

SENATE BILL NO. 482

INTRODUCED BY MCGEE

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS GOVERNING SUBDIVISIONS; ~~REVISING WHAT~~
5 ~~CONSTITUTES A TRACT OF RECORD FOR THE PURPOSES OF THE SUBDIVISION AND PLATTING ACT;~~
6 ~~REVISING CONDITIONS RELATED TO PAYMENT OF PROPERTY TAXES UNDER WHICH A GOVERNING~~
7 ~~BODY SHALL APPROVE A FINAL SUBDIVISION PLAT; PROVIDING THAT A GOVERNING BODY MAY NOT~~
8 ~~REQUIRE A PARK DEDICATION FOR A FIRST MINOR SUBDIVISION FROM A TRACT OF RECORD;~~
9 PROVIDING THAT A GOVERNING BODY MAY NOT REQUIRE A PARK DEDICATION FOR A FIRST MINOR
10 SUBDIVISION FROM A TRACT OF RECORD; AND AMENDING SECTIONS ~~76-3-103, 76-3-611, AND 76-3-621,~~
11 76-3-207, AND 76-3-611, AND 76-3-621, MCA."
12

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

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

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

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

20 ~~(2) "Cluster development" means a subdivision with lots clustered in a group of five or more lots that is~~
21 ~~designed to concentrate building sites on smaller lots in order to reduce capital and maintenance costs for~~
22 ~~infrastructure through the use of concentrated public services and utilities, while allowing other lands to remain~~
23 ~~undeveloped:~~

24 ~~(3) "Dedication" means the deliberate appropriation of land by an owner for any general and public use,~~
25 ~~reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use~~
26 ~~to which the property has been devoted:~~

27 ~~(4) "Division of land" means the segregation of one or more parcels of land from a larger tract held in~~
28 ~~single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the~~
29 ~~tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels~~
30 ~~pursuant to this chapter. The conveyance of a tract of record or an entire parcel of land that was created by a~~

- 1 ~~previous division of land is not a division of land.~~
- 2 ~~——— (5) "Examining land surveyor" means a registered land surveyor appointed by the governing body to~~
3 ~~review surveys and plats submitted for filing.~~
- 4 ~~——— (6) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to be~~
5 ~~prepared for filing for record with the county clerk and recorder and containing all elements and requirements set~~
6 ~~forth in this chapter and in regulations adopted pursuant to this chapter.~~
- 7 ~~——— (7) "Governing body" means a board of county commissioners or the governing authority of a city or town~~
8 ~~organized pursuant to law.~~
- 9 ~~——— (8) "Immediate family" means a spouse, children by blood or adoption, and parents.~~
- 10 ~~——— (9) "Minor subdivision" means a subdivision that creates five or fewer lots from a tract of record.~~
- 11 ~~——— (10) "Planned unit development" means a land development project consisting of residential clusters,~~
12 ~~industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in~~
13 ~~a prearranged relationship to each other and having open space and community facilities in common ownership~~
14 ~~or use.~~
- 15 ~~——— (11) "Plat" means a graphical representation of a subdivision showing the division of land into lots,~~
16 ~~parcels, blocks, streets, alleys, and other divisions and dedications.~~
- 17 ~~——— (12) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout~~
18 ~~of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing~~
19 ~~body.~~
- 20 ~~——— (13) "Public utility" has the meaning provided in 69-3-101, except that for the purposes of this chapter,~~
21 ~~the term includes county or consolidated city and county water or sewer districts as provided for in Title 7, chapter~~
22 ~~13, parts 22 and 23.~~
- 23 ~~——— (14) "Subdivider" means a person who causes land to be subdivided or who proposes a subdivision of~~
24 ~~land.~~
- 25 ~~——— (15) "Subdivision" means a division of land or land so divided that it creates one or more parcels~~
26 ~~containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States~~
27 ~~government section, exclusive of public roadways, in order that the title to or possession of the parcels may be~~
28 ~~sold, rented, leased, or otherwise conveyed and includes any resubdivision and further includes a condominium~~
29 ~~or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or~~
30 ~~mobile homes.~~

