

SENATE BILL NO. 116

INTRODUCED BY LAIBLE

BY REQUEST OF THE EDUCATION AND LOCAL GOVERNMENT INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LOCAL GOVERNMENT REVIEW OF PROPOSED SUBDIVISIONS; CREATING DEFINITIONS OF "MINOR SUBDIVISION" AND "PUBLIC UTILITY"; REQUIRING LOCAL SUBDIVISION REGULATIONS TO LIST MATERIALS REQUIRED IN A SUBDIVISION APPLICATION; REQUIRING THE REGULATIONS TO ADDRESS MULTIPLE HEARINGS; REQUIRING THE REGULATIONS TO ESTABLISH EVASION CRITERIA AND PROVIDE FOR AN APPEALS PROCESS; REQUIRING THE REGULATIONS TO ESTABLISH A PREAPPLICATION PROCESS; ESTABLISHING A COMPLETENESS REVIEW FOR THE APPLICATION AND REVIEW FOR ~~ADEQUACY~~ SUFFICIENCY OF INFORMATION AND PROVIDING DEADLINES FOR THOSE REVIEWS; PROVIDING A PROCEDURE FOR MULTIPLE HEARINGS WHEN NEW INFORMATION IS PRESENTED TO A GOVERNING BODY; REVISING THE REVIEW PROCEDURE FOR FIRST AND SUBSEQUENT MINOR SUBDIVISIONS FROM A TRACT OF RECORD, ALLOWING FOR EXPEDITED REVIEW OF MINOR SUBDIVISIONS, AND ALLOWING A GOVERNING BODY TO ADOPT REGULATIONS SPECIFIC TO MINOR SUBDIVISIONS; REQUIRING THAT ANY DECISION BY A GOVERNING BODY ON A PROPOSED SUBDIVISION BE ACCOMPANIED BY INFORMATION ON THE APPEALS PROCESS, THE RELEVANT REGULATIONS AND STATUTES, DATA THE GOVERNING BODY USED TO MAKE ITS DECISION, AND CONDITIONS THAT APPLY IF APPROVAL IS CONDITIONAL; AMENDING SECTIONS 76-3-103, 76-3-501, 76-3-504, 76-3-601, 76-3-602, 76-3-603, 76-3-604, 76-3-605, 76-3-608, 76-3-609, 76-3-610, 76-3-620, 76-3-625, AND 76-4-127, MCA; REPEALING SECTION 76-3-505, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND ~~AN~~ APPLICABILITY DATE DATES."

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 or possession of 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.

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

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

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

(9) ~~"Irregularly shaped tract of land" means a parcel of land other than an aliquot part of the United States government survey section or a United States government lot, the boundaries or areas of which cannot be determined without a survey or trigonometric calculation.~~ "Minor subdivision" means a subdivision that creates five or fewer lots from a tract of record.

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

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

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

body.

~~(13) "Registered land surveyor" means a person licensed in conformance with Title 37, chapter 67, to practice surveying in the state of Montana. "Public utility" has the meaning provided in 69-3-101, except that for the purposes of this chapter, the term includes county or consolidated city and county water or sewer districts as provided for in Title 7, chapter 13, parts 22 and 23.~~

~~(14) "Registered professional engineer" means a person licensed in conformance with Title 37, chapter 67, to practice engineering in the state of Montana.~~

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

~~(16)~~(15) "Subdivision" means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and further includes a condominium or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes.

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

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

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

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

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

Section 2. Section 76-3-501, MCA, is amended to read:

"76-3-501. Local subdivision regulations. ~~(1) Before July 1, 1974, the~~ The governing body of every county, city, and town shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for:

- (1) the orderly development of their jurisdictional areas; ~~for~~
- (2) the coordination of roads within subdivided land with other roads, both existing and planned; ~~for~~
- (3) the dedication of land for roadways and for public utility easements; ~~for~~
- (4) the improvement of roads; ~~for~~
- (5) the provision of adequate open spaces for travel, light, air, and recreation; ~~for~~
- (6) the provision of adequate transportation, water, and drainage;
- (7) subject to the provisions of 76-3-511, ~~for~~ the regulation of sanitary facilities; ~~for~~
- (8) the avoidance or minimization of congestion; and ~~for~~
- (9) the avoidance of ~~subdivision which~~ subdivisions that would involve unnecessary environmental degradation and ~~the avoidance of~~ danger of injury to health, safety, or welfare by reason of natural hazard or the lack of water, drainage, access, transportation, or other public services or that would necessitate an excessive expenditure of public funds for the supply of ~~such~~ the services.

