

STATE OF MONTANA
ENVIRONMENTAL QUALITY COUNCIL
HELENA, MONTANA

PONDEROSA PINES RANCH
A Subdivision Case Study

by

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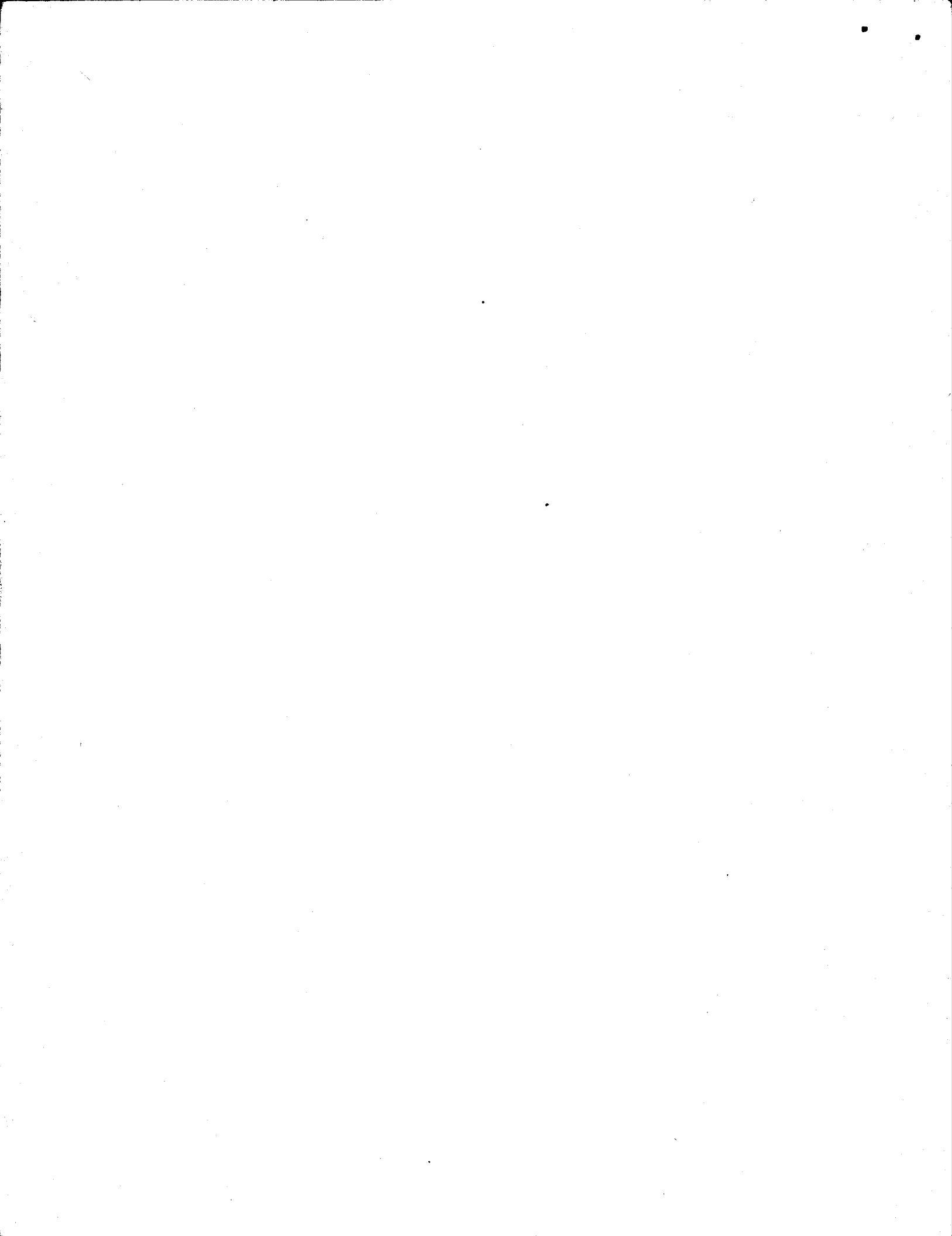
and

