

MINUTES OF THE MEETING  
LOCAL GOVERNMENT COMMITTEE  
50TH LEGISLATIVE SESSION  
HOUSE OF REPRESENTATIVES

February 20, 1987

The meeting of the Local Government Committee was called to order by Chairman Norm Wallin on February 20, 1987, at 12:30 p.m. in Room 312-F of the State Capitol.

ROLL CALL: Roll call was taken with all members present. Lee Heiman, Committee Counsel from the Legislative Council was also present.

CONSIDERATION OF HOUSE BILL 809: Rep. Dennis Iverson, House District 12 and sponsor of the bill, presented handouts to the committee. The first handout was an explanation of HB 809 and how it works (Exhibit 1). The other handout was proposed amendments to the bill which he said were technical amendments (Exhibit 2).

Rep. Iverson stated HB 809 replaces the MT Subdivision and Platting Act. He felt that HB 809 would work much better. The beginning intention was to identify what the public should be protected from and what subdivision law should be required to protect the public. He stated the bill does have an agricultural covenant and some minor exemptions. The bill no longer contains the exemptions for occasional sale, 20-acres, and family conveyance. Three types of subdivisions have been identified: special, minor and major. Rep. Iverson reviewed special subdivisions as outlined in his handout on page 4, section IV; minor subdivisions outlined on page 3, section III; and major subdivisions outlined on page 2, section II.

Rep. Iverson called on Bob Thompson, Environmental Quality Council (EQC), to cover the four major areas of the bill.

Mr. Thompson stated a very important part of the bill is the definition of subdivision. He said they attempted to work out a definition that would satisfy most concerns of the various interest groups but to not deviate substantially from the definition used in the Subdivision and Platting Act. The definition is given on page 1, section I-A of the handout. The current law uses multiple densities in the definition and HB 809 states three or more spaces. Mr. Thompson stated if there is three mobile homes on a piece of property those homes would be within the definition of subdivision. The reason for the wording, longer than one year for workcamp structures, is there is a work camp law and there are instances where work camps are put in for three or six months.

The council had no desire to address those in regards to the subdivision law. Mr. Thompson continued with explaining the definition. Section 9 of the bill deals with the approval of the final plat and that the governing body can set a density of development for which the subdivision proposal is approved.

There are several exemptions in the bill. The intent of the study was to develop a comprehensive subdivision law that provided a fair and quick review of all subdivisions. The exemptions are noncontroversial. The gift to family members, the occasional sale, the 20-acre limit are removed and are the controversial ones that exist in current law.

Another important point is the master planning process. The subdivision process would be much simpler if master planning was common in MT but it does cost money. Mr. Thompson referred the committee to page 59 of the bill which deals with master planning already in the statutes. Subsection 1 and 2 describe a master plan. The entire section is rewritten so it conforms with HB 809. Subsection 4, page 64, speaks of the qualified master plan. One of the requirements in existing law is that the governing body may require conformance with the master plan. The Environmental Quality Council (EQC) and working groups discussed through meetings the need for quality master plans. The components for a master plan are listed on page 65, lines 1-13. The bill attempts to do what a quality master plan would do by taking the public interest criteria listed in the Subdivision and Platting Act and defining them so the governing bodies and subdividers know what the requirements in the community regarding development would be. Section 52, page 65 deals with the current existing statute that requires that the conformance be not with the master plan but with the qualified master plan.

Mr. Thompson stated they came up with critical resource areas and fiscal impact areas in order to deal with the local governments that do not have qualified master plans. Critical resource areas are applied to major and minor subdivisions but would not apply to special subdivisions because a qualified master plan is needed in order to have a special subdivision. Critical resources are defined in HB 809 as those that are unique and susceptible to adverse effects from development. Local governments must attempt to identify critical resources and draw the areas through a rulemaking process described on page 39, section 27 which deals with local government regulations.

Mr. Thompson emphasized that a subdivision proposal in an area that does not have a qualified master plan would only be reviewed for critical resources if all or part of the

subdivision would be located in a critical resource area. If there are no critical resource areas in the county, there would be no review for critical resources that might possibly exist. There is an exception for wildlife and that could be considered in reviewing subdivision proposals. He referred the committee to page 31, subsection 2 (b).

The last topic he elaborated on was capital improvement and capital improvement fees. These fees are currently assessed. The bill attempts to specify on how they are assessed. On page 26, Section 20, speaks of the capital improvement fee. The larger subdivisions generally will be assessed a capital improvement fee in accordance with Section 25--capital improvement program and fee. A minor subdivision may not if it is outside a fiscal impact area.

The process for designated fiscal impact areas is very similar to the process used to identify critical resource areas. It is through local government rule or ordinance and as a result is put in Section 27 which deals with local government regulations.

PROPONENTS: Jim Jensen, Executive Director Montana Environmental Information Center, presented written testimony which included an amendment to the bill. He read from his testimony (Exhibit 3).

Dave Bishop, MT Association of Planners, presented a proposed list of amendments to HB 809 (Exhibit 4) and handed out copies of Montana's Subdivision and Surveying Laws and Regulations. He stated the amendments would clear up some of the technical problems with the new draft of the bill. Jerry Sorensen, Planner from Lake County and Lee Tuout, Planner from Butte-Silver Bow were also present to answer questions.

Robert Holding, MT Association of Realtors, presented written testimony to the committee (Exhibit 5). His testimony included suggested amendments to the bill.

Linda Stroll-Anderson, Lewis and Clark County Commissioner and representing MT Association of Counties, presented written testimony to the committee which included amendments to HB 809 (Exhibit 6).

Lisa Day, representing Jefferson County Commissioners and Planning Board, stated she had worked along with the committee on this process for some time and has been a planner in MT for nine years. They support the bill with some major reservations. The bill effectively diminishes the powers of local government to review subdivisions in a number of ways. Mrs. Day stated under the old law

subdivisions can be reviewed for affects on wildlife. Under the new law this can only be done after designating critical wildlife habitat or having a qualified master plan. Fiscal impacts can be assessed on local government services under the new law only if there are designated fiscal impact areas and capital improvement plans. A review for affect on natural resources can be done only if the county has a designated critical resource area under the new law. Mitigation for affect can be required or impacts on subdivisions under the new law only if there are special standards for mitigation. So in order to conduct the level of subdivision reviews that counties can do right now, they would have to prepare a comprehensive master plan or designate critical wildlife habitat resource areas, designate fiscal impact areas and capital improvement plans. Every county would have to prepare new subdivision regulations and for counties presently having master plans, the plans might have to be amended to make them qualified master plans. Ms. Day estimated the price tag to conduct studies necessary to allow the same level of review as counties have now under the new law would cost anywhere from \$30,000 to \$100,000 per jurisdiction. She stated the effect of the law has to be looked at from that point of view.

Ms. Day stated they would support the effective date of July 1, 1989 which would give the county the ability to assess the fiscal impacts that the bill would have on them and gives the Attorney General time to assess and iron out any ramifications.

Janet Ellison, Audibon Legislative Fund, presented written testimony to the committee (Exhibit 7). She also presented a second handout on the MT Natural Heritage Program which shows what criteria is included in HB 809 to protect wildlife that is rare or imperiled (Exhibit 8).

Richard Parks, President MT Fishing and Floating Outfitters Association, presented his testimony (Exhibit 9) and also a letter of testimony from Sue Johnson, President Bear Creek Council, an affiliate of Northern Plains Resource Council (Exhibit 10).

Richard Kalar, Attorney from Emigrant, MT, passed out an amendment to HB 809 and a witness statement containing his remarks to the committee (Exhibit 11).

Stan Bradshaw, State's Council Trout Unlimited, stated their interest in the bill is water quality. They support the bill with the amendments proposed by the MT Environmental Information Center and because of the cumulative water quality impact provisions which are opposed by the realtors.

Jan Henry, Division of Disaster and Emergency Services, stated they were in support of the amendments provided by MT Association of Planners, specifically the amendment requiring the review of subdivisions for natural hazards. He presented written testimony (Exhibit 12).

Jean Clondike, MT Wildlife Federation, urged the committee to consider wildlife and the critical resources it affects. As population continues to grow, the areas of migrating big game herds tend to be where subdivision development takes place. Critical wintering ranges and calving grounds are adversely affected by this.

Peggy Munoz, MT League of Women Voters, while giving support to HB 809 was concerned that overall the bill would distance citizens from planning decisions. She felt there was not enough time for adequate review of the bill. She was concerned with the shift in priority increasing emphasis on citizen concerns and input in the executive proceedings. The proceedings which are unscheduled would be incompatible with the open meeting laws. The public notification is definitely diminished in the bill. Park revenue is drastically reduced also. She said Section 15, 1 (3) "flood way" should be changed to "flood plain". Another concern was removing authority from citizen representatives on planning boards and delegating a tremendous amount to a subdivision review officer. Also, additional work would be loaded on underfunded and understaffed planning offices. Ms. Munoz said however if the main thrust of HB 809 is to bring all divisions under primary review then it will restore consistency in the review process. She commended the council's work.

