

AGENDA
REGULAR MEETING OF THE BOARD OF LAND COMMISSIONERS
Monday, September 17, 2012, at 9:00 a.m.
Capitol Building
Helena, MT

ACTION ITEMS

- 912-0 **FWP: LAND AND BUILDING ACQUISITION – TRAVELERS' REST STATE PARK**
Benefits: NA (non-Trust Land)
Location: Missoula County
APPROVED 5-0
- 912-1 **MDT AND DOA: TRANSFER OF STATE FACILITY AT FAIRGROUNDS TO LEWIS AND CLARK COUNTY**
Benefits: NA (non-Trust Land)
Location: Lewis and Clark County
APPROVED 5-0
- 912-2 **COMMUNITIZATION AGREEMENT – WHITING OIL AND GAS CORPORATION**
Benefits: Common Schools
Location: Roosevelt County
APPROVED 5-0
- 912-3 **OIL AND GAS LEASE SALE (SEPTEMBER 5, 2012)**
Benefits: Common Schools, Public Land Trust
Location: Blaine, Dawson, Garfield, Hill, Liberty, Musselshell, Pondera, Richland, Roosevelt, Rosebud, Teton, and Valley Counties
APPROVED 5-0
- 912-4 **SIGNAL PEAK ENERGY COAL LEASE**
Benefits: Common Schools
Location: Musselshell County
APPROVED 5-0, with the following language added to Paragraph 7. Royalty of the lease agreement:
The f.o.b. mine price shall be calculated on the gross value from an arm's length sale to an unaffiliated third-party. If the point of sale to the unaffiliated third-party is remote from the mine, lessee may utilize the higher of comparable sales to unaffiliated third-parties for the same time period, or deduct the actual transportation costs between the point of sale and mine load-out facility. The resulting price shall never be less than the fair market value of the coal at the mine, prepared for shipment.
- 912-5 **LAND BANKING PARCELS: PRELIMINARY APPROVAL FOR SALE**
Benefits: Common Schools
Location: Phillips County
APPROVED 5-0
- 912-6 **LAND BANKING PARCELS: SET MINIMUM BID FOR SALE**
A. FLATHEAD COUNTY
Benefits: Common Schools
Location: Flathead County
APPROVED 5-0
B. MINERAL COUNTY
Benefits: Public Buildings
Location: Mineral County

LAND BOARD MEETING SIGN-IN SHEET
September 17, 2012

NAME	AFFILIATION	E-MAIL	Check to be added to the interested parties list.
Bruce Mihelich	TRAVELERS Rest PRESERVATION	bruce@cedarflats.com	
Anby Henthansen	L+C Co	ahenthansen@co.lewis-clark.mt.us	
Eric Bryson	L+C Co	ebryson@co.lewis-clark.mt.us	
Kyle Thomas	L+C Co	kthomas@co.lewis-clark.mt.us	
Diane Conradi	Two Bear Ranch/WLP	diane@landwaterlaw.com	
Steve Chortis	Bull Mt Ford address	stephenowen.Chortis@gmail.com	✓
Svein Newman	Northern Plains	svein@northernplains.org	
Charyn Ayoub	Sleeping Giant Citizens' Council	onwords@hotmail.com	
BOB GUILFOYLE	WMWA	wmwmw@hotnet.com	✓
DAVE SKINNER	SECC	DAVSKIN@SOUTHWEST.MEM	
Edward Viren	Signal Peak Energy	eviren@signalpeakenergy.com	
John DeMichieci	Signal Peak Energy	jdemichieci@signalpeakenergy.com	
George Golie	PIWA + RLCA	ggolie@bresnan.net	✓
Tim Callahan	SELF	CALLAHANLAW@JMO.COM	✓
MARK LAMBRECINI	WETA	weta@weta-montana.org	✓
Sue Olson	Musselshell Cty	sueolson@mshelleva.com	
Chad Seebey	Roundup Public Schools	chadseebey@roundup.k12.mt.us	
Jim Petersen	SD #15	jimpetersenranch@gmail.com	
Lowell Chandler	Blue Skies Campaign	lowell.chandler@gmail.com	✓
Nick Engelfried	Blue Skies Campaign	Blueskiescampaign@gmail.com	✓
Anne Hedges	MEIC	ahedges@meic.org	
ALEKBLAD	MT AFL-CIO	ALEKBLAD@MTAFLCIO.ORG	✓
Steve Wade	Ph. 11p66	stevew@bkbh.com	✓

Contact Lucy Richards at lrichards@mt.gov or indicate on this sign-in sheet if you would like to be placed on the monthly agenda distribution list.

MINUTES
REGULAR MEETING OF THE BOARD OF LAND COMMISSIONERS
Friday, August 3, 2012, at 9:00 a.m.
Helena College – University of Montana
Student Center – Room 104
1115 N. Roberts
Donaldson Campus
Helena, MT

Please note: *The Land Board has adopted the audio recording of its meetings as the official record, as allowed by [2-3-212, MCA](#). These minutes provide an abbreviated summary of the Land Board discussion, public testimony, action taken, and other activities. The time designations listed are approximate and may be used to locate the referenced discussion on the audio recording of this meeting. Access to an electronic copy of these minutes and the audio recording is provided from the Land Board webpage at <http://dnrc.mt.gov/LandBoard>. The written minutes summary, along with the audio recordings, are listed by meeting date on the Land Board Archive webpage.*

Members Present

Governor Brian Schweitzer
Attorney General Steve Bullock
Commissioner of Securities and Insurance Monica Lindeen
Secretary of State Linda McCulloch (via telephone conferencing)
Superintendent of Public Instruction Denise Juneau

Testifying Staff

Mary Sexton, DNRC Director
Hugh Zackheim, FWP Lands Program Manager

Attachments

Related Materials, Attachment 1 – Sign-in Sheet

Call to Order

00:00:00 Governor Schweitzer called the meeting to order. Ms. Juneau moved to approve the May 21, 2012, minutes. The motion was seconded by Mr. Bullock and carried unanimously.

Business Considered

812-1 FWP: Wildlife Management Area – Deer Creek Addition to Marshall Creek WMA

00:00:15 Ms. Sexton.
00:00:25 Mr. Zackheim gave an overview of the item.
00:02:35 Mr. Bullock moved to approve the WMA. The motion was seconded by Ms. McCulloch and carried unanimously.

812-2 FWP: Fishing Access Site Acquisition – Bailey Reservoir

00:02:54 Ms. Sexton
00:03:20 Mr. Zackheim gave an overview of the item.
00:05:10 Ms. Lindeen moved to approve the fishing access site acquisition. The motion was seconded by Ms. McCulloch and carried unanimously.

812-3 Signal Peak Energy Coal Lease Application – Competitive Bid Results

00:05:31 Ms. Sexton gave an overview of the item.

Board Discussion/Questions

00:06:44 Governor Schweitzer

00:06:48 Ms. Sexton

00:06:52 Governor Schweitzer

00:06:56 Ms. Juneau moved to solicit public comment on the results of the competitive bid process. The motion was seconded by Ms. Lindeen and carried unanimously.

812-4 Fairways/Primary Seismic Projects

00:07:09 Ms. Sexton gave an overview of the item.

00:08:48 Ms. Lindeen moved for approval of the seismic projects. The motion was seconded by Ms. Juneau and carried unanimously.

812-5 Preliminary Approval for Land Banking Parcels.

A. Rosebud County

B. Flathead County

00:09:00 Ms. Sexton gave an overview of items 812-5A and 812-5B.

00:10:12 Mr. Bullock moved for preliminary approval of items 812-5A and 812-5B. The motion was seconded by Ms. McCulloch and carried unanimously.

812-6 Set Minimum Bid for Land Banking Parcels

00:10:38 Ms. Sexton gave an overview of the item.

00:11:58 Ms. McCulloch moved to set the minimum bid for the parcels. The motion was seconded by Ms. Lindeen.

Board Discussion/Questions

00:12:07 Governor Schweitzer

00:14:50 Ms. Sexton

00:15:03 Governor Schweitzer

00:15:09 Ms. Sexton

00:15:15 The motion to set minimum bid for the parcels was carried unanimously.

812-7 Final Approval for Land Banking Parcels

00:15:20 Ms. Sexton gave an overview of the item.

00:16:23 Ms. Juneau moved for final approval for the sale of the land banking parcels. The motion was seconded by Mr. Bullock and carried unanimously.

812-8 Timber Sales

A. Fish Bull Face

B. Mohican Stickney (Limited Access)

C. Pleasant Valley

D. Tim Burke Two

00:16:38 Ms. Sexton gave an overview of items 812-8A through 812-8D.

00:19:52 Mr. Bullock moved to approve items 812-8A through 812-8D. The motion was seconded by Ms. Lindeen and carried unanimously.

812-9 Easements

A. Rights of Way

00:20:06 Ms. Sexton gave an overview of the item.

00:21:09 Ms. McCulloch moved to approve the rights-of-way. The motion was seconded by Ms. Juneau and carried unanimously.

B. Nature Conservancy Reciprocal Access Easement

00:21:22 Ms. Sexton gave an overview of the item.
00:22:44 Ms. Lindeen moved to approve the reciprocal access easement. The motion was seconded by Mr. Bullock and carried unanimously.

C. Pipeline Easement Applications

00:22:58 Ms. Sexton gave an overview of the item.

Public Comment/Board Discussion

00:26:32 Senator Jim Keane (SD38)
00:26:44 Governor Schweitzer
00:26:46 Senator Keane (SD38)
00:28:02 Governor Schweitzer
00:28:11 Ms. Sexton
00:28:25 Governor Schweitzer
00:28:27 Ms. Sexton
00:28:34 Ms. Lindeen moved to approve the pipeline easement applications. The motion was seconded by Ms. Juneau.
00:28:44 Mr. Bullock
00:28:54 Ms. Sexton
00:29:52 Governor Schweitzer

00:30:42 The motion to approve the pipeline easement applications was carried unanimously.

General Public Comment

00:30:50 Governor Schweitzer
00:32:26 Bryan Nickerson, Blue Skies Campaign
00:34:42 Jan Siemers
00:36:14 Lowell Chandler, Blue Skies Campaign
00:40:25 Richard Gold
00:42:30 Cory Bressler, Blue Skies Campaign
00:44:52 Nick Engelfried, Blue Skies Campaign

Adjournment

00:48:09 Adjournment

PRESIDENT

ATTEST

/s/ Brian Schweitzer
Brian Schweitzer, Governor

/s/ Mary Sexton
Mary Sexton, DNRC Director

RELATED MATERIALS
ATTACHMENT 1

LAND BOARD MEETING SIGN-IN SHEET
August 3, 2012

NAME	AFFILIATION	E-MAIL	Check to be added to the interested parties list.
Pete Lawrence	MRL	plawrenson@mtRail.com	
Edward Viren	Signal Peak Energy	eviren@signalpeakenergy.com	
BOB EBERTS	ONEOK	robert.eberts@oneok.com	
Bruce Johnson	ONEOK	brucej@unitedwb.coop	
Melissa Lewis	ONEOK	melissa@mlewisassoc.com	
GAIL ABERCROMBIE	Gaila Consulting for MT Petroleum Assn	Gaila_consulting@msn.com	
Keat Mollohan	citizen	keatml23@live.com	
Hugh Zackham	FWP		
Candace Durran	FWP		
Nick Engelried		nicke.activism@gmail.com	X
Dustin Leftridge		dustin.leftridge@gmail.com	X
John Johnson	100 E 400	outofwork400@MT.Mt	
Jay Bodner	MSGA		
Pick Gold	Citizen	goldrich@hotmail.com	X
Jan Siemers	Occupy Helena	je.helena@gmail.com	
Connie Raskey	LWV Bellingham	randc.raskey@juno.com	
Clayton Elliott	Northern Plains	clayton@northplains.org	
Lowell Chandler	BLUE SKIES Campaign		
Cary Hegreberg	Contractors Assn.	cary@mtagc.org	
EVAN BARRETT	G.O.E.D.	ebarrett@mt.gov	
Cory Bressler	Blue Skies		

APPROVED 5-0

912-7

EASEMENTS

Benefits: Capital Buildings, Common Schools, Montana Tech, MSU Morrill, Public Land Trust, School for the Deaf and Blind, State Normal School

Location: *Big Horn, Cascade, Gallatin, Golden Valley, Lewis and Clark, Missoula, Powder River, and Ravalli Counties*

APPROVED 5-0

PUBLIC COMMENT

912-0

FWP: Land and Building Acquisition –
Travelers' Rest State Park

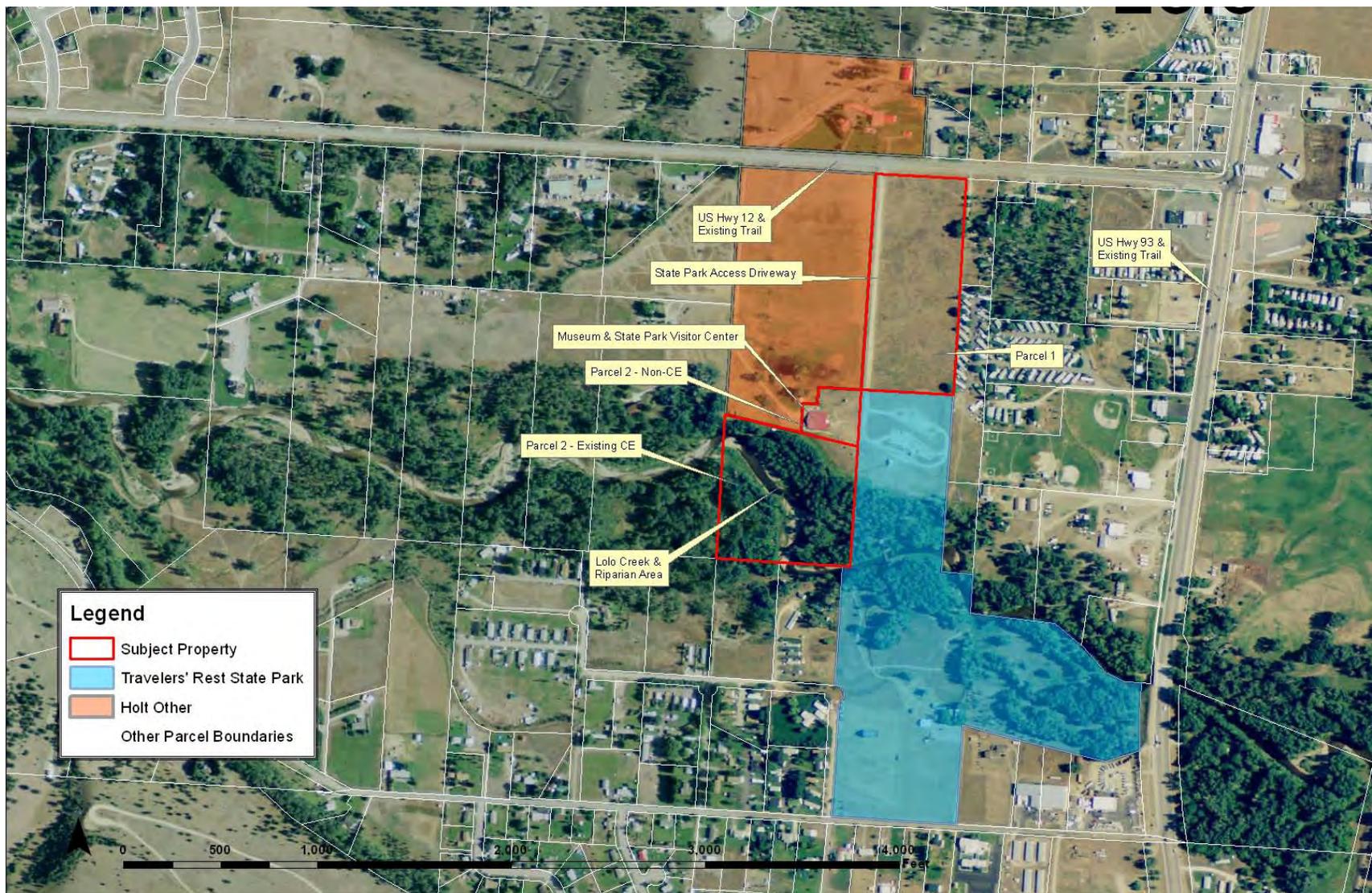
**TRAVELERS' REST STATE PARK
LAND AND BUILDING ACQUISITION**

**Montana Board of Land Commissioners
September 2012**

- Agency:** Fish, Wildlife and Parks (Parks Division)
- Proposed Acquisition:** Fee purchase of **24 acres** in Missoula County as an addition to Travelers' Rest State Park. The proposed acquisition also includes the **visitor center-museum building** and the **museum collection**.
- Project Description:** The land **adjoins the existing 40-acre park** and consists of three parcels. Parcel A is **10 acres of riparian habitat** along Lolo Creek, and its acquisition would improve resource management and public access to Lolo Creek. Parcel B consists of **12 acres of open-space** that would protect the park entrance from development and link the park with existing non-motorized trails along Highways 12 and 93. Parcel C houses **the museum and visitor center**, including FWP's leased park offices for Travelers' Rest, Fort Owen and Painted Rocks state parks.
- Cost and Funding:** FWP will use a \$402,500 grant from the federal Land & Water Conservation Fund, matched by \$247,500 from the Missoula County Open Space Bond Fund and \$50,000 raised through community fundraising spearheaded by the Travelers' Rest Preservation & Heritage Association and the Missoula Community Foundation. **Landowners Bill and Ramona Holt are selling the land and building for \$485,000 below appraised value, and will donate historic artifacts and exhibits** valued at approximately \$200,000.
- Purpose and Need:** Acquisition of this land would **secure the park visitor center, museum and artifacts** for historic interpretation and public enjoyment; protect important **wildlife habitat** in an increasingly urban area; provide a safe conduit for **non-motorized recreation**; and add an **important buffer area** for this National Historic Landmark.
- Process:** **FWP Draft Environmental Assessment** was available for public review from April 21 through May 21, 2012. The 18 comments reflected strong public support for the acquisition.
- FWP Decision Notice** was issued on June 5, 2012, recommending approval of the project, including purchase of the three land parcels and the building, acquisition of the historic artifacts and exhibits, and development of the associated trail system. The project was approved by the Fish, Wildlife and Parks Commission on June 14.
- Requested Action:** FWP now requests **final approval** of the project by the **Board of Land Commissioners**.

TRAVELERS' REST STATE PARK

2012 PROPOSED ADDITIONS (parcels outlined in red)





**Decision Notice:
Travelers' Rest State Park
Proposed Land Donation, Acquisition and Trail Development**

Montana State Parks – Region 2
3201 Spurgin Road
Missoula MT 59804
(406) 542-5500

Description of Proposed Project

Montana State Parks proposes to acquire via fee title a 24-acre, three-parcel, addition to Travelers' Rest State Park located near the town of Lolo, Montana from Bill and Ramona Holt. Included in the acquisition would be the park visitor center, museum, artifacts, and administrative office building, which are currently leased from the landowners. The community of Lolo is in Missoula County, about 8 miles south of Missoula. Travelers' Rest is located just west of the junction of US Highway 93 and US Highway 12.

If the acquisition were completed, Montana State Parks would also plan to expand the trail system within the park to connect to Lolo neighborhoods and existing non-motorized trails within the community. Trails would be constructed with gravel, no more than 5 feet in width and designed to meet accessibility standards. Where cultural resources could be impacted by ground disturbance, trail construction would involve placing a barrier on top of the existing surface, then adding and compacting gravel to complete the surface.

Travelers' Rest State Park was established in 2001 with a donation of 15 acres of land from The Conservation Fund. Additional acquisitions in 2002, 2004 and 2005 have increased the size of the park to approximately 41 acres. Montana State Parks also holds a 10-acre conservation easement on one of the parcels (Parcel 3) of this proposed acquisition.

In 2001 and 2002, a unique research project identified and uncovered evidence of the use of the site by the Lewis and Clark Expedition during their stays here in 1805 and 1806. Based on this evidence, the U.S. Department of Interior relocated the Travelers' Rest National Historic Landmark (NHL) boundary to State Park lands and some private land on the south side of Lolo Creek.

The proposed acquisition includes the Holt Museum and Visitor Center at Travelers' Rest State Park, which is currently leased by Montana State Parks and houses exhibits related to the history of the area as well as the administrative offices for Travelers' Rest, Fort Owen and Painted Rocks State Parks.

This project would not only add the visitor center and museum to state ownership, but the additional lands would protect important riparian habitat along Lolo Creek; provide important and desired recreational access to the Lolo and western Montana community; and provide the opportunity to connect neighborhoods in the community as well as link existing non-motorized recreational trails along both US Highways. The three parcels are:

- Parcel 1, approximately 11 acres of open grazing land is between the existing park boundary and US Highway 12. The park entrance road passes through this parcel via a road easement granted to Montana State Parks by the landowners;
- Parcel 2 includes the visitor center and museum and affiliated parking lot. This is approximately 2.5 acres;
- Parcel 3 is south of parcel 2 and comprised primarily of riparian lands along Lolo Creek. This parcel is approximately 10 acres.

Threats to these parcels include the potential development of residential homes and/or commercial businesses in parcels 1 and 2 because of their close proximity to Lolo and the main travel corridors of the highways.

The proposed action would help meet many of the objectives of the 2003 Travelers' Rest State Park Management Direction, including:

1. Providing for a series of paths (and associated educational materials) to illustrate natural ecosystems.
2. More land for recreational access and opportunity.
3. Fish and wildlife habitat protection.
4. Access to existing non-motorized trails.
5. Buffer to the historic site.

Alternatives Considered:

Alternative A - Proposed Action: Montana State Parks would acquire three parcels totaling 23.69 acres, the visitor center, museum, and artifacts, and expand the park trail system.

Montana State Parks would acquire via fee title, approximately 24 acres in Lolo, Montana – including a visitor center, museum for the Park and an extensive collection of artifacts and exhibits related to the history of the area – for \$700,000.

If the land is acquired, Montana State Parks would begin to further develop the trail system within the Park, connecting neighborhoods and existing non-motorized trails throughout the Park. This would be very important for Parcel 1. In the fall of 2011, Missoula County completed an extension of the non-motorized trail parallel to US Highway 12, which has already contributed to a significant increase in

pedestrian use along the Park entry road. For visitor safety, trail construction along the entry road would be a high priority.

Alternative B - No Action: Montana State Parks would not purchase three Travelers' Rest State Park parcels and visitor center/museum.

Montana State Parks would not purchase the three parcels including the visitor center and museum building from the Holts. It is assumed that the Holts would look for other buyers for the parcels, with the possibility of Parcel 1 being developed, most of which has been identified as suitable for 4 dwellings per acre by the Lolo Regional Plan. It is also possible that without Montana State Parks' long-term commitment that the Holts may sell or lease the visitor center and museum to an interested commercial interest, thereby leaving Travelers' Rest without the ability to provide essential services to the public or office space for park employees. This loss of the visitor center and museum could mean that staff would need to be re-assigned to alternative work stations. This could leave the park open to increased vandalism on existing lands. Or, Montana State Parks would need to request funding for a visitor center from which to manage this National Historic Landmark.

Public Process

Montana Fish, Wildlife and Parks is required by the Montana Environmental Policy Act (MEPA) to assess the potential impacts of its proposed actions to the human and physical environments, evaluate those impacts through an interdisciplinary approach, including public input, and make a decision based on this information.

The legal notices for the Travelers' Rest State Park Land Acquisition and Trail Development were published in the *Missoulian*, *Ravalli Republic* (Hamilton) and *Independent Record* (Helena) newspapers on April 20 and 27, 2012. Montana State Parks issued a statewide press release on April 24, 2012. Montana State Parks distributed approximately 39 copies of the EA, and approximately 108 postcard and 9 email notifications of the EA's availability to adjacent landowners and individual groups, individuals and agencies. The EA was available for public review on Montana State Parks' website from April 21 through May 21, 2012.

Comment Summary

During the official comment period, Montana State Parks received 18 comments in the form of letters, emails and/or phone calls (hereafter "comments"). Fifteen comments were from individuals, two were from agencies (Missoula County Floodplain and Missoula County Commissioners) and one was from a local, non-profit organization (Travelers' Rest Preservation and Heritage Association).

From the comments, there was almost unanimous support or qualified support for the proposed action to acquire the three parcels, the building that houses the visitor center, museum, artifacts, and park offices, and to expand the parks trail system. Specific comments, concerns and recommendations are addressed below.

1.

- “The proposed purchase of the additional 24 acres, visitor center and museum will guarantee the future of this fine facility. I feel personally blessed to have this State Park in my backyard.”
- “A great acquisition for the local community and all Montanans.”
- “This purchase of Travelers’ Rest is the best use of money by MT Fish, Wildlife and Parks that I am aware of in the last four decades.”

Montana State Parks Response: *Thank you for the support. To be clear, however, no state revenues will be used in this acquisition. Monies will come from the Land and Water Conservation Fund (LWCF), the Missoula County Open Space Bond Fund, and private contributions.*

2.

- “most of that proposed parcel 3 is in the floodplain. Only comments from my end are that any proposed trails in the park need to remain at grade without fill.”

Montana State Parks Response: *Thank you for the comment. All trails within the floodplain will be constructed at grade without fill. As mentioned in the draft EA, however, trails outside the floodplain will be constructed in a way that protects the cultural resources that are the reason for the park’s creation and existence. This may be best accomplished by placing barriers on the soil at grade and adding fill to complete trail construction.*

3.

- “I feel very strongly that FWP should not go through with this land acquisition. I do agree it is an important historical site and would benefit the Lolo community to some extent. However, I think it is extremely irresponsible for our state or any to be accepting money from the federal government given the \$16,000,000,000,000 debt. I have tremendous respect for FWP, but I think all government agencies should be looking at ways to cut spending instead of increasing it.

Montana State Parks Response: *Montana State Parks are an economic engine for Montana, with Travelers’ Rest being a prime example. An Economic Impact Survey of Visitors to Montana State Parks conducted by the Montana Bureau of Business and Economic Research in 2010 found that resident and non-resident visitors to state parks spend an estimated \$289 million in Montana, creating more than 1,600 jobs statewide. Because no state revenues will be used in this acquisition and the relatively low amount of federal funds (LWCF funds, dedicated to outdoor recreation projects) compared to the overall value of the project (\$300,000 LWCF to leverage up to approximately \$2,000,000), Montana State Parks feels that the public will see its investment repaid many times over through the life of Travelers’ Rest State Park.*

4.

- “This action will be a wonderful legacy for future generations and is a very appropriate use of LWCF funds.”

- “The expansion would not only serve Lolo residents with greater access to Lolo Creek, but would also provide a greater corridor of protection for native plants, birds and animals.”
- “The creation of a complete trail system made possible through this purchase will provide both recreational opportunities and a safe route for pedestrians, including children, who attend the nearby Lolo School.”

Montana State Parks Response: *We agree that this acquisition is important to the future of the Lolo community and its residents. Future trail expansion will be dependent on funding, likely through Montana State Parks’ Recreational Trails Program (RTP) and outside sources. Montana State Parks will make pursuing the necessary funding for trail expansion a priority for Travelers’ Rest State Park.*

Decision

Based on the Draft Environmental Assessment (EA) and the applicable laws, regulations and policies, I have determined that the proposed actions will not have significant negative effects on the human and physical environments associated with the proposed acquisition and trail development. Therefore, I conclude that the EA is the appropriate level of analysis and the preparation of an Environmental Impact Statement is unnecessary.

By this notification, the draft EA is made the final EA with this Decision Notice, since very minimal changes (noted in the Montana State Parks responses above) are required to the draft document. It is my decision to recommend that the FWP Commission approve Montana State Parks’ proposed action--to acquire the three parcels of land, the building that houses the visitor center, museum, artifacts, and park offices, and to expand the park’s trail system--at its June 14th meeting. This action will also require the approval of the Montana Land Board at an upcoming meeting.



Lee Bastian
Montana State Parks Regional Park Manager

6/5/2012
Date



Region 2 Headquarters
3201 Spurgin Road
Missoula, MT 59804-3101
Phone 406-542-5500

April 20, 2012

Dear Interested Parties:

Enclosed, you will find for your review the Draft Environmental Assessment (EA) for a Montana Fish, Wildlife & Parks (FWP) proposal to purchase 23.69 acres of land, including a building that houses a visitor center, museum, artifacts, and offices at Travelers' Rest State Park (TRSP) in Lolo, Missoula County. FWP also proposes to expand the trail system on existing TRSP lands and those included in this acquisition.

This draft EA is available for review in Helena at FWP's Headquarters, the State Library, and the Environmental Quality Council. It also may be obtained from the Region 2 FWP Headquarters or viewed on FWP's Internet website at <http://fwp.mt.gov> ("Public Notices" under "News").

Comments on this draft EA must be received by FWP no later than 5:00 pm on May 21, 2012. Comments should be mailed to Loren Flynn, Travelers' Rest State Park, PO Box 995, Lolo, MT 59847 or emailed to LFlynn2@mt.gov. If you have questions, please phone Flynn at (406) 273-4253.

As part of the decision making process under MEPA, I plan to issue the Decision Notice for this EA by June 1. Based on the outcome of the Decision Notice, this project proposal would be presented to the FWP Commission for final action. Approval will also be needed from the Montana Board of Land Commissioners.

Sincerely,

Lee Bastian
Regional Park Manager

Enclosure: Draft EA for Travelers' Rest State Park—Proposed Land Acquisition and Trail Development

DRAFT Environmental Assessment
Proposed Land Acquisition and Trail Development--
Travelers' Rest State Park

April 20, 2012



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Appendix A. TRSP Map

Appendix B. TRSP Management Direction

1.0 PURPOSE OF AND NEED FOR ACTION

1.1. Proposed Action and Need

Montana Fish, Wildlife and Parks (FWP) proposes to purchase via fee title a 23.69-acre, three-parcel addition to Travelers' Rest State Park (hereafter, TRSP, the Park, or Travelers' Rest) located near the town of Lolo, Montana from Bill and Ramona Holt (Figure 1). Included in the acquisition would be the park visitor center, museum and administrative office building, which are currently leased from the Holts. The community of Lolo is in Missoula County, about 8 miles south of Missoula. Travelers' Rest is located south of US Highway 12, just west of its junction with US Highway 93.

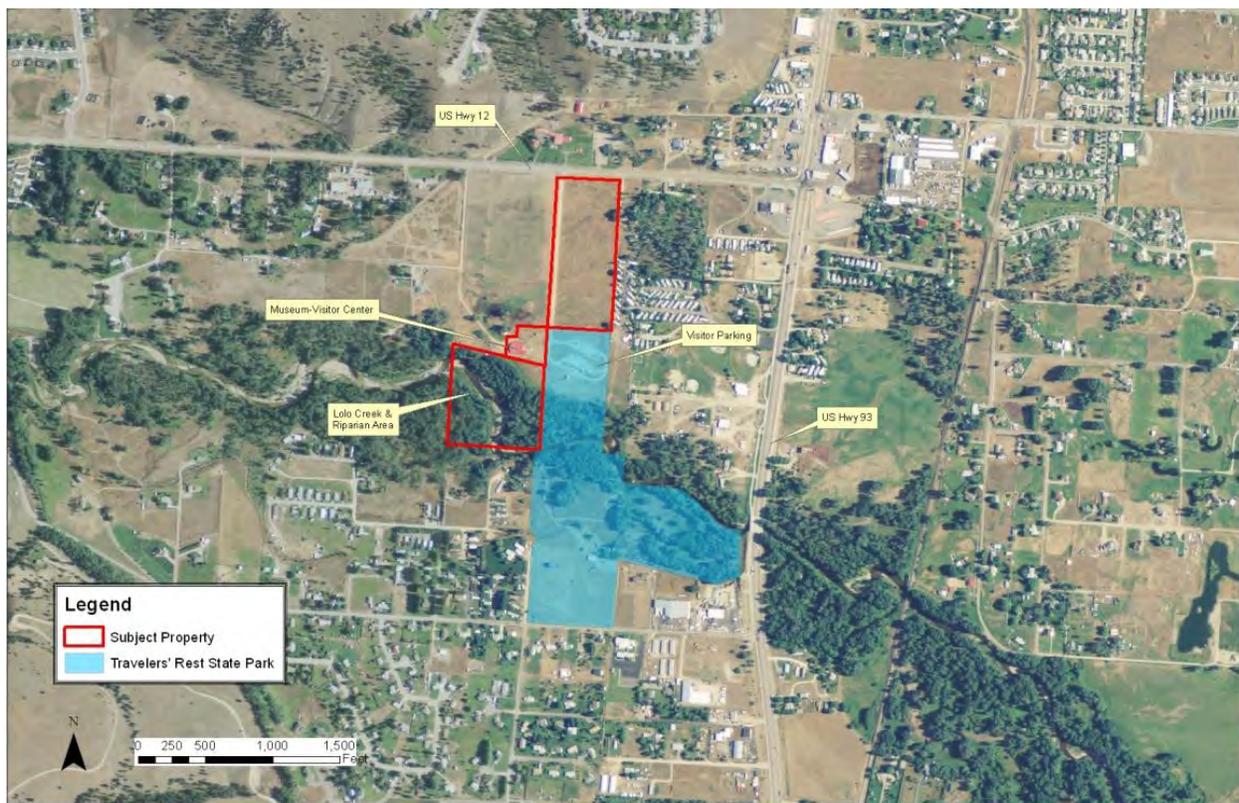


Figure 1. Outlined in red are the Travelers' Rest State Park parcels proposed to be acquired by FWP. The blue shaded areas are the existing lands owned by FWP.

