MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 15, 1995, at 3:30 PM

ROLL CALL

Members Present:
Sen. Lorents Grosfield, Chairman (R)
Sen. Larry J. Tveit, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. William S. Crismore (R)
Sen. Mike Foster (R)
Sen. Thomas F. Keating (R)
Sen. Ken Miller (R)
Sen. Vivian M. Brooke (D)
Sen. B.F. "Chris" Christiaens (D)
Sen. Jeff Weldon (D)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Mickhael Kakuk, Environmental Quality Council
Theda Rossberg, Committee Secretary

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

Committee Business Summary:

Hearing: HB 472, HB 473,
Executive Action: SB 382

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HEARING ON HB 472

Opening Statement by Sponsor:

REPRESENTATIVE DICK KNOX, House District 93, Winifred, presented HB 472. He handed out printed material, **EXHIBIT 1.** SB 346, which was tabled last session, called for the sale of water for

instream flow. It was tabled because it permanently severed the water from the land. He believed this issue needed to be dealt with. No one likes to see a dry streambed. HB 472 is the result of a tremendous amount of interim work. The organizations involved were: Montana Farm Bureau Federation, Montana Stockgrowers Association, Montana Water Resources Association, Montana Association of Conversation Districts, Montana Trout Unlimited, and the Montana Wildlife Federation. This is a consensus bill. The bill authorizes the temporary use of existing water rights for instream flow to benefit the fishery resource. It allows any private individual or association to lease an existing water right from a land owner. It also allows the owner of a water right to temporarily change the use of that water right to an instream use to benefit the fishery resource. There are many safeguards to protect the private property rights of existing water users. It allows any potentially affected person to provide input and advice before the application for a change in water use is submitted to the DNRC.

Proponents' Testimony:

Robert Hanson, Montana Farm Bureau Federation, stated the best part of this bill is that it will allow both factions to be proactive. They spent eight months working on this bill and are very pleased with the outcome.

John Bloomquist, Montana Stockgrowers' Association, stated he worked with the group on this bill and that the Stockgrowers fully support HB 472. This does not involve the sale of water for instream use. When water is removed from the land, some of the ramifications are unknown. The mechanism which was chosen to implement the change from a consumptive use and irrigation use to the instream use for the benefit of the fishery was the temporary change provision under present law.

Mr. Bloomquist stated that the main crux of the bill is in Section 1, pages 1 and 2. There are two ways an applicant can change water to an instream use. The first is found on page 2, lines 3-8. If a water right owner chooses to leave a portion of that right instream and be administered instream, they could apply to the Department for temporary change and go through the process. The second way that water could be administered instream is to lease it. Under this bill, any person could go to a water right holder and lease the water for instream use. They would need to go through the process of applying for the change from irrigation use to instream use and get the approval from the DNRC.

Mr. Bloomquist said that under this bill the definition of "person" is an individual, association, partnership or corporation. This would not involve the Department of Fish, Wildlife, and Parks or other state or federal agencies. This bill deals with the private sector participating if they so

choose. The measuring point is specifically stated and will not adversely affect the water rights of other persons. This provision should prevent some of the problems with past bills which looked at the reach concept and tried to protect large reaches of streams by moving points of measurement around where potential water right users could be affected.

Mr. Bloomquist added that another part of the bill specific to instream issues is that there needs to be a showing that the water is needed to maintain or enhance instream flows to benefit the fishery. They wanted to avoid the idea of leasing water simply for the sake of leasing water. Pages 10 and 11 of the bill state the ability to object to a proposed change to instream use. Other water right users have the opportunity to object during an initial temporary change application process. If there is a renewal, they have the right to object at that point. They also have the right to object during the term of the lease or during the term of the temporary authorization. Many times another water user may not be aware or have the documentation to show adverse effect. They wanted them to have the ability to come in and explain any effect by the change and have the DNRC look at it and either modify or change the temporary change provision. They fully support this measure.

Kirk Evenson, Trout Unlimited, emphasized the importance of the process which lead to this bill that brought two opposing sides together. This bill is not a panacea for all water use debate. It is a constructive start to diffusing a controversy over instream flows in the state of Montana. Passing this legislation would be a positive signal that the Legislature believes that consensus negotiations among Montanans is a very good thing.

Mike Murphy, Montana Water Resources Association, presented his written testimony in support of HB 472, **EXHIBIT 1.**

Alan Rollo, Montana Wildlife Federation, presented his written testimony in support of HB 472, **EXHIBIT 2.**

Glenn Marx, Governor's Office, presented his written testimony in support of HB 472, **EXHIBIT 3.**

Larry Brown, Agricultural Preservation Association, stated it has been twenty years since the instream flow process first started. On page 11, line 1, the language "once during the term of the temporary change permit" gives the interested parties the opportunity to object to the situation if it is not working.

Janet Ellis, Montana Audubon Legislative Fund, stated that they support the bill. She said they believed the Consensus Council did an excellent job facilitating this process.

Debby Smith, Montana Chapter of the Sierra Club, stated their support of this bill.

Art Whitney, Montana Chapter of the American Fisheries Society, presented his written testimony, **EXHIBIT 4.** He commented that this bill is an important step toward improving fish habitat in streams.

Robert Lane, Department of Fish, Wildlife & Parks, presented his written testimony in support of HB 472, **EXHIBIT 5.** He also handed out their "Annual Progress Report Water Leasing Program - 1994" **(EXHIBIT 6)** which summarizes the progress they have made and some of the projects which have been completed under their program.

Franklin Rigler stated his support of HB 472. He has had first hand experience water leasing for the Fish and Game. This bill does not change the point of measurement.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SENATOR MACK COLE asked **Mr. Bloomquist** what protection there would be for an agricultural person who had problems after the lease and felt that he was not getting his full share of water.

Mr. Bloomquist stated there were three areas that would address this. When the DNRC considers an application for a change in water right, one of the elements it considers is found in § 85-2-402 which states that other water users would not be adversely affected by that change. Under this bill, the temporary change mechanism found in § 85-2-407 still exists. Part of what the applicant must show on the proposed change to instream use is that other water users will not be adversely affected. In addition, the temporary change authorization for the instream flow as measured at a point, will not adversely affect the water rights of other persons. Under this bill, wherever the instream flow right would be administered or where the call would be placed would be at a point where other water users will not be injured. They would not be able to go over the measuring points downstream and go over junior users because that would subject those new users to a call that they had not previously been subject to and have an adverse effect.

SENATOR CHRIS CHRISTIAENS asked for information on the Consensus Council. It was his understanding that the funding for the Consensus Council was not in the budget. He asked about its future role.

Mr. Marx stated that if the Consensus Council is not funded, it's future is uncertain. The Governor's Office believes that they have provided some very good examples of positive work and they would like to see the program remain in place. Private funding is always an option. The office has been in existence for a year and a half and a base of support from HB 2 would be an important step to keep the Council fully operational.

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SENATOR VIVIAN BROOKE, referring to the "objection" which is built into the bill, asked **Mr. Bloomquist** if he would envision that this objection could go to court?

Mr. Bloomquist stated a contested case hearing would be conducted under MEPA and could end up in court.

SENATOR BROOKE asked who would pay the court cost if the objector prevails?

Mr. Bloomquist stated there was no loser pay provision under that scenario. There was a lengthy discussion whether the loser, particularly at the agency level, should have to pay the other party as to costs and attorneys fees. The agricultural community was a little concerned with that because this would have a chilling effect on objections to these interests. Ranchers may not have a valid objection at first, but the right to object should be preserved. Many times a change application comes in on the last day to file an objection. An objection is then filed to preserve those rights and then they are able to go over the information involved.

SENATOR BROOKE asked **Mr. Lane** how long it took to determine the need for a fishery resource?

Mr. Lane stated their biologists usually have a pretty good idea of the streams which are having fisheries problems due to low water. They have summaries and opinions on most of the streams in the state. In their water leasing program, they already know critical streams and which streams would be good candidates for spawning purposes if they had more water on a regular basis.

Closing by Sponsor:

REPRESENTATIVE KNOX stated he believed the bill would work. This is a wide open process for a willing buyer and a willing seller. Where there is an established instream need and there are people or organizations which are interested in purchasing water and there is an existing water source there, these two parties have every opportunity to come to a meeting of the minds.

HEARING ON HB 473

Opening Statement by Sponsor:

REPRESENTATIVE DICK KNOX, House District 93, Winifred, presented HB 473. He stated there have been comments that HB 473 creates an unfunded mandate upon the cities and counties of Montana. He has not signed the fiscal note because it was based on an erroneous assumption that the costs associated with implementing

it would be the same as the cost of implementation of the first major subdivision revision law in Montana. This bill can be implemented by simply adding to the existing regulations. The cost will be less than 50% of the cost on the fiscal note. The first substantive change in language was on page 2, line 15, which stated that the purpose of this bill is to protect the rights of property owners.

In the review process the local government will consider the rights of adjacent land owners. Page 2, line 28, provides for the "gift" of land by an owner to their heirs. The gift must be accompanied by an agricultural covenant. The land must continue to be used for agricultural purposes. This will allow orderly transfer of land from landowners to their descendants. Section 4 requires that developers complete improvements within a subdivision before approval of the final plat. In the event that bonding is used to provide security for improvements, this section modifies the bonding requirements by requiring the reduction of bonding and as improvements are completed, and permitting alternate guarantee plans for projects finished in phases. This section will assure that improvements are completed while keeping development costs in sync with revenue flows.

Proponents' Testimony:

REPRESENTATIVE DAN MCGEE, House District 21, Billings, commented that this bill completes the process which was begun last session. Both HB 408 and HB 280 were passed out of the House and into the Senate. Both bills addressed the issue of rampant development in the state of Montana. HB 408 did absolutely nothing about the other side of the issue which was the subjective interpretation of the law by local governments, planning boards, etc. HB 280 was intended to put some teeth in the other side of the law; however, it did not pass. What we have now is a situation where landowners have had their rights taken away by subjective interpretation of the law by local governments. This bill will put back into statute the ability of a property owner to take to task arbitrary and capricious decisions on the part of local government. The opponents will say that is an unfunded mandate. That is not true. In the county that he has worked in during the last two years, they amended their regulations three times. The opponents will also state that they will be in jeopardy because the bill specifically states that they can be taken to task. If you are the landowner who is trying to do something with your property, it is only right and proper that if someone adjudicates that you cannot do so, you have a right to question that through the judicial process.

William Spilker, Montana Association of Realtors, stated that last session a subdivision bill was passed which contained major changes to the subdivision bill. Basically, that bill was a

compromise which eliminated the 20 acre definition, eliminated most of the exemptions, and, on the other hand, eliminated public interest criteria and the basis of need as a criteria for review. Unfortunately that bill failed to include the additional features which would provide streamlined review for minor subdivisions, make local governments more accountable for their actions and bring some reason to this process. This bill addresses these issues. He referred to the ability of a subdivider, adjacent property owner, municipality or a county to bring an action against a governing body on their decision regarding a preliminary plat. This action can be brought on the basis of arbitrary or capricious acts or for acts that exceed lawful authority. **Mr. Spilker** predicted that there will be testimony that requests that this right to bring the action should be extended to any person. He urged the committee to ignore this on the basis of preventing frivolous lawsuits. The last legislature removed public interest as a criteria for review under this bill.

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Jerry Hamlin urged passage of HB 472 because of the private property rights protection which the bill affords and also the appeal process which would make local governments more accountable for their decisions. He presented written testimony from Erin Melugin, **EXHIBIT 7.** He presented an example of a three lot minor subdivision process. His secretary asked him if he thought it would be a good idea to buy a 20 acre parcel of ground and possibly subdivide it into three parcels so her house would be more affordable. The covenants defined that it could be divided four times. The county government had already approved the process. All the property owners adjacent to it knew when they bought their land that the property could be divided up to four times. He has been in the building and land development business for over 25 years.

Mr. Hamlin stated that the denial of this subdivision request was the most flagrant abuse of discretion by a county commission which he has ever seen. One of the reasons for denial was that it did not conform with the comprehensive plan which is not to be used as a regulatory document. The attorney in Jefferson County at the time, stated that it was also a flagrant abuse of county commissioners' discretion. The part of this bill which addresses an appeal process is extremely important. In Montana, we are developing very rapidly. The cost of moving here is escalating rapidly because the prices of lots are escalating rapidly which is a direct result of supply and demand. Many Montanans are being priced out of the ability to be able to live in Montana. This kind of legislation will stop that pendulum from swinging too far.

The seven reasons for denial of this particular subdivision were: (1) The proposed subdivision was in conflict with the Lewis and Clark County Comprehensive Planning Board's plan to provide for

efficient delivery of public services. Prior to the subdivision application, a new fire department was installed in the area. A school bus route already existed in the area. It is served by one of the interstate highways. (2) The proposed subdivision was in conflict with the Lewis and Clark County Comprehensive Plan goal to encourage development within preferred development areas, and approval of this proposal would encourage premature subdivision within the area and encourage leapfrog development. He researched what the Lewis and Clark Comprehensive Plan goal was and the preferred development area ended up being any area within a one mile radius of the city of Helena. This would mean that any development outside of one mile of Helena is not good and therefore would serve as reason for denial of a subdivision. (3) The proposed density of development in the plan is a departure from the current pattern of development and it alleges that property in the immediate area is divided into tracts of 20 acres or greater. However, seventeen parcels within 1100 feet of this proposal were 5 acres and more. (4) The proposed subdivision, when developed, would have an immediate long lasting impact upon the scenic values of the surrounding landscape. If impact on scenic values is a criteria for denial of a subdivision, everyone could be denied. On the other hand, the landscape could be increased and enhanced by the construction of a beautiful new home. It would not have to impact the scenic values negatively. (5) Wildlife values, in particular mule deer and elk winter ranges associated with south and easterly facing slopes, would be negatively impacted. The proposed existing development activities also would exacerbate the cumulative loss of wildlife habitat. (6) Development of the proposed subdivision would enlarge the residential wildlife interface. (7) While the proposal would create only two additional parcels and for the most part the direct adverse effect would be minor if looked at individually, these adverse effects could be mitigated by certain restrictions and improvements in most cases. The commissioners based their denial of the subdivision on density. Density is not a legitimate reason for denial of a subdivision request.

Daniel Brien, Montana Association of Registered Land Surveyors, stated that they believe the changes in the park dedication or cash in lieu of, is long overdue. The ability to seek a just course of action for denial of a subdivision application is long overdue. This protects the property rights of the property owner. He presented written testimony, **EXHIBIT 8.**

Rick Gustine, Survco Surveying, Inc., presented his written testimony in support of HB 473, **EXHIBIT 9.** He asked for an amendment which would remove any park requirement or cash-in-lieu thereof for minor subdivisions.

Collin Bangs, Montana Association of Realtors, stated he spoke to this committee earlier on SB 331 regarding the housing affordability problems. This bill can help by keeping the housing prices from going up another 90% in the next six years. Sections 5 and 6 are very important because they now have to

review every subdivision of any land through these sections. This needs to be more workable. To divide a ten acre piece of land into two five acre pieces, the process needed will cost approximately $3,000 and six months to accomplish. He presented his written testimony, **EXHIBIT 10.**

Warren Latvala, a Professional Land Surveyor, stated that this legislation and protection of property rights accomplishes what a good surveyor does when surveying and that is to survey both sides of the property line. This bill protects the people on both sides of the property line, not just the developer but the adjacent owner as well. He has had numerous experiences of landowners who wish to divide their property being completely handcuffed by a planning board referring to subjective portions of the current rules. He has personally experienced a bad situation as a neighbor where a subdivision was allowed where there was a violation of the objective portions. This would include things like providing legal and physical access, properly preparing the plat, etc. He asked his county commissioners to vacate a plat which was filed in violation of five county regulations and each violation was also a violation of state law. Since there is no provision for appeal as an aggrieved landowner, he has no way to appeal this other than through the courts.

Peggy Trenk, Western Environmental Trade Association, Montana Chamber of Commerce, stated their support of HB 473 primarily because of the recognition of property rights.

Bob Marks stated he firmly believed that standards need to be set and followed by the developer as well as the people reviewing developments. He wanted to emphasize the importance of Section 10 which provides for judicial review on subjective decisions.

