

HOUSE BILL 280

Introduced by Gilbert, et al.

1/19	Introduced
1/20	Referred to Natural Resources
1/20	First Reading
1/21	Fiscal Note Requested
1/28	Fiscal Note Received
1/29	Fiscal Note Printed
2/03	Hearing
2/16	Committee Report--Bill Passed as Amended
2/17	2nd Reading Passed as Amended
2/19	3rd Reading Passed
	Transmitted to Senate
2/22	First Reading
2/22	Referred to Natural Resources
3/19	Hearing
3/30	Tabled in Committee
3/31	Motion Failed to take from Committee and place on 2nd Reading

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House BILL NO. 280

INTRODUCED BY *Willbert Swanson Jags Barlowi*
Doherty Raney

A BILL FOR AN ACT ENTITLED "AN ACT GENERALLY REVISING THE MONTANA SUBDIVISION AND PLATTING ACT; CLARIFYING THE PURPOSE OF THE ACT; REDEFINING "SUBDIVISION" AND CERTAIN OTHER TERMS; REMOVING THE CRIMINAL PENALTY AND INSTITUTING A CIVIL PENALTY FOR VIOLATIONS; PROVIDING FOR ACTIONS AGAINST GOVERNING BODIES; ESTABLISHING CLEAR GUIDELINES FOR LOCAL GOVERNMENT REVIEW OF SUBDIVISIONS; ESTABLISHING CRITERIA AND A PROCESS FOR INFORMATIONAL HEARINGS; REMOVING CERTAIN EXEMPTIONS FROM SUBDIVISION REVIEW; AMENDING SECTIONS 7-16-2324, 76-3-102, 76-3-103, 76-3-105, 76-3-301, 76-3-501, 76-3-507, 76-3-601, 76-3-603, 76-3-608, 76-4-102, 76-4-125, AND 76-6-203, MCA; REPEALING SECTIONS 76-3-104, 76-3-201, 76-3-202, 76-3-203, 76-3-204, 76-3-205, 76-3-206, 76-3-207, 76-3-208, 76-3-209, 76-3-210, 76-3-504, 76-3-505, 76-3-604, 76-3-605, 76-3-606, 76-3-607, 76-3-609, AND 76-4-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES."

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

Section 1. Section 76-3-102, MCA, is amended to read:

"76-3-102. Statement of purpose. ~~it is the~~ The purpose of this chapter is to promote the public health, safety, and

1 general welfare by regulating the subdivision of land; to
2 prevent--overcrowding--of--land; to lessen congestion in the
3 streets and highways; to provide for adequate light--air,
4 water supply, sewage disposal, parks and recreation areas,
5 ingress and egress, and other public requirements adopted
6 pursuant to this chapter; ~~to require development in harmony~~
7 ~~with the--natural--environment;--to require--that--whenver~~
8 ~~necessary;--the--appropriate--approval--of--subdivisions--be~~
9 ~~contingent--upon a written finding of public interest by the~~
10 ~~governing body;--and to require uniform monumentation of land~~
11 ~~subdivisions and transferring divisions; to require that the~~
12 transfer of interests in real property be made by reference
13 to plat or certificate of survey; and to provide simple,
14 clear, and uniform guidelines for review of subdivisions in
15 a manner that also protects the rights of property owners."

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

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

(1) "Access" means:

(a) physical access by a road that meets the applicable standards set by the governing body according to 76-3-501;
and

(b) legal access by easement or otherwise that provides

1 the property owner the right of ingress and egress for any
2 parcel created by a subdivision.

3 (2) "Agricultural producer" means a person primarily
4 engaged in the production of agricultural products.

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

9 (4) "Dedication" means the deliberate appropriation
10 of land by an owner for any general and public use,
11 reserving to himself the owner no rights which that are not
12 incompatible with the full exercise and enjoyment of the
13 public use to which the property has been devoted.

14 (5) "Division of land" means the segregation
15 creation of one or more parcels of land from a larger tract
16 held in single or undivided ownership by transferring or
17 contracting to transfer title to or possession of a portion
18 of the tract or properly filing a certificate of survey or
19 subdivision plat establishing the identity of the segregated
20 created parcels pursuant to this chapter.

21 (6) "Dwelling unit" means a residential structure in
22 which a person or persons reside.

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

1 (8) "Executive proceedings" means public proceedings in
2 which the governing body deliberates without receiving
3 public comment except when, with the approval of the
4 presiding officer, specific questions are directed to the
5 subdivider or other individuals.

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

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

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

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

22 (13) "Major subdivision" means a subdivision that is not
23 a minor subdivision or a special subdivision.

24 (14) "Minor subdivision" means:

25 (a) for subdivisions involving the actual division of

land, the first five parcels subject to subdivision review under this chapter from a single tract of record as of July 1, 1993; or

(b) for subdivisions involving the provision of permanent multiple spaces with utility hookups for recreational camping vehicles or mobile homes, multiple spaces for dwelling units, or multiple spaces for work camp structures as described in subsection (21)(a), the first five of these spaces from a single tract of record as of July 1, 1993.

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

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

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

body.

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

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

(18) "Rights of property owners" means the right to use, enjoy, improve, sell, and convey, in total or in part, real property as long as the exercise of the rights do not deny these rights to other property owners or adversely affect public health, safety, and welfare.

(19) "Special subdivision" means a subdivision that conforms to a master plan and a long-range development program of public works projects adopted pursuant to 76-1-601 and zoning regulations adopted pursuant to Title 76, chapter 2, part 2 or 3.

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

(15)(21) (a) "Subdivision" means, except as provided in subsection (21)(b), a division of land or land so divided which that creates one or more additional parcels containing less than 20 160 acres--exclusive--of--public--roadways, in order that the title to or possession of the parcels may be

1 sold, rented, leased, or otherwise conveyed, and--shall
 2 include The term includes any resubdivision and shall
 3 further--include any residential condominium or residential
 4 building and also includes the conversion of a
 5 nonresidential building to a dwelling unit. The term further
 6 includes any area, regardless of its size, which that
 7 provides or will provide permanent multiple space spaces
 8 with utility hookups for recreational camping vehicles or
 9 mobile homes, multiple spaces for dwelling units, or
 10 multiple spaces for work camp structures constructed to
 11 exist for longer than 1 year. For purposes of this
 12 subsection (a), "work camp structure" means housing that is
 13 provided by a person for two or more families or individuals
 14 living separately and that is for the exclusive use of the
 15 employees of that person and the families of the employees.
 16 Housing does not include shelter provided by an agricultural
 17 producer for persons who are primarily employed to perform
 18 agricultural duties on the agricultural producer's ranch or
 19 farm.

20 (b) Subdivision does not mean:

21 (i) a division creating cemetery lots only;

22 (ii) a division created by lease or rental for farming
 23 and agricultural or silvicultural purposes;

24 (iii) a division creating an interest in oil, gas,
 25 minerals, or water that is severed from the surface

1 ownership of real property;

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

3 (v) the sale, rent, lease, or other conveyance or use
 4 of one or more parts of a building, structure, or other
 5 improvement, whether existing or proposed;

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

9 (vii) a division created by operation of law or an order
 10 of a court of record in this state pursuant to the laws
 11 governing the distribution of estates, Title 72, chapters 1
 12 through 6 and 10 through 14, or the dissolution of marriage,
 13 Title 40, chapter 4, or a division that, in the absence of
 14 an agreement between the parties, could be created by an
 15 order of a court in this state;

16 (viii) except for the survey requirements in 76-3-401
 17 through 76-3-405 and any applicable zoning requirements, a
 18 division made for the purpose of relocating boundary lines
 19 between adjoining properties, provided the division is
 20 recorded in either the index of certificate of survey or the
 21 index provided for in 76-3-613, as applicable, as long as
 22 additional parcels are not created;

23 (ix) except for the survey requirements in 76-3-401
 24 through 76-3-405, a division of land by an agricultural
 25 producer made primarily for agricultural or silvicultural

1 purposes by sale or agreement to buy and sell if the
 2 division is outside of a platted subdivision, provided that
 3 a dwelling unit is not to be erected on the parcel. The
 4 erection of a dwelling unit on the parcel subjects the
 5 division to the provisions of this chapter. Divisions made
 6 primarily for agricultural or silvicultural purposes must be
 7 noted on the certificate of survey or other recorded
 8 instrument of conveyance, along with the statement that the
 9 erection of a dwelling unit on the parcel subjects the
 10 division to the provisions of this chapter.

11 (x) except for the survey requirements in 76-3-401
 12 through 76-3-405, divisions created by rights-of-way;

13 (xi) (A) except for the survey requirements in 76-3-401
 14 through 76-3-405 and the review requirements of Title 76,
 15 chapter 4, part 1, a division created by an agricultural
 16 producer for sale or gift to a member of the agricultural
 17 producer's immediate family and limited to a single sale or
 18 gift to each immediate family member. Additional sales or
 19 gifts to an immediate family member of an agricultural
 20 producer may be made for adjoining properties under the
 21 provisions of subsection (21)(b)(viii), as long as
 22 additional parcels are not created.

23 (B) A division created by an agricultural producer,
 24 regardless of its size, that provides or will provide
 25 permanent multiple spaces for four or fewer dwelling units,

1 as long as land is not divided;

2 (xii) a division of land made for the purpose of mining
 3 when an application has been submitted or a permit or
 4 contract received under the provisions of Title 82, chapter
 5 4; or

6 (xiii) a division created to provide security for
 7 mortgages, liens, or trust indentures.

8 (22) "Tract of record" means a parcel of land,
 9 irrespective of ownership, that can be identified by legal
 10 description, independent of any other parcel of land, using
 11 documents on file in the records of the county clerk and
 12 recorder's office.

13 (23) "Water user entity" means an entity as described in
 14 7-12-1151 or irrigation districts as provided for in
 15 85-7-101."

16 **Section 3.** Section 76-3-105, MCA, is amended to read:

17 "76-3-105. Violations -- actions against subdivider.

18 (1) Any A person who violates any a provision of this
 19 chapter or any a local regulations regulation adopted
 20 pursuant thereto--shall--be to this chapter is guilty-of-a
 21 misdemeanor-and-punishable-by-a-fine-of-not-less--than--\$100
 22 or--more--than--\$500-or-by-imprisonment-in-a-county-jail-for
 23 not-more-than-3-months-or--by--both--fine--and--imprisonment
 24 subject to a civil penalty not to exceed \$5,000. Each sale,
 25 lease, or transfer of each separate parcel of land in

violation of any a provision of this chapter or any a local regulation adopted pursuant thereto-~~shall be deemed to this chapter is~~ a separate and distinct offense.

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

NEW SECTION. Section 4. Violations -- actions against governing body. A person who has filed with the governing body an application for a subdivision under this chapter may sue the governing body to recover actual damages caused by:

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

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

(a) arbitrary or capricious; or

(b) unlawful or exceeds lawful authority.

Section 5. Section 76-3-301, MCA, is amended to read:

"76-3-301. General restriction on transfer of title to subdivided lands. (1) Except as provided in 76-3-303, every final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. The clerk and recorder of the county shall refuse to accept any plat for

record that fails to have the approval of 76-3-611(1) in proper form.

(2) The clerk and recorder shall notify the governing body or its designated agent of any land division described in--76-3-287(1) exempted from review but subject to survey requirements.

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

Section 6. Section 76-3-501, MCA, is amended to read:

"76-3-501. Local subdivision regulations. (1) ~~Before July 1, 1974, the~~ The governing body of every county, city, and town shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for the orderly development of their jurisdictional areas; for the coordination of roads within subdivided land with other roads, both existing and planned; for the dedication of land for roadways and for public utility easements; for the improvement of roads; for the provision of adequate open spaces for ~~travel, light, air,~~ and recreation; for the provision of adequate transportation, water, drainage, and sanitary facilities; for the avoidance or minimization of congestion of streets

1 and highways; and for the avoidance of subdivision which
 2 that would involve unnecessary unreasonable environmental
 3 degradation and the avoidance of danger of injury to health,
 4 safety, or welfare by reason of natural hazard or the lack
 5 of water, drainage, access, transportation, or other public
 6 services or would necessitate an excessive unreasonable
 7 expenditure of public funds for the supply of such services.
 8 The subdivision regulations must protect the rights of
 9 property owners. The regulations must include and are
 10 limited to:

11 (a) procedures for expedited review of minor and
 12 special subdivisions;

13 (b) procedures, based on the minimum requirements as
 14 provided for in 7-1-4127, for providing public notice of
 15 subdivision applications and hearings;

16 (c) procedures for obtaining public agency and public
 17 utility review. This review may not delay the governing
 18 body's action on the proposal beyond the time limits
 19 specified in [section 10]. The failure of an agency to
 20 complete a review of a plat may not be a basis for rejection
 21 of the plat by a governing body.