If the acquisition is completed, FWP would also plan to expand the trail system within the park to connect to Lolo neighborhoods and existing nonmotorized trails within the community (Figure 2). Trails would be constructed with gravel, no more than 5 feet in width and designed to meet accessibility (Americans with Disabilities or ADA) standards. Where cultural resources could be impacted by ground disturbance, trail construction would involve placing a barrier on top of the existing surface, then adding and compacting gravel to complete the surface.

Travelers' Rest State Park was established in 2001 with a donation of 15 acres of land from The Conservation Fund. Additional acquisitions in 2002, 2004 and 2005 have increased the size of

the park to approximately 41 acres. FWP also holds a 10-acre conservation easement on one of the parcels (Parcel 3) of this proposed acquisition.

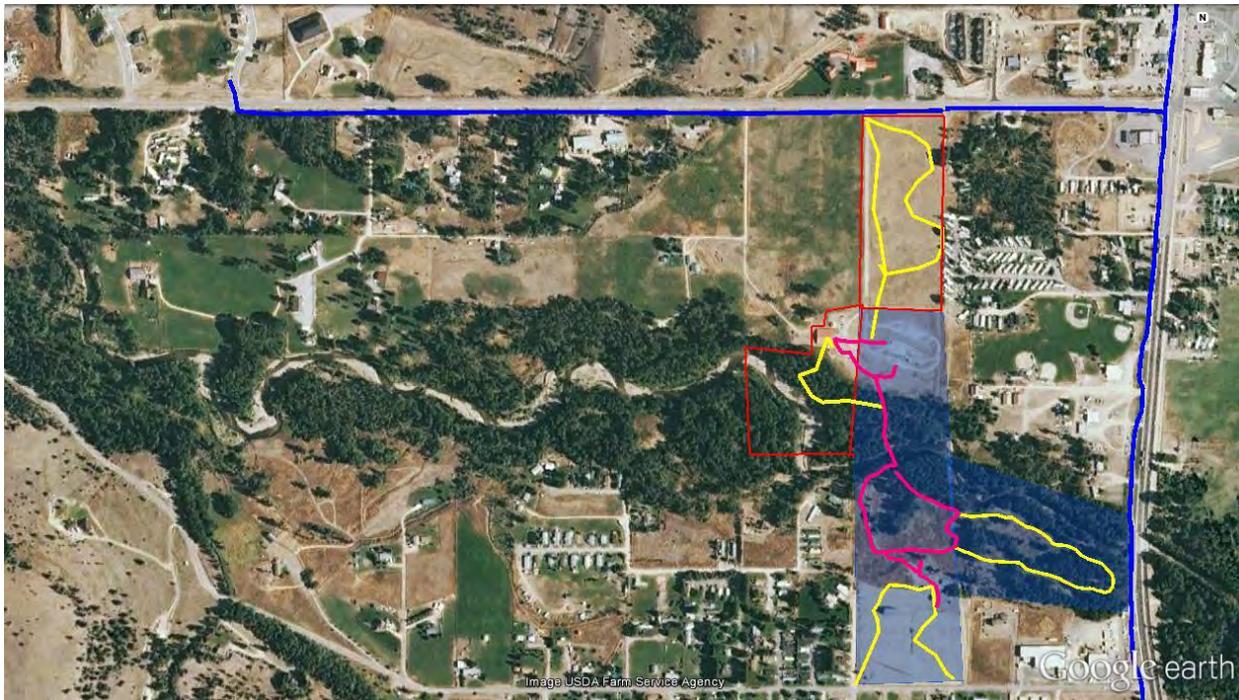


Figure 2. Proposed trail routes with Travelers' Rest State Park (TRSP). The pink lines indicate existing TRSP trails. Blue lines mark the nonmotorized trails following US Highway 93 east of TRSP and US Highway 12 north of TRSP. Yellow lines are proposed future trails within TRSP.

In 2001 and 2002, a unique research project identified and uncovered evidence of the use of the site by the Lewis and Clark Expedition during their stays here in 1805 and 1806. Based on this evidence, the Department of Interior relocated the Travelers' Rest National Historic Landmark (NHL) boundary to State Park lands and some private land on the south side of Lolo Creek.

The proposed acquisition includes the Holt Museum and Visitor Center at Travelers' Rest State Park, which is currently leased by FWP and houses exhibits related to the history of the area as well as the administrative offices for Travelers' Rest, Fort Owen and Painted Rocks State Parks.

This project would not only add the visitor center and museum to state ownership, but the additional lands would protect important riparian habitat along Lolo Creek; provide important and desired recreational access to the Lolo and western Montana community; and provide the opportunity to connect neighborhoods in the community as well as link existing nonmotorized recreational trails along both US Highways. The three parcels are (see Appendix A):

- Parcel 1, approximately 11 acres of open grazing land is between the existing park boundary and US Highway 12. The park entrance road passes through this parcel via a road easement granted to FWP by the Holts;

- Parcel 2 includes the visitor center and museum and affiliated parking lot. This is approximately 2.5 acres;
- Parcel 3 is south of Parcel 2 and comprised primarily of riparian lands along Lolo Creek. This parcel is approximately 10 acres.

Threats to these parcels include the potential for development of residential homes and/or commercial businesses in Parcels 1 and 2 because of their close proximity to Lolo and the main travel corridors of the highways.

The proposed action helps meet many of the objectives of the 2003 TRSP Management Direction (see Appendix B), including:

1. Providing for a series of paths (and associated educational materials) to illustrate natural ecosystems.
2. More land for recreational access and opportunity.
3. Fish and wildlife habitat protection.
4. Access to existing nonmotorized trails.
5. Buffer to the historic site.

1.2 Objectives of the Proposed Action

- Provide lasting public access to open and riparian lands;
- Create the ability to connect existing community nonmotorized trail systems through the park;
- Expand the trail system within the park to provide additional recreational access and educational opportunities to the community;
- Secure ownership of the park visitor center, museum and offices;
- Permanently protect riparian and wildlife habitat; and
- Preserve the park entrance from development.

1.3. Location

The Travelers' Rest acquisition parcels are located within the community of Lolo, approximately 8 miles south of Missoula, in Missoula County, Montana (Figure 1).

Legal Descriptions:

T12N, R20W, Sec. 34. Tract 3A-1 in E2 and Plat C2, Parcel 001 in NE ¼

1.4 Relevant Plans

Travelers' Rest State Park Management Direction (2003) identifies the plans to develop and create Travelers' Rest State Park.

Lolo Regional Plan serves as a planning guide for local officials and citizens, which was adopted in 2002 and amended in 2010. Missoula County is currently reviewing the document based on stakeholders' concerns regarding growth in the planning area.

Missoula County Parks and Conservation Lands Plan is meant to guide citizens, the County Park Board, and the Board of County Commissioners in their work to improve and maintain park lands within Missoula County (1997).¹

1.5 Authority and Responsibility

FWP has the authority to purchase lands that are suitable for game, bird, fish or fur-bearing animal restoration, propagation or protection; for public hunting, fishing, or trapping areas; and for state parks and outdoor recreation per Montana state statute § 87-1-209, Montana Code Annotated (MCA).

FWP is also required to deposit 20% of the purchase price, capped at \$300,000/acquisition, for properties it acquires (§§ 87-1-209 and 23-1-127(2), MCA). Such an account would be used for weed maintenance, fence installation or repair of existing fences, garbage removal, implementation of safety and health measures required by law to protect the public, erosion control, streambank stabilization, erection of barriers to preserve riparian vegetation and habitat, and planting of native trees, grasses, and shrubs for habitat stabilization. Such maintenance activities should be consistent with the Good Neighbor Policy (23-1-126 MCA).

2.0 ALTERNATIVES

2.1. Alternative A--Proposed Action: FWP would purchase three parcels totaling 23.69 acres and the visitor center and museum and would expand the park trail system

FWP proposes to acquire via fee title, approximately 24 acres in Lolo, including visitor center and museum for the Park and an extensive collection of artifacts and exhibits related to the history of the area. FWP would provide \$300,000 towards the expected \$700,000 purchase price.

The acquisition would be funded from four sources: Land and Water Conservation Fund (LWCF); the Missoula County Open Space Bond Fund; a private, community fundraising campaign; and a generous and significant sale discount from the landowners.

FWP would provide \$300,000 in federal LWCF funds for the project. The LWCF program provides matching grants to States and local governments for the acquisition and development of public outdoor recreation areas and facilities. The program is intended to create and maintain a nationwide legacy of high quality recreation areas and facilities and to stimulate non-federal investments in the protection and maintenance of recreation resources across the United States.

The Missoula Board of County Commissioners has approved funding of up to 30% of the appraised value of the land not to exceed \$300,000 for this project. An appraisal would be completed in the spring of 2012. The Missoula Open Space Bond Fund was established by the

¹ The Missoula County Park Board has recommended that the Missoula County Commissioners adopt a new *Missoula County Parks and Trails Plan*. Action on that plan is expected in the spring of 2012. For Lolo the Draft Plan states “The most fruitful community trail projects would be...explore connections within the community such as from Mormon Creek Road to existing trail on Highway 93 and Travelers’ Rest State Park.”

voters of Missoula County in November, 2006. This program designated \$10 million (divided equally between the City of Missoula and Missoula County) to implement the purposes of the bond. Bond funds are used to preserve fish and wildlife habitat, protect agricultural lands, and provide recreational access to Missoula County residents. Because the bond funds must be used for preserving open space and recreational access, a deed restriction would be added at closing. This deed restriction would acknowledge that FWP would manage the land consistent with bond purposes.

The remaining estimated \$100,000 would come from other sources, primarily a community fundraising effort spearheaded by the Travelers' Rest Preservation and Heritage Association (TRPHA). TRPHA is the non-profit partner of TRSP, and the organization has been integral to the preservation and development of the Park.

The Holt family would complete the transaction by donating the remaining value of the land and building, as well as the Holt collection of artifacts and exhibits in the museum. The value of the land, building and collection is estimated at \$1.5 - \$2 million. Therefore, the Holts' contribution towards FWP ownership of the land would be in the range of \$1 million.

If the land is acquired, FWP would begin to further develop the trail system within the Park, connecting neighborhoods and existing nonmotorized trails throughout the Park. This would be very important for Parcel 1. In the fall of 2011, Missoula County completed an extension of the nonmotorized trail parallel to US Highway 12, which has already contributed to a significant increase in pedestrian use along the Park entry road. For visitor safety, trail construction along the entry road would be a high priority.

FWP proposes a series of trail routes within the park to provide connection to neighborhoods and other trails, as well as create trail loops within and outside the park boundary. It is not expected that all trails would be constructed in the near future, but priorities would be established to address the trails as funding and other opportunities become available. The first priority would be to connect the park to the Highway 12 trail (Figure 2).

Challenges for FWP related to the proposed acquisition include:

- Long-range operation and maintenance of the parcels and buildings;
- ensuring adequate levels of funding for trail development and access; and
- enforcement of FWP rules throughout the parcels for protecting public safety, park facilities, and resource values.

Anticipated immediate expenses include the installation of appropriate signage (FWP identification, public use rules and regulations, etc.), ongoing noxious weed management, fence removal, and trail construction.

2.2 Alternative B--No Action: FWP would not purchase three Travelers' Rest State Park parcels and the visitor center/museum

Under the No Action Alternative, FWP would not purchase the three parcels, including the visitor center and museum building from the Holts. It is assumed that the Holts would look for

other buyers for the parcels, with an eye to develop Parcel 1, most of which has been identified as suitable for 4 dwellings per acre by the Lolo Regional Plan. It is also quite possible that without the long-term commitment that the Holts may look to sell or lease the visitor center and museum to an interested commercial interest, thereby leaving TRSP without the ability to provide essential services to the public or office space for park employees. This loss of the visitor center and museum could mean that staff would need to be re-assigned to alternative work stations. This could leave the park open to increased vandalism on existing lands. Or, FWP would need to request funding for a visitor center from which to manage this National Historic Landmark.

Additionally, the 10 acres of riparian land would not be as easily accessible to the public for fishing or other recreational access, and the community would not have the expanded trails proposed in this project.

2.3 Alternative Considered but Eliminated from Further Analysis--Conservation Easement

This alternative was not investigated since the Holts are only interested in selling the parcels.

3.0 AFFECTED ENVIRONMENT AND ENVIRONMENT CONSEQUENCES

3.1 LAND USE

Parcel 1 has been used for agricultural purposes for at least the last century. Currently, this land is grazed on a rotating basis by the Holts. The land is irrigated, and the associated water rights would be transferred to FWP if it obtains the land.

Until 2008, Parcel 2 was also used primarily for agricultural purposes, associated with a small house located adjacent to the subject property. In 2008, the Holts began an expansion of a building on the property that eventually grew to be the visitor center and museum currently leased by FWP.

Parcel 3 is part of the Lolo Creek riparian system and is largely intact as such with a multi-tiered understory and a healthy cottonwood forest over-story.

Proposed Action: Under FWP ownership, Parcel 1 would remain as open space and would be managed for light recreational use (hiking, wildlife viewing, etc.) as part of TRSP. A trail would be constructed along the entry road to connect the park to the Highway 12 pedestrian trail. Long-term plans may include a more extensive trail system through this parcel (with associated interpretation) and a possible native prairie restoration project. With the deed restriction in place, development beyond trails and signage would be prohibited.

FWP would manage Parcel 2 in conjunction with the visitor center and museum. This would allow for parking, picnic areas, signage and park information. The visitor center and museum would continue operations consistent with current management, providing park information to visitors, a space for interpretive and educational programs, and community events. Additionally,

existing native plant beds established in 2010 could be used as a seed source for future restoration efforts at Travelers' Rest.

Parcel 3 would be managed for its high value as fish and wildlife habitat. Eventually a small trail could be constructed through the parcel to allow for more recreational access to the stream, wildlife viewing, and natural history education. A conservation easement was donated to FWP by the Holts in 2005. That easement prohibits any development other than trails and associated signage. FWP expects to transfer the conservation easement to the Five Valleys Land Trust prior to closing.

A search of the Montana Bureau of Mines and Geology Abandoned and Inactive Mines database for Missoula County did not identify any old hard rock mines (gold, silver, etc.) within any of the parcels. All mineral interests attached to the parcels would be transferred to FWP.

The Montana Department of Natural Resources and Conservation (DNRC) water rights database identifies 2.5 cfs as part of the larger 40-acre parcel from which FWP would acquire its 23.69 acres. FWP would receive a proportionate share of these rights at acquisition.

Any existing road easements attached to the parcels would transfer to FWP.

No Action: Under the No Action Alternative, FWP would not acquire the land. The Holts would be free to explore other land use options, including developing the property or seeking another buyer who may develop the property for residential or commercial purposes.

3.2 Aesthetics and Recreation Opportunities

Although Travelers' Rest is a cultural park, its location on Lolo Creek, within the community of Lolo and situated along the commuter corridor connecting Missoula with the Bitterroot Valley has meant that the fastest growing segment of visitation is recreational use by local residents. Acquisition of these parcels would allow FWP to better provide and manage this use.

Historically, all the parcels have been in open space, albeit in private ownership. As Lolo has grown over the years many of the open lands contiguous to the community have been developed, leaving a patchwork of ownership with little recreational access to Lolo Creek or other public lands.

There is little public access to Lolo Creek between Lolo Creek Campground and the confluence with the Bitterroot River (approximately 15 miles). Access to the rich fishery of Lolo Creek is a need for the community and the many visitors to the area.

Another growing segment of TRSP users are local residents who use the existing trail to walk or bike, either for exercise and/or to view the wildlife that inhabits the park. While there are many such opportunities in the greater Missoula area, there are few places in Lolo where residents can access natural areas easily.

Another community need is an alternative route to Lolo School for children who reside in the neighborhoods south of Travelers' Rest. Currently many of those children use Mormon Creek Road, which lacks a shoulder and is heavily traveled by motor vehicles.

Finally, schoolchildren from throughout the region would benefit from the increased education opportunities. Working in cooperation with TRPHA, more than 2,000 students from approximately 20 communities take part in place-based education at Travelers' Rest each year. The addition of these parcels would not only secure a year-round weatherproof facility for additional programs, but the lands in this proposal provide rich opportunities to increase the program offerings that are focused on Lewis and Clark history, Native American history of the area and natural history.

Proposed Action: With acquisition of these parcels, FWP would further meet the plans and ideals developed in the early phases of park planning and described in the Travelers Rest State Park Management Direction (Appendix B).

Parcel 1 would allow for trail linkages to existing trails and would connect communities, including providing a safe alternative route to Lolo School and the main part of town for those who live in the Mormon Creek Road area south of the park. Construction of a trail parallel to the entry road through this parcel would be a high priority for FWP if the acquisition is completed.

Parcel 3 protects high-value riparian area that is important to the Lolo Creek watershed. In addition to mink, beaver, river otter, muskrat, moose, white-tailed and mule deer, mountain lion, black bear, fox, coyote and bobcat, more than 125 species of birds have been documented on site. While protecting the cottonwood forest, this parcel would also greatly increase the recreational access at the park. When combined with other FWP lands at the park, approximately $\frac{3}{4}$ mile of Lolo Creek frontage would be accessible to the public for fishing and recreating (Figure 3).

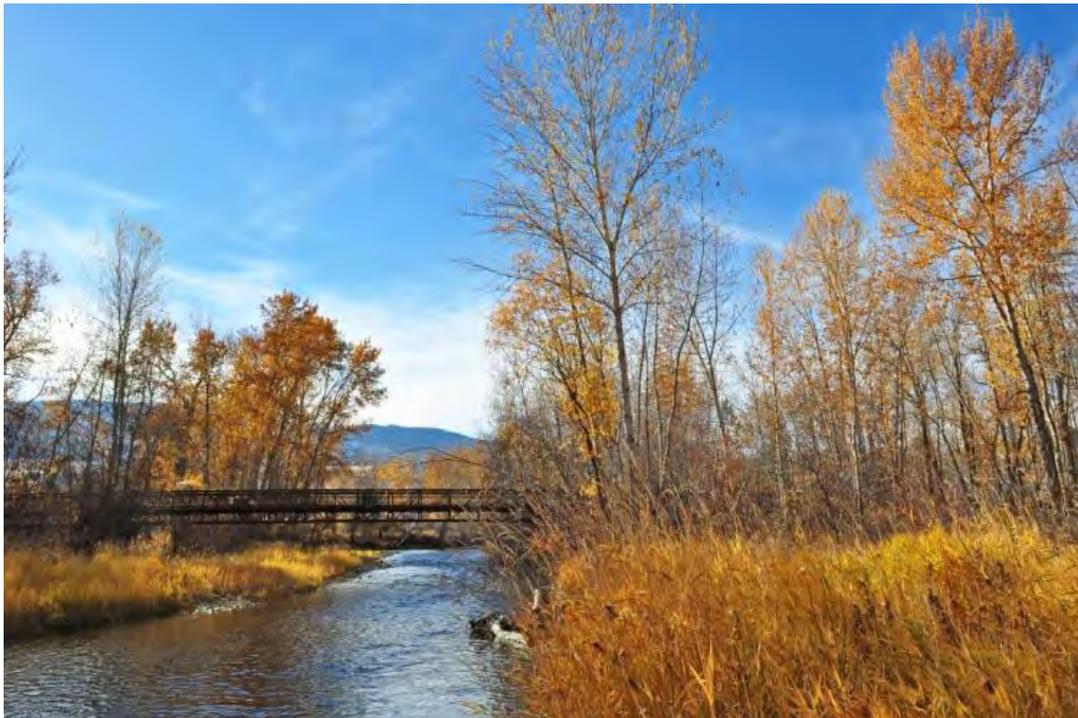


Figure 3. Lolo Creek in the proposed acquisition area (Parcel 3) for Travelers' Rest State Park.

The proposed acquisitions are expected to benefit a large number of visitors to the park, due to its location within the community. With visitation more than 20,000 per year and increasing, FWP anticipates addition of these parcels would encourage more nearby residents to use the park for recreation.

FWP would continue with the management of the parcels for open year-round nonmotorized recreation appropriate at a cultural site. Firewood cutting, off-road motorized use, horse riding, hunting and camping would be prohibited.

The purchase of Parcels 1 and 2 would protect them from potential commercial and/or residential development and would ensure the park entrance would maintain the open character of the park. The acquisition of the parcels by FWP would also provide buffer zones between developed areas and wildlands for the benefit of wildlife species.

With the location of the park in an urban area and limited resources, there would be challenges associated with managing recreation on the property. These challenges could be related to: public safety, law enforcement coverage, vandalism, maintenance, noxious weed management, and resource protection. FWP has a year-round site manager based at the park, as well as seasonal employees and a strong cadre of volunteers who provide everything from visitor information to park maintenance.

Recreation would continue to be managed in accordance with applicable FWP rules and regulations, including the Parks Biennial Fee Rule, Commercial Use Administrative Rules, and Commercial Use Permit Fee Rule. FWP would install appropriate boundary, entry and regulation signage, and additional site information would be available via brochures and FWP's Montana State Parks website (<http://stateparks.mt.gov>) to inform the public of the recreational opportunities and activities within the park.

No Action: If FWP decides not to purchase the parcels, the Holts would possibly search for other buyers. Public recreational opportunities afforded by these properties would likely be lost.

3.3 Vegetation

Parcels 1 and 2 are largely comprised of introduced short grasses commonly found on agricultural land in west-central Montana. Parcel 3 is a functioning cottonwood riparian area. The dominant overstory is black cottonwood (*Populus trichocarpa*), with much understory of alder (*Alnus spp.*), common snowberry (*Symphoricarpos albus*), woods rose (*Rosa woodsii*), willow (*Salix spp.*), and red-osier dogwood (*Cornus sericea*). The elevation of the parcels is approximately 3200 feet throughout.

Invasive weed species are present in limited areas within all the parcels. Exotic weed species include spotted knapweed (*Centaurea maculosa*), leafy spurge (*Euphorbia esula*), common hound's-tongue (*Cynoglossum officinale*), and Canada thistle (*Cirsium arvense*).

Proposed Action: FWP acquisition of the proposed parcels for Travelers' Rest would preserve the existing vegetation within the riparian area of Parcel 3 and provide opportunity for future grassland restoration activities on Parcels 1 and 2.

If FWP were to acquire these parcels, FWP would manage noxious weeds in accordance with the FWP's Integrated Noxious Weed Management Plan (2008) and the FWP Region 2 Parks Division Weed Management Implementation Plan (2010). In accordance with § 7-22-215, MCA, FWP is required to have the property inspected and to develop a site-specific noxious weed management plan agreement in cooperation with the local weed district. Any isolated patches of invading species would be eradicated by the most efficient and effective means (e.g., hand-pulling, digging and/or herbicide spot treatment), depending on weed species and site limitations. FWP's priority for herbicide control of noxious weeds on the subject lands would be to spray roadsides and previously disturbed areas. Roadsides and trail edges would be inspected annually for the purpose of detecting and eradicating any new weed introductions before infestations become established. As an additional preventive measure, FWP would confine motorized traffic to the existing road system and would otherwise avoid disturbance of the soil surface.

No Action: If the Holts retained ownership of the parcels, little would change for now. Parcels 1 and 2 would continue to be used for agricultural purposes in the short-term. If the parcels were sold, the exact level of this risk is unknown since the future impacts to resources and public access would be dependent on the desires of the property's new owner(s). It is difficult to predict how new ownership would affect existing vegetation and wildlife habitat resources, since actual landowner activities are unknown. There is the potential for residential and/or commercial development, which could negatively impact habitat for wildlife species and the open space feel of the park.

3.4 Wildlife Species

Despite the location in the urban interface with the Lolo community, Travelers' Rest State Park and the proposed acquisition parcels provide habitat for a wide diversity of species. To date, more than 125 species of birds have been documented on site, most of them in the cottonwood riparian area along Lolo Creek. Mule and white-tailed deer frequent the proposed acquisition, as well as an occasional moose and elk.

There is considerable evidence of furbearers and other mammals throughout the Park and proposed parcels. River otter, mink, muskrat, bobcat, black bear, mountain lion, fox and coyote have been observed or known to use the area on a regular basis.

In general, riparian areas are critical habitat for many bird species. Riparian areas and wetlands comprise approximately 4% of Montana's land mass, yet support more than 80% of all bird species found in the state. The riparian area along Lolo Creek in the proposed acquisition area provides a rich source of food and cover for the diversity of bird species found here. It also provides a critical link to the Bitterroot River Important Bird Area (IBA), which borders the park property to the southeast.

Table 1 lists Montana Species of Concern (SOC) and Threatened/Endangered species (US Fish and Wildlife Service status under the Endangered Species Act) that have been observed on the property or are predicted to occur within the vicinity².

Table 1. Montana Species of Concern (SOC) and Threatened/Endangered Species observed or expect to occur on the lands proposed for acquisition by FWP.

Common name <i>Species</i>	Status*	Habitat	Status in Vicinity of Parcels
<u>Species of Concern</u>			
Bull Trout <i>Salvelinus confluentus</i>	Threatened, SOC, Tier 1	Mountain streams, rivers, and lakes	Uses Lolo Creek in Parcel #3 as a migratory corridor.
Westslope Cutthroat Trout <i>(Oncorhynchus clarki lewisi)</i>	Sensitive, SOC, Tier 1	Coldwater streams	Uses Lolo Creek in Parcel #3 as a migratory corridor.
Fisher <i>(Martes pennant)</i>	SOC, Tier 2	Mixed conifer forest	The area has low quality fisher habitat.
Hoary Bat <i>(Lasiurus cinereus)</i>	SOC, Tier 2	Conifer and riparian forests	Suitable habitat, no surveys have been done to document presence/absence.
Fringed Myotis <i>(Myotis thysanodes)</i>	SOC, Tier 2	Riparian and dry mixed conifer forests	Suitable habitat, no surveys have been done to document presence/absence.
Bald Eagle <i>(Haliaeetus leucocephalus)</i>	Delisted, SOC, Tier 1	Riparian forests	Birds present and use all of the parcels for foraging
Clark's Nutcracker <i>(Nucifraga Columbiana)</i>	SOC, Tier 3	Conifer forests	Birds present & probably use all of the parcels.
Flammulated Owl <i>(Otus flammeolus)</i>	SOC, Tier 1	Low-mid elevation conifer forests with large trees	Suitable habitat, but not yet verified on site.
Great Blue Heron <i>(Ardea Herodias)</i>	SOC, Tier 3	Riparian woodlands	Birds present and use Parcel #3 frequently for foraging.
Northern Goshawk <i>(Accipiter gentilis)</i>	SOC, Tier 2	Mixed conifer forests	Birds present and use all of the parcels.
Pileated Woodpecker <i>(Dryocopus pileatus)</i>	SOC, Tier 2	Moist conifer forests	Birds present and use Parcel #3 extensively.
Lewis's Woodpecker <i>(Melanerpes lewis)</i>	SOC, Tier 2	Riparian forest	Birds present and documented breeding in Parcel #3.
Clark's Nutcracker <i>(Nucifraga Columbiana)</i>	SOC, Tier 3	Conifer forest	Birds observed on site.
Veery <i>(Catharus fuscescens)</i>	SOC, Tier 2-3	Riparian forests, shrubby habitats	Birds present, primarily in Parcel #3.
Golden Eagle <i>(Aquila chrysaetos)</i>	SOC, Tier 2	Grasslands	Birds present and use all of the parcels for foraging.
Cassin's Finch <i>(Carpodacus cassinii)</i>	SOC, Tier 3	Drier conifer forest	Birds observed on site.
Bobolink	SOC, Tier 3	Moist grasslands	Suitable habitat, but not yet verified

² Montana Natural Heritage database. Available <http://mtnhp.org/SpeciesOfConcern/?AorP=a>. Accessed 22 February 2012.

Common name Species	Status*	Habitat	Status in Vicinity of Parcels
<i>(Dolichonyx oryzivorus)</i>			on site.
Harlequin Duck <i>(Histrionicus histrionicus)</i>	SOC, Tier 1	Mountain streams	Birds verified using Parcel #3.
Brown Creeper <i>(Certhia Americana)</i>	SOC, Tier 2	Mixed conifer forests	Birds verified using Parcel #3.
Western Skink <i>(Eumeces skiltonianus)</i>	SOC, Tier 2	Rock outcrops	Suitable habitat, not verified.
<u>Potential Species of Concern</u>			
Barrow's Goldeneye <i>(Bucephala islandica)</i>	PSOC, Tier 3	Wetlands	Documented to occur in the area during migration.
An Ice Crawler <i>(Grylloblatta campodeiformis)</i>	PSOC		Unknown due to its nocturnal habits and activity at temperatures just above freezing.

*Tier 1 status identifies those species in greatest conservation need. PSOC are Potential SOC.

Proposed Action: FWP acquisition of the Travelers' Rest State Park parcels would protect riparian resources, which are important migratory corridors for songbirds, small mammals, amphibians and aquatic species. Preserving these parcels would also provide a small wildlife corridor connecting the Carlton Ridge area to the south and the Blue Mountain area to the north.

Parcel 1 includes highly desirable lands for residential or commercial development. The location along Highway 12 and just ¼-mile west of Highway 93 would likely make this land more desirable as time goes by.

FWP would manage these parcels for nonmotorized recreation opportunities appropriate in cultural parks. No impacts are expected to wildlife species if the proposed action is approved.

No Action: If no action were taken by FWP, the Holts may look to sell or develop the land in Parcels 1 and 2.

If the parcels were sold to a buyer for development, then the subject lands would be put at greater long-term risk of residential and/or commercial development and important local habitat for a host of game and nongame wildlife species might be impacted. Furthermore, easy public access to the park and the connectivity of neighborhoods could be lost. Exact level of risk of loss of habitat and public access are unknown, since they are dependent on the desires of the new property owner(s).

3.5 Fisheries Species and Water Resources

Lolo Creek originates near Lolo Pass on the Montana/Idaho border and flows 37 miles east to its confluence with the Bitterroot River. The Lolo Creek watershed drains 265,000 acres and is a main tributary to the Bitterroot River.

Historically, the stream hosted a prolific fishery of westslope cutthroat and bull trout. Although those populations have declined, Lolo Creek remains as important habitat for these species. This lower section of Lolo Creek is important migratory habitat for these species of concern, connecting the remnant populations of westslope cutthroat and bull trout to the Bitterroot River.



Figure 4. Lolo Creek in the proposed acquisition area (Parcel 3) for Travelers' Rest State Park

Floodplain: Nearly the entirety of Parcel 3 is identified as floodplain by US Federal Emergency Management Agency (FEMA) floodplain map database.

Water Rights: A search of the Montana Department of Natural Resources and Conservation (DNRC) water rights database identified 2.5 cfs as part of the larger 40-acre parcel from which FWP would acquire its 23.69 acres. FWP would receive a proportionate share of these rights at acquisition.

Proposed Action: FWP acquisition of Parcel 3 would add more than 900 feet of Lolo Creek frontage to Park lands, bringing the total creek frontage in the park to approximately $\frac{3}{4}$ mile. The acquisition would assist in stream preservation and restoration efforts for the Lolo Creek and Bitterroot River watersheds.

In recent years, millions of dollars of public and private funds have been used to acquire former Plum Creek Timber Company lands in the upper Lolo Creek drainage. A key part of the success of the investments is to connect the migratory fish routes to the Bitterroot River, and the acquisition of Parcel 3 can be an important component in that success.

The project would have no negative impacts on fisheries habitat, fish passage or aquatic species.

No Action Alternative: If FWP decides not to purchase the parcels, it is unknown how fisheries and water resources (riparian areas) would be affected by future ownership or management.

3.6 Soils

The soils through most of the existing park properties, as well as the parcels proposed for acquisition, have been associated with the Lolo Creek bottom at some time in the past few centuries.

A search of the Natural Resources Conservation Service Web Soil Survey found that most of Parcels 1 and 2 are categorized as Moiese gravelly loam, a well-drained soil. The soils in Parcel 3 are identified as Xerofluvents, a soil found in frequently flooded areas such as the riparian area along Lolo Creek.

The soils in the existing park lands are identified as Perma gravelly loam, a somewhat excessively drained soil, on the upper terrace, and as Riverrun-Gash complex soils on the lower terrace south of Lolo Creek. These soils are also fairly well drained.

Proposed Action: FWP acquisition of these lands would not be expected to have any significant impact on the soils. Future trail development could have minor impact to the soils, although due to the well-drained nature of the soils it is likely that those impacts would be minimal. Additionally, any trail construction in archeologically sensitive areas would be done with little or no ground disturbance, which would also protect the soils.

No Action Alternative: If FWP does not purchase the parcels, it is unknown how soils would be affected by future ownership or management.

3.7 Air Quality

Proposed Action: FWP acquisition of these lands would have no long-term impact on existing or future air quality in the surrounding area. Future trail development could have temporary and minimal impact to air quality during trail construction.

No Action Alternative: If FWP does not purchase the parcels, it is unknown how air quality would be affected by future ownership or management.

3.8 Noise and Electrical Effects

Proposed Action: FWP acquisition of these lands would not be expected to have negative impact on existing or future noise levels in the surrounding area. All vehicles would be

restricted to existing roads within the park. Existing utility easements would not be impacted by this acquisition.

No Action Alternative: If FWP does not purchase the parcels, it is unknown how noise would be affected by future ownership or management, but future development of Parcel 1 could lead to increased noise levels within the community.

