

HOUSE BILL NO. 442

INTRODUCED BY MAEDJE

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A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING FOR THE INSPECTION OF ~~STREETS AND~~ CERTAIN
PRIVATE ROADS IN A PROPOSED SUBDIVISION BY A REGISTERED LAND SURVEYOR; AND AMENDING
 SECTIONS 76-3-402 AND 76-3-504, MCA."

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

9

10 **Section 1.** Section 76-3-402, MCA, is amended to read:

11 **"76-3-402. Survey and platting requirements for subdivided lands.** (1) ~~Every~~ Each subdivision of
 12 land ~~after June 30, 1973~~; must be surveyed and platted in conformance with this chapter, including the
 13 requirements of 76-3-406, by or under the supervision of a registered land surveyor.

14 (2) Subdivision plats must be prepared and filed in accordance with this chapter and regulations
 15 adopted pursuant to this chapter.

16 (3) All division of sections into aliquot parts and retracement of lines must conform to United States
 17 bureau of land management instructions, and all public land survey corners must be filed in accordance with
 18 Corner Recordation Act of Montana, {Title 70, chapter 22, part 1}. Engineering plans, specifications, and reports
 19 required in connection with public improvements and other elements of the subdivision required by the governing
 20 body must be prepared and filed by a registered engineer or a registered land surveyor, as their respective
 21 licensing laws allow, in accordance with this chapter and regulations adopted pursuant to this chapter.

22 (4) ~~(a)~~ A registered land surveyor may be engaged to certify, upon inspection, that ~~streets and~~ CERTAIN
 23 PRIVATE roads in a proposed subdivision meet the CERTAIN standards required in the subdivision regulations
 24 adopted under AS PROVIDED IN 76-3-504.

25 ~~———— (b) Streets and roads must be considered to meet the standards required in the subdivision regulations~~
 26 ~~adopted under 76-3-504 upon certification by a registered land surveyor as provided in subsection (4)(a)."~~

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28 **Section 2.** Section 76-3-504, MCA, is amended to read:

29 **"76-3-504. Subdivision regulations -- contents.** (1) The subdivision regulations adopted under this
 30 chapter must, at a minimum:

- 1 (a) except as provided in 76-3-210, 76-3-509, or 76-3-609(3), require the subdivider to submit to the
2 governing body an environmental assessment as prescribed in 76-3-603;
- 3 (b) establish procedures consistent with this chapter for the submission and review of subdivision plats;
- 4 (c) prescribe the form and contents of preliminary plats and the documents to accompany final plats;
- 5 (d) provide for the identification of areas that, because of natural or human-caused hazards, are
6 unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be
7 eliminated or overcome by approved construction techniques;
- 8 (e) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year
9 frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;
- 10 (f) prescribe standards for:
- 11 (i) the design and arrangement of lots, streets, and roads;
- 12 (ii) grading and drainage;
- 13 (iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that, at a
14 minimum, meet the regulations adopted by the department of environmental quality under 76-4-104;
- 15 (iv) the location and installation of utilities;
- 16 (g) provide procedures for the administration of the park and open-space requirements of this chapter;
- 17 (h) provide for the review of preliminary plats by affected public utilities and those agencies of local,
18 state, and federal government having a substantial interest in a proposed subdivision. A utility or agency review
19 may not delay the governing body's action on the plat beyond the time limits specified in this chapter, and the
20 failure of any agency to complete a review of a plat may not be a basis for rejection of the plat by the governing
21 body.
- 22 (i) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider
23 to:
- 24 (i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be
25 subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have
26 a legal right to the water and reserve and sever any remaining surface water rights from the land;
- 27 (ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to
28 provide the use of a water right on the subdivision lots, establish a landowner's water use agreement
29 administered through a single entity that specifies administration and the rights and responsibilities of
30 landowners within the subdivision who have a legal right and access to the water; or

1 (iii) reserve and sever all surface water rights from the land;

2 (j) ~~(i)~~ except as provided in ~~this~~ subsection ~~(1)(j)(ii)~~, require the subdivider to establish ditch easements

