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John Mangiameli

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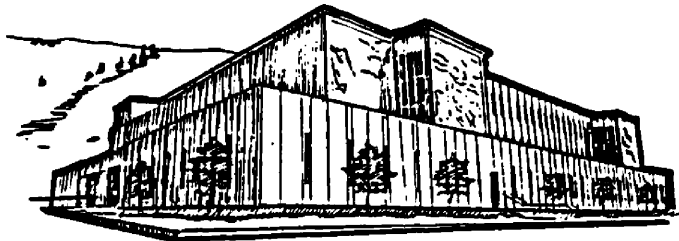
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University of
Montana

THE MONTANA SUBDIVISION AND PLATTING ACT:
A CASE STUDY AND ANALYSIS OF THE MISSOULA WYE

By

John Mangiameli

B.S. Southeast Missouri State University, 1986

Presented in partial fulfillment of the requirements

for the degree of

Master of Science

University of Montana

1991

Approved by



Chairperson, Board of Examiners



Dean, Graduate School

Dec. 18, 1991

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PREFACE

As an employee of the Missoula Office of Community Development my job responsibilities require that I work with the Montana Subdivision and Platting Act and the Missoula County Subdivision Regulations. Both sets of regulations guide the processes by which land can be divided. As I became more familiar with the Act and its regulations, and as I learned more about the practice of dividing land, I discovered that most land divisions are created by avoiding the regulatory review guidelines established in the Act and in the local regulations. In fact 87% of land divisions in Missoula County have been created this way.

I decided to research the Montana Subdivision and Platting Act and its effects on local government and the landscape because I feel the Act does not justly serve the interest of the general public. I chose not to delve into the Missoula County Subdivision Regulations in this analysis simply because state enabling legislation must change before substantive changes in local regulations can be made. Once these changes are made, local subdivision regulations will be ripe for review and modification.

Based on practical experience with state subdivision regulations, I believe the Montana Subdivision and Platting Act has failed to empower local

government to monitor and review all land divisions and has placed in jeopardy the ability of local government to provide adequately for the health, safety and general welfare of the public. Land divisions created by the exemptions in the Act take place without the benefit of review to preclude transportation problems, school crowding, and adverse impacts to water and air quality, and police and fire protection.

To illustrate the political and social ramifications caused by unreviewed land divisions, I first profiled Missoula County to provide population and land distribution data and describe significant natural characteristics. I then reviewed historical land division data for the County. To narrow the scope of this essay, I studied land division activity in an area of Missoula County known as the "Wye." Within this area, I further narrowed the study to Sections 16, 17, 20, and 21 of Township 14 North, Range 20 West. This four square mile microcosm provides a view of development related problems and pressures created by the subdivision review exemptions not only in Missoula County but in many other areas of the state.

I have designed this essay to heighten awareness of the land division review and exemption processes, promote further investigation of the Act, and encourage the Missoula Board of County Commissioners to take a leadership role in fostering positive changes in the Montana Subdivision and Platting Act

during the 1993 Legislative session.

This project would have been impossible without the help and dedicated work of all the people at the Missoula Office of Community Development, Amy and Pat O’Herren of Rural Planning, Marnie McLain of the County Attorney’s Office, Dan Jordan of the City Department of Engineering, and Doug Bureson and Jim Philippi of the Missoula County Surveyor’s Office. Nor would it have been possible without the pioneering work of the Montana Environmental Information Center.

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INTRODUCTION

A PROFILE OF MISSOULA

Missoula County consists mainly of forested mountains interspersed with glaciated valleys and gravel filled basins worn level by streams. The bulk of Missoula County's population resides in these level valleys. For example, the City of Missoula is located at the confluence of the Jocko, Bitterroot, Clark Fork, Grant Creek and Rattlesnake valleys. Tables 1 and 2 refer to data detailing the geographic area and recent population figures for both Missoula City and County.

Table 1 LAND AREA

	ACRES	SQUARE MILES
CITY	11,200	17.5
COUNTY	1,679,360	2,624

Office of Community Development, 1991

Table 2 POPULATION

	1960	1970	1980	1990
CITY	27,090	24,497	33,388	42,918
COUNTY	44,663	58,263	76,016	78,687

US Census Data

During the past 30 years, the population of Missoula County has grown by approximately 34,000 people, increasing the population density from 17 to 30 people per square mile.



MISSOULA COUNTY

MAP 1

LAND DISTRIBUTION AND PHYSICAL CHARACTERISTICS OF MISSOULA

Approximately 74% ¹ of Missoula County's land base is owned by the State of Montana, the federal government, Plum Creek Timber Co. and Champion International. The remaining 26% ² is either privately owned, or owned by the University of Montana, the County and/or City of Missoula, or other public organizations and agencies. Additionally, a significant portion of Missoula County lies under water. When this area is subtracted from the County's land base, this 26% figure drops to 18% ³. In effect, the 1,371,097 acres covered by surface water and owned or managed by the state, the federal government, Plum Creek, and Champion has been removed from Missoula County's developable and inhabitable land base, leaving approximately 308,263 acres under the control of local government.

Table 3 DISTRIBUTION OF LAND IN MISSOULA COUNTY

	STATE	FEDERAL	P.C.	CHAMPION	WATER
SQ.MILES	131.3	1105.7	287.1	427.3	200
ACRES	84,038	707,637	177,962	273,460	128,000

(State includes Department of State Lands and Fish, Wildlife and Parks land, Federal includes Forest Service and Bureau of Land Management land, P.C. is Plum Creek Timber Co., Champion is Champion International, and water indicates the amount of land covered by surface water)

¹ These figures do not include the acreage owned by Dennis Washington Jr., Burlington Northern and Montana Rail Link, the Montana Power Company, or the State Highway Department.

² See above footnote.

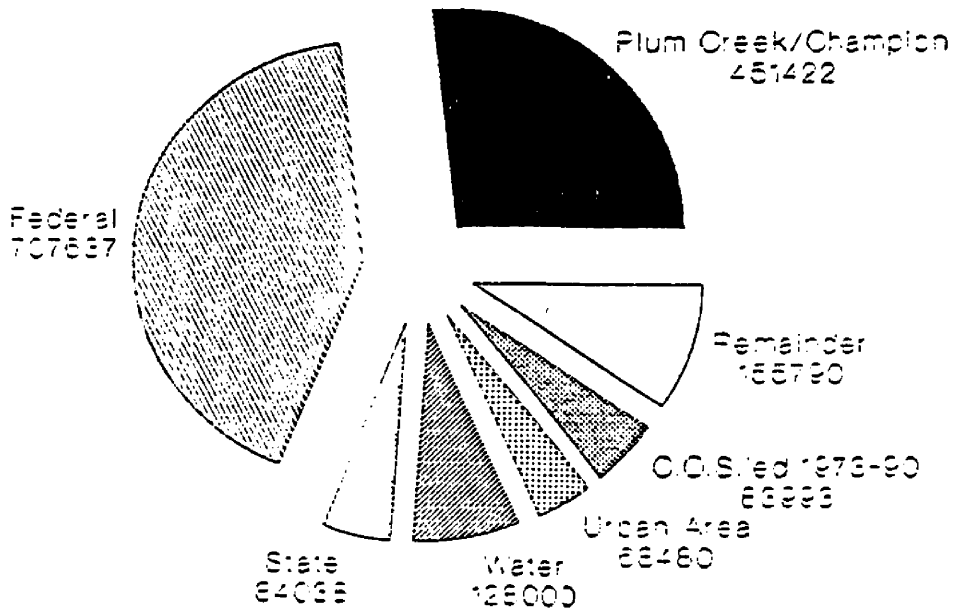
³ See above footnote.

However, of these remaining 308,263 acres, areas for human habitation are limited by steepness of slope, high ground water, soil characteristics, floodplains and by areas that are already developed or dedicated. Moreover, the areas suitable for human habitation are also the same areas used by wildlife as winter range and that are well suited for agriculture. (Missoula County Subdivision Inventory, 1980) Although 308,263 acres may seem like an adequate supply of developable land, 49% of this area, or 152,573 acres, is currently in the Urban Area or has already been divided by Certificate of Survey (COS). Graph 1 visually describes the use of the committed lands in Missoula County.

Notwithstanding the amount of land already committed to human habitation or set aside in large public and private holdings, Missoula County is rich with natural and cultural features. Some of these include a large aquifer from which all the residents of the Missoula Valley draw their water, relatively mild climatic conditions, and a fairly long growing season. The Rattlesnake National Recreation Area and Wilderness lie just outside of Missoula's city limits and can be accessed by public transportation. The Bitterroot River, the Clearwater River, the Blackfoot River, and the Clark Fork of the Columbia River are significant Montana drainages that run through and shape the County. Elk, mountain lions, black bear, and osprey all inhabit Missoula County, as do threatened and endangered species such as the grizzly bear, bald eagle and

Missoula County Lands

Total Acres: 1,679,360



GRAPH 1

grey wolf. The Flathead Reservation and Flathead Lake, and Glacier and Yellowstone National Parks are all within an easy day's drive from Missoula. And, the City of Missoula serves as a regional center for services, health care, retail and wholesale goods, and transportation.

These features combine to make Missoula an attractive place to live, but human settlement in the area is not without a price. Forested mountains, large open spaces, and river corridors give credence that Missoula County is rural in character and not very crowded or cluttered. Yet, as noted above, only a small fraction of the entire county is inhabited or is inhabitable. On a county-wide basis, the population density is approximately 30 people per square mile, this compares to a national average of approximately 67 people per square mile.⁴ However, calculating the population density based on the 308,263 acre figure provided above, the population density of Missoula County rises to approximately 163 people per square mile, while calculating the density based on the 152,573 acres currently inhabited and divided by COS, the population density rises to approximately 330 people per square mile. Such a density transforms Missoula from a rural to an urban city and county.

Similarly, Missoula suffers from other problems related to urban expansion. It's sole-source aquifer is threatened with pollution, and climatic

⁴Goodes Atlas, Rand McNally

conditions in the winter produce temperature inversions trapping particulate matter in a layer of smog that hangs over the Missoula valley. Wild forested lands often radically end at urban environs. Rivers are often silted from logging and/or poisoned by heavy metals from mine tailings. Wildlife habitat has been consumed by housing, and human-animal encounters continue, almost always resulting with the animals being killed or displaced. Increased traffic congestion and air pollution results from tourists traveling to and from cultural and natural attractions. And finally, all dwellers of Missoula County pay the price for the seemingly insatiable demands of physical and economic growth placed on valleys with finite space and resources.

THE SUBDIVISION AND PLATTING ACT

During the 1960s and 1970s Missoula County's population grew by approximately 31,000 people. As a result, developers reacted by providing residential lots created through the subdivision of land. Consequently, in 1973 the Montana State Legislature saw fit to debate and pass the Montana Subdivision and Platting Act to regulate the processes by which land is divided, giving local government the authority to review subdivisions.

The mission statement of the Act is:

76-3-102. Statement of purpose. It is the purpose of this chapter to promote the public health, safety, and general welfare by regulating the *subdivision* (emphasis added) of land; to prevent overcrowding of land, to lessen congestion in the streets and highways; to provide for

adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements; to require development in harmony with the natural environment; to require that whenever necessary, the appropriate approval of subdivisions be contingent upon a written finding of public interest by the governing body; and to require uniform monumentation of land subdivisions and transferring interests in real property by reference to plat or certificate of survey.

The Act derives its authority from the clause, "to promote the public health, safety and general welfare." However, the mission statement goes on to designate specifically several objectives through which the Act aims to promote the public health, safety and general welfare; it states that there are compelling reasons to prevent overcrowding and congestion, provide for services and recreation, and to require development harmonious with the natural environment. (This clause will be important in a later discussion of this essay.)

A very important element of the Act is the word "subdivision." A subdivision is defined as any division of land that creates one or more parcels containing less than 20 acres. The Act lays out a fairly rigorous review process for subdivisions. This review process includes a list of eight review criteria: 1) need for the subdivision; 2) expressed public opinion; 3) effects on agriculture; 4) effects on local services; 5) effects on taxation; 6) effects on the natural environment; 7) effects on wildlife and wildlife habitat; and 8) effects on the public health and safety. Written findings of fact based on these criteria

are used to evaluate the proposed subdivision and attempt to promote development in the public interest. However, innocently enough, the Act also grants numerous exemptions to the subdivision review requirements. These exemptions were incorporated into the Act to give flexibility to non-developers who wish to divide their land.

Some of the more often used exemptions include:

1. **Acreage exemption:** Parcels 20 acres (as of 1975) or larger are exempt from review under the Subdivision and Platting Act.
2. **Family conveyance:** Parcels of any size may be given or sold without review to members of the landowner's immediate family.
3. **Occasional sale:** Landowners may sell one parcel of land of any size once a year. (This definition has been interpreted to apply only to the land and not to the landowner. For example, a person owning two parcels can make one occasional sale per parcel per year.)
4. **Remainder sale:** The sale of a parcel which is "left over" from another division of land. (For example, a 12 acre parcel is split into two 5 acre lots, the remaining 2 acre parcel can be sold through a remainder sale.)

An hypothetical example will help illustrate the nature of these exemptions:

Rancher Smith has five children and she owns 640 acres. She divides the 640 acres into thirty-two 20-acre parcels (using the acreage exemption). That same year she gives each of her children one 20-acre parcel (family conveyance) and sells 10 acres of each remaining 20-acre parcel (occasional

sale). So now there are five 20-acre parcels, twenty-seven 10-acre parcels that were sold, and twenty-seven 10-acre parcels that she kept. Later that same year all of Rancher Smith's children divide their lots into two 9-acre parcels leaving a 2 acre remainder parcel. Each child keeps one 9-acre parcel, sells one 9-acre parcel (occasional sale) and sells the remaining 2 acre parcel (remainder sale). During this one year, Rancher Smith's original 640 acre parcel was divided 101 times, entirely and legally avoiding the subdivision review process. However, the above example clearly demonstrates a series of suspect land divisions that seem to violate the intent of the Act. Rancher Smith initiated a subdivision-by-exemption, leaving open the possibility for present and future land owners to further subdivide using the same surreptitious process she did.

Although parcels created through exemptions avoid review under the subdivision regulations, they are recorded through the Certificate of Survey process. COSs are a required drawing of a field survey prepared by a registered surveyor, the purpose of which is to disclose boundary locations. COSs in Missoula County are reviewed by the County Attorney to ensure the legality of the split, the County Surveyor to check the accuracy of the survey, and the Office of Community Development to determine compliance with zoning regulations, and by the Department of Health and Environmental Sciences to lift sanitation restrictions. The COS is then officially filed with the County Clerk and Recorder.

The only way to monitor the division of Rancher Smith's original 640 acre tract, or any other subdivisions-by-exemption, would be to research all the certificates of survey filed with the County Clerk and Recorder for the year in which the parcels were divided. If Rancher Smith and her children divided their land over period of 50 years, all the COSs that occurred during those 50 years would have to be reviewed. The result is that dubious land divisions created by exemption often go undetected.

MISSOULA COUNTY SUBDIVISION AND COS DATA

Table 4 shows the number of subdivisions filed at the Missoula County Courthouse since 1900. Included are the number of plats filed, number of lots created and number of acres subdivided. Most of these subdivisions took place in what is now the Missoula Urban Area. Additionally, a portion of these subdivisions were replattings or resubdivisions. In other words, these subdivisions divided land that had been subdivided at least once before. This explains why 29,475 lots were created on only 24,947 acres. The result is an increased lot density in the urban area.

Table 4 PLAT STATISTICS BY DECADE

	# OF PLATS	# OF LOTS	# OF ACRES *
1900s	40	7,890	5,062
1910s	20	3,593	1,340
1920s	5	1,577	826
1930s	7	387	62
1940s	30	3,328	784
1950s	139	2,878	1,572
1960s	274	4,454	6,737
1970s	252	4,672	6,447
1980s	267	696 **	2,117
TOTALS	1,034	29,475	24,947

* Nearest full acre. (Missoula County Subdivision Inventory, 1980 and Inventory of Conservation Resources Update, 1991) ** Includes total of years 1985 - 1989 only.

Table 5 compares the number of subdivisions, platted lots, and total acres subdivided with the number of COSs, number of lots, and total acres documented using the COS process.

Table 5 NUMBER OF PLATTED SUBDIVISION LOTS AND ACREAGE AND COS LOTS AND ACREAGE BY YEAR

	# OF PLATS	PLAT LOTS	PLAT ACRES * @	# OF COSs	COS LOTS	COS ACRES *
1973	15	644	1,077	165	346	4,642
1974	13	131	70	351	566	8,787
1975	5	191	104	240	179	1,810
1976	17	167	110	298	240	2,530
1977	34	538	400	318	400	5,465
1978	52	1,168	888	380	609	8,485
1979	33	519	1,050	494	908	7,203
1980	13	#	304	236	#	6,981
1981	14	#	317	144	#	4,534
1982	9	#	136	66	#	1,037
1983	9	#	362	81	#	1,654
1984	29	#	221	123	#	7,047
1985	18	55	65	90	221	2,980
1986	33	98	139	142	269	6,329
1987	39	213	186	115	227	4,212
1988	69	116	143	110	215	2,701
1989	34	214	244	97	208	2,162
1990	32	151	167	147	284	5,434
TOT.	468	4,205	5,983	3597	4,672	83,993

* Rounded to the nearest full acre. @ Only lot acreage was tabulated for plats. Road and park averages were omitted. (Missoula County Subdivision Inventory, 1980 and Inventory of Conservation Resources Update, 1991)

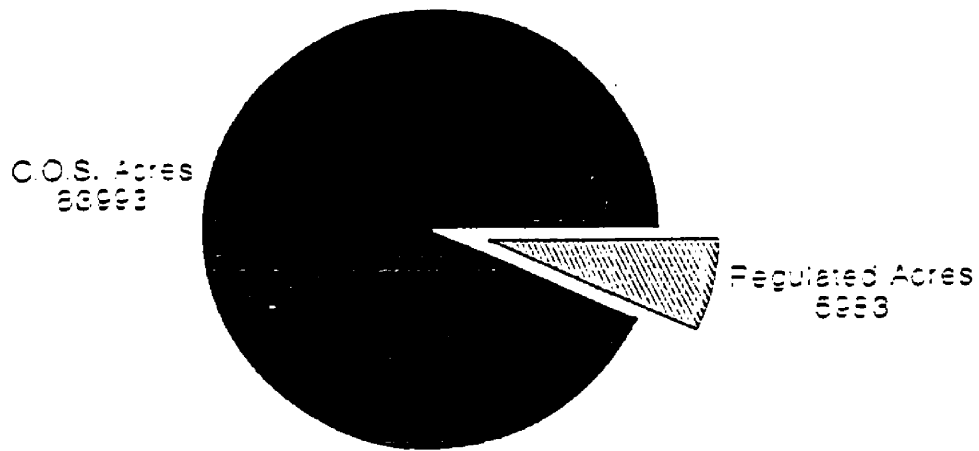
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Table 5 and Graph 2 (Page 11-A) demonstrate the extent to which the COS process is favored over the subdivision process. Lots created by COS outnumber lots created by subdivision approximately 14 to 1. That is, only about 7% of all land divisions in Missoula County are reviewed or regulated. Furthermore, the total acres divided by COS (83,993) represents approximately 28% of Missoula County's inhabitable space. As development encroaches on land only marginally suited for such activity, the need to review and regulate all land divisions becomes more critical.

Land Subdivision - Missoula County

By Acres, 1973 through 1990

12-A



Percentage regulated: 7.1%

GRAPH 2

A LOOK AT THE "WYE"

The Wye is located in Missoula County, in Township 14 North, Range 20 West, approximately six miles west of the City of Missoula. The Wye consists approximately of a ten square mile area around the intersection of Interstate 90 and US Highway 93. Since Interstate 90 was constructed, the area surrounding this intersection has served as a hub for trucking activities and has attracted associated commercial enterprises. North of this intersection, ranching was the traditional land use, while more recently this area has seen a shift to an exurban residential land use. The balance of the area appears to remain largely agricultural.

The Wye is of significant local and regional importance. It is the area in which primary east-west and north-south thoroughfares intersect. In Missoula County, Highway 93 provides the only major access to points north and south of Interstate 90. Therefore, whatever development occurs in the Wye, it is critical to plan for the transportation, residential and commercial needs of the community and region, if the effects on aesthetics and inherent cultural and natural resources are to be minimized.

The following maps illustrate the character and importance of the Wye.

o Appendix A shows all the land divisions in Township 14 North, Range 20 West. An important point to glean from this is the character of the landscape. As shown in Chart 1 (Page 16-A), the landscape does not represent the degree to which the area has been divided. In 1989 approximately 22 houses, farms, or businesses existed in Sections 16 and 21 of the study area, obviously many more parcels exist.

o Appendix B delineates the boundaries of the 1975 Urban Comprehensive Plan and the 4 1/2 mile building permit jurisdiction area. Only Section 21 lies within the 4 1/2 mile building permit jurisdiction area, and therefore only construction occurring in this Section is reviewed by the Office of Community Development.

o Appendix C indicates the capability of land to handle development. The Missoula Urban Comprehensive Plan, updated in 1990, shows that all four Sections possess severe limitations to development. These limitations may include high ground water, steep slopes, floodplain, etc.

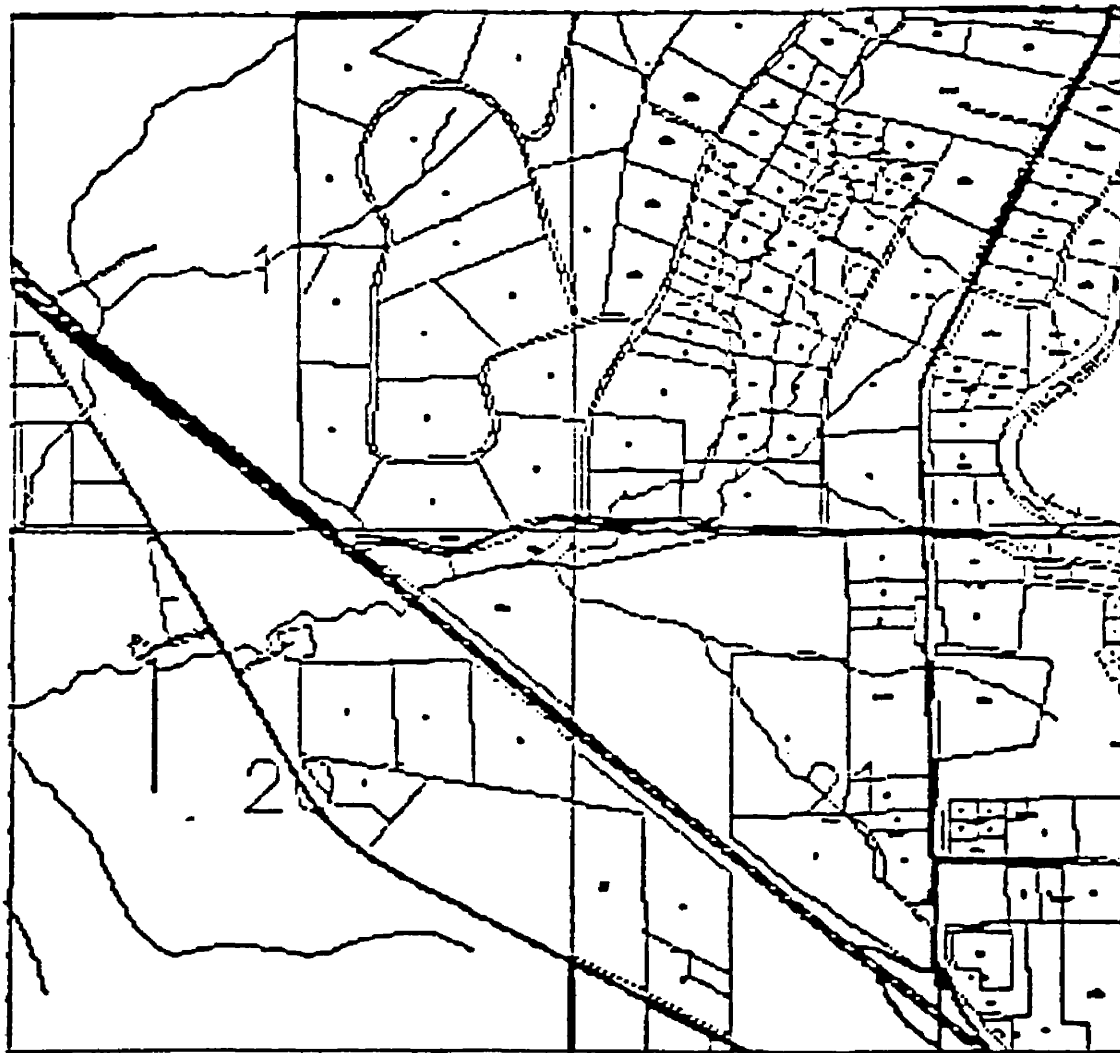
o Appendix D points out the agricultural resources of the area. According to the 1990 comprehensive plan update, the majority of the study area contains farmland of either local or statewide importance. Data provided by the Soil Conservation Service indicates that much of Missoula's best agricultural land is now developed. (Missoula County Subdivision Inventory Report, 1980)

o Appendix E outlines the boundary of the Missoula sole-source aquifer. All four Sections of the study area lie within the recharge area, while the majority of these Sections are within the service area. Although the Department of Environmental Health must lift sanitation restrictions, most of this area remains unzoned. Therefore, no regulations governing land use exist. Government cannot direct activities that are prone to discharge harmful wastes to areas that are least likely to cause damage to the aquifer.

Tables 6 and 7 show the level of subdivision activity in all of T14N, R20W and the subdivision and COS activity in the study area, this data is graphically displayed in Appendix A and Map 2 respectively.

