

Housing Task Force - Phase III Assignment #4
DRAFT Recommendations – **SUCSESSES Study Group**

5-6-2024

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1 - Supporting Local Government Housing Regulatory Reform

Submitted By: Kendall Cotton

Common Theme: Financial

Recommendation:

Leverage state resources and expertise to decrease the costs of pro-housing reform implementation.

Rationale:

The Successes Study Group heard concerns raised by local governments about the costs of reforming strict local zoning regulations. Some Montana local governments, particularly small local governments, have expressed concern that they do not have the necessary in-house expertise or staff bandwidth to comprehensively revise local zoning codes, and must hire expensive outside consultants. While there are many federal/state grants available to support this sort of work, the state can leverage resources to help reduce the actual amount of work involved with a locally-driven zoning reform process, reducing the need for expensive hired consultants.

For example, [SB 382](#) required the Department of Commerce to develop a list of public participation methods and best practices for use by local governments in developing, adopting, or updating a land use plan or regulations. This was intended to reduce the burden of work involved with developing new policies, methods, and procedures for public participation as contemplated under the law. However, more can be done.

Barriers Addressed:

Costs, especially to smaller local governments, involved with comprehensively reforming local planning and zoning regulations.

Key Strategies:

1. *Model Ordinances*
 - a. The Department of Commerce could leverage in-house planning expertise create model ordinances for local governments to implement legislative zoning reforms.
2. *Data Modeling*
 - a. Department of Commerce: municipal population projections, housing data inventories, economic development analysis.
 - b. Montana Department of Transportation: jurisdiction-wide traffic models.
 - c. State Library: environmental and wildlife inventories and impact models.
3. *Best practices and planning methodology*
 - a. Follow through on SB 382 requirements that the Department of Commerce shall develop a robust list of public participation methods and best practices for use by

local governments in developing, adopting, or updating a land use plan or regulations.

Dissenting Opinions: NA

Supporting Graphics: NA

2 - Limiting Subdivision Approval Conditions

Submitted By: Kendall Cotton

Common Theme: Planning

Recommendation:

The state should consider placing firmer and more explicit limits on the conditions allowed for subdivision approvals.

Rationale:

Despite progress in making the subdivision approval process more predictable and administratively-driven via SB 382, the Successes Study Group continued to hear concerns with the conditions placed on subdivision approvals. Presenters said the amount of discretion that local governments have to place conditions on their approval of subdivisions was problematic, particularly when conditions are required significantly drive up the cost of development and go beyond what's truly necessary for health, safety, infrastructure etc.

[SB 174](#) from Sen. Greg Hertz in 2021 updated the subdivision review criteria in §76-3-620, MCA to specify that “each condition required for subdivision approval must identify a **specific, documentable, and clearly defined** purpose or objective related to the **primary criteria** set forth in §76-3-608, MCA”. Primary criteria include impacts related agriculture, local services, the environment, public health and safety etc. Conditional approval decisions under this statutory framework are often made directly by elected local government officials either at or directly after contentious public hearings. This Study Group heard from presenters speculation that conditions are added to approvals to satisfy popular opinion instead of closely following the “primary criteria” of §76-3-608, MCA.

[SB 382](#) creates an entirely new local subdivision review procedure, but only for certain municipalities. Instead of approval decisions being made directly by local elected officials for every new subdivision, SB 382 enables certain approvals to be made entirely at the administrative level. Under the new system, the planning administrator "shall issue" a decision to approve, conditionally approve, or deny a preliminary plat if it's in “substantial compliance” with the new land use plan (Section 29). This creates more predictability for subdivision approvals by making decisions less prone to influence by public opinion, rather more focused on an administrator’s professional judgement.