Grace Edwards, Yellowstone County Commissioner, urged approval of the bill with its inadequacies. She stated it could not be any more inadequate and hard to work with than the past legislation. The occasional sale, family conveyance, and 20-acres exemptions have been removed from the language and she stated those were what had given them the most problems in Yellowstone County. She said for that reason alone this piece of legislation deserves to be passed. Ms. Edwards commended the widely diverse groups of people who got together on HB 809 and did not know that such a group of people would ever get together and come to some kind of consensus about a piece of legislation again. She stated the local authority remains with the local government. The county commissioners do not need to delegate or designate away any of the power they presently have unless they want to and she supported this.

OPPONENTS: Don Valiton, Powell County Commissioner, stated he was in opposition to the bill as a landowner and as a former legislator. He felt what is being done is an explosion

of rules and regulations in MT. He felt this the reason for MT acquiring an antibusiness image in the eyes of the world and has given MT some serious problems. He objected to the elimination of the occasional sale feature. He stated that government is bulging at the seams because of state mandated programs, rules and regulations. This includes HB 809, an 85 page bill for which the proponents even voiced serious reservations by offering a large amount of amendments. As a county commissioner whose goal is to minimize and neutralize some of these restrictive regulations, he opposed HB 809.

Rick Gustine, MT Association of Registered Land Surveyors, stated the Association has no problems with the surveying or platting requirements but in most cases are the initial contact for citizens who want to do something with their land. Because of this he was speaking for the landowners and developers. He stated the bulk of his testimony in opposition of the bill was stated by proponents. He submitted written testimony (Exhibit 13).

Ken Haag, Director of Public Works in Billings, presented written testimony (Exhibit 14). He stated he opposed HB 809 because there are numerous problems with the bill and did not feel through the amendment process that the problems could be handled.

Ray White, Gallatin County Commissioner, stated he has served over 18 years on various planning and zoning boards and felt he was acquainted with subdivision regulation. He now sits on a commission that reviews subdivisions. He felt a bill of this magnitude should have gone through a statewide review and serious hearings. The bill pretty much removes the public hearing process which he felt wrong. It gives authority to zoning officers and Mr. White stated that discretionary authority should stay with governing bodies. He said regarding the capital improvement program, there are already statutes that allow for some capital improvements such as RID, local improvement districts. In this day, the occasional sale is salvaging a lot of people in the rural segment. He felt it unfair that a family person cannot give something to their family. They have not had that big of a problem with exemptions because they write into their regulations what is allowed on those exemptions.

Mr. White stated he was for planning but master plans are costly and not every county can do one. The Bozeman City/County Planning master plan was revised at a cost of \$20,000 and 18 months of time. This was two years ago and is the third time it has been revised since 1957. Mr. White stated if there is a master plan written, it needs to be revised every three to five years. So once it is started, plan on

putting money into it to keep it working. He stated on page 65, lines 18 and 19--the county or city governing body shall by resolution require plats to conform to the master plan, that courts have determined that zoning takes precedence over any master plan and if that zoning is in place and the master plan does not comply with it, zoning has precedence. The bill does not recognize zoning. Mr. White commented that through most of the bill the word "may" is replaced by "shall" and "must". He did not feel it right to take all the discretion out of decision-making.

Julie Hacker, Missoula Freeholders Association, stated they were in opposition to HB 809. They believe the legislation was being ramrodded into the legislature by EQC. She stated the people of MT cannot afford it and what was needed is a change in attitude where business could all be done in a reasonable manner. The elimination of the family gift, occasional sale and 20-acre exemptions was a devaluation and is taking private property rights from the people. She urged the committee to preserve these exemptions. Ms. Hacker stated business needs to get going in MT but there isn't a need for government regulations telling when, why and how. She believed the people of MT are smart enough to make those decisions for themselves. She asked that private property rights not be destroyed.

Warren Sohlberg, MT Land and Title Association, commented they were one association not contacted and they did not assist with the drafting of the bill. They oppose the bill philosophically because they feel the added provisions compared to the current Subdivision and Platting Act are further encroachments of government on personal property rights and the rights of individual landowners. On a technical standpoint, they oppose it because there are provisions in the bill that are wrong, other provisions that simply won't work and others that create too much of a hardship on the individual landowner especially in terms of making the ability of individual sale of land or ability to use a portion of the land for financing purposes.

Stephen Reis, Landowner, commented that the state has 100 million acres and 800,000 people and yet has stiffer laws than in California. He stated this is one of the reasons why there is not anything going on in the state.

Jim Hutchins, resident of MT, opposed HB 809 on the basic premise that no government entity has the right to control transfer of real property to the extent the bill proposes. The bill is extremely long and complex and contains provisions that the results are unknown if the bill passes.

He gave as an example, page 22, Section 15, subsection 2, any tract of any subdivision that is not a primitive tract (which means any tract of land within two miles of a maintained road) the governing body shall designate the road standards necessary to comply with the physical access requirement. Mr. Hutchins stated that would mean that a piece of property located on a mountainside 1 1/2 miles from any maintained county road, in order to be sold, a road would have to be built to county standards to the property. If county standards should be a 36-foot paved highway, five miles of highway might end up being built to get to the property. This is a possibility as written in the law.

Gerry Ditto, Land Surveyor, Owner and Developer, offered the following amendments: page 21, 1(B), he commented as a land surveyor, he could not make a statement or notation of legal access on a plat. That would have to be done by an attorney. He suggested it be changed or sticken. Page 22, unstable slopes and unsuitable soils be considered, he stated that should be determined by geologists and a correction should be made there. Page 20, under NEW SECTION (a) a certificate of title abstractor. He said anyone could be an abstractor and could actually certify. It needed to be changed or sticken. Page 42, Section 30 correction of recorded plat, he said the governing body has the option of doing that as it is. As written it would only expand the expense. Page 49, Section 43, delves into surveyor law which already exists and obligates the surveyor to do those and is duplication of law.

Rep. Gould asked to be recorded as an opponent on HB 809.

DISCUSSION (OR QUESTIONS) ON HOUSE BILL 809: Rep. Gould gave a situation of having 250 acres put on a 30-year contract for retirement purposes. He said if he needed money to augment his Social Security during retirement and wanted to sell a piece of land once a year he wouldn't be able to do this without having a small review.

Rep. Iverson commented that the land would be considered a minor subdivision and as a minor subdivision there is nothing he would have to do other than get it approved. The requirements would essentially be the same as under current law.

Rep. Hansen asked how extensive the notices were that were put out for the meetings held concerning subdivisions?

Rep. Iverson replied the process was started a year ago and at that time they developed a mailing list that was not all inclusive but included 150 people they identified as interested outside the regular organizations. He apologized



for missing the MT Land and Title Association. Every public interest group they could identify was notified regularly. The attendance at the meetings in Great Falls was excellent and all groups were represented. Public hearings were held in Billings and Missoula. The public hearings involved radio, TV and newspapers and all legislators were notified in the areas prior to the hearings. In Billings, 16 people showed up and in Missoula 2.

Rep. Hansen asked if he felt the bill was too much too soon.

Rep. Iverson commented that could be true. He felt if the bill had been ready in its present stage in October or November, most of the problems would have taken care of themselves.

Rep. Ramirez stated there were so many questions that needed to be asked but because of the amount of time wouldn't be asked. He stated he found the meetings in the abstract are usually not very meaningful. There has to be something concrete before people can come to grips with the issue and give the detail comments that are needed. He asked now that there is a written bill, if it would not be better to go back out and have hearings with the public. This would at least give the time to not have to force the bill through the legislative process.

Rep. Iverson commented there was no question it would be better but because of the amount of money already spent and the staff time involved it would not be possible. He said the process started a year ago, but was not able to be intensified until the last six months. Staffing patterns for the legislative agencies over the next year or two show there is not the resources or money to go out and have the hearings again. The people who spent the 12 and 14 hour days in negotiations do not have the energy to do it again and he certainly did not.

Rep. Bulger asked what he thought of the extended effective date?

Rep. Iverson commented it was one of the recommendations made that he could support and was worth considering. He said county government has some responsibility and part of that is to reflect the will of the people and the responsibility of local government is to ask the people to help finance those things that they want.