Table 6 shows a list of subdivisions that have occurred in Township 14

PARCEL DISTRIBUTION IN SECTIONS 16, 17, 20, and 21,
TOWNSHIP 14 NORTH, RANGE 20 WEST. FEBRUARY 1990



MAP 2

North, Range 20 West since 1973. As indicated by the bold text, only part of one subdivision, Bay Meadows, lies in any of the four Sections studied. However, in reality, 67 land divisions have occurred and 178 parcels exist within the study area.

Table 6 SUBDIVISIONS IN TOWNSHIP 14 NORTH, RANGE 20 WEST

Sec. - T - R	SUBDIVISION	# OF LOTS	# OF ACRES
21-14-20 22-14-20	Bay Meadows	9 23	17 36.2
29-14-20 32-14-20	Grass Valley Tracts 1 & 2	1: 10 2: 0*	51.9 58.6
24-14-20	Hanson Butler Creek #1	2	3.2
28-14-20	Msla Ind. Pk. Msla Ind. Pk. (replat)	0* 2	100 4.1
35-14-20 36-14-20	Momont Ind. Pk. Phase 1	0*	28.6
36-14-20	Momont Ind. Pk. Phase 2	1	21.1
31-14-20	Primrose Acres Phase 1 & 2	1: 7 2: 2	50.1 6.1
34-14-20	Steinbrenner Ind. Pk.	4	19.5
31-14-20	Warren Ac. Tracts 1 & 2	1: 3 2: 1	17.5 5.5
TOTALS	13	68	419.2

* The subdivision created only one industrial park tract that was not further divided.

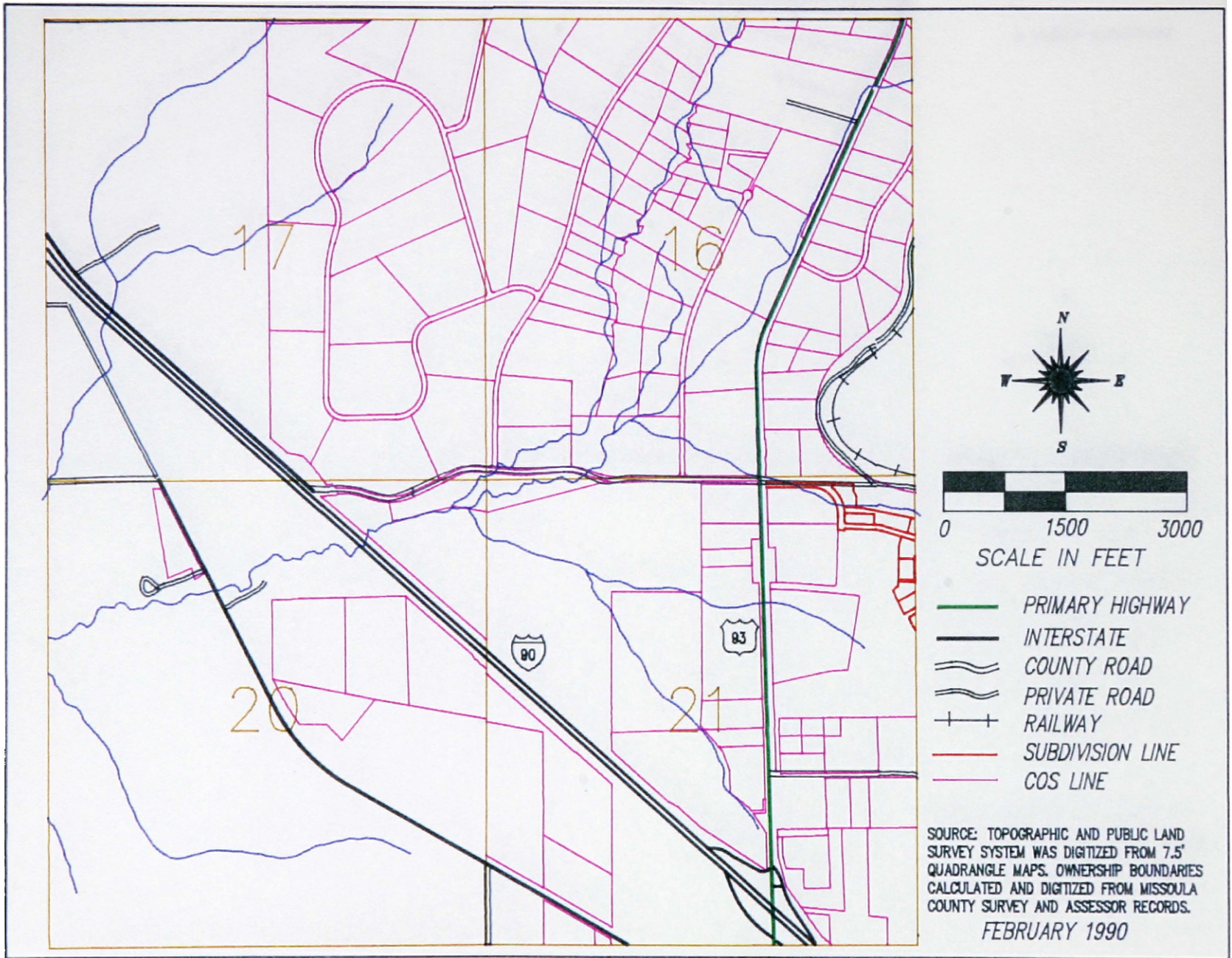
Office of Community Development, 1990

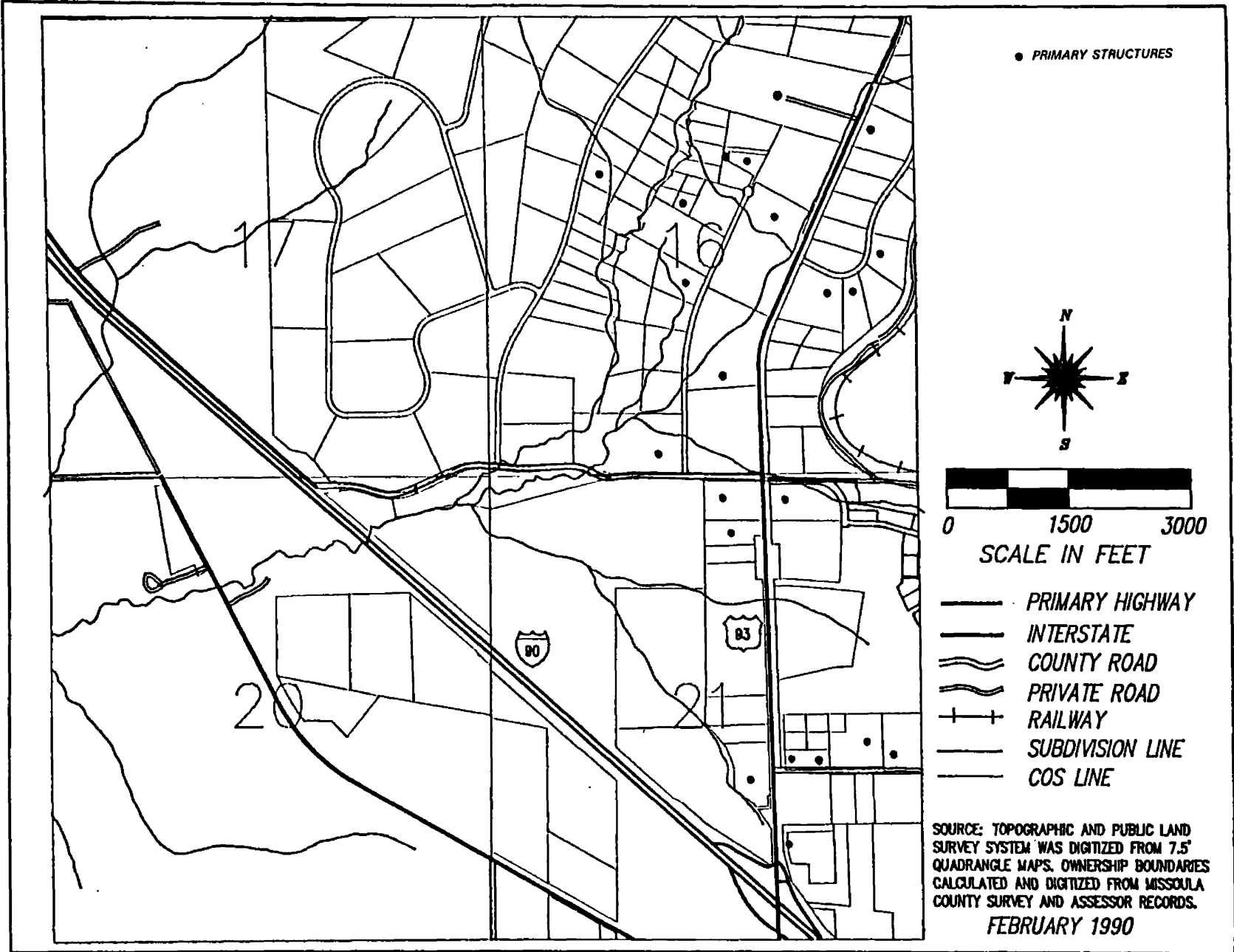
Table 7 LAND DIVISION SUMMARY FOR SECTIONS 16, 17, 20, AND 21 OF TOWNSHIP 14 NORTH, RANGE 20 WEST

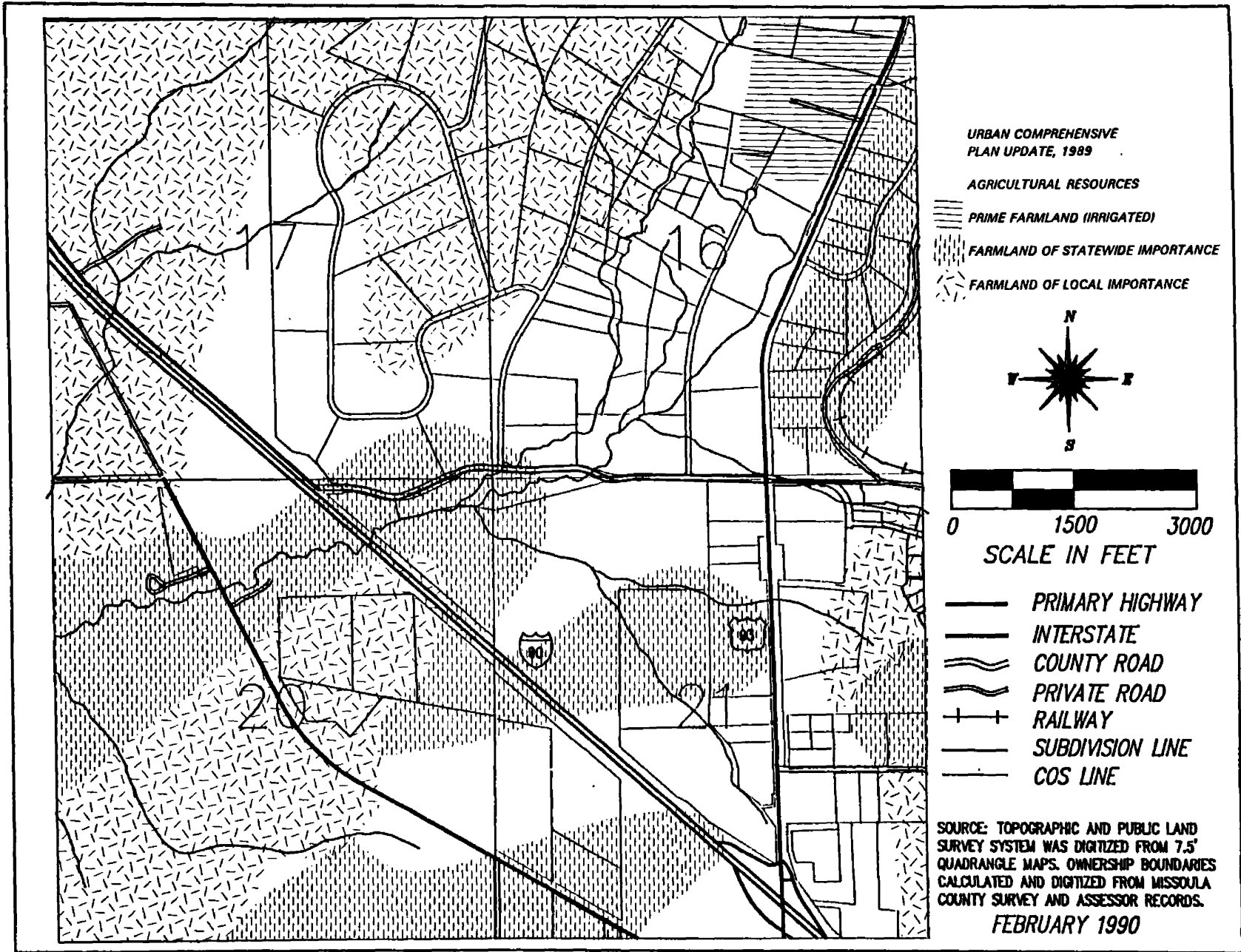
	SUBDIVs	LOTS	ACRES	COSs	LOTS	ACRES
SEC. 16	0	0	0	38	98	586
SEC. 17	0	0	0	1	24	317
SEC. 20	0	0	0	5	9	121
SEC. 21	1	9	17	22	48	371
TOTALS	1	9	17	66	169	1395

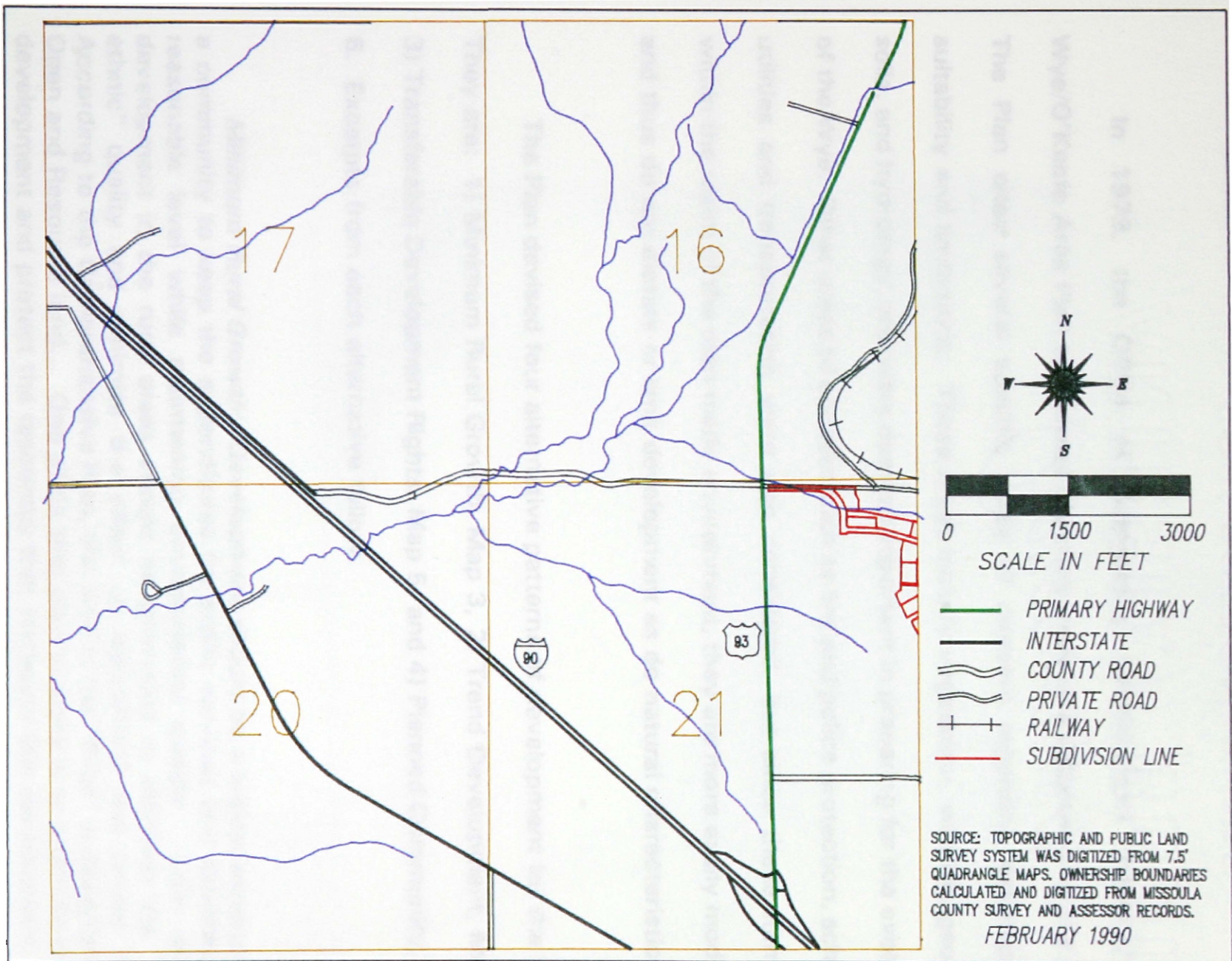
As indicated in Table 7, only nine lots and 17 acres have been divided by the subdivision process, while 169 lots and 1395 acres have been divided by COS. Not one subdivided lot has been created in Sections 16, 17, and 20, yet 131 lots exist. Chart 1 (Page 16-A) is a flip chart that graphically shows the degree to which COSs have influenced the landscape. The first overlay shows all COSs and subdivisions, the second indicates the primary structures found in Sections 16 and 21, the third displays significant agricultural lands, and fourth only shows those parcels of land that have been subdivided.

This raises an important question. Why do only a few people know this information? Unfortunately, the answer is that no one is required to know, and that no mechanism exists by which anyone can readily find out. The follow-up question is: If this is true, how is anyone, especially the County government, ever going to plan adequately services and either monitor or control development?









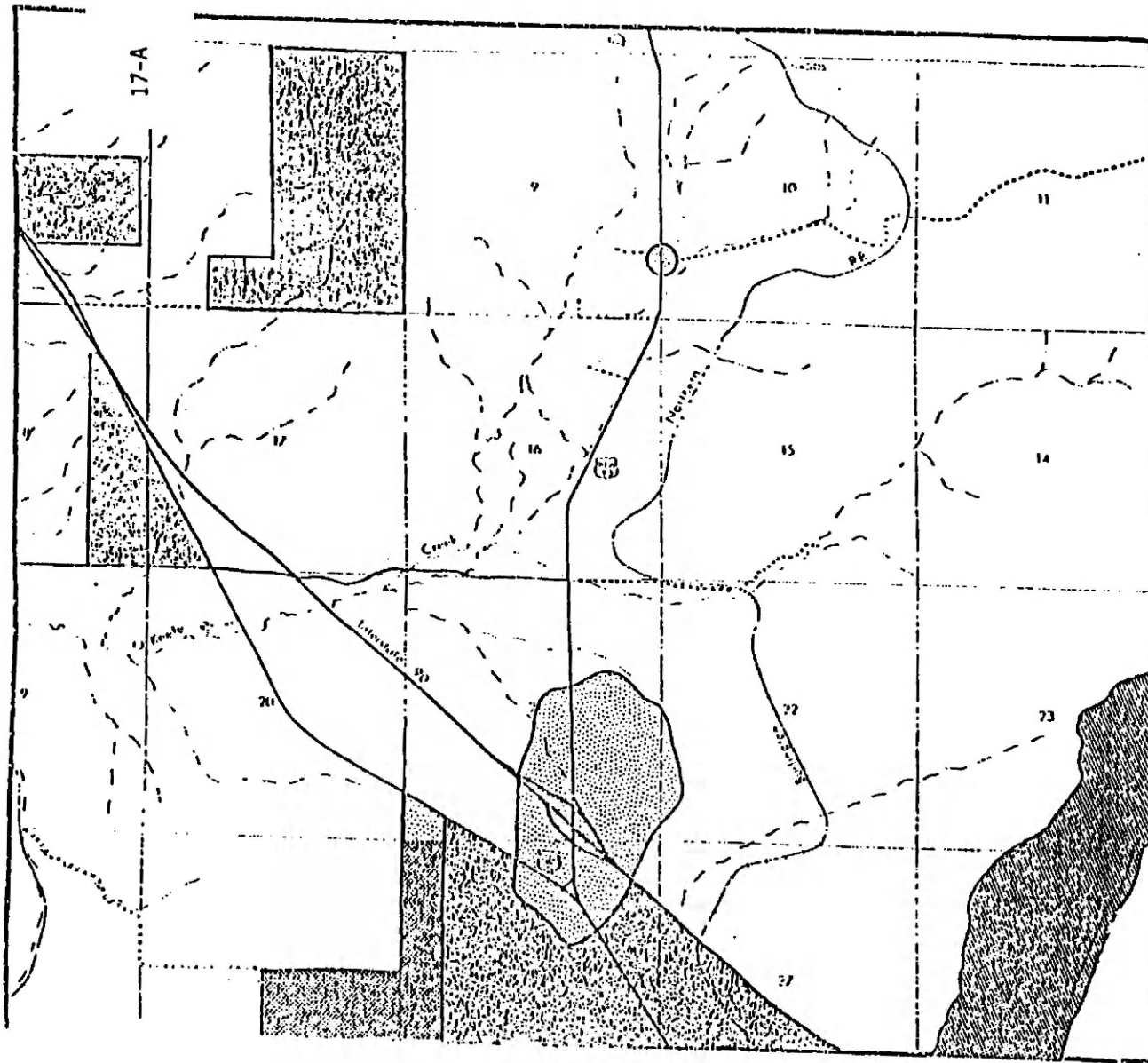
This question lies at the very heart of this project.





In 1979, the Office of Community Development prepared the Wye/O'Keefe Area Plan to address planning goals and objectives in this area. The Plan cites several specific areas of concern regarding development suitability and limitations. These areas include vegetation, wildlife, geology, soils, and hydrology, and were deemed important in preparing for the evolution of the Wye. Other areas of concern such as fire and police protection, schools, utilities and transportation were also considered, but since these items lie within the realm of the man-made environment, they are more easily modified, and thus do not dictate or limit development as do natural characteristics.

The Plan devised four alternative patterns of development for the Wye. They are: 1) Minimum Rural Growth, Map 3, 2) Trend Development, Map 4, 3) Transferable Development Rights, Map 5, and 4) Planned Community, Map 6. Excerpts from each alternative follow.

Minimum Rural Growth: Development should be a logical expansion of a community to keep the expenditures for public services and facilities at a reasonable level while maintaining environmental quality. Low density development in the rural areas should be promoted to maintain the "rural ethnic" quality and minimize the effect on agricultural and timber lands. According to the Comprehensive Plan, the land in the "Wye" is designated as Open and Resource land... One of its [the plan's] goals is to promote orderly development and protect the resources that stimulate this development.

