

# **LAND BANKING HANDBOOK**



**Montana Department of Natural  
Resources and Conservation**

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## **INTRODUCTION**

The State of Montana has the ability to sell state trust land (land). However, until the passage of the Land Banking statute (§77-2-361 through 367, M.C.A.), there was no provision to purchase replacement land. This resulted in a net loss of trust land acreage.

With the advent of Land Banking, it is now possible for the Department of Natural Resources and Conservation to sell land to the public and put the proceeds in a Land Banking Trust Fund. The combined funds from multiple sales can then be used to purchase parcels which produce a higher level of income than the lands sold. This results in a greater income to the trust beneficiaries (U of M, MSU, Common Schools, etc.).

The purpose of this handbook is to provide a brief overview of the rationale and process concerning the sale of land to the public, and the acquisition of land by the state. The rules governing the sale or acquisition of land will implement the law, and are contained in their entirety in the Land Banking Rules, available on the department's website <http://dnrc.mt.gov/Trust/LandBanking/default.asp>. The rules and law supersede information provided in this handbook or on the website. If, after reviewing the handbook, you have specific questions about the process, we suggest you review the Land Banking Rules, or contact the Trust Lands Management Division (see Appendix C for contact information).

## **PURPOSE OF LAND BANKING**

The purpose of the Land Banking program is to “temporarily hold proceeds from the sale of trust land pending the purchase of other land, easements, or improvements for the benefit of the beneficiaries of the respective trusts”.

## **GOALS AND PROVISIONS OF THE LAW**

The goals of Land Banking are:

1. To diversify land holdings in order to minimize the risk of loss;
2. To maximize the sustained rate of return to the trusts;
3. Improve public access to state trust land;
4. Consolidate land ownership.

### **The Land Banking statute (§77-2-316 - 367, MCA) says:**

1. Up to 250,000 acres of land can be sold, and the proceeds used to buy other parcels of land.
2. 75% of the parcels must be isolated (no public access), and 25% can be accessible.
3. Only 20,000 acres can be sold before another parcel or parcels must be purchased.
4. Lessees have preference on land they presently lease in that they can match the high bid on the parcel if they, the Board, or the Department nominates it for sale.
5. Land cannot be sold to the federal government.
6. Land, easements or improvements acquired by the state must be evaluated to insure they produce equal or greater income than the land that was sold.

## **WEBSITE**

Ongoing information on the Land Banking program is available to the public on the department's website at <http://dnrc.mt.gov/Trust/LandBanking/default.asp>. This site will contain information about:

1. Parcels available for sale with information such as:
  - a. A legal description, location, physical description, maps, minimum bid price, and contact information;
  - b. Environmental review (MEPA); and,
  - c. Appraisal reports and reviews
2. Parcels being considered for acquisition by the department, including:
  - a. Location;
  - b. Description of parcel and amenities; and,
  - c. Maps of parcels

DNRC staff can provide Land Banking forms and information. See Appendix C, Contact Information.

## **LAND BANKING SALES**

### **GENERAL INFORMATION**

1. Information on all land offered for sale will be on the department's Land Banking website: –<http://svcalt.mt.gov/tlmspublic/LandBanking/LBTest.aspx>
2. The website will be updated frequently with information on the availability and status of parcels nominated for sale.
3. If a lessee is interested in purchasing a parcel, download the information from the website or request information from the local DNRC Area/Unit office or the DNRC office in Helena (see Appendix C for contact information).
4. Factors in evaluating land for sale:
  - The availability of land for sale will be determined, in part, by the amount of income presently generated by the parcel. Land generating below average income is more likely to be offered for sale than land generating income at, or above average.
  - Additional limitations on land available for sale includes land that:
    - Is wholly surrounded by public land; or,
    - Is wholly surrounded by conservation easement; or,
    - Has significant habitat for threatened and endangered species; or,
    - Extinguishes existing access to public land or historic access to private land so as to create an isolated parcel.
    - Has potential for oil & gas development; or
    - Unique cultural features.
5. Criteria for exchanging title:
  - Title for land sold by the state will be conveyed by a Patent, Grant Deed, or Quit Claim deed, as deemed appropriate by the department. The department does not provide title insurance; however the purchaser may purchase title insurance at their own cost, if desired.
  - When purchasing property, the department requires from the seller a Warranty Deed and an ALTA standard coverage title insurance policy or other appropriate title insurance as determined by the department.
6. Timeline
  - Sale or acquisition of land takes time, as show in the flowcharts in Appendix B. In general, time from initiation to completion of sales to the public is 10 to 15 months, and 6 to12 months for acquisition by the department.

