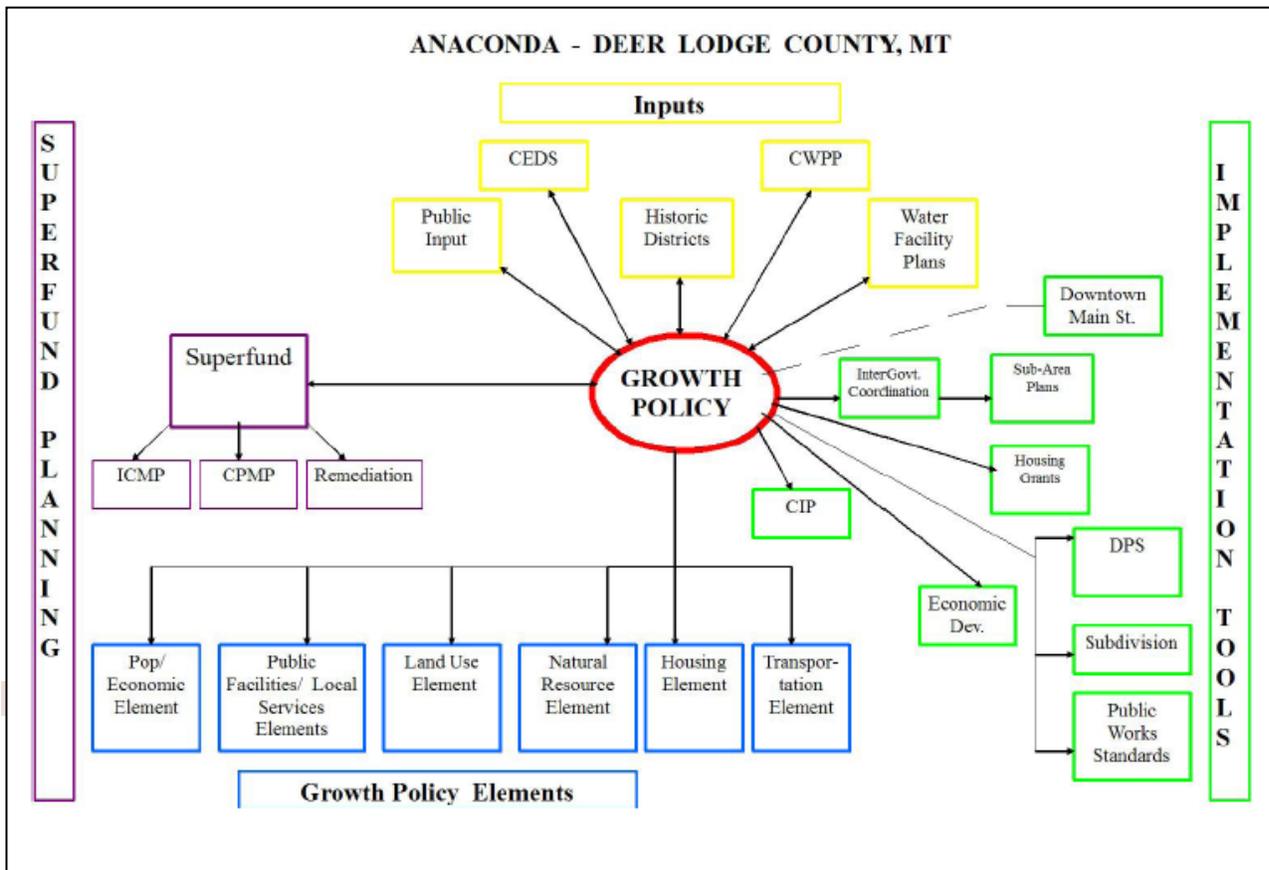


# IMPLEMENTATION

## PART 1: INTRODUCTION

A Growth Policy is a broad body of public policy that addresses growth and development issues through specific topic areas, or elements. The Implementation element describes how the policies and recommendations contained in the first seven elements will be carried out. Therefore, as required by Montana law, this element of the Growth Policy will set forth the programs and strategies for its implementation. This element will describe the types of programs, capital improvement planning, financial strategies, and regulatory approaches that will all serve to implement the Growth Policy over time. It must be stressed from the very outset that **all** programs, plans, and strategies are on the table for implementation. Just as a Growth Policy does not consist of a single element, its implementation cannot consist of a single program or strategy. The following diagram indicates how all the various components of a growth policy and implementation tools interact with one another.

