

MINUTES

**MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Lawrence Stimatz, on April 1, 1991, at 3:00 p.m.

ROLL CALL

Members Present:

Lawrence Stimatz, Chairman (D)
Cecil Weeding, Vice Chairman (D)
John Jr. Anderson (R)
Esther Bengtson (D)
Don Bianchi (D)
Steve Doherty (D)
Lorents Grosfield (R)
Bob Hockett (D)
Thomas Keating (R)
John Jr. Kennedy (D)

Members Excused: Larry Tveit

Staff Present: Gail Kuntz, Paul Sihlert and Deborah Schmidt (EQC).

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

Announcements/Discussion: None.

EXECUTIVE ACTION ON HB 233

Motion:

Senator Kennedy made a motion that HB 233 BE CONCURRED IN.

Senator Doherty moved Senator Thayer's amendments to HB 233.(EXHIBIT #1).

Discussion:

Senator Grosfield told the committee that he did not understand why there was a coordinating clause between HB's 233 and 924. Grosfield stated he felt the bills "should be able to stand on their own."

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Paul Sihler, Environmental Quality Council, explained that the House subcommittee segretated a couple of issues dealing with the concerns of leaseholders and the maintenance of right-of-ways. The House made a decision that they were companion issues and chose to have the bills linked, Sihler said.

Representative Measure stated the House Natural Resources Committee did not want one bill passed without the other.

Senator Tveit noted that he felt the bills were entirely different: one bill is for individual leaseholders and the other for sportsmen. Tveit explained that his proposed amendments tied HB's 233 and 924 together.

Senator Bengtson stated that if the intention was to remove the coordination instruction in HB 233 then perhaps Section 5 on page 7 should be deleted. Bengtson moved to delete Section 5 on page 7.

Senator Hockett told the committee that although he wasn't familiar with "the workings of the two bodies" he was concerned that if the coordinating clause was removed from one bill, it would kill both bills. Hockett said he felt "strongly" about the passage of HB 233.

Senator Keating stated HB 924 deals with right-of-way and there would be no need for coordination of HB's 924 and 233.

Senator Tveit stated that his amendments would deal primarily with adjacent landowners. Tveit said he did not have a problem tying the two bills together.

Representative Thayer told the committee that both bills were drafted together initially as HB 233. HB 924 is "far different than it started out as," Thayer said. "I didn't feel it was that inappropriate for both bills to travel together," he said.

Senator Kennedy made a substitute motion that HB 233 as amended BE CONCURRED IN.

Amendments, Discussion, and Votes:

None.

Recommendation and Vote:

Motion by Senator Kennedy that HB 233 BE CONCURRED IN passed. Senators Keating and Tveit opposed the motion.

Amendments, Discussion, and Votes:

None.

Recommendation and Vote:

Motion by Senator Tveit to move his amendments passed unanimously and included combining "interested persons" and "interested adjacent landowners."

Senator Keating voted against the motion.

EXECUTIVE ACTION ON HB 924

Motion:

Senator Hockett moved that HB 924 BE CONCURRED IN as amended.

Discussion:

Senator Doherty suggested that the phrases "interested persons" and "interested adjacent landowners" be combined.

Amendments, Discussion, and Votes:

None.

Recommendation and Vote:

Motion by Hockett that HB 924 BE CONCURRED IN as amended by Senators Thayer and Doherty passed. Senator Keating voted against the motion.

EXECUTIVE ACTION ON HB 360

Motion:

Motion by Senator Weeding that HB 360 BE CONCURRED IN as amended by Senator Keating. (EXHIBIT #1).

Discussion:

Senator Bengtson asked that Gordon McCombre appear before the committee and state his viewpoints of the Federal Compact Commission.

Senator Hockett stated that because McCombre did not testify at the hearing on HB 360, he was also interested in hearing his testimony in executive action.

Gordon McComber stated that the federal government "is becoming impatient and threatening to go to court." The government has reassigned assets for resources to other states because Montana "is dragging its feet." The water courts are running out of basis to adjudicate because of the bottleneck creating by legislation adopted twelve years ago, McComber said.

Senator Bengtson expressed concern over the drafting of the amendments and asked that executive action be delayed on the bill.

Senator Weeding moved that HB 360 BE CONCURRED IN as amended.

Amendments, Discussion, and Votes:

Senator Grosfield asked if HB 360 eliminated the sunset?

Deborah Schmidt, Director Environmental Quality Council, stated that was true.

Senator Bengtson said she felt there should be a sunset so the legislature could receive a report on the compact commission.

Senator Keating asked if a sunset was all that was needed within the bill.

Schmidt said that if the committee wanted to insert the sunset date, the language that was stricken along with the date, should be reinserted.

Jo Brunner, Montana Water Resources Association, told the committee that the sunset amendments were offered by the Association and noted that it was not their intent to eliminate the Reserved Water Rights Compact Commission. "There are 32 basins with preliminary decrees that would allow them to begin working with Reserved Water Rights," Brunner said. "We believe our farmers and ranchers have the right to proceed."

McComber, Reserved Compact Commission member, stated that the state of Montana set up water courts to handle all water claims. The federal government and several Indian tribes were opposed, McComber said. Approximately one third of the land in Montana is subject to claims for federally reserved rights. The system designed to handle these claims, "just isn't getting the job done," McComber said. McComber said he felt Montanans were entitled to an examination of what the Commission has accomplished and what it should accomplish.

Senator Grosfield made a substitute motion to extend the sunset to 1999.

Schmidt told the committee she could reinsert the language that would extend the sunset to 1999.

Recommendation and Vote:

Motion by Senator Weeding that the amendment extending the sunset to 1999 be adopted carried unanimously.

Motion by Senator Weeding that HB 360 BE CONCURRED IN as amended carried unanimously.

EXECUTIVE ACTION ON HB 375

Motion:

Motion by Senator Keating that HB 375 BE NOT CONCURRED IN.

Discussion:

Senator Keating told the committee that if a \$250 fine didn't solve the littering problem, he didn't believe a \$500 fine would either.

Amendments, Discussion, and Votes:

None.

Recommendation and Vote:

Motion by Senator Keating that HB 375 BE NOT CONCURRED IN passed on a 6 to 5 vote with Senators Keating, Bengtson, Doherty, Weeding, Kennedy and Tveit voting in favor of the motion.

EXECUTIVE ACTION ON HB 377

Motion:

Motion by Senator Weeding that HB 377 BE CONCURRED IN.

Senator Keating made a substitute motion to amend HB 377 by deleting 200,000 tons and inserting 500,000 tons on page 2, line 15, and by deleting lines 12 and 13 on page 14. Keating said he suggested the amendments because "there is at least one landfill in the state that could get to be over 200,000 tons before too long." There are areas in the state that lend themselves to solid waste dumpsites, Keating said. Keating said he would like to refute the testimony given at the hearing on HB 377 that suggested the landfill site in Billings was "in trouble" with the EPA. "There isn't any evidence whatsoever that any leachate from the landfill is going into the Yellowstone River," said Keating.

Discussion:

Senator Hockett said he was concerned about the toxicity of incinerator ash.

Senator Weeding said that most incinerator ash would be composed of sulphur and radioactive materials. Weeding said he felt the jump from 200,000 to 500,000 tons was "a tremendous jump" and if that amount of waste would be dumped, there needed to be new siting regulations developed.

If the ash is caustic and as dangerous as some believe, it should be under a hazardous waste bill rather than a solid waste law,

Keating said.

Senator Hockett asked Tony Grover, Solid Waste Manager, Department of Health and Environmental Sciences, if the committee fly ash material is from the incineration of solid waste.

Municipal solid waste incinerator ash has been called non-toxic, no matter how toxic it is, Grover said.

Grover told the committee that consultant records demonstrate that there is leachate from the landfill in the wells in Billings. Whether or not the leachate has gone into the Yellowstone River is an unknown, he said.

Amendments, Discussion, and Votes:

Motion by Senator Keating to adopt his amendments failed with Senators Keating, Anderson and Bengtson favoring the amendment.

Paul Sihler, EQC, told the committee that the state currently generates 550 to 600,000 tons of waste yearly.

Senator Grosfield stated he felt the bill had "technical problems" and is implying "we will not have a megalandfill bill in Montana."

George Ochenski, Waste Management, Inc., told the committee that Waste Management had not taken a position on HB 377 and did not have plans to build any megalandfills within the state because "it isn't economically feasible."

Senator Bianchi asked if testimony had been submitted from the company interested in Baker, Montana.

Chairman Stimatz and secretary, Roberta Opel, stated that no additional testimony had been received.

Senator Bengtson said she felt HB 377 was sending a "tough message."

Senator Keating said that even without HB 377, the state still would have solid waste rules and regulations that continue to be more thoroughly developed. "It's possible that we could have out of state money funding our health department to develop these rules," Keating said. "By passing this bill, we begin to impact local government with horrendous fees. Think seriously about several factors within this bill, not just that it's a nice idea to keep garbage out of the state," Keating said.

Senator Weeding noted there are no fees in the current Waste Management Act.

Senator Grosfield asked Grover how much the license fees would be without this bill?

Grover replied that under SB 209, there would be a \$15,000 fee for a large landfill.

Recommendation and Vote:

Motion by Senator Weeding that HB 377 BE CONCURRED IN passed on a 6 to 5 vote with Senators Anderson, Bengtson, Grosfield, Keating and Tveit opposing the motion.

EXECUTIVE ACTION ON HB 637

Motion:

Senator Grosfield moved that HB 637 BE NOT CONCURRED IN stating that he did not feel the bill was "workable."

Discussion:

None.

Amendments, Discussion, and Votes:

None.

Recommendation and Vote:

Motion by Senator Grosfield that HB 637 BE NOT CONCURRED IN carried unanimously.

EXECUTIVE ACTION ON HB 660

Motion:

Motion by Senator Bengtson to move Senator Kennedy's amendments to HB 660.

Motion by Senator Hockett that HB 660 as amended BE CONCURRED IN.

Discussion:

None.

Amendments, Discussion, and Votes:

Motion to adopt Senator Kennedy's amendments carried unanimously.

Recommendation and Vote:

Motion by Senator Hockett that HB 660 BE CONCURRED IN carried with Senator Keating voting against the motion.

EXECUTIVE ACTION ON HB 891

Motion:

Motion by Senator Kennedy to adopt his amendments to HB 891.

Motion by Senator Bianchi that HB 891 BE CONCURRED IN as adopted.

Discussion:

Paul Sihler, Environmental Quality Council, explained to the committee that concerns about research were raised after the hearing: would revenue from bonding be used for research? Sihler said Kennedy's amendment clarified the bonding question by striking the word "research."

Senator Grosfield said he felt HB 891 "suffered from some of the same problems as HB 377" and that the bill raised unanswered bonding issues.

Tony Grover, DHES, explained that Subtitle D set up five different mechanisms for financial assurance for bonding within HB 891.

Amendments, Discussion, and Votes:

Motion by Senator Kennedy carried unanimously.

Recommendation and Vote:

Motion by Senator Bianchi that HB 891 BE CONCURRED IN as amended carried with Senators Anderson, Bengtson, Grosfield, Keating and Tveit opposing the motion.

EXECUTIVE ACTION ON HB 908

Motion:

Senator Bianchi moved the adoption of Representative Harper's amendment to HB 908. (EXHIBIT #1).

Motion by Senator Grosfield to adopt his amendments. (EXHIBIT #2).

Motion by Senator Bianchi that HB 908 BE CONCURRED in with both Representative Harper and Senator Grosfield's amendments.

Discussion:

Senator Bianchi stated that the amendment strikes the words "fish, wildlife and parks" and inserts "other agencies and groups." The amendment does not change the bill, Bianchi noted.

Amendments, Discussion, and Votes:

Motion to adopt Representative Harper's amendment carried unanimously.

Motion to adopt Senator Grosfield's amendment carried unanimously.

Recommendation and Vote:

Motion by Senator Bianchi that HB 980 BE CONCURRED IN as amended carried with Senator Keating opposing the motion.

EXECUTIVE ACTION ON HB 671

Motion:

Senator Weeding moved the subcommittee amendments. (The Gray bill includes the amendments to the blue bill).

Discussion:

Senator Stimatz distributed copies of the Gray Bill to HB 671 developed for discussion purposes only (EXHIBIT #1) and asked Subcommittee Chairman Weeding to explain how the blue bill differed from the Gray bill.

Weeding reported that the subcommittee defined subdivision as a division of land but that a subdivision was not an agricultural division if its uses were for agricultural purposes as clarified in Senator Doherty's amendments. (EXHIBIT #2). "Dwelling" was redefined as a "detached residential structure" to differentiate from multiple dwelling places, Weeding said. An expansion definition of "family members" was also included in the gray bill. Weeding noted a number of amendments had been added to the bill.

Senator Anderson asked for clarification of the term "family units."

Senator Weeding replied that for agricultural units there is an exemption of "up to four units" on the farm.

Deborah Schmidt, EQC, noted there were 88 amendments within the Gray bill.

Representative Gilbert explained to the committee that the Gray bill made the bill "more readable."

Senator Bengtson asked for a definition of "agriculture producer"?

Senator Weeding replied that an interpretation of "agriculture" is up to the subdivider. The committee allowed for a broad

definition so the burden would be on the regulator not on the person who divides the land, Weeding said.

Senator Stimatz asked if there was a consistent definition, throughout the bill for the term "agricultural producer."

Representative Gilbert stated that definition, for taxation purposes, would be \$1500.

Senator Hockett asked if the subcommittee had come to a consensus on HB 671.

Senator Doherty stated the general consensus of the subcommittee was to work from the Gray bill.

Chairman Stimatz asked Senator Doherty what road requirements (within the subdivision) would have to be followed?

Senator Doherty stated the local governing body would be required to help the existing subdivision upgrade roads.

Senator Anderson asked if subdivision roads were maintained by the county and would they have to meet the standards of a public road?

Representative Gilbert answered that would be determined by the developer and the county commissioner.

Amendments, Discussion, and Votes:

Senator Grosfield told the committee he wanted clauses regarding variances included in the bill. Grosfield told the committee that, in essence, HB 671 would require "environmental analysis for everything that everybody does on land with the exception of a small window-of-opportunity (the first five divisions). Grosfield presented amendments to HB 671. (EXHIBIT #1).

Senator Grosfield stated he had a "problem" with amendments 2,4,5,7,8,13,14,16,18,22,23,24,26,28,30 and 34.

Senator Grosfield moved amendments 1,3,6,9,10 and 11.

The motion carried unanimously.

Senator Grosfield moved amendments 4 and 5 on page 1.

The motion carried.

Senator Grosfield moved amendments 12, 15, 17, 20 and 21.

The motion carried unanimously.

Motion by Senator Grosfield to move amendments 13 and 14 failed, 5 to 5.

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Senator Grosfield moved amendments 25, 27, 29, 31 and 32.

The motion carried unanimously.

Motion by Senator Grosfield to move amendments 22, 23, and 24 failed 5 to 5.

Motion by Senator Grosfield to move amendment 26 failed 4 to 6.

Motion to adopt amendments 28 and 30 failed 7 to 6.

Senator Grosfield withdrew amendments 34, 36 and 40.

Senator Grosfield moved amendments 33 and 35.

Motion to adopt these amendments carried unanimously.

Senator Weeding moved that HB 671 BE CONCURRED IN as amended.

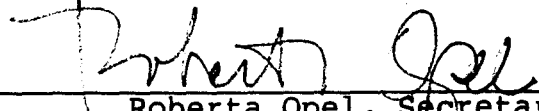
Recommendation and Vote:

Motion by Senator Weeding that HB 671 BE CONCURRED IN as amended carried with Senator Bengtson, Keating, Grosfield and Tveit opposing the motion.

ADJOURNMENT

Adjournment At: 9:30 p.m.

Lawrence Stimatz, Chairman



Roberta Opel, Secretary

LS/ro

ROLL CALL VOTE

SENATE COMMITTEE Natural Resources

Date Natural Resources Bill No. HB 671 Time 7:30p
(as amended)

NAME	YES	NO
Senator Anderson	✓	
Senator Bengston		✓
Senator Bianchi	✓	
Senator Doherty	✓	
Senator Grosfield		✓
Senator Hockett	✓	
Senator Keating		✓
Senator Kennedy	✓	
Senator Iwert		✓
Senator Weeding, Vice Chairman	✓	
Senator Stimatz, Chairman	✓	

Robert C. Juel
Secretary

Chairman

Motion: _____

FOR DISCUSSION PURPOSES ONLY

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SENATE NATURAL RESOURCES SUBCOMMITTEE
EXHIBIT NO. 1
DATE 3-27-91
BILL NO. 671

HOUSE BILL NO. 671 INTRODUCED BY GILBERT, HARPER, ECK, RANEY,
BRADLEY, WALLIN, LEE

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

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

Section 1. Section 76-3-102, MCA, is amended to read:

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

1 HEALTH, SAFETY, AND GENERAL WELFARE BY REGULATING THE SUBDIVISION
2 OF LAND; TO PREVENT OVERCROWDING OF LAND; TO LESSEN CONGESTION IN
3 THE STREETS AND HIGHWAYS; TO PROVIDE FOR ADEQUATE LIGHT, AIR,
4 WATER SUPPLY, SEWAGE DISPOSAL, PARKS AND RECREATION AREAS,
5 INGRESS AND EGRESS, AND OTHER PUBLIC REQUIREMENTS ADOPTED
6 PURSUANT TO THIS CHAPTER; TO REQUIRE DEVELOPMENT IN HARMONY WITH
7 THE NATURAL ENVIRONMENT; ~~to require that whenever necessary, the~~
8 ~~appropriate approval of subdivisions be contingent upon a written~~
9 ~~finding of public interest by the governing body; and TO require~~
10 uniform monumentation of land subdivisions and transferring
11 divisions; TO require that the transfer of interests in real
12 property be made by reference to plat or certificate of survey;
13 TO provide simple, clear, and uniform guidelines for review of
14 subdivisions; AND TO ~~promote~~ REQUIRE environmentally sound
15 subdivisions; and protect public health, safety, and welfare in a
16 manner that also protects the rights of property owners. FOR THE
17 PURPOSE OF THIS CHAPTER, RIGHTS OF PROPERTY OWNERS INCLUDE THE
18 RIGHT TO USE, ENJOY, IMPROVE, SELL, AND CONVEY, IN TOTAL OR IN
19 PART, REAL PROPERTY SO LONG AS THE EXERCISE OF THE RIGHTS DOES
20 NOT DENY THESE RIGHTS TO OTHER PROPERTY OWNERS OR ADVERSELY
21 AFFECT PUBLIC HEALTH, SAFETY, AND WELFARE."

22 Section 2. Section 76-3-103, MCA, is amended to read:

23 "76-3-103. Definitions. As used in this chapter, unless the
24 context or subject matter clearly requires otherwise, the
25 following words or phrases shall have the following meanings:

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

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

34 (3) "Division of land" means the ~~segregation~~ creation of
35 one or more parcels of land from a larger tract held in single or

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

6 ~~(4) "Dwelling unit" means a unit in which a person or~~
7 ~~persons reside for more than 8 months of a calendar year.~~

8 (4) "DWELLING UNIT" MEANS A DETACHED RESIDENTIAL STRUCTURE
9 IN WHICH A PERSON OR PERSONS RESIDE.

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

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

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

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

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

28 ~~(9)(7)(8)~~ "Legal access" means access by easement or other
29 right-of-way that provides the property owner THE RIGHT OF
30 ingress and egress to or from any tract or parcel created by a
31 subdivision.

32 ~~(10)(8)(9)~~ "Major subdivision" means a subdivision that is
33 not a minor subdivision or special subdivision.

34 ~~(11)(9)(10)~~ "Minor subdivision" means: a subdivision of THE
35 FIRST five or fewer parcels. A second or subsequent minor

1 ~~subdivision from a single tract of record as of July 1, 1991, may~~
2 ~~not be considered a minor subdivision for review purposes unless~~
3 ~~the subdivider notifies the reviewing authority of the~~
4 ~~subdivider's intention to create subsequent parcels, up to the~~
5 ~~five-parcel limit, at the time of the initial minor subdivision~~
6 ~~application.~~

7 (A) FOR SUBDIVISIONS INVOLVING THE ACTUAL DIVISION OF LAND,
8 THE FIRST FIVE PARCELS FROM A SINGLE TRACT OF RECORD AS OF JULY
9 1, 1991; OR

10 (B) FOR SUBDIVISIONS INVOLVING THE PROVISION OF PERMANENT
11 MULTIPLE SPACES WITH UTILITY HOOK-UPS FOR RECREATIONAL CAMPING
12 VEHICLES, MOBILE HOMES, DWELLING UNITS, OR WORK CAMP STRUCTURES,
13 AS DESCRIBED IN SUBSECTION (21) (A), THE FIRST FIVE OF THESE FROM
14 A SINGLE TRACT OF RECORD AS OF JULY 1, 1991.

15 ~~(12)(10)(11)~~ "Physical access" means access by a road that
16 meets the standards set by the governing body according to 76-3-
17 501.

18 ~~(8)(13)(11)(12)~~ "Planned unit development" means a land
19 development project consisting of residential clusters,
20 industrial parks, shopping centers, office building parks, or any
21 combination thereof which comprises a planned mixture of land
22 uses built in a prearranged relationship to each other and having
23 open space and community facilities in common ownership or use.

