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THE MONTANA SUBDIVISION AND PLATTING ACT:
A SUGGESTION FOR LEGISLATIVE REFORM

By

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B.A., University of Montana, 1977

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the degree of Master of Public Administration

UNIVERSITY OF MONTANA

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INTRODUCTION

The Subdivision and Platting Act is Montana's most significant and comprehensive statement governing the subdivision of land. It was enacted by the 1973 Legislature to serve a dual purpose--to achieve accurate land records through proper survey requirements and to attain orderly land development through local review and approval of subdivisions.¹

Its enactment followed the adoption in 1972 of Montana's new Constitution, which provides in Article IX that the "state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations." Certainly, the Act was not adopted as a direct and immediate response to this Constitutional prerogative; the need for new regulatory policies regarding subdivisions already had been debated and well-established. However, it is evident that the Act was drafted with serious consideration given to this Constitutional commitment to a quality environment. The Constitution charged the Legislature with the duties of providing "adequate remedies ...to prevent unreasonable depletion and degradation of

¹MCA 76-3-101 contains a statement of purpose, as does Department of Community Affairs, The Subdivision and Platting Act in Practice, January 1977, p. 18.

natural resources," and legislators answered this challenge by providing that the Act, among other things, would regulate subdivisions by requiring development in harmony with the natural environment.

With these legislative and Constitutional objectives in mind, the Subdivision and Platting Act has far-reaching implications for Montana. First, it is an expression that land subdivision has a direct impact on a community and therefore should not occur without public and local governmental approval. Second, the Act is a realization by the State of Montana, like many other Western states which have been the scene of increased land development pressures in the past decades, that an individual's right to make unilateral decisions concerning the use of his land sometimes conflicts with the social and natural environments in which all members of a community must live.² Further, it is an expression that uncontrolled land development has the potential to create many severe problems in the areas of public health and safety, particularly if haphazard development practices impede the planning and administrative tasks that local governments must perform for the effective delivery of needed services.

Therefore, the Act's primary objective, like that

² For a more complete explanation of externalities and the role of government, see John F. Due and Ann F. Friedlaender, Government Finance, Irwin Inc., 1977, pp. 56-75.

of all subdivision regulations, is to "internalize" the costs of development--particularly the negative externalities that may be apparent from land subdivision. Internalizing these effects assures that either the developer, the previous landowner or the buyers of the subdivided land, rather than the public at large, pay the bulk of the costs associated with land subdivision. These costs are assumed to be those of providing public services to families within the subdivision.

When the costs of development are internalized, the burden of bearing these costs is determined, ultimately, on demand and supply or marginal costs elasticities. And, to the extent that costs of development are internalized, a good portion is very likely forward-shifted to purchasers of the subdivided land. However, a small portion is also born by the developer or can be backward-shifted to the original landowner. In this later case, the costs of development (providing roads, fire protection, sewer and water systems) would have to be so high that subdivision would not result in an economic gain for the developer. In this instance, the original landowner would bear a significant cost since his land would no longer be considered prime subdivision land.

One of the most important objectives of the Act was to put the primary responsibility and authority for subdivision regulation at the local government level,

particularly with county and city governments, by providing that subdivisions should be approved only if they are deemed to be in the public interest as determined by local governing bodies.³ The State of Montana, through the Sanitation in Subdivisions Act of 1973, retained the right to regulate the review of wells and sewage systems in subdivisions.

However, after seven years it has become increasingly apparent that local governments have only partial control of subdivision activity within their jurisdictions. A report issued in 1977 by the Planning Division of the Montana Department of Community Affairs (DCA) concluded that a majority of subdivisions escape local review and approval because they qualify as legal "exemptions" to the Act.⁴ The impact of these exemptions has created significant administrative problems for local governments, not only in their attempt to anticipate and plan for community growth patterns, but also in their attempt to treat land developers equally. Chapter 1 of this study will review the DCA report and will present a case study of how exemptions to the Act have been used in Ravalli County to create a subdivision of significant impact. The impact of this subdivision on the social and natural environments of the surrounding communities has completely escaped legitimate review and

³MCA 76-3-608.

⁴DCA, The Subdivision and Platting Act..., p. 1.

approval by the local government. And, by escaping review, many of the externalities, or costs of development, have not been internalized. Therefore, it is not clear who will bear the costs of providing adequate public services to the subdivision when they are demanded of its residents. One could logically assume that if costs are not forced upon the developer or forward shifted to buyers of the subdivided lots, they will be born by local taxpayers.

For purposes of further analysis, two assumptions must be made about subdivision regulations in general. First, the objectives which the Subdivision and Platting Act attempts to fulfill are necessary. Specifically, subdivisions should be subject to review by local governments in order that externalities can, where appropriate, be internalized. Second, subdivision regulations are cost efficient--that is, the costs avoided by taxpayers (because negative externalities are either reduced or eliminated) equal or exceed the costs of administering the regulations. To the extent that a majority of subdivisions escape government review, then, exemptions to the Act result in significant administrative problems. The implications of those problems are the topic of this study.

Undoubtedly, it is no surprise to the Montana Legislature that one of the Act's objectives--to attain

orderly land development through local review and approval-- is being only partially fulfilled. As Chapter 2 of this study will explain, the Legislature has devoted a vast amount of time and resources during the past two sessions (1977 and 1979) to the study of measures that would bring the Act into alignment with its original objective. Historically, Legislative reform of not only the Subdivision and Platting Act, but also Montana's land-use planning legislation in general, has upheld the proposition that local governments should have control of land-use regulations within their jurisdictions.⁵ This commitment was upheld by the 1977-79 Legislative Interim Subcommittee on Subdivision Regulations, which proposed a series of bills that were aimed at further delegating the responsibility and authority of subdivision review and approval to local governments. However, all of these bills failed for reasons which have never been fully examined. This study will examine some of the possible reasons in Chapter 2.

As a result of the inaction of the Legislature, there appears to remain a need for reform of Montana's subdivision regulations. The issue of subdivision reform

⁵ This trend is shown by the enactment in 1975 of MCA 76-3-608, which mandates that local governing bodies must find a subdivision to be in the public interest before approving a subdivision, and also by the enactment of a 1974 amendment which increased those subdivisions subject to review from 10 to 20 acres.

is likely to surface during the 1981 Legislative session, and this realization leads to a discussion in Chapter 3 of an alternative measure the Legislature may adopt to bring the Subdivision and Platting Act into alignment with its original objective.

CHAPTER I

EXEMPTIONS TO THE SUBDIVISION AND PLATTING ACT

Their Implications for Local Governments

Despite the legislative intention that subdivisions should be found to be in the public interest by local governing bodies, it is clear that the majority of the subdivisions created in Montana receive absolutely no review by any government body whatsoever. One of the most conclusive statements of this finding was released in 1977 by the Planning Division of the Montana Department of Community Affairs after the agency studied subdivision activity in nine Montana counties. The report, Land Division in Montana: The Subdivision and Platting Act in Practice,⁷ revealed that less than one third of the total land area divided

⁷The DCA conducted an inventory during the fall of 1976 of land records filed with Clerk and Records' Offices in the counties of Lewis and Clark, Cascade, Ravalli, Broadwater, Flathead, Gallatin, Missoula, Beaverhead and Granite. The nine counties were considered to be representative of the level of land development activity in the State of Montana. DCA staff inspections of records were made by an agency subdivision specialist, who was assisted by an agency planner. The two staff members collected data on the number and size of parcels created by subdivision, the acreage divided by subdivision and the type of exemption, if applicable, that was used to create the parcels.

between July 1974 and January 1977 was reviewed publicly.

Provisions within the Act, known as exemptions, have allowed the development of subdivisions that are not reviewed by local governments. In fact, the Act's definition of a subdivision--a parcel containing less than 20 acres, exclusive of public roadways--has been one of the largest factors in allowing subdivisions to escape the public review intention of the Act.⁸ The definition has resulted in an inordinate amount of land to be divided into parcels of 20+ acres. This, according to the Legislative Interim Committee on Subdivision Laws, has led not only to a colossal waste of land, but also to unsound land-use and land management practices. The Subcommittee, in making its recommendations for legislative reform, felt that a 20-acre parcel is much too large for a single home-site and too small to serve as a productive agricultural tract.⁹ In its study, the DCA found that in the nine counties alone, approximately 12,446 acres of land had been divided into parcels ranging in size from 20 to 22 acres--just large enough to escape the requirements that the divisions be reviewed by a local government.

In addition to exempting from review parcels which are larger than 20 acres, the Subdivision and Platting Act

⁸ DCA, The Subdivision and Platting Act..., p. 1.

⁹ Interview with Deborah Schmidt, research assistant for the Montana Legislative Council.

provides that certain other divisions of land be exempted from local government review. These exemptions were included within the original text of the Act as a means of providing relief from regulation in legitimate cases, under the assumption that parcels created through the exemptions, taken individually, would have little impact on the social and natural environments of a community. Further, the Act specifically states that exemptions are not to be used to evade the legislative intention that subdivisions should, indeed, be reviewed and approved by local governments. Section 76-3-207 of the Montana Codes Annotated, which is part of the Subdivision and Platting Act, lists those types of land divisions which are exempted from local government reviewed and approval but are still subject to survey requirements adopted by the DCA and specified in the Administrative Regulations of Montana. The exemptions are:

1. Divisions of land made outside platted subdivisions for the purpose of relocating common boundaries between adjoining properties. This exemption allows a landowner to relocate property boundaries when the relocation would not result in additional parcels, but would simply change the size of the land parcels affected by the boundary relocation.