Pete Story stated his support of HB 473.

John Bloomquist, Montana Stockgrowers Association, pointed out two provisions which they support wholeheartedly. One was found in Section 3, the provision on "gifting" of lands for agricultural purposes. The other was in Section 6, the consideration of agricultural water user facilities.

Larry Brown, Agricultural Preservation Association, stated their support of HB 473.

Opponents' Testimony:

Gordon Morris, Director of Montana Association of Counties, stated they were primary supporters of the legislation in the 93 session which was referenced earlier. They spent the interim prior to 1993 working on that legislation and were pleased when it passed. In September of 1994 they surveyed the membership relative to the subdivision law which was passed in 93 specific to the question of problems they had identified, complaints in regard to existing law and advice for preparing legislation for

this session. From a local government perspective, they did not find any problems in the existing law which needed to be addressed in this session. More recently they surveyed counties and planning departments across the state of Montana, **EXHIBIT 13.** They had 902 processed applications for subdivisions. Of those, 873 had been approved. They have an expedited review process. This bill would complicate expedited review. Section 2 of the bill simply deals with common sense. No one is looking to deny the rights of property owners. The entire subdivision process is a property rights issue. They are looking to protect property rights and not to deny property rights.

Mr. Morris stated that Section 4 of the bill, line 27, fails to recognize the bond referred to is a faithful performance bond in terms of making sure that the improvements are installed consistent with the subdivision proposal which has already been approved. That bond would be held by local government officials until such time as the project itself has been completed and time has elapsed to put them in the position to be comfortable to assume that there are no problems in the installation of the improvements. This bill fails to take into account the current need for ensuring that if there are immediate repairs necessary to a recently completed infrastructure project, there will be money available. That is the purpose of the bonds. They cannot reduce it commensurate with the successful completion of a project. They will hold it until the end. Section 5, line 10, states that an environmental assessment must accompany major subdivisions. Minors are already excluded. This section is not needed. On Section 6, line 12, the language which states "based on substantial credible evidence. . ." establishes an almost impossible burden of proof.

Mr. Morris added that the fiscal note states that Section 6 of the proposed legislation causes confusion in implementing the legislation. Referring to Section 8, he stated that when they go through the review process for subdivisions they make assurances that capital facilities will be anticipated and paid for. That section is unneeded. Section 9 is interesting in that this bill proposes to repeal 76-3-606 and 607, which are the existing parks set aside provisions. This would establish a new procedure entirely replacing the one in existing law. The current law is working and should not be changed.

The proposed system is so complicated that in many cases it would end up being litigated. Referring to Section 10, he stated there is a recent court case in Lewis and Clark County which ruled that notwithstanding the City of Kalispell case, an aggrieved person may obtain judicial review of subdivision decisions by means of a writ of review. Property owners can go to court and have an opportunity for judicial review at any stage of the process, thus Section 10 is also unneeded. This section invites litigation.

Blake Wordal, Lewis and Clark County Commissioner, reminded the committee of the language of SB 301 which states that the state

shall not mandate or assign any new expanded or modified programs or responsibilities to any political subdivision in such a way as to necessitate additional local expenditures by the political subdivision. That is an enormous political statement by this legislature which transcends partisan politics and political philosophies that are very important to local government. The fiscal note to this bill objectively surveyed cities and counties about the costs of reviewing the regulatory processes which they have. The fiscal note came up with a cost of $348,000. This is an unfunded mandate.

Jane Jelinski, President of Montana Association of Counties, spoke in opposition to the bill because it is an unfunded mandate to every city and county in this state. She presented her written testimony, **EXHIBIT 11.**

Kris Dunn, Gallatin County Commission Chair, presented her written testimony, **EXHIBIT 12.** Section 10 caused confusion. She said that one way to the statute was that, "The county commissioners of the county where the subdivision is proposed who are aggrieved by a decision of the governing body to approve, conditionally approve, or disapprove a proposed preliminary plat or final subdivision plat may, within 30 days after the decision, appeal to the district court in the county in which the property involved is located." The county commissioners in Gallatin County would not be appealing to the district court for a decision which they had made themselves.

Susan Abell, Flathead County Park Board, stated the problem she had with HB 473 was found in the New Section 9. Approximately five years ago the Flathead County Park Board conducted an intensive study as to what lands and money they had and what was needed in Flathead County. They found that in the early 70's, during rampart subdivision developoment, their commissioners had approved all of the subdivisions with land dedications for parks instead of cash-in-lieu of land. They found this land to be rocky cliffs, swampland, and triangular shapes of land surrounded by private roads which were absolutely unusable for county parks. They then tried to sell the lands. Most of them were purchased by adjoining land owners only to make their lands larger in size. As a result, they have the money discussed earlier. Their problem is with the word "maintenance" on line 18. Their board felt that with the population increase in the Flathead, they needed large acreages of land to help promote the recreational complexes which are needed for baseball, soccer, exercise trails, etc. They need to use the dollars which they have accumulated to acquire and develop larger parklands, nor for maintenance. Perhaps they can compromise by limiting the dollars allowed for maintenance on a percentage basis.

Bob Norwood, Flathead County Parks and Recreations Superintendent, stated he has been involved with county parks in the Flathead for four years. He is opposed to Section 9 of this bill. By allowing these dollars to be used for maintenance, an

unfunded mandate is created. When a subdivision gives him $700 to develop a park and the $700 is spent, what money would he used to maintain that site? He can't take it from another site 20 miles away.

David Hull, City of Helena, presented his written testimony, **EXHIBIT 13.** The fiscal note shows an unfunded mandate which the local governments will have to come up with. This bill has eliminated the legislative immunity of local government. This has a chilling effect on anyone who wants to be a part-time city commissioner or county commissioner. It will be difficult getting people to fill those positions if their personal property is at stake. This bill will increase litigation.

Don Spivey, Whitefish City/County Planning Board, Kalispell City/County Planning Board, Flathead County Planning Board, stated that by law the time frame for approval of major subdivisions is 60 days. The time frame for a minor subdivision is 35 days. For a period of time before the application is accepted, the applicant spends time with the planning staff to resolve differences before it comes to a public hearing. After the application is complete, the clock starts running. Thirty days later this arrives at the planning board. After the planning board holds a public hearing, they then take all of the conditions which have been applied and deal with them individually and ask the developer if he has problems with any of them. Any problem issue is dealt with and there is an attempt to resolve the situation to everyone's satisfaction. It then would go the city council or the county commissioners who have another public hearing. Those same issues are dealt with in that forum. During that entire period of time, there are endless numbers of working sessions with the developer. This all happens within a 60 day window. The new legislation is working. This bill is not needed. He presented written testimony, **EXHIBIT 14.**

Jim Nugent, City Attorney of Missoula, presented written testimony, **EXHIBIT 15.** They have a concern with Section 10. Zoning density must be looked at in subdivision review. Any denial would involve expenses and costs. The subdividers are authorized to sue, but the owner isn't. Many times the subdivider does not own the land. He may have the land on a contingency. Why would a municipality want to sue? What is fair market value and how will it be determined? There are many unfunded mandate requirements in this bill.

Nancy McLane presented her written testimony, **EXHIBIT 16.**

Susan Norton presented her written testimony, **EXHIBIT 17.**

Roger Nerlin presented his written testimony, **EXHIBIT 18.**

Richard Idler presented his written testimony, **EXHIBIT 19.**

Don Williamson, presented his written testimony, **EXHIBIT 20.** He stated this bill contains a lot of vague and confusing language. Litigation will be increased by this bill. The cost of litigation will be borne by the citizens out of the General Fund. That will take money away from other programs.

Gretchen Olheiser, Montana Preservation Alliance, presented her written testimony, **EXHIBIT 21.**

Glenna Obie, Jefferson County Commissioner, presented her written testimony, **EXHIBIT 22.** She represents a rural county which is the fourth fastest growing county in Montana. They do not have a planner on staff. This legislation would make that necessary.

Kelly Flaherty presented her written testimony, **EXHIBIT 23.**

Kerwin Jensen, Montana Association of Planners, stated their opposition to HB 473.

Chris Imhoff, League of Women Voters in Montana, presented her written testimony in opposition to HB 473, **EXHIBIT 24.**

Kathy Macefield, Planning Director for the City of Helena, presented her written testimony on behalf of the Helena City Commission stating their opposition to HB 473, **EXHIBIT 25.**

Paul Spengler, Lewis and Clark County Disaster and Emergency Services Coordinator, submitted written testimony. **EXHIBIT 26.**

Janet Ellis, Montana Audubon Legislative Fund, presented her written testimony in opposition to HB 473, **EXHIBIT 27.**

Jim Emerson stated his opposition to HB 473.

Katharine Brown presented her written testimony, **EXHIBIT 28.**

Park County Commissioners stated their opposition to HB 473 in written testimonies. **EXHIBIT 29 through 29-Y.**

<u>Questions From Committee Members and Responses</u>:

SENATOR JEFF WELDON asked **REPRESENTATIVE MCGEE** what he meant when he stated that HB 280 did not get its just due last session?

REPRESENTATIVE MCGEE stated that he was informed at the break last session that the Senate Natural Resources Committee Chairman had already determined that HB 408 would pass out of committee unamended and be signed by the Governor the first week of April. That is exactly what happened.

SENATOR WELDON stated the deliberations over the bill in the session happened long and late in the Senate and they spent a good deal of time on both bills.

SENATOR WELDON asked **REPRESENTATIVE KNOX** how they could rationalize the cost of the fiscal note given the high success rate of the current subdivision law.

REPRESENTATIVE KNOX stated this was the first time he had heard of a 97% success rate.

SENATOR WELDON asked what a "tract of record" was and how small it could be?

Commissioner Jelinski replied it is a legal division of land which could be any size. The issue she was raising in terms of requiring an environmental assessment is that currently they do not require an environmental assessment for the first minor subdivision of five lots or fewer. They do have the discretion, however, if the developer is doing another minor subdivision. They can look into the history to see if there is an attempt to evade or go around the standards.

SENATOR WELDON summarized that there could be a fairly large tract of record and a series of minor subdivisions over a half dozen years. None of the subdivisions would then require an environmental assessment. In essence, this would open a loophole large enough for a truck to drive through.

SENATOR CHRIS CHRISTIAENS asked **Commissioner Obie** what this bill would require of a part-time unpaid planning staff? Also, he asked about the need for them to hire a planner?

Commissioner Obie stated they contract for a planner. They will need to go through the process of review of their subdivision regulations again. This will require significant time on both the part of their contract planner and the volunteer planning board. In addition, there are new obligations on the county which may result in the hiring of a part-time to full time county planner.

SENATOR CHRISTIAENS asked **Ms. Abell** the same question.

Ms. Abell stated she was not on the planning board. She is on the parks and recreation board. Her testimony was in relationship to the maintenance of the cash-in-lieu of dollars. In that respect, it will cost them quite a bit.

SENATOR CHRISTIAENS asked what the benefits would be for the subdivider?

Mr. Bangs stated that current law does state that cities and counties can require mitigation. They now have conditions of approval. They state that the plat will be approved if the landowner meets the following conditions. This bill will clarify in law that they may decide what conditions need to be met; however, they will also need to justify the reasons for the request. In Missoula County a subdivision was approved with the

condition that every cat wore two bells. At present time, local government can list any conditions they choose without justifying the reason for the conditions.

SENATOR VIVIAN BROOKE asked **Commissioner Jelinski** if Gallatin County had a comprehensive plan and, if so, was it used when they reviewed subdivisions?

Commissioner Jelinski stated that they had a comprehensive plan; however, a master plan is not a regulatory document. It sets out goals, objectives and tasks for the planning board. It is a statement to the public that is the way they would like the county to develop in the future. In order to effectively regulate, they must use the zoning ordinance which accompanies the master plan. The Supreme Court has stated that a zoning ordinance must be substantially consistent with the master plan.

SENATOR BROOKE, referring to actions against governing bodies in Section 10, asked how she envisioned that working within the county government structure?

Commissioner Jelinski replied that there is no question that litigation is very costly. Their county is growing rapidly so there is a lot of tension and opposition to growth. The tension between the opposing forces is very much felt at the county commission and planning board level. It is possible that they could be sued by both sides. They have not had a lot of litigation in their county because they have worked very hard to make sure that they are not arbitrary and capricious and to mitigate the effects of growth with conditional approval. Damages caused by a final action would take away legislative immunity. There is an extreme risk for private citizens. Another problem involved in this section is defining who may sue and leaving out the person who lives across the street from the development.

SENATOR BROOKE stated that if this bill passed, the counties would have to go through rule changes. She asked how that was accomplished?

Commissioner Jelinski stated that first of all they would have to go through their regulations very carefully to see if they are compatible with the new legislation. Changes will need to be made to make them compatible with the law. Public hearings will then need to be scheduled. The planning boards and the elected officials will then need to be trained on what is included in the new regulations. There are other unfunded mandates in this bill. The administrative process of bonding will involve a staff person to handle the bonds, investments, withdrawals, mailings, and tracking.

Closing by Sponsor:

REPRESENTATIVE KNOX stated this bill establishes accountability for the planners. Section 4 is commonly used procedure. The goal of Section 5 is to place a greater degree of control at the local level. **SENATOR WELDON** had a concern that Section 5 would bypass the review process for minor subdivisions. However, there is a great deal of comprehensive criteria which has been formulated to fit local needs for any local governing body in the state of Montana. There is no question that there can and will be review of minor subdivisions. On the mitigation portion, substantial credible evidence is a common legal standard which has been used in over 800 cases statewide.

Mr. Morris stated that Section 3 was not needed because a gift is already covered. A gift to an immediate family member is covered but this is inadequate for agricultural estate planning. Only the first minor of a subdivision is excluded. **Mr. Morris** also stated that Section 10 was not needed because many district court cases state that there is the option of appeal. The Supreme Court is final and they have decided in Sourdough, "The legislature did not provide an appeal process under this act or cases involved in decisions of conditional approval of preliminary plats, accordingly this court will not fabricate one." He rejected the comments that this is an unfunded mandate. There will be some additional costs to local governments; however, it will not be excessive.

Susan Abell stated a legitimate problem. He has prepared an amendment which he will give to the committee addressing the problem. A statement had been made that maintenance of parks would be an unfunded mandate. He felt this was a stretch of logic. The fair market value could be decided by appraisers using recent sale price of like property. HB 473 adds the protection of the rights of property owners to the statement of purpose. It allows a gift of lands which allows the landowner to mitigate the impact of gift and estate taxes on the next generation. It improves bonding provisions and places in statute commonly used incremental bonding practices. It will give local governments greater flexibility to establish rules for minor subdivisions. It improves mitigation procedures. It allows money dedicated for parks to be used for maintenance thus addressing the statewide problem of neglected, weed infested parks. HB 473 addresses the problems created by a Supreme Court decision in reference to appeals.

EXECUTIVE ACTION ON SB 382

Motion: **SENATOR KEATING MOVED TO AMEND SB 382.**

Discussion: **Leo Berry** explained the amendments to the committee members, as contained in **EXHIBIT 30**

Bob Robinson, Director of Montana Department of Health and Environmental Sciences, presented a summary of fiscal concerns.

EXHIBIT 31. He stated **Mr. Berry** was very fair in explaining the concerns which the Department has. The Department has worked with **Mr. Berry's** office and the other proponents to the bill; however, this is still a situation of damage control from the perspective of the Department because some of the language in the original bill has a much greater affect on the program than he believes the proponents anticipated.

SENATOR CHRISTIAENS stated that **Mr. Berry** indicated that there were some additional negotiations going on. He questioned going ahead with executive action when there are negotiations still in place which may substantially change the bill.

Mr. Robinson stated the amendments they presented earlier speak to cleanup standards and voluntary cleanup. A lot of the language was incorporated into the Grey Bill. The Department still stands behind the intent on the rest of the amendments which basically struck the rest of the bill with the exception of the voluntary cleanup and cleanup standards.

CHAIRMAN GROSFIELD stated that due to the late hour, the length of the amendments, and the ongoing negotiations regarding this bill, he would prefer to defer any Executive Action undil March 17th.

SENATOR KEATING withdrew his motion.

