MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN BILL TASH**, on January 22, 1999 at 3:00 P.M., in Room 437 Capitol.

ROLL CALL

Members Present:
Rep. Bill Tash, Chairman (R)
Rep. Hal Harper, Vice Chairman (D)
Rep. Cindy Younkin, Vice Chairman (R)
Rep. Rod Bitney (R)
Rep. Rick Dale (R)
Rep. Bill Eggers (D)
Rep. Ron Erickson (D)
Rep. David Ewer (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Dan McGee (R)
Rep. Douglas Mood (R)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Bob Story (R)
Rep. Jay Stovall (R)
Rep. Carley Tuss (D)
Rep. Doug Wagner (R)

Members Excused: Rep. Aubyn A. Curtiss, (R)Rep. Bob Raney (D)

Members Absent: None.

Staff Present: Deb Thompson, Committee Secretary
Kathleen Williams, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 74, HB 270, 1/18/1999
Executive Action: HB 35, HB 113

HEARING ON HOUSE BILL 74

Sponsor: Rep. Doug Mood, HD 58, presented the bill. He distributed an exhibit detailing the drinking water revolving fund loans and the wastewater revolving fund loans. **EXHIBIT(nah17a01)** He explained HB 74 would allow the transfer of funds when the need arises. It authorizes the department to increase the bonding authority from $10-$20 million and provide a state match for federal funds.

Proponents: Anna Miller, Department of Natural Resources, spoke in support of the bill. She pointed out the importance of providing communities with low cost financing to finance projects. The department provides technical expertise to make sure they are in compliance with EPA. Wastewater and drinking water projects are expensive facilities. She discussed how efficient the low interest rate loans were to communities especially in view of the complications from CI-75.***{Tape : 1; Side : A; Approx. Time Counter : 7.1}***

Alec Hansen, representing the Montana League of Cities and Towns, spoke in support of the program. He said it was a good program for the people of Montana. The low rates translate into lower water and sewer rates and was vitally important to municipal governments and rate payers.

Gloria Paladicheck, representing the Richland Economic Development Council, said the program was vital for communities to use for ongoing funding.

Lucy Gallus, Montana Rural Water Systems, said this provided low cost financing for essential projects.

Tom Livers, Environmental Quality Council, said the merits were well established. ***{Tape : 1; Side : A; Approx. Time Counter : 15.4}***

Opponents: None

Questions from Committee Members and Responses: None

Closing by Sponsor: Rep. Mood stated this was a good program and made projects affordable.

HEARING ON HOUSE BILL 270

Sponsor: Rep. Cliff Trexler, HD 59, displayed a poster of a comma. He said by definition a comma signifies individual items when included in a group. He said an example when you buy a home you get a bill of sale for the items, such as a range, refrigerator, water and dryer. He pointed out a misplaced comma could completely reverse the meaning of a sentence.

Rep. Trexler explained House Bill 270 addressed legal descriptions of tracts of record that county clerk and recorder's offices have been treating in an inconsistent manner from the original aliquot part, a uniform United States Government survey system. The inconsistency stemmed from two Attorney General opinions regarding division of land that deviated from this system. The unintended consequence becomes an aggregation of separate parcel descriptions into a single tract, which would be shown at the courthouse, without the consent of the landowner. House Bill 270 does not make new tracts of land since the land descriptions have existed as a matter of record. Rep. Trexler stated "the comma was put there for a reason". He noted the fiscal note was imprecise. ***{Tape : 1; Side : A; Approx. Time Counter : 17.5 - 30.9}***

Proponents: **Steve Snezek**, representing the Montana Association of Realtors, described the land description issue. He explained until 1993, as long as any parcel was greater than 20 acres, local government could not regulate it through the Subdivision Act, the parcel's creation or its transfer. After 1993, the Subdivision Act authorized the regulation of the creation of parcels of under 160 acres. The definition in 76-3-103 under current law, 16-a, "a tract of record means an individual parcel of land irrespective of ownership that can be identified by legal description independent of any other parcel of land used in the documents on file in the records of the county clerk and recorder's office." Sub-3, division of land, "means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey of a subdivision plat establishing the identify of the segregated parcel pursuant to this chapter. The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land." Snezek stated that the association interpreted this to mean, and believe it was legislative intent to mean, that any parcel of land separately described and identified in the deed is a tract of record and therefore a landowner may convey that parcel without being subject to the provisions of the subdivision and planning act.