2. Divisions of land made outside platted subdivisions for the purpose of a gift or sale to any member of

the landowner's immediate family. This exemption allows a landowner to transfer his interest in a parcel of land to a member of his family as a legitimate means of estate planning.

3. Divisions of land made outside platted subdivisions by sale or agreement to buy and sell where the parties to the transaction enter into a covenant running with the land and revocable only by the mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes. This exemption provides relief from regulations to farmers and ranchers who desire to sell a workable and productive portion of their property but still maintain the property as agricultural land.

4. A single division of a parcel outside a platted subdivision when the transaction is an occasional sale. An occasional sale is defined as one sale of a division of land within any 12-month period. This exemption was intended to provide a landowner with relief from regulation if economic need makes the quick sale of land necessary.

5. The relocation of common boundaries and the aggregation of lots within an already platted subdivision when the relocation will result in five or fewer lots. This exemption was provided since an already platted subdivision should have already received approval by the local governing

body.

When exemptions are used in a way which complies with the spirit and intention of the Subdivision and Platting Act, the one or two parcels created do not generally cause negative impacts on either the social and natural environments of a community or on the ability of a local government to plan for future growth patterns. However, when these exemptions are combined with one another and are used in connection with divisions larger than 20 acres, the result is the creation of a sizable development that has neither been reviewed nor anticipated by local administrators. Therefore, there is no assurance that the potential negative impacts of a development will be prevented, minimized or internalized.

In an attempt to stop the illegal use of exemptions, the DCA in 1974 asked local governments to adopt a set of administrative criteria which can be used to determine evasion of the Act. The DCA felt that such a model would provide consistent direction to local officials throughout the state, particularly for those exemptions which allow an occasional sale or transfer to a family member. However, the criteria have not been successful in stopping abuse of the exemptions for several reasons. First, many counties have been recalcitrant in adopting the model and unless it is adopted as county resolution, it cannot be legally

enforced. Of those counties which have adopted the model, the criteria have been enforced in differing degrees, due to the fact that the model relies heavily upon the cooperation of the county clerk and recorder to keep track of land divisions when they are filed. Further, the DCA has no legal authority to force local governments to either adopt the model criteria or to enforce it.

Second, some local government officials claim that DCA has no legal right to restrict the use of exemptions further than what is allowed in the Subdivision and Platting Act. It was DCA's original intention that if each county adopted and administered the criteria consistently, the actual potential for abuse of the exemptions would be significantly limited. And, in those counties which have adopted the DCA-inspired criteria, officials have been successful in stopping many of the abuses which could conceivably occur. In fact, without these criteria, DCA officials generally feel that the Act could be rendered useless.¹⁰

The final reason the criteria have not stopped the abuse of exemptions is their questionable legal status. The Montana Supreme Court, in 1977, ruled invalid a DCA criteria which prohibited the use of exemptions within platted subdivisions. That ruling placed in doubt the validity of two other DCA criteria, which are yet to be

¹⁰DCA, The Subdivision and Platting Act..., p. 6

tested in court. The court ruling blurs the agency's authority to adopt rules restricting the use of exemptions, and currently the DCA is considering the repeal of the model criteria.¹¹

But even with these criteria in effect, exemptions have been combined to create developments of significant impact. The DCA study confirmed this claim. The study was an attempt to determine the extent and character of land division under the provisions of the Act. The data collected by the agency in nine counties revealed that of the 128,949 acres divided into separate parcels during the study period only 8,889 acres had been reviewed as subdivisions and, therefore, had received local government review and approval. The remaining acreage had been filed as certificates of survey.

It is important to realize the difference between subdivisions plats and certificates of survey. Under definitions of the Act, a land division which requires approval by the local government must be filed as a "subdivision plat;" a land division which does not require local approval is filed as a "certificate of survey."

Particularly significant is the conclusion drawn by the DCA that 70 percent of the acreage divided during the

¹¹ Ibid.

study period was done so using exemptions to the Act. These divisions--a total of 4,054 parcels--were all under 20 acres in size, the size which was intended by the legislature to be reviewed publicly.

Vague statutory language and the absence of state laws which define evasion of the Act exist simultaneously to allow exemptions to be combined in a manner that allows land divisions to escape public review. For example, if the exemption allowing family members to transfer parcels to one another was combined with the exemption allowing occasional sales and was used by a man, his wife and three children to its fullest extent, a parcel of land could conceivably be split into 30 parcels without ever being reviewed by a government entity.¹² To illustrate this point, a man could divide a parcel of land into five parcels, keeping one for himself and conveying one parcel to each of the remaining members of the family. In turn, each of these family members could divide their gift, keep one parcel and convey the remaining four parcels, one to each of the other members of the family. At the end of this process, each family member would have five lots: the one retained plus the four conveyed by the other four family members.

¹²Beardslee, Mark A., The Subdivision and Platting Act in Practice in Nine Montana Counties, University of Montana Professional Paper, Master of Science in Rural, Town and Regional Planning, 1979.

Thus, 25 lots could be created, and sold, from one. If each member of the family divided one of their five lots by occasional sale, 30 lots would be created without public review.

While this fictitious illustration may be an example of the weaknesses in the Act taken to extreme, actual cases do exist which support the conclusion that exemptions can and have been used in a combination of ways to create residential communities of significant impact--communities which never have been reviewed and approved by a local government entity. One such development is the Hidden Valley Ranches subdivision in Ravalli County. The 1,400 acre development includes 130 residential lots ranging in size from one to 24 acres. Approximately 100 of these lots have been created using legal exemptions to the Subdivision and Platting Act. Despite strong public sentiment against the development, neither the local government nor the state or court system has been able to prohibit the subdivision. In addition, no government jurisdiction has had any legitimate opportunity to review the internal design or planning of the development to help insure that negative impacts on the local community are mitigated.

Before proceeding further with details of the Hidden Valley Ranches development, it is important to point out that the negative impacts of this subdivision are not

limited to the possible harmful effects this development may have on the social and natural environments of the surrounding community, although several have been anticipated.¹³

The development of Hidden Valley Ranches poses two specific administrative problems. First, when developments such as this are legally allowed to occur, the ability of local governments to effectively and efficiently plan for the delivery of local services in the area is impeded. These services range from the delivery of adequate fire protection to the maintenance of roadways to providing adequate educational facilities. Second, when exemptions are used unscrupulously, landowners involved in the development completely escape any responsibility to internalize the costs of the development, which is one of the primary reasons for subdivision regulations. The result is that landowners who develop their land using legitimate channels are unduly penalized for following the spirit of the law. This inequity works essentially as a discentive in promoting sound development patterns. It should be of paramount interest to any government in a democratic society that this inequity be eliminated.

¹³For a more complete analysis of the possible negative effects this development may have on the social and environmental environments of the Florence Community, see Department of Health and Environmental Sciences, Environmental Impact Statement: The Hensler Subdivisions, June, 1978.

The Hidden Valley
Ranches Subdivision

The 1,400-acre Hidden Valley Ranches development is a portion of the 6,000-acre Hensler Ranch. It is nestled in the foothills of the Sapphire Mountains near the Bitterroot River, approximately 1½ miles east of Florence. Situated about 20 miles south of Missoula, the area is within easy commuting distance, which partially explains why the area has become economically feasible to develop as residential homesites. Two years ago, the Hensler Ranch consisted of pasture and hayland; for many years prior, the land supported one of the largest sheep ranches in Montana. Since January of 1978, however, the character of the ranch has changed dramatically. In 1977 the portion of the Hensler Ranch now known as Hidden Valley Ranches was surveyed into 71 parcels ranging in size from 20.06 to 24.96 acres. The parcels were filed as Certificate of Survey 1316 and hence were not reviewed under terms of the Subdivision and Platting Act.

Initial knowledge that the land was to be developed into residential homesites was gained by the Ravalli County Planning Office when 24 of the 71 Hidden Valley parcels were simultaneously submitted as minor subdivisions under terms of the Subdivision and Platting Act. Under definitions of the Act, a minor subdivision is a parcel of land divided into five or fewer lots as opposed to a major subdivision,

which contains more than five lots. Because of their limited size, minor subdivisions are considered to have a minimal effect on the local community and, therefore, are eligible for "summary" review by local officials. Summary review means that a subdivision is not subject to the costly and rigorous requirements of an environmental assessment and a public hearing--both of which are required of a major subdivision.

As can be seen from the map of Hidden Valley Ranches on page 20, many of the proposed subdivisions are contiguous; in fact, some of the contiguous parcels were owned by the same individual. All subdivisions proposed in the development named Wilbur Hensler as title holder. Immediately after public knowledge of the subdivision was gained, public sentiment arose questioning the "minor" impact the subdivisions would have on the Florence community, a small, unincorporated village of about 200 persons. A steady population growth rate throughout the past decade had already put pressure on the school district facilities and on the ability of the Florence Volunteer Fire District to respond adequately to calls in the surrounding area.¹⁴

Critics of the proposed subdivisions claimed that the cumulative effect of the minor subdivisions constituted

¹⁴ Ibid.

a major development and, thus, should be reviewed as a major subdivision. The Ravalli County Planning Board, after considerable debate, chose to follow the specific letter of the law as contained within the Subdivision and Platting Act and all were reviewed and approved as minor subdivisions.

