

HOUSE BILL 46

IN THE HOUSE

January 4, 1979	Introduced and referred to Committee on Local Government.
February 13, 1979	Committee recommend bill, as amended.
February 15, 1979	Printed and placed on members' desks.
February 16, 1979	Second reading, do pass, as amended.
February 19, 1979	Considered correctly engrossed. Third reading, passed.

IN THE SENATE

February 20, 1979	Introduced and referred to Committee on Local Government.
March 27, 1979	Committee recommend bill, not concurred. On motion, Senate reconsider its action taken on Adverse Committee report, motion failed.

IN THE HOUSE

March 28, 1979	Returned from Senate, not concurred.
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1 HOUSE BILL NO. 46
 2 INTRODUCED BY LORY
 3 BY REQUEST OF THE INTERIM SUBCOMMITTEE ON SUBDIVISION LAWS
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE
 6 SUBDIVISION AND PLATTING ACT AND RELATED LAND-USE STATUTES;
 7 EXEMPTING CERTAIN SUBDIVISIONS FROM REVIEW, REDEFINING
 8 SUBDIVISIONS, AND MAKING CERTAIN MINOR CHANGES; AMENDING
 9 76-1-606, 76-3-103, 76-3-104, 76-3-207, 76-3-504, 76-3-505,
 10 76-3-508, 76-3-601, 76-3-604, 76-3-605, 76-3-609; AND
 11 REPEALING 76-3-201, and 76-3-210, MCA."

12
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 14 Section 1. Section 76-1-606, MCA, is amended to read:
 15 "76-1-606. Effect of master plan on subdivisions and
 16 plats. (1) Where ~~when~~ a master plan ~~containing the~~
 17 provisions specified in subsection (3) has been approved,
 18 the city council may by ordinance or the board of county
 19 commissioners may by resolution require subdivision plats to
 20 conform to the provisions of the master plan. Certified
 21 copies of such ordinance shall be filed with the city or
 22 town clerk and with the county clerk and recorder of the
 23 county.
 24 (2) Thereafter:
 25 (a) a plat involving lands within the corporate limits

1 of the city and covered by said master plan shall not be
 2 filed without first presenting it to the planning board,
 3 which shall make a report to the city council advising as to
 4 compliance or noncompliance of the plat with the master
 5 plan. The city council shall have the final authority to
 6 approve the filing of such plat.
 7 (b) a plat involving lands outside the corporate
 8 limits of the city and covered by said master plan shall not
 9 be filed without first presenting it to the planning board
 10 which shall make a report to the board of county
 11 commissioners advising as to compliance or noncompliance of
 12 the plat with the master plan. The board of county
 13 commissioners shall have the final authority to approve the
 14 filing of such plat.
 15 (3) For purposes of this section and 76-3-505,
 16 76-3-604, and 76-3-609(3), the master plan must contain:
 17 (a) a land use plan that identifies geographic areas
 18 suitable for residential, commercial, or industrial land
 19 uses or sets forth community policy regarding quality or
 20 location of urban development;
 21 (b) a housing plan that identifies the existing
 22 housing units by type and number and the estimated
 23 availability of housing by type and number of units;
 24 (c) a public services plan that identifies existing
 25 public services and facilities, including but not limited to

1 systems for water supply, sewage treatment and solid waste
 2 disposal, parks and recreation, schools, roads and bridges,
 3 and police and fire protection; the capacity of each; and
 4 identifies the needs for improvement or expansion of those
 5 services and facilities.

6 ~~(3)~~(4) Nothing herein contained shall be interpreted
 7 to limit the present powers of the city or county
 8 governments but shall be an additional requirement before
 9 any plat may be filed of record or entitled to be recorded."

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

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

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

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

23 (3) "Division of land" means the segregation of one or
 24 more parcels of land from a larger tract held in single or
 25 undivided ownership by transferring or contracting to

1 transfer title to or possession of a portion of the tract or
 2 properly filing a certificate of survey or subdivision plat
 3 establishing the identity of the segregated parcels pursuant
 4 to this chapter.

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

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

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

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

18 ~~(8)~~(6) "Planned unit development" means a land
 19 development project consisting of residential clusters,
 20 industrial parks, shopping centers, office building parks,
 21 or any combination thereof which comprises a planned mixture
 22 of land uses built in a prearranged relationship to each
 23 other and having open space and community facilities in
 24 common ownership or use.

25 ~~(9)~~(7) "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 ~~††††(8)~~ "Preliminary plat" means a neat and scaled
5 drawing of a proposed subdivision showing the layout of
6 streets, alleys, lots, blocks, ~~utility easements~~ and other
7 elements of a subdivision which furnish a basis for review
8 by a governing body.

9 ~~††††(9)~~ "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.

15 ~~(10) "Minor subdivision" means a subdivision~~
16 ~~containing five or fewer parcels where proper access to all~~
17 ~~lots is provided and where, if park dedication is required,~~
18 ~~it shall be met by cash in lieu of land donation.~~

19 ~~††††(11)~~ "Registered land surveyor" means a person
20 licensed in conformance with the Montana Professional
21 Engineers' Registration Act (Title 37, chapter 67) to
22 practice surveying in the state of Montana.

23 ~~††††(12)~~ "Registered professional engineer" means a
24 person licensed in conformance with the Montana Professional
25 Engineers' Registration Act (Title 37, chapter 67) to

1 practice engineering in the state of Montana.

2 ~~(13) "Relocating a common boundary line" means the~~
3 ~~establishment of a new location for a boundary line between~~
4 ~~abutting parcels with no additional parcels being created.~~

5 (14) "Subdivider" means any person who causes land to
6 be subdivided or who proposes a subdivision of land.

7 (15) "Subdivision" means a division of land or land so
8 divided which creates one or more parcels containing less
9 than ~~20 acres, exclusive of public roadways~~ in order that
10 the title to or possession of the parcels may be sold,
11 rented, leased, or otherwise conveyed and shall include any
12 resubdivision and shall further include any condominium or
13 area, regardless of its size, which provides or will provide
14 multiple space for recreational camping vehicles, or mobile
15 homes."

16 Section 3. Section 76-3-104, MCA, is amended to read:
17 "76-3-104. What constitutes subdivision. A subdivision
18 shall comprise only those parcels ~~less than 20--~~acres which
19 have been segregated from the original tract, and the plat
20 thereof shall show all such parcels whether contiguous or
21 not."

