

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

In the matter of the amendment of )  
ARM 36.25.1001, 36.25.1002, )  
36.25.1004 through 36.25.1006, )  
36.25.1008 through 36.25.1011, and )  
36.25.1013, 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 )

To: All Concerned Persons

1. The Department of Natural Resources and Conservation will hold two public hearings at the following dates and times to consider the proposed amendment, adoption, and repeal of the above-stated rules:

10:00 a.m. on February 29, 2016, Bannack Conference Room, 1625 Eleventh Avenue, Helena, Montana 59601; and

1:00 p.m. on March 1, 2016, Hampton Inn, 1140 U.S. Highway 2 West, Kalispell, Montana 59901.

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 February 15, 2016, to advise the department of the nature of the accommodation that you need. Please contact Amy Randall, P.O. Box 201601, Helena, MT 59620-1601; telephone (406) 444-3844, fax (406) 444-2684, e-mail arandall@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

36.25.1001 CABINSITE DEFINITIONS (1) remains the same.

~~(2) "Adjusted 2009 appraised value" means an amount equal to the 2003 Montana Department of Revenue (DOR) appraised value for a state parcel increased at a rate of 6.53 percent compounded annually to 2009.~~

~~(3) "Annual lease rental period" means March 1 to February 28, annually.~~

(4) "Assignment" means the transfer of rights, obligations, and ownership of a current lease agreement to another person or other legal entity qualified to hold a lease. Assignments must be executed on a form prescribed by the department, and are subject to department approval.

~~(5) "Base rent" means the lower of five percent of the adjusted 2009 appraised value of the state trust land under lease or an amount equal to five percent of the actual 2009 reappraisal of market value by the DOR.~~

~~(63) "Board," also referred to as "Land Board," means the Board of Land Commissioners.~~

~~(74) "Cabin site," also referred to as "homesite home site," and "residential lease", means land leased or to be leased occupied or to be occupied for single-family residential use that is noncommercial in nature. a noncommercial use as a temporary or principal place of residence for a single family or equivalent of the same, and the supporting buildings, within the lease area.~~

~~(8) remains the same but is renumbered (5).~~

~~(9) "Consumer Price Index" (CPI) is a measure of the annual change in the price of a basket of consumer goods over time. For these rules, the department will use the CPI-U, West Urban Index published by the U.S. Bureau of Labor Statistics (<http://www.bls.gov/>) or, should the CPI-U, West Urban Index be discontinued, a similar index published by the U.S. Bureau of Labor Statistics chosen by the department. The CPI shall be established by reviewing the annual change in the CPI on October 1 of each year.~~

~~(10) remains the same but is renumbered (6).~~

~~(7) "Improvement" means structures including, but not limited to:~~

~~(a) a home or residence;~~

~~(b) outbuildings;~~

~~(c) sleeping cabins;~~

~~(d) utilities;~~

~~(e) water systems;~~

~~(f) septic systems;~~

~~(g) docks;~~

~~(h) landscaping;~~

~~(i) any other structure necessary for the conservation or utilization of state trust land; and/or~~

~~(j) any other structure determined by the department to meet this definition.~~

~~(11) "Director" means the director of Natural Resources and Conservation, chief administrative officer of the Department of Natural Resources and Conservation, or the director's designee.~~

~~(128) "Lease" means a contract by which the board conveys conveying state trust land for:~~

~~(a) a specific term of years;~~

~~(b) for a specified rental lease fee; and~~

~~(c) for the use for which the land is as classified under (77-1-401, MCA).~~

~~(9) "Leased land" means the land leased for a cabin site, and does not include any improvements.~~

~~(10) "Neighborhood" means a cabin site management region as determined by the department.~~

~~(13) "Lease fee adjustment" means the department application of the rental rate contracted in the lease to the most recent appraised market value to determine if it is necessary to alter the annual rental payment. The adjustment will occur at the review period defined in the lease.~~

~~(14) "Lease fee adjustment process" means the annual process by which the department applies the Lease Fee Indicator to the adjusted 2009 appraised value of the leased premises, or by which the department applies the rental rate contracted in the lease to the actual 2009 reappraisal of market value by the DOR, and subsequent reappraisals, to determine if it is necessary to alter the annual rental payment. Future lease fee adjustments will occur at the review period defined in the lease, or at any time that it is considered necessary to protect the interests of the trusts, as determined at the sole discretion of the director of the department.~~

~~(15) "Lease Fee Indicator" (LFI) means the increase that is applied annually to the previous year's lease fee. The LFI, which is recalculated annually, is the average of the CPI and the Real Estate Index; however, the LFI shall be limited in that it may never be less than 3.25 percent and may never be more than 6.5 percent. The LFI is named for the year the CPI data was primarily collected, but applied to the billing for the following year. For example, an LFI determined from CPI data from calendar year 2014 would be called the 2014 LFI and would be applied to the 2015 cabinsite lease fee adjustment process.~~

~~(16) "Real Estate Index" (REI) means a moving 25-year average of the annual appreciation of all cabinsite parcel values. This number will be adjusted after every new reappraisal cycle by the DOR. The REI is currently 8.75 percent and will remain so until the next DOR appraisal, which is currently scheduled for 2014.~~

(11) "Rental rate" means a percentage of the Department of Revenue (DOR) valuation of the leased land to derive a lease fee. The rental rate for renewing leases is 5 percent or \$800, whichever is higher, unless otherwise determined by the board. The minimum rate for new leases issued through a competitive bid is 6.5 percent unless reduced in accordance with these rules, or as otherwise determined by the board.

