

To Education and Local Government Interim Committee, September 24-25, 2015, Room 137, State Capitol

Submission of Rose Lockwood, 267 Grizzly Drive, Dogtown, Seeley Lake, MT 59868-1314

4. TREATMENT OF DOGTOWN LEASEHOLDERS BY DNRC & MISSOULA COUNTY

There has been a stark contrast between how leaseholders have been treated by the DNRC and Missoula County. While this may not be relevant to the issue being dealt with by the committee, it is revealing about the culture within DNRC, which in turn is relevant to how solving conflicts between DNRC and other bodies and citizens might be addressed.

To summarize things, in case you are not interested in the details: DNRC has treated leaseholders with contempt, withheld information, given confusing or wrong information, and flatly refused to engage either with us, or the county, on how to resolve what is, in the great scheme of things, a relatively small problem (unless you happen to live in Dogtown). Every supposed point of engagement with us has been nothing more than DNRC stating that their position is above discussion. The department has a culture that does not permit questions, and/or answers questions by avoiding the issue...or worse.

If DNRC is going to solve its obvious problem with "dealing well with others" there will need to be some recognition that its fiduciary responsibility to beneficiaries includes the responsibility to manage their trust land in a businesslike way. We have been told by DNRC that they are "a business" and their job is to "make money". No doubt about that, the question is whether they are actually managing their business in a way that maximizes what they can deliver to beneficiaries. The record overall is flawed (hence Montrust), and in Dogtown it is baffling. Six Dogtown lots have been abandoned by leaseholders, three older leases from the 90s after 4 years, 3 years, and six months respectively. More recent new leases have been abandoned after 15, 10 and 4 months respectively, and have never been re-rented. Together with one lot that was already vacant, that created at the time a 15% vacancy rate. DNRC then poured money into building a road to "develop" six additional lots, never leased, raising the vacancy rate to 25%. (Just for perspective, the US housing rental vacancy rate is 6% and has not gone above 11% in many years.) DNRC is definitely not producing full market value for the lots in Dogtown and while there may be many reasons for that, one of them is surely the contemptuous way they treat leaseholders.

Dogtown leaseholder wonder why, with the very poor record of re-renting lots in our neighborhood, DNRC spent money, creating additional unleaseable lots, that could have been credited toward bringing the existing leaseholders into legal compliance for county road maintenance that they pretended existed when they signed leases with us. That would have secured their existing income, at least.

By contrast, Missoula County has reached out to us and tried to find ways to resolve the maintenance problem. In spite of the fact that they receive no real estate taxes on our lots they are willing to provide maintenance, and to carry out very expensive but necessary improvements that Dogtown residents could never afford to fund, IF DNRC would do what every other land owner does, and recognize that road rights add value to residential lots (and as already pointed out, value that is figured into our lease fees through the tax appraisals on our lots).

DNRC AT ITS MOST STUBBORN

The most vivid example of DNRC's refusal to deal in a rational way with leaseholders is the issue of just how much the easements for our roads would actually cost Missoula County, if they were in principle willing and able to pay for them. (This, by the way, is also important to leaseholders who might wish to exercise their right to buy their lots, since that cost would be added to the value of the lot itself.)

We were told in two different public meetings that DNRC had no way of knowing what the cost would be because it would require a survey to determine the size of each easement, and they have no surveyors on staff (and I understand that the county were also told that DNRC could not say how much our easements would cost though I can't confirm that). Aside from the implausibility of the statement that DNRC does not employ surveyors, I asked a Missoula county surveyor to calculate the size of the easement that would be associated with my lot, and he did it easily from the COS (the same one attached to the previous section).

In these meetings we were also told that the cost of the easements would be the full market value of the acreage the road runs over, based on the value of our land. With that information, it's pretty easy to estimate what DNRC said publicly they would be expecting as payment for our easements. The roads are roughly 1.5 miles (7,920'), the easements are 60' wide (30' for lots on each side), which yields 475,200 square feet, which = 10.91 acres. To estimate the "full market value" of the land, Dogtown lots cover 82.3 acres in total, and all lots combined are appraised at around \$3.4M, which yields an average value/acre of \$41,289. Multiply that by the acreage of the road and the cost of the easements would be over \$450,000. This is a stunning number, and the proportionate share for my lot would be \$10,940. To check the plausibility of that I multiplied the size of the easement needed for my lot (given to me by the county surveyor) by the value/acre of the tax appraisal on my lot, and the answer is \$10,392. Reality check: this really does seem to be what they think the easements are worth, or at least what they told leaseholders.

