

## 1 HOUSE BILL NO. 586

2 INTRODUCED BY D. WANZENRIED

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING "MINOR SUBDIVISION"; DEFINING "ORIGINAL  
5 TRACT OF RECORD"; CLARIFYING THE REVIEW PROCEDURE FOR THE FIRST MINOR SUBDIVISION;  
6 REVISING THE REVIEW PROCEDURE FOR SUBSEQUENT MINOR SUBDIVISIONS; ELIMINATING  
7 REDUNDANT PROVISIONS; PROVIDING FOR THE PRORATION OF PROPERTY TAXES ON CENTRALLY  
8 ASSESSED PROPERTY; AMENDING SECTIONS 76-3-103, 76-3-207, 76-3-504, 76-3-601, 76-3-603,  
9 76-3-605, 76-3-608, 76-3-609, AND 76-3-620, MCA; REPEALING SECTION 76-3-505, MCA; AND  
10 PROVIDING AN APPLICABILITY DATE."

11

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13

14 **Section 1.** Section 76-3-103, MCA, is amended to read:

15 **"76-3-103. Definitions.** As used in this chapter, unless the context or subject matter clearly  
16 requires otherwise, the following definitions apply:

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

19 (2) "Dedication" means the deliberate appropriation of land by an owner for any general and public  
20 use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the  
21 public use to which the property has been devoted.

22 (3) "Division of land" means the segregation of one or more parcels of land from a larger tract held  
23 in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion  
24 of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the  
25 segregated parcels pursuant to this chapter. The conveyance of a tract of record or an entire parcel of land  
26 that was created by a previous division of land is not a division of land.

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

29 (5) "Final plat" means the final drawing of the subdivision and dedication required by this chapter  
30 to be prepared for filing for record with the county clerk and recorder and containing all elements and

1 requirements set forth in this chapter and in regulations adopted pursuant to this chapter.

2 (6) "Governing body" means a board of county commissioners or the governing authority of a city  
3 or town organized pursuant to law.

4 (7) "Immediate family" means a spouse, children by blood or adoption, and parents.

5 (8) "Irregularly shaped tract of land" means a parcel of land other than an aliquot part of the  
6 United States government survey section or a United States government lot, the boundaries or areas of  
7 which cannot be determined without a survey or trigonometric calculation.

8 (9) "Minor subdivision" means a subdivision that creates five or fewer lots from a tract of land.

9 (10) "Original tract of record" means the tract of record from which the first subdivision was  
10 approved pursuant to this chapter.

11 ~~(9)~~(11) "Planned unit development" means a land development project consisting of residential  
12 clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land  
13 uses built in a prearranged relationship to each other and having open space and community facilities in  
14 common ownership or use.

15 ~~(10)~~(12) "Plat" means a graphical representation of a subdivision showing the division of land into  
16 lots, parcels, blocks, streets, alleys, and other divisions and dedications.

17 ~~(11)~~(13) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing  
18 the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for  
19 review by a governing body.

20 ~~(12)~~(14) "Registered land surveyor" means a person licensed in conformance with Title 37, chapter  
21 67, to practice surveying in the state of Montana.

22 ~~(13)~~(15) "Registered professional engineer" means a person licensed in conformance with Title 37,  
23 chapter 67, to practice engineering in the state of Montana.

24 ~~(14)~~(16) "Subdivider" means a person who causes land to be subdivided or who proposes a  
25 subdivision of land.

26 ~~(15)~~(17) "Subdivision" means a division of land or land so divided that it creates one or more  
27 parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United  
28 States government section, exclusive of public roadways, in order that the title to or possession of the  
29 parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and further  
30 includes a condominium or area, regardless of its size, that provides or will provide multiple space for

1 recreational camping vehicles or mobile homes.

2 ~~(16)~~(18) (a) "Tract of record" means an individual parcel of land, irrespective of ownership, that  
3 can be identified by legal description, independent of any other parcel of land, using documents on file in  
4 the records of the county clerk and recorder's office.