22 Section 4. Section 76-3-207, MCA, is amended to read:
23 "76-3-207. Subdivisions exempted from review but
24 subject to survey requirements -- exceptions. (1) Except as
25 provided in subsection (2), unless the method of disposition

1 is adopted for the purpose of evading this chapter, the
2 following divisions of land are not subdivisions under this
3 chapter but are subject to the surveying requirements of
4 76-3-401 for divisions of land not amounting to
5 subdivisions:

6 (a) divisions made outside of platted subdivisions for
7 the purpose of relocating common boundary lines between
8 adjoining properties;

9 (b) ~~divisions~~ one division made outside of a platted
10 ~~subdivisions~~ subdivision for the purpose of a gift or sale
11 to any each member of the landowner's immediate family,
12 provided that any additional conveyance to the same family
13 member shall be reviewed under the summary review procedures
14 of 76-3-609;

15 (c) divisions made outside of platted subdivisions by
16 sale or agreement to buy and sell where when the parties to
17 the transaction enter a convenient covenant running with the
18 land and revocable only by mutual consent of the governing
19 body and the property owner that the divided land will be
20 used exclusively for agricultural purposes and that
21 residential, commercial, and industrial uses or structures
22 will be excluded on parcels of less than 40 acres;

23 ~~(d) -- a single division of a parcel outside of platted~~
24 ~~subdivisions when the transaction is an occasional sale~~

25 (e)(d) for five or fewer lots within a platted

1 subdivision, relocation of common boundaries and the
2 aggregation of lots;

3 ~~(e) divisions ordered by a court of record pursuant to~~
4 ~~40-4-402 of the Uniform Marriage and Divorce Act or pursuant~~
5 ~~to the law of decedents' estates, provided that the case~~
6 ~~number of the order is noted on the certificate of survey;~~

7 ~~(f) divisions that could be created pursuant to the~~
8 ~~law of eminent domain.~~

9 (2) Notwithstanding the provisions of subsection (1):

10 (a) within a platted subdivision filed with the county
11 clerk and recorder, any division of lots which results in an
12 increase in the number of lots or which redesigns or
13 rearranges six or more lots must be reviewed and approved by
14 the governing body, and an amended plat must be filed with
15 the county clerk and recorder;

16 (b) any change in use of the land exempted under
17 subsection (1)(c) for anything other than agricultural
18 purposes subjects the division to the provisions of this
19 chapter."

20 Section 5. Section 76-3-504, MCA, is amended to read:

21 "76-3-504. Minimum requirements for subdivision
22 regulations. (1) Not later than December 31, 1973, the
23 department of community affairs, through its division of
24 planning, shall, in conformance with the Montana
25 Administrative Procedure Act, prescribe reasonable minimum

1 requirements for subdivision regulations adopted pursuant to
2 this chapter.

3 (2) The minimum requirements shall include detailed
4 criteria for the content of the environmental assessment
5 required by this chapter. In prescribing the minimum
6 contents of the subdivision regulations, the department of
7 community affairs, through its division of planning, shall
8 require the submission by the subdivider to the governing
9 body of an environmental assessment except for those
10 subdivisions described in 76-3-505.

11 (3) The department shall provide for the review of
12 preliminary plats by those agencies of state and local
13 government and affected public utilities having a
14 substantial interest in a proposed subdivision. Such agency
15 or utility review shall not delay the governing body's
16 action on the plat beyond the time limit specified herein,
17 and the failure of any agency to complete a review of a plat
18 shall not be a basis for rejection of the plat by the
19 governing body."

20 Section 6. Section 76-3-505, MCA, is amended to read:

21 "76-3-505. Provision for summary review of minor
22 certain subdivisions. (1) Local subdivision regulations
23 shall include procedures for the summary review and approval
24 of subdivision plats meeting any of the following
25 conditions:

1 ~~(a) containing five or fewer parcels where proper~~
2 ~~access to all lots is provided, where no land in the~~
3 ~~subdivision will be dedicated to public use for parks or~~
4 ~~playgrounds and which have been approved by the department~~
5 ~~of health and environmental sciences where such approval is~~
6 ~~required by part of chapter 4 comprising a minor~~
7 subdivision:

8 (b) consisting exclusively of parcels larger than 40
9 acres in size; or

10 (c) lying within the corporate boundaries of a
11 municipality or lying within areas for which a master plan
12 containing the minimum requirements described in 76-3-606(3)
13 has been adopted and to which the subdivision conforms,
14 ~~provided that reasonable~~

15 (2) Reasonable local regulations may contain
16 additional requirements for summary approval."

17 Section 7. Section 76-3-508, MCA, is amended to read:

18 "76-3-508. Procedure if local government fails to
19 adopt regulations. In the event that any governing body has
20 not adopted subdivision regulations by July 1, 1974, which
21 meet or exceed the prescribed minimum requirements, the
22 department shall, through its division of planning, no later
23 than January 1, 1975, promulgate reasonable regulations to
24 be enforced by the governing body. If at any time thereafter
25 the governing body adopts its own subdivision regulations,

1 these shall supersede those promulgated by the department
2 ~~but shall be no less stringent."~~

3 Section 8. Section 76-3-601, MCA, is amended to read:
4 *76-3-601. Submission of preliminary plat for review.

5 (1) Except where a plat is eligible for summary approval,
6 the subdivider shall present to the governing body or the
7 agent or agency designated thereby the preliminary plat of
8 the proposed subdivision for local review. The preliminary
9 plat shall show all pertinent features of the proposed
10 subdivision and all proposed improvements.

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

15 (b) ~~(i)~~ When the proposed subdivision is situated
16 entirely in an unincorporated area, the preliminary plat
17 shall be submitted to and approved by the governing body of
18 the county.

19 ~~(ii)~~ However, if the proposed subdivision lies within
20 1 mile of a third-class city or town or within 2 miles of a
21 second-class city or within 3 miles of a first-class city,
22 the county governing body shall submit the preliminary plat
23 to the city or town governing body or its designated agent
24 for review and comment.

25 ~~(iii) If the proposed subdivision is contiguous to the~~

1 ~~boundary of an incorporated city or town or is separated~~
2 ~~from a corporate boundary by only a public road, the~~
3 ~~approval by the county governing body shall be contingent~~
4 ~~upon a written finding by the city or town that the design~~
5 ~~and location of any roads or central water and sewer~~
6 ~~facilities will be compatible with the existing facilities~~
7 ~~of the municipality.~~

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

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

16 Section 9. Section 76-3-604, MCA, is amended to read:

17 *76-3-604. Review of preliminary plat. (1) The
18 governing body or its designated agent or agency shall
19 review the preliminary plat to determine whether it conforms
20 to the local master plan ~~that meets the requirements~~
21 ~~specified in 76-1-606(3)~~, if one has been adopted, pursuant
22 ~~to chapter 4~~ to the provisions of this chapter, and to rules
23 prescribed or adopted pursuant to this chapter.

24 (2) The governing body shall approve, conditionally
25 approve, or reject the preliminary plat within 60 days of

1 its presentation unless the subdivider consents to an
 2 extension of the review period. If the governing body fails
 3 to act within the prescribed time period, the subdivision is
 4 approved.

5 (3) If the governing body rejects or conditionally
 6 approves the preliminary plat, it shall forward one copy of
 7 the plat to the subdivider accompanied by a letter over the
 8 appropriate signature stating the reason for rejection or
 9 enumerating the conditions which must be met to assure
 10 approval of the final plat."

11 Section 10. Section 76-3-605, MCA, is amended to read:

12 "76-3-605. Hearing on preliminary plat. (1) The
 13 governing body or its authorized agent or agency shall hold
 14 a public hearing on the preliminary plat and shall consider
 15 all relevant evidence relating to the public health, safety,
 16 and welfare, including the environmental assessment, to
 17 determine whether the plat should be approved, conditionally
 18 approved, or disapproved by the governing body.

19 (2) Notice of such hearing shall be given by
 20 publication in a newspaper of general circulation in the
 21 county not less than 15 days prior to the date of the
 22 hearing. The subdivider and each property owner of record
 23 immediately adjoining the land included in the plat shall
 24 also be notified of the hearing by registered or certified
 25 mail not less than 15 days prior to the date of the hearing.

