**** Bill No. **

Introduced By ******

By Request of the **

EDUCATION & LOCAL GOV'T IC
JUNE 18, 2012
EXHIBIT 5

A Bill for an Act entitled: "An Act authorizing the regulation of second or subsequent buildings or structures on an existing tract of record; authorizing regulations; providing definitions; providing a review process; authorizing appeals; amending sections 76-3-103, 76-4-125, 76-6-203, and 76-7-203, MCA; repealing sections 76-3-202, 76-3-204, and 76-3-208, MCA; providing an immediate effective date; and providing an applicability date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 6], the following definitions apply:

(1) "Building" means a structure with a roof supported by columns or walls that is used for the housing or enclosure of persons, animals, or property of any kind.

(2) "Governing body" means the governing body of a county, a municipality, or a consolidated city-county that exercises planning or zoning authority.

(3) "Reviewing agent or agency" means an individual or entity that is designated by the governing body to accept applications for second or subsequent buildings or structures and that is authorized to:

(a) determine whether the application is complete for purposes of review; and

(b) approve, conditionally approve, or deny such applications.

(4) "Structure" means anything constructed or erected that requires a location on the ground, including a building, garage, or shed, but not including incidental improvements such as a fence, wall, driveway, or walkway.

(5) "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.

NEW SECTION. **Section 2. Second or subsequent buildings or structures -- authority.** (1) A governing body may adopt regulations for the purpose of reviewing the creation of second or subsequent buildings or structures on an existing tract of record. A governing body may adopt any regulations it considers necessary to protect public health, safety, or the general welfare.

(2) Prior to adopting or amending regulations pursuant to subsection (1), the governing body shall hold at least one public hearing. The notice of the public hearing must be published as provided in 7-1-2121 if the governing body is a county commission or as provided in 7-1-4127 if the governing body is a city commission or a town council. In addition to any requirement

provided in 7-1-2121 or 7-1-4127, the governing body shall provide a description of the general character of the proposed regulations in the notice for the hearing.

(3) At the public hearing, the governing body shall give the public an opportunity to be heard regarding the proposed regulations.

(4) Within 30 days following the public hearing, the governing body may adopt the regulations.

(5) The governing body may establish a reasonable fee to be paid by the applicant that is commensurate with the cost of reviewing applications for the creation of second or subsequent buildings or structures on an existing tract of record.

(6) Second or subsequent buildings or structures in existence on or before [the effective date of this act] on an existing tract of record are not subject to the provisions of this section and are not subject to review for compliance with Title 76, chapter 3.

NEW SECTION. **Section 3. Regulations -- contents.** (1) If a governing body adopts regulations pursuant to [section 2], the regulations must, at a minimum, require:

(a) a description of:

(i) property boundaries;

(ii) on-site and adjacent off-site streets, roads, and easements;

(iii) geographic features;

(iv) existing septic tanks and drainfields; and

(v) the layout of all existing and proposed buildings and structures;

(b) adequate water supply and sewage and solid waste disposal facilities as provided in subsection (2);

(c) an assessment of potential significant impacts on the surrounding physical environment and human population in the area to be affected by the proposal;

(d) mitigation measures, if any, that may be imposed on the proposal to avoid or minimize potential significant impacts identified in subsection (1)(c).

(e) adequate emergency medical, fire protection, and law enforcement services;

(f) legal and physical access to the site;

(g) compliance with applicable flood plain requirements; and

(h) minimum site development standards.

(2) All water supply and sewage and solid waste disposal facilities must comply with any applicable regulations adopted by the department of environmental quality, department of public health and human services, a local health department with jurisdiction over the proposal, or other local, state, or federal agency, as applicable.

