdivision review and gives an overview of how those criteria are used during the review of subdivisions.

#### Agriculture

Agriculture is defined as: The cultivation or tilling of soil or use of other growing medium for the purpose of producing vegetative materials for sale or for use in a commercial operation and/or the raising or tending of animals for commercial sale or use. Agriculture does not include gardening for personal use, keeping of house pets or animals as authorized under chapter 8 of the municipal code, service animals as defined by the Americans with Disabilities Act, or landscaping for aesthetic purposes.

The following presumptions apply.

- 1) Property annexed or seeking to be annexed within the depicted urban area shown on the future land use map will generally not be utilized for agricultural purposes over the long term.
- 2) Agriculture may be appropriate within the City in limited areas where physical constraints make an area undesirable for the construction of buildings, or in support of a commercial business such as a Plant nursery or a common community garden.
- 3) Urban density development within the City of Bozeman facilitates the preservation of agriculture in Gallatin County. It provides a location for the development of residential and employment activities in a compact and efficient manner. This reduces pressure to convert agricultural lands to non-agricultural uses in the county.
- 4) Undeveloped lands within the City not constrained by physical features should be developed at urban densities. This enables infill development and reduces outward expansion of the City.



### Agricultural Water User Facilities

Agricultural water user facilities are defined as: Those facilities, which include but are not limited to ditches, pipes, and other water-conveying facilities, which provide water for irrigation and stock watering on agricultural lands, with said lands being defined in MCA 15-7-202

The following presumptions apply.

- 1) Agricultural uses are not generally urban uses. The transition of agricultural lands to urban uses will often remove the need for agricultural water user facilities within the urbanized area. Where a need for protection due to ongoing use for water conveyance can be demonstrated provision for protection of the facility must be made.
- 2) The formal abandonment and removal of all agricultural water user facilities within the City shall occur in accordance with Montana law. Should the beneficial use cease in the future an easement for protection of agricultural water user facilities may be removed.
- 3) The use of agricultural water user facilities for storm water does not constitute beneficial use for the purposes of presumption 2 above. Storm water facilities may require separate easements or other procedures.

### Local Services

Local Services means: All services provided by governmental bodies for the benefit of citizens. This includes, but is not limited to, police, fire, water, recreation, streets, parks, libraries, schools, wastewater, and solid waste collection and disposal. Those criteria to which a specific response and evaluation of impact must be made are listed within the City subdivision regulations.

The following presumptions apply.

- 1) When the City assessed needs and means of addressing those needs, subdividers will not be required to duplicate that work without good cause. If the City has completed a portion of a required assessment the subdivider may be required to submit the remaining portion of the necessary information.
- 2) CapaCity and capability in local services is limited. All development shall equitably participate in providing adequate services for itself, including replacement of consumed reserve capaCity. Development shall meet levels of service and facility design standards established by the City.

- 3) Response times, physical space within facilities, compliance with applicable facility Plans, and general design of local service facilities within proposed subdivisions shall be addressed during the preliminary plat review and necessary mitigation provided.
- 4) Lack of adequate service capacity and capability within local services is adequate grounds for denial of subdivision approval when impacts of proposed subdivisions are not mitigated.

#### Effect on the Natural Environment

The natural environment is defined as: The physical conditions which exist within a given area, including land, water, mineral, flora, fauna, noise, light, and objects of historic or aesthetic significance.

The following presumptions apply.

- 1) The natural environment is fundamentally linked with our economic development, as an attraction to new and expanding businesses, a tourist destination, and a basic component of Bozeman's character.
- 2) The natural environment should be conserved and development should respect significant natural features and systems. Impacts to consider include road locations, storm water treatment and discharges, potential contamination of ground or surface water, building placement, and others that may be identified through subdivision, zoning, data inventories, and other implementation tools. Mitigation of negative development impacts is required.

#### Wildlife and Wildlife Habitat

Wildlife means animals that are neither human, domesticated, nor feral descendants of commonly domesticated animals; and wildlife habitat means the place or type of habitat where wildlife naturally thrives. Habitat excludes areas developed for human use or habitation including agriculture.

The following presumptions apply.

