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MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE
COUNTY

JANE DESCHNER and JON LODGE,)	Cause No. DV-10-1800
)	
Plaintiffs,	)	Judge: G. Todd Baugh
)	
vs.	)	MOTION FOR ENTRY OF
	)	MANDATORY INJUNCTIONS TO
HARTFORD INSURANCE COMPANY,	)	DEFENDANTS CITY OF BILLINGS
SENTINEL INSURANCE COMPANY,	)	AND STATE OF MONTANA
BRICKLEY INSURANCE AGENCY,)	
JOHN DOE #1, (CITY OF BILLINGS), and)	
JOHN DOE #2 (STATE OF MONTANA)	
DEPARTMENT OF HIGHWAYS),)	
)	
Defendants.)	
)	

COME NOW the plaintiffs Jon Lodge and Jane Deschner, and through their counsel, Rodney T. Hartman, respectfully move that this Court enter a mandatory injunction requiring the City of Billings to approve the recommendation its own staff requested at a Special Meeting of the Billings City Council on January 3, 2011, and remove safely the sandstone boulders which detached and fell from the Rimrocks onto plaintiffs' property at 1313 Granite Avenue, Billings, Montana and to safely remove the


two large areas of unstable rock face identified by the staff as a rock slab described as the Shady Lane slab above the Vermillion home and the rest of the slab above plaintiffs' home. A Terracon report commissioned by the City staff reports these rock slabs "would be subject to complete failure in the near future" and recommended they be removed.

Further the plaintiffs respectfully move that the Court enter a Mandatory Injunction ordering the State of Montana to immediately take steps pursuant to Section 10-3-101, MCA et seq. to reduce the vulnerability of people and communities of this state to damage, injury and loss of life and property from natural or man-made disasters by all means authorized in said specified statutes.

This Motion is made pursuant to Rule 65 of the Montana Rules of Civil Procedure and Sec. 27-19-101, MCA et seq.

DATED this 27 day of January, 2011.

TOLLIVER LAW FIRM, P.C.
P.O. Box 1913
Billings, MT 59103

By: 
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that a true and correct copy of the foregoing was served, by U.S. Mail, postage prepaid, on the 27 day of January, 2011, upon the following interested parties:

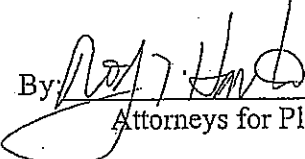
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Attorneys for Plaintiffs

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE
COUNTY

JANE DESCHNER and JON LODGE,

Plaintiffs,

vs.

HARTFORD INSURANCE COMPANY,
SENTINEL INSURANCE COMPANY,
BRICKLEY INSURANCE AGENCY,
JOHN DOE #1, (CITY OF BILLINGS), and
JOHN DOE #2 (STATE OF MONTANA
DEPARTMENT OF HIGHWAYS),

Defendants.

) Cause No. DV-10-1800

) Judge: G. Todd Baugh

) BRIEF OF JON LODGE AND JANE
) DESCHNER IN SUPPORT OF THEIR
) MOTION FOR ENTRY OF
) MANDATORY INJUNCTIONS TO
) DEFENDANTS CITY OF BILLINGS
) AND STATE OF MONTANA

FACTS

For a number of years plaintiffs Jane Deschner and Jon Lodge enjoyed their ownership of real property and a beautiful home located at 1313 Granite Avenue, Billings, Montana.

On October 9, 2010, their home was destroyed when a "60 foot section of the rim face weighing approximately 1,000 tons failed, broke into pieces, and tumbled down the

slope and into their house. Mr. Thompson (City of Billings, Superintendent of Parks) advised the rim face above the house was parkland." See page 5, Deschner Affidavit Exhibit "I".

Coincidentally, Jon Lodge had applied to the City of Billings for a building permit to improve the 1313 Granite Avenue property in early 2010. The permit was issued by the City of Billings in July of 2010. Before the actual construction commenced, Jon Lodge noticed a large stream of water coming down upon the property from the top of the Rims. Upon investigation, Mr. Lodge discovered that the encroaching waters were coming out of a previously plugged culvert owned by the State of Montana, which stream fed directly into the site of the falling rocks. See Deschner Affidavit, paragraph 11 and Exhibit "G" attached thereto.

Ironically, when the catastrophic rock collapse took place, Jon Lodge was in the home. A very short time before the incident, he exited a room which was totally smashed thus escaping death and/or grave injury by a whisker. Deschner Affidavit, paragraph 7.