~~(2) Review and approval or disapproval of a subdivision under this chapter may occur only under those regulations in effect at the time an application for approval of a preliminary plat or for an extension under 76-3-610 is submitted to the governing body."~~

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

"76-3-504. Subdivision regulations -- contents. (1) The subdivision regulations adopted under this chapter must, at a minimum:

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

(b) except as provided in 76-3-210, 76-3-509, or 76-3-609~~(3)~~, require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

~~(b)(c)~~ establish procedures consistent with this chapter for the submission and review of subdivision ~~plats~~ applications and amended applications;

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

~~(d)(e)~~ provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be

eliminated or overcome by approved construction techniques;

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

~~(f)~~(g) prescribe standards for:

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

(ii) grading and drainage;

(iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that, ~~at a minimum,~~ meet the regulations adopted by the department of environmental quality under 76-4-104;

(iv) the location and installation of public utilities;

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

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

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

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

(ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

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

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

(A) are in locations of appropriate topographic characteristics and sufficient width; to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for

irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

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

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

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

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

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

~~(+)(l)~~ require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

~~(+)(m)~~ require the subdivider to describe, dimension, and show public utility easements in the subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility services within the subdivision.

(N) ESTABLISH WHETHER THE GOVERNING BODY, ITS AUTHORIZED AGENT OR AGENCY, OR BOTH WILL HOLD PUBLIC HEARINGS:

~~(+)(o)~~ establish procedures describing how the governing body OR ITS AGENT OR AGENCY will address information presented to the governing body after AT the hearing OR HEARINGS held pursuant to 76-3-605 and when the governing body may schedule subsequent public hearings to consider new information. The procedures

~~must be in accordance with the provisions of [section 9].~~

~~(P) establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207 is an attempt to evade the requirements of this chapter. The regulations must provide for an appeals process to the governing body if the reviewing authority is not the governing body.~~

~~(Q) establish a preapplication process that:~~

~~(i) allows a subdivider to meet with the agent or agency, other than the governing body, that is designated by the governing body to review subdivision applications prior to the subdivider submitting the application;~~

~~(ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;~~

~~(iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local, state, and federal government, and any other entities that will MAY be contacted for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during the review of the application, the agent or agency designated by the governing body contacts a public utility, agency, or other entity that was not included on the list originally made available to the subdivider, the agent or agency shall notify the subdivider of the contact and the timeframe for response.~~

~~(iv) requires that a preapplication meeting take place no more than 30 days from the date that the agent or agency receives a written request for a preapplication meeting from the subdivider; and~~

~~(v) establishes a time limit after a preapplication meeting by which an application must be submitted as provided in 76-3-604.~~

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

(3) The governing body may establish deadlines for submittal of subdivision applications.

Section 4. Section 76-3-601, MCA, is amended to read:

"76-3-601. Submission of application and preliminary plat for review. (1) ~~Except when a plat is eligible for summary review pursuant to 76-3-505, the~~ Subject to the submittal deadlines established as provided in 76-3-504(3), the subdivider shall present to the governing body or to the agent or agency designated by the governing body the subdivision application, including the preliminary plat of the proposed subdivision, for local

review. The preliminary plat must show all pertinent features of the proposed subdivision and all proposed improvements.

(2) (a) When the proposed subdivision lies within the boundaries of an incorporated city or town, the application and preliminary plat must be submitted to and approved by the city or town governing body.

(b) When the proposed subdivision is situated entirely in an unincorporated area, the application and preliminary plat must be submitted to and approved by the governing body of the county. However, if the proposed subdivision lies within 1 mile of a third-class city or town, within 2 miles of a second-class city, or within 3 miles of a first-class city, the county governing body shall submit the application and preliminary plat to the city or town governing body or its designated agent for review and comment. If the proposed subdivision is situated within a rural school district, as described in 20-9-615, the county governing body shall provide ~~an informational copy~~ a summary of the information contained in the application and preliminary plat to school district trustees.

(c) If the proposed subdivision lies partly within an incorporated city or town, the ~~proposed~~ application and preliminary plat must be submitted to and approved by both the city or town and the county governing bodies.

