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Senate BILL NO. 391
Romney

INTRODUCED BY _____
A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A STATE LAND USE COMMISSION TO DESIGNATE AREAS OF STATE CONCERN; REQUIRING GOVERNING BODIES TO PLAN FOR, AND REGULATE DEVELOPMENT WITHIN THOSE AREAS; AUTHORIZING THE DEPARTMENT OF INTERGOVERNMENTAL RELATIONS TO FORMULATE PLANNING AND REGULATION PROCEDURES FOR SUCH AREAS; AND PROVIDING CITIES, TOWNS, AND COUNTIES WITH FINANCIAL ASSISTANCE TO PLAN FOR AND REGULATE SUCH AREAS."

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

Section 1. Citation of act. This act shall be known and may be cited as the "Areas of State Concern Act".

Section 2. Statement of purpose. The legislature finds that while local government has a primary and continuing interest in the control of land use within its jurisdiction, certain areas of Montana may possess such unique and fragile qualities that decisions as to their development are of greater than local concern and are of vital importance to all Montana. It is the purpose of this act to establish a system for the identification of these areas and to facilitate local efforts to plan for and regulate them.

INTRODUCED BILL

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Section 3. Definitions. As used in this act unless the context requires otherwise:

(1) "Area of state concern" means an area designated as provided in this act.

(2) "Commission" means the state land use commission established by this act.

(3) "Department" means the department of intergovernmental relations provided for in Title 82A, chapter 9.

(4) "Developer" means any person or governmental agency undertaking development as defined in this act.

(5) "Development" means the material alteration, addition to, or construction of any structure or improvement upon land; any extractive activities upon land; or any other activity which materially alters the physical appearance or the use of land. Development also means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring, or contracting to transfer, title to or possession of a portion of the tract or by properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels. Development does not include:

(a) The construction, maintenance, or improvement of a road or railroad track, if the work is carried out on land within the boundaries of the existing right-of-way;

SB 391

1 (b) The inspection, maintenance, or replacement of any
2 utility system such as sewers, mains, pipes, pipelines,
3 cables, utility tunnels, power and communications
4 facilities, towers, or poles, within established
5 rights-of-way;

6 (c) The maintenance, renewal and improvement, or
7 alteration of any structure, if the work affects only the
8 interior or the color of the structure or the decoration of
9 the exterior of the structure;

10 (d) The construction or installation of pollution
11 abatement equipment;

12 (e) Any activity which is undertaken as a result of a
13 natural or man-caused emergency such as a fire, flood,
14 avalanche, tornado, or earthquake.

15 (6) "Governing body" means the governing body of a
16 county or incorporated city or town.

17 (7) "Person" means any individual, corporation, firm,
18 association, organization, governing body, state agency, or
19 any other entity except the United States government.

20 Section 4. There is a new R.C.M. section numbered
21 82A-906 that reads as follows:

22 82A-906. State land use commission. There is created
23 a state land use commission, which shall be attached for
24 administrative purposes only as provided in section 82A-108
25 to the department of intergovernmental relations. The

1 commission shall be organized as provided in section 82A-112
2 except as follows:

3 (1) The commission shall consist of seven members
4 appointed by the governor and confirmed by the senate.

5 (2) Members of the commission shall be selected to
6 represent as broadly as possible the geographic areas of the
7 state. In making appointments, the governor shall take into
8 consideration the representation of local government,
9 agricultural, economic, and conservation interests. No more
10 than four members of the commission may be from the same
11 political party.

12 (3) The commission shall elect a chairman and
13 establish rules for its organization and procedures.

14 (4) The members of the commission shall be appointed
15 on or before December 31, 1975. Of the initial appointments
16 made, two shall be for a term of two years, two shall be for
17 a term of three years, and three shall be for a term of four
18 years. Thereafter, all appointments shall be for a term of
19 four years. Vacancies shall be filled by the governor for
20 the unexpired portion of the terms in which they occur.
21 Having once served a full term on the commission, no member
22 may be reappointed for a consecutive term.

23 (5) The members of the commission shall be paid and
24 reimbursed for their expenses as provided in section
25 82A-112.

1 Section 5. Criteria for areas of state concern.
2 (1) To qualify as an area of state concern, the area must
3 be one or more of the following:

4 (a) an area which contains, or which if developed may
5 have a significant impact upon, unique historical,
6 aesthetic, or natural resources including proven mineral
7 reserves, significant agricultural lands, major
8 archeological sites, or unique wildlife habitats;

9 (b) an area which because of its unique character or
10 location has significant development potential which should
11 be protected;

12 (c) an area proposed as a site for a new town
13 development;

14 (d) an area in which development may endanger life and
15 property due to such natural or man-made hazards as
16 landslides, avalanches, flooding, or subsidence; or

17 (e) an area which, if developed, may substantially
18 affect major public facilities or other projects, existing
19 or proposed, representing a substantial public investment.