Actual subdivision of the property was halted, however, when the Florence-Carlton School District filed a suit in district court against the Ravalli County Planning Board and the Board of County Commissioners for failing to find the subdivisions in the public interest as required by Section 76-3-608 of the Act. That section requires that the governing body must issue a written statement addressing eight criteria of public concern, which are 1) the basis of need for the subdivision; 2) expressed public opinion regarding the subdivision; 3) the effect the subdivision would have on agriculture; 4) the effect the subdivision would have on local services; 5) the effect the subdivision would have on taxation; 6) the effect the subdivision would have on wildlife and wildlife habitat; 7) the effect the subdivision would have on the natural environment; and, 8) the effect the subdivision would have on the public health and safety.

The suit made the specific complaint that the subdivisions were not reviewed in a manner that addressed their

cumulative impact on the Florence community, the school district and the fire district. It asked that this be done. During the hearings, school officials testified that the Florence School already exceeded student population ceilings imposed by the State Board of Education. Also, the district claimed that the 175 students the subdivision would have the potential to generate would nearly double the student population of the district and therefore far exceed its ability to provide adequate educational facilities to students.

The Florence-Carlton Volunteer Fire Department entered the suit as plaintiffs, claiming that the taxable valuation of the proposed subdivisions would not provide adequate financing to purchase equipment to service the subdivisions, and therefore they were not in the public interest. The Florence fire chief estimated that a new fire station may have to be built in the Hidden Valley subdivision if it continued to develop to its fullest extent. In addition, since the Hidden Valley Ranches development had been first divided into 20+ acre parcels--without government review--the fire department officials claimed they had no assurance that roads providing access to the development could accommodate fire trucks. Because roads in the subdivision were not built to county specifications, they could not be accepted into the county road maintenance

system according to county resolution. Fire department officials warned that the roads would pose significant problems, because of their slope, when trying to respond to fire calls during winter months.

Both the fire department and the school district supported the argument that if the subdivisions were reviewed cumulatively as a major subdivision, each would have the legitimate right to make suggestions that would help the development be more compatible with the local community and bring the development into closer alignment with the public interest criteria. If reviewed as minor subdivisions, they had no such right.

The suit was decided by District Judge Jack L. Green, who said that Ravalli County acted properly in reviewing the minor subdivisions individually. However, an appeal was made to the Montana Supreme Court, which held that while each minor subdivision must be reviewed individually, each also had to be found in the public interest. The court decision opened the door for the school and fire districts to suggest proposals that would enable each to better plan for and provide for public services needed by residents of the proposed subdivisions. The final court decision was announced in February 1979, a full year after the initial suit had been filed.

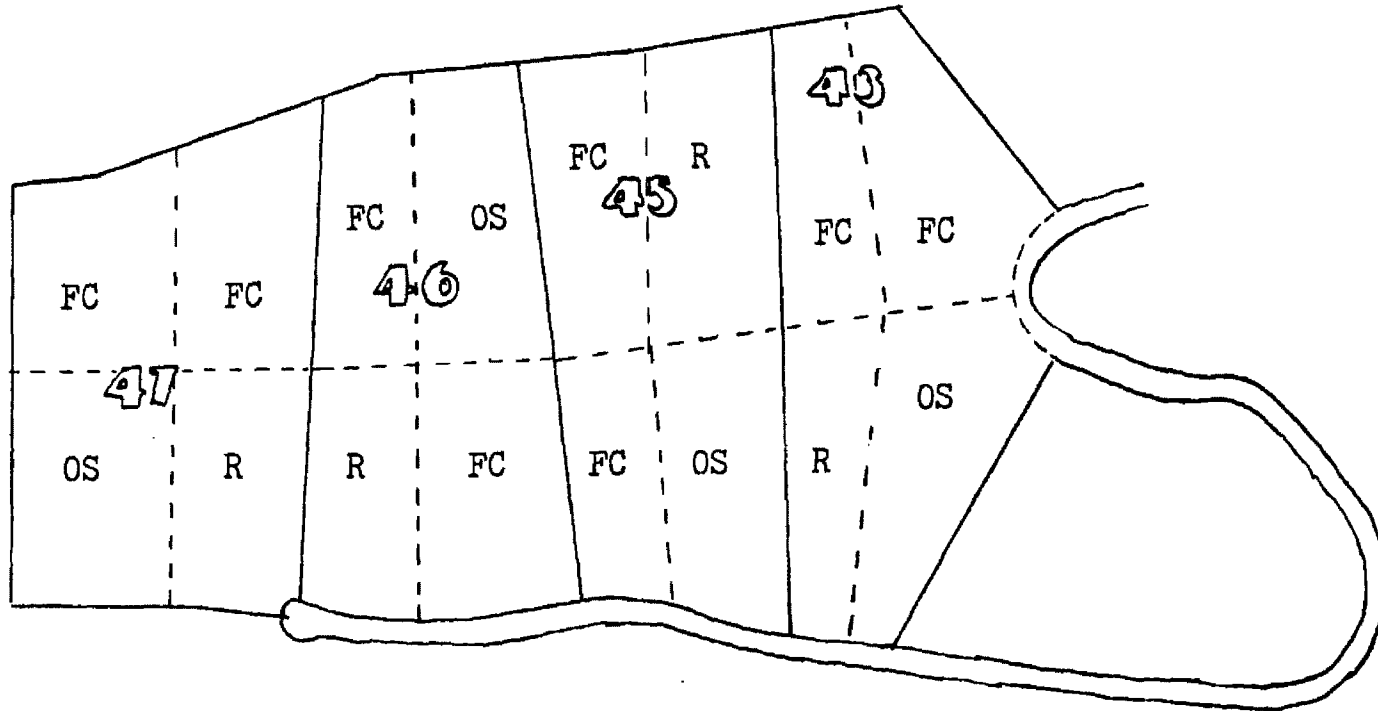
Although the initial lawsuit had halted the 24

Hidden Valley parcels from being subdivided under the terms of the Subdivision and Platting Act until court litigation was complete, it did not stop the division of the properties. Instead, developers used legal exemptions to the Act during the year-long dispute to divide 14 of the 20-acre parcels into 46 separate homesites. None of them was reviewed by any government and none was determined to be in the public interest. The map on page 18 indicates those parcels which were split using exemptions to the Subdivision and Platting Act.

The creation of these subdivisions through the use of exemptions not only poses significant problems for the Florence community, which must respond to a need for additional public services, but also to Ravalli County, which must administer subdivision regulations for other Hidden Valley land divisions filed under terms of the Act. Following is an example of how two Hidden Valley developers have been treated in regard to the subdivision process.

Page 25 shows four separate, but contiguous, 20-acre parcels within Hidden Valley. They are all owned by the same developer. Each parcel was split into four residential lots to create a total of 16 homesites within an approximate 80-acre area. Since they were created with exemptions

A PORTION OF HIDDEN VALLEY RANCHES
 Robert Nicholson
 Parcels
 (each parcel = approx. 24 acres)



KEY TO EXEMPTIONS:
 OS = occasional sale
 FC = family conveyance
 R = remainder

to the Act (family conveyance, occasional sale and remainder), the overall development did not receive review and approval from Ravalli County. If reviewed, the local government could have altered the internal design of the subdivision, thus assuring "proper access" to the subdivision, adequate slope of driveways and the dedication of parkland or cash in lieu of parkland dedication to the county. Parkland or cash in lieu of parkland is required of all subdivisions that fall under the terms of the Subdivision and Platting Act. The purpose of the dedication is to internalize the costs of recreation facilities that will be demanded of residents who move into the subdivision. A developer has the choice of creating a park within the subdivision or of donating cash which equals the market value of the land which would have been used as a park.

This "exempt" development must be compared with the development of a parcel of Hidden Valley known as Arrowhead Acres. This 20-acre development was divided as a major subdivision (14 lots) under terms of the Subdivision and Platting Act. Ravalli County was legally allowed to review this subdivision and in doing so imposed several conditions that the developer had to meet, at his expense, before the subdivision received final approval. All of the conditions concerned internal design problems and were imposed in an effort to bring the subdivisions into closer

alignment with the public interest criteria of the Act. The conditions included: 1) the installation of two 2,000 gallon water cisterns to insure water availability in case the Florence Volunteer Fire Department should have to respond to calls in the subdivision; 2) a requirement that all roads into the subdivision be built in accordance with county road specifications to insure proper access to all lots; and, 3) the dedication of \$3,726.74 to the county park fund as cash payment in lieu of parkland dedication.

It is obvious that these developers were not treated in a comparable manner, even though each had created the same number of residential lots. Although the density of the developments are different (the exempted development has a density of one home per four acres, while Arrowhead Acres has a density of one home per one acre), each will have similar effects on public services.

The trend in Hidden Valley indicates that this type of development will continue. The 14 twenty-acre parcels which have already been divided using exemptions to the Act represent only one-fifth of the total Hidden Valley parcels. Forty-six homesites have been already created using exemptions to the Act and, if this trend continues, there is the potential that a total of 230 homesites could be created without local review and approval.