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

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

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

12 (c) An instrument of conveyance does not merge parcels of land under subsection ~~(16)(b)(i)~~  
13 (18)(b)(i) unless the instrument states, "This instrument is intended to merge individual parcels of land to  
14 form the aggregate parcel(s) described in this instrument" or a similar statement, in addition to the legal  
15 description of the aggregate parcels, clearly expressing the owner's intent to effect a merger of parcels."  
16

17 **SECTION 2. SECTION 76-3-207, MCA, IS AMENDED TO READ:**

18 **"76-3-207. Subdivisions exempted from review but subject to survey requirements -- exceptions.**

19 (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of  
20 evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject  
21 to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions:

22 (a) divisions made outside of platted subdivisions for the purpose of relocating common boundary  
23 lines between adjoining properties;

24 (b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each  
25 county to each member of the landowner's immediate family;

26 (c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in  
27 which the parties to the transaction enter a covenant running with the land and revocable only by mutual  
28 consent of the governing body and the property owner that the divided land will be used exclusively for  
29 agricultural purposes;

30 (d) for five or fewer lots within a platted subdivision, relocation of common boundaries and the

1 aggregation of lots; and

2 (e) divisions made for the purpose of relocating a common boundary line between a single lot  
3 within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement  
4 on the original platted lot or original unplatted parcel continues to apply to those areas.

5 (2) Notwithstanding the provisions of subsection (1):

6 (a) within a platted subdivision filed with the county clerk and recorder, a division of lots that  
7 results in an increase in the number of lots or ~~which that~~ redesigns or rearranges six or more lots must be  
8 reviewed and approved by the governing body and an amended plat must be filed with the county clerk  
9 and recorder;

10 (b) a change in use of the land exempted under subsection (1)(c) for anything other than  
11 agricultural purposes subjects the division to the provisions of this chapter.

12 (3) ~~(a) A~~ Subject to subsection (3)(b), a division of land may not be made under this section unless  
13 the county treasurer has certified that all real property taxes and special assessments assessed and levied  
14 on the land to be divided have been paid.

15 (b) If a division of land includes centrally assessed property, in which the property taxes applicable  
16 to the division of land are not specifically identified in the tax assessment, the department of revenue shall  
17 prorate the taxes applicable to the land being divided on a reasonable basis."

18

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

20 **"76-3-504. Minimum requirements for subdivision regulations.** The subdivision regulations adopted  
21 under this chapter must, at a minimum:

22 (1) except as provided in 76-3-210 or 76-3-609~~(3)~~, require the subdivider to submit to the  
23 governing body an environmental assessment as prescribed in 76-3-603;

24 (2) establish procedures consistent with this chapter for the submission and review of subdivision  
25 plats;

26 (3) prescribe the form and contents of preliminary plats and the documents to accompany final  
27 plats;

28 (4) provide for the identification of areas that, because of natural or human-caused hazards, are  
29 unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be  
30 eliminated or overcome by approved construction techniques;

1 (5) prohibit subdivisions for building purposes in areas located within the floodway of a flood of  
2 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the  
3 governing body;

4 (6) prescribe standards for:

5 (a) the design and arrangement of lots, streets, and roads;

6 (b) grading and drainage;

7 (c) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that,  
8 at a minimum, meet the regulations adopted by the department of environmental quality under 76-4-104;

9 (d) the location and installation of utilities;

10 (7) provide procedures for the administration of the park and open-space requirements of this  
11 chapter;

12 (8) provide for the review of preliminary plats by affected public utilities and those agencies of  
13 local, state, and federal government having a substantial interest in a proposed subdivision. A utility or  
14 agency review may not delay the governing body's action on the plat beyond the time limits specified in  
15 this chapter, and the failure of any agency to complete a review of a plat may not be a basis for rejection  
16 of the plat by the governing body.

17 (9) require the subdivider to establish ditch easements in the subdivision, in locations of  
18 appropriate topographic characteristics and sufficient width, to allow the physical placement and  
19 unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation  
20 to persons and lands legally entitled to the water under an appropriated water right or permit of an  
21 irrigation district or other private or public entity formed to provide for the use of the water right on the  
22 subdivision lots. Establishment of easements pursuant to this subsection (9) is not required if:

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

27 (b) the water rights are removed or the process has been initiated to remove the water rights from  
28 the subdivided land through an appropriate legal or administrative process and if the removal or intended  
29 removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final  
30 plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the

1 water right and shall document that intent, when applicable, in agreements and legal documents for related  
2 sales transactions.

3 (10) require the subdivider, unless otherwise provided for under separate written agreement or filed  
4 easement, to file and record ditch easements for unobstructed use and maintenance of existing water  
5 delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the  
6 subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that  
7 are consistent with historic and legal rights."

8

9 **Section 4.** Section 76-3-601, MCA, is amended to read:

10 **"76-3-601. Submission of preliminary plat for review.** (1) Except ~~when a plat is eligible for~~  
11 ~~expedited review pursuant to 76-3-505~~ as provided in 76-3-609, the subdivider shall present to the  
12 governing body or to the agent or agency designated by the governing body the preliminary plat of the  
13 proposed subdivision for local review. The preliminary plat must show all pertinent features of the  
14 proposed subdivision and all proposed improvements.