20 (2) By July 1, 1976, the department shall propose and
21 the commission shall adopt, with or without modification,
22 detailed criteria for determining whether an area qualifies
23 as an area of state concern as defined in (1) of this
24 section. These criteria shall be adopted in accordance with
25 the Administrative Procedure Act and shall be subject to

1 review and repeal or modification by the legislature as
2 provided by section 82-4203.1 of that act.

3 (3) In developing its proposed criteria the department
4 shall consult with and seek the advice of appropriate state
5 and local government agencies and officials including, but
6 limited to, governing bodies, planning boards, and soil and
7 water conservation district supervisors.

8 Section 6. Nomination of an area for designation as an
9 area of state concern. (1) The department shall by July 1,
10 1976, specify the information that must be submitted with
11 the nomination of an area for designation as an area of
12 state concern.

13 (2) The required information shall include:

14 (a) a geographic description of the area;

15 (b) a statement of the reasons the area is of state
16 concern;

17 (c) a description of the land use and ownership of the
18 area and adjacent land;

19 (d) a description of any existing plans or regulations
20 affecting land use in the area;

21 (e) a description of any interim or final land use
22 controls needed to insure proper management of the area; and

23 (f) any other data relevant to the nomination.

24 Section 7. Nomination procedures. (1) Any person may
25 submit a nomination for designation of an area of state

1 concern to the governing body within whose jurisdiction the
 2 area lies. At its next meeting the governing body shall by
 3 official action accept the nomination for designation if it
 4 contains all of the required information or state in writing
 5 the reasons for refusing to accept the nomination for
 6 designation.

7 (2) After accepting the nomination the governing body
 8 may adopt and enforce interim controls for the nominated
 9 area.

10 (3) Within five (5) days after accepting the
 11 nomination the governing body shall send a copy of the
 12 nomination to the department for distribution to the
 13 appropriate state and local agencies. These agencies shall
 14 forward any comments to the governing body within thirty
 15 (30) days after receiving the nomination.

16 (4) Within forty-five (45) days after accepting the
 17 nomination for designation the governing body shall hold a
 18 public hearing on the nomination under section 13 of this
 19 act. At least thirty (30) days prior to the public hearing
 20 the nominator shall send by certified mail a notice of the
 21 hearing to owners of real property and persons residing
 22 within the proposed area.

23 (5) Within sixty (60) days following the hearing, the
 24 governing body shall submit to the commission its written
 25 findings and recommendation for approval, with or without

1 modification, or disapproval of the nomination. The
 2 governing body shall include with its recommendation the
 3 record of the hearing, copies of the application, any
 4 suggested additional regulations needed to effectively
 5 manage the area, and any other pertinent information.

6 Section 8. Designation of an area of state concern.

7 (1) Within sixty (60) days after receiving the
 8 recommendations from the governing body the commission shall
 9 either:

10 (a) designate the area, as proposed or with modified
 11 boundaries, as an area of state concern; or

12 (b) deny the designation of the area and notify the
 13 governing body of the reasons therefore.

14 (2) If the commission's decision is contrary to the
 15 governing body's recommendation, such decision shall require
 16 the concurrence of at least five (5) members of the
 17 commission.

18 (3) The order designating an area of state concern
 19 shall include:

20 (a) a description of the area and a map of its
 21 boundaries;

22 (b) a statement of the reasons for designating the
 23 area;

24 (c) a list of the units of local government authorized
 25 by law to exercise land use planning and regulatory powers

1 within the area;

2 (d) any interim controls to be administered by the
3 governing body until final regulations are adopted; and

4 (e) any additional information relevant to the
5 designation of the area.

6 (4) If the proposed designation of an area as an area
7 of state concern is denied by the commission, the area may
8 not be renominated for a period of one (1) year after
9 denial.

10 Section 9. Development of plans and regulations for an
11 area of state concern. (1) Within ninety (90) days after
12 an area's designation, the department shall develop and the
13 commission approve, with or without modifications,
14 guidelines and procedures applicable to the designated area
15 to be used by the governing body in developing plans and
16 regulations. The department shall, in developing guidelines
17 and procedures for the designated area, consult with and
18 seek the advice of local government agencies and officials
19 having jurisdiction within the area including, but not
20 limited to, governing bodies, planning boards, and soil and
21 water conservation district supervisors. These guidelines
22 and procedures shall address only those aspects of the plans
23 and procedures for the area that are essential to protect
24 the state's interest in the area as set out in the order
25 designating the area.

