

**ENVIRONMENTAL QUALITY COUNCIL
LAND USE/ENVIRONMENTAL TRENDS SUBCOMMITTEE**

Meeting Minutes

January 21, 2000

Draft: March 8, 2000

Approved: March 23, 2000

SUBCOMMITTEE MEMBERS PRESENT

Ms. Julia Page
Mr. Jerry Sorensen
Sen. Barry "Spook" Stang

SUBCOMMITTEE MEMBERS EXCUSED

None

STAFF MEMBERS PRESENT

Mr. Larry Mitchell
Ms. Mary Vandebosch
Ms. Judy Keintz, Secretary

Visitors' List
Agenda ([Attachment 3](#))

SUBCOMMITTEE ACTION

- ▶ Adopted minutes of the September 22, 1999 and December 2, 1999 Subcommittee meetings.

- ▶ Recommended that the proposal by the Department of Commerce for funding growth policies be presented to the full EQC and a request be made that a letter of support be sent to the Department.

- ▶ Set next meeting date for 8:00 a.m. on Thursday, March 23rd in Billings.

CALL TO ORDER AND ROLL CALL

MR. SORENSEN called the meeting to order at 1 :30 p.m. Roll call was noted; all members were present ([Attachment 2](#)).

ENVIRONMENTAL TRENDS

MR. MITCHELL presented copies of letters received from the Department of Environmental Quality (DEQ), the Department of Natural Resources and Conservation (DNRC), and the Natural Resource Information System (NRIS) -- **Exhibits 1, 2, and 3**. The agencies are reluctant to provide the information requested without more specific guidance from the Subcommittee. He added that NRIS may be able to provide database information. **Jim Stimson, NRIS**, explained to MR. MITCHELL that the problem with identifying trends using databases is that the information present at any one point in time would be current information that is updated continually. This would need to be routinely downloaded in order to illustrate trends, perhaps on a four-year basis.

CHAIRMAN SORENSEN suggested that the Land Use/Environmental Trends Subcommittee work with the Water Policy Subcommittee on this issue,

MS. VANDENBOSCH explained that the Water Policy Subcommittee is seeking information on whether or not Montana's water is getting cleaner, what is being monitored, and also, whether or not monitoring is adequate. This presents a problem and an opportunity. The problem is that a lot of additional monitoring is being implemented due to streams being taken off the Section 303(d) list. Monitoring is part of the total maximum daily load (TMDL) implementation. This could be an opportunity for the Subcommittee to inquire about the quality of the information in years ahead. Perhaps a system could be put in place for NRIS to receive consistent data. It would be beneficial to have a dialogue with the agency people who are involved.

Greg Tollefson, Missoula citizen, encouraged the Subcommittee to continue working on environmental trends. The EQC enabling legislation requires periodic reporting on the state of the environment based on selected environmental indicators. The first environmental trends project was done as a first step in a continuing process to create a useful tool. At the time of this project, the agencies expressed interest and cooperation.

MR. MITCHELL explained that the 1996 EQC report concentrated on the physical part of the environment. A comparative analysis was attempted between the 1975 report and the 1995 data that was being obtained.

MR. SORENSEN added that it was hoped that the agencies would replicate the process. He summarized that the Subcommittee should work with the Water Policy Subcommittee on requesting environmental trend information on water issues. Also, at the May meeting in Helena, the agency personnel could be invited to the Subcommittee meeting for a dialogue on measuring the environmental trends.

BUSINESS/NEXT STEPS

▶ **Adoption of Minutes**

Motion/Vote: SEN. STANG MOVED THAT THE MINUTES OF THE SEPTEMBER 22,1999 AND DECEMBER 2,1999 LAND USE/ENVIRONMENTAL TRENDS SUBCOMMITTEE MEETINGS BE APPROVED AS WRITTEN. THE MOTION CARRIED UNANIMOUSLY.

▶ **Next Meeting**

MR. SORENSEN requested that the Subcommittee meet on the morning of March 23rd at 8:00 a.m. The Subcommittee members agreed to the change.

