

Department of Natural Resources and Conservation
Report to the Environmental Quality Council on
SB369 Cabin and Home Site Sales
January 2014

Background:

SB 369 passed the Legislature in 2013 with bipartisan support. SB 369 enacted a cabin and home site sale program whereby the proceeds of trust land sales would be placed in a special Land Banking account which could only be used to acquire other real property interests (land, easements, or improvements).

Statute requirements:

- Require the sale of cabin and home sites at the request of a lessee or improvements owner, only if approved by the Land Board and the sale is consistent with the Board's fiduciary duty of attaining full market value.
- The Department is required to on or before July 1 of each year, in consultation with the appropriate stakeholders, report to the environmental quality council by providing a summary of land sales of those lands that were state land cabin or home sites pursuant to 77-2-318 and efforts by the department to comply with the requirements of 77-2-318(1).

Goals of the program:

- Make available for sale cabin and home sites at the request of a lessee or improvements owner, only if approved by the Board and the sale is consistent with fiduciary duty of attaining full market value.
- To maximize the revenue from the sale of these state cabin sites to the beneficiaries, the properties must be sold over a reasonable period of time.
- Improve the investment portfolio of the beneficiaries by purchasing replacement lands that provide better return, or invest sale funds in the permanent fund.
- Sale of five cabin or home sites by December 31st, 2014, through a pilot sale program.

Milestones:

- Rulemaking process was begun in May, 2013 by DNRC.
- Meeting with MT State Leaseholders Association to review draft rules and address questions and concerns, 7/18/13.
- Rules presented to the Land Board for approval of draft proposal notice so we could proceed with rulemaking, 9/23/13
- Public Comment period on proposed rules, 10/17/13 – 11/14/13. Two rule hearings, Seeley Lake 11/6/13 and Helena on 11/8/13.
- Presented proposed Administrative Rules to the Land Board for final approval on 12/16/13.
- Administrative Rules became effective on December 27th, 2013 (new rules ARM 36.25.701 through 708, amended rule ARM 36.26.128, and repealed ARM 36.25.131).
- A letter explaining sale program and soliciting interest in 2014 pilot sale program was sent to lessees and improvement owners on 11/29/13. Lessees needed to respond by December 31, 2013, indicating they wanted to be considered for the pilot sale program.
- Evaluation of cabin and home sites to be considered for the 2014 pilot sale project, by February 7th, 2014.

FREQUENTLY ASKED QUESTIONS

Cabin Site and Home Site Sales

**Responses are based on Administrative Rules of Montana (ARM) drafted in October of 2013 to implement Senate Bill 369. The draft rules, if approved, are scheduled to be effective January 1, 2014.*



Basics

1. Why is the DNRC selling Cabin and Home Sites?

During the 2013 Regular Legislative Session, Senate Bill 369 (SB369) was passed. SB369 was a bill regarding the availability for sale, and the sale process for trust lands designated as cabin sites or home sites. The bill allowed for the sale of a cabin site or home site at the request of the lessee (or owner of improvements upon a cancelled lease), if the sale is approved by the Land Board and is consistent with the Board's fiduciary duty of attaining full market value.

2. Will my leased cabin site be sold out from under me?

No. The Land Banking Sale process is a voluntary program. You will not be required to nominate your cabin site for sale if you wish to continue leasing.

3. How many cabin sites will be sold per year?

DNRC will begin a pilot cabin site sale program in January 2014. Because of lack of department funding, we only have the ability to move 5 sales through the sale process for 2014. This number will be re-evaluated in subsequent years depending on funding.

4. How long does the sales process take?

The estimated timeline for a cabin or home site sales from selecting which sales will move forward, up to the time of closing will take approximately 10-12 months.

5. Why does the land have to be a public auction?

The sale of all state lands must be sold by public auction as required by state statute and the Enabling Act of 1889. <http://courts.mt.gov/content/library/docs/enablingact.pdf>

6. Who is writing the Administrative Rules for the sales process? Are any lessees involved?

DNRC staff is currently writing Administrative Rules of Montana (ARM) specific to cabin and home site sales to implement SB369. DNRC met with members of the Montana State Lease Holders Association (MSLA) during initial rule drafting and addressed concerns and questions. The MSLA is a group comprised of current and former cabin site or home site lessees and their families. There will also be a public comment period, including two public hearings, prior to rule adoption for members of the public to participate.

7. How can I comment on the draft Administrative Rules?

You may submit written comments via email to dcabinsites@mt.gov, or to DNRC ATTN: SB369 ARM Public Comments, PO Box 201601, Helena, MT 59620. You may also submit oral or written comments in person by attending one of two scheduled public hearings scheduled for November 6, 2013 at 7:00 pm at the Sullivan Memorial Community Hall, 3248 Highway 83, Seeley Lake, MT or November 8, 2013 at 1:00 pm in the Bannack Room (first floor) at the Department of Natural Resources and Conservation, Headquarters, 1625 11th Avenue, Helena, MT. Comments must be submitted by November 14, 2013

Getting Started

8. How do I get on a list to purchase my lease lot?

There is not a list at this time. DNRC will be sending out a letter in late Fall of 2013 to all current lessees explaining the sale process in more detail. At that time, lessees may respond to indicate that they are interested in participating in the pilot cabin site sale program. DNRC will evaluate cabin sites for the pilot sale program based on responses from those indicating that they are interested in participating in the sale program.

9. What are the preliminary sale criteria?

The department may consider the following factors in the preliminary review:

- Whether sale is consistent with the board's constitutional fiduciary duty;*
- whether the improvements possess clear title and whether any mortgage holder consents to sale;*
- whether there are any outstanding lease violations on the parcel;*
- whether, and to what degree the sale of the parcel would affect access to other public lands;*
- the extent of infrastructure, such as roads, utilities, power, telephone, water, or sewer availability;*
- whether the land has been surveyed by a licensed surveyor and title can be conveyed using that survey.*

10. What if my lease lot does not meet the preliminary criteria?

You will be notified by DNRC staff that the lease does not meet preliminary criteria for sale. You would work with DNRC staff to address the issues.

11. How do I find out if my lot has been surveyed? What if it has not been surveyed?

*You may contact a DNRC office in your area to see if your lot has a current survey useable to convey title. The lot will **not** be saleable until it has been properly surveyed. DNRC will work to complete surveys as funding is available.*

12. Do I have to be a current lessee to nominate a cabin site for sale?

Parcels can be nominated for sale by the current lessee, improvements owner, DNRC or the Land Board. During the pilot program period, lots that are currently under lease will be prioritized over abandoned or cancelled lease lots.

13. How do I nominate a lease site for sale?

DNRC will be sending out a letter in late Fall of 2013 to all current lessees explaining the sale process in more detail. At that time, lessees can respond to indicate that they are interested in participating in the pilot cabin site sale program. DNRC will begin to screen for preliminary criteria based on respondents. If the lot meets the preliminary criteria, the DNRC will notify the lessee with further instructions. Instructions will include a nomination form and payment of a non-refundable \$100 nomination fee.

14. How will DNRC prioritize nominated parcels?

All parcels will first be screened through the preliminary sales criteria. Leased lots that have a current lessee will be prioritized ahead of leases that have been abandoned or cancelled. The department will then select nominations at random, with consideration given to not saturating the market in any given area.

15. Who can nominate a parcel for sale?

Parcels can be nominated for sale by the current lessee, improvements owner, DNRC or the Land Board.

16. What if my nomination for sale is not selected for the current sale year?

The DNRC will keep the nomination on file until such time that it is selected. You do not have to nominate every year if your lot is not selected in the first year.

17. What if it is denied entirely?

You may appeal the denial to the Land Board, or choose to continue leasing, or work with the DNRC to correct any issues if possible.