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

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

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

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

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

15

16 **SECTION 1. SECTION 76-3-207, MCA, IS AMENDED TO READ:**

17 **"76-3-207. Divisions of land exempted from review but subject to survey requirements and zoning**
 18 **regulations -- exceptions -- fees for examination of division.** (1) Except as provided in subsection (2), unless
 19 the method of disposition is adopted for the purpose of evading this chapter, the following divisions of land are
 20 not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions of land
 21 not amounting to subdivisions and are subject to applicable zoning regulations adopted under Title 76, chapter
 22 2:

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

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

27 (c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the
 28 parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the
 29 governing body and the property owner that the divided land will be used exclusively for 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 within a
3 platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original
4 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 results in
7 an increase in the number of lots or that redesigns or rearranges six or more lots must be reviewed and approved
8 by the governing body and an amended plat must be filed with the county clerk and recorder;

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

11 (3) (a) Subject to subsection (3)(b), a division of land may not be made under this section unless the
12 county treasurer has certified that ~~all~~ no real property taxes and special assessments assessed and levied on
13 the land to be divided ~~have been paid~~ are delinquent.

14 (b) (i) If a division of land includes centrally assessed property and the property taxes applicable to the
15 division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the
16 taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property
17 shall ensure that ~~the~~ no prorated real property taxes and special assessments are ~~paid~~ delinquent on the land
18 being sold before the division of land is made.

19 (ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection (3)(b) as
20 a partial payment of the total tax that is due.

21 (4) The governing body may examine a division of land to determine whether or not the requirements
22 of this chapter apply to the division and may establish reasonable fees, not to exceed \$200, for the examination."
23

24 **Section 2.** Section 76-3-611, MCA, is amended to read:

25 **"76-3-611. Review of final plat.** (1) The governing body shall examine each final subdivision plat and
26 shall approve the plat only if:

27 (a) it conforms to the conditions of approval set forth on the preliminary plat and to the terms of this
28 chapter and regulations adopted pursuant to this chapter; and

29 (b) the county treasurer has certified that ~~all~~ NO real property taxes and special assessments assessed
30 and levied on the land to be subdivided ~~have been paid~~ are not delinquent.

1 (2) (a) The governing body may require that final subdivision plats and certificates of survey be reviewed
 2 for errors and omissions in calculation or drafting by an examining land surveyor before recording with the county
 3 clerk and recorder. When the survey data shown on the plat or certificate of survey meets the conditions pursuant
 4 to this chapter, the examining land surveyor shall certify the compliance in a printed or stamped certificate on the
 5 plat or certificate of survey. The certificate must be signed by the surveyor.

6 (b) A land surveyor may not act as an examining land surveyor in regard to a plat or certificate of survey
 7 in which the surveyor has a financial or personal interest."

8

9 ~~Section 3. Section 76-3-621, MCA, is amended to read:~~

10 ~~"76-3-621. Park dedication requirement. (1) Except as provided in 76-3-509 or subsections (2), (3),~~
 11 ~~and (6) through (9) of this section, a subdivider shall dedicate to the governing body a cash or land donation equal~~
 12 ~~to:~~

13 ~~(a) 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;~~

14 ~~(b) 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not~~
 15 ~~larger than 1 acre;~~

16 ~~(c) 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger~~
 17 ~~than 3 acres; and~~

18 ~~(d) 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not larger~~
 19 ~~than 5 acres.~~

20 ~~(2) When a subdivision is located totally within an area for which density requirements have been~~
 21 ~~adopted pursuant to a growth policy under chapter 1 or pursuant to zoning regulations under chapter 2, the~~
 22 ~~governing body may establish park dedication requirements based on the community need for parks and the~~
 23 ~~development densities identified in the growth policy or regulations. Park dedication requirements established~~
 24 ~~under this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03 acres per dwelling~~
 25 ~~unit.~~

26 ~~(3) A park dedication may not be required for:~~

27 ~~(a) land proposed for subdivision into parcels larger than 5 acres;~~

28 ~~(b) subdivision into parcels that are all nonresidential;~~

29 ~~(c) a subdivision in which parcels are not created, except when that subdivision provides permanent~~
 30 ~~multiple spaces for recreational camping vehicles, mobile homes, or condominiums; or~~