(12) "Security bond" means an amount submitted by the lessee and held by the department throughout the term of the lease to secure costs incurred by the department as a result of activity or improvements upon the lease site.

~~(1713) "Security interest" means an interest that a third party retains in any portion of a lease and the lease improvements located on that lease in order to secure the payment by the lessee to that third party.~~

(14) "State trust land" means lands or property interests held in trust by the state as defined by 77-1-101, MCA.

~~(18) "Semiannual lease rental period" means March 1 to August 31 or September 1 to February 28.~~

(19) remains the same but is renumbered (15).

AUTH: 77-1-202, 77-1-204, 77-1-209, MCA

IMP: 77-1-208, MCA

### 36.25.1002 CABINSITE LEASES AUTHORITIES, LIMITATIONS, AND RESTRICTIONS

(1) A cabinsite cabin site lease generally may only include a maximum of five acres; unless however, special circumstances may exist for which the department may grant more than five acres.

(2) through (2)(b) remain the same.

(c) all other local, state, and federal statutes and regulations. The department's approval to place or modify any improvement on the lease lot does not necessarily constitute approval from any other regulatory entity such as a county, other state administrative agencies, or federal agencies.

~~(3) The successful bidder for a cabinsite lease may be required to pay for the cost of any surveys, fulfillment of zoning and subdivision requirements, and other assessments, or costs related to compliance with any other local, state, and federal statutes and regulations.~~

~~(4) Cabinsite leases shall be classified as per ARM 36.25.108, or if necessary, reclassified as per ARM 36.25.109.~~

~~(5) A cabinsite cabin site lease authorizes the lessee grants the lessee the right of access to the leased land and, with prior approval from the department, and the right to place allows for placement of necessary utility facilities within the cabinsite cabin site lease premises and across specified adjacent state trust lands from the main utility to the cabinsite cabin site lease premises during the term of the lease, with the prior written approval of the department. For any such rights authority outside of state trust land, the lessee will be responsible for obtaining any necessary easements from the appropriate landowner(s).~~

(4) At the lessee's expense, cabin site lessees are solely responsible for road maintenance of all roads upon state trust land that are used to access the cabin site lease.

(a) The department reserves the right to require the formation of road users associations (RUA), at lessee's expense, to address the potential of multiple use on access roads to the lease land.

(b) Should the department require the formation of a RUA, the cabin site lessees shall become members of that RUA and comply with all requirements of the RUA bylaws as approved by the department.

(5) At the lessee's expense, the lessee must keep the leased land free of fire hazards by:

(a) fireproofing incinerators, fireplaces, stoves, or any other type of burner by use of spark-proof screens;

(b) removing any forest litter such as needles, twigs, or duff in a ten-foot perimeter around all buildings and roof tops;

(c) removing all tree limbs encroaching the roof or chimney(s); and

(d) abiding by all restrictions on fires which may be in effect at any time and take all reasonable precautions to prevent and suppress fires, including extinguishing all fires prior to leaving the lease area.

(6) The use of firearms or fireworks is not permitted.

(7) Any falling of live or green trees is prohibited unless otherwise permitted by the department.

(8) At the lessee's expense, the leased land must be kept free of weeds, debris, garbage, and any open pits or ditches.

AUTH: 77-1-202, 77-1-204, 77-1-209, MCA

IMP: 77-1-208, MCA

36.25.1004 CABINSITE LEASE FEE PAYMENT DUE DATE (1) All cabin sites are assessed an annual lease fee. Payment is due in one annual installment unless the lessee elects to pay the annual fee on a semi-annual schedule in two equal installments.

(a) Annual lease fees are due on March 1 of each year.

(b) Semi-annual lease fees are due on March 1 and on September 1 of each year.

(2) Lease fee payment must be postmarked by the due date. Lease fee payment that is not postmarked by the due date will be considered late and a \$25 late fee will be assessed.

(a) Late payment of annual lease fees will be accepted if postmarked on or before April 1.

(b) Lease cancellation for leases on an annual fee schedule occurs if payment is not received, or is received postmarked after April 1.

(c) Late payment of the first installment of semi-annual lease fees postmarked on or before April 1 will be accepted; late payment of the second installment postmarked on or before October 1 will be accepted.

(d) Lease cancellation for leases on a semi-annual fee schedule occurs if payment is not received, or is received postmarked after either date in (c).

(3) The department will send written notice of payments due to the address of record for lessees in accordance with the following schedule:

(a) invoice in January for all annual lease fees;

(b) invoice in January and July for all semi-annual lease fees;

(c) late notice in March for any unpaid annual lease fees;

(d) late notice in March and September for any unpaid semi-annual lease fees;

(e) cancellation notice in April for any unpaid annual lease fees; and

(f) cancellation notice in April and October for any unpaid semi-annual lease fees.

