

---

**REPORT AND RECOMMENDATIONS  
FOR  
THE STATE BOARD  
OF  
LAND COMMISSIONERS**

**PRESENTED BY**

**THE ENDOWMENT LAND TRANSACTION  
ADVISORY COMMITTEE**

**JULY 7, 2009**

## Contents

<i>Preface</i> .....	3
<i>Committee Charter</i> .....	4
<i>Historic Perspectives</i> .....	6
<i>Analyses</i> .....	10
<i>Recommendations</i> .....	10
<i>Other Issues</i> .....	17
<i>Summary of Recommendations</i> .....	19

## P R E F A C E

To the Idaho State Board of Land Commissioners,

This report, prepared by The Endowment Land Transaction Advisory Committee, details the analyses and recommendations regarding the State's ability to secure the maximum long term financial return to Idaho schools as the beneficiaries of Idaho's endowment lands.

The Idaho Department of Lands was directed to form an Endowment Land Transaction Advisory Committee (referred to in this report as ELTAC) to provide an impartial review of the specific elements of Idaho State Constitution and the Admission Bill governing the disposition of Endowment lands. The ELTAC was further charged with the task of, "identifying impediments to conducting real estate transactions in the 21st century" (State Board of Land Commissioners, March 17, 2009, Regular Agenda, Page 2).

ELTAC, consisting of members of Idaho's business community, used their specific expertise and lens to study essential documents provided by the Department of Lands staff. They met as a committee to analyze specific implications and formulate the overall recommendations contained in this report.

This report includes a charter describing background and expectations for ELTAC, a description of the history of Endowment reform in Idaho that provided essential context for ELTAC's work, analyses, recommendations, and rationale followed by a brief conclusion. The yellow highlighted areas of the State Constitution and the Admission Bill are included to indicate the areas of focus charged to ELTAC.

ELTAC appreciates this opportunity to offer their expertise and respectfully offers its counsel to the Idaho State Board of Land Commissioners regarding best interests of the Endowment beneficiaries.

Bryant Forrester	Realtor	Homeland Realty	Residential RE Broker
Kurt R. Gustavel	President	Idaho Independent Bank	Banker
Jack Harty	President	Harty Capital	Commercial Real Estate Mortgage Broker
George Kirk	Principal	The Kirk Group	Residential RE Developer
Al Marino	Partner	Thornton-Oliver-Keller	Commercial RE Broker
Robert Phillips	President	Hawkins Companies Commercial Developers	Commercial RE Developer
Robert Follett	DAG	State of Idaho	Legal Counsel

## ENDOWMENT LAND TRANSACTION ADVISORY COMMITTEE CHARTER

This charter outlines the expectations of the Endowment Land Transaction Advisory Committee and significant background information related to its charge.

### **Purpose**

The Idaho State Board of Land Commissioners determined that they, the Legislature and the public need an impartial review of the Idaho State Constitution and the Admission Act to identify any impediments to conducting real estate transactions in the 21st century (State Board of Land Commissioners, March 17, 2009, Regular Agenda, Page 2).

The Endowment Land Transaction Advisory Committee will analyze and recommend changes in the Constitution and the Admission Bill in order to eliminate provisions that may prohibit or hinder the trustees from their primary goal of maximizing return on investment for the individual trust beneficiaries, primarily the public schools.

### **OUTPUT EXPECTATIONS:**

As outlined in the Regular Agenda, State Board of Land Commissioners, March 17, 2009, the Idaho State Board of Land Commissioners expects the following:

1. Written report and presentation to the Land Board;
2. Identification of provisions in the Idaho State Constitution and Admission Act that are inconsistent with modern real estate law or transactions;
3. Explain why the existing language is a problem or hindrance to the Endowment mission; identify potential business impediments;
4. Assist the Land Board with legislative public education efforts for the 2010 legislative session.

### **CONSIDERATIONS:**

The Committee reviewed essential background to establish a context for the work to which they are charged. Key references that assisted the Committee in understanding past and current philosophy and practices are presented here.

The Land Board, as trustees of Idaho's Endowment lands and financial assets, has a duty to invest and manage the trusts "as an overall investment strategy having risk and return objectives reasonably suited to the trust" (Idaho Code § 68-502, 2).