(3) Any regulation adopted pursuant to this subsection shall not apply to the creation of second or subsequent buildings or structures on an existing tract of record when:

(a) the proposal is in conformance with applicable local zoning regulations when local zoning regulations are in effect;

(b) the creation of the existing tract of record through

subdivision in compliance with parts 5 and 6 of this chapter expressly contemplated the creation of the proposed second or subsequent buildings or structures;

(c) the second or subsequent building or structure is a facility, as defined in 15-65-101, that is required by law to charge and collect a lodging facility use tax, except that any area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes is subject to the provisions of this chapter; or

(d) in its regulations, the governing body identifies other types or number of second or subsequent buildings or structures on an existing tract of record that are exempt from local review pursuant to this chapter or exempt from one or more of the review criteria set forth in the regulations adopted pursuant to this section.

NEW SECTION. **Section 4. Review procedure.** (1) Upon receiving an application for the creation of second or subsequent buildings or structures on an existing tract of record, the reviewing agent or agency shall within 10 working days determine whether the application contains the required materials and sufficient information, including payment of any applicable fees authorized pursuant to [section 2]. The reviewing agent or agency shall notify the applicant in writing as to whether the application is complete, or specifically identify any missing materials or insufficient information needed before the application may be determined complete.

(2) Within 45 working days after the application is determined to be complete, the reviewing agent or agency shall approve, approve with conditions, or deny the application and issue written findings of fact to the applicant that address each criteria adopted by the local government pursuant to [sections 2 and 3].

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

(4) The application shall be reviewed under the regulations in effect at the time the application is determined to be complete.

(5) The reviewing agent or agency may hold a hearing on the application.

(6) In its regulations adopted pursuant to [sections 2 and 3], the governing body may identify a different process than set forth in this section for the review of certain types or numbers of second or subsequent buildings or structures on an existing tract of record.

NEW SECTION. **Section 5. Appeals.** Any person aggrieved by a decision of the reviewing agent or agency may, within 30 days after issuance of the reviewing agent or agency's written findings of fact on the application, appeal the decision to the governing body. The governing body may affirm or deny the determination of the reviewing agent or agency. The applicant may appeal any decision or order issued by the governing body to the

district court in the county in which the property involved is located.

Section 6. 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) "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) "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, and municipal sewer or water systems and municipal water supply systems established by the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44.

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

(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~~ transferred 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~~.

(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 (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."

{*Internal References to 76-3-103:*
69-5-102 *76-4-127* *76-6-203* *76-7-203* }

Section 7. Section 76-4-125, MCA, is amended to read:

"76-4-125. Review of subdivision application -- land divisions excluded from review. (1) Except as provided in subsection (2), an application for review of a subdivision must be submitted to the reviewing authority. The review by the reviewing authority must be as follows:

(a) At any time after the developer has submitted an application under the Montana Subdivision and Platting Act, the developer shall present a subdivision application to the reviewing authority. The application must include preliminary plans and specifications for the proposed development, whatever information the developer feels necessary for its subsequent review, any public comments or summaries of public comments collected as provided in 76-3-604(7), and information required by the reviewing authority. Subdivision fees assessed by the reviewing authority must accompany the application. If the proposed development includes onsite sewage disposal facilities, the developer shall notify the designated agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The agent may conduct a preliminary site assessment to determine whether the site meets applicable state and local requirements.

(b) Within 5 working days after receipt of an application that is not subject to review by a local reviewing authority under 76-4-104, the department shall provide a written notice for informational purposes to the applicant if the application does not include a copy of the certification from the local health department required by 76-4-104(6)(j) or, if applicable, contain an approval from the local governing body under Title 76, chapter 3, together with any public comments or summaries of public comments collected as provided in 76-3-604(7)(a).

(c) If the reviewing authority denies an application and the applicant resubmits a corrected application within 30 days

after the date of the denial letter, the reviewing authority shall complete review of the resubmitted application within 30 days after receipt of the resubmitted application. If the review of the resubmitted application is conducted by a local department or board of health that is certified under 76-4-104, the department shall make a final decision on the application within 10 days after the local reviewing authority completes its review.

