

HOUSE BILL 671

Introduced by Gilbert, et al.

2/07	Introduced
2/07	Referred to Natural Resources
2/07	First Reading
2/07	Fiscal Note Requested
2/14	Fiscal Note Received
2/14	Fiscal Note Printed
2/18	Hearing
2/22	Committee Report--Bill Passed as Amended
2/25	2nd Reading Passed as Amended
2/26	3rd Reading Passed
	Transmitted to Senate
2/27	First Reading
2/27	Referred to Natural Resources
3/14	Revised Fiscal Note Requested
3/15	Hearing
3/24	Hearing
4/03	Committee Report--Bill Concurred as Amended
4/04	2nd Reading Concur as Amended Motion Failed
4/04	2nd Reading Indefinitely Postponed
4/04	Motion Failed to Reconsider Previous Action

1 *HOUSE* BILL NO. *671*
 2 INTRODUCED BY *Dilbert Hays*
 3 *Eric* *Randy Bradley Wallin Lee*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 MONTANA SUBDIVISION AND PLATTING ACT; REDEFINING
 6 SUBDIVISION; REMOVING CERTAIN EXEMPTIONS; PROVIDING AN
 7 EXPEDITED REVIEW PROCESS FOR MINOR SUBDIVISIONS AND SPECIAL
 8 SUBDIVISIONS; PROVIDING PUBLIC HEARING GUIDELINES AND AN
 9 OPTIONAL INFORMATIONAL HEARING PROCEDURE; ESTABLISHING
 10 PRIMARY CRITERIA FOR REVIEW OF ALL SUBDIVISIONS; PROVIDING
 11 CERTAIN ADDITIONAL REVIEW REQUIREMENTS FOR MAJOR
 12 SUBDIVISIONS; PROVIDING FOR SUITS AGAINST A GOVERNING BODY;
 13 AMENDING SECTIONS 7-16-2324, 76-3-102, 76-3-103, 76-3-104,
 14 76-3-105, 76-3-301, 76-3-302, 76-3-304, 76-3-305, 76-3-401,
 15 76-3-402, 76-3-403, 76-3-404, 76-3-405, 76-3-501, 76-3-507,
 16 76-3-601, 76-3-603, 76-3-608, 76-3-610, 76-3-611, 76-3-613,
 17 76-3-614, 76-4-103, 76-4-125, AND 76-6-203, MCA; REPEALING
 18 SECTIONS 76-3-201, 76-3-202, 76-3-203, 76-3-204, 76-3-205,
 19 76-3-206, 76-3-207, 76-3-208, 76-3-209, 76-3-210, 76-3-504,
 20 76-3-505, 76-3-604, 76-3-605, 76-3-606, 76-3-607, AND
 21 76-3-609, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND
 22 APPLICABILITY DATES."
 23
 24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 25 **Section 1.** Section 76-3-102, MCA, is amended to read:

1 "76-3-102. Statement of purpose. It is the purpose of
 2 this chapter to promote--the--public--health, safety, and
 3 general welfare by regulating the subdivision--of--land, to
 4 prevent--overcrowding--of--land, to lessen congestion in the
 5 streets and highways, to provide for--adequate--light, air,
 6 water--supply,--sewage disposal, parks and recreation areas,
 7 ingress--and--egress,--and--other--public--requirements, to
 8 require development in harmony with the natural environment,
 9 to require that whenever necessary, the appropriate approval
 10 of subdivisions be contingent upon a written finding of
 11 public--interest--by--the--governing--body,--and--to require
 12 uniform monumentation of land subdivisions and transferring
 13 divisions; require that the transfer of interests in real
 14 property be made by reference to plat or certificate of
 15 survey; provide simple, clear, and uniform guidelines for
 16 review of subdivisions; promote environmentally sound
 17 subdivisions; and protect public health, safety, and welfare
 18 in a manner that also protects the rights of property
 19 owners."

20 **Section 2.** Section 76-3-103, MCA, is amended to read:
 21 "76-3-103. Definitions. As used in this chapter, unless
 22 the context or subject matter clearly requires otherwise,
 23 the following words or phrases shall have the following
 24 meanings:
 25 (1) "Certificate of survey" means a drawing of a field



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1 survey prepared by a registered professional land surveyor
2 for the purpose of disclosing facts pertaining to boundary
3 locations.

4 (2) "Dedication" means the deliberate appropriation of
5 land by an owner for any general and public use, reserving
6 to himself no rights which are incompatible with the full
7 exercise and enjoyment of the public use to which the
8 property has been devoted.

9 (3) "Division of land" means the segregation creation
10 of one or more parcels of land from a larger tract held in
11 single or undivided ownership by transferring or contracting
12 to transfer title to or possession of a portion of the tract
13 or properly filing a certificate of survey or subdivision
14 plat establishing the identity of the segregated created
15 parcels pursuant to this chapter.

16 (4) "Dwelling unit" means a unit in which a person or
17 persons reside for more than 8 months of a calendar year.

18 ~~(4)~~(5) "Examining land surveyor" means a registered
19 professional land surveyor duly appointed by the governing
20 body to review surveys and plats submitted for filing.

21 (6) "Executive proceedings" means public proceedings in
22 which the governing body makes deliberations without
23 receiving public comment except when, with the approval of
24 the chairman, specific questions are directed to the
25 subdivider or other individuals.

1 ~~(5)~~(7) "Governing body" means a board of county
2 commissioners or the governing authority of any city or town
3 organized pursuant to law.

4 ~~(6)~~(8) "Irregularly shaped tract of land" means a
5 parcel of land other than an aliquot part of the United
6 States government survey section or a United States
7 government lot, the boundaries or areas of which cannot be
8 determined without a survey or trigonometric calculation.

9 ~~(7)---"Occasional--sale"--means--one--sale--of--a--division--of~~
10 ~~land--within--any--12--month--period--~~

11 (9) "Legal access" means access by easement or other
12 right-of-way that provides the property owner ingress and
13 egress to or from any tract or parcel created by a
14 subdivision.

15 (10) "Major subdivision" means a subdivision that is not
16 a minor subdivision or special subdivision.

17 (11) "Minor subdivision" means a subdivision of five or
18 fewer parcels. A second or subsequent minor subdivision from
19 a single tract of record as of July 1, 1991, may not be
20 considered a minor subdivision for review purposes unless
21 the subdivider notifies the reviewing authority of the
22 subdivider's intention to create subsequent parcels, up to
23 the five-parcel limit, at the time of the initial minor
24 subdivision application.

25 (12) "Physical access" means access by a road that meets

1 the standards set by the governing body according to
2 76-3-501.

3 ~~{0}~~{13} "Planned unit development" means a land
4 development project consisting of residential clusters,
5 industrial parks, shopping centers, office building parks,
6 or any combination thereof which comprises a planned mixture
7 of land uses built in a prearranged relationship to each
8 other and having open space and community facilities in
9 common ownership or use.

10 ~~{9}~~{14} "Plat" means a graphical representation of a
11 subdivision showing the division of land into lots, parcels,
12 blocks, streets, alleys, and other divisions and
13 dedications.

14 ~~{10}~~{15} "Preliminary plat" means a neat and scaled
15 drawing of a proposed subdivision showing the layout of
16 streets, alleys, lots, blocks, and other elements of a
17 subdivision which furnish a basis for review by a governing
18 body.

19 ~~{11}~~{16} "Final plat" means the final drawing of the
20 subdivision and dedication required by this chapter to be
21 prepared for filing for record with the county clerk and
22 recorder and containing all elements and requirements set
23 forth in this chapter and in regulations adopted pursuant
24 thereto to this chapter.

25 {17} "Primitive tract" means a tract that is located

1 more than 1 mile from a state, federal, or maintained county
2 road and that is used for open space or for wildlife,
3 hunting, or other activities with minimal human impacts.
4 Activities with minimal human impacts include the
5 construction of camping structures that are dismantled or
6 relocated after seasonal use.

7 ~~{12}~~{18} "Registered professional land surveyor" means a
8 person licensed in conformance with Title 37, chapter 67, to
9 practice surveying in the state of Montana.

10 ~~{13}~~{19} "Registered professional engineer" means a
11 person licensed in conformance with Title 37, chapter 67, to
12 practice engineering in the state of Montana.

13 {20} "Review authority" means the person or entity with
14 authority to approve, conditionally approve, or disapprove a
15 subdivision application.

16 {21} "Special subdivision" means a subdivision that
17 conforms to a master plan pursuant to 76-1-601, a long-range
18 development program of public works projects pursuant to
19 76-1-601, and either local government regulations pursuant
20 to 76-3-501 or zoning regulations pursuant to Title 76,
21 chapter 2, part 2 or 3.

22 ~~{14}~~{22} "Subdivider" means any person who causes land
23 to be subdivided or who proposes a subdivision of land.

24 ~~{15}~~{23} {a} "Subdivision" means a division of land or
25 land so divided which that it creates one or more parcels

1 ~~containing less than 20 acres~~, exclusive of public roadways,
 2 in order that the title to or possession of the parcels may
 3 be sold, rented, leased, or otherwise conveyed. ~~and shall~~
 4 ~~include~~ The term includes any resubdivision and shall
 5 ~~further include any residential condominium or building and~~
 6 ~~further includes any area, regardless of its size, which~~
 7 ~~that provides or will provide multiple-space three or more~~
 8 ~~spaces for recreational camping vehicles, or mobile homes~~
 9 ~~dwelling units, or work camp structures constructed to exist~~
 10 ~~for longer than 1 year.~~

11 (b) Subdivision does not mean:

12 (i) a division creating cemetery lots only;

13 (ii) a division created by lease or rental for farming
 14 and agricultural purposes;

15 (iii) a division creating an interest in oil, gas,
 16 minerals, or water that is severed from the surface
 17 ownership of real property;

18 (iv) a division created by reservation of a life estate;

19 (v) the sale, rent, lease, or other conveyance of one
 20 or more parts of a building, structure, or other
 21 improvement, whether existing or proposed;

22 (vi) a division of state-owned land unless the division
 23 creates a second or subsequent parcel from a single tract
 24 for sale, rent, or lease for residential purposes;

25 (vii) a division created by order of a court of record

1 in this state pursuant to the laws governing the
 2 distribution of estates (Title 72, chapters 1 through 6 and
 3 10 through 14) or the dissolution of marriage (Title 40,
 4 chapter 4) or a division that, in the absence of an
 5 agreement between the parties to the sale, could be created
 6 by an order of a court in this state pursuant to the law of
 7 eminent domain (Title 70, chapter 30);

8 (viii) except for the survey requirements in 76-3-401
 9 through 76-3-405 and any applicable zoning requirements, a
 10 division made for the purpose of relocating boundary lines
 11 between adjoining properties, provided the division is
 12 recorded in both the certificate of survey and the index
 13 provided for in 76-3-613 and unless the governing body
 14 determines that the subdivision may be used to create
 15 subdivisions for resale;

16 (ix) except for the survey requirements in 76-3-401
 17 through 76-3-405, a division made exclusively for
 18 agricultural purposes by sale or agreement to buy and sell
 19 if the division is outside of a platted subdivision and if
 20 the local governing body and the subdivider enter into a
 21 covenant running with the land that the divided parcels must
 22 be used exclusively for agricultural purposes. The governing
 23 body shall agree to release the covenant upon petition by
 24 the subdivider if the subdivision proposal complies with the
 25 provisions of this chapter.

1 (x) except for the survey requirements in 76-3-401
 2 through 76-3-405 and the review requirements of 76-3-610
 3 through 76-3-614, a division created by rent or lease;

4 (xi) except for requirements other than the survey and
 5 platting requirements in 76-3-401 through 76-3-405,
 6 divisions created by rights-of-way; or

7 (xii) except for requirements other than the survey and
 8 platting requirements in 76-3-401 through 76-3-405 and the
 9 review requirements of 76-4-101 through 76-4-131, a division
 10 created by an agricultural producer for sale or gift to a
 11 member of the agricultural producer's immediate family for
 12 the purpose of maintaining the agricultural operation and
 13 limited to a single sale or gift to each family member. For
 14 the purposes of this section, agricultural producer means a
 15 person primarily engaged in the production of agricultural
 16 products.

17 (24) "Subdivision review officer" means the person
 18 designated by the governing body to administer subdivision
 19 review or to approve, conditionally approve, or disapprove
 20 applications for minor subdivisions or special subdivisions.

21 (25) "Tract of record" means a tract of record as
 22 appears in the records of the county clerk and recorder's
 23 office."

24 **Section 3.** Section 76-3-104, MCA, is amended to read:

25 **"76-3-104. What constitutes subdivision. A subdivision**

1 ~~shall--comprise~~ comprises only those parcels ~~less-than-20~~
 2 ~~acres-which that~~ have been segregated ~~created~~ from the
 3 original tract, and the plat thereof--~~shall~~ of the
 4 subdivision must show all such the parcels, whether
 5 contiguous or not."

6 **Section 4.** Section 76-3-105, MCA, is amended to read:

7 **"76-3-105. Violations -- actions against subdivider.**
 8 (1) Any A person who violates any provision of this chapter
 9 or any local regulations adopted pursuant thereto--shall-be
 10 to this chapter is guilty-of subject to a civil penalty not
 11 to exceed \$5,000 misdemeanor-and-punishable-by-a-fine-of-not
 12 less--than--\$100--or--more-than-\$500-or-by-imprisonment-in-a
 13 county-jail-for-not-more-than-3-months-or-by-both--fine--and
 14 imprisonment. Each sale, lease, or transfer of each separate
 15 parcel of land in violation of any provision of this chapter
 16 or any local regulation adopted pursuant thereto--shall-be
 17 deemed to this chapter is considered a separate and distinct
 18 offense.

19 (2) The governing body may file an action in district
 20 court to enjoin the violation of any provision of this
 21 chapter or of any regulation adopted pursuant to 76-3-501."

22 **NEW SECTION. Section 5. Violations -- actions against**
 23 **governing body. A person who has filed with the governing**
 24 **body an application for a permit under this chapter may**
 25 **bring an action against the governing body to recover actual**

1 damages caused by:

2 (1) a final action, decision, or order of the governing
3 body that imposes requirements, limitations, or conditions
4 upon the use of the property in excess of those authorized
5 by this chapter; or

6 (2) a regulation adopted pursuant to this chapter that
7 is:

8 (a) arbitrary or capricious; or

9 (b) unlawful or exceeds lawful authority.

10 NEW SECTION. Section 6. Certificate of taxes paid. A
11 division of land may not be made unless the county treasurer
12 has certified that real property taxes assessed and levied
13 on the land to be divided are not delinquent.

14 **Section 7.** Section 76-3-301, MCA, is amended to read:

15 *76-3-301. **General restriction on transfer of title to**
16 **subdivided lands.** (1) Except as provided in 76-3-303, every
17 final subdivision plat must be filed for record with the
18 county clerk and recorder before title to the subdivided
19 land can be sold or transferred in any manner. The clerk and
20 recorder of the county shall refuse to accept any plat for
21 record that fails to have the approval of 76-3-611(1) in
22 proper form.

23 (2) The clerk and recorder shall notify the governing
24 body or its designated agent of any land division described
25 in 76-3-207(1) exempted from review but subject to survey

1 requirements.

2 (3) If transfers not in accordance with this chapter
3 are made, the county attorney shall commence action to
4 enjoin further sales or transfers and compel compliance with
5 all provisions of this chapter. The cost of such the action
6 ~~shall~~ must be imposed against the party not prevailing."

7 **Section 8.** Section 76-3-302, MCA, is amended to read:

8 *76-3-302. **Restrictions on recording instruments**
9 **relating to land subject to surveying requirements.** (1)
10 Except as provided in subsection (2), the county clerk and
11 recorder of any county may not record any instrument which
12 that purports to transfer title to or possession of a parcel
13 or tract of land which that is required to be surveyed by
14 this chapter unless the required certificate of survey or
15 subdivision plat has been filed with the clerk and recorder
16 and the instrument of transfer describes the parcel or tract
17 by reference to the filed certificate or plat.

18 (2) Subsection (1) does not apply when the parcel or
19 tract to be transferred was created before July 1, 1973, and
20 the instrument of transfer for the parcel or tract includes
21 a reference to a previously recorded instrument of transfer
22 or is accompanied by documents ~~which, if recorded, would~~
23 ~~otherwise satisfy the requirements of this subsection. The~~
24 ~~reference or document must~~ that demonstrate that the parcel
25 or tract existed before July 1, 1973.

1 (3) The reference or documents required in subsection
2 (2) do not constitute a legal description of the property
3 and may not be substituted for a legal description of the
4 property."

5 **Section 9.** Section 76-3-304, MCA, is amended to read:

6 "76-3-304. Effect of recording filing complying plat.
7 The recording filing of any plat made in compliance with the
8 provisions of this chapter ~~shall-serve~~ serves to establish
9 the identity of all lands shown on ~~and-being-a-part-of--such~~
10 the plat. ~~Where~~ When lands are conveyed by reference to a
11 plat, the plat itself or any copy of the plat properly
12 certified by the county clerk and recorder as being a true
13 copy ~~thereof--shall~~ of the plat must be regarded as
14 incorporated into the instrument of conveyance and ~~shall~~
15 must be received in evidence in all courts of this state."

16 **Section 10.** Section 76-3-305, MCA, is amended to read:

17 "76-3-305. Vacation of plats -- utility easements. (1)
18 Any plat prepared and recorded as ~~herein provided~~ in this
19 part may be vacated either in whole or in part as provided
20 by 7-5-2501, 7-5-2502, subsections (1) and (2) of 7-14-2616,
21 7-14-2617, subsections (1) and (2) of 7-14-4114, and
22 7-14-4115, and upon such vacation the title to the streets
23 and alleys of such the vacated portions to the center
24 ~~thereof--shall-revert~~ of the street or alley reverts to the
25 owners of the properties within the platted area adjacent to

1 such the vacated portions.

2 (2) ~~However--when--any~~ If a poleline, pipeline, or any
3 other public or private facility is located in a vacated
4 street or alley at the time of the reversion of the title
5 ~~thereto of the street or alley~~, the owner of ~~said the~~ public
6 or private utility facility ~~shall-have~~ has an easement over
7 the vacated land to continue the operation and maintenance
8 of the public or private utility facility."

9 **Section 11.** Section 76-3-401, MCA, is amended to read:

10 "76-3-401. Survey requirements for divisions of lands
11 ~~other--than--subdivisions~~. All divisions of land ~~for-sale~~
12 ~~other-than-a-subdivision-after-July-17--1974~~, into parcels
13 which parts that cannot be described as 1/32 or larger
14 aliquot parts of a United States government section or a
15 United States government lot must be surveyed by or under
16 the supervision of a registered professional land surveyor."

17 **Section 12.** Section 76-3-402, MCA, is amended to read:

18 "76-3-402. Survey and platting requirements for
19 subdivided lands. (1) Every subdivision of land after June
20 30, 1973, ~~shall~~ must be surveyed and platted in conformance
21 with this chapter by or under the supervision of a
22 registered professional land surveyor.

23 (2) Subdivision plats ~~shall~~ must be prepared and filed
24 in accordance with this chapter and regulations adopted
25 pursuant thereto to this chapter.

1 (3) All division of sections into aliquot parts and
 2 retracement of lines must conform to United States bureau of
 3 land management instructions, and all public land survey
 4 corners ~~shall~~ must be filed in accordance with the Corner
 5 Recordation Act of Montana (Title 70, chapter 22, part 1).
 6 Engineering plans, specifications, and reports required in
 7 connection with public improvements and other elements of
 8 the subdivision required by the governing body ~~shall~~ must be
 9 prepared and filed by a registered professional engineer or
 10 a registered professional land surveyor as their respective
 11 licensing laws allow in accordance with this chapter and
 12 regulations adopted pursuant ~~thereto to this chapter.~~"

13 **Section 13.** Section 76-3-403, MCA, is amended to read:

14 "76-3-403. Monumentation. ~~{}~~ The department of
 15 commerce shall, in conformance with the Montana
 16 Administrative Procedure Act, prescribe uniform standards
 17 for monumentation and for the form, accuracy, and
 18 descriptive content of records of survey.

19 ~~{2}--it--shall--be--the--responsibility--of--the--governing
 20 body--to--require--the--replacement--of--all--monuments--removed--in
 21 the--course--of--construction--"~~

22 **Section 14.** Section 76-3-404, MCA, is amended to read:

23 "76-3-404. Certificate of survey. (1) Within 180 days
 24 of the completion of a survey, the registered professional
 25 land surveyor responsible for the survey, whether he is

1 privately or publicly employed, shall prepare ~~and-submit~~ for
 2 filing a certificate of survey in the county in which the
 3 survey was made if the survey:

4 (a) provides material evidence not appearing on any map
 5 filed with the county clerk and recorder or contained in the
 6 records of the United States bureau of land management;

7 (b) reveals a material discrepancy in such a map;

8 (c) discloses evidence to suggest alternate locations
 9 of lines or points; or

10 (d) establishes one or more lines not shown on a
 11 recorded map, the positions of which are not ascertainable
 12 from an inspection of such the map without trigonometric
 13 calculations.

14 (2) A certificate of survey ~~will~~ is not be required for
 15 any survey ~~which that~~ is made by the United States bureau of
 16 land management, ~~or-which that~~ is preliminary, or ~~which that~~
 17 will become part of a subdivision plat being prepared for
 18 recording under the provisions of this chapter.

19 (3) Certificates of survey ~~shall~~ must be legibly drawn,
 20 printed, or reproduced by a process guaranteeing a permanent
 21 record and ~~shall~~ must conform to monumentation and surveying
 22 requirements promulgated under this chapter."

23 **Section 15.** Section 76-3-405, MCA, is amended to read:

24 "76-3-405. Administration of oaths by registered land
 25 surveyor. (1) Every A registered professional land surveyor

1 may administer and certify oaths when:

2 (a) it becomes necessary to take testimony for the
3 identification of old corners or reestablishment of lost or
4 obliterated corners;

5 (b) a corner or monument is found in a deteriorating
6 condition and it is desirable that evidence concerning it be
7 perpetuated; or

8 (c) the importance of the survey makes it desirable to
9 administer an oath to his assistants for the faithful
10 performance of their duty.

11 (2) A record of oaths ~~shall~~ must be preserved as part
12 of the field notes of the survey and noted on the
13 ~~certificate-of-survey-filed-under-76-3-404~~ corner record
14 filed under 70-22-104."

15 **Section 16.** Section 76-3-501, MCA, is amended to read:

16 "76-3-501. Local subdivision regulations. (1) Before
17 ~~July-17-1974,~~ the governing body of every county, city,
18 and town shall adopt and provide for the enforcement and
19 administration of subdivision regulations reasonably
20 ~~providing-for-the-orderly-development-of-their~~
21 ~~jurisdictional-areas-for-the-coordination-of-roads-within~~
22 ~~subdivided-land-with-other-roads, both-existing-and-planned,~~
23 ~~for-the-dedication-of-land-for-roadways-and-for-public~~
24 ~~utility-easements-for-the-improvement-of-roads-for-the~~
25 ~~provision-of-adequate-open-spaces-for-travel, light, air,~~

1 ~~and-recreation-for-the-provision-of-adequate~~
2 ~~transportation, water, drainage, and sanitary facilities,~~
3 ~~for-the-avoidance-or-minimization-of-congestion, and-for-the~~
4 ~~avoidance-of-subdivision-which-would-involve-unnecessary~~
5 ~~environmental-degradation-and-the-avoidance-of-danger-of~~
6 ~~injury-to-health, safety, or-welfare-by-reason-of-natural~~
7 ~~hazard-or-the-lack-of-water, drainage, access,~~
8 ~~transportation, or-other-public-services-or-would~~
9 ~~necessitate-an-excessive-expenditure-of-public-funds-for-the~~
10 ~~supply-of-such-services.~~ implementing the provisions of this
11 chapter that are consistent with the statement of purpose
12 described in 76-3-102 and that do not unreasonably restrict
13 a landowner's ability to develop land. The regulations must
14 include:

15 (a) procedures for expedited review of minor
16 subdivisions and special subdivisions;

17 (b) procedures for providing public notice of
18 subdivision applications and hearings;

19 (c) procedures for obtaining public agency and public
20 utility review. This review may not delay the review
21 authority's action on the proposal beyond the time limits
22 specified in [sections 20 and 21]. The failure of an agency
23 to complete a review of a plat may not be a basis for
24 rejection of the plat by a governing body.

25 (d) procedures and standards concerning the application

1 of review criteria to subdivision applications, as provided
2 for in 76-3-608 and [section 26];

3 (e) standards for the design and arrangement of lots,
4 streets, and roads; grading and drainage; and for the
5 location and installation of utilities. Standards for the
6 design of streets and roads may not exceed the requirements
7 for anticipated vehicle use.

8 (f) financial incentives for developments that
9 accommodate public values.

10 (2) Review and approval or disapproval of a subdivision
11 under this chapter may occur only under those regulations in
12 effect at the time an application for approval of a
13 preliminary plat or for an extension under 76-3-610 is
14 submitted to the governing body."

15 **Section 17.** Section 76-3-507, MCA, is amended to read:

16 "76-3-507. Provision for bonding requirements to insure
17 ensure construction of public improvements. (1) Except as
18 provided in subsection (2), the governing body shall require
19 the subdivider to complete any required public improvements
20 within the subdivision prior to the approval of the final
21 plat.

22 (2) Local regulations may provide that, in (a) In lieu
23 of the completion of the construction of any public
24 improvements prior to the approval of a final plat, the
25 governing body subdivider shall require provide a bond or

1 other reasonable security, in an amount and with surety and
2 conditions satisfactory to ~~it~~ the governing body, providing
3 for and securing the construction and installation of ~~such~~
4 the improvements within a period specified by the governing
5 body and expressed in the bonds or other security. The
6 governing body shall reduce bond requirements commensurate
7 with the completion of improvements.

8 (b) In lieu of requiring a bond or other means of
9 security for the construction or installation of all the
10 required public improvements under subsection (2)(a), the
11 governing body may approve an incremental payment or
12 guaranteed plan. The improvements in a prior increment must
13 be completed, or the payment or guarantee of payment for the
14 costs of the improvements incurred in a prior increment must
15 be satisfied, before development of future increments.

16 (3) Governing body approval of a final plat prior to
17 the completion of required improvements and without the
18 provision of the security required under subsection (2) is
19 not an act of a legislative body for the purpose of
20 2-9-111."

21 **Section 18.** Section 76-3-601, MCA, is amended to read:

22 "76-3-601. Submission of preliminary plat for review.
23 ~~(1) Except where a plat is eligible for summary approval,~~
24 ~~the subdivider shall present to the governing body or the~~
25 ~~agent or agency designated thereby the preliminary plat of~~

1 ~~the proposed subdivision for local review. The preliminary~~
 2 ~~plat shall show all pertinent features of the proposed~~
 3 ~~subdivision and all proposed improvements. The subdivider~~
 4 shall present the preliminary plat of the proposed
 5 subdivision to the subdivision review officer for review.
 6 The subdivision review officer shall determine whether the
 7 proposed subdivision is a major subdivision, minor
 8 subdivision, or special subdivision according to the
 9 definitions in 76-3-103.

10 (2) (a) When the proposed subdivision lies within the
 11 boundaries of an incorporated city or town, the preliminary
 12 plat ~~shall~~ must be submitted to and approved by the city or
 13 town ~~governing-body~~ review authority.

14 (b) When the proposed subdivision is situated entirely
 15 in an unincorporated area, the preliminary plat ~~shall~~ must
 16 be submitted to and approved by the ~~governing-body-of-the~~
 17 appropriate county review authority. However, if the
 18 proposed subdivision lies within 1 mile of a third-class
 19 city or town or within 2 miles of a second-class city or
 20 within 3 miles of a first-class city, the county ~~governing~~
 21 body review authority shall submit the preliminary plat to
 22 the city or town governing body or its designated agent for
 23 review and comment.