He pointed out there was some disagreement over this and the Attorney General was asked to write an opinion which he did in Volume 47, Number 10. This states that a particular parcel was a tract of record and therefore exempt from subdivision review only if it meets one of these criteria: the parcel had been previously transferred and has not been recombined, there is a valid certificate of survey identifying the parcel, or the parcel was created with a properly filed subdivision plat. The association feels the current interpretation is incorrect. The bill addresses this issue. If you have a deed with three parcels described, separated by commas, then they are tracts of record and can be individually sold and transferred. This protects private property rights. If one purchases four forty acre parcels on one deed and then is told they have to go through subdivision review this damages one's ability to utilize their property. This encourages good land use planning and plan implementation by local government. Planning and plan implementation should take place in the planning process, not in subdivision review. The bill provides for a uniform rule across the state. The problem, however, is individual counties were interpreting the law separately and sometimes differently. Snezek stated the AG's opinion did provide a uniform rule, however, the association believe it is incorrect. The bottom line is if it is separated by a comma on a deed it is a tract of record. The plain language of the current statute is clear. A parcel of land identified on a deed fits the definition of tract of record and is therefore exempt from review under the subdivision and planning act. For example, landowner expectation means that an individual who purchases 160 contiguous acres in which the deed identified as four, forty acre parcels. A plain reading of the statute as well as common sense will tell the purchaser that he has four parcels of land. The Attorney General's opinion tells him he has one. If he wants to transfer one forty acre parcel he is a subdivider and therefore he is regulated by the local government. The bill is needed from a procedural standpoint. This legislation reduces government involvement in regulating existing parcels through the subdivision and planning act, provides benefits to the regulating community and local government by lowering costs. Tracts of record became an issue because of a misinterpretation of the statute. At its core, the tract of records issue is a result of lack of proper planning and land use regulation. Until the citizens of the community properly plan and effectively implement a plan through reasonable and fair land use controls, local governments will continue to feel compelled to address growth and land use issues through the subdivision statutes. The lack of proper planning and zoning is not an overwhelming and compelling reason to infringe on private property rights, reduce land values and needlessly take away land owner expectations. He re-emphasized that some would say this would create 150-200 thousand

new parcels in the state of Montana. These parcels are not new. They already exist. Just because these parcels exist doesn't mean houses will be built on them. Across Montana there are thousands of acres of subdivided land that doesn't have houses on them, many still used for agriculture or timber use. Just as subdivision does not equal houses or sprawl, tracts of record and comma doesn't equal houses and sprawl. The intent is to overturn the Attorney General's opinion. We believe that the Attorney General's opinion was incorrect based on a plain language reading of the statute, common sense and landowner expectations.

Snezek pointed out the effect of the Attorney General's opinion regarding Conservation easements which are based on the value of the land. This would assert a greater tax benefit for the establishment of a Conservation easement since four forty acre parcels are worth more than one 160 acre parcel.

Snezek said this bill would not make every forty acre parcel in the state of Montana a tract of record. The intent was not to create new parcels or to exempt every forty acres in Montana from subdivision review. The legislation only affects the comma on a deed. He concluded that many people on both sides of the issue had worked very hard with the EQC Growth Subcommittee on this legislation. This legislation was undertaken to adhere to the fundamental and consensus philosophy of doing planning and zoning in the planning and zoning process, not in the subdivision review process. This way the community and the individual land owners will be able to make land use decisions together and up front, not one subdivision at a time which leads to patchwork planning at best. If we truly believe that planning and zoning should take place in the planning and zoning process, the law should be correctly interpreted by passing HB 270 and then work together in the planning and zoning process. ***{Tape : 1; Side : A; Approx. Time Counter : 31.6 - 39.8}***