Ravalli County
Is Not Alone

These exemptions do not affect Ravalli County alone. A recent private study by the Environmental Information Center concludes that 85 percent of parcels divided in Missoula County are done so without government review and approval.¹⁵ In Cascade County, it is estimated that only one of every 100 lots is reviewed publicly.¹⁶

Recently, a Yellowstone County developer was found guilty by a district court of evading the intent of the Subdivision and Platting Act after he divided a 78-acre parcel into 41 lots using the occasional sale, family conveyance and boundary relocation exemptions to the Act. In this case, Yellowstone County had adopted the DCA guidelines for determining evasion of the Act. These guidelines helped greatly in the prosecution of the developer, but, had they not been adopted, officials conclude that there would have been no way to stop the development since state law provides no provisions for determining evasion.¹⁷ DCA officials believe the court decision is a landmark ruling in halting the illegal use of exemptions to create subdivisions. However, the court order was issued only in

¹⁵ Interview with Lis Burden, Environmental Information Center, Missoula, MT., March 1980.

¹⁶ "The Billings Gazette," March 8, 1980, p. 1+

¹⁷ Ibid.

regard to a particular set of circumstances that evolved in Yellowstone County. It is therefore unclear whether the ruling actually sets a precedent for determining evasion of the Act in other cases.

On the other hand, it cannot be effectely argued that all local governments are being plagued by exemptions in the Act. The DCA study and another subdivision inventory conducted in 1975 by the EIC both concluded that many Montana counties are not experiencing a significant amount of subdivision activity. Likewise, few subdivided parcels are created using exemptions. For example, the EIC inventory revealed that in seven counties (Big Horn, Broadwater, Glacier, Pondera, Rosebud, Sweet Grass and Teton), less than 1,000 total acres of land had been subdivided. This contrasts sharply when compared to counties which have experienced the most subdivision activity: Custer, 17,876 acres; Flathead, 56,441 acres; Gallatin, 19,999 acres; Missoula, 40,815 acres; Musselshell, 33,031 acres; Ravalli, 50,267 acres; and Yellowstone, 18,646 acres.¹⁸

¹⁸ Environmental Information Center, The Montana Subdivision Inventory Project, February 1975, p. 4.

CHAPTER II

LEGISLATIVE ACTION?

Previous Attempts at Legislative Reform

A substantial amount of information supports the contention that state laws currently prohibit some local governments from reviewing and approving a majority of the subdivisions created in Montana. In light of this information, a question arises: What steps are being taken by the state Legislature to solve the problem?

The analysis of legislative action during the past two sessions (1977 and 1979) leads to what seems to be a contradictory attitude among Montana legislators. While the issue of reform of state laws has surfaced as a persistent problem during both legislative sessions and while the Legislature has considered reform a major priority, only one bill has been enacted that amends the state subdivision laws.¹⁹ That Bill, House Bill 84 (1979), provides that the County Clerk and Recorder must notify the governing

¹⁹This statement is made in light of the fact that SJR 43 requested the Committee on Priorities to assign a study of Montana's subdivision laws to the Subcommittee on Subdivision Laws for the purpose of generally clarifying, updating, supplementing and reviewing those laws.

body when a certificate of survey, which creates a parcel using the family conveyance, is filed. The bill serves primarily as an information tool because it allows local jurisdictions to more easily detect trends that may be construed as evasions of the legislative intention of the Subdivision and Platting Act.

The 1977 Legislature considered a number of bills concerning subdivisions and related land-use laws, but none was enacted. In the final days of the session, the Legislature adopted Senate Joint Resolution 43, requesting the Committee on Priorities to assign a study of all Montana's laws concerning subdivisions to an eight-member, bi-partisan Subcommittee on Subdivision Laws. The Subcommittee, which consisted of four members of the Montana Senate and four members of the Montana House of Representatives, met six times during the 1977-79 interim period and held two public hearings--one in Billings and one in Missoula. Following these hearings and information-gathering sessions, the Subcommittee identified and concentrated its efforts on a number of areas. Among them was the Subdivision and Platting Act, specifically, "its exemptions, definitions, park dedications requirements, summary review provisions and public interest requirements."²⁰

²⁰ Montana Legislative Council, Montana's Subdivision Legislation: Problems and Prospects, November 1978, p. V.

The Subcommittee's close work with the Research Division of the Montana Legislative Council and the Montana Department of Community Affairs, combined with a heavy reliance on public testimony, resulted in several recommendations specifically aimed at reform of the Subdivision and Platting Act. (All are contained in Appendix).

The first amendment, House Bill 46, would have substantially revised the Act by redefining subdivisions, modifying exemptions, providing for summary review of certain subdivisions, providing for special review of multiple minor subdivisions and specifying requirements for master plans in certain areas.

The second amendment, House Bill 43, would have redefined and elaborated on the public interest criteria for reviewing subdivisions.

The third amendment, Senate Bill 44, would have revised the formula in determining park dedication requirements and allowed a portion of park funds to be used for maintenance of existing parks.

House Bill 46 formed the centerpiece of the Subcommittee's reform package and included several propositions, among them:

1. The elimination of the clause which defines a subdivision as only those parcels less than 20 acres. Essentially, any division of land, except those exempted by

the Act, would require local review and approval.

2. A provision which would have allowed local governments only summary review of subdivisions which consist solely of parcels larger than 40 acres. The governing body would have been allowed to review the subdivision plats only to insure that lots were provided with proper access. This section was recommended as a way of relieving legitimate agricultural transfers from regulation.

3. A provision which would have exempted the first minor subdivision from a tract of record from having to be found in the public interest.

4. Elimination of the exemption allowing an occasional sale.

5. The restriction of the use of the exemption allowing a gift or sale to family members to only one parcel per family and then only after the land had been owned by an individual for three years previous to the transaction; any other similar conveyance would have been subject to summary review by the local governing body.

6. A provision which would have prevented the use of the exemption allowing a relocation of common boundaries from being used to create an additional parcel.

7. A provision which would have allowed any subdivision, no matter what its size, to fall under summary review if the subdivision was proposed within an area for

which a master plan had been adopted. This provision would have encouraged local jurisdictions to adopt master plans and would have created an incentive for property owners to develop land within master plan districts.

8. A provision which would have set a time period in which a governing body must act upon a subdivision plat (give approval, conditional approval or disapproval). This provision would have prevented governing bodies from placing unwarranted time constraints upon developers during the review process. The time limits would have been 60 days for major subdivisions and 35 days for minor subdivisions.

9. A provision that would have allowed governing bodies the discretion of reviewing the cumulative effects of several minor subdivisions proposed within the same general area. According to the Montana Legislative Council, this provision was recommended as a means of preventing the recurrence of developments such as Hidden Valley.

House Bill 46 would have eliminated two of the primary obstacles which now prevent local governments from reviewing the majority of subdivided land--the 20-acre definition and the occasional sale. Also, the exemption allowing a gift to a family member would have been clarified in state law, which would have eliminated abuse of the exemption. The exemption allowing a relocation of common

boundary lines also would have been clarified. Essentially, under the new law, only a finite number of parcels created as gifts to family members would not have received approval and review by local governments. However, the reform bill would have contained some flexibility for agricultural transactions since local governments would have only cursory review of subdivisions which would have consisted of tracts of 40 acres. The cursory review would have allowed local governments to accommodate the impact of these subdivisions when making comprehensive plans.

Therefore, under the new law, none of the exemptions to the Act would have conflicted seriously with the objective of the Subdivision and Platting Act. Legitimate agricultural subdivisions and those parcels created by family conveyance as a means of estate planning would seldom be found in violation of a local government's ability to plan local growth patterns. Nor would they seriously impede a local government's ability to treat developers equally under the law.

Senate Bill 44, which would have reformed the Act by revising the formula for determining parkland dedication would have also allowed local governments more authority and responsibility in the area of subdivision regulation. Under existing law, one-ninth of the total area within a minor subdivision and one-twelfth of the land area within major

subdivisions is to be dedicated to the county or a property owner's association as parkland; otherwise cash-in-lieu of parkland must be paid to the county for use in acquiring additional public parklands. The inflexibility of this section has often been criticized as unworkable. In high density subdivisions, one-twelfth of the total land area is rarely sufficient, whereas dedicated parkland within a minor subdivision often remains an unused weedpatch. Under the new law, a developer would have been required to dedicate parkland amounting to 1,000 square feet of land for each dwelling unity, or cash based on the fair market value of the land. Up to one-third of the funds collected through cash-in-lieu of parkland dedication could have been used for maintenance of existing parks. Currently, these funds can be used only for acquisition of new parkland.

Even while granting this additional responsibility and authority to local governments, the reform measures included provisions that would have withheld power, as well. For example, House Bill 46 would have exempted the first minor subdivision from a tract of record from being found in the public interest. This provision was included in the reform legislation despite the Supreme Court ruling (*Florence Carlton School District vs. Ravalli County*), which held that all subdivisions must be found in the public interest.

Further, House Bill 43 may have had the potential to reduce local discretion in determining whether a subdivision is in the public interest. Under existing law, a governing body is required to issue a written statement addressing the eight criteria mentioned earlier in this report. The reform bill would have elaborated and more strictly defined the public interest criteria, perhaps decreasing the latitude a local government would have in determining the public interest. For example, the new bill would have eliminated the criteria which allows a local government to address the effects a subdivision would have on agriculture and expressed public opinion.

In conclusion, while allowing some concessions to political forces which prefer a laissez faire attitude toward land use regulation, the Subcommittee, in drafting House Bill 46 and the remaining pieces of legislation, intended to provide local governments with substantially more authority and responsibility in the area of subdivision regulation. Most of the proposed bills would have taken a large step in bringing the Subdivision and Platting Act into alignment with its original legislative objectives. House Bill 46 would have provided the centerpiece of the reform package by eliminating and generally clarifying exemptions and their uses. However, this bill and others aimed at amending the Act were defeated during the 1979 Legislative session.