24 ~~(9)(14)(12)(13)~~ "Plat" means a graphical representation of a
25 subdivision showing the division of land into lots, parcels,
26 blocks, streets, alleys, and other divisions and dedications.

27 ~~(10)(15)(13)(14)~~ "Preliminary plat" means a neat and scaled
28 drawing of a proposed subdivision showing the layout of streets,
29 alleys, lots, blocks, and other elements of a subdivision which
30 furnish a basis for review by a governing body.

31 ~~(11)(16)(14)(15)~~ "Final plat" means the final drawing of the
32 subdivision and dedication required by this chapter to be
33 prepared for filing for record with the county clerk and recorder
34 and containing all elements and requirements set forth in this

1 chapter and in regulations adopted pursuant thereto to this
2 chapter.

3 ~~(17) "Primitive tract" means a tract that is located more~~
4 ~~than 1 mile from a state, federal, or maintained county road and~~
5 ~~that is used for open space or for wildlife, hunting, or other~~
6 ~~activities with minimal human impacts. Activities with minimal~~
7 ~~human impacts include the construction of camping structures that~~
8 ~~are dismantled or relocated after seasonal use.~~

9 ~~(12)(18)(15)(16)~~ "Registered professional land surveyor"
10 means a person licensed in conformance with Title 37, chapter 67,
11 to practice surveying in the state of Montana.

12 ~~(13)(19)(16)(17)~~ "Registered professional engineer" means a
13 person licensed in conformance with Title 37, chapter 67, to
14 practice engineering in the state of Montana.

15 ~~(20)(17)(18)~~ "Review authority" means the person or entity
16 GOVERNING BODY with authority to approve, conditionally approve,
17 or disapprove a subdivision application.

18 ~~(21)(18)(19)~~ "Special subdivision" means a subdivision that
19 conforms to a master plan pursuant to 76-1-601, AND a long-range
20 development program of public works projects ADOPTED pursuant to
21 76-1-601, and either local government regulations pursuant to 76-
22 3-501 or zoning regulations ADOPTED pursuant to Title 76, chapter
23 2, part 2 or 3.

24 ~~(14)(22)(19)(20)~~ "Subdivider" means any person who causes
25 land to be subdivided or who proposes a subdivision of land.

26 ~~(15)(23)(20)(21)~~ (a) "Subdivision" means, EXCEPT AS PROVIDED
27 IN (21)(B), a division of land or land so divided which that it
28 creates one or more ONE OR MORE ADDITIONAL parcels containing
29 less than 20 acres, exclusive of public roadways, in order that
30 the title to or possession of the parcels may be sold, rented,
31 leased, or otherwise conveyed, and shall include The term
32 includes any resubdivision and shall further include any
33 residential condominium or building and further includes any
34 area, regardless of its size, which that provides or will provide
35 multiple space three or more spaces for recreational camping

1 ~~vehicles, or mobile homes dwelling units, or work camp structures~~
2 ~~constructed to exist for longer than 1 year. THE TERM INCLUDES:~~

3 ~~(I) ANY RESUBDIVISION;~~

4 ~~(II) ANY RESIDENTIAL CONDOMINIUM OR BUILDING;~~

5 ~~(III) ANY AREA, REGARDLESS OF ITS SIZE, THAT PROVIDES OR~~
6 ~~WILL PROVIDE MULTIPLE SPACE FOR RECREATIONAL CAMPING VEHICLES OR~~
7 ~~DWELLING UNITS; AND~~

8 ~~(IV) WORK CAMP STRUCTURES CONSTRUCTED TO EXIST FOR LONGER~~
9 ~~THAN 1 YEAR. IN ORDER THAT THE TITLE TO OR POSSESSION OF THE~~
10 ~~PARCELS MAY BE SOLD, RENTED, LEASED, OR OTHERWISE CONVEYED, THE~~
11 ~~TERM INCLUDES ANY RESUBDIVISION; ANY RESIDENTIAL CONDOMINIUM~~
12 ~~BUILDING; AND FURTHER INCLUDES ANY AREA, REGARDLESS OF ITS SIZE,~~
13 ~~THAT PROVIDES OR WILL PROVIDE PERMANENT MULTIPLE SPACES WITH~~
14 ~~UTILITY HOOK-UPS FOR RECREATIONAL CAMPING VEHICLES; MOBILE HOMES;~~
15 ~~DWELLING UNITS; OR WORK CAMP STRUCTURES CONSTRUCTED TO EXIST FOR~~
16 ~~LONGER THAN ONE YEAR. FOR PURPOSES OF THIS SUBSECTION, "WORK~~
17 ~~CAMP STRUCTURE" MEANS HOUSING PROVIDED BY A PERSON FOR TWO OR~~
18 ~~MORE FAMILIES OR INDIVIDUALS LIVING SEPARATELY, FOR THE EXCLUSIVE~~
19 ~~USE OF THE EMPLOYEES OF THAT PERSON AND THE FAMILIES, IF ANY, OF~~
20 ~~THE EMPLOYEES. "HOUSING" DOES NOT INCLUDE SHELTER PROVIDED BY AN~~
21 ~~AGRICULTURAL EMPLOYER FOR PERSONS WHO ARE PRIMARILY EMPLOYED TO~~
22 ~~PERFORM AGRICULTURAL DUTIES ON THAT PERSON'S RANCH OR FARM.~~

23 (b) Subdivision does not mean:

24 (i) a division creating cemetery lots only;

25 (ii) a division created by lease or rental for farming and
26 agricultural purposes;

27 (iii) a division creating an interest in oil, gas, minerals,
28 or water that is severed from the surface ownership of real
29 property;

30 (iv) a division created by reservation of a life estate;

31 (v) the sale, rent, lease, or other conveyance OR USE of
32 one or more parts of a building, structure, or other improvement,
33 whether existing or proposed;

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

4 (vii) a division created by OPERATION OF LAW OR AN order of
5 a court of record in this state pursuant to the laws governing
6 the distribution of estates (Title 72, chapters 1 through 6 and
7 10 through 14) or the dissolution of marriage (Title 40, chapter
8 4) or a division that, in the absence of an agreement between the
9 parties to the sale, could be created by an order of a court in
10 this state pursuant to the law of eminent domain (Title 70,
11 chapter 30);

12 (viii) except for the survey requirements in 76-3-401
13 through 76-3-405 and any applicable zoning requirements, a
14 division made for the purpose of relocating boundary lines
15 between adjoining properties, provided the division is recorded
16 in both EITHER the INDEX OF certificate CERTIFICATES of survey
17 and OR the index provided for in 76-3-613, AS APPLICABLE, and
18 unless the governing body determines that the subdivision may be
19 used to create subdivisions for resale AS LONG AS NO ADDITIONAL
20 PARCELS ARE CREATED;

21 (ix) except for the survey requirements in 76-3-401 through
22 76-3-405, a division made exclusively for agricultural OR
23 SILVICULTURAL purposes by sale or agreement to buy and sell if
24 the division is outside of a platted subdivision and if the local
25 governing body and the subdivider enter into a covenant running
26 with the land that the divided parcels must be used exclusively
27 for agricultural purposes. The governing body shall agree to
28 release the covenant upon petition by the subdivider if the
29 subdivision proposal complies with the provisions of this
30 chapter. DIVISIONS MADE FOR AGRICULTURAL OR SILVICULTURAL
31 PURPOSES MUST BE NOTED ON THE CERTIFICATE OF SURVEY OR OTHER
32 RECORDED INSTRUMENT OF CONVEYANCE.

33 (x) except for the survey requirements in 76-3-401 through
34 76-3-405 and the review requirements of 76-3-610 through 76-3-

1 614. a division THAT DOES NOT CONSTITUTE A SUBDIVISION AS DEFINED
2 BY THIS CHAPTER created by rent or lease;

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

6 (xii)(A) except for requirements other than the survey and
7 platting requirements in 76-3-401 through 76-3-405 and the review
8 requirements of 76-4-101 through 76-4-131, a division created by
9 an agricultural producer for sale or gift to a member of the
10 agricultural producer's immediate family for the purpose of
11 maintaining the agricultural operation and limited to a single
12 sale or gift to each IMMEDIATE family member. ADDITIONAL SALES OR
13 GIFTS TO EACH IMMEDIATE FAMILY MEMBER OF AN AGRICULTURAL PRODUCER
14 MAY BE MADE FOR ADJOINING PROPERTIES UNDER THE PROVISIONS OF
15 SUBSECTION (21)(B)(VIII) OF THIS SECTION, AS LONG AS NO
16 ADDITIONAL PARCELS ARE CREATED; OR For the purposes of this
17 section, agricultural producer means a person primarily engaged
18 in the production of agricultural products.

19 (B) THE CREATION BY AN AGRICULTURAL PRODUCER OF ANY AREA,
20 REGARDLESS OF ITS SIZE, THAT PROVIDES OR WILL PROVIDE PERMANENT
21 MULTIPLE SPACES FOR LESS THAN 4 DWELLING UNITS.

22 (C) FOR PURPOSES OF THIS SECTION, AGRICULTURAL PRODUCER
23 MEANS A PERSON PRIMARILY ENGAGED IN THE PRODUCTION OF
24 AGRICULTURAL PRODUCTS.

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

28 (XIV) A DIVISION CREATED TO PROVIDE SECURITY FOR MORTGAGES,
29 LIENS, OR TRUST INDENTURES, UNTIL SUCH TIME AS THE DIVISION IS NO
30 LONGER PROVIDING THAT SECURITY.

31 (24)(21)(22) "Subdivision review officer" means the person
32 designated by the governing body to administer subdivision review
33 or to approve, conditionally approve, or disapprove applications
34 for minor subdivisions or special subdivisions AND TO ADVISE THE
35 REVIEW AUTHORITY ON SUBDIVISIONS.

1 ~~(25)(22)(23)~~ "Tract of record" means a tract of record as
2 appears in the records of the county clerk and recorder's office.

3 ~~(23)(24)~~ "WATER USER ENTITY" MEANS AN ENTITY AS DESCRIBED IN
4 7-12-1151 AND IRRIGATION DISTRICTS AS PROVIDED IN 85-7-101."

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

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

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

12 "76-3-105. Violations ~~-- actions against subdivider.~~ (1)
13 Any A person who violates any provision of this chapter or any
14 local regulations adopted pursuant thereto shall be to this
15 chapter is guilty of subject to a civil penalty not to exceed
16 \$5,000 misdemeanor and punishable by a fine of not less than \$100
17 or more than \$500 or by imprisonment in a county jail for not
18 more than 3 months or by both fine and imprisonment. Each sale,
19 lease, or transfer of each separate parcel of land in violation
20 of any provision of this chapter or any local regulation adopted
21 pursuant thereto shall be deemed to this chapter is considered a
22 separate and distinct offense.

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

26 ~~NEW SECTION. Section 5. Violations -- actions against~~
27 ~~governing body. A person who has filed with the governing body an~~
28 ~~application for a permit under this chapter may bring an action~~
29 ~~against the governing body to recover actual damages caused by:~~

30 ~~(1) a final action, decision, or order of the governing~~
31 ~~body that imposes requirements, limitations, or conditions upon~~
32 ~~the use of the property in excess of those authorized by this~~
33 ~~chapter; or~~

34 ~~(2) a regulation adopted pursuant to this chapter that is:~~

35 ~~(a) arbitrary or capricious; or~~

1 ~~(b) unlawful or exceeds lawful authority.~~

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

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

7 "76-3-301. General restriction on transfer of title to
8 subdivided lands. (1) Except as provided in 76-3-303, every final
9 subdivision plat must be filed for record with the county clerk
10 and recorder before title to the subdivided land can be sold or
11 transferred in any manner. The clerk and recorder of the county
12 shall refuse to accept any plat for record that fails to have the
13 approval of 76-3-611(1) in proper form.

14 (2) The clerk and recorder shall notify the governing body
15 or its designated agent of any land division ~~described in 76-3-~~
16 207(1) exempted from review but subject to survey requirements.

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

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

23 "76-3-302. Restrictions on recording instruments relating
24 to land subject to surveying requirements. (1) Except as provided
25 in subsection (2), the county clerk and recorder of any county
26 may not record any instrument ~~which~~ that purports to transfer
27 title to or possession of a parcel or tract of land ~~which~~ that is
28 required to be surveyed by this chapter unless the required
29 certificate of survey or subdivision plat has been filed with the
30 clerk and recorder and the instrument of transfer describes the
31 parcel or tract by reference to the filed certificate or plat.

32 (2) Subsection (1) does not apply when the parcel or tract
33 to be transferred was created before July 1, 1973, and the
34 instrument of transfer for the parcel or tract includes a
35 reference to a previously recorded instrument of transfer or is

1 accompanied by documents which, ~~if recorded, would otherwise~~
2 ~~satisfy the requirements of this subsection. The reference or~~
3 ~~document must~~ that demonstrate that the parcel or tract existed
4 before July 1, 1973.

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

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

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

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

20 "76-3-305. Vacation of plats -- utility easements. (1) Any
21 plat prepared and recorded as ~~herein~~ provided in this part may be
22 vacated either in whole or in part as provided by 7-5-2501, 7-5-
23 2502, subsections (1) and (2) of 7-14-2616, 7-14-2617,
24 subsections (1) and (2) of 7-14-4114, and 7-14-4115, and upon
25 such vacation the title to the streets and alleys of ~~such~~ the
26 vacated portions to the center ~~thereof shall revert~~ of the street
27 or alley reverts to the owners of the properties within the
28 platted area adjacent to ~~such~~ the vacated portions.

29 (2) ~~However, when any~~ If a poleline, pipeline, or any other
30 public or private facility is located in a vacated street or
31 alley at the time of the reversion of the title ~~thereto~~ of the
32 street or alley, the owner of ~~said~~ the public or private utility
33 facility ~~shall have~~ has an easement over the vacated land to
34 continue the operation and maintenance of the public or private
35 utility facility."

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

2 "76-3-401. Survey requirements for divisions of lands other
3 ~~than subdivisions~~. All divisions of land ~~for sale other than a~~
4 ~~subdivision after July 1, 1974~~, into parcels which parts that
5 cannot be described as ~~1/32~~ ~~1/16~~ 1/32 or larger aliquot parts of
6 a United States government section or AS a United States
7 government lot must be surveyed by or under the supervision of a
8 registered professional land surveyor."

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

10 "76-3-402. Survey and platting requirements for subdivided
11 lands. (1) Every subdivision of land after June 30, 1973, shall
12 must be surveyed and platted in conformance with this chapter by
13 or under the supervision of a registered professional land
14 surveyor.

15 (2) Subdivision plats shall must be prepared and filed in
16 accordance with this chapter and regulations adopted pursuant
17 ~~thereto to this chapter~~.

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

30 ~~Section 13. Section 76-3-403, MCA, is amended to read:~~

31 ~~"76-3-403. Monumentation. (1) The department of commerce~~
32 ~~shall, in conformance with the Montana Administrative Procedure~~
33 ~~Act, prescribe uniform standards for monumentation and for the~~
34 ~~form, accuracy, and descriptive content of records of survey.~~

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

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

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

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

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

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

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

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

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

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

30 "76-3-405. Administration of oaths by registered land
31 surveyor. (1) ~~Every~~ A registered professional land surveyor may
32 administer and certify oaths when:

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

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

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

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

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

11 "76-3-501. Local subdivision regulations. (1) ~~Before July~~
12 ~~1, 1974, the~~ The governing body of every county, city, and town
13 shall, IN A MANNER THAT PROTECTS THE RIGHTS OF PROPERTY OWNERS,
14 adopt and provide for the enforcement and administration of
15 subdivision regulations reasonably ~~providing for the orderly~~
16 ~~development of their jurisdictional areas; for the coordination~~
17 ~~of roads within subdivided land with other roads, both existing~~
18 ~~and planned; for the dedication of land for roadways and for~~
19 ~~public utility easements; for the improvement of roads; for the~~
20 ~~provision of adequate open spaces for travel, light, air, and~~
21 ~~recreation; for the provision of adequate transportation, water,~~
22 ~~drainage, and sanitary facilities; for the avoidance or~~
23 ~~minimization of congestion; and for the avoidance of subdivision~~
24 ~~which would involve unnecessary environmental degradation and the~~
25 ~~avoidance of danger of injury to health, safety, or welfare by~~
26 ~~reason of natural hazard or the lack of water, drainage, access,~~
27 ~~transportation, or other public services or would necessitate an~~
28 ~~excessive expenditure of public funds for the supply of such~~
29 ~~services. implementing the provisions of this chapter that are~~
30 ~~consistent with the statement of purpose described in 76-3-102~~
31 ~~and that do not unreasonably restrict a landowner's ability to~~
32 ~~develop land.~~ PROVIDING FOR THE ORDERLY DEVELOPMENT OF THEIR
33 JURISDICTIONAL AREAS; FOR THE COORDINATION OF ROADS WITHIN
34 SUBDIVIDED LAND WITH OTHER ROADS, BOTH EXISTING AND PLANNED; FOR
35 THE DEDICATION OF LAND FOR ROADWAYS AND FOR PUBLIC UTILITY

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

18 (a) procedures for expedited review of minor subdivisions
19 and special subdivisions;

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

23 (c) procedures for obtaining public agency and public
24 utility review. This review may not delay the review authority's
25 action on the proposal beyond the time limits specified in
26 [sections ~~20 and 21~~ 18 AND 19]. The failure of an agency to
27 complete a review of a plat may not be a basis for rejection of
28 the plat by a governing body.

29 (d) procedures and standards concerning the application of
30 review criteria to subdivision applications, as provided for in
31 76-3-608 and [section ~~26~~ 24];

32 (e) standards for the design and arrangement of lots,
33 streets, and roads; grading and drainage; and for the location
34 and installation of utilities. Standards for the design of
35 streets and roads may not exceed the requirements for anticipated

1 vehicle use. VARIANCES FROM ROAD STANDARDS MAY BE GRANTED FOR
2 SUBDIVISIONS REQUIRING MINIMAL VEHICLE USE.

3 ~~(f) financial incentives for developments that accommodate~~
4 ~~public values~~ FINANCIAL OR OTHER POSITIVE INCENTIVES FOR
5 DEVELOPMENTS THAT ACCOMMODATE PUBLIC VALUES;

6 (G) IF A PROPOSED MAJOR, MINOR, OR SPECIAL SUBDIVISION LIES
7 PARTLY OR TOTALLY WITHIN THE BOUNDARIES OF A WATER USER ENTITY,
8 THAT THE PROPOSED PLAT OF THE SUBDIVISION BE SUBMITTED FOR REVIEW
9 TO THE WATER USER ENTITY TO ENSURE THAT THE EXISTENCE AND
10 LOCATION OF ALL WATER USER FACILITIES ARE PROPERLY NOTED ON THE
11 PLAT. WATER USER FACILITIES INCLUDE BUT ARE NOT LIMITED TO
12 CANALS, LATERALS, OPEN DRAINS, AND CLOSED DRAINS.

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

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

19 "76-3-507. Provision for bonding requirements to insure
20 ensure construction of public improvements. (1) Except as
21 provided in subsection (2), the governing body shall require the
22 subdivider to complete any required public improvements within
23 the subdivision prior to the approval of the final plat.

24 ~~(2) Local regulations may provide that, in (a)~~ In lieu of
25 the completion of the construction of any public improvements
26 prior to the approval of a final plat, the governing body
27 subdivider shall require provide a bond or other reasonable
28 security, in an amount and with surety and conditions
29 satisfactory to ~~it~~ the governing body, providing for and securing
30 the construction and installation of such the improvements within
31 a period specified by the governing body and expressed in the
32 bonds or other security. The governing body shall reduce bond
33 requirements commensurate with the completion of improvements.

34 (b) In lieu of requiring a bond or other means of security
35 for the construction or installation of all the required public

1 improvements under subsection (2)(a), the governing body may
2 approve an incremental payment or guarantee plan. The
3 improvements in a prior increment must be completed, or the
4 payment or guarantee of payment for the costs of the improvements
5 incurred in a prior increment must be satisfied, before
6 development of future increments.

7 (3) Governing body approval of a final plat prior to the
8 completion of required improvements and without the provision of
9 the security required under subsection (2) is not an act of a
10 legislative body for the purpose of 2-9-111."

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

12 "76-3-601. Submission of preliminary plat for review. (1)
13 ~~Except where a plat is eligible for summary approval, the~~
14 ~~subdivider shall present to the governing body or the agent or~~
15 ~~agency designated thereby the preliminary plat of the proposed~~
16 ~~subdivision for local review. The preliminary plat shall show all~~
17 ~~pertinent features of the proposed subdivision and all proposed~~
18 ~~improvements. The subdivider shall present the preliminary plat~~
19 of the proposed subdivision to the subdivision review officer for
20 review. The subdivision review officer shall determine whether
21 the proposed subdivision is a major subdivision, minor
22 subdivision, or special subdivision according to the definitions
23 in 76-3-103.

24 (2) (a) When the proposed subdivision lies within the
25 boundaries of an incorporated city or town, the preliminary plat
26 ~~shall~~ must be submitted to and approved by the city or town
27 governing body review authority.