18. What happens after my nomination is accepted for sale?

Please see the [Cabin Site Sale Processing Timeline for 2014 Pilot.](#)

[http://dnrc.mt.gov/CabinSite/Documents/Timeline for Cabin site sale processing 2014\(2\).pdf](http://dnrc.mt.gov/CabinSite/Documents/Timeline%20for%20Cabin%20site%20sale%20processing%202014(2).pdf)

Risks/Cost

19. Can someone outbid me if I own improvements on the lease site?

Yes, but if you are the current lessee you have the preference right to match the high bid in accordance with 77-2-324, MCA. If you are only the improvements owner, and not a current lessee, you do not have the same right to match the high bid; you must bid higher.

20. What happens to my improvements if someone outbids me?

You must sell the improvements to the winner bidder, and the winning bidder must purchase the improvements from you for the appraised value determined by the appraiser and set by the Land Board prior to the public auction. The improvements sale/purchase agreement is understood and agreed upon by all parties prior to going to auction, or the auction will not be held.

21. What are the costs involved?

The lessee or improvements owner is responsible for Processing Costs associated with preparing a parcel for sale. These costs include but are not limited to:

- *A one-time non-refundable \$100 nomination fee that must be paid for each cabin site or home site nominated for sale;*
- *Cost of the appraisal attributable to the improvements;*
- *Legal advertisement of sale;*
- *Environmental review (if required);*
- *Document recording fees; and*
- *Water rights transfers*

During the Process

22. How is the sale price determined for the lease lot?

A Montana Certified General appraiser will appraise both the cabin site lease lot and all improvements under consideration for sale. The department then takes the appraisers determination of values to the Land Board for their approval. The Land Board then sets the minimum bid for the sale.

23. How will the sales price for my improvements be determined?

A Montana Certified General Appraiser will appraise the lease site for both the land and improvement values. The appraisal will include separate values for the land and the improvements under consideration for sale. The maximum asking price for the improvements associated with the sale of the land will be the appraised value of the improvements as determined by the appraiser.

24. What if I don't want to sell my improvements?

The owner of any improvements located on the lease site must agree to sell the improvements to the highest bidder on the land, or the nomination will not be accepted. If you are the current lessee, you have a preference right to match the highest bid. The current lessee also has the right to withdraw the parcel from sale up to 10 days before auction.

25. Who does the appraisal?

DNRC will contract with a MT Certified General appraiser to appraise both the cabin site /home site and all improvements under consideration for sale. The appraisal must comply with Uniform Standards of Professional Appraisal Practices (USPAP) as adopted by the state Board of Real Estate Appraisers in ARM 24.207.402. DNRC will review or contract the review of the appraisal conducted by the contract appraiser.

26. What if I don't agree with the appraised value?

If the lessee or improvement owner does not agree with the value of the improvements or the land under consideration for sale, they may request an informal administrative hearing before the department to contest those valuations. The department shall review the arguments and evidence received at the hearing and makes a recommendation of the values to the Land Board. This request for an informal hearing must be given within 10 days of the department's notification to the lessee or improvement owner of the appraised value of the land and improvements considered for sale. A current lessee may also choose to withdraw the parcel from the sale process and continue to lease.

27. Do I still need to pay my lease fee while my lease is going through the sale process?

Yes. All lease fees must be paid as the sale goes through the sale process.

28. What if my lease expires before my lot is selected for sale?

In order to maintain a preference right to match high bid, the lease must be in good standing. For the 2014 pilot sale program, leased lots will be prioritized over cancelled or abandoned lots. In order to maintain the preference right, and the priority status, the lease would have to be renewed upon expiration.

29. Can I withdraw my nomination from sale?

Yes, if you are the current lessee. The lessee must send written notice by certified mail to the department, postmarked no later than 10 days before the date of the auction.

30. Will I know if there are any other people interested in bidding on my lease lot?

Each bidder wishing to participate in the auction as a qualified bidder must execute an Offer to Purchase Agreement along with a bid deposit equal to 5% of the minimum bid amount and the Improvements Purchase Agreement, no later than 20 days before the date of the auction. You may contact the DNRC after the date that the bids are due and inquire whether or not there are any qualified bidders on the sale.

31. What is required to be a qualified bidder for auction?

To be a qualified bidder, one must submit an Offer to Purchase Agreement, an Improvements Purchase Agreement, and have submitted a 5% bid deposit no later than 20 days before the date of the auction.

32. Where will the auctions take place?

Auctions must take place in the county seat for the county where the parcel is located. Typically this is at the county court house or in some instances, the local DNRC office, if one is located in the county seat.

33. Do I have to be present for the auction?

Yes. All qualified bidders wishing to participate in the auction must appear in person or be represented by a legal representative at the auction.

34. What is the process for bidding on auction day?

DNRC staff will hold a public oral auction for the sale of the land. All qualified bidders wishing to participate in the auction must appear in person or be represented by a legal representative at the auction to present an oral bid. All bidding will be for the land only. Only qualified bidders will be allowed to bid. The minimum bid amount will be set by the Land Board based on the appraised value of the land. Bids for less than the minimum amount will not be accepted. If there are multiple qualified bidders, the bidding will continue until no one wishes to offer a higher bid. If one of the qualified bidders is a current lessee, they will be allowed to match the highest bid until such time that there is no longer a higher bid, or the current lessee does not wish to match the highest bid. The land will be sold to the highest bidder who consummates the terms of the sale. All qualified bidders and the improvements owner will have signed an Agreement to Sell/Purchase Improvements prior to the auction. The closing of the sale of the improvements is conducted separately between the improvements seller and the purchaser and must be completed prior to the closing of the land sale.

Closing

35. What happens after the auction.

The sale of the land must be taken to the Land Board for Final Approval. Upon approval, the state will prepare closing documents, including settlement statements and drafting of deeds. The sale of the improvements is conducted separately between the seller and the purchaser and must be completed prior to the closing of the land.

36. How is title transferred?

The state conveys title to the land by Patent, Grant Deed or Quitclaim Deed. The state does not warrant title, but you have the option to purchase title insurance at your own expense. Transfer of the improvements happens between the seller and the purchaser.

37. How long will the winning bidder have to close on the sale of land and improvements?

The department will allow 90 days from the sale's Final Approval from the Land Board for closing. An extension of time may be granted on a case by case basis for good cause.

