

House Bill 715

In The House

February 11, 1981	Introduced and referred to Committee on Local Government.
February 21, 1981	Committee recommend bill do pass as amended.
February 23, 1981	Bill printed and placed on members' desks.
February 24, 1981	Second reading do pass.
February 25, 1981	On motion rules suspended and bill placed on third reading this day. Third reading passed.

In The Senate

March 3, 1981	Introduced and referred to Committee on Local Government.
March 30, 1981	Committee recommend bill not concurred.

In The House

March 31, 1981	Returned from Senate not concurred.
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HOUSE BILL NO. 715

INTRODUCED BY *Loy Dorn Agnew, A. Kemmis Sherwitz*
STEVE BROWN, Hussain, Eubaly, Anderson, Hansen

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

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

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

"76-1-606. Effect of master plan on subdivisions and
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.

(b) a plat involving lands outside 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 board of county
commissioners advising as to compliance or noncompliance of
the plat with the master plan. The board of county
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:~~

~~(a) a land-use plan that identifies geographic areas
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; and~~

~~(c) a public services plan that identifies existing
public services and facilities, including but not limited to
systems for water supply, sewage treatment and solid waste~~

1 disposal, parks and recreation, schools, roads and bridges,
 2 and police and fire protection; the capacity of each; and
 3 the need for improvement or expansion of those services and
 4 facilities.

5 ~~(3)(4)~~ Nothing herein contained shall be interpreted
 6 to limit the present powers of the city or county
 7 governments but shall be an additional requirement before
 8 any plat may be filed of record or entitled to be recorded."

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

10 "76-3-103. Definitions. As used in this chapter,
 11 unless the context or subject matter clearly requires
 12 otherwise, the following words or phrases shall have the
 13 following meanings:

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

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

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

1 properly filing a certificate of survey or subdivision plat
 2 establishing the identity of the segregated parcels pursuant
 3 to this chapter.

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

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

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

15 ~~(7)(6)~~ "Occasional sale" means one sale of a division
 16 of land within any 12-month period division of land for
 17 conveyance within any 12 months following the transaction.

18 ~~(8)(7)~~ "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)(8)~~ "Plat" means a graphical representation of a

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

4 ~~(10)~~(9) "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 ~~(11)~~(10) "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 ~~(11) "Minor subdivision" means a subdivision containing~~
16 ~~five or fewer parcels where proper access to all lots is~~
17 ~~provided and where, if park dedication is required, it shall~~
18 ~~be met by cash in lieu of land donation.~~

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

23 (13) "Registered professional engineer" means a person
24 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 ~~(14) "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)~~(15) "Subdivider" means any person who causes land
6 to be subdivided or who proposes a subdivision of land.

7 ~~(15)~~(16) "Subdivision" means a division of land or land
8 so 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 76-3-201, MCA, is amended to read:
23 "76-3-201. Exemption for certain divisions of land.
24 Unless the method of disposition is adopted for the purpose
25 of evading this chapter, the requirements of this chapter

1 shall not apply to any division of land which:

2 ~~(1) is created by order of any court of record in this~~
 3 ~~state or by operation of law or which in the absence of~~
 4 ~~agreement between the parties to the sale, could be created~~
 5 ~~by an order of any court in this state pursuant to the law~~
 6 ~~of eminent domain (Title 70, Chapter 30);~~

7 (2)(1) is created to provide security for construction
 8 mortgages, liens, or trust indentures;

9 (3)(2) creates an interest in oil, gas, minerals, or
 10 water which is now or hereafter severed from the surface
 11 ownership of real property;

12 (4)(3) creates cemetery lots;

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

14 ~~(6) is created by lease or rental for farming and~~
 15 ~~agricultural purposes.~~

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

17 "76-3-207. Subdivisions exempted from review but
 18 subject to survey requirements -- exceptions. (1) Except as
 19 provided in subsection (2), unless the method of disposition
 20 is adopted for the purpose of evading this chapter, the
 21 following divisions of land are not subdivisions under this
 22 chapter but are subject to the surveying requirements of
 23 76-3-401 for divisions of land not amounting to
 24 subdivisions:

25 (a) divisions made outside of platted subdivisions for

1 the purpose of relocating common boundary lines between
 2 adjoining properties;

3 (b) ~~divisions made outside of platted subdivisions for~~
 4 ~~the purpose of a gift or sale to any member of the~~
 5 ~~landowner's immediate family; a single division within a~~
 6 ~~12-month period of a parcel to which title or contract for~~
 7 ~~deed as recorded in a notice of purchaser's interest filed~~
 8 ~~with the clerk and recorder has been held continuously by~~
 9 ~~the person proposing to divide the parcel for a period of 5~~
 10 ~~years and which is outside of platted subdivisions, if the~~
 11 ~~transaction is a gift or sale to each member of the~~
 12 ~~landowner's immediate family. Any further division of the~~
 13 ~~exempted parcel shall be reviewed by the governing body~~
 14 ~~under the provisions of this chapter.~~

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 covenant running with the land and
 18 revocable only by mutual consent of the governing body and
 19 the property owner that the divided land will be used
 20 exclusively for agricultural purposes and that residential,
 21 commercial, and industrial uses or structures will be
 22 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 to~~
 25 which title or contract for deed as recorded in a notice of

purchaser's interest filed with the clerk and recorder has been held continuously by the person proposing to divide the parcel for a period of 5 years and which is outside of platted subdivisions, if the transaction is an occasional sale. Any further division of the exempted parcel shall be reviewed by the governing body under the provisions of this chapter.

(e) for five or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots, if the survey is filed with the county clerk and recorder as an amended plat:

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

(g) divisions that could be created pursuant to the law of eminent domain.

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

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

(b) any change in use of the land exempted under

subsection (1)(c) for anything other than agricultural purposes subjects the division to the provisions of this chapter."

Section 6. Section 76-3-504, MCA, is amended to read:

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

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

(3) The department shall provide for the review of preliminary plats by those agencies of state and local government and affected public utilities having a substantial interest in a proposed subdivision. Such agency or utility review shall not delay the governing body's action on the plat beyond the time limit specified herein,

1 and the failure of any agency to complete a review of a plat
2 shall not be a basis for rejection of the plat by the
3 governing body."

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

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

10 ~~(a) containing five or fewer parcels where proper~~
11 ~~access to all lots is provided, where no land in the~~
12 ~~subdivision will be dedicated to public use for parks or~~
13 ~~playgrounds and which have been approved by the department~~
14 ~~of health and environmental sciences where such approval is~~
15 ~~required by part 1 of chapter 4 comprising a minor~~
16 ~~subdivision;~~

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

19 ~~(c) lying within the corporate boundaries of a~~
20 ~~municipality or lying within areas for which a master plan~~
21 ~~containing the minimum requirements described in 76-1-606(2)~~
22 ~~has been adopted and to which the subdivision conforms.~~

23 ~~(2) provided that reasonable~~ Reasonable local
24 regulations may contain additional requirements for summary
25 approval."

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

2 "76-3-508. Procedure if local government fails to
3 adopt regulations. In the event that any governing body has
4 not adopted subdivision regulations by July 1, 1974, which
5 meet or exceed the prescribed minimum requirements, the
6 department shall, through its division of planning, no later
7 than January 1, 1975, promulgate reasonable regulations to
8 be enforced by the governing body. If at any time thereafter
9 the governing body adopts its own subdivision regulations,
10 these shall supersede those promulgated by the department
11 but shall be no less stringent."

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

13 "76-3-601. Submission of preliminary plat for review.
14 (1) Except where a plat is eligible for summary approval,
15 the subdivider shall present to the governing body or the
16 agent or agency designated thereby the preliminary plat of
17 the proposed subdivision for local review. The preliminary
18 plat shall show all pertinent features of the proposed
19 subdivision and all proposed improvements.

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

24 (b) ~~(1)~~ When the proposed subdivision is situated
25 entirely in an unincorporated area, the preliminary plat

1 shall be submitted to and approved by the governing body of
2 the county.