28 (b) When the proposed subdivision is situated entirely in
29 an unincorporated area, the preliminary plat ~~shall~~ must be
30 submitted to and approved by the ~~governing body of the~~
31 appropriate county review authority. However, if the proposed
32 subdivision lies within 1 mile of a third-class city or town or
33 within 2 miles of a second-class city or within 3 miles of a
34 first-class city, the county ~~governing body~~ review authority

1 shall submit the preliminary plat to the city or town governing
2 body or its designated agent for review and comment.

3 (c) ~~If~~ When the proposed subdivision lies partly within an
4 incorporated city or town, the proposed plat ~~thereof~~ must be
5 submitted to and approved by both the city or town and the county
6 ~~governing bodies~~ review authorities.

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

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

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

17 "76-3-603. Contents of environmental assessment. Where
18 ~~required,~~ the An environmental assessment ~~shall~~ must accompany
19 the preliminary plat for any major subdivision and ~~shall~~ must
20 include:

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

26 ~~(2) maps and tables showing soil types in the several parts~~
27 ~~of the proposed subdivision and their suitability for any~~
28 ~~proposed developments in these several parts;~~

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

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

1 (2) a summary of the probable impacts of the proposed
2 subdivision based on the criteria described in 76-3-608 and
3 [section 26 241; AND

4 (3) ADDITIONAL RELEVANT AND REASONABLE INFORMATION RELATED
5 TO THE APPLICABLE REGULATORY CRITERIA AS MAY BE REQUIRED BY THE
6 GOVERNING BODY."

7 NEW SECTION. Section 18. Review process for major
8 subdivisions. (1) A subdivider proposing a major subdivision
9 shall confer first with the subdivision review officer or his
10 designated agent in a preliminary conference to discuss the
11 application for the major subdivision, the requirements provided
12 in this chapter, and local government regulations provided in 76-
13 3-501. The subdivider shall submit a sketch of the plat at the
14 conference, and the subdivision review officer shall refer the
15 subdivider to the requirements of Title 76, chapter 4. Notice of
16 the subdivision application must comply with the local government
17 regulations adopted under 76-3-501.

18 (2) ~~The governing body, or the planning board if designated~~
19 ~~as the review authority by the governing body,~~ shall approve,
20 conditionally approve, or disapprove an application for a major
21 subdivision within 60 days following the submission of a complete
22 application. However, the subdivider and the ~~governing body or~~
23 review authority may agree to extend the time period.

24 (3) An application for a major subdivision may not receive
25 more than ~~two~~ ONE informational ~~hearings~~ HEARING. The hearing ~~or~~
26 ~~hearings~~ must be conducted by the governing body unless it
27 delegates the responsibility to the planning board or to a
28 hearing officer under subsection (5) or conducts a joint hearing
29 with the planning board. When a hearing is held by the planning
30 board or a hearing officer, the board or officer shall make
31 findings and recommendations for submission to the governing body
32 concerning approval, conditional approval, or disapproval of the
33 plat not later than 10 days after the informational hearing.

34 (4) Within 21 days following submission to the governing
35 body of the complete application by the subdivider, an

1 informational hearing on the subdivision application may be
2 requested by:

3 (a) the subdivider;

4 (b) a citizen who would be SUBSTANTIALLY adversely affected
5 by the subdivision; or

6 (c) the review authority.

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

17 (6) In informational hearings under this section,
18 irrelevant, immaterial, or unduly repetitious evidence must be
19 excluded but all other evidence of a type commonly relied upon by
20 reasonably prudent persons in the conduct of their affairs is
21 admissible, whether or not the evidence would be admissible in a
22 trial in the courts of Montana. Any part of the evidence may be
23 received in written form, ~~and all testimony of parties and~~
24 ~~witnesses must be made under oath. Hearsay evidence may be used~~
25 ~~for the purpose of supplementing or explaining other evidence,~~
26 ~~but it is not sufficient in itself to support a finding unless it~~
27 ~~would be admissible over objection in civil actions.~~

28 (7) Not less than 15 days prior to the date of an
29 informational hearing on an application for a major subdivision,
30 notice of the INFORMATIONAL hearing ~~and of the type of hearing~~
31 ~~must be given BY THE GOVERNING BODY~~ by publication in a newspaper
32 of general circulation in the county in which the subdivision is
33 located. The subdivider, each adjoining property owner of record,
34 and each purchaser of record under contract for deed of property
35 adjoining the land included in the plat must also be notified of

1 the hearing by certified mail not less than 15 days prior to the
2 date of the hearing.

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

7 NEW SECTION. Section 19. Review process for minor
8 subdivisions and special subdivisions. (1) A subdivider proposing
9 a minor subdivision or special subdivision shall confer first
10 with the subdivision review officer or his designated agent in a
11 preliminary conference to discuss the application for the
12 subdivision, under the requirements provided in this chapter, and
13 local government regulations provided in 76-3-501. The subdivider
14 shall submit a sketch of the plat at the conference, and the
15 subdivision review officer shall refer the subdivider to the
16 requirements of Title 76, chapter 4. Notice of the subdivision
17 application must comply with the local government regulations
18 adopted under 76-3-501.

19 (2) ~~The governing body, or the planning board or~~
20 ~~subdivision review officer if either is designated the review~~
21 ~~authority by the governing body,~~ shall approve, conditionally
22 approve, or disapprove an application for a minor subdivision or
23 special subdivision.

24 (3) A determination on the application must be made within
25 35 days following submission of a complete application unless the
26 review authority and the subdivider agree to extend the time
27 period.-

28 ~~(4) A public hearing may be held on a minor or special~~
29 ~~subdivision only if:-~~

30 ~~(a) the subdivision would be located in an area having~~
31 ~~unique cultural, historical, or natural resources that are~~
32 ~~susceptible to substantial adverse effects from subdivision~~
33 ~~development or if the subdivision would cause substantial adverse~~
34 ~~fiscal costs to local government; and-~~

1 ~~(b) the subdivider or a citizen who demonstrates that he~~
2 ~~would be adversely affected by the proposed subdivision petitions~~
3 ~~the governing body for a hearing within 15 days following~~
4 ~~submission of the complete application.~~

5 (4) WITHIN 15 DAYS FOLLOWING SUBMISSION TO THE GOVERNING
6 BODY OF A COMPLETE APPLICATION BY THE SUBDIVIDER, A PUBLIC
7 HEARING ON THE SUBDIVISION MAY BE REQUESTED BY THE SUBDIVIDER OR
8 BY A CITIZEN WHO DEMONSTRATES THAT HE WOULD BE SUBSTANTIALLY
9 ADVERSELY AFFECTED BY THE SUBDIVISION. AN INFORMATIONAL HEARING
10 MAY BE HELD ON A MINOR OR SPECIAL SUBDIVISION ONLY IF:

11 (A) THE SUBDIVISION WOULD BE LOCATED IN AN AREA HAVING
12 UNIQUE CULTURAL OR HISTORICAL RESOURCES, OR ENVIRONMENTAL OR
13 ECOLOGICAL RESOURCES THAT ARE SUSCEPTIBLE TO SUBSTANTIAL ADVERSE
14 EFFECTS FROM SUBDIVISION DEVELOPMENT; OR IF THE SUBDIVISION WOULD
15 CAUSE SUBSTANTIAL ADVERSE FISCAL COSTS TO LOCAL GOVERNMENT; AND

16 (B) THE SUBDIVIDER OR A CITIZEN WHO DEMONSTRATES THAT HE
17 WOULD BE ADVERSELY AFFECTED BY THE PROPOSED SUBDIVISION REQUESTS
18 A HEARING FROM THE GOVERNING BODY WITHIN 15 DAYS FOLLOWING
19 SUBMISSION OF A COMPLETE APPLICATION.

20 (5) If requested by the subdivider, OR an affected citizen
21 who petitions REQUESTS A HEARING under subsection (4), ~~or the~~
22 ~~review authority,~~ the hearing must be conducted as an
23 informational hearing as provided for in [section 20 18]. The
24 governing body shall designate the hearing officer, and, ~~if the~~
25 ~~hearing is held pursuant to the subdivider's or an affected~~
26 ~~citizen's request, the governing body may assess costs of the~~
27 ~~hearing to the requester. The~~ THE hearing officer shall submit
28 findings and recommendations to the review authority concerning
29 the approval, conditional approval, or disapproval of the plat
30 not later than 10 days after the ~~public~~ hearing and within the
31 time period determined under subsection (3).

32 (6) An application for a minor subdivision or special
33 subdivision may not receive more than one ~~public~~ hearing. The
34 ~~public~~ hearing must be conducted by the governing body unless it

1 delegates that responsibility to the subdivision review officer,
2 the planning board, or a hearing officer under subsection (5).

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

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

26 (9) The ~~review authority~~ SUBDIVISION REVIEW OFFICER shall
27 report the results of the meeting to the ~~governing body~~ REVIEW
28 AUTHORITY and may make a recommendation.

29 (10) The ~~governing body~~ REVIEW AUTHORITY may require the
30 subdivider to design the subdivision to minimize any potentially
31 significant adverse impacts. ~~IT IS RECOGNIZED THAT IN SOME~~
32 ~~INSTANCES THE IMPACTS OF A PROPOSED DEVELOPMENT MAY BE~~
33 ~~UNACCEPTABLE AND WILL PRECLUDE APPROVAL OF THE PLAT.~~

1 (11) ~~The governing body~~ REVIEW AUTHORITY shall issue written
2 findings, based on substantial credible evidence, to justify any
3 action taken under subsection (10).

4 ~~(12) In reviewing a subdivision under subsection (4), a~~
5 ~~governing body must be guided by the following standards:~~

6 ~~(a) Mitigation measures imposed should not unreasonably~~
7 ~~restrict a landowner's ability to develop land, but it is~~
8 ~~recognized that in some instances the unmitigated impacts of a~~
9 ~~proposed development may be unacceptable and will preclude~~
10 ~~approval of the plat.~~

11 ~~(b)~~ IN REVIEWING A SUBDIVISION UNDER SUBSECTION (4), A
12 REVIEW AUTHORITY MUST BE GUIDED BY THE FOLLOWING STANDARDS:

13 (A) MITIGATION MEASURES IMPOSED SHOULD NOT UNREASONABLY
14 RESTRICT A LANDOWNER'S ABILITY TO DEVELOP LAND, BUT IT IS
15 RECOGNIZED THAT IN SOME INSTANCES THE UNMITIGATED IMPACTS OF A
16 PROPOSED DEVELOPMENT MAY BE UNACCEPTABLE AND WILL PRECLUDE
17 APPROVAL OF THE PLAT.

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

24 (13) The review authority shall approve, conditionally
25 approve, or disapprove the application after the hearing has
26 occurred or the opportunity for hearing has expired. ~~If the~~
27 ~~review authority is the governing body or planning board, the~~ THE
28 decision must be made during executive proceedings. ~~If the~~
29 ~~subdivision review officer is designated the review authority,~~
30 ~~the review officer shall proceed according to the following~~
31 ~~requirements:~~

32 ~~(a) The subdivision review officer shall notify the~~
33 ~~governing body and the planning board, if one exists, of the~~
34 ~~review officer's decision.~~

1 ~~(b) If the application for the subdivision contains a~~
2 ~~request for a deviation from standards or for a variance or if~~
3 ~~the application was subject to a public hearing under subsections~~
4 ~~(4) through (7), the subdivision review officer shall make a~~
5 ~~preliminary decision on the application. This decision is subject~~
6 ~~to review and modification by the governing body, or the planning~~
7 ~~board if designated by the governing body, during executive~~
8 ~~proceedings. The subdivision review officer's decision may be~~
9 ~~modified by the governing body or planning board only if it finds~~
10 ~~by substantial credible evidence and documents that the decision~~
11 ~~is not consistent with the provisions of this chapter or with~~
12 ~~local government regulations adopted pursuant to 76-3-501.~~

13 NEW SECTION. Section 20. Review guidelines -- all
14 subdivisions. (1) A proposed subdivision must comply with the
15 applicable requirements stated in this chapter and local
16 government regulations adopted pursuant to 76-3-501 and must
17 conform to a master plan, if required, pursuant to 76-1-606.

18 (2) Written findings and the reasons for approving,
19 disapproving, or conditionally approving the subdivision must
20 accompany the review authority's action on a subdivision
21 application.

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

24 (4) Approval of the final plat represents final approval
25 from the review authority. However, this approval is only for the
26 subdivision description provided in the final plat. A person who
27 proposes to implement a change from an approved FINAL plat must
28 submit a plat amendment that is subject to the review
29 requirements of this chapter.

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

34 (a) ~~7.5%~~ 10% of the fair market value of the land proposed
35 to be subdivided into parcels of one-half acre or smaller;

1 (b) ~~5%~~ 7.5% of the fair market value of the land proposed
2 to be subdivided into parcels larger than one-half acre and not
3 larger than 1 acre;

4 (c) ~~2.5%~~ 5% of the fair market value of the land proposed
5 to be subdivided into parcels larger than 1 acre and not larger
6 than 3 acres; and

7 (d) ~~1.25%~~ 2.5% of the fair market value of the land
8 proposed to be subdivided into parcels larger than 3 acres and
9 not larger than 5 acres.

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

13 ~~(a) 7.5% of the fair market value of the land proposed to~~
14 ~~be subdivided if the development density is 13 or more dwelling~~
15 ~~units per acre;~~

16 ~~(b) 5% of the fair market value of the land proposed to be~~
17 ~~subdivided if the development density is 8 to 12.99 dwelling~~
18 ~~units per acre;~~

19 ~~(c) 2.5% of the fair market value of the land proposed to~~
20 ~~be subdivided if the development density is 5 to 7.99 dwelling~~
21 ~~units per acre;~~

22 ~~(d) 1.25% of the fair market value of the land proposed to~~
23 ~~be subdivided if the development density is 3 to 4.99 dwelling~~
24 ~~units per acre. WHEN A SUBDIVISION IS LOCATED TOTALLY WITHIN AN~~
25 ~~AREA FOR WHICH DENSITY REQUIREMENTS HAVE BEEN ADOPTED PURSUANT TO~~
26 ~~A MASTER PLAN UNDER TITLE 76, CHAPTER 1, OR PURSUANT TO ZONING~~
27 ~~REGULATIONS UNDER TITLE 76, CHAPTER 2, THE GOVERNING BODY MAY~~
28 ~~ESTABLISH PARK DEDICATION REQUIREMENTS BASED ON THE COMMUNITY~~
29 ~~NEED FOR PARKS AND THE DEVELOPMENT DENSITIES IDENTIFIED IN THE~~
30 ~~PLANS OR REGULATIONS. PARK DEDICATION REQUIREMENTS ESTABLISHED~~
31 ~~UNDER THIS SUBSECTION ARE IN LIEU OF THOSE PROVIDED IN SUBSECTION~~
32 ~~(1) AND MAY NOT EXCEED 0.03 ACRES PER DWELLING UNIT.~~

33 (3) (A) A park dedication may not be required;

34 (I) for land proposed for subdivision into parcels larger
35 than 5 acres;

1 (II) for subdivision into parcels that are all
2 nonresidential;

3 (III) FOR SUBDIVISIONS WHERE NO PARCELS ARE CREATED, EXCEPT
4 WHEN THAT SUBDIVISION PROVIDES PERMANENT MULTIPLE SPACES FOR
5 MOBILE HOMES OR CONDOMINIUMS: or

6 (IV) where only one additional parcel is created.

7 (B) If a future subdivision of the land creates parcels
8 smaller than 5 acres, park dedication is required according to
9 the provisions of this section.

10 (4) For the purpose of this section, the fair market value
11 is the value of the unsubdivided, unimproved land.-

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

14 (5) THE GOVERNING BODY, IN CONSULTATION WITH THE SUBDIVIDER
15 AND THE PLANNING BOARD OR PARK BOARD HAVING JURISDICTION, MAY
16 DETERMINE SUITABLE LOCATIONS FOR PARKS AND PLAYGROUNDS AND,
17 GIVING DUE WEIGHT AND CONSIDERATION TO THE EXPRESSED PREFERENCE
18 OF THE SUBDIVIDER, MAY DETERMINE WHETHER THE PARK DEDICATION MUST
19 BE A LAND DONATION, CASH DONATION, OR A COMBINATION OF BOTH.

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

23 (b) The governing body may use the dedicated money to
24 acquire or develop regional parks or recreational areas or for
25 the purchase of public open space or conservation easements only
26 if:

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

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

32 (7) The local governing body shall waive the park
33 dedication requirement if:

34 (a) (i) the preliminary plat provides for a planned unit
35 development or other development with land permanently set aside

1 for park and recreational uses sufficient to meet the needs of
2 the persons who will ultimately reside in the development; and

3 (ii) the appraised value of the land set aside for park and
4 recreational purposes equals or exceeds the value of the
5 dedication required under subsection (1); or

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

9 (ii) the appraised market value of the unimproved subdivided
10 land, by virtue of providing long-term protection provided for in
11 subsection (7)(b)(i), is reduced by an amount equal to or
12 exceeding the value of the dedication required under subsection
13 (1).

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

21 Section 23. Section 76-3-608, MCA, is amended to read:

22 "76-3-608. Criteria for local government review. (1) The
23 basis for the ~~governing body's or review authority's~~ decision to
24 approve, conditionally approve, or disapprove a subdivision shall
25 be is whether the applicable preliminary plat, environmental
26 assessment, ~~public~~ hearing, planning board recommendations, and
27 or any additional information ~~demonstrate~~ demonstrates that
28 development of the subdivision ~~would be in the public interest.~~
29 ~~The governing body shall disapprove any subdivision which it~~
30 ~~finds not to be in the public interest~~ meets the requirements of
31 this chapter.

32 (2) ~~To determine whether the proposed subdivision would be~~
33 ~~in the public interest, the~~ The governing body or review
34 authority shall issue written findings of fact which that weigh
35 the following criteria ~~for public interest~~ in [SECTION 18].

1 [SECTION 19], [section 26 24], and subsections (3) and (4) of
2 this section, as applicable.

3 ~~(a) the basis of the need for the subdivision;~~

4 ~~(b) expressed public opinion;~~

5 ~~(c) effects on agriculture;~~

6 ~~(d) effects on local services;~~

7 ~~(e) effects on taxation;~~

8 ~~(f) effects on the natural environment;~~

9 ~~(g) effects on wildlife and wildlife habitat; and~~

10 ~~(h) effects on the public health and safety.~~

11 (3) A subdivision proposal must undergo review for the
12 following primary criteria:

13 ~~(a) The subdivision must be mapped, and the subdivision~~
14 ~~plat must be properly filed with the county clerk and recorder.~~

15 ~~(b)(A) The subdivision must comply with water supply, solid~~
16 ~~waste disposal, sewage treatment, and water quality standards, as~~
17 ~~provided for in Title 76, chapter 4, part 1.~~

18 ~~(c)(B) The subdivision must provide easements for the~~
19 ~~location and installation of any planned utilities.~~

20 ~~(d)(C) The subdivision must ensure access to each~~
21 ~~tract PARCEL within the subdivision, as follows:~~

22 ~~(i) for a primitive tract:~~

23 ~~(A) legal access must be provided; and~~

24 ~~(B)(II) notation of legal access must be made on the~~
25 ~~applicable plat and any instrument of transfer concerning the~~
26 ~~tract PARCEL; and~~

27 ~~(ii) for any other tract, (III) physical access must be~~
28 ~~provided according to standards set by the governing body under~~
29 ~~76-3-501.~~

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

32 ~~(f)(E) The subdivision must be evaluated under the~~
33 ~~conditions provided in subsection (4) to determine if lots upon~~
34 ~~which building sites are or can reasonably be expected to be~~

1 located within the subdivision are located in an area affected by
2 the following hazards, INCLUDING BUT NOT LIMITED TO SUCH AS:

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

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

10 (iii) drainage problems, including the potential for
11 sheetflooding.

12 (4) Subdivisions evaluated for hazards under subsection
13 ~~(3)(f)~~(3)(E) must be reviewed under all of the following
14 conditions:

15 (a) Local government regulations must provide specific
16 standards for evaluation and mitigation.

17 (b) Existing and reasonably accessible data must be used
18 for the evaluation unless otherwise agreed to by the subdivider
19 and the review authority.

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

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

24 (e) If the review authority knows of the existence of
25 natural or man-caused hazards other than those described in
26 subsection ~~(3)(f)~~ (3)(E), the review authority shall notify the
27 subdivider in writing of those known hazards and require notice
28 of the hazards on the final plat.

29 (f) The result of the hazard evaluation is not dispositive
30 of the degree of hazard existing and is not grounds to establish
31 liability against the review authority."

32 NEW SECTION. Section 24. Additional review criteria for
33 major subdivisions. (1) In addition to the requirements of 76-3-
34 608 and [sections ~~20 and 22~~ 18 AND 20], a major subdivision must
35 be reviewed for effects on:

1 (a) agricultural or agricultural water-user practices;—

2 ~~(b) unique cultural and historical sites;—~~

3 ~~(c) the natural environment; and~~

4 (B) UNIQUE CULTURAL OR HISTORICAL RESOURCES;

5 (C) ENVIRONMENTAL OR ECOLOGICAL RESOURCES, INCLUDING
6 WILDLIFE AND WILDLIFE HABITAT; AND

7 (d) local services.

