

## Legislative Committee Report 02/01/2019

Here's a list of legislative activities since our last report:

1. MCA 37-67-3, Licensing (see attached)
  - a. MALRS Legislative and Justin Stefanik met with the Board of Professional Engineers and Land Surveyors on January 31<sup>st</sup> in Helena to present concept of changing part (c) of the experience requirements a total of 4 years of combined office and field experience in land surveying. The Board voted unanimously to support the concept and asked that MARLS present a draft LC Bill so they can get permission to officially support the bill.
  - b. Matt talked it over with Ross Fitzgerald, who advised to find an open draft (draft bill deadline has passed), of which Matt found. Rep. Fitzgerald is working with the committee to forge ahead with getting this legislation introduced.
  
2. Legislative Comm has put together a bill "watch list". This list is attached and will hopefully be maintained and updated on our web site. Several bills of interest, so please read through them and provide feedback to your committee (listed below).
  - a. LC1079 (HB 124) – Agricultural Covenant amendments. This one has changed quite a bit from the original MACo resolution from our last report, be sure to read through it and let us know whether you think MARLS should "support", "oppose", or "no action necessary".
  - b. LC2984 (SB 198) This one looks to allow the governing body to require legal access be reviewed as part of the exemption review. Legislative Committee plans to oppose this bill.
  - c. Complete watchlist attached to this report

Respectfully Submitted,

Michael S. Lapp, PLS & Dan Stahly, PLS - MARLS Legislative Committee Co-Chairs

Matt Morris

Mark Larson

Craig Brown

Proposed amendment to Part (c) of existing highlighted in yellow

**MCA 37-67-325.** *Qualifications of applicant for examination and licensure as professional land surveyor.*

*(1) An applicant who meets any of the following sets of requirements must be admitted to the principles and practices of surveying examination and the Montana state-specific land surveyor examination:*

*(a) a baccalaureate degree in land surveying that meets the board-approved land surveying curriculum, passage of the fundamentals of surveying examination, at least 4 years of combined office and field experience in land surveying under the direct supervision of a licensed professional land surveyor of which at least 3 years must be progressive experience on land surveying projects, and references and exhibits of land surveying projects as required by the board;*

*(b) an associate degree in land surveying that meets the board-approved land surveying curriculum, passage of the fundamentals of surveying examination, at least 6 years of combined office and field experience in land surveying under the direct supervision of a licensed professional land surveyor of which at least 4 1/2 years must be progressive experience on land surveying projects, and references and exhibits of land surveying projects as required by the board;*

*(c) a baccalaureate degree with a minor in land surveying that meets the board-approved land surveying curriculum, passage of the fundamentals of surveying examination, at least 6 4 years of combined office and field experience in land surveying under the direct supervision of a licensed professional land surveyor of which at least*

*4 1/2 3 years must be progressive experience on land surveying projects, and references and exhibits of land surveying projects as required by the board; or*

*(d) before October 1, 2022, passage of the fundamentals of surveying examination, at least 10 years of combined office and field experience in land surveying under the direct supervision of a licensed professional land surveyor of which at least 6 years must be progressive experience on land surveying projects, and references and exhibits of land surveying projects as required by the board.*

*(2) Upon passage of both examinations, the applicant must be granted a license to practice land surveying in this state.*

Senate Bills:

## **SB020**

*Noteworthy mention "Allow certain municipalities to annex onto a rural fire district"*

## **SB33 Introduced by T Richmond and D. Kary edits the Subdivision and platting act**

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

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

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

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

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

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

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

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

Also worth watching

### **LC0626 Generally revise laws related to conservation easements**

This is a Bill intended on "Generally revising laws related to conservation easements, it is on hold and is requested by JP Pomnichowski

### **LC0627 Generally revise land use laws**

This is a Bill intended on "Generally revise land use laws, it is on hold and is requested by JP Pomnichowski

### **LC710 Generally revise floodplain laws**

This is a Bill intended on "Generally revise floodplain laws", it is on hold and is requested by JP Pomnichowski

### **LC711 Generally revise subdivision laws**

This is a Bill intended on "Generally revise subdivision laws", it is on hold and is requested by JP Pomnichowski

### **LC722 Generally revise right-of-way laws**

This is a Bill intended on "Generally revise right-of-way laws", it is on hold and is requested by JP Pomnichowski

### **LC910 Generally revise floodplain laws**

This is a Bill intended on "Generally revise floodplain laws", it is on hold and is requested by Tom Woods

### **LC911 Generally revise subdivision laws**

This is a Bill intended on "Generally revise subdivision laws", it is on hold and is requested by Tom Woods

### **LC 1168 Generally revise zoning laws Jill Cohernour (D) SD 40,:**

**"76-2-303. Procedure to administer certain annexations and zoning laws -- hearing and notice.** (1) The city or town council or other legislative body of a municipality shall provide for the manner in which regulations and restrictions and the boundaries of districts are determined, established, enforced, and changed, subject to the requirements of ~~subsection (2)~~ subsections (2) through (4).

