

HB 809 INTRODUCED BY IVERSON
ENVIRONMENTAL QUALITY COUNCIL COMPREHENSIVE
SUBDIVISION REGULATION AND DEVELOPMENT BILL

2/17 INTRODUCED
2/17 REFERRED TO LOCAL GOVERNMENT
2/17 FISCAL NOTE REQUESTED
2/20 HEARING
2/24 FISCAL NOTE RECEIVED
3/02 TABLED IN COMMITTEE

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

6 (4) "Division of land" means the creation of one or
 7 more parcels of land from a larger tract held in single or
 8 undivided ownership by transferring or contracting to
 9 transfer title to or possession of a portion of the tract or
 10 properly filing a certificate of survey or subdivision plat
 11 establishing the identity of the created parcels pursuant to
 12 [sections 1 through 43].

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

16 (6) "Executive proceedings" means public proceedings
 17 in which the governing body makes deliberations without
 18 receiving public comment except where specific questions
 19 with the approval of the chairman are directed to the
 20 subdivider or other individuals.

21 (7) "Final plat" means the final drawing of the
 22 subdivision and dedication required by [sections 1 through
 23 43] to be prepared for filing for record with the county
 24 clerk and recorder and containing all elements and
 25 requirements set forth in [sections 1 through 43] and in

1 regulations adopted pursuant to [section 27].

2 (8) "Fiscal impact area" means an area where the
 3 governing body has determined that additional subdivision
 4 development will cause documentable projected increases in
 5 capital costs to local government and that has been
 6 designated as a fiscal impact area in accordance with the
 7 provisions of [section 27].

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

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

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

17 (12) "Minor subdivision" means a subdivision of five or
 18 fewer parcels, except that a second minor subdivision from a
 19 tract of record as of October 1, 1987, may not be considered
 20 a minor subdivision.

21 (13) "Mitigation" means the act of avoiding an impact
 22 by not taking a certain action or a part of an action;
 23 minimizing an impact by limiting the degree or magnitude of
 24 the action and its implementation; rectifying an impact by
 25 repairing, rehabilitating, or restoring the affected

1 environment; reducing or eliminating the impact by
 2 preservation or maintenance operations during the term of
 3 the impact or action; or compensating for an impact by
 4 replacing or providing substitute resources or environments.

5 (14) "Montana natural heritage program" means the
 6 program operated by the state library and established under
 7 the provisions of 90-15-302.

8 (15) "Physical access" means access by a road meeting
 9 standards set by the governing body according to [section
 10 15].

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

18 (17) "Plat" means a graphical representation of a
 19 subdivision prepared by a registered professional land
 20 surveyor showing the layout of lots, parcels, blocks,
 21 streets, alleys, and other divisions and dedications.

22 (18) "Preliminary plat" means a neat and scaled
 23 preliminary drawing of a proposed subdivision showing the
 24 division of land into lots, parcels, blocks, streets,
 25 alleys, and other divisions and dedications, and showing all

1 other pertinent features of the subdivision and all proposed
 2 improvements.

3 (19) "Primitive use tract" means a tract located more
 4 than 2 miles from a state, federal, or maintained county
 5 road that is used for open space or wildlife, hunting, or
 6 other activities that have minimal human impacts, including
 7 the construction of structures for camping that are
 8 dismantled or relocated after seasonal use.

9 (20) "Qualified master plan" means a master plan
 10 satisfying the requirements of 76-1-601(4).

11 (21) "Registered professional engineer" means a person
 12 licensed in conformance with Title 37, chapter 67, to
 13 practice engineering in the state of Montana.

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

17 (23) "Review authority" means either the governing
 18 body, the planning board, or the subdivision review officer.

19 (24) "Special subdivision" means a subdivision that
 20 conforms to a qualified master plan pursuant to 76-1-601, a
 21 capital improvement program and fee pursuant to [sections 20
 22 and 25], and either local government regulations pursuant to
 23 [section 27] or zoning regulations pursuant to part 2 or 3
 24 of chapter 2.

25 (25) "Subdivider" means a person who causes land to be

1 subdivided or who proposes a subdivision of land.

2 (26) "Subdivision" means a division of land or land so
3 divided that creates one or more parcels, exclusive of
4 public roadways, in order that the title to or possession of
5 the parcels may be sold, rented, leased, or otherwise
6 conveyed and includes any resubdivision, any residential
7 condominium building, and any area, regardless of its size,
8 that provides or will provide three or more spaces for
9 recreational camping vehicles, mobile homes, or work camp
10 structures that would exist for longer than 1 year, except
11 that an area that would provide fewer than three spaces for
12 these purposes is a subdivision if a density approved
13 pursuant to [section 9] would be exceeded. Subdivision does
14 not mean, except if the division is used to evade the
15 purposes of [sections 1 through 43]:

16 (a) a division creating cemetery lots only;

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

19 (c) a division creating an interest in oil, gas,
20 minerals, or water that is now or hereafter severed from the
21 surface ownership of real property;

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

24 (e) the sale, rent, lease, or other conveyance of one
25 or more parts of a building, structure, or other

1 improvement, whether existing or proposed;

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

5 (g) a division for which a deed, contract, lease, or
6 other conveyance was executed prior to July 1, 1974;

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

15 (i) except for the survey requirements in [sections 39
16 through 43] and any applicable zoning requirements, a
17 division made for the purpose of relocating boundary lines
18 between adjoining properties, provided that the division is
19 recorded in both the certificate of survey and the index of
20 subdivision plats provided for in [section 29] and unless
21 the governing body determines that the division may be used
22 to create distinct parcels for resale;

23 (j) except for the survey requirements in [sections 39
24 through 43], a division made exclusively for agricultural
25 purposes by sale or agreement to buy and sell that is

1 outside of a platted subdivision where the local governing
 2 body and the party enter into a covenant running with the
 3 land that the divided parcels must be used exclusively for
 4 agricultural purposes and not for residential purposes. The
 5 governing body shall agree to release the covenant upon
 6 petition by the party, provided the party's subdivision
 7 proposal complies with the provisions of [sections 1 through
 8 43].

9 (k) except for the review requirements in [sections 1
 10 through 28], a division created by rent or lease;

11 (1) except for requirements other than the survey and
 12 platting requirements in [sections 39 through 43], divisions
 13 created by public rights-of-way.

14 (27) "Subdivision review officer" means the person
 15 designated by the governing body to administer subdivision
 16 review and to approve, conditionally approve, or deny
 17 applications for minor subdivisions.

18 NEW SECTION. Section 4. Violations. A person who
 19 violates any provision of [sections 1 through 43] or any
 20 local regulations adopted under it is guilty of a
 21 misdemeanor and may be punished by a fine of not less than
 22 \$100 or more than \$500 or imprisoned in a county jail for
 23 not more than 3 months, or by both fine and imprisonment.
 24 Each sale, lease, or transfer of each separate parcel of
 25 land in violation of any provision of [sections 1 through

1 43] or any local regulation adopted pursuant thereto is a
 2 separate and distinct offense.

3 NEW SECTION. Section 5. Submission of subdivision
 4 application for review -- all subdivisions. (1) The
 5 subdivider shall present the preliminary plat of the
 6 proposed subdivision to the subdivision review officer for
 7 local review. The subdivision review officer shall determine
 8 whether the proposed subdivision is a major, minor, or
 9 special subdivision.

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

14 (b) When the proposed subdivision is situated entirely
 15 in an unincorporated area, the preliminary plat must be
 16 submitted to and approved by the appropriate county review
 17 authority.

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

22 (d) When a proposed subdivision is also proposed to be
 23 annexed to a municipality, the governing body of the
 24 municipality shall coordinate the annexation and subdivision
 25 review procedures to minimize duplication of hearings,

1 reports, and other requirements whenever possible.

2 (3) This section does not limit the authority of
3 certain municipalities to regulate subdivisions beyond their
4 corporate limits pursuant to 7-3-4444.

5 NEW SECTION. Section 6. Review process for major
6 subdivisions. (1) The subdivider shall confer first with the
7 subdivision review officer or his designated agent in a
8 preliminary conference to discuss the subdivision
9 application, the requirements provided in [sections 1
10 through 43], and local government regulations enacted
11 pursuant to [section 27]. The subdivider shall submit a
12 sketch of the plat at the conference, and the subdivision
13 review officer shall refer the subdivider to the
14 requirements of Title 76, chapter 4.

15 (2) The governing body, or the planning board if
16 designated by the governing body, shall approve, approve
17 with conditions, or deny a major subdivision application
18 within 60 days following the submission of a complete
19 application. However, the subdivider and the governing body
20 may agree to extend the time period.

21 (3) A subdivision application may receive no more than
22 one public hearing. The public hearing must be conducted by
23 the governing body, unless it delegates that responsibility
24 to the planning board or to a hearing examiner under
25 subsection (4), or conducts a joint hearing with the

1 planning board. When a hearing is held by the planning board
2 or a hearing examiner, that agency or agent shall make
3 findings and recommendations to the governing body
4 concerning the approval, conditional approval, or
5 disapproval of the plat not later than 10 days after the
6 public hearing.

7 (4) Upon petition within 21 days following submission
8 of the complete application by the subdivider or a citizen
9 that would be adversely affected by the subdivision, or upon
10 election by the review authority, the hearing must be
11 conducted as a contested case by a hearing examiner under
12 2-4-604 and Title 2, chapter 4, part 7. The governing body
13 shall designate the hearing examiner and, if the hearing is
14 held pursuant to the subdivider's or an affected citizen's
15 petition, the governing body may assess costs of the hearing
16 to the subdivider or affected citizen. The hearing examiner
17 shall make findings and recommendations to the governing
18 body concerning the approval, conditional approval, or
19 disapproval of the plat not later than 10 days after the
20 public hearing and within the time period determined under
21 subsection (2).

22 (5) Notice of a public hearing on a subdivision
23 application, and of the type of hearing, must be given by
24 publication in a newspaper of general circulation in the
25 county in which the subdivision is located not less than 15

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

7 (6) After the public hearing, the governing body shall
 8 make its decision during executive proceedings.

