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SUBDIVISION IN THE FLATHEAD

by

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Land Use Analysis

For

The Montana Environmental Quality Council

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Chapter 1

INTRODUCTION

HISTORY OF FLATHEAD AREA DEVELOPMENT

Indians have lived in the Flathead for thousands of years and still own and utilize much of the lower Flathead on the Kootenai and Salish Reservation. Europeans came first in the early 1800's in their search for furs, but settlers did not arrive until the 1850's. With the Homestead Act of 1862, settlers began filing ownership claims on the most desirable land, mostly in the lower valleys where warmer climate and level, productive land was available. Between 1855 and 1871 treaties were arranged with the Indians to establish their reservation on its present day location. The decade of the 1880's brought a large influx of people to the Flathead, promoted by a dramatic increase in transportation. In 1883 the Northern Pacific Railroad, aided by the largest land grant in American history (over forty million acres in alternate sections for twenty miles on both sides of the right-of-way) began bringing settlers in from the south to the Jocko valley.¹ At the same time the large mining companies began acquiring large tracts of timberland to support their large timber requirements. These actions created the

¹State Engineers Office, Water Resources Survey of Flathead and Lincoln Counties, Helena, June 1965, p. 11.

first large non-federal ownership patterns that are still evident today. Pioneers taking advantage of the Homestead Act and General Allotment Act of 1880 came rapidly to the area and in 1884 boats began regular navigation of the Flathead Lake and River. From 1885 on rapid settlement of the lower valleys further established the ownership pattern. By 1889 Montana was admitted to the Union, and by 1890 the Great Northern Railroad had pushed its tracks through Marias Pass to the upper Flathead valley and the new townsite of Kalispell. This transportation corridor was completed in 1893 to Seattle. Roads became more numerous as more people came to the valley. Flathead County was created out of Missoula County in 1893.² The federal government moved to complete the ownership pattern in 1897 by establishing the Flathead Forest Reserve. This became the Blackfeet and Flathead National Forest in 1907. Part of this reserve became Glacier National Park in 1910.³ The Flathead Indian Reservation was thrown open to white settlement under the General Allotment Act after Indian families were given the chance to choose homestead sites. These allotments enabled the white settlers to dominate the ownership of much of the most productive lowlands in the lower Flathead valley. The

²Edgar Trippet, Historical Information Concerning the Upper Flathead Valley (Trippet Publishing, 1971), p. 18.

³Charles Shaw, The Flathead Story (U.S.F.S.:1967), p. 42.

federal government created the first subdivisions at this time by dividing some areas of the Flathead Lake Reservation shoreline into "villas" to sell to white people to generate money for the Indians.⁴

By the 1920's the ownership and use patterns had become established. Agriculture was the foundation of the economy, and the wood products industry developed as the demand grew. Much land in the valley had been cleared in the early 1900's and federal timber began to be used. Also in these early years, man-generated fires incised patterns in the timbered hills, increasing the natural fire impact considerably. In 1931 the Kerr Dam hydroelectric project began generating electricity in the lower Flathead, following the trend of the Pacific Northwest region in obtaining virtually all of its electrical power in this way.⁵ The huge Hungry Horse dam was completed in 1953, bringing President Harry S. Truman to the Flathead to dedicate it. Within two years the Anaconda Aluminum Company had built a large smelting plant just five miles downriver at Columbia Falls. The aluminum reducing process is the most consumptive of all industries of electricity and depends on a large cheap supply for its success.

⁴J.E. McAlear, The Fabulous Flathead (Reservation Pioneers, 1962), p. 23.

⁵Edgar Trippet, op. cit., p. 26.

This importance is indicated by comparing the power source to the ore source, which is in Caribbean Jamaica.⁶

As the prosperity of the post-war United States increased and transportation improved, recreation and tourism began to play an increasing role in people's lives and the Flathead's economy. Service facilities were needed to satisfy the larger demands of more people coming to the area to experience the natural wonders of the northern Rockies. Forest Service, National Park, and Fish and Game agencies began adapting their management policies to the increased demand, and new business opportunities were created to accommodate the large tourist population flow.⁷ As transportation and surplus income availability further improved, many people became interested in owning land in this scenic country for retirement, second home or speculative purposes and a new "settler" influx has commenced. Since 1968 the new land rush has instigated new land-use and ownership pattern changes that are the focus of this study.

PHYSICAL ENVIRONMENT

The bedrock of the Flathead drainage and forming the northern Rockies is of Pre-Cambrian sedimentary origin,

⁶Norman Larson, An Economic Analysis of Anaconda Aluminum Plant, Dept. I.G.R. (Research and Information System Division), Helena, 1974, p. 31.

⁷Wild and Scenic River Study Draft Proposal (Flathead National Forest).

containing argillites, quartzites and limestones and referred to as the Laramide Belt Series. Paleozoic formations in some upper drainages form cliffs and ridges due to their erosional resistance. The large fault system of the Rocky Mountain trench falls along the axis of the valley and forms the Mission and Swan Range faces. The valleys have been glaciated during the Ice ages, most recently during the Wisconsin age which ended 12,000 years ago. The valleys have been filled by glacial deposits of different ages and may be as deep as 4,000 feet in the main Flathead Valley. The last valley glacier deposited the moraines containing the present Flathead Lake and the till and alluvium that forms much of the present day valley soil. The pothole lakes region of kettle and kame topography around Echo Lake in the eastern upper Flathead Valley was formed as the glacier receded and left isolated ice blocks that melted to form the potholes.⁸

The landforms of the valley bottoms include the nearly level alluvial river bottom and floodplain, the lacustrine formed bottoms and the rolling glacial low terraces and benches. The east valley terrace is elevated some eighty to one hundred fifty feet above the Flathead River, and the central valley terrace is a lower formation north of Kalispell.

⁸R.L. Konizeski, Alex Brietkrietz, and R.G. McMurtrey, Geology and Groundwater Resources of the Kalispell Valley, Northwestern Montana (Bulletin 68, U.S.G.S., July 1968), pp. 14-20.

In addition there are low, ice-scoured hills southwest of Whitefish Lake, and glaciated terrain to the south of those hills. This encompasses the fifteen by twenty-five mile main Flathead Valley, the Stillwater Valley and the Northfork Valley. Ninety percent of the area's farmland is here within six hundred vertical feet of the lake. The glaciated valleys, foothills and uplands are found at higher elevations. These lands are forested or cutover and include much of the large private ownership holdings. The low rolling Salish mountains to the west, the Whitefish range to the north, and the high, steep mountains of the continental divide to the east form the boundaries of the drainage basin and receive most of the precipitation in the watershed.⁹

The soils of the Flathead area are altitudinally stratified. The Brown Podzolics can be found in the higher forest zones, the gray wooded soils in the low forests and the chernozem, chestnut and azonal alluvial soil groups in the lower valleys. The soils of the Flathead Valley have been mapped and the survey indicates that 135,868 acres of upper valley land fall in the category of Class I-IV agriculturally productive soils.¹⁰

The climate of the Flathead is influenced primarily by

⁹Ibid., p. 23.

¹⁰Soil Survey, Upper Flathead Valley Area, Montana (U.S.D.A., S.C.S., and Montana Agr. Exp. Station, September 1960), p. 12.

Pacific maritime systems modified by drying effects of the mountain ranges to the west. Generally there is most precipitation in winter and spring with warm dry summers and cold, cloudy winters. In winter some polar continental air masses from the northeast spill over the Rockies and bring cold temperatures and wind through Bad Rock Canyon. Precipitation is year-round and is heaviest in December, January, and June. Yearly average precipitation ranges from one hundred twenty inches in the high North Fork mountains to fifteen inches in the low valley. The driest months are July and August.¹¹ The growing season varies from 150 days in Kalispell, 130 days in Polson, 100 days in Columbia Falls and 90 to 30 days in the mountains. Flathead lake moderates temperatures in all seasons and enables fruit orchards to thrive on its shores.¹²

A major contributor to the intrinsic wealth of the Flathead is its water resources. The heavy mountain snow-pack and spring rains nourish the forests and bring water to the streams and upper rivers and recharge the groundwater storage of the mountains. The large valley rivers provide wildlife and fisheries habitat, valley groundwater recharge, hydro-power for the region, navigable water for recreation (and

¹¹ Water Resources Survey, op. cit., p. 13.

¹² Soil Survey, op. cit., p. 18.

transportation in the past), irrigation water that is so advantageous to agricultural prosperity, and recharge for the many lakes in the region. The primary rivers by volume feeding the water system are the North, Middle, and South Forks of the Flathead from the north and east, the Swan River from the southeast and the Stillwater from the broad valley of the northwest. The South Fork, Swan and Lower Flathead River are dammed for hydroelectric power and provide 460 megawatts.

The groundwater storage in the valley is recharged primarily in the spring from April to July as the aquifers receive the runoff from the mountains, especially from the east. The pothole lakes of the kettle and kame glaciated region north of Bigfork have no inlets or outlets but are recharged from subsurface springs and irrigation waters which are fed from aquifers in the outwash under creeks from the Swan range. The water levels rise in the fall as the spring runoff finally percolates down to the valley floor. In recent years the water levels appear to be rising, perhaps due to increased runoff from clearcutting the watersheds above. As these lakes have no circulation they are susceptible to pollution and eutrophication.¹³

There are three main aquifers in the Pleistocene fill

¹³ Konizeski et. al., op. cit., p. 40.

of the Flathead Valley. A deep artesian aquifer of sand and gravel is found more than one hundred feet below the surface and is the largest and most dependable supply. Wells tapping this source range from 110 feet to 400 feet and average 175 feet. It is recharged from the base of the Swan range. Shallower "perched" aquifers occur discontinuously under the east valley terrace in lacustrine and outwash sand and produce hard water at six to ninety feet, with recharge from rain and local streams. Recent floodplain aquifers in gravel outwash some twenty-eight feet thick occur just north of Kalispell and have a volume of 170,000 acre feet. The gravel is very permeable and is susceptible to contamination. It is recharged from the Whitefish and Flathead Rivers and provides the water supply for Kalispell, Evergreen, Anaconda Aluminum and most large wells in the valley. Below Kalispell the aquifer turns to sand, with poor permeability and water yield. This aquifer is correlated with the Flathead River and Lake as the water levels correspond throughout the year.¹⁴

Vegetation in the Flathead ranges from the Cottonwood-Ponderosa riparian forests along the rivers to the alpine tundra of the high mountains. The lower and driest valleys were originally bunchgrass grasslands, now modified by grazing, agriculture and invaders. Much of the upper valley was

¹⁴ Ibid., pp. 43-52.

originally forested with Ponderosa pine but extensive clearing in the early 1900's opened large tracts to agriculture. Foothill and mountain forests are dominated by Douglas fir at the lower and middle zones with Lodgepole pine evident as a successional stage in fire and logging-disturbed areas. Western larch is also a major seral species on damp and north facing sites. Higher elevation forests are mixed Englemann spruce-Subalpine fir which grow to the timberline. Understories vary with available moisture and slope aspect from Pinegrass and Beargrass on the driest sites, Snowberry and Huckleberry on more mesic sites and Ninebark on wet sites.¹⁵

POPULATION

Population figures for Flathead and Lake Counties indicate that the Flathead area has a low population density at present but is growing rapidly, especially in the last ten years. Census figures (Appendix A) show a 19.7% increase for Flathead County from 1960 - 1970 but a total increase of only 6,500 people, half of which were in-migrators from other areas of the country. Lake County has a similar situation with a 10.2% increase but only 1,200 new people. The rate of increase since 1970 has maintained this pace and projected

¹⁵ James Habeck, The Vegetation of Northwestern Montana, A Preliminary Report (Missoula: University of Montana, Dept. of Botany, 1968).

populations show a 35% increase from 1970 - 1990 to 62,000. Many nonprojectable factors may modify this rate of growth, such as lack of economic opportunities and increased costs of transportation, but the trend shows that the Flathead area is one of very rapid growth potential that will require increased housing at a comparable rate. Rural versus urban resident figures show that both areas are increasing at about the same rate with rural residents outnumbering urban dwellers by some eighteen percent, 16,500 to 23,000.

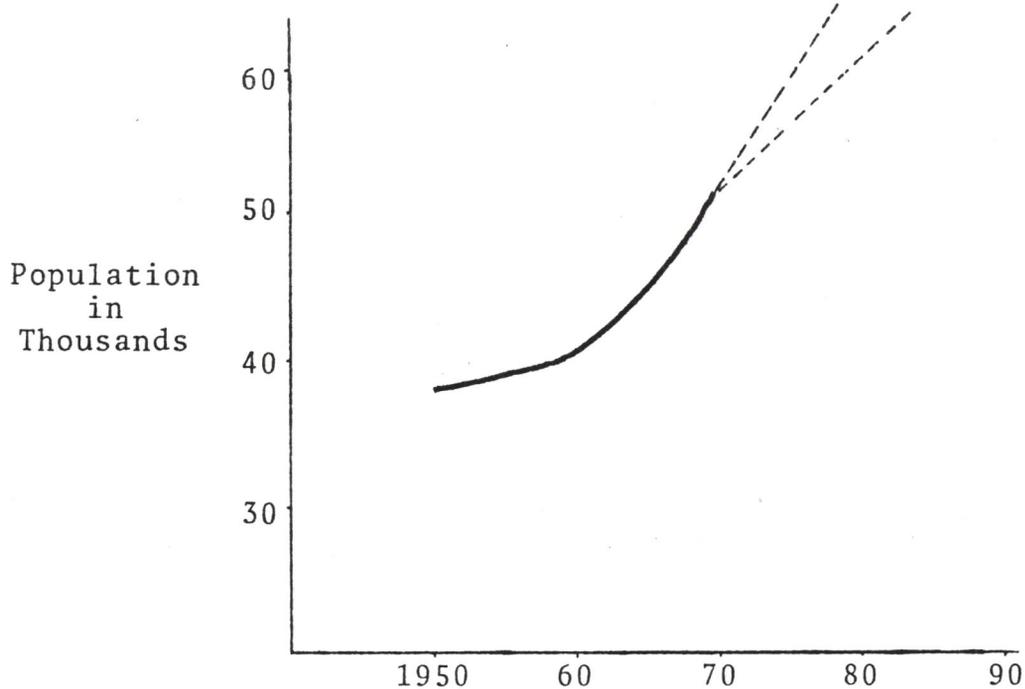


Figure 1

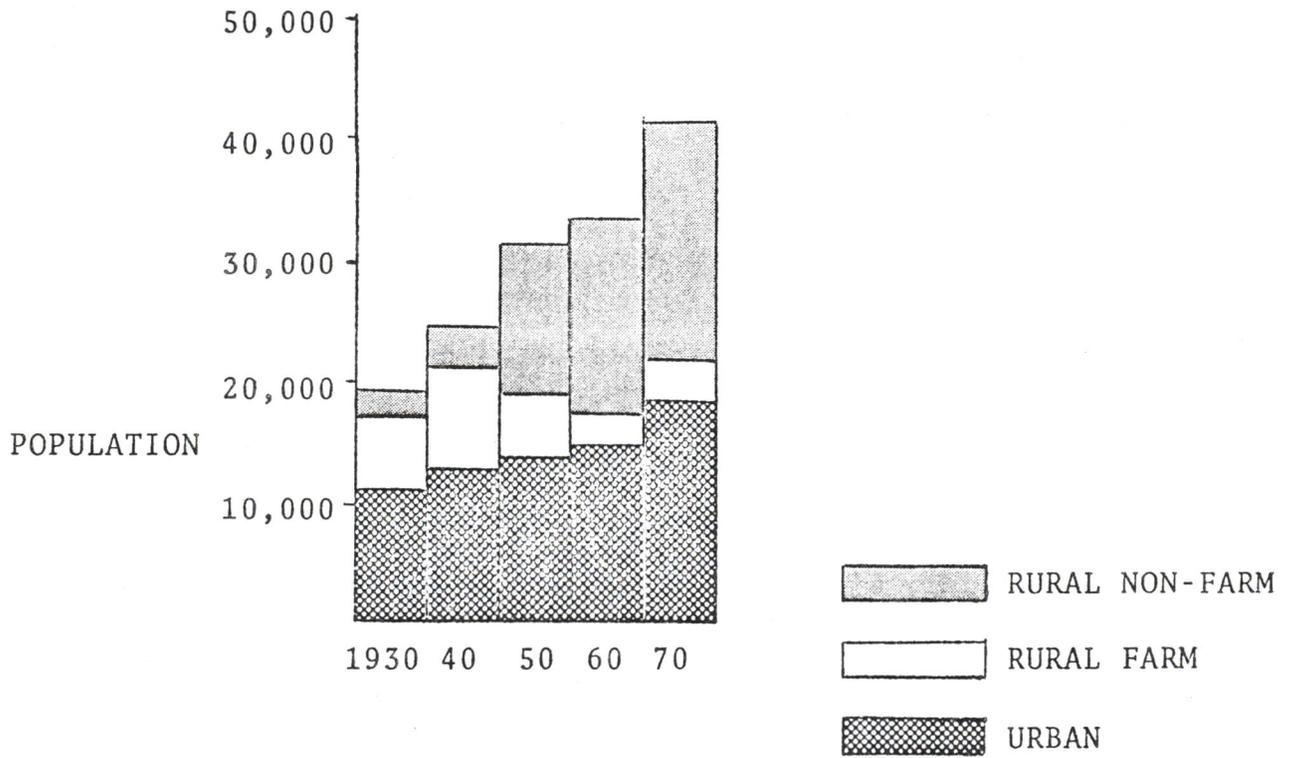
Flathead Area Population*

* U.S. Bureau of Census and Projections after E. Tannehill, APO Economist.

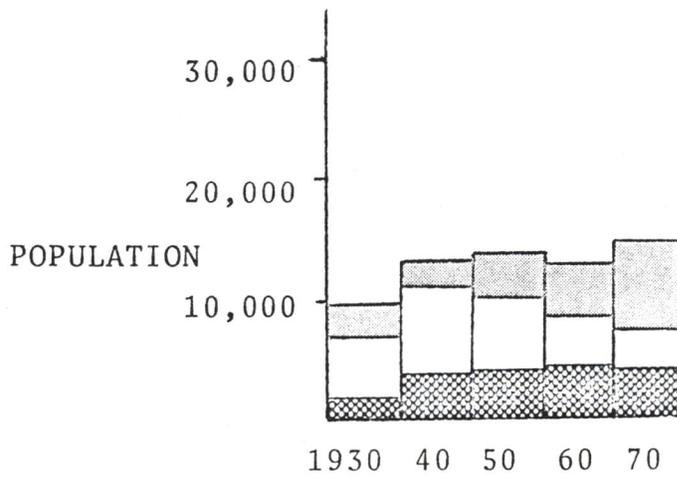
Figures for summer tourist influx are much more difficult to ascertain. Estimates from visitor day information at major public facilities (Glacier Park, Flathead National Forest, Montana State campgrounds) have produced figures that show the drainage entertaining some three million visitor days per year excluding residents, and Glacier Park logs 1,350,000 visitor days a year. Area tourism is increasing 8-12% a year and 80% of the visits come between June 15 and September 15. This concentrated increase in people pressure increases the likelihood of air and water pollution and the need for adequate facilities to service the temporary increase in population. This influx of vacationing people is a large and susceptible market for vacation and retirement homesite subdivision developments. These people see the Flathead when it is warm, sunny, and green and can't help being impressed by prices that are usually low compared with other regions of the U. S. The psychological set of being on vacation and exploring the wilder reaches of the Rockies contributes to the impetus to invest in a piece of land near to these amenities.¹⁶

¹⁶ T.R. Seastedt, Land Use and Water Quality in the Flathead Drainage (U. of Montana Biological Research Station, February, 1974).

POPULATION DISTRIBUTION
FLATHEAD COUNTY



LAKE COUNTY



ECONOMY AND TRANSPORTATION

The economy of the Flathead has been based upon agriculture and the wood products industry, and more recently, manufacturing (Anaconda Aluminum) and tourism have become major contributors to the economic base. Unemployment is chronically high in the area (9% yearly average) and fluctuates seasonally (13% in winter to 5% in summer) as forest products, tourism, agriculture and construction employment are adversely affected by winter weather.¹⁷ Highly skilled and unskilled people have the hardest time finding steady employment, and this situation causes considerable in-and-out migration in the area. Amenities such as mountains, waterways, forests, recreational opportunities and a clean, uncrowded environment draw people here but employment usually dictates if they become permanent residents. The mean family income for 1970 was \$9,200 and per capita income was \$2,550.

