

HOUSE BILL NO. 762

Introduced: 02/12/83

Referred to Committee on Natural Resources: 02/12/83

Hearing: 2/18/83

Report: 02/19/83, Do Pass, As Amended

2nd Reading: 02/22/83, Do Pass

3rd Reading: 02/23/83, Do Pass

Transmitted to Senate: 02/23/83

Referred to Committee on Agriculture, Livestock, & Irrigation:  
3/1/83

Hearing: 3/14/83

Report: 03/21/83, Be Not Concurred In. Report Adopted.

Bill Killed

1 House BILL NO. 762  
 2 INTRODUCED BY Liz Ream Kaden J. Jackson  
 3 Waldron  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA  
 5 SUBDIVISION AND PLATTING ACT AND RELATED LAND-USE STATUTES;  
 6 EXEMPTING CERTAIN SUBDIVISIONS FROM REVIEW; REDEFINING  
 7 "SUBDIVISIONS"; AND MAKING CERTAIN MINOR CHANGES; AMENDING  
 8 SECTIONS 76-1-606, 76-3-103, 76-3-104, 76-3-201, 76-3-207,  
 9 76-3-504, 76-3-505, 76-3-601, 76-3-604, 76-3-605, 76-3-609,  
 10 MCA; AND REPEALING SECTION 76-3-210, MCA."  
 11  
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 13 Section 1. Section 76-1-606, MCA, is amended to read:  
 14 "76-1-606. Effect of master plan on subdivisions and  
 15 plats. (1) Where ~~When~~ a master plan ~~containing the~~  
 16 ~~provisions specified in subsection (3)~~ has been approved,  
 17 the city council may by ordinance or the board of county  
 18 commissioners may by resolution require subdivision plats to  
 19 conform to the provisions of the master plan. Certified  
 20 copies of such ordinance shall be filed with the city or  
 21 town clerk and with the county clerk and recorder of the  
 22 county.  
 23 (2) Thereafter:  
 24 (a) a plat involving lands within the corporate limits  
 25 of the city and covered by said master plan shall not be

1 filed without first presenting it to the planning board,  
 2 which shall make a report to the city council advising as to  
 3 compliance or noncompliance of the plat with the master  
 4 plan. The city council shall have the final authority to  
 5 approve the filing of such plat.

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

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

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

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

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

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 12 months following the time of  
 18 conveyance.

19 ~~(8)(7)~~ "Planned unit development" means a land  
 20 development project consisting of residential clusters,  
 21 industrial parks, shopping centers, office building parks,  
 22 or any combination thereof which comprises a planned mixture  
 23 of land uses built in a prearranged relationship to each  
 24 other and having open space and community facilities in  
 25 common ownership or use.

1        ~~(99)~~(11) "Plat" means a graphical representation of a  
2 subdivision showing the division of land into lots, parcels,  
3 blocks, streets, alleys, and other divisions and  
4 dedications.

5        ~~(10)~~(12) "Preliminary plat" means a neat and scaled  
6 drawing of a proposed subdivision showing the layout of  
7 streets, alleys, lots, blocks, ~~utility easements~~ and other  
8 elements of a subdivision which furnish a basis for review  
9 by a governing body.

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

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

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

24        (13) "Registered professional engineer" means a person  
25 licensed in conformance with the Montana Professional

1 Engineers' Registration Act (Title 37, chapter 67) to  
2 practice engineering in the state of Montana.

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

6        ~~(14)~~(15) "Subdivider" means any person who causes land  
7 to be subdivided or who proposes a subdivision of land.

8        ~~(15)~~(16) "Subdivision" means a division of land or land  
9 so divided which creates one or more parcels containing less  
10 than 20 acres exclusive of public roadways, in order that  
11 the title to or possession of the parcels may be sold,  
12 rented, leased, or otherwise conveyed and shall include any  
13 resubdivision and shall further include any condominium or  
14 area, regardless of its size, which provides or will provide  
15 multiple space for recreational camping vehicles, or mobile  
16 homes."

