

HOUSE BILL NO. 445

INTRODUCED BY E. GREEF

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LOCAL SUBDIVISION REVIEW LAWS; PROVIDING FOR  
5 PHASED DEVELOPMENT FOR WHICH A SUBDIVIDER MAY APPLY TO A LOCAL GOVERNING BODY;  
6 REQUIRING THAT A PHASED DEVELOPMENT APPLICATION INCLUDE INFORMATION ON ALL PROPOSED  
7 PHASES AND A SCHEDULE FOR REVIEW OF EACH PHASE; REQUIRING THAT ALL PHASES OF A  
8 PHASED DEVELOPMENT BE SUBMITTED FOR REVIEW AND ACTED ON WITHIN A CERTAIN TIME;  
9 REQUIRING A PUBLIC HEARING FOR REVIEW OF EACH PHASE AND REQUIRING A GOVERNING BODY  
10 TO CONSIDER CHANGED PRIMARY CRITERIA IMPACTS OR NEW INFORMATION WHEN REVIEWING  
11 EACH PHASE; ALLOWING A GOVERNING BODY TO IMPOSE CONDITIONS ON APPROVAL OF EACH  
12 PHASE; ALLOWING A GOVERNING BODY TO CHARGE A FEE FOR REVIEW OF PHASES IN A PHASED  
13 DEVELOPMENT; PROVIDING DEFINITIONS; AMENDING SECTIONS 76-3-102, 76-3-103, AND 76-8-101,  
14 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

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18 **Section 1.** Section 76-3-102, MCA, is amended to read:

19 **"76-3-102. Statement of purpose.** It is the purpose of this chapter to:

- 20 (1) promote the public health, safety, and general welfare by regulating the subdivision of land;
- 21 (2) prevent overcrowding of land;
- 22 (3) lessen congestion in the streets and highways;
- 23 (4) provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress  
24 and egress, and other public requirements;
- 25 (5) require development in harmony with the natural environment;
- 26 (6) promote preservation of open space;
- 27 (7) promote cluster development approaches that minimize costs to local citizens and that promote  
28 effective and efficient provision of public services;
- 29 (8) protect the rights of property owners; ~~and~~
- 30 (9) require uniform monumentation of land subdivisions and transferring interests in real property by

1 reference to a plat or certificate of survey; and  
2 (10) provide for phased developments."

3

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

5 **"76-3-103. Definitions.** As used in this chapter, unless the context or subject matter clearly requires  
6 otherwise, the following definitions apply:

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

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

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

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

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

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

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

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

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

30 (10) "Phased development" means a subdivision application and plat reviewed and approved or

1 conditionally approved at the time of submission as independently platted development phases that are  
2 scheduled for review on a schedule proposed by the subdivider.

3 ~~(10)~~(11) "Planned unit development" means a land development project consisting of residential clusters,  
4 industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in  
5 a prearranged relationship to each other and having open space and community facilities in common ownership  
6 or use.

7 ~~(11)~~(12) "Plat" means a graphical representation of a subdivision showing the division of land into lots,  
8 parcels, blocks, streets, alleys, and other divisions and dedications.

9 ~~(12)~~(13) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the  
10 layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a  
11 governing body.

12 ~~(13)~~(14) "Public utility" has the meaning provided in 69-3-101, except that for the purposes of this chapter,  
13 the term includes county or consolidated city and county water or sewer districts as provided for in Title 7, chapter  
14 13, parts 22 and 23, and municipal sewer or water systems and municipal water supply systems established by  
15 the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44.

16 ~~(14)~~(15) "Subdivider" means a person who causes land to be subdivided or who proposes a subdivision  
17 of land.

18 ~~(15)~~(16) "Subdivision" means a division of land or land so divided that it creates one or more parcels  
19 containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States  
20 government section, exclusive of public roadways, in order that the title to the parcels may be sold or otherwise  
21 transferred and includes any resubdivision and a condominium. The term also means an area, regardless of its  
22 size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or  
23 mobile homes will be placed.

