

MONTANA BOARD OF REGENTS OF HIGHER EDUCATION
Policy and Procedures Manual

SUBJECT: PHYSICAL PLANT

Policy 1003.6 – Transfers of interest in real property

Adopted: January 23, 1997; Revised: September 22, 2011; January 12, 2017; November 19, 2021

I. Sale of University System Land:

- A. Definitions: University System Land covered by sections I through VI is: All real property and any buildings that are held in the name of the Board of Regents (“Regents”), Montana University System or in the name of a unit in the system. (§ 20-25-307(1), MCA & § 77-1-101(8)(b)(ii) & (iii), MCA.)
- B. All sales of University System land must be approved by the Board of Regents. Such sales must be preceded by the following:
1. An appraisal by a certified or licensed appraiser or, if the property is worth less than \$10,000.00, a limited or restricted appraisal.
 2. A request for proposals to purchase the land published no less than once a week for four consecutive weeks in a newspaper of general circulation published in the county where the land is situated. If a newspaper of general circulation is not published in that county, any paper of general circulation within the county may be used for the notice.
 3. The public notice must describe the land to be sold, its appraised value, the procedure for securing a copy of the request for proposal, the terms and conditions of sale, and the criteria upon which each proposal will be evaluated.
- C. No sale shall be approved unless full market value is received and the sale is in the best interests of the University System as determined by the Regents. The sale need not be made to the highest bidder if some other offer is more advantageous to the System. The land shall be conveyed by the Regents without covenants of warranty (i.e. by quit claim deed.)

II. Exchanges of Land

- A. All exchanges of University System land must be approved by the Regents. Such exchanges must be preceded by the following:
1. An appraisal by a certified or licensed appraiser or, if the property is worth less than \$10,000.00, a limited or restricted appraisal.
 2. Public notice of the proposed land exchange published no less than once a week for four consecutive weeks in a newspaper of general circulation in the county or counties wherein the exchanged parcels are situated.
 3. If requested by any person, a public hearing in the area where the state land to be conveyed is located.
- B. No exchange shall be approved unless full market value is received for the land being conveyed and the exchange is in the best interests of the University System as determined by the Regents. The land shall be conveyed by the Regents without covenant of warranty.

III. Lease

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- A. Lease of University System real property. All leases of university system property for periods exceeding two years, except university housing agreements, must be approved by the Regents.
1. The initial lease of university system real property shall be submitted to the regents for approval if the lease is for a term in excess of two years. Renewals of such leases need not be resubmitted for approval unless there is a substantive change in the provisions of the lease.
 2. No lease shall exceed 20 years, including options to renew. Exceptions may be made by a majority vote of the Board of Regents for extraordinary situations where it is demonstrable that a term longer than 20 years is in the best interest of the Montana University System.
 3. All lease agreements shall contain a restriction prohibiting the lessee from making material alterations or improvements on or to the leased property without prior written authorization of the president or chancellor. Any alterations or improvements must conform to the aesthetics of the campus.
- B. Lease of Property for University System use. From time to time it becomes necessary for campuses to rent property from private and public entities to house employees and programs that cannot be housed on campus. Leases of real property for university system use must be approved by the Regents if:
1. The lease exceeds five years in duration, or
 2. The total lease payments exceed \$25,000 per year.

The president or chancellor or designee shall approve all other leases entered into by a campus to lease space for campus use.

IV. Easements

All easements encumbering University System land must be approved by the Regents. The easement shall only be approved if the System receives fair value for the easement. Benefit to the affected campus may be taken into account when determining fair value.

V. Acquisition by Purchase or Gift and Reconveyance of Property between Educational Entities.

- A. All acquisitions of land by or for any campus of the University System must be approved by the Regents except as provided for in Subsection B. below. When property is being purchased the Regents shall be informed of estimates of fair market value established either by:
1. Two appraisals.
 2. Any other process which gives the Regents reasonable assurance of the reliability of the derived value.
- B. Where land has been acquired by the University System from another public educational entity for an educational use by gift or for nominal consideration, the Regents may approve acquisition of that land without consideration or for nominal consideration and without covenant of

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warranty. When the educational use for which the land was conveyed expires the land may be reconveyed back to the public educational entity under the terms of this provision without consideration or for nominal consideration and without covenant of warranty.

- C. When the Regents have adopted a specific procedure by which property may be purchased within a clearly defined area, denoted as a property acquisition zone, such procedures shall supersede this section.

VI. Other Requirements

If land to be sold or exchanged contains designated heritage property the unit shall consult with the state Historic Preservation Officer to mitigate, if practical, any deleterious effect the sale or transfer may have on the heritage property.

- A. If a transfer of an interest in University System real property significantly affects the quality of the human environment, an environmental impact statement (EIS) shall be prepared in conformance with 75-1-201, MCA. In order to determine whether an EIS is required, an environmental assessment (EA) shall, if necessary, be prepared in conformance with 17.4.609, ARM, unless the transfer in question is defined as a "categorical exclusion."

1. For purposes of this policy a categorical exclusion is any transfer of an interest in real property which:

- a. contemplates no significant change in the existing use of the land; or
- b. contemplates no significant change in existing land use patterns; or
- c. any future uses of the land will be governed by local zoning ordinances; or
- d. fits within the definition of categorical exclusion found at 17.4.607(5), ARM; or
- e. is an action primarily social or economic in nature that does not otherwise affect the human environment; or
- f. Is an integral part of a project for which some other entity has done either an environmental assessment or an environmental impact statement.

VII. Board of Land Commissioners Jurisdiction and Approval

Any state lands used by the University System and its units that is in the name of the state of Montana or trust land as defined in § 77-1-101(8)(a)(i)(ii)(iii) & (9)(a)(b)(c), MCA, respectively, are subject to the Board of Land Commissioner's jurisdiction as defined by § 77-1-202, MCA.

VIII. Comity

Any decision by the Regents to submit a particular transaction to the Board of Land Commissioners that is not land under that Board's jurisdiction shall not be construed as a waiver or delegation of any authority possessed by the Regents under the constitution or any statute but only as a courtesy done in furtherance of comity among state governmental entities and not as an acknowledgment of any legal right, obligation or requirement.

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History:

Item 93-002-R1196, Transfers of Interests in Real Property (NEW), approved by the Board of Regents on January 23, 1997; as amended on January 29, 1998 and November 18, 1999 (Item 104-103-R0999). Item 152-130-R0911, revised September 22, 2011; Item 174-102-R0117, January 12, 2017. Revised November 19, 2021, ITEM 197-113-R1121.