8 (2) (a) In reviewing major subdivisions for the effects
9 listed in subsection (1), the review authority shall use
10 information from the environmental assessment required by 76-3-
11 603 and may solicit other site-specific information from the
12 subdivider, agencies, and other appropriate sources. Efforts by
13 the review authority to gather additional information do not
14 constitute grounds for extending the deadlines for the
15 subdivision review process provided for in [section 20 18] unless
16 an extension is agreed to by the subdivider.

17 (b) Based on the information gathered, the subdivision
18 review officer shall determine whether the proposed subdivision
19 is likely to have significant adverse impacts on the factors
20 listed in subsection (1).

21 (c) If the subdivision review officer determines that
22 significant adverse impacts are probable, the subdivision review
23 officer shall schedule a consultation with the subdivider,
24 knowledgeable persons, and agency representatives. During the
25 consultation process, the parties shall work to develop
26 mitigation for the potential adverse effects on the factors
27 listed in subsection (1).

28 (d) The subdivision review officer shall report the results
29 of the meeting to the governing body and may make a
30 recommendation.

31 (e) The governing body may require the subdivider to design
32 the subdivision to minimize any potentially significant adverse
33 impacts. ~~IT IS RECOGNIZED THAT IN SOME INSTANCES THE IMPACTS OF A~~
34 ~~PROPOSED DEVELOPMENT MAY BE UNACCEPTABLE AND WILL PRECLUDE~~
35 ~~APPROVAL OF THE PLAT.~~

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

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

6 ~~(i) Mitigation measures imposed must not unreasonably~~
7 ~~restrict a landowner's ability to develop land, but it is~~
8 ~~recognized that in some instances the impacts of a proposed~~
9 ~~development may be unacceptable and will preclude approval of the~~
10 ~~plat.~~

11 (ii) IN REVIEWING A SUBDIVISION UNDER SUBSECTION (1), A
12 GOVERNING BODY MUST BE GUIDED BY THE FOLLOWING STANDARDS:

13 (I) MITIGATION MEASURES IMPOSED SHOULD NOT UNREASONABLY
14 RESTRICT A LANDOWNER'S ABILITY TO DEVELOP LAND, BUT IT IS
15 RECOGNIZED THAT IN SOME INSTANCES THE UNMITIGATED IMPACTS OF A
16 PROPOSED DEVELOPMENT MAY BE UNACCEPTABLE AND WILL PRECLUDE
17 APPROVAL OF THE PLAT.

18 (II) Whenever feasible, mitigation should be designed to
19 provide some benefits for the subdivider, including allowances
20 for higher density development in less environmentally sensitive
21 sites within the plat, waiver of the park dedication requirement
22 under the provisions of {section 23-21}, and structuring
23 mitigation to provide eligibility for tax benefits if land or
24 development rights are donated to eligible receivers.

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

26 "76-3-610. Effect of approval of preliminary plat. (1) Upon
27 approving or conditionally approving a preliminary plat, the
28 ~~governing body review authority~~ shall provide the subdivider with
29 a dated and signed statement of approval. This approval shall may
30 be in force for not more than 3 calendar years or less than 1
31 calendar year. At the end of this period, the ~~governing body~~
32 review authority may, at the request of the subdivider, extend
33 its approval for no more than 1 calendar year, except that the
34 ~~governing body review authority~~ may extend its approval for a
35 period of more than 1 year if that approval period is included as

1 a specific condition of a written agreement between the governing
2 body review authority and the subdivider, ~~according to 76-3-507.~~

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

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

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

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

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

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

29 (b) ~~No~~ A registered professional land surveyor shall may
30 not act as an examining land surveyor in regard to a plat or
31 certificate of survey in which he has a financial or personal
32 interest."

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

34 "76-3-613. Index of plats and certificates of survey to be
35 kept by county clerk and recorder. (1) The county clerk and

1 recorder shall maintain an index of all recorded subdivision
2 plats and certificates of survey.

3 (2) This index ~~shall~~ must list plats and certificates of
4 survey by the quarter section, section, township, and range in
5 which the platted or surveyed land lies and ~~shall~~ must list the
6 recording or filing numbers of all plats depicting lands lying
7 within each quarter section. Each quarter section list ~~shall~~ must
8 be definitive to the exclusion of all other quarter sections. The
9 index ~~shall~~ must also list the names of all subdivision plats of
10 more than five tracts in alphabetical order and the place where
11 filed."

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

13 "76-3-614. Correction of recorded plat. When a recorded
14 plat does not definitely show the location or size of lots or
15 blocks or the location or width of any street or alley, the
16 ~~governing body review authority~~ may at its own expense cause a
17 new and correct survey and plat to be made and recorded in the
18 office of the county clerk and recorder. The corrected plat must,
19 to the extent possible, follow the plan of the original survey
20 and plat. The surveyor making the resurvey shall endorse the
21 corrected plat, referring to the original plat and noting the
22 defect existing ~~therein~~ in the original plat and the corrections
23 made."

24 Section 29. Section 7-16-2324, MCA, is amended to read:

25 "7-16-2324. Sale, lease, or exchange of dedicated park
26 lands. (1) For the purposes of this section and part 25 of
27 chapter 8, lands dedicated to the public use for park or
28 playground purposes under ~~76-3-606 and 76-3-607~~ [section 23 21]
29 or a similar statute or pursuant to any instrument not
30 specifically conveying land to a governmental unit other than a
31 county are considered county lands.

32 (2) A county may not sell, lease, or exchange lands
33 dedicated for park or playground purposes except as provided
34 under this section and part 25 of chapter 8.

1 (3) Prior to selling, leasing, or exchanging any county
2 land dedicated to public use for park or playground purposes, a
3 county shall:

4 (a) compile an inventory of all public parks and
5 playgrounds within the county;

6 (b) prepare a comprehensive plan for the provision of
7 outdoor recreation and open space within the county;

8 (c) determine that the proposed sale, lease, or exchange
9 furthers or is consistent with the county's outdoor recreation
10 and open space comprehensive plan;

11 (d) publish notice as provided in 7-1-2121 of intention to
12 sell, lease, or dispose of ~~such~~ the park or playground lands,
13 giving the people of the county opportunity to be heard regarding
14 ~~such~~ the action;

15 (e) if the land is within an incorporated city or town,
16 secure the approval of the governing body thereof for the action;
17 and

18 (f) comply with any other applicable requirements under
19 part 25 of chapter 8.

20 (4) Any revenue realized by a county from the sale,
21 exchange, or disposal of lands dedicated to public use for park
22 or playground purposes ~~shall~~ must be paid into the park fund and
23 used in the manner prescribed in ~~76-3-606 and 76-3-607~~ [section
24 23 21] for cash received in lieu of dedication."

25 Section 30. Section 76-4-102, MCA, is amended to read:

26 "76-4-102. Definitions. As used in this part, unless the
27 context clearly indicates otherwise, the following words or
28 phrases have the following meanings:

29 (1) "Board" means the board of health and environmental
30 sciences.

31 (2) "Department" means department of health and
32 environmental sciences.

33 (3) "Extension of public sewage disposal system" means a
34 sewer line that connects two or more sewer service lines to a
35 sewer main.

1 (4) "Extension of public water supply system" means a water
2 line that connects two or more water service lines to a water
3 main.

4 (5) "Facilities" means public or private facilities for the
5 supply of water or disposal of sewage or solid waste and any
6 pipes, conduits, or other stationary method by which water,
7 sewage, or solid wastes might be transported or distributed.

8 (6) "Public water supply system" or "public sewage disposal
9 system" means, respectively, a water supply or sewage disposal
10 system that serves 10 or more families or 25 or more persons for
11 at least 60 days out of the calendar year.

12 (7) "Registered professional engineer" means a person
13 licensed to practice as a professional engineer under Title 37,
14 chapter 67.

15 (8) "Registered sanitarian" means a person licensed to
16 practice as a sanitarian under Title 37, chapter 40.

17 (9) "Reviewing authority" means the department or a local
18 department or board of health certified to conduct review under
19 76-4-104.

20 (10) "Sanitary restriction" means a prohibition against the
21 erection of any dwelling, shelter, or building requiring
22 facilities for the supply of water or the disposition of sewage
23 or solid waste or the construction of water supply or sewage or
24 solid waste disposal facilities until the department has approved
25 plans for those facilities.

26 (11) "Sewer service line" means a sewer line that connects a
27 single building or living unit to a public sewer system or
28 extension of such a system.

29 (12) "Solid wastes" means all putrescible and nonputrescible
30 solid wastes (except body wastes), including garbage, rubbish,
31 street cleanings, dead animals, yard clippings, and solid market
32 and solid industrial wastes.

33 (13) "Subdivision" means a division of land or land so
34 divided ~~which that~~ creates one or more additional parcels
35 ~~containing less than 20 acres, exclusive of public roadways, in~~

1 order that the title to or possession of the parcels may be sold,
2 rented, leased, or otherwise conveyed and includes any
3 resubdivision and any condominium building or area, regardless of
4 size, ~~which that~~ provides permanent multiple ~~space~~ spaces with
5 utility hook-ups for recreational camping vehicles, ~~or~~ mobile
6 homes, dwelling units, or work camp structures constructed to
7 exist for longer than one year. For purposes of this subsection,
8 "work camp structure" means housing provided by a person for two
9 or more families or employees of that person and the families, if
10 any, of the employees. "Housing" does not include shelter
11 provided by an agricultural employer for persons who are
12 primarily employed to perform agricultural duties on that
13 person's ranch or farm.

14 (14) "Water service line" means a water line that connects a
15 single building or living unit to a public water system or
16 extension of such a system."

17 Section 31. Section 76-4-103, MCA, is amended to read:

18 "76-4-103. What constitutes subdivision. A subdivision
19 ~~shall comprise~~ comprises only those parcels ~~of less than 20 acres~~
20 ~~which that~~ have been created by a division of land, and the plat
21 ~~thereof shall~~ of the subdivision must show all ~~such the~~ parcels,
22 whether contiguous or not. The rental or lease of one or more
23 parts of a building, structure, or other improvement, whether
24 existing or proposed, is not a subdivision, as that term is
25 defined in this part, and is not subject to the requirements of
26 this part."

27 Section 32. Section 76-4-125, MCA, is amended to read:

28 "76-4-125. Review of development plans -- land divisions
29 ~~excluded from review.~~ (1) Plans and specifications of a
30 subdivision as defined in this part ~~shall~~ must be submitted to
31 the reviewing authority, and the reviewing authority shall
32 indicate by certificate that it has approved the plans and
33 specifications and that the subdivision is not subject to a
34 sanitary restriction. The plan review by the reviewing authority
35 ~~shall~~ must be as follows:

1 (a) At any time after the developer has submitted an
2 application under the Montana Subdivision and Platting Act, the
3 developer shall present to the reviewing authority a preliminary
4 plan of the proposed development, whatever information the
5 developer feels necessary for its subsequent review, and
6 information required by the reviewing authority.

7 (b) The reviewing authority ~~must give~~ shall take final
8 action ~~of on~~ the proposed plan within 60 days unless an
9 environmental impact statement is required, at which time this
10 deadline may be increased to 120 days.

11 (2) A subdivision ~~excluded from the provisions of chapter 3~~
12 ~~shall~~ must be submitted for review according to the provisions of
13 this part, except that the following divisions, ~~unless such~~
14 ~~exclusions are used to evade the provisions of this part,~~ are not
15 subject to review:

16 (a) ~~the exclusions cited in 76-3-201 and 76-3-204, a~~
17 division created OPERATION OF LAW OR by order of a court of
18 record in this state pursuant to the laws governing the
19 distribution of estates (Title 72, chapters 1 through 6 and 10
20 through 14) or the dissolution of marriage (Title 40, chapter 4)
21 or a division that, in the absence of agreement between the
22 parties to the sale, could be created by an order of a court in
23 this state pursuant to the law of eminent domain (Title 70,
24 chapter 30);

25 (b) a division creating an interest in oil, gas, minerals,
26 or water that is new or at a later time severed from the surface
27 ownership of real property;

28 (c) a division creating cemetery lots only;

29 (d) a division created by reservation of a life estate;

30 (e) a division created by lease or rental for farming and
31 agricultural purposes;

32 (f) the sale, rent, lease, or other conveyance OR USE of
33 one or more parts of a building, structure, or other improvement,
34 whether existing or proposed;

1 ~~(b)(g)~~ divisiens a division made for the purpose of
2 acquiring additional land to become part of an approved parcel,
3 provided that ~~no~~ a dwelling or structure requiring water or
4 sewage disposal is not to be erected on the additional acquired
5 parcel and that the division does not fall within a previously
6 platted or approved subdivision; and

7 ~~(e)(h)~~ divisiens a division made for purposes other than
8 the construction of water supply or sewage and solid waste
9 disposal facilities as the department specifies by rule; AND

10 (I) A DIVISION CREATED TO PROVIDE SECURITY FOR CONSTRUCTION
11 MORTGAGES, LIENS, OR TRUST INDENTURES, UNTIL SUCH TIME AS THE
12 DIVISION IS NO LONGER PROVIDING THAT SECURITY."

13 Section 33. Section 76-6-203, MCA, is amended to read:

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

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

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

24 (3) vegetation--removal or destruction of trees, shrubs, or
25 other vegetation;

26 (4) loam, gravel, etc.--excavation, dredging, or removal of
27 loam, peat, gravel, soil, rock, or other material substance;

28 (5) surface use--surface use except for such purposes
29 permitting the land or water area to remain predominantly in its
30 existing condition;

31 (6) acts detrimental to conservation--activities
32 detrimental to drainage, flood control, water conservation,
33 erosion control, soil conservation, or fish and wildlife habitat
34 and preservation;

1 (7) subdivision of land--subdivision of land as defined in
2 76-3-103, ~~and 76-3-104, and 76-3-202;~~

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

5 NEW SECTION. Section 34. Repealer. (1) Sections 76-3-201,
6 76-3-202, 76-3-203, 76-3-204, 76-3-205, 76-3-206, 76-3-207, 76-3-
7 208, 76-3-209, 76-3-210, MCA, ARE REPEALED.

8 (2) SECTIONS 76-3-504, 76-3-505, 76-3-604, 76-3-605, 76-3-
9 606, 76-3-607, 76-3-609, MCA, are repealed.

10 NEW SECTION. Section 35. Codification instruction.
11 [Sections 5, ~~6, 20 through 24~~ 18 THROUGH 22, and ~~26~~ 24] are
12 intended to be codified as an integral part of Title 76, chapter
13 3, and the provisions of Title 76, chapter 3, apply to [sections
14 5, ~~6, 20 through 24~~ 18 THROUGH 22, and ~~26~~ 24].

15 NEW SECTION. Section 36. Saving clause. [This act] does
16 not affect rights and duties that matured, penalties that were
17 incurred, or proceedings that were begun before [the effective
18 date of this act].

19 NEW SECTION. Section 37. Severability. If a part of [this
20 act] is invalid, all valid parts that are severable from the
21 invalid part remain in effect. If a part of [this act] is invalid
22 in one or more of its applications, the part remains in effect in
23 all valid applications that are severable from the invalid
24 applications.

25 NEW SECTION. Section 38. Applicability. [Sections 2, 3, ~~30~~
26 ~~31~~, and ~~32~~ 33(1) ~~34(1)~~] apply to all subdivision applications
27 filed after passage and approval. [Sections 1, 4 through ~~31, 33,~~
28 ~~and 34~~ 29, 31, 32, AND 33(2) ~~32, 33, AND 34(2)~~] apply to all
29 subdivision applications filed after September 30, 1991.

30 NEW SECTION. Section 39. Effective date. [This act] is
31 effective on passage and approval.

32 -End-

33
34

Amendments to House Bill No. 671
Gray Copy

Requested by Senator Grosfield
For the Committee on Natural Resources

Prepared by Deborah Schmidt
April 1, 1991

1. Page 3, line 30.
Following: "any"
Strike: "tract or"
2. Page 5, line 21.
Following: "76-1-601"
Strike: "and"
Insert: "or"
3. Page 6, line 26.
Following: "agricultural"
Insert: "or silvicultural"
4. Page 7, line 22.
Following: "made"
Strike: "exclusively"
Insert: "primarily"
5. Page 7, line 30.
Following: "MADE"
Insert: "primarily"
6. Page 8, line 13.
Following: "TO"
Strike: "EACH"
Insert: "an"
7. Page 8, lines 15 and 16.
Following: "SECTION"
Strike: the remainder of line 15 through "CREATED" on line 16
8. Page 9, lines 5 through 10.
Strike: these lines in their entirety
Re-number: subsequent sections
9. Page 12, line 11.
Following: "1973,"
Insert: "that creates parcels"
10. Page 14, line 13.
Following: "shall,"
Strike: "IN A MANNER THAT PROTECTS THE RIGHTS OF PROPERTY OWNERS,"
11. Page 14, line 34.
Following: "AND"

Insert: "currently"

12. Page 15, line 11.

Following: "SERVICES."

Insert: "The subdivision regulations must protect the rights of property owners."

13. Page 16, line 1.

Following: "use"

Insert: "directly attributable to the subdivision"

Following: "STANDARDS"

Strike: "MAY"

Insert: "shall"

14. Page 16.

Following: line 17

Insert: "(3) Subdivision regulations must require the governing body to grant waivers from the regulations when strict compliance will result in undue hardship, when the subdivider certifies that no development will take place on the newly created parcel, when it is not essential to public health, safety, and welfare, or when it would result in a failure to protect the rights of the property owner."

15. Page 19, line 5.

Following: "CRITERIA"

Insert: "adopted under 76-3-501"

16. Page 20, line 4.

Following: "a"

Insert: "local"

17. Page 21, line 1.

Following: "hearing"

Insert: "by the governing body"

18. Page 22, line 16.

Following: "A"

Insert: "local"

19. Page 23, line 22.

Following: "subdivider"

Strike: ", "

Insert: "and such"

Following: "persons"

Strike: ", "

20. Page 23, line 23.

Following: "representatives"

Insert: "that they deem necessary"

21. Page 21, line 24.

Following: "develop"

Insert: "reasonable"

22. Page 27, line 5.
Following: "i"
Strike: "or"
23. Page 27, line 6.
Following: "created"
Strike: "."
Insert: "; or"
24. Page 27.
Following: line 6
Insert: "(v) for minor subdivisions as defined in 76-3-103(10)(A)"
25. Page 28, line 13.
Following: "(1)"
Insert: "or a combination of (?) and (6) that equals or exceeds the value of dedication required under subsection (1)"
26. Page 28, lines 17 and 18.
Following: "TO"
Strike: the remainder of line 17 through "TO" on line 18
27. Page 28, line 20.
Following: "impacts"
Strike: "of"
Insert: "directly attributable to"
28. Page 30, line 2.
Following: "~~the following~~"
Insert: "the following"
Following: "TO"
Strike: "SUCH AS"
29. Page 30, lines 13 and 14.
Following: "reviewed"
Strike: the remainder of line 13 through "conditions" on line 14
Insert: "as follows"
30. Page 30, line 21.
Following: line 20
Strike: "REQUIRED"
Insert: "recommended"
31. Page 31, line 23.
Following: "subdivider"
Strike: ","
Insert: "and such"
32. Page 31, line 24.
Following: "persons"
Strike: ","
Following: "representatives"
Insert: "that they deem necessary"

33. Page 31.

Following: line 25

Insert: "reasonable"

34. Page 37, lines 22 through 26.

Following: "not."

Strike: the remainder of lines 22 through "." on line 26

35. Page 38, line 22.

Following: "parties"

Strike: "to the sale"

36. Page 40, line 5.

Following: "Sections"

Insert: "76-3-104"

37. Page 40, line 25.

Following: "2,"

Strike: "3,"

38. Page 40, line 26.

Following: line 25

Strike: "31"

Insert: "30"

Following: "~~33(1)~~"

Strike: "34(1)"

Insert: "33(1)"

39. Page 40, line 27.

Following: "1,"

Strike: "4"

Insert: "3"

40. Page 40, line 28.

Following: "34"

Strike: "29"

Insert: "28"

Following: "~~33(2)~~"

Strike: "32, 33"

Insert: "31, 32"

Following: "AND"

Strike: "34(2)"

Insert: "33(2)"

Amendments to House Bill No. 671
For the Committee on Natural Resources
Gray Copy

Prepared by Deborah Schmidt

Requested by Senator Doherty
April 1, 1991

SENATE NATURAL RESOURCES	
EXHIBIT NO.	2
DATE	4-1-91
BILL NO.	HB 671

1. Page 4, line 16.

Following: "governing body"

Insert: ", if any"

2. Page 7, line 22.

Following: "division"

Insert: "of land by an agricultural producer"

3. Page 7, line 24.

Following: "subdivision"

Insert: ", provided that no dwelling unit (or other structure furnishing housing for one or more persons is to be erected on the parcel. The erection of a dwelling unit or other structure furnishing housing for one or more persons on the parcel subjects the division to the provisions of this chapter."

