

1 SENATE BILL NO. 324

2 INTRODUCED BY M. ROSENDALE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING SUBDIVISION LAWS RELATED TO LEASE
5 OR RENT; PROVIDING FOR THE REGULATION OF BUILDINGS CREATED FOR LEASE OR RENT ON A
6 SINGLE TRACT; PROVIDING EXEMPTIONS FROM REVIEW FOR CERTAIN BUILDINGS; REQUIRING
7 CERTAIN BUILDINGS CREATED FOR LEASE OR RENT TO BE REVIEWED BY THE DEPARTMENT OF
8 ENVIRONMENTAL QUALITY OR LOCAL REVIEWING AUTHORITY FOR SANITATION COMPLIANCE;
9 AUTHORIZING A LOCAL GOVERNMENT TO REVIEW THE CREATION OF BUILDINGS FOR LEASE OR
10 RENT IN CERTAIN CASES; PROVIDING MINIMUM REQUIREMENTS FOR LOCAL GOVERNMENT
11 REGULATIONS; AUTHORIZING THE ADOPTION OF ADDITIONAL CRITERIA FOR THE LOCAL REVIEW OF
12 CERTAIN BUILDINGS; PROVIDING DEFINITIONS; PROVIDING PENALTIES; REVISING LOCAL SUBDIVISION
13 REGULATIONS; AMENDING SECTIONS 76-3-103, 76-3-504, 76-4-103, 76-4-125, 76-6-203, AND 76-7-203,
14 MCA; REPEALING SECTIONS 76-3-202, 76-3-204, AND 76-3-208, MCA; AND PROVIDING AN EFFECTIVE
15 DATE AND AN APPLICABILITY DATE."
16

17 WHEREAS, The Montana Subdivision and Platting Act provides for the local review of proposed
18 subdivisions; and

19 WHEREAS, Title 76, chapter 3, part 2, provides miscellaneous exemptions from subdivision review for
20 certain divisions of land and conveyances; and

21 WHEREAS, sections 76-3-202, 76-3-204, and 76-3-208, MCA, address the sale, lease, or rent or other
22 conveyance of one or more parts of a building, structure, or other improvement; and

23 WHEREAS, section 76-3-204, MCA, provides that the sale, lease, rent, or other conveyance of one or
24 more parts of a building, structure, or other improvement is not subject to subdivision review; and

25 WHEREAS, this exemption has been interpreted to exempt only one or more parts of a single building,
26 structure, or improvement on a tract of record from subdivision review; and

27 WHEREAS, a strict interpretation of section 76-3-204, MCA, places an undue burden of undergoing full
28 subdivision review on property owners who seek to lease or rent certain buildings; and

29 WHEREAS, it is the intent of the Legislature to provide an alternative process to subdivision review for
30 the creation of buildings for lease or rent on tracts of land.

1

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

3

4 NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 8], the following definitions
5 apply:

6 (1) "Building" means a structure or a unit of a structure with a roof supported by columns or walls for the
7 permanent or temporary housing or enclosure of persons or property or for the operation of a business. Except
8 as provided in 76-3-103(15) the term includes a recreational camping vehicle, mobile home, or cell tower. The
9 term does not include a condominium or townhome.

10 (2) "Department" means the department of environmental quality provided for in 2-15-3501.

11 (3) "Governing body" means the legislative authority for a city, town, county, or consolidated city-county
12 government.

13 (4) "Landowner" means an owner of a legal or equitable interest in real property. The term includes an
14 heir, successor, or assignee of the ownership interest.

15 (5) "Local reviewing authority" means a local department or board of health that is approved to conduct
16 reviews under Title 76, chapter 4.

17 (6) "Supermajority" means:

18 (a) an affirmative vote of at least two-thirds of the present and voting members of a city or town council;

19 (b) a unanimous affirmative vote of the present and voting county commissioners in counties with three
20 county commissioners;

21 (c) an affirmative vote of at least four-fifths of the present and voting county commissioners in counties
22 with five commissioners;

23 (d) an affirmative vote of at least two-thirds of the present and voting county commissioners in counties
24 with more than five commissioners; or

25 (e) an affirmative vote of at least two-thirds of the present and voting members of the governing body
26 of a consolidated city-county government.

