



State of Montana

Department of Natural Resources & Conservation
Trust Lands Management Division
Real Estate Management Bureau

Commercial Leasing Program

- Manages nearly 5.2 million surface acres of Montana State Trust Land
- Responsible for producing revenue for trust beneficiaries
 - Real Estate Management Plan, MCA, ARM
- Must consider environmental factors
 - MEPA, EIS, EA
- Must attain the highest and best use for Trust Land
 - Appraisals, Limited Valuations, Surveys, etc.
- Projects over 50k must go before Land Board for approval



Each trust land parcel is assigned to a different trust beneficiary which profits from revenue generated by our leasing programs.

COMMERCIAL LEASING

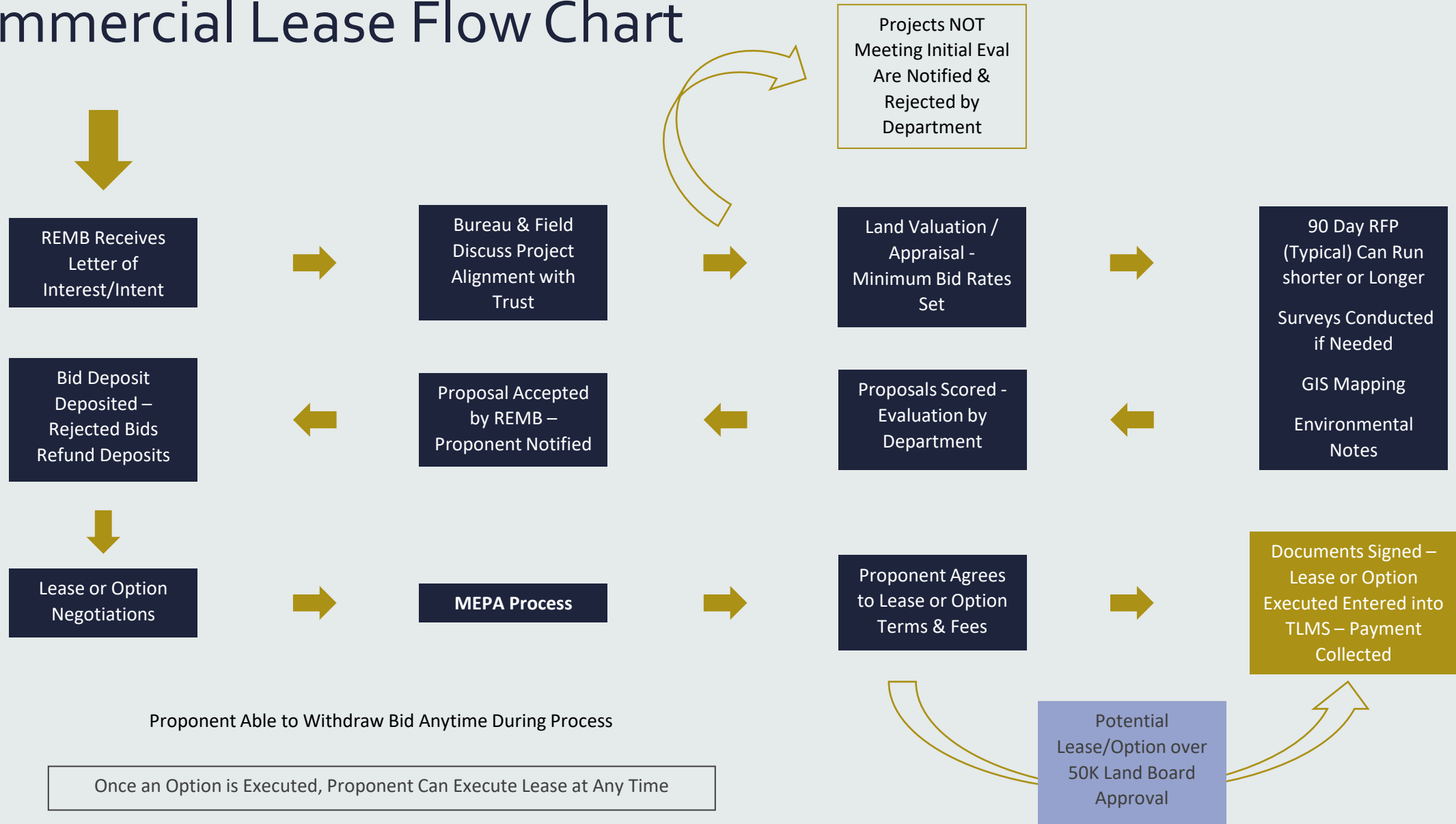
In FY 2020, the bureau executed 7 new commercial development leases and 3 new lease options that together generated \$316,730 in revenue (see Table 5).

