



Commercial Leasing Questions

WHY IS THE STATE LEASING TRUST LAND FOR DEVELOPMENT?

The Montana Department of Natural Resources and Conservation (DNRC) generates revenue for trust beneficiaries through four primary programs: agriculture and grazing management, forest management, minerals management, and real estate management. Some lands that are managed by the agency have a “highest and best use” as commercial development. Often those lands are located near or within city limits in various locations across the state and therefore present excellent opportunities for industrial, retail, and mixed-use residential. Currently, the DNRC manages 130 active commercial leases and continually reviews proposals for other development opportunities throughout the state.

WHAT IS THE STANDARD COMMERCIAL LEASING PROCESS?

All commercial leases are issued through a Request for Proposal (RFP) process open to the public. By statute, annual lease fees are based upon a percentage of the full market appraised value of the trust property. Proposals are scored and, if selected, lease terms are negotiated between the parties. Some proposals request an Option to Lease for a period of time prior to executing a lease. Under an Option to Lease, the proponent would hold rights to develop, and pay for the rights to develop, but would not be able to break ground on the development. The Option to Lease facilitates permitting and further due diligence on the project. Leases in excess of \$50,000 per year require Montana State Board of Land Commissioners (Land Board) approval prior to execution. Furthermore, the Department conducts an appropriate environmental review in compliance with the Montana Environmental Policy Act (MEPA).

WHERE DOES THE REVENUE GO THAT IS GENERATED FROM A TRUST LAND LEASE?

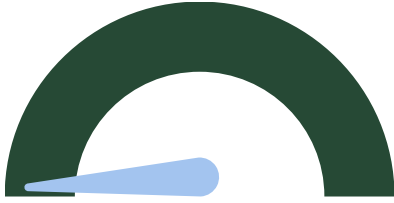
The revenue generated from a commercial lease is considered “distributable” revenue and is paid to the appropriate trust beneficiary. There are twelve beneficiaries that receive this revenue, with common schools (K-12) being the beneficiaries of the majority of the land trust.

ARE THERE LIMITS TO HOW MUCH TRUST LAND CAN BE COMMERCIAL OR RESIDENTIALLY DEVELOPED?

Yes, the Real Estate Management Plan adopted in 2005 provides policy, direction, and guidance in the selection and management of real estate development on Montana’s trust lands. The plan was developed through an Environmental Impact Statement that analyzed the impacts of real estate activities on state trust lands.

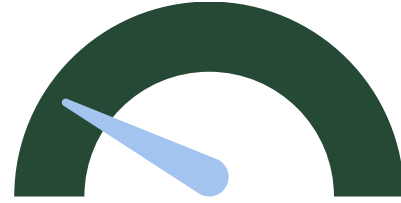
Subsequent rules were established, ARM 36.25.911, to provide specific development thresholds that cannot be exceeded unless the Department conducts a review of the programmatic plan. To date, only 1% of the threshold for urban area parcels and 18% of the threshold for rural parcels have seen real estate development activity.

Statewide Development Threshold



281.4 Developed Acres 30,000 Acre Threshold

Rural Development Threshold



270.6 Developed Acres 1,500 Acre Threshold

HOW ARE CONSERVATION INTERESTS CONSIDERED DURING THE COMMERCIAL LEASING PROCESS?

Once trust land parcels have been identified for potential commercial development, the Department notifies conservation entities and interested parties, prior to issuing an RFP for development, and allows conservation entities 60 days to propose a conservation use of those lands by issuing a letter of intent to the Department. If an entity seeks to secure that parcel for a conservation use and compensate the Trust, the Department works through the process in ARM 36.25.910 to work jointly with that entity.

HOW IS THIS LEGISLATIVE PROPOSAL FOR A COMMERCIAL JOINT VENTURE PROGRAM RELATED TO THE RULE CHANGE CURRENTLY BEING PROPOSED (MAR NOTICE NO. 36-224.)?

The commercial joint venture program proposal is not related to the rule amendment currently being sought by the DNRC for ARM 36.25.901 and 903. The changes proposed in MAR Notice No. 36-224 seek to remove an expiration date for the entire sub-chapter of real estate rules, and to clarify a definition to make it more consistent with existing statute. The existing administrative rules provide programmatic guidance for real estate projects, and they remain relevant to the DNRC.

LAND BANKING PROGRAM QUESTIONS

WHY IS THE STATE SELLING TRUST LAND?

During the 2003 legislative session, House Bill 223 was passed. The bill enacted a land banking 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 such as land, easements, or improvements.

WHAT HAPPENS TO THE MONEY THAT DNRC COLLECTS FROM THE SALES?

The money received from the sale of state trust land is used to purchase replacement land for the trust beneficiaries. When purchasing replacement land the Department looks for parcels that:

- Provide a higher rate of return for the trust beneficiaries than the parcels sold;
- Have legal public access; and
- Have the potential for multiple uses.