1 ~~—— (d) a subdivision in which only one additional parcel is created; or~~

2 ~~—— (e) a first minor subdivision from a tract of record as described in 76-3-609(2).~~

3 ~~—— (4) The governing body, in consultation with the subdivider and the planning board or park board that~~
 4 ~~has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and~~
 5 ~~consideration to the expressed preference of the subdivider, may determine whether the park dedication must~~
 6 ~~be a land donation, cash donation, or a combination of both. When a combination of land donation and cash~~
 7 ~~donation is required, the cash donation may not exceed the proportional amount not covered by the land~~
 8 ~~donation.~~

9 ~~—— (5) (a) In accordance with the provisions of subsections (5)(b) and (5)(c), the governing body shall use~~
 10 ~~the dedicated money or land for development, acquisition, or maintenance of parks to serve the subdivision.~~

11 ~~—— (b) The governing body may use the dedicated money to acquire, develop, or maintain, within its~~
 12 ~~jurisdiction, parks or recreational areas or for the purchase of public open space or conservation easements only~~
 13 ~~if:~~

14 ~~—— (i) the park, recreational area, open space, or conservation easement is within a reasonably close~~
 15 ~~proximity to the proposed subdivision; and~~

16 ~~—— (ii) the governing body has formally adopted a park plan that establishes the needs and procedures for~~
 17 ~~use of the money.~~

18 ~~—— (c) The governing body may not use more than 50% of the dedicated money for park maintenance.~~

19 ~~—— (6) The local governing body shall waive the park dedication requirement if:~~

20 ~~—— (a) (i) the preliminary plat provides for a planned unit development or other development with land~~
 21 ~~permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will~~
 22 ~~ultimately reside in the development; and~~

23 ~~—— (ii) the area of the land and any improvements set aside for park and recreational purposes equals or~~
 24 ~~exceeds the area of the dedication required under subsection (1);~~

25 ~~—— (b) (i) the preliminary plat provides long-term protection of critical wildlife habitat, cultural, historical, or~~
 26 ~~natural resources; agricultural interests; or aesthetic values; and~~

27 ~~—— (ii) the area of the land proposed to be subdivided, by virtue of providing long-term protection provided~~
 28 ~~for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication required~~
 29 ~~under subsection (1);~~

30 ~~—— (c) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of~~

1 subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication required
 2 under subsection (1); or

3 ~~—— (d) (i) the subdivider provides for land outside of the subdivision to be set aside for park and recreational
 4 uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and~~

5 ~~—— (ii) the area of the land and any improvements set aside for park and recreational uses equals or exceeds
 6 the area of dedication required under subsection (1).~~

7 ~~—— (7) The local governing body may waive the park dedication requirement if:~~

8 ~~—— (a) the subdivider provides land outside the subdivision that affords long-term protection of critical wildlife
 9 habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and~~

10 ~~—— (b) the area of the land to be subject to long-term protection, as provided in subsection (7)(a), equals
 11 or exceeds the area of the dedication required under subsection (1).~~

12 ~~—— (8) A local governing body may, at its discretion, require a park dedication for a subsequent minor
 13 subdivision as described in 76-3-609(3). A local governing body that chooses to require a park dedication shall
 14 specify in regulations the circumstances under which a park dedication will be required.~~

15 ~~—— (9) Subject to the approval of the local governing body and acceptance by the school district trustees,
 16 a subdivider may dedicate a land donation provided in subsection (1) to a school district, adequate to be used
 17 for school facilities or buildings.~~

18 ~~—— (10) For the purposes of this section:~~

19 ~~—— (a) "cash donation" is the fair market value of the unsubdivided, unimproved land; and~~

20 ~~—— (b) "dwelling unit" means a residential structure in which a person or persons reside.~~

21 ~~—— (11) A land donation under this section may be inside or outside of the subdivision."~~

22

23 **SECTION 3. SECTION 76-3-621, MCA, IS AMENDED TO READ:**

24 **"76-3-621. Park dedication requirement.** (1) Except as provided in 76-3-509 or subsections (2), (3),
 25 and (6) through (9) of this section, a subdivider shall dedicate to the governing body a cash or land donation equal
 26 to:

27 (a) 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;

28 (b) 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not
 29 larger than 1 acre;

30 (c) 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger

1 than 3 acres; and

2 (d) 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not larger
3 than 5 acres.

