

IS IT CONSTITUTIONAL FOR THE IDAHO LEGISLATURE TO BE INVOLVED WITH LAND BOARD ACTIONS? IDAHO CONSTITUTION ART. IX

Art. IX, 3. "...the earnings of the public school permanent endowment fund shall be deposited into the public school earnings reserve fund and distributed... as may be prescribed by law."

"... the legislature may appropriate from the public school earnings reserve fund..."

"The state treasurer shall be the custodian of these funds, and the same shall be invested as may be by law directed."

"As defined and prescribed by law, the state shall supply losses to the public school permanent endowment fund."

Art. IX, 4. "If those proceeds are not used to acquire other lands within a time provided by the legislature,..."

Art. IX, 7. "The state board of land commissioners shall have the direction, control and disposition of the public lands...under such regulations as may be prescribed by law."

Art. IX. 8. "It shall be the duty of the state board of land commissioners to provide for the location, protection, sale or rental of all lands... under such regulations as may be prescribed by law."

"The legislature shall... provide by law that the general grants of land made by congress shall be carefully preserved...subject to disposal at public auction..."

"...the legislature shall provide for the sale of said lands...and for the sale of timber..."

"The legislature shall have power to authorize the land board to exchange granted lands...."

Art IX, 11. "The permanent endowment funds...may be invested...pursuant to state law."

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CONSTITUTION OF THE STATE OF IDAHO

ARTICLE IX EDUCATION AND SCHOOL LANDS

Section 8. LOCATION AND DISPOSITION OF PUBLIC LANDS. It shall be the duty of the state board of land commissioners to provide for the location, protection, sale or rental of all the lands heretofore, or which may hereafter be granted to or acquired by the state by or from the general government, under such regulations as may be prescribed by law, and in such manner as will secure the maximum long term financial return to the institution to which granted or to the state if not specifically granted; provided, that no state lands shall be sold for less than the appraised price. No law shall ever be passed by the legislature granting any privileges to persons who may have settled upon any such public lands, subsequent to the survey thereof by the general government, by which the amount to be derived by the sale, or other disposition of such lands, shall be diminished, directly or indirectly. 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 or 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. 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, corporations, companies, individuals, or combinations thereof.

ARTICLE IX EDUCATION AND SCHOOL LANDS

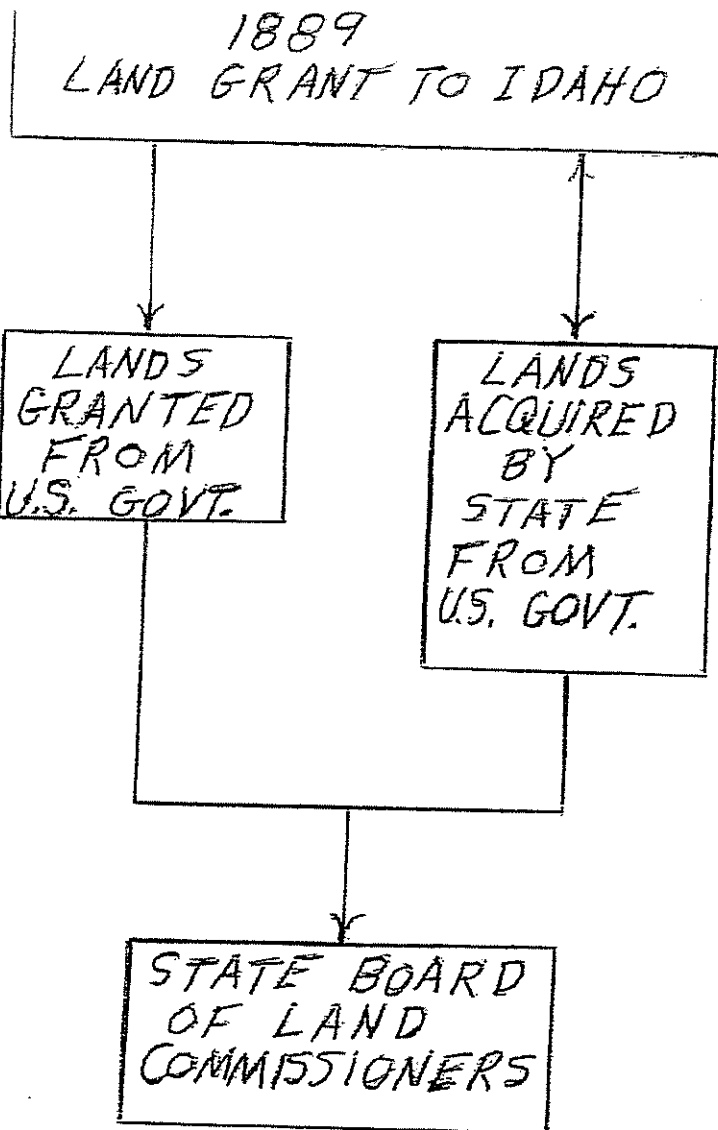
Section 7. State board of land commissioners. The governor, superintendent of public instruction, secretary of state, attorney general and state controller shall constitute the state board of land commissioners, who shall have the direction, control and disposition of the public lands of the state, under such regulations as may be prescribed by law.

Land
by Definition:

"'Land' is not restricted to the earth's surface, but extends below and above the surface. Nor is it confined to solids, but may encompass within its bounds such things as gases and liquids. A definition of 'land' along the lines of 'a mass of physical matter occupying a space' also is not sufficient, for an owner of land may remove part or all of that physical matter, as by digging it up and carrying away the soil, but would nevertheless retain as part of his 'land' the space that remains. Ultimately ... 'land' is simply an area of three dimensional space, its position being defined by natural or imaginary points located by reference to the earth's surface. 'Land' is not the fixed contents of that space, although, as we shall see, the owner of that space may well own those fixed contents. Land is immoveable, as distinct from chattels, which are moveable; it is also, in its legal significance, indestructible. The contents of the space may be physically severed, destroyed or consumed, but the space itself, and so the 'land', remains immutable." *Peter Butt, Land Law 9 (2nd ed. 1988) Reprinted in Black's Law Dictionary, Seventh Edition*

Idaho Supreme Court decision, Village of Moyie Springs v. Aurora Mfg. Co. (1960):

"... it is not the function of the government to engage in private business, ... If the state-favored industries were successfully managed, private enterprise would of necessity be forced out, and the state, through its municipalities, would increasingly become involved in promoting, sponsoring, regulating, and controlling private business, and our free enterprise economy would be replaced by socialism. The constitutions of both the state and the nation were founded upon a capitalistic, private enterprise economy, and were designed to protect and foster private property and private initiative."



