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HOUSE BILL 26

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

ROBERTO J. GONZALES

AN ACT

RELATING TO SUBDIVISIONS; PROVIDING AN EXEMPTION TO THE NEW
MEXICO SUBDIVISION ACT FOR SUSTAINABLE, ALTERNATIVE
RESIDENTIAL COMMUNITY PROJECTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 47-6-2 NMSA 1978 (being Laws 1973,
Chapter 348, Section 2, as amended) is amended to read:

"47-6-2. DEFINITIONS. -- As used in the New Mexico
Subdivision Act:

A. "immediate family member" means a husband,
wife, father, stepfather, mother, stepmother, brother,
stepbrother, sister, stepsister, son, stepson, daughter,
stepdaughter, grandson, stepgrandson, granddaughter,
stepgranddaughter, nephew [~~and~~] or niece, whether related by
natural birth or adoption;

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[bracketed material] = delete

1 B. "lease" means to lease or offer to lease land;

2 C. "parcel" means land capable of being described
3 by location and boundaries and not dedicated for public or
4 common use;

5 D. "person" means [~~any~~] an individual, estate,
6 trust, receiver, cooperative association, club, corporation,
7 company, firm, partnership, joint venture, syndicate or other
8 entity;

9 E. "final plat" means a ~~map~~, chart, survey, plan
10 or replat certified by a licensed, registered land surveyor
11 containing a description of the subdivided land with ties to
12 permanent monuments prepared in a form suitable for filing of
13 record;

14 F. "preliminary plat" means a ~~map~~ of a proposed
15 subdivision showing the character and proposed layout of the
16 subdivision and the existing conditions in and around it and
17 need not be based upon an accurate and detailed survey of the
18 land;

19 G. "sell" means to sell or offer to sell land;

20 H. "subdivide" means to divide a surface area of
21 land into a subdivision;

22 I. "subdivider" means [~~any~~] a person who creates
23 or who has created a subdivision individually or as part of a
24 common promotional plan or [~~any~~] a person engaged in the sale,
25 lease or other conveyance of subdivided land; however,

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1 "subdivider" does not include [~~any~~] a duly licensed real
2 estate broker or salesperson acting on another's account;

3 J. "subdivision" means the division of a surface
4 area of land, including land within a previously approved
5 subdivision, into two or more parcels for the purpose of sale,
6 lease or other conveyance or for building development, whether
7 immediate or future, but "subdivision" does not include:

8 (1) the sale, lease or other conveyance of
9 [~~any~~] a parcel that is thirty-five acres or larger in size
10 within [~~any~~] a twelve-month period, provided that the land has
11 been used primarily and continuously for agricultural
12 purposes, in accordance with Section 7-36-20 NMSA 1978, for
13 the preceding three years;

14 (2) the sale or lease of apartments, offices,
15 stores or similar space within a building;

16 (3) the division of land within the
17 boundaries of a municipality;

18 (4) the division of land in which only gas,
19 oil, mineral or water rights are severed from the surface
20 ownership of the land;

21 (5) the division of land created by court
22 order where the order creates no more than one parcel per
23 party;

24 (6) the division of land for grazing or
25 farming activities; provided the land continues to be used for

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1 grazing or farming activities;

2 (7) the division of land resulting only in
3 the alteration of parcel boundaries where parcels are altered
4 for the purpose of increasing or reducing the size of
5 contiguous parcels and where the number of parcels is not
6 increased;

7 (8) the division of land to create burial
8 plots in a cemetery;

9 (9) the division of land to create a parcel
10 that is sold or donated as a gift to an immediate family
11 member; however, this exception shall be limited to allow the
12 seller or donor to sell or give no more than one parcel per
13 tract of land per immediate family member;

14 (10) the division of land created to provide
15 security for mortgages, liens or deeds of trust; provided that
16 the division of land is not the result of a seller-financed
17 transaction;

18 (11) the sale, lease or other conveyance of
19 land that creates no parcel smaller than one hundred forty
20 acres;

21 (12) the division of land to create a parcel
22 that is donated to [~~any~~] a trust or nonprofit corporation
23 granted an exemption from federal income tax, as described in
24 Section 501 (c) (3) of the United States Internal Revenue Code
25 of 1986, as amended; school, college or other institution with

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1 a defined curriculum and a student body and faculty that
2 conducts classes on a regular basis; or [~~to any~~] church or
3 group organized for the purpose of divine worship, religious
4 teaching or other specifically religious activity; [~~or~~]