1 (2) Within one (1) year after the designation of an
2 area of state concern the governing body or bodies having
3 jurisdiction shall develop and transmit to the department
4 plans and regulations for the designated area.

5 (3) If an area of state concern lies within the
6 jurisdiction of more than one governing body, the governing
7 bodies may form a single multi-jurisdictional organization
8 for the purpose of coordinating the planning and development
9 of regulations for the designated area.

10 (4) Within sixty (60) days after receiving them, the
11 department shall review the plans and regulations to
12 determine their consistency with the guidelines and
13 procedures for the area and return them to the governing
14 body with any comments and suggested modifications.

15 (5) If the magnitude of the project precludes the
16 completion, review and adoption of plans and regulations
17 within the time limits established by this act, the
18 department may grant an appropriate extension of time to the
19 governing body.

20 (6) After review by the department and after holding a
21 public hearing in conformance with the procedures contained
22 in section 13, the governing body shall adopt the plans and,
23 by ordinance or resolution, adopt and enforce the
24 regulations.

25 (7) The governing body shall periodically review the

1 plans and regulations for the area and at any time may
2 revise them if the revision is consistent with the
3 guidelines for the area.

4 Section 10. Financial and technical assistance to
5 local governing bodies. (1) To facilitate the planning for
6 regulation and administration of areas of state concern, the
7 department is authorized to allocate and disburse to
8 governing bodies funds appropriated for these purposes as
9 follows: Upon designation, each governing body of a
10 multi-jurisdictional area of state concern shall receive no
11 less than fifteen thousand dollars (\$15,000). If the
12 designated area lies within a single jurisdiction, the
13 governing body shall receive no less than twenty-five
14 thousand dollars (\$25,000).

15 (2) The department shall contract with the governing
16 body for the expenditure of allocated funds, specify work
17 elements to be performed consistent with the guidelines for
18 the area, and monitor the use of those funds.

19 (3) The governing body may request technical
20 assistance from the department and appropriate state
21 agencies in completing the plans and regulations for an area
22 of state concern.

23 Section 11. State authority to develop plans and
24 regulations. (1) If a governing body has not exercised its
25 authority to initiate plans and regulations for an area

1 within one (1) year after its designation, then and only
2 then shall the commission direct the department to prepare
3 plans and regulations for the area. The plans shall be
4 adopted and the regulations adopted and enforced by the
5 governing body.

6 (2) The department may enter into contractual
7 relationships with other state and federal agencies and
8 private entities in carrying out the objectives of this act.

9 Section 12. Application for a permit to develop within
10 an area of state concern. (1) By July 1, 1976, the
11 department shall develop procedures for applying for a
12 permit to develop within an area of state concern.

13 (2) After the designation of an area of state concern
14 no person may initiate a development within the area without
15 first obtaining from the governing body a permit to develop.

16 (3) Prior to granting a development permit the
17 governing body shall transmit a copy of the application to
18 the department.

19 (4) Unless the applicant agrees to an extension of
20 time, the governing body shall deny, approve, or
21 conditionally approve an application for a development
22 permit within thirty (30) days after receiving the
23 application. The governing body may prescribe and include
24 in its development permit conditions or restrictions it
25 considers necessary to ensure that the proposed development

1 complies with the regulations for the area.

2 Section 13. Public hearings. (1) When a public
3 hearing is held in accordance with this act, the governing
4 body, department, or commission shall at least two (2) weeks
5 before the hearing publish notice thereof in a newspaper of
6 general circulation in the county or counties affected and,
7 where applicable, give notice to:

- 8 (a) the developer;
- 9 (b) the local planning board; and
- 10 (c) the residents and owners of any real property
11 within the boundaries of the proposed area of state concern.

12 (2) The notice shall:

- 13 (a) indicate the date, time, and place of the hearing;
- 14 (b) state the purpose of the hearing and, where
15 applicable, the general location of the proposed area of
16 state concern; and
- 17 (c) specify the public official from whom additional
18 information can be obtained.

19 (3) When a proposed area of state concern comes within
20 the jurisdiction of two (2) or more governing bodies, the
21 governing bodies shall, where practicable, hold a joint
22 hearing on the matter.

