EXHIBIT #3
DATE 3/5/2013
SB 40

MONTANA ASSOCIATION OF PLANNERS
Legislative Committee
2013 Legislative Session

Summary comments regarding: SB 40, AN ACT GENERALLY REVISING PROVISIONS GOVERNING SUBDIVISION REVIEW; REVISING PROCEDURES FOR THE SUBMISSION OF SUBDIVISION APPLICATIONS; PROVIDING THAT INFORMATION PERTAINING TO MITIGATION BY THE SUBDIVIDER MAY NOT BE CONSIDERED NEW INFORMATION; AMENDING SECTIONS 76-3-604 AND 76-3-615, MCA

House Local Government Committee; March 5, 2013

Planners and developers alike are accustomed to the current system of a pre-application meeting, submission of an application, and review for required elements and sufficiency of information as discussed below. It is predictable statewide.

This bill is opposed by MAP for the following reasons:

1) The bill eliminates all of 76-3-615, MCA -- the provisions for subsequent public hearings when new information may be relevant and credible. The bill would not allow information pertaining to mitigation to be considered new information for purposes of a subsequent public hearing, full public disclosure, and the opportunity for public comment before the governing body makes a decision that may include new information on a project.. MAP is concerned that this is not in keeping with our state's commitment to open and public processes. It is also the experience of professional planners across the state that the subsequent public hearing is used sparingly by governing bodies when a real situation exists when new information may be critical to the decision making process.
2) The bill eliminates the ability of local governments to set deadlines for submitting subdivision applications. This bill would make it impossible for developers and local officials to rely on consistent schedules to complete subdivision reviews. Consultants often contact planning offices to determine the submittaland review schedule for their clients so they can coordinate survey, engineering, and document drafting work for a project. These schedules and project segments are built around the review and adoption schedule of a local government. If communities are not able to set schedules for subdivision review, developers will lose the consistency and predictability they desire to complete projects on time and within budget. Imagine being told that the only way to receive a schedule for a project would be to first submit the application!

Background on Current Review Process for Subdivisions:

- **Pre-Application Meeting.** This is required by state law (76-3-504(1)(q), MCA and is for the purpose of explaining the subdivision review process and relevant state laws and

local regulations that apply to that review and which might affect the design of the subdivision.

- **Application Submitted.** Current law does not specify how the subdivision application is submitted or received, but it does set some review parameters and time frames for Element Review and Sufficiency Review (see below). These were established by the legislature to set some consistent time frames state-wide.

- **Element Review.** Within 5 days of receiving the subdivision, the reviewing agent (typically the planning office or subdivision administrator) is required to determine if the application contains all the required elements of an application and to notify the subdivider of their findings.

- **Sufficiency Review.** Once the application is determined to contain all the required elements, it moves to the next phase of review – to determine if there is sufficient information for decision-making. Another deadline of 15 working days is set forth in state law for this review.

- **Application Determined Sufficient for Governing Body Review.** Once the application is determined sufficient, all major subdivisions move forward to the planning board.

- **Review by Planning Board and Public Hearing.** The planning board typically holds a public hearing on a major subdivision, then considers public comment and other information prior to making a recommendation to the governing body.

- **Governing Body Review.** The governing body is required by state law (76-3-608(5), MCA) to consult with the subdivider regarding their preferences for mitigation, if any, for the subdivision. There is no deadline in state law for when a subdivider can submit such preferences; consequently they have the option of presenting new mitigation measures right up until the time the governing body is ready to make their decision.

- **Need to Consider New Information and Subsequent Public Hearing**

  In order to ensure that there is adequate public review, 76-3-615, MCA requires the governing body to determine the need for a subsequent public hearing if new information is presented that is credible and relevant. This information might come from any source, not just from the subdivider and not just related to mitigation. However, it is possible that new mitigation measures could also be considered new and relevant information and trigger the subsequent public hearing. For example, a subdivider could propose a new

or alternative approach to the subdivision that might have unintended consequences and affect adjoining neighbors in new ways.

In fact, the need for a subsequent public hearing is generally infrequent. For example, in Yellowstone County there have been discussions at the Planning Board and governing body level regarding the option of conducting a subsequent public hearing, but one has never been conducted since this change in the law was enacted. The Planning Board and governing bodies appear to be very aware of the potential impacts a second hearing might have on an application and so take implementation of the option very seriously.

- **Governing Body Decision**. After considering the application, planning board recommendation, subdivider's preferences, and other information, including public comment and comment from a subsequent public hearing, the governing body make their decision.