

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT,
ARM 36.25.1001, 36.25.1002,	)	ADOPTION, AND REPEAL
36.25.1004 through 36.25.1006,	)	
36.25.1008 through 36.25.1011, and	)	
36.25.1013, the adoption of New	)	
Rules I and II, and the repeal of ARM	)	
36.11.101, 36.25.1003, 36.25.1007,	)	
36.25.1012, and 36.25.1016 through	)	
36.25.1021 regarding cabin site	)	
leasing	)	

To: All Concerned Persons

1. On February 5, 2016, the Board of Land Commissioners and the Department of Natural Resources and Conservation published MAR Notice No. 36-22-184 pertaining to the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules at page 181 of the 2016 Montana Administrative Register, Issue Number 3.

2. The department has repealed the above-stated rules as proposed.

3. The department has adopted New Rule I (36.25.1014) and New Rule II (36.25.1015) as proposed.

4. The department has amended ARM 36.25.1001, 36.25.1004, 36.25.1006, 36.25.1008 through 36.25.1011, and 36.25.1013 as proposed.

5. Upon further review of the proposal notice, the department discovered "felling" was incorrectly spelled as "falling" in ARM 36.25.1002(7). Additionally, the grammatical construct of ARM 36.25.1005(1)(a)(ii) was inconsistent with the rest of the subsection. The department has amended ARM 36.25.1002 and 36.25.1005 as proposed, but with the following changes, stricken matter interlined, new matter underlined:

36.25.1002 AUTHORITIES, LIMITATIONS, AND RESTRICTIONS

(1) through (6) remain as proposed.

(7) Any ~~falling~~ felling of live or green trees is prohibited unless otherwise permitted by the department.

(8) remains as proposed.

AUTH: 77-1-202, 77-1-204, 77-1-209, MCA

IMP: 77-1-208, MCA

36.25.1005 IMPROVEMENTS (1) A cabin site lessee may apply to the department to request authorization to place improvements on, or to install utilities to, the leased land. Approval is at the discretion of the department.

(a) The lessee must apply for permission prior to placing any improvements or utilities on state trust land using a form provided by the department. Failure of the lessee to obtain prior written permission from the department, may result in:

(i) limited or no compensation paid to the lessee for the improvements upon termination of the lease; or

(ii) the department ~~may require~~ requiring the lessee to remove any improvements placed on the leased land, at the lessee's expense.

(b) through (2) remain as proposed.

AUTH: 77-1-202, 77-1-204, 77-1-209, MCA

IMP: 77-1-208, MCA

6. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: Four commenters objected to, or requested clarification of ARM 36.25.1002(4)(a), which gives the department "...the right to require the formation of a road users association (RUA), at lessee's expense, to address the potential of multiple uses on access roads to leased land."

RESPONSE 1: This provision is necessary to allow the department the flexibility to work with neighborhoods and other third parties to address issues of access and to create cooperative arrangements to resolve access and maintenance issues involving cabin sites.

COMMENT 2: Two commenters requested clarification of what the term "limited right" in ARM 36.25.1006 meant with respect to the right of a lessee to remove improvements from the leased land.

RESPONSE 2: The term "limited right" as used in this rule means that the right of a lessee to remove improvements from leased land is limited to, and defined by, the rights provided in ARM 36.25.1006.

COMMENT 3: Two commenters objected to ARM 36.25.1006(4)(b)(ii) as it refers to appraisals of cabin site improvements being valued by "...giving full consideration to the improvement's condition, its contribution to the value of the property for residential purposes, and remaining economic life."

RESPONSE 3: An appraisal of improvements based upon the condition of those improvements and their contribution to the overall value of the property on which they reside is an appropriate factor to consider when determining value. Personal property improvements to real property are not appraised in a vacuum; and

therefore, considering their condition and contribution to the value of the overall property is an appropriate part of the equation.

COMMENT 4: Seven commenters generally disagreed with the new lease rate structure proposed by these rule revisions.

