

1 House BILL NO. 473  
 2 INTRODUCED BY Knox Stovall ORR Barnett Row  
 3 Truitt McEwen FUCHS Feland Taylor Foster

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LOCAL SUBDIVISION LAWS; MODIFYING  
 5 THE REQUIREMENTS FOR AN ENVIRONMENTAL ASSESSMENT; MODIFYING BONDING REQUIREMENTS  
 6 FOR PUBLIC IMPROVEMENTS; MODIFYING PARK DEDICATION REQUIREMENTS; ESTABLISHING  
 7 PAYMENT CRITERIA FOR THE EXTENSION OF CAPITAL FACILITIES; ESTABLISHING MITIGATION  
 8 GUIDELINES; PROVIDING FOR SUITS AGAINST LOCAL GOVERNMENTS; AMENDING SECTIONS  
 9 7-16-2324, 76-3-102, 76-3-207, 76-3-507, 76-3-603, 76-3-608, AND 76-3-609, MCA; AND REPEALING  
 10 SECTIONS 76-3-606 AND 76-3-607, MCA."

11  
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13  
 14 **Section 1.** Section 7-16-2324, MCA, is amended to read:

15 **"7-16-2324. Sale, lease, or exchange of dedicated park lands.** (1) For the purposes of ~~this section~~  
 16 ~~and part 25 of~~ chapter 8, part 25, and this section, lands dedicated to the public use for park or playground  
 17 purposes under ~~76-3-606 and 76-3-607~~ [section 9] or a similar statute or pursuant to any instrument not  
 18 specifically conveying land to a governmental unit other than a county are considered county lands.

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

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

- 23 (a) compile an inventory of all public parks and playgrounds within the county;
- 24 (b) prepare a comprehensive plan for the provision of outdoor recreation and open space within  
 25 the county;
- 26 (c) determine that the proposed sale, lease, or exchange furthers or is consistent with the county's  
 27 outdoor recreation and open space comprehensive plan;
- 28 (d) publish notice as provided in 7-1-2121 of intention to sell, lease, or dispose of ~~such~~ the park  
 29 or playground lands, giving the people of the county opportunity to be heard regarding ~~such~~ the action;
- 30 (e) if the land is within an incorporated city or town, secure the approval of the governing body

1 ~~thereof~~ for the action; and

2 (f) comply with any other applicable requirements under ~~part 26~~ of chapter 8, part 25.

3 (4) Any revenue realized by a county from the sale, exchange, or disposal of lands dedicated to  
4 public use for park or playground purposes ~~shall~~ must be paid into the park fund and used in the manner  
5 prescribed in ~~76-3-606 and 76-3-607~~ [section 9] for cash received in lieu of dedication."  
6

7 **Section 2.** Section 76-3-102, MCA, is amended to read:

8 **"76-3-102. Statement of purpose.** It is the purpose of this chapter to:

9 (1) promote the public health, safety, and general welfare by regulating the subdivision of land;

10 (2) ~~to~~ prevent overcrowding of land;

11 (3) ~~to~~ lessen congestion in the streets and highways;

12 (4) ~~to~~ provide for adequate light, air, water supply, sewage disposal, parks and recreation areas,  
13 ingress and egress, and other public requirements;

14 (5) ~~to~~ require development in harmony with the natural environment;

15 (6) protect the rights of property owners; and

16 (7) ~~to~~ require uniform monumentation of land subdivisions and transferring interests in real property  
17 by reference to a plat or certificate of survey."  
18

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

20 **"76-3-207. Subdivisions exempted from review but subject to survey requirements -- exceptions.**

21 (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of  
22 evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject  
23 to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions:

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

26 (b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each  
27 county to each member of the landowner's immediate family;

28 (c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell ~~where~~  
29 in which the parties to the transaction enter a covenant running with the land and revocable only by mutual  
30 consent of the governing body and the property owner that the divided land will be used exclusively for

1 agricultural purposes;

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

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

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

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

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

14 (3) A division of land may not be made under this section unless the county treasurer has certified  
15 that all real property taxes and special assessments assessed and levied on the land to be divided have  
16 been paid."

17

18 **Section 4.** Section 76-3-507, MCA, is amended to read:

19 **"76-3-507. Provision for bonding requirements to ~~insure~~ ensure construction of public**  
20 **improvements. (1) Except as provided in subsection (2), the governing body shall require the subdivider to**  
21 **complete required improvements within the subdivision prior to the approval of the final plat.**

22 **(2) ~~Local regulations may provide that, in (a) In~~ lieu of the completion of the construction of any**  
23 **public improvements prior to the approval of a final plat, the ~~governing body~~ subdivider shall ~~require~~ provide**  
24 **or cause to be provided a bond or other reasonable security, in an amount and with surety and conditions**  
25 **satisfactory to ~~the governing body~~, providing for and securing the construction and installation of ~~such~~**  
26 **the improvements within a period specified by the governing body and expressed in the bonds or other**  
27 **security. The governing body shall reduce bond requirements commensurate with the completion of**  
28 **improvements.**

29 **(b) In lieu of requiring a bond or other means of security for the construction or installation of all**  
30 **the required public improvements under subsection (2)(a), the governing body may approve an incremental**

1 payment or guarantee plan. The improvements in a prior increment must be completed or the payment or  
 2 guarantee of payment for the costs of the improvements incurred in a prior increment must be satisfied  
 3 before development of future increments.

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

7  
 8 **Section 5.** Section 76-3-603, MCA, is amended to read:

9 **"76-3-603. Contents of environmental assessment.** ~~Where required, the~~ An environmental  
 10 assessment ~~shall~~ must accompany the preliminary plat for a major subdivision and ~~shall~~ must include:

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

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

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

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

22  
 23 **Section 6.** Section 76-3-608, MCA, is amended to read:

24 **"76-3-608. Criteria for local government review.** (1) The basis for the governing body's decision  
 25 to approve, conditionally approve, or disapprove a subdivision is whether the preliminary plat, applicable  
 26 environmental assessment, public hearing, planning board recommendations, or additional information  
 27 demonstrates that development of the subdivision meets the requirements of this chapter.