Property taxes have increased steadily in the Flathead over the past five years at a rate of 6% per year. Taxes on farmland increased 27% in the five year period while farmland value increased only 10%.¹⁸ This economic pressure encourages

¹⁷ Montana State Employment Service, Kalispell Office, 1974.

¹⁸ The Daily Interlake, Kalispell, November 1973, p. 4.

Table 1

Employment Percent by Industry, 1960 and 1970*

Industry	Kalispell		Flathead Co.		Montana	
	1960	1970	1960	1970	1960	1970
Agriculture & Forestry	3	3	10	6	20	15
Construction	5	7	5	7	7	6
Manufacturing (Largely AAC)	12	14	20	23	10	9
Transportation & Utilities	5	7	11	8	9	7
Trade	34	28	24	23	20	21
Finance, R.E., & Insurance	7	5	3	3	4	3
Services	26	28	22	20	22	27
Public Admini- stration	6	5	5	4	5	5
Other	2	2	2	2	2	3

*U.S. Census of Population

land use changes and the commodity approach to land use values. Economic forces operating to encourage subdivision development include increased demand for rural homesites by a growing market of increasingly affluent Americans both for recreational "second home" investments and primary home needs spurred by population increase and resulting housing shortage. Inflation is encouraging investment in relatively non-inflation susceptible areas such as land. The general belief that land prices and values will continue to rise indefinitely and that the supply will decrease has instilled a "get mine now" psychology in prospective buyers.

Transportation to and within the Flathead area is generally good. East-west access by rail is provided by the

Burlington Northern through the north end of the valley. Air access is by feeder airline from surrounding cities to Glacier International Airport just north of Kalispell. Primary road access is by U.S. Highway 2 east and west and U.S. Highway 93 north and south. The great majority of visitors to the area come by car. Within the valley, state and county roads are well maintained and secondary roads allow access to and from all areas of potential subdivision in all but the most severe winter weather. This road network and compact valley area makes it possible for people to live almost anywhere in the area and commute to communities for employment and services with a drive of less than one-half hour. Only the North Fork area and to a lesser extent the Middle Fork areas are impractical for daily year-round commuting. This transportation pattern increases the susceptibility of new and comparatively remote parts of the valley to subdivision pressures.

OWNERSHIP AND POLICIES

The federal government is the major landowner in Flathead County with 73% of the county area, 1,784,000 acres in Flathead National Forest and 643,000 acres in Glacier National Park.¹⁹ The Park is managed under the National Park Service

¹⁹ Appendix A.

division of the Department of the Interior for the preservation of the natural and scenic values of the land and is not susceptible to major land development. New recreational facilities and camps will not be developed within the boundaries in the near future.²⁰ National forest lands are managed under the federal National Forest Multiple Use Act of 1960 and the Flathead National Forest Basic Land Management Plan, providing for sustained yield concepts of timber production, wilderness preservation, protection of wildlife and watershed resources, and provision of public recreation opportunities. Federal policy calls for retention of all federal land and very restricted development of recreational campgrounds, excluding this land from development possibilities. The proposed Wild and Scenic Rivers designation for the three forks of the Flathead could place density and setback restrictions on portions of the North and Middle fork private ownership sections, affecting some fifty-nine miles of river shoreline if passed by Congress.²¹ The U.S. Bureau of Sport Fisheries and Wildlife owns small but strategic areas on the north shore of Flathead Lake, the south end of Swan Lake, and much of the land around Smith Lake for wildlife

²⁰ Glacier National Park Master Plan Draft (National Park Service, Dept. of Interior, October 1973).

²¹ Flathead National Forest Basic Land Management Plan (Flathead National Forest, U.S.F.S., September 1972).

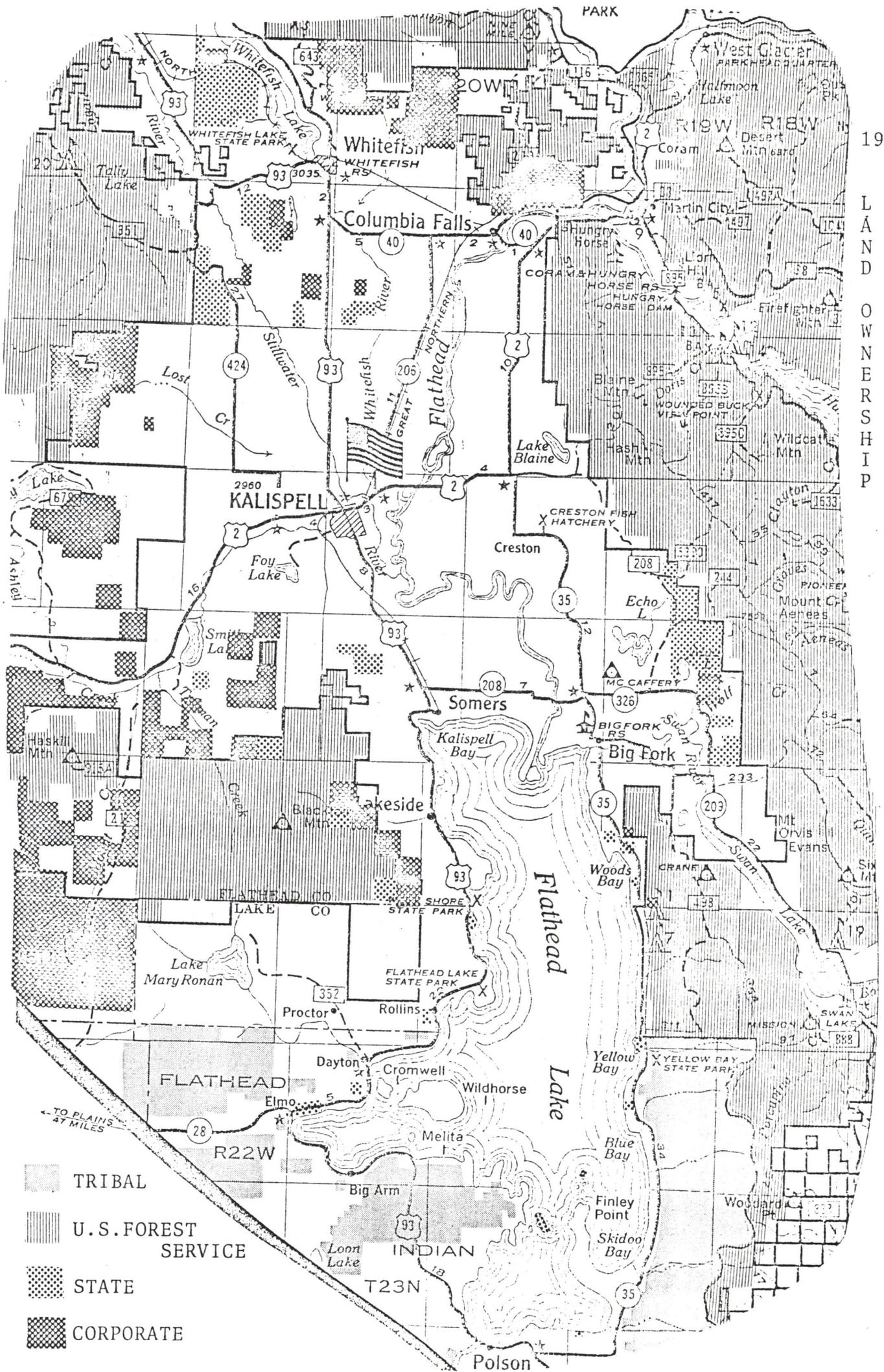
habitat and recreation.²² In addition to federal lands, the Montana State Forestry Department owns 129,700 acres of land in the Stillwater drainage which is managed for forest products production and not available for development.

Large corporate land holdings in the county are 315,000 acres or 9.6% of the total.²³ Burlington Northern, U.S. Champion Plywood and Stoltz Lumber Company are major owners, and this land is presently being managed to produce forest products. While this land is not open for development now, its location (See map, page 19) in the lower forested foothill fringe of the valley suggests its desirability for subdivision development in the future is a distinct possibility. The land is now taxed as forest land and a change in land use to a higher category would precipitate a large increase in taxes which would have to be offset by the revenue increase from the land development. It is not known at this time what the future plans are for these lands, but a logical assumption is that when and if the demand for land becomes great enough and the financial environment is favorable, these lands will be opened to development.

Another 204,000 acres of private or individually owned forest land in the county is similarly situated as to present

²² U.S.B.S.F.W. Ownership Map, Moiese, Montana 1974.

²³ Appendix A.



-  TRIBAL
-  U.S. FOREST SERVICE
-  STATE
-  CORPORATE

← TO PLAINS
47 MILES

uses and future subdivision possibility. Transportation, demand, and financial suitability will probably determine the eventual degree of development of these areas. Indian lands in Flathead County amount to 8000 acres of mostly forested land that is primarily timber land and not now open to development.

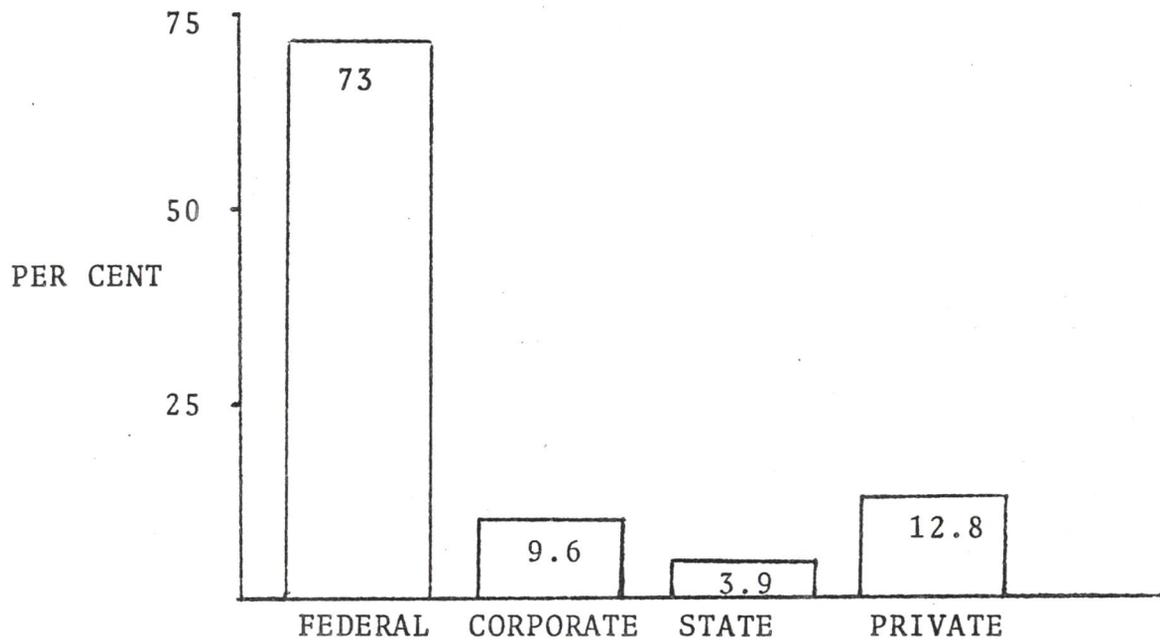
Non-forested private land in the county contains some 214,306 acres under various uses²⁴ on the valley floor and it is here that the major changes in land use and development are taking place (See Subdivision in the Flathead). The ownership structure in Lake County shows a large segment of federal and state owned land (232,479 acres) that is exempt from development, and another large parcel (64,080 acres) under large corporate control that is probably not immediately susceptible to subdivision possibilities.

Lake County has a rather unique situation in that nearly one-third (299,130 acres) of the county's 960,000 acres is taken up by the Flathead Indian Reservation trust lands.²⁵ This land is held in trust for the Kootenai and Salish tribes and is not under the jurisdiction of Lake County Commissioners. Taxes are not paid on this land and planning for its use is handled by the Tribal Council. No comprehensive plan has

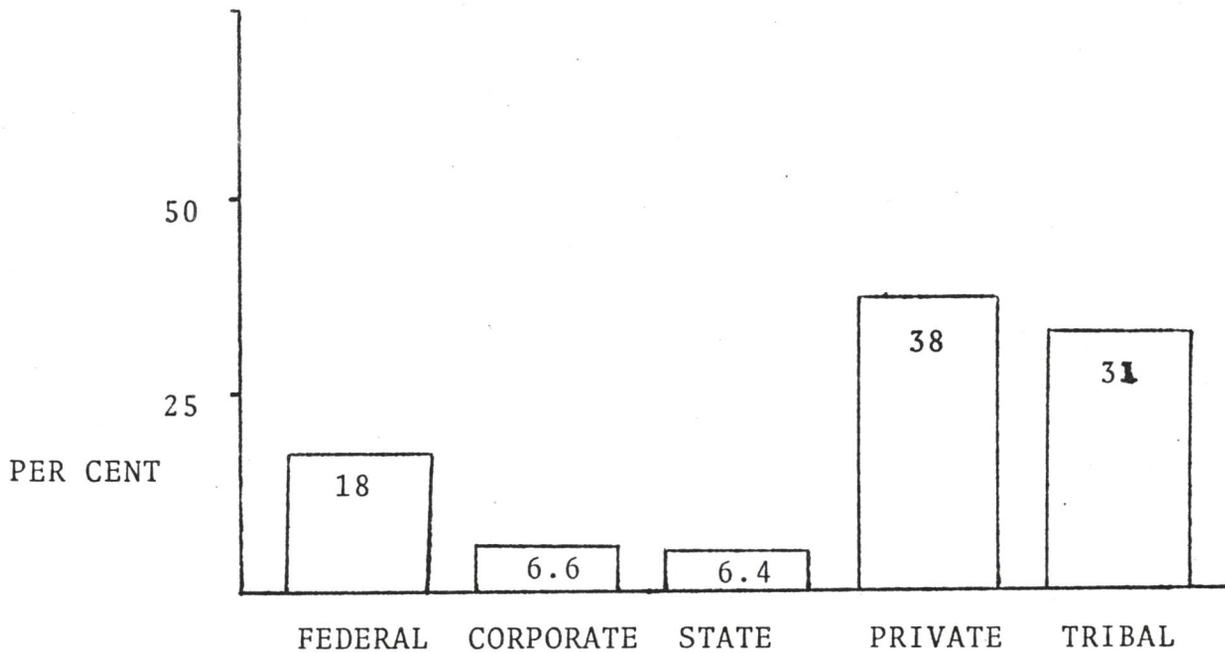
²⁴ Appendix A.

²⁵ Appendix A.

LAND OWNERSHIP
FLATHEAD COUNTY

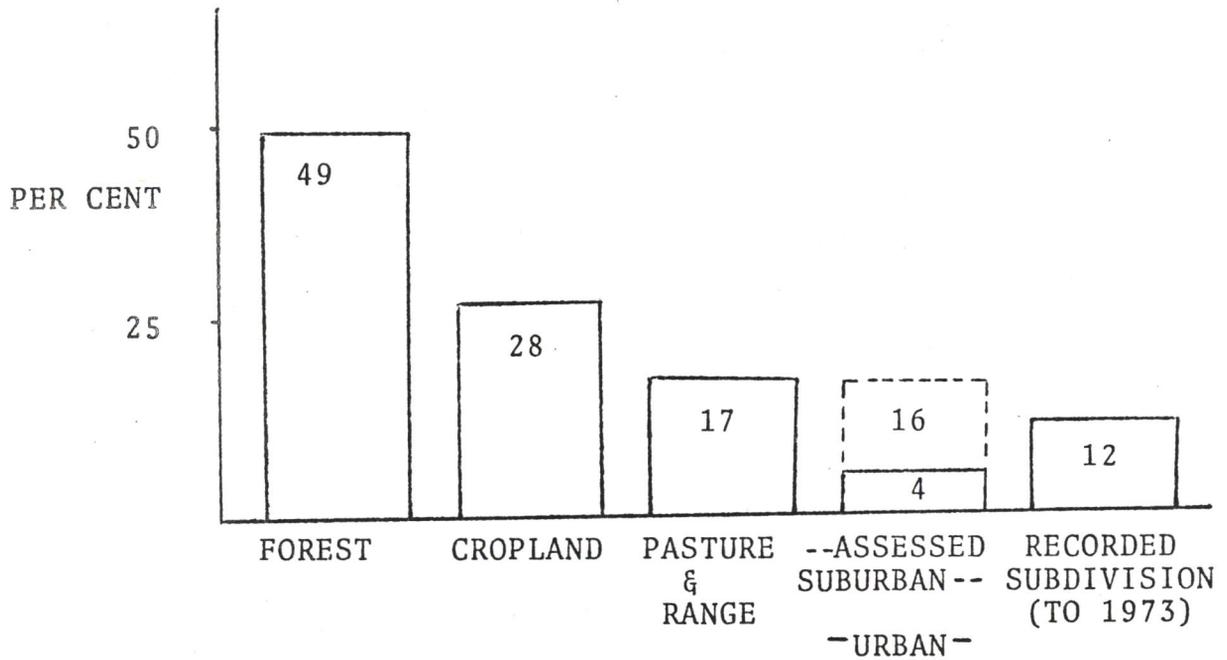


LAKE COUNTY

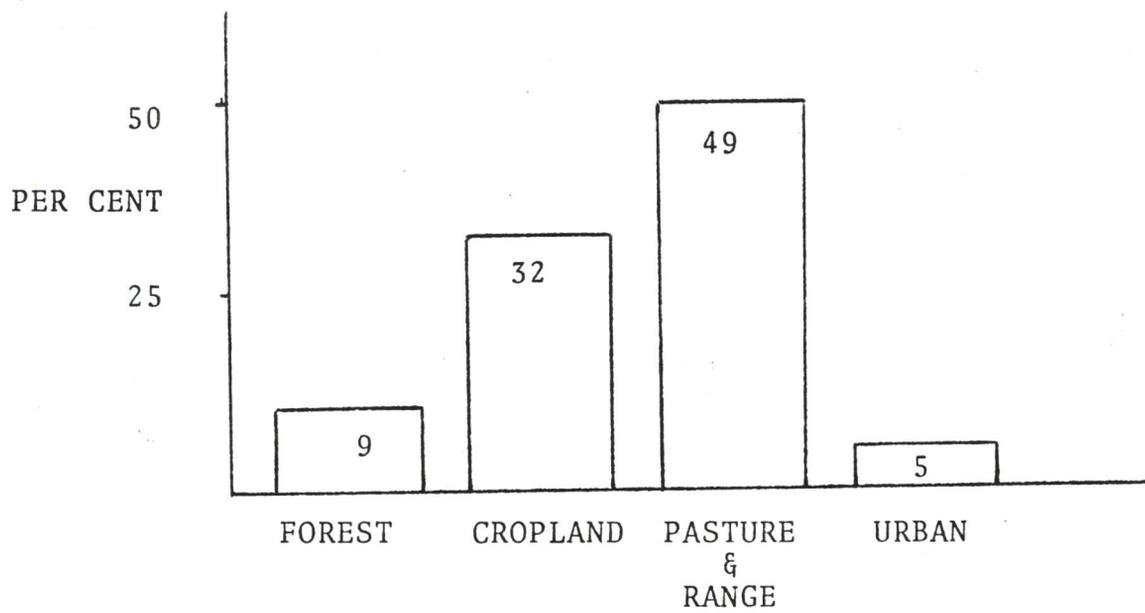


LAND USE IN THE PRIVATE SECTOR

FLATHEAD COUNTY



LAKE COUNTY



been established for the tribal land, but as much of it is in higher forested areas, logging and grazing are major uses. The tribes can sell it whenever they like, but the current policy is to add to the lands, not sell them. In addition to the tribal land, there is considerable private Indian ownership of land which is taxed, but these owners are understandably reticent to submit to external land use controls.²⁶ All small private holdings total more than one-third of the county land. The predominant uses are range, pasture, hay and crop with only 19,000 acres presently built up.²⁷ A great majority of the built-up land surrounds Flathead Lake.