15 (2) (a) When the proposed subdivision lies within the boundaries of an incorporated city or town,  
16 the preliminary plat must be submitted to and approved by the city or town governing body.

17 (b) When the proposed subdivision is situated entirely in an unincorporated area, the preliminary  
18 plat must be submitted to and approved by the governing body of the county. However, if the proposed  
19 subdivision lies within 1 mile of a third-class city or town, within 2 miles of a second-class city, or within  
20 3 miles of a first-class city, the county governing body shall submit the preliminary plat to the city or town  
21 governing body or its designated agent for review and comment. If the proposed subdivision is situated  
22 within a rural school district, as described in 20-9-615, the county governing body shall provide an  
23 informational copy of the preliminary plat to school district trustees.

24 (c) If the proposed subdivision lies partly within an incorporated city or town, the proposed plat  
25 must be submitted to and approved by both the city or town and the county governing bodies.

26 (d) When a proposed subdivision is also proposed to be annexed to a municipality, the governing  
27 body of the municipality shall coordinate the subdivision review and annexation procedures to minimize  
28 duplication of hearings, reports, and other requirements whenever possible.

29 (3) The provisions of 76-3-604, 76-3-605, 76-3-608 through 76-3-610, and this section do not  
30 limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant

1 to 7-3-4444."

2

3 **Section 5.** Section 76-3-603, MCA, is amended to read:

4 **"76-3-603. Contents of environmental assessment.** When required, the environmental assessment  
5 must accompany the preliminary plat and must include:

6 (1) for a major subdivision:

7 (a) a description of every body or stream of surface water that may be affected by the proposed  
8 subdivision, together with available ground water information, and a description of the topography,  
9 vegetation, and wildlife use within the area of the proposed subdivision;

10 (b) a summary of the probable impacts of the proposed subdivision based on the criteria described  
11 in 76-3-608; and

12 (c) a community impact report containing a statement of anticipated needs of the proposed  
13 subdivision for local services, including education and busing; roads and maintenance; water, sewage, and  
14 solid waste facilities; and fire and police protection; and

15 (d) additional relevant and reasonable information related to the applicable regulatory criteria  
16 adopted under 76-3-501 as may be required by the governing body;

17 (2) except as provided in 76-3-609(3), for a minor subdivision, a summary of the probable impacts  
18 of the proposed subdivision based on the criteria described in 76-3-608."

19

20 **Section 6.** Section 76-3-605, MCA, is amended to read:

21 **"76-3-605. Hearing on preliminary plat.** (1) ~~Except as provided in 76-3-505, the~~ The governing  
22 body or its authorized agent or agency shall hold a public hearing on the preliminary plat and shall consider  
23 all relevant evidence relating to the public health, safety, and welfare, including the environmental  
24 assessment if required, to determine whether the plat should be approved, conditionally approved, or  
25 disapproved by the governing body.

26 (2) When a proposed subdivision is also proposed to be annexed to a municipality, the governing  
27 body of the municipality shall hold joint hearings on the preliminary plat and annexation whenever possible.

28 (3) Notice of the hearing must be given by publication in a newspaper of general circulation in the  
29 county not less than 15 days prior to the date of the hearing. The subdivider, each property owner of  
30 record, and each purchaser under contract for deed of property immediately adjoining the land included

1 in the plat must also be notified of the hearing by registered or certified mail not less than 15 days prior  
2 to the date of the hearing.

3 (4) When a hearing is held by an agent or agency designated by the governing body, the agent  
4 or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional  
5 approval, or disapproval of the plat. This recommendation must be submitted to the governing body in  
6 writing not later than 10 days after the public hearing."

7

8 **Section 7.** Section 76-3-608, MCA, is amended to read:

9 **"76-3-608. Criteria for local government review.** (1) The basis for the governing body's decision  
10 to approve, conditionally approve, or disapprove a subdivision is whether the preliminary plat, applicable  
11 environmental assessment, public hearing, planning board recommendations, or additional information  
12 demonstrates that development of the subdivision meets the requirements of this chapter. A governing  
13 body may not deny approval of a subdivision based solely on the subdivision's impacts on educational  
14 services.

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

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

18 (a) except when the governing body has established an exemption pursuant to subsection ~~(7)~~ or  
19 ~~except as provided in 76-3-505, (6)~~, the effect on agriculture, agricultural water user facilities, local  
20 services, the natural environment, wildlife and wildlife habitat, and public health and safety;

21 (b) compliance with:

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

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

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

25 (c) the provision of easements for the location and installation of any planned utilities; and

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

28 (4) The governing body may require the subdivider to design the subdivision to reasonably  
29 minimize potentially significant adverse impacts identified through the review required under subsection  
30 (3). The governing body shall issue written findings to justify the reasonable mitigation required under this

1 subsection (4).