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

18        "76-3-104. What constitutes subdivision. A subdivision  
19 shall comprise only those parcels less than 20 acres which  
20 have been segregated from the original tract, and the plat  
21 thereof shall show all such parcels whether contiguous or  
22 not."

23        Section 4. Section 76-3-201, MCA, is amended to read:

24        "76-3-201. Exemption for certain divisions of land.  
25 Unless the method of disposition is adopted for the purpose

of evading this chapter, the requirements of this chapter shall not apply to any division of land which:

~~{1}--is-created-by-order-of-any-court-of-record-in-this state--or--by--operation--of--law--or--which--in-the-absence-of agreement-between-the-parties-to-the-sale--could-be--created by--an--order-of-any-court-in-this-state-pursuant-to-the-law of-eminant-domain--{title-70y-chapter-30}~~

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

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

{4}{13} creates cemetery lots;

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

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

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

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

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

(b) ~~divisions-made-outside-of-platted-subdivisions-for the-purpose-of-a-gift--or--sale--to--any--member--of-the landowner's-immediate-family; if the transaction is a gift or sale to each member of the landowner's immediate family, a single division of a parcel 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 3 years and which is not within a platted subdivision. Any further division of the exempted parcel must be reviewed by the governing body under the provisions of this chapter.~~

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

(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 3 years and which is not within a platted subdivision, if the transaction is an occasional sale. Any further division of the exempted parcel must 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;~~

~~if divisions ordered by a court of record pursuant to 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;~~

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

~~(h) divisions used for utility siting or easements if 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. The subdivision regulations adopted under this chapter shall, at a minimum:

(1) require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603, except for those subdivisions described in 76-3-505;

(2) establish procedures consistent with this chapter for the submission and review of subdivision plats;

(3) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(4) provide for the identification of areas which, because of natural or man-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

(5) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency as defined by Title 76, chapter 5, or determined

1 to be subject to flooding by the governing body;

2 (6) prescribe standards for:

3 (a) the design and arrangement of lots, streets, and

4 roads;

5 (b) grading and drainage;

6 (c) water supply and sewage and solid waste disposal

7 which, at a minimum, meet the regulations adopted by the

8 department of health and environmental sciences under

9 76-4-104;

10 (d) the location and installation of utilities;

11 (7) provide procedures for the administration of the

12 park and open-space requirements of this chapter;

13 (8) provide for the review of preliminary plats by

14 affected public utilities and those agencies of local,

15 state, and federal government having a substantial interest

16 in a proposed subdivision; such utility or agency review may

17 not delay the governing body's action on the plat beyond the

18 time limits specified in this chapter, and the failure of

19 any agency to complete a review of a plat may not be a basis

20 for rejection of the plat by the governing body."

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

22 "76-3-505. Provision for summary review of minor

23 certain subdivisions. (1) Local subdivision regulations

24 shall include procedures for the summary review and approval

25 of subdivision plats ~~meeting any of the following~~

1 conditions:

2 (a) containing ~~five or fewer~~ parcels where proper

3 access to all lots is provided where no land in the

4 subdivision will be dedicated to public use for parks or

5 playgrounds and which have been approved by the department

6 of health and environmental sciences where such approval is

7 required by part 1 of chapter 4 comprising a minor

8 subdivision;

9 (b) consisting exclusively of parcels larger than 40

10 acres in size; or

11 (c) lying within the corporate boundaries of a

12 municipality or lying within areas for which a master plan

13 containing the minimum requirements prescribed in

14 76-1-606(3) has been adopted and to which the subdivision

15 conforms.

16 (2) provided that reasonable Reasonable local

17 regulations may contain additional requirements for summary

18 approval."

19 Section 8. 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

subdivision and all proposed improvements.