1 (3) When a hearing is held by an agent or agency
 2 designated by the governing body, the agent or agency shall
 3 act in an advisory capacity and recommend to the governing
 4 body the approval, conditional approval, or disapproval of
 5 the plat. ~~this recommendation must be submitted to the~~
 6 ~~governing body in writing not later than 10 days after the~~
 7 ~~public hearing."~~

8 Section 11. Section 76-3-609, MCA, is amended to read:

9 "76-3-609. Review Summary review procedure for minor
 10 certain subdivisions. Except as provided in [section 13],
 11 summary review procedures shall be as follows:

12 (1) Subdivisions For minor subdivisions containing
 13 five or fewer parcels where proper access to all lots is
 14 provided and in which no land is to be dedicated to the
 15 public for parks or playgrounds are to be reviewed as
 16 follows:

17 (a) ~~The governing body must approve, conditionally~~
 18 ~~approve, or disapprove the first such subdivision from a~~
 19 ~~tract of record within 35 days of the submission of an~~
 20 ~~application for approval thereof.~~

21 (a) the subdivider shall submit either a preliminary
 22 plat that complies with local regulations or a final plat
 23 that complies with local regulations and the department of
 24 community affairs' uniform standards for final subdivision
 25 plats. The governing body shall act on the plat of the first

1 minor subdivision from a tract within 35 days of submittal
 2 in accordance with 76-3-611 if a final plat is submitted or
 3 in accordance with 76-3-610 if a preliminary plat is
 4 submitted. If the governing body fails to act within 35 days
 5 of submittal, the subdivision is approved.

6 ~~(2)(b)~~ The the governing body shall state in writing
 7 the conditions which must be met if the subdivision is
 8 conditionally approved or what local regulations would not
 9 be met by the subdivision if it disapproves the
 10 subdivision;

11 ~~(3)(c)~~ The the requirements for holding a public
 12 hearing and preparing an environmental assessment ~~shall~~ and
 13 finding that the subdivision is in the public interest do
 14 not apply to the first such minor subdivision created from a
 15 tract of record;

16 ~~(4)(d)~~ Subsequent second and subsequent subdivisions
 17 from a tract of record shall be reviewed under 76-3-505 and
 18 regulations adopted pursuant to that section.

19 (2) For subdivisions consisting exclusively of parcels
 20 larger than 40 acres:

21 (a) the subdivider shall submit either a preliminary
 22 plat which complies with local regulations or a final plat
 23 which complies with local regulations and the department of
 24 community affairs' uniform standards for final subdivision
 25 plats. The governing body shall act on the plat within 35

1 days of submittal in accordance with 76-3-611 if a final
 2 plat is submitted or in accordance with 76-3-610 if a
 3 preliminary plat is submitted. If the governing body fails
 4 to act within 35 days of submittal, the subdivision is
 5 approved.

6 (b) the requirements for holding a public hearing,
 7 preparing an environmental assessment, and finding that the
 8 subdivision is in the public interest do not apply;

9 (c) the governing body's review and approval shall be
 10 limited to a written determination that appropriate access
 11 and any easements are properly provided.

12 (3) For subdivisions within the corporate boundaries
 13 of a municipality or within areas covered by a master plan
 14 containing the elements listed in 76-1-606(3) and to which
 15 the subdivision conforms:

16 (a) a preliminary plat must be submitted and acted
 17 upon pursuant to 76-3-610, except that the requirements for
 18 preparation of an environmental assessment and a finding
 19 that the subdivision is in the public interest do not apply.
 20 If the governing body fails to act within 60 days of
 21 submittal, the preliminary plat is approved.

22 (b) a final plat may be approved by the governing body
 23 only after review pursuant to 76-3-611."

24 Section 17. There is a new MCA section that reads:

25 NEW SECTION. Major impact resulting from cumulative

1 effect of several minor subdivisions -- when reviewed. When
2 so many minor subdivisions are proposed for the same general
3 area that the governing body believes their cumulative
4 effect on the provision of public services or the natural
5 environment may be significant, it shall require the
6 preparation of an environmental assessment and a public
7 hearing to address the overall impact of the subdivisions
8 and review them pursuant to 76-3-608 and the other
9 provisions for review of major subdivisions in [Title 76,
10 chapter 3, part 6].

11 Section 13. Repealer. Sections 76-3-201 and 76-3-210,
12 MCA, are repealed.

-End-

Approved by Comm.
on Local Government

HOUSE BILL NO. 46

INTRODUCED BY LORY

BY REQUEST OF THE INTERIM SUBCOMMITTEE ON SUBDIVISION LAWS

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE
SUBDIVISION AND PLATTING ACT AND RELATED LAND-USE STATUTES;
EXEMPTING CERTAIN SUBDIVISIONS FROM REVIEW; REDEFINING
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plats. (1) Where ~~when~~ a master plan ~~containing~~ the
~~provisions specified in subsection (3)~~ has been approved,
the city council may by ordinance or the board of county
commissioners may by resolution require subdivision plats to
conform to the provisions of the master plan. Certified
copies of such ordinance shall be filed with the city or
town clerk and with the county clerk and recorder of the
county.

(2) Hereafter:

(a) a plat involving lands within the corporate limits

of the city and covered by said master plan shall not be
filed without first presenting it to the planning board,
which shall make a report to the city council advising as to
compliance or noncompliance of the plat with the master
plan. The city council shall have the final authority to
approve the filing of such plat.

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limits of the city and covered by said master plan shall not
be filed without first presenting it to the planning board
which shall make a report to the board of county
commissioners advising as to compliance or noncompliance of
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commissioners shall have the final authority to approve the
filing of such plat.

~~(3) For purposes of this section and 76-3-505,
76-3-604, and 76-3-609(3), the master plan must contain:~~

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suitable for residential, commercial, or industrial land
uses or sets forth community policy regarding quality or
location of urban development;~~

~~(b) a housing plan that identifies the existing
housing units by type and number and the estimated
availability of housing by type and number of units;~~

~~(c) a public services plan that identifies existing
public services and facilities, including but not limited to~~

1 ~~systems for water supply, sewage treatment and solid waste~~
 2 ~~disposal, parks and recreation, schools, roads and bridges,~~
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 12 of land other than an aliquot part of the United States
 13 government survey section or a United States government lot
 14 the boundaries or areas of which cannot be determined
 15 without a survey or trigonometric calculation.

16 ~~{7}~~ "Occasional sale" means one sale of a division of
 17 land within any 12-month period.

18 ~~{6}~~ "OCCASIONAL SALE" MEANS ONE DIVISION OF LAND, E.G.
 19 CONVEYANCE WITHIN ANY 12 MONTHS FOLLOWING THE TRANSACTION.

20 ~~{8}{6}{7}~~ "Planned unit development" means a land
 21 development project consisting of residential clusters,
 22 industrial parks, shopping centers, office building parks,
 23 or any combination thereof which comprises a planned mixture
 24 of land uses built in a prearranged relationship to each
 25 other and having open space and community facilities in

1 common ownership or use.

2 ~~{9}{17}{18}~~ "Plat" means a graphical representation of a
3 subdivision showing the division of land into lots, parcels,
4 blocks, streets, alleys, and other divisions and
5 dedications.

6 ~~{10}{19}{19}~~ "Preliminary plat" means a neat and scaled
7 drawing of a proposed subdivision showing the layout of
8 streets, alleys, lots, blocks, ~~utility easements,~~ and other
9 elements of a subdivision which furnish a basis for review
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11 ~~{11}{21}{10}~~ "Final plat" means the final drawing of the
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21 ~~{2}{11}{12}~~ "Registered land surveyor" means a person
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23 Engineers' Registration Act (Title 37, chapter 67) to
24 practice surveying in the state of Montana.

