

SENATE BILL 343

Introduced by Swift, et al.

2/09	Introduced
2/09	Referred to Natural Resources
2/09	First Reading
2/09	Fiscal Note Requested
2/15	Hearing
2/15	Fiscal Note Received
2/16	Fiscal Note Printed
2/17	Tabled in Committee

1 *Senate* BILL NO. *343*  
 2 INTRODUCED BY *Bill G...*  
 3 *Fonseca* *...* *...*

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE  
 5 MONTANA SUBDIVISION AND PLATTING ACT; ESTABLISHING A RIGHT  
 6 TO SUE LOCAL GOVERNMENTS FOR VIOLATIONS OF THE ACT;  
 7 REDEFINING DIVISIONS OF LAND; ESTABLISHING ADDITIONAL  
 8 REQUIREMENTS FOR INSTRUMENTS OF TRANSFER; MODIFYING LOCAL  
 9 GOVERNMENT SUBDIVISION REVIEW CRITERIA; MODIFYING PARKLAND  
 10 DEDICATION REQUIREMENTS; AMENDING SECTIONS 7-16-2324,  
 11 76-3-102, 76-3-103, 76-3-105, 76-3-201, 76-3-207, 76-3-301,  
 12 76-3-302, 76-3-304, 76-3-401, 76-3-402, 76-3-403, 76-3-404,  
 13 76-3-405, 76-3-501, 76-3-504, 76-3-506, 76-3-507, 76-3-601,  
 14 76-3-603, 76-3-604, 76-3-605, 76-3-608, 76-3-609, 76-3-613,  
 15 AND 76-6-203, MCA; AND REPEALING SECTIONS 76-3-104,  
 16 76-3-505, 76-3-606, AND 76-3-607, MCA."

17  
 18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19 **Section 1.** Section 76-3-102, MCA, is amended to read:  
 20 "76-3-102. **Statement of purpose.** It is the purpose of  
 21 this chapter to promote the public health, safety, and  
 22 general welfare and protect the rights of property owners;  
 23 by--regulating to regulate the subdivision division of land;  
 24 to-prevent-overcrowding-of-land;-to-lessen-congestion-in-the  
 25 streets-and-highways; to provide for adequate light;-air;

1 water supply, sewage disposal, parks and recreation areas,  
 2 ingress-and-egress, legal and physical access, reservation  
 3 of easements for utilities, and other public requirements;  
 4 adopted pursuant to this chapter; to-require-development--in  
 5 harmony--with--the--natural--environment;-to--require--that  
 6 whenever-necessary;-the-appropriate-approval-of-subdivisions  
 7 be--contingent--upon-a-written-finding-of-public-interest-by  
 8 the-governing-body;-and to require uniform monumentation of  
 9 land subdivisions--and-transferring-interests divisions; to  
 10 require that transfer of interest in real property be made  
 11 by reference to plat or certificate of survey; and to  
 12 provide simple, clear, and uniform guidelines for  
 13 subdivision review in a manner that protects the rights of  
 14 property owners."

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

16 "76-3-103. **Definitions.** As used in this chapter, unless  
 17 the context or subject matter clearly requires otherwise,  
 18 the following words or phrases shall have the following  
 19 meanings:

- 20 (1) "Certificate of survey" means a drawing of a field
- 21 survey prepared by a registered professional land surveyor:
- 22 (a) for the purpose of disclosing facts pertaining to
- 23 boundary locations and identifying aspects of the survey for
- 24 reference in an instrument of conveyance; and
- 25 (b) for divisions of land that are not subdivisions



1 under this chapter.

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

8 (3) "Division of land" means the segregation of one or  
9 more parcels of land, subject to the provisions of this  
10 chapter, from a larger tract held in single or undivided  
11 ownership by:

12 (a) transferring or contracting to transfer title to or  
13 possession--of--a--portion-of-the-tract-or properly filing a  
14 certificate of survey or subdivision plat; or

15 (b) filing an instrument of transfer for divisions of  
16 land described as 1/32 or larger aliquot part of a United  
17 States government section or a United States government lot,  
18 establishing the identity of the segregated parcels pursuant  
19 to this chapter.

20 (4) "Dwelling unit" means a residential structure in  
21 which one or more persons reside.

22 ~~(4)~~(5) "Examining land surveyor" means a registered  
23 professional land surveyor duly appointed by the governing  
24 body to review surveys and plats submitted for filing.

25 (6) "Executive proceedings" means public proceedings in

1 which the governing body deliberates without receiving  
2 public comment except when specific questions are directed  
3 by the governing body to the subdivider or other  
4 individuals.

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

11 ~~(6)~~(8) "Governing body" means a board of county  
12 commissioners or the governing authority of any a city or  
13 town organized pursuant to law.

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

19 (9) "Legal access" means an easement or right-of-way,  
20 either public or private, that is established pursuant to  
21 this chapter and that provides, preserves, and protects the  
22 right of ingress and egress to a parcel of land.

23 (10) "Minor subdivision" means the first five parcels  
24 created and recorded by one or more plat filings from a  
25 tract of record as of October 1, 1993.

1        ~~{8}~~{11} "Occasional sale division" means ~~one-sale-of~~ a  
2 single division of-land from a tract of record outside of a  
3 platted subdivision within any a 12-month 24-month period.

4        {12} "Person" means an individual, partnership, firm,  
5 association, municipality, trust, estate, public or private  
6 corporation, subdivision or agency of the state, or other  
7 legal entity.