4 (2) When a subdivision is located totally within an area for which density requirements have been
5 adopted pursuant to a growth policy under chapter 1 or pursuant to zoning regulations under chapter 2, the
6 governing body may establish park dedication requirements based on the community need for parks and the
7 development densities identified in the growth policy or regulations. Park dedication requirements established
8 under this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03 acres per dwelling
9 unit.

10 (3) A park dedication may not be required for:

11 (a) land proposed for subdivision into parcels larger than 5 acres;

12 (b) subdivision into parcels that are all nonresidential;

13 (c) a subdivision in which parcels are not created, except when that subdivision provides permanent
14 multiple spaces for recreational camping vehicles, mobile homes, or condominiums; or

15 (d) a subdivision in which only one additional parcel is created; or

16 (e) a first minor subdivision from a tract of record as described in 76-3-609(2).

17 (4) The governing body, in consultation with the subdivider and the planning board or park board that
18 has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and
19 consideration to the expressed preference of the subdivider, may determine whether the park dedication must
20 be a land donation, cash donation, or a combination of both. When a combination of land donation and cash
21 donation is required, the cash donation may not exceed the proportional amount not covered by the land
22 donation.

23 (5) (a) In accordance with the provisions of subsections (5)(b) and (5)(c), the governing body shall use
24 the dedicated money or land for development, acquisition, or maintenance of parks to serve the subdivision.

25 (b) The governing body may use the dedicated money to acquire, develop, or maintain, within its
26 jurisdiction, parks or recreational areas or for the purchase of public open space or conservation easements only
27 if:

28 (i) the park, recreational area, open space, or conservation easement is within a reasonably close
29 proximity to the proposed subdivision; and

30 (ii) the governing body has formally adopted a park plan that establishes the needs and procedures for

1 use of the money.

2 (c) The governing body may not use more than 50% of the dedicated money for park maintenance.

3 (6) The local governing body shall waive the park dedication requirement if:

4 (a) (i) the preliminary plat provides for a planned unit development or other development with land
5 permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will
6 ultimately reside in the development; and

7 (ii) the area of the land and any improvements set aside for park and recreational purposes equals or
8 exceeds the area of the dedication required under subsection (1);

9 (b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical, or
10 natural resources; agricultural interests; or aesthetic values; and

11 (ii) the area of the land proposed to be subdivided, by virtue of providing long-term protection provided
12 for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication required
13 under subsection (1);

14 (c) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of
15 subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication required
16 under subsection (1); or

17 (d) (i) the subdivider provides for land outside of the subdivision to be set aside for park and recreational
18 uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and

19 (ii) the area of the land and any improvements set aside for park and recreational uses equals or exceeds
20 the area of dedication required under subsection (1).

21 (7) The local governing body may waive the park dedication requirement if:

22 (a) the subdivider provides land outside the subdivision that affords long-term protection of critical wildlife
23 habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and

24 (b) the area of the land to be subject to long-term protection, as provided in subsection (7)(a), equals
25 or exceeds the area of the dedication required under subsection (1).

26 (8) A local governing body may, at its discretion, require a park dedication for a subsequent minor
27 subdivision as described in 76-3-609(3). A local governing body that chooses to require a park dedication shall
28 specify in regulations the circumstances under which a park dedication will be required.

29 (9) Subject to the approval of the local governing body and acceptance by the school district trustees,
30 a subdivider may dedicate a land donation provided in subsection (1) to a school district, adequate to be used

1 for school facilities or buildings.

2 (10) For the purposes of this section:

3 (a) "cash donation" is the fair market value of the unsubdivided, unimproved land; and

4 (b) "dwelling unit" means a residential structure in which a person or persons reside.

5 (11) A land donation under this section may be inside or outside of the subdivision."

6 - END -