

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By CHAIRMAN DICK KNOX, on February 3, 1993, at
3:00 p.m.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Rolph Tunby, Vice Chairman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Russ Fagg (R)
Rep. Gary Feland (R)
Rep. Mike Foster (R)
Rep. Bob Gilbert (R)
Rep. Hal Harper (D)
Rep. Scott Orr (R)
Rep. Bob Raney (D)
Rep. Dore Schwinden (D)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Howard Toole (D)
Rep. Doug Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Michael Kakuk, Environmental Quality Council
Roberta Opel, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB's 280, 242, 408 and 218
Executive Action: None

HEARING ON SB 280

Informational Testimony:

Michael Kakuk, Environmental Quality Council attorney,
distributed a Summary/Statement of Purpose regarding HB 280,
EXHIBIT 1, and a chart depicting the purpose of each of the
subdivision bills, HB 280, HB 242, HB 408 and HB 218. EXHIBIT 2

Karen Fagg, on behalf of the Racicot administration, said the administration does not endorse any specific subdivision bill, but does endorse the concept of subdivision reform. EXHIBIT 3

Opening Statement by Sponsor:

REP. BOB GILBERT, HD 22, Sidney, stated that HB 280 revises the Subdivision and Platting Act. He said workable, understandable subdivision law is now necessary and added that HB 280, known last session as HB 671, is a better bill.

REP. GILBERT said the philosophy that your property rights end where mine begin needs to be abolished. Contrary to what many opponents believe, HB 280 does not take away individual property rights.

Proponents' Testimony:

Jim Richards, representing the Montana Wildlife Federation and the Montana Association of Planners, submitted testimony supporting HB 280. EXHIBIT 4

William M. Spilker, Helena real estate broker, testified in support of HB 280, noting the bill achieves balance. EXHIBIT 5

Ted Doney, on behalf of the Montana Dairymen's Association, said the Association supports subdivision reform. He said the problem with subdivision reform is the 20 acre exemption and the 20 acre weed patches, both of which create too many loopholes. Mr. Doney said he had worked with REP. GILBERT to eliminate the 20 acre exemption, the applause meter and the occasional sale. He said if HB 280 is assigned to subcommittee, the Dairyman's Association recommends that this should be the bill to provide a framework. HB 280 is not harmful to the environment.

John Bloomquist, Montana Stockgrower's Association, said they are concerned with problems that improper subdivisions create for agriculture and livestock. The biggest concern is the family conveyance which requires everyone to be a good estate planner. He said HB 280 leads us in the right direction by eliminating the applause meter.

Julia Page, Upper Yellowstone Defense Fund, said HB 280 eliminates three major loopholes. A video showing how subdivision regulations may have been abused by Church Universal Triumphant (CUT) was shown to the committee. Ms. Page said that under current subdivision law, the opportunity exists for two to four people to buy property and then quietly divide it into five to 10 acre parcels.

Jo Brunner, Executive Director, Montana Water Resources Association (MWRA), said she appreciated REP. GILBERT'S willingness to include MWRA concerns within HB 280. EXHIBIT 6

Brian McNitt, Montana Environmental Information Center (MEIC), said MEIC has been involved in subdivision reform for over 20 years. He said MEIC will be supportive of the best subdivision bill possible.

Lorna Frank, Montana Farm Bureau, said the Bureau is particularly concerned with two elements: family conveyance and undivided land. She stated county planning boards should review sales. The Montana Farm Bureau prefers 20 acre review rather than 160 acres. She also stated private property rights are of concern to Bureau members.

Bill Myers, Agriculture Appreciation Association, said four bills have resulted from REP. GILBERT'S efforts. Agriculture has rarely been listened to, he said. If the occasional sale option is removed from HB 280, the Association would be in support.

Janet Ellis, Montana Audubon Legislative Fund, said they support HB 280 but have concerns about the local government's inability to determine if a development is trying to evade the subdivision act. EXHIBIT 7.

Doug Olson, Paradise Valley Coalition, offered support for HB 280 if it is amended. EXHIBIT 8.

Bob Stephens, Montana Grain Grower's Association, supported subdivision reform and HB 280.

Alec Hansen, Executive Director, Montana League of Cities and Towns, said that the League supported all four subdivision bills and urged the committee to look carefully at Section 4 of HB 280.

Dennis Olson, Northern Plains Resource Council, NPRC, testified in support of HB 280.

The committee was informed a Yellowstone Coalition member had telephoned February 3, 1993 in support of removal of the 20 acre and sale exemptions.

Opponents' Testimony:

Dan McGee, Montana Association of Land Surveyors, said he supports subdivision reform and property rights but not as represented by HB 280, HB 242, HB 218 and HB 408.

Tom Sands, President, Montana Land Surveyors, suggested HB 280 did not go far enough. He said a revised definition of subdivisions, as well as a revised effective date was in order.

Mike Maney, President, Bozeman Chamber of Commerce, asked the committee to consider an equitable solution for subdivision reform. He said subdivision reform is possible if HB 280 is taken one step further to include mandatory land use plans for every county in Montana.

Tonia Bloom, League of Women Voters of Montana, said it was difficult to decide to be a proponent or an opponent of the bill. The League is concerned that the 160 acre exemption is not high enough. EXHIBIT 9

Blake Wordal, County Commissioner, Lewis and Clark County, expressed opposition to the government liability factor within HB 280. He said the bill should incorporate a new definition of the rights of property owners to avoid a school of sharks.

Jerry Ditto, registered land surveyor, said he opposed land parcels of less than 120 acres and noted it was in everyone's best interest to change this acreage.

Tim Swanson, Mayor of Bozeman, said he was opposed to part, but not all, of HB 280. He said he has been on numerous land use planning boards in the past three years and believes the process of review is the main problem within HB 280.

Christine Mangiantini, on behalf of the League of Women Voters of Montana, stated subdivision bills should be focused on the family conveyance and HB 280 lacked this focus. She said the committee should work on the remaining subdivision bills before them.

Brooks Martin, on his own behalf, said he echoed the position of the League of Women Voters.

Steve Rawley, on his own behalf, said HB 280 is misplaced in a number of directions.

Sherman Janke, Montana Chapter of the Sierra Club, said that although the Sierra Club did not question REP. GILBERT'S commitment, they opposed HB 280. EXHIBIT 10

Alliance for the Wild Rockies, Bozeman, submitted written testimony opposing HB 280. EXHIBIT 11

Alan Rainey, Helena, stated HB 280 is unacceptable subdivision legislation. EXHIBIT 12

Ron Hammar, President, Butte Board of Realtors, submitted testimony opposing HB 280. EXHIBIT 13

Stephen F. Herbaly, Planning Director, Flathead County, said HB 280 is bad public policy. EXHIBIT 14

Additional Testimony Supporting Subdivision Reform:

T.H. Crawford, Bozeman, submitted testimony supporting subdivision reform legislation. EXHIBIT 15

Susan Bjerke, Helena architect, said she urged the committee to change the focus of subdivision law from how it impedes development to how it can assist development. EXHIBIT 16

Doug Rand, Bozeman architect, urged the committee to pass legislation which would require counties to review all subdivision of land. EXHIBIT 17

Art Whitney, Montana Chapter of the American Fisheries Society, said the Society did not support or oppose any specific bill, but did support the concept of reforming subdivision law. EXHIBIT 18

Phil Johnson, former botanist for the Department of Agriculture, testified in support of subdivision reform. EXHIBIT 19

Dennis Glick, Park County resident, said the unregulated sprawl of subdivision development in Montana is bad for the land, bad for wildlife, and bad for the economy. EXHIBIT 20

Page Dabney, Gallatin Gateway, offered strong support for reform of subdivision laws. EXHIBIT 21

Gary Olson, Chairman, Montana Association of Fish and Wildlife Biologists, urged the committee to eliminate both the 20 acre and occasional sale exemptions from existing law. EXHIBIT 22

Written testimony from the City of Billings, EXHIBIT 23, supports adequate review and approval on all divisions of land.

Rick Meis, Bozeman, said he supports HB 218, HB 280, HB 242 and HB 408. EXHIBIT 24

Matthew Arno, Montana Public Interest Research Group (MontPirg), testified in support of subdivision reform. EXHIBIT 25

Judy Walberg, Gillespie Realty Company, Missoula, said she supports subdivision bills that streamline the review process. EXHIBIT 26

Robert Barry, Montana Alliance for Progressive Policy, testified in support of subdivision reform. EXHIBIT 27

Dan Kemmis, Mayor of Missoula, and on behalf of the Montana League of Cities and Towns, said resolutions have been adopted urging repeal of the family transfer and occasional sale subdivision exemptions. EXHIBIT 28 and EXHIBIT 28a.

Fern Hart, Missoula County Commissioner, expressed concern regarding land divisions. EXHIBIT 29

Tom Hopgood, lobbyist for the Montana Association of Realtors, presented testimony regarding subdivision law. EXHIBIT 30

Richard D. Idler, land use counselor, Bigfork, submitted testimony supporting subdivision reform. EXHIBIT 31

Gretchen Rupp, President, Madison-Gallatin Alliance, Bozeman, testified it was long past time to tighten up subdivision review

in Montana. EXHIBIT 32

Barbara Bennetts, Bennetts Agency Realtors, Bigfork, said she would prefer to see existing law modified rather than passage of new subdivision law. EXHIBIT 33

Jerry Sorensen, Lake County Planning Director, submitted testimony depicting subdivision problems in Lake County. EXHIBIT 34

Mike Hutchin, Chairman, Lake County Board of Commissioners, testified in support of flexibility in subdivision review at the local level. EXHIBIT 35

Milt Carlson, Kalispell, testified in support of subdivision reform. EXHIBIT 36

Don Spivey, Columbia Falls, submitted testimonies supporting new subdivision law. EXHIBITS 37 and 38.

Questions From Committee Members and Responses:

REP. SWANSON asked REP. GILBERT to explain the problem the Department of Transportation had with the fiscal note. REP. GILBERT said that the fiscal note reflected sections of land that would be exempt from surveys.

Closing by Sponsor:

REP. GILBERT said he wanted to clarify that the bill does not give exemptions to agriculture as one opponent had mentioned. Montana needs land use planning as well as zoning. HB 280 is designed to give counties flexibility. He also said concerns about multiple dwellings are handled by zoning laws. He noted HB 280 is a new vehicle, not an overhaul. Twenty years of case history has shown that subdivision law has been poorly written and is difficult to administer. The occasional sale and family conveyance need to be removed from law, he said. From a helicopter, Paradise Valley looks like two acres of homes and knapweed. He concluded by saying that HB 280 is the result of legislation the people believe will work.

HEARING ON HB 242

Opening Statement by Sponsor:

REP. EMILY SWANSON, HD 79, Bozeman, told the committee Montana is being sold off in 20 acre parcels. She said the issue is not whether Montana should grow, but how to guide the state's development. Many roads in the Bozeman subdivision areas are switchbacks where residents either pay up front for these roads or pay forever.

She noted HB 280 raises some good questions but then stops. She

said she believed simpler law is better; too many land divisions have gone unreviewed.

Proponents' Testimony:

Lill Erickson, on behalf of Bear Creek Council and Northern Plains Resource Council (NPRC), stated that existing subdivision law needs reform. Existing land review does not mean property can't be subdivided, she said.

Lisa Bay, representing the Lewis and Clark County Conservation District, said the District supports review of all divisions of land.

Jim Nugent, on behalf of the city of Missoula, spoke in support of HB 242.

Jim Richards, Montana Wildlife Federation, testified in support of HB 242.

Rick Smith, Century 21, Polson, said he supported HB 242.

Valerie Drake, Belgrade, submitted testimony supporting the bill.
EXHIBIT 39

Sherm Janke, Sierra Club, Montana Chapter, said the Sierra Club preferred HB 242 to other subdivision bills as it addresses the occasional sale. He said in Gallatin County alone, 109,000 land sales have escaped review.

Herva Simpson, on behalf of the League of Women Voters, said the bill provides for reform that has been the cause of problems in the past.

Brian McNitt, Montana Environmental Informational Center (MEIC), said MEIC supports HB 242, HB 208 and HB 408.

Tonia Bloom, League of Women Voters, submitted testimony in support of HB 242. EXHIBIT 40

Janet Ellis, Montana Audubon Legislative Fund, said she agrees that subdivision law needs reform. She noted that 10,000 acres have been divided by subdivisions in Montana.

Christine Mangiantini, League of Women Voters, suggested the committee focus on passing one of the four subdivision bills that did not require an attorney for interpretation.

Matthew Arno, MontPIRG, testified in support of HB 242.

Sara Toubman, Helena, said she supports HB 242 and would like a no acre limit with review on all land divisions. EXHIBIT 41

Cedron Jones, Helena, said HB 242 was the best alternative, among

HB 218, HB 280 and HB 408, for changing the exemptions in subdivision review. He said he would support removing park land set aside for subdivision if it involves less than 20 acres. He also said that streamlining the review process for minor parcels, five acres or less, is also favored.

Dennis Olson, NPRC, said NPRC supports HB 242.

Opponents' Testimony:

Tom Hopgood, Montana Board of Realtors, testified on his own behalf in opposition to HB 242. Public interest is limited in this bill, he said, and the bill does little for the review process. Mr. Hopgood indicated he would be interested in being part of a subcommittee.

Ed Frances, Vice-President, Church Universal Triumphant (CUT), said CUT opposed HB 242 but would support HB 280 and HB 408. He stated the CUT video that has been shown at this hearing is 11 years old and, therefore, no longer an accurate reflection of CUT land divisions. He contended a master plan is necessary to resolve subdivision problems.

Ted Doney, Montana Dairymen's Association, said HB 242 has some good points but contains some unnecessary review processes and does not provide reform solutions as well as does REP. GILBERT'S bill.

John Bloomquist, Montana Stockgrower's Association, said they oppose the bill.

Steve Mandeville, Montana Association of Realtors (MAR), said the Association supports strong, well defined subdivision law and does not feel HB 242 meets this criteria. He stated that the official stand on subdivisions was adopted by MAR November 17 and 19, 1992.

Doug Olson, Paradise Valley Coalition, suggested a definition to the Platting Act should be included to define subdivision.

Robert Tarnberg, on his own behalf, suggested HB 242 places too much emphasis on acreage sales. He said limitations and regulations should be placed on government agencies dealing with subdivisions.

Tom Burnett, Bozeman, submitted testimony opposing the bill.

EXHIBIT 42

Questions From Committee Members and Responses:

REP. RANEY told Mr. Frances he was confused by his testimony which indicated that more than one home per 20 acres is objectionable. Mr. Frances replied yes, there is more than one home per 20 acres currently. CUT is now involved in litigation

regarding this acreage.

REP. RANEY asked Carlo Cieri, Park County Commissioner, if land could be purchased under one ownership with more than one house per subdivision. Mr. Cieri replied that under current law it was possible to have ten houses on forty acres of land.

Closing by Sponsor:

REP. SWANSON said the committee heard testimony requesting a speedy, prompt review process. Expedited review already exists, she said, as current subdivision review requires only an application with a 35 day review period. She said she believes in strong public involvement and did not want to pass any legislation which would infringe on this involvement.

REP. SWANSON said the fiscal note would have no financial impact as it relates to a fee-based system. She said government should not have to absorb the cost of subdivision review, emphasizing that she did not want to see any impact on the general fund.

HEARING ON HB 408

Opening Statement by Sponsor:

REP. RUSSELL FAGG, HD 89, Billings, stated that 90% of land divisions are not reviewed. He said HB 408 allows for land division but not without review by local government. The bill also does away with exemptions and is a balanced bill. EXHIBIT 43

REP. FAGG said he would support HB 280, HB 242 and HB 408 and urged the committee to pass HB 280 plus one of the simpler bills. REP. GILBERT'S bill, HB 280, should take precedence over any other subdivision bill.

Proponents' Testimony:

Valerie Drake, Gallatin County, submitted testimony supporting HB 408. EXHIBIT 44

Lisa Bay, Lewis and Clark County Conservation District, supports HB 408 and HB 218 and noted the two bills were fairly close in agreement.

Jim Richards, Montana Wildlife Federation, testified in support of HB 408.

Tonia Bloom, on behalf of the League of Women Voters, noted HB 408 is a worthy contribution to the subdivision debate but added the League is concerned with the family conveyance. Without the occasional sale, she said, a family sale is more probable.

Dennis Olson, NPRC, said they support HB 408 and public participation as a means to improve the reform. He stated NPRC supports closing loopholes for use of the family conveyance.

Jim Nugent, City of Missoula, asked the committee to consider passing HB 280 and one of the smaller subdivision bills. He said there is continued concern about multi-family complexes.

Terry Murphy, Jefferson County, said emergency temporary zoning laws need to be brought under control.

Gerald Newgard, Lake County Commissioner, stated HB 408 did include notification for the review process. He suggested combining HB 408, HB 218 and HB 242 should be considered.

Steve Herbaly, Flathead County, said that between 1961 and 1983, 6,000 unreviewed lots were created in Montana. He stated current subdivision law puts the state in one of the worst land scenarios in the country.

Doug Grand, Bozeman, suggested each city be given the opportunity to review all land divisions.

Barb Bennetts, Bennetts Real Estate Agency, said whichever bill passes the committee, loopholes should be closed. Current land division sales are not enforced.

Janet Ellis, Montana Audubon Legislative Fund, said Audubon would support this subdivision bill.

Ted Doney, Montana Dairymen's Association, noted HB 408 has great promise and does not include unsound compromise reform.

John Bloomquist, Montana Stockgrower's Association, suggested the bill should include an acre limitation.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor:

REP. FAGG thanked the committee and reiterated the need for the committee to pass HB 280 and one of the smaller subdivision bills.

HEARING ON HB 218

Opening Statement by Sponsor:

REP. RAY BRANDEWIE, HB 49, Bigfork, said the hearing marked the 20th anniversary of the Subdivision and Platting Act. Skirting the approval process is the main reason previous subdivision law

has not worked, he said. He stated that subdivision law that is viable elsewhere in the country is not necessarily viable in Montana. HB 218 eliminates the occasional sale and allows for one land under a family transfer. He said money that is being considered for park lands should be added to a fee structure.

Montana doesn't have many more years to deal with the subdivision issue, REP. BRANDEWIE said. He concluded by saying that HB 218 will not require as much work on the county level as the other smaller subdivision bills.

Proponents' Testimony:

Jim Richards, Montana Wildlife Federation, stated the Federation supports HB 218 with an amendment suggestion that would include more than 40 acre land review.

Neal Brown, on his own behalf, said he would like to see acreage increased.

Janet Ellis, Audubon Legislative Fund, stated the Fund would like to see acreage larger than 40 acres for subdivision. HB 218 would offer Flathead County residents tools to us in dealing with subdivision reform.

Don Spivey, on his own behalf, said the public interest sections of the bill needed to be rewritten. Mr. Spivey said he approves of the elimination of the occasional sale.