24 (c) ~~if~~ When the proposed subdivision lies partly within
 25 an incorporated city or town, the proposed plat ~~thereof~~ must

1 be submitted to and approved by both the city or town and
 2 the county ~~governing-bodies~~ review authorities.

3 (d) When a proposed subdivision is also proposed to be
 4 annexed to a municipality, the governing body of the
 5 municipality shall coordinate the subdivision review and
 6 annexation procedures to minimize duplication of hearings,
 7 reports, and other requirements whenever possible.

8 (3) This section ~~and 76-3-604, 76-3-605, and 76-3-608~~
 9 ~~through 76-3-610~~ do not limit the authority of certain
 10 municipalities to regulate subdivisions beyond their
 11 corporate limits pursuant to 7-3-4444."

12 **Section 19.** Section 76-3-603, MCA, is amended to read:

13 "76-3-603. Contents of environmental assessment. ~~Where~~
 14 ~~required,~~ the An environmental assessment ~~shall~~ must
 15 accompany the preliminary plat for any major subdivision and
 16 ~~shall~~ must include:

17 (1) a description of every body or stream of surface
 18 water as that may be affected by the proposed subdivision,
 19 together with available ground water information, and a
 20 description of the topography, vegetation, and wildlife use
 21 within the area of the proposed subdivision; and

22 ~~{2}--maps-and-tables-showing-soil-types-in--the--several~~
 23 ~~parts--of--the--proposed--subdivision--and--their--suitability--for~~
 24 ~~any--proposed--developments--in--those--several--parts;~~

25 ~~{3}--a--community--impact--report--containing--a--statement--of~~

1 anticipated-needs-of--the--proposed--subdivision--for--local
2 services,---including---education---and--busing,--roads--and
3 maintenance, water, sewage, and solid-waste facilities,--and
4 fire-and-police-protection;

5 (4)--such-additional-relevant-and-reasonable-information
6 as-may-be-required-by-the-governing-body;

7 (2) a summary of the probable impacts of the proposed
8 subdivision based on the criteria described in 76-3-608 and
9 [section 26]."

10 NEW SECTION. **Section 20.** Review process for major
11 subdivisions. (1) A subdivider proposing a major subdivision
12 shall confer first with the subdivision review officer or
13 his designated agent in a preliminary conference to discuss
14 the application for the major subdivision, the requirements
15 provided in this chapter, and local government regulations
16 provided in 76-3-501. The subdivider shall submit a sketch
17 of the plat at the conference, and the subdivision review
18 officer shall refer the subdivider to the requirements of
19 Title 76, chapter 4. Notice of the subdivision application
20 must comply with the local government regulations adopted
21 under 76-3-501.

22 (2) The governing body, or the planning board if
23 designated as the review authority by the governing body,
24 shall approve, conditionally approve, or disapprove an
25 application for a major subdivision within 60 days following

1 the submission of a complete application. However, the
2 subdivider and the governing body or review authority may
3 agree to extend the time period.

4 (3) An application for a major subdivision may not
5 receive more than two informational hearings. The hearing or
6 hearings must be conducted by the governing body unless it
7 delegates the responsibility to the planning board or to a
8 hearing officer under subsection (5) or conducts a joint
9 hearing with the planning board. When a hearing is held by
10 the planning board or a hearing officer, the board or
11 officer shall make findings and recommendations for
12 submission to the governing body concerning approval,
13 conditional approval, or disapproval of the plat not later
14 than 10 days after the informational hearing.

15 (4) Within 21 days following submission to the
16 governing body of the complete application by the
17 subdivider, an informational hearing on the subdivision
18 application may be requested by:

- 19 (a) the subdivider;
- 20 (b) a citizen who would be adversely affected by the
21 subdivision; or
- 22 (c) the review authority.

23 (5) The governing body shall designate the hearing
24 officer. The first informational hearing, if held, must be
25 at the local government's expense. If a second hearing is

1 held pursuant to the subdivider's or an affected citizen's
 2 petition, the governing body may assess costs of the second
 3 hearing to the petitioner. The hearing officer shall make
 4 findings and recommendations to the governing body
 5 concerning the approval, conditional approval, or
 6 disapproval of the plat not later than 10 days after the
 7 informational hearing and within the time period determined
 8 under subsection (2).

9 (6) In informational hearings under this section,
 10 irrelevant, immaterial, or unduly repetitious evidence must
 11 be excluded but all other evidence of a type commonly relied
 12 upon by reasonably prudent persons in the conduct of their
 13 affairs is admissible, whether or not the evidence would be
 14 admissible in a trial in the courts of Montana. Any part of
 15 the evidence may be received in written form, and all
 16 testimony of parties and witnesses must be made under oath.
 17 Hearsay evidence may be used for the purpose of
 18 supplementing or explaining other evidence, but it is not
 19 sufficient in itself to support a finding unless it would be
 20 admissible over objection in civil actions.

21 (7) Not less than 15 days prior to the date of an
 22 informational hearing on an application for a major
 23 subdivision, notice of the hearing and of the type of
 24 hearing must be given by publication in a newspaper of
 25 general circulation in the county in which the subdivision

1 is located. The subdivider, each adjoining property owner of
 2 record, and each purchaser of record under contract for deed
 3 of property adjoining the land included in the plat must
 4 also be notified of the hearing by certified mail not less
 5 than 15 days prior to the date of the hearing.

6 (8) The review authority shall make its decision during
 7 executive proceedings after the informational hearing or
 8 hearings.

9 NEW SECTION. **Section 21. Review process for minor**
 10 **subdivisions and special subdivisions.** (1) A subdivider
 11 proposing a minor subdivision or special subdivision shall
 12 confer first with the subdivision review officer or his
 13 designated agent in a preliminary conference to discuss the
 14 application for the subdivision, under the requirements
 15 provided in this chapter, and local government regulations
 16 provided in 76-3-501. The subdivider shall submit a sketch
 17 of the plat at the conference, and the subdivision review
 18 officer shall refer the subdivider to the requirements of
 19 Title 76, chapter 4. Notice of the subdivision application
 20 must comply with the local government regulations adopted
 21 under 76-3-501.

22 (2) The governing body, or the planning board or
 23 subdivision review officer if either is designated the
 24 review authority by the governing body, shall approve,
 25 conditionally approve, or disapprove an application for a

1 minor subdivision or special subdivision.

2 (3) A determination on the application must be made
3 within 35 days following submission of a complete
4 application unless the review authority and the subdivider
5 agree to extend the time period.

6 (4) A public hearing may be held on a minor or special
7 subdivision only if:

8 (a) the subdivision would be located in an area having
9 unique cultural, historical, or natural resources that are
10 susceptible to substantial adverse effects from subdivision
11 development or if the subdivision would cause substantial
12 adverse fiscal costs to local government; and

13 (b) the subdivider or a citizen who demonstrates that
14 he would be adversely affected by the proposed subdivision
15 petitions the governing body for a hearing within 15 days
16 following submission of the complete application.

17 (5) If requested by the subdivider, an affected citizen
18 who petitions under subsection (4), or the review authority,
19 the hearing must be conducted as an informational hearing as
20 provided for in [section 20]. The governing body shall
21 designate the hearing officer and, if the hearing is held
22 pursuant to the subdivider's or an affected citizen's
23 request, the governing body may assess costs of the hearing
24 to the requestor. The hearing officer shall submit findings
25 and recommendations to the review authority concerning the

1 approval, conditional approval, or disapproval of the plat
2 not later than 10 days after the public hearing and within
3 the time period determined under subsection (3).

4 (6) An application for a minor subdivision or special
5 subdivision may not receive more than one public hearing.
6 The public hearing must be conducted by the governing body
7 unless it delegates that responsibility to the subdivision
8 review officer, the planning board, or a hearing officer
9 under subsection (5).

10 (7) Not less than 10 days prior to the date of a
11 hearing on an application for a minor subdivision or special
12 subdivision, notice of the hearing and of the type of
13 hearing must be given by publication in a newspaper of
14 general circulation in the county in which the subdivision
15 is located. The subdivider, each adjoining property owner of
16 record, and each purchaser of record under contract for deed
17 of property adjoining the land included in the plat must be
18 notified of the hearing by certified mail not less than 10
19 days prior to the date of the hearing.

20 (8) Regardless of whether or not a public hearing is
21 held, if the review authority determines that substantial
22 adverse impacts on the factors listed in subsection (4) are
23 probable, the review authority shall schedule a consultation
24 with the subdivider, knowledgeable persons, and agency
25 representatives. During the consultation process, the

1 parties shall work to develop mitigation for the potential
2 adverse effects on the factors listed in subsection (4).

3 (9) The review authority shall report the results of
4 the meeting to the governing body and may make a
5 recommendation.

6 (10) The governing body may require the subdivider to
7 design the subdivision to minimize any potentially
8 significant adverse impacts.

9 (11) The governing body shall issue written findings,
10 based on substantial credible evidence, to justify any
11 action taken under subsection (10).

12 (12) In reviewing a subdivision under subsection (4), a
13 governing body must be guided by the following standards:

14 (a) Mitigation measures imposed should not unreasonably
15 restrict a landowner's ability to develop land, but it is
16 recognized that in some instances the unmitigated impacts of
17 a proposed development may be unacceptable and will preclude
18 approval of the plat.

19 (b) Whenever feasible, mitigation should be designed to
20 provide some benefits for the subdivider, including
21 allowances for higher density development in less
22 environmentally sensitive sites within the plat and
23 structuring mitigation to provide eligibility for tax
24 benefits if land or development rights are donated to
25 eligible receivers.

1 (13) The review authority shall approve, conditionally
2 approve, or disapprove the application after the hearing has
3 occurred or the opportunity for hearing has expired. If the
4 review authority is the governing body or planning board,
5 the decision must be made during executive proceedings. If
6 the subdivision review officer is designated the review
7 authority, the review officer shall proceed according to the
8 following requirements:

9 (a) The subdivision review officer shall notify the
10 governing body and the planning board, if one exists, of the
11 review officer's decision.

12 (b) If the application for the subdivision contains a
13 request for a deviation from standards or for a variance or
14 if the application was subject to a public hearing under
15 subsections (4) through (7), the subdivision review officer
16 shall make a preliminary decision on the application. This
17 decision is subject to review and modification by the
18 governing body, or the planning board if designated by the
19 governing body, during executive proceedings. The
20 subdivision review officer's decision may be modified by the
21 governing body or planning board only if it finds by
22 substantial credible evidence and documents that the
23 decision is not consistent with the provisions of this
24 chapter or with local government regulations adopted
25 pursuant to 76-3-501.

1 **NEW SECTION. Section 22. Review guidelines** -- all
 2 subdivisions. (1) A proposed subdivision must comply with
 3 the applicable requirements stated in this chapter and local
 4 government regulations adopted pursuant to 76-3-501 and must
 5 conform to a master plan, if required, pursuant to 76-1-606.

6 (2) Written findings and the reasons for approving,
 7 disapproving, or conditionally approving the subdivision
 8 must accompany the review authority's action on a
 9 subdivision application.

10 (3) A proposed subdivision is preliminarily approved
 11 when the review authority approves the preliminary plat.

12 (4) Approval of the final plat represents final
 13 approval from the review authority. However, this approval
 14 is only for the subdivision description provided in the
 15 final plat. A person who proposes to implement a change from
 16 an approved plat must submit a plat amendment that is
 17 subject to the review requirements of this chapter.

18 **NEW SECTION. Section 23. Park dedication requirement.**

19 (1) Except as provided in subsections (2), (3), and (7), a
 20 subdivider shall dedicate to the governing body a cash or
 21 land donation equal to:

22 (a) 7.5% of the fair market value of the land proposed
 23 to be subdivided into parcels of one-half acre or smaller;

24 (b) 5% of the fair market value of the land proposed to
 25 be subdivided into parcels larger than one-half acre and not

1 larger than 1 acre;

2 (c) 2.5% of the fair market value of the land proposed
 3 to be subdivided into parcels larger than 1 acre and not
 4 larger than 3 acres; and

5 (d) 1.25% of the fair market value of the land proposed
 6 to be subdivided into parcels larger than 3 acres and not
 7 larger than 5 acres.

8 (2) Based on the park needs of the area, in lieu of
 9 subsection (1), the governing body may require the
 10 subdivider to dedicate to the governing body a cash or land
 11 donation equal to:

12 (a) 7.5% of the fair market value of the land proposed
 13 to be subdivided if the development density is 13 or more
 14 dwelling units per acre;

15 (b) 5% of the fair market value of the land proposed to
 16 be subdivided if the development density is 8 to 12.99
 17 dwelling units per acre;

18 (c) 2.5% of the fair market value of the land proposed
 19 to be subdivided if the development density is 5 to 7.99
 20 dwelling units per acre;

21 (d) 1.25% of the fair market value of the land proposed
 22 to be subdivided if the development density is 3 to 4.99
 23 dwelling units per acre.

24 (3) A park dedication may not be required for land
 25 proposed for subdivision into parcels larger than 5 acres,

1 for subdivision into parcels that are all nonresidential, or
2 where only one additional parcel is created. If a future
3 subdivision of the land creates parcels smaller than 5
4 acres, park dedication is required according to the
5 provisions of this section.

6 (4) For the purpose of this section, the fair market
7 value is the value of the unsubdivided, unimproved land.

8 (5) The subdivider shall make the park dedication in
9 land or cash.

10 (6) (a) Except as provided in subsection (6)(b), the
11 governing body shall use the dedicated money or land for
12 development or acquisition of parks to serve the
13 subdivision.

14 (b) The governing body may use the dedicated money to
15 acquire or develop regional parks or recreational areas or
16 for the purchase of public open space or conservation
17 easements only if:

18 (i) the park, recreational area, open space, or
19 conservation easement is within a reasonably close proximity
20 to the proposed subdivision; and

21 (ii) the governing body has formally adopted a park plan
22 that establishes the needs and procedures for use of the
23 money.

24 (7) The local governing body shall waive the park
25 dedication requirement if:

1 (a) (i) the preliminary plat provides for a planned
2 unit development or other development with land permanently
3 set aside for park and recreational uses sufficient to meet
4 the needs of the persons who will ultimately reside in the
5 development; and

6 (ii) the appraised value of the land set aside for park
7 and recreational purposes equals or exceeds the value of the
8 dedication required under subsection (1); or

9 (b) (i) the preliminary plat provides long-term
10 protection of critical wildlife habitat; cultural,
11 historical, or natural resources; agricultural interests; or
12 aesthetic values; and

13 (ii) the appraised market value of the unimproved
14 subdivided land, by virtue of providing long-term protection
15 provided for in subsection (7)(b)(i), is reduced by an
16 amount equal to or exceeding the value of the dedication
17 required under subsection (1).

18 NEW SECTION. **Section 24.** Payment for extension of
19 capital facilities. A local government may require a
20 subdivider to pay or guarantee payment for part or all of
21 the costs of extending public sewer lines, water supply
22 lines, and storm drains to a subdivision. The costs must
23 reasonably reflect the expected impacts of the subdivision.

24 **Section 25.** Section 76-3-608, MCA, is amended to read:
25 "76-3-608. Criteria for local government review. (1)

1 The basis for the governing body's or review authority's
 2 decision to approve, conditionally approve, or disapprove a
 3 subdivision ~~shall be~~ is whether the applicable preliminary
 4 plat, environmental assessment, public hearing, planning
 5 board recommendations, and or any additional information
 6 demonstrate demonstrates that development of the subdivision
 7 ~~would be in the public interest. The governing body shall~~
 8 ~~disapprove any subdivision which it finds not to be in the~~
 9 ~~public interest~~ meets the requirements of this chapter.

10 (2) ~~To determine whether the proposed subdivision would~~
 11 ~~be in the public interest, the~~ The governing body or review
 12 authority shall issue written findings of fact which that
 13 weigh the following criteria for public interest: in
 14 [section 26] and subsections (3) and (4) of this section, as
 15 applicable.

16 (a) ~~the basis of the need for the subdivision;~~

17 (b) ~~expressed public opinion;~~

18 (c) ~~effects on agriculture;~~

19 (d) ~~effects on local services;~~

20 (e) ~~effects on taxation;~~

21 (f) ~~effects on the natural environment;~~

22 (g) ~~effects on wildlife and wildlife habitat; and~~

23 (h) ~~effects on the public health and safety.~~

24 (3) A subdivision proposal must undergo review for the
 25 following primary criteria:

1 (a) The subdivision must be mapped, and the subdivision
 2 plat must be properly filed with the county clerk and
 3 recorder.

4 (b) The subdivision must comply with water supply,
 5 solid waste disposal, sewage treatment, and water quality
 6 standards, as provided for in Title 76, chapter 4, part 1.

7 (c) The subdivision must provide easements for the
 8 location and installation of any planned utilities.

9 (d) The subdivision must ensure access to each tract
 10 within the subdivision, as follows:

11 (i) for a primitive tract:

12 (A) legal access must be provided; and

13 (B) notation of legal access must be made on the
 14 applicable plat and any instrument of transfer concerning
 15 the tract; and

16 (ii) for any other tract, physical access must be
 17 provided according to standards set by the governing body
 18 under 76-3-501.

19 (e) Lots within the subdivision may not have building
 20 sites within a floodway as defined by Title 76, chapter 5.

21 (f) The subdivision must be evaluated under the
 22 conditions provided in subsection (4) to determine if lots
 23 upon which building sites are or can reasonably be expected
 24 to be located within the subdivision are located in an area
 25 affected by the following hazards:

1 (i) unstable slopes, including areas where rockfalls,
 2 landslides, mudslides, or avalanches have occurred in the
 3 past 25 years or can reasonably be expected to occur;

4 (ii) unsuitable soils, including areas where a high
 5 water table occurs within 5 feet of the surface of the lot
 6 at any time of year and areas affected by soil creep,
 7 shrink-swell potential, or sinkholes; and

8 (iii) drainage problems, including the potential for
 9 sheetflooding.

10 (4) Subdivisions evaluated for hazards under subsection
 11 (3)(f) must be reviewed under all of the following
 12 conditions:

13 (a) Local government regulations must provide specific
 14 standards for evaluation and mitigation.

15 (b) Existing and reasonably accessible data must be
 16 used for the evaluation unless otherwise agreed to by the
 17 subdivider and the review authority.

18 (c) Approved construction techniques may be recommended
 19 to mitigate or overcome hazards.

20 (d) If a hazard is found to exist, notice of the hazard
 21 must be placed on the final plat.

22 (e) If the review authority knows of the existence of
 23 natural or man-caused hazards other than those described in
 24 subsection (3)(f), the review authority shall notify the
 25 subdivider in writing of those known hazards and require

1 notice of the hazards on the final plat.

2 (f) The result of the hazard evaluation is not
 3 dispositive of the degree of hazard existing and is not
 4 grounds to establish liability against the review
 5 authority."

6 **NEW SECTION. Section 26. Additional review criteria**
 7 **for major subdivisions.** (1) In addition to the requirements
 8 of 76-3-608 and [sections 20 and 22], a major subdivision
 9 must be reviewed for effects on:

- 10 (a) agricultural or agricultural water-user practices;
 11 (b) unique cultural and historical sites;
 12 (c) the natural environment; and
 13 (d) local services.

14 (2) (a) In reviewing major subdivisions for the effects
 15 listed in subsection (1), the review authority shall use
 16 information from the environmental assessment required by
 17 76-3-603 and may solicit other site-specific information
 18 from the subdivider, agencies, and other appropriate
 19 sources. Efforts by the review authority to gather
 20 additional information do not constitute grounds for
 21 extending the deadlines for the subdivision review process
 22 provided for in [section 20] unless an extension is agreed
 23 to by the subdivider.

24 (b) Based on the information gathered, the subdivision
 25 review officer shall determine whether the proposed

1 subdivision is likely to have significant adverse impacts on
2 the factors listed in subsection (1).

3 (c) If the subdivision review officer determines that
4 significant adverse impacts are probable, the subdivision
5 review officer shall schedule a consultation with the
6 subdivider, knowledgeable persons, and agency
7 representatives. During the consultation process, the
8 parties shall work to develop mitigation for the potential
9 adverse effects on the factors listed in subsection (1).

10 (d) The subdivision review officer shall report the
11 results of the meeting to the governing body and may make a
12 recommendation.

13 (e) The governing body may require the subdivider to
14 design the subdivision to minimize any potentially
15 significant adverse impacts.

16 (f) The governing body shall issue written findings,
17 based on substantial credible evidence, to justify any
18 action taken under subsection (2)(e).

19 (g) In reviewing a subdivision under subsection (1), a
20 governing body must be guided by the following standards:

21 (i) Mitigation measures imposed must not unreasonably
22 restrict a landowner's ability to develop land, but it is
23 recognized that in some instances the impacts of a proposed
24 development may be unacceptable and will preclude approval
25 of the plat.

1 (ii) Whenever feasible, mitigation should be designed to
2 provide some benefits for the subdivider, including
3 allowances for higher density development in less
4 environmentally sensitive sites within the plat, waiver of
5 the park dedication requirement under the provisions of
6 [section 23], and structuring mitigation to provide
7 eligibility for tax benefits if land or development rights
8 are donated to eligible receivers.

9 **Section 27.** Section 76-3-610, MCA, is amended to read:

10 ***76-3-610. Effect of approval of preliminary plat.** (1)
11 Upon approving or conditionally approving a preliminary
12 plat, the governing-body review authority shall provide the
13 subdivider with a dated and signed statement of approval.
14 This approval ~~shall~~ may be in force for not more than 3
15 calendar years or less than 1 calendar year. At the end of
16 this period, the governing-body review authority may, at the
17 request of the subdivider, extend its approval for no more
18 than 1 calendar year, except that the governing-body review
19 authority may extend its approval for a period of more than
20 1 year if that approval period is included as a specific
21 condition of a written agreement between the governing--body
22 review authority and the subdivider, ~~according to 76-3-507.~~

23 (2) After the preliminary plat is approved, the
24 governing-body-and-its-subdivisions review authority may not
25 impose any additional conditions as a prerequisite to final

1 plat approval, providing ~~said~~ the approval is obtained
 2 within the original or extended approval period as provided
 3 in subsection (1)."

4 **Section 28.** Section 76-3-611, MCA, is amended to read:

5 "76-3-611. Review of final plat. (1) The ~~governing-body~~
 6 review authority shall examine every final subdivision plat
 7 and shall approve it ~~when-and~~ only when:

8 (a) it conforms to the conditions of approval set forth
 9 on the preliminary plat and to the terms of this chapter and
 10 regulations adopted pursuant ~~thereto~~ to this chapter; and

11 (b) the county treasurer has ~~certified~~ issued a
 12 certificate of taxes paid pursuant to [section 6] certifying
 13 that no real property taxes assessed and levied on the land
 14 to be subdivided are not delinquent.

15 (2) (a) The governing body may require that final
 16 subdivision plats and certificates of survey be reviewed for
 17 errors and omissions in calculation or drafting by an
 18 examining registered professional land surveyor before
 19 recording with the county clerk and recorder. When the
 20 survey data shown on the plat or certificate of survey meets
 21 the conditions set forth by or pursuant to this chapter
 22 section, the examining land surveyor shall so certify in a
 23 printed or stamped certificate on the plat or certificate of
 24 survey. ~~Such~~ The certificate ~~shall~~ must be signed by him.

25 (b) ~~No~~ A registered professional land surveyor ~~shall~~

1 ~~may not~~ act as an examining land surveyor in regard to a
 2 plat or certificate of survey in which he has a financial or
 3 personal interest."

4 **Section 29.** Section 76-3-613, MCA, is amended to read:

5 "76-3-613. Index of plats and certificates of survey to
 6 be kept by county clerk and recorder. (1) The county clerk
 7 and recorder shall maintain an index of all recorded
 8 subdivision plats and certificates of survey.

9 (2) This index ~~shall~~ must list plats and certificates
 10 of survey by the quarter section, section, township, and
 11 range in which the platted or surveyed land lies and ~~shall~~
 12 must list the recording or filing numbers of all plats
 13 depicting lands lying within each quarter section. Each
 14 quarter section list ~~shall~~ must be definitive to the
 15 exclusion of all other quarter sections. The index ~~shall~~
 16 must also list the names of all subdivision plats of more
 17 than five tracts in alphabetical order and the place where
 18 filed."

19 **Section 30.** Section 76-3-614, MCA, is amended to read:

20 "76-3-614. Correction of recorded plat. When a recorded
 21 plat does not definitely show the location or size of lots
 22 or blocks or the location or width of any street or alley,
 23 the ~~governing-body~~ review authority may at its own expense
 24 cause a new and correct survey and plat to be made and
 25 recorded in the office of the county clerk and recorder. The

1 corrected plat must, to the extent possible, follow the plan
2 of the original survey and plat. The surveyor making the
3 resurvey shall endorse the corrected plat, referring to the
4 original plat and noting the defect existing therein in the
5 original plat and the corrections made."

6 **Section 31.** Section 7-16-2324, MCA, is amended to read:

7 "7-16-2324. Sale, lease, or exchange of dedicated park
8 lands. (1) For the purposes of this section and part 25 of
9 chapter 8, lands dedicated to the public use for park or
10 playground purposes under 76-3-606-and-76-3-607 [section 23]
11 or a similar statute or pursuant to any instrument not
12 specifically conveying land to a governmental unit other
13 than a county are considered county lands.

14 (2) A county may not sell, lease, or exchange lands
15 dedicated for park or playground purposes except as provided
16 under this section and part 25 of chapter 8.

17 (3) Prior to selling, leasing, or exchanging any county
18 land dedicated to public use for park or playground
19 purposes, a county shall:

20 (a) compile an inventory of all public parks and
21 playgrounds within the county;

22 (b) prepare a comprehensive plan for the provision of
23 outdoor recreation and open space within the county;

24 (c) determine that the proposed sale, lease, or
25 exchange furthers or is consistent with the county's outdoor

1 recreation and open space comprehensive plan;

2 (d) publish notice as provided in 7-1-2121 of intention
3 to sell, lease, or dispose of such the park or playground
4 lands, giving the people of the county opportunity to be
5 heard regarding such the action;

6 (e) if the land is within an incorporated city or town,
7 secure the approval of the governing body thereof for the
8 action; and

9 (f) comply with any other applicable requirements under
10 part 25 of chapter 8.

11 (4) Any revenue realized by a county from the sale,
12 exchange, or disposal of lands dedicated to public use for
13 park or playground purposes ~~shall~~ must be paid into the park
14 fund and used in the manner prescribed in 76-3-606-and
15 76-3-607 [section 23] for cash received in lieu of
16 dedication."

17 **Section 32.** Section 76-4-103, MCA, is amended to read:

18 "76-4-103. What constitutes subdivision. A subdivision
19 ~~shall-comprise~~ comprises only those parcels ~~of-less-than--20~~
20 ~~acres which that~~ that have been created by a division of land,
21 and the plat ~~thereof-shall~~ of the subdivision must show all
22 such the parcels, whether contiguous or not. The rental or
23 lease of one or more parts of a building, structure, or
24 other improvement, whether existing or proposed, is not a
25 subdivision, as that term is defined in this part, and is

1 not subject to the requirements of this part."

2 **Section 33.** Section 76-4-125, MCA, is amended to read:

3 "76-4-125. Review of development plans -- land
4 ~~divisions excluded from review.~~ (1) Plans and specifications
5 of a subdivision as defined in this part ~~shall~~ must be
6 submitted to the reviewing authority, and the reviewing
7 authority shall indicate by certificate that it has approved
8 the plans and specifications and that the subdivision is not
9 subject to a sanitary restriction. The plan review by the
10 reviewing authority ~~shall~~ must be as follows:

11 (a) At any time after the developer has submitted an
12 application under the Montana Subdivision and Platting Act,
13 the developer shall present to the reviewing authority a
14 preliminary plan of the proposed development, whatever
15 information the developer feels necessary for its subsequent
16 review, and information required by the reviewing authority.

17 (b) The reviewing authority ~~must-give~~ shall take final
18 action ~~of on~~ the proposed plan within 60 days unless an
19 environmental impact statement is required, at which time
20 this deadline may be increased to 120 days.