Figure 1: Growth Policy Implementation Diagram



## **PART 2: IMPLEMENTATION MEASURES**

This section describes the various tools that are part of the implementation strategy to carry out the recommendations of Growth Policy.

### 1. Regulations

The Development Permit System (DPS) and the County subdivision regulations are the primary tools for regulating land development in the County. The subdivision ordinance regulates the subdivision of land, platting of lots, dedication of new roads, and the provision of infrastructure improvements. The 'sub regs' contain procedures for the preparation, review, and filing of subdivision documents. The Development Permit System establishes development districts with specific standards for Anaconda and for the Georgetown Lake area. Lakeshore protection standards for Georgetown Lake are also included. In addition, the DPS establishes several rural development districts that have no specific regulations. These districts such as Lost Creek, West Valley, and Big Hole, mostly coincide with the Planning Areas established in the 2005 Growth Policy, and carried through to this comprehensive update.

Land use regulations should to be updated to reflect the recommendations in the Growth Policy and to comply with State legislative mandates and current judicial rulings. Examples of Growth Policy recommendations to amend the DPS include adding provisions for planned unit developments, neighborhood conservation districts, standards for critical areas protection, and provisions for accessory residential units (ARUs).

### 2. Administrative Procedures

Many of the Plan's goals can be advanced through modifying and improving administrative procedures. This may include updating forms, creating checklists and other user aids, reviewing notification procedures, distribution of plans, and examining timelines for reviews. The overall aim of these techniques is to promote more efficient use of staff resources, ensure comprehensive reviews and provide responsive service to the community. The county recently created a developers packet for two county projects and continues to develop procedures to more effectively respond to the unique needs created by the remediation and redevelopment of land in the Superfund site.

### 3. Planning Studies & Programs

Some areas and issues require more detailed studies and special strategies than can be reasonably provided in a growth policy. These areas can be designated as a special area study or neighborhood plan that will be the subject of a separate planning process with targeted strategies specific to that area. The East Anaconda Reuse Plan is a special area plan that was adopted as an amendment to the Growth Policy and is adopted by reference in this update. The Reuse Plan calls for economic development, public/community uses, infrastructure improvements, and housing. The "Community Wildfire Protection Plan" and "Multi-Hazard Mitigation Plan" are examples of issue driven studies. Studies recommended by Growth Policy include the Washoe Master Park Plan (already underway), an aquifer study for the West Valley area, and finalization of the Trails Master Plan

### 4. State & Federal Programs/Technical Assistance/Partnerships

There are a variety of State and Federal programs available to help localities achieve the goals of the plan. The U.S. Environmental Protection Agency (EPA) is a key player in the remediation and

redevelopment of the Superfund site. Other commonly used programs include the Community Development Block Grant program, Treasure State Endowment Program, Community Technical Assistance Program, State Historic Preservation grants, and Safe-Routes to Schools grants. The Intergovernmental Coordination section of this Element lists a number of state, federal and non-profit agencies that the County partners with on various programs.

#### 5. Education Programs & Public Outreach

Many planning objectives can be accomplished through voluntary efforts by citizens in the community. Communicating the Growth Policy's vision to the public is critical. Education and outreach efforts include disseminating information through publications, brochures, news releases, service announcements, displays, and other public relations methods. It also means obtaining regular feedback through task forces, surveys, public meetings, and customer service questionnaires. The Growth Policy recommends an education campaign with Georgetown Lake homeowners regarding water quality issues.

#### 6. Conservation & Other Easements

Conservation easements are established when the property owner grants an easement to a nonprofit group (land trust, conservation group ...) or public agency (Fish, Wildlife and Parks, ...) to guarantee its preservation. Conservation easements can be used to preserve open space, wildlife habitat, and/or environmentally sensitive areas. The property owner retains use of the land and receives tax benefits (Sec. 76-6-101, MCA). The Land Use Element contains a map of existing conservation easements in the County. Additionally, the Growth Policy recommends obtaining rights-of-way and/or easements for new trails in accordance with the Master Trails Plan.

#### 7. Design Guidelines

Design guidelines describe and illustrate site plan and design techniques, features, and treatments that promote good community compatible design and environmentally sound practices. Guidelines can be an educational tool with voluntary compliance or may be adopted as part of a regulatory system. The "Anaconda Revitalization Project" contains design recommendations for downtown. The Growth Policy also recommends developing urban design standards for gateway commercial areas and promoting green designs for new buildings.