(d) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall make a final decision on the proposed subdivision within 55 days after the submission of a complete application and payment of fees to the reviewing authority unless an environmental impact statement is required, at which time this deadline may be increased to 120 days. The reviewing authority may not request additional information for the purpose of extending the time allowed for a review and final decision on the proposed subdivision. If the department approves the subdivision, the department shall issue a certificate of subdivision approval indicating that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction.

(2) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to review:

(a) the ~~exclusions~~ exclusion cited in 76-3-201 ~~and 76-3-204~~;

(b) divisions made for the purpose of acquiring additional

land to become part of an approved parcel, provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision;

(c) divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule;

(d) divisions located within jurisdictional areas that have adopted growth policies pursuant to chapter 1 or within first-class or second-class municipalities for which the governing body certifies, pursuant to 76-4-127, that adequate storm water drainage and adequate municipal facilities will be provided; and

(e) subject to the provisions of subsection (3), a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer if:

(i) the remainder is served by a public or multiple-user sewage system approved before January 1, 1997, pursuant to local regulations or this chapter; or

(ii) the remainder is 1 acre or larger and has an individual sewage system serving a discharge source that was in existence prior to April 29, 1993, and, if required when installed, the system was approved pursuant to local regulations or this chapter.

(3) Consistent with the applicable provisions of 50-2-116, a local health officer may require that, prior to the filing of a plat or a certificate of survey subject to review under this part

for the parcel to be segregated from the remainder referenced in subsection (2)(e)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield."

{*Internal References to 76-4-125:*
x75-1-208 *x76-3-622* *x76-4-104* *x76-4-121*
x76-4-121 *x76-4-122* *x76-4-127* *x76-4-131* }

Section 8. Section 76-6-203, MCA, is amended to read:

"**76-6-203. Types of permissible easements.** Easements or restrictions under this chapter may prohibit or limit any or all of the following:

(1) structures--construction or placing of buildings, camping trailers, housetrailers, mobile homes, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;

(2) landfill--dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials;

(3) vegetation--removal or destruction of trees, shrubs, or other vegetation;

(4) loam, gravel, etc.--excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance;

(5) surface use--surface use except for such purposes permitting the land or water area to remain predominantly in its existing condition;

(6) acts detrimental to conservation--activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat

and preservation;

(7) subdivision of land--subdivision of land as defined in 76-3-103~~,~~ and 76-3-104~~, and 76-3-202~~;

(8) other acts--other acts or uses detrimental to such retention of land or water areas in their existing conditions."

{*Internal References to 76-6-203: None.*}

Section 9. Section 76-7-203, MCA, is amended to read:

"76-7-203. Permissible easements. (1) An environmental control easement under this chapter may prohibit or limit the following activities or uses:

(a) constructing or placing of buildings, camping trailers, housetrailers, mobile homes, roads, or other structures on or above the ground;

(b) dumping or placing of soil, debris, or other wastes or substances as landfill or dumping or placing of trash, waste, or unsightly or offensive materials;

(c) removing or destroying trees, shrubs, or other vegetation or planting or allowing growth of specific types of vegetation, such as crops for human or animal consumption or undesirable vegetation;

(d) excavating, dredging, or removing of gravel, soil, rock, or other materials or substances;

(e) using the surface of the land in a particular manner, such as for agricultural, residential, commercial, or industrial uses;

(f) subdividing the land, as described in 76-3-103~~,~~ and

requirements but subject to review provisions.

{Internal References to 76-3-202: x76-6-203 x76-7-203
Internal References to 76-3-204: x76-4-125
Internal References to 76-3-208: None.}

NEW SECTION. **Section 11. {standard} Codification instruction.** [Sections 1 through 6] are intended to be codified as an integral part of Title 76, chapter 2, and the provisions of Title 76, chapter 2, apply to [sections 1 through 6].

NEW SECTION. **Section 12. {standard} Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 13. {standard} Applicability.** [Sections 1 through 5] apply to applications for the creation of second or subsequent buildings or structures submitted on or after [the effective date of this act].

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