22 (d) procedures and standards concerning the application
 23 of review criteria to subdivision applications, as provided
 24 for in 76-3-608;

25 (e) standards for the design and arrangement of lots,

1 streets, and roads; for grading and drainage; and for the
 2 location and installation of utilities. Standards for the
 3 design of streets and roads may not exceed the requirements
 4 for anticipated vehicle use directly attributable to the
 5 subdivision. Variances from road standards may be granted
 6 for subdivisions requiring minimal vehicle use.

7 (f) if a proposed subdivision lies partly or totally
 8 within the boundaries of a water user entity, a provision
 9 that the proposed plat of the subdivision be submitted for
 10 review to the water user entity to ensure that the existence
 11 and location of all water user facilities are properly noted
 12 on the plat. Water user facilities include but are not
 13 limited to canals, laterals, open drains, and closed drains.

14 (2) The governing body may also adopt subdivision
 15 regulations that provide financial or other positive
 16 incentives for developments that accommodate public values.

17 (2)(3) Review and approval or disapproval of a
 18 subdivision under this chapter may occur only under those
 19 regulations in effect at the time an application for
 20 approval of a preliminary plat or for an extension under
 21 76-3-610 is submitted to the governing body."

22 **Section 7.** Section 76-3-507, MCA, is amended to read:

23 "76-3-507. Provision for bonding requirements to insure
 24 ensure construction of public improvements. (1) Except as
 25 provided in subsection (2), the governing body shall require

1 the subdivider to complete required improvements within the
 2 subdivision prior to the approval of the final plat.

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

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

22 (3) Governing body approval of a final plat prior to
 23 the completion of required improvements and without the
 24 provision of the security required under subsection (2) is
 25 not an act of a legislative body for the purposes of

1 2-9-111."

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

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

4 (1) ~~Except where a plat is eligible for summary approval,~~
 5 the The subdivider shall present the preliminary plat of the
 6 proposed subdivision to the governing body or the its
 7 designated agent or---agency---designated---thereby---the
 8 preliminary plat--of--the--proposed--subdivision for local
 9 review. The preliminary plat shall must show all pertinent
 10 features of the proposed subdivision and all proposed
 11 improvements. The governing body or its designated agent
 12 shall determine whether the proposed subdivision is a major,
 13 minor, or special subdivision according to the definitions
 14 in 76-3-103.

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

19 (b) When the proposed subdivision is situated entirely
 20 in an unincorporated area, the preliminary plat shall must
 21 be submitted to and approved by the governing body of the
 22 county. However, if the proposed subdivision lies within 1
 23 mile of a third-class city or town or within 2 miles of a
 24 second-class city or within 3 miles of a first-class city,
 25 the county governing body shall submit the preliminary plat

to the city or town governing body or its designated agent for review and comment.

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

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

(3) This section ~~and 76-3-604, 76-3-605, and 76-3-600 through 76-3-610~~ does not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to 7-3-4444."

Section 9. Section 76-3-603, MCA, is amended to read:

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

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

(2) ~~maps and tables showing soil types in the several parts of the proposed subdivision and their suitability for any proposed developments in those several parts~~ a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608; and

(3) ~~a community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing, roads and maintenance, water, sewage, and solid waste facilities, and fire and police protection;~~ additional relevant and reasonable information related to the applicable regulatory criteria adopted under 76-3-501 as may be required by the governing body.

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

NEW SECTION. **Section 10.** Subdivision review process.

(1) A subdivider proposing a subdivision shall confer first with the governing body or its designated agent in a preliminary conference to discuss the subdivision application, the requirements of Title 76, chapter 4, and this chapter, and local government regulations provided in 76-3-501. The subdivider shall submit a sketch of the plat at the conference. Notice of the subdivision application must comply with the local government regulations adopted under 76-3-501.

(2) (a) Following the submission of a complete subdivision application, the governing body shall approve, conditionally approve, or disapprove the application within the following timeframe:

(i) 60 days for a major subdivision; or

(ii) 35 days for a minor subdivision.

(b) The subdivider and the governing body may agree to extend the time period.

NEW SECTION. Section 11. Informational hearings.

(1) In accordance with the procedure provided in subsections (2) and (3), an application for a subdivision may not receive more than one informational hearing. The hearing must be conducted by the governing body unless it delegates the responsibility to the planning board or to a hearing officer or conducts a joint hearing with the planning board. When a hearing is held by the planning board or a hearing officer, the board or officer shall make findings and recommendations for submission to the governing body concerning approval, conditional approval, or disapproval of the plat not later than 10 days after the informational hearing and within the timeframe provided in [section 10].

(2) (a) For a major subdivision, within 21 days following submission to the governing body of the complete application by the subdivider, an informational hearing on

the subdivision application may be requested by:

(i) the subdivider;

(ii) a person who would be substantially adversely affected by the subdivision; or

(iii) the governing body.

(b) The informational hearing, if held, must be at the local government's expense.

(3) (a) Except as provided for in subsection (3)(c), for a minor or special subdivision, an informational hearing may be held only if:

(i) the subdivision would be located in an area having unique cultural or historical resources or environmental or ecological resources that are susceptible to substantial adverse effects from subdivision development or if the subdivision would cause substantial adverse fiscal costs to local government; and

(ii) the subdivider or a person who would be adversely affected by the proposed subdivision requests a hearing from the governing body within 15 days following submission of the complete application.

(b) The governing body may assess costs of the hearing on a minor or special subdivision to the requestor.

(c) The governing body may not hold an informational hearing on the first minor subdivision from a tract of record.

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

(5) (a) Within the timeframe provided in subsection (5)(b), notice of an informational hearing on a subdivision application must be given by the governing body by publication in a newspaper of general circulation in the county in which the subdivision is located. The subdivider, each adjoining property owner of record, and each purchaser of record under contract for deed of property adjoining the land included in the plat must also be notified of the hearing by the governing body by certified mail.

(b) The notification required in subsection (5)(a) must be accomplished:

(i) not less than 15 days prior to the date of the hearing for a major subdivision; or

(ii) not less than 10 days prior to the date of the hearing for a minor or special subdivision.

(6) The governing body shall make its decision to approve, disapprove, or conditionally approve the subdivision application during executive proceedings after the informational hearing or after the time for a hearing

has expired.

Section 12. Section 76-3-608, MCA, is amended to read:

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

(2) ~~To determine whether the proposed subdivision would be in the public interest, the~~ Except as provided in subsection (7), the governing body shall issue written findings of fact ~~which that~~ weigh the following criteria for ~~public interest in subsections (3) and (4), as applicable.~~

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

~~(b) expressed public opinion;~~

~~(c) effects on agriculture;~~

~~(d) effects on local services;~~

~~(e) effects on taxation;~~

~~(f) effects on the natural environment;~~

~~(g) effects on wildlife and wildlife habitat; and~~

~~(h) effects on the public health and safety;~~

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

3 (a) The subdivision's effect on agricultural or
 4 agricultural water user practices must be weighed.

5 (b) The subdivision must comply with water supply,
 6 solid waste disposal, sewage treatment, and water quality
 7 standards, as provided for in Title 76, chapter 4, part 1.

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

10 (d) The subdivision must ensure access to each parcel
 11 within the subdivision and notation of access must be made
 12 on the applicable plat and on any instrument of transfer
 13 concerning the parcel.

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

16 (f) Except as provided in subsection (3)(g), the
 17 subdivision must be evaluated under the conditions provided
 18 in subsection (4) to determine if lots that contain or that
 19 can reasonably be expected to contain building sites are
 20 located in an area affected by the following hazards:

21 (i) unstable slopes, including areas where rockfalls,
 22 landslides, mudslides, or avalanches have occurred or can
 23 reasonably be expected to occur;

24 (ii) unsuitable soils, including areas where the water
 25 table occurs within 5 feet of the ground surface at any time

1 of year and areas affected by soil creep, shrink-swell
 2 potential, or sinkholes; or

3 (iii) drainage problems, including the potential for
 4 sheetflooding.

5 (g) The hazard evaluation required under subsection
 6 (3)(f) does not apply to the first minor subdivision from a
 7 tract of record.

8 (4) Subdivisions evaluated for hazards under subsection
 9 (3)(f) must be reviewed as follows:

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

12 (b) Existing and reasonably accessible data must be
 13 used for the evaluation unless otherwise agreed to by the
 14 subdivider and the governing body.

15 (c) Approved construction techniques may be required to
 16 mitigate or overcome hazards.

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

19 (e) If the governing body knows of the existence of
 20 natural or man-caused hazards other than those described in
 21 subsection (3)(f), the governing body shall notify the
 22 subdivider in writing of those known hazards and require
 23 notice of the hazards on the final plat.

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

1 grounds to establish liability against the governing body.

2 (5) (a) Major subdivisions must also be reviewed for
3 effects on:

4 (i) unique cultural or historical resources;

5 (ii) environmental or ecological resources; and

6 (iii) local services.

7 (b) Except for the first minor subdivision from a tract
8 of record, minor and special subdivisions may be reviewed
9 for the effects listed in subsection (5)(a) if the governing
10 body determines that, based on information received in an
11 informational hearing held pursuant to [section 11], a
12 review is necessary.

13 (6) (a) In reviewing subdivisions for the effects
14 listed in subsection (5)(a), the governing body shall use
15 information from the environmental assessment, if required,
16 and may solicit other site-specific information from the
17 subdivider, agencies, and other appropriate sources. Efforts
18 by the governing body to gather additional information do
19 not constitute grounds for extending the deadlines for the
20 subdivision review process provided for in [section 10]
21 unless an extension is agreed to by the subdivider.

22 (b) Based on the information gathered, the governing
23 body or its designated agent shall determine whether the
24 proposed subdivision is likely to have significant adverse
25 impacts on the factors listed in subsection (5).

1 (c) If the governing body or its designated agent
2 determines that significant adverse impacts are probable, it
3 shall consult with the subdivider and knowledgeable persons
4 and agency representatives that it considers necessary.
5 During the consultation process, the parties shall work to
6 develop reasonable mitigation for the potential adverse
7 effects on the factors listed in subsection (5).

8 (d) The governing body may require the subdivider to
9 design the subdivision to minimize any potentially
10 significant adverse impacts.

11 (e) The governing body shall issue written findings,
12 based on substantial credible evidence, to justify any
13 action taken under subsection (6)(d).

14 (f) In reviewing a subdivision under subsections (5)
15 and (6), a governing body must be guided by the following
16 standards:

17 (i) Mitigation measures imposed may not unreasonably
18 restrict a landowner's ability to develop land, but it is
19 recognized that in some instances the unmitigated impacts of
20 a proposed development may be unacceptable and will preclude
21 approval of the plat.

22 (ii) Whenever feasible, mitigation should be designed to
23 provide some benefits for the subdivider.

24 (7) (a) When a minor subdivision is proposed in an area
25 for which a master plan has been adopted pursuant to chapter

1 1 and the proposed subdivision will comply with the plan,
 2 the subdivision is exempt from the approval criteria
 3 contained in this section but is subject to applicable
 4 zoning regulations.

5 (b) In order for a master plan to serve as the basis
 6 for the exemption provided by this subsection (7), the plan
 7 must, at a minimum, contain housing, transportation, and
 8 land-use elements and a discussion of physical constraints
 9 on development that exist within the area encompassed by the
 10 plan."

11 **NEW SECTION. Section 13. Review guidelines -- all**
 12 **subdivisions. (1) Written findings and the reasons for**
 13 **approving, disapproving, or conditionally approving the**
 14 **subdivision must accompany the governing body's action on a**
 15 **subdivision application.**

16 (2) A proposed subdivision is preliminarily approved
 17 when the governing body approves the preliminary plat.

18 (3) Approval of the final plat represents final
 19 approval from the governing body. However, this approval is
 20 only for the subdivision description provided in the final
 21 plat. A person who proposes to implement a change from an
 22 approved final plat shall submit a plat amendment that is
 23 subject to the review requirements of this chapter.