Section 28 of SB 382 also limits subdivision requirements to standards for:

- (i) standards for grading and erosion control;
- (ii) standards for the design and arrangement of lots, streets, and roads;
- (iii) standards for the location and installation of public utilities, including water supply and sewage and solid waste disposal;
- (iv) standards for the provision of other public improvements; and

(v) legal and physical access to all lots;

In further limitation of conditional approvals, Section 25 of SB 382 also explicitly specifies that local governments cannot require so-called “inclusionary zoning” policies, which [increases the cost of housing development](#), as a condition of approval.

While SB 382 has made substantial improvements to the subdivision approval process for certain municipalities, subdivision approval procedures for jurisdictions that remain governed under the pre-SB 382 subdivision statutes could be improved by placing firmer and more explicit limits on the conditions allowed in subdivision approvals.

Barriers Addressed:

Prolonged permit approval times add [thousands of dollars](#) to the costs of construction, making housing more expensive. Additionally, uncertainty about the conditions added to a development adds risk, which increases the cost of building. One of the Successes Study Group’s presenters said the conditions placed on a subdivision he developed added “\$30, \$40, even \$50,000” to the cost of each home in the subdivision.

Key Strategies:

1. The state could consider **narrowing the primary criteria for subdivision approvals set forth in §76-3-608, MCA**. This could include further defining “specific, documentable, and clearly defined impact” or further limiting the types of impacts that can be considered to ensure conditions are only made for the most compelling health or safety reasons.

Dissenting Opinions: NA

Supporting Graphics: NA

3 - Self-Certification Permit Programs

Submitted By: Kendall Cotton

Common Theme: Regulations

Recommendation:

State and local governments should pursue creating self-certification programs to speed up permit approvals.

Rationale:

Despite progress in speeding up permit approval timelines for housing via SB 382 and other reforms, the Successes Study Group continued to hear concerns with permitting delays. Self-Certification programs were suggested as a model for consideration that could potentially compliment streamlined administrative approvals of subdivisions via SB 382, as well as support permit reviews by DEQ and other state agencies.

Self-Certification programs allow registered professionals to bypass the normal permit process for certain eligible projects and get permits approved quickly, often in a few days, as long as those professionals have passed a government-sponsored certification program and undergo random audits for compliance.

Self-Certification programs are being implemented with success around the country. The City of Phoenix has had a Self-Certification program in place since 2010. The City of Phoenix notes they can process self-certified permits in [1 to 5 business days](#), compared to the time https://www.phoenix.gov/pddsit/Documents/TRT/dsd_trt_pdf_00468a.pdf it takes to approve a basic site plan under the normal process.

Barriers Addressed:

Prolonged permit approval times add [thousands of dollars](#) to the costs of construction, making housing more expensive.

As previously [noted](#) by the Montana Housing Task Force, Self-Certification programs would help mitigate review staff shortages and speed up the review process for approving permits. Self-Certification programs reduce the burden on administrative staff to process permits for local engineers and other professionals they work with on a daily basis, allowing them to focus on the new or non-conventional project plans that come across their desk. This saves governments money and promotes efficiency.

Key Strategies:

1. State could reconsider [SB 227](#) from Sen. Forrest Mandeville in 2023, which created a self-certification program at DEQ for subdivision reviews.
2. State should evaluate whether state agencies and local governments can voluntarily adopt self-certification programs within existing law. If not, legislative reforms should be considered to allow self-certification of permits.
3. If self-certification programs are allowed within existing law, the state could consider:
 - a. Voluntarily adopting self-certification programs at DEQ, DLI etc.
 - b. Creating resources and model language to support voluntary local government adoption of self-certification.
 - i. For example, the state could create and administer a statewide educational curriculum and self-certification examination. Local governments could rely on the state certification program to qualify applicants for self-certification of local permits, rather than creating their own program.

Dissenting Opinions: NA

Supporting Graphics:



PLANNING & DEVELOPMENT
DEPARTMENT

Self-Certification Program Program Overview

The Self-Certification Program allows a registered professional to bypass the normal plan review process and get permits in one to five business days. Participating professionals must meet minimum qualifications and attend a Self-Certification training class.

