

BEFORE THE BOARD OF LAND COMMISSIONERS AND
THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF PUBLIC HEARING
Rules I through VI and the amendment)	ON PROPOSED ADOPTION
of ARM 36.25.1011 pertaining to the)	AND AMENDMENT
establishment of lease rental rates,)	
lease assignments, and sale procedures)	
for state cabinsites)	

To: All Concerned Persons

1. The Department of Natural Resources and Conservation will hold two public hearings at 7:00 p.m. on the following dates to consider the adoption and amendment of the above-stated rules:

December 6, 2011, at the Hampton Inn, 1140 Highway 2 West, Kalispell, Montana; and

December 7, 2011, at the Seeley Lake Community Hall, 3248 Highway 83, Seeley Lake, Montana.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the agency no later than 5:00 p.m. on November 21, 2011, to advise the department of the nature of the accommodation that you need. Please contact Jeanne Holmgren, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, P.O. Box 201601, Helena, Montana, 59620-1601; telephone (406) 444-3844; fax (406) 444-2684; or e-mail jholmgren@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I COMPETITIVE BIDDING (1) Subject to all the provisions of [New Rule I] through [New Rule VI] and 36.25.1009, except as provided in (8), the department shall use a process of open competitive bidding to issue a lease upon a cabinsite upon unleased state lands; or when the cabinsite lessee initiates the competitive bid process under this rule; or upon renewal of a cabinsite lease.

(2) In consideration of the board's constitutional fiduciary responsibility to prudently attain full market value and to act in the best financial interests of the affected beneficiary institution, the department may, in its sole discretion, determine the number of cabinsites to be offered for competitive bidding at a given time in a given area, and the duration of the marketing period for each vacant cabinsite to be bid. The department shall determine the timing and duration of the marketing of a vacant cabinsite within 180 days from the date the cabinsite becomes vacant.

(3) When the department solicits offers to lease the premises of a cabinsite through an open competitive bidding process the initial minimum bid shall be two percent of value of the cabinsite premises as established by the most recent Montana Department of Revenue (DOR) statewide periodic appraised value.

(a) There shall be no preference right granted to a former lessee to meet the high bid.

(b) If no bids are received within 180 days of the board's solicitation of offers to lease a cabinsite through open competitive bidding that meet or exceed the minimum bid set by the board, the board may reduce the minimum bid incrementally until a bid is received.

(4) If the former lessee and the new lessee have not reached an agreement to permanently transfer possession or ownership of the cabinsite lease improvements and cannot agree upon the value of any improvements affixed to any cabinsite lease premises to be acquired by the new lessee within 120 days of the department's acceptance of the new lessee's lease bid, the value of those improvements to be paid to the former lessee by the new lessee shall be established according to the standards and procedures set out in 77-1-208(4), MCA and ARM 36.25.1005.

(5) Provided that the lessee is in compliance with the terms and conditions of its lease, and the department determines it is in the best interests of the affected trust beneficiary to renew the lease, a lessee whose lease is set for renewal may either:

(a) request to have the lease competitively bid as provided in this rule; or

(b) apply to the department to have the lease renewed for 15 years with terms and conditions, including the lease fee specified therein, consistent with ARM 36.25.1001 through 36.25.1013.

(6) Where a lessee requests that the lease be competitively bid, that request will result in a change of the lease fee calculation methodology to that specified in [New Rule III]. The competitive bidding for an existing cabinsite lease will occur during the period from April 1 through September 30 of each year. The number of leases available for bid statewide is at the discretion of the board, but shall be consistent with 77-1-235 and 77-1-236, MCA. The department may use the following standards to determine how many lease lots are available for bid.

(a) In any given neighborhood a maximum of three lease lots or ten percent of the total number of lease lots in that neighborhood, whichever is greater, may be available for competitive bid when the lessee requests that the lease be competitively bid.