(d) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall coordinate the subdivision review and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible.

(3) The provisions of 76-3-604, 76-3-605, 76-3-608 through 76-3-610, and this section do not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to 7-3-4444."

Section 5. Section 76-3-602, MCA, is amended to read:

"76-3-602. Fees. The governing body may establish reasonable fees to be paid by the subdivider to defray the expense of reviewing subdivision ~~plats~~ applications."

Section 6. Section 76-3-603, MCA, is amended to read:

"76-3-603. Contents of environmental assessment. When required, the environmental assessment must accompany the ~~preliminary plat~~ subdivision application and must include:

(1) for a major subdivision:

(a) a description of every body or stream of surface water that may be affected by the proposed subdivision, together with available ground water information, and a description of the topography, vegetation, and wildlife use within the area of the proposed subdivision;

(b) a summary of the probable impacts of the proposed subdivision based on the criteria described in

76-3-608; and

(c) a community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing; roads and maintenance; water, sewage, and solid waste facilities; and fire and police protection; and

(d) additional relevant and reasonable information related to the applicable regulatory criteria adopted under 76-3-501 as may be required by the governing body;

(2) except as provided in 76-3-609(3), for a minor subdivision, a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608."

Section 7. Section 76-3-604, MCA, is amended to read:

"76-3-604. Review of preliminary plat subdivision application -- review for required elements and adequacy SUFFICIENCY of information. (1) ~~(a) The governing body or its designated agent or~~ Within 5 working days of receipt of a subdivision application submitted in accordance with any deadlines established pursuant to 76-3-504(3) and receipt of the review fee submitted as provided in 76-3-602, the reviewing agent or agency shall review the preliminary plat to determine whether it conforms to the provisions of this chapter and to rules prescribed or adopted pursuant to this chapter determine whether the application contains all of the listed materials as required by 76-3-504(1)(a) and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of the reviewing agent's or agency's determination.

(b) If the reviewing agent or agency determines that elements are missing from the application, the reviewing agent or agency shall identify those elements in the notification.

(2) (a) Within 15 working days after the reviewing agent or agency notifies the subdivider or the subdivider's agent that the application contains all of the required elements as provided in subsection (1), the reviewing agent or agency shall determine whether the application and required elements contain ~~adequate~~ DETAILED, SUPPORTING information THAT IS SUFFICIENT to allow for the review of the proposed subdivision under the provisions of this chapter and the local regulations adopted pursuant to this chapter and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of the reviewing agent's or agency's determination.

(b) If the reviewing agent or agency determines that information in the application is ~~inadequate~~ NOT SUFFICIENT to allow for review of the proposed subdivision, the reviewing agent or agency shall identify the ~~inadequate~~ INSUFFICIENT information in its notification.

(c) A determination that an application contains ~~adequate~~ SUFFICIENT information for review as provided

in this subsection (2) does not ensure that the proposed subdivision will be approved or conditionally approved by the governing body and does not limit the ability of the reviewing agent or agency OR THE GOVERNING BODY to request additional information during the review process.

(3) The time limits provided in subsections (1) and (2) apply to each submittal of the application until:

(a) a determination is made that the application contains the required elements and ~~adequate~~ SUFFICIENT information; and

(b) the subdivider or the subdivider's agent is notified.

(2)(4) ~~The~~ After the reviewing agent or agency has notified the subdivider or the subdivider's agent that an application contains ~~adequate~~ SUFFICIENT information as provided in subsection (2), the governing body shall approve, conditionally approve, or ~~disapprove~~ DENY the ~~preliminary plat~~ proposed subdivision within 60 working days, based on its determination of whether the application conforms to the provisions of this chapter and to the local regulations adopted pursuant to this chapter, ~~of its presentation~~ unless:

(a) the subdivider ~~consents~~ and the reviewing agent or agency agree to an extension or suspension of the review period, not to exceed 1 year; or

(b) a subsequent public hearing is scheduled and held as provided in [section 9].

(3)(5) If the governing body ~~disapproves~~ DENIES or conditionally approves the ~~preliminary plat~~ proposed subdivision, it shall ~~forward one copy of the plat to~~ send the subdivider ~~accompanied by a letter, over~~ with the appropriate signature, ~~stating the reason for disapproval or enumerating the conditions that must be met to ensure approval of the final plat that complies with the provisions of 76-3-620.~~

(6) (a) Review and approval, CONDITIONAL APPROVAL, or ~~disapproval~~ DENIAL of a proposed subdivision under this chapter may occur only under those regulations in effect at the time a subdivision application is determined to contain ~~adequate~~ SUFFICIENT information for review as provided in subsection (2).