PUBLIC OPINION AND ORGANIZATION

The people of the Flathead have traditionally held the view that disposition of private property was a private matter and land use regulation would be considered an infringement of personal rights guaranteed under amendments to the U.S. Constitution. These attitudes are common in rural areas of the nation and may be due in part to the basically conservative nature of peoples living there, and also to the mental impact that large areas of open space have-an apparent lack of need for land planning-that rural areas may seem to

²⁶ Tom Bearhead Swaney, Interview, December 14, 1973.

²⁷ Appendix A.

project. Development of land in rural areas generates economic opportunities which are usually quite welcome there.

As the Flathead community has grown, so has the awareness that planning and regulation may be advantageous to the people and the land resource. Planning boards were set up in the late 1950's. Resource planning in the Flathead forest has been a major citizen concern since the 1960's as much of the local economy is dependent upon its timber. Federal and state concern for planning has focused attention on these issues in the 1970's.

The Flathead Survey Committee conducted a survey on community issues in the spring of 1973.²⁸ The compiled results show that the responding citizens enjoy and appreciate their physical environment and do not want to see its values deteriorated. Seventy-five percent felt that the area was growing too fast and almost half felt the quality of the community was declining. Ninety-five percent believed that agriculture is important to the county and good agricultural land should be preserved, and 65 percent wanted the agriculture base to be expanded. Land use decisions should be made by coordinated efforts between the individual and the community (55%), by the landowner (37%), and by City and County Commissioners (7%). Fifty-two percent felt that present health

²⁸ The Sunday Missoulian, Flathead Survey Committee Results, August 5, 1973, p. 13.

and sanitation regulations are not strict enough and 60% believe that large landowners and developers use an unfair amount of influence in deciding whether health regulations are enforced.

On economic issues, 82% felt that industry was important to the county and 46% want industry expanded, but 65% would not approve of attracting an industry to the valley if it required all surplus water even if this guaranteed full employment and a stable economy. Only 13% favored this proposal. Eighty-three percent thought tourism was important to the region and 38% wanted it expanded and 18% wanted it reduced.

A survey conducted by the Water Resources Division of the Department of Natural Resources and Conservation for the Flathead River Basin Study revealed that residents of the valley favor increased land use zoning and subdivision regulation for control of urban and rural growth, and that shoreline and streambank protection is a major concern to these people in the future land use decisions in the valley.²⁹

Citizen organizations have sprung up in the last year in response to land use problems and specific developments. In 1973 residents of the area just north of Flathead Lake, concerned by the threat of subdivision and potential loss of

²⁹ Flathead River Basin Study Results (Department of Natural Resources and Conservation, February 1974).

the agricultural nature of the area (currently 98% of the land there) petitioned the APO and County Commissioners to designate the area a planning unit, and promulgate zoning restrictions to maintain the agricultural use of the land, protect the shallow sand aquifer underlying the area from septic tank pollution, and maintain the present economic and population base. The resolution to create Lower Valley Planning Unit Number 5 was approved by the County Commissioners who are now responsible (with the APO staff) for drawing up regulations to implement the plan and establish zoning for the area.³⁰

The West Valley Landowners Association was formed in January of 1974 in response to proposed development in the area, especially the Deer Meadows subdivision. The Association requests an immediate temporary moratorium on subdivisions until the comprehensive county plan can be completed. They feel that the present system of subdivision location by arbitrary landowner decision is creating land use and social problems in the valley. The consensus is that the comprehensive plan will provide an instrument to ensure controlled and orderly development of the county. Complete cooperation is promised to the planning staff in helping to realize

³⁰ Flathead County Planning Unit No. 5, Lower Valley Area [Areawide Planning Organization (APO), December 1973], pp. 1-15.

the plan. The Association also wishes to preserve the agricultural value of the West Valley.³¹

Flathead Tommorrow is a newly formed organization concerned with maintaining the quality of life and land that residents now enjoy and that draws new people to the area. Of primary concern to this group is the current problem of rampant subdivision, and planning efforts to insure maintenance of wise land use and responsible future development directions. Preservation of the quality of the many water areas in the valley is a primary goal.³²

The Evergreen Landowners Association is yet another citizen group that has requested special zoning considerations from the County Commissioners. They feel that any additional trailer parks in their community would overburden community services such as fire and police protection and schools without contributing a fair share to their financial support. They request the commissioners to declare anti-trailer park zoning in the Evergreen area. A comprehensive plan for the Kalispell-Evergreen area, written in 1971 and updated by projections to 1990, is being prepared by the APO and should be completed by June 1974.³³

³¹ West Valley Landowners Association, letter to the Flathead County Commissioners, January 29, 1974.

³² Flathead Tommorrow Bylaws, March, 1974.

³³ The Missoulian, February 24, 1974, p. 16.

The Flathead Lakers are a long-established organization of people in the valley (and many lakeshore property owners) who are concerned with the water and land quality of the lake and protection of property rights of the non-Indian property owners. The Flathead Defense Committee is a special interest group that is backing legal defense of lakeside dock owners who are threatened by lawsuit over the Confederated Kootenai-Salish Tribes who claim ownership of the lake to the high water level and waters of the drainage.

The Flathead Floodplain Association consists of owners of land adjacent to the main Flathead River who were included in the Army Corps of Engineers designated 100 year floodplain area, which comes under the Floodway Management Act wherein houses and other obstructions were illegal. The Association instigated and backed a bill (HB924) submitted by Representative O. Halvorson of Kalispell calling for a two-zone concept of floodplain zoning. A "floodway" zone to accommodate flowing waters of a 100 year flood and void of obstructions would have no obstructions to flow, and a floodplain zone of restricted construction for less threatened areas would allow some structures to be built. Construction here is controlled by county government authority. The bill was passed by the legislature and duly amended the Floodway Act.

Another special interest group formed by realtors and developers, called the Flathead Landowners Association, is calling for speedy completion of the county comprehensive

plan so the development in the county can proceed. They say the County Planning Board is denying new development pending completion of the plan.³⁴

Hearings on Flathead County subdivision regulations as required by SB208 (Montana Subdivision and Platting Act) brought forth testimony in favor of subdivision regulations from a majority of those who spoke, but many felt that pre-application procedures should be optional and that definite time tables be provided for government agency review. Developers and realtors spoke of the need for the comprehensive plan so they could determine what to expect from further regulation. Several area farmers testified that they didn't want anyone telling them what they couldn't do with their land, drawing general approval from the crowd.³⁵

The consensus of public opinion from surveys, hearings, and interest groups seems to be that a majority of people responding to pleas for public input recognize the speed of development and land use changes and the need for regulation and intelligent planning. The long range goals for the development of the valley have not been spelled out and this is where public opinion can be most effective. Once the goals and objectives of regional and local planning have been

³⁴ Ibid., March 12, 1974, p. 17.

³⁵ Ibid., September 13, 1973, p. 11.

elucidated, the methods for successful realization of these goals will become apparent. Public support of its preferred comprehensive plan alternative could be a crucial factor for the future of the Flathead.

THE LEGAL ENVIRONMENT

There are two basic conceptual approaches to the problems of land use. The economic or commodity approach to land use values land according to the market value or amount of income generated by the land in the economic system. This approach has been misnamed the "highest and best use" in real estate appraisal and really denotes the greatest monetary generation possible. This contrasts the constitutional provision for determination of the "highest and best use" of land, a judgment reserved by the people (collectively), and the constitutional basis for land use controls in this country. This refers to a longer range view of land as it benefits society through its utilization as a natural resource. The second approach values land as a public and natural resource and considers land's value for continuing productivity and base for the processes of the biosphere, just as water and air.³⁶

The concept of absolute private determination of private land use grew out of misinterpretation of English common law,

³⁶ Fred Bosselman and David Callies, The Quiet Revolution in Land Use Control (Council on Environmental Quality, U.S. Government Printing Office, 1971), pp. 314-325.

which protected private land from arbitrary or unreasonable taking by the government.³⁷ This pioneer ethic was very much in evidence during the expansion of the United States when land seemed to be an almost unlimited resource. Basis for this belief is quoted from the fifth amendment to the Constitution, which forbids federal taking of private property for public use without just compensation, and the fourteenth amendment, which similarly restricts state government.³⁸ These amendments as interpreted by the Supreme Court also allow persons the freedom to use property in lawful occupations without government prohibitions. The issue of taking versus regulating has been examined extensively and legal consensus seems to be that the determination is one of degree.³⁹

Governmental authority is exercised through a number of long established powers, including the financial powers of taxation, appropriation, and borrowing, the power of eminent domain, the police power, the licensing power, and the penal power. These powers are possessed by governments whether they engage in conscious planning or not. Planning does not add to the substantive powers of government, but it may afford the occasion for the exercise of certain powers.

³⁷ William Cunningham, Natural Resources Law - Forestry 427 lecture, October 18, 1973.

³⁸ U.S. Constitution, Amendments 5 and 14.

³⁹ Oliver Wendel Holmes, Associate Justice U.S. Supreme Court, 1902-1932.

The most comprehensive and persuasive of all powers of government is the police power, to establish the social order, protect the life and health of persons, securing their existence and comfort, and safeguarding them in the enjoyment of private and social life and the beneficial use of their property. Under police power the government can regulate the conduct of individuals in their relations toward each other and the manner in which each shall use his property when regulation becomes necessary in the public interest, or to promote the general welfare of the state or community.

The basis of subdivision control is primarily that of police power. Land subdivision regulations are an attempt to guide subdivision developments along orderly lines in order to avoid the possibilities of economic losses and ill-planned communities which seem to occur otherwise. Control is enforced through the power to withhold the privilege of recording plats which do not conform to the standards and requirements established under the law. Supporting subdivision regulation under the police power, courts have recognized the public interest in developing the community as a social, economic, and political unit.⁴⁰

The federal government addressed the problem of subdivision consumer protection in the Securities Act of 1933.

⁴⁰ Development Guidelines for Campgrounds and Recreational Vehicle Parks (Intermountain Planners Inc.), Billings, June 1973.

In 1969 the Interstate Land Sales Full Disclosure Act decreed that any subdivision of fifty or more lots offered for sale interstate (or sold five percent of lots per year out of state) or offering 300 lots intrastate must file a property report containing detailed information on physical and economic characteristics of the subdivision. In the Flathead only Many Lakes Vacation Village qualifies and is registered under the act.⁴¹

Montana has had subdivision statutes on the books since 1894 but enforcement provisions were not adequate. Concern over subdivision activity came about after the increase in subdivision and land sales began in 1967. The Montana Subdivision and Platting Act passed in 1973 and amended in 1974 (HB1017)⁴² provides incentive for stronger county control and minimum regulation requirements. Survey, platting, and filing requirements covering individual lot sizes up to twenty acres are delineated as well as dedication of roads and parks to the county. Public review is incorporated as part of the screening process. In an attempt to allow for non-development-oriented splits of land to bypass the review process, many potential loopholes were created. Court determined splits, lots created for immediate relatives, and "occasional splits"

⁴¹ Department of Housing and Urban Development (HUD) Office of Interstate Land Sales Registration Regulations, and letter of March 27, 1974, Statement of Registration.

⁴² Appendix B.

(one each year) by pass review. Control is determined at the County Clerk and Recorder's Office where only legally performed instruments are accepted. The Attorney General has released an opinion that unlawful instruments of subdivision can void the land contract.⁴³ Health and sanitation regulation is promulgated by HB465 of the 43rd legislature. Minimum requirements are elucidated and regulation interred in the State Department of Health and Environmental Sciences.⁴⁴

Land use and subdivision control is centered at the county level of government. The Board of County Commissioners, as the highest elected officials in the county, make the final determination for acceptance or rejection of the new development plants. Specific subdivision regulations, based on state minimum standards, are written for each county, and while efforts are being made to combine counties into regional planning units by the state, this concept has not yet been realized. The key to responsible subdivision regulation then is centered on the County Commission, and it is here that special interest group pressure, increased tax revenue demand, personal bias and political influences all focus to complicate the regulatory process.

Lake County has a rather unique additional complication in the land use planning and control process. The external

⁴³ The Missoulian, October 21, 1973.

⁴⁴ Appendix B.

boundaries of the Flathead Indian Reservation encompass virtually all of the county land except the Swan Valley. Created by federal treaty, the Reservation is governed by the Tribal Council and the Bureau of Indian Affairs and does not come under the jurisdiction of the county government. Land ownership includes tribal trust land (mostly in the foothills and mountains), Indian allotted land that may or may not pay county property tax (depending on patent status) and where jurisdiction is unclear, and much private, patented land in the valleys and lakeshore that does come under county jurisdiction. There is little coordination between Indian and county governments. Problems of unfair tax burdens on the private white owners and Indian ownership of the waters of Flathead Lake and its tributaries (now in court) hinder the planning process.⁴⁵ Judicial decisions of jurisdiction will have to precede a coordinated land use planning effort.

Subdivision Review Process

The Flathead County subdivision review process begins with the development idea or concept. The developer is encouraged to consult with the Areawide Planning Organization (APO) planning staff and show a pre-application sketch of the proposed development and general features. After

⁴⁵ Lake County Board of County Commissioners, interview of July 28, 1973.

researching the cultural, physical and natural influences of the development and the environment, a preliminary plat is drawn up on a scale of at least 200 feet to the inch showing the exact nature of the proposed subdivision and the ownership of adjacent lands. Sixteen copies of the preliminary plat and the environmental assessment along with the filing fee of ten dollars plus two dollars per net acre are submitted to the APO, Health Department and other county offices. The governing body (city council or county commission) has a maximum of sixty days to render a decision on the acceptability of the preliminary plat. The APO staff reviews the plan and makes its recommendations. Public notice of a public hearing is made at least fifteen days prior to the meeting of the planning board, which then has ten days from the meeting to make its written recommendation to the governing body. The governing body makes its decision within the sixty-day limit and notifies the developer. Approval or conditional approval of the preliminary plat is good for twelve months. Summary review of five or fewer parcel plats all on a public road may follow an abbreviated review process. The applicant files the approved preliminary plat with the County Clerk and Recorder.

The final plat, conforming to the preliminary plat and conditions, is submitted with a two dollar per acre fee to the APO staff for review. The examining land surveyor has

seven days to certify that the plat is correct. The County Attorney issues a title opinion on any land dedicated to the public, and a notice of approval of sanitary facilities must be obtained from the State Department of Health and Environmental Sciences. The staff must make its recommendation within ten days of receiving the final plat, and the governing body then has seven days to make a final decision. The governing body utilizes information from the APO staff, public hearing records, and personal knowledge.

Upon final approval of the plat, the developer presents it to the County Clerk and Recorder's office for filing and recording. The plat room director checks the plat for completeness and may call upon the appointed land surveyor to clarify technical questions. If any legal questions arise the County Deputy Attorney (Dean Jellison) is available to render an opinion.⁴⁶

In Lake County there is no planning staff and the preliminary plat is submitted directly to the Board of County Commissioners for reviewal, field checking and decision within twenty-one days. Where a zoning and planning commission exists, all plans must be submitted to the planning agency for recommendations. Final plats for multiple tracts shall be completed after initial review and approval of the Montana

⁴⁶ Flathead County Subdivision Regulations, Flathead County, Montana, October 1973.

State Board of Health and before final approval of the County Commissioners. Public hearings have not been held on proposed subdivision developments. Plats are filed at the Clerk and Recorder's office upon approval of the County Commissioners.⁴⁷

The Areawide Planning Organization

The Areawide Planning Organization (APO) is a voluntary organization of local governments brought together in 1972 to deal with the problems of growth and development in Flathead County and the region. Membership includes the city governments of Kalispell, Whitefish and Columbia Falls represented by the Mayor, one city councilman and president of the City-County Commissioners, and president of the County Planning Board from Flathead County. This Policy Board is commissioned to develop action recommendations and policy for consideration by the local boards and governments.

The purpose of the APO is to provide for collection and exchange of information of regional interest, develop and review policies, prepare and update a comprehensive plan, and assist local governmental units and planning boards in their plans and implementation. The responsibilities of the APO include adoption of bylaws and an annual budget, initiation of necessary studies, approval of staff appointments

⁴⁷ Lake County Commissioners, personal interview, February 6, 1974.

and work programs, and coordination of local programs and input from state and federal governments.

The Policy Body appoints the staff director and authorizes other staff positions as deemed necessary. Presently there are seven full-time staff members working on various facets of planning needs in the county.⁴⁸

The program of the APO is to establish Goals and Objectives for Flathead County planning through public involvement in surveys and input from public hearings and special interest groups. A physical inventory of environmental influences on the planning process has been undertaken and a survey of Flathead County subdivision activity was completed in November 1972. In June of 1974 a presentation of several comprehensive plan alternatives is due to be brought before the public for discussion, study, and choice of the desired direction. A revised final comprehensive plan is projected for June of 1975.⁴⁹

Policies of the Flathead County Planning Boards

The jurisdictions of the city planning boards of Kalispell and Columbia Falls are generally four miles out from the city limits and the Whitefish Board jurisdiction extends some

⁴⁸ Bylaws of the Flathead County Areawide Planning Organization, August 30, 1972.

⁴⁹ Flathead County Goals and Objectives, APO Staff, Kalispell, July 1973.

twelve miles to the north to include their water supply drainage.⁵⁰ The rest of the private land in the county falls under the jurisdiction of the Flathead County Planning Board.

The policy of the Flathead County Planning Board is to carry out the wishes of the majority of the people residing within the jurisdiction of the Board, being cognizant of the obligations of Montana Statutes. The Board discourages subdivision of Class I-IV agricultural soils and encourages development on less valuable soil. Public road right of way shall be sixty feet wide and no more than eight percent grade. Subdividers shall establish the availability of a potable water supply at a reasonable cost. Private development that encroaches upon lakes and streams will be given serious consideration to protect the public health and avoid contamination of any stream, lake or potable water supply. In rural areas, Class I-IV farm land shall not be sold in tracts of ten acres or less. Subdivision activity and development in floodplain areas will be restricted. Commitment of capital by developers will not influence decisions of the Board.⁵¹

ADD
"MOTTO"

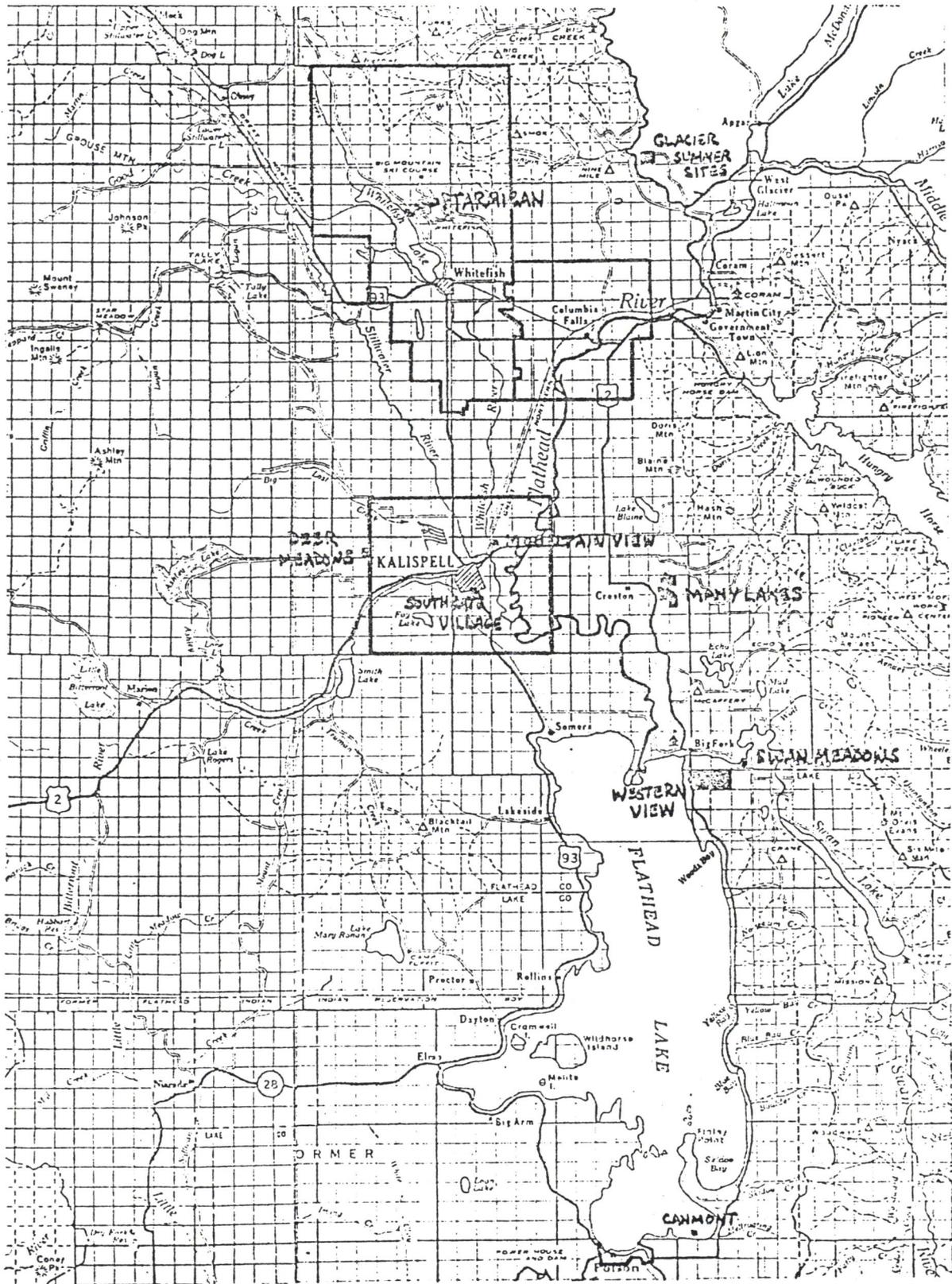
The policy of the Kalispell City Planning Board is to encourage subdivision within its jurisdiction, centralizing

⁵⁰ See map, page 41.