21 (2) A subdivision excluded from the provisions of
22 chapter 3 ~~shall~~ must be submitted for review according to
23 the provisions of this part, except that the following
24 ~~divisions,--unless--such--exclusions--are--used--to--evade--the~~
25 ~~provisions-of-this-part,~~ are not subject to review:

1 ~~(a) the-exclusions-cited-in-76-3-201--and--76-3-204,~~ a
2 division created by order of a court of record in this state
3 pursuant to the laws governing the distribution of estates
4 (Title 72, chapters 1 through 6 and 10 through 14) or the
5 dissolution of marriage (Title 40, chapter 4) or a division
6 that, in the absence of agreement between the parties to the
7 sale, could be created by an order of a court in this state
8 pursuant to the law of eminent domain (Title 70, chapter
9 30);

10 (b) a division creating an interest in oil, gas,
11 minerals, or water that is now or at a later time severed
12 from the surface ownership of real property;

13 (c) a division creating cemetery lots only;

14 (d) a division created by reservation of a life estate;

15 (e) a division created by lease or rental for farming
16 and agricultural purposes;

17 (f) the sale, rent, lease, or other conveyance of one
18 or more parts of a building, structure, or other
19 improvement, whether existing or proposed;

20 ~~(b)(g)~~ divisions a division made for the purpose of
21 acquiring additional land to become part of an approved
22 parcel, provided that no a dwelling or structure requiring
23 water or sewage disposal is not to be erected on the
24 additional acquired parcel and that the division does not
25 fall within a previously platted or approved subdivision;

1 and

2 (c)(h) divisions a division made for purposes other
3 than the construction of water supply or sewage and solid
4 waste disposal facilities as the department specifies by
5 rule."

6 **Section 34.** Section 76-6-203, MCA, is amended to read:

7 "76-6-203. **Types of permissible easements.** Easements or
8 restrictions under this chapter may prohibit or limit any or
9 all of the following:

10 (1) structures--construction or placing of buildings,
11 camping trailers, housetrailer, mobile homes, roads, signs,
12 billboard or other advertising, utilities, or other
13 structures on or above the ground;

14 (2) landfill--dumping or placing of soil or other
15 substance or material as landfill or dumping or placing of
16 trash, waste, or unsightly or offensive materials;

17 (3) vegetation--removal or destruction of trees,
18 shrubs, or other vegetation;

19 (4) loam, gravel, etc.--excavation, dredging, or
20 removal of loam, peat, gravel, soil, rock, or other material
21 substance;

22 (5) surface use--surface use except for such purposes
23 permitting the land or water area to remain predominantly in
24 its existing condition;

25 (6) acts detrimental to conservation--activities

1 detrimental to drainage, flood control, water conservation,
2 erosion control, soil conservation, or fish and wildlife
3 habitat and preservation;

4 (7) subdivision of land--subdivision of land as defined
5 in 76-3-103, and 76-3-104, ~~and 76-3-202~~;

6 (8) other acts--other acts or uses detrimental to such
7 retention of land or water areas in their existing
8 conditions."

9 **NEW SECTION. Section 35. Repealer.** Sections 76-3-201,
10 76-3-202, 76-3-203, 76-3-204, 76-3-205, 76-3-206, 76-3-207,
11 76-3-208, 76-3-209, 76-3-210, 76-3-504, 76-3-505, 76-3-604,
12 76-3-605, 76-3-606, 76-3-607, 76-3-609, MCA, are repealed.

13 **NEW SECTION. Section 36. Codification instruction.**
14 [Sections 5, 6, 20 through 24, and 26] are intended to be
15 codified as an integral part of Title 76, chapter 3, and the
16 provisions of Title 76, chapter 3, apply to [sections 5, 6,
17 20 through 24, and 26].

18 **NEW SECTION. Section 37. Saving clause.** [This act]
19 does not affect rights and duties that matured, penalties
20 that were incurred, or proceedings that were begun before
21 [the effective date of this act].

22 **NEW SECTION. Section 38. Severability.** If a part of
23 [this act] is invalid, all valid parts that are severable
24 from the invalid part remain in effect. If a part of [this
25 act] is invalid in one or more of its applications, the part

1 remains in effect in all valid applications that are
2 severable from the invalid applications.

3 NEW SECTION. **Section 39.** Applicability. [Sections 2,
4 3, and 32] apply to all subdivision applications filed after
5 passage and approval. [Sections 1, 4 through 31, 33, and 34]
6 apply to all subdivision applications filed after September
7 30, 1991.

8 NEW SECTION. **Section 40.** Effective date. [This act] is
9 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0671, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


A bill to generally revise the Montana subdivision and platting act; redefining subdivision; removing certain exemptions; providing an expedited review process for minor subdivisions and special subdivisions; providing public hearing guidelines and an optional informational hearing procedure; establishing primary criteria for review of all subdivisions; providing certain additional review requirements for major subdivisions; and providing for suits against a governing body.

ASSUMPTIONS:


1. HB0671 would revise the definition of a subdivision for purposes of the Sanitation in Subdivisions Act. The number of minor subdivisions reviewed by the Department of Health and Environmental Sciences under the Sanitation in Subdivisions Act would approximately double over what are currently reviewed. The number of lots in minor subdivisions shall approximately double over those currently reviewed.
2. Reimbursements to local governments on contract for minor subdivisions under the Sanitation in Subdivisions Act would be proportional to current levels.
3. Current review fees per lot under the Sanitation in Subdivisions Act would remain the same as under current law.
4. Increases in workload for the Department of Commerce program which provides technical assistance to local governments associated with the Subdivision and Platting Act would be minor and could be absorbed within the program's current level budget.

FISCAL IMPACT:

see next page


ROD SUNDSTED, BUDGET DIRECTOR
Office of Budget and Program Planning

2-13-91
DATE


BOB GILBERT, PRIMARY SPONSOR

DATE

Fiscal Note for HB0671, as introduced.

HB 671

Fiscal Note Request, HB0671, as introduced.

Form BD-15

Page 2

FISCAL IMPACT:Department of Health and Environmental Sciences:

	<u>FY 92</u>			<u>FY 93</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	3.30	5.05	1.75	3.30	5.05	1.75
Personal Services	90,877	136,077	45,200	90,690	137,540	46,850
Operating Expenses	16,789	48,429	31,640	17,015	49,815	32,800
Grants	<u>45,000</u>	<u>60,000</u>	<u>15,000</u>	<u>45,000</u>	<u>60,000</u>	<u>15,000</u>
Total	152,666	244,506	91,840	152,705	247,355	94,650
<u>Funding:</u>						
General Fund (01)	152,666	244,506	91,840	152,705	247,355	94,650
<u>Revenues:</u>						
General Fund (01)	139,500	199,500	60,000	139,500	199,500	60,000
<u>Impact to General Fund:</u>			(31,840)			(34,650)

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

Local government entities which contract with DHES for review of subdivisions under the Sanitation in Subdivisions Act would experience increase in workload. Compensation currently ranges from \$5 to \$35 per lot reviewed, depending on time involved.

Local governments reviewing subdivisions pursuant to the Subdivision and Platting Act would experience significant increase in workload. The fiscal impact to local entities cannot be determined at this time. The governing body is authorized under 76-3-602, MCA to charge reasonable fees to defray the expenses of reviewing subdivision plats. The average annual salary for a staff planner or consultant is approximately \$24,000. Lot fees charged to subdividers may range from \$50 to several hundred dollars per lot. HB0671 proposes an expedited review process for 5 lots or less which would minimize increases in costs, particularly for local governments which already have planning staff.

APPROVED BY COMM. ON
NATURAL RESOURCES

HOUSE BILL NO. 671

INTRODUCED BY GILBERT, HARPER, ECK, RANEY, BRADLEY,
WALLIN, LEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE MONTANA SUBDIVISION AND PLATTING ACT; REDEFINING SUBDIVISION; REMOVING CERTAIN EXEMPTIONS; PROVIDING AN EXPEDITED REVIEW PROCESS FOR MINOR SUBDIVISIONS AND SPECIAL SUBDIVISIONS; PROVIDING PUBLIC HEARING GUIDELINES AND AN OPTIONAL INFORMATIONAL HEARING PROCEDURE; ESTABLISHING PRIMARY CRITERIA FOR REVIEW OF ALL SUBDIVISIONS; PROVIDING CERTAIN ADDITIONAL REVIEW REQUIREMENTS FOR MAJOR SUBDIVISIONS; ~~PROVIDING FOR SUITS AGAINST A GOVERNING BODY;~~ AMENDING SECTIONS 7-16-2324, 76-3-102, 76-3-103, 76-3-104, 76-3-105, 76-3-301, 76-3-302, 76-3-304, 76-3-305, 76-3-401, 76-3-402, ~~76-3-403,~~ 76-3-404, 76-3-405, 76-3-501, 76-3-507, 76-3-601, 76-3-603, 76-3-608, 76-3-610, 76-3-611, 76-3-613, 76-3-614, 76-4-103, 76-4-125, AND 76-6-203, MCA; REPEALING SECTIONS 76-3-201, 76-3-202, 76-3-203, 76-3-204, 76-3-205, 76-3-206, 76-3-207, 76-3-208, 76-3-209, 76-3-210, 76-3-504, 76-3-505, 76-3-604, 76-3-605, 76-3-606, 76-3-607, AND 76-3-609, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 76-3-102, MCA, is amended to read:

"76-3-102. Statement of purpose. It is the purpose of this chapter to ~~promote--the--public--health, safety, and general welfare by regulating the subdivision--of--land;--to prevent--overcrowding--of--land; to lessen congestion in the streets and highways; to provide for--adequate--light, air, water supply; sewage disposal, parks and recreation areas; ingress--and--egress; and--other--public--requirements; to require development in harmony with the natural environment; to require that whenever necessary, the appropriate approval of subdivisions be contingent upon--a--written--finding--of public--interest--by--the governing body; and to~~ PROMOTE THE PUBLIC HEALTH, SAFETY, AND GENERAL WELFARE BY REGULATING THE SUBDIVISION OF LAND; TO PREVENT OVERCROWDING OF LAND; TO LESSEN CONGESTION IN THE STREETS AND HIGHWAYS; TO PROVIDE FOR ADEQUATE LIGHT, AIR, WATER SUPPLY, SEWAGE DISPOSAL, PARKS AND RECREATION AREAS, INGRESS AND EGRESS, AND OTHER PUBLIC REQUIREMENTS; TO REQUIRE DEVELOPMENT IN HARMONY WITH THE NATURAL ENVIRONMENT; TO REQUIRE THAT WHENEVER NECESSARY, THE APPROPRIATE APPROVAL OF SUBDIVISIONS BE CONTINGENT UPON A WRITTEN FINDING OF PUBLIC INTEREST BY THE GOVERNING BODY; AND TO require uniform monumentation of land ~~subdivisions and transferring divisions; TO require that the transfer of~~ interests in real property be made by reference to plat or certificate of survey; TO provide simple, clear, and uniform

1 guidelines for review of subdivisions; AND TO promote
 2 environmentally sound subdivisions;--and--protect--public
 3 health;--safety;--and-welfare in a manner that also protects
 4 the rights of property owners. FOR THE PURPOSE OF THIS
 5 CHAPTER, RIGHTS OF PROPERTY OWNERS INCLUDE THE RIGHT TO USE,
 6 ENJOY, IMPROVE, SELL, AND CONVEY, IN TOTAL OR IN PART, REAL
 7 PROPERTY SO LONG AS THE EXERCISE OF THE RIGHTS DOES NOT DENY
 8 THESE RIGHTS TO OTHER PROPERTY OWNERS OR ADVERSELY AFFECT
 9 PUBLIC HEALTH, SAFETY, AND WELFARE."

10 **Section 2.** Section 76-3-103, MCA, is amended to read:

11 "76-3-103. **Definitions.** As used in this chapter, unless
 12 the context or subject matter clearly requires otherwise,
 13 the following words or phrases shall have the following
 14 meanings:

15 (1) "Certificate of survey" means a drawing of a field
 16 survey prepared by a registered professional land surveyor
 17 for the purpose of disclosing facts pertaining to boundary
 18 locations.

19 (2) "Dedication" means the deliberate appropriation of
 20 land by an owner for any general and public use, reserving
 21 to himself no rights which are incompatible with the full
 22 exercise and enjoyment of the public use to which the
 23 property has been devoted.

24 (3) "Division of land" means the segregation creation
 25 of one--or-more parcels of land from a larger tract held in

1 single or undivided ownership by transferring or contracting
 2 to transfer title to or possession of a portion of the tract
 3 or properly filing a certificate of survey or subdivision
 4 plat establishing the identity of the segregated created
 5 parcels pursuant to this chapter.

6 ~~(4) "Dwelling unit" means a unit in which a person or~~
 7 ~~persons reside for more than 8 months of a calendar year.~~

8 ~~(4)(5)(4)~~ "Examining land surveyor" means a registered
 9 professional land surveyor duly appointed by the governing
 10 body to review surveys and plats submitted for filing.

11 ~~(6)(5)~~ "Executive proceedings" means public proceedings
 12 in which the governing body makes deliberations without
 13 receiving public comment except when, with the approval of
 14 the chairman, specific questions are directed to the
 15 subdivider or other individuals.

16 ~~(5)(7)(6)~~ "Governing body" means a board of county
 17 commissioners or the governing authority of any city or town
 18 organized pursuant to law.

19 ~~(6)(8) "Irregularly shaped tract of land" means a~~
 20 ~~parcel of land other than an aliquot part of the United~~
 21 ~~States government survey section or a United States~~
 22 ~~government lot, the boundaries or areas of which cannot be~~
 23 ~~determined without a survey or trigonometric calculation.~~

24 ~~(7) "Occasional sale" means one sale of a division of~~
 25 ~~land within any 12-month period.~~

1 {9}(7) "Legal access" means access by easement or other
 2 right-of-way that provides the property owner THE RIGHT OF
 3 ingress and egress to or from any tract or parcel created by
 4 a subdivision.

5 {10}(8) "Major subdivision" means a subdivision that is
 6 not a minor subdivision or special subdivision.

7 {11}(9) "Minor subdivision" means a subdivision of THE
 8 FIRST five or--fewer parcels--A-second-or-subsequent-minor
 9 subdivision from a single tract of record as of July 1,
 10 1991,--may--not--be--considered--a--minor--subdivision--for--review
 11 purposes--unless--the--subdivider--notifies--the---reviewing
 12 authority--of--the--subdivider's--intention--to--create--subsequent
 13 parcels,--up--to--the--five--parcel--limit,--at--the--time--of--the
 14 initial--minor--subdivision--application.

15 {12}(10) "Physical access" means access by a road that
 16 meets the standards set by the governing body according to
 17 76-3-501.

18 {0}{13}(11) "Planned unit development" means a land
 19 development project consisting of residential clusters,
 20 industrial parks, shopping centers, office building parks,
 21 or any combination thereof which comprises a planned mixture
 22 of land uses built in a prearranged relationship to each
 23 other and having open space and community facilities in
 24 common ownership or use.

25 {9}{14}(12) "Plat" means a graphical representation of a

1 subdivision showing the division of land into lots, parcels,
 2 blocks, streets, alleys, and other divisions and
 3 dedications.

4 {10}{15}(13) "Preliminary plat" means a neat and scaled
 5 drawing of a proposed subdivision showing the layout of
 6 streets, alleys, lots, blocks, and other elements of a
 7 subdivision which furnish a basis for review by a governing
 8 body.

9 {11}{16}(14) "Final plat" means the final drawing of the
 10 subdivision and dedication required by this chapter to be
 11 prepared for filing for record with the county clerk and
 12 recorder and containing all elements and requirements set
 13 forth in this chapter and in regulations adopted pursuant
 14 thereto to this chapter.

15 {17}--"Primitive--tract"--means--a--tract--that--is--located
 16 more--than--1--mile--from--a--state,--federal,--or--maintained--county
 17 road--and--that--is--used--for--open--space--or--for--wildlife,
 18 hunting,--or--other--activities--with--minimal--human--impacts.
 19 Activities--with---minimal---human---impacts---include---the
 20 construction--of--camping--structures--that--are--dismantled--or
 21 relocated--after--seasonal--use.

22 {12}{18}(15) "Registered professional land surveyor"
 23 means a person licensed in conformance with Title 37,
 24 chapter 67, to practice surveying in the state of Montana.

25 {13}{19}(16) "Registered professional engineer" means a

1 person licensed in conformance with Title 37, chapter 67, to
 2 practice engineering in the state of Montana.

3 ~~(20)~~(17) "Review authority" means the person or entity
 4 with authority to approve, conditionally approve, or
 5 disapprove a subdivision application.

6 ~~(21)~~(18) "Special subdivision" means a subdivision that
 7 conforms to a master plan pursuant to ~~76-1-601~~ AND a
 8 long-range development program of public works projects
 9 ADOPTED pursuant to 76-1-601, and either ~~local~~ government
 10 regulations pursuant to ~~76-3-501~~ or zoning regulations
 11 ADOPTED pursuant to Title 76, chapter 2, part 2 or 3.

12 ~~(14)~~(22)(19) "Subdivider" means any person who causes
 13 land to be subdivided or who proposes a subdivision of land.

14 ~~(15)~~(23)(20) (a) "Subdivision" means a division of land
 15 or land so divided which that it creates one or more parcels
 16 containing ~~less than 20 acres, exclusive of public roadways,~~
 17 ~~in order that the title to or possession of the parcels may~~
 18 ~~be sold, rented, leased, or otherwise conveyed, and shall~~
 19 ~~include The term includes any resubdivision and shall~~
 20 ~~further include any residential condominium or building and~~
 21 ~~further includes any area, regardless of its size, which~~
 22 ~~that provides or will provide multiple space three or more~~
 23 ~~spaces for recreational camping vehicles, or mobile homes~~
 24 ~~dwelling units, or work camp structures constructed to exist~~
 25 ~~for longer than 1 year. THE TERM INCLUDES:~~

- 1 (I) ANY RESUBDIVISION;
- 2 (II) ANY RESIDENTIAL CONDOMINIUM OR BUILDING;
- 3 (III) ANY AREA, REGARDLESS OF ITS SIZE, THAT PROVIDES OR
- 4 WILL PROVIDE MULTIPLE SPACE FOR RECREATIONAL CAMPING
- 5 VEHICLES OR DWELLING UNITS; AND
- 6 (IV) WORK CAMP STRUCTURES CONSTRUCTED TO EXIST FOR
- 7 LONGER THAN 1 YEAR.
- 8 (b) Subdivision does not mean:
- 9 (i) a division creating cemetery lots only;
- 10 (ii) a division created by lease or rental for farming
- 11 and agricultural purposes;
- 12 (iii) a division creating an interest in oil, gas,
- 13 minerals, or water that is severed from the surface
- 14 ownership of real property;
- 15 (iv) a division created by reservation of a life estate;
- 16 (v) the sale, rent, lease, or other conveyance of one
- 17 or more parts of a building, structure, or other
- 18 improvement, whether existing or proposed;
- 19 (vi) a division of state-owned land unless the division
- 20 creates a second or subsequent parcel from a single tract
- 21 for sale, rent, or lease for residential purposes;
- 22 (vii) a division created by OPERATION OF LAW OR AN order
- 23 of a court of record in this state pursuant to the laws
- 24 governing the distribution of estates (Title 72, chapters 1
- 25 through 6 and 10 through 14) or the dissolution of marriage

1 (Title 40, chapter 4) or a division that, in the absence of
 2 an agreement between the parties to the sale, could be
 3 created by an order of a court in this state pursuant to the
 4 law of eminent domain (Title 70, chapter 30);

5 (viii) except for the survey requirements in 76-3-401
 6 through 76-3-405 and any applicable zoning requirements, a
 7 division made for the purpose of relocating boundary lines
 8 between adjoining properties, provided the division is
 9 recorded in both the certificate of survey and the index
 10 provided for in 76-3-613 and unless the governing body
 11 determines that the subdivision may be used to create
 12 subdivisions for resale;

13 (ix) except for the survey requirements in 76-3-401
 14 through 76-3-405, a division made exclusively for
 15 agricultural purposes by sale or agreement to buy and sell
 16 if the division is outside of a platted subdivision and if
 17 the local governing body and the subdivider enter into a
 18 covenant running with the land that the divided parcels must
 19 be used exclusively for agricultural purposes. The governing
 20 body shall agree to release the covenant upon petition by
 21 the subdivider if the subdivision proposal complies with the
 22 provisions of this chapter.

23 (x) except for the survey requirements in 76-3-401
 24 through 76-3-405 and the review requirements of 76-3-610
 25 through 76-3-614, a division created by rent or lease;

1 (xi) except for requirements other than the survey and
 2 platting requirements in 76-3-401 through 76-3-405,
 3 divisions created by rights-of-way; or

4 (xii) except for requirements other than the survey and
 5 platting requirements in 76-3-401 through 76-3-405 and the
 6 review requirements of 76-4-101 through 76-4-131, a division
 7 created by an agricultural producer for sale or gift to a
 8 member of the agricultural producer's immediate family for
 9 the purpose of maintaining the agricultural operation and
 10 limited to a single sale or gift to each family member. For
 11 the purposes of this section, agricultural producer means a
 12 person primarily engaged in the production of agricultural
 13 products.

14 (XIII) A DIVISION OF LAND MADE FOR THE PURPOSE OF MINING
 15 WHEN AN APPLICATION HAS BEEN SUBMITTED OR A PERMIT OR
 16 CONTRACT RECEIVED UNDER THE PROVISIONS OF TITLE 82, CHAPTER
 17 4.

18 {24}(21) "Subdivision review officer" means the person
 19 designated by the governing body to administer subdivision
 20 review or to approve, conditionally approve, or disapprove
 21 applications for minor subdivisions or special subdivisions.

22 {25}(22) "Tract of record" means a tract of record as
 23 appears in the records of the county clerk and recorder's
 24 office.

25 (23) "WATER USER ENTITY" MEANS AN ENTITY AS DESCRIBED IN

7-12-1151 AND IRRIGATION DISTRICTS AS PROVIDED IN 85-7-101."

Section 3. Section 76-3-104, MCA, is amended to read:

"76-3-104. What constitutes subdivision. A subdivision shall ~~comprise~~ comprises only those parcels ~~less--than--20~~ acres--which that have been ~~segregated~~ created from the original tract, and the plat thereof--~~shall~~ of the subdivision must show all ~~such the~~ parcels, whether contiguous or not."

Section 4. Section 76-3-105, MCA, is amended to read:

"76-3-105. Violations -- actions against subdivider.

(1) Any A person who violates any provision of this chapter or any local regulations adopted pursuant thereto--~~shall--be~~ to this chapter is guilty of subject to a civil penalty not to exceed \$5,000 ~~misdemeanor and punishable by a fine of not less than \$100 or more than \$500 or by imprisonment in a county jail for not more than 3 months or by both fine and imprisonment.~~ Each sale, lease, or transfer of each separate parcel of land in violation of any provision of this chapter or any local regulation adopted pursuant thereto--~~shall--be~~ deemed to this chapter is considered a separate and distinct offense.

(2) The governing body may file an action in district court to enjoin the violation of any provision of this chapter or of any regulation adopted pursuant to 76-3-501."

~~NEW SECTION. Section 5. Violations--actions against~~

~~governing body. A person who has filed with the governing body an application for a permit under this chapter may bring an action against the governing body to recover actual damages caused by:~~

~~(1) a final action, decision, or order of the governing body that imposes requirements, limitations, or conditions upon the use of the property in excess of those authorized by this chapter; or~~

~~(2) a regulation adopted pursuant to this chapter that is:~~

- ~~(a) arbitrary or capricious; or~~
- ~~(b) unlawful or exceeds lawful authority.~~

NEW SECTION. Section 5. Certificate of taxes paid. A division of land may not be made unless the county treasurer has certified that real property taxes assessed and levied on the land to be divided are not delinquent.

Section 6. Section 76-3-301, MCA, is amended to read:

"76-3-301. General restriction on transfer of title to subdivided lands. (1) Except as provided in 76-3-303, every final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. The clerk and recorder of the county shall refuse to accept any plat for record that fails to have the approval of 76-3-611(1) in proper form.

1 (2) The clerk and recorder shall notify the governing
 2 body or its designated agent of any land division described
 3 ~~in 76-3-207(1)~~ exempted from review but subject to survey
 4 requirements.

5 (3) If transfers not in accordance with this chapter
 6 are made, the county attorney shall commence action to
 7 enjoin further sales or transfers and compel compliance with
 8 all provisions of this chapter. The cost of such the action
 9 shall must be imposed against the party not prevailing."

10 **Section 7.** Section 76-3-302, MCA, is amended to read:

11 "76-3-302. Restrictions on recording instruments
 12 relating to land subject to surveying requirements. (1)
 13 Except as provided in subsection (2), the county clerk and
 14 recorder of any county may not record any instrument which
 15 that purports to transfer title to or possession of a parcel
 16 or tract of land which that is required to be surveyed by
 17 this chapter unless the required certificate of survey or
 18 subdivision plat has been filed with the clerk and recorder
 19 and the instrument of transfer describes the parcel or tract
 20 by reference to the filed certificate or plat.

21 (2) Subsection (1) does not apply when the parcel or
 22 tract to be transferred was created before July 1, 1973, and
 23 the instrument of transfer for the parcel or tract includes
 24 a reference to a previously recorded instrument of transfer
 25 or is accompanied by documents ~~which, if recorded, would~~

1 ~~otherwise satisfy the requirements of this subsection. The~~
 2 ~~reference or document must~~ that demonstrate that the parcel
 3 or tract existed before July 1, 1973.

4 (3) The reference or documents required in subsection
 5 (2) do not constitute a legal description of the property
 6 and may not be substituted for a legal description of the
 7 property."

8 **Section 8.** Section 76-3-304, MCA, is amended to read:

9 "76-3-304. Effect of recording filing complying plat.
 10 The recording filing of any plat made in compliance with the
 11 provisions of this chapter ~~shall serve~~ serves to establish
 12 the identity of all lands shown on ~~and being a part of such~~
 13 the plat. ~~Where~~ When lands are conveyed by reference to a
 14 plat, the plat itself or any copy of the plat properly
 15 certified by the county clerk and recorder as being a true
 16 copy ~~thereof~~ of the plat must be regarded as
 17 incorporated into the instrument of conveyance and ~~shall~~
 18 must be received in evidence in all courts of this state."

19 **Section 9.** Section 76-3-305, MCA, is amended to read:

20 "76-3-305. Vacation of plats -- utility easements. (1)
 21 Any plat prepared and recorded as herein provided in this
 22 part may be vacated either in whole or in part as provided
 23 by 7-5-2501, 7-5-2502, subsections (1) and (2) of 7-14-2616,
 24 7-14-2617, subsections (1) and (2) of 7-14-4114, and
 25 7-14-4115, and upon such vacation the title to the streets

1 and alleys of such the vacated portions to the center
 2 ~~thereof--shall--revert~~ of the street or alley reverts to the
 3 owners of the properties within the platted area adjacent to
 4 such the vacated portions.

5 (2) ~~However, when any~~ If a poleline, pipeline, or any
 6 other public or private facility is located in a vacated
 7 street or alley at the time of the reversion of the title
 8 ~~thereto of the street or alley,~~ the owner of ~~said the~~ public
 9 or private utility facility ~~shall have~~ has an easement over
 10 the vacated land to continue the operation and maintenance
 11 of the public or private utility facility."

12 **Section 10.** Section 76-3-401, MCA, is amended to read:

13 ~~*76-3-401. Survey requirements for divisions of lands~~
 14 ~~other than subdivisions.~~ All divisions of land ~~for--sale~~
 15 ~~other than a subdivision after July 17, 1974,~~ into parcels
 16 ~~which parts that~~ cannot be described as ~~1/32~~ 1/16 or larger
 17 aliquot parts of a United States government section or AS a
 18 United States government lot must be surveyed by or under
 19 the supervision of a registered professional land surveyor."

