

BEFORE THE BOARD OF LAND COMMISSIONERS AND
THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rules I through VIII, the amendment) PROPOSED ADOPTION ,
of ARM 36.25.128, and the repeal of) AMENDMENT, AND
36.25.131 regarding cabinsite lease) REPEAL
site sales)

To: All Concerned Persons

1. The Department of Natural Resources and Conservation will hold two public hearings on the following dates and times to consider the proposed adoption, amendment, and repeal of the above-stated rules:

November 6, 2013, at 7:00 p.m. at the Sullivan Memorial Community Hall, 3248 Highway 83, Seeley Lake, Montana; and

November 8, 2013, at 1:00 p.m. in the Bannack Room (first floor) at the Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, Montana.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than October 31, 2013, to advise us of the nature of the accommodation that you need. Please contact Emily Cooper, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, MT; telephone (406) 444-4165; fax (406) 444-2684; e-mail ecooper@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I DEFINITIONS As used in this subchapter, the following definitions apply, except where the context clearly indicates otherwise:

(1) "Agenda item report" means an agenda item containing information specific to sales presented to the state Board of Land Commissioners.

(2) "Bid" means a written or oral monetary commitment to purchase land or interest in land offered at the specified time and place by a person eligible to participate in an auction, as specified by the department in accordance with 77-2-363, MCA.

(3) "Bid deposit" for a cabin site or home site sale only means electronic funds transfer or a certified check or cashier's check drawn on any Montana bank equal to five percent of the minimum sales price submitted in connection with a bid for the real property as an assurance of the performance of a contractual or promissory requirement.

(4) "Board" means the state Board of Land Commissioners.

(5) "Department" means the Department of Natural Resources and Conservation.

(6) "Estimated costs" means the estimated costs to prepare the cabin site or home site for sale.

(7) "Improvements" means a home or residence, outbuildings and structures, sleeping cabins, utilities, water systems, septic systems, docks and landscaping.

(8) "Lessee" means the current lease holder of any cabin site or home site lease of state trust land.

(9) "Parcel" means one section or less that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office or in the department's records.

(10) "Processing costs" means estimated costs of preparing the parcel for sale, including but not limited to nomination fees, legal advertising, appraisals attributable to improvements, cultural resource inventories, required environmental review if not exempt under 77-2-363(6)(b), MCA, public notice, and document filing fees.

(11) "Tract" means a distinct portion of land, irrespective of ownership, that can be identified by legal description, independent of any other portion of land, using documents on file in the records of the county clerk and recorder's office.

AUTH: 77-1-204, 77-2-308, 77-2-328, 77-2-362, MCA

IMP: 77-2-328, 77-2-362, 77-2-363, MCA

NEW RULE II TRANSACTION COSTS FOR CABIN SITE OR HOME SITE

SALES (1) With the exception of processing costs described in this rule, the purchaser, or an applicant for purchase, of lands formerly comprising a state cabin site need not compensate the department for any administrative costs or services performed by department staff necessary for the sale of that state cabin site.

(2) The department shall:

(a) maintain a record of each transaction; and

(b) summarize all costs at the completion of each sale.

(3) Except as provided hereinabove, processing costs as described in [New RULE I](9) shall be paid by the nominator or the purchaser, respectively.

AUTH: 77-2-362, MCA

IMP: 77-2-362, MCA

NEW RULE III CONSIDERATIONS IN THE SALE OF CABIN SITE OR HOME SITE PURSUANT TO LAND BANKING

(1) If the sale of a parcel would extinguish existing, reasonable public access to other public or state trust land or to public water, as defined in 77-2-303(2)(a), MCA, the board shall reserve an easement or right of way for access to the other public or state trust land or to public water.

(2) If the sale of a parcel would extinguish access to adjacent private land, the department shall provide an opportunity for the landowner to make application to purchase an easement under 77-1-107, 77-1-130, or 77-2-101, MCA.

