



MONTANA DEPARTMENT OF NATURAL  
RESOURCES AND CONSERVATION

**FREQUENTLY ASKED QUESTIONS**  
**Proposed Apex Solar Development**

May 2, 2019

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The Montana Department of Natural Resources and Conservation (DNRC) has received a commercial lease proposal for a utility scale solar development on 1,308 acres of state trust land in Beaverhead County. The 1,308 acres have two active grazing leases that together generated an annual revenue of \$2,430 in fiscal year 2018. The land is also encumbered by an irrigation ditch, and water and power lines. It is bordered by an irrigation ditch, a ranch residence to the west, Birch Creek county road, Interstate 15, an active state gravel pit, and one rural subdivision with a single private residence. The proposal is for a 160 megawatt (MW) solar development and is expected to generate \$480,000 per year in annual revenue to the trust.

The following are frequently asked questions about the proposed project:

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*GENERAL LEASING AND PROCESS QUESTIONS*

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**1. Why is the State leasing land for development?**

The Montana Department of Natural Resources and Conservation (DNRC) manages nearly 5.2 million surface acres of the State of Montana's trust land resources. The Montana Constitution and the Enabling Act require the State to act with undivided loyalty in the interest of the trust beneficiaries in matters involving trust property, to carry out the intentions of the grantor of the trust, to make the trust economically productive, and to be accountable to the beneficiary. The DNRC has a fiduciary duty to generate revenue on trust lands for trust beneficiaries. Trust beneficiaries include public education institutions, such as K-12 schools, universities, and Pine Hills, which receive trust revenue.

The DNRC generates revenue for trust beneficiaries through four primary programs: agriculture and grazing management, forest management, minerals management, and real estate management, including commercial leasing. The proposed solar development, if approved, would be managed as a commercial lease. The DNRC currently manages 140 commercial lease contracts across the State.

**2. What is the leasing process and the next steps?**

All commercial leases are issued through a Request for Proposals (RFP) process. The proposals are scored and, if selected, lease terms are negotiated between the parties. Some proposals request an Option to Lease for a period of time prior to executing a lease. Under an Option the proponent would hold rights to develop, and pay for the rights to develop, but would not be able to break ground on the development. The Option to Lease facilitates permitting and further due diligence on the project. Some leases require Land Board approval prior to execution, and the appropriate environmental review must be completed, in compliance with the Montana Environmental Policy Act (MEPA). For the Apex Solar Development, this is the general leasing process:

- 1. RFP – this was released in July of 2018 and closed in October 2018.
- 2. Score proposals – DNRC scored the one proposal that was received in response to the RFP. It was a proposal from Clenera for a solar development.

- 3. Option to Lease – on February 28, 2019, an Option to Lease was executed, contingent upon both Land Board approval of the lease, and the outcome of the environmental document conducted in compliance with the MEPA.
- 4. Land Board – The negotiated lease is scheduled to be presented to the Land Board on May 20, 2019.
- 5. MEPA – if the lease is approved by the Land Board, the DNRC and the proponent will move forward with the appropriate MEPA document. The DNRC has decided that an Environmental Impact Statement (EIS) is the appropriate document for this proposed project. The DNRC would be the decision maker for the EIS, and it would be paid for by the proponent. The development of an EIS will include public scoping and at least one public hearing in Dillon. Upon completion of an EIS, the decision on how to proceed with any action, or alternative, including a no-action alternative, is called a Record of Decision.
- 6. Commercial Lease – if the Record of Decision for the EIS includes execution of a lease for solar development, and the proponent wishes to move forward with a lease, a lease may be executed.
- 7. Withdraw Grazing Lease – upon execution of the commercial lease, the grazing leases will be withdrawn. The grazing leases will remain intact until such time that a commercial lease is signed.
- 8. Development – after the lease is executed, and upon securing any other necessary permitting, the proponent may begin development.

### 3. **What happens to the development at the end of the lease?**

The Lessee will remove its Improvements and personal property and shall fully restore the Land according to the reclamation plan. The reclamation plan will be compiled as part of the MEPA process and will factor in requirements established in the EIS Record of Decision. The reclamation plan will also include the amount for the reclamation bond to ensure completion of the reclamation plan.

### 4. **Where does the revenue go that is generated from the land lease?**

The revenue generated from this proposed commercial lease is considered “distributable” revenue and is paid to the trust beneficiary, State Reform School – Pine Hills. Funds for the Pine Hills School in Miles City are managed by the Montana State Department of Corrections. The funds generated from this lease will contribute to the annual operating budget of Pine Hills School and replace a portion of the general fund in the schools operating budget.

### 5. **How can I participate in the process?**

The DNRC will begin work on an EIS for the proposed project if it is approved by the Land Board at their May 20, 2019 meeting. Interested parties will be formally scoped for comments during the MEPA process which will include a public hearing (date and time TBD). The best way to participate in the process is to sign up as an interested party to receive the MEPA scoping notices, and to participate in providing public comment through the MEPA scoping and public hearings. There will also be opportunity for public comment at the Land Board meeting.