In closing, Rep. Iverson answered a few of the concerns addressed by the people who testified. One of the planners commented they opposed the bill because of the power to review and deny without specific written reason. Rep. Iverson stated he could not think of any better testimony in favor

of the bill. That has been one of the problems of subdivision law all along. He emphasized that a division where a person wants to split off a piece from a farm and give it to his children falls into the minor subdivision section. The review is very simple and does not require anything that is not already required by present law.

Rep. Iverson admitted that if a county went ahead and did things right, there would be some additional costs but because of not doing a full blown master plan it would not be that significant.

Concerning wildlife, Rep. Iverson stated the way wildlife is dealt with in the bill is much simpler and easier than in current law. In current law, every subdivision must be reviewed for a list of things and wildlife has to be considered in every case in current law. In addition under current law, it can simply be stated that there is an impact on wildlife and development can be denied on that basis. Under HB 809, the only time wildlife can be considered is in a major subdivision where there is no master plan.

Rep. Iverson read what is currently required for public interest criteria under current law. These public interest criteria apply to every subdivision.

One opponent was concerned of county power being given up to another officer. Rep. Iverson stated this is only in the case where the county decides to designate that authority.

He understood the bill is difficult and complex to deal with in the short amount of time but felt it is critical that it be dealt with.

Chairman Wallin commented that executive action would be taken up on Monday. He felt it important to give the time for other people to contact members of the committee and for committee members to have time to study the bill.

Rep. Iverson suggested that Mr. Thompson identify the places in the bill currently in present law.

Chairman Wallin appointed a subcommittee to work on HB 809. Rep. Dave Brown was appointed chairman, Rep. Gilbert and Rep. Kitselman were appointed as members.

#### EXECUTIVE ACTION

DISPOSITION OF HOUSE BILL 762: Rep. Jan Brown moved to DO PASS 762 and moved to DO PASS the clarification amendments previously submitted. Rep. Brown read the amendments and stated they had been an oversight in drafting. She stated she had spoken with Rep. Donaldson and the original intent of the bill was so two different services were not going

into the same area within the five-year period.

Rep. Wallin asked then that the bill gives the independent contractor five years to operate in the area that has already been annexed?

Rep. Brown stated it allowed the contractor to operate without the city going in and taking up the new places. The independent contractor would have the whole area for the five years unless the services were not being provided adequately and then the people could petition to remove the service.

The question was called on the amendments. The motion carried unanimously.

Rep. Jan Brown moved to DO PASS HB 762 AS AMENDED. The question was called and the motion carried unanimously.

ADJOURNMENT: There being no further business to come before the committee, the meeting was adjourned at 2:35 p.m.

A handwritten signature in cursive script, appearing to read "Norm Wallin", written in dark ink.

Rep. Norm Wallin, Chairman

DAILY ROLL CALL  
 LOCAL GOVERNMENT COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 2/20/87

NAME	PRESENT	ABSENT	EXCUSED
REP. NORM WALLIN, CHAIRMAN	✓		
REP. RAY BRANDEWIE, VICE CHAIRMAN	✓		
REP. BUDD GOULD	✓		
REP. REP. TIMOTHY WHALEN	✓		
REP. PAULA DARKO	✓		
REP. TOM BULGER	✓		
REP. JAN BROWN	✓		
REP. BOB GILBERT	✓		
REP. LARRY GRINDE	✓		
REP. WALTER SALES	✓		
REP. STELLA JEAN HANSEN	✓		
REP. PAUL PISTORIA	✓		
REP. ROBERT HOFFMAN	✓		
REP. LES KITSELMAN	✓		
REP. JACK RAMIREZ	✓		
REP. DAVE BROWN	✓		
REP. CAROLYN SQUIRES	✓		

# STANDING COMMITTEE REPORT

February 20 19 87

## LOCAL GOVERNMENT

Mr. Speaker: We, the committee on

HB 762

report

☒ do pass  
☐ do not pass

☐ be concurred in  
☐ be not concurred in

☒ as amended  
☐ statement of intent attached

Rep. Norm Wallin

Chairman

1. Page 2, line 10.

Following: "if"

Insert: "if"

2. Page 2, line 16.

Following: "or"

Insert: "after the expiration of 5 years,"

3. Page 2, line 17.

Strike: "request"

Insert: "sign a petition requesting"

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House Bill 809

The Proposed Montana Subdivision and Regulation Act  
Rep. Dennis Iverson (EQC)  
February 20, 1987

House Bill 809 proposes the Montana Subdivision Regulation and Development Act, a bill developed from a comprehensive interim study undertaken by the Environmental Quality Council. The bill replaces the Subdivision and Platting Act, which all interest groups participating in the study agreed does not work effectively. A principal objective of the bill is to "protect public health, safety, and welfare in a manner that also protects the rights of property owners." The major features of this bill are:

- a subdivision definition with fewer exemptions than the definition in the Subdivision and Platting Act;
- a subdivision law that provides specific substantive and procedural review for three subdivision types: the major subdivision, the minor subdivision, and the special subdivision;
- primary review for all subdivisions, and primary and secondary review for major and special subdivisions. Some secondary review is available for minor subdivisions, provided they are in designated impact areas.
- an expedited review process for minor and special subdivisions;
- identifying land-use planning concerns up front either by designation of critical resource or fiscal impact areas or by inclusion in qualified master plans.

I. General Framework

A. "Subdivision" means a division of land or land so divided that creates one or more parcels, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision, any residential condominium building, and any area, regardless of its size, that provides or will provide three or more spaces for recreational camping vehicles, mobile homes, or work camp structures that would exist for longer than 1 year, except that an area that would provide fewer than three spaces for these purposes is a subdivision if a density approved pursuant to [section 9] would be exceeded..... [emphasis added]

B. Key exemptions:

1. An agricultural covenant is provided (the farmer or rancher may remove the covenant by complying with the act).
2. A variety of other exemptions remain (generally non-controversial Subdivision and Platting Act exemptions).
3. The occasional sale and family conveyance exemptions, and the 20-acre limit do not exist in the bill.

C. Other concepts:

1. A "contested case hearing by a hearing examiner under 2-4-604" is an alternative to local governments, subdividers and affected citizens. This hearing is an informal contested case hearing.
2. The "subdivision review officer" is the "review authority" for certain minor and special subdivisions.
3. "Critical resource area" and "fiscal impact area" designations, in addition to development of a "qualified master plan", are available to local governments as a means of addressing secondary impact or land-use planning concerns.
4. A "primitive use tract" is a tract used for recreational purposes that is at least two miles from a state, federal, or maintained county road. Only legal access, i.e., access affording ingress and egress for the property owner, is required. Physical access is required to other tracts.

## II. Review for Major Subdivisions

- A. "Major subdivision" means a subdivision that is not a minor or special subdivision.
- B. Process Requirements
  1. A public hearing is required (but only one public hearing).
  2. The governing body decides how the hearing is conducted (e.g., whether it is a joint hearing with the planning board).
  3. Upon petition by the subdivider or an affected citizen, or upon election of the governing body, the hearing must be an informal contested case proceeding (see 2-4-604, MCA).
    - a) the governing body selects the hearing examiner;
    - b) the governing body may charge the petitioner for costs of the hearing.
  4. The governing body, or planning board if designated by the governing body, must make its decision during executive proceedings.
  5. The decision must be made within 60 days, unless the governing body and the subdivider agree to extend the time period.
- C. Substantive Requirements
  1. Primary Review Criteria -- This Review Involves:
    - a) review for accurate mapping and recordation;
    - b) review for water supply, sewage disposal, and solid waste disposal under the Sanitation in Subdivisions Act;
    - c) review to ensure easements are provided for any planned utilities;
    - d) review for access (legal access is required for primitive use tracts and physical access is required for all other subdivided parcels);
    - e) review to ensure lots have building sites outside the floodway of a 100-year flood; and
    - f) review for certain natural hazards (unstable slopes, unsuitable soils, drainage). In general, these hazards must be analyzed with existing data, and mitigation measures may only be required pursuant to clear and specific standards adopted by the local government. Other hazards may be identified by the review authority and made known to the subdivider.
  2. Secondary Review Criteria:
    - a) A capital improvement fee may be assessed under the capital improvement program described in section 25. The fee must consider:
      - whether the subdivision specifically expands the need for capital improvements;
      - whether the fee is reasonably commensurate with the burden imposed by the proposed subdivision;
      - whether the revenue from the fee will be used for capital improvements related to the proposed subdivision;
      - that the fee may not exceed the actual burden or cost of service necessitated by the proposed subdivision; and
      - the anticipated contribution of property taxes from each new tract created by the proposed subdivision.
    - b) A park dedication fee may be assessed, unless the capital improvement fee includes an assessment for parks. The park dedication fee is based on sliding percentages ranging from 10% of the fair market value of unimproved land for parcels one-half acre or smaller to no charge for parcels larger than five acres. Alternatively, the governing body may request a land dedication of equal value from the subdivider.
    - c) The subdivision must conform with a qualified master plan, if one exists. Otherwise, the subdivision must be reviewed for:
      - effects on agricultural and water user interests;
      - effects on wildlife if the subdivision is in any area determined to be critical wildlife habitat as defined in section 22 and designated through local government rulemaking under section 27.
      - effects on other resources within areas designated as critical resource areas for these resources through local government rulemaking (optional; see sections 22 and 27).