⁵¹ Flathead County Planning Board Draft Policy Statement, May 16, 1973.

Figure 6

PLANNING BOARD JURISDICTIONS AND SUBDIVISION LOCATION



suburban development and increasing the availability of community water and sewage processing to suburban and rural homes. Development in floodplain areas is discouraged until definitive floodway and floodplain zones have been established.⁵²

The Whitefish City Planning Board discourages the development of good agricultural soil within its jurisdiction and encourages homesites on hilly, forested, rougher lands. Shoreline areas involve special consideration and sites that are set back from the shore are preferred. Maximum use of community sewer and water is encouraged on all developments as the services become available.⁵³

The policies of the Columbia Falls Planning Board are to work with developers to insure that their subdivisions are in accordance with present regulations. If there is opposition to a development at the required public hearing, the Board tries to obtain changes in the development plan to negate the public objections. The Board works with the City Council as the developable land is adjacent to the town itself. Denials of particular subdivisions have been on the grounds of inadequate sewage systems, detrimental effects of

⁵² James Shaw, President of Kalispell City Planning Board, personal interview of February 27, 1974.

⁵³ Ervin Hanson, President of the Whitefish City Planning Board, interview of March 1, 1974.

more private wells on the groundwater table and the possibility of increased hazards due to traffic congestion.⁵⁴

⁵⁴ George Hanson, Chairman of the Columbia Falls City-County Planning Board, personal letter, March 16, 1974.

Chapter 2

SUBDIVISION IN THE FLATHEAD

Land has been subdivided in the Flathead valley since the late 1800's. As new settlers came and began locating in or near towns, they acquired land that was originally part of larger tracts and built homes. Living in or near town was a desirable circumstance, with various services available without excessive time and effort involved in transportation. Those living in the "country" were of necessity quite self-sufficient and used the land to produce what they needed or to provide income. As transportation systems, especially roads and cars, increased in efficiency and the standards of living rose to allow availability to almost everyone, feasibility to live within "commuting" distance of employment and services increased. With the recently expanded drive to live in a natural, scenic surrounding away from noise and crime and the feasibility to do so, suburban and rural non-farm living has greatly increased.¹ Extension of electrical and telephone service and generally low property tax has encouraged the new living style. Investment in land is treated as a solid financial enterprise and a hedge against

¹Population Distribution graph, p. 13.

inflation. And finally the great increase in availability, comfort, convenience, and financing of the mobile home has made it possible to occupy unimproved homesites quickly and easily.

The land ownership map and graph show that non-corporate private holdings in Flathead County amount to 449,000 acres and 12.8 percent of the land, exclusively in the valleys and foothills. Here is where man builds his houses, towns and roads. Here the other land uses necessary or desirable for man's livelihood are accommodated. Forest, cropland, range, and game winter range compete for occupation of the land. Urban use occupies only four percent of private land and suburban or subdivided land another twelve percent. Distribution of the population (See graph, page 13) over the last forty years indicates a small, steady increase in urban population, some decline in farm population, and a great increase in rural non-farm living. This dispersal is characteristically medium to low density, most concentrated around urban areas, dependent on road transportation systems, and influential in the land use of the enclosed land through small unit land ownership. From 1891 to 1973, 8,237 acres have been filed and recorded as subdivisions and since 1969 41,315 more acres have been subdivided by metes and bounds description.² This

²Flathead County Subdivision Survey, APO Staff, June 1973, Appendix A.

method of subdivision was no doubt utilized extensively prior to 1961 but documentation of this phenomenon is difficult. In addition, land divided and sold by contract for deed (where the original owner does not transfer title until the total sum is paid off, i.e., the contract fulfilled) is not included in the total as most of these transactions were not recorded until after the Subdivision Act of 1973. The volume of subdivision between 1961 and 1973 (over 45,000 acres) is almost three-fourths of the total assessed suburban land. Of that total 21,000 acres of subdivided land was in Class I-IV agricultural soil, or one-sixth of the agriculturally productive land in Flathead County.³ The local population and housing demand has increased in that time, but not 300%. Building has occurred on only 38% of the total lots created in the twelve year period.⁴ This is an indication that the lots are being held for speculation, a second home when feasible, or perhaps a primary homesite for the future.

*Ag land
lost
to build
on*

Statistics of filed and recorded tracts reflect the statutes in force at that time, which required only small lot (five acres or less) divisions to be recorded. Metes and bounds descriptions of subdivisions much more nearly represent the degree of activity and lot size distribution that is

³Flathead Tomorrow, White Paper on Subdivision Influence, April 1974.

⁴Flathead Subdivision Survey Computer Printout, APO, June 1973.

occurring. Small lot divisions (from both categories) dominate the percentage of number of lots (64%) but amount to only 11% of the land area used. Five to forty acre lots accounted for almost 80% of the subdivided land. Much of this land may be resubdivided into smaller parcels when market indications are favorable.⁵

The implementation of the Subdivision and Platting Act and the Health and Sanitation Standards Act of 1973 slowed subdivision activity drastically for four months while the new regulations were being drawn up. Very few plans were submitted and a "wait and see" attitude seemed to prevail.⁶ Abuse of the sanitary restrictions and the "let the buyer beware" small lot subdivision development was effectively curtailed by requiring Health Department approval and planning staff and public review before any lot could be offered for sale. During hearings on the proposed regulations Flathead County realtors and developers predictably resisted the regulations as being too stringent, complex and as disincentive to economic growth.⁷ Deductive logic indicates here that the motives for resistance to these public welfare regulations is private profit by these individuals and not constitutional, ethical or land use resource considerations. These interests

⁵Flathead Subdivision Survey, June 1973, Appendix A.

⁶Paul Kane, APO Staff, personal interview, March 29, 1974.

⁷The Missoulian, Report on State Senate Hearings on HB1017, February 27, 1974.

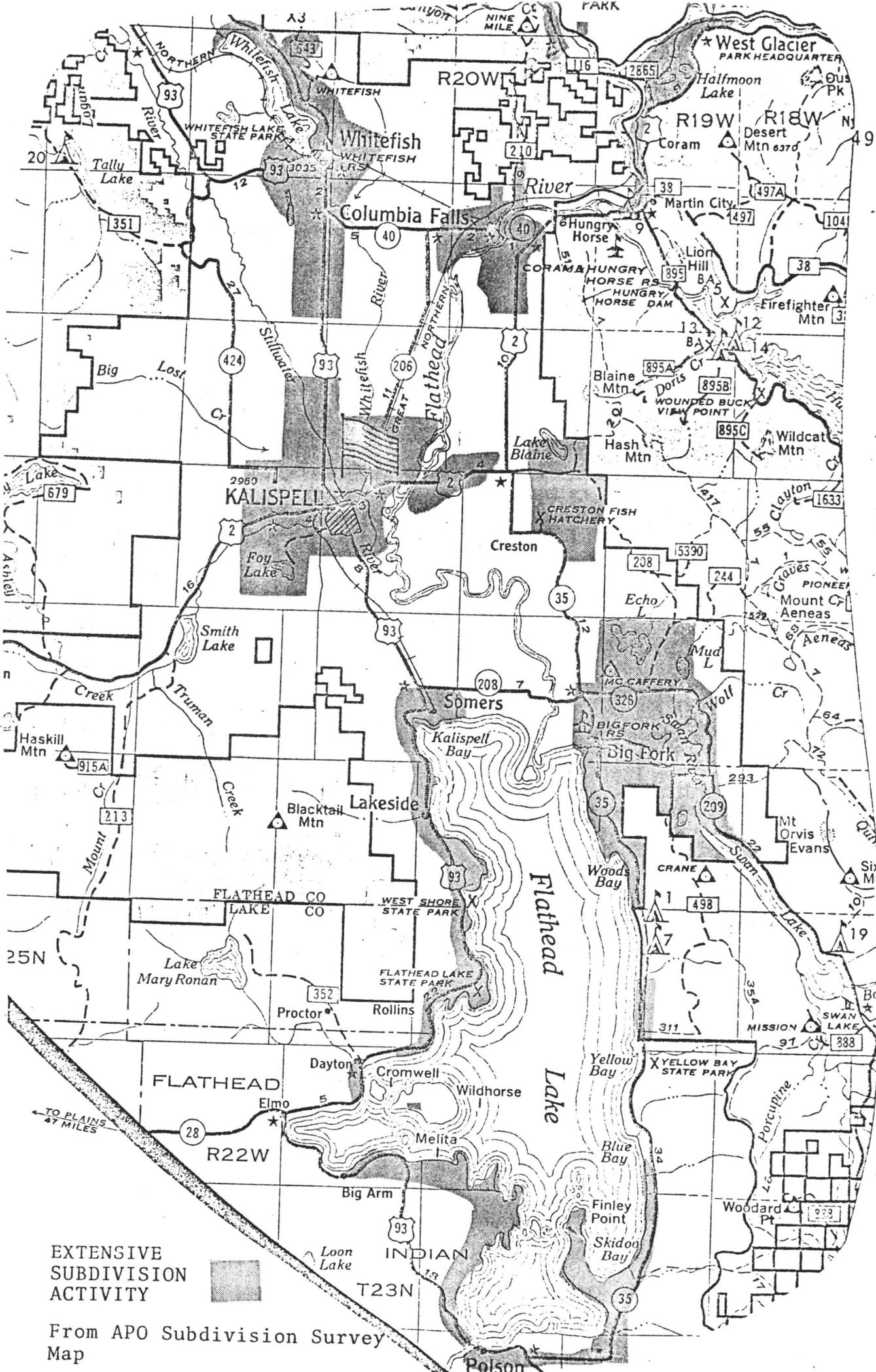
were active in reducing the original proposed statute definition of 40 acres or less to 10 acres in the final Senate bill.⁸ The political influence is considerable in determining land use control regulations and the decisions do not always reflect the expressed desire for the "public good."

After the new statutes took effect in July 1973 through the end of January 1974, 2,173 acres of land were subdivided without public review through the instrument of the certificate of survey.⁹ This legal method of documentation includes revisions of previous plats, over-ten-acre divisions and "free split" divisions as determined by the Attorney General. Included in this list are 19 subdivisions containing at least one lot smaller than ten acres for a total of 590 acres. Over-ten-acre subdivisions created 103 lots on 1,509 acres. The amendments to the Subdivision Act which include all subdivisions with one lot under twenty acres in size will bring most of this type of subdivision under public review, and probably force other developments to go over twenty acres in size.

The pattern of subdivision activity in the past thirteen years as indicated on the map (page 49) has centered around

⁸Arthur Sheldon, Legislator (D-Libby), Comment to Montana Wildlife Federation District 1 Meeting, May 5, 1973.

⁹Flathead County Clerk and Recorder's Office, APO Certificate of Survey List, March 4, 1974.



EXTENSIVE
SUBDIVISION
ACTIVITY

From APO Subdivision Survey
Map

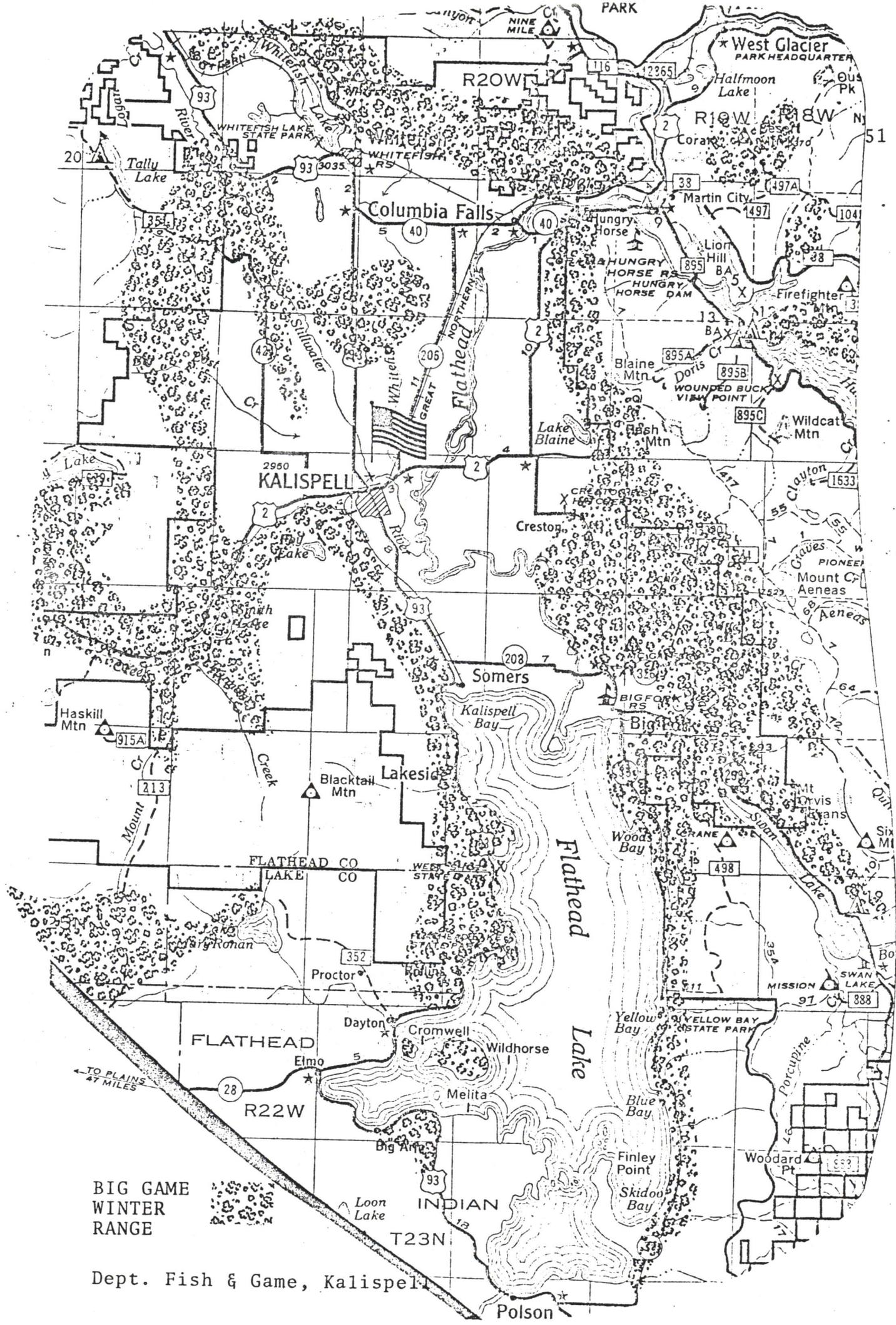
the urban areas of the valley and the lakeshores. The lower Swan valley northeast of Bigfork has seen extensive recent subdivision although the density is relatively low and few lots have been improved.¹⁰ The shores of Flathead, Whitefish, Blaine, Echo, and lower Swan Lakes have also been the subject of extensive activity. Most development-intensive sites are on or near major access roads, while the less accessible "hide-away" recreation sites are more scattered around the periphery of the valley. The valley edge is where the critical winter game range is located (See map, page 51) and is also a desirable recreation and second home development area. Between 1967 and 1973, 9,000 acres of big game winter range was subdivided in Flathead County.¹¹ As subdivision activity is more closely controlled on the valley agricultural land, more intensive use and "filling in" of the present subdivided areas will probably take place, and valley periphery areas will come under more pressure.

winter
range

It is difficult to assess the impact of one subdivision on its immediate environment. A rural second home development may not realize houses, fences and human activity for several years. If accessibility is good and mobile homes are utilized for living quarters however, an intrusion of

¹⁰ Department of Natural Resources and Conservation Aerial Photographs of the Bigfork Inventory Methodology Study.

¹¹ Flathead Tomorrow White Paper on Subdivisions, April 1974.



BIG GAME
WINTER
RANGE

Dept. Fish & Game, Kalispell

hundreds of people, dogs, cars, horses and attendant pollution can occur within a few months. A basic rule of thumb is that the alteration of the natural ecosystem varies directly with the number of people living in the area. It is unrealistic to imagine that a significant number of people can move into a sparsely settled area without causing long range alterations in that environment regardless of the intent or completeness of protective covenants. If these alterations are considered detrimental to biological, physical, and social community, the location, density, rate and type of development should be regulated for the benefit of the whole.

SUBDIVISIONS AND PROBLEMS

Prior to the enactment of the Subdivision and Platting Act and the Health and Sanitation Act of 1973 several subdivision developments came to the attention of the public and indicated a need for control of private development projects. On Whale Creek, a large tributary to the North Fork of the Flathead, a thirty-one acre, twenty-three lot recreational subdivision was proposed in January of 1973 with the lots running right to the waters edge. A road was cut near the back of the property (before any plans were submitted to the County Planning Board) that cut through 50% slopes and below a discharge area for a spring. The road

slumped badly, causing extensive repair and future hazard. Local area residents gave testimony of high water table spring runoff and Flathead Forest District Ranger Ron Prichard said that the area is in the floodplain and may flood. Further percolation testing and other water information was requested by the County Board and was never received, so the Board made no recommendation and the County Commissioners approved the plat, having no other information or recommendation for denial.¹²

Angel Point is a small, rocky peninsula on the northwestern shore of Flathead Lake having a spectacular view of the Lake and Mission mountains. It was subdivided in 1967 into half acre lots for recreation homesites. The small lots and rock substratum so close to the lake render conventional septic tank sewage disposal useless for these sites. Some of the owners are currently installing the Armon self-contained disposal system, digging a forty-foot square pit, sealing the outside and filling with gravel and a holding tank. This allows for sewage disposal in otherwise unsuitable soil for about two thousand dollars. The systems require Health Department approval.¹³

¹² APO Staff Report, Whale Creek Subdivision, APO Subdivision File, Kalispell.

¹³ Dave Nunnalee, Sanitary Engineer, D.H.E.S., Kalispell Office, personal interview, February 8, 1974.

