

SENATE BILL NO. 324

INTRODUCED BY ROSENDALE, BUTTREY, EDMUNDS, HERTZ, HILL, KARY, LARSEN, WASHBURN,  
D. MOORE

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

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

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

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

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

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

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

WHEREAS, it is the intent of the Legislature to provide an alternative process to subdivision review for



1 the creation of buildings for lease or rent on tracts of land.

2

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

4

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

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

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

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

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

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

18 (6) "Supermajority" means:

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

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

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

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

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

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

30

1            **NEW SECTION. Section 2. Buildings for lease or rent -- exemptions.** (1) A building created for lease  
2 or rent on a single tract is exempt from the provisions of [sections 1 through 8] if:

3            ~~(1) THE BUILDING WAS IN EXISTENCE OR UNDER CONSTRUCTION BEFORE [THE EFFECTIVE DATE OF THIS ACT];~~

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

6            ~~(2)(3)(B)~~ when applicable zoning regulations are not in effect:

7            ~~(I) THE BUILDING WAS IN EXISTENCE OR UNDER CONSTRUCTION BEFORE [THE EFFECTIVE DATE OF THIS ACT];~~

8            ~~(a)(II)~~ the building is a facility as defined in 15-65-101 that is subject to the lodging facility use tax under  
9 Title 15, chapter 65, except for ~~recreational camping vehicles or~~ RECREATIONAL CAMPING VEHICLES OR mobile home  
10 parks;

11            ~~(b)(III)~~ the building is created for lease or rent for farming or agricultural purposes;

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

13            ~~(d)(V)~~ the building is served by water and wastewater and the landowner records a notarized declaration  
14 with the clerk and recorder of the county in which the property is located stating that the proposed building will  
15 not be leased or rented. The declaration recorded pursuant to this subsection ~~(2)(d) (3)(D) (1)(B)(V)~~ runs with the  
16 land and is binding on the landowner and all subsequent landowners and successors in interest to the property.  
17 The declaration must include but is not limited to:

18            ~~(i)(A)~~ the name and address of the landowner;

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

20            ~~(iii)(C)~~ a specific description of the building on the tract of record.

21            (2) ANY BUILDING THAT IS EXEMPT UNDER SUBSECTION (1) FROM THE PROVISIONS OF [SECTIONS 1 THROUGH  
22 8] AND THAT IS OR WILL BE SERVED BY WATER OR WASTEWATER MUST BE IN COMPLIANCE WITH THE PROVISIONS OF  
23 [SECTION 3].

24            (3) THE EXEMPTION PROVIDED IN SUBSECTION (1)(B)(I) IS LIMITED TO THE FIRST THREE BUILDINGS CREATED FOR  
25 LEASE OR RENT ON A SINGLE TRACT.

26  
27            **NEW SECTION. Section 3. Buildings for lease or rent -- five THREE or fewer buildings --**  
28 **application -- review procedures.** (1) A landowner shall submit an application for the creation of ~~five~~ THE FIRST  
29 THREE or fewer buildings for lease or rent on a single tract to the department or local reviewing authority for  
30 sanitation review pursuant to IF REVIEW IS REQUIRED BY Title 76, chapter 4, ~~if the tract is less than 20 acres or to~~

1 ~~the local reviewing authority under Title 50, chapter 2, if the tract is more than 20 acres~~ OR MORE OR TO THE LOCAL  
 2 BOARD OR DEPARTMENT OF HEALTH IF REVIEW IS REQUIRED BY TITLE 50.

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

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

9  
 10 **NEW SECTION. Section 4. Buildings for lease or rent -- ~~six~~ FOUR or more buildings -- regulations.**

11 (1) A governing body shall adopt regulations for the administration and enforcement of the creation of ~~six~~ FOUR  
 12 or more buildings for lease or rent on a single tract.