Richard Idler, Bigfork, testified in support of HB 218 suggesting the committee close existing loopholes in current subdivision law.

Opponents' Testimony:

Ted Doney, Montana Dairymen's Association, suggested the 40 acre limitation in HB 218 is too small. The bill does not provide the compromise reform necessary, he said.

Tonia Bloom, Montana League of Women Voter's, noted the bill has some problems. EXHIBIT 46

John Bloomquist, Montana Stockgrower's Association, said that the bill has a number of desirable features, especially in the review process language, but he would not support passing HB 218.

REP. ALVIN ELLIS, HD 84, Red Lodge, stated he appeared as a NO-PONENT to the bill. He indicated HD 84 constituents want subdivision change. The Department of Revenue says that in 100,000 acre parcels of land, there are 75,000 acres with different owners.

Renee Evanoff, Rock Creek, stated each land transaction in Montana needed to be evaluated separately. EXHIBIT 47

Questions From Committee Members and Responses: None

Closing by Sponsor:

REP. BRANDEWIE stated that agriculturists are not the only ones who should consider giving land to their family. He said the need for subdivision reform is now.

Additional Exhibits:

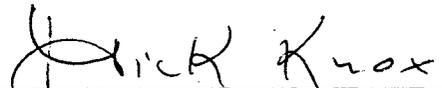
EXHIBIT 46 shows Flathead County total land division, 1973-1992

Certificate of Surveys from Park County, Montana, Survey Numbers 711, 712, 713 and 714 were submitted as testimony. EXHIBITS 47, 48, 49 and 50

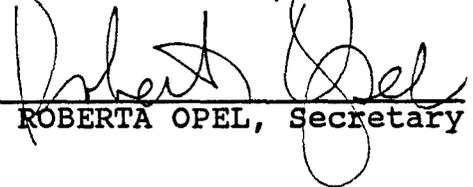
Two additional surveys showing Park County subdivided lands were submitted. EXHIBITS 51 and 52

ADJOURNMENT

Adjournment: The meeting adjourned at 8:15 p.m.



DICK KNOX, Chairman



ROBERTA OPEL, Secretary

DK/ro

HOUSE OF REPRESENTATIVES

Natural Resources COMMITTEE

ROLL CALL

DATE 2/3/92

BILL NO. Submission Bills NUMBER

MOTION:

HB 218, 280, 242 + 408.

ROLL CALL

NAME	AYE	NO
Jody Bird	✓	
Vivian Brooke	✓	
Russ Fagg	✓	
Gary Feland	✓	
Mike Foster	✓	
Bob Gilbert	✓	
Hal Harper	✓	
Scott Orr	✓	
Bob Raney	✓	
Dore Schwinden	✓	
Jay Stovall	✓	
Emily Swanson	✓	
Howard Toole	✓	
Doug Wagner	✓	
Rolph Tunby, Vice Chairman	✓	
Dick Knox, Chairman	✓	



HB 280 - Summary

76-3-102 Statement of Purpose

EXHIBIT ⁵¹
DATE 2-3-95
HB Subdivision Bills

HB 280 removes the following purpose language:

- * to prevent overcrowding of land;
- * to provide adequate light and air;
- * to require development in harmony with the natural environment;
- * to require whenever necessary the appropriate approval of subdivisions be contingent upon a written finding of public interest.

Adds: And to provide simple, clear, and uniform guidelines for review of subdivisions in a manner that protects the rights of property owners. - pg. 2

76-3-103 Definitions

HB 280 removes definitions for:

- * Irregularly shaped tract of land - pg. 4
- * Occasional sale - pg. 4

adds definitions for:

- * Physical and Legal Access - pg. 2
- * Dwelling unit - pg. 3
- * Executive proceedings - pg. 4
- * Major and minor subdivisions - pg. 4
- * Rights of property owners - pg. 6
- * Special subdivision - pg. 6
- * Tract of record - pg. 10
- * Water user entity - pg. 10

modifies definitions for:

- * land surveyors to read registered professional land surveyors - pg. 6
- * subdivisions. - pg. 6 through 10

76-3-105 Violations

HB 280 removes the criminal penalty and adds a civil penalty not to exceed \$5000. - pg. 10

New Section - Actions Against Governing Body

HB 280 adds the right to sue a local government to recover actual damages caused by regulation in excess of legal authority or arbitrary and capricious actions. - pg. 11

76-3-501 Local Subdivision Regulations - pg. 13

HB 280 adds the following: Local government must develop:

- * procedures for expedited review of minor and specials;
- * procedures for providing public notice of subdivision applications and hearings;
- * procedures for public agency review;
- * procedures for application of 76-3-608 review criteria;
- * standards for roads and streets;
- * procedure for water entity review.

Adds the authority for local regulations that provide financial or other positive incentives for developments that accommodate public values. - *pg. 14*

76-3-507 Bonding Requirements

HB 280 adds authority to allow incremental payment for capitol improvements. - *pg. 15*

76-3-603 Contents of Environmental Assessment

HB 280 removes the requirements for specific soils information and community impact report; adds requirements for a summary of probable impacts of the proposed subdivision based on the criteria in 76-3-608; and modifies the requirement for an environmental assessment to major subdivisions only. - *pg. 18*

New Section - Subdivision Review Process

Major Subdivisions

* Preliminary conference with governing body or its designated agent to discuss the application, requirements of chapters 3 and 4 and local government regulations. Submit sketch. Public notice. - *pg.18*

* Preliminary plat, including environmental assessment, to governing body. Governing body determines if special, major, or minor. - *pg. 16*

* Governing body shall, in writing, approve, conditionally approve, or disapprove application within 60 days following complete application. Extensions OK if mutually agreed. - *pg. 19* (Decision must be made no sooner than 21 days - to allow for hearing request - and no later than 10 days after hearing.)

* One informational hearing on application if requested by the subdivider, a person substantially adversely affected, or the governing body within 21 days after complete application is submitted. Hearing at local government's expense. - *pg. 19*

* Public notice - newspaper and certified letter to adjacent landowners. - *pg. 21*

* No irrelevant, immaterial or unduly repetitious evidence at hearing. - *pg. 21*

* Governing body decision within 10 days after hearing. - *pg. 19*

* Review under 76-3-608 primary criteria. - *pg. 22*

* Major subdivisions must also be reviewed for effects on unique cultural or historical resources, environmental or ecological resources, and local services. - pg. 25

* Review authority may use information from the environmental assessment and all other appropriate sources to determine effects on above factors. - pg. 25

* If governing body determines that substantial adverse impacts on unique cultural or historical resources, environmental or ecological resources or local services are probable, the governing body shall schedule a consultation with subdivider and anyone else necessary. Consultation is to develop reasonable mitigation for adverse impacts. - pg. 26

* Governing body may require subdivider to minimize impacts if it justifies its decisions in writing based on substantial credible evidence. Mitigation should not unreasonably restrict landowner's ability to develop land but unmitigated impacts may preclude plat approval. Whenever feasible, mitigation should provide benefits to subdivider. - pg. 26

Review Process for Minor and Special Subdivisions

* Preliminary conference with governing body to discuss the application, requirements of chapter and local government regulations. Submit sketch. Public notice. - pg. 18

* Preliminary plat to governing body to determine if special, major, or minor subdivision. - pg. 16

* Governing body shall, in writing, approve, conditionally approve, or disapprove the application within 35 days following complete application. Extensions OK if mutually agreed. - pg. 19 (Decision must be made no sooner than 15 days - to allow for hearing request - no later than 10 days after hearing)

* One informational hearing if requested by the subdivider or person adversely affected within 15 after application complete; and if the subdivision is located in an area having unique cultural or historical resources, or environmental or ecological resources that are susceptible to substantial adverse effects from subdivision or if subdivision would cause substantial adverse fiscal costs to local government. - pg. 20

* No informational may be held on first minor from a tract of record. - pg. 20

* Local government may assess cost of hearing to requestor. - pg. 20

* Public notice - newspaper and certified letter to adjacent landowners. - pg. 21

* No irrelevant, immaterial or unduly repetitious evidence. - pg. 21

* Decision within 10 days after hearing. - pg. 19

* Review under 76-3-608 primary criteria. - pg. 22

EXHIBIT 1
DATE 2-3-93
JLH 250

* Except for the first minor from a tract of record, if an informational hearing has been held and if the governing body determines that substantial adverse impacts on unique cultural or historical resources, or environmental or ecological resources are probable, the governing body shall schedule a consultation with subdivider and anyone else necessary. Consultation to develop reasonable mitigation for adverse impacts. - pg. 25

* Governing body may require subdivider to minimize impacts if it justifies its decision in writing based on substantial credible evidence. Mitigation should not unreasonably restrict landowner's ability to develop land but unmitigated impacts may preclude plat approval. Whenever feasible, mitigation should provide benefits to subdivider. - pg. 26

* Minor subdivisions in master planed areas are exempt from 76-3-608 review. - pg. 26

76-3-608 Criteria for Local Government Review - pg. 22

HB 280 removes the public interest demonstration and the following criteria from consideration -

- the basis of the need for the subdivision;
- expressed public opinion;
- effects on local services;
- effects on taxation;
- effects on the natural environment;
- effects on wildlife and wildlife habitat; and

HB 280 requires all subdivisions, except for minors in master planned areas, to be reviewed for the following primary criteria:

- * Effect on agricultural
- * Must comply with water supply, sanitation etc.
- * Planned utilities easements
- * Legal and Physical access
- * Location in floodways;
- * Hazards, including unstable slopes, unsuitable soils, and drainage problems.

No hazard review under 76-3-608 for first minor from a tract of record. - pg. 24

New Section - Park Dedication Requirements

HB 280 establishes an acreage based scale to determine park land dedication. - pg. 27

New Section - Payment for Capital Facilities

HB 280 allows that a local government may require a subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public sewer lines, water supply lines, and storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly attributable to the subdivision. - pg. 31

HB 408
 Removes "public interest" requirements. [Sc 1, p. 1]
EXHIBIT
 DATE 2-3-93
 HB Sullivan
 Removes 20 acres.
 [Sc 2, p. 4 (14)]

HB 280
 Removes "public interest" and "harmony with natural environment" requirements. Adds "property right" protections. [Sc 1, p. 2]
 Changes 20 acres to 160 acres. [Sc 2, p. 6]
 Provides numerous exceptions to definition. [p. 7-10, (b)(i) - (xiii)]
 Removes occasional sale. [Repealer]
 [Sc 2, p. 4 and Sc 20, p. 37]
 Limits family sale to 1 transfer to each member of agricultural producer's immediate family. [Sc 2, p. 9, (xi)(A)]
 Repeals 76-3-504 and incorporates requirements into 76-3-501. Limits local government regulation to specific issues identified. [Sc 6, p. 12-14]
 Acreage based scale to determine amount of park land dedication. [Sc 14, p. 27-31]
 Removes public interest and all existing review criteria. Specifies the hazards to be evaluated, identifies other primary review criteria and establishes mitigation requirements. [Sc 12, p. 22-27]
 Repeals 76-6-609. Minor defined [Sc 2, p. 4 (12)]
 Expedited review required. [Sc 6, p. 13 (1)(e)]
 No informational hearing for 1st minor from tract of record. [Sc 11, p. 20 (3)(c)] Minors in master planned areas are exempt from 76-3-608. [Sc 12, p. 26 (7)]
 Access required. [Sc 12, p. 23 (3)(d)]
 Legal and physical access defined. [Sc 2, p. 2 (1)]
 Provides for citizen suit against local government. [Sc 4, p. 11]
 Environmental assessment modifications. [Sc 9, p. 17-18]
 Establishes process and criteria for informational hearings. [Sc 11, p. 19-21]
 Agricultural producer defined. [Sc 2, p. 3 (2)]

HB 242
 No change.
 Changes 20 acres to 640 acres. [Sc 1, p. 4 (15)]
 Removes occasional sale. [Sc 1, p. 3 and Sc 3, p. 5]
 Limits family sale to 1 transfer to each member of agricultural producer's immediate family. [Sc 3, p. 5 (1)(b)]
 No change.
 No change.
 No change.
 No change.
 No change.
 No change.
 Agricultural producer defined. [Sc 1, p. 1 (1)]

HB 218
 No change.
 Changes 20 acres to 40 acres. [Sc 1, p. 4 (15)]
 Removes occasional sale. [Sc 1, p. 3 and Sc 3, p. 5]
 Limits family sale to 1 transfer in each county. [Sc 2, p. 5 (1)(b)]
 Adds property rights protection. [Sc 4, p. 6]
 Adds public notice for subdivision applications and hearings. [Sc 4, p. 8 (9)]
 Acreage based scale to determine amount of park land dedication. [Sc 6, p. 9]
 Removes "basis of need", "expressed public opinion", and "effects on taxation" as review criteria. [Sc 7, p. 12]
 Expedited review required. [Sc 4, p. 7 (2)]
 Limits minor subdivision 76-3-608 review criteria to water quality and public health effects. [Sc 8, p. 13 (5)]
 Prohibits park land dedication for minors. [Sc 6, p. 11 (3)]
 No change.
 Requires consideration of only substantive evidence in public hearing. [Sc 5, p. 8]

Existing Law
 76-3-102
 See handout p. 1.
 76-3-103(15)
 p. 2
 76-3-103(8)
 76-3-207(1)(d)
 p. 1-2
 76-3-207(1)(b)
 76-3-501 p. 3
 76-3-504 p. 4
 76-3-606 p. 4
 76-3-607 p. 5
 76-3-608 p. 6
 76-3-609 p. 6
 Not required.
 Access
 ber

Remove "public interest" requirements. [Sc 1, p. 1]
 No change.
 Changes 20 acres to 640 acres. [Sc 1, p. 4 (15)]
 Removes occasional sale. [Sc 1, p. 3 and Sc 3, p. 5]
 Limits family sale to 1 transfer to each member of agricultural producer's immediate family. [Sc 3, p. 5 (1)(b)]
 No change.
 No change.
 No change.
 No change.
 No change.
 No change.
 Agricultural producer defined. [Sc 1, p. 1 (1)]
 No change.
 Requires consideration of only substantive evidence in public hearing. [Sc 5, p. 8]
 Access required. [Sc 6, p. 9 (3)(d)]
 Limit of 2 public hearings. [Sc 5, p. 8 (5)]

Existing Law	HB 218	HB 242	HB 280	HB 408
76-3-102 See handout p. 1.	No change.	No change.	Removes "public interest" and "harmony with natural environment" requirements. Adds "property right" protections. [Sc 1, p. 2]	Removes "public interest" requirements. [Sc 1, p. 1]
76-3-103(15) p. 2	Changes 20 acres to 40 acres. [Sc 1, p. 4 (15)]	Changes 20 acres to 640 acres. [Sc 1, p. 4 (15)]	Changes 20 acres to 160 acres. [Sc 2, p. 6] Provides numerous exceptions to definition. [p. 7-10, (b)(i) - (xiii)]	Removes 20 acres. [Sc 2, p. 4 (14)]
76-3-103(8) 76-3-207(1)(d) p. 1-2	Removes occasional sale. [Sc 1, p. 3 and Sc 3, p. 5]	Removes occasional sale. [Sc 1, p. 3 and Sc 3, p. 5]	Removes occasional sale. [Repealer] [Sc 2, p. 4 and Sc 20, p. 37]	Removes occasional sale. [Sc 2, p. 3 and Sc 4, p. 6]
76-3-207(1)(b)	Limits family sale to 1 transfer in each county. [Sc 2, p. 5 (1)(b)]	Limits family sale to 1 transfer to each member of agricultural producer's immediate family. [Sc 3, p. 5 (1)(b)]	Limits family sale to 1 transfer to each member of agricultural producer's immediate family. [Sc 2, p. 9, (xi)(A)]	No change.
76-3-501 p. 3 76-3-504 p. 4	Adds property rights protection. [Sc 4, p. 6] Adds public notice for subdivision applications and hearings. [Sc 4, p. 8 (9)]	No change.	Repeals 76-3-504 and incorporates requirements into 76-3-501. Limits local government regulation to specific issues identified. [Sc 6, p. 12-14]	No change.
76-3-606 p. 4 76-3-607 p. 5	Acres based scale to determine amount of park land dedication. [Sc 6, p. 9]	No change.	Acres based scale to determine amount of park land dedication. [Sc 14, p. 27-31]	No change.
76-3-608 p. 6	Removes "basis of need", "expressed public opinion", and "effects on taxation" as review criteria. [Sc 7, p. 12]	No change.	Removes public interest and all existing review criteria. Specifies the hazards to be evaluated, identifies other primary review criteria and establishes mitigation requirements. [Sc 12, p. 22-27]	Removes "public interest", "basis of need" and "expressed public opinion" as review criteria. [Sc 6, p. 8] Identifies other primary review criteria. [Sc 6, p. 9 (3)]
76-3-609 p. 6	Expedited review required. [Sc 4, p. 7 (2)] Limits minor subdivision 76-3-608 review criteria to water quality and public health effects. [Sc 8, p. 13 (5)] Prohibits park land dedication for minors. [Sc 6, p. 11 (3)]	No change.	Repeals 76-6-609. Minor defined [Sc 2, p. 4 (12)] Expedited review required. [Sc 6, p. 13 (1)(a)] No informational hearing for 1st minor from tract of record. [Sc 11, p. 20 (3)(e)] Minors in master planned areas are exempt from 76-3-608. [Sc 12, p. 26 (7)]	No change.
Not required.	No change.	No change.	Access required. [Sc 12, p. 23 (3)(d)] Legal and physical access defined. [Sc 2, p. 2 (1)]	Access required. [Sc 6, p. 9 (3)(d)]
	Requires consideration of only substantive evidence in public hearing. [Sc 5, p. 8]	Agricultural producer defined. [Sc 1, p. 1 (1)]	Provides for citizen suit against local government. [Sc 4, p. 11] Environmental assessment modifications. [Sc 9, p. 17-18] Establishes process and criteria for informational hearings. [Sc 11, p. 19-21] Agricultural producer defined. [Sc 2, p. 3 (2)]	Limit of 2 public hearings. [Sc 5, p. 8 (5)]

EAH:JSC 2
DATE 2-3-93
HB 218, 242, 280, 408

EXHIBIT 3
DATE 2-3-93
HB 'S 280, 242, 408
218

February 3, 1993

Testimony Before Natural Resources Committee
by Karen Fagg

Issue: Subdivision Reform Legislation

Mr. Chairman, members of the committee, for the record my name is Karen Fagg, and I appear before you today representing the Racicot administration.

The Racicot administration does not endorse any one specific bill today, but we do endorse the concept of subdivision reform. We also stand ready to assist this committee and this Legislature in working with the sponsors of the various subdivision reform bills to ensure that a reasonable, responsible bill passes this body for Governor Racicot's signature.

I can assure you that Governor Racicot understands the need for and is prepared to support and sign subdivision reform legislation.