#### 8. Inter-Local Agreements/Development Agreements

Inter-local agreements have been used among cities, counties, the state, sewer districts, rural fire districts and other governmental and non-governmental agencies. These agreements are recognized under the Montana planning statutes as a tool for the creation of joint planning boards, mutual aid agreements, code enforcement, road maintenance, law enforcement, and governmental needs. A development agreement enumerates responsibilities for public improvements between local governments and developers. A memorandum of understanding (MOU) can be used as a tool to set forth specific obligations, agreements, and cooperative efforts between parties, either public or private.

#### 10. Sustainability Guidelines

More communities are establishing sustainability guidelines that promote principles of smart growth, conservation and energy efficiency. In 2009, EPA, HUD, and the US Dept. of Transportation entered into the "Sustainable Community Partnership" that established livability principles that will become the basis for evaluating new programs and funding initiatives. The East Anaconda Reuse Plan contains Sustainability Principles that are guiding the redevelopment of this study area.

## **PART 3: PUBLIC INFRASTRUCTURE STATEMENT**

### 1. Capital Improvement Plan

Anaconda-Deer Lodge County conducts capital improvement planning on both a county-wide and department by department basis. The county-wide CIP was adopted in 2002 by resolution of the Board of County Commissioners, and is scheduled to be updated in 2011.

"A Capital Improvements Plan (CIP) is a budgeting and financial tool used by a local governing body to establish public works rehabilitation and maintenance priorities and to establish funding for repairs and improvements. The CIP includes planning, setting priorities, effective public works management, financial management, and community decision process. A CIP consists of five basic elements:

- 1) inventory and evaluation of existing conditions for each facility (needs assessment);
- 2) prioritization of improvement needs for each public facility and prioritization of the needs for the entire infrastructure;
- 3) identification of monetary options that can be used to meet the needs;
- 4) establishment of a time schedule that matches available funds to the improvements required to meet the system needs; and
- 5) a brief written document (the CIP which is formally adopted by the governing body by resolution or by ordinance."

(Source: Montana Department of Commerce, The Mini Capital Improvements Plan for Small Towns)

### 2. Facility Plans

The County has completed or initiated the following facility plans in order to identify existing needs and future improvements to accommodate growth. The plans are summarized elsewhere in this Growth Policy and are listed below.

- West Valley Water & Sewer Feasibility Study – 2000
- Opportunity Water & Sewer Feasibility Study – 2000
- Final Report for the Preliminary Engineering Report Modeling Study Amendment - March 2009
- Anaconda-Deer Lodge County Storm Water Monitoring and Assessment Study – 2010
- Trail Master Plan - 2009

### 3. Funding Resources

Following is a summary of financing mechanisms that may be used to fund infrastructure improvements.

- Public Works Program - Economic Development Administration - The Economic Development Administration (EDA) is an agency within the U.S. Department of Commerce. The purpose of the Public Works Program is to assist communities with the funding of public works and development facilities that contribute to the creation or retention of private sector jobs and to the alleviation of unemployment and underemployment. Grants are awarded up to a participation level of 80 percent but the average EDA grant covers approximately 50 percent of project costs. Acceptable sources of match include cash, local general obligation or revenue bonds, Community Development Block Grants, TSEP grants and loans, entitlement funds, Rural Development loans and other public and private financing, including donations.
- Community Transportation Enhancement Program - Under 23 USC 133 (d) (2) (Federal Code) 10

percent of the Surface Transportation Program monies are awarded to each state for transportation enhancements. Montana is unique in that enhancements are made available to communities under the Community Transportation Enhancement Program (CTEP) administered by the Montana Department of Transportation.

- State Fuel Tax— Under 15-70-101, MCA, Montana assesses a tax of \$.27 per gallon on gasoline and diesel fuel used for transportation purposes. Each county and incorporated city and town receives a portion of the total tax funds allocated to cities and towns based on:
  - 1) The ratio of the population within each county or city and town to the total population in all cities and towns in the State;
  - 2) The ratio of the road or street mileage within each county or city and town to the total street mileage in the State. The street mileage is exclusive of the Interstate, National Highway, and Primary Systems.

All fuel tax funds allocated to local governments must be used for the construction, reconstruction, maintenance, and repair of rural roads or city streets and alleys. Priorities for the use of these funds are established by the local governments receiving them.