4. Page 7, line 31

Following: "NOTED"

Insert: ", along with the statement that the erection of a dwelling unit (~~or other structure furnishing housing for one or more persons on the parcel subjects~~) the division to the provisions of this chapter"

5. Page 8, line 21.

Following: "UNITS"

Insert: ", as long as no land is divided"

Amendments to House Bill No. 908
Third Reading Copy

Requested by Senator Grosfield
For the Senate Committee on Natural Resources

Prepared by Gail Kuntz
March 27, 1991

1. Page 11, line 13.

Following: "WATERCOURSE;"

Strike: "AND"

2. Page 11, line 15.

Following: "WATERCOURSE"

Insert: "; and

(i) likelihood that the installation of measuring devices
will significantly help to:

(i) solve the chronically dewatered condition of the
watercourse; or

(ii) resolve conflicts among water rights holders on the
watercourse"

EXHIBIT NO. _____

DATE 4-9BILL NO. H.R. 908

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 7, 1991

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 908 (third reading copy -- blue), respectfully report that House Bill No. 908 be amended and be so amended be concurred in:

1. Page 10, lines 22 and 23.

Following: "with" on line 22

Strike: the remainder of line 22 through "parks" on line 23

Insert: "other agencies and groups"

2. Page 11, line 13.

Following: "WATERCOURSE;"Strike: "AND"

3. Page 11, line 15.

Following: "WATERCOURSE"

Insert: "; and

(i) likelihood that the installation of measuring devices will significantly help to:

(i) solve the chronically dewatered condition of the watercourse; or

(ii) resolve conflicts among water rights holders on the watercourse"

Signed: _____

Lawrence G. Stimatz, Chairman

Amd. Coord._____
Sec. of Senate

EXHIBIT NO. 1

DATE 4-1-91

BILL NO. HB 891

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 2, 1991


HR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 891 (third reading copy - blue), respectfully report that House Bill No. 891 be amended and as so amended be concurred in:

1. Page 7, line 13.
Strike: "research,"

2. Page 7, line 14.
Strike: "a"
Insert: "the"

Signed:


Lawrence G. Stimatz, Chairman

M 4-2-91
Amd. Coord.

P 4-2-91
Sec. of Senate

SENATE NATURAL RESOURCES

EXHIBIT NO. _____

DATE

4-1-91

BILL NO. _____

HR 660

Amendments to House Bill No. 660
Third Reading Copy

Requested by Sen. Kennedy
For the Senate Committee on Natural Resources

Prepared by Gail Kuntz
March 28, 1991

1. Page 3, line 10.

Following: "exclusion"

Insert: "and is not subject to the civil penalty provisions of
[section 2] during that 1-year period"

HR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 360 (third reading copy - blue), respectfully report that House Bill No. 360 be amended and as so amended be concurred in:

1. Title, line 6.

Following: line 5

Strike: "DELETING PROVISIONS THAT ESTABLISH A"

Insert: "EXTENDING THE"

2. Title, line 8.

Strike: "85-2-231."

3. Page 1, lines 16 and 17.

Following: "appointed" on line 16

Strike: the remainder of line 16 through "1990," on line 17

4. Page 2, line 13.

Following: "for"

Strike: "STAGGERED"

5. Page 2, line 15.

Following: "legislature."

Insert: "The position of a member appointed by the governor or attorney general is vacant if that person is elected to the legislature."

6. Page 3, lines 9 and 10.

Following: "2" on line 9

Strike: the remainder of line 9 through "85-2-704" on line 10

Insert: "July 1, 1999, as long as negotiations are continuing or ratification of a completed compact is being sought. If approval by the state legislature and tribes or federal agencies has not been accomplished by July 1, 1999, the suspension shall terminate on that date. Upon termination of the suspension of this part, the tribes and the federal agencies shall be subject to the special filing requirements of 85-2-702(3) and all other requirements of the state water adjudication system provided for in Title 85, chapter 2"

7. Page 3, line 15 through page 5, line 19.

Strike: section 3 in its entirety

Re-number: subsequent section

8. Page 7, line 4

Following: "filings"

nssett: "However, if approval of the state legislature and tribe has not been accomplished by July 1, 1990, all Indian claims for reserved water rights that have not been resolved by a compact must be filed with the department within 6 months. These new filings shall be used in the formulation of the preliminary decree and shall be given treatment similar to that given to all other filings."

Signed: *Lawrence G. Stimate*
Lawrence G. Stimate, Chairman

LB 11/2/11
Amd. Coord.

1 R 91 (R-50)
Sec. of Senate

EXHIBIT NO. _____

DATE 4-1-91

BILL NO. SB 924

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 2, 1991

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 924 (third reading copy -- black) respectfully report that House Bill No. 924 be amended and so amended be concurred in:

1. Title, line 10.
page 5, line 5

Following: "INTERESTS"

Insert: "and other interested persons, including adjacent landowners,"

2. Page 2, line 11.

Following: "STATE"

Insert: "and other interested persons, including adjacent landowners."

3. Page 2, line 18.

Following: "INTEREST"

Insert: ", or from another interested person, including an adjacent landowner"

Signed: _____

Lawrence G. Stimatz, Chairman

11 124
Amd. Coord.

11 4241 200
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 2, 1991

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 233 (third reading copy -- blue), respectfully report that House Bill No. 233 be amended and as so amended be concurred in:

1. Title, line 5.

Following: "WAY"

Insert: "OR THE RIGHT TO MATCH A COMPETING LEASE OFFER FOR"

2. Title, line 10.

Following: "RIGHT-OF-WAY;"

Insert: "REQUIRING COMPENSATION TO THE LESSEE IF THE LEASE IS TERMINATED;"

3. Page 3, line 12.

Following: "purchase"

Insert: "or match offer -- lease preference"

4. Page 4, line 13.

Following: line 12

Insert: "(2) The leaseholder of a leasehold site described in subsection (1) must be given the opportunity to match a competing lease offer upon expiration of an existing lease. If the leaseholder matches the new lease offer, the lease must be given to the leaseholder. When a person other than the current leaseholder becomes the lessee of a leasehold site described in subsection (1) or the lease is terminated by the lessor for reasons other than nonpayment of the lease, the lessor or new lessee shall compensate the former leaseholder for the fair market value of improvements made by the former leaseholder."

Renumber: subsequent subsections

5. Page 4, line 23.

Following: "SUBSECTION"

Strike: "(2)"

Insert: "(3)"

Signed: _____

Lawrence G. Stimatz, Chairman

Amd. Coord.

Sec. of Senate

ROLL CALL
Natural Resources
COMMITTEE

DATE 4-1-91

52

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
Senator Anderson	✓		
Senator Bengtson	✓		
Senator Bianchi	✓		
Senator Doherty	✓		
Senator Grosfield	✓		
Senator Hockett	✓		
Senator Keating	✓		
Senator Kennedy	✓		
* Senator Tveit	✓	(left proxy	wrote w/ minutes)
Vice Chairman, Weeding	✓		
Chairman Stimatz	✓		

Each day attach to minutes.

ROLL CALL VOTE

SENATE COMMITTEE Natural Resources

Date 4/1/91 Bill No. HB 891 Time _____

NAME	YES	NO
Senator Anderson		X
Senator Bengston		X
Senator Bianchi	X	
Senator Doherty	X	
Senator Grosfield		X
Senator Hockett	X	
Senator Keating		X
Senator Kennedy	X	
Senator Tveit		X
Senator Weeding, Vice Chairman	X	
Senator Stimatz, Chairman	X	

Robert C. Ford

Secretary

Chairman

Motion: Motion to Concur by Carried 6 to 5

ROLL CALL VOTE

for HO 377

SENATE COMMITTEE Natural Resources

Date 4/1/91 Bill No. HO 377 Time _____

NAME	YES	NO
Senator Anderson		✓
Senator Bengston		✓
Senator Bianchi	✓	
Senator Doherty	✓	
Senator Grosfield		✓
Senator Hockett	✓	
Senator Keating		✓
Senator Kennedy	✓	
Senator Tveit		✓
Senator Weeding, Vice Chairman	✓	
Senator Stimatz, Chairman	✓	

Robert G. Del Lancia Secretary
Stimatz Chairman

Motion: Motion carried 6 to 5.

Senate Natural Resources April 1, 1991

1. I vote no on HB 660
2. I vote no on HB 637
3. I vote no on HB 377
4. I vote no on HB 375
5. I vote no on HB 891
6. I vote yes on HB 908
2. I vote no on HB 67 (as amended)
(a) I vote yes on Greybill amendments as amended
by sub committee.

Senator Larry Truitt

ROLL CALL VOTE

SENATE COMMITTEE Natural Resources

Date 4/11/91

Bill No. HB 891

Time 5:30

NAME	YES	NO
Senator Anderson		✓
Senator Bengston		✓
Senator Bianchi	✓	
Senator Doherty	✓	
Senator Grosfield		✓
Senator Hockett	✓	
Senator Keating		✓
Senator Kennedy	✓	
Senator Tveit		✓
Senator Weeding, Vice Chairman	✓	
Senator Stimatz, Chairman	✓	

Robert C. Gabel
Secretary

Chairman

Motion: _____

ROLL CALL VOTE

SENATE COMMITTEE Natural Resources

Date 4/1/91 Bill No. HB 377 Time 5:05

NAME	YES	NO
Senator Anderson		✓
Senator Bengston		✓
Senator Bianchi	✓	
Senator Doherty	✓	
Senator Grosfield		✓
Senator Hockett	✓	
Senator Keating		✓
Senator Kennedy	✓	
Senator Tveit		✓
Senator Weeding, Vice Chairman	✓	
Senator Stimatz, Chairman	✓	

Robert A. Gel
Secretary

Chairman

Motion: _____

ROLL CALL VOTE

SENATE COMMITTEE Natural Resources

*in subc. (Graybill
as amended)*

Date 4/1/91

Bill No. HB 671

Time 7:30 pm

~~minutes~~ ~~minutes~~

NAME	YES	NO
Senator Anderson	✓	
Senator Bengston		✓
Senator Bianchi	✓	
Senator Doherty	✓	
Senator Grosfield		✓
Senator Hockett	✓	
Senator Keating		✓
Senator Kennedy	✓	
Senator Tveit		
Senator Weeding, Vice Chairman	✓	
Senator Stimatz, Chairman	✓	

(7)

Robert C. Pease
Secretary

Lawrence L. Stensby
Chairman

Motion: _____

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 2, 1991

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 908 (third reading copy -- blue), respectfully report that House Bill No. 908 be amended and as so amended be concurred in:

1. Page 10, lines 22 and 23.

Following: "with" on line 22

Strike: the remainder of line 22 through "parks" on line 23

Insert: "other agencies and groups"

2. Page 11, line 13.

Following: "WATERCOURSE;"

Strike: "AND"

3. Page 11, line 15.

Following: "WATERCOURSE"


Insert: "; and

(i) likelihood that the installation of measuring devices will significantly help to:

(i) solve the chronically dewatered condition of the watercourse; or

(ii) resolve conflicts among water rights holders on the watercourse"

Signed:


Lawrence G. Stimatz, Chairman

2-8-91
Amd. Coord.

SP 4-2-91 12:50
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 2, 1991

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 377 (third reading copy -- blue), respectfully report that House Bill No. 377 be concurred in.

Signed: Lawrence G. Stimatz
Lawrence G. Stimatz, Chairman

191 4-2-91
And. Coord.

SB 4-2-91 2:10
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 2, 1991

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 233 (third reading copy -- blue), respectfully report that House Bill No. 233 be amended and as so amended be concurred in:

1. Title, line 5.

Following: "WAY"

Insert: "OR THE RIGHT TO MATCH A COMPETING LEASE OFFER FOR"

2. Title, line 10.

Following: "RIGHT-OF-WAY;"

Insert: "REQUIRING COMPENSATION TO THE LESSEE IF THE LEASE IS TERMINATED;"

3. Page 3, line 12.

Following: "purchase"

Insert: "or match offer -- lease preference"

4. Page 4, line 13.

Following: line 12

Insert: "(2) The leaseholder of a leasehold site described in subsection (1) must be given the opportunity to match a competing lease offer upon expiration of an existing lease. If the leaseholder matches the new lease offer, the lease must be given to the leaseholder. When a person other than the current leaseholder becomes the lessee of a leasehold site described in subsection (1) or the lease is terminated by the lessor for reasons other than nonpayment of the lease, the lessor or new lessee shall compensate the former leaseholder for the fair market value of improvements made by the former leaseholder."

Renumber: subsequent subsections

5. Page 4, line 23.

Following: "SUBSECTION"

Strike: "(2)"

Insert: "(3)"

Signed: Lawrence G. Stimatz
Lawrence G. Stimatz, Chairman

W 4-2-91
Amd. Coord.

S.B. 4-2
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 2, 1991

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 375 (third reading copy -- blue), respectfully report that House Bill No. 375 be not concurred in.

Signed: *Lawrence G. Stimatz*
Lawrence G. Stimatz, Chairman

JAL 4-2-91
Amd. Coord.

533 4-2 10:20
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 2, 1991

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 637 (third reading copy -- blue), respectfully report that House Bill No. 637 be not concurred in.

Signed: Lawrence G. Stimatz
Lawrence G. Stimatz, Chairman

JA 4-2-91
Ad. Coord.

593 4-2 10:20
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 2, 1991

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 660 (third reading copy -- blue), respectfully report that House Bill No. 660 be amended and as so amended be concurred in:

1. Page 3, line 10.

Following: "exclusion"

Insert: "and is not subject to the civil penalty provisions of [section 2] during that 1-year period"

Signed: Lawrence G. Stimatz
Lawrence G. Stimatz, Chairman

4-2-91
Amd. Coord.

4-2-91 1991
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
April 2, 1991

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 360 (third reading copy -- blue), respectfully report that House Bill No. 360 be amended and as so amended be concurred in:

1. Title, line 6.

Following: line 5

Strike: "DELETING PROVISIONS THAT ESTABLISH A"

Insert: "EXTENDING THE"

2. Title, line 8.

Strike: "85-2-231."

3. Page 1, lines 16 and 17.

Following: "appointed" on line 16

Strike: the remainder of line 16 through "1990," on line 17

4. Page 2, line 13.

Following: "for"

Strike: "STAGGERED"

5. Page 2, line 15.

Following: "legislature."

Insert: "The position of a member appointed by the governor or attorney general is vacant if that person is elected to the legislature."

6. Page 3, lines 9 and 10.

Following: "2" on line 9

Strike: the remainder of line 9 through "85-2-704" on line 10

Insert: "July 1, 1999, as long as negotiations are continuing or ratification of a completed compact is being sought. If approval by the state legislature and tribes or federal agencies has not been accomplished by July 1, 1999, the suspension shall terminate on that date. Upon termination of the suspension of this part, the tribes and the federal agencies shall be subject to the special filing requirements of 85-2-702(3) and all other requirements of the state water adjudication system provided for in Title 85, chapter 2"

7. Page 3, line 15 through page 5, line 19.

Strike: section 3 in its entirety

Renumber: subsequent section

8. Page 7, line 4

Following: "filing."

Insert: "However, if approval of the state legislature and tribe has not been accomplished by July 1, 1999, all Indian claims for reserved water rights that have not been resolved by a compact must be filed with the department within 6 months. These new filings shall be used in the formulation of the preliminary decree and shall be given treatment similar to that given to all other filings."

Signed: Lawrence G. Stimatz
Lawrence G. Stimatz, Chairman

LB 4/2/91
Amd. Coord.

SP 4/2/91 12:50
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 2, 1991

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 924 (third reading copy -- blue), respectfully report that House Bill No. 924 be amended and as so amended be concurred in:

1. Title, line 10.
page 5, line 5

Following: "INTERESTS"

Insert: "and other interested persons, including adjacent landowners,"

2. Page 2, line 11.

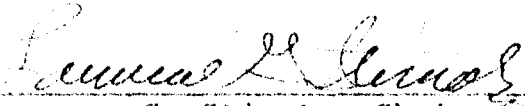
Following: "STATE"

Insert: "and other interested persons, including adjacent landowners,"

3. Page 2, line 18.

Following: "INTEREST"

Insert: ", or from another interested person, including an adjacent landowner"

Signed: 
Lawrence G. Stimatz, Chairman

171 4291
Amd. Coord.

SB 4-2-91 2:10
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 13
April 3, 1991

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 671 (third reading copy as amended - blue), respectfully report that House Bill No. 671 be amended and as so amended be concurred in:

1. Title, lines 9 and 10.
Following: "PROVIDING" on line 9
Strike: the remainder of line 9 through "OPTIONAL" on line 10
Following: "HEARING" on line 10
Strike: "PROCEDURE"
Insert: "PROCEDURES"
2. Title, line 18.
Following: "76-3-614"
Insert: "76-4-102,"
3. Page 2, line 14.
Following: "LAND;"
Strike: "TO PREVENT OVERCROWDING OF LAND;"
4. Page 2, line 16.
Following: "ADEQUATE"
Strike: "LIGHT, AIR,"
5. Page 2, line 18.
Following: line 17
Strike: "PUBLIC"
Following: "REQUIREMENTS"
Insert: "adopted pursuant to this chapter"
6. Page 2, lines 18 and 19.
Following: ";" on line 18
Strike: "TO REQUIRE DEVELOPMENT IN HARMONY WITH THE NATURAL ENVIRONMENT;"
7. Page 3, line 1.
Following: "AND TO"
Strike: "promote"
Insert: "require"
8. Page 4.
Following: line 7
Insert: "(4) "Dwelling unit" means a detached residential structure in which a person or persons reside."
Re-number: subsequent subsections
9. Page 5, line 3.
Following: "any"
Strike: "tract or"

10. Page 5, lines 7 through 9.

Following: "means" on line 7

Insert: ":",

Strike: the remainder of lines 7 and 8

Following: "subdivision" on line 9

Insert: "(a) for subdivisions involving the actual division of land, the first five parcels from a single tract of record as of July 1, 1991; or

(b) for subdivisions involving the provision of permanent multiple spaces with utility hookups for recreational camping vehicles or mobile homes, multiple spaces for dwelling units, or multiple spaces for work camp structures as described in subsection (21)(a), the first five of these"

11. Page 5, line 16.

Following: "standards"

Insert: ", if any standards exist,"

12. Page 7, line 3.

Following: "the"

Strike: "person or entity"

Insert: "governing body"

13. Page 7, line 14.

Following: "means"

Insert: ", except as provided in subsection (20)(b),"

14. Page 7, line 15.

Following: "more"

Insert: "one or more additional"

15. Page 7, line 25 through page 8, line 7.

Following: "year" on page 7, line 25

Strike: the remainder of line 25 through line 7 on page 8

Insert: "in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed. The term includes any resubdivision and any residential condominium building. The term further includes any area, regardless of its size, that provides or will provide permanent multiple spaces for recreational camping vehicles or mobile homes, multiple spaces for dwelling units, or multiple spaces for work camp structures constructed to exist for longer than 1 year. For purposes of this subsection, work camp structure means housing that is provided by a person for two or more families or individuals living separately and that is for the exclusive use of the employees of that person and the families, if any, of the employees. Housing does not include shelter provided by an agricultural employer for persons who are primarily employed to perform agricultural duties on that person's ranch or farm."

16. Page 8, line 11.
Following: "agricultural"
Insert: "or silvicultural"

17. Page 8, line 16.
Following: "conveyance"
Insert: "or use"

18. Page 9, line 2.
Following: "parties"
Strike: "to the sale"

19. Page 9, line 9.
Following: "in"
Strike: "both"
Insert: "either"
Following: the first "the"
Insert: "index of"
Following: "survey"
Strike: "and"
Insert: "or"

20. Page 9, lines 10 through 12.
Following: "76-3-613" on line 10
Strike: the remainder of line 10 through line 12
Insert: ", as applicable, as long as no additional parcels are created;"

21. Page 9, line 14.
Following: "division"
Insert: "of land by an agricultural producer"
Following: "made"
Strike: "exclusively"
Insert: "primarily"

22. Page 9, line 15.
Following: "agricultural"
Insert: "or silvicultural"

23. Page 9, lines 16 through 22.
Following: "subdivision" on line 16
Strike: the remainder of line 16 through "chapter" on line 22
Insert: ", provided that no dwelling unit is to be erected on the parcel. The erection of a dwelling unit on the parcel subjects the division to the provisions of this chapter. Divisions made primarily for agricultural or silvicultural purposes must be noted on the certificate of survey or other recorded instrument of conveyance, along with the statement that the erection of a dwelling unit on the parcel subjects the division to the provisions of this chapter"

24. Page 9, line 23.

Following: "(x)"

Strike: "except for the"

25. Page 9, lines 24 and 25.

Following: "the" on line 24

Strike: the remainder of line 24 through "76-3-614." on line 25

Following: "lease" on line 25

Insert: "that does not constitute a subdivision as defined by
this chapter"

26. Page 10, line 1.

Following: "for"

Strike: "requirements other than"

27. Page 10, line 4.

Following: "(xii)"

Insert: "(A)"

Following: "for"

Strike: "requirements other than"

28. Page 10, lines 8 and 9.

Following: "family" on line 8

Strike: the remainder of line 8 through "operation" on line 9

29. Page 10, lines 10 through 13.

Following: "each" on line 10

Insert: "immediate"

Following: "products." on line 13

Insert: "Additional sales or gifts to an immediate family member
of an agricultural producer may be made for adjoining
properties under the provisions of subsection (21)(b)(viii),
as long as no additional parcels are created.

