

## **MINUTES**

### **MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION SUBCOMMITTEE ON NATURAL RESOURCES**

**Call to Order:** By Chairman Cecil Weeding, on March 24, 1991, at 2:05 p.m., and they adjourned at 4:42 p.m. The subcommittee met on March 25, 1991, at 7:15, and adjourned at 9:45 p.m. The subcommittee met for the final time on March 26, 1991, at 6:50 p.m., and adjourned at 9:30 p.m.

#### **ROLL CALL**

**Members Present:**

Cecil Weeding, Vice Chairman (D)  
Steve Doherty (D)  
Lorents Grosfield (R)  
Larry Tveit (R)

**Members Excused:**

**Staff Present:** Deborah Schmidt (EQC).

**Please Note:** These are summary minutes of a subcommittee assigned to study HB-671 that deals with revising subdivision law. The committee met on three different days.

**Announcements/Discussion:** The following members were added as exofficio members of the subcommittee.

Senator Esther Bengtson (D)  
Senator Don Bianchi (D)  
Senator Thomas Keating (R)  
Senator John Jr. Kennedy (D)  
Senator Dorothy Eck (D)  
Representative Bob Gilbert (R)

#### **SUBCOMMITTEE REPORT: HB-671**

**Discussion:** Chairman Weeding explained to the subcommittee what their goals would be. They will need to report back to the Natural Resource Committee on March 27, 1991 with their recommendation. Chairman Weeding asked the audience to introduce themselves, and they will be allowed to comment if called upon.

Chairman Weeding said they would approach the bill by walking through page by page, amendment by amendment. Representative Gilbert has proposed amendments that have been inserted into a Grey bill, and the APA has proposed amendments. These three items are in a pink packet (Exhibit #1). The packet contains the

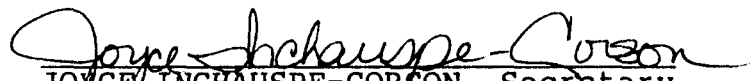
grey bill which has the Gilbert Cobb Amendments inserted into HB-671, the APA amendments proposed by Marvin Barber, and then the Gilbert Cobb amendments in numerical order.

Senator Weeding stated that Senator Harding had asked if her sand and gravel problems could be addressed in this bill through amendments? Representative Gilbert said that this bill is not a land use and planning bill it is a subdivision bill, and dealing with sand and gravel operations is a land use issue. Senator Grosfield said there is another bill that will have an Adverse Committee Report on Monday concerning this issue.

The subcommittee considered all the amendments during three meetings. Proposed definitions for road standards (Exhibit #1a), proposed definition of a "Minor Subdivision" (Exhibit #1b), and alternative definitions (Exhibit #1c) were presented during discussions. A new version of the grey bill will be typed by Ms. Schmidt as the subcommittee's recommendation to the Senate Natural Resources Committee on March 27, 1991. (Exhibit #2)

RESPECTIVELY SUBMITTED BY

  
CECIL WEEDING, Chairman

  
JOYCE INCHAUSPE-CORSON, Secretary

CW/jic

ROLL CALL  
Natural Resources

Sub COMMITTEE *\* members*  
DATE 3-24-91

52

LEGISLATIVE SESSION

| NAME                          | PRESENT | <del>ABSENT</del> | EXCUSED |
|-------------------------------|---------|-------------------|---------|
| Senator Anderson              | N/A     | EX <i>offical</i> |         |
| Senator Bengtson              | N/A     | X                 |         |
| Senator Bianchi               | N/A     |                   |         |
| * Senator Doherty             | X       |                   |         |
| * Senator Grosfield           | X       |                   |         |
| Senator Hockett               | N/A     |                   |         |
| Senator Keating               | N/A     | X                 |         |
| Senator Kennedy               | N/A     | X                 |         |
| * Senator Tveit               | X       |                   |         |
| * Vice Chairman, Weeding      | X       |                   |         |
| Chairman Stimatz              | N/A     |                   |         |
| Senator Eck                   |         | X                 |         |
| Representative <i>Shelton</i> |         | X                 |         |
|                               |         |                   |         |
|                               |         |                   |         |

Each day attach to minutes.

Sub Committee DATE March 24, 1991  
ON Natural Resources HB-671

# VISITORS' REGISTER

[illegible]

DATE March 25, 1991

DATE March 23, 1971  
COMMITTEE ON Natural Resources Subcommittee

# VISITORS' REGISTER

[illegible]

DATE March 26, 1991

COMMITTEE ON Natural Resource Subcommittee

# VISITORS' REGISTER

[illegible]

# NATURAL RESOURCES SUBCOMMITTEE

SENATE NATURAL RESOURCES *Subcomm*

EXHIBIT NO. 1

DATE 3-24-91

BILL NO. HB-671

## HB-671

GREY BILL (PROPOSED + INSERTED  
GILBERT/COBB AMENDMENTS

APA AMENDMENTS

GILBERT/COBB AMENDMENTS #4 1/2

GREY BILL 3/22/91

52nd Legislature

HB 0671/03

HB 0671/03

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, 76-3-610, 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, 76-3-208, 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 ~~76-3-608~~ 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 lighting, 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 that whenever necessary,~~  
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 require  
 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) "Swelling unit" means a unit in which a person or  
 7 persons reside for more than 90 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-percent 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        (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        (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        (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        (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 a 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 impact.  
 19        Activities with minimal human impacts include the  
 20        construction of camping structures that are dismantled or  
 21        relocated after seasonal use.

22        (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        (19)(16) "Registered professional engineer" means a

person licensed in conformance with Title 37, chapter 67, to  
 practice engineering in the state of Montana.  
 (26)(17) "review authority" means the person or entity  
 with authority to approve, conditionally approve, or  
 disapprove a subdivision application.

(23)(18) "Special subdivision" means a subdivision that  
 conforms to a master plan pursuant to 76-1-6017 AND a  
 long-range development program of public works projects  
 ADOPTED pursuant to 76-1-6017 and either local government  
 regulations pursuant to 76-3-501 or zoning regulations  
 ADOPTED pursuant to Title 76, chapter 2, part 2 or 3.

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

(I) ~~any subdivision;~~

(II) ~~any residential condominium or building;~~

(III) ~~any area, regardless of its size, that provides or~~

~~will provide multiple space for recreational camping~~  
~~vehicles or dwelling units; and~~

(IV) ~~work camp structures constructed to exist for~~  
~~longer than 1 year.~~ *Insert # 1 (creating*

(b) Subdivision does not mean:

(i) a division creating cemetery lots only; *existing law*

(ii) a division created by lease or rental for farming  
 and agricultural purposes; *defined work*  
*(camp)*

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

(iv) a division created by reservation of a life estate;  
 (v) the sale, rent, lease, or other conveyance of one  
 or more parts of a building, structure, or other  
 improvement, whether existing or proposed;

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

(vii) a division created by OPERATION OF LAW OR AN ORDER  
 of a court of record in this state pursuant to the laws  
 governing the distribution of estates (Title 72, chapters 1  
 through 6 and 10 through 14) or the dissolution of marriage

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

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

(ix) except for the survey requirements in 76-3-401 through 76-3-405, a division made exclusively for agricultural purposes by sale or agreement to buy and sell;

(x) if the division is outside of a platted subdivision and the local governing body and the subdivider enter into a covenant running with the land that the divided parcels must be used exclusively for agricultural purposes. The governing body shall agree to release the covenant upon petition by the subdivider if the subdivision proposal complies with the provisions of this chapter.

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

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

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

(xiii) a division of land made for the purpose of mining when an application has been submitted or a permit or contract received under the provisions of title 82, chapter 2, division created to provide security for the person designated by the governing body to administer subdivision review or to approve, conditionally approve, or disapprove applications for minor subdivisions or special subdivisions.

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

(xv) "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 ~~less~~ than ~~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--for--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-57--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 76-3-302 which is 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 of 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 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

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

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

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

"76-3-401. Survey requirements for divisions of lands other--than--subdivisions. All divisions of land for--sale other--than--a--subdivision--after--July-17-19747 into parcels which parts that cannot be described as 1/32 1/16 1/32 or larger" aliquot parts of a United States government section or AS a United States government lot must be surveyed by or under the supervision of a registered professional land surveyor."

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

"76-3-402. Survey and platting requirements for subdivided lands. (1) Every subdivision of land after June 30, 1973, shall must be surveyed and platted in conformance 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-76-3-4037-MCA7-is-amended-to-read:  
18 "76-3-4037--Monumentation,---{t}---the---department---of  
19 commerce---shall7---in---conformance---with---the---Montana  
20 Administrative--Procedure--Act7--prescribe-uniform-standards  
21 for--monumentation--and--for---the---formy---accuracy---and  
22 descriptive-content-of-records-of-survey7  
23 {t}---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 city--17-1974--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

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 76-3-102 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

19) 1 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 of review criteria to subdivision applications, as provided for in 76-3-608 and [section 26 24];

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

(f) financial <sup>reinsure</sup> incentives for developments that accommodate public values of a proposed major, minor, or special subdivision lies partly or totally within the boundaries of a water user entity, that the proposed plat of the subdivision be submitted for review to the water user entity to ensure that the existence and location of all water user facilities are properly noted on the plat. Water user facilities include but are not limited to canals, laterals, open drains, and closed drains.

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

Section 15. Section 76-3-507, MCA, is amended to read:  
"76-3-507. Provision for bonding requirements to insure ensure construction of public improvements. (1) Except as

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

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

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

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

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

Section 16. Section 76-3-601, MCA, is amended to read: "76-3-601. Submission of preliminary plat for review.

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

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

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

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

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

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

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

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

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

(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 busiing, roads, and  
 11 maintenance, water, sewer, 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

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

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

(5) The governing body shall designate the hearing  
officer. The first informational hearing, if held, must be  
at the local government's expense. If a second hearing is  
held pursuant to the subdivider's or an affected citizen's  
petition, the governing body may assess costs of the second  
hearing to the petitioner. The hearing officer shall make  
findings and recommendations to the governing body  
concerning the approval, conditional approval, or  
disapproval of the plat not later than 10 days after the  
informational hearing and within the time period determined  
under subsection (7).

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

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

(7) Not less than 15 days prior to the date of an  
informational hearing on an application for a major  
subdivision, notice of the <sup>hearing</sup> ~~hearing~~ ~~shall be given~~ ~~by the governing body~~ ~~by publication~~  
must be given BY THE GOVERNING BODY by publication  
in a newspaper of general circulation in the county in which  
the subdivision is located. The subdivider, each adjoining  
property owner of record, and each purchaser of record under  
contract for deed of property adjoining the land included in  
the plat must also be notified of the hearing by certified  
mail not less than 15 days prior to the date of the hearing.

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

NEW SECTION. Section 19. Review process for minor  
subdivisions and special subdivisions. (1) A subdivider  
proposing a minor subdivision or special subdivision shall  
confer first with the subdivision review officer or his  
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

he would be adversely affected by the proposed subdivision  
 petitions the governing body for a hearing within 15 days  
 following submission of the complete application.

(1) Within 15 days following submission to the  
 governing body of a complete application by the subdivider,  
 a public hearing on the subdivision may be requested by the  
 subdivider or by a citizen who demonstrates that he would be  
 substantially adversely affected by the subdivision.