3.9 Cultural and Historic Resources

FWP believes the entire human history of western Montana could be embodied at Travelers' Rest State Park.

The Lewis and Clark Expedition arrived on the banks of Lolo Creek (named "Travellers Rest" by Meriwether Lewis) on September 9, 1805. Here they camped before turning west on September 11, following an ancient trail over the Bitterroot Mountains in the most perilous part of their journey. The Expedition returned to Travelers' Rest on June 30, 1806 and stayed until July 3. On that day, the two leaders split the party in order to explore more of present-day Montana, remaining apart for nearly six weeks before reuniting near the confluence of the Missouri and Yellowstone Rivers.

A unique archeological research project in 2001-2002 verified the location of the Lewis and Clark Expedition campsite of September 9-11, 1805 and June 30-July 3, 1806. To date, this is the only scientifically confirmed Lewis and Clark campsite in the United States. The US Department of Interior moved the boundaries of the Travelers' Rest National Historic Landmark to the Park in 2006.

Prior to the arrival of Euro-Americans, however, the area around present-day Lolo was the homeland of the Bitterroot Salish people. Known in their culture as Tmsm, à (No Salmon), the area along Lolo Creek was an important gathering spot for the exchange of commerce and culture for the Salish and their allies, the Pend d'Oreille, the Nez Perce and others.

The Hellgate Treaty of 1855 included a provision that all lands "above the Loo-lo Fork" (south of Lolo Creek) be examined and perhaps set aside as a reservation for the Salish tribe. Although no such survey was completed, the Federal government opened the Bitterroot Valley to settlement. Many Salish peacefully remained in the valley until agricultural settlement precluded their traditional lifestyle. The last main band of Salish left the ancestral homelands of the Bitterroot Valley in 1891.

In 1854, Captain John Mullan traveled to what was called the "Lou Lou Fork" (Lolo Creek) making a cursory exploration of the Lolo Trail ("a good road is found for twenty miles up the stream, partly through prairie and open forest"). Gustav Sohon, an artist with Mullan's party, created a sketch of the area that captures the first known image of what is today Lolo and Travelers' Rest (Figure 5).



Figure 5 *Entrance to the Bitterroot Mountains by the Lou Lou Fork* by Gustav Sohon. Travelers' Rest is along the low line of hills to the right.

The earliest homesteads in the area were near present day Travelers' Rest in the 1880s. A large barn on the park grounds dates to the mid 1920s, a rustic reminder of Montana's agricultural roots.

FWP, in cooperation with the State Historic Preservation Office (SHPO), TRPHA, the Travelers' Rest Chapter of the Lewis and Clark Trail Heritage Foundation, and the Confederated Salish Kootenai Tribes developed a Cultural Resources Management Plan (CRMP) in 2006. Any lands added to the park would be managed in accordance with the CRMP.

Proposed Action: FWP's proposed acquisition would have a positive effect on cultural and historical resources by securing and managing them in public ownership. Under the Montana Antiquities Act (§ 22-3-433, MCA), all state agencies are required to consult with the SHPO on the identification and location of heritage properties on lands owned by the state, which may be adversely impacted by a proposed action or development project. This acquisition would provide a critical buffer to the National Historic Landmark properties, helping to ensure their preservation.

No Action: If the parcels were sold to a private party, it is unknown if or at what level historic sites would be affected. However, residential and/or commercial development could lead to degradation of these important resources.

3.10 Community and Taxes

All of these parcels are located within the unincorporated community of Lolo. Since Lolo is unincorporated, an estimation of population of the immediate area is difficult to define, but the population of the Lolo/Woodman area is estimated to be 3,800 people.

A high percentage of Lolo residents commute to Missoula for work, although agriculture, education, timber and service industries also provide local employment.

Property taxes assessed on the parcels total \$2,168 per year, based on Missoula County's current tax assessment.

Proposed Action: The proposed acquisition of the parcels is not expected to have any negative affects to the community of Lolo or other western Montana communities. With visitation at more than 20,000 annually and rising, Travelers' Rest State Park provides an economic stimulus for the Lolo community. The acquisition of these parcels would be expected to increase the opportunity for economic benefit for the community.

The proposed acquisition by FWP would also address several needs identified by the 2002 Lolo Regional Plan:

- "the community needs more parks for active recreation, conservation and historic preservation and interpretation"
- "the public has identified access to Lolo Creek and the Bitterroot River for fishing and recreation opportunities as desired goals"
- "Public acquisition of additional parklands could be considered in areas that are in need of recreation sites and cultural preservation, such as the Travelers' Rest National Historic Landmark"
- "Include areas of cultural resource and linear connections into a parks system through land acquisition, lease, donation, or in partnership with federal and state agencies, private individuals or organizations"
- "Establish linear parkways that connect important cultural and natural resources"

Purchase of these parcels by FWP would essentially eliminate future residential or commercial development of the property and potential revenues to the county that would have resulted. However, preclusion of residential and/or commercial development would also save the county from having to provide services (schools, infrastructure such as roads and maintenance, etc.) to newly developed areas.

The actual amount of property taxes paid to the County is not expected to change. FWP is required by state law to make tax payments to counties equal to the amount that a private landowner would be required to pay per § 87-1-603, MCA.

No Action: If the property were to remain under current use for agriculture, taxes paid to the County would likely remain the same as they are now. If the parcels were sold and used for

residential and/or commercial development, the amount of tax revenue paid to the County could be higher than the current level but the exact amount of change is difficult to predict at this time and would depend on plans/management by potential future landowner

3.11 Cumulative Impacts

Proposed Action: The proposed purchase would contribute to the long-term preservation of the Travelers' Rest National Historic Landmark, while increasing recreational opportunities for the residents of Lolo and west-central Montana. The addition of the visitor center and museum would establish Travelers' Rest State Park as a year-round destination for area residents and visitors to the area, increasing park visitation, interpretive programming and economic opportunity for the unincorporated community.

The long-term protection of the riparian area along Lolo Creek would assist in any future fisheries habitat restoration activities initiated by FWP or other partners and cooperators to improve habitat quality for native trout populations, as well as other aquatic and terrestrial species.

With proposed trail expansion within the park, Lolo neighborhoods would be better connected, providing alternate and safer routes to Lolo School and area residents with a quality outdoor recreational experience.

Additionally, State Parks in Montana provide significant economic benefits to local communities, and Travelers' Rest is no different. A survey of state park visitors in 2010 found that visitors to all Montana State Parks contributed \$289 million annually to Montana's economy, with nonresident spending creating 1,600 jobs statewide. In FWP Region 2, nonresidents spent more than \$22 million in 2010 and created nearly 300 jobs.

No Action: The implementation of the No Action alternative would eliminate these parcels from the broader development plans for Travelers' Rest State Park and jeopardize future preservation efforts for the riparian area or native grassland restoration projects. It may also require FWP to eventually construct a new visitor center at the park. The No Action alternative would impact public access to Lolo Creek and forego linking the park to existing nonmotorized trails in the community.

If the parcels were sold to private buyers, their existing natural resource values could be impacted if the parcels were developed for residences and/or businesses. Wildlife movement may change to navigate around newly developed sites.

Public access into the parcels and on to adjoining public lands could be allowed, altered or prohibited. Predicting potential long-term changes to the parcels' management under private ownership is not possible.

4.0 RESOURCE ISSUES CONSIDERED BUT ELIMINATED FROM DETAILED ANALYSIS

The Montana Environmental Policy Act (MEPA) provides for the identification and elimination from detailed study of issues, which are not significant or which have been covered by a prior environmental review, narrowing the discussion of these issues to a brief explanation of why they would not have a significant effect on the physical or human environment or providing a reference to their coverage elsewhere (Administrative Rules of Montana 12.2.434(d)). While the following resources are important, FWP anticipates they would be unaffected by the proposed action or if there are any effects, those influences could be adequately mitigated, and therefore these resources were eliminated from further detailed analysis.

4.1 Risk and Health Hazards

As part of FWP's due diligence, the Department would complete a hazardous materials survey prior to the property's acquisition.

5.0 NEED FOR AN ENVIRONMENTAL IMPACT STATEMENT

Based on the significance criteria evaluated in this EA, is an EIS required? No. Based upon the above assessment of the Proposed Action, which has identified a limited number of minor impacts which can be mitigated, an EIS is not required and an Environmental Assessment is the appropriate level of review.

6.0 PUBLIC PARTICIPATION

6.1 Public Involvement

Planning for the preservation and development of Travelers' Rest State Park has involved many different phases of public involvement, beginning with a design charrette held in the Lolo community in 1999, a full two years before the park was established.

The Traveler's Rest State Park Management Direction (Appendix B) was the result of two years of public involvement following the original 15-acre acquisition in 2001. Additional acquisitions in 2002, 2003, 2004 and 2005 were all part of the public process, with the parcels in question in this current EA document identified as crucial to achieving the overall goals of the park.

Additionally, this acquisition has been vetted through the Missoula County Open Space Bond process, with presentations by FWP and Five Valleys Land Trust at Open Space Land Committee meetings on February 2 and 16, 2012. The result of those meetings was a unanimous recommendation to fund up to 30% of the appraised land value. Subsequently, the project was reviewed and approved at a public meeting by the Missoula County Board of Commissioners on March 28, 2012.

Current Environmental Assessment:

Public notification of the EA release and opportunities to comment would be by:

- A statewide press release;
- Two legal notices in each of these newspapers: *Independent Record* (Helena), *Missoulian*, and *Ravalli Republic* (Hamilton);
- Direct mailing to adjacent landowners and interested parties;
- Public notice and posting the EA on the Fish, Wildlife & Parks web page: <http://fwp.mt.gov> (“Public Notices”).

Copies of this EA will be available for public review at FWP Headquarters in Helena, the State Library, Region 2 Headquarters in Missoula, Travelers’ Rest State Park in Lolo, and on the FWP web site.

This level of public notice and participation is appropriate for a project of this scope having few and limited physical and human impacts.

6.2 Duration of Comment Period

The public comment period will extend for thirty (30) days beginning April 20, 2012. Written comments will be accepted by FWP until 5:00 p.m. on May 21, 2012 and can be mailed to the address below:

Travelers’ Rest State Park
Attn: Loren Flynn
PO Box 995
Lolo, MT 59847

or email comments to: LFlynn2@mt.gov

or phone comments to: 406-273-4253

6.3 Timeline of Events

Draft EA public comment period	April 20 to May 21, 2012
FWP Commission for final approval	June or July meeting
MT Land Board for approval	After final funding is secured from private sources

6.4 Offices/Programs Contacted or Contributing to This Document:

Missoula County Assessor Office
Montana County Office of Rural Initiatives, Missoula
Montana Fish, Wildlife & Parks:
Lands Bureau, Helena
Legal Bureau, Helena

Parks Division, Helena and Missoula
 Wildlife and Fisheries Division, Missoula
 Montana Natural Heritage Program, Species of Concern database
 Natural Resources Conservation Service Web Soil Survey
 US Department of Agriculture, Soil Survey Database
 US Fish and Wildlife Service, Wetlands Database

7.0 EA PREPARATION

Loren Flynn, Park Manager, FWP, Lolo
 Lee Bastian, Region 2 Parks Manager, FWP, Missoula
 Kristi DuBois, Nongame Wildlife Biologist, FWP, Missoula
 Ladd Knotek, Fisheries Biologist, Region 2 FWP, Missoula
 Sara Scott, FWP Heritage Resources Specialist, Lolo
 Darlene Edge, Lands Agent, FWP, Helena
 Beth Shumate, FWP Trails Grant Coordinator, Helena
 Jack Lynch, Legal Counsel, FWP, Helena

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**Travelers' Rest State Park
Management Direction
April 21, 2003**

Historic Context

The Lolo area has been a crossroads of travel, culture, and commerce for hundreds of years. Located at the nexus of major American Indian trails, it is no surprise that the Lewis and Clark expedition was led here by a Shoshone guide in the fall of 1805. Camping along the banks of a stream they named "Travellers Rest Creek", the party spent three days in preparation for an arduous journey over the Bitterroot mountains. Enamored with the place, they returned on their eastward journey in 1806, led by a small group of Nez Perce. Again they rested, spending four days before splitting the party to explore more of what is now Montana. Because of the decisions made at Travelers' Rest camp, the location is one of the most significant along the length of the Lewis and Clark Trail. Archaeology completed in 2002 discovered physical evidence of the expedition, furthering the status of this unique and wonderful place.

Before and after these explorers stopped here, this area was used as a gathering place for many Indian tribes. The Salish, Nez Perce, and others lived, gathered, and hunted in the north part of the Bitterroot valley for millennia. It can be argued that this area has been the hub of history of western North America. Preservation of a portion of this historic location provides a unique opportunity to discuss the people, plants, and animals that make up the past, present, and future of western Montana.

The Vision

Travelers' Rest State Park will be a place that engages the imagination, the intellect and the hearts of visitors and local residents alike.

In order to attain this vision, Travelers' Rest State Park must complete the site and program development outlined in this document in order to provide an interactive, accurate, safe, and dynamic experience for the visitors. This narrative generally describes the various facilities and activities that are depicted on the Conceptual Master Plan (Appendix I), prepared by Kent Watson and Associates, Landscape Architects. The plan more or less depicts the ultimate park; however, it should be understood that the developments will be built as conditions and funding allow.

When this development is complete, visitors will access the park from U.S. Highway 12 via a road easement into the northern boundary of the park property. Well-placed highway signs will direct the visitors to the park entrance. The entrance to the access road and the park will be welcoming and attractively landscaped, using native vegetation. The 22'-wide paved access road will meander within a 60' right-of-way to the northwest corner of the park boundary. The road will not be fenced to maintain the rural and open feel that currently exists in the area. Small groups of native trees and shrubs (ponderosa pine, chokecherry, mock orange, e.g.) will be placed along the roadway to provide shade and aesthetic appeal. A pedestrian path will be constructed parallel to the road to accommodate foot and bicycle traffic. The access road will lead to the parking lot, which will also be paved. The parking lot will be a one-way loop that will provide parking for up to 75 passenger cars, six tour buses, and 10-20 recreational vehicles

at one time with additional space for overflow parking. Again, native shrubbery and trees (black cottonwood, ponderosa pine, e.g.) will be placed on the edge of the parking area to provide shade for visitors.¹ A pet area will be developed on an island in the parking area. Pets will be restricted to this area of the park.

Other visitor amenities will be developed in the area around the parking lot. Restrooms with flush toilets, drinking fountains, picnic areas, and informational and directional signage will be placed in convenient, safe, and appropriate locations.

Some visitor amenities must also be provided for visitors on the south side of the park near the administrative offices. A vault toilet, drinking fountain, a kiosk to provide interpretation and shade, a meeting room, and potentially a small visitor information center will be needed to accommodate visitors who want to spend more time on the site.

Interpretive and education programs are the backbone of the visitor experience at Travelers' Rest State Park and we will develop a comprehensive interpretive plan in the summer of 2003. Using the four identified storylines (please see Appendix II – Program Philosophy), a variety of delivery methods identified in the interpretive plan will be used to tell these stories.

- Interpretive Signs. Three to five, small wood, open-sided, covered kiosks (approximately 24' feet in diameter) will be erected between the parking lot and the riparian area.² Interpretive signs will be placed in these kiosks. Interpretive signs will also be used at the campsite overlook.
- Information Center. A larger kiosk (approximately 36' in diameter) will act as a visitor information center. This kiosk will be enclosed, and will require electricity. In this structure, visitors may ask questions, find area and park information, pay day-use fees, and purchase educational materials.
- Self-guided trails.³ A non-motorized trail will begin at the edge of the parking lot. This trail will be a minimum 6' wide to meet ADA standards and will be constructed of gravel, granite, or some aggregate material (not asphalt or concrete). The trail will pass through the curtain of cottonwoods, a physical reminder to visitors that they are passing from the present into the past. The trail will wind through the riparian area⁴, over a pedestrian bridge⁵, circle the historic campsite, and up to a bench that overlooks the campsite, before looping back to the bridge.⁶ An interpretive brochure will accompany this self-guided trail.

¹ Some of these trees should be large enough to provide some shade immediately, while others will be smaller and allowed to mature.

² As designed by the U.S. Forest Service. These kiosks will have hard surface floor (concrete or asphalt).

³ All trails in Travelers' Rest State Park will be non-motorized. Access will be restricted to foot and wheelchair travel unless specific segments of the trail provide a direct link to other non-motorized trails in the area. The width of those segments of the trail would be widened accordingly.

⁴ There are two overflow channels in this area that will need to be bridged. Each of these bridges will be less than 25 feet in length.

⁵ Like the kiosks, plans are underway to construct a bridge made of small material as designed by the U.S. Forest Service. This suspension bridge would be 120-140 feet in length and 6 feet wide to accommodate ADA standards, as well as management and emergency response requirements.

⁶ There is an existing and growing network of non-motorized trails in the Lolo and Bitterroot area. The trails at Travelers' Rest State Park should become a part of that network.

- Guided tours. Both paid and volunteer staff will provide guided tours of the site. These tours may follow the main trail, or a series of short, secondary paths where visitors may learn more about the history of this area.
- Living history and demonstration. Small areas will be cleared adjacent to the main trail, secondary paths, and near the parking lot to provide interpretive stations for presentation areas for a variety of living history performers and people who can demonstrate the skills and crafts utilized throughout time. Because some of these demonstrations may require fire or high impact activities (cooking, fire starting, dancing, e.g.), some of the areas near the parking lot will be hard surface. The plan includes a small amphitheater to be constructed on site for use with living history, demonstration, staff interpretive programs, and performing arts.
- Interpretive programs. Paid and volunteer staff will develop many interpretive programs to impart the vast history of the area. These programs will be conducted at a variety of locations, including the interpretive kiosks adjacent to the parking lot, another kiosk located near the historic overlook, or the amphitheater.
- Lectures and presentations. There are many interesting and scholarly aspects related to the history of Lewis and Clark, and the associated storylines of Travelers' Rest. Venues will be provided for presentation of these ideas to the public or to other researchers. The amphitheater, visitor information center, or administrative area can all provide space for these types of activities.
- Education programs and class field trips. Providing relevant educational resources to area schools is also a critical component of park development and sustainability. In addition to the interpretive tools described above, educational programs will be developed to meet curriculum guidelines for area schools. These programs will be presented on the site and in classroom space in the administrative area.
- A resource library. TRPHA is currently developing a resource library of materials related to the history of the area for use by staff and volunteers. Plans are to develop this library to be a resource also to visitors to the park.

The above listed tools and locations will be used to deliver the interpretive messages during the Lewis and Clark bicentennial in 2003-2006. Because of the significance of the site to the Lewis and Clark Expedition, that story, and the associated history of American Indians in the area, will always be an important component of the programming at Travelers' Rest State Park. In order to engage visitors long-term, other programs will be developed that talk about other historical aspects of the area, specifically natural history and the European settlement of the area. The foundation for these programs will be developed during the bicentennial years, with more of an emphasis placed on them in the post-bicentennial era. Some ideas for interpretation and development for these programs includes:

- A series of paths and educational materials to illustrate the natural ecosystems (riparian, grassland) on the existing park property and easements.⁷
- Educational programs focused on the ecosystems.

⁷ Additional properties may be acquired that would augment this system and link Travelers' Rest State Park to existing or future non-motorized trails.

- A native vegetation restoration and education program, This program would be used to showcase plants native to the area, as well as discuss their importance to Lewis and Clark, Native Americans, and the European settlers.
- Technology augmented programs. i.e. A computer lab with information specific to the stories told at Travelers' Rest.
- A "Homestead Museum." This would require acquisition of the land located immediately southwest of the existing park boundary, currently owned by Mr. Ralph Kulberg, and renovation of the historic barn located on that property. Coupled with the adjacent existing acreage slated for the native vegetation program, this will provide a unique area for a variety of programming options.
- Community events. The park may eventually provide place for community picnics, reunions, and other community events.

It is also important to note that Travelers' Rest State Park provides many recreational opportunities to residents and visitors. Fishing access to Lolo Creek, bird and other wildlife viewing opportunities, and a place for quiet strolls on designated walkways are all acceptable and encouraged uses of Travelers' Rest State Park.

Park Establishment

In 2001, The Conservation Fund purchased 15 acres believed to be the heart of the historic Lewis and Clark Travelers' Rest campsite located on the outskirts of present day Lolo, Montana from the Pat and Ernie Deschamps family. The property was donated to the Montana Department of Fish, Wildlife and Parks (FWP) and designated a State Park by the FWP Commission in March, 2001. Unable to commit the resources necessary to manage, develop, and interpret this site of national historic importance, FWP entered into a long-term management agreement (see Appendix I) with the Travelers' Rest Preservation and Heritage Association (TRPHA), passing management and financial responsibility to TRPHA. These two organizations will work collaboratively to prepare the park for significant visitation during the Lewis and Clark Bicentennial, but also to establish a framework that will ensure the long-term viability of the park for future generations. Additionally, TRPHA and FWP have chosen to work in concert with a variety of other organizations to create an enriching, sustainable, multi-faceted and multi-cultural experience for visitors and residents alike.

Much of the planning for Travelers' Rest State Park began before the property was in public ownership. In 1999, a design charette for the Lolo community was held to identify opportunities and obstacles facing this unincorporated community located just eight miles from one of Montana's major population centers. During this process, several opportunities (economic, cultural, aesthetic) were identified due to Lolo being the site of Travelers' Rest. There were also some obstacles and concerns identified at the same time (local infrastructure to support increased tourism, creating a sustainable visitation environment, creating historic, educational, and recreational opportunities for local residents and visitors). At that time the actual location of the Travelers' Rest campsite was suspected, but not known.

Following preliminary archaeological work, preservation of the site, and state park designation, TRPHA and FWP set out to build on the 1999 charette in creating site and program plans for the park. In June of 2002, a diverse planning team was brought together to create a vision for

development, education and interpretation. In addition to TRPHA and FWP, the team included Lolo community residents, representatives from the Confederated Salish and Kootenai Tribes, the Lewis and Clark Trail Heritage Foundation (and its Travelers' Rest Chapter), the National Trust for Historic Preservation, the Montana Community Development Corporation, the University of Montana, Missoula County, and members of the tourism and education community. The charge of this group was to arrive at a list of site and program recommendations to create an atmosphere at Travelers' Rest State Park that will not only promote visitation, but will also encourage park users to return.

The Opportunity

TRPHA, FWP and all the partners associated with Travelers' Rest State Park stand at the threshold of a unique opportunity. Having identified the historic campsite at the dawn of the bicentennial commemoration focuses a great deal of attention and visitation to the Lolo area. Finding physical evidence of the Lewis and Clark expedition provides immediate credibility as a significant site for visitors along the Lewis and Clark Trail.

With this credibility and enthusiasm, it is imperative that the organizations use this energy and attention to create a sustainable and dynamic operation that is a benefit to area residents and visitors while remaining financially sustainable.

This unique public/private collaboration should also continue to develop partnerships that will assist with site development, program creation, education curriculum development, and event planning. All parties involved should keep in mind that this relationship can be used as a model for similar situations in the future.

Because the very heart of the development of Travelers' Rest is a dynamic and engaging interpretive and education program, planning must also have a dynamic component while the site and programs are being developed. It is the intent of this Management Direction to act as an interim operating document until a long-range Management Plan can be developed. The long-range Management Plan will be developed as the attention from the bicentennial commemoration begins to wane. Due to the dynamic nature of this document, it should be reviewed at least annually and be updated when necessary.

Roles and Responsibilities

Travelers' Rest State Park is a part of the Montana State Park system and activities there must be consistent with any land owned by FWP and managed by the Parks Division.

FWP will provide technical assistance to TRPHA in the management of the site. This will include review of site and construction plans, review of programmatic objectives, assurance of public involvement, and environmental and cultural compliance.

FWP will also provide assistance in the form of labor, maintenance, minor supplies and equipment, when feasible from a financial and personnel standpoint. The concept of shared resources is integral to the success of the Park.

TRPHA will assume day-to-day management and operations of Travelers' Rest State Park. This responsibility will also include future site and programmatic development to meet the goals of TRPHA and FWP. TRPHA will manage the site in accordance with this document, the management agreement (Appendix I) and the statutes for Montana Fish, Wildlife and Parks.

Because of this unique management arrangement, TRPHA has been able to develop additional partnerships with the U.S. Forest Service, the Confederated Salish and Kootenai Tribes, the Bureau of Land Management, the National Trust for Historic Preservation, and others. The continued use of these partnerships will be critical to meeting the goals established by TRPHA and FWP.

Public Involvement

Public involvement in the preservation, development and interpretation of Travelers' Rest actually began long before FWP had acquired the site and has been an ongoing part of the planning process for Travelers' Rest State Park. In April of 1999, the Society of Landscape Architects and the Missoula County Office of Planning and Grants hosted a design charrette for the community of Lolo. Over 100 people had input into this process, including community leaders, local school children, professional planners and landscape architects, and interested members of the Lolo and western Montana community. Although the broad scope of this two-day session was the future of Lolo, much of the discussion focused on the inclusion of the Travelers' Rest site (which had been identified in 1998) as a major recreational, economic, cultural, and educational resource for Lolo. The outcomes of that charette, while never coalesced into a completed document, laid the foundation for future planning when the site was acquired in March, 2001.

The second phase of significant public involvement took place during the acquisition of the 15-acre property from the Deschamps family in early 2001. The Environmental Analysis public review generated 65 responses from interested parties, all of whom were in support of the acquisition and preservation of the site, as well as public access and interpretation.

The next phase of public participation came in the spring of 2002, when FWP purchased 10 additional acres on the north side of Lolo Creek and planned for the anticipated acquisition of a 4.5 acre parcel that abuts the southwest corner of the original 15 acre Deschamps property. During this public review process, 17 comments were received. Fifteen of these favored the acquisition and one favored it with concerns about private property rights. There was one dissenting opinion, from a landowner who wished to develop property overlooking the site, and who was facing some opposition for the proposed developments potential impacts to the historic viewshed associated with Travelers' Rest.

The planning team developed a conceptual Master Site Plan (see Appendix II). This plan allows for necessary development and provides an appropriate context for an interactive and meaningful interpretive and education program. The planning teams also helped craft a program philosophy (see Appendix III). This philosophy will assist staff and volunteers in developing program direction and content. These plans were brought before the public in a variety of ways. Two public meetings were held at the park in September of 2002. Over 20 individuals attended the meetings, and offered comments on the site plan and proposed program philosophy. The comments were generally positive and dealt mostly with specifics of the plan that would be best

addressed in a MEPA process. The proposed site and program directions have also been used at presentations in Missoula, Lolo, and Helena, where audience members have viewed the plans and had opportunity for comment. Additionally, the plans have been available to all park visitors since early August of 2002. In all, over 500 individual copies of the plans have been distributed to interested parties to date.

Planning Process Outcomes

The planning team decided on four major interpretive and educational themes at Travelers' Rest State Park; the significance of the site to the Lewis and Clark Expedition during its stays here in 1805 and 1806; the significance of the immediate area to the variety of Native American tribes who utilized the area as a campsite and crossroads for centuries; the European settlement of the area in the wake of the Lewis and Clark journey; and the natural history of the area, which was critical to the success and survival of indigenous people, Lewis and Clark and the pioneers. Each of these themes can be told in the context of those days in 1805 and 1806 when the explorers and their party chose the banks of "Travellers Rest" (now Lolo) Creek as a place of rest and preparation. In order to create this atmosphere, we must establish certain tenets that will guide all aspects of site and program development:

1. The landscape will be used wherever possible to tell the stories.
2. Although significant visitation is expected during the Lewis and Clark Bicentennial commemoration, development of park amenities (parking, restrooms, etc.) should not be built to accommodate the "worst case scenario" - but built to fit into the landscape so that management and maintenance costs can be sustained beyond the Bicentennial.
3. The cultural and natural resources of the park will be protected and the park will be safe, clean, accessible and well-maintained.
4. The park is an economic benefit to the Lolo area and a source of pride to residents. The park will be a good neighbor to surrounding residents and an integral part of the community.
5. Interpretation and education must be intricately interwoven into all program development.
6. The park will be managed in a way that is beneficial to wildlife native to the area.
7. Interpretive and education programs will integrate the different cultural and historical influences of the area. These programs will engage the intellect, the spirit, and the imagination.

Following the public review of this document and planned development, there will be additional planning. In the summer of 2003, TRPHA and FWP will develop an interpretive plan that will outline the type of programs that will be offered at the Park, the delivery methods to be utilized, and outline objectives to meet the program goals put forth in this document. During this process, the site plan will be meshed with the interpretive plan so that these two components compliment each other.

Current Buildings and Use

When the property was purchased from the Deschamps family, it included the existing ranch house and several out buildings. Many of these buildings are used for Park operations.

The house is currently in use as the administrative office building for TRPHA. The house has been reviewed by FWP engineers for adherence to building codes. Minor renovations may be needed to bring the building into compliance with the Americans with Disabilities Act (ADA). The house is generally in good repair, although it is likely new shingles will be needed in the coming five years. A report from FWP engineering staff is expected in early spring, 2003.

Associated with the house are two small outbuildings, one located north of the house, the other to the west (between the house and garage). These buildings will be used for storage of equipment necessary for operations (interpretive materials, gift store items, tools, signs, etc.). Each of these buildings is in good repair and will not likely be used for public access.

The garage has been utilized as a visitor greeting area. Plans are underway to renovate the garage in 2003 to improve the visitor services area and to provide current and future meeting and classroom space. This building, and the proposed renovation, has also been reviewed by FWP engineering staff and a design for this project that addresses public health and safety has been completed by FWP Design and Construction Bureau. TRPHA is developing a resource library that may eventually be located in this building.

The large barn on the property will be used for maintenance and equipment storage. It is anticipated that TRPHA will need to acquire mowers, snow removal, trail maintenance and fencing equipment and supplies, and other items necessary to maintain and groom the park. These items will be housed in this building.

There are other various structures on the grounds that are proposed for removal. There is a small weathered shed at the edge of the bench overlooking Lolo Creek and a corral and located to the south of this structure. Removal of these structures would open up the area and make it much more inviting and relevant to the visitor. This is slated to take place in the spring or summer of 2003.

Rules, Regulations and Management Concerns

Animal Control – Pets are allowed only in designated areas. All pets are required to be on leashes not over 10 feet long.

Motor Vehicles – Motorized vehicles are allowed only on the roads and in the parking areas of Travelers' Rest State Park.

Night Closures – Travelers' Rest is located adjacent to a residential area and must respect those neighbors. Day use is appropriate, with hours posted by season. Normal hours will not exceed dawn to dusk, although special events may extend beyond those hours on occasion.

It may be necessary to restrict or prohibit access to some areas or during specific times to protect culturally or biologically sensitive areas.

Noxious Weeds – Travelers' Rest State Park will be added to the Montana Fish, Wildlife and Parks Region 2 (west central Montana) Weed Management Plan.

Fees – Fees will be charged in accordance with the management agreement.

Other rules and regulations will be developed as the Park develops. In order to develop these rules and regulations, TRPHA will refer to the statutes for Montana Fish, Wildlife and Parks, FWP State Park Management Policies, FWP Parks Department personnel, and the Guide to Montana's State Parks, Fishing Access Sites and Wildlife Management Areas.

Access, Acquisition and Site Development

Travelers' Rest needs to be developed and maintained in a manner that uses the natural setting of the park to enhance the programmatic objectives. The historic integrity of the park must be preserved while providing appropriate access and opportunities for local residents and area visitors.

In 2002, FWP purchased 10 acres on the north side of Lolo Creek adjoining the original 15-acre parcel. This property was acquired for the express purpose of developing the main park access from U.S. Highway 12 and providing the bulk of visitor services in a manner that protects the integrity of the historic campsite location. Administrative access would remain at the current park entrance on Mormon Creek Road. It is possible that pedestrian and recreation access could also be directed to the Mormon Creek access.

In 2003, FWP will receive a conservation easement on an additional 10-acres adjoining the tract north of Lolo Creek. The purpose of this easement will be to construct secondary trails that will be utilized to disperse activity during peak use times as well as serve as an area to provide education and interpretation for the natural history portion of park programming.

There is a 4.5 acre parcel at the southwest corner of the original park property that is owned by Mr. Ralph Kulberg. Mr. Kulberg purchased the property in order to protect it from development. He has indicated that should evidence be found to support the theory that the park encompassed the historic campsite, Mr. Kulberg would like to transfer ownership of the property to Travelers' Rest State Park. Conversations are ongoing with Mr. Kulberg and this property may be acquired during 2003. Possible uses of this property include education programs, interpretive programs focused on the agricultural settlement of the area, and conversion of the historic barn located on this property to a museum and education center.

With these properties under the ownership of FWP and the management of TRPHA, the partner organizations believe they can adequately manage, interpret and preserve the site. Additional properties may become available and each opportunity will be assessed as it arises. More land for recreational access and opportunity, access to existing non-motorized trails, for fish and wildlife habitat protection, and as a buffer to the historic area could be beneficial in the long term.

Funding and Staffing Requirements

In 2002, TRPHA entered into a joint capital campaign (Montana's Lewis and Clark Legacy Campaign) to provide the bulk of funding necessary for site and program development. The other partners in this venture are the Pompey's Pillar Historical Association, the Montana Lewis

and Clark Bicentennial Commission, the Lewis and Clark Interpretive Center Foundation, and the Montana Historical Society. TRPHA expects to receive \$1 million from this campaign by 2006, with specific funding objectives (see Appendix IV).