24 **NEW SECTION. Section 14. Park dedication requirement.**

25 (1) Except as provided in subsections (2), (3), and (7), a

1 subdivider shall dedicate to the governing body a cash or
 2 land donation equal to:

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

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

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

11 (d) 1.25% of the fair market value of the land proposed
 12 to be subdivided into parcels larger than 3 acres and not
 13 larger than 5 acres.

14 (2) When a subdivision is located totally within an
 15 area for which density requirements have been adopted
 16 pursuant to a master plan under Title 76, chapter 1, or
 17 pursuant to zoning regulations under Title 76, chapter 2,
 18 the governing body may establish park dedication
 19 requirements based on the community need for parks and the
 20 development densities identified in the plans or
 21 regulations. Park dedication requirements established under
 22 this subsection are in lieu of those provided in subsection
 23 (1) and may not exceed 0.03 acres per dwelling unit.

24 (3) A park dedication may not be required for:

25 (a) land proposed for subdivision into parcels larger

1 than 5 acres;

2 (b) subdivision into parcels that are all
3 nonresidential;

4 (c) a subdivision in which parcels are not created,
5 except when that subdivision provides permanent multiple
6 spaces for mobile homes or condominiums; or

7 (d) a subdivision in which only one additional parcel
8 is created.

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

11 (5) The governing body, in consultation with the
12 subdivider and the planning board or park board having
13 jurisdiction, may determine suitable locations for parks and
14 playgrounds and, giving due weight and consideration to the
15 expressed preference of the subdivider, may determine
16 whether the park dedication must be a land donation, cash
17 donation, or a combination of both.

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

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

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

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

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

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

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

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

21 (ii) the fair market value of the land proposed to be
22 subdivided, by virtue of providing long-term protection
23 provided for in subsection (7)(b)(i), is reduced by an
24 amount equal to or exceeding the value of the dedication
25 required under subsection (1); or

(c) the fair market value of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (7)(a) and (7)(b), is reduced by an amount equal to or exceeding the value of the dedication required under subsection (1).

NEW SECTION. Section 15. Payment for extension of capital facilities. A local government may require a subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public sewer lines, water supply lines, and storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly attributable to the subdivision.

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

"7-16-2324. Sale, lease, or exchange of dedicated park lands. (1) For the purposes of this section and part 25 of chapter 8, lands dedicated to the public use for park or playground purposes under 76-3-606-and-76-3-607 [section 14] or a similar statute or pursuant to any instrument not specifically conveying land to a governmental unit other than a county are considered county lands.

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

(3) Prior to selling, leasing, or exchanging any county

land dedicated to public use for park or playground purposes, a county shall:

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

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

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

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

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

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

(4) Any revenue realized by a county from the sale, exchange, or disposal of lands dedicated to public use for park or playground purposes shall must be paid into the park fund and used in the manner prescribed in 76-3-606-and-76-3-607 [section 14] for cash received in lieu of dedication."

Section 17. Section 76-4-102, MCA, is amended to read:

1 "76-4-102. Definitions. As used in this part, unless
2 the context clearly indicates otherwise, the following words
3 or phrases have the following meanings:

4 (1) "Board" means the board of health and environmental
5 sciences.

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

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

11 (4) "Extension of public water supply system" means a
12 water line that connects two or more water service lines to
13 a water main.

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

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

24 (7) "Registered professional engineer" means a person
25 licensed to practice as a professional engineer under Title

1 37, chapter 67.

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

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

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

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

16 (12) "Solid wastes" means all putrescible and
17 nonputrescible solid wastes (except body wastes), including
18 garbage, rubbish, street cleanings, dead animals, yard
19 clippings, and solid market and solid industrial wastes.

20 (13) "Subdivision" means a subdivision as defined in
21 76-3-103 a-division-of-land-or-land-so-divided-which-creates
22 one-or-more-parcels-containing-less-than-20-acres,-exclusive
23 of-public-roadways,-in-order-that-the-title-to-or-possession
24 of-the-parcels-may-be-sold,-rented,-leased,-or--otherwise
25 conveyed--and--includes-any-resubdivision-and-any-condominium

1 or--area,--regardless--of--size,--which--provides--permanent
2 multiple-space-for-recreational-camping-vehicles--or--mobile
3 homes.

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 18.** Section 76-4-125, MCA, is amended to read:

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

16 (a) At any time after the developer has submitted an
17 application under the Montana Subdivision and Platting Act,
18 the developer shall present to the reviewing authority a
19 preliminary plan of the proposed development, whatever
20 information the developer feels necessary for its subsequent
21 review, and information required by the reviewing authority.

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

1 (2) A subdivision excluded--from--the--provisions--of
2 chapter-3-shall must be submitted for review according to
3 the provisions of this part, except that the following
4 divisions,--unless--such--exclusions--are--used--to--evade--the
5 provisions-of-this-part, are not subject to review:

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

7 (b) divisions a division made for the purpose of
8 acquiring additional land to become part of an approved
9 parcel, provided that no a dwelling or structure requiring
10 water or sewage disposal is not to be erected on the
11 additional acquired parcel and that the division does not
12 fall within a previously platted or approved subdivision;
13 and

14 (c)(b) divisions a division made for purposes other
15 than the construction of water supply or sewage and solid
16 waste disposal facilities as the department specifies by
17 rule."

18 **Section 19.** Section 76-6-203, MCA, is amended to read:

19 "76-6-203. Types of permissible easements. Easements or
20 restrictions under this chapter may prohibit or limit any-or
21 all of the following:

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

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

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

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

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

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

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

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

NEW SECTION. Section 20. Repealer. (1) Sections 76-3-104, 76-3-201, 76-3-202, 76-3-203, 76-3-204, 76-3-205, 76-3-206, 76-3-207, 76-3-208, 76-3-209, 76-3-210, 76-3-504, 76-3-505, 76-3-604, 76-3-605, 76-3-606, 76-3-607, 76-3-609, and 76-4-103, MCA, are repealed.

NEW SECTION. Section 21. Codification. instruction.

[Sections 4, 10, 11, and 13 through 15] are intended to be codified as an integral part of Title 76, chapter 3, and the provisions of Title 76, chapter 3, apply to [sections 4, 10, 11, and 13 through 15].

NEW SECTION. Section 22. Saving clause. [This act]

does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. Section 23. Severability. If a part of

[this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 24. Applicability. (1) [Sections

2, 17, and 18] apply to all subdivision applications filed after passage and approval of [this act].

(2) [Sections 1, 3 through 16, and 19] apply to all subdivision applications filed after September 30, 1993.

NEW SECTION. Section 25. Transition. To ensure an

efficient transition from existing local government subdivision regulations to local regulations adopted pursuant to [this act], existing local government subdivision regulations remain effective until September 30,

LC 0020/01

1 1993.

2 NEW SECTION. **Section 26.** Effective date. [This act] is

3 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0280, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: An act generally revising the Montana Subdivision and Platting Act; clarifying the purpose of the act; redefining "subdivision" and certain other terms; removing the criminal penalty and instituting a civil penalty for violations; providing for actions against governing bodies; establishing clear guidelines for local government review of subdivisions; establishing criteria and a process for informational hearings; removing certain exemptions from subdivision review; amending and repealing various sections of law; and providing an immediate effective date and applicability date.

ASSUMPTIONS:

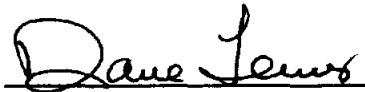
Department of Health and Environmental Sciences (DHES):

1. Changing the definition of a subdivision to parcels less than 160 acres in size will increase the number of parcels subject to review by local governments and DHES by 50% over current levels because of current heavy demand for building lots in Montana. (50% increase equates to 2350 lots X \$90 lot review fee = \$211,500 increased fees.)
2. Approximately one-half of the increase in DHES subdivision review would be addressed by contract with local governments; the remainder of the increased review would be split equally between contracted services and by an additional DHES FTE.
3. Revenue from review fees should offset the costs to the department for the increased workload.
4. DHES is requesting legislation introduced that would create a state special revenue account and require that all fees be deposited in this account. All subdivision costs then would be appropriated from this account.
5. The legislation in assumption number 4 will be passed. If not, then DHES will need a general fund appropriation for each year of the biennium.

Department of Commerce:

6. The proposed bill substantially changes existing procedures for reviewing subdivisions and dealing with exempt divisions of land. Thirty-two sections of the law would be changed and the land surveying procedures for exempt divisions of land would be modified.
7. Due to these substantial changes, the Department of Commerce will need to: Hire a consultant to help design the new model local regulations; print and distribute publications to provide technical assistance to local officials and developers; hold eight workshops per year to assist local officials, developers, and surveyors in understanding the new law; and revise the department's administrative rules.
8. Costs for implementation are based on the costs incurred by the department to implement the substantial revisions to the subdivision law in 1973.

(Continued)

 1-27-93

DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

BOB GILBERT, PRIMARY SPONSOR

DATE

Fiscal Note for HB0280, as introduced

HB 280

Department of Transportation (DOT):

9. A retracement survey will have to be conducted on each property from which property interest is acquired.
10. The Certificate of Survey (COS) would be the right-of-way plan sheet prepared in accordance with the act.
11. An estimated 1,000 parcels would be acquired per year.
12. All additional survey work would be accomplished by consulting registered land surveyors at \$1,250 average price per parcel (1000 x \$1,250 = \$1,250,000 per year).
13. More time will be required to prepare plan sheets to comply with act and recording costs for 1,000 parcels at five parcels per sheet at \$10 per sheet will be \$2,000 per year.
14. With the repeal of the exemption in 76-3-209, right-of-way acquisition is delayed until COSs can be prepared (minimum 4 to 6 months); therefore, construction projects are also delayed.

FISCAL IMPACT:

Department of Health & Environmental Sciences:

<u>Expenditure:</u>	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	0	1.0	1.0	0	1.0	1.0
Personnel Services	0	\$31,500	\$31,500	0	\$31,500	\$31,500
Operating	0	\$70,000	\$70,000	0	\$70,000	\$70,000
Equipment	0	0	0	0	0	0
Grants to Counties	0	\$82,250	\$82,250	0	\$82,250	\$82,250
Total	0	\$183,750	\$183,750	0	\$183,750	\$183,750
 <u>Revenues:</u>						
Fees	0	\$211,500	\$211,500	0	\$211,500	\$211,500
 <u>Net Impact:</u>						
Fees	0	\$27,750	\$27,500	0	\$27,500	\$27,500

Department of Commerce:

<u>Expenditures:</u>	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Personal Services	105,263	105,263	0	105,368	105,368	0
Operating	66,568	110,276	43,708	66,618	73,846	7,228
Equipment	2,820	2,820	0	2,820	2,820	0
Total	174,651	218,359	43,708	174,806	182,034	7,228
 <u>NET GENERAL FUND IMPACT:</u>	 174,651	 218,359	 43,708	 174,806	 182,034	 7,228

(Continued)

HB280

Department of Transportation:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u>						
FTE	890.79	890.79	0	890.79	890.79	0
Personal Services	30,735,610	30,735,610	0	30,823,161	30,823,161	0
Operating	183,226,184	184,478,184	1,252,000	185,090,755	186,342,755	1,252,000
Equipment	1,083,040	1,083,040	0	683,220	683,220	0
Capital Outlay	6,150,000	6,150,000	0	6,150,000	6,150,000	0
Grants	100,000	100,000	0	100,000	100,000	0
Total	221,294,834	222,546,834	1,252,000	222,847,136	224,099,136	1,252,000
<u>Funding:</u>						
Highways State Special Revenue	38,827,328	39,077,728	250,400	37,712,847	37,963,247	250,400
Highway Reconstruction Trust	19,563,285	19,563,285	0	20,632,500	20,632,500	0
Highways Federal Special Revenue	162,904,221	163,905,821	1,001,600	164,501,789	165,503,389	1,001,600
Total	221,294,834	222,546,834	1,252,000	222,847,136	224,099,136	1,252,000
<u>Net Impact:</u>			1,252,000			1,252,000

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES: DHES - Annual reimbursements to local health departments under contract with DHES to provide subdivision review services would increase by \$183,750 under this scenario.

COMMERCE -

1. Costs for extensively changing regulations and procedures. The bill would extensively change the state subdivision laws; therefore, requiring local governments to extensively change local procedures, regulations, and evaluation methods for subdivisions and exempted divisions of land. The bill also would require changes in the surveying of exempt divisions of land. City and county planners, county sanitarians, planning boards, city commissions, county commissions, and county clerks and recorders will have to substantially change their current procedures. To develop and implement local regulations to comply with HB0280, local governments may have to retain additional local staff specialists. The statewide quantification of these local costs for preparing and implementing these regulations and procedures is not available.