(2) A regulation, restriction, or boundary may not become effective until after a public hearing in relation to the regulation, restriction, or boundary ~~at which parties in interest and citizens have an opportunity to be heard has been held. At least 15 days' notice of the time and place of the hearing must be published in an official paper or a paper of general circulation in the municipality has been held where interested parties and citizens have an opportunity to be heard.~~

(3) A notice of the time and place of the hearing must be published in an official paper or a paper of general circulation in the municipality and posted in at least five public places within the proposed district, including but not limited to public buildings and adjacent to public rights-of-way, at least 15 days prior to the hearing.

(4) A notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning district must state:

(a) the boundaries of the proposed district;

(b) the general character of the proposed zoning regulations;

(c) the time and place of the public hearing; and

(d) that the proposed zoning regulations and staff report and findings are on file and available electronically for public inspection at the office of the city clerk.

~~(3)~~(5) (a) For municipal annexations, a municipality may conduct a hearing on the annexation in conjunction with a hearing on the zoning of the proposed annexation if the proposed municipal zoning regulations for the annexed property:

(i) authorize land uses comparable to the land uses authorized by county zoning;

(ii) authorize land uses that are consistent with land uses approved by the board of county commissioners or the board of adjustment pursuant to Title 76, chapter 2, part 1 or 2; or

(iii) are consistent with zoning requirements recommended in a growth policy adopted pursuant to Title 76, chapter 1, for the annexed property.

(b) A joint hearing authorized under this subsection ~~(3)~~ (5) fulfills a municipality's obligation regarding zoning notice and public hearing for a proposed annexation."

- END -

LC 1168,1169,1170,1171,1172,1173 and 1174 **Generally revise subdivision and platting laws**  
Only one draft is ready for delivery and these are all under Jill Cohernour (D) SD 40,  
**LC1173:**

**Section 1.** 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 an application and preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval must be in force for not more than ~~3~~ 5 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 a ~~mutually agreed-upon~~ 5-year period of time. Any ~~mutually agreed-upon~~ extension must be in writing and dated and signed by the members of the governing body and the subdivider or subdivider's agent. The governing body may issue more than one extension if the governing body has determined that the proposed development is within:

(a) the jurisdiction of an incorporated city or town with an adopted growth policy, zoning regulations, and infrastructure plan and the proposed development is consistent with the adopted growth policy, zoning regulations, and infrastructure plan;

(b) the jurisdiction of a county with an adopted growth policy and zoning regulations and the proposed development is consistent with the adopted growth policy and zoning regulations; or

(c) an area outside of the boundaries of a city or town with an adopted growth policy, zoning regulations, and infrastructure plan to which zoning regulations have been extended under 76-2-310 and

the proposed development is consistent with the adopted growth policy, zoning regulations, and infrastructure plan.

(2) Except as provided in 76-3-507, after the application and preliminary plat are approved, the governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat approval if the approval is obtained within the original or extended approval period as provided in subsection (1)."

- END -

### **LC2035 Generally revise subdivision laws**

This is a Bill intended on "Generally revise subdivision laws", it is on hold and is requested by Geraldine Custer (R) HD 39