8        {13} "Physical access" means a road or street, either  
9 public or private, that meets the requirements of this  
10 chapter or the local government standards established  
11 pursuant to 76-3-504(6)(a), as applicable.

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

19        ~~{10}~~{15} "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}~~{16} "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        {17} "Record of survey" means a drawing of a field  
4 survey of existing parcels that may be used for recording  
5 evidence of a survey when parcels are not created.

6        ~~{12}~~{18} "Registered professional land surveyor" means a  
7 person licensed and entitled to perform all duties in  
8 conformance with Title 37, chapter 67, ~~to for the~~ practice  
9 of surveying in the state of Montana.

10        ~~{13}~~{19} "Registered professional engineer" means a  
11 person licensed and entitled to perform all duties in  
12 conformance with Title 37, chapter 67, ~~to for the~~ practice  
13 of engineering in the state of Montana.

14        {20} "Rights of property owners" means the right to use,  
15 enjoy, improve, sell, and convey, in total or in part, real  
16 property.

17        {21} "Special subdivision" means a subdivision that  
18 conforms to:

19        {a} a master plan and a long-range development program  
20 of public work projects adopted pursuant to 76-1-601; and

21        {b} zoning regulations adopted pursuant to Title 75,  
22 chapter 2, part 2 or 3.

23        ~~{14}~~{22} "Subdivider" means any a person who causes land  
24 to be subdivided or who proposes a subdivision of land.

25        ~~{15}~~{23} (a) "Subdivision" means a division of land or

1 land so divided which that creates one or more parcels  
 2 containing less than 20 acres, exclusive of public roadways,  
 3 in order that the title to or possession of the parcels may  
 4 be sold, rented, leased, or otherwise conveyed, ~~and shall~~  
 5 ~~include any resubdivision and shall further include any~~ The  
 6 term includes a condominium or development of an area,  
 7 regardless of its size, which that provides or will provide  
 8 multiple space for recreational camping vehicles or mobile  
 9 homes.

10 (b) The term does not include divisions of land  
 11 specifically exempted pursuant to 76-3-201 and 76-3-207.

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

17 (25) "Utilities" means a public or private firm,  
 18 company, or other entity that provides facilities or  
 19 services to the general public. The term includes but is not  
 20 limited to utilities providing water, sewer, electrical  
 21 power, natural gas, cable television, telephone, and  
 22 irrigation services."

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

24 "76-3-105. Violations. (1) Any A person who violates  
 25 any a provision of this chapter or any a local regulations

1 regulation adopted pursuant thereto to this chapter shall be  
 2 is guilty of a misdemeanor and punishable by a fine of not  
 3 less than \$100 or more than \$500 or by imprisonment in a  
 4 county jail for not more than 3 months or by both fine and  
 5 imprisonment. Each sale, lease, or transfer of each separate  
 6 parcel of land in violation of any a provision of this  
 7 chapter or any a local regulation adopted pursuant thereto  
 8 shall be deemed to this chapter is a separate and distinct  
 9 offense.

10 (2) A person who has filed with the governing body an  
 11 application for subdivision approval under this chapter may  
 12 bring a mandamus action against the governing body or bring  
 13 an action to recover actual damages caused by:

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

18 (b) a regulation adopted by the governing body pursuant  
 19 to this chapter that is arbitrary or capricious, unlawful,  
 20 or in excess of lawful authority or that violates a portion  
 21 of the stated purpose of this act."

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

23 "76-3-201. Exemption for certain divisions of land.  
 24 ~~Unless--the method of disposition is adopted for the purpose~~  
 25 ~~of evading--this--chapter,--the~~ The requirements of this

1 chapter ~~shall~~ do not apply to any a division of land which  
2 that:

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

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

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

13 (4) creates cemetery lots;

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

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

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

18 "76-3-207. Subdivisions Divisions of land exempted from  
19 review but subject to survey, legal access, and physical  
20 access requirements -- exceptions. (1) Except as provided in  
21 subsection (2), ~~unless-the-method-of-disposition-is-adopted~~  
22 ~~for-the-purpose--of--evading--this--chapter~~, the following  
23 divisions of land are not subdivisions under this chapter  
24 but are subject to the requirements for legal and physical  
25 access under 76-3-302 and are subject to the surveying

1 requirements of 76-3-401 for divisions of land not amounting  
2 to subdivisions:

3 (a) ~~divisions made outside-of-platted-subdivisions--for~~  
4 ~~the--purpose--of--relocating--common--boundary-lines-between~~  
5 ~~adjoining-properties; for the purpose of relocating boundary~~  
6 ~~lines between adjoining, contiguous, and abutting~~  
7 ~~properties, whether subdivided or not, with the acknowledged~~  
8 ~~consent of all parties directly affected, as long as~~  
9 ~~additional parcels are not created. Restrictions or~~  
10 ~~requirements of original platted lots, including annexation~~  
11 ~~or unplatted parcels affected by the boundary relocations,~~  
12 ~~continue to apply to the relocated areas, as applicable.~~  
13 Surveys of boundary relocations must be recorded on an  
14 amended plat or subdivision plat or on a certificate of  
15 survey, as applicable. If common boundaries are relocated or  
16 if five or fewer lots within platted subdivisions are  
17 aggregated, the boundary relocation must be recorded on an  
18 amended plat or subdivision plat.