{Comments: this meeting was recorded on 3, 2 hour tapes.}

ADJOURNMENT

Adjournment: 7:30 PM

Lorents Grosfield

LORENTS GROSFIELD, Chairman

Theda Rossberg

THEDA ROSSBERG, Secretary

by Shirley Hewitt

LG/TR

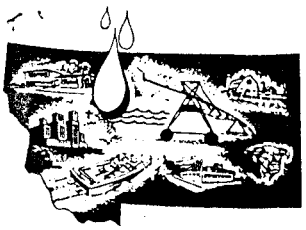
MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE

ROLL CALL DATE 3-15-95

SEN

NAME	PRESENT	ABSENT	EXCUSED
VIVIAN BROOKE	X		
B.F. "CHRIS" CHRISTIAENS	X		
MACK COLE	X		
WILLIAM CRISMORE	X		
MIKE FOSTER	X		
TOM KEATING	X		
KEN MILLER	X		
JEFF WELDON	X		
BILL WILSON	X		
LARRY TVEIT, VICE CHAIRMAN	X		
LORENTS GROSFIELD, CHAIRMAN	X		

SEN:1995
wp.rollcall.man
CS-09



MONTANA WATER RESOURCES ASSOCIATION

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

MONTANA WATER RESOURCES ASSOCIATION
Testimony Regarding HB 472
Presented to
SENATE NATURAL RESOURCES COMMITTEE
March 15, 1995

Mr. Chairman, Members of the Committee. For the record, I'm Mike Murphy, representing the Montana Water Resources Association. The Association supports House Bill 472.

Agriculture has always been concerned for and is a strong advocate of the environment. House Bill 472 advances opportunities to further enhance fishery resources by facilitating the leasing of water rights for instream use. We are confident that these opportunities can be fostered while protecting the principles of the Prior Appropriation Doctrine and temporary water right change process.

Ultimately, as a win-win concept, this legislation must address concerns regarding the need to protect private property rights and the environment. In addition, the enabling legislation must ensure that the manner of use of such private property rights will not adversely impact or cause injury to others or to the environment.

This legislation will sunset in ten years, if not reauthorized. Considering the significance of the change from historic uses, we feel this is appropriate and provides sufficient time to initiate leasing activities and evaluate resulting impacts or problems. If the leasing process is working as hoped, it is reasonable to assume that the provisions of this legislation would continue.

House Bill 472 provides an opportunity for input from those who may be impacted prior to the actual application for a temporary change in order to determine the extent and reason for concerns. By determining in advance the extent and rational of concerns, confrontations may be averted, and reduce the extent of objections that may arise as a result of a proposed lease. If in fact, existing water rights are impacted as the result of an action provided for under the provisions of this legislation, there must be adequate opportunity for objection and resolution. Such oppportunity for objections is provided for in HB 472.

We also feel that it is appropriate as provided for within this bill, that the owner of the involved water right retain sole responsibility and authority for any enforcement requirements that may be necessary during the term of the lease and temporary change for instream use. It is also appropriate that the owner of the involved water right retain sole responsibility and authority for initiating any objection that may be brought against future temporary change of use requests made by the owners of other water rights.

This legislation would establish a significant change from historic use. Positive results are possible for both agriculture and the state's fisheries. Again, our primary concerns are to maintain the integrity of the prior appropriation doctrine and to ensure appropriate protection of existing water rights. We feel that these concerns are addressed within House Bill 472.

Thank you.

MONTANA WILDLIFE FEDERATION

MONTANA WILDLIFE FEDERATION

P.O. Box 1175,
Helena, MT 59624

Ph. 406-449-7604
Fax 406-449-8946

March 15, 1995

SENATE NATURAL RESOURCES
EXHIBIT NO 2
DATE 3-15-95
BILL NO. HB 472

Senate Natural Resources Committee
Helena, Montana

Chairman Grosfield and Committee Members:

I am Alan Rollo from Great Falls with the Montana Wildlife Federation, requesting your support for House Bill 472.

As you are aware of, water in Montana can be a very contentious issue and especially the issue of instream flow. For almost a year several people from state wide organizations sat down to hammer out a compromise that would prevent this problem from escalating. We worked very hard to find a compromise to satisfy all participants and put this issue behind us. This process was not easy but an agreement has been achieved and the bill before you is the proof we succeeded.

The changes to existing law were minimal but required to make this process work. So what is different than previous years where similar bills were met with significant opposition. We started at square one, looked at everyone's needs and built a solid base, one block at a time - a very slow process but one that was built to be strong. I know everyone made a sincere effort to make this process work and I feel proud to have participated on this concensus approach.

You have heard the main elements about this bill but the key parts that I want to stress again are: that this bill works within the prior appropriation system, it does protect junior and senior water right holders, it is strictly voluntary and you will receive briefings on its' progress.

So please give HB 472 favorable consideration so we can allow this instream flow idea to work.

Thank you.

Sincerely,

Alan Rollo
Montana Wildlife Federation

Senate Natural Resources Committee
Wednesday, March 15, 1995
Testimony In Support Of House Bill 472
Glenn Marx, Governor Racicot's Office

Mr. Chairman, for the record I'm Glenn Marx and I serve as policy director for Governor Marc Racicot.

The Racicot Administration rises in enthusiastic support of this bill and pledges a strong commitment to assist with its successful implementation.

There are a few critical components of this bill which bear added emphasis.

One, the bill respects -- and works within -- the prior appropriation system to provide agriculture water users new options in water management and income potential.

Two, the basis for the instream flow agreement is completely voluntary.

Three, the water needed to preserve instream flow can only be obtained through a temporary lease.

Fourth, the water leased is enough to maintain fish and aquatic life.

That means no public trust doctrine, no government mandated actions or "takings," no permanent water sales. What that all tells us, Mr. Chairman, is that the group who put this bill together did its work in a precise, careful and thoughtful fashion. They did the job right, and Governor Racicot both respects and applauds their efforts and their product.

Like state lands access, this bill represents another example of how the Montana Consensus Council can take an issue and transform that issue into a solution that works in Montana's best interest.

Finally, Mr. Chairman, the Statement of Intent directs the governor to "monitor and review" the instream flow protection program and to convene a broad-based working group to work with DNRC on the program itself as well as a legislative report in the year 2001. The governor accepts that obligation and hopes to see the Consensus Council continue its constructive involvement on this issue, the future working group and the report itself.

Thank you for the opportunity to testify and the governor urges passage of the bill.

SENATE NATURAL RESOURCES
EXHIBIT NO. 4
DATE 3-15-95
BILL NO HB472

HB 472

Testimony on behalf of the
Montana Chapter of the American Fisheries Society
before the
Senate Natural Resources Committee

March 15, 1995

Mr. Chairman and members of the committee, my name is Art Whitney and I am here on behalf of the Montana Chapter of the American Fisheries Society. The American Fisheries Society is an international organization of fisheries and aquatic professionals that promotes the wise use and management of fisheries and aquatic habitat. AFS is the oldest professional conservation society in North America and the Montana Chapter has about 160 members.

The Montana Chapter supports HB 472. The bill is the result of a unique coalition of water user interests sitting down and reaching consensus on ways to help resolve the problem of dewatered streams in Montana. Previous attempts to resolve the issue have been unsuccessful because the various interest groups had insufficient dialog prior to legislation being introduced. As a result, the legislation failed.

This bill different. It is the result of these different interests talking to each other to reach some consensus on the instream flow issue.

Currently, water leases for instream flow can only be obtained by Montana Fish, Wildlife and Parks. House Bill 472 broadens the opportunity to improve instream flows in dewatered streams by allowing private individuals and groups to either convert their existing water rights from a consumptive use to instream flow or for others to lease these rights from willing individuals and convert them to instream flow. To protect existing water users, DNRC must approve such a change.

We believe this bill is an important step toward improving fish habitat conditions in streams currently affected by low streamflows and will help restore Montana's important stream fisheries.

The Montana Chapter urges your support of HB 472 as approved by the House.

Thank you.

THB472.SP

House Bill No. 472
March 15, 1995
Testimony presented by Robert Lane
Montana Fish, Wildlife & Parks
before the Senate Natural Resources Committee

Fish, Wildlife & Parks supports the concept of House Bill 472. We have been involved in our own water leasing program since 1989 and have realized some positive fishery benefits from the leases we have been successful in implementing. The 1994 water leasing report I am handing out to the committee summarizes our efforts and successes with the program. We would be happy to share our leasing experiences with those persons who would be able to lease water for instream flows if House Bill 472 is approved by the legislature.

We urge your support of the bill.

Attachment

PRESIDENT
DANIEL P. BRIEN
P.O. BOX 225
SOMERS, MT 59932
406 - 857-3563 (0) (FAX)

VICE-PRESIDENT
LINDA S. SMITH
1935 3RD AVE. EAST
KALISPELL, MT 59901
406 - 755-5369
406 - 758-5393 (FAX)

PRESIDENT-ELECT
WARREN P. LATVALA
RTE 85 BOX 4244
LIVINGSTON, MT 59047
406 - 686-4452 (0) (FAX)

SECRETARY-TREASURER
ROBERT R. GUSTINE
P.O. BOX 3727
BOZEMAN, MT 59729
406 - 587-5407
406 - 587-5408 (FAX)

MONTANA ASSOCIATION OF REGISTERED LAND SURVEYORS

P.O. BOX 359
COLUMBIA FALLS, MT 59912

March 15, 1995

Senate Natural Resources Committee / Room 405

Re: Hearing on HB 473 at 3:00pm on Wednesday, March 15, 1995

Dear Committee Chairman Senator Lorents Grosfield, and members:

The Montana Association of Registered Land Surveyors, MARLS, supports this bill. We would request you considering the following changes:

Under the new section on park dedication requirement, page 7 line 7, where it states "A park dedication ***may*** not be required for: (a) land proposed for subdivision into parcels larger than 5 acres;..." we request the ***may*** be changed to ***shall***. Some of the governing bodies I deal with consider when lots are 5 acres or greater in size there is no need for park lands for recreation purposes. After all, almost 5 football fields would fit into this size parcel, large enough for your own "park" on site. But there are others, that are requiring cash-in-lieu of park lands on lots greater than 5 and even to 10 acres in size. I've enclosed 4 examples of plats with varying lots and sizes. On the backs of each plat is the governing bodies requirement for cash-in-lieu of park lands.

The first two plats have all lots greater than 5 acres in size. The requirement for cash-in-lieu of park lands totals $11,929 for 9 lots. Or $1325 per lot. These are for lots that would fit from 5 to 10 football fields inside each parcel! The second two plats have all lots smaller than 5 acres in size. The requirement for cash-in-lieu of park lands totals $7,556 for 8 lots. Or $945 per lot. In light of the newly revised subdivision law of 1993, subdivisions now include lots up to 160 acres in size. This word ***may*** gives the governing bodies the option to require park lands or cash-in-lieu, at their whims, up to this 160 acre size. Please consider changing this to a ***shall***.

EXHIBIT NO. 6 - 3/15//95
THE ORIGINAL OF THIS DOCUMENT
IS STORED AT THE HIST.SOCIETY AT
225 N.ROBERTS, HELENA MT 59620-1201
PHONE NO.444-2694

SENATE NATURAL RESOURCES
EXHIBIT NO. 7
DATE 2-15-95
BILL NO. HB-473

Dear Committee Members;

Three years ago we started looking for a parcel of land to build a home on.

About two and a half years ago we found a parcel. It was slightly over 20 acres. It was more than we could afford, but the covenants allowed for division of the land up to four times.

After careful consideration of the impact subdividing may have and consulting with a builder, we decided to subdivide the parcel into three lots, two 5 acre lots and one lot slightly over 10 acres in size.

Almost two years ago we began the "subdivision process". We met all of the county's criteria, and in doing so spent about $1,800.00. We wrote additional covenants which cared and provided for wildlife concerns and visual mitigation of the homes as well as filing a noxious weed control plan. We were then told our subdivision request would go before the County Commissioners at a scheduled Tuesday morning meeting.

Late on Saturday before the Tuesday meeting we received our mail containing the "report" by the Planning Staff. It was negative and recommended denial of our subdivision.

The county had given us one working day to combat the contents of their report. There was no one to contact regarding the report on Saturday or Sunday. Monday was a hectic work day.

It was suggested to us that we may not be attending a meeting as stated in our letter but rather a hearing. When we called to confirm which it would be, it was confirmed to us it was a meeting, not a hearing. Never the less, we tried to fit in as many inquisitive phone calls as possible Monday. We worked until 11:30 Monday evening trying to put some sort of a letter together for the County Commissioners in hopes they'd take it into consideration. It seemed to be our only hope.

At the discretion of the Commission, the meeting turned into a hearing. Our subdivision was denied. The denial was unlawfully based on density.

It took us, with the help of friends, in excess of three weeks to research most of the Planning Staff Report. It contained, in all reality, one falsehood and one lie after another.

We had been given an unlawful decision of denial and we had been lied to. And we had no rights to protect ourselves. There was no appeal process available.

When a legal avenue called a writ of review was found, we chose to pursue it, it did not give us the opportunity to introduce new evidence but was our last hope, and was a moral obligation to others. With the financial backing of several, we filed suit against the county. The case cost in excess of $25,000.00.

We won the case. The county attorney and commissioners said they didn't read the decision that way.

On two separate occasions since the courts decision, we have requested another hearing before the board. Our last letter was over a month and a half ago. They still have not answered us.

It appears the Board of County Commissioners' feel they have more power than our judicial system.

We need to correct the injustices that are a part of our current subdivision laws. We need the right to defend ourselves when our government acts unlawfully. We need Private Property Rights, not to misuse or abuse our land or environment, but to have the rights to our own land, as it was promised to us.

HB 473 is the first step in the right direction to correct an arbitrary and often capricious subdivision review process. It will give innocent people like us, an appeals process. It will help protect private property rights.

We Urge your passage of HB 473

Sincerely,

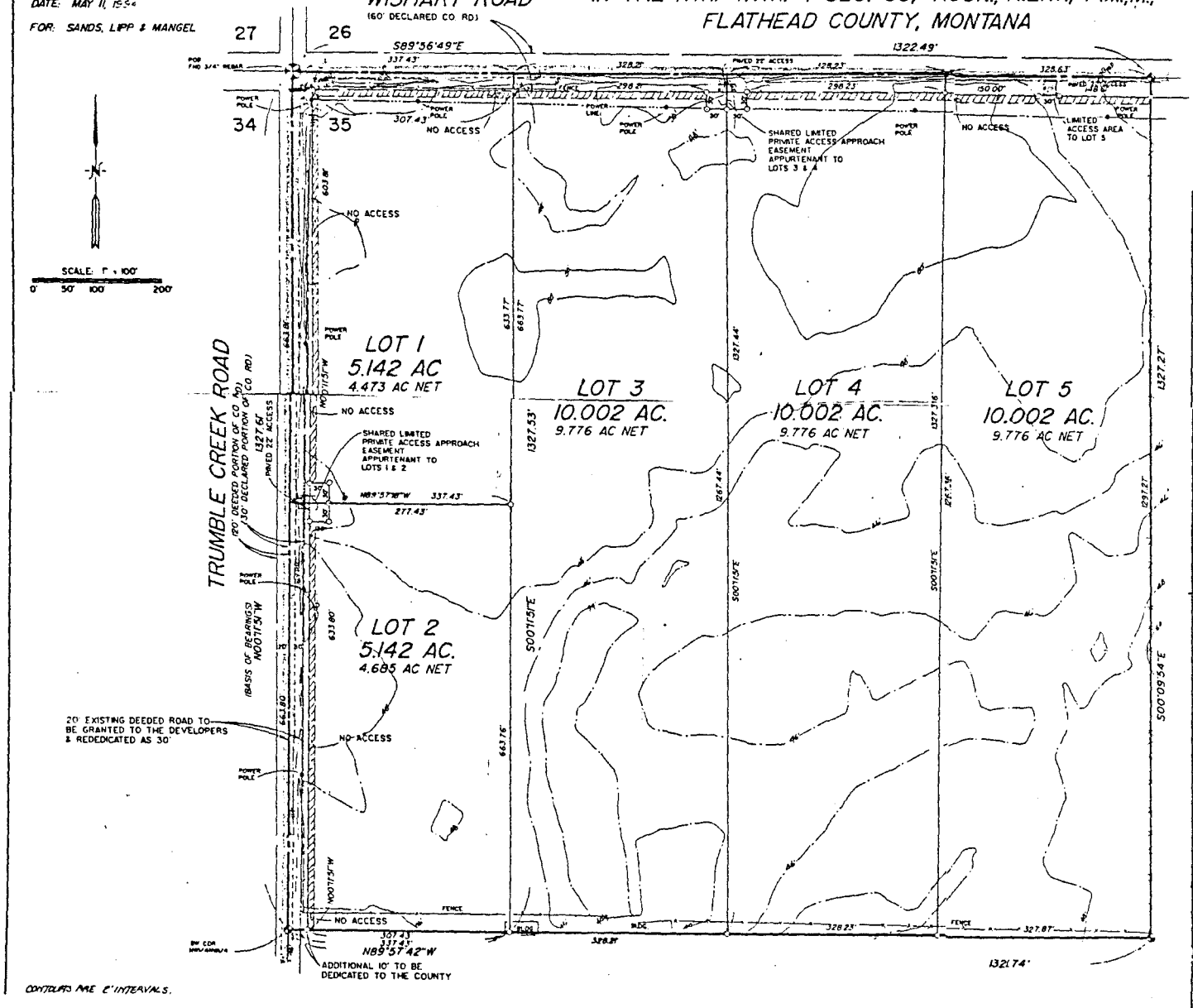
Mike and Erin Mclugin

Mike and Erin Mclugin
129 Hauser Boulevard
Helena, Montana 59601 (406)-443-1971

BY: SANDS SURVEYING, INC.
1995 THIRD AVENUE EAST
KALISPELL, MT 59901
PH: (406) 755-6481

JOB NO: 30203
DATE: MAY 11, 1994
FOR: SANDS, LIPP & MANGEL

PRELIMINARY PLAT OF
SUBDIVISION NO. 115
IN THE NW1/4NW1/4 SEC. 35, T.30N., R.21W., P.M.,M., FLATHEAD COUNTY, MONTANA



CONTOURS ARE 5' INTERVALS.