This is no dispute in this matter that the Deschner and Lodge home and much personal property have been totally destroyed. See Exhibits "B", "C" and "H" appended to the Deschner Affidavit.

Immediately following the calamity of October 9, 2010, Deschner and Lodge made application to their homeowners' insurer, the Hartford Insurance Company - Sentinel Insurance Company for payment of their casualty losses. While the carrier tarried in its coverage investigation, on December 2, 2010, Defendant City of Billings served upon Jon Lodge and Jane Deschner a "Notice of City Code Violation", Case Number: 10-1998, which is attached to Jane Deschner's Affidavit as Exhibit "A".

Incredibly, the City, after allowing its own huge boulders to crash onto and into plaintiffs' property, claimed the plaintiffs were allowing a public nuisance to exist upon their property stating among other things, "Furthermore, the City has reason to believe that this public nuisance constitutes an emergency presenting imminent danger of serious injury to persons or property".

It is this emergency which the City of Billings claims poses an imminent danger of serious injury to persons or property which necessitates this petition for injunctive relief. The nuisance, however, was created by the State of Montana and the City of Billings in some combination which will be adjudicated down the road. In the meantime, while the City of Billings and the State of Montana act like fiddling Neros, more very large boulders are ready to plummet.

In this connection, we respectfully direct the Court's attention not only to the "Notice of City Code Violation" cited above but also to the minutes of the Special Meeting of the Billings City Council held January 3, 2011, which minutes are attached to the Deschner Affidavit as Exhibit "I". Therein, there is testimony from others living close to Jon Lodge's and Jane's former abode. They stated that they were worried after the emergency became so obvious that they and their property were, in fact, in imminent danger.

There are really three emergencies which are the focus of plaintiffs' motion. First, the City's property which smashed their house remain in dire danger of falling further down hill and causing grievous danger to property, public right of way and to human life itself. Plaintiffs have had to rent alternate living quarters but are still paying the mortgage on the 1313 Granite Avenue property. They have been financially

devastated by the occurrence. The "Notice of City Code Violation" threatens them with being assessed the costs of removing the debris that used to be their home and the rocks that the City has allowed to become teetering menaces upon their property. Parenthetically, it must be noted that this threat was tendered by plaintiffs to their homeowners' carrier who wrongfully and maliciously declined to tender a defense to the "Notice of City Code Violation" in contravention of the Montana Insurance Code and applicable case law.

The motion for injunction in part seeks safe removal of all debris including the City's rocks from plaintiffs' property. If this does not occur, plaintiffs will suffer further irreparable injury when those rocks fall, as predicted by the City and its agents, and injure property, public right of way and persons below plaintiffs' property. It appears that the City will then wrongfully assert that resultant liability will rest solely upon plaintiffs who evidently will again be denied insurance protection from their own insurance company. Plaintiffs agonize over this. It adds insult to injury.

The other two emergencies are explained in Exhibit "I" attached to the Deschner Affidavit. Two large slabs of the Rimrock upper face over plaintiffs' property and over the property of the Vermillions are detached and subject to complete failure in the near future. See remarks of Park Superintendent Thompson especially at page 6 of Exhibit "I" attached to Deschner's Affidavit. It is hoped that by the time of the hearing to be set in this matter, the "Terracon Report" underlying Mr. Thompson's remarks will be available for the Court's benefit.

Another disturbing aspect of this matter arises out of Exhibits "D" and "E" attached to the Deschner Affidavit. These are maps the Montana Bureau of Mines and

Geology used in a 2003 study regarding the danger posed by the Rimrocks to homes in some areas of Billings. We have just located an October 2003 Explorer Magazine article published by the American Association of Petroleum Geologists. The article discussed Exhibits "D" and "E". It also discusses what the State of Montana did before a "public release" of the maps. Beginning at the bottom page 1, the following is written:

A PUBLIC SERVICE

Lopez got the idea for the hazard maps from a similar project done by a friend in the Golden, Colo. Area

Not everyone was happy with is idea.

For example, when Lopez' maps were being reviewed before release to the public, Bureau lawyers expressed concern that publicizing the information could lower property values in the affected areas, which in turn could perhaps prompt lawsuits against the agency.

Others, however, raised the point that withholding the information would be a public disservice-and also could result in potential liability if damage occurred that might have been avoided, Lopez said.