(4) Late notices and cancellation notices will be mailed to the address of record by certified mail; and, will be copied to any known security interest holder for improvements upon the leased land.

~~(1) The department shall bill for cabinsite leases using the schedule outlined in (1)(a) through (c).~~

~~(a) Written notice of the amount of rental due for 2010 will be sent to each cabinsite lessee's address of record following adoption of these rules on May 28, 2010. In this instance, the specific dates for payment notification, when payments are due, and when late charges and lease cancellation may occur will be approved by the Land Board.~~

~~(b) Beginning in January 2011 and each January thereafter, the department will send written notice of the amount of rental due to each cabinsite lessee's address of record.~~

~~(i) The notice shall state that the payment is due by March 1, and if payment is not received or postmarked by April 1, that the lease is cancelled.~~

~~(A) In mid-March, prior to April 1, the department shall send a reminder letter by certified mail to each lessee who has not made payment, notifying the lessee that~~

~~the lease is cancelled if payment is not received or postmarked on or before April 1. If payment is not received or postmarked by April 1, the entire lease is cancelled.~~

~~(B) An additional \$25 late fee will be charged for payments made after March 1, but before April 1. If payment is not received or postmarked by April 1, the entire lease is cancelled.~~

~~(c) If the lessee elects to make semiannual payments, the department will send written notices in January and July of each year, except as described in (1) to the address of record, per ARM 36.25.104(3), stating the amount of semiannual rental due.~~

~~(i) The notice shall state that the first half payment is due by March 1, and if not paid by April 1, the lease is cancelled. The notice shall also state that the second-half payment is due by September 1, and if not paid by October 1, the lease is cancelled.~~

~~(A) In mid-March, prior to April 1; and mid-September, prior to October 1, the department shall send a reminder letter by certified mail to each lessee who has not made payment a letter notifying the lessee that the lease is cancelled if payment is not received or postmarked on or before April 1 or October 1. If payment is not received and postmarked by April 1 or October 1, the entire lease is cancelled.~~

~~(B) An additional \$25 late fee will be charged for payments made after March 1 but before April 1; and payments made after September 1 but before October 1.~~

~~(da) In special circumstances, As determined by, and the department or at the direction of the board, the department may send notices regarding of payments due to lessees at times other than those described in this rule. (1)(a) and (b). The specific dates for payment notification, when payments are due, and when late charges and lease cancellation may occur will be approved by the Land Board.~~

~~(25) A cancelled lease may be reinstated at the discretion of the department. for an additional The minimum fee for reinstatement fee, which will be a minimum of is \$500, or as much as three times the annual rental amount lease fee of the lease. The decision whether or not to offer a lessee the ability to reinstate the lease by paying a reinstatement fee, as well as the reinstatement fee amount to charge for the reinstatement fee, are both at the discretion of the department.~~

~~(3) The rental price for the first year of a new lease shall be prorated by dividing the full amount of the rental for the first year by 365 then multiplying the result by the number of days between the lease start date and the last day of the upcoming February.~~

AUTH: 77-1-202, 77-1-209, MCA

IMP: 77-1-208, MCA

36.25.1005 CABINSITE IMPROVEMENTS (1) A cabinsite cabin site lessee may apply to the department to request authorization to place improvements on, or to install utilities to, the leased land. Approval is at the discretion of the department. state trust land which are necessary for the conservation or utilization of that state trust land and associated structures such as outbuildings, utilities, and sleeping cabins, with the approval of the department; however,

(a) The lessee must apply for permission prior to placing any improvements or utilities on state trust land using a form provided by the department. Failure of the lessee to obtain prior written permission from the department, may result in:

(i) limited or no compensation paid to the lessee for the improvements upon termination of the lease; or

(ii) the department may require the lessee to remove any improvements placed on the leased land, at the lessee's expense.

(b) Only one single-family residence will be permitted on each ~~cabinsite~~ cabin site lease, ~~and.~~

(c) The lessee is responsible to ensure all such installations and improvements meet all applicable rules, codes, and regulations. The department's approval to place or modify any improvement on the lease lot does not necessarily constitute approval from any other regulatory entity such as a county, other state administrative agencies, or federal agencies.

(d) The lessee is solely responsible for the installation, maintenance, and expense of any improvements or utilities to the leased land.

(e) The lessee is responsible for all initial or recurring utility company charges or taxes resulting from the installation.

(f) Applications for improvement within 100 feet of a water body may be denied or limited.

(g) The department may require a security bond, the terms of which will be defined within the lease.

(2) A lessee may apply to the department to request to sublet the improvements.

(a) The lessee must apply for permission prior to subletting.

(b) The application must be on a form prescribed by the department.

(c) Subletting of improvements is permissible for long-term (monthly or longer) single-family residential use. Any subletting for short-term and/or recreational activity for total rentals that exceed the annual lease fee in a given year is prohibited.

(d) Approval of any sublease is at the discretion of the department.