So this is the preposterous level of cost DNRC led us to believe would be involved in getting our road maintenance back, and as you can imagine it was a very depressing number. And pretty unbelievable based on the obvious fact that road easements simply do not have the same value as fee-simple ownership (discussed in the first section of this submittal). Residents asked DNRC repeatedly, in both meetings, if this was their approach, and they repeatedly confirmed that it was.

One of our leaseholder group (after pestering the governor's office) managed finally to get a meeting with the head of DNRC to represent us and ask if he would listen to our issues, and try to find some resolution. He dismissed our issues, and said the only resolution is for Missoula County to pay. When presented with the logical calculation of the cost of the easements based on DNRC's information it was obvious to him that this was a ridiculous number but he still wouldn't say what it would actually be. Our representative persisted and eventually he produced an answer: around \$800/acre, which would be a maximum cost of around \$8,700 (actually less since so many lots are unleased, and would not need to be paid for). Clearly the information given to us by low-level staff that the market value of our lots would be the basis of the cost was simply wrong.

So for weeks DNRC has been putting their leaseholders through the anguish of worrying about their safety and their ability to use their homes, disseminating misleading information, and making it appear that there could not possibly be a resolution for our problem. When in fact we are talking about the relatively paltry sum of \$7-8,000.

Given that the annual cost of routine maintenance on our roads is \$3,000, the easements could be paid for in a little over two years for the same cost and problem solved.

We still maintain that the easements do not need to be paid for a second time (as discussed in section 2), but if we lose that argument we can almost certainly come up with a solution, in collaboration with Missoula County. The only thing that has held up that process is the behavior of DNRC. Instead of collaborating – on behalf of their beneficiaries – with the parties involved, they stonewalled, equivocated, misled us, and ignored us until we finally managed to get somebody who wouldn't give up in front of the Director. As a community we have put enormous effort into trying to figure out what is going on and figure out how to solve our problem, and the stumbling block is always DNRC. IT SHOULD NOT BE LIKE THAT. Leaseholders have the same commitment to the value of public education – DNRC's beneficiaries – as any other citizens, and we should be treated with respect on that basis alone. If our experience is typical, it is no wonder that the department has a problem with historic rights-of-way all over the state.

DNRC DO NOT LISTEN AND DO NOT ANSWER QUESTIONS

I will attach here copies of my attempts to correspond with DNRC about the problem with our roads. It took some time for us to grasp the full picture of what was going on, and at no point did we get any response other than "we are right, you have to pay". This is probably too far in the weeds to be of any relevance to the committee, but it is of some significance that I worked my way up to trying to communicate with the Land Board, only to be pushed back down at every point to dealing with DNRC itself.

My understanding is that DNRC is responsible to the Land Board, not that the board is a rubber-stamper for whatever DNRC wants to do. This is something that might also be considered by the committee. Is DNRC actually accountable to anyone? If not, it should be.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

Southwestern Land Office



STEVE BULLOCK, GOVERNOR

STATE OF MONTANA

PHONE: (406) 542-4200
FAX: (406) 542-4285

1401 27TH AVENUE
MISSOULA, MT 59804

July 31, 2015

LOCKWOOD, ROSE & MOON
267 Grizzly Drive
P. O. Box 1314
Seeley Lake, MT 0

Dear Lessee(s):

Montana Department of Natural Resources and Conservation (DNRC) received a letter from Gregory Robertson, Department of Public Works informing DNRC that Missoula County would no longer maintain Grizzly Drive and Cub Lane roads in Dogtown (see letter enclosed).

The Special Lease for Single Family Residence Cabinsite states that road maintenance is the responsibility of the lessee to maintain access to the leased premises. Maintenance includes such items as dust abatement, grading, and plowing for the purpose of providing for safe vehicular travel. The lease also states, "...The Lessee shall fully repair and bear the expense for all damage, ordinary wear and tear, to state school trust lands, roads and trails caused by the Lessee's activities."

DNRC would be willing to facilitate a meeting to discuss lessee responsibilities and options regarding road maintenance, including the possible formation of a Road Users Association. If this is of interest to you, please respond to Kristen Baker-Dickinson at (406) 244-2381 or email at kbaker@mt.gov or me at (406) 542-4345 or by email at lmullins@mt.gov by August 14, 2015.