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

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

8 ~~(6) (a) When a minor subdivision is proposed in an area where a growth policy has been adopted  
9 pursuant to chapter 1 and the proposed subdivision will comply with the growth policy, the subdivision  
10 is exempt from the review criteria contained in subsection (3)(a) but is subject to applicable zoning  
11 regulations.~~

12 ~~———— (b) In order for a growth policy to serve as the basis for the exemption provided by this subsection  
13 (6), the growth policy must meet the requirements of 76-1-601.~~

14 ~~(7)(6)~~ The governing body may exempt subdivisions that are entirely within the boundaries of  
15 designated geographic areas from the review criteria in subsection (3)(a) if all of the following requirements  
16 have been met:

17 (a) the governing body has adopted a growth policy pursuant to chapter 1 that:

18 (i) addresses the criteria in subsection (3)(a);

19 (ii) evaluates the effect of subdivision on the criteria in subsection (3)(a);

20 (iii) describes zoning regulations that will be implemented to address the criteria in subsection  
21 (3)(a); and

22 (iv) identifies one or more geographic areas where the governing body intends to authorize an  
23 exemption from review of the criteria in subsection (3)(a); and

24 (b) the governing body has adopted zoning regulations pursuant to chapter 2, part 2 or 3, that:

25 (i) apply to the entire area subject to the exemption; and

26 (ii) address the criteria in subsection (3)(a), as described in the growth policy."  
27

28 **Section 8.** Section 76-3-609, MCA, is amended to read:

29 **"76-3-609. Review procedure for minor subdivisions.** ~~Subdivisions containing five or fewer parcels  
30 in which proper access to all lots is provided and in which there is not any land to be dedicated to the~~

1 ~~public for parks or playgrounds are to be reviewed as follows:~~

2 (1) Minor subdivisions are to be reviewed as provided in this section.

3 (2) When proper access to all lots is provided, the first minor subdivision from the original tract  
4 of record must be reviewed as follows:

5 (a) The governing body shall approve, conditionally approve, or disapprove the first minor  
6 subdivision from ~~a~~ the original tract of record within 35 working days of the submission of the application.

7 ~~(2) The governing body shall state in writing the conditions that must be met if the subdivision~~  
8 ~~is conditionally approved or what local regulations would not be met by the subdivision if it disapproves~~  
9 ~~the subdivision.~~

10 ~~(3)(b) The following requirements for holding a public hearing and preparing an environmental~~  
11 ~~assessment do not apply to the first minor subdivision created from a the original tract of record-:~~

12 (i) the requirement to prepare an environmental assessment;

13 (ii) ~~the requirement to submit a preliminary plat~~ THE REQUIREMENT TO HOLD A HEARING ON THE  
14 PRELIMINARY PLAT PURSUANT TO 76-3-605; and

15 (iii) if the minor subdivision is proposed within a jurisdictional area that has adopted a growth policy  
16 that meets the requirements of 76-1-601 and the proposed minor subdivision will comply with the growth  
17 policy, the requirement to review the subdivision for the criteria contained in 76-3-608(3)(a).

18 ~~(4)(3) Subsequent~~ Except as provided in subsection (4), subsequent minor subdivisions from a  
19 tract of record must be reviewed under 76-3-505 and regulations adopted pursuant to that section as  
20 provided in 76-3-601 through 76-3-605, 76-3-608, and 76-3-610 through 76-3-620.

21 (4) The governing body may adopt subdivision regulations that establish requirements for review  
22 of subsequent minor subdivisions that meet or exceed the requirements that apply to the first minor  
23 subdivision, as provided in subsection (2) and this chapter."

24

25 **Section 9.** Section 76-3-620, MCA, is amended to read:

26 **"76-3-620. Review requirements -- written statement.** In addition to the requirements of 76-3-604  
27 ~~and 76-3-609~~, a governing body may not deny or condition a subdivision approval under this part unless  
28 it provides a written statement to the applicant detailing the circumstances of the subdivision denial or  
29 condition imposition. The statement must include:

30 (1) the reason for the denial or condition imposition;

- 1 (2) the evidence that justifies the denial or condition imposition; and
- 2 (3) information regarding the appeal process for the denial or condition imposition."

3

4 NEW SECTION. **Section 10. Repealer.** Section 76-3-505, MCA, is repealed.

5

6 NEW SECTION. **Section 11. Applicability.** [This act] applies to minor subdivisions AND DIVISIONS  
7 OF LAND INVOLVING CENTRALLY ASSESSED PROPERTY that are proposed after [the effective date of this act].

8

- END -