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

14 (a) list the materials that must be included in an application for the creation of ~~six~~ FOUR or more buildings  
 15 for lease or rent;

16 (b) require a description of:

17 (i) property boundaries;

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

19 (iii) geographic features;

20 (iv) existing septic tanks and drainfields; ~~and~~

21 (V) EXISTING WELLS; AND

22 ~~(VI)~~ (VI) existing and proposed buildings;

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

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

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

28 (f) require access to the site; and

29 (g) comply with applicable flood plain requirements.

30 (3) Prior to adopting regulations pursuant to this section, the governing body shall provide an opportunity

1 for public hearing and comment on the proposed regulations. Notice of the public hearing must be published as  
 2 provided in 7-1-2121 if the governing body is a county commission or as provided in 7-1-4127 if the governing  
 3 body is a city commission or a town council and must be posted not less than 30 days before the public hearing  
 4 in at least five public places, including but not limited to public buildings. Public comment must be addressed  
 5 before the regulations are adopted.

6

7 **NEW SECTION. Section 5. Additional review criteria -- ~~six~~ FOUR or more buildings for lease or**  
 8 **rent.** (1) (a) Upon a majority vote, a governing body may increase the minimum number of buildings created for  
 9 lease or rent that are subject to review by the governing body pursuant to [section 4]. The governing body may  
 10 elect to increase the minimum number subject to review by the governing body for all buildings created for lease  
 11 or rent or may limit the increase to specific types or uses of buildings created for lease or rent.

12 (b) For purposes of subsection (1)(a), the governing body shall adopt regulations pursuant to [section  
 13 4] identifying the number or types of buildings created for lease or rent that are subject to review by the governing  
 14 body.

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

19

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

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

26 (a) the governing body or its agent or agency in which the buildings are proposed to be located; and  
 27 (b) the department or local reviewing authority if review by the department or local reviewing authority  
 28 is required by Title 76, chapter 4 OR TO THE LOCAL BOARD OR DEPARTMENT OF HEALTH IF REVIEW IS REQUIRED BY TITLE  
 29 50.

30 (3) (a) Upon receipt of an application and any applicable fees, the governing body or its agent or agency

1 shall within 10 working days determine whether the application contains the required materials and sufficient  
 2 information for review. The governing body or its agent or agency shall notify the applicant in writing as to whether  
 3 the application is complete. If the application is incomplete, the governing body shall identify any missing  
 4 materials or insufficient information.

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

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

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

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

18  
 19 **NEW SECTION. Section 7. Actions against governing body and department.** (1) An applicant who  
 20 has filed an application for the creation of buildings for lease or rent and who is aggrieved by a decision of the  
 21 department OR THE LOCAL REVIEWING AUTHORITY may request a hearing as provided in 76-4-126(1). For purposes  
 22 of this subsection, the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter  
 23 4, part 6, apply to the proceeding.

24 (2) An applicant who has filed an application for the creation of buildings for lease or rent ~~and~~ OR A  
 25 LANDOWNER WITH A PROPERTY BOUNDARY CONTIGUOUS TO THE TRACT ON WHICH THE BUILDINGS ARE PROPOSED TO BE  
 26 LOCATED who is aggrieved by a decision of the governing body ~~or local reviewing authority~~ may, within 30 days  
 27 of the date of the decision of the governing body ~~or local reviewing authority~~, appeal to the district court in the  
 28 county in which the property involved is located.

29 (3) FOR PURPOSES OF THIS SECTION, "AGGRIEVED" HAS THE MEANING PROVIDED IN 76-3-625.

30

1            **NEW SECTION. Section 8. Violations -- penalties.** (1) If any building is created in violation of [sections  
2 1 through 8], the governing body may, in addition to assessing a fine or penalty not to exceed a maximum of  
3 \$500, initiate an action to:

- 4            (a) prevent the unlawful creation of the building;  
5            (b) restrain, correct, or abate a violation; or  
6            (c) prevent the occupancy of the building.

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

10

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

12            **"76-3-103. Definitions.** As used in this chapter, unless the context or subject matter clearly requires  
13 otherwise, the following definitions apply:

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

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

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

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

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

30            (6) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to be

1 prepared for filing for record with the county clerk and recorder and containing all elements and requirements set  
2 forth in this chapter and in regulations adopted pursuant to this chapter.