19 (b) divisions made outside of platted subdivisions for  
20 the purpose of a gift or sale to any member of the  
21 landowner's immediate family, which includes the parents,  
22 children, and spouse of the landowner;

23 (c) divisions made outside of platted subdivisions by  
24 sale or agreement to buy and sell ~~where~~ when the parties-to  
25 ~~the-transaction--enter~~ property owner enters a covenant

1 running with the land and revocable only by mutual consent  
 2 of the governing body and the property owner that the  
 3 divided land will be used exclusively for agricultural  
 4 purposes for purposes other than uses requiring sewer and  
 5 water facilities; and

6 (d) a single division of a parcel outside of platted  
 7 subdivisions when the transaction is an occasional ~~sale~~  
 8 division.

9 ~~{e}--for--five--or--fewer--lots--within--a--platted~~  
 10 ~~subdivision;--relocation--of--common--boundaries--and--the~~  
 11 ~~aggregation-of-lots;--and~~

12 ~~{f}--divisions--made--for--the--purpose--of--relocating--a~~  
 13 ~~common-boundary-line-between-a-single-lot-within--a--platted~~  
 14 ~~subdivision--and--adjoining--land--outside--a--platted~~  
 15 ~~subdivision.---Any---restrictions--or--requirements--on--the~~  
 16 ~~original-platted-lot-or-original-unplatted--parcel--continue~~  
 17 ~~to-apply-to-these-areas;~~

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

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

1 (b) any a change in use of the land exempted under  
 2 subsection (1)(c) ~~for--anything--other--than--agricultural~~  
 3 ~~purposes to a purpose requiring sewer or water facilities~~  
 4 subjects the division to the provisions of this chapter.

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

9 {4} Contiguous divisions created under this section may  
 10 be shown on the same certificate of survey or amended plat,  
 11 as applicable."

12 **Section 6.** Section 76-3-301, MCA, is amended to read:

13 "76-3-301. General restriction on transfer of title to  
 14 subdivided divisions of lands. (1) Except as provided in  
 15 76-3-303, every final subdivision plat or certificate of  
 16 survey must be filed for record with the county clerk and  
 17 recorder before title to the ~~subdivided-land~~ divided lands  
 18 can be sold or transferred in any manner. The clerk and  
 19 recorder of the county shall ~~refuse to accept any plat for~~  
 20 ~~record that fails to have the approval of 76-3-611(1)~~ in  
 21 proper--form file and record a plat or certificate of survey  
 22 that shows the approvals and acknowledgments that are  
 23 required by this chapter and established in local government  
 24 subdivision regulations.

25 ~~{2}--The clerk and recorder shall notify the governing~~

1 ~~body--or-its-designated-agent-of-any-land-division-described~~  
2 ~~in-76-3-287(1)-~~

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

9 **Section 7.** Section 76-3-302, MCA, is amended to read:

10 "76-3-302. Restrictions on recording instruments  
11 relating to land subject to surveying requirements. (1) (a)  
12 Except as provided in subsection (2), the county clerk and  
13 recorder of any a county may not record any instrument which  
14 that purports to transfer title to or possession of a parcel  
15 or tract of land which that is ~~required-to--be--surveyed--by~~  
16 subject to the provisions of this chapter:

17 (i) unless the required certificate of survey or  
18 subdivision plat has been filed with the clerk and recorder  
19 and the instrument of transfer describes the parcel or tract  
20 by reference to the filed certificate or plat;

21 (ii) after October 1, 1993, unless the instrument of  
22 transfer contains or is accompanied by an acknowledged  
23 statement by the grantor or references another's  
24 acknowledged statement that:

25 (A) for parcels created prior to October 1, 1993,

1 addresses the presence or absence of legal and physical  
2 access to the parcels; or

3 (B) for parcels created after October 1, 1993,  
4 certifies that the parcels have legal and physical access.

5 (iii) unless the county treasurer has certified that  
6 real property taxes assessed and levied on lands subject to  
7 the transfer are not delinquent.

8 (b) The acknowledged statement provided for in  
9 subsection (1)(a)(i) must be on the face of the certificate  
10 of survey or subdivision plat or must be contained in the  
11 instrument of transfer.

12 (2) Subsection (1) does not apply when the parcel or  
13 tract to be transferred was created before July 1, 1973, and  
14 the instrument of transfer for the parcel or tract includes  
15 a reference to a previously recorded instrument of transfer  
16 or is accompanied by documents which, if recorded, would  
17 otherwise satisfy the requirements of this subsection. The  
18 reference or document must demonstrate that the parcel or  
19 tract existed before July 1, 1973.

20 (3) The reference or documents required in subsection  
21 (2) do not constitute a legal description of the property  
22 and may not be substituted for a legal description of the  
23 property."

24 **Section 8.** Section 76-3-304, MCA, is amended to read:

25 "76-3-304. Effect of recording complying plat or



1 certificate of survey. The recording of any a plat or  
 2 certificate of survey made in compliance with the provisions  
 3 of this chapter ~~shall--serve-to-establish~~ establishes the  
 4 identity of all lands shown on and being that are a part of  
 5 such the plat or certificate. ~~Where~~ When lands are conveyed  
 6 by reference to a plat or certificate, the plat or the  
 7 certificate itself or any a copy of the plat or certificate  
 8 properly certified by the county clerk and recorder as being  
 9 a true copy thereof ~~shall-be--regarded--as~~ is incorporated  
 10 into the instrument of conveyance and ~~shall-be-received-in~~  
 11 is evidence in all courts of this state."

12 **Section 9.** Section 76-3-401, MCA, is amended to read:

13 "76-3-401. Survey requirements for lands other than  
 14 subdivisions. All divisions of land for sale other than a  
 15 subdivision after July 1, 1974, into parcels which cannot be  
 16 described as 1/32 or larger aliquot parts of a United States  
 17 government section or a United States government lot must be  
 18 surveyed by or under the supervision of a registered  
 19 professional land surveyor."