Trend Development: This type of development has the most intensive



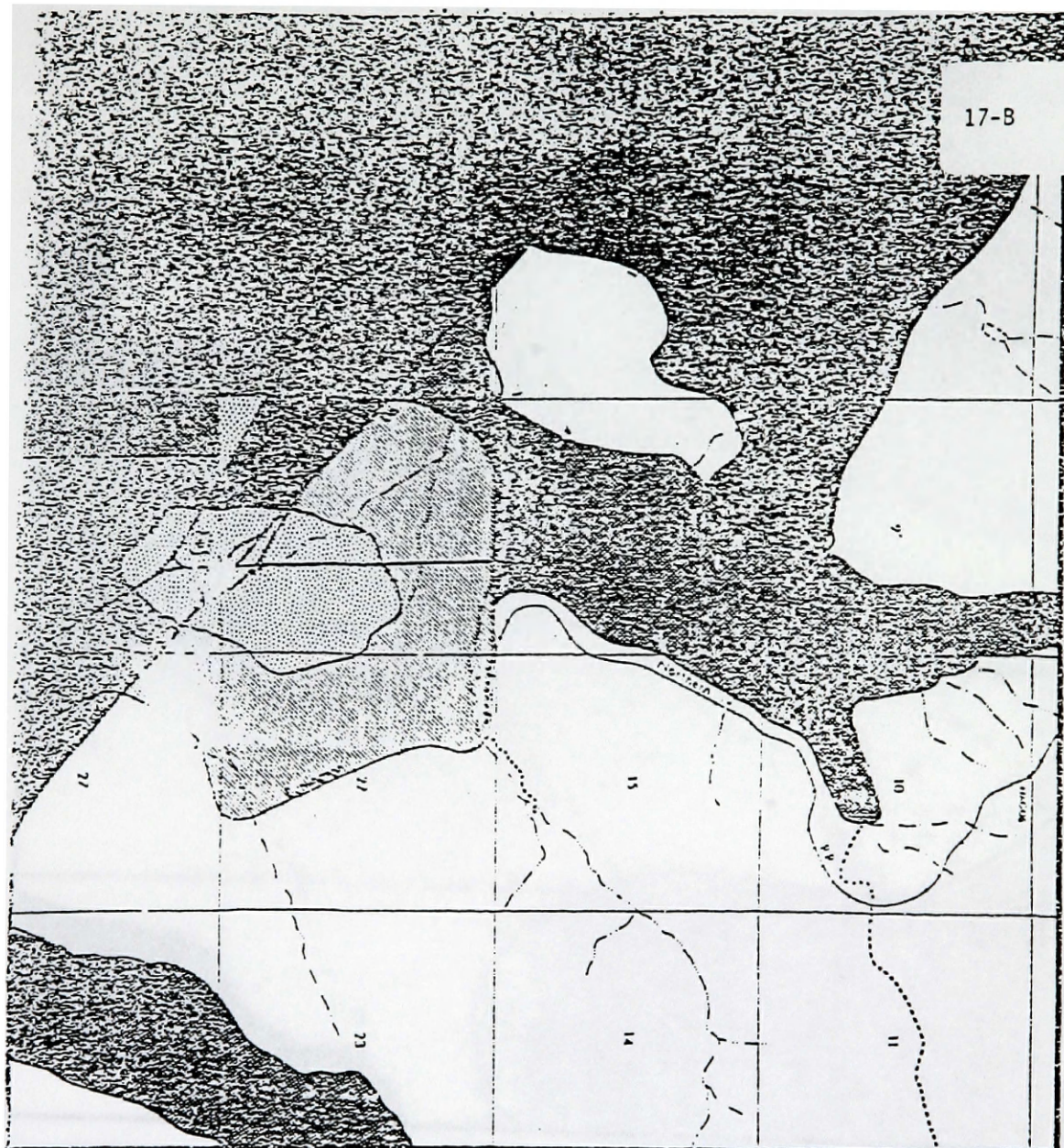
-  1 UNIT PER 10 ACRES
-  1 UNIT PER 5 ACRES
-  COMMERCIAL
-  LIGHT INDUSTRIAL






EXISTING PLAN

WYE/OKEEFE PLAN AMENDMENT 1979

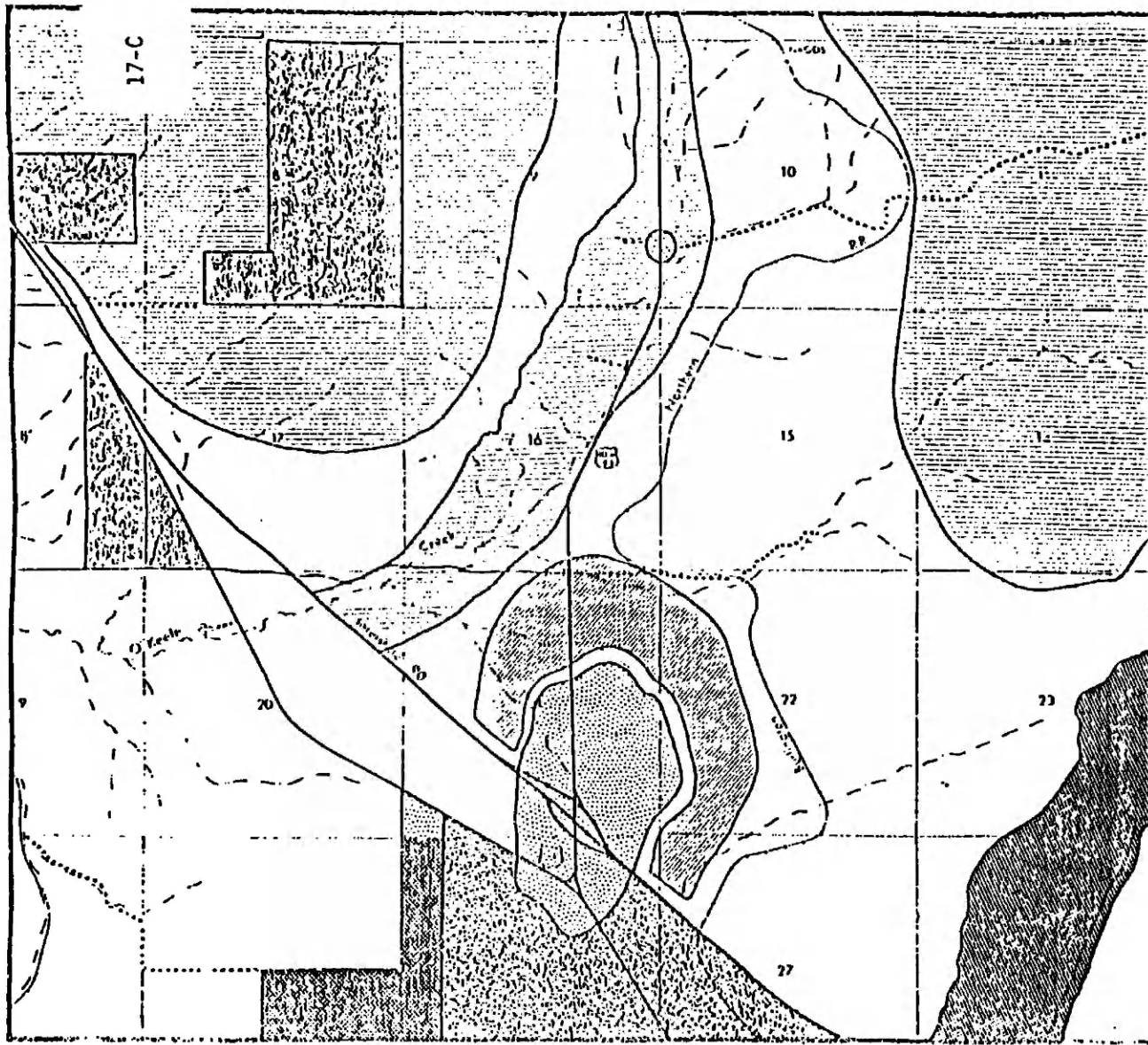
MAP 3







17-B



-  1 UNIT PER 10 ACRES
-  1 UNIT PER 5 ACRES
-  COMMERCIAL
-  LIGHT INDUSTRIAL
-  1 UNIT PER ACRE

TREND

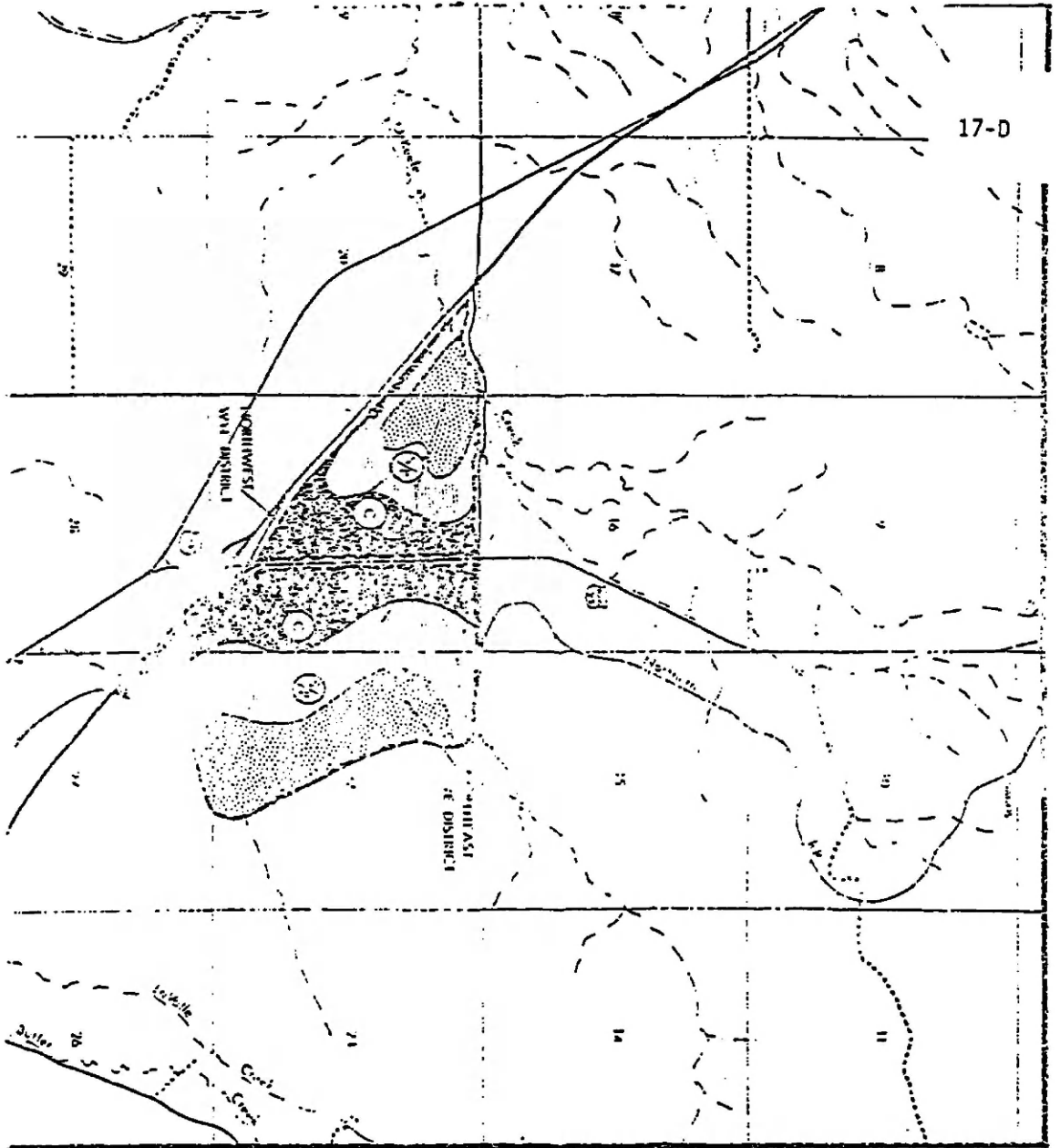


-  1 UNIT PER 10 ACRES
-  1 UNIT PER 5 ACRES
-  COMMERCIAL
-  LIGHT INDUSTRIAL
-  2 UNITS PER ACRE
-  1 UNIT PER 10 ACRES (TRANS.)

MAP 5

T.D.R.
 TRANSFERABLE
 DEVELOPMENT
 RIGHTS

WYE/KEEFE PLAN AMENDMENT
 1979



17-D

PLANNED COMMUNITY

- LOW DENSITY
- MEDIUM DENSITY
- HIGH DENSITY
- COMMERCIAL
- SCHOOL/PARK
- DISTRICT BOUNDARY

WYE/OKEEFE PLAN AMENDMENT 1979

MAP 6

land use near the core of an area. In a concentric pattern, the outlying land uses become less intensive. Trend development, because of its lack of cohesiveness, has a higher impact on the environment. The scattering of developments demands an increase in roads and utilities whose construction and existence generally have negative affects on the natural vegetation and wildlife in the "Wye" area. Public health and safety concerning water and sewage would have to be determined for each individual site.

Transferable Development Rights (TDR): Simply stated, TDR means that the right to develop is severed from one site and transferred to another. This concept conserves utilities and services by limiting the extent of subdivided land, while leaving the remaining land as open space. Regarding environmental impacts, the TDR approach has many positive aspects. By transferring the right to develop away from agricultural, critical wildlife, or other lands with natural resource value, some degree of environmental resource enhancement can be obtained.

Planned Community: The overall intent of a Planned Community is to create the physical layout for development that best promotes a desirable lifestyle. Reinforcing common objectives is necessary in order for a community to evolve into a positive, pleasant and safe area in which to work, live and play. Transitional standards to allow the development of land from agricultural use to urbanized uses become a key element in promoting the planned community alternative.

The above plans each have particular merits; however local government chose the Planned Community alternative as the one best suited for the area. Regardless, all of the alternative plans suffer from one major problem: they are now irrelevant. When Map 2 is compared with Maps 3 - 6, it is clear that land divisions incompatible with the Comprehensive Plan -- the only plan that guides the Missoula County government in preparing for services and growth -- have already been made.

Chart 2 graphically shows the extent to which land divisions have

exceeded the County's ability to plan. Hypothetically, if houses could be built in a day, Sections 16 and 21 could potentially have 137 new houses tomorrow. And if, hypothetically, four people lived in each house, the population of this area would grow by 548.

If this could occur in the time frame suggested, County government could not adequately provide or assure services for these new residents, nor could the County stop the construction. Yet this scenario -- although taken to an extreme -- is most likely going to happen over time, yielding the same results.

MAKING CONNECTIONS

For the moment, local governments seem not to be concerned by land divisions created through the exemptions, yet this is sure to end. The expenses and disputations sure to flow from this situation will soon come.

Political and legislated tax limitations hold tax revenues to current levels. In Missoula County current service levels are using up all the available funding. When the development potential already created by unreviewed land splits is realized, the demand for services will certainly increase. Either taxes will be raised to meet the demand, the private sector will provide those services at market cost, or services would be withheld.

The simple solution is not to demand greater levels of service -- ever. But simply put, it's too late. New demand already exists. Currently, in the four Sections of the study area alone, Missoula County faces the ultimate prospect of providing services for everyone who builds on the 169 lots already created. Furthermore, the County must also be prepared to provide services for anyone else who chooses to divide more land and build additional houses or businesses.

The resulting population growth would most probably require substantial

capital improvements by the Frenchtown School District, cause the County to accelerate plans to provide city sewer and water to the area, prompt the Sheriff's Department to hire new Deputies, and compel Frenchtown Rural Fire Department to expand its newly built fire station on Highway 10. All of this costs money and takes time. For example, it costs approximately \$184,000 to construct a mile of sewer line, \$184,000 to construct a mile water line, \$160,000 to construct a mile of road and \$160,000 to construct a mile of curb, gutter and sidewalk ⁵. The problem is that the County has neither the time or money.

But how can County government be prepared to provide services when it is not even completely aware of the existing development potential? It cannot.

When reviewing platted subdivisions, the County Surveyor, school districts, utility companies, the Sheriff, fire departments, the Soil Conservation Service, the Department of Fish, Wildlife and Parks, and others are asked to comment on the proposed development. Often, such comments are returned saying "No Comment," or they reluctantly accommodate the impacts caused by the proposed subdivision. This is unfortunate. This inaction or accommodation only stresses infrastructure and social services, accelerating

⁵Bruce Bender, Missoula City Engineer

problems that could otherwise be handled. This behavior may be explained by the fact that the reviewers are often completely unaware of surrounding parcels created through the exemptions. This happens because no one and no mechanism exists to assure their notification, nor are they required to do any kind of analysis documenting the cumulative effects of development on the area in which development is to occur. More aptly, they could be reluctant to slow the pace of development to ensure adequate review time, they may be unaware of alternative courses of action, or they could feel powerless to improve the situation.

For whatever reason, it is a fact that agencies limit their comments to only the proposed subdivision. Knowing this to be true, how are they to do a reliable job of reviewing the proposed development for any potential adverse impacts to the community? They cannot.

Not only do parcels divided by exemption create problems, but they also severely impact the ability of government to review adequately platted subdivisions. In essence, local government and related agencies often do not realize what is happening within their jurisdiction. This seriously impairs their ability to fulfill their responsibilities. Unfortunately, local government cannot always adequately plan services and either monitor or control development so that it benefits, rather than imposes on, the community.

As mentioned in the previous section, the Wye is not a very good place to develop in the first place. The very qualities (listed in "A Biographical Sketch of Missoula") that draw people to Missoula are being jeopardized and destroyed. And the plan devised to structure development in the Wye has been rendered useless by the unregulated and unreviewed land divisions already created by exemption. That is not to say that those people living at the Wye are or should be unhappy, or that they are directly responsible for all the problems of the Missoula urban area. It is solely to illustrate the degree to which the exemptions affect local government and the community.

The problem of unregulated, unreviewed land divisions is systemic. Other areas in Missoula County are subjected to the very same problems -- often times to a greater degree. These places include the Rattlesnake Valley, Big Flat, Frenchtown, Grant Creek, Miller Creek, Seeley Lake, the Swan Valley, Potomac, and Butler Creek. Intuitively, if this is true in Missoula County, many other places throughout Montana must be influenced by the same problems. In fact, since 1974 over 108,000 acres have been divided by COS in Gallatin County ⁶, Flathead County has between 9,000 and 10,000 COSs of record ⁷, and statewide 80% - 90% ⁷ of all land divisions are performed via COS, with

⁶Gallatin County Planning Department

⁷Flathead Valley Regional Planning Department

over 100,000 acres divided by exemption last year alone ⁸.

So, whatever happened to the objectives of the Montana Subdivision and Platting Act's mission statement?

Is the Act functioning as intended? Is this what was envisioned by the framers? Are the people of Montana supposed to expect, and in fact welcome, the degradation of services and the environment caused by unreviewed land divisions? Most probably not, yet this is what is happening, and the people of Missoula and Montana are accepting it either out of ignorance or without question.

The Act mandates that local government promote the health, safety, and general welfare of the public. It is supposed to accomplish this by preventing overcrowding of land, lessening congestion in the streets, providing adequate water supply, sewage disposal and parks and recreation areas, and requiring development in harmony with the natural environment. Well maybe it does these things for reviewed subdivisions, but it falls short when dealing with the 87% of land divisions in Missoula County that is not.

Compare the objectives of the Act with what is happening at the Wye.

⁸Montana Department of Commerce

169 exempted lots were created in Sections 16, 17, 20, and 21 of the Wye. All most probably are legal, yet no one can say for sure whether any one agency or any one person within County government knows of this activity. This lack of knowledge and the resulting affects on the community not only compromise the ability of local government to make sound land use decisions presently, but they also adversely limit city and county agencies' capacity to plan for and guide development.

In 1975 Missoula prepared a comprehensive plan for the urban area. This plan dedicates areas for residential, commercial and industrial land uses and directs development towards these areas. Areas with steep slopes and high ground water, and areas within the floodplain are not fit for certain kinds of development and are therefore avoided. Residential areas tend to be located adjacent to other residential areas, commercial development occurs along arterials and collectors, and industrial areas are generally located near transportation hubs such as the rail yard or interstate. This is important because development is highly encouraged in areas that already have adequate infrastructure and services in place.

However, currently local government has no control over how many and where parcels created by COS occur, and thus it has little to no control over where future development in the county will take place. This has a great

impact on the community. Often parcels created by COS are far removed from the urban area, have no access easements or are accessed by substandard roads, are distant from schools, and are situated on soils not well suited for septic systems. Thus ground water becomes polluted. Yet in the future as the urban area moves closer to these areas, or the urban area suffers the ill effects of traffic congestion, crowded schools, and polluted ground water, local government will have to expend large sums of money and resources to buy rights-of-way, upgrade roads, build schools and install city sewer and water.

Simply put, the exemptions to the Montana Subdivision and Platting Act preclude local government from doing its job: fully knowing and understanding the impact of those activities that affect the community, providing services, and making land use decisions that are in the public interest not only for the present but in the future.

SOME THOUGHTS ABOUT AND REVISION ALTERNATIVES FOR THE MONTANA SUBDIVISION AND PLATTING ACT

The Montana Subdivision and Platting Act was created to structure the process by which land is divided. In the attempt to address adequately the needs of all persons wishing to divide land, the Act includes exemptions to the subdivision review process. Understandably, many people who wish to divide land are not professional land developers. They may be farmers, for example, who need to sell a parcel of land to pay for a piece of farm equipment, or who would like to give their children a part of the family farm. For these people and purposes, the exemptions adequately serve their intended function. However, as illustrated in this essay, many people have blurred the intent of the exemption provisions and in the process have made a mockery of the Act.

The problems created by abuse of the exemptions are well detailed by highlighting what has happened in Missoula County. Missoula County government has an insufficient understanding of the number of land divisions that have occurred and are occurring within the county. And as a direct result, the County is sure to experience difficulty in providing services for the people who will populate the landscape once the development potential already created, not to mention any additional potential to be created, is realized.

Missoula County is only one of many counties in Montana experiencing population growth and severe development pressures. These counties, like Missoula, lie in areas of the state that offer unparalleled natural amenities. And also like Missoula, these counties are slowly gaining some understanding of this problem.

The following list of counties have experienced a double digit increase in population growth. Missoula County's figure is included to suggest the degree to which these other counties are experiencing development pressure, and to provide some kind of reference point from which the reader may project the extent to which unreviewed land divisions may be a problem in these other counties.

Table 8 POPULATION INCREASE FROM 1980 TO 1990

	INCREASE
MISSOULA COUNTY	3.5%
GALLATIN COUNTY	17.5%
GLACIER COUNTY	14%
LAKE COUNTY	10.4%
FLATHEAD COUNTY	14%
PARK COUNTY	13.2%
RAVALLI COUNTY	11.2%

(Missoula County Rural Planning)

It is logical to conclude that unreviewed land divisions are an even larger problem in other counties. In fact, Ravalli County is preparing a land use inventory to highlight this problem, and Flathead County is being petitioned by residents to zone part of the county. Yet, this is only one part of the picture. Many counties in Montana are not suffering from the ill effects of increased population and/or development pressure. In fact they suffer from the converse. These places include counties such as Petroleum, Garfield, Carter, and Rosebud, to name just a few.

These counties have few towns, few people (most of whom are engaged in agriculture or some related activity), and little to no active local government. In these counties, individual land owners may own entire townships, some even own more than one. And in these counties, the Act as written seems not to be a problem.

On the most basic level, the Act is certainly a good idea. Some measure of control regarding at least some land divisions is maintained. Yet, the vast majority of divisions, at least in Missoula County, continue to go unreviewed.

Ever since the Act was created in 1973, attempts have been made to amend it. Some have succeeded, some have not. In fact, during the last legislative session, HB 671, "An Act to Generally Revise the Montana

Subdivision and Platting Act" was introduced. The bill passed the House and was defeated in the Senate by two votes. Many people feel that the current Act has adversely impacted private property rights, and they will not support any revision of the Act which, in their eyes, further erodes their rights. The following ad placed in the *Helena Independent Record* on March 12, 1991 by the Montana Association of Realtors poignantly illustrates this position.

The Door is Closing on Your Property Rights

House Bill 671 will restrict
your rights as a property owner.


- Most divisions of land will be subject to extensive government review.
- Greatly restricts the right to divide and give a parcel of land to a family member without extensive government review.
- Eliminates the ability to divide a parcel of land for the purpose of securing financing without extensive government review.
- Most divisions of land creating parcels are subject to government review.
- In the end, you (taxpayers) will pay for government review of most property review divisions.

This bill has been passed by the House of Representatives and will soon be voted on in the Senate.

If keeping your property rights is important to you, please write, call or fax your local Senator and voice your concerns and oppositions to this bill.

Senate Phone: 444-4800
Senate Fax: 444-4705
Senate Address: Montana State Senate
Capitol Station
Helena, MT 59620

This message is brought to you by the
Montana Association of Realtors



Is there actually anything wrong with the Montana Subdivision and Platting Act? And if there is, how can it be changed to empower better local government and thus serve the public better?

Judging from the evidence provided in this essay, there are serious problems with the Act. The exemptions create too great an opportunity for blatant disregard of the Act's objectives. The solution is to remove this "opportunity."

House Bill 671 attempted to remove some of these loopholes. (See Appendix G for the complete text of the bill.) The bill changed the definition of subdivision, raised the penalty for evasion, eliminated the abused exemptions, disallowed lots in floodways, increased the amount of park dedication, and changed the review criteria. Similarly, the Montana Association of Planners (MAP) proposed amendments to the Act (Appendix H).

The following proposed changes in the Act would reduce if not fully eliminate unreviewed and unregulated land divisions. Additionally, many of these changes encourage greater investigation and provide more thorough information regarding proposed land splits. Perhaps this will furnish governing bodies the knowledge needed to make more informed land use decisions. Many of these proposed changes are taken directly from either HB 617 or the

Montana Association of Planner's amendments. The citations from the original Act are given as a reference. For a complete reading of each section, consult Appendix I.

** Include in 76-3-103 MAP's definition of "original tract."*

Original tract means a tract of land created as of July 1, 1973. The Act as currently written does not differentiate between tracts created before or after the Act. This definition provides a point of origin from which the new regulations would apply.

** Eliminate in 76-3-103(15) "containing less than 20 acres."*

Presently all land divisions larger than 20 acres go unreviewed. Striking this clause would eliminate the exemption which often initiates the subdivision-by-exemption process.

** Eliminate 76-3-104 and revise to include all divisions of land not excluded in Part 2.*

As stated above, by definition, only lots less than 20 acres can constitute a "subdivision." The elimination of this definition would require that all land divisions be reviewed under the regulations of the Act.

** Amend 76-3-105 to include civil and criminal penalties and raise the fine sufficiently so that it serves deterrent to evasion.*

Currently the Act states that violators shall be guilty of a misdemeanor

and punishable by a fine of not less than \$100 or more than \$500 or by imprisonment in a county jail for not more than 3 months or by both fine and imprisonment. In many instances this fine would be less than the cost to execute a subdivision in Missoula County. Penalties for evasion should be more severe. Substantial fines should be levied for each illegal lot, the violation should be upgraded to a felony, and violators should be held civilly and criminally liable. Profits in the tens to hundreds of thousands of dollars are often made by selling subdivided land. The current penalty is not sufficient to discourage illegal subdivisions.

Similarly, there should be more aggressive enforcement of the regulations. Review agencies and County Attorneys must be more diligent in discovering and evaluating suspect splits, and prosecuting alleged violators.

** Eliminate exemptions in 76-3-207(1)(b) and 76-3-207(1)(d).*

As illustrated in the Rancher Smith example, gifts to family and occasional sales are often used to create unreviewed subdivisions. As is the case with the 20 acre exemption, these exemptions are quite often used to initiate the subdivision-by-exemption process. And like the elimination of the 20 acre exemption, the deletion of these two exemptions would effectively end the opportunity to create illegal subdivisions via COS.

**** Eliminate 76-3-210 in total.***

This section of the Act exempts certain subdivisions from environmental review. This is a bad idea. All subdivisions, no matter how small, should undergo a cumulative environmental analysis as listed in Section 76-3-603 of the Act. Such an analysis is often the only opportunity for review agencies to identify significant natural or cultural features located on the land.

**** Amend 76-3-504(5) to require a no-build easement within the floodplain and add language that requires all land within the floodplain to serve as flood storage.***

The Act does not contain a section outlawing subdivisions and prohibiting structures within the floodplain. Nor does the Act state that floodplains should be used as intended, for flood storage. As a result, subdivisions are created in riparian and littoral zones and on wetlands. Aside from habitat destruction and other obvious environmental problems associated with development in sensitive areas, the future owner of a lot residing in a floodplain may be, and rightly so, prohibited from ever constructing anything on his/her lot. Adding such a regulation would eliminate potential destruction of environmentally sensitive areas and would eliminate the possibility that a land owner may be denied the opportunity to use their land as intended. Furthermore, such a regulation would make clear that floodplains are to be used as flood storage. Floodplains were not created to accommodate houses. By definition, floodplains flood.