This article is attached to this brief as Exhibit "A". We assert that this is a strong separate reason for liability to be found to attach to the State of Montana and likewise a compelling reason to issue a mandatory injunction to it making it partners to the City of Billings in immediately being proactive in abating the three emergencies detailed above. This dovetails with page 8 of Exhibit "T" to the Deschner Affidavit which reads in pertinent part:

Mayor Hanel asked about the liability of being pro-active versus waiting for something to happen. Mr. Addy (Deputy City Attorney) said both sites were going to fail and if they came down at 3 a.m., and five families were wiped out, he did not want to be listening to a plaintiff attorney sum up the case to a jury. He said if the City was proactive and did everything it could, he thought it would be in a better position. Mr. Addy advised the entire staff was recommending adoption of both resolutions.

Defendant State of Montana can partner with the City of Billings and should be mandated to so act to abate the three emergencies. We respectfully direct the Court's attention to Sec. 10-3-101, MCA et seq. These statutes enable the State to promptly react to emergencies such as plaintiffs and other citizens of the State of Montana and City of Billings now face as described above. The Governor of the State can declare a state of emergency or disaster for the area at issue in the instant litigation. He can then accept funds from the federal government to among other things as is set forth in §10-3-315(a), MCA:

(a) notwithstanding any other provision of law, through the use of state departments or agencies or the use of any of the state's instrumentalities, to clear or remove from publicly or privately owned land or water debris and wreckage which may threaten public health or safety or public or private property in any state of emergency or state of disaster declared by the governor or major disaster as declared by the president. Mont. Code Ann. § 20-3-315(a) (2009).

LAW

In some states, mandatory injunctions require a higher standard of proof than injunctions which seek to stop conduct. This not so in Montana. *City of Whitefish v. Troy Town Pump, Inc.*, 2001 MT 58, 304 Mont. 346, 21 P.3d 1026.

This is an extraordinary case which cries out for specific action to prevent irreparable injury to plaintiffs and, indeed, to several other citizens of the City of Billings and the State of Montana. The City of Billings' own employees proved beyond any doubt that the fallen boulders which obliterated plaintiffs' home and the two unsteady rock face areas which will fail, absent remediation, now present emergency situations.

As the Billings City Park Superintendent has made clear, the Rimrocks are a city park. They are property owned by the City. The State of Montana owns the highway

which traverses the Rimrocks. Under the highway is a culvert owned also by the State of Montana. Both governmental entities have a duty to maintain their properties so as not to create a nuisance. There is no governmental immunity which might otherwise be posited under § 27-19-101 MCA, et seq., under *Knight v. City of Missoula* (1992) 252 Mont 232, 827 P.2d 1270, which holds that governmental entities are entitled to no greater deference than a private citizen when their acts or omissions create a public nuisance. In this connection, it is relevant to restate that the City has declared the existence of a nuisance which also constitutes an emergency which ominously threatens property damage and personal injury. § 27-30-203, MCA provides:

A nuisance is the subject of an action. Such action may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance; and by the judgment the nuisance may be enjoined or abated, as well as damages recovered. Mont. Code Ann. § 27-3-203 (2009).

The City's staff presentation at the January 3, 2011, Special Session also establishes a prima facie case of continuing trespass upon plaintiffs' property and a high probability of new trespasses. Injunctive relief is appropriate under this legal theory as well. *Thrasher v. Hodge* (1929), 86 Mont. 218, 283 P. 219.

The City of Billings owns and maintains the applicable stretch of Rimrocks as City Park. They are utilized by the public at large for recreation. The State of Montana owns the culvert under its State Highway depicted in photos included in the Deschner Affidavit. The highway is maintained by the State of Montana for the traveling needs of the public at large. The unfortunate byproduct of these public uses has been the inverse condemnation of plaintiffs' property at their expense. They are entitled to reasonable compensation as per *Knight v. City of Billings* (1997), 197 Mont. 165, 642 P.2d 141.

Plaintiffs are likely to prevail against the City and the State under a variety of legal theories and remedies.

Moreover, if a mandatory injunction is not immediately entered herein, these moving plaintiffs, who already have suffered massive financial damages, will suffer irreparable injury when the City's boulders which invaded their property continue their inevitable "tumble down". The "Notice of Code Violation" states that these boulders and remnants of plaintiffs' home will likely "continue downhill and cause damage to downhill homeowners and block city streets". Thus plaintiffs, Jane Deschner and Jon Lodge, face the probability of being sued for multiple claims by multiple persons. They are exposed to this damage and injury without any insurance protection whatsoever due to their carrier's unwarranted refusal to tender a defense for these sorts of claims. Absent entry of the mandatory injunctions, plaintiffs will incur irreparable injury without relief adequate in law absent the equitable relief afforded by the injunctions.