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

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

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

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

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

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

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

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

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

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

(2) The governing body shall approve, conditionally approve, or reject the preliminary plat within 60 days of its presentation unless the subdivider consents to an extension of the review period. ~~If the governing body fails to act within the 60-day period, the subdivision is approved.~~



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

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

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

15 (2) When a proposed subdivision is also proposed to be  
16 annexed to a municipality, the governing body of the  
17 municipality shall hold joint hearings on the preliminary  
18 plat and annexation whenever possible.

19 (3) 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 (4) 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 12],~~  
11 ~~summary review procedures shall be as follows:~~

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

17 (i) ~~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 a preliminary plat~~  
22 ~~that complies with local regulations. The governing body~~  
23 ~~shall act on the plat of the first minor subdivision from a~~  
24 ~~tract within 35 days of submittal in accordance with~~  
25 ~~16-3-610. If the governing body fails to act within 35 days~~

1 ~~of submittal, the subdivision is approved.~~

2       ~~{2}{b1}~~ The the governing body shall state in writing  
3 the conditions which must be met if the subdivision is  
4 conditionally approved or what local regulations would not  
5 be met by the subdivision if it disapproves the  
6 subdivision;

7       ~~{3}{c1}~~ The the requirements for holding a public  
8 hearing and preparing an environmental assessment ~~shall~~ and  
9 ~~finding that the subdivision is in the public interest do~~  
10 ~~not apply to the first such~~ ~~plac~~ subdivision created from a  
11 tract of record;

12       ~~{4}{d1}~~ Subsequent ~~second~~ and subsequent subdivisions  
13 from a tract of record shall be reviewed under 76-3-505 and  
14 regulations adopted pursuant to that section.

15       ~~{21}~~ For subdivisions consisting exclusively of parcels  
16 larger than 40 acres;

17       ~~{a1}~~ the subdivider shall submit either a preliminary  
18 plat that complies with local regulations or a final plat  
19 that complies with local regulations and the department of  
20 commerce's uniform standards for final subdivision plats.  
21 The governing body shall act on the plat within 35 days of  
22 submittal in accordance with 76-3-611 if a final plat is  
23 submitted or in accordance with 76-3-610 if a preliminary  
24 plat is submitted. If the governing body fails to act within  
25 35 days of submittal, the subdivision is approved.

1       ~~{b1}~~ the requirements for holding a public hearing,  
2 preparing an environmental assessment, and finding that the  
3 subdivision is in the public interest do not apply; and

4       ~~{c1}~~ the governing body's review and approval must be  
5 limited to a written determination that appropriate access  
6 and any easements are properly provided.

7       ~~{3}~~ For subdivisions within the corporate boundaries  
8 of a municipality or within areas covered by a master plan  
9 containing the elements listed in 76-1-606(3) and to which  
10 the subdivision conforms;

11       ~~{a1}~~ a preliminary plat must be submitted and acted  
12 upon pursuant to 76-3-610, except that the requirements for  
13 preparation of an environmental assessment and a finding  
14 that the subdivision is in the public interest do not apply.  
15 If the governing body fails to act within 60 days of  
16 submittal, the preliminary plat is approved.

17       ~~{b1}~~ a final plat may be approved by the governing body  
18 only after review pursuant to 76-3-611."

19       NEW SECTION. Section 12. Major impact resulting from  
20 cumulative effect of several minor subdivisions -- when  
21 reviewed. When so many minor subdivisions are proposed for  
22 the same general area that the governing body believes their  
23 cumulative effect on the provision of public services or the  
24 natural environment may be significant, it shall require the  
25 preparation of an environmental assessment and a public

1 hearing to address the overall impact of the subdivisions  
2 and review them pursuant to 76-3-608 and the other  
3 provisions for review of major subdivisions in Title 76,  
4 chapter 3, part 6.

5 **NEW\_SECTION.** Section 13. Codification instruction.  
6 Section 12 is intended to be codified as an integral part of  
7 Title 76, chapter 3, and the provisions of Title 76, chapter  
8 3, apply to section 12.