Ongoing maintenance and operations funding will continue to be funded by TRPHA from a variety of sources. The organization will continue to develop a diverse funding stream including state and federal agencies, private contributions, entrance fees, and in-kind contributions.

TRPHA received funding from the Rural Community Assistance Program of the U.S. Forest Service. This appropriation assures operations through the end of 2003. It is expected that entrance fees, program fees, and individual contributions will fund the bulk of day-to-day operations in 2005 and 2006. Therefore a critical need is to find the necessary funding for operations in 2004 (expected to be \$150,000-\$200,000). The development of an endowment to ensure operations funding after 2006 is also a critical need in the next five years.

The organization currently employs an Executive Director, a Project Associate and an Interpretive Specialist (a position funded jointly by FWP and TRPHA). The individuals who fill these positions are responsible for the daily operations of TRPHA and Travelers' Rest State Park including fundraising, planning, community outreach, education and interpretive program development, and administration. Additional interpretive, seasonal, and maintenance staff will be added as needed and as funding allows.

Volunteers will continue to play a significant role at the park. Interpreters, groundskeepers, custodians, greeters, and gift shop staff should be largely comprised of volunteer or stipend rewarded staff.

While other future staffing needs are not clearly defined at this time, it may be desirable for TRPHA to add a part-time fundraising staff member during the next 1-3 years, should funding permit.

Current Operating Environment

Travelers' Rest State Park opened to the public for the first time in May, 2002. Currently, all administrative and visitor services take place on the south side of Lolo Creek. The park is accessed from U.S. Highway 93 and Mormon Creek Road. A small parking area has been established and may be improved with gravel in 2003. Portable toilets are now in use, but TRPHA has funding to install a vault toilet in 2003. This would not only address visitor comforts and convenience in the short-term, but provide long-term restroom facilities for park users.

The historic campsite is exposed to the sun, so plans are underway to construct a covered kiosk near the campsite to provide shade and interpretive area. This kiosk is identical to the interpretive kiosks to be constructed on the south side of Lolo Creek. Again, this development addresses immediate and long-term needs for shelter and an interpretive area in this location.

Interpretative opportunities are expanding at Travelers' Rest. A self-guided interpretive path opened in the spring of 2003. Paid and volunteer staff provide regularly scheduled interpretive

programs for visitors year round. the park also offers a weekly presenter series during the summer and special events around the anniversary dates of the Lewis and Clark stops at the site. TRPHA also offers an active outreach program for schools and community groups, providing interpretation and information about Travelers' Rest.

A project is underway to convert the original garage into a visitor information area, bookshop and gift store, exhibit space, and meeting space. Although visitor information and sales of educational materials will eventually be moved to the north side of the creek, this space can continue to act as meeting and exhibit space into the future.

Future Development Timeline and Triggers

It is critical that site development proceed as quickly as possible so that the park will be prepared to provide services and programs for visitors during the Lewis and Clark Bicentennial. It is also imperative that the constructions parallel program creation. While it is the intent of the partners to use the land to tell the story wherever possible, it is also necessary to provide comfort, safety, and educational opportunities for our visitors. Future development is dependent on funding and future planning and design elements. It is the intent to re-locate the entrance and visitor amenities to the north side location by the spring of 2005, to coincide with the heaviest visitation related to the Lewis and Clark Bicentennial. Timelines for this development are dynamic, but completion of certain steps will trigger succeeding steps. The sequence of events:

1. Complete design of pedestrian bridge over Lolo Creek.
2. Begin design of access road, parking lot, restrooms, water supply.
3. Complete interpretive plan. Identify elements of interpretive plan that will effect location of kiosks, trails, etc.
4. Begin design of kiosks, trails, and interpretive signs.
5. Secure funding for bridge construction.
6. Begin construction of access road, parking lot, restrooms, water supply.
7. Begin bridge construction.
8. Begin construction of main trail⁸, interpretive areas, kiosks.
9. Complete construction of access roads, parking lot, restrooms, water supply.
10. Complete construction of kiosks and interpretive signs.
11. Complete trail construction.
12. Complete bridge construction.
13. Add directional and informational signs

Program Development

Interpretive and education programming will be the backbone of Travelers' Rest State Park. A diverse, multi-disciplinary program will provide a foundation of sustainability for the organization.

⁸ It is important that the archaeological record be preserved on the site. There is no indication of important cultural resources in the area north of Lolo Creek. TRPHA and FWP will work with the State Historic Preservation Office (SHPO) to preserve the integrity of the archaeological record in the historic campsite – and at all locations on the site.

TRPHA and FWP have jointly funded an Interpretive Specialist to oversee program development at the park. Additionally, TRPHA has received funding to hire a Salish tribal member to develop interpretive programs related to Salish and other Native American use in the area.

A comprehensive interpretive plan will be developed during summer and fall of 2003. This plan will not only outline which delivery methods are best suited for each of the stories on the site, but also create a timeline for creation of the elements of the interpretive plan. Once completed, the interpretive plan will be added as an addendum to this document.

Future Operating Environment

Much of the future operating environment has been outlined in the “Vision” section of this document. Once the entrance has been moved to the Highway 12 location, the administrative offices will remain in their current location. Staff and administrative access will remain from Mormon Creek Road. Meeting areas and classrooms will also remain in the existing administrative area.

Public access will be from Highway 12. Interpretive and education programs will take place at designated areas across the site. The bulk of visitor services will be located on the north side of Lolo Creek, with minimal services available near the administrative area. This approach will leave the historic campsite area largely undeveloped, allowing visitors to experience Travelers’ Rest as it was 200 years ago – and beyond.

Summary

This unique partnership provides great opportunity for creating a public/private management model for Montana. The critical aspect will be developing the infrastructure, programs, and visitor experience on a very short timeline to prepare for the Lewis and Clark Bicentennial Commemoration. TRPHA, FWP, and other partners are committed to the vision and the future of Travelers’ Rest and will make its success a priority for the coming years. As the intensity of the bicentennial wanes, a long-term management planning process for Travelers’ Rest State Park will begin in 2005.

There is an opportunity to create a legacy at Travelers’ Rest. This opportunity must not be missed.

912-1

MDT AND DOA: TRANSFER OF STATE
FACILITY AT FAIRGROUNDS TO LEWIS AND
CLARK COUNTY

REQUEST FOR APPROVAL**Transfer of State Facility at Fairgrounds to Lewis and Clark County under authority of §77-2-351, MCA****September 17, 2012**

REQUEST: The Department of Natural Resources, on behalf of the Department of Administration (DOA) and Department of Transportation (DOT), requests final approval for transfer of the site commonly known as the Helena Maintenance Facility property at the Lewis and Clark County Fairgrounds to Lewis and Clark County (**map in Exhibit 1**).

LOCATION: The property is at the corner of Custer Ave and Henderson Ave and comprises 9.509 acres, more or less. The property is in the southwest quarter of Section 13, Township 10 North, Range 4 West, P.M.M., Lewis and Clark County, Montana, and is legally described as Block 11 through 14 of the Rosedale Addition to the City of Helena Townsite.

BENEFICIARY: This is non-trust land owned by the State of Montana.

AUTHORITY: §77-2-351, MCA, authorizes the Board of Land Commissioners to dispose of, sell, or exchange certain state lands for less than market value, if the receiving entity makes a binding commitment to use the property to provide a community service or a benefit that fulfills a public purpose.

PROPOSAL: As provided by 77-2-351, MCA, this proposal will transfer the property to L&C County in exchange for the County's commitment "to use the property to provide a community service or benefit that fulfills a public purpose", in this case to be used as part of the County fairgrounds complex. No other compensation or consideration is proposed.

This is the last portion of the former Montana State Fairgrounds property held by the State of Montana. Three previous grants of state land under the authority of §77-2-351, MCA were made to Lewis and Clark County in 1997, including the area of the current fairgrounds to the north of the subject property, and Ryan Exchange Park to the south. The granted lands were previously leased by the County.

DOA is the custodian of the subject property. The subject property is currently used by the DOA, the MDT and the Montana Historical Society (MHS) for storage. Thirteen buildings exist on the site (**see Exhibit 2**). DOA State Surplus Property Bureau occupies a recently constructed metal building and open lot on the east side of the subject property for storage, property management, and surplus equipment and vehicle auctions. MHS uses five buildings along the northern edge of the property for storage of historic materials. One other building is currently leased to the County search and rescue; that organization is presently looking to relocate for reasons unrelated to this proposal.

The County intends to redevelop the property into additional parking for the fairgrounds and the Ryan ball fields complex to the south, as well as reconfigure the entrance into the fairgrounds to provide for easier traffic flow. The County may retain one or more of the buildings on the property for administrative purposes.

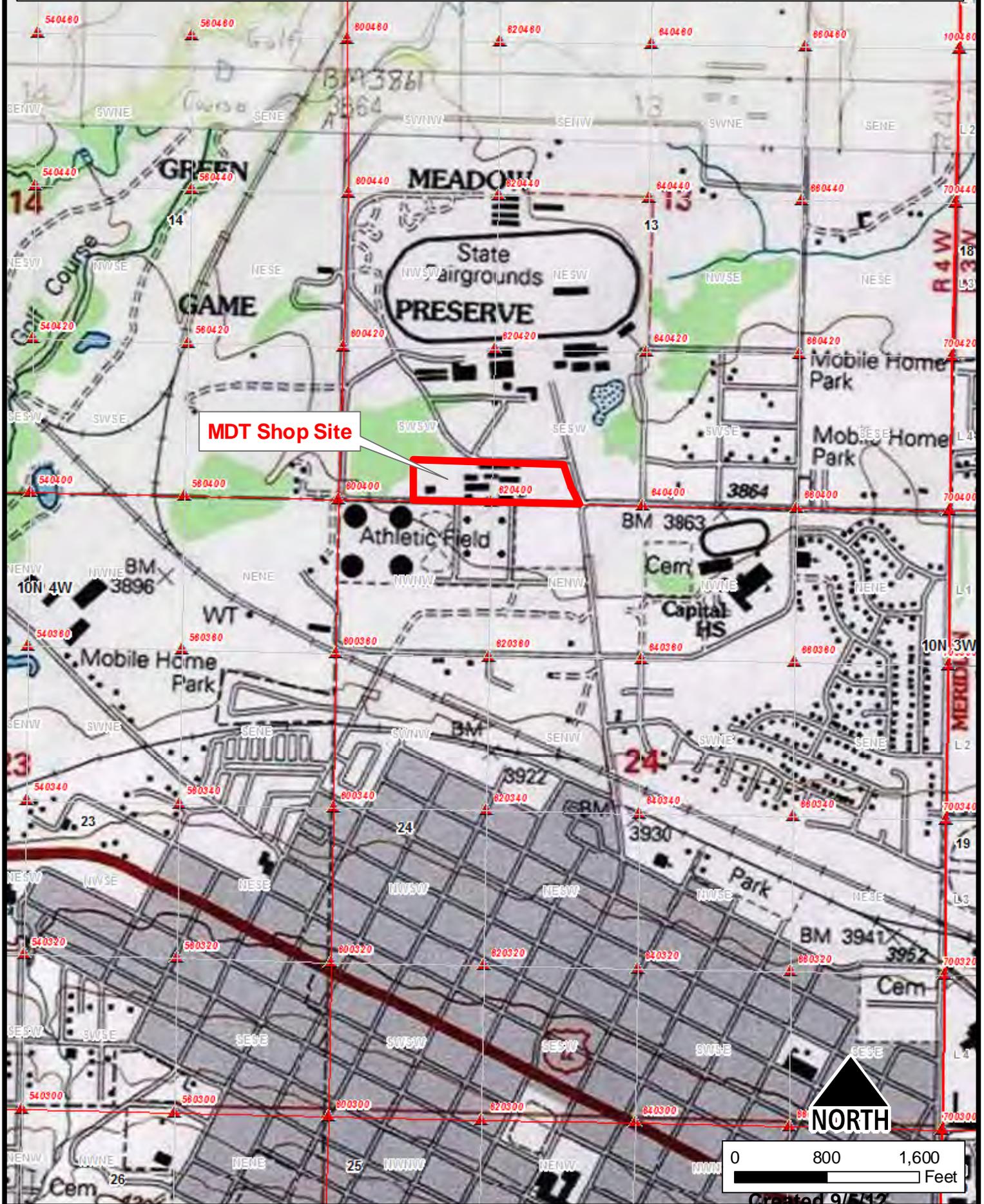
The County's intended redevelopment of the property will occur once the existing tenants have relocated. Following transfer, the County will lease the buildings back to the existing tenants at no cost. The County has agreed to provide five year leases with the option to renew for another five years.

PROCESS:

- In accordance with §77-2-351, MCA, DNRC completed a 60 day public notice period and opportunity for public comment which ended August 31. Weekly legal notices advertising the 60 day notice and comment period have been published in the Helena Independent Record. No comments were received.
- DOA completed an Environmental Assessment and determined that the proposed transfer is a categorical exclusion. A 30 day comment period began August 1 and ended August 31. No comments were received.
- The State Historic Preservation Office has requested an inventory of the buildings on the property. MDT is currently conducting the inventory, which will be completed before the property is transferred to the County.
- A retracement survey (**preliminary survey attached as Exhibit 3**) will be filed prior to issuance of the grant deed.
- On August 24, DNRC presented the proposal to the Legislative Council as required by §77-2-351, MCA. The Council offered no recommendations or concerns. The Council's response to the Land Board is attached as **Exhibit 4**.
- The land and buildings were appraised for \$640,000 by an independent appraiser in August 2012.
- Ownership of the property will be transferred to the County via a grant deed (draft **Grant Deed in Exhibit 5**). To meet the intent of §77-2-351, MCA the deed will contain a reversionary clause that states if the property ceases to be used for a public purpose, title to the land will revert to the State.

AGENCY RECOMMENDATION: The Department recommends that the Land Board grant final approval of the transfer of this property to Lewis and Clark County.

MDT Maintenance Shop Site at Lewis and Clark County Fairgrounds



MDT Shop Site



Created 9/1/12

LEWIS AND CLARK COUNTY SITE EXHIBIT

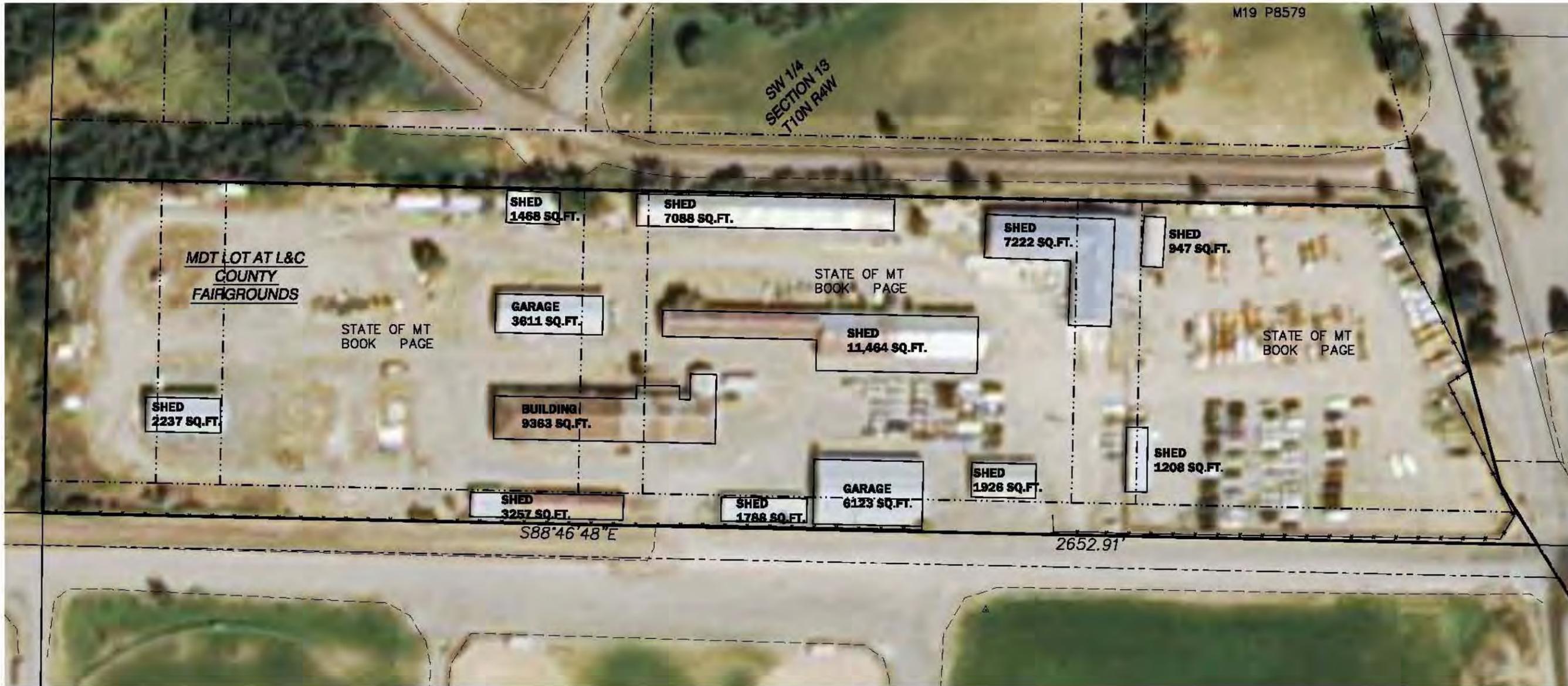
LOCATED IN SW 1/4 SECTION 13 T10N R4W, P.M.,M.
LEWIS AND CLARK COUNTY, MONTANA

THE PURPOSE OF THIS EXHIBIT IS TO SHOW THE EXISTING BUILDINGS AND APPROX. SQ FOOTAGE THEREOF OF BUILDINGS OCCUPYING THE MDT LOT AT THE FAIRGROUNDS.



STN	REVISION	BY	APPR	DATE

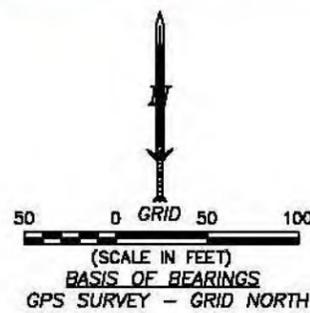
DESIGNED BY: T. STARK, PLS
 DRAWN BY: J.G. Fairgrounds Rebrandment
 CHECKED BY:
 DATE: 07/12
 PROJECT NO.
 FILE



PROJECT TITLE
**LEWIS AND CLARK COUNTY
 FAIRGROUNDS**
Helena, Montana

SHEET TITLE
**MDT LOT AT FAIRGROUNDS
 LEWIS AND CLARK COUNTY
 SURVEY EXHIBIT**

SHEET
1
 9/5/12



- LEGEND:**
- EDGE ROAD
 - FOUND MONUMENT, OR AS NOTED
 - EXISTING FENCELINE



CERTIFICATE OF SURVEY

RETRACEMENT SURVEY OF A REMAINING PORTION OF THAT LAND DESCRIBED IN DEED BOOK 80 PAGE 67 KNOWN AS BLOCKS 11,12,13&14 OF THE ROSEDALE ADDITION TO THE CITY OF HELENA, MONTANA.

SW 1/4 SECTION 13 T10N R4W, P.M.,M. LEWIS AND CLARK COUNTY, MONTANA

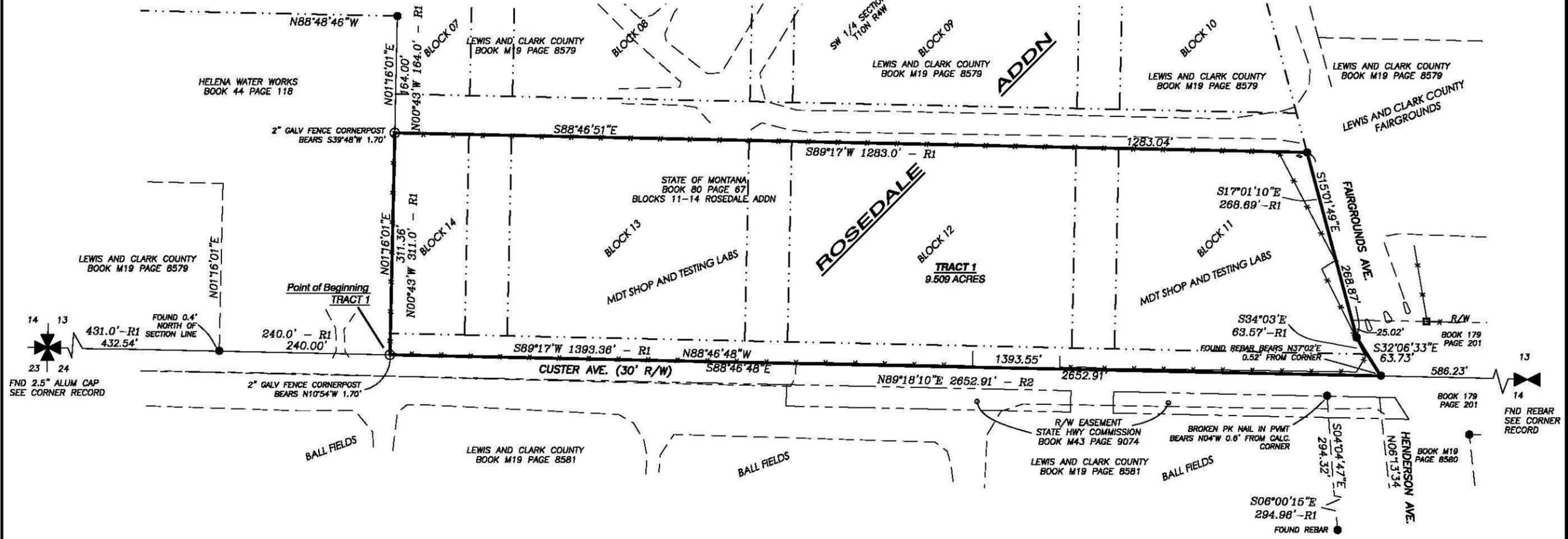
STATE OF MONTANA DEED BOOK 80 PAGE 67 BLOCKS 11-14 ROSEDALE ADDITION

LEGAL DESCRIPTION - TRACT 1:

A TRACT OF LAND SITUATED IN THE SOUTHWEST 1/4 OF SECTION 13, T10N R4W, P.M.,M., LEWIS AND CLARK COUNTY, MONTANA AND BEING ALL OF BLOCKS 11, 12, 13 & 14 OF THE ROSEDALE ADDITION TO THE CITY OF HELENA, MONTANA DEEDED TO THE STATE OF MONTANA BY DEED RECORDED IN BOOK 80 PAGE 67 RECORDS OF LEWIS AND CLARK COUNTY, MONTANA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH SECTION LINE OF SAID SECTION 13 AND ALSO BEING THE SOUTHEAST CORNER OF THAT LAND DESCRIBED IN DEED BOOK 44 PAGE 118; THENCE NORTH 01°16'01" EAST ALONG THE EAST LINE OF SAID DEED 311.36 FEET; THENCE SOUTH 88°46'51" EAST 1283.04 FEET TO THE WEST LINE OF FAIRGROUNDS AVENUE; THENCE SOUTH 15°01'49" EAST ALONG SAID WESTERLY LINE 268.87 FEET; THENCE SOUTH 32°06'33" EAST 63.73 FEET TO THE SOUTH LINE OF SAID SECTION 13; THENCE NORTH 88°46'48" WEST ALONG SAID SOUTH LINE 1393.55 FEET TO THE POINT OF BEGINNING, CONTAINING 9.509 ACRES OF LAND, MORE OR LESS, ALL ACCORDING TO THE ATTACHED DRAWING WHICH IS HEREWITH INCORPORATED IN AND MADE A PART OF THIS LEGAL DESCRIPTION AND IS SUBJECT TO ALL EASEMENTS AND RIGHTS OF WAY PERTINENT TO THIS TRACT.

NOTE: STREET AND ALLEYS NORTH OF BURWOOD STREET (CUSTER AVE.) WERE OFFICIALLY CLOSED, VACATED, AND ABANDONED BY BOOK B OF ROADS PAGE 139



LEGEND:

- FOUND SECTION/QUARTER SECTION CORNER AS NOTED
- FOUND 1 1/4" YPC "2376ES" OR AS NOTED
- FOUND 4"x4" CONC RIGHT OF WAY MONUMENT
- SET 5/8" X 24" REBAR WITH 2" ALUMINUM CAP MARKED "STARK 12249LS"
- FENCE LINE
- CALCULATED LOT LINES
- RIGHT OF WAY/BLOCK LINE
- RECORD DIMENSION PER UNFILED RETRACEMENT BY LOUIS FONTANA 2376ES
- RECORD DIM PER CORNER RECORDS
- EDGE ROAD

CERTIFICATE OF COUNTY TREASURER: I CERTIFY THAT, PURSUANT TO §76-3-207(3) OF MCA, THAT ALL REAL PROPERTY TAXES AND SPECIAL ASSESSMENTS ASSESSED AND LEVIED ON THE LAND DESCRIBED AND ENCOMPASSED ON THIS SURVEY HAVE BEEN PAID.

MDT GEO CODE: EXEMPT DATED: 2012 LEWIS AND CLARK COUNTY TREASURER

CERTIFICATE OF EXAMINING LAND SURVEYOR REVIEWED FOR ERRORS AND OMISSIONS IN CALCULATIONS AND DRAFTING THIS DAY OF 2012 PURSUANT TO §76-3-611(2)(a), MCA

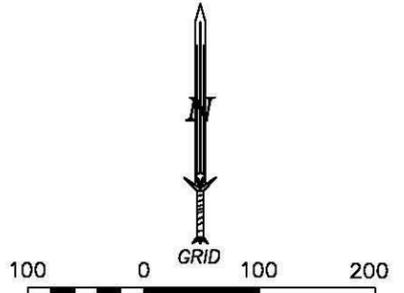
EXAMINING LAND SURVEYOR REG. NO.

CERTIFICATE OF EXEMPTIONS: EXEMPTION (1): THIS SURVEY IS FILED IN ACCORDANCE WITH THE PROVISIONS OF §76-3-404(1)(a) MCA, TO WIT, "PROVIDES MATERIAL EVIDENCE NOT APPEARING ON ANY MAP FILED WITH THE COUNTY CLERK AND RECORDER OR CONTAINED IN THE RECORDS OF THE UNITED STATES BUREAU OF LAND MANAGEMENT;"

NOTE 1: THE PURPOSE OF THIS CERTIFICATE OF SURVEY IS TO RETRACE AN EXISTING DEED DESCRIPTION. NO DIVISIONS CREATED. NOTE 2: THE SURVEYOR HAS PERFORMED NO INDEPENDENT RESEARCH FOR EASEMENTS OF RECORD, ENCUMBRANCES, COVENANTS OR ANY OTHER EVIDENCE OR FACTS THAT A ACCURATE CURRENT AND COMPLETE TITLE SEARCH MAY DISCLOSE. ALL IMPROVEMENTS SHOWN HEREON ARE FOR INFORMATIONAL USE ONLY.

CERTIFICATE OF PROFESSIONAL LAND SURVEYOR: I, THOMAS E. STARK, A REGISTERED LAND SURVEYOR IN THE STATE OF MONTANA DO HEREBY CERTIFY THAT I HAVE PERFORMED THE SURVEY AS SHOWN ON THE ATTACHED CERTIFICATE OF SURVEY, DURING SUMMER OF 2012 AND THAT THE MONUMENTS, EITHER FOUND OR SET, ARE AS SHOWN.

THOMAS E. STARK DATE MONTANA REG. NO. 12249LS



(SCALE IN FEET) BASIS OF BEARINGS: GPS SURVEY MONTANA STATE PLANE COORDINATE GRID BEARINGS, GROUND DISTANCES Ø = -1°52'07"

CERTIFICATE OF SURVEY NO.

OWNERS: STATE OF MONTANA PURPOSE: DEED RETRACEMENT REQUESTED BY LEWIS AND CLARK COUNTY

1/4	SEC.	T.	R.
<input checked="" type="checkbox"/>	13	10N	4W
<input type="checkbox"/>			

Principal Meridian, Montana
Lewis and Clark County

RPA
ROBERT PEGGA & ASSOCIATES
CIVIL
ENGINEERING-TRANSPORTATION-PLANNING
SURVEYING
825 CUSTER AVE.
HELENA, MT 59601
(406) 447-1000
www.rpa-mt.com

FILENAME: LC FAIRGROUNDS_RETRACEMENT DATE: JULY 2012 1 OF 1

Created 9/5/12



Legislative Council

62nd Montana Legislature

SENATE MEMBERS

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JEFF ESSMANN
JIM PETERSON
MITCH TROPILA
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MARGARET MACDONALD
TOM MCGILLVRAY
JESSE O'HARA
JON SESSO

COMMITTEE STAFF

SUSAN FOX, Executive Director
TODD EVERTS, Legal Division Director
DAWN FIELD, Secretary

RECEIVED

AUG 28 2012

D.N.R.C.

912-1

PO BOX 201706
Helena, Montana 59620-1706

(406) 444-3064

FAX (406) 444-3036

August 27, 2012

Board of Land Commissioners
c/o Ethan Stapp, DNRC Trust Lands Division
1625 Eleventh Ave.
Helena, MT 59620

To the members of the Board of Land Commissioners:

On August 24, 2012, the Legislative Council received a consultation on the proposed land transfer of state property to Lewis and Clark County in the vicinity of the Lewis and Clark County fairgrounds (see attached). As provided in 77-2-351, MCA, the Legislative Council adopted a motion that the consultation occurred. The Council made no recommendations or noted any concerns.

Respectfully submitted on behalf of the Legislative Council,

A handwritten signature in cursive script that reads "Susan B. Fox".

Susan Byorth Fox, Executive Director
Legislative Services Division

CI0429 2240sfxa.

**THE STATE OF MONTANA
GRANT DEED TO STATE LAND**

KNOW ALL MEN BY THESE PRESENTS that the **STATE OF MONTANA DEPARTMENT OF ADMINISTRATION** (hereinafter referred to as the "Grantor") acting by and through the State Board of Land Commissioners (hereinafter referred to as the "Board"), whose address is P.O. Box 201601, Helena, MT, 59620-1601, in consideration of Grantee's promise to use the following lands for public purposes under §77-2-351, MCA, does hereby grant to **LEWIS AND CLARK COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF MONTANA** (hereinafter referred to as the "Grantee"), whose address is Lewis and Clark County, 316 North Park Avenue, Helena, MT, 59624, the following:

A tract of land situated in the Southwest ¼ of Section 13, T10N, R4W, P.M.M., Lewis and Clark County, Montana and being all of Blocks 11, 12, 13 and 14 of the Rosedale Addition to the City of Helena, Montana and being more particularly described as follows:

Beginning at a point on the South section line of said Section 13 and also being the Southeast corner of that land described in Deed Book 44 Page 118; thence North 01°06'01" East along the East line of said deed 311.36 feet; thence South 88°46'51" East 1283.04 feet to the west line of Fairgrounds Avenue; thence South 15°01'49" East along said Westerly line 268.87 feet; thence South 32°06'33" East 63.73 feet to the South line of said Section 13; thence North 88°46'48" West along said South line 1393.55 feet to the Point of Beginning, containing 9.509 acres of land, more or less, all according to the attached drawing which is herewith incorporated in and made part of this legal description.

PROVIDED, in accordance with §77-2-351, MCA, in the event that the above-described land shall cease to be used for a public purpose or cease to be owned by the Grantee, upon written notice to the Grantee by the Grantor, title to the above-described land shall revert to the State of Montana. Within 30 days of such notice of reversion, the Grantee may request a contested case hearing before the Board or the Board's designee to determine whether the terms of this Deed have been violated and reversion of this land is warranted. The Board shall be the trier of fact and its decision shall be reviewable by the local District Court as any other decision under a contested case proceeding under § 2-4-701, et seq., MCA.

PROVIDED FURTHER, that the Grantee shall fully comply with the Montana Antiquities Act, 22-3-421, et seq., in its management and control of the above-described property, as if it were an executive agency of the State of Montana.

PROVIDED FURTHER, that this conveyance is subject to any and all valid reservations, exceptions, restrictions, limitations, conditions, or provisions, if any, as may be contained in Patents, Deeds, grants, or laws of the United States of America; and EXCEPTING AND RESERVING to the State of Montana all title in and to all coal, oil, oil shale, gas, phosphate, sodium and other mineral deposits, geo-pressured brine, associated gases and steam in whatever form, and any other geothermal resources having a temperature greater than 40° C in the above described land which have not already been reserved by the United States, except sand, gravel, building stone, and brick clay, whether now known or hereafter found to exist therein, together with the right for itself and its lessees to enter upon the said lands, to prospect for, drill, develop, mine and remove such mineral deposits and utilize the geothermal resources so reserved and to occupy and use so much of the surface of such lands as may be required for all purposes reasonably extending to the exploring for, mining and removal of such minerals and the production of heat, steam, electrical power, and of electrolytic by-products from geothermal resources thereon, but the lessee shall make just payment to the Grantee for all damage done to the premises by reason of such entry upon the land and the use and occupancy of the surface thereof.

SUBJECT TO all exceptions, reservations, easements, rights of way and restrictions of record.