20 **Section 11.** Section 76-3-402, MCA, is amended to read:

21 ~~*76-3-402. Survey and platting requirements for~~
 22 ~~subdivided lands.~~ (1) Every subdivision of land after June
 23 30, 1973, ~~shall must~~ be surveyed and platted in conformance
 24 with this chapter by or under the supervision of a
 25 registered professional land surveyor.

1 (2) Subdivision plats ~~shall~~ must be prepared and filed
 2 in accordance with this chapter and regulations adopted
 3 pursuant thereto to this chapter.

4 (3) All division of sections into aliquot parts and
 5 retracement of lines must conform to United States bureau of
 6 land management instructions, and all public land survey
 7 corners ~~shall~~ must be filed in accordance with the Corner
 8 Recordation Act of Montana (Title 70, chapter 22, part 1).
 9 Engineering plans, specifications, and reports required in
 10 connection with public improvements and other elements of
 11 the subdivision required by the governing body ~~shall~~ must be
 12 prepared and filed by a registered professional engineer or
 13 a registered professional land surveyor as their respective
 14 licensing laws allow in accordance with this chapter and
 15 regulations adopted pursuant thereto to this chapter."

16 ~~Section 13--Section 76-3-403, MCA, is amended to read:~~

17 ~~*76-3-403--Monumentation--(1)--The--department--of~~
 18 ~~commerce--shall,--in--conformance--with--the--Montana~~
 19 ~~Administrative-Procedure-Act,--prescribe--uniform--standards~~
 20 ~~for--monumentation--and--for--the--form,--accuracy,--and~~
 21 ~~descriptive-content-of-records-of-survey;~~

22 ~~(2)--It--shall--be--the--responsibility--of--the--governing~~
 23 ~~body--to--require--the--replacement--of--all--monuments--removed--in~~
 24 ~~the--course--of--construction."~~

25 **Section 12.** Section 76-3-404, MCA, is amended to read:

1 "76-3-404. Certificate of survey. (1) Within 180 days
 2 of the completion of a survey, the registered professional
 3 land surveyor responsible for the survey, whether he is
 4 privately or publicly employed, shall prepare ~~and submit~~ for
 5 filing a certificate of survey in the county in which the
 6 survey was made if the survey:

7 (a) provides material evidence not appearing on any map
 8 filed with the county clerk and recorder or contained in the
 9 records of the United States bureau of land management;

10 (b) reveals a material discrepancy in such a map;

11 (c) discloses evidence to suggest alternate locations
 12 of lines or points; or

13 (d) establishes one or more lines not shown on a
 14 recorded map, the positions of which are not ascertainable
 15 from an inspection of such the map without trigonometric
 16 calculations.

17 (2) A certificate of survey ~~will~~ is not be required for
 18 any survey which that is made by the United States bureau of
 19 land management, ~~or which that~~ is preliminary, or which that
 20 will become part of a subdivision plat being prepared for
 21 recording under the provisions of this chapter.

22 (3) Certificates of survey ~~shall~~ must be legibly drawn,
 23 printed, or reproduced by a process guaranteeing a permanent
 24 record and ~~shall~~ must conform to monumentation and surveying
 25 requirements promulgated under this chapter."

1 **Section 13.** Section 76-3-405, MCA, is amended to read:

2 "76-3-405. Administration of oaths by registered land
 3 surveyor. (1) Every A registered professional land surveyor
 4 may administer and certify oaths when:

5 (a) it becomes necessary to take testimony for the
 6 identification of old corners or reestablishment of lost or
 7 obliterated corners;

8 (b) a corner or monument is found in a deteriorating
 9 condition and it is desirable that evidence concerning it be
 10 perpetuated; or

11 (c) the importance of the survey makes it desirable to
 12 administer an oath to his assistants for the faithful
 13 performance of their duty.

14 (2) A record of oaths ~~shall~~ must be preserved as part
 15 of the field notes of the survey and noted on the
 16 ~~certificate-of-survey-filed-under-76-3-404~~ corner record
 17 filed under 70-22-104."

18 **Section 14.** Section 76-3-501, MCA, is amended to read:

19 "76-3-501. Local subdivision regulations. (1) ~~Before~~
 20 ~~July 1, 1974, the~~ The governing body of every county, city,
 21 and town shall, IN A MANNER THAT PROTECTS THE RIGHTS OF
 22 PROPERTY OWNERS, adopt and provide for the enforcement and
 23 administration of subdivision regulations reasonably
 24 ~~providing for the orderly development of their~~
 25 ~~jurisdictional areas; for the coordination of roads within~~

~~subdivided land with other roads, both existing and planned;~~
~~for the dedication of land for roadways and for public~~
~~utility easements; for the improvement of roads; for the~~
~~provision of adequate open spaces for travel, light, air,~~
~~and recreation; for the provision of adequate~~
~~transportation, water, drainage, and sanitary facilities;~~
~~for the avoidance or minimization of congestion; and for the~~
~~avoidance of subdivision which would involve unnecessary~~
~~environmental degradation and the avoidance of danger of~~
~~injury to health, safety, or welfare by reason of natural~~
~~hazard or the lack of water, drainage, access,~~
~~transportation, or other public services or would~~
~~necessitate an excessive expenditure of public funds for the~~
~~supply of such services; implementing the provisions of this~~
~~chapter that are consistent with the statement of purpose~~
~~described in 76-3-182 and that do not unreasonably restrict~~
a landowner's ability to develop land; PROVIDING FOR THE
ORDERLY DEVELOPMENT OF THEIR JURISDICTIONAL AREAS; FOR THE
COORDINATION OF ROADS WITHIN SUBDIVIDED LAND WITH OTHER
ROADS, BOTH EXISTING AND PLANNED; FOR THE DEDICATION OF LAND
FOR ROADWAYS AND FOR PUBLIC UTILITY EASEMENTS; FOR THE
IMPROVEMENT OF ROADS; FOR THE PROVISION OF ADEQUATE OPEN
SPACES FOR TRAVEL, LIGHT, AIR, AND RECREATION; FOR THE
PROVISION OF ADEQUATE TRANSPORTATION, WATER, DRAINAGE, AND
SANITARY FACILITIES; FOR THE AVOIDANCE OR MINIMIZATION OF

CONGESTION; AND FOR THE AVOIDANCE OF SUBDIVISION THAT WOULD
INVOLVE UNNECESSARY ENVIRONMENTAL DEGRADATION AND THE
AVOIDANCE OF DANGER OF INJURY TO HEALTH, SAFETY, OR WELFARE
BY REASON OF NATURAL HAZARD OR THE LACK OF WATER, DRAINAGE,
ACCESS, TRANSPORTATION, OR OTHER PUBLIC SERVICES OR WOULD
NECESSITATE AN EXCESSIVE EXPENDITURE OF PUBLIC FUNDS FOR THE
SUPPLY OF THESE SERVICES. FOR THE PURPOSE OF THIS CHAPTER,
RIGHTS OF PROPERTY OWNERS INCLUDE THE RIGHT TO USE, ENJOY,
IMPROVE, SELL, AND CONVEY, IN TOTAL OR IN PART, REAL
PROPERTY SO LONG AS THE EXERCISE OF THE RIGHTS DOES NOT DENY
THESE RIGHTS TO OTHER PROPERTY OWNERS OR ADVERSELY AFFECT
PUBLIC HEALTH, SAFETY, AND WELFARE. The regulations must
include:

(a) procedures for expedited review of minor
subdivisions and special subdivisions;

(b) procedures, BASED ON THE MINIMUM REQUIREMENTS AS
PROVIDED IN 7-1-4127, for providing public notice of
subdivision applications and hearings;

(c) procedures for obtaining public agency and public
utility review. This review may not delay the review
authority's action on the proposal beyond the time limits
specified in [sections 20 and 21 18 AND 19]. The failure of
an agency to complete a review of a plat may not be a basis
for rejection of the plat by a governing body.

(d) procedures and standards concerning the application

1 of review criteria to subdivision applications, as provided
2 for in 76-3-608 and [section 26 24];

3 (e) standards for the design and arrangement of lots,
4 streets, and roads; grading and drainage; and for the
5 location and installation of utilities. Standards for the
6 design of streets and roads may not exceed the requirements
7 for anticipated vehicle use.

8 (f) ~~financial---incentives---for---developments---that~~
9 ~~accommodate-public-values~~ IF A PROPOSED MAJOR, MINOR, OR
10 SPECIAL SUBDIVISION LIES PARTLY OR TOTALLY WITHIN THE
11 BOUNDARIES OF A WATER USER ENTITY, THAT THE PROPOSED PLAT OF
12 THE SUBDIVISION BE SUBMITTED FOR REVIEW TO THE WATER USER
13 ENTITY TO ENSURE THAT THE EXISTENCE AND LOCATION OF ALL
14 WATER USER FACILITIES ARE PROPERLY NOTED ON THE PLAT. WATER
15 USER FACILITIES INCLUDE BUT ARE NOT LIMITED TO CANALS,
16 LATERALS, OPEN DRAINS, AND CLOSED DRAINS.

17 (2) Review and approval or disapproval of a subdivision
18 under this chapter may occur only under those regulations in
19 effect at the time an application for approval of a
20 preliminary plat or for an extension under 76-3-610 is
21 submitted to the governing body."

22 **Section 15.** Section 76-3-507, MCA, is amended to read:

23 "76-3-507. Provision for bonding requirements to insure
24 ensure construction of public improvements. (1) Except as
25 provided in subsection (2), the governing body shall require

1 the subdivider to complete any required public improvements
2 within the subdivision prior to the approval of the final
3 plat.

4 (2) ~~local--regulations--may--provide--that--in~~ (a) In lieu
5 of the completion of the construction of any public
6 improvements prior to the approval of a final plat, the
7 governing-body subdivider shall require provide a bond or
8 other reasonable security, in an amount and with surety and
9 conditions satisfactory to it the governing body, providing
10 for and securing the construction and installation of such
11 the improvements within a period specified by the governing
12 body and expressed in the bonds or other security. The
13 governing body shall reduce bond requirements commensurate
14 with the completion of improvements.

15 (b) In lieu of requiring a bond or other means of
16 security for the construction or installation of all the
17 required public improvements under subsection (2)(a), the
18 governing body may approve an incremental payment or
19 guarantee plan. The improvements in a prior increment must
20 be completed, or the payment or guarantee of payment for the
21 costs of the improvements incurred in a prior increment must
22 be satisfied, before development of future increments.

23 (3) Governing body approval of a final plat prior to
24 the completion of required improvements and without the
25 provision of the security required under subsection (2) is

1 not an act of a legislative body for the purpose of
 2 2-9-111."

3 **Section 16.** Section 76-3-601, MCA, is amended to read:

4 **"76-3-601. Submission of preliminary plat for review.**

5 (1) ~~Except where a plat is eligible for summary approval,~~
 6 ~~the subdivider shall present to the governing body or the~~
 7 ~~agent or agency designated thereby the preliminary plat of~~
 8 ~~the proposed subdivision for local review. The preliminary~~
 9 ~~plat shall show all pertinent features of the proposed~~
 10 ~~subdivision and all proposed improvements. The subdivider~~
 11 shall present the preliminary plat of the proposed
 12 subdivision to the subdivision review officer for review.
 13 The subdivision review officer shall determine whether the
 14 proposed subdivision is a major subdivision, minor
 15 subdivision, or special subdivision according to the
 16 definitions in 76-3-103.

17 (2) (a) When the proposed subdivision lies within the
 18 boundaries of an incorporated city or town, the preliminary
 19 plat ~~shall~~ must be submitted to and approved by the city or
 20 town ~~governing body review authority.~~

21 (b) When the proposed subdivision is situated entirely
 22 in an unincorporated area, the preliminary plat ~~shall~~ must
 23 be submitted to and approved by the ~~governing body of the~~
 24 appropriate county review authority. However, if the
 25 proposed subdivision lies within 1 mile of a third-class

1 city or town or within 2 miles of a second-class city or
 2 within 3 miles of a first-class city, the county ~~governing~~
 3 ~~body review authority~~ shall submit the preliminary plat to
 4 the city or town governing body or its designated agent for
 5 review and comment.

6 (c) If When the proposed subdivision lies partly within
 7 an incorporated city or town, the proposed plat ~~thereof~~ must
 8 be submitted to and approved by both the city or town and
 9 the county ~~governing bodies~~ review authorities.

10 (d) When a proposed subdivision is also proposed to be
 11 annexed to a municipality, the governing body of the
 12 municipality shall coordinate the subdivision review and
 13 annexation procedures to minimize duplication of hearings,
 14 reports, and other requirements whenever possible.

15 (3) This section ~~and 76-3-604, 76-3-605, and 76-3-608~~
 16 ~~through 76-3-610 do~~ does not limit the authority of certain
 17 municipalities to regulate subdivisions beyond their
 18 corporate limits pursuant to 7-3-4444."

19 **Section 17.** Section 76-3-603, MCA, is amended to read:

20 **"76-3-603. Contents of environmental assessment. Where**
 21 ~~required, the~~ An environmental assessment ~~shall~~ must
 22 accompany the preliminary plat for any major subdivision and
 23 shall must include:

24 (1) a description of every body or stream of surface
 25 water ~~as~~ that may be affected by the proposed subdivision,

1 together with available ground water information, and a
 2 description of the topography, vegetation, and wildlife use
 3 within the area of the proposed subdivision; and

4 ~~(2)--maps--and--tables--showing--soil--types--in--the--several~~
 5 ~~parts--of--the--proposed--subdivision--and--their--suitability--for~~
 6 ~~any--proposed--developments--in--those--several--parts;~~

7 ~~(3)--a--community--impact--report--containing--a--statement--of~~
 8 ~~anticipated--needs--of--the--proposed--subdivision--for--local~~
 9 ~~services,--including--education--and--busing,--roads--and~~
 10 ~~maintenance,--water,--sewage,--and--solid--waste--facilities,--and~~
 11 ~~fire--and--police--protection;~~

12 ~~(4)--such--additional--relevant--and--reasonable--information~~
 13 ~~as--may--be--required--by--the--governing--body;~~

14 (2) a summary of the probable impacts of the proposed
 15 subdivision based on the criteria described in 76-3-608 and
 16 [section 26 24]; AND

17 (3) ADDITIONAL RELEVANT AND REASONABLE INFORMATION AS
 18 MAY BE REQUIRED BY THE GOVERNING BODY."

19 NEW SECTION. Section 18. Review process for major
 20 subdivisions. (1) A subdivider proposing a major subdivision
 21 shall confer first with the subdivision review officer or
 22 his designated agent in a preliminary conference to discuss
 23 the application for the major subdivision, the requirements
 24 provided in this chapter, and local government regulations
 25 provided in 76-3-501. The subdivider shall submit a sketch

1 of the plat at the conference, and the subdivision review
 2 officer shall refer the subdivider to the requirements of
 3 Title 76, chapter 4. Notice of the subdivision application
 4 must comply with the local government regulations adopted
 5 under 76-3-501.

6 (2) The governing body, or the planning board if
 7 designated as the review authority by the governing body,
 8 shall approve, conditionally approve, or disapprove an
 9 application for a major subdivision within 60 days following
 10 the submission of a complete application. However, the
 11 subdivider and the governing body or review authority may
 12 agree to extend the time period.

13 (3) An application for a major subdivision may not
 14 receive more than two ONE informational hearings HEARING.
 15 The hearing or-hearings must be conducted by the governing
 16 body unless it delegates the responsibility to the planning
 17 board or to a hearing officer under subsection (5) or
 18 conducts a joint hearing with the planning board. When a
 19 hearing is held by the planning board or a hearing officer,
 20 the board or officer shall make findings and recommendations
 21 for submission to the governing body concerning approval,
 22 conditional approval, or disapproval of the plat not later
 23 than 10 days after the informational hearing.

24 (4) Within 21 days following submission to the
 25 governing body of the complete application by the

1 subdivider, an informational hearing on the subdivision
 2 application may be requested by:

- 3 (a) the subdivider;
- 4 (b) a citizen who would be adversely affected by the
 5 subdivision; or
- 6 (c) the review authority.
- 7 (5) The governing body shall designate the hearing
 8 officer. The first informational hearing, if held, must be
 9 at the local government's expense. ~~if a second hearing is~~
 10 ~~held pursuant to the subdivider's or an affected citizen's~~
 11 ~~petition, the governing body may assess costs of the second~~
 12 ~~hearing to the petitioner.~~ The hearing officer shall make
 13 findings and recommendations to the governing body
 14 concerning the approval, conditional approval, or
 15 disapproval of the plat not later than ~~10~~ 20 days after the
 16 informational hearing and within the time period determined
 17 under subsection (2).
- 18 (6) In informational hearings under this section,
 19 irrelevant, immaterial, or unduly repetitious evidence must
 20 be excluded but all other evidence of a type commonly relied
 21 upon by reasonably prudent persons in the conduct of their
 22 affairs is admissible, whether or not the evidence would be
 23 admissible in a trial in the courts of Montana. Any part of
 24 the evidence may be received in written form, ~~and all~~
 25 ~~testimony of parties and witnesses must be made under oath.~~

1 ~~Hearsay evidence may be used for the purpose of~~
 2 ~~supplementing or explaining other evidence, but it is not~~
 3 ~~sufficient in itself to support a finding unless it would be~~
 4 ~~admissible over objection in civil actions.~~

5 (7) Not less than 15 days prior to the date of an
 6 informational hearing on an application for a major
 7 subdivision, notice of the hearing and of the type of
 8 hearing must be given BY THE GOVERNING BODY by publication
 9 in a newspaper of general circulation in the county in which
 10 the subdivision is located. The subdivider, each adjoining
 11 property owner of record, and each purchaser of record under
 12 contract for deed of property adjoining the land included in
 13 the plat must also be notified of the hearing by certified
 14 mail not less than 15 days prior to the date of the hearing.

15 (8) The review authority shall make its decision TO
 16 APPROVE, DISAPPROVE, OR CONDITIONALLY APPROVE THE
 17 SUBDIVISION APPLICATION during executive proceedings after
 18 the informational hearing or hearings AFTER THE TIME FOR A
 19 HEARING HAS EXPIRED.

20 NEW SECTION. Section 19. Review process for minor
 21 subdivisions and special subdivisions. (1) A subdivider
 22 proposing a minor subdivision or special subdivision shall
 23 confer first with the subdivision review officer or his
 24 designated agent in a preliminary conference to discuss the
 25 application for the subdivision, under the requirements

1 provided in this chapter, and local government regulations
 2 provided in 76-3-501. The subdivider shall submit a sketch
 3 of the plat at the conference, and the subdivision review
 4 officer shall refer the subdivider to the requirements of
 5 Title 76, chapter 4. Notice of the subdivision application
 6 must comply with the local government regulations adopted
 7 under 76-3-501.

8 (2) The governing body, or the planning board or
 9 subdivision review officer if either is designated the
 10 review authority by the governing body, shall approve,
 11 conditionally approve, or disapprove an application for a
 12 minor subdivision or special subdivision.

13 (3) A determination on the application must be made
 14 within 35 days following submission of a complete
 15 application unless the review authority and the subdivider
 16 agree to extend the time period.

17 ~~(4) A public hearing may be held on a minor or special~~
 18 ~~subdivision only if:~~

19 ~~(a) the subdivision would be located in an area having~~
 20 ~~unique cultural, historical, or natural resources that are~~
 21 ~~susceptible to substantial adverse effects from subdivision~~
 22 ~~development or if the subdivision would cause substantial~~
 23 ~~adverse fiscal costs to local government; and~~

24 ~~(b) the subdivider or a citizen who demonstrates that~~
 25 ~~he would be adversely affected by the proposed subdivision~~

1 ~~petitions the governing body for a hearing within 15 days~~
 2 ~~following submission of the complete application.~~

3 (4) WITHIN 15 DAYS FOLLOWING SUBMISSION TO THE
 4 GOVERNING BODY OF A COMPLETE APPLICATION BY THE SUBDIVIDER,
 5 A PUBLIC HEARING ON THE SUBDIVISION MAY BE REQUESTED BY THE
 6 SUBDIVIDER OR BY A CITIZEN WHO DEMONSTRATES THAT HE WOULD BE
 7 SUBSTANTIALLY ADVERSELY AFFECTED BY THE SUBDIVISION.

8 (5) If requested by the subdivider, an affected citizen
 9 who petitions REQUESTS A HEARING under subsection (4), or
 10 the review authority, the hearing must be conducted as an
 11 informational hearing as provided for in [section 20 18].
 12 The governing body shall designate the hearing officer, and
 13 ~~if the hearing is held pursuant to the subdivider's or an~~
 14 ~~affected citizen's request, the governing body may assess~~
 15 ~~costs of the hearing to the requestor. The THE hearing~~
 16 officer shall submit findings and recommendations to the
 17 review authority concerning the approval, conditional
 18 approval, or disapproval of the plat not later than 10 days
 19 after the public hearing and within the time period
 20 determined under subsection (3).

21 (6) An application for a minor subdivision or special
 22 subdivision may not receive more than one public hearing.
 23 The public hearing must be conducted by the governing body
 24 unless it delegates that responsibility to the subdivision
 25 review officer, the planning board, or a hearing officer

1 under subsection (5).

2 (7) Not less than 10 days prior to the date of a
 3 hearing on an application for a minor subdivision or special
 4 subdivision, notice of the hearing and of the type of
 5 hearing must be given BY THE GOVERNING BODY by publication
 6 in a newspaper of general circulation in the county in which
 7 the subdivision is located. The subdivider, each adjoining
 8 property owner of record, and each purchaser of record under
 9 contract for deed of property adjoining the land included in
 10 the plat must be notified of the hearing BY THE GOVERNING
 11 BODY by certified mail not less than 10 days prior to the
 12 date of the hearing.

13 (8) Regardless of whether or not a public hearing is
 14 held, if the review authority determines that substantial
 15 adverse impacts on ~~the factors listed in subsection (4) are~~
 16 probable CULTURAL OR HISTORICAL RESOURCES OR ENVIRONMENTAL
 17 OR ECOLOGICAL RESOURCES, INCLUDING WILDLIFE AND WILDLIFE
 18 HABITAT, ARE PROBABLE OR THAT THE SUBDIVISION WOULD CAUSE
 19 SUBSTANTIAL ADVERSE FISCAL COSTS TO THE LOCAL GOVERNMENT,
 20 the review authority shall schedule a consultation with the
 21 subdivider, knowledgeable persons, and agency
 22 representatives. During the consultation process, the
 23 parties shall work to develop mitigation for the potential
 24 adverse effects on the factors listed in THIS subsection
 25 ~~(4)~~.

1 (9) The review authority shall report the results of
 2 the meeting to the governing body and may make a
 3 recommendation.

4 (10) The governing body may require the subdivider to
 5 design the subdivision to minimize any potentially
 6 significant adverse impacts. IT IS RECOGNIZED THAT IN SOME
 7 INSTANCES THE IMPACTS OF A PROPOSED DEVELOPMENT MAY BE
 8 UNACCEPTABLE AND WILL PRECLUDE APPROVAL OF THE PLAT.

9 (11) The governing body shall issue written findings,
 10 based on substantial credible evidence, to justify any
 11 action taken under subsection (10).

12 (12) ~~In reviewing a subdivision under subsection (4), a~~
 13 ~~governing body must be guided by the following standards:~~

14 ~~(a) Mitigation measures imposed should not unreasonably~~
 15 ~~restrict a landowner's ability to develop land, but it is~~
 16 ~~recognized that in some instances the unmitigated impacts of~~
 17 ~~a proposed development may be unacceptable and will preclude~~
 18 ~~approval of the plat.~~

19 (b) Whenever feasible, mitigation should be designed to
 20 provide some benefits for the subdivider, including
 21 allowances for higher density development in less
 22 environmentally sensitive sites within the plat and
 23 structuring mitigation to provide eligibility for tax
 24 benefits if land or development rights are donated to
 25 eligible receivers.

1 (13) The review authority shall approve, conditionally
 2 approve, or disapprove the application after the hearing has
 3 occurred or the opportunity for hearing has expired. If the
 4 review authority is the governing body or planning board,
 5 the decision must be made during executive proceedings. If
 6 the subdivision review officer is designated the review
 7 authority, the review officer shall proceed according to the
 8 following requirements:

9 (a) The subdivision review officer shall notify the
 10 governing body and the planning board, if one exists, of the
 11 review officer's decision.

12 (b) If the application for the subdivision contains a
 13 request for a deviation from standards or for a variance or
 14 if the application was subject to a public hearing under
 15 subsections (4) through (7), the subdivision review officer
 16 shall make a preliminary decision on the application. This
 17 decision is subject to review and modification by the
 18 governing body, or the planning board if designated by the
 19 governing body, during executive proceedings. The
 20 subdivision review officer's decision may be modified by the
 21 governing body or planning board only if it finds by
 22 substantial credible evidence and documents that the
 23 decision is not consistent with the provisions of this
 24 chapter or with local government regulations adopted
 25 pursuant to 76-3-501.

1 **NEW SECTION. Section 20. Review guidelines -- all**
 2 **subdivisions.** (1) A proposed subdivision must comply with
 3 the applicable requirements stated in this chapter and local
 4 government regulations adopted pursuant to 76-3-501 and must
 5 conform to a master plan, if required, pursuant to 76-1-606.

6 (2) Written findings and the reasons for approving,
 7 disapproving, or conditionally approving the subdivision
 8 must accompany the review authority's action on a
 9 subdivision application.

10 (3) A proposed subdivision is preliminarily approved
 11 when the review authority approves the preliminary plat.

12 (4) Approval of the final plat represents final
 13 approval from the review authority. However, this approval
 14 is only for the subdivision description provided in the
 15 final plat. A person who proposes to implement a change from
 16 an approved FINAL plat must submit a plat amendment that is
 17 subject to the review requirements of this chapter.

18 **NEW SECTION. Section 21. Park dedication requirement.**

19 (1) Except as provided in subsections (2), (3), and (7), a
 20 subdivider shall dedicate to the governing body a cash or
 21 land donation equal to:

22 (a) ~~7-5%~~ 10% of the fair market value of the land
 23 proposed to be subdivided into parcels of one-half acre or
 24 smaller;

25 (b) ~~5%~~ 7.5% of the fair market value of the land

1 proposed to be subdivided into parcels larger than one-half
2 acre and not larger than 1 acre;

3 (c) ~~2.5%~~ 5% of the fair market value of the land
4 proposed to be subdivided into parcels larger than 1 acre
5 and not larger than 3 acres; and

6 (d) ~~1.25%~~ 2.5% of the fair market value of the land
7 proposed to be subdivided into parcels larger than 3 acres
8 and not larger than 5 acres.

9 (2) ~~Based on the park needs of the area, in lieu of~~
10 ~~subsection (1), the governing body may require the~~
11 ~~subdivider to dedicate to the governing body a cash or land~~
12 ~~donation equal to:~~

13 (a) ~~7.5% of the fair market value of the land proposed~~
14 ~~to be subdivided if the development density is 13 or more~~
15 ~~dwelling units per acre;~~

16 (b) ~~5% of the fair market value of the land proposed to~~
17 ~~be subdivided if the development density is 8 to 12.99~~
18 ~~dwelling units per acre;~~

19 (c) ~~2.5% of the fair market value of the land proposed~~
20 ~~to be subdivided if the development density is 5 to 7.99~~
21 ~~dwelling units per acre;~~

22 (d) ~~1.25% of the fair market value of the land proposed~~
23 ~~to be subdivided if the development density is 3 to 4.99~~
24 ~~dwelling units per acre. WHEN A SUBDIVISION IS LOCATED~~
25 ~~TOTALLY WITHIN AN AREA FOR WHICH DENSITY REQUIREMENTS HAVE~~

1 BEEN ADOPTED PURSUANT TO A MASTER PLAN UNDER TITLE 76,
2 CHAPTER 1, OR PURSUANT TO ZONING REGULATIONS UNDER TITLE 76,
3 CHAPTER 2, THE GOVERNING BODY MAY ESTABLISH PARK DEDICATION
4 REQUIREMENTS BASED ON THE COMMUNITY NEED FOR PARKS AND THE
5 DEVELOPMENT DENSITIES IDENTIFIED IN THE PLANS OR
6 REGULATIONS. PARK DEDICATION REQUIREMENTS ESTABLISHED UNDER
7 THIS SUBSECTION ARE IN LIEU OF THOSE PROVIDED IN SUBSECTION
8 (1) AND MAY NOT EXCEED 0.03 ACRES PER DWELLING UNIT.