*The State Trust Lands Asset Management Plan*, updated July 30, 2008, provided a comprehensive perspective on the current management approaches for Endowment lands. It is important for ELTAC to understand specific components of this document as outlined below:

## **Asset Management Philosophy** (*State Trust Lands Asset Management Plan, Page 3*)

To fulfill its fiduciary duties to each individual Endowment, the State of Idaho will:

1. Manage the endowed land and financial assets as a whole trust on a total return basis.
2. Seek to optimize risk and return from both the Endowments' land and financial assets through diversification of holdings.
3. Ensure that significant land holdings will be maintained in perpetuity, since they provide material diversification and inflation protection to an Endowment's portfolio.
4. Seek to reposition parcels to reduce risk, lower management costs, and increase prospects for immediate and sustainable income, recognizing that much Endowment land remains in the original scattered parcels obtained from the federal government.
5. Provide for the appropriate and reasonable management expenses of each Endowment from its own income.
6. Accommodate public use of Endowment lands, to the extent feasible, provided such use does not impair financial returns.

## **Land Acquisition and Disposal Strategy** (*State Trust Lands Asset Management Plan, Page 27-28*)

Future strategy will include proactively searching for property, consolidating ownership only when earnings will substantially increase, seeking to optimize risk (sic) and return, and identifying an exit strategy for each property. The target holding period for land assets shall be for long-term investment (generally 10 years or more).

### Management Objectives

- Increase long-term financial returns.
- Reduce cost through improved management efficiency.
- Increase cash flow.
- Acquire lands or position parcels for value maximization.
- Diversify the Endowment land portfolio to distribute risk.
- Enhance access to Endowment land assets.
- Adjust land holdings based on current and projected market conditions to capture value in excess of target returns.

### Challenges

- Constraints pursuant to Article IX, Section 8 that do not conform to modern business practices:
  - The sale of land is limited to transactions "...sold in subdivisions of not to exceed three hundred and twenty acres of land to any one individual, company or corporation."
  - All land sales are "...subject to disposal at public auction."
- Current procedures inhibit the agency's ability to be competitive in the real estate market.
  - Efficiency and expediency required to secure property
  - Securing resources necessary to conduct due diligence
  - Land Board approval required at multiple steps throughout the land acquisition and sale process

- Operating a profit oriented business within a government agency; traditionally perceived as a nonprofit environment.

#### Opportunities

- Utilizing agent agreements to conduct proactive searches for properties based on criteria herein.
- Authorizing agency management to enter into non-binding and binding agreements to become competitive in the real estate market.
  - Buyer Agency Agreement
  - Letter of Intent, *including Buyer Agency Agreement*
  - Agreement to Initiate
  - Purchase Sale Agreement, *including Buyer Agency Agreement*

#### **Problem Statement:**

To fulfill the clear fiduciary responsibility of the Land Board to maximize return on investment for the beneficiaries of the trust, it is the intent of the ELTAC to make recommendations for language changes to the Idaho Constitution and Admission Bill that may affect the flexibility of the Land Board in areas of land acquisition and disposal. Following the input from the Land Board, revisions, and acceptance of the recommendations herein, the Committee will assist the Land Board in public education.

## HISTORIC PERSPECTIVES OF THE ENDOWMENT FUNDS

The following section is included in this report as essential background for the Endowment Land Transaction Advisory Committee to have as it considered its charge.

Presentations were made by the staff of the Idaho Department of Lands on the history of endowment reform efforts. ELTAC members reviewed major milestones and key documents that specifically related to our current charge. The following documents were used to understand endowment reform efforts to date as well as constitutional parameters:

- *Idaho State Constitution*
- *Admission Act*
- *Report and Recommendations of the Governor's Citizens Ad Hoc Evaluation Committee on Lands/Endowments, July 10, 2001*
- *State Trust Lands Asset Management Plan, July, 2008*

We chronicle the highlights of the establishment and management of Endowment funds that ELTAC believed are of significance to its work.