SUBJECT TO that Declaration of Restrictive Covenants on Real Property, dated June 27, 2011, and recorded July 8, 2011 as Document No. 3207055 at Book M43, Page 8307 in the records of the Lewis and Clark County Clerk and Recorder's Office.

The Grantor represents that it is unaware of the existence of any underground or buried tanks on the land used for the storage of oil, gasoline, or other hazardous substances, and is unaware of any mine sites on the land that are unreclaimed.

TO HAVE AND TO HOLD the said land with all its appurtenances thereto unto the said Grantee, Lewis and Clark County, Montana.

IN TESTIMONY WHEREOF, the State of Montana has caused these presents to be executed by the Governor and to be attested by the Secretary of State and countersigned by the Montana Department of Administration, and the Great Seal of the State and the Seal of the State Board of Land Commissioners to be hereunto affixed this ____ day of _____, 2012.

Great Seal of the State of Montana

Governor Brian Schweitzer

Linda McCulloch, Secretary of State

Janet Kelly, Director
Department of Administration

Board of Land Commissioners Seal

Chairperson, Lewis and Clark County Board of Commissioners

912-2

COMMUNITIZATION AGREEMENT –
WHITING OIL AND GAS CORPORATION

REQUEST FOR APPROVAL OF COMMUNITIZATION AGREEMENT

Whiting Oil and Gas Corporation
1700 Broadway, Suite 2300
Denver, CO 80290-2300

Township 30 North, Range 56 East
Section 25: ALL
Section 36: ALL
1,280 Acres
Roosevelt County

State Tract
Section 36: ALL
640 Acres
Common Schools Trust = 100%

Whiting Oil and Gas Corporation has filed a request with the Department for the approval of a communitization agreement to communitize State-owned acreage to permit development in conformity with regulations of the Montana Board of Oil and Gas Conservation Commission (BOGC).

A communitization agreement brings together small tracts sufficient for the granting of a well permit under applicable spacing rules. Communitization agreements are not formed until after a well has been drilled and proven to be productive. The communitization agreement provides for distribution of royalties and must be approved and signed by the Department to be effective. Communitization is important in the prevention of drilling of unnecessary and uneconomic wells which would result in physical and economic waste.

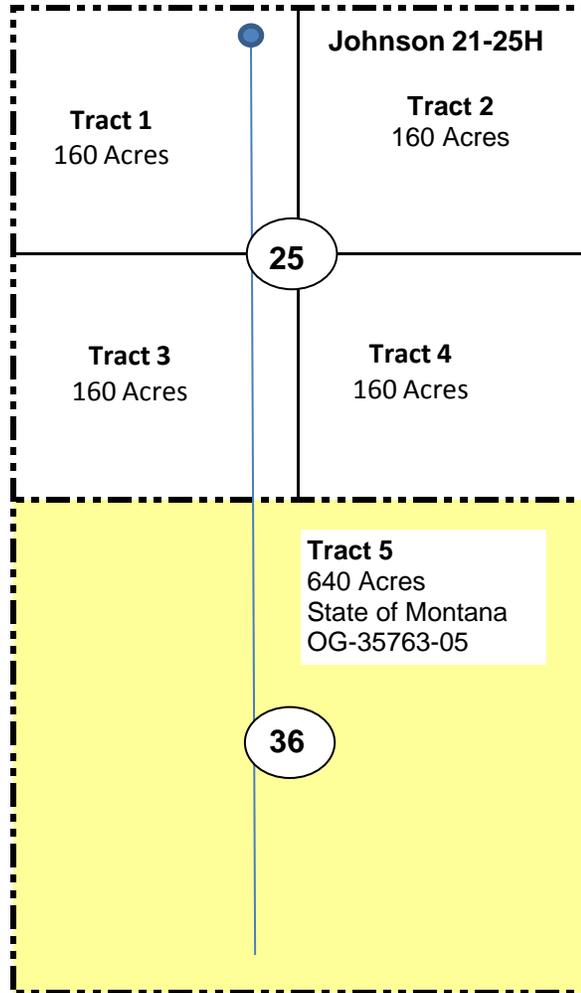
The Johnson 21-25H well, which is a Bakken formation oil well, was drilled in the NE4NW4 of Section 25. This spacing unit has a total of 1,280 acres. The Department owns 640 acres of the 1,280 mineral acres in the permanent spacing unit that will be communitized. All the mineral owners in the spacing unit will share in the royalty from this well. The Communitization Agreement shall include said lands from the Bakken Formation only in Sections 25 & 36.

The Department's tract comprises 50% of the communitized area. The communitized production will be allocated to each tract based upon the relationship of its acreage to the total acreage within the communitized area. The Department will consequently receive 6.5% of all oil production (13% royalty rate x 50% tract participation).

The Communitization Agreement will allow the State to receive its proper share of production from the spacing unit. Therefore, the Director recommends approval of this Communitization Agreement.

Township 30 North Range 56 East

Sections 25 & 36



Recapitulation

Tract No.	Type	Acres	Tract Participation	Royalty %	Owners Interest Decimal
1	Johnson	160.00	12.50%	15.00%	0.018750
2	Lynch, et al.	160.00	12.50%	various	various
3	Butterfield, et al.	160.00	12.50%	various	various
4	Anderson, et al.	160.00	12.50%	various	various
5	State of Montana	640.00	50.00%	13.00%	0.065000
Total		1280.00	100.00%		

* The Operator of the Communitized Area is Whiting Oil and Gas Company

912-3

OIL AND GAS LEASE SALE
(SEPTEMBER 5, 2012)

**OIL AND GAS LEASE SALE (SEPTEMBER 5, 2012)
SEPTEMBER 17, 2012
Land Board**

The Department of Natural Resources and Conservation held an oil and gas lease sale on September 5, 2012, in the Auditorium at the Department of Transportation building. A total of 56 tracts were offered for lease. Fifty-six tracts were leased for a total of \$580,419.83. The 56 tracts that were sold covered a total of 17,676.23 acres. The average bid per acre was \$32.84.

The high competitive bid for the September 5th sale was \$390.00 per acre for Tract 32 in Richland County and the largest total bid was \$41,760.00 for Tract 1 in Blaine County.

The Director requests Land Board approval to issue the leases from the September 5, 2012 sale.

Grants:

Common Schools

Public Land Trust – Navigable Rivers

Counties:

Blaine

Dawson

Garfield

Hill

Liberty

Musselshell

Pondera

Richland

Roosevelt

Rosebud

Teton

Valley

**State of Montana
Oil & Gas Lease Sale - September 5, 2012
Lease Sale Results**

The following described lands were offered for oil and gas leasing through oral competitive bidding in the Department of Transportation auditorium, 2701 Prospect Avenue, Helena, Montana, beginning at 9:00 am, September 5, 2012.

Tract	Stipulations	Twp	Rng	Sec	Description	Acres	Bid/Acre	Total Bid	Lessee
Blaine									
1	1, 2, 3, 4, 5, 6	34.N	21.E	16	W2, N2NE4, SE4NE4, SW4SE4	480.00	\$87.00	\$41,760.00	COMET RIDGE MONTANA, LLC
2	1, 2, 3, 4, 5, 6	36.N	20.E	16	All	640.00	\$26.00	\$16,640.00	COMET RIDGE MONTANA, LLC
3	1, 2, 3, 4, 5, 6, 7	36.N	21.E	36	All	640.00	\$28.00	\$17,920.00	COMET RIDGE MONTANA, LLC
4	1, 2, 3, 4, 5, 6	37.N	19.E	36	All	640.00	\$30.00	\$19,200.00	COMET RIDGE MONTANA, LLC
5	1, 2, 3, 4, 5, 6	37.N	20.E	36	All	640.00	\$28.00	\$17,920.00	COMET RIDGE MONTANA, LLC
Dawson									
6	1, 2, 3, 4, 5, 6, 10, 11	14.N	55.E	8	Yellowstone Riverbed and related acreage	213.00	\$33.00	\$7,029.00	HARVEY MINERAL PARTNERS, LP
7	1, 2, 3, 4, 5, 6	15.N	58.E	6	Lot 1, SE4NW4, S2NE4, N2SE4, SE4SE4	* 290.11	\$23.00	\$6,672.53	HARVEY MINERAL PARTNERS, LP
8	1, 2, 3, 4, 5, 6, 7	15.N	58.E	10	E2	320.00	\$26.00	\$8,320.00	HARVEY MINERAL PARTNERS, LP
9	1, 2, 3, 4, 5, 6, 7	15.N	58.E	16	S2	320.00	\$56.00	\$17,920.00	INTERSTATE EXPLORATIONS LLC
10	1, 2, 3, 4, 5, 6	15.N	58.E	18	Lots 3, 4, SE4NW4, SW4NE4, W2SE4, E2SW4	317.40	\$77.00	\$24,439.80	HARVEY MINERAL PARTNERS, LP
11	1, 2, 3, 4, 5, 6	15.N	58.E	20	SE4NW4, NE4, N2SE4, NE4SW4	320.00	\$77.00	\$24,640.00	HARVEY MINERAL PARTNERS, LP
Garfield									
12	1, 2, 3, 4, 5, 6, 9	17.N	34.E	4	SW4NW4, NW4SW4	* 80.00	\$3.50	\$280.00	AMERICAN PATRIOT OIL AND GAS LLC
13	1, 2, 3, 4, 5, 6, 9	17.N	34.E	5	S2NE4, SE4	* 240.00	\$4.50	\$1,080.00	AMERICAN PATRIOT OIL AND GAS LLC
14	1, 2, 3, 4, 5, 6, 7, 9	17.N	34.E	12	SE4	* 160.00	\$1.50	\$240.00	AMERICAN PATRIOT OIL AND GAS LLC
15	1, 2, 3, 4, 5, 6	17.N	34.E	15	NE4NW4, S2NW4, SW4	* 280.00	\$4.00	\$1,120.00	AMERICAN PATRIOT OIL AND GAS LLC
16	1, 2, 3, 4, 5, 6, 7	17.N	34.E	16	All	* 640.00	\$10.00	\$6,400.00	AMERICAN PATRIOT OIL AND GAS LLC
17	1, 2, 3, 4, 5, 6	17.N	34.E	21	SE4NW4, N2SE4, SW4SE4, E2SW4	* 240.00	\$1.50	\$360.00	AMERICAN PATRIOT OIL AND GAS LLC
18	1, 2, 3, 4, 5, 6	17.N	34.E	22	NW4NW4, S2NW4, N2SW4	* 200.00	\$1.50	\$300.00	AMERICAN PATRIOT OIL AND GAS LLC
19	1, 2, 3, 4, 5, 6	17.N	34.E	28	E2NW4, W2NE4, NW4SE4, NE4SW4	* 240.00	\$11.00	\$2,640.00	AMERICAN PATRIOT OIL AND GAS LLC
20	1, 2, 3, 4, 5, 6	17.N	34.E	33	S2NE4, SE4	240.00	\$15.00	\$3,600.00	AMERICAN PATRIOT OIL AND GAS LLC
21	1, 2, 3, 4, 5, 6	17.N	34.E	34	S2SW4	80.00	\$12.00	\$960.00	AMERICAN PATRIOT OIL AND GAS LLC
22	1, 2, 3, 4, 5, 6	18.N	34.E	36	N2, N2S2	480.00	\$10.00	\$4,800.00	AMERICAN PATRIOT OIL AND GAS LLC
23	1, 2, 3, 4, 5, 6	19.N	36.E	11	SE4NE4, E2SE4	120.00	\$1.50	\$180.00	AMERICAN PATRIOT OIL AND GAS LLC
24	1, 2, 3, 4, 5, 6	19.N	36.E	14	NE4NW4, NE4	200.00	\$1.50	\$300.00	AMERICAN PATRIOT OIL AND GAS LLC
25	1, 2, 3, 4, 5, 6, 7, 9	19.N	36.E	16	All	* 640.00	\$2.00	\$1,280.00	PETROSHALE ENERGY, LLC
Hill									
26	1, 2, 3, 4, 5, 6	35.N	16.E	13	S2	320.00	\$5.00	\$1,600.00	UNCONVENTIONAL ENERGY PARTNERS, LLC
Liberty									
27	1, 2, 3, 4, 5, 6	37.N	6.E	2	S2	320.00	\$1.50	\$480.00	UNCONVENTIONAL ENERGY PARTNERS, LLC
Musselshell									
28	1, 2, 3, 4, 5, 6	9.N	26.E	16	All	640.00	\$61.00	\$39,040.00	VECTA OIL & GAS, LTD.

Tract	Stipulations	Twp	Rng	Sec	Description	Acres	Bid/Acre	Total Bid	Lessee
Pondera									
29	1, 2, 3, 4, 5, 6, 8	28.N	5.W	36	All, below the base of the Sun River Dolomite formation	640.00	\$21.00	\$13,440.00	GREAT NORTHERN ENERGY, LLC
30	1, 2, 3, 4, 5, 6, 7	28.N	6.W	34	S2NW4, SW4SE4, NW4SW4, SE4SW4, below the base of the Mission Canyon formation	* 200.00	\$12.00	\$2,400.00	GREAT NORTHERN ENERGY, LLC
Richland									
31	1, 2, 3, 4, 5, 6, 10, 11	26.N	58.E	6	Missouri Riverbed and related acreage	41.00	\$185.00	\$7,585.00	WILLIS OIL & GAS, INC.
32	1, 2, 3, 4, 5, 6, 10, 11	26.N	59.E	24	Missouri Riverbed and related acreage	41.00	\$390.00	\$15,990.00	ST. ANDREW'S HOLDING COMPANY
33	1, 2, 3, 4, 5, 6, 10, 11	28.N	53.E	28	Any and all State interest under the Missouri Riverbed and related acreage	63.00	\$6.00	\$378.00	WILLIS OIL & GAS, INC.
34	1, 2, 3, 4, 5, 6, 10, 11	28.N	53.E	29	Any and all State interest under the Missouri Riverbed and related acreage	63.00	\$105.00	\$6,615.00	WILLIS OIL & GAS, INC.
35	1, 2, 3, 4, 5, 6, 10, 11	28.N	53.E	30	Any and all State interest under the Missouri Riverbed and related acreage	5.00	\$25.00	\$125.00	TRINITY WESTERN LAND & EXPLORATION, LLC
36	1, 2, 3, 4, 5, 6, 10, 11	28.N	53.E	31	Any and all State interest under the Missouri Riverbed and related acreage	47.00	\$110.00	\$5,170.00	TRINITY WESTERN LAND & EXPLORATION, LLC
37	1, 2, 3, 4, 5, 6, 10, 11	28.N	53.E	33	Any and all State interest under the Missouri Riverbed and related acreage	14.00	\$32.00	\$448.00	TRINITY WESTERN LAND & EXPLORATION, LLC
38	1, 2, 3, 4, 5, 6, 10, 11	28.N	53.E	34	Any and all State interest under the Missouri Riverbed and related acreage	59.00	\$105.00	\$6,195.00	WILLIS OIL & GAS, INC.
39	1, 2, 3, 4, 5, 6, 10, 11	28.N	54.E	31	Any and all State interest under the Missouri Riverbed and related acreage	6.00	\$50.00	\$300.00	TRINITY WESTERN LAND & EXPLORATION, LLC
40	1, 2, 3, 4, 5, 6, 10, 11	28.N	54.E	32	Any and all State interest under the Missouri Riverbed and related acreage	37.00	\$115.00	\$4,255.00	WILLIS OIL & GAS, INC.
41	1, 2, 3, 4, 5, 6, 10, 11	28.N	55.E	33	Any and all State interest under the Missouri Riverbed and related acreage	49.00	\$120.00	\$5,880.00	WILLIS OIL & GAS, INC.
42	1, 2, 3, 4, 5, 6, 10, 11	28.N	55.E	34	Any and all State interest under the Missouri Riverbed and related acreage	205.00	\$75.00	\$15,375.00	WILLIS OIL & GAS, INC.
Roosevelt									
43	1, 2, 3, 4, 5, 6, 10, 11	28.N	55.E	27	Missouri Riverbed and related acreage	1.00	\$110.00	\$110.00	TRINITY WESTERN LAND & EXPLORATION, LLC
Rosebud									
44	1, 2, 3, 4, 5, 6, 7	11.N	34.E	31	Lots 1, 2, 3, 4, E2, E2W2, from the surface to the base of the Cretaceous (3rd Cat Creek) formation	629.08	\$25.00	\$15,727.00	MBI OIL AND GAS, LLC
Teton									
45	2, 3, 4, 5, 6, 13	23.N	8.W	5	Lot 1, SE4NE4	74.60	\$1.50	\$111.90	PRIMARY PETROLEUM COMPANY LLC
46	1, 2, 3, 4, 5, 6	27.N	5.W	4	SE4, below the base of the Sun River Dolomite formation	160.00	\$6.00	\$960.00	GREAT NORTHERN ENERGY, LLC
47	2, 3, 4, 5, 6, 12	27.N	7.W	18	S2NE4, SE4SE4	* 120.00	\$15.00	\$1,800.00	PRIMARY PETROLEUM COMPANY LLC

Tract	Stipulations	Twp	Rng	Sec	Description	Acres	Bid/Acre	Total Bid	Lessee
Valley									
48	1, 2, 3, 4, 5, 6	31.N	39.E	3	Lots 1, 2, 3, 4, S2N2, S2	640.40	\$30.00	\$19,212.00	HARVEY MINERAL PARTNERS, LP
49	1, 2, 3, 4, 5, 6	31.N	39.E	4	Lots 1, 2, 3, 4, S2N2, S2	640.24	\$40.00	\$25,609.60	HARVEY MINERAL PARTNERS, LP
50	1, 2, 3, 4, 5, 6	31.N	39.E	5	Lots 1, 2, 3, 4, S2N2, S2	640.40	\$30.00	\$19,212.00	HARVEY MINERAL PARTNERS, LP
51	1, 2, 3, 4, 5, 6	31.N	39.E	8	W2, NE4NE4, S2NE4, SE4	600.00	\$30.00	\$18,000.00	HARVEY MINERAL PARTNERS, LP
52	1, 2, 3, 4, 5, 6	31.N	39.E	9	E2, SW4SW4	360.00	\$30.00	\$10,800.00	HARVEY MINERAL PARTNERS, LP
53	1, 2, 3, 4, 5, 6	31.N	39.E	10	All	640.00	\$46.00	\$29,440.00	HARVEY MINERAL PARTNERS, LP
54	1, 2, 3, 4, 5, 6	32.N	39.E	32	All	640.00	\$50.00	\$32,000.00	HARVEY MINERAL PARTNERS, LP
55	1, 2, 3, 4, 5, 6	32.N	39.E	33	All	640.00	\$51.00	\$32,640.00	UNCONVENTIONAL ENERGY PARTNERS, LLC
56	1, 2, 3, 4, 5, 6	32.N	39.E	34	NW4, S2	480.00	\$49.00	\$23,520.00	HARVEY MINERAL PARTNERS, LP

* Part or all of tract is not state-owned surface

Summary by Lessor

	Total Acres	Total Tracts
Dept. of Natural Resources and Conservation	17,676.23	56

Oil and Gas Lease Sale Summary

Total Tracts	56
Total Acres	17,676.23
Total Bid Revenue	\$580,419.83
Average Bid Per Acre	\$32.84

State of Montana
Oil & Gas Lease Sale - September 5, 2012
Stipulations

1. Lessee shall notify and obtain approval from the Department's Trust Land Management Division (TLMD) prior to constructing well pads, roads, power lines, and related facilities that may require surface disturbance on the tract. Lessee shall comply with any mitigation measures stipulated in TLMD's approval.
2. Prior to the drilling of any well, lessee shall send one copy of the well prognosis, including Form 22 "Application for Permit" to the Department's Trust Land Management Division (TLMD). After a well is drilled and completed, lessee shall send one copy of all logs run, Form 4A "Completion Report", and geologic report to TLMD. A copy of Form 2 "Sundry Notice and Report of Wells" or other appropriate Board of Oil and Gas Conservation form shall be sent to TLMD whenever any subsequent change in well status or operator is intended or has occurred. Lessee shall also notify and obtain approval from the TLMD prior to plugging a well on the lease premises.

Issuance of this lease in no way commits the Land Board to approval of coal bed methane production on this lease. Any coal bed methane extraction wells would require subsequent review and approval by the board.
3. The TLMD will complete an initial review for cultural resources and, where applicable, paleontological resources of the area intended for disturbance and may require a resources inventory. Based on the results of the inventory, the TLMD may restrict surface activity for the purpose of protecting significant resources located on the lease premises.
4. The lessee shall be responsible for controlling any noxious weeds introduced by lessee's activity on State-owned land and shall prevent or eradicate the spread of those noxious weeds onto land adjoining the lease premises.
5. The definitions of "oil" and "gas" provided in 82-1-111, MCA, do not apply to this lease for royalty calculation purposes.
6. If the State does not own the surface, the lessee must contact the owner of the surface in writing at least 30 days prior to any surface activity. A copy of the correspondence shall be sent to TLMD.
7. Due to unstable soil conditions on this tract and/or topography that is rough and/or steep, surface use may be restricted or denied. Seismic activity may be restricted to poltershots.
8. The lessee is responsible to pay for all damages, including penalties and charges assessed by the USDA-CFSA on CRP lands, as a result of drilling and production on the tract.
9. Active sage grouse lek(s) have been identified on or adjacent to this tract. No activities shall occur on the tract until the proposed action has been approved in writing by the Director of the Department. If surface activity is proposed on the tract, the department will consult with the Director of the Department of Fish, Wildlife and Parks for his or her comments, concerns and recommendations. Additional mitigation measures may be required, including no-surface-occupancy buffers and/or timing restrictions, which may encompass part or all of the tract.
10. This tract contains navigable riverbeds. No surface occupancy is allowed within the bed of the navigable river, abandoned channels, or on islands and accretions. In addition, upon completion of a successful well, where river title is disputed, the lessee will file an interpleader action under Rule 22, M.R.Civ.P. in the Montana District Court, or other court having jurisdiction, in which the leased lands are located for all acreage within the lease in which the title is disputed. The lessee shall name all potential royalty claimants as defendants.

11. If the lessee completes a successful oil and/or gas well, and if land title is disputed, the lessee shall fund professional land surveys as needed to determine the location and acreage encompassed by the spacing and/or pooling unit and the state lease acreage within that unit. Surveys shall be conducted by a licensed land surveyor acceptable to the Department, and shall be prepared pursuant to survey requirements provided by the Department.
12. This lease is located near the Rocky Mountain Front and includes areas that are environmentally sensitive. Therefore, except as otherwise provided below, the lessee shall not conduct any surface operations on the lease premises. If the lessee determines that surface operation on the lease premises may be required, the lessee shall submit a proposed Operating Plan or Amendment to an existing Operating Plan to the State Board of Land Commissioners describing in detail the proposed operations. No surface activities shall occur on the lease premises unless and until the Operating Plan or Amendment is approved by the Board. In determining whether to approve the proposed Operating Plan or Amendment, the following provisions shall apply:
- 1) If the lessee proposes an activity that does not entail any significant surface disturbance, the Board may approve the same after completion of the appropriate environmental review in accordance with the Montana Environmental Policy Act (MEPA) and an opportunity for public comment on the proposed activity has been provided.
 - 2) Before the Board approves any proposed activity on the lease premises that entails a significant surface disturbance, an environmental impact statement (EIS) shall be completed in accordance with MEPA. The EIS shall analyze the potential impacts of alternative and future potential levels of oil and gas development and extraction on an ecosystem scale as the ecosystem is defined by the "Limits of Acceptable Change - Bob Marshall Wilderness Complex" adopted by the Montana Department of Fish, Wildlife and Parks in December 1991. The analysis shall consider all relevant information, which may include, but is not limited to, existing environmental reviews and management plans. Public involvement in the environmental review process shall be actively solicited by the preparer of the environmental review document and shall include, at minimum, adequately noticed public meetings in at least three communities including Great Falls and Helena.
 - 3) The proposed surface activity shall adhere to the "Interagency Rocky Mountain Front, Wildlife Monitoring/Evaluation Program, Management Guidelines for Selected Species" adopted by the Montana Department of Fish, Wildlife and Parks in September 1987, or any successor guidelines thereto.
 - 4) The Board may refuse to approve any proposed surface operations if it determines that they do not constitute the best use of trust resources or are not in the best interest of the State of Montana.
13. This lease is located within the Rocky Mountain Front area established under federal legislation removing mineral leasing and development on federal fee title lands, and federal minerals and has been identified as environmentally sensitive. The Rocky Mountain Front area is a crucial fish or wildlife area or corridor; has FWP owned surface rights; has an existing or is in the process of having conservation easements established and has important recreational value to the citizens of Montana. Therefore, except as otherwise provided below, the lessee shall not conduct any surface operations on the lease premises. If the lessee determines that surface operation on the lease premises may be required, the lessee shall submit a proposed Operating Plan or Amendment to an existing Operating Plan to the State Board of Land Commissioners and notify the Director of Fish, Wildlife and Parks describing in detail the proposed operations. No surface activities shall occur on the lease premises unless and until the Operating Plan or Amendment is approved by the Board. In determining whether to approve the proposed Operating Plan or Amendment, the following provisions shall apply:
- 1) If the lessee proposes an activity that does not entail any significant surface disturbance (not in excess of 1 well pad/640 acres), the Board may approve the same after completion of the appropriate environmental review in accordance with the Montana Environmental Policy Act (MEPA). As part of the MEPA process, DNRC will provide for an on-the-ground consultation with FWP, and an opportunity for public comment on the proposed activity. Public involvement in the environmental review process shall be actively solicited by the preparer of the environmental review document and shall include, at minimum, adequately noticed public meetings in three major daily publications including Missoula, Great Falls and Helena; legal notices to those non-daily papers in the affected counties, and detailed notification of landowners who own the surface rights, or directly adjacent rights, who would be impacted by development.

- 2) Before the Board approves any proposed activity on the lease premises that entails a significant surface disturbance (in excess of 1 well pad/640 acres), an environmental impact statement (EIS) shall be completed in accordance with MEPA. The EIS shall analyze the potential impacts of alternative and future potential levels of oil and gas development and extraction on an ecosystem scale as the ecosystem is defined by the "Limits of Acceptable Change - Bob Marshall Wilderness Complex" adopted by the Montana Department of Fish, Wildlife and Parks in December 1991, and any successor thereto. The analysis shall consider all relevant information, which may include, but is not limited to, existing environmental reviews and management plans, and new data concerning climate change, private lands conservation efforts, and fish and wildlife distribution and migration patterns. Public involvement in the environmental review process shall be actively solicited by the preparer of the environmental review document and shall include, at minimum, adequately noticed public meetings in at least three communities including Great Falls and Helena.
- 3) The proposed surface activity shall adhere to the "Interagency Rocky Mountain Front, Wildlife Monitoring/Evaluation Program, Management Guidelines for Selected Species" adopted by the Montana Department of Fish, Wildlife and Parks in September 1987, or any successor guidelines thereto.
- 4) The Board may refuse to approve any proposed surface operations if it determines that they do not constitute the best use of trust resources or are not in the best interest of the State of Montana.

912-4

SIGNAL PEAK ENERGY COAL LEASE

SIGNAL PEAK ENERGY COAL LEASE APPLICATION FMV Comments and Request to Lease

Township 6 North, Range 27 East

Section 16: All (± 640 acres)

Musselshell County

Grant: Common Schools

The Department has completed solicitation of public comment on the results of the competitive bid and the Department's May 8, 2012 report. The Department has reviewed the comments received. The attached report provides comments and comment summaries, and includes Department discussion on the major areas of concern voiced by the public. This report is submitted pursuant to MCA § 77-3-312(1)(a), which requires the Board, prior to issuing a coal lease, to give opportunity for and consideration to public comment on the Board's evaluation and determination of fair market value (FMV).

Previous Actions

- April 6, 2012: The Department receives a coal lease application from SPE.
- May 8, 2012: The Department completes report (Report) on the coal lease application and request to bid. The Report presents the coal leasing procedure and anticipated timelines, provides coal resource information, recommends lease rental and royalty terms, presents the results of the recently completed BLM lease sale for federal coal adjacent to and surrounding the state section, calculates the bonus bid for the state section that would be equivalent to the FMV established by the directly comparable BLM lease sale, recommends a target bonus amount, and provides a projection of anticipated total revenue if the state section were leased and developed.
- May 21, 2012: The Board reviews the application and Department's Report, establishes lease terms, and authorizes the Department to solicit competitive bids.
- August 3, 2012: The Department presents the bid result and to the Board. At the Board's direction, the Department solicits public comment on the bid result and Report.
- September 4, 2012: The Department requests written comments to be received by this date.
- September 13, 2012: The Department reviews written comments and completes comment report.

Information Summary

The Board's previous actions and available information pertinent for the Board's consideration of SPE's bid and lease application can be briefly summarized as follows:

Resource: 11.93 million tons recoverable (9.78 million tons shippable), low sulfur, moderate BTU, coal reserves

Lease Terms:	Primary Term:	10 years	Same as BLM
	Annual Rental:	\$3.00 per acre	Same as BLM
	Royalty Rate:	10%	BLM – 8%
	Target Bid:	\$0.30 per ton	Same as BLM
	Total Bonus:	\$3,578,200	

FMV from BLM directly comparable sale: \$0.30 per ton @ 8% royalty

State lease terms equal to BLM FMV: \$0.14 per ton @ 10% royalty

Note: Calculation based on \$12.00 average coal price.

Equivalent bonus is lower if average coal price is higher.

SPE bonus bid at State royalty rate: \$0.30 per ton @ 10% royalty

Est. total revenue to school trust over life of lease: \$15.3 million (@ \$12 coal price)

Comments received covered the following topics:

FMV Issues/Concerns

- Bid process not competitive
- FMV estimate not formal or independent
- BLM appraisal and sale process is not FMV

Other Non-FMV Issues/Concerns

- MEPA review is not pre-lease
- No environmental review of potential resource impacts
- Sale to foreign markets
- Operator/Union relations
- Unclear royalty terms for non-arm's length sales

The attached comment report focuses primarily on FMV concerns, but information related to non-FMV topics is included where appropriate.

The Department's May 8, 2012 Report, results of the competitive bid process, and review of public comments, taken together provide the Board with the comprehensive basis, contemplated and required by MCA § 77-3-312, from which to evaluate the FMV determination, and to consider whether or not to accept the offered bonus bid and issue a lease to SPE.

If the Board decides in favor of lease issuance, the Department recommends incorporating the following additional royalty language into ¶ 7. of the State coal lease form:

“The f.o.b. mine price shall be calculated on the gross value from an arm’s length sale to an unaffiliated third-party. If the point of sale to the unaffiliated third-party is remote from the mine, Lessee may utilize the higher of comparable sales to unaffiliated third-parties for the same time period, or may deduct the actual transportation costs between the point of sale and mine load-out facility. The resulting price must never be less than the fair market value of the coal at the mine, prepared for shipment.”

Attachments: DNRC Report, *Public Comments on FMV Determination*,
September 13, 2012
DNRC Report, *Coal Lease Application & Request to Bid*,
May 8, 2012
Coal Leasing Statutes (MCA § 77-3-301, et seq.)

Grant: Common Schools

County: Musselshell

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Signal Peak Energy
Public Comments
on
Fair Market Value Determination

Bull Mountain Mine
Musselshell County

September 13, 2012

Montana Department
of
Natural Resources and Conservation
Trust Land Management Division

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SUMMARY

Pursuant to state statute and Board directive, the department has completed solicitation of comments on the results of the competitive bid and department valuation information for the issuance of a coal lease on the state common school trust section located at the Bull Mountain Mine. Comments were received on both the valuation and on other non-valuation issues of concern. The department reviewed and considered all comments received, and prepared responses where appropriate. The department's responses provide additional information, clarify existing information, or explain the actions of the Board and department, relative to the issue or concern raised. This report presents the issues and concerns raised and department responses. Actual comments and collated summaries of form comments are provided separately in Section 2. Supplemental exhibits and attachments for specific comment letters are also provided separately in Section 3. The major issues or concerns are summarized below, along with the department's response where appropriate.

Fair Market Value (FMV) Issues/Concerns:

- Bid Process: The confidential sealed bid process was open and competitive. The Board may properly consider the bid result in their evaluation of FMV.
- FMV estimate: The DNRC Report provides the actual sale value for identical federal coal surrounding the state section. This comparative sale directly establishes a FMV estimate for the state section. The Board may properly consider the federal sale transaction in their evaluation of FMV.
- Flawed BLM appraisal and sale process not FMV: The BLM is the dominant coal owner, and holds a monopoly position on coal leased in the Powder River Basin. Regardless of the merits of allegations that the BLM coal evaluation and leasing process is flawed, their sale transactions establish the market value for leasing state coal.

Other Non-FMV Issues/Concerns

- Pre-Lease MEPA Review: MEPA is not required for the issuance of leases where lease rights are contingent upon MEPA review by the Board and DEQ of any proposed activity. The Montana 16th District Court recently upheld the constitutionality of this synchronized timing of the MEPA review process. Plaintiffs did not request an injunction on leasing, but have appealed to the Montana Supreme Court.
- Environmental Review of potential resource impacts: The joint MEPA review to be prepared by the DEQ and DNRC will consider potential impacts related to the proposal for mining to continue into the life of mine area.
- Mine Operator/Union Lease Stipulations: The Board's coal lease already includes language requiring lessee to comply with all applicable laws and rules.
- Royalty Terms not Clear for Non-Arm's Length Sales: The department has drafted suggested lease language clarifying the proper calculation of coal value for royalty purposes in these situations.