**** Amend 76-3-507 to include a warranty bond.***

Section 76-3-507 establishes a bonding procedure so that all proposed capital improvements are completed according to the conditions agreed to in the final plat. If the improvements are not completed in the specified time, local government uses the bond money to construct the improvements. Including a warranty bond would go one step further, providing local government with the opportunity to take the subdivision if deemed necessary.

**** Create Section 76-3-509 to state that the subdivider shall pay or guarantee to pay for all or part of the costs of extending capital facilities related to public health and safety, including to but not limited to city sewer and public water to a subdivision. The costs must be reasonably reflect the expected impacts of the subdivision.***

Such a regulation would help defray the cost to local government of providing services and infrastructure to subdivisions isolated from an urban area.

**** In Part 6 establish a section to require all land divisions not exempted in Part 2 to be reviewed by local government.***

Such a regulation would give reviewing agencies and local government the opportunity to analyze and evaluate the merits of a proposed subdivision so that development may be guided towards areas most suited for it. Currently, no cumulative analysis is performed, and numerous unreviewed land splits have occurred. The natural or cultural features of many areas make them unsuitable for human habitation.

**** Amend 76-3-603 to include summary plats. The section shall explicitly create substantive requirements for the Environmental Assessment.***

The Act does not require an environmental analysis for summary plats. All subdivisions should undergo an environmental analysis. Such an analysis is often the only opportunity for review agencies to identify significant natural or cultural features located on the land. Similarly, local government should be aware of the resources that may be altered by development.

Furthermore, the environmental assessment regulations should be substantive. Currently the regulations request, among other things, a description of every body or stream of surface water as may be affected by the proposed subdivision. However the regulations do not state the limits to which the body or stream of surface water can be affected. For example, the regulation does not state that if the subdivision is projected to increase nitrate levels by a factor of four, the subdivision must be denied. Performance standards should be attached to the existing environmental assessment criteria.

**** Amend 76-3-604(2) and 76-3-609(1) to allow for a review period of 180 days.***

The current review period for preliminary and summary plats is 60 and 35 days respectively. From professional experience, this is an insufficient time to review adequately proposed subdivisions. Regularly, developers provide incomplete information to review agencies. When this happens review

agencies must spent time researching every aspect of the proposed subdivision. Regardless of whether or not a proposed subdivision encounters legal or procedural problems, a decision to approve, conditionally, or deny the subdivision must be made in the time frame provided. Often this kind of pressure leads to inadequate research, incomplete staff reports, and uninformed decisions by governing bodies.

** Substantially amend 76-3-606 so that park dedication reflects the language in MAP's suggested bill. Allow local government to determine whether park land is dedicated or cash-in-lieu payment is accepted. Fair market value shall be defined as the value of the land after subdivision.*

MAPs proposed bill requires a subdivider to dedicate to the governing body a cash or land donation or a combination thereof, equal to 10% of the fair market value of the land proposed to be subdivided into parcels of one-half acre or smaller, 7.5% of the fair market value of the land proposed to be subdivided into parcels larger than one-half acre and not larger than one acre, 5% of the fair market value of the land proposed to be subdivided into parcels larger than one acre and not larger than three acres, and 2.5% of the fair market value of land proposed to be subdivided into parcels larger than three acres and not larger than five acres. It should be up to the discretion of the governing body as to whether park land is dedicated, cash-in-lieu payment is made, or any combination thereof.

** In 76-3-607(2) strike "shall" and substitute "may."*

This section requires that local government shall waive park land dedication or cash-in-lieu payment for unsplit areas of subdivisions that have already dedicated park land or made cash-in-lieu payment to meet the requirements of 76-3-606. It should be up to the discretion of local government whether more park land or further payment is needed.

** Amend 76-3-608(1) to indicate that the developer/divider must bear the burden of proof.*

This section establishes the criteria by which a proposed subdivision shall be evaluated. Basically, the governing body must decide whether or not the proposed subdivision is in the public interest. The section should require the developer to prove that the proposed subdivision is unquestionably in the public interest. Review agencies or local government should not have to bear the burden of either proving or disproving the developers case.

** Amend 76-3-608 to include review criteria that address effects to historic, prehistoric, and cultural resources and values; agricultural land; and on instream flow, and surface and ground water quality. Require a cumulative impact analysis regarding the effects of the proposed subdivision on the community. State that economic interest to the developer/divider shall not be considered in approving, conditionally approving or disapproving a subdivision. State that the public shall not bear any financial burden resulting from a subdivision.*

Section 76-3-608 establishes the criteria by which proposed subdivisions are evaluated, however many important criteria are omitted. The criteria suggested above should be included in this section. Furthermore, all

subdivisions should undergo a cumulative impact review to determine clearly the degree to which the proposed subdivision is in the public interest. This section should explicitly state that economic interest to the developer shall not be considered in deciding the fate of the proposed subdivision. The governing bodies are only responsible to the community at large, not the economic or financial well being of the developer. Similarly, the developer should bear the financial burden of impacts resulting from his/her subdivision. Adding section 76-3-509 would remedy this.

** Amend 76-3-608 to reword the review criteria so that they are explicitly substantive rather than procedural requirements. Include a provision that allows local government to require that subdivisions conform with locally adopted comprehensive plans.*

As in section 76-3-603, the review criteria should also be substantive. Review agencies shall issue findings of fact based on eight review criteria, one of which is effects on local services. The regulations simply require that the potential effects be documented, they do not establish any limit to the potential effects. For example, Missoula County has a fixed amount of space in local schools. In some neighborhoods classroom space is in extremely short supply. If a proposed subdivision would increase the student population by 120, the developer, under current regulations must simply state this fact. No regulations guide the review agencies in ascertaining whether or not, for example, an increase of 120 students is acceptable. Performance standards should be attached to the eight review criteria so that when a certain threshold is

reached, the subdivision is denied. Furthermore, all land subdivisions occurring within the bounds of a comprehensive or area plan should be tied to those regulations. This would eliminate the creation of lots that do not meet local zoning regulations.

The list of amendments is somewhat exhaustive, however these suggestions would go far towards reducing the problems outlined in this essay, if not eliminate them altogether. These revisions are necessary if Montanans are to have an Act that will empower local government to monitor and review all land divisions and that will provide adequately for the health, safety and welfare of the general public.

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Jim Philippi, Missoula County Surveyor's Office
Amy O'Herren, Missoula County Rural Planning
Pat O'Herren, Missoula County Rural Planning
Doris Fischer, Missoula Office of Community Development
Barbara Martins, Missoula Office of Community Development
Robert McCracken, Montana Department of Commerce**

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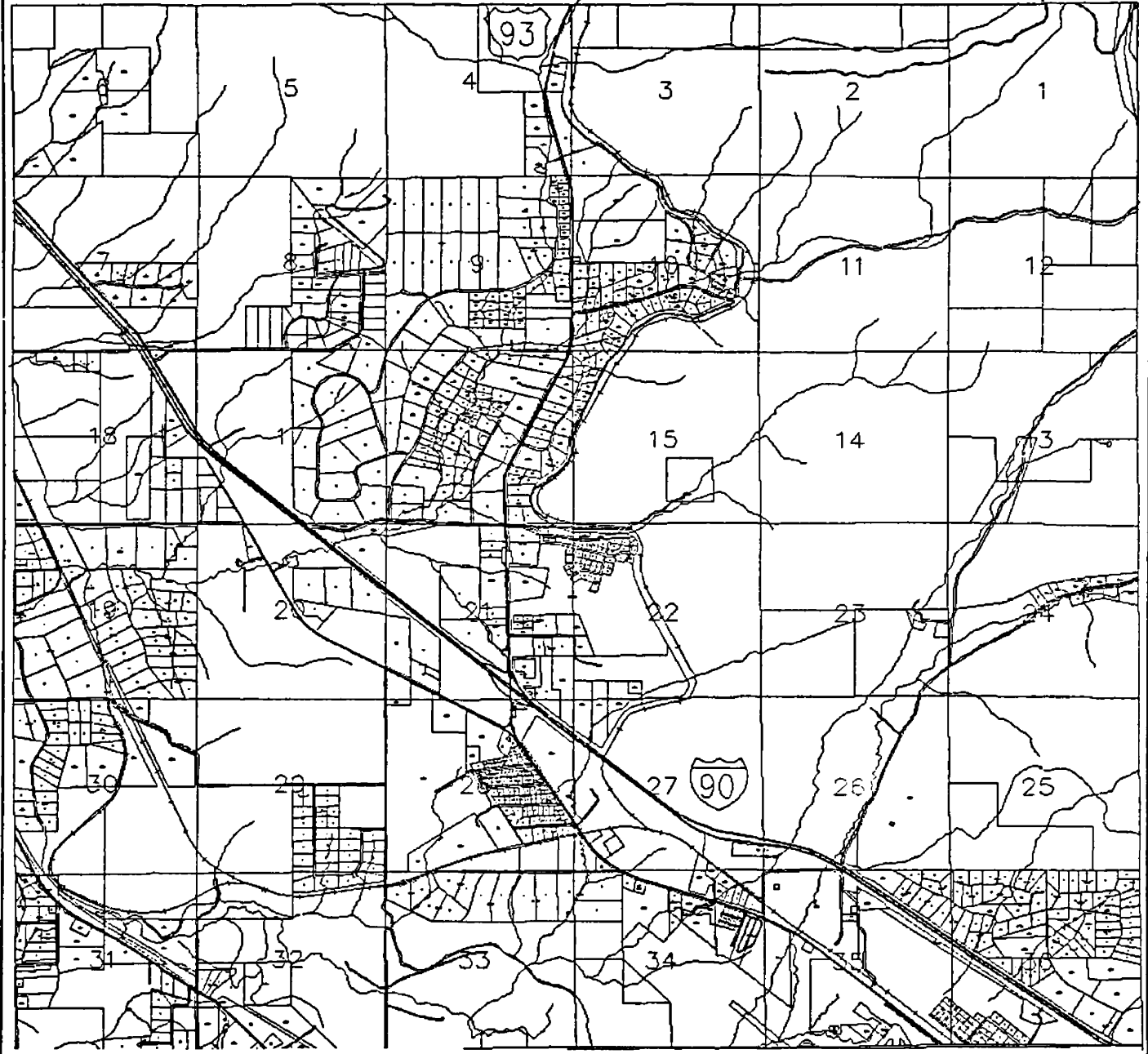
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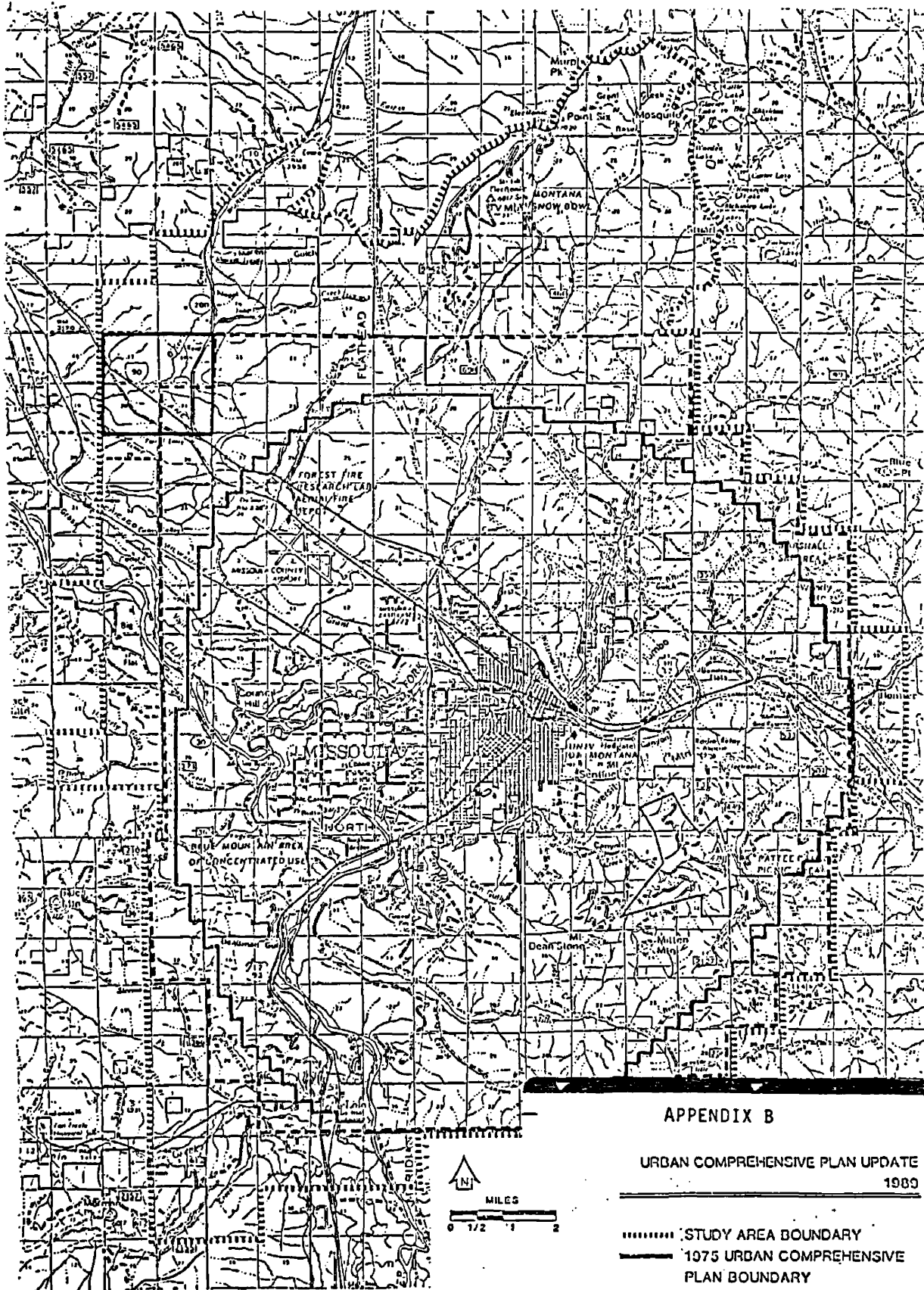
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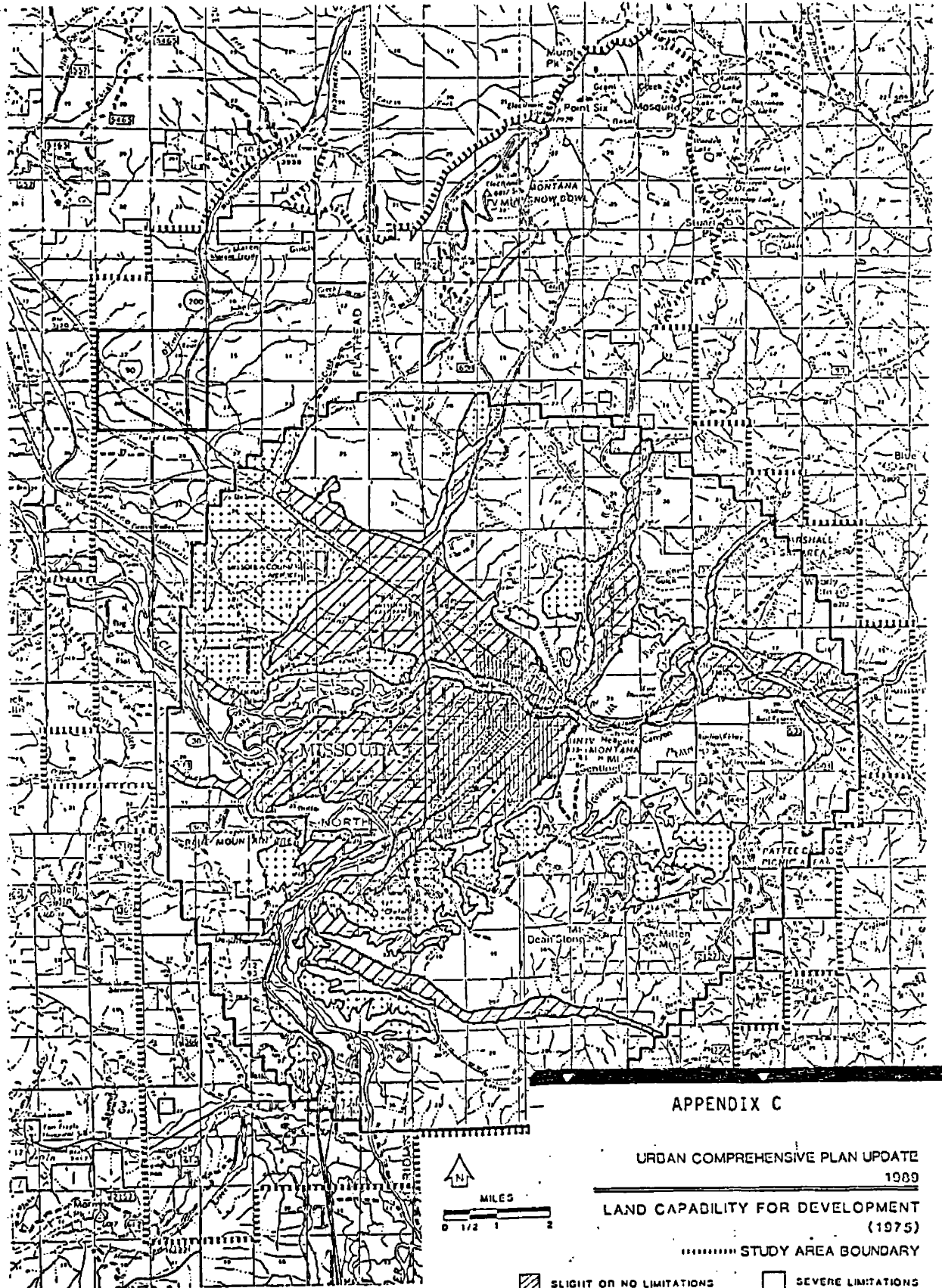
Township 14 North,
Range 20 West



APPENDIX B

URBAN COMPREHENSIVE PLAN UPDATE
1989

- STUDY AREA BOUNDARY
- 1975 URBAN COMPREHENSIVE PLAN BOUNDARY
- - - - 4 1/2 MILE JURISDICTIONAL BOUNDARY






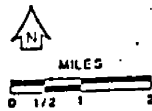
APPENDIX C

URBAN COMPREHENSIVE PLAN UPDATE
1989

LAND CAPACITY FOR DEVELOPMENT
(1975)

----- STUDY AREA BOUNDARY

-  SLIGHT OR NO LIMITATIONS
-  MODERATE LIMITATIONS
-  SEVERE LIMITATIONS



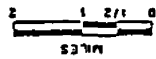
2. Farmland prepared by MCHD as nearly important.

-  PRIME FARMLAND (IF IMPLICATED)
-  FARMLAND OF STATEWIDE IMPORTANCE (IF IMPLICATED)
-  FARMLAND
-  URBAN AND BUILT UP LAND
-  LOCALLY IMPORTANT

