

1 INTRODUCED BY Grasfield ^{Senate} BILL NO. 339

4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE REVIEW OF CERTAIN PARCEL DIVISIONS;
5 AND AMENDING SECTIONS 76-3-103, 76-3-201, 76-3-207, AND 76-3-507, MCA."

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

9 Section 1. Section 76-3-103, MCA, is amended to read:

11 "76-3-103. Definitions. As used in this chapter, unless the context or subject matter clearly
12 requires otherwise, the following ~~words or phrases shall have the following meanings~~ definitions apply:

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

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

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

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

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

27 (6) "Governing body" means a board of county commissioners or the governing authority of a city
28 or town organized pursuant to law.

29 (7) "Immediate family" means a spouse, children, and parents.

30 ~~(8)~~ "Irregularly shaped tract of land" means a parcel of land other than an aliquot part of the
United States government survey section or a United States government lot, the boundaries or areas of

1 which cannot be determined without a survey or trigonometric calculation.

2 ~~(8)~~(9) "Planned unit development" means a land development project consisting of residential
3 clusters, industrial parks, shopping centers, or office building parks that ~~emprise~~ compose a planned
4 mixture of land uses built in a prearranged relationship to each other and having open space and community
5 facilities in common ownership or use.

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

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

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

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

15 ~~(13)~~(14) "Subdivider" means a person who causes land to be subdivided or who proposes a
16 subdivision of land.

17 ~~(14)~~(15) "Subdivision" means a division of land or land so divided that it creates one or more
18 parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United
19 States government section, exclusive of public roadways, in order that the title to or possession of the
20 parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and further
21 includes a condominium or area, regardless of its size, that provides or will provide multiple space for
22 recreational camping vehicles or mobile homes.

23 ~~(15)~~(16) (a) "Tract of record" means:

24 (i) a parcel of land, irrespective of ownership, that can be identified by legal description,
25 independent of any other parcel of land, using documents on file in the records of the county clerk and
26 recorder's office;

27 (ii) each individual parcel of land identified by a legal description unless the parcel has been joined
28 with one or more other parcels and has a legal description that describes the resulting single larger parcel;
29 and

30 (iii) a single larger parcel created pursuant to subsection (16)(a)(ii) that is shown and described on

1 a certificate of survey on file in the office of the county clerk and recorder setting forth the single larger
 2 parcel.

3 (b) The term does not apply to multiple parcels shown on a single deed or other instrument."
 4

5 **Section 2.** Section 76-3-201, MCA, is amended to read:

6 **"76-3-201. Exemption for certain divisions of land.** (1) Unless the method of disposition is adopted
 7 for the purpose of evading this chapter, the requirements of this chapter ~~shall~~ may not apply to any division
 8 of land ~~which~~ that:

9 ~~(1)(a)~~ (a) is created by order of any court of record in this state or by operation of law or ~~which~~ that,
 10 in the absence of agreement between the parties to the sale, could be created by an order of any court in
 11 this state pursuant to the law of eminent domain, {Title 70, chapter 30};

12 ~~(2)(b)~~ (b) is created to provide security for construction mortgages, liens, or trust indentures;

13 ~~(3)(c)~~ (c) creates an interest in oil, gas, minerals, or water ~~which~~ that is ~~now or hereafter~~
 14 the surface ownership of real property;

15 ~~(4)(d)~~ (d) creates cemetery lots;

16 ~~(5)(e)~~ (e) is created by the reservation of a life estate;

17 ~~(6)(f)~~ (f) is created by lease or rental for farming and agricultural purposes.

18 (2) Before a court of record orders a division of land under subsection (1)(a), the court shall notify
 19 the governing body of the pending division and allow the governing body to present written comment on
 20 the division."
 21

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

23 **"76-3-207. Subdivisions exempted from review but subject to survey requirements -- exceptions.**

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

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

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

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

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

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

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

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

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

17 (c) a sale of a division of land created under 76-3-201(2) subjects the division to the provisions
 18 of this chapter.

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

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

24 **"76-3-507. Provision for bonding requirements to ensure construction of public improvements.**

25 (1) Except as provided in subsection (2), the governing body shall require the subdivider to complete
 26 required improvements within the subdivision prior to the approval of the final plat.

