

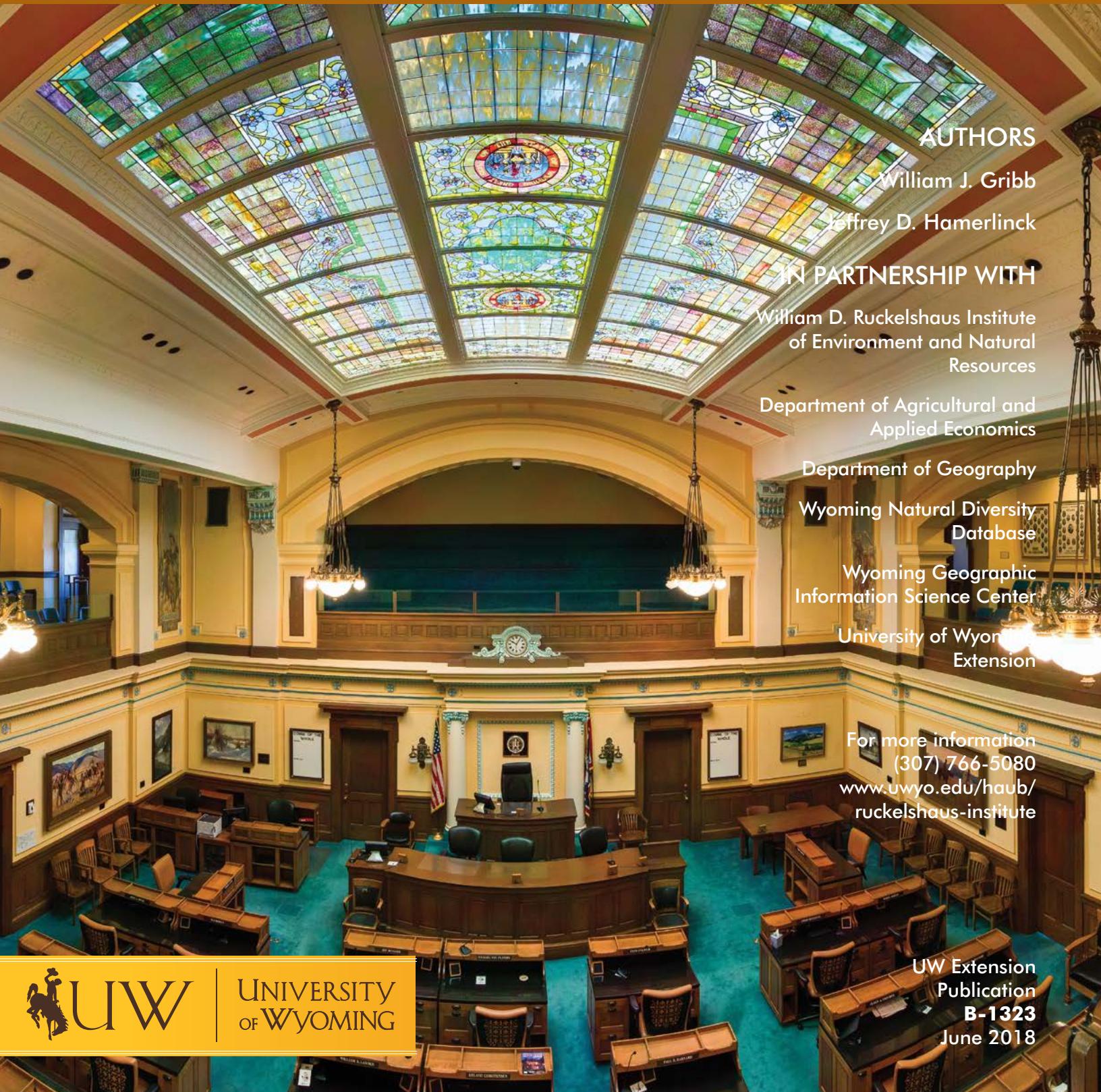


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# The Legal Basis of Planning in Wyoming

WYOMING OPEN SPACES INITIATIVE



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# The Legal Basis of Planning in Wyoming

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Planning is a process by which citizens and leaders identify and pursue the vision, goals, and objectives for their community and its future. Planning allows the local community to efficiently and effectively administer government services based on the physical layout of the community and its needs, and by anticipating future changes in population, employment, and land use (Hamerlinck and Gribb 2016). Though planning processes may vary across communities and jurisdictions, the overarching goals of planning in Wyoming can be traced to the enabling acts of legislation that afforded the state's counties and municipalities the authority to plan and self-govern. Ultimately, however, it is the decision of the community and its citizens to decide if, when, and how to plan.

