

MONTRUST III SETTLEMENT AGREEMENT

FREQUENTLY ASKED QUESTIONS

November 10, 2015

1. What is Montrust III?

Montrust II is the name by which the lawsuit is commonly referred. Montrust III was initiated by MonTrust (Montanan's for the Responsible Use of the School Trust) in 2012 against the State of Montana, the Montana Board of Land Commissioners (Land Board), and the Department of Natural Resources and Conservation (DNRC). MonTrust was joined by the Board of Regents, and these two groups alleged that the administrative rules regarding lease fee calculation methods for cabin and home site leases on state trust land violated the fiduciary, trust, and constitutional duties of the State of Montana, the Land Board, and the DNRC, and failed to secure for the trust a full market value rate of return. Specifically, Montrust III addressed the terms of SB409, which was enacted into law in 2011, and the subsequent administrative rules, as well as the administrative rules that existed regarding Alternative 3B. Montrust III alleged that the rules related to both SB409 and Alternative 3B included fee calculation methods that created lease fees below full market value.

2. What is a Settlement Agreement?

A settlement agreement is a legally binding document used as a means of resolving disputes. A global settlement agreement, such as the one executed in Montrust III, ends the litigation case.

3. Why was a settlement proposed in Montrust III?

To determine whether the terms of settlement are favorable, litigants examine the strength of the competing claims and defenses and the costs and benefits of litigation versus the costs and benefits of settlement. Parties seek settlement terms which reduce liability exposure; quickly achieve legal clarity; reduce the costs of continued litigation; and better focus scarce resources.

Because the DNRC administers cabin sites on trust lands in a fiduciary capacity, the main consideration was whether settlement of litigation was in the best long-term financial interests of the affected trust beneficiaries. The DNRC believes that, given the facts and the law in this case, the terms of the settlement are favorable to the State and the affected trust beneficiaries and that continuation of litigation in this instance was unwarranted.

4. What are the key points of the Settlement Agreement?

- All rules implementing SB409 and the lease fee calculations of Alternative 3B are void.
- All current leases remain in place until expiration.
- The fee for all renewed leases will be set at 5% of the land value.
- The rate for new bidding on unleased tracts will start at 6.5% of the land value; and the DNRC may reduce the rate to 5% of the land value after 60 days. In neighborhoods with vacancy rates over 30%, the DNRC may reduce the minimum bid rate incrementally until the vacancy rate of the neighborhood is no longer greater than 30%. However, in no case may a bid rate be less than 3.5% of the land value.
- The minimum annual lease fee for all renewals and/or new bidding will be \$800.
- Lease rates will be reevaluated by the Land Board through a contracted Lease Rate Valuation Analysis every two years to consider bidding and bid rates, as well as vacancy numbers within the program.

5. Who will be affected by the Settlement Agreement, and when?

Current lessees will be affected only when their lease expires. All leases expiring in 2016 must be renewed under the terms of the Settlement Agreement with an annual lease fee of 5% of the land value, or \$800, whichever is higher. Most active leases will not be affected by the Settlement Agreement within the first two years: there are currently 17 leases scheduled for renewal in 2016, and 14 in 2017.

6. What was the basis for the new lease rate under the Settlement Agreement?

A Lease Rate Valuation Analysis was contracted in 2015 by parties to the litigation. The Analysis concluded that market evidence resulted in a full-market lease rate between 4.9% and 8.6%, with a mean lease rate of 6.7%. The Analysis also

concluded that a minimum rate of 5% was justified. The entire report can be viewed online on the DNRC Cabin and Home Site Lease Page: <http://dnrc.mt.gov/cabinsiteleasing>

7. How will the DNRC implement the Settlement Agreement?

The DNRC will issue formal notice of the Settlement Agreement to all current lessees in the form of a letter. Additionally, the DNRC must write Administrative Rules of Montana (ARM) to implement the terms of the Settlement Agreement. The ARM writing process will include public hearings and public comment on proposed rules. Upon completion of the ARM writing process, the DNRC will implement a new lease document that will reflect the terms of the Settlement Agreement and the new cabin site leasing ARM. The ARM writing process is anticipated to be complete in June of 2016.

Leases that expire prior to completion of the ARM writing process will be offered for renewal for one year under the lease fee terms of the Settlement Agreement. After one year, they will be offered for renewal again for longer-term, under the conditions of the effective ARM and associated lease document.

8. Will lessees be forced to change their lease?

Current contracts are protected under the Settlement Agreement. Lessees will be able to keep their current lease and terms until expiration. Any and all renewals will be conducted under the Settlement Agreement with an annual lease fee of 5% of the land value or \$800 (whichever is greater), and on a lease document that is current at the time of renewal.

9. How does the Settlement Agreement affect the sales program?

The Settlement Agreement does not affect the sales program.

10. When will I know the new land value for my lease lot?

New DOR values were released this year, and will affect only those leases that are currently on a lease fee method of 5% of the land value and are under financial review, and those leases that will be renewed in 2016 and 2017. Those applicable lessees will be notified of the land values in letter from the DNRC. The DNRC has also posted all new values on their website upon receipt of the final data from the DOR, and the DOR also has the data available on its website.

11. What if I disagree with the DOR valuation?

The DOR has a process for requesting review of its assessed land values via a form called AB-26. The AB-26 form must be filled out by the lessee and submitted to the DOR for review. If the value is modified, the lease rate will be modified accordingly. The timeline for requesting a review of the DOR value is 30 days after notice from the DNRC.

12. Will there be any future reevaluation of the lease rate provided under the Settlement Agreement?

Lease rates will be reevaluated by the Land Board through a contracted Lease Rate Valuation Analysis every two years to consider bidding and renewal rates, as well as vacancy numbers within the program. The purpose of the reevaluation is to review the appropriate percentage of appraised land values for use in determining lease fees based on market evidence.

13. Is there any public involvement in the Settlement Agreement?

The Settlement Agreement was negotiated between parties of the law suit. The Settlement Agreement was presented to the Land Board at its October 19, 2015, meeting, and public comment was received at that time.

In addition, implementation of the Settlement Agreement will require modification to the ARM regarding the cabin and home site leasing program. As part of the rule writing process, there will be a public comment period, including a hearing, prior to the adoption of any new Administrative Rules to implement the Settlement Agreement.

14. Who can I call to ask questions?

The DNRC headquarters phone number is 406-444-2074. The receptionist can direct you to an available Real Estate Management Bureau Employee.