(b) If regulations change during the review periods provided in subsections (1) and (2), the determination of whether the application contains the required elements and ~~adequate~~ SUFFICIENT information must be based on the new regulations."

Section 8. Section 76-3-605, MCA, is amended to read:

"76-3-605. Hearing on preliminary plat subdivision application. (1) Except as provided in 76-3-505 76-3-609 and subject to the regulations adopted pursuant to 76-3-504(1)(n)(1)(o) and [section 9], ~~the governing body or its authorized agent or agency shall hold a at least one public hearing on the preliminary plat subdivision application~~ MUST BE HELD BY THE GOVERNING BODY, ITS AUTHORIZED AGENT OR AGENCY, OR BOTH and THE GOVERNING

BODY, ITS AUTHORIZED AGENT OR AGENCY, OR BOTH shall consider all relevant evidence relating to the public health, safety, and welfare, including the environmental assessment if required, to determine whether the plat proposed subdivision APPLICATION should be approved, conditionally approved, or ~~disapproved~~ DENIED by the governing body.

(2) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall hold joint hearings on the ~~preliminary plat~~ subdivision application and annexation whenever possible.

(3) Notice of the hearing must be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing. The subdivider, each property owner of record whose property is immediately adjoining the land included in the preliminary plat, and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat must also be notified of the hearing by registered or certified mail not less than 15 days prior to the date of the hearing.

(4) When a hearing is held by an agent or agency designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or ~~disapproval~~ DENIAL of the plat proposed subdivision. This recommendation must be submitted to the governing body in writing not later than 10 working days after the public hearing."

NEW SECTION. Section 9. Subsequent hearings -- consideration of new information -- requirements for regulations. (1) The regulations adopted pursuant to 76-3-504~~(1)(n)(1)(o)~~ must comply with the provisions of this section.

(2) The governing body shall determine whether public comments or documents presented to the governing body ~~following~~ AT a hearing held pursuant to 76-3-605 constitute:

(a) information or analysis of information that was presented at ~~the~~ A hearing held pursuant to 76-3-605 that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment; or

(b) new information regarding a subdivision application that has never been submitted as evidence or considered by EITHER the governing body or its agent or agency at ~~an earlier~~ A hearing during which the subdivision application was considered.

(3) If the governing body determines that the public comments or documents constitute the information described in subsection (2)(b), the governing body may:

(a) approve, conditionally approve, or ~~disapprove~~ DENY the proposed subdivision without basing its

decision on the new information IF THE GOVERNING BODY DETERMINES THAT THE NEW INFORMATION IS EITHER IRRELEVANT OR NOT CREDIBLE; or

(b) schedule or direct its agent or agency to schedule a subsequent public hearing for consideration of only the new information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.

(4) If a public hearing is held as provided in subsection (3)(b), the 60-working-day review period required in 76-3-604(4) is suspended and the new hearing must be noticed and held within 45 days of the governing body's determination to schedule a new hearing. After the new hearing, the 60-working-day time limit resumes AT THE GOVERNING BODY'S NEXT SCHEDULED PUBLIC MEETING FOR WHICH PROPER NOTICE FOR THE PUBLIC HEARING ON THE SUBDIVISION APPLICATION CAN BE PROVIDED and the THE governing body may not consider any information regarding the subdivision application that is presented after the hearing when making its decision to approve, conditionally approve, or ~~disapprove~~ DENY the proposed subdivision.

Section 10. Section 76-3-608, MCA, is amended to read:

"76-3-608. Criteria for local government review. (1) The basis for the governing body's decision to approve, conditionally approve, or ~~disapprove~~ DENY a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision meets the requirements of this chapter. A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts on educational services.