This publication provides a basic background of the legal foundation upon which planning is built in Wyoming. It is the third in a series of articles on land use and community planning in Wyoming.

## HISTORICAL CONTEXT AND U.S. CONSTITUTIONAL FRAMEWORK

Contrary to the idea that controls on land use were a 20<sup>th</sup> century creation, the legal basis for land-use planning in the United States emerged early in colonial times, with significant influence from English Common Law. This legacy includes strong support for private property rights balanced against the prohibition of activities deemed to be nuisances that negatively impact one's neighbors, and the legitimacy of local government regulations to control building construction and the location of potentially harmful land uses (Nolon 2007).

At the federal level, the U.S. Constitution established a national government with certain delegated powers. The Tenth Amendment of the U.S. Constitution clarifies that any powers not delegated to the federal government are reserved to the states (Box 1). Among the most important of these powers is the police power that permits state legislatures to enact laws that protect the public health, safety, and welfare of the state's citizens, including regulating how private land is used (Levy 2017).

"The power to control private land use is part of the states' police power and it is regarded as a reserved power of the states, subject to Congress's power to regulate interstate commerce."

(Source: Nolon 2007)



Another important source of authority for federal and local governments in the land-use planning process is the power of eminent domain (Box 2). Eminent domain refers to the inherent power of government to acquire private property without consent for a legitimate public use, for example the construction of roads, railroads, bridges, or pipelines (Levy 2017). The Fifth Amendment of the U.S. Constitution restrains the federal government's right to exercise the power of eminent domain subject to reasonable compensation for the landowner from which the property is taken, and the Fourteenth Amendment extends the requirement of just compensation to the states. The guarantees provided by the Fourteenth Amendment require courts to strike down land-use laws deemed unreasonable or arbitrary, that fail to serve a legitimate public purpose, or that create land-use categories that discriminate between classes of landowners unless those categories are determined to rationally relate to a legitimate public purpose.

By protecting individual freedom of speech, the right to assemble, and the right to worship, the First Amendment of the U.S. Constitution limits local land-use regulations that dictate, for example, the content of signs and construction of houses of worship and their related activities (Nolon 2007).

### Police Power and Enabling Legislation

The most essential source of authority for state and local governments in the land-use planning process is the “police power”—broadly defined as the inherent power of the state and its local governments to enact regulations to protect, support, and advance the health, safety, and welfare of the public. Police power is generally limited only by federal and state constitutional provisions or limitations imposed by state legislatures. Local governments are only permitted to exercise this power if it has been expressly provided to them by the state. In Wyoming, municipalities are granted by constitutional amendment the power to self-



### BOX 1: FOUR CONSTITUTIONAL AMENDMENTS THAT INFLUENCE LAND-USE PLANNING

- **The First Amendment of the U.S. Constitution** protects an individual’s freedom of speech, the right to assemble, and the right to worship.
- **The Fifth Amendment of the U.S. Constitution** affirms that private property cannot be taken for public use without just compensation.
- **The Tenth Amendment of the U.S. Constitution** reserves to the states all powers not delegated to the federal government, including police power.
- **The Fourteenth Amendment of the U.S. Constitution** offers equal protection and guarantees no person be deprived of life, liberty, or property, without due process of law.

govern with home rule authority (Box 3), while counties are limited to powers delegated by the state legislature (Wyoming Association of Municipalities 2010). In both cases, police power is extended to local municipal and county governments through the State Constitution and Wyoming State Statutes.

Like many other states, Wyoming's enabling legislation for planning was designed after the *Standard State Zoning Enabling Act*—a “model” act published by the U.S. Department of Commerce in 1926 intended to serve as a guide that states could follow to establish their own laws to regulate land use. The standards set forth

## BOX 2: EMINENT DOMAIN AND THE TAKINGS ISSUE

Eminent domain refers to the power of government to acquire private property for the purpose of putting the land to public use, for example the extension of a road or creation of a new park. When a government exercises the power of eminent domain, the action results in a “possessory taking” of private property, which may be either permanent (i.e., via eminent domain) or temporary (e.g., the use of private property by local government to store building materials during a road construction project). In either case, just compensation must be paid by the government to the property owner, with the value dependent upon both the time and magnitude of the taking.