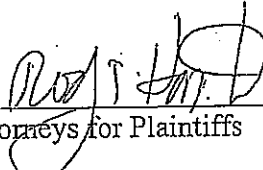
Plaintiffs' neighbors have signed Affidavits which are filed simultaneously herewith. They forcefully illustrate the high level of fear of looming danger in the areas affected by the three emergencies the City of Billings is now choosing to ignore despite contrary recommendations of its own staff and outside consultants. The City of Billings and the State of Montana have created or allowed to exist improvidently a continuing nuisance which is an emergency. As the January 3, 2011 Special Session of the City Council reveals, the nuisance and emergency plaguing plaintiffs and other citizens can be abated. The curative action specified by the City staff must be immediately undertaken. What higher purpose does government have than to protect its citizens from injury, death and destruction of their property?

CONCLUSION

Plaintiffs respectfully pray for entry of mandatory injunctions directing the City of Billings and the State of Montana to immediately utilize their emergency powers enumerated above and abate the three separate nuisance – trespass emergencies specified above.

DATED this 27 day of July, 2011.

TOLLIVER LAW FIRM, P.C.
P.O. Box 1913
Billings, MT 59103

By: 
Attorneys for Plaintiffs

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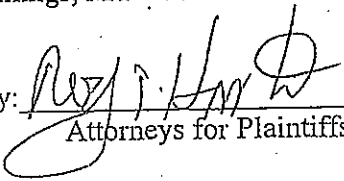
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Just the Facts

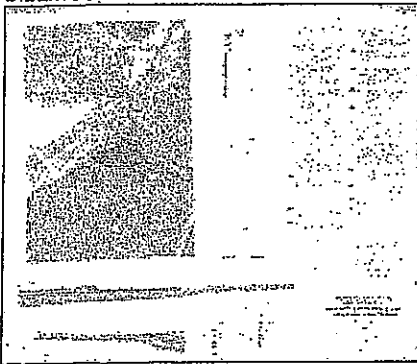
Hazards Map Makes Impact

By KEN MILAM
EXPLORER Correspondent

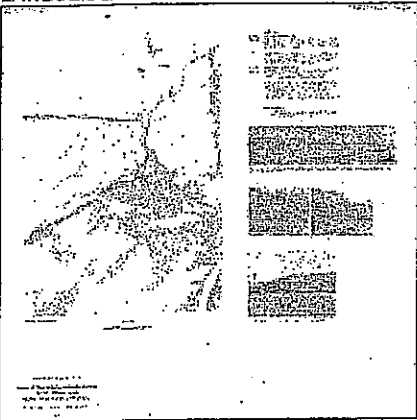
MAP PREVIEWS:

These maps are low resolution JPEGs and do not reflect the actual quality of the originals.

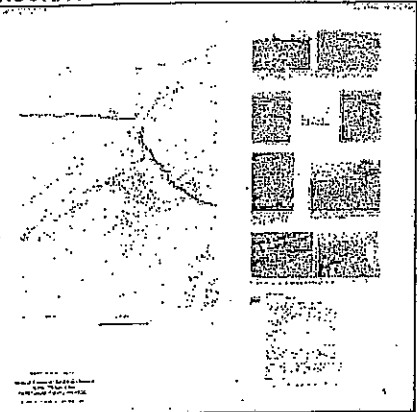
BILLINGS, MONTANA



LANDSLIDE



ROCKFALL



Most folks are blissfully unaware of geologic hazards until those threats hit home – literally, in the case of rock falls or landslides.

David Lopez, senior research geologist with the Montana Bureau of Mines and Geology, hopes to prevent that from occurring in developing areas of Billings, Mont., where new residential construction can be found in areas that put homeowners close to the edge of geologic forces at work.

His work in helping revise and complete the geologic map of the state made him aware of several hazard areas in his hometown of Billings, and his passion for mapping led him beyond the project's original scope.

He completed a set of maps showing three hazard areas – rock falls, landslides and bentonite or swelling clay.

One map shows the area's geology and three companion maps show the hazard areas, accompanied by photographs and explanations to help non-geologists understand the documents and the potential problems they illustrate.

Because of the maps, homeowners have a clearer understanding of potential problems before building or buying a house.

"They are absolutely wonderful," said Billings consultant Betsy Campen. "David's main love in life is mapping, and he has done a great job here ... and a great service to Billings."

The dramatic scenery provided by Billings' landmark Rimrocks is the area that has spurred upscale development in areas threatened by rock falls and slides from the 80 million-year-old Eagle Sandstone, which is a major gas-bearing formation in other parts of the state.