### 6. **How has DNRC kept interested parties informed about this Project?**

- **Prior to RFP release**, DNRC met in person with impacted grazing lessees, and County Commissioners, and contacted adjacent land owners by phone. DNRC also contacted local legislators with general information about the proposed project.

- **Upon RFP release**, DNRC sent an email notification to lessees and those adjacent landowners whose email address was on file. A legal notice was published in the Montana Standard and the Dillon Tribune for a three-week period.
- **Upon receipt of proposal**, DNRC sent an email notice to lessees and an email or letter to adjacent landowners. DNRC also talked with the County Commissioners to let them know a proposal had been received.
- **Prior to Open House**, DNRC created a dedicated webpage for the proposed project for accessible project information and updates, and for interested parties to sign up to receive email notifications on the proposed project. DNRC sent a comprehensive informational notice directly to all interested parties that included project information, webpage and interested party sign-up information, and details on the scheduled open house and Land Board dates. DNRC also issued a press-release for the project and open house with the Montana Standard, and advertised the open house in the Dillonite Daily and Dillon Tribune.
- **Open house** was held in Dillon from 4:00pm – 7:30pm on April 17, 2019. There were approximately 40 attendees at the open house.

#### 7. **How can I get more information?**

The DNRC has developed a webpage for the project that will have ongoing updates on the project: [www.dnrc.mt.gov/solar](http://www.dnrc.mt.gov/solar). This webpage also includes a link to sign up as an interested party to receive direct notifications on the project. There is a project email address set up for submitting your comments: [DNRCApexSolar@mt.gov](mailto:DNRCApexSolar@mt.gov). Information can also be obtained directly from the Dillon Unit Office at: 840 N. Montana St, Dillon, MT 59725 or by contacting the Dillon Unit Manager, Tim Egan, at 406-683-6305.

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### *SOLAR DEVELOPMENT QUESTIONS*

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#### 8. **What factors did Clenera consider when selecting this site?**

Some factors considered are:

- The site has excellent solar exposure, topography, weather/climate trends, access, and acreage available.
- Access to existing utility infrastructure. NorthWestern Energy's 161kV line is suitable for operating this planned 160MW facility and does not have to be expanded in size or capacity. Due diligence was given to privately-owned grazing parcels along the same transmission line, yet analysis revealed they are not as flat nor as accessible as the selected site.
- The ability to negotiate a suitable Power Purchase Agreement (PPA), factoring in Montana's primary utility environment and current load vs demand, as well as demand for supplemental renewable energy contracts.
- The site is close to services and urban facilities for support, labor, and goods.

#### 9. **Do the panels need water for cooling?**

No.

*The complete proposal can be viewed online at [www.dnrc.mt.gov/solar](http://www.dnrc.mt.gov/solar).*

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### *COMMUNITY, LESSEE, AND EXISTING USES*

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**10. How will taxes generated from the site impact the County?**

The project is anticipated to produce a significant positive contribution to Beaverhead County property tax revenue. According to County Commissioner Mike McGinley, the new revenue would reduce taxes for other tax payers. The impact to local tax payers would ultimately be up to the County Commissioners and relevant state law regarding taxes.

**11. How will the existing easement for the power lines be affected?**

The existing easement will be honored and remain intact. Any change to the easement would require the easement holder to apply for an amendment, which would then have to be approved by the Land Board.

**12. How will the existing irrigation ditch rights be impacted?**

The DNRC fully recognizes irrigation ditch and associated water rights as important resources for agricultural producers in Montana. The one existing irrigation ditch bisecting the proposed lease area will be identified and protected from impacts associated with the proposed development. The proponent will be obligated through the state lease to insure ditch owners have suitable free and open access to maintain the ditches with equipment in accordance with Montana law including MCA § 70-17-112(1), and proponent shall comply with MCA § 70-17-112(1) and other Laws applicable to such access rights. Proponent will coordinate with the ditch company directly for specific access details.

**13. What happens to the existing grazing leases on the site?**

The existing grazing leases will remain intact until such time that a commercial lease is executed for the development. If the proponent executes a commercial lease, the grazing leases will be withdrawn at that time.

**14. Who will pay for the improvements on the withdrawn grazing lease, and how will their value be determined?**

In accordance with MCA § 77-6-302 MCA, when land under a grazing lease is leased to another party while the grazing lessee owns improvement lawfully remaining thereon, and which the grazing lessee does not desire to remove, such new lessee shall pay the former lessee the reasonable value of such improvements. If the grazing lessee and the incoming lessee are unable to come to an agreement on the reasonable value of the improvements, the value shall be fixed through arbitration. The grazing lessee shall have 60 days of notification from the department that there is a new lessee, to initiate arbitration.