28 (2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3),  
 29 as applicable.

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

1 (a) the effect on agriculture, agricultural water user facilities, local services, the natural  
2 environment, wildlife and wildlife habitat, and public health and safety;

3 (b) compliance with:

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

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

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

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

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

10 (4) The governing body may require the subdivider to design the subdivision to minimize potentially  
11 significant adverse impacts identified through the review required under subsection (3). The governing  
12 body shall issue written findings, based on substantial credible evidence, to justify the mitigation required  
13 under this subsection (4).

14 (5) In reviewing a subdivision under subsection (3) and when requiring mitigation under subsection  
15 (4), a governing body must be guided by the following standards:

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

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

20 (6) (a) When a minor subdivision is proposed in an area where a master plan has been adopted  
21 pursuant to chapter 1 and the proposed subdivision will comply with the plan, the subdivision is exempt  
22 from the review criteria contained in subsection (3)(a) but is subject to applicable zoning regulations.

23 (b) In order for a master plan to serve as the basis for the exemption provided by this subsection  
24 (6), the plan must, at a minimum, contain:

25 (i) housing, transportation, and land-use elements sufficient for the governing body to protect  
26 public health, safety, and welfare; and

27 (ii) a discussion of physical constraints on development that exist within the area encompassed by  
28 the proposed subdivision."

29  
30 **Section 7.** Section 76-3-609, MCA, is amended to read:

1           **"76-3-609. Review procedure for minor subdivisions.** Subdivisions containing five or fewer parcels  
 2 ~~where~~ in which proper access to all lots is provided and in which no land is to be dedicated to the public  
 3 for parks or playgrounds are to be reviewed as follows:

4           (1) The governing body ~~must~~ shall approve, conditionally approve, or disapprove the first ~~such~~  
 5 minor subdivision from a tract of record within 35 days of the submission of ~~an~~ the application ~~for approval~~  
 6 ~~thereof~~.

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

10           (3) The requirements for holding a public hearing ~~and preparing an environmental assessment~~ shall  
 11 do not apply to the first ~~such~~ minor subdivision created from a tract of record.

12           (4) Subsequent subdivisions from a tract of record ~~shall~~ must be reviewed under 76-3-505 and  
 13 regulations adopted pursuant to that section."  
 14

15           NEW SECTION. Section 8. Payment for extension of capital facilities. A local government may  
 16 require a subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities  
 17 related to public health and safety, including but not limited to public sewer lines, water supply lines, and  
 18 storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly attributable  
 19 to the subdivision.  
 20

21           NEW SECTION. Section 9. Park dedication requirement. (1) Except as provided in subsections (2),  
 22 (3), and (6), a subdivider shall dedicate to the governing body a cash or land donation equal to:

23           (a) 11% of the fair market value of the land proposed to be subdivided into parcels of one-half acre  
 24 or smaller;

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

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

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

1           (2) When a subdivision is located totally within an area for which density requirements have been  
2 adopted pursuant to a master plan under Title 76, chapter 1, or pursuant to zoning regulations under Title  
3 76, chapter 2, the governing body may establish park dedication requirements based on the community  
4 need for parks and the development densities identified in the plans or regulations. Park dedication  
5 requirements established under this subsection are in lieu of those provided in subsection (1) and may not  
6 exceed 0.03 acres per dwelling unit.

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

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

9           (b) subdivision into parcels that are all nonresidential;

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

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

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

17          (5) (a) Except as provided in subsection (5)(b), the governing body shall use the dedicated money  
18 or land for development, acquisition, or maintenance of parks to serve the subdivision.

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

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

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

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

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

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

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

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

6 (c) the fair market value of the land proposed to be subdivided, by virtue of a combination of the  
7 provisions of subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the value of the  
8 dedication required under subsection (1).

9 (7) For the purposes of this section:

10 (a) "dwelling unit" means a residential structure in which a person or persons reside; and

11 (b) "fair market value" is the value of the unsubdivided, unimproved land.

12  
13 **NEW SECTION. Section 10. Violations -- actions against governing body.** (1) A person who has  
14 filed with the governing body an application for a subdivision under this chapter may bring an action in  
15 district court to sue the governing body to recover damages caused by a final action, decision, or order of  
16 the governing body or a regulation adopted pursuant to this chapter that is:

17 (a) arbitrary or capricious; or

18 (b) unlawful or exceeds lawful authority.

19 (2) A party identified in subsection (3) who is aggrieved by a decision of the governing body to  
20 approve, conditionally approve, or disapprove a proposed preliminary plat or final subdivision plat may,  
21 within 30 days after the decision, appeal to the district court in the county in which the property involved  
22 is located. The petition must specify the grounds upon which the appeal is made.

23 (3) The following parties may appeal under the provisions of subsection (2):

24 (a) the subdivider;

25 (b) a landowner with a property boundary contiguous to the proposed subdivision if that landowner  
26 can show a likelihood of material injury to the adjoining landowner's property or its value;

27 (c) the county commissioners of the county where the subdivision is proposed; and

28 (d) a municipality if a subdivision is proposed within its jurisdiction.

29  
30 **NEW SECTION. Section 11. Repealer.** Sections 76-3-606 and 76-3-607, MCA, are repealed.





STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0473, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising local subdivision laws by modifying environmental assessment requirements, bonding requirements for public improvements, park dedication requirements, establishing payment criteria for the extension of capital facilities, establishing mitigation guidelines and providing for lawsuits against local governments.

ASSUMPTIONS:

1. The proposed legislation would become effective October 1, 1995.
2. All of the 56 county governments and all 128 municipal governments that have local subdivision regulations would revise them.
3. As directed by state law, the Department of Commerce (DOC) provides advisory technical assistance to counties, municipalities, business persons, developers, land surveyors, and citizens, to help them understand and comply with planning and development statutes (including subdivision statutes).
4. Estimated DOC costs are based upon actual costs incurred by the DOC in FY94 and FY95 when the subdivision law was substantially changed by the 1993 Legislature. DOC projected costs for HB473 include updating two advisory educational publications and conducting eight educational workshops across the state.
6. The proposed legislation amends only the Montana Subdivision and Platting Act, not the Sanitation Subdivision Act administered by the Department of Health and Environmental Sciences.