Campen said her own home, built in 1982, once was threatened when a huge, square block above and behind her house split and teetered. The rock had to be blasted away, she said.

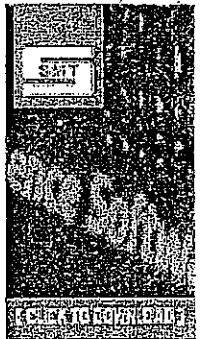
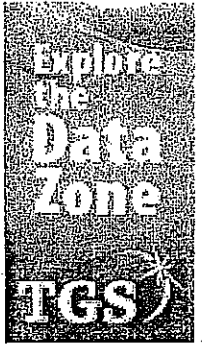
Lopez said that even when people are aware of the potential dangers, often they are willing to gamble that their homes will escape damage.

Billings is located in central Montana and not prone to earthquakes, but temblors in the western or southwestern parts of the state could trigger rock falls or other events in the area, Lopez said.

As an example of the far-reaching effects of geologic events, Campen cited a 1940s earthquake in Yellowstone that closed a hot spring miles away, effectively shutting down the tourist attraction in the town of Joliet, near Billings.

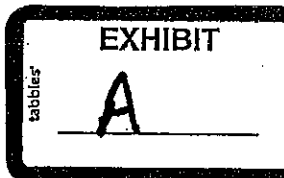
A Public Service

Lopez got the idea for the hazard maps from a similar project done by a friend in the Golden, Colo., area.

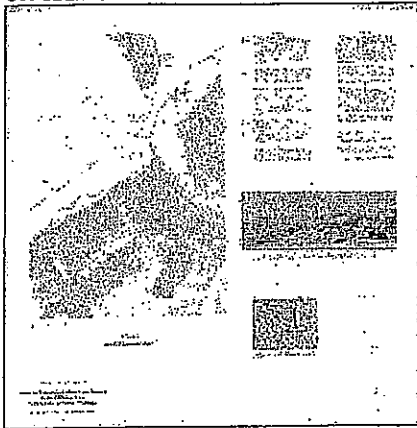


Classifieds

Advertising



SWELLING CLAY



Not everyone was happy with his idea.

For example, when Lopez' maps were being reviewed before release to the public, Bureau lawyers expressed concern that publicizing the information could lower property values in the affected areas, which in turn could perhaps prompt lawsuits against the agency.

Others, however, raised the point that withholding the information would be a public disservice – and also could result in potential liability if damage occurred that might have been avoided, Lopez said.

The legal concerns were eased with minor editing so that photos and text did not identify specific homes or addresses. The photos "just show the facts without editorial comment," Lopez said.

Even so, Lopez said the maps are "30 years too late" for some residential areas. In some areas, the rock fall danger could have been avoided by building just a block away from the base of the cliffs, he said.

In another instance, the toe of a large landslide was cut away to make room for sport fields. The slide has been reinforced with large, rock-filled wire baskets, Lopez said.

The bentonite problem usually can be avoided by moving the building site or digging out the clay, Lopez said.

While the swelling clay can cause considerable damage to a structure, it also presents a more immediate risk of damage or injury.

Billings has had some "close calls," such as when a truck-size boulder rolled onto a city street as recently as 1994. That and other incidents are pictured on the maps.

A rock fall "could cause the total wipeout of a house ... could cause death," Lopez said.

The falls are continual. The upper Cretaceous sandstone underlain by shale is constantly eroded and shifted by frost and root wedging.

The potential rock fall area is a long but narrow strip. The landslide area is wider but actually affects fewer homes, he said. Several homes were built on the slides and have experienced warping, he said.

Lopez came to the Billings area in 1982, working in the oil industry until joining the Bureau in 1992. He is a 20-year member of AAPG.

Lopez said he decided to produce the hazard maps in 1994 while teaching at Rocky Mountain College in Billings. He gave the project to a student, Marianne Sims, and supervised as she developed it as her senior thesis. Lopez then reworked the explanations and added photos for the Bureau version, sharing credit with Sims.

Tell us what you think ...

Name: _____

E-mail: _____

Are you a member of AAPG? Yes No

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Attorneys for Plaintiffs

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE
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JOHN DOE #2 (STATE OF MONTANA)
DEPARTMENT OF HIGHWAYS),)
)
Defendants.)
)

STATE OF MONTANA)
:SS
County of Yellowstone)

Being first duly sworn upon her oath, JANE W. DESCHNER deposes and states
as follows:

1. I am a co-plaintiff along with Jon D. Lodge, in this matter. We own the real property and home located at 1313 Granite Avenue, Billings, Yellowstone County, Montana.