23 (4) A mechanical or written record shall be made of
24 any hearing held under this act.

25 (5) In conducting public hearings and giving notice,

1 the department and the commission shall comply with the
2 procedures described in this section in addition to those
3 specified by the Montana Administrative Procedure Act.

4 Section 14. Notice of activities -- public
5 dissemination. (1) A governing body shall notify the
6 department whenever it adopts interim controls or grants or
7 denies a development permit as provided in this act.

8 (2) The department shall make available a list of all
9 designations, development permits and terminations of
10 designations.

11 Section 15. Termination of designation of areas of
12 state concern. (1) Any person may petition the commission
13 for the termination of the designation of all or part of an
14 area of state concern. The petition must contain a
15 statement of the reasons the petitioner believes that the
16 area is no longer of state concern and appropriate data and
17 information to support the petitioner's claim.

18 (2) Upon accepting the petition, the commission shall
19 send a copy of the petition to the governing body or bodies
20 having jurisdiction over the area of state concern, the
21 department, the person who originally nominated the area for
22 designation, and any other person who requests a copy of the
23 petition. The commission shall hold a hearing on the
24 petition for termination not more than sixty (60) days after
25 receiving the petition.

1 (3) Within thirty (30) days after the public hearing,
2 the commission shall issue its decision granting or denying
3 the termination petition.

4 (4) If a petition for termination of the designation
5 of all or part of any area of state concern has been denied,
6 the area may not be reconsidered for termination for a
7 period of one year after denial.

8 Section 16. Conflict with existing statutes. (1) No
9 state or local agency may grant a permit for a development
10 inconsistent with the uses allowed within an area of state
11 concern.

12 (2) No development subject to regulation under the
13 Utility Siting Act, sections 70-801 through 70-823, shall be
14 considered a development for the purposes of this act.

15 (3) When an area of state concern lies within a
16 floodway, the land use regulations adopted under this act
17 may be no less restrictive than any any regulations adopted
18 pursuant to the Floodway Management Act, sections 89-3501
19 through 89-3515.

20 (4) Lands administered by the board of land
21 commissioners shall be exempt from the provisions of this
22 act.

23 (5) The regulation of a division of land under this
24 act shall not exempt it from the requirements of the
25 Subdivision and Platting Act, sections 11-3859 through

1 11-3876, and the rules adopted under it.

2 (6) The authority granted to governing bodies by this
3 act is independent of and unaffected by the provisions of
4 sections 11-2701 through 11-2710, sections 16-4101 through
5 16-4107, and sections 16-4701 through 16-4711. These
6 sections shall not be applicable within an area of state
7 concern after land use regulations have been adopted for the
8 area under this act.

9 (7) The authority granted to governing bodies by this
10 act to plan and develop regulations for areas of state
11 concern is in addition to the authority granted by sections
12 11-3801 through 11-3858 and is not subject to any
13 limitations or conditions contained in these sections.

14 Section 17. Protection of property rights.
15 (1) Nothing in this act authorizes any governmental agency
16 to adopt a rule or issue an order that constitutes a taking
17 of property in violation of the constitution of this state
18 or of the Constitution of the United States.

19 (2) No use of land or structures which was lawful when
20 the use was initiated or when a legally enforceable right to
21 carry on the use was acquired may be prohibited by any
22 designation, rule, or regulation promulgated or adopted
23 under this act.

24 Section 18. Severability. It is the intent of the
25 legislature that if part of this act is invalid, all valid

1 parts that are severable from the invalid part remain in
2 effect. If a part of this act is invalid in one or more of
3 its applications, the part remains in effect in all valid
4 applications that are severable from the invalid
5 applications.

6 Section 19. Saving clause. Nothing in this act shall
7 affect the validity of any judicial or administrative
8 proceeding pending or that could have been commenced before
9 the effective date of this act.

-End-

SB 391

FISCAL NOTE

Form BD-15

In compliance with a written request received February 10, 19 75, there is hereby submitted a Fiscal Note for Senate Bill 391 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF LEGISLATION:

Senate Bill 391 would create a state Land Use Commission to designate areas of state concern; direct the Department of Intergovernmental Relations to formulate procedures; require local governing bodies to plan for and regulate these areas; and provide financial assistance to local governments.

ASSUMPTIONS:

1. The State Land Use Commission would be created December 31, 1975. Commission costs are based on the following:

7 members

18 - 2 day meetings per year (plus 1 day of travel per meeting)

Commission salary and expenses - \$25 per day salary; \$25 per day expenses

Commission travel - actual costs (\$482 per meeting for all members)

2. The Department would need 3 additional staff people at an average salary of \$15,000. These people would be employed July 1, 1975.

