

## ENVIRONMENTAL ASSESSMENT

<b>Project Name:</b>	Amendments to ARM 36.25.1001, 36.25.1002, 36.25.1004 through 36.25.1006, the adoption of New Rules I and II, and the repeal of ARM 36.11.101, 36.25.1003, 36.25.1007, 36.25.1012, and 36.25.1016 through 36.25.1021.
<b>Proposed Implementation Date:</b>	May 2016
<b>Proponent:</b>	Real Estate Management Bureau, Trust Land Management Division, Montana DNRC
<b>Location:</b>	State of Montana
<b>County:</b>	

### I. TYPE AND PURPOSE OF ACTION

The Trust Land Management Division of the Montana Department of Natural Resources and Conservation (DNRC) proposes to adopt amendments to the real estate management rules addressing lease fee calculation methods for cabin and home site leases on state trust lands under the Montana Administrative Procedures Act (MAPA).

A lawsuit commonly referred to as Montrust III was initiated by Montrust (Montanan's for the Responsible Use of the School Trust) in 2012 against the State of Montana, the Montana Board of Land Commissioners (Land Board), and the DNRC under Cause No. BDV-2012-39, in the First Judicial District, Lewis and Clark County, Montana. Montrust was joined by the Board of Regents. These two groups alleged that the administrative rules regarding lease fee calculation methods for cabin and home site leases on state trust land violated the fiduciary, trust, and constitutional duties of the State of Montana, the Land Board, and DNRC, and failed to secure for the trust a full market value rate of return. Specifically, Montrust III addressed the terms of SB409 (2011), and the subsequent administrative rules, as well as the administrative rules that existed regarding Alternative 3B. Montrust III alleged that the rules related to both SB409 (2011) and Alternative 3B included fee calculation methods that created lease fees below full market value.

A Settlement Agreement to resolve Montrust III was approved by the Land Board at their October 19, 2015 meeting, and was subsequently approved by the district court on November 10, 2015.

The Settlement Agreement provided for specific changes in the lease fee structure that will apply to any new lease issued after the date the settlement was approved by the district court. This means that the terms of the settlement agreement will apply to any renewed lease, or any lease issued through a competitive bid after November 10, 2015.

The proposed amendments to ARM 36.25.1001, 36.25.1002, 36.25.1004 through 36.25.1006, the adoption of New Rules I and II, and the repeal of ARM 36.11.101, 36.25.1003, 36.25.1007, 36.25.1012, and 36.25.1016 through 36.25.1021 regarding cabin site leasing are reasonably necessary as a requirement of the settlement agreement and as ordered by the district court in Cause No. BDV-2012-39, in the First Judicial District, Lewis and Clark County, Montana.

Included in the terms of the settlement agreement and court order were the requirements that DNRC complete rulemaking in compliance with the terms of the settlement agreement.

### II. PROJECT DEVELOPMENT

**1. PUBLIC INVOLVEMENT, AGENCIES, GROUPS OR INDIVIDUALS CONTACTED:**

The Land Board approved the draft proposal notice on January 19, 2016 enabling DNRC to proceed with rulemaking. The proposal notice was filed with the Montana Secretary of State on January 25, 2016, and published in the Montana Administrative Register (MAR) on February 5, 2016. The comment period ran through March 4, 2016, and two public hearings were held, one on February 29, 2016 in Helena and one on March 1, 2016 in Kalispell.

All comments received during the MAPA hearings and comment period will be published with the Secretary of State.

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**2. OTHER GOVERNMENTAL AGENCIES WITH JURISDICTION, LIST OF PERMITS NEEDED:**

NA

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**3. ALTERNATIVE DEVELOPMENT:**

No Action Alternative – Under the No Action Alternative, the real estate management rules would not be amended at this time and would thus not be in compliance with the Montrust III Settlement Agreement.

Action Alternative – Under the Action Alternative, real estate management amended rules would be formally adopted under MAPA procedures in compliance with the Montrust III Settlement Agreement.



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**4. GEOLOGY AND SOIL QUALITY, STABILITY AND MOISTURE:**

No Action Alternative – No impacts

Action Alternative – No impacts

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**5. WATER QUALITY, QUANTITY AND DISTRIBUTION:**

No Action Alternative – No impacts

Action Alternative – No impacts

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**6. AIR QUALITY:**

No Action Alternative – No impacts

Action Alternative – No impacts

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**7. VEGETATION COVER, QUANTITY AND QUALITY:**

No Action Alternative – No impacts

Action Alternative – No impacts

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**8. TERRESTRIAL, AVIAN AND AQUATIC LIFE AND HABITATS:**

No Action Alternative – No impacts

Action Alternative – No impacts

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**9. UNIQUE, ENDANGERED, FRAGILE OR LIMITED ENVIRONMENTAL RESOURCES:**