Sincerely,

A handwritten signature in blue ink that reads "Liz Mullins".

Liz Mullins
Land Use Planner
Southwestern Land Office

Enclosure

Cc: Greg Robertson, Chief Public Works Officer, Missoula County Public Works
Pat O'Herren, CAPS Director, Missoula County
Board of Missoula County Commissioners
Kristen Baker-Dickinson, Clearwater Unit Manager, DNRC
File #3061986



April 29, 2015

*Sent to
leaseholders
~~in August~~
in August*

Mr. Mike O'Herron
Area Manager
Montana DNRC
1401 27th Avenue
Missoula, MT 59804-3190

Re: Dogtown Road – Seeley Lake

Dear Mr. O'Herron:

The purpose of this letter is to inform you that Missoula County will no longer maintain the following roads in the area known as Dogtown in Seeley Lake:

1. Grizzly Drive
2. Cub Lane
3. Mill Street

Each of these roads is located on state owned land under the supervision of DNRC. There are no dedicated easements over and across state lands for these roads. A recent county attorney opinion has determined that the County Road Fund is to be used for the purpose of maintaining county roads are not to be used on either state or federal routes. In order to ensure the proper expenditure of county road funds, we are examining all routes that involve state or federal property owners.

Future maintenance of these routes will be determined by you and your leaseholders. Missoula County is open to assisting on a reimbursable basis should you consider this as an option.

Sincerely,

Gregory H. Robertson, P.E., AICP, CFM
Chief Public Works Officer

cc. Board of County Commissioners

roselockwood@hotmail.com

From: <roselockwood@hotmail.com>
Date: Friday, August 07, 2015 6:37 PM
To: "Liz" <lmullins@mt.gov>; <kbaker@mt.gov>
Subject: road maintenance, Grizzly Drive

Hello,

I received your letter about road maintenance in Dogtown. Has Missoula County withdrawn maintenance because of the hole in their budget when Congress didn't renew federal funds for rural roads? I can't think of any other reason why the county would take such an extraordinary step.

Since, as you note, the lease has language referring to road maintenance and repair, DNRC must have had a responsibility to inform leaseholders that you had no agreed easements with the county for the roads providing access to our sites, since those roads have been in existence – and regularly maintained – for many many years and we had no way of knowing that they are not “legitimate” county roads. We pay personal property taxes like everybody else, and rely on you to have arrangements in place with the county with respect to real property - you own the land, we don't.

The section of the lease you quote is out of context and does not address “road maintenance”: in my lease it is Section IV-E:

E. The lessee shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the lease manager. The lessee shall fully repair and bear the expense for all damage, ordinary wear and tear, to state school trust lands, roads and trails caused by the lessee's activities.

These responsibilities regarding “roads and trails” are described in the paragraph referring to maintenance of improvements and premises on the leased site, not access roads. Otherwise you would have to read this paragraph as making us responsible for wear and tear on any state trust land, which is obviously ridiculous.

The section that describes road maintenance is IV-J:

J. Road Maintenance: The lessee is responsible for the maintenance commensurate with their lease of all state access roads to the leased premises.

Residents of Grizzly Drive and Cub Lane signed our leases based on the existence of maintained county access roads. Now these same roads are apparently being re-defined as state access roads because DNRC failed to agree easements with the county. To me it looks like DNRC has liability to lessees rather than other way around. It wasn't our responsibility to get it right with the county.

If we genuinely did have responsibility for maintaining these roads, then it must be somehow “commensurate” with our respective leases – whatever that means. I don't see how a “Road Users Association” would be consistent with that provision in our leases. An association is optional, and responsibility for maintenance can't be optional – either we are all responsible, or none of us is responsible. And if we ARE responsible, then WE have to pay for public access to the whole of Dogtown where the roads are used by the whole community and not just by residents of these two roads. There is plenty of traffic on these roads that has nothing to do with residents...just like there is on any maintained county road.

Maybe you can explain the situation in a way that I can understand.

Also, while you're clearing things up maybe you could figure out why there are two Grizzly Drives in Seeley Lake, and do something on behalf of your lessees to make it possible for residents to distinguish which road they live on – this is a safety issue, e.g. in the case of need for ambulance, fire service, etc. The “other” Grizzly Drive is way up in Double Arrow.

