

HOUSE BILL NO. 408

INTRODUCED BY FAGG, GILBERT, SWANSON, DOHERTY, YELLOWTAIL,
WELDON, WEEDING, B. BROWN, WANZENRIED, BRANDEWIE,
HARRINGTON, HIBBARD

IN THE HOUSE

JANUARY 30, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
FEBRUARY 16, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 17, 1993	PRINTING REPORT.
	SECOND READING, DO PASS AS AMENDED.
FEBRUARY 18, 1993	ENGROSSING REPORT.
FEBRUARY 19, 1993	THIRD READING, PASSED. AYES, 76; NOES, 22.
FEBRUARY 22, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 22, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
MARCH 27, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 29, 1993	SECOND READING, CONCURRED IN.
MARCH 30, 1993	THIRD READING, CONCURRED IN. AYES, 38; NOES, 12.
	RETURNED TO HOUSE.

IN THE HOUSE

MARCH 30, 1993	RECEIVED FROM SENATE.
	SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *House* BILL NO. *408*
 2 INTRODUCED BY *Jay Silbert Swanson*
 3 *Yellowstone Wildlife Weeding Bob Brown*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
 5 MONTANA SUBDIVISION AND PLATTING ACT; CHANGING THE
 6 DEFINITION OF SUBDIVISION; REMOVING THE OCCASIONAL SALE
 7 EXEMPTION; REMOVING THE 20-ACRE LIMITATION; CHANGING THE
 8 CRITERIA FOR LOCAL GOVERNMENT SUBDIVISION REVIEW; LIMITING
 9 THE NUMBER OF PUBLIC HEARINGS ON SUBDIVISIONS; AMENDING
 10 SECTIONS 76-3-102, 76-3-103, 76-3-104, 76-3-207, 76-3-605,
 11 AND 76-3-608, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE
 12 AND APPLICABILITY DATES."

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

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

16 "76-3-102. Statement of purpose. It is the purpose of
 17 this chapter to promote the public health, safety, and
 18 general welfare by regulating the subdivision of land; to
 19 prevent overcrowding of land; to lessen congestion in the
 20 streets and highways; to provide for adequate light, air,
 21 water supply, sewage disposal, parks and recreation areas,
 22 ingress and egress, and other public requirements; to
 23 require development in harmony with the natural environment;
 24 ~~to require that whenever necessary, the appropriate approval~~
 25 ~~of subdivisions be contingent upon a written finding of~~

1 public-interest-by-the-governing-body; and to require
 2 uniform monumentation of land subdivisions and transferring
 3 interests in real property by reference to plat or
 4 certificate of survey."

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

6 "76-3-103. Definitions. As used in this chapter, unless
 7 the context or subject matter clearly requires otherwise,
 8 the following words or phrases shall have the following
 9 meanings:

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

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

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

25 (4) "Examining land surveyor" means a registered land

1 surveyor duly appointed by the governing body to review
2 surveys and plats submitted for filing.

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

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

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

17 ~~{8}--"Occasional--sale"--means-one-sale-of-a-division-of~~
18 ~~land-within-any-12-month-period-~~

19 {9}{8} "Planned unit development" means a land
20 development project consisting of residential clusters,
21 industrial parks, shopping centers, or office building
22 parks,--or--any--combination--thereof--which--comprises that
23 comprise a planned mixture of land uses built in a
24 prearranged relationship to each other and having open space
25 and community facilities in common ownership or use.

1 ~~{10}~~{9} "Plat" means a graphical representation of a
2 subdivision showing the division of land into lots, parcels,
3 blocks, streets, alleys, and other divisions and
4 dedications.

5 ~~{11}~~{10} "Preliminary plat" means a neat and scaled
6 drawing of a proposed subdivision showing the layout of
7 streets, alleys, lots, blocks, and other elements of a
8 subdivision which furnish a basis for review by a governing
9 body.

10 ~~{12}~~{11} "Registered land surveyor" means a person
11 licensed in conformance with Title 37, chapter 67, to
12 practice surveying in the state of Montana.