FISCAL IMPACT:

Expenditures:

Department of Commerce:	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Operating Expenses	16,000	16,000

Funding:

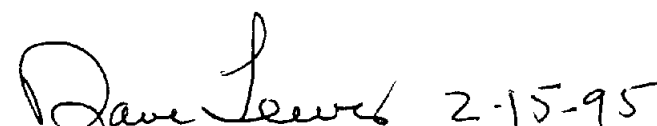
General Fund (01)	16,000	16,000
-------------------	--------	--------

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Additional costs for the 56 county governments (\$147,000) and 128 municipal governments (\$201,000) are estimated to total \$348,000. These estimates are derived from approximate costs incurred by county and municipal governments to update subdivision regulations passed by the 1993 Legislature.

TECHNICAL NOTES:

Section 6 of the proposed legislation (page 5, line 19) states, "Whenever feasible, mitigation should be designed to provide some benefits for the subdivider." There is no definition of the term "benefits". The term could cause confusion in implementing the legislation.

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

\_\_\_\_\_  
 DICK KNOX, PRIMARY SPONSOR      DATE  
 Fiscal Note for HB0473, as introduced  
**HB 473**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

House BILL NO. 473

INTRODUCED BY

*Knox Stovall ORR Barnett*  
*Fuchs Feland*

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LOCAL SUBDIVISION LAWS; MODIFYING THE REQUIREMENTS FOR AN ENVIRONMENTAL ASSESSMENT; MODIFYING BONDING REQUIREMENTS FOR PUBLIC IMPROVEMENTS; MODIFYING PARK DEDICATION REQUIREMENTS; ESTABLISHING PAYMENT CRITERIA FOR THE EXTENSION OF CAPITAL FACILITIES; ESTABLISHING MITIGATION GUIDELINES; PROVIDING FOR SUITS AGAINST LOCAL GOVERNMENTS; AMENDING SECTIONS 7-16-2324, 76-3-102, 76-3-207, 76-3-507, 76-3-603, 76-3-608, AND 76-3-609, MCA; AND REPEALING SECTIONS 76-3-606 AND 76-3-607, MCA."

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

Section 1. Section 7-16-2324, MCA, is amended to read:

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

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

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

- (a) compile an inventory of all public parks and playgrounds within the county;
- (b) prepare a comprehensive plan for the provision of outdoor recreation and open space within the county;
- (c) determine that the proposed sale, lease, or exchange furthers or is consistent with the county's outdoor recreation and open space comprehensive plan;
- (d) publish notice as provided in 7-1-2121 of intention to sell, lease, or dispose of ~~such~~ the park or playground lands, giving the people of the county opportunity to be heard regarding ~~such~~ the action;
- (e) if the land is within an incorporated city or town, secure the approval of the governing body

1 ~~thereof~~ for the action; and

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

3 (4) Any revenue realized by a county from the sale, exchange, or disposal of lands dedicated to  
4 public use for park or playground purposes ~~shall~~ must be paid into the park fund and used in the manner  
5 prescribed in ~~76-3-606 and 76-3-607~~ [section 9] for cash received in lieu of dedication."  
6

7 **Section 2.** Section 76-3-102, MCA, is amended to read:

8 "**76-3-102. Statement of purpose.** It is the purpose of this chapter to:

9 (1) promote the public health, safety, and general welfare by regulating the subdivision of land;

10 (2) ~~to~~ prevent overcrowding of land;

11 (3) ~~to~~ lessen congestion in the streets and highways;

12 (4) ~~to~~ provide for adequate light, air, water supply, sewage disposal, parks and recreation areas,  
13 ingress and egress, and other public requirements;

14 (5) ~~to~~ require development in harmony with the natural environment;

15 (6) protect the rights of property owners; and

16 (7) ~~to~~ require uniform monumentation of land subdivisions and transferring interests in real property  
17 by reference to a plat or certificate of survey."  
18

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

20 "**76-3-207. Subdivisions exempted from review but subject to survey requirements -- exceptions.**

21 (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of  
22 evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject  
23 to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions:

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

26 (b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each  
27 county to each member of the landowner's immediate family;

28 (c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell ~~where~~  
29 in which the parties to the transaction enter a covenant running with the land and revocable only by mutual  
30 consent of the governing body and the property owner that the divided land will be used exclusively for

1 agricultural purposes;

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

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

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

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

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

14 (3) A division of land may not be made under this section unless the county treasurer has certified  
15 that all real property taxes and special assessments assessed and levied on the land to be divided have  
16 been paid."

17

18 **Section 4.** Section 76-3-507, MCA, is amended to read:

19 **"76-3-507. Provision for bonding requirements to insure ensure construction of public**  
20 **improvements. (1) Except as provided in subsection (2), the governing body shall require the subdivider to**  
21 **complete required improvements within the subdivision prior to the approval of the final plat.**

22 ~~(2) Local regulations may provide that, in (a)~~ **In lieu of the completion of the construction of any**  
23 **public improvements prior to the approval of a final plat, the governing body subdivider shall require provide**  
24 **or cause to be provided a bond or other reasonable security, in an amount and with surety and conditions**  
25 **satisfactory to the governing body, providing for and securing the construction and installation of such**  
26 **the improvements within a period specified by the governing body and expressed in the bonds or other**  
27 **security. The governing body shall reduce bond requirements commensurate with the completion of**  
28 **improvements.**

29 **(b) In lieu of requiring a bond or other means of security for the construction or installation of all**  
30 **the required public improvements under subsection (2)(a), the governing body may approve an incremental**

1 payment or guarantee plan. The improvements in a prior increment must be completed or the payment or  
 2 guarantee of payment for the costs of the improvements incurred in a prior increment must be satisfied  
 3 before development of future increments.