(B) the creation by an agricultural producer of any area,
regardless of its size, that provides or will provide
permanent multiple spaces for less than four dwelling units,
as long as no land is divided. For purposes of this
section, agricultural producer means a person primarily
engaged in the production of agricultural products."

30. Page 10, line 17

Following: "4"

Insert: "; or

(xiv) a division created to provide security for mortgages,
liens, or trust indentures until such time as the division
is no longer providing that security"

31. Page 10, lines 20 and 21.

Following: "review"

Strike: the remainder of line 20 through "special" on line 21

Insert: "and advise the review authority on"

32. Page 15, line 24.

Following: "~~shall~~"

Insert: "that creates parcels"

33. Page 18, line 22.

Following: "shall"

Strike: ", IN A MANNER THAT PROTECTS THE RIGHTS OF PROPERTY OWNERS,"

34. Page 19, line 21.

Following: "AND"

Insert: "currently"

35. Page 19, line 24.

Following: "SPACES FOR"

Strike: "TRAVEL, LIGHT, AIR, AND"

36. Page 20, line 2.

Following: "CONGESTION"

Insert: "of streets and highways"

37. Page 20, line 3.

Following: "INVOLVE"

Strike: "UNNECESSARY"

Insert: "unreasonable"

38. Page 20, line 7.

Following: "AN"

Strike: "EXCESSIVE"

Insert: "unreasonable"

39. Page 20, line 8.

Following: "SERVICES."

Insert: "The subdivision regulations must protect the rights of property owners."

40. Page 21, line 8.

Following: "use"

Insert: "directly attributable to the subdivision. Variances from road standards may be granted for subdivisions requiring minimal vehicle use"

41. Page 21, line 10.

Following: "values"

Insert: "financial or other positive incentives for developments that accommodate public values;

(g)"

42. Page 21, line 12.

Following: "L"

Insert: "a provision"

43. Page 25, line 18.

Following: "INFORMATION"

Insert: "related to the applicable regulatory criteria adopted
under 76-3-501"

44. Page 26, lines 7 and 8.

Following: "The" on line 7

Strike: the remainder of line 7 through "as the" on line 8

Following: "authority" on line 8

Strike: "by the governing body,"

45. Page 26, line 12.

Following: "the"

Strike: "governing body or"

46. Page 27, line 5.

Following: "a"

Strike: "citizen"

Insert: "person"

47. Page 27, lines 13 through 18.

Following: "~~petitioner-~~" on line 13

Strike: the remainder of lines 13 through 18

48. Page 28, lines 8 and 9.

Following: "notice of the" on line 8

Insert: "informational"

Following: "hearing" on line 8

Strike: the remainder of line 8 through
"hearing" on line 9

49. Page 28, line 14.

Following: "hearing"

Insert: "by the governing body"

50. Page 29, lines 9 and 10.

Following: "The" on line 9

Strike: the remainder of lines 9 and 10

51. Page 29, line 11.

Following: "authority"

Strike: "by the governing body,"

52. Page 30, lines 4 through 8.

Following: "(4)" on line 4

Strike: the remainder of lines 4 through 8

Insert: "An informational hearing may be held on a minor or

special subdivision only if:

(a) the subdivision would be located in an area having unique cultural or historical resources or environmental or ecological resources that are susceptible to substantial adverse effects from subdivision development or if the subdivision would cause substantial adverse fiscal costs to local government; and

(b) the subdivider or a person who demonstrates that he would be adversely affected by the proposed subdivision requests a hearing from the governing body within 15 days following submission of the complete application."

53. Page 30, line 9.

Following: "subdivider"

Strike: ", "

Insert: "or by"

Strike: "citizen"

Insert: "person"

54. Page 30, lines 10 and 11.

Following: "(4)," on line 10

Strike: "or the review authority,"

55. Page 30, line 20.

Following: "after the"

Strike: "public"

56. Page 30, line 23.

Following: "one"

Strike: "public"

57. Page 30, line 24.

Following: "The"

Strike: "public"

58. Page 31, line 14.

Following: "whether"

Strike: "or not"

Following: "a"

Strike: "public"

59. Page 31, line 15.

Following: "the"

Strike: "review authority"

Insert: "subdivision review officer"

60. Page 31, lines 17 through 20.

Following: "~~probable~~" on line 17

Strike: the remainder of lines 17 through 20

Insert: "the factors listed in subsection (4) are probable,"

61. Page 31, line 21.
Following: "the"
Strike: "review authority"
Insert: "subdivision review officer"
62. Page 31, line 22.
Following: "subdivider"
Strike: ", "
Insert: "and such"
Following: "persons"
Strike: ", "
63. Page 31, line 23.
Following: "representatives"
Insert: "that they consider necessary"
64. Page 31, line 24.
Following: "develop"
Insert: "reasonable"
65. Page 31, line 25.
Following: "in"
Strike: "THIS"
66. Page 32, line 1.
Following: "+4+"
Insert: "(4)"
67. Page 32, line 2.
Following: "The"
Strike: "review authority"
Insert: "subdivision review officer"
68. Page 32, line 3.
Following: "the"
Strike: "governing body"
Insert: "review authority"
69. Page 32, line 5.
Following: "The"
Strike: "governing body"
Insert: "review authority"
70. Page 32, lines 7 through 9.
Following: "impacts." on line 7
Strike: the remainder of lines 7 through 9
71. Page 32, line 10.
Following: "The"
Strike: "governing body"
Insert: "review authority"

72. Page 32, line 20.

Following: "~~(b)~~"

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

73. Page 32, line 21 through page 33, line 1.

Following: "subdivider" on page 32, line 21

Strike: the remainder of line 21 through "receivers" on page 33,
line 1

74. Page 33, lines 4 through 6.

Following: "expired." on line 4

Strike: the remainder of line 4 through "the" on line 6

Insert: "The"

75. Page 33, line 6 through page 34, line 1.

Following: "proceedings." on page 33, line 6

Strike: the remainder of line 6 through line 1 on page 34

76. Page 36, line 10.

Following: "(3)"

Insert: "(a)"

Following: "required"

Insert: "; (i)"

77. Page 36, line 11.

Following: "acres"

Strike: ", "

Insert: "; (ii)"

78. Page 36, line 12.

Following: "nonresidential"

Strike: ", "

Insert: "; (iii) for a subdivision where no parcels are created, except when that subdivision provides permanent multiple spaces for mobile homes or condominiums;"

79. Page 36.

Following: line 12

Insert: "(iv) for a subdivision"

80. Page 36, line 13.

Following: "created."

Insert: "(b)"

81. Page 38, line 10.

Following: "(1)"

Insert: "or a combination of the elements of subsection (7)(a) and (7)(b) that equals or exceeds the value of dedication required under subsection (1)"

82. Page 38, line 18.

Following: "impacts"

Strike: "of"

Insert: "directly attributable to"

83. Page 38, line 21.

Following: "the"

Strike: "governing body's or"

84. Page 38, line 24.

Following: "assessment,"

Strike: "public"

85. Page 39, line 6.

Following: "The"

Strike: "governing body or"

86. Page 39.

Following: line 8

Insert: "[section 18],"

87. Page 40, line 4.

Strike: "tract"

Insert: "parcel"

88. Page 40, line 10.

Following: "the"

Strike: "tract"

Insert: "parcel"

89. Page 40, lines 21 and 22.

Following: "hazards," on line 21

Strike: "INCLUDING BUT NOT LIMITED TO"

Insert: "such as"

90. Page 41, lines 8 and 9.

Strike: "(3)(f)" on line 8

Insert: "(3)(e)"

Strike: "under all of the following conditions"

Insert: "as follows"

91. Page 42, line 10.

Following: "(B)"

Insert: "unique"

92. Page 42, lines 11 and 12.

Following: "RESOURCES"

Strike: ", INCLUDING WILDLIFE AND WILDLIFE HABITAT"

93. Page 43, lines 6 and 7.

Following: "subdivider" on line 6

Strike: ", "

Insert: "and such"

Following: "persons"

Strike: ", "

Following: "representatives" on line 7

Insert: "that they consider necessary"

94. Page 43, line 8.

Following: "develop"

Insert: "reasonable"

95. Page 43, lines 15 through 17.

Following: "impacts." on line 15

Strike: the remainder of lines 15 through 17

96. Page 44, line 3.

Following: "~~+++~~"

Insert: "In reviewing a subdivision under subsection (1), a governing body must be guided by the following standards:
(i) Mitigation measures imposed must not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval the plat.

(ii)"

97. Page 44, lines 4 through 10.

Following: "subdivider" on line 4

Strike: the remainder of line 4 through "receivers" on line 10

98. Page 45, line 23.

Strike: "76-3-403 AND"

99. Page 48.

Following: line 19

Insert:

"Section 30. Section 76-4-102, HCA, is amended to read:
"76-4-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following words or phrases have the following meanings:

(1) "Board" means the board of health and environmental sciences.

(2) "Department" means department of health and environmental sciences.

(3) "Extension of public sewage disposal system" means a

sewer line that connects two or more sewer service lines to a sewer main.

(4) "Extension of public water supply system" means a water line that connects two or more water service lines to a water main.

(5) "Facilities" means public or private facilities for the supply of water or disposal of sewage or solid waste and any pipes, conduits, or other stationary method by which water, sewage, or solid wastes might be transported or distributed.

(6) "Public water supply system" or "public sewage disposal system" means, respectively, a water supply or sewage disposal system that serves 10 or more families or 25 or more persons for at least 60 days out of the calendar year.

(7) "Registered professional engineer" means a person licensed to practice as a professional engineer under Title 37, chapter 67.

(8) "Registered sanitarian" means a person licensed to practice as a sanitarian under Title 37, chapter 40.

(9) "Reviewing authority" means the department or a local department or board of health certified to conduct review under 76-4-104.

(10) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or building requiring facilities for the supply of water or the disposition of sewage or solid waste or the construction of water supply or sewage or solid waste disposal facilities until the department has approved plans for those facilities.

(11) "Sewer service line" means a sewer line that connects a single building or living unit to a public sewer system or extension of such a system.

(12) "Solid wastes" means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yard clippings, and solid market and solid industrial wastes.

(13) "Subdivision" means a division of land or land so divided ~~which that~~ creates one or more additional parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and any condominium building or area, regardless of size, which that provides permanent multiple space spaces with utility hookups for recreational camping vehicles or mobile homes, multiple spaces for dwelling units, or multiple spaces for work camp structures constructed to exist for longer than 1 year. For purposes of this subsection, work camp structure means housing that is provided by a person for two or more families or individuals living separately and that is for the exclusive use of the employees of that person and the families, if any, of the employees. Housing does not include shelter provided by an agricultural employer for persons who are primarily employed to perform agricultural duties on that person's ranch or farm.

(14) "Water service line" means a water line that connects a single building or living unit to a public water system or extension of such a system."

Renumber: subsequent sections

100. Page 50, line 5.

Following: "by"

Insert: "operation of law or by"

101. Page 50, lines 9 and 10.

Following: "parties" on line 9

Strike: "to the sale"

102. Page 50, line 14.

Following: "is"

Strike: "now or at a later time"

103. Page 50, line 20.

Following: "conveyance"

Insert: "or use"

104. Page 51, line 10.

Following: line 9

Strike: "CONSTRUCTION"

Following: "INDENTURES"

Insert: "until such time as the division is no longer providing that security"

105. Page 53, line 10.

Following: "3,"

Strike: "30"

Insert: "31"

Following: "32"

Strike: "33(1)"

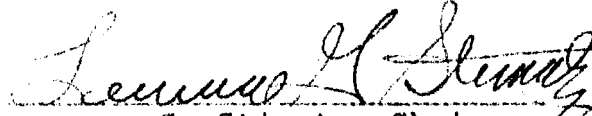
Insert: "34(1)"

106. Page 53, line 12.

Following: "29"

Strike: "31, 32, AND 33(2)"

Insert: "32, 33, and 34(2)"

Signed: 
Lawrence G. Stimatz, Chairman

JGA 4-3-91
Adm. Coord.

SB 4-3 10:35
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 2, 1991

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 891 (third reading copy -- blue), respectfully report that House Bill No. 891 be amended and as so amended be concurred in:

1. Page 7, line 13.
Strike: "research,"
2. Page 7, line 14.
Strike: "a"
Insert: "the"

Signed: *Lawrence G. Stimat*
Lawrence G. Stimat, Chairman

MS 4-2-91
Amd. Coord.

4-2-91
Sec. of Senate

FALLON COUNTY

City-County Administration Building - 10 West Fallon Avenue

P. O. Box 1134
Baker, MT 59313

Charles (Mike) Madler
County Planner/Surveyor
406-778-2883 Ext. 21

March 15, 1991

SENATE NATURAL RESOURCES
EXHIBIT NO. 2
DATE 4-11-91
BILL NO. HB 377

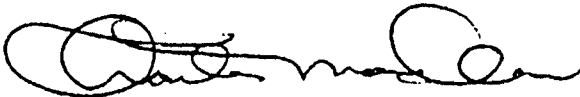
Chairman Larry Stimatz
Senate Natural Resources Committee
52nd Legislative Assembly
Helena, Montana 59601

Re: House Bill 377

Chairman Stimatz:

Attached are the most important amendments to House Bill 377, the Mega-Landfill Bill. We sincerely request your consideration of these amendments when you review the bill. Thank you.

Respectfully,



Charles Madler

encl: (9)

HOUSE BILL NO. 377

Amendments

Section 2(2)(lines 14-15) The construction of solid waste facilities that dispose of over 500,000 tons of waste a year (megalandfills)

Comments: Economical operation of a solid waste management facility, under proposed EPA guidelines forthcoming, is estimated to be 500,000 tons. Establishing a definition of "megalandfill" at 200,000 is a) intentionally prohibitive of large landfill development; b) targeted toward landfills that would accept out-of-state waste because in-state landfills are currently below this limit; and, c) presents the potential in the future for undo hardship on landfills accepting in-state waste as Montana's landfills regionalize.

Section 3. Definitions. As used in [sections 1 through 36], the following definitions apply:

Section 3(1) "Application" means an application for a license submitted in accordance with [sections 11 through 28] and the rules adopted under [sections 11 through 28].

Comments: It is unnecessarily burdensome to require both a certificate of suitability and a license since part of the licensing process is to determine site suitability. Therefore, the "certificate of suitability" references herein should be incorporated into the licensing process, rather than providing duplicative processes.

Section 3(3) STRIKE SECTION 3(3)

Section 3(4) "Commence to construct" means:

Section 3(4)a any installation of clay liner material or synthetic liner material for the specific construction of disposal cells; however, miscellaneous construction not related to direct disposal is not included in the definition of "commence to construct".

Comments: Commence to construct should provide for protection from the completion of a landfill facility in advance of permit issuance. It is standard industry practice to allow some earth removal and construction to begin, so long as such construction is protected by a bond placed by the applicant to allow the state access to funds to reclaim the site should the application be denied. To delay any construction whatsoever until completion of the permitting process places unnecessary hardship and delay on the project by extending its development period unnecessarily.

Section 3(4)b does not include modification or upgrading an existing solid waste disposal facility into a megalandfill.

Comments:

Section 3(7) "Megalandfill" [strike "FACILITY"] means any new or existing solid waste landfill that accepts more than 500,000 tons a year of solid waste [strike remainder of line 11 through line 13].

Comments: Under current (Section 3000(i)) and anticipated EPA guidelines, ash monofill is not to be hazardous waste. It is inappropriate to single out a particular waste stream when the general premise behind solid waste management regulations includes the principal that the state establishes guidelines for disposal of all waste under which specific permits are granted. Ash monofill is a subset of industrial waste and should not be singled out or treated as a particular material with specific reference

Also, the economic feasibility of ash monofill in a solid waste site is 200,000 tons. Setting a limit of 35,000 tons per year is therefore intentionally prohibitive, again, to large landfill development.

Section (9)a "Solid waste" means all putrescible and non putrescible wastes, including but not limited to garbage....[strike "inert material", line 24 and 25].

Comments: Inert material, by definition, means material that will not have an adverse impact on the environment. Because of the critical shortage of valuable landfill capacity, inert material should not be classified as solid waste that would have it utilize landfill capacity.

Section 3(9)b "Solid waste" does not mean...or marketable by-product, OR A WASTE MATERIAL THAT IS BENEFICIALLY USED, OR RECYCLED, RECLAIMED OR REUSED AS A PRODUCT OR SUBSTITUTED FOR COMMERCIALY AVAILABLE MATERIAL OR NATURAL RESOURCE.

Section 3(10) "Solid waste landfill" means any...the terms does not included land application unites, surface impoundments, injection wells, waste piles, OR HAZARDOUS WASTE UNITS.

Comments: An important inclusion to the definition.

Section 4 STRIKE "ENVIRONMENTAL FACTORS TO BE EVALUATED"

Comments: "Environmental factors" is a broad term without clear definition of its specific scope and intent that intrudes the board into technical aspects of the permitting process that are the responsibility of the Department.

Sections 6 and 7 STRIKE SECTIONS 6 AND 7

Comments: Section 6, allowing the department to contract with an applicant for information services, places the department in the role of "client" to the applicant, raising the potential for accusations of conflict of interest. As the language is now written, there is a conflict of interest on behalf of the department it is allowed to administer the rules and determine the stringency of the rules, while at the same time receiving funds from the permittee for efforts performed as a consultant in the permitting process.

It is the purpose and intent of the department to represent the interests of the people of Montana. It is therefore more fair to the applicant and to the people of Montana if all services provided by the department are included in a permit fee which would reflect the actual cost of permitting.

Section 7 is intended to allow the department to receive or charge direct charges to the applicant and thereby cover the department's expenses. Again, the department should be allowed to administer a fee which would reflect actual permitting costs.

Also, there is a separate bill currently under consideration in legislature to provide the department with adequate staff to conduct its responsibilities for current and future applicants for solid waste landfills. Having the state provide adequate support to the permitting staff and staff of experts to review the permitting process better protects the interests of the people of Montana and avoids potential accusations of conflict of interest or of unnecessary creation of delays by the department in the permitting process.

A better procedure would be the establishment of an administrative fee for the permittee to submit in support of the application process. Typically fees among other states include charges of up to \$15,000.00 for the permit application for a solid waste landfill permit. Such a fee should be substituted in place of Sections 6 and 7.

The funds are allocated in Section 8 "for use by the department in carrying out its functions and responsibilities related to solid waste management."

Section 9(1) A person may not file an application for a certificate of site acceptability required by [section 1] unless the megalandfill has been adequately identified in a long-range plan at least [strike 2 years] SIX MONTHS prior to acceptance of an application by the department.

Comments: Two years is an unacceptable condition that serves no purpose other than to delay a permitting effort and incur time-related cost expense for any applicant pursuing a landfill application.

The sole purpose of this two year delay is to provide political lead time to environmental groups in order to lobby politicians in the local area to fight permitting efforts. As we all know, most politicians on a local level require a new vote for office within a two year period.

Six months offers adequate time for the long-range plan to be submitted for public comment and review.

Also, the interests of the community are currently being protected in legislation currently before the legislature that would require a local referendum to be conducted that county citizens to require that the department halt the permitting application process. There would be every incentive for a potential applicant to have the referendum completed prior to completion of a long-range plan or submission of a permit application.

Section 9(2)b STRIKE SECTION 9(2)b

Comments: This section is redundant, since the regulations clearly spell out what land use planning agencies will be involved and what environmental concerns will be dealt with in a landfill permitting process. It is not the responsibility of the applicant to spell these out, but to conduct these investigations as required by the department and for the department to confirm, through the application process, that these consultations have taken place.

This is a condition unnecessarily burdensome since its intent, in its duplication, is to involve the applicant in the expenditure of additional time and money.

Section 9(2)c STRIKE SECTION 9(2)c

Comments: This section, again, is unnecessarily burdensome since the demand for a landfill is a given point prior to a business interest pursuing a landfill permit, and obviously justified for municipal governments pursuing permits.

The permit program should provide for environmental protection and long-term closure bonding requirements that provide environmental protection measures and financial guarantees that provide for proper closure.

Therefore, with proper environmental protection and bonding requirements, environmental risk should be adequately protected therefore making this requirement unnecessary.

Section 9(2)d additional information that the department by rule [strike: or the department on its own initiative or upon the advice of interested state agencies] requests in order to carry out the purposes of [sections 1 through 36].

Comments: Involvement of other state agencies is assumed in the duties of the department for the processing of permit applications. It is redundant and duplicative to regulate communication between departments. As to department request for information, it should be determined by rule, not caprice.

Section 9(3) revise line 3 to 5, page 8, to read:

"The plan must be furnished to the governing body of each county in which any facility included in the plan under subsection (2)a is proposed to be located and must be made available to the public by the department. The applicant shall give public notice IN THE LOCAL AREA WHERE THE FACILITY WILL BE LOCATED by publishing at least once a week for 2 consecutive weeks a summary of the proposed plan in newspapers of general circulation. [STRIKE "The plan must also be filed with...department of natural resources and conservation]. Interested persons may obtain a copy of the plan by written request and payment to the department of the costs of copying the plan."

