

EXHIBIT 1
DATE 4-8-05
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Process and Criteria for Consultation on Land Transfers
Issue Summary – April 8, 2005
Prepared for the Legislative Council
by
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Introduction

§77-2-302, MCA, and §77-2-351, MCA, authorizes the Board of Land Commissioners to dispose of, sell or exchange certain state lands after consultation with the appropriate legislative committee. Since 1996, review of proposed transfers has appeared on the Council agenda on a number of occasions.

Process

Both sections provide that it is the Land Board that consults with the appropriate legislative committee. The Council should consult on land transfers on referral from the Land Board. The Council should authorize the chairman to set a consultation on the agenda when the Land Board presents a timely request with documentation meeting the adopted criteria as provided in the "summary" section of this document.

Following the consultation, the Council should adopt a motion to the effect that consultation, required by either §77-2-302, MCA, or §77-2-351, MCA, as appropriate for the subject proposal, has occurred. Should the Council have recommendations or concerns for the Board to consider, they may be added. There is no need to state an opinion since there is no authority to approve or reject a proposal.

April 8, 2005 Testimony: Proposed Property Transfer between the Department of Natural Resources & Conservation and the City of Missoula.

The Department of Natural Resources and Conservation (DNRC) is bringing a proposal to the House Administrative Committee for consultation for the transfer of an easement for the construction of a 14-foot wide foot bridge supported by the existing Madison Street Bridge piers and by new concrete abutments at each end across the Clark Fork River to the City of Missoula (City).

The intent of this proposed project is to improve bicycle and pedestrian connections between the downtown area and the neighborhood south of the river, including the University of Montana. The existing riverfront trail system terminates on the north side east of Madison Street. Extending the trail to the east is cost prohibitive due to physical and right-of-way constraints. The existing roadway bridge has narrow sidewalks and bike lanes, but lacks connections to the existing trail system. The proposed bridge will connect to the existing trail system on the north and south banks of the Clark Fork. Two bridge types were considered, a steel box-truss and a two-span suspension bridge. The preferred alternative is the suspension bridge. Both steel and wood were considered for the structural members. The preferred alternative is a steel construction with a concrete deck.

The State of Montana (State) is the sovereign owner of the land and minerals located below the low water marks of navigable rivers and lakes as established in the Equal Footing Doctrine. The DNRC, Trust Land Management Division, administers these lands on behalf of the state. Based on a US Supreme Court decision (Pollard vs. Hagen 44 U.S. 212) the original 13 states held ownership of navigable riverbeds consistent with English Law. The Supreme Court held that all new states enter the union under equal footing. Therefore, all of the states would own the lands beneath the navigable rivers and lakes. State ownership for Montana is defined in MCA §70-16-201 through 203. The City makes a commitment to DNRC that the property will continue in its proposed use and agree to a binding commitment in the Deed that the property will be continually used for a public purpose. In the event that it ceases to be used for the benefit of the public, the easement will be cancelled and title shall revert to the State.

Benefit to State – The benefit to the State lies in servicing Montana residents in Missoula and the University of Montana. The intent of this proposed project is to improve bicycle and pedestrian connections between the downtown area and the neighborhood south of the river, including the University of Montana.

SUMMARY

Criteria: §77-2-351, MCA – Transfer of property to a public entity.

1. What lands are involved?

- a. Provide an accurate description of the property involved including legal description and acreage involved.

The location of this proposed project is on Madison Street (US Hwy 12, P-7) at approximately milepost 95, in Section 22, Township 13 North, Range 19 West, Missoula County.

- b. Provide a general location map showing graphically the same information as required above.

See map accompanying this packet.

2. Are there restrictions on the transfer?

- a. Provide an affidavit documenting whether the land is or is not granted to or held by the State in trust for the support of the common schools, for a state institution, or for another specific purpose.

The affected DNRC lands are sovereign lands that are considered non-trust lands as defined by the Navigable River Policy.

- b. Provide an affidavit indicating any known restrictions on the transfer or stating that there are none.

This transfer is contingent upon a final approval letter from MT Department of Transportation by April 25, 2005.

3. Are the terms of the proposed transfer in the best interest of the state?

- a. Document the proposed terms of the transfer and any alternative terms that may have been considered.

The property will be transferred to the City of Missoula for continued use as a bicycle and pedestrian easement across the Clark Fork River. The City commits to use the property for a public purpose, as required by §77-2-351, MCA.

- b. If the transfer involves a binding commitment to use the property to provide a community service or a benefit that fulfills a public purpose, provide documentation showing the details of the commitment.

This use meets the requirement of §77-2-351, MCA, in that it provides for a community service or a benefit that fulfills a public purpose. The deed will contain restrictive language and a reversionary clause.

- c. Document that the transferee is a "public entity" as that term is used in §77-2-351, MCA.

A city government is a public entity as provided in §77-2-351, MCA.

4. Is the manner of the transfer in accordance with public policy?

a. Document the proposed manner of the transfer including plans for the required 60-day notice period.

Notice of the proposal is currently running in a newspaper(s) of general circulation in the affected area and opportunity is being given for public comment on this proposal and for compliance with the Montana Environmental Policy Act (MEPA). A hearing will be held if deemed necessary by DNRC as determined by the receipt of any opposition to the transfer.