Professional Qualifications

- Architect or structural engineer registered in Arizona for at least three years to certify building plans
- Landscape architect registered in Arizona for at least three years to certify landscape plans
- Professional civil engineer registered in Arizona for at least three years to certify grading and drainage plans
- Successful completion of self-certification training from the Planning & Development Department

Submittal Requirements

- Building projects must obtain all planning, zoning, grading and drainage approvals and building code modifications as necessary prior to the city's intake of the plans.
- Civil, Landscape or Parking Lot projects must obtain all planning, zoning, site, off-site civil, site fire, addressing, and alternative paving approvals as necessary prior to the city's intake of the plans.
- For building projects, [subject to random audit](#); a Structural Peer Review Certificate by a city-approved Structural Peer Reviewer is required for projects with structural scope of work; an Electrical Peer Review Certificate by a city-approved Electrical Peer Reviewer is required for installation or modifications to electrical systems that exceed 400 amperes or the available fault current exceeds 22,000 amperes.
- Fire plans and permits cannot be self-certified.
- All plan sheets must be sealed by a professional registered in the State of Arizona.
- Additional program requirements for all projects include: a hold-harmless letter signed by all registrants, a building owner/tenant indemnification letter, and a copy of the Self-Certified Professional's Certification of Insurance.
 - Current forms and checklists are on-line at <https://www.phoenix.gov/pdd/self-certification-program/procedures-forms-and-links>

Eligibility

Project scope of work must comply with the Self-Certification Program Eligibility Chart:

https://www.phoenix.gov/pddsite/Documents/TRT/dsd_trt_pdf_00491.pdf

For more information refer to our website at <https://www.phoenix.gov/pdd/self-certification-program> or contact Claire Simeone-Stern at 602-495-0265.



Building Plans

Projects Eligible	Projects Not Eligible
<ul style="list-style-type: none"> • All new building construction and alterations not included in the "Projects Not Eligible" list to the right 	<ul style="list-style-type: none"> • Hazardous occupancies and projects that contain any of the following: <ul style="list-style-type: none"> - Hazardous processes - Electrically hazardous locations - Extraction rooms - Hazardous exhaust systems - Refrigerant monitoring systems • New high rise buildings (occupied floor more than 75' above Fire Department access) • Projects located in a Hillside Development Area • Extra-large assembly occupancies (A4 & A5) • Projects in FEMA Special Floodplain Hazard Area

Civil/Site/Landscape Plans

Projects Eligible	Projects Not Eligible
<ul style="list-style-type: none"> • New construction and improvements to parking lot site plans up to 5 acres • All new construction and alteration plans for landscape, salvage and inventory up to 20 acres (on-site and off-site) • Civil on-site grading & drainage plans, & storm water management plans for: <ul style="list-style-type: none"> - Commercial projects up to 20 acres - Industrial and non-hazardous storage projects up to 80 acres - New residential single family home subdivisions up to 160 acres • Civil grading & drainage/concrete combination plans that meet the criteria above and limited to the following: <ul style="list-style-type: none"> - Removal and installation of driveways - Repair/replacement of existing curb, gutter and sidewalk - Update existing curb ramps to meet ADA 	<ul style="list-style-type: none"> • Projects located in a Hillside Development Area • Projects in FEMA Special Floodplain Hazard Area • Civil grading & drainage/concrete combination plans for projects located in the Downtown Code or Walkable Urban Code as established by the Phoenix Zoning Ordinance • All other site and landscape plans • All other civil plans

Note: All Self-Certification plans must be submitted by the following types of registered professionals:

- Building Plans – Architect or Professional Structural Engineer
- Landscape Plans – Landscape Architect
- Civil Grading and Drainage Plans – Professional Civil Engineer
- Parking Lot Site Plans – Architect, Landscape Architect or Professional Civil Engineer