9 **NEW\_SECTION.** Section 14. Repealer. Section 76-3-210,  
10 MCA, is repealed.

-End-

Approved by Committee  
on Natural Resources

## HOUSE BILL NO. 762

INTRODUCED BY LORY, REAM,

KADAS, J. JENSEN, WALORON

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING 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, 76-3-601, 76-3-604, 76-3-605, 76-3-609,  
~~76-3-125~~, 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:

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

~~§3141~~ Nothing herein contained shall be interpreted to limit the present powers of the city or county governments but shall be an additional requirement before any plat may be filed of record or entitled to be recorded."

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

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

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

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

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

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

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

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

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

~~§7161~~ "Occasional sale" means one sale of a division of land within any 12-month period division of land for conveyance within 12 months following the time of conveyance.

~~§7171~~ "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, office building parks, or any combination thereof which comprises a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in

common ownership or use.

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

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

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

(11) ~~"Minor subdivision" means a subdivision containing five or fewer parcels where proper access to all lots is provided and where, if park dedication is required, the requirement is met by cash in lieu of land donation.~~

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

(13) "Registered professional engineer" means a person

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

~~(14) "Relocating a common boundary line" means the establishment of a new location for a boundary line between abutting parcels with no additional parcels being created.~~

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

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

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

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

Section 4. Section 76-3-201, MCA, is amended to read:

"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; if the transaction is a gift~~  
8 ~~or sale to each member of the landowner's immediate family,~~  
9 ~~a single division of a parcel to which title or contract for~~  
10 ~~deed, as recorded in a notice of purchaser's interest, filed~~  
11 ~~with the clerk and recorder, has been held continuously by~~  
12 ~~the person proposing to divide the parcel for a period of 3~~  
13 ~~years and which is not within a platted subdivision. Any~~  
14 ~~further division of the exempted parcel must be reviewed by~~  
15 ~~the governing body under the provisions of this chapter.~~

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

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

1 ~~which title or contract for deed, as recorded in a notice of~~  
 2  ~~purchaser's interest filed with the clerk and recorder, has~~  
 3  ~~been held continuously by the person proposing to divide the~~  
 4  ~~parcel for a period of 3 years and which is not within a~~  
 5  ~~platted subdivision, if the transaction is an occasional~~  
 6  ~~sale. Any further division of the exempted parcel must be~~  
 7  ~~reviewed by the governing body under the provisions of this~~  
 8  ~~chapter.~~

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

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

17 ~~(g) divisions that could be created pursuant to the~~  
 18  ~~law of eminent domain; and~~

19 ~~(h) divisions used for utility siting or easements if~~  
 20  ~~no structure requiring water or sewage disposal is erected~~  
 21  ~~on the parcel.~~

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

23 (a) within a platted subdivision filed with the county  
 24 clerk and recorder, any division of lots which results in an  
 25 increase in the number of lots or which redesigns or

1 rearranges six or more lots must be reviewed and approved by  
 2 the governing body, and an amended plat must be filed with  
 3 the county clerk and recorder;

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

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

9 "76-3-504. Minimum requirements for subdivision  
 10 regulations. The subdivision regulations adopted under this  
 11 chapter shall, at a minimum:

12 (1) require the subdivider to submit to the governing  
 13 body an environmental assessment as prescribed in 76-3-603,  
 14 ~~except for those subdivisions described in 76-3-505;~~

15 (2) establish procedures consistent with this chapter  
 16 for the submission and review of subdivision plats;

17 (3) prescribe the form and contents of preliminary  
 18 plats and the documents to accompany final plats;

19 (4) provide for the identification of areas which,  
 20 because of natural or man-caused hazards, are unsuitable for  
 21 subdivision development and prohibit subdivisions in these  
 22 areas unless the hazards can be eliminated or overcome by  
 23 approved construction techniques;