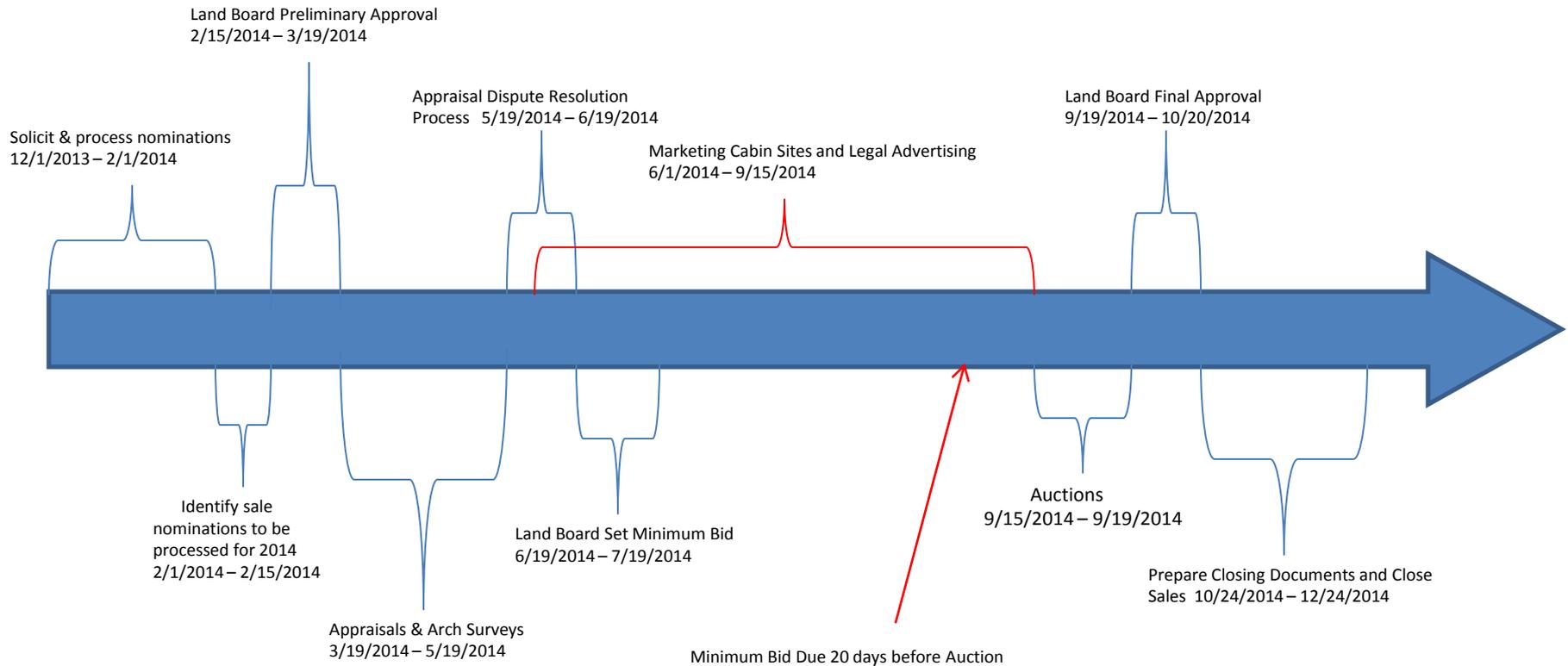
38. How will closing occur on the land sale?

All closings will occur by mail, unless an alternative time and location is agreed upon by all parties. Closing of the improvements happens between the seller and the purchaser and must be completed prior to the closing of the land.

39. What are my financing options?

Sales of state land are on a cash only basis. Purchasers will need to seek financing from a lending agency if necessary.

Cabin Site Sale Processing Timeline for 2014 Pilot



BEFORE THE BOARD OF LAND COMMISSIONERS AND
THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through VIII, the amendment of ARM 36.25.128, and the repeal of 36.25.131 regarding cabinsite lease site sales) NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION , AMENDMENT, AND REPEAL)

To: All Concerned Persons

1. The Department of Natural Resources and Conservation will hold two public hearings on the following dates and times to consider the proposed adoption, amendment, and repeal of the above-stated rules:

November 6, 2013, at 7:00 p.m. at the Sullivan Memorial Community Hall, 3248 Highway 83, Seeley Lake, Montana; and

November 8, 2013, at 1:00 p.m. in the Bannack Room (first floor) at the Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, Montana.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than October 31, 2013, to advise us of the nature of the accommodation that you need. Please contact Emily Cooper, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, MT; telephone (406) 444-4165; fax (406) 444-2684; e-mail ecooper@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I DEFINITIONS As used in this subchapter, the following definitions apply, except where the context clearly indicates otherwise:

(1) "Agenda item report" means an agenda item containing information specific to sales presented to the state Board of Land Commissioners.

(2) "Bid" means a written or oral monetary commitment to purchase land or interest in land offered at the specified time and place by a person eligible to participate in an auction, as specified by the department in accordance with 77-2-363, MCA.

(3) "Bid deposit" for a cabin site or home site sale only means electronic funds transfer or a certified check or cashier's check drawn on any Montana bank equal to five percent of the minimum sales price submitted in connection with a bid for the real property as an assurance of the performance of a contractual or promissory requirement.

(4) "Board" means the state Board of Land Commissioners.

(5) "Department" means the Department of Natural Resources and Conservation.

(6) "Estimated costs" means the estimated costs to prepare the cabin site or home site for sale.

(7) "Improvements" means a home or residence, outbuildings and structures, sleeping cabins, utilities, water systems, septic systems, docks and landscaping.

(8) "Lessee" means the current lease holder of any cabin site or home site lease of state trust land.

(9) "Parcel" means one section or less that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office or in the department's records.

(10) "Processing costs" means estimated costs of preparing the parcel for sale, including but not limited to nomination fees, legal advertising, appraisals attributable to improvements, cultural resource inventories, required environmental review if not exempt under 77-2-363(6)(b), MCA, public notice, and document filing fees.

(11) "Tract" means a distinct portion of land, irrespective of ownership, that can be identified by legal description, independent of any other portion of land, using documents on file in the records of the county clerk and recorder's office.

AUTH: 77-1-204, 77-2-308, 77-2-328, 77-2-362, MCA

IMP: 77-2-328, 77-2-362, 77-2-363, MCA

NEW RULE II TRANSACTION COSTS FOR CABIN SITE OR HOME SITE

SALES (1) With the exception of processing costs described in this rule, the purchaser, or an applicant for purchase, of lands formerly comprising a state cabin site need not compensate the department for any administrative costs or services performed by department staff necessary for the sale of that state cabin site.

(2) The department shall:

(a) maintain a record of each transaction; and

(b) summarize all costs at the completion of each sale.

(3) Except as provided hereinabove, processing costs as described in [New RULE I](9) shall be paid by the nominator or the purchaser, respectively.

AUTH: 77-2-362, MCA

IMP: 77-2-362, MCA

NEW RULE III CONSIDERATIONS IN THE SALE OF CABIN SITE OR HOME SITE PURSUANT TO LAND BANKING

(1) If the sale of a parcel would extinguish existing, reasonable public access to other public or state trust land or to public water, as defined in 77-2-303(2)(a), MCA, the board shall reserve an easement or right of way for access to the other public or state trust land or to public water.

(2) If the sale of a parcel would extinguish access to adjacent private land, the department shall provide an opportunity for the landowner to make application to purchase an easement under 77-1-107, 77-1-130, or 77-2-101, MCA.

AUTH: 77-2-303, 77-2-362, MCA
IMP: 77-2-308, 77-2-311, 77-2-363, MCA

NEW RULE IV PRELIMINARY REVIEW OF CABIN SITES AND HOME SITE SALE PARCELS BEFORE NOMINATION

(1) The department shall conduct a preliminary review of each parcel prior to department's nomination of any cabin site or home site parcel for sale. The department shall also conduct a preliminary review of any lessee- or improvement owner-nominated parcel to determine the suitability and priority for selling a cabin site or home site. The department may consider the following factors in the preliminary review:

- (a) whether sale is consistent with the board's constitutional fiduciary duty;
- (b) whether the parcel possesses clear title and whether any mortgage holder consents to sale;
- (c) whether there are any outstanding lease violations on the parcel;
- (d) whether, and to what degree the sale of the parcel would affect access to other public lands; and
- (e) the extent of infrastructure, such as roads, utilities, power, telephone, water, or sewer availability.

(2) Based on the preliminary review, the department will inform the nominating lessee how the department ranks the cabin site or home site for processing for nomination for sale.

(3) The department may determine, based on current market conditions, the annual amount of cabin site or home site sale applications that it will accept and process in a given area.