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4 ~~{11}{14}~~ "~~Relocating a common boundary line~~" means the
5 ~~establishment of a new location for a boundary line between~~
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11 than ~~20~~ acres, exclusive of public roadways, in order that
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19 "76-3-104. What constitutes subdivision. A subdivision
20 shall comprise only those parcels less than 20 acres which
21 have been segregated from the original tract, and the plat
22 thereof shall show all such parcels whether contiguous or
23 not."

24 ~~SECTION 4. SECTION 76-3-201, MCA, IS AMENDED TO READ:~~
25 "76-3-201. Exemption for certain divisions of land.

1 Unless the method of disposition is adopted for the purpose
2 of evading this chapter, the requirements of this chapter
3 shall not apply to any division of land which:

4 ~~{1}--is-created-by-order-of-any-court-of-record-in-this
5 state-or-by-operation-of-law-or-which,--in--the--absence--of
6 agreement--between-the-parties-to-the-sale-could-be-created
7 by-an-order-of-any-court-in-this-state-pursuant-to--the--law
8 of-eminent-domain--{Title-76, chapter-30}~~

9 {2}{11} is created to provide security for construction
10 mortgages, liens, or trust indentures;

11 {3}{12} creates an interest in oil, gas, minerals, or
12 water which is now or hereafter severed from the surface
13 ownership of real property;

14 {4}{13} creates cemetery lots;

15 ~~{5}--is-created-by-the-reservation-of-a-life-estate~~

16 ~~{6}--is--created--by--lease--or--rental--for--farming--and
17 agricultural--purposes."~~

18 Section 5. Section 76-3-207, MCA, is amended to read:

19 "76-3-207. Subdivisions exempted from review but
20 subject to survey requirements -- exceptions. (1) Except as
21 provided in subsection (2), unless the method of disposition
22 is adopted for the purpose of evading this chapter, the
23 following divisions of land are not subdivisions under this
24 chapter but are subject to the surveying requirements of
25 76-3-401 for divisions of land not amounting to

1 subdivisions:

2 (a) divisions made outside of platted subdivisions for
3 the purpose of relocating common boundary lines between
4 adjoining properties;

5 (b) ~~divisions~~ one division made outside of a platted
6 ~~subdivisions~~ subdivision for the purpose of a gift or sale
7 to any each member of the landowner's immediate family,
8 provided that any additional conveyance to the same family
9 member shall be reviewed under the summary review procedures
10 of 76-3-609;

11 (c) divisions made outside of platted subdivisions by
12 sale or agreement to buy and sell where when the parties to
13 the transaction enter a convenient covenant running with the
14 land and revocable only by mutual consent of the governing
15 body and the property owner that the divided land will be
16 used exclusively for agricultural purposes and that
17 residential, commercial, and industrial uses or structures
18 will be excluded on parcels of less than 40 acres;

19 ~~{d}--a--single--division-of-a-parcel--outside-of-platted
20 subdivisions--when--the--transaction--is--an--occasional--sale~~

21 (D) A SINGLE DIVISION OF A PARCEL, TO WHICH TITLE OR
22 CONTRACT FOR DEED AS RECORDED IN A NOTICE OF PURCHASER'S
23 INTEREST FILED WITH THE CLERK AND RECORDER HAS BEEN
24 CONTINUOUSLY BY THE PERSON PROPOSING TO DIVIDE THE PARCEL
25 FOR A PERIOD OF 5 YEARS AND WHICH IS OUTSIDE THE PLATTED

1 SUBDIVISIONS, WHERE THE TRANSACTION IS AN OCCASIONAL SALE,
 2 ANY FURTHER DIVISION OF THE EXEMPTED PARCEL SHALL BE
 3 REVIEWED BY THE GOVERNING BODY UNDER THE PROVISIONS OF THIS
 4 CHAPTER.

5 ~~fe)(d)(E)~~ for five or fewer lots within a platted
 6 subdivision, relocation of common boundaries and the
 7 aggregation of lots, PROVIDED THAT THE SURVEY IS FILED WITH
 8 THE COUNTY CLERK AND RECORDER AS AN AMENDED PLAT:

9 ~~fe)(E)~~ divisions ordered by a court of record pursuant
 10 to 40-4-402 of the Uniform Marriage and Divorce Act or
 11 pursuant to the law of decedents' estates, provided that the
 12 case number of the order is noted on the certificate of
 13 survey;

14 ~~ff)(2)~~ divisions that could be created pursuant to the
 15 law of eminent domain.

16 (2) Notwithstanding the provisions of subsection (1):

17 (a) within a platted subdivision filed with the county
 18 clerk and recorder, any division of lots which results in an
 19 increase in the number of lots or which redesigns or
 20 rearranges six or more lots must be reviewed and approved by
 21 the governing body, and an amended plat must be filed with
 22 the county clerk and recorder;

23 (b) any change in use of the land exempted under
 24 subsection (1)(c) for anything other than agricultural
 25 purposes subjects the division to the provisions of this

1 chapter."

2 Section 6. Section 76-3-504, MCA, is amended to read:
 3 "76-3-504. Minimum requirements for subdivision
 4 regulations. (1) Not later than December 31, 1973, the
 5 department of community affairs, through its division of
 6 planning, shall, in conformance with the Montana
 7 Administrative Procedure Act, prescribe reasonable minimum
 8 requirements for subdivision regulations adopted pursuant to
 9 this chapter.

10 (2) The minimum requirements shall include detailed
 11 criteria for the content of the environmental assessment
 12 required by this chapter. In prescribing the minimum
 13 contents of the subdivision regulations, the department of
 14 community affairs, through its division of planning, shall
 15 require the submission by the subdivider to the governing
 16 body of an environmental assessment except for those
 17 subdivisions described in 76-3-505.

18 (3) The department shall provide for the review of
 19 preliminary plats by those agencies of state and local
 20 government and affected public utilities having a
 21 substantial interest in a proposed subdivision. Such agency
 22 or utility review shall not delay the governing body's
 23 action on the plat beyond the time limit specified herein,
 24 and the failure of any agency to complete a review of a plat
 25 shall not be a basis for rejection of the plat by the

1 governing body."

2 Section 7. Section 76-3-505, MCA, is amended to read:

3 "76-3-505. Provision for summary review of minor
4 ~~certain~~ subdivisions. (1) Local subdivision regulations
5 shall include procedures for the summary review and approval
6 of subdivision plats ~~meeting any of the following~~
7 ~~conditions:~~

8 (a) ~~containing five or fewer parcels where proper~~
9 ~~access to all lots is provided, where no land in the~~
10 ~~subdivision will be dedicated to public use for parks or~~
11 ~~playgrounds, and which have been approved by the department~~
12 ~~of health and environmental sciences where such approval is~~
13 ~~required by part 3 of chapter 4 comprising a minor~~
14 ~~subdivision;~~

15 (b) ~~consisting exclusively of parcels larger than 40~~
16 ~~acres in size; or~~

17 (c) ~~lying within the corporate boundaries of a~~
18 ~~municipality or lying within areas for which a master plan~~
19 ~~containing the minimum requirements described in 76-3-606(1)~~
20 ~~76-1-606(3) has been adopted and to which the subdivision~~
21 ~~conforms, provided that reasonable~~

22 (2) Reasonable local regulations may contain
23 additional requirements for summary approval."