2. Costs for reviewing additional land divisions as subdivisions. The bill would increase the numbers of land divisions that would be reviewed as subdivisions by Montana cities and, most particularly, by Montana counties. The quantification of the numbers of additional subdivisions that would be reviewed and the costs of these subdivision reviews is not available. Cities and counties have existing authority to charge fees to land developers recover the costs of such subdivision reviews.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION: DHES - A long-term increase in subdivision applications to DHES is certain under this scenario, but the increase would likely decline after this biennium when interest rates increase and/or demand for building lots in Montana decreases.

DOT - Additional costs would be ongoing from year to year, and would vary based on the long-range construction program.

(Continued)

HB280

Fiscal Note Request for HB0280, as introduced
Form BD-15 page 4
(continued)

TECHNICAL NOTES: DHES - This bill must be coordinated with LC 914 to properly fund subdivision activities. The bill is very complicated. It is difficult to fully comprehend the potential impacts from the many proposed changes in the bill. The bill appears to remove campgrounds without water and sewer hook-ups from DHES and local review, which may have serious public health and local planning implications. If the bill more clearly defined agricultural producer, confusion over what parcels are subject to DHES and local review might be avoided.

DOT - There is a potential conflict between this bill and the provisions of 60-2-209(2), MCA.

HB 280

APPROVED BY COMM. ON
NATURAL RESOURCES

HOUSE BILL NO. 280

INTRODUCED BY GILBERT, SWANSON, FAGG, BRANDEWIE,
DOHERTY, RANEY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA SUBDIVISION AND PLATTING ACT; CLARIFYING THE PURPOSE OF THE ACT; REDEFINING "SUBDIVISION" AND CERTAIN OTHER TERMS; REMOVING THE CRIMINAL PENALTY AND INSTITUTING A CIVIL PENALTY FOR VIOLATIONS; PROVIDING FOR ACTIONS AGAINST GOVERNING BODIES; ESTABLISHING CLEAR GUIDELINES FOR LOCAL GOVERNMENT REVIEW OF SUBDIVISIONS; ESTABLISHING CRITERIA AND A PROCESS FOR INFORMATIONAL HEARINGS; REMOVING CERTAIN EXEMPTIONS FROM SUBDIVISION REVIEW; AMENDING SECTIONS 7-16-2324, 76-3-102, 76-3-103, 76-3-105, 76-3-301, 76-3-501, 76-3-507, 76-3-601, 76-3-603, 76-3-608, 76-4-102, 76-4-125, AND 76-6-203, MCA; REPEALING SECTIONS 76-3-104, 76-3-201, 76-3-202, 76-3-203, 76-3-204, 76-3-205, 76-3-206, 76-3-207, 76-3-208, 76-3-209, 76-3-210, 76-3-504, 76-3-505, 76-3-604, 76-3-605, 76-3-606, 76-3-607, 76-3-609, AND 76-4-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES."

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

Section 1. Section 76-3-102, MCA, is amended to read:**"76-3-102. Statement of purpose.** ~~It is the~~ The purpose

of this chapter is to promote the public health, safety, and general welfare by regulating the subdivision of land; to prevent--overcrowding--of--land; to lessen congestion in the streets and highways; to provide for adequate light--air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements adopted pursuant to this chapter; ~~to require development in harmony with the natural environment; to require that whenever necessary, the appropriate approval of subdivisions be contingent upon a written finding of public interest by the governing body; and to require uniform monumentation of land subdivisions and transferring divisions; to require that the transfer of interests in real property be made by reference to plat or certificate of survey; and to provide simple, clear, and uniform guidelines for review of subdivisions in a manner that also protects the rights of property owners."~~

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

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

(1) "Access" means:

(a) physical access by a road that meets the applicable standards set by the governing body according to 76-3-501;
and

(b) legal access by easement or otherwise that provides the property owner the right of ingress and egress for any parcel created by a subdivision.

(2) "Agricultural producer" means a person primarily engaged in the production of agricultural products.

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

{2}(4) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to himself the owner no rights which that are not incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

{3}(5) "Division of land" means the segregation creation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated created parcels pursuant to this chapter.

(6) "Dwelling unit" means a residential structure in which a person or persons reside.

{4}(7) "Examining land surveyor" means a registered land surveyor duly appointed by the governing body to review

surveys and plats submitted for filing.

(8) "Executive proceedings" means public proceedings in which the governing body deliberates without receiving public comment except when, with the approval of the presiding officer, specific questions are directed to the subdivider or other individuals.

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

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

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

{8}--"Occasional-sale"--means-one-sale-of-a--division--of land-within-any-12-month-period-

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

(12) "Minor subdivision" means:

(a) for subdivisions involving the actual division of land, the first five parcels subject to subdivision review under this chapter from a single tract of record as of July 1, 1993; or

(b) for subdivisions involving the provision of permanent multiple spaces with utility hookups for recreational camping vehicles or mobile homes, multiple spaces for dwelling units, or multiple spaces for work camp structures as described in subsection (21)(a), the first five of these spaces from a single tract of record as of July 1, 1993.

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

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

{11}(15) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a

subdivision which furnish a basis for review by a governing body.

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

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

(18) "Rights of property owners" means the right to use, enjoy, improve, sell, and convey, in total or in part, real property as long as the exercise of the rights do not deny these rights to other property owners or adversely affect public health, safety, and welfare.

(19) "Special subdivision" means a subdivision that conforms to a master plan and a long-range development program of public works projects adopted pursuant to 76-1-601 and zoning regulations adopted pursuant to Title 76, chapter 2, part 2 or 3.

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

{15}(21) (a) "Subdivision" means, except as provided in subsection (21)(b), a division of land or land so divided which that creates one or more additional parcels containing less than 20 160 acres--exclusive--of--public--roadways, in

1 order that the title to or possession of the parcels may be
 2 sold, rented, leased, or otherwise conveyed. ~~and--shall~~
 3 ~~include~~ The term includes any resubdivision and shall
 4 ~~further--include any residential condominium or residential~~
 5 ~~building and also includes the conversion of a~~
 6 ~~nonresidential building to a dwelling unit. The term further~~
 7 ~~includes any area, regardless of its size, which that~~
 8 ~~provides or will provide permanent multiple space spaces~~
 9 ~~with utility hookups for recreational camping vehicles or~~
 10 ~~mobile homes, multiple spaces for dwelling units, or~~
 11 ~~multiple spaces for work camp structures constructed to~~
 12 ~~exist for longer than 1 year. For purposes of this~~
 13 ~~subsection (a), "work camp structure" means housing that is~~
 14 ~~provided by a person for two or more families or individuals~~
 15 ~~living separately and that is for the exclusive use of the~~
 16 ~~employees of that person and the families of the employees.~~
 17 ~~Housing does not include shelter provided by an agricultural~~
 18 ~~producer for persons who are primarily employed to perform~~
 19 ~~agricultural duties on the agricultural producer's ranch or~~
 20 ~~farm.~~

21 (b) Subdivision does not mean:

22 (i) a division creating cemetery lots only;

23 (ii) a division created by lease or rental for farming
 24 and agricultural or silvicultural purposes;

25 (iii) a division creating an interest in oil, gas,

1 minerals, or water that is severed from the surface
 2 ownership of real property;

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

4 (v) the sale, rent, lease, or other conveyance or use
 5 of one or more parts of a building, structure, or other
 6 improvement, whether existing or proposed;

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

10 (vii) a division created by operation of law or an order
 11 of a court of record in this state pursuant to the laws
 12 governing the distribution of estates, Title 72, chapters 1
 13 through 6 and 10 through 14, or the dissolution of marriage,
 14 Title 40, chapter 4, or a division that, in the absence of
 15 an agreement between the parties, could be created by an
 16 order of a court in this state;

17 (viii) except for the survey requirements in 76-3-401
 18 through 76-3-405 and any applicable zoning requirements, a
 19 division made for the purpose of relocating boundary lines
 20 between adjoining properties, provided the division is
 21 recorded in either the index of certificate of survey or the
 22 index provided for in 76-3-613, as applicable, as long as
 23 additional parcels are not created;

24 (ix) except for the survey requirements in 76-3-401
 25 through 76-3-405, a division of land by an agricultural

1 producer made primarily for agricultural or silvicultural
 2 purposes by sale or agreement to buy and sell if the
 3 division is outside of a platted subdivision, provided that
 4 a dwelling unit is not to be erected on the parcel. The
 5 erection of a dwelling unit on the parcel WITHOUT LOCAL
 6 GOVERNMENT REVIEW UNDER THE PROVISIONS OF THIS CHAPTER IS A
 7 VIOLATION OF THIS CHAPTER AND subjects the division to the
 8 provisions of this chapter. Divisions made primarily for
 9 agricultural or silvicultural purposes must be noted on the
 10 certificate of survey or other recorded instrument of
 11 conveyance, along with the statement that the erection of a
 12 dwelling unit on the parcel WITHOUT LOCAL GOVERNMENT REVIEW
 13 UNDER THE PROVISIONS OF THIS CHAPTER IS A VIOLATION OF THIS
 14 CHAPTER AND subjects the division to the provisions of this
 15 chapter.

16 (x) except for the survey requirements in 76-3-401
 17 through 76-3-405, divisions created by rights-of-way;

18 (xi) (A) except for the survey requirements in 76-3-401
 19 through 76-3-405 and the review requirements of Title 76,
 20 chapter 4, part 1, a division created by an agricultural
 21 producer for sale or gift to a member of the agricultural
 22 producer's immediate family and limited to a single sale or
 23 gift to each immediate family member. Additional sales or
 24 gifts to an immediate family member of an agricultural
 25 producer may be made for adjoining properties under the

1 provisions of subsection (21)(b)(viii), as long as
 2 additional parcels are not created.

3 (B) A division created by an agricultural producer,
 4 regardless of its size, that provides or will provide
 5 permanent multiple spaces for four or fewer dwelling units,
 6 as long as land is not divided;

7 (xii) a division of land made for the purpose of mining
 8 when an application has been submitted or a permit or
 9 contract received under the provisions of Title 82, chapter
 10 47-er, PROVIDED THAT A DWELLING UNIT IS NOT TO BE ERECTED ON
 11 THE PARCEL. THE ERECTION OF A DWELLING UNIT ON THE PARCEL
 12 WITHOUT LOCAL GOVERNMENT REVIEW UNDER THE PROVISIONS OF THIS
 13 CHAPTER IS A VIOLATION OF THIS CHAPTER AND SUBJECTS THE
 14 DIVISION TO THE PROVISIONS OF THIS CHAPTER. DIVISIONS MADE
 15 FOR THE PURPOSE OF MINING MUST BE NOTED ON THE CERTIFICATE
 16 OF SURVEY OR OTHER RECORDED INSTRUMENT OF CONVEYANCE, ALONG
 17 WITH THE STATEMENT THAT ERECTION OF A DWELLING UNIT ON THE
 18 PARCEL WITHOUT LOCAL GOVERNMENT REVIEW UNDER THE PROVISIONS
 19 OF THIS CHAPTER IS A VIOLATION OF THIS CHAPTER AND SUBJECTS
 20 THE DIVISION TO THE PROVISIONS OF THIS CHAPTER.

21 (xiii) a division created to provide security for
 22 CONSTRUCTION mortgages, liens, or trust indentures; OR

23 (XIV) A PARCEL CONTAINING LESS THAN 160 ACRES IF THAT
 24 PARCEL CAN BE DESCRIBED AS A ONE-QUARTER ALIQUOT PART OF A
 25 UNITED STATES GOVERNMENT SECTION.

(22) "Tract of record" means a parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office.

(23) "Water user entity" means an entity as described in 7-12-1151 or irrigation districts as provided for in 85-7-101."

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

***76-3-105. Violations -- actions against subdivider.**

(1) Any A person who violates any a provision of this chapter or any a local regulations regulation adopted pursuant thereto--shall-be to this chapter is guilty--of--a misdemeanor--and--punishable-by-a-fine-of-not-less-than-\$100 or-more-than-\$500-or-by-imprisonment-in-a--county--jail--for not--more--than--3--months--or-by-both-fine-and-imprisonment subject to a civil penalty not to exceed \$5,000. Each sale, lease, or transfer of each separate parcel of land in violation of any a provision of this chapter or any a local regulation adopted pursuant thereto--shall-be-deemed to this chapter is a separate and distinct offense.