9 (3) A park dedication may not be required for land
10 proposed for subdivision into parcels larger than 5 acres,
11 for subdivision into parcels that are all nonresidential, or
12 where only one additional parcel is created. If a future
13 subdivision of the land creates parcels smaller than 5
14 acres, park dedication is required according to the
15 provisions of this section.

16 (4) For the purpose of this section, the fair market
17 value is the value of the unsubdivided, unimproved land.

18 (5) ~~The subdivider shall make the park dedication in~~
19 ~~land or cash.~~

20 (5) THE GOVERNING BODY, IN CONSULTATION WITH THE
21 SUBDIVIDER AND THE PLANNING BOARD OR PARK BOARD HAVING
22 JURISDICTION, MAY DETERMINE SUITABLE LOCATIONS FOR PARKS AND
23 PLAYGROUNDS AND, GIVING DUE WEIGHT AND CONSIDERATION TO THE
24 EXPRESSED PREFERENCE OF THE SUBDIVIDER, MAY DETERMINE
25 WHETHER THE PARK DEDICATION MUST BE A LAND DONATION, CASH

1 DONATION, OR A COMBINATION OF BOTH.

2 (6) (a) Except as provided in subsection (6)(b), the
 3 governing body shall use the dedicated money or land for
 4 development or acquisition of parks to serve the
 5 subdivision.

6 (b) The governing body may use the dedicated money to
 7 acquire or develop regional parks or recreational areas or
 8 for the purchase of public open space or conservation
 9 easements only if:

10 (i) the park, recreational area, open space, or
 11 conservation easement is within a reasonably close proximity
 12 to the proposed subdivision; and

13 (ii) the governing body has formally adopted a park plan
 14 that establishes the needs and procedures for use of the
 15 money.

16 (7) The local governing body shall waive the park
 17 dedication requirement if:

18 (a) (i) the preliminary plat provides for a planned
 19 unit development or other development with land permanently
 20 set aside for park and recreational uses sufficient to meet
 21 the needs of the persons who will ultimately reside in the
 22 development; and

23 (ii) the appraised value of the land set aside for park
 24 and recreational purposes equals or exceeds the value of the
 25 dedication required under subsection (1); or

1 (b) (i) the preliminary plat provides long-term
 2 protection of critical wildlife habitat; cultural,
 3 historical, or natural resources; agricultural interests; or
 4 aesthetic values; and

5 (ii) the appraised market value of the unimproved
 6 subdivided land, by virtue of providing long-term protection
 7 provided for in subsection (7)(b)(i), is reduced by an
 8 amount equal to or exceeding the value of the dedication
 9 required under subsection (1).

10 NEW SECTION. Section 22. Payment for extension of
 11 capital facilities. A local government may require a
 12 subdivider to pay or guarantee payment for part or all of
 13 the costs of extending CAPITAL FACILITIES RELATED TO PUBLIC
 14 HEALTH AND SAFETY, INCLUDING BUT NOT LIMITED TO public sewer
 15 lines, water supply lines, and storm drains to a
 16 subdivision. The costs must reasonably reflect the expected
 17 impacts of the subdivision.

18 **Section 23.** Section 76-3-608, MCA, is amended to read:
 19 "76-3-608. Criteria for local government review. (1)
 20 The basis for the governing body's or review authority's
 21 decision to approve, conditionally approve, or disapprove a
 22 subdivision ~~shall be~~ is whether the applicable preliminary
 23 plat, environmental assessment, public hearing, planning
 24 board recommendations, and or any additional information
 25 demonstrate demonstrates that development of the subdivision

1 ~~would be in the public interest. The governing body shall~~
 2 ~~disapprove any subdivision which it finds not to be in the~~
 3 ~~public interest~~ meets the requirements of this chapter.

4 (2) ~~To determine whether the proposed subdivision would~~
 5 ~~be in the public interest, the~~ The governing body or review
 6 authority shall issue written findings of fact which that
 7 weigh the following criteria for public interest: in
 8 [SECTION 19], [section 26 24], and subsections (3) and (4)
 9 of this section, as applicable.

- 10 ~~(a) the basis of the need for the subdivision;~~
- 11 ~~(b) expressed public opinion;~~
- 12 ~~(c) effects on agriculture;~~
- 13 ~~(d) effects on local services;~~
- 14 ~~(e) effects on taxation;~~
- 15 ~~(f) effects on the natural environment;~~
- 16 ~~(g) effects on wildlife and wildlife habitat; and~~
- 17 ~~(h) effects on the public health and safety.~~

18 (3) A subdivision proposal must undergo review for the
 19 following primary criteria:

20 ~~(a) The subdivision must be mapped, and the subdivision~~
 21 ~~plat must be properly filed with the county clerk and~~
 22 ~~recorder;~~

23 ~~(b)(A) The subdivision must comply with water supply,~~
 24 ~~solid waste disposal, sewage treatment, and water quality~~
 25 ~~standards, as provided for in Title 76, chapter 4, part 1.~~

1 ~~(c)(B) The subdivision must provide easements for the~~
 2 ~~location and installation of any planned utilities.~~

3 ~~(d)(C) The subdivision must ensure access to each tract~~
 4 ~~within the subdivision, as follows:~~

5 ~~(i) for a primitive tract:~~

6 ~~(A) legal access must be provided; and~~

7 ~~(B)(II) notation of legal access must be made on the~~
 8 ~~applicable plat and any instrument of transfer concerning~~
 9 ~~the tract; and~~

10 ~~(i) for any other tract, (III) physical access must be~~
 11 ~~provided according to standards set by the governing body~~
 12 ~~under 76-3-501.~~

13 ~~(e)(D) Lots within the subdivision may not have~~
 14 ~~building sites within a floodway as defined by Title 76,~~
 15 ~~chapter 5.~~

16 ~~(f)(E) The subdivision must be evaluated under the~~
 17 ~~conditions provided in subsection (4) to determine if lots~~
 18 ~~upon which building sites are or can reasonably be expected~~
 19 ~~to be located within the subdivision are located in an area~~
 20 ~~affected by the following hazards, INCLUDING BUT NOT LIMITED~~
 21 ~~TO:~~

22 ~~(i) unstable slopes, including areas where rockfalls,~~
 23 ~~landslides, mudslides, or avalanches have occurred in the~~
 24 ~~past 25 years or can reasonably be expected to occur;~~

25 ~~(ii) unsuitable soils, including areas where a high~~

1 water table occurs within 5 feet of the surface of the lot
 2 at any time of year and areas affected by soil creep,
 3 shrink-swell potential, or sinkholes; and
 4 (iii) drainage problems, including the potential for
 5 sheetflooding.
 6 (4) Subdivisions evaluated for hazards under subsection
 7 (3)(f) must be reviewed under all of the following
 8 conditions:
 9 (a) Local government regulations must provide specific
 10 standards for evaluation and mitigation.
 11 (b) Existing and reasonably accessible data must be
 12 used for the evaluation unless otherwise agreed to by the
 13 subdivider and the review authority.
 14 (c) Approved construction techniques may be recommended
 15 REQUIRED to mitigate or overcome hazards.
 16 (d) If a hazard is found to exist, notice of the hazard
 17 must be placed on the final plat.
 18 (e) If the review authority knows of the existence of
 19 natural or man-caused hazards other than those described in
 20 subsection ~~(3)(f)~~ (3)(E), the review authority shall notify
 21 the subdivider in writing of those known hazards and require
 22 notice of the hazards on the final plat.
 23 (f) The result of the hazard evaluation is not
 24 dispositive of the degree of hazard existing and is not
 25 grounds to establish liability against the review

1 authority."
 2 NEW SECTION. Section 24. Additional review criteria
 3 for major subdivisions. (1) In addition to the requirements
 4 of 76-3-608 and [sections ~~20-and-22~~ 18 AND 20], a major
 5 subdivision must be reviewed for effects on:
 6 (a) agricultural or agricultural water-user practices;
 7 ~~(b)--unique-cultural-and-historical-sites;~~
 8 ~~(c)--the-natural-environment;-and~~
 9 (B) CULTURAL OR HISTORICAL RESOURCES;
 10 (C) ENVIRONMENTAL OR ECOLOGICAL RESOURCES, INCLUDING
 11 WILDLIFE AND WILDLIFE HABITAT; AND
 12 (d) local services.
 13 (2) (a) In reviewing major subdivisions for the effects
 14 listed in subsection (1), the review authority shall use
 15 information from the environmental assessment required by
 16 76-3-603 and may solicit other site-specific information
 17 from the subdivider, agencies, and other appropriate
 18 sources. Efforts by the review authority to gather
 19 additional information do not constitute grounds for
 20 extending the deadlines for the subdivision review process
 21 provided for in [section 20 18] unless an extension is
 22 agreed to by the subdivider.
 23 (b) Based on the information gathered, the subdivision
 24 review officer shall determine whether the proposed
 25 subdivision is likely to have significant adverse impacts on

1 the factors listed in subsection (1).

2 (c) If the subdivision review officer determines that
3 significant adverse impacts are probable, the subdivision
4 review officer shall schedule a consultation with the
5 subdivider, knowledgeable persons, and agency
6 representatives. During the consultation process, the
7 parties shall work to develop mitigation for the potential
8 adverse effects on the factors listed in subsection (1).

9 (d) The subdivision review officer shall report the
10 results of the meeting to the governing body and may make a
11 recommendation.

12 (e) The governing body may require the subdivider to
13 design the subdivision to minimize any potentially
14 significant adverse impacts. IT IS RECOGNIZED THAT IN SOME
15 INSTANCES THE IMPACTS OF A PROPOSED DEVELOPMENT MAY BE
16 UNACCEPTABLE AND WILL PRECLUDE APPROVAL OF THE PLAT.

17 (f) The governing body shall issue written findings,
18 based on substantial credible evidence, to justify any
19 action taken under subsection (2)(e).

20 (g) ~~In reviewing a subdivision under subsection (1), a~~
21 ~~governing body must be guided by the following standards:~~

22 ~~(1) Mitigation measures imposed must not unreasonably~~
23 ~~restrict a landowner's ability to develop land, but it is~~
24 ~~recognized that in some instances the impacts of a proposed~~
25 ~~development may be unacceptable and will preclude approval~~

1 ~~of the plat.~~

2 ~~(1) Whenever feasible, mitigation should be designed to~~
3 ~~provide some benefits for the subdivider, including~~
4 ~~allowances for higher density development in less~~
5 ~~environmentally sensitive sites within the plat, waiver of~~
6 ~~the park dedication requirement under the provisions of~~
7 ~~[section 23 21], and structuring mitigation to provide~~
8 ~~eligibility for tax benefits if land or development rights~~
9 ~~are donated to eligible receivers.~~

10 **Section 25.** Section 76-3-610, MCA, is amended to read:

11 **"76-3-610. Effect of approval of preliminary plat. (1)**
12 **Upon approving or conditionally approving a preliminary**
13 **plat, the governing-body review authority shall provide the**
14 **subdivider with a dated and signed statement of approval.**
15 **This approval shall may be in force for not more than 3**
16 **calendar years or less than 1 calendar year. At the end of**
17 **this period, the governing-body review authority may, at the**
18 **request of the subdivider, extend its approval for no more**
19 **than 1 calendar year, except that the governing-body review**
20 **authority may extend its approval for a period of more than**
21 **1 year if that approval period is included as a specific**
22 **condition of a written agreement between the governing-body**
23 **review authority and the subdivider, according to 76-3-507.**

24 (2) After the preliminary plat is approved, the
25 governing-body-and-its-subdivisions review authority may not

1 impose any additional conditions as a prerequisite to final
 2 plat approval, providing ~~said~~ the approval is obtained
 3 within the original or extended approval period as provided
 4 in subsection (1)."

5 **Section 26.** Section 76-3-611, MCA, is amended to read:

6 "76-3-611. **Review of final plat.** (1) The governing-body
 7 review authority shall examine every final subdivision plat
 8 and shall approve it ~~when-and~~ only when:

9 (a) it conforms to the conditions of approval set forth
 10 on the preliminary plat and to the terms of this chapter and
 11 regulations adopted pursuant ~~thereto~~ to this chapter; and

12 (b) the county treasurer has certified issued a
 13 certificate of taxes paid pursuant to [section 6 5]
 14 certifying that no real property taxes assessed and levied
 15 on the land to be subdivided are not delinquent.

16 (2) (a) The governing body may require that final
 17 subdivision plats and certificates of survey be reviewed for
 18 errors and omissions in calculation or drafting by an
 19 examining registered professional land surveyor before
 20 recording with the county clerk and recorder. When the
 21 survey data shown on the plat or certificate of survey meets
 22 the conditions set forth by or pursuant to 76-3-403 AND this
 23 chapter section, the examining land surveyor shall so
 24 certify in a printed or stamped certificate on the plat or
 25 certificate of survey. Such The certificate shall must be

1 signed by him.

2 (b) No A registered professional land surveyor shall
 3 may not act as an examining land surveyor in regard to a
 4 plat or certificate of survey in which he has a financial or
 5 personal interest."

6 **Section 27.** Section 76-3-613, MCA, is amended to read:

7 "76-3-613. **Index of plats and certificates of survey** to
 8 **be kept by county clerk and recorder.** (1) The county clerk
 9 and recorder shall maintain an index of all recorded
 10 subdivision plats and certificates of survey.

11 (2) This index shall must list plats and certificates
 12 of survey by the quarter section, section, township, and
 13 range in which the platted or surveyed land lies and shall
 14 must list the recording or filing numbers of all plats
 15 depicting lands lying within each quarter section. Each
 16 quarter section list shall must be definitive to the
 17 exclusion of all other quarter sections. The index shall
 18 must also list the names of all subdivision plats of more
 19 than five tracts in alphabetical order and the place where
 20 filed."

21 **Section 28.** Section 76-3-614, MCA, is amended to read:

22 "76-3-614. **Correction of recorded plat.** When a recorded
 23 plat does not definitely show the location or size of lots
 24 or blocks or the location or width of any street or alley,
 25 the governing--body review authority may at its own expense

1 cause a new and correct survey and plat to be made and
 2 recorded in the office of the county clerk and recorder. The
 3 corrected plat must, to the extent possible, follow the plan
 4 of the original survey and plat. The surveyor making the
 5 resurvey shall endorse the corrected plat, referring to the
 6 original plat and noting the defect existing therein in the
 7 original plat and the corrections made."

8 **Section 29.** Section 7-16-2324, MCA, is amended to read:

9 "7-16-2324. Sale, lease, or exchange of dedicated park
 10 lands. (1) For the purposes of this section and part 25 of
 11 chapter 8, lands dedicated to the public use for park or
 12 playground purposes under 76-3-606 ~~and 76-3-607~~ [section 23
 13 21] or a similar statute or pursuant to any instrument not
 14 specifically conveying land to a governmental unit other
 15 than a county are considered county lands.

16 (2) A county may not sell, lease, or exchange lands
 17 dedicated for park or playground purposes except as provided
 18 under this section and part 25 of chapter 8.

19 (3) Prior to selling, leasing, or exchanging any county
 20 land dedicated to public use for park or playground
 21 purposes, a county shall:

22 (a) compile an inventory of all public parks and
 23 playgrounds within the county;

24 (b) prepare a comprehensive plan for the provision of
 25 outdoor recreation and open space within the county;

1 (c) determine that the proposed sale, lease, or
 2 exchange furthers or is consistent with the county's outdoor
 3 recreation and open space comprehensive plan;

4 (d) publish notice as provided in 7-1-2121 of intention
 5 to sell, lease, or dispose of such the park or playground
 6 lands, giving the people of the county opportunity to be
 7 heard regarding such the action;

8 (e) if the land is within an incorporated city or town,
 9 secure the approval of the governing body thereof for the
 10 action; and

11 (f) comply with any other applicable requirements under
 12 part 25 of chapter 8.

13 (4) Any revenue realized by a county from the sale,
 14 exchange, or disposal of lands dedicated to public use for
 15 park or playground purposes ~~shall~~ must be paid into the park
 16 fund and used in the manner prescribed in 76-3-606 ~~and~~
 17 ~~76-3-607~~ [section 23 21] for cash received in lieu of
 18 dedication."

19 **Section 30.** Section 76-4-103, MCA, is amended to read:

20 "76-4-103. ~~What constitutes subdivision.~~ A subdivision
 21 ~~shall comprise~~ comprises only those parcels ~~of less than 20~~
 22 ~~acres which~~ that have been created by a division of land,
 23 and the plat ~~thereof shall~~ of the subdivision must show all
 24 ~~such the~~ parcels, whether contiguous or not. The rental or
 25 lease of one or more parts of a building, structure, or

1 other improvement, whether existing or proposed, is not a
 2 subdivision, as that term is defined in this part, and is
 3 not subject to the requirements of this part."

4 **Section 31.** Section 76-4-125, MCA, is amended to read:

5 "76-4-125. Review of development plans -- land
 6 divisions excluded from review. (1) Plans and specifications
 7 of a subdivision as defined in this part ~~shall~~ must be
 8 submitted to the reviewing authority, and the reviewing
 9 authority shall indicate by certificate that it has approved
 10 the plans and specifications and that the subdivision is not
 11 subject to a sanitary restriction. The plan review by the
 12 reviewing authority ~~shall~~ must be as follows:

13 (a) At any time after the developer has submitted an
 14 application under the Montana Subdivision and Platting Act,
 15 the developer shall present to the reviewing authority a
 16 preliminary plan of the proposed development, whatever
 17 information the developer feels necessary for its subsequent
 18 review, and information required by the reviewing authority.

19 (b) The reviewing authority ~~must give~~ shall take final
 20 action of on the proposed plan within 60 days unless an
 21 environmental impact statement is required, at which time
 22 this deadline may be increased to 120 days.

23 (2) A subdivision ~~excluded--from--the--provisions--of~~
 24 ~~chapter--3~~ ~~shall~~ must be submitted for review according to
 25 the provisions of this part, except that the following

1 divisions, ~~--unless--such--exclusions--are--used--to--evade--the~~
 2 ~~provisions--of--this--part,~~ are not subject to review:

3 (a) ~~the--exclusions--cited--in--76-3-201--and--76-3-204;~~ a
 4 division created by order of a court of record in this state
 5 pursuant to the laws governing the distribution of estates
 6 (Title 72, chapters 1 through 6 and 10 through 14) or the
 7 dissolution of marriage (Title 40, chapter 4) or a division
 8 that, in the absence of agreement between the parties to the
 9 sale, could be created by an order of a court in this state
 10 pursuant--to--the--law--of--eminent--domain--(Title--70,--chapter
 11 30);

12 (b) a division creating an interest in oil, gas,
 13 minerals, or water that is now or at a later time severed
 14 from the surface ownership of real property;

15 (c) a division creating cemetery lots only;

16 (d) a division created by reservation of a life estate;

17 (e) a division created by lease or rental for farming
 18 and agricultural purposes;

19 (f) the sale, rent, lease, or other conveyance of one
 20 or more parts of a building, structure, or other
 21 improvement, whether existing or proposed;

22 (b)(g) divisions a division made for the purpose of
 23 acquiring additional land to become part of an approved
 24 parcel, provided that no a dwelling or structure requiring
 25 water or sewage disposal is not to be erected on the

1 additional acquired parcel and that the division does not
 2 fall within a previously platted or approved subdivision;
 3 and

4 ~~(c)~~(h) divisions a division made for purposes other
 5 than the construction of water supply or sewage and solid
 6 waste disposal facilities as the department specifies by
 7 rule; AND

8 (I) A DIVISION CREATED TO PROVIDE SECURITY FOR
 9 CONSTRUCTION MORTGAGES, LIENS, OR TRUST INDENTURES."

10 **Section 32.** Section 76-6-203, MCA, is amended to read:

11 "76-6-203. **Types of permissible easements.** Easements or
 12 restrictions under this chapter may prohibit or limit any or
 13 all of the following:

14 (1) structures--construction or placing of buildings,
 15 camping trailers, housetrailers, mobile homes, roads, signs,
 16 billboards or other advertising, utilities, or other
 17 structures on or above the ground;

18 (2) landfill--dumping or placing of soil or other
 19 substance or material as landfill or dumping or placing of
 20 trash, waste, or unsightly or offensive materials;

21 (3) vegetation--removal or destruction of trees,
 22 shrubs, or other vegetation;

23 (4) loam, gravel, etc.--excavation, dredging, or
 24 removal of loam, peat, gravel, soil, rock, or other material
 25 substance;

1 (5) surface use--surface use except for such purposes
 2 permitting the land or water area to remain predominantly in
 3 its existing condition;

4 (6) acts detrimental to conservation--activities
 5 detrimental to drainage, flood control, water conservation,
 6 erosion control, soil conservation, or fish and wildlife
 7 habitat and preservation;

8 (7) subdivision of land--subdivision of land as defined
 9 in 76-3-103, and 76-3-104, and 76-3-202;

10 (8) other acts--other acts or uses detrimental to such
 11 retention of land or water areas in their existing
 12 conditions."

13 NEW SECTION. Section 33. Repealer. (1) Sections
 14 76-3-201, 76-3-202, 76-3-203, 76-3-204, 76-3-205, 76-3-206,
 15 76-3-207, 76-3-208, 76-3-209, 76-3-210, MCA, ARE REPEALED.

16 (2) SECTIONS 76-3-504, 76-3-505, 76-3-604, 76-3-605,
 17 76-3-606, 76-3-607, 76-3-609, MCA, are repealed.

18 NEW SECTION. Section 34. Codification instruction.
 19 [Sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100]
 20 intended to be codified as an integral part of Title 76,
 21 chapter 3, and the provisions of Title 76, chapter 3, apply
 22 to [sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100].

23 NEW SECTION. Section 35. Saving clause. [This act]
 24 does not affect rights and duties that matured, penalties
 25 that were incurred, or proceedings that were begun before

1 [the effective date of this act].

2 NEW SECTION. Section 36. Severability. If a part of
3 [this act] is invalid, all valid parts that are severable
4 from the invalid part remain in effect. If a part of [this
5 act] is invalid in one or more of its applications, the part
6 remains in effect in all valid applications that are
7 severable from the invalid applications.

8 NEW SECTION. Section 37. Applicability. [Sections 2,
9 3, ~~30,~~ and ~~32~~ 33(1)] apply to all subdivision applications
10 filed after passage and approval. [Sections 1, 4 through ~~31~~
11 ~~33~~-and-~~34~~ 29, 31, 32, AND 33(2)] apply to all subdivision
12 applications filed after September 30, 1991.

13 NEW SECTION. Section 38. Effective date. [This act] is
14 effective on passage and approval.

-End-

1 HOUSE BILL NO. 671

2 INTRODUCED BY GILBERT, HARPER, ECK, RANEY, BRADLEY,

3 WALLIN, LEE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE

6 MONTANA SUBDIVISION AND PLATTING ACT; REDEFINING

7 SUBDIVISION; REMOVING CERTAIN EXEMPTIONS; PROVIDING AN

8 EXPEDITED REVIEW PROCESS FOR MINOR SUBDIVISIONS AND SPECIAL

9 SUBDIVISIONS; PROVIDING PUBLIC HEARING GUIDELINES AND AN

10 OPTIONAL INFORMATIONAL HEARING PROCEDURE; ESTABLISHING

11 PRIMARY CRITERIA FOR REVIEW OF ALL SUBDIVISIONS; PROVIDING

12 CERTAIN ADDITIONAL REVIEW REQUIREMENTS FOR MAJOR

13 SUBDIVISIONS; ~~PROVIDING FOR SUITS AGAINST A GOVERNING BODY;~~

14 AMENDING SECTIONS 7-16-2324, 76-3-102, 76-3-103, 76-3-104,

15 76-3-105, 76-3-301, 76-3-302, 76-3-304, 76-3-305, 76-3-401,

16 76-3-402, ~~76-3-403~~, 76-3-404, 76-3-405, 76-3-501, 76-3-507,

17 76-3-601, 76-3-603, 76-3-608, 76-3-610, 76-3-611, 76-3-613,

18 76-3-614, 76-4-103, 76-4-125, AND 76-6-203, MCA; REPEALING

19 SECTIONS 76-3-201, 76-3-202, 76-3-203, 76-3-204, 76-3-205,

20 76-3-206, 76-3-207, 76-3-208, 76-3-209, 76-3-210, 76-3-504,

21 76-3-505, 76-3-604, 76-3-605, 76-3-606, 76-3-607, AND

22 76-3-609, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND

23 APPLICABILITY DATES."

24
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

1 Section 1. Section 76-3-102, MCA, is amended to read:

2 "76-3-102. Statement of purpose. It is the purpose of

3 this chapter to ~~promote--the--public--health, safety, and~~

4 ~~general welfare by regulating the subdivision--of--land;--to~~

5 ~~prevent--overcrowding--of--land; to lessen congestion in the~~

6 ~~streets and highways; to provide for--adequate--light, air,~~

7 ~~water--supply;--sewage disposal; parks and recreation areas;~~

8 ~~ingress--and--egress;--and--other--public--requirements;--to~~

9 ~~require development in harmony with the natural environment;~~

10 ~~to require that whenever necessary, the appropriate approval~~

11 ~~of subdivisions be contingent upon a written finding of~~

12 ~~public--interest--by--the governing body; and to~~ PROMOTE THE

13 PUBLIC HEALTH, SAFETY, AND GENERAL WELFARE BY REGULATING THE

14 SUBDIVISION OF LAND; TO PREVENT OVERCROWDING OF LAND; TO

15 LESSEN CONGESTION IN THE STREETS AND HIGHWAYS; TO PROVIDE

16 FOR ADEQUATE LIGHT, AIR, WATER SUPPLY, SEWAGE DISPOSAL,

17 PARKS AND RECREATION AREAS, INGRESS AND EGRESS, AND OTHER

18 PUBLIC REQUIREMENTS; TO REQUIRE DEVELOPMENT IN HARMONY WITH

19 THE NATURAL ENVIRONMENT; ~~TO REQUIRE THAT WHENEVER NECESSARY,~~

20 ~~THE APPROPRIATE APPROVAL OF SUBDIVISIONS BE CONTINGENT UPON~~

21 ~~A WRITTEN FINDING OF PUBLIC INTEREST BY THE GOVERNING BODY,~~

22 AND TO require uniform monumentation of land subdivisions

23 and transferring divisions; TO require that the transfer of

24 interests in real property be made by reference to plat or

25 certificate of survey; TO provide simple, clear, and uniform

1 guidelines for review of subdivisions; AND TO promote
 2 environmentally sound subdivisions; and protect public
 3 health, safety, and welfare in a manner that also protects
 4 the rights of property owners. FOR THE PURPOSE OF THIS
 5 CHAPTER, RIGHTS OF PROPERTY OWNERS INCLUDE THE RIGHT TO USE,
 6 ENJOY, IMPROVE, SELL, AND CONVEY, IN TOTAL OR IN PART, REAL
 7 PROPERTY SO LONG AS THE EXERCISE OF THE RIGHTS DOES NOT DENY
 8 THESE RIGHTS TO OTHER PROPERTY OWNERS OR ADVERSELY AFFECT
 9 PUBLIC HEALTH, SAFETY, AND WELFARE."

10 **Section 2.** Section 76-3-103, MCA, is amended to read:

11 "76-3-103. **Definitions.** As used in this chapter, unless
 12 the context or subject matter clearly requires otherwise,
 13 the following words or phrases shall have the following
 14 meanings:

15 (1) "Certificate of survey" means a drawing of a field
 16 survey prepared by a registered professional land surveyor
 17 for the purpose of disclosing facts pertaining to boundary
 18 locations.

