STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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C.L. "Butch" Otter, Governor
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DEQ POLICY STATEMENT
PS15-01

BUNKER HILL LAND TRANSFER POLICY

PURPOSE

The purpose of this policy is to update guidance for transferring or leasing Idaho Department of Environmental Quality (DEQ) property to other parties at the Bunker Hill Superfund Site. DEQ has determined that future transfers will be based on fair market value. This determination was made after completing multiple low- to no-cost land transfers to local governments, school districts, and utilities. Exceptions to this policy will be made at the discretion of the DEQ director consistent with Idaho Code §39-107A. The updated policy also reflects changes in state statute that extend the applicability of the statute to include the entire Bunker Hill Superfund Site, including areas known as the Box and the Coeur d'Alene Basin. This policy shall supersede DEQ's "Policy for Land Transfer" (PM08-01) dated February 13, 2008.

BACKGROUND

DEQ currently owns real estate parcels and may acquire additional real estate parcels within the Bunker Hill Superfund Site via transfers from the US Environmental Protection Agency (EPA). EPA acquired or may acquire these parcels for the purpose of remediation under CERCLA (the Comprehensive Environmental Response, Compensation, and Liability Act, also known as Superfund) through bankruptcy proceedings or settlement agreements with potentially responsible parties. 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 §39-107A:

> 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 any operable unit of 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 or assisting local governmental entities within the site.* 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.* (Idaho Code §39-107A [emphasis added])

The statute identifies three purposes for land transactions:

1. Facilitating appropriate operation and maintenance activities
2. Encouraging economic development
3. Assisting local governmental entities within the site

DEQ interprets these purposes as being disjunctive, meaning that DEQ can make a land transfer for each purpose and is not required to fulfill all three purposes conjunctively. DEQ's past land transfer focus has been on meeting the second and third purposes shown above.

While continuing to consider economic development and local government needs, DEQ will now focus on the first purpose by selling or leasing property at market value to help augment the Bunker Hill Cleanup Trust Fund to pay for the Institutional Controls Program (ICP) and other state operation and maintenance (O&M) obligations.

STATEMENT OF POLICY

Land Transfer Policies

- DEQ-owned Bunker Hill real property may be sold or leased at market value to augment the Bunker Hill Cleanup Trust Fund for the purpose of funding O&M and ICP activities to ensure the long-term success of the cleanup.
- Where appropriate, DEQ may lease rather than sell properties that require long-term control by DEQ to manage significant O&M risks, such as the Central Impoundment Area (CIA). Leasing such properties will allow DEQ to control activities and uses to ensure the remedy is protected and O&M costs are controlled.
- DEQ may lease or transfer property to another party or governmental entity that will use the land for the sole or primary purpose of supporting O&M or ICP activities or other direct support or protection of the cleanup. An example would be if the Panhandle Health District (PHD) had a need for property to implement the ICP.
- In appropriate cases as determined by the director, DEQ may elect to 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 shall be based on demonstrated benefits to the general public. A public notice will be required for these types of transactions.

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 help jumpstart the local economy, increase local tax base, and create jobs. However, recent development activities, as well as the completion of cleanups and the general improvement in the real estate market, have improved real estate values in the Bunker Hill site area. Accordingly, DEQ will seek market value for its remaining properties as set forth above. DEQ may place land on the market utilizing a real estate sales professional.

The following process will be applicable to transactions for fair market value:

- DEQ will place property on the market and enter into a land transaction negotiation with the party that has offered the best price. DEQ may reject offers if it determines that the price offered is below market value.
- 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 at DEQ's discretion. 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 necessary 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.
- In appropriate cases, DEQ may at its discretion 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 parcels. The purpose of such requirements is to ensure the local economy and communities realize the benefits of development in a timely manner and to avoid speculative purchases/leases.
- In appropriate cases, DEQ may at its discretion retain reversionary interests to ensure properties are developed in a timely manner to ensure that the local economy and communities realize the benefits of development in a timely manner and to avoid speculative purchases/leases.
- If DEQ is approached by a party interested in purchasing a property that is not currently on the market, DEQ may at its discretion opt to sell the land at an appraised fair market value, place the property on the market to obtain market price, or decline to sell due to current market conditions.

Land Transfer Team

The DEQ director will select members of the DEQ Land Transfer Team. Selection will be based on appropriate DEQ and community representation and necessary legal and real estate expertise.

RESPONSIBILITY

DEQ's Mine Waste Program Manager is responsible for maintaining this policy.

IMPLEMENTATION

This policy is effective immediately and will remain in effect for 5 years unless amended, replaced, or rescinded prior to expiration.

Dated this 5th day of February, 2015

Curt Fransen
Director