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

7  
 8 **Section 5.** Section 76-3-603, MCA, is amended to read:

9 **"76-3-603. Contents of environmental assessment.** ~~Where required, the~~ An environmental  
 10 assessment ~~shall~~ must accompany the preliminary plat for a major subdivision and ~~shall~~ must include:

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

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

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

21 ~~(4) such additional relevant and reasonable information as may be required by the governing body."~~  
 22

23 **Section 6.** Section 76-3-608, MCA, is amended to read:

24 **"76-3-608. Criteria for local government review.** (1) The basis for the governing body's decision  
 25 to approve, conditionally approve, or disapprove a subdivision is whether the preliminary plat, applicable  
 26 environmental assessment, public hearing, planning board recommendations, or additional information  
 27 demonstrates that development of the subdivision meets the requirements of this chapter.

28 (2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3),  
 29 as applicable.

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

1 (a) the effect on agriculture, agricultural water user facilities, local services, the natural  
2 environment, wildlife and wildlife habitat, and public health and safety;

3 (b) compliance with:

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

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

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

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

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

10 (4) The governing body may require the subdivider to design the subdivision to minimize potentially  
11 significant adverse impacts identified through the review required under subsection (3). The governing  
12 body shall issue written findings, based on substantial credible evidence, to justify the mitigation required  
13 under this subsection (4).

14 (5) In reviewing a subdivision under subsection (3) and when requiring mitigation under subsection  
15 (4), a governing body must be guided by the following standards:

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

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

20 (6) (a) When a minor subdivision is proposed in an area where a master plan has been adopted  
21 pursuant to chapter 1 and the proposed subdivision will comply with the plan, the subdivision is exempt  
22 from the review criteria contained in subsection (3)(a) but is subject to applicable zoning regulations.

23 (b) In order for a master plan to serve as the basis for the exemption provided by this subsection  
24 (6), the plan must, at a minimum, contain:

25 (i) housing, transportation, and land-use elements sufficient for the governing body to protect  
26 public health, safety, and welfare; and

27 (ii) a discussion of physical constraints on development that exist within the area encompassed by  
28 the proposed subdivision."

29  
30 **Section 7.** Section 76-3-609, MCA, is amended to read:

1           **"76-3-609. Review procedure for minor subdivisions.** Subdivisions containing five or fewer parcels  
 2 ~~where~~ in which proper access to all lots is provided and in which no land is to be dedicated to the public  
 3 for parks or playgrounds are to be reviewed as follows:

4           (1) The governing body ~~must~~ shall approve, conditionally approve, or disapprove the first ~~such~~  
 5 minor subdivision from a tract of record within 35 days of the submission of ~~an~~ the application ~~for approval~~  
 6 ~~thereof~~.

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

10           (3) The requirements for holding a public hearing ~~and preparing an environmental assessment shall~~  
 11 do not apply to the first ~~such~~ minor subdivision created from a tract of record.

12           (4) Subsequent subdivisions from a tract of record ~~shall~~ must be reviewed under 76-3-505 and  
 13 regulations adopted pursuant to that section."  
 14

15           **NEW SECTION. Section 8. Payment for extension of capital facilities.** A local government may  
 16 require a subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities  
 17 related to public health and safety, including but not limited to public sewer lines, water supply lines, and  
 18 storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly attributable  
 19 to the subdivision.  
 20

21           **NEW SECTION. Section 9. Park dedication requirement.** (1) Except as provided in subsections (2),  
 22 (3), and (6), a subdivider shall dedicate to the governing body a cash or land donation equal to:

23           (a) 11% of the fair market value of the land proposed to be subdivided into parcels of one-half acre  
 24 or smaller;

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

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

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



1           (2) When a subdivision is located totally within an area for which density requirements have been  
2 adopted pursuant to a master plan under Title 76, chapter 1, or pursuant to zoning regulations under Title  
3 76, chapter 2, the governing body may establish park dedication requirements based on the community  
4 need for parks and the development densities identified in the plans or regulations. Park dedication  
5 requirements established under this subsection are in lieu of those provided in subsection (1) and may not  
6 exceed 0.03 acres per dwelling unit.

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

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

9           (b) subdivision into parcels that are all nonresidential;

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

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

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

17          (5) (a) Except as provided in subsection (5)(b), the governing body shall use the dedicated money  
18 or land for development, acquisition, or maintenance of parks to serve the subdivision.

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

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

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

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

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

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

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

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

6 (c) the fair market value of the land proposed to be subdivided, by virtue of a combination of the  
7 provisions of subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the value of the  
8 dedication required under subsection (1).

9 (7) For the purposes of this section:

10 (a) "dwelling unit" means a residential structure in which a person or persons reside; and

11 (b) "fair market value" is the value of the unsubdivided, unimproved land.

12  
13 **NEW SECTION. Section 10. Violations -- actions against governing body.** (1) A person who has  
14 filed with the governing body an application for a subdivision under this chapter may bring an action in  
15 district court to sue the governing body to recover damages caused by a final action, decision, or order of  
16 the governing body or a regulation adopted pursuant to this chapter that is:

17 (a) arbitrary or capricious; or

18 (b) unlawful or exceeds lawful authority.

19 (2) A party identified in subsection (3) who is aggrieved by a decision of the governing body to  
20 approve, conditionally approve, or disapprove a proposed preliminary plat or final subdivision plat may,  
21 within 30 days after the decision, appeal to the district court in the county in which the property involved  
22 is located. The petition must specify the grounds upon which the appeal is made.

23 (3) The following parties may appeal under the provisions of subsection (2):

24 (a) the subdivider;

25 (b) a landowner with a property boundary contiguous to the proposed subdivision if that landowner  
26 can show a likelihood of material injury to the adjoining landowner's property or its value;

27 (c) the county commissioners of the county where the subdivision is proposed; and

28 (d) a municipality if a subdivision is proposed within its jurisdiction.

29  
30 **NEW SECTION. Section 11. Repealer.** Sections 76-3-606 and 76-3-607, MCA, are repealed.

1           **NEW SECTION.** **Section 12. Codification instruction.** (1) [Section 8] is intended to be codified  
2 as an integral part of Title 76, chapter 3, part 5, and the provisions of Title 76, chapter 3, part 5, apply to  
3 [section 8].

4           (2) [Sections 9 and 10] are intended to be codified as an integral part of Title 76, chapter 3, part  
5 6, and the provisions of Title 76, chapter 3, part 6, apply to [sections 9 and 10].