## **NOMINATION AND SALE**

A general outline of the sale process is as follows:

1. Nomination of parcel for sale.
2. The department evaluates parcel for suitability to sell.
3. Land Board grants the department preliminary approval to sell the parcel.
4. The department contracts appraisal and cultural resource inventory.
5. Land Board sets minimum bid for the parcel.
6. The department holds public auction of the parcel.
7. Land Board grants final approval of sale.
8. Lessee settlement for improvement (if applicable).
9. Closing of sale.

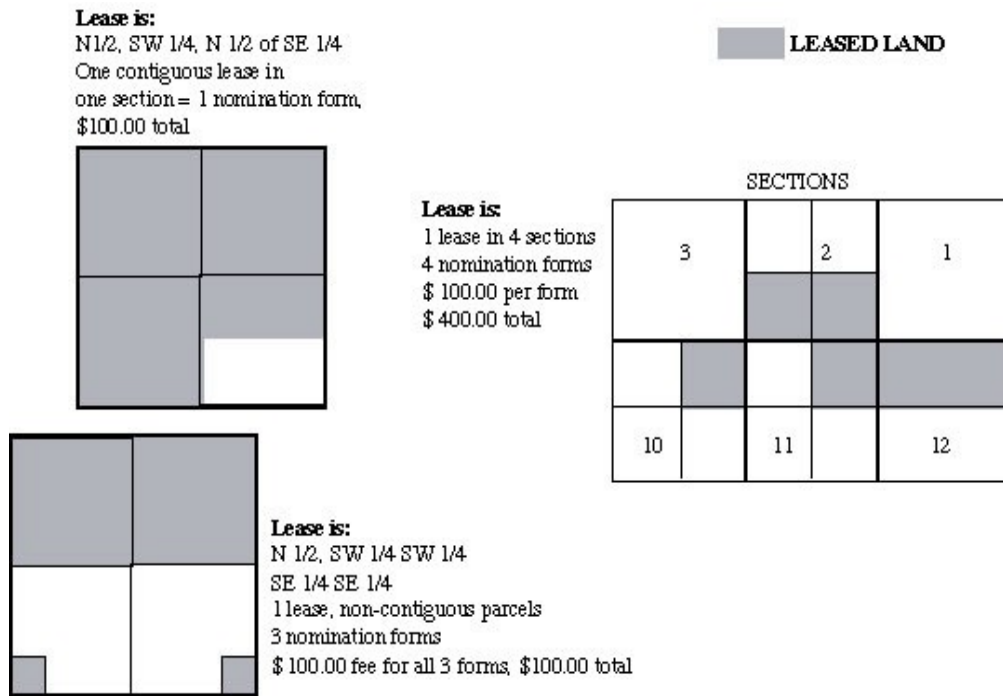
Nomination of a parcel for sale can **only** be initiated by the Land Board, the department, or the lessee. Nomination of a tract for purchase by the State can be made by anyone (see Glossary for definitions of parcel and tract).

### **If you are a Lessee:**

If you are a current lessee and would like to nominate land you presently have under lease with the department, please consult with the local DNRC land office prior to submitting a nomination form. The local land office will advise you whether your leased parcel meets initial criteria for sale.

- Lessees may nominate any combination of parcels held under one lease, regardless of whether the land is contiguous, or the area exceeds 640 acres. Parcels under different leases must be nominated separately, on a separate nomination form. The nomination form can be obtained from the local DNRC land office. The form must be filled out completely, and return to the local land office with the appropriate fee. Incomplete nominations will not be accepted
- There is a One Hundred Dollar (\$100.00) non-refundable fee for each nomination application unless land nominated is contained in one section and under one lease. In these situations, a nomination form must be filled out for each parcel, but is considered one nomination with a charge \$100.00 for the entire section. Nomination forms should not be accepted without the appropriate fee.
- Parcels may be sold in 'sale unit' configurations that provide the best financial and management advantage to the affected trust beneficiary.