Any adverse effects to a critical resource within a critical resource area should be addressed by specific, effective and long-term mitigation. However, these measures should not unreasonably restrict a landowner's ability to develop land and, where feasible, should provide benefits to the developer.

### III. Review for Minor Subdivisions

A. "Minor subdivision" means a subdivision of five or fewer parcels, except that a second minor subdivision from a tract of record as of October 1, 1987, may not be considered a minor subdivision.

#### B. Process Requirements:

1. A subdivision review officer, who is designated by the governing body, makes the decision on most minor subdivision applications. The officer must notify the governing body of his decisions.
2. If the minor subdivision would deviate from standards or involves a request for a variance, the subdivision review officer must make an initial decision which is then subject to review and modification by the governing body during executive proceedings.
3. A public hearing may be held if a minor subdivision is located in a critical resource or fiscal impact area and a petition is received from a citizen who would be adversely affected by the proposal.
4. Upon petition by the subdivider or an affected citizen, or upon election of the governing body, the hearing must be an informal contested case proceeding (see 2-4-604, MCA).
  - a) The governing body selects the hearing examiner.
  - b) The governing body may charge the petitioner for costs of the hearing.
5. The decision must be made within 35 days, unless the governing body and subdivider agree to extend the time period.

#### C. Substantive Requirements

##### 1. Primary Review Criteria -- This Review Involves:

- a) review for accurate mapping and recordation;
- b) review for water supply, sewage disposal, and solid waste disposal under the Sanitation in Subdivisions Act;
- c) review to ensure easements are provided for any planned utilities;
- d) review for access (legal access is required for primitive use tracts and physical access is required for all other subdivided parcels);
- e) review to ensure lots have building sites outside the floodway of a 100-year flood; and
- f) review for certain natural hazards (unstable slopes, unsuitable soils, drainage). In general, these hazards must be analyzed with existing data, and mitigation measures may only be required pursuant to clear and specific standards adopted by the local government. Other hazards may be identified by the review authority and made known to the subdivider.

##### 2. Secondary Review Criteria:

- a) A minor subdivision within a fiscal impact area may be assessed a capital improvement fee. Fiscal impact areas may be designated through local government rulemaking in areas where the governing body documents that additional subdivision development will increase long-term capital costs to the local government (see sections 25 and 27). The fee must consider:
  - whether the subdivision specifically expands the need for capital improvements;
  - whether the fee is reasonably commensurate with the burden imposed by the proposed subdivision;
  - whether the revenue from the fee will be used for capital improvements related to the proposed subdivision;
  - that the fee may not exceed the actual burden or cost of service necessitated by the proposed subdivision; and
  - the anticipated contribution of property taxes from each new tract created by the proposed subdivision.
- b) A minor subdivision must conform with a qualified master plan, if one exists. Otherwise, if the subdivision would be located in a critical resource area determined under local government rulemaking and pursuant to specific criteria (see sections 22 and 27), the subdivision must be reviewed for effects on critical resources designated by the governing body (e.g., critical wildlife habitat).

Any adverse effects to a critical resource within a critical resource area should be addressed by specific, effective and long-term mitigation. However, these measures should not unreasonably restrict a landowner's ability to develop land and, where feasible, should provide benefits to the developer.



#### IV. Review for Special Subdivisions

A. "Special subdivision" means a subdivision that conforms to a qualified master plan pursuant to 76-1-601, a capital improvement program and fee pursuant to [sections 20 and 25], and either local government regulations pursuant to [section 27] or zoning regulations pursuant to part 2 or 3 or chapter 2.

#### B. Process Requirements:

1. A subdivision review officer, who is designated by the governing body, makes the decision on most minor subdivision applications. The officer must notify the governing body of his decisions.
2. If the minor subdivision would deviate from standards or involves a request for a variance, the subdivision review officer must make an initial decision which is then subject to review and modification by the governing body during executive proceedings.
3. A public hearing may not be held on a special subdivision. These subdivisions are in areas that have undergone previous hearings at the master planning, capital improvements programming, or zoning stages.
4. The decision must be made within 35 days, unless the governing body and subdivider agree to extend the time period.

#### C. Substantive Requirements

##### 1. Primary Review Criteria — This Review Involves:

- a) review for accurate mapping and recordation;
- b) review for water supply, sewage disposal, and solid waste disposal under the Sanitation in Subdivisions Act;
- c) review to ensure easements are provided for any planned utilities;
- d) review for access (legal access is required for primitive use tracts and physical access is required for all other subdivided parcels);
- e) review to ensure lots have building sites outside the floodway of a 100-year flood; and
- f) review for certain natural hazards (unstable slopes, unsuitable soils, drainage). In general, these hazards must be analyzed with existing data, and mitigation measures may only be required pursuant to clear and specific standards adopted by the local government. Other hazards may be identified by the review authority and made known to the subdivider.

##### 2. Secondary Review Criteria:

- a) A special subdivision is subject to a capital improvement fee as established pursuant to section 25. The fee must consider:
  - whether the subdivision specifically expands the need for capital improvements;
  - whether the fee is reasonably commensurate with the burden imposed by the proposed subdivision;
  - whether the revenue from the fee will be used for capital improvements related to the proposed subdivision;
  - that the fee may not exceed the actual burden or cost of service necessitated by the proposed subdivision; and
  - the anticipated contribution of property taxes from each new tract created by the proposed subdivision.
- b) A park dedication fee may be assessed to unless the capital improvement fee includes an assessment for parks. The park dedication fee is based on sliding percentages, ranging from 10 percent of the fair market value of unimproved land for parcels one-half acre or smaller to no charge for parcels larger than five acres. Alternatively, the governing body may request a land dedication of equal value from the subdivider.
- c) By virtue of its definition, a special subdivision must conform with a qualified master plan.

EXHIBIT 2  
DATE 2-20-87  
HB 809

Amendments to HB 809  
Rep. Dennis Iverson  
February 20, 1987

1. Page 13, line 7

Following: "body"

Insert: ", or the planning board if designated by the governing body,"

2. Page 14, line 19

Strike: "plan"

Insert: "program"

3. Page 22, line 16

Strike: "plan"

Insert: "program"

4. Page 22, line 18

Strike: "plan"

Insert: "program"



## The Montana Environmental Information Center Action Fund

• P.O. Box 1184, Helena, Montana 59624

(406)443-2520

February 20, 1987

House Local Government Committee

RE: HB 809 (Subdivision Law)

Mr. Chairman and Members of the Committee, I'm Jim Jensen representing the Montana Environmental Information Center. MEIC supports this bill. Frankly, it is not the subdivision bill we would write if left to our own devices and prejudices. However, consensus means compromise. As Representative Iverson has stated, for the last year and one half we, the Realtors, planners, ranchers, surveyors, Clerk and Recorders, County Commissioners, conservation organizations, and just about anyone else with an opinion on the subject of subdivisions has worked to craft this subdivision bill. It has been difficult. We have had to swallow some provisions we would just as soon not. But, so have the other parties. It has been a fair process.

We have one small amendment to submit. I hesitate to do so, because if everyone starts bringing pages of amendments to this bill, it will die. However, after discussion with the sponsor and Rep. Gilbert, who is a member of the EQC, I believe it is appropriate. Simply stated, the amendment gives the governing body the right to seek an injunction to halt an activity in violation of the law while the concern is being resolved. I have copies of the language which I will pass out.

On the substance of the bill, there is a significant difference in philosophy from the current law. The current law requires subdivisions to under-go a lengthy process which includes subjective components which the development industry finds objectionable. This law streamlines the process, it eliminates a lot of red tape. These subjective components, which we call public interest criteria are no longer addressed in the subdivision law, but are transferred to the planning function of counties.

We believe this is where the public should have its say. Master plans are required under this bill which allow the public to identify the values they wish to encourage or preserve in their own communities, instead of subjecting every subdivision to the public hearing process. Hopefully,

the outcome of this planning process will be a written plan which any owner or developer of land can use to guide their decisions. No more guessing whether, after significant investments of time and money, the development will be will be denied because of public pressures. The developer will be able to identify on a map what areas are designated for what uses. The rules of the game will be objective, written and verifiable.