**15. Will the grazing lessee be compensated for years left on their current contracts?**

No. The grazing lease provides that “all or any portion of the land under lease may be withdrawn from the lease by the state. The lessee shall be entitled to reasonable compensation for any improvements thereon. The lands may be withdrawn to promote the duties and responsibilities of the Board of Land Commissioners.”

The grazing lease does not provide for any compensation due to the lessee if the lease is withdrawn by the state. There is no budget or spending authority to compensate a former lessee for terms remaining on a withdrawn lease. However, the grazing lessee will be due a refund for any advanced payment for land included within the withdrawn area, upon state withdrawal.

**16. Will the current grazing lessee retain a preference right if the state land were reverted to grazing land in the future?**

There is currently no statute or precedent set for this determination. The Department is currently researching how/if this preference right could be retained and treated like a renewal lease in the future with preferential rights.

**17. Will there be any mitigation for lost potential value of the adjacent deeded land due to the visual and ecological impacts of a solar farm this large?**

All potential impacts from the project will be considered through the EIS, and appropriate mitigations may be identified and considered at that time. There is no financial mitigation, budget or spending authority, to compensate adjacent land owners for development of trust land.

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*ENVIRONMENTAL CONCERNS*

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**18. Have the environmental impacts been considered?**

If the lease is approved by the Land Board, the DNRC and the proponent will move forward with the appropriate MEPA document. The DNRC has decided that an EIS is the appropriate document for this proposed project. The DNRC would be the decision maker for the EIS, and it would be paid for by the proponent. The development of an EIS will include public scoping and at least one public hearing in Dillon. The Lease cannot be executed until the EIS is complete and a Record of Decision supports proceeding with the lease. The reclamation plan will be developed as part of the EIS process and attached to the lease prior to execution.

**19. What is the reclamation plan?**

The reclamation plan is an exhibit to the lease that will describe the full requirements and expectations for reclamation upon expiration or termination of the lease. The reclamation plan will be compiled as part of the MEPA process and will factor in requirements established in the EIS Record of Decision. The reclamation plan will also include the amount for the reclamation bond to ensure completion of the reclamation plan.

**20. How will weeds be controlled?**

The proposed solar development lease provides that the proponent shall be responsible for controlling any noxious weeds and non-native grass species and other plants regulated by the Montana Weed Control Association (such as cheat grass), introduced by their activity on the lease premises or adjacent state-owned land. The Dillon Unit Office must review the proponent's methods of control. Any lessee must comply with the Montana County Noxious Weed Management Act. Additionally, all potential impacts from the project will be considered through the EIS, and appropriate mitigations may be identified and considered at that time.

**21. How will vegetation be managed to control dust and/or fire hazards?**

The lease requires that upon the completion of construction, all land disturbed by the construction, not required for continuing operations of the project, shall be restored to a condition and forage density reasonably similar to its original condition and forage density, consistent with the continued use of the Land pursuant to this Lease. Reclamation shall include, as reasonably required, leveling, terracing, mulching, and other reasonably necessary steps to prevent soil erosion, to ensure the

establishment of suitable grasses and forbs, and to control noxious weeds and pests. After the completion of construction, no refuse, waste, or other litter of any kind shall be left on the Land by Lessee. Lessee shall at all times comply with all Laws, including any applicable city and state building codes and fire codes, and Lessee must secure property insurance, commercial general liability insurance, and environmental impairment liability insurance. Additionally, all potential impacts from the project will be considered through the environmental impact statement (EIS), and appropriate mitigations may be identified and considered at that time.

**22. How will the development impact wildlife?**

The EIS will fully analyze potential impacts and mitigations to wildlife species (both game and non-game) known to exist in this area. DNRC and FWP wildlife biologists will assist in the assessment and evaluation of potential impacts through the EIS process.

**23. Is there adequate bonding for site reclamation when the project ends or if it is unsuccessful?**

The proponent will be required to post a financial guarantee or bond with the DNRC to ensure full compliance with the reclamation plan.

**24. Do the panels contain hazardous materials?**

The proponent has represented the solar panels will be crystalline silicon glass panels that meet all current industry safety and environmental hazard standards for the industry. The panels are safe for recycling, resale to the residential solar markets, or disposal within landfills. The material used in the panels will be considered in the EIS, and appropriate mitigations may be identified and considered at that time.

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*RECREATIONAL USE QUESTIONS*

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**25. How will the project effect hunting and recreation on and around the project site?**

The solar development will be closed to recreational use within the fence boundaries. This is both due to public safety, as well as recreational use rules that provide that all commercial leases are categorically closed to recreational use.

Recreational use will continue to be allowable outside the lease boundary, consistent with Montana's recreational use laws and administrative rules. The lease boundary will be fenced. See recreational use rules and the Dillon Unit Office for more information.

**26. Will there be a buffer zone for recreational use around the project?**

No.