1. LOCATION
2. PROTECTION
3. SALE - AT AUCTION
4. RENTAL

TO SECURE THE MAXIMUM LONG TERM FINANCIAL RETURN

This explains what the Constitution requires of the Land Board in dealing with the endowment lands.

LAND GRANT
School Lands
Idaho Admission Bill

Money From Sale of Land

LAND BANK FUND
To Buy Other Land
Art. IX Sec. 4

PUBLIC SCHOOL PERMANENT ENDOWMENT FUND
Inviolable & Intact Art. IX Sec. 3

Current & Planned Acquisitions

- * Commercial Businesses
- * Apartments
- * Parking Lots
- * Restaurants
- * Mobile Home Parks
- * Hotels
- * Office Properties
- * Industrial Properties
- * Retail Properties
- * Congregate Care Facilities

Earnings

PUBLIC SCHOOL EARNINGS RESERVE FUND
Art. IX Sec. 3

Distributed to Schools and Other Endowment Funds

Higher Risk
Non Liquid
Non Tax Paying Assets
Compete with Private Sector

Instead of putting money into the schools - This is what the Land Board is doing.

Quotes from Members of the State Land Board and Department of Lands.
This is their plan for the future.

1. Chairman of Board: *Gov. Otter*

- a. One aspect of managing endowment lands is to create a more diversified land portfolio.
- b. This includes expanding the portfolio to include more commercial properties. (personal letter)

2. Director of Dept. of Lands: *George Bacon (Retired)*

- a. Trust lands are not public lands. (Idaho Statesman, Nov. 28, 2010)
- b. We don't have a whole lot of commercial property. We see that as an area to build diversity in our land portfolio. (Idaho Reporter, Jan. 6, 2011)
- c. Downtown expansion is something we are looking at. (Idaho Reporter, Jan. 17, 2011)
- d. We have a lot of vacant lots, the state has options to do more than just own central Boise properties. (Idaho Reporter, Jan. 6, 2011)
- e. We've had the opportunity to go vertical in the past. Folks coming to us wanting to establish condos downtown. (Idaho Reporter, Jan. 6, 2011)
- f. We need a constitutional amendment to be able to operate like anyone else would or we're never going to get top dollars. (Idaho Reporter, Jan. 6, 2011)
- g. The department of Lands is going after it (commercial property) with private brokers out there looking for stuff to sell the state. (Idaho Reporter, Jan. 6, 2011)

3. Strategic business analyst, Dept. of Lands *Jane Wright*

- a. When asked if the Land Board would buy a fast-food restaurant she responded, "that has at least been considered." (Idaho Statesman, Oct. 22, 2010)
- b. The department has been working with several commercial brokers to find more commercial properties. (Idaho Statesman, Oct. 22, 2010)
- c. Movement into commercial concerns simply makes good business sense. (Idaho Reporter, Jan. 6, 2011)

4. Deputy director for Dept. of Lands.... *Kathy Opp (Retired)*

- a. Our public relations director can help muster acceptance of state involvement in commercial ventures. (Idaho Reporter, Jan. 10, 2011)
- b. The department took a public relations hit over it's purchase of a self storage business in August. (Idaho Reporter, Jan. 10, 2011)
- c. The department plans to expand commercial holdings. (Idaho Reporter, Jan. 10, 2011)

1.0 SCOPE OF ACTIVITIES

1.1 PURPOSE

The purpose of this Request for Proposal (RFP) is to solicit proposals from innovative and flexible qualified firms to provide commercial property management for the Idaho Department of Lands ("IDL"). The selected contractor will be the sole and exclusive property manager of the properties designated in this contract. This means that no other property management firm will be retained to manage the designated properties. IDL, as the entity responsible for the properties, retains the right to oversight and involvement in the property management.

1.2 PROPERTIES: the properties to be covered under this Contract are listed below:

1) Central Washington Place	472 W Washington St, Boise, ID	Office Use
2) Capitol Park Plaza	300 N 6 th St, Boise, ID	Office Use
3) Garro Building	816 W Bannock St, Boise, ID	Office Use
4) Sherm Perry Building	802 W Bannock St, Boise, ID	Retail Use
5) Travis Jeffries Building	590 W Washington St, Boise, ID	Office Use
6) 512 W Bannock Building	512 W Bannock St, Boise, ID	Office Use
7) Home Federal Building	307 N 8 th St, Boise, ID	Bank Use
8) Affordable Self-Storage	450 S Maple Grove Rd, Boise, ID	Self-Storage
9) Collins House	7050 S Pleasant Valley Rd, Boise, ID	Single-Family
10) Federal Way & Gowen Rd	SW cnr Federal & Gowen, Boise, ID	Land - Frontage
11) Watertower Finished Lots	Watertower/Stratford, Meridian, ID	Land - Lots
12) Garro Lot	816 W Bannock St, Boise, ID	Parking Lot
13) Hoff Lot	SW cnr 8 th & Jefferson, Boise, ID	Parking Lot
14) 512 West Bannock Lot	512 W Bannock St, Boise, ID	Parking Lot
15) 590 W Washington Lot	590 W Washington St, Boise, ID	Parking Lot
16) 417 West Jefferson Lot	417 W Jefferson St, Boise, ID	Parking Lot
17) 4 th & Bannock Lot (Gravel)	NW cnr 4 th & Bannock St, Boise, ID	Parking Lot
18) 401 West Bannock Lot	401 W Bannock St, Boise, ID	Parking Lot
19) 211 North 5 th Street Lot	211 N 5 th St, Boise, ID	Parking Lot

IDL reserves the right to add or delete properties to the contract. Contractor's duties and obligations, as identified in this document, shall thereafter apply to the new property(ies) and the contract shall be supplemented by a contract amendment signed by Contractor and IDL.