AUTH: 77-2-303, 77-2-362, MCA
IMP: 77-2-308, 77-2-311, 77-2-363, MCA

NEW RULE IV PRELIMINARY REVIEW OF CABIN SITES AND HOME SITE SALE PARCELS BEFORE NOMINATION

(1) The department shall conduct a preliminary review of each parcel prior to department's nomination of any cabin site or home site parcel for sale. The department shall also conduct a preliminary review of any lessee- or improvement owner-nominated parcel to determine the suitability and priority for selling a cabin site or home site. The department may consider the following factors in the preliminary review:

- (a) whether sale is consistent with the board's constitutional fiduciary duty;
- (b) whether the parcel possesses clear title and whether any mortgage holder consents to sale;
- (c) whether there are any outstanding lease violations on the parcel;
- (d) whether, and to what degree the sale of the parcel would affect access to other public lands; and
- (e) the extent of infrastructure, such as roads, utilities, power, telephone, water, or sewer availability.

(2) Based on the preliminary review, the department will inform the nominating lessee how the department ranks the cabin site or home site for processing for nomination for sale.

(3) The department may determine, based on current market conditions, the annual amount of cabin site or home site sale applications that it will accept and process in a given area.

AUTH: 77-1-204, 77-2-308, 77-2-362, MCA
IMP: 77-2-328, 77-2-363, MCA

NEW RULE V PROCEDURES FOR NOMINATING AND EVALUATING CABIN SITE AND HOME SITES FOR SALE PURSUANT TO LAND BANKING

(1) The board shall, in its sole discretion, sell individual cabin sites and home sites in configurations providing the best financial and management advantage to the affected trust beneficiary.

(2) The board reserves the right to approve or deny any nominations for the sale of state cabin sites and home sites. The department reserves the right to prioritize activities and determine the number of transactions processed related to the sale of cabin sites and home sites.

(3) The board, the department, the current lessee of, or the owner of the improvements resting upon a cabin site or home site, may nominate that cabin site or home site for sale:

- (a) nominations must be on a form issued by the department and must be sent to the appropriate department office, as noted on the form;
- (b) a lessee or improvement owner may nominate and shall pay a nonrefundable \$100 processing fee for each cabin site or home site nominated;
- (c) the department may not accept incomplete nominations;
- (d) the department shall review the classification of the parcel, as provided in 77-1-401, MCA, and classify the parcel if it is not classified; and

(e) when a parcel is nominated, the department shall notify:
(i) all persons holding a license on the parcel;
(ii) the representative of any affected trust beneficiary; and
(iii) the lessee of the parcel if the board or department nominated the parcel for sale.

(4) Sale of cabin sites and home sites are exempt from Montana Environmental Policy Act (MEPA) review under 77-2-363(6)(b), MCA.

(5) If the department determines pursuant to [New Rule IV] that a cabin site or home site meets the preliminary suitability requirements for sale, the department will prepare an agenda item report for the board to seek the board's preliminary approval for a potential sale of the cabin site or home site.

(6) If the department determines the cabin site or home site is not suitable for sale, the department may, without board approval, remove the cabin site or home site from nomination and eliminate the parcel from further review.

(7) The department shall notify the lessee or improvement owner of the department's recommendation of the suitability of a cabin site or home site parcel's suitability for sale by mail, as provided in 77-2-363(3), MCA.

(a) The notification must be mailed on or before the day the department posts the notice on its web site or other equivalent electronic medium.

(b) As a courtesy, the department shall try to contact the lessee by telephone about the department's notice of suitability for sale.

(8) The department shall notify all persons holding a license on the cabin site or home site and the trust beneficiary about the determination.

(9) Any person may appeal the department's removal of a cabin site or home site from nomination to the board within 15 days of the department posting the report on the web site or other equivalent electronic medium. The board shall place the appeal on the next available agenda of a regularly scheduled board meeting no later than 15 days before the meeting.

(10) On a board or department-nominated cabin site or home site, the lessee may, within 60 days of the determination, notify the department that the lessee intends to propose a land exchange.

(11) For each cabin site or home site under review for possible sale, the department shall review the title to the tract and improvements, but the department does not warrant the accuracy of its findings to any party.

(12) Upon the department's agenda item report to the board under (5), the board may preliminarily approve, reject, or modify the terms of the proposed sale.

(a) If the board rejects the proposed sale of the cabin site or home site, the department shall remove the parcel from nomination.

(b) If the board preliminarily approves the proposed sale of the cabin site or home site, the department shall post the sale information for the parcel on the department's web site or other equivalent electronic medium within 30 days of the board's approval.

