

HOUSE BILL NO. 380

INTRODUCED BY M. MILLER

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LOCAL SUBDIVISION REVIEW REQUIREMENTS WITH REGARD TO CREATION OF SPACES FOR RECREATIONAL CAMPING VEHICLES; PROVIDING THAT CREATION OF MORE THAN 20 SPACES FOR RECREATIONAL VEHICLES IS CONSIDERED A SUBDIVISION FOR THE PURPOSES OF LOCAL SUBDIVISION REVIEW, LOCAL REGULATIONS, AND PARK DEDICATION REQUIREMENTS; AND AMENDING SECTIONS 76-3-103, 76-3-504, AND 76-3-621, MCA."

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

**Section 1.** Section 76-3-103, MCA, is amended to read:

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

23 (15) "Subdivision" means a division of land or land so divided that it creates one or more parcels  
24 containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States  
25 government section, exclusive of public roadways, in order that the title to the parcels may be sold or otherwise  
26 transferred and includes any resubdivision and a condominium. The term also means an area, regardless of its  
27 size, that provides or will provide ~~multiple~~ more than 20 spaces for rent or lease on which recreational camping  
28 vehicles will be placed or multiple spaces for rent or lease on which 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 2.** 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;

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

24 (s) establish criteria for reviewing an area, regardless of its size, that provides or will provide ~~multiple~~  
25 more than 20 spaces for recreational camping vehicles or multiple spaces for mobile homes.

26 (2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under  
27 76-3-509 and this section may include provisions that are consistent with this section that promote cluster  
28 development."  
29

30 **Section 3.** Section 76-3-621, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

20           (c) a subdivision in which parcels are not created, except when that subdivision provides more than 20  
21 permanent multiple spaces for recreational camping vehicles; or multiple permanent spaces for mobile homes;  
22 or condominiums;

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

24           (e) except as provided in subsection (8), a first minor subdivision from a tract of record as described in  
25 76-3-609(2).

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

1 donation.

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

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

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

9 (ii) the governing body has formally adopted a park plan that establishes the needs and procedures for  
10 use of the money.

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

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

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

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

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

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

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

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

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

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

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

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

5 (8) (a) A local governing body may, at its discretion, require a park dedication for:

6 (i) a subsequent minor subdivision as described in 76-3-609(3); or

7 (ii) a first minor subdivision from a tract of record as described in 76-3-609(2) if:

8 (A) the subdivision plat indicates development of condominiums or other multifamily housing;

9 (B) zoning regulations permit condominiums or other multifamily housing; or

10 (C) any of the lots are located within the boundaries of a municipality.

11 (b) A local governing body that chooses to require a park dedication shall specify in regulations the  
12 circumstances under which a park dedication will be required.

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

16 (10) For the purposes of this section:

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

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

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

20 - END -