(5) If requested by the subdivider, an affected citizen  
 who petitions requests a hearing under subsection (4), or  
 the review authority, the hearing must be conducted as an  
 informational hearing as provided for in [section 29 18].  
 The governing body shall designate the hearing officer, and  
 if the hearing is held pursuant to the subdividers or an  
 affected citizen's request, the governing body may assess  
 costs of the hearing to the requester. The hearing  
 officer shall submit findings and recommendations to the  
 review authority concerning the approval, conditional  
 approval, or disapproval of the plat not later than 10 days  
 after the public hearing and within the time period  
 determined under subsection (3).

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

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

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

(8) Regardless of whether or not a public hearing is held, if the review authority determines that substantial adverse impacts on the factors listed in subsection (4) are probable CULTURAL OR HISTORICAL RESOURCES OR ENVIRONMENTAL OR ECOLOGICAL RESOURCES, INCLUDING WILDLIFE AND WETLANDS ~~HABITAT ARE PROTECTED OR THAT THE SUBDIVISION WOULD CAUSE SUBSTANTIAL ADVERSE FINANCIAL COSTS TO THE LOCAL GOVERNMENT.~~

the review authority shall schedule a consultation with the subdivider, knowledgeable persons, and agency representatives. During the consultation process, the parties shall work to develop mitigation for the potential adverse effects on the factors listed in ~~THIS~~ subsection

147. (4)

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

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

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

(12) 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) Whenever feasible, mitigation should be designed to provide some benefits for the subdivider, including allowances for higher density development in less environmentally sensitive sites within the plat and structuring mitigation to provide eligibility for tax 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;

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

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

(d) 3.25% 2.5% of the fair market value of the land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.

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

(a) 7.5% of the fair market value of the land proposed to be subdivided if the development density is 33 or more dwelling units per acre;

(b) 5% of the fair market value of the land proposed to be subdivided if the development density is 8 to 32.99 dwelling units per acre;

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

(d) 3.25% of the fair market value of the land proposed to be subdivided if the development density is 3 to 4.99 dwelling units per acre; WHEN A SUBDIVISION IS LOCATED

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

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

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

(5) The subdivider shall make the park dedication in kind or cash.

(5) THE GOVERNING BODY, IN CONSULTATION WITH THE SUBDIVIDER AND THE PLANNING BOARD OR PARK BOARD HAVING JURISDICTION, MAY DETERMINE SUITABLE LOCATIONS FOR PARKS AND PLAYGROUNDS AND, GIVING DUE WEIGHT AND CONSIDERATION TO THE 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. Criteria for local government review. (1)~~

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

demonstrate demonstrates that development of the subdivision would be in the public interest. The governing body shall disapprove any subdivision which it finds not to be in the public interest meets the requirements of this chapter.

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

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

(b) expressed public opinion;

(c) effects on agriculture;

(d) effects on local services;

(e) effects on taxation;

(f) effects on the natural environment;

(g) effects on wildlife and wildlife habitat; and

(h) effects on the public health and safety.

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

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

(b) The subdivision must comply with water supply, solid waste disposal, sewage treatment, and water quality

standards, as provided for in Title 76, chapter 4, part 1.

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

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

(i) for a primitive tract;

(ii) legal access must be provided; and

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

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

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

(e) The subdivision must be evaluated under the conditions provided in subsection (4) to determine if lots upon which building sites are or can reasonably be expected to be located within the subdivision are located in an area affected by the following hazards, including but not limited to:

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

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

(3) Subdivisions evaluated for hazards under subsection (3)(a) must be reviewed under all of the following conditions:

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

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

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

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

(e) If the review authority knows of the existence of natural or man-caused hazards other than those described in subsection (3)(f), the review authority shall notify the subdivider in writing of those known hazards and require notice of the hazards on the final plat.

(f) The result of the hazard evaluation is not dispositive of the degree of hazard existing and is not

grounds to establish liability against the review authority."

NEW SECTION. Section 24. Additional review criteria for major subdivisions. (1) In addition to the requirements of 76-3-608 and (sections 20-and-22 18 AND 20), a major subdivision must be reviewed for effects on:

(a) agricultural or agricultural water-user practices;

(b) unique-cultural-and-historical-sites;

(c) the natural-environment; and

(d) CULTURAL OR HISTORICAL RESOURCES;

(e) ENVIRONMENTAL OR ECOLOGICAL RESOURCES, INCLUDING

WILDLIFE AND HABITAT; AND

(f) local services.

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

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

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

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

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

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

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

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

(i) Mitigation measures imposed must not be unreasonable; restrict a landowner's ability to develop land, but it is recognized that in some instances the impacts of a proposed

development may be unacceptable and will preclude approval of the plat.

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

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

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

(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 51  
 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,

## governing body

the governing--body lawful authority may at its own expense cause a new and correct survey and plat to be made and recorded in the office of the county clerk and recorder. The corrected plat must, to the extent possible, follow the plan of the original survey and plat. The surveyor making the resurvey shall endorse the corrected plat, referring to the original plat and noting the defect existing therein in the original plat and the corrections made."

Section 29. Section 7-16-2324, MCA, is amended to read: "7-16-2324. Sale, lease, or exchange of dedicated park lands." (1) For the purposes of this section and part 25 of chapter 8, lands dedicated to the public use for park or playground purposes under 76-3-606-end-76-3-607 [section 23 21] or a similar statute or pursuant to any instrument not specifically conveying land to a governmental unit other than a county are considered county lands.

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

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

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

(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-end  
18 76-3-607 [section 23 21] for cash received in lieu of  
19 dedication."

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

"76-4-103. What constitutes subdivision. A subdivision shall-comprise comprises only those parcels of-less-than--20 acres which that have been created by a division of land, and the plat thereof-shall of the subdivision must show all 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--excisions--are--used-to-evade--the  
 3 provisions-of-this-part, are not subject to review:

4 (a) the-excisions-cited-in-76-3-303--and--76-3-304; a  
 5 operation of laws of  
 6 division created by order of a court of record in this state  
 7 pursuant to the laws governing the distribution of estates  
 8 (Title 72, chapters 1 through 6 and 10 through 14) or the  
 9 dissolution of marriage (Title 40, chapter 4) or a division  
 10 that, in the absence of agreement between the parties to the  
 11 sale, could be created by an order of a court in this state  
 12 pursuant--to--the--law--of--eminent-domain--(Title-70--chapter-

13 307);  
 14 (b) a division creating an interest in oil, gas,  
 15 minerals, or water that is now or at a later time severed  
 16 from the surface ownership of real property;

17 (c) a division creating cemetery lots only;

18 (d) a division created by reservation of a life estate;  
 19 (e) a division created by lease or rental for farming  
 20 and agricultural purposes;

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

24 (g) divisions a division made for the purpose of  
 25 acquiring additional land to become part of an approved  
 parcel, provided that no dwelling or structure requiring

water or sewage disposal is not to be erected on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision;

and

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

(I) A DIVISION CREATED TO PROVIDE SECURITY FOR CONSTRUCTION MORTGAGES, LIENS, OR TRUST INDENTURES<sup>1</sup>, *until such time as the division is no longer providing that security*

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

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

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

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

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

(4) loam, gravel, etc.--excavation, dredging, or 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 76-3-1037 and 76-3-1047--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 32  
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-

**Proposed amendments and adjustments to H.B. 671:**

1. Ranchers and Farmers should have right to provide for family. Page 10, lines 9 and 10 strike "for the purpose of maintaining the agricultural operation and".
2. Page 10, lines 18-21 dealing with "Subdivision review officer". on line 18 insert "advisory" between the and person. [Hearing officers should only act as advisory to local government].
3. Page 8 (b), subdivision does not mean:  
[xiv] A division of land for agricultural purposes.  
[Review should not be necessary unless the division changes the use of the land, ie, agricultural to subdivision.]
4. Page 21 lines 4 through 8. Roads needs some criteria and minimum standards. [Roads may not exceed the requirements for anticipated vehicle use is not sufficient criteria].
5. Page 22 line 19 between "body" and "approve", strike "may" and insert "shall".
6. Page 27 line 25 beginning with "and", and page 28, lines 1 through 5. reinsert , " and all testimony of parties and witnesses must be made under oath. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it is not sufficient in itself to support a finding unless it would be admissible over objection in civil actions."
7. Somewhere in H.B. 671 the "takings" issue must be addressed.
8. Section 2. 76-3-103 Definitions: Insert Agriculture producer defined as a person or persons, Corporation, or partnership or other definition that has been or is currently in agriculture production and marketing thereof;
9. Page 7, line 15 after "parcels". insert ;"except agriculture producer as defined, may divide and sell, rent, lease or otherwise convey land without review, as an occassional sale, limited to one each two years, but no more than 5 every 10 years.
10. Page 8, line 12 create (iii),: a division by an agriculture producer.

12. Page 8 line 20 strike all of lines 20 and 21 and insert  
"changes the use of the land created by the division.

*Draft 4/12*

Amendments to House Bill No. 671  
Third Reading Copy

Requested by Rep. Gilbert  
For the Committee on Natural Resources

Prepared by Deborah Schmidt  
March 21, 1991

1. Title, line 18.

Following: "76-3-614"

Insert: "76-4-102"

2. Page 2, line 14.

Following: "LAND;"

Strike: "TO PREVENT OVERCROWDING OF LAND;"

3. Page 2, line 16.

Following: "ADEQUATE"

Strike: "LIGHT, AIR,"

4. Page 2, lines 18 and 19.

Following: "REQUIREMENTS;" on line 18

Strike: "TO REQUIRE DEVELOPMENT IN HARMONY WITH THE NATURAL ENVIRONMENT;"

5. Page 3, line 1.

Following: "AND TO"

Strike: "promote"

Insert: "require"

6. Page 7, line 15.

Following: "it"

Insert: "it"

Following: "more"

Insert: "one or more"

7. 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 #1*

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, and further includes any area, regardless of its size, that provides or will provide permanent multiple spaces for recreational camping vehicles, three or more dwelling units, or work camp structures constructed to exist for longer than one year. For purposes of this subsection, "work camp structure" means housing provided by a person for two or more families or individuals living separately, 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 employer for persons who are employed to perform agricultural duties

on a ranch or farm, if the employer's primary business is agriculture."

8. Page 9, line 9.

Following: "both the"

Insert: "index of"

Following: "survey"

Strike: "and"

Insert: "or"

9. Page 9, line 10.

Following: "76-3-613"

Insert: ", as applicable"

10. Page 9.

Following: line 15

Insert: ":

(A)"

11. Page 9, line 16.

Following: "subdivision"

Insert: ";

Following: "and"

Insert: "(B)"

12. Page 9.

Following: line 16

Insert: ", for parcels smaller than 160 acres,"

13. Page 9, line 22.

Following: "chapter."

Insert: "(C) Divisions made exclusively for agricultural purposes when the parcels are 160 acres or larger must be noted on the certificate of survey."

14. Page 10, line 1.

Following: "for"

Strike: "requirements other than"

15. Page 10, line 4.

Following: "for"

Strike: "requirements other than"

16. Page 10, line 10.

Following: "member."

Insert: "Additional sales or gifts to each family member of an agricultural producer may be made for adjoining properties under the provisions of subsection (20)(b)(viii) of this section, as long as no additional parcels are created."

17. Page 10.

Following: line 17

Insert: "(xiv) a division created to provide security for construction mortgages, liens, or trust indentures, until such time as the division is no longer providing that security."