24 Section 8. Section 76-3-508, MCA, is amended to read:

25 "76-3-508. Procedure if local government fails to

1 adopt regulations. In the event that any governing body has
2 not adopted subdivision regulations by July 1, 1974, which
3 meet or exceed the prescribed minimum requirements, the
4 department shall, through its division of planning, no later
5 than January 1, 1975, promulgate reasonable regulations to
6 be enforced by the governing body. If at any time thereafter
7 the governing body adopts its own subdivision regulations,
8 these shall supersede those promulgated by the department
9 ~~but shall be no less stringent."~~

10 Section 9. Section 76-3-601, MCA, is amended to read:

11 "76-3-601. Submission of preliminary plat for review.

12 (1) Except where a plat is eligible for summary approval,
13 the subdivider shall present to the governing body or the
14 agent or agency designated thereby the preliminary plat of
15 the proposed subdivision for local review. The preliminary
16 plat shall show all pertinent features of the proposed
17 subdivision and all proposed improvements.

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

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

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

7 lii If the proposed subdivision is contiguous to the
 8 boundary of an incorporated city or town or is separated
 9 from a corporate boundary by only a public road, the
 10 approval by the county governing body shall be contingent
 11 upon a written finding by the city or town that the design
 12 and location of any roads or central water and sewer
 13 facilities will be compatible with the existing facilities
 14 of the municipality.

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

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

23 Section 10. Section 76-3-604, MCA, is amended to read:

24 "76-3-604. Review of preliminary plat. (1) The
 25 governing body or its designated agent or agency shall

1 review the preliminary plat to determine whether it conforms
 2 to the local master plan that meets the requirements
 3 specified in 76-1-606(3), if one has been adopted, pursuant
 4 to chapter 1 to the provisions of this chapter, and to rules
 5 prescribed or adopted pursuant to this chapter.

6 (2) The governing body shall approve, conditionally
 7 approve, or reject the preliminary plat within 60 days of
 8 its presentation unless the subdivider consents to an
 9 extension of the review period. If the governing body fails
 10 to act within the prescribed time period, the subdivision is
 11 approved.

12 (3) If the governing body rejects or conditionally
 13 approves the preliminary plat, it shall forward one copy of
 14 the plat to the subdivider accompanied by a letter over the
 15 appropriate signature stating the reason for rejection or
 16 enumerating the conditions which must be met to assure
 17 approval of the final plat."

18 Section 11. Section 76-3-605, MCA, is amended to read:

19 "76-3-605. Hearing on preliminary plat. (1) The
 20 governing body or its authorized agent or agency shall hold
 21 a public hearing on the preliminary plat and shall consider
 22 all relevant evidence relating to the public health, safety,
 23 and welfare, including the environmental assessment, to
 24 determine whether the plat should be approved, conditionally
 25 approved, or disapproved by the governing body.

1 (2) Notice of such hearing shall be given by
 2 publication in a newspaper of general circulation in the
 3 county not less than 15 days prior to the date of the
 4 hearing. The subdivider and each property owner of record
 5 immediately adjoining the land included in the plat shall
 6 also be notified of the hearing by registered--or certified
 7 mail not less than 15 days prior to the date of the hearing.

8 (3) When a hearing is held by an agent or agency
 9 designated by the governing body, the agent or agency shall
 10 act in an advisory capacity and recommend to the governing
 11 body the approval, conditional approval, or disapproval of
 12 the plat. ~~This recommendation must be submitted to the~~
 13 ~~governing body in writing not later than 10 days after the~~
 14 ~~public hearing.~~

15 Section 12. Section 76-3-609, MCA, is amended to read:

16 "76-3-609. Review summary review procedure for minor
 17 certain subdivisions. Except as provided in [Section 12],
 18 summary review procedures shall be as follows:

19 (1) Subdivisions For minor subdivisions containing
 20 five--or--fewer--percents--where proper access to all lots is
 21 provided and in which no land is to be dedicated to the
 22 public--for--parks--or--playgrounds--are--to--be reviewed as
 23 follows:

24 (i) ~~The governing body must approve conditionally~~
 25 ~~approve or disapprove the first such subdivision from a~~

1 ~~tract of record within 35 days of the submission of an~~
 2 ~~application for approval thereof~~

3 (a) ~~the subdivider shall submit either a preliminary~~
 4 ~~plat that complies with local regulations or a final plat~~
 5 ~~that complies with local regulations and the department of~~
 6 ~~community affairs uniform standards for final subdivision~~
 7 ~~plats. The governing body shall act on the plat of the first~~
 8 ~~minor subdivision from a tract within 35 days of submittal~~
 9 ~~in accordance with 76-3-611 if a final plat is submitted or~~
 10 ~~in accordance with 76-3-610 if a preliminary plat is~~
 11 ~~submitted. If the governing body fails to act within 35 days~~
 12 ~~of submittal, the subdivision is approved.~~

13 (i) (b) ~~The~~ the governing body shall state in writing
 14 the conditions which must be met if the subdivision is
 15 conditionally approved or what local regulations would not
 16 be met by the subdivision if it disapproves the
 17 subdivision;

18 (i) (c) ~~The~~ the requirements for holding a public
 19 hearing and preparing an environmental assessment ~~shall~~ and
 20 finding that the subdivision is in the public interest do
 21 not apply to the first such minor subdivision created from a
 22 tract of record;

23 (i) (d) Subsequent second and subsequent subdivisions
 24 from a tract of record shall be reviewed under 76-3-505 and
 25 regulations adopted pursuant to that section.

1 (2) For subdivisions consisting exclusively of parcels
2 larger than 40 acres:

3 (a) the subdivider shall submit either a preliminary
4 plat which complies with local regulations or a final plat
5 which complies with local regulations and the department of
6 community affairs' uniform standards for final subdivision
7 plats. The governing body shall act on the plat within 35
8 days of submittal in accordance with 76-3-611 if a final
9 plat is submitted or in accordance with 76-3-610 if a
10 preliminary plat is submitted. If the governing body fails
11 to act within 35 days of submittal, the subdivision is
12 approved.

13 (b) the requirements for holding a public hearing,
14 preparing an environmental assessment, and finding that the
15 subdivision is in the public interest do not apply;

16 (c) the governing body's review and approval shall be
17 limited to a written determination that appropriate access
18 and any easements are properly provided.

19 (3) For subdivisions within the corporate boundaries
20 of a municipality or within areas covered by a master plan
21 containing the elements listed in 76-1-606(3) and to which
22 the subdivision conforms:

23 (a) a preliminary plat must be submitted and acted
24 upon pursuant to 76-3-610, except that the requirements for
25 preparation of an environmental assessment and a finding

1 that the subdivision is in the public interest do not apply.
2 If the governing body fails to act within 60 days of
3 submittal, the preliminary plat is approved.

4 (b) a final plat may be approved by the governing body
5 only after review pursuant to 76-3-611."

6 NEW SECTION. Section 13. Major impact resulting from
7 cumulative effect of several minor subdivisions -- when
8 reviewed. When so many minor subdivisions are proposed for
9 the same general area that the governing body believes their
10 cumulative effect on the provision of public services or the
11 natural environment may be significant, it shall require the
12 preparation of an environmental assessment and a public
13 hearing to address the overall impact of the subdivisions
14 and review them pursuant to 76-3-608 and the other
15 provisions for review of major subdivisions in [Title 76,
16 chapter 3, part 6].

