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VIA INTERNET EMAIL AND REGULAR U.S. MAIL

Clayton Christian
Commissioner of Higher Education
Board of Regents
Office of the Commissioner of Higher Education
P.O. Box 203201
Helena, MT 59620-3201

Re: Missoula College

Dear Mr. Christian, and Hon. Regents,

We represent Advocates for Missoula's Future ("AMF"). They and some other interested neighbors of the University of Montana have retained us to file an action to enjoin the construction of the Missoula College on the athletic fields between Dornblazer stadium and Mt. Sentinel. The construction, as currently proposed, is illegal under Montana law for several reasons. Primary among them, Montana law requires the Montana Board of Regents of Higher Education to develop donated lands only "for the specific purpose of the ... donation." Mont. Code Ann. Sec. 20-25-301(7) (emphasis on "specific" added). The land at issue here was acquired by the "Alumni Challenge Athletic Field Corporation" in 1928 with a specific object: to supply UM with athletic fields "for student recreational purposes." (See, e.g., see deed and other historical documents enclosed.) Likewise, the State accepted the deed in exchange for a price greatly below fair market value, on the express understanding that the land would be used for "student recreational purposes." (See copy of Resolutions of Executive Board of Montana Stated University (December 7, 1948), p. 2, enclosed.)

Because the purpose of the donation was so specific, and so carefully expressed in writing at the time the State accepted delivery of the deed, it would violate Montana law to pave over the golf course and athletic fields in favor of buildings or parking spaces as proposed for the new Missoula College development. The prohibition obviously makes sense from

a policy perspective. Higher education in Montana has often by the beneficiary of donations of land, and money to improve land. If it hopes to continue to enjoy such benefits, it must show loyalty to the purpose of its donors. If people ever come to believe that their intent is meaningless to the University System, it is less likely they will continue to give. But whether or not it makes sense that the Regents honor the specific intent its generous donors, the law requires it.

In addition, Montana law provides that a state actor, such as the Regents, must include in proposals for land development "significantly affecting the quality of the human environment" a detailed statement on:

- (A) the environmental impact of the proposed action;
- (B) any adverse effects on Montana's environment that cannot be avoided if the proposal is implemented;
- (C) alternatives to the proposed action. An analysis of any alternative included in the environmental review must comply with the following criteria:
 - (i) any alternative proposed must be reasonable, in that the alternative must be achievable under current technology and the alternative must be economically feasible as determined solely by the economic viability for similar projects having similar conditions and physical locations and determined without regard to the economic strength of the specific project sponsor;
 - (ii) the agency proposing the alternative shall consult with the project sponsor regarding any proposed alternative, and the agency shall give due weight and consideration to the project sponsor's comments regarding the proposed alternative;
 - (iii) the agency shall complete a meaningful no-action alternative analysis. The no-action alternative analysis must include the projected beneficial and adverse environmental, social, and economic impact of the project's non-completion.
- (E) the relationship between local short-term uses of the Montana human environment and the maintenance and enhancement of long-term productivity;
- (F) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented;

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(H) the details of the beneficial aspects of the proposed project, both short-term and long-term, and the economic advantages and disadvantages of the proposal;...

Mont. Code Ann. § 75-1-201(1)(b)(iv). In this case, there has been a now nearly-out-of-date "environmental assessment" for the 2007 South Campus Master Plan. The assessment, which was signed by Pres. Dennison, expressly indicates that no further EIS was needed at the time. But it was completed in December 2007, a month after the Regents approved the South Campus Master Plan in November, 2007. And it was for a 50-year plan. In other words, there was no construction or other "irreversible and irretrievable commitments of resources" pending at the time. That has obviously changed. Now ground-breaking is imminent on a major \$31 million building project. Yet, there has been no EIS of any kind on the proposal. Until there is one, and a period of time for the public to study and comment upon it, the Missoula College cannot be developed, as currently proposed, in compliance with Montana law.

Of equal import, under the Montana Constitution, the "right to a clean and healthful environment is a fundamental right." MEIC v. DEQ, 1999 MT 248, ¶ 63, 296 Mont. 207, 988 P.2d 1236. State action that impacts this fundamental right "is subject to strict scrutiny, requiring the State to provide a compelling interest for its existence." MEIC, ¶¶ 55, 60. The problems with Missoula's winter air quality are well documented. Developing a new 2500 student campus up against Mt. Sentinel will have a huge impact on localized auto emissions. The generally western flow of the local atmosphere will then trap those emissions, and cause them to concentrate in and around three long-established residential neighborhoods. In view of this potential, the burden is on the Regents. The decision to wedge the Missoula College campus in-between the current residents and Mt. Sentinel "must be strictly scrutinized and can only survive scrutiny if the State establishes a compelling state interest and that its action is closely tailored to effectuate that interest and is the least onerous path that can be taken to achieve the State's objective." MEIC, ¶ 63. Given that there are at least two alternative sites that will not similarly undermine Missoula's hard-won improvement of its winter air quality, the site now proposed cannot meet Constitutional muster.