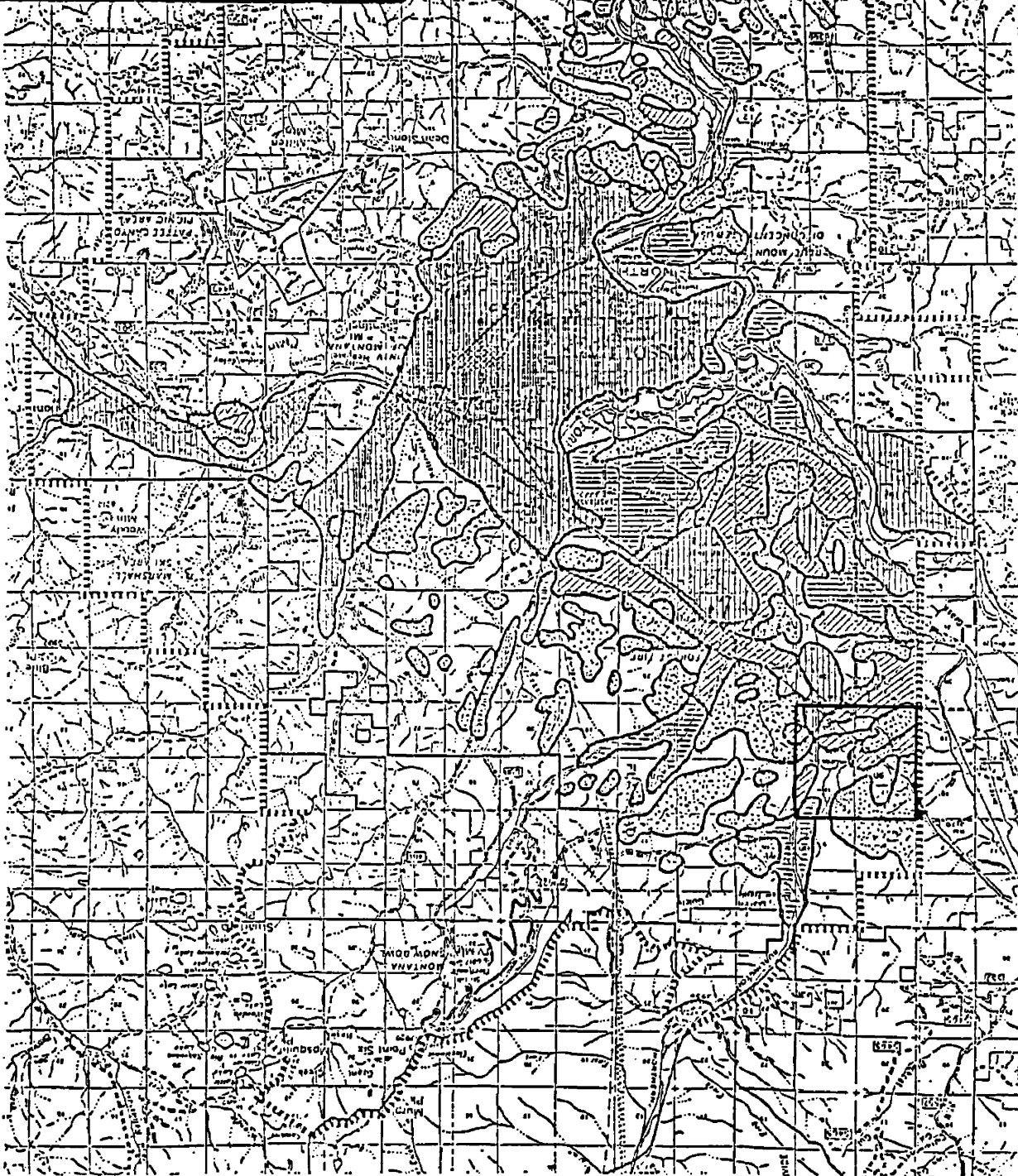
..... STUDY AREA BOUNDARY

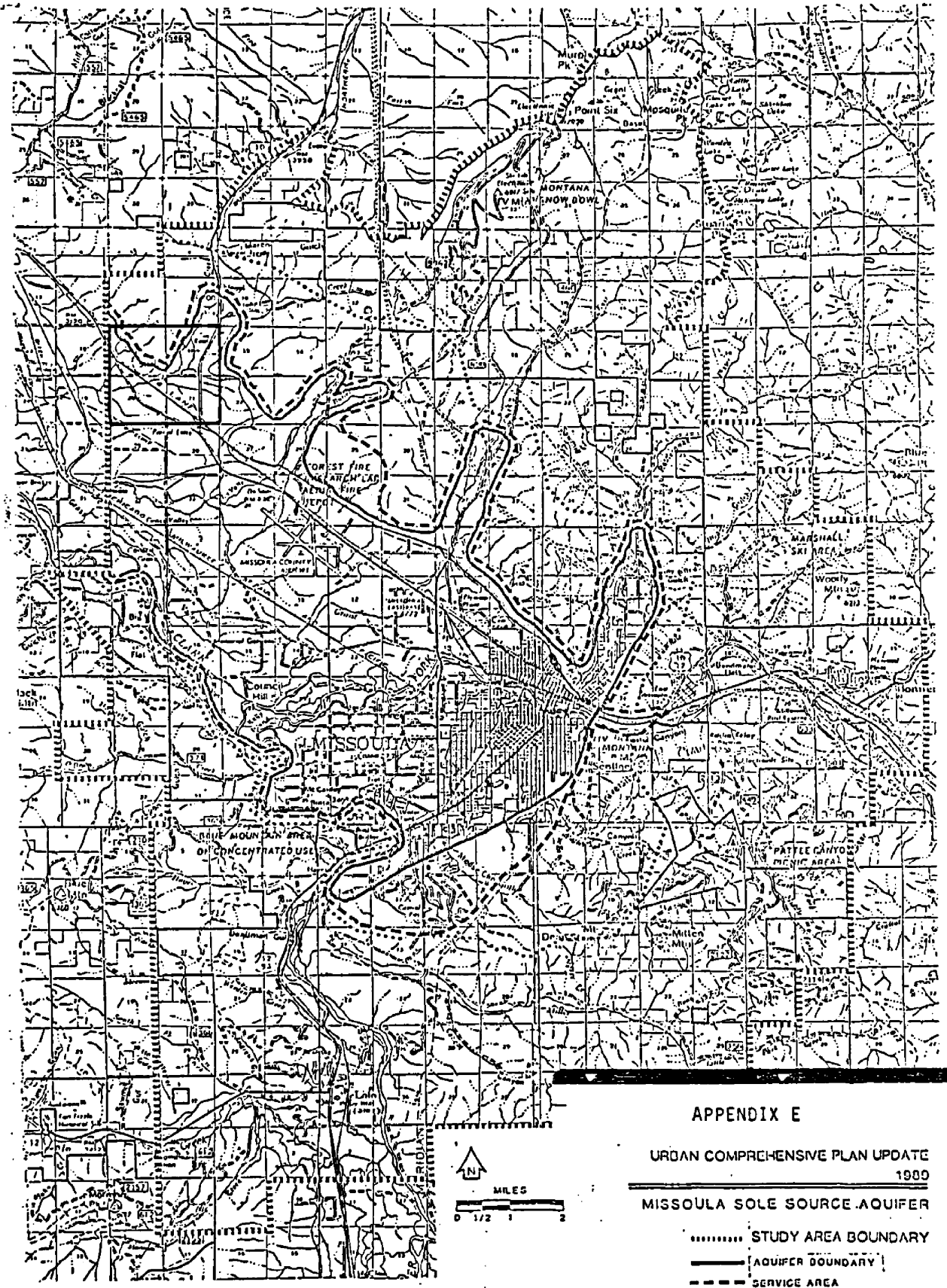
AGRICULTURAL RESOURCES

URBAN COMPREHENSIVE PLAN UPDATE
1989



APPENDIX D





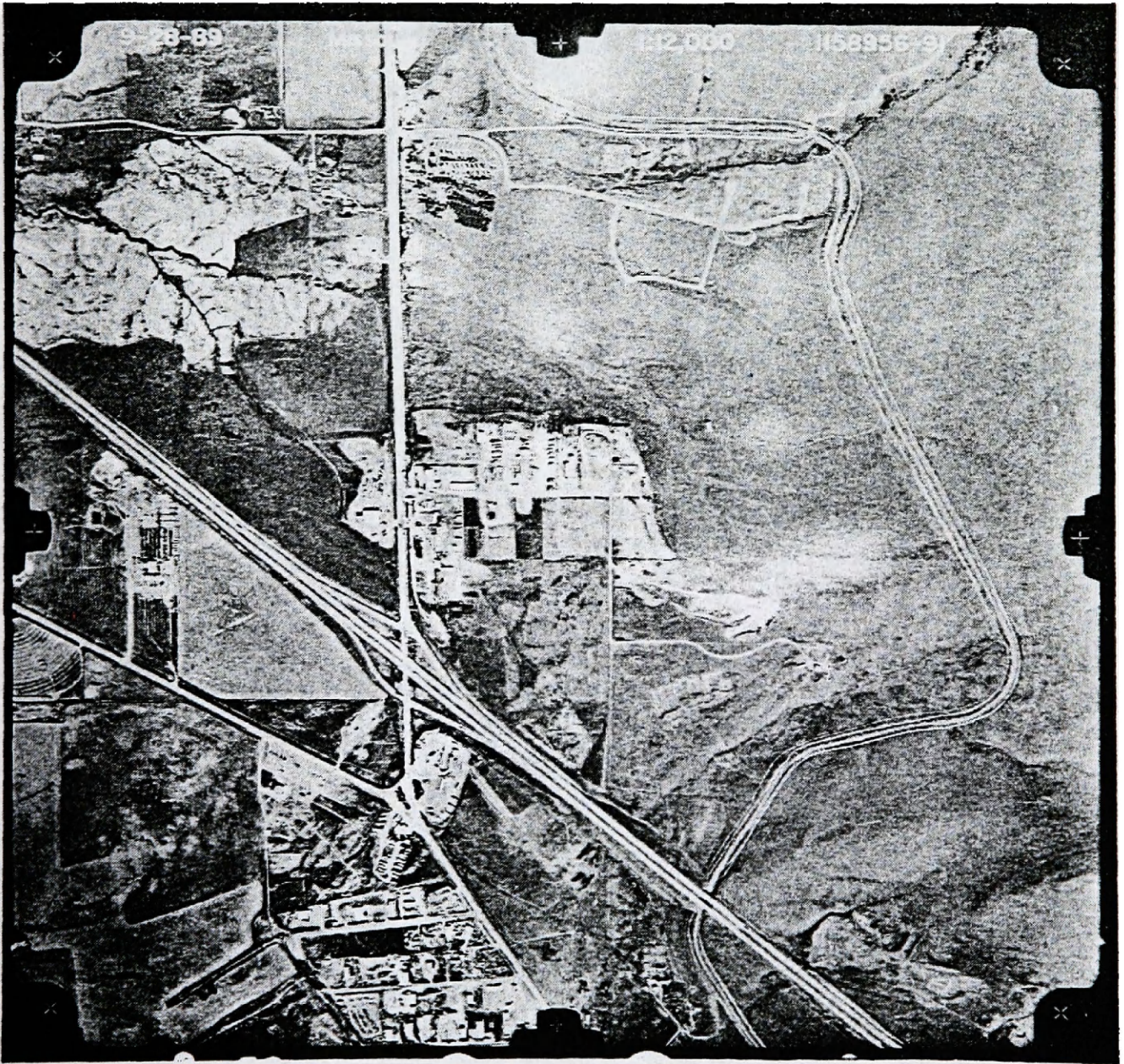
APPENDIX E

URBAN COMPREHENSIVE PLAN UPDATE
1980

MISSOULA SOLE SOURCE AQUIFER

- STUDY AREA BOUNDARY
- AQUIFER BOUNDARY
- SERVICE AREA
- · - · - · RECHARGE AREA

AERIAL PHOTOGRAPHS OF SECTIONS 21 AND 16 OF TOWNSHIP 14 NORTH,
RANGE 20 WEST. PHOTOS TAKEN 9-28-89.





HOUSE BILL NO. 671

INTRODUCED BY GILBERT, HARPER, ECK, HANEY, BRADLEY,
WALLIN, LEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE MONTANA SUBDIVISION AND PLATTING ACT; REDEFINING SUBDIVISION; REMOVING CERTAIN EXEMPTIONS; PROVIDING AN EXPEDITED REVIEW PROCESS FOR MINOR SUBDIVISIONS AND SPECIAL SUBDIVISIONS; PROVIDING PUBLIC HEARING GUIDELINES AND AN OPTIONAL INFORMATIONAL HEARING PROCEDURE; ESTABLISHING PRIMARY CRITERIA FOR REVIEW OF ALL SUBDIVISIONS; PROVIDING CERTAIN ADDITIONAL REVIEW REQUIREMENTS FOR MAJOR SUBDIVISIONS; PROVIDING FOR SUITS AGAINST A GOVERNING BODY; AMENDING SECTIONS 7-16-2324, 76-3-102, 76-3-103, 76-3-104, 76-3-105, 76-3-301, 76-3-302, 76-3-304, 76-3-305, 76-3-401, 76-3-402, 76-3-403, 76-3-404, 76-3-405, 76-3-501, 76-3-507, 76-3-601, 76-3-603, 76-3-608, 76-3-610, 76-3-611, 76-3-613, 76-3-614, 76-4-103, 76-4-125, AND 76-6-203, MCA; REPEALING SECTIONS 76-3-201, 76-3-202, 76-3-203, 76-3-204, 76-3-205, 76-3-206, 76-3-207, 76-3-208, 76-3-209, 76-3-210, 76-3-504, 76-3-505, 76-3-604, 76-3-605, 76-3-606, 76-3-607, AND 76-3-609, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES."

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

Section 1. Section 76-3-102, MCA, is amended
"76-3-102. Statement of purpose. It is the
this chapter to promote--the--public--health,
general-welfare-by-regulating-the-subdivision--o
prevent--overcrowding--of--land;-to-lessen-congestion-in-the
streets-and-highways;-to-provide-for--adequate--light,-air,
water--supply;-sewage-disposal;-parks-and-recreation-areas;
ingress--and--egress;-and--other--public--requirements;-to
require-development-in-harmony-with-the-natural-environment;
to-require-that-when-ever-necessary-the-appropriate-approval
of-subdivisions-be-contingent-upon--a--written--finding--of
public--interest--by--the-governing-body;-and-to PROMOTE THE
PUBLIC HEALTH, SAFETY, AND GENERAL WELFARE BY REGULATING THE
SUBDIVISION OF LAND; TO PREVENT OVERCROWDING OF LAND; TO
LESSEN CONGESTION IN THE STREETS AND HIGHWAYS; TO PROVIDE
FOR ADEQUATE LIGHT, AIR, WATER SUPPLY, SEWAGE DISPOSAL,
PARKS AND RECREATION AREAS, INGRESS AND EGRESS, AND OTHER
PUBLIC REQUIREMENTS; TO REQUIRE DEVELOPMENT IN HARMONY WITH
THE NATURAL ENVIRONMENT; TO REQUIRE THAT WHENEVER NECESSARY,
THE--APPROPRIATE-APPROVAL-OF-SUBDIVISIONS-BE-CONTINGENT-UPON
A-WRITTEN-FINDING-OF-PUBLIC-INTEREST-BY-THE-GOVERNING--BODY;
AND TO require uniform monumentation of land subdivisions
and-transferring divisions; TO require that the transfer of
interests in real property be made by reference to plat or
certificate of survey; TO provide simple, clear, and uniform

APPENDIX G

1 guidelines for review of subdivisions; AND TO promote
 2 environmentally sound subdivisions;--and--protect--public
 3 health--safety;--and-welfare in a manner that also protects
 4 the rights of property owners. FOR THE PURPOSE OF THIS
 5 CHAPTER, RIGHTS OF PROPERTY OWNERS INCLUDE THE RIGHT TO USE,
 6 ENJOY, IMPROVE, SELL, AND CONVEY, IN TOTAL OR IN PART, REAL
 7 PROPERTY SO LONG AS THE EXERCISE OF THE RIGHTS DOES NOT DENY
 8 THESE RIGHTS TO OTHER PROPERTY OWNERS OR ADVERSELY AFFECT
 9 PUBLIC HEALTH, SAFETY, AND WELFARE."

10 **Section 2.** Section 76-3-103, MCA, is amended to read:
 11 "76-3-103. Definitions. As used in this chapter, unless
 12 the context or subject matter clearly requires otherwise,
 13 the following words or phrases shall have the following
 14 meanings:

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

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

24 (3) "Division of land" means the segregation creation
 25 of one--or--more parcels of land from a larger tract held in

1 single or undivided ownership by transferring or contracting
 2 to transfer title to or possession of a portion of the tract
 3 or properly filing a certificate of survey or subdivision
 4 plat establishing the identity of the segregated created
 5 parcels pursuant to this chapter.

6 ~~(4) "Dwelling-unit" means a unit in which a person or~~
 7 ~~persons reside for more than 0 months of a calendar year;~~

8 ~~(4)(5)(4)~~ "Examining land surveyor" means a registered
 9 professional land surveyor duly appointed by the governing
 10 body to review surveys and plats submitted for filing.

11 ~~(6)(5)~~ "Executive proceedings" means public proceedings
 12 in which the governing body makes deliberations without
 13 receiving public comment except when, with the approval of
 14 the chairman, specific questions are directed to the
 15 subdivider or other individuals.

16 ~~(5)(7)(6)~~ "Governing body" means a board of county
 17 commissioners or the governing authority of any city or town
 18 organized pursuant to law.

19 ~~(6)(8) "Irregularly-shaped-tract-of-land" means a~~
 20 ~~parcel-of-land-other-than-an-aliquot-part-of-the-United~~
 21 ~~States--government--survey--section--or--a--United--States~~
 22 ~~government--lot;--the-boundaries-or-areas-of-which-cannot-be~~
 23 ~~determined-without-a-survey-or-trigonometric-calculation;~~

24 ~~(7) "Occasional-sale" means one sale of a division of~~
 25 ~~land within any 12-month period;~~

1 {9}{7} "Legal access" means access by easement or other
 2 right-of-way that provides the property owner THE RIGHT OF
 3 ingress and egress to or from any tract or parcel created by
 4 a subdivision.

5 {10}{8} "Major subdivision" means a subdivision that is
 6 not a minor subdivision or special subdivision.

7 {11}{9} "Minor subdivision" means a subdivision of THE
 8 FIRST five or--fewer parcels--A-second-or-subsequent-minor
 9 subdivision from a single tract of record as of July 1,
 10 1997--may--not--be--considered--a--minor--subdivision--for--review
 11 purposes--unless--the--subdivider--notifies--the---reviewing
 12 authority--of--the--subdivider's--intention--to--create--subsequent
 13 parcels--up--to--the--five--parcel--limit--at--the--time--of--the
 14 initial--minor--subdivision--application.

15 {12}{10} "Physical access" means access by a road that
 16 meets the standards set by the governing body according to
 17 76-3-501.

18 {8}{13}{11} "Planned unit development" means a land
 19 development project consisting of residential clusters,
 20 industrial parks, shopping centers, office building parks,
 21 or any combination thereof which comprises a planned mixture
 22 of land uses built in a prearranged relationship to each
 23 other and having open space and community facilities in
 24 common ownership or use.

25 {9}{14}{12} "Plat" means a graphical representation of a

1 subdivision showing the division of land into lot:
 2 blocks, streets, alleys, and other divi:
 3 dedications.

4 {10}{15}{13} "Preliminary plat" means a neat
 5 drawing of a proposed subdivision showing the layout of
 6 streets, alleys, lots, blocks, and other elements of a
 7 subdivision which furnish a basis for review by a governing
 8 body.

9 {11}{16}{14} "Final plat" means the final drawing of the
 10 subdivision and dedication required by this chapter to be
 11 prepared for filing for record with the county clerk and
 12 recorder and containing all elements and requirements set
 13 forth in this chapter and in regulations adopted pursuant
 14 thereto to this chapter.

15 {17}--"Primitive--tract"--means--a--tract--that--is--located
 16 more--than--1--mile--from--a--state--federal--or--maintained--county
 17 road--and--that--is--used--for--open--space--or--for--wildlife
 18 hunting--or--other--activities--with--minimal--human--impacts--
 19 Activities--with--minimal--human--impacts--include--the
 20 construction--of--camping--structures--that--are--dismantled--or
 21 relocated--after--seasonal--use

22 {12}{10}{15} "Registered professional land surveyor"
 23 means a person licensed in conformance with Title 37,
 24 chapter 07, to practice surveying in the state of Montana.

25 {13}{19}{16} "Registered professional engineer" means a

1 person licensed in conformance with Title 37, chapter 67, to
 2 practice engineering in the state of Montana.

3 ~~{20}~~(17) "Review authority" means the person or entity
 4 with authority to approve, conditionally approve, or
 5 disapprove a subdivision application.

6 ~~{21}~~(18) "Special subdivision" means a subdivision that
 7 conforms to a master plan pursuant--to--76-1-601, AND a
 8 long-range development program of public works projects
 9 ADOPTED pursuant to 76-1-601 and either--local--government
 10 regulations--pursuant--to--76-3-501--or zoning regulations
 11 ADOPTED pursuant to Title 76, chapter 2, part 2 or 3.

12 ~~{14}~~~~{22}~~(19) "Subdivider" means any person who causes
 13 land to be subdivided or who proposes a subdivision of land.

14 ~~{15}~~~~{23}~~(20) (a) "Subdivision" means a division of land
 15 or land so divided which that it creates one-or-more parcels
 16 containing-less-than-20-acres,-exclusive-of-public-roadways,
 17 in--order-that-the-title-to-or-possession-of-the-parcels-may
 18 be-sold,-rented,-leased,-or-otherwise--conveyed; and--shall
 19 include The--term--includes--any--resubdivision--and--shall
 20 further--include-any-residential-condominium-or building-and
 21 further--includes-any-area,-regardless--of--its--size,-which
 22 that--provides--or-will-provide-multiple-space three-or-more
 23 spaces-for-recreational-camping-vehicles, or--mobile--homes
 24 dwelling-units,-or-work-camp-structures-constructed-to-exist
 25 for-longer-than-1-year. THE TERM INCLUDES:

- 1 (I) ANY RESUBDIVISION;
- 2 (II) ANY RESIDENTIAL CONDOMINIUM OR BUILDING;
- 3 (III) ANY AREA, REGARDLESS OF ITS SIZE, THAT PROVIDES OR
- 4 WILL PROVIDE MULTIPLE SPACE FOR RECREATIONAL CAMPING
- 5 VEHICLES OR DWELLING UNITS; AND
- 6 (IV) WORK CAMP STRUCTURES CONSTRUCTED TO EXIST FOR
- 7 LONGER THAN 1 YEAR.

- 8 (b) Subdivision does not mean:
- 9 (i) a division creating cemetery lots only;
- 10 (ii) a division created by lease or rental for farming
- 11 and agricultural purposes;
- 12 (iii) a division creating an interest in oil, gas,
- 13 minerals, or water that is severed from the surface
- 14 ownership of real property;
- 15 (iv) a division created by reservation of a life estate;
- 16 (v) the sale, rent, lease, or other conveyance of one
- 17 or more parts of a building, structure, or other
- 18 improvement, whether existing or proposed;
- 19 (vi) a division of state-owned land unless the division
- 20 creates a second or subsequent parcel from a single tract
- 21 for sale, rent, or lease for residential purposes;
- 22 (vii) a division created by OPERATION OF LAW OR AN order
- 23 of a court of record in this state pursuant to the laws
- 24 governing the distribution of estates (Title 72, chapters 1
- 25 through 6 and 10 through 14) or the dissolution of marriage

1 (Title 40, chapter 4) or a division that, in the absence of
 2 an agreement between the parties to the sale, could be
 3 created by an order of a court in this state pursuant to the
 4 law of eminent domain (Title 70, chapter 30):

5 (viii) except for the survey requirements in 76-3-401
 6 through 76-3-405 and any applicable zoning requirements, a
 7 division made for the purpose of relocating boundary lines
 8 between adjoining properties, provided the division is
 9 recorded in both the certificate of survey and the index
 10 provided for in 76-3-613 and unless the governing body
 11 determines that the subdivision may be used to create
 12 subdivisions for resale;

13 (ix) except for the survey requirements in 76-3-401
 14 through 76-3-405, a division made exclusively for
 15 agricultural purposes by sale or agreement to buy and sell
 16 if the division is outside of a platted subdivision and if
 17 the local governing body and the subdivider enter into a
 18 covenant running with the land that the divided parcels must
 19 be used exclusively for agricultural purposes. The governing
 20 body shall agree to release the covenant upon petition by
 21 the subdivider if the subdivision proposal complies with the
 22 provisions of this chapter.

23 (x) except for the survey requirements in 76-3-401
 24 through 76-3-405 and the review requirements of 76-3-610
 25 through 76-3-614, a division created by rent or lease;

1 (xi) except for requirements other than the survey and
 2 platting requirements in 76-3-401 through 76-3-405,
 3 divisions created by rights-of-way; or

4 (xii) except for requirements other than the survey and
 5 platting requirements in 76-3-401 through 76-3-405 and the
 6 review requirements of 76-4-101 through 76-4-131, a division
 7 created by an agricultural producer for sale or gift to a
 8 member of the agricultural producer's immediate family for
 9 the purpose of maintaining the agricultural operation and
 10 limited to a single sale or gift to each family member. For
 11 the purposes of this section, agricultural producer means a
 12 person primarily engaged in the production of agricultural
 13 products.

14 (XIII) A DIVISION OF LAND MADE FOR THE PURPOSE OF MINING
 15 WHEN AN APPLICATION HAS BEEN SUBMITTED OR A PERMIT OR
 16 CONTRACT RECEIVED UNDER THE PROVISIONS OF TITLE 82, CHAPTER
 17 4.

18 {24}{21} "Subdivision review officer" means the person
 19 designated by the governing body to administer subdivision
 20 review or to approve, conditionally approve, or disapprove
 21 applications for minor subdivisions or special subdivisions.

22 {25}{22} "Tract of record" means a tract of record as
 23 appears in the records of the county clerk and recorder's
 24 office.

25 {23} "WATER USER ENTITY" MEANS AN ENTITY AS DESCRIBED IN

1 7-12-1151 AND IRRIGATION DISTRICTS AS PROVIDED IN 85-7-101."

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

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

9 Section 4. Section 76-3-105, MCA, is amended to read:

10 "76-3-105. Violations -- actions against subdivider.

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

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

25 NEW-SECTION:--Section-5:--Violations-----actions-against

1 governing-body;--A-person-who-has-filed--with--the--governing
2 body--an--application--for--a--permit-under-this-chapter-may
3 bring-an-action-against-the-governing-body-to-recover-actual
4 damages-caused-by:

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

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

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

12 (b)--unlawful-or-exceeds-lawful-authority;

13 NEW SECTION. Section 5. Certificate of taxes paid. A
14 division of land may not be made unless the county treasurer
15 has certified that real property taxes assessed and levied
16 on the land to be divided are not delinquent.

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

18 "76-3-301. General restriction on transfer of title to
19 subdivided lands. (1) Except as provided in 76-3-303, every
20 final subdivision plat must be filed for record with the
21 county clerk and recorder before title to the subdivided
22 land can be sold or transferred in any manner. The clerk and
23 recorder of the county shall refuse to accept any plat for
24 record that fails to have the approval of 76-3-611(1) in
25 proper form.

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

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

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

11 *76-3-302. Restrictions on recording instruments
 12 relating to land subject to surveying requirements. (1)
 13 Except as provided in subsection (2), the county clerk and
 14 recorder of any county may not record any instrument which
 15 that purports to transfer title to or possession of a parcel
 16 or tract of land which that is required to be surveyed by
 17 this chapter unless the required certificate of survey or
 18 subdivision plat has been filed with the clerk and recorder
 19 and the instrument of transfer describes the parcel or tract
 20 by reference to the filed certificate or plat.

21 (2) Subsection (1) does not apply when the parcel or
 22 tract to be transferred was created before July 1, 1973, and
 23 the instrument of transfer for the parcel or tract includes
 24 a reference to a previously recorded instrument of transfer
 25 or is accompanied by documents which ~~if recorded,~~ would

1 otherwise ~~satisfy the requirements of this subsection.~~ The
 2 reference ~~or document must~~ that demonstrate that the parcel
 3 or tract existed before July 1, 1973.

4 (3) The reference or documents required in subsection
 5 (2) do not constitute a legal description of the property
 6 and may not be substituted for a legal description of the
 7 property."

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

9 *76-3-304. Effect of recording filing complying plat.
 10 The recording filing of any plat made in compliance with the
 11 provisions of this chapter shall ~~serve~~ serve to establish
 12 the identity of all lands shown on ~~and being a part of such~~
 13 the plat. Where When lands are conveyed by reference to a
 14 plat, the plat itself or any copy of the plat properly
 15 certified by the county clerk and recorder as being a true
 16 copy thereof ~~shall~~ of the plat must be regarded as
 17 incorporated into the instrument of conveyance and shall
 18 must be received in evidence in all courts of this state."

19 Section 9. Section 76-3-305, MCA, is amended to read:

20 *76-3-305. Vacation of plats -- utility easements. (1)
 21 Any plat prepared and recorded as herein provided in this
 22 part may be vacated either in whole or in part as provided
 23 by 7-5-2501, 7-5-2502, subsections (1) and (2) of 7-14-2616,
 24 7-14-2617, subsections (1) and (2) of 7-14-4114, and
 25 7-14-4115, and upon such vacation the title to the streets

1 and alleys of such the vacated portions to the center
 2 thereof--shall--revert of the street or alley reverts to the
 3 owners of the properties within the platted area adjacent to
 4 such the vacated portions.

5 (2) However, when any If a poleline, pipeline, or any
 6 other public or private facility is located in a vacated
 7 street or alley at the time of the reversion of the title
 8 thereto of the street or alley, the owner of said the public
 9 or private utility facility shall have has an easement over
 10 the vacated land to continue the operation and maintenance
 11 of the public or private utility facility."

12 Section 10. Section 76-3-401, MCA, is amended to read:

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

21 Section 11. Section 76-3-402, MCA, is amended to read:

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

1 registered professional land surveyor.

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

5 (3) All division of sections into aliquot parts and
 6 retracement of lines must conform to United States bureau of
 7 land management instructions, and all public land survey
 8 corners shall must be filed in accordance with the Corner
 9 Recordation Act of Montana (Title 70, chapter 22, part 1).
 10 Engineering plans, specifications, and reports required in
 11 connection with public improvements and other elements of
 12 the subdivision required by the governing body shall must be
 13 prepared and filed by a registered professional engineer or
 14 a registered professional land surveyor as their respective
 15 licensing laws allow in accordance with this chapter and
 16 regulations adopted pursuant thereto to this chapter."

17 Section 13--Section 76-3-403, MCA, is amended to read:

18 "76-3-403--Monumentation--(1)--The--department--of
 19 commerce--shall--in--conformance--with--the--Montana
 20 Administrative--Procedure--Act--prescribe--uniform--standards
 21 for--monumentation--and--for--the--form,--accuracy,--and
 22 descriptive--content--of--records--of--survey--

23 (2)--It--shall--be--the--responsibility--of--the--governing
 24 body--to--require--the--replacement--of--all--monuments--removed--in
 25 the--course--of--construction--"

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

2 "76-3-404. Certificate of survey. (1) Within 180 days
3 of the completion of a survey, the registered professional
4 land surveyor responsible for the survey, whether he is
5 privately or publicly employed, shall prepare and-submit for
6 filing a certificate of survey in the county in which the
7 survey was made if the survey:

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

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

12 (c) discloses evidence to suggest alternate locations
13 of lines or points; or

14 (d) establishes one or more lines not shown on a
15 recorded map, the positions of which are not ascertainable
16 from an inspection of such the map without trigonometric
17 calculations.

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

23 (3) Certificates of survey shall must be legibly drawn,
24 printed, or reproduced by a process guaranteeing a permanent
25 record and shall must conform to monumentation and surveying

1 requirements promulgated under this chapter."