DESCRIPTION:

A TRACT OF LAND SITUATED, LYING, AND BEING IN THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 30 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS TO WIT:

The Northwest Quarter of the Northwest Quarter of Section 35, Township 30 North, Range 21 West, P.M.M., Flathead County, Montana, and containing 40.29 acres; subject to and together with two (2) county roads as shown hereon; subject to and together with all appurtenant easements of record.

THE ABOVE DESCRIBED TRACT OF LAND SHALL HEREAFTER BE KNOWN AS: SUBDIVISION No. 115

TOTAL AREA: 40.290 AC.

LOTS (5) NET	38.486 AC.
ROADS	1.804 AC.

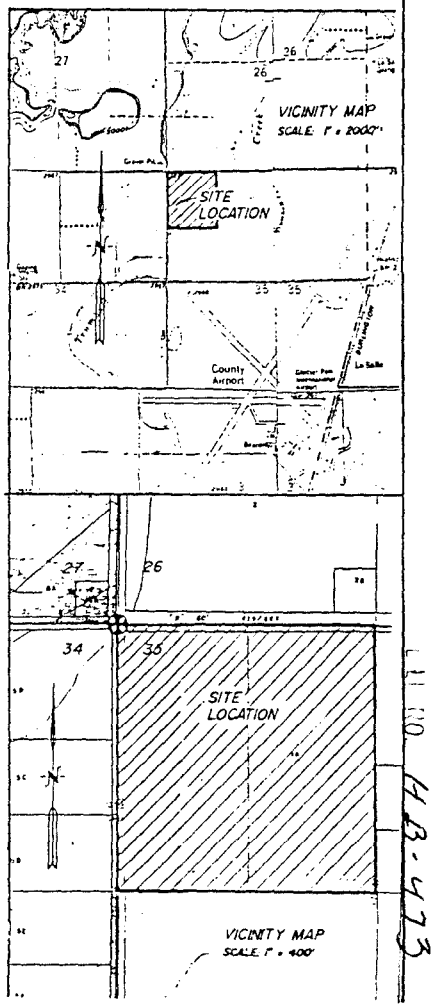


EXHIBIT NO. 8
DATE 2-15-95
H.B. NO. HB-473

PRELIMINARY PLAT OF "SUNRISE ACRES ON MORNING VIEW DRIVE"

NE¼ SE¼ SEC. 17, T.28N., R.22W., P.M.M., FLATHEAD CO.

SCALE: 1" = 100'

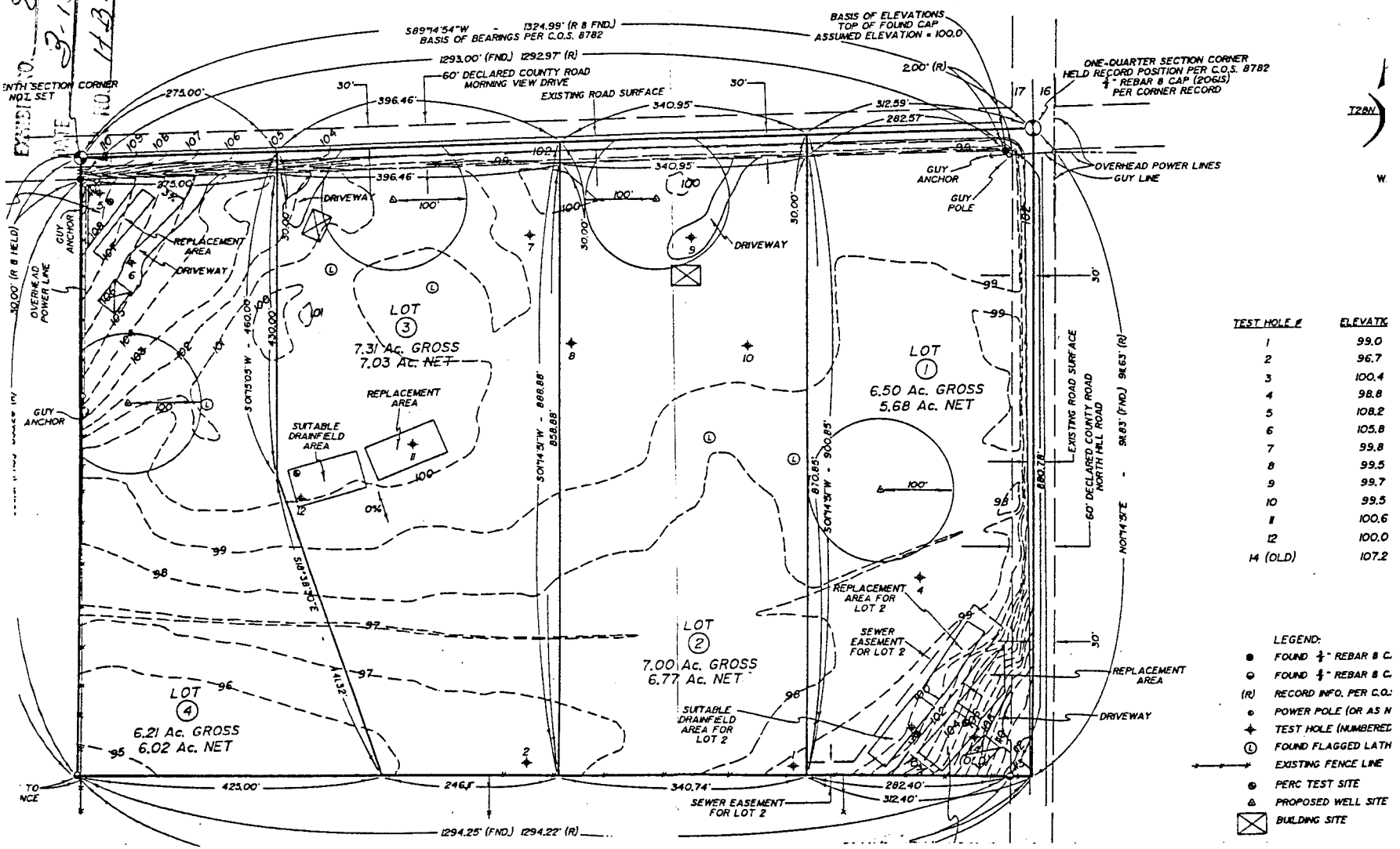
CONTOUR INTERVAL = 1 FOOT

FROM THE OFFICE OF : HERSMAN LAND S
P.O. BOX 225
SOMERS, MT 59
(406) 857-3563

FOR : GOLDEN MEADOW
MONTANA DREAM

DATE : DECEMBER 23, 19

PURPOSE : PRELIMINARY PL.



TEST HOLE #	ELEVATIC
1	99.0
2	96.7
3	100.4
4	98.8
5	108.2
6	105.8
7	99.8
8	99.5
9	99.7
10	99.5
11	100.6
12	100.0
14 (OLD)	107.2

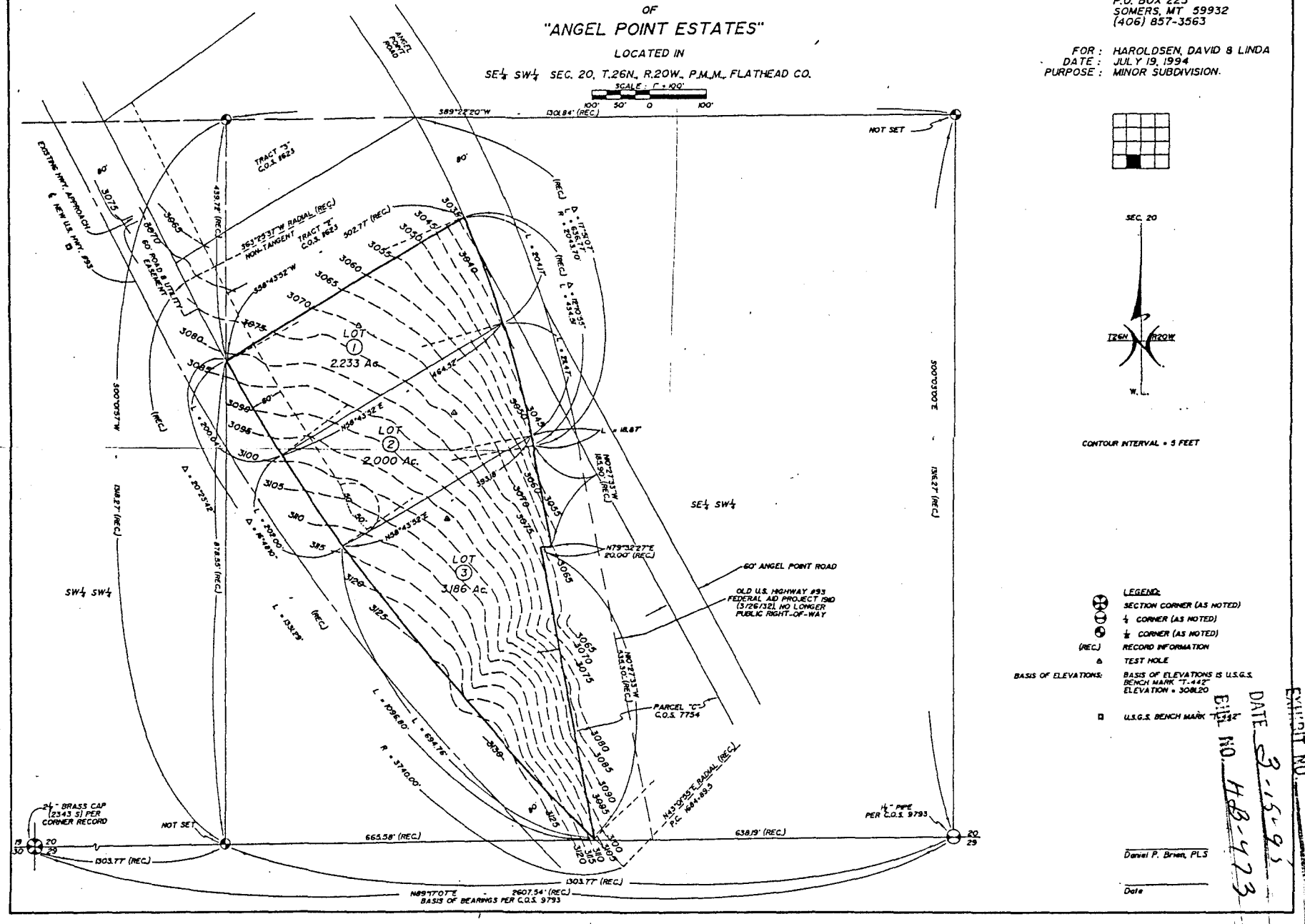
LEGEND:
- FOUND ½" REBAR & C.
- FOUND ¼" REBAR & C.
- (R) RECORD INFO. PER C.O.
- POWER POLE (OR AS N
- TEST HOLE (NUMBERED
- FOUND FLAGGED LATH
- EXISTING FENCE LINE
- PERC TEST SITE
- PROPOSED WELL SITE
- BUILDING SITE

PRELIMINARY PLAT
OF
"ANGEL POINT ESTATES"
LOCATED IN
SE¼ SW¼ SEC. 20, T.26N., R.20W., P.M.M., FLATHEAD CO.

SCALE : 1" = 100'

FROM THE OFFICE OF : HERSMAN LAND SURVEY
P.O. BOX 225
SOMERS, MT 59932
(406) 857-3563

FOR : HAROLDSEN, DAVID & LINDA
DATE : JULY 19, 1994
PURPOSE : MINOR SUBDIVISION.



CONTOUR INTERVAL = 5 FEET

LEGEND:
- SECTION CORNER (AS NOTED)
- ¼ CORNER (AS NOTED)
- 1/16 CORNER (AS NOTED)
- (REC.) RECORD INFORMATION
- TEST HOLE

BASIS OF ELEVATIONS: BASIS OF ELEVATIONS IS U.S.G.S. BENCH MARK "T-442" ELEVATION = 3081.20

U.S.G.S. BENCH MARK "T-442"

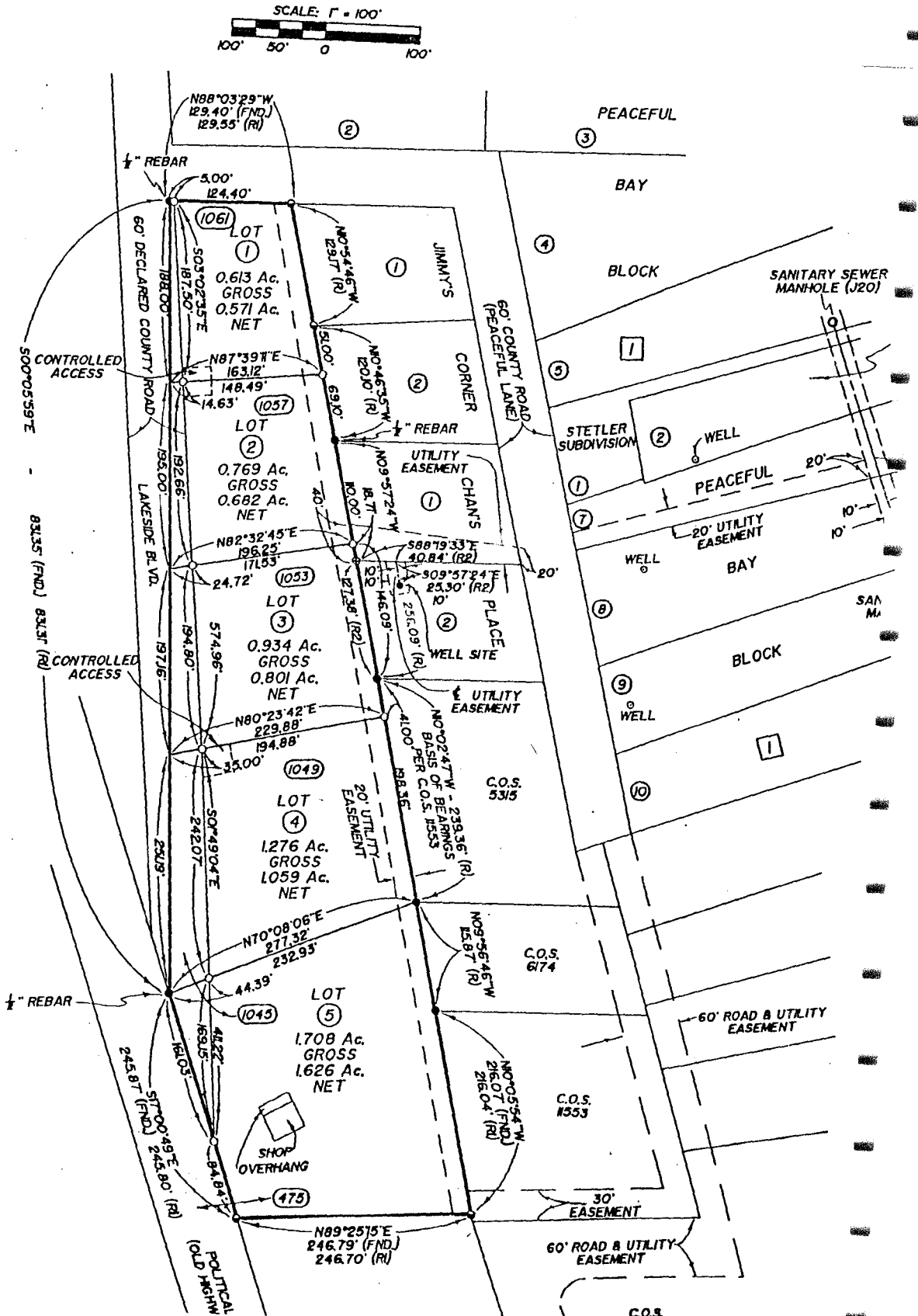
Daniel P. Brien, PLS

Date

SENATE NATURAL RESOURCES
EXHIBIT NO. 8
DATE 3-15-93
BILL NO. HB-473

PLAT
OF
"PEACEFUL ORCHARDS"
A SUBDIVISION
LOCATED IN
GOV'T. LOT 4 SEC. 20, T.26N., R.20W., P.M.,M., FLATHEAD CO.