Building Plans Audit Guidelines

Random Audit Guidelines	Automatic Audit Guidelines
<ul style="list-style-type: none"> • All projects not subject to automatic audit • Requires a structural peer review by a city-approved structural peer reviewer • Requires electrical peer review by a city-approved electrical peer reviewer for installation or modifications to electrical systems that exceed 400 amperes or the available fault current exceeds 22,000 amperes. • No audit fee assessed • Generally, a 10% chance of audit 	<ul style="list-style-type: none"> • Remodels – 25,000 sf and above¹ • Shell buildings – 25,000 sf and above¹ • New buildings – 10,000 sf and above¹ • All new E and I occupancies² • All new A occupancies with an occupant load of 300 or more² • All medical marijuana facilities • All ambulatory care facilities • All standard plans • No structural or electrical peer review required • Audit fee is equal to half plan review fee per Planning & Development Fee Schedule <p>¹ Aggregate area of all buildings ² New = new building, addition, change of occupancy or initial tenant improvement</p>

Civil/Site/Landscape Plans Audit Guidelines

Random Audit Guidelines	Automatic Audit Guidelines
<ul style="list-style-type: none"> • All landscape, civil grading and drainage, and parking lot plans up to 5 acres • No audit fee assessed • Generally, a 10% chance of audit 	<ul style="list-style-type: none"> • Projects over 5 acres • Landscape plans for projects located in the Downtown Code or Walkable Urban Code as established by the Phoenix Zoning Ordinance • Civil grading and drainage/concrete combination plans • Audit fee is equal to half plan review fee per Planning & Development Fee Schedule

4 - Voluntary Wildfire Mitigation Certification Program

Submitted By: Kendall Cotton

Common Theme: Regulations

Recommendation:

The state will create a voluntary wildfire mitigation certification program led by the Office of the Montana State Auditor.

Rationale:

Nearly [30% of Montana properties](#) have extreme wildfire risk, more than any other state. The Successes Study Group heard that this extreme risk can [impact the availability](#) of home insurance for thousands of Montanans as insurers increase premiums to compensate for the risk, or decline coverage completely.

While home insurance is generally not required by law, many mortgage companies require home insurance coverage. Declined coverage can be devastating for those relying on financing for their home, while expensive coverage can put home insurance - and thereby homeownership - out of reach for less wealthy homeowners. Additionally, no insurance puts Montanans at a great risk of unrecoverable losses from property damage by wildfires or other disasters.

Federal law [mandates](#) that mortgage lenders require flood insurance on loans secured by properties located within high-risk flood disaster areas. Additionally, the federal government directly provides flood insurance to property owners via the [National Flood Insurance Program \(NFIP\)](#). There is no comparable program for wildfires.

A standing [advisory memo](#) from Montana's Insurance Commissioner clarifies that insurance companies cannot outright deny coverage based solely on the fire risk present in the home's geographic zone, such as a zip code. However, insurers [aren't prohibited](#) from denying coverage based on a case-by-case assessment of fire risk.

Barriers Addressed:

Fire mitigation efforts [can increase](#) the chances that a home at risk of wildfire will remain insurable. Some [Montana insurers](#) have already adopted mitigation incentive programs, which offer premium discounts in exchange for community homeowners voluntarily achieving a FireWise USA recognition for reduced wildfire risk.

Montana leaders can champion the development of these voluntary mitigation programs to help Montana homes remain insurable in the face of wildfire risk. Leaders in Boulder County, CO have collaborated with insurers to create [Wildfire Partners](#), an innovative program which helps homeowners mitigate the wildfire risk on their property with education and financial assistance. Homeowners who opt-in to the Wildfire Partners program receive a certification that their

property has the proper mitigation for wildfires. In exchange, insurance companies recognize this certification as proof of mitigation efforts and agree to provide coverage for certified homes. The program is funded in part by Boulder County, along with state and federal grants.

