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The Montana Smart Growth Coalition urges you to Oppose SB300

SB300: Violates Provisions of the Montana Subdivision and Platting Act OPPOSE SB300

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SB300 creates an illegal non-existent property right for individual property owners not authorized under the Montana Subdivision and Platting Act (MCA 76-4-101). SB 300 attempts to create what it refers to as a “basic right” for a property owner to further develop and use property within a subdivision, outside of the limitations that an HOA may vote to impose on the property owner. But this so-called “basic right” is overly broad and clearly in conflict with the Montana Subdivision and Platting Act (MSPA).

The MSPA grants subdivision approval not based on an individual “basic right,” but rather on a shared property right of those who have bought into a subdivision. This shared property right is defined and limited by required health, safety, and welfare findings that set forth for each subdivision unique and site-specific sanitary restrictions that govern the subdivision going forward. Approval of a subdivision is based on the measurable scope of uses identified in

the required application for subdivision approval and sizing of water and sanitation systems. SB 300 attempts to create a “basic right” for property owners within a subdivision to expanded uses of their property for uses which can dramatically stress, place at risk, or shorten the function and lifespan of water and septic or sewage systems, though increases in volume of such additional uses as short term rentals (STRs) may possibly create. STRs were likely not a use that was not considered, reviewed, or approved under the required final plat approval for the subdivision.

SB 300 further violates the Montana Subdivision and Platting Act (MSPA), by creating limitations of the governing ability of homeowner associations (HOA’s) in direct violation of the state’s conditions of subdivision approval set forth under MCA 76-4-104 (k)(l) evidence to demonstrate that appropriate easements, covenants, agreements, and management entities have been established to ensure the protection of human health and state waters and to ensure the long-term operation and maintenance of water supply, storm water drainage, and sewage disposal facilities.

One need look no further than an example in Big Sky Montana to see how under SB300 the expanded use of property created by subdivision as a “basic right” can create unacceptable risks to human health and to the management and long-term operation of sanitary systems. In prior written testimony before the House Judiciary committee Attorney Alanah Griffith described but one example of where SB300 would tie the hands of HOAs seeking to fulfill their contractual and legal duties under their subdivision approval. As she explained, “...a condominium association in Big Sky that is currently experiencing a serious health and safety issue....The Association has approximately 200 condominium units, some three bedroom and some four. It has its own sewer system, that should last for 30 years. However, a number of construction companies have purchased units in this association and are "racking and stacking" employees in the units. The three bedroom units have up to 12 employees living in them and the 4 bedroom units have up to 16 people living in them. There are around 30 or 40 units used this way.... Furthermore, the sewer system was not designed for the increased use. According to the experts hired by the Association, this increased use has already halved the life span of the sewer system, which will cost millions to replace.” However if SB300 is enacted this HOA would be barred from adopting regulations to prevent or regulate such overuse.

SB 300 will tie the hands of HOAs seeking to fulfill their contractual obligation under the HOA covenants or guidelines to provide oversight and enforce conditions that avoid harm and to protect the health, safety and welfare of members of the HOA including the upkeep and use of water, wastewater, and sanitary systems. As such SB 300 may also violate constitutional provisions governing contractual relationships and may force upon HOA's the unequal application of rules that violate standards of due process.

SB300's broadly defined basic right provisions are in conflict with or are unenforceable and are superseded by Municipal and County zoning authority under MCA 76-2-202 and MCA 76-2-202 which delegates authority to regulate permitted or conditional uses such as short-term rentals in established districts. Zoning criteria established under these statutes for permitting a uses such as a short-term rental often include, as does Flathead County, for individual homes *"5.11.030 Maximum occupancy shall be the sewage capacity as determined by the Flathead City-County Environmental Health Department or the applicable sewer district."* Furthermore these zoning statutes allow for the adoption of criteria that allow for the rejection or denial of a prior approved use for a short-term rental. Flathead County Zoning regulations: *5.11.110 The approval of an Administrative Permit for Short-term Rental Housing is subject to suspension or revocation should any of these standards and any additional conditions of approval not be met, or if there are substantive and valid complaints of disturbances of the peace or health and safety violations related to the operation of Short-term Rental Housing. The decision to suspend or revoke an Administrative Conditional Use Permit shall be made after a hearing before the Flathead County Board of Adjustment and shall follow the procedures outlined in Section 2.06.040.* **HOA's should not be barred from their legal duty to ensure the enforcement of similar criteria in un-zoned areas as set forth in part already under the MSPA, yet SB300 would do just this.**

SB 300 is the state telling local communities they do not have the right to choose rules for what they believe is best for their community.

Homeowners associations and condominiums are deed-restricted communities with the community association board, elected by neighbors, managing the operations of the community association, to preserve property values and maintain covenant, codes, and restrictions. The governing documents are structured to require the homeowners to vote on changes to the covenants,

codes, and restrictions and the process uses a democratic system whereby the majority vote prevails. This community-oriented self-governance is the key to creating communities by the residents for the residents.

SB 300 will create confusion for buyers and residents and will make it impossible to apply rules and covenants as required under the Montana Subdivision and Platting Act by association board members. SB300 will compromise the integrity of the community association housing model in Montana. Further and most disturbing, SB 300 will create chaos, confusion, and lawsuits.

1. MCA 76-4-101. Public policy. It is the public policy of this state to extend present laws controlling water supply, sewage disposal, and solid waste disposal to include individual wells affected by adjoining sewage disposal and individual sewage systems to protect the quality and potability of water for public water supplies and domestic uses and to protect the quality of water for other beneficial uses, including uses relating to agriculture, industry, recreation, and wildlife.

Founded in 1999, the Montana Smart Growth Coalition works to help Montana communities grow smart. We are a coalition of conservation and smart growth minded organizations, businesses, and individuals representing communities across the state. Our goal is to ensure that development patterns maintain viable working landscapes, protect our clean water and wildlife habitat, and enhance Montana's unique quality of life and small towns. We work on the local and state level to secure policies to achieve these goals.

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