27 (2) (a) In lieu of the completion of the construction of any public improvements prior to the
 28 approval of a final plat, the governing body shall at the subdivider's option allow the subdivider ~~shall~~ to
 29 provide or cause to be provided a bond or other reasonable security, in an amount and with surety and
 30 conditions satisfactory to the governing body, providing for and securing the construction and installation

1 of the improvements within a period specified by the governing body and expressed in the bonds or other
2 security. The governing body shall reduce bond requirements commensurate with the completion of
3 improvements.

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

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

12

-END-

1 SENATE BILL NO. 339

2 INTRODUCED BY GROSFIELD

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE REVIEW OF CERTAIN PARCEL DIVISIONS;
5 AND AMENDING SECTIONS 76-3-103, 76-3-201, ~~76-3-207~~, AND 76-3-507, MCA."
67 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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13 the purpose of disclosing facts pertaining to boundary locations.14 (2) "Dedication" means the deliberate appropriation of land by an owner for any general and public
15 use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the
16 public use to which the property has been devoted.17 (3) "Division of land" means the segregation of one or more parcels of land from a larger tract held
18 in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion
19 of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the
20 segregated parcels pursuant to this chapter.21 (4) "Examining land surveyor" means a registered land surveyor ~~du~~ appointed by the governing
22 body to review surveys and plats submitted for filing.23 (5) "Final plat" means the final drawing of the subdivision and dedication required by this chapter
24 to be prepared for filing for record with the county clerk and recorder and containing all elements and
25 requirements set forth in this chapter and in regulations adopted pursuant ~~thereto~~ to this chapter.26 (6) "Governing body" means a board of county commissioners or the governing authority of a city
27 or town organized pursuant to law.28 (7) "Immediate family" means a spouse, children BY BLOOD OR ADOPTION, and parents.29 ~~(7)(8)~~ (8) "Irregularly shaped tract of land" means a parcel of land other than an aliquot part of the
30 United States government survey section or a United States government lot, the boundaries or areas of

1 which cannot be determined without a survey or trigonometric calculation.

2 ~~(8)~~(9) "Planned unit development" means a land development project consisting of residential
3 clusters, industrial parks, shopping centers, or office building parks that ~~comprise~~ compose a planned
4 mixture of land uses built in a prearranged relationship to each other and having open space and community
5 facilities in common ownership or use.

6 ~~(9)~~(10) "Plat" means a graphical representation of a subdivision showing the division of land into
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9 layout of streets, alleys, lots, blocks, and other elements of a subdivision ~~which~~ that furnish a basis for
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14 chapter 67, to practice engineering in the state of Montana.

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16 subdivision of land.

17 ~~(14)~~(15) "Subdivision" means a division of land or land so divided that it creates one or more
18 parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United
19 States government section, exclusive of public roadways, in order that the title to or possession of the
20 parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and further
21 includes a condominium or area, regardless of its size, that provides or will provide multiple space for
22 recreational camping vehicles or mobile homes.

23 ~~(15)~~(16) (a) "Tract of record" means:

24 ~~(i) a NOTWITHSTANDING 43 U.S.C. 753, AN INDIVIDUAL~~ parcel of land, irrespective of ownership,
25 that can be identified by legal description, independent of any other parcel of land, using documents on file
26 in the records of the county clerk and recorder's office;

27 ~~(ii) each individual parcel of land identified by a legal description unless the parcel has been joined~~
28 ~~with one or more other parcels and has a legal description that describes the resulting single larger parcel;~~

29 and

30 ~~(iii) a single larger parcel created pursuant to subsection (16)(a)(ii) that is shown and described on~~

1 ~~a certificate of survey on file in the office of the county clerk and recorder setting forth the single larger~~
 2 ~~parcel.~~

3 ~~(b) The term does not apply to multiple parcels shown on a single deed or other instrument.~~

4 (B) EACH INDIVIDUAL TRACT OF RECORD CONTINUES TO BE AN INDIVIDUAL PARCEL OF LAND
 5 UNLESS THE OWNER OF THE PARCEL HAS JOINED IT WITH OTHER CONTIGUOUS PARCELS BY FILING
 6 WITH THE COUNTY CLERK AND RECORDER:

7 (I) AN INSTRUMENT OF CONVEYANCE IN WHICH THE AGGREGATED PARCELS HAVE BEEN
 8 ASSIGNED A LEGAL DESCRIPTION THAT DESCRIBES THE RESULTING SINGLE PARCEL AND IN WHICH
 9 THE OWNER EXPRESSLY DECLARES THE OWNER'S INTENTION THAT THE TRACTS BE MERGED; OR

10 (II) A CERTIFICATE OF SURVEY OR SUBDIVISION PLAT THAT SHOWS THAT THE BOUNDARIES
 11 OF THE ORIGINAL PARCELS HAVE BEEN EXPUNGED AND DEPICTS THE BOUNDARIES OF THE LARGER
 12 AGGREGATE PARCEL.