18. Page 19, line 24.

Following: "SPACES FOR"

Strike: "TRAVEL, LIGHT, AIR, AND"

19. Page 20, line 2.

Following: "CONGESTION"

Insert: "of streets and highways"

20. Page 21, line 10.

Following: "values"

Insert: "incentives for developments that accommodate public  
values;  
(g)"

21. Page 27, lines 13 through 18.

Following: "~~petitioner~~," on line 13

Strike: the remainder of lines 13 through 18

22. 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

23. 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 citizen 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."

24. Page 30, lines 10 and 11.

Following: "(4)," on line 10

Strike: "or the review authority,"

25. Page 30, line 20.

Following: "after the"

Strike: "public"

26. Page 30, line 23.

Following: "one"

Strike: "public"

27. Page 30, line 24.

Following: "The"

Strike: "public"

28. Page 31, line 14.

Following: "a"

Strike: "public"

29. 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,"

30. Page 31, line 25.

Following: "in"

Strike: "THIS"

31. Page 32, line 1.

Following: "~~{4}~~"

Insert: "(4)"

32. Page 32, lines 7 through 9.

Following: "impacts."

Strike: the remainder of lines 7 through 9

33. 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)"

34. Page 39.

Following: line 8

Insert: "[section 18],"

35. Page 40, lines 21 and 22.

Following: "hazards" on line 21

Strike: ", INCLUDING BUT NOT LIMITED TO"

Insert: "such as"

36. Page 41, line 8.

Following: "(3)"

Strike: "(f)"

Insert: "(e)"

37. Page 42, line 10.

Following: "(B)"

Insert: "unique"

38. Page 42, lines 11 and 12.

Following: "RESOURCES"

Strike: ", INCLUDING WILDLIFE AND WILDLIFE HABITAT"

39. Page 43, lines 15 through 17.

Following: "impacts."

Strike: the remainder of lines 15 through 17

40. Page 44, line 3.

Following: "~~(ii)~~"

Insert: "In reviewing a subdivision under subsection (1), a governing body must be guided by the following standards:  
(i) 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 the plat.  
(ii)"

41. Page 47, line 1.

Following: "body"

Strike: "review authority"

Insert: "governing body"

42. 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 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 spaces for recreational camping vehicles, ~~or mobile homes three or more dwelling units, or work camp structures constructed to exist for longer than one year.~~ For purposes of this subsection, "work camp structure" means housing provided by a person for two or more families or individuals living separately, 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 employer for persons who are employed to perform agricultural duties on a ranch or farm, if the employer's primary business is agriculture.

(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

43. Page 50, line 5.

Following: "by"

Insert: "operation of law or"

44. Page 51, line 10.

Following: "INDENTURES"

Insert: "until such time as the division is no longer providing that security"

**SURVCO**P.O. Box 3727 • 32406 Frontage Road  
Bozeman, Montana 59715 • Phone: (406) 587-5407

SENATE NATURAL RESOURCES

EXHIBIT NO. 1ADATE 3-25-91BILL NO. HB-671**TELECOPY COVER SHEET**DATE 3/26/91TIME 5:25 pmNUMBER OF COPIES  
(Including Cover Letter)

TO:

Company Name

Address

Attention

Fax. Number

FROM:

Name

Subject

(406) 587-5408  
Fax. Number(406) 587-5407  
Verifying Number

REMARKS:

Steve - enclosed are road proposed for  
House Bill 671 prepared by our Assoc. in consultation  
w/ the Flathead Co. planning office. I've FAXed  
these to Sen. Grosfield.

Rick

NOTE: If you did not receive all of the pages or if you have a question, please call the verifying number.

Sorry these are so late —

**ROAD STANDARDS IN SUBDIVISIONS  
OUTSIDE THE CITY LIMITS OF AN INCORPORATED CITY**

---

**ROAD STANDARDS  
WITHIN PROPOSED RESIDENTIAL SUBDIVISIONS  
CONSISTING OF TRACTS OF LESS THAN 5 ACRES IN SIZE**

- 1) FOR SUBDIVISIONS CREATING ONLY ONE ADDITIONAL PARCEL:  
LEGAL ACCESS TO FOR INGRESS, EGRESS, AND PUBLIC UTILITIES SHALL BE PROVIDED.
- 2) FOR SUBDIVISIONS CREATING 3 THROUGH 5 PARCELS:  
UNLESS THE PARCELS FRONT ON AN EXISTING PUBLIC ROAD:  
LEGAL ACCESS FOR INGRESS, EGRESS, AND PUBLIC UTILITIES SHALL BE PROVIDED BY A 60 FOOT EASEMENT OR OTHER RIGHT OF WAY.  
PHYSICAL ACCESS SHALL BE PROVIDED WITH A 16 FOOT WIDE SURFACE, WITH TEN PERCENT MAXIMUM GRADES.
- 3) FOR SUBDIVISIONS CREATING 6 THROUGH 20 PARCELS:  
LEGAL ACCESS FOR INGRESS, EGRESS, AND PUBLIC UTILITIES SHALL BE PROVIDED BY A 60 FOOT EASEMENT OR OTHER RIGHT OF WAY.  
PHYSICAL ACCESS SHALL BE PROVIDED WITH A 20 FOOT WIDE SURFACE, WITH TEN PERCENT MAXIMUM GRADES.
- 4) FOR SUBDIVISIONS CREATING MORE THAN 20 PARCELS:  
LEGAL ACCESS FOR INGRESS, EGRESS, AND PUBLIC UTILITIES SHALL BE PROVIDED BY A 60 FOOT EASEMENT OR OTHER RIGHT OF WAY.  
PHYSICAL ACCESS SHALL BE PROVIDED WITH A 26 FOOT WIDE SURFACE, WITH TEN PERCENT MAXIMUM GRADES.

**ROAD STANDARDS  
WITHIN PROPOSED RURAL SUBDIVISIONS  
CONSISTING OF TRACTS OF 5 ACRES TO LESS THAN 20 ACRES IN SIZE**

- 1) FOR SUBDIVISIONS CREATING ONLY ONE ADDITIONAL PARCEL:  
LEGAL ACCESS FOR INGRESS, EGRESS AND PUBLIC UTILITIES SHALL BE PROVIDED.
- 2) FOR SUBDIVISIONS CREATING 2 THROUGH 20 PARCELS:  
UNLESS THE PARCELS FRONT ON AN EXISTING PUBLIC ROAD:  
LEGAL ACCESS FOR INGRESS, EGRESS, AND PUBLIC UTILITIES SHALL BE PROVIDED BY A 60 FOOT EASEMENT OR OTHER RIGHT OF WAY.  
PHYSICAL ACCESS SHALL BE PROVIDED WITH A 16 FOOT WIDE SURFACE, WITH TEN PERCENT MAXIMUM GRADES.
- 3) FOR SUBDIVISIONS CREATING MORE THAN 20 PARCELS:  
LEGAL ACCESS FOR INGRESS, EGRESS, AND PUBLIC UTILITIES SHALL BE PROVIDED BY A 60 FOOT EASEMENT OR OTHER RIGHT OF WAY.  
PHYSICAL ACCESS SHALL BE PROVIDED WITH A 20 FOOT WIDE SURFACE, WITH TEN PERCENT MAXIMUM GRADES.

---

**ROAD STANDARDS  
WITHIN PROPOSED RURAL/RECREATIONAL SUBDIVISIONS  
CONSISTING OF TRACTS OF MORE THAN 20 ACRES IN SIZE**

- 1) FOR SUBDIVISIONS CREATING ONLY ONE ADDITIONAL PARCEL:  
LEGAL ACCESS FOR INGRESS, EGRESS, AND PUBLIC UTILITIES SHALL BE PROVIDED.
- 2) FOR SUBDIVISIONS CREATING MORE TWO PARCELS:  
LEGAL ACCESS FOR INGRESS, EGRESS, AND PUBLIC UTILITIES SHALL BE PROVIDED BY A 60 FOOT EASEMENT OR OTHER RIGHT OF WAY.  
PHYSICAL ACCESS SHALL BE PROVIDED WITH A 16 FOOT WIDE SURFACE, WITH TEN PERCENT MAXIMUM GRADES.

ANY OF THE ABOVE REQUIREMENTS MAY BE AMENDED BY APPLYING FOR A VARIANCE TO THE GOVERNING BODY, IDENTIFYING THE HARDSHIP IN COMPLYING WITH THE REQUIREMENTS, AND RECEIVING APPROVAL FROM THE GOVERNING BODY REGARDING THOSE REQUIREMENTS.

NEW PROPOSED DEFINITION OF MINOR SUBDIVISION

SENATE NATURAL RESOURCES

page 5, line 7

EXHIBIT NO. 1b

DATE 3-26-91

BILL NO. HB-671

(9) "Minor subdivision" means:

(a) for subdivisions involving the actual division of land, the first 5 parcels from a single tract of record as of July 1, 1991; or

(b) for subdivisions involving the provision of permanent multiple spaces for recreational camping vehicles, mobile homes, dwelling units, or work camp structures, as described in subsection (20)(a), the first 5 of these from a single tract of record as of July 1, 1991.

NEW PROPOSED EXEMPTION FROM PARKLAND REQUIREMENTS

page 36, line 10

(3) (a) A park dedication may not be required:

(i) for land proposed for subdivision into parcels larger than 5 acres;

(ii) for subdivision into parcels that are all nonresidential;

(iii) for subdivisions where no parcels are created, except when that subdivision provides permanent multiple spaces for mobile homes or condominiums; or

(iv) where only one <sup>additional</sup> parcel is created.

(b) If a future subdivision of the land creates parcels smaller than 5 acres, park dedication is required according to the provisions of this chapter.

Alternative proposals for defining subdivisions where a division of land is not created:

--change the definition of dwelling unit to "detached residential structure" (this eliminates apartment buildings, duplexes, fourplexes, etc.  
(p. 4, lines 5-7)

--provide an agricultural exemption for less than (4) [3] dwelling units on a farm or ranch by adding the following:

page 10, line 4  
Insert: "(A)" following (xii)

page 10, lines 10-13  
Strike: definition of agricultural producer (to be reinserted in another place)

page 10  
Following: line 13  
Insert: "or

(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 (4) [3] dwelling units;

(C) For purposes of this section, agricultural producer means a person primarily engaged in the production of agricultural products."