#### **1890 to 2000**

At statehood, Idaho was given a land grant from Congress to provide support for a variety of public institutions, principally public schools. This land grant was accepted through ratification of the state constitution that contained provisions guiding the state's management of these lands. Unlike the contemporary notion of "public lands," state trust

lands, or Endowment lands as they are referred to in Idaho, are public lands held in trust by the state for designated beneficiaries. As trustees, state land managers have a fiduciary duty to manage the lands for the benefit of the beneficiaries of the trust grant. These lands are sold or leased for a diverse range of uses to help meet that responsibility – generating revenue for the designated beneficiaries, today and for future generations.

When Idaho was admitted to the Union as the 43rd state in 1890, it was granted approximately 3,672,000 acres of land for the support of state institutions. This land was granted under the condition that it be managed in perpetuity as a trust for the beneficiary institutions. This mandate was codified in Article IX Section 8 of the Idaho Constitution, which also mandates that the lands be managed. The state Constitution established the State Board of Land Commissioners, also referred to as the Land Board, as the trustee over the assets of the nine Endowments. As trust manager, the Land Board is obliged to manage the assets of each trust with undivided loyalty to the beneficiaries of the trusts.

Over time, as properties were sold or exchanged, the proceeds from the sales and certain other income were deposited in the Endowment funds. The ultimate purpose of Idaho's land grant Endowments has been to provide a perpetual stream of income to the beneficiaries, Idaho's public schools. Over the years, the management of Endowment funds experienced changes. These funds were initially managed by the State Treasurer followed by the Department of Finance. In March of 1969, the State Legislature created the Endowment Investment Board, later changed to the Endowment Fund Investment Board (EFIB). The Idaho State Board of Land Commissioners was given governance authority over the EFIB and all endowment funds in July 2000 (*State Trust Lands Asset Management Plan*, July, 2008, page 5). Idaho Code § 58-101 created the Idaho Department of Lands to serve as the manager of the non-financial assets of each trust on behalf of the Land Board.

In the *State Trust Lands Asset Management Plan*, July, 2008, page 3, we quote:

"The state Constitution establishes the State Board of Land Commissioners (Land Board) as the trustee over the assets of the nine endowments. As trust manager, the Land Board is obligated to manage the assets of each trust with undivided loyalty to the beneficiaries of the trusts. Idaho Code 58-101 created the Idaho Department of Lands (IDL) to serve as the manager of the non-financial assets of each trust on behalf of the Land Board. Similarly, Idaho Code 57-718 created the Endowment Fund Investment Board (EFIB) which formulates policy for, and manages the investment of, the financial assets."

## **2000-2009**

Initially, during this time period, a major restructuring of the Endowment funds was implemented in July 2000. The Land Board was given governance authority over the EFIB. All Endowment funds and investment restrictions were made consistent with the Idaho Prudent Investor Act (Idaho Code Title 68, chapter 5).

The next step was the formation of an ad hoc Citizen's Evaluation Committee in the late January/early February 2001 timeframe. By mid March of that year, after extensive input from Land Board members, their deputies, Department of Lands, acting director and others, this ad hoc committee finalized their Charter Package as a working document. Thereafter,

they focused their efforts through three committee work teams, governance, organizational development, and investment policy. The following recommendations were made in the document, *Report and Recommendations of the Governor's Citizens Ad Hoc Evaluation Committee on Lands/Endowments* dated July 10, 2001:

- The Land Board should adopt a formal Land Trust Investment Policy that includes, among other standard items, the following three areas:
  - Statement of Investment Objectives
  - Annual Investment Plan
  - Commercial Real Estate Policies

" .....throughout our committee's discussions there was a concern that with these policies, reporting metrics and investment plans, there might be an implication that land assets failing to meet a targeted rate of return should be converted to the financial trust, which is another way of saying, dispose of the land. However, disposition of any land assets under unconstitutionally imposed requirements and the likelihood, in most cases, of non-competitive sales at auction really necessitates a careful look at another viable options namely, taking the steps necessary to realize the targeted rate of return on certain land assets. Clearly, these decisions will represent significant and very sensitive investment choices for the Land Board in the future." (*Citizens' Evaluation Committee-Lands/Endowments; Recommendation #1, Attachment 1, Page 3.*)

This recommendation from the Citizen's Evaluation Committee led to the need to examine the following language in the Constitution:

"The legislature shall, at the earliest practicable period, provide by law that the general grants of land made by congress to the state shall be judiciously located and carefully preserved and held in trust, subject to disposal at public auction for the use and benefit of the respective object for which said grants of land were made...."