19 (2) "Dedication" means the deliberate appropriation of
 20 land by an owner for any general and public use, reserving
 21 to himself no rights which are incompatible with the full
 22 exercise and enjoyment of the public use to which the
 23 property has been devoted.

24 (3) "Division of land" means the segregation creation
 25 of one or more parcels of land from a larger tract held in

1 single or undivided ownership by transferring or contracting
 2 to transfer title to or possession of a portion of the tract
 3 or properly filing a certificate of survey or subdivision
 4 plat establishing the identity of the segregated created
 5 parcels pursuant to this chapter.

6 ~~(4) "Dwelling unit" means a unit in which a person or~~
 7 ~~persons reside for more than 8 months of a calendar year.~~

8 ~~(4)(5)(4)~~ "Examining land surveyor" means a registered
 9 professional land surveyor duly appointed by the governing
 10 body to review surveys and plats submitted for filing.

11 ~~(6)(5)~~ "Executive proceedings" means public proceedings
 12 in which the governing body makes deliberations without
 13 receiving public comment except when, with the approval of
 14 the chairman, specific questions are directed to the
 15 subdivider or other individuals.

16 ~~(5)(7)(6)~~ "Governing body" means a board of county
 17 commissioners or the governing authority of any city or town
 18 organized pursuant to law.

19 ~~(6)(8) "Irregularly shaped tract of land" means a~~
 20 ~~parcel of land other than an aliquot part of the United~~
 21 ~~States government survey section or a United States~~
 22 ~~government lot, the boundaries or areas of which cannot be~~
 23 ~~determined without a survey or trigonometric calculation.~~

24 ~~(7) "Occasional sale" means one sale of a division of~~
 25 ~~land within any 12-month period.~~

1 {9}(7) "Legal access" means access by easement or other
 2 right-of-way that provides the property owner THE RIGHT OF
 3 ingress and egress to or from any tract or parcel created by
 4 a subdivision.

5 {10}(8) "Major subdivision" means a subdivision that is
 6 not a minor subdivision or special subdivision.

7 {11}(9) "Minor subdivision" means a subdivision of THE
 8 FIRST five or fewer parcels. A second or subsequent minor
 9 subdivision from a single tract of record as of July 1,
 10 1991, may not be considered a minor subdivision for review
 11 purposes unless the subdivider notifies the reviewing
 12 authority of the subdivider's intention to create subsequent
 13 parcels up to the five parcel limit at the time of the
 14 initial minor subdivision application.

15 {12}(10) "Physical access" means access by a road that
 16 meets the standards set by the governing body according to
 17 76-3-501.

18 {8}{13}(11) "Planned unit development" means a land
 19 development project consisting of residential clusters,
 20 industrial parks, shopping centers, office building parks,
 21 or any combination thereof which comprises a planned mixture
 22 of land uses built in a prearranged relationship to each
 23 other and having open space and community facilities in
 24 common ownership or use.

25 {9}{14}(12) "Plat" means a graphical representation of a

1 subdivision showing the division of land into lots, parcels,
 2 blocks, streets, alleys, and other divisions and
 3 dedications.

4 {10}{15}(13) "Preliminary plat" means a neat and scaled
 5 drawing of a proposed subdivision showing the layout of
 6 streets, alleys, lots, blocks, and other elements of a
 7 subdivision which furnish a basis for review by a governing
 8 body.

9 {11}{16}(14) "Final plat" means the final drawing of the
 10 subdivision and dedication required by this chapter to be
 11 prepared for filing for record with the county clerk and
 12 recorder and containing all elements and requirements set
 13 forth in this chapter and in regulations adopted pursuant
 14 thereto to this chapter.

15 {17} "Primitive tract" means a tract that is located
 16 more than 1 mile from a state, federal, or maintained county
 17 road and that is used for open space or for wildlife,
 18 hunting, or other activities with minimal human impacts.
 19 Activities with minimal human impacts include the
 20 construction of camping structures that are dismantled or
 21 relocated after seasonal use.

22 {12}{10}(15) "Registered professional land surveyor"
 23 means a person licensed in conformance with Title 37,
 24 chapter 67, to practice surveying in the state of Montana.

25 {13}{19}(16) "Registered professional engineer" means a

1 person licensed in conformance with Title 37, chapter 67, to
 2 practice engineering in the state of Montana.

3 ~~(20)~~(17) "review authority" means the person or entity
 4 with authority to approve, conditionally approve, or
 5 disapprove a subdivision application.

6 ~~(21)~~(18) "Special subdivision" means a subdivision that
 7 conforms to a master plan pursuant to ~~76-1-601~~; AND a
 8 long-range development program of public works projects
 9 ADOPTED pursuant to 76-1-601 and ~~either local government~~
 10 ~~regulations pursuant to 76-3-501 or zoning regulations~~
 11 ADOPTED pursuant to Title 76, chapter 2, part 2 or 3.

12 ~~(22)~~(19) "Subdivider" means any person who causes
 13 land to be subdivided or who proposes a subdivision of land.

14 ~~(23)~~(20) (a) "Subdivision" means a division of land
 15 or land so divided which that it creates one or more parcels
 16 containing less than 20 acres, exclusive of public roadways,
 17 in order that the title to or possession of the parcels may
 18 be sold, rented, leased, or otherwise conveyed; and shall
 19 include ~~The term includes any resubdivision and shall~~
 20 ~~further include any residential condominium or building and~~
 21 ~~further includes any area, regardless of its size, which~~
 22 ~~that provides or will provide multiple space three or more~~
 23 ~~spaces for recreational camping vehicles, or mobile homes~~
 24 ~~dwelling units, or work camp structures constructed to exist~~
 25 ~~for longer than 1 year. THE TERM INCLUDES:~~

- 1 (I) ANY RESUBDIVISION;
- 2 (II) ANY RESIDENTIAL CONDOMINIUM OR BUILDING;
- 3 (III) ANY AREA, REGARDLESS OF ITS SIZE, THAT PROVIDES OR
 4 WILL PROVIDE MULTIPLE SPACE FOR RECREATIONAL CAMPING
 5 VEHICLES OR DWELLING UNITS; AND
- 6 (IV) WORK CAMP STRUCTURES CONSTRUCTED TO EXIST FOR
 7 LONGER THAN 1 YEAR.
- 8 (b) Subdivision does not mean:
- 9 (i) a division creating cemetery lots only;
- 10 (ii) a division created by lease or rental for farming
 11 and agricultural purposes;
- 12 (iii) a division creating an interest in oil, gas,
 13 minerals, or water that is severed from the surface
 14 ownership of real property;
- 15 (iv) a division created by reservation of a life estate;
- 16 (v) the sale, rent, lease, or other conveyance of one
 17 or more parts of a building, structure, or other
 18 improvement, whether existing or proposed;
- 19 (vi) a division of state-owned land unless the division
 20 creates a second or subsequent parcel from a single tract
 21 for sale, rent, or lease for residential purposes;
- 22 (vii) a division created by OPERATION OF LAW OR AN order
 23 of a court of record in this state pursuant to the laws
 24 governing the distribution of estates (Title 72, chapters 1
 25 through 6 and 10 through 14) or the dissolution of marriage

1 (Title 40, chapter 4) or a division that, in the absence of
 2 an agreement between the parties to the sale, could be
 3 created by an order of a court in this state pursuant-to-the
 4 law-of-eminant-domain-(Title-70,-chapter-30);

5 (viii) except for the survey requirements in 76-3-401
 6 through 76-3-405 and any applicable zoning requirements, a
 7 division made for the purpose of relocating boundary lines
 8 between adjoining properties, provided the division is
 9 recorded in both the certificate of survey and the index
 10 provided for in 76-3-613 and unless the governing body
 11 determines that the subdivision may be used to create
 12 subdivisions for resale;

13 (ix) except for the survey requirements in 76-3-401
 14 through 76-3-405, a division made exclusively for
 15 agricultural purposes by sale or agreement to buy and sell
 16 if the division is outside of a platted subdivision and if
 17 the local governing body and the subdivider enter into a
 18 covenant running with the land that the divided parcels must
 19 be used exclusively for agricultural purposes. The governing
 20 body shall agree to release the covenant upon petition by
 21 the subdivider if the subdivision proposal complies with the
 22 provisions of this chapter.

23 (x) except for the survey--requirements--in--76-3-401
 24 through--76-3-405--and--the review requirements of 76-3-610
 25 through 76-3-614, a division created by rent or lease;

1 (xi) except for requirements other than the survey and
 2 platting requirements in 76-3-401 through 76-3-405,
 3 divisions created by rights-of-way; or

4 (xii) except for requirements other than the survey and
 5 platting requirements in 76-3-401 through 76-3-405 and the
 6 review requirements of 76-4-101 through 76-4-131, a division
 7 created by an agricultural producer for sale or gift to a
 8 member of the agricultural producer's immediate family for
 9 the purpose of maintaining the agricultural operation and
 10 limited to a single sale or gift to each family member. For
 11 the purposes of this section, agricultural producer means a
 12 person primarily engaged in the production of agricultural
 13 products.

14 (XIII) A DIVISION OF LAND MADE FOR THE PURPOSE OF MINING
 15 WHEN AN APPLICATION HAS BEEN SUBMITTED OR A PERMIT OR
 16 CONTRACT RECEIVED UNDER THE PROVISIONS OF TITLE 82, CHAPTER
 17 4.

18 {24}(21) "Subdivision review officer" means the person
 19 designated by the governing body to administer subdivision
 20 review or to approve, conditionally approve, or disapprove
 21 applications for minor subdivisions or special subdivisions.

22 {25}(22) "Tract of record" means a tract of record as
 23 appears in the records of the county clerk and recorder's
 24 office.

25 (23) "WATER USER ENTITY" MEANS AN ENTITY AS DESCRIBED IN

1 7-12-1151 AND IRRIGATION DISTRICTS AS PROVIDED IN 85-7-101."

2 **Section 3.** Section 76-3-104, MCA, is amended to read:

3 "76-3-104. What constitutes subdivision. A subdivision
4 ~~shall comprise~~ comprises only those parcels ~~less--than--20~~
5 ~~acres--which~~ that have been ~~segregated~~ created from the
6 original tract, and the plat thereof ~~---shall~~ of ~~the~~
7 subdivision must show all such ~~the~~ parcels, whether
8 contiguous or not."

9 **Section 4.** Section 76-3-105, MCA, is amended to read:

10 "76-3-105. Violations ~~--~~ actions against subdivider.
11 (1) Any A person who violates any provision of this chapter
12 or any local regulations adopted pursuant thereto ~~---shall--be~~
13 to this chapter is guilty of subject to a civil penalty not
14 to exceed \$5,000 ~~misdemeanor and punishable by a fine of not~~
15 ~~less than \$100 or more than \$500 or by imprisonment in a~~
16 ~~county jail for not more than 3 months or by both fine and~~
17 ~~imprisonment.~~ Each sale, lease, or transfer of each separate
18 parcel of land in violation of any provision of this chapter
19 or any local regulation adopted pursuant thereto ~~---shall--be~~
20 deemed to this chapter is considered a separate and distinct
21 offense.

22 (2) The governing body may file an action in district
23 court to enjoin the violation of any provision of this
24 chapter or of any regulation adopted pursuant to 76-3-501."

25 ~~NEW SECTION:--Section 5:--Violations---actions against~~

1 ~~governing body:--A person who has filed with the governing~~
2 ~~body--an--application--for--a--permit under this chapter may~~
3 ~~bring an action against the governing body to recover actual~~
4 ~~damages caused by:~~

5 ~~(1)--a final action, decision, or order of the governing~~
6 ~~body that imposes requirements, limitations, or conditions~~
7 ~~upon the use of the property in excess of those authorized~~
8 ~~by this chapter; or~~

9 ~~(2)--a regulation adopted pursuant to this chapter--that~~
10 ~~is:~~

11 ~~(a)--arbitrary or capricious; or~~

12 ~~(b)--unlawful or exceeds lawful authority.~~

13 NEW SECTION. Section 5. Certificate of taxes paid. A
14 division of land may not be made unless the county treasurer
15 has certified that real property taxes assessed and levied
16 on the land to be divided are not delinquent.

17 **Section 6.** Section 76-3-301, MCA, is amended to read:

18 "76-3-301. **General restriction on transfer of title to**
19 **subdivided lands.** (1) Except as provided in 76-3-303, every
20 final subdivision plat must be filed for record with the
21 county clerk and recorder before title to the subdivided
22 land can be sold or transferred in any manner. The clerk and
23 recorder of the county shall refuse to accept any plat for
24 record that fails to have the approval of 76-3-611(1) in
25 proper form.

1 (2) The clerk and recorder shall notify the governing
 2 body or its designated agent of any land division ~~described~~
 3 ~~in--76-3-207(i)~~ exempted from review but subject to survey
 4 requirements.

5 (3) If transfers not in accordance with this chapter
 6 are made, the county attorney shall commence action to
 7 enjoin further sales or transfers and compel compliance with
 8 all provisions of this chapter. The cost of ~~such~~ the action
 9 ~~shall~~ must be imposed against the party not prevailing."

10 **Section 7.** Section 76-3-302, MCA, is amended to read:

11 "76-3-302. **Restrictions on recording instruments**
 12 **relating to land subject to surveying requirements.** (1)
 13 Except as provided in subsection (2), the county clerk and
 14 recorder of any county may not record any instrument ~~which~~
 15 that purports to transfer title to or possession of a parcel
 16 or tract of land ~~which~~ that is required to be surveyed by
 17 this chapter unless the required certificate of survey or
 18 subdivision plat has been filed with the clerk and recorder
 19 and the instrument of transfer describes the parcel or tract
 20 by reference to the filed certificate or plat.

21 (2) Subsection (1) does not apply when the parcel or
 22 tract to be transferred was created before July 1, 1973, and
 23 the instrument of transfer for the parcel or tract includes
 24 a reference to a previously recorded instrument of transfer
 25 or is accompanied by documents ~~which, if recorded, would~~

1 ~~otherwise-satisfy-the-requirements-of-this--subsection--The~~
 2 ~~reference--or-document-must~~ that demonstrate that the parcel
 3 or tract existed before July 1, 1973.

4 (3) The reference or documents required in subsection
 5 (2) do not constitute a legal description of the property
 6 and may not be substituted for a legal description of the
 7 property."

8 **Section 8.** Section 76-3-304, MCA, is amended to read:

9 "76-3-304. **Effect of recording filing complying plat.**
 10 The recording filing of any plat made in compliance with the
 11 provisions of this chapter ~~shall-serve~~ serves to establish
 12 the identity of all lands shown on ~~and-being-a-part-of-such~~
 13 the plat. ~~Where~~ When lands are conveyed by reference to a
 14 plat, the plat itself or any copy of the plat properly
 15 certified by the county clerk and recorder as being a true
 16 copy ~~thereof--shall~~ of the plat must be regarded as
 17 incorporated into the instrument of conveyance and ~~shall~~
 18 must be received in evidence in all courts of this state."

19 **Section 9.** Section 76-3-305, MCA, is amended to read:

20 "76-3-305. **Vacation of plats -- utility easements.** (1)
 21 Any plat prepared and recorded as ~~herein~~ provided in this
 22 part may be vacated either in whole or in part as provided
 23 by 7-5-2501, 7-5-2502, subsections (1) and (2) of 7-14-2616,
 24 7-14-2617, subsections (1) and (2) of 7-14-4114, and
 25 7-14-4115, and upon such vacation the title to the streets

1 and alleys of such the vacated portions to the center
 2 thereof--~~shall revert~~ of the street or alley reverts to the
 3 owners of the properties within the platted area adjacent to
 4 such the vacated portions.

5 (2) ~~However, when any~~ If a poleline, pipeline, or any
 6 other public or private facility is located in a vacated
 7 street or alley at the time of the reversion of the title
 8 thereto of the street or alley, the owner of ~~said the~~ public
 9 or private utility facility ~~shall have~~ has an easement over
 10 the vacated land to continue the operation and maintenance
 11 of the public or private utility facility."

12 **Section 10.** Section 76-3-401, MCA, is amended to read:

13 "76-3-401. Survey requirements for divisions of lands
 14 ~~other than subdivisions.~~ All divisions of land for--~~sale~~
 15 ~~other than a subdivision after July 17, 1974,~~ into parcels
 16 which parts that cannot be described as $1/32$ $1/16$ $1/32$ or
 17 larger aliquot parts of a United States government section
 18 or AS a United States government lot must be surveyed by or
 19 under the supervision of a registered professional land
 20 surveyor."

21 **Section 11.** Section 76-3-402, MCA, is amended to read:

22 "76-3-402. Survey and platting requirements for
 23 subdivided lands. (1) Every subdivision of land after June
 24 30, 1973, ~~shall~~ must be surveyed and platted in conformance
 25 with this chapter by or under the supervision of a

1 registered professional land surveyor.

2 (2) Subdivision plats ~~shall~~ must be prepared and filed
 3 in accordance with this chapter and regulations adopted
 4 pursuant thereto to this chapter.

5 (3) All division of sections into aliquot parts and
 6 retracement of lines must conform to United States bureau of
 7 land management instructions, and all public land survey
 8 corners ~~shall~~ must be filed in accordance with the Corner
 9 Recordation Act of Montana (Title 70, chapter 22, part 1).
 10 Engineering plans, specifications, and reports required in
 11 connection with public improvements and other elements of
 12 the subdivision required by the governing body ~~shall~~ must be
 13 prepared and filed by a registered professional engineer or
 14 a registered professional land surveyor as their respective
 15 licensing laws allow in accordance with this chapter and
 16 regulations adopted pursuant thereto to this chapter."

17 ~~Section 13--Section 76-3-403, MCA, is amended to read:~~

18 "76-3-403--~~Monumentation--(1)--The--department--of~~
 19 ~~commerce--shall,--in--conformance--with--the--Montana~~
 20 ~~Administrative--Procedure--Act--prescribe--uniform--standards~~
 21 ~~for--monumentation--and--for--the--form,--accuracy,--and~~
 22 ~~descriptive--content--of--records--of--survey:~~

23 ~~(2)--it--shall--be--the--responsibility--of--the--governing~~
 24 ~~body--to--require--the--replacement--of--all--monuments--removed--in~~
 25 ~~the--course--of--construction."~~

1 **Section 12.** Section 76-3-404, MCA, is amended to read:

2 **"76-3-404. Certificate of survey.** (1) Within 180 days
3 of the completion of a survey, the registered professional
4 land surveyor responsible for the survey, whether he is
5 privately or publicly employed, shall prepare ~~and submit~~ for
6 filing a certificate of survey in the county in which the
7 survey was made if the survey:

8 (a) provides material evidence not appearing on any map
9 filed with the county clerk and recorder or contained in the
10 records of the United States bureau of land management;

11 (b) reveals a material discrepancy in such a map;

12 (c) discloses evidence to suggest alternate locations
13 of lines or points; or

14 (d) establishes one or more lines not shown on a
15 recorded map, the positions of which are not ascertainable
16 from an inspection of such the map without trigonometric
17 calculations.

18 (2) A certificate of survey ~~will~~ is not be required for
19 any survey which that is made by the United States bureau of
20 land management, or which that is preliminary, or which that
21 will become part of a subdivision plat being prepared for
22 recording under the provisions of this chapter.

23 (3) Certificates of survey ~~shall~~ must be legibly drawn,
24 printed, or reproduced by a process guaranteeing a permanent
25 record and ~~shall~~ must conform to monumentation and surveying

1 requirements promulgated under this chapter."

2 **Section 13.** Section 76-3-405, MCA, is amended to read:

3 **"76-3-405. Administration of oaths by registered land**
4 **surveyor.** (1) Every A registered professional land surveyor
5 may administer and certify oaths when:

6 (a) it becomes necessary to take testimony for the
7 identification of old corners or reestablishment of lost or
8 obliterated corners;

9 (b) a corner or monument is found in a deteriorating
10 condition and it is desirable that evidence concerning it be
11 perpetuated; or

12 (c) the importance of the survey makes it desirable to
13 administer an oath to his assistants for the faithful
14 performance of their duty.

15 (2) A record of oaths ~~shall~~ must be preserved as part
16 of the field notes of the survey and noted on the
17 ~~certificate--of--survey--filed--under--76-3-404~~ corner record
18 filed under 70-22-104."

19 **Section 14.** Section 76-3-501, MCA, is amended to read:

20 **"76-3-501. Local subdivision regulations.** (1) ~~Before~~
21 ~~duty--in--1974--the~~ The governing body of every county, city,
22 and town shall, IN A MANNER THAT PROTECTS THE RIGHTS OF
23 PROPERTY OWNERS, adopt and provide for the enforcement and
24 administration of subdivision regulations reasonably
25 ~~providing---for---the---orderly---development---of---their~~

1 jurisdictional areas; for the coordination of roads within
 2 subdivided land with other roads, both existing and planned;
 3 for the dedication of land for roadways and for public
 4 utility easements; for the improvement of roads; for the
 5 provision of adequate open spaces for travel, light, air,
 6 and recreation; for the provision of adequate
 7 transportation, water, drainage, and sanitary facilities;
 8 for the avoidance or minimization of congestion; and for the
 9 avoidance of subdivision which would involve unnecessary
 10 environmental degradation and the avoidance of danger of
 11 injury to health, safety, or welfare by reason of natural
 12 hazard or the lack of water, drainage, access,
 13 transportation, or other public services or would
 14 necessitate an excessive expenditure of public funds for the
 15 supply of such services; implementing the provisions of this
 16 chapter that are consistent with the statement of purpose
 17 described in 76-3-102 and that do not unreasonably restrict
 18 a landowner's ability to develop land; PROVIDING FOR THE
 19 ORDERLY DEVELOPMENT OF THEIR JURISDICTIONAL AREAS; FOR THE
 20 COORDINATION OF ROADS WITHIN SUBDIVIDED LAND WITH OTHER
 21 ROADS, BOTH EXISTING AND PLANNED; FOR THE DEDICATION OF LAND
 22 FOR ROADWAYS AND FOR PUBLIC UTILITY EASEMENTS; FOR THE
 23 IMPROVEMENT OF ROADS; FOR THE PROVISION OF ADEQUATE OPEN
 24 SPACES FOR TRAVEL, LIGHT, AIR, AND RECREATION; FOR THE
 25 PROVISION OF ADEQUATE TRANSPORTATION, WATER, DRAINAGE, AND

1 SANITARY FACILITIES; FOR THE AVOIDANCE OR MINIMIZATION OF
 2 CONGESTION; AND FOR THE AVOIDANCE OF SUBDIVISION THAT WOULD
 3 INVOLVE UNNECESSARY ENVIRONMENTAL DEGRADATION AND THE
 4 AVOIDANCE OF DANGER OF INJURY TO HEALTH, SAFETY, OR WELFARE
 5 BY REASON OF NATURAL HAZARD OR THE LACK OF WATER, DRAINAGE,
 6 ACCESS, TRANSPORTATION, OR OTHER PUBLIC SERVICES OR WOULD
 7 NECESSITATE AN EXCESSIVE EXPENDITURE OF PUBLIC FUNDS FOR THE
 8 SUPPLY OF THESE SERVICES. FOR THE PURPOSE OF THIS CHAPTER,
 9 RIGHTS OF PROPERTY OWNERS INCLUDE THE RIGHT TO USE, ENJOY,
 10 IMPROVE, SELL, AND CONVEY, IN TOTAL OR IN PART, REAL
 11 PROPERTY SO LONG AS THE EXERCISE OF THE RIGHTS DOES NOT DENY
 12 THESE RIGHTS TO OTHER PROPERTY OWNERS OR ADVERSELY AFFECT
 13 PUBLIC HEALTH, SAFETY, AND WELFARE. The regulations must
 14 include:

15 (a) procedures for expedited review of minor
 16 subdivisions and special subdivisions;

17 (b) procedures, BASED ON THE MINIMUM REQUIREMENTS AS
 18 PROVIDED IN 7-1-4127, for providing public notice of
 19 subdivision applications and hearings;

20 (c) procedures for obtaining public agency and public
 21 utility review. This review may not delay the review
 22 authority's action on the proposal beyond the time limits
 23 specified in [sections 20 and 21 18 AND 19]. The failure of
 24 an agency to complete a review of a plat may not be a basis
 25 for rejection of the plat by a governing body.

1 (d) procedures and standards concerning the application
 2 of review criteria to subdivision applications, as provided
 3 for in 76-3-608 and [section 26 24];

4 (e) standards for the design and arrangement of lots,
 5 streets, and roads; grading and drainage; and for the
 6 location and installation of utilities. Standards for the
 7 design of streets and roads may not exceed the requirements
 8 for anticipated vehicle use.

9 (f) ~~financial---incentives---for---developments---that~~
 10 ~~accommodate-public-values~~ IF A PROPOSED MAJOR, MINOR, OR
 11 SPECIAL SUBDIVISION LIES PARTLY OR TOTALLY WITHIN THE
 12 BOUNDARIES OF A WATER USER ENTITY, THAT THE PROPOSED PLAT OF
 13 THE SUBDIVISION BE SUBMITTED FOR REVIEW TO THE WATER USER
 14 ENTITY TO ENSURE THAT THE EXISTENCE AND LOCATION OF ALL
 15 WATER USER FACILITIES ARE PROPERLY NOTED ON THE PLAT. WATER
 16 USER FACILITIES INCLUDE BUT ARE NOT LIMITED TO CANALS,
 17 LATERALS, OPEN DRAINS, AND CLOSED DRAINS.

18 (2) Review and approval or disapproval of a subdivision
 19 under this chapter may occur only under those regulations in
 20 effect at the time an application for approval of a
 21 preliminary plat or for an extension under 76-3-610 is
 22 submitted to the governing body."

23 **Section 15.** Section 76-3-507, MCA, is amended to read:

24 "76-3-507. Provision for bonding requirements to insure
 25 ensure construction of public improvements. (1) Except as

1 provided in subsection (2), the governing body shall require
 2 the subdivider to complete any required public improvements
 3 within the subdivision prior to the approval of the final
 4 plat.

5 (2) ~~Local--regulations--may--provide--that--in~~ (a) In lieu
 6 of the completion of the construction of any public
 7 improvements prior to the approval of a final plat, the
 8 ~~governing-body~~ subdivider shall require provide a bond or
 9 other reasonable security, in an amount and with surety and
 10 conditions satisfactory to it the governing body, providing
 11 for and securing the construction and installation of such
 12 the improvements within a period specified by the governing
 13 body and expressed in the bonds or other security. The
 14 governing body shall reduce bond requirements commensurate
 15 with the completion of improvements.

16 (b) In lieu of requiring a bond or other means of
 17 security for the construction or installation of all the
 18 required public improvements under subsection (2)(a), the
 19 governing body may approve an incremental payment or
 20 guarantee plan. The improvements in a prior increment must
 21 be completed, or the payment or guarantee of payment for the
 22 costs of the improvements incurred in a prior increment must
 23 be satisfied, before development of future increments.

24 (3) Governing body approval of a final plat prior to
 25 the completion of required improvements and without the

1 provision of the security required under subsection (2) is
2 not an act of a legislative body for the purpose of
3 2-9-111."

4 **Section 16.** Section 76-3-601, MCA, is amended to read:

5 "76-3-601. Submission of preliminary plat for review.

6 (1) ~~Except where a plat is eligible for summary approval,~~
7 ~~the subdivider shall present to the governing body or the~~
8 ~~agent or agency designated thereby the preliminary plat of~~
9 ~~the proposed subdivision for local review. The preliminary~~
10 ~~plat shall show all pertinent features of the proposed~~
11 ~~subdivision and all proposed improvements. The subdivider~~
12 shall present the preliminary plat of the proposed
13 subdivision to the subdivision review officer for review.
14 The subdivision review officer shall determine whether the
15 proposed subdivision is a major subdivision, minor
16 subdivision, or special subdivision according to the
17 definitions in 76-3-103.

18 (2) (a) When the proposed subdivision lies within the
19 boundaries of an incorporated city or town, the preliminary
20 plat shall must be submitted to and approved by the city or
21 town governing-body review authority.