13 (C) AN INSTRUMENT OF CONVEYANCE DOES NOT MERGE PARCELS OF LAND UNDER
 14 SUBSECTION (16)(B)(I) UNLESS THE INSTRUMENT STATES, "THIS INSTRUMENT IS INTENDED TO MERGE
 15 INDIVIDUAL PARCELS OF LAND TO FORM THE AGGREGATE PARCEL(S) DESCRIBED IN THIS
 16 INSTRUMENT" OR CLEARLY EXPRESSES THE OWNER'S INTENT TO EFFECT A MERGER OF PARCELS."

17

18 **Section 2.** Section 76-3-201, MCA, is amended to read:

19 **"76-3-201. Exemption for certain divisions of land.** (1) Unless the method of disposition is adopted
 20 for the purpose of evading this chapter, the requirements of this chapter ~~shall~~ may not apply to any division
 21 of land ~~which~~ that:

22 ~~(1)(a)~~ (a) is created by order of any court of record in this state or by operation of law or ~~which~~ that,
 23 in the absence of agreement between the parties to the sale, could be created by an order of any court in
 24 this state pursuant to the law of eminent domain, {Title 70, chapter 30};

25 ~~(2)(b)~~ (b) is created to provide security for construction mortgages, liens, or trust indentures;

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

28 ~~(4)(d)~~ (d) creates cemetery lots;

29 ~~(5)(e)~~ (e) is created by the reservation of a life estate;

30 ~~(6)(f)~~ (f) is created by lease or rental for farming and agricultural purposes.

1 ~~(2) Before a court of record orders a division of land under subsection (1)(a), the court shall notify~~
 2 ~~the governing body of the pending division and allow the governing body to present written comment on~~
 3 ~~the division."~~

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

6 ~~"76-3-207. Subdivisions exempted from review but subject to survey requirements—exceptions.~~

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

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

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

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

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

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

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

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

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

30 ~~(c) a sale of a division of land created under 76-3-201(2) subjects the division to the provisions~~

1 ~~of this chapter.~~

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

5

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

7 **"76-3-507. Provision for bonding requirements to ensure construction of public improvements.**

8 (1) Except as provided in subsection (2), the governing body shall require the subdivider to complete
9 required improvements within the subdivision prior to the approval of the final plat.

10 (2) (a) In lieu of the completion of the construction of any public improvements prior to the
11 approval of a final plat, the governing body shall at the subdivider's option allow the subdivider shall to
12 provide or cause to be provided a bond or other reasonable security, in an amount and with surety and
13 conditions satisfactory to the governing body, providing for and securing the construction and installation
14 of the improvements within a period specified by the governing body and expressed in the bonds or other
15 security. The governing body shall reduce bond requirements commensurate with the completion of
16 improvements.

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

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

25

-END-

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SENATE BILL NO. 339
INTRODUCED BY GROSFIELD

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE REVIEW OF CERTAIN PARCEL DIVISIONS;
AND AMENDING SECTIONS 76-3-103, 76-3-201, ~~76-3-207~~, AND 76-3-507, 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 BILL NO. 339

INTRODUCED BY GROSFIELD

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE REVIEW OF CERTAIN PARCEL DIVISIONS;
AND AMENDING SECTIONS 76-3-103, 76-3-201, ~~76-3-207~~, AND 76-3-507, MCA; AND PROVIDING AN
IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE ."

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

Section 1. Section 76-3-103, MCA, is amended to read:

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

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

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

(3) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter. THE CONVEYANCE OF A TRACT OF RECORD OR AN ENTIRE PARCEL OF LAND THAT WAS CREATED BY A PREVIOUS DIVISION OF LAND IS NOT A DIVISION OF LAND.

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

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

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

1 (7) "Immediate family" means a spouse, children BY BLOOD OR ADOPTION, and parents.

2 ~~(7)(8)~~ "Irregularly shaped tract of land" means a parcel of land other than an aliquot part of the
3 United States government survey section or a United States government lot, the boundaries or areas of
4 which cannot be determined without a survey or trigonometric calculation.