Too Far Too Soon?

The Legislature's flat rejection of the Subcommittee recommendations--which would have given local governments considerably more authority and responsibility over subdivision review and approval--can lead to any of three conclusions: 1) the legislature felt local governments should not have any additional control over subdivisions: regulation within their jurisdictions; 2) it felt the current exemptions to the Act have functional merit and should not be reviewed by any government jurisdiction whatsoever; or, 3) it felt that the recommendations went to far too fast in dealing with a complex and very political issue--that despite the merits of the proposed bills, members of the legislature were unable to commit themselves to a comprehensive package of reform at that time.

The first conclusion, of course, would be in direct conflict with the original legislative intention of the Act and would render its purpose useless, while the second conclusion simply ignores the problems that local governments are now facing with the widespread use (and abuse) of the exemptions allowed by the Act. The third conclusion is the most logical explanation in determining why the recommendations failed; therefore, the remainder of this chapter will examine some of the complexities involved in passing such a comprehensive package of reform legislation.

A combination of forces probably led to the defeat of the Subcommittee recommendations. None, however, could have played as important a role in the bills' defeat as the widespread and vigilantly held belief among many Montanans that a person has the right to do with his land what he wants--without government interference. The concept of private land ownership is a well-grounded tradition in Montana, just as it is in Western states where the encroachment of urban areas has not yet created a tremendously pressing need for land-use control. This concept has a phenomenal effect on the overall amount of government regulation that is tolerated by citizens of the state.

However, the concept of subdivision regulation implies that the market fails to allocate land resources efficiently and effectively and that certain negative externalities result from land division. If perfect information, competition and internalization of costs and externalities were a reality, there would be less need for regulation. Under this model, land-use patterns would more closely reflect optimum location decisions and full internalization of costs associated with a particular use. Unfortunately, one does not have to look far to see that use of land resources does not always reflect this model; the example of Hidden Valley Ranches adequately illustrates this point. The development is located adjacent to the East Side Highway, an area which the Ravalli County Comprehensive Plan spec-

ifically proposed to remain rural and undeveloped. Further, roads in the subdivision will not be built to county specifications and the availability of adequate fire protection to the area remains dubious.

Subdivision regulation also implies that a subdivider realizes a profit from government approval of his development. In return, the landowner should theoretically have to meet reasonable conditions imposed by regulations to force the internalization of costs generated by development.

To state legislators, then, subdivision reform becomes a question of how much government regulation is needed to balance this imperfect market. Necessarily, when this question arises those persons who cling most strongly to the concept of "individual rights" make the most resounding noises against further regulations. When these voices are supplemented by interest groups--surveyors, engineers and real estate professionals--who benefit from less stringent regulations, as occurred during the 1979 legislative session, the pressure upon lawmakers to maintain the status quo affects the decision making process.²¹

Lack of Senate support and representation within the Subcommittee on Subdivision Laws could also be partially blamed for the failure of the bills. The Subcommittee was

²¹ These coalitions all opposed the recommendations during committee hearings.

organized as an eight-member, bi-partisan committee, made up of four members from each house of the legislature. Appointments to the Subcommittee were made in April 1977 and the entire committee spent two years developing recommendations. However, three Subcommittee members--all from the Senate--did not return to the 1979 Montana Legislature. Because there was only one Senate member of the Subcommittee available to "sell" the package of legislation to the Senate, there seemed to be a general lack of support in that house, where most of the legislation recommended by the Subcommittee failed.

Another reason the bills were defeated could be attributed to the make-up of the 1979 Legislature, which certainly could not be termed the most "progressive" assembly in recent years. In fact, in terms of environmental legislation, the 1979 Legislature could be called quite conservative. Certainly, the Legislature lacked the unity for progressive environmental policies that was apparent at the height of its environmental awareness in 1973 and 1975.

The make-up of the Legislature is dependent upon how legislative district lines are drawn based on population, and currently legislators from larger cities and counties are in a clear minority. This could be construed as another reason the recommended bills failed in 1979. Generally,

citizens from urban areas are much more aware of the problems associated with subdivision development and are more willing to allow increased government involvement in the subdivision process. As a result, legislators will reflect this willingness. But, in a legislature dominated by representatives from smaller towns and rural areas, the need for subdivision reform does not seem so pressing. Many Montana counties have not yet felt the pressure of population growth, which tends to first manifest itself in a proliferation of subdivisions.

As one Missoula representative pointed out, "Just ask someone from Petroleum County what he thinks about subdivision problems and he probably won't even know about the Act, let alone the problems posed by the exemptions."²²

In summary, no single hypothesis explains why the Subcommittee's recommendations failed, but a combination of several theories reveals the factors that tend to generate political resistance to reform. The failure of the 1979 Legislature to pass any measures which would have alleviated the problems identified in this study leads to the final topic of discussion: the possibility of future legislative reform and a recommendation that considers an important methodological mistake the Subcommittee made when making recommendations for reform.

²² Interview with Rep. Earl Lory, D-Msla.

CHAPTER III

THE FUTURE

OF SUBDIVISION REFORM

Comprehensive vs. Incremental Change

Considering the action of the 1979 Montana Legislature, the future of reform of Montana's subdivision laws is ambiguous. In all likelihood, reform will not follow a comprehensive study such as that which was conducted by the Subcommittee on Subdivision Laws. This conclusion is reached as a result of the rejection by the Legislature of the Subcommittee's final recommendation, which provided that the Legislature should:

Approve the package of (recommended) legislation; however, if the Legislature rejects this legislation as being insufficient to solve subdivision-related problems, then the Subcommittee should be continued in the next interim (1979-1981) with the possible purpose being the complete rewriting of Montana's subdivision laws.

Presumably, then, any future changes made to Montana's subdivision laws will be done so in an incremental manner. However, while incremental change is, in general, more reflective of the legislative process than is comprehensive change, it may not necessarily be the best method in instituting subdivision reform. A comprehensive reform approach is methodologically more sound for several reasons,

and these were reflected in the Subcommittee's recommendations.

First, seldom does one area of the state's subdivision legislation stand separate and distinct from others. Montana statutes governing the regulation of subdivisions are extensive and complicated. Besides the Subdivision and Platting Act, a myriad of laws--some administered by different agencies with overlapping jurisdictions--exist to confront land developers and local administrators.²³ For example, approval from three administrative levels must be gained before final approval of a subdivision is granted. The Subdivision and Platting Act requires approval from the local governing body and the Department of Community Affairs, while the Sanitation in Subdivisions Act requires approval from the Montana Department of Health and Environmental Sciences. Further, the Administrative Regulations of Montana, which specifies additional review procedures for subdivisions and which were drafted by the Department of Community Affairs, requires review--but not necessarily approval--from several state agencies, among them the Department of Highways, the Department of Fish, Wildlife and Parks and the State Bureau of Mines and Geology. This network of agency review is meant to provide technical information to local governments regarding the potential

²³ Montana Legislative Council, p. 1.

impact a subdivision will have on a particular area. This network provides important information, especially to governments which lack the resources to employ experts in these technical fields.

Because this information network is required by more than one single Act, incremental change, while not impossible, would perhaps have unanalyzed effects on the purposes and objectives of other state statutes.

Second, incremental change is less desirable than comprehensive change because it impedes planning efforts on the part of administrators and developers who must deal with continuing changes or anticipated changes in state laws. Land developers have been the most outspoken opponent of incremental change because this method potentially subjects subdivision laws to legislative review during each session. This method provides an unstable legal environment under which subdivision plans are proposed. An example of this instability is the number of times the definition of a subdivision has been changed under the Subdivision and Platting Act. The Act originally defined a subdivision as a parcel less than 10 acres; this definition was changed in 1974 to a minimum size of 20 acres and during the 1979 session, House Bill 46 would have eliminated any minimum size, thus making all land divisions subject to provisions of the Act.

This instability is partially reflected in the increased number of subdivisions filed in Ravalli County during 1978. The number of subdivision plats filed in 1978 jumped to a total of 136 from only 39 in 1977. The number of plats filed in 1979 fell to 71. The increase during 1978 can be traced to the fact that landowners suspected that the 1979 Legislature would pass prohibitive legislation which would limit development options. Landowners, therefore, wanted to subdivide their property before new laws could be passed even if there was not yet a demand for residential parcels.²⁴

Although the Montana Legislative Council clearly points out that most land development interest groups oppose any reform of subdivision laws, they generally agree that if reform is needed, it should take place in a comprehensive rather than incremental manner--that change should take place at once rather than being spread out over several years.