24 (5) prohibit subdivisions for building purposes in  
 25 areas located within the floodway of a flood of 100-year



1 frequency as defined by Title 76, chapter 5, or determined  
2 to be subject to flooding by the governing body;

3 (6) prescribe standards for:

4 (a) the design and arrangement of lots, streets, and  
5 roads;

6 (b) grading and drainage;

7 (c) water supply and sewage and solid waste disposal  
8 which, at a minimum, meet the regulations adopted by the  
9 department of health and environmental sciences under  
10 76-4-104;

11 (d) the location and installation of utilities;

12 (7) provide procedures for the administration of the  
13 park and open-space requirements of this chapter;

14 (8) provide for the review of preliminary plats by  
15 affected public utilities and those agencies of local,  
16 state, and federal government having a substantial interest  
17 in a proposed subdivision; such utility or agency review may  
18 not delay the governing body's action on the plat beyond the  
19 time limits specified in this chapter, and the failure of  
20 any agency to complete a review of a plat may not be a basis  
21 for rejection of the plat by the governing body."

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

23 "76-3-505. Provision for summary review of ~~minor~~  
24 ~~certain~~ subdivisions. (1) Local subdivision regulations  
25 shall include procedures for the summary review and approval

1 of subdivision plats meeting any of the following  
2 conditions:

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

10 (b) consisting exclusively of parcels larger than 40  
11 acres in size; or

12 (c) lying within the corporate boundaries of a  
13 municipality or lying within areas for which a master plan  
14 containing the minimum requirements prescribed in  
15 76-1-606(3) has been adopted and to which the subdivision  
16 conforms;

17 (2) ~~provided that reasonable~~ Reasonable local  
18 regulations may contain additional requirements for summary  
19 approval."

20 Section 8. Section 76-3-601, MCA, is amended to read:

21 "76-3-601. Submission of preliminary plat for review.

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

1 plat shall show all pertinent features of the proposed  
2 subdivision and all proposed improvements.

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

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

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

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

25 (c) If the proposed subdivision lies partly within an

1 incorporated city or town, the proposed plat thereof must be  
2 submitted to and approved by both the city or town and the  
3 county governing bodies.

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

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

13 Section 9. Section 76-3-604, MCA, is amended to read:  
14 "76-3-604. Review of preliminary plat. (1) The  
15 governing body or its designated agent or agency shall  
16 review the preliminary plat to determine whether it conforms  
17 to the local master plan ~~that meets the requirements~~  
18 ~~specified in 76-1-606(3),~~ if one has been adopted, pursuant  
19 ~~to chapter 17~~ to the provisions of this chapter, and to  
20 rules prescribed or adopted pursuant to this chapter.

21 (2) The governing body shall approve, conditionally  
22 approve, or reject the preliminary plat within 60 days of  
23 its presentation unless the subdivider consents to an  
24 extension of the review period. ~~If the governing body fails~~  
25 ~~to act within the 60-day period, the subdivision is~~

1 approved.

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

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

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

16 (2) When a proposed subdivision is also proposed to be  
17 annexed to a municipality, the governing body of the  
18 municipality shall hold joint hearings on the preliminary  
19 plat and annexation whenever possible.

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

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

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

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

10 "76-3-609. Review Summary review procedure for minor  
11 certain subdivisions. Except as provided in [section 12],  
12 summary review procedures shall be as follows:

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

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

22 (a) the subdivider shall submit a preliminary plat  
23 that complies with local regulations. The governing body  
24 shall act on the plat of the first minor subdivision from a  
25 tract within 35 days of submittal in accordance with

~~76-3-610. If the governing body fails to act within 35 days of submittal, the subdivision is approved.~~

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

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

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

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

~~(a) the subdivider shall submit either a preliminary plat that complies with local regulations or a final plat that complies with local regulations and the department of commerce's uniform standards for final subdivision plats. The governing body shall act on the plat within 35 days of submittal in accordance with 76-3-611 if a final plat is submitted or in accordance with 76-3-610 if a preliminary plat is submitted. If the governing body fails to act within~~

