

# DEPARTMENT OF MILITARY AFFAIRS



STEVE BULLOCK  
GOVERNOR

ARMED FORCES RESERVE CENTER  
1956 MT MAJO STREET

## STATE OF MONTANA

OFFICE OF THE ADJUTANT GENERAL  
MAJOR GENERAL MATTHEW T. QUINN  
(406) 324-3010 - FAX (406) 324-4800

PO BOX 4789  
FORT HARRISON, MONTANA 59636-4789

DATE: May 15, 2015

TO: Susan Byorth Fox, Executive Director, Montana Legislative Services

SUBJECT: Request to be on the Legislative Council Agenda to request permission to sell Miles City National Guard Armory to Miles Community College

The Department of Military Affairs (DMA) has an Armory located in Miles City Montana. Within the last year DMA has completed and moved into a new facility located in Miles City. We no longer have a use for the old facility and have been approached by Miles Community College to purchase the facility for use as Classroom space.

The Appraised Value of the Miles City Armory is \$650,000. Miles Community College has agreed to purchase the facility and are hoping to close on the property by the end of September.

DMA's intent is to go to the Land Board on June 15 to make the request to sell the Miles City Armory to Miles Community College.

### **What Lands are involved?**

The Miles City Armory is located at 2500 Main Street in the City of Miles City, Montana. The Armory sits on 2.63 acres and the building is 8,225 square feet. The building has office areas, a kitchen, storage areas, a walk in vault and a large shop or warehouse area. It was built in 1957. The property is zoned commercial.

### **Are there restrictions on the transfer?**

Yes, because the Miles Community College is a Public entity under section 77-2-351 the property at transfer will be (deed restricted) with a binding commitment to use the property to provide a community service or a benefit that fulfills a public service.

### **Are the terms of the transfer in the best interest of the State?**

Terms of the transfer: Miles Community College will purchase the Miles City Armory for \$650,000. And use the facility for classes to teach equipment repair.

The facility will basically be used for a public purpose.

### **Is the Manner of the transfer in accordance with public policy?**

Yes the transfer will be in accordance with Public Policy.

DMA's intent is to go to the Land Board on June 15 to make the request to sell the Miles City Armory to Miles Community College. The Buy Sell agreement is currently being drafted and the closing date will be at the end of September. The closing date will be well beyond the 60 day notice period.

Enclosed for you review are: Deed to the property (Affidavit of ownership), plat of the Armory Site (Survey), aerial site location map, picture of the facility, email from DNRC Attorney Tom Butler saying that Miles Community College is a "Public Entity".

Please let me know the time and location of the meeting and I will be there to answer any questions you may have.

Sincerely,



Debra LaFontaine  
Plans and Programs Branch Manager  
Construction and Facilities Management Office  
Department of Military Affairs



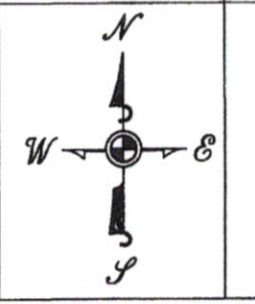
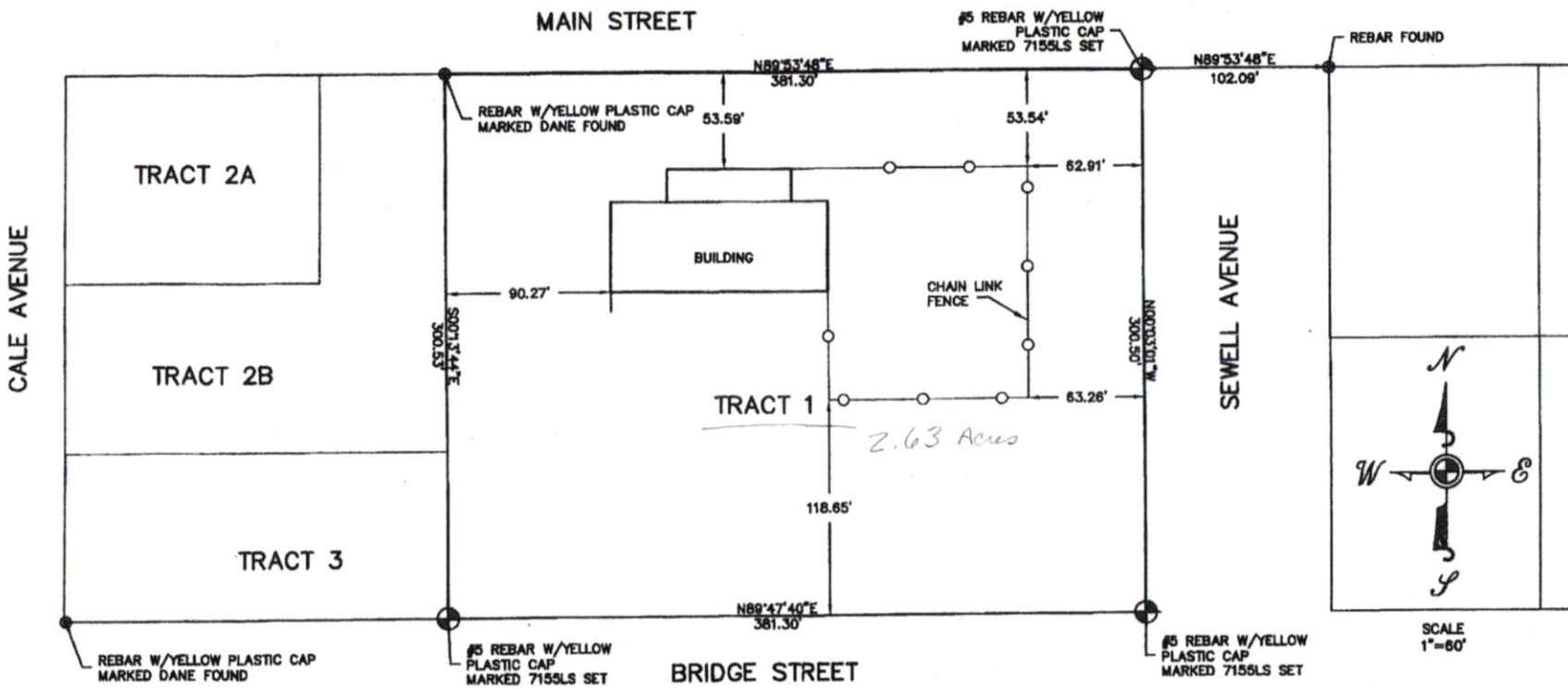