Third, incremental changes will further slow the progress that past legislatures have made in turning over the responsibility and authority for subdivision review and approval to local governments. In the meantime, hundreds--even thousands--of acres of land are being developed without

²⁴ This conclusion was drawn by three professional surveying and engineering companies in Ravalli and Missoula Counties. The companies survey and engineer much of the subdivision development in Ravalli County.

regard to local comprehensive plans and community standards. And, much of this unreviewed development is occurring at the expense of prime agricultural land.²⁵

The Subcommittee's
Missing Link

Attempting to correct the problems posed by Montana's Subdivision and Platting Act using an incremental approach may not be the wisest method. The evidence in this report supports the need for reform of the state codes, but only if it can be done in a comprehensive manner. The Subcommittee on Subdivision Laws conducted a thorough review of Montana's subdivision legislation, and that fact remains the redeeming value of the recommendations it proposed. However, while the Subcommittee's recommendations would have alleviated a majority of the problems now evident in the Act, it failed to recognize an important factor: that not all counties are being affected by the weaknesses in the Act. This failure is the most significant methodological mistake made by the Subcommittee, because it has special implications for Montana's existing and future land-use policies, of which subdivision regulations are only a part. Montana is a large state and is geographically, economically and socially diverse. Therefore, each of the state's 56 counties has unique needs and problems related to land use. Unfortunately, the state's existing subdivision laws do

²⁵Montana Legislative Council, p. 26.

not allow this diversity to be reflected in local subdivision policies. For example, provisions which allow exemptions to the Subdivision and Platting Act quite possibly pose no administrative problems to some governing bodies, while these same exemptions are a curse to planning and administrative efforts in others.

Therefore, eliminating and clarifying exemptions and generally giving more local authority and responsibility in the area of subdivision regulation to local governments would have alleviated those problems being experienced by communities which are gaining population and experiencing an increase in the level of subdivision activity. However, the same action may have worked against counties which are not experiencing any significant amount of growth, or are actually losing population. If these counties are forced to accept more responsibility and authority for subdivision control, they will also have to bear the costs of administering the regulations. Further, landowners within these counties, who use exemptions responsibly, will be forced to bear an unfair burden if state-wide laws are passed in an attempt to prohibit unscrupulous land developers from taking advantage of the exemptions.

In this light, any future legislation aimed at correcting problems with the Subdivision and Platting Act, and Montana's land-use legislation in general, should take

into account three factors: 1) that the original intention of the legislature in passing the Subdivision and Platting Act was to allow local governments the authority and responsibility for reviewing and approving land divisions within their jurisdictions; 2) that a wide diversity exists among Montana counties; and, 3) that state reform must be accomplished in a comprehensive manner.

One measure which considers all these factors is the adoption of an enabling act by the state which would allow local governments the discretion to review any division of land considered important to effective planning efforts. This measure could be adopted as a supplement to a set of minimum state-wide subdivision laws, similar to those now contained in the Subdivision and Platting Act, which would be effective for those local governments which do not want the expanded authority and responsibility this provision would allow. These state-wide minimum laws would serve to keep legislative objectives consistent in all counties.

This type of provision has been adopted in the States of Washington and Oregon simply by adding a statement that empowers local governments to regulate and restrict the subdivision and development of land within their jurisdictional borders.²⁶

²⁶Beardslee, p. 43.

This provision would certainly recognize a local government's ability to review and approve those subdivisions within their jurisdiction. Further, it would recognize the diversity which exists among Montana counties by allowing local governments to accept additional authority and responsibility at the time officials feel the need to take on those duties. Finally, it would solve many of the current problems with the Subdivisions and Platting Act if it were implemented after taking a comprehensive approach to subdivision reform. For example, the legislature would have to decide whether local governments should also be able to take over duties involving the review of sanitation facilities, a responsibility now vested in the Montana Department of Health and Environmental Sciences.

The greatest advantage of such a provision would be to free local governments from the actions of unscrupulous land developers who are currently using the exemptions to the Act in a manner which evades legislative intentions. A government's ability to review any exemption it felt was being used illegitimately would significantly improve local planning efforts and, subsequently, the delivery of public services. However, such a provision would do little to correct current problems in regard to parkland dedication requirements or to subdivision acceptability criteria. These two areas of the Act are significantly less a political issue than is the section allowing exemptions and, therefore,

it can be reasonably expected that these problems can be worked out within a comprehensive manner.

Passing such a provision would also enable local governments to eliminate a legal framework which invites and encourages unequal treatment under the law, depending upon whether a subdivider uses legitimate channels or exemptions to divide his land.

Finally, allowing local governments this discretion would be consistent with past legislative policies to allow local governments more authority and responsibility in the area of subdivision regulation. The provision would recognize that the county or city--not the state--should have the right to decide which land divisions should be reviewed and approved by the public and local officials.

Despite the merits of an enabling provision, certain criticisms will be leveled. One of the most valid is a question commonly asked by landowners and land development corporations which operate state-wide: Would counties which opt to take on the additional authority have the technical expertise and resources available to administer the added responsibility fairly and consistently, without being arbitrary and capricious? Development interests already claim that the Subdivision and Platting Act is subject to arbitrary interpretation among localities, particularly in regard to DCA administrative criteria that define evasion of the Act.

There exists several ways to insure that local governments meet their administrative responsibilities fairly and consistently. The techniques include:

1) allowing only those jurisdictions which have adopted a comprehensive plan, pursuant to state law, to take advantage of the provision; this would also encourage counties experiencing population growth to adopt community plans;

2) requiring that local governments, previous to accepting additional authority and responsibility in the area of subdivision review and approval, submit their plans for administering the additional authority to the DCA for review; the DCA review could work as a "performance agreement" or be limited to insuring that a local government's intentions are in alignment with state legislative objectives;

3) requiring that any additional acceptance of authority and responsibility be approved by popular vote; or

4) giving the state district court system final word as to whether local governments are, indeed, meeting their responsibility for fair and competent administration of the law.

CONCLUSION

When the Tax Bills Are Delivered

The Montana Subdivision and Platting Act, as currently written and administered, is clearly inadequate. It neither accomplishes the legislative objective for which it was enacted, nor does it promote fair and equitable treatment of land developers. As exemptions to the Act are now being used, they prohibit local governments from carrying out the Constitutional requirement to protect and improve the natural environment of the state. The primary purpose of any subdivision law is to help internalize the costs of development so that the subdivider and landowners, rather than the public at large, bear most of the burden for development. However, as the exemptions to the Act are now being used, this purpose is being rendered useless; Hidden Valley Ranches in Ravalli County is an example. Further, if developments such as Hidden Valley are allowed to proceed unchecked, taxpayers will be required to finance the costs of providing needed services to the subdivision--services such as adequate roadways, parkland and fire protection equipment, all of which should have been required of the developer before final approval of the subdivision was granted.

However, many such developments are never given final approval because they escape legitimate review from governments which must ultimately provide needed services. Naturally, the cost of providing needed services to unreviewed developments will be more expensive than normal simply because the location and arrangement of the unanticipated subdivisions do not conform to standards and plans that have been adopted by local jurisdictions.

Legislative reform to the Act is in order, but solutions to the problems posed by the Act must be worked out within a political framework; this situation has slowed progress toward some feasible solution. The Montana Legislature has attempted to change the Act but all legislative amendments proposed so far have embraced a common theme: that the state should define which land divisions should be reviewed by local governments. Further, these amendments have been proposed with little regard to the diversity which exists among Montana counties and, as a result, would be inherently unfair if they were to be enacted. Reform measures proposed so far would benefit some counties--those experiencing population growth--while forcing unnecessary administrative duties on others.

This study suggests a reversal of this patronizing philosophy. It maintains that local governments should have the choice of deciding which subdivisions need public

review and approval, based upon the character of land development trends within an individual jurisdiction. This policy would put the majority of responsibility and authority for subdivision review and approval in the hands of local governments--a trend that is consistent with past legislative reform of the Subdivision and Platting Act.

When will legislative reform occur? Considering the past performance of the Legislature it is unclear. The opinion of this writer is that reform will occur when subdivisions, such as Hidden Valley, are completely built, public services are demanded, and tax bills are delivered to residents of the county at large.

-end-

APPENDIX

**AMENDMENTS TO THE SUBDIVISION AND PLATTING ACT PROPOSED
BY THE SUBCOMMITTEE ON SUBDIVISION REGULATIONS**

**These bills appear in the
form in which they were
originally proposed by the
Subcommittee on Subdivision
Laws .**

46th Legislature

LC 0056/01

RECOMMENDED BY COMMITTEE

1

HOUSE BILL NO. 46

2 INTRODUCED BY _____

3 BY THE REQUEST OF THE INTERIM SUBCOMMITTEE ON SUBDIVISION LAWS

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE

6 SUBDIVISION AND PLATTING ACT AND RELATED LAND-USE STATUTES;

7 EXEMPTING CERTAIN SUBDIVISIONS FROM REVIEW, REDEFINING

8 SUBDIVISIONS, AND MAKING CERTAIN MINOR CHANGES: AMENDING

9 76-1-606, 76-3-103, 76-3-104, 76-3-207, 76-3-504, 76-3-505,

10 76-3-508, 76-3-601, 76-3-604, 76-3-605, 76-3-609; AND

11 REPEALING 76-3-201, and 76-3-210, MCA."

12

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

14 Section 1. Section 76-1-606, MCA is amended to read:

15 "76-1-606. Effect of a master plan on subdivisions

16 and plats. (1) Where When a master plan containing the

17 provisions specified in subsection (3) has been approved,

18 the city council may by ordinance or the board of county

19 commissioner may by resolution require subdivision plats

20 to conform to the provisions of the master plan. Certified

21 copies of such ordinance shall be filed with the city or

22 town clerk and with the county clerk and recorder of the

23 county.

24 (2) Thereafter:

25 (a) a plat involving lands within the corporate limits

1 of the city and covered by said master plan shall not be
2 filed without first presenting it to the planning board,
3 which shall make a report to the city council advising as
4 to compliance or noncompliance of the plat with the master
5 plan. The city council shall have the final authority to
6 approve the filing of such plat.