Tina Torgrimson
Research Assistant

January 1974

Senator Elmer Flynn
Chairman

Fletcher E. Newby
Executive Director



A Once in a Lifetime Opportunity

The Best Land Investment Offer

NEVER TO BE MADE AVAILABLE TO GUAM RESIDENTS TO PARTICIPATE
IN THE LUCRATIVE REAL ESTATE MARKET

\$\$\$ BUY LAND AT THE LOWEST POSSIBLE MARKET PRICE \$\$\$

We all want to own land for ourselves and for our children. Some of us do own land; some of us don't. Do YOU own land right now? Can you afford to buy land for your children? If your answers are "yes", then you are certainly a very fortunate person. If not, then you should certainly read this ad (and then see us about it) because this is perhaps just what you have been looking for! We are offering you a very positive opportunity to become a living part of the most lucrative business--real estate investment. At least we think YOU should, for the following simple reasons upon which the whole concept of real estate investment is premised:

1. Land is the basis of money. If you own land, you have money!
2. The price of land inevitably escalates, and often sky rockets astronomically out of proportion to its original cost. Whatever the price of land is today, you can be sure that it will be much more tomorrow....

The above is the beginning of an advertisement that appeared in the Pacific Daily News, Guam, January 13, 1973. The land it is advertising for sale is 13,000 acres of Montana--Ponderosa Pines Ranch. It is being sold in Hawaii, Southeast Asia and Japan; none of the land is being offered for sale in Montana.

Ponderosa Pines Ranch is in Gallatin County, adjacent to the east side of the Missouri River and extending into the Horseshoe Hills. The 13,000-acre ranch is being subdivided into 908 lots of

10 and 20 acres each. In addition to the immensity of the subdivision, this land deal is significant because it exemplifies misleading sales tactics and advertising, an absence of land use planning that could create countless problems in the future, and an apparent immunity from any subdivision or real estate law.

The ranch is presently being leased and operated by the former owner, Mike Quinn, of Boulder. Some of the land is planted in wheat and the rest is used to graze horses and cattle. Topography varies from steep slopes to meadow land to timber land.

Quinn said he was approached by Lincoln-Green, Inc., Missoula, which offered to buy his Horseshoe Hills ranch. The first document filed with the Gallatin County clerk and recorder was for purchaser's interest (the purchaser is in the process of paying for the land, so the title remains in the original owner's name until the land is completely paid for), from Mike Quinn to Lincoln-Green, Inc. In June 1972. A transfer dated July 17, 1972 provided purchaser's interest from the seller, Lincoln-Green, Inc., to the buyers, Morris and Roberta Moche, Honolulu, Hawaii.

In February 1973, William Smiley, Bozeman, visited Morris Moche's Honolulu office at the request of the Gallatin city-county planning director. Smiley posed as an interested buyer. Moche told him about hunting (including buffalo), fishing and skiing but never explained whether these were available on the ranch. He told Smiley the ranch lies in the center of 35 national parks and adjacent to Yellowstone Park and Chet Huntley's Big Sky resort. To say the ranch

is in the center of 35 national parks, when the closest are 100-300 miles away, or that Yellowstone is "adjacent" when it is 100 miles away is a deceptive overstatement. Smiley wrote, "He (Moche) talked about boating on Flathead lake and shopping in Great Falls as though they were within walking distance." Flathead is about 250 miles; Great Falls is about 175.

A potential purchaser is given a copy of a Montana Highway Department brochure about Montana and a public offering statement required by Hawaii law. Moche had no brochures about the ranch but did have an album of snapshots. Smiley described the sales talk as "high pressure tactics" and potentially misleading, especially to a person unfamiliar with Montana and its land. For example, Moche told Smiley that the Montana Power Company would install gas and electricity at no charge. A Montana Power spokesman in Bozeman later said that he seriously doubted whether the subdivision could get these services free. He said it was unlikely that one particular subdivision could get special services.

The advertising campaign in Hawaii was widespread. Television and newspapers were the most common media. The television advertisement script was not available at this writing, but the video portion of the advertisement, according to Smiley, was a "big lake with mountains and trees." There are no mountains or lakes on the Ponderosa Pines Ranch. In fact, there are no known ponderosa pine trees. The advertisement also announced plans for a contest and a free trip to Montana.

Newspaper advertisements were made in the Japan Times and the Pacific Daily News (Guam). They offered escape or lucrative investment.

Sales prices for lots on the ranch differ depending on topography.

Prices range from:

- \$2,995 for 10 acres of steep slopes,
- \$3,995 for 10 acres of more gradual slopes,
- \$4,995 for 10 acres of still more gradual slopes,
- \$5,995 for 10 acres of meadow bottom, and
- \$6,995 for 10 acres of timber land.