9 NEW SECTION. Section 7. Review process for minor
 10 subdivisions. (1) The subdivider shall confer first with the
 11 subdivision review officer or his designated agent in a
 12 preliminary conference to discuss the subdivision
 13 application, the requirements provided in [sections 1
 14 through 43], and local government regulations enacted
 15 pursuant to [section 27]. The subdivider shall submit a
 16 sketch of the plat at the conference, and the subdivision
 17 review officer shall refer the subdivider to the
 18 requirements of Title 76, chapter 4.

19 (2) Except as provided in subsection (3), the
 20 subdivision review officer shall approve, approve with
 21 conditions, or disapprove the subdivision application. The
 22 subdivision review officer shall notify the governing body
 23 of his decision.

24 (3) If the subdivision application contains requests
 25 for deviations from standards or for a variance, or has

1 undergone public hearing under subsections (5) through (8),
 2 the subdivision review officer shall make an initial
 3 decision on the application subject to review and
 4 modification by the governing body during executive
 5 proceedings. The subdivision review officer's decision may
 6 be modified by the governing body during executive
 7 proceedings only if it finds, by substantial credible
 8 evidence, and documents that the decision is not consistent
 9 with the provisions of [sections 1 through 43] or with local
 10 government regulations adopted pursuant to [section 27].

11 (4) A determination on the subdivision application
 12 must be made within 35 days following submission of a
 13 complete application, unless the governing body and the
 14 subdivider agree to extend the time period.

15 (5) A public hearing may be held on a minor
 16 subdivision only if:

17 (a) the subdivision is located in a critical resource
 18 area identified under [section 27] or a fiscal impact area
 19 identified in a capital improvement plan pursuant to
 20 [section 25]; and

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

25 (6) Upon petition by the subdivider or an affected

1 citizen within 15 days following submission of the complete
 2 application or upon election by the review authority, the
 3 hearing must be conducted as a contested case by a hearing
 4 examiner under 2-4-604 and Title 2, chapter 4, part 7. The
 5 governing body shall designate the hearing examiner and, if
 6 the hearing is held pursuant to the subdivider's or an
 7 affected citizen's petition, the governing body may assess
 8 costs of the hearing to the petitioner. The hearing examiner
 9 shall make findings and recommendations to the subdivision
 10 review officer concerning the approval, conditional
 11 approval, or disapproval of the plat not later than 10 days
 12 after the public hearing and within the time period
 13 determined under subsection (4).

14 (7) A minor subdivision application may receive no
 15 more than one public hearing. The public hearing must be
 16 conducted by the governing body unless it delegates that
 17 responsibility to the subdivision review officer, the
 18 planning board, or a hearing examiner under subsection (6).

19 (8) Notice of a public hearing on a minor subdivision
 20 application, and of the type of hearing, must be given by
 21 publication in a newspaper of general circulation in the
 22 county in which the subdivision is located not less than 15
 23 days prior to the date of the hearing. The subdivider, each
 24 adjoining property owner of record, and each purchaser of
 25 record under contract for deed of property adjoining the

1 land included in the plat must also be notified of the
 2 hearing by registered or certified mail not less than 15
 3 days prior to the date of the hearing.

4 NEW SECTION. Section 8. Review process for special
 5 subdivisions. (1) The subdivider shall confer first with the
 6 subdivision review officer or his designated agent in a
 7 preliminary conference to discuss the subdivision
 8 application, the requirements provided in [sections 1
 9 through 43], any zoning requirements enacted pursuant to
 10 Title 76, chapter 2, and local government regulations
 11 enacted pursuant to [section 27]. The subdivider shall
 12 submit a sketch of the plat at the conference, and the
 13 subdivision review officer shall refer the subdivider to the
 14 requirements of Title 76, chapter 4.

15 (2) Except as provided in subsection (3), the
 16 subdivision review officer shall approve, approve with
 17 conditions, or disapprove the subdivision application. The
 18 subdivision review officer shall notify the governing body
 19 of his decision.

20 (3) If the subdivision application contains requests
 21 for deviations from standards or for a variance, the
 22 subdivision review officer shall make an initial decision on
 23 the application subject to review and modification by the
 24 governing body during executive proceedings. The subdivision
 25 review officer's decision may be modified by the governing

1 body during executive proceedings only if it finds by
2 substantial credible evidence that the decision is not
3 consistent with the provisions of [sections 1 through 43] or
4 with local government regulations adopted pursuant to
5 [section 27].

6 (4) A determination on the subdivision application
7 must be made within 35 days following submission of the
8 complete application, unless the governing body and the
9 subdivider agree to extend the time period.

10 (5) A public hearing may not be held on a special
11 subdivision.

12 NEW SECTION. Section 9. Review guidelines -- all
13 subdivisions. (1) A proposed subdivision must be in
14 compliance with the requirements stated in [sections 1
15 through 43], local government regulations adopted pursuant
16 to [section 27], and in conformance with a qualified master
17 plan, if one exists, according to 76-1-601. In reviewing a
18 subdivision application, the review authority shall presume
19 initially that the subdivision complies with these
20 requirements. This presumption does not affect the burden of
21 proof in a proceeding before a district court.

22 (2) Written findings, along with the reasons for
23 approval, disapproval, or attachment of conditions, shall
24 accompany the review authority's action on a subdivision
25 application.

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

3 (4) Approval of the final plat represents final
4 approval from the review authority. However, this approval
5 is only for the intended density depicted in the plat. A
6 proposed use that would vary substantially from the approved
7 use or would cause an increase in density represents a new
8 subdivision proposal and is subject to the review
9 requirements of [sections 1 through 43].

10 NEW SECTION. Section 10. Effect of approval of
11 preliminary plat -- all subdivisions. (1) Upon approving or
12 conditionally approving a preliminary plat, the review
13 authority shall provide the subdivider with a dated and
14 signed statement of approval. This approval must be in force
15 for not more than 3 calendar years or less than 1 calendar
16 year. At the end of this period the review authority may, at
17 the request of the subdivider, extend its approval for no
18 more than 2 calendar years, except that the governing body
19 may extend its approval for a period of more than 1 year if
20 that approval period is included as a specific condition of
21 a written agreement between the review authority and the
22 subdivider.

23 (2) After the preliminary plat is approved, the review
24 authority may not impose any additional conditions as a
25 prerequisite to final plat approval providing this approval

1 is obtained within the original or extended approval period
2 as provided in subsection (1).

3 NEW SECTION. Section 11. Review of final plat -- all
4 subdivisions. (1) The review authority shall examine every
5 final subdivision plat and shall approve it only when:

6 (a) it conforms to the conditions of approval set
7 forth on the preliminary plat, the terms of [sections 1
8 through 43], and local government regulations adopted
9 pursuant to [section 27]; and

10 (b) the county treasurer has issued a certificate of
11 taxes paid pursuant to [section 14] certifying that no real
12 property taxes assessed and levied on the land to be
13 subdivided are delinquent.

14 (2) (a) The review authority may require that final
15 subdivision plats and certificates of survey be reviewed for
16 errors and omissions in calculation or drafting by an
17 examining land surveyor before filing with the county clerk
18 and recorder. When the survey data shown on the plat or
19 certificate of survey meet the surveying conditions set
20 forth by or pursuant to [sections 1 through 43], the
21 examining land surveyor shall so certify in a printed or
22 stamped certificate on the plat or certificate of survey
23 that is signed by him.

24 (b) No registered professional land surveyor may act
25 as an examining land surveyor in regard to a plat or

1 certificate of survey in which he has a financial or
2 personal interest.

3 NEW SECTION. Section 12. Report of title required for
4 review process -- all subdivisions. (1) The subdivider shall
5 submit with the final plat:

6 (a) a certificate of a title abstractor showing the
7 names of the owners of record of the land to be subdivided
8 and the names of lienholders or claimants of record against
9 the land; and

10 (b) the written consent to the subdivision by the
11 owners of the land, if other than the subdivider, and of any
12 lienholders or claimants of record against the land.

13 (2) The review authority may provide for the review of
14 the abstract or certificate of title of the land in question
15 by the county attorney where the land lies in an
16 unincorporated area or by the city or town attorney when the
17 land lies within the limits of a city or town.

18 NEW SECTION. Section 13. Fees -- all subdivisions.
19 The governing body may establish reasonable fees to be paid
20 by the subdivider to defray the expense of reviewing
21 subdivision plats.

22 NEW SECTION. Section 14. Certificate of taxes paid.
23 For any division of land, the county treasurer shall certify
24 that no real property taxes assessed and levied on the land
25 to be divided are delinquent.

1 NEW SECTION. Section 15. Primary review criteria --
 2 all subdivisions. (1) A subdivision proposal shall undergo
 3 review for the following primary criteria:

4 (a) the subdivision must be mapped and the subdivision
 5 plat must be properly filed in compliance with [sections 29
 6 through 43];

7 (b) the subdivision shall comply with water supply,
 8 solid waste disposal, sewage treatment, and water quality
 9 standards, as provided for in Title 76, chapter 4, part 1;

10 (c) the subdivision shall provide easements for the
 11 location and installation of any planned utilities;

12 (d) the subdivision shall ensure access to each tract
 13 within the subdivision, as follows:

14 (i) for a primitive tract:

15 (A) legal access must be provided; and

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

19 (ii) for any other tract, physical access must be
 20 provided subject to the requirements of subsection (2);

21 (e) lots within the subdivision may not have building
 22 sites within the floodway as defined by Title 76, chapter 5;

23 (f) the subdivision must be evaluated under the
 24 conditions provided in subsection (3) to determine if lots
 25 upon which building sites are or can reasonably be expected

1 to be located within the subdivision are located in an area
 2 affected by the following hazards:

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

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

10 (iii) drainage, including potential for sheetflooding.

11 (2) For any tract within a subdivision that is not a
 12 primitive tract, the governing body shall designate the road
 13 standards necessary to comply with the physical access
 14 requirement. The standards may not be arbitrary or
 15 capricious and must be accompanied by a written
 16 justification. In addition, if a capital improvement plan
 17 has been adopted, the standards must conform with standards
 18 described in the plan.