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

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

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

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

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

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

16 (13) "Public utility" has the meaning provided in 69-3-101, except that for the purposes of this chapter,  
17 the term includes county or consolidated city and county water or sewer districts as provided for in Title 7, chapter  
18 13, parts 22 and 23, and municipal sewer or water systems and municipal water supply systems established by  
19 the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44.

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

22 (15) "Subdivision" means a division of land or land so divided that it creates one or more parcels  
23 containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States  
24 government section, exclusive of public roadways, in order that the title to ~~or possession of~~ the parcels may be  
25 sold, ~~rented, leased,~~ or otherwise ~~conveyed~~ transferred and includes any resubdivision and ~~further includes a~~  
26 ~~condominium\_ or area, regardless of its size, that provides or will provide multiple space for recreational camping~~  
27 ~~vehicles or mobile homes~~ THE TERM ALSO MEANS AN AREA, REGARDLESS OF ITS SIZE, THAT PROVIDES OR WILL PROVIDE  
28 MULTIPLE SPACES FOR RENT OR LEASE ON WHICH RECREATIONAL CAMPING VEHICLES OR MOBILE HOMES WILL BE PLACED.

29 (16) (a) "Tract of record" means an individual parcel of land, irrespective of ownership, that can be  
30 identified by legal description, independent of any other parcel of land, using documents on file in the records of

1 the county clerk and recorder's office.

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

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

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

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

13

14 **Section 10.** Section 76-3-504, MCA, is amended to read:

15 **"76-3-504. Subdivision regulations -- contents.** (1) The subdivision regulations adopted under this  
16 chapter must, at a minimum:

17 (a) list the materials that must be included in a subdivision application in order for the application to be  
18 determined to contain the required elements for the purposes of the review required in 76-3-604(1);

19 (b) except as provided in 76-3-509, 76-3-609, or 76-3-616, require the subdivider to submit to the  
20 governing body an environmental assessment as prescribed in 76-3-603;

21 (c) establish procedures consistent with this chapter for the submission and review of subdivision  
22 applications and amended applications;

23 (d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

24 (e) provide for the identification of areas that, because of natural or human-caused hazards, are  
25 unsuitable for subdivision development. The regulations must prohibit subdivisions in these areas unless the  
26 hazards can be eliminated or overcome by approved construction techniques or other mitigation measures  
27 authorized under 76-3-608(4) and (5). Approved construction techniques or other mitigation measures may not  
28 include building regulations as defined in 50-60-101 other than those identified by the department of labor and  
29 industry as provided in 50-60-901.

30 (f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year

1 frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

2 (g) prescribe standards for:

3 (i) the design and arrangement of lots, streets, and roads;

4 (ii) grading and drainage;

5 (iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet

6 the:

7 (A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that

8 will create one or more parcels containing less than 20 acres; and

9 (B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels

10 containing 20 acres or more and less than 160 acres; and

11 (iv) the location and installation of public utilities;

12 (h) provide procedures for the administration of the park and open-space requirements of this chapter;

13 (i) provide for the review of subdivision applications by affected public utilities and those agencies of

14 local, state, and federal government identified during the preapplication consultation conducted pursuant to

15 subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review

16 may not delay the governing body's action on the application beyond the time limits specified in this chapter, and

17 the failure of any agency to complete a review of an application may not be a basis for rejection of the application

18 by the governing body.

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

20 to:

21 (i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be

22 subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have

23 a legal right to the water and reserve and sever any remaining surface water rights from the land;

24 (ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to

25 provide the use of a water right on the subdivision lots, establish a landowner's water use agreement

26 administered through a single entity that specifies administration and the rights and responsibilities of landowners

27 within the subdivision who have a legal right and access to the water; or

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

29 (k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in

30 the subdivision that:

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

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

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

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

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

15 (B) the water rights are removed or the process has been initiated to remove the water rights from the  
16 subdivided land through an appropriate legal or administrative process and if the removal or intended removal  
17 is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the  
18 subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall  
19 document that intent, when applicable, in agreements and legal documents for related sales transactions.