It is time for subdivision reform. Reports indicate that some ninety percent of all land divisions escape local government review. These unreviewed land divisions can result in unsafe roads, unsafe drinking water, improper septic systems, conflicts among neighbors, poor fire protection, unnecessary and unwanted expense to local governments and taxpayers, hidden costs for landowners, unanticipated impacts of local social systems and broken dreams of consumers who find their Big Sky "dream home" is not a dream home at all.

Subdivision reform need not be anti-business legislation. In fact, quite the opposite can be true. Reasonable reforms can in fact be pro-business legislation. Subdivision reform need not be anti-property rights legislation. Again, the opposite can be true. Reasonable reforms can be supportive of property rights.

The goal of subdivision reform must be to protect the consumer, protect private property rights and prevent haphazard, unreviewed subdivisions of land. The goal must also be to ensure a quick, predictable and stable method of reviewing subdivision plans. There is no need for subdivision reform to lead to additional red tape, delays or unnecessary restrictions for landowners, purchasers or developers. In fact, expedited review of minor subdivisions is a concept the Governor supports.

Most of the subdivision reform bills before you share common ideals and language. These shared concepts -- which address occasional sales, family conveyances and the size of unreviewable parcels -- can be a starting point for common ground which can hopefully lead to consensus legislation. For instance, each bill removes occasional sales from the list of exemptions to subdivision reviews. A majority of bills modify the family sale provisions and

acreage under a subdivision definition. These are three central components to subdivision reform and there is the appearance of some agreement -- at least in principle -- on these issues.

We commend the sponsors of each subdivision reform bill and urge them to work with each other, this committee, interest groups as well as the Racicot administration toward legislation which can achieve the goals stated.

TESTIMONY OF JIM RICHARD ON HB 280
representing the
MONTANA WILDLIFE FEDERATION AND MONTANA ASSOCIATION OF PLANNERS

I AM JIM RICHARD. TODAY I AM REPRESENTING THE MONTANA WILDLIFE FEDERATION AND THE MONTANA ASSOCIATION OF PLANNERS.

BOTH ORGANIZATIONS HAVE BEEN INTERESTED IN SUBDIVISION REFORM FOR MANY YEARS.

THE MONTANA WILDLIFE FEDERATION, THE LARGEST CONSERVATION ORGANIZATION IN MONTANA, IS CONCERNED ABOUT THE EFFECTS OF UNPLANNED, UNREGULATED LAND DEVELOPMENT ON WATER QUALITY, FISH AND WILDLIFE HABITAT, AND ON HUNTING AND FISHING ACCESS. THE FEDERATION WANTS AN EFFECTIVE REVIEW AND APPROVAL PROCESS THAT CONSIDERS WILDLIFE AND WILDLIFE HABITAT AND CONSIDERS MEASURES TO MINIMIZE OR MITIGATE IMPACTS ON FISH AND WILDLIFE. IN ADDITION, FEDERATION MEMBERS ARE TAXPAYERS AND WANT LOCAL GOVERNMENT EMPOWERED TO ENSURE THAT LAND DEVELOPMENT RESULTS IN FUNCTIONAL, LIVABLE NEIGHBORHOODS AT A MINIMAL COST TO TAXPAYERS.

THE MONTANA ASSOCIATION OF PLANNERS COMPRISES THE PEOPLE WHO PROVIDE THE PROFESSIONAL AND TECHNICAL ADVICE AND COUNSEL TO LOCAL OFFICIALS REGARDING LAND USE AND COMMUNITY DEVELOPMENT. MANY MEMBERS WORK FOR LOCAL GOVERNMENT AND ARE GIVEN THE RESPONSIBILITY FOR HANDLING THE ADMINISTRATIVE FUNCTIONS UNDER THE MSPA. THE MONTANA ASSOCIATION OF PLANNERS WANTS A SUBDIVISION REVIEW PROCESS THAT FUNCTIONS EFFECTIVELY, ALLOWS ELECTED OFFICIALS TO ENSURE FUNCTIONAL, CONVENIENT COST-EFFECTIVE COMMUNITIES, AND MINIMIZES THE COSTS TO LOCAL TAXPAYERS.

I MIGHT ADD THAT MY OWN EXPERIENCE WITH MONTANA SUBDIVISIONS AND SUBDIVISION LAW GOES BACK 22 YEARS, EVEN TO WORKING WITH THE STATE PLATTING ACT THAT PRECEDED THE MSPA. THROUGH THOSE YEARS, I HAVE DEALT WITH SUBDIVISION REVIEW FROM MANY PERSPECTIVES, INCLUDING WORKING WITH LOCAL GOVERNMENTS TO ADMINISTER REGULATIONS, AND HELPING LAND OWNERS THROUGH THE REVIEW PROCESS.

WE RISE TODAY IN SUPPORT OF SUBDIVISION REFORM. WE WANT TO COMMEND REP GILBERT FOR THE MANY YEARS HE HAS WORKED ON SUBDIVISION LEGISLATION, AND FOR HELPING MAKE REFORM A PUBLIC ISSUE.

HB 280 MAKES SEVERAL POSITIVE MOVES TOWARD SUBDIVISION REFORM. IT

CHANGES THE 20-ACRE DEFINITION TO 160 ACRES, ELIMINATES THE OCCASIONAL SALE EXEMPTION AND LIMITS APPLICATION OF THE FAMILY CONVEYANCE EXEMPTION.

HB 280 IS A MAJOR RE-WRITE OF THE MSPA, AND INCLUDES A NUMBER OF PROVISIONS THAT, IF LEFT UNCHANGED, WOULD MAKE LOCAL GOVERNMENT LESS EFFECTIVE IN ACHIEVING SOUND, COST-EFFECTIVE LAND DEVELOPMENT THAN UNDER THE CURRENT LAW.

1. By moving the exemption sections to the definition of "subdivision" HB 280 deletes the current umbrella language "Unless the method of disposition is adopted for the purpose of evading the chapter...". This language has been essential to allow local government the authority to determine whether an exemption was properly used. Without this or similar language, the exemptions in HB 280 could be used to evade the purpose of the law, and local government would have no authority to prevent abuse.

2. Not only is HB 280 silent on abuse of exemptions, Section 6 contains new exclusionary language that would prevent local government from dealing with attempts to evade the act. To add to this circumstance, Section 4 specifically allows lawsuits against the governing body to recover monetary damages if the subdivider believes a local regulation exceeds the authority of the statute.

3. As a result of the above prohibition against local government's preventing abuse exemptions, four exemptions in HB 280 will be used to create unlimited parcels of any size without review. This circumstance would be worse than the present "occasional sale" exemption, which is at least limited to one time per year:

o the present exemption for a construction mortgage, lien or trust indenture is limited to legitimate financing of a home on the parcel. HB 280 broadens the exemption to any mortgage or lien, and thus, to secure any loan, any person can divide property into any number of parcels if the parcels are to be security for the loan. This exemption alone allows creation of unlimited parcels without review.

o a new exemption for mining allows a person to submit an application for a mining permit (cost: \$100) on a property and then create any number of parcels within that property without review.

o without local government oversight and no limiting exemptions,

a person will be able to create an unlimited number of "cemetery lots" and "reservations of life estate".

Even if the problems with exemptions in HB 280 are remedied, there is little gain if local government cannot conduct an effective review of subdivision proposals.

1. HB 280 repeals 76-3-504 which sets minimum requirements for local subdivision regulations, and Section 6 replaces that language with a limited and exclusionary set of requirements for local regulations.

2. Section 12 deletes the finding of public interest and the 8 criteria as part of the basis of approval. The bill provides 3 general considerations as part of the approval, but with the prohibition against a local government's amplification of the statutory provisions, it is doubtful that a governing body can specifically consider wildlife, habitat, and water quality in its decision to approve or disapprove a subdivision. Minor subdivisions are not subject to even the three criteria.

3. Sections 9 and 12 limit the information that can be used in reviewing a proposed subdivision, which would lessen the accuracy and thoroughness of the review and approval decision.

4. Section 11 greatly restricts the public's right and opportunity to become knowledgeable about a proposal and to participate in decision-making process. Public hearings would be replaced by "informational hearings" that would be held only upon request, and governing body decisions would be made in "executive proceedings." Over the years, public comment has been a vital asset in identifying issues and problems and the means of overcoming those problems, and HB 280 would significantly reduce this benefit.

5. Again, Section 4's broad provisions for lawsuits against the governing body would tend to stifle a proper review.

EXHIBIT 4
DATE 2-3-93
HB 280

THESE ARE FATAL PROBLEMS WITH HB 280 THAT MUST BE CHANGED IF THE BILL IS TO BECOME A POSITIVE TOOL FOR SUBDIVISION REFORM.

MANY OTHER PROVISIONS OF THE BILL CREATE DIFFICULTIES FOR LOCAL GOVERNMENT, AND CHANGING THESE PROVISIONS WOULD BE DESIRABLE.

MWF AND MAP BELIEVE THAT PLACING ALL THE BILLS IN A SUBCOMMITTEE WOULD BE VERY IMPORTANT.

AGAIN, MWF AND MAP COMMEND REP GILBERT FOR HIS LONG EFFORTS TOWARD SUBDIVISION REFORM.

Testimony HB 280

My name is William M. Spilker and I reside at 801 Harrison, Helena, MT. I am a licensed real estate broker and am the co-owner of a real estate brokerage firm here in Helena. I have been involved in real property divisions both as an owner, and as acting as an agent for property owners.

I want you to understand I am appearing on my own behalf, and do not represent any other persons or organizations.

I am here in support of House Bill 280, I have actively followed the legislative process with respect to the Montana Subdivision and Platting act since 1977. Through most of the sessions there was always the biennial effort to eliminate the occasional sale, and gift to the family member exemptions and do away with the 20 acre definition. This was the only focus on subdivision reform, and again this session there is a preponderance of subdivision bills aimed at closing these so called "loopholes", but offer little else for improvement.

If real subdivision reform is to take place it has to encompass additional changes to the act to reduce the subjectivity, eliminate the arbitrary nature in which the act is administered and finally offer a degree of certainty to property owners in the review process.

House bill 280 does eliminate the occasional sale and the 20 acre definition - but it also sets a new tone and direction for subdivision regulation, sets forth specific review criteria and streamlines the review process.

As some examples:

The Tone and Direction are improved by:

1. Change in the intent section
2. Definition of private property rights and that those rights be considered in the process.
3. Require the local government mitigate in the review process.

The Review Criteria are made more objective

1. Eliminating the public interest criteria
2. Eliminating the basis of need
3. Puts control on type of roads that might be required and permits a waiver of standards for areas of minimal vehicular use.
4. Puts specific parameters on what can be considered when creating the first minor from a tract of record.

The Review Process has been improved by:

1. Providing for only one informational hearing on a subdivision
2. Defining the type of evidence which can be considered in a hearing
3. Provides for expedited review of special subdivisions i.e. those in a master planned area.

To me the most significant feature of this Bill is the treatment given to the first five parcels created from a tract of record. The review in this case is very similar to the review one undergoes for an occasional sale or gift in those counties that have adopted evasion criteria. It is a reasonable trade off for the elimination of the occasional sale. Yet the more detailed review remains in place for those larger developments which have greater impact.

I have given a few examples of what I believe Rep. Gilberts bill does. There are other positive features of this Bill. It is a comprehensive bill, and it may not be the perfect bill, but I believe it comes the closest to achieving a reasonable balance in eliminating the so called abuses of the current act and achieving a more streamline process and objective criteria which is sorely lacking in the existing act. I do have 3 small specific suggestions for improvements in the Bill which I would like to have considered in your deliberation.

Rep. Gilbert introduced a similar bill 2 years ago, however when it came out of this committee it was unrecognizable and most of the Bill had been turned 180 degrees from his intent. I hope your body, the House or the Senate will not tamper drastically with what has been set before you.

EXHIBIT 5
DATE 2-3-93
.. HB 280

Amendments:

- ① page 7 delete all after "condominium" line 3 through "unit" line 5.

This is confusing and could lead to an interpretation that any building is a subdivision

76-4 covers this in Health Regulations

- ② page 23 line 12 - delete all after "plat" to the end of line 13.

This becomes way to cumbersome in preparing deeds. Title insurance covers access and access conveyance can be done by plat reference.

- ③ page 23-24 line 24 - delete after "soils" through "areas" on line 1 page 24.

This water table limit is set forth in 76-4 (Health) which is covered in a separate review. The 5 foot designation is too arbitrary when one really wants to deal with the soils characteristics as set forth in the last part of line 1 and line 2 page 7.



EXHIBIT 6
DATE 2-3-93
HB 280

501 N. Sanders, Suite #4 • Helena, Montana 59601 • (406) 442-9666

February 3, 1993
HB280, Gilbert
House Natural Resources

Testimony by Jo Brunner, Executive Director, Montana Water Resources Association

In support of water language, pages 10, 14, 23.

As many of you are aware, Montana Water Resources Association has been working for several sessions for recognition of water user facilities included in the platting process of subdivisions.

We continue to support this and appreciate Representative Gilberts willingness to include our concerns in HB280.

Our concern continues to be the problems that can, and do occur for the water user facilities, the subdividers, and eventually the home, land owners.

Essentially, the water user entities are making available information that will save the developer time and money. In return we ask that, section 5, page 14, [f] lines 7 through 14, recognition of the water user facilities.

Section 12, page 23 of this bill, lists the review criteria for a subdivision proposal. Of that list, information on a, b, c, d, e, f -1 2 & 3, including certain hazard considerations, may be obtained by contacting the water user facility within a proposed subdivision. The degree of information differs with the local.

Perhaps the most important information the developer needs to know is the relationship between owning land that has a right to water delivered, and the feasibility of getting that water delivered. Most irrigation districts and water user organizations now have, through implementation of rules and regulations for their facilities, the ability to deliver to a specific number of acres *divisions*

Let me give you an example of a irrigation district in Missoula that has seen extensive subdivision. The delivery system historically has specific diversions. Now, there are small acreages with the water right, and no means to transport that water to the land. And although most of the homeowners have private wells, the cost of delivery system must still be paid. Financially cumbersome to the homeowner, more than burdensome to the water user facility. Facilities can not be improved, water is lost through leakage, and a constant hassle between the homeowners and the water users.

It is important to our people that the homeowners are aware that there

is a delivery ditch up grade from them; that the maintenance easement isn't available for landscaping into their back yard; no matter how cute a little curved bridge would look over a ditch, its not part of the subdivision, and they ought not to build it, or that the delivery ditch running across the street is not a swimming pool within a subdivision park.

Every year water user entities spend literally thousand of dollars to defend themselves from such cases. And, to my knowledge, the water users have not lost a case. One of the main arguments of such cases is the lack of understanding of property rights, who has a right to what property.

This language does not request any type of approval by the water entity. It simply says that when a water entity is within a proposed subdivision, either partially or totally, and hopefully, adjacent to one, the plat will be reviewed by the water user entity to make sure that all ditches, easements, underground delivery systems are noted.

Any inconvenience to the subdivider in contacting the water user entity is more than offset by having readily available information that will substantially lessen the preliminary work for the subdivider.

Thank you.

EXHIBIT 7
DATE 2-3-93
HB 280

NAME Janet Ellis

ADDRESS _____

HOME PHONE _____ WORK PHONE _____

REPRESENTING Montana Audubon Legislative Fund

APPEARING ON WHICH PROPOSAL? HB 280

DO YOU: SUPPORT OPPOSE _____ AMEND

COMMENTS:

We support this proposal. We do have concerns about the local governments inability to determine if a development is trying to evade the act. We have spoken with Rep. Gilbert specifically about the evasion criteria and the "mortgage, lien or trust indenture" exemption he has in his bill.

We look forward to actively working with this committee to come up with subdivision reform legislation that best serves Montana.

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

EXHIBIT 8
DATE 2-3-93
HB 280

NAME Douglas B. Olson

ADDRESS P.O. Box 1018, Helena, MT

HOME PHONE 443-0207 WORK PHONE 443-4345

REPRESENTING Paradise Valley Coalition

APPEARING ON WHICH PROPOSAL? HB280

DO YOU: SUPPORT OPPOSE AMEND X

COMMENTS:

Please amend definition of what is
subdivision to clarify Atty. General Opinion
Vol. 39 No. 28, July 28, 1981 which held
an area regardless of size containing 2 or more "mobile
homes" constitutes a subdivision. This ^{amend} the
definition of what constitutes a "subdivision"
to limit it to parcels with 2 or more
mobile homes that are available for rent or
lease, (i.e. not those available to family members
or farm workers). In addition, I would
suggest that the Subdivision Act needs
a definition for what constitutes a "mobile home"
versus "modular home". I will submit
proposed amendments to do this tomorrow.

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

EXHIBIT 9

DATE 2-3-93

HB 280

February 3, 1993

TO: House Natural Resources Committee
FROM: Tonia Bloom for the League of Women Voters of Montana
RE: Testimony on HB 280

On behalf of the League of Women Voters of Montana I would like to offer this testimony on HB 280. The League has a long standing commitment to good land use planning and orderly growth and recognizes that these goals will not be possible until the existing subdivision laws are reformed to eliminate the major exemptions, under which most land divisions take place in Montana. The use of these exemptions is so great and so little subdivision activity currently receives review under the law that it is fair to say that for all practical purposes Montana has no subdivision laws. In light of this situation we support a number of provisions in HB 280, but have serious reservations about many of its provisions.

We support HB 280's effort to eliminate the occasional sale, to raise the threshold of the 20 acre exemption and to limit the use of the family conveyance. We have some question about whether the 160 acre exemption proposed in HB 280 is high enough, but believe it is definitely a step in the right direction. We support limiting the family conveyance to agricultural producers, but believe the definition of an agricultural producer as someone "primarily engaged in the production of agricultural products" would be cumbersome to enforce.

With regards to the many other areas of the existing subdivision law which HB 280 modifies or rewrites we have reservations. The Montana subdivision law has not worked badly in those instances where it applies. The problem has been that up to 90% of all subdivisions are exempt from its provisions. We believe it would be far wiser to eliminate the exemptions and leave the basic law alone until it can be seen how it functions when more subdivisions come under its jurisdiction. We believe it is premature to alter the review process when we have yet to really see how it works.

In addition we think that HB 280 goes too far in detailing criteria for local review. In a state as diverse as Montana, with such varied levels and patterns of development, it is probably impossible to write detailed criteria at the state level which will fit every county's needs. The current law has a good balance between state guidelines and local discretion.

We hope that as this committee and the legislature debate the bills before them, that everyone will keep in mind that the problem with the law is the exemptions. Once the state has had a chance to function under a subdivision law that applies to more than a small minority of subdivisions, then it will be possible to assess whether or not changes should be made to the law as a whole.