3. Nomination petitions would be accepted after July 1, 1976. Local government grants will commence at this time.

FISCAL IMPACT:

	FY 76	FY 77
Personal Services	\$ 55,125	\$ 64,850
Operating Expenses	75,253	96,206
Local Assistance, Grants	0	50,000
Total Expenditures	<u>\$130,378</u>	<u>\$211,056</u>

CONCLUSION:

Creation of the State Land Use Commission will result in increased expenditures from the General Fund of \$341,434 during the biennium.

Michael B. Pillsbury

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: February 14, 1975

Reported back from Committee without recommendation, as amended.

SENATE BILL NO. 391
INTRODUCED BY ROMNEY

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A STATE LAND USE COMMISSION TO DESIGNATE AREAS OF STATE CONCERN; REQUIRING GOVERNING BODIES TO PLAN FOR, AND REGULATE DEVELOPMENT WITHIN THOSE AREAS; AUTHORIZING THE DEPARTMENT OF INTERGOVERNMENTAL RELATIONS TO FORMULATE PLANNING AND REGULATION PROCEDURES FOR SUCH AREAS; AND PROVIDING CITIES, TOWNS, AND COUNTIES WITH FINANCIAL ASSISTANCE TO PLAN FOR AND REGULATE SUCH AREAS."

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(5) "Development" means the material alteration, addition to, or construction of any structure or improvement upon land; any extractive activities upon land; or any other activity which materially alters the physical appearance or the use of land. Development also means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring, or contracting to transfer, title to or possession of a portion of the tract or by properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels. Development does not include:

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8 interior or the color of the structure or the decoration of
9 the exterior of the structure;

10 (d) The construction or installation of pollution
11 abatement equipment;

12 (e) Any activity which is undertaken as a result of a
13 natural or man-caused emergency such as a fire, flood,
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4 appointed by the governor and confirmed by the senate.

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6 represent as broadly as possible the geographic areas of the
7 state. In making appointments, the governor shall take into
8 consideration the representation of local government,
9 agricultural, economic, and conservation interests. No more
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11 political party.

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13 establish rules for its organization and procedures.

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18 years. Thereafter, all appointments shall be for a term of
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20 the unexpired portion of the terms in which they occur.
21 Having once served a full term on the commission, no member
22 may be reappointed for a consecutive term.

23 (5) The members of the commission shall be paid and
24 reimbursed for their expenses as provided in section
25 82A-112.

1 Section 5. Criteria for areas of state concern.

2 (1) To qualify as an area of state concern, the area must
3 be one or more of the following:

4 (a) an area which contains, or which if developed may
5 have a significant impact upon, unique historical,
6 aesthetic, or natural resources including proven mineral
7 reserves, significant agricultural lands, major
8 archeological sites, or unique wildlife habitats;

9 (b) an area which because of its unique character or
10 location has significant development potential which should
11 be protected;

12 (c) an area proposed as a site for a new town
13 development;

14 (d) an area in which development may endanger life and
15 property due to such natural or man-made hazards as
16 landslides, avalanches, flooding, or subsidence; or

17 (e) an area which, if developed, may substantially
18 affect major public facilities or other projects, existing
19 or proposed, representing a substantial public investment.

20 (2) By July 1, 1976, the department shall propose and
21 the commission shall adopt, with or without modification,
22 detailed criteria for determining whether an area qualifies
23 as an area of state concern as defined in (1) of this
24 section. These criteria shall be adopted in accordance with
25 the Administrative Procedure Act and shall be subject to

1 review and repeal or modification by the legislature as
2 provided by section 32-4203.1 of that act.

3 (3) In developing its proposed criteria the department
4 shall consult with and seek the advice of appropriate state
5 and local government agencies and officials including, but
6 limited to, governing bodies, planning boards, and soil and
7 water conservation district supervisors.

8 Section 6. Nomination of an area for designation as an
9 area of state concern. (1) The department shall by July 1,
10 1976, specify the information that must be submitted with
11 the nomination of an area for designation as an area of
12 state concern.

13 (2) The required information shall include:

14 (a) a geographic description of the area;

15 (b) a statement of the reasons the area is of state
16 concern;

17 (c) a description of the land use and ownership of the
18 area and adjacent land;

19 (d) a description of any existing plans or regulations
20 affecting land use in the area;

21 (e) a description of any interim or final land use
22 controls needed to insure proper management of the area; and

23 (f) any other data relevant to the nomination.

