

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO. _____

Subdivisions-development.

Sponsored by: Joint Corporations, Elections and Political
Subdivisions Interim Committee

A BILL

for

1 AN ACT relating to subdivisions; modifying exemptions from
2 county subdivision regulation; authorizing a county
3 conservation design process; providing for cluster
4 development in unincorporated areas as specified; providing
5 for incentives for land use design; defining water supply
6 systems; providing for subdivision of land prior to
7 construction or sale; providing for homeowners associations
8 in subdivision plans as specified; providing for
9 arbitration or mediation for disputes between members of
10 homeowner associations; requiring notice of potential
11 development of appurtenant mineral estates in subdivisions;
12 specifying legislative intent and providing for an
13 effective date.

1

2 *Be It Enacted by the Legislature of the State of Wyoming:*

3

4 **Section 1.** W.S. 18-5-401 through 18-5-405 are created
5 to read:

6

7

ARTICLE 4

8

CONSERVATION DESIGN PROCESS

9

10 **18-5-401. Authority.**

11

12 The establishment, regulation and control of a conservation
13 design process for the unincorporated area in each county
14 is vested in the board of county commissioners of the
15 county in which the land is located.

16

17 **18-5-402. Definitions.**

18

19 (a) As used in this article:

20

21 (i) "Conservation design process" means a
22 planning process adopted by a county to offer a land use
23 option for single family residential purposes that differs

1 from traditional thirty-five (35) acre divisions of land
2 described in W.S. 18-5-303(b) using cluster development,
3 density bonuses and parcel bonuses to:

4

5 (A) Preserve open space;

6

7 (B) Protect wildlife habitat and critical
8 areas; and

9

10 (C) Enhance and maintain the rural
11 character of lands with contiguity to agricultural lands
12 suitable for long range farming and ranching operations.

13

14 (ii) "Cluster development" means any division of
15 land that creates parcels containing less than thirty-five
16 (35) acres each, for single family residential purposes
17 only, provided:

18

19 (A) One (1) or more tracts are being
20 divided pursuant to a county conservation design process;

21

22 (B) At least two-thirds (2/3) of the total
23 area of the tract or tracts is reserved for the

1 preservation of open space provided that open space does
2 not include roads or any land within fifty (50) feet of any
3 building;

4

5 (C) The gross overall density shall not
6 exceed one (1) residential unit for each ten (10) acres;
7 and

8

9 (D) Land set aside to preserve open space
10 or to protect wildlife habitat or critical areas shall not
11 be developed for at least forty (40) years from the date
12 the cluster development is approved. If the area reserved
13 for the preservation of open space is used for agriculture
14 and otherwise qualifies as agricultural land for purposes
15 of W.S. 39-13-103(b)(x), the area shall be deemed not to be
16 part of a platted subdivision for purposes of W.S. 39-13-
17 103(b)(x)(B)(II).

18

19 (iii) "Density bonus" means a land use design
20 incentive that encourages optimized preservation of open
21 space by allowing a gross overall density of not more than
22 two (2) parcels for each thirty-five (35) acres;

23

1 (iv) "Parcel bonus" means a land use design
2 incentive that encourages optimized preservation of open
3 space by allowing an increase in the total number of
4 parcels beyond that permitted through traditional thirty-
5 five (35) acre divisions of land described in W.S.
6 18-5-303(b).

7
8 **18-5-403. Cluster development permits.**
9

10 (a) No person shall sell land subject to cluster
11 development regulation under this article or commence
12 construction of any cluster development without first
13 obtaining a permit from the board of county commissioners
14 in which the land is located.

15
16 (b) No permit shall be approved until a plat of the
17 cluster development has been prepared by or under the
18 supervision of a Wyoming professional land surveyor and
19 recorded with the county clerk in the county in which the
20 land is located.