17 Section 14. Repealer. Sections--76-3-207--and SECTION
18 76-3-210, MCA, are IS repealed.

-End-

1 HOUSE BILL NO. 46

2 INTRODUCED BY LORY

3 BY REQUEST OF THE INTERIM SUBCOMMITTEE ON SUBDIVISION LAWS

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE
6 SUBDIVISION AND PLATTING ACT AND RELATED LAND-USE STATUTES;
7 EXEMPTING CERTAIN SUBDIVISIONS FROM REVIEW; REDEFINING
8 SUBDIVISIONS; AND MAKING CERTAIN MINOR CHANGES; AMENDING
9 76-1-606, 76-3-103, 76-3-104, ~~76-3-201~~, 76-3-207, 76-3-504,
10 76-3-505, 76-3-508, 76-3-601, 76-3-604, 76-3-605, 76-3-609;
11 AND REPEALING ~~76-3-201~~ AND 76-3-210, MCA."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Section 76-1-606, MCA, is amended to read:

15 "76-1-606. Effect of master plan on subdivisions and
16 plats. (1) ~~When~~ a master plan ~~containing the~~
17 ~~provisions specified in subsection (3)~~ has been approved,
18 the city council may by ordinance or the board of county
19 commissioners may by resolution require subdivision plats to
20 conform to the provisions of the master plan. Certified
21 copies of such ordinance shall be filed with the city or
22 town clerk and with the county clerk and recorder of the
23 county.

24 (2) Thereafter:

25 (a) a plat involving lands within the corporate limits

1 of the city and covered by said master plan shall not be
2 filed without first presenting it to the planning board,
3 which shall make a report to the city council advising as to
4 compliance or noncompliance of the plat with the master
5 plan. The city council shall have the final authority to
6 approve the filing of such plat.

7 (b) a plat involving lands outside the corporate
8 limits of the city and covered by said master plan shall not
9 be filed without first presenting it to the planning board
10 which shall make a report to the board of county
11 commissioners advising as to compliance or noncompliance of
12 the plat with the master plan. The board of county
13 commissioners shall have the final authority to approve the
14 filing of such plat.

15 ~~(3) For purposes of this section and 76-3-505,~~
16 ~~76-3-604, and 76-3-609(3), the master plan must contain:~~

17 ~~(a) a land use plan that identifies geographic areas~~
18 ~~suitable for residential, commercial, or industrial land~~
19 ~~uses or sets forth community policy regarding quality or~~
20 ~~location of urban development;~~

21 ~~(b) a housing plan that identifies the existing~~
22 ~~housing units by type and number and the estimated~~
23 ~~availability of housing by type and number of units;~~

24 ~~(c) a public services plan that identifies existing~~
25 ~~public services and facilities, including but not limited to~~

1 ~~systems for water supply, sewage treatment and solid waste~~
2 ~~disposal, parks and recreation, schools, roads and bridges,~~
3 ~~and police and fire protection; the capacity of each; and~~
4 ~~identifies the needs for improvement or expansion of those~~
5 ~~services and facilities.~~

6 ~~{3}{4}~~ Nothing herein contained shall be interpreted
7 to limit the present powers of the city or county
8 governments but shall be an additional requirement before
9 any plat may be filed of record or entitled to be recorded."

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

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

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

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

23 (3) "Division of land" means the segregation of one or
24 more parcels of land from a larger tract held in single or
25 undivided ownership by transferring or contracting to

1 transfer title to or possession of a portion of the tract or
2 properly filing a certificate of survey or subdivision plat
3 establishing the identity of the segregated parcels pursuant
4 to this chapter.

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

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

11 ~~{6}~~ "Irregularly shaped tract of land" means a parcel
12 of land other than an aliquot part of the United States
13 government survey section or a United States government lot
14 the boundaries or areas of which cannot be determined
15 without a survey or trigonometric calculations.

16 ~~{7}~~ "Occasional sale" means one sale of a division of
17 land within any 12-month period.

18 {6} "OCCASIONAL SALE" MEANS ONE DIVISION OF LAND FOR
19 CONVEYANCE WITHIN ANY 12 MONTHS FOLLOWING THE TRANSACTION.

20 ~~{8}{9}{11}~~ "Planned unit development" means a land
21 development project consisting of residential clusters,
22 industrial parks, shopping centers, office building parks,
23 or any combination thereof which comprises a planned mixture
24 of land uses built in a prearranged relationship to each
25 other and having open space and community facilities in

1 common ownership or use.

2 ~~{9}{7}{18}~~ "Plat" means a graphical representation of a
3 subdivision showing the division of land into lots, parcels,
4 blocks, streets, alleys, and other divisions and
5 dedications.

6 ~~{18}{18}{19}~~ "Preliminary plat" means a neat and scaled
7 drawing of a proposed subdivision showing the layout of
8 streets, alleys, lots, blocks, ~~utility easements,~~ and other
9 elements of a subdivision which furnish a basis for review
10 by a governing body.

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

17 ~~{10}{11}~~ "Minor subdivision" means a subdivision
18 containing five or fewer parcels where proper access to all
19 lots is provided and where, if park dedication is required,
20 it shall be met by cash in lieu of land donation.

21 ~~{12}{11}{12}~~ "Registered land surveyor" means a person
22 licensed in conformance with the Montana Professional
23 Engineers' Registration Act (Title 37, chapter 67) to
24 practice surveying in the state of Montana.

25 ~~{13}{12}{13}~~ "Registered professional engineer" means a

1 person licensed in conformance with the Montana Professional
2 Engineers' Registration Act (Title 37, chapter 67) to
3 practice engineering in the state of Montana.

4 ~~{11}{14}~~ "Relocating a common boundary line" means the
5 establishment of a new location for a boundary line between
6 abutting parcels with no additional parcels being created.

7 ~~{14}{15}~~ "Subdivider" means any person who causes land
8 to be subdivided or who proposes a subdivision of land.

9 ~~{15}{16}~~ "Subdivision" means a division of land or land
10 so divided which creates one or more parcels containing less
11 than ~~20~~ acres, exclusive of public roadways, in order that
12 the title to or possession of the parcels may be sold,
13 rented, leased, or otherwise conveyed and shall include any
14 resubdivision and shall further include any condominium or
15 area, regardless of its size, which provides or will provide
16 multiple space for recreational camping vehicles, or mobile
17 homes."

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

19 "76-3-104. What constitutes subdivision. A subdivision
20 shall comprise only those parcels less than ~~20~~ acres which
21 have been segregated from the original tract, and the plat
22 thereof shall show all such parcels whether contiguous or
23 not."

24 SECTION 4. SECTION 76-3-201, MCA, IS AMENDED TO READ:

25 "76-3-201. Exemption for certain divisions of land.

1 Unless the method of disposition is adopted for the purpose
 2 of evading this chapter, the requirements of this chapter
 3 shall not apply to any division of land which:

4 ~~(1) is created by order of any court of record in this~~
 5 ~~state or by operation of law or which, in the absence of~~
 6 ~~agreement between the parties to the sale, could be created~~
 7 ~~by an order of any court in this state pursuant to the law~~
 8 ~~of eminent domain (Title 76, Chapter 30);~~

9 (2)(1) is created to provide security for construction
 10 mortgages, liens, or trust indentures;

11 (3)(2) creates an interest in oil, gas, minerals, or
 12 water which is now or hereafter severed from the surface
 13 ownership of real property;

14 (4)(3) creates cemetery lots;

15 ~~(5) is created by the reservation of a life estate;~~

16 ~~(6) is created by lease or rental for farming and~~
 17 ~~agricultural purposes."~~

18 Section 5. Section 76-3-207, MCA, is amended to read:

19 "76-3-207. Subdivisions exempted from review but
 20 subject to survey requirements -- exceptions. (1) Except as
 21 provided in subsection (2), unless the method of disposition
 22 is adopted for the purpose of evading this chapter, the
 23 following divisions of land are not subdivisions under this
 24 chapter but are subject to the surveying requirements of
 25 76-3-401 for divisions of land not amounting to

