

EXHIBIT NO. 3

DATE: 3/8/05

RESOLUTION 2004-8

BILL NO. HB 114

HISTORIC ROAD RIGHT OF WAY POLICY

It is the intent of the Montana Association of Counties to seek legislation to extend the time-frames for the application for access roads constructed prior to 1997 on State Trust Land.

WHEREAS, counties are required to inventory and identify all roads that are not deeded that access State Trust Lands, pursuant to MCA 77-1-130, and make application for the recognition of an historic right of way; and

WHEREAS, in order to preserve the deviations that were provided in law from the standard easement process mainly that the following are not required: 1) a legal survey completed by a licensed surveyor or licensed professional engineer, 2) a settlement of damages with the State surface lessee and 3) an analyses of each historic right of way under the Montana Environmental Policy Act, plus additional Departmental concessions dealing with minimum road widths and others, all of which are scheduled to expire as of October 1, 2006.

NOW THEREFORE, BE IT RESOLVED that the Montana Association of Counties will seek legislation to extend the time frames in order to preserve the above stated rights until 2011 and to extend the termination date to October 1, 2016.

SPONSOR: Districts 1, 2 and 3

RECOMMENDATION: Do Pass

PRIORITY: High

REFERRED TO: MACo Transportation Committee,
MACo Public Lands Committee

ADOPTED: Annual Conference, Missoula, MT
September 29, 2004

77-1-130. (Temporary) Recognition of historic right-of-way -- criteria for right-of-way deed -- conditions -- fees. (1) A person or a county may apply to the department for a historic right-of-way deed to provide access to the applicant's private property, to provide continuation of a county road, or to provide for authorization of existing utilities by filing an application with the department by October 1, ~~2006~~ 2011, on a form prescribed by the department. An application must be accompanied by:

- (a) an application fee of \$50;
- (b) a notarized affidavit:
 - (i) demonstrating that the applicant or the applicant's predecessor in interest used the right-of-way applied for before 1997 and that the use has continued to the present;
 - (ii) describing the purpose for which the right-of-way was used before 1997; and
 - (iii) demonstrating that the historic right-of-way applied for is the right-of-way demonstrated in the evidence provided in subsection (1)(c); and
- (c) (i) aerial photographs taken by an agency of the United States demonstrating use of the right-of-way applied for; or

- (ii) other evidence of the use of the right-of-way applied for.

(2) The department shall review an application and other evidence submitted pursuant to subsection (1) and shall issue a historic right-of-way deed in the name of the applicant if:

- (a) the applicant pays the application fee provided in subsection (1)(a) and the fair market value of the historic right-of-way as provided in subsection (4);
- (b) the applicant has shown by substantial evidence the matters required in subsections (1)(b) and (1)(c)(i) or (1)(c)(ii);
- (c) the department has, if necessary, made a field inspection of the right-of-way applied for; and
- (d) the deed is approved by the board.

(3) A historic right-of-way deed issued in the name of the applicant must contain the description of the property of the applicant to which it is appurtenant as provided in the application, and the right-of-way must thereafter be considered appurtenant to that dominant estate. A deed may be assigned by the applicant to the applicant's successor in interest with the approval of the department. The department may not withhold approval for any reason other than that the use of the historic right-of-way is contrary to subsection (5).

(4) (a) At the time of issuing the historic right-of-way deed, the department shall collect from the applicant the full market value of the acreage of the historic right-of-way.

(b) The amount collected pursuant to subsection (4)(a) must be deposited in the appropriate trust fund established for receipt of income from the land over which a historic right-of-way is granted.

(5) If application is made in accordance with this section, a historic right-of-way deed must be issued by the department, subject to the approval of the board, on the following terms:

- (a) the right-of-way is only for the minimum width necessary, as negotiated by the department and the applicant; and

(b) the right-of-way is only for the physical condition of the road or utility facilities existing on the date the historic right-of-way deed is issued by the department.

(6) Issuance of a historic right-of-way deed pursuant to this section is exempt from the requirements of Title 22, chapter 3, part 4, and Title 75, chapter 1, parts 1 and 2.

(7) The survey requirements of 77-2-102 may be waived by the department for the issuance of a historic right-of-way deed if the department determines that there is sufficient information available to define the boundaries of the right-of-way for the purposes of recording the easement.

(8) The department may attach conditions to a historic right-of-way deed necessary to ensure compliance with this chapter.

(9) For the purposes of this section, "historic right-of-way deed" means a document issued by the department granting to the applicant a nonexclusive easement over state land. (Terminates October 1, 2011 2016--sec. 6, Ch. 270, L. 2001.)