William Spilker, a real estate broker from Helena, representing himself, discussed how HB 270 would clarify what properties might have to come under review of the Subdivision and Platting Act when a transfer occurs. **EXHIBIT(nah17a02)** He explained when a parcel of land was sold it had a legal identification, transferred by a deed and recorded in the Clerk and Recorder's office. Title companies would issue title insurance on these properties. Citing a book and page reference from the Clerk and Recorder's office to establish that the parcel existed as a tract of land prior to the passage of the Subdivision Act in 1973. If several properties were described on one deed one could be sold by virtue of the fact this parcel of land was in existence prior to the 1973 Subdivision Act. He pointed out that the parcels of land, when transferred were not divided, they were transferred as

individual parcels. He noted that in 1996 a local government official decided, because several parcels of land, each with its own legal description and separated by commas, appeared on one deed, they had to be reviewed under the Montana Subdivision and Platting Act before they could be transferred. The Attorney General's opinion after the 1997 Session, would not accept a government lot or an aliquot part of a government survey which had been transferred to be a parcel of land or a tract of record. This opinion is the crux of the issue. Spilker listed previous clarifications. The 1993 Legislature had defined tract of record. "Tract of Record" means an individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents in file in the office of the Clerk and Recorder. In the 1997 Session further clarified the subject. A sentence was added to the definition of a division of land: "the conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land." Additional language clarified aggregation of parcels of land. Aggregation required a conscientious action by a landowner to file a new survey obliterating the previous tracts of record or intentionally stating there was only one parcel. Also stated was "an instrument of conveyance does not merge tracts unless so stated."

Spilker pointed out that now if you own an identifiable parcel of land as part of your land, less that 160 acres, you must go through subdivision review and receive approval in order to file a plat and sell the property. Lewis and Clark County has attached CI-75 to the issue, blocking the recording of subdivision plats until an election is held. It appears that CI-75 becomes a justification for policy hesitation.

Spilker concluded that the law should be clear. He does not believe it is the intent of the legislature to stifle the process of transferring land or to make the transfer of property so restrictive.

P.C. Musgrove, representing the Big Sky Property Owners, and the Montana Association of Realtors and property owners in the Flathead. **EXHIBIT(nah17a03)** He described the consequences which created an aggregation of land without the consent of the landowner. The issue affected landowners by effecting the basis of valuing their land, their ability to sell, obtain financing and create beneficial conservation easements. The AG ruling says that Government Lots that appear on Government Plats and have lot numbers, bearings, distances, and acreage are not lots as defined by the subdivision law, thereby giving the subdivision law precedence over historical facts. The issue of tracts of record should be a land use issue dealing with how a property is used

and possibly developed. this is more appropriately dealt with on the planning and zoning side of the law where landowners can participate in the process. ***{Tape : 1; Side : A; Approx. Time Counter : 46.8}***

Andy Stensrud, from Bozeman, representing the Professional Engineers and Land Surveyors, spoke in support of the bill.

Steven Bab, professional land surveyor with Niel Consultants in Great Falls, Kalispell and Helena. He pointed out their business was statewide. He said there was one consistent issue with most landowners and that was that their rights had been systematically eroded over the years. The authority for the bill is the 1973 BLM Manual of Survey and Instructions. **EXHIBIT(nah17a04)** It is incorporated into Montana law according to MCA 76-3-401 which says all divisions of sections into aliquot parts and retracement lines must conform to United States Bureau of Land Management instructions, this being the current edition. He pointed out the decision of whether an aliquot part is a separate parcel is not this committee's to decide, it is not the real estate communities responsibility but has been decided beginning in the 1700's and in Montana the late 1800's. He pointed to the Manual of Surveying and Instructions, Section 376, which states that the local surveyors employed as an expert to identify lands which have passed into private ownership and the work usually includes the subdivision of sections of fractional parts shown upon approved plats. It also indicates that the surveyor does not divide the parcels, that the parcels were previously, at the time that the original plat in the 1800's was accepted by the federal government-became a parcel of record. In section 377 of the manual, states "upon the plat of all regular sections of boundaries of the quarter sections are shown by broken and straight lines connecting the opposite quarter section corner. The sections bordering on the north and west...the normal township, accepting section 6, are further subdivided", not will be, not could be, "are" further subdivided, by protraction. The section, as divided by the federal government in the 1800's contains all those parcels. These are not new parcels.

Byron Roberts, representing the Montana Building Industry Association, spoke in support of the bill.