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

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

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

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

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

7 (q) establish a preapplication process that:

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

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

13 (iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local,  
14 state, and federal government, and any other entities that may be contacted for comment on the subdivision  
15 application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during  
16 the review of the application, the agent or agency designated by the governing body contacts a public utility,  
17 agency, or other entity that was not included on the list originally made available to the subdivider, the agent or  
18 agency shall notify the subdivider of the contact and the timeframe for response.

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

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

23 (r) ~~requires~~ require that the written decision required by 76-3-620 must be provided to the applicant within  
24 30 working days following a decision by the governing body to approve, conditionally approve, or deny a  
25 subdivision;

26 (s) establish criteria for reviewing an area, regardless of its size, that provides or will provide multiple  
27 space for recreational camping vehicles or RECREATIONAL CAMPING VEHICLES OR mobile homes.

28 (2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under  
29 76-3-509 and this section may include provisions that are consistent with this section that promote cluster  
30 development.

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

2  
3 ~~Section 11. Section 76-4-103, MCA, is amended to read:~~

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

9  
10 **Section 11.** Section 76-4-125, MCA, is amended to read:

11 **"76-4-125. Review of subdivision application -- land divisions excluded from review.** (1) Except  
12 as provided in subsection (2), an application for review of a subdivision must be submitted to the reviewing  
13 authority. The review by the reviewing authority must be as follows:

14 (a) At any time after the developer has submitted an application under the Montana Subdivision and  
15 Platting Act, the developer shall present a subdivision application to the reviewing authority. The application must  
16 include preliminary plans and specifications for the proposed development, whatever information the developer  
17 feels necessary for its subsequent review, any public comments or summaries of public comments collected as  
18 provided in 76-3-604(7), and information required by the reviewing authority. Subdivision fees assessed by the  
19 reviewing authority must accompany the application. If the proposed development includes onsite sewage  
20 disposal facilities, the developer shall notify the designated agent of the local board of health prior to presenting  
21 the subdivision application to the reviewing authority. The agent may conduct a preliminary site assessment to  
22 determine whether the site meets applicable state and local requirements.

23 (b) Within 5 working days after receipt of an application that is not subject to review by a local reviewing  
24 authority under 76-4-104, the department shall provide a written notice for informational purposes to the applicant  
25 if the application does not include a copy of the certification from the local health department required by  
26 76-4-104(6)(j) or, if applicable, contain an approval from the local governing body under Title 76, chapter 3,  
27 together with any public comments or summaries of public comments collected as provided in 76-3-604(7)(a).

28 (c) If the reviewing authority denies an application and the applicant resubmits a corrected application  
29 within 30 days after the date of the denial letter, the reviewing authority shall complete review of the resubmitted  
30 application within 30 days after receipt of the resubmitted application. If the review of the resubmitted application

1 is conducted by a local department or board of health that is certified under 76-4-104, the department shall make  
2 a final decision on the application within 10 days after the local reviewing authority completes its review.

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

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

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

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

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

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

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

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

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

29 (3) Consistent with the applicable provisions of 50-2-116, a local health officer may require that, prior  
30 to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated from

1 the remainder referenced in subsection (2)(e)(ii), the remainder include acreage or features sufficient to  
2 accommodate a replacement drainfield."

3

4 **Section 12.** Section 76-6-203, MCA, is amended to read:

5 **"76-6-203. Types of permissible easements.** Easements or restrictions under this chapter may prohibit  
6 or limit any or all of the following:

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

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

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

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

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

16 (6) acts detrimental to conservation--activities detrimental to drainage, flood control, water conservation,  
17 erosion control, soil conservation, or fish and wildlife habitat and preservation;

18 (7) subdivision of land--subdivision of land as defined in 76-3-103; and 76-3-104; ~~and 76-3-202;~~

19 (8) other acts--other acts or uses detrimental to such retention of land or water areas in their existing  
20 conditions."

