RECIPROCAL ACCESS AND EASEMENT EXCHANGE POLICY

Effective September 18, 2006

I. Authority

The authority for the Department of Natural Resources and Conservation – DNRC (Department) to negotiate reciprocal access agreements, including easements, is contained in §77-1-617, MCA.

The authority for the Board (State Board of Land Commissioners) to issue easements on state land is contained in §77-2-101, MCA.

The authority for the Board to charge for granting easements or to accept in-kind payments for easements is contained in §77-2-106, MCA.

The authority for the Board to conduct land exchanges is contained in §77-2-201 through §77-2-217, MCA.

II. Objectives

It is the Board's objective and in the trust's best interest to obtain access to tracts of state trust land either by reciprocity when such tracts are isolated, or by easement exchange when not isolated.

III. Accounting of Costs

As per §77-2-106, MCA the full market value of the estate or interest disposed of includes the proportional land and road values involved in the reciprocal access or easement exchange. Market values are based on current fee schedules or land values mutually agreed to by both parties whereby per-acre land values are multiplied by the right-of-way acres involved. Specific accounting by road segment, showing total land values and balances due, are depicted in Exhibit II-A (Summary of Land Values) of each reciprocal access or easement exchange package. Road values are calculated by multiplying the road length of each segment by the actual or estimated construction cost per mile, as depicted in Exhibit II-B (Summary of Road Costs) of each reciprocal access or easement exchange.

Full market value as depicted in these exhibits does not include the Conveyance Fee as may be required by the Reciprocal Access or Easement Exchange Agreement. This Conveyance Fee is in addition to the full market valuation process. Payment of this fee shall occur at the time of the first sale of an existing tract of record, upon creation of a new tract or tracts of record created by subdivision, or by partial assignment of the easement rights to a third party by either the State of Montana or Cooperator initiating the subdivision or partial assignment of easement rights. The board is obligated to charge and collect the full market value for land and road values; however, they may elect to reduce or waive the Conveyance Fee when they deem it to be in the best interest of the trust beneficiaries. (See Conveyance Fees Exemptions). The Conveyance Fee will be deposited into the permanent fund for the appropriate trust(s).

IV. Principles and Application of Reciprocal Access Agreements and Easement Exchange

The authority to dispose of an interest in trust land rests with the Board. Therefore, the Board must approve easements issued on trust lands as part of a reciprocal access agreement or easement exchange.

Reciprocal access agreements are the method established by §77-1-617, MCA whereby the Department can acquire access to **isolated** state trust land by exchanging an equal right on trust land. The tract(s) the state is acquiring access to must be "isolated" in either a legal sense (i.e. there is no legal access to the state land) or there are portions of the tract that have substantial physical restrictions that prevent access. A state tract may have legal access and be burdened by reciprocity as long as one or more state tracts obtain access through the reciprocal agreement. Rights do not have to be equal if the trust beneficiary burdened by reciprocity is compensated.

A. The trust that is burdened by an easement relinquished must be benefited by an easement received. If the tract that is burdened and not advantaged is not the same trust as the other parcels obtaining access, the burdened trust must be compensated for land value.

B. The trust must receive equal or greater value. The land value of the easement relinquished must be less than or equal to the land value of the easement received. If not, the difference in value owed the trust must be paid in cash. Land values may be determined through appraisal, fee schedule, or negotiation.

Easement exchange is the method whereby the Department can acquire access to **non-isolated** state trust lands by evaluating the proposal utilizing the guidelines within the Land Exchange Policy. (See Appendix B)

RIGHTS EXCHANGED:

1. It is the policy of the Board to negotiate 60-foot easements and to secure rights to access land for all lawful purposes (ALP) when possible. It is not in the Board's or trust beneficiaries' interests to secure fewer rights than granted to reduce the cost of the easement. Unrestricted access benefits all resource management options.

2. It is preferred to grant and acquire easements that are 60 feet wide, with such additional width as may be required for accommodation and protection of cuts and fills. However, there may be circumstances where the state is willing to grant and receive greater or less than 60-foot easement widths.