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

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

(a) except when the governing body has established an exemption pursuant to subsection ~~(7)~~ (6) of this section or except as provided in ~~76-3-505 and 76-3-509~~ or in 76-3-609(2) or (4), the ~~effect~~ impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety;

(b) compliance with:

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

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

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

(c) the provision of easements for the location and installation of any planned utilities; and

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

(4) The governing body may require the subdivider to design the proposed subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3). The governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

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

(b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

~~(6) (a) When a minor subdivision is proposed in an area where a growth policy has been adopted pursuant to chapter 1 and the proposed subdivision will comply with the growth policy, the subdivision is exempt from the review criteria contained in subsection (3)(a) but is subject to applicable zoning regulations.~~

~~————(b) In order for a growth policy to serve as the basis for the exemption provided by this subsection (6), the growth policy must meet the requirements of 76-1-601.~~

~~————(7)(6) The governing body may exempt proposed subdivisions that are entirely within the boundaries of designated geographic areas from the review criteria in subsection (3)(a) if all of the following requirements have been met:~~

~~(a) the governing body has adopted a growth policy pursuant to chapter 1 that:~~

~~(i) addresses the criteria in subsection (3)(a);~~

~~(ii) evaluates the ~~effect~~ impact of ~~the subdivision~~ DEVELOPMENT on the criteria in subsection (3)(a);~~

~~(iii) describes zoning regulations that will be implemented to address the criteria in subsection (3)(a); and~~

~~(iv) identifies one or more geographic areas where the governing body intends to authorize an exemption from review of the criteria in subsection (3)(a); and~~

~~(b) the governing body has adopted zoning regulations pursuant to chapter 2, part 2 or 3, that:~~

~~(i) apply to the entire area subject to the exemption; and~~

~~(ii) address the criteria in subsection (3)(a), as described in the growth policy."~~

Section 11. Section 76-3-609, MCA, is amended to read:

"76-3-609. Review procedure for minor subdivisions -- determination of ~~adequacy~~ SUFFICIENCY of application -- governing body to adopt regulations. ~~Subdivisions containing five or fewer parcels in which proper access to all lots is provided and in which there is not any land to be dedicated to the public for parks or playgrounds are to be reviewed as follows: (1) Minor subdivisions must be reviewed as provided in this section and subject to the applicable local regulations adopted pursuant to 76-3-504.~~

~~(1)(2) When legal and physical access to all lots is provided, the first minor subdivision from a tract of record that existed prior to or that was legally created on or after April 2, 1973, from which no subdivision has been approved under this chapter or from which no more than five parcels have been created under 76-3-201 or 76-3-207 must be reviewed as follows:~~

~~(2) IF THE TRACT OF RECORD PROPOSED TO BE SUBDIVIDED HAS NOT BEEN SUBDIVIDED OR CREATED BY A SUBDIVISION UNDER THIS CHAPTER OR HAS NOT RESULTED FROM A TRACT OF RECORD THAT HAS HAD MORE THAN FIVE PARCELS CREATED FROM THAT TRACT OF RECORD UNDER 76-3-201 OR 76-3-207 SINCE JULY 1, 1973, THEN THE PROPOSED SUBDIVISION IS A FIRST MINOR SUBDIVISION FROM A TRACT OF RECORD AND, WHEN LEGAL AND PHYSICAL ACCESS TO ALL LOTS IS PROVIDED, MUST BE REVIEWED AS FOLLOWS:~~

~~(a) The Except as provided in subsection (2)(b), the governing body shall approve, conditionally approve, or disapprove DENY the first minor subdivision from a tract of record within 35 working days of the submission of the application a determination by the reviewing agent or agency that the application contains required elements and adequate SUFFICIENT information for review. The determination and notification to the subdivider must be made in the same manner as is provided in 76-3-604(1) through (3).~~

~~(b) The subdivider and the reviewing agent or agency may agree to an extension or suspension of the review period, not to exceed 1 year.~~

~~(c) Except as provided in subsection (2)(d)(iii), an application must include a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608(3).~~

~~(2) The governing body shall state in writing the conditions that must be met if the subdivision is conditionally approved or what local regulations would not be met by the subdivision if it disapproves the subdivision.~~

~~———— (3) The requirements for holding a public hearing and preparing an environmental assessment do not apply to the first minor subdivision created from a tract of record.~~

~~———— (4) Subsequent subdivisions from a tract of record must be reviewed under 76-3-505 and regulations adopted pursuant to that section~~

~~(d) The following requirements do not apply to the first minor subdivision created from a tract of record~~