20 **Section 10.** Section 76-3-402, MCA, is amended to read:

21 "76-3-402. Survey and platting requirements for  
 22 subdivided lands. (1) Every subdivision of land after June  
 23 30, 1973, ~~shall~~ must be surveyed and platted in conformance  
 24 with this chapter by or under the supervision of a  
 25 registered professional land surveyor.

1 (2) Subdivision plats and certificates of survey shall  
 2 must be prepared and filed in accordance with this chapter  
 3 and regulations adopted pursuant thereto to this chapter.

4 (3) All division of sections into aliquot parts and  
 5 retracement of lines must conform to applicable United  
 6 States bureau of land management manuals of surveying  
 7 instructions and specific surveying instructions, ~~and all~~  
 8 ~~public-land-survey-corners-shall~~ A corner defined by an  
 9 official United States government plat or survey and used in  
 10 a survey must be filed in accordance with the Corner  
 11 Recordation Act of Montana (Title 70, chapter 22, part 1).

12 (4) Engineering plans, specifications, and reports  
 13 required in connection with public improvements and other  
 14 elements of the subdivision required by the governing body  
 15 ~~shall~~ must be prepared and filed by a registered engineer or  
 16 a registered professional land surveyor as their respective  
 17 licensing laws allow in accordance with this chapter and  
 18 regulations adopted pursuant thereto to this chapter.

19 (5) A subdivision plat, certificate of survey, or  
 20 instrument of transfer that creates a parcel of land must:

21 (a) bear the acknowledged certification of the  
 22 landowner as to the purpose of the survey; and

23 (b) reserve, describe, grant, or dedicate all public or  
 24 private easements or rights-of-way that are a matter of  
 25 public record for legal and physical access and utility

1 access as applicable."

2 **Section 11.** Section 76-3-403, MCA, is amended to read:

3 **"76-3-403. Monumentation and standards.** (1) The  
4 department of commerce shall, in conformance with the  
5 Montana Administrative Procedure Act, prescribe uniform  
6 standards for monumentation and for the form, accuracy, and  
7 descriptive content of subdivision plats, certificates of  
8 survey, and records of survey.

9 (2) It ~~shall be~~ is the responsibility of the governing  
10 body to require the replacement of all monuments removed in  
11 the course of construction.

12 (3) A person whose activities may disturb or destroy a  
13 monument or its accessories shall have a professional land  
14 surveyor file a corner recordation before the activities  
15 commence.

16 (4) The person whose activities disturb or destroy a  
17 monument or its accessories shall:

- 18 (a) restore or replace the monument or its accessories;  
19 and  
20 (b) file a new corner recordation."

21 **Section 12.** Section 76-3-404, MCA, is amended to read:

22 **"76-3-404. Certificate of survey, subdivision plat,**  
23 **instrument of transfer, and record of survey.** (1) Within 180  
24 days of the completion of a survey, the registered  
25 professional land surveyor responsible for the survey,

1 whether he the land surveyor is privately or publicly  
2 employed, shall prepare and submit for filing a certificate  
3 of survey or record of survey, as appropriate, in the county  
4 in which the survey was made if the survey:

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

8 (b) reveals a material discrepancy in such map;

9 (c) discloses evidence to suggest alternate locations  
10 of lines or reference points;

11 (d) establishes one or more lines not shown on a  
12 recorded map, the positions of which are not ascertainable  
13 from an inspection of such the map without trigonometric  
14 calculations; or

15 (e) retraces the boundary of a tract of record when new  
16 monuments are set.

17 (2) A certificate of survey ~~will~~ is not be required for  
18 any a survey which that is made by the United States bureau  
19 of land management, or which that is preliminary, or which  
20 that will become part of a subdivision plat being prepared  
21 for recording under the provisions of this chapter.

22 (3) Certificates of survey ~~shall~~ must be legibly drawn,  
23 printed, or reproduced by a process guaranteeing a permanent  
24 record and ~~shall~~ must conform to monumentation and surveying  
25 requirements promulgated under this chapter.

1 (4) When a certificate of survey, subdivision plat, or  
 2 instrument of transfer includes proposed private roads, the  
 3 certificate of survey, subdivision plat, or instrument of  
 4 transfer must include the following statement signed by the  
 5 landowner: "The private roads providing physical access to  
 6 the parcels may not meet local government standards for  
 7 public roads. The governing body is released from liability  
 8 from the nonstandard roads and is not responsible for  
 9 maintenance of the private roads unless the roads are  
 10 constructed to local government standards, dedicated to the  
 11 public, and accepted by the governing body. The private  
 12 roads may not be suitable for year-round access or use by  
 13 public services."

14 (5) (a) A record of survey may not be used to describe  
 15 a division of land but may be filed with the clerk and  
 16 recorder to show information on corners, lines, or other  
 17 evidence not otherwise specified in this chapter.

18 (b) A record of survey must be 8 1/2 inches by 14  
 19 inches and must bear the signature and seal of the surveyor  
 20 in charge of the survey.

21 (c) A record of survey must specify:

22 (i) the lot, block, and subdivision;

23 (ii) the parcel number and certificate of survey;

24 (iii) the deed exhibit book and page; or

25 (iv) section, township, and range."