3. Equal rights must be exchanged or the trust compensated if equal rights are not obtained. While it is the Board's preference to acquire permanent easements for all lawful purposes, more restrictive easements may be acceptable if the trust is benefited and the easement relinquished on state land has similar restrictions.

4. Recognizing that access rights for the public to recreate on state trust lands is an issue, the Board shall, whenever possible and consistent with fiduciary responsibilities, secure access rights for the public when negotiating reciprocal access and easement exchanges. Securing motorized public access to state trust lands is preferable where allowed and consistent with management and land-use goals. Where motorized access will not be allowed on state trust land, then securing non-motorized public access (e.g. walk-in, horseback) is preferred. As part of the Reciprocal Access/Easement Exchange Agreement, public access shall be specifically addressed.

ROAD USERS ASSOCIATION:

1. As provided herein, the Board shall require both the state and cooperator to agree to the creation of a Road Users Association (RUA) and the payment of a conveyance fee as outlined in the reciprocal access or easement exchange agreement and this section.

2. The cooperating entity initiating the first sale of an existing tract of record, the subdivision of a tract of record, or the partial assignment of easement rights to a third party shall be responsible for the creation of an RUA. The RUA is required to submit Articles of Incorporation upon its formation, and annual reports to the Department as required by the Secretary of States office. Failure to comply with these and other requirements stated in the easements may result in cancellation or suspension of the easement(s) assigned to the RUA.

CONVEYANCE FEE:

The conveyance fee is 1% of the sale price or market value for lands sold, as determined by the Department. If the state, cooperator, or successor sells or subdivides a tract of record, which represents only a portion of the tributary area, the conveyance fee will be assessed. Note: See Conveyance Fee Exemptions and Cooperator/State Requirements provided below.

CONVEYANCE FEE EXEMPTIONS:

On a case-by-case basis, the Board, at the recommendation of the Department, may elect to reduce or waive the conveyance fee. Some examples of situations where the fee could be waived or reduced are:

- If the net near-term financial gain or irrevocable loss to the trust(s) is equal to or greater than the amount of the conveyance fees that may be collected. Examples may include, but are not limited to:
    - where joint development of properties are proposed by both parties or;
    - where other existing or proposed real estate transactions are planned by the State within the next five years (i.e. – residential, commercial or industrial land development; land exchange; land banking; land sale; sale of conservation easement; etc.).
- Cases where public access is granted in addition to All Lawful Purpose easements.
- Cases where public camping and recreational sites are created for and managed by the Montana Department of Fish, Wildlife and Parks.
- Situations where the cooperator has a legally existing residence(s) located within the tributary area. Legally existing means that all necessary easements for the dwelling unit(s) are in place.

Situations where the cooperator has legal access to a portion of their ownership that the state must cross to gain access to trust land. In this situation, the portion of the tributary area that has legal access is exempt from the requirement to pay a conveyance fee.

Cooperator/State Requirements

If either the state or cooperator subdivide or sell anything less than their entire property interest within a tributary area, the following provisions must be addressed:

1. RUA shall be created and assignment of the easement deed to the RUA shall be executed. The assignment will describe the tracts of record served.
2. 1% conveyance fee assessed and paid for all tracts of record included in the newly created RUA.
3. Any subsequent subdivision or sale of additional tracts of record within the tributary area shall require the party initiating such action and/or purchasing the property to:

a. join the existing RUA;

b. pay the 1% conveyance fee for all new tracts of record included in the existing RUA; and

c. amend existing RUA assignment to include new tracts of record that have been added to RUA.

The creation of an RUA or the payment of a conveyance fee is not required of either party when the original deeds are issued, or when easements are assigned in whole (successor) for an entire tributary area. The successor shall be bound to all provisions found in the reciprocal access or easement exchange agreement, including the payment of conveyance fees and the creation of a RUA upon subdivision or transfer of title for a portion of the lands in the tributary area.

NOTE: Refer to Appendix A of this policy for implementation examples of when the RAU is created and the conveyance fee paid.