21

22 **Section 13.** Section 76-7-203, MCA, is amended to read:

23 **"76-7-203. Permissible easements.** (1) An environmental control easement under this chapter may  
24 prohibit or limit the following activities or uses:

25 (a) constructing or placing of buildings, camping trailers, housetrailers, mobile homes, roads, or other  
26 structures on or above the ground;

27 (b) dumping or placing of soil, debris, or other wastes or substances as landfill or dumping or placing  
28 of trash, waste, or unsightly or offensive materials;

29 (c) removing or destroying trees, shrubs, or other vegetation or planting or allowing growth of specific  
30 types of vegetation, such as crops for human or animal consumption or undesirable vegetation;

- 1 (d) excavating, dredging, or removing of gravel, soil, rock, or other materials or substances;
- 2 (e) using the surface of the land in a particular manner, such as for agricultural, residential, commercial,  
3 or industrial uses;
- 4 (f) subdividing the land, as described in 76-3-103; and 76-3-104; ~~and 76-3-202;~~
- 5 (g) disturbing soil caps, soil surfaces, berms, drainage structures, or other structures or other activities  
6 that may cause erosion or migration of hazardous wastes or substances at or from the environmental control site;
- 7 (h) drilling or using water wells for potable or nonpotable purposes;
- 8 (i) other activities or uses detrimental to or interfering with the remediation or cleanup of the  
9 environmental control site or detrimental to the preservation of remedial structures, measures, or technologies  
10 employed at the environmental control site; and
- 11 (j) other activities or uses that may result in a risk or threat to the public health, safety, or welfare or the  
12 environment.
- 13 (2) An environmental control easement under this chapter may include or require the following:
- 14 (a) maintenance of environmental control site remedial structures or other remedial measures, such as  
15 soil surfaces, soil caps, berms, fences, or drainage improvements;
- 16 (b) rights in the holder of the easement or others for continuing access to the site as necessary to  
17 implement, operate, maintain, and monitor remedial work and technologies, including operation and maintenance,  
18 and to ensure implementation and enforcement of the requirements, restrictions, and limitations specified in the  
19 easement instrument;
- 20 (c) prompt notification to the holder of the easement or others of transfers of all or any portion of an  
21 environmental control site or interest in the site or of any proposed changes in land use at the site;
- 22 (d) compliance with all requirements of any applicable governmental order;
- 23 (e) arrangements for indemnification or for reimbursement of any costs and expenses of the easement  
24 holder or others or other methods of allocating costs and expenses for remedial actions, operations and  
25 maintenance, or other activities on the environmental control site or with respect to the site;
- 26 (f) other obligations that any federal public entity or other public body having jurisdiction over the property  
27 determines are necessary to implement, ensure noninterference with, or ensure the protection of remedial work  
28 performed under a governmental order; or
- 29 (g) other obligations that are necessary or advisable to reduce or eliminate risks or threats to the public  
30 health, safety, or welfare or the environment at environmental control sites."

1

2           NEW SECTION. **Section 14. Repealer.** The following sections of the Montana Code Annotated are  
3 repealed:

4 76-3-202.       Exemption for structures on complying subdivided lands.

5 76-3-204.       Exemption for conveyances of one or more parts of a structure or improvement.

6 76-3-208.       Subdivisions exempted from surveying and filing requirements but subject to review provisions.

7

8           NEW SECTION. **Section 15. Codification instruction.** [Sections 1 through 8] are intended to be  
9 codified as an integral part of Title 76, and the provisions of Title 76 apply to [sections 1 through 8].

10

11           NEW SECTION. **Section 16. Saving clause.** [This act] does not affect rights and duties that matured,  
12 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

13

14           NEW SECTION. **Section 17. Severability.** If a part of [this act] is invalid, all valid parts that are  
15 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
16 the part remains in effect in all valid applications that are severable from the invalid applications.

17

18           NEW SECTION. **Section 18. Effective date.** [This act] is effective September 1, 2013.

19

20           NEW SECTION. **Section 19. Applicability.** [This act] applies to buildings created for lease or rent on  
21 a single tract on or after [the effective date of this act].

22

- END -