6   -END-

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12

House BILL NO. 473

INTRODUCED BY

*Knox Stovall ORR Burnett Row*  
*Chambers* *McLee* *Fuchs Feland Taylor Foster*  
*Trick*

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LOCAL SUBDIVISION LAWS; MODIFYING THE REQUIREMENTS FOR AN ENVIRONMENTAL ASSESSMENT; MODIFYING BONDING REQUIREMENTS FOR PUBLIC IMPROVEMENTS; MODIFYING PARK DEDICATION REQUIREMENTS; ESTABLISHING PAYMENT CRITERIA FOR THE EXTENSION OF CAPITAL FACILITIES; ESTABLISHING MITIGATION GUIDELINES; PROVIDING FOR SUITS AGAINST LOCAL GOVERNMENTS; AMENDING SECTIONS 7-16-2324, 76-3-102, 76-3-207, 76-3-507, 76-3-603, 76-3-608, AND 76-3-609, MCA; AND REPEALING SECTIONS 76-3-606 AND 76-3-607, MCA."

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

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.



SENATE STANDING COMMITTEE REPORT

Page 1 of 4  
March 23, 1995

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration HB 473 (third reading copy -- blue), respectfully report that HB 473 be amended as follows and as so amended be concurred in.

Signed:   
Senator Lorents Grosfield, Chair

That such amendments read:

1. Title, line 9.

Strike: second "AND"

2. Title, line 10.

Following: "MCA"

Insert: "; AND PROVIDING AN APPLICABILITY DATE"

3. Page 4, line 9.

Strike: "An"

Insert: "When required, the"

4. Page 4, line 10.

Strike: "for a major subdivision"

5. Page 4, line 11.

Following: "(1)"

Insert: "for a major subdivision: (a)"

6. Page 4, line 14.

Strike: "(2)"

Insert: "(b)"

7. Page 4, line 17.

Strike: "(3)"

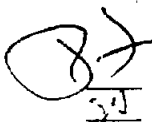
Insert: "(c)"


8. Page 4, line 19.

Following: "~~protection,~~"

Insert: "a community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing; roads and maintenance; water, sewage, and solid waste facilities; and fire and police protection; and  
(d)"

9. Page 4, line 20.

  
Amd. Coord.  
21 Sec. of Senate

  
LORENTS GROSFIELD  
Senator Carrying Bill

HB 473

SENATE

Strike: ".\_"

Insert: "; (2) except as provided in 76-3-609(3), for a minor subdivision, a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608."

10. Page 5, line 10.

Following: "subdivision to"

Insert: "reasonably"

11. Page 5, line 12.

Strike: ", based" through "evidence,"

Following: "justify the"

Insert: "reasonable"

12. Page 5, line 14.

Following: "(5)"

Insert: "(a)"

13. Page 5, lines 15 and 16.

Strike: "must" on line 15 through "imposed" on line 16

14. Page 5, line 19.

Strike: "Whenever feasible,"

Insert: "When requiring"

Following: "mitigation"

Strike: "should" through "for"

Insert: "under subsection (4), a governing body shall consult with"

Following: "subdivider"

Insert: "and shall give due weight and consideration to the expressed preference of the subdivider"

15. Page 6, line 10.

Following: "~~shall~~"

Insert: "and preparing an environmental assessment"

16. Page 6, line 17.

Following: second "public"

Insert: "roads,"

17. Page 6, lines 23, 25, 27, and 29.

Strike: "fair market value"

Insert: "area"

18. Page 7.

Following: line 7

Insert: "(a) a minor subdivision;"

Renumber: subsequent subsections

19. Page 7, line 11.

Following: "for"

Insert: "recreational camping vehicles,"

Following: "homes"

Insert: ", "

20. Page 7, line 16.

Following: "both."

Insert: "When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation."

21. Page 7, line 17.

Strike: "Except" through "subsection"

Insert: "In accordance with the provisions of subsections"

Following: "(5)(b)"

Insert: "and (5)(c)"

22. Page 7, line 19.

Strike: "regional"

Insert: ", within its jurisdiction,"

23. Page 7.

Following: line 24

Insert: "(c) The governing body may not use more than 50% of the dedicated money for park maintenance."

24. Page 7, line 29.

Strike: "fair market value"

Insert: "area"

25. Page 7, line 30.

Strike: "value"

Insert: "area"

26. Page 8, lines 3 and 6.

Strike: "fair market value"

Insert: "area"

27. Page 8, lines 4 and 7.

Strike: "value"

Insert: "area"

28. Page 8, line 11.

Strike: "\"fair market value\""

Insert: "\"cash donation\""

Following: "is the"  
Insert: "fair market"

29. Page 8, lines 16 through 18.  
Strike: ":" on line 16 through "(a)" on line 17  
Strike: "; or" on line 17 through "authority" on line 18

30. Page 8, line 25.  
Following: "subdivision"  
Insert: "or a private landowner with property within the county  
or municipality where the subdivision is proposed"

31. Page 8, line 26.  
Strike: "adjoining"

32. Page 8.  
Following: line 28  
Insert: "(4) For the purposes of this section, "aggrieved" means  
a person that can demonstrate a specific personal and legal  
interest, as distinguished from a general interest, that has  
been or is to likely to be specially and injuriously  
affected by the decision."

33. Page 9.  
Following: line 5  
Insert: "NEW SECTION. **Section 13. Applicability.** Funds in a  
park fund that exceed \$10,000 as of [the effective date of  
this act] must be used for park land acquisition and initial  
development. Funds in a park fund up to \$10,000 as of [the  
effective date of this act] may be used for park maintenance  
in accordance with a formally adopted park plan."

-END-



2

SENATE COMMITTEE OF THE WHOLE AMENDMENT

March 28, 1995 2:14 pm

Mr. Chairman: I move to amend HB 473 (third reading copy -- blue).

ADOPT *V.V.*

REJECT

Signed: *Loren B. Grosfield*  
Senator Grosfield

That such amendments read:

1. Page 1.

Following: line 11

Insert: "STATEMENT OF INTENT

It is the intent of the legislature that the department of commerce, local government assistance division, update its model subdivision rules to minimize the fiscal impacts to local governments in implementing this legislation."