66th Legislature HB0124.02 1 HOUSE BILL NO. 124 2 INTRODUCED BY F. MANDEVILLE 3 4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PROVISIONS CONCERNING 5 AGRICULTURAL COVENANTS UNDER THE SUBDIVISION AND PLATTING ACT; CLARIFYING THAT A 6 CHANGE IN USE SUBJECTS CERTAIN EXEMPTIONS TO SUBDIVISION REVIEW; ALLOWING A 7 GOVERNING BODY TO REVOKE CERTAIN EXEMPTIONS IF THERE IS A CHANGE IN USE; PROVIDING 8 EXCEPTIONS; AND AMENDING SECTION 76-3-207, MCA." 9 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 11 12 NEW SECTION. Section 1. Agricultural covenant -- change in use. (1) A change in use for anything 13 other than agricultural purposes subjects a division of land that received an exemption under 76-3-207(1)(c) to 14 subdivision review under parts 5 and 6 of this chapter. However, the governing body, in its discretion, may revoke 15 the covenant provided for in 76-3-207(1)(c) for the purposes of this chapter and the division may proceed without 16 subdivision review if: 17 (a) the original lot lines are restored through aggregation of the covenanted land prior to or in conjunction 18 with the revoking of the covenant; or 19 (b) a government or public entity seeks to use the land for public purposes as defined in the governing 20 body's review criteria pursuant to 76-3-504(1)(p). 21 (2) If a governing body proposes to revoke a covenant pursuant to subsection (1)(b), the governing body 22 shall hold a public hearing. Within 15 days of the hearing, the governing body shall issue written findings of fact 23 and a decision based on the record. If the governing body approves the revoking of the covenant, the approval 24 must be recorded with the clerk and recorder. 25 (3) THE REVOCATION OF A COVENANT PURSUANT TO THIS SECTION DOES NOT AFFECT SANITARY RESTRICTIONS 26 IMPOSED UNDER TITLE 76, CHAPTER 4. 27 28 Section 2. Section 76-3-207, MCA, is amended to read: 29 "76-3-207. Divisions or aggregations of land exempted from review but subject to survey 30 requirements and zoning regulations -- exceptions -- fees for examination of division. (1) Except as - 1 - Authorized Print Version - HB 124 66th Legislature HB0124.02 1 provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, 2 the following divisions or aggregations of tracts of record of any size, regardless of the resulting size of any lot 3 created by the division or aggregation, are not subdivisions under this chapter but are subject to the surveying 4 requirements of 76-3-401 for divisions or aggregations of land other than subdivisions and are subject to 5 applicable zoning regulations adopted under Title 76, chapter 2: 6 (a) divisions made outside of platted subdivisions for the purpose of relocating common

boundary lines 7 between adjoining properties; 8 (b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county 9 to each member of the landowner's immediate family; 10 (c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the 11 parties to the transaction enter landowner enters into a covenant running for the purposes of this chapter with 12 the governing body that runs with the land and revocable only by mutual consent of the governing body and the 13 property owner and provides that the divided land will be used exclusively for agricultural purposes, subject to 14 the provisions of [section 1]; 15 (d) for five or fewer lots within a platted subdivision, the relocation of common boundaries; 16 (e) divisions made for the purpose of relocating a common boundary line between a single lot within a 17 platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original 18 platted lot or original unplatted parcel continues to apply to those areas. 19 (f) aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the 20 boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are 21 established. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply 22 to those areas. 23 (2) Notwithstanding the provisions of subsection (1);, 24 (a) within a platted subdivision filed with the county clerk and recorder, a division, redesign, or 25 rearrangement of lots that results in an increase in the number of lots or that redesigns or rearranges six or more 26 lots must be reviewed and approved by the governing body before an amended plat may be filed with the county 27 clerk and recorder; 28 (b) a change in use of the land exempted under subsection (1)(c) for anything other than agricultural 29 purposes subjects the division to review under parts 5 and 6 of this chapter. 30 (3) (a) Subject to subsection (3)(b), a division of land may not be made under this section unless the - 2 - Authorized Print Version - HB 124 66th Legislature HB0124.02 1 county treasurer has certified that all real property taxes and special assessments assessed and levied on the 2 land to be divided have been paid. 3 (b) (i) If a division of land includes centrally assessed property and the property taxes applicable to the 4 division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the 5 taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property 6 shall ensure that the prorated real property taxes and special assessments are paid on the land being sold before 7 the division of land is made. 8 (ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection (3)(b) as 9 a partial payment of the total tax that is due. 10 (4) The governing body may examine a division or aggregation of land to determine whether or not the 11 requirements of this chapter apply to the division or aggregation and may establish reasonable fees, not to 12 exceed \$200, for the examination." 13 14 NEW SECTION. Section 3. Codification instruction. [Section 1] is intended to be codified as an 15 integral part of Title 76, chapter 3, part 2, and the provisions of Title 76, chapter 3, part 2, apply to [section 1]. 16 - END -

66th Legislature SB0198.01

1 SENATE BILL NO. 198

2 INTRODUCED BY J. ELLSWORTH

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING SUBDIVISION LAWS; PROVIDING  
5 CRITERIA TO DETERMINE LEGAL ACCESS TO PARCELS EXEMPT FROM SUBDIVISION REVIEWS; AND  
6 AMENDING SECTION 76-3-504."