27 (7) "Tract" means an individual parcel of land that can be identified by legal description, independent of
28 any other parcel of land, using documents on file in the records of the county clerk and recorder's office.

29

30 NEW SECTION. **Section 2. Buildings for lease or rent -- exemptions.** A building created for lease

1 or rent on a single tract is exempt from the provisions of [sections 1 through 8] if:

2 (1) the building is in conformance with applicable zoning regulations adopted pursuant to Title 76,
3 chapter 2, parts 1 through 3, provided that the zoning contains the elements of [section 4]; or

4 (2) when applicable zoning regulations are not in effect:

5 (a) the building is a facility as defined in 15-65-101 that is subject to the lodging facility use tax under Title
6 15, chapter 65, except for recreational camping vehicles or mobile home parks;

7 (b) the building is created for lease or rent for farming or agricultural purposes;

8 (c) the building is not served by water and wastewater and will not be leased or rented;

9 (d) the building is served by water and wastewater and the landowner records a notarized declaration
10 with the clerk and recorder of the county in which the property is located stating that the proposed building will
11 not be leased or rented. The declaration recorded pursuant to this subsection (2)(d) runs with the land and is
12 binding on the landowner and all subsequent landowners and successors in interest to the property. The
13 declaration must include but is not limited to:

14 (i) the name and address of the landowner;

15 (ii) a legal description of the tract upon which the proposed building will be located; and

16 (iii) a specific description of the building on the tract of record.
17

18 **NEW SECTION. Section 3. Buildings for lease or rent -- five or fewer buildings -- application --**
19 **review procedures.** (1) A landowner shall submit an application for the creation of five or fewer buildings for
20 lease or rent on a single tract to the department or local reviewing authority for sanitation review pursuant to Title
21 76, chapter 4, if the tract is less than 20 acres or to the local reviewing authority under Title 50, chapter 2, if the
22 tract is more than 20 acres.

23 (2) If the department or local reviewing authority approves the application, the landowner shall record
24 the certificate of approval and any conditions for the approval of the application with the county clerk and
25 recorder.

26 (3) If a building for lease or rent is created on a single tract on or after [the effective date of this act] and
27 the tract is later subdivided or an exemption from subdivision review is used pursuant to Title 76, chapter 3, any
28 building for lease or rent on the new tract is subject to the provisions of [sections 4 through 6].
29

30 **NEW SECTION. Section 4. Buildings for lease or rent -- six or more buildings -- regulations.** (1)

1 A governing body shall adopt regulations for the administration and enforcement of the creation of six or more
2 buildings for lease or rent on a single tract.

3 (2) The regulations adopted pursuant to this section must, at a minimum:

4 (a) list the materials that must be included in an application for the creation of six or more buildings for
5 lease or rent;

6 (b) require a description of:

7 (i) property boundaries;

8 (ii) onsite and adjacent offsite streets, roads, and easements;

9 (iii) geographic features;

10 (iv) existing septic tanks and drainfields; and

11 (v) existing and proposed buildings.

12 (c) require adequate water supply and sewage and solid waste disposal facilities;

13 (d) require an assessment of potential significant impacts on the surrounding physical environment and
14 human population in the area to be affected, including conditions, if any, that may be imposed on the proposal
15 to avoid or minimize potential significant impacts identified;

16 (e) require adequate emergency medical, fire protection, and law enforcement services;

17 (f) require access to the site; and

18 (g) comply with applicable flood plain requirements.

19 (3) Prior to adopting regulations pursuant to this section, the governing body shall provide an opportunity
20 for public hearing and comment on the proposed regulations. Notice of the public hearing must be published as
21 provided in 7-1-2121 if the governing body is a county commission or as provided in 7-1-4127 if the governing
22 body is a city commission or a town council and must be posted not less than 30 days before the public hearing
23 in at least five public places, including but not limited to public buildings. Public comment must be addressed
24 before the regulations are adopted.

25

26 **NEW SECTION. Section 5. Additional review criteria -- six or more buildings for lease or rent.** (1)

27 (a) Upon a majority vote, a governing body may increase the minimum number of buildings created for lease or
28 rent that are subject to review by the governing body pursuant to [section 4]. The governing body may elect to
29 increase the minimum number subject to review by the governing body for all buildings created for lease or rent
30 or may limit the increase to specific types or uses of buildings created for lease or rent.