Although legal, eminent domain can be controversial, in part because of concerns about government overreach. Unlike possessory takings, which are allowed under eminent domain, regulatory takings result from governmental policies or actions that “go too far” and impose uncompensated losses on a property owner (Levy 2017).

Examples include zoning regulations or passage of local ordinances that significantly decrease the value or usefulness of private property. Like possessory takings, regulatory takings can be either permanent or temporary. Most legal authorities today agree that determining whether certain regulations are unreasonable is a matter of debate (Wright and Gitelman 2000).

Additional concerns arise over disagreement about what constitutes just compensation for a possessory

taking. In a typical scenario, a community intends to build a new road, bridge, or school, but needs to obtain private property to establish the right-of-way or construction site. The Fifth Amendment requires that the government must provide “just compensation” to the owner from which the property was taken. More often than not, the government and property owner will reach an agreement about compensation that satisfies both parties. However, in instances where a property owner

refuses to sell or sets a price beyond the fair market value for the land, the local government may exercise its power of eminent domain, resulting in a condemnation action. In this case, “just compensation” will be determined by a court.

While court cases involving eminent domain often make big headlines, such legal battles, as well as condemnation actions themselves, are actually uncommon. A 2006 statewide survey found that of the approximately 8,500 property

acquisitions reported by public entities and private entities with the delegated authority in Wyoming between 2001 and 2005, only 40 resulted from a condemnation action—less than one-half of one percent of all reported instances (Richards 2006). Among other reasons, condemnation cases are rare because the exercise of eminent domain power is financially expensive for cities and counties, and most elected officials are reluctant to force property owners to sell their land.



### **BOX 3: WHAT IS HOME RULE AUTHORITY?**

Generally speaking, home rule authority refers to the delegation of power from the state to its incorporated municipalities. Home rule provides local governments the power to self-govern and establish laws or ordinances in all areas not denied them by a state's constitution. Home rule exists in contrast to Dillon's Rule, which in other states, limits the power of municipal governments to those expressly granted to them by the state.

Home rule authority in Wyoming was established by a 1972 amendment to Article 13, Section 1 of the Wyoming Constitution. The amendment provides municipalities complete power to determine their local affairs by ordinance, subject to state statutes. Despite language in the amendment that asserts "the powers and authority granted to cities and towns ... shall be liberally construed for the purpose of giving the largest measure of self-government to cities and towns," the Wyoming Supreme Court has not directly addressed the implications of home rule in Wyoming, leaving many to contend that Wyoming municipalities have been granted home rule authority in name only.

in the Wyoming enabling act are expressed as "zoning," a regulatory method of controlling land use that establishes districts (or zones) in a town or city to regulate specific uses and characteristics (e.g., residential, commercial, and industrial) and determine which land uses are permitted or prohibited.

### **LOCAL AUTHORITY FOR PLANNING IN WYOMING**

Local land-use planning in Wyoming occurs primarily at the county and municipal levels and consists of three major components: land use and its associated infrastructures (transportation and utilities), services (public health, public safety, education, social services, and recreation) and land development (mainly subdivisions). Here we provide an overview of the specific legislation that affords Wyoming counties and municipalities the power to plan at the local level (Box 4).

#### ***County Planning***

Planning authority at the county level is authorized by Title 18, Chapter 5 of the Wyoming State Statutes ("Planning and Zoning"), and pertains to all unincorporated lands situated outside cities and towns in the county. Under Chapter 5, each board of county commissioners has the power to "regulate and restrict the location and use of buildings and structures and the use, condition of use or occupancy of lands for residence, recreation, agriculture, industry, commerce, public use and other purposes in the unincorporated area of the county" (Wyo. Stat. § 18-5-201).

To accomplish this task, boards of county commissioners have the power to create by resolution a planning and zoning commission composed of five members appointed by the board. If a board of county commissioners decides to establish a planning and zoning commission, the commission is then afforded the power to develop a comprehensive plan and to make recommendations for planning and zoning in the county. All recommendations are subject to public review and require a majority vote of approval by the board of county of commissioners to be adopted (Wyo. Stat. § 18-5-202).