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

NEW SECTION. Section 4. Violations -- actions against

governing body. A person who has filed with the governing body an application for a subdivision under this chapter may sue the governing body to recover actual damages caused by:

(1) a final action, decision, or order of the governing body that imposes ARBITRARY AND CAPRICIOUS requirements, limitations, or conditions upon the use of the property ~~in excess-of-those-authorized-by-this-chapter~~; or

(2) a AN ARBITRARY AND CAPRICIOUS regulation adopted pursuant to this chapter ~~that-is-~~

~~(a)--arbitrary-or-capricious;-or~~

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

Section 5. Section 76-3-301, MCA, is amended to read:

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

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

(3) If transfers not in accordance with this chapter

are made, the county attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions of this chapter. The cost of such the action shall must be imposed against the party not prevailing."

Section 6. Section 76-3-501, MCA, is amended to read:

"76-3-501. Local subdivision regulations. (1) Before ~~July--17-1974~~, the The governing body of every county, city, and town shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for the orderly development of their jurisdictional areas; for the coordination of roads within subdivided land with other roads, both existing and planned; for the dedication of land for roadways and for public utility easements; for the improvement of roads; for the provision of adequate open spaces for ~~travel, light, air,~~ and recreation; for the provision of adequate transportation, water, drainage, and sanitary facilities; for the avoidance or minimization of congestion of streets and highways; and for the avoidance of subdivision which that would involve unnecessary unreasonable environmental degradation and the avoidance of danger of injury to health, safety, or welfare by reason of natural hazard or the lack of water, drainage, access, transportation, or other public services or would necessitate an excessive unreasonable expenditure of public funds for the supply of such services.

The subdivision regulations must protect the rights of property owners AS DEFINED IN 76-3-103. The regulations must include and are limited to:

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

(b) procedures, based on the minimum requirements as provided for in 7-1-4127, for providing public notice of subdivision applications and hearings;

(c) procedures for obtaining public agency and public utility review. This review may not delay the governing body's action on the proposal beyond the time limits specified in [section 10]. The failure of an agency to complete a review of a plat may not be a basis for rejection of the plat by a governing body.

(d) procedures and standards concerning the application of review criteria to subdivision applications, as provided for in 76-3-608;

(e) standards for the design and arrangement of lots, streets, and roads; for grading and drainage; and for the location and installation of utilities. Standards for the design of streets and roads may not exceed the requirements for anticipated vehicle use directly attributable to the subdivision. Variances from road standards may be granted for subdivisions requiring minimal vehicle use.

(f) if a proposed subdivision lies partly or totally

within the boundaries of a water user entity OR IMMEDIATELY ADJACENT TO A WATER USER ENTITY, a provision that the proposed plat of the subdivision be submitted for review to the water user entity to ensure that the existence and location of all water user facilities are properly noted on the plat. Water user facilities include but are not limited to canals, laterals, open drains, and closed drains.

(2) The governing body may also adopt subdivision regulations that provide financial or other positive incentives for developments that accommodate public values.

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

Section 7. Section 76-3-507, MCA, is amended to read:

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

(2) ~~Local regulations may provide that, in (a)~~ In lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body subdivider shall require provide a bond or

other reasonable security, in an amount and with surety and conditions satisfactory to it the governing body, providing for and securing the construction and installation of such the improvements within a period specified by the governing body and expressed in the bonds or other security. The governing body shall reduce bond requirements commensurate with the completion of improvements.

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

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

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

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

(1) ~~Except where a plat is eligible for summary approval,~~ the The subdivider shall present the preliminary plat of the proposed subdivision to the governing body or the its

designated agent or---agency---designated---thereby---the preliminary plat--of--the--proposed--subdivision for local review. The preliminary plat shall must show all pertinent features of the proposed subdivision and all proposed improvements. The governing body or its designated agent shall determine whether the proposed subdivision is a major, minor, or special subdivision according to the definitions in 76-3-103.

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

(b) When the proposed subdivision is situated entirely in an unincorporated area, the preliminary plat shall must be submitted to and approved by the governing body of the county. However, if the proposed subdivision lies within 1 mile of a third-class city or town or within 2 miles of a second-class city or within 3 miles of a first-class city, the county governing body shall submit the preliminary plat to the city or town governing body or its designated agent for review and comment.

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

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

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

Section 9. Section 76-3-603, MCA, is amended to read:

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

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

(2) ~~maps--and--tables--showing--soil--types--in--the--several--parts--of--the--proposed--subdivision--and--their--suitability--for--any--proposed--developments--in--those--several--parts~~ a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608; and

(3) ~~a--community--impact--report--containing--a--statement--of~~

anticipated needs of the proposed subdivision for local services, including education and busing, roads and maintenance, water, sewage, and solid waste facilities, and fire and police protection; additional relevant and reasonable information related to the applicable regulatory criteria adopted under 76-3-501 as may be required by the governing body.

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

NEW SECTION. Section 10. Subdivision review process.

(1) A subdivider proposing a subdivision shall confer first with the governing body or its designated agent in a preliminary conference to discuss the subdivision application, the requirements of Title 76, chapter 4, and this chapter, and local government regulations provided in 76-3-501. The subdivider shall submit a sketch of the plat at the conference. Notice of the subdivision application must comply with the local government regulations adopted under 76-3-501.

(2) (a) Following the submission of a complete subdivision application, the governing body shall approve, conditionally approve, or disapprove the application within the following timeframe:

- (i) 60 days for a major subdivision; or
- (ii) 35 days for a minor OR SPECIAL subdivision.

(b) The subdivider and the governing body may agree to extend the time period.

NEW SECTION. Section 11. Informational hearings.

(1) In accordance with the procedure provided in subsections (2) and (3), an application for a subdivision may not receive more than one informational hearing. The hearing must be conducted by the governing body unless it delegates the responsibility to the planning board or to a hearing officer or conducts a joint hearing with the planning board. When a hearing is held by the planning board or a hearing officer, the board or officer shall make findings and recommendations for submission to the governing body concerning approval, conditional approval, or disapproval of the plat not later than 10 days after the informational hearing and within the timeframe provided in [section 10].

(2) (a) For a major subdivision, within 21 days following submission to the governing body of the complete application by the subdivider, an informational hearing on the subdivision application may be requested by:

- (i) the subdivider;
 - (ii) a person who would be substantially adversely affected by the subdivision; or
 - (iii) the governing body.
- (b) The informational hearing, if held, must be at the

1 local government's expense.

2 (3) (a) Except as provided for in subsection (3)(c),
3 for a minor or special subdivision, an informational hearing
4 may be held only if:

5 (i) the subdivision would be located in an area having
6 unique cultural or historical resources or environmental or
7 ecological resources that are susceptible to substantial
8 adverse effects from subdivision development or if the
9 subdivision would cause substantial adverse fiscal costs to
10 local government; and

11 (ii) the subdivider or a person who would be adversely
12 affected by the proposed subdivision requests a hearing from
13 the governing body within 15 days following submission of
14 the complete application.

15 (b) The governing body may assess costs of the hearing
16 on a minor or special subdivision to the requestor.

17 (c) The governing body may not hold an informational
18 hearing on the first minor subdivision from a tract of
19 record.

20 (4) In informational hearings under this section,
21 irrelevant, immaterial, or unduly repetitious evidence must
22 be excluded but all other evidence of a type commonly relied
23 upon by reasonably prudent persons in the conduct of their
24 affairs is admissible, whether or not the evidence would be
25 admissible in a trial in the courts of Montana.

1 (5) (a) Within the timeframe provided in subsection
2 (5)(b), notice of an informational hearing on a subdivision
3 application must be given by the governing body by
4 publication in a newspaper of general circulation in the
5 county in which the subdivision is located. The subdivider,
6 each adjoining property owner of record, and each purchaser
7 of record under contract for deed of property adjoining the
8 land included in the plat must also be notified of the
9 hearing by the governing body by certified mail.

10 (b) The notification required in subsection (5)(a) must
11 be accomplished:

12 (i) not less than 15 days prior to the date of the
13 hearing for a major subdivision; or

14 (ii) not less than 10 days prior to the date of the
15 hearing for a minor or special subdivision.

16 (6) The governing body shall make its decision to
17 approve, disapprove, or conditionally approve the
18 subdivision application during executive proceedings after
19 the informational hearing or after the time for a hearing
20 has expired.

21 **Section 12.** Section 76-3-608, MCA, is amended to read:

22 "76-3-608. Criteria for local government review. (1)
23 The basis for the governing body's decision to approve,
24 conditionally approve, or disapprove a subdivision ~~shall be~~
25 is whether the preliminary plat, applicable environmental

1 assessment, public informational hearing, planning board
 2 recommendations, and or any additional information
 3 demonstrate demonstrates that development of the subdivision
 4 ~~would-be-in-the-public-interest--The--governing--body--shall~~
 5 ~~disapprove--any--subdivision-which-it-finds-not-to-be-in-the~~
 6 ~~public-interest~~ meets the requirements of this chapter.

7 (2) ~~To-determine-whether-the-proposed-subdivision-would~~
 8 ~~be-in--the-public--interest--the~~ Except as provided in
 9 subsection (7), the governing body shall issue written
 10 findings of fact which that weigh the following criteria for
 11 public-interest: in subsections (3) and (4), as applicable.

12 ~~{a}--the-basis-of-the-need-for-the-subdivision;~~

13 ~~{b}--expressed-public-opinion;~~

14 ~~{c}--effects-on-agriculture;~~

15 ~~{d}--effects-on-local-services;~~

16 ~~{e}--effects-on-taxation;~~

17 ~~{f}--effects-on-the-natural-environment;~~

18 ~~{g}--effects-on-wildlife-and-wildlife-habitat;-and~~

19 ~~{h}--effects-on-the-public-health-and-safety;~~

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

22 (a) The subdivision's effect on agricultural or
 23 agricultural water user practices must be weighed.

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

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

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

4 (d) The subdivision must ensure access to each parcel
 5 within the subdivision and notation of access must be made
 6 on the applicable plat and on any instrument of transfer
 7 concerning the parcel.

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

10 (f) Except as provided in subsection (3)(g), the
 11 subdivision must be evaluated under the conditions provided
 12 in subsection (4) to determine if lots that contain or that
 13 can reasonably be expected to contain building sites are
 14 located in an area affected by the following hazards:

15 (i) unstable slopes, including areas where rockfalls,
 16 landslides, mudslides, or avalanches have occurred or can
 17 reasonably be expected to occur;

18 (ii) unsuitable soils, including areas where the water
 19 table occurs within 5 feet of the ground surface at any time
 20 of year and areas affected by soil creep, shrink-swell
 21 potential, or sinkholes; or

22 (iii) drainage problems, including the potential for
 23 sheetflooding.

24 (g) The hazard evaluation required under subsection
 25 (3)(f) does not apply to the first minor subdivision from a

tract of record.

(4) Subdivisions evaluated for hazards under subsection (3)(f) must be reviewed as follows:

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

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

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

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

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

(f) The result of the hazard evaluation is not dispositive of the degree of hazard existing and is not grounds to establish liability against the governing body.

(5) (a) Major subdivisions must also be reviewed for effects on:

- (i) unique cultural or historical resources;
- (ii) environmental or ecological resources; and
- (iii) local services.

(b) Except for the first minor subdivision from a tract of record, minor and special subdivisions may be reviewed for the effects listed in subsection (5)(a) if the governing body determines that, based on information received in an informational hearing held pursuant to [section 11], a review is necessary.

(6) (a) In reviewing subdivisions for the effects listed in subsection (5)(a), the governing body shall use information from the environmental assessment, if required, and may solicit other site-specific information from the subdivider, agencies, and other appropriate sources. Efforts by the governing body to gather additional information do not constitute grounds for extending the deadlines for the subdivision review process provided for in [section 10] unless an extension is agreed to by the subdivider.

(b) Based on the information gathered, the governing body or its designated agent shall determine whether the proposed subdivision is likely to have significant adverse impacts on the factors listed in subsection (5).

(c) If the governing body or its designated agent determines that significant adverse impacts are probable, it shall consult with the subdivider and knowledgeable persons and agency representatives that it considers necessary. During the consultation process, the parties shall work to develop reasonable mitigation for the potential adverse

1 effects on the factors listed in subsection (5).

2 (d) The governing body may require the subdivider to
3 design the subdivision to minimize any potentially
4 significant adverse impacts.