This is a list of some of the properties the Land Bd. owns in Boise. All of them are taken off the property tax rolls.

Idaho Code Amendments

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55-101A. "LANDS" Defined. Lands are the material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, natural growth, or other substance. ~~and include free or occupied space for an indefinite distance upwards as downwards, subject to limitations upon the use of airspace imposed and rights in the use of airspace granted, by law.~~ *

Land is immovable ; as distinct from chattels, which are moveable: it is also in it's legal significance, indestructible. The contents of the space may be physically severed, destroyed, or consumed, but the space itself, so the "land" remains immutable.

55-101. REAL PROPERTY DEFINED. Real property or real estate consists of the combination of the following:

1. Lands, possessory rights to land, ditch and water rights, and mining claims, both lode and placer.
2. That which is affixed to land.
3. That which is appurtenant to land.

* Highlighted lines to be removed.

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Review of Idaho Land Board Actions 2014

By Robert Forrey

In 2001, Gov. Kempthorne appointed a Citizen Committee to make recommendations to the Idaho Land Board in order to increase the endowment fund revenues.

The Committee reported that the Land Board and the Idaho Dept. of Lands had a "mindset" that must undergo a "paradigm shift." That paradigm shift has resulted in the Land Board's long and Mid-Term vision Plan which states that the Board will be "focusing on transitioning and growing commercial income producing assets."

The Chairman of the Land Board, wrote in a personal letter to me, "One aspect of the managing of endowment lands is to create a more diversified land portfolio. This includes expanding the portfolio to include more commercial properties."

The former director of the IDL, is quoted in the Idaho Reporter, Jan. 6, 2011 stating, "The department of Lands is going after it (commercial property) with private brokers out there looking for stuff to sell the state."

The strategic business analyst for IDL, is quoted in the Idaho Statesman, Oct. 22, 2010, "The department has been working with several commercial brokers to find more commercial properties." She also commented to the Idaho Reporter on Jan. 6, 2011, "Movement into commercial concerns simply makes good business sense."

In addition to the Board's Long Term Vision Plan, they adopted the State Trust Lands Asset Management Plan in Dec. 2011. The objective of this plan states the following, "Detailed underlying business plans are required for each asset classification..." The assets include, "but are not limited to, Commercial Real estate properties, office, retail and light industrial business designations, public facilities, hospitality, energy resources (wind hydro, geothermal) communication sties, ski resorts, etc.," (pg.23) This

2.

plan also calls for changing ownership and land management practices of federal and private land holdings . (emp. added pg. 24) And to add properties to the commercial portfolio...”

Violating the endowment trust requirement for “undivided loyalty” to the trust and it’s beneficiaries, the Asset Plan calls for, “providing for the support of the prorata cost of health, life, safety services benefiting the properties and tenants.” (emp. added pg.24)

To accomplish the goals of the Asset Plan, the Land Board Members list as their, “Challenges: Changing social and political attitudes and values, markets , and products.” And, “Operating a profit oriented business within a government agency.” (pg.26)

Appendix A of the plan describes the Asset Business Plan Template. Some of the features in the Template are to: “Identify and Describe our Competition. Who are they, the size of the firms, their location, their products and capacity, describe competitor strengths, products and competing resources.” (pg 35)

A major challenge for the Land Board in putting their Asset Management Plan into action is the Idaho Constitution, Art. IX, Sec.8. The Constitution limits the Board to dealing only with, “lands, heretofore... granted to or acquired by the state by or from the general (Federal) government...” In addition, the Constitution requires that, “...grants of land made by congress...”are, “...subject to disposal at public auction...”

To overcome these Constitutional restrictions, the Land Board plans an attempt to amend the Idaho Constitution. Page 31 in the Asset Management Plan, states as “Challenges: Constraints pursuant to Article IX Section 8 that do not conform to modern business practices: All land sales are subject to disposal at public auction.”

Former IDL Director George Bacon commented to the Idaho Reporter, Jan. 6, 2011, “we need a constitutional amendment to be able to operate like anyone else would or we’re never going to get top dollar.”

At the July 21, 2009 meeting of the state board of land commissioners, the board discussed and accepted the report of the citizen based Endowment Land Transaction Advisory Committee.

“The report identified the need to reform portions of the Idaho Constitution and Admissions Bill to allow the board greater flexibility in its endowment land leasing, sales, exchange and development program. Existing language presents hurdles that tend to protract negotiations, create convoluted and awkward contract terms, limit revenue sharing opportunities and even arrest the state’s ability to capitalize on current market conditions.”

The Land Board continues to violate the Idaho Constitution by not holding auctions when disposing of endowment lands. The Idaho Supreme Court has ruled against them on several occasions and most recently in Wasden v State Bd of Land Commissioners. The Court ruled that, “In addition to “disposal” the section (art, IX sec.8) variously refers to “sale,” “rental,” or other disposition of such lands.” (pg.10)

The Court went on to write, “The language of Art IX, Sec. 8, unambiguously requires that any disposal of endowment land must be at public auction.” Then quoting East Side v State Bd. of Land Comm. Wrote “... that the State shall receive the greatest possible amount for the lease of school lands for the benefit of the school funds, and for this reason competitive bidding is made mandatory.” (pg. 10)

As the Idaho land Board continues its quest to expand and grow their involvement in the private enterprise world in competition with private business, they ignore the warning from the Idaho Supreme Court in Village of Moyie Springs V. Aurora Mtg. Co. (1960) “...it is not the function of government to engage in private business, ...if the state favored industries were successfully managed, private enterprise would of necessity be forced out, and the state, through its municipalities, would increasingly become involved in promoting, sponsoring, regulating and controlling

private business, and our free enterprise economy would be replaced by socialism.”

Since the 1970s, we are increasingly following another system of government that opposes the principles of the Constitution.

Without private property, individuals are powerless to oppose the government’s attempt to infringe on their rights or control the fruit of their labor.