3 in the subdivision that:

4 (A) are in locations of appropriate topographic characteristics and sufficient width; to allow the physical

5 placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for

6 irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an

7 irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision

8 lots;

9 (B) are a sufficient distance from the centerline of the ditch to allow for construction, repair,

10 maintenance, and inspection of the ditch; and

11 (C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch

12 easement without the written permission of the ditch owner;

13 (ii) Establishment of easements pursuant to this subsection (1)(j) is not required if:

14 ~~(i)~~(A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner

15 acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated

16 land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable;

17 or

18 ~~(i)~~(B) the water rights are removed or the process has been initiated to remove the water rights from

19 the subdivided land through an appropriate legal or administrative process and if the removal or intended

20 removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat,

21 the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and

22 shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

23 (k) require the subdivider, unless otherwise provided for under separate written agreement or filed

24 easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery

25 ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision

26 to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with

27 historic and legal rights;

28 (l) require the subdivider to describe, dimension, and show utility easements in the subdivision on the

29 final plat in their true and correct location. The utility easements must be of sufficient width to allow the physical

30 placement and unobstructed maintenance of utility facilities for the provision of utility services within the

1 subdivision.

2 (2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted
3 under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster
4 development.

5 ~~———— (3) If inspection of streets and roads is required by subdivision regulations adopted under this section,
6 the regulations must allow for the inspection by a registered land surveyor.~~

7 (3) A REGISTERED LAND SURVEYOR MAY INSPECT A PRIVATE SUBDIVISION ROAD, AND THERE IS NO REQUIREMENT
8 TO HAVE A LICENSED ENGINEER INSPECT THE ROAD IF:

9 (A) THE ROAD IS SUBJECT ONLY TO COUNTY SUBDIVISION REGULATIONS AND IS NOT SUBJECT TO MUNICIPAL
10 SUBDIVISION REGULATIONS;

11 (B) THE ROAD IS A GRAVEL ROAD;

12 (C) THE SURVEYOR INSPECTING THE ROAD IS NOT THE SAME SURVEYOR AND IS NOT FINANCIALLY AFFILIATED
13 WITH THE SURVEYOR WHO PREPARED THE PLAT; AND

14 (D) THE SPECIFICATIONS OF THE ROAD UNDER THE COUNTY SUBDIVISION REGULATIONS REQUIRE NO MORE THAN:

15 (I) A SPECIFIED HEIGHT OF BASE OR PIT RUN MATERIAL;

16 (II) A SPECIFIED HEIGHT OF FINISH GRAVEL;

17 (III) A SPECIFIED WIDTH OF THE ROAD SURFACE;

18 (IV) A SPECIFIED WIDTH OR DEPTH OF MATERIALS FOR DRIVEWAY APPROACHES;

19 (V) THAT DRIVEWAY APPROACHES HAVE A CULVERT;

20 (VI) A SPECIFIED COMPACTION RATE; AND

21 (VII) A SPECIFIED CLEARANCE DISTANCE ON THE RIGHT-OF-WAY.

22 (4) IF THE CONDITIONS IN SUBSECTION (3) ARE SATISFIED, A REGISTERED LAND SURVEYOR MAY MAKE AN
23 INSPECTION TO ENSURE THAT TURNOUTS, CUL-DE-SACS, OR OTHER SIMILAR ROAD FEATURES ARE THE APPROPRIATE SIZE
24 AND HEIGHT AND HAVE THE APPROPRIATE COMPACTION RATE.

25 (5) A REGISTERED LAND SURVEYOR MAY NOT BE PROHIBITED FROM INSPECTING FEATURES OF THE ROAD OR
26 RIGHT-OF-WAY UNDER THIS SECTION THAT ARE INCIDENTAL TO THE PRIMARY PURPOSE AND ARE RELATED TO
27 MEASUREMENTS OF DISTANCES, MATERIALS, CLEAR ZONES, OR SIMILAR REGULATIONS."

28 - END -