SENATE NATURAL RESOURCES
EXHIBIT NO. 8
DATE 3-15-95
BILL NO. HB-473



FLATHEAD COUNTY PARKS AND RECREATION

225 Cemetery Road, Kalispell, MT 59901
(406)758-5800 FAX (406)758-5929
CONRAD ATHLETIC COMPLEX 758-5805

SENATE NATURAL RESOURCES
EXHIBIT NO. 8
DATE 3-15-95
BILL NO. HB-473

FLATHEAD COUNTY PARKS AND RECREATION

SUBDIVISION REVIEW

Name Moose Run Kind Residential

Phase or Total Development Total

Total Acreage 25 Acreage in Lots 9.98 Acreage Offered 0

Acreage Required Yes

Cash-in-Lieu: Offered no Required yes

Proposed Park Topography N/A

Wooded Yes Open Area _____ Marshy No

Water Access No Road Access Yes

Nearest Public Park Whitefish Dev./Undev. Dev

Park Land Needs in Area Yes

Other Park Lands in Subdivision No

Comments: Winter Sports Inc. is not providing recreation opportunities for lower or middle income residents. Playgrounds are not being provided for permanent residents of the area. This should be a concern of Winter Sports, Inc.

Recommendations: We strongly recommend that cash-in-lieu equal to 1/9 of the unimproved lots be paid.

Reviewed by: Wayne Worthington and Bob Norwood Date 3-6-95

Title: Vice-President, FCP&R Board/Superintendent

Survco Surveying, Inc.

P.O. Box 3727 • 211 Haggerty Lane • Bozeman, Montana 59715
Phone 406-587-5407 • Fax 406-587-5408

SENATE NATURAL RESOURCES
EXHIBIT NO. 9
DATE 3-15-95
BILL NO. HB-473

March 14, 1995

Sen. Lorents Grosfield, Chairman
Senate Natural Resources Committee
Capitol Station
Helena, MT 59620

Re: HB 473

Mr. Chairman and Members of the Committee:

I am in support of HB 473. This legislation will mitigate some of the loss of property rights caused in part by actions of this Committee, under different leadership, in the 1993 session. In reality probably few, other than special interests, remorse the loss of countless 20 acre parcels. The real impact of last session's Subdivision revisions affects not the developer, but the Mom and Pop Montana citizen who find it necessary to sell a parcel or two of their land to make ends meet. The "Occasional Sale" offered them an affordable avenue to meet their needs, and, through strongly worded evasion criteria at the local government level, was not near the abuse it was made out to be.

These folks now must go through the Minor Subdivision process to accomplish the same goal, at a much greater cost. Survey costs are double to triple, review fees must be paid, local road standards, most often requiring paving, must be met and cash-in-lieu of park dedication must be paid. I have a long list of clients who would like to split off a parcel or two who are waiting for the laws to loosen up because it is simply not economically feasible to proceed. The market will simply not bear the cost of development. Almost daily we hear that Montanans are being priced out of owning their own home. The regulatory process is a significant source of the increased cost of buildable property in Montana.

HB 473 is an effort to lessen some of these development costs, particularly for Minor Subdivisions. Removing the possibility of an environmental assessment is a step in the right direction. Another step would be to amend HB 473 to remove any requirement for park dedication or cash-in-lieu thereof for Minor Subdivisions. Cash-in-lieu for Minors is nothing more than a ransom which must be paid to obtain subdivision approval. The park dedication requirements for Major Subdivisions is much more equitable under the proposed New Section 9 of HB 473.

I very strongly support the New Section 10 of HB 473. Under current law the only legal recourse available to a developer who questions the decision of a local governing body is a Writ of Revue. A Writ of Revue allows the applicant to ask a District Court if the governing body, which made the decision, had, in fact, the legal authority to either approve, conditionally approve, or deny a subdivision application. The Findings of Fact on which the governing body made its decision are not part of the proceedings, only the question of whether or not they had the legal authority to make the decision. An arbitrary or capricious decision made by the governing body is not reviewed by the Court. This amounts to basically no recourse for the developer. Section 10, however, puts local government in a position where they must base their actions on the same laws, rules, and regulations as the developer. Local regulators are nervous about this section of the law because they fear that taxpayers will be stuck with having to pick up the tab in the event of an adverse legal decision against the local government. This is exactly why this is such a crucial part of this legislation. If unjust decisions are made by the local government, and the taxpayers are forced to pay for these unjust decisions, these people will be replaced with individuals that the public has the trust in to make a proper decision.

I have actively followed subdivision reform legislation, both on my own and in numerous official capacities on behalf of the state body of registered land surveyors since 1985. I found it interesting to read comments made on the front page of the 'Bozeman Chronicle' on Sunday, March 12, 1995 by members of the planning community. The planners (regulators) are concerned with the fiscal impacts of having to implement any new changes in subdivision law into their local regulations. I will admit that I have missed a couple of committee hearings over the past ten years, but never, when the planning community was testifying in favor of more stringent regulation, did I hear one person express a concern that any changes would be an inconvenience or cause a fiscal hardship for them to implement. Seems finding the time and money to implement more regulation is not a hardship, but removing a regulation or two is.

Politically the pendulum has been on a long swing in one direction with more and more rules and regulations stifling private property rights. It is time to bring the pendulum back more toward the middle, and HB473 is definitely a step in the right direction.

I strongly urge your support of HB473, and urge the amendment of no park requirement for Minor Subdivisions.

Respectfully yours,

Robert R. (Rick) Gustine, P.L.S.
President

MONTANA ASSOCIATION OF REALTORS®

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SENATE NATURAL RESOURCES
EXHIBIT NO. 10
DATE 2-15-95
BILL NO. HB-473

EXECUTIVE OFFICES
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February 13, 1995

The Honorable Richard Knox, Chairman
Committee on Natural Resources
Montana House of Representatives
Capitol Station
Helena, Montana 59620

RE: House Bill 473

Dear Chairman Knox,

HB 473 is reasoned legislation that addresses environmental concerns while taking into account the needs and rights of property owners in Montana.

The Bill:

- Section 2. Adds language to the purpose section of the statute that protects the rights of property owners. The section will provide Legislative guidance to Montana Courts when the courts is asked to interpret the subdivision statute. The new section assures that, for the first time, the rights of property owners will be taken into account when local governments review requests for subdivisions.

- Section 3. Adds property transfer by gift of agricultural land so long as the land is continually used for agricultural purposes. This section will ease the current inability of persons to transfer agricultural land on to the next generation without subjection to serious gift and estate tax consequences.

- Section 4. This section requires that developers complete improvements with a subdivision before approving a final plat. In the event bonding is used to provide security for improvements, the section modifies the bonding requirements by requiring incremental bonding and permitting bonding of projects finished in phases. This section will assure that improvements are completed while keeping development costs in sync with revenue flows.

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- Section 5. This section lowers costs where five or less parcels are subdivided or readjusted by limiting environmental assessments (EAs) to major subdivisions. The section also asks that local governments, within statutory limits, clearly articulate EA criteria via rule making. This section can reduce the cost of the division of small tracts by as much as $1,500.00 per tract.

In addition, the section will give Montana landowners a clearer understanding of the local rules and regulations they must follow when subdividing larger parcels of land than is the case today. The section also gives local governments more flexibility in adopting subdivision rules that meet local needs.

A concern mentioned by some is that a subdivider will be able to escape environmental review of a large number of land divisions by creating minor subdivisions (five parcels per year over a period of years). Under 76-5-505 MCA (not subject to amendment by this bill) local governments can impose reasonable requirements for minor subdivisions created from a tract of land. Thus, local governments retain the right to require that environmental information be developed on minor subdivisions of a tract of land. Furthermore, under 76-6-608 MCA, local governments retain the ability to determine the extent to which reasonable environmental information is necessary before approving additional subdivisions of a tract.

Finally, we note that public hearings are still required under 76-5-609 MCA for additional (beyond the first) minor subdivisions of a tract of land. The public has a clear opportunity to comment on and therefore the opportunity to impact the environmental consequences of multiple divisions of a tract of land through the use of this statute.

- Section 6. This section also increases the local government review criteria by including:

1) review of subdivision's impact on agricultural water user facilities.
2) mitigation requirement but only if the local government justifies the requirements in writing by substantial credible evidence.
3) an exemption for minor subdivisions in certain master planned areas.

Under this section, a subdivision's impacts on agricultural water user facilities such as ditches, canals and pumping facilities must be taken into account by the local government when reviewing a subdivision.

This section also provides, for the first time, that the local government can require that a subdivider minimize and mitigate significant adverse impacts that a subdivision may have on agriculture, ag. water use facilities, local services, the environment, wildlife & habitat, as well as public health and safety. the local government will also be able to disapprove a plat if mitigation is not possible. HB 477

To assure that mitigation requirements or reasons for denial are reasonable, the section also requires the local government imposing mitigation on a subdivider must issue written findings based on substantial credible evidence that mitigation is necessary or the plat denied.

This section will assure that a local government does not act in an arbitrary or capricious manner thus avoiding litigation resulting from its subdivision decisions. The section will also assure that a local government makes subdivision decisions based only on the specific criteria articulated by the legislature.

The section provides that certain minor subdivisions are exempt from review if the local government has a master plan in place and the minor subdivision meets the criteria of the master plan and any zoning governing the parcel to be divided. This provision, if properly implemented, will save the purchaser of a parcel as much as $2,500.00 since the full blown subdivision review will no longer be necessary without

- Section 7. Clarifies that minor subdivisions are not subject to environmental assessments.

- Section 8. This section allows local governments to require developer to pay for capitol improvements that are directly attributable to the subdivision. This is a new section in the law. The section assures that subdivisions do not overwhelm the current service base of local government. The section also provides that the developer is required only to pay for capitol services that are reasonably and directly related to the subdivision.

- Section 9. the section makes the park dedication statutes more flexible by

1) adopting a sliding cash in lieu of scale based on lot size. The scale recognizes that smaller lots will create the need for additional park space and therefore places a premium on the "cash in lieu" value of small lots.
2) Creating certain exemptions from park land. The section recognizes, for example, that dedicated parks are not necessary to provide open spaces when the lots in a subdivision exceeds five acres in size.

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3) Allowing donated funds to be used ~~for park~~ maintenance.

The section allows local governments the ability to use funds paid in lieu of land to be used for the maintenance of parks to be used by residents of the subdivision. The section accepts the wisdom of maintenance of current facilities in light of increased use instead of simply expanding a local government's thinly stretched existing service base by creating additional parks. the section requires that current park services must be reasonably available and within reach of subdivision residents.

- Section 10 Clarifies that developers, adjacent landowners, and local governments can seek judicial relief from preliminary plat decisions and sets thresholds for suit. This section recognizes that a preliminary plat is, for all practical purposes, the final decision document of the local government.

The section therefore specifically overturns the Montana supreme court decision in City of Kalispell v. Flathead County, 93-069 (1993). In that decision, the court opined that a decision on a preliminary plat could not be judicially reviewed because the plat was not the final administrative finding of the local government. The Court held that because the administrative review process was not exhausted, the plaintiff lacked standing to seek judicial relief.

The section also clarifies who can bring suit. In the past, "standing" determined who could bring suit against a local government regarding its decision on a subdivision. A person's standing, or her/his ability to show harm or damage as a result of a local government decision, was open to judicial interpretation on a case by case basis only.

The section defines who can bring suit against a local government for its decision regarding a preliminary plat. First, the section permits a developer to bring suit against a local government for damages in the event the local government's decision is arbitrary or capricious, is unlawful, or exceeds its lawful authority. The potential for suit to be brought under this section is substantially reduce by the local government mitigation requirements found in section 6 of the bill. The language in section 6 requiring local governments to submit mitigation requirements in writing and supported by reasonable credible evidence will assure that local government act in a responsible and legal manner.

Second, the section further permits a number of stakeholders in a subdivision to turn to the courts to challenge a local government decision regarding a preliminary plat in state district court. Challenges will probably not be heard by the courts

if the plaintiff has failed to fully participate in the public subdivision review process and any related master plan and zoning public hearings. Any challenger will be also required to illustrate, by a preponderance of the evidence, that the local government acted unreasonably under the controlling statutes, unlawfully or beyond the scope of its authority.

The subdivider can challenge the decision in district court. A person who owns land contiguous and who can demonstrate the likelihood of material injury to his/her property can challenge the local government's decision. We note that for both the subdivider and his/her neighbor, this bill provides protection of private property rights under section 2.

Neighbors who are not contiguous to the subdivision but who suffer a decline in the quality of their property because of activity caused by the subdivision will be able to bring suit against the developer and/or the subdivision residents under Montana's nuisance and trespass laws. The bill in no way diminishes the ability of any party to seek redress or abatement of a nuisance (such as noise, dust, or actual trespass) under Montana law.

A local government may also bring an action in district court against another local government concerning a subdivision decision. This does occur as the case noted above relates. This provision is particularly important for two reasons. First, local governments may have conflicting agendas and jurisdictions. Second, local governments provide the citizens' voice in the planning and development process. Third, local governments have been given certain police powers by the Legislature. In the land development arena, local governments have the power to protect the public health and safety.

First, local governments in Montana may have conflicting jurisdictions over subdivision control. We note that certain cities possess certain jurisdictional controls up to four and one half miles beyond their municipal boundaries. This section gives municipalities the authority to seek judicial relief from decisions made, for example, by county commissioner that are contrary to the municipality's best interests.

Second, local governments represent the citizen's voice in planning decisions. Acting through their local governments, citizens can seek reversal of a competing local government's decision to issue or deny a preliminary plat. The bill does prevent undue harassment of orderly development. While the bill limits persons with no direct interest in the subdivision from,litigating a local government decisions, the bill specifically allows any citizen to petition their local elected officials to bring suit on behalf of their community.

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Furthermore, persons with no direct interest in a subdivisions are also encouraged as well as afforded every opportunity to participate in the public process regarding zoning, planing and the local government review of the specific subdivision itself.

The section affords all Montanans and their local governments far more access to judicial relief from a local government decision to approve or deny a preliminary plat than the law currently affords. The section also assures that orderly development approved by the proper authorities will NOT be subjected to delays and harassment through frivolous lawsuits.