21
22 (c) Each application for a cluster development permit
23 shall be accompanied by a fee to be determined by the board

1 of county commissioners along with the following
2 information:

3

4 (i) A study evaluating the sewage system
5 proposed for the cluster development and the adequacy and
6 safety of the system. The study shall, at a minimum,
7 include the following:

8

9 (A) Identification of the type of sewage
10 system to serve the cluster development and identification
11 of the entity or entities responsible for the design,
12 construction, operation and maintenance of the proposed
13 facility;

14

15 (B) For all types of sewage systems except
16 individual on-lot sewage systems, a report submitted by the
17 subdivider as to the adequacy and safety of the proposed
18 sewage system. The report shall address, at a minimum, the
19 following issues:

20

21 (I) An assessment of the adequacy of
22 the proposed sewage system in relation to the proposed
23 population density of the cluster development and any other

1 existing or proposed land and water uses in the vicinity of
2 the cluster development that may affect the adequacy of the
3 system;

4

5 (II) An estimate of the total number
6 of gallons per day of sewage generated by the proposed
7 cluster development where a central sewage system is
8 proposed;

9

10 (III) A demonstration that technical
11 requirements and design standards of the department of
12 environmental quality applicable to central sewage systems
13 can and will be met;

14

15 (IV) Where utilization of or
16 connection to an existing private or public sewage system
17 is proposed, documentation that application to such entity
18 with control of the system has been made and that the
19 entity can and will provide service;

20

21 (V) A detailed demonstration that the
22 proposed sewage system for the cluster development is
23 compatible with the proposed water supply system for the

1 cluster development. The study shall demonstrate that the
2 operation of the sewage system will not affect the
3 suitability or safety of the proposed water supply system
4 and a determination of the potential impacts of
5 downgradient use of groundwater;

6
7 (VI) Demonstration that the proposed
8 sewage system will meet all county, state and federal
9 standards. The demonstration shall address the
10 relationship of the development to any local or state
11 approved water quality management plans established
12 pursuant to section 201 of the federal Clean Water Act, 33
13 U.S.C. section 1281 and demonstrate no conflict exists with
14 any state approved local wellhead protection plan or local
15 source water protection plan established pursuant to the
16 federal Safe Drinking Water Act.

17
18 (C) Where individual on-lot sewage systems
19 are proposed by the subdivider, a report submitted by the
20 subdivider shall document the safety and adequacy of the
21 proposed on-lot sewage systems including the following:

22
23 (I) Adequacy of separation distances;

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(II) Separation of drainfield relative
to groundwater and impervious soils;

(III) Suitability of the cluster
development soil conditions;

(IV) Suitable topography;

(V) Proposed population density;

(VI) Protection of groundwater uses;

and

(VII) Watersheds located on or
draining into, under or over the proposed cluster
development.

(D) Where individual on-lot sewage systems
are proposed, the words "NO PROPOSED CENTRALIZED SEWAGE
SYSTEM," in bold capital letters shall appear on all
offers, solicitations, advertisements, contracts,
agreements and plats relating to the cluster development.

1

2 (ii) If the applicant proposes to utilize
3 adjoining property for sewers, drainage, sewer lines, power
4 lines or other utilities, the subdivider shall provide
5 copies of binding easements of not less than twenty (20)
6 feet in width for the proposed facilities from each
7 property owner over whose land such services shall extend
8 and shall provide a minimum access roadway right-of-way of
9 sixty (60) feet to the cluster development for all public
10 ways;

11

12 (iii) A study evaluating the water supply system
13 proposed for the cluster development and the adequacy and
14 safety of the system. The study shall, at a minimum,
15 include the following:

16

17 (A) Identification of the type of water
18 supply system proposed to serve the cluster development and
19 identification of the entity or entities responsible for
20 the design, construction, operation and maintenance of the
21 proposed facility;

22

1 (B) For all water supply systems except
2 individual on-lot wells, a report submitted by the
3 subdivider demonstrating the adequacy and safety of the
4 proposed water supply system. The report shall address, at
5 a minimum, the following issues:

6

7 (I) The estimated total number of
8 gallons per day for the cluster development water supply
9 system;

10

11 (II) Documentation that the proposed
12 water supply system will be compatible with and not
13 adversely affected by the sewage system proposed for the
14 cluster development or any other sources of pollution
15 within a reasonable distance;