Rose Lockwood
 Grizzly Drive (the one in Dogtown)

1st Message

to Land Board Aug. 17throselockwood@hotmail.com

From: <roselockwood@hotmail.com>
Date: Monday, August 17, 2015 7:19 PM
To: <OPISupt@mt.gov>
Subject: to members of the State Land Board

(received
 phone call from
 Gov's
 office
 telling
 me
 to go
 to
 the
 meeting)

To the Members of the State Land Board: Governor Bullock, Attny General Fox, Sec of State McCulloch, Auditor Lindeen, Superintendent Juneau

I live on Grizzly Drive in Dogtown, Seeley Lake. The County of Missoula has sent a letter to the DNRC saying that my road, and the adjacent Cub Lane - both of which lie on state land - were never granted formal easements even though the county has been maintaining them for decades. Without easements, the county can no longer legally continue to maintain our roads. All residents on these roads are on state-lease lots, so DNRC sent a letter to leaseholders saying it's now our responsibility to maintain these roads, even though they are used as public roads by everybody in Seeley (including what I think is called "doing donuts" by boy-racers...no doubt an issue for road maintenance but not residents' fault).

Residents asked the county what's up, and they said DNRC is demanding payment for granting the easements. Every deeded lot in Seeley includes easements up to the middle of road. Nobody who owns deeded land in Seeley has been paid for the required easements. Missoula County policy is not to pay for easements. The quid-pro-quo is obvious: land owners allow formal right of way, in exchange the county provides the public service of road repair and maintenance. In this case the pro-quo from the county is pretty generous considering that DNRC land is exempt from property tax.

Residents asked DNRC why they wouldn't just grant the easements on the same basis that everybody else does. It costs them nothing and regularizes an anomaly that leaseholders were not even aware of (and couldn't have been aware of since we do not have access to title records for our lots, and DNRC chose not to disclose this anomaly when we signed our leases). DNRC responded by repeating their assertion that it's our problem.

Planning is underway for sewer service in Seeley and without the easements, residents of Dogtown will never be able to get hooked up, to ease pollution from septic. DNRC does not seem to be worried about this even though a number of the affected lots are on the Clearwater, and the mandate of the Dept they work for is to protect the natural resources of our state.

Residents asked DNRC how it expects to fulfill its mandate (further supported with additional funding in the recent legislative session) to sell state-lease lots if the lots don't have access easements. No access...no title insurance...no financing...no sale. DNRC apparently does not have a view on this conundrum.

The county appears to be quite willing to maintain our roads, but just wants the legalities to be settled. Could you get some adults in the room and sort this out?

Thanks,

Rose Lockwood

Answer received from DNRC

In response to
Land Bd. message

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION



STEVE BULLOCK, GOVERNOR

1625 ELEVENTH AVENUE

STATE OF MONTANA

DIRECTOR'S OFFICE (406) 444-2074
FAX: (406) 444-2684

PO BOX 201601
HELENA, MONTANA 59620-1601

August 25, 2015

Rose Lockwood
267 Grizzly Drive
PO Box 1314
Seeley Lake, MT 59868

*Mostly repeats
what has already
been said, ignores
my questions*

Re: Road Easement

Dear Ms. Lockwood,

I am in receipt of your email dated August 25, 2015. Although Missoula County has in the past, provided maintenance to roads that serve cabin site leases in the Seeley Lake area known as Dogtown, the ultimate responsibility for maintenance activity and cost is that of the lessee. The DNRC is not requiring the County to have easements in order to perform road maintenance. Missoula County's decision to drop these roads from their maintenance program is beyond the State's control. To our knowledge, Missoula County is continuing to maintain other roads across Trust land without easements, including the Placid Lake Road. All cabin and home site lessees are responsible for road maintenance in relationship to their lease, as provided within the lease contract. For example, your lease contract provides the following regarding road maintenance:

II. Authority and Use and Term Authorized (Subsection B)

- 6. Unless specifically provided as an added provision to this lease, this authorization is for site occupancy and does not provide for the furnishing of structures, road maintenance, water, fire protection, or any other such service by the State, utility association, or individual.

IV. Responsibilities of Lessee

- E. The lessee shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the lease manager. The lessee shall fully repair and bear the expense for all damage, ordinary wear and tear, to state school trust lands, roads and trails caused by the lessee's activities.
- J. Road Maintenance: The lessee is responsible for the maintenance commensurate with their lease of all state access roads to the leased premises.