No Action Alternative – No impacts

Action Alternative – No impacts

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**10. HISTORICAL AND ARCHAEOLOGICAL SITES:**

No Action Alternative – No impacts

Action Alternative – No impacts

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**11. AESTHETICS:**

No Action Alternative – No impacts

Action Alternative – No impacts

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**12. DEMANDS ON ENVIRONMENTAL RESOURCES OF LAND, WATER, AIR OR ENERGY:**

No Action Alternative – No impacts

Action Alternative – No impacts

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**13. OTHER ENVIRONMENTAL DOCUMENTS PERTINENT TO THE AREA:**

NA

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**14. HUMAN HEALTH AND SAFETY:**

No Action Alternative – No impacts

Action Alternative – No impacts

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**15. INDUSTRIAL, COMMERCIAL AND AGRICULTURE ACTIVITIES AND PRODUCTION:**

No Action Alternative – No impacts

Action Alternative – No impacts

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**16. QUANTITY AND DISTRIBUTION OF EMPLOYMENT:**

No Action Alternative – No impacts

Action Alternative – No impacts

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**17. LOCAL AND STATE TAX BASE AND TAX REVENUES:**

No Action Alternative – No impacts

Action Alternative – No impacts

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**18. DEMAND FOR GOVERNMENT SERVICES:**

No Action Alternative – No impacts

Action Alternative – No impacts

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**19. LOCALLY ADOPTED ENVIRONMENTAL PLANS AND GOALS:**

No Action Alternative – No impacts

Action Alternative – No impacts

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**20. ACCESS TO AND QUALITY OF RECREATIONAL AND WILDERNESS ACTIVITIES:**

No Action Alternative – No impacts.

Action Alternative – No impacts

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**21. DENSITY AND DISTRIBUTION OF POPULATION AND HOUSING:**

No Action Alternative – No impacts

Action Alternative – No impacts

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**22. SOCIAL STRUCTURES AND MORES:**

No Action Alternative – No impacts

Action Alternative – No impacts

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**23. CULTURAL UNIQUENESS AND DIVERSITY:**

No Action Alternative – No impacts

Action Alternative – No impacts

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**24. OTHER APPROPRIATE SOCIAL AND ECONOMIC CIRCUMSTANCES:**

Under the No Action Alternative, real estate management lease fee calculations would be out of compliance with the Montrust III Settlement Agreement.

Under the Action Alternative, the proposed amendment required in the Montrust III Settlement Agreement would be adopted. The implementation of the Montrust III Settlement would result in greater revenue return to the trust beneficiaries.

<b>EA Checklist Prepared By:</b>	<b>Name:</b> Jessica Hoag	<b>Date:</b> 4/13/16
	<b>Title:</b> Property Management Supervisor	

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**25. ALTERNATIVE SELECTED:**

The Montana Department of Natural Resources and Conservation has completed the environmental assessment (EA) for the proposed amendments to ARM 36.25.1001, 36.25.1002, 36.25.1004 through 36.25.1006, the adoption of New Rules I and II, and the repeal of ARM 36.11.101, 36.25.1003, 36.25.1007, 36.25.1012, and 36.25.1016 through 36.25.1021. After a thorough review of the EA, public comments, the project file, Department policies, standards, and guidelines, I have made the following decisions concerning this action:

The alternatives proposed for consideration in this EA were the No Action and Action Alternative. Under the Action Alternative, real estate management rules would be formally adopted under MAPA procedures. Real estate management rules would comply with the measures set forth in the Montrust III Settlement Agreement.

The Action Alternative has been selected for the following reasons:

- The Action Alternative meets the project Purpose and Need listed under Section I. of the EA:
- The Action Alternative is consistent with State and local policies, laws, and regulations.
- The Action Alternative is required to meet the terms of the Montrust III Settlement Agreement.

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**26. SIGNIFICANCE OF POTENTIAL IMPACTS:**

Upon review of the project and analysis herein, I find that none of the impacts are severe, enduring, geographically widespread, or frequent. Further, I find that the quantity and quality of the natural resources, including any that may be considered unique or fragile, will not be adversely affected to a significant degree. I find no precedent for the future actions that would cause significant impacts, and I find no conflict with local, State, or federal laws, requirements, or formal plans.

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**27. NEED FOR FURTHER ENVIRONMENTAL ANALYSIS:**

EIS

More Detailed EA

No Further Analysis

<b>EA Checklist Approved By:</b>	<b>Name:</b> Amy Randall <b>Title:</b> Bureau Chief, Real Estate Management Bureau
<b>Signature:</b> /s/ Amy Randall <b>Date:</b> 4/14/16	