22 (b) When the proposed subdivision is situated entirely
23 in an unincorporated area, the preliminary plat shall must
24 be submitted to and approved by the governing-body-of-the
25 appropriate county review authority. However, if the

1 proposed subdivision lies within 1 mile of a third-class
2 city or town or within 2 miles of a second-class city or
3 within 3 miles of a first-class city, the county governing
4 body review authority shall submit the preliminary plat to
5 the city or town governing body or its designated agent for
6 review and comment.

7 (c) ~~if~~ When the proposed subdivision lies partly within
8 an incorporated city or town, the proposed plat thereof must
9 be submitted to and approved by both the city or town and
10 the county governing-bodies review authorities.

11 (d) When a proposed subdivision is also proposed to be
12 annexed to a municipality, the governing body of the
13 municipality shall coordinate the subdivision review and
14 annexation procedures to minimize duplication of hearings,
15 reports, and other requirements whenever possible.

16 (3) This section ~~and 76-3-604, 76-3-605, and 76-3-608~~
17 ~~through 76-3-610 do~~ does not limit the authority of certain
18 municipalities to regulate subdivisions beyond their
19 corporate limits pursuant to 7-3-4444."

20 **Section 17.** Section 76-3-603, MCA, is amended to read:

21 "76-3-603. Contents of environmental assessment. ~~Where~~
22 ~~required, the~~ An environmental assessment shall must
23 accompany the preliminary plat for any major subdivision and
24 shall must include:

25 (1) a description of every body or stream of surface

1 water as that may be affected by the proposed subdivision,
2 together with available ground water information, and a
3 description of the topography, vegetation, and wildlife use
4 within the area of the proposed subdivision; and

5 ~~(2)--maps--and--tables--showing--soil--types--in--the--several
6 parts--of--the--proposed--subdivision--and--their--suitability--for
7 any--proposed--developments--in--those--several--parts;~~

8 ~~(3)--a--community--impact--report--containing--a--statement--of
9 anticipated--needs--of--the--proposed--subdivision--for--local
10 services;--including--education--and--busing;--roads--and
11 maintenance;--water;--sewage;--and--solid--waste--facilities;--and
12 fire--and--police--protection;~~

13 ~~(4)--such--additional--relevant--and--reasonable--information
14 as--may--be--required--by--the--governing--body.~~

15 (2) a summary of the probable impacts of the proposed
16 subdivision based on the criteria described in 76-3-608 and
17 [section 26 24]; AND

18 (3) ADDITIONAL RELEVANT AND REASONABLE INFORMATION AS
19 MAY BE REQUIRED BY THE GOVERNING BODY."

20 **NEW SECTION. Section 18.** Review process for major
21 subdivisions. (1) A subdivider proposing a major subdivision
22 shall confer first with the subdivision review officer or
23 his designated agent in a preliminary conference to discuss
24 the application for the major subdivision, the requirements
25 provided in this chapter, and local government regulations

1 provided in 76-3-501. The subdivider shall submit a sketch
2 of the plat at the conference, and the subdivision review
3 officer shall refer the subdivider to the requirements of
4 Title 76, chapter 4. Notice of the subdivision application
5 must comply with the local government regulations adopted
6 under 76-3-501.

7 (2) The governing body, or the planning board if
8 designated as the review authority by the governing body,
9 shall approve, conditionally approve, or disapprove an
10 application for a major subdivision within 60 days following
11 the submission of a complete application. However, the
12 subdivider and the governing body or review authority may
13 agree to extend the time period.

14 (3) An application for a major subdivision may not
15 receive more than two ONE informational hearings HEARING.
16 The hearing ~~or~~ hearings must be conducted by the governing
17 body unless it delegates the responsibility to the planning
18 board or to a hearing officer under subsection (5) or
19 conducts a joint hearing with the planning board. When a
20 hearing is held by the planning board or a hearing officer,
21 the board or officer shall make findings and recommendations
22 for submission to the governing body concerning approval,
23 conditional approval, or disapproval of the plat not later
24 than 10 days after the informational hearing.

25 (4) Within 21 days following submission to the

1 governing body of the complete application by the
 2 subdivider, an informational hearing on the subdivision
 3 application may be requested by:

- 4 (a) the subdivider;
 - 5 (b) a citizen who would be SUBSTANTIALLY adversely
 6 affected by the subdivision; or
 - 7 (c) the review authority.
- 8 (5) The governing body shall designate the hearing
 9 officer. The first informational hearing, if held, must be
 10 at the local government's expense. ~~If a second hearing is~~
 11 ~~held pursuant to the subdivider's or an affected citizen's~~
 12 ~~petition, the governing body may assess costs of the second~~
 13 ~~hearing to the petitioner.~~ The hearing officer shall make
 14 findings and recommendations to the governing body
 15 concerning the approval, conditional approval, or
 16 disapproval of the plat not later than ~~±~~ 20 days after the
 17 informational hearing and within the time period determined
 18 under subsection (2).

19 (6) In informational hearings under this section,
 20 irrelevant, immaterial, or unduly repetitious evidence must
 21 be excluded but all other evidence of a type commonly relied
 22 upon by reasonably prudent persons in the conduct of their
 23 affairs is admissible, whether or not the evidence would be
 24 admissible in a trial in the courts of Montana. Any part of
 25 the evidence may be received in written form, ~~and all~~

1 ~~testimony of parties and witnesses must be made under oath.~~
 2 ~~Hearsay evidence may be used for the purpose of~~
 3 ~~supplementing or explaining other evidence, but it is not~~
 4 ~~sufficient in itself to support a finding unless it would be~~
 5 ~~admissible over objection in civil actions.~~

6 (7) Not less than 15 days prior to the date of an
 7 informational hearing on an application for a major
 8 subdivision, notice of the hearing and of the type of
 9 hearing must be given BY THE GOVERNING BODY by publication
 10 in a newspaper of general circulation in the county in which
 11 the subdivision is located. The subdivider, each adjoining
 12 property owner of record, and each purchaser of record under
 13 contract for deed of property adjoining the land included in
 14 the plat must also be notified of the hearing by certified
 15 mail not less than 15 days prior to the date of the hearing.

16 (8) The review authority shall make its decision TO
 17 APPROVE, DISAPPROVE, OR CONDITIONALLY APPROVE THE
 18 SUBDIVISION APPLICATION during executive proceedings after
 19 the informational hearing or hearings AFTER THE TIME FOR A
 20 HEARING HAS EXPIRED.

21 NEW SECTION. Section 19. Review process for minor
 22 subdivisions and special subdivisions. (1) A subdivider
 23 proposing a minor subdivision or special subdivision shall
 24 confer first with the subdivision review officer or his
 25 designated agent in a preliminary conference to discuss the

1 application for the subdivision, under the requirements
 2 provided in this chapter, and local government regulations
 3 provided in 76-3-501. The subdivider shall submit a sketch
 4 of the plat at the conference, and the subdivision review
 5 officer shall refer the subdivider to the requirements of
 6 Title 76, chapter 4. Notice of the subdivision application
 7 must comply with the local government regulations adopted
 8 under 76-3-501.

9 (2) The governing body, or the planning board or
 10 subdivision review officer if either is designated the
 11 review authority by the governing body, shall approve,
 12 conditionally approve, or disapprove an application for a
 13 minor subdivision or special subdivision.

14 (3) A determination on the application must be made
 15 within 35 days following submission of a complete
 16 application unless the review authority and the subdivider
 17 agree to extend the time period.

18 ~~(4) A public hearing may be held on a minor or special~~
 19 ~~subdivision only if:~~

20 ~~(a) the subdivision would be located in an area having~~
 21 ~~unique cultural, historical, or natural resources that are~~
 22 ~~susceptible to substantial adverse effects from subdivision~~
 23 ~~development or if the subdivision would cause substantial~~
 24 ~~adverse fiscal costs to local government; and~~

25 ~~(b) the subdivider or a citizen who demonstrates that~~

1 ~~he would be adversely affected by the proposed subdivision~~
 2 ~~petitions the governing body for a hearing within 15 days~~
 3 ~~following submission of the complete application:~~

4 (4) WITHIN 15 DAYS FOLLOWING SUBMISSION TO THE
 5 GOVERNING BODY OF A COMPLETE APPLICATION BY THE SUBDIVIDER,
 6 A PUBLIC HEARING ON THE SUBDIVISION MAY BE REQUESTED BY THE
 7 SUBDIVIDER OR BY A CITIZEN WHO DEMONSTRATES THAT HE WOULD BE
 8 SUBSTANTIALLY ADVERSELY AFFECTED BY THE SUBDIVISION.

9 (5) If requested by the subdivider, an affected citizen
 10 who petitions REQUESTS A HEARING under subsection (4), or
 11 the review authority, the hearing must be conducted as an
 12 informational hearing as provided for in [section 20 18].
 13 The governing body shall designate the hearing officer, and
 14 ~~if the hearing is held pursuant to the subdivider's or an~~
 15 ~~affected citizen's request, the governing body may assess~~
 16 ~~costs of the hearing to the requestor.~~ The THE hearing
 17 officer shall submit findings and recommendations to the
 18 review authority concerning the approval, conditional
 19 approval, or disapproval of the plat not later than 10 days
 20 after the public hearing and within the time period
 21 determined under subsection (3).

22 (6) An application for a minor subdivision or special
 23 subdivision may not receive more than one public hearing.
 24 The public hearing must be conducted by the governing body
 25 unless it delegates that responsibility to the subdivision

1 review officer, the planning board, or a hearing officer
2 under subsection (5).

3 (7) Not less than 10 days prior to the date of a
4 hearing on an application for a minor subdivision or special
5 subdivision, notice of the hearing and of the type of
6 hearing must be given BY THE GOVERNING BODY by publication
7 in a newspaper of general circulation in the county in which
8 the subdivision is located. The subdivider, each adjoining
9 property owner of record, and each purchaser of record under
10 contract for deed of property adjoining the land included in
11 the plat must be notified of the hearing BY THE GOVERNING
12 BODY by certified mail not less than 10 days prior to the
13 date of the hearing.

14 (8) Regardless of whether or not a public hearing is
15 held, if the review authority determines that substantial
16 adverse impacts on ~~the factors listed in subsection (4) are~~
17 probable CULTURAL OR HISTORICAL RESOURCES OR ENVIRONMENTAL
18 OR ECOLOGICAL RESOURCES, INCLUDING WILDLIFE AND WILDLIFE
19 HABITAT, ARE PROBABLE OR THAT THE SUBDIVISION WOULD CAUSE
20 SUBSTANTIAL ADVERSE FISCAL COSTS TO THE LOCAL GOVERNMENT,
21 the review authority shall schedule a consultation with the
22 subdivider, knowledgeable persons, and agency
23 representatives. During the consultation process, the
24 parties shall work to develop mitigation for the potential
25 adverse effects on the factors listed in THIS subsection

1 ~~(4)~~.

2 (9) The review authority shall report the results of
3 the meeting to the governing body and may make a
4 recommendation.

5 (10) The governing body may require the subdivider to
6 design the subdivision to minimize any potentially
7 significant adverse impacts. IT IS RECOGNIZED THAT IN SOME
8 INSTANCES THE IMPACTS OF A PROPOSED DEVELOPMENT MAY BE
9 UNACCEPTABLE AND WILL PRECLUDE APPROVAL OF THE PLAT.

10 (11) The governing body shall issue written findings,
11 based on substantial credible evidence, to justify any
12 action taken under subsection (10).

13 ~~(12) In reviewing a subdivision under subsection (4) a~~
14 ~~governing body must be guided by the following standards:~~

15 ~~(a) Mitigation measures imposed should not unreasonably~~
16 ~~restrict a landowner's ability to develop land, but it is~~
17 ~~recognized that in some instances the unmitigated impacts of~~
18 ~~a proposed development may be unacceptable and will preclude~~
19 ~~approval of the plat.~~

20 (b) Whenever feasible, mitigation should be designed to
21 provide some benefits for the subdivider, including
22 allowances for higher density development in less
23 environmentally sensitive sites within the plat and
24 structuring mitigation to provide eligibility for tax
25 benefits if land or development rights are donated to

1 eligible receivers.

2 (13) The review authority shall approve, conditionally
3 approve, or disapprove the application after the hearing has
4 occurred or the opportunity for hearing has expired. If the
5 review authority is the governing body or planning board,
6 the decision must be made during executive proceedings. If
7 the subdivision review officer is designated the review
8 authority, the review officer shall proceed according to the
9 following requirements:

10 (a) The subdivision review officer shall notify the
11 governing body and the planning board, if one exists, of the
12 review officer's decision.

13 (b) If the application for the subdivision contains a
14 request for a deviation from standards or for a variance or
15 if the application was subject to a public hearing under
16 subsections (4) through (7), the subdivision review officer
17 shall make a preliminary decision on the application. This
18 decision is subject to review and modification by the
19 governing body, or the planning board if designated by the
20 governing body, during executive proceedings. The
21 subdivision review officer's decision may be modified by the
22 governing body or planning board only if it finds by
23 substantial credible evidence and documents that the
24 decision is not consistent with the provisions of this
25 chapter or with local government regulations adopted

1 pursuant to 76-3-501.

2 **NEW SECTION. Section 20. Review guidelines** -- all
3 subdivisions. (1) A proposed subdivision must comply with
4 the applicable requirements stated in this chapter and local
5 government regulations adopted pursuant to 76-3-501 and must
6 conform to a master plan, if required, pursuant to 76-1-606.

7 (2) Written findings and the reasons for approving,
8 disapproving, or conditionally approving the subdivision
9 must accompany the review authority's action on a
10 subdivision application.

11 (3) A proposed subdivision is preliminarily approved
12 when the review authority approves the preliminary plat.

13 (4) Approval of the final plat represents final
14 approval from the review authority. However, this approval
15 is only for the subdivision description provided in the
16 final plat. A person who proposes to implement a change from
17 an approved FINAL plat must submit a plat amendment that is
18 subject to the review requirements of this chapter.

19 **NEW SECTION. Section 21. Park dedication requirement.**

20 (1) Except as provided in subsections (2), (3), and (7), a
21 subdivider shall dedicate to the governing body a cash or
22 land donation equal to:

23 (a) ~~7-5%~~ 10% of the fair market value of the land
24 proposed to be subdivided into parcels of one-half acre or
25 smaller;

1 (b) ~~5%~~ 7.5% of the fair market value of the land
2 proposed to be subdivided into parcels larger than one-half
3 acre and not larger than 1 acre;

4 (c) ~~2.5%~~ 5% of the fair market value of the land
5 proposed to be subdivided into parcels larger than 1 acre
6 and not larger than 3 acres; and

7 (d) ~~1.25%~~ 2.5% of the fair market value of the land
8 proposed to be subdivided into parcels larger than 3 acres
9 and not larger than 5 acres.

10 (2) ~~Based on the park needs of the area, in lieu of~~
11 ~~subsection (1), the governing body may require the~~
12 ~~subdivider to dedicate to the governing body a cash or land~~
13 ~~donation equal to:~~

14 ~~(a) 7.5% of the fair market value of the land proposed~~
15 ~~to be subdivided if the development density is 13 or more~~
16 ~~dwelling units per acre;~~

17 ~~(b) 5% of the fair market value of the land proposed to~~
18 ~~be subdivided if the development density is 8 to 12.99~~
19 ~~dwelling units per acre;~~

20 ~~(c) 2.5% of the fair market value of the land proposed~~
21 ~~to be subdivided if the development density is 5 to 7.99~~
22 ~~dwelling units per acre;~~

23 ~~(d) 1.25% of the fair market value of the land proposed~~
24 ~~to be subdivided if the development density is 3 to 4.99~~
25 ~~dwelling units per acre;~~ WHEN A SUBDIVISION IS LOCATED

1 TOTALLY WITHIN AN AREA FOR WHICH DENSITY REQUIREMENTS HAVE
2 BEEN ADOPTED PURSUANT TO A MASTER PLAN UNDER TITLE 76,
3 CHAPTER 1, OR PURSUANT TO ZONING REGULATIONS UNDER TITLE 76,
4 CHAPTER 2, THE GOVERNING BODY MAY ESTABLISH PARK DEDICATION
5 REQUIREMENTS BASED ON THE COMMUNITY NEED FOR PARKS AND THE
6 DEVELOPMENT DENSITIES IDENTIFIED IN THE PLANS OR
7 REGULATIONS. PARK DEDICATION REQUIREMENTS ESTABLISHED UNDER
8 THIS SUBSECTION ARE IN LIEU OF THOSE PROVIDED IN SUBSECTION
9 (1) AND MAY NOT EXCEED 0.03 ACRES PER DWELLING UNIT.

10 (3) A park dedication may not be required for land
11 proposed for subdivision into parcels larger than 5 acres,
12 for subdivision into parcels that are all nonresidential, or
13 where only one additional parcel is created. If a future
14 subdivision of the land creates parcels smaller than 5
15 acres, park dedication is required according to the
16 provisions of this section.

17 (4) For the purpose of this section, the fair market
18 value is the value of the unsubdivided, unimproved land.

19 ~~(5) The subdivider shall make the park dedication in~~
20 ~~land or cash:~~

21 (5) THE GOVERNING BODY, IN CONSULTATION WITH THE
22 SUBDIVIDER AND THE PLANNING BOARD OR PARK BOARD HAVING
23 JURISDICTION, MAY DETERMINE SUITABLE LOCATIONS FOR PARKS AND
24 PLAYGROUNDS AND, GIVING DUE WEIGHT AND CONSIDERATION TO THE
25 EXPRESSED PREFERENCE OF THE SUBDIVIDER, MAY DETERMINE

1 WHETHER THE PARK DEDICATION MUST BE A LAND DONATION, CASH
 2 DONATION, OR A COMBINATION OF BOTH.

3 (6) (a) Except as provided in subsection (6)(b), the
 4 governing body shall use the dedicated money or land for
 5 development or acquisition of parks to serve the
 6 subdivision.

7 (b) The governing body may use the dedicated money to
 8 acquire or develop regional parks or recreational areas or
 9 for the purchase of public open space or conservation
 10 easements only if:

11 (i) the park, recreational area, open space, or
 12 conservation easement is within a reasonably close proximity
 13 to the proposed subdivision; and

14 (ii) the governing body has formally adopted a park plan
 15 that establishes the needs and procedures for use of the
 16 money.

17 (7) The local governing body shall waive the park
 18 dedication requirement if:

19 (a) (i) the preliminary plat provides for a planned
 20 unit development or other development with land permanently
 21 set aside for park and recreational uses sufficient to meet
 22 the needs of the persons who will ultimately reside in the
 23 development; and

24 (ii) the appraised value of the land set aside for park
 25 and recreational purposes equals or exceeds the value of the

1 dedication required under subsection (1); or

2 (b) (i) the preliminary plat provides long-term
 3 protection of critical wildlife habitat; cultural,
 4 historical, or natural resources; agricultural interests; or
 5 aesthetic values; and

6 (ii) the appraised market value of the unimproved
 7 subdivided land, by virtue of providing long-term protection
 8 provided for in subsection (7)(b)(i), is reduced by an
 9 amount equal to or exceeding the value of the dedication
 10 required under subsection (1).

11 NEW SECTION. Section 22. Payment for extension of
 12 capital facilities. A local government may require a
 13 subdivider to pay or guarantee payment for part or all of
 14 the costs of extending CAPITAL FACILITIES RELATED TO PUBLIC
 15 HEALTH AND SAFETY, INCLUDING BUT NOT LIMITED TO public sewer
 16 lines, water supply lines, and storm drains to a
 17 subdivision. The costs must reasonably reflect the expected
 18 impacts of the subdivision.

19 **Section 23.** Section 76-3-608, MCA, is amended to read:

20 "76-3-608. Criteria for local government review. (1)
 21 The basis for the governing body's or review authority's
 22 decision to approve, conditionally approve, or disapprove a
 23 subdivision ~~shall be~~ is whether the applicable preliminary
 24 plat, environmental assessment, public hearing, planning
 25 board recommendations, and or any additional information

1 ~~demonstrate~~ demonstrates that development of the subdivision
2 ~~would--be--in--the--public--interest--The-governing-body-shall~~
3 ~~disapprove-any-subdivision-which-it-finds-not-to-be--in--the~~
4 ~~public-interest~~ meets the requirements of this chapter.

5 (2) ~~To-determine-whether-the-proposed-subdivision-would~~
6 ~~be--in-the-public-interest,-the~~ The governing body or review
7 authority shall issue written findings of fact which that
8 weigh the following criteria for--public--interest: in
9 [SECTION 19], [section 26 24], and subsections (3) and (4)
10 of this section, as applicable.

11 ~~{a}--the-basis-of-the-need-for-the-subdivision;~~

12 ~~{b}--expressed-public-opinion;~~

13 ~~{c}--effects-on-agriculture;~~

14 ~~{d}--effects-on-local-services;~~

15 ~~{e}--effects-on-taxation;~~

16 ~~{f}--effects-on-the-natural-environment;~~

17 ~~{g}--effects-on-wiildife-and-wiildife-habitat;-and~~

18 ~~{h}--effects-on-the-public-health-and-safety;~~

19 (3) A subdivision proposal must undergo review for the
20 following primary criteria:

21 ~~{a}--The-subdivision-must-be-mapped,-and-the-subdivision~~
22 ~~plat-must-be--properly--filed--with--the--county--clerk--and~~
23 ~~recorder-;~~

24 ~~{b}{A}~~ The subdivision must comply with water supply,
25 solid waste disposal, sewage treatment, and water quality

1 standards, as provided for in Title 76, chapter 4, part 1.

2 ~~{c}{B}~~ The subdivision must provide easements for the
3 location and installation of any planned utilities.

4 ~~{d}{C}~~ The subdivision must ensure access to each tract
5 within the subdivision, as follows:

6 ~~{i}~~ for-a-primitive-tract:

7 ~~{A}~~ legal access must be provided; and

8 ~~{B}{II}~~ notation of legal access must be made on the
9 applicable plat and any instrument of transfer concerning
10 the tract; and

11 ~~{ii}-for-any-other-tract, {III}~~ physical access must be
12 provided according to standards set by the governing body
13 under 76-3-501.

14 ~~{e}{D}~~ Lots within the subdivision may not have
15 building sites within a floodway as defined by Title 76,
16 chapter 5.

17 ~~{ff}{E}~~ The subdivision must be evaluated under the
18 conditions provided in subsection (4) to determine if lots
19 upon which building sites are or can reasonably be expected
20 to be located within the subdivision are located in an area
21 affected by the-following hazards, INCLUDING BUT NOT LIMITED
22 TO:

23 ~~{i}~~ unstable slopes, including areas where rockfalls,
24 landslides, mudslides, or avalanches have occurred in-the
25 past-25-years or can reasonably be expected to occur;

1 (ii) unsuitable soils, including areas where a high
 2 water table occurs within 5 feet of the surface of the lot
 3 at any time of year and areas affected by soil creep,
 4 shrink-swell potential, or sinkholes; and

5 (iii) drainage problems, including the potential for
 6 sheetflooding.

7 (4) Subdivisions evaluated for hazards under subsection
 8 (3)(f) must be reviewed under all of the following
 9 conditions:

10 (a) Local government regulations must provide specific
 11 standards for evaluation and mitigation.

12 (b) Existing and reasonably accessible data must be
 13 used for the evaluation unless otherwise agreed to by the
 14 subdivider and the review authority.

15 (c) Approved construction techniques may be recommended
 16 REQUIRED to mitigate or overcome hazards.

17 (d) If a hazard is found to exist, notice of the hazard
 18 must be placed on the final plat.

19 (e) If the review authority knows of the existence of
 20 natural or man-caused hazards other than those described in
 21 subsection ~~(3)(f)~~ (3)(E), the review authority shall notify
 22 the subdivider in writing of those known hazards and require
 23 notice of the hazards on the final plat.

24 (f) The result of the hazard evaluation is not
 25 dispositive of the degree of hazard existing and is not

1 grounds to establish liability against the review
 2 authority."

3 NEW SECTION. Section 24. Additional review criteria
 4 for major subdivisions. (1) In addition to the requirements
 5 of 76-3-608 and [sections ~~20-and-22~~ 18 AND 20], a major
 6 subdivision must be reviewed for effects on:

7 (a) agricultural or agricultural water-user practices;

8 ~~(b)--unique-cultural-and-historical-sites;~~

9 ~~(c)--the-natural-environment;-and~~

10 (B) CULTURAL OR HISTORICAL RESOURCES;

11 (C) ENVIRONMENTAL OR ECOLOGICAL RESOURCES, INCLUDING
 12 WILDLIFE AND WILDLIFE HABITAT; AND

13 (d) local services.

14 (2) (a) In reviewing major subdivisions for the effects
 15 listed in subsection (1), the review authority shall use
 16 information from the environmental assessment required by
 17 76-3-603 and may solicit other site-specific information
 18 from the subdivider, agencies, and other appropriate
 19 sources. Efforts by the review authority to gather
 20 additional information do not constitute grounds for
 21 extending the deadlines for the subdivision review process
 22 provided for in [section 20 18] unless an extension is
 23 agreed to by the subdivider.

24 (b) Based on the information gathered, the subdivision
 25 review officer shall determine whether the proposed

1 subdivision is likely to have significant adverse impacts on
2 the factors listed in subsection (1).

3 (c) If the subdivision review officer determines that
4 significant adverse impacts are probable, the subdivision
5 review officer shall schedule a consultation with the
6 subdivider, knowledgeable persons, and agency
7 representatives. During the consultation process, the
8 parties shall work to develop mitigation for the potential
9 adverse effects on the factors listed in subsection (1).

10 (d) The subdivision review officer shall report the
11 results of the meeting to the governing body and may make a
12 recommendation.

13 (e) The governing body may require the subdivider to
14 design the subdivision to minimize any potentially
15 significant adverse impacts. IT IS RECOGNIZED THAT IN SOME
16 INSTANCES THE IMPACTS OF A PROPOSED DEVELOPMENT MAY BE
17 UNACCEPTABLE AND WILL PRECLUDE APPROVAL OF THE PLAT.

18 (f) The governing body shall issue written findings,
19 based on substantial credible evidence, to justify any
20 action taken under subsection (2)(e).

21 ~~(g) In reviewing a subdivision under subsection (1), a~~
22 ~~governing body must be guided by the following standards:~~

23 ~~(i) Mitigation measures imposed must not unreasonably~~
24 ~~restrict a landowner's ability to develop land, but it is~~
25 ~~recognized that in some instances the impacts of a proposed~~

1 ~~development may be unacceptable and will preclude approval~~
2 ~~of the plat.~~

3 ~~(ii) Whenever feasible, mitigation should be designed to~~
4 ~~provide some benefits for the subdivider, including~~
5 ~~allowances for higher density development in less~~
6 ~~environmentally sensitive sites within the plat, waiver of~~
7 ~~the park dedication requirement under the provisions of~~
8 ~~[section 23 21], and structuring mitigation to provide~~
9 ~~eligibility for tax benefits if land or development rights~~
10 ~~are donated to eligible receivers.~~

11 **Section 25.** Section 76-3-610, MCA, is amended to read:

12 ***76-3-610. Effect of approval of preliminary plat.** (1)
13 Upon approving or conditionally approving a preliminary
14 plat, the governing-body review authority shall provide the
15 subdivider with a dated and signed statement of approval.
16 This approval ~~shall~~ may be in force for not more than 3
17 calendar years or less than 1 calendar year. At the end of
18 this period, the governing-body review authority may, at the
19 request of the subdivider, extend its approval for no more
20 than 1 calendar year, except that the governing-body review
21 authority may extend its approval for a period of more than
22 1 year if that approval period is included as a specific
23 condition of a written agreement between the governing-body
24 review authority and the subdivider, ~~according to 76-3-507.~~

25 (2) After the preliminary plat is approved, the

1 ~~governing-body-and-its-subdivisions~~ review authority may not
 2 impose any additional conditions as a prerequisite to final
 3 plat approval, providing ~~said~~ the approval is obtained
 4 within the original or extended approval period as provided
 5 in subsection (1)."