Ray Marshall, a surveyor in Helena and vice president of their organization Morals, spoke in favor of the bill. He emphasized three points. Prior to 1973, the intent of the original buyers and sellers was to sell parcels and not a single large tract. As a surveyor, he looks at the construction of a deed when working with clients. The construction of the deed is very important. Surveyors have to have a knowledge and follow the law to give

information to the client in his best interest. This bill will give the private landowners the best interest. He noted there were not many parcels under 20 acres of concern. Today there are many parcels that are designated as homesteads, grants, mineral claims, many separate surveys of metes and bounds descriptions. If the Attorney General's opinion is followed today, all those surveys, parcels and grants that were described on a single deed can be one parcel. He believed this was not the intent of the grant, or the mining claim or the homesteads. He asked the committee to support the bill.

Ed Bartlett, manager of government affairs for Montana Power. Montana Power urged the support of the bill. It would eliminate unnecessary costs in transfers of land. ***{Tape : 1; Side : A; Approx. Time Counter : 57.4}***

Kerry Hegeburg, representing the Montana Wood Products Association, spoke in support of the bill. Many of the member companies that own timber tracts in Western Montana are affected by this legislation. He pointed out page 3, line 22, needed a comma as well.

William F. Gowan, president of Montana Land Title, spoke in favor of the bill. He said legal descriptions were determined by chain of title and the survey. The description will be determined when the title is searched and determines what that legal description is of record. It is not going to be a problem for the Department of Revenue since they follow the normal rules of procedure. To make an analogy on a deed or a patent that is issued in the 1880's and you acquire government lots 1, 2, 3 and 4 is no different than acquiring lots 1, 2, 3 and 4 in the original town site of Helena. Original town site lots you can sell separately. As it stands now, you cannot sell lots 1, 2, 3 and 4 under the patent.

Dennis Lay, land surveyor in Helena, said the Attorney General's opinion actually creates a lot of work for the land surveyors. The reason for the need to reverse the opinion is that it erodes private property ownership rights. Land surveyors are obligated to look out for the client. He supported the bill. ***{Tape : 1; Side : A; Approx. Time Counter : 60.6}***

Jonathan Ries, representing First Montana Title, spoke in support of the bill.

Herb Mobley, a retired farmer from Park City, spoke in support of the bill. He pointed out the problem of transferring ownership which takes too much effort to do that. The bill would help that transfer. He said it was an insult to have to go through the

subdivision process just to get a description which was already there.

Steven Ries, part owner of Ries Surveying, spoke in support of the bill.

{Tape : 1; Side : B}

Opponents: **Janet Ellis**, representing the Montana Audubon, spoke about the concerns from their organization. She distributed a map showing government lots. She explained one of the concerns of the bill, besides overturning the Attorney General's opinion, was that it creates a lot of tracts that could be subdivided. **EXHIBIT(nah17a05)** She pointed out that government lots show up around every lake, due to the government surveys accounting for the earth curvature. She said there were a million government lots in the state of Montana. Adding a comma would result in the development of riparian areas. She distributed deeds with commas, where she had highlighted the description. **EXHIBIT(nah17a06)** She pointed out that she agreed with Rep. Trexler that commas separate surveying terms not individual lots that were subdivided for development purposes. She said the ramification of the bill would be creating parcels all over the state. There was no way of knowing how many deeds have commas in them. She noted that clerk and recorder offices do not check the deeds to see if they were correct, which she believed would add a burden to their work since a person could turn in a deed with a bunch of commas and the clerk and recorder's office would inadvertently be subdividing.

Ann Hedges, representing the Montana Environmental Information Center, spoke in opposition to the bill. She discussed the history of the land ordinance in 1785 which adopted the rectangular grid system providing a means of dividing up the public domain into an orderly arrangement of square mile sections. No one at that time anticipated the subdivision law that passed in 1973. She pointed out the word "subdivision" means different things in different contexts. For surveying purposes, subdivision is a description. For the Subdivision and Platting Act, the subdivision is a division of land that is subject to public review. Both uses are complimentary, one describes the land and one is just the public review of the land. The intent of the 1973 law was to protect people and the land from careless development from that date forward. She distributed opinions of the Attorney General from 1980. **EXHIBIT(nah17a07)** In that opinion, Attorney General Greeley stated, "The crucial factor is single undivided ownership of a tract, not the description in the deed by which the owner obtained the tract." The Attorney General's opinion stated "A