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

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

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

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

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

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

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

20 "76-3-501. Local subdivision regulations. (1) Before
21 ~~July--17--1974--the~~ The governing body of every county, city,
22 and town shall, IN A MANNER THAT PROTECTS THE RIGHTS OF
23 PROPERTY OWNERS, adopt and provide for the enforcement and
24 administration of subdivision regulations reasonably
25 providing---for---the---orderly---development---of---their

1 jurisdictional areas; for the coordination of roads within
 2 subdivided land with other roads, both existing and planned;
 3 for the dedication of land for roadways and for public
 4 utility easements; for the improvement of roads; for the
 5 provision of adequate open spaces for travel, light, air,
 6 and recreation; for the provision of adequate
 7 transportation, water, drainage, and sanitary facilities;
 8 for the avoidance or minimization of congestion; and for the
 9 avoidance of subdivision which would involve unnecessary
 10 environmental degradation and the avoidance of danger of
 11 injury to health, safety, or welfare by reason of natural
 12 hazard or the lack of water, drainage, access,
 13 transportation, or other public services or would
 14 necessitate an excessive expenditure of public funds for the
 15 supply of such services; implementing the provisions of this
 16 chapter that are consistent with the statement of purpose
 17 described in 76-3-102 and that do not unreasonably restrict
 18 a landowner's ability to develop land; PROVIDING FOR THE
 19 ORDERLY DEVELOPMENT OF THEIR JURISDICTIONAL AREAS; FOR THE
 20 COORDINATION OF ROADS WITHIN SUBDIVIDED LAND WITH OTHER
 21 ROADS, BOTH EXISTING AND PLANNED; FOR THE DEDICATION OF LAND
 22 FOR ROADWAYS AND FOR PUBLIC UTILITY EASEMENTS; FOR THE
 23 IMPROVEMENT OF ROADS; FOR THE PROVISION OF ADEQUATE OPEN
 24 SPACES FOR TRAVEL, LIGHT, AIR, AND RECREATION; FOR THE
 25 PROVISION OF ADEQUATE TRANSPORTATION, WATER, DRAINAGE, AND

1 SANITARY FACILITIES; FOR THE AVOIDANCE OR MINIMIZATION OF
 2 CONGESTION; AND FOR THE AVOIDANCE OF SUBDIVISION THAT WOULD
 3 INVOLVE UNNECESSARY ENVIRONMENTAL DEGRADATION AND THE
 4 AVOIDANCE OF DANGER OF INJURY TO HEALTH, SAFETY, OR WELFARE
 5 BY REASON OF NATURAL HAZARD OR THE LACK OF WATER, DRAINAGE,
 6 ACCESS, TRANSPORTATION, OR OTHER PUBLIC SERVICES OR WOULD
 7 NECESSITATE AN EXCESSIVE EXPENDITURE OF PUBLIC FUNDS FOR THE
 8 SUPPLY OF THESE SERVICES. FOR THE PURPOSE OF THIS CHAPTER,
 9 RIGHTS OF PROPERTY OWNERS INCLUDE THE RIGHT TO USE, ENJOY,
 10 IMPROVE, SELL, AND CONVEY, IN TOTAL OR IN PART, REAL
 11 PROPERTY SO LONG AS THE EXERCISE OF THE RIGHTS DOES NOT DENY
 12 THESE RIGHTS TO OTHER PROPERTY OWNERS OR ADVERSELY AFFECT
 13 PUBLIC HEALTH, SAFETY, AND WELFARE. The regulations must
 14 include:

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

17 (b) procedures, BASED ON THE MINIMUM REQUIREMENTS AS
 18 PROVIDED IN 7-1-4127, for providing public notice of
 19 subdivision applications and hearings;

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

1 (d) procedures and standards concerning the application
 2 of review criteria to subdivision applications, as provided
 3 for in 76-3-608 and [section 26 24];

4 (e) standards for the design and arrangement of lots,
 5 streets, and roads; grading and drainage; and for the
 6 location and installation of utilities. Standards for the
 7 design of streets and roads may not exceed the requirements
 8 for anticipated vehicle use.

9 (f) ~~financial---incentives---for---developments---that~~
 10 accommodate public values IF A PROPOSED MAJOR, MINOR, OR
 11 SPECIAL SUBDIVISION LIES PARTLY OR TOTALLY WITHIN THE
 12 BOUNDARIES OF A WATER USER ENTITY, THAT THE PROPOSED PLAT OF
 13 THE SUBDIVISION BE SUBMITTED FOR REVIEW TO THE WATER USER
 14 ENTITY TO ENSURE THAT THE EXISTENCE AND LOCATION OF ALL
 15 WATER USER FACILITIES ARE PROPERLY NOTED ON THE PLAT. WATER
 16 USER FACILITIES INCLUDE BUT ARE NOT LIMITED TO CANALS,
 17 LATERALS, OPEN DRAINS, AND CLOSED DRAINS.

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

23 Section 15. Section 76-3-507, MCA, is amended to read:

24 "76-3-507. Provision for bonding requirements to insure
 25 ensure construction of public improvements. (1) Except as

1 provided in subsection (2), the governing body sh
 2 the subdivider to complete any required public i
 3 within the subdivision prior to the approval of
 4 plat.

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

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

24 (3) Governing body approval of a final plat prior to
 25 the completion of required improvements and without the

1 provision of the security required under subsection (2) is
 2 not an act of a legislative body for the purpose of
 3 2-9-111."

4 Section 16. Section 76-3-601, MCA, is amended to read:

5 "76-3-601. Submission of preliminary plat for review.

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

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

22 (b) When the proposed subdivision is situated entirely
 23 in an unincorporated area, the preliminary plat shall must
 24 be submitted to and approved by the governing body of the
 25 appropriate county review authority. However, if the

1 proposed subdivision lies within 1 mile of a third-class
 2 city or town or within 2 miles of a second-class city or
 3 within 3 miles of a first-class city, the county governing
 4 body review authority shall submit the preliminary plat to
 5 the city or town governing body or its designated agent for
 6 review and comment.

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

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

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

20 Section 17. Section 76-3-603, MCA, is amended to read:

21 "76-3-603. Contents of environmental assessment. Where
 22 required, the An environmental assessment shall must
 23 accompany the preliminary plat for any major subdivision and
 24 shall must include:

25 (1) a description of every body or stream of surface

1 water as that may be affected by the proposed subdivision,
 2 together with available ground water information, and a
 3 description of the topography, vegetation, and wildlife use
 4 within the area of the proposed subdivision; and

5 ~~{2}--maps--and--tables--showing--soil--types--in--the--several~~
 6 ~~parts--of--the--proposed--subdivision--and--their--suitability--for~~
 7 ~~any--proposed--developments--in--those--several--parts;~~

8 ~~{3}--a--community--impact--report--containing--a--statement--of~~
 9 ~~anticipated--needs--of--the--proposed--subdivision--for--local~~
 10 ~~services;--including--education--and--busing;--roads--and~~
 11 ~~maintenance;--water;--sewage;--and--solid--waste--facilities;--and~~
 12 ~~fire--and--police--protection;~~

13 ~~{4}--such--additional--relevant--and--reasonable--information~~
 14 ~~as--may--be--required--by--the--governing--body;~~

15 (2) a summary of the probable impacts of the proposed
 16 subdivision based on the criteria described in 76-J-608 and
 17 [section 26 24]; AND

18 (3) ADDITIONAL RELEVANT AND REASONABLE INFORMATION AS
 19 MAY BE REQUIRED BY THE GOVERNING BODY."

20 NEW SECTION. Section 18. Review process for major
 21 subdivisions. (1) A subdivider proposing a major subdivision
 22 shall confer first with the subdivision review officer or
 23 his designated agent in a preliminary conference to discuss
 24 the application for the major subdivision, the requirements
 25 provided in this chapter, and local government regulations

1 provided in 76-J-501. The subdivider shall submit
 2 of the plat at the conference, and the subdivi
 3 officer shall refer the subdivider to the requi
 4 Title 76, chapter 4. Notice of the subdivision
 5 must comply with the local government regulations adopted
 6 under 76-J-501.

7 (2) The governing body, or the planning board if
 8 designated as the review authority by the governing body,
 9 shall approve, conditionally approve, or disapprove an
 10 application for a major subdivision within 60 days following
 11 the submission of a complete application. However, the
 12 subdivider and the governing body or review authority may
 13 agree to extend the time period.

14 (3) An application for a major subdivision may not
 15 receive more than two ONE informational hearings HEARING.
 16 The hearing or hearings must be conducted by the governing
 17 body unless it delegates the responsibility to the planning
 18 board or to a hearing officer under subsection (5) or
 19 conducts a joint hearing with the planning board. When a
 20 hearing is held by the planning board or a hearing officer,
 21 the board or officer shall make findings and recommendations
 22 for submission to the governing body concerning approval,
 23 conditional approval, or disapproval of the plat not later
 24 than 10 days after the informational hearing.

25 (4) Within 21 days following submission to the

1 governing body of the complete application by the
2 subdivider, an informational hearing on the subdivision
3 application may be requested by:

- 4 (a) the subdivider;
5 (b) a citizen who would be SUBSTANTIALLY adversely
6 affected by the subdivision; or
7 (c) the review authority.

8 (5) The governing body shall designate the hearing
9 officer. The first informational hearing, if held, must be
10 at the local government's expense. ~~if a second hearing is~~
11 ~~held pursuant to the subdividers or an affected citizen's~~
12 ~~petition, the governing body may assess costs of the second~~
13 ~~hearing to the petitioner.~~ The hearing officer shall make
14 findings and recommendations to the governing body
15 concerning the approval, conditional approval, or
16 disapproval of the plat not later than ~~10~~ 20 days after the
17 informational hearing and within the time period determined
18 under subsection (2).

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

1 testimony of parties and witnesses must be made under oath.
2 Hearsay evidence may be used for the purpose of
3 supplementing or explaining other evidence, but it is not
4 sufficient in itself to support a finding unless it would be
5 admissible over objection in civil actions.

6 (7) Not less than 15 days prior to the date of an
7 informational hearing on an application for a major
8 subdivision, notice of the hearing and of the type of
9 hearing must be given BY THE GOVERNING BODY by publication
10 in a newspaper of general circulation in the county in which
11 the subdivision is located. The subdivider, each adjoining
12 property owner of record, and each purchaser of record under
13 contract for deed of property adjoining the land included in
14 the plat must also be notified of the hearing by certified
15 mail not less than 15 days prior to the date of the hearing.

16 (8) The review authority shall make its decision TO
17 APPROVE, DISAPPROVE, OR CONDITIONALLY APPROVE THE
18 SUBDIVISION APPLICATION during executive proceedings after
19 the informational hearing or hearings AFTER THE TIME FOR A
20 HEARING HAS EXPIRED.

21 NEW SECTION. Section 19. Review process for minor
22 subdivisions and special subdivisions. (1) A subdivider
23 proposing a minor subdivision or special subdivision shall
24 confer first with the subdivision review officer or his
25 designated agent in a preliminary conference to discuss the

1 application for the subdivision, under the requirements
2 provided in this chapter, and local government regulations
3 provided in 76-3-501. The subdivider shall submit a sketch
4 of the plat at the conference, and the subdivision review
5 officer shall refer the subdivider to the requirements of
6 Title 76, chapter 4. Notice of the subdivision application
7 must comply with the local government regulations adopted
8 under 76-3-501.

9 (2) The governing body, or the planning board or
10 subdivision review officer if either is designated the
11 review authority by the governing body, shall approve,
12 conditionally approve, or disapprove an application for a
13 minor subdivision or special subdivision.

14 (J) A determination on the application must be made
15 within 35 days following submission of a complete
16 application unless the review authority and the subdivider
17 agree to extend the time period.

18 ~~{4}--A-public-hearing-may-be-held-on-a-minor-or--special
19 subdivision-only-if:~~

20 ~~{a)--the--subdivision-would-be-located-in-an-area-having
21 unique-cultural,--historical,--or-natural-resources--that--are
22 susceptible--to-substantial-adverse-effects-from-subdivision
23 development-or-if-the-subdivision--would--cause--substantial
24 adverse-fiscal-costs-to-local-government;--and~~

25 ~~{b)--the--subdivider--or-a-citizen-who-demonstrates-that~~

1 he-would-be-adversely-affected-by-the--proposed--
2 petitions--the--governing--body-for-a-hearing-wit
3 following-submission-of-the-complete-application:

4 (4) WITHIN 15 DAYS FOLLOWING SUBMISSION
5 GOVERNING BODY OF A COMPLETE APPLICATION BY THE SUBDIVIDER,
6 A PUBLIC HEARING ON THE SUBDIVISION MAY BE REQUESTED BY THE
7 SUBDIVIDER OR BY A CITIZEN WHO DEMONSTRATES THAT HE WOULD BE
8 SUBSTANTIALLY ADVERSELY AFFECTED BY THE SUBDIVISION.

9 (5) If requested by the subdivider, an affected citizen
10 who petitions REQUESTS A HEARING under subsection (4), or
11 the review authority, the hearing must be conducted as an
12 informational hearing as provided for in [section 20 18].
13 The governing body shall designate the hearing officer, and
14 ~~if-the-hearing-is-held-pursuant-to-the--subdivider's--or--an~~
15 ~~affected--citizen's--request,--the-governing-body-may-assess~~
16 ~~costs-of-the-hearing--to--the--requestor.--The~~ THE hearing
17 officer shall submit findings and recommendations to the
18 review authority concerning the approval, conditional
19 approval, or disapproval of the plat not later than 10 days
20 after the public hearing and within the time period
21 determined under subsection (J).

22 (6) An application for a minor subdivision or special
23 subdivision may not receive more than one public hearing.
24 The public hearing must be conducted by the governing body
25 unless it delegates that responsibility to the subdivision

1 review officer, the planning board, or a hearing officer
2 under subsection (5).

3 (7) Not less than 10 days prior to the date of a
4 hearing on an application for a minor subdivision or special
5 subdivision, notice of the hearing and of the type of
6 hearing must be given BY THE GOVERNING BODY by publication
7 in a newspaper of general circulation in the county in which
8 the subdivision is located. The subdivider, each adjoining
9 property owner of record, and each purchaser of record under
10 contract for deed of property adjoining the land included in
11 the plat must be notified of the hearing BY THE GOVERNING
12 BODY by certified mail not less than 10 days prior to the
13 date of the hearing.

14 (8) Regardless of whether or not a public hearing is
15 held, if the review authority determines that substantial
16 adverse impacts on the ~~factors listed in subsection (4)~~ are
17 probable CULTURAL OR HISTORICAL RESOURCES OR ENVIRONMENTAL
18 OR ECOLOGICAL RESOURCES, INCLUDING WILDLIFE AND WILDLIFE
19 HABITAT, ARE PROBABLE OR THAT THE SUBDIVISION WOULD CAUSE
20 SUBSTANTIAL ADVERSE FISCAL COSTS TO THE LOCAL GOVERNMENT,
21 the review authority shall schedule a consultation with the
22 subdivider, knowledgeable persons, and agency
23 representatives. During the consultation process, the
24 parties shall work to develop mitigation for the potential
25 adverse effects on the factors listed in THIS subsection

1 (4).

2 (9) The review authority shall report the results of
3 the meeting to the governing body and may make a
4 recommendation.

5 (10) The governing body may require the subdivider to
6 design the subdivision to minimize any potentially
7 significant adverse impacts. IT IS RECOGNIZED THAT IN SOME
8 INSTANCES THE IMPACTS OF A PROPOSED DEVELOPMENT MAY BE
9 UNACCEPTABLE AND WILL PRECLUDE APPROVAL OF THE PLAT.

10 (11) The governing body shall issue written findings,
11 based on substantial credible evidence, to justify any
12 action taken under subsection (10).

13 (12) ~~in reviewing a subdivision under subsection (4) a~~
14 ~~governing body must be guided by the following standards:~~
15 ~~(a) Mitigation measures imposed should not unreasonably~~
16 ~~restrict a landowner's ability to develop land, but it is~~
17 ~~recognized that in some instances the unmitigated impacts of~~
18 ~~a proposed development may be unacceptable and will preclude~~
19 ~~approval of the plat.~~

20 (b) Whenever feasible, mitigation should be designed to
21 provide some benefits for the subdivider, including
22 allowances for higher density development in less
23 environmentally sensitive sites within the plat and
24 structuring mitigation to provide eligibility for tax
25 benefits if land or development rights are donated to

1 eligible receivers.

2 (13) The review authority shall approve, conditionally
3 approve, or disapprove the application after the hearing has
4 occurred or the opportunity for hearing has expired. If the
5 review authority is the governing body or planning board,
6 the decision must be made during executive proceedings. If
7 the subdivision review officer is designated the review
8 authority, the review officer shall proceed according to the
9 following requirements:

10 (a) The subdivision review officer shall notify the
11 governing body and the planning board, if one exists, of the
12 review officer's decision.

13 (b) If the application for the subdivision contains a
14 request for a deviation from standards or for a variance or
15 if the application was subject to a public hearing under
16 subsections (4) through (7), the subdivision review officer
17 shall make a preliminary decision on the application. This
18 decision is subject to review and modification by the
19 governing body, or the planning board if designated by the
20 governing body, during executive proceedings. The
21 subdivision review officer's decision may be modified by the
22 governing body or planning board only if it finds by
23 substantial credible evidence and documents that the
24 decision is not consistent with the provisions of this
25 chapter or with local government regulations adopted

1 pursuant to 76-3-501.

2 NEW SECTION. Section 20. Review guideline:
3 subdivisions. (1) A proposed subdivision must c
4 the applicable requirements stated in this chapte
5 government regulations adopted pursuant to 76-3-501 and must
6 conform to a master plan, if required, pursuant to 76-1-606.

7 (2) Written findings and the reasons for approving,
8 disapproving, or conditionally approving the subdivision
9 must accompany the review authority's action on a
10 subdivision application.

11 (3) A proposed subdivision is preliminarily approved
12 when the review authority approves the preliminary plat.

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

19 NEW SECTION. Section 21. Park dedication requirement.
20 (1) Except as provided in subsections (2), (3), and (7), a
21 subdivider shall dedicate to the governing body a cash or
22 land donation equal to:

23 (a) 7-5% 10% of the fair market value of the land
24 proposed to be subdivided into parcels of one-half acre or
25 smaller;

1 (b) 5% 7.51 of the fair market value of the land
 2 proposed to be subdivided into parcels larger than one-half
 3 acre and not larger than 1 acre;

4 (c) ~~2+5%~~ 5% of the fair market value of the land
 5 proposed to be subdivided into parcels larger than 1 acre
 6 and not larger than 3 acres; and

7 (d) ~~1+25%~~ 2.5% of the fair market value of the land
 8 proposed to be subdivided into parcels larger than 3 acres
 9 and not larger than 5 acres.

10 (2) ~~Based-on-the-park-needs-of-the-area, in lieu of~~
 11 ~~subaection--{1}, the governing body may require the~~
 12 ~~subdivider to dedicate to the governing body a cash or land~~
 13 ~~donation equal to:~~

14 (a) ~~7+5% of the fair market value of the land proposed~~
 15 ~~to be subdivided if the development density is 13 or more~~
 16 ~~dwelling units per acre;~~

17 (b) ~~5% of the fair market value of the land proposed to~~
 18 ~~be subdivided if the development density is 8 to 12+99~~
 19 ~~dwelling units per acre;~~

20 (c) ~~2+5% of the fair market value of the land proposed~~
 21 ~~to be subdivided if the development density is 5 to 7+99~~
 22 ~~dwelling units per acre;~~

23 (d) ~~1+25% of the fair market value of the land proposed~~
 24 ~~to be subdivided if the development density is 3 to 4+99~~
 25 ~~dwelling units per acre;~~ WHEN A SUBDIVISION IS LOCATED

1 TOTALLY WITHIN AN AREA FOR WHICH DENSITY REQUIREMENTS HAVE
 2 BEEN ADOPTED PURSUANT TO A MASTER PLAN UNDER TITLE 76,
 3 CHAPTER 1, OR PURSUANT TO ZONING REGULATIONS UNDER TITLE 76,
 4 CHAPTER 2, THE GOVERNING BODY MAY ESTABLISH PARK DEDICATION
 5 REQUIREMENTS BASED ON THE COMMUNITY NEED FOR PARKS AND THE
 6 DEVELOPMENT DENSITIES IDENTIFIED IN THE PLANS OR
 7 REGULATIONS. PARK DEDICATION REQUIREMENTS ESTABLISHED UNDER
 8 THIS SUBSECTION ARE IN LIEU OF THOSE PROVIDED IN SUBSECTION
 9 (1) AND MAY NOT EXCEED 0.03 ACRES PER DWELLING UNIT.

10 (3) A park dedication may not be required for land
 11 proposed for subdivision into parcels larger than 5 acres,
 12 for subdivision into parcels that are all nonresidential, or
 13 where only one additional parcel is created. If a future
 14 subdivision of the land creates parcels smaller than 5
 15 acres, park dedication is required according to the
 16 provisions of this section.

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

19 (5) ~~The subdivider shall make the park dedication in~~
 20 ~~land or cash.~~

21 (5) THE GOVERNING BODY, IN CONSULTATION WITH THE
 22 SUBDIVIDER AND THE PLANNING BOARD OR PARK BOARD HAVING
 23 JURISDICTION, MAY DETERMINE SUITABLE LOCATIONS FOR PARKS AND
 24 PLAYGROUNDS AND, GIVING DUE WEIGHT AND CONSIDERATION TO THE
 25 EXPRESSED PREFERENCE OF THE SUBDIVIDER, MAY DETERMINE

1 WHETHER THE PARK DEDICATION MUST BE A LAND DONATION, CASH
 2 DONATION, OR A COMBINATION OF BOTH.

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

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

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

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

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

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

24 (ii) the appraised value of the land set aside for park
 25 and recreational purposes equals or exceeds the value of the

1 dedication required under subsection (1); or

2 (b) (i) the preliminary plat provides
 3 protection of critical wildlife habitat;
 4 historical, or natural resources; agricultural int
 5 aesthetic values; and

6 (ii) the appraised market value of the unimproved
 7 subdivided land, by virtue of providing long-term protection
 8 provided for in subsection (7)(b)(i), is reduced by an
 9 amount equal to or exceeding the value of the dedication
 10 required under subsection (1).

11 NEW SECTION. Section 22. Payment for extension of
 12 capital facilities. A local government may require a
 13 subdivider to pay or guarantee payment for part or all of
 14 the costs of extending CAPITAL FACILITIES RELATED TO PUBLIC
 15 HEALTH AND SAFETY, INCLUDING BUT NOT LIMITED TO public sewer
 16 lines, water supply lines, and storm drains to a
 17 subdivision. The costs must reasonably reflect the expected
 18 impacts of the subdivision.

19 Section 23. Section 76-3-600, MCA, is amended to read:
 20 *76-3-600. Criteria for local government review. (1)
 21 The basis for the governing body's or review authority's
 22 decision to approve, conditionally approve, or disapprove a
 23 subdivision shall be is whether the applicable preliminary
 24 plat, environmental assessment, public hearing, planning
 25 board recommendations, and or any additional information

1 demonstrate demonstrates that development of the subdivision
 2 would--be--in--the-public-interest--The governing body shall
 3 disapprove any subdivision which it finds not to be--in--the
 4 public interest meets the requirements of this chapter.

5 (2) To determine whether the proposed subdivision would
 6 be--in--the-public-interest, the The governing body or review
 7 authority shall issue written findings of fact which that
 8 weigh the following criteria for--public--interest: in
 9 [SECTION 19], [section 26 24], and subsections (3) and (4)
 10 of this section, as applicable.

- 11 (a)--the-basis-of-the-need-for-the-subdivision;
- 12 (b)--expressed-public-opinion;
- 13 (c)--effects-on-agriculture;
- 14 (d)--effects-on-local-services;
- 15 (e)--effects-on-taxation;
- 16 (f)--effects-on-the-natural-environment;
- 17 (g)--effects-on-wildlife-and-wildlife-habitat; and
- 18 (h)--effects-on-the-public-health-and-safety;

19 (J) A subdivision proposal must undergo review for the
 20 following primary criteria:

21 (a)--The subdivision must be mapped, and the subdivision
 22 plat must be--properly--filed--with--the--county--clerk--and
 23 recorded;

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

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

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

4 (d)(C) The subdivision must ensure access to each tract
 5 within the subdivision, as follows:

6 (i) for a primitive tract:

7 (A) legal access must be provided; and

8 (B)(II) notation of legal access must be made on the
 9 applicable plat and any instrument of transfer concerning
 10 the tract; and

11 (iii)-for any other tract, (III) physical access must be
 12 provided according to standards set by the governing body
 13 under 76-3-501.

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

17 (f)(E) The subdivision must be evaluated under the
 18 conditions provided in subsection (4) to determine if lots
 19 upon which building sites are or can reasonably be expected
 20 to be located within the subdivision are located in an area
 21 affected by the following hazards, INCLUDING BUT NOT LIMITED
 22 TO:

23 (i) unstable slopes, including areas where rockfalls,
 24 landslides, mudslides, or avalanches have occurred in the
 25 past 25 years or can reasonably be expected to occur;

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

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

7 (4) Subdivisions evaluated for hazards under subsection
 8 (3)(f) must be reviewed under all of the following
 9 conditions:

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

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

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

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

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

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

1 grounds to establish liability against the review
 2 authority."

3 NEW SECTION. Section 24. Additional review criteria
 4 for major subdivisions. (1) In addition to the requirements
 5 of 76-3-608 and [sections 20-and-22 18 AND 20], a major
 6 subdivision must be reviewed for effects on:

7 (a) agricultural or agricultural water-user practices;

8 (b)--unique-cultural-and-historical-sites;

9 (c)--the-natural-environment;-and

10 (B) CULTURAL OR HISTORICAL RESOURCES;

11 (C) ENVIRONMENTAL OR ECOLOGICAL RESOURCES, INCLUDING
 12 WILDLIFE AND WILDLIFE HABITAT; AND

13 (d) local services.

14 (2) (a) In reviewing major subdivisions for the effects
 15 listed in subsection (1), the review authority shall use
 16 information from the environmental assessment required by
 17 76-3-603 and may solicit other site-specific information
 18 from the subdivider, agencies, and other appropriate
 19 sources. Efforts by the review authority to gather
 20 additional information do not constitute grounds for
 21 extending the deadlines for the subdivision review process
 22 provided for in [section 20 18] unless an extension is
 23 agreed to by the subdivider.

