

February 12, 2003

**BOARD OF LAND COMMISSIONERS'
LAND DONATION POLICY**

Whereas the Board of Land Commissioners' may need information for consideration of real property consisting of land or an interest in land (i.e., minerals, timber, water, etc.) and any building, structure or improvement located thereon which may be received by the State (other than State Trust Lands and lands received under other statutory authority) by virtue of estates and lands to be donated or transferred in lieu of monetary compensation due for fines and any other forfeitures or land donations; and

Whereas the Board of Land Commissioners has authority, direction and control over the care, management and disposition of state lands;

Whereas §77-1-211 thru 214, MCA, authorize the Board of Land Commissioners, on behalf of the state, to accept certain lands from the federal government and from any natural person as a result of gifts, donations, legacies, devises and other grants;

Whereas some agencies have independent statutory authority to accept real property for specific purposes and need not submit such transactions to the Board for approval unless the specific statutory authority so requires; and

Whereas certain information is needed by the Board to aid them in determining whether lands proposed for donation or transfer to the state are of a nature and condition that they will not be a burden should they be accepted and that they will be free and clear of any objectionable title encumbrances;

Unless the transfer is expressly provided for by other statutory provisions, the following information must be supplied and submitted to the Board, without cost to the Board or the DNRC; however, the managing agency of the state may elect to pay certain costs associated with the transfer as an enhancement to the offeror:

APPRAISALS: In accordance with §77-1-202(3), MCA, a current appraisal must be conducted by a qualified appraiser. Said appraiser shall be properly licensed and certified in the State of Montana to conduct said appraisal. An appraisal will be considered current that is no more than six (6) months old at the time the matter of the land acceptance is presented to the Board for its consideration and one (1) year old at the time the property is transferred to the state. In some instances the board approval process takes longer than a year to complete, and in that case, the decision will be left to the managing agency to determine if an updated appraisal is necessary depending upon the type of property and circumstances. Said appraisal may be reviewed and approved by a qualified appraiser at the discretion of the proposed managing agency.

LAND SURVEYS: If the lands are an existing or legally established lot, tract, parcel, section or aliquot part of a section, an encroachment survey showing all monumented corners and the legal boundaries of the lands will be required. If the lands constitute a new break out or subdivision or are not able to be described as an existing legal subdivision (full section, aliquot part greater than 160 acres in size or a parcel already surveyed and legally platted and recorded), then a full survey and approval through the appropriate local County and state review processes will be required. The survey must be reviewed and approved by the proposed managing agency prior to recording.

HAZARDOUS WASTE AND MATERIALS INVENTORY: No lands will be considered for acceptance by the Board on which any non-removable or non-satisfactorily reclaimable materials, substances or contaminations exist. At a minimum, a current Phase I Hazardous Materials Survey (Haz Mat) shall be conducted by a state certified person or company and report provided to the state. A Haz Mat survey will be considered current that is no more than six (6) months old at the time the matter of the land acceptance is presented to the Board for its consideration. In some instances the board approval process takes longer than a year to complete, and in that case, the decision will be left to the managing agency to determine if an updated Phase I Survey is necessary depending upon the type of property and/or type of contamination and circumstances. Said survey must be reviewed and approved by the proposed managing agency. Any and all objectionable materials (i.e. dilapidated buildings, junk or abandoned vehicles, old

tires, debris piles, etc.), substances or contaminations may be required to be removed from the property, at the discretion of the proposed managing agency, prior to the matter being presented to the Board for approval.