24 Section 7. Nomination procedures. (1) Any person, A
25 RESIDENT OR PROPERTY OWNER OF THE AREA TO BE NOMINATED, may

1 submit a nomination for designation of an area of state
 2 concern to the governing body within whose jurisdiction the
 3 area lies. At its next meeting the governing body shall by
 4 official action accept the nomination for designation if it
 5 contains all of the required information ~~or state in writing~~
 6 ~~the reasons for refusing to accept the nomination for~~
 7 ~~designation.~~ THE LOCAL GOVERNING BODY MUST APPROVE THE PLAN
 8 BY A MAJORITY OF ITS MEMBERS BEFORE THE NOMINATION CAN BE
 9 SUBMITTED TO THE STATE COMMISSION.

10 (2) After accepting the nomination the governing body
 11 may adopt and enforce interim controls for the nominated
 12 area.

13 (3) Within five (5) days after accepting the
 14 nomination the governing body shall send a copy of the
 15 nomination to the department for distribution to the
 16 appropriate state and local agencies. These agencies shall
 17 forward any comments to the governing body within thirty
 18 (30) days after receiving the nomination.

19 (4) THE GOVERNING BODY SHALL SUBMIT THE NOMINATION TO
 20 THE PLANNING BOARD HAVING JURISDICTION OVER THE NOMINATED
 21 AREA AND SEEK THE RECOMMENDATION OF THE BOARD REGARDING THE
 22 NOMINATION. WHEN A NOMINATION IS MADE FOR AN AREA OVER
 23 WHICH NO PLANNING BOARD HAS JURISDICTION, THE GOVERNING BODY
 24 SHALL, WITHIN SIXTY (60) DAYS OF ACCEPTING THE NOMINATION,
 25 CREATE A PLANNING BOARD FOR THE AREA PURSUANT TO SECTIONS

1 11-3801 THROUGH 11-3855. HOWEVER, A RESOLUTION CREATING A
 2 COUNTY PLANNING BOARD REQUIRED BY THIS SECTION IS NOT
 3 SUBJECT TO THE PETITIONING PROVISION OF SECTION 11-3801.

4 ~~44~~(5) Within forty-five (45) days after accepting the
 5 nomination for designation OR AFTER CREATING A PLANNING
 6 BOARD WHEN REQUIRED BY THIS SECTION the governing body shall
 7 hold a public hearing on the nomination under section 13 of
 8 this act. At least thirty (30) days prior to the public
 9 hearing the nominator shall send by certified mail a notice
 10 of the hearing to owners of real property and persons
 11 residing within the proposed area.

12 ~~45~~(6) Within sixty (60) days following the hearing,
 13 the governing body shall submit to the commission its
 14 written findings and recommendation for approval, with or
 15 without modification, or disapproval of the nomination. The
 16 governing body shall include with its recommendation the
 17 record of the hearing, copies of the application, any
 18 suggested additional regulations needed to effectively
 19 manage the area, and any other pertinent information.

20 Section 8. Designation of an area of state concern.
 21 (1) Within sixty (60) days after receiving the
 22 recommendations from the governing body the commission shall
 23 either:

24 (a) designate the area, as proposed or with modified
 25 boundaries, as an area of state concern; or

1 (b) deny the designation of the area and notify the
2 governing body of the reasons therefore.

3 (2) If the commission's decision is contrary to the
4 governing body's recommendation, such decision shall require
5 the concurrence of at least five (5) members of the
6 commission.

7 (3) The order designating an area of state concern
8 shall include:

9 (a) a description of the area and a map of its
10 boundaries;

11 (b) a statement of the reasons for designating the
12 area;

13 (c) a list of the units of local government authorized
14 by law to exercise land use planning and regulatory powers
15 within the area;

16 (d) any interim controls to be administered by the
17 governing body until final regulations are adopted; and

18 (e) any additional information relevant to the
19 designation of the area.

20 (4) If the proposed designation of an area as an area
21 of state concern is denied by the commission, the area may
22 not be renominated for a period of one (1) year after
23 denial.