APPLICATION CONTENTS:

The local Department office may negotiate reciprocal access agreements or easement exchanges for use of new, proposed or existing roads, subject to the following requirements:

1) Description of state tract(s) to which access would be acquired.

2) Description of cooperators ownership to which they are acquiring access.

3) Description of cooperators ownership upon which state would acquire an easement.

4) Description of state ownership upon which cooperator would acquire an easement.

5) Description of specific rights to be acquired and relinquished and a discussion of whether or not public access rights will be acquired. If access rights for the public are not acquired, then a specific discussion regarding the reason(s) why must be included.

6) Maps indicating existing roads or approximate location of roads to be constructed relative to the Reciprocal Access Agreement or easement exchange. If access is available to other public lands within the area, maps should also show the surrounding roads as they relate to additional access opportunities for the public.

7) Maps indicating adjacent ownership of properties involved.

8) An estimate of approximate easement acreage the state would acquire and relinquish.

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9) A summary of the benefits of the proposal, including discussion of rights agreed upon, details of associated activities (e.g. timber sale) and cost estimates of construction/reconstruction.

10) **If the proposal is an easement exchange, the seven criteria in Land Board Exchange policy must be addressed. (Value, acreage, income, consolidation, access, long term appreciation and navigable lands)**

FINAL REVIEW AND APPROVAL BY THE BOARD

When the Department and applicant have generated all information necessary for the Board's consideration, the information will be presented to the Board for review and determination whether the proposal is advantageous to the state. It is the Board's duty to disapprove any application that, in its opinion, would be disadvantageous to the state.

This policy is not retroactive to past agreements. As such, the holders of prior grants from the state may utilize the easements as approved by the Board. Conversely, any time a holder of a prior easement seeks to expand the rights previously granted, the provisions of this policy shall apply.

Changes to the reciprocal access and easement exchange policy require the approval of the Land Board. However, the attached appendices may be revised as needed by the Department and do not require the approval of the Land Board.

Approved by the State Board of Land Commissioners and effective this 18 day of September, 2006.

Signed: _____
Mary Sexton, Director
Department of Natural Resources and Conservation

Definitions:

"Subdivision" means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and further includes a condominium or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes. §76-3-103(15), MCA

"Tract of record" means (a) an individual parcel of land, 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. (b) Each individual tract of record continues to be an individual parcel of land unless the owner of the parcel has joined it with other contiguous parcels by filing with the county clerk and recorder:
(i) an instrument of conveyance in which the aggregated parcels have been assigned a legal description that describes the resulting single parcel and in which the owner expressly declares the owner's intention that the tracts be merged; or
(ii) a certificate of survey or subdivision plat that shows that the boundaries of the original parcels have been expunged and depicts the boundaries of the larger aggregate parcel. §76-3-103(16), MCA

"All Lawful Purposes (ALP)" includes any and all uses enumerated in Sections 70-30-102 or 77-2-101 MCA that are now or may hereafter be authorized by the legislature of the State of Montana. As an element of All Lawful Purposes, access rights for the public may be granted. All Lawful Purpose easements must address the issue of public access and will specify one of the three following statements regarding access:

1. Unrestricted Public Access
2. Restricted Public Access (Non-Motorized, Walk-in, Horseback. etc)
3. No Public Access.

The Grantee may not assign rights, in whole or in part, to third parties without prior approval of the Grantor.

APPENDIX A – IMPLEMENTATION TERMS AND EXAMPLES

The following terms and examples are meant to illustrate the implementation of the 1% conveyance fee and the creation of the Road Users Association (RUA) as per this policy.