- Debt Financing – County can make use of various kinds of debt financing to fund urban renewal projects. These include general obligation bonds, special improvement district bonds and revenue bonds as well as Tax Increment Financing Bonds. Debt financing enables local governments to finance major infrastructure projects using future revenue from special assessments, user fees, and other forms of revenue. Under 7-7-4101, MCA, a city or town council has power to incur indebtedness for a variety of infrastructure projects by borrowing money, issuing bonds, issuing notes, entering into leases, entering into lease-purchase agreements, or entering into installment purchase contracts for the following purposes:
- Special Improvement Districts (SIDs) — Under 7-12-4101, MCA, cities and towns can create special improvement districts that assess properties within the district for infrastructure improvements. Such improvements may include public streets and roads, sidewalks, curbs, gutters, parks, storm water system components, and sewer and water systems. The MCA even allows SIDS for alternative energy production facilities’.
- General Obligation Bonds - General obligation bonds are backed by the full faith and credit of the city and must be approved by the voters in an election. General obligation bonds are generally payable from ad valorem taxes (based on the value of property) and expressed in mills. General obligation bonds are attractive to bond buyers because they have voter approval and are not as vulnerable to fluctuations in revenue. Cities are assigned a bond debt limit based on a percentage of taxable valuation. General obligation bonds must fall within this limit.
- Revenue Bonds—Under Sec. 7-7-4401, MCA, a city or town may issue revenue bonds to finance any project or activity authorized. Revenue Bonds are paid back with revenue sources such as TIF funds, fees, and leases or sale of property.
- Treasure State Endowment Program (Montana Department of Commerce) - The Montana Treasure State Endowment Program (TSEP) is a state-funded program, authorized under 90-6-701 through 710, MCA, and is administered by the Montana Department of Commerce (MDOC). It is designed to assist local governments in financing capital improvements to sewer and water facilities. Grant requests cannot exceed \$500,000 and the local government must typically provide a dollar for dollar match that can include other grant funds. Matching funds can be public or private funds provided by a TSEP applicant to directly support the cost of eligible project activities.
- Community Development Block Grant (CDBG) - This federal program provides annual grants on a formula basis to entitled cities and counties to develop viable urban communities by providing

decent housing and a suitable living environment, and by expanding economic opportunities, principally for low- and moderate-income persons. The funds are administered by the Montana Department of Commerce. Non-entitlement communities, under 50,000 in population, must apply for grants on a competitive basis. CDBG funds may be used for activities which include, but are not limited to:

1. Acquisition of real property;
  2. Relocation and demolition;
  3. Rehabilitation of residential and non-residential structures;
  4. Construction of public facilities and improvements, such as water and sewer
  5. Facilities, streets, neighborhood centers, and the conversion of school buildings 6. Public services, within certain limits;
  7. Activities relating to energy conservation and renewable energy resources; and
  8. Provision of assistance to profit-motivated businesses to carry out economic development and job creation/retention activities.
- Tax Increment Financing –Tax Increment Finance Districts (TIF) and Tax Increment Finance Industrial Districts (TIFID) can be established under the provisions of MCA 7-15-4282 through 7-15-4292. The purpose of a TIF/TIFID is to fund infrastructure and other improvements in urban renewal areas and industrial districts. When a TIF/TIFID is created, a base taxable value for the district is established. The base taxable value is the taxable value of all property within the district boundary at the time the TIF/TIFID is established. In following years, the amount of taxable value within the boundary of the district should increase. The incremental taxable value for a TIF/TIFID is the amount by which the taxable value exceeds the base taxable value. The amount of property tax realized by applying the mill levies of taxing jurisdictions present in the district against the incremental taxable value is called the tax increment and is distributed to the district. There is a downtown TIF District and two TIFIDs in the county.
  - Natural Resource Damage (NRD) Program- NRD is a program set up under Superfund (CERCLA) for assessment and restoration of damage to natural resources resulting from the release of hazardous substances, pollution, or contaminants that could endanger human health and/or the environment. "Natural resources" are broadly defined to include "land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources..." that are held in trust for the public. NRD are for injury to, destruction of, or loss of natural resources, including the reasonable costs of a damage assessment. The measure of damages is the cost of restoring injured resources to their baseline condition, compensation for the interim loss of injured resources pending recovery, and the reasonable cost of a damage assessment. ADLC and other agencies and organizations in the County have been successful obtaining NRD funding for important resource projects.
  - US Environmental Protection Agency/Atlantic Richfield Co. (Superfund)- This funding source has provided resources to the County for planning, economic development, remediation, and other related work since the area was first designated a Superfund site in 1983. Additional detail about the future potential for this funding source will be provided later in the Growth Policy process.