In July, the DNRC Southwestern Land Office mailed a letter to all lessees in the Dogtown neighborhood informing them of the County's decision to no longer maintain roads in the area, and offered to facilitate a meeting to discuss lessee responsibilities and options regarding road maintenance, including the

possible formation of a Road User Association. **A formal meeting has been scheduled for Wednesday, September 2, at 5:30pm at the Seeley Chamber of Commerce.** A letter was mailed to all lessees of the Dogtown neighborhood on August 20, 2015 regarding the scheduled meeting. Please contact Kristen Baker at 406-244-2381 or kbaker@mt.gov for more information about the meeting.

You also expressed concern about road access easements for purchasers of cabin sites in the Dogtown area if sold through the current Cabin and Home Site Sales Program. Sales through the Cabin and Home Site Sale Program include in the purchase price, an access easement for roads that cross trust land. Any purchaser would thus be granted an access easement.

Unfortunately, the trust mandate does not allow for easements to be given to any entity, including Counties, without compensation to the trust at full market value. There have been a number of court cases leading to this conclusion. Therefore, the DNRC cannot legally grant an easement to Missoula County for less than full market value.

Sincerely,

Shawn Thomas
DNRC Trust Lands Administrator

*Misleading
statement,
see 1999
Trust
Decision*

My answer to DNRC / Land Bd. - to ^{sent} ~~the~~ Governor's Assistant. (the one who called me)

roselockwood@hotmail.com

From: <roselockwood@hotmail.com>
Date: Thursday, September 03, 2015 7:46 PM
To: "Bullock, Governor" <governor@mt.gov>
Cc: "Kristen Baker" <KBaker@mt.gov>; "Liz" <lmullins@mt.gov>; "Mike O'Herron" <moherron@mt.gov>; "Bob Storer" <rstoror@mt.gov>; <jcurtiss@co.missoula.mt.us>
Subject: message for Tyler Campbell

DNRC
DID NOT
ANSWER
MY QUESTIONS

Dear Tyler,

Thank you for your call yesterday. For the record, my issue is not with Missoula County, but with DNRC. I did attend the meeting, and have a number of points (on both the meeting and the letter from Shawn Thomas) that I hope you will convey to the members of the Land Board. I wrote to the governor (and the other members) in that capacity since the DNRC org chart shows that they are ultimately responsible to the board. Frankly I don't know who else to contact because DNRC itself seems to be the problem.

To put it succinctly for the Land Board, these are the facts as I see them:

- Missoula County can only - by law - provide road maintenance if right-of-way is formalized through easements for County Roads.
- The county is currently correcting historical anomalies on a number of County Roads including several in Dogtown, Seeley Lake: Grizzly Drive and Cub Lane (both on state trust land), and Riverview Drive (where land owners have already granted the necessary easements).
- Residents of Grizzly Drive and Cub Lane have, for decades, relied on the county (particularly for snow plowing) to keep access open for life-critical services as well as ordinary convenience; residents include children and many older people who rely on these services for safety.
- DNRC is collecting lease fees (based on tax appraisals) on Grizzly Drive and Cub Lane lots **as if they had granted easements** to the county for road maintenance; they have not.
- At the same time DNRC is refusing to grant rights-of-way on grounds that are, on the face of it, completely spurious; they are denying the obvious, that access rights are a critical component of land value.
- By not granting the rights-of-way, DNRC are destroying the market value of land in their trust; without the easements the market value of the land-trust sites is virtually nil and DNRC is only able to collect inflated lease fees because they have misrepresented the access to the sites on these roads.
- DNRC withheld information from Dogtown leaseholders that would have affected their decisions to sign leases, punishes them for mistakes DNRC made in handling rights-of-way, and effectively excludes them from the cabin-site sales program (contrary to the intent of the 2013 legislation).

This is a very serious situation for the residents of Dogtown, and some resolution is urgently needed. If DNRC allows the rights-of-way requested by the county they will increase the value of the land in their trust, and remove the risk imposed on their leaseholders by their failure to play by the rules.

Chapter-and-Verse below....

I regret that the letter from Shawn Thomas (administrator at DNRC) was not very illuminating, and did not address the issues I have raised repeatedly with representatives of DNRC. His first point is incomprehensible. Dogtown residents are perfectly aware that "DNRC is not requiring the County to have easements in order to perform road maintenance". Owners of lots adjacent to roads don't require easements from the county to provide road maintenance, it's the other way around. DNRC continues to claim that they have no idea why the County requires a right-of-way when the letter to Mr. O'Herron (forwarded to all affected residents) is very clear on the matter: County Attorney opinion is that the County Road Fund cannot be used to maintain either state or federal routes. It is a question of how the County is legally entitled to spend its recently decreased road funds. The County Road Fund is used to maintain County Roads, which are by definition roads for which access easements have been granted to the county. This is not rocket science.