1 (b) For purposes of subsection (1)(a), the governing body shall adopt regulations pursuant to [section
2 4] identifying the number or types of buildings created for lease or rent that are subject to review by the governing
3 body.

4 (2) Upon a supermajority vote, the governing body may adopt regulations pursuant to [section 4] for the
5 purpose of reviewing six or more buildings for lease or rent that are in addition to the regulations provided in
6 [section 4]. For purposes of this subsection, a governing body may adopt any regulations it considers necessary
7 to protect public health, safety, or the general welfare.

8
9 **NEW SECTION. Section 6. Buildings for lease or rent -- six or more structures -- review**
10 **procedure.** (1) Unless the additional buildings are exempt from review as provided in [section 2] or subject to
11 review as provided in [section 3], an application for the creation of six or more buildings for lease or rent on a
12 single tract must be reviewed as provided in this section.

13 (2) An application pursuant to this section for the creation of buildings for lease or rent must be submitted
14 for review to:

15 (a) the governing body or its agent or agency in which the buildings are proposed to be located; and
16 (b) the department or local reviewing authority if review by the department or local reviewing authority
17 is required by Title 76, chapter 4.

18 (3) (a) Upon receipt of an application and any applicable fees, the governing body or its agent or agency
19 shall within 10 working days determine whether the application contains the required materials and sufficient
20 information for review. The governing body or its agent or agency shall notify the applicant in writing as to whether
21 the application is complete. If the application is incomplete, the governing body shall identify any missing
22 materials or insufficient information.

23 (b) After the governing body or its agent or agency has notified the applicant that the application is
24 complete, the governing body shall approve, conditionally approve, or deny the application for the creation of
25 buildings for lease or rent pursuant to this section within 60 working days. The applicant and the governing body
26 may agree to extend the time for review in writing.

27 (c) Review and approval, conditional approval, or denial of an application for the creation of buildings
28 for lease or rent pursuant to this section must be based upon the regulations in effect at the time an application
29 is determined to be complete. If regulations change during the period that the application is determined to be
30 complete, the determination of whether the application is complete must be based on the new regulations.

1 (4) The governing body may establish a reasonable fee to be paid by the landowner commensurate with
2 the cost of reviewing applications submitted pursuant to this section.

3 (5) If the governing body denies, approves, or conditionally approves the proposed creation of buildings
4 for lease or rent pursuant to this section, the governing body shall provide written notification to the landowner
5 within the 60 working-day period provided in this section.

6

7 **NEW SECTION. Section 7. Actions against governing body and department.** (1) An applicant who
8 has filed an application for the creation of buildings for lease or rent and who is aggrieved by a decision of the
9 department may request a hearing as provided in 76-4-126(1). For purposes of this subsection, the contested
10 case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to the proceeding.

11 (2) An applicant who has filed an application for the creation of buildings for lease or rent and who is
12 aggrieved by a decision of the governing body or local reviewing authority may, within 30 days of the date of the
13 decision of the governing body or local reviewing authority, appeal to the district court in the county in which the
14 property involved is located.

15

16 **NEW SECTION. Section 8. Violations -- penalties.** (1) If any building is created in violation of [sections
17 1 through 8], the governing body may, in addition to assessing a fine or penalty not to exceed a maximum of
18 \$500, initiate an action to:

19 (a) prevent the unlawful creation of the building;

20 (b) restrain, correct, or abate a violation; or

21 (c) prevent the occupancy of the building.

22 (2) For the purposes of enforcing the provisions of [sections 1 through 8], the governing body shall
23 attempt to obtain voluntary compliance from the landowner at least 30 days prior to initiating an action for a
24 violation of [sections 1 through 8].

25

26 **Section 9.** Section 76-3-103, MCA, is amended to read:

27 **"76-3-103. Definitions.** As used in this chapter, unless the context or subject matter clearly requires
28 otherwise, the following definitions apply:

29 (1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the
30 purpose of disclosing facts pertaining to boundary locations.