1 subdivisions:

2 (a) divisions made outside of platted subdivisions for
 3 the purpose of relocating common boundary lines between
 4 adjoining properties;

5 (b) divisions ~~one division~~ made outside of a platted
 6 subdivisions ~~subdivision~~ for the purpose of a gift or sale
 7 to any ~~each member~~ of the landowner's immediate family
 8 ~~provided that any additional conveyance to the same family~~
 9 ~~member shall be reviewed under the summary review procedures~~
 10 ~~of 76-3-609; A SINGLE DIVISION WITHIN A 12-MONTH PERIOD OF A~~
 11 ~~PARCEL TO WHICH TITLE OR CONTRACT FOR DEED AS RECORDED IN A~~
 12 ~~NOTICE OF PURCHASER'S INTEREST FILED WITH THE CLERK AND~~
 13 ~~RECORDER HAS BEEN HELD CONTINUOUSLY BY THE PERSON PROPOSING~~
 14 ~~TO DIVIDE THE PARCEL FOR A PERIOD OF 5 YEARS, AND WHICH IS~~
 15 ~~OUTSIDE OF PLATTED SUBDIVISIONS, WHERE THE TRANSACTION IS A~~
 16 ~~GIFT OR SALE TO ANY EACH MEMBER OF THE LANDOWNER'S IMMEDIATE~~
 17 ~~FAMILY. ANY FURTHER DIVISION OF THE EXEMPTED PARCEL SHALL BE~~
 18 ~~REVIEWED BY THE GOVERNING BODY UNDER THE PROVISIONS OF THIS~~
 19 ~~CHAPTER.~~

20 (c) divisions made outside of platted subdivisions by
 21 sale or agreement to buy and sell where when the parties to
 22 the transaction enter a convenient covenant running with the
 23 land and revocable only by mutual consent of the governing
 24 body and the property owner that the divided land will be
 25 used exclusively for agricultural purposes and that

1 ~~residential, commercial, and industrial uses or structures~~
2 ~~will be excluded on parcels of less than 40 acres;~~

3 ~~(d) a single division of a parcel outside of platted~~
4 ~~subdivisions when the transaction is an occasional sale;~~

5 (D) A SINGLE DIVISION OF A PARCEL, TO WHICH TITLE OR
6 CONTRACT FOR DEED AS RECORDED IN A NOTICE OF PURCHASER'S
7 INTEREST FILED WITH THE CLERK AND RECORDER HAS BEEN HELD
8 CONTINUOUSLY BY THE PERSON PROPOSING TO DIVIDE THE PARCEL
9 FOR A PERIOD OF 5 YEARS AND WHICH IS OUTSIDE THE PLATTED
10 SUBDIVISIONS, WHERE THE TRANSACTION IS AN OCCASIONAL SALE,
11 ANY FURTHER DIVISION OF THE EXEMPTED PARCEL SHALL BE
12 REVIEWED BY THE GOVERNING BODY UNDER THE PROVISIONS OF THIS
13 CHAPTER.

14 ~~(e) (1) for five or fewer lots within a platted~~
15 ~~subdivision, relocation of common boundaries and the~~
16 ~~aggregation of lots, PROVIDED THAT THE SURVEY IS FILED WITH~~
17 ~~THE COUNTY CLERK AND RECORDER AS AN AMENDED PLAT;~~

18 ~~(f) (E) divisions ordered by a court of record pursuant~~
19 ~~to 40-4-402 of the Uniform Marriage and Divorce Act or~~
20 ~~pursuant to the law of decedents' estates, provided that the~~
21 ~~case number of the order is noted on the certificate of~~
22 ~~survey;~~

23 ~~(f) (G) divisions that could be created pursuant to the~~
24 ~~law of eminent domain.~~

25 (2) Notwithstanding the provisions of subsection (1):

1 (a) within a platted subdivision filed with the county
2 clerk and recorder, any division of lots which results in an
3 increase in the number of lots or which redesigns or
4 rearranges six or more lots must be reviewed and approved by
5 the governing body, and an amended plat must be filed with
6 the county clerk and recorder;

7 (b) any change in use of the land exempted under
8 subsection (1)(c) for anything other than agricultural
9 purposes subjects the division to the provisions of this
10 chapter."

11 Section 6. Section 76-3-504, MCA, is amended to read:
12 "76-3-504. Minimum requirements for subdivision
13 regulations. (1) Not later than December 31, 1973, the
14 department of community affairs, through its division of
15 planning, shall, in conformance with the Montana
16 Administrative Procedure Act, prescribe reasonable minimum
17 requirements for subdivision regulations adopted pursuant to
18 this chapter.

19 (2) The minimum requirements shall include detailed
20 criteria for the content of the environmental assessment
21 required by this chapter. In prescribing the minimum
22 contents of the subdivision regulations, the department of
23 community affairs, through its division of planning, shall
24 require the submission by the subdivider to the governing
25 body of an environmental assessment except for those

1 subdivisions described in 76-3-505.

2 (3) The department shall provide for the review of
 3 preliminary plats by those agencies of state and local
 4 government and affected public utilities having a
 5 substantial interest in a proposed subdivision. Such agency
 6 or utility review shall not delay the governing body's
 7 action on the plat beyond the time limit specified herein,
 8 and the failure of any agency to complete a review of a plat
 9 shall not be a basis for rejection of the plat by the
 10 governing body."

11 Section 7. Section 76-3-505, MCA, is amended to read:

12 "76-3-505. Provision for summary review of minor
 13 certain subdivisions. (1) Local subdivision regulations
 14 shall include procedures for the summary review and approval
 15 of subdivision plats ~~meeting any of the following~~
 16 conditions:

17 ~~(a) containing five or fewer parcels where proper~~
 18 ~~access to all lots is provided, where no lot in the~~
 19 ~~subdivision will be dedicated to public use for parks or~~
 20 ~~playgrounds and which have been approved by the department~~
 21 ~~of health and environmental sciences where such approval is~~
 22 ~~required by part 1 of chapter 4 comprising a minor~~
 23 subdivision;

24 (b) consisting exclusively of parcels larger than 40
 25 acres in size; or

1 ~~(c) lying within the corporate boundaries of a~~
 2 ~~municipality or lying within areas for which a master plan~~
 3 ~~containing the minimum requirements described in 76-3-606(3)~~
 4 ~~76-1-606(3) has been adopted and to which the subdivision~~
 5 ~~conforms, provided that reasonable~~

6 (2) Reasonable local regulations may contain
 7 additional requirements for summary approval."

8 Section 8. Section 76-3-508, MCA, is amended to read:

9 "76-3-508. Procedure if local government fails to
 10 adopt regulations. In the event that any governing body has
 11 not adopted subdivision regulations by July 1, 1974, which
 12 meet or exceed the prescribed minimum requirements, the
 13 department shall, through its division of planning, no later
 14 than January 1, 1975, promulgate reasonable regulations to
 15 be enforced by the governing body. If at any time thereafter
 16 the governing body adopts its own subdivision regulations,
 17 these shall supersede those promulgated by the department
 18 ~~but shall be no less stringent."~~

19 Section 9. Section 76-3-601, MCA, is amended to read:

20 "76-3-601. Submission of preliminary plat for review.
 21 (1) Except where a plat is eligible for summary approval,
 22 the subdivider shall present to the governing body or the
 23 agent or agency designated thereby the preliminary plat of
 24 the proposed subdivision for local review. The preliminary
 25 plat shall show all pertinent features of the proposed

1 subdivision and all proposed improvements.