The following diagram shows possible nomination scenarios and associated fees:



- **Please be advised that even though a parcel may meet the initial criteria for sale, it does not guarantee the parcel will be offered for sale.**
- Lessees have the option to propose a land exchange in lieu of sale of a leased parcel. This option should be discussed with the local DNRC land office prior to nominating a parcel for sale. If DNRC or the Land Board nominates your lease for sale, you will be notified and have 60 days to inform the department if you wish to pursue a land exchange in lieu of sale.
- If the Land Board has approved a proposed lessee nominated sale, DNRC will notify the lessee of the estimated processing costs associated with preparing the parcel for sale, such as; appraisal, archeological survey, advertisement, recording, etc. Payment for these costs must be submitted to the department within ten days of preliminary Land Board approval of the sale.
- The Land Board then sets the minimum bid for the parcel. Once the minimum bid price has been set, prospective purchasers must submit a bid deposit equal to 20% of the minimum bid amount along with a completed State of Montana Land Sale Offer to Purchase and Bid Deposit Receipt postmarked no later than 20 days prior to the date of the auction.
  - Bid deposits must be in the form of a certified check or cashier's check or electronic funds transfer drawn on a Montana bank (§77-2-363 (2), MCA).
- If the lessee has initiated the sale, and submitted processing costs to the department, the lessee may cancel the sale by giving written notice to the department by Certified Mail postmarked no later than ten (10) days prior to the date of the auction.
- 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:
  - Any costs incurred for preparation of MEPA documents, appraisal, survey, cultural resource inventory, public hearings, public

- advertisement, and any other costs that may have been incurred by the department;
- The processing costs and bid deposit paid by the lessee must be applied toward costs incurred by the department for the canceled sale; and,
- Any amount of processing costs and bid deposit remaining after payment of department costs must be returned to the lessee.

### **Sale process for all prospective purchasers**

- Land must be sold to the highest bidder who consummates the terms of the sale.
  - The current lessee has the preference right to match the high bid (§77-2-324, MCA).
- The purchaser pays closing costs, including but not limited to:
  - the cost of the appraisal;
  - the cost of the cultural resource inventory;
  - title insurance (bought by purchaser outside of closing);
  - filing fees;
  - water rights transfers
  - advertising; and,
  - survey, if necessary.
- The department retains the bid deposit of the successful bidder and will return the bid deposits of all unsuccessful bidders within 15 business days following the auction.
- If the highest bidder fails to consummate the sale for any reason, the department may offer the parcel to the next highest bidder at the final sale price (high bid). 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 submit a bid deposit to the department.
- If the final bidder who agrees to consummate the sale fails to comply with the terms of the sale for any reason, that bidder's bid deposit is forfeit and must be credited to the Land Banking Trust Fund, after deduction of any sale costs incurred by the department (§77-2-363 (2) (b), MCA).

### **Fees and Closing Costs**

The following fees and costs are associated with the sale or acquisition of land:

- Nomination application
- There is a One Hundred Dollar (\$100.00) non-refundable nomination fee for each application.
- Closing costs for sale or acquisition of land
  - Generally, the closing costs follow the usual and customary costs associated with real estate transactions.
    - The department **does not** furnish title insurance on Trust Land it sells. The purchaser may purchase title insurance, at their own cost, if desired.
    - The department requires that the **seller** provide an ALTA standard coverage title insurance policy on all parcels purchased by the department.
    - Cost of advertising is a closing cost of the purchaser of trust land.

- Additional costs
  - There may be additional requirements and fees, which may include, but are not limited to: Archaeological Survey, ALTA Survey, Boundary Survey, Infrastructure Analysis Report, Phase I Site Assessment Report, Preliminary Soil Investigation Report, Water Rights Transfer Fees, Document Filing Fees, Advertising Fees and Appraisal Fees. Any expenses related to these or additional requirements are the responsibility of the lessee which will be reimbursed by the successful bidder in the event the lessee is not the successful bidder at the time of closing.
  - The department will provide a settlement statement detailing all closing costs after the Board has given final approval to sell.
- Penalties
  - There is a penalty for withdrawing from the sales process after a certain point in the transaction, as follows:
    - Lessee nominated:
      - A lessee may withdraw a parcel from a sale initiated by the lessee any time prior to 10 days before the date of the auction by sending a certified letter to the department **postmarked no later than 10 days prior to the auction date** notifying of the lessee's intent to withdraw.
        - If the lessee initiates the sale, and then cancels the sale, the lessee shall pay all costs incurred by the department in preparing the sale,
        - If the lessee fails to notify the department less than 10 days before the date of the auction, the sale will not be cancelled.
    - Non-Lessee nominated:
      - If the final bidder who agrees to consummate the sale fails to comply with the terms of the sale for any reason, that bidder will forfeit all processing costs and bid deposit submitted to the department prior to the auction.

