

## 1 SENATE BILL NO. 174

2 INTRODUCED BY G. HERTZ

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE REVIEW AND APPROVAL  
5 OF A SUBDIVISION; PROVIDING ADDITIONAL CONDITIONS FOR SUBDIVISION REGULATIONS;  
6 AMENDING SECTIONS 76-3-501, 76-3-504, AND 76-3-608, MCA; AND PROVIDING AN IMMEDIATE  
7 EFFECTIVE DATE AND AN APPLICABILITY PROVISION."

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

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11 **Section 1.** Section 76-3-501, MCA, is amended to read:

12 **"76-3-501. Local subdivision regulations.** (1) The governing body of every county, city, and town  
13 shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing  
14 for:

15 ~~(1)~~(a) the orderly development of their jurisdictional areas;

16 ~~(2)~~(b) the coordination of roads within subdivided land with other roads, both existing and planned;

17 ~~(3)~~(c) the dedication of land for roadways and for public utility easements;

18 ~~(4)~~(d) the improvement of roads;

19 ~~(5)~~(e) the provision of adequate open spaces for travel, light, air, and recreation;

20 ~~(6)~~(f) the provision of adequate transportation, water, and drainage;

21 ~~(7)~~(g) subject to the provisions of 76-3-511, the regulation of sanitary facilities;

22 ~~(8)~~(h) the avoidance or minimization of congestion; and

23 ~~(9)~~(i) the avoidance of subdivisions that would involve unnecessary environmental degradation and  
24 danger of injury to health, safety, or welfare by reason of natural hazard, including but not limited to fire and  
25 wildland fire, or the lack of water, drainage, access, transportation, or other public services or that would  
26 necessitate an excessive expenditure of public funds for the supply of the services.

27 (2) Conditions required for the approval of a subdivision must:

28 (a) be limited to a defined purpose or objective;

1           **(b) identify a specific, documentable, and clearly defined purpose or objective related to the criteria**  
 2 **set forth in 76-3-608(3)(a);**

3           **(c) be narrowly tailored to achieve each defined purpose or objective; and**

4           **(d) use the least restrictive means to achieve the purpose or objective.**

5           **(3) Except as otherwise provided in subsection (2), additional restrictions governing a subdivision**  
 6 **must be set forth in the governing documents of the subdivision, which may include:**

7           **(a) homeowners' association formation documents;**

8           **(b) covenants, conditions, and restrictions;**

9           **(c) architectural or design guidelines; and**

10           **(d) other homeowners' association rules.**

11           **(4) Unless otherwise provided by law, the governing body and administrative personnel of a county,**  
 12 **city, or town may not have review or approval authority of the governing documents or amendments unless the**  
 13 **governing documents directly and materially impact a condition of subdivision approval."**

14

15           **Section 2.** Section 76-3-504, MCA, is amended to read:

16           **"76-3-504. Subdivision regulations -- contents.** (1) The subdivision regulations adopted under this  
 17 chapter must comply with the requirements provided for in 76-3-501 and, at a minimum:

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

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

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

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

25           (e) provide for the identification of areas that, because of natural or human-caused hazards, are  
 26 unsuitable for subdivision development. The regulations must prohibit subdivisions in these areas unless the  
 27 hazards can be eliminated or overcome by approved construction techniques or other mitigation measures  
 28 authorized under 76-3-608(4) and (5). Approved construction techniques or other mitigation measures may not

1 include building regulations as defined in 50-60-101 other than those identified by the department of labor and  
2 industry as provided in 50-60-901.

3 (f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-  
4 year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

5 (g) prescribe standards for:

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

7 (ii) grading and drainage;

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

10 (A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions  
11 that will create one or more parcels containing less than 20 acres; and

12 (B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels  
13 containing 20 acres or more and less than 160 acres; and

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

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

17 (i) provide for the review of subdivision applications by affected public utilities and those agencies of  
18 local, state, and federal government identified during the preapplication consultation conducted pursuant to  
19 subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency  
20 review may not delay the governing body's action on the application beyond the time limits specified in this  
21 chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of  
22 the application by the governing body.

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

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

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

1 provide the use of a water right on the subdivision lots, establish a landowner's water use agreement  
2 administered through a single entity that specifies administration and the rights and responsibilities of  
3 landowners within the subdivision who have a legal right and access to the water; or

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

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

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

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

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

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

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

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

26 (l) require the subdivider, unless otherwise provided for under separate written agreement or filed  
27 easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery  
28 ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to

- 1 lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with  
2 historic and legal rights;
- 3 (m) require the subdivider to describe, dimension, and show public utility easements in the  
4 subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient  
5 width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of  
6 public utility services within the subdivision.
- 7 (n) establish whether the governing body, its authorized agent or agency, or both will hold public  
8 hearings;
- 9 (o) establish procedures describing how the governing body or its agent or agency will address  
10 information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;
- 11 (p) establish criteria that the governing body or reviewing authority will use to determine whether a  
12 proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207 is an attempt to evade  
13 the requirements of this chapter. The regulations must provide for an appeals process to the governing body if  
14 the reviewing authority is not the governing body.
- 15 (q) establish a preapplication process that:
- 16 (i) requires a subdivider to meet with the authorized agent or agency, other than the governing body,  
17 that is designated by the governing body to review subdivision applications prior to the subdivider submitting  
18 the application;
- 19 (ii) requires, for informational purposes only, identification of the state laws, local regulations, and  
20 growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;
- 21 (iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local,  
22 state, and federal government, and any other entities that may be contacted for comment on the subdivision  
23 application and the timeframes that the public utilities, agencies, and other entities are given to respond. If,  
24 during the review of the application, the agent or agency designated by the governing body contacts a public  
25 utility, agency, or other entity that was not included on the list originally made available to the subdivider, the  
26 agent or agency shall notify the subdivider of the contact and the timeframe for response.
- 27 (iv) requires that a preapplication meeting take place no more than 30 days from the date that the  
28 authorized agent or agency receives a written request for a preapplication meeting from the subdivider; and