~~(2) The lessee shall apply for permission prior to placing any improvements on state trust land and shall use the form prescribed by the department.~~

~~(3) A lessee will not be entitled to compensation by a subsequent lessee for improvements placed on the land after May 10, 1979, unless those improvements were previously approved by the department in writing prior to their placement upon the land. Proof of the date of placement of improvements may be required by the department. Any improvements or fixtures paid for by state or federal monies shall not be compensable to the former lessee.~~

~~(4) The lessee shall be responsible for notifying the department of the value of the improvements. The asking price of the improvements shall be the higher of either the most recent DOR assessment of the improvements, or of an appraisal of the improvements, though the lessee retains the right to lower the asking price of the improvements. Settlement for the improvements shall be determined pursuant to 77-1-208(3), MCA, and the procedures set out in ARM 36.25.125. All settlement for improvements must occur within 120 days of the issuance of the lease.~~

~~(a) If an appraisal is needed, the appraisal shall be contracted by the department and paid for by the lessee.~~

~~(b) Determination of compensation for improvements shall utilize standard appraisal procedures, giving full consideration to the improvement's condition, its contribution to the value of the property for residential purposes, and remaining economic life. Compensation shall be the estimated cost to construct, at current prices, a building with equivalent utility as of the date of the lease or license's expiration.~~

~~(5) At the time of assignment or other transfer of interest in the leasehold, the department must be notified of the sale price of the improvements and be provided copies of any agreements reflecting the transfer of both the lease and improvements, such as, but not limited to a realty transfer certificate.~~

~~(6) The department may require a written notice from the former lessee stating that the former lessee has received full compensation for the improvements or has removed the improvements and fixtures when a new lease is issued.~~

AUTH: 77-1-202, 77-1-204, 77-1-209, MCA

IMP: 77-1-208, MCA

36.25.1006 REMOVAL OF CABINSITE IMPROVEMENTS UPON CANCELLATION OR ABANDONMENT AND COMPENSATION (1) ~~At cancellation, termination, or abandonment of the cabinsite lease, the~~ The former lessee will be notified of their has a limited right to remove the improvements or be compensated for their the improvements by a new lessee, or their right to remove those improvements. Improvements that are not removed or sold in accordance with this section will result in trust assumption and ownership of all improvements.

(2) The ability to remove or seek compensation for improvements is only available if the former lessee has continued to pay all taxes and any other applicable assessments; and, is limited to a time period of up to three years after the date of cancellation or abandonment.

(a) If, after three years there is no new lessee and the improvements have not been removed, the department will provide written notice to the former lessee granting 60 days for removal of remaining improvements. After that time, the improvements will become the property of the trust.

(b) This condition and limitation applies to all improvements on the leased land, including movable and nonmovable improvements, as well as personal property.

(c) The beginning of the three-year time period shall be either:

(i) the effective date of an abandonment form executed by the lessee and accepted by the department;

(ii) the date rent is due, if the rent is not paid, as per ARM 36.25.1004; or

(iii) the effective date of cancellation provided in the cancellation notice from the department to the lessee, if the lease is cancelled for any reason other than failure to pay rent.

~~(23) If the A former lessee intending to informs the department that they wish to remove the their improvements, the former lessee must:~~



~~(a)~~ obtain a land use license from the department to remove the improvements. The license fee must be paid in advance.

(a) The department reserves the right to withhold authorization to remove the improvements during any time a lease is being actively offered for bid by the department.

(b) The land use license may be for a term of up to 60 days.

(c) The term may be extended by the department for good cause; and,

~~(b) pay the license fee in advance.~~

(d) The license fee will be calculated as the most recent year's lease fee, divided by 365, and multiplied by the number of days in the license.

(e) The minimum fee for a removal land use license shall be is \$50.

~~(34) If the A former lessee intending informs the department that they wish to be compensated for their improvements by a new lessee, must the former lessee will have a maximum of three years from the time of cancellation, termination, or abandonment of the cabinsite lease to be compensated for their improvements by a new lessee. The former lessee shall have:~~

~~(a) submitted in writing to the department a statement that the former lessee is seeking third-party compensation for the improvements;~~

~~(b) paid all property taxes and any applicable special assessments; and~~

~~(c) obtain a land use license from the department to access the cabin site for the limited purpose of maintaining and marketing the improvements for a potential buyer and new lessee. The former lessee may not utilize the cabin site for recreational or residential purposes.~~

(a) The maximum asking price of the improvements shall be the most recent DOR assessment of the improvements; or, if requested by the improvements owner, an appraisal of the improvements conducted pursuant to Uniform Standards of Professional Appraisal Practice (USPAP) standards. In case of a conflict, a USPAP appraisal will control.

(i) Improvements placed on the land after May 10, 1979, which were not previously approved by the department in writing prior to their placement, are not eligible for compensation under this rule.

(ii) Proof of the date of placement of improvements may be required by the department.

(iii) Any improvements or fixtures paid for by state or federal monies will not be compensable to the former lessee.