segregation of one or more parcels of land from a larger tract held in single or undivided ownership constitutes a division of land under section 76-3-103(3), MCA, regardless of how the larger tract is described in relation to aliquot parts of a United States government survey." In 1993, the Montana Legislature changed the law. It decided it wanted more land reviewed under the subdivision act. It decided the subdivision law was valuable and meant that these tracts would be analyzed for the effects on public health, safety and welfare. In 1996, the Sanders County Attorney asked the Attorney General once again to clarify this issue. The 1997 Legislature was faced with this issue. The decision made by the Natural Resources Committee was to table the bill and wait for the Attorney General's opinion. This opinion addressed the issues and said there was no Legislative history to support changing the 1980 Attorney General's opinion. She pointed out the Environmental Quality Council, during the Interim, spent a lot of time studying growth management issues in the state. The EQC decided it was better to emphasize planning and zoning instead of making changes to the subdivision law.

Paul Stahl, Deputy County Attorney from Lewis and Clark County, representing himself as an individual citizen, spoke against the bill. He distributed a letter from the planning board who unanimously were opposed to the bill because of the problems it creates for local government. **EXHIBIT(nah17a08)** A deed illustrates the number of parcels that could be created using a comma. **EXHIBIT(nah17a09)** He discussed his large family ranch that contained numerous homesteads. If every section of land was allowed to be developed and sold it would have created 1500 parcels. He pointed out the potential problems of government parcels along the river which could be developed if this bill would pass. He believed the bill would create a disaster.

Gordon Morris, Director of the Montana Association of Counties, spoke in opposition to the bill. ***{Tape : 1; Side : B; Approx. Time Counter : 16.1}*** The county perspective believes the bill would have the affect of recognizing parcels of land created by U.S. survey maps as divisions of land and thereby exempt from review. That would create thousands of plots of land into that context. He quoted from the 1997 Attorney General's Opinion, "The U.S. survey map is a method of property description and survey. Government lots and survey sections were created by federal maps to facilitate their disposition and not to ensure orderly growth of future communities. As I have indicated, the goals of federal survey extensions and state subdivision laws are distinct. Compliance with the federal law does not supplant the need for state review." Morris stated if this bill passed it would circumvent state review.

Linda Stohl, representing the Montana Association of Planners, spoke in opposition to the bill. She said the association takes no position for or against growth. However, they acknowledge that growth is occurring and will continue to occur. The association supports policies that encourage smart growth, growth that creates livable, sustainable and economic revival for the communities. Successive legislative sessions have struggled with public policy questions surrounding the impact of rapid, unplanned growth in the state's communities. The Montana Subdivision and Platting Act and the Sanitation and Subdivision Act, which passed in 1973, set the policy regarding growth and development. Basic amenities, such as access to property, assurances of potable water and adequate sewage disposal should be provided for in a regulated review process. She stressed that HB 270 would provide for instant division of thousands of divisions of land. These divisions would not be subject to the philosophies espoused in the Montana Subdivision and Platting Act. The land divisions would be immediately saleable, perhaps without even adequate legal access. No one knows how many parcels would be affected under this law. She noted the problems created for the Department of Revenue to determine the tax questions resulting from the passage of HB 270. This bill would create one of the largest single exemptions to the Montana and Subdivision and Platting Act since the occasional sale. Passage of this legislation has the potential to reverse decades of pro-active planning policy. She noted that deeds clearly say "a" parcel or "a" tract of land, singular. Deeds describe one parcel, but if the bill passes it would describe multiple tracts and would clearly be available for sale individually within the context of HB 270. ***{Tape : 1; Side : B; Approx. Time Counter : 17.8}***

Glenna Obie, chairman of the Jefferson County Commission and Montana Association of Counties Resolution Committee, spoke against the bill. She discussed managed growth in Jefferson County, an area which has grown at a rate of over 25% in the last 6 years. She agreed that planning and managed growth should occur in planning and zoning regulations. Jefferson County is one of three counties in the state that has a master plan for the entire county and comprehensive county zoning. Subdivision regulation is one of the tools for managing growth. This bill would remove that tool. Lots would be created where none had been before with no access, no ability to provide for the things that county commissioners and citizen planning boards review subdivision for, health, safety and welfare, not to take away property rights or create problems for surveyors. The bill would create massive confusion and a lot of tracts that don't exist now.