~~that existed prior to or that was legally created on or after April 2, 1973, from which no subdivision has been approved under this chapter or from which no more than five parcels have been created under 76-3-201 or 76-3-207 FROM A TRACT OF RECORD AS PROVIDED IN SUBSECTION (2):~~

~~(i) the requirement to prepare an environmental assessment;~~

~~(ii) the requirement to hold a hearing on the subdivision application pursuant to 76-3-605; and~~

~~(iii) the requirement to review the subdivision for the criteria contained in 76-3-608(3)(a) if the minor subdivision is proposed in the portion of a jurisdictional area that has adopted zoning regulations that address the criteria in 76-3-608(3)(a).~~

~~(e) The governing body may adopt regulations that establish requirements for the expedited review of the first minor subdivision from a tract of record. The following apply to a proposed subdivision reviewed under the regulations:~~

~~(i) 76-3-608(3); and~~

~~(ii) the provisions of Title 76, chapter 4, part 1, whenever approval is required by those provisions.~~

~~(3) Except as provided in subsection (4), subsequent minor subdivisions from a tract of record that existed prior to or that was legally created on or after April 2, 1973, from which a subdivision has been approved under this chapter or from which no more than AT LEAST five parcels have been created under 76-3-201 or 76-3-207 ANY MINOR SUBDIVISION THAT IS NOT A FIRST MINOR SUBDIVISION FROM A TRACT OF RECORD, AS PROVIDED IN SUBSECTION (2), IS A SUBSEQUENT MINOR SUBDIVISION AND must be reviewed as provided in 76-3-601 through 76-3-605, 76-3-608, 76-3-610 through 76-3-614, and 76-3-620.~~

~~(4) The governing body may adopt subdivision regulations that establish requirements for review of subsequent minor subdivisions that meet or exceed the requirements that apply to the first minor subdivision, as provided in subsection (2) and this chapter.~~

~~(5) (A) Review and approval, or disapproval, CONDITIONAL APPROVAL, OR DENIAL of a subdivision under this chapter may occur only under those regulations in effect at the time ~~an~~ THAT A SUBDIVISION application is determined to contain ~~adequate~~ SUFFICIENT information for review as provided in subsection (2)(a).~~

~~(B) IF REGULATIONS CHANGE DURING THE PERIOD THAT THE APPLICATION IS REVIEWED FOR REQUIRED ELEMENTS AND SUFFICIENT INFORMATION, THE DETERMINATION OF WHETHER THE APPLICATION CONTAINS THE REQUIRED ELEMENTS AND SUFFICIENT INFORMATION MUST BE BASED ON THE NEW REGULATIONS."~~

Section 12. Section 76-3-610, MCA, is amended to read:

"76-3-610. Effect of approval of application and preliminary plat. (1) Upon approving or conditionally

approving ~~a~~ an application and preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval ~~shall~~ must be in force for not more than 3 calendar years or less than 1 calendar year. At the end of this period the governing body may, at the request of the subdivider, extend its approval for no more than 1 calendar year, except that the governing body may extend its approval for a period of more than 1 year if that approval period is included as a specific condition of a written agreement between the governing body and the subdivider, according to 76-3-507.

(2) After the application and preliminary plat ~~is~~ are approved, the governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat approval ~~providing said~~ if the approval is obtained within the original or extended approval period as provided in subsection (1)."

Section 13. Section 76-3-620, MCA, is amended to read:

"76-3-620. Review requirements -- written statement. In addition to the requirements of 76-3-604 and 76-3-609, ~~a governing body may not deny or condition a subdivision approval under this part unless it provides a~~ FOLLOWING any decision by the governing body on a proposed subdivision must be based upon and accompanied by a written statement TO DENY OR CONDITIONALLY APPROVE A PROPOSED SUBDIVISION, THE GOVERNING BODY SHALL PREPARE A WRITTEN STATEMENT THAT MUST BE PROVIDED TO THE APPLICANT, THAT MUST BE MADE AVAILABLE TO THE PUBLIC, AND to the applicant detailing the circumstances of the subdivision denial or condition imposition. The statement must include:

~~_____ (1) the reason for the denial or condition imposition;~~

~~_____ (2) the evidence that justifies the denial or condition imposition; and~~

~~_____ (3) information regarding the appeal process for the denial or condition imposition. that:~~

~~(1) includes information regarding the appeal process for the denial or imposition of conditions;~~