1 **Section 13.** Section 76-3-405, MCA, is amended to read:

2 **"76-3-405. Administration of oaths by registered land**  
 3 **surveyor.** (1) Every registered professional land surveyor  
 4 may administer and certify oaths when:

5 (a) it becomes necessary to take testimony for the  
 6 identification of old corners or reestablishment of lost or  
 7 obliterated corners;

8 (b) a corner or monument is found in a deteriorating  
 9 condition and it is desirable that evidence concerning it be  
 10 perpetuated;

11 (c) the importance of the survey makes it desirable to  
 12 administer an oath to his the surveyor's assistants for the  
 13 faithful performance of their duty.

14 (2) A record of oaths shall must be preserved as part  
 15 of the field notes of the survey and noted on the  
 16 certificate of survey filed under 76-3-404 or noted on a  
 17 corner record filed under 70-22-104, as applicable."

18 **Section 14.** Section 76-3-501, MCA, is amended to read:

19 **"76-3-501. Local subdivision regulations.** (1) Before  
 20 July 1, 1974, the governing body of every county, city, and  
 21 town shall adopt and provide for the enforcement and  
 22 administration of subdivision regulations reasonably  
 23 providing for the orderly development of their  
 24 jurisdictional areas; for the coordination of roads within  
 25 subdivided land with other roads, both existing and planned;

1 for the dedication of land for roadways and for public  
 2 utility easements; for the improvement of roads; for the  
 3 provision of adequate open spaces for ~~travel; light; air;~~  
 4 ~~and recreation; and~~ for the provision of adequate  
 5 ~~transportation; water, drainage, and sanitary facilities;~~  
 6 ~~for the avoidance or minimization of congestion; and for the~~  
 7 ~~avoidance of subdivision which would involve unnecessary~~  
 8 ~~environmental degradation and the avoidance of danger of~~  
 9 ~~injury to health, safety, or welfare by reason of natural~~  
 10 ~~hazard or the lack of water, drainage, access,~~  
 11 ~~transportation, or other public services or would~~  
 12 ~~necessitate an excessive expenditure of public funds for the~~  
 13 ~~supply of such services. The subdivision regulations must~~  
 14 protect the rights of property owners.

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

21 **Section 15.** Section 76-3-504, MCA, is amended to read:

22 "76-3-504. Minimum requirements for subdivision  
 23 regulations. The subdivision regulations adopted under this  
 24 chapter shall, at a minimum must:

25 (1) if applicable, require the subdivider to submit to

1 the governing body an environmental assessment as prescribed  
 2 in 76-3-603;

3 (2) establish procedures consistent with this chapter  
 4 for the submission and review of subdivision plats,  
 5 including expedited review procedures for minor and special  
 6 subdivisions;

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

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

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

17 (5) ~~prohibit subdivisions provide that sites~~ for  
 18 building purposes for all parcels are in areas located  
 19 within outside of the floodway of a flood of 100-year  
 20 frequency as defined by Title 76, chapter 5, or determined  
 21 to be subject to flooding by the governing body;

22 (6) prescribe standards for:

23 (a) the design and arrangement of lots, streets, and  
 24 public roads; including specific standards for  
 25 recreational, rural, suburban, and urban public roads. These

1 standards may not exceed the expected vehicular use directly  
 2 attributable to the proposed subdivision. Variances from  
 3 road standards must be granted for subdivisions requiring  
 4 minimal vehicular use.

5 (i) Private roads that conform to the provisions of  
 6 76-3-404(4) are not subject to the local government  
 7 standards established pursuant to this section.

8 (ii) The county is responsible for the maintenance of  
 9 roads that:

10 (A) meet the local government standards established  
 11 pursuant to this section; and

12 (B) have been dedicated to the public.

13 (b) grading and drainage;

14 (c) water supply and sewage and solid waste disposal  
 15 which, at a minimum, meet the regulations adopted by the  
 16 department of health and environmental sciences under  
 17 76-4-104;

18 (d) the location and installation of utilities; and

19 (e) financial or other positive incentives for  
 20 developments that accommodate public values;

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

23 (8) provide for the review of preliminary plats by  
 24 affected public utilities and those agencies of local,  
 25 state, and federal government ~~having-a-substantial-interest~~

1 in affected by a proposed subdivision. The recommendations  
 2 of the utility or agency review may not exceed the  
 3 requirements specified in this chapter or the regulations  
 4 adopted pursuant to this chapter. such The utility or agency  
 5 review may not delay the review by the governing body or its  
 6 designated agent or delay the governing body's action on the  
 7 plat beyond the time limits specified in this chapter, and  
 8 the failure of any a utility or an agency to complete a  
 9 review of a plat may not be a basis for rejection of the  
 10 plat by the governing body."

11 **Section 16.** Section 76-3-506, MCA, is amended to read:

12 "76-3-506. Provision for granting variances.  
 13 Subdivision regulations may must authorize the governing  
 14 body to grant variances from the regulations when strict  
 15 compliance will result in undue hardship and when it is not  
 16 essential to the public welfare. Any A variance granted  
 17 pursuant to this section must be based on specific variance  
 18 criteria contained in the subdivision regulations."

19 **Section 17.** Section 76-3-507, MCA, is amended to read:

20 "76-3-507. Provision for bonding-----requirements  
 21 compliance security to insure construction of public  
 22 improvements. (1) Local regulations may provide that, in  
 23 lieu of the completion of the construction of any public  
 24 improvements prior to the approval of a final plat, the  
 25 governing body shall require a bond-or-other-reasonable

1 compliance security, in an amount and with surety and  
 2 conditions satisfactory to it, providing for and securing  
 3 the construction and installation of such the improvements  
 4 within a period specified by the governing body and  
 5 expressed in the bonds or other security. The governing body  
 6 shall reduce the security requirements commensurate with the  
 7 completion of improvements.