TITLE REPORTS: A current title report or title commitment in the name of the State of Montana as the proposed insured must be provided showing the current status of the ownership of the lands and all easements, leases, licenses, contracts for sale, liens, judgments, tax status, mineral rights or reservations, and all other matters of record which may affect the title to the property. A full copy of any and all easements, leases, licenses, contracts for sale, liens, judgments, tax notices, mineral rights or reservations, and all other matters of record that affect title will accompany the report or commitment. (A title report is a written ownership & encumbrance [O&E] report and is only good as of the certification date.) A title report or commitment is considered current if it is certified to a date within 2 months prior to the time the matter of the property is presented to the Board for its consideration. In some instances the board approval process takes longer than a year to complete, and in that case, the decision will be left to the managing agency to determine if an updated title report or commitments is necessary depending upon the type of property and circumstances. A special mineral title opinion issued by a qualified attorney may also be required. Objectionable matters may be required to be cleared before the state will agree to accept title in and to the property. On the day of the recordation of the title transfer document, an updated title report or commitment will also be required, certifying through the date and time of that recordation and showing that clear title is vested in the State of Montana.

PUBLIC NOTICE: A notice shall be published in a newspaper of general distribution in the area within the County where the lands are located notifying the public of the proposed donation or transfer. Public notice must include the legal description of the property and advise the public of the date, time, and place of the meeting of the Board of Land Commissioners in which the matter will be presented for their approval.

The public notice must be run at least once a week for two consecutive weeks, within the 30 days prior to the Board's meeting date. The managing agency is exempt from this requirement if they had already gone through the equivalent notice in the MEPA process. The proposing managing agency must also notify the Board of County Commissioners in the county or counties in which the property is located when receiving buildings or lands, so the tax rolls can be changed to show that the property is then tax exempt.

The following additional information must be supplied and submitted to the Board by the proposed managing agency, without cost to the Board or the DNRC; however, the managing agency of the state may elect to pay certain costs associated with the transaction as an enhancement to the offeror:

PROPERTY INSPECTION REPORT: To determine the suitability of the property for ownership by the State, the proposed managing agency must conduct an on-site, physical inspection of the property proposed as well as research and review historic and current records related to the ownership and use of the property and shall report to the Board the findings of the inspection and the research and review of the land use records. When conducting the physical inspection of the property, the proposed managing agency shall also observe and make note of the type and condition of the access to the lands (i.e., state highway, county road, city street, private road, etc.) and the land uses on adjoining and surrounding vicinity lands. The records research shall include, but is not limited to, past aerial photos, land ownership and survey records, and City, County and/or State land use records regarding the lands proposed for acceptance.

SPECIAL CONSIDERATIONS FOR ACCEPTING DONATIONS: In considering the acceptance of buildings, lands and interests in lands, special consideration must be given to the following:

a) Conditions benefiting the donor or transferor, if any. These may include restrictions as to the type of use or access that may restrict or defeat a proposed managing agency's program purpose. Some examples may include a reservation of hunting rights or access to the donor; or stipulations of no hunting, no development, no vehicular access, timbering or no timbering, etc. Restrictions or reservations must be considered and negotiated on a case-by-case basis and must be allowed under the donation authority used.

b) Costs necessary to develop, manage, and maintain the property to meet objectives, satisfy special conditions, and to make revenue sharing payments. Such costs should be evaluated with benefits received by the proposed managing agency and the public.

c) Significant future problems of administration if a donation is accepted subject to conditions imposed by the donor such as no hunting, no public access, etc.

d) Legislative approval for certain federal lands in accordance with §77-1-211, MCA.

ANTICIPATED USE: An agency or department of the state proposing to receive lands must provide the Board with a statement of intent to accept the lands that outlines all of the above factors and indicates the proposed managing agency's anticipated use and management of the lands. Said donations shall be consistent with the mission of the agency or department involved and with applicable agency or departmental land-use plans. Upon acceptance of title, all lands accepted and acquired by the Board shall become public lands of the state and shall be subject to all applicable laws, rules and regulations for the administration of the same.

TITLE TRANSFER DOCUMENTS: All deeds and documents transferring title to the state must be reviewed and approved by the proposed managing agency's legal counsel before being recorded with the County Clerk & Recorder. Documents transferring title may not be placed of record until after securing the approval of the Board.

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Revised: 02/12/2003 11:00 a.m. jlw*