Again, the new campus is intended for some 2,500 students, plus faculty, to take up occupancy within 24 months. Yet, the development plan calls for only 600 new parking spaces. Whether these new students live on campus or, more likely, commute, there will be no place on campus for them to park. So hundreds of them, if not thousands, will be forced to park in the surrounding residential neighborhoods. Yet, the Regents have undertaken no study of how developing this land will impact the quality of life in those neighborhoods. Likewise, there has been no traffic study for the proposed campus. The sole traffic study that has been done was for the South Campus Master Plan. But that's a 50-year plan. The study states over-and-over that it is just too early to predict exactly how traffic will need to be managed so far in the future. Now, with the new Missoula

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College, the plan has been moved forward by not less than 43 years. But no one knows how the traffic of 2500 new commuters will flow through the neighborhoods at the end of next year. Again, without parking and traffic studies, and an opportunity for public review and comment on their methods, data and conclusions, developing the athletic fields into a new Missoula College campus will violate both common sense and Montana law. E.g., Mont. Code Ann. § 75-1-201(1)(b)(iv)(E), (H).

In addition, Mont. Code Ann. § 17-7-202 and 204 require the Office of Higher Education to consider alternative building locations before proposing projects to be built under auspices of the State's Long Range Building Program. Our investigation so far has found no evidence that the Regents complied with this requirement before deciding to develop the Missoula College on the UM golf course and athletic fields. If such a study has been conducted, we ask that you supply us with whatever written reports might have been generated by it. For example, in 2005, there was a College of Technology Montana Futures Park Site Assessment. (See enclosure.) At that time, nine sites were evaluated. In the study, the "Golf Course" was labeled a "rejected site." Whether or not that evaluation is reconsidered, Montana law requires any change of course to include careful evaluation of alternatives. Until such a study has been conducted, developing the UM golf course into the Missoula College is, again, illegal.

Finally, there is little substantive need for the Missoula College to be physically located in close proximity to the UM main campus, when the university and the two-year college have different functions, different student backgrounds and needs, and different entrance requirements. This site is far more accessible to Missoula College's constituency of West and North Missoula, the outlying areas of Missoula County, and points beyond. Furthermore, it consolidates all services and instruction at one location. This location would be doing what was done with colleges at Helena, Great Falls, Butte, and Billings, and what was requested by the Regents in 2009. Likewise, the land of the West Campus would provide the one-stop venue for all the two-year student needs, since their time is limited. It would provide adequate parking and be less than one-half mile from Community Medical Center for the approximately one third of the enrolled in two year health science technical programs for certification.

If there were no alternatives, perhaps AMF, the local neighborhoods, and people everywhere who value accessible open space, would be less justified in their resistance, and more inclined to flout Montana law in sacrifice for, as the Regents would assert, the broader good. The fact is, however, there is a splendid alternative, as the 2009 Legislature recognized when it supplied the Regents with \$500,000 to work on "consolidating the three Missoula College of Technology campuses." (See Legislative Fiscal Report 2009 Biennium enclosed, pp. F-1, F-4, F-5 and F-13.) The College of Technology already has started a campus on an estimated 55 acres of land – of which only 3.2 is in the flood plain – adjacent to Fort Missoula. (See official Missoula ariel photo enclosed.) There is no reason to cut this project short in favor of the illegal golf course location.

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Ultimately, there are no good arguments for the Missoula College being developed on the present site of the athletic fields and golf course. It faces none of the problems for donor intent, smog, parking and traffic posed by the current plan. And nothing iconic or unique would have to be razed or destroyed to add it to the Missoula community. The Missoula College can and should be placed on existing bare land at Fort Missoula, that can be put to good use with this project. But whatever the public policy, the law is clear. The Missoula College campus cannot be located, legally, as presently proposed.

We hope the Regents agree, and respectfully request that they reconsider the decision to attempt to construct the Missoula College atop the UM golf course and athletic fields. It is AMF's hope, for everyone's sake, that it can avoid litigation with its valued neighbor.

Thank you for your kind attention. If you have any questions or comments, please feel free to contact me.

Sincerely yours,



SULLIVAN, TABARACCI & RHOADES, P.C.
Quentin M. Rhoades
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cc: Governor Bullock
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