8 (2) In lieu of requiring a compliance security for the  
 9 construction or installation of all the required public  
 10 improvements under subsection (1), the governing body may  
 11 approve an incremental payment or guaranty plan. The  
 12 improvements in a prior increment must be completed or the  
 13 payment or guaranty of payment for the costs of the  
 14 improvements incurred in a prior increment must be satisfied  
 15 before development of future increments.

16 (3) The public improvements or the amount of the  
 17 compliance security required under this section may not  
 18 exceed the expected impacts directly attributable to the  
 19 proposed subdivision.

20 (4) Compliance security may be made in the form of but  
 21 not limited to private or public escrow, letters of credit,  
 22 liens, mortgages, trust indentures on property, or  
 23 performance or property bonds. The creation of a special  
 24 improvement district or rural improvement district may be  
 25 adequate for purposes of subsection (1)."

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

2 **\*76-3-601. Submission of preliminary plat for review.**

3 (1) Except where a plat is eligible for summary approval,  
 4 the subdivider shall present to the governing body or the  
 5 agent or agency designated thereby by the governing body the  
 6 preliminary plat of the proposed subdivision for local  
 7 review. The preliminary plat ~~shall~~ must show all pertinent  
 8 features of the proposed subdivision and all proposed  
 9 improvements.

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

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

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

1 or town and the county governing bodies.

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

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

13 **Section 19.** Section 76-3-603, MCA, is amended to read:

14 "76-3-603. Contents of environmental assessment. Where  
15 required, the environmental assessment ~~shall~~ must accompany  
16 the preliminary plat and ~~shall~~ must include:

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

22 (2) maps and tables showing soil types in ~~the several~~  
23 ~~parts of~~ the proposed subdivision and their suitability for  
24 any the proposed developments ~~in those several parts; and~~

25 ~~{3} a community impact report containing a statement of~~

1 ~~anticipated needs of the proposed subdivision for local~~  
2 ~~services, including education and busing, roads and~~  
3 ~~maintenance, water, sewage, and solid waste facilities, and~~  
4 ~~fire and police protection;~~

5 ~~{4}~~ (3) such additional relevant and reasonable  
6 information, authorized by this chapter, as that may be  
7 required by the governing body."

8 **Section 20.** Section 76-3-604, MCA, is amended to read:

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

15 (2) A subdivider proposing a subdivision reviewed under  
16 this section shall confer first with the governing body or  
17 its designated agent or agency in a pre-application  
18 conference to discuss the application, the requirements  
19 provided in this chapter, and local government regulations  
20 adopted pursuant to this chapter. At the conference, the  
21 subdivider shall submit a sketch of the proposed subdivision  
22 that outlines the general aspects and concepts of the  
23 proposed development. The governing body or its designated  
24 agent or agency shall refer the subdivider to this chapter  
25 and local regulations adopted pursuant to this chapter and

1 shall identify the items of significance that may affect the  
2 subdivision review.

3 ~~†2†~~(3) The governing body shall approve, conditionally  
4 approve, or reject the preliminary plat within 60 days of  
5 its presentation--unless--the--subdivider--consents--to--an  
6 extension-of-the-review-period submittal. The subdivider and  
7 the governing body may agree to extend the review time  
8 period. Failure by the local governing body to act on a  
9 complete subdivision application is not a basis for  
10 subdivision denial. A subdivision application that meets the  
11 provisions of this chapter is approved if the governing body  
12 does not take action within the review time period  
13 established by this chapter.

14 (4) The governing body shall make its decision to  
15 approve, conditionally approve, or deny the subdivision  
16 application during executive proceedings.

17 ~~†3†~~(5) If the governing body rejects or conditionally  
18 approves the preliminary plat, it shall forward one copy of  
19 the plat to the subdivider accompanied by a letter over the  
20 appropriate signature stating the reason for rejection or  
21 enumerating the conditions which must be met to assure  
22 approval of the final plat."

23 **Section 21.** Section 76-3-605, MCA, is amended to read:

24 "76-3-605. Hearing on preliminary plat. (1) The  
25 governing body or its authorized agent or agency shall hold

1 a public hearing on the preliminary plat and shall consider  
2 all relevant evidence relating to the public health, safety,  
3 and welfare, including the environmental assessment, to  
4 determine whether the plat should be approved, conditionally  
5 approved, or disapproved by the governing body.

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

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

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



1       (5) For hearings under this section, irrelevant,  
 2 immaterial, or unduly repetitious evidence or comments must  
 3 be excluded from consideration."

4       **NEW SECTION. Section 22. Park dedication requirement.**

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

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

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

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

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

19       (2) When a subdivision is located totally within an  
 20 area for which density requirements have been adopted  
 21 pursuant to a master plan under Title 76, chapter 1, or  
 22 pursuant to zoning regulations under Title 76, chapter 2,  
 23 the governing body may establish park dedication  
 24 requirements based on the community need for parks and the  
 25 development densities identified in the plans or

1 regulations. Park dedication requirements established under  
 2 this subsection are in lieu of those provided in subsection  
 3 (1) and may not exceed 0.03 acres per dwelling unit.

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

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

7       (b) land proposed for subdivision into parcels that are  
 8 all nonresidential;

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

12       (d) a subdivision in which only one additional parcel  
 13 is created;

14       (e) a minor subdivision; or

15       (f) a subdivision proposed in a jurisdiction that has  
 16 disposed of parkland acquired under this section.