EXHIBIT 10
DATE 2-3-93
HB 280 - Subdivision
Bills

~~CONFIDENTIAL~~

from: Montana Chapter of the Sierra Club
re: Subdivision reform in the 1993 session of the Montana Legislature

Montana relies on its quality of life to attract visitors and residents, yet allows that quality to be degraded by the proliferation of unreviewed subdivisions. This degradation takes the forms of visual intrusion, negative impacts on wildlife habitat, particularly in riparian zones, winter range, and forested areas. It further extends to soil erosion, degradation of surface and underground waters because of contamination, and to extensive vehicular movement from subdivisions to urban centers where traffic congestion and air pollution result.

Since the Subdivision and Platting Act of 1973 went into effect, the use of its major exemptions have permitted from 91 to 93 percent of subdivided acreages in Gallatin, Missoula and Ravalli counties to escape review. In Gallatin County, this translates into over 108,000 unreviewed acres.

The most commonly used exemption, that for parcels exceeding 20 acres, accounted in the period from 1973 to 1992 for 67.5% of the acreage that was not subject to review in Gallatin County. The occasional sale and gift or sale to family member provisions accounted for the next most frequently used exemptions.

The Montana Chapter of the Sierra Club asserts that the Subdivision and Platting Act of 1973 should be amended to eliminate the 20 acre and the occasional sale exemptions. The family gift or sale provision should be restricted.

CLOSE
AS IN
HB 24

At the same time the Act's requirements for review criteria and for park land within developments should be retained or even strengthened: that impacts on agriculture, local taxes, local services, public health and safety, natural environment, wildlife and wildlife habitats must be considered.

Additionally, the costs of such review should be assessed to developers rather than to county taxpayers; the mechanism could be fee-based or by the establishment of an up-front fund upon which the county would draw. Another option could involve a real estate transfer tax, the proceeds of which would accrue to the county for planning, review, and enforcement of regulations.

Permitting subdivisions to escape review is not in the best interest of Montana businesses, particularly as those who work in those businesses but reside in unreviewed subdivisions come to realize that they may face hidden costs, poor roads, and unreliable ground water while not being accessible to emergency services. Further, the use of exemptions is not to the benefit of a real estate industry and development industry that has any kind of long-term perspective: why should it encourage practices that will give it a poor reputation? And why should the industry encourage or condone practices that will reduce the scope of its future options?

Sherman H. Janke
Sherman H. Janke
Chair, Subdivision Task Force

Idaho Montana Wyoming Oregon Washington Alberta British Columbia

Alliance for the Wild Rockies

127 W. Main St. Suite F Bozeman, MT 59715 (406) 586-0180

EXHIBIT 11

DATE 2-3-93

HB 280

Statement of the Alliance for the Wild Rockies
concerning House Bill 280



- ° The Alliance for the Wild Rockies (AWR) is a regional environmental Network of over 320 grassroots groups and small businesses, and over 3,000 individuals committed to the protection of the core ecosystems and connecting corridors in Montana and the Northern Rockies. Our organization is based in Missoula, and maintains a satellite office in Bozeman, MT. AWR advocates the enactment of the Northern Rockies Ecosystem Protection Act.
- ° The AWR supports efforts to revise the currently outdated subdivision law. The elimination of several unfortunate loopholes will benefit the programs of AWR, the people of Montana, and the continued existence of Montana as the Last Best Place.

No exemptions should be given to review when tracts of land are broken up for the purpose of sale. In addition, much of Montana is currently in the process of being divided and sold. As much as possible, these already platted lands should also be reviewed. The occasional sale exemption should be eliminated. This method of breaking up land only slows the process of filling up Montana's open space. Finally, the traditional family conveyance laws should be tightened so they are less likely to be abused.

The lower limit of review should not be set at 160 acres. This arbitrary figure will simply create a situation where Montana is filled with larger, more expensive subdivision tracts. The review of land being broken up for sale should occur for any acreage size, and for whatever reason it is being broken up.

° Subdivision reform is essential to the continued viability of the endangered species and endangered ecosystems of Montana and the Northern Rockies. Migration of wildlife between the large, core ecosystem areas of the Greater Yellowstone and Greater Glacier/Divide depend on effective corridors between these areas. The efforts of AWR, citizens, and other conservation organizations to protect public land will be essentially for naught if uncontrolled sprawl is continued to be allowed on our private lands.

The skeletons of the corridors between the core ecosystem areas are public land whose habitat effectiveness is in varying degrees of intactness. In most cases, these public lands are currently surrounded by large, open swaths of private land. If this pattern of public and private land is retained, it is thought that our wildlife populations will intermingle, fostering genetic interchange between separated populations. This exchange will help maintain the traditional diversity and numbers of Montana's wildlife.

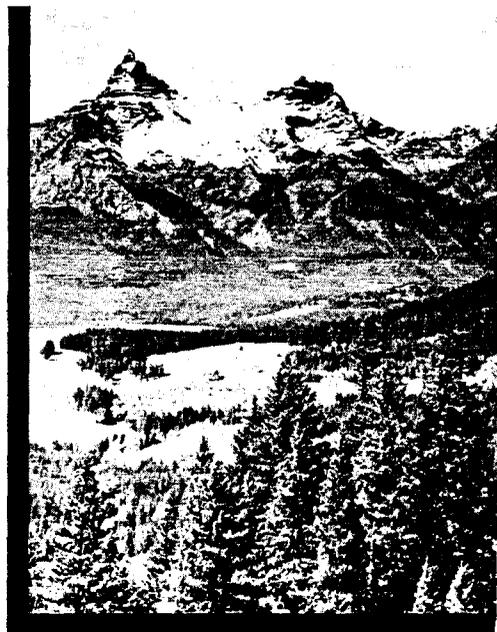
Uncontrolled development surrounding public lands is a nightmare not only to sensitive wildlife species, but to public and private institutions attempting to foster coordinated and sound public lands management. Clearcuts, roads, and oil and gas wells associated with public lands development are often temporary intrusions into essential habitat zones. Subdivision and its related human presence are permanent intrusions.

Thank you for the opportunity to submit comments on this vital issue impacting the future of Montana's wildlife and wildlife habitat.

The Wild Rockies . . . National Treasure or Ecological Holocaust?

The Wild Northern Rockies, last major wildland region south of Canada, contains virtually all the native species that were here at the time of the Lewis & Clark Expedition. The largest remaining tracts of native forest and biodiversity are found here, in-

However, this threatened region is in great danger. The United States Forest Service roadbuilding targets for the Wild Rockies are the highest in the nation, with over 70,000 miles of destructive and costly logging roads planned. Rampant defor-



The Wild Rockies, America's last great wilderness region. Photos by U.S. Forest Service, except gray wolf by Gary Crandall.

Yellowstone & Glacier Ecosystems in peril!

cluding populations of grizzly bear, gray wolf, woodland caribou, anadromous salmon and trout, ancient forests, and a host of lesser-known species. In fact, the largest intact forest ecosystems in the Earth's temperate zones are found in the Wild Rockies.

estation and habitat destruction are occurring as a result of taxpayer-subsidized below-cost logging and massive clearcutting. Extensive habitat fragmentation threatens the world-class wildlife and fisheries and native forests of the Wild Rockies.

Endangered



Grizzly Bear



Gray Wolf



Salmon



The Future?

"... we believe that our land managers and politicians will either pass laws and adopt policies that capture the substance of the Northern Rockies Ecosystem Protection Act or they will preside over the demise of a truly unique, world-class wildland resource."

- letter to Sen. Dale Bumpers, signed by 13 of the nation's top wildlife research scientists.

The Northern Rockies Ecosystem Protection Act

This bill is designed to protect ecosystems and save our remaining roadless wilderness lands. Biologically based, it incorporates the principles of ecosystem contiguity and wildlife linkage corridors. The bill covers the United States portion of the Wild Rockies Bioregion: Montana, Idaho, Wyoming, Oregon, and Washington.

A national approach is taken; this is not a local decision. These public lands belong equally to all Americans, and their disposition has national consequences. All 535 federal elected officials and the American public must be involved.

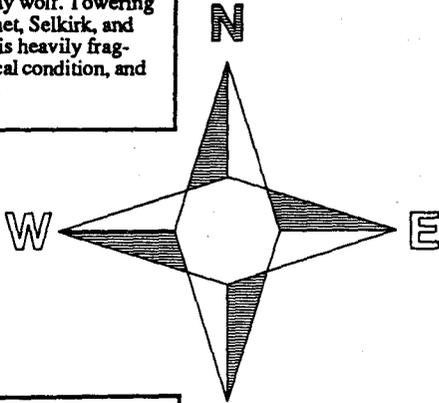
The bill designates Wilderness areas, National Park Study areas, Wild and Scenic Rivers, and biological corridors. It also creates a National Wildland Restoration and Recovery System to restore lands that have been damaged by unwise development. Jobs would be provided removing unneeded roads, stabilizing slopes and restoring native plant and animal diversity.

Drafted by grassroots citizens groups throughout the Rockies, the bill is backed by major conservation organizations, sportsmen's groups, outfitters and guides, business owners, and hundreds of thousands of individuals across America.

The Northern Rockies

Greater Cabinet/Yaak/Selkirk-

The wettest part of the Wild Rockies, this wildland region contains the last major stands of low elevation ancient forests in the region. The Long Canyon area contains the oldest living cedars in the nation. The only caribou herd in the lower 48 roams these mountains, joined by the grizzly and gray wolf. Towering mountains include the Cabinet, Selkirk, and Purcell ranges. However, this heavily fragmented ecosystem is in critical condition, and in urgent need of protection.



Greater Hells Canyon/Wallowa-

The deepest river-carved canyon in the world at over 8,000 feet, the Hells Canyon of the Snake River forms the centerpiece of this rugged region. The ancestral home of the Nez Perce Indians and their famous leader Chief Joseph, the region abounds in cultural and archeological sites. Breathtaking scenery includes the 10,000 foot peaks of the Wallowa and Seven Devils mountains, old growth forests of ponderosa pine and larch, and the desert-like canyon walls themselves. The Imnaha River Chinook salmon are among the largest salmon in the nation. Wildlife includes one of the largest free-roaming elk herds in the nation.

Hells Canyon National Park Study Area

-  *Developed and roaded areas*
-  *Wilderness Areas Designated by this Act*
-  *National Park and Preserves Study Areas*
-  *Wildland Recovery Areas*
-  *Further Planning Areas*
-  *Existing Wilderness and Special Management Areas*
-  *Existing National Parks*

Flathead National Park Study Area

Greater Salmon-

This region is one of the most rugged and wild areas in America, and one of the largest intact forest ecosystems in the temperate zones of the earth. The core is comprised of the Frank Church/River of No Return and Selway-Bitterroot Wilderness areas. Swimming the Salmon and Clearwater river systems, several species of salmon and sea-going trout still make the 900 mile spawning journey from the Pacific Ocean to small tributaries in the high mountain country. Biological and landscape diversity is great, ranging from rocky, dry canyon country to wet forests of ancient cedars many feet in diameter in the Mallard-Larkins and other areas. A wide array of forest-dwelling species reside here, and the gray wolf is making a comeback.

Ecosystem Protection Act

EXHIBIT 11
DATE 2-3-93
KB 280

Greater Glacier/Continental Divide-

The core of this region is Glacier Nat'l Park and the Bob Marshall Wilderness, America's first Wilderness area. This ecosystem includes unique lands such as the Rocky Mountain Front, where grizzlies still roam the prairies and America's largest bighorn sheep herd scales the craggy peaks. The Swan and Mission Mtns contain some of Montana's largest old growth forests and pristine bull trout and westslope cutthroat trout spawning runs. The Rocky Mountain Gray wolf is making a comeback here, and the ecosystem is home to the largest grizzly population in the lower 48.

Greater Yellowstone-

The core of this great region is Yellowstone, the nation's first national park. This world-famous region of geyser basins, towering mountains, abundant wildlife and vast forests contains the headwaters for many of the nation's most famous blue-ribbon trout streams. Small glaciers and permanent snowfields cloak the rugged Teton and Beartooth mountains, with several peaks over 12,000 feet. Diverse habitat ranges from cactus desert lowlands to arctic tundra. Wildlife includes the threatened grizzly bear, the nation's last wild bison herd, trumpeter swans and nearly 35,000 elk.

Designations Made by the Northern Rockies Ecosystem Protection Act

Core Ecosystem Wilderness Areas:
10,811,644 acres

Biological Connecting Corridors:
a) Designated as Wilderness Areas:
3,026,878 acres
b) Designated as Corridor Management:
2,408,371 acres

Sky Island Wilderness:
1,943,001 acres

National Park and Preserve Study:
1,724,522 acres

Wildland Recovery Areas:
516,682 acres

Wild and Scenic Rivers:
1,301 miles

Study Rivers:
154 miles

Biological Connectors-

None of the remaining wildland ecosystems of the Wild Rockies Bioregion are of sufficient size to perpetuate self-sustaining populations of native wildlife and native biological diversity on their own - the ecosystems are dependent on each other. Therefore, a system of biological connecting corridors are protected by the Act. These wildland areas are found between the major ecosystems of the region and are essential for wildlife and plant migration and genetic interchange. They are also some of the most beautiful and wild mountain ranges in the nation, including the Bitterroot, Sapphire, Lost River, Lemhi, and Bridger mountain ranges.

Prepared for the Alliance for the Wild Rockies
Missoula, MT. Funded by the Wild Rockies
Legislative Action Fund, Inc. Data Source
U.S. Forest Service Forest Plans, March 1990

— Represents 50 miles

© Jiri Doshocil, Missoula MT.

Write a letter - support the Northern Rockies Ecosystem Protection Act!

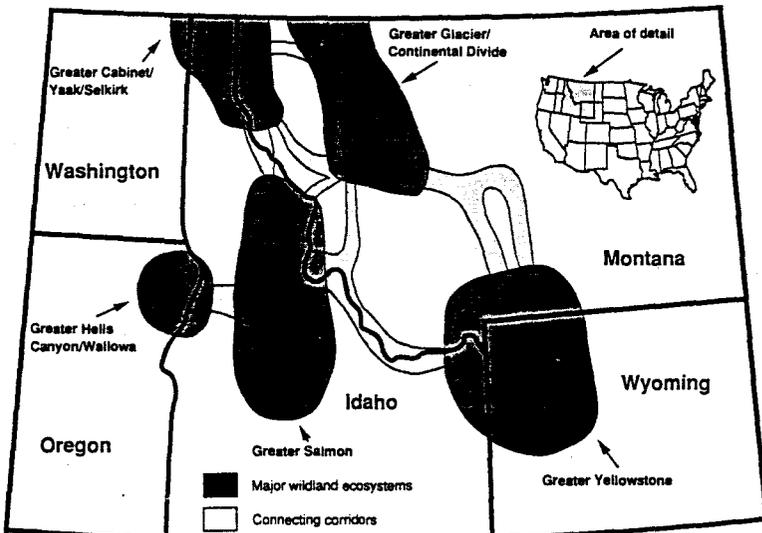
Points to include:

1. Ask your Congressperson to sponsor the bill. These federal wildlands belong to all Americans.
2. The bill is based on ecosystems and wildlife needs, not state boundaries.
3. The bill would preserve old growth forests, wildlife corridors, and biodiversity.
4. The Wildlands Recovery Corps would preserve jobs restoring wildlands.
5. The bill was drafted by grassroots conservationists in the region, and it's been endorsed by over 170 organizations and businesses.

Write To:

Representative _____
 U.S. House of Representatives
 Washington, D.C. 20515

Senator _____
 U.S. Senate
 Washington, D.C. 20510



U.S. portion of the Northern Rockies Bioregion, its five major ecosystems and connecting corridors
 © 1991, Alliance for the Wild Rockies, Missoula, MT.

What Others Have To Say About the Act:

... exactly the kind of visionary legislation we would like to promote and actively support.

- Greenpeace

This legislation offers a comprehensive approach to protecting the best undeveloped lands of the Rockies.

- Idaho Sportsmen's Coalition

This bill is based not on political concerns but on biological concerns and socio-economic concerns.

- Carole King, Grammy Award winner

I believe this sort of bioregional approach to ecosystem integrity is the only way that we can preserve critical wildlife habitat, migration corridors and the headwaters of the region's streams and rivers.

- Rep. Ben Cohen, MT House of Representatives

Clip and Mail Today!

Mike Bader, president
 WILD ROCKIES LEGISLATIVE ACTION FUND
 P.O. Box 8395; Missoula, MT 59807

Here's my contribution of:

___\$25 ___\$50 ___\$75 ___\$100 ___other

Dear Mike:

I know the Wild Rockies Legislative Action Fund is working to protect America's finest remaining wildland treasures, by passing the Northern Rockies Ecosystem Protection Act. I'd like to do my part: keep me informed and on the front lines!

Name _____

Address _____

City _____

State _____

Zip _____

(Sorry! Contributions are not tax-deductable)

EXHIBIT 12
DATE 2-3-93
HB 280

Date: February 3, 1993

Subject: H.B. 280, (A bill revising the Montana Subdivision
Platting Act requirements)

MEMBERS OF THE HOUSE NATURAL RESOURCES COMMITTEE

The above bill (H.B. 280) IS NOT ACCEPTABLE for the
following reasons.

- 1: The exception for an occasional sale is written to allow only agricultural producers to have occasional sales. (Farmers Should Not have preference over all other landowners)
- 2: Agricultural Producers (farmers) could sell any size piece of property without being subject to the act. Then the subdivision that they created would come under the act only if a dwelling was erected upon it. THIS IS NOT RIGHT, The seller (farmer) should not be out of the picture, after creating a subdivision and being paid for the land.
- 3: The bill is totally riddled with words, sentences and paragraphs that require interpretation, thus creating loopholes, for various groups or individuals.

Examples: The words unnecessary, reasonable, unreasonable, excessive, relevant & credible all may mean something different to separate individuals. Can anybody tell me the meaning of the first paragraph in Subsection 2, Section 6.? See Sheet 14, lines 14,15,16.

Alan Reiny
2045 Oro-Fino Gulch
Helena Montana
59601

EXHIBIT 13 PAGE.001
DATE 2-3-93
HB 280



BUTTE BOARD OF REALTORS®

March 26, 1993

Senate Natural Resources Committee
House Natural Resources Committee

Re: SB 261, HB 280, HB 408

The Butte Board of Realtors are unanimous in their opposition to the passage of SB 261, HB 280, and HB 408.

The three bills contain the common thread of infringement of the basic property rights of an individual. The bills impose another layer of government control and its attendant staffing costs at a time of fiscal crisis.

The present subdivision and Platting Act of 1973 is serving our state well and need not be changed to impose the drastic measures of the three bills.

The Butte Board of Realtors ask that you oppose passage of SB 261, HB 280, and HB 408.

Thank you for your support.

