



Montana Legislative Services Division

Legal Services Office

TO: Environmental Quality Council
FROM: Helen Thigpen, Staff Attorney
DATE: December 6, 2011
RE: Legislative Administrative Rule Review Report

Pursuant to 75-1-324 and 5-5-215, MCA, the Environmental Quality Council is responsible for reviewing administrative rules within its jurisdiction. Staff for the Environmental Quality Council has prepared this report for informational purposes only. This report does not represent any action or opinion of the Environmental Quality Council and does not preclude additional action that may be taken by the Environmental Quality Council pursuant to its authority under the Montana Administrative Procedure Act (Title 2, chapter 4, MCA).

MAR NOTICE NUMBER:

36-22-158

AGENCY/BOARD:

Department of Natural Resources and Conservation

RULE CLASSIFICATION: (e.g., substantive/interpretative/emergency/temporary)

Substantive

SUBJECT:

Cabinsite Leasing

NOTICE DESCRIPTION: (e.g., proposal notice/adoption notice)

Notice of Public Hearing on Proposed Amendment

SUMMARY OF RULE(S):

The DNRC is proposing to adopt rules for cabinsite leasing on state land. Senate Bill No. 409 (2011) requires the DNRC to adopt rules by January 1, 2012. The last meeting of the Land Board before the January 1, 2012, deadline is December 19.

The DNRC is proposing six new rules and an amendment to ARM 36.25.1011, which addresses renewals of cabinsite leases and preferences. The proposed rules are summarized as follows:

1. New Rule I, “Competitive Bidding,” outlines the bidding process that will be utilized by the DNRC. According to the proposed rule, the DNRC will use an open, competitive bidding process: (1) to issue cabinsite leases upon unleased state land; (2) when the cabinsite lessee initiates the competitive bidding process; or (3) upon the renewal of a cabinsite lease. The DNRC may determine the number of cabinsites to be offered under a competitive bidding process and the duration of the marketing period for vacant cabinsites. In addition, New Rule I establishes the initial minimum bid at 2% of the value of the premises as established by the most recent DOR statewide appraisal. There is no preference right for former lessees, and the minimum bid may be reduced if bids are not received within 180 days. New Rule I also addresses minimum lease terms, renewals of existing leases, and other items.
2. New Rule II, “Rolling Neighborhood Average Lease Rate,” states that the DNRC will set an average lease rate for each neighborhood or geographic location by October 31 of each year. New Rule II also establishes two types of neighborhoods: one type of neighborhood for cabinsites that are adjacent to water and one type of neighborhood for cabinsites that are not adjacent to water. Subsection (2) provides that at least three winning bids are required to establish a rolling neighborhood average lease rate.
3. New Rule III, “Lease Fee for Bid Cabinsite Leases Under [New Rule I],” provides an option to have any cabinsite lease existing prior to May 12, 2011, placed for open competitive bidding or renewed with a standard rental rate as provided by DNRC rule.
4. New Rule IV, “Subleasing and Abandonment of Improvements,” states that cabinsite lessees may sublease their improvements if they comply with the lease agreement and notify the DNRC prior to subleasing. New Rule IV also addresses permanent improvements, including the sale of improvements left on a cabinsite for more than 3 years.
5. New Rule V, “Sale of Cabinsite Lands,” provides that cabinsites may be sold as per Article X of the Montana Constitution and relevant statute, and references the procedures that must be followed. Under this rule, the Board of Land Commissioners or the DRNC may nominate a cabinsite for sale at any time; a lessee may also nominate a cabinsite for sale.
6. New Rule VI, “Applicability of Cabinsite Rules,” provides that the proposed cabinsite rules are not subject to ARM. 36.25.1003 “Cabinsite Minimum Rental,” ARM 36.25.1009(8), “Issuance of Cabinsite Lease on Unleased Reclassified Land,” or ARM 36.25.1012 “Cabinsite Hardship Rental Deferralment”.
7. The DNRC is also proposing to amend ARM 36.25.1011 to provide that current cabinsite lessees seeking to renew a lease under an open competitive bidding process must use the process described in New Rules I and III.

NOTES: (e.g., hearing dates)

Hearings on the above-referenced rules will be held on the following dates:

1. December 6, 2011, at the Hampton Inn, 1140 Highway 2 West, Kalispell, Montana;
and
2. December 7, 2011, at the Seeley Lake Community Hall, 2348 Highway 83, Seeley Lake, Montana.

Comments will be accepted until December 8, 2011.

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