5 (e) The governing body shall issue written findings,
6 based on substantial credible evidence, to justify any
7 action taken under subsection (6)(d).

8 (f) In reviewing a subdivision under subsections (5)
9 and (6), a governing body must be guided by the following
10 standards:

11 (i) Mitigation measures imposed may not unreasonably
12 restrict a landowner's ability to develop land, but it is
13 recognized that in some instances the unmitigated impacts of
14 a proposed development may be unacceptable and will preclude
15 approval of the plat.

16 (ii) Whenever feasible, mitigation should be designed to
17 provide some benefits for the subdivider.

18 (7) (a) When a minor subdivision is proposed in an area
19 for which a master plan has been adopted pursuant to chapter
20 1 and the proposed subdivision will comply with the plan,
21 the subdivision is exempt from the approval criteria
22 contained in this section but is subject to applicable
23 zoning regulations.

24 (b) In order for a master plan to serve as the basis
25 for the exemption provided by this subsection (7), the plan

1 must, at a minimum, contain housing, transportation, and
2 land-use elements and a discussion of physical constraints
3 on development that exist within the area encompassed by the
4 plan."

5 NEW SECTION. Section 13. Review guidelines -- all
6 subdivisions. (1) Written findings and the reasons for
7 approving, disapproving, or conditionally approving the
8 subdivision must accompany the governing body's action on a
9 subdivision application.

10 (2) A proposed subdivision is preliminarily approved
11 when the governing body approves the preliminary plat.

12 (3) Approval of the final plat represents final
13 approval from the governing body. However, this approval is
14 only for the subdivision description provided in the final
15 plat. A person who proposes to implement a change from an
16 approved final plat shall submit a plat amendment that is
17 subject to the review requirements of this chapter.

18 NEW SECTION. Section 14. Park dedication requirement.

19 (1) Except as provided in subsections (2), (3), and (7), a
20 subdivider shall dedicate to the governing body a cash or
21 land donation equal to:

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

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

larger than 1 acre;

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

(d) 1.25% of the fair market value of the land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.

(2) When a subdivision is located totally within an area for which density requirements have been adopted pursuant to a master plan under Title 76, chapter 1, or pursuant to zoning regulations under Title 76, chapter 2, the governing body may establish park dedication requirements based on the community need for parks and the development densities identified in the plans or regulations. Park dedication requirements established under this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03 acres per dwelling unit.

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

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

(b) subdivision into parcels that are all nonresidential;

(c) a subdivision in which parcels are not created, except when that subdivision provides permanent multiple spaces for mobile homes or condominiums; or

(d) a subdivision in which only one additional parcel is created.

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

(5) The governing body, in consultation with the subdivider and the planning board or park board having jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both.

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

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

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

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

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

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

(ii) the fair market value of the land set aside for park and recreational purposes equals or exceeds the value of the dedication required under subsection (1); or

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

(ii) the fair market value of the land proposed to be subdivided, by virtue of providing long-term protection provided for in subsection (7)(b)(i), is reduced by an amount equal to or exceeding the value of the dedication required under subsection (1); or

(c) the fair market value of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (7)(a) and (7)(b), is reduced by an amount equal to or exceeding the value of the dedication required under subsection (1).

NEW SECTION. Section 15. Payment for extension of

capital facilities. A local government may require a subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public sewer lines, water supply lines, and storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly attributable to the subdivision.

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

"7-16-2324. Sale, lease, or exchange of dedicated park lands. (1) For the purposes of this section and part 25 of chapter 8, lands dedicated to the public use for park or playground purposes under 76-3-606 and 76-3-607 [section 14] or a similar statute or pursuant to any instrument not specifically conveying land to a governmental unit other than a county are considered county lands.

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

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

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

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

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

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

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

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

(4) Any revenue realized by a county from the sale, exchange, or disposal of lands dedicated to public use for park or playground purposes shall must be paid into the park fund and used in the manner prescribed in 76-3-606 and 76-3-607 [section 14] for cash received in lieu of dedication."

Section 17. Section 76-4-102, MCA, is amended to read:

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

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

(2) "Department" means department of health and

environmental sciences.

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

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

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

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

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

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

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

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

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

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

(13) "Subdivision" means a subdivision as defined in 76-3-103 ~~a division of land or land so divided which creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and any condominium or area, regardless of size, which provides permanent multiple space for recreational camping vehicles or mobile homes.~~

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

Section 18. Section 76-4-125, MCA, is amended to read:

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

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

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

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

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

{b} divisions a division made for the purpose of acquiring additional land to become part of an approved parcel, provided that no a dwelling or structure requiring water or sewage disposal is not to be erected on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision; and

{c}{b} divisions a division made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule."

Section 19. Section 76-6-203, MCA, is amended to read:

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

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

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

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

(4) loam, gravel, etc: or other substances--excavation,

dredging, or removal of loam, peat, gravel, soil, rock, or other material substance;

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

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

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

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

NEW SECTION. Section 20. Repealer. (1) Sections 76-3-104, 76-3-201, 76-3-202, 76-3-203, 76-3-204, 76-3-205, 76-3-206, 76-3-207, 76-3-208, 76-3-209, 76-3-210, 76-3-504, 76-3-505, 76-3-604, 76-3-605, 76-3-606, 76-3-607, 76-3-609, and 76-4-103, MCA, are repealed.

NEW SECTION. Section 21. Codification instruction. [Sections 4, 10, 11, and 13 through 15] are intended to be codified as an integral part of Title 76, chapter 3, and the provisions of Title 76, chapter 3, apply to [sections 4, 10, 11, and 13 through 15].

NEW SECTION. Section 22. Saving clause. [This act]

1 does not affect rights and duties that matured, penalties
2 that were incurred, or proceedings that were begun before
3 [the effective date of this act].

4 NEW SECTION. Section 23. Severability. If a part of
5 [this act] is invalid, all valid parts that are severable
6 from the invalid part remain in effect. If a part of [this
7 act] is invalid in one or more of its applications, the part
8 remains in effect in all valid applications that are
9 severable from the invalid applications.

10 NEW SECTION. Section 24. Applicability. (1) [Sections
11 2, 17, and 18] apply to all subdivision applications filed
12 after passage and approval of [this act].

13 (2) [Sections 1, 3 through 16, and 19] apply to all
14 subdivision applications filed after September 30, 1993.

15 NEW SECTION. Section 25. Transition. To ensure an
16 efficient transition from existing local government
17 subdivision regulations to local regulations adopted
18 pursuant to [this act], existing local government
19 subdivision regulations remain effective until September 30,
20 1993.

21 NEW SECTION. Section 26. Effective date. [This act] is
22 effective on passage and approval.

-End-

HOUSE BILL NO. 280

INTRODUCED BY GILBERT, SWANSON, FAGG, BRANDEWIE,

DOHERTY, RANEY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA SUBDIVISION AND PLATTING ACT; CLARIFYING THE PURPOSE OF THE ACT; REDEFINING "SUBDIVISION" AND CERTAIN OTHER TERMS; REMOVING THE CRIMINAL PENALTY AND INSTITUTING A CIVIL PENALTY FOR VIOLATIONS; PROVIDING FOR ACTIONS AGAINST GOVERNING BODIES; ESTABLISHING CLEAR GUIDELINES FOR LOCAL GOVERNMENT REVIEW OF SUBDIVISIONS; ESTABLISHING CRITERIA AND A PROCESS FOR INFORMATIONAL HEARINGS; REMOVING CERTAIN EXEMPTIONS FROM SUBDIVISION REVIEW; AMENDING SECTIONS 7-16-2324, 76-3-102, 76-3-103, 76-3-105, 76-3-301, 76-3-501, 76-3-507, 76-3-601, 76-3-603, 76-3-608, 76-4-102, 76-4-125, AND 76-6-203, MCA; REPEALING SECTIONS 76-3-104, 76-3-201, 76-3-202, 76-3-203, 76-3-204, 76-3-205, 76-3-206, 76-3-207, 76-3-208, 76-3-209, 76-3-210, 76-3-504, 76-3-505, 76-3-604, 76-3-605, 76-3-606, 76-3-607, 76-3-609, AND 76-4-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES."

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

Section 1. Section 76-3-102, MCA, is amended to read:"76-3-102. Statement of purpose. It is the The purpose

of this chapter is to promote the public health, safety, and general welfare by regulating the subdivision of land; to ~~prevent--overcrowding--of--land;~~ to lessen congestion in the streets and highways; to provide for adequate ~~light,--air,~~ water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements adopted pursuant to this chapter; to require development in harmony with the--natural--environment;--to--require--that--whenver necessary,--the--appropriate--approval--of--subdivisions--be contingent--upon--a--written--finding--of--public--interest--by--the governing body;--and to require uniform monumentation of land ~~subdivisions--and--transferring divisions;~~ to require that the transfer of interests in real property be made by reference to plat or certificate of survey; and to provide simple, clear, and uniform guidelines for review of subdivisions in a manner that also protects the rights of property owners."

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

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

(1) "Access" means:

(a) physical access by a road that meets the applicable standards set by the governing body according to 76-3-501; and

1 (b) legal access by easement or otherwise that provides
 2 the property owner the right of ingress and egress for any
 3 parcel created by a subdivision.

4 (2) "Agricultural producer" means a person primarily
 5 engaged in the production of agricultural products.

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

10 (4) "Dedication" means the deliberate appropriation
 11 of land by an owner for any general and public use,
 12 reserving to himself the owner no rights which that are not
 13 incompatible with the full exercise and enjoyment of the
 14 public use to which the property has been devoted.

15 (5) "Division of land" means the segregation
 16 creation of one or more parcels of land from a larger tract
 17 held in single or undivided ownership by transferring or
 18 contracting to transfer title to or possession of a portion
 19 of the tract or properly filing a certificate of survey or
 20 subdivision plat establishing the identity of the segregated
 21 created parcels pursuant to this chapter.

22 (6) "Dwelling unit" means a residential structure in
 23 which a person or persons reside.

24 (7) "Examining land surveyor" means a registered
 25 land surveyor duly appointed by the governing body to review

1 surveys and plats submitted for filing.

2 (8) "Executive proceedings" means public proceedings in
 3 which the governing body deliberates without receiving
 4 public comment except when, with the approval of the
 5 presiding officer, specific questions are directed to the
 6 subdivider or other individuals.

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

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

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

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

23 (11) "Major subdivision" means a subdivision that is not
 24 a minor subdivision or a special subdivision.

25 (12) "Minor subdivision" means:

1 (a) for subdivisions involving the actual division of
 2 land, the first five parcels subject to subdivision review
 3 under this chapter from a single tract of record as of July
 4 1, 1993; or

5 (b) for subdivisions involving the provision of
 6 permanent multiple spaces with utility hookups for
 7 recreational camping vehicles or mobile homes, multiple
 8 spaces for dwelling units, or multiple spaces for work camp
 9 structures as described in subsection (21)(a), the first
 10 five of these spaces from a single tract of record as of
 11 July 1, 1993.

12 {9}(13) "Planned unit development" means a land
 13 development project consisting of residential clusters,
 14 industrial parks, shopping centers, office building parks,
 15 or any combination thereof which comprises a planned mixture
 16 of land uses built in a prearranged relationship to each
 17 other and having open space and community facilities in
 18 common ownership or use.

19 {10}(14) "Plat" means a graphical representation of a
 20 subdivision showing the division of land into lots, parcels,
 21 blocks, streets, alleys, and other divisions and
 22 dedications.

23 {11}(15) "Preliminary plat" means a neat and scaled
 24 drawing of a proposed subdivision showing the layout of
 25 streets, alleys, lots, blocks, and other elements of a

1 subdivision which furnish a basis for review by a governing
 2 body.

3 {12}(16) "Registered land surveyor" means a person
 4 registered professional land surveyor licensed in
 5 conformance with Title 37, chapter 67, to practice surveying
 6 in the state of Montana.

7 {13}(17) "Registered professional engineer" means a
 8 person licensed in conformance with Title 37, chapter 67, to
 9 practice engineering in the state of Montana.

10 (18) "Rights of property owners" means the right to use,
 11 enjoy, improve, sell, and convey, in total or in part, real
 12 property as long as the exercise of the rights do not deny
 13 these rights to other property owners or adversely affect
 14 public health, safety, and welfare.

15 (19) "Special subdivision" means a subdivision that
 16 conforms to a master plan and a long-range development
 17 program of public works projects adopted pursuant to
 18 76-1-601 and zoning regulations adopted pursuant to Title
 19 76, chapter 2, part 2 or 3.