(i) If ten percent of the lease lots in a neighborhood is a fractional number, the number shall be rounded down to the nearest whole number. After applying these criteria, if the requests to put lease lots out for bid exceeds ten percent or three of the total number of lots in a neighborhood, whichever is greater, the bid requests will be selected by a random drawing.

(7) When a lease is competitively bid:

(a) the lessee will not have a preference right to match the high bid;

(b) the existing lease agreement will remain in effect until a new lease agreement is completed or the lease is cancelled:

(i) the lessee must be current on its payment of the annual lease fee prior to, and during the competitive bidding process, or the lease may be cancelled; and

(ii) if the lease agreement is cancelled during the competitive bidding process, the department may terminate or continue the bidding process, in its sole discretion;

(c) the department will notify any individual or entity that has filed a security interest in the cabinsite lease or improvements with the department. Lessees must notify any individual or entity that holds a security interest. The lease will not be put up for competitive bidding without approval from all security interest holders; and

(d) the lease offered to the winning bidder will be for a term of 15 years. The department may provide to the winning bidder a lease with a term longer than 15 years only as provided for under (8).

(8) The department may issue a lease for a term greater than 15 years for loan security purposes as provided in ARM 36.25.1010(1). However, any lease issued at a lease rental rate under this rule shall be limited to a 15 year term. A lease issued for longer than 15 years may only specify the terms and conditions provided in ARM 36.25.1001 through ARM 36.25.1013, including the lease fee stipulated therein. A new lease whose term is longer than 15 years may be issued by the department during the term of an existing lease or at renewal. During the term of an existing lease, the department may issue a new lease to a lessee requiring a lease term greater than 15 years for loan security purposes.

(9) For the renewal of an existing lease that is competitively bid, including leases where the lessee initiates the competitive bid process under this rule, the lease rate established by competitive bidding will apply at the date of the renewal of the lease.

(10) For a new lease, the lease rate established by the winning competitive bid shall apply at the date the lease is issued.

(11) The results of the competitive bidding for all cabinsites will be posted on the department web site annually.

AUTH: 77-1-204, 77-1-208, 77-1-209, 77-1-235, 77-1-236, MCA
IMP: 77-1-235, 77-1-236, MCA

REASONABLE NECESSITY: Chapter 401 of the 2011 Montana Session Laws (codified in part as 77-1-235 and 77-1-236, MCA) requires the state Board of Land Commissioners to adopt rules to implement the provisions of this act. Section 77-1-235(3), MCA, directs that:

"[b]y January 1, 2012, the board shall adopt rules to ensure that:

(a) the open competitive bidding process authorized pursuant to this section is orderly and consistent with the board's constitutional fiduciary duties and that the number of leased cabin or home sites or city or town lots made available for competitive bid at any given time is consistent with the board's constitutional fiduciary duty of attaining full rental market value; and

(b) the information used to determine the rental market percentage pursuant to this section is posted on the department's website and periodically updated."

Section 77-1-236(3), MCA, also directs that:

(3) By January 1, 2012, the board shall adopt rules for the orderly transition for cabinsite lessees or licensees who have chosen the lease option pursuant to subsection (1) that is consistent with the board's constitutional fiduciary duty of attaining full rental market value."

New Rule I implements the competitive bidding procedures directed by Chapter 401 of the 2011 Montana Session Laws, and is reasonably necessary to effectuate the purposes of that legislative act. The competitive bidding procedures were written to be as consistent as possible with existing cabinsite leasing rules and contract provisions, yet were written to allow for a transition to a different rental payment, as provided in Chapter 401 of the 2011 Montana Session Laws.