Terms:

1. The conveyance fee will not be applied retroactively to previously granted All Lawful Purposes (ALP) easements. Therefore, assignment of existing resource management and ALP easements are not subject to the conveyance fee requirements.
2. The conversion of an existing Resource Management Only easement to ALP or, that results in expansion of rights or addition of road width, is subject to the new policy and will require amendment of the easement through approval by the Board.
3. The approved policy will be used by the Department to process all pending and future access requests (there will be no outright exemptions for any access project). The Department recognizes that there will be unique instances where the conveyance fee or other requirements of the new policy could be waived and will review and recommend a course of action to the Land Board. The Land Board, not the Department, has the authority to grant rights and reduce or waive the conveyance fee.
4. In the instance of "gift" or non-disclosed purchase price, the Department will establish full market price. Where the Department is a public entity, we will always disclose purchase price for state lands sold that are subject to the conveyance fee provisions.
5. The conveyance fee for a tract of record may not be transferred to another tract of record or legal description.
6. In an ALP easement, when creation of an RUA is triggered and an easement is to be assigned to the RUA, such assignment will specify the number of parcels or subdivision lots being accessed. Any further subdivision activity or additional transfer of tracts of record within the tributary area will require amending the assignment to the RUA to include the new lots and payment of the conveyance fee.
7. Once a new tract of record has been created, included in the RUA, and the conveyance fee paid, future conveyance fees will not be assessed upon its sale unless the tract is further subdivided.

Example:

1) Reciprocal Access Agreement approved by the Land Board and Cooperator.
   a) Deeds are exchanged between the State and the Cooperator for the entire tributary area.
   b) No conveyance fee paid or RUA created at time of exchange of easements.

2) The cooperator sells their entire portion of the tributary area (Assignment in Whole).
   a) Easements are assigned in whole to the new owner (successor).
   b) No RUA is created.

c) No conveyance fee is assessed.

3) The cooperator or successor sells a 100-acre tract of record within the tributary area (Partial Assignment).
   a) Cooperator creates the Road User Association.
   b) 1% Conveyance fee is assessed and paid for one tract of record.
   c) Easement rights assigned to RUA, specifying all tracts of record being served.

4) Purchaser of the 100-acre tract of record creates a 100-lot subdivision.
   a) All 100-lots (new tracts of record) must join the existing Road User Association.
   b) 1% Conveyance fee assessed and paid for all 100-lots.
   c) Assignment of easement to RUA is amended to include all 100 lots in the subdivision.

5) Lot 75 is further divided into four new lots.
   a) The four lots (new tracts of record) must join the existing Road User Association.
   b) 1% conveyance fee assessed and paid for all four new lots.
   c) Assignment of easement to RUA is amended to add the four new lots (tracts of record).

6) Another 100 acres within the tributary area is sold by the original cooperator or successor.
   a) The 100-acre tract of record is required to join the existing Road User Association.
   b) 1% conveyance fee is assessed and paid for the 100-acre tract of record.
   c) Assignment of easement to RUA is amended to add another tract of record.

APPENDIX B - PROCEDURES FOR PROCESSING RECIPROCAL ACCESS AND EASEMENT EXCHANGES

The procedure for processing requests for reciprocal access easements and easement exchange is outlined below. Items in **bold** are additional requirements for easement exchanges when the reciprocal access statute is not applicable.

A) DNRC Land/Unit Office and cooperating landowner initiate proposal for Reciprocal Access Agreement or easement exchange. **If an easement exchange is proposed, §77-2-204, MCA requires notification of the proposal to the lessee by certified mail and their right to present comments to the Board.**

B) DNRC Land/Unit Office reviews and authorizes proceeding with proposal or recommends modification. If sensitive issues are present, Land/Unit Office will consult with FMB and REMB.

C) DNRC Land/Unit Office prepares and sends to the reciprocating party a letter of intent with the draft, standard reciprocal agreement attached. At a minimum, the agreement should include:

1) Specific description of rights to be exchanged.
2) Description and map of the roads proposed for exchange.
3) A description of lands to be accessed by the easement exchange.
4) Standards and specifications of the roads included in the exchange.
5) Description of construction or reconstruction needs, inspection and acceptance procedures.
6) Maintenance and weed control responsibilities.
7) Methods of determining road/easement value or process for settlement if values are not equal.
8) Survey and appraisal standards
9) Distribution and responsibility of costs associated with developing the exchange package such as survey, appraisal and environmental analysis.

D) The DNRC Land/Unit Office may request the Title Report from a title company. The title report should verify current ownership of property, who has the right to issue an easement on the roads involved, who has signatory authority and whether there are any liens or other easements on the road. Copies of pertinent documents should be specifically requested.