GROWTH POLICIES AND RELATED ACTIVITIES

MS. VANDENBOSCH remarked that the Subcommittee had sent letters to the Montana Association of Counties (MACo), the Montana League of Cities and Towns, and the Montana Smart Growth Coalition, inviting a discussion about implementation of the EQC's growth legislation and also initiating a dialogue about the legislation that did not pass and the need for funding for growth policies. At the present time, they have not responded. She questioned whether a letter on the same subject matter should be sent to other groups including realtors, home builders, and other interested parties. The Subcommittee requested that letters go out to the groups.

Gavin Anderson, Department of Commerce, explained that the Department of Commerce is considering requesting an amendment in the Governor's budget that would address funding growth policies in the state. The funds involved would include the coal severance tax that comes through the county land planning funds. This biennium \$198,000 per year has been allocated. Yellowstone County receives \$5,800 and this goes down to the smaller counties receiving approximately \$3,100. Last biennium approximately \$267,000 went to the General Fund. The excess money, plus the \$198,000 presently allocated, could be turned into a grant program for growth policies. With an amount of approximately \$400,000, there would be substantial funds for planning.

This has been discussed with the MACo Land Use Committee and they appeared to be supportive. The statute would need to be changed and the grant money may need to be available to municipalities as well as counties. It would help to receive a letter of support from the EQC. The Community Development Block Grant Program has set aside approximately \$200,000 for technical assistance grants. Growth policies would fall under this category. The grants are awarded a \$10,000 limit with a 50% match. They are expecting 80 applications for planning in the next few weeks.

Motion/Vote: SEN. STANG MOVED THAT THE PROPOSAL FOR FUNDING GROWTH POLICIES BE PRESENTED TO THE FULL ENVIRONMENTAL QUALITY COUNCIL AND A RECOMMENDATION BE MADE THAT A LETTER BE PROVIDED TO THE DEPARTMENT OF COMMERCE IN SUPPORT OF THE PROPOSAL. THE MOTION CARRIED UNANIMOUSLY.

MS. VANDENBOSCH reported that the Legislative Audit Division is conducting a performance audit of the subdivision regulation process. They are looking at the Sanitation in Subdivisions Act, the Subdivision and Platting Act, and Title 50. It should be completed in May. They will be visiting 15 counties. She added that they would be willing to make a presentation to the Subcommittee.

MR. SORENSEN requested that the Legislative Audit Division staff be invited to make a presentation to a future Subcommittee meeting when the process is completed. MS. VANDENBOSCH noted an article about minor subdivisions in Flathead County, [Exhibit 4](#).

MS. VANDENBOSCH further reported that the Sonoran Institute and the National Association of Counties have a program focusing on small, sparsely populated counties that have recently experienced rapid population growth. Their primary concern is preservation of agricultural lands. They train leaders and provide technical assistance. Currently there are seven counties participating in the western region. Two Montana counties are participating and include Jefferson County and Stillwater County. Four or five people from Jefferson County went to a training workshop in Utah. Sonoran Institute representatives will be in Jefferson County in March to train community leaders. She further reported that the training helped Jefferson County to become enthused about launching development of a growth policy. Currently there is a second round of applications for this project and there will be a third round in June. The goal is to strengthen the capacity of county officials in rural counties to manage growth in their communities through innovative approaches to community land use. They encourage the inclusion of municipal officials and representatives of organizations that are interested in growth-related issues.

MS. PAGE remarked that the Sonoran Institute presented a successful communities forum several years ago. This was helpful when they decided to go ahead with their community plan. She suggested that eligible counties should be notified if the Subcommittee had a presentation on the issue.

MS. VANDENBOSCH provided a copy of a summary of the American Planning Association (APA) "Growing Smart" Montana Project, [Exhibit 5](#). She added that **Dennis Glick, Montana Smart Growth Coalition**, emphasized that the study is only one aspect of the Coalition's plans. They plan to work on improving capacity at the local level. The goal of the APA study is to evaluate Montana laws, policies, and court decisions relating to planning and land development

in order to assess the need for language changes in the Montana codes. They have set out four tasks: 1) A survey and evaluation of state statutes affecting planning and land development and judicial review of local land-use decisions by the Montana Supreme Court. 2) Facilitated focus group interviews and public opinion surveys. 3) Prepare a report which summarizes the results of Tasks 1 and 2 and recommends changes. 4) Preparation of a draft study bill for potential introduction into the state legislature.