NEW RULE II ROLLING NEIGHBORHOOD AVERAGE LEASE RATE

(1) By October 31 of each year, the department will establish a rolling neighborhood average lease rate for each neighborhood, or geographic location, to be used for the next billing cycle that begins January 1 of the following year. For the purposes of [New Rule I] through [New Rule V], two types of neighborhoods shall exist in the land area administered by each unit office of the department within the northwest, southwest, and central areas of the department, and the land area administered by each area office within the northeast, southern, and eastern areas of the department:

(a) one neighborhood for cabinsites which are adjacent to water such as lakes, rivers, and streams; and

(b) one neighborhood for cabinsites which lack access to water such as lakes, rivers, and streams.

(2) A minimum of three winning bids are necessary to establish a rolling neighborhood average lease rate. The rolling neighborhood average lease rates will be determined as follows:

(a) the department will document the bid amounts for every successful cabinsite that is competitively bid;

(b) the rolling neighborhood average lease rate for a given billing cycle will be calculated using the competitive bid amounts from cabinsites in that neighborhood for the most recent three calendar years, or as of January 1, 2012, if three years have not yet elapsed from the effective date of these rules; and

(c) the winning bid amount for every cabinsite that is successfully bid will be divided by the most recent appraised value from the DOR for that cabinsite. The resulting rates will then be averaged together by neighborhood to determine the neighborhood rolling average lease rate for the next billing cycle.

AUTH: 77-1-204, 77-1-208, 77-1-209, 77-1-235, 77-1-236, MCA

IMP: 77-1-235, 77-1-236, MCA

REASONABLE NECESSITY: New Rule II implements the requirements found in Section two of Chapter 401 of the 2011 Montana Session Laws (codified at 77-1-

236, MCA), which requires that current lessees be offered a process for determining their state cabinsite lease rental rates according to rental market percentages in distinct geographic locations. Rule II is reasonably necessary to effectuate the purposes of Section two of Chapter 401 of the 2011 Montana Session Laws. The department chose to limit a "geographic location" or a "neighborhood" under New Rule II to lands with water or without water under the jurisdiction of each unit office of the department in the western half of the state and in area offices of the eastern half of the state. The use of unit offices and area offices to determine the "rolling neighborhood average" was utilized to provide administrative convenience and to provide sufficient numbers of leases to quickly implement the concept of the "rolling neighborhood average".

NEW RULE III LEASE FEE FOR BID CABINSITE LEASES UNDER [NEW RULE I] (1) At the conclusion of the term of any cabinsite lease existing prior to May 12, 2011, the lessee of that cabinsite lease may either choose to place the cabinsite lease up for open competitive bidding under [New Rule I], or the lessee may choose to renew the lease with a standard rental rate as provided in ARM 36.25.1001 through 36.25.1013.

(2) Where the lessee of a lease existing prior to May 12, 2011 chooses to place the lease up for competitive bidding under [New Rule I], the annual lease fee for the first year will equal the bid amount.

(a) However, in subsequent years, the annual lease fee for that lease will equal the most recent appraised value of the cabinsite as determined by the DOR multiplied by the rolling neighborhood average lease rate effective for that year, plus an annual adjustment equal to the previous year's lease fee multiplied by the annual percentage change in the consumer price index (CPI) as provided in ARM 36.25.1001(9).

(b) The department will not add a CPI adjustment to the annual lease fee for the first annual billing following release of a new appraised value.

AUTH: 77-1-204, 77-1-208, 77-1-209, 77-1-235, 77-1-236, MCA
IMP: 77-1-235, 77-1-236, MCA

REASONABLE NECESSITY: Rule III implements the transition requirements found in Sections two and four of Chapter 401 of the 2011 Montana Session Laws (codified at 77-1-236, MCA), which require that current lessees be offered a process for determining their state cabinsite lease rental rates according to rental market percentages in certain geographic locations. New Rule II is reasonably necessary to effectuate the purposes of Section two of Chapter 401 of the 2011 Montana Session Laws.

NEW RULE IV SUBLEASING AND ABANDONMENT OF IMPROVEMENTS

(1) Lessees may sublease their improvements if they are in compliance with the terms and conditions of their lease agreement, provided that the lessees must notify the department of their intent to sublease their improvements prior to subleasing.