16

17 (III) List of all surface and
18 groundwater rights which will be used or which may be
19 affected, including state engineer application and permit
20 numbers and description of expected effects;

21

1 (IV) Plans for the mitigation of water
2 right conflicts resulting from the use of water within the
3 proposed cluster development;

4

5 (V) When connecting to an existing
6 water supply system, the report shall also contain:

7

8 (1) Documentation that public or
9 private water suppliers can and will supply water to the
10 proposed cluster development, stating the amount of water
11 available for use within the cluster development and the
12 feasibility of extending service to that area;

13

14 (2) Documentation concerning the
15 potability of the proposed water supply for the cluster
16 development.

17

18 (VI) Where a centralized water supply
19 system is proposed containing a new source of water supply
20 to be developed, the report shall also demonstrate that the
21 water supply system is sufficient in terms of quality,
22 quantity and dependability and will be available to ensure
23 an adequate water supply system for the type of cluster

1 development proposed. The report shall include a narrative
2 summary of:

3
4 (1) Where the water supply system
5 source is derived from groundwater, the geologic setting of
6 the water supply system source and the area of influence
7 such as nearby communities, sources of pollution, surface
8 water bodies and aquifers described by a Wyoming registered
9 professional geologist;

10
11 (2) The quantity, quality and
12 source of the water to be used including proposed and
13 existing surface and groundwater facilities and their
14 locations. Where the proposed water supply system for the
15 cluster development is from a groundwater source, a written
16 report shall be submitted by the subdivider demonstrating
17 that the proposed source is sufficient in terms of quality,
18 quantity and dependability for the type of cluster
19 development proposed;

20
21 (3) The proposed disposal of
22 water not consumed, including water obtained under permits,

1 storm drainage, dewatering, sewage and other wastewater
2 sources;

3

4 (4) A delineation of primary
5 sources of water, secondary sources and occasional or
6 seasonal sources;

7

8 (5) Graphic location of all water
9 supply sources including wells, raw water intakes,
10 treatment facilities, treated water storage facilities and
11 ponds;

12

13 (6) Documentation of all data
14 sources on the occurrence and availability of surface and
15 groundwater;

16

17 (7) Historic stream flows and
18 well levels;

19

20 (8) Senior water rights;

21

22 (9) Flood damage and flood
23 protection;

1

2 (10) Impact of and protection

3 from supply shortages.

4

5 (C) Where individual on-lot wells are

6 proposed as the water supply system, a report submitted by

7 the subdivider demonstrating the safety and adequacy of the

8 water supply system shall address, at a minimum, the

9 following:

10

11 (I) The estimated total number of

12 gallons per day required for the cluster development;

13

14 (II) Information relative to the

15 potential availability and quality of groundwater proposed

16 within the cluster development which may consist of new

17 data, existing data on other working wells in the area, or

18 other data, including drilling logs, from a test well

19 drilled within the proposed cluster development indicating

20 soil types, depth, quantity and quality of water produced

21 in the test well;

22

1 (III) Documentation that the proposed
2 water supply system will be compatible with and not
3 adversely affected by the sewage system proposed for the
4 cluster development or any other sources of pollution
5 within a reasonable distance;

6

7 (IV) List of all surface and
8 groundwater rights which will be used or which may be
9 affected, including state engineer application and permit
10 numbers, and description of expected effects; and

11

12 (V) Plans for the mitigation of water
13 right conflicts resulting from the use of water within the
14 proposed cluster development.

15

16 (D) Where individual on-lot wells are
17 proposed, the words "NO PROPOSED CENTRAL WATER SUPPLY
18 SYSTEM," in bold capital letters shall appear on all
19 offers, solicitations, advertisements, contracts,
20 agreements and plats relating to the cluster development.