--add clarification on page 8, lines 16-18 that exemption does not apply to entire dwelling units

SENATE NATURAL RESOURCES

EXHIBIT NO. 1c

DATE 3-26-91

BILL NO. HB-671

FOR DISCUSSION PURPOSES ONLY    SENATE NATURAL RESOURCES

1    HOUSE BILL NO. 671 INTRODUCED BY GILBERT, HARPER, ECK, RANEY, <sup>EXHIBIT NO. 2</sup>  
2    BRADLEY, WALLIN, LEE    DATE \_\_\_\_\_

3    BILL NO. HB-671

4    A BILL FOR AN ACT ENTITLED:    "AN ACT TO GENERALLY REVISE THE  
5    MONTANA SUBDIVISION AND PLATTING ACT; REDEFINING SUBDIVISION;  
6    REMOVING CERTAIN EXEMPTIONS; PROVIDING AN EXPEDITED REVIEW  
7    PROCESS FOR MINOR SUBDIVISIONS AND SPECIAL SUBDIVISIONS;  
8    PROVIDING PUBLIC HEARING GUIDELINES AND AN OPTIONAL INFORMATIONAL  
9    HEARING PROCEDURE; ESTABLISHING PRIMARY CRITERIA FOR REVIEW OF  
10    ALL SUBDIVISIONS; PROVIDING CERTAIN ADDITIONAL REVIEW  
11    REQUIREMENTS FOR MAJOR SUBDIVISIONS; ~~PROVIDING FOR SUITS AGAINST~~  
12    ~~A GOVERNING BODY;~~ AMENDING SECTIONS 7-16-2324, 76-3-102, 76-3-  
13    103, 76-3-104, 76-3-105, 76-3-301, 76-3-302, 76-3-304, 76-3-305,  
14    76-3-401, 76-3-402, ~~76-3-403~~, 76-3-404, 76-3-405, 76-3-501, 76-3-  
15    507, 76-3-601, 76-3-603, 76-3-608, 76-3-610, 76-3-611, 76-3-613,  
16    76-3-614, 76-4-102, 76-4-103, 76-4-125, AND 76-6-203, MCA;  
17    REPEALING SECTIONS 76-3-201, 76-3-202, 76-3-203, 76-3-204, 76-3-  
18    205, 76-3-206, 76-3-207, 76-3-208, 76-3-209, 76-3-210, 76-3-504,  
19    76-3-505, 76-3-604, 76-3-605, 76-3-606, 76-3-607, AND 76-3-609,  
20    MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY  
21    DATES."

22  
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:

26        "76-3-102. Statement of purpose. It is the purpose of this  
27    chapter to ~~promote the public health, safety, and general welfare~~  
28    ~~by regulating the subdivision of land; to prevent overcrowding of~~  
29    ~~land; to lessen congestion in the streets and highways; to~~  
30    ~~provide for adequate light, air, water supply, sewage disposal,~~  
31    ~~parks and recreation areas, ingress and egress, and other public~~  
32    ~~requirements; to require development in harmony with the natural~~  
33    ~~environment; to require that whenever necessary, the appropriate~~  
34    ~~approval of subdivisions be contingent upon a written finding of~~  
35    ~~public interest by the governing body; and to~~ PROMOTE THE PUBLIC

1 HEALTH, SAFETY, AND GENERAL WELFARE BY REGULATING THE SUBDIVISION  
2 OF LAND; TO PREVENT OVERCROWDING OF LAND; TO LESSEN CONGESTION IN  
3 THE STREETS AND HIGHWAYS; TO PROVIDE FOR ADEQUATE LIGHT, AIR,  
4 WATER SUPPLY, SEWAGE DISPOSAL, PARKS AND RECREATION AREAS,  
5 INGRESS AND EGRESS, AND OTHER PUBLIC REQUIREMENTS ADOPTED  
6 PURSUANT TO THIS CHAPTER; TO REQUIRE DEVELOPMENT IN HARMONY WITH  
7 THE NATURAL ENVIRONMENT; to require that whenever necessary, the  
8 appropriate approval of subdivisions be contingent upon a written  
9 finding of public interest by the governing body; and TO require  
10 uniform monumentation of land subdivisions and transferring  
11 divisions; TO require that the transfer of interests in real  
12 property be made by reference to plat or certificate of survey;  
13 TO provide simple, clear, and uniform guidelines for review of  
14 subdivisions; AND TO promote REQUIRE environmentally sound  
15 subdivisions; and protect public health, safety, and welfare in a  
16 manner that also protects the rights of property owners. FOR THE  
17 PURPOSE OF THIS CHAPTER, RIGHTS OF PROPERTY OWNERS INCLUDE THE  
18 RIGHT TO USE, ENJOY, IMPROVE, SELL, AND CONVEY, IN TOTAL OR IN  
19 PART, REAL PROPERTY SO LONG AS THE EXERCISE OF THE RIGHTS DOES  
20 NOT DENY THESE RIGHTS TO OTHER PROPERTY OWNERS OR ADVERSELY  
21 AFFECT PUBLIC HEALTH, SAFETY, AND WELFARE."

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

23 "76-3-103. Definitions. As used in this chapter, unless the  
24 context or subject matter clearly requires otherwise, the  
25 following words or phrases shall have the following meanings:

26 (1) "Certificate of survey" means a drawing of a field  
27 survey prepared by a registered professional land surveyor for  
28 the purpose of disclosing facts pertaining to boundary locations.

29 (2) "Dedication" means the deliberate appropriation of land  
30 by an owner for any general and public use, reserving to himself  
31 no rights which are incompatible with the full exercise and  
32 enjoyment of the public use to which the property has been  
33 devoted.

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

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

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

(4) "DWELLING UNIT" MEANS A DETACHED RESIDENTIAL STRUCTURE IN WHICH A PERSON OR PERSONS RESIDE.

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

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

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

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

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

~~(9)(7)(8)~~ "Legal access" means access by easement or other right-of-way that provides the property owner THE RIGHT OF ingress and egress to or from any tract or parcel created by a subdivision.

~~(10)(8)(9)~~ "Major subdivision" means a subdivision that is not a minor subdivision or special subdivision.

~~(11)(9)(10)~~ "Minor subdivision" means: a subdivision of THE FIRST five or fewer parcels. A second or subsequent minor

~~subdivision from a single tract of record as of July 1, 1991, may not be considered a minor subdivision for review purposes unless the subdivider notifies the reviewing authority of the subdivider's intention to create subsequent parcels, up to the five parcel limit, at the time of the initial minor subdivision application.~~

(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 HOOK-UPS FOR RECREATIONAL CAMPING VEHICLES, MOBILE HOMES, DWELLING UNITS, OR WORK CAMP STRUCTURES, AS DESCRIBED IN SUBSECTION (21)(A), THE FIRST FIVE OF THESE FROM A SINGLE TRACT OF RECORD AS OF JULY 1, 1991.

~~(12)(10)(11)~~ "Physical access" means access by a road that meets the standards set by the governing body according to 76-3-501.

~~(8)(13)(11)~~ (12) "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, office building parks, or any combination thereof which comprises a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

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

~~(10)(15)(13)~~ (14) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision which furnish a basis for review by a governing body.

~~(11)(16)(14)~~ (15) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this

chapter and in regulations adopted pursuant thereto to this chapter.

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

~~(12)(18)(15)(16)~~ "Registered professional land surveyor" means a person licensed in conformance with Title 37, chapter 67, to practice surveying in the state of Montana.

~~(13)(19)(16)(17)~~ "Registered professional engineer" means a person licensed in conformance with Title 37, chapter 67, to practice engineering in the state of Montana.

~~(20)(17)(18)~~ "Review authority" means the person or entity GOVERNING BODY with authority to approve, conditionally approve, or disapprove a subdivision application.

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

~~(14)(22)(19)(20)~~ "Subdivider" means any person who causes land to be subdivided or who proposes a subdivision of land.

~~(15)(23)(20)(21)~~ (a) "Subdivision" means, EXCEPT AS PROVIDED IN (21)(B), a division of land or land so divided which that it creates one or more 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 shall include The term includes any resubdivision and shall further include any residential condominium or building and further includes any area, regardless of its size, which that provides or will provide multiple space three or more spaces for recreational camping

1 ~~vehicles, or mobile homes dwelling units, or work camp structures~~  
2 ~~constructed to exist for longer than 1 year. THE TERM INCLUDES:~~

3 ~~(i) ANY RESUBDIVISION;~~

4 ~~(ii) ANY RESIDENTIAL CONDOMINIUM OR BUILDING;~~

5 ~~(iii) ANY AREA, REGARDLESS OF ITS SIZE, THAT PROVIDES OR~~  
6 ~~WILL PROVIDE MULTIPLE SPACE FOR RECREATIONAL CAMPING VEHICLES OR~~  
7 ~~DWELLING UNITS; AND~~

8 ~~(iv) WORK CAMP STRUCTURES CONSTRUCTED TO EXIST FOR LONGER~~  
9 ~~THAN 1 YEAR. IN ORDER THAT THE TITLE TO OR POSSESSION OF THE~~  
10 ~~PARCELS MAY BE SOLD, RENTED, LEASED, OR OTHERWISE CONVEYED. THE~~  
11 ~~TERM INCLUDES ANY RESUBDIVISION; ANY RESIDENTIAL CONDOMINIUM~~  
12 ~~BUILDING; AND FURTHER INCLUDES ANY AREA, REGARDLESS OF ITS SIZE,~~  
13 ~~THAT PROVIDES OR WILL PROVIDE PERMANENT MULTIPLE SPACES WITH~~  
14 ~~UTILITY HOOK-UPS FOR RECREATIONAL CAMPING VEHICLES; MOBILE HOMES;~~  
15 ~~DWELLING UNITS; OR WORK CAMP STRUCTURES CONSTRUCTED TO EXIST FOR~~  
16 ~~LONGER THAN ONE YEAR. FOR PURPOSES OF THIS SUBSECTION, "WORK~~  
17 ~~CAMP STRUCTURE" MEANS HOUSING PROVIDED BY A PERSON FOR TWO OR~~  
18 ~~MORE FAMILIES OR INDIVIDUALS LIVING SEPARATELY, FOR THE EXCLUSIVE~~  
19 ~~USE OF THE EMPLOYEES OF THAT PERSON AND THE FAMILIES, IF ANY, OF~~  
20 ~~THE EMPLOYEES. "HOUSING" DOES NOT INCLUDE SHELTER PROVIDED BY AN~~  
21 ~~AGRICULTURAL EMPLOYER FOR PERSONS WHO ARE PRIMARILY EMPLOYED TO~~  
22 ~~PERFORM AGRICULTURAL DUTIES ON THAT PERSON'S RANCH OR FARM.~~

23 (b) Subdivision does not mean:

24 (i) a division creating cemetery lots only;

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

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

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

31 (v) the sale, rent, lease, or other conveyance OR USE of  
32 one or more parts of a building, structure, or other improvement,  
33 whether existing or proposed;

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

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

12        (viii) except for the survey requirements in 76-3-401  
13 through 76-3-405 and any applicable zoning requirements, a  
14 division made for the purpose of relocating boundary lines  
15 between adjoining properties, provided the division is recorded  
16 in both EITHER the INDEX OF certificate CERTIFICATES of survey  
17 and OR the index provided for in 76-3-613, AS APPLICABLE, and  
18 unless the governing body determines that the subdivision may be  
19 used to create subdivisions for resale AS LONG AS NO ADDITIONAL  
20 PARCELS ARE CREATED;

21        (ix) except for the survey requirements in 76-3-401 through  
22 76-3-405, a division made exclusively for agricultural OR  
23 SILVICULTURAL purposes by sale or agreement to buy and sell if  
24 the division is outside of a platted subdivision and if the local  
25 governing body and the subdivider enter into a covenant running  
26 with the land that the divided parcels must be used exclusively  
27 for agricultural purposes. The governing body shall agree to  
28 release the covenant upon petition by the subdivider if the  
29 subdivision proposal complies with the provisions of this  
30 chapter. DIVISIONS MADE FOR AGRICULTURAL OR SILVICULTURAL  
31 PURPOSES MUST BE NOTED ON THE CERTIFICATE OF SURVEY OR OTHER  
32 RECORDED INSTRUMENT OF CONVEYANCE.