20 {14}(20) "Subdivider" means any a person who causes land
 21 to be subdivided or who proposes a subdivision of land.

22 {15}(21) (a) "Subdivision" means, except as provided in
 23 subsection (21)(b), a division of land or land so divided
 24 which that creates one or more additional parcels containing
 25 less than 20 160 acres, exclusive of public roadways, in

order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed, and--shall include The term includes any resubdivision and shall further--include any residential condominium or residential building and also includes the conversion of a nonresidential building to a dwelling unit. The term further includes any area, regardless of its size, which that provides or will provide permanent multiple space spaces with utility hookups for recreational camping vehicles or mobile homes, multiple spaces for dwelling units, or multiple spaces for work camp structures constructed to exist for longer than 1 year. For purposes of this subsection (a), "work camp structure" means housing that is provided by a person for two or more families or individuals living separately and that is for the exclusive use of the employees of that person and the families of the employees. Housing does not include shelter provided by an agricultural producer for persons who are primarily employed to perform agricultural duties on the agricultural producer's ranch or farm.

(b) Subdivision does not mean:

(i) a division creating cemetery lots only;

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

(iii) a division creating an interest in oil, gas,

minerals, or water that is severed from the surface ownership of real property;

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

(v) the sale, rent, lease, or other conveyance or use of one or more parts of a building, structure, or other improvement, whether existing or proposed;

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

(vii) a division created by operation of law or an order of a court of record in this state pursuant to the laws governing the distribution of estates, Title 72, chapters 1 through 6 and 10 through 14, or the dissolution of marriage, Title 40, chapter 4, or a division that, in the absence of an agreement between the parties, could be created by an order of a court in this state;

(viii) except for the survey requirements in 76-3-401 through 76-3-405 and any applicable zoning requirements, a division made for the purpose of relocating boundary lines between adjoining properties, provided the division is recorded in either the index of certificate of survey or the index provided for in 76-3-613, as applicable, as long as additional parcels are not created;

(ix) except for the survey requirements in 76-3-401 through 76-3-405, a division of land by an agricultural

producer made primarily for agricultural or silvicultural purposes by sale or agreement to buy and sell if the division is outside of a platted subdivision, provided that a dwelling unit is not to be erected on the parcel. The erection of a dwelling unit on the parcel WITHOUT LOCAL GOVERNMENT REVIEW UNDER THE PROVISIONS OF THIS CHAPTER IS A VIOLATION OF THIS CHAPTER AND subjects the division to the provisions of this chapter. Divisions made primarily for agricultural or silvicultural purposes must be noted on the certificate of survey or other recorded instrument of conveyance, along with the statement that the erection of a dwelling unit on the parcel WITHOUT LOCAL GOVERNMENT REVIEW UNDER THE PROVISIONS OF THIS CHAPTER IS A VIOLATION OF THIS CHAPTER AND subjects the division to the provisions of this chapter.

(x) except for the survey requirements in 76-3-401 through 76-3-405, divisions created by rights-of-way;

(xi) (A) except for the survey requirements in 76-3-401 through 76-3-405 and the review requirements of Title 76, chapter 4, part 1, a division created by an agricultural producer for sale or gift to a member of the agricultural producer's immediate family and limited to a single sale or gift to each immediate family member. Additional sales or gifts to an immediate family member of an agricultural producer may be made for adjoining properties under the

provisions of subsection (21)(b)(viii), as long as additional parcels are not created.

(B) A division created by an agricultural producer, regardless of its size, that provides or will provide permanent multiple spaces for four or fewer dwelling units, as long as land is not divided;

(xii) a division of land made for the purpose of mining when an application has been submitted or a permit or contract received under the provisions of Title 82, chapter 4-or, PROVIDED THAT A DWELLING UNIT IS NOT TO BE ERECTED ON THE PARCEL. THE ERECTION OF A DWELLING UNIT ON THE PARCEL WITHOUT LOCAL GOVERNMENT REVIEW UNDER THE PROVISIONS OF THIS CHAPTER IS A VIOLATION OF THIS CHAPTER AND SUBJECTS THE DIVISION TO THE PROVISIONS OF THIS CHAPTER. DIVISIONS MADE FOR THE PURPOSE OF MINING MUST BE NOTED ON THE CERTIFICATE OF SURVEY OR OTHER RECORDED INSTRUMENT OF CONVEYANCE, ALONG WITH THE STATEMENT THAT ERECTION OF A DWELLING UNIT ON THE PARCEL WITHOUT LOCAL GOVERNMENT REVIEW UNDER THE PROVISIONS OF THIS CHAPTER IS A VIOLATION OF THIS CHAPTER AND SUBJECTS THE DIVISION TO THE PROVISIONS OF THIS CHAPTER.

(xiii) a division created to provide security for CONSTRUCTION mortgages, liens, or trust indentures; OR

(XIV) A PARCEL CONTAINING LESS THAN 160 ACRES IF THAT PARCEL CAN BE DESCRIBED AS A ONE-QUARTER ALIQUOT PART OF A UNITED STATES GOVERNMENT SECTION.

(22) "Tract of record" means a parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office.

(23) "Water user entity" means an entity as described in 7-12-1151 or irrigation districts as provided for in 85-7-101."

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

"76-3-105. Violations -- actions against subdivider.

(1) Any A person who violates any a provision of this chapter or any a local regulations regulation adopted pursuant thereto-shall-be to this chapter is guilty--of--a misdemeanor--and--punishable-by-a-fine-of-not-less-than-\$100 or-more-than-\$500-or-by-imprisonment-in-a--county--jail--for not--more--than--3--months--or-by-both-fine-and-imprisonment subject to a civil penalty not to exceed \$5,000. Each sale, lease, or transfer of each separate parcel of land in violation of any a provision of this chapter or any a local regulation adopted pursuant thereto-shall-be-deemed to this chapter is a separate and distinct offense.

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

NEW SECTION. Section 4. Violations -- actions against

governing body. (1) A person who has filed with the governing body an application for a subdivision under this chapter may sue the governing body to recover actual damages caused by:

(1)(A) a final action, decision, or order of the governing body that imposes ARBITRARY AND CAPRICIOUS requirements, limitations, or conditions upon the use of the property in-excess-of-those-authorized-by-this-chapter; or

(2)(B) a AN ARBITRARY AND CAPRICIOUS regulation adopted pursuant to this chapter that-is:

(a)--arbitrary-or-capricious;-or

(b)--unlawful-or-exceeds-lawful-authority.

(2) THIS SECTION DOES NOT CREATE A NEW CAUSE OF ACTION.

Section 5. Section 76-3-301, MCA, is amended to read:

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

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

1 requirements.

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

7 **Section 6.** Section 76-3-501, MCA, is amended to read:

8 "76-3-501. Local subdivision regulations. (1) Before
9 ~~July 17, 1974~~ the The governing body of every county, city,
10 and town shall adopt and provide for the enforcement and
11 administration of subdivision regulations reasonably
12 providing for the orderly development of their
13 jurisdictional areas; for the coordination of roads within
14 subdivided land with other roads, both existing and planned;
15 for the dedication of land for roadways and for public
16 utility easements; for the improvement of roads; for the
17 provision of adequate open spaces for ~~travel, light, air,~~
18 and recreation; for the provision of adequate
19 transportation, water, drainage, and sanitary facilities;
20 for the avoidance or minimization of congestion of streets
21 and highways; and for the avoidance of subdivision which
22 that would involve unnecessary unreasonable environmental
23 degradation and the avoidance of danger of injury to health,
24 safety, or welfare by reason of natural hazard or the lack
25 of water, drainage, access, transportation, or other public

1 services or would necessitate an excessive unreasonable
2 expenditure of public funds for the supply of such services.
3 The subdivision regulations must protect the rights of
4 property owners AS DEFINED IN 76-3-103. The regulations must
5 include and are limited to:

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

8 (b) procedures, based on the minimum requirements as
9 provided for in 7-1-4127, 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 governing
13 body's action on the proposal beyond the time limits
14 specified in [section 10]. The failure of an agency to
15 complete a review of a plat may not be a basis for rejection
16 of the plat by a governing body.

17 (d) procedures and standards concerning the application
18 of review criteria to subdivision applications, as provided
19 for in 76-3-608;

20 (e) standards for the design and arrangement of lots,
21 streets, and roads; for grading and drainage; and for the
22 location and installation of utilities. Standards for the
23 design of streets and roads may not exceed the requirements
24 for anticipated vehicle use directly attributable to the
25 subdivision. Variances from road standards may be granted

for subdivisions requiring minimal vehicle use.

(F) if a proposed subdivision lies partly or totally within the boundaries of a water user entity OR IMMEDIATELY ADJACENT TO A WATER USER ENTITY, a provision that the proposed plat of the subdivision be submitted for review to the water user entity to ensure that the existence and location of all water user facilities are properly noted on the plat. Water user facilities include but are not limited to canals, laterals, open drains, and closed drains.

(2) The governing body may also adopt subdivision regulations that provide financial or other positive incentives for developments that accommodate public values.

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

Section 7. Section 76-3-507, MCA, is amended to read:

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

(2) Local regulations may provide that, in (a) In lieu of the completion of the construction of any public

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

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

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

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

"76-3-601. Submission of preliminary plat for review. (1) Except where a plat is eligible for summary approval,

the ~~The~~ subdivider shall present the preliminary plat of the proposed subdivision to the governing body or the its designated agent or ~~---agency---designated---thereby---the preliminary---plat---of---the---proposed---subdivision~~ for local review. The preliminary plat shall must show all pertinent features of the proposed subdivision and all proposed improvements. The governing body or its designated agent shall determine whether the proposed subdivision is a major, minor, or special subdivision according to the definitions in 76-3-103.

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

(b) When the proposed subdivision is situated entirely in an unincorporated area, the preliminary plat shall must be submitted to and approved by the governing body of the county. However, if the proposed subdivision lies within 1 mile of a third-class city or town or within 2 miles of a second-class city or within 3 miles of a first-class city, the county governing body shall submit the preliminary plat to the city or town governing body or its designated agent for review and comment.

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

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

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

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

Section 9. Section 76-3-603, MCA, is amended to read:

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

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

(2) ~~maps and tables showing soil types in the several parts of the proposed subdivision and their suitability for any proposed developments in those several parts~~ a summary of the probable impacts of the proposed subdivision based on

the criteria described in 76-3-608; and

(3) ~~a community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing, roads and maintenance, water, sewerage and solid waste facilities, and fire and police protection; additional relevant and reasonable information related to the applicable regulatory criteria adopted under 76-3-501 as may be required by the governing body.~~

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

NEW SECTION. Section 10. Subdivision review process.

(1) A subdivider proposing a subdivision shall confer first with the governing body or its designated agent in a preliminary conference to discuss the subdivision application, the requirements of Title 76, chapter 4, and this chapter, and local government regulations provided in 76-3-501. The subdivider shall submit a sketch of the plat at the conference. Notice of the subdivision application must comply with the local government regulations adopted under 76-3-501.

(2) (a) Following the submission of a complete subdivision application, the governing body shall approve, conditionally approve, or disapprove the application within the following timeframe:

(i) 60 days for a major subdivision; or

(ii) 35 days for a minor OR SPECIAL subdivision.

(b) The subdivider and the governing body may agree to extend the time period.

NEW SECTION. Section 11. Informational hearings.

(1) In accordance with the procedure provided in subsections (2) and (3), an application for a subdivision may not receive more than one informational hearing. The hearing must be conducted by the governing body unless it delegates the responsibility to the planning board or to a hearing officer or conducts a joint hearing with the planning board. When a hearing is held by the planning board or a hearing officer, the board or officer shall make findings and recommendations for submission to the governing body concerning approval, conditional approval, or disapproval of the plat not later than 10 days after the informational hearing and within the timeframe provided in [section 10].

(2) (a) For a major subdivision, within 21 days following submission to the governing body of the complete application by the subdivider, an informational hearing on the subdivision application may be requested by:

(i) the subdivider;

(ii) a person who would be substantially adversely affected by the subdivision; or

1 (iii) the governing body.

2 (b) The informational hearing, if held, must be at the
3 local government's expense.