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

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

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

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

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

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

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

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

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

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

1 determine whether the plat should be approved, conditionally
2 approved, or disapproved by the governing body.

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

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

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

18 "76-3-609. Review Summary review procedure for minor
19 certain subdivisions. Except as provided in [section 13],
20 summary review procedures shall be as follows:

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

1 ~~(1) The governing body must approve conditionally~~
2 ~~approve or disapprove the first such subdivision from a~~
3 ~~tract of record within 35 days of the submission of an~~
4 ~~application for approval thereof.~~

5 (a) the subdivider shall submit a preliminary plat
6 that complies with local regulations. The governing body
7 shall act on the plat of the first minor subdivision from a
8 tract within 35 days of submittal in accordance with
9 76-3-610. If the governing body fails to act within 35 days
10 of submittal, the subdivision is approved.

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

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

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

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

1 ~~(a) the subdivider shall submit either a preliminary~~
 2 ~~plat that complies with local regulations or a final plat~~
 3 ~~that complies with local regulations and the department of~~
 4 ~~community affairs' uniform standards for final subdivision~~
 5 ~~plats. The governing body shall act on the plat within 25~~
 6 ~~days of submittal in accordance with 76-3-611 if a final~~
 7 ~~plat is submitted or in accordance with 76-3-610 if a~~
 8 ~~preliminary plat is submitted. If the governing body fails~~
 9 ~~to act within 35 days of submittal, the subdivision is~~
 10 ~~approved.~~

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

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

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

21 ~~(a) a preliminary plat must be submitted and acted~~
 22 ~~upon pursuant to 76-3-610, except that the requirements for~~
 23 ~~preparation of an environmental assessment and a finding~~
 24 ~~that the subdivision is in the public interest do not apply.~~
 25 ~~If the governing body fails to act within 50 days of~~

1 ~~submittal, the preliminary plat is approved.~~

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

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

15 Section 14. Repealer. Section 76-3-210, MCA, is
 16 repealed.

-End-

Approved by Comm.
on Local Government

HOUSE BILL NO. 715

INTRODUCED BY LORY, DOVER, AZZARA, KEMMIS,

MURWITZ, S. BROWN, DUSSAULT, EUDAILY, ANDREASON, HANSON

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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) Thereafter:

(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
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uses or sets forth community policy regarding quality or
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19 TIME OF CONVEYANCE.

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22 industrial parks, shopping centers, office building parks,
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25 other and having open space and community facilities in

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3 subdivision showing the division of land into lots, parcels,
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22 in conformance with the Montana Professional Engineers'
23 Registration Act (Title 37, chapter 67) to practice
24 surveying in the state of Montana.

25 {13} "Registered professional engineer" means a person

1 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 {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-70, 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-made-outside-of-platted-subdivisions-for~~
 6 ~~the--purpose--of--a--gift--or--sale--to--any--member--of--the~~
 7 ~~landowner's-immediate-family; a single division within--a~~
 8 ~~12-month--period of a parcel to which title or contract for~~
 9 ~~deed as recorded in a notice of purchaser's interest filed~~
 10 ~~with the clerk and recorder has been held continuously by~~
 11 ~~the person proposing to divide the parcel for a period of 5~~
 12 ~~3 years and which is outside of platted subdivisions, if the~~
 13 ~~transaction is a gift or sale to each member of the~~
 14 ~~landowner's immediate family. Any further division of the~~
 15 ~~exempted parcel shall be reviewed by the governing body~~
 16 ~~under the provisions of this chapter.~~

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

25 (d) a single division of a parcel ~~outside-of-platted~~

1 ~~subdivisions when the transaction is an occasional sale~~ to
 2 ~~which title or contract for deed as recorded in a notice of~~
 3 ~~purchaser's interest filed with the clerk and recorder has~~
 4 ~~been held continuously by the person proposing to divide the~~
 5 ~~parcel for a period of 5 3 years and which is outside of~~
 6 ~~platted subdivisions, if the transaction is an occasional~~
 7 ~~sale. Any further division of the exempted parcel shall be~~
 8 ~~reviewed by the governing body under the provisions of this~~
 9 ~~chapter.~~