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

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

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

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

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

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

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

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

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

25 (b) (i) the preliminary plat provides long-term

1 protection of critical wildlife habitat; cultural,  
 2 historical, or natural resources; agricultural interests; or  
 3 aesthetic values; and

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

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

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

15 "76-3-608. Criteria for local government review. (1)  
 16 The basis for the governing body's decision to approve,  
 17 conditionally approve, or disapprove a subdivision ~~shall be~~  
 18 is whether the preliminary plat, applicable environmental  
 19 assessment, public informational hearing, planning board  
 20 recommendations, and or any additional information,  
 21 demonstrate demonstrates that development of the subdivision  
 22 ~~would--be--in--the-public-interest--The-governing-body-shall~~  
 23 ~~disapprove-any-subdivision-which-it-finds-not-to-be--in--the~~  
 24 ~~public-interest~~ meets the requirements of this chapter.

25 (2) ~~To-determine-whether-the-proposed-subdivision-would~~

1 ~~be--in--the--public--interest;~~ the Except as provided in  
 2 subsection (6), the governing body shall issue written  
 3 findings of fact which that weigh the following criteria for  
 4 public-interest: in subsections (3) and (4), as applicable.

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

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

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

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

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

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

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

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

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

15 (a) The subdivision's effect on agricultural or  
 16 agricultural water-user practices must be reviewed.

17 (b) The subdivision's effect on local services must be  
 18 reviewed.

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

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

24 (e) The subdivision plat or an instrument of transfer  
 25 must contain the statements regarding legal and physical

1 access required under 76-3-302.

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

4 (g) Except as provided in subsection (3)(h), the  
 5 subdivision must be evaluated to determine if lots may be  
 6 affected by the following hazards:

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

10 (ii) unsuitable soils; or

11 (iii) drainage problems.

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

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

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

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

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

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

1 (5) (a) In reviewing subdivisions, the governing body  
 2 shall use information from the environmental assessment, if  
 3 required, and may solicit other site-specific information  
 4 from the subdivider, agencies, and other appropriate  
 5 sources. Efforts by the governing body to gather additional  
 6 information do not constitute grounds for extending the  
 7 deadlines for the subdivision review process provided for in  
 8 76-3-604 and 76-3-609 unless an extension is agreed to by  
 9 the subdivider.

10 (b) In reviewing a subdivision under this section, a  
 11 governing body must be guided by the following standards:

12 (i) mitigation measures imposed must not unreasonably  
 13 restrict a landowner's ability to develop land; and

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

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

22 (b) In order for a master plan to serve as the basis  
 23 for the exemption provided by this subsection (6), the plan  
 24 must, at a minimum, contain housing, transportation, and  
 25 land-use elements and a discussion of physical constraints

1 on development that exist within the area encompassed by the  
 2 plan."

3 **Section 24.** Section 76-3-609, MCA, is amended to read:

4 "76-3-609. Review procedure for minor subdivisions.  
 5 ~~Subdivisions--containing--five-or-fewer-parcels-where-proper~~  
 6 ~~access-to-all-lots-is-provided-and-in-which-no-land-is-to-be~~  
 7 ~~dedicated-to-the--public--for--parks--or--playgrounds~~ Minor  
 8 subdivisions are to be reviewed as follows:

9 (1) The governing body must approve, conditionally  
 10 approve, or disapprove the first such minor subdivision from  
 11 a tract of record within 35 days of the submission of an  
 12 application for minor subdivision approval thereof. The  
 13 subdivider and the governing body may agree to extend the  
 14 review time period. Failure by the local governing body to  
 15 act on a complete subdivision application is not a basis for  
 16 subdivision denial. A subdivision application that meets the  
 17 provisions of this chapter is approved if the governing body  
 18 does not take action within the review time period  
 19 established by this chapter.

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

24 (3) The requirements for holding a public hearing, and  
 25 preparing an environmental assessment, and dedication of

1 parkland or cash-in-lieu payment shall do not apply to the  
 2 first-such-subdivision-created-from-a-tract--of--record to  
 3 minor subdivisions.

4 (4) Subsequent After 5 parcels have been reviewed and  
 5 approved through the summary review process, subsequent  
 6 subdivisions from a the same tract of record shall must be  
 7 reviewed under 76-3-505 76-3-504 and regulations adopted  
 8 pursuant to that section."

9 **Section 25.** Section 76-3-613, MCA, is amended to read:

10 "76-3-613. Index of plats, certificates of survey, and  
 11 records of survey to be kept by county clerk and recorder.

12 (1) The county clerk and recorder shall maintain an index of  
 13 all recorded subdivision plats, and certificates of survey,  
 14 and records of surveys.

15 (2) This index shall must list plats, and certificates  
 16 of survey, and records of surveys by the quarter section,  
 17 section, township, and range in which the platted or  
 18 surveyed land lies and shall must list the recording or  
 19 filing numbers of all plats depicting lands lying within  
 20 each quarter section. Each quarter section list shall must  
 21 be definitive to the exclusion of all other quarter  
 22 sections. The index shall must also list the names of all  
 23 subdivision plats in alphabetical order and the place where  
 24 filed."

25 **Section 26.** Section 76-6-203, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

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

3 **Section 27.** Section 7-16-2324, MCA, is amended to read:

4 "7-16-2324. Sale, lease, or exchange of dedicated park  
5 lands parkland. (1) For the purposes of this section and  
6 part 25 of chapter 8, lands dedicated to the public use for  
7 park or playground purposes under ~~76-3-606--and--76-3-607~~  
8 [section 22] or a similar statute or pursuant to any  
9 instrument not specifically conveying land to a governmental  
10 unit other than a county are considered county lands.

