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SENATE BILL 33

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,  
2000**

INTRODUCED BY

Ben D. Altamirano

AN ACT

RELATING TO LAND USE; MAKING CHANGES IN THE NEW MEXICO  
SUBDIVISION ACT.

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 niece, whether related by  
natural birth or adoption;

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

C. "parcel" means land capable of being described

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1 by location and boundaries and not dedicated for public or  
2 common use;

3 D. "person" means any individual, estate, trust,  
4 receiver, cooperative association, club, corporation,  
5 company, firm, partnership, joint venture, syndicate or other  
6 entity;

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

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

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

18 H. "subdivide" means to divide a surface area of  
19 land into a subdivision;

20 I. "subdivider" means any person who creates or  
21 who has created a subdivision individually or as part of a  
22 common promotional plan or any person engaged in the sale,  
23 lease or other conveyance of subdivided land; however,  
24 "subdivider" does not include any duly licensed real estate  
25 broker or salesperson acting on another's account;

J. "subdivision" means the division of a surface  
area of land, including land within a previously approved

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1 subdivision, into two or more parcels for the purpose of  
2 sale, lease or other conveyance or for building development,  
3 ~~[whether immediate or future]~~ but "subdivision" does not  
4 include:

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

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

13 (3) the division of land within the  
14 boundaries of a municipality;

15 (4) the division of land in which only gas,  
16 oil, mineral or water rights are severed from the surface  
17 ownership of the land;

18 (5) the division of land created by court  
19 order where the order creates no more than one parcel per  
20 party;

21 (6) the division of land for grazing or  
22 farming activities; provided the land continues to be used  
23 for grazing or farming activities;

24 (7) the division of land resulting only in  
25 the alteration of parcel boundaries where parcels are altered  
for the purpose of increasing or reducing the size of  
contiguous parcels and where the number of parcels is not

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1 increased;

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

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

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

13 (11) the sale, lease or other conveyance of  
14 land that creates no parcel smaller than one hundred forty  
15 acres;

16 (12) the division of land to create a parcel  
17 that is donated to any trust or nonprofit corporation granted  
18 an exemption from federal income tax, as described in Section  
19 501(c)(3) of the United States Internal Revenue Code of 1986,  
20 as amended; school, college or other institution with a  
21 defined curriculum and a student body and faculty that  
22 conducts classes on a regular basis; or ~~[to any]~~ church or  
23 group organized for the purpose of divine worship, religious  
24 teaching or other specifically religious activity; or

25 (13) the ~~[sale, lease or other conveyance of  
a single parcel from a tract]~~ division of land creating only  
two parcels, except from a tract within a previously approved

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1 subdivision, within any [~~five-year~~] three-year period;  
2 provided that a second or subsequent [~~sale, lease or other~~  
3 ~~conveyance from~~] division of the same tract of land within  
4 [~~five~~] three years of the first [~~sale, lease or other~~  
5 ~~conveyance~~] division shall [~~be subject to the provisions of~~  
6 ~~the New Mexico Subdivision Act~~] constitute a "subdivision";  
7 provided further that a survey shall be filed with the county  
8 clerk indicating the [~~five-year holding~~] three-year period  
9 for both the original tract and the newly created tract;

10 K. "terrain management" means the control of  
11 floods, drainage and erosion and measures required for  
12 adapting proposed development to existing soil  
13 characteristics and topography;

14 L. "time of purchase, lease or other conveyance"  
15 means the time of signing any document obligating the person  
16 signing the document to purchase, lease or otherwise acquire  
17 a legal interest in land;

18 M. "common promotional plan" means any plan or  
19 scheme of operation, undertaken by a single subdivider or a  
20 group of subdividers acting in concert, to offer for sale or  
21 lease parcels of land where such land is either contiguous or  
22 part of the same area of land or is known, designated or  
23 advertised as a common unit or by a common name;

24 N. "type-one subdivision" means any subdivision  
25 containing five hundred or more parcels, any one of which is  
less than ten acres in size;

O. "type-two subdivision" means any subdivision

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1 containing not fewer than twenty-five but not more than four  
2 hundred ninety-nine parcels, any one of which is less than  
3 ten acres in size;

4 P. "type-three subdivision" means any subdivision  
5 containing not more than twenty-four parcels, any one of  
6 which is less than ten acres in size;

7 Q. "type-four subdivision" means any subdivision  
8 containing twenty-five or more parcels, each of which is ten  
9 acres or more in size; and

10 R. "type-five subdivision" means any subdivision  
11 containing not more than twenty-four parcels, each of which  
12 is ten acres or more in size."