Extra costs involved are \$175 for a survey trust fund and \$7 a year for the "general maintenance" of the land. Prices for 20-acre lots are not quite double the figures for 10-acre lots. Financing terms, for example, for a 20-acre lot are a \$595 down payment and a \$56.99 monthly payment for 143 months.

The land is being sold on a contract-for-deed basis and the county has no information on the number of lots under contract or when they will be deeded to new owners. Immediate questions arise concerning the deeding of parkland to the county, the assessment of this land, and the difficulties the county may face in collecting taxes from owners scattered over such distant areas. On the other hand, if the owners choose to occupy their lots the county will suddenly be faced with responsibility for a number of public services it may not be prepared to provide.

Moche's stationery letterhead reveals sales outlets in Tokyo, Guam and Hong Kong. Moche handles sales in Honolulu and a General

Investment Corporation (G-I-C) broker handles sales in Tokyo. The City Realty, Inc., Agana, Guam has a franchise from G-I-C to sell lots.

Persons interested in seeing the land are instructed to contact the Reely Brothers of Missoula, Montana. The Reely's are John, president, and William, vice president, of Lincoln-Green, Inc., the real estate corporation that sold the land to the Moches. Their Montana legal counsel is Milton Datsopoulos, Missoula.

The sales contract for Ponderosa Pines stipulates that the "Buyer agrees that neither the Seller nor assigns shall be held to any covenant respecting the condition of any improvements on said property, nor to any agreement for alterations, improvements, repairs, access roads or utility services, unless the covenant or agreement be in writing and duly executed by the parties."

The contract stipulates that if a monthly payment is late, a charge of \$3 or 10 percent, whichever is greater, is assessed the purchaser. If the payment is late by 30 days or more, the seller has the right to resell the land and retain all previous payments.

The contract gives the purchaser the right to an access easement if there is no existing road running to or through the lot. The access is to be no more than 30 feet wide and "shall be as close to boundary lines as practicable and shall be designated by seller upon the completion of the survey of said development."

Purchasers are given the right to exchange their lots for others (some lots are being held off the market for this purpose) if, when

they finish payment, the deed to their lots cannot be transmitted (there can be a 120-day lag period). If they do not like their lots upon inspection, within 36 months of the contract date they may exchange them for others. If the exchange lot is of higher value, the contract price will be adjusted accordingly.

The public offering statement required by Hawaii law contains a number of potentially misleading statements, especially for persons unfamiliar with the area and Montana in general.

The description of the land's location is accurate, but the statement does not explain whether a straight-line measurement (as the crow flies) or a road mileage measurement was used. For example, Three Forks may be 10 miles by air, but it is 19 miles by road. Helena is about 87 miles by road rather than the 60 reported. Bozeman is 39 rather than 30. The statement describes the "easy commuting distance," yet fails to mention that about 13-15 miles of a journey on any road would be unsurfaced. In addition, the statement suggests that the trip to Helena is by freeway, which it is not.

The statement says "Yellowstone National Park is a little over 100 miles away, and there are many other state and national parks nearby." But the closest other national parks, Grand Teton (200 miles) and Glacier (300 miles), are hardly "nearby."

The discussion of topography is truthful but overly general. This excerpt from the "Description of Land" is ambiguous: "These areas are divided into lots of a size best-suited to the contour of the land." The platting diagram reveals that drainage patterns and slope were disregarded in shaping and sizing the lots. Furthermore,

the contours and slopes of the land are not readily understood from the platting diagram. Many of the lots appear to include nothing but steep hillsides, which leads to problems with installing septic tanks and erecting buildings. A real estate agent in Gallatin County, Paul Dudley, commented, "In inquiring around (about the Ponderosa Pines Ranch), we found that one party--either he was a prospective buyer or had already agreed to buy--had visited the ranch and found that his particular tract was so steep and hilly that no building could be erected."

The offering statement says, "The ranch contains numerous wells, springs, and intermittent and permanent streams." Mike Quinn, the former owner, said he knows of only three wells and just a few springs. In August he said no streams were running. The offering statement makes it clear the developer will not provide water, power, or communication lines to the subdivision.

Regarding taxes on the land, the offering statement reads, "Gallatin County property taxes are less than \$1 an acre a year." This may be true in some cases, but it is not an accurate assessment for developed residential land. The land is being sold "for residential, recreational, or agricultural purposes."