The outcome will be orderly growth and development of our communities. The environment will be protected. The developer will save time, misery and money. And hopefully we will all be spared the agony of the endless debates - Session after Session - about subdivisions. It is about as good a bill as we are going to get. I urge you to pass it. Thanks.

PROPOSED AMENDMENT TO HB 809  
February 20 ,1987  
House Local Government Committee

page 9, line 18: After "violations", insert "(1)"

Page 10, line 2: After "." insert "(2) the governing body may file an action in district court in the name of the state to enjoin the violation of any provisions of this act or of any local regulations adopted pursuant to it or to compel action necessary to remedy any damage caused by the violation of any provision of this act or of any local regulations adopted pursuant to it."

PROPOSED AMENDMENTS

HB 809

1. Topic: Definition of "subdivision;" p. 7, lines 2-6

"Subdivision" means a division of land or land so divided which creates one or more parcels ~~in-order-that-the-title-to~~ ~~or-possession--of-the-parcels-may-be-sold,-rented,-leased-or~~ ~~otherwise--conveyed~~ and includes any resubdivision, any residential condominium building, and any area, regardless of its size that provides or will provide three or more spaces for recreational camping vehicles, dwelling units, mobile homes, ..."

2. Topic: Contested Case

A. p. 12, lines 10-11

"...or upon election by review authority, the hearing must may at the discretion of the governing body..."

B. p. 15, lines 2-3

"...or upon election by review authority, the hearing must may at the discretion of the governing body..."

3. Topic: Presumption of Compliance, p. 17, lines 17-21

"...plan, if one exists, according to 76-1-601. In reviewing ~~a--subdivision--application,-the-review-authority~~ ~~shall-presume-initially-that--the-subdivision-complies-with~~ ~~these-requirements,---This--presumption-does--not-affect-the~~ ~~burden-of-proof-in-a-proceeding-before-a-district-court...~~"

4. Topic: Building Site/Hazards

A. p. 23, lines 4-5

"(d) If a hazard is found to exist, ~~notice-of-hazard-must-be~~ ~~placed--on--the--final--plat~~ and it can not be mitigated by approved construction methods or the arrangement of lots cannot be redesigned to minimize the impact of the hazard, the review authority may deny the subdivision."

B. p. 23, lines 6-10. Strike all.

C. p. 22, line 11. Insert:

"(iv) man-made hazards such as high pressure gas lines

(v) other hazards as defined by the governing body in the adoption of local regulations"

D. p. 22-23, lines 25-line 1

"(b) existing and reasonably accessible data must be used for the evaluation unless ~~otherwise--agreed-to-by the-subdivider--and-review-authority~~ the governing body justifies, in writing, the public safety necessity for requiring on-site tests."

5. Topic: Public Facilities and Services Needed by Subdivision; p. 34, lines 12-16

A. Strike: All of Section 24.

B. Insert: (New Section 24)

"Where local governing bodies do not prepare and adopt a capital improvement program or establish a fiscal impact area, they shall have the authority to exact reasonable fees or dedications from subdividers. Such fees shall be used to mitigate impacts of the development on community services and facilities such as roads, water supply, sewage disposal, storm drainage, schools, police protection, fire protection, and other public facilities or services thus preventing excessive expenditures of public funds for the supply of such facilities or services."

2) Critical resource areas have to have strong guidelines to prevent abuse.

3) Capital improvement programs and the accompanying fee have to have strong controls and guidelines. The most recent draft has some improvement in this area.

4) We cannot accept both a park fee and fiscal impact fee.

5) We cannot accept the expanded language in Health Department review of cumulative effects on ground water. That function is already part of their role and this language only adds to the subjective factors which we have repeatedly strived to eliminate from the existing law.

6) In regards to wildlife and wildlife habitat and their relationship to the subdivision process we have suggested it be deleted. As it is proposed in HB 809, it is just too broad and important a subject to be passed without a full appreciation of its impact on economic growth, private property rights, and the resulting burdens on local government.

There are other concerns which are included in a written report as suggested changes to the bill.

Again I would say there is not unanimity in our Association. As an Association we cannot support the bill as written. Our support of the bill, therefore, is conditional on the inclusion of the attached amendments. If these are not included, we believe the bill as written is not in the best interest of property owners and the citizens of Montana, and we must oppose its passage and approval.





MONTANA  
ASSOCIATION  
OF REALTORS®

DATE 2-20-87  
HB 809

EXECUTIVE OFFICE  
910 HELENA AVENUE  
HELENA, MONTANA 59601  
TELEPHONE: (406) 443-4032  
IN MONTANA CALL TOLL FREE  
1-800-421-1864

House Local Government Committee

February 20, 1987

The MONTANA ASSOCIATION OF REALTORS® has participated in this process from the beginning of the workshop sessions. We have recognized the need for change in the Montana Subdivision and Platting Act. The process has been long and tedious, and, quite frankly, we don't believe that process is over. Not only is there conflict between various interest groups, there is conflict within interest groups.

I further advise you there is not unanimity in our own Association. This is so because of philosophical feelings, and secondly and more importantly, because of the short time period in which people have had a chance to review, evaluate, and understand a complicated piece of legislation. We started out on this path nearly a year ago to streamline and simplify the current subdivision process as embodied in the Montana Subdivision and Platting Act that we are all familiar with. We do not believe that this has been accomplished in this bill. Our support, therefore, is conditional upon the inclusion of certain positions we have held from the onset of this process. These positions are as follows:

Minor Subdivision Review: 1) Limited to plat, sewer, and water; access, utility easements, and flood plain.

Testimony  
of  
Linda Stoll-Anderson

Representing  
Montana Association of Counties  
in Support of HB809

February 20, 1987

The Montana Association of Counties wishes to support, with the enclosed amendments, HB809. Since May of 1986 we have actively participated in the Environmental Quality Council's working group formed for the purpose of examining the Subdivision and Platting Act. A diverse group, participants included realtors, developers, county commissioners, surveyors, environmentalists and planners.

If there is one thing the group could agree on, it was this: that the existing laws pertaining to subdivision review in the State of Montana were not accomplishing their intended and stated goals. Simply stated, because of the use of exemptions, most of the subdivision activity occurring in the state was not being reviewed under the Act.

Given this, the working group fairly quickly agreed that any new legislation, in order to be effective would have to eliminate or greatly reduce the exemptions. The legislation before you does that.

Another concern the working group expressed was a desire to simplify the process used for reviewing subdivisions. This, too, is accomplished through HB809.

Most parties agreed that the public interest criteria was confusing and difficult to apply. The bill before you goes a long way towards clarifying those important goals and defining for local governments and developers ways in which we might achieve them.

There are several facets of the proposed legislation however that are problematic for counties. To correct these areas, we would like to propose

two amendments and support those amendments already before you at the request of the Montana Association of Planners.

The first amendment we would like to address is, in fact, a reaffirmation of MAPS amendment #5. The following proposed added language will satisfy the concerns we have about the existing capital improvement language contained within Section 25 on page 34 of the bill.

The counties strongly support progressive management tools such as Capital Improvement Plans. However, if left unchanged, HB809 would not allow local governments to assess needed capital improvement fees to developments unless a Capital Improvement Plan for the particular area being proposed for development was in place. Limited resources will prevent counties from having these documents ready and the result could very well be an increased property tax burden for all property taxpayers in the county.

The second amendment we have proposed is a change in the effective date of the Act from September 30, 1987 to July 1, 1989.

At our mid-winter conference yesterday, several counties expressed adamantly that because of the monumental nature, complexity and timing, this bill should be killed. Those concerns are justified. The 81-page bill was just distributed within the last two days with limited opportunity for review and comment.

MACO believes that a preferable alternative to killing the bill is to extend the effective date, thereby giving everyone involved in subdivision review an opportunity to prepare for the changes. If, in the course of that preparation, unworkable aspects of the bill are found, we will have another legislative session in which to remedy major problems.

Lastly, the bill will demand of counties, in order to effectively implement sound planning goals, the development of new or the updating of existing master and comprehensive plans, creation of capital improvement plans

and plans for mitigating impacts in critical resource areas. We will need both time and money to achieve this. The time element can be realized by accepting our amendment to change the effective date of the law. The money element will be a bit more problematic.

A bill nearing introduction in the House by Representative Nancy Keenan, will direct funding for planning efforts to local governments through the establishment of a .01% realty transfer tax. MACO believes that this nominal charge on realty transfer is a logical and sensible way to pay for the necessary planning costs associated with the implementation of this legislation.

We strongly urge you to view both of these bills as positive steps toward addressing sound and rational development and the costs of the same in the State of Montana.

Thank you for your consideration.