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

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

8 (4) "Division of land" means the segregation of one or more parcels of land from a larger tract held in
9 single or undivided ownership by transferring or contracting to transfer title to ~~or possession of~~ a portion of the
10 tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels
11 pursuant to this chapter. The conveyance of a tract of record or an entire parcel of land that was created by a
12 previous division of land is not a division of land.

13 (5) "Examining land surveyor" means a registered land surveyor appointed by the governing body to
14 review surveys and plats submitted for filing.

15 (6) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to be
16 prepared for filing for record with the county clerk and recorder and containing all elements and requirements set
17 forth in this chapter and in regulations adopted pursuant to this chapter.

18 (7) "Governing body" means a board of county commissioners or the governing authority of a city or town
19 organized pursuant to law.

20 (8) "Immediate family" means a spouse, children by blood or adoption, and parents.

21 (9) "Minor subdivision" means a subdivision that creates five or fewer lots from a tract of record.

22 (10) "Planned unit development" means a land development project consisting of residential clusters,
23 industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in
24 a prearranged relationship to each other and having open space and community facilities in common ownership
25 or use.

26 (11) "Plat" means a graphical representation of a subdivision showing the division of land into lots,
27 parcels, blocks, streets, alleys, and other divisions and dedications.

28 (12) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout
29 of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing
30 body.

1 (13) "Public utility" has the meaning provided in 69-3-101, except that for the purposes of this chapter,
2 the term includes county or consolidated city and county water or sewer districts as provided for in Title 7, chapter
3 13, parts 22 and 23, and municipal sewer or water systems and municipal water supply systems established by
4 the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44.

5 (14) "Subdivider" means a person who causes land to be subdivided or who proposes a subdivision of
6 land.

7 (15) "Subdivision" means a division of land or land so divided that it creates one or more parcels
8 containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States
9 government section, exclusive of public roadways, in order that the title to ~~or possession of~~ the parcels may be
10 sold, ~~rented, leased,~~ or otherwise ~~conveyed~~ transferred and includes any resubdivision and further includes a
11 condominium or area, regardless of its size, that provides or will provide multiple space for recreational camping
12 vehicles or mobile homes.

13 (16) (a) "Tract of record" means an individual parcel of land, irrespective of ownership, that can be
14 identified by legal description, independent of any other parcel of land, using documents on file in the records of
15 the county clerk and recorder's office.

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

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

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

23 (c) An instrument of conveyance does not merge parcels of land under subsection (16)(b)(i) unless the
24 instrument states, "This instrument is intended to merge individual parcels of land to form the aggregate parcel(s)
25 described in this instrument" or a similar statement, in addition to the legal description of the aggregate parcels,
26 clearly expressing the owner's intent to effect a merger of parcels."
27

28 **Section 10.** 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) list the materials that must be included in a subdivision application in order for the application to be
2 determined to contain the required elements for the purposes of the review required in 76-3-604(1);
- 3 (b) except as provided in 76-3-509, 76-3-609, or 76-3-616, require the subdivider to submit to the
4 governing body an environmental assessment as prescribed in 76-3-603;
- 5 (c) establish procedures consistent with this chapter for the submission and review of subdivision
6 applications and amended applications;
- 7 (d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;
- 8 (e) provide for the identification of areas that, because of natural or human-caused hazards, are
9 unsuitable for subdivision development. The regulations must prohibit subdivisions in these areas unless the
10 hazards can be eliminated or overcome by approved construction techniques or other mitigation measures
11 authorized under 76-3-608(4) and (5). Approved construction techniques or other mitigation measures may not
12 include building regulations as defined in 50-60-101 other than those identified by the department of labor and
13 industry as provided in 50-60-901.
- 14 (f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year
15 frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;
- 16 (g) prescribe standards for:
- 17 (i) the design and arrangement of lots, streets, and roads;
- 18 (ii) grading and drainage;
- 19 (iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet
20 the:
- 21 (A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that
22 will create one or more parcels containing less than 20 acres; and
- 23 (B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels
24 containing 20 acres or more and less than 160 acres; and
- 25 (iv) the location and installation of public utilities;
- 26 (h) provide procedures for the administration of the park and open-space requirements of this chapter;
- 27 (i) provide for the review of subdivision applications by affected public utilities and those agencies of
28 local, state, and federal government identified during the preapplication consultation conducted pursuant to
29 subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review
30 may not delay the governing body's action on the application beyond the time limits specified in this chapter, and

1 the failure of any agency to complete a review of an application may not be a basis for rejection of the application
2 by the governing body.