This voluntary and collaborative effort would be inexpensive compared to the [costly top-down](#) approaches of states like California to dealing with home insurance. While California has instituted insurance price controls and mandates that have forced homeowners onto a bare bones state-run plan, Colorado has not needed to resort to such policies.

By leading a collaborative effort with the state’s property insurers, Montana can avoid the pitfalls of states like California and empower the private marketplace to overcome the challenges that unnaturally severe wildfires pose for home ownership and affordability.

Key Strategies:

1. The State could consider creating a model voluntary wildfire mitigation certification program similar to Boulder, Colorado’s, led by the Insurance Commissioner in consultation with local wildfire mitigation organizations such as the [Tri-County Fire Safe Work Group](#).
2. The governor (or state auditor) may appoint a Task Force or Advisory Group to further study the issue and make further recommendations.

Dissenting Opinions: NA

Supporting Graphics:

States At High To Extreme Wildfire Risk, 2021 (1)

Rank	State	Estimated number of properties at risk	Rank	State	Percent of properties at risk
1	California	2,040,600	1	Montana	29%
2	Texas	717,800	2	Idaho	26
3	Colorado	373,900	3	Colorado	17
4	Arizona	242,200	4	California	15
5	Idaho	175,000	5	New Mexico	15
6	Washington	155,500	6	Utah	14
7	Oklahoma	153,400	7	Wyoming	14
8	Oregon	147,500	8	Arizona	9
9	Montana	137,800	9	Oklahoma	9
10	Utah	136,000	10	Oregon	9
11	New Mexico	131,600	11	Texas	7
12	Nevada	67,100	12	Nevada	6
13	Wyoming	36,800	13	Washington	5

(1) As of October 2021.

Source: [https://www.iii.org/fact-statistic/facts-statistics-wildfires#Top%2010%20Costliest%20Wildland%20Fires%20In%20The%20United%20States%20\(1\)](https://www.iii.org/fact-statistic/facts-statistics-wildfires#Top%2010%20Costliest%20Wildland%20Fires%20In%20The%20United%20States%20(1))

5 - Use State Funds to Develop Montana State LIHTC Program

Submitted By: Mike Smith

Common Theme: Finance

Recommendation:

Use state funds to develop Montana State LIHTC program.

Rationale:

LIHTC financing is already a successful model with the use of Federal and Solar Tax Credit funds.

Barriers Addressed:

State LIHTC funds could be used by developers to use funds from the sale of these credits to finance new rental construction, acquire multifamily properties, or improve existing affordable homes. These tax credits not only provide additional capital to offset increased construction costs and rising interest rates, it allows corporations to invest in our communities.

The federal tax credit program allocates enough credits to Montana for only an average of five projects to be built or rehabilitated to remain in the rent restricted pool. The number of units is decreasing due to increased costs. In today's market environment, construction and development costs have become an extreme impediment to building truly affordable homes that are deed restricted and maintained affordable for decades. Traditional funding sources often fall short, and developers are left with a "gap" in their financing structure. The state housing credit is a valuable source of gap financing to overcome this shortage to ensure projects remain financially viable. That is why 24 states have enacted a state-level housing credit program.

The availability of this type of gap financing provides Montana with an opportunity for greater leverage of the federal Housing Credit program and more projects can achieve the funding level necessary to reach full completion reaching more individuals and families. Wages, though still lagging in the state of Montana, are now creating hardship in qualifying more residents based on the units available based on higher AMI%. With additional tax credits, more housing will become available for our service workers to our essential workers (teachers, police, nurses, fireman, etc.) so they can afford to rent in the communities that they serve.

Key Strategies:

Set aside one-time funding for the Housing Montana Fund to be allocated for State housing tax credits.

Dissenting Opinions:

LIHTC projects are expensive from a construction cost basis and are considered by some to be developer friendly.

Supporting Graphics:

To qualify for apartments the household must first make less than the income limits listed below. This means if you are a single person and no one else will be residing in the apartment with you, you will use the 1-person limit. If you are a parent with two children, you will use the 3-person income limit, etc. The income limits below determine eligibility.