ARE THERE ANY LIMITS ON HOW MUCH TRUST LAND CAN BE SOLD?

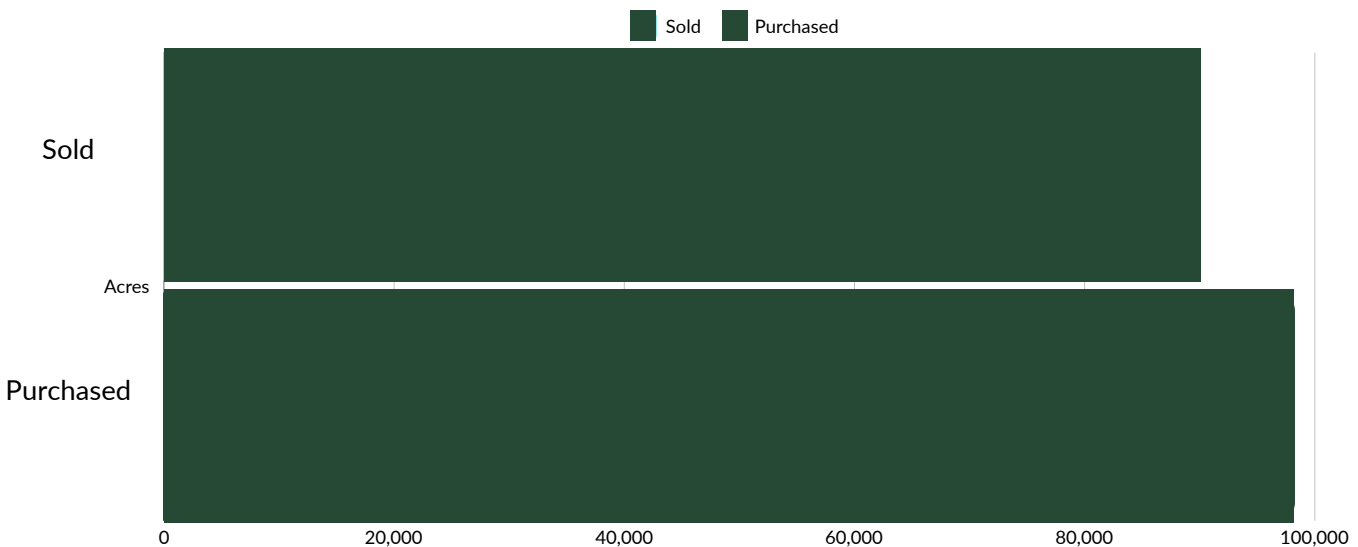
In 2009, the Legislature passed House Bill 402, removing the sunset of the initial land banking legislation, and capping the number of acres that could be sold through land banking at 250,000. The bill requires 75% of the acreage cumulatively sold to be isolated parcels that do not have a legal right of access by the public. Pursuant to 77-2-363 Montana Code Annotated (MCA), the Land Board may not sell more than 20,000 acres of state trust land at one time during the life of the land banking process without purchasing land, easements or improvements.

HOW MUCH LAND HAS BEEN SOLD THROUGH THE LAND BANKING PROGRAM?

As of October 2024, 90,099 acres have been sold since 2003, and 76% of those acres have been isolated.

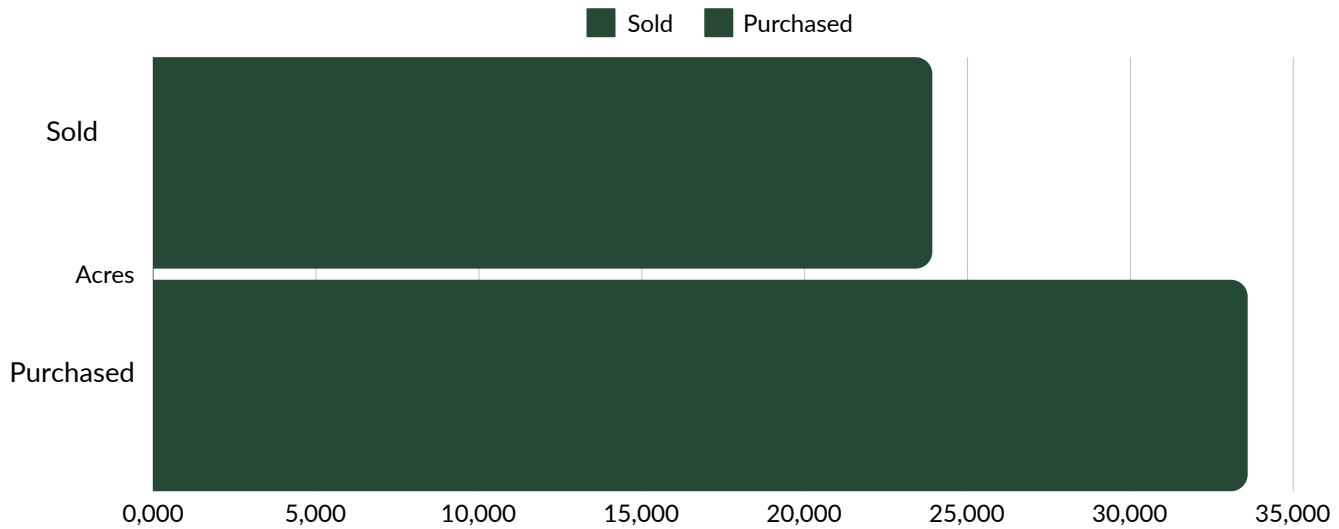
HOW MUCH LAND HAS BEEN ACQUIRED THROUGH THE LAND BANKING PROGRAM?

