

**DRAFT ONLY  
NOT APPROVED FOR  
INTRODUCTION**

HOUSE BILL NO. \_\_\_\_\_

Subdivisions-cluster developments.

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; providing for  
5 incentives for land use design; and providing for an  
6 effective date.

7

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

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

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ARTICLE 4

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CONSERVATION DESIGN PROCESS

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

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

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

(a) As used in this article:

(i) "Conservation design process" means a planning process adopted by a county to offer a land use option for residential purposes that differs from traditional thirty-five (35) acre divisions of land described in W.S. 18-5-303(b) using cluster development and density bonuses to:

(A) Preserve open space; or

1 (B) Protect wildlife habitat and critical  
2 areas; or

3  
4 (C) Enhance and maintain the rural  
5 character of lands with contiguity to agricultural lands  
6 suitable for long range farming and ranching operations.

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8 (ii) "Cluster development" means any division of  
9 land that creates parcels containing less than thirty-five  
10 (35) acres each, for residential purposes, provided:

11  
12 (A) One (1) or more parcels are being  
13 divided pursuant to a county conservation design process;

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15 (B) At least two-thirds (2/3) of the total  
16 area of the parcel being divided is reserved for the  
17 preservation of open space;

18  
19 (C) Unless otherwise provided through a  
20 density bonus, the gross overall density shall not exceed  
21 one (1) residential unit for each seventeen and one-half  
22 (17 1/2) acres; and

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1                   (D) Land set aside to preserve open space  
2 or to protect wildlife habitat or critical areas shall not  
3 be developed in any way that changes its open space  
4 designation for at least ninety-nine (99) years from the  
5 date the cluster development is approved and shall be  
6 governed by the provisions of W.S. 18-5-403(b)(ii).

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8                   (iii) "Density bonus" means a land use design  
9 incentive that encourages optimized preservation of open  
10 space by allowing a gross overall density of two (2) or  
11 more residential units for each thirty-five (35) acres;

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13                   (iv) "Open space" means an area of land or water  
14 that is substantially free of structures, impervious  
15 surfaces, roads and other land-altering activities and does  
16 not include lands used for private recreation such as golf  
17 courses and residential yards, areas devoted to parking,  
18 vehicular traffic, non-agricultural private use or any  
19 other use which does not significantly lend itself to the  
20 overall benefit of a particular development or surrounding  
21 environment. "Open space" includes lands used for  
22 agricultural activities;

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1           (v) "Residential unit" means a structure or part  
2 of a structure containing dwelling units, including single  
3 family or two-family houses, multiple dwellings or  
4 apartments. Residential units do not include transient  
5 accommodations such as transient hotels, motels, tourist  
6 cabins, boarding or rooming houses or dormitories.

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

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

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15           (b) No permit shall be approved until:

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17           (i) A plat of the cluster development has been  
18 prepared by or under the supervision of a Wyoming  
19 professional land surveyor, approved by the board and  
20 recorded with the county clerk in the county in which the  
21 land is located which includes a statement on the plat  
22 designating and clearly noting the duration of the open  
23 space reservation;

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2           (ii)     A provision is approved by the board  
3 providing for the retention and maintenance of the open  
4 space, which may be evidenced by restrictive covenants,  
5 dedication of open space to the public where the dedication  
6 will be accepted by the governing body or any other  
7 evidence approved by the board.     The provision shall  
8 provide for a process by which the owners of the lots in  
9 the development may retain the land in open space after the  
10 expiration of the initial ninety-nine (99) year period;

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12           (iii)    The board finds that the development has  
13 met the conservation design process requirements adopted by  
14 the board.

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16           (c)     Each application for a cluster development permit  
17 shall be accompanied by a fee to be determined by the board  
18 of county commissioners.

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20 **\*\*\* Staff note: This leaves the county with no guidance as**  
21 **to how fees shall be set and may be an unlawful delegation**  
22 **of authority. At the very least the fee should be**  
23 **"reasonable" and set through some process that allows**  
24 **public input to ensure that it is not arbitrary and**  
25 **capricious. \*\*\***

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2 (d) If the open space areas created pursuant to a  
3 permit issued under this article are used for agricultural  
4 purposes and otherwise qualify as agricultural land for  
5 purposes of W.S. 39-13-103(b)(x), the area designated as  
6 open space shall be deemed not to be part of a platted  
7 subdivision for purposes of W.S. 39-13-103(b)(x)(B)(II).

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9 **18-5-404. Enforcement; rules and regulations.**

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11 Each board of county commissioners shall enforce this  
12 article and in accordance with the Wyoming Administrative  
13 Procedure Act shall adopt rules and regulations to  
14 implement the provisions of and to insure compliance with  
15 the intent and purposes of this article.

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17 **18-5-405. Cluster development; notice to state**  
18 **engineer.**

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20 Within thirty (30) days after a cluster development  
21 has been approved pursuant to the conservation design  
22 process, the board of county commissioners shall notify the

1 state engineer of the approval and shall provide the state  
2 engineer a copy of the approved cluster development plan.

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4 **Section 2.** W.S. 18-5-303(a) by creating a new  
5 paragraph (xii) is amended to read:

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7 **18-5-303. Exemptions from provisions.**

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

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

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22 **Section 3.** This act is effective July 1, 2009.

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(END)