21

22 (iv) Documentation satisfactory to the board
23 that adequate access has been provided and that all

1 proposed streets, alleys and roadways within the cluster
2 development conform to the minimum standards adopted by the
3 board and applied uniformly throughout the county which
4 shall not in itself constitute consent of the board to
5 locate, repair or maintain roadways and facilities. If,
6 however, the subdivider proposes to make any streets,
7 alleys or roadways private, then the subdivider shall
8 submit to the board properly acknowledged written
9 certification that certain streets, alleys or roadways
10 within the cluster development shall remain private and the
11 board shall be under no obligation to repair, maintain or
12 accept any dedication of such roads to the public use. If
13 no such public maintenance is contemplated, the subdivider
14 shall put a legend on the plat of the cluster development,
15 on all advertisements and solicitations for the cluster
16 development and on all offers, contracts or agreements for
17 the sale and purchase of lots within the cluster
18 development showing the streets, alleys and roadways,
19 stating in capital letters "NO PUBLIC MAINTENANCE OF
20 STREETS OR ROADS".

21

22 (d) The board shall approve or disapprove the
23 application and issue a cluster development permit or

1 ruling after a public hearing held within forty-five (45)
2 days after receipt of the plat and all information required
3 pursuant to this section.

4
5 **18-5-404. Enforcement; rules and regulations.**

6
7 Each board of county commissioners shall enforce this
8 article and in accordance with the Wyoming Administrative
9 Procedure Act shall adopt rules and regulations to
10 implement the provisions of and to insure compliance with
11 the intent and purposes of this article.

12
13 **18-5-405. Cluster development; notice to state**
14 **engineer.**

15
16 Within thirty (30) days after a cluster development
17 has been approved pursuant to the conservation design
18 process, the board of county commissioners shall notify the
19 state engineer of the approval and shall provide the state
20 engineer a copy of the approved cluster development plan.

21
22 **Section 2.** W.S. 18-5-302(a)(v), (ix), 18-5-303(a) by
23 creating a new paragraph (xii), 18-5-304, 18-5-306(a) by

1 creating a new paragraph (xii), by creating a new
2 paragraph (xiii), 18-5-309, 18-5-312 and 18-5-314 are
3 amended to read:

4
5 **18-5-302. Definitions.**

6
7 (a) As used in this article:

8
9 (v) "Sell" or "sale" includes sale as evidenced
10 by the delivery of a deed, ~~contract to sell, lease,~~
11 assignment, auction, or award by lottery, ~~or any offer or~~
12 ~~solicitation of any offer to do any of the foregoing,~~
13 concerning a subdivision or any part of a subdivision.
14 "Sell" or "sale" does not include acceptance of a deposit
15 held in escrow and refundable if the subdivision is not
16 approved or its layout is materially modified in ways
17 affecting the lot for which that deposit was accepted;

18
19 (ix) "Water supply system" includes development
20 of the source and all structures for conveyance of raw
21 water to the treatment plant or delivery systems; all water
22 treatment plants including disinfection facilities; water
23 supply systems used for irrigation and stock water; and all

1 finished water delivery systems including pipelines,
2 pumping stations and finished water storage facilities.

3 ~~Separate water supply systems used solely for irrigation or~~
4 ~~stock water are not included.~~

5
6 **18-5-303. Exemptions from provisions.**

7
8 (a) Unless the method of sale or other disposition is
9 adopted for the purpose of evading the provisions of this
10 article, this article shall not apply to the following
11 subdivisions of land however, the following subdivisions
12 are subject to requirements which may be adopted by the
13 board of county commissioners regarding documentation of
14 the proper use and implementation of the following
15 exemptions:

16
17 (xii) A division which creates a cluster
18 development pursuant to and in accordance with article 4 of
19 this chapter.

20
21 **18-5-304. Subdivision permit required.**

1 No person shall ~~subdivide~~sell land subject to subdivision
2 regulation under this article or commence ~~the physical~~
3 ~~layout or~~ construction of a subdivision without first
4 obtaining a subdivision permit from the board of the county
5 in which the land is located.