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

6 (b) (i) When the proposed subdivision is situated
7 entirely in an unincorporated area, the preliminary plat
8 shall be submitted to and approved by the governing body of
9 the county.

10 (ii) However, if the proposed subdivision lies within
11 1 mile of a third-class city or town or within 2 miles of a
12 second-class city or within 3 miles of a first-class city,
13 the county governing body shall submit the preliminary plat
14 to the city or town governing body or its designated agent
15 for review and comment.

16 (iii) If the proposed subdivision is contiguous to the
17 boundary of an incorporated city or town or is separated
18 from a corporate boundary by only a public road, the
19 approval by the county governing body shall be contingent
20 upon a written finding by the city or town that the design
21 and location of any roads or central water and sewer
22 facilities will be compatible with the existing facilities
23 of the municipality.

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

1 submitted to and approved by both the city or town and the
2 county governing bodies.

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

7 Section 10. Section 76-3-604, MCA, is amended to read:

8 "76-3-604. Review of preliminary plat. (1) The
9 governing body or its designated agent or agency shall
10 review the preliminary plat to determine whether it conforms
11 to the local master plan that meets the requirements
12 specified in 76-1-606(3), if one has been adopted, pursuant
13 to chapter 1 to the provisions of this chapter, and to rules
14 prescribed or adopted pursuant to this chapter.

15 (2) The governing body shall approve, conditionally
16 approve, or reject the preliminary plat within 60 days of
17 its presentation unless the subdivider consents to an
18 extension of the review period. If the governing body fails
19 to act within the prescribed time period, the subdivision is
20 approved.

21 (3) If the governing body rejects or conditionally
22 approves the preliminary plat, it shall forward one copy of
23 the plat to the subdivider accompanied by a letter over the
24 appropriate signature stating the reason for rejection or
25 enumerating the conditions which must be met to assure

1 approval of the final plat."

2 Section 11. Section 76-3-605, MCA, is amended to read:

3 "76-3-605. Hearing on preliminary plat. (1) The
4 governing body or its authorized agent or agency shall hold
5 a public hearing on the preliminary plat and shall consider
6 all relevant evidence relating to the public health, safety,
7 and welfare, including the environmental assessment, to
8 determine whether the plat should be approved, conditionally
9 approved, or disapproved by the governing body.

10 (2) Notice of such hearing shall be given by
11 publication in a newspaper of general circulation in the
12 county not less than 15 days prior to the date of the
13 hearing. The subdivider and each property owner of record
14 immediately adjoining the land included in the plat shall
15 also be notified of the hearing by registered--or certified
16 mail not less than 15 days prior to the date of the hearing.

17 (3) When a hearing is held by an agent or agency
18 designated by the governing body, the agent or agency shall
19 act in an advisory capacity and recommend to the governing
20 body the approval, conditional approval, or disapproval of
21 the plat. ~~This recommendation must be submitted to the~~
22 ~~governing body in writing not later than 10 days after the~~
23 ~~public hearing."~~

24 Section 12. Section 76-3-609, MCA, is amended to read:

25 "76-3-609. Review Summary review procedure for minor

1 ~~certain subdivisions. Except as provided in [section 13 12],~~
2 ~~summary review procedures shall be as follows:~~

3 (1) ~~Subdivisions~~ For minor subdivisions containing
4 ~~five or fewer parcels where proper access to all lots is~~
5 ~~provided and in which no land is to be dedicated to the~~
6 ~~public for parks or playgrounds are to be reviewed as~~
7 ~~follows:~~

8 (i) ~~The governing body must approve conditionally~~
9 ~~approve or disapprove the first such subdivision from a~~
10 ~~tract of record within 35 days of the submission of an~~
11 ~~application for approval thereof~~

12 (a) the subdivider shall submit either a preliminary
13 plat that complies with local regulations or a final plat
14 ~~that complies with local regulations and the department of~~
15 ~~community affairs uniform standards for final subdivision~~
16 ~~plats. The governing body shall act on the plat of the first~~
17 ~~minor subdivision from a tract within 35 days of submittal~~
18 ~~in accordance with 76-3-611 if a final plat is submitted or~~
19 ~~in accordance with 76-3-610 if a preliminary plat is~~
20 ~~submitted. If the governing body fails to act within 35 days~~
21 ~~of submittal, the subdivision is approved.~~

22 (2)(b) ~~The~~ the governing body shall state in writing
23 the conditions which must be met if the subdivision is
24 conditionally approved or what local regulations would not
25 be met by the subdivision if it disapproves the

1 subdivisions;

2 (3)(c) The the requirements for holding a public
3 hearing and preparing an environmental assessment ~~and~~
4 ~~finding that the subdivision is in the public interest do~~
5 not apply to the first such minor subdivision created from a
6 tract of record;

7 (4)(d) Subsequent ~~second and subsequent~~ subdivisions
8 from a tract of record shall be reviewed under 76-3-505 and
9 regulations adopted pursuant to that section.

10 (2) ~~For subdivisions consisting exclusively of parcels~~
11 ~~larger than 40 acres:~~

12 (a) ~~the subdivider shall submit either a preliminary~~
13 ~~plat which complies with local regulations or a final plat~~
14 ~~which complies with local regulations and the department of~~
15 ~~community affairs' uniform standards for final subdivision~~
16 ~~plats. The governing body shall act on the plat within 35~~
17 ~~days of submittal in accordance with 76-3-611 if a final~~
18 ~~plat is submitted or in accordance with 76-3-610 if a~~
19 ~~preliminary plat is submitted. If the governing body fails~~
20 ~~to act within 35 days of submittal, the subdivision is~~
21 ~~approved.~~

22 (b) ~~the requirements for holding a public hearing,~~
23 ~~preparing an environmental assessment, and finding that the~~
24 ~~subdivision is in the public interest do not apply;~~

25 (c) ~~the governing body's review and approval shall be~~

1 ~~limited to a written determination that appropriate access~~
2 ~~and any easements are properly provided.~~

3 (3) ~~For subdivisions within the corporate boundaries~~
4 ~~of a municipality or within areas covered by a master plan~~
5 ~~containing the elements listed in 76-1-606(3) and to which~~
6 ~~the subdivision conforms:~~

7 (a) ~~a preliminary plat must be submitted and acted~~
8 ~~upon pursuant to 76-3-610, except that the requirements for~~
9 ~~preparation of an environmental assessment and a finding~~
10 ~~that the subdivision is in the public interest do not apply.~~
11 ~~If the governing body fails to act within 60 days of~~
12 ~~submittal, the preliminary plat is approved.~~

13 (b) ~~a final plat may be approved by the governing body~~
14 ~~only after review pursuant to 76-3-611."~~

15 NEW SECTION. Section 13. Major impact resulting from
16 cumulative effect of several minor subdivisions -- when
17 reviewed. When so many minor subdivisions are proposed for
18 the same general area that the governing body believes their
19 cumulative effect on the provision of public services or the
20 natural environment may be significant, it shall require the
21 preparation of an environmental assessment and a public
22 hearing to address the overall impact of the subdivisions
23 and review them pursuant to 76-3-608 and the other
24 provisions for review of major subdivisions in [Title 76,
25 chapter 3, part 6].

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1 Section 14. Repealer. Sections--76-3-201--and SECTION
2 76-3-210, MCA, are IS repealed.

-End-