~~35 days of submittal, the subdivision is approved.~~

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

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

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

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

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

~~SECTION 12. SECTION 76-4-125, MCA, IS AMENDED TO READ:~~

~~"76-4-125. Review of subdivisions excluded from all or some of the provisions of the subdivision and platting act. (1) When a subdivision as defined in this part is excluded from the provisions of 76-3-302 and 76-3-401 through 76-3-403, but not 76-3-201, and the subdivision is otherwise~~

1 subject to the provisions of this part, plans and  
 2 specifications of the subdivision as defined in this part  
 3 shall be submitted to the department and the department  
 4 shall indicate by certificate that it has approved the plans  
 5 and specifications and that the subdivision is not subject  
 6 to a sanitary restriction. The plan review by the department  
 7 shall be as follows:

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

14 (b) The department must give final action of the  
 15 proposed plan within 60 days unless an environmental impact  
 16 statement is required, at which time this deadline may be  
 17 increased to 120 days.

18 (2) A subdivision excluded from the provisions of  
 19 chapter 3 shall be submitted for review by the department  
 20 according to the provisions of this part, except that the  
 21 following divisions are not subject to review by the  
 22 department:

23 (a) the exclusions cited in 76-3-201 and 76-3-204;

24 (b) divisions made for the purpose of acquiring  
 25 additional land to become part of an approved parcel,

1 provided that no dwelling or structure requiring water or  
 2 sewage disposal is to be erected on the additional acquired  
 3 parcel; and

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

7 ~~(3) Any division of land otherwise subject to this~~  
 8 ~~part which is ordered by a court of record in this state or~~  
 9 ~~which is created by operation of law shall be subject to the~~  
 10 ~~requirements of this part."~~

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

22 ~~NEW SECTION.~~ Section 14. Codification instruction.  
 23 Section 12 is intended to be codified as an integral part of  
 24 Title 76, chapter 3, and the provisions of Title 76, chapter  
 25 3, apply to section 12.

HB 0762/02

1        ~~NEW-SECTION.~~ Section 15. Repealer. Section 76-3-210,  
2        MCA, is repealed.

-End-

## HOUSE BILL NO. 762

INTRODUCED BY LORY, REAM,

KADAS, J. JENSEN, WALDRON

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING 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, 76-3-601, 76-3-604, 76-3-605, 76-3-609,  
~~76-3-125~~, 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) 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  
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, 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 developments;~~

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

~~Nothing herein contained shall be interpreted to limit the present powers of the city or county governments but shall be an additional requirement before any plat may be filed of record or entitled to be recorded.~~

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

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

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

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

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

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

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

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

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

~~"Occasional sale" means one sale of a division of land within any 12-month period division of land for conveyance within 12 months following the time of conveyance.~~

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



1 common ownership or use.

2 ~~(9)(81)~~ "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)(91)~~ "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)(101)~~ "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~~  
18 ~~containing five or fewer parcels where proper access to all~~  
19 ~~lots is provided and where, if park dedication is required,~~  
20 ~~the requirement is 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.

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

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

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

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

~~(4) creates cemetery lots;~~

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

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

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

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

subdivisions:

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

(b) ~~divisions made outside of platted subdivisions for the purpose of a gift or sale to any member of the landowner's immediate family; if the transaction is a gift or sale to each member of the landowner's immediate family, a single division of a parcel 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 3 years and which is not within a platted subdivision. Any further division of the exempted parcel must be reviewed by the governing body under the provisions of this chapter.~~

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

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

1 ~~which title or contract for deed, as recorded in a notice of~~  
 2 ~~purchaser's interest filed with the clerk and recorder, has~~  
 3 ~~been held continuously by the person proposing to divide the~~  
 4 ~~parcel for a period of 3 years and which is not within a~~  
 5 ~~platted subdivision, if the transaction is an occasional~~  
 6 ~~sale. Any further division of the exempted parcel must be~~  
 7 ~~reviewed by the governing body under the provisions of this~~  
 8 ~~chapter.~~