33        (x) except for the survey requirements in 76-3-401 through  
34 76-3-405 and the review requirements of 76-3-610 through 76-3-

1 614, a division THAT DOES NOT CONSTITUTE A SUBDIVISION AS DEFINED  
2 BY THIS CHAPTER created by rent or lease;

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

6 (xii)(A) except for requirements other than the survey and  
7 platting requirements in 76-3-401 through 76-3-405 and the review  
8 requirements of 76-4-101 through 76-4-131, a division created by  
9 an agricultural producer for sale or gift to a member of the  
10 agricultural producer's immediate family for the purpose of  
11 maintaining the agricultural operation and limited to a single  
12 sale or gift to each IMMEDIATE family member. ADDITIONAL SALES OR  
13 GIFTS TO EACH IMMEDIATE FAMILY MEMBER OF AN AGRICULTURAL PRODUCER  
14 MAY BE MADE FOR ADJOINING PROPERTIES UNDER THE PROVISIONS OF  
15 SUBSECTION (21) (B) (VIII) OF THIS SECTION, AS LONG AS NO  
16 ADDITIONAL PARCELS ARE CREATED; OR For the purposes of this  
17 section, agricultural producer means a person primarily engaged  
18 in the production of agricultural products.

19 (B) THE CREATION BY AN AGRICULTURAL PRODUCER OF ANY AREA,  
20 REGARDLESS OF ITS SIZE, THAT PROVIDES OR WILL PROVIDE PERMANENT  
21 MULTIPLE SPACES FOR LESS THAN 4 DWELLING UNITS.

22 (C) FOR PURPOSES OF THIS SECTION, AGRICULTURAL PRODUCER  
23 MEANS A PERSON PRIMARILY ENGAGED IN THE PRODUCTION OF  
24 AGRICULTURAL PRODUCTS.

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

28 (XIV) A DIVISION CREATED TO PROVIDE SECURITY FOR MORTGAGES,  
29 LIENS, OR TRUST INDENTURES, UNTIL SUCH TIME AS THE DIVISION IS NO  
30 LONGER PROVIDING THAT SECURITY.

31 (24)(21)(22) "Subdivision review officer" means the person  
32 designated by the governing body to administer subdivision review  
33 or to approve, conditionally approve, or disapprove applications  
34 for minor subdivisions or special subdivisions AND TO ADVISE THE  
35 REVIEW AUTHORITY ON SUBDIVISIONS.

1 ~~(25)(22)(23)~~ "Tract of record" means a tract of record as  
2 appears in the records of the county clerk and recorder's office.

3 ~~(23)(24)~~ "WATER USER ENTITY" MEANS AN ENTITY AS DESCRIBED IN  
4 7-12-1151 AND IRRIGATION DISTRICTS AS PROVIDED IN 85-7-101."

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

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

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

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

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

26 NEW SECTION. Section 5. Violations -- actions against  
27 governing body. A person who has filed with the governing body an  
28 application for a permit under this chapter may bring an action  
29 against the governing body to recover actual damages caused by:

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

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

35 (a) arbitrary or capricious; or

1 ~~(b) unlawful or exceeds lawful authority.~~

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

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

7 "76-3-301. General restriction on transfer of title to  
8 subdivided lands. (1) Except as provided in 76-3-303, every final  
9 subdivision plat must be filed for record with the county clerk  
10 and recorder before title to the subdivided land can be sold or  
11 transferred in any manner. The clerk and recorder of the county  
12 shall refuse to accept any plat for record that fails to have the  
13 approval of 76-3-611(1) in proper form.

14 (2) The clerk and recorder shall notify the governing body  
15 or its designated agent of any land division ~~described in 76-3-~~  
16 ~~207(1)~~ exempted from review but subject to survey requirements.

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

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

23 "76-3-302. Restrictions on recording instruments relating  
24 to land subject to surveying requirements. (1) Except as provided  
25 in subsection (2), the county clerk and recorder of any county  
26 may not record any instrument ~~which~~ that purports to transfer  
27 title to or possession of a parcel or tract of land ~~which~~ that is  
28 required to be surveyed by this chapter unless the required  
29 certificate of survey or subdivision plat has been filed with the  
30 clerk and recorder and the instrument of transfer describes the  
31 parcel or tract by reference to the filed certificate or plat.

32 (2) Subsection (1) does not apply when the parcel or tract  
33 to be transferred was created before July 1, 1973, and the  
34 instrument of transfer for the parcel or tract includes a  
35 reference to a previously recorded instrument of transfer or is

1 accompanied by documents ~~which, if recorded, would otherwise~~  
2 ~~satisfy the requirements of this subsection. The reference or~~  
3 ~~document must~~ that demonstrate that the parcel or tract existed  
4 before July 1, 1973.

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

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

9 "76-3-304. Effect of recording filing complying plat. The  
10 recording filing of any plat made in compliance with the  
11 provisions of this chapter ~~shall serve~~ serves to establish the  
12 identity of all lands shown on and ~~being a part of such~~ the plat.  
13 ~~Where~~ When lands are conveyed by reference to a plat, the plat  
14 itself or any copy of the plat properly certified by the county  
15 clerk and recorder as being a true copy ~~thereof shall of the plat~~  
16 must be regarded as incorporated into the instrument of  
17 conveyance and ~~shall~~ must be received in evidence in all courts  
18 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) Any  
21 plat prepared and recorded as ~~herein~~ provided in this part may be  
22 vacated either in whole or in part as provided by 7-5-2501, 7-5-  
23 2502, subsections (1) and (2) of 7-14-2616, 7-14-2617,  
24 subsections (1) and (2) of 7-14-4114, and 7-14-4115, and upon  
25 such vacation the title to the streets and alleys of ~~such~~ the  
26 vacated portions to the center ~~thereof shall revert of the street~~  
27 or alley reverts to the owners of the properties within the  
28 platted area adjacent to ~~such~~ the vacated portions.

29 (2) ~~However, when any~~ If a poleline, pipeline, or any other  
30 public or private facility is located in a vacated street or  
31 alley at the time of the reversion of the title ~~thereto of the~~  
32 street or alley, the owner of ~~said~~ the public or private utility  
33 facility ~~shall have~~ has an easement over the vacated land to  
34 continue the operation and maintenance of the public or private  
35 utility facility."

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

2           "76-3-401. Survey requirements for divisions of lands other  
3 ~~than subdivisions~~. All divisions of land ~~for sale other than a~~  
4 ~~subdivision after July 1, 1974,~~ into parcels which parts that  
5 cannot be described as ~~1/32 1/16~~ 1/32 or larger aliquot parts of  
6 a United States government section or AS a United States  
7 government lot must be surveyed by or under the supervision of a  
8 registered professional land surveyor."

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

10          "76-3-402. Survey and platting requirements for subdivided  
11 lands. (1) Every subdivision of land after June 30, 1973, shall  
12 must be surveyed and platted in conformance with this chapter by  
13 or under the supervision of a registered professional land  
14 surveyor.

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

18          (3) All division of sections into aliquot parts and  
19 retracement of lines must conform to United States bureau of land  
20 management instructions, and all public land survey corners shall  
21 must be filed in accordance with the Corner Recordation Act of  
22 Montana (Title 70, chapter 22, part 1). Engineering plans,  
23 specifications, and reports required in connection with public  
24 improvements and other elements of the subdivision required by  
25 the governing body shall must be prepared and filed by a  
26 registered professional engineer or a registered professional  
27 land surveyor as their respective licensing laws allow in  
28 accordance with this chapter and regulations adopted pursuant  
29 ~~thereto to this chapter~~."

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

31          ~~"76-3-403. Monumentation. (1) The department of commerce~~  
32 ~~shall, in conformance with the Montana Administrative Procedure~~  
33 ~~Act, prescribe uniform standards for monumentation and for the~~  
34 ~~form, accuracy, and descriptive content of records of survey.~~

1       ~~(2) It shall be the responsibility of the governing body to~~  
2 ~~require the replacement of all monuments removed in the course of~~  
3 ~~construction."~~

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

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

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

14       (b) reveals a material discrepancy in ~~such~~ a map;

15       (c) discloses evidence to suggest alternate locations of  
16 lines or points; or

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

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

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

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

30       "76-3-405. Administration of oaths by registered land  
31 surveyor. (1) ~~Every~~ A registered professional land surveyor may  
32 administer and certify oaths when:

33       (a) it becomes necessary to take testimony for the  
34 identification of old corners or reestablishment of lost or  
35 obliterated corners;

1 (b) a corner or monument is found in a deteriorating  
2 condition and it is desirable that evidence concerning it be  
3 perpetuated; or

4 (c) the importance of the survey makes it desirable to  
5 administer an oath to his assistants for the faithful performance  
6 of their duty.

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

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

11 "76-3-501. Local subdivision regulations. (1) ~~Before July~~  
12 ~~1, 1974, the~~ The governing body of every county, city, and town  
13 shall, IN A MANNER THAT PROTECTS THE RIGHTS OF PROPERTY OWNERS,  
14 adopt and provide for the enforcement and administration of  
15 subdivision regulations reasonably providing for the orderly  
16 development of their jurisdictional areas; for the coordination  
17 of roads within subdivided land with other roads, both existing  
18 and planned; for the dedication of land for roadways and for  
19 public utility easements; for the improvement of roads; for the  
20 provision of adequate open spaces for travel, light, air, and  
21 recreation; for the provision of adequate transportation, water,  
22 drainage, and sanitary facilities; for the avoidance or  
23 minimization of congestion; and for the avoidance of subdivision  
24 which would involve unnecessary environmental degradation and the  
25 avoidance of danger of injury to health, safety, or welfare by  
26 reason of natural hazard or the lack of water, drainage, access,  
27 transportation, or other public services or would necessitate an  
28 excessive expenditure of public funds for the supply of such  
29 services. implementing the provisions of this chapter that are  
30 consistent with the statement of purpose described in 76-3-102  
31 and that do not unreasonably restrict a landowner's ability to  
32 develop land. PROVIDING FOR THE ORDERLY DEVELOPMENT OF THEIR  
33 JURISDICTIONAL AREAS; FOR THE COORDINATION OF ROADS WITHIN  
34 SUBDIVIDED LAND WITH OTHER ROADS, BOTH EXISTING AND PLANNED; FOR  
35 THE DEDICATION OF LAND FOR ROADWAYS AND FOR PUBLIC UTILITY

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

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

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

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

29 (d) procedures and standards concerning the application of  
30 review criteria to subdivision applications, as provided for in  
31 76-3-608 and [section ~~26~~ 24];

32 (e) standards for the design and arrangement of lots,  
33 streets, and roads; grading and drainage; and for the location  
34 and installation of utilities. Standards for the design of  
35 streets and roads may not exceed the requirements for anticipated

1 vehicle use. VARIANCES FROM ROAD STANDARDS MAY BE GRANTED FOR  
2 SUBDIVISIONS REQUIRING MINIMAL VEHICLE USE.

3 ~~(f) financial incentives for developments that accommodate~~  
4 ~~public values~~ FINANCIAL OR OTHER POSITIVE INCENTIVES FOR  
5 DEVELOPMENTS THAT ACCOMMODATE PUBLIC VALUES;

6 (G) IF A PROPOSED MAJOR, MINOR, OR SPECIAL SUBDIVISION LIES  
7 PARTLY OR TOTALLY WITHIN THE BOUNDARIES OF A WATER USER ENTITY,  
8 THAT THE PROPOSED PLAT OF THE SUBDIVISION BE SUBMITTED FOR REVIEW  
9 TO THE WATER USER ENTITY TO ENSURE THAT THE EXISTENCE AND  
10 LOCATION OF ALL WATER USER FACILITIES ARE PROPERLY NOTED ON THE  
11 PLAT. WATER USER FACILITIES INCLUDE BUT ARE NOT LIMITED TO  
12 CANALS, LATERALS, OPEN DRAINS, AND CLOSED DRAINS.