24 (b) Based on the information gathered, the subdivision
 25 review officer shall determine whether the proposed

1 subdivision is likely to have significant adverse impacts on
2 the factors listed in subsection (1).

3 (c) If the subdivision review officer determines that
4 significant adverse impacts are probable, the subdivision
5 review officer shall schedule a consultation with the
6 subdivider, knowledgeable persons, and agency
7 representatives. During the consultation process, the
8 parties shall work to develop mitigation for the potential
9 adverse effects on the factors listed in subsection (1).

10 (d) The subdivision review officer shall report the
11 results of the meeting to the governing body and may make a
12 recommendation.

13 (e) The governing body may require the subdivider to
14 design the subdivision to minimize any potentially
15 significant adverse impacts. IT IS RECOGNIZED THAT IN SOME
16 INSTANCES THE IMPACTS OF A PROPOSED DEVELOPMENT MAY BE
17 UNACCEPTABLE AND WILL PRECLUDE APPROVAL OF THE PLAT.

18 (f) The governing body shall issue written findings,
19 based on substantial credible evidence, to justify any
20 action taken under subsection (2)(e).

21 (g) ~~In reviewing a subdivision under subsection (1), a~~
22 ~~governing body must be guided by the following standards:~~

23 ~~(i) Mitigation measures imposed must not unreasonably~~
24 ~~restrict a landowner's ability to develop land, but it is~~
25 ~~recognized that in some instances the impacts of a proposed~~

1 development may be unacceptable and will preclude approval
2 of the plat.

3 (ii) Whenever feasible, mitigation should be designed to
4 provide some benefits for the subdivider, including
5 allowances for higher density development in less
6 environmentally sensitive sites within the plat, waiver of
7 the park dedication requirement under the provisions of
8 [section 29 2], and structuring mitigation to provide
9 eligibility for tax benefits if land or development rights
10 are donated to eligible receivers.

11 Section 25. Section 76-3-610, MCA, is amended to read:

12 "76-3-610. Effect of approval of preliminary plat. (1)
13 Upon approving or conditionally approving a preliminary
14 plat, the governing-body review authority shall provide the
15 subdivider with a dated and signed statement of approval.
16 This approval shall may be in force for not more than 3
17 calendar years or less than 1 calendar year. At the end of
18 this period, the governing-body review authority may, at the
19 request of the subdivider, extend its approval for no more
20 than 1 calendar year, except that the governing-body review
21 authority may extend its approval for a period of more than
22 1 year if that approval period is included as a specific
23 condition of a written agreement between the governing-body
24 review authority and the subdivider, according to 76-3-507.

25 (2) After the preliminary plat is approved, the

1 governing-body-and-its-subdivisions review authority may not
 2 impose any additional conditions as a prerequisite to final
 3 plat approval, providing said the approval is obtained
 4 within the original or extended approval period as provided
 5 in subsection (1)."

6 Section 26. Section 76-3-611, MCA, is amended to read:

7 "76-3-611. Review of final plat. (1) The governing-body
 8 review authority shall examine every final subdivision plat
 9 and shall approve it when-and only when:

10 (a) it conforms to the conditions of approval set forth
 11 on the preliminary plat and to the terms of this chapter and
 12 regulations adopted pursuant thereto to this chapter; and

13 (b) the county treasurer has certified issued a
 14 certificate of taxes paid pursuant to [section 6 5]
 15 certifying that no real property taxes assessed and levied
 16 on the land to be subdivided are not delinquent.

17 (2) (a) The governing body may require that final
 18 subdivision plats and certificates of survey be reviewed for
 19 errors and omissions in calculation or drafting by an
 20 examining registered professional land surveyor before
 21 recording with the county clerk and recorder. When the
 22 survey data shown on the plat or certificate of survey meets
 23 the conditions set forth by or pursuant to 76-3-403 AND this
 24 chapter section, the examining land surveyor shall so
 25 certify in a printed or stamped certificate on the plat or

1 certificate of survey. Such The certificate shall must be
 2 signed by him.

3 (b) No A registered professional land surveyor shall
 4 may not act as an examining land surveyor in regard to a
 5 plat or certificate of survey in which he has a financial or
 6 personal interest."

7 Section 27. Section 76-3-613, MCA, is amended to read:

8 "76-3-613. Index of plats and certificates of survey to
 9 be kept by county clerk and recorder. (1) The county clerk
 10 and recorder shall maintain an index of all recorded
 11 subdivision plats and certificates of survey.

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

22 Section 28. Section 76-3-614, MCA, is amended to read:

23 "76-3-614. Correction of recorded plat. When a recorded
 24 plat does not definitely show the location or size of lots
 25 or blocks or the location or width of any street or alley,

1 water or sewage disposal is not to be erected on the
 2 additional acquired parcel and that the division does not
 3 fall within a previously platted or approved subdivision;
 4 and

5 (c)(h) divisions a division made for purposes other
 6 than the construction of water supply or sewage and solid
 7 waste disposal facilities as the department specifies by
 8 rule; AND

9 (I) A DIVISION CREATED TO PROVIDE SECURITY FOR
 10 CONSTRUCTION MORTGAGES, LIENS, OR TRUST INDENTURES."

11 **Section 32.** Section 76-6-203, MCA, is amended to read:

12 "76-6-203. Types of permissible easements. Easements or
 13 restrictions under this chapter may prohibit or limit any or
 14 all of the following:

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

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

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

24 (4) loam, gravel, etc.--excavation, dredging, or
 25 removal of loam, peat, gravel, soil, rock, or other material

1 substance;

2 (5) surface use--surface use except for su
 3 permitting the land or water area to remain predo
 4 its existing condition;

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

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

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

14 NEW SECTION. **Section 33.** Repealer. (1) Sections
 15 76-3-201, 76-3-202, 76-3-203, 76-3-204, 76-3-205, 76-3-206,
 16 76-3-207, 76-3-208, 76-3-209, 76-3-210, MCA, ARE REPEALED.

17 (2) SECTIONS 76-3-504, 76-3-505, 76-3-604, 76-3-605,
 18 76-3-606, 76-3-607, 76-3-609, MCA, are repealed.

19 NEW SECTION. **Section 34.** Codification instruction.
 20 [Sections 5, 6, 7-20-through-24 18 THROUGH 22, and 26 24] are
 21 intended to be codified as an integral part of Title 76,
 22 chapter 3, and the provisions of Title 76, chapter 3, apply
 23 to [sections 5, 6, 7-20-through-24 18 THROUGH 22, and 26 24].

24 NEW SECTION. **Section 35.** Saving clause. [This act]
 25 does not affect rights and duties that matured, penalties

1 that were incurred, or proceedings that were begun before
2 [the effective date of this act].

3 NEW SECTION. Section 36. Severability. If a part of
4 [this act] is invalid, all valid parts that are severable
5 from the invalid part remain in effect. If a part of [this
6 act] is invalid in one or more of its applications, the part
7 remains in effect in all valid applications that are
8 severable from the invalid applications.

9 NEW SECTION. Section 37. Applicability. [Sections 2,
10 3, 30, and 32 33(1)] apply to all subdivision applications
11 filed after passage and approval, [Sections 1, 4 through 31,
12 33, and 34 29, 31, 32, AND 33(2)] apply to all subdivision
13 applications filed after September 30, 1991.

14 NEW SECTION. Section 38. Effective date. [This act] is
15 effective on passage and approval.

-End-

TITLE 76
LAND RESOURCES AND USE
CHAPTER 3
LOCAL REGULATION OF SUBDIVISIONS

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

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

(2) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to himself no rights which 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.

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

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

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

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

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

(8) "Minor Subdivision means a subdivision of five or fewer parcels, except that a second or subsequent minor subdivision from a single tract of record as of July 1, 1973, may not be considered a minor subdivision.

(9) "Original tract" means a tract of land created as of July 1, 1973.

~~+(8)~~ (10) "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, office building parks, or any combination thereof which comprises a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

~~+(9)~~ (11) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

~~449~~ (12) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision which furnish a basis for review by a governing body.

~~444~~ (13) "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.

~~442~~ (14) "Registered professional land surveyor" means a person licensed in conformance with Title 37, chapter 67, to practice surveying in the state of Montana.

~~443~~ (15) "Registered professional engineer" means a person licensed in conformance with Title 37, chapter 67, to practice engineering in the state of Montana.

(16) "Special subdivision" means a subdivision that conforms to a master plan pursuant to 76-1-501, a long-range development program of public works projects pursuant to 76-1-601, and either local government regulations pursuant to 76-3-501 or zoning regulations pursuant to Title 76, chapter 2, part 2 or 3.

(17) "Review authority" means the person or entity with authority to approve, conditionally approve, or disapprove a subdivision application, as established by the governing body.

~~444~~ (18) "Subdivider" means any person who causes land to be subdivided or who proposes a subdivision of land.

~~445~~ (19) "Subdivision" means a division of land or land so divided which creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed, and The term shall include any resubdivision and shall further include any condominium or area, regardless of its size, which provides or will provide multiple spaces for dwellings, recreational camping vehicles, or mobile-homes or work camp structures to exist for longer than one (1) year.

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

76-3-105. Violations and penalties. (1) Any person who violates any provision of this chapter or any local regulations adopted pursuant thereto shall be guilty of a misdemeanor and punishable by a fine of not less than \$100 or more than \$500 or by imprisonment in a county jail for not more than 3 months or by both fine and imprisonment. Each sale, lease, or transfer of each separate parcel of land in violation of any provision of this chapter or any local regulation adopted pursuant thereto shall be deemed a separate and distinct offense.

(2) Any person violating any provision of this part, or any rule or order issued under this part is guilty of an offense and subject to a fine not to exceed \$1000.

(3) In addition to the fine specified in subsection (2), a person who violates any provision of this part or any rule or order issued under this part is subject to a civil penalty not to exceed \$1,000. Each day of violation constitutes a separate violation.

(4) The governing body may file an action in district court to enjoin the violation of any provision of this chapter or of any regulation adopted pursuant to 73-3-501.

New Section. Certificate of taxes paid. A division of land may not be made unless the county treasurer has certified that real property taxes assessed and levied on the land to be divided are not delinquent.

76-3-201. Exemption for certain divisions of land. Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter shall not apply to any division of land which:

(1) is created by order of any court of record in this state or-by-operation-of-law-or pursuant to the laws governing the distribution of estates (Title 72, chapters 1 through 5 and 10 through 14), the dissolution of marriage (Title 40, chapter 4), which, 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) is created to provide security for construction mortgages, liens, or trust indentures;~~

(2) a division for which a deed, contract, lease, or other conveyance was executed prior to July 1, 1973;

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

(4) creates cemetery lots;

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

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

(7) the sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement, whether existing or proposed, when it is situated or constructed on land that has been divided in compliance with this chapter;

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

~~76-3-202.--Exemption for structures on complying subdivided lands.--Where required by this chapter, when the land upon which an improvement is situated has been subdivided in compliance with this chapter, the sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land and is not subject to the terms of this chapter.~~

~~76-3-203.--Exemption for certain condominiums--Condominiums~~

~~constructed on land divided in compliance with this chapter are exempt from the provisions of this chapter.~~

~~76-3-204. -- Exemption for conveyances of one or more parts of a structure or improvement. The sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement, whether existing or proposed, is not a division of land, as that term is defined in this chapter, and is not subject to the requirements of this chapter.~~

~~76-3-205. -- Exemption for state-owned lands --- exceptions. The provisions of this chapter shall not apply to the division of state-owned land unless the division creates a second or subsequent parcel from a single tract for sale, rent, or lease for residential purposes after July 1, 1974.~~

~~76-3-206. -- Exemption for conveyances executed prior to July 1, 1974. This chapter shall not be applicable to deeds, contracts, leases, or other conveyances executed prior to July 1, 1974.~~

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

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

(a) except for any applicable zoning requirements, a division made for the purpose of relocating boundary lines between adjoining properties, provided that the division is recorded in both the certificate of survey and the index of subdivision plats provided for in 76-3-612;

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

~~(c) (b) divisions made outside of platted subdivisions by sale or agreement to buy and sell where the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes. Any change in use of the land exempted under this section for anything other than agricultural purposes subjects the division to the review provisions of this chapter and local regulations;~~

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

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

~~(f) (c) divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and~~

adjoining land outside a platted subdivision. Any restrictions or requirements on the original platted lot or original unplatted parcel continue to apply to those areas.

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

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

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

~~(2) No division of land may be made under this section unless the county treasurer has certified that no real property taxes assessed and levied on the land to be divided are delinquent.~~

76-3-210. Subdivisions exempted from requirement of an environmental assessment. (1) Special Subdivisions located totally within an master-planning area adopted pursuant to chapter 1 wherein a master plan, zoning regulations pursuant to part 3 of chapter 2 or 76-2-291 and a long-range development program of public works¹ projects pursuant to 76-1-601 have been adopted are deemed to be in the public interest and exempt from the requirement of an environmental assessment.

(2) (a) When a subdivision is proposed in an area for which a master plan has been adopted pursuant to chapter 1 and the proposed subdivision will be in compliance with the plan or when the subdivision will contain fewer than 10 parcels and less than 30 acres, a planning board established pursuant to chapter 1 and having jurisdiction over the area involved may exempt the subdivider from the completion of all or any portion of the environmental assessment.

(b) When such an exemption is granted, the planning board shall prepare and certify a written statement of the reasons for granting the exemption. A copy of this statement shall accompany the preliminary plat of the subdivision when it is submitted for review.

(c) Where no properly established planning board having jurisdiction exists, the governing body may grant exemptions as specified in this subsection.

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

(2) The clerk and recorder shall notify the governing body or its designated agent of any land division described in 76-3-267~~(1)~~ exempted from review but subject to survey requirements.

(3) If transfers not in accordance with this chapter are made,

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

76-3-305. Vacation of plats -- utility easements. (1) Any plat prepared and recorded as herein provided may be vacated either in whole or in part as provided by 7-5-2501, 7-5-2502, subsections (1) and (2) of 7-14-2616, 7-14-2617, subsections (1) and (2) of 7-14-4114, and 7-14-4115, and upon such vacation the title to the streets and alleys of such vacated portions to the center thereof shall revert to the owners of the properties within the platted area adjacent to such vacated portions and the vacated portions are aggregated with the adjacent parcels.

(2) However, when any poleline, pipeline, or any other public or private facility is located in a vacated street or alley at the time of the reversion of the title thereto, the owner of said public or private utility facility shall have an easement over the vacated land to continue the operation and maintenance of the public utility facility.

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

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

(2) Subdivision plats shall be prepared and filed in accordance with this chapter and regulations adopted pursuant thereto.

(3) All division of sections into aliquot parts and retracement of lines must conform to United States bureau of land management instructions, and all public land survey corners shall be filed in accordance with Corner Recordation Act of Montana (Title 70, chapter 22, part 1). Engineering plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the governing body shall be prepared and filed by a registered professional engineer or a registered professional land surveyor as their respective licensing laws allow in accordance with this chapter and regulations adopted pursuant thereto.

76-3-403. Monumentation. (1) The department of commerce shall, in conformance with the Montana Administrative Procedure Act, prescribe uniform standards for monumentation and for the form,

accuracy, and descriptive content of records of survey.

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

76-3-404. Certificate of survey. (1) Within 180 days of the completion of a survey, the registered professional land surveyor responsible for the survey, whether he is privately or publicly employed, shall prepare and submit for filing a certificate of survey in the county in which the survey was made if the survey:

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

(b) reveals a material discrepancy in such map;

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

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

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

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

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

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

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

(c) the importance of the survey makes it desirable to administer an oath to his assistants for the faithful performance of their duty.

(2) A record of oaths shall be preserved as part of the field notes of the survey and noted on the certificate-of-survey corner record filed under 76-3-404- 70-22-104.

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

(2) The governing body or the review authority shall approve,

conditionally approve, or reject the preliminary plat within 60 days of its presentation unless the subdivider consents to an extension of the review period.

(3) If the governing body or review authority rejects or conditionally approves the preliminary plat, it shall forward one copy of the plat to the subdivider accompanied by a letter over the appropriate signature stating the reason for rejection or enumerating the conditions which must be met to assure approval of the final plat.

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

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

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

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

76-3-606. Dedication-of-land-to-public---cash-donations- Park dedication requirement. ~~(((A plat of a residential subdivision shall show that one-ninth of the combined area of lots 5 acres or less in size and one-twelfth of the combined area of lots greater than 5 acres in size, exclusive of all other dedications, is forever dedicated to the public for parks or playgrounds. No dedication may be required for the combined area of those lots in the subdivision which are larger than 10 acres exclusive of all other dedications. The governing body, in consultation with the planning board having jurisdiction, may determine suitable locations for such parks and playgrounds.~~

(1) A subdivider shall dedicate to the governing body a cash or land donation, or a combination thereof, equal to:

(a) 10% of the fair market value of the land proposed to be subdivided into parcels of one-half acre or smaller;

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

than 1 acre;

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

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

(2) A park dedication may not be required for land proposed for subdivision into parcels larger than 5 acres, for subdivision into parcels that are all nonresidential, or where only one additional parcel is created. If future resubdivision of this land creates parcels smaller than 5 acres, park dedication is required according to the provisions of this section.

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

(4) The governing body, in consultation with the subdivider and the planning board or park board having jurisdiction, may determine suitable locations for parks and playgrounds. Where the dedication of land for parks or playgrounds is undesirable because of size, topography, shape, location, or other circumstances, the governing body may, for good cause shown, make an order to be endorsed and certified on the plat accepting a cash donation in lieu of the a land dedication, of land and equal to the fair-market-value-of-the-amount-of-land-that-would-have-been dedicated. For the purpose of this section, the fair-market-value is the value of the unsubdivided, unimproved land. Such cash donation shall be paid into the park fund to be used for the purchase of additional lands or for the initial development of parks and playgrounds.

(5) (a) Except as provided in (3)(b), the governing body shall use the dedicated money or land, or the combination thereof, for development and/or acquisition of parks to serve the subdivision.

(b) The governing body may use the dedicated money to acquire or develop regional parks or recreational areas or for the purchase of public open space or conservation easements only if the governing body has formally adopted a park plan that establishes the needs and procedures for such use of the money.

~~(3) The park dedication and cash-in-lieu requirements of subsections (1) and (2) do not apply to any division that creates only one additional lot.~~

76-3-607. Waiver of land dedication and cash donation requirements. ~~(1) If the proposed plat provides for a planned unit development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside therein, the governing body may issue an order waiving land dedication and cash donation requirements.~~

(1) The local governing body may waive the park dedication requirement if:

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

persons who will ultimately reside in the development; and

(ii) the appraised value of the land set aside for park and recreational purposes equals or exceeds the value of the dedication required under 76-3-606; or

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

(ii) the appraised market value of the unimproved subdivided land, by virtue of providing long-term protection provided for in subsection (1)(b)(i), is reduced by an amount equal to or exceeding the value of the dedication required under 76-3-606.

(2) If a tract of land is being developed under single ownership as a part of an overall plan and part of the tract has been subdivided and sufficient park lands have been dedicated to the public from the area that has been subdivided to meet the requirements of 76-3-606 for the entire tract being developed, the governing body shall issue an order waiving the land dedication and cash donation requirements for the subsequently platted area.

~~(3) The local governing body may waive dedication and cash donation requirements:~~

~~(a) where all of the parcels in a subdivision are 5 acres or more in size and where the subdivider enters a covenant to run with the land and revocable only by mutual consent of the governing body and the property owner that the parcels in the subdivision will never be subdivided into parcels of less than 5 acres and that all parcels in the subdivision will be used for single-family dwellings;~~

~~(b) when the subdivider agrees to create a property owners' association for the proposed subdivision and to deed to the association land to be held in perpetuity for use as parks or playgrounds, and the area of land to be deeded to the association shall equal the amount that would otherwise have been dedicated to public use;~~

~~(c) for subdivision to be created by rent or lease where the subdivider agrees to develop parks or playgrounds within the subdivision for the common use of the residents of the subdivision, and the area of land to be reserved for this purpose shall equal the amount that would otherwise have been dedicated to the public.~~

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

(2) To determine whether the proposed subdivision would be in the public interest, the governing body or review authority shall issue written findings of fact which weigh the following criteria for public interest:

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

historic and prehistoric resources;

- ~~(b)~~ expressed public opinion;
- ~~(c)~~ (b) effects on agriculture and water-user practices;
- ~~(d)~~ (c) effects on local services;
- ~~(e)~~ (d) effects on taxation;
- ~~(f)~~ (e) effects on the natural environment;
- ~~(g)~~ (f) effects on wildlife and wildlife habitat; and
- ~~(h)~~ (g) effects on the public health and safety.

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

(1) The governing body or the review authority must approve, conditionally approve, or disapprove the first such subdivisions from a tract of record within 35 days of the submission of an application for approval thereof.

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

(3) The requirements for holding a public hearing and preparing an environmental assessment shall not apply to a minor subdivision that is the first such subdivision created from an original tract of record, or to special subdivisions.

(4) Subsequent subdivisions from an original tract, other than special subdivisions, of record shall may be reviewed under 76-3-305 this chapter and regulations adopted pursuant to that section; this chapter, for major subdivisions.

76-3-610. Effect of approval of preliminary plat. (1) Upon approving or conditionally approving a preliminary plat, the governing body or the review authority shall provide the subdivider with a dated and signed statement of approval. This approval shall be in force for not more than 3 calendar years or less than 1 calendar year. At the end of this period the governing body or review authority may, at the request of the subdivider, extend its approval for no more than 1 calendar year at a time. The total period of preliminary plat approval shall not exceed 5 years, except that the governing body may extend its approval for a period of more than 4-year 5 years if that approval period is included as a specific condition of a written agreement between the governing body and the subdivider, according to 76-3-507.

(2) After the preliminary plat is approved, the governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat approval providing said approval is obtained within the original or extended approval period as provided in subsection (1).

76-3-611. Review of final plat. (1) The governing body shall examine every final subdivision plat and shall approve it when and

only when:

(a) it conforms to the conditions of approval set forth on the preliminary plat and to the terms of this chapter and regulations adopted pursuant thereto; and

(b) the county treasurer has certified that no real property taxes assessed and levied on the land to be subdivided are delinquent.

(2) (a) The governing body may require that final subdivision plats and certificates of survey be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the county clerk and recorder. When the survey data shown on the plat or certificate of survey meets the conditions set forth by or pursuant to this chapter, the examining land surveyor shall so certify in a printed or stamped certificate on the plat or certificate of survey. Such certificate shall be signed by him.

(b) No registered professional land surveyor shall act as an examining land surveyor in regard to a plat or certificate of survey in which he has a financial or personal interest.

New Section. Applicability. These amendments shall become effective immediately upon passage.

76-2-411. Definition of community residential facility. "Community residential facility" means:

- (1) a community group home for developmentally, mentally, or severely disabled persons which does not provide skilled or intermediate nursing care;
- (2) a youth foster home or youth group home as defined in 41-3-1102;
- (3) a halfway house operated in accordance with regulations of the department of health and environmental sciences for the rehabilitation of alcoholics or drug dependent persons; or
- (4) a licensed adult foster family care home.

History: En. Sec. 4, Ch. 350, L. 1973; amd. Sec. 1, Ch. 129, L. 1974; amd. Sec. 6, Ch. 364, L. 1975; R.C.M. 1947, 11-2702.1; MCA 1981, 76-2-313; redes. 76-2-411 by Code Commissioner, 1983; amd. Sec. 28, Ch. 465, L. 1983; amd. Sec. 1, Ch. 309, L. 1985; amd. Sec. 9, Ch. 514, L. 1987.

76-2-412. Relationship of foster homes, youth group homes, community residential facilities, and day-care homes to zoning. (1) A foster or youth group home operated under the provisions of 41-3-1141 through 41-3-1143 or a community residential facility serving eight or fewer persons is considered a residential use of property for purposes of zoning if the home provides care on a 24-hour-a-day basis.

(2) A family day-care home or a group day-care home registered by the department of family services under Title 52, chapter 2, part 7, is considered a residential use of property for purposes of zoning.

(3) The facilities listed in subsections (1) and (2) are a permitted use in all residential zones, including but not limited to residential zones for single-family dwellings. Any safety or sanitary regulation of the department or any other agency of the state or a political subdivision thereof which is not applicable to residential occupancies in general may not be applied to a community residential facility serving eight or fewer persons or to a day-care home serving 12 or fewer children.

(4) Nothing in this section shall be construed to prohibit a city or county from requiring a conditional use permit in order to maintain a home pursuant to the provisions of subsection (1), provided such home is licensed by the department of health and environmental sciences and the department of family services. No city or county may require a conditional use permit in order to maintain a day-care home registered by the department of family services.

History: En. Sec. 2, Ch. 350, L. 1973; amd. Sec. 2, Ch. 129, L. 1974; R.C.M. 1947, 11-2702.2; MCA 1981, 76-2-314; redes. 76-2-412 by Code Commissioner, 1983; amd. Sec. 29, Ch. 465, L. 1983; amd. Sec. 1, Ch. 181, L. 1987.

CHAPTER 3

LOCAL REGULATION OF SUBDIVISIONS

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Chapter Cross-References

Municipal subdivisions required to conform to subdivision laws, 7-3-4445.

Duty to notify weed management district when proposed project will disturb land, 7-22-2152.

Conservation easements preventing subdivision of land, 76-6-203.

Water use — ground water, Title 85, ch. 2, part 5.

Part 1**General Provisions**

76-3-101. Short title. This chapter may be cited as the "Montana Subdivision and Platting Act".

History: En. Sec. 1, Ch. 500, L. 1973; R.C.M. 1947, 11-3859.

76-3-102. Statement of purpose. It is the purpose of this chapter to promote the public health, safety, and general welfare by regulating the subdivision of land; to prevent overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements; to require development in harmony with the natural environment; to require that whenever necessary, the appropriate approval of subdivisions be contingent upon a written finding of public interest by the governing body; and to require uniform monumentation of land subdivisions and transferring interests in real property by reference to plat or certificate of survey.