Third, local governments have the power to regulate land use activity under the state's police powers. The Legislature, through HB 473, enhances the powers of local governments to assure that public safety and health concerns are met. For example, local governments have the ability to designate areas in their jurisdiction that may be environmentally sensitive through master planning and zoning. Local governments are also afforded the opportunity to advise everyone up front what are deemed environmental sensitive areas.

If we can be of further information, please let us know.

Sincerely,

Collin K. Bangs

Collin Bangs, Chairman
Legislative Committee
JMS/ll

NATURAL RESOURCES
EXHIBIT NO. 11
DATE 3-15-95
BILL NO. HB-473

GALLATIN COUNTY

County Commission

Kris Dunn
Jane Jelinski
Phil Olson

331 West Main, Rm. 301 • Bozeman, MT 59715

Phone (406) 582-3000
FAX (406) 582-3007

March 14, 1995

Senator Lorents Grosfield, Chairman
Senate Natural Resources
Montana State Legislature
Capitol Station,
Helena, Mt. 59620

Dear Senator Grosfield:

Please enter this letter into the record in opposition to House Bill 473 - An Act Generally revising local subdivision laws. I oppose this legislation for the following reasons:

1. This is an unfunded mandate to every city and county in the state. The ink is barely dry on the revisions to city and county subdivision regulations which were required by the changes to the Montana Subdivision and Platting Act during the last legislative session. The changes in HB 473 would require another substantive revision of our regulations.

2. The amendments proposed for Section 76-3-603 would exempt minor subdivisions from providing an environmental assessment. We have had a number of instances in our county where a developer subdivides in a series of five parcel sequences in order of meet lower standards for park requirements and environmental information. The cumulative impacts of these contiguous developments are in fact greater than major subdivisions which are planned and reviewed as a whole.

The consequences of deleting the requirement that developers provide "maps and tables showing soil types in the several parts of the proposed subdivision and their suitability for any proposed developments in these several parts. . ." can be seen on CNN tonight. Watch the homes in California slide to oblivion because they were built on unstable and unsuitable soils. The human misery which results from developing in environmentally inappropriate areas is overwhelming. Preventing these tragedies is what subdivision review is all about.

3. Deleting (3) from the act is another unfunded mandate. It ignores the right of the community to understand the impact of new development on their schools, services, health, safety and welfare. Studies show that for every dollar a new residence puts into the tax base, it extracts $1.36 worth of local government services. Local government officials and all residents have a right to evaluate the impact of a new development because ultimately it will raise their taxes and has the potential to lower the quality of their transportation services and schools.

Please vote against HB 473.

Respectfully submitted,

Jane Jelinski

Jane Jelinski, President
Montana Association of Counties

...TE NATURAL RESOURCES
...MIT NO. 12
DATE 3-15-95
BILL NO. HB-473

Senator Grosfield, senators for the record ~~my~~ I am Kris Dunn, Gallatin County Commission Chair. I stand before you in opposition to HB 473.

We as a commission must make subdivision review decisions for 14 Planning and Zoning districts, 3 City/County districts, and unincorporated county districts. To do this we rely on clear, consistant and objective statues and criteria. ~~HB 473 does~~ For the most part HB 473 does not change nor clarify the subdivision statutes for the State of Montana but rather creates confusion and subjectivity which would dilute our ability to make credible, legal and clear decisions.

I would ask you to compare what is being stricken in section 76-3-603 sections 2, 3, 4 and what is being added to 76-3-608 Section 4. As a commissioner making a review decision based on credible, substantial evidence would require ~~me to request~~ the very specific data being struck from 76-3-603.

Senators I would propose to that by passage of HB 473 ~~could face~~ may be forced County Government to become developers, realtors and builders. Please see Section 4 which refers to bonding requirements (my pg 3) MCA 76-3-507. ~~The governing body~~

Section 10 - Violations raises more confusion. I support due process of law and do not oppose the right of recourse thru the District Courts but the language here is perplexing.
Read Section 2 - then insert Section 3.

Senator Grosfield, Senators, HB 473 does not clarify the law nor further protect our citizens - developer nor public - rather it's confusion and subjectivity will once again have our Court system writing law rather than interpreting law. Please vote against HB 473

City of Helena

March 1, 1995

Senator Lorents Grosfield, Chairman
and Members of the
Senate Natural Resources Committee
Helena, MT 59601

RE: House Bill No. 473

Dear Senator Grosfield & Committee members

There are several proposed changes in the law as set forth in House Bill No. 473 which cause me considerable concern. On behalf of the City of Helena, and as the Helena City Attorney, I would like to comment on several of the proposed changes.

First, let me address the proposed addition to Section 76-3-102, MCA, of the language (6) protect the rights of property owners. The purpose of government is to protect the rights of all persons, including property owners, and I don't believe that property owners should be singled out. I don't believe it is necessary to include that language, but if you feel something should be added, it would be more appropriate if the language were changed to read "protect the rights of all citizens". Ultimately, I believe any addition to that statement of purpose is unnecessary.

Second, I'm particularly concerned about the language addition proposed for Section 76-3-507(3). That appears to exempt a governing body from immunity for approving or disapproving a final plat. It is that kind of decision that is the raison d'etre for legislative immunity. A city or county commission acting in good faith should not be personally imperiled for the decisions such a body. As a legislative committee you have legislative immunity and as the Legislature you have legislative immunity. That same protection should be afforded to local governments. The elimination of such immunity only encourages lawsuits with the attendant expenses. Taxpayers then pay for attorneys and possible damage awards to whichever side may be disgruntled about the decision of a governmental entity.

My third concern is about the changes proposed for Section 76-3-608, MCA. The new language of subparagraph (4) would add . . .

316 N. Park, Helena, Montana 59623 Phone: (406) 447-8000

based on substantial credible evidence,. . . . That clearly puts an undue burden on a governmental entity. Subparagraph (5) also imposes an unreasonable duty on a governmental entity, particularly subsection (b): The language in that section would require a governmental entity to assist in designing a project for a subdivider. I believe that merely muddies the waters concerning the duties of the developer and duties of the governmental entity in the review process. The governmental entity should not have the obligation of redesigning a proposed subdivision for a developer. Further, subparagraph (6) creates problems because of the vagueness of its language and the obligations placed on the governmental entity. For example, the master plan must include (ii) a discussion of physical constraints on development that exists within the area encompassed by the proposed subdivision. Does that mean a topographical evaluation of all the property within the master plan is required? That is an unreasonable burden to place on the governmental entity and its taxpayers.

Fourth, proposed Section 9 presents all kinds of problems for the determination of parkland, the first being the sliding percentages; the second being how fair market value is determined; and third, how do you determine when the local governing body should waive the park dedication requirement in a PUD? Proposed Section 9 greatly changes the entire process. It isn't necessary when the present process for parkland dedication is working to protect the interests of the governing body, the subdivider and the citizens as a whole.

Fifth, as to proposed Section 10, I see no objection to subparagraph (2). However, subparagraphs (1) and (3) create significant problems for the governing body. For example, the parties who may appeal the governing body's decision pursuant to subparagraph (3) are unnecessarily limited. The decision of the governing body may affect more than the parties named. Anyone who is adversely affected by government action should have the opportunity to appeal a governmental decision through the court process. Legal action under the public and private nuisance laws does not address the governing body's decisions. It only addresses the damages to a party. There simply is no justification for limiting the persons who can appeal a decision. Anyone who is adversely affected should be entitled to his/her day in court.

I would like to point out that the City of Helena's concerns, as well as my concerns, are based upon the threat to the governing body's ability to act in a manner believed to be in the best interests of a city and its citizens. Of course, the governing body must act in a lawful manner; however, neither it should not be

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Senator Lorents Grosfield
March 15, 1995

penalized as long as the action is taken in good faith. The effect of HB 473 would be virtually assure an appeal to district court on every major subdivision and a request for damages against the governing body by whoever didn't like the governing body's decision. The provisions of HB 473 that I've raised concerns about, as set forth above, do not benefit the citizens, the governing body or even the subdivider. They merely muddy the waters and increase the likelihood of litigation. Please remember, this is not an issue of developer versus government, it is a matter of government acting to assure protection and planned growth for the benefit of all its citizens, including developers.

Thank you for your consideration of these concerns. I respectfully request that they be taken into consideration when final action is taken on this bill and that, specifically, new Sections 9 and 10 be deleted.

Very truly yours,

DAVID N. HULL
City Attorney for the City of Helena
DNH/ks
c: William J. Verwolf
Kathy Macefield

SENATE NATURAL RESOURCES
EXHIBIT NO. 14
DATE 3-15-95
BILL NO. HB 473

March 11, 1995

Memo to: Senate Natural Resources Committee
Senator Lorents Grosfield, Chairman

Subject: House Bill 473 Spivey

I am a private citizen, retired businessman, operate a small business near Whitefish, and am a member of the Whitefish City/County Planning Board. I'm representing myself in all those flavors but also the Whitefish City/County Planning Board and the Citizens For A Better Flathead, a concerned citizen group of several hundred members.

We strongly oppose HB.473 for several reasons:

1. In the last session major changes were made to the Subdivision and Platting Act. Every municipality has gone through a rigorous process to change rules and procedures. Most importantly we have found those changes beneficial and in the public interest, In fact in Flathead County we are currently approving in excess of 95% of the subdivision applications filed. In Whitefish we deal with many applications and have not encountered problems with the current laws, so we see no reason to change again just two years later.

2. This bill clearly represents an 'unfunded public mandate' as every municipality would have to go through that update and training process again. We believe this is unnecessary, and undesirable.

3. This bill further shifts the property rights focus to the subdivider when in fact they are already the key component of property rights considerations. Today as a planning board we must consider the property rights of the land owner, subdivider, neighbors, community and in some cases every citizen of the State. Effectively balancing those allows us to make recommendations reflecting the interests of all parties and all property rights affected. This bill constrains that capability and we object to that change in emphasis.

MISSOULA
OFFICE OF THE CITY ATTORNEY
435 RYMAN • MISSOULA, MT 59802-4297 • (406) 523-4614 • FAX: (406) 728-6690

SENATE NATURAL RES. EXHIBIT NO. 15 DATE 3-15-95 BILL NO. HB-473

March 15, 1995

Re: Opposition to HB-473 Generally Revising Subdivision Laws

Senate Natural Resources Committee Members:

City of Missoula officials would like to take this opportunity to express their concern and opposition to HB-473 entitled "AN ACT GENERALLY REVISING LOCAL SUBDIVISION LAWS; MODIFYING THE REQUIREMENTS FOR AN ENVIRONMENTAL ASSESSMENT; MODIFYING BONDING REQUIREMENTS FOR PUBLIC IMPROVEMENTS; MODIFYING PARK DEDICATION REQUIREMENTS; ESTABLISHING PAYMENT CRITERIA FOR THE EXTENSION OF CAPITAL FACILITATES; ESTABLISHING MITIGATION GUIDELINES; PROVIDING FOR SUITS AGAINST LOCAL GOVERNMENTS;."

City of Missoula officials strongly oppose Section 10 of HB-473 which is a new section of law creating a cause of action lawsuit authorization against local government's elected governing bodies. Local government elected officials oppose creation of a cause of action against elected governing bodies and are dismayed at the lack of confidence the state legislature places in local government elected officials acting in good faith and in the public interest.

Another concern pertains to Section 9 of HB-473 which is another new section pertaining to park dedications. The provisions pertaining to "fair market value" for park dedication is a concern. What constitutes fair market value? Who performs the appraisal? Are county assessor appraisals acceptable? An appraiser's appraisal? A certified appraiser? A realtor's appraiser? Etc. This provision creates a great deal of uncertainty and confusion as to what constitutes fair market value.

HB-473 constitutes a significant unfunded mandate. Local governments revised their subdivision regulations after the 1993 state legislature. Now local governments will have to once again go through the public notice review and revision process again. This is an unfunded mandate to revise subdivision regulations.

Sincerely,

Jim Nugent
City Attorney

JN:kmr
cc: Missoula County Senators; Mayor; City Council; Alec Hansen; Legislative file

Testimony on HB 473

Before the Senate Natural Resources Committee

March 15, 1995

My name is Nancy McLane and I live in Helena. I am not a planner. I am not in the real estate business. I am not a developer. No one asked me to testify at this hearing. I have come on my own behalf because I am very concerned about this bill.

There are three provisions in this bill that particularly worry me.

First, Section 76-3-608 (5)a, that reads "Mitigation measures imposed may not unreasonably restrict a landowner's ability to develop land. . . ." This section tends to present local governments with only two choices -- to approve a subdivision as presented by the developer, or deny it. It makes it much harder to choose the middle option, which is usually the wisest one, to approve the subdivision with mitigating conditions. I think this section should be deleted.

Second, Section 76-3-608 (5)b, that reads "Whenever feasible, mitigation should be designed to provide some benefits for the subdivider." This section is as confusing to me as to the person who wrote the fiscal note for this bill. Mitigating measures by definition are meant to protect the public's interest, and it is inappropriate in this part of the process to consider benefits to the developer. The developer's "benefit" is the profit that she or he will make from the development. I think this section should be deleted.

Third, the new Section 10 that removes the public's right to question a local government decision. Section 10 limits the parties who may appeal a local government decision on a subdivision to the subdivider, a landowner whose property is contiguous to the proposed subdivision, and the city or county in which the subdivision is located. What reason is there to deny

SENATE NATURAL RESOURCES
EXHIBIT NO. 17
DATE 3-15-95
BILL NO. HB-473

Mr. Chairman, Members of the Committee, for the record my name is Susan Norton and I am a member of the Gallatin County Planning Board. ~~This~~ is a Board of Volunteer Citizens who donate ~~their~~ our time and energies to the community. We are not reimbursed for ~~the~~ our time.

I hope you will not take lightly the cost of new legislation. There is significant financial impact.

Two years ago the Subdivision Act was revised and our board undertook the task of incorporating those changes into our County Subdivision Regulations. We spent countless hours in meetings drafting and re-drafting language and conducting public hearings to adopt the changes. Training was made available, which I attended, as did our staff members. It was a 300 mile trip. I then spent many many more hours organizing a training in an adjacent Co., organizing mailing lists, mailing invitations to indiv. P.B. members

I understand that the fiscal note did not take into account some of the seemingly minor costs such as our mileage to trainings and for ~~all~~ of the board members to attend each of our meetings and hearings. There are also un-reimbursed costs. I took time off without pay from my job to attend trainings, I am a single mother who must bear the cost of childcare for every meeting I attend. But just as important, is all the time and energy donated by each board member.

I do not mind as I joined ~~the board to~~ contribute to my community. However looking at House Bill 473 I believe that it will cost more time and money to implement. It is vague and citizen members will certainly need training on issues such as mitigation, park dedication, ...

I haven't witnessed any problems with the current Subdivision bill. The new regulations have worked very well. I implore you not to burden local governments and citizen board members with unnecessary changes in a good law.

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DATE 3-15-95
HB # 473

I am very sensitive to its impacts. That is why I joined this board
I have always been interested in protecting my property rights
as a landowener, & I felt I could best do that as a PB member.
In looking at House Bill 473 I believe that it
will cost more time and more money to
implement than the previous subdivision bill.
It was a very cut and dry bill unlike HB473
and complicated
HB 473 is vaguel and citizen members such as
myself will certainly need training on issues
such as ~~justification~~ of mitigation, how to deal
with the major chgs in park land dedication,
and how we are to benefit the subdivider when
we mitigate his impacts.

I have not witnessed any problems with
the current subdivision laws (*) As a planning
board we review subdivision proposals under
these statutes and find them to be very fair and
objective. They have worked ~~very~~ quite well

I implore you not to burden our local gov'ts
and citizen board members with the tremendous
cost of implementing unnecessary changes
in a good law.