As required by law, all 23 Wyoming counties have adopted a county comprehensive plan or land use plan to help guide them into the future.

#### ***Municipal Planning***

Municipalities refer to incorporated cities and towns as defined by Article 13, Section 1 of the Wyoming State Constitution. Planning authority at the municipal level is covered in Title 15, Chapter 1, Article 5 of the Wyoming State Statutes, entitled "Planning." Under Article 5, cities and towns are granted the authority to establish a planning commission. As with county planning authority, municipalities *may* have a planning commission but are not required to (Wyo. Stat. § 15-1-502). If they do create a commission, they are required to adopt a master

plan (Box 5). The master plan—using text, graphics, maps and tables—*shall* include:

- i. Recommendations for the development and general location, character, and extent of streets, bridges, viaducts, parks, waterways and waterfront developments, playgrounds, airports, and other public ways, ground, places, and spaces;
- ii. General location of public buildings and other public property;
- iii. General location and extent of public utilities and terminals, whether publicly or privately owned, for water, light, power, heat, sanitation, transportation, communication and other purposes;
- iv. Acceptance, widening, removal, extension, relocation, narrowing, vacation, abandonment, or change of use of any public ways grounds, places, spaces, buildings, properties, utilities, or terminals;
- v. Zoning plan for the regulation of the height, area, bulk, location, and use of private and public structures and premises, and of population density;
- vi. General location, character, layout, and extent of community centers and neighborhood units; and,
- vii. General character, extent and layout of the re-planning of blighted districts and slum areas. (Wyo. Stat. § 15-1-503(a) (i)-(vii).

In 1975, Wyoming lawmakers passed the Land Use Planning Act, which required all counties and municipalities to develop a land-use plan (Wyo. Stat. § 301–8–9). As a result, all local governments in Wyoming have adopted some form of a land-use plan.

## Other Planning Jurisdictions

In addition to counties and municipalities, the Wyoming State Statutes identify four other jurisdictions for which a local government or governments have the legal authority to plan.



## BOX 4: WYOMING PLANNING STATUTES

### Title 9 – Administration of Government

#### *Chapter 8 – Land Use Planning*

All local governments must develop a local land use plan and may cooperate with the county to develop such a plan. All counties must develop a countywide land use plan that incorporates the land use plans of all incorporated cities and towns within the county (Wyo. Stat. § 9-8-301–302).

### Title 15 – Cities and Towns

#### *Chapter 1 – General Provisions*

#### *Article 5 – Planning*

A city or town may have a planning commission, and if the city or town elects to have a planning commission, it must adopt a master plan (comprehensive plan) for the physical development of the community. Development of the community must conform to the plan. In addition, the planning commission must adopt a master street plan, which can include an overall transportation system that addresses walking, bicycles, mass-transit, railroad, and air traffic (Wyo. Stat. § 15-1-502–506).

### Title 18 – Counties

#### *Chapter 5 – Planning and Zoning*

#### *Article 2 – Planning and Zoning Commission*

A county may regulate the location, use, and condition of buildings and structures with consideration for the public's health, safety, morals, and general welfare. The general forms of use are residence, recreation, agriculture, industry, commerce, public, and other uses within the unincorporated areas of the county. The county may create and establish a planning and zoning commission and they may prepare and amend a comprehensive plan (Wyo. Stat. § 18-5-201–202).



## BOX 5: WHAT'S THE PLAN?

Wyoming State Statutes refer to different types of planning documents, including master plans, comprehensive plans, and land-use plans.

A **master plan** (also called a “comprehensive” or “general plan”) consists of maps, policies, goals, and actions, and provides a blueprint for how a community or jurisdiction intends to grow. A master plan is the official statement of the legislative body of ~~that of land planning in a~~ sets forth goals, policies, and guidelines intended to direct the present ~~and future~~ physical, social, and economic development that occurs within its planning jurisdiction (Davidson and Dolnick 2004).