10 (e) for five or fewer lots within a platted
 11 subdivision, relocation of common boundaries and the
 12 aggregation of lots, if the survey is filed with the county
 13 clerk and recorder as an amended plat;

14 (f) divisions ordered by a court of record pursuant to
 15 40-4-402 40-4-202 of the Uniform Marriage and Divorce Act or
 16 pursuant to the law of decedents' estates, if the case
 17 number of the order is noted on the certificate of survey;
 18 and

19 (g) divisions that could be created pursuant to the
 20 law of eminent domain; AND

21 (H) DIVISIONS USED FOR UTILITY SITINGS OR EASEMENTS
 22 PROVIDED NO STRUCTURE REQUIRING WATER OR SEWAGE DISPOSAL IS
 23 ERECTED ON THE PARCEL.

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

25 (a) within a platted subdivision filed with the county

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

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

10 Section 6. Section 76-3-504, MCA, is amended to read:

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

18 (2) The minimum requirements shall include detailed
 19 criteria for the content of the environmental assessment
 20 required by this chapter. In prescribing the minimum
 21 contents of the subdivision regulations, the department of
 22 community affairs, through its division of planning, shall
 23 require the submission by the subdivider to the governing
 24 body of an environmental assessment except for those
 25 subdivisions described in 76-3-505.

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

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

11 "76-3-505. Provision for summary review of minor
 12 certain subdivisions. (1) Local subdivision regulations
 13 shall include procedures for the summary review and approval
 14 of subdivision plats meeting any of the following
 15 conditions:

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

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

25 (c) lying within the corporate boundaries of a

1 municipality or lying within areas for which a master plan
 2 containing the minimum requirements described in 76-1-606(3)
 3 has been adopted and to which the subdivision conforms.

4 (2) provided that reasonable Reasonable local
 5 regulations may contain additional requirements for summary
 6 approval."

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

8 "76-3-508. Procedure if local government fails to
 9 adopt regulations. In the event that any governing body has
 10 not adopted subdivision regulations by July 1, 1974, which
 11 meet or exceed the prescribed minimum requirements, the
 12 department shall, through its division of planning, no later
 13 than January 1, 1975, promulgate reasonable regulations to
 14 be enforced by the governing body. If at any time thereafter
 15 the governing body adopts its own subdivision regulations,
 16 these shall supersede those promulgated by the department
 17 but shall be no less stringent."

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

19 "76-3-601. Submission of preliminary plat for review.
 20 (1) Except where a plat is eligible for summary approval,
 21 the subdivider shall present to the governing body or the
 22 agent or agency designated thereby the preliminary plat of
 23 the proposed subdivision for local review. The preliminary
 24 plat shall show all pertinent features of the proposed
 25 subdivision and all proposed improvements.

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

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

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

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

23 (c) If the proposed subdivision lies partly within an
24 incorporated city or town, the proposed plat thereof must be
25 submitted to and approved by both the city or town and the

1 county governing bodies.

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

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

7 "76-3-604. Review of preliminary plat. (1) The
8 governing body or its designated agent or agency shall
9 review the preliminary plat to determine whether it conforms
10 to the local master plan that meets the requirements
11 specified in 76-1-606(3), if one has been adopted, pursuant
12 ~~to--chapter--1~~ to the provisions of this chapter, and to
13 rules prescribed or adopted pursuant to this chapter.

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

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

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

2 "76-3-605. Hearing on preliminary plat. (1) The
3 governing body or its authorized agent or agency shall hold
4 a public hearing on the preliminary plat and shall consider
5 all relevant evidence relating to the public health, safety,
6 and welfare, including the environmental assessment, to
7 determine whether the plat should be approved, conditionally
8 approved, or disapproved by the governing body.