4 (3) (a) Except as provided for in subsection (3)(c),
5 for a minor or special subdivision, an informational hearing
6 may be held only if:

7 (i) the subdivision would be located in an area having
8 unique cultural or historical resources or environmental or
9 ecological resources that are susceptible to substantial
10 adverse effects from subdivision development or if the
11 subdivision would cause substantial adverse fiscal costs to
12 local government; and

13 (ii) the subdivider or a person who would be adversely
14 affected by the proposed subdivision requests a hearing from
15 the governing body within 15 days following submission of
16 the complete application.

17 (b) The governing body may assess costs of the hearing
18 on a minor or special subdivision to the requestor.

19 (c) The governing body may not hold an informational
20 hearing on the first minor subdivision from a tract of
21 record.

22 (4) In informational hearings under this section,
23 irrelevant, immaterial, or unduly repetitious evidence must
24 be excluded but all other evidence of a type commonly relied
25 upon by reasonably prudent persons in the conduct of their

1 affairs is admissible, whether or not the evidence would be
2 admissible in a trial in the courts of Montana.

3 (5) (a) Within the timeframe provided in subsection
4 (5)(b), notice of an informational hearing on a subdivision
5 application must be given by the governing body by
6 publication in a newspaper of general circulation in the
7 county in which the subdivision is located. The subdivider,
8 each adjoining property owner of record, and each purchaser
9 of record under contract for deed of property adjoining the
10 land included in the plat must also be notified of the
11 hearing by the governing body by certified mail.

12 (b) The notification required in subsection (5)(a) must
13 be accomplished:

14 (i) not less than 15 days prior to the date of the
15 hearing for a major subdivision; or

16 (ii) not less than 10 days prior to the date of the
17 hearing for a minor or special subdivision.

18 (6) The governing body shall make its decision to
19 approve, disapprove, or conditionally approve the
20 subdivision application during executive proceedings after
21 the informational hearing or after the time for a hearing
22 has expired.

23 **Section 12.** Section 76-3-608, MCA, is amended to read:

24 "76-3-608. Criteria for local government review. (1)
25 The basis for the governing body's decision to approve,

conditionally approve, or disapprove a subdivision shall--be is whether the preliminary plat, applicable environmental assessment, public informational hearing, planning board recommendations, and or any additional information demonstrate demonstrates that development of the subdivision would--be--in--the-public-interest--The governing body shall disapprove any subdivision which it finds not to be--in--the public-interest meets the requirements of this chapter.

(2) ~~To determine whether the proposed subdivision would be--in--the-public--interest--the~~ Except as provided in subsection (7), the governing body shall issue written findings of fact which that weigh the following criteria for public-interest: in subsections (3) and (4), as applicable.

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

~~(b)--expressed-public-opinion;~~

~~(c)--effects-on-agriculture;~~

~~(d)--effects-on-local-services;~~

~~(e)--effects-on-taxation;~~

~~(f)--effects-on-the-natural-environment;~~

~~(g)--effects-on-wildlife-and-wildlife-habitat; and~~

~~(h)--effects-on-the-public-health-and-safety.~~

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

(a) The subdivision's effect on agricultural or agricultural water user practices must be weighed.

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

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

(d) The subdivision must ensure access to each parcel within the subdivision and notation of access must be made on the applicable plat and on any instrument of transfer concerning the parcel.

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

(f) Except as provided in subsection (3)(g), the subdivision must be evaluated under the conditions provided in subsection (4) to determine if lots that contain or that can reasonably be expected to contain building sites are located in an area affected by the following hazards:

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

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

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

(g) The hazard evaluation required under subsection (3)(f) does not apply to the first minor subdivision from a tract of record.

(4) Subdivisions evaluated for hazards under subsection (3)(f) must be reviewed as follows:

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

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

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

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

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

(f) The result of the hazard evaluation is not dispositive of the degree of hazard existing and is not grounds to establish liability against the governing body.

(5) (a) Major subdivisions must also be reviewed for effects on:

(i) unique cultural or historical resources;

(ii) environmental or ecological resources; and

(iii) local services.

(b) Except for the first minor subdivision from a tract of record, minor and special subdivisions may be reviewed for the effects listed in subsection (5)(a) if the governing body determines that, based on information received in an informational hearing held pursuant to [section 11], a review is necessary.

(6) (a) In reviewing subdivisions for the effects listed in subsection (5)(a), the governing body shall use information from the environmental assessment, if required, and may solicit other site-specific information from the subdivider, agencies, and other appropriate sources. Efforts by the governing body to gather additional information do not constitute grounds for extending the deadlines for the subdivision review process provided for in [section 10] unless an extension is agreed to by the subdivider.

(b) Based on the information gathered, the governing body or its designated agent shall determine whether the proposed subdivision is likely to have significant adverse impacts on the factors listed in subsection (5).

(c) If the governing body or its designated agent determines that significant adverse impacts are probable, it shall consult with the subdivider and knowledgeable persons and agency representatives that it considers necessary.

During the consultation process, the parties shall work to develop reasonable mitigation for the potential adverse effects on the factors listed in subsection (5).

(d) The governing body may require the subdivider to design the subdivision to minimize any potentially significant adverse impacts.

(e) The governing body shall issue written findings, based on substantial credible evidence, to justify any action taken under subsection (6)(d).

(f) In reviewing a subdivision under subsections (5) and (6), a governing body must be guided by the following standards:

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

(ii) Whenever feasible, mitigation should be designed to provide some benefits for the subdivider.

(7) (a) When a minor subdivision is proposed in an area for which a master plan has been adopted pursuant to chapter 1 and the proposed subdivision will comply with the plan, the subdivision is exempt from the approval criteria contained in this section but is subject to applicable zoning regulations.

(b) In order for a master plan to serve as the basis for the exemption provided by this subsection (7), the plan must, at a minimum, contain housing, transportation, and land-use elements and a discussion of physical constraints on development that exist within the area encompassed by the plan."

NEW SECTION. Section 13. Review guidelines -- all subdivisions. (1) Written findings and the reasons for approving, disapproving, or conditionally approving the subdivision must accompany the governing body's action on a subdivision application.

(2) A proposed subdivision is preliminarily approved when the governing body approves the preliminary plat.

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

NEW SECTION. Section 14. Park dedication requirement.

(1) Except as provided in subsections (2), (3), and (7), a subdivider shall dedicate to the governing body a cash or land donation equal to:

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

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

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

(d) 1.25% of the fair market value of the land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.

(2) When a subdivision is located totally within an area for which density requirements have been adopted pursuant to a master plan under Title 76, chapter 1, or pursuant to zoning regulations under Title 76, chapter 2, the governing body may establish park dedication requirements based on the community need for parks and the development densities identified in the plans or regulations. Park dedication requirements established under this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03 acres per dwelling unit.

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

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

(b) subdivision into parcels that are all nonresidential;

(c) a subdivision in which parcels are not created,

except when that subdivision provides permanent multiple spaces for mobile homes or condominiums; or

(d) a subdivision in which only one additional parcel is created.

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

(5) The governing body, in consultation with the subdivider and the planning board or park board having jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both.

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

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

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

(ii) the governing body has formally adopted a park plan

1 that establishes the needs and procedures for use of the
2 money.

3 (7) The local governing body shall waive the park
4 dedication requirement if:

5 (a) (i) the preliminary plat provides for a planned
6 unit development or other development with land permanently
7 set aside for park and recreational uses sufficient to meet
8 the needs of the persons who will ultimately reside in the
9 development; and

10 (ii) the fair market value of the land set aside for
11 park and recreational purposes equals or exceeds the value
12 of the dedication required under subsection (1); or

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

17 (ii) the fair market value of the land proposed to be
18 subdivided, by virtue of providing long-term protection
19 provided for in subsection (7)(b)(i), is reduced by an
20 amount equal to or exceeding the value of the dedication
21 required under subsection (1); or

22 (c) the fair market value of the land proposed to be
23 subdivided, by virtue of a combination of the provisions of
24 subsections (7)(a) and (7)(b), is reduced by an amount equal
25 to or exceeding the value of the dedication required under

1 subsection (1).

2 **NEW SECTION. Section 15.** Payment for extension of
3 capital facilities. A local government may require a
4 subdivider to pay or guarantee payment for part or all of
5 the costs of extending capital facilities related to public
6 health and safety, including but not limited to public sewer
7 lines, water supply lines, and storm drains to a
8 subdivision. The costs must reasonably reflect the expected
9 impacts directly attributable to the subdivision.

10 **Section 16.** Section 7-16-2324, MCA, is amended to read:

11 "7-16-2324. Sale, lease, or exchange of dedicated park
12 lands. (1) For the purposes of this section and part 25 of
13 chapter 8, lands dedicated to the public use for park or
14 playground purposes under 76-3-606-and-76-3-607 [section 14]
15 or a similar statute or pursuant to any instrument not
16 specifically conveying land to a governmental unit other
17 than a county are considered county lands.

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

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

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

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

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

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

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

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

(4) Any revenue realized by a county from the sale, exchange, or disposal of lands dedicated to public use for park or playground purposes shall must be paid into the park fund and used in the manner prescribed in 76-3-606--and 76-3-607 [section 14] for cash received in lieu of dedication."

Section 17. Section 76-4-102, MCA, is amended to read:

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

(1) "Board" means the board of health and environmental

sciences.

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

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

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

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

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

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

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

(9) "Reviewing authority" means the department or a

1 local department or board of health certified to conduct
2 review under 76-4-104.

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

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

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

16 (13) "Subdivision" means a subdivision as defined in
17 76-3-103 a-division-of-land-or-land-so-divided-which-creates
18 one-or-more-parcels-containing-less-than-20-acres,-exclusive
19 of-public-roadways,-in-order-that-the-title-to-or-possession
20 of--the--parcels--may--be-sold,-rented,-leased,-or-otherwise
21 conveyed-and-includes-any-resubdivision-and-any-condominium
22 or--area,-regardless-of-size,-which-provides-permanent
23 multiple-space-for-recreational-camping-vehicles-or-mobile
24 homes.

25 (14) "Water service line" means a water line that

1 connects a single building or living unit to a public water
2 system or extension of such a system."

3 **Section 18.** Section 76-4-125, MCA, is amended to read:

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

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

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

22 (2) A subdivision excluded--from--the--provisions--of
23 chapter--3--shall must be submitted for review according to
24 the provisions of this part, except that the following
25 divisions, unless--such--exclusions--are--used-to-evade-the

provisions-of-this-part, are not subject to review:

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

(b) divisions a division made for the purpose of acquiring additional land to become part of an approved parcel, provided that no a dwelling or structure requiring water or sewage disposal is not to be erected on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision; and

(c) (b) ~~divisions~~ a division made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule."

Section 19. Section 76-6-203, MCA, is amended to read:

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

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

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

(3) vegetation--removal or destruction of trees,

shrubs, or other vegetation;

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

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

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

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

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

NEW SECTION. Section 20. Repealer. (1) Sections 76-3-104, 76-3-201, 76-3-202, 76-3-203, 76-3-204, 76-3-205, 76-3-206, 76-3-207, 76-3-208, 76-3-209, 76-3-210, 76-3-504, 76-3-505, 76-3-604, 76-3-605, 76-3-606, 76-3-607, 76-3-609, and 76-4-103, MCA, are repealed.

NEW SECTION. Section 21. Codification instruction. [Sections 4, 10, 11, and 13 through 15] are intended to be codified as an integral part of Title 76, chapter 3, and the provisions of Title 76, chapter 3, apply to [sections 4, 10,

1 11, and 13 through 15].

2 NEW SECTION. Section 22. Saving clause. [This act]
3 does not affect rights and duties that matured, penalties
4 that were incurred, or proceedings that were begun before
5 [the effective date of this act].

6 NEW SECTION. Section 23. Severability. If a part of
7 [this act] is invalid, all valid parts that are severable
8 from the invalid part remain in effect. If a part of [this
9 act] is invalid in one or more of its applications, the part
10 remains in effect in all valid applications that are
11 severable from the invalid applications.

12 NEW SECTION. Section 24. Applicability. (1) [Sections
13 2, 17, and 18] apply to all subdivision applications filed
14 after passage and approval of [this act].

15 (2) [Sections 1, 3 through 16, and 19] apply to all
16 subdivision applications filed after September 30, 1993.

17 NEW SECTION. Section 25. Transition. To ensure an
18 efficient transition from existing local government
19 subdivision regulations to local regulations adopted
20 pursuant to [this act], existing local government
21 subdivision regulations remain effective until September 30,
22 1993.

23 NEW SECTION. Section 26. Effective date. [This act] is
24 effective on passage and approval.

-End-