AUTH: 77-1-204, 77-2-308, 77-2-362, MCA
IMP: 77-2-328, 77-2-363, MCA

NEW RULE V PROCEDURES FOR NOMINATING AND EVALUATING CABIN SITE AND HOME SITES FOR SALE PURSUANT TO LAND BANKING

(1) The board shall, in its sole discretion, sell individual cabin sites and home sites in configurations providing the best financial and management advantage to the affected trust beneficiary.

(2) The board reserves the right to approve or deny any nominations for the sale of state cabin sites and home sites. The department reserves the right to prioritize activities and determine the number of transactions processed related to the sale of cabin sites and home sites.

(3) The board, the department, the current lessee of, or the owner of the improvements resting upon a cabin site or home site, may nominate that cabin site or home site 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 or improvement owner may nominate and shall pay a nonrefundable \$100 processing fee for each cabin site or home site 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 the board or department nominated the parcel for sale.

(4) Sale of cabin sites and home sites are exempt from Montana Environmental Policy Act (MEPA) review under 77-2-363(6)(b), MCA.

(5) If the department determines pursuant to [New Rule IV] that a cabin site or home site meets the preliminary suitability requirements for sale, the department will prepare an agenda item report for the board to seek the board's preliminary approval for a potential sale of the cabin site or home site.

(6) If the department determines the cabin site or home site is not suitable for sale, the department may, without board approval, remove the cabin site or home site from nomination and eliminate the parcel from further review.

(7) The department shall notify the lessee or improvement owner of the department's recommendation of the suitability of a cabin site or home site parcel's suitability for sale by mail, as provided in 77-2-363(3), MCA.

(a) The notification must be mailed on or before the day the department posts the notice on its web site or other equivalent electronic medium.

(b) As a courtesy, the department shall try to contact the lessee by telephone about the department's notice of suitability for sale.

(8) The department shall notify all persons holding a license on the cabin site or home site and the trust beneficiary about the determination.

(9) Any person may appeal the department's removal of a cabin site or home site 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.

(10) On a board or department-nominated cabin site or home site, the lessee may, within 60 days of the determination, notify the department that the lessee intends to propose a land exchange.

(11) For each cabin site or home site under review for possible sale, the department shall review the title to the tract and improvements, but the department does not warrant the accuracy of its findings to any party.

(12) Upon the department's agenda item report to the board under (5), the board may preliminarily approve, reject, or modify the terms of the proposed sale.

(a) If the board rejects the proposed sale of the cabin site or home site, the department shall remove the parcel from nomination.

(b) If the board preliminarily approves the proposed sale of the cabin site or home site, the department shall post the sale information for the parcel on the department's web site or other equivalent electronic medium within 30 days of the board's approval.

(13) If the board has preliminarily approved a proposed sale nominated by the lessee or improvement owner, the department will estimate the costs of the appraisal and will notify the lessee or improvement owner of the approval and request submission of the estimated costs of the appraisal attributable to the

improvements on the cabin site or home site and associated costs of processing the cabin site or home site for sale.

(a) Where the board gives preliminary approval for the sale of the parcel, the lessee or improvement owner must submit payment for all processing costs within ten days of notification to do so by the department.

(14) If the board has preliminarily approved a proposed sale, the department shall contract with a Montana-licensed certified general appraiser to appraise the cabin site or home site, including improvements 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.

(15) The department shall pay that proportion of the cost of the appraisal necessary to determine the appraised value of the land. The lessee or improvement owner shall pay that proportion of the cost of the appraisal necessary to determine the appraised value of the improvements.

(a) The department will provide the lessee or improvement owner with a list of no less than two acceptable appraisers to conduct the appraisal, the lessee or improvement owner will select 50 percent of the appraisers on the list, from which the department will select an appraiser to conduct the appraisal.

(b) The appraisal for cabin sites and home sites must:

(i) include a separate land value for the state-owned cabin site or home site in the valuation;

(ii) include a separate value for the non-state-owned improvements in the valuation.

(A) Valuation of the improvements must account for all forms of obsolescence;

(iii) include a total value of the property.

(A) The value of state-owned land added to the non-state-owned improvements value will not be greater than the total value of the property;

(iv) use comparable sales for like properties;

(v) be valued with the hypothetical condition that the cabin site or home site has legal access;

(vi) be reviewed and updated one year from the date of valuation stated in the appraisal report; and

(c) The department shall notify the lessee of the appraised value and post that same information in a dated notice on the department's web site or other equivalent electronic medium.

(16) The department shall give the lessee or improvement owner notice and opportunity for an informal administrative hearing before the department to contest those valuations. The department shall review the arguments and evidence received at the hearing to make a recommendation of the values of the land and the cabin site or home site improvements to the board.

(a) The lessee or improvements owner must file notice of appeal of value with the department within ten days of the department's notification to the lessee or improvements owner of the department's initial valuation of the land and the improvements. Within ten days after receipt of any notice of appeal the department

shall notify the lessee or improvements owner of the time and place of the hearing before the director of the department, or the director's designee. Any such hearing shall be informal without adherence to strict rules of evidence as provided in 2-4-604, MCA. A hearings examiner may be appointed to conduct the hearing. The lessee or owner of improvements shall present evidence and arguments it wishes the department to consider in recommending values of land and improvements to the board.

(17) The department shall present its findings, conclusions, and recommended values of land and improvements to the board and the lessee or improvement owner.

(18) Upon receiving the appraisal values or department's recommendation of values, the board shall set a minimum acceptable bid on the real property comprising the cabin site or home site, and determine the improvement value for compensation to the lessee or improvement owner.

(a) Upon receipt of lessee consent to the terms and conditions of the proposed sale and the valuation of cabin site or home site improvements, the sale must proceed utilizing the board's final determination of the values, and the lessee or improvement owner is obligated to transfer its interest in the cabin site or home site improvements existing on the cabin site or home site lease according to the board's final determination of their value.

(b) Nothing in this rule prohibits the lessee or improvement owner from choosing to accept a price for the cabin site or home site improvements existing on the cabin site or home site that is less than the board's final determination of value.

(19) The department shall give notice of the minimum acceptable bid for the real property comprising the cabin site or home site, and the determined value of the improvements for sale by listing the proposed sale of the cabin site or home site and the improvements upon the department's Internet web site or other equivalent electronic medium.

(20) If the board has preliminarily approved a proposed sale, the department shall make the following available to the public, all bidders, and the lessee:

(a) minimum acceptable bid for the land and the determined value of the improvements;

(b) contents and findings of any title review without any warranty of title; and

(c) any required environmental review.

(21) 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 cabin site or home site is located;

(g) any surface lessees of the sale of the cabin site or home site by mail. The notice to lessees must include an estimate of costs necessary to complete the sale if the lessees nominated the cabin site or home site;

(h) all persons holding a license on the cabin site or home site;

(i) all persons who have requested to be placed on a notification list for the sale of the real property.

(22) If necessary, the department may conduct a survey of the cabin site or home site proposed for sale. The department shall pay for any such survey of the cabin site or home site.

AUTH: 77-1-204, 77-2-308, 77-2-362, MCA

IMP: 77-2-328, 77-2-362, 77-2-363, 77-2-364, 77-2-366, MCA

NEW RULE VI TERMINATION OF LESSEE-INITIATED CABIN SITE OR HOME SITE SALE AFTER DEPOSIT AND PROCESSING COSTS PAID BY LESSEE

(1) If the current lessee of the cabin site or home site has initiated the sale, as authorized by 77-2-361 through 77-2-367, MCA, and submitted processing costs with the department, the lessee may cancel the sale. The lessee shall send written notice by certified mail to the department, postmarked no later than ten days before the date of the auction.