# TRACT 1 ARMORY SUBDIVISION



SCALE  
1"=60'



Date 10-17-2007  
Valid only if signed  
and dated.

TRACT 1 ARMORY SUBDIVISION  
MILES CITY, MONTANA

EXHIBIT  
**HCM**  
ENGINEERING  
7X407.113 10-17-2007

S:\MONTANA\2007\7859\7859.dwg 10/17/2007 10:08:41 AM

### Know All Men by These Presents:

That CUSTER POST NO. 5 OF THE AMERICAN LEGION, DEPARTMENT OF MONTANA,  
 a corporation, organized and existing under the laws  
 of the State of MONTANA, in consideration of  
 the sum of One dollar and other valuable considerations,  
 Dollars (\$ 1.00 ), the receipt whereof is hereby admitted,  
 does hereby grant, bargain, sell, convey, warrant and confirm unto  
 STATE OF MONTANA,

and to its successors and assigns, FOREVER, the  
 following described real property, situated in the city or town of  
 County of Custer, State of Montana, to-wit:

That portion of the west half of the northeast quarter of section thirty-four  
 in township eight north, range forty-seven east of the Montana Meridian in  
 Custer County, Montana, described as follows: Beginning at a point on the  
 south line of Main Street and the west line of Sewall Avenue extended; thence  
 west along the south line of Main Street a distance of 381.3 feet, more or less  
 to the east line of the Regan property; thence south along the east line of the  
 Regan property to the north line of Bridge Street extended, a distance of 300.5  
 feet; thence east along the north line of Bridge Street extended, a distance of  
 381.3 feet to the west line of Sewall Avenue extended and thence north along the  
 west line of Sewall Avenue extended, a distance of 300.5 feet, more or less,  
 to the point of beginning and containing 2.63 acres, more or less.

TOGETHER, with all and singular the tenements, hereditaments,  
 and appurtenances thereto belonging or in anywise appertaining.  
 In event that said land is not used for construction of National Guard  
 Training facilities within five years period; title will revert back to the  
 grantor.

And the said GRANTOR hereby covenants that it will forever WARRANT and DEFEND  
 all right, title, and interest in and to said premises, and the quiet and peaceable possession thereof, unto  
 the said GRANTEE its successors and assigns, against the  
 acts and deeds of said grantor, and all and every person and persons whomsoever lawfully claiming or to  
 claim the same.

IN WITNESS WHEREOF, said GRANTOR has caused its corporate name to be subscribed  
 and its corporate seal to be affixed, by its proper officers, thereunto duly authorized, on this 20<sup>th</sup>  
 day of April A. D. 1955

CUSTER POST NO. 5 OF THE AMERICAN  
 LEGION, DEPARTMENT OF MONTANA.

By Frank E. Powell  
 President.



W. Nelson  
 Secretary.



17700

180985

Warranty Deed-Corporation (S.F.)