As recorded in the document entitled State Board of Land Commissioners, March 17, 2009, Regular Agenda, the Endowment Reform Review Task Force was formed in September, 2005. Their charge was to track and report on Endowment reforms and identify the need for further statutory and policy refinement. The Task Force worked with the Endowment Fund Investment Board (EFIB) to satisfy most of the provisions under the original reform expectation. Out of this effort flowed the need for an overarching management document, the *State Trust Land Asset Management Plan*, first approved in December, 2007 and later updated July 30, 2008.

Specific sections of *The Asset Management Plan*, July 2008 are referenced as significant to the work of ELTAC.

#### Section 1. B. Mission, Page 3

All endowment assets of the State of Idaho must, per the State Constitution, be managed "in such manner as will secure the maximum long term financial return" to the trust beneficiaries. The assets will be managed to provide a perpetual stream of income to the beneficiaries by:

- Maximizing long-term financial return at a prudent level of risk,
- Protecting future generations' purchasing power, and
- Providing a relatively stable and predictable payout.

Section B. Land Management Philosophy, Page 16:

The Land Board, as trustees of Idaho's endowment trusts, has a duty to invest and manage the land trusts "as a prudent investor would," Idaho Code § 68-502(1), which includes development "of an overall investment strategy having risk and return objectives reasonably suited to the trust Idaho Code § 68-02(2). This section delineates the Board's land asset management philosophy and practices:

1. Management Goals

- Protect and enhance the value and productivity of the Land assets.
- Maximize financial returns from Land assets over time.
- Encourage a diversity of revenue-producing uses of Land assets.
- Manage Land assets prudently, efficiently, and with accountability to the beneficiaries.

These goals are best achieved by establishing general operating expectations for endowment trust lands, including but not limited to the following:

- Preserving land holdings where leasing will generate a competitive rate of return.
- Seeking to enhance land values before considering sale, or exchange of underperforming land assets.
- Acquiring lands, structures, and resources when the acquisition will add value or diversification to the overall trust portfolio.
- Selling lands, structures, and resources when the outcome adds value to the overall trust portfolio.

Section F. Land Acquisition and Disposal Strategy, Page 28

Challenges

- Constraints pursuant to Article IX, Section 8 that do not conform to modern business practices:
  - The sale of land is limited to transactions "...sold in subdivisions of not to exceed three hundred and twenty acres of land to any one individual, company or corporation."
  - All land sales are "...subject to disposal at public auction."

The above references provided perspective and context to ELTAC regarding the assignment they were given. With this as background information, ELTAC proceeded with an analysis of the current parameters of constitutional language, hindrances and opportunities for consideration by the Land Board.

## ANALYSES

### OVERVIEW OF COMMITTEE APPROACH

ELTAC prepared for their work through the following activities:

- Reviewed background information and reading materials provided by the staff of the Idaho Department of Lands.
- Investigated and reviewed approaches utilized in other states with regard to similar public land issues.
- Applied specific experience and expertise of the Committee members to the legal issues involved, specifically residential and commercial real estate, banking, land development, and real estate capital financing.
- Reviewed the current language of the Constitution and the Admission Bill.
- Analyzed the current business practices and governmental process to identify areas for potential improvement that may be prohibited under the current language in the Constitution and Admission Act.
- Analyzed individual opinions of each member regarding the following:
  - Ways in which the current language *hinders* the mission of the Endowment.
  - Reasons *why* specific language is an impediment to maximize the return of investment for the beneficiaries of the Land Endowment.
  - Possible *lost opportunities* if the language is not revised.
- Drafted recommendations made by the individual members for discussion and debate based on the analysis.
- Utilized scenarios to test both the current and recommended language for consequences and practical application.
- Prepared this written report for the Land Board to summarize ELTAC's findings and recommendations.

