

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 NECESSARY, ADDITIONAL CONDITIONS ON  
12 APPROVAL OF EACH PHASE; ALLOWING A GOVERNING BODY TO CHARGE A FEE FOR REVIEW OF  
13 PHASES IN A PHASED DEVELOPMENT; PROVIDING DEFINITIONS; AMENDING SECTIONS 76-3-102,  
14 76-3-103, AND 76-8-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY  
15 DATE."

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

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

20 **"76-3-102. Statement of purpose.** It is the purpose of this chapter to:

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

1 (9) require uniform monumentation of land subdivisions and transferring interests in real property by  
2 reference to a plat or certificate of survey; and  
3 (10) provide for phased developments."  
4

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

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

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

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

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

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

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

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

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

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

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

1           ~~(10)~~ "Phased development" means a subdivision application and ~~PRELIMINARY plat reviewed and approved~~  
 2 ~~or conditionally approved~~ THAT at the time of submission ~~as~~ CONSISTS OF independently platted development  
 3 phases that are scheduled for review on a schedule proposed by the subdivider.

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

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

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

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

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

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

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

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

30           (i) an instrument of conveyance in which the aggregated parcels have been assigned a legal description

1 that describes the resulting single parcel and in which the owner expressly declares the owner's intention that  
2 the tracts be merged; or

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

5 (c) An instrument of conveyance does not merge parcels of land under subsection ~~(16)~~(17)(b)(i) unless  
6 the instrument states, "This instrument is intended to merge individual parcels of land to form the aggregate  
7 parcel(s) described in this instrument" or a similar statement, in addition to the legal description of the aggregate  
8 parcels, clearly expressing the owner's intent to effect a merger of parcels."  
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10 **NEW SECTION. Section 3. Phased development -- application requirements -- hearing required.**

11 (1) A subdivider applying for phased development review shall submit with the phased development application  
12 an overall phased development PRELIMINARY plat on which independent platted development phases must be  
13 presented. ~~The subdivider must also submit~~ PHASED DEVELOPMENT APPLICATION MUST CONTAIN the information  
14 required pursuant to ~~76-3-603, 76-3-608, 76-3-621, and 76-3-622~~ PARTS 5 AND 6 OF THIS CHAPTER for all phases  
15 of a development ~~for review under parts 5 and 6 of this chapter~~ and ~~must include~~ a schedule for when the  
16 subdivider plans to submit for review each phase of the development. The subdivider may change the schedule  
17 for review of each phase of the development upon approval of the governing body after a public hearing as  
18 provided in subsection ~~(3)~~ (4) if the change does not negate conditions of approval or otherwise adversely affect  
19 public health, safety, and welfare. ~~Each~~

20 (2) EXCEPT AS OTHERWISE PROVIDED BY THIS SECTION, THE PHASED DEVELOPMENT APPLICATION MUST BE  
21 REVIEWED IN CONFORMITY WITH PARTS 5 AND 6 OF THIS CHAPTER. IN ADDITION, EACH phase of the phased  
22 development must be reviewed as provided in subsection ~~(3)~~ (4).

23 ~~(2)~~(3) The governing body may approve phased developments that extend beyond the time limits set  
24 forth in 76-3-610 but all phases of the phased development must be submitted for review and approved,  
25 conditionally approved, or denied within ~~45~~ 20 years of the date the overall phased development PRELIMINARY plat  
26 is approved by the governing body.

27 ~~(3)~~(4) ~~When a phase or phases of the overall phased development are begun after the approval of a final~~  
28 ~~plat for a previous phase upon written notice to the governing body by the subdivider,~~ PRIOR TO THE  
29 COMMENCEMENT OF EACH PHASE, THE SUBDIVIDER SHALL PROVIDE WRITTEN NOTICE TO THE GOVERNING BODY. THE  
30 GOVERNING BODY SHALL HOLD a public hearing must be held pursuant to 76-3-605(3) and WITHIN 30 WORKING DAYS

1 AFTER RECEIPT OF THE WRITTEN NOTICE FROM THE SUBDIVIDER. AFTER THE HEARING, the governing body shall  
 2 determine whether any changed primary criteria impacts or new information exist that create new potentially  
 3 significant adverse impacts for the phase or phases. Notwithstanding the provisions of 76-3-610(2), the governing  
 4 body shall issue supplemental written findings of fact ~~if it imposes~~ WITHIN 20 WORKING DAYS OF THE HEARING AND  
 5 MAY IMPOSE NECESSARY, additional conditions to minimize potentially significant adverse impacts identified in the  
 6 review of each phase of the development for changed primary criteria impacts or new information. Any additional  
 7 conditions must be met before final plat approval for each particular phase and the approval in accordance with  
 8 76-3-611 is in force for not more than 3 calendar years or less than 1 calendar year within the maximum time  
 9 frame provided in subsection ~~(2)~~ (3).

10 ~~(4)~~(5) The governing body may impose a reasonable periodic fee for the review under subsection ~~(3)~~  
 11 (4) of the phases in the phased development.

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

14 **"76-8-101. Definitions.** As used in this part, the following definitions apply:

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

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

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

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

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

26 (6) "Supermajority" means:

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

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

30 (c) an affirmative vote of at least four-fifths of the present and voting county commissioners in counties

1 with five commissioners;

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

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

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

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9 **NEW SECTION. Section 5. Codification instruction.** [Section 3] is intended to be codified as an  
10 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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12 **NEW SECTION. Section 6. Effective date.** [This act] is effective on passage and approval.

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

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