2. As is stated in the Complaint on file herein, on October 9, 2010, a portion of the "Billings Rimrocks" became a falling object and destroyed our home.

3. Attached hereto and by this reference incorporated herein as Exhibit "A" is a true and correct copy of a "Notice of City Code Violation" dated December 2, 2010, which said violation was served upon Jon and me on that date.

4. As the "Notice of City Code Violation" recites, the falling rocks situation "creates an emergency situation requiring immediate abatement." (emphasis added)

5. Later in Exhibit "A", the Billings Deputy City Attorney and Code Enforcement Officer collaborated to correctly posit, "The debris in and around your residence constitutes a public nuisance, because it is rubble, debris, or a dangerous structure that has accumulated in such a way that it endangers safety or health. Additionally, it poses a risk of blocking the city streets below, thereby becoming a 'condition which renders any public right-of-way dangerous for passage.'"

6. Finally, it is written in the "Notice of City Code Violation", "The City has the authority to require abatement of a public nuisance which constitutes an emergency presenting imminent danger of serious injury to persons or property".

7. Jon D. Lodge was in our home when the incident occurred. Less than a minute before this, he was in a room which was totally smashed by the barrage and would have been killed or gravely injured had he stayed in the room.

8. Attached hereto, and by this reference incorporated herein, respectively as Exhibits "B" and "C" are photographs of our home taken on the same date of the incident.

9. Attached hereto, and by this reference incorporated herein, respectively as Exhibits "D" and "E" are two Montana Bureau of Mines and Geology maps used by persons studying areas of high landslide potential vis' a vis' our home. On information and belief, I believe the City of Billings and the State of Montana were in possession of these maps as early as 2003 but that the maps and the imminent danger they were depicting were never disseminated to Jon or me or the general public. [Note to opposing counsel: the maps are very large and incapable of reproduction. The only copies are in the Court file along with this Affidavit.]

10. Attached hereto as Exhibit "F", and by this reference incorporated herein is a true and correct copy of a January 6, 2011, Billings Gazette opinion which is included in my Affidavit to show that prior to our calamity, "a big chunk of rock fell from the Rimrocks in January 2010 and broke apart above Shady Lane". As will be shown later, this site presents a clear and present danger to life and limb as another large chunk is ready to fall at any time. This site is very close to our destroyed home.

11. In January of 2010, Jon D. Lodge applied to the City of Billings for a building permit for a studio he planned to build to the west of our home. The permit was issued in July of 2010. Prior to beginning the work, he noticed an unusual water fall encroaching upon our property. Attached hereto as Exhibit "G", and by this reference incorporated herein, are pictures taken on August 29, 2010, which pictures show the encroaching waters coming from a culvert owned by the State of Montana. The water

was directed to the spot where the rocks separated and then fell upon our property less than two months later.

12. Our insurance carrier erroneously turned our claim down in part because it attributes the surface water runoff discussed in the previous paragraph as a contributing factor to the disaster of October 9, 2010. While we vigorously fight our carrier over its coverage decision, studies and comments indicate the State of Montana has some responsibility for the rock fall as well as is stated in the previous paragraph.

13. The City of Billings owns the rocks which fell from a City Park. The rocks which trespassed and encroached upon our property are also shown in Exhibit "H" attached hereto, and by this reference incorporated herein. They remain unsteady.


14. Attached hereto is Exhibit "I", and by this reference incorporated herein, is a true and correct copy of the minutes of a Special Meeting of the Billings City Council conducted on January 3, 2011. The Billings Superintendent of Parks, Jon Thompson, informed the City Council of Billings that an emergency situation exists with respect to other rocks in the area falling and endangering property, public access and the safety of human beings. Moreover, the rocks which fell onto our property are unstable and moving, thus endangering property and persons below us.

15. Despite being urged by its own staff and private engineers to take preventive action to remediate the emergency situations discussed above, the City Council voted not to so remediate. Therefore, at the time I make this Affidavit, the facts are that citizens of the City of Billings are in imminent danger of catastrophic injury to life and property from what has now become a well known and publicized emergency.

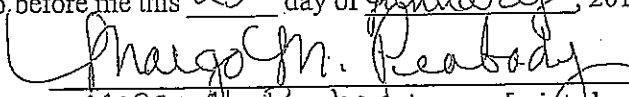
Neither the City of Billings nor the State of Montana has answered the urgent necessity of protecting its own citizens.

Further affiant sayeth naught.

Dated this 25 day of January, 2011.