### CONCLUSION OF THE ENDOWMENT LAND TRANSACTION ADVISORY COMMITTEE

Based on the analyses conducted, ELTAC concluded that the existing language (i) limiting disposal of Endowment Land to public auction and (ii) certain limitations of the quantity of land that may be disposed of in any single transaction contained in the Idaho Constitution presents a constraint to the Land Board's primary charge to "secure the maximum long term financial return to the institution to which granted..." (Idaho Constitution Section 8 Location and Disposition of Public Lands). The information that follows outlines ELTAC's review of specific current language, the recommendation for how the language should be amended, and provides the Committee's rationale for such recommendations.

## RECOMMENDATIONS

The Endowment Land Transaction Advisory Committee presents its recommendations impacting the Idaho State Constitution and the Admission Bill. We outline the current language, the recommendation, and the rationale.

**RECOMMENDATION ONE**  
**CONSTITUTION OF THE STATE OF IDAHO**  
**ARTICLE IX EDUCATION AND SCHOOL LANDS**  
**SECTION 8. LOCATION AND DISPOSITION OF PUBLIC LANDS**

**A. CURRENT LANGUAGE**

ELTAC reviewed the highlighted language. The reference in red corresponds to the recommendation forwarded to the Land Board.

**SECTION 8: EDUCATION AND SCHOOL LANDS**

.....The legislature shall, at the earliest practicable period, provide by law that the general grants of land made by congress to the state shall be judiciously located and carefully preserved and held in trust, subject to disposal at public auction for the use and benefit **(RECOMMENDATION ONE)** of the respective object for which said grants of land were made, and the legislature shall provide for the sale of said lands from time to time and for the sale of timber on all state lands and for the faithful application of the proceeds thereof in accordance with the terms of said grants; provided, that not to exceed one hundred sections of state lands shall be sold in any one year, and to be sold in subdivisions of not to exceed three hundred and twenty acres of land to any one individual, company or corporation **(RECOMMENDATION TWO)**. The legislature shall have power to authorize the state board of land commissioners to exchange granted or acquired lands of the state on an equal value basis for other lands under agreement with the United States, local units of government, corporation, companies, individual, or combinations thereof.

**B. RECOMMENDATION ONE**

ELTAC recommends the language be changed as follows:

**SECTION 8: EDUCATION AND SCHOOL LANDS**

....The legislature shall, at the earliest practicable period, provide by law that the general grants of land made by congress to the state shall be judiciously located and carefully preserved and held in trust, **to be managed and disposed of in any reasonable manner to secure the maximum long term financial return** ~~subject to disposal at public auction for the use and benefit~~ of the respective object for which said grants of land were made, and the legislature shall provide for the sale of said lands from time to time.....

**C. RATIONALE**

The current Constitutional language (subject to disposal at public auction) unreasonably restricts the ability of the Land Board in carrying out its duty to maximize long-term returns. It does not provide flexibility to the manner in which land may be disposed. By prescribing the method of disposal the language may not allow for the maximum price to seller and/or the maximum long-term value to the beneficiaries. Further, the current language also does not allow the legislature the flexibility to create alternatives by statute.

Public auction is only one of many forms of sale that can be utilized to maximize the sale price of real property. The optimal form of marketing and sale is dependent on many factors, including market conditions, depth of market, type of property, specific property characteristics, and financing that may be available. The main reason for the proposed language change is to allow flexibility for maximizing the investment of the Endowment Lands to the beneficiaries.

The current language limits opportunity for negotiation. The language may limit or place burdensome restrictions on joint ventures to the point that they are not feasible, do not create incentives for developers or buyers and thus may have the effect of reducing values to the Endowment Land beneficiaries.

Typical transactions in the private sector provide buyers time to perform due diligence and to assess the risks, procure tenants, analyze costs, obtain necessary financing, and obtain entitlements. The current language does not allow for this normal process, and because this creates uncertainty, may reduce the value the developer or buyer will risk (reduces the price they will pay). Moreover, it is difficult to procure commitments for financing, procure tenants, negotiate leases, and obtain entitlements if it is not known who will ultimately be successful in procuring the property or know the ultimate price. Quite simply, it is impossible to quote rents without certainty; without tenants, there is no financing, especially in today's market.

Current language increases uncertainty, complications, requirements, and ultimately risks, which can bring down the value to the Endowment Land beneficiaries. In an auction, the higher the risk means the lower the bid. Reducing risk and uncertainty is valuable to both parties.