13 ~~{13}~~{12} "Registered professional engineer" means a
14 person licensed in conformance with Title 37, chapter 67, to
15 practice engineering in the state of Montana.

16 ~~{14}~~{13} "Subdivider" means any a person who causes land
17 to be subdivided or who proposes a subdivision of land.

18 ~~{15}~~{14} "Subdivision" means a division of land or land
19 so divided which that creates one or more parcels containing
20 ~~less-than-20-acres~~, exclusive of public roadways, in order
21 that the title to or possession of the parcels may be sold,
22 rented, leased, or otherwise conveyed and ~~shall--include~~
23 includes any resubdivision and ~~shall~~ further include
24 includes any a condominium or area, regardless of its size,
25 which that provides or will provide multiple space for

recreational camping vehicles or mobile homes."

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

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

Section 4. Section 76-3-207, MCA, is amended to read:

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

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

(b) divisions ~~made~~ outside of platted subdivisions for the purpose of a gift or sale to any a member of the landowner's immediate family;

(c) divisions ~~made~~ outside of platted subdivisions by sale or agreement to buy and sell where the parties to the transaction enter a covenant running with the land and

revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes;

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

~~(e)~~(d) for five or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots; and

~~(f)~~(e) divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. ~~Any restrictions-or-requirements~~ A restriction or requirement on the original platted lot or original unplatted parcel ~~continue~~ continues to apply to those areas.

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

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

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

(3) No A division of land may not be made under this section unless the county treasurer has certified that no real property taxes assessed and levied on the land to be divided are not delinquent."

Section 5. Section 76-3-605, MCA, is amended to read:

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

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

(3) Notice of such a hearing ~~shall~~ must be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing. The subdivider, each property owner of record, and each purchaser under contract for deed of property immediately adjoining the land included in the plat shall also be notified of the hearing by registered or certified mail not less than 15 days prior to the date of the hearing.

(4) When a hearing is held by an agent or agency

designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or disapproval of the plat. This recommendation must be submitted to the governing body in writing not later than 10 days after the public hearing.

(5) The governing body or its authorized agent or agency may hold no more than two public hearings on a proposed subdivision."

Section 6. 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 hearing, planning board recommendations, and or 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~~ The governing body shall issue written findings of fact which that weigh the following criteria for-public-interest: in subsection (3), 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 effect on agriculture, local services, the natural environment, wildlife and wildlife habitat, and public health and safety;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements for the location and installation of any planned utilities; and

(d) the provision of access to each parcel within the subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning

the parcel."

NEW SECTION. Section 7. Applicability. (1) [Sections 1 through 5] apply to all subdivision applications filed after passage and approval of [this act].

(2) [Section 6] applies to all subdivision applications filed after September 30, 1993.

NEW SECTION. Section 8. Effective date. [This act] is effective on passage and approval.

-End-

APPROVED BY COMM. ON
NATURAL RESOURCES

HOUSE BILL NO. 408

INTRODUCED BY FAGG, GILBERT, SWANSON, DOHERTY, YELLOWTAIL,
WELDON, WEEDING, B. BROWN, WANZENRIED, BRANDEWIE,
HARRINGTON, HIBBARD

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
MONTANA SUBDIVISION AND PLATTING ACT; CHANGING THE
DEFINITION OF SUBDIVISION; REMOVING THE OCCASIONAL SALE
EXEMPTION; REMOVING THE 20-ACRE LIMITATION; MODIFYING THE
FAMILY SALE EXEMPTION; CHANGING THE CRITERIA FOR LOCAL
GOVERNMENT SUBDIVISION REVIEW; ~~LIMITING-THE-NUMBER-OF-PUBLIC~~
~~HEARINGS---ON---SUBDIVISIONS~~; AMENDING SECTIONS 76-3-102,
76-3-103, 76-3-104, 76-3-207, 76-3-605, AND 76-3-608, 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 purpose of
this chapter 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; to

require development in harmony with the natural environment;
~~to-require-that-when-ever-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
interests in real property by reference to plat or
certificate of survey."