# **LAND BANKING ACQUISITION**

## **GENERAL INFORMATION**

1. Information on all tracts proposed for acquisition by the department will be on the department's Land Banking website: <http://dnrc.mt.gov/Trust/LandBanking/default.asp>
2. The website will be updated frequently with information on the availability and status of tracts nominated for acquisition.

## **HOW TO NOMINATE**

Anyone can nominate a parcel for acquisition. The department reserves the right to prioritize activities and tracts for acquisition. Potential nominations must be reviewed by the Area/Unit Office using the Acquisition Checklist prior to submission of a nomination form by a potential seller. Nominations must be on a form supplied by the department. Incomplete forms will not be accepted. Adjacent landowner information is generally available on the internet <http://gis.mt.gov/> or at the County Clerk and Recorder's office in the county where the property is located.

The department is currently not contracting with licensed real estate professionals to locate tracts for acquisition. The department will work with selling agents, but currently unable pay a commission for acquisition.

## **ACQUISITION CRITERIA AND PROCESS**

1. Once a tract has been nominated for sale, a seller's disclosure statement describing any known material defects in the property must be provided within 60 days of the department request, on a form provided by the department.
2. The department will conduct a review of the tract, including the financial feasibility of acquiring and managing the tract; existing access; and potential for multiple-use.
3. If the department determines a tract is not suitable for acquisition, the tract will be removed from nomination and eliminated from further review.
4. The department may enter into a purchase agreement or option to buy on a tract contingent on approval of the Land Board.
5. An appeal process is available.
6. Preliminary review taken to Land Board for suitability decision.
7. Detailed due-diligence report prepared and evaluated by the department.
8. Notification of appropriate entities of pending acquisition.
9. Due-diligence report and department recommendation taken to the Land Board for their consideration.
10. Upon Land Board approval, land acquisition finalized and documents exchanged. Total time for acquisition is estimated to be 6 to 12 months.