7

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

9

10 **Section 1.** Section 76-3-504, MCA, is amended to read:

11 **"76-3-504. Subdivision regulations -- contents.** (1) The subdivision regulations adopted under this  
12 chapter must, at a minimum:

13 (a) list the materials that must be included in a subdivision application in order for the application to  
be

14 determined to contain the required elements for the purposes of the review required in 76-3-604(1);

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

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

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

20 (e) provide for the identification of areas that, because of natural or human-caused hazards, are  
21 unsuitable for subdivision development. The regulations must prohibit subdivisions in these areas  
unless the

22 hazards can be eliminated or overcome by approved construction techniques or other mitigation  
measures

23 authorized under 76-3-608(4) and (5). Approved construction techniques or other mitigation  
measures may not

24 include building regulations as defined in 50-60-101 other than those identified by the department of  
labor and

25 industry as provided in 50-60-901.

26 (f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year

27 frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

28 (g) prescribe standards for:

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

30 (ii) grading and drainage;

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(iii) subject to the provisions of 1 76-3-511, water supply and sewage and solid waste disposal that meet

2 the:

3 (A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that

4 will create one or more parcels containing less than 20 acres; and

5 (B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels

6 containing 20 acres or more and less than 160 acres; and

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

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

9 (i) provide for the review of subdivision applications by affected public utilities and those agencies of

10 local, state, and federal government identified during the preapplication consultation conducted pursuant to

11 subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review

12 may not delay the governing body's action on the application beyond the time limits specified in this chapter, and

13 the failure of any agency to complete a review of an application may not be a basis for rejection of the application

14 by the governing body.

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

16 to:

17 (i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be  
18 subdivided and transfer the water rights to a single entity for use by landowners within the  
subdivision who have  
19 a legal right to the water and reserve and sever any remaining surface water rights from the land;  
20 (ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed  
to  
21 provide the use of a water right on the subdivision lots, establish a landowner's water use agreement  
22 administered through a single entity that specifies administration and the rights and responsibilities  
of landowners  
23 within the subdivision who have a legal right and access to the water; or  
24 (iii) reserve and sever all surface water rights from the land;  
25 (k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements  
in  
26 the subdivision that:  
27 (A) are in locations of appropriate topographic characteristics and sufficient width to allow the  
physical  
28 placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery  
of water for  
29 irrigation to persons and lands legally entitled to the water under an appropriated water right or  
permit of an  
30 irrigation district or other private or public entity formed to provide for the use of the water right on  
the subdivision

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1 lots;

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

3 and inspection of the ditch; and

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

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

7 (A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner

8 acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated

9 land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable;

10 or

11 (B) the water rights are removed or the process has been initiated to remove the water rights from the

12 subdivided land through an appropriate legal or administrative process and if the removal or intended removal

13 is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the

14 subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall

15 document that intent, when applicable, in agreements and legal documents for related sales transactions.

16 (l) require the subdivider, unless otherwise provided for under separate written agreement or filed

17 easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery

18 ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to

19 lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with

20 historic and legal rights;

21 (m) require the subdivider to describe, dimension, and show public utility easements in the subdivision

22 on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow

23 the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility

24 services within the subdivision.

25 (n) establish whether the governing body, its authorized agent or agency, or both will hold public

26 hearings;

27 (o) establish procedures describing how the governing body or its agent or agency will address

28 information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

29 (p) establish criteria that the governing body or reviewing authority will use to determine whether a

30 proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207 is an attempt to evade

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1 the requirements of this chapter and whether legal access must exist to the newly created tract of record. The

2 regulations must provide for an appeals process to the governing body if the reviewing authority is not the

3 governing body.

4 (q) establish a preapplication process that:

5 (i) requires a subdivider to meet with the authorized agent or agency, other than the governing body, that

6 is designated by the governing body to review subdivision applications prior to the subdivider submitting the

7 application;

8 (ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth

9 policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

10 (iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local,

11 state, and federal government, and any other entities that may be contacted for comment on the subdivision

12 application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during

13 the review of the application, the agent or agency designated by the governing body contacts a public utility,

14 agency, or other entity that was not included on the list originally made available to the subdivider, the agent or

15 agency shall notify the subdivider of the contact and the timeframe for response.

16 (iv) requires that a preapplication meeting take place no more than 30 days from the date that the

17 authorized agent or agency receives a written request for a preapplication meeting from the subdivider; and

18 (v) establishes a time limit after a preapplication meeting by which an application must be submitted;

19 (r) require that the written decision required by 76-3-620 must be provided to the applicant within 30

20 working days following a decision by the governing body to approve, conditionally approve, or deny a subdivision;

21 (s) establish criteria for reviewing an area, regardless of its size, that provides or will provide multiple

22 spaces for recreational camping vehicles or mobile homes.

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

24 76-3-509 and this section may include provisions that are consistent with this section that promote cluster

25 development."

26 - END -

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