6
7 **18-5-306. Minimum requirements for subdivision**
8 **permits.**

9
10 (a) Except as provided in paragraph (xii) of this
11 subsection, the board shall require the following
12 information to be submitted with each application for a
13 subdivision permit, provided the board may by rule exempt
14 from any of the following requirements of this subsection
15 or subsection (c) of this section the subdivision of one
16 (1) or more units of land into not more than a total of
17 five (5) units of land:

18
19 (xii) The board may require evidence
20 satisfactory to the board that the owners of all parcels of
21 land created by the subdivision have entered into a
22 homeowner's association agreement, binding on subsequent

1 owners of the land within the subdivision, that addresses
2 at least the following topics as needed:

3
4 (A) Maintenance and responsibility for
5 common areas, roads, sewer systems and water supply systems
6 and assessments against all parcels of land in the
7 subdivision to defray the costs thereof;

8
9 (B) Continued management of the homeowner's
10 association;

11
12 (C) Provisions requiring dispute resolution
13 between members of the homeowner's association through
14 arbitration as provided in W.S. 1-36-101 through 1-36-119
15 or mediation as provided in W.S. 1-43-101 through 1-43-104;

16
17 (D) Provisions designating a person or
18 entity initially responsible for representing the
19 landowners in disputes against the association where
20 another party is asserting legal rights or responsibilities
21 against the association which shall be filed with the
22 county clerk initially and upon any change of the person
23 designated; and

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(E) Nuisance abatement and covenants.

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18-5-309. Permit fee.

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Each application for a subdivision permit shall be accompanied by a fee to be determined by the board. The fee shall be ~~the greater of one hundred dollars (\$100.00) or ten dollars (\$10.00) per lot up to a maximum fee of one thousand dollars (\$1,000.00)~~ determined based on the cost to the county to review the application for the subdivision permit. All fees collected shall be credited to the county general fund.

18-5-312. Enforcement.

1 (a) Except as provided in subsection (b) of this
2 section, the provisions of this article are enforceable by
3 all appropriate legal remedies including but not limited to
4 injunctive relief or a writ of mandamus. Upon failure or
5 refusal of any county attorney to act upon a violation of
6 the provisions of this article, the attorney general at the
7 request of the board shall initiate civil or criminal
8 proceedings to enforce the provisions of this article.

9
10 (b) Before civil proceedings may be brought pursuant
11 to subsection (a) of this section, all disputes arising
12 under homeowner's association agreements required under
13 W.S. 18-5-306(a)(xii) shall be subject to mediation
14 proceedings as provided in this section and subject to the
15 provisions of W.S. 1-43-101 through 1-43-104 or arbitration
16 pursuant to W.S. 1-36-101 through 1-36-119. The board of
17 county commissioners may make available a list of qualified
18 mediators, from which the parties to the dispute shall
19 choose a mediator. Expenses and fees for the mediators
20 shall be borne by the parties to the mediation.

21
22 **18-5-314. Penalties.**
23

1 Any person who willfully violates any provision of this
2 article or any rule or order issued under this article, ~~and~~
3 ~~any person who as an agent for a subdivider, developer or~~
4 ~~owner of subdivided lands offers for sale any subdivided~~
5 ~~lands or subdivisions without first complying with the~~
6 ~~provisions of this article~~ shall upon conviction be fined
7 not more than five hundred dollars (\$500.00) or imprisoned
8 in a county jail for not more than thirty (30) days or
9 both. Each day of violation constitutes a new offense.

10
11 **Section 3.** Legislative declaration.

12
13 (a) It is in the public interest to encourage
14 clustering of residential dwellings on tracts of land that
15 are exempt from subdivision regulation by county government
16 pursuant to W.S. 18-5-303(a)(xii) to preserve open space
17 and reduce the extension of roads and utilities to
18 residential development.

19
20 (b) Landowners should have the option to consider
21 cluster development when dividing land as an alternative to
22 the traditional thirty-five (35) acre parcels described in
23 W.S. 18-5-303(b).

1

2 (c) A process should be available for the development
3 of parcels of land for residential purposes that will
4 authorize the use of clustering, density bonuses and parcel
5 bonuses and fulfill the goals of the county to preserve
6 open space, protect wildlife habitat and critical areas and
7 enhance and maintain the rural character of lands with
8 contiguity to agricultural lands suitable for long range
9 farming and ranching operations.

10

11 **Section 4.** This act is effective July 1, 2008.

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(END)