(2) Where permanent improvements are placed upon a cabinsite lease after the effective date of these rules and the cabinsite lease is canceled, terminated, or abandoned for a period of three years, the title to all such improvements will automatically vest in the department without representation or warranty.

(a) If the department receives value for the improvements through a sale, the department will transfer the proceeds to the previous lessee, at the last address of record.

(b) If the previous lessee cannot be reached at the last address of record, the department will deposit the proceeds into the permanent trust account.

(3) When selling improvements left upon the cabinsite lease for more than three years:

(a) the department may conclude the sale, disposal, or removal of the improvements in any expedient manner, or it may direct the removal or demolition of the improvements;

(b) the department may keep a portion of the value received for improvements to compensate the department for necessary costs incurred, such as, but not limited to:

(i) marketing of the improvements;

(ii) demolition;

(iii) disposal fees;

(iv) repairs; and

(v) maintenance; and

(c) any moveable personal property remaining on the cabinsite three years after the date a cabinsite lease is cancelled, terminated, abandoned, or otherwise ends shall become the property of the department to keep, sell, or dispose of at the department's discretion without compensation or reimbursement to the previous lessee.

AUTH: 77-1-204, 77-1-208, 77-1-209, 77-1-235, 77-1-236, MCA

IMP: 77-1-235, 77-1-236, MCA

REASONABLE NECESSITY: New Rule IV implements the assignment requirements found in Section three of Chapter 401 of the 2011 Montana Session Laws (codified at 77-1-236, MCA), which requires that current licensees and lessees be authorized to assign or rent their improvements. New Rule IV is reasonably necessary to effectuate the purposes of Section three of Chapter 401 of the 2011 Montana Session Laws. The department chose to require the removal or sale of personal property left upon the cabinsite lease premises after the end of the cabinsite lease because the abandonment or desertion of personal property interferes with the prompt assignment of a lease and the stream of lease revenue to the trust beneficiary.

NEW RULE V SALE OF CABINSITE LANDS (1) Cabinsites may be sold as provided in Article X of the Montana Constitution and 77-1-204, 77-2-301, and 77-2-318, MCA.

(a) The sale of cabinsites under the land banking program will be conducted using the procedures set out in ARM 36.25.801 through 36.25.817.

(b) The board may in its sole discretion designate that the proceeds from the sale of certain cabinsites be deposited within the permanent fund for the affected trust beneficiary.

(2) The board or the department may nominate a cabinsite for sale at any time.

(3) A cabinsite lessee may nominate the sale of the lease premises:

(a) during the fifteenth year of any 15-year cabinsite lease that was established through the open competitive bidding process;

(b) through the transition process provided for in 77-1-236, MCA; or

(c) pursuant to 77-2-318(4), MCA, or any other time.

(4) The sale of cabinsites shall be conducted in a manner consistent with the procedures set out in 77-2-363(2) through (5), MCA. The minimum bid must be equal to the full market value of the premises, which must be determined by a Montana-licensed and Montana-certified appraiser. The department may determine the timing and the number of cabinsite lots to be offered for sale, and the conditions of the sale, based upon, but not limited to, the following factors:

(a) how many lots are currently available for competitive bidding;

(b) current real estate market conditions;

(c) the time available to market a cabinsite before the bid closing date and season/time of year;

(d) the administration of other cabinsites; and

(e) valuing, selling, repairing, or removing existing improvements on cabinsites.

(5) Should no qualified bid be received by the department, or if the board determines that it is not in the best interest of the affected trust beneficiary to accept any bid, the sale shall be rejected, and the existing cabinsite lease may be renewed to the former lessee at the previous lease terms.