Under the current language, the extended length of time it takes to go through the process may eliminate the feasibility for both developers and/or prospective tenants. Timing is typically essential to developments and tenants alike. Tenants will simply move to other locations if the seller cannot move fast enough or provide certainty, especially when part of the project includes a parcel of public land. Not all tenants are willing to wait. Idaho could benefit from greater flexibility by applying the most advantageous methods for disposing a particular property to the specific circumstances of the transaction. This can be accomplished while maintaining public disclosure of transaction opportunities.

ELTAC also mentioned these additional points to consider as they impact the Endowment mission:

- The recommended change would give the Idaho Legislature the authority to create more flexibility for the Department of Lands in carrying out the day-to-day activities of managing the Endowment lands.
- The change would allow for disposal of land in a commercially reasonable manner consistent with the duties of care entrusted to the trustees and State law. A significant body of law and case law already exists with respect to the duty of care obligation of trustees, and thus would apply to transactions under the more flexible structure.

- Undue reliance on appraised values is not recommended. Appraisals are merely an opinion of value and often vary widely. This is particularly true at market inflection points. For example, there is currently a dearth of buyers in many real estate markets and real estate appraisals currently tend to overestimate what value may be obtained in the market place. Conversely, in heated markets, appraisals tend to under estimate market values. Appraisals also ignore the fact that different potential buyers value a particular property differently.
- The proposed language will give general guidance to the trustees in the Constitution rather than detailing specifics and will strengthen the Constitution to ensure that the trustees are and will always be fully responsible as fiduciaries of the trust. State law already requires the trustees to exercise duty and care to manage the Endowments as a prudent investor (IC 68-502(1) and to manage the portfolio of properties according to an overall strategy suited to the trust (IC 68-502(2); State Trust Lands *Asset Management Plan*, Page 16).

**RECOMMENDATION TWO**  
**CONSTITUTION OF THE STATE OF IDAHO**  
**ARTICLE IX EDUCATION AND SCHOOL LANDS**  
**SECTION 8. LOCATION AND DISPOSITION OF PUBLIC LANDS**

**A. CURRENT LANGUAGE**

ELTAC reviewed the highlighted language. The reference in red corresponds to the recommendation forwarded to the Land Board.

**SECTION 8: EDUCATION AND SCHOOL LANDS**

.....The legislature shall, at the earliest practicable period, provide by law that the general grants of land made by congress to the state shall be judiciously located and carefully preserved and held in trust, subject to disposal at public auction for the use and benefit **(RECOMMENDATION ONE)** of the respective object for which said grants of land were made, and the legislature shall provide for the sale of said lands from time to time and for the sale of timber on all state lands and for the faithful application of the proceeds thereof in accordance with the terms of said grants; provided, that not to exceed one hundred sections of state lands shall be sold in any one year, and to be sold in subdivisions of not exceed three hundred and twenty acres of land to any one individual, company or corporation **(RECOMMENDATION TWO)**. The legislature shall have power to authorize the state board of land commissioners to exchange granted or acquired lands of the state on an equal value basis for other lands under agreement with the United States, local units of government, corporation, companies, individual, or combinations thereof.

**B. RECOMMENDATION TWO**

C. The Committee recommends the following language be removed:

**SECTION 8: EDUCATION AND SCHOOL LANDS**

"...provided, that not to exceed one hundred sections of state lands shall be sold in any one year. ~~and to be sold in subdivisions of not exceed three hundred and twenty acres of land to any one individual, company or corporation."~~

**D. RATIONALE**

The current language ("sold in subdivisions not to exceed three hundred twenty acres to any one individual, company or corporation") may preclude opportunities that are advantageous to the Endowment Land beneficiaries, the schools. This language would not allow the state to take advantage of strong market cycles and could limit potentially desirable opportunities to sell, lease, or swap large parcels of land.

Typical transactions in the private sector currently exceed this size and would be precluded by the limitation, especially if the project is residential or a mixed use project. Larger tracts of land may be commercially feasible for private development. The current language would prohibit these opportunities. Most planned communities favored by county planners have a minimum acreage for application greater than 120 acres, and may exceed the current limitation.