A **land-use plan** is any written statement of land use policies, goals, and objectives adopted by local governments (counties and municipalities) that represents the long-range plan for the desirable use of land in a jurisdiction. Unlike a master plan or comprehensive plan that covers a range of socio-economic and physical topics, land-use plans are specific to land use. Land-use plans typically address zoning and progressive changes in the zoning of land to meet the changing needs of a community, including subdivisions, use of undeveloped land, and the acquisition of rights-of-way or sites for public purposes such as streets, parks, schools, and public buildings (Davidson and Dolnick 2004).

### **Joint powers agreements**

Joint powers agreements are contracts between any one or more of the state’s counties, municipalities, school districts, special districts, public institutions, agencies, boards, commissions, and political subdivisions, to form a combined jurisdiction (Wyo. Stat. § 16-1-101). Joint powers agreements establish a regional area with similar planning authority as counties and municipalities.

*Example:* In 1998, Natrona County and the City of Casper established a joint powers agreement to clean up and redevelop a former petroleum refinery site operated by Amoco Corporation along the banks of the North Platte River near downtown Casper. The refinery operated for over 80 years and played a major role in the Casper’s local economy until it shut down in 1991. For years, the property sat fenced in and idle, until BP acquired the property in a merger with Amoco in 1998. Soon after, the company entered into an agreement with the city and county to appoint a group of citizens known

as the Amoco Reuse Agreement Joint Powers Board to oversee cleanup and manage the reuse agreement (EPA 2007). Today the site is known as the Platte River Commons and hosts several amenities, including a golf course, green belt, and whitewater kayak park.

### **Improvement and service districts**

Improvement and service districts are jurisdictions developed and approved by a county board of commissioners to provide communities with infrastructure and services, including health services, sewers, roads, libraries, and more (Wyo. Stat. § 18-12-103). Districts tax themselves to provide services not afforded by the county government and form a board through which resolutions and regulations can be passed.

*Example:* The Teton Village Improvement and Service District was formed in 1985 to provide municipal services such as road maintenance, capital improvements, snow removal, parking enforcement, and signage to the residential areas of Teton Village.



Once the site of one of the largest oil refineries in the world (left), the Platte River Commons located in Casper, Wyoming, was created through a joint powers agreement between the City of Casper, Natrona County, and BP-Amoco. Today the site is home to the Three Crowns Golf Club (right), among several other public amenities.

### **Extra-territorial zones**

Extra-territorial zones are areas that extend beyond the incorporated boundaries of towns and cities into county jurisdiction for which municipalities are able to zone and plan. Extra-territorial zones serve as a buffer to allow municipalities to meet land use standards, for example the installation of roads and water or sewer lines, to integrate areas of new development into the existing system. Prior to July 1, 2019, municipalities in Wyoming were authorized to plan and zone in areas extending one-half mile outside their incorporated boundaries, subject to nullification by county government. However, legislation passed in the 2018 Budget Session of the Wyoming State Legislature restricts a municipality's authority

to exercise jurisdiction in unincorporated areas of a county if that county has officially adopted a comprehensive plan. The new legislation also requires the county to solicit feedback regarding adjacent development from cities and towns under certain circumstances. For more information, see Wyo. Stat. § 15-3-202; 15-9-103; 34-12-103 and Sixty-Fourth Legislature of the State of Wyoming 2018 Budget Session, House Bill 14.

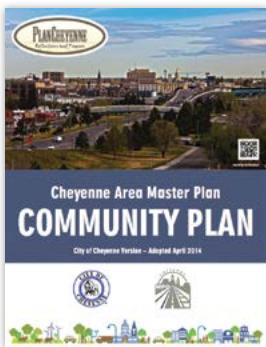
*Example:* Through its community master plan known as *PlanCheyenne*, the City of Cheyenne plans for expected growth in areas that lie beyond the municipal boundary of the city and extend into Laramie County. This type of proactive coordination between the city and county serves to direct growth and annexation decisions, and helps ensure that adequate facilities, services, and infrastructure are available for future growth (Greater Cheyenne Chamber of Commerce 2011; City of Cheyenne 2014).

### **Parks and recreational districts**

Wyoming towns and cities have the power to manage parks and conservation areas up to 30 miles outside their boundaries (Wyo. Stat. § 15-7-101). Typically characterized by open space with natural vegetation and landscaping or recreational facilities, these areas are available for recreational, educational, cultural, and aesthetic uses.



The Teton Village Improvement District provides municipal services to residential areas of Teton Village.