2. Page 8, line 15.

Following: "recover"

Insert: "actual"

3. Page 8, line 28.

Strike: "a" through "jurisdiction"

Insert: ": (i) a first-class municipality, as described in 7-1-4111, if a subdivision is proposed within 3 miles of its limits;

(ii) a second-class municipality, as described in 7-1-4111, if a subdivision is proposed within 2 miles of its limits; and

(iii) a third-class municipality or a town, as described in 7-1-4111, if a subdivision is proposed within 1 mile of its limits"

-END-

HB 473

*[Signature]*  
Amd. Coord.

SENATE

SENATE COMMITTEE OF THE WHOLE AMENDMENT

March 28, 1995 12:59 pm

Mr. Chairman: I move to amend HB 473 (third reading copy -- blue).

ADOPT V.V.

REJECT

Signed: \_\_\_\_\_

Senator Toews

That such amendments read:

1. Page 4, line 27.

Following: "chapter."

Insert: "A governing body may not deny approval of a subdivision based solely on the subdivision's impacts on educational services."

2. Page 6, line 19.


Following: "subdivision."

Insert: "A local government may not require a subdivider to pay or guarantee payment for part or all of the costs of constructing or extending capital facilities related to education."

-END-

HB 473

SENATE

 Amd. Coord.

HOUSE BILL NO. 473

INTRODUCED BY KNOX, STOVALL, ORR, BARNETT, ROSE, DEVANEY, MCGEE, TVEIT, FUCHS,  
FELAND, TREXLER, FOSTER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LOCAL SUBDIVISION LAWS; MODIFYING  
THE REQUIREMENTS FOR AN ENVIRONMENTAL ASSESSMENT; MODIFYING BONDING REQUIREMENTS  
FOR PUBLIC IMPROVEMENTS; MODIFYING PARK DEDICATION REQUIREMENTS; ESTABLISHING  
PAYMENT CRITERIA FOR THE EXTENSION OF CAPITAL FACILITIES; ESTABLISHING MITIGATION  
GUIDELINES; PROVIDING FOR SUITS AGAINST LOCAL GOVERNMENTS; AMENDING SECTIONS  
7-16-2324, 76-3-102, 76-3-207, 76-3-507, 76-3-603, 76-3-608, AND 76-3-609, MCA; ~~AND~~ REPEALING  
SECTIONS 76-3-606 AND 76-3-607, MCA; AND PROVIDING AN APPLICABILITY DATE."

STATEMENT OF INTENT

IT IS THE INTENT OF THE LEGISLATURE THAT THE DEPARTMENT OF COMMERCE, LOCAL  
GOVERNMENT ASSISTANCE DIVISION, UPDATE ITS MODEL SUBDIVISION RULES TO MINIMIZE THE  
FISCAL IMPACTS TO LOCAL GOVERNMENTS IN IMPLEMENTING THIS LEGISLATION.

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

**Section 1.** Section 7-16-2324, MCA, is amended to read:

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

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

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

- (a) compile an inventory of all public parks and playgrounds within the county;
- (b) prepare a comprehensive plan for the provision of outdoor recreation and open space within

1 the county;

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

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

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

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

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

12

13 **Section 2.** Section 76-3-102, MCA, is amended to read:

14 **"76-3-102. Statement of purpose.** It is the purpose of this chapter to:

15 (1) promote the public health, safety, and general welfare by regulating the subdivision of land;

16 (2) ~~to~~ prevent overcrowding of land;

17 (3) ~~to~~ lessen congestion in the streets and highways;

18 (4) ~~to~~ provide for adequate light, air, water supply, sewage disposal, parks and recreation areas,  
19 ingress and egress, and other public requirements;

20 (5) ~~to~~ require development in harmony with the natural environment;

21 (6) protect the rights of property owners; and

22 (7) ~~to~~ require uniform monumentation of land subdivisions and transferring interests in real property  
23 by reference to a plat or certificate of survey."

24

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

26 **"76-3-207. Subdivisions exempted from review but subject to survey requirements -- exceptions.**

27 (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of  
28 evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject  
29 to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions:

30 (a) divisions made outside of platted subdivisions for the purpose of relocating common boundary

1 lines between adjoining properties;

2 (b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each  
3 county to each member of the landowner's immediate family;

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

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

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

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

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

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

20 (3) A division of land may not be made under this section unless the county treasurer has certified  
21 that all real property taxes and special assessments assessed and levied on the land to be divided have  
22 been paid."  
23

24 **Section 4.** Section 76-3-507, MCA, is amended to read:

25 **"76-3-507. Provision for bonding requirements to ~~insure~~ ensure construction of public**  
26 **improvements. (1) Except as provided in subsection (2), the governing body shall require the subdivider to**  
27 **complete required improvements within the subdivision prior to the approval of the final plat.**

28 **(2) ~~Local regulations may provide that, in (a)~~ In lieu of the completion of the construction of any**  
29 **public improvements prior to the approval of a final plat, the ~~governing body subdivider~~ shall ~~require~~ provide**  
30 **or cause to be provided a bond or other reasonable security, in an amount and with surety and conditions**

1 satisfactory to ~~it~~ the governing body, providing for and securing the construction and installation of ~~such~~  
 2 the improvements within a period specified by the governing body and expressed in the bonds or other  
 3 security. The governing body shall reduce bond requirements commensurate with the completion of  
 4 improvements.

