

SENATE BILL NO. 33

INTRODUCED BY T. RICHMOND, D. KARY

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PHASED DEVELOPMENT SUBDIVISION REVIEW PROCESS; LIMITING PUBLIC HEARING REQUIREMENTS PRIOR TO THE COMMENCEMENT OF EACH DEVELOPMENT PHASE; REQUIRING GOVERNMENT BODIES TO COMPLETE PHASE REVIEWS WITHIN 20 WORKING DAYS; AMENDING SECTIONS 76-3-103 AND 76-3-617, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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) "Phased development" means a subdivision application and preliminary plat that at the time of  
9 submission consists of independently platted development phases ~~that are scheduled for review on a schedule~~  
10 ~~proposed by the subdivider.~~

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

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

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

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

24 (15) "Subdivider" means a person who causes land to be subdivided or who proposes a subdivision of  
25 land.

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

1 mobile homes will be placed.

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

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

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

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

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

17 **Section 2.** Section 76-3-617, MCA, is amended to read:

18 **"76-3-617. Phased development -- application requirements -- hearing required.** (1) A subdivider  
19 applying for phased development review shall submit with the phased development application an overall phased  
20 development preliminary plat on which independent platted development phases must be presented. The phased  
21 development application must contain the information required pursuant to parts 5 and 6 of this chapter for all  
22 phases of a development and a schedule for when the subdivider plans to submit for review each phase of the  
23 development. ~~The subdivider may change the schedule for review of each phase of the development upon~~  
24 ~~approval of the governing body after a public hearing as provided in subsection (4) if the change does not negate~~  
25 ~~conditions of approval or otherwise adversely affect public health, safety, and welfare.~~

26 (2) Except as otherwise provided by this section, the phased development application must be reviewed  
27 in conformity with parts 5 and 6 of this chapter. ~~In addition, each phase of the phased development must be~~  
28 ~~reviewed as provided in subsection (4).~~

29 (3) The governing body may approve phased developments that extend beyond the time limits set forth  
30 in 76-3-610 but all phases of the phased development must be submitted for review and approved, conditionally

1 approved, or denied within 20 years of the date the overall phased development preliminary plat is approved by  
2 the governing body.

3 (4) Prior to the commencement of each phase, the subdivider shall provide written notice to the  
4 governing body. ~~The governing body shall hold a public hearing pursuant to 76-3-605(3) within 30 working days~~  
5 ~~after receipt of the written notice from the subdivider. After the hearing, the governing body shall determine~~  
6 ~~whether any changed primary criteria impacts or new information exists that creates new potentially significant~~  
7 ~~adverse impacts for the phase or phases. Notwithstanding the provisions of 76-3-610(2), the governing body shall~~  
8 ~~issue supplemental written findings of fact within 20 working days of the hearing and may impose necessary,~~  
9 ~~additional conditions to minimize potentially significant adverse impacts identified in the review of each phase of~~  
10 ~~the development for changed primary criteria impacts or new information. Any additional conditions must be met~~  
11 ~~before final plat approval for each particular phase and the approval in accordance with 76-3-611 is in force for~~  
12 ~~not more than 3 calendar years or less than 1 calendar year within the maximum timeframe provided in~~  
13 ~~subsection (3). The governing body has 20 working days to complete reviews for completeness and compliance~~  
14 ~~of each phase.~~

15 (5) The governing body may impose a reasonable periodic fee for the review under subsection (4) of the  
16 phases in the phased development."  
17

18 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.  
19

- END -