Where property belongs to the state, the occupiers of that property are hesitant to speak out against the government for fear of eviction or their job being taken away.

Government ownership of commercial and residential property is about control, taking the land and property away from the people.

It is apparent that the members of the Idaho Land Board, knowingly or not, are leading Idaho into another system of government that the Founding Fathers of the Idaho Constitution worked so hard to guard against.

Final Thoughts

The 10 Barrel Beer Pub “negotiated” lease is a prime example where the Land Board has altered or removed the competitive nature of the auction itself, either by limiting the class of people who may participate or by ignoring the entire proceeding.

Only the selected lessee was allowed to negotiate a contract to lease a building owned by the school endowment trust, 10 Barrel Beer Pub. The competitive nature of the auction was poisoned when the class of participants was artificially limited; no one else could place a bid at auction.

The simple participation in the auction process of even “unfit” bidders will necessarily drive up bids of the other parties who, of course, do not know how the Land Board will ultimately rule or just who is willing to pay the highest return with their bid.

Without holding competitive bids, the Land Board has nearly guaranteed a lower return for the schools because the simple presence in the auction of multiple bidders will cause all participants to raise their bids, thus achieving the maximum long-term financial return on Idaho’s school trust lands.

In summary, the Idaho Land Board has a long range plan to:

1. Enter into the Commercial Business Market Place in competition with private enterprise.
2. Amend the Idaho Constitution so that it will “conform to modern business practices,” and to repeal the requirement that endowment land disposals be “subject to disposal at public auction.”
3. To be able to operate a business like anyone else would within a government agency.

Idaho Supreme Court decision, Village of Moyie Spings v. Auroara Mfg. Co. (1960)

“The Constitutions of both the state and the nation were founded upon a Capitalistic , Private Enterprise Economy, and were designed to protect and foster private property and private initiative.”

Note: Some of the comments above were taken from the Idaho Law Review, 40 Idaho L. Rev 187 (2003) by Erik Ryberg.

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Mr. Chairman and Members of the Committee,

In recent years the Idaho Land Board has injected itself into the competitive free market in direct competition with private enterprise.

The Land Board has obtained a business license No. D1411807 with plans to expand its commercial operations into office, retail, industrial, apartment properties, even a brew pub and restaurant.

According to the Idaho Reporter, former director of the Department of Lands, George Bacon stated that "The Department of Lands is going after commercial property with private brokers out there looking for stuff to sell the state." He went on to say, "We need a constitutional amendment to be able to operate like anyone else would or we're never going to get top dollar."

Mr. Chairman, under our system of government it was never envisioned that the State would operate like "anyone else" would.

I would like to read two short statements from the North Carolina and Idaho Supreme Courts.

North Carolina: "In reiterating that it is not the function of the government to engage in private business, the opinion quoted, with approval, the following language from the Supreme Court of Idaho."

Quoting *Village of Moyie Springs V. Aurora Mfg. Co.*:-

"If the state-favored industries were successfully managed, private enterprise would of necessity be forced out, and the state through its municipalities would increasingly become involved in promoting, sponsoring, regulation and controlling private business and our free private enterprise economy would be replaced by socialism. The constitutions of both state and nation were founded upon a capitalistic private enterprise economy and were designed to protect and foster private property and private initiative."

Mr. Chairman, it appears that the members of the Idaho Land Board and the Dept. of Lands are doing the very thing that our Idaho Supreme Court warned that, "our free private enterprise economy would be replaced by socialism."

I would like to quote and point out to the committee several statutes from the Idaho Code, the Idaho Supreme Court and the Idaho Attorney General having to do with education endowment funds.

First, let's look at the definition of Endowment Fund. Idaho Code 57-717; "Endowment Fund means the financial proceeds of lands granted to or acquired by the state by or from the general government."

Next, we have Idaho Code 57-715; "Permanent endowment funds of the state are hereby declared to be trust funds of the highest standard as directed by law."

The Land Board is currently speculating in business investments which are a commercial standard with higher risk and do not rise to the level of "highest and most sacred."

Blacks Law Dictionary – seventh addition defines speculation.

1. Speculation – "The buying or selling of something with the expectation of profiting from price fluctuations."
2. "The act or practice of theorizing about matters which there is no certain knowledge."
3. Speculative risk – "A risk that can result in either a loss or gain. This is not the highest and most sacred standard." as defined by the Idaho Supreme Court.

Mr. Chairman, I'm sure there are business men and women on this committee who know that there are no guarantees in operating a business.

It is, at best, speculation.

In Idaho Watersheds Project vs. State Board of Land Commissioners in 1998, the Idaho Supreme Court stated, "In Lassen, the Supreme Court emphasized that the states must not substitute subjective speculative considerations in place of realizing full, direct, economic value for endowment lands." Speculating in institutional commercial businesses does not meet this standard.

Idaho A.G. Legal Guideline, June 10, 1996. Page 6. "First, the Idaho Constitution, Art. 9, Section 11 requires an unconditional promise to repay the principal lent as well as interest. Second, the Idaho Code, through the Prudent Man Investment Act prohibits speculative investments."

Idaho A.G. opinion No. 88-1, page 8: "However, the constitutional provisions regarding the endowment board's fiduciary duties would not sanction speculation."

Attorney General Opinion No. 10-1...

"... investments are limited by the Idaho Constitution and cannot be expanded by the legislation resulting in a diversion of Public School Endowment funds from the support of public schools."

Mr. Chairman, if the legislature cannot divert these funds to make speculative investments, it stands to reason, neither can the Land Board nor the Department of Lands' personnel.

Mr. Chairman, I have no less than 28 opinions and court rulings that consistently over the years have made the following statements regarding investment of endowment funds:

1. There "must be a guarantee of full repayment."
2. There must be an "unconditional promise to repay."
3. "Security must be guaranteed."

Mr. Chairman, speculative investments in commercial businesses have no guarantees of a financial return. No business can keep an unconditional promise to make a profit.

School endowment funds are a sacred trust and should never be put at risk to speculation.

This interim committee is in a very good position to introduce legislation to stop the Land Board's actions and support our free enterprise system.