Leisure Islands was created in 1970 on two low islands surrounded by old channels and backwaters of the Flathead River just south of Kalispell. Nineteen lots of fifteen acres (.5 to .8 acres each) were offered for sale as river front cabin sites. As the average height above water level for the islands is two to three feet, the building, sewage and flooding hazards are evident. Health restrictions were attached to the lots under the old regulations but six were sold to naive buyers anyway. The Floodway Management Act, subsequently passed, restricts future developments of this type, but the lots, having been platted, are still available. Reserve Drive Estates near Kalispell offers 1½-2 acre lots for sale within the delineated 100-year floodplain but may be eligible for development under the new definition of floodways in HB924¹⁴ passed in 1974, although they would appear to be in the actual floodway.¹⁵

In 1972 developers of land on the northwest shore of Whitefish Lake near the outlet of Lazy Creek decided to create new land for themselves by filling in part of Whitefish Lake and building on it. Construction began with no public

¹⁴ The new law defines a floodway with moving waters of a 100-year flood (and no structures) and a floodplain of standing flood water (and some development possible). This bill was devised and pushed by the Flathead Floodplain Association, landowners near the Flathead River around Kalispell.

¹⁵ APO Subdivision Files, Kalispell.

announcement and soon sediment had discolored a large area of Lazy Bay. As the laws of Montana state that the navigable waters belong to the state and cannot be arbitrarily replaced by private real estate developments (and the lake is a public water supply) the Attorney General filed a restraining order to prohibit the encroachment.¹⁶ Development in this case was halted by the vigilance of concerned citizens and the legal stewardship of the state over navigable waters, but it illustrates the thought processes of some land developers and the need for definitive shoreline controls against the abuse of the region's natural resources.

Glacier Summer Sites, also known as Green's Estates, is a classic example of the commodity approach of land ethics and disregard of the purchasers situation while utilizing the surrounding Glacier National Park to enhance the land value. The Sites are reached by a steep, winding, rutted road that meanders west eight miles from near West Glacier along the southern edge of Glacier Park to the Sites, which are one-half mile north of the North Fork of the Flathead. The road is passable only in the summer months during dry weather. The 375 fifty by ninety-eight foot lots are grid-ironed on a sloping hillside in small second growth timber.¹⁷

¹⁶ Ibid.

¹⁷ Flathead County Clerk and Recorder's Office Records, Kalispell.

Forty-foot bulldozed swaths in the brush serve as access roads. No provisions are made for sewer or water and the four cabins that have been erected are very small, one-room shanties for weekend use. More than two-thirds of the lots have been sold and the Park Service is negotiating for the rest. The Park inholding was purchased in 1946 by Charles Green of Coram, a developer noted locally for his attitude of "private determination of the use of private land" who sees any regulation of land use as an illegal taking by the government.¹⁸ The land was platted in 1955 and has been sold slowly since then. Lots are periodically offered for sale in country-wide brochures with no mention of the limited nature of the access. Inflated prices are quoted on the strength of location alone.

With the passing of the new regulatory statutes in the midst of extensive subdivision activity, and with the time required to draw up and adopt county regulations, some developments were caught in the middle. Tedmar Subdivision was drawn up in June 1972 and filed as Deed Exhibit No. 676 in the Flathead County Clerk and Recorder's Office in May 1973. The deed exhibit indicates a 160 acre, 29 lot division, R. Groenke owner. The exhibit does not bear a statement of approval by the County Commissioners as required under

¹⁸ C. Green, letter to the Hungry Horse News (Columbia Falls), February 1, 1974, p. 3.

Section 11-614, Chapter 6 of the Revised Codes of Montana, the old subdivision regulation. The Commissioners stated in a letter to the APO (June 28, 1973) that they have no record of reviewal of the plat or of talking to the owner. Mr. Groenke said he would welcome a review of his plat and stated that it should come under the provisions of the old statute as the development was started before July 1973.¹⁹ The plat has not been formally reviewed and apparently had slipped through the reviewal process. It appears to be an isolated instance of procedural breakdown rather than an overt attempt to bypass county regulations.

SUBDIVISION SINCE THE NEW STATUTES

With the advent of the Platting and Subdivision Act and the County Planning Board adopted policies, the proposed subdivision plats are reviewed at public hearings where recommendations are made for approval, conditional approval or denial of the preliminary plat. Flat denials have been rare. Plats not acceptable due to survey discrepancies, environmental factors, or substandard planning are usually given approval with conditions attached that must be met to clear up inequities of the plan before gaining official approval. Outright denials have come from the County Planning

¹⁹ Paul Kane, APO Staff, Report to the Flathead County Commissioners on Subdivision Filing Procedures, February 11, 1974.

Board on requests for variance from the Board's policy of no subdivisions on agricultural land. On October 10 and November 14, 1973, variances were denied to C. Hiseler and L. West for clearance to subdivide agricultural land. On December 12 application for Teakettle subdivision near Coram was denied due to lots encroaching on Highway 2 expansion right-of-way and poor lot location. In February 1974 the plat was revised, resubmitted, and conditionally approved pending Health Department sanitary restriction removal.²⁰ The Columbia Falls Board has recommended denial of two subdivisions as hazards to groundwater quality, poor sewage disposal, and adverse effects on traffic patterns. The Commissioners have upheld these recommendations.²¹

Conditions from the Planning Board do not have to be upheld by the Commissioners, who may require their own conditions. It is in this conditional category that most of the differences between the County Planning Board and the County Commissioners have come out. They may be addressed as partial overrides.

A case in point is Mountain View Mobile Manor, a proposed twenty-five lot (50' X 90') trailer park on 3.76 acres in Evergreen north of Kalispell. Community water and sewer was to be provided but no park provisions were made. The tract

²⁰ Flathead County Planning Board meeting minutes, APO Office, Kalispell.

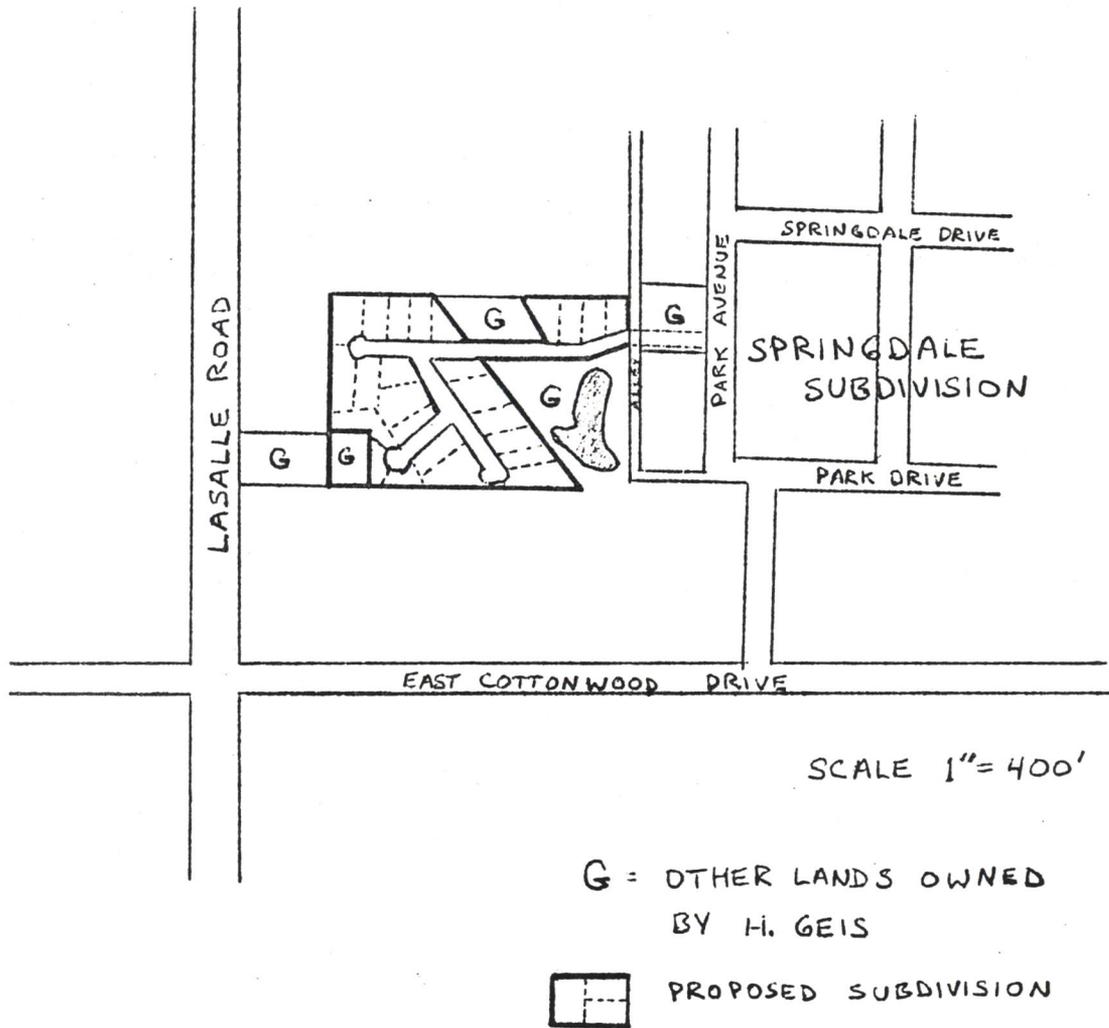
²¹ George Hanson, personal letter, loc. cit.

is located in a high water table area including a drainage swale and standing water at the rear of the property. Fill had already been added and the drainage swale blocked at the time of application. Access to the tract was to be provided by an extension of Park Avenue (a street serving the adjacent Springdale addition) through a lot owned by the Mountain View developer to the tract. This would add an estimated 125 cars-per-day traffic to this suburban collector street. A preliminary hearing held by the Kalispell Planning Board elicited a local response of twenty-eight opposed and zero for the development. An August 1973 board meeting, with less than a quorum of members to vote, gave seven conditions to be met before the plat could be acceptable. Among these were access from LaSalle road, replacement of the slough area, nondevelopment of four back lots, recreational space provided by the developer, return of the drainage swale, coordination of development with the school district, and upgrading the sewage system. The next meeting of the County Commissioners (September 7) allowed approval of the tract if- 1) access from LaSalle road was provided, 2) the school district agreed, and 3) a culvert was placed to facilitate drainage of the area.²² The Planning Board recommendations were thus severely modified by the Commissioners but it is not exactly an approval over

²² APO Subdivision Files, APO Office, Kalispell.

Figure 9

MOUNTAIN VIEW MOBILE MANOR⁶⁰



a denial by the Planning Board. The degree of agreement of conditions makes it difficult to point out and classify differences in Planning Board and Commissioner's decisions.

SUBDIVISION CASE STUDIES

CanMont

The CanMont Recreation Unlimited trailer park development began as a government sponsored subdivision of the "Baptiste Villa" sites to raise money for the Indians of the reservation. The lots sold for \$15 an acre in 1910 and were situated at the high water mark of Flathead Lake on the south shore of East Bay. This became deeded land with property rights bestowed on the owners. Then in 1931 Kerr Dam was completed and Montana Power Company purchased flooding easement rights for power production for nine vertical feet above the original high water mark delineated in 1909.²³ The water surface is controlled for power production and is highest (2893 feet) in late summer and lowest in early spring. The intertidal zone has become a marsh habitat with mudflats and tule growth.

Hector Speckart, a farmer who has contiguous farmland, owns some of the lots and the rest (some 48 acres) were bought by H.D. Barton and J. Vert in 1972. In 1973 CanMont Recreation

²³ Baptiste Villa Plat, Lake County Records, Courthouse, Polson.

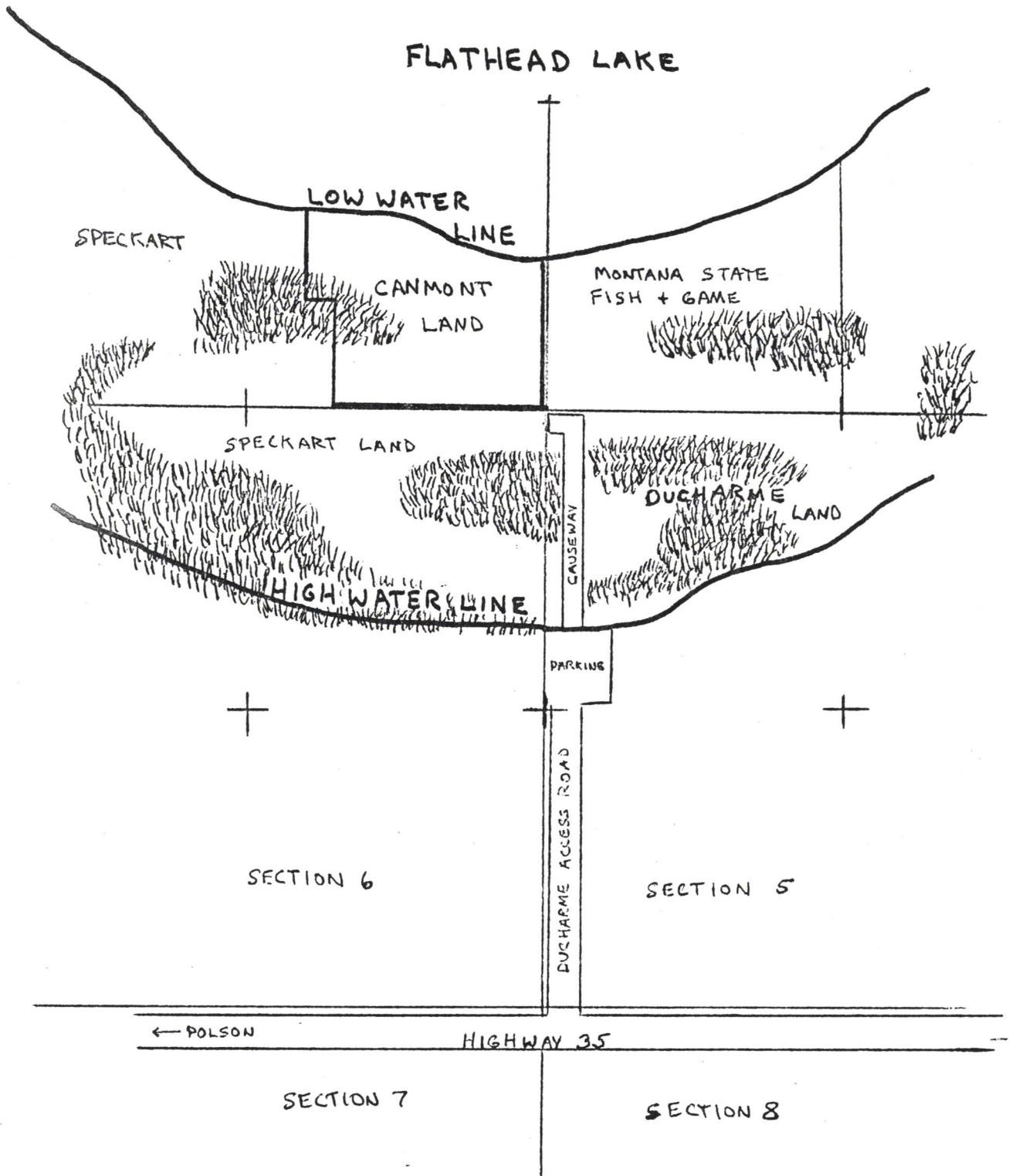
Unlimited was formed to develop the property.²⁴ A fifty year easement was purchased from B. Ducharme for access to the CanMont property and in April of 1973 a filled causeway was constructed on the Ducharme land some 1200 feet out to the common corner of CanMont land to the northwest, Speckart land to the southwest, Ducharme to the southeast, and Montana State Fish and Game land to the northwest. Speckart attempted a restraining order and the State Department of Fish and Game finally got a temporary restraining order to stop the fill construction as the causeway is an obstruction to the navigable waters of Flathead Lake.²⁵ Access to the forty-eight acres of the CanMont land across the point of the common corner would entail trespass on Speckart or Fish and Game land. The development plans call for a five to ten acre fill to provide 200 trailer spaces for overnight camping. Sewage would be collected and then hauled away. The county sanitarian was consulted as an authority on the possibility of environmental degradation. He found none.

The Polson County-City Planning Board considered the proposal and decided the economic advantages outweighed the environmental factors. Tax from the property would be \$2000 to \$3000 compared to the present seventeen dollars. The

²⁴ Lake County Records, Lake County Courthouse, Polson.

²⁵ Fourth District Court Complaint No. 8561, April 11, 1973.

CANMONT LAND AND ENVIRONMENT



Polson Chamber of Commerce also came out for the proposal. Speckart and the Fish and Game Department feel that currents are being interfered with, duck and goose habitat would be adversely affected, and the increase in people would greatly interfere with the functioning of the natural ecosystem of this marshland, which is very limited on the southern lakeshore.²⁶ Studies of waterfowl utilization on similar habitat on the south lakeshore show greatly decreased use of marsh areas where continual human activity is present.²⁷ Use of the area by waterfowl and especially goose brooding in the summer will be greatly reduced not only on CanMont land but also on Speckart's land and the contiguous State Fish and Game land, which was purchased by the Polson Outdoors Club in 1959 and turned over to the Fish and Game Department for perpetuation of the site as a waterfowl area.

James Vert, President of CanMont, believes private landowners should be able to do what they want with their property and that they would be providing needed campground space. C. Zimmer, owner of a KOA campground four miles north on the lake claims he has never turned a camper away²⁸ and another large private campground (Montana Campgrounds) has been constructed in the same area in 1973. Vert says the best

²⁶ The Missoulian, April 17, 1973, p. 8.

²⁷ Gerald Salinas, Goose Habitat Study (unpublished), 1973.

²⁸ The Missoulian, loc. cit.

way to accomplish a project of this nature is to keep it out of the public eye and do it fast before anyone can stop it. According to Vert, the Fish and Game Department has offered "only one-third of what we have in it."²⁹ CanMont and the Department of Fish and Game are continuing to negotiate for an agreeable price for the property while the temporary restraining order is in effect. The land was purchased for about \$6,000 and an additional \$7,000 was invested in the filled access causeway. The Department is prepared to file for a permanent restraining order if any further development is started.³⁰ CanMont tentatively plans to "use the land when its underwater" in the summer of 1974.³¹

This proposed development and the ensuing controversy points out the lack of direct control available to county or state agencies to control development in an area that is shown to be valuable in the natural ecosystem and in short supply in the south lake area. The construction could be halted legally only on the grounds of interference to navigation on the lake's waters. The Montana Power Company, owner of the flooding easement rights, has the legal authority to prohibit filling of the flooding zone, but they do not wish to intrude in the legal arena when such a small loss of

²⁹ J. Vert, personal interview, March 6, 1974.

³⁰ J. Posewitz, State Dept. of Fish and Game, Office Memorandum, April 16, 1973.

³¹ J. Vert, loc. cit.

flooding area is involved. The Fish and Game Department is forced to use a legal standing that does not directly address itself to the use of the land, its control, or the influence of the proposed land use on adjacent land uses.

Western View

Western View is currently an expanse of rugged, forested, rocky, mountainous land of almost two full sections (1140 acres) of the Mission range south of Bigfork and between Flathead Lake and the lower Swan Valley. It commands a scenic view and has access to Flathead Lake through the owner's and developers property at the Flathead Lake Lodge. The original proposal in 1973 was for ninety-four tracts of from five to thirty acres, forty-two residential lots of one to seven acres, and eight condominium buildings overlooking Flathead Lake. The APO was consulted and found that many of the lots had severe soil restrictions for septic tanks, rock outcroppings dominated some of the sites, and that the road system had some steep sloping sections and acute intersections.³² A Fish and Game report stated that the area is prime deer and elk winter range and couldn't recommend any development in the area.³³ The proposed development was informally rejected by the APO staff and two alternate planned-unit-development

³² Western View, APO Staff Report, April 1973.