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

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

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

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

(3) "Division of land" means the segregation of one or
more parcels of land from a larger tract held in single or
undivided ownership by transferring or contracting to
transfer title to or possession of a portion of the tract or
properly filing a certificate of survey or subdivision plat

1 establishing the identity of the segregated parcels pursuant
2 to this chapter.

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

6 (5) "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.

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

15 (7) "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 ~~{8}--"Occasional-sale"--means-one-sale-of-a--division--of~~
21 ~~land-within-any-12-month-period-~~

22 {9}{8} "Planned unit development" means a land
23 development project consisting of residential clusters,
24 industrial parks, shopping centers, or office building
25 parks, or any combination thereof which comprises that

1 comprise a planned mixture of land uses built in a
2 prearranged relationship to each other and having open space
3 and community facilities in common ownership or use.

4 {10}{9} "Plat" means a graphical representation of a
5 subdivision showing the division of land into lots, parcels,
6 blocks, streets, alleys, and other divisions and
7 dedications.

8 {11}{10} "Preliminary plat" means a neat and scaled
9 drawing of a proposed subdivision showing the layout of
10 streets, alleys, lots, blocks, and other elements of a
11 subdivision which furnish a basis for review by a governing
12 body.

13 {12}{11} "Registered land surveyor" means a person
14 licensed in conformance with Title 37, chapter 67, to
15 practice surveying in the state of Montana.

16 {13}{12} "Registered professional engineer" means a
17 person licensed in conformance with Title 37, chapter 67, to
18 practice engineering in the state of Montana.

19 {14}{13} "Subdivider" means any a person who causes land
20 to be subdivided or who proposes a subdivision of land.

21 {15}{14} (A) "Subdivision" means a division of land or
22 land so divided which that creates one or more parcels
23 containing less than 20 acres CONTAINING LESS THAN 160 ACRES
24 THAT CANNOT BE DESCRIBED AS A ONE-QUARTER ALIQUOT PART OF A
25 UNITED STATES GOVERNMENT SECTION, 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~~ includes any resubdivision and ~~shall~~ further ~~include~~ includes any a condominium or area, regardless of its size, which that provides or will provide multiple space for recreational camping vehicles or mobile homes.

(B) A LOCAL GOVERNING BODY MAY INCREASE OR REMOVE THE 160-ACRE PROVISION IN SUBSECTION (14)(A) AFTER:

(I) PROVIDING PUBLIC NOTICE PURSUANT TO 7-1-4128 FOR A MUNICIPALITY OR PURSUANT TO 7-1-2121 FOR A COUNTY;

(II) CONDUCTING A PUBLIC HEARING ACCORDING TO THE PROCEDURES IN 7-1-4131; AND

(III) FOLLOWING THE PROCEDURES FOR THE ADOPTION OF ORDINANCES IN 7-5-103."

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

"76-3-104. What constitutes subdivision. A subdivision ~~shall-comprise~~ comprises only those parcels ~~less--than--20~~ acres--which that CONTAINING LESS THAN 160 ACRES THAT CANNOT BE DESCRIBED AS A ONE-QUARTER ALIQUOT PART OF A UNITED STATES GOVERNMENT SECTION WHEN THE PARCELS have been segregated from the original tract~~y-and-the~~. THE subdivision plat thereof-shall must show all such the parcels whether contiguous or not."

Section 4. Section 76-3-207, MCA, is amended to read:

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

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

(b) divisions made outside of platted subdivisions for the purpose of a SINGLE gift or sale IN EACH COUNTY to any a EACH member of the landowner's immediate family;

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

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

~~(e)~~ (d) for five or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots; and

~~{f}{e}~~ divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. Any ~~restrictions-or-requirements~~ A restriction or requirement on the original platted lot or original unplatted parcel ~~continue~~ continues to apply to those areas.

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

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

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

(3) No A division of land may not be made under this section unless the county treasurer has certified that no real property taxes assessed and levied on the land to be divided are not delinquent."