(13) If the board has preliminarily approved a proposed sale nominated by the lessee or improvement owner, the department will estimate the costs of the appraisal and will notify the lessee or improvement owner of the approval and request submission of the estimated costs of the appraisal attributable to the

improvements on the cabin site or home site and associated costs of processing the cabin site or home site for sale.

(a) Where the board gives preliminary approval for the sale of the parcel, the lessee or improvement owner must submit payment for all processing costs within ten days of notification to do so by the department.

(14) If the board has preliminarily approved a proposed sale, the department shall contract with a Montana-licensed certified general appraiser to appraise the cabin site or home site, including improvements under consideration for sale in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), as adopted by reference by the state Board of Real Estate Appraisers in ARM 24.207.402. The department will review or contract the review of the appraisal conducted by the contract appraiser.

(15) The department shall pay that proportion of the cost of the appraisal necessary to determine the appraised value of the land. The lessee or improvement owner shall pay that proportion of the cost of the appraisal necessary to determine the appraised value of the improvements.

(a) The department will provide the lessee or improvement owner with a list of no less than two acceptable appraisers to conduct the appraisal, the lessee or improvement owner will select 50 percent of the appraisers on the list, from which the department will select an appraiser to conduct the appraisal.

(b) The appraisal for cabin sites and home sites must:

(i) include a separate land value for the state-owned cabin site or home site in the valuation;

(ii) include a separate value for the non-state-owned improvements in the valuation.

(A) Valuation of the improvements must account for all forms of obsolescence;

(iii) include a total value of the property.

(A) The value of state-owned land added to the non-state-owned improvements value will not be greater than the total value of the property;

(iv) use comparable sales for like properties;

(v) be valued with the hypothetical condition that the cabin site or home site has legal access;

(vi) be reviewed and updated one year from the date of valuation stated in the appraisal report; and

(c) The department shall notify the lessee of the appraised value and post that same information in a dated notice on the department's web site or other equivalent electronic medium.

(16) The department shall give the lessee or improvement owner notice and opportunity for an informal administrative hearing before the department to contest those valuations. The department shall review the arguments and evidence received at the hearing to make a recommendation of the values of the land and the cabin site or home site improvements to the board.

(a) The lessee or improvements owner must file notice of appeal of value with the department within ten days of the department's notification to the lessee or improvements owner of the department's initial valuation of the land and the improvements. Within ten days after receipt of any notice of appeal the department

shall notify the lessee or improvements owner of the time and place of the hearing before the director of the department, or the director's designee. Any such hearing shall be informal without adherence to strict rules of evidence as provided in 2-4-604, MCA. A hearings examiner may be appointed to conduct the hearing. The lessee or owner of improvements shall present evidence and arguments it wishes the department to consider in recommending values of land and improvements to the board.

(17) The department shall present its findings, conclusions, and recommended values of land and improvements to the board and the lessee or improvement owner.

(18) Upon receiving the appraisal values or department's recommendation of values, the board shall set a minimum acceptable bid on the real property comprising the cabin site or home site, and determine the improvement value for compensation to the lessee or improvement owner.

(a) Upon receipt of lessee consent to the terms and conditions of the proposed sale and the valuation of cabin site or home site improvements, the sale must proceed utilizing the board's final determination of the values, and the lessee or improvement owner is obligated to transfer its interest in the cabin site or home site improvements existing on the cabin site or home site lease according to the board's final determination of their value.

(b) Nothing in this rule prohibits the lessee or improvement owner from choosing to accept a price for the cabin site or home site improvements existing on the cabin site or home site that is less than the board's final determination of value.

(19) The department shall give notice of the minimum acceptable bid for the real property comprising the cabin site or home site, and the determined value of the improvements for sale by listing the proposed sale of the cabin site or home site and the improvements upon the department's Internet web site or other equivalent electronic medium.

(20) If the board has preliminarily approved a proposed sale, the department shall make the following available to the public, all bidders, and the lessee:

(a) minimum acceptable bid for the land and the determined value of the improvements;

(b) contents and findings of any title review without any warranty of title; and

(c) any required environmental review.