Comments: The decision on location of a landfill should remain with the local area and county(ies) where the landfill will be located. It is an unnecessary burden to require statewide notification when the department's professional involvement is intended to enforce the law and thereby protect the health, safety and welfare of the people of Montana.

As to applicant's notification of various unrelated agencies, this is burdensome and should not be included as part of the law. Administrative laws and administrative regulations for waste management clearly states that the solid waste management and the expertise to permit landfills and this permitting effort and review process should remain with the department. It should be the department, in their professional judgement, who request the involvement and assistance of other appropriate departments and/or agencies.

To require the applicant to perform what is a department responsibility renders the applicant unnecessarily vulnerable to oversight in the notification process.

8. Section 10 STRIKE "social and economic" from line 20, page

Comments: The intent of this section is to provide the department with the authority to begin assessing the environmental effects of the landfill in the event that the long-range plan identifies construction of the landfill would begin prior to the application submission.

The issue of social and economic impacts of the facility will not affect the community in the six (6) months prior to the acceptance of an application by the department. Indeed, definition of "commence to construct" limits construction activity. should protect the community by a bond placed by the applicant to allow the state access to funds to reclaim the site should the application be denied. Such a requirement would protect the community from all social and economic impact of the site prior to application.

Section 13(1)a(iii)through (vi) STRIKE Section
13(1)a(iii)through(vi)

Comments: To require an environmental impact study on "at least three reasonable alternate locations" for the megalandfill is an unnecessary burden on the applicant and should not be required. The inclusion of this requirement is a clear indication that the intent of this legislation is to unreasonably block the permitting of megalandfills in Montana.

The expertise of the department should be relied upon to evaluate the application to determine the site's conformance with state regulation. The State of Montana provides performance criteria for a landfill and if the performance standards of the state are met, then the landfill permit should be granted.

To require three alternative locations, each with an environmental impact study, is unnecessarily burdensome to the applicant and unnecessary under the regulatory requirements of Montana law.

Section 13(2) STRIKE Section 13(2)

Comments: Again, as stated in reference to Section 9(3) it is unnecessarily burdensome for applicant to notify unrelated agencies and should not be included as part of the law. It should be the department, in their professional judgement, who should decide to whom additional copies are sent for review and to which parties are involved in the review process.

Section 13(3) STRIKE Section 13(3)

Comments: It is inappropriate that public notice be filed of an applicants submission of an application. Already there is the requirement to publish a summary of the long-range plan (Section 9(3)). And, should the referendum legislation pass legislature, this provides additional notice of intent to locate a landfill in a given area. The application procedure is inherently technical, not political, and the efficacy of the application should remain a technical consideration of the department.

It is the responsibility of the department to provide public notice to interested parties when a draft permit has been put out for public comment. This procedure should remain in place.

There is no purpose to be served in providing public notice an application has been filed when all appropriate state agency parties will be involved in the technical review related to the application process. This is clearly intended to politicize the technical process of application review and decision making, interfering with the ability of the department carry out its responsibilities. The result will be unnecessary delay and expense in the permitting process. Public notice of application, prior to the draft permit issuance should not be required.

Section 14(2) page 11, STRIKE lines 14 and 15: "...Notice of an amendment must be given as provided in (section 13(3) and (4)).

Comments: For reasons provided re:Section 13(3) and (4) above.

Section 14(2) page 11, STRIKE line 21 and 22: "additional filing FEES. (Strike at the department determines necessary or may require a new application and filing fee."

Comments: Request for a new application is a technical matter pursuant to the regulations governing approval of a landfill site and need not be duplicated by law here.

Section 15 Page 12, line 10 the word "shall" should be replaced with the word "may".

Section 15(4)a-d STRIKE

Comments: Identifying alternative methods of solid waste disposal is not the responsibility of the applicant. Since the recycling efforts of the host community are not directly related to the demands for a commercial landfill capacity, then the recycling requirements and review requirements are not appropriate for commercial landfills. Extensive opportunity and notice is being provided in this revision of the law to local areas where the burden should rest for determining the availability and desirability of alternative methods of solid waste disposal.

Section 15(5) STRIKE

Comments: The factors raised in this item are not related to the demands for commercial disposal capacity. Any permittee requesting permission to establish a commercial landfill would be prohibited from pursuing a landfill permit if these conditions were left as proposed. Again, this section is indicative of the intent of this legislation to effectively prohibit the location of a megalandfill in Montana, not to regulate their development.

Again, these provisions in Section 15(5) are duplicative of impacts included as a part of the department's review and do not need to be spelled out in a legislative act.

Section 15(6) STRIKE

Comments: The hydrogeological investigations are required as a part of solid waste regulations and will require sufficient review of these impacts by the department and other appropriate agencies it would choose to include.

Again, these provisions are duplicative of impacts included as a part of the department's review and do not need to be spelled out in a legislative act.

Section 15(7)d and e STRIKE page 15, lines 11-17

Comments: These conditions for inspection for the landfill and transportation practices, route of transportation, are not recycling for solid waste management issues. The transportation of waste is well governed by transportation standards which already apply to both rail and truck transport. Therefore, additional reference in legislative act is redundant and unwarranted.

Section 16(1)a STRIKE page 15, line 20-22: "section [strike "based upon the department's estimated costs of processing the application for certificate"]. The filing fee..."

Comments: By allowing the department to estimate cost of processing the applications certificate, the conflict of interest issue (raised above re:Sections 6 and 7) would become a major problem.

Section 16(1)a(i) revise to read, "a base fee of \$10,000.00"

Section 16(1)a(ii) 20 cents per ton for every ton over 200,000 tons capacity.

Section 16(1)b page 16, line 6, substitute "shall" for "may"

Section 16(1)b page 16, beginning line 9, STRIKE "...or required for..." through line 13, ending "...seq."

Comments: Again, as raised above re:Section ,an environmental impact statement should not be required for a solid waste management landfill application. This is an unnecessary requirement of time and expense, again intended to inhibit the industry.

Section 16(2)-(4) STRIKE page 16, line 25 through page 18, line 19

Comments: By allowing the department to enter into a contract to provide consulting services to applicant, the conflict of interest issue (raised above re:Section 6, Section 7 and Section 16(1)a) would become a major problem.

All revenues required by the department to perform its work should be derived from the filing fee and not as charges to applicant. The department, as a representative of the people of Montana, should be paid for by tax revenues and business taxes. The filing fee should remain a fixed amount, that would enable the department to carry out its responsibilities and should not be increased through charges to the applicant. This issue should be addressed in Section 1(a) exclusively.

Section 18(2) Page 18, line 17-21. Revise to read: "Upon receipt of an application [strike complying with sections 9 through 17], the department shall commence an [strike intensive study and] evaluation of the proposed megalandfill [strike and its effects], considering all applicable criteria [strike listed in section 24].

Comments: The procedure and criteria for review of applications by the department are currently set by law and need no repetition in this legislative act. Reference to the intensity of evaluation is inappropriate and duplicative to the department's handling of its technical review process. The issue of effect of the megalandfill to also covered by the department's review and duplicative here.

Section 17(3) Page 18, line 25 revise to read : "Within 120 days following acceptance of a complete..."

Comments: Given the amount of information exchange and involvement of the department prior to (through the long-range plan review) and during the process, 1 year is an excessive period for application review and response by the department. Department should have adequate staff, under proposed legislation, to respond to applicants in a timely fashion.

One year for application review is an excessive amount of time, indicative of the intent of this bill to create unnecessary delay and expense that would prohibit megalandfill development in Montana.

Section 18(2) STRIKE Page 19, line 13-15

Comments: This condition is inappropriate to void an application simply because it didn't comply with the exact form of the rules in terms of form and content. It is not substantial evidence to justify throwing out an application.

Again, this is indicative of the bill's intent to obstruct rather than regulate megalandfill development.

Section 19(1) Revise page 19, line 21-25 to read: ...shall set a date for a hearing to begin not more than 60 days after the receipt of the report. A certification hearing must be conducted by the board (strike in Helena or) in the county seat of the county in which the facility or the greatest portion of the facility is to be located.

Comments: One concern of this legislation and others before the legislature is to give communities an opportunity to respond to the presence of a landfill in their community. Holding a board meeting in Helena to review the department's report on an application does not give citizens of a county, like Fallon County, adequate opportunity to participate. Also, it would be inappropriate to hold two hearings, since all parties should benefit from all input to the Board. Therefore, all meetings of the board to review a department report on a landfill application should take place only within the county most directly affected.

Section 20(1) STRIKE page 20, line 8-9 being, "...including notice to all active parties to the original proceeding"

Comments: Again, continual notification is inappropriate to the application review process. Public notification and review should be given when hearings are held on the draft permit, and not at every point in the application process.

To continually require notification is detrimental to the technical requirements of the application review. Such notice has the primary effect of politicizing the application process, a condition which does not comply with the stated intent of this bill, that being to protect health, safety and welfare of Montana.

Section 21(5) STRIKE page 22, line 18-25, ending with "...for the hearing" and revise page 23, line 1-2, to read: "The hearing examiner may allow the introduction of new evidence prior to close of the comment period."

Comments: It is inappropriate and over burdensome for each interested party to be served with all documents that are part of public record. All documents which will be used and filed as a part of the hearing will become part of the public record and can be reviewed by any interested party. The financial consequences of having to serve each party with full copies of all documents would be prohibitive for the state and for the permit applicant. Also, by entering this requirement into law, an oversight in mailing leaves the state and the applicant open to legal action should the permit be given.

Section 21(6) STRIKE page 23, line 3-6

Comments: Discovery is allowed only during a civil proceeding during a lawsuit. It should not be allowed during the permitting process and public comment period since the environmental agencies clearly intend to take advantage of this process to delay and increase the expense of any permitting effort.

Section 21(7) STRIKE page 23, line 10-11, "These witnesses are subject to cross-examination." ADD: "Technical witnesses may be subject to cross-examination."

Comments: Cross examination of technical witnesses for both the permit applicant and the opposition is generally and should be allowed. However, the hearing officer will generally not allow cross-examination of community citizens who are non-technical and who represent personal or emotional comments.

Section 21(9) Revise line 8-9 to read: "the board, does not exceed 2 calendar months. [strike unless extended by the board for good cause]"

Comments: Again, this is another means by which unnecessary delays can be allowed in the application process. Specified timelines are appropriate and beneficial in the application process.

Section 22(1)b Revise page 24, line 22-24 to read: "the chairman of county commissioners, city and/or town mayor in the county(ies) in which the facility is to be located." STRIKE page 24, line 25 and page 25, line 1-11.

Comments: Again, this is an example of unnecessary and burdensome expense to provide proper service of documents to unspecified parties. It is normal practice to have permits reviewed by local government bodies and other political entities, this condition when made part of law is burdensome. Service to the affected local government is appropriate, while notification by the department of other involved agencies should be sufficient.

Also, to single out in law any non-profit organizations identified only by general description of their activities, as apart from all interested citizens and groups, is inappropriate and burdensome. Individual citizens within such groups can request documents since all documents are a matter of public record and can be obtained at any time from the department.

Parties to whom notice and documents are to be served should be reserved, as a matter of expense and burden, to those parties a) directly involved in the process; b) identified by the department as pertinent to the review process; and, c) who specifically request the public documents be provided to them.

To unnecessarily burden the department with distribution of documents to parties not directly involved in the review process leaves the state and applicant open to legal action for failure to serve such documents.

Section 22(1)e Revise page 25, line 12-13 to read: "any other interested person who the department determines to be germane to the proceeding."

Comments: Again, this can encompass any concerned citizen having direct concern or interest in the location of a megalandfill.

Section 22(5) STRIKE page 25, line 22-25 and page 26, line 1-6.

Comments: This condition--to require in law that a local public officials deliberations on the landfill siting be published in his/her local paper--is inappropriate and is not germane to the review of an application. This condition serves no purpose other than to directly grant opponents of the landfill a platform from which to embarrass and/or intimidate local politicians.

The process of permitting a solid waste management facility is a technical decision process over which the department must rule. It is therefore extremely important that the technical experts who understand the law and understand protective measures are the primary decision makers. It cannot be decided in the political arena where politicians can be swayed by emotionalism or local politics.

No local politician should be forced by law to state their intent or have their decision not to participate subjected to public scrutiny and ridicule in their local paper.

Section 24(2)a&b STRIKE page 27, line 17-20

Comments: Again, this is assumed in the state criteria in is inappropriately duplicated here.

Section 24(2)d-g;(3) STRIKE page 28, line 5-24

Comments: These requirements have been conducted by the department in their role of protecting the public interest. It is responsibility of the department to provide the board with assurances that they have protected the health, security and welfare of the people of Montana. Let them do their job.

Section 25 Revise page 29, line 3-5 to read: "its certificate upon the modification. [strike provided that the persons residing in the area affected by the modification have been given reasonable notice of the modification]"

Comments: The board conditions must be final. Notification cannot be a condition for further delay of the permitting process.

Again, this is another indication of the intent of the legislation to prohibit not regulate megalandfill development.

Section 26 Page 29, line 6-18, replace "license" with "permit" and "licensing" with "permitting."

Section 26(2) Revise page 29, line 13 to read: "deny the permit within 10 days of the certification".

Section 27 Page 29, line 19, replace "license transferable" with "permit transferable"

Section 28(2) Revise page 30, line 4 to read "may include" not "shall include".

Section 28(2)a Revise page 30, line 7 to read "may include" not "shall include".

Section 28(2)a(i-iv) STRIKE page 30, line 9-14

Comments: As discussed re: Section 3 (10a(iii-vi)), to require an environmental impact study for a megalandfill is an unnecessary financial and procedural burden on the applicant and should not be required. The inclusion of this requirement is a clear indication that the intent of this legislation is to unreasonably block the permitting of megalandfills in Montana.

Section 28(2)b Revise page 30, line 15 to read: "a plan for monitoring groundwater effects of the".

Section 28(2)d STRIKE page 30, line 20-22

Comments: This is not required because a permit holder has a "duty to comply" built into the permit.

Section 29 STRIKE page 31, line 1-3, beginning at "and to discover and or vent noncompliance with [section 1 through 36] or certificates issued under [section 11].

Comments: This is basically unenforceable, since the department can't afford to be present at all times.

Section 30 Page 31, line 4-13 replace "certificate" with "permit"; replace "license" with "permit"

Section 30(3) STRIKE page 31, line 14-16.

Comments: Unnecessary and assumed under Montana law.

Section 31(2) STRIKE page 32, line 3-14

Comments: This provision is intended to be intimidating to public officials and is basically useful only as a means of harassment and intimidation. The rights of the individual to sue the state for lack of enforcement of its laws are currently available to all citizens and the decisions and actions of the courts need not be repeated or altered here.

Section 32 STRIKE page 32, line 15-24

Comments: Again, individual citizens have the right under existing law to seek legal remedies. It would be inappropriate to broaden or limit those legal remedies here.

Section 34 Replace "shall" with "may", throughout. Replace "license" with "permit" throughout.

Section 34(1)a Revise page 33, line 13 to read "commences [strike to construct] to operate a magalandfill without"

Comments: This is relevant to Section 3(4) "commence to construct".

Section 34(1)a Revise page 33, line 15-16 to read: "permit required under [section 26], who [strike constructs] operates [strike or maintains] a facility other than in compliance with the certificate. STRIKE balance of line 17-21. Revise line 21 to read: "is liable for a civil".

Section 34(1)b STRIKE page 33, line 23-24

Comments: This is unnecessarily punitive.

Section 34(2) Revise page 34, line 4-5 to read:
"subsection (1) shall be fined not more than \$10,000.00 for
a violation." STRIKE page 34, balance of line 5, line 6-7.

Comments: Civil action does not allow criminal penalties.

Section 35 Revise page 35, line 3-4 to read: " operation
of the order. The court may, upon motion by the department, stay
or suspend, in whole or in part, the operation"

Comments: It is the appeal is made by the department (line
2) and the court may move only on the motion of the
department.

Section 35(1) Revise page 35, line 9-10 to read: "A stay
may be granted with notice to the parties."

Section 35(2) STRIKE page 35, line 11-14.

FALLEN COUNTY

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Baker, MT 59313

Charles (Mike) Madler
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406-778-2883 Ext. 21

March 15, 1991


Chairman Larry Stimatz
Senate Natural Resources Committee
52nd Legislative Assembly
Helena, Montana 59601

Re: House Bill 377

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Also, there is a separate bill currently under consideration in legislature to provide the department with adequate staff to conduct its responsibilities for current and future applicants for solid waste landfills. Having the state provide adequate support to the permitting staff and staff of experts to review the permitting process better protects the interests of the people of Montana and avoids potential accusations of conflict of interest or of unnecessary creation of delays by the department in the permitting process.

A better procedure would be the establishment of an administrative fee for the permittee to submit in support of the application process. Typically fees among other states include charges of up to \$15,000.00 for the permit application for a solid waste landfill permit. Such a fee should be substituted in place of Sections 6 and 7.

The funds are allocated in Section 8 "for use by the department in carrying out its functions and responsibilities related to solid waste management."

Section 9(1) A person may not file an application for a certificate of site acceptability required by (section 1) unless the megalandfill has been adequately identified in a long-range plan at least (strike 2 years) SIX MONTHS prior to acceptance of an application by the department.

Comments: Two years is an unacceptable condition that serves no purpose other than to delay a permitting effort and incur time-related cost expense for any applicant pursuing a landfill application.

The sole purpose of this two year delay is to provide political lead time to environmental groups in order to lobby politicians in the local area to fight permitting efforts. As we all know, most politicians on a local level require a new vote for office within a two year period.

Six months offers adequate time for the long-range plan to be submitted for public comment and review.

Also, the interests of the community are currently being protected in legislation currently before the legislature that would require a local referendum to be conducted that county citizens to require that the department halt the permitting application process. There would be every incentive for a potential applicant to have the referendum completed prior to completion of a long-range plan or submission of a permit application.

Section 9(3) revise line 3 to 5, page 8, to read:

"The plan must be furnished to the governing body of each county in which any facility included in the plan under subsection (2)a is proposed to be located and must be made available to the public by the department. The applicant shall give public notice IN THE LOCAL AREA WHERE THE FACILITY WILL BE LOCATED by publishing at least once a week for 2 consecutive weeks a summary of the proposed plan in newspapers of general circulation. [STRIKE "The plan must also be filed with...department of natural resources and conservation]. Interested persons may obtain a copy of the plan by written request and payment to the department of the costs of copying the plan."

Comments: The decision on location of a landfill should remain with the local area and county(ies) where the landfill will be located. It is an unnecessary burden to require statewide notification when the department's professional involvement is intended to enforce the law and thereby protect the health, safety and welfare of the people of Montana.

As to applicant's notification of various unrelated agencies, this is burdensome and should not be included as part of the law. Administrative laws and administrative regulations for waste management clearly states that the solid waste management and the expertise to permit landfills and this permitting effort and review process should remain with the department. It should be the department, in their professional judgement, who request the involvement and assistance of other appropriate departments and/or agencies.

To require the applicant to perform what is a department responsibility renders the applicant unnecessarily vulnerable to oversight in the notification process.

Section 13(1)a(iii)through (vi) STRIKE Section
13(1)a(iii)through(vi)

Comments: To require an environmental impact study on "at least three reasonable alternate locations" for the megalandfill is an unnecessary burden on the applicant and should not be required. The inclusion of this requirement is a clear indication that the intent of this legislation is to unreasonably block the permitting of megalandfills in Montana.

The expertise of the department should be relied upon to evaluate the application to determine the site's conformance with state regulation. The State of Montana provides performance criteria for a landfill and if the performance standards of the state are met, then the landfill permit should be granted.

To require three alternative locations, each with an environmental impact study, is unnecessarily burdensome to the applicant and unnecessary under the regulatory requirements of Montana law.

Section 15(5) STRIKE

Comments: The factors raised in this item are not related to the demands for commercial disposal capacity. Any permittee requesting permission to establish a commercial landfill would be prohibited from pursuing a landfill permit if these conditions were left as proposed. Again, this section is indicative of the intent of this legislation to effectively prohibit the location of a megalandfill in Montana, not to regulate their development.

Again, these provisions in Section 15(5) are duplicative of impacts included as a part of the department's review and do not need to be spelled out in a legislative act.

Section 16(1)a(i) revise to read, "a base fee of \$10,000.00"

Section 16(1)a(ii) 20 cents per ton for every ton over 200,000 tons capacity.

Section 16(2)-(4) STRIKE page 16, line 25 through page 18, line 19

Comments: By allowing the department to enter into a contract to provide consulting services to applicant, the conflict of interest issue (raised above re:Section 6, Section 7 and Section 16(1)a) would become a major problem.

All revenues required by the department to perform its work should be derived from the filing fee and not as charges to applicant. The department, as a representative of the people of Montana, should be paid for by tax revenues and business taxes. The filing fee should remain a fixed amount, that would enable the department to carry out its responsibilities and should not be increased through charges to the applicant. This issue should be addressed in Section 1(a) exclusively.

Section 18(2) Page 18, line 17-21. Revise to read: "Upon receipt of an application [strike complying with sections 9 through 17], the department shall commence an [strike intensive study and] evaluation of the proposed megalandfill [strike and its effects], considering all applicable criteria [strike listed in section 24].