Jerry Wells, Montana Council for Trout Unlimited, spoke against the bill. He explained the bill would bring serious and chaotic results to the river corridors. Unreviewed lots were not in the best interest of river management.

Marga Lincoln, representing Alternative Energy Resources Organization, spoke about her concerns. **EXHIBIT(nah17a10)** She noted the bill would create thousands of new lots. She discussed the impact of rural fire chiefs and sheriff's departments. The bill would compound the problem of infrastructure needs on roads and bridges concerning new far-flung houses. ***{Tape : 1; Side : B; Approx. Time Counter : 27.1-29.0}***

Sherman H. Janke, representing the Sierra Club in Bozeman, discussed the resentment of paying increased property taxes because subdivisions do not pay their way. He said they were strongly opposed to the bill. Subdivisions would be easier under the bill. Surveying should not be a tool for land use planning. Surveying was a tool for description. Riparian habitat should be protected and not developed.

Informational Witness: Chris Tweeten, representing the Attorney General's Office, said they would provide information. The Attorney General takes no position for or against HB 270. ***{Tape : 1; Side : B; Approx. Time Counter : 32.7}***

Questions from Committee Members and Responses: Rep. Ohs asked Steve Snezek to clarify how the counties were doing their work differently in regards to the Attorney General's opinion. Snezek replied that the established tracts already existed.

Rep. Younkin demonstrated on the chalk board two parcels in a section of land owned by the same person, that were not contiguous and asked if one of the parcels could be sold, such as happened in her family. Tweeten replied it was his understanding that the consideration of whether a subdivision was required, or if it was considered a division of land, hinges on parcels being contiguous. Rep. Younkin explained that a clerk and recorder told her she could not convey one of the parcels even though they were conveyed to her as one parcel.

Rich Weddle, attorney with the Department of Commerce, said he worked for 25 years with the Subdivision and Platting Act and said the two tracts were segregated by virtue of an earlier conveyance. In the last Session, the subdivision law was amended to make it clear that once tracts are established as separate tracts, by virtue of conveyance, they do not automatically merge simply because they are owned in common ownership, even if they are contiguous. For example, somehow in the past a person has

acquired first one tract and then a contiguous tract so now he owns two contiguous tracts, especially under the 1997 amendments, individual tracts do not loose their individual identity just because they are contiguous and owned by the same person. This bill does not really address this issue either way.

Rep. Younkin asked for clarification if one person owns the east half of the SE quarter and the west half of the SE quarter and they were at one time owned by two different people and now he has acquired them from one person, he has not inadvertently made that into one tract. Weedle replied that was right, and that was what the 1997 amendment had made clear. The merger cannot occur inadvertently. The law now requires that you use very specific language in the conveyance process to cause that merger. For example, if he acquired one tract one time and another tract at another time, those are clearly separate tracts and the only way they can be merged would be if they were conveyed to another person and in the conveyance say "I intend that these tracts be merged", so it can't happen accidently. ***{Tape : 1; Side : B; Approx. Time Counter : 35 - 38.7}***

Rep. Harper noted the bill was important and seemed to have far reaching impacts. He asked Bill Spilker to show his plat display. Spilker replied that a conscientious effort would be needed to aggregate parcels. He said the way the Attorney General's Opinion is, it says they are aggregated. ***{Tape : 1; Side : B; Approx. Time Counter : 40.7}***

Spilker referred to the large map presented by Janet Ellis (See Exhibit 5). The Bureau of Land Management distributes this map that tells all of the different kinds of descriptions that can occur throughout the government survey process and also how land can get transferred. He pointed out the Master Plat Book from the Bureau of Land Management. He described a parcel of land owned by Tim Babcock that had been conveyed by patent by the U.S. Government. This included government lots, mining claims, surveys and patent parcels that had been taken out, which had interfered with the rectangular method of surveying. This made the section irregular with tiny parcels of ground, each tract a tract of record with descriptions. Individual tracts were sold, they were contiguous but undivided ownership. He noted that now under the Attorney General's rule if this were done now, if Babcock wanted to sell government lot 16, he would have to go to the planning board, before the county commissioners, need to have a plat filed, in order to put that on record as a subdivision. Then he could convey it. Spilker stated that parcel of ground has always been in existence. This is not a parcel of ground that is going to be created by this law. This parcel of ground is in existence right now and still is in existence. There is

nothing new being created, these things exist. There is no real problem, other than fear. ***{Tape : 1; Side : B; Approx. Time Counter : 40.7 - 46.1}***