Ms. Vandebosch reported that she asked how the Land Use/Environmental Trends Subcommittee could have input into the scope of the APA study. Mr. Glick asked what the Subcommittee is working on that may be of use to the Montana Smart Growth Coalition and also what the Coalition can do to help with the Subcommittee's work plan. She suggested that the Coalition review the letter from the Subcommittee to the Coalition about funding for growth policies as a starting point. A draft of the APA study report will be available in June.

MR. SORENSEN suggested that representatives from the APA and/or the Montana Smart Growth Coalition be invited to a future Subcommittee meeting. If they plan to come up with draft legislation, it would be beneficial to have this run through the EQC for a screening.

MS. VANDENBOSCH provided a document showing the status of local growth policies, [Exhibit 6](#), She remarked that she conducted a survey of planners at the Montana Association of Planners meeting and this table reflects the results of that survey. She has not contacted every governing body in the state. The City of Great Falls has adopted a plan under the new law for the jurisdiction of the city/county planning board. Sanders County has also adopted a growth policy. Jefferson County will be starting a plan.

The Department of Commerce is continuing their "Planning Montana" public television series. On a recent show, there were favorable comments on SB 97. It provided a good blueprint for Big Horn County. The next show is February 7th at 8:00 p.m.

Mr. Anderson added that the February 7th show will address implementing a growth policy. Future shows address open space and neighborhood planning. Big Horn County is probably the only county in the United States that has two national parks. They also have the Crow Tribe and the Northern Cheyenne Tribe. The Crow Tribe and the Northern Cheyenne Tribe have been having discussions with the county and as a result they will be adopting the same growth policy and regulations to implement a growth policy.

RESIDENTIAL DEVELOPMENT IN RIPARIAN AREAS

MS. VANDENBOSCH further reported that the Madison County Planning Board and the Greater Yellowstone Coalition have sued the Madison County Commission. The county has a requirement for a 150 foot set back from the Ruby River. A subdivider wanted a variance and

the Planning Board recommended against the variance but the Commission granted the same. The Commission said there are five guiding principles in their county comprehensive plan. One is about protecting the riparian areas and another is about protecting private property rights. The lawsuit states that the Commissioners did not follow the plan. Additional handout, "Local Tools -- Residential Development in Riparian Areas", [Exhibit 7](#). The DNRC has grant funds for workshops related to riparian management and monitoring. This must be sponsored by a conservation district.

MR. SORENSEN requested information regarding counties that have a setback provision to include the rationale for establishing the same, public comments that have been submitted on the matter, and how effectively it is being applied.

MS. PAGE remarked that it was her understanding that Park County had rejected a setback and was using performance standards. She questioned whether performance standards were another means of protecting riparian areas.

LOCAL GOVERNMENT PANEL: LAND USE PLANNING AND IMPLEMENTATION

► City of Missoula - Missoula County

Barbara Evans, Missoula County Commissioner, remarked that they have spent over five years on their comprehensive plan update. They are considering neighborhood plans for Lolo, Frenchtown, and Seeley Lake. If it is necessary that these plans be completed before a county plan was completed, everything else would suffer. Money is a problem. When looking at recommendations, she requested that the test of violating personal property rights be used. Missoula passed land sensitive zoning in the Miller Creek area when they knew a large holding was planned for development. This allowed the people to use their land but still protected the areas that needed protection. The riparian regulations have been instituted. No one has asked for a variance. She added that the no growth attitude is very real.

Michael Kennedy, Chair, Missoula County Board of Commissioners, stated that everyone deserves a good quality of life. Missoula has been substantially engaged in the growth management process for the last six years. He remarked that in a recent newspaper article Flathead County was reported to have 262 minor subdivisions and 10 major subdivisions in this past year. Missoula County had approximately 70 minor subdivisions and 12 major subdivisions during the same time frame.

With respect to SB 97, the two year time period [to adopt zoning regulations based on a comprehensive plan adopted before October 1, 1999] is too short. Their urban comprehensive plan incorporated the overall values they came to consensus on in the growth management process. This plan took six years to develop and the regulations to support it are still not

adopted. Good planning results from a need, political will, and leadership. It involves enormous public involvement, money and time.

MR. SORENSEN remarked that it wasn't the legislative intent that all the criteria for the growth policy needed to met within two years. It was also the intent that anything in place would be grandfathered. As Missoula County amends its plan using a regional or neighborhood plan, amendments can be made in conformance with the growth policy. The mandatory trigger involves no zoning after two years unless the growth policy needs are met.