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

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

13

14 **Section 5.** Section 76-3-603, MCA, is amended to read:

15 **"76-3-603. Contents of environmental assessment.** ~~Where required, the~~ **AN WHEN REQUIRED, THE**  
 16 **environmental assessment shall must accompany the preliminary plat ~~for a major subdivision~~ and shall must**  
 17 **include:**

18 **(1) FOR A MAJOR SUBDIVISION:**

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

22 ~~{2}(B) maps and tables showing soil types in the several parts of the proposed subdivision and their~~  
 23 ~~suitability for any proposed developments in these several parts~~ **a summary of the probable impacts of the**  
 24 **proposed subdivision based on the criteria described in 76-3-608; and**

25 ~~{3}(C) a community impact report containing a statement of anticipated needs of the proposed~~  
 26 ~~subdivision for local services, including education and busing; roads and maintenance; water, sewage, and~~  
 27 ~~solid waste facilities; and fire and police protection;~~ **A COMMUNITY IMPACT REPORT CONTAINING A**  
 28 **STATEMENT OF ANTICIPATED NEEDS OF THE PROPOSED SUBDIVISION FOR LOCAL SERVICES,**  
 29 **INCLUDING EDUCATION AND BUSING; ROADS AND MAINTENANCE; WATER, SEWAGE, AND SOLID**  
 30 **WASTE FACILITIES; AND FIRE AND POLICE PROTECTION; AND**

1 (D) additional relevant and reasonable information related to the applicable regulatory criteria  
 2 adopted under 76-3-501 as may be required by the governing body-;

3 (2) EXCEPT AS PROVIDED IN 76-3-609(3), FOR A MINOR SUBDIVISION, A SUMMARY OF THE  
 4 PROBABLE IMPACTS OF THE PROPOSED SUBDIVISION BASED ON THE CRITERIA DESCRIBED IN  
 5 76-3-608.

6 ~~(4) such additional relevant and reasonable information as may be required by the governing body-"~~  
 7

8 **Section 6.** Section 76-3-608, MCA, is amended to read:

9 **"76-3-608. Criteria for local government review.** (1) The basis for the governing body's decision  
 10 to approve, conditionally approve, or disapprove a subdivision is whether the preliminary plat, applicable  
 11 environmental assessment, public hearing, planning board recommendations, or additional information  
 12 demonstrates that development of the subdivision meets the requirements of this chapter. A GOVERNING  
 13 BODY MAY NOT DENY APPROVAL OF A SUBDIVISION BASED SOLELY ON THE SUBDIVISION'S IMPACTS  
 14 ON EDUCATIONAL SERVICES.

15 (2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3),  
 16 as applicable.

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

18 (a) the effect on agriculture, agricultural water user facilities, local services, the natural  
 19 environment, wildlife and wildlife habitat, and public health and safety;

20 (b) compliance with:

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

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

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

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

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

27 (4) The governing body may require the subdivider to design the subdivision to REASONABLY  
 28 minimize potentially significant adverse impacts identified through the review required under subsection  
 29 (3). The governing body shall issue written findings, ~~based on substantial credible evidence,~~ to justify the  
 30 REASONABLE mitigation required under this subsection (4).

1           (5) (A) In reviewing a subdivision under subsection (3) and when requiring mitigation under  
 2 subsection (4), a governing body must be guided by the following standards:

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

6           ~~(b) Whenever feasible, WHEN REQUIRING mitigation should be designed to provide some benefits~~  
 7 for UNDER SUBSECTION (4), A GOVERNING BODY SHALL CONSULT WITH the subdivider AND SHALL  
 8 GIVE DUE WEIGHT AND CONSIDERATION TO THE EXPRESSED PREFERENCE OF THE SUBDIVIDER.

9           (6) (a) When a minor subdivision is proposed in an area where a master plan has been adopted  
 10 pursuant to chapter 1 and the proposed subdivision will comply with the plan, the subdivision is exempt  
 11 from the review criteria contained in subsection (3)(a) but is subject to applicable zoning regulations.

12           (b) In order for a master plan to serve as the basis for the exemption provided by this subsection  
 13 (6), the plan must, at a minimum, contain:

14           (i) housing, transportation, and land-use elements sufficient for the governing body to protect  
 15 public health, safety, and welfare; and

16           (ii) a discussion of physical constraints on development that exist within the area encompassed by  
 17 the proposed subdivision."

18  
 19           **Section 7.** Section 76-3-609, MCA, is amended to read:

20           **"76-3-609. Review procedure for minor subdivisions.** Subdivisions containing five or fewer parcels  
 21 ~~where in which~~ proper access to all lots is provided and in which no land is to be dedicated to the public  
 22 for parks or playgrounds are to be reviewed as follows:

23           (1) The governing body ~~must~~ shall approve, conditionally approve, or disapprove the first ~~such~~  
 24 minor subdivision from a tract of record within 35 days of the submission of ~~an the~~ application ~~for approval~~  
 25 ~~thereof.~~

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

29           (3) The requirements for holding a public hearing ~~and preparing an environmental assessment~~ shall  
 30 AND PREPARING AN ENVIRONMENTAL ASSESSMENT ~~do~~ not apply to the first ~~such~~ minor subdivision



1 created from a tract of record.

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

5 NEW SECTION. Section 8. Payment for extension of capital facilities. A local government may  
6 require a subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities  
7 related to public health and safety, including but not limited to public ROADS, sewer lines, water supply  
8 lines, and storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly  
9 attributable to the subdivision. A LOCAL GOVERNMENT MAY NOT REQUIRE A SUBDIVIDER TO PAY OR  
10 GUARANTEE PAYMENT FOR PART OR ALL OF THE COSTS OF CONSTRUCTING OR EXTENDING CAPITAL  
11 FACILITIES RELATED TO EDUCATION.  
12

13 NEW SECTION. Section 9. Park dedication requirement. (1) Except as provided in subsections (2),  
14 (3), and (6), a subdivider shall dedicate to the governing body a cash or land donation equal to:

15 (a) 11% of the ~~fair market value~~ AREA of the land proposed to be subdivided into parcels of  
16 one-half acre or smaller;

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

19 (c) 5% of the ~~fair market value~~ AREA of the land proposed to be subdivided into parcels larger than  
20 1 acre and not larger than 3 acres; and

21 (d) 2.5% of the ~~fair market value~~ AREA of the land proposed to be subdivided into parcels larger  
22 than 3 acres and not larger than 5 acres.

23 (2) When a subdivision is located totally within an area for which density requirements have been  
24 adopted pursuant to a master plan under Title 76, chapter 1, or pursuant to zoning regulations under Title  
25 76, chapter 2, the governing body may establish park dedication requirements based on the community  
26 need for parks and the development densities identified in the plans or regulations. Park dedication  
27 requirements established under this subsection are in lieu of those provided in subsection (1) and may not  
28 exceed 0.03 acres per dwelling unit.