The City of Cheyenne, Wyoming, plans for extra-territorial zones that extend beyond the city's municipal boundaries in its community master plan, known as *PlanCheyenne*.

*Example:* In 2003, the City of Cheyenne Board of Public Utilities acquired 20,000 acres of land southwest of the city for the purposes of landfill and water development for the city. Later, in 2005, the city purchased an additional 18,000 acres of land from The Nature Conservancy preserved by conservation easement. These properties are managed by the City of Cheyenne, Larimer County, and The Nature Conservancy, and provide opportunities for low-impact recreational activities.

## Subdivision Planning

A major responsibility of local governments is overseeing land development for residential, commercial, industrial, or recreational purposes. This type of development typically involves dividing parcels of land into smaller units designated for specific land use activities, thus known as a subdivision. The following section details the subdivision planning rules at the county and municipal levels.

### County Subdivision Rules

The Wyoming State Legislature defines a county-level subdivision as “the creation of a division of a lot, tract, parcel or other unit of land for the immediate or future purpose of sale, building development, or redevelopment, for residential, recreation, industrial, commercial, or public uses” (Wyo. Stat. § 18-5-302).

Any person or entity wishing to subdivide their land must first obtain a permit from the board of county commissioners in which the land is located (Wyo. Stat. § 18-5-304). To obtain a permit, plans for the subdivision must adhere to county rules and regulations regarding platting, roads, utilities (e.g., water and sewer), rights-of-way, easements, parks, and structures. The location, rules, and regulations affecting the subdivision must also be in accordance with the necessary components of the county’s comprehensive plan, where applicable.

There are four main categories of exemptions through which a landowner wishing to subdivide

land is not required to obtain a permit: use, family member, size, and ownership.

*Use* exemptions apply when a landowner subdivides land for cemetery plots or for the purpose of establishing unmanned communications facilities, compressor stations, metering stations, fiber optic booster stations, or similar unmanned facilities on parcels of land five acres or less.

*Family member* exemptions apply when a landowner subdivides land to give to family members or members of a corporation of which the landowner is a part, to provide for the housing, business, or agricultural needs of the grantee.

*Size* exemptions apply to parcels of land that are five acres or less to be used for establishing unmanned communications facilities, compressor and metering stations, or similar unmanned facilities. In some Wyoming counties, size exemptions also pertain to subdivisions of land recorded before July 1, 2008, that create parcels 35 acres or larger and up to 140 acres (Wyo. Stat. § 18-5-316). Large acreage subdivisions of land recorded after July 1, 2008, are subject to a separate set of permitting requirements found in Wyo. Stat. § 18-5-316.

*Ownership* exemptions relate to subdivisions that are created as part of a right-of-way or easement, those created by court decisions, property realignments or boundary adjustments, eminent domain, and sale or disposition to a governmental entity, such as the state or county.

For more detailed information on these exemptions see Wyo. Stat. § 18-5-303, “Exemptions from provisions.”

### Municipal Subdivision Rules

Subdivision rules at the municipal level pertain to lands within the municipal boundary and are governed by regulations determined by the town or city (Wyo. Stat. § 15-1-510(b)). In cases where a municipality has a major street plan in place, any subdivision must be approved by the governing body of the municipality (Wyo. Stat. § 15-1-510(a)). Thus, municipalities may, through

regulation, control aspects of a subdivision within its incorporated boundary that exceed controls permitted at the county level. For more information on the specific subdivision rules in your municipality, contact your local government.

## SUMMARY OF THE LEGAL BASIS OF PLANNING IN WYOMING

Planning is a process that empowers local citizens and leaders to determine the vision, goals, and objectives for the future of their community, along with the policies to achieve them (Hamerlink and

Gribb 2016). The Wyoming State Statutes provide the legal structure for planning in Wyoming and make it possible for counties and municipalities in the state to decide if, when, and how they want to plan for their communities. Although communities enjoy the right to choose if they want to plan, it's important to note that a decision not to plan is itself a form of de facto planning. By engaging in the planning process, communities are better situated to respond to changing needs by anticipating future conditions and making decisions to maximize the local economy and ensure a high quality of life for its citizens.

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Wyo. Stat. § 18-5-202-203  
Wyo. Stat. § 18-5-302  
Wyo. Stat. § 18-5-304  
Wyo. Stat. § 18-5-316  
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