5 ~~(8)(9)~~ "Planned unit development" means a land development project consisting of residential
6 clusters, industrial parks, shopping centers, or office building parks that ~~comprise~~ compose a planned
7 mixture of land uses built in a prearranged relationship to each other and having open space and community
8 facilities in common ownership or use.

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

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

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

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19 subdivision of land.

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21 parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United
22 States government section, exclusive of public roadways, in order that the title to or possession of the
23 parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and further
24 includes a condominium or area, regardless of its size, that provides or will provide multiple space for
25 recreational camping vehicles or mobile homes.

26 ~~(15)(16)~~ (a) "Tract of record" means:

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29 in the records of the county clerk and recorder's office;

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1 ~~with one or more other parcels and has a legal description that describes the resulting single larger parcel;~~

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3 ~~(iii) a single larger parcel created pursuant to subsection (16)(a)(ii) that is shown and described on~~
 4 ~~a certificate of survey on file in the office of the county clerk and recorder setting forth the single larger~~
 5 ~~parcel.~~

6 ~~(b) The term does not apply to multiple parcels shown on a single deed or other instrument.~~

7 (B) EACH INDIVIDUAL TRACT OF RECORD CONTINUES TO BE AN INDIVIDUAL PARCEL OF LAND
 8 UNLESS THE OWNER OF THE PARCEL HAS JOINED IT WITH OTHER CONTIGUOUS PARCELS BY FILING
 9 WITH THE COUNTY CLERK AND RECORDER:

10 (I) AN INSTRUMENT OF CONVEYANCE IN WHICH THE AGGREGATED PARCELS HAVE BEEN
 11 ASSIGNED A LEGAL DESCRIPTION THAT DESCRIBES THE RESULTING SINGLE PARCEL AND IN WHICH
 12 THE OWNER EXPRESSLY DECLARES THE OWNER'S INTENTION THAT THE TRACTS BE MERGED; OR

13 (II) A CERTIFICATE OF SURVEY OR SUBDIVISION PLAT THAT SHOWS THAT THE BOUNDARIES
 14 OF THE ORIGINAL PARCELS HAVE BEEN EXPUNGED AND DEPICTS THE BOUNDARIES OF THE LARGER
 15 AGGREGATE PARCEL.

16 (C) AN INSTRUMENT OF CONVEYANCE DOES NOT MERGE PARCELS OF LAND UNDER
 17 SUBSECTION (16)(B)(I) UNLESS THE INSTRUMENT STATES, "THIS INSTRUMENT IS INTENDED TO MERGE
 18 INDIVIDUAL PARCELS OF LAND TO FORM THE AGGREGATE PARCEL(S) DESCRIBED IN THIS
 19 INSTRUMENT" OR A SIMILAR STATEMENT, IN ADDITION TO THE LEGAL DESCRIPTION OF THE
 20 AGGREGATE PARCELS, CLEARLY EXPRESSES EXPRESSING THE OWNER'S INTENT TO EFFECT A
 21 MERGER OF PARCELS."

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 23 **Section 2.** Section 76-3-201, MCA, is amended to read:

24 **"76-3-201. Exemption for certain divisions of land.** (1) Unless the method of disposition is adopted
 25 for the purpose of evading this chapter, the requirements of this chapter ~~shall~~ may not apply to any division
 26 of land ~~which~~ that:

27 ~~(1)(a)~~ (a) is created by order of any court of record in this state or by operation of law or ~~which~~ that,
 28 in the absence of agreement between the parties to the sale, could be created by an order of any court in
 29 this state pursuant to the law of eminent domain, ~~{Title 70, chapter 30}~~;

30 ~~(2)(b)~~ (b) is created to provide security for construction mortgages, liens, or trust indentures;

1 ~~(3)(c)~~ creates an interest in oil, gas, minerals, or water which that is new or hereafter severed from
2 the surface ownership of real property;

3 ~~(4)(d)~~ creates cemetery lots;

4 ~~(5)(e)~~ is created by the reservation of a life estate;

5 ~~(6)(f)~~ is created by lease or rental for farming and agricultural purposes.

6 (2) Before a court of record orders a division of land under subsection (1)(a), the court shall notify
7 the governing body of the pending division and allow the governing body to present written comment on
8 the division."