- 1) Lands within the designated urban area are typically utilized for purposes which reduce their value as wildlife habitat and development will have a minor impact. Watercourse corridors and wetlands are an exception to this presumption. The designated urban area is all lands except [Present Rural] shown on the future land use map.
- 2) The habitat needs of larger and/or predatory wildlife species such as deer, moose, bears, coyotes, or similar species will not be met within urban density development and will likely be in conflict with people. Therefore,

these types of animals are found to be undesirable within the City boundaries.

- 3) Smaller species, especially birds, are compatible within urban density development and should be preserved, including the encouragement of suitable habitats.
- 4) High value wetlands, stream corridors, and similar high value habitats should be preserved in accordance with the City's adopted standards. These provide a variety of recreational, environmental sustainability, and safety values such as flood control as well as habitat.

#### Public Health and Safety

Public health and safety means a condition of optimal well-being, free from danger or injury, for a community at large, as well as for an individual or small group of persons.

The following presumptions apply.

- 1) Health is a comprehensive subject and threats to health include chronic as well as acute hazards.
- 2) Subdivision design should encourage physical activity and a healthy community.
- 3) The creation of hazards to public health and safety are not acceptable and appropriate mitigation must be provided.
- 4) Some level of risk is present in all locations and times despite efforts to prevent harm. Individual developments are not solely responsible for the correction of risks which are common to all. They should equitably participate in common solutions to common problems. However, the presence of common risks, such as inadequate public services, may prevent approval of a development until the hazard has been removed or corrected. The developer of a subdivision may not accept hazards to public health and safety on behalf of future residents or owners of a subdivision by declaring that necessary infrastructure improvements or other actions are unnecessary.

#### Public Hearing Procedures

An important part of the subdivision review process is the opportunity to offer comments on the proposal. Comments may be given by any interested person. This opportunity is formally provided by the public comment/hearing process.

Persons for, against, or merely seeking information about the proposal may send written comments to the City for transmittal to the appointed or elected officials who review the subdivision, or speak at a public hearing. The public hearing, when one is required by state law, on a subdivision proposal may be held by either the Planning Board and/or the City Commission. The individual body to hold the public hearing is set by ordinance. Planning Board recommends to the City Commission regarding the proposed subdivision's compliance with the Bozeman Community Plan. More than one public hearing may be held. Regardless of which body holds a hearing a similar procedure is required. Generally, the format for a subdivision public hearing is as follows:

- 1) The public hearing will be advertised as required by state law and Divisions 38.220 and 38.240 of the City of Bozeman Municipal Code.
- 2) The public hearing will be conducted at the time and place advertised.
- 3) Announcement of the project by the Mayor or the President of the Board.
- 4) Report on the project by the Department of Community Development, including an analysis of compliance with the Bozeman Community Plan, regulatory standards and a recommendation of approval, denial, or approval with conditions
- 5) Presentation by applicant and applicant's representative(s).
- 6) Questions from the Commission or Planning Board to staff or applicant.
- 7) The public hearing/comment is opened with persons able to speak for, against, or to seek additional information from applicant or staff. A time limit may be established for each speaker. The public is encouraged to provide a factual basis for their support or opposition to a subdivision and base their comments on subdivision review criteria.
- 8) When all persons have had opportunity to speak, the public hearing/comment will be closed and the Commission or Planning Board will then return discussion of the project to themselves.
- 9) The Commission or Planning Board will evaluate the application materials, the staff report, public testimony, and the requirements of subdivision law and regulations. The Commission or Planning Board may inquire of staff, applicants, or the public for clarification or additional information in order to complete their evaluation.
- 10) A majority vote of a defined Planning Board quorum is adequate to render a decision.

- 11)The Planning Board will forward a recommendation to the City Commission.
- 12)The City Commission will make their decision on the record established during the review of the subdivision. The record includes all application materials, staff review, public comments, and other materials provided prior to the Commission's action.
- 13)When the City Commission has rendered their decision they will cause findings of fact to be prepared which establishes the official record and decision.
- 14)An approval or denial of a subdivision may be appealed to District Court after a final decision has been rendered. Appeals are subject to the requirements of state law.