As of October 2024, 98,272 acres have been acquired since 2003, and 100% of those acres are publicly accessible.



HOW MANY ACRES OF TRUST LAND HAVE BEEN SOLD AND ACQUIRED IN THE LAST 10 YEARS?

Since January of 2015, 23,919 acres of trust land have been sold across 43 counties. During the last 10 years, over 33,600 acres of trust land have been purchased within five counties in order to satisfy the statutory requirements of the land banking program to “maintain, as closely as possible, the existing land base of each trust, consistent with the state’s fiduciary duty,” 77-2-364(5)(e), MCA.



IS THE LAND BANKING PROGRAM A PUBLIC PROCESS?

Yes, land banking sales can be nominated by the current lessee, the DNRC, or the Land Board. In addition to public scoping through the MEPA process, all land sales require three approvals by the Land Board, with opportunities for public comment during each of the three Land Board meetings. Finally, all sales of trust lands are open to the public, with notification of sales occurring in the local newspapers, as well as through emails and postings to the DNRC website.

Other Questions

HOW DOES THE AGENCY EVALUATE TRUST LANDS WITH RESIDENTIAL DEVELOPMENT OR LAND BANKING SALE POTENTIAL?

The DNRC follows the guidance in the Real Estate Management Plan and associated administrative rules to identify parcels in both urban and rural areas. As described in the Real Estate Management Plan, Urban Growth Areas are trust lands located in or near an incorporated city or near developed public infrastructure. These urban area parcels are the ones most likely to have high potential for revenue from commercial or residential development. A parcel of trust land could also be identified by an interested developer who submits a letter of interest to the DNRC, initiating an evaluation by the Department for consideration of commercial lease development.

Factors considered by the Department when choosing to initiate the RFP process may include but are not limited to:

- Highest and best use of the land.
- Probability of developer response and subsequent lease.
- Current market conditions.
- Project priority status.
- The Department's Real Estate Management Plan.
- Any local, state or federal regulations that effect the ability to develop the land, such as zoning.
- Decisions made by the Land Board.
- Analysis of other real estate management programs.

The goals of the Land Banking Program are to:

- Diversify land holdings in order to minimize the risk of loss.
- Maximize the sustained rate of return to the trust beneficiaries.
- Improve public access to state trust land.
- Consolidate land ownership.

When evaluating parcels for the land banking sale program, some criteria that are considered are the average revenue generated, the access to state or other public land for recreational activities, and access to navigable rivers or lakes. Typically, good candidates for sale through the land banking program are low producing, isolated parcels of trust land without access.

HOW WOULD A COMMERCIAL JOINT VENTURE PROGRAM FIT WITHIN THE LAND BANKING PROGRAM?

Although state trust land with commercial development potential would not traditionally be considered a good candidate for the land banking program, some tracts of land, due to their location, the surrounding development, or other factors, may be best suited to development of single-family homesites. By working in partnership with a developer to subdivide and install infrastructure prior to sale, the increased land value could potentially be captured when the individual lots are then sold through land banking.

HOW IS THIS LEGISLATIVE PROPOSAL RELATED TO HOUSE BILL 819 THAT WAS PASSED BY THE 2023 LEGISLATURE?

House Bill 819 identified state trust lands as a potential location for developing affordable housing opportunities. While the current commercial leasing program provides a mechanism for development of multifamily housing, such as apartments or townhomes, the current trust land programs do not provide a good mechanism for development of home ownership opportunities.

The Department believes this proposal for a commercial joint venture program could create an additional avenue for residential development opportunities on trust lands.

WHAT HAPPENS TO THE EXISTING AG OR GRAZING LEASE ON THE TRUST LAND IF IT IS IDENTIFIED FOR DEVELOPMENT?

The DNRC has a process to convert ag or grazing land to commercial development if that is deemed the highest and best use. The existing use will be phased out over time as the commercial development construction begins. The DNRC will work proactively with both the current lessee and the developer to minimize the impact.

**Learn More About Trust Lands At:
DNRC.MT.GOV**