9

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

11 ~~"76-3-207. Subdivisions exempted from review but subject to survey requirements -- exceptions.~~

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

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

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

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

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

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

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

29 ~~(a) within a platted subdivision filed with the county clerk and recorder, a division of lots that~~
30 ~~results in an increase in the number of lots or which that redesigns or rearranges six or more lots must be~~

1 ~~reviewed and approved by the governing body and an amended plat must be filed with the county clerk and~~
 2 ~~recorder;~~

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

5 ~~(c) a sale of a division of land created under 76-3-201(2) subjects the division to the provisions~~
 6 ~~of this chapter.~~

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

10

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

12 **"76-3-507. Provision for bonding requirements to ensure construction of public improvements.**

13 (1) Except as provided in subsection (2), the governing body shall require the subdivider to complete
 14 required improvements within the subdivision prior to the approval of the final plat.

15 (2) (a) In lieu of the completion of the construction of any public improvements prior to the
 16 approval of a final plat, the governing body shall at the subdivider's option allow the subdivider ~~shall~~ to
 17 provide or cause to be provided a bond or other reasonable security, in an amount and with surety and
 18 conditions satisfactory to the governing body, providing for and securing the construction and installation
 19 of the improvements within a period specified by the governing body and expressed in the bonds or other
 20 security. The governing body shall reduce bond requirements commensurate with the completion of
 21 improvements.

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

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

30

SENATE BILL NO. 339

INTRODUCED BY GROSFIELD

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE REVIEW OF CERTAIN PARCEL DIVISIONS; AND AMENDING SECTIONS 76-3-103, ~~76-3-201, 76-3-207~~, AND 76-3-507, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE ."

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

Section 1. Section 76-3-103, MCA, is amended to read:

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

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

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

(3) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter. THE CONVEYANCE OF A TRACT OF RECORD OR AN ENTIRE PARCEL OF LAND THAT WAS CREATED BY A PREVIOUS DIVISION OF LAND IS NOT A DIVISION OF LAND.

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

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

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

1 (7) "Immediate family" means a spouse, children BY BLOOD OR ADOPTION, and parents.

2 ~~(7)~~(8) "Irregularly shaped tract of land" means a parcel of land other than an aliquot part of the
3 United States government survey section or a United States government lot, the boundaries or areas of
4 which cannot be determined without a survey or trigonometric calculation.

5 ~~(8)~~(9) "Planned unit development" means a land development project consisting of residential
6 clusters, industrial parks, shopping centers, or office building parks that ~~comprise~~ compose a planned
7 mixture of land uses built in a prearranged relationship to each other and having open space and community
8 facilities in common ownership or use.

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

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

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

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

18 ~~(13)~~(14) "Subdivider" means a person who causes land to be subdivided or who proposes a
19 subdivision of land.

20 ~~(14)~~(15) "Subdivision" means a division of land or land so divided that it creates one or more
21 parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United
22 States government section, exclusive of public roadways, in order that the title to or possession of the
23 parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and further
24 includes a condominium or area, regardless of its size, that provides or will provide multiple space for
25 recreational camping vehicles or mobile homes.

26 ~~(15)~~(16) (a) "Tract of record" means:

27 ~~(i) a NOTWITHSTANDING 43 U.S.C. 753, AN AN INDIVIDUAL~~ parcel of land, irrespective of
28 ownership, that can be identified by legal description, independent of any other parcel of land, using
29 documents on file in the records of the county clerk and recorder's office;

30 ~~(ii) each individual parcel of land identified by a legal description unless the parcel has been joined~~

1 ~~with one or more other parcels and has a legal description that describes the resulting single larger parcel;~~
2 ~~and~~

3 ~~(iii) a single larger parcel created pursuant to subsection (16)(a)(ii) that is shown and described on~~
4 ~~a certificate of survey on file in the office of the county clerk and recorder setting forth the single larger~~
5 ~~parcel.~~

6 ~~(b) The term does not apply to multiple parcels shown on a single deed or other instrument.~~

7 (B) EACH INDIVIDUAL TRACT OF RECORD CONTINUES TO BE AN INDIVIDUAL PARCEL OF LAND
8 UNLESS THE OWNER OF THE PARCEL HAS JOINED IT WITH OTHER CONTIGUOUS PARCELS BY FILING
9 WITH THE COUNTY CLERK AND RECORDER:

10 (I) AN INSTRUMENT OF CONVEYANCE IN WHICH THE AGGREGATED PARCELS HAVE BEEN
11 ASSIGNED A LEGAL DESCRIPTION THAT DESCRIBES THE RESULTING SINGLE PARCEL AND IN WHICH
12 THE OWNER EXPRESSLY DECLARES THE OWNER’S INTENTION THAT THE TRACTS BE MERGED; OR

13 (II) A CERTIFICATE OF SURVEY OR SUBDIVISION PLAT THAT SHOWS THAT THE BOUNDARIES
14 OF THE ORIGINAL PARCELS HAVE BEEN EXPUNGED AND DEPICTS THE BOUNDARIES OF THE LARGER
15 AGGREGATE PARCEL.