Jane Deschner

SUBSCRIBED AND SWORN to before me this 25th day of January, 2011.


MARGO M. Peabody [printed name]
Notary Public for the State of Montana
Residing at Ryegate, Montana
My Commission expires: Sept. 21, 2013



MARGO M. PEABODY
NOTARY PUBLIC for the
State of Montana
Residing at Ryegate, Montana.
My Commission Expires
September 21, 2013

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THIS IS TO CERTIFY that a true and correct copy of the foregoing was served, by U.S. Mail, postage prepaid, on the 27 day of January 2011, upon the following interested parties:

Paul C. Collins
Daniela E. Pavuk
Peter Habein
Crowley Fleck PLLP
P.O. Box 2529
Billings, MT 59103-2529

Gerald Murphy
Moulton, Bellingham, Longo & Mather, P.C.
P.O. Box 2559
Billings, MT 59103-2559

J. Kelly Addy
Deputy City Attorney
PO Box 1178
Billings, MT 59103

Bill Gianoulis
Chief Defense Counsel
Department of Administration
Risk Management and Tort Division
PO Box 200124
Helena, MT 59620-0124

TOLLIVER LAW FIRM, P.C.
P.O. Box 1913
Billings, MT 59103-1913

By: 

Attorneys for Plaintiffs

Kenneth D. Tolliver
Matthew B. Gallinger
TOLLIVER LAW FIRM, P.C.
P.O. Box 1913
Billings, MT 59103-1913
Telephone: (406) 256-9600

Attorneys for Plaintiffs

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE
COUNTY

JANE DESCHNER and JON LODGE,	) Cause No. DV-10-1800
)
Plaintiffs,	) Judge: G. Todd Baugh
)
vs.	) AFFIDAVIT IN SUPPORT OF
	) MANDATORY INJUNCTION OF
	) JANE W. DESCHNER AND JON
HARTFORD INSURANCE COMPANY,	) LODGE
SENTINAL INSURANCE COMPANY,)
BRICKLEY INSURANCE AGENCY,)
JOHN DOE #1, (CITY OF BILLINGS), and)
JOHN DOE #2 (STATE OF MONTANA)
DEPARTMENT OF HIGHWAYS),)
)
Defendants.)
)

STATE OF MONTANA)
 :SS
County of Yellowstone)

Being first duly sworn upon his/her oath, TED N. PROCTOR

deposes and states as follows:

1. I own property whose address is 3125 SMOKEY LANE

Billings, Montana 59102.

2. I am familiar with the devastation caused to Jane Deschner's and Jon Lodge's home when a portion of the Rimrocks fell upon their property. I am a neighbor and live in the area which the City of Billings staff members declared an emergency because of the imminence of further rock falls or movement of the rocks from 1313 Granite Avenue.

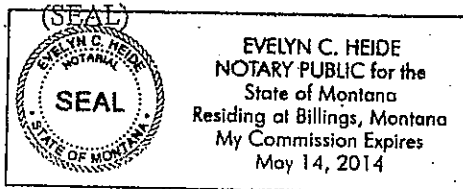
3. I am gravely worried about the safety of my property and my personal safety if the City of Billings and/or the State of Montana do not act to remedy the emergency and danger declared by the City Staff to the Billings City Council on January 3, 2011 at the Council's special session.

Dated this 26th day of JANUARY, 2011.

Ted N. Proctor
[print name] TED N. PROCTOR

SUBSCRIBED AND SWORN to before me this 26th day of January, 2011.

Evelyn C. Heide
EVELYN C. HEIDE [printed name]
Notary Public for the State of Montana
Residing at BILLINGS, Montana
My Commission expires: MAY 14, 2014



CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that a true and correct copy of the foregoing was served, by U.S. Mail, postage prepaid, on the 27 day of January, 2011, upon the following interested parties:

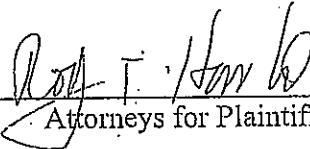
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By: 
Attorneys for Plaintiffs

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P.O. Box 1913
Billings, MT 59103-1913
Telephone: (406) 256-9600

Attorneys for Plaintiffs

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY

JANE DESCHNER and JON LODGE,

Plaintiffs,

vs.

HARTFORD INSURANCE COMPANY,
SENTINAL INSURANCE COMPANY,
BRICKLEY INSURANCE AGENCY,
JOHN DOE #1, (CITY OF BILLINGS), and
JOHN DOE #2 (STATE OF MONTANA
DEPARTMENT OF HIGHWAYS),

Defendants.