³³ Dickwert, State Dept. of Fish and Game Report, Kalispell, March 1, 1973.

plans were suggested using linear and cluster siting for forty-two one acre homesites and ninety-two larger tracts. These proposals were rejected by Mr. Les Averill (the owner) as they did not provide the privacy and seclusion sought by people of the intended market, who also require minimum encumbrances on their land. Mr. Averill then decided that rather than cluster development he would make all the lots larger than ten acres, giving privacy to the buyers and eliminating the review process. No construction has been accomplished but the primary road system has been flagged in.³⁴

Subsequent to this plan the developers have decided that the land is not compatible with large lot divisions. Investigation of other large developments (notably Sun River and Black Butte Ranch in Oregon) has indicated that better utilization of the land characteristics could be made through small two-to-five-acre low density sites in cluster developments, screened from each other by greenbelts. Rock outcrops and viewless sites would not be used for houses. No perimeter fencing or dogs would be allowed to ease wildlife disruption. Over a fifteen year period a 1,000 acre development with 200 sites of 2.5 acres, 500 deeded and 500 commonly owned open space is proposed, making the actual density one house per

³⁴ Western View, loc. cit.

five acres. Property lines would be drawn to the lay of the land. Economic influences would dictate the scale and timing of the development and the indications are now that the economy would not support the sale of condominium units.³⁵

The location -- close to the lake, near Highway 35 and Bigfork, abutting Forest Service land on the south and the east -- and physiography of the area make it attractive for the developer and prospective buyer as a recreational home development if basic physical requirements can be met. Water supply and sewage disposal may prove difficult to obtain in some places where bedrock is near the surface and in depressions containing small pothole lakes and no drainage. Road access to county specifications may be hard to realize, although as the developer says, "a D-8 can make a road anywhere." The influence of a development this large could have a considerable effect on the community services of Bigfork. The magnitude of proposed development of this area would indicate that considerable planning should be done to insure its financial and physical success. The small-sized lots proposed would mean that the subdivision would be subject to the review process according to Flathead County Subdivision Regulations, though perhaps under a P.U.D. classification. The effects of a development this size will be difficult to

³⁵ Dan Averill, telephone interview, March 6, 1974.

anticipate. It will depend on the pace of construction and whether the residents subsist on the local economy or use the land as a second or recreational home. At present the great majority of subdivisions in the main upper Flathead Valley are for primary residences, and second home developments are more numerous in the more remote tributary drainages.

Developments for primary homes logically generate more traffic, increased wildlife disturbance through greater frequency of occupation, and generally produce an urbanizing effect on the surrounding environment. Second home subdivisions tend to acquire lot improvements more slowly and speculation is a common land use.

Deer Meadows

Deer Meadows is a proposed subdivision of 108 acres in the forested foothills four miles northwest of Kalispell in a sparsely populated area known as the West Valley. The original proposal in June of 1973 by the owner G. Ostrom showed 134 lots of mostly 20,000 square feet ($\frac{1}{2}$ acre) each with a few larger parcels located on the hillsides. Community water service would be made available, and individual sewer systems with septic tanks and absorption fields would be used for sewage disposal. Solid waste would be disposed of at the county landfill site. Provisions for a public park incorporate one-seventh of the total area and include most

of the area influenced by the surface water of Whitetail Creek. The site is located on a glacial till terrace and a large upland meadow. One water body, intermittent Whitetail Creek, flows through the property.³⁶ The Department of Health's Draft Environmental Impact Statement says that severe limitation for septic tanks by unfavorable slopes may affect some forty percent of the lots, and the slope and rockiness of the soils may interfere with some construction and utilization of the terrace face area.³⁷ The Fish and Game Department states that the subdivision is located on critical deer winter range in the low forested valley periphery, and intensive human settlement and dogs will eliminate the wildlife population and preclude any winter range use by deer in the area. They recommended no development on this site.³⁸

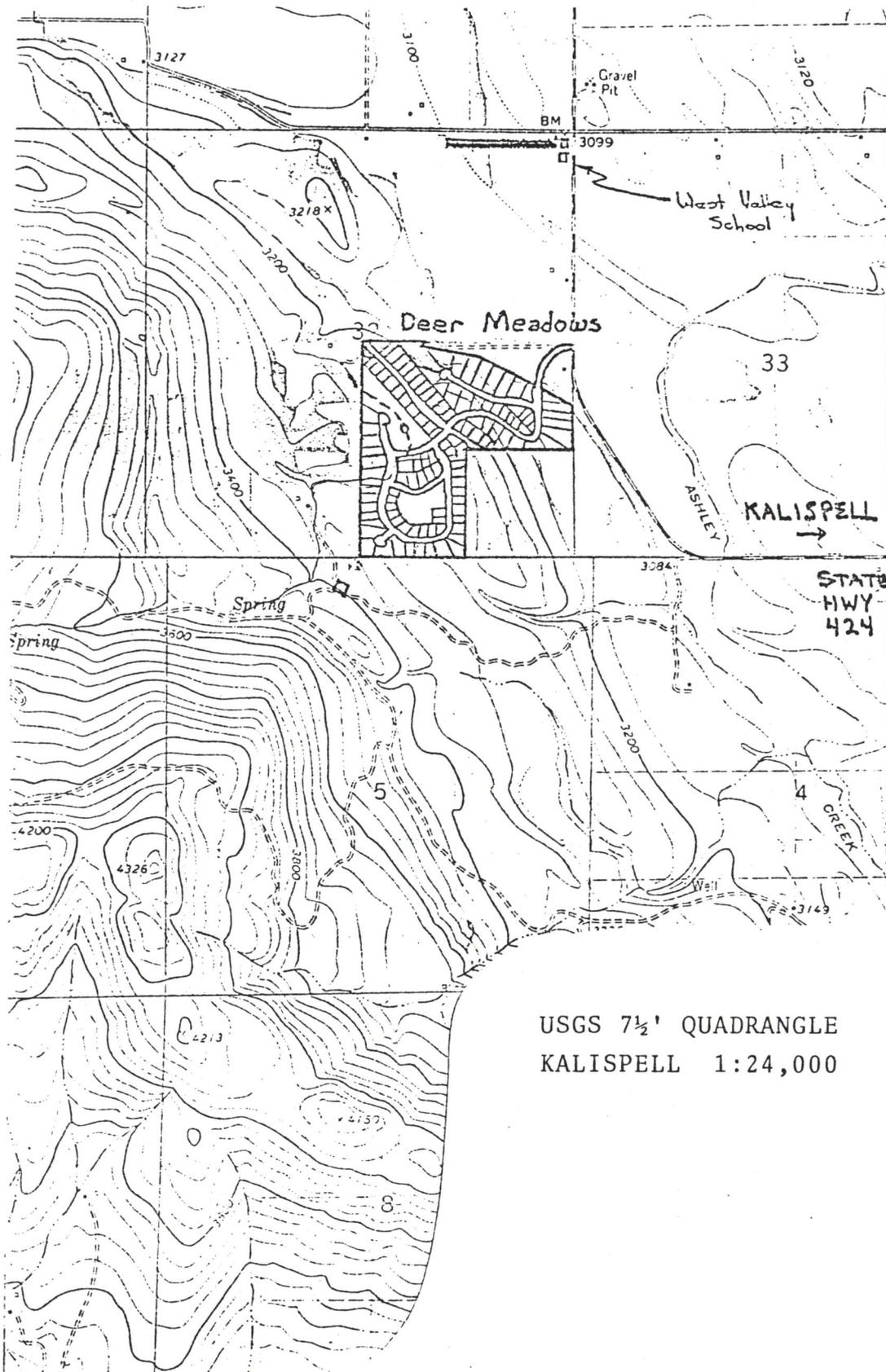
Perhaps the greatest impact of Deer Meadows would be to the social community. The influx of 130 families would require police protection equivalent to the addition of one man to the county force at an average cost of \$50 to \$100 per house. The West Valley school in the West Valley District,

³⁶ Deer Meadows Subdivision, APO Report, August 8, 1973.

³⁷ Wilbur Aiken, Draft Environmental Impact Statement on Deer Meadows Subdivision, Kalispell Regional Office of D.H.E.S., September 12, 1973.

³⁸ Otis Robbins, Deer Meadows Environmental Impact Report, Department of Fish and Game, October 10, 1973.

DEER MEADOWS PROPOSED SUBDIVISION



USGS 7½' QUADRANGLE
KALISPELL 1:24,000

(and one-half mile north of the site) has just added three rooms and is full now. The District is currently bonded to capacity. If an estimated 150 elementary children were to attend the school from the subdivision, eight more classrooms and seven or eight new teachers would be required. The population, size, and budget would be more than doubled. The West Valley District has a taxable valuation per child of \$5,937 and operating costs of \$526 per child, \$279 of which is provided by property taxes. If the taxable valuation of the subdivision doesn't provide the per-child base, a higher mill levy than the present district levy of thirty-three mills would be required. If a majority of the new homes were mobile homes, the sum could not be raised at the same mill rate. A new bus route to the high school would be required at a cost of \$800.³⁹

The APO staff recommends that a water system insuring adequate fire control for the development, which is surrounded by second growth forest, would be necessary. The other condition is that the developer would coordinate the growth of the subdivisions and work with the school district trustees. The Flathead County Planning Board held a public hearing in August of 1973 and gave conditional preliminary approval to the subdivision, adopting the conditions of the APO staff.

³⁹ The Missoulian, January 9, 1974, p. 7.

At the meeting eight citizens spoke out against the plan and one for it.⁴⁰

In January 1974, the West Valley Landowners Association was formed by residents of the area in protest of the subdivision and its impact on the school district. The Association asked the trustees to approve the subdivision only if its lots were all ten acres or over and limited to single family dwellings. The Association also asked the County Commissioners to impose a temporary moratorium on all rural subdivisions in the West Valley until a plan for orderly development can be implemented from the comprehensive County-wide plan being written. The group also asked the Commissioners to institute emergency zoning to preserve the agricultural value of the area.⁴¹

Since the public hearing and negotiations with the school trustees, a new plat has been offered with 75 lots on 76.8 acres, 16.5 acres of park, and 15 acres of roads. A final decision has not been rendered on this proposal pending the completion of the prime condition, that the school district trustees agree with the development plans. Ecological considerations have been largely set aside or compromised and the basis for the decision placed on the economic and social

⁴⁰ APO Subdivision Files, Kalispell.

⁴¹ Hungry Horse News (Columbia Falls), February 1, 1974, p. 3.

impact of the development on the school district. This is a primary home development and human housing needs are used by the developer to overshadow wildlife and aesthetic concerns.

Swan Meadows

Swan Meadows is a seventeen acre, thirty lot subdivision on the lower Swan River, two and one-half miles east of Bigfork. It was instigated in 1973 by the Golden Goose Development Company owned in part by L. Vadala of Kalispell. The tract sits on a low terrace, with a steep twelve foot drop to the river that supports riparian forest vegetation. The soil of the two-thirds of the tract near the river is Selle fine sandy loam, which has good characteristics for building and drainage. Back from the river, however, the soils are Stryker silty loams having severe limitations for sewage disposal and high groundwater levels. This physical profile coupled with the minimum lot size (20,000 square feet) produces considerable implied restrictions on home siting. As the developer proposed that each lot provide its own water and sewage disposal, the river lot building sites would have to be situated at the rear of the lot to prevent river water contamination and the off-river lots would require siting near the front of the lot to avoid the poor soils characteristics at the back of their lots. In addition, the whole tract is classified as Class III agricultural soil though it has been used as a hay

meadow.⁴² The on-site wells would have to tap the deep (100-300 feet) groundwater source or the shallow sandpoint aquifer which is probably less than the state-required twenty-five feet deep. The minimum lot size and physical restrictions create a congested and potentially pollution-prone situation.⁴³ A safe, potable water supply and sanitary sewage disposal was not assured to the buyer. The APO staff report recommended disapproval of the subdivision because of the agricultural classification of the soil and recommended as an alternative plan that larger lots be provided and a strip of common land be set aside along the river. Lot eighteen, having a high water table, was suggested as a park.

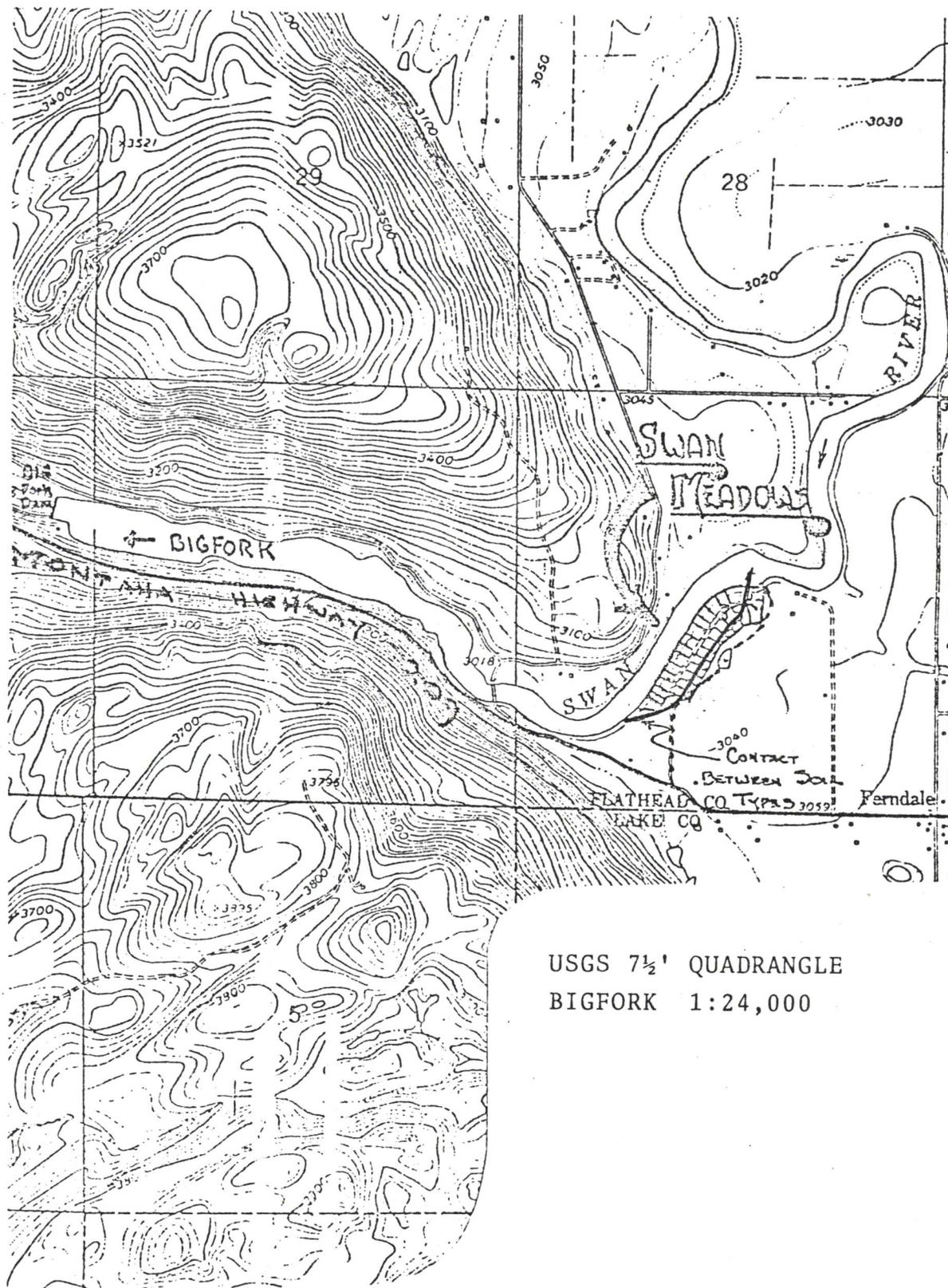
On August 8, 1973 a public hearing was held by the Flat-head County Planning Board, and the decision was reached to reject the preliminary plat due to the Board policy of discouraging subdivisions on agricultural land. The Board of County Commissioners met on August 30 and decided that the land was primarily hay or grazing land rather than agricultural land and then disapproved lots nineteen through thirty, all the lots in the meadow off the river. The small narrow lots along the river (100 feet wide) were approved for development and the others were disapproved in the interest of saving the

⁴² APO Staff Report for Public Hearing on Swan Meadows Subdivision, August 8, 1973.

⁴³ Wilbur Aiken, D.H.E.S., Environmental Impact Statement, Swan Meadows Subdivision, September 6, 1973.

Figure 13

SWAN MEADOWS PROPOSED SUBDIVISION



USGS 7½' QUADRANGLE
BIGFORK 1:24,000

relatively low-productive meadow. The access road was required to be brought up to county specifications before final approval of the subdivision could be given.⁴⁴

The decision reached by the Board of County Commissioners seems to indicate that a compromise was struck between preserving environmental quality and/or agricultural values and allowing some development to take place on the developer's property. The small lot size, propinquity to the river, and hazard of shallow sandpoint well water source was subordinated to the preservation of eight acres of marginally productive agricultural land-and in an area that is experiencing extensive subdivision development. A condition for approval addressing itself to the size of each lot and the intrusion on the river environment might have served the well-being of the area and the county better in the long range scheme.

Southgate Village

Southgate Village was originally introduced as a medium density mobile home development at the south city limits of Kalispell near U.S. 93. In June of 1972 a proposal was submitted for an eighty-three acre tract of 128 lots, 28 one acre lots and 100 quarter- to half-acre mobile home sites, with on-lot water and sewage disposal facilities. A large

⁴⁴ APO Subdivision File, Kalispell.

portion of the tract is underlain by a heavy calcareous silt, causing an impermeable outcropping zone with severe septic tank and drainfield limitations. An oxbow slough with no outlet is located at the south of the property, and sewage contamination was very possible. An Environmental Impact Statement from the Department of Health and Environmental Sciences, which was operating under statutes in force prior to July 1973, reluctantly stated that the plans did meet minimum requirements but that potential problems were present.⁴⁵ Sanitary restrictions were then removed from the property. Action was not taken for final approval from the Kalispell Board and no construction was accomplished.

The plat was resubmitted in July of 1973, at which time SB208 was in effect. Extensive redesigning was done by planner J. Bostedt. The new plan applied for annexation to the city by phases and with utilization of city water and sewer facilities. Density was increased to 340 lots on the 68 acres, two commercial lots on six acres, and twelve acres to be dedicated as a public park bordering the waterway. Lot size was reduced to 6,000 square feet (50' X 120') for a density of 4.06 per acre. A preliminary cost study has indicated water and sewer extension to be economically feasible at this density. One hundred mobile home lots and one

⁴⁵ Department of Health and Environmental Sciences Final Environmental Impact Statement, Southgate Village Subdivision, December 20, 1972.

commercial lot were proposed for phase 1, and zoning was requested for Business Residence - District 5 for the commercial lot and Residence - District 3A accommodating mobile homes for the remainder of phase 1.

Street layout was improved over the original plat, but construction configuration was recommended to be further changed to accommodate anticipated increased runoff and possible freezing of draining water in winter. The APO staff gave a favorable recommendation to the plat and preliminary approval was obtained from the City Board.⁴⁶

The development of this plan shows how the planning process can achieve goals that benefit the community through critical assessment of the direction and needs of community development, utilizing the resources available and striving to protect environmental quality. While a 340 lot trailer park may not be the ideal of aesthetic environmental quality, it is well located to take advantage of municipal water, sewer, and transportation systems, and concentrates this kind of land use in a compatible area. If this subdivision realizes its projected capacity it will accommodate some 200 more mobile homes that would otherwise have been spread out and located elsewhere.

⁴⁶ APO Staff Report on Resubmittal of Southgate Village Subdivision Plat, August 24, 1973.