24 Section 9. Development of plans and regulations for an
25 area of state concern. (1) Within ninety (90) days after

1 an area's designation, the department shall develop and the
2 commission approve, with or without modifications,
3 guidelines and procedures applicable to the designated area
4 to be used by the governing body in developing plans and
5 regulations. The department shall, in developing guidelines
6 and procedures for the designated area, consult with and
7 seek the advice of local government agencies and officials
8 having jurisdiction within the area including, but not
9 limited to, governing bodies, planning boards, and soil and
10 water conservation district supervisors. THE COMMISSION
11 SHALL HOLD PUBLIC HEARINGS IN THE AREA TO BE AFFECTED TO
12 OBTAIN ADDITIONAL INFORMATION FROM THE LOCAL LAND OWNERS
13 BEFORE THE AREA CAN BE DESIGNATED AN AREA OF STATE CONCERN.
14 These guidelines and procedures shall address only those
15 aspects of the plans and procedures for the area that are
16 essential to protect the state's interest in the area as set
17 out in the order designating the area.

18 (2) Within one (1) year after the designation of an
19 area of state concern the governing body or bodies having
20 jurisdiction shall develop and transmit to the department
21 plans and regulations for the designated area.

22 (3) If an area of state concern lies within the
23 jurisdiction of more than one governing body, the governing
24 bodies may form a single multi-jurisdictional organization
25 for the purpose of coordinating the planning and development

1 of regulations for the designated area.

2 (4) Within sixty (60) days after receiving them, the
3 department shall review the plans and regulations to
4 determine their consistency with the guidelines and
5 procedures for the area and return them to the governing
6 body with any comments and suggested modifications.

7 (5) If the magnitude of the project precludes the
8 completion, review and adoption of plans and regulations
9 within the time limits established by this act, the
10 department may grant an appropriate extension of time to the
11 governing body.

12 (6) After review by the department and after holding a
13 public hearing in conformance with the procedures contained
14 in section 13, the governing body shall adopt the plans and,
15 by ordinance or resolution, adopt and enforce the
16 regulations.

17 (7) The governing body shall periodically review the
18 plans and regulations for the area and at any time may
19 revise them if the revision is consistent with the
20 guidelines for the area.

21 Section 10. Financial and technical assistance to
22 local governing bodies. (1) To facilitate the planning for
23 regulation and administration of areas of state concern, the
24 department is authorized to allocate and disburse to
25 governing bodies funds appropriated for these purposes as

1 follows: Upon designation, each governing body of a
2 multi-jurisdictional area of state concern shall receive no
3 less than fifteen thousand dollars (\$15,000). If the
4 designated area lies within a single jurisdiction, the
5 governing body shall receive no less than twenty-five
6 thousand dollars (\$25,000).

7 (2) The department shall contract with the governing
8 body for the expenditure of allocated funds, specify work
9 elements to be performed consistent with the guidelines for
10 the area, and monitor the use of those funds.

11 (3) The governing body may request technical
12 assistance from the department and appropriate state
13 agencies in completing the plans and regulations for an area
14 of state concern.

15 Section 11. State authority to develop plans and
16 regulations. (1) If a governing body has not exercised its
17 authority to initiate plans and regulations for an area
18 within one (1) year after its designation, then and only
19 then shall the commission direct the department to prepare
20 plans and regulations for the area. The plans shall be
21 adopted and the regulations adopted and enforced by the
22 governing body.

23 (2) The department may enter into contractual
24 relationships with other state and federal agencies and
25 private entities in carrying out the objectives of this act.

1 Section 12. Application for a permit to develop within
2 an area of state concern. (1) By July 1, 1976, the
3 department shall develop procedures for applying for a
4 permit to develop within an area of state concern.

5 (2) After the designation of an area of state concern
6 no person may initiate a development within the area without
7 first obtaining from the governing body a permit to develop.

8 (3) Prior to granting a development permit the
9 governing body shall transmit a copy of the application to
10 the department.

11 (4) Unless the applicant agrees to an extension of
12 time, the governing body shall deny, approve, or
13 conditionally approve an application for a development
14 permit within thirty (30) days after receiving the
15 application. The governing body may prescribe and include
16 in its development permit conditions or restrictions it
17 considers necessary to ensure that the proposed development
18 complies with the regulations for the area.

19 Section 13. Public hearings. (1) When a public
20 hearing is held in accordance with this act, the governing
21 body, department, or commission shall at least two (2) weeks
22 before the hearing publish notice thereof in a newspaper of
23 general circulation in the county or counties affected and,
24 where applicable, give notice to:

25 (a) the developer;

1 (b) the local planning board; and

2 (c) the residents and owners of any real property
3 within the boundaries of the proposed area of state concern.

4 (2) The notice shall:

5 (a) indicate the date, time, and place of the hearing;

6 (b) state the purpose of the hearing and, where
7 applicable, the general location of the proposed area of
8 state concern; and

9 (c) specify the public official from whom additional
10 information can be obtained.