**RECOMMENDATION THREE**  
**CONSTITUTION OF THE STATE OF IDAHO**  
**ARTICLE IX EDUCATION AND SCHOOL LANDS**  
**SECTION 10. STATE UNIVERSITY –LOCATION, REGENTS, AND LANDS**

**A. CURRENT LANGUAGE**

ELTAC reviewed the highlighted language. The reference in red corresponds to the recommendation forwarded to the Land Board.

**SECTION 10: STATE UNIVERSITY—**  
**LOCATION, REGENTS, AND LANDS**

.....No university lands shall be sold for less than ten dollars per acre, and in subdivisions not to exceed one hundred and sixty acres, to any one person, company or corporation. **(RECOMMENDATION THREE)**

**B. RECOMMENDATION THREE**

The Committee recommends the following language be removed:

No university lands shall be sold for less than ten dollars per acre. ~~and in subdivisions not to exceed one hundred and sixty acres, to any one person, company or corporation.~~

**C. RATIONALE**

The current language (“sold in subdivisions not to exceed one hundred twenty acres to any one individual, company or corporation”) may preclude opportunities that are advantageous to the Endowment Land beneficiaries. This language would not allow the state to take advantage of strong market cycles and could limit potentially desirable opportunities to sell, lease, or swap large parcels of land.

## **RECOMMENDATION FOUR IDAHO ADMISSION BILL**

### **A. CURRENT LANGUAGE**

ELTAC reviewed the highlighted language. The reference in red corresponds to the recommendation forwarded to the Land Board.

§5. Sale, lease, or exchange of school land.

- (1) In general. (c), all land granted under this Act for educational purposes shall be sold only at public sale. **(RECOMMENDATION FOUR)**
- (2) (ii)(I) may be deposited in a land bank fund to be used to acquire, in accordance with State law, other land in the State for the benefit of the beneficiaries of the public school permanent Endowment fund;  
(c) Exchange.-
- (3) Valuation.-The values of exchanged lands shall be approximately equal,

### **B. RECOMMENDATION FOUR**

The Committee recommends the following change:

- (1) In general. (C), all land granted under this Act for educational purposes shall be sold as provided by Idaho Law. ~~be sold only at public sale.~~

### **C. RATIONALE**

After review of the Admission Bill, it was determined that only one of the highlighted areas required revision at this point to provide authority to implement Recommendation One. The rationale for this change is consistent with the rationale found on page 13 of this document in reference to public auction; that is, the Land Board needs maximum flexibility to maximize the return on investment for the public schools.

## OTHER ISSUES

### **FINANCIAL TOOLS:**

In this section, ELTAC examines additional possible impediments that may impact the Land Board's ability to finance infrastructure and improvements. This may prompt the Board to seek modifications outside the scope of this committee's original charter. The committee has examined and highlighted tools that would facilitate value-added transactions.

#### **I. Land Bank Fund Limitations**

Idaho code §58-133 has been interpreted to preclude the department from using such funds to pay for the cost of constructing improvements on the land (i.e. architectural design, building supplies, and construction permits).

The department would have to craft a fixed-price turn-key project wherein a construction contractor and their banker assume all the risks to deliver a fully functional improvement at the end of the contract. While this has been done by the state of Colorado, market timing and the ability of the contractor may prohibit using this process because it is too rigid and complex.

Also, Land Bank funds are only accumulated by the sale of other lands. Therefore, without significant sales within the five-year reinvestment period required by the Land Bank statute, the balances in the Land Bank fund remain small and therefore typically may not be viable for significant improvement purchases.

#### **II. Permanent Fund Financing**

It appears that Article 9, Section 11 of the Idaho Constitution provides broad investment criteria to the Land Board that authorizes it to invest Permanent Endowment Funds. Guidance stipulates that investments can be made in a variety of federal, state, and local bonds and "...other investments in which a trustee is authorized to invest pursuant to state law." This appears to give the Land Board the flexibility to work with the Endowment Funds Investment Board to use Permanent Fund monies to invest in value-added infrastructure on Endowment Lands.

Having the ability to provide flexible funding options in a business transaction will enhance the Land Board's capability to secure value-added projects. The Board should research and identify a mechanism or process that the Department of Lands would include when marketing a property for development that will significantly enhance the value of return to the trust and the beneficiaries.