E) Cooperator or the DNRC Land/Unit Office contacts the lessee and secures a lessee settlement form. If damages are anticipated, the cooperator (not DNRC) must negotiate reimbursement to the lessee.

F) Under Reciprocal Access, DNRC Land/Unit Office conducts MEPA review of proposed easement on state land. Analysis of impacts on private or

federal ownerships that may occur as a result of granting the easement on state land (connected actions) is not required. **If the proposal is an easement exchange, both state and private lands involved in the exchange are subject to MEPA review (including archaeological review under the Antiquities Act) and must be documented and supported by a Decision or Finding in an EA or EIS.**

G) **If the proposal is an easement exchange, a public hearing must be held in the county containing the state land per §77-2-204. Consult with FMB for appropriate format**.

H) DNRC Land/Unit Office or cooperator estimates easement values using fee schedules, contract appraisal or requests appraisal from REMB and documents estimate of improvement costs (i.e. roads, bridges, etc.).

I) DNRC Land/Unit Office prepares draft easement deeds using standard format. Changes or additions to the standard format must be highlighted or indicated by bold type to facilitate review by FMB.

J) The reciprocal agreement is signed by the cooperator using the standard format. Agreement includes the final acreage, costs, value estimates, terms and conditions.

K) DNRC Land/Unit Office prepares package for FMB review and Board approval. Package shall include:

1) Original, signed Reciprocal Access Agreement
2) MEPA document for the easement transaction (as a part of a larger project or as a stand-alone document)
3) Plats of road easements sufficient for recordation
4) Explanation of how values were derived or copy of appraisal
5) Lessee settlement documentation
6) Title commitment
7) Recommendation, description of special circumstances (including specific discussion of public access in the area) and summary of benefit to trust and analysis of any additional compensation due to the trust beneficiary.
8) Easement Deed (paper copy with package, electronic version to Helena)
9) Tabulation sheet with legal description of properties by section (to 40-acre subdivision), value, acres and individual trust debits and credits
10) If payment is due, how will it be paid? (e.g. R/W budget, cooperator waives compensation)

L) Upon approval by the Board, final deeds are processed for signature.

State to Cooperator:

1) FMB sends deed from state to cooperator to the DNRC Land/Unit Office. DNRC Land/Unit Office arranges for cooperator to sign acceptance block of deed from the state.
2) Signed deed from state to cooperator is returned to FMB. If payment by the state is required, FMB will process payment request. FMB forwards state to cooperator deed to Helena to acquire signature by Director, Governor and Secretary of State.
3) Upon final execution of state to cooperator deed, FMB forwards original executed deed to DNRC Land/Unit Office and sends REMB a copy of the executed deed. DNRC Land/Unit Office holds original deed until a mutual time for exchange of deeds with cooperator is scheduled.

Cooperator to State:

1) Cooperator to State deed is sent by FMB to the Director for execution. Director. If payment is required from Cooperator, it must be received prior to obtaining signature from Director. Deed is returned to FMB after execution by Director.

2) FMB forwards cooperator to state deed to DNRC Land/Unit Office and deed is returned to cooperator for final execution. Cooperator holds deed until a mutual time for exchange of deeds with DNRC is scheduled.

Exchange of Deeds and Recordation:

1) DNRC Land/Unit Office arranges for a mutual exchange of original, executed deeds (state to cooperator deed, cooperator to state) and records cooperator to state deed at appropriate county Clerk and Recorder's Office.

2) After recordation, the DNRC Land/Unit Office makes copy for file and forwards original recorded cooperator to state deed to FMB. FMB forwards recorded deed to REMB.

3) REMB updates TLMS to reflect the grant of the easement from the state to cooperator and the acquisition of easement from cooperator. The cooperator to state easement will be entered under the section(s) of trust land that the deed provides access to.

4) FMB will provide all required financial and valuation information associated with a reciprocal access or easement exchange project to the Department's Centralized Services Division for accounting purposes.