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

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

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

24 ~~(2) Local regulations may provide that, in (a)~~ In lieu of  
25 the completion of the construction of any public improvements  
26 prior to the approval of a final plat, the ~~governing body~~  
27 subdivider shall require provide a bond or other reasonable  
28 security, in an amount and with surety and conditions  
29 satisfactory to ~~it~~ the governing body, providing for and securing  
30 the construction and installation of ~~such~~ the improvements within  
31 a period specified by the governing body and expressed in the  
32 bonds or other security. The governing body shall reduce bond  
33 requirements commensurate with the completion of improvements.

34 (b) In lieu of requiring a bond or other means of security  
35 for the construction or installation of all the required public

1 improvements under subsection (2)(a), the governing body may  
2 approve an incremental payment or guarantee plan. The  
3 improvements in a prior increment must be completed, or the  
4 payment or guarantee of payment for the costs of the improvements  
5 incurred in a prior increment must be satisfied, before  
6 development of future increments.

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

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

12 "76-3-601. Submission of preliminary plat for review. (1)  
13 ~~Except where a plat is eligible for summary approval, the~~  
14 ~~subdivider shall present to the governing body or the agent or~~  
15 ~~agency designated thereby the preliminary plat of the proposed~~  
16 ~~subdivision for local review. The preliminary plat shall show all~~  
17 ~~pertinent features of the proposed subdivision and all proposed~~  
18 ~~improvements. The subdivider shall present the preliminary plat~~  
19 of the proposed subdivision to the subdivision review officer for  
20 review. The subdivision review officer shall determine whether  
21 the proposed subdivision is a major subdivision, minor  
22 subdivision, or special subdivision according to the definitions  
23 in 76-3-103.

24 (2) (a) When the proposed subdivision lies within the  
25 boundaries of an incorporated city or town, the preliminary plat  
26 shall must be submitted to and approved by the city or town  
27 governing body review authority.

28 (b) When the proposed subdivision is situated entirely in  
29 an unincorporated area, the preliminary plat shall must be  
30 submitted to and approved by the governing body of the  
31 appropriate county review authority. However, if the proposed  
32 subdivision lies within 1 mile of a third-class city or town or  
33 within 2 miles of a second-class city or within 3 miles of a  
34 first-class city, the county governing body review authority

1 shall submit the preliminary plat to the city or town governing  
2 body or its designated agent for review and comment.

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

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

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

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

17 "76-3-603. Contents of environmental assessment. Where  
18 ~~required, the~~ An environmental assessment ~~shall~~ must accompany  
19 the preliminary plat for any major subdivision and ~~shall~~ must  
20 include:

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

26 ~~(2) maps and tables showing soil types in the several parts~~  
27 ~~of the proposed subdivision and their suitability for any~~  
28 ~~proposed developments in these several parts;~~

29 ~~(3) a community impact report containing a statement of~~  
30 ~~anticipated needs of the proposed subdivision for local services,~~  
31 ~~including education and busing, roads and maintenance, water,~~  
32 ~~sewage, and solid waste facilities, and fire and police~~  
33 ~~protection;~~

34 ~~(4) such additional relevant and reasonable information as~~  
35 ~~may be required by the governing body.~~

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

4        (3) ADDITIONAL RELEVANT AND REASONABLE INFORMATION RELATED  
5 TO THE APPLICABLE REGULATORY CRITERIA AS MAY BE REQUIRED BY THE  
6 GOVERNING BODY."

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

18        ~~(2) The governing body, or the planning board if designated~~  
19 ~~as the review authority by the governing body,~~ shall approve,  
20 conditionally approve, or disapprove an application for a major  
21 subdivision within 60 days following the submission of a complete  
22 application. However, the subdivider and the ~~governing body or~~  
23 review authority may agree to extend the time period.

24        (3) An application for a major subdivision may not receive  
25 more than ~~two~~ ONE informational ~~hearings~~ HEARING. The hearing ~~or~~  
26 ~~hearings~~ must be conducted by the governing body unless it  
27 delegates the responsibility to the planning board or to a  
28 hearing officer under subsection (5) or conducts a joint hearing  
29 with the planning board. When a hearing is held by the planning  
30 board or a hearing officer, the board or officer shall make  
31 findings and recommendations for submission to the governing body  
32 concerning approval, conditional approval, or disapproval of the  
33 plat not later than 10 days after the informational hearing.

34        (4) Within 21 days following submission to the governing  
35 body of the complete application by the subdivider, an

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

3 (a) the subdivider;

4 (b) a citizen who would be SUBSTANTIALLY adversely affected  
5 by the subdivision; or

6 (c) the review authority.

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

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

28 (7) Not less than 15 days prior to the date of an  
29 informational hearing on an application for a major subdivision,  
30 notice of the INFORMATIONAL hearing ~~and of the type of hearing~~  
31 ~~must be given~~ BY THE GOVERNING BODY by publication in a newspaper  
32 of general circulation in the county in which the subdivision is  
33 located. The subdivider, each adjoining property owner of record,  
34 and each purchaser of record under contract for deed of property  
35 adjoining the land included in the plat must also be notified of

1 the hearing by certified mail not less than 15 days prior to the  
2 date of the hearing.

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

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

19 (2) ~~The governing body, or the planning board or~~  
20 ~~subdivision review officer if either is designated the review~~  
21 ~~authority by the governing body,~~ shall approve, conditionally  
22 approve, or disapprove an application for a minor subdivision or  
23 special subdivision.

24 (3) A determination on the application must be made within  
25 35 days following submission of a complete application unless the  
26 review authority and the subdivider agree to extend the time  
27 period.-

28 ~~(4) A public hearing may be held on a minor or special~~  
29 ~~subdivision only if:-~~

30 ~~(a) the subdivision would be located in an area having~~  
31 ~~unique cultural, historical, or natural resources that are~~  
32 ~~susceptible to substantial adverse effects from subdivision~~  
33 ~~development or if the subdivision would cause substantial adverse~~  
34 ~~fiscal costs to local government; and-~~

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

5       ~~(4) WITHIN 15 DAYS FOLLOWING SUBMISSION TO THE GOVERNING~~  
6 ~~BODY OF A COMPLETE APPLICATION BY THE SUBDIVIDER, A PUBLIC~~  
7 ~~HEARING ON THE SUBDIVISION MAY BE REQUESTED BY THE SUBDIVIDER OR~~  
8 ~~BY A CITIZEN WHO DEMONSTRATES THAT HE WOULD BE SUBSTANTIALLY~~  
9 ~~ADVERSELY AFFECTED BY THE SUBDIVISION. AN INFORMATIONAL HEARING~~  
10 ~~MAY BE HELD ON A MINOR OR SPECIAL SUBDIVISION ONLY IF:~~

11       ~~(A) THE SUBDIVISION WOULD BE LOCATED IN AN AREA HAVING~~  
12 ~~UNIQUE CULTURAL OR HISTORICAL RESOURCES, OR ENVIRONMENTAL OR~~  
13 ~~ECOLOGICAL RESOURCES THAT ARE SUSCEPTIBLE TO SUBSTANTIAL ADVERSE~~  
14 ~~EFFECTS FROM SUBDIVISION DEVELOPMENT; OR IF THE SUBDIVISION WOULD~~  
15 ~~CAUSE SUBSTANTIAL ADVERSE FISCAL COSTS TO LOCAL GOVERNMENT; AND~~

16       ~~(B) THE SUBDIVIDER OR A CITIZEN WHO DEMONSTRATES THAT HE~~  
17 ~~WOULD BE ADVERSELY AFFECTED BY THE PROPOSED SUBDIVISION REQUESTS~~  
18 ~~A HEARING FROM THE GOVERNING BODY WITHIN 15 DAYS FOLLOWING~~  
19 ~~SUBMISSION OF A COMPLETE APPLICATION.~~

20       (5) If requested by the subdivider, OR an affected citizen  
21 who petitions REQUESTS A HEARING under subsection (4), ~~or the~~  
22 ~~review authority,~~ the hearing must be conducted as an  
23 informational hearing as provided for in [section 20 18]. The  
24 governing body shall designate the hearing officer, ~~and, if the~~  
25 ~~hearing is held pursuant to the subdivider's or an affected~~  
26 ~~citizen's request, the governing body may assess costs of the~~  
27 ~~hearing to the requester. The~~ THE hearing officer shall submit  
28 findings and recommendations to the review authority concerning  
29 the approval, conditional approval, or disapproval of the plat  
30 not later than 10 days after the ~~public~~ hearing and within the  
31 time period determined under subsection (3).

32       (6) An application for a minor subdivision or special  
33 subdivision may not receive more than one ~~public~~ hearing. The  
34 ~~public~~ hearing must be conducted by the governing body unless it

1 delegates that responsibility to the subdivision review officer,  
2 the planning board, or a hearing officer under subsection (5).

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

13 (8) Regardless of whether ~~or not~~ a public hearing is held,  
14 if the ~~review authority~~ SUBDIVISION REVIEW OFFICER determines  
15 that substantial adverse impacts on ~~the factors listed in~~  
16 ~~subsection (4) are probable~~ CULTURAL OR HISTORICAL RESOURCES OR  
17 ENVIRONMENTAL OR ECOLOGICAL RESOURCES, INCLUDING WILDLIFE AND  
18 WILDLIFE HABITAT, ARE PROBABLE OR THAT THE SUBDIVISION WOULD  
19 CAUSE SUBSTANTIAL ADVERSE FISCAL COSTS TO THE LOCAL  
20 GOVERNMENT, THE FACTORS LISTED IN SUBSECTION (4) ARE PROBABLE, the  
21 ~~review authority~~ SUBDIVISION REVIEW OFFICER shall schedule a  
22 consultation with the subdivider, knowledgeable persons, and  
23 agency 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 ~~(4)~~ (4).

26 (9) The ~~review authority~~ SUBDIVISION REVIEW OFFICER shall  
27 report the results of the meeting to the ~~governing body~~ REVIEW  
28 AUTHORITY and may make a recommendation.