## **PART 4: IMPLEMENTATION TIMETABLE**

The Montana Code Annotated requires that the Growth Policy set forth “a timetable for implementing the growth policy”. The Growth Policy is generally based on a 20-year time horizon, but the Growth Policy is on-going and is dynamic---and it serves a dynamic community. Therefore, this Growth Policy will be reviewed every two years and revised as necessary. Implementation will be on-going as is the community planning process.

The Growth Policy recommends numerous programs and new and amended regulations to carry out the goals and vision of the County and its various communities. Initiating and carrying out these programs and regulations will take time and resources, and therefore, priorities must be carefully set. It is recommended that immediately upon adoption of this Growth Policy, the Board of County Commissioners, in consultation with the Planning Board and Planning Director, establish a priority list of programs and regulations for the next two years. Upon the biennial review of the Growth Policy by the Planning Board (as set forth in this element under **Periodic Review**), implementation priorities shall again be set for the next two-year period. Initially, it is recommended that implementation priorities include:

- Comprehensive rewrite of the Development Permit System. The DPS was adopted in 1992, and has been amended from time to time, mostly in response to specific development or neighborhood issues. However, there has never been a **comprehensive** review and amendment to these regulations. In the current document, much of the terminology is outdated, and it contains references to state and federal laws that have been superseded. Permitted and special uses often reference the Standard Land Use Coding Manual (SLUC), which also has been superseded. Critical areas and hillside development standards must also be incorporated into the DPS. Recommended DPS amendments are included in the Land Use and Natural Resources elements of this Growth Policy.
- Subdivision Regulations. The current ADLC Subdivision Regulations, like most in Montana, are based on the 2005 model subdivision regulations developed by the State of Montana in conjunction with the University of Montana School of Law. Amendments to the Montana Subdivision and Platting Act since 2005 must be accounted for, and several procedural, submittal, and review steps should be reexamined.
- Institutional Controls Plan and Community Protective Measures Program. The ICP and CPMP documents must be finalized, and where appropriate, integrated with the Development Permit System and/or other County regulations, documents, and maintenance and inspection procedures.
- General Utility/Street Construction and Repair (GUS) Permit. For years, street construction and repair---mostly be private contractors replacing or repairing water or sewer service lines---has been problematic for the County. After service lines are replaced, the street surface, sidewalks, and even street lights and associated wiring, are often left in a state of disrepair. The GUS permit would set bonding requirements and provide a uniform set of standards for working in public rights-of-way for properly repairing public infrastructure.

## **PART 5: GROWTH POLICY AMENDMENTS & UPDATES**

### 1. Periodic Review

A Growth Policy is not a static, end state document. Communities are dynamic---they change over time--- and a Growth Policy must be as dynamic and adaptable as the community it serves. Because of the on-going efforts to implement various aspects of the Superfund remediation program and active economic development efforts, **it is strongly recommended that this Growth Policy be thoroughly reviewed every two years, and updated as needed.** In two years from the time this Growth Policy is adopted, and every two years thereafter, the Planning Board shall conduct a review of the Growth Policy. This review shall analyze the Policy's effectiveness in working toward community goals and in carrying out its vision. The review shall, at a minimum, include the following:

- Revisit trends and projections update if new data becomes available.
- Note which "Recommended Actions" have been, or are being, carried out. Analyze the "Recommended Action's" effectiveness in addressing the issue(s) for which it was intended.
- Document any "unintended consequences" that may be occurring as a result of Policies and Recommended Actions.
- Note programs which have been completed or begun since adoption or the most recent review. Note priority programs (if any) that have not yet begun.
- Check for changes in community conditions, demographics, economics, and other factors that would require revisions to the Growth Policy.
- Note any new issues which may have arisen in the community since adoption or most recent review, and recommend the appropriate process through which to address those issues.

The Board shall submit a written report of its finding to the County Commission. Should the Board find that revisions are warranted, the Board shall so recommend to the Commission, and shall prepare a scope of work and schedule for revisions to be made. All reviews, revisions, updates, and all procedures shall be in accordance with applicable Montana law.

### 2. Amendments

This Growth Policy and regulations shall provide that any person may apply for an amendment to the Growth Policy. All procedures and criteria for text and map amendments shall be set forth in the land development regulations, but generally those criteria shall include:

- A specific error was made in the Growth Policy that necessitates an amendment to the text or maps in order to preserve a property right, or to preserve or achieve equal protection under the law. (Example: A property may have been treated differently than a similarly situated property in the same general area under the same general conditions.)
- Community conditions have changed to the degree that amendments to maps and/or text will facilitate achieving community goals and the overall vision of the citizens of ADLC. (Example:

Increased infrastructure capacity may render a property or an entire area more advantageous for additional community growth.)