19 (3) Subdivisions evaluated for hazards under
 20 subsection (1)(f) must be reviewed under the following
 21 conditions:

22 (a) local government regulations must provide specific
 23 standards for evaluation and mitigation;

24 (b) existing and reasonably accessible data must be
 25 used for the evaluation unless otherwise agreed to by the

1 subdivider and the review authority;

2 (c) approved construction techniques may be allowed or
3 required to mitigate or overcome hazards;

4 (d) if a hazard is found to exist, notice of the
5 hazard must be placed on the final plat;

6 (e) if natural or man-caused hazards other than those
7 described in subsection (1)(f) are known to exist by the
8 review authority, the review authority shall notify the
9 subdivider in writing of those known hazards and require
10 notice of the hazards on the final plat; and

11 (f) the result of the hazard evaluation is not
12 dispositive of the degree of hazard existing and is not
13 grounds for liability of the review authority.

14 NEW SECTION. Section 16. Secondary review criteria --
15 general. (1) The requirements provided in [sections 16
16 through 26] are secondary review criteria for proposed
17 subdivisions.

18 (2) Secondary review criteria apply to the different
19 types of subdivisions in the manner described in [sections
20 17 through 19].

21 (3) The level of review for secondary criteria may
22 reflect local concern for specific resources, as specified
23 through the designation of critical resource areas under
24 [section 27]. Review for effects on critical resources under
25 [section 22] is intended to develop methods to mitigate

1 potential adverse effects on these resources.

2 (4) Governing bodies may identify areas in which
3 increased subdivision activity may necessitate planning to
4 meet funding needs for capital facilities. A capital
5 improvement program that addresses the needs arising both
6 from major subdivisions and from a series of minor
7 subdivisions is provided in [section 25] to enable local
8 governments to mitigate potential fiscal impacts.

9 (5) Governing bodies that adopt and enforce qualified
10 master plans under 76-1-601 have completed and implemented a
11 local process intended to address certain potential effects
12 of subdivision on public values. For this reason,
13 subdivisions judged to be in conformance with qualified
14 master plans are exempt from specified secondary review
15 criteria.

16 NEW SECTION. Section 17. Secondary review -- major
17 subdivisions. A major subdivision is subject to secondary
18 review criteria as follows:

19 (1) a capital improvement fee may be assessed under
20 [section 20], if such a fee has been established under the
21 requirements of [section 25];

22 (2) a park dedication may be required pursuant to
23 [section 21];

24 (3) a major subdivision that is proposed in a
25 jurisdiction where no qualified master plan provided for in

1 76-1-601 is in effect must be reviewed for effects on
2 agricultural and water user interests pursuant to [section
3 23];

4 (4) a major subdivision that is proposed in a
5 designated critical resource area for a resource other than
6 wildlife and that does not conform to a qualified master
7 plan adopted under 76-1-601 must be reviewed under [section
8 22].

9 (5) a major subdivision must be reviewed for effects
10 on critical wildlife habitat under [section 22] if:

11 (a) the subdivision is proposed within an area
12 designated as critical wildlife habitat under [section 27];
13 or

14 (b) (i) the local government has not adopted a
15 qualified master plan as provided in 76-1-601 or designated
16 critical resource areas for wildlife as provided in [section
17 27]; and

18 (ii) site-specific information available to the review
19 authority indicates that the proposed location meets the
20 definition of critical wildlife habitat in [section 22].

21 NEW SECTION. Section 18. Secondary review -- minor
22 subdivisions. A minor subdivision is subject to secondary
23 review criteria as follows:

24 (1) a minor subdivision proposed within a fiscal
25 impact area designated under [section 27] may be assessed a

1 capital improvement fee as provided in [sections 20 and 25];
2 and

3 (2) a minor subdivision that is proposed in a critical
4 resource area and where no qualified master plan as provided
5 for in 76-1-601 is in effect must be reviewed for effects on
6 critical resources, as provided in [section 22].

7 NEW SECTION. Section 19. Secondary review -- special
8 subdivisions. A special subdivision is subject to the park
9 dedication requirement provided in [section 21] and to the
10 capital improvement fee provided in [section 20].

11 NEW SECTION. Section 20. Capital improvement fee. If
12 a governing body has adopted a capital improvement program
13 and a capital improvement fee in accordance with [section
14 25], the governing body may assess a capital improvement fee
15 for:

- 16 (1) a major subdivision;
17 (2) a minor subdivision proposed in a fiscal impact
18 area; and
19 (3) a special subdivision.

20 NEW SECTION. Section 21. Park dedication requirement.
21 (1) Except as provided in subsections (6) and (7), a
22 subdivider shall dedicate to the governing body a cash
23 donation equal to:

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

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

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

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

10 (2) No park dedication may be required for land
11 proposed to be subdivided into parcels larger than 5 acres,
12 parcels that are all nonresidential, or where only one
13 additional parcel is created. If future resubdivision of
14 this land creates parcels smaller than 5 acres, park
15 dedication is required according to the provisions of this
16 section.

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

19 (4) The governing body may request that the subdivider
20 dedicate land equal to the respective dedication percentages
21 provided for in subsection (1) in lieu of the cash donation.
22 The subdivider shall then decide whether to donate land or
23 cash.

24 (5) (a) Except as provided in (5)(b), the governing
25 body shall use the dedicated money or land for development

1 or acquisition of parks to serve the subdivision.

2 (b) The governing body may use the dedicated money to
3 acquire or develop regional parks or recreational areas or
4 for the purchase of public open space or conservation
5 easements only if the governing body has formally adopted a
6 park plan that establishes the needs and procedures for such
7 use of the money.

8 (6) The local governing body shall waive the park
9 dedication requirement if:

10 (a) (i) the preliminary plat provides for a planned
11 unit development or other development with land permanently
12 set aside for park and recreational uses sufficient to meet
13 the needs of the persons who will ultimately reside therein;
14 and

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

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

22 (ii) the appraised market value of the unimproved
23 subdivided land by virtue of providing such long-term
24 protection is reduced by an amount equal to or exceeding the
25 value of the dedication required under subsection (1).

1 (7) A park dedication may not be required if the
2 subdivision is assessed a capital improvement fee or a
3 fiscal impact fee and if that fee has been computed to
4 include support of local government costs for parks.

5 NEW SECTION. Section 22. Review for effects on
6 critical resources. (1) As used in this section, the
7 following definitions apply:

8 (a) "Calving areas" means identified and defined areas
9 that game animals use for parturition.

10 (b) "Critical resource" means a cultural, historical,
11 or natural resource that is unique and susceptible to
12 substantial adverse effects from subdivision and that has
13 been designated as a critical resource by a local governing
14 body in accordance with the provisions of [section 27]. The
15 term includes critical wildlife habitat.

16 (c) "Critical resource area" means a critical resource
17 area as defined in [section 3].

18 (d) "Critical wildlife habitat" means a winter range,
19 calving area, migration route, or rare and imperiled habitat
20 as those terms are defined in this section.

21 (e) "Game animals" means those animals defined as game
22 animals in 87-2-101.

23 (f) "Migration route" means identified and defined
24 areas that serve as corridors for predictable, annual
25 movements of major game animal herds between seasonal

1 ranges. A critical migration route is land that, if lost to
2 access by game animals, would result in a substantial
3 disruption in normal migratory patterns.

4 (g) "Mitigation" means mitigation as defined in
5 [section 3].

6 (h) "Montana Natural Heritage Element Occurrence
7 Report" means a record of the locations of rare and
8 exemplary animals, plants, and communities that is compiled
9 and maintained by the Montana natural heritage program.

10 (i) "Rare or imperiled habitat" means wildlife habitat
11 or riparian communities that are classified as rare,
12 imperiled, or critically imperiled in the Montana Natural
13 Heritage Element Occurrence Report.

14 (j) "Winter range" means land that:

15 (i) contains physical and vegetative characteristics
16 that can be distinguished from other seasonal habitat used
17 by game animals and that make the land accessible to and
18 necessary for the survival of game animals during winter;

19 (ii) hosts game animals during winter in densities
20 substantially greater than densities of that specific game
21 animal population that occur in other habitats or in other
22 seasons; and

23 (iii) the loss of a substantial portion of which would
24 have a strong likelihood of resulting in a significant,
25 long-term reduction in the population of game animals

1 depending on that land.

2 (2) In a jurisdiction where a governing body has
3 designated critical resource areas under the provisions of
4 [section 27], the following procedures for reviewing the
5 effects on critical resources apply:

6 (a) Upon receipt of a preliminary plat, the
7 subdivision review officer shall determine whether a
8 proposed subdivision overlies a critical resource area.

9 (b) For any parts of the subdivision that lie within a
10 critical resource area, the subdivision review officer shall
11 solicit, collect, and evaluate site-specific information on
12 the potential effects of the subdivision on the critical
13 resource. The subdivision review officer shall solicit this
14 information from the subdivider, agencies, and other
15 appropriate sources.

16 (c) Based on the information, the subdivision review
17 officer shall determine whether the proposed subdivision is
18 likely to have adverse effects on the critical resource.

19 (d) If the subdivision review officer determines that
20 no adverse effects are likely, he shall so indicate in a
21 written finding to the governing body.

22 (e) If the subdivision review officer determines that
23 adverse effects are likely, he shall schedule an informal
24 consultation with the subdivider and knowledgeable persons
25 and agencies. During the consultation process, the parties

1 shall work to develop mitigation for the potential effects
2 on the critical resource.

3 (f) The subdivision review officer shall report the
4 results of the meeting to the governing body, and may make a
5 recommendation.

6 (g) In consideration of the information, the governing
7 body may:

8 (i) approve the subdivision as proposed;

9 (ii) require modification of the preliminary plat to
10 mitigate potential significant adverse effects on the
11 critical resource; or

12 (iii) deny the proposed subdivision if the subdivision
13 will have demonstrable and irreconcilable adverse effects on
14 the critical resource.

15 (h) The governing body shall issue written findings
16 based on substantial credible evidence to justify the action
17 taken under subsection (2)(g).

18 (3) (a) Except as provided in subsection (3)(b), where
19 a governing body has not designated any critical resource
20 areas for critical wildlife habitat, the subdivision review
21 officer shall solicit, collect, and evaluate site-specific
22 information to determine whether a proposed subdivision is
23 in critical wildlife habitat. If the subdivision is in
24 critical wildlife habitat, the process provided for in
25 subsections (2)(c) through (2)(h) must be conducted.