- 1 (v) establishes a time limit after a preapplication meeting by which an application must be submitted;
- 2 (r) require that the written decision required by 76-3-620 must be provided to the applicant within 30
- 3 working days following a decision by the governing body to approve, conditionally approve, or deny a
- 4 subdivision;
- 5 (s) establish criteria for reviewing an area, regardless of its size, that provides or will provide multiple
- 6 spaces for recreational camping vehicles or mobile homes.

7 (2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted

8 under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster

9 development."

10

11 **Section 3.** Section 76-3-608, MCA, is amended to read:

12 **"76-3-608. Criteria for local government review.** (1) The basis for the governing body's decision to

13 approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application,

14 preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or

15 additional information demonstrates that development of the proposed subdivision meets the requirements of

16 this chapter. A governing body may not deny approval of a proposed subdivision based solely on the

17 subdivision's impacts on educational services or based solely on parcels within the subdivision having been

18 designated as wildland-urban interface parcels under 76-13-145.

19 (2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as

20 applicable.

21 (3) A subdivision proposal must undergo review for the following primary criteria:

22 (a) except when the governing body has established an exemption pursuant to subsection (6) of this

23 section or except as provided in 76-3-509, 76-3-609(2) or (4), or 76-3-616, the specific, documentable, and

24 clearly defined impact on ~~agriculture, agricultural water user facilities~~ active agricultural production, local

25 services, the natural environment, wildlife, wildlife habitat, and public health and safety;

26 (b) compliance with:

27 (i) the survey requirements provided for in part 4 of this chapter;

28 (ii) the local subdivision regulations provided for in part 5 of this chapter; and

1 (iii) the local subdivision review procedure provided for in this part;

2 (c) the provision of easements within and to the proposed subdivision for the location and installation  
3 of any planned utilities; and

4 (d) the provision of legal and physical access to each parcel within the proposed subdivision and the  
5 required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

6 (4) The governing body may require the subdivider to design the proposed subdivision to reasonably  
7 minimize potentially significant adverse impacts identified through the review required under subsection (3).

8 Pursuant to 76-3-501, The the governing body shall issue written findings to justify the reasonable mitigation  
9 required under this subsection (4).

10 (5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under  
11 subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is  
12 recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable  
13 and will preclude approval of the subdivision.

14 (b) When requiring mitigation under subsection (4) and consistent with 76-3-501, a governing body  
15 shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the  
16 subdivider.

17 (6) A governing body may conditionally approve or deny a proposed subdivision as a result of the  
18 water and sanitation information provided pursuant to 76-3-622 or public comment received pursuant to 76-3-  
19 604 on the information provided pursuant to 76-3-622 only if the conditional approval or denial is based on  
20 existing subdivision, zoning, or other regulations that the governing body has the authority to enforce.

21 (7) A governing body may not require as a condition of subdivision approval that a property owner  
22 waive a right to protest the creation of a special improvement district or a rural improvement district for capital  
23 improvement projects that does not identify the specific capital improvements for which protest is being waived.  
24 A waiver of a right to protest may not be valid for a time period longer than 20 years after the date that the final  
25 subdivision plat is filed with the county clerk and recorder.

26 (8) A governing body may not approve a proposed subdivision if any of the features and  
27 improvements of the subdivision encroach onto adjoining private property in a manner that is not otherwise  
28 provided for under chapter 4 or this chapter or if the well isolation zone of any proposed well to be drilled for the

1 proposed subdivision encroaches onto adjoining private property unless the owner of the private property  
2 authorizes the encroachment. For the purposes of this section, "well isolation zone" has the meaning provided  
3 in 76-4-102.

4 (9) If a federal or state governmental entity submits a written or oral comment or an opinion regarding  
5 wildlife, wildlife habitat, or the natural environment relating to a subdivision application for the purpose of  
6 assisting a governing body's review, the comment or opinion may be included in the governing body's written  
7 statement under 76-3-620 only if the comment or opinion provides scientific information or a published study  
8 that supports the comment or opinion. A governmental entity that is or has been involved in an effort to acquire  
9 or assist others in acquiring an interest in the real property identified in the subdivision application shall disclose  
10 that the entity has been involved in that effort prior to submitting a comment, an opinion, or information as  
11 provided in this subsection.

12 (10) Findings of fact by the governing body concerning whether the development of the proposed  
13 subdivision meets the requirements of this chapter must be based on the record as a whole. The governing  
14 body's findings of fact must be sustained unless they are arbitrary, capricious, or unlawful."

15

16 NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

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18 NEW SECTION. Section 5. Applicability. [This act] applies to all currently approved subdivisions  
19 and future subdivision applications. If any existing conditions of subdivision approval are in conflict with [this  
20 act], the homeowners' association or developer may petition the appropriate local governmental entity for  
21 modifications to the conditions to reflect the changes set forth in [this act].

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- END -