(b) If an appraisal is requested by the former lessee, the appraisal must:

(i) be contracted by the department and paid for by the lessee; and

(ii) utilize standard appraisal procedures, giving full consideration to the improvement's condition, its contribution to the value of the property for residential purposes, and remaining economic life. Compensation shall be the estimated cost to construct, at current prices, a building with equivalent utility as of the date of the lease or license's expiration.

(c) The lessee or improvement owner will be afforded notice and opportunity for an informal administrative hearing before the department to contest the appraisal valuation, as follows:

(i) the lessee or improvements owner must file a request for a hearing with the department within ten days of the department's notification to the lessee or

improvements owner of the appraised value of the improvements. The department shall notify the lessee or improvements owner of the time and place of the hearing before the department director, or the director's designee. The hearing will be informal, without adherence to strict rules of evidence as provided in 2-4-604, MCA. A hearing examiner may be appointed to conduct the hearing. The lessee or owner of improvements may present any evidence and/or arguments for the department to consider;

(ii) upon determination of the improvement value, the lessee or improvement owner is obligated to transfer its interest in the improvements according to the department's final determination of the value.

(d) The proposed buyer of a former lessee's improvements must still participate in, and be the successful bidder of, the cabin site lease, per ARM 36.25.1009.

(e) In no case will the department pay any realtor fees, commissions, or otherwise, for the marketing of improvements when such marketing services are contracted by the lessee or former lessee. provided the department with qualifying value information for the improvements. At any time during the three-year period and at the approval of the department, the former lessee may request a license to remove the improvements, at a fee and duration consistent with this rule.

(4) The beginning of the three year time period shall be either:

(a) the effective date of an abandonment form executed by the lessee and accepted by the department; or

(b) the date rent is due, if the rent is not paid as per ARM 36.25.1004 or no abandonment form is submitted.

(5) If the lessee abandons the improvements there shall be no obligation. When a former lessee intends to unconditionally abandon the lease and improvements, the abandonment shall be recorded on a form as prescribed by the department, and the following will apply:

(a) the department or other party is under no obligation by the department or other party to compensate the former lessee for any for compensation for all improvements on the leased land property, including movable and nonmovable improvements, as well as personal property;

(b) the improvements may be sold to a new lessee at a price determined by the department. Any revenue generated from the sale of improvements that have been unconditionally abandoned shall be distributed by the department in the same manner as rentals for the applicable leased land; and

(c) the department reserves the right to refuse an unconditional abandonment.

(6) The department reserves the right to withhold authorization to remove the improvements during any time that a lease is being actively bid by the department.

(7) If three years after the cancellation, termination, or abandonment of the cabinsite lease no new lessee has been found, the department shall provide written notice to the former lessee that unless the improvements are removed within 60 days, the improvements will become the property of the trust. This condition and limitation applies to all improvements on the property, including movable and nonmovable improvements, as well as personal property.

~~(8) If the department receives no written request from the former lessee seeking to receive compensation for improvements from a new lessee or to remove the improvements, the department shall seek a new lessee for the cabinsite lease.~~

~~(9) Final determination of settlement for improvements will be conducted in accordance with statutes and rules pertaining to arbitration.~~

AUTH: 77-1-202, 77-1-208, 77-1-209, MCA

IMP: 77-1-208, MCA

36.25.1008 CANCELLATION AND ABANDONMENT OF CABINSITE LEASES AND SECURITY INTERESTS (1) Either the department or the lessee may cancel the lease.

~~(a) The department may cancel a lease for nonpayment of rentals or any other breach of the lease contract.~~

~~(2b) A lessee may cancel per the terms of the lease, or unconditionally abandon a lease in accordance with ARM 36.25.1006. request to abandon the lessee's right, title, and interest in the improvements on a cabinsite lease and the cabinsite lease itself to the department.~~

~~(a) The department reserves the discretion whether to accept the abandonment of the improvements and lease.~~

~~(b) All such abandonments shall utilize a form as prescribed by the department.~~

~~(32) Before any cancellation or abandonment of a cabinsite cabin site lease, the department shall notify any known holder of a security interest for improvements located upon the cabin site form issued by the department of the impending cancellation or request by the lessee for abandonment.~~

~~(4) through (6) remain the same but are renumbered (3) through (5).~~

~~(7) The former lessee may or may not choose to market the improvements for sale. In no case will the department pay any realtor fees or commissions for the marketing of former lessee improvements when such marketing services are contracted by the lessee.~~

~~(8) The proposed buyer of a former lessee's improvements must still participate in, and be the successful bidder of the cabinsite lease, per ARM 36.25.1009.~~

~~(9) If the lease improvements have been abandoned, the improvements may be sold to a new lessee at a price determined by the department.~~

~~(406) The former lessee shall will not be entitled to any refunds of any lease payments after related to cancellation or abandonment.~~

AUTH: 77-1-202, 77-1-209, MCA

IMP: 77-1-208, MCA

36.25.1009 ISSUANCE OF CABIN SITE LEASE ON UNLEASED AND RECLASSIFIED LAND (1) ~~A person who desires to lease unleased state trust land for a cabinsite must apply on the standard application form prescribed by the department. The application form must be returned to the department and must be accompanied by a nonrefundable application fee. Such application shall be deemed~~

~~an offer to lease land for a cabinsite as specified by the application, at a rental rate which reflects fair market value.~~

~~(2) When the department receives one or more applications to lease a cabinsite on an unleased tract of land, or on a tract which has been reclassified, it may advertise for bids on the tract and shall use the procedures set forth in this rule. The department has the discretion to put cabinsite leases up for bid even without first receiving any applications or offers for those cabinsite leases.~~

(1) Unleased cabin sites are available to lease through a competitive bidding process.