At the end of FY 2020, there were 5 active commercial lease options and 123 active commercial leases on trust land, which includes all leases that are not agriculture, grazing, or residential in nature.

FY 2020 Commercial Leasing Numbers

| | | | | |
|--|------------------------------------|---------------|--------------------------|--|
| Northwest Montana Adventure LLC | Flathead County | 540.35 | \$3,500 | |
| Ace Storage | Gallatin County | 10 | \$14,000 | <i>Converted from Lease Option</i> |
| TransCanada Keystone Pipeline | Phillips | 11.99 | \$15,000 | |
| North Park Development Partners, Phase 1 | Gallatin County | 22.4 | \$53,600 | <i>Converted from Lease Option</i> |
| North Park Development Partners, Phase 2 | Gallatin County | 10.7 | \$34,000 | <i>Converted from Lease Option</i> |
| North Park Development Partners, Phase 3 | Gallatin County | 25.5 | \$61,200 | <i>Converted from Lease Option</i> |
| North Park Development Partners, Phase 4 | Gallatin County | 28.8 | \$69,000 | <i>Converted from Lease Option</i> |
| Total New Leases | | 649.74 | \$250,300 | |
| FY 2020 NEW LEASE OPTION | | | | |
| Name | Location | Acres | Annual Option Fee | Annual Base Rent Upon Lease (hypothetical) |
| Martinsdale Wind Farm | Wheatland, Meagher Counties | 3,080.35 | \$7,700 | <i>Greater of 3% of Land Value, or \$2,500/MW Installed, or 3% of Gross Revenues</i> |
| Yellowstone Utility Services | Yellowstone County | 15.4 | \$18,500 | \$18,500 |
| Clearwater Energy Resources | Garfield, Rosebud, Custer Counties | 5,120 | \$40,030 | \$40,030 |

Commercial Lease Flow Chart



Commercial Leasing Regulations

[MCA for Commercial Leasing](#) - All Commercial Leasing with an annual payment over 50K must receive a final approval from Land Board – which is an added step to the Commercial Leasing process. An RFP process is required per [77-1-904, MCA](#) for the state to lease trust land for a commercial purpose.

Factors considered by the Department when choosing to instigate or not 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
- Real Estate Management Plan
- Local, State or Federal regulations that effect the ability to develop the land, zoning
- decisions made by the Land Board
- analysis of other Real Estate Management programs such as
 - land sales,
 - exchanges,
 - or easements (as appropriate avenues for maximizing the financial return to the trust.)



What to expect with the RFP process

If the Department determines that it is in the best interest of the trust to solicit for a commercial lease for a particular parcel, the RFP process will start, and the Project Manager will begin the process of reclassifying the land to “other”, if necessary.

(Either Field staff, Bureau staff, or the Land Board may instigate the RFP process.)

- The RFP is advertised in the local newspaper, on the DNRC website and through an email campaign to interested parties
- Proponents can ask questions and seek clarification on RFP requirements.
- The minimum lease fee is provided in the FRP and is based on a percentage of the appraised market value of the land.
- Proposals must include project specifications as well as proposed compensation to the Trust.
- Proposals will be scored against criteria provided in the RFP to determine the successful proponent.

See the [Real Estate Management Plan](#) and [ARM 36.25.901-36.25.918](#) for more information.

What to expect with RFP scoring

All proposals received by the deadline provided in the RFP will be analyzed by the Proposal Evaluation Committee (PEC) to determine if the proposal is responsive or nonresponsive. Proposals that do not follow the instructions in the RFP or are incomplete may be deemed nonresponsive, and consequently will not be evaluated further. Proposals received after the deadline will not be scored.

Proposal Evaluation Committee:

The PEC shall be a minimum of 3 members that are selected by the Project Manager and the Property Management Section Supervisor. Members shall include the Project Manager, and at least one Bureau staff member. It may also include legal staff.



Environmental Reviews – MEPA, Cultural, Etc.

The level of MEPA analysis required for the lease will vary based on the proposed activity and the proposed location. Some locations may have had MEPA already conducted for commercial development, in which case, further MEPA may not be necessary. The Project Manager will work with the Bureau and Unit or Area Manager to determine the appropriate course for the MEPA analysis.

The proponent may apply for a Land Use License for up to 60 days to conduct any other necessary environmental studies prior to lease signature. The Land Use License fee will be calculated using the Land Use License Procedure. Longer duration Land Use Licenses for environmental studies may be issued on a case-by-case basis for projects that require extensive data for MEPA and feasibility (ex. Wind Farm development).