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

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

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

24 "76-3-609. Review Summary review procedure for minor
25 certain subdivisions. Except as provided in [section 13],

1 summary review procedures shall be as follows:

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

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

11 (a) the subdivider shall submit a preliminary plat
12 that complies with local regulations. The governing body
13 shall act on the plat of the first minor subdivision from a
14 tract within 35 days of submittal in accordance with
15 76-3-610. If the governing body fails to act within 35 days
16 of submittal, the subdivision is approved.

17 (2)(b) The the governing body shall state in writing
18 the conditions which must be met if the subdivision is
19 conditionally approved or what local regulations would not
20 be met by the subdivision if it disapproves the
21 subdivision;

22 (3)(c) The the requirements for holding a public
23 hearing and preparing an environmental assessment shall and
24 finding that the subdivision is in the public interest do
25 not apply to the first such minor subdivision created from a

1 tract of record; and

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

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

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

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

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

23 (3) For subdivisions within the corporate boundaries
24 of a municipality or within areas covered by a master plan
25 containing the elements listed in 76-1-606(3) and to which

1 the subdivision conforms:

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

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

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

21 Section 14. Repealer. Section 76-3-210, MCA, is
22 repealed.

-End-

1 HOUSE BILL NO. 715
 2 INTRODUCED BY LORY, DOVER, AZZARA, KEMMIS,
 3 HURWITZ, S. BROWN, DUSSAULT, EUDAILY, ANDREASON, HANSON
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE MONTANA
 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 SECTIONS 76-1-606, 76-3-103, 76-3-104, 76-3-201, 76-3-207,
 10 76-3-504, 76-3-505, 76-3-508, 76-3-601, 76-3-604, 76-3-605,
 11 76-3-609, MCA; AND REPEALING SECTION 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) Hereafter:
 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; and

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 the need for improvement or expansion of those services and
 5 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)~~(6) "Occasional sale" means one sale of a division
 17 of land within any 12-month period division of land for
 18 conveyance within any 12 months following the transaction
 19 TIME OF CONVEYANCE.

20 ~~(8)~~(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}~~{8} "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}~~{9} "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}~~{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 {11} "Minor subdivision" means a subdivision containing
18 five or fewer parcels where proper access to all lots is
19 provided and where, if park dedication is required, it shall
20 be met by cash in lieu of land donation.

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

25 {13} "Registered professional engineer" means a person

1 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 {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 made outside of platted subdivisions for~~
6 ~~the purpose of a gift or sale to any member of the~~
7 ~~landowner's immediate family; a single division within a~~
8 ~~12-month period of a parcel to which title or contract for~~
9 ~~deed as recorded in a notice of purchaser's interest filed~~
10 ~~with the clerk and recorder has been held continuously by~~
11 ~~the person proposing to divide the parcel for a period of 5~~
12 ~~3 years and which is outside of platted subdivisions, if the~~
13 ~~transaction is a gift or sale to each member of the~~
14 ~~landowner's immediate family. Any further division of the~~
15 ~~exempted parcel shall be reviewed by the governing body~~
16 ~~under the provisions of this chapter.~~

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

25 (d) a single division of a parcel ~~outside of platted~~

~~subdivisions when the transaction is an occasional sale to which title or contract for deed as recorded in a notice of purchaser's interest filed with the clerk and recorder has been held continuously by the person proposing to divide the parcel for a period of 5 3 years and which is outside of platted subdivisions, if the transaction is an occasional sale. Any further division of the exempted parcel shall be reviewed by the governing body under the provisions of this chapter.~~

(e) for five or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots, if the survey is filed with the county clerk and recorder as an amended plat;

(f) divisions ordered by a court of record pursuant to 40-4-402 40-4-202 of the Uniform Marriage and Divorce Act or pursuant to the law of decedents' estates, if the case number of the order is noted on the certificate of survey; and

(g) divisions that could be created pursuant to the law of eminent domain; AND

(H) DIVISIONS USED FOR UTILITY SITINGS OR EASEMENTS PROVIDED NO STRUCTURE REQUIRING WATER OR SEWAGE DISPOSAL IS ERECTED ON THE PARCEL.