- There is a clear, extraordinary community benefit in terms of achieving goals, resolving problems or issues, or furthering the realization of the ADLC community vision. (Example: A proposed amendment may produce desired community benefits such as affordable housing, bike and pedestrian trails, or a needed transportation corridor.)

### 3. Neighborhood Plans

As set forth in 76-1-601(4), a growth policy **may** contain one or more neighborhood plans. However, the law contains no specific description of a neighborhood or of its contents. This Growth Policy and the local land development regulations shall provide for the formulation and application for consideration and approval of neighborhood plans. The neighborhood plan shall be an option for refining and/or amending the Growth Policy. It shall generally be used for areas that are already developed, and shall generally be available for neighborhood residents to formulate comprehensive plans for the preservation, enhancement, or transition of existing neighborhoods. Neighborhood plans may also be initiated by the City. All procedures, requirements, and criteria for neighborhood plans shall be set forth in the land development regulations, but generally those criteria shall include:

- That the proposed neighborhood plan is a refinement of the Growth Policy in terms of the type and distribution of development, infrastructure, open spaces, and environmental considerations.
- That the proposed neighborhood plan provides **extraordinary** community benefits toward the stated goals of this Growth Policy such as affordable housing, preservation of community/neighborhood character, preservation and/or enhancement of natural resources, provision of open space, or essential and/or desirable community infrastructure.

### 4. Subarea Plans

Subarea plans are a Growth Policy amendment mechanism through which a developer or group of developers may plan for the orderly development of primarily undeveloped land. Like neighborhood plans, the requirements and procedures for submittal and review of subarea plans will be set forth in the land development regulations. Generally however, in order to ensure compliance with this Growth Policy, subarea plans shall be subject to a strict community benefit test that includes:

- The subarea plan must substantially further the goals and vision of the Growth Policy.
- The plan must provide of substantial community benefits such as affordable housing, open space, protection of air and water quality, protection and/or enhancement of critical areas, provide for essential public facilities including parks, ped/bikeways, streets, and school sites as needed and as applicable to each individual subarea plan.
- All on and off site improvements must be provided for, including but not limited to streets, utilities, drainage, and bike/pedestrian facilities.
- Any and all environmental constraints and natural hazards on site shall be avoided or effectively mitigated.
- Any and all adverse impacts upon existing neighborhoods shall be avoided or effectively mitigated. These shall include but may not be limited to traffic, noise, and overburdening of public facilities and services.

## PART 6: INTERGOVERNMENTAL COORDINATION

The Montana Code Annotated (MCA) requires the following in regards to intergovernmental coordination:

### **76-1-601. Growth policy -- contents.**

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

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

Anaconda – Deer Lodge County is a city-county consolidated government formed under MCA 7-3-12. Consequently, the Growth Policy covers the entire county including the Anaconda urban area. The County Planning Board reviews development applications for the entire county makes recommendation to the County Commission. There are no other local jurisdictions.

No single government agency, however, can address all of the issues in the Growth Policy Plan. Many agencies offer various types of public services and still more are involved in land use, environmental, and transportation issues. Their activities all need to be coordinated to promote efficient operations, avoid duplication and minimize the potential for conflicts. There are already many examples of coordination and cooperation between agencies. These include sharing information, regular meetings between public officials of agencies, and inviting comment on development proposals.

In addition to coordination of activities, some issues require a joint response from multiple agencies. Agencies may partner on capital construction projects, share staff, conduct joint planning processes or enter intergovernmental agreements on a variety of issues. In some instances, there are regional agencies with representatives from various jurisdictions to provide specific services.

The following table lists other agencies that have operations in Anaconda Deer-Lodge County and activities that will promote intergovernmental coordination.

**Table 1: Intergovernmental Coordination**

Surrounding Counties	Big Hole Conservation Development Standards and Permitting Process (ADLC, Butte-Silver Bow, Madison, and Beaverhead County)  Tri-County Environmental Health Services (ADLC, Granite County & Powell County)
Anaconda Local Development Corporation & Headwaters RC&D	These agencies engage in economic development planning for the County. Coordinate on information sharing and assist with land use issues for potential new businesses.
School District #10	Coordinate on new subdivisions. Shared use of facilities. Cooperate on youth leadership programs
Housing Authority of Anaconda	Coordinate on housing programs & land use issues that may impact existing housing projects.