16 (C) AN INSTRUMENT OF CONVEYANCE DOES NOT MERGE PARCELS OF LAND UNDER
17 SUBSECTION (16)(B)(I) UNLESS THE INSTRUMENT STATES, "THIS INSTRUMENT IS INTENDED TO MERGE
18 INDIVIDUAL PARCELS OF LAND TO FORM THE AGGREGATE PARCEL(S) DESCRIBED IN THIS
19 INSTRUMENT" OR A SIMILAR STATEMENT, IN ADDITION TO THE LEGAL DESCRIPTION OF THE
20 AGGREGATE PARCELS, CLEARLY EXPRESSES EXPRESSING THE OWNER’S INTENT TO EFFECT A
21 MERGER OF PARCELS."

22
23 **Section 2.** ~~Section 76-3-201, MCA, is amended to read:~~

24 ~~"76-3-201. Exemption for certain divisions of land. (1) Unless the method of disposition is adopted~~
25 ~~for the purpose of evading this chapter, the requirements of this chapter shall may not apply to any division~~
26 ~~of land which that:~~

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

30 ~~(2)(b) is created to provide security for construction mortgages, liens, or trust indentures;~~

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

3 ~~(4)(d) creates cemetery lots;~~

4 ~~(5)(e) is created by the reservation of a life estate;~~

5 ~~(6)(f) is created by lease or rental for farming and agricultural purposes.~~

6 ~~(2) Before a court of record orders a division of land under subsection (1)(a), the court shall notify~~
 7 ~~the governing body of the pending division and allow the governing body to present written comment on~~
 8 ~~the division."~~

9

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

11 ~~"76-3-207. Subdivisions exempted from review but subject to survey requirements--exceptions.~~

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

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

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 24 ~~aggregation of lots; and~~

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

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

29 ~~(a) within a platted subdivision filed with the county clerk and recorder, a division of lots that~~
 30 ~~results in an increase in the number of lots or which that redesigns or rearranges six or more lots must be~~

1 ~~reviewed and approved by the governing body and an amended plat must be filed with the county clerk and~~
 2 ~~recorder;~~

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

5 ~~(c) a sale of a division of land created under 76-3-201(2) subjects the division to the provisions~~
 6 ~~of this chapter.~~

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

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11 **Section 2.** Section 76-3-507, MCA, is amended to read:

12 **"76-3-507. Provision for bonding requirements to ensure construction of public improvements.**

13 (1) Except as provided in subsection (2), the governing body shall require the subdivider to complete
 14 required improvements within the subdivision prior to the approval of the final plat.

15 (2) (a) In lieu of the completion of the construction of any public improvements prior to the
 16 approval of a final plat, the governing body shall at the subdivider's option allow the subdivider ~~shall to~~
 17 provide or cause to be provided a bond or other reasonable security, in an amount and with surety and
 18 conditions satisfactory to the governing body, providing for and securing the construction and installation
 19 of the improvements within a period specified by the governing body and expressed in the bonds or other
 20 security. The governing body shall reduce bond requirements commensurate with the completion of
 21 improvements.

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

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

30

1 NEW SECTION. SECTION 3. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID
2 PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT]
3 IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID
4 APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

5
6 NEW SECTION. SECTION 4. EFFECTIVE DATE -- RETROACTIVE APPLICABILITY. [THIS ACT] IS
7 EFFECTIVE ON PASSAGE AND APPROVAL, AND [SECTION 1] APPLIES RETROACTIVELY, WITHIN THE
8 MEANING OF 1-2-109, TO TRACTS OF RECORD FOR LOCAL REGULATION OF SUBDIVISIONS FILED
9 BEFORE [THE EFFECTIVE DATE OF THIS ACT].