Ron Hammar
President, Butte Board of Realtors

RH/kh



Flathead Regional Development Office

723 5th Avenue East - Room 414
Kalispell, Montana 59901

Phone: (406) 752-5300 Ext. 279

February 12, 1993

EXHIBIT 14

DATE 2-3-93

HB 280

Representative Emily Swanson
Natural Resources Committee
Montana House of Representatives
Capitol Station
Helena, MT 59620

RE: Subdivision Reform

Dear Representative Swanson:

This letter is to repeat the fact that Montana needs short and simple subdivision reform. The Fagg bill accomplishes this.

I oppose a major re-write of the law. The Gilbert bill is bad public policy.

Quality of life in Montana and particularly the Flathead Valley are threatened by the existing exemptions in the law.

If you have any questions please call.

Sincerely,

Stephen F. Herbaly
Stephen F. Herbaly
Planning Director

SFH/dh



T. Crawford Enterprises
C₃ Ranches

EXHIBIT 15
DATE 2-3-93
HB Submission bills

February 2, 1993

Chairman Dick Knox
House Natural Resource Committee
Montana House of Representatives
Helena, MT 59620

Dear Representative Knox:

I am writing to you and your committee to express my concerns regarding proposed changes in the Montana Subdivision Law.

Let me point out that I think a revision of the current law will suffice rather than the cumbersome and time consuming business of a complete rewrite. The three salient provisions which I think are absolutely necessary are as follows:

1. deletion of the present 20 acres exemption.
2. elimination of the occasional sales provision.
3. tightening up of the family conveyance provision.

Thank you for your time. It is heartening to know that you're welcome the input of the Montana citizen along with the inevitable chorus of special interests.

Sincerely,

T.H. Crawford

EXHIBIT 16
DATE 2-3-93
HB Subdivision Bills

Susan Bjerke, Helena Montana

I'm an architect practicing here in Helena. These bills that you are reviewing here have an impact on my profession.

[Revision to the subdivision law is extremely important in our state.] Subdivision review cannot continue to be seen as a hurdle to private landowners and developers, nor should it be perceived as regulations to "circumvent". Our subdivision law should be viewed as a means to improve the development that our state is experiencing. Western Montana is being forever altered by developments that had no review for access, drainage, fire protection and the more intangible items such as views and open space that brought the buyers to that development in the first place. [Close the loopholes that allow these 20 acre parcel developments to be subdivided into small parcels without any overall planning.]

My profession thrives in a healthy economic climate and new construction is extremely important to us. I encourage you to ~~make the review process more user-friendly.~~ Montana's legislature has a chance to set the tone for the development that will occur in this state on into the 21st century. I urge you - as a body that represents every Montanan, to change the focus of the subdivision law from how it "impedes" development to how the law can "assist" responsible development. It is an enormous, complex task, and not one to be taken lightly. ^{any}...we are becoming a "magnet" state, development is knocking (sometimes kicking) at our door, the time to act is now.



THE RULES OF REGULATIONS
MUST BE OBJECTIVE & CLEAR FROM THE START OF THE
PROCESS → & THEY CANNOT CHANGE ONCE THE PROCESS
IS UNDERWAY.

EXHIBIT 17
DATE 2-5-93
HB 280

Doug Rand, Architect and Landscape Architect
37 East Main, Bozeman, Montana 59715
(406) 587-8252 & 763-4394

Monday, February 1, 1993

Rep. Dick Knox
Chairman, House Natural
Resources Committee
Capital Station
Helena, Montana 59620

Re: Effective Subdivision Regulation reform

Dear Representative Knox:

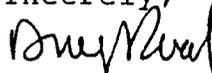
I have enclosed 16 copies of this letter. Could you please distribute them to your Natural Resources Committee before the Feb. 3 hearings.

I urge you to pass legislation which would require counties to review all subdivision of land.

Merely raising the acreage threshold does not provide adequate protection for our relatively cheap lands. Clients of mine from out-of-state have remarked that they "love Montana because it is so cheap, its like free". I can easily imagine people being able to buy 320 acre "lots" in some of our unspoiled areas. Recently a series of ("unreviewed") 20 acre lots have sold at Big Sky for \$890,000.* each.

Let's stop making it so easy to make a mess of our wonderful state.

Sincerely,



Doug Rand

* You might consider a "real-estate transfer tax" on such high priced recreational property to help the state budget problems.

Subdivision Reform Legislation

Testimony on behalf of the
Montana Chapter of the American Fisheries Society
before the
House and Senate Natural Resources Committees
February 3, 1993

EXHIBIT 18
DATE 2-5-93
HB 280

Mr. Chairman and members of the committee, my name is Art Whitney and I am here on behalf of the Montana Chapter of the American Fisheries Society. The American Fisheries Society is an international organization of fisheries and aquatic professionals. In Montana, we have 110 active members across the state, representing both public agencies and private enterprise. Our Society promotes the wise use and management of fisheries and aquatic habitat.

I am not here to specifically support or oppose any of the five or six introduced bills pertaining to subdivision reform. I am here, however, to tell you that the Montana Chapter of the American Fisheries Society supports the concept of reforming subdivision law to remove loopholes in the existing law. These loopholes allow for unreviewed division of Montana land. Exemptions in present law include: any tract greater than 20 acres in size; occasional sales (1 every 12 months); and sale or gift of a parcel to a family member.

Abuse of these exemptions have allowed for the development or subdivision of land with little or no regulatory review. From a fisheries perspective, the lack of review can result in the loss of aquatic habitat and degradation of water quality. Past unreviewed divisions of land have resulted in building and/or development along stream corridors and lake shores. The consequences of this development can include: destabilization of the stream channel as a result of damage to the riparian zone; construction of channel control structures for the protection of streamside homes resulting in damage to the aquatic habitat; degradation to water quality due to the construction of poorly drained substandard roads; and the cultural eutrophication of ponds and lakes.

Regulatory review of land divisions which are presently exempt would act to minimize adverse impacts to Montana's aquatic habitat and water quality. The Montana Chapter of the American Fisheries Society supports subdivision reform legislation that eliminates loopholes by making simple amendments to the existing law.

Statement by Phil Johnson, former botanist with the Montana Department of Agriculture.

The progressive invasion of weeds throughout Montana has had a dramatic impact on the value and function of our lands. The threat of losing more land to this blight increases with each additional acre of disturbance. The hand-in-hand relationship between rural subdivision development and noxious weed invasion can be seen in every corner of the state. The question is not whether rural development contributes to land degradation, but, whether the state can continue to absorb the loss in land productivity that results from removing 10's of thousands of acres from the land base which we rely on for food, fiber and environmental stability.

The percentage of small parcel (<200 acres) landholdings which return tax revenues to the state which were once part of a larger farm/ranch operation is almost non-existent. Land, which one time produced crops or livestock now produce horses and weeds. Not an equitable trade in any respect. An unfortunate byproduct of the current trend to subdivide, is that neighbors who wish to manage their land as a long-term agriculture operation are fearful of peer retaliation if they speak out against rural development. Strong feelings of land stewardship are discarded for an acceptance to maintain private property rights.

The direct cost of noxious weed invasion and establishment is measured in 10's of millions of dollars. Discounting the threat to the environment from indiscriminate use of herbicides, the loss in forage production from desirable plant replacement adds an additional burden to agricultural producers operating on a slim margin. The real shame is that those responsible for land degradation are immune from any degree of accountability for their actions. Land developers and occupants of rural developments simply ignore the implications which arise from weed migration from a poorly maintained road or overgrazed pasture onto adjacent land. It is the farmer or rancher who must bear the burden of weed control; simply as a means to protect their livelihood. What's even more disturbing is that the general taxpayer is being asked to bankroll local and statewide efforts to control noxious weeds!!

It is time that legislators, county commissioners and planning boards take notice of what is happening to our rural landscape and take steps to protect what we now take for granted as a productive, quality environment.

**Testimony to House/Senate Natural Resources Committees on
Proposed Reform of Montana Subdivision Laws**

Dear Members of the Committee,

The unregulated sprawl of subdivision development in Montana is bad for the land, bad for communities, bad for wildlife, and bad for the economy.

My name is Dennis Glick. I live in Park County and work with the Greater Yellowstone Coalition. GYC has been monitoring development trends in Greater Yellowstone for ten years. Of the landscape changes we have documented, perhaps none is more startling than the speed at which subdivisions are gobbling up open space and agricultural lands. In the five counties that make up the Montana portion of the Ecosystem, over half a million acres have been subdivided into tracts of 200 acres or less. In 1991, during a two week period, more than 5,000 acres were subdivided into 20 and 40 acre parcels in Park and Gallatin counties. Many of these subdivisions are located on prime agricultural lands, in critical wildlife habitats, or in areas of high scenic value.

It's not difficult to predict the impact that these developments will have on the future of agriculture. Gallatin county for example, lost 23% of its farmlands to subdivision in the past two decades. Noxious weeds are becoming firmly established on postage stamp ranchettes and are spreading to neighboring farms. And agricultural operations are increasingly becoming the target of complaints by transplants from more urban areas.

Subdivisions seriously threaten our wildlife heritage. Rural private lands encompass winter range essential for the survival of elk, deer and pronghorn. For example, 25% of Yellowstone Park's northern elk herd winters on private lands. Private lands harbor other important habitats such as riparian corridors and wetlands. Sixty-two plants and animals that the Nature Conservancy considers to be "sensitive" species in Greater Yellowstone, are found on private lands. These are the same areas being sliced and diced into rural subdivision.

Unregulated subdivision is also hard on the wallet. Besides the loss agricultural revenue, the fiscal and economic impacts of rural sprawl can be disastrous for communities. Leap frog development characterizing many of these subdivisions requires substantial and perpetual expenditures of scarce tax dollars. This includes the construction, maintenance and plowing of roads, expansion of schools and other financially draining services.

Population growth rates in the counties of Greater Yellowstone are literally some of the highest in the nation. We need to prepare ourselves to effectively manage that growth. Reforming the subdivision law is absolutely essential:

- Remove the 20 acre exemption. Reviews should also occur for platted and unplatted unsold land.
- Remove the occasional sale exemption.
- And tighten the family conveyance provisions.

This and future generations will thank you for doing so.

Sincerely,

Dennis Glick

EXHIBIT 21
DATE 2-3-93
HB 280

February 3, 1992

Members - House Natural Resources Committee
c/o Legislative Message Center
State Capitol
Helena, MT

Dear Natural Resources Committee Member:

This letter is to express my strong support for legislative reform of the subdivision review laws. As a member of the Gallatin County Planning Board charged with developing a Master Plan for Gallatin County I am painfully aware of the irreparable damage being done to the county and to the state by the current lax subdivision review laws. In Gallatin County over 95% of all existing parcels have escaped any subdivision review! In addition, the loophole allowing taxation of parcels over 20 acres as agricultural land is being exploited at enormous cost in lost tax revenue to the counties.

Montana is growing. Gallatin County is growing far faster. While few of us want additional bureaucracy or additional regulation, there are innumerable examples around the country of what we'll be facing without good land-use planning. This is not a problem we can ignore.

I urge you to enact tough new reforms which will give local communities the power to review proposed subdivisions before the damage is done. My preference is for The Swanson Bill, H.B. 242, based on its simplicity, comprehensiveness and fair treatment of the agricultural exemptions regarding occasional sales and family transfers.

Sincerely,

Page Dabney
320 Little Bear Spur
Gallatin Gateway, MT 59730
763-4757

cc: Rep. Dick Knox, Chair
Rep. Jody Bird
Rep. Russ Fagg
Rep. Mike Foster
Rep. Hal Harper
Rep. Bob Raney
Rep. Jay Stovall
Rep. Doug Wagner

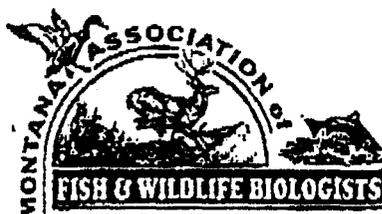
Rep. Ralph Tunby, Vice Chair
Rep. Vivian Brook
Rep. Gary Feland
Rep. Bob Gilbert
Rep. Scott Orr
Rep. Dorey Schwinden
Rep. Howard Toole
Rep. Emily Swanson

431

EXHIBIT 22
 DATE 2-3-93
 HB 280

BOARD OF DIRECTORS:

Gary Olson, Chairman
 Dan Hook, Secretary
 David Pac, Treasurer
 Pat Clancey & Fred Nelson



414 S. Grand, Bozeman, MT 59715

2/3/93

Dear Members of the House Natural Resource Committee:

The Montana Association of Fish and Wildlife Biologists urge your support for simple reforms in existing subdivision legislation, eliminating both the 20 acre and occasional sale exemptions from existing law.

Our members have witnessed large acreages of the State's western intermountain valleys being gobbled up by unreviewed subdivision. The 20 acre exemption has resulted in 20 acre lots with homes scattered across the landscape. The occasional sale exemption has created similar problems with unreviewed development. The end result is the loss of open space which is paramount to agriculture and wildlife. This in turn translates directly to loss of wildlife and fisheries habitat and lower long term productivity of the land for agriculture. Unreviewed subdivision development has heightened game damage problems for those neighbors who are still in agriculture and increased human/wildlife conflicts.

We understand that development of Montana's landscape will continue. However, development by unreviewed subdivision without a vision for the future has significant negative ramifications for maintaining the land's productivity for agriculture, wildlife and fisheries. Ultimately the quality of our way of life is impacted.

For these reasons we urge you to eliminate these two exemptions under the existing subdivision law which account for the majority of the unreviewed subdividing of Montana.

Sincerely,

Gary Olson (FAW)
 Gary Olson
 Chairman

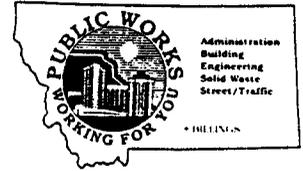


CITY OF BILLINGS

PUBLIC WORKS DEPARTMENT
Administration Division

510 North Broadway-4th Floor
Billings, Montana 59101
Office (406) 657-8230
Fax (406) 657-8252

EXHIBIT 23
DATE 2-3-93
HB 280



The City of Billings supports subdivision bills that will assure that adequate review and approval is required on all divisions of lands. This would include, but not be limited to:

1. Elimination of 20 acre exemption
2. Elimination of occasional sale provisions
3. Appropriate limits on the sale to immediate families
4. Streamlining the review process for all subdivisions
5. Allowing for expedited review of minor subdivisions if they meet the requirements of an adopted master plan
6. Continues the requirement for park dedication
7. Refines the definition of public interest criteria with more local flexibility to comply with local plans such as open space, transportation, zoning, storm drain master plans, utilities master plans, etc.

Rick Meis P.O. Box 5086 Bozeman, MT 59717

February 1, 1993

Rep. Dick Knox, Chair
Natural Resources Committee
Montana State House of Representatives
Helena, MT 59620

Chairman Knox, Members of the Committee,

My name is Rick Meis, and I am from Bozeman. I am submitting this testimony to you in support of reform of Montana's subdivision laws, specifically HB 218, HB242, HB 280, and HB 408 which are before your committee.

To put it in plain language from someone with a love for Montana and a lifelong residency as my only vested interests, it is high (expletive deleted) time we got around to fixin' this thing. Too much good land has been trashed in the name of free enterprise and private property rights.

I grew up in the Bitterroot, and look at it now! Twenty acre Weedettes everywhere! I say no more! I have lived in the Gallatin Valley for a long time now. Take a look around. It's a damn shame ... it's a crime! Why? Bluntly put, it's for the worship of money. Well, let's show some respect for the land and its true values!

All of these bills to some extent eliminate the three major loopholes by which something approaching 90% of the land in our state that has been subdivided has received NO review. If this ain't the epitome of broke, I sure don't know what is. But the question at hand is which of these is the bill to fix it. We must examine carefully the impacts of the various bills on two of these exemptions.

To eliminate these loopholes is good for the counties involved. From a budgeting point of view, tax expenditures could be controlled and stabilized, especially for the control and planning of services, which have become horrendously costly with the sprouting of Weedettes around every corner.

I support Representative Swanson's HB 242 completely.

Occasional Sale

All the proposed House bills, and SB261, eliminate completely the occasional sale exemption. This is good. This must be done. Used to good advantage at times; mostly it can and has grown ugly to be used simply as a loophole to get around sound management. No more! I urge your total support of this elimination.

Acreage Exemption

Also, all the bills change or eliminate the 20 acre exemption. The nemesis. The creator of Weedettes. The perpetrator of knapweed and spurge, the displacer of wildlife, the horror of county services. And on and on. There is nothing that can be said about this exemption that is in the public good. Period.

I support HB 242 and HB 408 for their elimination of this loophole. I am opposed to HB 218 and HB 280 for simply increasing this size of the exemption. To double it for the umteenth time does not solve the problem. We don't need more exemptions. To increase it to 160 acres is still not looking to the future.

p. 2, Testimony of Rick Meis on Subdivision Reform

Rep. Swanson's HB 242 would make it a section. Maybe at that size it can be an exemption, but even then a review of a division to even that size would not hurt to be reviewed given the possibility of future plans for a chunk of land. HB 408 completely eliminates it and this is best. The larger the acreage, the less impactful the need for review on the buyer and seller. The smaller the acreage, the more important it is to have this review.

Family Conveyance

The third exemption is the family conveyance. This is the tough one. It definitely needs to be limited to disallow abuse. I support HB 242 and HB 408 which would allow an exemption for ag producers only to make one conveyance to one family member. This should be acceptable to all who are not simply trying to get around the fact that a whole lot of ag land is being turned over to knapweed and underused horses. A son or daughter who is a partner in the operation should be able to have their home on the place, but simply cutting up land to give the kids a chunk to live on; I'm not sure it is any longer an acceptable practice.

Amend or Rewrite

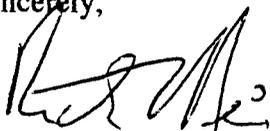
I respect Rep. Gilbert's efforts to rewrite the whole subdivision law, and I am not sure that is not the best approach. However, I am worried that it may open up some new cans of worms. I'm not in a fishin' mood. With all that faces this legislature, I am afraid there is not the time and energy to give a total rewrite of the law the attention it needs and deserves.

Of all the bills introduced on subdivision reform, I guess the one I favor most would be that of Rep. Emily Swanson, HB 242. I would urge your committee to pass only a bill that contains all the provisions of HB242.

After all, the land we are talking about is not ours to squander for some short-term pleasures or the worship of money. No. It is held by us in trust for the future generations of Montanans for whom we should be acting as the best stewards possible in our use and enjoyment of the land.

Thank you for your time.

Sincerely,



Rick Meis
Bozeman, MT

MontPIRG

Montana Public Interest Research Group

360 Corbin Hall □ Missoula, MT 59812 □ (406)243-2907

EXHIBIT 25

DATE 2-3-93

HB 280

2/2/93

Testimony For Subdivision Reform

Dear Chairman Knox and Members of the Committee:

The Montana Public Interest Research Group (MontPIRG) is a non-profit, non-partisan research and advocacy organization located on the University of Montana campus. MontPIRG represents 2500 student members and 1500 community members statewide.