Many Lakes

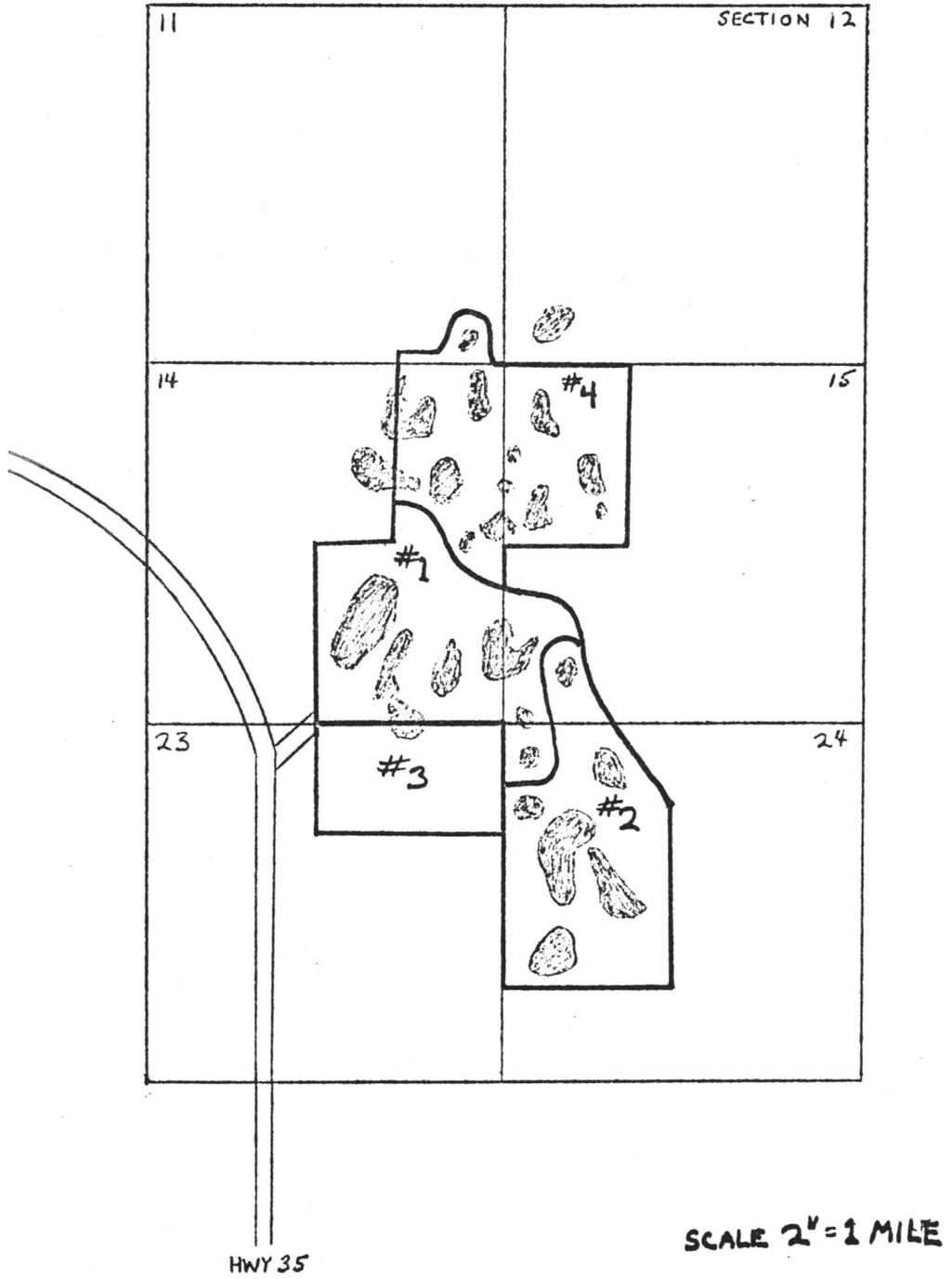
Many Lakes Vacation Village is a recreational or second home development and the largest subdivision development in the Flathead (See location map, page 61). Conceived by Francis Bitney⁴⁷ and owned by state legislator Fred Broeder, Many Lakes took seven years to complete. It is situated in the kettle and kame country of the east valley, and surrounds some twenty-six pothole lakes which have no inlet or outlets, but are fed by groundwater. Many Lakes covers 1,200 acres and includes 300 one-half to five acre lots. As many lots as possible front on the small lakes (See map, page 83) which are shallow and eutrophic. Ninety percent of the lots have been sold and fifteen houses have been built to date. Three of the structures are primary homes and the balance are second homes. No trailers are allowed. Water and sewage must be furnished on-site and there is no garbage disposal system available. Electricity and telephone service is available.⁴⁸

The land was subdivided in four stages on contiguous acreage. The last three stages came under public review and some question was raised about soil percolation capacity and possible lake contamination, but investigation indicated

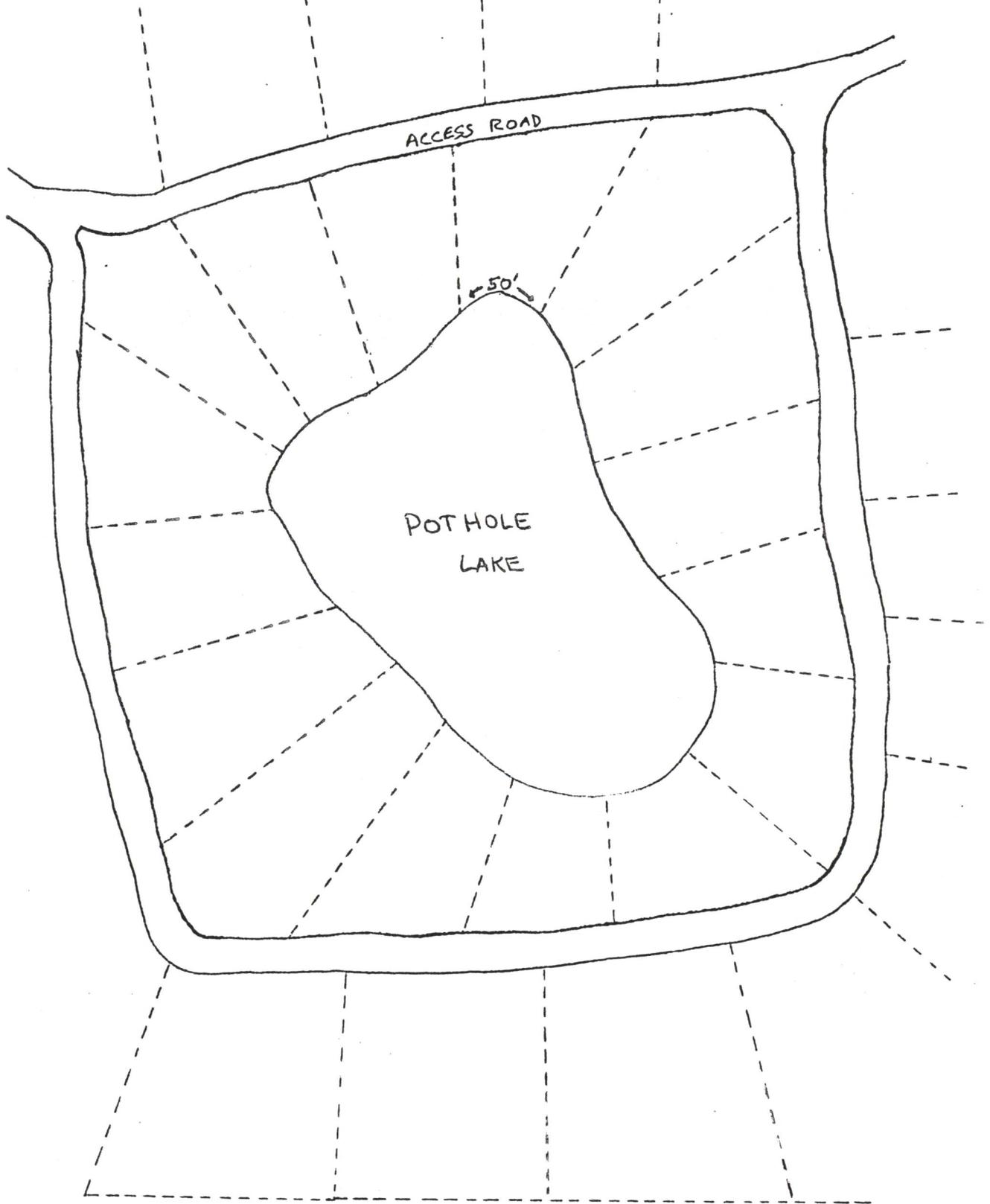
⁴⁷ Mr. Bitney is a developer and has written a book entitled How to Buy Recreational Land for Profit, Prentice Hall. He has developed eleven other areas in the Flathead.

⁴⁸ Francis Bitney, personal interview, April 26, 1974.

MANY LAKES RECREATION VILLAGE



TYPICAL MANY LAKES LOT LAYOUT



acceptable sanitary standards would be met. Nutrient enrichment is almost certain to occur in the entrapped lakes, but the rate and degree of eutrophication cannot be predicted.⁴⁹

The market for this recreation home village is mainly Montanans who want property in the Flathead area, even if they can't live there year round. A psychological need for a piece of the "Big Sky" country for vacations or the future is supplied by this development.⁵⁰ Building will probably be accomplished slowly here, and the full impact may not be known for twenty-five years. This subdivision is not supplying primary housing for residents but it is dictating long range land use for a unique natural area for the benefit of the owner, developer, and part-time use of the lot owners. This type of development could have more critical restrictions than the close-to-town primary home subdivisions.

Ptarmigan

Ptarmigan Incorporated is a recreation resort complex located between the town of Whitefish and the Big Mountain ski resort. There are currently seven condominium buildings containing forty-nine units, and fifteen lots for houses, two

⁴⁹ Dave Nunnalee, D.H.E.S. Sanitary Engineer, Kalispell, personal communication, February 10, 1974.

⁵⁰ F. Bitney, loc. cit.

of which have been built upon. The land area owned by the resort totals 457 acres, including frontage on Whitefish Lake. Originally a master plan for the area included a convention center, golf course, lift to the ski area, and more condominium units and house lots. A sewage treatment plant has already been installed. Future plans for the development are now in limbo as the resort has been taken into receivership by the Conrad Bank of Kalispell. The possibilities for a large planned unit development have been considerably decreased by the change in ownership unless another corporation buys the whole tract. Without the value of the total development, the land will probably be developed piecemeal, with the first concentration being the lakeshore parcel.⁵¹

⁵¹ S. Hurst, Ptarmigan Inc. Salesman, personal interview, April 14, 1974.

Chapter 3

CONCLUSIONS

The phenomenon of rapid land subdivision has been caused by a combination of economic and psychological factors in conjunction with easing of physical constraints to rural living. Contributing also is the rapid increase in population in the valley. The physical environment of surrounding recreational land, and natural and agricultural land and waterways in the valley provides an ideal setting for the great American dream of getting away from it all to a nice rural area. This psychological need, coupled with an increasing affluence in the middle class and in increased mobility through better transportation, has created a large market demand for subdivided land. Property investment and speculation is encouraged as a hedge against inflation and as the basis of the wealth of many successful people. The demand is met by the subdividers or developers who see the difference between the divided price and the original cost as their profit. This economic realization, coupled with a much lower realization of revenue from the land through other land uses, is the major force in the generation of the supply of subdivided land.

The results of the land subdivision boom are a fairly rapid change in long-range land use patterns in the private

ownership area of the Flathead, which is the valley floor and low foothills. Competition from this expanding land use with previous or existing land uses brings attention to the balance as it changes. The typical pattern of land use change is from a natural, agricultural, or open space area to a higher density human use and habitation utilization. The previous uses -- agriculture, natural area, wildlife habitat, recreation, or open space -- are excluded or reduced by the land use change. The limitation of land capability for some of these uses to the lower elevations (mostly privately owned) stresses the importance of understanding the magnitude of change and its effect on the quality of life. Agricultural use, most directly related to regional economics, has been officially recognized (by the Flathead County Planning Board) as a valuable land use with definite physical limitations of soil and climate, and through policy the Board attempts to retain this land use where possible. Without diminishing demand for subdivided land this causes further encroachment on less directly economically beneficial land such as wildlife habitat and other natural areas.

Final results of human habitation impact are sometimes not apparent until years after the land use commitment has been made by disbursing ownership of subdivisions. Finance availability, personal situation and choice can cause considerable delay between land purchase and building and

occupation (62% of the lots in Flathead County haven't been built on yet). Financial and time-to-utilization factors have encouraged extensive use of mobile homes on rural subdivisions. Harassment by dogs, vehicles and human predation on wildlife, nutrient addition to waterways, and noise and other pollutants of intensive human use can't be measured when the use commitment is first made. In addition, the cadastral survey system of land boundary description (initiated early in the country's history and furthered by present survey regulations) imposes a "gridiron" ownership pattern on the land. This pattern, cartographically expedient but without regard to natural patterns, further fragments natural land and ecosystem units into less productively practical pieces. Individually subdivisions don't always have extensive impact, but they have a cumulative effect and should be dealt with collectively in their effects.

Current statewide controls for subdivisions concern basic physical limitations such as sewage disposal and water availability, minimum construction codes, and minimum survey requirements. The statutes emphasize that subdividers have responsibilities as well as rights, but they control only minimum standards of development and become engineering considerations that can be overcome by application of money and technology. The restrictions become only one of financing the construction. Subdivision siting, size, and impact are

not adequately addressed. State law does not have the authority to dictate land use in specific subdivision situations. Minimum lot size designation of ten, twenty, or forty acres becomes less critical when it allows only for public review and not subdivision control.

County regulations generally reiterate state statutes on minimum standards. The County Commission has the power of decision for plat acceptance of subdivisions that qualify for public review. However, the Commission has little legal justification for rejecting a proposed development if the physical and survey requirements are met. The Commission is susceptible to pressure to accept subdivisions as they increase county tax revenue through higher assessment. Special interest groups, usually economically oriented (Chamber of Commerce, realtors, developers), also can bring pressure on the local authority. Any proposed change in the land use decision process is considered a challenge to county land use control authority. Also the county, by its political boundary restrictions, does not have the scope to deal with regional problems and land use decisions that affect the region. Temporary agricultural land subdivision moratorium is promulgated by the County Planning Board, whose capacity is advisory only. If the County Comprehensive Plan continues this policy, court challenges are sure to come on whether this constitutes an infringement on private land ownership rights. If the plan

attempts to restrict second home or rural subdivisions, similar challenges will probably result.

The motivation for subdivision and development of land is economic gain. Developer's interests are economic and are guided by economic principles. This precludes regulation by land ethic and suggests that effective regulation be centered in the economic realm. High capital gains tax on speculation profits and increased property tax on rural developments have been suggested to accomplish this. Economic disincentives for second home subdivisions could be imposed by county regulations. Basic questions arise as contemplated regulations become more restrictive. Should justification for a particular land use be required? Where is the balance between private determination of land use decisions and public welfare?

In the present legal environment the best land use control measure is to own the land, and the next best is to own the development-restriction authority through easements. These methods have been employed in some environmentally critically areas (Fish and Wildlife waterfowl habitat and State parks), but are limited by available financing and agencies that are restricted to very specific types of land.

The objectives of a land use policy and its controls must be understood and accepted by the people of the community if the program is to have any chance of success. This is indicated

in the U.S. Constitution, which leaves the highest and best use of the land to be determined by the people. If a restriction of subdivision development is an aim or a policy, a majority of residents in the valley must believe that this is a worthwhile concept in promoting the welfare of the people who live here. Who has the right to change land use and foster its effect on the quality of life in the region? The people must decide whether private land use decisions are inviolate or not.

The objectives of a wise land use policy should include the protection of the resources that enhance the quality of the physical and biological environment. Aquifers and their recharge areas, clean surface waters, marsh ecosystems and their wildlife, floodways and their dynamic balance, good agricultural land and its productivity, clean air, wildlife and its required habitat, and access to perceive and enjoy these resources without disruption -- all add to the total that makes the Flathead a unique and beautiful place to live. Consolidation of intensive human activities leaves room for these values and their required land that can be adversely affected by the activity. Economic forces that encourage consolidation of human activities (living near town or in specified areas) and retention of land ownership in large parcels for better land utilization can serve the present

owners and the general public. A state land use policy and plan can give support and help focus land use objectives that benefit the people in the community. A strong citizen-supported Comprehensive Plan can be even more effective in realizing land use goals. Subdivisions that do not provide primary living quarters for people of the area can be more closely restricted if the people, and their elected representatives, decide that harm from this nonessential land use outweighs the private gain of speculators and developers and whatever increase in property tax to the county that may be realized.

The methods of land use control have evolved into a balance of constitutionally delegated powers and locally determined objectives of the planning process. Methodologies such as physical and use inventories, impact matrices and comprehensive plan formulae are numerous. What is needed are specific objectives and the means to accomplish these goals with on-the-ground planning. Feedback of public opinion on comprehensive plan alternatives should indicate desired objectives and areas where education of the people to needed controls would be helpful. A concise explanation of the Constitutional basis for land use control, low key and widely circulated, is an example. A documented study of financial advantages of home-subdivision-area consolidation and disadvantages of random dispersal -- exposed to the County

Commission -- is another. Coordination between different regions and levels of government in identifying needs, problems, and resources of each region are lacking in Montana. An advisory board with representatives from federal landowner and policy agencies, concerned state departments, regional and contiguously regional areas, and county and local regulatory offices should be formed to help in communication and coordination of overlapping concerns. Flathead and Lake County cooperation in providing for the orderly development of Flathead Lake and protection of this nationally important natural resource is an important case in point.

Functional planning, the concentration of regulations or land use guidelines around a single resource or problem area, has been shown to be a less than ideal approach, as the isolation of a single conceptual area for planning purposes cannot consider its relationship to the whole region and the interrelatedness of land use problems. Areas of recognized value that are threatened by specific encroachments can be emphasized for protection however. The shorelines of lakes, streams, and marshes are such areas. The demand for these areas is made evident by the number of subdivisions located along waterways and the advertising and increased prices attached to such developments. Special problems can arise from subdivision and development in these areas -- decreased public access, increased runoff and erosion due to construction

of impervious surfaces and the disturbance of ground cover, and nutrient addition to the water -- that affects downstream ecosystem balance for considerable distance. Shoreline zoning has been attempted by past legislatures, but rigid restrictions on density and setback distance does not allow for individual environmental situations that are perhaps best evaluated on each site. Basic "guideline" restrictions on density and setback with maximum area disturbance criteria, written by State Health Department and Fish and Game Department personnel who work with these problems, could emphasize protection needs to planning staffs and County Commissioners. Individual cases where increased development would not adversely affect the environment would have to be strongly documented and proved by the developer before initial plat application.

Criticism of current state subdivision regulation statutes centers around the impracticality or difficulty in working with some clauses that stem from the lack of day-to-day working knowledge of practical problems by the writers of the statutes. When the basic regulatory goals have been worked out by the legislature or a committee, a symposium of parties who work with and under these regulations might be drawn together to indicate potential problem areas or vague wording so that these discrepancies can be worked out before the bill becomes law. The present system induces a one or two year lag in the corrective process and also inserts the politically-motivated change possibility at every correction.

Rural zoning has been a primary land use regulation tool in other states threatened by dispersed developments (Hawaii, Connecticut, Vermont). Zoning district enabling legislation is on the books in Montana (Chapter 47, Section 16, 4702-3), and the County Commissioners may establish zoning districts and regulations in unincorporated regions by resolution. Although historically this regulatory process has been disappointing in its achievement of intended goals, it remains the major instrument for rural land use regulation. In Montana, "zoning" elicits a negative reaction by the people due to its government regulation of private land connotation. However, in some rural areas of Flathead County threatened by major development, landowners have asked the County Commissioners for restrictive density zoning for their area. Proper coordination between the county comprehensive plan and local district zoning objectives can be the best safeguard against social and environmental degradation in Flathead County.

For positive subdivision control at the county or state department level, a subdivision siting act with categories of descriptive criteria and requirements for the physical site, size, density, and architecture of any new subdivision would be necessary. As this would dictate development potential for all private land and therefore be a major differential economic determinant to private property, it would most likely

constitute a taking and require compensation to all owners deprived of potential revenue by development. This is very likely to be unacceptable to the people of the state, so subdivision control will have to be by more indirect means.

As the incentive for land subdivision and development is economic gain, disincentives can be produced to affect the same source. Taxation has historically been utilized to generate revenue for government operations and services. Tax incentives have been used for many years to encourage business development, resource exploration and domestic trade. Taxes could be a major tool to compliment objectives of land use planning. The Greenbelt Act of 1973 and subsequent removal of bureaucratic red tape in 1974 is a first step in encouraging long range beneficial land use. Taxing land on how it is used as opposed to its speculative or market value lessens the economic pressure to subdivide or sell it when the subdivided value is so much higher. Ideally land could be taxed according to how it is used versus its most beneficial long range use. (Beneficial in terms of its contribution to the total regional ecosystem). New Hampshire uses a current use tax in conjunction with a ten year non-development easement to discourage second home subdivision. Vermont links property tax assessment to personal income to ease the pressure on low or fixed-income landowners to sell or subdivide in the face of rising taxes. Compensation to

rural landowners for nondevelopment through tax breaks would encourage nondispersal of ownership and retention of present land uses. The basic tenet of taxation for land use "persuasion" is to reward "good" land use and the retention of consolidated ownership. A substantial capital gains tax on income derived from the speculative profit gained on short term land turnover was defeated in the 1974 Montana legislature, but this could still be an effective way to reduce land use manipulation from speculative economic pressure.

