



DEQ POLICY MEMORANDUM PM08-01

POLICY FOR LAND TRANSFER

PURPOSE:

The purpose of this policy is to provide guidance for transferring or leasing DEQ property to other parties at the Bunker Hill Superfund Site.

BACKGROUND

DEQ currently owns real estate parcels and, in the future, will acquire other real estate parcels within the Bunker Hill Superfund Site via transfers from EPA. EPA acquired these parcels for the purpose of remediation under CERCLA (also known as Superfund) through bankruptcy proceedings of Potentially Responsible Parties (PRPs). CERCLA requires EPA to transfer such real property to the State upon completion of remedial actions.

DEQ has statutory authority to acquire, manage, lease and dispose of this real property pursuant to Idaho Code Section 39-107A as provided below:

TITLE 39, HEALTH AND SAFETY, CHAPTER 1 ENVIRONMENTAL QUALITY -- HEALTH

39-107A. REAL PROPERTY IN BUNKER HILL CLEANUP SITE. Notwithstanding any other provision of law to the contrary, the department may accept transfer from the United States of any real property or interest in real property acquired by the United States for remediation purposes concerning the Bunker Hill Superfund Site pursuant to 42 U.S.C. section 9604(j). The state of Idaho shall incur no liability nor be subject to any claims related to the existence, release or threatened release of any hazardous substance or contaminant or pollutant on, or from, any such real property. The department may, in its sole discretion, manage, lease or dispose of such property for the purpose of facilitating appropriate operation and maintenance activities, encouraging economic development of the Silver Valley or assisting local governmental entities. The management, lease or disposal of such property shall not be subject to chapter 3, title 58, Idaho Code. Any receipts from the management, lease or disposal of such property shall be deposited in the Bunker Hill Cleanup Trust Fund established by the Trust Fund Declaration of the state of Idaho dated May 2, 1994 (Attachment M, Consent Decree, United States of America v. Asarco, Inc. No. CV-94-0206-N-HLR (D. Idaho)) for the purpose of funding institutional control or operation and maintenance activities regarding the site.

In 2001, Governor Kempthorne provided three guideline priorities for the disposition of this real property as follows:

First, the property will be used to leverage job producing and property tax paying enterprises.

Second, the property will be used to give local units of government the opportunity to accept and utilize such property for public service facilities and purposes, or for transfers and trades for existing publicly owned property that could be more appropriately used for economic development.

Third, the property will be used to provide opportunities for additional recreational and tourism activities.

These authorities and guidance are consistent with the State of Idaho's longstanding advocacy of healthy local economies and communities as critical components of a successful and sustainable cleanup. Closure of the smelter and several of the local mines left the Silver Valley economy near collapse in the 1980's and through the early 2000's. Local communities were plagued with high unemployment and inadequate local tax revenues to maintain infrastructure and other public services. State statutes and policies allow DEQ to manage Bunker Hill real property in a manner that improves the local economy and tax revenues for local governments, schools, and utility districts or otherwise supports local communities.

In 2001 a DEQ Land Transfer Team was established to guide DEQ's management of its Bunker Hill real property. Current participants include:

Jerry Cobb, Panhandle Health District
Rob Hanson, DEQ Mine Waste Program Manager
Curt Fransen, Deputy Attorney General
Freeman Duncan, Real Estate Attorney under contract to the AG's Office
Gale Allen, Planner under contract to PHD
Tom Bourque, Civil Engineer under contract to DEQ

Participants may change over time and are selected by the DEQ Director based on appropriate agency and community representation and necessary legal and real estate expertise.

LAND TRANSFER ACTIVITIES TO DATE

Idaho DEQ has transferred four parcels of land in four separate transactions:

1. The former Bunker Hill mine engineering building was transferred to the City of Kellogg to support city administration.
2. A small parcel of property was transferred to the South Fork of the Coeur d'Alene River Sewer District for location of a lift station for the Page Ponds facility.

3. Significant acreage located south of McKinley Avenue was transferred to Eagle Crest Idaho, LLC, now known as Galena Ridge, LLC, for development of a golf course and associated commercial and residential properties.
4. The zinc plant building and associated real property in Government Gulch was sold to Galena Ridge to support the golf course.

In addition, DEQ leased a small parcel in Government Gulch to Shoshone County for use as a public shooting range.

With the exception of the zinc plant sale, these transactions were not premised on the establishment or payment of fair market value. However, DEQ did negotiate, under the direction of former Director Steve Allred, contributions to the Bunker Hill Cleanup Trust Fund. The purpose of such contributions was to assist DEQ in meeting its ongoing and future obligations at the Site regarding operation and maintenance (O&M) and the Institutional Control Program. The Sewer District and the County transactions did not include negotiated contributions given the limited value and development potential of the small parcels concerned and the overall general benefit to the local community.