Rep. Stovall asked Chris Tweeten asked if a comma was specifically not recognized in the Attorney General's Opinion. Tweeten replied, it did not say that directly. Rep. Stovall asked how a legal description could then be used to describe anything. Tweeten replied the legal description has always been used to locate the piece of ground on the ground. The effect of the legal description in terms of subdivision review and any other purpose or law created after the time when that legal description was drafted is a separate question. Nobody disputes the fact that the legal descriptions exist. The question is whether this Legislature has ever clearly expressed it's intention that an individual portion of that chunk of land that is described in that deed ought to be able to be conveyed without subdivision review. The Attorney General's Opinion is that is a separate question. The fact that it may have been surveyed that way and described that way by the government when deeds were issued doesn't answer the question about whether, as a policy matter, that ought to be able to be conveyed without subdivision review. That is the question, the rest is all a debate about unintended consequences. That is a policy decision for the Legislature to make. In the opinion issued, the statute was not clear in the language, the Supreme Court said to go look at the Legislative history and try to decide from the Legislative history whether that ambiguity is cleared up. In the conference committee minutes, the decision was made not to decide that issue in the 1997 Legislature, but to wait for the Attorney General's Opinion. The opinion was issued based on the past Legislative history. The Attorney General did not see in that legislative history any clear indication that the Legislature ever intended that these parcels, however you call them, whether they were individual for some purposes or not, that it was the intention of the Legislature that those parcels be able to be conveyed without subdivision review.

Rep. Stovall asked about Rep. Younkin's example of the two parcel before 1997 if they would have to go through environmental review. Tweeten replied no. They were originally conveyed prior to 1973 as separate tracts of land, they are not contiguous to each other and have never been affirmatively aggregated with each other, therefore they are separate tracts and can be sold without review. He said the 1997 law did not change that.

Rep. Stovall asked Mr. Weddle about the Younkin example. Weddle replied the 1997 change confirmed what had always been the case. This was a very clear cut case because the two tracts in the example were not contiguous. There is no way that two non-

contiguous tracts could be one tract. He pointed out the trickier question is what happens when one person owns two contiguous tracts. Did they somehow merge? You could buy one tract at one time and another tract at another time or buy two tracts on one deed. It is not beyond the realm of possibility that a single deed could convey it. You could have two tracts created by a deed that could have the effect of dividing land. If that had ever happened in the past, those two tracts would stay separate. The trick is, the tract of land had to be created as a separate tract by conveyance rather than by simply because tracts are shown on a government survey. They don't become separate tracts simply because they have been used in a deed with the comma issue. That is what the Attorney General's Opinion in 1980 really addressed. It said if those component parts, separated by commas, are simply describing a tract of land, they don't become separate tracts because they are descriptive in nature. The only way that they would become separate is if you were to sell them off as separate tracts. At that time, a deed had been filed. Just describing a large tract by its components doesn't create separate tracts. Rep. Younkin's example is really not addressed by this bill. Those tracts are not contiguous but even if they were contiguous they would stay separate because they had been created as separate tracts. ***{Tape : 1; Side : B; Approx. Time Counter : 53.8}***

Rep. McGee asked Mr. Weddle if he had provided council to county planning entities, planning boards or staff across the state. Weddle said it was part of his job. Rep. McGee pointed out what he had just explained to the committee was not being done out in the real world. Weddle said they should be following the Attorney General's Opinion. Rep. McGee asked if that opinion clarified Rep. Younkin's example. Weddle said he thought it did. The principal question was whether the government survey established all those lots. There was a reaffirmation of the comma issue. The Attorney General Opinion said that those tracts are not separate solely by virtue of the fact that they are shown on U.S. Government survey. Implicit in that opinion is the notion that if they had been separated by earlier transfer and division then they are separate.