SENATE NATURAL RESOURCES
EXHIBIT NO. 18
DATE 3-15-95
BILL NO HB-473

MR Chairman and committe members
for the Record ~~I'm~~ I'm Roger Merlin
a rancher from Gallatin County.
I am here to explain how this Bill affects me
~~The first thing this would be the~~
The money to fund both
revisions of subdivision regulations
and any lost lawsuits would
come from the general fund. This
will take money from (~~agricultural~~ extension
programs such as 4-H. Things like

76-3-406 already requires
notification of irrigation districts
for any survey. We do not
need to change other sections
of the subdivision regulations
to do something that is already in the law.
In addition Section 76-3-625
limits my ability to appeal
any subdivision decision. Only
contiguous landowners may appeal.
What if a landowner is
not contiguous but has irrigation
ditches running through the property?
It would have no concerns with development
resource. ~~Here~~ I thank You

SENATE NATURAL RESOURCES
EXHIBIT NO. 19
DATE 3-15-95
BILL NO. HB 473

Richard D. Idler
Land Use Counselor
P.O. Box 1631
Bigfork, Montana 59911
March 15, 1995

54th Legislature 0HB0473.01

BILL NO. 473
INTRODUCED BY Dick Knox Winifred R

It appears to me that this Bill is designed to reduce the responsibilities placed on a subdivider or developer in the the filing and execution of a subdivision.

Briefly me concerns are as follows:

76-3-102 sub-section (6) The purpose of codes and regulations is to protect the health, safety and welfare of the public at large. Inherent in this is the regulation of property uses and the protection of private property. The introduction of sub-section (6) "protect the right of property owners" immediately introduces a conflict in land use regulation that could prove counter-productive.

76-3-207 (2-c) It has been my experience that covenants running with the land are civil matters settled in the courts rather than enforced by land regulatory agencies.

76-3-507 (2) The reduction of bond requirements commensurate with the completion of improvements should contain a "warranty" period for performance to assure that the taxpayers don't get "stuck" with faulty infrastructure to be repaired at the taxpayers'expense.

76-603 (2) A responsible developer or subdivider of his/her own volition will provide maps, tables, and soil types. I believe this should be expected of anyone in the business.

76-308 (4)(3) Mitigation where necessary should be a requirement for adverse impacts of subdivision and development.

76-3-608 (5-b) The statement is superfluous.

76-3-NEW SECTION The process is too complicated; plus it adversely affects the ability to create affordable housing opportunities.

76-3-NEW SECTION ---violations----actions against governing body. This section will open the flood gate to litigation, on one hand, or shoddy development on the other: Either way the taxpayer will suffer. Smart communities need good developers and good developers need smart communities. Responsible subdividers and developers understand that grievances and misunderstandings are best resolved through administrative remedies. Most courts will not render a judgement or decision until the administrative remedies have been exhausted. I would suggest that this section is an effort to protect the irresponsible subdividers, since the responsible ones would know how to proceed on their own to resolve disputes.

What is proposed in Bill 473 is not in the best interest of the public at large, in my opinion, and should be tabled for further consideration. Until assurances can be given that the public's interest has been adequately addressed this should not be brought to the floor for a vote.

Richard D. Idler

CITY OF HAMILTON

223 South Second Street
Hamilton, Montana 59840
406-363-2101 · FAX 406-363-2102

SENATE NATURAL RESOURCES
EXHIBIT NO. 20
DATE 3-15-95
BILL NO. HB-473

March 14, 1995

Senate Natural Resources Committee
Capitol Station
Helena, Mt. 59620-1706

Re: VOTE AGAINST HB 473 - PROPOSED SUBDIVISION LEGISLATION
File Number: 95039

Honorable Committee Members:

The 1993 Legislature passed sweeping changes to the Montana subdivision laws. The legislators worked hard and long to come to agreement on the final legislation. The City of Hamilton then spent time, money, and resources to understand the new legislation and propose changes to local ordinances.

You are now being asked to consider HB 473 sponsored by Representative Dick Knox. This bill would once again force us to spend time, money, and resources to understand the new legislation and draft new city ordinances. I am extremely skeptical of the language contained in this bill. It is vague and subject to arbitrary interpretation. The City Attorney has reviewed the bill and concurs that in order to enforce many of the provisions, litigation may be necessary for interpretation.

The present subdivision laws have worked well for Hamilton. We have not experienced any difficulty with the way they are written. What are the specific problems enumerated with present law which require such sweeping changes? The present legislation does allow "gifting" and the other major components of HB 473. Let us not overhaul an engine that simply needs a tune-up.

I urge you to <u>vote against HB 473</u>. Thank you for your careful consideration.

Don Williamson
City Administrator

cc: Marc Racicot, Governor

SENATE NATURAL RESOURCES
EXHIBIT NO. 21
DATE 3-15-95
BILL NO. HB-473

MPA

MONTANA PRESERVATION ALLIANCE

P. O. Box 1872, Bozeman, Montana 59771-1872 (406) 585-9551

March 15, 1995

Senator Lorents Grosfield, Chairman
Senate Natural Resources Committee

Dear Committee Members:

The Montana Preservation Alliance (MPA) is a state-wide non-profit organization that was founded to further historic preservation of our cultural heritage through technical assistance and advocacy.

The Montana Preservation Alliance is opposed to HB 473 for the following reasons:

This bill introduces two specific changes to Montana's subdivision law which would also negatively affect historic preservation. Mitigation that is required would have to provide "benefits" to the subdivider. Therefore, if a historic or prehistoric resource is identified that needs to be protected, a typical mitigation measure would be to require documentation of that portion of the property, and/or to not allow it to be disturbed.

The subdivider realizes a profit after the land is subdivided and sold; the question that will be debated during the subdivision review process will be whether or not that profit is adequate "benefit" for this mitigation requirement, or if there should be additional "benefit" and how it would be measured.

The second change would be a limitation on who would have legal standing to sue if a bad subdivision is approved and developed. With HB 473, the only parties that would have legal standing to sue would be the subdivider, a city, a county, or a contiguous property owner. Again, if historic or prehistoric resources are negatively affected on a nearby property, no legal recourse would be available.

For these reasons, the Montana Preservation Alliance asks you to not pass HB 473. Thank you.

Sincerely,

Gretchen Olheiser

Gretchen Olheiser, Vice-President

TESTIMONY BEFORE SENATE NATURAL RESOURCES COMMITTEE REGARDING HB 473

My name is Glenna Obie. I am a member of the Board of County Commissioners of Jefferson County. The Jefferson County Commission is very concerned about the effects that House Bill 473 will have on our county.

Some of our specific concerns include the exclusion of minor subdivisions from the environmental assessment process. In Jefferson County, we don't currently require an environmental assessment for minor subdivisions UNLESS WE SEE A NEED FOR ONE. We believe we should have the flexibility on the local level to make that decision. We are also oposed to the elimination of the language in section 5 which enumerates those specific local services which can be considered in an environmental assessment. In Jefferson County, those specified items have provided a clarity which wil be replaced by ambiguity and confusion with the new language.

We also believe the new Section 10 amounts to a significant reduction in the rights of the public to be involved in the process but is an invitation to legal action whenever the result of the subdivision review process doesn't meet with the approval of the developer.

This last issue is especially important because litigation costs money and that money will come right our of our general fund budget. It's money we can't afford.

Jefferson County is now the fourth fastest-growing county in the state but it is a rural county. We have no county planner on staff. We contract for our county planning services. Besides the substantial cost, time and effort of repeating, after only two years, the process of reviewing our subdivision regulations, I think there are portions of this bill which will complicate the process and put so much responsibility on the county that a contracted planner may no longer be able to handle the work of subdivisions in our county.

My colleagues and I urge you to reject HB 473.

SENATE NATURAL RESOURCES
EXHIBIT NO. 23
DATE 3-15-95
BILL NO. HB 473

Good Afternoon

My name is Kelly Flaherty. My husband & I ranch in Canyon Creek, some 25 miles northwest of Helena.

I appear before you today in opposition of this bill as it is written.

If passed, HB 473 will take away our right to appeal a subdivision, unless we are adjacent landowners.

Where our ranch is located, the water source for our irrigation is over 5 miles away. During it's journey to our sprinklers, the water passes by and thru a number of other properties. In the event any of these properties decided to subdivide and drill multiples of wells, both for domestic use and/or ag use, it may severly impact the availability of our water. Our lifestyle and means of living may be threatened. If this happens, under this piece of legislation, we may not have any recourse opposing this development.

This bill, as it is written, ignores the total concept of community and neighborhood. I do not believe that we as citizens of MOntana, can afford to disregard community, either economically, socially or culturally.

Impacts from development of land do not always know their boundaries. They do not know that they are only supposed to impact the adjacent land owner. Thus, these impacts may very well affect others, either downstream, downwind or down the road. It is the duty of the body to see that the citizens of Montana have the means to protect their private property rights and land values from any negative impacts brought to bear by others.

This piece of legislation, as it is written, takes away my rights as a private property owner to hold the responsible parties accountable for actions that negatively impact me.

The fact that planning boards and local governments know that they are liable for their decisions is one of the checks and balances that I, as a property owner and taxpayer have at my disposal. This reality provides me with more confidence in my local government and assures me that they will work in my best interest.

In addition, I do not agree with the park dedication provision of this bill. I do not agree with a sliding scale allowing one person to dedicate a smaller piece of parkland because their development is larger than the person next door, who is subdividing. This is not fair and equal treatment first of all.

Secondly, this provision weakens the current parkland dedication provision by lowering the amount of park land that can be dedicated. I am sure the proponents will tell you that with large yards, parks are not needed. But I have seen very few private

yards that have baseball diamonds, skating rinks, tennis courts, etc. that are made accessible to all the surrounding neighbors at all times and at no cost or invitation.

I urge you to not pass this bill as it written.

League of Women Voters of Montana

SENATE NATURAL RESOURCES
EXHIBIT NO. 24
DATE 3-15-95
BILL NO. HB-473

WRITTEN TESTIMONY PRESENTED BY THE LEAGUE OF WOMEN VOTERS OF MONTANA

Senate Natural Resources Committee
3:00 p.m., Wednesday, March 15, 1995
House Bill 473 by Knox

Two years ago Montana's subdivision laws underwent a major revision, with the elimination of exemptions and loopholes under which most subdivision activity in the state for decades had escaped any meaningful review. HB 473 proposes few major changes, but rather tinkers with certain aspects of the current law. Unfortunately, in many instances this tinkering would reduce local discretion and would detail review criteria for vastly different situations. Many of the changes proposed in this bill are well-intentioned, but largely unnecessary or ill-advised.

The proposed changes to the bonding requirements in Section 4 could weaken the governing body's ability to ensure that agreed upon improvements are actually carried out. The governing body already has discretion in structuring a bonding agreement or other reasonable security. This section attempts to unnecessarily micro-manage the decisions of the local government. Subsection 3 appears to attempt to settle a judicial question by fiat.

Section 6, Subsections 4 and 5, would involve the local governing body in the design of mitigation measures for a proposed subdivision. The government's role would no longer be to identify problems with a proposed subdivision and communicate them to the developer, who could then address them and bring the proposal back. Now the local government would begin to take on responsibility for redesigning a subdivision and proposing mitigation measures. We believe that the proper role of government should be to review subdivisions, not to redesign them.

Subsection 6 of the same section would exempt minor subdivisions from review for their effects on agriculture, local services, the natural environment, wildlife and wildlife habitat, and public health and safety, if the proposal is for an area where a master plan has been adopted. Yet the criteria laid out for a master plan are too minimal and vague to warrant the waiving of these important review criteria.

The proposed changes to the park dedication requirement are a mixed bag. It may make sense to have a sliding payment scale based on the size of the parcels being created, but it does not make sense to mandate the elimination from the park dedication requirement of land proposed for subdivision into parcels larger than 5 acres. Local governments should have the discretion, depending on local circumstances, to waive or not to waive the dedication for larger parcels. In some parts of the state, a large volume of subdivision of land into parcels of 5 acres or more may warrant a park dedication requirement for such parcels.

EXHIBIT NO. 24
DATE 2-15-95
BILL NO. HB-473

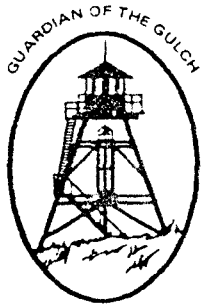
The lack of funds for park maintenance is certainly a problem for many local jurisdictions. However, it is not clear that park dedication funds are the best source of support for maintenance. Park dedication monies are highly variable from year to year, depending on the level of subdivision activity. And if local governments become dependent on park dedication funds for maintenance, the acquisition and development of parks may suffer. Proposed New Section 9 also details criteria for the development of parks. But with such diverse levels and patterns of development across Montana, such decisions would be better made at the local level.

Proposed New Section 10 reiterates rights to sue which already exist in law. This section also invites an appeal to district court of virtually any subdivision decision.

The League of Women Voters of Montana believes that, with the elimination of the major exemptions, the current subdivision laws provide a good framework for local government review of subdivisions. The current law strikes a good balance between state guidelines and local discretion. In the absence of any pervasive statewide problems, we believe the legislature should refrain from tinkering with the subdivision laws as they now stand.

The League of Women Voters of Montana stands in opposition to HB 473 and urges a do not pass recommendation by the committee. Thankyou

Chris Imhoff, Legislative Chair LWVMT



City of Helena

March 15, 1995

Senator Lorents Grosfield
Senate Natural Resources Committee

Dear Committee Members:

The 1993 Montana Legislature adopted extensive revisions to the Montana Subdivision and Platting Act. The law was revised after several years of work was completed with a wide range of various interest groups (including realtors, developers, local government, environmentalists, agricultural groups, etc.) to address concerns, and compromise was reached. After the law was adopted, each city and county developed and adopted new subdivision regulations to comply with the changes.

In the City of Helena, public hearings were held before the Planning Board and City Commission for a total cost of approximately $2,000. The requirement to revise the City's subdivision regulations did not include funds to cover the costs that were borne by the City and its taxpayers. During the time needed to revise the regulations, other requests by citizens were put on hold.

Since October 1993 when the new local subdivision regulations were adopted, the City has reviewed and approved three major subdivisions creating 115 residential lots (including one major subdivision with 65 lots, which was initially denied and then resubmitted and approved with 60 lots for 69 dwelling units); one major subdivision for 220 units for rent; and eight minor subdivisions creating 23 lots.

The Helena City Commission is opposed to HB 473 for the following reasons:

1) The revised subdivision regulations have not been in place long enough to determine if there are any problems, or what those problems might be. In fact, specific problems remain to be identified that would warrant HB 473.

2) Needlessly revising the subdivision regulations requires additional time that is not readily available. Helena, like many other Montana communities, is in a period of rapid growth and development. Revising regulations takes time away from other development projects and can result in unnecessary delay for developers.

316 N. Park, Helena, Montana 59623 Phone: (406) 447-8000

3) Needlessly revising the subdivision regulations incurs additional expense that is not provided by the Legislature (i.e., an "unfunded mandate") that would be passed down from state government to local government. The last thing cities and counties need is to be required to invest additional time and money where it is not needed. Will the state be providing the additional funds to assist local governments with this mandate?

4) If changes are going to be made to the Subdivision and Platting Act, they should only be considered after there has been a discussion with the various groups that have an interest in those changes. This careful and considered discussion is important to avoid confusing language in the proposed legislation.

5) HB 473 severely limits the aspects the governing body may require to be considered with the environmental assessment by striking "such additional relevant and reasonable information as may be required by the governing body."

6) HB 473 has confusing language for mitigation considerations. In order to adequately address the mitigation measures, it may take more time than is presently provided by the subdivision review process (60 days for major subdivisions, 35 days for minor subdivisions).

7) In addition to the sections in HB 473 related to the mitigation, the proposed parkland requirements will be time-consuming for both local governments and developers to address through the subdivision review process, and will lead to confusion that will result in costly litigation to resolve differences. As a result, subdivisions may not be completed within the timeframe required by the law, or other development proposals will be placed on hold so that priority can be given to those projects going through the subdivision review process.

8) HB 473 identifies the parties that are able to appeal a governing body's decision for a subdivision. As a technicality, how would a county or city commission sue itself for a decision it made? Yet, the public has been specifically excluded from that legal process.

For these reasons, the City of Helena strongly urges you to not pass HB 473.

Sincerely,

Kathy Macefield

Kathy Macefield
Planning Director

3-15-95
SENATE NATURAL RESOURCES
EXHIBIT NO. 26
DATE 3-15-95
BILL NO. HB-473

TESTIMONY IN OPPOSITION TO HB 473

Mitigation, which reduces the severity of a disaster and the need to respond, is the wave of the future of emergency management. We have learned that we cannot control nature and prevent disasters, but we can reduce the impact through common sense development, called mitigation.