3 (j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider
4 to:

5 (i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be
6 subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have
7 a legal right to the water and reserve and sever any remaining surface water rights from the land;

8 (ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to
9 provide the use of a water right on the subdivision lots, establish a landowner's water use agreement
10 administered through a single entity that specifies administration and the rights and responsibilities of landowners
11 within the subdivision who have a legal right and access to the water; or

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

13 (k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in
14 the subdivision that:

15 (A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical
16 placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for
17 irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an
18 irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision
19 lots;

20 (B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance,
21 and inspection of the ditch; and

22 (C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch
23 easement without the written permission of the ditch owner.

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

25 (A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner
26 acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated
27 land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable;
28 or

29 (B) the water rights are removed or the process has been initiated to remove the water rights from the
30 subdivided land through an appropriate legal or administrative process and if the removal or intended removal

1 is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the
2 subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall
3 document that intent, when applicable, in agreements and legal documents for related sales transactions.

4 (l) require the subdivider, unless otherwise provided for under separate written agreement or filed
5 easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery
6 ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to
7 lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with
8 historic and legal rights;

9 (m) require the subdivider to describe, dimension, and show public utility easements in the subdivision
10 on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow
11 the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility
12 services within the subdivision.

13 (n) establish whether the governing body, its authorized agent or agency, or both will hold public
14 hearings;

15 (o) establish procedures describing how the governing body or its agent or agency will address
16 information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

17 (p) establish criteria that the governing body or reviewing authority will use to determine whether a
18 proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207 is an attempt to evade
19 the requirements of this chapter. The regulations must provide for an appeals process to the governing body if
20 the reviewing authority is not the governing body.

21 (q) establish a preapplication process that:

22 (i) requires a subdivider to meet with the authorized agent or agency, other than the governing body, that
23 is designated by the governing body to review subdivision applications prior to the subdivider submitting the
24 application;

25 (ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth
26 policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

27 (iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local,
28 state, and federal government, and any other entities that may be contacted for comment on the subdivision
29 application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during
30 the review of the application, the agent or agency designated by the governing body contacts a public utility,

1 agency, or other entity that was not included on the list originally made available to the subdivider, the agent or
2 agency shall notify the subdivider of the contact and the timeframe for response.

3 (iv) requires that a preapplication meeting take place no more than 30 days from the date that the
4 authorized agent or agency receives a written request for a preapplication meeting from the subdivider; and

5 (v) establishes a time limit after a preapplication meeting by which an application must be submitted as
6 provided in 76-3-604;

7 (r) ~~requires~~ require that the written decision required by 76-3-620 must be provided to the applicant within
8 30 working days following a decision by the governing body to approve, conditionally approve, or deny a
9 subdivision;

10 (s) establish criteria for reviewing an area, regardless of its size, that provides or will provide multiple
11 space for recreational camping vehicles or mobile homes.

12 (2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under
13 76-3-509 and this section may include provisions that are consistent with this section that promote cluster
14 development.

15 (3) The governing body may establish deadlines for submittal of subdivision applications."
16

17 **Section 11.** Section 76-4-103, MCA, is amended to read:

18 **"76-4-103. What constitutes subdivision.** A subdivision ~~shall comprise~~ comprises only those parcels
19 of less than 20 acres ~~which that~~ have been created by a division of land, and the plat ~~thereof~~ for the subdivision
20 ~~shall must~~ show all such the parcels, whether contiguous or not. ~~The rental or lease of one or more parts of a~~
21 ~~building, structure, or other improvement, whether existing or proposed, is not a subdivision, as that term is~~
22 ~~defined in this part, and is not subject to the requirements of this part."~~

23

24 **Section 12.** Section 76-4-125, MCA, is amended to read:

25 **"76-4-125. Review of subdivision application -- land divisions excluded from review.** (1) Except
26 as provided in subsection (2), an application for review of a subdivision must be submitted to the reviewing
27 authority. The review by the reviewing authority must be as follows:

28 (a) At any time after the developer has submitted an application under the Montana Subdivision and
29 Platting Act, the developer shall present a subdivision application to the reviewing authority. The application must
30 include preliminary plans and specifications for the proposed development, whatever information the developer

1 feels necessary for its subsequent review, any public comments or summaries of public comments collected as
2 provided in 76-3-604(7), and information required by the reviewing authority. Subdivision fees assessed by the
3 reviewing authority must accompany the application. If the proposed development includes onsite sewage
4 disposal facilities, the developer shall notify the designated agent of the local board of health prior to presenting
5 the subdivision application to the reviewing authority. The agent may conduct a preliminary site assessment to
6 determine whether the site meets applicable state and local requirements.

7 (b) Within 5 working days after receipt of an application that is not subject to review by a local reviewing
8 authority under 76-4-104, the department shall provide a written notice for informational purposes to the applicant
9 if the application does not include a copy of the certification from the local health department required by
10 76-4-104(6)(j) or, if applicable, contain an approval from the local governing body under Title 76, chapter 3,
11 together with any public comments or summaries of public comments collected as provided in 76-3-604(7)(a).

12 (c) If the reviewing authority denies an application and the applicant resubmits a corrected application
13 within 30 days after the date of the denial letter, the reviewing authority shall complete review of the resubmitted
14 application within 30 days after receipt of the resubmitted application. If the review of the resubmitted application
15 is conducted by a local department or board of health that is certified under 76-4-104, the department shall make
16 a final decision on the application within 10 days after the local reviewing authority completes its review.

17 (d) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall make a final decision
18 on the proposed subdivision within 55 days after the submission of a complete application and payment of fees
19 to the reviewing authority unless an environmental impact statement is required, at which time this deadline may
20 be increased to 120 days. The reviewing authority may not request additional information for the purpose of
21 extending the time allowed for a review and final decision on the proposed subdivision. If the department
22 approves the subdivision, the department shall issue a certificate of subdivision approval indicating that it has
23 approved the plans and specifications and that the subdivision is not subject to a sanitary restriction.

24 (2) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to
25 the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade
26 the provisions of this part, are not subject to review:

27 (a) the ~~exclusions~~ exclusion cited in 76-3-201 and ~~76-3-204~~;

28 (b) divisions made for the purpose of acquiring additional land to become part of an approved parcel,
29 provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and
30 that the division does not fall within a previously platted or approved subdivision;

1 (c) divisions made for purposes other than the construction of water supply or sewage and solid waste
2 disposal facilities as the department specifies by rule;

3 (d) divisions located within jurisdictional areas that have adopted growth policies pursuant to chapter 1
4 or within first-class or second-class municipalities for which the governing body certifies, pursuant to 76-4-127,
5 that adequate storm water drainage and adequate municipal facilities will be provided; and

6 (e) subject to the provisions of subsection (3), a remainder of an original tract created by segregating
7 a parcel from the tract for purposes of transfer if:

8 (i) the remainder is served by a public or multiple-user sewage system approved before January 1, 1997,
9 pursuant to local regulations or this chapter; or

10 (ii) the remainder is 1 acre or larger and has an individual sewage system serving a discharge source
11 that was in existence prior to April 29, 1993, and, if required when installed, the system was approved pursuant
12 to local regulations or this chapter.

13 (3) Consistent with the applicable provisions of 50-2-116, a local health officer may require that, prior
14 to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated from
15 the remainder referenced in subsection (2)(e)(ii), the remainder include acreage or features sufficient to
16 accommodate a replacement drainfield."

17

18 **Section 13.** Section 76-6-203, MCA, is amended to read:

19 **"76-6-203. Types of permissible easements.** Easements or restrictions under this chapter may prohibit
20 or limit any or all of the following:

21 (1) structures--construction or placing of buildings, camping trailers, housetrailer, mobile homes, roads,
22 signs, billboards or other advertising, utilities, or other structures on or above the ground;

23 (2) landfill--dumping or placing of soil or other substance or material as landfill or dumping or placing of
24 trash, waste, or unsightly or offensive materials;

25 (3) vegetation--removal or destruction of trees, shrubs, or other vegetation;

26 (4) loam, gravel, etc.--excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material
27 substance;

28 (5) surface use--surface use except for such purposes permitting the land or water area to remain
29 predominantly in its existing condition;

30 (6) acts detrimental to conservation--activities detrimental to drainage, flood control, water conservation,

- 1 erosion control, soil conservation, or fish and wildlife habitat and preservation;
 2 (7) subdivision of land--subdivision of land as defined in 76-3-103; and 76-3-104; ~~and 76-3-202~~;
 3 (8) other acts--other acts or uses detrimental to such retention of land or water areas in their existing
 4 conditions."

