

## LEGAL MEMO

**TO:** GLENN OPPEL, GOVERNMENT AFFAIRS DIRECTOR, MONTANA  
ASSOCIATION OF REALTORS  
**FROM:** MICHAEL S. KAKUK, ATTORNEY  
**RE:** SB116 PROPOSED HOUSE LOCAL GOVERNMENT AMENDMENTS  
**DATE:** MARCH 28, 2005

### PURPOSE AND DISCLAIMER

You have asked me to prepare a brief summary of the consensus Work Group amendments to SB116 for consideration by the House Local Government Committee. This is provided below.

Please keep in mind that this memo is based on my understanding of the "intent" of the amendments. Additional impacts of these amendments may become evident during public testimony. Of course, any further amendments to the bill may have serious implications for the accuracy of this memo.

Note: This memo should be read in conjunction with my earlier memo regarding SB116 as amended in the Senate.

- 1. Page 14, line 8.  
**Strike:** "the subdivision"  
**Insert:** "development"

Comment: Clarifies that the growth policy does not have to consider the impacts of a specific subdivision but rather development in general.

- 2. Page 14, line 18.  
**Strike:** "adequacy"  
**Insert:** "sufficiency"

Comment: Makes the language consistent with amendments in Senate Local Government.

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3. Page 14, line 23 through line 26.

**Strike:** subsection (2) in its entirety

**Insert:** "(2) If the tract of record proposed to be subdivided has not been subdivided or created by a subdivision under this chapter, or has not resulted from a tract of record that has had more than five parcels created from that tract of record under 76-3-201 or 76-3-207 since July 1, 1973, then the proposed subdivision is a first minor subdivision from a tract of record and, when legal and physical access to all lots is provided, must be reviewed as follows:"

Comment: This amendment clarifies how the determination is made as to whether a particular minor subdivision will be reviewed as a first or subsequent minor. The intent is to allow local governments to go back and check the history of a particular tract of record to determine how that parcel was created and whether or not it was part of a parcel that has had more than five parcels created through the use of exemptions to the subdivision process. For example:

A. A 160-acre parcel was divided into eight 20 acre parcels in 1993 just prior to the definition of subdivision going from 20 acres to 160 acres. Since none of these eight parcels was created through the subdivision process, each of these eight parcels can have a "first" minor subdivision.

B. A 160-acre parcel was divided into four 40-acre parcels through the use of family exemptions in 2000. The two north 40-acre parcels were then split into four 20-acre parcels in 2003, again through the use of family exemptions. A minor subdivision proposed from any of these parcels would be reviewed as a subsequent minor since each parcel resulted from a tract of record, i.e., the original 160-acre parcel, from which there has been more than five parcels created through the use of exemptions.

This language more clearly implements the compromise agreement reached by Work Group members that recognizes the importance of expedited review for first minor subdivisions while allowing local governments to take into account the impacts of un-reviewed development and subsequent minors.

4. Page 15, line 13 through line 16.

**Strike:** "created" on line 13 through "76-3-207" on line 16

**Insert:** "from a tract of record as provided in subsection (2)"

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