

EXHIBIT 5
DATE 2-2-2011
HB _____



F.H. STOLTZE LAND & LUMBER COMPANY

Lumber Manufacturers

Box 1429 Columbia Falls, MT 59912
Phone (406) 892-7005 Fax (406) 892-1612
www.stoltzelumber.com

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Good for you. Good for our forests.

Member Company

House Transportation Committee
Chairman Gordon Vance
Montana House of Representatives
P.O. Box 200400
Helena, MT 59620-0400

RE: HB 290 "An Act Prohibiting the Restriction of Public Access On Certain Roads or Rights-Of-Way Used by the Public Unless Certain Requirements Are Met."

Chairman Vance and Members of the Committee,



Member Since 1966

Please accept the following comments in opposition of HB 290 on behalf of F.H. Stoltze Land & Lumber Company. Stoltze is the oldest family owned sawmill and timberland company in Montana. We own and sustainably manage 38,000 acres of forestland in northwestern Montana.

For over 100 years Stoltze has maintained an "open lands" policy that allows public access to our private timberlands for general recreational use as a "neighborly accommodation". This includes permissive use of our roads and trails by both motorized and non-motorized users. Many of our roads currently have gates that restrict highway vehicle access either year round or on a seasonal basis. The reason for these gates is to protect our investment in road infrastructure as well as to ensure our continued compliance with the clean water act and providing wildlife security. While we have restricted highway vehicle use, our road systems are generally open to ORV uses.

This use by the public is by permission and is a privilege, not a right. Stoltze feels it is important to allow the public to enjoy the multiple benefits of a sustainably managed forest. Likewise, it is important for the public to have firsthand exposure to forest management activities and the associated impacts and benefits. However, private landowners need to maintain the ability to manage their properties as they see fit, including management of private road systems including vehicular access.



Charter Member

HB 290 is a far reaching bill that not only reverses decades of right of way case law, but will undoubtedly further exacerbate the tension between public users and private landowners. We understand the frustrations when traditional access is lost, however, this

bill is not the answer. The existing prescriptive rights process works. Valid public access routes that meet the current prescriptive rights criteria are protected by the current legal process. Placing the burden upon the landowner to prove that the public does NOT have a right across their property is paramount to the ill-advised premise of "guilty until proven innocent".

The burden placed upon the counties in this bill will be onerous and likely require substantial investment of public dollars to implement. As currently proposed, the Commissioners will be required to hold multiple public meetings and likely involve county attorneys and other department personnel in the review of the case each and every time a private landowner wants to manage access on their property. Subsequently, if the route is determined to be "public" there would be a reasonable expectation on behalf of the landowner for the county to maintain the "public" right of way to support the public use. I doubt many counties are prepared or able to sustain additional public road maintenance duties.

In closing, there is a long standing history in Montana of private landowners allowing public use of private lands. This use is a privilege that has been earned by the public through their responsible actions conducted by permission on private land. We have a well-established and effective legal mechanism in place to determine when prescriptive rights for the public or other users exist and those rights can and will be protected. At the same time, private landowners need to maintain the ability to fully manage both the public and private use of their private lands. The impacts to our local government and communities of implementing this bill will be substantial.

If this bill were to pass, Stoltze would have to seriously reconsider our Open Lands policy and likely would no longer be able to allow public use of our lands. The burden that would be placed on us for having to prove that public rights do not exist would be too great. We urge you not to pass this bill. A more productive option is to continue to work with sportsman and private landowners alike to encourage responsible public use of private lands as a privilege earned by the actions of those users rather than dictated by overly prescriptive legislation.

Sincerely,



Paul R. McKenzie C.F.
Lands & Resource Manager