In closing, I would like to take a close look at just what our Idaho Constitution requires or permits the Land Board to do when considering how to, “secure the maximum long term financial return on investment.”

Art. 9, Sec. 8 is very clear. “The Land Board is to provide for the location, protection, sale or rental of all lands heretofore, or which may hereafter be GRANTED to or ACQUIRED BY THE STATE BY OR FROM THE GENERAL GOVERNMENT.” “... in such manner as will secure the maximum long term financial return ...”

The only assets the Land Board may deal with are LANDS granted from or acquired by the state from the general government.

The general government does not grant commercial buildings, businesses, storage units, congregate care facilities, mobile home courts or anything of this sort to the several states, and certainly NOT a brew pub and restaurant.

Mr. Chairman, and members of this committee, I implore you to read our Constitution carefully, and take legislative action before this situation has to be settled by our courts.

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LAND BOARD EXTENSION OF LEASE TERMS

Wasden v. Land Board, Opinion No. 104. 2012

In the 2012 law suit of Wasden V Land Board, Page 10, "The Court (Idaho Supreme Court) has recognized that the Board does not have the discretion to grant a lease to an applicant who does not place a bid at an auction, based upon Idaho's Constitution and statutory mandate that the Board conduct an auction."

The Idaho Constitution, Art IX, Sec.8 requires the Land Board to "...secure the maximum long term financial return..." on the lands that were granted from the Federal Govt. when Idaho became a state.

The Court has ruled that "...for this reason competitive bidding is made mandatory." This ruling also pointed out that it is clearly unconstitutional to eliminate the conflict auction and instead require market rent. Market rent is determined at auction. Furthermore, the court stated that, The "disposal" or "disposition" of public lands obviously includes the sale thereof and just as obviously includes other types of disposal or disposition." Therefore a "disposal" would include a sale, lease or an exchange.

For example, during the drafting of the Idaho Constitution, delegate J.W. Reid explained that the wording or other deposition meant; "Now this gives power to sell and dispose of these lands by sale, lease or any other way." Since a lease is a disposal, there must be an auction to lease endowment land to determine market value and secure the maximum financial return to the endowment.

"When a lease term has expired it comes to an end and is a formal termination, the date on which an offer, option or the like ceases to exist." (Blacks seventh addition) The Land Board cannot arbitrarily extend a lease that has expired or terminated because it no longer exists and has come to its end. A new lease must be offered at auction to determine a current market value and gain the maximum financial return under the current market conditions.

The Land Board's current plan to extend leases at Payette Lake and Priest Lake is clearly unconstitutional and should not be executed without conducting new lease terms at auction.

Land Board vs. Land

Members of the Idaho Land Board are required by the Idaho Constitution, Art. IX Sec. 8, to "secure the maximum long term financial return" for the public school endowment fund.

The logical question is, maximum return on what? The obvious and clear answer is also obtained in Art. IX, Sec. 8 of the Idaho Constitution.

" It shall be the duty of the state board of land commissioners to provide for the location, protection, sale or rental of all the lands heretofore or which may, hereafter, be granted to or acquired by the state by or from the general government..."

It is clear from this language that the Idaho Land Board's power is limited to only those lands granted to the state from the general government, or those lands acquired by the state from the general government.

In spite of this limitation of power by our Constitution, the Land Board members continue to purchase commercial properties, buildings and businesses on the open market from anyone who will sell to them.

Notice that the only thing granted to the State from the general government was land. And the only thing to be acquired by the State from the general government is land.

Even the Idaho Admission Bill in Art. 4, states, "Sections numbered 16 and 36 in every township of said state... are hereby granted to said state for the support of common schools."

These "sections" that were granted are land, not office, retail, industrial, and apartment properties. They are not mobile home parks, congregate care facilities, brew pubs and storage units. The Land Board Cottage Site Plan and Asset Management Plans are being implemented to put the Land Board into the commercial real estate market competing with private enterprise.

The Constitution limits the Land Board to dealing with land, not real estate and commercial businesses.

Idaho Code 55-101A. "Land" defined:

"Lands are the material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance,..."

Black's Law Dictionary: "Land is immovable as distinct from chattels, which are moveable; it is also, in its legal significance, indestructible.

Courts will apply the rules of statutory construction to construe constitutional provisions. " They will give effect to the plain language of an unambiguous statutory or constitutional provision (Verska V. St. Alphonsus, 2011) It reviews the provision's language as a whole, considering the meaning of each word, so as not to render any word superfluous or redundant. (BHC Inter. Hops. V. Ada Cnty. 2010)"

It is also clear that the members of the Idaho Land Board have violated the limits imposed on them by the Ida. Constitution by expanding into the commercial, retail estate business.

"The Idaho Constitution specifies the Board's duties in managing State Endowment LANDS. Art. IX, Sec. 8 expressly states that endowment LANDS must be held in trust to secure the maximum long term financial return, subject to "disposal" at public auction." (Emp. added) Wasden v. Land Board, 2012

There is no argument concerning the securing of the maximum financial return, this should absolutely be done. However, our Constitution states that this will be done by managing "the general grants of LAND made by Congress to the State... (Emp. added) and not to conduct business in competition with private enterprise.

The purpose of the Land Board is to deal with LAND not real estate.

Robert Forrey, Former Legislator, 10/4/13

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IDAHO DEPT OF LANDS WILL USE EXPERT FOR LAND SWAPS

DEC 26, 2013 - ALEX STUCKEY - IDAHO FALLS POST REGISTER

The Idaho Department of Lands will enlist a third-party expert when looking into future land exchanges.

That decision comes after legal and political concerns were raised during the evaluation of several recent land swaps, including two in Idaho Falls.

Department spokeswoman Emily Callihan called the decision "a step in the right direction" to give Land Board members more comfort that exchange recommendations have been vetted fully and are in the best interest of the state's endowment trust lands.

The Department of Lands manages more than 2.4 million acres under a constitutional mandate to produce maximum long-term financial returns for public schools and other beneficiary institutions.

"With the addition of more commercial land, I think the board wants to make sure it's moving in the direction that truly is in the best interest of the trust," Callihan said.