29 (10) The ~~governing body~~ REVIEW AUTHORITY may require the  
30 subdivider to design the subdivision to minimize any potentially  
31 significant adverse impacts. ~~IT IS RECOGNIZED THAT IN SOME~~  
32 ~~INSTANCES THE IMPACTS OF A PROPOSED DEVELOPMENT MAY BE~~  
33 ~~UNACCEPTABLE AND WILL PRECLUDE APPROVAL OF THE PLAT.~~

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

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

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

11           ~~(b) IN REVIEWING A SUBDIVISION UNDER SUBSECTION (4), A~~  
12 ~~REVIEW AUTHORITY MUST BE GUIDED BY THE FOLLOWING STANDARDS:~~

13           ~~(A) MITIGATION MEASURES IMPOSED SHOULD NOT UNREASONABLY~~  
14 ~~RESTRICT A LANDOWNER'S ABILITY TO DEVELOP LAND, BUT IT IS~~  
15 ~~RECOGNIZED THAT IN SOME INSTANCES THE UNMITIGATED IMPACTS OF A~~  
16 ~~PROPOSED DEVELOPMENT MAY BE UNACCEPTABLE AND WILL PRECLUDE~~  
17 ~~APPROVAL OF THE PLAT.~~

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

24           (13) The review authority shall approve, conditionally  
25 approve, or disapprove the application after the hearing has  
26 occurred or the opportunity for hearing has expired. ~~If the~~  
27 ~~review authority is the governing body or planning board, the~~ THE  
28 decision must be made during executive proceedings. ~~If the~~  
29 ~~subdivision review officer is designated the review authority,~~  
30 ~~the review officer shall proceed according to the following~~  
31 ~~requirements:~~

32           ~~(a) The subdivision review officer shall notify the~~  
33 ~~governing body and the planning board, if one exists, of the~~  
34 ~~review officer's decision.~~

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

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

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

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

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

NEW SECTION. Section 21. Park dedication requirement. (1) Except as provided in subsections (2), (3), and (7), a subdivider shall dedicate to the governing body a cash or land donation equal to:

(a) ~~7.5%~~ 10% of the fair market value of the land proposed to be subdivided into parcels of one-half acre or smaller;

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

4 (c) ~~2.5%~~ 5% of the fair market value of the land proposed  
5 to be subdivided into parcels larger than 1 acre and not larger  
6 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 and  
9 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 subdivider to~~  
12 ~~dedicate to the governing body a cash or land donation equal to:~~

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

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

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

22 ~~(d) 1.25% of the fair market value of the land proposed to~~  
23 ~~be subdivided if the development density is 3 to 4.99 dwelling~~  
24 ~~units per acre. WHEN A SUBDIVISION IS LOCATED TOTALLY WITHIN AN~~  
25 ~~AREA FOR WHICH DENSITY REQUIREMENTS HAVE BEEN ADOPTED PURSUANT TO~~  
26 ~~A MASTER PLAN UNDER TITLE 76, CHAPTER 1, OR PURSUANT TO ZONING~~  
27 ~~REGULATIONS UNDER TITLE 76, CHAPTER 2, THE GOVERNING BODY MAY~~  
28 ~~ESTABLISH PARK DEDICATION REQUIREMENTS BASED ON THE COMMUNITY~~  
29 ~~NEED FOR PARKS AND THE DEVELOPMENT DENSITIES IDENTIFIED IN THE~~  
30 ~~PLANS OR REGULATIONS. PARK DEDICATION REQUIREMENTS ESTABLISHED~~  
31 ~~UNDER THIS SUBSECTION ARE IN LIEU OF THOSE PROVIDED IN SUBSECTION~~  
32 ~~(1) AND MAY NOT EXCEED 0.03 ACRES PER DWELLING UNIT.~~

33 (3) (A) A park dedication may not be required;

34 (I) for land proposed for subdivision into parcels larger  
35 than 5 acres; i

1       (II) for subdivision into parcels that are all  
2 nonresidential;

3       (III) FOR SUBDIVISIONS WHERE NO PARCELS ARE CREATED, EXCEPT  
4 WHEN THAT SUBDIVISION PROVIDES PERMANENT MULTIPLE SPACES FOR  
5 MOBILE HOMES OR CONDOMINIUMS; or

6       (IV) where only one additional parcel is created.

7       (B) If a future subdivision of the land creates parcels  
8 smaller than 5 acres, park dedication is required according to  
9 the provisions of this section.

10       (4) For the purpose of this section, the fair market value  
11 is the value of the unsubdivided, unimproved land.--

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

14       (5) THE GOVERNING BODY, IN CONSULTATION WITH THE SUBDIVIDER  
15 AND THE PLANNING BOARD OR PARK BOARD HAVING JURISDICTION, MAY  
16 DETERMINE SUITABLE LOCATIONS FOR PARKS AND PLAYGROUNDS AND,  
17 GIVING DUE WEIGHT AND CONSIDERATION TO THE EXPRESSED PREFERENCE  
18 OF THE SUBDIVIDER, MAY DETERMINE WHETHER THE PARK DEDICATION MUST  
19 BE A LAND DONATION, CASH DONATION, OR A COMBINATION OF BOTH.

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

23       (b) The governing body may use the dedicated money to  
24 acquire or develop regional parks or recreational areas or for  
25 the purchase of public open space or conservation easements only  
26 if:

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

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

32       (7) The local governing body shall waive the park  
33 dedication requirement if:

34       (a) (i) the preliminary plat provides for a planned unit  
35 development or other development with land permanently set aside

1 for park and recreational uses sufficient to meet the needs of  
2 the persons who will ultimately reside in the development; and

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

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

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

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

21 Section 23. Section 76-3-608, MCA, is amended to read:

22 "76-3-608. Criteria for local government review. (1) The  
23 ~~basis for the governing body's or review authority's decision to~~  
24 ~~approve, conditionally approve, or disapprove a subdivision shall~~  
25 ~~be is whether the applicable preliminary plat, environmental~~  
26 ~~assessment, public hearing, planning board recommendations, and~~  
27 ~~or any additional information demonstrate demonstrates that~~  
28 ~~development of the subdivision would be in the public interest.~~  
29 ~~The governing body shall disapprove any subdivision which it~~  
30 ~~finds not to be in the public interest meets the requirements of~~  
31 this chapter.

32 (2) ~~To determine whether the proposed subdivision would be~~  
33 ~~in the public interest, the The governing body or review~~  
34 authority shall issue written findings of fact which that weigh  
35 the following criteria for public interest: in [SECTION 18].

1 [SECTION 19], [section 26 24], and subsections (3) and (4) of  
2 this section, as applicable.

- 3 ~~(a) the basis of the need for the subdivision;~~
- 4 ~~(b) expressed public opinion;~~
- 5 ~~(c) effects on agriculture;~~
- 6 ~~(d) effects on local services;~~
- 7 ~~(e) effects on taxation;~~
- 8 ~~(f) effects on the natural environment;~~
- 9 ~~(g) effects on wildlife and wildlife habitat; and~~
- 10 ~~(h) effects on the public health and safety.~~

11 (3) A subdivision proposal must undergo review for the  
12 following primary criteria:

13 ~~(a) The subdivision must be mapped, and the subdivision~~  
14 ~~plat must be properly filed with the county clerk and recorder.~~

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

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

20 ~~(d)(C) The subdivision must ensure access to each~~  
21 ~~tract PARCEL within the subdivision, as follows:~~

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

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

24 ~~(B)(II) notation of legal access must be made on the~~  
25 ~~applicable plat and any instrument of transfer concerning the~~  
26 ~~tract PARCEL; and~~

27 ~~(ii) for any other tract, (III) physical access must be~~  
28 ~~provided according to standards set by the governing body under~~  
29 ~~76-3-501.~~

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

32 ~~(f)(E) The subdivision must be evaluated under the~~  
33 ~~conditions provided in subsection (4) to determine if lots upon~~  
34 ~~which building sites are or can reasonably be expected to be~~

1 located within the subdivision are located in an area affected by  
2 the following hazards, INCLUDING BUT NOT LIMITED TO SUCH AS:

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

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

10 (iii) drainage problems, including the potential for  
11 sheetflooding.

12 (4) Subdivisions evaluated for hazards under subsection  
13 (3)(f)(3)(E) must be reviewed under all of the following  
14 conditions;

15 (a) Local government regulations must provide specific  
16 standards for evaluation and mitigation.

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

20 (c) Approved construction techniques may be recommended  
21 REQUIRED to mitigate or overcome hazards.

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

24 (e) If the review authority knows of the existence of  
25 natural or man-caused hazards other than those described in  
26 subsection (3)(f)(3)(E), the review authority shall notify the  
27 subdivider in writing of those known hazards and require notice  
28 of the hazards on the final plat.

29 (f) The result of the hazard evaluation is not dispositive  
30 of the degree of hazard existing and is not grounds to establish  
31 liability against the review authority."

32 NEW SECTION. Section 24. Additional review criteria for  
33 major subdivisions. (1) In addition to the requirements of 76-3-  
34 608 and [sections 20 and 22 18 AND 20], a major subdivision must  
35 be reviewed for effects on:

1 (a) agricultural or agricultural water-user practices;—

2 ~~(b) unique cultural and historical sites;—~~

3 ~~(c) the natural environment; and~~

4 (B) UNIQUE CULTURAL OR HISTORICAL RESOURCES;

5 (C) ENVIRONMENTAL OR ECOLOGICAL RESOURCES, INCLUDING  
6 WILDLIFE AND WILDLIFE HABITAT; AND

7 (d) local services.

8 (2) (a) In reviewing major subdivisions for the effects  
9 listed in subsection (1), the review authority shall use  
10 information from the environmental assessment required by 76-3-  
11 603 and may solicit other site-specific information from the  
12 subdivider, agencies, and other appropriate sources. Efforts by  
13 the review authority to gather additional information do not  
14 constitute grounds for extending the deadlines for the  
15 subdivision review process provided for in [section 20 18] unless  
16 an extension is agreed to by the subdivider.

17 (b) Based on the information gathered, the subdivision  
18 review officer shall determine whether the proposed subdivision  
19 is likely to have significant adverse impacts on the factors  
20 listed in subsection (1).

21 (c) If the subdivision review officer determines that  
22 significant adverse impacts are probable, the subdivision review  
23 officer shall schedule a consultation with the subdivider,  
24 knowledgeable persons, and agency representatives. During the  
25 consultation process, the parties shall work to develop  
26 mitigation for the potential adverse effects on the factors  
27 listed in subsection (1).

28 (d) The subdivision review officer shall report the results  
29 of the meeting to the governing body and may make a  
30 recommendation.

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

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

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

6 ~~(i) Mitigation measures imposed must not unreasonably~~  
7 ~~restrict a landowner's ability to develop land, but it is~~  
8 ~~recognized that in some instances the impacts of a proposed~~  
9 ~~development may be unacceptable and will preclude approval of the~~  
10 ~~plat.~~

11 ~~(ii) IN REVIEWING A SUBDIVISION UNDER SUBSECTION (1), A~~  
12 ~~GOVERNING BODY MUST BE GUIDED BY THE FOLLOWING STANDARDS:~~

13 ~~(I) MITIGATION MEASURES IMPOSED SHOULD NOT UNREASONABLY~~  
14 ~~RESTRICT A LANDOWNER'S ABILITY TO DEVELOP LAND, BUT IT IS~~  
15 ~~RECOGNIZED THAT IN SOME INSTANCES THE UNMITIGATED IMPACTS OF A~~  
16 ~~PROPOSED DEVELOPMENT MAY BE UNACCEPTABLE AND WILL PRECLUDE~~  
17 ~~APPROVAL OF THE PLAT.~~

18 ~~(II) Whenever feasible, mitigation should be designed to~~  
19 ~~provide some benefits for the subdivider, including allowanees~~  
20 ~~for higher density development in less environmentally sensitive~~  
21 ~~sites within the plat, waiver of the park dedication requirement~~  
22 ~~under the provisions of [section 23 21], and structuring~~  
23 ~~mitigation to provide eligibility for tax benefits if land or~~  
24 ~~development rights are donated to eligible receivers.~~

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

26 "76-3-610. Effect of approval of preliminary plat. (1) Upon  
27 approving or conditionally approving a preliminary plat, the  
28 ~~governing body review authority~~ shall provide the subdivider with  
29 a dated and signed statement of approval. This approval shall may  
30 be in force for not more than 3 calendar years or less than 1  
31 calendar year. At the end of this period, the ~~governing body~~  
32 ~~review authority~~ may, at the request of the subdivider, extend  
33 its approval for no more than 1 calendar year, except that the  
34 ~~governing body review authority~~ may extend its approval for a  
35 period of more than 1 year if that approval period is included as

1 a specific condition of a written agreement between the governing  
2 body review authority and the subdivider, ~~according to 76-3-507.~~

3 (2) After the preliminary plat is approved, the governing  
4 ~~body and its subdivisions~~ review authority may not impose any  
5 additional conditions as a prerequisite to final plat approval,  
6 providing ~~said~~ the approval is obtained within the original or  
7 extended approval period as provided in subsection (1)."