1 (b) A governing body that has determined through the
2 procedures of [section 27] that there are no areas of
3 critical wildlife habitat within its jurisdiction need not
4 review subdivisions for effects on critical wildlife
5 habitat.

6 (4) In reviewing a subdivision under this section, a
7 governing body must be guided by the following standards:

8 (a) The review process is intended to develop
9 specific, effective, and long-term mitigation.

10 (b) Mitigation measures imposed should not
11 unreasonably restrict a landowner's ability to develop land,
12 but it is recognized that in some instances the impacts of a
13 proposed development may be unacceptable.

14 (c) Where feasible, mitigation should be designed to
15 provide some benefits for the developer, including
16 allowances for higher density development in less
17 environmentally sensitive sites within the plat, waiver of
18 the park dedication requirement under the provisions of
19 [section 21], and structuring mitigation to provide
20 eligibility for tax benefits if land or development rights
21 are donated to eligible receivers.

22 NEW SECTION. Section 23. Protection of agricultural
23 and water user interests. (1) The subdivider shall contact
24 agricultural or water user special districts and
25 agricultural property owners in the area where a subdivision

1 is proposed to determine if the proposed subdivision would
2 conflict with existing agricultural or water user practices.

3 (2) If a proposed subdivision may result in conflicts
4 with existing agricultural or water user practices, the
5 subdivision review officer shall schedule a consultation
6 with the developer, representatives of any affected
7 district, and affected agricultural property owners to
8 discuss ways to minimize the potential for conflict.

9 (3) The review authority may require the subdivider to
10 design the subdivision to minimize potential conflict with
11 agricultural or water user interests.

12 NEW SECTION. Section 24. Payment for extension of
13 capital facilities. A local government may require a
14 subdivider to pay or guarantee payment for part or all of
15 the costs of extending public sewer lines, water supply
16 lines, and storm drains to the subdivision.

17 NEW SECTION. Section 25. Capital improvement program
18 and fee. (1) A capital improvement program is an
19 acquisition, replacement, construction, and reconstruction
20 plan for public, capital facilities in a community.

21 (2) A capital improvement program must include:

22 (a) an inventory and assessment of the community's
23 needs for capital facilities;

24 (b) a plan that establishes priorities among different
25 projects; and

1 (c) identification and assessment of possible funding
2 sources.

3 (3) In addition to the general requirements of
4 subsection (2), a capital improvement program adopted by the
5 governing body for the purpose of assessing a capital
6 improvement fee under [sections 1 through 43] must:

7 (a) identify those specific public facilities that may
8 have to be constructed, acquired, or expanded because of new
9 subdivision development. These facilities may include
10 roads, water systems, sewer systems, storm drains, and solid
11 waste facilities; schools, libraries, and other public
12 buildings; and major equipment for fire prevention, road
13 construction, and police protection.

14 (b) present the estimated costs of extension,
15 construction, or acquisition of such facilities, along with
16 a tentative schedule of when such costs may be incurred,
17 based on population increase or geographical shifts;

18 (c) include a method of calculating a capital
19 improvement fee, based on the increased local government
20 revenue requirements attributable to new development. The
21 procedure for calculating a capital improvement fee must
22 consider:

23 (i) whether the proposed subdivision specifically
24 expands the need for capital improvements;

25 (ii) whether the fee is reasonably commensurate with

1 the burden imposed by the proposed subdivision;

2 (iii) whether the revenue from the fee will be used for
3 capital improvements related to the proposed subdivision;

4 (iv) that the fee may not exceed the actual burden or
5 cost of service necessitated by the proposed subdivision;
6 and

7 (v) the anticipated contribution of property taxes
8 from each new tract created by the proposed subdivision.

9 (4) A capital improvement program may include the
10 designation of fiscal impact areas. Any subdivision in a
11 fiscal impact area may be assessed a capital improvement
12 fee.

13 (5) The capital improvement program must be adopted
14 under the provisions of [section 27].

15 (6) The capital improvement program must be updated
16 every 5 years. A capital improvement program older than 5
17 years is invalid and may not be used to assess a capital
18 improvement fee.

19 (7) The capital improvement fund, as authorized in
20 7-6-2219 and 7-6-4134, may be used to finance the capital
21 improvement program.

22 (8) The capital improvement program and fee may
23 include provisions for acquisition and development of parks,
24 recreation areas, and open space as provided for in [section
25 21]. If the capital improvement program and fee include

1 these provisions, no park dedication may be required under
2 [section 21].

3 NEW SECTION. Section 26. Public improvements required
4 to be completed or bonded. (1) Except as provided in
5 subsection (2), the governing body shall require the
6 subdivider to complete any required public improvements
7 within the subdivision prior to the approval of the final
8 plat.

9 (2) In lieu of the completion of the construction of
10 any public improvements prior to the approval of a final
11 plat, the subdivider shall provide a bond or other
12 reasonable security, in an amount and with surety and
13 conditions satisfying to the governing body, providing for
14 and securing the construction and installation of such
15 improvements within a period specified by the governing body
16 and expressed in the bonds or other security.

17 (3) The governing body shall reduce bond requirements
18 commensurate with the completion of such improvements.

19 (4) Governing body approval of a final plat prior to
20 the completion of required improvements and without the
21 provision of the security required under subsection (2) is
22 not a legislative act for the purposes of 2-9-111.

23 NEW SECTION. Section 27. Local government regulations
24 -- designation of critical resource areas and fiscal impact
25 areas. (1) The governing body of every county, city, and

1 town shall adopt regulations implementing the provisions of
2 [sections 1 through 43] that are consistent with the
3 statement of purpose described in [section 2]. Before
4 adoption, a public hearing must be held for which notice is
5 given not less than 15 or more than 30 days prior to the
6 hearing. The regulations shall include:

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

9 (b) procedures for providing public notice of
10 subdivision applications and hearings;

11 (c) procedures for obtaining public agency and public
12 utility review. This review may not delay the review
13 authority's action on the proposal beyond the time limits
14 specified in [sections 1 through 43] and the failure of any
15 agency to complete a review of a plat may not be a basis for
16 rejection of the plat by the governing body.

17 (d) procedures and standards concerning the
18 application of primary and secondary review criteria to
19 subdivision applications, as described in [sections 15
20 through 26];

21 (e) standards for the design and arrangement of lots,
22 streets, and roads; grading and drainage; and the location
23 and installation of utilities;

24 (f) financial incentives for developments that
25 accommodate public values;

1 (g) procedures for granting variances when strict
2 compliance would result in undue hardship and when it is not
3 essential to the public welfare. Any variance granted
4 pursuant to this section must be based on specific variance
5 criteria contained in the subdivision regulations.

6 (2) A local governing body that has not adopted a
7 qualified master plan under 76-1-601 may designate critical
8 resource areas for resources other than critical wildlife
9 habitat through the following procedures:

10 (a) The governing body shall identify the critical
11 resource to be considered in the critical resource area. A
12 cultural, historical, or natural resource is eligible for
13 designation as a critical resource if the resource is unique
14 and susceptible to substantial adverse effects from
15 subdivision development.

16 (b) The governing body shall develop management or
17 protection goals for any resource designated to be the
18 subject of a critical resource area. These goals must be
19 accompanied by specific mitigating measures to be considered
20 as part of the review for the effects of a proposed
21 subdivision within the critical resource area.

22 (c) The governing body shall prepare a map of the
23 boundaries of the proposed critical resource area.

24 (d) A designation of a critical resource area and
25 establishment of the critical resource management goals must

1 be adopted by the governing body in the same manner as other
2 local government regulations are adopted. As part of the
3 process, the governing body must find by substantial
4 credible evidence that the resource has unique value or
5 importance and requires the consideration afforded by
6 inclusion in a critical resource area.

7 (3) A governing body that has not adopted a qualified
8 master plan under 76-1-601 shall for the purpose of
9 subdivision review designate on a map areas that meet the
10 definition of critical wildlife habitat in [section 22]. In
11 determining whether critical wildlife habitat exists within
12 a jurisdiction, the governing body must solicit information
13 from the Montana natural heritage program and appropriate
14 agencies and may solicit information from knowledgeable
15 individuals. If the information received indicates that
16 there is no known critical wildlife habitat in the
17 jurisdiction, the governing body may adopt a statement of
18 this finding in the same manner that other local government
19 regulations are adopted.

20 (4) The governing body may adopt a capital improvement
21 program as described in [section 25]. The capital
22 improvement program may include designation of fiscal impact
23 areas, as provided in subsection (5).

24 (5) The governing body may delineate on a map fiscal
25 impact areas within its jurisdiction through the following

1 procedures:

2 (a) a fiscal impact area may be designated where the
3 governing body is able to document by experience or valid
4 projections that development of additional subdivisions can
5 reasonably be expected to increase the long-term capital
6 costs to the local government;

7 (b) a fiscal impact area may only be designated and a
8 capital improvement fee may only be assessed as part of a
9 capital improvement program; and

10 (c) a designation of a fiscal impact area by a
11 governing body must be adopted in the same manner that other
12 local government regulations are adopted.

13 NEW SECTION. Section 28. Environmental assessment. An
14 environmental assessment must accompany the preliminary plat
15 for any major subdivision and must include:

16 (1) a description of every surface water body as may
17 be affected by the proposed subdivision, along with
18 available groundwater information, and a description of the
19 topography, vegetation, and wildlife use within the area of
20 the proposed subdivision;

21 (2) a summary of the probable impacts of the proposed
22 subdivision based on the primary and secondary criteria
23 described in [sections 15 through 26]; and

24 (3) additional relevant and reasonable information as
25 may be required by the governing body.

1 NEW SECTION. Section 29. Index of plats to be kept by
2 county clerk and recorder. (1) The county clerk and recorder
3 shall maintain an index of all recorded subdivision plats
4 and certificates of survey.

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

14 NEW SECTION. Section 30. Correction of recorded plat.
15 When a recorded plat does not definitely show the location
16 or size of lots or blocks or the location or width of any
17 street or alley, the review authority may at its own expense
18 cause a new and correct survey and plat to be made and
19 recorded in the office of the county clerk and recorder. The
20 corrected plat must, to the extent possible, follow the plan
21 of the original survey and plat. The surveyor making the
22 resurvey shall endorse the corrected plat referring to the
23 original plat and noting the defect therein and the
24 corrections made.