AUTH: 77-1-204, 77-1-208, 77-1-209, 77-1-235, 77-1-236, MCA

IMP: 77-1-235, 77-1-236, MCA

REASONABLE NECESSITY: New Rule V implements the requirements found in Section four of Chapter 401 of the 2011 Montana Session Laws (codified at 77-1-318, MCA), which requires that current lessees be offered the opportunity, in the last year of their state cabinsite lease, to nominate the lands described in the lease premises for sale. Rule V is reasonably necessary to effectuate the purposes of Section four of Chapter 401 of the 2011 Montana Session Laws.

NEW RULE VI APPLICABILITY OF CABINSITE RULES (1) Cabinsite leases issued under [New Rule I] shall be not be subject to ARM 36.25.1003, 36.25.1009(8), and 36.25.1012.

AUTH: 77-1-204, 77-1-208, 77-1-209, 77-1-235, 77-1-236, MCA

IMP: 77-1-235, 77-1-236, MCA

REASONABLE NECESSITY: New Rule VI implements the requirements found in Section one of Chapter 401 of the 2011 Montana Session Laws to allow a cabinsite

lessee to elect to place its lease up for competitive bid or to retain the terms of its current lease, and the method described therein for determining the lease rental rate. Because some lessees will choose to place their leases up for competitive bid, while others will choose to retain their current lease terms and rental rate method, New Rule VI is reasonably necessary to effectuate the purposes of Section four of Chapter 401 of the 2011 Montana Session Laws to describe what rules are not applicable to cabinsite leases competitively bid under New Rule I.

4. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

36.25.1011 RENEWAL OF CABINSITE LEASE AND PREFERENCE RIGHT

(1) A current cabinsite lessee shall be sent an application to renew the cabinsite lease if all rentals due are paid. The application shall be accepted under the same conditions as specified in ARM 36.25.115; however, applications for renewal will only be accepted after December 1 of the year preceding the expiration of the lease and must be postmarked on or before January 28 of the year of expiration of the lease. Failure to submit a renewal application postmarked on or before January 28 will result in an unleased tract, and the tract will be subject to the requirements for leasing an unleased tract under ARM 36.25.115.

(2) A current cabinsite lessee that seeks to renew a lease using the competitive bid process shall follow the dates and processes described in [New Rule I] and [New Rule III].

~~(2) A cabinsite lease is not subject to bids upon renewal if the lessee continues the lease and the lessee has paid all rentals and the lease is in good standing. The lease shall be renewed at the rental according to 36.25.1003.~~

AUTH: 77-1-204, 77-1-208, 77-1-209, 77-1-235, 77-1-236, MCA

IMP: 77-1-235, 77-1-236, MCA

REASONABLE NECESSITY: The amendment of ARM 36.25.1011 implements the requirements found in Section four of Chapter 401 of the 2011 Montana Session Laws (codified at 77-1-318, MCA), which requires that current lessees be offered the opportunity, in the last year of their state cabinsite lease, to nominate the lands described in the lease premises for sale. The department is proposing to repeal ARM 36.25.1011(2), which allowed leases to be renewed without competitive bidding, because it is inconsistent with the competitive bidding or neighborhood average concepts for determining full market value for cabinsite leases.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Jeanne Holmgren, Real Estate Management Bureau, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, MT; telephone (406) 444-3844; fax (406) 444-2684; e-mail jholmgren@mt.gov, and must be received no later than 5:00 p.m. on December 8, 2011.

6. Jeanne Holmgren, Department of Natural Resources Real Estate Management Bureau, has been designated to preside over and conduct the public hearing.

7. An electronic copy of this Notice of Public Hearing on Proposed Adoption and Amendment is available through the department's web site at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of this Notice of Public Hearing on Proposed Adoption and Amendment conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be sent or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. A meeting was held with the bill sponsor on September 26, 2011.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton
MARY SEXTON
Director
Natural Resources and Conservation

/s/ Tommy Butler
Tommy Butler
Rule Reviewer

Certified to the Secretary of State on October 31, 2011.