History: En. Sec. 2, Ch. 500, L. 1973; amd. Sec. 1, Ch. 498, L. 1975; amd. Sec. 1, Ch. 552, L. 1977; R.C.M. 1947, 11-3860.

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

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

(2) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to himself no rights which 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.

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

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

(6) "Irregularly shaped tract of land" means a parcel of land other than an aliquot part of the United States government survey section or a United

States government lot, the boundaries or areas of which cannot be determined without a survey or trigonometric calculation.

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

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

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

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

(11) "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.

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

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

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

(15) "Subdivision" means a division of land or land so divided which creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and shall include any resubdivision and shall further include any condominium or area, regardless of its size, which provides or will provide multiple space for recreational camping vehicles or mobile homes.

History: En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part); amd. Sec. 140, Ch. 370, L. 1987.

Cross-References

Conservation easements preventing subdivision of land, 76-6-203.

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

History: En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part).

76-3-105. Violations. Any person who violates any provision of this chapter or any local regulations adopted pursuant thereto shall be guilty of a misdemeanor and punishable by a fine of not less than \$100 or more than \$500 or by imprisonment in a county jail for not more than 3 months or by both fine and imprisonment. Each sale, lease, or transfer of each separate

parcel of land in violation of any provision of this chapter or any local regulation adopted pursuant thereto shall be deemed a separate and distinct offense.
History: En. Sec. 18, Ch. 500, L. 1973; amd. Sec. 2, Ch. 553, L. 1977; R.C.M. 1947, 11-3876.

Part 2

Miscellaneous Exemptions

76-3-201. Exemption for certain divisions of land. Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter shall not apply to any division of land which:

(1) is created by order of any court of record in this state or by operation of law or which, 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) is created to provide security for construction mortgages, liens, or trust indentures;

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

(4) creates cemetery lots;

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

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

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(9).

76-3-202. Exemption for structures on complying subdivided lands. Where required by this chapter, when the land upon which an improvement is situated has been subdivided in compliance with this chapter, the sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land and is not subject to the terms of this chapter.

History: En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part); amd. Sec. 10, Ch. 266, L. 1979.

Cross-References

Unit Ownership Act, Title 70, ch. 23.

76-3-203. Exemption for certain condominiums. Condominiums constructed on land divided in compliance with this chapter are exempt from the provisions of this chapter.

History: En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part).

Cross-References

Unit Ownership Act, Title 70, ch. 23.

76-3-204. Exemption for conveyances of one or more parts of a structure or improvement. The sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement, whether existing or proposed, is not a division of land, as that term is defined in this chapter, and is not subject to the requirements of this chapter.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(10); amd. Sec. 1, Ch. 500, L. 1985.

76-3-205. Exemption for state-owned lands — exception. The provisions of this chapter shall not apply to the division of state-owned land

unless the division creates a second or subsequent parcel from a single tract for sale, rent, or lease for residential purposes after July 1, 1974.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(5).

76-3-206. Exemption for conveyances executed prior to July 1, 1974. This chapter shall not be applicable to deeds, contracts, leases, or other conveyances executed prior to July 1, 1974.

History: En. Sec. 12, Ch. 500, L. 1973; amd. Sec. 8, Ch. 334, L. 1974; R.C.M. 1947, 11-3870(part).

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

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

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

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

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

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

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

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

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

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

(3) No division of land may be made under this section unless the county treasurer has certified that no real property taxes assessed and levied on the land to be divided are delinquent.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(6); amd. Sec. 1, Ch. 379, L. 1985; amd. Sec. 1, Ch. 569, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (1)(f) relating to relocation of common boundary between lot within platted subdivision and adjoining land

outside the subdivision; and made minor change in phraseology.

Cross-References

County taxation, Title 7, ch. 6, part 25.
Property tax levies, Title 15, ch. 10.

76-3-208. Subdivisions exempted from surveying and filing requirements but subject to review provisions. Subdivisions created by rent or lease are exempt from the surveying and filing requirements of this chapter but must be submitted for review and approved by the governing body before portions thereof may be rented or leased.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(7).

76-3-209. Exemption from surveying and platting requirements for lands acquired for state highways. Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with 60-2-209 and are exempted from the surveying and platting requirements of this chapter. If such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(4).

76-3-210. Subdivisions exempted from requirement of an environmental assessment. (1) Subdivisions totally within a master planning area adopted pursuant to chapter 1 wherein zoning regulations pursuant to part 3 of chapter 2 or 76-2-201 and a long-range development program of public works' projects pursuant to 76-1-601 have been adopted are deemed to be in the public interest and exempt from the requirement of an environmental assessment.

(2) (a) When a subdivision is proposed in an area for which a master plan has been adopted pursuant to chapter 1 and the proposed subdivision will be in compliance with the plan or when the subdivision will contain fewer than 10 parcels and less than 20 acres, a planning board established pursuant to chapter 1 and having jurisdiction over the area involved may exempt the subdivider from the completion of all or any portion of the environmental assessment.

(b) When such an exemption is granted, the planning board shall prepare and certify a written statement of the reasons for granting the exemption. A copy of this statement shall accompany the preliminary plat of the subdivision when it is submitted for review.

(c) Where no properly established planning board having jurisdiction exists, the governing body may grant exemptions as specified in this subsection.

History: (1)En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; Sec. 11-3862, R.C.M. 1947; (2)En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; Sec. 11-3863, R.C.M. 1947; R.C.M. 1947, 11-3862(8), 11-3863(3.1).

Part 3

Land Transfers

76-3-301. General restriction on transfer of title to subdivided lands. (1) Except as provided in 76-3-303, every final subdivision plat must

be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. The clerk and recorder of the county shall refuse to accept any plat for record that fails to have the approval of 76-3-611(1) in proper form.

(2) The clerk and recorder shall notify the governing body or its designated agent of any land division described in 76-3-207(1).

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

History: En. Sec. 9, Ch. 500, L. 1973; amd. Sec. 7, Ch. 334, L. 1974; amd. Sec. 1, Ch. 553, L. 1977; R.C.M. 1947, 11-3867(part); amd. Sec. 1, Ch. 633, L. 1979.

76-3-302. Restrictions on recording instruments relating to land subject to surveying requirements. (1) Except as provided in subsection (2), the county clerk and recorder of any county may not record any instrument which purports to transfer title to or possession of a parcel or tract of land which is required to be surveyed by this chapter unless the required certificate of survey or subdivision plat has been filed with the clerk and recorder and the instrument of transfer describes the parcel or tract by reference to the filed certificate or plat.

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

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

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(3); amd. Sec. 1, Ch. 268, L. 1987.

76-3-303. Contract for deed permitted if buyer protected. Notwithstanding the provisions of 76-3-301, after the preliminary plat of a subdivision has been approved or conditionally approved, the subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following conditions are met:

(1) that under the terms of the contracts the purchasers of lots in the proposed subdivision make any payments to an escrow agent which must be a bank or savings and loan association chartered to do business in the state of Montana;

(2) that under the terms of the contracts and the escrow agreement the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder;

(3) that the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the county clerk and recorder within 2 years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments he has made under the contract;

(4) that the county treasurer has certified that no real property taxes assessed and levied on the land to be divided are delinquent; and

(5) that the contracts contain the following language conspicuously set out therein: "The real property which is the subject hereof has not been finally platted, and until a final plat identifying the property has been filed with the county clerk and recorder, title to the property cannot be transferred in any manner."

History: En. Sec. 9, Ch. 500, L. 1973; amd. Sec. 7, Ch. 334, L. 1974; amd. Sec. 1, Ch. 553, L. 1977; R.C.M. 1947, 11-3867(4); amd. Sec. 2, Ch. 379, L. 1985.

Cross-References

County taxation, Title 7, ch. 6, part 25.

Property tax levies, Title 15, ch. 10.

76-3-304. Effect of recording complying plat. The recording of any plat made in compliance with the provisions of this chapter shall serve to establish the identity of all lands shown on and being a part of such plat. Where lands are conveyed by reference to a plat, the plat itself or any copy of the plat properly certified by the county clerk and recorder as being a true copy thereof shall be regarded as incorporated into the instrument of conveyance and shall be received in evidence in all courts of this state.

History: En. Sec. 12, Ch. 500, L. 1973; amd. Sec. 8, Ch. 334, L. 1974; R.C.M. 1947, 11-3870(3).

76-3-305. Vacation of plats — utility easements. (1) Any plat prepared and recorded as herein provided may be vacated either in whole or in part as provided by 7-5-2501, 7-5-2502, subsections (1) and (2) of 7-14-2616, 7-14-2617, subsections (1) and (2) of 7-14-4114, and 7-14-4115, and upon such vacation the title to the streets and alleys of such vacated portions to the center thereof shall revert to the owners of the properties within the platted area adjacent to such vacated portions.

(2) However, when any poleline, pipeline, or any other public or private facility is located in a vacated street or alley at the time of the reversion of the title thereto, the owner of said public or private utility facility shall have an easement over the vacated land to continue the operation and maintenance of the public utility facility.

History: En. Sec. 12, Ch. 500, L. 1973; amd. Sec. 8, Ch. 334, L. 1974; R.C.M. 1947, 11-3870(1).

76-3-306. Covenants run with the land. All covenants shall be considered to run with the land, whether marked or noted on the subdivision plat or contained in a separate instrument recorded with the plat.

History: En. Sec. 11, Ch. 500, L. 1973; R.C.M. 1947, 11-3869.

76-3-307. Donations or grants to public considered a grant to donee. Every donation or grant to the public or to any person, society, or corporation marked or noted on a plat is to be considered a grant to the donee.

History: En. Sec. 13, Ch. 500, L. 1973; R.C.M. 1947, 11-3871.

Part 4

Survey Requirements

Part Cross-References

Board of Professional Engineers and Professional Land Surveyors — licensing, Title 37, ch. 67.

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

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(1).

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

(2) Subdivision plats shall be prepared and filed in accordance with this chapter and regulations adopted pursuant thereto.

(3) All division of sections into aliquot parts and retracement of lines must conform to United States bureau of land management instructions, and all public land survey corners shall be filed in accordance with Corner Recordation Act of Montana (Title 70, chapter 22, part 1). Engineering plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the governing body shall be prepared and filed by a registered engineer or a registered land surveyor as their respective licensing laws allow in accordance with this chapter and regulations adopted pursuant thereto.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(2).

76-3-403. Monumentation. (1) The department of commerce shall, in conformance with the Montana Administrative Procedure Act, prescribe uniform standards for monumentation and for the form, accuracy, and descriptive content of records of survey.

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

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(11), (12); amd. Sec. 6, Ch. 274, L. 1981.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

76-3-404. Certificate of survey. (1) Within 180 days of the completion of a survey, the registered land surveyor responsible for the survey, whether he is privately or publicly employed, shall prepare and submit for filing a certificate of survey in the county in which the survey was made if the survey:

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

(b) reveals a material discrepancy in such map;

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

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

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

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

History: En. Sec. 14, Ch. 500, L. 1973; R.C.M. 1947, 11-3872; amd. Sec. 2, Ch. 633, L. 1979.

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

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

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

(c) the importance of the survey makes it desirable to administer an oath to his assistants for the faithful performance of their duty.

(2) A record of oaths shall be preserved as part of the field notes of the survey and noted on the certificate of survey filed under 76-3-404.

History: En. Sec. 17, Ch. 500, L. 1973; R.C.M. 1947, 11-3875; amd. Sec. 11, Ch. 266, L. 1979.

Part 5

Local Regulations

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

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

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(part); amd. Sec. 1, Ch. 378, L. 1985.

76-3-502. Repealed. Sec. 4, Ch. 236, L. 1981.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(part); amd. Sec. 6, Ch. 274, L. 1981.

76-3-503. Hearing on proposed regulations. Before the governing body adopts subdivision regulations pursuant to 76-3-501, it shall hold a public hearing thereon and shall give public notice of its intent to adopt such regulations and of the public hearing by publication of notice of the time and place of the hearing in a newspaper of general circulation in the county not less than 15 or more than 30 days prior to the date of the hearing.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(part).

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

(1) require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(2) establish procedures consistent with this chapter for the submission and review of subdivision plats;

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

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

(5) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(6) prescribe standards for:

(a) the design and arrangement of lots, streets, and roads;

(b) grading and drainage;

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

(d) the location and installation of utilities;

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

(8) provide for the review of preliminary plats by affected public utilities and those agencies of local, state, and federal government having a substantial interest in a proposed subdivision; such utility or agency review may not delay the governing body's action on the plat beyond the time limits specified in this chapter, and the failure of any agency to complete a review of a plat may not be a basis for rejection of the plat by the governing body.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(2), (3); amd. Sec. 1, Ch. 236, L. 1981; amd. Sec. 17, Ch. 274, L. 1981.

76-3-505. Provision for summary review of subdivisions. Local subdivision regulations shall include procedures for the summary review and approval of subdivision plats containing five or fewer parcels where proper access to all lots is provided, where no land in the subdivision will be dedicated to public use for parks or playgrounds, and which have been approved by the department of health and environmental sciences where such approval

is required by part 1 of chapter 4; provided that reasonable local regulations may contain additional requirements for summary approval.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(5); amd. Sec. 1, Ch. 579, L. 1985; amd. Sec. 1, Ch. 256, L. 1987.

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

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(6).

76-3-507. Provision for bonding requirements to insure construction of public improvements. Local regulations may provide that, in lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body shall require a bond or other reasonable security, in an amount and with surety and conditions satisfactory to it, providing for and securing the construction and installation of such improvements within a period specified by the governing body and expressed in the bonds or other security.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(7).

Cross-References

Suretyship, Title 28, ch. 11, part 4.

76-3-508. Repealed. Sec. 4, Ch. 236, L. 1981.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(8).

Part 6

Local Review Procedure

76-3-601. Submission of preliminary plat for review. (1) Except where a plat is eligible for summary approval, the subdivider shall present to the governing body or the agent or agency designated thereby the preliminary plat of the proposed subdivision for local review. The preliminary plat shall show all pertinent features of the proposed subdivision and all proposed improvements.

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

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

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

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

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

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 1, Ch. 89, L. 1981.

76-3-602. Fees. The governing body may establish reasonable fees to be paid by the subdivider to defray the expense of reviewing subdivision plats.

History: En. Sec. 10, Ch. 500, L. 1973; R.C.M. 1947, 11-3868.

76-3-603. Contents of environmental assessment. Where required, the environmental assessment shall accompany the preliminary plat and shall include:

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

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

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

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

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(4); amd. Sec. 2, Ch. 236, L. 1981.

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

(2) The governing body shall approve, conditionally approve, or reject the preliminary plat within 60 days of its presentation unless the subdivider consents to an extension of the review period.

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

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part).

(g) effects on wildlife and wildlife habitat; and

(h) effects on the public health and safety.

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(4).

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

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

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

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

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

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(6); amd. Sec. 2, Ch. 579, L. 1985; amd. Sec. 2, Ch. 256, L. 1987.

76-3-610. Effect of approval of preliminary plat. (1) Upon approving or conditionally approving a preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval shall be in force for not more than 3 calendar years or less than 1 calendar year. At the end of this period the governing body may, at the request of the subdivider, extend its approval for no more than 1 calendar year, except that the governing body may extend its approval for a period of more than 1 year if that approval period is included as a specific condition of a written agreement between the governing body and the subdivider, according to 76-3-507.

(2) After the preliminary plat is approved, the governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat approval providing said approval is obtained within the original or extended approval period as provided in subsection (1).

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 4, Ch. 223, L. 1981; amd. Sec. 1, Ch. 190, L. 1983.

76-3-611. Review of final plat. (1) The governing body shall examine every final subdivision plat and shall approve it when and only when:

(a) it conforms to the conditions of approval set forth on the preliminary plat and to the terms of this chapter and regulations adopted pursuant thereto; and

(b) the county treasurer has certified that no real property taxes assessed and levied on the land to be subdivided are delinquent.

(2) (a) The governing body may require that final subdivision plats and certificates of survey be reviewed for errors and omissions in calculation or

drafting by an examining land surveyor before recording with the county clerk and recorder. When the survey data shown on the plat or certificate of survey meets the conditions set forth by or pursuant to this chapter, the examining land surveyor shall so certify in a printed or stamped certificate on the plat or certificate of survey. Such certificate shall be signed by him.

(b) No land surveyor shall act as an examining land surveyor in regard to a plat or certificate of survey in which he has a financial or personal interest.

History: En. Sec. 9, Ch. 500, L. 1973; amd. Sec. 7, Ch. 334, L. 1974; amd. Sec. 1, Ch. 553, L. 1977; R.C.M. 1947, 11-3867(part); amd. Sec. 1, Ch. 273, L. 1981.

76-3-612. Abstract of title required for review process. (1) The subdivider shall submit with the final plat a certificate of a title abstracter showing the names of the owners of record of the land to be subdivided and the names of lienholders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lienholders or claimants of record against the land.

(2) The governing body may provide for the review of the abstract or certificate of title of the land in question by the county attorney where the land lies in an unincorporated area or by the city or town attorney when the land lies within the limits of a city or town.

History: En. Sec. 7, Ch. 500, L. 1973; amd. Sec. 5, Ch. 334, L. 1974; R.C.M. 1947, 11-3865; amd. Sec. 186, Ch. 575, L. 1981.

76-3-613. Index of plats to be kept by county clerk and recorder. (1) The county clerk and recorder shall maintain an index of all recorded subdivision plats and certificates of survey.

(2) This index shall list plats and certificates of survey by the quarter section, section, township, and range in which the platted or surveyed land lies and shall list the recording or filing numbers of all plats depicting lands lying within each quarter section. Each quarter section list shall be definitive to the exclusion of all other quarter sections. The index shall also list the names of all subdivision plats in alphabetical order and the place where filed.

History: En. Sec. 15, Ch. 500, L. 1973; R.C.M. 1947, 11-3873.

76-3-614. Correction of recorded plat. When a recorded plat does not definitely show the location or size of lots or blocks or the location or width of any street or alley, the governing body may at its own expense cause a new and correct survey and plat to be made and recorded in the office of the county clerk and recorder. The corrected plat must, to the extent possible, follow the plan of the original survey and plat. The surveyor making the resurvey shall endorse the corrected plat referring to the original plat and noting the defect existing therein and the corrections made.

History: En. Sec. 16, Ch. 500, L. 1973; R.C.M. 1947, 11-3874.

CHAPTER 4

STATE REGULATION OF SUBDIVISIONS

Part 1 — Sanitation in Subdivisions

76-4-101. Public policy.

76-4-102. Definitions.

76-4-103. What constitutes subdivision.

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

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

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

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

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 2, Ch. 89, L. 1981; amd. Sec. 21, Ch. 526, L. 1983.

76-3-606. Dedication of land to public — cash donations. (1) A plat of a residential subdivision shall show that one-ninth of the combined area of lots 5 acres or less in size and one-twelfth of the combined area of lots greater than 5 acres in size, exclusive of all other dedications, is forever dedicated to the public for parks or playgrounds. No dedication may be required for the combined area of those lots in the subdivision which are larger than 10 acres exclusive of all other dedications. The governing body, in consultation with the planning board having jurisdiction, may determine suitable locations for such parks and playgrounds.

(2) Where the dedication of land for parks or playgrounds is undesirable because of size, topography, shape, location, or other circumstances, the governing body may, for good cause shown, make an order to be endorsed and certified on the plat accepting a cash donation in lieu of the dedication of land and equal to the fair market value of the amount of land that would have been dedicated. For the purpose of this section, the fair market value is the value of the unsubdivided, unimproved land. Such cash donation shall be paid into the park fund to be used for the purchase of additional lands or for the initial development of parks and playgrounds.

(3) The park dedication and cash in lieu requirements of subsections (1) and (2) do not apply to any division that creates only one additional lot.

History: En. Sec. 6, Ch. 500, L. 1973; amd. Sec. 4, Ch. 334, L. 1974; R.C.M. 1947, 11-3864(1), (2); amd. Sec. 1, Ch. 703, L. 1979.

Cross-References

Sale, lease, or exchange of dedicated park lands, 7-16-2324.

76-3-607. Waiver of land dedication and cash donation requirements. (1) If the proposed plat provides for a planned unit development with

land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside therein, the governing body may issue an order waiving land dedication and cash donation requirements.

(2) If a tract of land is being developed under single ownership as a part of an overall plan and part of the tract has been subdivided and sufficient park lands have been dedicated to the public from the area that has been subdivided to meet the requirements of 76-3-606 for the entire tract being developed, the governing body shall issue an order waiving the land dedication and cash donation requirements for the subsequently platted area.

(3) The local governing body may waive dedication and cash donation requirements:

(a) where all of the parcels in a subdivision are 5 acres or more in size and where the subdivider enters a covenant to run with the land and revocable only by mutual consent of the governing body and the property owner that the parcels in the subdivision will never be subdivided into parcels of less than 5 acres and that all parcels in the subdivision will be used for single family dwellings;

(b) when the subdivider agrees to create a property owners' association for the proposed subdivision and to deed to the association land to be held in perpetuity for use as parks or playgrounds, and the area of land to be deeded to the association shall equal the amount that would otherwise have been dedicated to public use;

(c) for subdivision to be created by rent or lease where the subdivider agrees to develop parks or playgrounds within the subdivision for the common use of the residents of the subdivision, and the area of land to be reserved for this purpose shall equal the amount that would otherwise have been dedicated to the public.

History: En. Sec. 6, Ch. 500, L. 1973; amd. Sec. 4, Ch. 334, L. 1974; R.C.M. 1947, 11-3864(3) thru (7).

Cross-References

Sale, lease, or exchange of dedicated park lands, 7-16-2324.

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

(2) To determine whether the proposed subdivision would be in the public interest, the governing body shall issue written findings of fact which weigh the following criteria for public interest:

- (a) the basis of the need for the subdivision;
- (b) expressed public opinion;
- (c) effects on agriculture;
- (d) effects on local services;
- (e) effects on taxation;
- (f) effects on the natural environment;

(g) effects on wildlife and wildlife habitat; and

(h) effects on the public health and safety.

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(4).

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

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

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

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

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

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(6); amd. Sec. 2, Ch. 579, L. 1985; amd. Sec. 2, Ch. 256, L. 1987.

76-3-610. Effect of approval of preliminary plat. (1) Upon approving or conditionally approving a preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval shall be in force for not more than 3 calendar years or less than 1 calendar year. At the end of this period the governing body may, at the request of the subdivider, extend its approval for no more than 1 calendar year, except that the governing body may extend its approval for a period of more than 1 year if that approval period is included as a specific condition of a written agreement between the governing body and the subdivider, according to 76-3-507.

(2) After the preliminary plat is approved, the governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat approval providing said approval is obtained within the original or extended approval period as provided in subsection (1).

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 1, Ch. 223, L. 1981; amd. Sec. 1, Ch. 190, L. 1983.

76-3-611. Review of final plat. (1) The governing body shall examine every final subdivision plat and shall approve it when and only when:

(a) it conforms to the conditions of approval set forth on the preliminary plat and to the terms of this chapter and regulations adopted pursuant thereto; and

(b) the county treasurer has certified that no real property taxes assessed and levied on the land to be subdivided are delinquent.

(2) (a) The governing body may require that final subdivision plats and certificates of survey be reviewed for errors and omissions in calculation or

drafting by an examining land surveyor before recording with the county clerk and recorder. When the survey data shown on the plat or certificate of survey meets the conditions set forth by or pursuant to this chapter, the examining land surveyor shall so certify in a printed or stamped certificate on the plat or certificate of survey. Such certificate shall be signed by him.

(b) No land surveyor shall act as an examining land surveyor in regard to a plat or certificate of survey in which he has a financial or personal interest.

History: En. Sec. 9, Ch. 500, L. 1973; amd. Sec. 7, Ch. 334, L. 1974; amd. Sec. 1, Ch. 553, L. 1977; R.C.M. 1947, 11-3867(part); amd. Sec. 1, Ch. 273, L. 1981.

76-3-612. Abstract of title required for review process. (1) The subdivider shall submit with the final plat a certificate of a title abstracter showing the names of the owners of record of the land to be subdivided and the names of lienholders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lienholders or claimants of record against the land.

(2) The governing body may provide for the review of the abstract or certificate of title of the land in question by the county attorney where the land lies in an unincorporated area or by the city or town attorney when the land lies within the limits of a city or town.

History: En. Sec. 7, Ch. 500, L. 1973; amd. Sec. 5, Ch. 334, L. 1974; R.C.M. 1947, 11-3865; amd. Sec. 186, Ch. 575, L. 1981.

76-3-613. Index of plats to be kept by county clerk and recorder. (1) The county clerk and recorder shall maintain an index of all recorded subdivision plats and certificates of survey.

(2) This index shall list plats and certificates of survey by the quarter section, section, township, and range in which the platted or surveyed land lies and shall list the recording or filing numbers of all plats depicting lands lying within each quarter section. Each quarter section list shall be definitive to the exclusion of all other quarter sections. The index shall also list the names of all subdivision plats in alphabetical order and the place where filed.

History: En. Sec. 15, Ch. 500, L. 1973; R.C.M. 1947, 11-3873.

76-3-614. Correction of recorded plat. When a recorded plat does not definitely show the location or size of lots or blocks or the location or width of any street or alley, the governing body may at its own expense cause a new and correct survey and plat to be made and recorded in the office of the county clerk and recorder. The corrected plat must, to the extent possible, follow the plan of the original survey and plat. The surveyor making the resurvey shall endorse the corrected plat referring to the original plat and noting the defect existing therein and the corrections made.

History: En. Sec. 16, Ch. 500, L. 1973; R.C.M. 1947, 11-3874.

CHAPTER 4

STATE REGULATION OF SUBDIVISIONS

Part 1 — Sanitation in Subdivisions

- 76-4-101. Public policy.
- 76-4-102. Definitions.
- 76-4-103. What constitutes subdivision.