7 (b) a plat involving lands outside the corporate
8 limits of the city and covered by said master plan shall
9 not be filed without first presenting it to the planning
10 board which shall make a report to the board of county
11 commissioners advising as to compliance or noncompliance
12 of the plat with the master plan. The board of county
13 commissioners shall have the final authority to approve
14 the filing of such plat.

15 (3) For purposes of this section and 76-3-505,
16 76-3-604, and 76-3-609(3), the master plan must contain:

17 (a) a land use plan that identifies geographic areas
18 suitable for residential, commercial, or industrial land
19 uses or sets forth community policy regarding quality or
20 location of urban development:

21 (b) a housing plan that identifies the existing
22 housing units by type and number and the estimated
23 availability of housing by type and number of units:

24 (c) a public services plan that identifies existing
25 public services and facilities, including but not limited

1 to systems for water supply, sewage treatment and solid
2 waste disposal, parks and recreation, schools, roads and
3 bridges, and police and fire protection; the capacity of
4 each; and identifies the needs for improvement or
5 expansion of those services and facilities.

6 ~~(3)~~(4) Nothing herein contained shall be interpreted
7 to limit the present powers of the city or county
8 governments but shall be an additional requirement before
9 any plat may be filed of record or entitled to be recorded."

10 Section 2. Section 76-3-1-3, MCA, is amended to read:

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

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

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

23 (3) "Division of land" means the segregation of one
24 or more parcels of land from a larger tract held in single
25 or undivided ownership by transferring or contracting to

1 transfer title to or possession of a portion of the tract
2 or properly filing a certificate of survey or subdivision
3 plat establishing the identity of the segregated parcels
4 pursuant to this chapter.

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

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

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

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

18 (8) (6) "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) (7) "Plat" means a graphical representation of a

1 subdivision showing the division of land into lots, parcels,
2 blocks, streets, alleys, and other divisions and
3 dedications.

4 ~~(10)~~(8) "Preliminary plat" means a neat and scaled
5 drawing of a proposed subdivision showing the layout of
6 streets, alleys, lots, blocks, utility easements, and other
7 elements of a subdivision which furnish a basis for review
8 by a governing body.

9 ~~(11)~~(9) "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.

15 (10)"Minor subdivision" means a subdivision
16 containing five or fewer parcels where proper access to
17 all lots is provided and where, if park dedication is
18 required, it shall be met by cash in lieu of land donations.

19 ~~(12)~~(11)"registered land surveyor" means a person
20 licensed in conformance with the Montana Professional
21 Engineers' Registration Act (Title 37, chapter 67) to
22 practice surveying in the state of Montana.

23 ~~(13)~~(12) "Registered professional engineer" means a
24 person licensed in conformance with the Montana Professional
25 Engineers' Registration Act (Title 37, chapter 67) to

1 practice engineering in the state of Montana.

2 (13) "Relocating a common boundary line" means the
3 establishment of a new location for a boundary line between
4 abutting parcels with no additional parcels being created.

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

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

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

17 "76-3-104. What constitutes a subdivision. A
18 subdivision shall comprise only those parcels ~~less-than-20~~
19 ~~acres~~ which have been segregated from the original tract,
20 and the plat thereof shall show all such parcels whether
21 contiguous or not."

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

23 "76-3-207. Subdivisions exempted from review but
24 subject to survey requirements--exceptions. (1) Except as
25 provided in subsection (2), unless the method of disposition

1 is adopted for the purpose of evading this chapter, the
2 following divisions of land are not subdivisions under
3 this chapter but are subject of the surveying requirements
4 of 76-3-401 for divisions of land not amounting to
5 subdivisions.

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

9 (b) ~~divisions~~ one division made outside of a platted
10 ~~subdivisions~~ subdivision for the purpose of a gift or sale
11 to any each member of the landowner's immediate family,
12 provided that any additional conveyance to the same family
13 member shall be reviewed under the summary review procedures
14 of 76-3-609.

15 (c) divisions made outside of platted subdivisions
16 by sale or agreement to buy and sell ~~where~~ when the parties
17 to the transaction enter a covenant ~~covenant~~ running with
18 the land and revocable only by mutual consent of the
19 governing body and the property owner that the divided
20 land will be used exclusively for agricultural purposes
21 and that residential, commercial, and industrial uses or
22 structures will be excluded on parcels less than 40 acres;

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

25 (e)(d) for five or fewer lots within a platted

1 subdivision, relocation of common boundaries and the
2 aggregation of lots-;

3 (e) divisions ordered by a court of record pursuant
4 to 40-4-402 of the Uniform Marriage and Divorce Act or
5 pursuant to the law of decedents' estates, provided that
6 the case number is noted on the certificate of survey;

7 (f) divisions that could be created pursuant to the
8 law of eminent domain.

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

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

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

20 Section 5. Section 76-3-504, MCA is amended to read:

21 "76-3-504. Minimum requirements for subdivision
22 regulations. (1) Not later than December 31, 1973, the
23 department of community affairs, through its division of
24 planning, shall, in conformance with the Montana
25 Administrative Procedure Act, prescribe reasonable minimum

1 requirements for subdivision regulations adopted pursuant
2 to this chapter.

3 (2) The minimum requirements shall include detailed
4 criteria for the content of the environmental assessment
5 required by this chapter. In prescribing the minimum
6 contents of the subdivision regulations, the department
7 of community affairs, through its division of planning,
8 shall require the submission by the subdivider to the
9 governing body of an environmental assessment except for
10 those subdivisions described in 76-3-505.

11 (3) The department shall provide for the review of
12 preliminary plats by those agencies of state and local
13 government and affected public utilities having a
14 substantial interest in a proposed subdivision. Such agency
15 or utility review shall not delay the governing body's
16 action on the plat beyond the time limit specified herein,
17 and the failure of any agency to complete a review of a
18 plat shall not be a basis for rejection of the plat by the
19 governing body."

20 Section 6. Section 76-3-505, MCA is amended to read:

21 "76-3-505. Provision for summary review of ~~minor~~
22 certain subdivisions. (1) Local subdivision regulations
23 shall include procedures for the summary review and approval
24 of subdivision plats meeting any of the following
25 conditions.

1 (a) containing five or fewer parcels where proper
2 access to all lots is provided, where no land in the
3 subdivision will be dedicated to public use for parks or
4 playgrounds, and which have been approved by the department
5 of health and environmental sciences where such approval is
6 required by part 1 of chapter 4, comprising a minor
7 subdivision;

8 (b) consisting exclusively of parcels larger than 40
9 acres in size; or

10 (c) lying within the corporate boundaries of a
11 municipality or lying within areas for which a master plan
12 containing the minimum requirements described in 76-3-606(3)
13 has been adopted and to which the subdivision conforms.
14 ~~provided that reasonable~~

15 (2) Reasonable local regulations may contain
16 additional requirements for summary approval."

17 Section 7. Section 76-3-508, MCA is amended to read:

18 "76-3-508. Procedure if local government fails to
19 adopt regulations. In the event that any governing body
20 has not adopted subdivision regulations by July 1, 1974,
21 which meet or exceed the prescribed minimum requirements,
22 the department shall through its division of planning, no
23 latter than January 1, 1975 promulgate reasonable regulations
24 to be enforced by the governing body. If at any time thereafter
25 the governing body adopts its own subdivision regulations,

1 these shall supersede those promulgated by the department
2 ~~but shall be no less stringent.~~"

3 Section 8. Section 76-3-601, MCA is amended to read:

4 "76-3-601. Submission of preliminary plat for review.

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

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

15 (b) (i) When the proposed subdivision is situated
16 entirely in an unincorporated area, the preliminary plat
17 shall be submitted to and approved by the governing body
18 of the county.

19 (ii) However, if the proposed subdivision lies within
20 1 mile of a third class city or town or within 2 miles of
21 a second-class city or within 3 miles of a first-class
22 city, the county governing body shall submit the preliminary
23 plat to the city or town governing body or its designated
24 agency for review and comment.

25 (iii) If the proposed subdivision is contiguous to the

1 boundary of an incorporated city or town or is separated
2 from a corporate boundary by only a public road, the
3 approval by the county governing body shall be contingent
4 upon a written finding by the city or town that the design
5 and location of any roads or central water and sewer
6 facilities will be compatible with the existing facilities
7 of the municipality.

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

12 (3) This section and 76-3-604, 76-3-605, and
13 76-3-610 do not limit the authority of certain municipal-
14 ities to regulate subdivisions beyond their corporate
15 limits pursuant to 7-3-4444."

16 Section 9. Section 76-3-604, MCA is amended to read:

17 "76-3-604. Review of preliminary plat. (1) The
18 governing body or its designated agent or agency shall
19 review the preliminary plat to determine whether it
20 conforms to the local master plan that meets the require-
21 ments specified in 76-1-606(3), if one has been adopted,
22 pursuant to ~~chapter 1~~ to the provisions of this chapter and
23 to rules prescribed or adopted pursuant to this chapter.

24 (2) The governing body shall approve, conditionally
25 approve or reject the preliminary plat within 60 days of

1 its presentation unless the subdivider consents to an
2 extension of the review period. If the governing body fails
3 to act within the prescribed time period, the subdivision
4 is approved.