(2) If the lessee cancels the sale the lessee shall pay all costs incurred by the department in preparing the sale, including but not limited to:

(a) any costs for required environmental review if not exempt under 75-1-201, 77-1-121, or 77-2-363(6)(b), MCA;

(b) appraisal attributable to the improvements;

(c) cultural resource inventory;

(d) public notices; and

(e) other costs that may be incurred by the department and/or board.

(3) The processing costs and bid deposit, as required in [New Rule V](13) and [New Rule VIII](4) that are paid by the lessee must be applied toward costs incurred by the department for the canceled sale.

(4) Any amount of processing costs and bid deposit remaining after payment of department costs must be returned to the lessee.

AUTH: 77-1-204, 77-2-308, 77-2-328, MCA

IMP: 77-2-328, 77-2-363, MCA

NEW RULE VII PROCEDURE FOR CONDUCTING CABIN SITE AND HOME SITE SALES (1) All land cabin site and home site sales are subject to the provisions of 77-2-318 through 77-2-326, MCA.

(2) The department shall set the date of the auction. Bidders may appear personally or be represented by a legally authorized representative.

(3) As required by 77-2-322, MCA, the department shall, at a minimum:

(a) publish notice of the auction in a newspaper of general circulation in the county where the auction is to take place, once each week for four consecutive weeks preceding the due date for bid deposits; and

(b) post the notice on the department's web site or other equivalent electronic medium and provide links to associated realty web sites, when feasible.

(4) A person wishing to bid upon a nominated cabin site or home site offered for sale at auction shall submit a bid deposit and execute a purchase agreement with

the department. The bid deposit and purchase agreement must be postmarked no later than 20 days before the date of the auction.

(5) Subject to (6), land must be sold to the highest bidder who consummates the terms of the sale.

(6) In accordance with 77-2-324, MCA, the current lessee has the preference right to match the high bid.

(7) The purchaser shall pay closing costs, including but not limited to:

(a) the cost of the appraisal attributable to the improvements;

(b) title insurance;

(c) filing fees;

(d) closing fees; and

(e) water rights transfer.

(8) The department shall retain the bid deposit and processing costs of the successful bidder. The department shall return the bid deposits of all unsuccessful bidders within 15 business days following the auction.

(9) If the highest bidder fails to consummate the sale for any reason the bidder forfeits the bid deposit and processing costs. The department may then offer the cabin site or home site to the next highest bidder at the final sale price.

(a) If the next highest bidder, or a subsequent bidder, in sequence of bid amount, agrees to the terms of the sale, that bidder shall complete a purchase agreement and resubmit a bid deposit and processing costs to the department.

(b) The bid deposit and processing costs will be returned to the highest bidder if a subsequent bidder completes a purchase agreement and resubmits a bid deposit and processing costs and the purchase price.

(10) If the final bidder who agrees to consummate the sale fails to comply with the terms of the sale, and submit the purchase price, for any reason, that bidder's bid deposit and processing costs are forfeited.

(a) The bid deposit must be credited to the land banking trust fund.

(b) The processing costs will be credited to the land banking administration account.

AUTH: 77-1-204, 77-2-308, 77-2-362, MCA

IMP: 77-2-328, 77-2-363, MCA

NEW RULE VIII VALUATION OF CABIN SITE AND HOME SITE IMPROVEMENTS FOR ACQUISITION UPON SALE OF CABIN AND HOME SITES

(1) If the lessee or improvement owner consents to the terms and conditions of the proposed sale and the valuation of cabin site or home site improvements, the sale must proceed utilizing the board's final determination of the values, and the lessee or improvement owner is obligated to transfer its interest in the cabin site or home site improvements existing upon the cabin site or home site lease according to the board's final determination of their value. The lessee or improvement owner shall receive the entire proceeds of sale attributable to the value of the improvements as previously determined by the board.

(2) Nothing in this rule prohibits the lessee or improvement owner from choosing to accept a price for the cabin site or home site improvements existing the cabin site or home site that is less than the board's final determination of value.

AUTH: 77-1-204, 77-2-308, 77-2-317, 77-6-302, 77-6-303, 77-6-306, MCA
IMP: 77-2-317, 77-2-328, MCA

REASONABLE NECESSITY: Chapter 422 of the 2013 Montana Session Laws, which will be codified as 77-2-317, MCA, established procedures for the sale of cabin sites and home sites upon state land. New Rules I through VIII are reasonably necessary to describe and define the sale process for such lands and implement the provisions of Chapter 422 of the 2013 Montana Session Laws. The rules are configured to: attain the full market value for the sale of such lands; make selected lands available for sale at the request of a cabin site or home site lessee or improvement owner; provide a valuation process for the land and improvements; and exempt such sales from the provisions of Title 75, Chapter 1, Parts 1 through 3.

During the initial two years the proposed nomination fees are expected to affect approximately five cabin site or home site nominees per year and generate approximately \$500 annually for the general fund. Thereafter, the proposed nomination fees are expected to affect approximately 40 cabin site or home site nominees per year and generate approximately \$4,000 annually for the general fund.

4. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

36.25.128 SALES (1) Except as provided in [New Rule I] through [New Rule VIII] ~~the board may sell any land under lease or license under the same terms and conditions as land not under lease or license. The board shall notify the lessee prior to such sale and at least six months prior to possession being given to the purchaser or as consistent with the applicable lease agreement. The lessee or licensee shall be entitled to compensation for improvements as provided in ARM 36.25.125. The purchaser will be given possession of land sold on March 1 next succeeding the date of the sale unless the lease or license expires prior to that date or the lessee or licensee and purchaser agree in writing on another date.~~

AUTH: 77-1-204, 77-1-209, 77-2-301, 77-2-303, 77-2-308, 77-2-328, 77-2-362, MCA

IMP: 77-2-303, 77-2-326, 77-2-362, 77-2-363, MCA

REASONABLE NECESSITY: The amendment of ARM 36.25.128 is reasonably necessary to conform the administrative rule to the provisions of Section one of Chapter 422 of the 2013 Montana Session Laws (codified at 77-2-303, MCA). The department is proposing to amend this rule to allow for the sale of the premises of former cabin site and home site leases which border navigable lakes, non-navigable meandered lakes, and navigable streams, as authorized by 77-2-303, MCA.

5. The department proposes to repeal the following rule:

36.25.131 SALE OF CABINSITES AND CITY OR TOWN LOTS:
IMPROVEMENTS

AUTH: 77-2-328, MCA

IMP: 77-2-318, 77-2-325, MCA

REASONABLE NECESSITY: ARM 36.25.131 is proposed to be repealed because it conflicts with New Rules I through VIII.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted in writing to Emily Cooper, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, MT; telephone (406) 444-4165; fax (406) 444-2684; e-mail dcabinsites@mt.gov, and must be received no later than 5:00 p.m. on November 14, 2013.

7. John Grimm, Department of Natural Resources and Conservation, has been designated to preside over and conduct the public hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Lucy Richards, P.O. Box 201601, 1625 Eleventh Avenue, Helena, MT 59620; fax (406) 444-2684; e-mail lrichards@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the department's web site at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by e-mail on September 6, 2013.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption, amendment, and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ John E. Tubbs
JOHN E. TUBBS
Director
Natural Resources and Conservation

/s/ Tommy Butler
TOMMY BUTLER
Rule Reviewer

Certified to the Secretary of State on October 7, 2013.