(a) The minimum bid amount will be the first year's annual lease fee, determined by applying a rental rate to the land value. In no case will a bid be considered if it is less than the minimum lease fee specified in the bid solicitation.

(i) Rental rates for new bidding shall start at 6.5 percent for all neighborhoods, or as otherwise determined by the board (in accordance with [New Rule I]).

(ii) The department may reduce the rental rate to 5 percent after 60 days if no bids are received.

(iii) In neighborhoods with vacancy rates over 30 percent, the department may incrementally reduce the rental rate after 60 additional days until the vacancy rate is no longer over 30 percent. The rental rate shall not be less than 3.5 percent or \$800, whichever is higher.

(3b) The department will advertise cabinsites ~~unleased cabin sites~~ for bid on the department web site, and may advertise through other marketing avenues. in one or more of the following ways:

~~(a) at least once in a newspaper of general circulation, which services the area where the cabinsite is located;~~

~~(b) at least once in any newspaper, magazine, trade journal, flier, or other print medium that potential cabinsite bidders may view;~~

~~(c) sending letters to interested parties;~~

(c) A response to a bid solicitation must be received prior to the bid closing date and time, at the location specified in the bid solicitation. The response must include the following:

(i) the bid form or application as provided by the department;

(ii) a bid deposit equal to 10 percent of the bid amount; and

(iii) the application fee as provided on the bid form.

~~(d) sending e-mails to interested parties; and/or~~

~~(e) placing information on the internet.~~

~~(4) Nothing in this rule shall preclude the department from generally making it known that a cabinsite is currently unleased and that the department is accepting applications to lease state trust land for a cabinsite.~~

~~(5) All bids shall be submitted at a specific place and time as specified by the department. Bids may be sealed bids, oral auction, or submitted electronically, whichever is indicated by the department at the time it advertises for bids.~~

~~(6) All competitive bids for cabinsites shall be submitted in the form of dollars per year. In no case may a bid be considered qualified if it is less than the minimum rental specified in the bid solicitation.~~

~~(a) For a bid to be considered, the bid must:~~

- ~~(i) include the bid application and application fee;~~
- ~~(ii) include a bid deposit that is ten percent of the amount the bidder bids; and~~
- ~~(iii) meet any other requirements as specified in the bid solicitation.~~

~~(6)(b) remains the same but is renumbered (1)(d).~~

~~(72) The cabinsite cabin site will be leased to the highest qualified bidder unless, with the following qualifications:~~

~~(a) if the department, at its discretion, board may determines that the bid is not in the best interests of the trust and reject the high bid is rejected, the board department will issue its reason for the rejection in writing. The lease and may accept the next highest qualified bid; then be issued, at a rental rate determined by the board, to the first bidder who is willing to pay the board-determined rental, whose name is selected through a random selection process from all bidders for the cabinsite lease; or~~

~~(b) if no bidder is selected, or if the highest qualified bidder declines the bid, the department may determine if and when to reopen a lease for bid, or accept the next highest qualified bid. offer the cabinsite lease to the next highest qualified bidder at that next bidder's bid amount.~~

~~(83) The successful bidder shall sign and return the lease to the department within 30 days of receipt of the lease. If the lease is not signed and returned to the department within 30 days, the bidder shall forfeit forfeits the bid deposit, and the department may:~~

~~(a) readvertise the lease for bid;~~

~~(b) offer the lease to the next highest bidder acceptable to the department accept the next highest qualified bid; or~~

~~(c) remains the same.~~

~~(94) The rental price lease fee for the first year of a new lease shall be is the bid amount divided prorated by dividing the full amount of the rental for the first year by 365, and then multiplied multiplying the result by the number of days between the lease start date and the last day of the upcoming February.~~

~~(10) When a lease is cancelled, abandoned, or otherwise terminated, the department shall attempt to lease the land in accordance with this rule.~~

~~(445) Any former lessee who has had a cabinsite cabin site lease cancelled and not reinstated by the board or department for nonpayment of rentals lease fees may bid upon that cancelled lease, or any other cabinsite cabin site lease provided that before the bid:~~

~~(a) the former lessee pays the unpaid rentals lease fee billed for that cancelled lease; and~~

~~(b) if the former lessee pays any unpaid taxes or similar assessments on the improvements, if is bidding on that cancelled lease, the former lessee must pay any unpaid taxes or similar assessments on the improvements; and~~

~~(c) the bid is in compliance with this rule.~~

~~(426) Any lessee who has had a cabinsite cabin site lease cancelled and not reinstated by the board or department for any reason other than nonpayment of rentals lease fees may be allowed to bid; however, the board or the department may reject any or all bids for a cabinsite cabin site from a lessee who has had a cabinsite cabin site lease cancelled in the past.~~

(7) The successful bidder for a cabin site lease may be required to pay for the cost of any surveys, fulfillment of zoning and subdivision requirements, and other assessments or costs related to compliance with any other local, state, and federal statutes and regulations.