RESPONSE 4: The new lease rate structure contained in these rule revisions conforms to the settlement agreement in the Montrust III litigation (Cause No. BDV-2012-39, in the First Judicial District, Lewis and Clark County, Montana) which was approved by the Montana Board of Land Commissioners (Land Board) on October 19, 2015, and signed by Judge Jeffrey Sherlock on November 10, 2015.

COMMENT 5: Three commenters disagreed with the new lease rate structure as it pertains to the new minimum annual rental rate of \$800.

RESPONSE 5: The new minimum annual rental rate contained in these rule revisions conforms to the settlement agreement in the Montrust III litigation (as referenced in Response 4).

COMMENT 6: Three commenters disagreed with the new lease rate structure as it pertains to the 2 percent annual incremental rental rate increase.

RESPONSE 6: The department has determined that a 2 percent annual incremental rental rate increase is an appropriate formula for: matching rental rate to market conditions; and, conforming cabin site rental rates to the requirements of the settlement agreement in the Montrust III litigation (as referenced in Response 4).

COMMENT 7: Two commenters expressed general displeasure with the fact the department is leasing cabin sites. Commenters would prefer all cabin sites be sold.

RESPONSE 7: These comments are outside the scope of this rulemaking.

COMMENT 8: Commenter expressed displeasure with the fact the department has not prevented neighboring livestock from rubbing on the personal property improvements upon his cabin site.

RESPONSE 8: This comment is outside the scope of this rulemaking.

COMMENT 9: Commenter expressed displeasure with the management of the department as it pertains to requests for information under the Freedom of Information Act.

RESPONSE 9: This comment is outside the scope of this rulemaking.

COMMENT 10: Commenter expressed displeasure with the staff employed by the department to manage the cabin site leasing program.

RESPONSE 10: This comment is outside the scope of this rulemaking.

COMMENT 11: Three commenters expressed displeasure with the department's cabin site sale program and the staff employed by the department to manage the cabin site sale program.

RESPONSE 11: These comments are outside the scope of this rulemaking.

COMMENT 12: Two commenters expressed displeasure with the communication between the department and cabin site lessees with regard to the cabin site sale program.

RESPONSE 12: These comments are outside the scope of this rulemaking.

COMMENT 13: Commenter requested that personal property improvements located on real property owned by the department be valued based upon the value that such improvements are given by the Montana Department of Revenue (DOR).

RESPONSE 13: The department is permitted to have reasonable rules regulating the personal property located on its real property. These rule revisions provide such reasonable rules. In the event that a property valuation needs to be obtained under these rules, both real and personal property are valued by an appraisal conducted by a Montana generally certified appraiser.

COMMENT 14: Commenter objected to the provisions ARM 36.25.1009(2)(a) as it pertains to the department's right to reject a bidder on an unleased cabin site.

RESPONSE 14: ARM 36.25.1009(2)(a) addresses the process for securing a lease on an unleased cabin site. This rule provides the department the right to reject a potential lessee that was the highest bidder, but only if the department provides the reason for its rejection to that potential lessee in writing. The department is not required to execute a lease that is contrary to its interest. This provision provides the department with the flexibility to reject such a lease, if necessary.

COMMENT 15: One commenter objected to ARM 36.25.1009(7) which states the department may require the successful bidder on an unleased cabin site to pay for the costs associated with "...surveys, fulfillment of zoning and subdivision requirements, and other assessments or costs related to compliance with any other local, state, and federal statutes and regulations."

RESPONSE 15: The department may require a new party choosing to lease an unleased cabin site to be responsible for reasonable costs associated with the leasing of that site. This includes the cost of a survey, costs related to zoning and subdivision requirements, or other costs related to compliance with statutes and regulations.

COMMENT 16: Commenter objected to ARM 36.25.1010(2)(a), which states that an assignment of a cabin site lease by a lessee may not be assigned unless approved by the department and the assignment fee has been paid.

RESPONSE 16: The department is not required to permit the assignment of a lease that is contrary to its interest. This provision provides the department with the flexibility to reject such an assignment if the assignment fee has not been paid.

COMMENT 17: Commenter generally disagreed with the provisions of ARM 36.25.1005 in their entirety on the grounds that the department should not regulate personal property in any manner.