In some areas of the country subdivision development has been controlled by the regulation of some limiting factor in the environment by the government agency. The Goleta Valley near Santa Barbara, California underwent rapid land development until the availability of fresh water became so critical that new houses cannot be built until the county decides that water can be furnished for domestic needs. A land development moratorium in the Tahoe basin in California is enforced by the capacity of the local sewage treatment plant to accommodate new structures and sewage loads. The Flathead Valley does not seem to have any physical constraints that may limit growth in the near future. Constraints to growth will have to be socially or economically derived for the preservation of a desired quality of life through the realization of optimum land use.

RECOMMENDATIONS

1. A concentrated effort should be made to identify natural and scenic areas of importance to the local region. This includes important wildlife areas (Fish and Game Department), aquifer recharge areas, marshes and other water areas, and access to them. A method to insure their protection should be implemented before their final selection has been made. (See Recommendation number 5)

2. A regional organization should be activated to allow a regional approach to land use problems. The state has set up regions by groups of counties (Region 10 includes Flathead, Lake, and Lincoln Counties) but as yet there is no organization to promulgate land use decisions.

3. A board of officials from different levels of government (federal, state, and county) and agencies that are concerned with conservation or manipulation of the environment should be formed to coordinate programs from the different groups and keep the other concerned agencies informed of new programs.

4. As new legislation is proposed for regulation subdivision and protecting environmental quality, input should be solicited from mid-level-personnel of the agencies responsible for regulation of the new law. Vague wording and unworkable regulations can be eliminated before the bill becomes law.

5. An agency should be set up to actively pursue the acquisition of conservation easements (both solicited and voluntary) to preserve natural areas of the region. This may be done in conjunction with recommendation number one. The agency could be funded at the state level and organized at the regional level.

6. A strong educational program should be instigated illustrating the need and advantages of proper land use planning to the people of the community. The Areawide Planning Organization could be the originating organization. The program should be aimed at those people in the community who have not yet become aware of this need or are resisting any control of land use.

7. Property tax structure should become more of an incentive to proper long range land use. When land use objectives are identified through an accepted comprehensive plan, the tax structure should encourage the most beneficial land use through tax breaks and discourage less desirable uses through higher taxes. In addition, land developers should be enjoined to pay the costs that derive from their developments that are now borne by the community, public services, and the inhabitants of the development.

8. Subdivision developments that can be identified as second home or speculation developments by their inaccessibility, distance to community centers, and general lack of immediate

utility as a primary living area (lived in less than six months of the year) should be made illegal as a gross misuse of our most valuable natural resource, land.

9. Proposed new development construction plans should be legally required to be restricted to the least possible land form alteration. Bulldozing every building site level to accommodate a lack of architectural imagination interferes with natural processes and imposes man's short-sighted whims on landscapes that attain balance through a dynamic process of natural physical laws that reflect their conformance to the whole.

10. The high school curriculum should include a one year required course in ethics (both interpersonal, and man and the cosmos) to provide an alternative to the "business-man's ethic" of get what you can.

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APPENDIXES

APPENDIX A

LAND, POPULATION, AND SUBDIVISION STATISTICS

Flathead County Land Statistics*

<u>Land Area by Major Land Classes</u>	<u>Acres</u>	<u>Percent</u>
Forest Land		
Federal (USFS & Glacier Park)	2,411,649	73.3
NonFederal		
Corporate Lands	315,000	9.6
Montana State Forestry Dept.	129,700	3.9
Indian Lands	8,000	.2
Private or Individually Owned	204,421	6.3
Total Forest	<u>3,068,770</u>	<u>93.3</u>
NonForest		
Urban and built up	17,347	.5
Small water areas (<40 acres)	6,524	.2
Cropland	115,679	3.5
Pasture	22,354	.7
Range	49,820	1.5
Other	9,106	.3
NonForest Land	<u>220,830</u>	<u>6.7</u>
Total Flathead County	3,289,600	100.0

Land Classification NonFederal†

Irrigated farm	8,384	1.17
Nonirrigated farm	95,852	13.43
Grazing	107,560	15.07
Wild hay	15,709	2.20
Noncommercial timber	247,912	34.72
Commercial timber	238,557	33.41
	<u>713,974</u>	<u>100.00</u>

Agricultural Soil Classifications§

Soil Surveyed	239,360 acres	
Class I	11,453	Saline Soil - 6,939 acres
Class II	65,806	
Class III	31,230	25% of small private land
Class IV	27,379	is Class I-IV land
	<u>135,868</u>	

*U.S.D.A. Flathead County Committee for Rural Development Situation Statement, 1972, p. 9.

†Don Field, Survey for County Commissioners, 1965.

§Upper Flathead Valley Soil Survey, USDA, SCS, 1960, p. 23.

Landscape Units Flathead County*

Mountains (>2000' local relief)	2,612,531 acres	79%
Foothills	290,304	9
Valley (<1000')	386,765	12
Total Private Land	748,251	22.8% of county

82,523 acres of harvested cropland in 1969
 77,000 acres of farmland lost to other uses from 1964-1969
 Number of farms in 1940 was 1,701
 Number of farms in 1969 was 825†

Lake County Land Statistics‡

<u>Ownership</u>	<u>Acres</u>
Federal	171,123
State	61,356
Indian	299,130
Large Corporation	64,080
Small Private	<u>364,311</u>
Total	960,000

<u>Land Use</u>	<u>Acres</u>
Federal	171,123
NonFederal Forest	375,863
Range	180,472
Pasture	80,891
Hay	72,300
Crop	43,171
Urban and built up	19,115
Small water	5,000
Other	<u>12,065</u>
Total	960,000

<u>Landscape Units**</u>	<u>Acres</u>	<u>Percent</u>
Mountains (>2000')	485,376	50
Foothills	88,166	9
Valleys (<1000')	386,458	41

*Regional Planning Association of Western Montana, Phase 2 Report, 1973, pp. 89-94.

†Bureau of Census, 1970, Flathead County.

‡USDA Lake County Committee for Rural Development Situation Statement, 1972, pp. 12-13.

**Regional Planning Association, loc. cit.

Population Statistics

Flathead County*	1940	1950	1960	1970	1960-70 % inc.
Montana	559,456	591,024	674,767	694,409	3.2
County	24,271	31,495	32,965	39,460	19.7
Kalispell	8,245	9,737	10,151	10,526	3.7
Whitefish	2,602	3,268	2,965	3,349	13.0
Columbia Falls	637	1,232	2,132	2,652	24.4

County 1960	Urban 13,116	Rural 19,849
1970	16,527	22,933

County net in-migration 1960-1970 2,916

Housing 1960 12,510 dwellings

1970 14,098

Population increase 6,495

1,588 increase

at 3.2 persons per unit -- short 440 dwellings

Lake County†

1950	1960	% increase	1970	% increase
13,835	13,104	-5.3%	14,300	10.2%

Rural population shows minor loss 1960-1970

Rural population approximately ½ farm and ½ nonfarm rural

Flathead Drainage‡	47,000 persons
Flathead County	39,460
Lake County	7,000
Missoula County	500

Projections - Areawide Planning Office Figures**

	1973	1985
County	45,095	58 - 78,000
Kalispell Planning Area	11,373	18,600 - 23,900
Whitefish Planning Area	8,406	9,000 - 12,000
Columbia Falls Planning Area	6,640	8,300 - 10,000

*Flathead County Situation Statement, USDA, 1972, p. 3.

†Lake County Situation Statement, USDA, 1972, p. 6.

‡T.R. Seastedt, Land Use and Water Quality in the Flathead Drainage, U. of Montana Biological Station, 1974, p. 16.

**Elna Tannehill, APO Economist, 1973.

Subdivision Statistics*

Flathead County

Apparent (metes and bounds divisions) 1961-1973

712 subdivisions 41,315 acres 3,998 lots

	Lots	Percent	Acres	Percent
0-5 acres	1617	40.5	3,194	7.7
5-10	1078	27.0	8,251	20.0
10-20	726	18.0	10,115	24.5
20-40	475	12.0	13,991	34.0
40 +	102	2.5	5,763	14.0

Filed and Recorded Subdivisions 1961-1973

115 subdivisions 2139.6 acres 2,655 lots

	Lots	Percent	Acres	Percent
0-5 acres	2,648	99.7	2,035	95.1
5-10	5	.18	30.6	1.4
10-20	0	0	0	0
20-40	1	0.03	27	
40 +	1	0.03	47	

Filed and Recorded Subdivisions 1891-1973

381 subdivisions 8,236.9 acres 14,258 lots

	Lots	Percent	Acres	Percent
0-5 acres	14,205	99.62	7773.8	94.37
5-10	46	0.32	249.1	3.02
10-20	0	0	0	0
20-40	6	0.04	167.0	2.02
40 +	1		47.0	0.57

1961-1973 13,480.9 acres subdivided into 0-10 acres
 Metes and Bounds divisions - 85% of acres 50.5% of lots
 Contract-for-Deed transactions not researched.

Sanitary restrictions imposed on 115 subdivisions.
 Restrictions removed on 47 divisions, leaving 68 not
 removed. 20 percent of the subdivisions (161 lots) have
 residential improvements.

*APO Subdivision Survey, Flathead County, 1973.

Recreational Population Estimates 1971*

Moise National Bison Range	111,000	visitor days†
Glacier National Park	1,400,000	
Flathead National Forest	600,000	
Swan Lake	40,000	
Lake Mary Ronan	40,000	
Big Mountain	75,600	
Flathead Drainage	2.3 to 2.8	million

†includes local and extra-regional visitors
 State campground visits increased 60% in 3 years
 Tourism increasing 8-10% each year
 80% of visits are during the summer season

Real Estate Figures§

Flathead River property \$50/front foot
 Flathead Lake property \$200/front foot
 20% increase in property values over past
 five years

Flathead County property valuations 1972	\$51,275,120
Kalispell	11,033,000
Whitefish	2,445,000
Columbia Falls	2,460,000

*T.R. Seastedt, op. cit., p. 42.

§Consensus of area realtors, 1973.

APPENDIX B

MONTANA SUBDIVISION AND LAND USE CONTROL STATUTES

SB208 Montana Subdivision and Platting Act

This law defines a subdivision (any division of land into two or more parcels any one of which is 10 acres or less, and includes condominiums, house and camping trailers and mobile homes even if the land is rented and not sold) and provides for the method of description or survey. It sets time limits for state model rules adoption (December 31, 1973) and county, city, or town regulation adoption (July 1, 1974) after which the state minimum regulations apply if no local rules are adopted. It provides for the dedication to the public for parks of one-ninth of the land area of the subdivision if any lot is smaller than five acres, or one-twelfth of the area if all the lots are larger than five acres. Under some conditions cash is accepted in lieu of park dedication. The law explains the application procedures and sets 60-day maximum review periods. Public hearings are provided for. Small subdivisions (5 lots or less) on a public road may be approved by an abbreviated summary review. An environmental assessment and its content is required and described. The filing of the final plat for record with the County Clerk and Recorder is required before the offer or sale of subject

land is allowed. Misdemeanor penalties are provided for violations.¹

HB1017 Amending the Subdivision and Platting Act - 43rd
Legislature, Second Session, 1974

The definition of a subdivision coming under jurisdiction of this act is amended to include any division of land creating a lot of less than twenty acres excepting condominium units situated on legally subdivided and platted land. A division of land does not include selling parts of a building on land already platted. Agricultural land sold or leased with covenants restricting its use to continued agricultural purposes is excepted from the requirements of the act. Divisions created by the reservation of a life estate is excepted. A single division of an "occasional sale" (one per twelve months) is excepted. A subdivision designed in compliance with a master plan for that area and containing less than ten parcels and less than twenty acres does not require the submittal of an environmental impact statement. A review of an abstract or certificate of title is required for all subdivided land covered by this act. The amendment further declares that all plats, certificates of survey and other title records are validated and any instrument affecting real property activated before July 1,

¹Chapter No. 334, Montana Session Laws 1974.

1973 is validated by the statute. The amendment further decrees that the governing body shall provide for the avoidance of any subdivision which would involve unnecessary environmental degradation.

HB465 Health Department Jurisdiction over Water Supply,
Sewage Disposal, Air Pollution and Solid Waste Disposal
in Subdivisions

The subdivision definition and jurisdiction here is similar to SB208. The law requires a plat or plan of development, including the proposed number of dwelling units, adequate evidence of the availability of a quality water supply, standards for storm drainage and sanitary sewer plans and designs and soil suitability for on-lot disposal systems, and standards for solid waste disposal. A person may not file a plat with the County Clerk and Recorder, sell any lot, erect or occupy any permanent building on a subdivision while the status is conditional. A plat cannot be recorded until an environmental statement has been prepared, the plat has been approved by the local Planning Board and Health Officer, and the Health Department has approved the plat. The Health Department is to inform other state departments that may be concerned. Hearings may be requested before the Health Board by aggrieved persons. A hearing may be prescribed for violators of the law. Civil or criminal action may be taken

on violators and each day constitutes a separate offense.²

This law is very effective in dealing with public health regulations because it requires the developer to meet sanitary requirements before a plat can be filed or a lot sold. Health requirements must be met first, not last as before 1973.

The Floodway Management Act (1972) and Amendments

This statute requires the state to enjoin the Army Corps of Engineers or other qualified agencies to delineate the 100 year floodplains for all rivers and substantial streams and restricts the type of development and land use allowed within the floodplain zone. Occupied structures, sewage disposal systems and any structures that would impede the flow of floodwater is not allowed.

HB924 from the 1974 legislature amends the Floodway Management Act to provide for delineation of a floodway where moving waters of a flood occur with the previous restrictions, and a floodplain for standing waters of a flood, where some non-interfering construction can occur. Minimum structure requirements are indicated. The political subdivision having land use jurisdiction in the area shall set the regulations, and minimum backup requirements shall be drawn by the state Department of Natural Resources and Conservation.³

²Chapter No. 425, Montana Session Laws 1973.

³Chapter No. 85, Montana Session Laws 1973-74.

The Greenbelt Law for Agricultural Land Taxation

This statute allows landowners of agricultural lands to apply for taxation assessment according to the production of the land if the owner meets certain requirements. Applications must be submitted each year and the owner must have at least five acres and must derive at least \$1000 income or 15% of his total gross income from the land. The land must be used for grazing or crops, not feedlot or fruit trees. The land cannot be surveyed into lots or blocks. The law requires that if the land is used for purposes other than crops or grazing while under the agricultural assessment, four years back taxes must be paid at the market value assessment. The state Department of Revenue shall assess the land.

SB507 of the 1974 legislature amends the statute to include lands in crop-land retirement programs or that provide produce for sale or home consumption for the \$1000 minimum. Owners do not have to file each year for eligibility but must notify the County Assessor upon change of land use. Agricultural uses only are considered in valuation.⁴

Montana Natural Areas Act of 1974 (HB628)

This act acknowledges existence of natural areas of outstanding values for physical attributes or those characteristics

⁴Chapter No. 56, Montana Session Laws 1973-74.

that promise value by restoration to the natural state. State lands may be designated for protection under this law, and private property easements may be acquired. Land may be purchased or traded for by the state, and gifts accepted. The legislature may designate areas, and state agencies shall report prospective areas. An advisory council shall be formed for recommendations on land and administration. Pre-existing land uses may continue, but designated areas are not subject to condemnation or development. The board of land commissioners and advisory council shall consult with citizen organizations and other interested state agencies in the administration of this act.⁵

⁵Chapter No. 81, Montana Session Laws 1974.

APPENDIX C

STATE LAND USE CONTROL APPROACHES

Hawaii Land Use Law of 1961 created a state Land Use Commission and directed it to divide the whole state into four districts -- conservation, agricultural, rural and urban. The urban district has local zoning laws, the agricultural and rural districts come directly under the regulation of the Commission, and the conservation district is regulated by the Department of Land and Natural Resources. The basic policies of guidance are the preservation of prime agricultural land, encouragement of tourism without serious encroachment on the natural landscape, and compact urban areas for living and services. Contributing to the effectiveness of the land use plan is the state's small land area and the dominance of the large agricultural holdings and political influence of the "ruling families."¹

Vermont Environmental Control Law of 1970 created a State Environmental Board and seven district commissions to administer a permit system for construction of improvements for commercial, industrial or residential use, and for sale of interest in or construction of subdivisions in the state.

¹Fred Bosselman and David Callies, The Quiet Revolution in Land Use Control, Council on Environmental Quality, Washington, D.C., 1971, p. 7.

Standards for issuance of permits by the district commissions are specifically delineated in the law. The law also provides for three plans for guiding land use in the future. The first is an interim land capability plan defining in broad categories the capability of land for development. The second is a capability and development plan, a statement of basic goals, objectives, and policies for coordinated development of the state, including population distribution and efficient land uses. The third, the land use plan, will consist of a map and statements of present and prospective land uses based on the capability plan. In addition, changes in the tax structure have linked and graduated real estate taxes to personal income and declared capital gains tax on profits from land sales.²

The Colorado Land Use Act of 1971 increased membership on the Land Use Commission and created an advisory board to help the Commission in developing an Interim and Final Plan of State Development Policy. Also the Commission is to develop standards and guidelines for units of the state government. A monitoring system is set up for growth and change in the state, evaluating proposed development impact, identifying environmental concerns, and documenting the

²Not Man Apart, Friends of the Earth periodical, June 1973, p. 6.

state's land use policies and planning. The Governor is empowered to restrain any land development activity of major hazard to the state. Counties must create planning commissions. Subdivision regulations must be written. Proposed for the state are regional planning commissions to coordinate land use and deal with decisions not of state concern or that counties don't want to deal with. Regional plans are proposed for adoption also in SB377, not yet passed by the legislature.³

The Connecticut Land Use Plan directs the Office of State Planning and Departments of Environmental Protection and Transportation to decide specifics of desirable land use. Three categories of development density are set up--Urban development, less than ½ acre residential lot size and concentrated industrial and commercial development, 25% of state; Limited development, two acre minimum lot size, on-lot sewer systems and no development at the expense of natural resources, 50% of state; and Permanent open space, 25% of the state. Communities do not have directives for logical zoning, and enforcement provisions are lacking.⁴

³Kirk Wickersham, Romcoe Consultant, presentation at the University of Montana, August 1, 1973.

The Oregon Zoning Act of 1969 decrees that all land in the state must come under the comprehensive land use plan or zoning ordinance. The state has authority to zone if local plans don't cover the land, but local plans supercede state plans. Goals of the comprehensive plan are delineated as are general policy and objective statements for maintaining the quality of life in the state.⁵

The California Assembly Bill 2070 of 1970 established the Office of Planning and Research and directs the Governor to make and maintain a Comprehensive State Environmental Goals and Policy Report with a thirty year overview and regular review of goals by the legislature. A state plan with implementation powers is to be formulated. The Office has no regulatory powers, but coordinates state policy decisions. Minimum considerations of the Comprehensive Plan are given and include wildlife, scenic, recreational, and open space values, hazard areas, access to water, cultural and historic areas and transportation corridors.⁶

⁵Toward a State Land Use Policy for the 70's, Washington Planning Agency, Seattle, 1970, p. 15

FEDERAL LAW AFFECTING PRIVATE LAND USE
IN THE FLATHEAD

PL 90-542 National Wild and Scenic Rivers Act directs the Department of Agriculture to study 219 miles of the Flathead River System (to the confluence of the South Fork) and submit a proposal of its suitability for inclusion into the Wild and Scenic Rivers system. The study, conducted by the Flathead National Forest, has recommended that the River does qualify for protection and should be included in the National System. The Act sets zoning requirements for lot sizes and set-back distances for structures according to the three categories of classification -- Wild, Scenic, and Recreational. In the proposal the stretches of river along private or developable land are either Scenic or Recreational. If accepted by Congress, this designation will figure considerably in land use decisions for the encompassed area in the future.⁷

⁷Wild and Scenic River Study Draft Report, Flathead National Forest, December 1972, p. 2.