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

(a) within a platted subdivision filed with the county

clerk and recorder, any division of lots which results in an increase in the number of lots or which redesigns or rearranges six or more lots must be reviewed and approved by the governing body, and an amended plat must be filed with the county clerk and recorder;

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

Section 6. Section 76-3-504, MCA, is amended to read:

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

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

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

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

11 "76-3-505. Provision for summary review of ~~minor~~
 12 certain subdivisions. (1) Local subdivision regulations
 13 shall include procedures for the summary review and approval
 14 of subdivision plats meeting any of the following
 15 conditions:

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

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

25 (c) lying within the corporate boundaries of a

1 municipality or lying within areas for which a master plan
 2 containing the minimum requirements described in 76-1-606(3)
 3 has been adopted and to which the subdivision conforms.

4 (2) provided that reasonable Reasonable local
 5 regulations may contain additional requirements for summary
 6 approval."

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

8 "76-3-508. Procedure if local government fails to
 9 adopt regulations. In the event that any governing body has
 10 not adopted subdivision regulations by July 1, 1974, which
 11 meet or exceed the prescribed minimum requirements, the
 12 department shall, through its division of planning, no later
 13 than January 1, 1975, promulgate reasonable regulations to
 14 be enforced by the governing body. If at any time thereafter
 15 the governing body adopts its own subdivision regulations,
 16 these shall supersede those promulgated by the department
 17 but shall be no less stringent."

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

19 "76-3-601. Submission of preliminary plat for review.

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

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

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

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

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

23 (c) If the proposed subdivision lies partly within an
 24 incorporated city or town, the proposed plat thereof must be
 25 submitted to and approved by both the city or town and the

1 county governing bodies.

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

6 Section 10. Section 76-3-604, MCA, is amended to read:
 7 "76-3-604. Review of preliminary plat. (1) The
 8 governing body or its designated agent or agency shall
 9 review the preliminary plat to determine whether it conforms
 10 to the local master plan that meets the requirements
 11 specified in 76-1-606(3), if one has been adopted, pursuant
 12 ~~to chapter 17~~ to the provisions of this chapter, and to
 13 rules prescribed or adopted pursuant to this chapter.

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

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

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

2 "76-3-605. Hearing on preliminary plat. (1) The
3 governing body or its authorized agent or agency shall hold
4 a public hearing on the preliminary plat and shall consider
5 all relevant evidence relating to the public health, safety,
6 and welfare, including the environmental assessment, to
7 determine whether the plat should be approved, conditionally
8 approved, or disapproved by the governing body.

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

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

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

24 "76-3-609. Review Summary review procedure for minor
25 certain subdivisions. Except as provided in [section 13],

1 summary review procedures shall be as follows:

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

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

11 (a) the subdivider shall submit a preliminary plat
12 that complies with local regulations. The governing body
13 shall act on the plat of the first minor subdivision from a
14 tract within 35 days of submittal in accordance with
15 76-3-610. If the governing body fails to act within 35 days
16 of submittal, the subdivision is approved.

17 ~~(2)(b) The the~~ governing body shall state in writing
18 the conditions which must be met if the subdivision is
19 conditionally approved or what local regulations would not
20 be met by the subdivision if it disapproves the
21 subdivision;

22 ~~(3)(c) The the~~ requirements for holding a public
23 hearing and preparing an environmental assessment shall and
24 finding that the subdivision is in the public interest do
25 not apply to the first such minor subdivision created from a

1 tract of record; and

2 ~~{4}{d}~~ Subsequent second and subsequent subdivisions
 3 from a tract of record shall be reviewed under 76-3-505 and
 4 regulations adopted pursuant to that section.

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

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

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

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

23 (3) For subdivisions within the corporate boundaries
 24 of a municipality or within areas covered by a master plan
 25 containing the elements listed in 76-1-606(3) and to which

1 the subdivision conforms:

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

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

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

21 Section 14. Repealer. Section 76-3-210, MCA, is
 22 repealed.

-End-