Section 19(1) Revise page 19, line 21-25 to read: ...shall set a date for a hearing to begin not more than 60 days after the receipt of the report. A certification hearing must be conducted by the board (strike in Helena or) in the county seat of the county in which the facility or the greatest portion of the facility is to be located.

Parties to whom notice and documents are to be served should be reserved, as a matter of expense and burden, to those parties a) directly involved in the process; b) identified by the department as pertinent to the review process; and, c) who specifically request the public documents be provided to them.

To unnecessarily burden the department with distribution of documents to parties not directly involved in the review process leaves the state and applicant open to legal action for failure to serve such documents.

Section 22(5) STRIKE page 25, line 22-25 and page 26, line 1-6.

Comments: This condition--to require in law that a local public officials deliberations on the landfill siting be published in his/her local paper--is inappropriate and is not germane to the review of an application. This condition serves no purpose other than to directly grant opponents of the landfill a platform from which to embarrass and/or intimidate local politicians.

The process of permitting a solid waste management facility is a technical decision process over which the department must rule. It is therefore extremely important that the technical experts who understand the law and understand protective measures are the primary decision makers. It cannot be decided in the political arena where politicians can be swayed by emotionalism or local politics.

No local politician should be forced by law to state their intent or have their decision not to participate subjected to public scrutiny and ridicule in their local paper.

Replace "SHALL" with "MAY"; replace "LICENSE" with "PERMIT"; and replace "LICENSING" with "PERMITING" throughout the bill

Section 22(1)b Revise page 24, line 22-24 to read: "the chairman of county commissioners, city and/or town mayor in the county(ies) in which the facility is to be located." STRIKE page 24, line 25 and page 25, line 1-11.

Comments: Again, this is an example of unnecessary and burdensome expense to provide proper service of documents to unspecified parties. It is normal practice to have permits reviewed by local government bodies and other political entities, this condition when made part of law is burdensome. Service to the affected local government is appropriate, while notification by the department of other involved agencies should be sufficient.

Also, to single out in law any non-profit organizations identified only by general description of their activities, as apart from all interested citizens and groups, is inappropriate and burdensome. Individual citizens within such groups can request documents since all documents are a matter of public record and can be obtained at any time from the department.

Parties to whom notice and documents are to be served should be reserved, as a matter of expense and burden, to those parties a) directly involved in the process; b) identified by the department as pertinent to the review process; and, c) who specifically request the public documents be provided to them.

To unnecessarily burden the department with distribution of documents to parties not directly involved in the review process leaves the state and applicant open to legal action for failure to serve such documents.

HOUSEHOLD DANGEROUS WASTE



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SENATE NATURAL RESOURCES

EXHIBIT NO. 3

DATE 3-13-91

BILL NO. HB 377

\$10.00

**GEOLOGY OF THE BAKER
AND WIBAUX 30X60-MINUTE
QUADRANGLES,
EASTERN MONTANA AND
ADJACENT NORTH DAKOTA**

by

Susan M. Vuke-Foster, Roger B. Colton,
Michael C. Stickney, Edith M. Wilde,
J. Elise Robocker and Kim C. Christensen



Cedar Creek anticline.

Prepared in cooperation with the U.S. Geological Survey.

Geologic Map 41

1986

Montana Bureau of Mines and Geology

A Department of

Montana College of Mineral Science and Technology



FALLON COUNTY

City-County Administration Building - 10 West Fallon Avenue

P. O. Box 1134
Baker, MT 59313

April 3, 1991

Charles (Mike) Madler
County Planner/Surveyor
406-778-2883 Ext. 21

Sen. Lawrence G. Stimatz, Chairman
Senate Natural Resources Committee
52nd Legislative Assembly
Capitol Station
Helena, MT. 59620

SENATE NATURAL RESOURCES
EXHIBIT # (Submitted 4-18-91)
DATE 3-13-91
BILL NO. HB 377

Re: House Bill 377 - Mega-Landfill Bill

Sen. Stimatz:

During the Senate Committee hearing a committee member asked how we determined the need for amendments. We are not experts on solid waste legislation so we asked an expert from a solid waste engineering firm. The engineer has worked with solid waste companies in siting and licensing facilities and has a great deal of experience with legislation over the entire United States. He reviewed the proposed bill and sent his comments on the condition that his company remain anonymous. I am enclosing a copy of these comments as per the committee request. All reference to the engineering firm has been deleted, however this does not detract from the comments. I hope that it will be useful to you in considering our proposed amendments.

Thank you for your time and consideration.

Sincerely,



Charles Madler

FACSIMILE TRANSMITTAL

SENATE NATURAL RESOURCES

EXHIBIT NO. (submitted 4-16-91)

DATE 3-13-91

BILL NO. HB 377

TO: Mike Madler

FROM: [REDACTED]

DATE: 3-8-91

RE: Bill 377

NUMBER OF PAGES TO FOLLOW: 16

COMMENTS/INSTRUCTIONS:

Mike,

This is a rough, rough, rough draft

[REDACTED]

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Comments in Response to House Bill Number 377 in the 52nd
Legislature of the State of Montana

Within the Bill supplied by the environmental quality council which is a environmental group dedicated to stopping the permitting and construction of landfills or making the process financially burdensome that it essentially is promulgated of landfill permits of the type named in this Act. The purpose of the Bill is stated that it will establish a certification and licensing perceive process for mega landfill, provide contracts for information, require submission of long-range plans, require certificate of site acceptability, request environmental factors to be evaluated, provide constant hearing processes, provide for enforcement by residence, provide a mechanism to recover damages for contamination of drinking water supplies and provide for an immediate effective date.

This particular Bill seeks to detail and establish timelines that will drag out a permitting process to an extended period of time that will seek or provide an defacto prohibition on permitting. All of the established purposes that are described in the definition are currently in place under the Montana State laws and are part of the existing permitting process for the State Department of Health. As an example, the existing permitting process and permit review procedures that would be utilized by the appropriate permitting agency within the State of Montana currently allows a review of site excitability, a review

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of long-range plans and a review of pertinent environmental factors prior to the agency issuing a draft permit.

This Bill essentially acts to circumvent the existing authority which the agency now controls. The primary purpose of this proposed House Bill 377 would be to take the control of the permitting process out of the hands of the responsible agency who acts on behalf of the people of Montana and to place the decision process in the hands of environmental groups who would be advisories to the group. The existing the courts and legal systems in the State of Montana clearly provides avenues of recourse for any damages that may result from contamination of a drinking water supply. This Bill does not need to spell out a specific mechanism that would be contradictory to or redundant with the existing judicial system within the State of Montana. The existing legal system for issuing permits also has a provision for judicial review and provides for penalties for violation and therefore does not need a redundant system as contained in this House Bill.

Within the Statement of Intent contained within this House Bill it states that the regulations are designed to protect public health safety and welfare and the environment. While the protection of health safety and welfare is the umbrella or shield under which these regulations and laws would be reenacted, it is very clear from the content of this Bill that the details requested in the timelines applied are delayed tactics associated

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with permitting facilities as opposed to actual health and safe protective measures. Anyone in the waste management industry including municipalities, private industry or State and Federal agencies would be opposed to the unnecessary written into this program and various requirements that are financially over burdensome without adequate return on investment in terms of providing health safety and welfare. It is obvious that the shield of protection of public health and safety has been abuse by the underlying purpose of the proposed Bill.

Under Section 3/Definitions the definition of commence to construct is defined as any clearing of land, excavation, construction or other action that would effect the environment the site. This Section 4A should be revised to state that commence to construct means; A) any installation of clay liner material or synthetic liner material for the specific construction of disposal cells however, miscellaneous construction not related to direct disposal is not included in the definition of commence to construct. Subsection B under Section 4B states that commence to construct also includes modification or upgrade any existing facilities in to a mega landfill classification. This Section 4B should be revised to state that commence to construct means; A) same as above B) does not include the modification or upgrading an existing solid waste disposal facility into a mega landfill. Under Section 3-7 the definition of mega landfill or facility is established to include facilities that except more than 200,000 tons of waste per year

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or any ash monofill that excepts 35,000 tons a year or more of solid waste incinerator ash. This Section should be revised to state that a mega landfill strike the words facility means any new solid waste landfill facility that excepts more than 500,000 tons per year but does not include industrial landfills nor ash monofills permitted under the industrial waste section. The existing language under Section 3-7 specifically points out or aims at ash monofills and is inappropriate to single out a particular waste stream when the general premise behind solid waste management regulations includes the principal that the state establishes guidelines for disposal of all waste under which specific permits are granted. Ash is a subset of industrial waste and should not be singled out or treated as a particular material with specific reference. Under Section 3-9A solid waste is defined to include all protrusible and non-protrusible waste including inert material. The reference inert materials should be taken out since a material that is inert should not be classified as a solid waste and could be more effectively managed outside the confines of a waste management landfill. Because of the critical shortage of suitable landfill capacity it does not warrant utilizing valuable landfill capacity for material which are inert. By definition inert means the material will not have an adverse impact on the environment therefore management should not be required for a waste landfill.

Under Section 3-9B solid waste is defined not to include various materials and at the end of that section the following

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should be added; "for solid waste does not mean ...or marketable by-product, or a waste material that is beneficially used, or recycled, reclaimed or reused as a product or substituted for commercially available material or natural resources". That section should be added to the end of Section 3-9B.

Section 3-10 under the definition of solid waste landfill includes landfills public and private and "other types of waste" but this section does not exclude hazardous disposal units. To correct this oversight, the last sentence of the Subparagraph 10 should read "the term does not include land application units, surface impoundments, injection wells, waste piles, or hazardous waste units.

Section 4 in line 17 the words environmental factors to be evaluated should be struck and removed. Under Section 6 line 8 and 9 on page 6 payments to the department under a contract must be credited under the fee payable under Section 16. This section requires for a proposed business which wishes to come in to the State of Montana to pay an up front fee for the processing of application information. This type of treatment of new business enterprise does not conform of the normal method of treatment of businesses which bring jobs, taxes and development to an area. Since the economic development associated with a private landfill operation will be assessed various fees during an operating life then the up front fees for licensing and permitting should be charged against the state budget and recovered through future

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taxes on future facilities as opposed to being up front payments prior to the location of the business interest.

With this principal in mind Section 6 should be removed completely. Section 7 has been placed in this Bill in order to allow the Agency to receive or charge direct charges to the permittee and cover the agencies expenses. This section should be revised or taken out since the agency should be allowed to administer a permit fee which would reflect a actual cost of permitting and should not be allowed to be a general consultant in the review process. The tax payers and business interest of the State and any business that would come into the State will share in the tax burden that supports the permitting staff and staff of experts whom will review the permitting processes.

It is inappropriate for the agency to place itself in competition with private industry as part of the consulting efforts related to permitting solid waste management facilities. Under the guidelines of this Bill there is a conflict of interest on behalf of the state agency if it is allowed to administer the rules and determine the stringency of the rules and application and at the same time receive funds from the permittee for efforts performed as a consultant in the permitting process. With this scenario the agency can require additional information or additional studies as a permit administrator and turnaround and collect additional funds as a result of this decision for continuing its permits efforts. This conflict of interest should

not be allowed a part of a state agency or legislative act. While the premise that the permittee has requested administrative action in order to review an application process should bear some of the expenses in reviewing the application it is a conflict of interest and self serving for the agency to be able to build a kingdom of staff by constantly by making the permitting process more difficult and stretching it out for a longer terms of time just to gain more revenue to support its growing staff. The alternative to Section's 7 and 8 of the proposed Bill would be to establish an administrative fee for the permittee to submit in support of the application process. Typically fees among other states include charges of up to \$10,000 to \$15,000 for the permit application for a solid waste landfill permit. These fees are industry wide and acceptable and should be substituted in place of Section 7 and 8.

Section 9 requires that a person cannot file an application for site suitability unless the landfill has been identified in a two year long-range planning state. This condition is unacceptable and serves no purpose other than to delay a permitting effort and incur a time related cost expenses for any applicant who is pursuing a landfill application. The soil purpose of this two year delay is a strategic effort by the environmental groups to be put on prior notice at least 2 years in advance of a landfill in order to try to lobby politicians in the local area to fight any permitting efforts. By having the 2 year advance the environmental groups are clearly aware that any

prior to close of comment. Page 23, lines 3, 4, 5 and 6 should be stricken completely since discovery should only be allowed during a civil proceeding during a lawsuit. Discovery should not be allowed during the permitting process and public comment period since the environmental agencies clearly intend to take advantage of this process to delay and increase the expenses of any permitting effort.

Section 21, page 23, line 10 and 11, this section allows witnesses to be cross examined during the hearing process. This statement should be revised since during most hearing processes the hearing officer will not allow cross examination of the community citizens who are non-technical and who represent emotional comments. Cross examination of technical witnesses both for the permittee and the opposition should be allowed however cross examination of community residence is usually not allowed.

Page 24, line 28, the number 9 should be marked out and number 6 should be inserted so that the sentence reads "the Board, does not exceed six calender months". And the remainder of the sentence should be struck. Strike the words unless extended by the Board for cause.

Page 24, line 22, the environmental group has sought to allow all political entities and local government agencies to be an interval part of the process realizing that the political

allowed unrestrictive access to continuing fees on a permit request.

Page 18, lines 17, 18, and 19 should read as follows: upon receipt of an application the department shall commence and evaluate the proposed facilities considering all applicable criteria. Page 18, item 25 should read; within a 120 days following exceptions. ...6 and 18 page 19, lines 13,14 and 15 should be struck, this condition is inappropriate to void an application simply because it didn't comply with the exact form of the rules in terms of form and content. This small type of nonconformance is not substantial evidence to throw out an application. Page 20, line 8 and 9 strike the words including notice to all active parties to the original proceeding. Page 20, line 12, strike the words social and economic impacts. Page 20, lines 15, 16, 17, 18, 19 and 20 should be struck. Line 21 and 22 should read; after the hearing the board shall grant deny or modify the amendment within 30 days. Page 22, lines 18 through 25 should be stricken. It is completely inappropriate and over burdensome for each interested party to be served with all documents that are part of public record. All documents which will be used and filed as part of the hearing will become part of the public record and can be reviewed by any interested party. The financial consequence of having to serve each party with full copies of all documents would be prohibitive for both the state and any permit applicant. Page 23, lines 1 and 2 should be revised to state that introduction of new evidence

interest will become a major problem. Page 16, line 3, should read; a base fee of \$10,000.00 plus \$0.20 per ton for every ton over 200,000 tons capacity. Page 16, line 6, should read as follows; the department shall allow... . This change substitutes the word shall for the word may in this sentence. Page 16, lines 9, 10 11, 12 should be taken out since an environmental impact statement should not be required for a solid waste management landfill application. Page 16, lines 13 through 24 should be removed, since they are to open ended and allow the state to much discretionary control over the funding mechanism. Page 16, line 25, and all provision related to the ability of the state to contract for providing a consulting services should be removed, since there is a conflict of interest among this regulation and legislative requirement and there is a conflict of interest with the private interest who supply consulting services for landfill design and permitting. Page 17, line 7, 8. and 9 the sentence that requires that the revenue derive from the filing fee must be sufficient to enable the department to carry out there responsibilities should be stricken and the following statement should be implemented: the revenue from the filing fee is limited to the \$10,000.00 fee and shall not be increased by the board or the department as charges to the applicant. Page 17 lines 9, 10, 11, and 12 should be stricken completely, the department should not be allowed to request additional payment from the applicant since the department is paid for by tax revenues and business taxes and will be self serving if it is

beginning on line 8 all factors related to this item should be removed since these factors are not related to the demands for commercial disposal capacity and any permittee requesting permission to establish a commercial landfill would be prohibited from pursuing a landfill permit if these conditions were left in place as proposed. Page 14, capital M, this section requires impacts on local government infrastructure and existing industry. These particular impacts are assessed by the solid waste management agency as part of there review, these conditions do not need to be spelled out as part of a legislative act. The hydrogeological investigations which are required as part of the solid waste regulations will require sufficient review of these impacts. These specific impact of a facility solid waste management facility should not be subject to review since commercial facilities will be governed by the availability of the resources to support the landfill activity. Page 15, lines 11 through 16 should be stricken. These conditions for inspection for the facility and transportation practices, route of transportation are not recycling for solid waste management issues. The transportation of waste is well governed by transportation standards which already apply to both rail and truck transport and therefore additional regulation is redundant and unwarranted. Page 15, Section 16, lines 20, 21 and 22 should be revised to state the following; the applicant should pay to the department a filing fee as provided in this section in the amount of \$10,000.00. By allowing the department to estimate cost of processing the applications certificate the conflict of

United States requires that the administering agency provide public notice to all interested parties when a draft permit has been put out for public comment. This same procedure should apply now. There is no purpose served in providing public notice in application has been filed when all interested state agency parties will involved in the technical review related to the application process. Public notice prior to the draft permit issuance should not be required.

Section 14, page 11, lines 14 and 15, the last sentence should be stricken from the document. Under page 11, lines 21 and 22, the sentence should end with the word fees, and the last portion of 21 and 22 should be removed. Page 12, lines 3, 4, 5 and 6, the last sentence of this group should be stricken completely. Page 12, line 10, the word shall should be replaced with the word may. Page 12, lines 21 and 22 should be stricken completely. Page 12, lines 23 and 24 should be removed. Page 12 last line and page 13 first line should be stricken. Page 13, lines 2, 3 and 4 should be removed. Page 13, subitem D, should be removed since the decision process to pursue a large landfill as a business opportunity should not be required to undergo an evaluation for waste reduction methods within the areas where solid waste will be removed and secured for disposal within the landfill. Since the reclined efforts of the host community are not directly related for the demands for a commercial landfill capacity then the recycling requirements and review requirements are not appropriate for commercial landfills. Page 13, item 5,

Section 13 conditions little 2, 3, 4, 5 and 6 should be removed as they relate to environmental impact statements and studies. To require an environmental impact study on the facility and at least 3 reasonable alternate locations is unnecessary burden on the permittee and should not be required. The expertise of the solid waste management agency should be relied upon to evaluate the application to determine its conformance with the regulations. If the performance standards of a regulatory program are met then the facility permit should be granted. An environmental impact statement of comparative facility locations should not be a factor in the permitting of an individual site. The solid waste management velocity and premise of the laws and regulations of the State of Montana provide for a set of rules that establish the performance criteria for facility to operate under and these should be the limiting criteria for a facility. Page 10, line 10 under Section 13B require that copies that any studies should be filed with the department and under Subsection 2 various other parties are listed for copies with. This condition should be removed it should be sufficient for the applicant to file the application with the appropriate solid waste management agency of the state and the solid waste management agency shall decide to whom additional copies are sent for review and to which parties are involved in the review process.

Section 13, page 11, lines 3 through 9 should be stricken. The application process normally used by states throughout the

Section 9-2D should be revised to state that additional information that the department by rule request in order to carry out the purpose of this act.

Section 9-3 should be revised to remove the second sentence which states that the applicant shall give public notice throughout the state of publishing once a week in two consecutive weeks public notice so on. This statement should be revised to state that the public notice would be required in the local area newspaper where the facility will be located.

Section 9-3 requires various unrelated agencies to receive copies of the plan, this administrative requirement is burdensome and should not be included as part of the law. The administrative laws and administrative regulations for waste management clearly states that the solid waste management and the expertise to permit landfills and this permitting effort and review process should remain with the solid waste agency instead of being deluded to various other agencies.

Section 10, page 8, line 17, the word shall should be replaced with the word may so that partial statement reads as follows; "the department may begin to examine..." Section 10 line 20 should have the words social and economic stricken from the sentence.

politicians in a local level will require at least a new vote for office for a 2 year period.

Section 9-2A & B requires the permittee to submit informational support for such things as the environmental groups that will be involved in permitting process. This statement requirement is a redundant effort since the regulations clearly spell out what land use planning agencies will be involved and what environmental concerns will be dealt with in a landfill permitting process.

Section 9-2C requires the permittee to give explanation of the basis for justifying the landfill demand and describe the extent to which facilities will meet the demand. This condition is unnecessarily burdensome since the demand for a landfill is a given point prior to a business interest pursuing a landfill permit and for municipal governments that pursue permits, the demand is obviously justified. Also it is important to note that, even if a landfill is permitted under a permit program which provides environmental protection and long-term closure bonding requirements than even if the demand for the facility is not there the environmental protection measures will still be in place and the financial guarantees will be in place to provide proper closure. Therefore, there is no environmental risk of permitting a facility and then finding out the demand is not there to support the facility, therefore, this requirement is unnecessary and does not need to be in place.

nature of a permit process almost guaranties that a permit will not be issued without substantial delay. In order to enhance the permitting process this condition should not be included in the act and the responsible parties who have an interest in the act and the responsible parties who have an interest to a permitting process should include the permittee, the agency responsible for carrying out the solid waste management laws and the regulations of the state and the parties that the agency deems to have a vested interest. Since environmental permits for solid waste management facilities are always reviewed by parties including local government bodies and other political entities this condition should not be part of the law even though normal practice is to include these parties without service of documents and the burdensome expense of proper service. To correct this Section, lines 22, 23, 24, and 25 should be stricken. On page 25, line 1 through 11 should be removed since non-profit organizations would be represented by the citizens who are in that community.