The best way to do that is to introduce an outside expert who can provide guidance on how to invest, she said.

The decision was based on a progress report on endowment reform and concerns raised during recent exchanges.

In October, the board rejected the exchange of three local properties -- leased by Battelle Energy Alliance, the contractor in charge of Idaho National Laboratory -- for 58 cottage sites along Priest and Payette lakes.

Bonneville County would have lost nearly \$134,000 in annual property tax revenue had the swap been approved.

During the October meeting, concerns were raised regarding the removal of taxable property from the county, as well as the validity of the buildings' appraisals. That was followed by a November announcement from director Tom Schultz, who said the department was suspending all pending and future land exchanges.

State Rep. Grant Burgoyne of Boise, who has been outspoken about the need to re-evaluate the swaps, is unsure if the change is a good one. He believes a problem will remain in the lack of knowledge among those within the department.

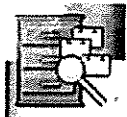
"In (the department), do we have the resources to do a good job ... do state legislators have the resources they need to act in the role of the Land Board?" Burgoyne said. "I think you get to a point where you're chasing your tail. We can continue to say we'll hire more experts, but where's the cutoff?"

The suspension of land exchanges will continue until a "comprehensive strategy review" of investment decisions is done, which is expected to take a year, according to a department news release.

Callihan said the two rejected Idaho Falls exchanges cannot come before the board in their current form because the properties on Priest and Payette lakes are being auctioned.

Whether the department will try to acquire the three commercial properties in another form would be speculative, she said.

Last year, another Idaho Falls building, also leased by Battelle, was swapped for a 14-acre property on Payette Lake in McCall, exempting the building from Bonneville County property taxes -- about \$36,000 a year -- and making it part of the state's endowment trust land.



Idaho Statutes

TITLE 55 PROPERTY IN GENERAL

CHAPTER 1 PROPERTY AND OWNERSHIP -- GENERAL PROVISIONS

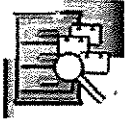
55-101A. "LANDS" DEFINED. Lands are the material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock or other substance, ~~and include free or occupied space for an indefinite distance upwards as well as downwards, subject to limitations upon the use of airspace imposed and rights in the use of airspace granted, by law.~~

natural
growth,
of

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Land is immovable, as distinct from chattels, which are moveable; it is also, in its legal significance, indestructible. The contents of the space may be physically severed, destroyed, or consumed, but the space itself, so the "land" remains immutable.



Idaho Statutes

TITLE 55 PROPERTY IN GENERAL

CHAPTER 1 PROPERTY AND OWNERSHIP -- GENERAL PROVISIONS

→ a combination
of the following:

- 55-101. REAL PROPERTY DEFINED. Real property or real estate consists of:
1. Lands, possessory rights to land, ditch and water rights, and mining claims, both lode and placer.
 2. That which is affixed to land.
 3. That which is appurtenant to land.

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Land By Definition

"Land' is not restricted to the earth's surface, but extends below and above the surface. Nor is it confined to solids, but may encompass within its bounds such things as gases and liquids. A definition of 'land' along the lines of 'a mass of physical matter occupying a space' also is not sufficient, for an owner of land may remove part or all of that physical matter, as by digging it up and carrying away the soil, but would nevertheless retain as part of his 'land' the space that remains. Ultimately ... 'land' is simply an area of three dimensional space, its position being defined by natural or imaginary points located by reference to the earth's surface. 'Land' is not the fixed contents of that space, although, as we shall see, the owner of that space may well own those fixed contents. Land is immovable, as distinct from chattels, which are moveable; it is also, in its legal significance, indestructible. The contents of the space may be physically severed, destroyed or consumed, but the space itself, and so the 'land', remains immutable." *Peter Butt, Land Law 9 (2nd ed. 1988) Reprinted in Black's Law Dictionary, Seventh Edition*

Chattles: Blacks Law Dictionary.

"Movable or transferable property"

Real Estate: It's a document that lays over the land in color of title; though it is not the land itself, it may include with it the right to real property that sits upon the Land.

[Http://www.teamlaw.org/land.htm](http://www.teamlaw.org/land.htm)

Land Board vs. Land

Members of the Idaho Land Board are required by the Idaho Constitution, Art. IX Sec. 8, to "secure the maximum long term financial return" for the public school endowment fund.

The logical question is, maximum return on what? The obvious and clear answer is also obtained in Art. IX, Sec. 8 of the Idaho Constitution.

" It shall be the duty of the state board of land commissioners to provide for the location, protection, sale or rental of all the lands heretofore or which may, hereafter, be granted to or acquired by the state by or from the general government..."

It is clear from this language that the Idaho Land Board's power is limited to only those lands granted to the state from the general government, or those lands acquired by the state from the general government.

In spite of this limitation of power by our Constitution, the Land Board members continue to purchase commercial properties, buildings and businesses on the open market from anyone who will sell to them.

Notice that the only thing granted to the State from the general government was land. And the only thing to be acquired by the State from the general government is land.

Even the Idaho Admission Bill in Art. 4, states, "Sections numbered 16 and 36 in every township of said state... are hereby granted to said state for the support of common schools."

These "sections" that were granted are land, not office, retail, industrial, and apartment properties. They are not mobile home parks, congregate care facilities, brew pubs and storage units. The Land Board Cottage Site Plan and Asset Management Plans are being implemented to put the Land Board into the commercial real estate market competing with private enterprise.

The Constitution limits the Land Board to dealing with land, not real estate and commercial businesses.

Idaho Code 55-101A. "Land" defined:

"Lands are the material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance,..."

Black's Law Dictionary: "Land is immovable as distinct from chattels, which are moveable; it is also, in its legal significance, indestructible."

Courts will apply the rules of statutory construction to construe constitutional provisions. " They will give effect to the plain language of an unambiguous statutory or constitutional provision (Verska V. St. Alphonsus, 2011) It reviews the provision's language as a whole, considering the meaning of each word, so as not to render any word superfluous or redundant. (BHC Inter. Hops. V. Ada Cnty. 2010)"

It is also clear that the members of the Idaho Land Board have violated the limits imposed on them by the Ida. Constitution by expanding into the commercial, retail estate business.