AUTH: 77-1-202, 77-1-208, 77-1-209, MCA

IMP: 77-1-208, MCA

36.25.1010 TERM OF CABIN SITE LEASE DURATION AND TRANSFER

(1) A ~~cabinsite~~ cabin site lease will be issued for a period not to exceed 15 years unless the ~~cabinsite~~ cabin site lessee demonstrates a need for a longer period for loan security purposes, in which case the new lease may be issued in the discretion of the department for a period up to five years longer than the term of the loan up to a maximum lease period of 35 years. If a lease is issued for term longer than 15 years as provided in this section, the following will apply:

(a) a ~~d~~Demonstration of need shall ~~must~~ be supplied to the department in the form of a request from the lender asking for the extended lease term;:-

(b) A ~~cabinsite~~ a cabin site lease shall ~~will~~ expire on February 28, ~~thirty-five~~ 35 years or less from the beginning date of the lease;:-

(c) L~~e~~ase terms longer than 15 years are intended for loan security of dwelling improvements, not ancillary improvements such as septic tanks, wells, garages, and outbuildings; and-

(d) the lender may submit a form provided by the department to document its security interest in the improvements on the lease land; and, to secure in advance a transfer of the lease to the lender in the event of lessee default. The loan amount shall be a minimum of 15 percent of the value of the dwelling improvements.

(e) The lender shall provide proof of the loan and the loan terms to the department.

(2) If all rental payments due have been paid and the terms of the lease have not been violated, the lease may be assigned on forms provided by the department. Any assignment is subject to the following:

(a) no assignment shall be effective until it is approved by the department, and the assignment fee has been paid;

(b) the department reserves the right to withhold approval of an assignment pending compliance with lease terms and conditions; and

(c) at the time of assignment or other transfer of interest in the leasehold, the department must be notified in writing of the sale price of the improvements and be provided copies of any agreements reflecting the transfer of both the lease and improvements, such as, but not limited to a realty transfer certificate.

(3) If the lessee, through enforcement of contract, foreclosure, tax sale, or other legal proceeding ceases to be the owner of the physical improvements, the department may—at its discretion—assign the lease to whom title has been transferred.

AUTH: 77-1-202, 77-1-206, 77-1-209, MCA

IMP: 77-1-208, MCA

36.25.1011 RENEWAL OF CABINSITE LEASE AND PREFERENCE RIGHT

(1) A current ~~cabinsite~~ cabin site is not subject to competitive bidding upon expiration if:

(a) the current lease is in good standing; and

(b) the new lease will continue to meet the terms and conditions described in this subchapter.

(2) The current lessee may apply to the department, shall be sent an application to request to renew the cabinsite cabin site lease if all rentals lease fees due have been are paid and there are no outstanding lease violations. The application shall be accepted under the same conditions as specified in ARM 36.25.115; however, An application for renewal must be on a form prescribed by the department.

(3) 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 ~~36.25.1009~~.

(24) Any renewal will be offered on the lease contract adopted by the board at the time of renewal. A current cabinsite lessee that seeks to renew a lease using the competitive bid process shall follow the dates and processes described in ARM 36.25.1016 and 36.25.1018.

(35) Any renewal will:

(a) be issued at the rental rate of 5 percent of the land value or \$800, whichever is greater, unless otherwise determined by the board (in accordance with [New Rule I]); and

(b) will be subject to other lease fee terms in ARM 36.25.1003. A cabinsite lease that is not subject to competitive bidding is not subject to bids upon renewal if the current lease is in good standing, and the new lease will continue to meet the terms and conditions described in ARM 36.25.1001 through 36.25.1013, including the rental provided in 36.25.1003.

AUTH: 77-1-202, 77-1-204, 77-1-208, 77-1-209, 77-1-235, 77-1-236, MCA  
IMP: 77-1-208, 77-1-235, 77-1-236, MCA

36.25.1013 ADMINISTRATIVE HEARINGS RELATED TO CABIN SITE LEASE DISPUTES

(1) Any ~~cabinsite~~ cabin site lessee may request a hearing before the department to resolve any dispute which arises from the interpretation, ~~of,~~ ~~the administration of,~~ or ~~the cancellation of,~~ or the rental lease fees due upon, a ~~cabinsite~~ cabin site lease. However, the department ~~shall~~ will not provide for any hearing upon the assessed valuations determined by the DOR for any ~~cabinsite~~ cabin site under 15-7-111, MCA.

AUTH: 77-1-202, 77-1-208, 77-1-209, MCA  
IMP: 77-1-208, MCA

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

NEW RULE I LEASE FEE (1) The annual lease fee for the first lease year of an individual cabin site lease will be the greater of:

- (a) the amount bid by the lessee to secure the lease;
- (b) the rental rate; or
- (c) \$800.