The statement in Mr Thomas's letter that the County has been inconsistent in its willingness to maintain roads on DNRC land needs to be clarified, and backed up with detail/evidence. This statement was repeated at the meeting yesterday, apparently to try to prove that Missoula County is in the wrong. I hope you will ask DNRC

to inform Dogtown residents exactly which roads comparable to ours are being maintained by the county without easements, so that we are fully informed about the situation we find ourselves in. We can't get this information from anybody else, so we are at the mercy of what they are willing to tell us. The only road specifically mentioned in the letter is Placid Lake Road; according to Certificates of Survey that I have seen, at least some of that road has road easements "granted and donated to the public" so it is clearly not comparable to our situation.

Mr Thomas's references to lease terms are less than helpful, in part because we apparently do not all have the same wording in our leases and more importantly because the language of the leases is itself ambiguous. Section II.B.6 does say DNRC will not provide road maintenance, but section IV.J says we are responsible only for sharing in the maintenance of "state access roads". I read my lease (for a site on Grizzly Drive) carefully before I signed it, took particular note of statements about road maintenance, and understood correctly that if Grizzly Drive had been a state access road, I would be responsible for a portion of maintenance. Grizzly Drive (and Cub Lane as well) was clearly designated as a County Road when I signed my lease, and this is true for everybody who has signed leases in Dogtown, since both roads have been maintained by the county for decades, and certainly longer than the term of any of our leases (which is 15 years).

During the terms of our leases there have been signs at the end of both roads marking the "end of county road". DNRC has title to the land we lease, and as leaseholders we are not privy to title details. DNRC's usual position is to disclose as little title-related information as possible to leaseholders, including details of the tax appraisals that are the basis of our lease fees, which as normal taxpayers we would have access to under conditions of confidentiality. DNRC had an obligation to tell us that the clearly designated and marked county roads were NOT actually county roads because no easement had been granted for their use. DNRC withheld this information from us and it is implausible to claim that DNRC didn't know an easement was required.

More to the point, DNRC takes full financial advantage of the lots/sites in Dogtown as if they had granted the easements. They collect substantial lease income for lots that are appraised as if equivalent ("comparable") to lots that do conform to the easement rules.

DNRC CAN'T HAVE IT BOTH WAYS: either they grant the normal right-of-way easements that give residents access and justify charging us lease fees on that basis (Missoula County provides road maintenance), or they do not grant easements and charge lower fees because of lack of access (we pay road maintenance).

It's a minor point (but indicative of the casual way DNRC treats our lease terms) that section IV.E of the leases clearly refers to maintenance of improvements (including roads) ON THE PREMISES BEING LEASED, not on DNRC land used for access. For DNRC to claim that this section of the lease creates an obligation to "fully repair and bear the expense for all damage, ordinary wear and tear, to state school trust lands, roads and trails caused by the lessee's activities" outside of the sites we are leasing would make us responsible for maintenance on any school trust lands we set foot on, anywhere in the state. This is patently ridiculous and cannot be sustained as an interpretation of our leaseholder responsibilities with respect to these two roads. This section of the lease does not mention access roads: either the section refers to our leased lots (in which case it is not relevant) or it refers to all state trust lands (in which case it is absurd and legally indefensible).

The difference in wording between different versions of our leases is not trivial. The "template" lease distributed at the meeting yesterday differs significantly from the wording of my lease. The template says "The lessee is responsible for maintaining access to the leased premises". My lease says (as referenced by Mr Thomas) "the lessee is responsible for the maintenance commensurate with their lease of all state access roads to the leased premises." I signed my lease on the basis of that wording, not on a general requirement that I am responsible for the public roads that lead to my lot including County Roads that are only not accepted as County Roads because of DNRC's intransigence.

This raises two questions: is Grizzly Drive (with respect to my lease) a state access road, and what level of maintenance responsibility would be "commensurate" with my lease?