Deer Lodge National Forest	Participate in planning efforts for the National Forest. Seek input on developments that may impact the National Forest. Information sharing.
State Agencies	<p>Information sharing, public participation, coordinated review processes with the following agencies:</p> <p>Department of Environmental Quality reviews water &amp; sewer systems. Developments must comply with variety of State regulations. Hazardous waste &amp; solid waste regulations. Water &amp; Air Quality programs &amp; permits. TMDL planning. Gravel pit permits.</p> <p>Montana Department of Transportation maintains State Highways in the County. CTEP. Safe Routes to Schools.</p> <p>Department of Natural Resources and Conservation. Deals with water rights and groundwater issues. Wildland Fire Fighting.</p> <p>Fish, Wildlife, &amp; Parks. Manages wildlife areas &amp; state parks. Comments on subdivision proposals.</p> <p>State Historic Preservation Office (SHPO) – Assist with administration of historic districts.</p> <p>Department of Corrections. Operates several facilities in the county. Coordinate on provision of local services and infrastructure upgrades for facilities.</p>
Watershed Groups	County representative to attend meetings, information sharing, distribute educational materials to land owners, notify of pending development reviews, invite input on land development regs
Utilities	Northwestern Energy, Vigilante Electric Coop, Qwest Telephone, Bresnan Cable, Solid Waste providers. Information sharing, notify of pending development, invite input on development regs.
U.S. Environmental Protection Agency	Super Fund coordination & Record of Decision. Wetlands regulations. Hazardous Waste handling. Information sharing. Distribution of educational materials.
Fire Districts	Coordination through the County Department of Emergency Services. Notify of pending developments. Invite input on land development regs
Regional agencies. (USDA Rural Development Office, USDA Soil Conservation Service, Area Council of Aging, Human Resource Council District 12...)	Share planning information. Invite comments during drafting stages of the plan and for development review. Coordinate on regional initiatives.

## PART 7: SUBDIVISION REVIEW

Subdivision is the division of land that creates one or more parcels for the purpose of selling, renting, leasing or conveying the land. In Montana, subdivisions that create parcels containing less than 160 acres (excluding right-of-ways) are subject to the Montana Subdivision and Platting Act (Title 76, Chapter 3, MCA) In addition to state law, subdivisions are subject to local regulations. Under the MSPA, land division may fall into one of three categories that do not require local government subdivision review.

1. Divisions Exempt from Local Approval but Requiring a Survey - Land divisions that are exempt from local government review and approval as subdivisions, but which must be surveyed and a certificate a survey filed (without local subdivision approval) before title can be transferred.

- Any parcel 160 acres or larger in size that cannot be described as consisting of 1/32 or larger aliquot parts of a section.

- Parcels less than 160 acres but are exempt under provisions for a family transfer, agricultural purpose, or relocation of a common boundary line.

2. Divisions Exempt from Subdivision Review and Surveying

Parcels 160 acres or larger and parcels exempt under family transfer, or agricultural purpose that can be described as consisting of 1/32 or larger aliquot parts of a section.

Divisions of land created by a court order, eminent domain, agricultural leases, oil, gas, or water interest, and other miscellaneous exemptions.

3. Amended Plats

Within a platted subdivision the relocation of common boundaries and the aggregation of five or fewer aggregated lots may be accomplished without approval of the governing body but must be surveyed.

Among the requirements in Section 76-1-601 of the Montana Code regarding requirements for growth policies are the following:

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

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

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

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

The criteria in 76-3-608 (3)(a) will be evaluated in the staff report to the Planning Board and considered as part of the deliberations. Definition of criteria will be reviewed in detail as part of the subdivision regulation updates but will generally reflected the recommended definitions as follows:

#### 4. Definitions of criteria in 76-606(3)(a)

**Agriculture** - Montana Code Annotated contains definitions for the words "agriculture" and "agricultural" as follows:

41-2-103, MCA Definitions. As used in this part, the following definitions apply:

"Agriculture" means: (a) all aspects of farming, including the cultivation and tillage of the soil; (b)(i) dairying; and (ii) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, including commodities defined as agricultural commodities in the federal Agricultural Marketing Act (12 U.S.C. 1141j(g)); (c) the raising of livestock, bees, fur-bearing animals, or poultry; and (d) any practices, including forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market or delivery to storage, to market, or to carriers for transportation market.

87-8-701, MCA Definitions. Unless the context requires otherwise, in this part the following definitions apply: (1) "Agricultural and food product" includes a horticultural, viticultural, dairy, livestock, poultry, bee, other farm or garden product, fish or fishery product, and other foods.

