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SB 147

The Legislative History of § 76-3-608

*From Agricultural Protection in Montana, a report by the University of Montana's Land Use Law Clinic*

An examination of the legislative history of § 76-3-608 reveals that the intent behind the term “agriculture” is broad and consistent with the plain meaning of agriculture. The Montana Legislature first enacted the MSPA in 1973. Originally, the Act mentioned agriculture only with respect to certain exempt divisions of land and in conjunction with a requirement that the environmental assessment include maps and tables indicating the soil types in the proposed subdivision.<sup>37</sup> The Legislature has subsequently met eleven times to propose and discuss amendments to § 76-3-608, including a handful of amendments addressing agricultural concerns. The full chronology of amendments is set forth in Appendix 1.

In 1974, agriculture was discussed in connection with HB 1017. As originally proposed, this bill had the primary purpose of defining subdivisions as divisions of land resulting in “parcels containing less than 40 acres”—an increase over the previous 10-acre requirement.<sup>38</sup> While agriculture was not featured prominently in the text of this bill, the topic was discussed in the bill testimony. Supporters of the bill appeared to view the 40-acre definition as one way of addressing the concern that subdivisions were affecting grazing lands and agricultural lands. As one commentator stated, “We have come to the realization that subdivision regulation is an absolutely necessity in a day when our most valuable resource, land, and our most valuable industry, agriculture, are threatened by unplanned subdivisions.”<sup>39</sup> Cattle ranchers in the Blackfoot Valley supported the 40-acre definition because they felt current law allowed the creation of small-tracts without subdivision review, causing the loss of agricultural lands.<sup>40</sup> Ultimately, in the bill’s final version, the requirement was reduced to 20 acres.<sup>41</sup>

Agriculture was first listed as a subdivision review criteria in 1975 as part of HB 666.<sup>42</sup> The original version of the bill would have required that a subdivision result in a “net public benefit” to the community.<sup>43</sup> The final bill language was later modified to require that the subdivision be “in the public interest.”<sup>44</sup> When determining whether the development was in the public interest, the governing body was required to weigh criteria that included “effects on agriculture.”<sup>45</sup> Rep. Vincent, the bill’s sponsor, indicated that he was a proponent of the legislation because of the “tragic intrusion” of subdivisions onto Montana agriculture lands.<sup>46</sup> Vincent indicated that some of the best agricultural land in the County of Gallatin was being converted to subdivision.<sup>47</sup>

The next discussion of agriculture in relation to § 76-3-608 occurred in 1995 as part of HB 473. That year, the phrase “agricultural water user facilities”<sup>48</sup> was inserted to account for the effect of subdivisions on an important part of agriculture—“the ditches, canals, and pumping facilities” that are used to irrigate agricultural land.<sup>49</sup> HB 473 also created a new category of exemption from subdivision review for land transfers intended to remain in agricultural use.<sup>50</sup> The exemption’s purpose was to ensure that future generations of farming families could continue to use agricultural lands.<sup>51</sup>

In 2001, the Legislature in SB 479 added a cluster development provision to the MSPA,<sup>52</sup> with the primary intent of preserving open lands and spaces for agriculture. The bill’s preamble concluded that “**agricultural land is increasingly being taken out of production for development and becoming unavailable for production of food;** and . . . farmers and ranchers are often forced to sell their land to generate sufficient income to retire . . .”<sup>53</sup> Sen. Hargrove, the bill’s sponsor, discussed how cluster development could be used to protect open lands to address these concerns.<sup>54</sup>

Later, in 2005, the phrase “effect on agriculture” was replaced with the phrase “impact on agriculture,” which remains today.<sup>55</sup> The record does not explain the purpose of this word change.

In sum, the legislative history of § 76-3-608 shows an intent over time to broadly protect the same characteristics of agriculture that appear in the plain meaning of the term, including protection of the land base, rural character, food production, and livelihood and economy of agriculture.