Proposed Amendments to

HB 809

Submitted by the

Montana Association of Counties

February 20, 1987

Page 34. A. Strike: All of Section 24

B. Insert: (New Section 24)

"Where local governing bodies do not prepare and adopt a capital improvement program of establish a fiscal impact area, they shall have the authority to exact reasonable fees or dedications from subdividers. Such fees shall be used to mitigate impacts of the development on community services and facilities such as roads, water supply, sewage disposal, storm drainage, schools, police protection, fire protection, and other public facilities or services thus preventing excessive expenditures of public funds for the supply of such facilities or services."

Page 81. 1. 25. Strike: September 30, 1987

1. 25. Insert: July 1, 1989

Montana  
Audubon Legislative Fund

Testimony on HB 809  
February 20, 1987

Mr. Chairman and Members of the Committee,

My name is Janet Ellis and I appear today representing the Montana Audubon Legislative Fund. The Audubon Fund is composed of 9 chapters of the National Audubon Society and has 2500 members located throughout the state.

The Audubon Fund supports HB 809. We would also like to express our support for the amendment offered by Jim Jenson that allows injunctive relief to halt subdivisions that are illegally under construction.

We believe that HB 809 is a better subdivision bill than current law because:

- Currently most subdivisions are not being reviewed. HB 809 will close down current loopholes that allow development without review.
- The review process has been streamlined for minor subdivisions (5 or fewer parcels) and special subdivisions (where the county has adopted a qualified master plan). The process for major subdivision review is also streamlined as well as becoming an objective (rather than subjective) process.
- The public interest criteria that realtors have objected to in the past have been made as objective as physically possible. The public interest criteria have also been reduced in number.

The Audubon Fund worked through the consensus process in developing HB 809. Our involvement centered around setting up objective wildlife criteria that appear in Section 22 of the bill. After being told that other groups involved in the consensus process were coming in to amend HB 809, I feel it important to present to this committee our views of why we think this section is reasonable and why we think this section is a compromise - we didn't get as much as we would have liked to get in this section.

---

WHAT HB 809 SAYS ABOUT WILDLIFE:

-all subdivisions will have to undergo review for critical wildlife resource areas. Those areas are defined as

- 1) game animal winter game range, calving areas, and migration routes.

-game animal is defined in 87-2-101. It represents all "big game" animals as designated by Montana's Fish, Wildlife & Parks. It does not include birds - just "big game" species.

-winter game range, calving areas, and migration routes must be "critical" as defined in the law. That means that all such areas would<sup>not</sup> be included - just the critical ones.

- critical winter range, etc. is able to be mapped.  
This hence takes the "guessing" out of deciding what is critical and where it is located.
- Winter game range, calving areas, and migration routes are the aspects to these animals that will "make or break" a population.
- 2) Rare or imperiled habitat as defined by the MT Natural Heritage Program.
  - The MT Natural Heritage Program uses a system used nationwide to classify species and communities as critically imperiled, imperiled, rare, apparently secure and demonstrably secure. Only the rarest wildlife species and the rarest riparian communities are included in HB 809.
  - The Heritage system ranks each species using 7 criteria before it decides which rank to give a species.
  - The Heritage system is a proven, objective system.
  - The Heritage program maps all species appearing as rare or imperiled. It will be simple ( a phone call) to determine if a subdivision is located within a critical rare or imperiled habitat. If you can describe the area on a map, you can quickly see if there is any rare or imperiled habitat in the area to be developed. This phone call could be made by developers before they do any planning - it would tell them early in the process if there might be a potential conflict so they could plan accordingly.
  - Riparian communities are those areas located around water. Only rare or imperiled riparian communities are included in HB 809. The importance of riparian communities to wildlife is easily demonstrated: in western Montana, 89 of 151 land birds found use riparian habitat for nesting.

---

WHAT WE FAILED TO GET IN HB 809 IN ORDER TO COMPROMISE:

We also tried to address critical habitat for the following wildlife:

- 1) critical upland game bird breeding grounds and winter range. Certain species of game birds use historic grounds to do their courtship dances. Their populations are greatly harmed with the loss off these grounds. These areas are easily identifiable and mapped. There have been only a few areas in the entire state where critical winter grounds for game birds have been located. These birds don't migrate and if these critical areas are lost the local populations will probably be lost.
- 2) Colonial nesting areas for birds. These areas are historically used by a handful of bird species in Montana. They are easily identified because large numbers of the birds use the areas every year. We limited our original request to 6 kinds of birds that colonize: pelicans, great blue herons, double-crested cormorants, grebes, gulls and terns.

- 3) critical areas for waterfowl. These areas also are able to be mapped. They are some of the richest areas for wildlife in the state.

---

All Montanan's agree that wildlife is precious to the state. For that reason, the "consensus" process used to develop HB 809 decided that some wildlife criteria was a requirement in the subdivision law of the state. What you see in this bill is a minimum requirement. It is also as objective a process as we could physically develop.

The wildlife criteria used in this bill will take a minimum effort to map. The Natural Heritage Program has maps already completed for rare, imperiled, and critically imperiled areas. The most likely source for game animal winter range, calving areas, and migration routes is the state's Dept. of Fish, Wildlife & Parks. All of the areas are readily mapped.

Even in these hard times, Montana is still growing. HB 809 is a positive step showing how we can work together to help Montana grow without destroying our wildlife heritage, burdening communities that need to plan for the future, and allowing developers an objective system to ensure that Montana continues to grow.

Please vote "Do Pass" on HB 809.



# MONTANA NATURAL HERITAGE PROGRAM



TED SCHWINDEN, GOVERNOR

MONTANA STATE LIBRARY BUILDING

## STATE OF MONTANA

1515 EAST 6TH AVENUE

HELENA, MONTANA 59620  
 (406) 444-3009

The Montana Natural Heritage Program (MTNHP) was established to create a comprehensive statewide data base on Montana's rich biological diversity. MTNHP is working on information acquisition, storage, and retrieval for data relating to the flora, fauna, and biological community types of Montana. Information on the existence, location, numbers, condition and status of rare and endangered plants, animals and exemplary natural communities is collected and made available to all interested parties.

In addition to providing a central clearinghouse for Natural Heritage information in the state, the Heritage inventory is unique and effective because:

### It is ongoing.

The Heritage Program is unlike inventories conducted over a set time period, whose information is out-of-date soon after the project results are published. New data keeps the information base accurate and current.

### It provides "neutral" data.

Heritage methodology and goals assure that data are unbiased, comprehensive, and accurate. The Program thus provides a non-confrontational approach to conflict-resolution for natural resource issues. This maintains the integrity of Heritage, as well as its broad-based support.

STATE RANK	Definition
S1	Critically imperiled in Montana because of extreme rarity (5 or fewer occurrences, or very few remaining individuals), or because of some factor of its biology making it especially vulnerable to extirpation from the state. (Critically endangered in state).
S2	Imperiled in Montana because of rarity (6 to 20 occurrences), or because of other factors demonstrably making it very vulnerable to extirpation from the state. (Endangered in state).
S3	Rare in Montana (on the order of 20+ occurrences). (Threatened in state).
S4	Apparently secure in Montana.
S5	Demonstrably secure in Montana.
SA	Accidental in the state, including species which only sporadically breed in state.
SE	A exotic species established in state; may be native elsewhere in North America (e.g. Colorado Blue Spruce).
SU	Possibly in peril in Montana, but status uncertain; more information needed.
SH	Historically known in Montana; may be rediscovered.
SX	Apparently extirpated from Montana.

*These are the only criteria cons in HB 809 to protect wildlife is rare or imperiled*



Fishing & Floating Outfitters  
Association of Montana  
P.O. Box 1372  
Livingston, Montana 59047

EXHIBIT 7  
DATE 2-20-87  
HB 809

Local Government Comm.  
Rep. Norm Wallin, Chm.

Mr. Chairman, members of the committee, for the record I am Richard Parks, President of the Fishing and Floating Outfitters Association of Montana. We are a professional association representing 227 members of that segment of the outfitting industry in this state. Water quality and quantity issues are of obvious importance to us.

It has been becoming increasingly obvious to us that the current laws regarding land use in this state are not working to protect the resources of critical importance to us. The exclusion from review of divisions exceeding 20 acres simply encouraged a dispersed kind of development that carved up the country. We are especially pleased therefore to commend the language on page 69, lines 20 to 22, wherein the cumulative consequences of such actions are addressed.

We are happy to stand for HB-809 and request a DO PASS recommendation for this bill. Thank you.

