

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.20.171, 42.20.620,)
42.20.701, 42.20.735, 42.20.740, and)
42.20.750 pertaining to land)
classification, natural disaster)
reduction, and forest land eligibility)
and valuation)

TO: All Concerned Persons

1. On August 18, 2017, the Department of Revenue published MAR Notice No. 42-2-977 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1390 of the 2017 Montana Administrative Register, Issue Number 16.

2. On September 11, 2017, a public hearing was held to consider the proposed amendment. Peter Pocius, Montana Forest Owners Association, and Bob Story, Montana Taxpayers Association, appeared and testified at the hearing. Written comments were received from Mike Christianson, Montana Forest Owners Association.

3. The department amends ARM 42.20.171, 42.20.620, 42.20.735, 42.20.740, and 42.20.750 as proposed.

4. Based upon further review and the comments received, the department amends ARM 42.20.701 as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

42.20.701 DEFINITIONS The following definitions apply to this subchapter:

(1) "Associated forest land management use" means the ~~intended~~ primary use of a structure is to support the health, maintenance, growth, and or harvest of ~~timber~~ the forest on the subject property.

(2) through (4)(b) remain as proposed.

~~(c) navigable rivers and streams;~~

(d) and (e) remain as proposed, but are renumbered (c) and (d).

(5) through (13) remain as proposed.

~~(14) "Navigable rivers and streams" means meandering rivers and streams determined navigable by the United States government surveyors and as determined by common law.~~

~~(15)~~(14) "Noncontiguous parcels of land" means parcels of land under one ownership that are physically separated from one another by land in a different ownership other than:

(a) and (b) remain as proposed.

~~(c) navigable rivers and streams;~~

(d) and (e) remain as proposed, but are renumbered (c) and (d).
(16) through (29) remain as proposed, but are renumbered (15) through (28).

AUTH: 15-44-105, MCA

IMP: 15-1-101, 15-44-101, 15-44-102, 15-44-103, 15-44-106, MCA

5. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: Mr. Pocius testified that because not all forest land owners manage their forest to harvest timber, the department should consider adding the terms "growth and harvest" in its proposed definition in ARM 42.20.701(1), and referred the department to the written comments submitted by Mr. Christianson on behalf of the Montana Forest Land Owners Association. In his written comments, Mr. Christianson explained that because managing forest land encompasses more than just harvesting the timber produced on the land, such as health and maintenance, they recommend the department revise the definition to read as follows: "Associated forest land management use means the primary intended use of a structure is to support the health, maintenance, growth, or harvest of the forest on the subject property."

RESPONSE 1: The department appreciates the Montana Forest Land Owners Association's comments and understands that forest land management involves many aspects in addition to harvesting timber. Therefore, the department has further amended the definition to specify the health, maintenance, growth, or harvest of the forest on the subject property. The department also acknowledges that the primary use of the structure is to support the forestry and other vegetative growth of the land and agrees that adding the term "primary" will better align with the use designations in statute. The department appreciates this concept and agrees that the term "intended use" is confusing, as statute requires the department to classify lands according to their use or uses, not to the intended use. However, due to uncertainty about how the combined term "primary intended" use of a structure might be interpreted, the department is inserting the word "primary" in place of the word "intended," rather than in addition to it. As amended, this change better aligns the definition with the language in the classification and appraisal statute.

COMMENT 2: Mr. Story expressed concern with some of the proposed changes to ARM 42.20.701. The definition of contiguous parcels of land in (4), and noncontiguous parcels of land in (15), previously stated that a parcel of land would be contiguous if separated by a river or stream that had "been adjudicated as being navigable." The proposed changes create a list that says "separated by rivers and streams" and then "separated by navigable rivers and streams," with that term separately defined in (14). These proposed changes are confusing relative to how property boundaries work in reality. If a stream was navigable when Montana became a state, those beds were excluded when surveyed. Tracts that run up to the low water mark and the bed of that stream are public land and the tracts on either

side would be considered contiguous under the current law. If the stream is not navigable, the bed of that stream is owned by someone. It is not vacant property. You don't really have property divided by streams that aren't navigable.

He further commented that the proposed definition of navigable streams in (14) may be problematic, legally. Section 15-24-1209, MCA, provides that a navigable stream in Montana is a stream that has been adjudicated by a court to be navigable. If, by definition, you allow this determination by "common law," then the department is determining what is or isn't a navigable stream. The department should look into whether or not the use of "common law" can be supported.

If the department's goal is to say that if there is a stream running through a parcel it doesn't affect the contiguous status of the parcel, then the original rule language worked. How the stream is classified makes no difference. If there is a highway or railroad running between two parcels in the same ownership, they are still considered contiguous. You can look at a stream the same way. It wouldn't make any difference if it was navigable or not. Revising the definition of navigable streams potentially creates other problems. He suggested the department consider leaving the language as rivers and streams and not get into the navigability issue.

RESPONSE 2: The department appreciates Mr. Story's comments and agrees with his concerns. Therefore, the department has further amended ARM 42.20.701 to remove the term "navigable rivers and streams" from the definitions of contiguous and noncontiguous parcels of land, and to remove the separate definition of navigable rivers and streams, altogether. As revised, the rule still provides the intended meaning that rivers and streams do not break parcel contiguity, regardless of navigable status.

/s/ Laurie Logan

Laurie Logan
Rule Reviewer

/s/ Mike Kadas

Mike Kadas
Director of Revenue

Certified to the Secretary of State November 13, 2017.