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

30 (A) A MINOR SUBDIVISION;

- 1        ~~(a)~~(B) land proposed for subdivision into parcels larger than 5 acres;
- 2        ~~(b)~~(C) subdivision into parcels that are all nonresidential;
- 3        ~~(c)~~(D) a subdivision in which parcels are not created, except when that subdivision provides
- 4 permanent multiple spaces for RECREATIONAL CAMPING VEHICLES, mobile homes, or condominiums; or
- 5        ~~(d)~~(E) a subdivision in which only one additional parcel is created.

6        (4) The governing body, in consultation with the subdivider and the planning board or park board  
 7 that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight  
 8 and consideration to the expressed preference of the subdivider, may determine whether the park  
 9 dedication must be a land donation, cash donation, or a combination of both. WHEN A COMBINATION OF  
 10 LAND DONATION AND CASH DONATION IS REQUIRED, THE CASH DONATION MAY NOT EXCEED THE  
 11 PROPORTIONAL AMOUNT NOT COVERED BY THE LAND DONATION.

12        (5) (a) ~~Except as provided in subsection~~ IN ACCORDANCE WITH THE PROVISIONS OF  
 13 SUBSECTIONS (5)(b) AND (5)(C), the governing body shall use the dedicated money or land for  
 14 development, acquisition, or maintenance of parks to serve the subdivision.

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

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

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

22        (C) THE GOVERNING BODY MAY NOT USE MORE THAN 50% OF THE DEDICATED MONEY FOR  
 23 PARK MAINTENANCE.

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

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

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

30        (b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; cultural,

1 historical, or natural resources; agricultural interests; or aesthetic values; and

2 (ii) the ~~fair market value~~ AREA of the land proposed to be subdivided, by virtue of providing  
3 long-term protection provided for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the  
4 ~~value~~ AREA of the dedication required under subsection (1); or

5 (c) the ~~fair market value~~ AREA of the land proposed to be subdivided, by virtue of a combination  
6 of the provisions of subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the ~~value~~  
7 AREA of the dedication required under subsection (1).

8 (7) For the purposes of this section:

9 (a) "dwelling unit" means a residential structure in which a person or persons reside; and

10 (b) "~~fair market value~~" "CASH DONATION" is the FAIR MARKET value of the unsubdivided,  
11 unimproved land.

12  
13 NEW SECTION. Section 10. Violations -- actions against governing body. (1) A person who has  
14 filed with the governing body an application for a subdivision under this chapter may bring an action in  
15 district court to sue the governing body to recover ACTUAL damages caused by a final action, decision,  
16 or order of the governing body or a regulation adopted pursuant to this chapter that is:

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

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

19 (2) A party identified in subsection (3) who is aggrieved by a decision of the governing body to  
20 approve, conditionally approve, or disapprove a proposed preliminary plat or final subdivision plat may,  
21 within 30 days after the decision, appeal to the district court in the county in which the property involved  
22 is located. The petition must specify the grounds upon which the appeal is made.

23 (3) The following parties may appeal under the provisions of subsection (2):

24 (a) the subdivider;

25 (b) a landowner with a property boundary contiguous to the proposed subdivision OR A PRIVATE  
26 LANDOWNER WITH PROPERTY WITHIN THE COUNTY OR MUNICIPALITY WHERE THE SUBDIVISION IS  
27 PROPOSED if that landowner can show a likelihood of material injury to the ~~adjoining~~ landowner's property  
28 or its value;

29 (c) the county commissioners of the county where the subdivision is proposed; and

30 (d) ~~a municipality if a subdivision is proposed within its jurisdiction~~ (l) A FIRST-CLASS

1 MUNICIPALITY, AS DESCRIBED IN 7-1-4111, IF A SUBDIVISION IS PROPOSED WITHIN 3 MILES OF ITS  
2 LIMITS;

3 (II) A SECOND-CLASS MUNICIPALITY, AS DESCRIBED IN 7-1-4111, IF A SUBDIVISION IS  
4 PROPOSED WITHIN 2 MILES OF ITS LIMITS; AND

5 (III) A THIRD-CLASS MUNICIPALITY OR A TOWN, AS DESCRIBED IN 7-1-4111, IF A SUBDIVISION  
6 IS PROPOSED WITHIN 1 MILE OF ITS LIMITS.

7 (4) FOR THE PURPOSES OF THIS SECTION, "AGGRIEVED" MEANS A PERSON THAT CAN  
8 DEMONSTRATE A SPECIFIC PERSONAL AND LEGAL INTEREST, AS DISTINGUISHED FROM A GENERAL  
9 INTEREST, THAT HAS BEEN OR IS LIKELY TO BE SPECIALLY AND INJURIOUSLY AFFECTED BY THE  
10 DECISION.

11

12 NEW SECTION. Section 11. Repealer. Sections 76-3-606 and 76-3-607, MCA, are repealed.

13

14 NEW SECTION. Section 12. Codification instruction. (1) [Section 8] is intended to be codified  
15 as an integral part of Title 76, chapter 3, part 5, and the provisions of Title 76, chapter 3, part 5, apply to  
16 [section 8].

17 (2) [Sections 9 and 10] are intended to be codified as an integral part of Title 76, chapter 3, part  
18 6, and the provisions of Title 76, chapter 3, part 6, apply to [sections 9 and 10].

19

20 NEW SECTION. SECTION 13. APPLICABILITY. FUNDS IN A PARK FUND THAT EXCEED \$10,000  
21 AS OF [THE EFFECTIVE DATE OF THIS ACT] MUST BE USED FOR PARK LAND ACQUISITION AND INITIAL  
22 DEVELOPMENT. FUNDS IN A PARK FUND UP TO \$10,000 AS OF [THE EFFECTIVE DATE OF THIS ACT]  
23 MAY BE USED FOR PARK MAINTENANCE IN ACCORDANCE WITH A FORMALLY ADOPTED PARK PLAN.

24

-END-