Cindy Klette, Missoula Office of Planning and Grants, stated that they had previously understood that they needed to have a countywide growth policy in place before the county could amend or apply any zoning after October of 2001. If they were to complete a Lolo plan and have it comply with SB 97 and then move on to Seeley and have it comply with SB 97, they could then apply zoning in both regions even though a full countywide policy would not be in place.

MR. SORENSEN believed that would be a reasonable way to proceed.

Mr. Kennedy explained that this is what they argued in the House Natural Resources Committee and it was not included in the bill. He understood that the countywide plan needed to be adopted before any zoning was allowed.

MR. SORENSEN maintained that since Missoula County had a plan, it could work off the grandfathered plan and update pieces of the plan to conform to the growth policy and then apply zoning in respect to the growth policy. After two years, zoning could not be applied on the county plan that was grandfathered, Area plans could be completed as a part of the adopted plan. In the areas where the area plan was updated and the original plan was amended to include the same, zoning could be applied.

MS. VANDENBOSCH remarked that if the neighborhood plan was consistent with the comprehensive plan that covered the entire jurisdictional area, there should not be a problem with amending a plan to include a neighborhood plan. She suggested talking to legal staff about this concern.

Mike Kadas, Mayor of Missoula, stated that changing subdivision and zoning so that they are in line with a plan that has been adopted is as hard as changing the plan. The City of Missoula is struggling with zoning. Missoula County is struggling with zoning and subdivision. This takes longer than two years and may take up to ten years. This is the third time they have tried to update zoning in the last ten years. The cities and counties do not have the resources to pay for the planning process. Since the state has a \$30 million surplus, funding for planning should be appropriated from the General Fund.

People are seeing large subdivisions in rural areas affecting stream courses. The questions that the Subcommittee provided to panel participants involve a rural focus. From a regulatory perspective, the solution will be a regulatory response to this rural problem. From a larger perspective, it is important to recognize that the solution is much more than regulatory and involves market forces. The solution involves cities and towns. We should be looking at ways to make it easier for people to build in cities and towns. Given the political climate in Montana, strict land use regulations will not be passed. If the regulations did pass, few county commissions would enforce the regulations in the way they were envisioned to be enforced.

Annexation regulations are too hard. We build around the edge of the city, totally under the jurisdiction of the county. Idaho has a system where the county commission has the authority to award the land planning jurisdiction to the city, within a mile of city limits. Eleven years ago the population of the City of Missoula was approximately 35,000. Currently the population of the City of Missoula is 58,000. The city has spent millions of dollars putting in sewer, rebuilding streets, putting in sidewalks, etc. People like to live next to cities. They need to start paying for that privilege by paying city taxes. They also need to vote for city leadership.

Every project proposal goes to the planning board and then it goes to the city council. Proposals should not go through both entities. Cities need the ability to designate the planning board as the final authority on development projects. The cities should be responsible for ordinances. The city would set the guidelines but the specific interpretation and approval would happen by staff or by staff and a planning board.

Mr. Kennedy remarked that there are between 75-100 jobs per 100 people in Missoula County. This means that people live in Ravalli County and drive to Missoula County to work. Growth needs to be addressed on a regional basis. Support from the EQC and the Legislature could provide an annexation policy that would result in good planning at the least cost to everyone concerned. When there is a lot of contention, the costs increase.

Ms. Evans maintained that many people choose to live outside the city. The storm drainage system was first built by the county and the city is now hoping to attach to it. It is not accurate to assume that the county cannot plan properly. Annexation would allow people to connect to the sewer and pay a fee without being required to be on the sewer system. This would protect the water. An important help for the counties would be the repeal of the Dillon Rule so that counties are allowed to do anything that the Legislature does not specifically prohibit. This would allow counties to be more responsive.

Mr. Kennedy related that the State of Washington has adopted the county services act which is a fallback for providing infrastructure in urbanized areas where the cities that have jurisdictions fail to do so.