Section 5. ~~Section 76-3-605, MCA, is amended to read:~~

~~"76-3-605. Hearing on preliminary plat. (1) The governing body or its authorized agent or agency shall hold a public hearing on the preliminary plat and shall consider~~

~~all relevant evidence relating to the public health, safety, and welfare, including the environmental assessment, to determine whether the plat should be approved, conditionally approved, or disapproved by the governing body.~~

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

~~(3) Notice of such a hearing shall must be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing. The subdivider, each property owner of record, and each purchaser under contract for deed of property immediately adjoining the land included in the plat shall also be notified of the hearing by registered or certified mail not less than 15 days prior to the date of the hearing.~~

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

~~(5) The governing body or its authorized agent or agency may hold no more than two public hearings on a~~

1 ~~proposed subdivision.~~"

2 **Section 5.** Section 76-3-608, MCA, is amended to read:

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

13 (2) ~~To determine whether the proposed subdivision would~~
14 ~~be in the public interest, the~~ The governing body shall
15 issue written findings of fact which that weigh the
16 following criteria for public interest in subsection (3),
17 as applicable.

- 18 ~~(a) the basis of the need for the subdivision;~~
- 19 ~~(b) expressed public opinion;~~
- 20 ~~(c) effects on agriculture;~~
- 21 ~~(d) effects on local services;~~
- 22 ~~(e) effects on taxation;~~
- 23 ~~(f) effects on the natural environment;~~
- 24 ~~(g) effects on wildlife and wildlife habitat; and~~
- 25 ~~(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 effect on agriculture, local services, the
4 natural environment, wildlife and wildlife habitat, and
5 public health and safety;

6 (b) compliance with:

7 (i) the survey requirements provided for in part 4 of
8 this chapter;

9 (ii) the local subdivision regulations provided for in
10 part 5 of this chapter; and

11 (iii) the local subdivision review procedure provided
12 for in this part;

13 (c) the provision of easements for the location and
14 installation of any planned utilities; and

15 (d) the provision of LEGAL AND PHYSICAL access to each
16 parcel within the subdivision and the required notation of
17 that access on the applicable plat and any instrument of
18 transfer concerning the parcel."

19 NEW SECTION. SECTION 6. COORDINATION INSTRUCTION. IF
20 HOUSE BILL NO. 280 IS PASSED AND APPROVED, THEN [THIS ACT]
21 IS VOID.

22 NEW SECTION. Section 7. Applicability. (1) [Sections 1
23 through 5 4] apply to all subdivision applications filed
24 after passage and approval of [this act].

25 (2) [Section 6 5] applies to all subdivision

1 applications filed after September 30, 1993.

2 NEW SECTION. **Section 8.** Effective date. [This act] is

3 effective on passage and approval.

-End-

HOUSE BILL NO. 408

INTRODUCED BY FAGG, GILBERT, SWANSON, DOHERTY, YELLOWTAIL,
WELDON, WEEDING, B. BROWN, WANZENRIED, BRANDEWIE,
HARRINGTON, HIBBARD

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
MONTANA SUBDIVISION AND PLATTING ACT; CHANGING THE
DEFINITION OF SUBDIVISION; REMOVING THE OCCASIONAL SALE
EXEMPTION; REMOVING THE 20-ACRE LIMITATION; MODIFYING THE
FAMILY SALE EXEMPTION; CHANGING THE CRITERIA FOR LOCAL
GOVERNMENT SUBDIVISION REVIEW; ~~LIMITING-THE-NUMBER-OF-PUBLIC~~
~~HEARINGS---ON---SUBDIVISIONS~~; AMENDING SECTIONS 76-3-102,
76-3-103, 76-3-104, 76-3-207, 76-3-605, AND 76-3-608, 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 purpose of
this chapter 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; 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
interests in real property by reference to plat or
certificate of survey."

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

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

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

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

(3) "Division of land" means the segregation of one or
more parcels of land from a larger tract held in single or
undivided ownership by transferring or contracting to
transfer title to or possession of a portion of the tract or
properly filing a certificate of survey or subdivision plat

1 establishing the identity of the segregated parcels pursuant
2 to this chapter.