INTRODUCTION

Signal Peak Energy (SPE) operates the Bull Mountain mine, an underground mine located 12 miles south of Roundup, on the border between Musselshell and Yellowstone counties. The State of Montana owns a state school trust section located within the path of future mining.¹ School trust lands are managed by the State Board of Land Commissioners (Board). The Department of Natural Resources and Conservation (department) carries out direct management of trust properties per the directives of the Board. The department received a coal lease application on April 6, 2012 from SPE for the subject state section. The department then prepared a May 8, 2012 report containing coal resource and market value information (DNRC Report). At its May 21, 2012 meeting, the Board reviewed and considered the DNRC Report and recommendations -- and established lease terms for primary term, royalty and rental rates, and a target bonus bid. The Board authorized the department to solicit competitive bids for leasing of the coal reserves located on the state section.

The department received one bid, which was from SPE. SPE was also the sole bidder on five tracts of federal coal, also located within the path of future mining. These federal tracts surround the state section². SPE submitted a bonus bid offer of \$3,578,200. This equals the Board's target bonus, and represents a bid of \$0.30 per recoverable ton of coal from the state section. The bonus bid represents a nonrefundable, up-front payment in return for receiving a coal lease. The bonus is in addition to rental and royalty payment obligations.

MCA § 77-3-312 provides that the Board shall evaluate the coal to be leased for the purpose of determining fair market value (FMV). The Board may determine FMV by competitive bid or through an appraisal, giving opportunity for and consideration to public comments on the evaluation.

The department presented the bid results and DNRC Report to the Board at its August 3, 2012 meeting. The Board authorized the department to solicit public comments on the competitive bid, including the DNRC Report. The department's request process for public comments included a press release, notices in major Montana newspapers, placement on the department's website, and direct mail-out to the department's coal leasing mailing list. The bid results and DNRC Report were combined into one document, which was available on the department's website and by request in both electronic and hardcopy form. Comments were requested to be received by September 4, 2012.

A total of 556 comments were received. The overwhelming majority were generated from either the CREDO Action website form letter application (437 letters) or the MEIC website form email application (99 emails). Most of these letters and emails included only the pre-drafted comments, but many also included additional comments directly from the commentor. The department also received comment letters directly from individuals and organizations (20 letters). Several commentors submitted detailed comments and supplemental information through exhibits or attachments for consideration by the department and Board.

¹ MT-DNRC Report, *Coal Lease Application and Request to Bid*, May 8, 2012, p.1

² MT-DNRC Report, Exhibit 1.

Comments were received on the fair market evaluation as well as for other concerns unrelated to the evaluation. Section 1 of this report collates and summarizes the issues presented by the commentors, along with department responses as appropriate.

Due to file sizes, Sections 2 and 3 are broken down into separate electronic files. All report sections are available in electronic form on the department's website, and are available in electronic or hardcopy form upon request.

Section 2 includes the comments received by the department. The individual form letters and emails are not repeated, but the number received and the name and address of each commentor is provided. For those letters and emails that included additional comments beyond the pre-drafted text, the specific comments from each commentor are provided. The actual letters and emails are on file with the department.

Some letters included supplemental information in the form of exhibits or attachments. In these cases the comment letter is included in Section 2 of the report along with a specific reference to the supplemental information. Supplemental exhibits and attachments are then provided in Section 3.

SECTION 1

Issue Summaries and Department Response

Comments were received on both the fair market value (FMV) evaluation and on other issues unrelated to the FMV evaluation.

FAIR MARKET VALUE

MCA § 77-3-312 provides that the Board shall evaluate the coal to be leased for the purpose of determining fair market value. The Board may determine FMV by competitive bid or through an appraisal, giving opportunity for and consideration to public comments on the evaluation.

Concern: The Board did not use an open and competitive bid process.

The department employed a bid process that was open to all interested parties. The bids were required to be submitted in sealed envelopes and were not opened until after the bid deadline. The solicitation for bids included a press release, notices in major newspapers, direct notification to parties on the department's mailing list, and placement on the department website.

As the lease applicant, SPE would be expected to submit a bid. However, any company interested in acquiring a working or revenue interest in the Bull Mountain Mine could do so by submitting a successful bid. The sealed bid process provides a level playing field between the applicant and any interested party. Since the bids are confidential, an interested party must independently determine the amount of their bid without knowing the amount of any other potential bid. If the Board had the authority to negotiate exclusively with SPE instead of requesting bids, the process would not have been implicitly competitive. Instead, the Board engaged in an open solicitation for sealed bids from any and all parties. A competitive bid

process may generate a single bid, multiple bids, or no bid at all. It is the framework of the process that determines whether it is open and competitive, not the number of bids received. The Board's sealed bid process was open and competitive.

Concern: SPE's bid equaled the Board's target bonus amount.

SPE's bid equaled the Board's publicized target bonus amount. Commentors assert that the offered bid should therefore not be considered by the Board in their evaluation of FMV.

The department utilized the competitive bid process discussed above that, by definition, provides information for consideration by the Board on the FMV of the state tract. The department's bid process required submittal of sealed bids. As discussed above, the bid process was open to any interested party, which made it possible for any company to obtain an interest in the coal reserves at the Bull Mountain mine. SPE had to decide how much they were willing to offer as a bonus bid to obtain the lease. SPE therefore had to consider a number of factors – the results of their just completed successful bid for the five federal tracts, the Board's adoption of a target bonus bid based on the DNRC Report, and the risk of a competing bid by another company interested in buying into the Bull Mountain mine project.

SPE's bid represents an offer made by a knowledgeable buyer interested but not obligated to acquire the coal lease. As such, the Board may properly consider the result of the sealed bid process in their evaluation of FMV.

Concern: The DNRC Report does not provide a FMV estimate.

FMV is universally defined as the amount a property would reasonably be expected to sell for between a knowledgeable seller, willing but not obligated to sell, and a knowledgeable buyer, willing but not obligated to buy. FMV is not the actual property value; it is an estimate of the value that might be realized if the property were sold. The successful sale of a property generates its actual market value, which may be above, below or equal to the pre-sale FMV estimate. Actual sales transactions for similar properties therefore generate comparable sale information ("comp sales"). This information can be utilized to determine FMV for a similar property.

The DOI-BLM handbook on the evaluation of coal properties³ (Handbook) provides a detailed methodology for estimating FMV for leasing coal resources. Two methods for analysis can be employed, use of comparable sales information or preparation of a discounted cash flow income analysis. The BLM completes an estimate using both methodologies, and reconciles their results between the two. The Handbook advises that when sufficient similar sales data are available, the comparable sales approach is preferred.⁴ The comments submitted by EarthJustice on behalf of

³ U.S. Dept. of Interior, Bureau of Land Management, BLM Handbook, H-3070-1, *Economic Evaluation of Coal Properties*, Rel. 3-285.

⁴ BLM Handbook, Section III. A.

MEIC and Sierra Club include a document⁵ prepared by Tom Sanzillo. Mr. Sanzillo succinctly describes the comparable sales approach and why it is preferred⁶:

“The comparable sales approach, which is the method that the BLM prefers, allows the value of recent sales to be accepted as the new market value for a similarly situated coal tract. This approach is grounded in real world, market-based transactions. If a prior buyer and seller agree to a price on a similar property within a reasonably similar timeframe, the presumption is that the government’s acceptance of that price is reasonable as a measure of fair market value. Although coal tracts may vary to some degree, they must retain sufficient degrees of similarity in order to permit the BLM to use the comparable sales approach.”

To be sure, Mr. Sanzillo has issues with how he believes the BLM is utilizing coal price data, and the impacts he believes it has had on the BLM’s FMV estimates and market value for Powder River Basin (PRB) coal; but he acknowledges the underlying validity of the comparable sales approach for FMV estimates of similar properties.

Comp sales data usually involve properties that are similar but not identical to the subject property. For example, a coal lease may have issued for a tract at an underground mine several years ago in another state. The DNRC Report included for general reference a table summarizing several such sale transactions. Utilization of comp sales from generally similar properties like these therefore would require adjustments by an appraiser to apply the data to the property being evaluated. The BLM Handbook anticipates this aspect and provides guidance for making such adjustments⁷.

However, the recently completed BLM sale transaction is not just a similar property; it is an identical property, located around and adjacent to the state section. The BLM Handbook identifies the following property attributes to be compared between the comp sale property and the subject property to determine if the two are reasonably similar, and to identify what adjustments would be needed for use as a comparable sale transaction⁸. The following list includes the attribute and the comparison between the BLM Bull Mountain tracts and the state section:

1. Time of Sale and Market Conditions: Seven months apart.
2. Terms of Sale: Same except for higher state royalty rate (discussed below).
3. Physical Characteristics: Identical
4. Coal Characteristics: Identical
5. Production Scheduling: Identical
6. Access to Property and Transportation: Identical
7. Type of Market: Identical
8. Likelihood of Development: Identical

⁵ EarthJustice comment letter, September 4, 2012, Exhibit B.

⁶ Ibid. p. 26.

⁷ BLM Handbook, Section III.

⁸ BLM Handbook, Section III.B.2.b.

This is logical for properties located immediately adjacent to one another in the same mine expansion area. The coal has the same physical properties, the same mining methods are utilized, and the same mining costs are incurred. The coal is produced and sold to the same purchasers at the same price, so the same gross revenue per ton is generated. In all material respects, the BLM coal is indistinguishable from the state coal. The BLM comp sale property is therefore directly comparable to the state property, and provides a direct FMV estimate.

What is different are the royalty rates of the respective state and BLM coal leases. The bonus generates the competitive bid, but rental and royalty payments are also received by the mineral owner. These three components collectively constitute the amount the coal lessee pays to the owner for the right to mine, remove and sell coal from the lease premises. The total FMV for conveying the lease interest is the present value total of the rentals, royalties and bonus payments.

Bonus payments for federal and state leases are expressed as a rate, i.e. \$ per ton of coal reserves. They are a non-refundable, up-front amount paid at lease issuance. Both state and federal leasing regulations provide an option for amortizing the payment over a period of time. For state leases, amortization is at the discretion of the Board, for a period of up to 5 years.⁹ The Board is requiring full payment from the successful lessee at lease issuance for the state section. The bonus payment is typically a significant portion of the total FMV.

Rentals are a nominal annual payment required from the lessee to continue to hold the lease. Rentals are part of the total revenue received by the coal owner, but not material in terms of the total FMV. The annual rental is \$3.00 per acre for both BLM and state coal leases.

Royalty payments are calculated as a percentage of the gross value of the coal as it is mined and sold from the lease premises. It is the largest portion of total FMV. The lease specifies the percentage to be used, also called a royalty rate.

Except for the relatively small rental payment, the total FMV for a property is the present value sum of the bonus and royalty payments. A higher royalty rate generates higher royalty payments. Therefore, a lower bonus payment is needed to produce the same total FMV for the same property.

The BLM coal leases contain a royalty rate of 8%, while the state lease contains a 10% royalty rate. For a given property, the state's higher royalty rate lease would generate more royalty revenue, as compared to the BLM lease. The DNRC Report adjusted the BLM comp sale information to account for the state's higher royalty revenue, and determined that a bonus bid of only \$0.14 per ton would generate a total FMV equivalent to the BLM lease¹⁰. The department's report therefore includes the FMV estimate for bonus bid, expressed for both the federal 8% and the state 10% royalty lease rates. It is important to note that this is not an adjustment to the FMV estimate provided by the directly comparable BLM sale transaction. It is simply a calculation of the bonus needed along with royalty revenue to reach the same FMV. For the state section, a \$0.14 per ton bonus plus 10% royalties is equivalent to \$0.30 per ton bonus plus 8% royalties.

⁹ Montana Code Annotated, § 77-3-312(2).

¹⁰ MT-DNRC Report, p.5.

The department also recognized that the calculation of how much lower the state bonus payment could be and still add up to the same total FMV was dependent upon coal price. As the coal price increases, the state bonus bid needed for an equivalent total FMV decreases. At an average coal price of \$12 per ton, a bonus of \$0.14 per ton on a state lease (10% royalty) produces the same total FMV as a \$0.30 per ton bonus on a federal lease (8% royalty). The department analyzed the sensitivity of equivalent state bonus bid to coal price. As average coal price increases, the equivalent state bonus needed decreases until, at an average coal price of \$22.45, the state's 10% royalty rate alone (zero bonus payment) generates the same total FMV as a federal lease with an 8% royalty rate plus \$0.30 per ton bonus. The department therefore eliminated this variability as an issue by recommending that the Board solicit competitive bonus bids at the same \$0.30 per ton level as the BLM comparable sale. If a bid were received at this target rate, the sale would generate a total market value that is unquestionably higher than the actual market value the BLM received on its properties.

Prior to leasing the federal coal tracts surrounding the state section, the BLM completed a formal appraisal pursuant to the requirements of the BLM Handbook. The BLM rejected SPE's initial bid of \$0.15 per ton, and accepted SPE's subsequent bid of \$0.30 per ton. The BLM is prohibited from accepting a bid below its FMV estimate. The Board therefore knows that BLM's FMV estimate was between \$0.15 and \$0.30 per ton, for a coal lease with an 8% royalty rate.

SPE submitted a sealed bonus bid to the Board of \$0.30 per ton. Compared to the BLM comp sale, the bonus is identical, the rental payments are identical, and the royalty revenue that would be generated by the state's royalty rate is 25% higher.

If the BLM directly applicable comp sale for its five tracts adjacent to and surrounding the state section represent FMV, then the SPE bid offer to the Board clearly exceeds the FMV estimate.

Concern: Even if the BLM comp sale is directly applicable, it does not represent FMV.

EarthJustice submitted comments on behalf of MEIC and Sierra Club. They acknowledge that the department's May 8, 2012 report included a discussion of how the target bonus bid was calculated. They do not allege error or deficiency in the calculations, but dismiss the analysis because it relies on BLM's lease sale for the adjacent and surrounding coal. They assert that BLM's FMV estimates are low and therefore their comparable sale transactions are low. They conclude that the Board should not rely on the BLM comp sale or the SPE bid for evaluating the FMV of the state section.

EarthJustice includes a document¹¹ prepared by Tom Sanzillo to support their concerns about whether the BLM process represents full market value. Mr. Sanzillo's analyses have been a major component in recent efforts by organizations concerned about the continued utilization of coal. Areas of concern range from initial leasing (as with BLM and state leasing actions) to construction of coal fired electrical generation facilities. With respect to the BLM leasing program, his writings and testimony have been cited in the current effort for a review of the

¹¹ EarthJustice, Exh. B.

BLM's leasing program, including a recommendation for a moratorium on federal coal leasing in the PRB¹².

Mr. Sanzillo lays out the history of the federal government's coal leasing program, including the 1982 federal leasing action for coal in the PRB and the resulting Linowes Commission report in 1984. The 1982 coal lease sale was notable because FMV appraisals were done, but specific agency officials reduced and published minimum bids that were below the appraised amount.

Mr. Sanzillo notes that, in his view, the most lasting impact of the 1982 lease scandal and Linowes report was the creation of the agency's BLM Handbook. Mr. Sanzillo believes the reaffirmation of the standards of fair market return did not rise to the level of a commitment, and therefore may not represent a lasting impact.¹³

Mr. Sanzillo's review concludes that the federal government has lost as much as \$28.9 million in coal bid revenue since 1983. He states that the "basic assumption used in this study is that the BLM has and continues to repeat the same undervaluing of coal that was demonstrated by the GAO in its 1983 audit¹⁴." This would seem to require the nationwide violation by the BLM of its legal mandate to secure FMV by a universal reduction of minimum bids to below the FMV estimate, for 30 years, by the same magnitudes as the 1982 coal lease scandal.

Concern: If the BLM is accepting lower values than it could in its coal lease sale transactions, then using BLM comp sales to develop a FMV estimate would mean the Board is not receiving market value for its coal.

EarthJustice essentially advances the position that the BLM is underestimating FMV and is therefore receiving less than it could for the leases it issues. The question still remains, what is the market value applicable to state coal?

The BLM is in a unique position. They are by far the dominant coal owner in the PRB. Their ownership position has been and is viewed as being so dominant that it constitutes a monopoly. As such, the BLM naturally dominates the market supply of coal and their actions establish the market price for coal.

Mr. Sanzillo emphasizes this market dynamic in his writings. He cites a conclusion of the Linowes report – that "the lower bid prices published by the DOI for the 1982 bids acted as the effective market price for the coal."¹⁵ He follows with an explanation of how and why BLM leasing actions have this impact.

"First, the U.S. government's possession of a large coal asset in the PRB constitutes a monopoly of supply. The existence of a monopoly means that action taken by the owner will lead and shape – if not dominate – the markets where it

¹² Ibid. p. 41.

¹³ Ibid. p. 19.

¹⁴ Ibid. p. 28.

¹⁵ Ibid. p.16.

holds sway.¹⁶”

“Second, the government acts as a price leader of western coal. As a result of its vast ownership of resources, the government *is* the price leader for western coal, meaning that the government’s actions and policies shape the market price for PRB coal.¹⁷”

[Quoting from a DOI report] “The government is the price leader for western coal properties due to its vast ownership of unleased, low cost coal. All lease prices will tend to go to the level the Department chooses.¹⁸”

Mr. Sanzillo has consistently advised the public and his clients of the federal government’s monopoly position. For example, in a 2011 affidavit prepared on behalf of Wildearth Guardians, Defenders of Wildlife, and Sierra Club, Mr. Sanzillo advises:

“The federal government holds a virtual monopoly on coal reserves in the western part of the United States. **Its policies and actions set the terms, conditions and market price of coal in the west**, and shape coal markets throughout the United States.¹⁹” [emphasis added]

The BLM and the State are in two drastically different market positions relative to the leasing of coal resources. An entity possessing monopoly power is often referred to as the “price-maker” while the other entities in the marketplace are “price-takers.”

The state section exists in a coal market where federal leasing actions “set the terms, conditions and market price” for coal. Regardless of the merits of any allegation that the amount the BLM accepts for coal leases “should have been more,” these sale transactions establish the market value for coal in a monopolistic market environment.

The BLM has leased five federal coal tracts adjacent to and surrounding the state section. Regardless of opinions or recommendations as to what the BLM did or didn’t do, the BLM’s sales transaction is a directly applicable comp sale by the dominant coal owner in the region. The BLM’s action establishes the market in which the state coal exists, and therefore is a valid estimate for the FMV of the state section.

NON-FAIR MARKET VALUE CONCERNS

Coal is or may be sold on the international market.

An international market for a portion of PRB coal exists. As the coal owner, the state school trust benefits from the ability of our coal lessee to generate additional or increased royalty payments from their participation in overseas markets.

¹⁶ Ibid. p. 38.

¹⁷ Ibid. p. 38.

¹⁸ Ibid, p. 39.

¹⁹ Tom Sanzillo, Affidavit, Civ. No. 1:11-cv-00670-CKK, p. 3.

Some comments asserted that coal exports were going to significantly increase in the next few years. Other comments asserted that the coal export market was going to weaken, casting doubt on whether China is a reliable market for Montana coal. The U.S. Energy Information Administration's 2012 forecast estimates that coal exports will increase slightly between 2015 and 2025, from 110 million tons to 115 million tons per year.²⁰ This timeframe encompasses the anticipated production schedule for the state section.

The Board should engage in “alternative” energy, not coal.

Some comments urged the Board to end development of state school trust coal and instead limit development on state lands to alternative energy sources such as solar and wind power.

The Board has a fiduciary obligation to generate revenue from its management of state school trust lands. The revenue-generating opportunities from the development of all forms of commercial energy, including coal, are properly subject to consideration by the Board.

The leasing bid is being considered without full consideration of environmental impacts.

Comments included broad concerns for potential environmental impacts from the continued mining, transporting and utilization of coal, as well as potential effects on land, water and air in and adjacent to the mine area.

Coal mining in Montana is regulated by state (Department of Environmental Quality) and federal (Bureau of Land Management) agencies. A state coal lease is therefore a contingent rights lease. Lease issuance does not confer upon the lessee the right to mine. Proposed mining operations cannot occur without the issuance of a permit pursuant to the Montana Strip and Underground Mine Reclamation Act, issuance of several ancillary permits, and Board review and approval of the mine operation and reclamation plan. These reviews require completion of an environmental review pursuant to MEPA and NEPA before any mining could take place.

The coal lease should not be issued before an environmental review under MEPA is conducted.

Pursuant to Section 77-1-121(2), MCA, and the terms of the State coal lease, the Board will conduct MEPA review upon any proposed mining upon the lease premises at the same time that mine regulatory permits are sought under Titles 75 and 82 of the Montana Code Annotated. The constitutionality of this synchronized timing of the MEPA review was recently upheld by the Montana 16th Judicial District Court, Powder River County in a February 3, 2012 Order issued in Northern Plains Resource Council, et al. v. State Board of Land Commissioners, et al., Cause No. DV-38-2010-2480. The Court held that in such instances the coal lessee:

... takes its leasehold interest subject to ‘all agency responsibility and authority under the Montana Environmental Policy Act,’ as well as the Montana Strip Mine Siting Act, SUMRA and the Land Board's approval of mine operations and

²⁰ Annual Energy Outlook 2012, U.S. Energy Information Administration, p. 115.

reclamation plans . . . [and] . . . also agrees "to be bound by all applicable laws in effect at the date of this lease, or which may, from time to time, be adopted and which do not impair the obligations of this lease and do not deprive the Lessee of an existing property right recognized by law." [Emphasis supplied.] This clause appears to be . . . broad enough to include all reasonable restrictions to be imposed by the Land Board in meeting its trust responsibilities.

The Board should condition the lease on lessee's compliance with unionization laws.

The United Mine Workers Association (UMWA) requests the Board to include language in the state school trust coal lease that provides for termination of the lease if the lessee is deemed to have violated provisions of several identified federal acts and similar (but not identified) state laws. Also requested is the inclusion of language regarding unionization neutrality, recognition of a "card check" process, and workplace access for union representatives.

The state coal lease presently includes language requiring the lessee to comply with all applicable laws and rules in effect at the date of the lease, or which may be subsequently adopted. The cited federal acts have provisions and procedures in place for enforcing compliance. Presumably, the un-cited state laws would also have provisions and procedures consistent with their statutory authorizations.

The stipulations proposed by the UMWA place the Board in the middle of disputes between the union and mine operator. The Board would be subject to requests that it evaluate allegations that the mine operator has violated laws for which the Board has no expertise or authority. The Board is also placed in a potential conflict of interest. It would be obligated by the proposed lease stipulations to determine whether a violation has occurred, and render and defend a decision on whether and why the violation does or does not merit lease termination. At the same time, the Board has a fiduciary duty to manage the lease interest for the benefit of the trust beneficiary. Obligating the Board to consider lease termination as a proper response for employment disputes fundamentally and adversely affects the stability of the lessee's lease interest.

The Board may not lease coal to foreign interests.

EarthJustice requested the Board to consider whether awarding a coal lease to SPE would violate the provisions of MCA §77-3-305(1), which directs that:

- (1) The board may not issue leases to any citizen of another country or any person, partnership, corporation, association, or other legal entity controlled by interests foreign to the United States unless that country provides for similar or like privileges to citizens of the United States.

EarthJustice refers to a news article stating that Gunvor Group, Ltd.(Gunvor) purchased a one-third interest in the Bull Mountain mine. Commentor advises that Gunvor's headquarters is located in Switzerland. Department legal staff investigated SPE's ownership status and made the following determination:

MCA § 77-3-305(1) is not implicated by SPE's bid, because this entity is a Delaware Limited Liability Company; an entity which is not foreign to the United States. The Manager of this LLC is Global Mining Holding Company, LLC, a Delaware Limited Liability Company, the control of which is comprised of three companies possessing equal shares:

- FirstEnergy Ventures Corp., a wholly-owned subsidiary of FirstEnergy Corp., a public utility holding company organized in 1996 under the laws of Ohio;
- WMB Marketing Ventures, LLC, a Delaware Limited Liability Company (a wholly-owned subsidiary of Boich Companies, an Ohio corporation; and
- Pinesdale, LLC, a Foreign Limited Liability Company, filed in the State of Texas on February 10, 2012, and is a wholly-owned subsidiary of Gunvor Group, Ltd., which is believed to be a Company organized under the laws of Cyprus.

Because foreign interests only possess an indirect and partial one-third equity interest in SPE, and do not possess majority control of that entity, they possess no effective control of SPE.

Royalty terms are unclear for determining coal price when f.o.b. mine, prepared for shipment, does not occur under an arm's length contract.

MCA § 77-3-316 and -317(c) affirm that the royalty terms must reflect fair market value, based on the total amount of all sales. The addition of the following lease royalty language is proposed to clarify the correct method of computing coal price for royalty calculations when the coal is not sold f.o.b. mine or the transaction involves affiliated companies.

The f.o.b. mine price shall be calculated on the gross value from an arm's length sale to an unaffiliated third-party. If the point of sale to an unaffiliated third-party is remote from the mine, Lessee may reference comparable sales that are to unaffiliated third-parties for the same time period, or may deduct the actual transportation costs between the point of sale and mine load-out facility. The resulting price must never be less and the fair market value of the coal at the mine, prepared for shipment.

If adopted by the Board, this language would be added to ¶ 7. Royalty.

SECTION 2 Comments Received

Due to file size, Section 2 is provided separately on the department website or upon request.

DNRC Website Address: <http://www.dnrc.mt.gov/>

Department Contact: Department of Natural Resources and Conservation
PO Box 201601
1625 11th Avenue
Helena MT 59620-1601

Department Main Number:	(406) 444-2074
Public Information Officer:	(406) 444-0465
Minerals Management Bureau Chief:	(406) 444-3843

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SECTION 3

Supplemental Exhibits and Attachments

Due to file size, Section 3 is available separately on the department website or upon request.

DNRC Website Address: <http://www.dnrc.mt.gov/>

Department Contact: Department of Natural Resources and Conservation
PO Box 201601
1625 11th Avenue
Helena MT 59620-1601

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Signal Peak Energy
Coal Lease Application and Request to Bid

Bull Mountain Mine
Musselshell County

May 8, 2012

Montana Department
of
Natural Resources and Conservation
Trust Land Management Division

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SUMMARY

Signal Peak Energy (SPE) operates the Bull Mountain mine, an underground mine located 12 miles south of Roundup, on the border between Musselshell and Yellowstone counties. The State of Montana owns a school trust section located within the path of future mining. Expressions of interest to lease the State section date back to at least the late 1980s. Bull Mountain Coal Properties, Inc. submitted an application in 2008. No lease was issued at that time, primarily due to uncertainty regarding market demand and infrastructure, the ability and timeframe required to obtain the Federal coal leases, and the requirement to have a State lease in production or within an approved permit area within the ten-year primary lease term.

Market demand and infrastructure have enabled SPE to successfully develop the mine, which produced about 5 million tons of coal in 2011. SPE also recently obtained coal leases from the BLM for five tracts of Federal coal located in a proposed life of mine expansion area. The State section contains approximately 11.93 million tons of recoverable coal and is also located within the proposed expansion area. The five Federal coal leases are located around three sides of the State section. Exhibit 1 shows the existing permitted mine area, the proposed life of mine expansion area, existing surface facilities and the location of the State tract and Federal leases within the mine expansion area.

The Department received a coal lease application on April 6, 2012 from SPE for the State section. The Department therefore seeks Land Board (Board) authorization to offer the State tract via a competitive, sealed bid process. The Department would return to the Board at a future date and present the bid results for consideration.

Recommended Lease Terms

The Department has reviewed the lease application and information for the Bull Mountain mine and other states. Recommended lease terms are as follows:

Township 6 North, Range 27 East, Section 16: ± 640 acres

Primary Term:	10 years
Royalty Rate:	10%
Annual Rental:	\$3.00 per acre
Target Bonus Bid:	\$0.30 per recoverable ton (\$3.58 million)
Beneficiary:	Common Schools

COAL LEASING PROCEDURE

State statute provides guidance and requirements relative to leasing procedure and evaluation of the coal resource to determine fair market value prior to issuing a lease:

77-3-312. Leasing procedures. (1) (a) Prior to issuing a coal mining lease, the board shall evaluate the coal and land proposed to be leased for the purpose of determining the fair market value of any coal reserves located on the land, giving opportunity for and consideration to public comments on the evaluation.

(b) (i) The board may determine fair market value by competitive bid or through an appraisal.

(ii) If no competitive bids are offered on the coal and land to be leased, the board may enter into a lease that is at least at the full market value as determined by the appraisal pursuant to subsection (1)(b)(i).

(2) Except as provided in subsection (1)(b), leases must be awarded by a competitive bid system, including a bonus bid for the first year's rental that may be amortized for a period of up to 5 years at the discretion of the board, and a lease may not be awarded at less than fair market value.

The Board has two methods for determining fair market value – either by competitive bid or through an appraisal. With either method, the Board must give opportunity for, and consideration of, public comments on the evaluation.

Proposed Timeline

The Department estimates the following timeframes would be required to complete the leasing process and provide the Board with information to determine whether to issue a coal lease on the state section.

- May-21-2012 Land Board – Department requests approval to proceed with the bid process.
- Prepare lease and bidding information for distribution.
 - Issue press release, place notice of lease sale and accompanying information on website.
 - Place notice of sale ads in major Montana newspapers for four consecutive weeks (required by ARM) prior to the sale date.
 - Mail or email a copy of the notice of sale to list of prospective coal lessees.
- Jun-##-2012 Sale Date – deadline for receiving bids.
- Department opens any bids received.
 - Prepare bid results/valuation document for Land Board consideration.
- Jul-16-2012 Land Board – request approval to put bid results/valuation document out for public comment.
- Solicit public comments on valuation document.
 - Press release, website, ads in major Montana newspapers.
- Aug-##-2012 Comment deadline.
- Prepare information document based on comments received for Board.
- Sep-17-2012 Land Board – review and determination of whether to issue lease.

MEPA

MEPA is not required prior to leasing if the leased lands are subject to further permitting and approval pursuant to Title 75 or 82. The Board's coal lease form contains express provisions implementing this requirement:

GRANTING CLAUSE. ...

All rights granted to Lessee under this Lease are contingent upon Lessee's compliance with the Montana Strip Mine Siting Act and the Montana Strip and Underground Mine Reclamation Act (Title 82, Chapter 4, Parts 1 and 2, MCA) and upon Lessor review and approval of Lessee's mine operation and reclamation plan. The rights granted under this Lease are further subject to agency responsibilities and authority under the provisions of the Montana Environmental Policy Act.

19. COMPLIANCE WITH LAWS AND RULES. This Lease is subject to further permitting under the provisions of Title 75 or 82, Montana Code Annotated. Lessee agrees to comply with all applicable laws and rules in effect at the date of this lease, or which may, from time to time, be adopted and which do not impair the obligations of this lease and do not deprive the Lessee of an existing property right recognized by law.

If a coal lease were issued on the State section, SPE would be in a position to finalize their proposed operating plan for the life of mine expansion area shown on Exhibit 1. This operating plan would then be submitted to DEQ and DNRC. This would trigger a new, comprehensive environmental review and permitting process for the life of mine expansion area. The Department would participate with DEQ in that process. Upon completion of that review, the Federal Office of Surface Mining (OSM) must approve the proposed operating plan for the Federal leases, DEQ must issue an amended mine permit, and the Board would have to approve the proposed operating plan as it relates to the State section.

COAL RESOURCE INFORMATIONMining Operation

The Bull Mountain mine is an underground mine located 12 miles south of Roundup, on the border between Musselshell and Yellowstone counties. The mine recovers coal using an underground continuous miner and longwall panels. A preparation plant processes run-of-mine coal into clean (shippable) coal. A 5.7 mile railroad spur and loadout facility is located adjacent to the mine. A 35 mile rail line runs from the mine to the BNSF main rail line at Broadview, Montana. The mine is permitted for up to 12 million tons per year. In calendar 2011, the mine produced about 5 million tons of coal.

Coal Quantity and Quality

The target coal is the Mammoth/Rehder coal seams in the Fort Union formation. Coal thickness ranges between 8 and 13 feet thick in the overall mine area. The Mammoth coal is approximately 10 foot thick in the State section. The interburden between the Rehder coal and the Mammoth Coal ranges in thickness from 13 feet in the western part of the section to 0 feet in the eastern part of the section. Where this interburden layer is thin, the 3 foot thick Rehder coal

is mined along with the Mammoth coal. The overburden (depth from the surface to the target coal seam) ranges from 400 to 800 feet on the State section.

Detailed reserve calculations conducted by the BLM determined that the State section contains an estimated 11.93 million tons of recoverable coal. SPE's reserve calculations for the State section are almost identical, at 11.62 million tons. The processing plant recovery factor averages 82%, which is the ratio of clean (shippable) coal to run of mine (recoverable) coal. Therefore the State section's shippable coal reserve is an estimated 9.78 million tons.

The Mammoth/Rehder coal seams are low sulfur, moderate BTU coal. Average quality values reported for this coal are as follows:

Ash:	10.2%
Sulfur:	0.87%
Fixed Carbon:	42.12%
Moisture:	17.65%
Volatile Matter:	29.68%
BTU/lb:	9,640

RENTAL AND ROYALTY TERMS

State statute (77-3-316) provides that the compensation to the State under all coal mining leases must be upon a rental and royalty basis, as fixed and determined by the Board.