5
 6 **Section 14.** Section 76-7-203, MCA, is amended to read:

7 **"76-7-203. Permissible easements.** (1) An environmental control easement under this chapter may
 8 prohibit or limit the following activities or uses:

- 9 (a) constructing or placing of buildings, camping trailers, housetrailers, mobile homes, roads, or other
 10 structures on or above the ground;
 11 (b) dumping or placing of soil, debris, or other wastes or substances as landfill or dumping or placing
 12 of trash, waste, or unsightly or offensive materials;
 13 (c) removing or destroying trees, shrubs, or other vegetation or planting or allowing growth of specific
 14 types of vegetation, such as crops for human or animal consumption or undesirable vegetation;
 15 (d) excavating, dredging, or removing of gravel, soil, rock, or other materials or substances;
 16 (e) using the surface of the land in a particular manner, such as for agricultural, residential, commercial,
 17 or industrial uses;
 18 (f) subdividing the land, as described in 76-3-103; and 76-3-104; ~~and 76-3-202~~;
 19 (g) disturbing soil caps, soil surfaces, berms, drainage structures, or other structures or other activities
 20 that may cause erosion or migration of hazardous wastes or substances at or from the environmental control site;
 21 (h) drilling or using water wells for potable or nonpotable purposes;
 22 (i) other activities or uses detrimental to or interfering with the remediation or cleanup of the
 23 environmental control site or detrimental to the preservation of remedial structures, measures, or technologies
 24 employed at the environmental control site; and
 25 (j) other activities or uses that may result in a risk or threat to the public health, safety, or welfare or the
 26 environment.

27 (2) An environmental control easement under this chapter may include or require the following:

- 28 (a) maintenance of environmental control site remedial structures or other remedial measures, such as
 29 soil surfaces, soil caps, berms, fences, or drainage improvements;
 30 (b) rights in the holder of the easement or others for continuing access to the site as necessary to

1 implement, operate, maintain, and monitor remedial work and technologies, including operation and maintenance,
2 and to ensure implementation and enforcement of the requirements, restrictions, and limitations specified in the
3 easement instrument;

4 (c) prompt notification to the holder of the easement or others of transfers of all or any portion of an
5 environmental control site or interest in the site or of any proposed changes in land use at the site;

6 (d) compliance with all requirements of any applicable governmental order;

7 (e) arrangements for indemnification or for reimbursement of any costs and expenses of the easement
8 holder or others or other methods of allocating costs and expenses for remedial actions, operations and
9 maintenance, or other activities on the environmental control site or with respect to the site;

10 (f) other obligations that any federal public entity or other public body having jurisdiction over the property
11 determines are necessary to implement, ensure noninterference with, or ensure the protection of remedial work
12 performed under a governmental order; or

13 (g) other obligations that are necessary or advisable to reduce or eliminate risks or threats to the public
14 health, safety, or welfare or the environment at environmental control sites."

15
16 **NEW SECTION. Section 15. Repealer.** The following sections of the Montana Code Annotated are
17 repealed:

18 76-3-202. Exemption for structures on complying subdivided lands.

19 76-3-204. Exemption for conveyances of one or more parts of a structure or improvement.

20 76-3-208. Subdivisions exempted from surveying and filing requirements but subject to review provisions.

21
22 **NEW SECTION. Section 16. Codification instruction.** [Sections 1 through 8] are intended to be
23 codified as an integral part of Title 76, and the provisions of Title 76 apply to [sections 1 through 8].

24
25 **NEW SECTION. Section 17. Saving clause.** [This act] does not affect rights and duties that matured,
26 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

27
28 **NEW SECTION. Section 18. Severability.** If a part of [this act] is invalid, all valid parts that are
29 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
30 the part remains in effect in all valid applications that are severable from the invalid applications.