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

6 (5) "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.

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

15 (7) "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 ~~(8) "Occasional sale" means one sale of a division of~~
21 ~~land within any 12-month period.~~

22 ~~(9)~~(8) "Planned unit development" means a land
23 development project consisting of residential clusters,
24 industrial parks, shopping centers, or office building
25 ~~park, or any combination thereof which comprises that~~

1 comprise a planned mixture of land uses built in a
2 prearranged relationship to each other and having open space
3 and community facilities in common ownership or use.

4 ~~(10)~~(9) "Plat" means a graphical representation of a
5 subdivision showing the division of land into lots, parcels,
6 blocks, streets, alleys, and other divisions and
7 dedications.

8 ~~(11)~~(10) "Preliminary plat" means a neat and scaled
9 drawing of a proposed subdivision showing the layout of
10 streets, alleys, lots, blocks, and other elements of a
11 subdivision which furnish a basis for review by a governing
12 body.

13 ~~(12)~~(11) "Registered land surveyor" means a person
14 licensed in conformance with Title 37, chapter 67, to
15 practice surveying in the state of Montana.

16 ~~(13)~~(12) "Registered professional engineer" means a
17 person licensed in conformance with Title 37, chapter 67, to
18 practice engineering in the state of Montana.

19 ~~(14)~~(13) "Subdivider" means any a person who causes land
20 to be subdivided or who proposes a subdivision of land.

21 ~~(15)~~(14) ~~(A)~~ "Subdivision" means a division of land or
22 land so divided which that creates one or more parcels
23 containing less than 20 acres CONTAINING LESS THAN 160 ACRES
24 THAT CANNOT BE DESCRIBED AS A ONE-QUARTER ALIQUOT PART OF A
25 UNITED STATES GOVERNMENT SECTION, 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 includes any resubdivision and shall further include includes any a condominium or area, regardless of its size, which that provides or will provide multiple space for recreational camping vehicles or mobile homes.

~~(B)--A LOCAL GOVERNING BODY MAY INCREASE OR REMOVE THE 160-ACRE PROVISION IN SUBSECTION (14)(A) AFTER:~~

~~(i)--PROVIDING PUBLIC NOTICE PURSUANT TO 7-1-4126 FOR A MUNICIPALITY OR PURSUANT TO 7-1-2121 FOR A COUNTY;~~

~~(ii)--CONDUCTING A PUBLIC HEARING ACCORDING TO THE PROCEDURES IN 7-1-4131; AND~~

~~(iii)--FOLLOWING THE PROCEDURES FOR THE ADOPTION OF ORDINANCES IN 7-5-103;~~

(15) "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."

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

"76-3-104. What constitutes subdivision. A subdivision shall--comprise comprises only those parcels less--than--20 acres--which that CONTAINING LESS THAN 160 ACRES THAT CANNOT BE DESCRIBED AS A ONE-QUARTER ALIQUOT PART OF A UNITED

STATES GOVERNMENT SECTION WHEN THE PARCELS have been segregated from the original tract--and--the. THE subdivision plat thereof--shall must show all such the parcels whether contiguous or not."

Section 4. Section 76-3-207, MCA, is amended to read:

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

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

(b) divisions made outside of platted subdivisions for the purpose of a SINGLE gift or sale IN EACH COUNTY to any a EACH member of the landowner's immediate family;

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

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

~~(e)(d)~~ for five or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots; and

~~(f)(e)~~ divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. Any restrictions or requirements A restriction or requirement on the original platted lot or original unplatted parcel ~~continue~~ continues to apply to those areas.

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

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

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

(3) No A division of land may not be made under this section unless the county treasurer has certified that no real property taxes assessed and levied on the land to be

divided are not delinquent."

