

MAP Legislative Wrap-Up
May 31, 2009

HB 52 (McNutt) - *Fund hydrogeologic study* - This bill arises from discussions of the past Interim Water Policy Committee (now a permanent interim committee) and provides for a groundwater investigation program to be developed and implemented by the Montana Bureau of Mines and Technology. A committee (for which the members of the Montana development community lobbied successfully to gain a seat) will be appointed to prioritize the sub-basins to be studied. Although not implicit in the legislation, I expect that someone will be reporting on the progress of this committee and this study to the Interim Water Policy Committee. MAP was not actively engaged in this bill but it should be noted that the development community has become much more actively engaged in state water policy, likely as a result of development impacts to water quality and quantity. This bill is effective July 1, 2009.

HB 129 (Getz) - *Revise floodplain map adoption laws* - Allows political subdivisions to adopt federal floodplain maps in compliance with the national flood control program. As originally introduced, this bill concerned floodplain administrators about the potential loss of state engineering assistance in the development of floodplain maps and compliance with Montana's more stringent floodplain laws. MAP assisted in amending the bill to address those concerns. Effective April 1, 2009.

HB 270 (Reinhart) - *Revise floodplain laws* - Prior to the passage of this bill, confusion existed because Montana statute and FEMA terminology had not been reconciled over time. In particular, where Montana continued to refer to designations as "Zone B", FEMA used a term called "shaded X." This legislation clarifies the definition of "floodplain" allowing for the newer "shaded X" term. The bill solved another floodplain administration problem by removing the requirement of building on fill, thus allowing the use of better building techniques to prevent flooding. The effective date of this legislation is October 1, 2009.

HB 279 (Reinhart) - *Revise transportation laws* - As originally conceived by the MAP board, this bill proposed to eliminate MDOT's indirect cost allocations (ICAP) against federally funded local transportation projects. MDOT objected, arguing those funds were crucial to the state's highway construction and maintenance program. A compromise was reached to eliminate the ICAP on only the Community Transportation and Enhancement Program (CTEP) projects. House Transportation Committee Chair Jon Sonju (R-Kalispell) pledged to use his position on the Revenue and Transportation Interim Committee to further study this issue during the interim. The bill is effective October 1, 2009.

HB 404 (Reinhart) - *Uniform standards for certificates of survey* - This bill reinforces the state Board of Professional Engineers and Professional Land Surveyors (BPEPLS) to develop uniform standards for certificates of survey and final subdivision plats through the administrative rule-making process.

Some members of the BPEPLS desire to remove land use designations from the face of plats entirely. MAP fought legislation (HB 183) that proposed those eliminations and HB 404 arose from the ashes. Expect to hear more about this issue during the interim as the BPEPLS begins its rule-making process. Effective October 1, 2009.

HB 486 (MacLaren) - *Generally revise land use and planning laws* - What began as a mostly consensus housekeeping bill ended as a heartbreaker as the essence of bad senate bills which had been killed or amended in the House were amended into this bill in the Senate Local Government Committee. Three separate conference committees were held to come to the compromise bill that emerged.

Some sections of this bill will require changes to subdivision regulations. Here are the major points of each of the sections:

Section 1 coordinates Unit Ownership Act (condominiums) with the MSPA.

Section 2 requires sand and gravel resource identification as a part of the mapping requirements for growth policies and it also requires a description of how development could impact sand and gravel resources. Proponents of this measure point to the language in the growth policy that allows broad discretion regarding the extent to which it addresses such requirements. This provision is effective upon adoption of a new growth policy or when a current growth policy is revised.

Section 3 reduces the time-frame from which a challenge can arise against a Part 1 zoning district from five years to six months.

Section 4 allows for the placement of either the county surveyor (current law) or the county clerk and recorder (to accommodate those counties that no longer have county surveyors) to serve on a planning and zoning commission in a Part 1 zoning district.

Section 5 allows for the dissolution of a Part 1 zoning district.

Sections 6 and 7 are housekeeping changes (language clean-up) to Part 2 zoning.

Section 8 revises the notice provisions for Part 2 zoning. In addition to publication, the new provisions require posting notices in five public places. The public places will include public buildings and places adjacent to public rights of ways.

Section 9 establishes notice and hearing requirements for county interim zoning.

Section 10 requires a county to seek voluntary zoning compliance 30 days prior to filing a zoning violation complaint.

Section 11 contains more clean-up language for Part 2 zoning.

Section 12 allows for the aggregation of lots without subdivision review.

Section 13 requires that a written decision on a subdivision application be provided to the applicant within 30 working days following the decision. This section is effective upon adoption or revision of subdivision regulations or May 2, 2010, whichever comes first.

Section 14 removes public hearing requirements for variances requested for minor subdivisions.

Section 15 allows a governing body to require certain public health related improvements to be completed before providing for bonding or other securities.

Section 16 requires that money paid by a subdivider for capital facilities be used for capital facilities.

Section 17 clarifies that the provision for identifying utility easements also includes identifying easements within and to the proposed subdivision.

Section 18 clarifies that a public hearing may not be held for a first minor subdivision from a tract of record

Section 19 contains corresponding language for the changes made in Section 15.

Section 20 contains corresponding language for the changes made to Section 13 requiring the written decision on an action taken on a subdivision application.

Section 21 prohibits, with some exceptions, parkland dedication for first minor subdivisions. The exceptions to this prohibition are for lots within municipalities, for subdivision plats that indicate anticipated condominium or other multi-family development or for subdivisions which are in zoning districts that allow for multi-family development. This provision is applicable at the time a local government revises its subdivision regulations or on December 31, 2010, whichever comes first.