MontPIRG supports four simple changes to the Montana Subdivision law:

1. Streamline the review process for minor subdivisions.
2. Remove the occasional sale exemption.
3. Restrict the family conveyance exemption.
4. Change the definition of a subdivision to any division of land under 640 acres.

We feel these changes are necessary to help bridle the uncontrolled development of our state.

Personally my interest in this issue has grown over the last few years as I watched my rural childhood home in the Bitterroot Valley change into a suburb of Missoula. I have witnessed conflicts over water and roads, over crowded schools and the loss of many agricultural lands as the result of this out of control development. The critical point I am trying to make here is the sheer speed at which this is happening. I am only twenty two years old, but I have witnessed thousands of acres developed with no thought given to any of the cumulative impacts. Our state is changing and our subdivision laws need to change with it.

Thankyou,

Matthew K. Arno

Matthew K. Arno

Students and citizens working for educated consumers, a clean environment and a more responsible government.



PRINTED ON
RECYCLED PAPER

EXHIBIT 26
DATE 2-3-93
HB 280



"Friends Tell Friends"

1020 SOUTH AVENUE WEST

MISSOULA, MONTANA 59801-7996

FAX (406) 728-4660
PHONE (406) 721-4141

**TO: Natural Resources Committee
Helena, MT**

**FROM : Judy Wahlberg, CRS
Broker Associate**

RE: HB 280

Gentleman: I am contacting you with my request that you vote to support HB 280 as it streamlines the review of subdivisions which has been a problem in the past. Although this bill is not perfect, it is supported by the Missoula County Association of Realtors by approval of the Board of Directors at the March 24, 1993 meeting.



Montana Alliance for Progressive Policy

P.O. Box 961 Helena, MT 59624 (406) 443-7283

February 8, 1993

EXHIBIT 27
DATE 2-3-93
HB 280

Representative Dick Knox, Chairman
House Committee on Natural Resources
Montana State Legislature
Helena, MT 59601

Dear Chairman Knox,

Although the Montana Alliance for Progressive Policy has been interested and involved in the issue of subdivision law reform for some time, we did not present testimony before your committee during the recent hearings on that subject. We chose, instead, to listen to the testimony at those hearings and present our comments in this letter. After listening to that testimony and reviewing all of the other information available (such as the study done by Carter Calle for the Montana Audubon Society), we believe that two important points are clear:

1. The exemptions excluding from review subdivisions of land involving parcels of more than 20 acres, family transactions, and occasional sales must be eliminated.

All the information and testimony indicate that these exemptions are being used to avoid review in the vast majority of transactions that subdivide parcels in this state. It is also abundantly clear that this is creating very real problems for both the people and the local governments that are forced to live with the aftermath of these transactions.

There appears to be little serious opposition and no compelling rationale for not eliminating the exemptions for parcels larger than 20 acres or for occasional sales. The occasional sale exemption should be discontinued and only transactions that result in parcels of at least 160 acres (or a quarter section) should be exempt from review. We do not have a problem with retaining language that allows limited family transactions designed to accomplish sound estate planning, so long as the abuse of this exemption is eliminated.

2. The case for revising the existing review process has not been made.

We heard the allegations that subdivision review is a burdensome process, conducted arbitrarily, that has deprived property owners of their legitimate rights. No data was presented to support these allegations. The real estate industry and others making these allegations certainly have the resources to compile data on any problems and abuses that really do exist, so their failure to do so suggests that their allegations are exaggerations. Similarly, the lack of evidence of any significant number of court cases or Attorney General opinion requests suggests the absence of real problems. Property developers and the real estate industry don't lack access to legal remedies, if there really were a problem. In the absence of anything supporting these allegations, the hard data presented by local government officials from Missoula and Gallatin Counties are persuasive.

We heard complaints that the review process is often slow and that those administering it are not helpful at best and incompetent at worst. These complaints may have some merit, but they are largely irrelevant as an argument for changing the review process. Adequate staffing of county planning departments and providing reasonable compensation to attract competent people would do far more to correct these problems than would changing the review process.

We heard that local governments should be limited to considering only certain criteria set by the state in conducting subdivision reviews. This was demanded as being necessary to make the process easier for applicants and especially to avoid arbitrary action on the part of local government. Again, no proof of arbitrariness on the part of local governments was provided. One only needs to consider the radically different conditions and needs of Dawson and Ravalli Counties, for example, to realize that no single set of criteria set by the state would be suitable and adequate statewide.

We heard complaints about the "applause meter" and of how the review process (public involvement in particular) creates obstacles and uncertainty for developers. Again these complaints were unsubstantiated, and those who make them obviously don't put much value on democratic government. Yes, those who want to subdivide a piece of land do have rights. They have the right make their subdivision proposal and to have it fairly reviewed. But their neighbors have rights too, and that includes the right to express their interests and to have those interests considered in evaluating a subdivision proposal. Local government decisions on subdivisions require a balancing of the rights of all parties affected. Given that fact, no meaningful subdivision review process is going to provide certainty for the proponent.

The one suggestion for change of the review process that makes sense at this time is the idea of a streamlined review process for minor subdivisions. We believe that counties should have the option of adopting such streamlined procedures, if it would meet their needs. However, this should not be required by the state, and provisions to insure that a new loophole does not result allowing large subdivisions to be created a few parcels at a time.

The major obvious problems with the existing subdivision law—exclusion from review of subdivisions involving parcels larger than 20 acres, occasional sales, and family transactions—have been allowed to continue for too long. Those problems need to be resolved now. If there are other real problems, the affected parties need to bring the hard data proving the existence of these problems to the legislature for action, but it is time to stop allowing unsubstantiated allegations to stymie resolution of the problems that are real.

Sincerely,



Robert L. Barry



OFFICE OF THE CITY ATTORNEY

435 RYMAN • MISSOULA, MT 59802-4297 • (406) 523-4614

February 3, 1993

93-042

House Natural Resources Committee
Montana State Legislature
Capitol Station
Helena, Montana 59620

EXHIBIT 28
DATE 2-3-93
HB 280

RE: HB'S 218, 242, 280 AND 408

Dear House Natural Resources Committee:

The City of Missoula and the Montana League of Cities and Towns have both adopted resolutions urging the repeal of the current broad family transfer and occasional sale subdivision exemptions.

The use of subdivision exemptions generally results in avoidance of any park land dedication, unpaved roads that contribute to air pollution and construction of residences that are not connected to municipal sanitary sewer systems.

City of Missoula officials would also urge that the State Legislature consider amending Section 76-3-204 MCA to reinstate 40 Montana Attorney General Opinion No. 57 (1984) holding that:

A developer's construction of 48 four-plexes, to be used as rental occupancy buildings, on a tract of land owned by the developer is a "subdivision", and consequently must be submitted for local review under the Subdivision and Platting Act.

The 1985 Montana State Legislature negated this attorney general opinion by amending Section 76-3-204 MCA to its current language. A development with 48 four-plexes would have a substantial impact on all government services and should be subject to subdivision review. Enclosed is a March 25, 1991 memorandum to City officials from a City planner identifying a proposed '60 rental unit project involving several buildings which was not subject to subdivision review. The effect of the 1985 State Legislature's amendments to Section 76-3-204 MCA is to allow a significant and substantive subdivision exemption that allows avoidance of subdivision review for developments that have an obvious and clear impact on government services.

Finally City of Missoula officials have concerns about the unreasonable provisions of Representative Gilbert's HB-280 in Section 4, lines 7-18, page 11 and subsection 7(3), lines 22-25, page 15 and line 1 on page 16 authorizing lawsuits against local government bodies and deleting legislative immunity for local government bodies. These provisions will intimidate local government decision making and tilt the Montana Subdivision and Platting Act in favor of development construction projects.

House Natural Resources Committee
February 3, 1993
Page Two

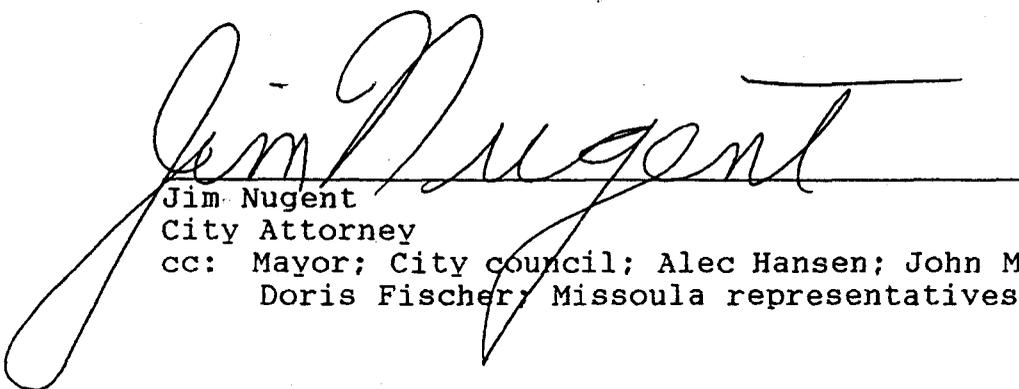
Local government body ELECTED officials, conscientiously endeavor to reasonably and equitably in good faith apply the provisions of the Montana Subdivision and Platting Act. It is quite expensive to defend even meritless lawsuits. Liability insurance coverage generally does not exist for local government land use decisions. Thus, the costs of defending litigation and/or any damage award will be directly borne by the taxpayers.

HB-280 is unreasonable and imposes a chilling effect on applying the "Montana Subdivision and Platting Act" in the public interest. The public interest will be adversely affected by these provisions of HB-280.

If this is to be the new philosophy of the State Legislature, then the State Legislature should likewise authorize lawsuits against the state and remove state legislative immunity with respect to emotional and controversial issues.

Thank you for your consideration of these matters.

Yours truly,



Jim Nugent

City Attorney

cc: Mayor; City council; Alec Hansen; John Merrell; Barb Martens;
Doris Fischer; Missoula representatives; Subdivision file

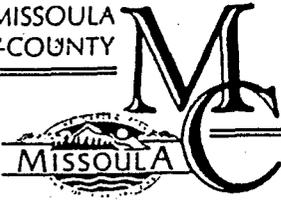


EXHIBIT 28
DATE 2-3-93
HB 280

TO: Jim Nugent, City Attorney

FROM: Barbara Martens, Planner II
Office of Community Development

3/27/91
Barbara Martens

DATE: March 25, 1991

RE: Informational Item: Property located at the southeast corner of the intersection of 39th Street and Hillview Way.

An individual has plans to and has discussed plans with the Office of Community Development Staff to construct two sixteen dwelling unit buildings, one twelve dwelling unit building and two eight dwelling unit buildings at the southeast corner of 39th Street and Hillview Way. This construction project would consist of sixty (60) dwelling units. The developer states that he will retain ownership of all the dwelling units and therefore would not trigger statutory subdivision review.

As you will recall in our previous discussions with Rich Weddle, Attorney for the Department of Commerce, Rich Weddle informed us that Section 76-3-204 MCA would allow for the construction of these dwelling units, without requiring that they be reviewed through the subdivision process, so long as all units are retained in single ownership. This individual has stated directly that he intends to retain all units in single ownership. Other applicable regulations would still apply.

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

The Staff of the Office of Community Development urged and encouraged that the developer consider the benefits of going through the subdivision process prior to constructing the units. Some of these benefits are 1). should the developer ever wish to sell any units, subdivision review will be necessary; and 2). if subdivision review occurs upfront possible delays or problems may be alleviated by addressing standards prior to construction, etc.

cc: Mayor Dan Kemmis
City Council Members
Chuck Stearns - Finance Officer/City Clerk
Mike Kress - Director of the Office of Community Development

RESOLUTION NUMBER _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MISSOULA, MONTANA, SUPPORTING REFORM OF THE MONTANA STATE SUBDIVISION LAWS.

WHEREAS, unreviewed divisions of land in Missoula City and County have caused:

- o Unpaved roads that contribute to air pollution;
- o Longer motor vehicle commutes, which also contribute to air pollution;
- o Extensive unsewered land development, which threatens public health, including the quality of our groundwater resource;
- o Avoided parkland dedication and cash-in-lieu payments to local governments;
- o Inadequate local infrastructure, as illustrated by overburdened fire departments, police departments, and public schools;
- o Higher road maintenance costs;
- o Adverse impacts on agricultural operations;
- o Increased local service costs to taxpayers;
- o Proliferation of noxious weeds and heightened wildfire danger;
- o Increased costs to tax and license-supported state and federal agencies who manage public resources and lands;
- o Adverse impacts to critical wildlife habitat;
- o Pollution of surface water and groundwater systems so essential to human health; and
- o Loss of other significant natural and cultural resources; and

WHEREAS, the Montana Subdivision and Platting Act now authorizes (1) unreviewed divisions of land twenty acres or larger in size, (2) unreviewed occasional sale divisions, and (3) unreviewed family conveyance divisions, pursuant to which the vast majority of land in the State of Montana is divided without public review; and

WHEREAS, local government review of proposed land divisions:

- o Advances the public health, safety and general welfare of the community;
- o Results in a more equitable distribution of development costs;
- o Provides protection to neighboring property owners;
- o Provides consumer protection to property purchasers;
- o Protects and enhances wildlife and conservation resources in critical areas;
- o Promotes economic stability by protecting investments in land development;
- o Protects air and water resources in Missoula City and County as well as in bordering areas;
- o Enables local governments to plan and budget for services in a manner that wisely conserves tax monies;
- o Offers ample opportunity for public participation; and
- o Otherwise furthers the community goals and policies as expressed in adopted Comprehensive Land Use Plans.

NOW, THEREFORE, BE IT RESOLVED that the Missoula City Council urges and supports Montana Subdivision and Platting Act law reforms that would:

- o Eliminate the occasional sale exemption;
- o Eliminate the family conveyance exemption;
- o Require the review of all divisions of land smaller than 640 acres;
- o Require the review of apartment houses, four-plexes and duplexes, and other multi-unit residential developments held under single ownership; and
- o Retain a comprehensive subdivision review process.

The Council further resolves to support appropriate subdivision reform during the 1993 Legislative Session and will seek the support of all Missoula County legislators for such reform.

PASSED AND ADOPTED this _____ day of February, 1993.

ATTEST:

APPROVED:

Charles C. Stearns
Finance Officer/City Clerk

Daniel Kemmis
Mayor

(SEAL)

for J. J. S. 070



House Committee on Natural Resources

February 3, 1993

EXHIBIT 29
DATE 2-3-93
HB 280

Chairman Knox and committee members:

My name is Fern Hart. I am County Commissioner of Missoula County. Thank you for the opportunity to comment on the proposed subdivision legislation.

Since there are several bills both in the House and in the Senate, I would like to discuss our concerns with land divisions in a general way.

We have been confronted with the consequent problems of access, adequate water and sewage besides the responsibility to respond the safety concerns.

The following are our most critical considerations:

We agree that the current subdivision legislation needs revision; however, we are not suggesting a total redraft. We would also ask that some development standards remain the prerogative of the local level of government so that we don't complicate and already complicated process.

Increasing the acreage to be reviewed from less than 20 to less than 120 and removing the occasional sale and gift to family member would give us the opportunity to plan our growth. Exhibit

From 1973 to October of 1992 in Missoula County

123,369 acres were divided by
Certificates of Survey (88%)

10,831 acres were divided by sub-
division review. (12%)

Between the dates of March 13, 1991 and April 17, 1991

Parcel #4 became five parcels
without subdivision review.

We continue to support public review. It might be beneficial to arrange for public review earlier in the process rather than wait until a great amount of work has been done by the developer. Also, in order to streamline the process, we would favor expediting the minor subdivision review and clarifying the eight public interest criteria.

Should the chair decide to establish a sub-committee to work through the various bills, we would be happy to supply any requested information.

EXHIBIT 30
DATE 2-3-93
HE 280

MONTANA ASSOCIATION OF REALTORS
FEBRUARY 3, 1993
BEFORE THE MONTANA LEGISLATURE
SENATE NATURAL RESOURCES COMMITTEE
HOUSE NATURAL RESOURCES COMMITTEE

Generic Subdivision Testimony

Mr. Chairman, members of the Committee.

My name is Tom Hopgood. I am an attorney practicing in Helena. I appear before you this afternoon as the registered lobbyist for the Montana Association of Realtors.

The Montana Association of Realtors is a professional association of nearly 2500 licensed brokers and real estate sales persons in Montana. There are approximately 2500 more licensed brokers and salespersons in the state who are not members of the Association.

I present this generic testimony to you in written form so it can be made part of your record and for you to refer to if that should become necessary in the future.

With 2500 members, there is not unanimity of opinion on the very complicated issue of the Subdivision and Platting Act. There very well may be members of the Association supporting and opposing the same bill. I hope you will not find this confusing. Please keep in mind, these persons appear on their own behalf and not on behalf of the Association. For purposes of the Association's official position on the issue of subdivision, Steve Mandeville, legislative chairman of the Association, or I should be consulted. I am not, nor is the Association, in any way

connected to the organization calling itself the Defenders of Montana.

The official position of the Montana Association of Realtors on subdivision legislation was adopted by its Board of Directors on September 17, 1992.

SUBDIVISION

Over the last three legislative sessions the Montana Association of REALTORS has been involved in the ongoing attempt to develop a new subdivision law which would have the support of all the groups interested in land use in Montana. During those discussions MAR has consistently reiterated our basic position regarding any changes in the law. MAR supports a strong, well-defined subdivision law. The law should be simple, understandable, and streamline the review process. We firmly believe the review criteria must be objective and the public interest criteria must be eliminated before that objectivity can be reached. If objective criteria are clearly established in state law, MAR would be able to support a revision of the existing subdivision law, MAR will support legislation in the 1993 session to establish objective review criteria and eliminate public interest and need as review criteria.

The Association believes this issue should be analyzed from the perspective of the owner of private property and the basic conflict which arises between his right to use his property and the government's control of that use.

As a society, we deal with similar conflicts in other areas on a day-to-day basis. Property rights in connection with property other than real estate are generally clearly defined and well known. As such, few disputes arise and for those that do, there are mechanisms to resolve them without resort to litigation.

EXHIBIT 30
DATE 2-3-93
HB 280

As a society, we economically settle competing interests as we determine such things as the appropriate amount of wheat to grow, cars to manufacture, houses to build, and advertising to produce. The coordination is not done through government direction, but through the cooperation of millions of individuals, each with competing interests, acting in the market place. The market uses prices and profits to signal to individuals what should be produced and in what quantity. But complex and efficient markets require the establishment and maintenance of well-defined property rights; the system would collapse if participants were largely uncertain who could do what with land, products, services, and ideas.

We respectfully submit that the implementation of the Montana Subdivision and Platting Act and its attendant regulations have greatly blurred the rights of private property owners and further, that in Montana, the use and division of land is, by and large, no longer a function of the market place. The Association recognizes that rampant and unplanned development is undesirable. However, we respectfully submit that Montana's Subdivision and Platting Act and its attendant local regulations have proved difficult and have been the source of on-going litigation precisely because of the uncertainty as to property rights they have engendered.