► **Ravalli County**

Jack Atthowe, Chair of the Ravalli County Board of Commissioners, related that Ravalli County is the fastest growing county in the state. A comprehensive plan was developed in 1994, but it was held back due to opposition. Last year a more generalized plan was developed and this was voted down. The planning process is now starting all over. They have retained legal counsel. One of the things that was discovered is that the planning board was not officially created. It was necessary to disband the planning board and create a new one. In December a resolution was passed recreating the planning board. A hearing was held this week and following a 60-day time line, a new planning board will then be on board. At the same time, three planners have been lost. Currently Ravalli County has no planning board, no planning staff, and two large subdivisions are being planned in the county. A moratorium on planning and subdivisions is not allowed. The three commission members need to handle all the subdivision matters and address planning. He requested that there be something in the law that allows for emergency situations such as the one Ravalli County is currently facing. The emergency zoning statutes state that a comprehensive plan needs to be in process. In order to have a plan in process, it is necessary to have a planning board.

Mr. Anderson stated that a county would not invoke an interim zoning ordinance on a countywide basis. This is too difficult to defend. It could be implemented in the extremely sensitive areas. Interim zoning cannot be implemented unless there is a showing that a plan is being created. This allows for a one year extension. Once the planning board is created, the intent would be established. In the past, several jurisdictions have contemplated moratoriums on subdivisions but none have been adopted.

Mr. Atthowe questioned whether their subdivision regulations could be amended to allow for simultaneous work with water quality and quantity analysis through their sanitation office. **Mr. Anderson** replied that the Subdivision and Platting Act requires that minimum standards for water, sewer, and solid waste disposal be adopted in the subdivision regulations. One of the criteria reviewed is public health and safety. In the past, review of these standards has been delegated to the DEQ.

Mr. Atthowe asked how the recent Montana Supreme Court decision on the right to a clean and healthful environment related to the six criteria for review of subdivisions. **MR. SORENSEN** stated that the decision has put everyone on notice that projects need to be reviewed more carefully.

Alan Thompson, Ravalli County Commissioner, remarked that the 198 1 plan was eliminated because it was vague and had no basis in law. It was to be updated every five years and no one had even looked at it. When they started to work on a new plan, they found out that the planning board did not exist. Their planning staff has left for higher paying jobs. It will take a few years to develop a comprehensive growth policy. At this time they have no way to assess the cumulative

effects of various subdivisions. Ravalli County's growth is unique in that a large number of people live in Ravalli County and work in Missoula. The water originates in Ravalli County and then goes on to Missoula County. A new subdivision is being planned that includes eight phases of 337 units. This will add 500 new children to a Stevensville school district that is already overcrowded. The first phase involved 32 units and 7 townhouses on 23 acres. They want to use a septic system. They need some way to show the cumulative impacts. Funding for growth policies is essential.

Kirk Thompson, Former Chair - Ravalli County Planning Board, related that Ravalli County's emergency problems are entirely of their own making and Ravalli County needs to find a way to solve the problems. Funding is always a problem. Ravalli County currently funds the Planning Board and staff at a rate of 70% of the amount that goes to the Fair Board to run the county fair. This shows the relative importance of planning in Ravalli County. State law should not cover matters best left to the local process. This would involve looking at impacts on schools or school impact fees. It is reasonable for the state to determine that a factory cannot be built next to a river if that factory might pollute the river. A loophole in the law is that a landowner can build anything on the property if it is a rental but needs to go through the subdivision process if the property is to be sold as a condominium. Physically, the impacts are identical. One only requires sanitary review while the other requires full subdivision review. This is a grave inconsistency in the law. The fight at the local level involves property rights. Most people want property rights for themselves and they also want the government to deny their neighbor's property rights.

Ravalli County has an excellent base of income in that the county continues to thrive and grow. This base is transfer payments. Growth in the county is driven by three factors and the county has no control over any of those factors. The factors include: 1) a relatively mild climate; 2) the Bitterroot National Forest and the Bitterroot Mountains; and 3) Missoula.

Tim Hall, Missoula Office of Planning and Grants, stated that if a growth policy designated certain densities to protect sensitive resources and a subdivider met all the criteria but the density recommendation was exceeded, the subdivider could still proceed if they have mitigated the six criteria. Density does not stop a project. The growth policy is the first step but the implementation through a zoning regulation will clearly state the specifics.

Mr. Kirk Thompson remarked that a growth policy plan that does not specifically address density is not a worthwhile growth policy plan.