25 NEW SECTION. Section 31. General restriction on

1 transfer of title. (1) Except as provided in [section 33],
 2 every final subdivision plat must be filed for record with
 3 the county clerk and recorder before title to the subdivided
 4 land can be sold or transferred in any manner. The clerk and
 5 recorder of the county shall refuse to accept any plat for
 6 record that fails to have approval according to [section 11]
 7 in proper form.

8 (2) The county clerk and recorder shall notify the
 9 governing body or its designated agent of any land division
 10 exempted from review but subject to survey requirements.

11 (3) If transfers not in accordance with [sections 1
 12 through 43] are made, the county attorney shall commence
 13 action to enjoin further sales or transfers and compel
 14 compliance with all provisions of [sections 1 through 43].
 15 The cost of such action must be imposed against the party
 16 not prevailing.

17 NEW SECTION. Section 32. Restrictions on recording
 18 instruments relating to land subject to survey requirements.

19 (1) Except as provided in subsection (2), the county clerk
 20 and recorder may not record any instrument that purports to
 21 transfer title to or possession of a parcel or tract of land
 22 that is required to be surveyed by [sections 39 through 43]
 23 unless the required certificate of survey or subdivision
 24 plat has been filed with the county clerk and recorder and
 25 the instrument of transfer describes the parcel or tract by

1 reference to the filed certificate or plat.

2 (2) Subsection (1) does not apply when the parcel or
 3 tract to be transferred was created before July 1, 1973, and
 4 the instrument of transfer for the parcel or tract includes
 5 a reference to a previously recorded instrument of transfer
 6 or is accompanied by documents that demonstrate that the
 7 parcel or tract existed before July 1, 1973.

8 (3) The reference or documents required in subsection
 9 (2) do not constitute a legal description of the property
 10 and may not be substituted for a legal description of the
 11 property.

12 NEW SECTION. Section 33. Contract for deed permitted
 13 if buyer protected. Notwithstanding the provisions of
 14 [section 31], after the preliminary plat of a subdivision
 15 has been approved or conditionally approved, the subdivider
 16 may enter into contracts to sell lots in the proposed
 17 subdivision if all of the following conditions are met:

18 (1) that under the terms of the contracts the
 19 purchasers of lots in the proposed subdivision make any
 20 payments to an escrow agent, which must be a bank or savings
 21 and loan association chartered to do business in the state
 22 of Montana;

23 (2) that under the terms of the contracts and the
 24 escrow agreement the payments made by purchasers of lots in
 25 the proposed subdivision may not be distributed by the

1 escrow agent to the subdivider until the final plat of the
2 subdivision is filed with the county clerk and recorder;

3 (3) that the contracts and the escrow agreement
4 provide that if the final plat of the proposed subdivision
5 is not filed with the county clerk and recorder within 2
6 years of the preliminary plat approval, the escrow agent
7 shall immediately refund to each purchaser any payments he
8 has made under the contract;

9 (4) that the county treasurer has certified that no
10 real property taxes assessed and levied on the land to be
11 divided are delinquent; and

12 (5) that the contracts contain the following language
13 conspicuously set out therein: "The real property which is
14 the subject hereof has not been finally platted, and until a
15 final plat identifying the property has been filed with the
16 county clerk and recorder, title to the property cannot be
17 transferred in any manner."

18 NEW SECTION. Section 34. Effect of filing complying
19 plat. The filing of any plat made in compliance with the
20 provisions of [sections 1 through 43] serves to establish
21 the identity of all lands shown on and being a part of the
22 plat. Where lands are conveyed by reference to a plat, the
23 plat itself or any copy of the plat properly certified by
24 the county clerk and recorder as being a true copy must be
25 regarded as incorporated into the instrument of conveyance

1 and must be received in evidence in all courts of this
2 state.

3 NEW SECTION. Section 35. Vacation of plats -- utility
4 easements. (1) Any plat prepared and filed as herein
5 provided may be vacated either in whole or in part as
6 provided by 7-5-2501, 7-5-2502, 7-14-2616(1) and (2),
7 7-14-2617, 7-14-4114(1) and (2), and 7-14-4115, and upon
8 such vacation the title to the streets and alleys of such
9 vacated portions to the center thereof reverts to the owners
10 of the properties within the platted area adjacent to the
11 vacated portions.

12 (2) When a poleline, pipeline, or other public or
13 private facility is located in a vacated street or alley at
14 the time of the reversion of the title thereto, the owner of
15 the public or private facility shall have an easement over
16 the vacated land to continue the operation and maintenance
17 of the public or private utility facility.

18 NEW SECTION. Section 36. Covenants run with the land.
19 All covenants must be considered to run with the land,
20 whether marked or noted on the subdivision plat or contained
21 in a separate instrument recorded with the plat.

22 NEW SECTION. Section 37. Donations or grants to
23 public considered a grant to donee. Each donation or grant
24 to the public or to any person, society, or corporation
25 marked or noted on a plat is to be considered a grant to the

1 donee.

2 NEW SECTION. Section 38. Preparation of public
3 highway transfers. Instruments of transfer of land acquired
4 for public highways may refer, if applicable, by parcel and
5 project number to state highway plans that have been
6 prepared in compliance with 60-2-209. If the parcels are not
7 shown on state highway plans of record, instruments of
8 transfer of the parcels must be accompanied by and refer to
9 appropriate certificates of survey and plats when presented
10 for recording.

11 NEW SECTION. Section 39. Survey requirements for
12 lands. All divisions of land into parts that cannot be
13 described as one thirty-second or larger aliquot parts of a
14 United States government section or a United States
15 government lot must be surveyed by or under the supervision
16 of a registered professional land surveyor.

17 NEW SECTION. Section 40. Survey and platting
18 requirements for subdivided lands. (1) Every subdivision of
19 land must be surveyed and platted in conformance with
20 [sections 29 through 43] by or under the supervision of a
21 registered professional land surveyor, except as provided in
22 [section 39].

23 (2) Subdivision plats must be prepared and filed in
24 accordance with [sections 29 through 43].

25 (3) All divisions of sections into aliquot parts and

1 retracements of lines must conform to United States bureau
2 of land management instructions, and all public land survey
3 corners must be filed in accordance with the Corner
4 Recordation Act of Montana (Title 70, chapter 22, part 1).
5 Engineering plans, specifications, and reports required in
6 connection with public improvements and other elements of
7 the subdivision required by the governing body must be
8 prepared and filed by a registered professional engineer or
9 a registered professional land surveyor as their respective
10 licensing laws allow in accordance with [sections 39 through
11 43].

12 NEW SECTION. Section 41. Monumentation. The
13 department of commerce shall, in conformance with the
14 Montana Administrative Procedure Act, prescribe uniform
15 standards for monumentation and for the form, accuracy, and
16 descriptive content of records of survey.

17 NEW SECTION. Section 42. Certificate of survey. (1)
18 Within 180 days of the completion of a survey, the
19 registered professional land surveyor responsible for the
20 survey, whether he is privately or publicly employed, shall
21 prepare for filing a certificate of survey in the county in
22 which the survey was made if the survey:

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

1 (b) reveals a material discrepancy in the map;
 2 (c) discloses evidence to suggest alternate locations
 3 of lines or points; or
 4 (d) establishes one or more lines not shown on a
 5 recorded map, the positions of which are not ascertainable
 6 from an inspection of the map without trigonometric
 7 calculations.

8 (2) A certificate of survey is not required for any
 9 survey that is made by the United States bureau of land
 10 management or that is preliminary or that will become part
 11 of a subdivision plat being prepared for recording under the
 12 provisions of [sections 1 through 43].

13 (3) Certificates of survey must be legibly drawn,
 14 printed, or reproduced by a process guaranteeing a permanent
 15 record and must conform to monumentation and survey
 16 requirements promulgated in [sections 39 through 43].

17 NEW SECTION. Section 43. Administration of oaths by
 18 registered professional land surveyor. (1) A registered
 19 professional land surveyor may administer and certify oaths
 20 when:

21 (a) it becomes necessary to take testimony for the
 22 identification of old corners or reestablishment of lost or
 23 obliterated corners;

24 (b) a corner or monument is found in a deteriorating
 25 condition and it is desirable that evidence concerning it be

1 perpetuated; and
 2 (c) the importance of the survey makes it desirable to
 3 administer an oath to his assistants for the faithful
 4 performance of their duties.

5 (2) A record of oaths must be preserved as part of the
 6 field notes of the survey and noted on the corner record
 7 filed under 70-22-104.

8 Section 44. Section 2-4-102, MCA, is amended to read:
 9 "2-4-102. Definitions. For purposes of this chapter,
 10 the following definitions apply:

11 (1) "Administrative code committee" or "committee"
 12 means the committee provided for in Title 5, chapter 14.

13 (2) (a) "Agency" means any agency, as defined in
 14 2-3-102, of the state government, except that the provisions
 15 of this chapter do not apply to the following:

16 (i) the state board of pardons, except that the board
 17 shall be subject to the requirements of 2-4-103, 2-4-201,
 18 2-4-202, and 2-4-306 and its rules shall be published in the
 19 administrative rules of Montana and Montana administrative
 20 register;

21 (ii) the supervision and administration of any penal
 22 institution with regard to the institutional supervision,
 23 custody, control, care, or treatment of youths or prisoners;

24 (iii) the board of regents and the Montana university
 25 system;

1 (iv) the financing, construction, and maintenance of
2 public works.

3 (b) (i) "Agency" does not include a school district,
4 unit of local government except as provided in subsection
5 (2)(b)(ii), or any other political subdivision of the state.

6 (ii) For purposes of 2-4-604 and part 7 of this
7 chapter, agency includes any unit of local government when
8 it is administering the Montana Subdivision Regulation and
9 Development Act [(sections 1 through 43)].

10 (3) "ARM" means the administrative rules of Montana.

11 (4) "Contested case" means any proceeding before an
12 agency in which a determination of legal rights, duties, or
13 privileges of a party is required by law to be made after an
14 opportunity for hearing. The term includes but is not
15 restricted to ratemaking, price fixing, and licensing.