Richard Parks, President

Suggested Amendments - House Bill 809

- Page 2      Line 22 - Delete significant and write in "substantial"
- Page 4      Line 18 - Delete all after "parcels"
- Page 4      Line 21 - Delete entire definition
- Page 6      Line 3 - Delete all after "tract"; all of Line 2 and all before "that" in line 5
- Page 14     After Line 24 add new (c) "only subject matter relating specifically to the critical resource area factors as pre-determined in deliniating the area or fiscal impact area factors as predetermined and defined in deliniating the fiscal impact area which ever factor under (a) above caused the hearing may be considered by the hearing authority in its decision"
- Page 21     Line 5 - After "plat" insert "unless described as provided for in Section 39"
- Page 21     Line 16 - Delete entire (B)
- Page 21     Line 21 - Delte Lines 23-25 and page 22 Lines 1-10
- Page 22     Line 16 - After "justification" add "and may not be required to exceed standards of existing county roads in immediate area"
- Page 22     Line 19-25 - Delete
- Page 23     Line 1-13 - Delete
- Page 26     Line 20 - Delete Section 21 in its entirety
- Page 29     Section 22 - Delete in its entirety
- Page 34     Line 9 - Delete "require" and enter "make reasonable suggestions that"

Page 34 Line 23 - After "facilities" add: "assessment shall include useful remaining life estimates, debt retirement considerations, and the concept of future value of present dollars"

Page 35 Line 14 - Add new section (b) and realphabetize following sections; new section (b): "Notwithstanding (a) above in developing a capital improvement program the governing body must clearly demonstrate and substantiate incremental capital costs attributable to the newly created parcels in relationship to the entire jurisdictional area"

Page 36 Line 2 - Delete "whether"

Page 36 Line 8 - Add "(vi) a fee is not deemed necessary or payable until the impact is created"

Page 38 Line 21 - Add after (e) "minimum"

Page 38 Line 23 - After "utilities" add: "said standards shall be so written as to provide maximum flexibility in design"

Page 41 Line 24 and 25 - Delete

Page 65 Line 17 - Change "shall" to "may"

Page 65 Line 18 - Change "shall" to "may"

Page 69 Line 20 - Delete all after "standards" and before "necessary" in Line 23

# BEAR CREEK COUNCIL

BOX 448, GARDINER, MT. 59030

EXHIBIT 10  
DATE 2-20-87  
HB 809

Local Government Comm.

Rep. Norm Wallin, Chm.

Testimony on HB-809

Mr. Chairman, members of the committee, please include this statement in the record of the hearing on this bill. It is being carried to you by one of our members on our behalf as I could not attend the hearing. For the record I am Sue Johnson of Jardine; President of the Bear Creek Council which is an affiliate of the Northern Plains Resource Council. We appear in support of HB-809.

For the last several years my husband and I have operated an outfitting business here on the border of Yellowstone Park. We have become increasingly dismayed by the inability of the county to get a handle on land use planning and subdivisions, most of the 20 acre variety, that have disfigured our valley and brought ever increasing pressure on the resources that are the root of our existence. Recently we have been confronted with an organization that has sought out every loophole available in the existing statutes to create a city without its being reviewable by local authorities.

In our view the failures of the present law are clear. We ask your favorable consideration and a "Do Pass" recommendation for HB-809.

Sincerely

Sue Johnson, Pres.

## WITNESS STATEMENT

DATE 2-20-87  
HB 809

NAME Richard Kalar BILL NO. 809  
ADDRESS Box 312 Emigrant, MN. 57027 DATE 2/ /87  
WHOM DO YOU REPRESENT? Attorney, Self, many clients are landowners  
SUPPORT With Amendment OPPOSE \_\_\_\_\_ AMEND ☒

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## Comments:

At EAC hearings all agreed greatest problem is current law is subjectivity in law.

Bill was to make law more objective and simplify law.

1. Critical Resource area concept should be deleted from Bill. Counties have this authority now under planning and zoning authority and it complicates the bill greatly.

2. The use of The Mt. Natural Heritage Occurrence Report includes plant communities and possibly insect communities. The use of this report should be limited to wildlife only.

EAC members generally felt subdivision law should include most important minimum concerns and leave rest to planning.

3. Master Planning process is totally subjective and greatly affects all landowners' important rights.

Thus, Bill should require proposed plan be submitted to and passed by electorate to be adopted.

Also, introduce as much objectivity in process as possible.

4. Language attached, (4)(a) and (b), should be included to encourage landowners to designate land for wildlife habitat while also allowing landowners to complete reasonable and balanced development with less complication, paperwork and review process.

(iii) deny the proposed subdivision if the subdivision will have demonstrable and irreconcilable adverse effects on critical wildlife habitat.

(e) the governing body must issue written findings based on substantial, credible evidence to justify any action taken under (2) (d).

(3) In reviewing a subdivision under this section, a local governing body should be guided by the following objectives:

(i) the review process is intended to develop specific, effective, and long-term measures to reduce the effects of development on critical wildlife habitat;

(ii) mitigation measures imposed should not unreasonably restrict a landowner's ability to develop land; in some instances, however, the impacts of developments as proposed may be unacceptable;

(iii) where feasible, mitigation should be designed to have some benefits for the developer, including allowance for higher density development in less sensitive sites within the plat, waiver of the park dedication requirement under the provisions of [section 2/], or providing eligibility for tax benefits if land or development rights are donated to eligible receivers.

[NOTE: inclusion of the following subsection (4) has not been determined as of this printing]

(4) Notwithstanding the provisions of subsections (2) and (3), a subdivider may not be subject to review under this section by submitting a preliminary plat which meets one of the following conditions:

(a) the subdivision plat provides for a planned unit development in which no more than 50% of the total area is planned for development (including lots, roads, buildings, yards, and parking areas) and at least 50% of the total area, having similar or greater wildlife habitat values to the 50% proposed to be developed, is designated as permanent open space or park land; or

(b) the subdivision plat is accompanied by an enforceable *dedication* (by deed, covenant running with the land, easement, or other equivalent instrument) of an equal or greater amount of adjacent or nearby land having similar or greater wildlife habitat values to ~~the~~ permanent open space or park land.

#### Section 24. Protection of agricultural and water user interests.

(1) The subdivision review officer shall contact all agricultural or water user special districts in the area where a subdivision is proposed to determine if the proposed subdivision could conflict with existing agricultural or water user practices.

(2) If a proposed subdivision may result in conflicts with existing agricultural or water user practices, the subdivision review officer shall schedule a consultation with the developer and with representatives of any affected special district to discuss ways to minimize the potential for conflict.

(3) The review authority may require the subdivider to design the subdivision to minimize potential conflict with agricultural or water user interests.

NEW SECTION. Section 25. Payment for extension of capital facilities. A local government may require a subdivider to pay for, or

PROPOSED AMENDMENTS TO HB 809

TESTIMONY OF THE DEPARTMENT OF MILITARY AFFAIRS - DIVISION OF  
DISASTER AND EMERGENCY SERVICES  
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It is the position of the Department of Military Affairs, Division of Disaster and Emergency Services to support the proposed amendment to provide the subdivision review authority with the authority to deny or conditionally approve subdivision on the basis of identified hazards.

This division is responsible for, among other things, the coordination, delivery, and administration of state and federal disaster relief programs and funds. In this capacity we see on a regular basis the results of mans location of homes, businesses, and public structures in hazardous areas. While the primary hazard which involves this division is flooding, other hazards of concern are earthquakes, forest fires, etc.

The cost to taxpayers in general, and Montana taxpayers in particular, for disaster relief to individuals and local governments has totalled millions of dollars over the past 20 years. In many cases this is repetitive damage which occurs every few years. A good example is the flooding which occurred in 1975 and 1981 in the Helena valley.

It is imperative, from our perspective, that local governments be required to review subdivisions for natural hazards and given the flexibility to deny, or conditionally approve a subdivision on this basis. If development is directed away from areas where it can be reasonably demonstrated that a hazard exists, the costs borne by the taxpayer for disaster relief can be reduced or eliminated.

A second issue of liability is beginning to impact local governments. There are numerous instances, and adequate case law on the national level, to demonstrate that local governments will be found liable for damages which occur when they knowingly make decisions, such as subdivision review, which allows people to develop in hazardous areas and subsequent damage occurs.

This division supports the provisions of this proposed amendment because we believe that it can contribute to putting us out of the business of cleaning up the results of locating development in hazardous areas. It just makes good dollars and sense.





HOUSE LOCAL GOVERNMENT COMMITTEE  
ROOM 312F CAPITOL BUILDING  
HELENA, MONTANA

February 20, 1987

Regarding: HOUSE BILL-809

Ladies and Gentlemen:

Since last May, MARLS has been actively involved in numerous meetings with the Environmental Quality Council, staff, and working groups composed of individuals representing a wide variety of occupations and philosophies, in an attempt to draft a better Subdivision and Platting Act for the State of Montana.

Early on we came to some basic conclusions regarding problems with the existing Subdivision and Platting Act.