**Agricultural Water User Facilities:** Those facilities which provide water for agricultural land as defined in 15-7-202, MCA, or which provide water for the production of agricultural products as defined in 15-1-101, MCA including, but not limited to ditches, pipes, and head gates.

**Local Services:** Any and all services or facilities that local government entities are authorized to provide.

**Natural Environment:** The physical conditions which exist within a given area, including land, air, water, mineral, flora, fauna, noise, and objects of historic or aesthetic significance.

**Wildlife:** Living things which are neither human nor domesticated.

**Wildlife Habitat:** Place or type of site where wildlife naturally lives and grows.

**Public Health and Safety:** A condition of optimal well-being, free from danger, risk, or injury for a community at large, or for all people, not merely for the welfare of a specific individual or a small class of persons.

#### 5. Evaluation of Subdivisions

As required by 76-3-608(3)(A) MCA—Criteria for Local Government Review, and as the primary criteria, all proposed subdivisions are evaluated for their effect on agriculture, agricultural water user facilities, local services, natural environment, wildlife and wildlife habitat, and public health and safety, along with all other elements of the Growth Policy. The purpose of this review is to determine if there are significant, unmitigated, adverse impacts. The governing body can deny a subdivision if adverse impacts associated with the development are not appropriately mitigated.

The following six criteria are examples of items considered in evaluating the overall impact of a proposed

subdivision. These examples do not reflect all potential items, but they do include a preponderance of the items under consideration, and some items may not apply to all subdivisions. In addition, some proposals may require evaluation of the effects of other items not included in these examples on these criteria. It is the subdivider's responsibility to document proposed mitigation of any adverse impacts in these critical areas.

**Effect on agriculture, including but not limited to:**

- Historic and current agricultural productivity and profitability
- Impact on productivity of adjacent farm operations (e.g., access for agricultural machinery, water available for irrigation or livestock)
- Prime agricultural land (soils as defined by the Natural Resources Conservation Services, NRCS)
- Prime rangeland (soils as defined by NRCS)

**Effect on agricultural water user facilities, including but not limited to:**

- Water availability to agricultural water users
- Access for maintenance of facilities
- Reasonable and prudent precautions to prevent injury to children who may be attracted to play in the area of the agricultural water user facility
- Liability resulting from proximity to agricultural water user facilities (e.g., blowouts, flooding, artificially elevated high groundwater)
- Impact on owners of the agricultural water user facility

**Effect on local services, including but not limited to:**

- Logical expansion of local services and public facilities
- Level of service to meet demand.
- Provision of adequate local services and public facilities simultaneous or prior to onset of impact
- Location and provision of multi-modal transportation facilities; including pedestrian and bicycle safety measures, and interconnectivity
- Fiscal impact relating to cost of local services and public facilities, for all stages of development including projected future subdivision

**Effect on natural environment, including but not limited to:**

- Runoff reaching surface waters (e.g., streams, rivers, riparian areas)
- Impacts on ground water supply, quantity, and quality
- Impacts on air quality
- Impacts on scenic resources
- Noxious weeds
- Wetlands not covered under nationwide permits
- Light pollution on adjacent property

**Effect on wildlife and wildlife habitat, including but not limited to:**

- Loss of significant, important and critical habitat, as defined.
- Impacts on significant, important and critical habitat.

**Effect on public health and safety, including but not limited to:**

- Creation of potential man-made hazards (e.g. unsafe road intersection, development in wildland residential interface fire areas)
- Demonstration of freedom from natural hazards (e.g. wildfire, flooding, steep slopes)
- Existing potential man-made hazards (e.g. high pressure gas lines, lack of fire protection, cumulative impacts)
- Traffic safety
- Emergency vehicle access
- Emergency medical and law enforcement response time
- Cumulative impacts on groundwater from individual sewage disposal systems or individual wells
- Any other item that endangers public health and safety

**6. Public Hearings**

Public hearings follow a general process that allows an opportunity for public input. The general steps are as follows:

- 1) Introduce public hearing.
- 2) Planning Department staff report.
- 3) Applicant presentation.
- 4) Public testimony.
- 5) Applicant response.
- 6) Close public testimony.
- 7) Board discussion.
- 8) Recommendation or decision.

Additional public comment may not be submitted after the close of public testimony, unless additional information is submitted by the applicant that substantially changes the application and the governing body specifically requests additional public comment.

Board determination of conformance with the Growth Policy is based on all other elements of the Growth Policy, including the evaluation of the criteria listed in 76-3-608(3)(A) MCA—Criteria for Local Government Review.