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

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

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

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

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

24 (d) publish notice as provided in 7-1-2121 of intention  
25 to sell, lease, or dispose of ~~such--lands~~ the parkland or

1 playground land, giving the people of the county opportunity  
2 to be heard regarding such the action;

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

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

8 (4) Any revenue realized by a county from the sale,  
9 exchange, or disposal of lands dedicated to public use for  
10 park or playground purposes ~~shall~~ must be paid into the park  
11 fund and used in the manner prescribed in ~~76-3-606--and~~  
12 ~~76-3-607~~ [section 22] for cash received in lieu of  
13 dedication."

14 NEW SECTION. **Section 28.** Repealer. Sections 76-3-104,  
15 76-3-505, 76-3-606, and 76-3-607, MCA, are repealed.

16 NEW SECTION. **Section 29.** Codification instruction.  
17 [Section 22] is intended to be codified as an integral part  
18 of Title 76, chapter 3, part 6, and the provisions of Title  
19 76, chapter 3, part 6, apply to [section 22].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0343, as introduced.

**DESCRIPTION OF PROPOSED LEGISLATION:** An act generally revising the Montana Subdivision Platting Act; establishing a right to sue local governments for violations of the act; redefining divisions of land; establishing additional requirements for instruments of transfer; modifying local government subdivision review criteria; and modifying parkland dedication requirements.

**ASSUMPTIONS:**

1. The proposed law substantially changes existing procedures for reviewing subdivisions and dealing with exempt divisions of land. Thirty sections of the law have been changed. SB0343 modifies land surveying procedures for exempt divisions of land.
2. Due to these substantial changes, the Department of Commerce (DOC) 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 administrative rules.
3. Costs for implementing SB0343 are based on the costs incurred by DOC to implement the substantial revisions to the subdivision law in 1973.
4. There is no impact on the Department of Health & Environmental Sciences subdivision review and approval function.

**FISCAL IMPACT:**

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<b>Commerce, CTAP:</b>						
<b>Expenditures:</b>						
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
<b>Net General Fund Impact:</b>	174,651	218,359	43,708	174,806	182,034	7,228

**EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:** Passage 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. SB0343 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 clerk and recorders will have to substantially change their current procedures. To develop and implement local regulations to comply with SB0343, local governments may have to retain additional local staff specialists. The state wide quantification of these local costs for preparing and implementing these regulations and procedures is not available.

(Continued)

*David Lewis* 2-13-93  
 DAVID LEWIS, BUDGET DIRECTOR DATE  
 Office of Budget and Program Planning

*Bernie C. Swift* 2/16/93  
 BERNIE SWIFT, PRIMARY SPONSOR DATE

Fiscal Note for SB0343, as introduced  
 SB343

TECHNICAL NOTES:

1. Constitutional concerns. (Page 3, line 25, through page 4, line 4: defining "executive proceedings"; page 29, lines 14 through 16: describing subdivision approval process; page 38, line 24 through page 39, line 3: describing approval process for minor subdivisions during "executive proceedings" in which the governing body may not accept any public comment except answers to "specific questions" posed by the governing body). Because under this bill a public hearing may never be held on a proposed minor subdivision, this exclusion of public comment at the time a decision is made would appear to violate the public's constitutional right to participate in the governmental decision making process (Article II, Section 9, Montana Constitution; sections 2-3-101 through 2-3-114, MCA).
2. Notice requirement. (Page 22, lines 14 through 16.) This provision requires that local subdivision regulations contain procedures "based on the minimum requirements as provided for in 7-1-4127, MCA, for providing public notice of subdivision applications and hearings." Although section 7-1-4127, MCA, establishes circulation and frequency of publication standards a local newspaper must meet before a municipality can publish official notices in it, the statute does not address the content, frequency, or timing of notice. These matters are addressed by section 7-1-4128, MCA.
3. Definition of "informational hearing." (Page 34, line 19.) In modifying the criteria according to which the governing body is to review a subdivision proposal, SB0343 deletes the modifier "public" to describe the hearing held on the proposal and substitutes the word "informational." The distinction between a public and an informational hearing is unclear, and the bill does not define the term "informational."
4. Unclear language regarding relocation of boundaries. (Page 10, lines 15 through 18.) In modifying the Subdivision and Platting Act exemption from subdivision review for the relocation of certain common boundaries SB0343 states: "If common boundaries are relocated or if five or fewer lots within platted subdivisions are aggregated, the boundary relocation must be recorded on an amended plat or subdivision plat." It is unclear whether under this language the "five or fewer lot" limitation applies to the relocation of boundaries between platted lots as well as to the aggregation of the lots.
5. Conflict with regard to governing body's obligation to maintain private roads. (Page 19, lines 5 through 13; page 23 lines 8 through 12.) The statement which new subsection 76-3-404(4), MCA, would require to be included on a certificate of survey, subdivision plat, or instrument of conveyance specifies that the governing body is not responsible for maintenance of private roads unless the roads are: 1) constructed to local government standards, 2) dedicated to the public, and 3) accepted by the governing body. However, at page 23, lines 8 through 12, SB0343 specifies that a county is responsible for maintaining private roads that: 1) meet local government standards, and 2) have been dedicated to the public regardless of whether the governing body has accepted that dedication.

SB 343