Section 5. ~~Section 76-3-605, MCA, is amended to read:--~~

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

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

~~(3) Notice of such a hearing shall must be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing. The subdivider, each property owner of record, and each purchaser under contract for deed of property immediately adjoining the land included in the plat shall also be notified of the hearing by registered or certified mail not less than 15 days prior to the date of the hearing.~~

~~(4) When a hearing is held by an agent or agency designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or disapproval of~~

the plat. This recommendation must be submitted to the governing body in writing not later than 10 days after the public hearing.

~~(5) The governing body or its authorized agent or agency may hold no more than two public hearings on a proposed subdivision.~~

Section 5. 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 hearing, planning board recommendations, and or 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~~ The governing body shall issue written findings of fact which that weigh the following criteria for public interest: in subsection (3), 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 effect on agriculture, local services, the natural environment, wildlife and wildlife habitat, and public health and safety;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements for the location and installation of any planned utilities; and

(d) the provision of LEGAL AND PHYSICAL access to each parcel within the subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel."

NEW SECTION. SECTION 6. COORDINATION INSTRUCTION. IF HOUSE BILL NO. 280 IS PASSED AND APPROVED, THEN [THIS ACT]

1 IS VOID.

2 NEW SECTION. Section 7. Applicability. (1) [Sections 1
3 through 5 4] apply to all subdivision applications filed
4 after passage and approval of [this act].

5 (2) [Section 6 5] applies to all subdivision
6 applications filed after September 30, 1993.

7 NEW SECTION. Section 8. Effective date. [This act] is
8 effective on passage and approval.

-End-

HOUSE BILL NO. 408

INTRODUCED BY FAGG, GILBERT, SWANSON, DOHERTY, YELLOWTAIL,
WELDON, WEEDING, B. BROWN, WANZENRIED, BRANDEWIE,
HARRINGTON, HIBBARD

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
MONTANA SUBDIVISION AND PLATTING ACT; CHANGING THE
DEFINITION OF SUBDIVISION; REMOVING THE OCCASIONAL SALE
EXEMPTION; REMOVING THE 20-ACRE LIMITATION; MODIFYING THE
FAMILY SALE EXEMPTION; CHANGING THE CRITERIA FOR LOCAL
GOVERNMENT SUBDIVISION REVIEW; ~~LIMITING THE NUMBER OF PUBLIC~~
~~HEARINGS ON SUBDIVISIONS~~; AMENDING SECTIONS 76-3-102,
76-3-103, 76-3-104, 76-3-207, 76-3-605, AND 76-3-608, 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 purpose of
this chapter 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; 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
interests in real property by reference to plat or
certificate of survey."

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

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

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

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

(3) "Division of land" means the segregation of one or
more parcels of land from a larger tract held in single or
undivided ownership by transferring or contracting to
transfer title to or possession of a portion of the tract or
properly filing a certificate of survey or subdivision plat

1 establishing the identity of the segregated parcels pursuant
2 to this chapter.

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

6 (5) "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.

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

15 (7) "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 ~~{8}--"Occasional sale"--means one sale of a division of~~
21 ~~land within any 12-month period.~~

22 {9}{8} "Planned unit development" means a land
23 development project consisting of residential clusters,
24 industrial parks, shopping centers, or office building
25 parks, or any combination thereof which comprises that

1 comprise a planned mixture of land uses built in a
2 prearranged relationship to each other and having open space
3 and community facilities in common ownership or use.

4 {10}{9} "Plat" means a graphical representation of a
5 subdivision showing the division of land into lots, parcels,
6 blocks, streets, alleys, and other divisions and
7 dedications.

8 {11}{10} "Preliminary plat" means a neat and scaled
9 drawing of a proposed subdivision showing the layout of
10 streets, alleys, lots, blocks, and other elements of a
11 subdivision which furnish a basis for review by a governing
12 body.

13 {12}{11} "Registered land surveyor" means a person
14 licensed in conformance with Title 37, chapter 67, to
15 practice surveying in the state of Montana.

16 {13}{12} "Registered professional engineer" means a
17 person licensed in conformance with Title 37, chapter 67, to
18 practice engineering in the state of Montana.

19 {14}{13} "Subdivider" means any a person who causes land
20 to be subdivided or who proposes a subdivision of land.