Mitigation is important because it saves lives and saves taxpayers money, by ensuring that people do not build in high risk areas like floodplains or on earthquake faults. There's a good reason for this, because we cannot prevent the disasters from occurring, but we can certainly cut down on loss and damages through rational and intelligent development, which is what mitigation is all about.

As the Montana Disaster and Emergency Services Association President, I am gravely concerned that this bill will begin to gut the mitigation standards that previous legislatures had the prudence to adopt.

Please protect the people and land of Montana by defeating this bill and continue to encourage our land to be developed with public safety in mind. Mitigation makes sense, that is why it is stressed as the most important phase of emergency management by the Federal Emergency Management Agency, because it provides more return for the dollar than the other phases, which are preparedness, response and recovery.

Paul N. Spengler,
Lewis and Clark County
Disaster & Emergency Svcs. Coord.

Testimony Submitted by Janet Ellis, Montana Audubon Legislative Fund

House Bill 473
Weakening Our Subdivision Law

Summary

This bill reopens the debate on our subdivision law. There are some major policy issues involved with HB 473, introduced by Rep. Knox (R-Winifred): it lowers the park dedication requirement; it lets park money be used for maintenance of parks (will another park ever be purchased?); it waives the environmental assessment process for minor subdivisions; and it restricts who can appeal a subdivision decision to landowners and the developer - so that citizens can not appeal a decision.

Citizens May Not Appeal Subdivision Decisions

The worst aspect of HB 473 is that citizens will lose their right to appeal subdivision decisions. Currently if a local government makes an "arbitrary and capricious" decision to grant (or deny) a subdivision, anyone that is affected by the decision may sue the local government to challenge their decision.

HB 473 only allows the developer and an adjacent landowner to appeal a subdivision. This is not fair. Why shouldn't citizens that feel their local government acted "arbitrarily and capriciously" not be able to challenge a subdivision decision?

There have only been a handful of subdivision appeals by citizens. However, one could argue that local governments now know that they can be sued if they act in an "arbitrary and capricious" manner. What will happen when this hammer is not over them? If HB 473 passes, local governments will have to satisfy the developer and the adjacent landowner - but they will not have to satisfy citizens.

Park Dedication

Currently developers have to set aside 1/9 of their subdivision as a park. HB 473 lowers the amount of park land that can be dedicated by developers, putting the amount of land for parks on a sliding scale.

Park dedication requirements can be used for playgrounds, ball parks, and saving environmentally sensitive areas, such as riparian areas along lakes or streams. With all the development pressures in the state, it does not make sense to weaken our park dedication requirements.

Additionally, the park dedication requirements of HB 473 are scaled in the wrong direction. As HB 473 is written, the bigger the lot size, the smaller the park dedication. This gives developers an incentive to develop larger lot sizes. If anything, there should be an incentive to cluster development.

Finally, HB 473 allows a government body to accept money for park maintenance instead of setting aside park land. We are afraid that governments may never buy another park if they can get money for park maintenance.

No Environmental Assessments for Minor Subdivisions

A minor subdivision is a development of five or fewer lots. Currently there is no Environmental Assessment (EA) on the first minor subdivision, but on subsequent minor subdivisions there must be an EA written.

HB 473 does not allow EAs to be written on any minor subdivision. This policy does not make sense. The environmental impacts of a development in a riparian area, or other environmentally sensitive area, should be reviewed by an EA. An EA will help local governments make better, more informed decisions about the environmental impacts of a subdivision.

Minor subdivisions must be reviewed in 35 days, so the requirement of an EA just

SENATE NATURAL RESOURCES
EXHIBIT NO. 28
DATE 3-15-95
BILL NO. HB 473

Against House Bill 473

Considering the pressures to develop Montana I feel that our subdivision laws should remain intact. Two points in particular;

1. All citizens may be affected by a subdivision - not just the developer and those adjacent. Local boards are not necessarily infallible. Therefore I think all citizens should have the right to question and appeal.

2. The park land requirement should not be lessened. Again, as pressure to develop increases, I feel that it becomes more important than ever to include park areas.

Thank you

Katherine A. Brown
Represent myself as a concerned citizen

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225 N.ROBERTS, HELENA MT 59620-1201
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NATURAL RESOURCES
EXHIBIT NO. 21
DATE 3-15-95
BILL NO SB-382

SUMMARY OF FISCAL CONCERNS WITH SB382, AS AMENDED 3/10/95

provided by Bob Robinson, Director
Montana Department of Health and Environmental Sciences (DHES)
March 15, 1995

The Department's concerns regarding the fiscal aspects of SB 382, as amended by the sponsors 3/10/95, are as follows:

- **The proposed increase in funding for the EQPF is not adequate to pay anticipated orphan/insolvent share claims on the fund in a timely manner.** DHES estimates that over the next 10 years approximately $48,000,000 in valid claims on the EQPF may accumulate that cannot be paid. Additional revenue will have to be raised if parties with valid cost reimbursement claims under the revised CECRA liability formula are to be compensated.

- **To make the proposed orphan/insolvent share liability method work, funding for the State's cost liability needs to be made both adequate and certain in the long term.** The proposed changes to the liability provisions of CECRA would establish certain and long-term orphan/insolvent share liability to the State. To be successful, this approach is dependent on establishing an adequate fund to pay the State's share. However, in addition to being inadequate in amount, the proposed RIT interest funding mechanism is uncertain in the long term. Allocation of the RIT interest is subject to possible modifications during each legislative session that result from various interests competing for limited RIT-interest funding, but having no stake in CECRA liability, cleanup, and funding issues.

- **The changes in liability provisions would require DHES to expand its CECRA program to handle the increased litigation, cost allocation, and claim reimbursement burden.** Under the present joint and several liability method there is essentially no litigation involving the State. In contrast, under the proposed bill's proportionate liability method, almost all determinations of proportionate liability would be made in court and the State would have to be actively involved in that litigation to represent and protect the financial interest of the State stemming from orphan and insolvent shares. To handle the increased litigation burden, DHES has estimated that the CECRA program would have to be expanded by 4 FTE (2 attorneys and 2 paralegals) at an additional cost of approximately $235,000 per year. In addition to increased litigation burden, DHES also would be required to evaluate the reasonableness of reimbursement claims made on the EQPF. Although the fiscal note on SB 382 as introduced did not consider additional staffing needs for claim review and payment, DHES' experience in evaluating claims under the Petroleum Release Compensation Fund indicates that considerable engineering and accounting review is necessary to ascertain cost reasonableness and approve claims. None of the additional DHES expense would be related to actually cleaning up sites, but rather to litigation, cost allocation, and claim payment.

- **Although the liability provisions of CECRA would be changed during the FY97 biennium to assign substantial orphan/insolvent share liability to the State, no additional funding to cover the increased State liability would be provided until the FY99 biennium.**

Details describing the Department's estimates of costs associated with SB 382 have been included in the SB 382 (as introduced) fiscal note and in testimony provided to the Committee by Bob Robinson on February 17, 1995. A summary of those estimates, including revisions incorporating provisions of the 3/10/95 amendments, is provided below:

Over the next 10-year period, the Department estimates that claims may amount to the following total:

$16,200,000	-	26 of 51 high-priority non-mining sites
$22,500,000	-	10 of 20 high-priority abandoned mine sites
$ 9,000,000	-	20 of 60 medium-priority abandoned mine sites
$ 9,000,000	-	225 storage tank cleanups not eligible for Petro Fund
$56,700,000		

Specific details of these cost estimates are provided in the attached table, which includes supporting assumptions. Estimated claims on the EQPF provided above and in the table have been reduced to 90 percent of the expected total orphan/insolvent liability share at affected sites, consistent with the provisions of the 3/10/95 amendments.

Over the same 10-year period, the Department estimates that funding in the EQPF (allocated from 21 percent of the RIT interest) available to reimburse orphan/insolvent share claims will total approximately $8,000,000. This will leave a shortfall of about $48,000,000 in claims that will not be paid or will have to be paid from other funding sources if applicants were to successfully litigate to receive their approved reimbursement.

The DHES estimates above assume that the 30 high- and medium-priority abandoned mine sites have mixed ownership and only partial orphan/insolvent shares, so they will be addressed by DHES or have claims made against the EQPF. Under the bill, additional funding of $3,100,000 over the same 10-year period would be provided to the Department of State Lands to supplement its abandoned mine reclamation work. It is assumed that those funds would be used on total orphan share sites addressed by DSL, which are a portion of the 280 abandoned mine sites inventoried by DSL.

The DHES figures above **do not include interest on unpaid claims**. It is uncertain if interest would accrue to the claims approved but awaiting payment. If interest is allowed to accrue, interest alone would probably consume all EQPF revenues after about 6 years of unpaid claims had accumulated.

SB 382

Comparison of Estimated State Costs Related to Orphan Share/Insolvent Share Funding Under Proportionate Liability

(Introduced and Amended Versions)

Annually
(in dollars)

	Current Law	SB 382 As Introduced	SB 382 As Amended *	
			During FY97 Bien.	After FY97 Bien.
Additional Revenue				
EQPF	0	647,000	0	1,332,500
Cost Recovery	0	(105,000)	(105,000)	(105,000)
TOTAL ADD'L REVENUE	0	542,000	(105,000)	1,227,500
Additional Expenses				
DHES Program Costs	0	292,043	235,384	235,384
Claims on EQPF**				
Past CECRA Sites	0	2,650,000	0	0
Future CECRA Sites	0	1,800,000	1,620,000	1,620,000
Abandoned Mine Sites	0	0	3,150,000	3,150,000
Storage Tanks Sites	0	1,012,500	911,250	911,250
TOTAL ADD'L EXPENSES	0	5,754,543	5,916,634	5,916,634
BALANCE (Revenue less Expenses)	**0**	**(5,212,543)** (per year)	**(6,021,634)** (per year)	**(4,689,134)** (per year)

Notes: * Under SB 382 as amended 3/10/95, additional EQPF revenue does not begin until FY99 Biennium and claims on EQPF are limited to 90% of total orphan/insolvent share.

** Assumptions for Claims on EQPF provided on attached sheet.

2/95

Assumptions Used to Estimate Claims on Fund **

Past CECRA Sites (SB382 as introduced)

Twenty (20) sites. Total estimated cleanup cost of $9,650,000. Estimated orphan share/insolvent share reimbursement cost of $5,300,000. All claims filed in two-year biennium at $2,650,000 per year. (Source: DHES)

Future CECRA Sites (SB382 as introduced and as amended)

Twenty-six (26) high-priority sites. No abandoned mine sites included. Total estimated cleanup cost of $29,900,000. Estimated orphan share/insolvent share cost of $18,000,000. Claims estimated to occur evenly over a 10-year period at $1,800,000 per year. 90% of total claim is $1,620,000 per year. (Source: DHES)

Abandoned Mine Sites (SB382 as amended)

Twenty (20) high-priority sites exist that will cost from $5,000,000 - $10,000,000 each to reclaim. (Source: DSL) Most of these sites have some responsible parties, and they would be addressed under CECRA authorities. To address 10 sites in 10 years would require a minimum estimated total cost of $50,000,000. Estimated 50% orphan share/insolvent share cost of $25,000,000 distributed evenly over 10 years at $2,500,000 per year. (Source: DHES)

Sixty (60) medium-priority sites exist that will cost approximately $1,000,000 each to reclaim. (Source: DSL) Many of these sites have responsible parties or mixed liability, and they would be addressed under CECRA authorities. To address 20 sites in 10 years would require a minimum estimated total cost of $20,000,000. Estimated 50% orphan share/insolvent share cost of $10,000,000 distributed evenly over 10 years at $1,000,000 per year. (Source: DHES)

Total estimated orphan/insolvent cost of CECRA mining sites therefore is $3,500,000 per year; 90% of total is $3,150,000 per year.

Storage Tank Sites (SB382 as introduced and as amended)

Approximately 10,000 active underground storage tanks exist in Montana. Leaks from these tanks are reported at a rate of approximately one per day. Under the revised bill, the cleanup of some of these leaking tanks would be eligible for reimbursement from the EQPF. Forty-five (45) cleanups per biennium are estimated to be ineligible for reimbursement from the Petroleum Tank Release Compensation Fund, but would be eligible for reimbursement from the EQPF under the proposed bill. Cleanup costs average $45,000 per site, for a total estimated cost of $2,025,500 per biennium, or $1,012,500 per year. 90% of total claim is $911,250 per year. (Source: DHES)

Note: * Interest for claims on the EQPF is **not** included in these estimates

DATE 3-15-95

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: HB-472 HB 473

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
Charles K. Brooks	Yellowstone County	HB473		
Chris Imhoff	League of Women Voters of MT	H.B 473		✓
Rick Hanson	MFBF	HB 472	✓	
Kirk Evenson	Trout Unlimited	HB 472	✓	
Alan Rollo	MWF	HB472	✓	
Kathy Macefield	City of Helena	HB473		X
Nancy McLane	Helena	HB473		X
Lorna Frank	MT. Farm Bureau	HB472	✓	
Gordon Morris	MACo	HB473		X
Jane Jelinski	MACo + Gallatin Co	HB473		X
Susan Abell	Flathead County Fair Bd	HB473		X
Bob Norwood	Flathead County Parks	HB473		X
MIKE MURPHY	MT. WATER RES. ASSN.	HB473 HB472	X	
Blake Wordal	Lewis & Clark Co	HB473		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3-15-95

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: HB-472 HB-473

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Jim Emerson	Self	473		✓
Janet Ellis	MT Audubon	473		✓
Janet Ellis	MT Audubon	472	X	
Bob MARKS	SELF	473	X	
Pete Story	Self	473	X	
Pete Story	Self	472	X	~~X~~
David Hull				
[illegible]	Self	472	X	~~X~~
[illegible]	Self	473	X	
David N. Hull	C.C. of Helena	473		X
Kris Runco	Gallatin County Comm	473		X
Larry Gallagher	City of Kalispell	473		✓
Anne Hedges	MEIC	473		✓
John Bloomquist	Mt. Stockgrowers	472 473	✓	

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DATE 3-15-95

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: HB 472 HB 473

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Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Rick Gustine	MARLS	HB 473	X	
Warren Latvala	Self / MARLS	HB 473	X	
Daniel P. Brien	MARLS / Self	HB 473	X	
Don Soltys	Self	473		X
Richard D. Idler	Self	473		X
Kerwin Jensen	Montana Assn of Planners	473		X
Jim Richard	MT Wildlife Fed	472 473	✓	X
Margaret Morgan	MT Assn. of Realtors	473	X	
Earl Olson	Self	473		X
Tom Whitney	MT Chapter Am. Fisheries Society	472	X	
Jim Nugent	City of Missoula	HB 473		X
Glenna Obie	Jefferson County	HB 473		X
Peggy Trenk	WETA; MT Chamber of Commerce	HB 473	X	
Collin Bangs	REALTORS	HB 473	X	

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SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: HB 472 HB 473

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Name	Representing	Bill No.	Check One: Support	Oppose
Wm M. Spilker	MT Assn Realtors	473	X	
Cliff Trexler	Self	473	X	
Gretchen Olhiser	MT. Preservation Alliance	473		X
George Ochenski	Trout Unlimited	472	X	
Larry Brown	Ag Pres. Assoc	472 473	X	
Glenn Marx	Gov. Rucicot	472	X	
Deborah Smith	Sierra Club	472 — X 473 — X		
Steve Mandeville	MT. Assoc Realtors	473	X	
Bob Lee	FWP	472	X	
Don Allen	MT. Wood Products Assn	473	✓	
Jerry Hamlin	Self	473	✓	
Ellen Woodbury	Park County	473		X
Dan Wilkinson	City of Hamilton	473		X
Roger Nellis	Self	473		X

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SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: HB-472 · HB-473

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Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Susan Norton	G.C. Planning Board	473		X
Beth Wheatley	Self	472	X	
Ted Lange	NPRC	473		X
Katharine A. Braun	Self	473		X
John Tubbs	DNRC (Info)	382		

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