

HOUSE BILL NO. 403

INTRODUCED BY G. MACLAREN

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A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE REQUIREMENT THAT LOCAL OPTION CLUSTER DEVELOPMENT AND OPEN SPACE REGULATIONS MANDATE THAT OPEN SPACE IN CLUSTER DEVELOPMENTS MUST SOLELY BE PRESERVED THROUGH AN IRREVOCABLE ~~CONSERVATION EASEMENT COVENANT~~; AMENDING ~~SECTION~~ SECTIONS 70-17-203 AND 76-3-509, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

SECTION 1. SECTION 70-17-203, MCA, IS AMENDED TO READ:

"70-17-203. Covenants that run with land. (1) Except as provided in 70-1-522, every covenant contained in a grant of an estate in real property that is made for the direct benefit of the property or some part of the property then in existence runs with the land.

(2) Subsection (1) includes:

(a) covenants of warranty, for quiet enjoyment, or for further assurance on the part of the grantor and covenants for the payment of rent or of taxes or assessments upon the land on the part of a grantee; ~~and~~

(b) conservation easements pursuant to 76-6-209; ~~or~~

(c) a dedication of open space as provided in 76-3-509.

(3) A covenant for the addition of some new thing to real property or for the direct benefit of some part of the property not then in existence or annexed to the property, when contained in a grant of an estate in the property and made by the covenantor expressly for the covenantor's assigns or to the assigns of the covenantee, runs with the land so far as the assigns mentioned are concerned."

Section 2. Section 76-3-509, MCA, is amended to read:

"76-3-509. Local option cluster development regulations and exemptions authorized. (1) If the governing body has adopted a growth policy that meets the requirements of 76-1-601, the governing body may adopt regulations to promote cluster development and preserve open space under this section.

(2) Regulations adopted under this section must:



- 1 (a) establish a maximum size for each parcel in a cluster development;
- 2 (b) subject to subsection (3)(d), establish a maximum number of parcels in a cluster development; and
- 3 (c) establish requirements, including a minimum size for the area to be preserved, for preservation of
- 4 open space as a condition of approval of a cluster development subdivision under regulations adopted pursuant
- 5 to this section. Land protected as open space on a long-term basis must be identified on the final subdivision plat,
- 6 and the plat must include a copy of or a recording reference to the irrevocable easement, covenant, deed
- 7 restriction, or other servitude or instrument prohibiting further subdivision, division, or development of the open
- 8 space lots or parcels, AS PROVIDED IN TITLE 70, CHAPTER 17, PART 2. The regulations must require that open space
- 9 be preserved through an irrevocable conservation easement, granted in perpetuity, as provided for in Title 76,
- 10 chapter 6, prohibiting further division of the parcel.
- 11 (3) Regulations adopted under this section may:
- 12 (a) establish a shorter timeframe for review of proposed cluster developments;
- 13 (b) establish procedures and requirements that provide an incentive for cluster development subdivisions
- 14 that are consistent with the provisions of this chapter;
- 15 (c) authorize the review of a division of land that involves more than one existing parcel as one
- 16 subdivision proposal for the purposes of creating a cluster development;
- 17 (d) authorize the creation of one clustered parcel for each existing parcel that is reviewed as provided
- 18 in subsection (3)(c); and
- 19 (e) establish exemptions from the following:
- 20 (i) the requirements of an environmental assessment pursuant to 76-3-603;
- 21 (ii) review of the criteria in 76-3-608(3)(a); and
- 22 (iii) park dedication requirements pursuant to 76-3-621.
- 23 (4) Except as provided in this section, the provisions of this chapter apply to cluster development
- 24 subdivisions."

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26 **NEW SECTION. Section 3. Effective date.** [This act] is effective July 1, 2011.

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