Rental Rate

The Department recommends an annual advance rental of \$3.00 per acre, consistent with that charged by the Federal government on BLM coal leases. Pursuant to administrative rule, lease rentals are in addition to any royalty payment. Statute requires rental payments cannot be less than \$2.00 per acre per year.

Royalty Rate

The Department recommends a royalty obligation of 10% f.o.b. mine site, prepared for shipment, including production and value-based taxes. State statute (77-3-316(4)(b), MCA) requires that the royalty for coal mined may not be less than 10%. This royalty rate is significantly higher than that imposed by Federal and other state leases. The BLM, Colorado, Utah, Idaho and Wyoming all utilize an 8% royalty rate for underground mines.

VALUATION

By statute, the Board has two methods for determining fair market value – either by competitive bid or through an appraisal. With either method, the Board must give opportunity for, and consideration of, public comments on the evaluation.

With rental and royalty terms established, the remaining valuation component is the bonus. The bonus is also the component universally utilized by the BLM and surrounding states in a competitive bid process. The bonus is commonly expressed as an amount per ton of coal reserves. The Department recommends the Board adopt a target bonus bid of \$0.30 per recoverable ton, as discussed below.

The BLM has just completed an appraisal and competitive bid process for the five tracts of Federal coal adjacent to the State section. The location of the Federal and State tracts are shown on Exhibit 1. The State coal is of identical quality, would be recovered using the same mining methods, would incur the same mining costs, and would be sold for the same price as the Federal coal. The BLM bid process is nearly identical to ours, consisting of an up-front bonus bid for a coal lease that contains defined rental and royalty terms. The one difference between the BLM and State bidding process is that the BLM is able to keep the appraised value confidential and therefore unknown to the prospective bidders. The BLM utilizes a detailed appraisal process pursuant to formal instructions and requirements (H-3070-1 Economic Evaluation of Coal Properties). The BLM's acceptance of SPE's bid confirms that SPE's bid equaled or exceeded BLM's formal appraisal. BLM's lease issuance therefore explicitly establishes a fair market value comparable sales transaction that is directly applicable to the State coal.

BLM lease sale transactions for underground mines in other states are available. A lease for an underground mine was also recently issued by the State of Utah. While not as directly comparable as the BLM leasing action for the five Federal tracts surrounding the State section, the information available from other states provides a reference for comparison.

State	Description	Lease No.	Sale Date	Tons (millions)	Bonus Bid (\$/ton)
<u>BLM Underground Lease Sales</u>					
WY	Ten Mile Rim	WYW154595	03/19/2005	32.145	\$ 0.216
UT	Kenilworth	UTU081893	06/08/2006	14.900	\$ 0.189
UT	Mill Fork West	UTU084285	08/01/2006	0.325	\$ 0.302
CO	Twentymile (1)	COC067514	10/12/2006	2.100	\$ 0.250
CO	Twentymile (2)	COC072980	01/14/2009	1.400	\$ 0.250
UT	Consolidation Coal	UTU086038	09/03/2009	0.561	\$ 0.359
<u>State of Utah Underground Lease Sale</u>					
UT	West Ridge Resources	ML51744OBA	06/01/2010	0.146	\$0.300

While the Department recommends \$0.30 per ton as a target bonus, this amount represents a significant premium over the value that would be generated by a Federal or other state coal lease. All leases above, including the Federal leases at Bull Mountain, have an 8% royalty rate. At 10%, the State's royalty rate generates 25% more royalty revenue than these other leases. If the average coal price is \$12.00 per ton, the State's additional 2% royalty rate generates \$2.35 million in additional royalty payments over approximately 8 years. When discounted at 3%, the incremental royalty revenue has a present value of \$1.91 million. A \$0.30 per ton bonus translates to an upfront bid of \$3.58 million. If the present value of the additional royalty revenue is taken into account, the State would have to receive only \$0.14 per ton to generate the same total present value as the Federal lease terms. A \$0.30 per ton bonus bid would therefore

net the State the same bonus revenue as the adjacent Federal leases, plus royalty revenue 25% higher than what the Federal and other state 8% royalty rate leases would receive.

Total Revenue Projection

Assuming an average coal price of \$12.00 per ton, an annual rental of \$3.00 per acre, a 10% royalty rate, and a bonus bid of \$0.30 per recoverable ton, the State section would generate an estimated \$15.3 million in total lease revenue (undiscounted) over the life of the lease. The Common Schools would receive net revenues as both distributable (rentals and bonus) and permanent (royalties) funds.

The State of Montana also receives approximately one-half of the coal royalties generated on Federal lands. The Federal leases would generate an estimated 29 million tons of shippable coal. The State would receive an estimated \$14 million over the life of the Federal leases.

Production from the life of mine expansion area would generate an estimated \$98 million from severance (\$60 million) and gross proceeds (\$38 million) taxes.

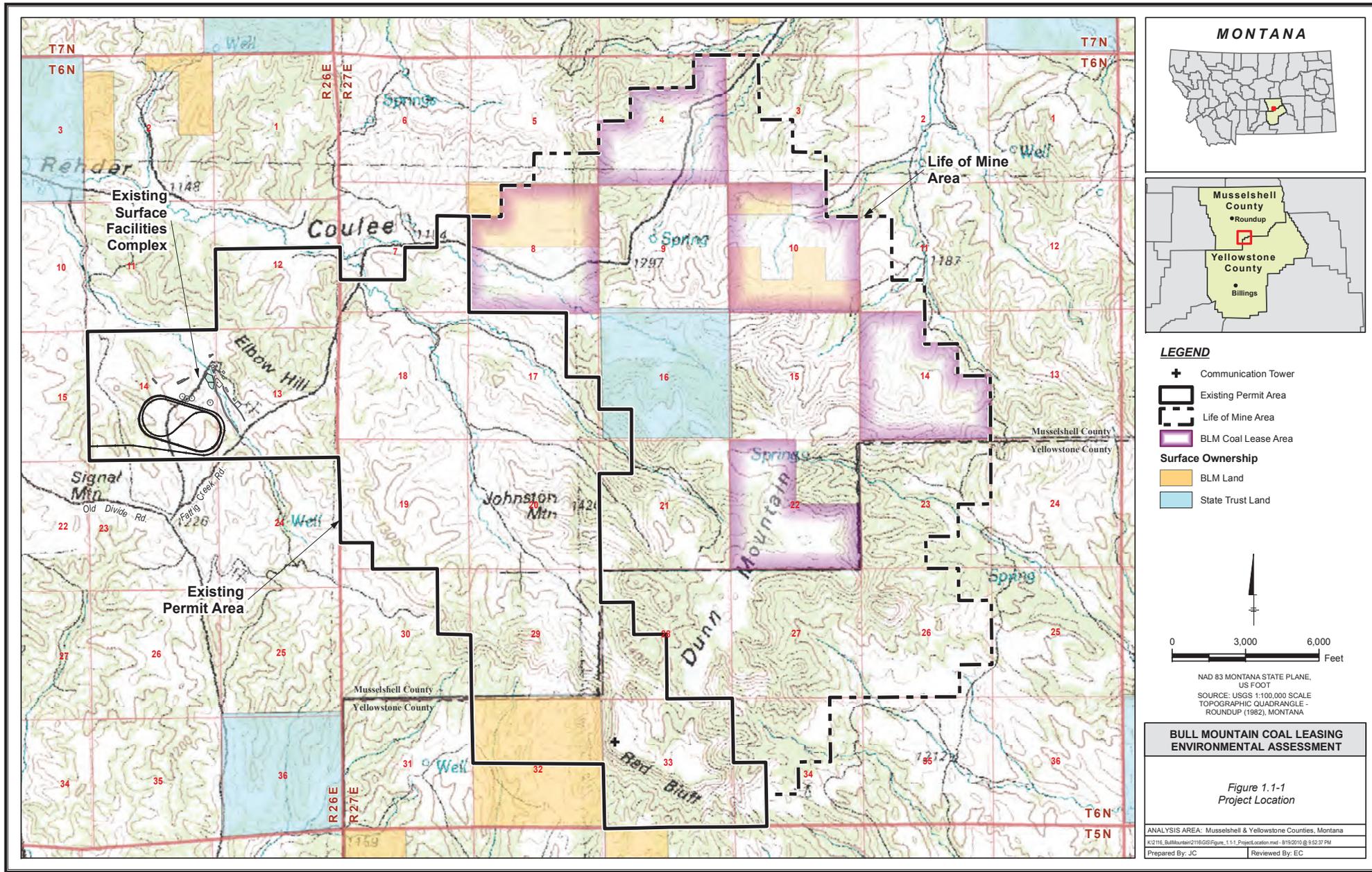


Exhibit 1

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Exhibit 2

**State of Montana
COAL LEASE**

DS-459
Amended 10/2009

No. _____

THIS LEASE is made and entered into between the State of Montana, by and through its lawfully qualified and acting Board of Land Commissioners, hereinafter referred to as "Lessor", and

<Lessee Name and Address>

hereinafter referred to as "Lessee", under and pursuant to the authority granted Lessor by the terms and provisions of Title 77, Chapter 3, Part 3, MCA, and all acts amendatory thereof and supplementary thereto, and all rules adopted pursuant thereto.

IT IS MUTUALLY UNDERSTOOD, AGREED AND COVENANTED BY AND BETWEEN THE PARTIES TO THIS LEASE AS FOLLOWS:

1. GRANTING CLAUSE. The Lessor, in consideration of the rents and royalties to be paid and the conditions to be observed as hereinafter set forth, does hereby grant and lease to the Lessee, for the purpose of mining and disposing of coal and constructing all such works, buildings, plants, structures and appliances as may be necessary and convenient to produce, save, care for, dispose of and remove said coal, and for the reclamation thereafter, all the lands herein described as follows:

Land Located in: _____ County:

Description of land:

Total number of acres, more or less, _____, belonging to _____ Grant.

All rights granted to Lessee under this Lease are contingent upon Lessee's compliance with the Montana Strip Mine Siting Act and the Montana Strip and Underground Mine Reclamation Act (Title 82, Chapter 4, Parts 1 and 2, MCA) and upon Lessor review and approval of Lessee's mine operation and reclamation plan. The rights granted under this Lease are further subject to agency responsibilities and authority under the provisions of the Montana Environmental Policy Act.

2. EFFECTIVE DATE AND TERM. This Lease takes effect on <Lease Effective Date> and is granted for a primary term of ten (10) years and so long thereafter as coal is produced from such lands in commercial quantities, subject to all of the terms and conditions herein set forth. A lease not producing coal in commercial quantities at the end of the primary term shall be terminated, unless the leased lands are described in a strip mine permit issued under Section 82-4-221, MCA, or in a mine site location permit issued under Section 82-4-122, MCA, prior to the end of the primary term, and the lease shall not be terminated so long as said lands are covered and described under valid permit.

3. LEASE EXTENSION. The Board of Land Commissioners may grant reasonable extensions of the primary term of this Lease upon a showing that Lessee, despite due care and diligence, is or has been directly or indirectly prevented from exploring, developing, or operating this Lease or is threatened with substantial economic loss due to litigation regarding this Lease or another lease in the same strip mine permit or mine site location permit held by the Lessee, state compliance with the Montana Environmental Policy Act, or adverse conditions caused by natural occurrences.

4. RIGHTS RESERVED. Lessor expressly reserves the right to sell, lease, or otherwise dispose of any interest or estate in the lands hereby leased, except the interest conveyed by this Lease; provided, however, that Lessor hereby agrees that subsequent sales, leases or other dispositions of any interest or estate in the lands hereby leased shall be subject to the terms of this Lease and shall not interfere with the Lessee's possession or rights hereunder.

5. BOND. Lessee shall immediately upon the execution of this Lease furnish a surety bond in the amount of <bond amount>, conditioned upon compliance with the provisions of this Lease, or, in the option of the Lessor, a cash deposit in the amount of <bond amount>, or an irrevocable letter of credit in a form approved by Lessor drawn upon an approved bank in the same amount. All rentals, royalties and interest must be paid and all disturbance must be reclaimed to the satisfaction of Lessor prior to release of any bond. Additional bonding may be required, or reduced bonding allowed, whenever Lessor determines it is necessary, or sufficient, to ensure compliance with this Lease.

6. RENTAL. Lessee shall pay Lessor annually, in advance, for each acre or fraction thereof covered by this Lease, beginning with the date this Lease takes effect, an annual money rental of <rental amount> per acre. Rental terms are subject to readjustment as provided in Paragraph 8, but in no case shall it be less than two (2) dollars per acre.

7. ROYALTY. Lessee shall pay Lessor in money or in kind at Lessor's option a royalty on every short ton (2,000 pounds) of coal mined and produced during the term of this Lease, calculated upon the f.o.b. mine price of the coal prepared for shipment, including taxes based on production or value. Lessee shall pay a royalty of <xx.x %> upon coal removed by strip, surface, or auger mining methods and a royalty of <xx.x %> for coal removed by underground mining methods. Royalty terms are subject to review and readjustment as provided in Paragraph 8, but in no case shall the royalty for the coal mined be less than ten (10) percent of the f.o.b. price of a ton prepared for shipment.

8. READJUSTMENT OF RENTAL AND ROYALTY TERMS. The rental and royalty terms of this Lease shall be subject to readjustment to reflect fair market value at the end of the primary term of ten (10 years) and at the end of each five (5) year period thereafter if the lease is producing coal in commercial quantities.

9. OFFSETTING PRODUCTION. The obligation of Lessee to pay royalties under this Lease may be reduced by the Board for coal produced from any particular tract within the Lease upon a showing by Lessee to the Board that the coal is uneconomical to mine at prevailing market prices and operating costs unless Lessor's royalty is reduced. Under no circumstances may Lessor's royalty be reduced below ten (10) percent of the coal produced and sold f.o.b. the mine site, prepared for shipment, including taxes based on production or value.

10. LESSOR NOTIFICATION AND REPORTS. Lessee shall notify Lessor prior to the commencement of any prospecting, exploration, development or production operations. As soon as any mining operations are commenced, Lessee shall submit to Lessor, on or before the last day of each month, a royalty report and payment covering the preceding calendar month, which report shall be in such form and include such information as Lessor shall prescribe. Upon request, Lessee shall also furnish to Lessor, reports, plats, and maps showing exploration data, development work, improvements, amount of leased deposits mined, contracts for sale and any other information with respect to the land leased which Lessor may require. Lessor's point of contact for all matters related to this Lease is:

Department of Natural Resources & Conservation
Minerals Management Bureau
P.O. Box 201601
1625 Eleventh Avenue
Helena, MT 59620-1601

Lessor will notify Lessee of any subsequent change in point of contact.

11. INSPECTION. Representatives of the Lessor shall at all times have the right to enter upon all parts of the leased premises for the purposes of inspection, examination, and testing that they may deem necessary to ascertain the condition of the Lease, the production of coal, and Lessee's compliance with its obligations under this Lease. Representatives of Lessor shall also, at all reasonable hours, have free access to all books, accounts, records, engineering data, and papers of Lessee insofar as they contain information relating to the production of coal under this Lease, the price obtained therefor, and the fair market value of the production. Lessor shall also have free access to agreements relating to production of coal under this Lease. Lessor may copy at its own expense any book, account, record, engineering data, papers, or agreements to which it has access pursuant to this paragraph.

12. CONFIDENTIALITY. Lessor agrees that Lessee may request any materials obtained by Lessor pursuant to this Lease be designated as confidential. Lessor shall agree to keep any information so designated strictly confidential if Lessor determines that confidentiality is not unlawful. Further, the parties agree that the information Lessee is obliged to provide pursuant to this Lease is only that information relating to the reasonable administration and enforcement by Lessor of the provisions of this Lease and state law.

13. ASSIGNMENT. This Lease may not be assigned without the prior approval of Lessor in writing. Assignments must be made in accordance with any statutes or administrative rules pertaining to assignments in effect at the time of assignment. Each Lessee executing this Lease, or accepting an assignment of an interest in this Lease, is jointly and severally liable for all obligations attributable to the entire working interest under this Lease. Assignments may not extend the expiration date of this Lease.

14. TERMINATION. Lessee may surrender and relinquish this Lease by giving written notice to the Lessor at least thirty (30) days prior to the anniversary date of the Lease. It is understood and agreed that the Lessor hereby reserves the right to declare this Lease forfeited and to cancel the same through the Board of Land Commissioners upon failure of Lessee to fully discharge all the obligations provided herein, after written notice from the Department and reasonable time fixed and allowed by it to Lessee for the performance of any undertaking or obligation specified in such notice concerning which Lessee is in default. Lessee, upon written application therefor, shall be granted a hearing on any notice or demand of the Department before the Lease may be declared forfeited or canceled.

15. SURRENDER OF PREMISES. Upon the termination of this Lease for any cause, Lessee shall surrender possession of the leased premises to Lessor, subject to Lessee's right to re-enter (1) for the purpose of removing all machinery and improvements belonging to Lessee, hereby granted at any time within six (6) months after the date of such termination, except those improvements as are necessary for the preservation of the deposit and access to the deposit, which improvements shall become the property of Lessor; and (2) for the purpose of complying with State and Federal laws adopted pursuant to the police power of State or Federal government. If any of the property of Lessee is not removed from the leased premises as herein provided, the same shall be deemed forfeited to Lessor and become its property.

16. PROTECTION OF THE SURFACE, NATURAL RESOURCES, AND IMPROVEMENTS. Lessee agrees to take such reasonable steps as may be needed to prevent operations from unnecessarily: (1) causing or contributing to soil erosion or damaging any forage and timber growth thereon; (2) polluting the waters of springs, streams, wells, or reservoirs; (3) damaging crops, including forage, timber, or improvements of a surface owner; or (4) damaging range improvements whether owned by Lessor or by its grazing permittees or lessees. Upon any partial or total relinquishment or the cancellation or expiration of this Lease, or at any other time prior thereto when required by Lessor and to the extent deemed necessary by Lessor, Lessee shall fill any sump holes, ditches and other excavations, remove or cover all debris, and, so far as reasonably possible, reclaim the disturbed area to a condition in keeping with the concept of the best beneficial use, including the removal of structures as and if required. Lessor may prescribe the steps to be taken and reclamation to be made with respect to the land and improvements thereon. Nothing in this section limits Lessee's obligation to comply with any applicable state or federal law, rule, or regulation.

17. TAXES. Lessee shall pay when due all taxes lawfully assessed and levied upon improvements, output of mines, or other rights, property or assets of the Lessee.

18. SUCCESSORS IN INTEREST. Each obligation hereunder shall extend to, and be binding upon, and every benefit hereof shall inure to the heirs, executors, administrators, successors and assigns of the respective parties hereto.

19. COMPLIANCE WITH LAWS AND RULES. This Lease is subject to further permitting under the provisions of Title 75 or 82, Montana Code Annotated. Lessee agrees to comply with all applicable laws and rules in effect at the date of this lease, or which may, from time to time, be adopted and which do not impair the obligations of this lease and do not deprive the Lessee of an existing property right recognized by law.

20. WATER RIGHTS. Lessee may not interfere with any existing water right owned or operated by any person. Lessee shall hold Lessor harmless against all claims, including attorney fees, for damages claimed by any person asserting interference with a water right.

21. MINE SAFETY. Lessee agrees to operate the mine in accordance with rules promulgated by the Mine Safety and Health Administration for the health and safety of workers and employees.

22. WASTE PROHIBITED. All mining operations shall be done in good and workmanlike manner in accordance with approved methods and practices using such methods to insure the extraction of the greatest amount of economically minable and saleable mineral, having due regard for the prevention of waste of the minerals developed on the land, the protection of the environment and all natural resources, the preservation and conservation of the property for future use, and for the health and safety of workers and employees. If the Lessor has reasonable belief that the operations are not so being conducted, it shall so notify the Lessee in writing, and if compliance is not promptly obtained and the delinquency fully satisfied, the Lessor may, at its option, cancel the Lease pursuant to the provisions of paragraph 13 of this Lease.

23. SURRENDER OF DATA. All geological data pertaining to the leased premises, including reports, maps, logs and other pertinent data regarding trust resources shall be given to the Lessor upon surrender, termination, or expiration of the Lease. Lessor may refuse to release bond until surrender of such data to the Lessor. All drill core unused or undamaged by testing shall be saved. Upon surrender, termination, or expiration of the lease, Lessee shall contact the State Geologist, Montana Bureau of Mines and Geology, Butte, Montana, to determine if such drill core is of interest to the State Geologist for the drill core library. Any drill core determined by the State Geologist to be of interest shall be forwarded by Lessee, at Lessee's cost, to the drill core library.

24. WEED CONTROL. Lessee is responsible for controlling noxious weeds on the leased premises and shall prevent or eradicate the spread of noxious weeds onto land adjoining the leased premises.

25. COAL MINE GAS. Lessee may remove and vent, flare, or sell coal bed gas from the coal formation being mined only if such removal is a necessary safety procedure directly related to the normal physical process of mining the coal under this Lease. If Lessor owns oil and gas rights to lands herein described, Lessee must pay Lessor a royalty on any coal bed gas removed and sold. Coal bed gas royalty will be calculated according to Lessor's then current oil and gas lease terms. Venting or flaring of coal bed gas that is uneconomical to sell must comply with all applicable laws and rules. The right to remove and vent, flare, or sell coal bed gas, except under the circumstance described above, is expressly retained by Lessor.

26. SURFACE OWNER AND SURFACE LESSEE RIGHTS. Lessee shall notify the surface owner, if the surface owner is not the Lessor, and any surface lessee of the location of any facilities or access roads on the leased premises prior to their construction.

27. DAMAGES. Where Lessor owns the surface estate above the leased premises, Lessee shall compensate Lessor or Lessor's surface lessees or permittees for all damages to authorized improvements on the leased premises, including penalties and charges assessed by the FSA on CRP lands, as a result of Lessee's prospecting, exploration, development or mining operations. All such damages will be assessed by and paid directly to the Lessor. Lessee shall also make all payments required by law to surface owners and lessees if Lessor is not the owner of the surface estate above the leased premises.

28. INDEMNIFICATION. The Lessee shall protect, defend, and save the Lessor, its agents and employees harmless from and against all claims, liabilities, demands, causes of action, and judgments (including the cost of defense and reasonable attorney fees) arising in favor of or asserted by third parties on account of damage to property, personal injury, or death, which injury, death or damage, in whole or in part, arises out of or in any way results from the negligent acts or omissions of the Lessee, its contractors, agents or subcontractors.

29. SPECIAL CONDITIONS.

30. NON-WARRANTY OF TITLE. Regardless of any of the above provisions of this Lease, actual or implied, the State of Montana does not warrant title to its lands.

IN WITNESS WHEREOF, the parties hereto set their hands and Lessor has caused this agreement to be executed with the official seal of the State Board of Land Commissioners on this ___ day of _____, 20__.

THE STATE OF MONTANA
Lessor

<lessee name>
Lessee

By Its State Board of Land Commissioners

By: _____

Its: _____

DIRECTOR

SAMPLE

Montana Code Annotated 2011

TITLE 77. STATE LANDS

CHAPTER 3

Part 3. Coal

77-3-301. Coal leases authorized. In response to an application or on its own initiative, the board may lease in a manner that it considers in the best interests of the state any state lands to which the title is vested in the state and in which the coal or coal rights are not reserved by the United States for exploring for, mining, removing, selling, and disposing of the coal, upon the terms and conditions provided in this section and subject to the rules that the board prescribes.

History: En. Sec. 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part); amd. Sec. 4, Ch. 318, L. 2003.

77-3-302. Lands subject to coal leasing. The authority to lease extends to state lands no matter how acquired and extends to state lands which have been sold but in which the coal rights are reserved by the state, whether the lands are under certificate of purchase or patents have been issued.

History: En. Sec. 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part).

77-3-303. Rules relating to coal leasing. (1) The board may adopt rules and perform all acts not inconsistent with The Enabling Act, the constitution, and the statutes of this state that it considers necessary and proper relating to the leasing of state land for coal mining purposes.

(2) The board is encouraged to lease the property interests acquired from the federal government in the Crown Butte land exchange for coal mining purposes. The proceeds from the leases must be used for the direct funding of education, including K-12 school districts, institutions of higher education, and vocational-technical education, unless otherwise provided in the transfer agreement.

History: En. Sec. 44, Ch. 60, L. 1927; re-en. Sec. 1805.44, R.C.M. 1935; R.C.M. 1947, 81-507; amd. Sec. 1, Ch. 485, L. 2001.

77-3-304. Protection of rights of purchasers or prior lessees. Whenever the leased lands are under certificate of purchase or patents have been issued and in all cases where the lands are under lease for grazing, agriculture, or similar purposes, care shall be taken in issuing the coal mining lease to protect the rights of the purchaser or lessee.

History: En. Sec. 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part).

77-3-305. Limitations on leasing. (1) The board may not issue leases to any citizen of another country or any person, partnership, corporation, association, or other legal entity controlled by interests foreign to the United States unless that country provides for similar or like privileges to citizens of the United States.

(2) The board shall consider whether the extraction of the coal from those lands by strip-mining methods would adversely affect the methods of recovery of deep minable coal from those

operations on those lands in the future.

History: En. 81-511 by Sec. 6, Ch. 358, L. 1975; R.C.M. 1947, 81-511(part); amd. Sec. 1, Ch. 127, L. 1983; amd. Sec. 1, Ch. 332, L. 2011.

77-3-306. Conditions on manner of mining. (1) Every coal lease shall be conditioned upon compliance with Title 82, chapter 4, parts 1 and 2.

(2) These coal leases are subject to the condition that the coal must be mined, handled, and marketed in a manner that will prevent as far as possible all waste of coal and are also subject to the condition that the mining operations shall be carried on in a systematic and orderly manner that will not make subsequent mining operations more difficult or expensive. A violation of any of these conditions is grounds for the forfeiture of the lease after a hearing before the board.

History: En. Sec. 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part).

77-3-307. Improvements of former lessee. (1) When a coal mining lease is applied for on land where mining operations have been carried on by a former lessee and there are surface or underground improvements on the land used at the former operations, disposition must be made of the improvements satisfactory to the board before a new lease is issued. If the owner of the improvements desires to sell the improvements to the new lessee, the new lessee shall pay the owner the reasonable value of the improvements as far as they are suitable for the new mining operations. If they fail to agree on the value of the improvements, the value must be ascertained and fixed as provided in 77-6-306.

(2) Before a new lease is issued, the applicant shall show to the satisfaction of the board that the applicant has paid the owner for the improvements as agreed on between them or as fixed under the provisions of 77-6-306, that the applicant has tendered payment as fixed, or that the owner desires to remove the owner's improvements.

History: En. Sec. 43, Ch. 60, L. 1927; re-en. Sec. 1805.43, R.C.M. 1935; amd. Sec. 32, Ch. 428, L. 1973; R.C.M. 1947, 81-506; amd. Sec. 2557, Ch. 56, L. 2009.

77-3-308. Limitation on public inspection rights. The department may withhold from public inspection any information obtained from a coal mining lessee or permittee under this part if the information relates to the geology of the mining lease or permit. The withholding is effective for as long as the department considers it necessary either to protect the lessee's or permittee's economic interest in the geologic information against unwarranted injury or to protect the public's best interest.

History: En. Sec. 3, Ch. 105, L. 1989.

77-3-309 through 77-3-310 reserved.

77-3-311. Form of lease. The board shall prescribe the form of the lease.

History: En. Sec. 39, Ch. 60, L. 1927; re-en. Sec. 1805.39, R.C.M. 1935; amd. Sec. 5, Ch. 257, L. 1965; amd. Sec. 1, Ch. 121, L. 1967; amd. Sec. 6, Ch. 22, L. 1971; amd. Sec. 1, Ch. 291, L. 1971; amd. Sec. 31, Ch. 428, L. 1973; amd. Sec. 2, Ch. 358, L. 1975; R.C.M. 1947, 81-502(part).

77-3-312. Leasing procedures. (1) (a) Prior to issuing a coal mining lease, the board shall evaluate the coal and land proposed to be leased for the purpose of determining the fair market value of any coal reserves located on the land, giving opportunity for and consideration to public

comments on the evaluation.

(b) (i) The board may determine fair market value by competitive bid or through an appraisal.

(ii) If no competitive bids are offered on the coal and land to be leased, the board may enter into a lease that is at least at the full market value as determined by the appraisal pursuant to subsection (1)(b)(i).

(2) Except as provided in subsection (1)(b), leases must be awarded by a competitive bid system, including a bonus bid for the first year's rental that may be amortized for a period of up to 5 years at the discretion of the board, and a lease may not be awarded at less than fair market value.

History: En. Sec. 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part); amd. Sec. 2, Ch. 332, L. 2011.

77-3-313. Bond requirements. The board may also demand a surety company bond in a form and in an amount as it may determine, conditioned for the payment of all royalties due the state and for the carrying on of the mining operations according to the terms of the lease. However, a lessee may, in lieu of furnishing a surety company bond, increase the cash deposit provided for under this part in an amount that in the judgment of the board makes the furnishing of a bond unnecessary.

History: En. Sec. 42, Ch. 60, L. 1927; re-en. Sec. 1805.42, R.C.M. 1935; R.C.M. 1947, 81-505; amd. Sec. 3, Ch. 332, L. 2011.

77-3-314. Duration of lease. (1) (a) Except as provided in subsection (1)(b), coal mining leases must be issued for a primary term of 10 years and for as long thereafter as coal is produced from lands in commercial quantities.

(b) If a lease under this part or a corresponding permit issued pursuant to Title 82, chapter 4, parts 1 and 2, is challenged before an administrative agency or in court, the primary term of the lease must be extended for the period of time that the lease or permit was subject to challenge.

(2) A lease not producing coal in commercial quantities at the end of the primary term must be terminated, unless the leased lands are described in a strip mine permit issued under 82-4-221 or in a mine-site location permit under 82-4-122 prior to the end of the primary term, and the lease may not be terminated so long as the lands are covered and described under valid permit.

(3) For the purpose of this part:

(a) "commercial quantities" means that quantity of coal that can be sold at profit in the commercial market;

(b) "covered and described" under a valid permit or "described" in a strip mine or mine-site location permit means that the leased lands or a portion of the leased lands within or outside of the boundaries of the permit area are expected to be affected or disturbed at some point during the life of the permittee's strip-mining or underground-mining operation and are identified in the permittee's permit application.

History: En. Sec. 39, Ch. 60, L. 1927; re-en. Sec. 1805.39, R.C.M. 1935; amd. Sec. 5, Ch. 257, L. 1965; amd. Sec. 1, Ch. 121, L. 1967; amd. Sec. 6, Ch. 22, L. 1971; amd. Sec. 1, Ch. 291, L. 1971; amd. Sec. 31, Ch. 428, L. 1973; amd. Sec. 2, Ch. 358, L. 1975; R.C.M. 1947, 81-502(part); amd. Sec. 4, Ch. 332, L. 2011.

77-3-315. Repealed. Sec. 2, Ch. 538, L. 1981.

History: En. 81-511 by Sec. 6, Ch. 358, L. 1975; R.C.M. 1947, 81-511(part).

77-3-316. Rental and royalty terms. (1) The compensation of the state under all coal mining leases must be upon a rental and royalty basis and must be fixed and determined by the board.

(2) The rental and royalty terms of each lease must be subject to readjustment to reflect fair market value at the end of its primary term of 10 years and at the end of each 5-year period thereafter if the lease is producing coal in commercial quantities.

(3) The rental may be on a per-acre basis or per-ton basis but the rental may not be less than \$2 per acre.

(4) (a) The amount of the royalty must be based upon:

- (i) the kind, grade, and character of the coal in each particular mine;
- (ii) the size, shape, and nature of the coal vein, strata, or body; and
- (iii) the shipping and marketing facilities for the product.

(b) Consideration must also be given to every other known factor affecting the value of each particular coal mining lease, but the royalty for the coal mined may not be less than 10% of the f.o.b. mine price of a ton prepared for shipment.

History: (1), (3), (4)En. Sec. 40, Ch. 60, L. 1927; re-en. Sec. 1805.40, R.C.M. 1935; amd. Sec. 3, Ch. 358, L. 1975; Sec. 81-503, R.C.M. 1947; (2)En. Sec. 39, Ch. 60, L. 1927; re-en. Sec. 1805.39, R.C.M. 1935; amd. Sec. 5, Ch. 257, L. 1965; amd. Sec. 1, Ch. 121, L. 1967; amd. Sec. 6, Ch. 22, L. 1971; amd. Sec. 1, Ch. 291, L. 1971; amd. Sec. 31, Ch. 428, L. 1973; amd. Sec. 2, Ch. 358, L. 1975; Sec. 81-502, R.C.M. 1947; R.C.M. 1947, 81-502(part), 81-503; amd. Sec. 5, Ch. 332, L. 2011.

77-3-317. Report and payment of royalty. (1) On or before the last day of each month every holder of a producing coal mining lease shall make a report to the department on a form the department prescribes showing:

- (a) the number of tons mined during the preceding calendar month;
- (b) the price obtained therefor at the mine;
- (c) the total amount of all sales; and
- (d) any additional information required by the department.

(2) The report shall be verified by the oath of the lessee and be accompanied by payment of the royalty due the state for the preceding month as shown by the report.

History: En. Sec. 45, Ch. 60, L. 1927; re-en. Sec. 1805.45, R.C.M. 1935; amd. Sec. 33, Ch. 428, L. 1973; R.C.M. 1947, 81-508.

