



ADMINISTRATIVE RULES OF MONTANA

36.25.805 PROCEDURES FOR NOMINATING AND EVALUATING STATE TRUST LANDS FOR SALE PURSUANT TO LAND BANKING

- (1) The board shall, in its sole discretion, sell sale units in configurations providing the best financial and management advantage to the affected trust beneficiary.
- (2) The board reserves the right to approve or deny nominations for the sale of state trust land. The department reserves the right to prioritize activities related to the sale of state trust land.
- (3) The board, the department, or the current lessee may nominate a parcel or parcels of state trust land for sale:
 - (a) nominations must be on a form issued by the department and must be sent to the appropriate department office, as noted on the form;
 - (b) a lessee may nominate one or more parcels currently held by that lessee under a state of Montana surface lease agreement. The nominating lessee shall pay a nonrefundable \$100 processing fee for each parcel of land nominated;
 - (c) the department may not accept incomplete nominations;
 - (d) the department shall review the classification of the parcel, as provided in 77-1-401, MCA, and classify the parcel if it is not classified; and
 - (e) when a parcel is nominated, the department shall notify:
 - (i) all persons holding a license on the parcel;
 - (ii) the representative of any affected trust beneficiary; and
 - (iii) the lessee of the parcel if board or department nominated.
- (4) If the department determines that a parcel meets the preliminary suitability requirements for sale, the department shall contract for an environmental review of the parcel under MEPA.
 - (a) If the MEPA analysis determines that the sale would result in a significant adverse impact on natural resources, the parcel is generally not suitable for sale unless the board determines otherwise.
 - (b) If the department conducts a checklist environmental assessment under MEPA, the department shall briefly explain in writing the potential impacts and mitigations for each resource and issue analyzed, including written explanations of resource or issue analysis conclusions of "no impact."
- (5) After evaluation of the preliminary review and the MEPA analysis, the department shall determine whether a parcel is suitable for sale and report to the board on the parcel's suitability for sale.

- (a) If the department determines the parcel is not suitable for sale, the department may remove the parcel from nomination and eliminate the parcel from further review without board approval.
 - (b) The department shall post the report required by (4), including the MEPA analysis, in a dated notice on the department's web site or other equivalent electronic medium at least 15 days prior to the meeting at which the board will consider the sale.
 - (c) The department shall notify the lessee of the department's recommendation by certified mail, as provided in 77-2-363(3), MCA.
 - (i) The notification must be mailed on or before the day the department posts the notice on its web site or other equivalent electronic medium.
 - (ii) As a courtesy, the department shall try to contact the lessee by telephone about the determination.
 - (d) The department shall notify all persons holding a license on the parcel and the trust beneficiary about the determination.
 - (e) Any person may appeal the department's removal of a parcel from nomination to the board within 15 days of the department posting the report on the web site or other equivalent electronic medium. The board shall place the appeal on the next available agenda of a regularly scheduled board meeting no later than 15 days before the meeting.
 - (f) On a board or department-nominated parcel, the lessee may, within 60 days of the determination, notify the department that the lessee intends to propose a land exchange.
- (6) For each parcel, the department shall conduct a title review, if necessary.
- (7) Upon the department's report to the board under (4), the board shall approve or reject the proposed sale.
- (a) If the board rejects the proposed sale of the parcel, the department shall remove the parcel from nomination.
 - (b) If the board approves the proposed sale of the parcel, the department shall post the parcel on the department's web site or other equivalent electronic medium within 30 days of the board's approval.
- (8) If the board has approved a proposed sale nominated by the lessee, the department will estimate the costs of the appraisal and will notify the lessee of the approval and request submission of the estimated costs of the appraisal and associated costs of preparing the parcel for sale.
- (a) Payment must be made after the board has given preliminary approval of the sale under ARM 36.25.807(2)(b).
 - (b) Payment must be made ten days after the department has notified the lessee of the estimated costs.
- (9) If the board has approved a proposed sale, land exchange, or acquisition, the department shall contract with a Montana-licensed certified general appraiser to appraise the parcel under consideration for sale in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), as adopted by reference by the state Board of Real Estate Appraisers in ARM 24.207.402.

The department will review or contract the review of the appraisal conducted by the contract appraiser.

- (a) The department shall contract for the appraisal, to be reimbursed by the appropriate party under ARM 36.25.807(2)(b):
 - (b) The appraisal must:
 - (i) include state-owned improvements in the valuation;
 - (ii) exclude lessee-owned or licensee-owned improvements from the valuation;
 - (iii) use comparable sales for like properties;
 - (iv) for a parcel that has legal access, provide the value;
 - (v) for a parcel that lacks legal access, the appraiser is to:
 - (A) provide a value with the hypothetical condition that the parcel has legal access;
 - (B) if there are comparable sales available to provide a credible opinion of the value without legal access, the appraiser is to provide that value as well; and
 - (C) if comparable sales are not available to provide a credible opinion of value without legal access, the appraiser will note the unavailability of sufficient sales data.
 - (vi) be reviewed and or updated one year from the date of the appraisal.
 - (c) The department shall post the appraised value of the parcel in a dated notice on the department's web site or other equivalent electronic medium.
- (10) Any person may commission, at that person's own expense, another appraisal from a list of department approved appraisers:
- (a) a person commissioning another appraisal shall notify the department within 15 days of the posting of the appraised value;
 - (b) any subsequent appraisal must be completed within 60 days of notification to the department of the intent to commission the appraisal; and
 - (c) any subsequent appraisal must include all elements required of the first appraisal and be submitted to the department for review.
- (11) The department shall present to the board the first appraisal and review and any subsequent appraisals and reviews that are provided to the department.
- (12) Upon receiving the appraisal(s) and review(s) the board shall set a minimum bid on the parcel. The department shall add the minimum bid to the parcel's listing on the department's web site or other equivalent electronic medium.
- (13) If the board has approved a proposed sale, the department shall make the minimum bid, contents and findings of any title review, and any environmental due-diligence review available to the public, all bidders, and the lessee.
- (14) The department shall provide notice of the proposed sale to the following:
- (a) Department of Fish, Wildlife and Parks;

- (b) Department of Transportation;
 - (c) Department of Environmental Quality;
 - (d) all adjacent landowners of record;
 - (e) the appropriate trust beneficiaries;
 - (f) the board of county commissioners in the county where the parcel is located;
 - (g) any surface lessees by certified mail. The notice to lessees must include an estimate of costs necessary to complete the sale if the lessees nominated the parcel; and
 - (h) all persons holding a license on the parcel.
- (15) If necessary, the department shall conduct a survey of the parcel or parcels proposed for sale. The department shall pay for the survey, to be reimbursed by the appropriate party under ARM 36.25.807(2)(c) or 36.25.808(7)(d).

Authorizing statute(s): 77-1-204, 77-2-308, 77-2-362, MCA

Implementing statute(s): 77-2-328, 77-2-362, 77-2-363, 77-2-364, 77-2-366, MCA

History: NEW, 2004 MAR p. 2399, Eff. 10/8/04; AMD, 2008 MAR p. 1153, Eff. 6/13/08; AMD, 2011 MAR p. 2414, Eff. 11/11/11.