BEFORE THE BOARD OF LAND COMMISSIONERS AND
THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through VIII, the amendment of ARM 36.25.128, and the repeal of 36.25.131 regarding cabinsite lease site sales) NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION , AMENDMENT, AND REPEAL)

To: All Concerned Persons

1. The Department of Natural Resources and Conservation will hold two public hearings on the following dates and times to consider the proposed adoption, amendment, and repeal of the above-stated rules:

November 6, 2013, at 7:00 p.m. at the Sullivan Memorial Community Hall, 3248 Highway 83, Seeley Lake, Montana; and

November 8, 2013, at 1:00 p.m. in the Bannack Room (first floor) at the Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, Montana.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than October 31, 2013, to advise us of the nature of the accommodation that you need. Please contact Emily Cooper, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, MT; telephone (406) 444-4165; fax (406) 444-2684; e-mail ecooper@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I DEFINITIONS As used in this subchapter, the following definitions apply, except where the context clearly indicates otherwise:

(1) "Agenda item report" means an agenda item containing information specific to sales presented to the state Board of Land Commissioners.

(2) "Bid" means a written or oral monetary commitment to purchase land or interest in land offered at the specified time and place by a person eligible to participate in an auction, as specified by the department in accordance with 77-2-363, MCA.

(3) "Bid deposit" for a cabin site or home site sale only means electronic funds transfer or a certified check or cashier's check drawn on any Montana bank equal to five percent of the minimum sales price submitted in connection with a bid for the real property as an assurance of the performance of a contractual or promissory requirement.

(4) "Board" means the state Board of Land Commissioners.

(5) "Department" means the Department of Natural Resources and Conservation.

(6) "Estimated costs" means the estimated costs to prepare the cabin site or home site for sale.

(7) "Improvements" means a home or residence, outbuildings and structures, sleeping cabins, utilities, water systems, septic systems, docks and landscaping.

(8) "Lessee" means the current lease holder of any cabin site or home site lease of state trust land.

(9) "Parcel" means one section or less that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office or in the department's records.

(10) "Processing costs" means estimated costs of preparing the parcel for sale, including but not limited to nomination fees, legal advertising, appraisals attributable to improvements, cultural resource inventories, required environmental review if not exempt under 77-2-363(6)(b), MCA, public notice, and document filing fees.

(11) "Tract" means a distinct portion of land, irrespective of ownership, that can be identified by legal description, independent of any other portion of land, using documents on file in the records of the county clerk and recorder's office.

AUTH: 77-1-204, 77-2-308, 77-2-328, 77-2-362, MCA

IMP: 77-2-328, 77-2-362, 77-2-363, MCA

NEW RULE II TRANSACTION COSTS FOR CABIN SITE OR HOME SITE

SALES (1) With the exception of processing costs described in this rule, the purchaser, or an applicant for purchase, of lands formerly comprising a state cabin site need not compensate the department for any administrative costs or services performed by department staff necessary for the sale of that state cabin site.

(2) The department shall:

(a) maintain a record of each transaction; and

(b) summarize all costs at the completion of each sale.

(3) Except as provided hereinabove, processing costs as described in [New RULE I](9) shall be paid by the nominator or the purchaser, respectively.

AUTH: 77-2-362, MCA

IMP: 77-2-362, MCA

NEW RULE III CONSIDERATIONS IN THE SALE OF CABIN SITE OR HOME SITE PURSUANT TO LAND BANKING

(1) If the sale of a parcel would extinguish existing, reasonable public access to other public or state trust land or to public water, as defined in 77-2-303(2)(a), MCA, the board shall reserve an easement or right of way for access to the other public or state trust land or to public water.

(2) If the sale of a parcel would extinguish access to adjacent private land, the department shall provide an opportunity for the landowner to make application to purchase an easement under 77-1-107, 77-1-130, or 77-2-101, MCA.

AUTH: 77-2-303, 77-2-362, MCA
IMP: 77-2-308, 77-2-311, 77-2-363, MCA

NEW RULE IV PRELIMINARY REVIEW OF CABIN SITES AND HOME SITE SALE PARCELS BEFORE NOMINATION

(1) The department shall conduct a preliminary review of each parcel prior to department's nomination of any cabin site or home site parcel for sale. The department shall also conduct a preliminary review of any lessee- or improvement owner-nominated parcel to determine the suitability and priority for selling a cabin site or home site. The department may consider the following factors in the preliminary review:

- (a) whether sale is consistent with the board's constitutional fiduciary duty;
- (b) whether the parcel possesses clear title and whether any mortgage holder consents to sale;
- (c) whether there are any outstanding lease violations on the parcel;
- (d) whether, and to what degree the sale of the parcel would affect access to other public lands; and
- (e) the extent of infrastructure, such as roads, utilities, power, telephone, water, or sewer availability.

(2) Based on the preliminary review, the department will inform the nominating lessee how the department ranks the cabin site or home site for processing for nomination for sale.

(3) The department may determine, based on current market conditions, the annual amount of cabin site or home site sale applications that it will accept and process in a given area.

AUTH: 77-1-204, 77-2-308, 77-2-362, MCA
IMP: 77-2-328, 77-2-363, MCA

NEW RULE V PROCEDURES FOR NOMINATING AND EVALUATING CABIN SITE AND HOME SITES FOR SALE PURSUANT TO LAND BANKING

(1) The board shall, in its sole discretion, sell individual cabin sites and home sites in configurations providing the best financial and management advantage to the affected trust beneficiary.

(2) The board reserves the right to approve or deny any nominations for the sale of state cabin sites and home sites. The department reserves the right to prioritize activities and determine the number of transactions processed related to the sale of cabin sites and home sites.

(3) The board, the department, the current lessee of, or the owner of the improvements resting upon a cabin site or home site, may nominate that cabin site or home site 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 or improvement owner may nominate and shall pay a nonrefundable \$100 processing fee for each cabin site or home site 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 the board or department nominated the parcel for sale.

(4) Sale of cabin sites and home sites are exempt from Montana Environmental Policy Act (MEPA) review under 77-2-363(6)(b), MCA.

(5) If the department determines pursuant to [New Rule IV] that a cabin site or home site meets the preliminary suitability requirements for sale, the department will prepare an agenda item report for the board to seek the board's preliminary approval for a potential sale of the cabin site or home site.

(6) If the department determines the cabin site or home site is not suitable for sale, the department may, without board approval, remove the cabin site or home site from nomination and eliminate the parcel from further review.

(7) The department shall notify the lessee or improvement owner of the department's recommendation of the suitability of a cabin site or home site parcel's suitability for sale by mail, as provided in 77-2-363(3), MCA.

(a) The notification must be mailed on or before the day the department posts the notice on its web site or other equivalent electronic medium.

(b) As a courtesy, the department shall try to contact the lessee by telephone about the department's notice of suitability for sale.

(8) The department shall notify all persons holding a license on the cabin site or home site and the trust beneficiary about the determination.

(9) Any person may appeal the department's removal of a cabin site or home site 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.

(10) On a board or department-nominated cabin site or home site, the lessee may, within 60 days of the determination, notify the department that the lessee intends to propose a land exchange.

(11) For each cabin site or home site under review for possible sale, the department shall review the title to the tract and improvements, but the department does not warrant the accuracy of its findings to any party.

(12) Upon the department's agenda item report to the board under (5), the board may preliminarily approve, reject, or modify the terms of the proposed sale.

(a) If the board rejects the proposed sale of the cabin site or home site, the department shall remove the parcel from nomination.

(b) If the board preliminarily approves the proposed sale of the cabin site or home site, the department shall post the sale information for the parcel on the department's web site or other equivalent electronic medium within 30 days of the board's approval.

(13) If the board has preliminarily approved a proposed sale nominated by the lessee or improvement owner, the department will estimate the costs of the appraisal and will notify the lessee or improvement owner of the approval and request submission of the estimated costs of the appraisal attributable to the

improvements on the cabin site or home site and associated costs of processing the cabin site or home site for sale.

(a) Where the board gives preliminary approval for the sale of the parcel, the lessee or improvement owner must submit payment for all processing costs within ten days of notification to do so by the department.