(2) Throughout the term of the lease, the annual lease fee for an individual cabin site lease, after the first lease year, shall be the previous year's rent plus an annually compounded escalator of two percent.

(a) The annual lease fee for the duration of the lease shall be compounded and provided within the terms of the lease.

(b) If the lease fee is \$800 as provided in (1)(c), the lease fee will not include an annual escalator.

(3) Any lease renewal will begin a new lease, and a new first lease year.

(a) The department will provide lessee notice of any lease fee adjustment by November 1 of the year prior to the renewal lease year.

(b) The lessee is solely responsible for contacting DOR if he/she wants to contest the valuation of the leased land. Any adjustment in valuation made by DOR shall be incorporated into the lease fee calculation effective the year following department receipt of a DOR adjustment.

(4) The lease fee for the first year of a new lease shall be prorated by dividing the full annual lease fee for the first year by 365, then multiplying the result by the number of days between the lease start date and the last day of February.

(5) Every two years, beginning in 2017, the board will:

- (a) review the data from all new competitive bids and lease renewals;
- (b) complete a formal review by a qualified professional economist; and
- (c) consider whether to revise procedures and/or rental rates.

AUTH: 77-1-202, 77-1-204, 77-1-208, 77-1-209, 77-1-235, 77-1-236, MCA  
IMP: 77-1-208, 77-1-209, 77-1-235, 77-1-236, MCA

NEW RULE II APPLICABILITY OF CABIN SITE RULES (1) ARM 36.25.1001 through 36.25.1015 shall apply to all cabin site leases issued after [the effective date of these rules].

AUTH: 77-1-202, 77-1-204, 77-1-208, 77-1-209, 77-1-235, 77-1-236, MCA  
IMP: 77-1-208, 77-1-235, 77-1-236, MCA

5. The department proposes to repeal the following rules:

36.11.101 CABINSITE MAINTENANCE AND RESTRICTIONS

AUTH: 77-6-104, MCA  
IMP: 77-6-104, MCA

36.25.1003 CABINSITE MINIMUM RENTAL



AUTH: 77-1-202, 77-1-209, MCA  
IMP: 77-1-208, MCA

36.25.1007 ACCESS TO CABINSITE IMPROVEMENTS ON AN INACTIVE LEASE

AUTH: 77-1-202, 77-1-209, MCA  
IMP: 77-1-208, MCA

36.25.1012 CABINSITE HARDSHIP RENTAL DEFERMENT

AUTH: 77-1-202, 77-1-209, MCA  
IMP: 77-1-208, MCA

36.25.1016 COMPETITIVE BIDDING

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

36.25.1017 ROLLING GEOGRAPHIC LOCATION AVERAGE LEASE RATE

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

36.25.1018 LEASE FEE FOR BID CABINSITE LEASES UNDER ARM

36.25.1016

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

36.25.1019 SUBLEASING AND ABANDONMENT OF IMPROVEMENTS

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

36.25.1020 SALE OF CABINSITE LANDS

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

36.25.1021 APPLICABILITY OF CABINSITE RULES

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

6. REASONABLE NECESSITY: The amendment, repeal, and adoption of these rules are reasonably necessary to clarify the cabin site leasing program under

the terms of the agreement referenced below. The amendments to ARM 36.25.1001, 36.25.1002, 36.25.1004 through 36.25.1006, 36.25.1008 through 36.25.1011, and 36.25.1013; the repeal of ARM 36.25.1003, 36.25.1007, 36.25.1012, and 36.25.1016 through 36.25.1021; and the adoption of New Rules I and II are all necessary to comply with the terms of a settlement agreement between all parties in Cause No. BDV-2012-39, in the First Judicial District, Lewis and Clark County, Montana. The agreement was approved by the Land Board on October 19, 2015, and signed by Judge Jeffrey Sherlock, First Judicial District, on November 10, 2015. The repeal of ARM 36.11.101 is necessary as the forest management bureau no longer manages the cabin site leasing program.

7. 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 Amy Randall, P.O. Box 201601, Helena, MT, 59620-1601; telephone (406) 444-3844; fax (406) 444-2684; or e-mailed to arandall@mt.gov, and must be received no later than 5:00 p.m. on March 4, 2016.

8. Amy Randall, Department of Natural Resources and Conservation, has been designated to preside over and conduct the public hearing.

9. An electronic copy of this proposal notice is available through the department's web site at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of notice 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.

10. 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 must 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 mailed or delivered to Lucy Richards, P.O. Box 201601, 1625 Eleventh Avenue, Helena, MT 59620; fax (406) 444-2684; e-mail lrichards@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

11. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The bill sponsor was contacted by e-mail on December 11, 2015.

12. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment, adoption, and repeal of the above-referenced rules will not significantly impact small businesses.

/s/ John E. Tubbs  
JOHN E. TUBBS  
Director  
Natural Resources and Conservation

/s/ Dennison Butler  
DENNISON BUTLER  
Rule Reviewer

Certified to the Secretary of State on January 25, 2016