Section 22 clarifies that an action taken against the governing body for a subdivision decision must occur within 30 days from the date of the written decision on the subdivision application. This section is effective upon adoption or revision of subdivision regulations or May 2, 2010, whichever comes first.

Section 23 repeals the section of law (76-3-210) that exempts certain subdivisions from the environmental assessment requirement.

Section 24 provides for an immediate effective date.

Section 25 identifies the various applicability dates of this act.

HB 546 (Pomnichowski) - *Prohibit covenants restricting certain political speech* - Homeowner's associations, property owner's associations and other private ownership entities are prohibited from restricting homeowners ability to erect political (supporting or opposing candidates or ballot issues) yard signs by the passage of this legislation. This bill becomes effective October 1, 2009.

HB 557 (Belcourt) - *Generally revise laws related to regional water systems* - This bill allows the Board of Environmental Review to adopt rules for the approval of regional water systems. It is effective October 1, 2009.

HB 563 (Kottel) - *Legalization of county roads* - This legislation establishes a new process for a district court to recognize a county road, under certain circumstances. It is effective October 1, 2009.

HB 630 (Sands) - *Revise laws relating to improvement districts* - This bill was introduced in an attempt to increase the marketability of bonds used to finance improvement district projects. It allows local governments to increase the reserves for the bond revolving funds and became effective April 24, 2009.

SB 9 (Erickson) - *Authorize funding of transportation system with revenue bonds* - This bill expands the uses of municipal revenue funds to include funding bus system, trolleys, passenger trains and light rail systems. It is effective July 1, 2009.

SB 22 (Murphy) - *Create Water Policy Committee* - There were a number of interim committee bills offered in the 2009 session but this is the only one that passed. The 2007 legislative session had authorized the interim (temporary) water policy committee and this bill now makes the Water Policy Committee a permanent committee. Development issues are very likely to be a topic to be further examined by this committee. This bill is effective July 1, 2009.

SB 48 (Essmann) - *Standardize statutes related to tax increment financing districts* - Effective immediately, this bill is a house-keeping measure, correcting terminology and providing for some consistency in terms.

SB 57 (Gillan) - *Revise laws governing special districts* - This legislation is one of two bills that arose from a special interim study from the previous session. Its primary purpose is to establish a consistent framework for the creation and administration of special districts. It is effective July 1, 2009.

SB 58 (Gillan) - *Revise local government laws* - This is the second piece of legislation to come from the above-described study committee. It allows local governments to contract with private institutions for the sale of bonds related to improvement districts.

SB 131 (Williams) - *Require DNRC to designate wildland-urban interface* - Effective immediately, the DNRC is required to identify and create and maintain maps identifying the wildland-urban interface. The bill actively engages county governments and local fire agencies and also provides for reporting before the "appropriate" legislative interim committee. It also prohibits the placement of any additional fees or costs based solely on the identification of the WUI.

SB 143 (Laible) - *Revise condominium fire protection costs* - This bill will increase the fire protection assessment fees for condominium owners. This bill became effective on May 1, 2009.

SB 164 (Barrett) - *Revise FWP land management and acquisition re: Good Neighbor Policy* - This legislation expands the state's "Good Neighbor" policy so as to include recreational land and water acquisitions and requires that a percentage of the acquisition price be budgeted for maintenance. It became effective on May 4, 2009.

SB 204 (Moss) - *Montana centennial farm and ranch program* - This new law creates the Montana Centennial Farm and Ranch Program designed to recognize Montana farms and ranches that have been held by the same families for 100 years or more. It provides for the adoption of rules (Montana Historical Society) to implement the new program. It is effective October 1, 2009.

SB 297 (Larsen) - *Map state gravel resources* - This legislation creates a "Sand and Gravel Deposit" program at the Bureau of Mines and technology. It allows the Bureau to accept gifts and grants for the purpose of investigating state sand and gravel deposits. It is anticipated that the gravel industry will be donating money to this fund, but it is not implicit in the legislation. The investigations will be geared towards areas in the state where development conflicts with sand and gravel operations occur. This bill was discussed frequently in conjunction with the growth policy sand and gravel mapping requirements that the legislature placed on local governments. It was noted that a local government may simply choose to incorporate any mapping that results from this project as a means to comply with the new growth policy requirements. The bill became effective on April 15, 2009.

SB 303 (Wanzenried) - *Update state water plan* - This legislation requires the state water plan to address water issues within the Clark Fork, Missouri and Yellowstone River basins. It also creates water user councils. It is effective July 1, 2009.

SB 305 (Tutvedt) - *Revise subdivision and platting act* - This legislation requires (as does HB 486) that any money collected for the purpose of capital facilities be used for capital facilities. It extends the review period for subdivisions with 50 or more lots to 80 working days and it provides a \$50 per lot per month fine against local governments that fail to comply with the statutory review time frame. It also provides for mutual extensions of the time-frames. It became effective on April 28, 2009.

SB 310 (Shockley) - *Restrict use of waiver of right to protest SIDs and RSIDs* - This bill requires that waivers (as a part of the subdivision review process) must identify the anticipated capital improvements and it limits the time-frame of the waivers to 20 years. It is effective on October 1, 2009.

SB 392 (Brueggeman) - *Revise sanitation in subdivision laws* - This bill allows DEQ the ability to examine parcels that have been submitted for review under the subdivision in sanitation act for the purpose of determining whether the parcel may be developed with water and wastewater systems. Effective July 1, 2009.

SB 457 (Branæ) - *Revise scenic byway laws* - This legislation creates a "Scenic-Historic Byways pilot project" within the MDOT and identifies 9 highways for inclusion. The bill is anticipated to create federal funding opportunities for the selected highways. It is effective July 1, 2009 and will terminate on July 1, 2019.