(14) If the board has preliminarily approved a proposed sale, the department shall contract with a Montana-licensed certified general appraiser to appraise the cabin site or home site, including improvements 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.

(15) The department shall pay that proportion of the cost of the appraisal necessary to determine the appraised value of the land. The lessee or improvement owner shall pay that proportion of the cost of the appraisal necessary to determine the appraised value of the improvements.

(a) The department will provide the lessee or improvement owner with a list of no less than two acceptable appraisers to conduct the appraisal, the lessee or improvement owner will select 50 percent of the appraisers on the list, from which the department will select an appraiser to conduct the appraisal.

(b) The appraisal for cabin sites and home sites must:

(i) include a separate land value for the state-owned cabin site or home site in the valuation;

(ii) include a separate value for the non-state-owned improvements in the valuation.

(A) Valuation of the improvements must account for all forms of obsolescence;

(iii) include a total value of the property.

(A) The value of state-owned land added to the non-state-owned improvements value will not be greater than the total value of the property;

(iv) use comparable sales for like properties;

(v) be valued with the hypothetical condition that the cabin site or home site has legal access;

(vi) be reviewed and updated one year from the date of valuation stated in the appraisal report; and

(c) The department shall notify the lessee of the appraised value and post that same information in a dated notice on the department's web site or other equivalent electronic medium.

(16) The department shall give the lessee or improvement owner notice and opportunity for an informal administrative hearing before the department to contest those valuations. The department shall review the arguments and evidence received at the hearing to make a recommendation of the values of the land and the cabin site or home site improvements to the board.

(a) The lessee or improvements owner must file notice of appeal of value with the department within ten days of the department's notification to the lessee or improvements owner of the department's initial valuation of the land and the improvements. Within ten days after receipt of any notice of appeal the department

shall notify the lessee or improvements owner of the time and place of the hearing before the director of the department, or the director's designee. Any such hearing shall be informal without adherence to strict rules of evidence as provided in 2-4-604, MCA. A hearings examiner may be appointed to conduct the hearing. The lessee or owner of improvements shall present evidence and arguments it wishes the department to consider in recommending values of land and improvements to the board.

(17) The department shall present its findings, conclusions, and recommended values of land and improvements to the board and the lessee or improvement owner.

(18) Upon receiving the appraisal values or department's recommendation of values, the board shall set a minimum acceptable bid on the real property comprising the cabin site or home site, and determine the improvement value for compensation to the lessee or improvement owner.

(a) Upon receipt of lessee consent to the terms and conditions of the proposed sale and the valuation of cabin site or home site improvements, the sale must proceed utilizing the board's final determination of the values, and the lessee or improvement owner is obligated to transfer its interest in the cabin site or home site improvements existing on the cabin site or home site lease according to the board's final determination of their value.

(b) Nothing in this rule prohibits the lessee or improvement owner from choosing to accept a price for the cabin site or home site improvements existing on the cabin site or home site that is less than the board's final determination of value.

(19) The department shall give notice of the minimum acceptable bid for the real property comprising the cabin site or home site, and the determined value of the improvements for sale by listing the proposed sale of the cabin site or home site and the improvements upon the department's Internet web site or other equivalent electronic medium.

(20) If the board has preliminarily approved a proposed sale, the department shall make the following available to the public, all bidders, and the lessee:

(a) minimum acceptable bid for the land and the determined value of the improvements;

(b) contents and findings of any title review without any warranty of title; and

(c) any required environmental review.

(21) 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 cabin site or home site is located;

(g) any surface lessees of the sale of the cabin site or home site by mail. The notice to lessees must include an estimate of costs necessary to complete the sale if the lessees nominated the cabin site or home site;

(h) all persons holding a license on the cabin site or home site;

(i) all persons who have requested to be placed on a notification list for the sale of the real property.

(22) If necessary, the department may conduct a survey of the cabin site or home site proposed for sale. The department shall pay for any such survey of the cabin site or home site.

AUTH: 77-1-204, 77-2-308, 77-2-362, MCA

IMP: 77-2-328, 77-2-362, 77-2-363, 77-2-364, 77-2-366, MCA

NEW RULE VI TERMINATION OF LESSEE-INITIATED CABIN SITE OR HOME SITE SALE AFTER DEPOSIT AND PROCESSING COSTS PAID BY LESSEE

(1) If the current lessee of the cabin site or home site has initiated the sale, as authorized by 77-2-361 through 77-2-367, MCA, and submitted processing costs with the department, the lessee may cancel the sale. The lessee shall send written notice by certified mail to the department, postmarked no later than ten days before the date of the auction.

(2) If the lessee cancels the sale the lessee shall pay all costs incurred by the department in preparing the sale, including but not limited to:

(a) any costs for required environmental review if not exempt under 75-1-201, 77-1-121, or 77-2-363(6)(b), MCA;

(b) appraisal attributable to the improvements;

(c) cultural resource inventory;

(d) public notices; and

(e) other costs that may be incurred by the department and/or board.

(3) The processing costs and bid deposit, as required in [New Rule V](13) and [New Rule VIII](4) that are paid by the lessee must be applied toward costs incurred by the department for the canceled sale.

(4) Any amount of processing costs and bid deposit remaining after payment of department costs must be returned to the lessee.

AUTH: 77-1-204, 77-2-308, 77-2-328, MCA

IMP: 77-2-328, 77-2-363, MCA

NEW RULE VII PROCEDURE FOR CONDUCTING CABIN SITE AND HOME SITE SALES (1) All land cabin site and home site sales are subject to the provisions of 77-2-318 through 77-2-326, MCA.

(2) The department shall set the date of the auction. Bidders may appear personally or be represented by a legally authorized representative.

(3) As required by 77-2-322, MCA, the department shall, at a minimum:

(a) publish notice of the auction in a newspaper of general circulation in the county where the auction is to take place, once each week for four consecutive weeks preceding the due date for bid deposits; and

(b) post the notice on the department's web site or other equivalent electronic medium and provide links to associated realty web sites, when feasible.

(4) A person wishing to bid upon a nominated cabin site or home site offered for sale at auction shall submit a bid deposit and execute a purchase agreement with

the department. The bid deposit and purchase agreement must be postmarked no later than 20 days before the date of the auction.

(5) Subject to (6), land must be sold to the highest bidder who consummates the terms of the sale.

(6) In accordance with 77-2-324, MCA, the current lessee has the preference right to match the high bid.

(7) The purchaser shall pay closing costs, including but not limited to:

(a) the cost of the appraisal attributable to the improvements;

(b) title insurance;

(c) filing fees;

(d) closing fees; and

(e) water rights transfer.

(8) The department shall retain the bid deposit and processing costs of the successful bidder. The department shall return the bid deposits of all unsuccessful bidders within 15 business days following the auction.

(9) If the highest bidder fails to consummate the sale for any reason the bidder forfeits the bid deposit and processing costs. The department may then offer the cabin site or home site to the next highest bidder at the final sale price.

(a) If the next highest bidder, or a subsequent bidder, in sequence of bid amount, agrees to the terms of the sale, that bidder shall complete a purchase agreement and resubmit a bid deposit and processing costs to the department.

(b) The bid deposit and processing costs will be returned to the highest bidder if a subsequent bidder completes a purchase agreement and resubmits a bid deposit and processing costs and the purchase price.

(10) If the final bidder who agrees to consummate the sale fails to comply with the terms of the sale, and submit the purchase price, for any reason, that bidder's bid deposit and processing costs are forfeited.

(a) The bid deposit must be credited to the land banking trust fund.

(b) The processing costs will be credited to the land banking administration account.