"The Idaho Constitution specifies the Board's duties in managing State Endowment LANDS. Art. IX, Sec. 8 expressly states that endowment LANDS must be held in trust to secure the maximum long term financial return, subject to "disposal" at public auction." (Emp. added) Wasden v. Land Board, 2012

There is no argument concerning the securing of the maximum financial return, this should absolutely be done. However, our Constitution states that this will be done by managing "the general grants of LAND made by Congress to the State... (Emp. added) and not to conduct business in competition with private enterprise.

The purpose of the Land Board is to deal with LAND not real estate.

LAND BOARD EXTENSION OF LEASE TERMS

Wasden v. Land Board, Opinion No. 104. 2012

Page 10. "The Court (Idaho Supreme Court) has recognized that the Board does not have the discretion to grant a lease to an applicant who does not place a bid at an auction, based upon Idaho's Constitution and statutory mandate that the Board conduct an auction."

The Idaho Constitution, Art IX, Sec.9 requires the Land Board to "...secure the maximum long term financial return..." on the lands that were granted from the Federal Govt. when Idaho became a state.

The Court has ruled that "...for this reason competitive bidding is made mandatory." This ruling also pointed out that it is clearly unconstitutional to eliminate the conflict auction and instead require market rent. Market rent is determined at auction. Furthermore, the court stated that, The "disposal" or "disposition" of public lands obviously includes the sale thereof and just as obviously includes other types of disposal or disposition." Therefore a "disposal" would include a sale, lease or an exchange.

For example, during the drafting of the Idaho Constitution, delegate J.W. Reid explained that the wording "or other disposition" meant; "Now this gives power to sell and dispose of these lands by sale, lease or any other way." Since a lease is a disposal, there must be an auction to lease endowment land to determine market value and secure the maximum financial return to the endowment.

When a lease tem has expired it comes to an end and is a formal termination, the date on which an offer, option or the like ceases to exist. (Blacks seventh addition) The Land Board cannot arbitrarily extend a lease that has expired or terminated because it no longer exists and has come to its end. A new lease must be offered at auction to determine a current market value and gain the maximum financial return under the current market conditions.

The Land Board's current plan to extend 63 leases at Payette Lakes and 125 leases at Priest Lake that will expire Dec. 31, 2013 is clearly unconstitutional and should not be executed without conducting new lease terms at auction.

Subject: Legal Notice public auction
From: B Forrey <baf4900@gmail.com>
Date: 3/7/2014 10:41 AM
To: B Forrey <baf4900@gmail.com>

Legal Notice PUBLIC AUCTION SALE NO. 50-08-14 - 1908 Agate Street, McCall
Auction with Published Reserve

Pursuant to Idaho Code §58-313, notice is hereby given that the State of Idaho, Department of Lands (hereinafter "IDL"), will conduct a public auction pursuant to Article IX of the Idaho Constitution. This will be an auction for fee simple interest in real property with reserve. IDL has retained Corbett Bottles Real Estate Marketing, LLC, to conduct this auction. Auction activities will begin at 1:00 PM on Saturday, April 5, 2014, at the Hilton Garden Inn, Eagle, ID at 145 East Riverside Drive, Eagle, ID 83616 for the property situated in Valley County, Idaho, to wit: Location of Property: 1908 Agate Street, McCall, in Valley County, Idaho. Description of Property: A fee simple interest in recreation/vacation real property ("land only") commonly referred to as a cottage site, legally described as a parcel of land located in a Portion of Section 4, Township 18 North, Range 3 East, Boise Meridian, Valley County, Idaho, more particularly described as follows: LOT 1, BLOCK 3, STATE SUBDIVISION - AGATE, VALLEY COUNTY, IDAHO, AS SHOWN ON THE PLAT RECORDED OCTOBER 24, 2013, AS INSTRUMENT NO. 381369, IN BOOK 13 OF PLATS, PAGE 6. Detailed information on this land can be obtained from Corbett Bottles Real Estate Marketing by visiting their office located at 839 S. Bridgeway Place, Eagle, ID 83616; by telephone at 208-377-5700; or by visiting their website at

Terms and Conditions:

1. The Auction, for the land only, will be with reserve of One Million One Hundred Sixty Five Thousand Two Hundred Dollars and NO/100 (\$1,165,200); all bids are subject to acceptance by IDL at close of bidding. The winning highest bid accepted by IDL (the "successful bid") must equal or exceed the reserve amount.
2. The minimum starting bid for the land shall not be less than \$10 per acre as provided by the Idaho Constitution. The minimum starting bid of \$10 is not the appraised value of the land, and is not the actual acceptable value for the land being sold.
3. All bidders at the auction must be citizens of the United States, eighteen (18) years of age or older, of sound mind, and legally competent to own and transfer real property in the State of Idaho.
4. The State of Idaho owns the land in fee simple and will transfer the fee simple estate in the land to the successful bidder. 5. Bids at this auction are for the purchase of the land only (excluding the personal property thereon).
6. The land shall be sold "AS IS", subject to all existing easements or claims of easements, rights of way, protective covenants, encumbrances, zoning ordinances and applicable building codes, laws and regulations, encroachments, overlaps, boundary line disputes and other matters which would be disclosed by an accurate title

commitment or title policy, survey or inspection of the premises (collectively referred to as "encumbrances"). IDL does not guarantee the accuracy of the encumbrances or acreage, if any, identified in the property description.

7. The personal property (improvements) on the land are owned by a prior lessee(s) or other 3rd party (hereafter referred to as the "personal property"). The successful bidder ("Bidder") shall be required to pay at the close of auction the sum of \$152,000, which sum is equal to the appraised value of the personal property ("personal property value"), in accordance with Idaho Code § 58-313.

8. In addition to the personal property value to be paid at close of auction, Bidder shall pay the following auction costs at the close of auction: a) an "Administration Fee" in the amount of \$11,652; and b) an appraisal fee for appraisal of the land in the amount of \$500.