For example, consider this scenario:

- Land value: \$5M
- Project Management and Concept Design Costs: \$5M
- Infrastructure and Improvement Costs: \$10M

Currently, the state only contributes the land value (\$5M) and likely receives only dollar-for-dollar compensation for their contribution.

If changes are implemented and flexibility is enhanced so that the department can fund some of the infrastructure and improvement costs, a more traditional return on investment model would be possible wherein the department would receive a higher percentage of the profit on the total project. If the above investment sold out for \$50M, the Endowment return on investment would be significantly enhanced.

### **III. Loaning Credit**

Article VIII, Section 2, Sub-section 2 of the Constitution discusses loaning of State credit. The only exemption seems to be for the Public School Guarantee Fund which provides for the guarantee of the debt of school districts using the Public School Endowment Fund (Permanent Fund). The Board may desire to create an additional subsection of Article VIII, Section 2 of the Constitution that clarifies an ability to incur debt for value-added transactions for land improvements and is not considered a loan of state credit.

The Citizens Ad Hoc Committee discussed debt at a 50% loan-to-value-ratio. However, codifying such a limitation runs counter to the objective of the recommendation to add flexibility by providing an array of financial tools. Rather, the Land Board should retain the ability to exercise prudent investment criteria based on the nature of specific projects and the risks they may pose. The Land Board might consider seeking the authorizing ability to work directly and continuously with the Idaho State Building Authority on possible appropriate projects as they arise, similar to the continuous appropriation afforded the Land Bank Fund.

These financial tools as well as the previous recommendations provide flexibility to the Land Board and their mandate to maximize funds to beneficiaries.

### **IV. Public Records Disclosure**

Idaho Code Section 9-340 D (Section 6) allows local agencies and the department of Commerce to protect information for the specific purpose of assisting businesses interested in locating, maintaining, investing in, or expanding business operation in Idaho. Participants in private sector and commercial business transactions typically expect confidentiality in negotiations and protection of trade secrets of the parties. Likewise, it is recommended that the same protections be afforded to the State Board of Land Commissioners when negotiating leases, purchases, or sales of state Endowment Lands. Transactional information, if disclosed, may disadvantage the Land Board in carrying out its fiduciary duty to secure the maximum long term financial return for the beneficiaries of the Endowment.

For these reasons, the committee recommends that the Board pursue similar protection under Public Records Law.

## SUMMARY OF RECOMMENDATIONS

The following outlines a summary of the proposed changes for The Idaho Constitution, Article IX in red:

### **SECTION 8: EDUCATION AND SCHOOL LANDS:**

The legislature shall, at the earliest practicable period, provide by law that the general grants of land made by congress to the state shall be judiciously located and carefully preserved and held in trust, ~~to be managed and disposed of in any reasonable manner to secure the maximum long term financial return subject to disposal at public auction for the use and benefit~~ of the respective object for which said grants of land were made, and the legislature shall provide for the sale of said lands from time to time and for the sale of timber on all state lands and for the faithful application of the proceeds thereof in accordance with the terms of said grants; provided, that not to exceed one hundred sections of state lands shall be sold in any one year, ~~and to be sold in subdivisions of not exceed three hundred and twenty acres of land to any one individual, company or corporation.~~ The legislature shall have power to authorize the state board of land commissioners to exchange granted or acquired lands of the state on an equal value basis for other lands under agreement with the United States, local units of government, corporation, companies, individual, or combinations thereof.

### **SECTION 10: STATE UNIVERSITY— LOCATION, REGENTS, AND LANDS.**

No university lands shall be sold for less than ten dollars per acre. ~~and in subdivisions not to exceed one hundred and sixty acres, to any one person, company or corporation.~~

### **ADMISSION BILL**

§5. Sale, lease, or exchange of school land.

(1) In general. (c) all land granted under this Act for educational purposes shall ~~be sold as provided by Idaho Law. be sold only at public sale.~~

### **RELATED RECOMMENDATIONS**

- A. Facilitate the use of financial tools, such as Permanent Fund Financing and Incurring Debt, to provide maximum flexibility to the Land Report for value-added contribution to the beneficiaries.
- B. Pursue similar protection under Public Records Law for confidentiality in negotiations as provided the private sector.