(21) The department shall provide notice of the proposed sale to the following:

(a) Department of Fish, Wildlife and Parks;

(b) Department of Transportation;

(c) Department of Environmental Quality;

(d) all adjacent landowners of record;

(e) the appropriate trust beneficiaries;

(f) the board of county commissioners in the county where the cabin site or home site is located;

(g) any surface lessees of the sale of the cabin site or home site by mail. The notice to lessees must include an estimate of costs necessary to complete the sale if the lessees nominated the cabin site or home site;

(h) all persons holding a license on the cabin site or home site;

(i) all persons who have requested to be placed on a notification list for the sale of the real property.

(22) If necessary, the department may conduct a survey of the cabin site or home site proposed for sale. The department shall pay for any such survey of the cabin site or home site.

AUTH: 77-1-204, 77-2-308, 77-2-362, MCA

IMP: 77-2-328, 77-2-362, 77-2-363, 77-2-364, 77-2-366, MCA

NEW RULE VI TERMINATION OF LESSEE-INITIATED CABIN SITE OR HOME SITE SALE AFTER DEPOSIT AND PROCESSING COSTS PAID BY LESSEE

(1) If the current lessee of the cabin site or home site has initiated the sale, as authorized by 77-2-361 through 77-2-367, MCA, and submitted processing costs with the department, the lessee may cancel the sale. The lessee shall send written notice by certified mail to the department, postmarked no later than ten days before the date of the auction.

(2) If the lessee cancels the sale the lessee shall pay all costs incurred by the department in preparing the sale, including but not limited to:

(a) any costs for required environmental review if not exempt under 75-1-201, 77-1-121, or 77-2-363(6)(b), MCA;

(b) appraisal attributable to the improvements;

(c) cultural resource inventory;

(d) public notices; and

(e) other costs that may be incurred by the department and/or board.

(3) The processing costs and bid deposit, as required in [New Rule V](13) and [New Rule VIII](4) that are paid by the lessee must be applied toward costs incurred by the department for the canceled sale.

(4) Any amount of processing costs and bid deposit remaining after payment of department costs must be returned to the lessee.

AUTH: 77-1-204, 77-2-308, 77-2-328, MCA

IMP: 77-2-328, 77-2-363, MCA

NEW RULE VII PROCEDURE FOR CONDUCTING CABIN SITE AND HOME SITE SALES (1) All land cabin site and home site sales are subject to the provisions of 77-2-318 through 77-2-326, MCA.

(2) The department shall set the date of the auction. Bidders may appear personally or be represented by a legally authorized representative.

(3) As required by 77-2-322, MCA, the department shall, at a minimum:

(a) publish notice of the auction in a newspaper of general circulation in the county where the auction is to take place, once each week for four consecutive weeks preceding the due date for bid deposits; and

(b) post the notice on the department's web site or other equivalent electronic medium and provide links to associated realty web sites, when feasible.

(4) A person wishing to bid upon a nominated cabin site or home site offered for sale at auction shall submit a bid deposit and execute a purchase agreement with

the department. The bid deposit and purchase agreement must be postmarked no later than 20 days before the date of the auction.

(5) Subject to (6), land must be sold to the highest bidder who consummates the terms of the sale.

(6) In accordance with 77-2-324, MCA, the current lessee has the preference right to match the high bid.

(7) The purchaser shall pay closing costs, including but not limited to:

(a) the cost of the appraisal attributable to the improvements;

(b) title insurance;

(c) filing fees;

(d) closing fees; and

(e) water rights transfer.

(8) The department shall retain the bid deposit and processing costs of the successful bidder. The department shall return the bid deposits of all unsuccessful bidders within 15 business days following the auction.

(9) If the highest bidder fails to consummate the sale for any reason the bidder forfeits the bid deposit and processing costs. The department may then offer the cabin site or home site to the next highest bidder at the final sale price.

(a) If the next highest bidder, or a subsequent bidder, in sequence of bid amount, agrees to the terms of the sale, that bidder shall complete a purchase agreement and resubmit a bid deposit and processing costs to the department.

(b) The bid deposit and processing costs will be returned to the highest bidder if a subsequent bidder completes a purchase agreement and resubmits a bid deposit and processing costs and the purchase price.

(10) If the final bidder who agrees to consummate the sale fails to comply with the terms of the sale, and submit the purchase price, for any reason, that bidder's bid deposit and processing costs are forfeited.

(a) The bid deposit must be credited to the land banking trust fund.

(b) The processing costs will be credited to the land banking administration account.