# APPENDIX A

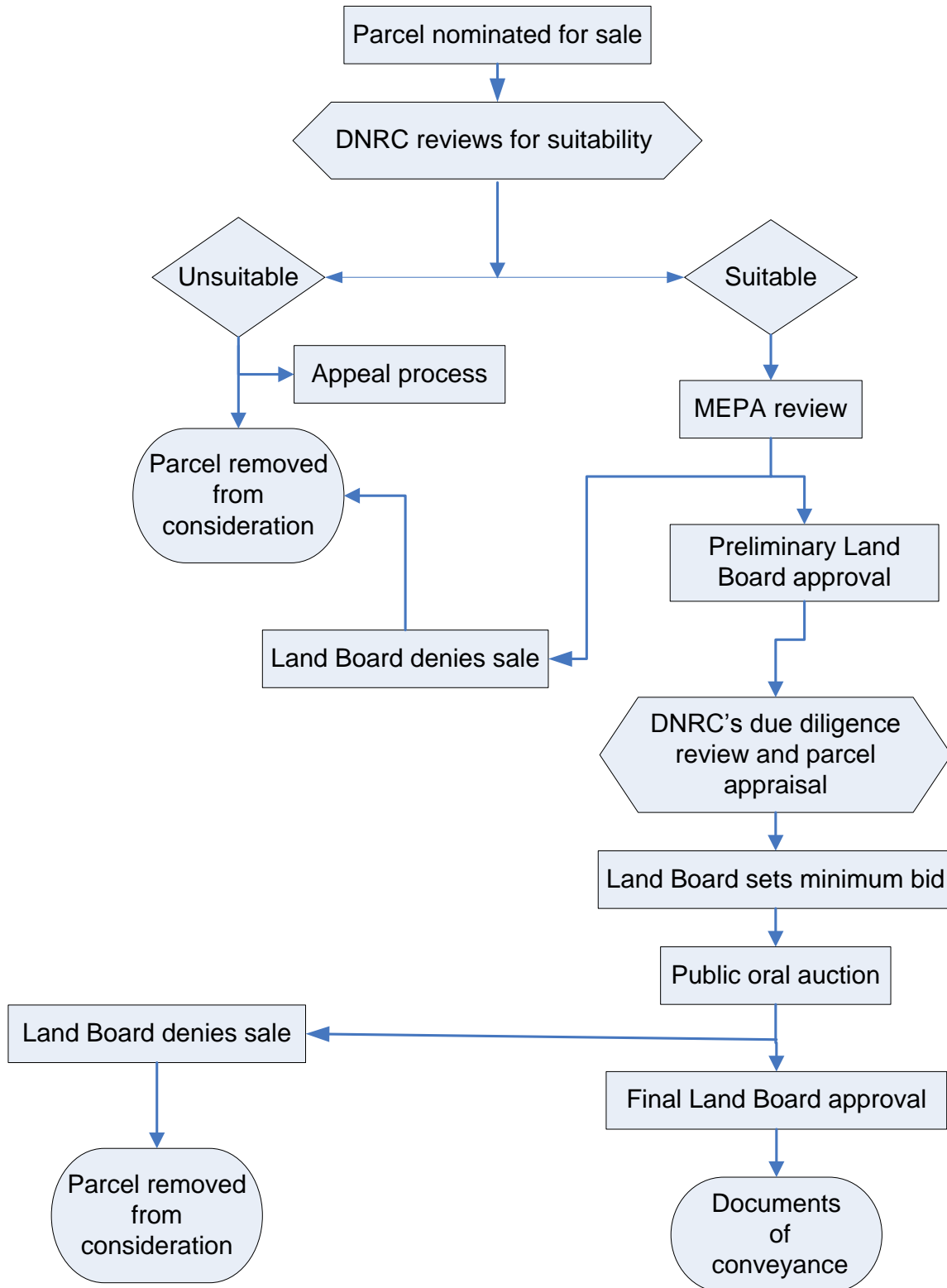
## GLOSSARY OF TERMS

1. "Bid deposit" means a certified check or cashier's check drawn on any Montana bank equal to 20% of the minimum sales price submitted in connection with a bid as an assurance of the performance of a contractual or promissory requirement.
2. "Isolated parcel" means any state land not possessing a legal right of access by the public. This includes land not accessible by navigable waterway, or which is totally surrounded by private land with no public access road, trail, or other designated route. Corner to corner contact (diagonal) does not provide an access point to public land. Limited access to private land to individuals for hunting, recreation, or other purposes does not constitute public access.
3. "Lessee" means the current lease holder of any agricultural, grazing, commercial, cabin or home site, or other surface lease of state trust land.
4. "Lessee preference" means the right of the present lessee of trust land to match the high bid in a proceeding for the sale or lease of trust land.
5. "Parcel" means one section or less, irrespective of ownership, 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.
6. "Processing costs" means estimated costs of preparing the parcel for sale, including but not limited to appraisals, cultural surveys, environmental review (pursuant to Title 75, chapter 1, parts 1 through 3) and land surveys.
7. "Sale Unit" means one or more parcels sold as a single sale.
8. "Tract of record" 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.