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

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

17 ~~(g) divisions that could be created pursuant to the~~  
 18 ~~law of eminent domain; and~~

19 ~~(h) divisions used for utility siting or easements if~~  
 20 ~~no structure requiring water or sewage disposal is erected~~  
 21 ~~on the parcel.~~

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

23 (a) within a platted subdivision filed with the county  
 24 clerk and recorder, any division of lots which results in an  
 25 increase in the number of lots or which redesigns or

1 rearranges six or more lots must be reviewed and approved by  
 2 the governing body, and an amended plat must be filed with  
 3 the county clerk and recorder;

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

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

9 "76-3-504. Minimum requirements for subdivision  
 10 regulations. The subdivision regulations adopted under this  
 11 chapter shall, at a minimum:

12 (1) require the subdivider to submit to the governing  
 13 body an environmental assessment as prescribed in 76-3-603,  
 14 ~~except for those subdivisions described in 76-3-505;~~

15 (2) establish procedures consistent with this chapter  
 16 for the submission and review of subdivision plats;

17 (3) prescribe the form and contents of preliminary  
 18 plats and the documents to accompany final plats;

19 (4) provide for the identification of areas which,  
 20 because of natural or man-caused hazards, are unsuitable for  
 21 subdivision development and prohibit subdivisions in these  
 22 areas unless the hazards can be eliminated or overcome by  
 23 approved construction techniques;

24 (5) prohibit subdivisions for building purposes in  
 25 areas located within the floodway of a flood of 100-year

1 frequency as defined by Title 76, chapter 5, or determined  
2 to be subject to flooding by the governing body;

3 (6) prescribe standards for:

4 (a) the design and arrangement of lots, streets, and  
5 roads;

6 (b) grading and drainage;

7 (c) water supply and sewage and solid waste disposal  
8 which, at a minimum, meet the regulations adopted by the  
9 department of health and environmental sciences under  
10 76-4-104;

11 (d) the location and installation of utilities;

12 (7) provide procedures for the administration of the  
13 park and open-space requirements of this chapter;

14 (8) provide for the review of preliminary plats by  
15 affected public utilities and those agencies of local,  
16 state, and federal government having a substantial interest  
17 in a proposed subdivision; such utility or agency review may  
18 not delay the governing body's action on the plat beyond the  
19 time limits specified in this chapter, and the failure of  
20 any agency to complete a review of a plat may not be a basis  
21 for rejection of the plat by the governing body."

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

23 "76-3-505. Provision for summary review of ~~minor~~  
24 ~~certain~~ subdivisions. (1) Local subdivision regulations  
25 shall include procedures for the summary review and approval

1 of subdivision plats ~~meeting any of the following~~  
2 ~~conditions:~~

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

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

12 (c) ~~lying within the corporate boundaries of a~~  
13 ~~municipality or lying within areas for which a master plan~~  
14 ~~containing the minimum requirements prescribed in~~  
15 ~~76-1-606(3) has been adopted and to which the subdivision~~  
16 ~~conforms.~~

17 (2) ~~provided that reasonable~~ Reasonable local  
18 regulations may contain additional requirements for summary  
19 approval."

20 Section 8. Section 76-3-601, MCA, is amended to read:

21 "76-3-601. Submission of preliminary plat for review.

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

1 plat shall show all pertinent features of the proposed  
2 subdivision and all proposed improvements.

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

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

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

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

25 (c) If the proposed subdivision lies partly within an

1 incorporated city or town, the proposed plat thereof must be  
2 submitted to and approved by both the city or town and the  
3 county governing bodies.