- ***Contracting for MEPA***
 - If it is necessary to contract for MEPA work for the proposed lease, the Project Manager will contract with a consultant, at the proponent's expense. DNRC will be the primary contact for the MEPA contractor and will have final authority over the management of the consultant and the MEPA document.
- ***EA or Checklist EA***
 - If an EA or checklist EA is acceptable for the project, the department does not have to contract for the work. See the MEPA administrative rules [ARM 36.2.521-36.2.543](#).

Montana is bound by the State Antiquities Act and [ARM 36.2.8et.seq.](#)

- Must consider the effects of projects on the Cultural and Fossil resources.

Land Board

Land Board approval is required for any new commercial lease with a fee over \$50,000 per year. It may be appropriate in certain circumstances to present a lease to the Land Board even though the fee is less than \$50,000. Consult with the Bureau to determine if the lease should be taken to the Land Board for approval.

- The Bureau will prepare an agenda item for the Land Board.
- The Bureau will present the item to the Land Board Staffer's prior to the Land Board meeting. They will also attend the Land Board meeting and respond to any questions posed by the Land Board.

The Bureau will obtain a printout of the Land Board vote for the lease file to document that the lease was taken before the Land Board and that it received approval



Lease Option | Lease Negotiations

The proponent must have included any terms that they intended to negotiate in their RFP response. No other terms should be negotiated at this point. The Project Manager will coordinate any negotiations with the proponent, the Bureau and legal staff for a final lease document for signature.

- This process should not take more than 90 days.
 - Timeline can vary due to land board, MEPA, location and use.
- Lease options are allowed for further due diligence prior to lease execution.
- Terms available for up to 99 years.
 - Structured with shorter terms and renewals
 - 2% annual escalator

The surface lease allows for subleasing and is also transferable.

Development can begin upon lease execution and payment of the first years' lease fee.

Senate Bill 63 & Changes Coming to Renewable Leasing

What: The bill moves ground leasing of state trust land for renewable resources out of statute that is tailored for traditional commercial ground leasing and into its own subchapter.

Why: Statute for traditional commercial ground leasing is not appropriate for renewable development, and the fee structures do not recognize the expansive nature and market of renewable development.

The bill:

Protects the interest of underlying agriculture lessees.

- Allowing the underlying agriculture or grazing lease to remain in place.
- Clarifying compensation for damages to improvements owned by the agriculture or grazing lessee.
- Providing for bonding to assure compensation to the agriculture or grazing lessee.

Protects recreational use access.

- Removing categorical closure to recreational use, allowing for consideration of appropriate restriction areas instead of a blanket closure.

Requires full market valuation.

Allows for rulemaking.

The DNRC anticipates that this bill will serve to streamline the process and allow for more flexibility.

Bureau –The Real Estate Management Bureau (REMB)

Commercial Purpose - Is defined in 77-1-902, MCA as an industrial enterprise, retail sales outlet, business and professional office building, warehouse, motel, hotel, hospitality enterprise, commercial or concentrated recreational use, multifamily residential development, and other similar business. The following uses are specifically excluded from the Commercial Purpose definition: agriculture; grazing; exploration or development of oil and gas, mineral, and geothermal resources; single-family residences, home sites, and cabin sites; and utility rights-of-way

Land Value Rate - The average per-acre value of land in the county in which the licensed area is located as determined by DNRC (through a Limited Valuation Method or contracted appraisal) multiplied by the number of acres encumbered within the lease/license area multiplied by the minimum commercial lease rate at that time.

Lease Rate Percentage - percentage applied to the land value to determine the initial Standard Rental Fee for the First Lease Year and for the first year after a Market Adjustment. This percentage may not be less than the rate provided in 77-1-905, MCA, and may be modified accordingly as part of a scheduled Market Adjustment. (The minimum is established in the Request for Proposal and is not to be less than that determined by Lessor in accordance with MCA 77-1-905.)

Limited Valuation Method - a quantitative process of determining the fair value of an asset based on varying data points and available records.

Market Value Rate - The comparable rates being charged on other private and/or public land in the area for uses identical or like those conveyed under the state lease or license (ex: oil/gas pipelines, access roads)

Percentage of Gross - Revenue sharing.

Project Manager - The DNRC employee that is leading the RFP process, typically from the applicable Area or Unit office. The Project Manager is listed as the primary contact on the RFP document.

Request for Proposal (RFP) - A document released to publicly solicit proposals to lease trust land for a commercial purpose. The document outlines the response format, proposal criteria, applicable deadlines, and scoring criteria for proposal selection

Definitions & Resources



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[REMB Website](#)

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