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Montana State Senate
Local Government Committee Members
P.O. Box 200500
Helena, MT 59620-0500

Re: Senate Bill 173 - Testimony at hearing on January 27, 2005

I come before you today wearing two hats. I am a third generation Montanan, having been born and raised in Missoula, and both my Father and my Grandfather served in the Legislature. I am an owner of property on the Clark Fork River east of Missoula. I am also a Professional Land Surveyor and Land Use Planner and have been in private practice in western Montana for just short of 40 years.

I sent you all a letter when I first became aware of the Legislation, thinking I would be unable to attend this hearing due to back surgery, but as it turned out I was able to attend, and I would like to verbalize the concerns I outlined in that letter.

Protecting Montana's valuable waterways is certainly something we should all strive to do, and in concept, the bill is fine. However, as written, it is plain and simple a "taking" of private property rights.

There are several flaws in the bill as written. First and foremost is treating all streams and rivers in the State the same. In some instances the proposed setbacks might make sense, whereas in others they are excessive, and in other instances may not be enough to achieve the stated goals of the bill. All streams and rivers are unique as are their banks and the corridors associated therewith. Applying the same blanket, arbitrary setback to all of them is totally illogical.

If you are really interested in protecting the resources along our streams and rivers, any setbacks that might be imposed by such legislation should be based on the site specific conditions and resources present at the point of the proposed action/development, not some one-size-fits-all restriction that has no relationship to the conditions on the ground.

Although I am concerned about the broad based impacts of this proposed legislation on private properties across Montana, and although I represent virtually dozens of parties that own property on streams and rivers that are concerned about the potential "taking" of their private property rights, being the owner of river frontage myself, I have a personal and very real concern about Senate Bill 173.

My wife and I own nearly a quarter of a mile of Clark Fork River frontage in East Missoula that includes approximately 10 acres. This property was purchased for construction of our own home, which was completed in 2000, with the balance to ultimately be developed. Specifically, this property is:

- in an urban setting,
- designated on the 1998 Missoula Urban Area Comprehensive Plan for residential development at densities of up to 6 dwelling units per acre,
- zoned for residential development at a density of 4 dwelling units per acre,
- served by public water and sewer,
- well elevated above the river,
- entirely outside the 100 year floodplain.

At it's deepest point this property is just over 400 feet deep, and averages about 250 feet of depth. If SB 173 were passed as written, virtually all of the development rights for this property would be taken away from us. Yet, this property was specifically studied as part of the County's comprehensive planning process, and as part of their zoning process, and was deemed to be suitable for residential development at the stated densities.

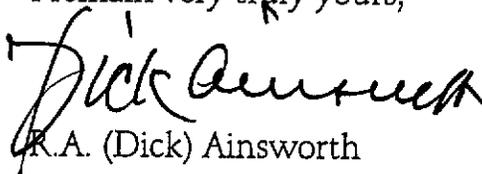
It makes no sense to place a blanket, arbitrary setback on this land that would take away our property rights, and the value of this land for the uses designated by the local governing bodies.

Sections 7 & 8 of the bill do provide for an opportunity for variances as a "nonconforming use" under certain circumstances that could apply to our property, but why should we need to obtain a variance to be permitted something that our property is already zoned for, and that we would have no assurance of getting..?

I STRONGLY OPPOSE SENATE BILL 173 FOR THE ABOVE STATED REASONS!!!

Thanking you, in advance, for your consideration,

I remain very truly yours,


R.A. (Dick) Ainsworth