21 {15}{14} {A} "Subdivision" means a division of land or
22 land so divided which that creates one or more parcels
23 containing less than 20 acres CONTAINING LESS THAN 160 ACRES
24 THAT CANNOT BE DESCRIBED AS A ONE-QUARTER ALIQUOT PART OF A
25 UNITED STATES GOVERNMENT SECTION, 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~~ includes any resubdivision and ~~shall further include~~ includes any a condominium or area, regardless of its size, which ~~that~~ provides or will provide multiple space for recreational camping vehicles or mobile homes.

~~{B}--A LOCAL GOVERNING BODY MAY INCREASE OR REMOVE THE 160-ACRE PROVISION IN SUBSECTION (14){A} AFTER:~~

~~{i}--PROVIDING--PUBLIC NOTICE PURSUANT TO 7-1-4128 FOR A MUNICIPALITY OR PURSUANT TO 7-1-2121 FOR A COUNTY,~~

~~{ii}--CONDUCTING--A--PUBLIC--HEARING--ACCORDING--TO--THE PROCEDURES IN 7-1-4131, AND~~

~~{iii}--FOLLOWING--THE--PROCEDURES--FOR--THE--ADOPTION--OF ORDINANCES IN 7-5-103;~~

(15) "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."

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

"76-3-104. What constitutes subdivision. A subdivision ~~shall comprise~~ comprises only those parcels ~~less than 20 acres which that~~ CONTAINING LESS THAN 160 ACRES THAT CANNOT BE DESCRIBED AS A ONE-QUARTER ALIQUOT PART OF A UNITED

STATES GOVERNMENT SECTION WHEN THE PARCELS have been segregated from the original tract ~~and the~~. THE subdivision plat thereof shall must show all such the parcels whether contiguous or not."

Section 4. Section 76-3-207, MCA, is amended to read:

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

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

(b) divisions made outside of platted subdivisions for the purpose of a SINGLE gift or sale IN EACH COUNTY to any a EACH member of the landowner's immediate family;

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

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

~~(e)(d)~~ for five or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots; and

~~(f)(e)~~ divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. Any ~~restrictions or requirements~~ A restriction or requirement on the original platted lot or original unplatted parcel ~~continue~~ continues to apply to those areas.

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

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

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

(3) No A division of land may not be made under this section unless the county treasurer has certified that no real property taxes assessed and levied on the land to be

divided are not delinquent."

Section 5. ~~Section 76-3-605, MCA, is amended to read:--~~

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

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

~~(3) Notice of such a hearing shall must be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing. The subdivider, each property owner of record, and each purchaser under contract for deed of property immediately adjoining the land included in the plat shall also be notified of the hearing by registered or certified mail not less than 15 days prior to the date of the hearing.~~

~~(4) When a hearing is held by an agent or agency designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or disapproval of~~

the plat. This recommendation must be submitted to the governing body in writing not later than 10 days after the public hearing.

(5) The governing body or its authorized agent or agency may hold no more than two public hearings on a proposed subdivision.

Section 5. 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 hearing, planning board recommendations, and or 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 The governing body shall issue written findings of fact which that weigh the following criteria for public interest: in subsection (3), 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 effect on agriculture, local services, the natural environment, wildlife and wildlife habitat, and public health and safety;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements for the location and installation of any planned utilities; and

(d) the provision of LEGAL AND PHYSICAL access to each parcel within the subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel."

NEW SECTION. SECTION 6. COORDINATION INSTRUCTION. IF HOUSE BILL NO. 280 IS PASSED AND APPROVED, THEN [THIS ACT]

1 IS VOID.

2 NEW SECTION. Section 7. Applicability. (1) [Sections 1
3 through 5 4] apply to all subdivision applications filed
4 after passage and approval of [this act].

5 (2) [Section 6 5] applies to all subdivision
6 applications filed after September 30, 1993.

7 NEW SECTION. Section 8. Effective date. [This act] is
8 effective on passage and approval.

-End-