24 ~~(16)~~(17) (a) "Tract of record" means an individual parcel of land, irrespective of ownership, that can be  
25 identified by legal description, independent of any other parcel of land, using documents on file in the records of  
26 the county clerk and recorder's office.

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

29 (i) an instrument of conveyance in which the aggregated parcels have been assigned a legal description  
30 that describes the resulting single parcel and in which the owner expressly declares the owner's intention that

1 the tracts be merged; or

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

4 (c) An instrument of conveyance does not merge parcels of land under subsection ~~(16)~~(17)(b)(i) unless  
5 the instrument states, "This instrument is intended to merge individual parcels of land to form the aggregate  
6 parcel(s) described in this instrument" or a similar statement, in addition to the legal description of the aggregate  
7 parcels, clearly expressing the owner's intent to effect a merger of parcels."

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9 **NEW SECTION. Section 3. Phased development -- application requirements -- hearing required.**

10 (1) A subdivider applying for phased development review shall submit with the phased development application  
11 an overall phased development plat on which independent platted development phases must be presented. The  
12 subdivider must also submit the information required pursuant to 76-3-603, 76-3-608, 76-3-621, and 76-3-622  
13 for all phases of a development for review under parts 5 and 6 of this chapter and must include a schedule for  
14 when the subdivider plans to submit for review each phase of the development. The subdivider may change the  
15 schedule for review of each phase of the development upon approval of the governing body after a public hearing  
16 as provided in subsection (3) if the change does not negate conditions of approval or otherwise adversely affect  
17 public health, safety, and welfare. Each phase of the phased development must be reviewed as provided in  
18 subsection (3).

19 (2) The governing body may approve phased developments that extend beyond the time limits set forth  
20 in 76-3-610 but all phases of the phased development must be submitted for review and approved, conditionally  
21 approved, or denied within 15 years of the date the overall phased development plat is approved by the governing  
22 body.

23 (3) When a phase or phases of the overall phased development are begun after the approval of a final  
24 plat for a previous phase upon written notice to the governing body by the subdivider, a public hearing must be  
25 held pursuant to 76-3-605(3) and the governing body shall determine whether any changed primary criteria  
26 impacts or new information exist that create new potentially significant adverse impacts for the phase or phases.  
27 Notwithstanding the provisions of 76-3-610(2), the governing body shall issue supplemental written findings of  
28 fact if it imposes additional conditions to minimize potentially significant adverse impacts identified in the review  
29 of each phase of the development for changed primary criteria impacts or new information. Any additional  
30 conditions must be met before final plat approval for each particular phase and the approval in accordance with

1 76-3-611 is in force for not more than 3 calendar years or less than 1 calendar year within the maximum time  
2 frame provided in subsection (2).

3 (4) The governing body may impose a reasonable periodic fee for the review under subsection (3) of the  
4 phases in the phased development.

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6 **Section 4.** Section 76-8-101, MCA, is amended to read:

7 **"76-8-101. Definitions.** As used in this part, the following definitions apply:

8 (1) "Building" means a structure or a unit of a structure with a roof supported by columns or walls for the  
9 permanent or temporary housing or enclosure of persons or property or for the operation of a business. Except  
10 as provided in 76-3-103~~(15)~~(16) the term includes a recreational camping vehicle, mobile home, or cell tower.  
11 The term does not include a condominium or townhome.

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

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

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

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

19 (6) "Supermajority" means:

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

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

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

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

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

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

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2           **NEW SECTION.** **Section 5. Codification instruction.** [Section 3] is intended to be codified as an  
3 integral part of Title 76, chapter 3, part 6, and the provisions of Title 76, chapter 3, part 6, apply to [section 3].

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5           **NEW SECTION.** **Section 6. Effective date.** [This act] is effective on passage and approval.

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7           **NEW SECTION.** **Section 7. Applicability.** [This act] applies to phased development applications  
8 submitted on or after [the effective date of this act].

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