CURRENT ECONOMIC SITUATION AND NEEDS IN THE VALLEY

The State's goal of improving the local economy through its management and disposition of the Bunker Hill real estate has largely been accomplished through the transfer of significant acreage to Eagle Crest and its related efforts and success in developing its properties. The completion of remedial work, the success of the ICP and the general real estate market have also been important contributing factors in reversing the economic stagnation in the Kellogg area. Local real estate prices have increased dramatically and DEQ's remaining real properties have significant value. Continued below market value disposition of such properties no longer appears necessary to spur the local economy and could be detrimental to the extent such transactions could distort the market. Use of the properties to provide adequate funding and support for O&M and ICP activities remains important to the long term success of cleanup actions and the future health of the local economy. In addition, local governmental entities have expressed ongoing interest in obtaining or using some properties for public purposes such as support of school transportation, road maintenance and affordable housing for teachers, health care workers, policeman, etc.

DEMANDS ON THE GOVERNOR'S TRUST FUND FOR CLEANUP

The Governor's Trust Fund was established after the 1995 Consent Decree with the Upstream Mining Group (UMG). The Fund holds settlement money from the site PRPs (UMG, Stauffer, and UPRR) for the purposes outlined in the consent decree such as blood lead testing and funding the Institutional Controls Program (ICP) and for activities in support of the Box cleanup such as O&M of the remedial action and land management and transfer costs. Receipts from land transfers has also gone into this Fund as required in the legislation. Costs for O&M in the Box will increase as remedial action moves into Phase II water quality improvements. Additionally, ICP costs are likely to increase due to soil disposal issues. Money from this Fund could also be directed to the Basin (EPA OU3) cleanup where it is expected that the state will have a match and operation and maintenance (O&M) shortfall to complete the work outlined in the EPA OU3 ROD.

LAND TRANSFER POLICIES

1. Except for the limited exceptions in items 2 and 3 below, DEQ Bunker Hill real property will be sold or leased at market value to augment the Governor's Trust Fund for the purpose of funding O&M and ICP activities to ensure the long term success of the cleanup and support the health of the local economy. DEQ will lease rather than sell properties which require long term control by IDEQ to manage significant O&M risks such as the Central Impoundment Area (CIA). The CIA has a synthetic liner cap that must be maintained to prevent water infiltration. Leasing such properties will allow the State to control activities and uses to ensure the remedy is protected and O&M costs are controlled.
2. DEQ may retain, lease, or transfer property to another party or governmental entity that will use the land for the sole or primary purpose of supporting the O&M or ICP activities or other direct support or protection of the cleanup. The need of Panhandle Health District (PHD) for property for ICP purposes is an example.
3. DEQ may transfer, sell or lease limited portions of the Bunker Hill real property to local governmental or tax supported entities at less than fair market value. Such transactions may be made to entities that have made past requests or proposals to the Transfer Team and shall be based on demonstrated benefits to the general public. Pending requests or proposals include those from Shoshone County, the City of Kellogg and School District 391. In addition the Land Transfer Team has been advised that Shoshone Medical Center has an interest in acquiring property for work force housing. The Medical Center is also working with other entities including local police and fire agencies to identify property for work force housing in Shoshone County.

THE LAND TRANSFER PROCESS

In the past, land transfers have generally been initiated by prospective purchasers. Land values were low and DEQ was looking for opportunities to jumpstart the local economy helping local tax collections and creating jobs. Recent development activities by Eagle Crest and others as well as the completion of cleanups and the general real estate market have dramatically improved real estate values in the Kellogg Area. As indicated, DEQ will seek market value for its properties with limited exceptions for tax supported entities as listed above. DEQ may place land on the market utilizing a local real estate sales professional.

DEQ is currently evaluating its property base and assessing its present and potential market values. This initial evaluation will be used to identify basic marketing and development strategies that could enhance and recover these values and also address community needs. DEQ will then select and implement development and marketing plans to sell, lease, transfer or retain properties. The following separate processes and requirements will be applicable to transactions concerning tax supported entities for public purposes and private entities for fair market value:

Transactions with Tax Supported Entities for Public Purposes:

- DEQ will consider existing requests or proposals which shall include those made as of June 1, 2007. Any future requests or proposals for non-fair market value transfers will not be considered

except upon a demonstration of exceptional, significant, and immediate benefits to the public and a minimal impact on the recovery of fair market value.