~~(2) identifies the regulations and statutes that are relevant to USED IN REACHING the decision TO DENY OR IMPOSE CONDITIONS and explains how they ~~contributed~~ APPLY to the decision TO DENY OR IMPOSE CONDITIONS;~~

~~(3) provides the facts and conclusions that the governing body relied upon in making its decision that are based on relevant issues raised through documents, testimony, and other materials submitted during review of the proposed subdivision;~~

~~_____ (4) identifies where in the public record the items listed in subsection (3) are located TO DENY OR IMPOSE CONDITIONS AND REFERENCES DOCUMENTS, TESTIMONY, OR OTHER MATERIALS THAT FORM THE BASIS OF THE DECISION;~~

and

~~(5)(4) provides the conditions that may apply to the ~~subdivision~~ PRELIMINARY PLAT approval and ~~the~~~~

conditions that must be satisfied before the final plat may be approved."

Section 14. Section 76-3-625, MCA, is amended to read:

"76-3-625. Violations -- actions against governing body. (1) A person who has filed with the governing body an application for a subdivision under this chapter may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to this chapter that is arbitrary or capricious.

(2) A party identified in subsection (3) who is aggrieved by a decision of the governing body to approve, conditionally approve, or ~~disapprove~~ DENY a proposed an application and preliminary plat for a proposed subdivision or a final subdivision plat may, within 30 days after the decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made.

(3) The following parties may appeal under the provisions of subsection (2):

(a) the subdivider;

(b) a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;

(c) the county commissioners of the county where the subdivision is proposed; and

(d) (i) a first-class municipality, as described in 7-1-4111, if a subdivision is proposed within 3 miles of its limits;

(ii) a second-class municipality, as described in 7-1-4111, if a subdivision is proposed within 2 miles of its limits; and

(iii) a third-class municipality or a town, as described in 7-1-4111, if a subdivision is proposed within 1 mile of its limits.

(4) For the purposes of this section, "aggrieved" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision."

Section 15. Section 76-4-127, MCA, is amended to read:

"76-4-127. Notice of certification that adequate storm water drainage and adequate municipal facilities will be provided. (1) To qualify for the exemption from review set out in 76-4-125(2)(d), the governing

body, as defined in 76-3-103, shall, within 20 days after ~~preliminary plat~~ approval of the application and preliminary plat under the Montana Subdivision and Platting Act, send notice of certification to the reviewing authority that a subdivision has been submitted for approval and that adequate storm water drainage and adequate municipal facilities will be provided for the subdivision.

(2) The notice of certification must include the following:

- (a) the name and address of the applicant;
- (b) a copy of the preliminary plat included with the application for the proposed subdivision or a final plat when a preliminary plat is not necessary;
- (c) the number of proposed parcels in the subdivision;
- (d) a copy of any applicable zoning ordinances in effect;
- (e) how construction of the sewage disposal and water supply systems or extensions will be financed;
- (f) certification that the subdivision is within an area covered by a growth policy pursuant to chapter 1 of this title or within a first-class or second-class municipality, as described in 7-1-4111, and a copy of the growth policy, when applicable, if one has not yet been submitted to the reviewing authority;
- (g) the relative location of the subdivision to the city or town;
- (h) certification that adequate municipal facilities for the supply of water and disposal of sewage and solid waste are available or will be provided within 1 year after the notice of certification is issued;
- (i) if water supply, sewage disposal, or solid waste facilities are not municipally owned, certification from the facility owners that adequate facilities are available; and
- (j) certification that the governing body has reviewed and approved plans to ensure adequate storm water drainage."

NEW SECTION. Section 16. Repealer. Section 76-3-505, MCA, is repealed.

NEW SECTION. Section 17. Codification instruction. [Section 9] is intended to be codified as an integral part of Title 76, chapter 3, part 6, and the provisions of Title 76, chapter 3, part 6, apply to [section 9].

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

NEW SECTION. Section 19. Applicability. (1) [This act] applies to subdivision applications submitted on or after [the effective date of this act].

(2) [SECTION 3], AMENDING 76-3-504 AND CONCERNING ADOPTION OF REGULATIONS, AND REFERENCES TO THAT SECTION APPLY UPON ADOPTION OF REGULATIONS UNDER THAT SECTION OR ON OCTOBER 1, 2006, WHICHEVER OCCURS FIRST.

- END -