RESPONSE 17: ARM 36.25.1005 pertains to personal property improvements on real property leased under the cabin site leasing program. The department is permitted to have reasonable rules regulating the personal property located on its real property. This section provides such reasonable rules.

COMMENT 18: Four commenters expressed displeasure with the rulemaking process. Specifically, the public notice requirements of the process and the specific dates and times of the hearings on the rule proposal.

RESPONSE 18: Notice of the hearings for this rulemaking and the hearings themselves were conducted accordingly within the requirements for rulemaking under the Montana Administrative Procedure Act and ARM Title 1, chapter 2. This included conducting hearings in two different regions of the state during business hours.

COMMENT 19: Commenter objected to ARM 36.25.1001(12), which defines the meaning of the term "security bond," on the grounds that security bonds should never be utilized by the department.

RESPONSE 19: The department is permitted to create reasonable rules for the governance of its cabin site leases, such as utilizing security bonds to protect itself against risk. ARM 36.25.1001(12) simply defines the term "security bond."

COMMENT 20: Commenter objected to the phrase "unless otherwise determined by the board" in ARM 36.25.1001(11), which defines the term "rental rate."

RESPONSE 20: The phrase "as otherwise determined by the board" was inserted into this provision to recognize the Land Board's ultimate authority and discretion concerning the leasing and disposition of all school trust lands, as provided by Article 10, section 4 of the Montana Constitution.

COMMENT 21: Commenter objected to ARM 36.25.1005(1)(b), which only permits one single family residence per cabin site lease.

RESPONSE 21: This provision is not new to the cabin site leasing rules as cabin site lessees are currently limited to one single family residence per cabin site. This provision amends the wording to clarify that one, single family residence is permitted per lease.

COMMENT 22: Commenter objected to ARM 36.25.1006(3) which states that if a former lessee is attempting to remove personal property improvements from the department's real property, the department reserves the right to withhold authorization to remove such improvements during any time a lease is being actively offered for bid by the department.

RESPONSE 22: The department is permitted to have reasonable rules regulating the personal property located on its real property. This section provides such reasonable rules and addresses the instance in which a former lessee is attempting to interfere with the department's efforts to lease its real property.

COMMENT 23: Commenter requested clarification regarding the meaning of ARM 36.25.1006(5)(b), as it pertains to the distribution of revenue.

RESPONSE 23: ARM 36.25.1006(5)(b) states: "When a former lessee intends to unconditionally abandon the lease and improvements, the improvements may be sold to a new lessee at a price determined by the department. Any revenue generated from the sale of improvements that have been unconditionally abandoned shall be distributed by the department in the same manner as rentals for the applicable leased land." Any revenue generated under this rule will be distributed by the department in the same manner that rent from the same property would have been distributed, including distributions to applicable trust beneficiaries.

COMMENT 24: Commenter objected to ARM 36.25.1009(5)(a), as it pertains to lessee initiated lease cancellations.

RESPONSE 24: ARM 36.25.1009(5)(a) states: "Any former lessee who has had a cabin site lease cancelled and not reinstated by the board or department for nonpayment of lease fees may bid upon that cancelled lease, or any other cabin site lease, provided that before the bid the former lessee pays the unpaid lease fee billed for that cancelled lease." This section requires a formerly cancelled lessee wishing to reinstate his/her lease to pay any past due fees, regardless of whether the cancellation was initiated by the lessee or the department. This provision exists in the current cabin site leasing rules; and, the department elects not to limit this provision solely to lease cancellations initiated by the department.

COMMENT 25: Two commenters objected to the concept that the fees under their existing leases could potentially be higher than the fees new bidders would pay to lease nearby vacant lots.

RESPONSE 25: The new lease rate structure contained in these rule revisions conforms to the settlement agreement in the Montrust III litigation (as referenced in Response 4).

/s/ John E. Tubbs

JOHN E. TUBBS

Director

Natural Resources and Conservations

/s/ Dennison Butler

DENNISON BUTLER

Rule Reviewer

Certified to the Secretary of State on May 17, 2016.