- The DEQ Land Transfer Team will recommend to the DEQ Director whether each request should be accepted, accepted with modifications, or rejected. The DEQ Director will make the final decision.
- All requests that have not been processed must complete the Land Transaction Proposal Form that provides information about the property desired, why it is needed, how the need is being met now, and the proposed transfer, sale or lease terms.
- Tax supported entities will be required to survey the requested property and bear the cost of any necessary improvements or other costs incurred by DEQ prior to completion of any transaction
- Tax supported entities will be required to work with the appropriate local jurisdictions to address any land use requirements.
- DEQ O&M obligations relating to vegetative cover and barrier protection will be transferred with the property. DEQ O&M obligations related to drainage control will be retained by DEQ except the new owner/lessee will assume O&M obligations for any drainage control features modified by the new owner/lessee. Such modification will require the advance approval of DEQ.
- DEQ will retain access rights for itself and any appropriate designee, including PHD or EPA, for O&M or ICP purposes and evaluation of water quality and remedy effectiveness
- DEQ will require a demonstration of financial capability and development milestones where significant development of the property is necessary for the intended public purpose.
- DEQ will retain reversionary interests to ensure properties are utilized consistent with the public benefit purpose of the transfer.
- The Land Transaction Proposal Form will be completed by the initiator of the land transfer to provide DEQ the information it needs to make a decision on the transfer. DEQ may ask for additional information if determined necessary to facilitate the transfer.

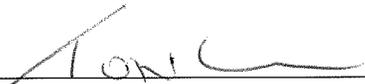
Transactions with Private Entities for Fair Market Value:

- The DEQ will develop and implement a marketing plan to sell or lease properties to private parties for fair market value.
- Parties offering to purchase or lease the DEQ owned properties will be required to complete the Land Transaction Form. Information from the form will be used to assess the qualifications of the applicant and the overall benefit of the project to the community and environmental protection.
- DEQ will enter into a land transaction negotiation with the party that has placed a bid that meets fair market value based on an open competitive process, demonstrates ability to implement the project, and meets the basic criteria of community benefit and environmental protection.
- DEQ O&M obligations relating to vegetative cover and barrier protection will be transferred with the property. DEQ O&M obligations related to drainage control will be retained by DEQ except the new owner/leasee will assume O&M obligations for any drainage control features modified by the new owner/leasee. Such modification will require the advance approval of DEQ.
- DEQ will retain access rights for itself and any appropriate designee, including PHD and EPA, for ICP and O&M purposes and evaluation of water quality and remedy effectiveness.
- DEQ may require a demonstration of financial capability and development milestones where significant development of the property is a factor or consideration in the sale or lease of any large parcel(s). The purpose of such requirements is to ensure that the local economy and communities realize the benefits of development in a timely manner and to avoid speculative purchases/leases.

- DEQ may retain reversionary interests to ensure properties are timely developed.

IMPLEMENTATION

This policy shall be effective immediately.
Dated this 13 day of February, 2008.



TONI HARDESTY
DIRECTOR

Land Transaction Proposal Form

Initiator: _____

Mailing Address: _____

Contact Person: _____

Phone number: _____

FAX: _____

E-Mail: _____

Land Description: Please describe the parcel or parcels of land owned by the Idaho Department of Environmental Quality (DEQ) that you propose to acquire:

Section _____, Township _____, Range _____.

Parcel size requested. _____

Project Description: Please describe your intended use of the land:

Please answer the following questions with reference to your proposed use of the land. Do not limit your answers to the space provided. It is important that you be as thorough as possible. Your answers will affect the ranking of your proposal with other proposals.

Benefits of the Proposal:

- (1) Describe how your proposed use of the land will compliment and enhance environmental protection in the Silver Valley and is compatible with the Superfund remedy and the State's O&M obligations. Need explanation for remedy and O&M?

(2) Will your proposed use of the land increase recreational opportunities and the quality of life in the Silver Valley. If so, how?

(3) Will your proposed use of the land contribute to the economic development of the Silver Valley (Be specific as to job creation, payroll and benefits)? If so, how?

(4) Will your proposed use of the land increase the value and utility of adjoining properties? If so, how?

(5) Will your proposed use of the land enhance the operation of local government entities in the Silver Valley? If so, how?

(6) Describe any special attributes that your proposed use of the land adds to the Silver Valley that does not already exist:

Transaction Description:

(1) Please identify the participants in your proposal (please include contact information).

(2) Identify your development experience. Please provide information on projects similar to your current proposal.

(3) Describe your financial capability to implement and complete the project.

(4) Please identify your desired timeline for your proposed acquisition and project completion.

By signing this proposal, the Initiator acknowledges that the information contained herein will be used by DEQ staff to study the proposal and that under Idaho's Public Records Act, may be considered to be a public document.

Date: _____

Initiator: _____
Signature