It is our position then that the subdivision process must be made predictable. An individual must be able to submit a subdivision proposal and have an idea what he needs to do and what the outcome will be. As the situation now stands, a developer contacts his attorney, his surveyor, or his realtor, and asks "what do I need to do?" This is a question which cannot be answered.

The reason it cannot be answered is in the review process. It just does not work.

As to the bills being heard this afternoon, the Montana Association stands in opposition to SB 261--it strikes all of the exemptions and does little or nothing to streamline the review process.

The Association also stands in opposition to HB 242, which effectively strikes the exemptions but does absolutely nothing for the review process.

The Association stands in opposition to HB 408, which again strikes the 20 acre and occasional sale exemption, but does little if anything to remedy the problems in the review process.

The Association takes no position on HB 218 or HB 280. We neither support nor oppose these bills.

The Association stands ready to assist this Committee in any way it needs and to participate in any sub-committee work which might be prescribed.

TKH/jb



RICHARD D. IDLER

LAND USE COUNSELOR

EXHIBIT 31

DATE 2-3-93

HB 280

Representative Dick Knox
Chairman, House Natural Resources Committee
Montana House of Representatives
Capitol Station
Helena, Montana, 59620

Re: Proposed Subdivision Bills

Dear Representative Knox;

January 30, '93

in Observation. The present subdivision act in my opinion, but for a few nuances, has been well crafted. These nuances as I'm told were introduced to assure passage of the original bill.

The provisions for exception, exemption and emergency division and sale of property have allowed many to circumvent the original intent of these provisions creating defects land divisions averting compliance with subdivision requirements and review.

It would seem to me that these loopholes could be closed making all land divisions subject to subdivision requirements. If a case need be made for hardship then make sure such provision is drafted in a manner requiring documentation, recordation and a limitation of its use.

I would also suggest that dedication of parkland for minor land divisions be reviewed. Too often such "pocket parks" create a nuisance for the administering agency and don't accomplish their intended purpose in the first place.

I honestly believe that to re-enact a new subdivision act will be time consuming, costly and probably ineffective.

Sincerely,
Richard D. Idler



EXHIBIT 32
DATE 2-3-93
HB 280

February 1, 1993

Representative Dick Knox
Chairman, Natural Resources Committee
MT. House of Representatives
Capitol Station
Helena, MT. 59620

Dear Representative Knox:

Thank you for the opportunity to testify concerning reform of Montana's subdivision law. This issue is of great interest to the 300 members of the Madison-Gallatin Alliance, most of whom live in the Gallatin, Madison or Yellowstone valleys. We believe it is long past time to tighten up our subdivision review rules, and we are hopeful that your committee will craft good reform legislation this term.

Provisions that we particularly need in our subdivision review rules are:

- opportunity for meaningful public participation in the review process
- continuation of the parkland set-aside procedure
- restrictions on the current family conveyance rules
- removal of the 20 acre exemption
- no more occasional sale exemption.

Any new regulations should not place additional burdens on county government, which, in our parts at least, is already strapped.

Our examination of HB 280 causes us great alarm. This bill is too much. While enacting some good provisions, it would do away with meaningful public participation and would enact new exemptions and result in new costs and delays. We urge you to reject this bill. Instead, we need a bill that closes loopholes and allows for orderly subdivision review and rural parkland creation. We ask that your committee compile the best features from each of the several bills under consideration, so that Montana's rural lands are developed in an orderly and fair way.

Sincerely,

Gretchen Rupp

Gretchen Rupp
President, Madison-Gallatin Alliance

EXHIBIT 33
DATE 2-5-93
HB 280

BENNETTS AGENCY
REALTORS

P.O. Box 1066
BIGFORK, MONTANA 59911

February 3, 1993

Natural Resources Committee
House of Representatives
State Capitol Building
Helena, Montana 59620

Dear Committee Members,

I am writing regarding the four subdivision bills before you today.

When the Montana Subdivision and Platting Act was passed in 1974 I was a member of the House of Representatives. Soon after that I became a Realtor in the Flathead Valley. I watched the initial rush of development that took place immediately before the effective date of the present subdivision law. And, I have continued to witness the steady flow of family transfers and occasional sales by developers and, even court-ordered divisions for persons whose intent was to maximize profits by circumventing the law.

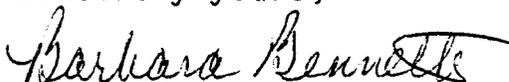
I would prefer to see the existing law modified rather than passage of a whole new subdivision law as proposed by Mr. Gilbert. Either the Swanson Bill (HB242) or the Fagg Bill (HB408) would be my preference. Either of these would help eliminate some of the presently well-used loopholes regarding acreage size and family transfers.

One thing is certain: no matter which bill becomes law, without adequate enforcement it is going to be less effective than you would like to believe. The county planning staffs in both Flathead and Lake Counties are taxed beyond their ability to perform their jobs adequately. The amount of land development that goes on cannot possibly be monitored effectively without additional staffing. I think we need to assess developers more to cover this funding burden.

As a member of the Montana Association of Realtors, Flathead Board of Realtors and the National Association of Realtors I do hold a minority view. However, the people I sell property to are as concerned as I am that we are fouling our own nest here in Montana.

Thank you for helping to create a solution to this sad decline in Montana's character.

Sincerely yours,



Barbara Bennetts

LAKE COUNTY LAND SERVICES

PLANNING AND SANITATION

106 Fourth Avenue East
Polson, Montana 59860-2175
Telephone (406) 883-6211

EXHIBIT 34
DATE 2-3-93
HB 280

November 30, 1992

James Jeffries
1021 S. Fifth W., Apt. B
Missoula, Montana 59801

Re: Land division history in Section 1, T.26N., R.19W., Lake County, Montana.

Dear James:

This section of land in Lake County is an example of numerous land divisions that have been done over time as exemptions from the Montana Subdivision Act. I will try to outline the history and problems associated with these land divisions in response to your letter which I received on November 6.

1. Meadowcreek Estates

In 1974 a survey was recorded which created 20 ten-plus acre tracts in the northeast portion of this section. At that time, these were exempt from public review because Montana law defined subdivision as 10 acres or less. The parcels created were fractions larger than 10 acres.

Since that time, seven of the original lots have been further divided to create 11 additional parcels. Most of these were done as occasional sales, but a few were family transfers.

As such, 31 tracts have been created in this portion of the section on 203 acres; none of the tracts were reviewed as subdivisions under Montana law.

2. Effect on Meadowcreek Estates

a. Roads

The main road leading into this area is known as Red Owl Road. It is not a county road and its legal status is questionable as there are no recorded easements from its intersection with Hwy 83 to the development. The Lake County Title Company views the road as a 'use by right'.

The road is substandard as regards construction, width, surface, and drainage. There is no maintenance on the road except by 'volunteers' who sometimes blade it or remove snow. People in the area have often requested that the county take over the road but the Commissioners will not

take a substandard road due to liability, and the cost of improving and maintaining it.

As a consequence, the road is rough to travel on, often lacks snow removal, and is inconvenient for homeowner access and difficult for emergency access.

b. Land use

The land use and character of development in the area is mixed, and often a source of conflict between neighbors. Homes consist of a mixture of single wide and double-wide trailers of different ages and conditions, some log homes, and some frame construction. Some folks raise animals of various varieties and some carry on auto mechanics type ventures. The Land Services Department has received more complaints about junk cars, accumulated debris on property, and dogs running loose than in any other area of the county.

Several years ago I was invited to a neighborhood meeting in Meadow Creek to help them put together some basic covenants or simple zoning to help manage construction type, general maintenance on lots, and dog control. The neighbors were about split on the need for these measures and we abandoned the effort.

If Meadow Creek would have been reviewed as a subdivision, basic covenants would have been required that address most of the conflicting uses and appearance of development in the area. It is almost impossible to go to an area after the land divisions and a character of development has been established and try to turn things around. As a consequence, property values and general quality of the neighborhood are diminished over time in comparison to other areas that are planned from the beginning.

c. Sanitation

The County Sanitarian says this is a difficult area to oversee and monitor for basic water and sewage disposal needs. There is substantial surface and groundwater throughout the area. It has been difficult to locate suitable drainfield sites. Many of the homeowners utilize surface water for domestic use. This is risky due to the potential for contamination due to the surrounding uses and giardia.

d. Utilities

There is no coordinated power and telephone utility plan in the area. As such, the utility providers give service on a case by case basis which has resulted in extra lines, problems with easements, and higher cost for installation to owners.

e. Fire protection

As mentioned earlier, access into the area is substandard. There is one way in and one way out of the area. If this road is blocked for reasons of fire, tree fall, or other happenstance, emergency vehicles will be restricted and landowners trapped.

The State classifies this area of the Swan as a Wildland Fire Management Zone. A substantial wildfire did occur in this area in the summer of 1986. It is my understanding that it came dangerously close to Meadow Creek. I suggest you talk to the Ferndale Fire Department about this event and the problems they encountered with homesite development in the area.

3. Surrounding land division

The remainder of Section 1 has been broken into 24 tracts (from about 400 acres). None of these have been reviewed as a subdivision and were done as follows:

- 5 tracts created as 40 acre parcels
- 8 tracts created as 20 acre parcels
- 11 tracts of 5 to 10 acres in size created as occasional sales

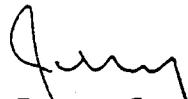
Section 1 is bordered by Flathead County to the north and I do not have information on land divisions in that area. Bordering sections in Lake County have not experienced the intensity of pattern of land division as seen in Section 1, but numerous exemptions have been utilized.

4. Summary

The major burdens associated with development as has occurred in the area of Meadow Creek are that there is inadequate access, lack of continuity and coordination in development leading to conflicting uses and problems between neighbors, concern about water supplies and sewage disposal, and difficulty providing emergency services. If these land divisions were reviewed I believe most of these problems could have been overcome and still allow for a reasonable level of development in the area.

I hope this information is useful in your analysis of the Montana Subdivision law. If you have further questions, please contact me.

Sincerely,


Jerry Sorensen
Planning Director

DATE 2-3-93 ASSESSOR
LENORE A. ROAT
HB 280

COUNTY COMMISSIONERS
MIKE W. HUTCHIN
District One
RAY HARBIN
District Two
GERALD L. NEWGARD
District Three
TREASURER
PATRICIA J. COOK
CLERK AND RECORDER
SURVEYOR
RUTH E. HODGES



SHERIFF AND CORONER
JOE GELDRICH
CLERK OF COURT
KATHERINE E. PEDERSEN
SUPERINTENDENT OF SCHOOLS
JOYCE DECKER WEGNER
COUNTY ATTORNEY
LARRY J. NISTLER
JUSTICE OF THE PEACE
CHUCK WHITSON

LAKE COUNTY

PHONE 406/883-6211 • 106 FOURTH AVENUE EAST • POLSON, MONTANA 59860

February 2, 1993

Chairman Dick Knox
House Natural Resources
Capitol Station
Helena, Montana 59620

Re: Subdivision Reform

Dear Chairman Knox:

The Board of Lake County Commissioners supports simple revision to the existing subdivision law that includes some modification to the review process. We feel H.B. 218 by Representative Brandewie, H.B. 242 by Representative Swanson, and H.B. 408 by Representative Fagg provide a reasonable approach to changes in the law. Possibly these bills could be combined to result in good legislation.

As in many counties, we have seen a majority of land divided through use of exemptions. We have numerous examples of problems that have resulted due to conflicting poor land uses and poor access. We've enclosed a case study of an area in the Swan Valley that shows how the exemptions have caused problems. The review process could have helped us to avoid these problems.

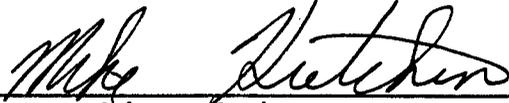
To the extent possible, we support flexibility in review at the local level. We have a good planning board made up of landowners who are business people and farmers. They are fair and reasonable and respectful of property rights of a developer as well as the public's interest in good development. The review process has resulted in better land development. By bringing most land divisions under review, all subdividers will be on a level playing field.

We urge your support of a simple revision to the subdivision law that closes the loopholes, streamlines the review process, and eliminates the parkland requirement for minor subdivisions.

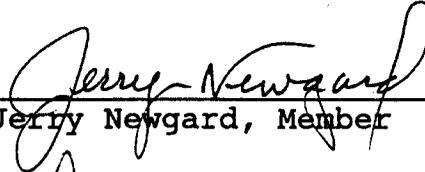
Thank you for consideration on this important issue.

Sincerely,

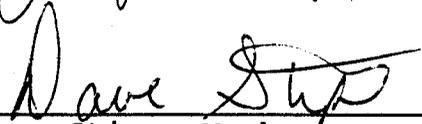
Lake County Board of Commissioners



Mike Hutchin, Chairman



Jerry Newgard, Member



Dave Stipe, Member

CC/JS/le

EXHIBIT 36
DATE 2-3-93
HB 280

MILT CARLSON
375 Grandview Drive
Kalispell, MT 59901

February 11, 1993

House Natural Resources Committee
Representative Dick Knox, Chair

Re: Subdivision Law Reform

As a county member of the Kalispell City-County Planning Board and Zoning Commission and as a concerned citizen in the Flathead Valley, I share with very many other citizens and taxpayers that the Montana Subdivision law needs minor revisions to fulfill the original intent of the law and of the Constitution of the State of Montana.

There is a crying need for revision in four areas:

Removal of the 20-acre exemption is essential.

Removal of the occasional sale provision is essential.

Removal of the family sale provision is essential.

Minor subdivision definition is well revised in SB 261.

Anything beyond these revisions would, in my mind and experience, create more confusion rather than less and would better represent the citizenry of the State in proper balance with those interests that have misused these exemptions under the current law.

Simple revision as outlined above would indicate to the public that concerns of communities and rural areas have indeed been addressed by our Legislature in this regard.

Thank you for your favorable consideration of my request for simple revision (rather than a comprehensive re-writing) both in the House action and in considering SB 261 conveyed to you by the Senate.

Yours very truly,


Milt Carlson

EXHIBIT 37
DATE 2-3-93
HB 280

March 15, 1993

To: Senate Natural Resources Committee
Senator Don Bianchi, Chairman

Subject: Subdivision Reform Legislation

Honorable Chairman and Committee Members--

On March 19th, each of you will be considering Subdivision Reform Legislation. Following the first hearing, as a private citizen and as a member of the Whitefish City/County Planning Board, I wrote to each of you proposing an idealistic solution. It is now time to be practical and pragmatic.

We must have legislative action to correct **identified problems in subdivision regulation--in the area of exemptions**. I have received 3 calls in the last 2 weeks--each addressing how long the caller had to exercise one or another exemption before legislative action changed them. Two addressed the 20 acre exemption and one the Family Conveyance--all were exploitive--all violated the "intent" of those exemptions.

The choices are clear:

You can do nothing as suggested in the Realtor's Ad. That would be disastrous! The suggestion that this reform seriously damages "**Private Property Rights**" is irresponsible and an affront to everyone's intelligence.

You can endorse H.B. 280 as it addresses the current exemptions, *however*, it also introduces new exemptions, limits public participation, restricts local government authority, and introduces additional legal liability for the governmental bodies involved. These additional changes are unnecessary and damaging to the review process, *thus I would urge each of you to NOT ENDORSE* H. B. 280.

You can and SHOULD ENDORSE H.B. 408. It addresses the current exemptions and makes minimal change to the review process. No bill is "perfect" but this bill most closely represents the needed changes and still allows us all to work toward responsible subdivision control across Montana.

Respectfully,

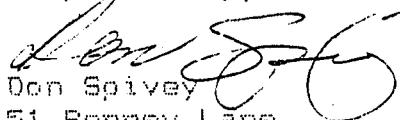

Don Spivey
51 Penney Lane
Columbia Falls, MT, 59912

EXHIBIT 38
DATE 2-3-93
HB 280

March 18, 1993

To: House Natural Resources Committee
Representative Dick Knox, Chairman

Subject: Subdivision Reform Legislation

As I indicated in the attached memo to the Senate it's time to get pragmatic. I was unable to make a special trip to Helena to testify at your hearing on S.B. 261, but I understand it will remain in committee for a while at least.

I think S.B. 261 is an excellent piece of legislation with one exception. The Family Transfer provision which it leaves intact needs to be constrained (like H.B. 408).

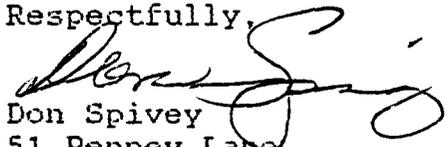
The need for reform is clear. We're currently processing about 20 Certificates of Survey each week in Flathead County. The citizens seem convinced that you're serious about reform and are rushing to exploit the current regulations. If we don't follow through and fix them, there will be nothing left.

This week I had a phone call referred to me from a developer in Colorado. He had read the Realtor's Ad and was concerned that pending legislative actions would eliminate his ability to develop property he owns between Whitefish and Columbia Falls. I dispelled that concern. HOWEVER, in the course of that conversation he volunteered that he had been reviewing Montana Subdivision Regulations and commented, "meeting Montana regulations is 'a piece of cake' compared to meeting those in Colorado.

In our piece of the State we're under increasing pressure from developers across the country and don't need to make the process of dealing with growth any more difficult than it already is. Unfortunately, in spite of its virtues, H.B. 280 does exactly that. Please don't pass that legislation and thereby impose those additional burdens on the process.

Either S.B. 261 or H.B. 408 will solve the problems and leave us with the capability to effectively deal with subdivision activity in Montana.

Respectfully,


Don Spivey
51 Penney Lane
Columbia Falls, MT, 59912
862-0724 257-0724

NAME Valorie Drake
ADDRESS 1477 Hamilton Road, Belgrade, MT 59714
HOME PHONE 388-1888 WORK PHONE 586-1593
REPRESENTING self
APPEARING ON WHICH PROPOSAL? HB 242
DO YOU: SUPPORT _____ OPPOSE _____ AMEND X

COMMENTS:

I support removal of the occasional sale exemption from Montana's Subdivision Laws and Regulations.

I can accept changing the acreage exemption from 20 to 640 acres, however, I would prefer no acreage limit.

I think all divisions of land should be reviewed for compliance with community plans and applicable regulations; therefore, I propose that the Family Conveyance clause allow for gifts to family members, or sales to them, be reviewed also. This does not mean families cannot convey land to other members, but it allows for problems to be spotted and addressed in advance, before such problems cost the taxpayer for unplanned for public services.

Thank you for addressing this very important issue!