		Flathead County					
2023 AMI		1 Person	2 Person	3 Person	4 Person	5 Person	6 Person
60%	Max Income	\$35,280	\$40,320	\$45,360	\$50,400	\$54,480	\$58,500
	Max Per/Hr	\$17	\$19	\$22	\$24	\$26	\$28
70%	Max Income	\$41,160	\$47,040	\$52,920	\$58,800	\$63,560	\$68,250
	Max Per/Hr	\$20	\$23	\$25	\$28	\$31	\$33
80%	Max Income	\$47,040	\$53,760	\$60,480	\$67,200	\$72,640	\$78,000
	Max Per/Hr	\$23	\$26	\$29	\$32	\$35	\$38
	Kalispell			Avg			
	Fast Food			\$18			
	Teller			\$16-18			
	Costco/Target			\$18			
	Office Admin			\$18-22			
	Clerk & Recorder Deputy Admin Clerk			\$19			
	Hospital Non-Medical			\$19-\$22			
	Court Deputy Clerk			\$20			
	911 Dispatcher			\$24			
	Laborer			\$26			
	Waste Water Treatment Plant Operator			\$26			
	EMT			\$28			
	Police Officer			\$32			

LIHTC Rent Limits for 2023 (Based on 2023 MTSP/PLI Income Limits)								
Bedrooms (People)	Charts	60.00%	30.00%	40.00%	50.00%	60.00%	70.00%	80.00%
Efficiency (1.0)	☞	882	441	588	735	882	1,029	1,176
1 Bedroom (1.5)	☞	945	472	630	787	945	1,102	1,260
2 Bedrooms (3.0)	☞	1,134	567	756	945	1,134	1,323	1,512
3 Bedrooms (4.5)	☞	1,311	655	874	1,092	1,311	1,529	1,748
4 Bedrooms (6.0)	☞	1,462	731	975	1,218	1,462	1,706	1,950
5 Bedrooms (7.5)	☞	1,613	806	1,075	1,344	1,613	1,882	2,151

Market rent for a comparable property is \$1,500 for 1-bedroom and over \$2,000 for 2 or 3-bedroom apartments.

6 - Manufactured Housing Park Zoning

Submitted By: Emily Hamilton

Common Theme: Planning

Recommendation:

Policymakers across Montana should prioritize zoning more land for new mobile home parks, and the state should require localities to zone some land for manufactured housing parks. Because developing manufactured housing parks generally does not require subdividing parcels, new manufactured housing parks should not be required to go through subdivision review.

Rationale:

Manufactured housing is the least expensive way to deliver a unit of new housing today. However, due in part to regulatory barriers to siting manufactured housing, these homes are becoming a smaller share of the nation's total housing stock. In 1973, manufactured housing made up one-third of the nation's new housing units, but they have made up less than one-tenth of new housing in recent years.

Following the 2023 legislative session, Montana is one of two states that both requires localities to treat manufactured housing equal to site-built housing and preempts aesthetic requirements that can make manufactured housing infeasible to build even where it's technically legal. However, zoning restrictions are still a barrier to manufactured housing as a source of low-cost housing. As manufactured housing parks are redeveloped, localities often do not zone new land for manufactured housing parks, leading to a reduction in the amount of land where manufactured housing is viable. Allowing more manufactured housing parks to be developed in Montana would improve opportunities for more people to live in the least expensive type of housing.

Barriers Addressed:

Montana faces a severe shortage of starter houses and houses affordable to low- and moderate-income residents. Manufactured housing is the country's largest source of unsubsidized housing that is affordable to these groups.

Key Strategies:

State legislation should require localities to zone for manufactured housing parks and streamline these parks' permit approval process by exempting manufactured housing parks from subdivision review.

Dissenting Opinions: NA

Supporting Graphics: NA

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