) Cause No. DV-10-1800
)
) Judge: G. Todd Baugh
)
) AFFIDAVIT IN SUPPORT OF
) MANDATORY INJUNCTION OF
) JANE W. DESCHNER AND JON
) LODGE
)
)
)
)
)
)
)
)
)
)
)

STATE OF MONTANA)
County of Yellowstone)

Being first duly sworn upon his/her oath, Alice Cassidy Stroughton
deposes and states as follows:

1. I own property whose address is 1323 Granite Avenue
Billings, Montana 59102.

2. I am familiar with the devastation caused to Jana Deschner's and Jon Lodge's home when a portion of the Rimrocks fell upon their property. I am a neighbor and live in the area which the City of Billings staff members declared an emergency because of the imminence of further rock falls or movement of the rocks from 1313 Granite Avenue.

3. I am gravely worried about the safety of my property and my personal safety if the City of Billings and/or the State of Montana do not act to remedy the emergency and danger declared by the City Staff to the Billings City Council on January 3, 2011 at the Council's special session.

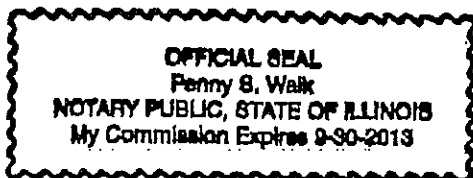
Dated this 27 day of January, 2011.

Alice Casady Staughton
 [print name]
 Alice Casady Staughton

SUBSCRIBED AND SWORN to before me this 27 day of January, 2011.

Penny S. Walk
Penny S. Walk [printed name]
 Notary Public for the State of ~~Montana~~ Illinois
 Residing at Shelby City, ~~Montana~~ Illinois
 My Commission expires: 9-30-2013

(SEAL)



CERTIFICATE OF SERVICE

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by U.S. Mail, postage prepaid, on the 27 day of January, 2011, upon the
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Paul C. Collins
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Attorneys for Plaintiffs

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Telephone: (406) 256-9600

Attorneys for Plaintiffs.

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE
COUNTY

JANE DESCHNER and JON LODGE,

Plaintiffs,

vs.

HARTFORD INSURANCE COMPANY,
SENTINAL INSURANCE COMPANY,
BRICKLEY INSURANCE AGENCY,
JOHN DOE #1, (CITY OF BILLINGS), and
JOHN DOE #2 (STATE OF MONTANA
DEPARTMENT OF HIGHWAYS),

Defendants.

) Cause No. DV-10-1800

)
) Judge: G. Todd Baugh

) AFFIDAVIT IN SUPPORT OF
) MANDATORY INJUNCTION OF
) JANE W. DESCHNER AND JON
) LODGE

STATE OF MONTANA)

:ss

County of Yellowstone)

Being first duly sworn upon his/her oath,

Vicki W. Dunaway

deposes and states as follows:

1. I own property whose address is


1303 Granite

Billings, Montana 59102.

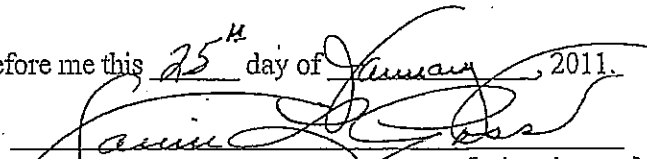
2. I am familiar with the devastation caused to Jane Deschner's and Jon Lodge's home when a portion of the Rimrocks fell upon their property. I am a neighbor and live in the area which the City of Billings staff members declared an emergency because of the imminence of further rock falls or movement of the rocks from 1313 Granite Avenue.

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Dated this 25th day of January, 2011.

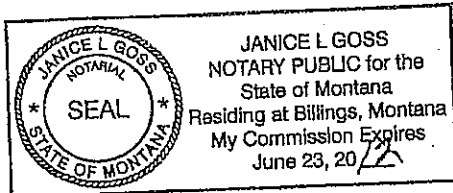

[print name] VICKI W. DUNAWAY

SUBSCRIBED AND SWORN to before me this 25th day of January, 2011.


[printed name]

Notary Public for the State of Montana
Residing at _____, Montana
My Commission expires: _____

(SEAL)



CERTIFICATE OF SERVICE

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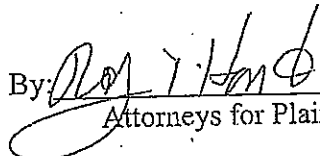
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By: 
Attorneys for Plaintiffs