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

9 "76-3-611. Review of final plat. (1) The governing ~~body~~  
10 review authority shall examine every final subdivision plat and  
11 shall approve it ~~when and only when~~:

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

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

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

29 (b) ~~No~~ A registered professional land surveyor ~~shall~~ may  
30 not act as an examining land surveyor in regard to a plat or  
31 certificate of survey in which he has a financial or personal  
32 interest."

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

34 "76-3-613. Index of plats and certificates of survey to be  
35 kept by county clerk and recorder. (1) The county clerk and

1 recorder shall maintain an index of all recorded subdivision  
2 plats and certificates of survey.

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

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

13 "76-3-614. Correction of recorded plat. When a recorded  
14 plat does not definitely show the location or size of lots or  
15 blocks or the location or width of any street or alley, the  
16 ~~governing body review authority~~ may at its own expense cause a  
17 new and correct survey and plat to be made and recorded in the  
18 office of the county clerk and recorder. The corrected plat must,  
19 to the extent possible, follow the plan of the original survey  
20 and plat. The surveyor making the resurvey shall endorse the  
21 corrected plat, referring to the original plat and noting the  
22 defect existing ~~therein~~ in the original plat and the corrections  
23 made."

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

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

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

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

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

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

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

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

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

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

20 (4) Any revenue realized by a county from the sale,  
21 exchange, or disposal of lands dedicated to public use for park  
22 or playground purposes ~~shall~~ must be paid into the park fund and  
23 used in the manner prescribed in ~~76-3-606 and 76-3-607~~ [section  
24 23 21] for cash received in lieu of dedication."

25 **Section 30.** Section 76-4-102, MCA, is amended to read:

26 "76-4-102. **Definitions.** As used in this part, unless the  
27 context clearly indicates otherwise, the following words or  
28 phrases have the following meanings:

29 (1) "Board" means the board of health and environmental  
30 sciences.

31 (2) "Department" means department of health and  
32 environmental sciences.

33 (3) "Extension of public sewage disposal system" means a  
34 sewer line that connects two or more sewer service lines to a  
35 sewer main.

1           (4) "Extension of public water supply system" means a water  
2 line that connects two or more water service lines to a water  
3 main.

4           (5) "Facilities" means public or private facilities for the  
5 supply of water or disposal of sewage or solid waste and any  
6 pipes, conduits, or other stationary method by which water,  
7 sewage, or solid wastes might be transported or distributed.

8           (6) "Public water supply system" or "public sewage disposal  
9 system" means, respectively, a water supply or sewage disposal  
10 system that serves 10 or more families or 25 or more persons for  
11 at least 60 days out of the calendar year.

12           (7) "Registered professional engineer" means a person  
13 licensed to practice as a professional engineer under Title 37,  
14 chapter 67.

15           (8) "Registered sanitarian" means a person licensed to  
16 practice as a sanitarian under Title 37, chapter 40.

17           (9) "Reviewing authority" means the department or a local  
18 department or board of health certified to conduct review under  
19 76-4-104.

20           (10) "Sanitary restriction" means a prohibition against the  
21 erection of any dwelling, shelter, or building requiring  
22 facilities for the supply of water or the disposition of sewage  
23 or solid waste or the construction of water supply or sewage or  
24 solid waste disposal facilities until the department has approved  
25 plans for those facilities.

26           (11) "Sewer service line" means a sewer line that connects a  
27 single building or living unit to a public sewer system or  
28 extension of such a system.

29           (12) "Solid wastes" means all putrescible and nonputrescible  
30 solid wastes (except body wastes), including garbage, rubbish,  
31 street cleanings, dead animals, yard clippings, and solid market  
32 and solid industrial wastes.

33           (13) "Subdivision" means a division of land or land so  
34 divided ~~which~~ that creates one or more additional parcels  
35 ~~containing less than 20 acres, exclusive of public roadways, in~~

1 order that the title to or possession of the parcels may be sold,  
2 rented, leased, or otherwise conveyed and includes any  
3 resubdivision and any condominium building or area, regardless of  
4 size, ~~which~~ that provides permanent multiple ~~space~~ spaces with  
5 utility hook-ups for recreational camping vehicles, ~~or~~ mobile  
6 homes, dwelling units, or work camp structures constructed to  
7 exist for longer than one year. For purposes of this subsection,  
8 "work camp structure" means housing provided by a person for two  
9 or more families or employees of that person and the families, if  
10 any, of the employees. "Housing" does not include shelter  
11 provided by an agricultural employer for persons who are  
12 primarily employed to perform agricultural duties on that  
13 person's ranch or farm.

14 (14) "Water service line" means a water line that connects a  
15 single building or living unit to a public water system or  
16 extension of such a system."

17 Section 31. 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 acres~~  
20 ~~which~~ that have been created by a division of land, and the plat  
21 ~~thereof shall~~ of the subdivision must show all ~~such~~ the parcels,  
22 whether contiguous or not. The rental or lease of one or more  
23 parts of a building, structure, or other improvement, whether  
24 existing or proposed, is not a subdivision, as that term is  
25 defined in this part, and is not subject to the requirements of  
26 this part."

27 Section 32. Section 76-4-125, MCA, is amended to read:

28 "76-4-125. Review of development plans -- land divisions  
29 excluded from review. (1) Plans and specifications of a  
30 subdivision as defined in this part ~~shall~~ must be submitted to  
31 the reviewing authority, and the reviewing authority shall  
32 indicate by certificate that it has approved the plans and  
33 specifications and that the subdivision is not subject to a  
34 sanitary restriction. The plan review by the reviewing authority  
35 ~~shall~~ must be as follows:

1 (a) At any time after the developer has submitted an  
2 application under the Montana Subdivision and Platting Act, the  
3 developer shall present to the reviewing authority a preliminary  
4 plan of the proposed development, whatever information the  
5 developer feels necessary for its subsequent review, and  
6 information required by the reviewing authority.

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

11 (2) A subdivision ~~excluded from the provisions of chapter 3~~  
12 ~~shall~~ must be submitted for review according to the provisions of  
13 this part, except that the following divisions, ~~unless such~~  
14 ~~exclusions are used to evade the provisions of this part,~~ are not  
15 subject to review:

16 (a) ~~the exclusions cited in 76-3-201 and 76-3-204, a~~  
17 division created OPERATION OF LAW OR by order of a court of  
18 record in this state pursuant to the laws governing the  
19 distribution of estates (Title 72, chapters 1 through 6 and 10  
20 through 14) or the dissolution of marriage (Title 40, chapter 4)  
21 or a division that, in the absence of agreement between the  
22 parties to the sale, could be created by an order of a court in  
23 this state pursuant to the law of eminent domain (Title 70,  
24 chapter 30);

25 (b) a division creating an interest in oil, gas, minerals,  
26 or water that is new or at a later time severed from the surface  
27 ownership of real property;

28 (c) a division creating cemetery lots only;

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

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

32 (f) the sale, rent, lease, or other conveyance OR USE of  
33 one or more parts of a building, structure, or other improvement,  
34 whether existing or proposed;

1        ~~(b)(g)~~ divisiens a division made for the purpose of  
2 acquiring additional land to become part of an approved parcel,  
3 provided that ~~ne~~ a dwelling or structure requiring water or  
4 sewage disposal is not to be erected on the additional acquired  
5 parcel and that the division does not fall within a previously  
6 platted or approved subdivision; and

7        ~~(e)(h)~~ divisiens a division made for purposes other than  
8 the construction of water supply or sewage and solid waste  
9 disposal facilities as the department specifies by rule; AND

10        (I) A DIVISION CREATED TO PROVIDE SECURITY FOR CONSTRUCTION  
11 MORTGAGES, LIENS, OR TRUST INDENTURES, UNTIL SUCH TIME AS THE  
12 DIVISION IS NO LONGER PROVIDING THAT SECURITY."

13        Section 33. Section 76-6-203, MCA, is amended to read:

14        "76-6-203. **Types of permissible easements.** Easements or  
15 restrictions under this chapter may prohibit or limit any or all  
16 of the following:

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

21        (2) landfill--dumping or placing of soil or other substance  
22 or material as landfill or dumping or placing of trash, waste, or  
23 unsightly or offensive materials;

24        (3) vegetation--removal or destruction of trees, shrubs, or  
25 other vegetation;

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

28        (5) surface use--surface use except for ~~such~~ purposes  
29 permitting the land or water area to remain predominantly in its  
30 existing condition;

31        (6) acts detrimental to conservation--activities  
32 detrimental to drainage, flood control, water conservation,  
33 erosion control, soil conservation, or fish and wildlife habitat  
34 and preservation;

1 (7) subdivision of land--subdivision of land as defined in  
2 76-3-103, and 76-3-104, ~~and 76-3-202;~~

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

5 NEW SECTION. Section 34. Repealer. (1) Sections 76-3-201,  
6 76-3-202, 76-3-203, 76-3-204, 76-3-205, 76-3-206, 76-3-207, 76-3-  
7 208, 76-3-209, 76-3-210, MCA, ARE REPEALED.

8 (2) SECTIONS 76-3-504, 76-3-505, 76-3-604, 76-3-605, 76-3-  
9 606, 76-3-607, 76-3-609, MCA, are repealed.

10 NEW SECTION. Section 35. Codification instruction.  
11 [Sections 5, 6, ~~20 through 24~~ 18 THROUGH 22, and ~~26 24~~] are  
12 intended to be codified as an integral part of Title 76, chapter  
13 3, and the provisions of Title 76, chapter 3, apply to [sections  
14 5, 6, ~~20 through 24~~ 18 THROUGH 22, and ~~26 24~~].

15 NEW SECTION. Section 36. Saving clause. [This act] does  
16 not affect rights and duties that matured, penalties that were  
17 incurred, or proceedings that were begun before [the effective  
18 date of this act].

19 NEW SECTION. Section 37. Severability. If a part of [this  
20 act] is invalid, all valid parts that are severable from the  
21 invalid part remain in effect. If a part of [this act] is invalid  
22 in one or more of its applications, the part remains in effect in  
23 all valid applications that are severable from the invalid  
24 applications.

25 NEW SECTION. Section 38. Applicability. [Sections 2, 3, ~~30~~  
26 31, and ~~32 33(1) 34(1)~~] apply to all subdivision applications  
27 filed after passage and approval. [Sections 1, 4 through ~~31, 33,~~  
28 ~~and 34 29, 31, 32, AND 33(2) 32, 33, AND 34(2)~~] apply to all  
29 subdivision applications filed after September 30, 1991.

30 NEW SECTION. Section 39. Effective date. [This act] is  
31 effective on passage and approval.

32 -End-  
33  
34

3-27-91  
Exc. Action  
am