16 (5) "License" includes the whole or part of any agency
17 permit, certificate, approval, registration, charter, or
18 other form of permission required by law but does not
19 include a license required solely for revenue purposes.

20 (6) "Licensing" includes any agency process respecting
21 the grant, denial, renewal, revocation, suspension,
22 annulment, withdrawal, limitation, transfer, or amendment of
23 a license.

24 (7) "Party" means any person named or admitted as a
25 party or properly seeking and entitled as of right to be

1 admitted as a party, but nothing herein shall be construed
2 to prevent an agency from admitting any person as a party
3 for limited purposes.

4 (8) "Person" means any individual, partnership,
5 corporation, association, governmental subdivision, agency,
6 or public organization of any character.

7 (9) "Register" means the Montana administrative
8 register.

9 (10) "Rule" means each agency regulation, standard, or
10 statement of general applicability that implements,
11 interprets, or prescribes law or policy or describes the
12 organization, procedures, or practice requirements of an
13 agency. The term includes the amendment or repeal of a prior
14 rule but does not include:

15 (a) statements concerning only the internal management
16 of an agency and not affecting private rights or procedures
17 available to the public;

18 (b) formal opinions of the attorney general and
19 declaratory rulings issued pursuant to 2-4-501;

20 (c) rules relating to the use of public works,
21 facilities, streets, and highways when the substance of such
22 rules is indicated to the public by means of signs or
23 signals;

24 (d) seasonal rules adopted annually relating to
25 hunting, fishing, and trapping when there is a statutory

1 requirement for the publication of such rules and rules
2 adopted annually relating to the seasonal recreational use
3 of lands and waters owned or controlled by the state when
4 the substance of such rules is indicated to the public by
5 means of signs or signals;

6 (e) rules implementing the state personnel
7 classification plan, the state wage and salary plan, or the
8 statewide budgeting and accounting system;

9 (f) uniform rules adopted pursuant to interstate
10 compact, except that such rules shall be filed in accordance
11 with 2-4-306 and shall be published in the administrative
12 rules of Montana.

13 (11) "Substantive rules" are either:

14 (a) legislative rules, which if adopted in accordance
15 with this chapter and under expressly delegated authority to
16 promulgate rules to implement a statute have the force of
17 law and when not so adopted are invalid; or

18 (b) adjective or interpretive rules, which may be
19 adopted in accordance with this chapter and under express or
20 implied authority to codify an interpretation of a statute.
21 Such interpretation lacks the force of law."

22 Section 45. Section 7-16-2324, MCA, is amended to
23 read:

24 "7-16-2324. Sale, lease, or exchange of dedicated park
25 lands. (1) For the purposes of this section and part 25 of

1 chapter 8, lands dedicated to the public use for park or
2 playground purposes under 76-3-606-and-76-3-607 [section 21]
3 or a similar statute or pursuant to any instrument not
4 specifically conveying land to a governmental unit other
5 than a county are considered county lands.

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

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

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

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

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

19 (d) publish notice as provided in 7-1-2121 of
20 intention to sell, lease, or dispose of such lands, giving
21 the people of the county opportunity to be heard regarding
22 such action;

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

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

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

8 Section 46. Section 15-7-202, MCA, is amended to read:

9 "15-7-202. Eligibility of land for valuation as
10 agricultural. (1) Contiguous parcels of land totaling 20
11 acres or more under one ownership shall be eligible for
12 valuation, assessment, and taxation as agricultural land
13 each year that none of the parcels is devoted to a
14 commercial or industrial use.

15 (2) Contiguous or noncontiguous parcels of land
16 totaling less than 20 acres under one ownership that are
17 actively devoted to agricultural use shall be eligible for
18 valuation, assessment, and taxation as herein provided each
19 year the parcels meet any of the following qualifications:

20 (a) the parcels produce and the owner or the owner's
21 agent, employee, or lessee markets not less than \$1,500 in
22 annual gross income from the raising of livestock, poultry,
23 field crops, fruit, and other animal and vegetable matter
24 for food or fiber; or

25 (b) the parcels would have met the qualification set

1 out in subsection (2)(a) were it not for independent
2 intervening causes of production failure beyond the control
3 of the producer or marketing delay for economic advantage,
4 in which case proof of qualification in a prior year will
5 suffice.

6 (3) Parcels that do not meet the qualifications set
7 out in subsections (1) and (2) shall not be classified or
8 valued as agricultural if they are part of a platted
9 subdivision that is filed with the county clerk and recorder
10 in compliance with the Montana Subdivision and-Platting
11 Regulation and Development Act.

12 (4) Land shall not be classified or valued as
13 agricultural if it is subdivided with stated restrictions
14 prohibiting its use for agricultural purposes.

15 (5) The grazing on land by a horse or other animals
16 kept as a hobby and not as a part of a bona fide
17 agricultural enterprise shall not be considered a bona fide
18 agricultural operation.

19 (6) If land has been valued, assessed, and taxed as
20 agricultural land in any year, it shall continue to be so
21 valued, assessed, and taxed until the department
22 reclassifies the property. A reclassification does not mean
23 revaluation pursuant to 15-7-111.

24 (7) For the purposes of this part, growing timber is
25 not an agricultural use. (Subsection (6) (now (7))

terminates January 1, 1991--sec. 10, Ch. 681, L. 1985.)"

Section 47. Section 60-4-105, MCA, is amended to read:

"60-4-105. Acquisition of whole parcel -- sale of excess. (1) Whenever any interest in a part of a parcel of land or other real property is to be acquired for highway purposes leaving the remainder in a shape or condition as to be of little market value or to give rise to claims or litigation over severance or other damage, the department may acquire the whole parcel. It may sell or exchange the remainder for other property needed for highway purposes.

(2) Whenever a part of a parcel of land acquired for highway purposes is in a shape or size as to come within the Montana Subdivision ~~and-Platting~~ Regulation and Development Act, the department shall prepare and file the required plat in the office of the county clerk and recorder."

Section 48. Section 75-7-202, MCA, is amended to read:

"75-7-202. Definitions. As used in this part, the following definitions apply:

(1) "Lake" means a body of standing water and the area within its lakeshore occurring naturally rather than by virtue of constructed impoundments (although a natural lake whose level is raised and whose area is increased by the construction of impoundments includes the additional level and area), having a water surface area of at least 160 acres for at least 6 months in a year of average precipitation as

such averages are determined by the United States geological survey, not used exclusively for agricultural purposes, and navigable by canoes and small boats.

(2) "Lakeshore" is the perimeter of a lake when the lake is at mean annual high-water elevation, including the land within 20 horizontal feet from that high-water elevation.

(3) "Local governing body" or "governing body" is that unit of local government authorized to administer the Montana Subdivision ~~and-Platting~~ Regulation and Development Act on the land adjoining a lake or part of a lake subject to this part.

(4) "Mean annual high-water elevation" is the mean average of the highest elevation of a lake in each of at least 5 consecutive years, excluding any high levels caused by erratic or unusual weather or hydrological conditions. A highest elevation caused by operation of a dam or other impoundment counts toward the establishment of the mean annual high-water elevation."

Section 49. Section 75-10-214, MCA, is amended to read:

"75-10-214. Exclusions -- exceptions to exclusions.

(1) This part may not be construed to prohibit a person from disposing of his own solid waste upon land owned or leased by that person or covered by easement or permit as long as

1 it does not create a nuisance or public health hazard.

2 (2) The exclusion contained in subsection (1) of this
3 section does not apply to a division of land of 5 acres or
4 less made after July 1, 1977, which falls within the
5 definition of subdivision in Title 76, chapter 4, part 1, or
6 ~~the Montana Subdivision and Platting Act in Title 76,~~
7 ~~chapter 3 [section 3]."~~

8 Section 50. Section 76-1-107, MCA, is amended to read:

9 "76-1-107. Role of planning board in relation to
10 subdivisions and plats. The governing body of any city,
11 town, or county which has formed a planning board and
12 adopted a comprehensive plan and subdivision regulations
13 pursuant to this chapter and ~~chapter 3 [sections 1 through~~
14 ~~43]~~ shall seek the advice of the appropriate planning board
15 in all matters pertaining to the approval or disapproval of
16 plats or subdivisions."

17 Section 51. Section 76-1-601, MCA, is amended to read:

18 "76-1-601. Master plan -- contents and special
19 requirements for qualified master plan. (1) The master plan
20 is a document that incorporates local values for the use of
21 land and resources within a jurisdiction into an integrated
22 and coordinated plan for the development and conservation of
23 that land and the associated community. The planning board
24 shall prepare and propose a master plan for the
25 jurisdictional area. The plan may propose ordinances or

1 resolutions for possible adoption by the appropriate
2 governing body.

3 (2) A master plan must:

4 (a) describe existing conditions in the jurisdiction;

5 (b) set forth goals, objectives, and policies for the
6 development and conservation of the community and its land
7 and resource base; and

8 (c) make recommendations to guide future development.