10

-END-



CONFERENCE COMMITTEE

on Senate Bill 339

Report No. 1, April 18, 1997

Page 1 of 2

Mr. President and Mr. Speaker:

We, your Conference Committee on Senate Bill 339, met and considered the House Committee of the Whole amendments dated April 4, 1997.

We recommend that Senate Bill 339 (reference copy - salmon) be amended further as follows:

1. Title, line 5.
Following: "76-3-207,"
Insert: ", 76-3-201,"

2. Page 5.
Following: line 9
Insert: "

Section 2. Section 76-3-201, MCA, is amended to read:
"76-3-201. Exemption for certain divisions of land. (1)
Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter ~~shall~~ may not apply to any division of land ~~which that~~ that:
~~(1)(a)~~ (a) is created by order of any court of record in this state or by operation of law or ~~which that~~ that, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain, ~~(Title 70, chapter 30);~~
~~(2)(b)~~ (b) is created to provide security for construction mortgages, liens, or trust indentures;
~~(3)(c)~~ (c) creates an interest in oil, gas, minerals, or water ~~which that is now or hereafter~~ severed from the surface ownership of real property;
~~(4)(d)~~ (d) creates cemetery lots;
~~(5)(e)~~ (e) is created by the reservation of a life estate;
~~(6)(f)~~ (f) is created by lease or rental for farming and agricultural purposes.
(2) Before a court of record orders a division of land under subsection (1)(a), the court shall notify the governing body of the pending division and allow the governing body to present written comment on the division."

Renumber: subsequent sections

ADOPT

REJECT


CCR#1
SB 339

830948CC.STS

3. Page 6, line 8.
Following: "TRACTS"
Strike: "OF" through "SUBDIVISIONS"

And that this Conference Committee report be adopted.

For the Senate:



Senator Tom Beck, Chair



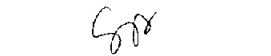
Senator Lorents Grosfield



Senator Dorothy Edk



Amd. Coord.



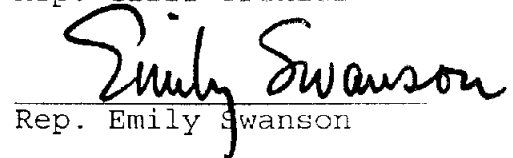
Sec. of Senate

For the House:



Rep. Jay Stoval, Chair

Rep. Cliff Trexler



Rep. Emily Swanson

SENATE BILL NO. 339

INTRODUCED BY GROSFIELD

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A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE REVIEW OF CERTAIN PARCEL DIVISIONS; AND AMENDING SECTIONS 76-3-103, ~~76-3-201~~, ~~76-3-207~~, 76-3-201, AND 76-3-507, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE ."

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(3) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter. THE CONVEYANCE OF A TRACT OF RECORD OR AN ENTIRE PARCEL OF LAND THAT WAS CREATED BY A PREVIOUS DIVISION OF LAND IS NOT A DIVISION OF LAND.

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

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

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

1 (7) "Immediate family" means a spouse, children BY BLOOD OR ADOPTION, and parents.

2 ~~(7)(8)~~ "Irregularly shaped tract of land" means a parcel of land other than an aliquot part of the
3 United States government survey section or a United States government lot, the boundaries or areas of
4 which cannot be determined without a survey or trigonometric calculation.

5 ~~(8)(9)~~ "Planned unit development" means a land development project consisting of residential
6 clusters, industrial parks, shopping centers, or office building parks that ~~emprise~~ compose a planned
7 mixture of land uses built in a prearranged relationship to each other and having open space and community
8 facilities in common ownership or use.

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

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

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

18 ~~(13)(14)~~ "Subdivider" means a person who causes land to be subdivided or who proposes a
19 subdivision of land.

20 ~~(14)(15)~~ "Subdivision" means a division of land or land so divided that it creates one or more
21 parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United
22 States government section, exclusive of public roadways, in order that the title to or possession of the
23 parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and further
24 includes a condominium or area, regardless of its size, that provides or will provide multiple space for
25 recreational camping vehicles or mobile homes.