Rep. McGee asked about parcels being all on the same deed. Tweeten described how component parts could be re-surveyed and filed if the property owner could demonstrate those tracts were separate. He explained, you do that by going to the deeds and finding where those tracts had been separated and if they had been there is not an issue. Rep. McGee asked about section lines. Tweeten said, because of the AG decision, it was clear that section lines are not dividing lines. McGee pointed out there was language in the AG opinion that states if the Legislature hadn't wanted it in a certain way they would have

clarified the issue, which suggests the Legislature could clarify this in a further fashion. Tweeten said this was true. Rep. McGee said these parcels should be recognized for what they are and then local government bodies can decide they want to have other means of controlling the use of that land. Tweeten said looking at the issue from different perspectives would be constructive.

Rep. Harper asked Linda Stahl if this legislation passed and then it created 100 thousand lots would it precipitate a Montana land rush. Stahl replied there were an unknown number of tracts.

{Tape : 2; Side : A}
Rep. Stovall asked about selling a parcel of his own land to one of his children if that would need environmental review. Stahl replied the property would go through the subdivision process as a minor subdivision if it were 5 or fewer lots. This would include fees and costs of appraisal. Rep. Stovall asked if there was an increase in costs because of distance to the property. Stahl pointed out that counties adopt their own fees.

Larry Marshall, land surveyor with experience in subdivisions, spoke about the cost to review a subdivision. He said it had been his experience in the last few years that a total minor subdivision, if the county approves it at a minimum cost around $5,000. A subdivision such as Rep. Stovall described far out of town, you would not be able to do it anyway. If there was no legal access the county would make you provide a county standard road to that parcel from the nearest county standard road, at the cost of $10 thousand dollars per mile to develop the road.

Rep. Harper asked Mr. Weddle to respond. Weddle discussed the subdivision issue. He noted that agricultural land has an exemption. No surveyor would be required but it would need a covenant on the land that it was to be used for agriculture purposes. If the buyer wanted to build a house on the tract of land, the Subdivision and Platting Act provides to the person that the first minor subdivision in the tract of record is entitled to a minor subdivision review which has to be completed within 35 days, the public hearing requirement doesn't apply and the environmental assessment portion of the law doesn't apply. However, in subsequent minor subdivisions, there is a review process that entitles the subdivider an expedited review. The governing body or planning board is authorized to waive all or a portion of the environmental assessment requirement on any minor subdivision of 5 or fewer parcels. The cost of preparing an environmental assessment need to be distinguished between environmental assessment that the subdivision law talks about, and the environmental impact statements which come about under

the Environmental Policy Act. ***{Tape : 2; Side : A; Approx. Time Counter : 9.2 - 14.3}***

Rep. Story asked Steve Snezek about the Department of Revenue's ability to tax parcels of land. Snezek replied the tracts were treated the same, there was no tax effect as far as he knew.

Closing by Sponsor: Rep. Trexler closed. He pointed out there were no costs. He said over the years it may have cost $6-8 dollars to file the pages and if there were four or five tracts you would put them on one page to save money. He said it was a good suggestion to deal with this as a planning issue. He clarified that the Clerk and Recorder's office do check the deeds.

EXECUTIVE ACTION ON HOUSE BILL 35

Rep. Story **MOVED DO PASS**. Rep. McGee asked about the 3% for the database and machinery. Rep. Younkin clarified that it cost the DNRC significantly more than 3% to administer those state trust lands. The 3% does not cover all those expenses and they want to continue to be able to do what they have been doing. Chairman Task commented that the database needs was one issue, the ownership responsibilities of the state of Montana to own these lands entail management responsibilities.

The question was called. The motion **PASSED** 13-7 on a roll call vote.

EXECUTIVE ACTION ON HOUSE BILL 113

Rep. Harper **MOVED HB 113 AS AMENDED**. Rep. Younkin explained the amendment which would add the word "or" in section 1 and 2, as a technical amendment. The question was called on the amendment. The motion **PASSED UNANIMOUSLY**.

Rep. McGee pointed out line 10 should replace "any" with "substantive" information. Rep. Harper suggested "determines". McGee said he could accept that.

The question was called on the motion to pass the bill as amended. The motion **PASSED UNANIMOUSLY**.

ADJOURNMENT

Adjournment: 5:37 P.M.

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REP. BILL TASH, Chairman

_____
DEB THOMPSON, Secretary

BT/DT

EXHIBIT(nah17aad)