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

EXHIBIT 40
DATE 2-3-93
HB 242

February 3, 1993

TO: House Natural Resources Committee
FROM: Tonia Bloom for the League of Women Voters of Montana
RE: In support of HB 242

On behalf of the League of Women Voters of Montana I would like to rise in support of HB 242. The League has long recognized that good land use planning and orderly growth will not be possible in Montana until the existing subdivision laws are reformed to eliminate the major exemptions. In fact, such a small percentage of subdivisions currently are reviewed that it would not be an exaggeration to say that Montana does not have a subdivision law.

The vast majority of the subdivisions in the state are being created using the 20 acre exemption, the occasional sale exemption, the family conveyance exemption -- or some combination of all three exemptions. In Ravalli County, where I live, up to 90% of all subdivisions are essentially exempted from local review. As more and more acres in the rapidly growing areas of Montana are subdivided without review, the costs to local taxpayers are mounting.

HB 242 addresses what everyone knows are the real problems with the law. It would eliminate the occasional sale and ensure that all land divisions which create parcels smaller than 640 acres receive review. It would restrict the family conveyance exemption to a single conveyance to each member of an agricultural producer's immediate family.

It must be emphasized that subjecting land divisions to review is not a means to prevent development or growth. It merely gives local governments the opportunity to ensure that lots have access, that roads are adequate, that fire departments and other services can find and serve homeowners, that houses are not built where they will cause degradation to streams, that irrigation rights are respected, and that homeowners are protected from major hazards. Good subdivision review is not anti-property rights, but rather protects all property owners -- those that sell from potential lawsuits, those that buy from excessive costs and hazards, and above all those many citizens, present and future, whose property taxes end up paying for the consequences of poorly designed development.

The legislative battle to eliminate the exemptions to the subdivision laws has been going on for more than a decade. Each legislative session it

ends in stalemate and failure, shouted down by those who reap short-term profit from the unregulated subdivision of land. This has been touted as the year that Montana lawmakers will finally come to grips with the many serious problems which confront the state. The League of Women Voters hopes that this session legislators will at last have the courage and wisdom to break the pattern of gridlock which has prevented reform of the subdivision laws for so long. We urge your support for HB 242.

EXHIBIT 41
DATE 2-3-93
HB 242

NAME Sara Toubman

ADDRESS 940 Wilder

HOME PHONE 442-1271 WORK PHONE 442-2380

REPRESENTING self

APPEARING ON WHICH PROPOSAL? HB 242

DO YOU: SUPPORT OPPOSE AMEND

COMMENTS:

- Would like no acre limits - i.e. all divisions
would be reviewed.

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

Feb 3-1993

EXHIBIT 42
DATE 2-3-93
HB 242

Dear Mr. Knox,

Would you kindly include my comment below in public comments?

Claim opposed to HB 242. It impedes the sale, subdivision and development of land in Montana.

The impacts of land development are highly overstated.

These kinds of measures infringe property rights

by creating regulatory hoops and penalties.

Land lock-up in Montana is not, as some claim, a boon to the agriculture community. Limiting a farmer's options is not a favor. Land lock-up harks back to a time of lords and ladies in castles, and a serf class. This and other similar laws will create a state where only the rich can own and enjoy a piece of land. The common man is excluded.

Thank you,

Don Burnett 9375 Star Lane Piquette 59711



The Big Sky Country

EXHIBIT 43
DATE 2-3-93
HB 408

MONTANA HOUSE OF REPRESENTATIVES

H. B. 408

2 valid concerns of local governments and environmentalists:

- ① 20 acre exemption;
- ② Occasional Sale exemption

* H.B. 408 takes out these 2 exemptions

2 valid concerns of developers and realtors:

- ① Subjective public interest criteria (§ 76-3-608, MCA)
- ② Multiple public hearings on subdivisions

* H.B. 408 takes out public interest criteria and limits number of public hearings to 2.

H.B. 408 is a balanced bill correcting the areas causing the most concern.

EXHIBIT 44
DATE 2-3-93
HB 408

NAME Valorie Drake

ADDRESS 1477 Hamilton Road, Belgrade, MT 59714

HOME PHONE 388-1888 WORK PHONE 586-1593

REPRESENTING self

APPEARING ON WHICH PROPOSAL? HB 408

DO YOU: SUPPORT _____ OPPOSE _____ AMEND

COMMENTS:

I support ~~most~~ ^{specifically,} aspects of HB408 - removing the occasional sale, the 20-acre exemption, and the public hearing clarification.

I would, however, also remove the family conveyance. While I believe that the ability to give lands to family members for their own homes is good, I also believe such divisions of land should go through the review process for compliance with community plans, allowing for problems to be spotted and addressed in advance, before such problems cause increased costs to taxpayers for unplanned for public services.

Regarding the local government review changes, I believe the additions suggested are good, but that public participation must remain.

Thank you for addressing this important issue!

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

EXHIBIT 45
DATE 2-3-93
HB 218

February 3, 1993

TO: House Natural Resources Committee
FROM: Tonia Bloom for the League of Women Voters of Montana
RE: Testimony on HB 218

On behalf of the League of Women Voters I would like to offer this testimony on HB 218. The League has a long standing commitment to good land use planning and orderly growth and recognizes that these goals will not be possible until the existing subdivision laws are reformed to eliminate the major exemptions, under which most land divisions take place in Montana. However, we believe that this reform must be done without weakening the overall law. Thus we support some of the provisions of HB 218, but have serious reservations about several others.

We support HB 218's elimination of the much abused occasional sale. While we support efforts to eliminate the 20 acre exemption, we believe that the 40 acre threshold which is proposed in HB 218 is far too low. Under a 40 acre exemption a great deal of development would occur without review. Similarly we believe that HB 218 fails to tighten up the family conveyance sufficiently. All landowners, not merely agricultural producers, would be allowed to use this exemption. Combined with the proposed 40 acre exemption it would allow numerous subdivisions to be created without review, just as they are now.

Another provision which concerns us is the exemption of minor subdivisions from the requirement for park dedication or cash in lieu of land. Since the vast majority of development in Montana which is not accomplished through exemptions is in the form of minor subdivisions, the ability of local communities to provide for their current and future park needs would be seriously compromised by this provision.

And finally HB 218 would weaken the overall review provisions of the law by altering the public interest criteria and exempting minor subdivisions from the criteria. We hope that as the committee debates the bills before it that it will keep in mind that the problem with the law is the exemptions. If the price that is paid for eliminating or limiting the exemptions is an overall weakening of the law, then we will all suffer for that mistake.

EXHIBIT 70
DATE 2-3-93
HB 218

FLATHEAD COUNTY TOTAL LAND DIVISION FOR YEARS 1973-1992

CERTIFICATE OF SURVEYS SUBDIVISIONS
TOTAL LOTS CREATED TOTAL ACREAGE DIVIDED
7,783 104,843.26

FINAL PLATS SUBDIVISIONS
TOTAL LOTS CREATED TOTAL ACREAGE DIVIDED
6,358 8,575.29

TOTAL LAND DIVISIONS FOR YEARS 1973-1992
TOTAL LOTS CREATED TOTAL ACREAGE DIVIDED
14,141 113,418.56

FLATHEAD COUNTY TOTAL LAND DIVISION FOR 1961-1973

METES AND BOUNDS SUBDIVISIONS
TOTAL LOTS CREATED TOTAL ACREAGE DIVIDED
3,998 41,315

FINAL PLAT SUBDIVISIONS
TOTAL LOTS CREATED TOTAL ACREAGE DIVIDED
2,655 2,139.6

FLATHEAD COUNTY TOTAL LAND DIVISIONS FOR 1961-1973

TOTAL LOTS CREATED TOTAL ACREAGE DIVIDED
6,653 43,454.60

FLATHEAD COUNTY TOTAL LAND DIVISIONS FOR 1891-1973

FILED AND RECORDED SUBDIVISIONS
TOTAL LOTS CREATED TOTAL ACREAGE DIVIDED
14,258 8,236.9

FINAL PLATS

YEAR	LOTS CREATED	TOTAL ACRES
1973	269	745.56
1974	667	875.58
1975	243	336.04
1976	375	528.62
1977	315	656.25
1978	957	937.00
1979	1055	1103.73
1980	311	507.76
1981	425	497.76
1982	199	191.55
1983	97	81.14
1984	81	70.02
1985	158	152.85
1986	214	333.10
1987	64	75.52
1988	184	281.84
1989	51	197.57
1990	89	201.85
1991	132	175.48
1992	472	626.08
TOTAL	6,358	8,575.29

CITIES FINAL PLATS LAND DIVISION TOTALS FOR YEARS 1973-1992

CITY	LOTS CREATED	TOTAL ACRES
KALISPELL	727	377.33
WHITEFISH	442	307.97
COL. FALLS	208	79.28
TOTAL	1,377	764.58

FLATHEAD LAND DIVISIONS

CERTIFICATE OF SURVEYS

YEAR	TOTAL LOTS CREATED	TOTAL ACRES
1973	236	2,614.06
1974	560	7,528.22
1975	272	3,776.98
1976	352	7,082.95
1977	755	16,871.03
1978	881	13,266.16
1979	839	12,643.16
1980	476	6,684.72
1981	365	6,305.15
1982	519	*
1983	362	*
1984	343	*
1985	272	*
1986	247	4,089.50
1987	221	3,336.88
1988	161	3,074.95
1989	170	2,922.51
1990	153	2,915.23
1991	215	3,820.32
1992	384	7,911.44
TOTAL	**7,783	104,843.26

*TOTAL ACREAGE NOT AVAILABLE.

**THE TOTAL NUMBER DOES NOT INCLUDE OVER 20 ACRE EXEMPTIONS, COURT ORDER AND AGRICULTURAL EXEMPTIONS IN THE YEARS OF 1982 THRU 1985.

EXHIBIT 4b
 2-3-93
 HB 218

EXHIBIT 47
DATE 2-3-93
HB 218

February 3, 1993

Committee on Subdivision Reform
Capitol Station
Helena, Montana 59620

Dear Committee Members:

I am writing to you today to express my concerns over the fervor for subdivision reform. I encourage you and your fellow lawmakers to look carefully at this issue and fully consider that not all landowners fit the picture painted by a number of groups seeking this change. Please give thought to those of us who in good faith are caught in the middle of this issue.

My husband and I have spent our adult lives directing our careers to afford us the opportunity to buy land and live in the state of Montana. We are both full time Park Service employees at Yellowstone National Park. When we moved here we realized our dream would be very hard to accomplish, based on available land and proximity to our workplace. We are not fortunate enough to be 5th or 6th generation Montanan's who inherited large ranches. But, nevertheless we are hardy, and willing in the pioneer spirit, to give up amenities like: good paved roads, electrical service, emergency response, etc. This choice of lifestyle is not for the weak at heart.

Before we were transferred to Yellowstone we had purchased a small piece of land in the Cooke City/Silvergate area and had always dreamed of retiring in our little hand-hewn cabin in a remote corner of Montana. We watched as this dream vanished in the shadow of the proposed Noranda Mine. It has already had a tremendous impact on that area and we were forced to face the fact that the reasons we had purchased this land were being diminished and our reasons for being there were no longer valid. We regretfully sold our property there and started over in the search for the place of our dreams, someplace else in Montana, where we could live out our lives, isolated and peaceful.

We feel so fortunate to have found a 23-acre parcel of land in the Rock Creek area, north of the Tom Miner Basin. We paid it off with vigor and sacrifice in the first year, to be secure in the fact that no one could ever take it away from us. With this land came the harsh reality that: it was on an unimproved Forest Service road; has no utilities; we might or might not find water; we would have to put up with cattle trespass and damage; we would have to snowmobile in in the winter months; protect ourselves from fire and loss; we would have to put up a wildlife compatible fence (at great expense to us, and against our wishes) to keep cattle from destroying our spring and trampling our property. These are not things many people would be willing to tolerate. We made this conscious choice to sacrifice in order to have this beautiful peace of property to build our home on.

We do not feel we should be discriminated against for owning a 20+ acre plot, when we must endure the hardships that go along with it. We could afford this property (our life savings) only because it does not come with all the "frills." We should not be taxed the same as a residential lot with all the amenities.

I am infuriated with the realitors who blatantly tote the ag tax exemption to wealthy out-of-staters who are buying up the state of Montana for all the wrong reasons. I also believe there does need to be reform. But, what about those of us who are trying to build our lives in Montana, for all the right reasons? The pioncer spirit has always been based on the harsh reality of being able to endure hardships. Don't penalize those of us who are trying to live in the best way we can with the land, the animals, and the state of Montana. There must be a way to evaluate each individual situation and govern justly. I too wish to see an end to the subdividing and selling of "the Last Best Place" with only financial gain as the motivation.

Please consider this other side of this difficult issue. Thank you for your time.

Sincerely,

A handwritten signature in cursive script that reads "Renee Evanoff". The signature is written in dark ink and is positioned above the printed name.

Renee Evanoff

Exhibits 47 through 52 are copies of survey maps presented to the House Natural Resources Committee on 2/3/93. These exhibits are stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

DATE 2/3/93

House Bill
SENATE COMMITTEE ON - HB 280, 240, 408, 218

BILLS BEING HEARD TODAY: Subdivision Bills

Name	Representing	Bill No.	Check One	
			Support	Oppose
<i>Art Whitney</i>	<i>Ing Crocker AFS</i>	<i>all 4 Sub. 17</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Edward Q. Jones</i>	<i>RT Ranch</i>	<i>all 4 HB 280</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Hill Erickson</i>	<i>Bear Creek Council Northern Plains Resource Council</i>	<i>HB 242</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Matthew K Arno</i>	<i>MontPIRG</i>	<i>408 242</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Valorie Drake</i>	<i>self</i>	<i>242 408</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Mike Money</i>	<i>SELF</i>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Gerald Z Gundard</i>	<i>Lake County</i>	<i>all</i>	<input checked="" type="checkbox"/>	<i>except sub 17</i>
<i>Herva Simpson</i>	<i>self + L.W.V.</i>	<i>HB 242</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Janet Ellis</i>	<i>MT Audubon</i>	<i>HB 242 408</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Janet Ellis</i>	<i>MT Audubon</i>	<i>HB 218 280</i>	<i>w/amend</i> <input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Brooks Martini</i>	<i>Self</i>	<i>242 280</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Terry Murphy</i>	<i>Self</i>	<i>218 242 408 280</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Kelly Flaherty</i>	<i>self</i>	<i>242 408</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Hugh Zackheim</i>		<i>242 408 280</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Mary Sexton</i>	<i>self</i>	<i>242 408 280</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Lorna Drank</i>	<i>Mt. Farm Bureau</i>	<i>280</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2/3/92

~~House~~ SENATE COMMITTEE ON _____

BILLS BEING HEARD TODAY: Submission Bills / House

Name	Representing	Bill No.	Check One	
			Support	Oppose
SHEEM JANKE	MONTANA CHAPTER SIERRA CLUB	242	-	
Dick Boehmer	3125 Old Pond Rd Missoula Self	242	←	
Jim Erickson	HB 218, 242, 408 280		✓	
Tim Swanson	1716 S Wilson	280		✓
Paul Bray	2485 Arnic @ Bozeman	242	✓	
Steve Powell	Rawliff Co - MACo	280 242	✓	✓
BEBE FITZGERALD	Self	242	✓	
DAN McGEE	Mt. Assn Land Surveyors	280 242 218 408		✓
Penny Koke	Montana City School	242 408 218 280	✓	
Julia Page	Upper Yellowstone Defense Fund	280 242	✓	
Chris Giamelli	Missoula City Council	242	✓	
Annette Cade	Montana City School	242	✓	
Peggy Murray	Self	242 408	✓	✓
FERN HART	Missoula County	242	✓	
Tonia Bloom	League of Women Voters of Montana	242 408 280 218	✓	✓
Joe Frost	CITY OF BOZEMAN	242	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2/3/93

~~House~~
SENATE COMMITTEE ON _____

BILLS BEING HEARD TODAY: Subdivision/Bills House

Name	Representing	Bill No.	Check One	
			Support	Oppose
CARLO CERI	PARK County	242	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dave Smith	Gallatin Co	242	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Susan D. Bjerke-Architect	2905 N-Montana 2905 N-Montana Helena	242 SUBDIVISION!	<input checked="" type="checkbox"/>	<input type="checkbox"/>
RICHARD D. BIER	SELF	218	<input checked="" type="checkbox"/>	<input type="checkbox"/>
LISA BAY	LEWIS & CLAREL CONS. DIST.		<input type="checkbox"/>	<input type="checkbox"/>
Doug Olson	Paradise Valley Cochise	reform	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
MARK SHAPLEY		242	<input checked="" type="checkbox"/>	<input type="checkbox"/>
ROSS PLAMBECK	CITY OF KALISPELL	218 242	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Neal Brown	Self	280	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Andy Skinner	SELF	334	<input type="checkbox"/>	<input type="checkbox"/>
CEDRON JONES	SELF	242	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HURLY CARREY	SELF	242	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Neal Brown	Self	218	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jane Jelinski	Gallatin County	242	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Bill Myers	Ag. Appreciation Assn		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jim Kuter	SELF		<input type="checkbox"/>	<input type="checkbox"/>

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~~HOUSE~~ SENATE COMMITTEE ON _____

BILLS BEING HEARD TODAY: SUB DIVISION

Name	Representing	Bill No.	Check One	
			Support	Oppose
Diane Sands	self	HB 242	X	
Jim Nugent	City of Missoula	HB 208 242	X	X
Kathy Macfield	City of Helena	242 408	X	
Blake Wordal	Franklin Clark County	242 408 280	X	X
Don Spivey	SOLE	280 218 242	X	
Sally Stiles	Lewis & Clark	Senate Bill	X	
Steve Hufbarly	FRDC ^{reintroduced} com	HB 280 2		✓
Glenn McElroy	HEC / Helena a/c Planning Bd	HB 280	X	
Bob Stephens	Mt. Helen Garden Assn	280	X	
John Bloomquist	Mt. Stockyards Assoc.	280		280 242
Brian McVitt	MEIC	280	X	
Larry Ditto	SELF	280		
Wm Spitzer	SELF	242 218 280	X	X
DAVE VANZONEN	40#7	242	✓	
Ed Brunner	MURA	280	X	
Bob Barry	MAPA	242	X	

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House
SENATE COMMITTEE ON Subdivision Bill

BILLS BEING HEARD TODAY: HB 280, 242, 408, 218

Name	Representing	Bill No.	Check One	
			Support	Oppose
Clay Landry	Montana Trout Unlimited	218 280 408 242	X	
Clay Landry	Montana Trout Unlimited	280	with amendments	
Ted J. Dwyer	MT Dairymen's Assn.	280	X	
Ted J. Dwyer	" " "	242, 408, 218		X
Steve Herbaly	ERPO Fishhawk	408		
BARBARA BENNETTS	BENNETTS AGENCY Real Estate	408	X	X
Dennis Olson	NPRC	HB 218 408 242 280	X	
Allen MAY	N/A	218, 242 408, 280	X	with amendments

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