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

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

13 Section 9. Section 76-3-604, MCA, is amended to read:  
14 "76-3-604. Review of preliminary plat. (1) The  
15 governing body or its designated agent or agency shall  
16 review the preliminary plat to determine whether it conforms  
17 to the local master plan ~~that meets the requirements~~  
18 ~~specified in 76-1-606(3)~~, if one has been adopted, pursuant  
19 ~~to chapter 14~~ to the provisions of this chapter, and to  
20 rules prescribed or adopted pursuant to this chapter.

21 (2) The governing body shall approve, conditionally  
22 approve, or reject the preliminary plat within 60 days of  
23 its presentation unless the subdivider consents to an  
24 extension of the review period. ~~If the governing body fails~~  
25 ~~to act within the 60-day period, the subdivision is~~

1 ~~approved.~~

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

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

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

16 (2) When a proposed subdivision is also proposed to be  
17 annexed to a municipality, the governing body of the  
18 municipality shall hold joint hearings on the preliminary  
19 plat and annexation whenever possible.

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

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

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

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

10 "76-3-609. Review Summary review procedure for minor  
11 certain subdivisions. Except as provided in [section 12],  
12 summary review procedures shall be as follows:

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

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

22 (a) the subdivider shall submit a preliminary plat  
23 that complies with local regulations. The governing body  
24 shall act on the plat of the first minor subdivision from a  
25 tract within 35 days of submittal in accordance with

~~76-3-610. If the governing body fails to act within 35 days of submittal, the subdivision is approved.~~

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

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

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

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

~~(a) the subdivider shall submit either a preliminary plat that complies with local regulations or a final plat that complies with local regulations and the department of commerce's uniform standards for final subdivision plats. The governing body shall act on the plat within 35 days of submittal in accordance with 76-3-611 if a final plat is submitted or in accordance with 76-3-610 if a preliminary plat is submitted. If the governing body fails to act within~~

~~35 days of submittal, the subdivision is approved.~~

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

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

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

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

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

~~SECTION 12. SECTION 76-4-125, MCA, IS AMENDED TO READ:~~

~~"76-4-125. Review of subdivisions excluded from all or some of the provisions of the subdivision and platting act. (1) When a subdivision as defined in this part is excluded from the provisions of 76-3-302 and 76-3-401 through 76-3-403, but not 76-3-201, and the subdivision is otherwise~~

1 subject to the provisions of this part, plans and  
 2 specifications of the subdivision as defined in this part  
 3 shall be submitted to the department and the department  
 4 shall indicate by certificate that it has approved the plans  
 5 and specifications and that the subdivision is not subject  
 6 to a sanitary restriction. The plan review by the department  
 7 shall be as follows:

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

14 (b) The department must give final action of the  
 15 proposed plan within 60 days unless an environmental impact  
 16 statement is required, at which time this deadline may be  
 17 increased to 120 days.

18 (2) A subdivision excluded from the provisions of  
 19 chapter 3 shall be submitted for review by the department  
 20 according to the provisions of this part, except that the  
 21 following divisions are not subject to review by the  
 22 department:

23 (a) the exclusions cited in 76-3-201 and 76-3-204;

24 (b) divisions made for the purpose of acquiring  
 25 additional land to become part of an approved parcel.

1 provided that no dwelling or structure requiring water or  
 2 sewage disposal is to be erected on the additional acquired  
 3 parcel; and

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

7 ~~(3) Any division of land otherwise subject to this~~  
 8 ~~part which is ordered by a court of record in this state or~~  
 9 ~~which is created by operation of law shall be subject to the~~  
 10 ~~requirements of this part."~~

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

22 **NEW SECTION.** Section 14. Codification instruction.  
 23 Section 12 is intended to be codified as an integral part of  
 24 Title 76, chapter 3, and the provisions of Title 76, chapter  
 25 3, apply to section 12.



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- 1 ~~NEW SECTION.~~ Section 15. Repealer. Section 76-3-210,
- 2 MCA, is repealed.

-End-