6 **Section 26.** Section 76-3-611, MCA, is amended to read:

7 "76-3-611. **Review of final plat.** (1) The governing-body
 8 review authority shall examine every final subdivision plat
 9 and shall approve it ~~when-and~~ only when:

10 (a) it conforms to the conditions of approval set forth
 11 on the preliminary plat and to the terms of this chapter and
 12 regulations adopted pursuant ~~thereto~~ to this chapter; and

13 (b) the county treasurer has ~~certified~~ issued a
 14 certificate of taxes paid pursuant to [section 6 5]
 15 certifying that no real property taxes assessed and levied
 16 on the land to be subdivided are not delinquent.

17 (2) (a) The governing body may require that final
 18 subdivision plats and certificates of survey be reviewed for
 19 errors and omissions in calculation or drafting by an
 20 examining registered professional land surveyor before
 21 recording with the county clerk and recorder. When the
 22 survey data shown on the plat or certificate of survey meets
 23 the conditions set forth by or pursuant to 76-3-403 AND this
 24 chapter section, the examining land surveyor shall so
 25 certify in a printed or stamped certificate on the plat or

1 certificate of survey. ~~Such~~ The certificate shall must be
 2 signed by him.

3 (b) ~~No~~ A registered professional land surveyor shall
 4 may not act as an examining land surveyor in regard to a
 5 plat or certificate of survey in which he has a financial or
 6 personal interest."

7 **Section 27.** Section 76-3-613, MCA, is amended to read:

8 "76-3-613. Index of plats and certificates of survey to
 9 be kept by county clerk and recorder. (1) The county clerk
 10 and recorder shall maintain an index of all recorded
 11 subdivision plats and certificates of survey.

12 (2) This index shall must list plats and certificates
 13 of survey by the quarter section, section, township, and
 14 range in which the platted or surveyed land lies and shall
 15 must list the recording or filing numbers of all plats
 16 depicting lands lying within each quarter section. Each
 17 quarter section list shall must be definitive to the
 18 exclusion of all other quarter sections. The index shall
 19 must also list the names of all subdivision plats of more
 20 than five tracts in alphabetical order and the place where
 21 filed."

22 **Section 28.** Section 76-3-614, MCA, is amended to read:

23 "76-3-614. **Correction of recorded plat.** When a recorded
 24 plat does not definitely show the location or size of lots
 25 or blocks or the location or width of any street or alley,

1 the governing--body review authority may at its own expense
 2 cause a new and correct survey and plat to be made and
 3 recorded in the office of the county clerk and recorder. The
 4 corrected plat must, to the extent possible, follow the plan
 5 of the original survey and plat. The surveyor making the
 6 resurvey shall endorse the corrected plat, referring to the
 7 original plat and noting the defect existing therein in the
 8 original plat and the corrections made."

9 **Section 29.** Section 7-16-2324, MCA, is amended to read:

10 **"7-16-2324. Sale, lease, or exchange of dedicated park**
 11 **lands.** (1) For the purposes of this section and part 25 of
 12 chapter 8, lands dedicated to the public use for park or
 13 playground purposes under ~~76-3-606 and 76-3-607~~ [section 23
 14 21] or a similar statute or pursuant to any instrument not
 15 specifically conveying land to a governmental unit other
 16 than a county are considered county lands.

17 (2) A county may not sell, lease, or exchange lands
 18 dedicated for park or playground purposes except as provided
 19 under this section and part 25 of chapter 8.

20 (3) Prior to selling, leasing, or exchanging any county
 21 land dedicated to public use for park or playground
 22 purposes, a county shall:

23 (a) compile an inventory of all public parks and
 24 playgrounds within the county;

25 (b) prepare a comprehensive plan for the provision of

1 outdoor recreation and open space within the county;

2 (c) determine that the proposed sale, lease, or
 3 exchange furthers or is consistent with the county's outdoor
 4 recreation and open space comprehensive plan;

5 (d) publish notice as provided in 7-1-2121 of intention
 6 to sell, lease, or dispose of such the park or playground
 7 lands, giving the people of the county opportunity to be
 8 heard regarding such the action;

9 (e) if the land is within an incorporated city or town,
 10 secure the approval of the governing body thereof for the
 11 action; and

12 (f) comply with any other applicable requirements under
 13 part 25 of chapter 8.

14 (4) Any revenue realized by a county from the sale,
 15 exchange, or disposal of lands dedicated to public use for
 16 park or playground purposes ~~shall~~ must be paid into the park
 17 fund and used in the manner prescribed in ~~76-3-606 and~~
 18 ~~76-3-607~~ [section 23 21] for cash received in lieu of
 19 dedication."

20 **Section 30.** Section 76-4-103, MCA, is amended to read:

21 **"76-4-103. What constitutes subdivision.** A subdivision
 22 ~~shall comprise~~ comprises only those parcels of ~~less than 20~~
 23 ~~acres which~~ that have been created by a division of land,
 24 and the plat thereof ~~shall~~ of the subdivision must show all
 25 ~~such the~~ parcels, whether contiguous or not. The rental or

1 lease of one or more parts of a building, structure, or
 2 other improvement, whether existing or proposed, is not a
 3 subdivision, as that term is defined in this part, and is
 4 not subject to the requirements of this part."

5 **Section 31.** Section 76-4-125, MCA, is amended to read:

6 "76-4-125. Review of development plans -- land
 7 divisions excluded from review. (1) Plans and specifications
 8 of a subdivision as defined in this part shall must be
 9 submitted to the reviewing authority, and the reviewing
 10 authority shall indicate by certificate that it has approved
 11 the plans and specifications and that the subdivision is not
 12 subject to a sanitary restriction. The plan review by the
 13 reviewing authority shall must be as follows:

14 (a) At any time after the developer has submitted an
 15 application under the Montana Subdivision and Platting Act,
 16 the developer shall present to the reviewing authority a
 17 preliminary plan of the proposed development, whatever
 18 information the developer feels necessary for its subsequent
 19 review, and information required by the reviewing authority.

20 (b) The reviewing authority ~~must-give~~ shall take final
 21 action of on the proposed plan within 60 days unless an
 22 environmental impact statement is required, at which time
 23 this deadline may be increased to 120 days.

24 (2) A subdivision ~~excluded--from--the--provisions--of~~
 25 ~~chapter--3~~ shall must be submitted for review according to

1 the provisions of this part, except that the following
 2 divisions, ~~--unless--such--exclusions--are--used--to--evade--the~~
 3 ~~provisions--of--this--part,~~ are not subject to review:

4 (a) ~~the-exclusions-cited-in-76-3-201--and--76-3-204;~~ a
 5 division created by order of a court of record in this state
 6 pursuant to the laws governing the distribution of estates
 7 (Title 72, chapters 1 through 6 and 10 through 14) or the
 8 dissolution of marriage (Title 40, chapter 4) or a division
 9 that, in the absence of agreement between the parties to the
 10 sale, could be created by an order of a court in this state
 11 pursuant--to--the--law--of--eminent-domain--(Title-707--chapter
 12 30);

13 (b) a division creating an interest in oil, gas,
 14 minerals, or water that is now or at a later time severed
 15 from the surface ownership of real property;

16 (c) a division creating cemetery lots only;

17 (d) a division created by reservation of a life estate;

18 (e) a division created by lease or rental for farming
 19 and agricultural purposes;

20 (f) the sale, rent, lease, or other conveyance of one
 21 or more parts of a building, structure, or other
 22 improvement, whether existing or proposed;

23 (b)(g) ~~divisions~~ a division made for the purpose of
 24 acquiring additional land to become part of an approved
 25 parcel, provided that no a dwelling or structure requiring

1 water or sewage disposal is not to be erected on the
2 additional acquired parcel and that the division does not
3 fall within a previously platted or approved subdivision;
4 and

5 ~~(e)~~(h) divisions a division made for purposes other
6 than the construction of water supply or sewage and solid
7 waste disposal facilities as the department specifies by
8 rule; AND

9 (I) A DIVISION CREATED TO PROVIDE SECURITY FOR
10 CONSTRUCTION MORTGAGES, LIENS, OR TRUST INDENTURES."

11 **Section 32.** Section 76-6-203, MCA, is amended to read:
12 "76-6-203. **Types of permissible easements.** Easements or
13 restrictions under this chapter may prohibit or limit any or
14 all of the following:

15 (1) structures--construction or placing of buildings,
16 camping trailers, housetrainers, mobile homes, roads, signs,
17 billboards or other advertising, utilities, or other
18 structures on or above the ground;

19 (2) landfill--dumping or placing of soil or other
20 substance or material as landfill or dumping or placing of
21 trash, waste, or unsightly or offensive materials;

22 (3) vegetation--removal or destruction of trees,
23 shrubs, or other vegetation;

24 (4) loam, gravel, etc.--excavation, dredging, or
25 removal of loam, peat, gravel, soil, rock, or other material

1 substance;

2 (5) surface use--surface use except for such purposes
3 permitting the land or water area to remain predominantly in
4 its existing condition;

5 (6) acts detrimental to conservation--activities
6 detrimental to drainage, flood control, water conservation,
7 erosion control, soil conservation, or fish and wildlife
8 habitat and preservation;

9 (7) subdivision of land--subdivision of land as defined
10 in 76-3-103~~7~~ and 76-3-104~~7~~~~and-76-3-202~~;

11 (8) other acts--other acts or uses detrimental to such
12 retention of land or water areas in their existing
13 conditions."

14 NEW SECTION. Section 33. Repealer. (1) Sections
15 76-3-201, 76-3-202, 76-3-203, 76-3-204, 76-3-205, 76-3-206,
16 76-3-207, 76-3-208, 76-3-209, 76-3-210, MCA, ARE REPEALED.

17 (2) SECTIONS 76-3-504, 76-3-505, 76-3-604, 76-3-605,
18 76-3-606, 76-3-607, 76-3-609, MCA, are repealed.

19 NEW SECTION. Section 34. Codification instruction.
20 [Sections 5, ~~67-20-through-24~~ 18 THROUGH 22, and ~~26~~ 24] are
21 intended to be codified as an integral part of Title 76,
22 chapter 3, and the provisions of Title 76, chapter 3, apply
23 to [sections 5, ~~67-20-through-24~~ 18 THROUGH 22, and ~~26~~ 24].

24 NEW SECTION. Section 35. Saving clause. [This act]
25 does not affect rights and duties that matured, penalties

1 that were incurred, or proceedings that were begun before
2 [the effective date of this act].

3 NEW SECTION. **Section 36. Severability.** If a part of
4 [this act] is invalid, all valid parts that are severable
5 from the invalid part remain in effect. If a part of [this
6 act] is invalid in one or more of its applications, the part
7 remains in effect in all valid applications that are
8 severable from the invalid applications.

9 NEW SECTION. **Section 37. Applicability.** [Sections 2,
10 3, ~~30,~~ and ~~32~~ 33(1)] apply to all subdivision applications
11 filed after passage and approval. [Sections 1, 4 through ~~31~~
12 ~~33~~~~-and-34~~ 29, 31, 32, AND 33(2)] apply to all subdivision
13 applications filed after September 30, 1991.

14 NEW SECTION. **Section 38. Effective date.** [This act] is
15 effective on passage and approval.

-End-

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 671 (third reading copy as amended - blue), respectfully report that House Bill No. 671 be amended and as so amended be concurred in:

1. Title, lines 9 and 10.
Following: "PROVIDING" on line 9
Strike: the remainder of line 9 through "OPTIONAL" on line 10
Following: "HEARING" on line 10
Strike: "PROCEDURE"
Insert: "PROCEDURES"
2. Title, line 18.
Following: "76-3-614"
Insert: "76-4-102,"
3. Page 2, line 14.
Following: "LAND;"
Strike: "TO PREVENT OVERCROWDING OF LAND;"
4. Page 2, line 16.
Following: "ADEQUATE"
Strike: "LIGHT, AIR,"
5. Page 2, line 18.
Following: line 17
Strike: "PUBLIC"
Following: "REQUIREMENTS"
Insert: "adopted pursuant to this chapter"
6. Page 2, lines 18 and 19.
Following: "i" on line 18
Strike: "TO REQUIRE DEVELOPMENT IN HARMONY WITH THE NATURAL ENVIRONMENT;"
7. Page 3, line 1.
Following: "AND TO"
Strike: "promote"
Insert: "require"
8. Page 4.
Following: line 7
Insert: "(4) ' Dwelling unit' means a detached residential structure in which a person or persons reside."
Renumber: subsequent subsections
9. Page 5, line 3.
Following: "any"
Strike: "tract or"

10. Page 5, lines 7 through 9.
Following: "means" on line 7
Insert: "i"
Strike: the remainder of lines 7 and 8
Following: "subdivision" on line 9
Insert: "(a) for subdivisions involving the actual division of land, the first five parcels from a single tract of record as of July 1, 1991; or
(b) for subdivisions involving the provision of permanent multiple spaces with utility hookups for recreational camping vehicles or mobile homes, multiple spaces for dwelling units, or multiple spaces for work camp structures as described in subsection (21)(a), the first five of these"
11. Page 5, line 16.
Following: "standards"
Insert: ", if any standards exist,"
12. Page 7, line 3.
Following: "the"
Strike: "person or entity"
Insert: "governing body"
13. Page 7, line 14.
Following: "means"
Insert: ", except as provided in subsection (20)(b),"
14. Page 7, line 15.
Following: "more"
Insert: "one or more additional"
15. Page 7, line 25 through page 8, line 7.
Following: "year" on page 7, line 25
Strike: the remainder of line 25 through line 7 on page 8
Insert: "in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed. The term includes any resubdivision and any residential condominium building. The term further includes any area, regardless of its size, that provides or will provide permanent multiple spaces for recreational camping vehicles or mobile homes, multiple spaces for dwelling units, or multiple spaces for work camp structures constructed to exist for longer than 1 year. For purposes of this subsection, work camp structure means housing that is provided by a person for two or more families or individuals living separately and that is for the exclusive use of the employees of that person and the families, if any, of the employees. Housing does not include shelter provided by an agricultural employer for persons who are primarily employed to perform agricultural duties on that person's ranch or farm."

16. Page 8, line 11.
Following: "agricultural"
Insert: "or silvicultural"

17. Page 8, line 16.
Following: "conveyance"
Insert: "or use"

18. Page 9, line 2.
Following: "parties"
Strike: "to the sale"

19. Page 9, line 9.
Following: "in"
Strike: "both"
Insert: "either"
Following: the first "the"
Insert: "index of"
Following: "survey"
Strike: "and"
Insert: "or"

20. Page 9, lines 10 through 12.
Following: "76-3-613" on line 10
Strike: the remainder of line 10 through line 12
Insert: ", as applicable, as long as no additional parcels are created;"

21. Page 9, line 14.
Following: "division"
Insert: "of land by an agricultural producer"
Following: "made"
Strike: "exclusively"
Insert: "primarily"

22. Page 9, line 15.
Following: "agricultural"
Insert: "or silvicultural"

23. Page 9, lines 16 through 22.
Following: "subdivision" on line 16
Strike: the remainder of line 16 through "chapter" on line 22
Insert: ", provided that no dwelling unit is to be erected on the parcel. The erection of a dwelling unit on the parcel subjects the division to the provisions of this chapter. Divisions made primarily for agricultural or silvicultural purposes must be noted on the certificate of survey or other recorded instrument of conveyance, along with the statement that the erection of a dwelling unit on the parcel subjects the division to the provisions of this chapter"

24. Page 9, line 23.
Following: "(x)"
Strike: "except for the"

25. Page 9, lines 24 and 25.
Following: "the" on line 24
Strike: the remainder of line 24 through "76-3-614," on line 25
Following: "lease" on line 25
Insert: "that does not constitute a subdivision as defined by this chapter"

26. Page 10, line 1.
Following: "for"
Strike: "requirements other than"

27. Page 10, line 4.
Following: "(xii)"
Insert: "(A)"
Following: "for"
Strike: "requirements other than"

28. Page 10, lines 8 and 9.
Following: "family" on line 8
Strike: the remainder of line 8 through "operation" on line 9

29. Page 10, lines 10 through 13.
Following: "each" on line 10
Insert: "immediate"
Following: "products." on line 13
Insert: "Additional sales or gifts to an immediate family member of an agricultural producer may be made for adjoining properties under the provisions of subsection (21)(b)(viii), as long as no additional parcels are created.
(B) the creation by an agricultural producer of any area, regardless of its size, that provides or will provide permanent multiple spaces for less than four dwelling units, as long as no land is divided. For purposes of this section, agricultural producer means a person primarily engaged in the production of agricultural products."

30. Page 10, line 17
Following: "4"
Insert: "; or
(xiv) a division created to provide security for mortgages, liens, or trust indentures until such time as the division is no longer providing that security"

31. Page 10, lines 20 and 21.
Following: "review"
Strike: the remainder of line 20 through "special" on line 21
Insert: "and advise the review authority on"

32. Page 15, line 24.
Following: "shall"
Insert: "that creates parcels"
33. Page 18, line 22.
Following: "shall"
Strike: ", IN A MANNER THAT PROTECTS THE RIGHTS OF PROPERTY OWNERS."
34. Page 19, line 21.
Following: "AND"
Insert: "currently"
35. Page 19, line 24.
Following: "SPACES FOR"
Strike: "TRAVEL, LIGHT, AIR, AND"
36. Page 20, line 2.
Following: "CONGESTION"
Insert: "of streets and highways"
37. Page 20, line 3.
Following: "INVOLVE"
Strike: "UNNECESSARY"
Insert: "unreasonable"
38. Page 20, line 7.
Following: "AN"
Strike: "EXCESSIVE"
Insert: "unreasonable"
39. Page 20, line 8.
Following: "SERVICES."
Insert: "The subdivision regulations must protect the rights of property owners."
40. Page 21, line 8.
Following: "use"
Insert: "directly attributable to the subdivision. Variances from road standards may be granted for subdivisions requiring minimal vehicle use"
41. Page 21, line 10.
Following: "values"
Insert: "financial or other positive incentives for developments that accommodate public values; (g)"
42. Page 21, line 12.
Following: "."
Insert: "a provision"
43. Page 25, line 18.
Following: "INFORMATION"
Insert: "related to the applicable regulatory criteria adopted under 76-3-501"
44. Page 26, lines 7 and 8.
Following: "The" on line 7
Strike: the remainder of line 7 through "as the" on line 8
Following: "authority" on line 8
Strike: "by the governing body,"
45. Page 26, line 12.
Following: "the"
Strike: "governing body or"
46. Page 27, line 5.
Following: "a"
Strike: "citizen"
Insert: "person"
47. Page 27, lines 13 through 18.
Following: "~~petitioner.~~" on line 13
Strike: the remainder of lines 13 through 18
48. Page 28, lines 8 and 9.
Following: "notice of the" on line 8
Insert: "informational"
Following: "hearing" on line 8
Strike: the remainder of line 8 through "hearing" on line 9
49. Page 28, line 14.
Following: "hearing"
Insert: "by the governing body"
50. Page 29, lines 9 and 10.
Following: "The" on line 9
Strike: the remainder of lines 9 and 10
51. Page 29, line 11.
Following: "authority"
Strike: "by the governing body,"
52. Page 30, lines 4 through 8.
Following: "(4)" on line 4
Strike: the remainder of lines 4 through 8
Insert: "An informational hearing may be held on a minor or

special subdivision only if:

(a) the subdivision would be located in an area having unique cultural or historical resources or environmental or ecological resources that are susceptible to substantial adverse effects from subdivision development or if the subdivision would cause substantial adverse fiscal costs to local government; and

(b) the subdivider or a person who demonstrates that he would be adversely affected by the proposed subdivision requests a hearing from the governing body within 15 days following submission of the complete application."

53. Page 30, line 9.
Following: "subdivider"
Strike: ", "
Insert: "or by"
Strike: "citizen"
Insert: "person"

54. Page 30, lines 10 and 11.
Following: "(4)," on line 10
Strike: "or the review authority,"

55. Page 30, line 20.
Following: "after the"
Strike: "public"

56. Page 30, line 23.
Following: "one"
Strike: "public"

57. Page 30, line 24.
Following: "The"
Strike: "public"

58. Page 31, line 14.
Following: "whether"
Strike: "or not"
Following: "a"
Strike: "public"

59. Page 31, line 15.
Following: "the"
Strike: "review authority"
Insert: "subdivision review officer"

60. Page 31, lines 17 through 20.
Following: "probable" on line 17
Strike: the remainder of lines 17 through 20
Insert: "the factors listed in subsection (4) are probable,"

61. Page 31, line 21.
Following: "the"
Strike: "review authority"
Insert: "subdivision review officer"

62. Page 31, line 22.
Following: "subdivider"
Strike: ", "
Insert: "and such"
Following: "persons"
Strike: ", "

63. Page 31, line 23.
Following: "representatives"
Insert: "that they consider necessary"

64. Page 31, line 24.
Following: "develop"
Insert: "reasonable"

65. Page 31, line 25.
Following: "in"
Strike: "THIS"

66. Page 32, line 1.
Following: "~~(4)~~"
Insert: "(4)"

67. Page 32, line 2.
Following: "The"
Strike: "review authority"
Insert: "subdivision review officer"

68. Page 32, line 3.
Following: "the"
Strike: "governing body"
Insert: "review authority"

69. Page 32, line 5.
Following: "The"
Strike: "governing body"
Insert: "review authority"

70. Page 32, lines 7 through 9.
Following: "impacts." on line 7
Strike: the remainder of lines 7 through 9

71. Page 32, line 10.
Following: "The"
Strike: "governing body"
Insert: "review authority"

72. Page 32, line 20.

Following: "+b+"

Insert: "In reviewing a subdivision under subsection (4), a governing body must be guided by the following standards:
(a) Mitigation measures imposed should not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the plat.
(b)"

73. Page 32, line 21 through page 33, line 1.

Following: "subdivider" on page 32, line 21

Strike: the remainder of line 21 through "receivers" on page 33, line 1

74. Page 33, lines 4 through 6.

Following: "expired." on line 4

Strike: the remainder of line 4 through "the" on line 6

Insert: "The"

75. Page 33, line 6 through page 34, line 1.

Following: "proceedings." on page 33, line 6

Strike: the remainder of line 6 through line 1 on page 34

76. Page 36, line 10.

Following: "(3)"

Insert: "(a)"

Following: "required"

Insert: "; (1)"

77. Page 36, line 11.

Following: "acres"

Strike: ", "

Insert: "; (11)"

78. Page 36, line 12.

Following: "nonresidential"

Strike: ", "

Insert: "; (11) for a subdivision where no parcels are created, except when that subdivision provides permanent multiple spaces for mobile homes or condominiums;"

79. Page 36.

Following: line 12

Insert: "(iv) for a subdivision"

80. Page 36, line 13.

Following: "created."

Insert: "(b)"

81. Page 38, line 10.

Following: "(1)"

Insert: "or a combination of the elements of subsection (7)(a) and (7)(b) that equals or exceeds the value of dedication required under subsection (1)"

82. Page 38, line 18.

Following: "impacts"

Strike: "of"

Insert: "directly attributable to"

83. Page 38, line 21.

Following: "the"

Strike: "governing body's or"

84. Page 38, line 24.

Following: "assessment,"

Strike: "public"

85. Page 39, line 6.

Following: "The"

Strike: "governing body or"

86. Page 39.

Following: line 8

Insert: "[section 18],"

87. Page 40, line 4.

Strike: "tract"

Insert: "parcel"

88. Page 40, line 10.

Following: "the"

Strike: "tract"

Insert: "parcel"

89. Page 40, lines 21 and 22.

Following: "hazards," on line 21

Strike: "INCLUDING BUT NOT LIMITED TO"

Insert: "such as"

90. Page 41, lines 8 and 9.

Strike: "(3)(f)" on line 8

Insert: "(3)(e)"

Strike: "under all of the following conditions"

Insert: "as follows"

91. Page 42, line 10.

Following: "(B)"

Insert: "unique"

92. Page 42, lines 11 and 12.

Following: "RESOURCES"

Strike: "INCLUDING WILDLIFE AND WILDLIFE HABITAT"

93. Page 43, lines 6 and 7.

Following: "subdivider" on line 6

Strike: ", "

Insert: "and such"

Following: "persons"

Strike: ", "

Following: "representatives" on line 7

Insert: "that they consider necessary"

94. Page 43, line 8.

Following: "develop"

Insert: "reasonable"

95. Page 43, lines 15 through 17.

Following: "impacts." on line 15

Strike: the remainder of lines 15 through 17

96. Page 44, line 3.

Following: "~~(ii)~~"

Insert: "In reviewing a subdivision under subsection (1), a governing body must be guided by the following standards:
(1) Mitigation measures imposed must not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the plat.
(ii)"

97. Page 44, lines 4 through 10.

Following: "subdivider" on line 4

Strike: the remainder of line 4 through "receivers" on line 10

98. Page 45, line 23.

Strike: "76-3-403 AND"

99. Page 48.

Following: line 19

Insert:
"Section 30. Section 76-4-102, MCA, is amended to read:
"76-4-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following words or phrases have the following meanings:
(1) "Board" means the board of health and environmental sciences.
(2) "Department" means department of health and environmental sciences.
(3) "Extension of public sewage disposal system" means a

sewer line that connects two or more sewer service lines to a sewer main.

(4) "Extension of public water supply system" means a water line that connects two or more water service lines to a water main.

(5) "Facilities" means public or private facilities for the supply of water or disposal of sewage or solid waste and any pipes, conduits, or other stationary method by which water, sewage, or solid wastes might be transported or distributed.

(6) "Public water supply system" or "public sewage disposal system" means, respectively, a water supply or sewage disposal system that serves 10 or more families or 25 or more persons for at least 60 days out of the calendar year.

(7) "Registered professional engineer" means a person licensed to practice as a professional engineer under Title 37, chapter 67.

(8) "Registered sanitarian" means a person licensed to practice as a sanitarian under Title 37, chapter 40.

(9) "Reviewing authority" means the department or a local department or board of health certified to conduct review under 76-4-104.

(10) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or building requiring facilities for the supply of water or the disposition of sewage or solid waste or the construction of water supply or sewage or solid waste disposal facilities until the department has approved plans for those facilities.

(11) "Sewer service line" means a sewer line that connects a single building or living unit to a public sewer system or extension of such a system.

(12) "Solid wastes" means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yard clippings, and solid market and solid industrial wastes.

(13) "Subdivision" means a division of land or land so divided which ~~that~~ creates one or more additional parcels ~~containing less than 20 acres, exclusive of public roadways,~~ in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and any condominium building or area, regardless of size, which that provides permanent multiple space spaces with utility hookups for recreational camping, vehicles or mobile homes, multiple spaces for dwelling units, or multiple spaces for work camp structures constructed to exist for longer than 1 year. For purposes of this subsection, work camp structure means housing that is provided by a person for two or more families or individuals living separately and that is for the exclusive use of the employees of that person and the families, if any, of the employees. Housing does not include shelter provided by an agricultural employer for persons who are primarily employed to perform agricultural duties on that person's ranch or farm.

(14) "Water service line" means a water line that connects a single building or living unit to a public water system or extension of such a system."
Renumber: subsequent sections

100. Page 50, line 5.
Following: "by"
Insert: "operation of law or by"

101. Page 50, lines 9 and 10.
Following: "parties" on line 9
Strike: "to the sale"

102. Page 50, line 14.
Following: "is"
Strike: "now or at a later time"

103. Page 50, line 20.
Following: "conveyance"
Insert: "or use"


104. Page 51, line 10.
Following: line 9
Strike: "CONSTRUCTION"
Following: "INDENTURES"
Insert: "until such time as the division is no longer providing that security"

105. Page 53, line 10.
Following: "3,"
Strike: "30"
Insert: "31"
Following: "32"
Strike: "33(1)"
Insert: "34(1)"

106. Page 53, line 12.
Following: "29"
Strike: "31, 32, AND 33(2)"
Insert: "32, 33, and 34(2)"

Signed:


Lawrence G. Stimatz, Chairman

 4-3-91
Coord.

SB 4-3 10:35
Sec. of Senate