In the "Public Transportation" section, the statement implies that railroad service is available in Three Forks. It is not. Passenger service is available in Bozeman three days a week. The statement mentions that the Burlington Northern Railway runs along the front of the ranch. But it does not stop there. Also, the statement mentions that two railroads pass through Three Forks. One is the Burlington

Northern that does not stop and the other is a freight service, which of course does not provide public transportation.

The statement asserts that there are "complete shopping facilities in Three Forks, 10 miles!" Three Forks does have some shopping facilities, but as a town of 1,200 it could hardly be described as having "complete" shopping facilities.

The statement says "sewage disposal would be the responsibility of the individual buyer." Buyers are not informed of the possibility that septic tanks might not be allowed. They are not informed about Montana's laws concerning sewage disposal and that if sanitary restrictions on the land are not lifted, they would not be able to build.

"No new roads are being constructed on the property, and none will be constructed by the developer," the offering statement reports. A county road reportedly runs along the front of the ranch for three miles. Numerous trails and small dirt-gravel roads meander through the property, cutting through the middle of lots in some places. Most of the lots presently have no access whatsoever. No estimate is given for the cost of installing access roads, though the offering statement says easements for roads and utilities will be provided for in each parcel.

The offering statement is not only misleading but ignores all reasons for proper planning. If people do begin moving in, the services they will require (roads, road maintenance, schools, school busing, medical facilities, waste disposal, fire and police protection)

will put a burden on county government, as well as a tax burden on other Gallatin County residents, who will end up paying for the developer's lack of planning. In addition, there is no assessment of or regard for the area environment (water quality and availability, soil characteristics, wildlife populations, community impact and best use of the land) or of the potential effects such a huge development will impose on it.

Because the current sellers, the Moches, are Hawaii residents and are not selling the Ponderosa Pines subdivision in Montana, their actions are not regulated by the Montana Board of Real Estate. Since the lots are all larger than five acres, the Moches were not required to register the subdivision with the U.S. Department of Housing and Urban Development under the Federal Interstate Land Sales Act. The only regulatory body involved is the Hawaii Department of Regulatory Agencies that requires the public offering statement (describing the development and its surroundings) to be filed and presented to all prospective buyers. The department also regulates advertising to some degree. Obviously, the Hawaiian government cannot adequately evaluate the accuracy of the offering statement or advertising, much less investigate the effects of a subdivision in Gallatin County, Montana.

Apparently, Ponderosa Pines Ranch is not subject to the 1973 Montana Subdivision and Platting Act, which states:

"It is the purpose of this act to promote the public health, safety, and general welfare by regulating the subdivision of land; to prevent overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate

light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements; to encourage development in harmony with the natural environment; and to require uniform monumentation of land subdivisions and transferring interests in real property by reference to plat or certificate of survey."

According to a recent opinion by Montana's attorney general, Robert Woodahl, "the Montana Subdivision and Platting Act does not govern the recording of deeds prepared and executed under contracts for deed prior to July 1, 1973, but not present for recording until after June 30, 1973." The documents filed for purchaser's interest of Ponderosa Pines Ranch (essentially the same as contract for deed) were recorded prior to the law's effective date, meaning that the division of the land occurred before the law went into effect, and would thus not be subject to the law.

Woodahl's ruling is supported by a 1972 Montana Supreme Court decision, which states that the land purchaser (for example, someone buying on a contract-for-deed basis) in effect is the "real" owner. This would mean that the Moche's were the "real" owners, or titleholders of the land before the Montana Subdivision and Platting Act went into effect, thus exempting them.

The Montana Subdivision and Platting Act is clearly intended to control land deals such as the Ponderosa Pines Ranch. It is unfortunate that this subdivision, which illustrates many of the reasons the law was enacted, is outside the law's jurisdiction.

This case, however, also demonstrates the need for a strong, comprehensive land sales practices act that would require registration of all lands to be subdivided, regulation of land sales practices, and criminal penalties and hearings for failure to comply. Such an act should require that no development could offer or dispose of any lot or subdivision in Montana without the filing of a registration statement and approval of it by the Montana Board of Real Estate. The land sales practices act would also regulate advertising and sales methods, thus preventing the misleading of interested purchasers.

Such an act was introduced in the 1973 legislature, but killed. The intent of the law will be included in the ongoing Environmental Quality Council land use policy study, which will be presented to the 1975 legislature.

A land sales practices act, coupled with other land development laws, would protect Montana land, Montana people and prospective buyers. In the case of Ponderosa Pines, only the developer will profit from a Montana resource, its land. Montanans and buyers are stuck with the social and environmental costs.