AUTH: 77-1-204, 77-2-308, 77-2-362, MCA

IMP: 77-2-328, 77-2-363, MCA

NEW RULE VIII VALUATION OF CABIN SITE AND HOME SITE IMPROVEMENTS FOR ACQUISITION UPON SALE OF CABIN AND HOME SITES

(1) If the lessee or improvement owner consents to the terms and conditions of the proposed sale and the valuation of cabin site or home site improvements, the sale must proceed utilizing the board's final determination of the values, and the lessee or improvement owner is obligated to transfer its interest in the cabin site or home site improvements existing upon the cabin site or home site lease according to the board's final determination of their value. The lessee or improvement owner shall receive the entire proceeds of sale attributable to the value of the improvements as previously determined by the board.

(2) Nothing in this rule prohibits the lessee or improvement owner from choosing to accept a price for the cabin site or home site improvements existing the cabin site or home site that is less than the board's final determination of value.

AUTH: 77-1-204, 77-2-308, 77-2-317, 77-6-302, 77-6-303, 77-6-306, MCA
IMP: 77-2-317, 77-2-328, MCA

REASONABLE NECESSITY: Chapter 422 of the 2013 Montana Session Laws, which will be codified as 77-2-317, MCA, established procedures for the sale of cabin sites and home sites upon state land. New Rules I through VIII are reasonably necessary to describe and define the sale process for such lands and implement the provisions of Chapter 422 of the 2013 Montana Session Laws. The rules are configured to: attain the full market value for the sale of such lands; make selected lands available for sale at the request of a cabin site or home site lessee or improvement owner; provide a valuation process for the land and improvements; and exempt such sales from the provisions of Title 75, Chapter 1, Parts 1 through 3.

During the initial two years the proposed nomination fees are expected to affect approximately five cabin site or home site nominees per year and generate approximately \$500 annually for the general fund. Thereafter, the proposed nomination fees are expected to affect approximately 40 cabin site or home site nominees per year and generate approximately \$4,000 annually for the general fund.

4. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

36.25.128 SALES (1) Except as provided in [New Rule I] through [New Rule VIII] ~~the board may sell any land under lease or license under the same terms and conditions as land not under lease or license. The board shall notify the lessee prior to such sale and at least six months prior to possession being given to the purchaser or as consistent with the applicable lease agreement. The lessee or licensee shall be entitled to compensation for improvements as provided in ARM 36.25.125. The purchaser will be given possession of land sold on March 1 next succeeding the date of the sale unless the lease or license expires prior to that date or the lessee or licensee and purchaser agree in writing on another date.~~

AUTH: 77-1-204, 77-1-209, 77-2-301, 77-2-303, 77-2-308, 77-2-328, 77-2-362, MCA

IMP: 77-2-303, 77-2-326, 77-2-362, 77-2-363, MCA

REASONABLE NECESSITY: The amendment of ARM 36.25.128 is reasonably necessary to conform the administrative rule to the provisions of Section one of Chapter 422 of the 2013 Montana Session Laws (codified at 77-2-303, MCA). The department is proposing to amend this rule to allow for the sale of the premises of former cabin site and home site leases which border navigable lakes, non-navigable meandered lakes, and navigable streams, as authorized by 77-2-303, MCA.

5. The department proposes to repeal the following rule:

36.25.131 SALE OF CABINSITES AND CITY OR TOWN LOTS:
IMPROVEMENTS

AUTH: 77-2-328, MCA

IMP: 77-2-318, 77-2-325, MCA

REASONABLE NECESSITY: ARM 36.25.131 is proposed to be repealed because it conflicts with New Rules I through VIII.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted in writing to Emily Cooper, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, MT; telephone (406) 444-4165; fax (406) 444-2684; e-mail dcabinsites@mt.gov, and must be received no later than 5:00 p.m. on November 14, 2013.

7. John Grimm, Department of Natural Resources and Conservation, has been designated to preside over and conduct the public hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Lucy Richards, P.O. Box 201601, 1625 Eleventh Avenue, Helena, MT 59620; fax (406) 444-2684; e-mail lrichards@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the department's web site at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by e-mail on September 6, 2013.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption, amendment, and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ John E. Tubbs
JOHN E. TUBBS
Director
Natural Resources and Conservation

/s/ Tommy Butler
TOMMY BUTLER
Rule Reviewer

Certified to the Secretary of State on October 7, 2013.