Mr. Kadas added that this ought to be addressed in cities. Cities already have zoning but this is difficult to change. It is so difficult to build in cities that it becomes more economically viable to spread development in the county. Senate Bill 96 is a small step in addressing this concern. When his staff is preparing a zoning analysis they need to review the 12 criteria which have

been outlined by a judge. It would make sense for the Legislature to review the 12 criteria. It is important that it become more difficult to build and subdivide in the county and easier to do so in the city. Unfortunately, the political view is the opposite.

Ms. Klette stated that, in regard to the review of subdivisions for lease or rent, their county attorney has held that these subdivisions can be reviewed as any other subdivision because they do have the same impact on the land.

Mr. Kadas remarked that earlier in the meeting a discussion was held regarding the ability to adopt neighborhood plans and enforce the same. Section 14 of SB 97 states that a board of county commissioners that has adopted a growth policy for the entire jurisdiction, is authorized to adopt zoning regulations for all parts of the jurisdiction in accordance with the provisions. Unless a growth policy has been adopted for the entire jurisdiction, zoning cannot take place.

SEN. STANG remarked that when the legislation was being amended, the concern was that it should not be easy to develop part of a plan instead of a complete plan.

MS. VANDENBOSCH explained that SB 97 grandfathered the existing plan adopted before October 1, 1999. It did not clearly address the question of amending the plan. If the plan amendment can be considered as part of the original plan, zoning regulations could be adopted under the old plan if it met the criteria. The saving clause in the bill means that the plan that was previously adopted can be used as it was used before. The debate is when the old plan is amended by adopting a neighborhood plan, does this become a new plan which needs to be in compliance with SB 97 or does amending the plan result in tweaking the old plan?

MR. SORENSEN clarified that the issue raised was not about adopting neighborhood plans: The concern was about the sunset date for adopting zoning regulations based on a comprehensive plan that does not comply with SB 97.

Ms. Klette remarked that her understanding is that it meant that new zoning could be enacted only in the area where there was an amendment to the plan that would be in compliance with SB 97. It now appears that the county could not enact zoning for only the part of the county that has a neighborhood plan.

MR. SORENSEN stated that they will need to have this issue reviewed by legal staff.

► **Lake County**

David DeGrandpre, Lake County Senior Planner, stated that planning is progressing in Lake County. Zoning districts were instituted in Lake County and are up for review every five years. This is largely a citizen driven process. They are also looking at a few new zoning districts in the county. The subdivision regulations are being updated to include water quality and noxious

weeds. They are currently working on a growth policy. They have a draft of current conditions and trends in Lake County. This document is currently out for public comment. They anticipate that the Confederated Salish and Kootenai Tribes will be a major player in the process. The vast majority of the county overlaps with the Flathead Indian Reservation.

Lake County is the third fastest growing county in the state. The project will be very expensive. They have received the Community Development Block Grant, but this was only a small amount. They do not have the funding to keep the growth policy progressing at a steady rate. There are three planners in Lake County but a lot of the time is spend on zoning and subdivision reviews and daily phone calls. SB 97 has given considerable guidance in setting out a growth policy. It provides components that ought to be in any plan and leaves the decision up to the local jurisdiction in terms of how far the components should be taken in terms of forming the policy. City and towns should be given some encouragement to work with counties. Smart growth is all about moving people into areas where services can be provided.

[Mr. DeGrandpre presented a written copy of his testimony, [Exhibit 8](#).]

INSTRUCTIONS TO STAFF

MR. SORENSEN requested legal review of the provisions of SB 97 which were brought forward by the representatives from Missoula City/County.

MR. MITCHELL noted that instructions to staff would include:

1. In regard to indicators/trends, staff will work with the Water Policy Subcommittee on their request for water quality indicators. Perhaps the agencies could be available for a discussion for the May meeting.
2. In May or later, the Legislative Audit Division staff will be requested to provide a report on their study of the subdivision statutes.
3. Set up a report from the Jefferson County or Stillwater County individuals working with the Sonoran Institute.
4. Request a presentation from the APA/Montana Smart Growth Coalition.
5. Obtain information requested (see "Residential Development in Riparian Areas") regarding local setback requirements in riparian areas.

ADJOURNMENT

There being no further business, the meeting adjourned at 5:00 p.m.