77-3-318. Disposition of royalties and other receipts. All fees, rentals, royalties, and bonuses collected under state coal leases shall be paid to the department and credited as follows:

- (1) All fees shall be credited to the state general fund.
- (2) All rentals and bonuses shall be credited to the income fund of the grant to which the lands under each lease belong.
- (3) All moneys collected as royalties shall be credited to the permanent fund arising from the grants to which the lands under lease belong.

History: En. Sec. 47, Ch. 60, L. 1927; re-en. Sec. 1805.47, R.C.M. 1935; amd. Sec. 34, Ch. 428, L. 1973; amd. Sec. 5, Ch. 358, L. 1975; R.C.M. 1947, 81-510.

77-3-319 through 77-3-320 reserved.

77-3-321. Repealed. Sec. 8, Ch. 18, L. 1999.

History: En. Sec. 46, Ch. 60, L. 1927; re-en. Sec. 1805.46, R.C.M. 1935; R.C.M. 1947, 81-509.

77-3-322. Obligation to pay royalties under coal lease contract -- interest. (1) The obligation arising under a coal lease to pay coal royalties to the department, to deliver coal to a purchaser to the credit of the department, or to pay a portion of the proceeds of the sale of the coal to the department is of the essence in the lease contract.

(2) If the operator under a coal lease fails to pay coal royalties to the department within 120 days after the initial coal produced under the lease is marketed and within 90 days for all coal produced and marketed thereafter, the unpaid royalties must bear interest at the legal rate of interest authorized under 31-1-106 from the date due until paid. The operator may remit semiannually to the department the aggregate of 6 months' royalties if the aggregate amount is less than \$50 and annually if the aggregate amount is less than \$10.

(3) An action for failure to make payments under the lease or seeking payments under this section must be filed in the district court for the county in which the coal mine is located, and that court has jurisdiction over any actions brought under this section. The prevailing party in a proceeding brought under this section is entitled to recover court costs and reasonable attorney fees.

(4) This section does not apply if the department has elected to take the owner's or assignee's proportionate share of production in kind or if there is a dispute as to the title to the minerals or entitlement to royalties, the outcome of which would affect distribution of royalty payments.

History: En. Sec. 1, Ch. 243, L. 2011.

77-3-323. Audit -- notice -- action to compel payment. (1) Except as provided in subsection (2), the department may, within 5 years of the filing of a report pursuant to 77-3-317, commence an audit of a lessee's or former lessee's operation to determine whether the report is complete and accurate and whether all royalties owed have been paid. The department shall notify the lessee in writing of the audit. The notice must describe the period for which the audit is being conducted. Upon conclusion of the audit, the department shall notify the lessee of the department's conclusions and, if the department has determined that additional royalties are owed, the basis for that determination. An action to compel payment of royalties due must be commenced within 2 years of the date of mailing the notice.

(2) If a lessee or former lessee, with intent to evade payment of royalties, purposely or knowingly files a false report or purposely or knowingly fails to pay royalties owed, the department may conduct an audit and file an action to collect royalties at any time after the royalties are due.

History: En. Sec. 2, Ch. 243, L. 2011.

[END]

912-5

LAND BANKING PARCELS:
PRELIMINARY APPROVAL FOR SALE

LAND BOARD AGENDA ITEM
September 17, 2012

**PRELIMINARY APPROVAL FOR SALE OF LAND BANKING
 PARCELS # 688, 689 & 690
 PHILLIPS COUNTY**

Seller: State of Montana, Department of Natural Resources and Conservation

Nominators: Parcel 688 – Lessee, Nick Cebulski
 Parcel 689 – Lessees, John & Candy Kalal
 Parcel 690 – Lessee, Barbara Schmidt

Location: Parcels 688, 689 & 690 – are located within the Town of Zortman.

Property Characteristics: Parcel 688, 689 & 690 – These parcels are flat to gently rolling and used primarily for residential purposes.

Access: Parcel 688, 689 & 690 – Are legally accessibly by the public, and are surrounded by BLM and private land.

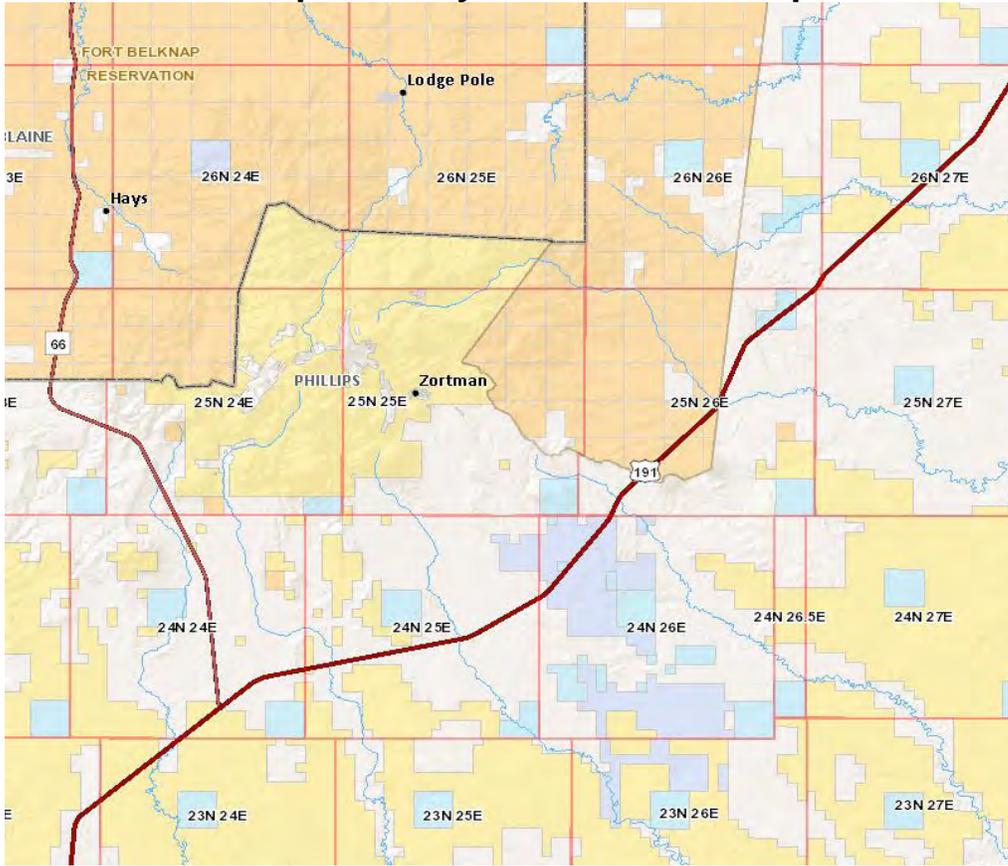
County	Sale #	# of Acres	Legal	Trust
Phillips	688	1±	Tract 1, COS 351 in SW¼NW¼SW¼, Section 16, T25N-R25E	Common Schools
Phillips	689	4.74±	Tract 2, COS 351 in SW¼NW¼SW¼, Section 16, T25N-R25E	Common Schools
Phillips	690	4.26±	Tract 3, COS 351 in SW¼NW¼SW¼, Section 16, T25N-R25E	Common Schools

Total Acres **10**

MEPA Issues: Parcel 688, 689 & 690 – None

Recommendation: The Director recommends that the Board give preliminary approval to sell Parcels # 688, 689 & 690.

Phillips County Sale Location Map



Sale #688, 689 & 690



912-6

LAND BANKING PARCELS: SET MINIMUM BID FOR SALE

A. Flathead County

B. Mineral County

LAND BOARD AGENDA ITEM

September 17, 2012

**SET MINIMUM BID FOR LAND BANKING
PARCEL # 685
FLATHEAD COUNTY**

- Seller:** State of Montana, Department of Natural Resources and Conservation
- Nominator:** Parcel 685 – DNRC, Northwest Land Office
- Location:** Parcel 685 – is located 13 miles northwest of Whitefish.
- Property Characteristics:** Parcel 685 – This parcel is primarily forested with typical Western Montana forest types. Overall the parcel is average in forest productivity and revenue return. This parcel is almost entirely hillsides with 20% to 40% slopes. The sale of this parcel works towards accomplishing the goals of the Whitefish Neighborhood Plan as the entire parcel would be restricted to development to no more than 2 home sites and there would be a permanent, public recreational trail easement.
- Access:** Parcel 685 – Is legally accessible via an adjacent block of trust lands to the west. The parcel does not have public road access.
- Economic Analysis:** Short term – The rate of return on the sale parcel is 0.30% for Common Schools Grant. They would continue to receive this return if the parcel is not sold.
- Long term – The sale of this parcel would result in acquisition of lands that generate a higher rate of return. To date the average annual rate of return on acquisitions has been 1.91%, on acquisitions with income generated from annual lease payments.

Cultural/Paleontological Resources:

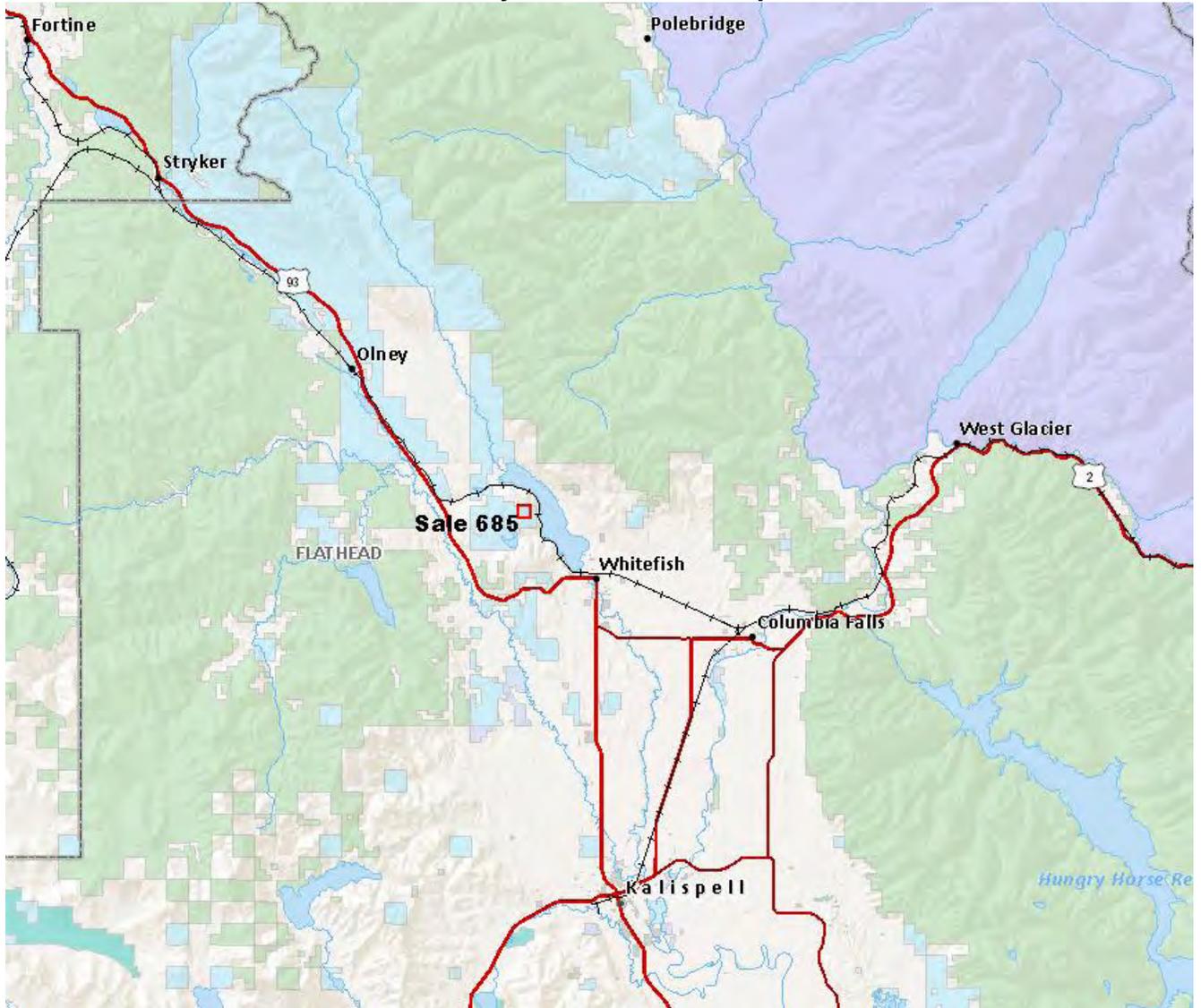
The state parcel proposed for sale (Land Banking Sale #685: T31N R22W Section 16) was inventoried to Class III standards for cultural and paleontologic resources on July 5th 2012. No cultural or paleontologic resources were identified. Further, neither Judith River nor Hell Creek geological formations occur on or beneath the ground surface of the subject state tract. The underlying geology is that of the Belt Series. A cultural and paleontologic resources inventory report has been prepared and is on file with the DNRC, (Helena) and the Montana State Historic Preservation Office (Helena):

Agency Recommendation:

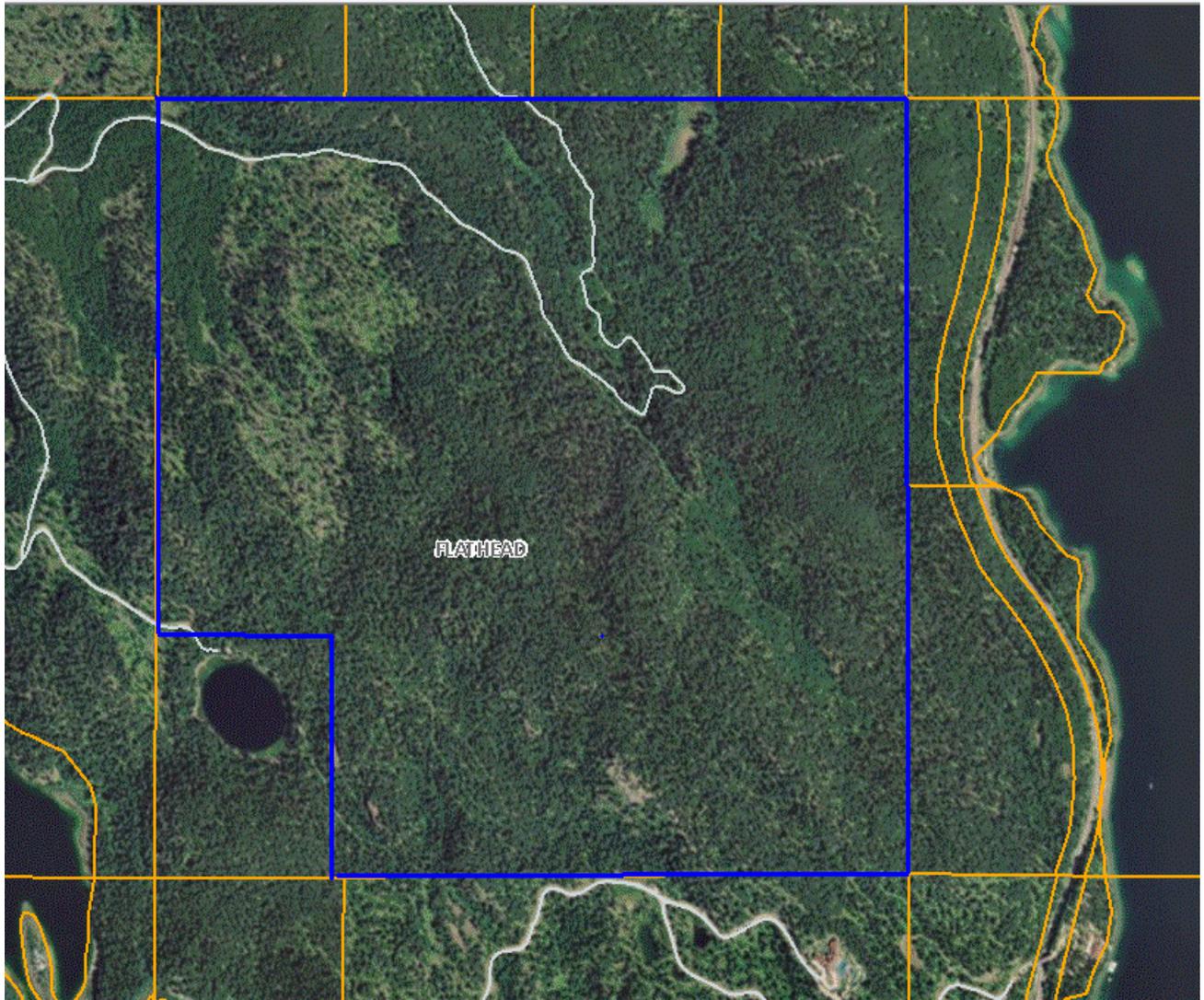
Based on appraised value, the Director recommends the minimum bid amount as follows:

Sale #	# of Acres	Appraised Value Without Access	Appraised Value With Access	Appraised Value per Acre With Access	Recommended Minimum Bid	Trust
685	580±	N/A	\$2,900,000	\$5,000	\$2,900,000	Common Schools
Total					\$ 2,900,000	

Flathead County Sale Location Map



Sale #685



LAND BOARD AGENDA ITEM
September 17, 2012

SET MINIMUM BID FOR LAND BANKING
PARCEL # 684
MINERAL COUNTY

- Seller:** State of Montana, Department of Natural Resources and Conservation
- Nominator:** Parcel 684 – Lessee - MT Dept. Environmental Quality
- Location:** Parcel 684 – is located approximately 2 miles north of Superior.
- Property Characteristics:** Parcel 684 – This parcel is primarily forested and currently being leased as a repository to safely accumulate mine waste in conjunction with the clean-up of the Iron Mountain Mine Project.
- Access:** Parcel 684 - This parcel has legal public access via Flat Creek Road. The parcel is adjacent to state lands to the North, East and West. Private land located to the South. The site is currently restricted from public access to prevent any damage or disturbance to the materials capping and hazardous waste repository therefore provides no recreational opportunities for the public.
- Economic Analysis:** Short term – The rate of return on the sale parcels is 0.0% for Public Buildings Grant. It would continue to receive this return if the parcel is not sold.
- Long term – The sale of this parcel would result in acquisition of lands that generate a higher rate of return. To date the average annual rate of return on acquisitions has been 1.91%, on acquisitions with income generated from annual lease payments.

Cultural/Paleontological Resources:

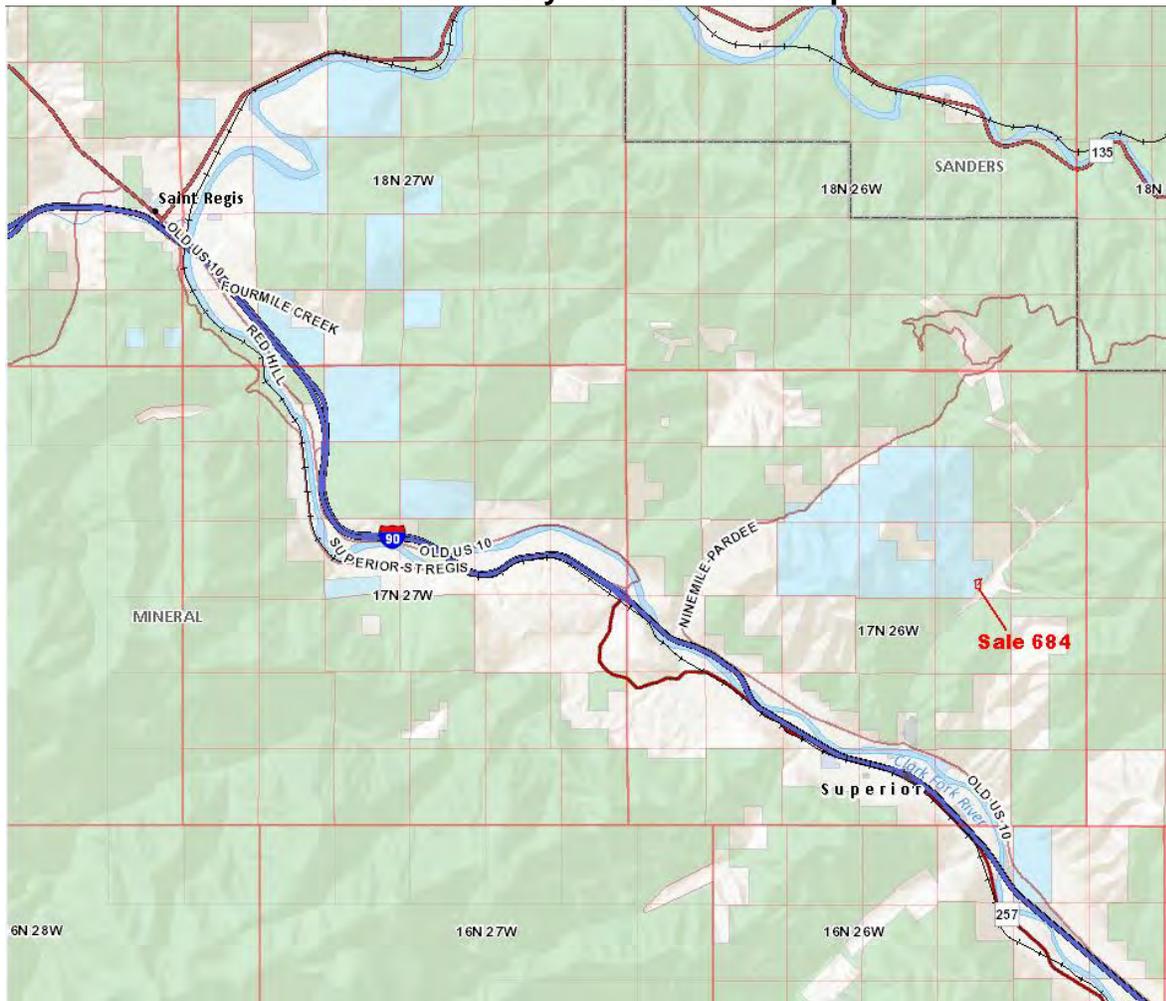
Neither Judith River nor Hell Creek geological formations occur on or beneath the ground surface of the subject state tract. The geology of the general project area is characterized by Belt Series sedimentary rocks. Soils in the site locale are thin and rocky. Previous cultural and paleontologic resources inventories have been conducted in and around the subject parcel (Pt Lots 4 & 5, Section 14, T17N-R26W), but no paleontologic or cultural resources have been identified. Reports of findings have been prepared and are on file with the DNRC, (Helena) and the Montana State Historic Preservation Office (Helena):

Agency Recommendation:

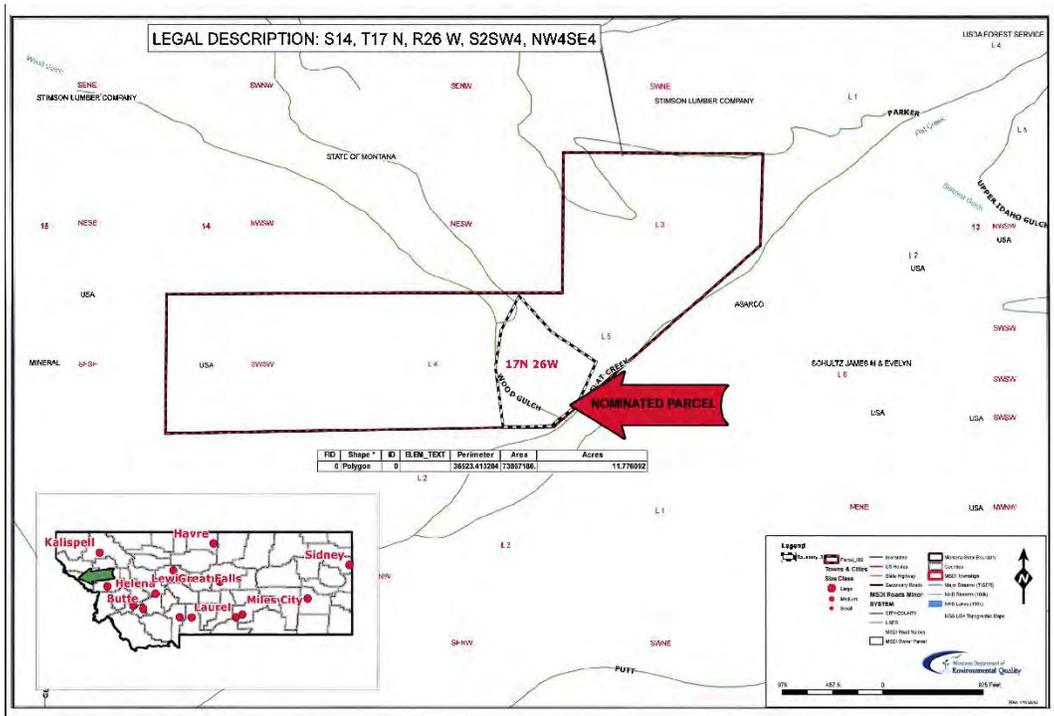
Based on appraised value, the Director recommends the minimum bid amount as follows:

Sale #	# of Acres	Appraised Value Without Access	Appraised Value With Access	Appraised Value per Acre With Access	Recommended Minimum Bid	Trust
684	12±	N/A	\$30,000	\$2,500	\$30,000	Public Buildings
Total					\$ 30,000	

Mineral County Sale Location Map



Sale #684



912-7

EASEMENTS

Rights of Way Applications

SEPTEMBER 17, 2012

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Range Telephone Cooperative, Inc. P O Box 127 Forsyth MT 59327
Application No.:	16082
R/W Purpose:	a buried telephone distribution line
Lessee Agreement:	ok
Acreage:	2.28
Compensation:	\$684.00
Legal Description:	20-foot strip through NW4SW4, W2NW4, NE4NW4, NW4NE4, Sec. 16, Twp. 9S, Rge. 54E, Powder River County
Trust Beneficiary:	Common Schools
Classification:	III



Applicant is upgrading facilities in the Biddle and Belle Creek areas of Powder River County. The installation follows an existing roadway and minimal disturbance will occur. The Department recommends approval of this application.

Rights of Way Applications

SEPTEMBER 17, 2012

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Mid-Rivers Telephone Cooperative, Inc. 105 Seven Mile Drive Glendive MT 59330
Application No.:	16083
R/W Purpose:	a buried telecommunications cable
Lessee Agreement:	needed
Acreage:	2.97
Compensation:	\$2,079.00
Legal Description:	20-foot strip through S2, Sec. 30, Twp. 6N, Rge. 21E, Golden Valley County
Trust Beneficiary:	Common Schools
Classification:	III



Applicant is upgrading facilities in the Ryegate exchange area. The proposed route follows existing roads and minimal disturbance will occur. The Department recommends approval.

Rights of Way Applications

SEPTEMBER 17, 2012

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Mid-Rivers Telephone Cooperative, Inc.
 105 Seven Mile Drive
 Glendive MT 59330

Application No.: 16084
 R/W Purpose: a buried telecommunications cable
 Lessee Agreement: needed
 Acreage: 1.36
 Compensation: \$952.00
 Legal Description: 20-foot strip through N2NE4, Sec. 36, Twp. 5N, Rge. 19E,
 Golden Valley County
 Trust Beneficiary: Common Schools
 Classification: III



See explanation on page 2.

Rights of Way Applications

SEPTEMBER 17, 2012

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Mid-Rivers Telephone Cooperative, Inc.
105 Seven Mile Drive
Glendive MT 59330

Application No.: 16085
R/W Purpose: a buried telecommunications cable
Lessee Agreement: needed
Acreage: 2.48
Compensation: \$1,760.00
Legal Description: 20-foot strip through N2N2, Sec. 36, Twp. 6N, Rge. 20E,
Golden Valley County
Trust Beneficiary: Common Schools
Classification: III



See explanation on page 2.

Rights of Way Applications

SEPTEMBER 17, 2012

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Blackfoot Telephone Cooperative, Inc. 1221 N. Russell Missoula MT 59808
Application No.:	16086
R/W Purpose:	a buried fiber optic cable
Lessee Agreement:	ok
Acreage:	2.36
Compensation:	\$3,540.00
Legal Description:	20-foot strip through S2NW4, NE4NW4, N2NE4, Sec. 14, Twp. 13N, Rge. 15W, Missoula County
Trust Beneficiary:	Capitol Buildings
Classification:	III



Application is made pursuant to §77-1-130, Historic Rights of Way.

Rights of Way Applications

SEPTEMBER 17, 2012

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Lewis & Clark County
 %Public Works Director
 3402 Cooney Drive
 Helena MT 59602

Application No.: 16087
 R/W Purpose: a public county road known as Benchmark Road
 Lessee Agreement: N/A (Historic)
 Acreage: 21.6
 Compensation: \$12,960.00
 Legal Description: 60-foot wide strips through SW4NE4, Sec. 13; S2SE4, Sec. 15;
 SE4NW4, SW4NE4, NE4SW4, Sec. 19; NW4SW4, NE4SE4,
 Sec. 20; W2NW4, NE4NE4, Sec. 21; and N2NW4, Sec. 22,
 all in Twp. 20N, Rge. 7W, Lewis & Clark County

Trust Beneficiary: Capitol Buildings, School for Deaf and Blind, Montana Tech,
 MSU Morrill

Classification: III



Application is made pursuant to §77-1-130, Historic Rights of Way.

Rights of Way Applications

SEPTEMBER 17, 2012

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant: Montana Department of Transportation
P O Box 201001
Helena MT 59620-1001

Application No.: 16088
R/W Purpose: Highway bridge construction and maintenance including
occupancy by public utilities as defined in §69-4-101, MCA

Lessee Agreement: N/A (Riverbed)
Acreage: 1.18
Compensation: \$9,238.00
Legal Description: Tract of land across the Bitterroot River in the S2SE4, Sec. 12,
Twp. 10N, Rge. 20W, Ravalli County

Trust Beneficiary: Public Land Trust
Classification: III



Applicant was made aware the Bitterroot River is not adjudicated but has elected to continue with an easement application from the Board. The Department recommends approval of this easement request.

Rights of Way Applications

SEPTEMBER 17, 2012

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Montana Department of Transportation P O Box 201001 Helena MT 59620-1001
Application No.:	16089
R/W Purpose:	Highway bridge construction and maintenance including occupancy by public utilities as defined in §69-4-101, MCA
Lessee Agreement:	N/A (Riverbed)
Acreage:	0.29
Compensation:	\$500.00
Legal Description:	Tract of land across the Sun River in the SE4NW4, Sec. 30, Twp. 21N, Rge. 2E, Cascade County
Trust Beneficiary:	Public Land Trust
Classification:	III



Applicant was made aware the Sun River is not adjudicated but has elected to continue with an easement application to the Board. The Department recommends approval of this easement request.

Rights of Way Applications

SEPTEMBER 17, 2012

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	United States Department of Agriculture Gallatin National Forest P O Box 130 Bozeman MT 59771
Application No.:	16090
R/W Purpose:	Locate, construct, use, manage, maintain, improve and repair a trail
Lessee Agreement:	N/A (Historic)
Acreage:	3.93
Compensation:	\$15,228.75
Legal Description:	30-foot strips of land through SE4NE4, Sec. 1, Twp. 3S, Rge. 6E and Gov. Lots 5 & 6, SE4SW4, SW4SE4, Sec. 6, Twp. 3S, Rge. 7E, Gallatin County
Trust Beneficiary:	Montana Tech and State Normal School
Classification:	III



This application is part of a Settlement Agreement previously approved by the Board in November, 2010 for the Bear Canyon road in Gallatin County. Per the agreement, the Department and Gallatin National Forest wish to continue to provide public access to both state and forest service lands and consider a trail to be the best mechanism to ensure continued public access. To that end, both parties have agreed to process an application for a trail to be managed by the Forest Service for public use. The Department recommends approval of this trail easement.

PIPELINE APPLICATIONS

SEPTEMBER 17, 2012

APPLICANTS AND RIGHTS OF WAY INFORMATION

Applicant:	Phillips 66 Pipeline LLC 2626 Lillian Avenue Billings MT 59101
Application No.:	16081
R/W Purpose:	an 8" buried petroleum products pipeline
Lessee Agreement:	ok
Acreage:	0.94
Initial Principal Payment:	\$3,212.00 (80.31 rods x \$40/rod)
Legal Description:	30-foot strip across the Big Horn River in SW4SE4, Sec. 25, Twp. 5S, Rge. 31E, Big Horn County
Trust Beneficiary:	Public Land Trust
Classification:	III



Applicant has an existing pipeline crossing in this location without benefit of an easement from the State. The top of the existing pipeline is exposed or nearly exposed in the thalweg of the channel depending upon flow. With additional high water the potential exists that the pipe could be further exposed and potentially damaged. Applicant is proposing to bore a new pipeline under the river to a depth of 28 feet and abandoning the old pipeline in place. In abandoning the existing pipe the applicant is proposing to purge and swab and line grout the pipe with a flowable sand/cement mixture and cap the ends. Without cathodic protection the pipeline would degrade overtime and the flowable fill would become part of the valley fill that the pipe is buried in. While applicant would continue to monitor the pipe for potential exposure, it is possible that the pipe would have to be removed in the future.

This area of the river is extensively used by fisherman and other recreationists. If the pipeline is left in place there is a potential that some object, like a drift boat anchor, could snag the pipeline. This would require a stretch of the river to be closed during a period of time of heavy use.

RECOMMENDATIONS:

- 30-year term easement;
- Initial payment shown above compounded by 2.5% annually, with additional rental due at years 10 and 20;
- Removal of exposed pipe