26 ~~(15)(16)~~ (a) "Tract of record" means:

27 ~~(i) a NOTWITHSTANDING 43 U.S.C. 753, AN AN INDIVIDUAL~~ parcel of land, irrespective of
28 ownership, that can be identified by legal description, independent of any other parcel of land, using
29 documents on file in the records of the county clerk and recorder's office;

30 ~~(iii) each individual parcel of land identified by a legal description unless the parcel has been joined~~

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3 ~~(iii) a single larger parcel created pursuant to subsection (16)(a)(ii) that is shown and described on~~
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6 ~~(b) The term does not apply to multiple parcels shown on a single deed or other instrument.~~

7 (B) EACH INDIVIDUAL TRACT OF RECORD CONTINUES TO BE AN INDIVIDUAL PARCEL OF LAND
 8 UNLESS THE OWNER OF THE PARCEL HAS JOINED IT WITH OTHER CONTIGUOUS PARCELS BY FILING
 9 WITH THE COUNTY CLERK AND RECORDER:

10 (I) AN INSTRUMENT OF CONVEYANCE IN WHICH THE AGGREGATED PARCELS HAVE BEEN
 11 ASSIGNED A LEGAL DESCRIPTION THAT DESCRIBES THE RESULTING SINGLE PARCEL AND IN WHICH
 12 THE OWNER EXPRESSLY DECLARES THE OWNER'S INTENTION THAT THE TRACTS BE MERGED; OR

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16 (C) AN INSTRUMENT OF CONVEYANCE DOES NOT MERGE PARCELS OF LAND UNDER
 17 SUBSECTION (16)(B)(I) UNLESS THE INSTRUMENT STATES, "THIS INSTRUMENT IS INTENDED TO MERGE
 18 INDIVIDUAL PARCELS OF LAND TO FORM THE AGGREGATE PARCEL(S) DESCRIBED IN THIS
 19 INSTRUMENT" OR A SIMILAR STATEMENT, IN ADDITION TO THE LEGAL DESCRIPTION OF THE
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 21 MERGER OF PARCELS."

22

23 ~~Section 2. Section 76-3-201, MCA, is amended to read:~~

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 28 ~~in the absence of agreement between the parties to the sale, could be created by an order of any court in~~
 29 ~~this state pursuant to the law of eminent domain, (Title 70, chapter 30);~~

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 9 ~~been paid."~~

10

11 **SECTION 2. SECTION 76-3-201, MCA, IS AMENDED TO READ:**

12 **"76-3-201. Exemption for certain divisions of land. (1) Unless the method of disposition is adopted**
 13 **for the purpose of evading this chapter, the requirements of this chapter ~~shall~~ may not apply to any division**
 14 **of land ~~which~~ that:**

15 ~~(1)(a)~~ (a) is created by order of any court of record in this state or by operation of law or ~~which~~ that,
 16 in the absence of agreement between the parties to the sale, could be created by an order of any court in
 17 this state pursuant to the law of eminent domain, {Title 70, chapter 30};

18 ~~(2)(b)~~ (b) is created to provide security for construction mortgages, liens, or trust indentures;

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

21 ~~(4)(d)~~ (d) creates cemetery lots;

22 ~~(5)(e)~~ (e) is created by the reservation of a life estate;

23 ~~(6)(f)~~ (f) is created by lease or rental for farming and agricultural purposes.

24 (2) Before a court of record orders a division of land under subsection (1)(a), the court shall notify
 25 the governing body of the pending division and allow the governing body to present written comment on
 26 the division."

27

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

29 **"76-3-507. Provision for bonding requirements to ensure construction of public improvements.**

30 (1) Except as provided in subsection (2), the governing body shall require the subdivider to complete

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

2 (2) (a) In lieu of the completion of the construction of any public improvements prior to the
3 approval of a final plat, the governing body shall at the subdivider's option allow the subdivider ~~shall~~ to
4 provide or cause to be provided a bond or other reasonable security, in an amount and with surety and
5 conditions satisfactory to the governing body, providing for and securing the construction and installation
6 of the improvements within a period specified by the governing body and expressed in the bonds or other
7 security. The governing body shall reduce bond requirements commensurate with the completion of
8 improvements.

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

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

17

18 NEW SECTION. SECTION 4. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID
19 PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT]
20 IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID
21 APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

22

23 NEW SECTION. SECTION 5. EFFECTIVE DATE -- RETROACTIVE APPLICABILITY. [THIS ACT] IS
24 EFFECTIVE ON PASSAGE AND APPROVAL, AND [SECTION 1] APPLIES RETROACTIVELY, WITHIN THE
25 MEANING OF 1-2-109, TO TRACTS OF RECORD FOR LOCAL REGULATION OF SUBDIVISIONS FILED
26 BEFORE [THE EFFECTIVE DATE OF THIS ACT].

27

-END-