11 (3) When a proposed area of state concern comes within
12 the jurisdiction of two (2) or more governing bodies, the
13 governing bodies shall, where practicable, hold a joint
14 hearing on the matter.

15 (4) A mechanical or written record shall be made of
16 any hearing held under this act.

17 (5) In conducting public hearings and giving notice,
18 the department and the commission shall comply with the
19 procedures described in this section in addition to those
20 specified by the Montana Administrative Procedure Act. ANY
21 HEARING HELD BY THE COMMISSION OR DEPARTMENT REGARDING AN
22 AREA NOMINATED OR DESIGNATED AS AN AREA OF STATE CONCERN
23 SHALL BE HELD AT A LOCATION SELECTED TO FACILITATE THE
24 ATTENDANCE OF LOCAL RESIDENTS WHO MAY BE MOST IMMEDIATELY
25 AFFECTED BY ACTIONS RESULTING FROM THE HEARING.

1 Section 14. Notice of activities -- public
2 dissemination. (1) A governing body shall notify the
3 department whenever it adopts interim controls or grants or
4 denies a development permit as provided in this act.

5 (2) The department shall make available a list of all
6 designations, development permits and terminations of
7 designations.

8 Section 15. Termination of designation of areas of
9 state concern. (1) Any person may petition the commission
10 for the termination of the designation of all or part of an
11 area of state concern. The petition must contain a
12 statement of the reasons the petitioner believes that the
13 area is no longer of state concern and appropriate data and
14 information to support the petitioner's claim.

15 (2) Upon accepting the petition, the commission shall
16 send a copy of the petition to the governing body or bodies
17 having jurisdiction over the area of state concern, the
18 department, the person who originally nominated the area for
19 designation, and any other person who requests a copy of the
20 petition. The commission shall hold a hearing on the
21 petition for termination not more than sixty (60) days after
22 receiving the petition.

23 (3) Within thirty (30) days after the public hearing,
24 the commission shall issue its decision granting or denying
25 the termination petition.

1 (4) If a petition for termination of the designation
2 of all or part of any area of state concern has been denied,
3 the area may not be reconsidered for termination for a
4 period of one year after denial.

5 Section 16. Conflict with existing statutes. (1) No
6 state or local agency may grant a permit for a development
7 inconsistent with the uses allowed within an area of state
8 concern.

9 (2) No development subject to regulation under the
10 Utility Siting Act, sections 70-801 through 70-823, shall be
11 considered a development for the purposes of this act.

12 (3) When an area of state concern lies within a
13 floodway, the land use regulations adopted under this act
14 may be no less restrictive than any ~~any~~ regulations adopted
15 pursuant to the Floodway Management Act, sections 89-3501
16 through 89-3515.

17 (4) Lands administered by the board of land
18 commissioners shall be exempt from the provisions of this
19 act.

20 (5) The regulation of a division of land under this
21 act shall not exempt it from the requirements of the
22 Subdivision and Platting Act, sections 11-3859 through
23 11-3876, and the rules adopted under it.

24 (6) The authority granted to governing bodies by this
25 act is independent of and unaffected by the provisions of

1 sections 11-2701 through 11-2710, sections 16-4101 through
2 16-4107, and sections 16-4701 through 16-4711. These
3 sections shall not be applicable within an area of state
4 concern after land use regulations have been adopted for the
5 area under this act.

6 (7) The authority granted to governing bodies by this
7 act to plan and develop regulations for areas of state
8 concern is in addition to the authority granted by sections
9 11-3601 through 11-3858 and is not subject to any
10 limitations or conditions contained in these sections.

11 Section 17. Protection of property rights.

12 (1) Nothing in this act authorizes any governmental agency
13 to adopt a rule or issue an order that constitutes a taking
14 of property in violation of the constitution of this state
15 or of the Constitution of the United States.

16 (2) No use of land or structures which was lawful when
17 the use was initiated or when a legally enforceable right to
18 carry on the use was acquired may be prohibited by any
19 designation, rule, or regulation promulgated or adopted
20 under this act.

21 Section 18. Severability. It is the intent of the
22 legislature that if part of this act is invalid, all valid
23 parts that are severable from the invalid part remain in
24 effect. If a part of this act is invalid in one or more of
25 its applications, the part remains in effect in all valid

1 applications that are severable from the invalid
2 applications.

3 Section 19. Saving clause. Nothing in this act shall
4 affect the validity of any judicial or administrative
5 proceeding pending or that could have been commenced before
6 the effective date of this act.

-End-