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

11 Section 10. Section 76-3-605, MCA is amended to read:

12 "76-3-605. Hearing on preliminary plat. (1) The
13 governing body or its authorized agent or agency shall
14 hold a public hearing on the preliminary plat and shall
15 consider all relevant evidence relating to the public health,
16 safety, and welfare, including the environmental assessment,
17 to determine whether the plat should be approved, condition-
18 ally approved, or disapproved by the governing body.

19 (2) Notice of such hearing shall be given by
20 publication in a newspaper of general circulation in the
21 county not less than 15 days prior to the date of the
22 hearing. The subdivider and each property owner of record
23 immediately adjoining the land included in the plat shall
24 also be notified of the hearing by ~~registered-or~~ certified
25 mail not less than 15 days prior to the date of the hearing.

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

8 Section 11. Section 76-3-609, MCA is amended to read:

9 "76-3-609. Review Summary review procedure for minor
10 certain subdivisions. Except as provided in (section 13),
11 summary review procedures shall be as follows:

12 (1) Subdivisions For minor subdivisions containing
13 five or fewer parcels where proper access to all lots is
14 provided and in which no land is to be dedicated to the
15 public for parks or playgrounds are to be reviewed as
16 follows:

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

21 (a) the subdivider shall submit either a preliminary
22 plat that complies with local regulations or a final plat
23 that complies with local regulations and the department of
24 community affairs' uniform standards for final subdivision
25 plats. The governing body shall act on the plat of the first

1 minor subdivision from a tract within 35 days of submittal
2 in accordance with 76-3-611 if a final plat is submitted or
3 in accordance with 76-3-610 if a preliminary plat is
4 submitted. If the governing body fails to act within 35
5 days of submittal, the subdivision is approved.

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

11 ~~(3)~~(c) ~~The~~ the requirements for holding a public
12 hearing and preparing an environmental assessment and
13 finding that the subdivision is in the public interest do
14 not apply to the first such minor subdivision created
15 from a tract of record;

16 ~~(4)~~(d) ~~Subsequent~~ second and subsequent subdivisions
17 from a tract of record shall be reviewed under 76-3-505
18 and regulations adopted pursuant to that section.

19 (2) For subdivisions consisting exclusively of
20 parcels larger than 40 acres:

21 (a) the subdivider shall submit either a preliminary
22 plat which complies with local regulations or a final plat
23 which complies with local regulations and the department
24 of community affairs' uniform standards for final subdivi-
25 sion plats. The governing body shall act on the plat within 35

1 days of submittal in accordance with 76-3-611 if a final
2 plat is submitted or in accordance with 76-3-610 if a
3 preliminary plat is submitted. If the governing body
4 fails to act within 35 days of submittal, the subdivision
5 is approved.

6 (b) the requirements for holding a public hearing,
7 preparing an environmental assessment, and finding that
8 the subdivision is in the public interest do not apply;

9 (c) the governing body's review and approval shall be
10 limited to a written determination that appropriate access
11 and any easements are properly provided.

12 (3) For subdivisions within the corporate boundaries
13 of a municipality or within areas covered by a master plan
14 containing the elements listed in 76-1-605(3) and to which
15 the subdivision conforms:

16 (a) a preliminary plat must be submitted and acted
17 upon pursuant to 76-3-610, except that the requirements
18 for preparation of an environmental assessment and a
19 finding that the subdivision is in the public interest do
20 not apply. If the governing body fails to act within 60
21 days of submittal, the preliminary plat is approved.

22 (b) a final plat may be approved by the governing
23 body only after review pursuant to 76-3-611."

24 Section 12. There is a new MCA section that reads:

25 NEW SECTION. Major impact resulting from cumulative

1 effect of several minor subdivisions when reviewed. When
2 so many minor subdivisions are proposed for the same
3 general area that the governing body believes their
4 cumulative effect on the provision of public services or
5 the natural environment may be significant, it shall require
6 the preparation of an environmental assessment and a public
7 hearing to address the overall impact of the subdivisions
8 and review them pursuant to 76-3-608 and the other
9 provisions for review of major subdivisions in (Title 76,
10 chapter 3, part 6).

11 Section 13. Reparler. Section 76-3-201 and 76-3-210
12 MCA are repealed.

-end-

46th Legislature

LC 0058/01

RECOMMENDED BY COMMITTEE

1

HOUSE BILL NO. 43

2 INTRODUCED BY _____

3 BY THE REQUEST OF THE INTERIM SUBCOMMITTEE ON SUBDIVISION LAWS

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION

6 76-3-608, MCA, TO MODIFY AND DEFINE THE PUBLIC INTEREST

7 CRITERIA FOR LOCAL GOVERNMENT REVIEW OF SUBDIVISIONS."

8

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

10 Section 1. Section 76-3-608, MCA is amended to read:

11 "76-3-608. Criteria for local government review. (1)

12 The Except for those subdivisions eligible for summary

13 review, the basis for the governing body's decision to

14 approve, conditionally approve, or disapprove a subdivision

15 shall be whetehre the preliminary plat, environmental

16 assessment, public hearing, planning board recommendations,

17 and additional information demonstrate that development of

18 the subdivision would be the the public interest. The

19 ~~governing body shall disapprove any subdivision which it~~

20 ~~finds not to be in the public interest.~~

21 (2) To determine whether the proposed subdivision

22 would be in the public interest, the governing body shall

23 issue a written ~~findings~~ finding of fact which weighs the

24 ~~following criteria for public interest~~ that considers at

25 least the following:

- 1 ~~(a)-the-basis-of-need-for-the-subdivision;~~
- 2 ~~(b)-expressed-public-opinion;~~
- 3 ~~(c)-effects-on-agriculture;~~
- 4 ~~(d)-effects-on-local-services;~~
- 5 ~~(e)-effects-on-taxation;~~
- 6 ~~(f)-effects-on-the-natural-environment;~~
- 7 ~~(g)-effects-on-wildlife-and-wildlife-habitat,-and;~~
- 8 ~~(h)-effects-on-the-public-health-and-safety-~~
- 9 (a) the compatibility of the subdivision with adopted
- 10 community goals, policies, or plans;
- 11 (b) (i) the effect the subdivision would have on
- 12 public schools, services, and facilities (including the
- 13 extent to which new or expanded services would be needed
- 14 to serve the subdivision);
- 15 (ii) who would bear the various costs of the addi-
- 16 tional services;
- 17 (iii) what legal constraints affect the provision
- 18 of those services; and
- 19 (iv) whether the subdivision would allow the
- 20 installation or improvement of services not feasible for
- 21 present landowners;
- 22 (c) the effects the subdivision would have on taxation,
- 23 such as the effects on taxable valuation, local tax revenues,
- 24 local mill levies, the local government's bonded
- 25 indebtedness, and special taxing districts;

1 (d) the effect the subdivision and its construction
2 would have on ground and surface water, air soils, slopes,
3 vegetation, wildlife, and historical or archaeological
4 sits;

5 (e) the effect on the public health and safety of
6 present and future residents from potential hazards such
7 as flooding, avalanches, rockslides, high-pressure gaslines,
8 high-voltage powerlines, nearby industrial or mining
9 operations, or unsafe airport or traffic conditions.

-end-

46th Legislature

LC 0059/01

RECOMMENDED BY COMMITTEE

1

SENATE BILL NO. 44

2

INTRODUCED BY _____

3

BY REQUEST OF THE INTERIM SUBCOMMITTEE ON SUBDIVISION LAWS

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO MODIFY THE
6 REQUIREMENTS FOR DEDICATION OF PARKLAND FOR SUBDIVISIONS;
7 ALLOWING A PORTION OF PARK MONEY TO BE USED FOR MAINTEN-
8 ANCE OF EXISTING PARKS: AND AMENDING SECTION 76-3-606 MCA."

9

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

11 Section 1. Section 76-3-606, MCA is amended to read:

12 "76-3-606. Dedication of land to public--cash
13 ~~donation. (1) A plat of a residential subdivision shall~~
14 ~~--show that one ninth of the combined area of lots five acres~~
15 ~~or less in size and one twelfth of the combined area of~~
16 ~~lots greater than five acres in size, exclusive of all~~
17 ~~other dedications, is forever dedicated to the public for~~
18 ~~parks or playgrounds. --No dedication may be required for the~~
19 ~~combined area of those lots in the subdivision which are larger-~~
20 ~~than 10 acres exclusive of all other dedication. Within each~~
21 residential subdivision, 1,000 square feet of land per
22 dwelling unit shall be dedicated to the public for parks
23 and playgrounds. The governing body, in consultation with
24 the planning board having jurisdiction and in conformance
25 to any park plan adopted by the governing body, may determine

1 suitable locations for such parks and playgrounds.

2 (2) Where the dedication of land for parks or
3 playgrounds is undesirable because of size, topography,
4 shape, location, or other circumstances, the governing
5 body may, for good cause shown, make an order to be endorsed
6 and certified on the plat accepting a cash donation in lieu
7 of all or part of the dedication of land and equal to the
8 fair market value of the amount of land that would have
9 been dedicated. For the purpose of this section, the fair
10 market value is the value of the unsubdivided, unimproved
11 land. Such The cash donation shall be paid into the park
12 fund to be used for the purchase of additional lands or for
13 the initial development of parks and playgrounds, and up to
14 one-third of the cash received in lieu of land dedicated
15 under this section may be used for routine maintenance of
16 existing parks or playgrounds. Park funds shall be expended
17 according to a park plan or policy statement, which must
18 be adopted by the governing body before expenditure of
19 park funds."

-end-

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