I asked the DNRC representatives if they are now saying that the two affected roads are state access roads. They said no, they "are DNRC land". Again, DNRC can't have it both ways. If they are state access roads then DNRC was in error to sign a lease with me without disclosing the fact that they had not provided easements for the obviously marked "county road" I live on. I am in year 13 of a 15-year lease and DNRC has NEVER mentioned the subject or requested reimbursement for road maintenance. If (as stated at the meeting) they are not state access roads, then I have no obligation under my lease to maintain them. This illustrates clearly how poorly the state leases have been worded, and the ambiguous position DNRC has put Dogtown leaseholders into.

Re the "commensurate" question, DNRC's "solution" to the problem created by their failure to properly designate rights-of-way is that residents form an association to collect funds to pay for road maintenance. If the association is voluntary, then it couldn't possibly impose "commensurate" charges on members and would be inconsistent with the terms of my lease. DNRC suggested (vaguely) that it could be set up as some kind of legal entity, with residents effectively imposing fees on ourselves which could be enforced in law. Aside from the additional cost this implies for leaseholders (none of us is qualified to establish, run, or enforce such an arrangement so we would have to hire experts...lawyers... to do it for us), it imposes a "tax" on residents who have been misled by DNRC, and many of whom can't afford to pay it; Dogtown is a low-income area with many residents already struggling to pay the inflated lease fees. DNRC offers, as a comparable example, the arrangements made by residents of Riverside Drive for plowing their "road". Riverside Drive is a tiny lane, accessed off Riverview Drive via what is essentially someone's driveway, for access to a handful of cabins (according to the cadastral map, 8). If you don't live in one of the cabins on the Seeley Lake outlet you are unlikely to even know the road exists (I certainly didn't and I drive by it every day). This is in NO WAY comparable to our situation. We live on roads that are heavily used by the public (not just residents), serving around 40 leased sites and another 20 sites that DNRC hopes to lease (and for which they have recently spent Land Trust money to build ACCESS ROADS connected to Grizzly Drive and Cub Lane). Many children and older people live in Dogtown, and access for public services (school busses, fire and ambulance, etc) is essential. To make things even worse, DNRC flatly refuses to acknowledge any responsibility to maintain access to the large number of currently empty lease sites that they are (according to their mandate) attempting, unsuccessfully, to lease. They expect existing Dogtown leaseholders to pay for their road access. This is hardly "commensurate" – by any reasonable interpretation of the language in my lease they should pay for around 1/3 of road maintenance if they refuse to grant the necessary easements.

DNRC seems to have the idea that we will establish something similar to "private roads" (such as I believe they have on Double Arrow), even suggesting that we could install entrance gates to prevent the general public from using "our" roads. But even if we were inclined (and able to afford) to turn Dogtown into a gated community (if you and/or the governor have visited Dogtown you will get the joke), they would not be private roads in the usual sense, within the control of residents - they would be state trust land over which we have no control whatsoever. Once again, DNRC is grasping at unrealistic solutions to a problem they have caused.

Apparently Mr Thomas completely misunderstood my point about the sale of land-trust sites in Dogtown. The legislation (SB34 from the 2013 session) does indeed permit (but does NOT require) DNRC to grant easements across state lands for access. Here is the language:

-
- (4) Upon a sale of a cabin or home site, the board may:
- (a) grant a permanent easement across state lands to secure access using current routes; or
 - (b) convey an appurtenant, nonexclusive easement to the property from the nearest public road if:
 - (i) the board has authority to grant the easement; and
 - (ii) the conveyance of the easement does not overburden a right-of-way held by the board.
- (5) The appraised value and minimum bid for a cabin or home site must include the value of the easement granted pursuant to subsection (4).
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DNRC said at the meeting that the usual easements (as I understand it from the county surveyor, to the middle of the road in front of the lot) would be granted to a lot if any Dogtown site is sold under the program set up in the 2013 legislation. What they didn't say is whether an easement "to the property from the nearest public road" would be granted for a sale in Dogtown. If DNRC won't allow County Road easements for Grizzly Drive and Cub Lane, then the nearest public road is Riverview Drive (where landowners have recently corrected a similar anomaly by simply doing the right thing and formalizing Riverview Drive as a County Road).