Creston Post No. 5 American Legion, Dept. of Mont. TO State of Montana

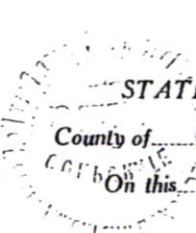
Dated July 19, 1955. STATE OF MONTANA, ss. County of Creston. Filed for Record this 5th day of July, A. D. 1955 at 4:57 o'clock P. M., and recorded in Book 88 of Deeds Page 522 of the Records of Creston County. J.E. Anderson County Recorder.

By [Signature] Deputy. Indexed [Signature] Paged [Signature]

Return to [Signature] District National Bank

Amory Buildings Grants

STATE OF MONTANA DEPARTMENT OF SECRETARY OF STATE FILED FOR RECORD July 18, 1955 AT 4:00 O'CLOCK P. M. AND RECORDED IN VOLUME PAGE [Signature] SECRETARY OF STATE BY [Signature] DEPUTY.



STATE OF MONTANA, ss.

County of GUSTER

On this 20th day of APRIL

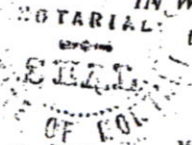
the undersigned

State of Montana, personally appeared Frank E. Powell and T. E. Nelstead,

(known to me or proved to me on oath of)

to be the President and Secretary, respectively of the corporation that executed the within instrument and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year in this certificate first above written.

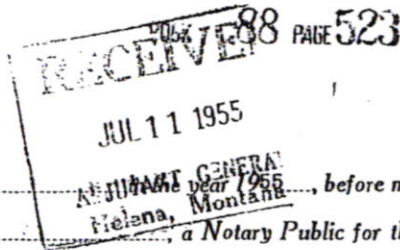


[Signature] Notary Public for the State of Montana.

Residing at Miles City, Montana.

My Commission expires August 18, 1955.

NOTE-Acknowledgment should be made by either president or secretary.



**Lafontaine, Debra L NFG (US)**

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**From:** Butler, Tom (DNRC) <tbutler@mt.gov>  
**Sent:** Friday, May 15, 2015 11:34 AM  
**To:** 'Wyatt Glade'; Lafontaine, Debra L NFG (US)  
**Cc:** Hesterberg, James E LTC USARMY NG MTARNG (US)  
**Subject:** RE: Armory/mcc

Wyatt, Debra:

I'm sorry for the delayed response. I've been pretty much consumed by litigation, lately.

You've inquired whether Miles Community College is a "public entity" within the meaning of Section 77-2-351, MCA. The answer is found by reference to a series of statutes.

Section 20-15-102, MCA, defines the powers of Community College Districts as follows: "A community college district shall be known as "Community College District of ....., Montana". In this name, the community college district may sue and be sued, levy and collect taxes within the limitations of the laws of Montana, and possess the same corporate powers as districts in this state, except as otherwise provided by law".

(emphasis added.)

In turn, Section 15-1-101(2), MCA, defines the phrase "municipal corporation" or "municipality" or "taxing unit" as including a county, city, incorporated town, township, school district, irrigation district, or drainage district or a person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(emphasis added.)

Therefore, under Montana law, a Community College District is a "municipal corporation".

Section 77-2-351, MCA, defines a "public entity" as any county, city, municipal corporation, school district, regional water authority provided for in Title 75, chapter 6, part 3, or special improvement or taxing district.



Consequently, it is my legal opinion that Miles Community College is a "public entity" under Section 77-2-351, MCA because it is statutorily defined as both a taxing district and a municipal corporation.

Tommy

Tommy H. Butler

Trust Lands Attorney

Montana DNRC

P.O. Box 201601

Helena, MT 59620-1601

(406) 444-3776

Facsimile (406) 444-2684

tbutler@mt.gov

From: Wyatt Glade [mailto:W.Glade@co.custer.mt.us]

Sent: Thursday, May 07, 2015 4:09 PM

To: Butler, Tom (DNRC); Stacy Klippenstein <klippensteins@milescc.edu> (klippensteins@milescc.edu)

Cc: jkorkow@rangeweb.net; Hesterberg,James

Subject: Armory/mcc

Hi Tom,

Thanks for meeting with us today, and for your research and cooperation in this issue. I am writing to confirm the outcome of our meeting today. It is my understanding that we are in agreement that Miles Community College, a community college district under 20-15-351, is a public entity as contemplated in 77-2-351.



20-15-403 states that the term "school district," as used in 15-1-101, includes a community college district. 15-1-101(2) specifically states that the term "municipal corporation" includes a school district, or in this case, a community college district. A "municipal corporation" is a "public entity" as contemplated in 77-2-351 MCA.

I have attached copies of the Custer County Mill levies for 2013 and 2014 for your review.

Please respond to confirm the information above.

Thank you, and I look forward to working with you further on this project.

Sincerely,

Wyatt Glade

Custer County Attorney