AUTH: 77-1-204, 77-2-308, 77-2-362, MCA

IMP: 77-2-328, 77-2-363, MCA

NEW RULE VIII VALUATION OF CABIN SITE AND HOME SITE IMPROVEMENTS FOR ACQUISITION UPON SALE OF CABIN AND HOME SITES

(1) If the lessee or improvement owner consents to the terms and conditions of the proposed sale and the valuation of cabin site or home site improvements, the sale must proceed utilizing the board's final determination of the values, and the lessee or improvement owner is obligated to transfer its interest in the cabin site or home site improvements existing upon the cabin site or home site lease according to the board's final determination of their value. The lessee or improvement owner shall receive the entire proceeds of sale attributable to the value of the improvements as previously determined by the board.

(2) Nothing in this rule prohibits the lessee or improvement owner from choosing to accept a price for the cabin site or home site improvements existing the cabin site or home site that is less than the board's final determination of value.

AUTH: 77-1-204, 77-2-308, 77-2-317, 77-6-302, 77-6-303, 77-6-306, MCA
IMP: 77-2-317, 77-2-328, MCA

REASONABLE NECESSITY: Chapter 422 of the 2013 Montana Session Laws, which will be codified as 77-2-317, MCA, established procedures for the sale of cabin sites and home sites upon state land. New Rules I through VIII are reasonably necessary to describe and define the sale process for such lands and implement the provisions of Chapter 422 of the 2013 Montana Session Laws. The rules are configured to: attain the full market value for the sale of such lands; make selected lands available for sale at the request of a cabin site or home site lessee or improvement owner; provide a valuation process for the land and improvements; and exempt such sales from the provisions of Title 75, Chapter 1, Parts 1 through 3.

During the initial two years the proposed nomination fees are expected to affect approximately five cabin site or home site nominees per year and generate approximately \$500 annually for the general fund. Thereafter, the proposed nomination fees are expected to affect approximately 40 cabin site or home site nominees per year and generate approximately \$4,000 annually for the general fund.

4. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

36.25.128 SALES (1) Except as provided in [New Rule I] through [New Rule VIII] ~~the board may sell any land under lease or license under the same terms and conditions as land not under lease or license. The board shall notify the lessee prior to such sale and at least six months prior to possession being given to the purchaser or as consistent with the applicable lease agreement. The lessee or licensee shall be entitled to compensation for improvements as provided in ARM 36.25.125. The purchaser will be given possession of land sold on March 1 next succeeding the date of the sale unless the lease or license expires prior to that date or the lessee or licensee and purchaser agree in writing on another date.~~

AUTH: 77-1-204, 77-1-209, 77-2-301, 77-2-303, 77-2-308, 77-2-328, 77-2-362, MCA

IMP: 77-2-303, 77-2-326, 77-2-362, 77-2-363, MCA

REASONABLE NECESSITY: The amendment of ARM 36.25.128 is reasonably necessary to conform the administrative rule to the provisions of Section one of Chapter 422 of the 2013 Montana Session Laws (codified at 77-2-303, MCA). The department is proposing to amend this rule to allow for the sale of the premises of former cabin site and home site leases which border navigable lakes, non-navigable meandered lakes, and navigable streams, as authorized by 77-2-303, MCA.

5. The department proposes to repeal the following rule:

36.25.131 SALE OF CABINSITES AND CITY OR TOWN LOTS:
IMPROVEMENTS

AUTH: 77-2-328, MCA

IMP: 77-2-318, 77-2-325, MCA

REASONABLE NECESSITY: ARM 36.25.131 is proposed to be repealed because it conflicts with New Rules I through VIII.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted in writing to Emily Cooper, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, MT; telephone (406) 444-4165; fax (406) 444-2684; e-mail dcabinsites@mt.gov, and must be received no later than 5:00 p.m. on November 14, 2013.

7. John Grimm, Department of Natural Resources and Conservation, has been designated to preside over and conduct the public hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Lucy Richards, P.O. Box 201601, 1625 Eleventh Avenue, Helena, MT 59620; fax (406) 444-2684; e-mail lrichards@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the department's web site at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by e-mail on September 6, 2013.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption, amendment, and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ John E. Tubbs
JOHN E. TUBBS
Director
Natural Resources and Conservation

/s/ Tommy Butler
TOMMY BUTLER
Rule Reviewer

Certified to the Secretary of State on October 7, 2013.

Cabin & Home Sites – by County

County	# of Sites	# of Acres	2008 DOR Value	County	# of Sites	# of Acres	2008 DOR Value
Beaverhead	2	2.5	\$55,462	Meagher	1	8.8	\$48,046
Big Horn	2	5.6	\$31,105	Mineral	7	14.4	\$142,896
Blaine	3	16.4	\$53,055	Missoula	266	527.9	\$21,986,686
Broadwater	2	11.2	\$234,897	Musselshell	6	43.5	\$140,495
Cascade	4	22.3	\$154,783	Phillips	3	11.2	\$24,010
Chouteau	15	113.0	\$300,078	Pondera	5	34.8	\$77,280
Custer	1	10.9	\$20,807	Powder River	2	3.1	\$16,805
Daniels	7	42.4	\$14,810	Powell	11	13.0	\$372,627
Dawson	1	6.4	\$5,980	Prairie	3	10.9	\$6,935
Fallon	4	35.5	\$32,128	Richland	5	61.8	\$56,707
Fergus	5	32.1	\$103,619	Rosebud	1	1.1	\$8,696
Flathead	184	314.2	\$37,446,114	Sanders	66	60.0	\$839,982
Gallatin	15	45.3	\$1,806,615	Sheridan	6	45.2	\$27,580
Golden Valley	2	12.2	\$4,741	Stillwater	2	13.5	\$14,065
Hill	1	15.0	\$32,000	Sweet Grass	1	3.5	\$4,943
Judith Basin	5	39.5	\$106,735	Toole	1	8.3	\$22,480
Lake	38	107.7	\$8,405,515	Valley	5	37.9	\$41,425
Lewis and Clark	69	99.4	\$3,342,435	Wheatland	5	34.7	\$36,028
Liberty	1	5.2	\$14,660	Wibaux	1	1.9	\$779
Lincoln	15	52.6	\$859,897	<u>Yellowstone</u>	<u>4</u>	<u>30.6</u>	<u>\$201,736</u>
McCone	1	15.3	\$5,590	Totals	782	1986.2	\$77,443,113
Madison	4	15.8	\$341,886				

Cabin & Home Sites – by Area Office

DNRC Area Office	# of Sites	# of Acres	2008 DOR Value
Central Land Office	36	155.2	\$2,867,555
Eastern Land Office	19	146.8	\$154,427
Northeastern Land Office	57	399.6	\$744,081
Northwestern Land Office	303	534.5	\$47,551,508
Southern Land Office	15	96.6	\$392,344
Southwestern Land Office	<u>352</u>	<u>653.6</u>	<u>\$25,733,198</u>
Totals	782	1,986.2	\$77,443,113

Cabin & Home Sites – by Grant

Grant	# of Sites	# of Acres	2008 DOR Value
MSU - 2nd Grant	209	448.4	\$18,036,412
MSU - Morrill Trust	2	6.0	\$372,260
Common Schools	321	1,078.2	\$26,626,872
Deaf & Blind School	37	62.9	\$1,764,582
Public Buildings	56	137.4	\$2,169,460
Veterans Home	1	16.4	\$35,817
Montana Tech	108	163.2	\$24,695,450
Eastern/Western	12	19.2	\$1,230,165
Pine Hills	35	49.5	\$2,353,195
University of Montana	<u>1</u>	<u>5.0</u>	<u>\$158,900</u>
Totals	782	1,986.2	\$77,443,113