9 (3) The plan may include:

10 (1) ~~careful and comprehensive surveys and studies of~~
11 ~~existing conditions and the probable future growth of the~~
12 ~~city and its environs or of the county;~~

13 (2) ~~maps, plats, charts, and descriptive material~~
14 ~~presenting basic information, locations, extent, and~~
15 ~~character of any of the following:~~

16 (a) ~~history, population, and physical site conditions;~~

17 (b) ~~land use, including the height, area, bulk,~~
18 ~~location, and use of private and public structures and~~
19 ~~premises;~~

20 (c) ~~population densities;~~

21 (d) ~~community centers and neighborhood units;~~

22 (e) ~~blighted and slum areas;~~

23 (f) ~~streets and highways, including bridges, viaducts,~~
24 ~~subways, parkways, alleys, and other public ways and places;~~

25 (g) ~~sewers, sanitation, and drainage, including~~

1 handling, treatment, and disposal of excess drainage waters,
 2 sewage, garbage, refuse, and other wastes;
 3 (h) flood control and prevention;
 4 (i) public and private utilities, including water,
 5 light, heat, communication, and other services;
 6 (j) transportation, including rail, bus, truck, air,
 7 and water transport and their terminal facilities;
 8 (k) local mass transit, including motor and trolley
 9 bus, street, elevated, or underground railways, and
 10 taxicabs;
 11 (l) parks and recreation, including parks,
 12 playgrounds, reservations, forests, wildlife refuges, and
 13 other public grounds, spaces, and facilities of a
 14 recreational nature;
 15 (m) public buildings and institutions, including
 16 governmental administration and service buildings,
 17 hospitals, infirmaries, clinics, penal and correctional
 18 institutions, and other civic and social service buildings;
 19 (n) education, including location and extent of
 20 schools, colleges, and universities;
 21 (o) land utilization, including areas for
 22 manufacturing and industrial uses, concentration of
 23 wholesale business, retail business, and other commercial
 24 uses, residential uses, and areas for mixed uses;
 25 (p) conservation of water, soil, agricultural, and

1 mineral resources;
 2 (q) any other factors which are a part of the
 3 physical, economic, or social situation within the city or
 4 county;
 5 (3) reports, maps, charts, and recommendations setting
 6 forth plans for the development, redevelopment, improvement,
 7 extension, and revision of the subjects and physical
 8 situations of the city or county set out in subsection (2)
 9 so as to substantially accomplish the object of this chapter
 10 as set out in 76-1-101 and 76-1-102;
 11 (4) a long-range development program of public works
 12 projects, based on the recommended plans of the planning
 13 board, for the purpose of eliminating unplanned, unsightly,
 14 untimely, and extravagant projects and with a view to
 15 stabilizing industry and employment and the keeping of such
 16 program up to date for all separate taxing units within the
 17 city or county, respectively, for the purpose of assuring
 18 efficient and economic use of public funds;
 19 (5) recommendations setting forth the development,
 20 improvement, and extension of areas, if any, to be set aside
 21 for use as trailer courts and sites for mobile homes;
 22 (a) surveys and studies of existing conditions and
 23 probable future growth of the jurisdiction and its environs;
 24 (b) narrative and graphic material presenting basic
 25 information, history, location, extent, character, and

1 management of any of the following:
 2 (i) population and population density;
 3 (ii) land uses and land-use regulations;
 4 (iii) housing, including existing development,
 5 undeveloped tracts, and areas appropriate for trailer
 6 courts;
 7 (iv) community centers, neighborhood units, and areas
 8 for urban redevelopment;
 9 (v) streets, highways, bridges, and other public ways;
 10 (vi) public and private utilities;
 11 (vii) transportation resources and facilities;
 12 (viii) energy conservation in housing, transportation,
 13 and other sectors;
 14 (ix) educational, health care, civic, and other public
 15 institutions;
 16 (x) private structures and premises;
 17 (xi) cultural and historical resources and sites;
 18 (xii) parks, recreation, and public lands;
 19 (xiii) scenic areas or corridors;
 20 (xiv) natural vegetative communities;
 21 (xv) wildlife and wildlife habitat;
 22 (xvi) water supplies, sewers, sanitation facilities,
 23 storm drains, and solid waste handling, treatment, and
 24 disposal facilities;
 25 (xvii) flood control and prevention;

1 (xviii) surface and ground waters;
 2 (xix) soil characteristics and limitations;
 3 (xx) geologic hazards;
 4 (xxi) mineral resources; and
 5 (xxii) any other factors that are a part of the
 6 physical, economic, environmental, or social situation
 7 within the city or county.
 8 (c) reports, maps, charts, and recommendations setting
 9 forth plans for the development, redevelopment, improvement,
 10 conservation, extension, and revision of the subjects set
 11 out in subsection (2) so as to substantially accomplish the
 12 objectives of this chapter as provided in 76-1-101 and
 13 76-1-102; and
 14 (d) a capital improvement program that is a long-range
 15 development program of public works projects and
 16 acquisitions that may include roads, schools and other
 17 public buildings, sewer and water systems, parks, facilities
 18 for public health and welfare, and other capital facilities.
 19 The program must be based on the recommendations of a
 20 planning board, government officials, and the public, and
 21 must be intended to provide facilities to serve the existing
 22 population of the jurisdiction and to accommodate projected
 23 changes in the population.
 24 (4) A qualified master plan for the purposes of the
 25 Montana Subdivision Regulation and Development Act shall at

1 a minimum:

2 (a) describe and map the existing community;

3 (b) set forth the goals, objectives, and policies for
4 the development and conservation of the community;

5 (c) indicate locations desirable for new development,
6 including appropriate uses and densities; and

7 (d) indicate locations undesirable for specified types
8 of development for reasons of public health and safety,
9 critical natural resources, cultural and historical values,
10 and conflicts with agricultural uses. As part of this
11 requirement, a qualified master plan must include detailed
12 consideration of critical wildlife habitat, as defined in
13 [section 22]."

14 Section 52. Section 76-1-606, MCA, is amended to read:

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

24 (2) Hereafter:

25 (a) a plat involving lands a major subdivision within

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

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

16 (3) Nothing herein contained shall be interpreted to
17 limit the present powers of the city or county governments
18 but shall be an additional requirement before any plat may
19 be filed of record or entitled to be recorded."

20 Section 53. Section 76-4-102, MCA, is amended to read:

21 "76-4-102. Definitions. As used in this part, unless
22 the context clearly indicates otherwise, the following words
23 or phrases have the following meanings:

24 (1) "Board" means the board of health and
25 environmental sciences.

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

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

6 (4) "Extension of public water supply system" means a
7 water line that connects two or more water service lines to
8 a water main.

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

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

19 (7) "Registered professional engineer" means a person
20 licensed to practice as a professional engineer under Title
21 37, chapter 67.

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

24 (9) "Reviewing authority" means the department or a
25 local department or board of health certified to conduct

1 review under 76-4-104.

2 (10) "Sanitary restriction" means a prohibition against
3 the erection of any dwelling, shelter, or building requiring
4 facilities for the supply of water or the disposition of
5 sewage or solid waste or the construction of water supply or
6 sewage or solid waste disposal facilities until the
7 department has approved plans for those facilities.

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

11 (12) "Solid wastes" means all putrescible and
12 nonputrescible solid wastes (except body wastes), including
13 garbage, rubbish, street cleanings, dead animals, yard
14 clippings, and solid market and solid industrial wastes.

15 (13) "Subdivision" means a division of land or land so
16 divided which that creates one or more parcels containing
17 less--than--20-acres, exclusive of public roadways, in order
18 that the title to or possession of the parcels may be sold,
19 rented, leased, or otherwise conveyed and includes any
20 resubdivision, and any residential condominium or building,
21 and any area, regardless of its size, which that provides
22 permanent-multiple-space-for-recreational-camping--vehicles
23 or--mobile--homes, or will provide three or more spaces for
24 recreational camping vehicles, mobile homes, or work camp
25 structures that would exist for longer than 1 year, except

1 that an area that would provide fewer than three spaces for
 2 these purposes is a subdivision if a density approved
 3 pursuant to [section 9] would be exceeded.

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

7 Section 54. Section 76-4-103, MCA, is amended to read:

8 "76-4-103. ~~What--constitutes Rental or lease of~~
 9 ~~building not subdivision. A-subdivision-shall-comprise-only~~
 10 ~~those-parcels-of-less-than-20-acres-which-have-been--created~~
 11 ~~by--a--division-of-land--and-the-plat-thereof-shall-show-all~~
 12 ~~such-parcels--whether-contiguous-or-not.~~ The rental or lease
 13 of one or more parts of a building, structure, or other
 14 improvement, whether existing or proposed, is not a
 15 subdivision, as that term is defined in this part, and is
 16 not subject to the requirements of this part."

17 Section 55. Section 76-4-104, MCA, is amended to read:

18 "76-4-104. Rules for administration and enforcement.

19 (1) The department shall adopt reasonable rules, including
 20 adoption of sanitary standards and rules that address any
 21 cumulative effects of subdivision development on water
 22 quality, necessary for administration and enforcement of
 23 this part.

24 (2) The rules and standards shall provide the basis
 25 for approving subdivision plats for various types of water,

1 sewage facilities, and solid waste disposal, both public and
 2 private, and shall be related to size of lots, contour of
 3 land, porosity of soil, groundwater level, distance from
 4 lakes, streams, and wells, type and construction of private
 5 water and sewage facilities, and other factors affecting
 6 public health and the quality of water for uses relating to
 7 agriculture, industry, recreation, and wildlife.

8 (3) The rules shall provide for the review of the
 9 following divisions of land by a local department or board
 10 of health, as described in Title 50, chapter 2, part 1, if
 11 the local department or board of health employs a registered
 12 sanitarian or a registered professional engineer and if the
 13 department certifies under subsection (4) that the local
 14 department or board is competent to review these divisions
 15 of land:

16 (a) divisions of land containing five or fewer
 17 parcels, whenever each parcel will contain individual onsite
 18 water and sewage disposal facilities; and

19 (b) divisions of land proposed to connect to existing
 20 municipal water and waste water systems previously approved
 21 by the department, if no extension of the systems is
 22 required.

23 (4) The department shall also adopt standards and
 24 procedures for certification and maintaining certification
 25 to ensure that a local department or board of health is

1 competent to review the divisions of land described in
2 subsection (3).

3 (5) The department shall review those divisions of
4 land described in subsection (3) if:

5 (a) a proposed division of land lies within more than
6 one jurisdictional area and the respective governing bodies
7 are in disagreement concerning approval of or conditions to
8 be imposed on the proposed subdivision; or

9 (b) the local department or board of health elects not
10 to be certified.

11 (6) The rules shall further provide for:

12 (a) the furnishing to the reviewing authority of a
13 copy of the plat and other documentation showing the layout
14 or plan of development, including:

15 (i) total development area;

16 (ii) total number of proposed dwelling units;

17 (b) adequate evidence that a water supply that is
18 sufficient in terms of quality, quantity, and dependability
19 will be available to ensure an adequate supply of water for
20 the type of subdivision proposed;

21 (c) evidence concerning the potability of the proposed
22 water supply for the subdivision;

23 (d) adequate evidence that a sewage disposal facility
24 is sufficient in terms of capacity and dependability;

25 (e) standards and technical procedures applicable to

1 storm drainage plans and related designs, in order to insure
2 proper drainage ways;

3 (f) standards and technical procedures applicable to
4 sanitary sewer plans and designs, including soil percolation
5 testing and required percolation rates and site design
6 standards for on-lot sewage disposal systems when
7 applicable;

8 (g) standards and technical procedures applicable to
9 water systems;

10 (h) standards and technical procedures applicable to
11 solid waste disposal;

12 (i) requiring evidence to establish that, if a public
13 sewage disposal system is proposed, provision has been made
14 for the system and, if other methods of sewage disposal are
15 proposed, evidence that the systems will comply with state
16 and local laws and regulations which are in effect at the
17 time of submission of the preliminary or final plan or plat.