Foremost of these conclusions was the fact that the majority of land divisions were being legally accomplished with no review, through exemptions in the law. It was then concluded that the main reason the exemptions were being used so extensively were the uncertainties, costs, and time delays incurred when going through the subdivision review process, caused by ambiguities in the local review process and attempts to force land use planning through the Subdivision and Platting Act.

Solutions seemed so simple - require all divisions of land to be reviewed, with the extent of review to be dependent on the impact the land division (or divisions) has on the community. Remove ambiguities in the review process by replacing subjective public interest criteria with specifically defined review criteria, and promote land use planning through planning legislation.

In a very short time, the complexities involved in a simple solution became apparent. We were faced with issues we hadn't heard of before, "Critical Resource Areas"; "Fiscal Impact Areas"; "Capital Improvement Fees" and "Qualified Master Plan" were a few that we had to deal with. The more we talked, the more complex the issues became and before long we were deeply engrossed in new concepts with a great deal of potential, but which raised a multitude of new questions. Were we making the process simpler or more complex? What additional costs would be incurred by an individual land owner or developer? What criteria would be used by local governments to delineate "Critical Resource Areas", "Fiscal Impact Areas", etc? Who will pay the costs of local governments determining these areas?

Local governments already suffer budget shortages similar to the State and Federal government.

These are but a few of the questions that must be addressed in this legislation, and though we've come a long way in the past 9 months, legislation as complex as House Bill-809 has to be hammered out slowly to remove all of the wrinkles.

The only way in which MARLS could support House Bill-809 would be to have time to carefully evaluate it and propose numerous amendments. We have had neither the time nor inclination to do this due to the fact that we feel legislation of this complexity cannot be properly constructed by amendment procedures.

Noting these facts, MARLS cannot support House Bill-809 as written.

I would sincerely like to commend Representative Iverson, members of the EQC, and in particular, members of their staff, for the tremendous efforts they have put forth on this project. MARLS is very appreciative of being a part of the working group and we feel that a great deal has been accomplished in a relatively short time. Unfortunately, despite our efforts, time has not been on our side.

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We have come up with some innovative concepts that must be thoroughly evaluated before we can rationally decide whether or not they will effectively work in Montana. MARLS has expressed a willingness to continue working on a new comprehensive subdivision bill, with or without state assistance. We feel that the vast amount of time and efforts expended this far should not go to waste, and given more time we can come up with a feasible product.

Thank You,

Rick Gustine, P.L.S.

President, MARLS



CITY OF BILLINGS  
PUBLIC WORKS DEPARTMENT

510 N. BROADWAY - 4TH FLOOR

BILLINGS, MT 59101

PHONE (406) 657-8230

DATE 2-20-87  
HB 809

February 20, 1987

TO: House Committee

FROM: Ken Haag, P.E., Director of Public Works

SUBJ: House Bill #809 - Testimony Presented  
February 20, 1987

Ladies and Gentlemen,

My name is Ken Haag and I am Director of Public Works for the City of Billings. I have been with the City of Billings for the past 16 years. I am here today to speak in opposition to House Bill #809, a Revision to the Subdivision and Platting Act of the State of Montana.

Over the course of the past 14 years, I have appeared before numerous Legislative Committees requesting a revision of the existing Subdivision Laws in the State of Montana. It is therefore, with a great deal of reluctance that I have to oppose this particular bill.

I would like to first comment on the timing of the preparation of this bill and the scheduling of this particular hearing.

The Environmental Quality Council has been working on this bill since last September, at which time they held a workshop in Great Falls. They have also held one here in Billings in late November, and this bill is a result of these various hearings. In reviewing the bill it is obvious that the real estate interests and the planning interests are effectively represented in the drafting of the bill, but that local government has been basically left out.

Since the timing on the introduction of the bill and the scheduling of this hearing is short, I have not attempted to give this total review. However, there are certain things that come to mind on an initial review that do cause me a great deal of concern. These are as follows.

The bill states that the subdivision proposal shall "receive no more than one public hearing". This substantially decreases the Council's ability to deal with various items. The bill sets up organizational structure locally that requires the designation of a subdivision review officer. It goes on to implement this

position and states that "the subdivision review officer's decision may be modified by the governing body during executive procedures only if it finds by substantial credible evidence and documents that the decision is not consistent with the provisions of this chapter".

The bill defines that certain public hearings would not be held unless the subdivider or "a citizen that would be affected" petitions for and pays for this public hearing. This could leave a vast number of people out in the cold in the entire process.

The bill also states various primary review criteria which do not include transportation plan requirements or proper traffic flow.

It also removes the possibility of the local government turning down a subdivision plat that is in a hazardous area, i.e., the Rims talus slope or some other location, and provides only that the notice of the hazard must be placed on the final plat. Thus, again, we would be in a situation where we could not deny subdivisions immediately under the Rims face, even though they did not create buildable lots.

The bill provides that "review authority shall presume initially that the subdivision complies with these requirements" and requires that "a written finding, along with the legal authority upon which an approval or attachment of conditions is based" is necessary in the process. This feature could remove the requirement from the developer to present sufficient information for local review.

The bill does provide for a capital improvements fee, however, it ties this to having a complete capital improvements program and deducts from the amount of the capital improvements fee the "anticipated contribution of property taxes from each new plot". This means that new property taxes could be earmarked for capital improvements and the subdivision would not pay for maintenance.

The bill would eliminate a park land dedication requirement and provide, in its place, "a subdivider shall dedicate to the governing body a cash donation equal to".

The bill also provides one full page of "for review for effects on critical wildlife habitat".

The bill also provides that "the subdivision review officer shall contact all agricultural or water users special districts in an area". This is in lieu of placing any responsibility on the water district itself to provide any input into the process.

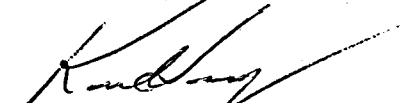
There are, I am sure, numerous other comments that could be made for or against this particular bill, but I think that these will serve as an example of what is trying to be accomplished.

I have no doubt that a revision of our subdivision laws would be

in order. I have long advocated the removal of some of the exemptions in our present subdivision laws and also advocated the strengthening of these various laws. I think that this particular bill, however, throws out the baby with the bath water and inserts, in its place, an unworkable law which would really work towards the detriment of the provision of local government services. I would strongly suggest that this bill be killed and that the Environmental Quality Council be asked to work with the local governments and the development community over the course of the next two years to arrive at a workable revision to our present Subdivision Laws. To attempt to do this major a law revision on this short of notice is sure to create a situation that throws the entire development community into a state of chaos.

I would be happy to answer any question you may have.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Ken Haag', written over a horizontal line.

Ken Haag, P.E.  
Director of Public Works

KH/skl

## WITNESS STATEMENT

EXHIBIT 13  
DATE 2-20-87  
HB 809

NAME Stephen J. Ries - L.L.S. BILL NO. HB-809  
ADDRESS 6850 Green Meadow Dr. Helena, Mt. DATE 2/20/87  
WHOM DO YOU REPRESENT? Ries Surveying.  
SUPPORT \_\_\_\_\_ OPPOSE ✓ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## Comments:

H.B. 809 is ~~not~~ to have total control of  
all land and making land owner answer to F.Q.C.,  
which is in violation of our constitution rights.  
This Bill is unconstitutional.

## VISITORS' REGISTER

LOCAL GOVERNMENT

COMMITTEE

BILL NO. HB 809DATE February 20, 1987SPONSOR REP. IVERSON

NAME (please print)	REPRESENTING AND/OR RESIDENCE	SUPPORT	OPPOSE
DAVID M. BISHOP	MONTANA ASSN. OF PLANNERS	✓	
Ken Haag	City of Billings		✓
JAN HENLY	MT - D.R.S.	✓	
DON & PEG VALITON	QUANDO, MT. - LAND OWNERS		✓
Richard Parks	FFOAM	✓	
Jessy Gossens	Mt Assoc Planners	✓	
James H. Edwards	Yellowstone Co. Comm.	✓	
Rick Gustine	Mt. Assoc. of Reg'd. Land Surveyors		✓
Jeannette G. Klobnack	Montana Wildlife Federation	✓	
Ray W. Kite	Statist. Commission		✓
Jim Jensen	MT. ENVIRON. INFO. CNTR.	✓	
Richard KALAR	Box 312 Emigrant, MT.	✓	
Rick Duncan	Lewis & Clark Co Health & MT ENV HEALTH ASSOC	✓	
BOB HELDING	MT. ASSOC. OF REALTORS	✓	
Greg Jackson	MT CLK & REC. ASSN.		
Stephen J. Ries	Helena, MT.		✓
Jaren Kelling	Mt. Land Title Assn		✓
Julie Hacker	Mska Co. Freeholders		X

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.