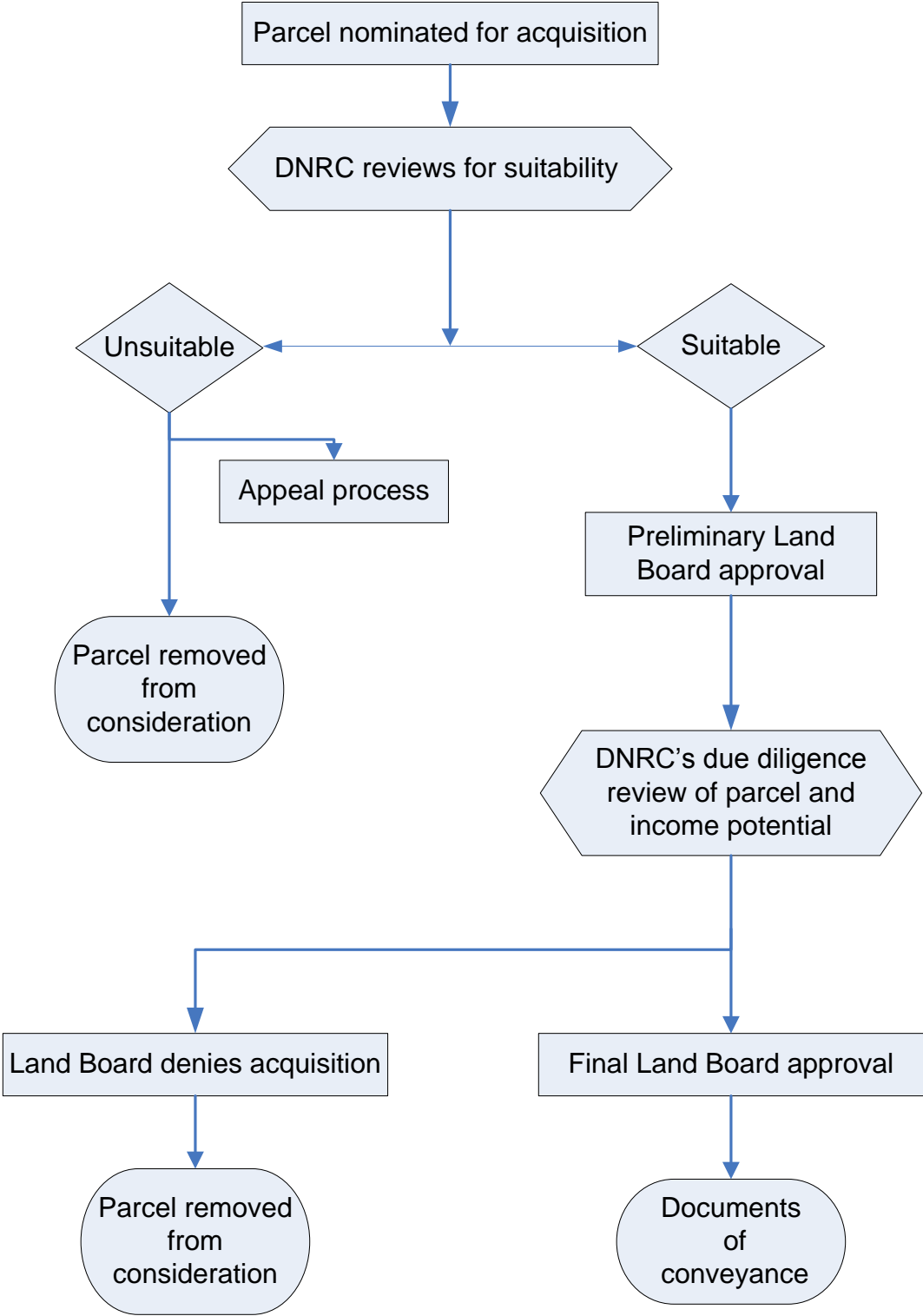
## **APPENDIX B**

# **FLOWCHARTS FOR SALE AND ACQUISITION**

# Sales Flowchart



# Acquisition Flowchart



# APPENDIX C

## CONTACT INFORMATION

### COUNTIES

### AREA OFFICE

Beaverhead  
Broadwater  
Cascade  
Gallatin  
Glacier

Jefferson  
Lewis & Clark  
Madison  
Meagher  
Park

Pondera  
Teton  
Toole  
Liberty

**Central Land Office**  
8001 N. Montana Avenue  
Helena, MT 59601  
Ph: 458-3500

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Carter  
Custer  
Dawson  
Fallon  
Garfield

McCone  
Powder River  
Prairie  
Richland  
Rosebud

Wibaux

**Eastern Land Office**  
PO Box 1794  
Miles City, MT 59301-1794  
Ph: 232-2034

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Blaine  
Chouteau  
Daniels  
Fergus

Golden Valley  
Hill  
Judith Basin  
Petroleum

Phillips  
Roosevelt  
Sheridan  
Valley  
Wheatland

**Northeastern Land Office**  
PO Box 1021  
Lewistown, MT 59457-1021  
Ph: 538-7789

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Flathead  
Lake  
Lincoln  
Sanders

**Northwestern Land Office**  
655 Timberwolf Parkway, Suite 1  
Kalispell, MT 59901-1215  
Ph: 751-2240

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Big Horn  
Carbon  
Musselshell  
Stillwater

Sweet Grass  
Treasure  
Yellowstone

**Southern Land Office**  
Airport Business Park  
1371 Rim Top Dr.  
Billings, MT 59105-1978  
Ph: 247-4410

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Deer Lodge  
Granite  
Mineral  
Missoula

Powell  
Ravalli  
Silver Bow

**Southwestern Land Office**  
2705 Spurgin Road  
Missoula, MT 59801  
Ph: 542-4285

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