5 (13) the sale, lease or other conveyance of a
6 single parcel from a tract of land, except from a tract within
7 a previously approved subdivision, within [~~any~~] a five-year
8 period; provided that a second or subsequent sale, lease or
9 other conveyance from the same tract of land within five years
10 of the first sale, lease or other conveyance shall be subject
11 to the provisions of the New Mexico Subdivision Act; provided
12 further that a survey shall be filed with the county clerk
13 indicating the five-year holding period for both the original
14 tract and the newly created tract; or

15 (14) a sustainable, alternative residential
16 community exempted under Section 47-6-2.1 NMSA 1978;

17 K. "terrain management" means the control of
18 floods, drainage and erosion and measures required for
19 adapting proposed development to existing soil characteristics
20 and topography;

21 L. "time of purchase, lease or other conveyance"
22 means the time of signing [~~any~~] a document obligating the
23 person signing the document to purchase, lease or otherwise
24 acquire a legal interest in land;

25 M "common promotional plan" means [~~any~~] a plan or

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1 scheme of operation, undertaken by a single subdivider or a
2 group of subdividers acting in concert, to offer for sale or
3 lease parcels of land where such land is either contiguous or
4 part of the same area of land or is known, designated or
5 advertised as a common unit or by a common name;

6 N. "type-one subdivision" means [~~any~~] a
7 subdivision containing five hundred or more parcels, any one
8 of which is less than ten acres in size;

9 O. "type-two subdivision" means [~~any~~] a
10 subdivision containing not fewer than twenty-five but not more
11 than four hundred ninety-nine parcels, any one of which is
12 less than ten acres in size;

13 P. "type-three subdivision" means [~~any~~] a
14 subdivision containing not more than twenty-four parcels, any
15 one of which is less than ten acres in size;

16 Q. "type-four subdivision" means [~~any~~] a
17 subdivision containing twenty-five or more parcels, each of
18 which is ten acres or more in size; and

19 R. "type-five subdivision" means [~~any~~] a
20 subdivision containing not more than twenty-four parcels, each
21 of which is ten acres or more in size. "

22 Section 2. A new Section 47-6-2.1 NMSA 1978 is enacted
23 to read:

24 "47-6-2.1 [NEW MATERIAL] EXEMPTION--SUSTAINABLE,
25 ALTERNATIVE RESIDENTIAL COMMUNITY PROJECTS.--A sustainable,

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1 alternative residential community project is not a subdivision
2 and is exempt from regulation under the New Mexico Subdivision
3 Act if:

4 A. all development and structures are located on a
5 single parcel of land;

6 B. the land is owned by one person;

7 C. the owner has filed a final plat, certified by
8 a surveyor registered in New Mexico, with the county clerk.

9 The final plat shall:

10 (1) define the parcel and all roads by
11 reference to permanent monuments;

12 (2) delineate those portions of the parcel
13 that are located in a flood plain; and

14 (3) state the maximum number of structures to
15 be constructed on the parcel;

16 D. the owner has provided a statement to the board
17 of county commissioners certifying that the county will never
18 be asked to provide utilities or roads within the boundaries
19 of the plat and the owner has filed the statement with the
20 county clerk as a covenant to run with the land;

21 E. the project provides, within its boundaries, an
22 alternative method of energy production, for itself and all
23 structures, that has been approved or permitted by the
24 construction industries division of the regulation and
25 licensing department;

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1 F. the project provides, within its boundaries, an
2 alternative water supply system, for itself and all
3 structures, that has been approved or permitted by the state
4 engineer;

5 G. the project provides, within its boundaries, an
6 alternative sewage system, for itself and all structures, that
7 has been approved or permitted by the department of
8 environment;

9 H. the project provides, within its boundaries, an
10 alternative heating and cooling system, for itself and all
11 structures, that has been approved or permitted by the
12 construction industries division of the regulation and
13 licensing department;

14 I. the design or construction of all project
15 structures has been approved or permitted by the construction
16 industries division of the regulation and licensing
17 department;

18 J. roads within the project meet county standards
19 applicable for emergency vehicles;

20 K. solid waste produced within the project is
21 disposed of in a manner consistent with the requirements of
22 the Solid Waste Act;

23 L. all prospective owners and tenants of homes
24 within the project receive a disclosure statement containing
25 the information required by Subsection B of Section 47-6-17

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NMSA 1978;

M before any structure is occupied, the occupier receives a certificate of occupancy certifying compliance with all applicable codes and standards; provided that no certificate is required if the structure is occupied for research and development purposes; and

N. for the purpose of determining whether the project qualifies for an exemption under this section, the project and project records relating to the exemption shall be available for inspection by county or state officials; provided that the inspections shall occur at a frequency of not more than one per month. "