18 (7) If the reviewing authority is a local department
19 or board of health, it shall, upon approval of a division of
20 land under this part, notify the department of the approval
21 and submit to the department a copy of the approval
22 statement.

23 (8) Review and certification or denial of
24 certification that a division of land is not subject to
25 sanitary restrictions under this part may occur only under

1 those rules in effect at the time plans and specifications
 2 are submitted to the department, except in cases where
 3 current rules would preclude the use for which the lot was
 4 originally intended, the applicable requirements in effect
 5 at the time such lot was recorded must be applied. In the
 6 absence of specific requirements, minimum standards
 7 necessary to protect public health and water quality will
 8 apply."

9 Section 56. Section 76-4-105, MCA, is amended to read:

10 "76-4-105. Lot fees -- general fund support. (1) The
 11 department shall adopt rules setting forth fees, not to
 12 exceed \$48 per parcel, for services rendered in the review
 13 of plats and subdivisions. The rules shall provide for a
 14 schedule of fees to be paid by the applicant for plat or
 15 subdivision review to the department for deposit in the
 16 state general fund or, if applicable, to another reviewing
 17 authority for deposit in the general fund of the reviewing
 18 authority's jurisdiction. The fees shall be used for review
 19 of plats and subdivisions based on the complexity of the
 20 subdivision, including but not limited to:

- 21 (a) number of lots in the subdivision;
- 22 (b) the type of water system to serve the development;
- 23 (c) the type of sewage disposal to serve the
 24 development; and
- 25 (d) the degree of environmental research necessary to

1 supplement the review procedure.

2 (2) The department shall adopt rules to determine the
 3 distribution of fees between the local governing body and
 4 the state general fund as provided in 76-4-128. When a
 5 subdivision is reviewed under the provisions of 76-4-124,
 6 the local governing body shall, within 20 days after
 7 receiving preliminary plat approval under the Montana
 8 Subdivision and Platting Regulation and Development Act,
 9 distribute the lot fees according to the fee schedule
 10 adopted under this section.

11 (3) When a local department or board of health
 12 conducts a review under the provisions of 76-4-104, it shall
 13 submit to the department, along with its approval statement,
 14 a fee of \$5 per reviewed lot, for purposes of offsetting
 15 costs incurred in providing certification to a local
 16 reviewing authority and other administrative costs.

17 (4) A fee as described in this section is not required
 18 for the review of subdivisions in which divisions are made
 19 for the purpose of relocating common boundary lines unless
 20 the division will result in the installation of additional
 21 water supply or sewage disposal facilities.

22 (5) Costs of implementing this part must be paid from
 23 the state general fund as provided by legislative
 24 appropriation."

25 Section 57. Section 76-4-111, MCA, is amended to read:

1 "76-4-111. Exemption for certain condominiums and
 2 subdivisions. (1) Condominiums constructed on land divided
 3 in compliance with the Montana Subdivision ~~and--Platting~~
 4 Regulation and Development Act and this part are exempt from
 5 provisions of this part.

6 (2) Whenever a parcel of land has previously been
 7 reviewed under either department requirements or local
 8 health requirements and has received approval for a given
 9 number of living units for rental or lease, the construction
 10 of the same or a fewer number of condominium units on that
 11 parcel is not subject to the provisions of this part,
 12 provided that no new extension of a public water supply
 13 system or a public sewage disposal system is required as
 14 defined in this part.

15 (3) Subdivisions located within master planning areas
 16 and first- or second-class municipalities that will be
 17 provided with municipal facilities for the supply of water
 18 and disposal of sewage and solid waste are not subject to
 19 the provisions of this part; except that, if the municipal
 20 facilities for water supply or sewage disposal to serve the
 21 subdivision constitute either an extension of a public water
 22 supply system or a public sewage disposal system, the
 23 subdivision must be reviewed in accordance with the
 24 provisions of 76-4-105, 76-4-124, and 76-4-127."

25 Section 58. Section 76-4-125, MCA, is amended to read:

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

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

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

20 (2) A subdivision excluded from the provisions of
 21 [sections 1 through 43] shall be submitted for review
 22 according to the provisions of this part, except that the
 23 following divisions, unless such exclusions are used to
 24 evade the provisions of this part, are not subject to
 25 review:

1 (a) ~~the exclusions cited in 76-3-201 and 76-3-204~~, the
2 following subdivisions excluded under the Montana
3 Subdivision Regulation and Development Act:

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

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

15 (iii) a division creating cemetery lots only;

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

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

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

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

1 sewage disposal is to be erected on the additional acquired
2 parcel and that the division does not fall within a
3 previously platted or approved subdivision; 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 Section 59. Section 76-4-127, MCA, is amended to read:

8 "76-4-127. Notice of certification that water and
9 waste services will be provided by local government. (1)
10 When a subdivision is reviewed under the provisions of
11 76-4-124, the local governing body shall, within 20 days
12 after receiving preliminary plat approval under the Montana
13 Subdivision and-Platting Regulation and Development Act,
14 send notice of certification to the reviewing authority that
15 a subdivision has been submitted for approval and that
16 municipal facilities for the supply of water and disposal of
17 sewage and solid waste will be provided for the subdivision.

18 (2) The notice of certification shall include the
19 following:

20 (a) the name and address of the applicant;

21 (b) a copy of the preliminary plat or a final plat
22 where a preliminary plat is not necessary;

23 (c) the number of proposed parcels in the subdivision;

24 (d) a copy of any applicable zoning ordinances in
25 effect;

1 (e) how construction of the sewage disposal and water
2 supply systems or extensions will be financed;

3 (f) a copy of the master plan, when applicable, if one
4 has not yet been submitted to the reviewing authority;

5 (g) the relative location of the subdivision to the
6 city or town; and

7 (h) certification that adequate municipal facilities
8 for the supply of water and disposal of sewage and solid
9 waste are available or will be provided within 1 year after
10 the notice of certification is issued."

11 Section 60. Section 76-4-129, MCA, is amended to read:

12 "76-4-129. Joint application form and concurrent
13 review. (1) ~~Within--90--days--after--July-17-1977, the~~ The
14 department shall prepare and distribute a joint application
15 form that can be used by an applicant to apply for approval
16 of a subdivision under the provisions of this part and the
17 provisions of ~~chapter--3~~ [sections 1 through 43]. When an
18 application is received by either the department or a local
19 government, the department or local government is
20 responsible for forwarding the appropriate parts of the
21 application to the other entity.

22 (2) The review required by this part and the
23 provisions of ~~chapter-3~~ [sections 1 through 43] shall occur
24 concurrently."

25 Section 61. Section 76-6-203, MCA, is amended to read:

1 "76-6-203. Types of permissible easements. Easements
2 or restrictions under this chapter may prohibit or limit any
3 or all of the following:

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

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

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

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

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

19 (6) acts detrimental to conservation--activities
20 detrimental to drainage, flood control, water conservation,
21 erosion control, soil conservation, or fish and wildlife
22 habitat and preservation;

23 (7) subdivision of land--subdivision of land as
24 defined in ~~76-3-103, 76-3-104, and 76-3-202~~ [section 3];

25 (8) other acts--other acts or uses detrimental to such

1 retention of land or water areas in their existing
2 conditions."

3 NEW SECTION. Section 62. Repealer. Sections 76-3-101
4 through 76-3-105, 76-3-201 through 76-3-210, 76-3-301
5 through 76-3-307, 76-3-401 through 76-3-405, 76-3-501,
6 76-3-503 through 76-3-507, and 76-3-601 through 76-3-614,
7 MCA, are repealed.

8 NEW SECTION. Section 63. Extension of authority. Any
9 existing authority of the attorney general and the
10 department of health and environmental sciences to make
11 rules on the subject of the provisions of this act is
12 extended to the provisions of this act.

13 NEW SECTION. Section 64. Saving clause. This act does
14 not affect rights and duties that matured, penalties that
15 were incurred, or proceedings that were begun before the
16 effective date of this act.

17 NEW SECTION. Section 65. Severability. If a part of
18 this act is invalid, all valid parts that are severable from
19 the invalid part remain in effect. If a part of this act is
20 invalid in one or more of its applications, the part remains
21 in effect in all valid applications that are severable from
22 the invalid applications.

23 NEW SECTION. Section 66. Applicability. This act
24 applies to all subdivision applications filed after
25 September 30, 1987.

-End-

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STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB809, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to create a new comprehensive subdivision regulation and development act, redefining subdivision, establishing review criteria and an expedited review process, providing for designation of critical resource areas and fiscal impact areas, modifying master plan requirements, repealing the Montana Subdivision and Platting Act.

ASSUMPTIONS:

1. There will be no additional fiscal impact on state expenditures or revenues.
2. There will be significant county expense to develop comprehensive master plans and capital improvement plans as a prerequisite to subdivision review.
3. There will be decreased revenue to county and city park development funds as a result of decreasing amounts of cash donations for park dedications.
4. Costs for subdivision review will be offset by fees.

FISCAL IMPACT:

No state impact.
Local impact not determinable.

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

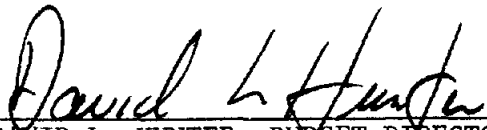
See assumptions.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Long-range effects should be favorable to local governments as costs for providing services to subdivisions are equalized through the capital improvements planning process.

TECHNICAL OR MECHANICAL DEFECTS IN PROPOSED LEGISLATION OR CONFLICTS WITH EXISTING LEGISLATION:

None noted.

 DATE 2/24/89
DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

 DATE _____
DENNIS IVERSON, PRIMARY SPONSOR

Fiscal Note for HB809, as introduced.

HB 809