13 Section 2. Section 47-6-9 NMSA 1978 (being Laws 1973,  
14 Chapter 348, Section 9, as amended) is amended to read:

15 "47-6-9. SUBDIVISION REGULATION--COUNTY AUTHORITY.--

16 A. The board of county commissioners of each  
17 county shall regulate subdivisions within the county's  
18 boundaries. In regulating subdivisions, the board of county  
19 commissioners of each county shall adopt regulations setting  
20 forth the county's requirements for:

21 (1) preliminary and final subdivision plats,  
22 including their content and format;

23 (2) quantifying the maximum annual water  
24 requirements of subdivisions, including water for indoor and  
25 outdoor domestic uses;

(3) assessing water availability to meet the  
maximum annual water requirements of subdivisions;

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- 1 (4) water conservation measures;
- 2 (5) water of an acceptable quality for human
- 3 consumption and for protecting the water supply from
- 4 contamination;
- 5 (6) liquid waste disposal;
- 6 (7) solid waste disposal;
- 7 (8) legal access to each parcel;
- 8 (9) sufficient and adequate roads to each
- 9 parcel, including ingress and egress for emergency vehicles;
- 10 (10) utility easements to each parcel;
- 11 (11) terrain management;
- 12 (12) phased development;
- 13 (13) protecting cultural properties,
- 14 archaeological sites and unmarked burials, as required by the
- 15 Cultural Properties Act;
- 16 (14) specific information to be contained in
- 17 a subdivider's disclosure statement in addition to that
- 18 required in Section 47-6-17 NMSA 1978;
- 19 (15) reasonable fees approximating the cost
- 20 to the county of determining compliance with the New Mexico
- 21 Subdivision Act and county subdivision regulations while
- 22 passing upon subdivision plats;
- 23 (16) a summary procedure for reviewing
- 24 certain type-three and all type-five subdivisions as provided
- 25 in Section 47-6-11 NMSA 1978;
- (17) recording all conveyances of parcels
- with the county clerk;

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1 (18) financial security to assure the  
2 completion of all improvements that the subdivider proposes  
3 to build or to maintain;

4 (19) fencing subdivided land, where  
5 appropriate, in conformity with Section 77-16-1 NMSA 1978,  
6 which places the duty on the purchaser, lessee or other  
7 person acquiring an interest in the subdivided land to fence  
8 out livestock; and

9 (20) any other matter relating to  
10 subdivisions that the board of county commissioners feels is  
11 necessary to promote health, safety or the general welfare.

12 B. Subsection A of this section does not preempt  
13 the authority of any state agency to regulate or perform any  
14 activity that it is required or authorized by law to perform.

15 C. The following counties shall adopt regulations  
16 pursuant to this section on or before July 1, 1996:  
17 Bernalillo, Dona Ana and Santa Fe.

18 D. All remaining counties shall adopt regulations  
19 pursuant to this section on or before July 1, 1997.

20 E. ~~[Nothing in]~~ The New Mexico Subdivision Act  
21 ~~[shall be construed to]~~ does not limit the authority of  
22 counties to adopt subdivision regulations with requirements  
23 that are more stringent than the requirements set forth in  
24 the New Mexico Subdivision Act, ~~[provided]~~ if the county has  
25 adopted a comprehensive plan in accordance with Section  
3-21-5 NMSA 1978 and those regulations are consistent with  
~~[such]~~ the plan but a county may not adopt definitions

1 different from those set out in Section 47-6-2 NMSA 1978."

2 Section 3. A new section of the New Mexico Subdivision  
3 Act is enacted to read:

4 "[NEW MATERIAL] NO CONSOLIDATION OF CONTIGUOUS TRACTS  
5 WITHOUT EXPRESS CONSENT AND SPECIFIC ACTION BY OWNER.--Unless  
6 the owner expressly consents and takes specific action to  
7 consolidate contiguous parcels owned by him, no county  
8 subdivision regulation enacted pursuant to the New Mexico  
9 Subdivision Act and no action by a board of county  
10 commissioners pursuant to that act shall require one parcel  
11 to be consolidated with one or more contiguous parcels for  
12 the purpose of considering the consolidated parcels as a  
13 single tract based upon common ownership of the parcels if  
14 the chain of title to the separate parcels clearly  
15 demonstrates the parcels to have been considered separate  
16 prior to transfer into common ownership."

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