DNRC is adamant that their hands are tied and that they are legally forbidden to grant an easement without being paid "full market value" for the land over which the easement runs. Aside from the weirdness of demanding full-market land value just for the right to pass over a piece of land (rational people pay full market value to acquire land), this means – if it is true (which I doubt) – that they would be unable to grant a right-of-

way from Riverview Drive to any lot in Dogtown without effectively selling – multiple times – rights-of-way over the roads, at the full market value of the land under the road, to everybody who buys a lot. This doesn't make any sense (except maybe as a jobs program for lawyers and surveyors). The principle that applies is pretty simple - everybody who owns a lot voluntarily cedes a portion at the front for a right-of-way, so everybody can get home on properly accessible roads. It's a mutual trade-off that adds value to everyone's property. DNRC would INCREASE the value of its lots in Dogtown by granting the County Road right-of-way. The Land Trust would achieve far more than full market value for the land under the road by allowing the easement, which makes their claim that they are legally forbidden to do so hard to take seriously.

If County Road access via Grizzly Drive/Cub Lane is not granted prior to the sale of a cabin site, even if a purchase includes a right-of-way easement to the middle of the road in front, purchasers would still not have clear access rights in their titles, precisely because DNRC is refusing to grant those rights. This means purchasers would not be able to get title insurance for the property, which means in turn that the land has very little market value since it could never be re-sold in the usual way. No financing either since lenders require title insurance. In other words, **if DNRC continues to stubbornly refuse to acknowledge that access easements are a critical part of the value of land-trust lots, then they are effectively destroying the value of the land being held in trust for the benefit of schools.** A side-effect is that Dogtown residents would effectively be excluded from the cabin-site sales program, completely contrary to the intent of the legislation...all the while paying excessively high lease fees.

Missoula County is apparently willing to maintain our roads (if allowed proper easements) even though DNRC land is exempt from real-property tax - i.e. more or less for free. I see the logic of this since we do pay personal property tax, and we contribute huge sums to the state-wide budget for education (which otherwise would fall, in part, on the county). Our lease fees are more than three times the mill levy on comparably appraised land, and will get proportionately even higher as a result of the Montrust settlement. But DNRC are asking the county to pay the Land Trust to increase the value of its own land, and also to provide free services to its leaseholders. This clearly exceeds the remit of the Land Trust to "attain full market value" and frankly sounds like good old fashioned gouging to me. Dogtown residents are the victims and we feel that the Land Board should fix this eminently fixable problem since no one within DNRC seems remotely interested in doing the right thing.

If DNRC refuses to allow the easements the county is asking for, then residents respectfully request that the recently published appraisals for our lots be adjusted to reflect the lack of marketability of our lots. (It is worth noting that not a single one of the Dogtown lots that DNRC has poured money into has been leased.) DNRC stands between us and any appeal of the appraisals, since they can only be raised by the land owner, and not leaseholders. In fact I was told by the Missoula County tax office (who appraise for DOR) that there is literally no mechanism for us to challenge the appraisals because the land is tax exempt. We are the only taxpayers in Montana whose "taxes" (for that is effectively what the lease fee is, specifically based on a tax appraisal) are set by DOR with no right of appeal. This is so eminently unjust, and stacked against leaseholders, that it seems inconceivable that DNRC would not at least support us to this extent. Yet the Unit Manager for our area stated in the meeting that even to make this request would be seen as controversial. That simply can't be right – an employee shouldn't feel at risk because she tries to do the right thing by the leaseholders she is responsible for.

A far simpler solution would be to grant the easements and secure the value of the land for which DNRC is supposed to be a guardian, in the public interest.

Rose Lockwood
Grizzly Drive, Dogtown
Seeley Lake, MT 59868-1314
677-3665

From: [Bullock, Governor](#)
Sent: Wednesday, September 02, 2015 3:27 PM
To: roselockwood@hotmail.com
Subject: Thanks for your email

Dear Rose:

Thank you for contacting me about the issue that you and your Seeley Lake neighbors are having with Missoula County ceasing to provide maintenance of your roadway.

I shared your message with the Montana Department of Natural Resources and Conservation (DNRC) and asked them to provide you with information regarding Missoula County, DNRC and the lessees' responsibility for road maintenance. DNRC Trust Lands Administrator, Shawn Thomas, provided the attached letter in response to my request.

I hope you are able to make it to the Seeley Chamber of Commerce meeting tonight at 5:30pm that will discuss the possibility of forming a Road User Association. Please contact the Seeley Chamber of Commerce or DNRC's Kristen Baker at 406-244-2381 or kbaker@mt.gov for more information.

I hope the information provided is useful. While DNRC is the best resource for information, please let me know if there is anything else I can assist with in the future.

Sincerely,

STEVE BULLOCK
Governor