9. At the close of auction, Bidder shall execute a Purchase and Sale Agreement ("PSA") with IDL, the form of which can be reviewed at Corbett Bottles as set forth above.

10. The PSA shall include the purchase and sale of both the land and personal property.

11. The purchase price in the PSA shall be the sum of the amount of the successful bid for the land, plus the Administration Fee, plus an appraisal fee for the land, plus the amount paid for the personal property (collectively, the "Total Purchase Price").

12. A closing date shall be established by IDL no less than thirty (30) days, nor more than sixty (60) days, following close of auction.

13. At or before closing, the owner of the personal property shall receive an amount equal to the personal property value.

14. At closing, after paying the balance due of the Total Purchase Price, together with any additional closing or escrow fees set forth in the PSA, Bidder will receive a State Deed, without warranty, conveying title to the land, and a Bill of Sale transferring title to the personal property from the prior owner. The form of the State Deed and Bill of Sale may be reviewed at Corbett Bottles.

15. If Bidder fails to pay all amounts due and owing as required at the close of the auction or by the PSA at closing, then all amounts paid by Bidder at the time of auction or thereafter, including the personal property value, shall be forfeited to IDL without any further action required by IDL; the PSA shall be deemed terminated; and, IDL shall be entitled to place the land for re-auction immediately, or as IDL deems appropriate in its discretion.

16. IDL may cancel this auction in whole or in part at any time prior to: IDL's acceptance of a final bid; Bidder's execution of the PSA; payment by Bidder of the personal property value, the Administrative Fee, the appraisal fee, or any other amount required of Bidder at the close of auction or pursuant to the PSA on or before the date of closing.


Appeared in: *Star-News* on 03/06/2014, 03/13/2014, 03/20/2014 and 03/27/2014

1. In the Payette Lake Lot solution plan in 2013, the Board deeded roads, easements and common areas to a private association's sub-division

Law Review
Toby v. Bridgewood: The Land Bd. had granted a permanent easement without holding an auction. — The Court concluded that the grant of a permanent easement over state school lands was not an action the Land Bd. could take... Because the grant was neither a lease nor a sale at a public auction. It was not within the discretionary authority of the Land Bd. to grant it.

2. The Sherm Perry Building was leased to the 10 Barrel Beer Co. without holding an auction. There was a negotiated lease in spite of the Supreme Ct. ruling in "Wasden," "... the Constitution is one mandatory basis for auctions..." The Court went on to say "... competitive bidding is made mandatory."

3. The Affordable Storage Units are endowment Trust property. When you rent or lease an individual storage unit are you not required to make that Disposal at auction?

4.  The Legal Notice for the Public Auction of a cottage site at Payette Lake states that the auction is for "land only." The Land has been appraised ~~separately~~ separately from the buildings & improvements. "The personal property (improvements) on the Land are owned by a prior lessee..."

The winning Bidder will receive a State Deed ~~to~~ convey title to the Land.

A Bill of Sale will transfer title to the personal property (building, improvements) to the winning bidder from the prior owner.

In this public notice the Land Board seems to recognize the difference between Land and Real Estate.

Priest Lake Lot News

Paradox of Priest
Lake

Dream of ownership
fades

Contact Us

IDL Creates Uncertainty on Priest Lake Private Property Rights at stake

Idaho Dept of Lands embarks on path that could transfer over \$100 million of private property into government control – without compensation or due process for owners

Idaho's school students and private property rights are likely victims of Idaho Dept of Lands' new and aggressive lease rate increases on Priest Lake

For over seventy years, lessees on Priest Lake have contributed to funding of Idaho's schools through their annual lease payments. While representing an estimated \$4 million (14 percent) of revenue generated by the State's Endowment Lands in 2012, the contributions from the lessees have been a steady and predictable stream of income to the school system.

Last week, the Idaho Department of Lands released new 2014 lot appraisals for 354 cottage sites on Priest Lake with an annual rent increase average of 84%, with some appraisal as high as 168% over last year's appraised value. Those increased lot values translate into annual rents that range from \$7,400 for a partial lot up to \$35,000 per year, to rent, not own land.

With an additional CPI-indexed fee added on each year of up to 4% that will bring a \$19,000 annual rent up to \$29,000 at the end of a 10-year lease contract with the state. That is somewhere around \$250,000 rent for a 10-year lease. There are few folks in the Northern Idaho region who can make that kind of financial commitment to a summer cabin.

While Tom Schultz, Director of Idaho Dept of Lands, believes the attrition rate by lessees will be 8-10% this year, others are predicting much higher numbers. In either case, countless lots will be left vacant with the future of their improvements uncertain.

One real estate agent on Priest Lake sent an email to a lessee last week saying that she is getting "flooded with calls" from lessees looking to list their lots and improvements for sale. The uncertainty of owning cabins on land that is rented from the State of Idaho will make it virtually impossible to sell a cabin on the eastside of Priest Lake this year.

These unprecedented rent increases indicate that the Idaho Department of Lands may be overestimating the demand for lease sites on Priest Lake, especially given that the new monthly rents are greater than a mortgage payment on a primary home for most folks.

The other fact that the State of Idaho overlooks is that these are primarily summer only cabins due to the lack of boat access between October and March when the lake's water level is lowered to prevent flooding in the spring. Power outages, severe weather and limited road access contribute to a lack of cabin use between Labor Day and Memorial Day.

Other states that have taken the path that Idaho Department of Lands is moving toward have paid dearly. The State of Montana made similarly aggressive rent increases a couple years ago

and has seen vacancies double to 80 home sites (10%) in just two years, resulting in lost revenues for their schools. There is a point at which even wealthy people opt out of rental properties and start looking for fee simple lots to own.

An unanswered question: What will happen to millions of dollars worth of improvements?

There is another overlay to this story and it involves the private property rights for the 354 lessees on Priest Lake. As the rents will more than double at Priest Lake starting with a new lease in 2014, dozens of lessees are already talking about having to turn their lease back to the state at the end of this year. To date, the state has not answered one important question with any clarity: What will happen to the millions of dollars of improvements (cabins, docks, drain field, roads, etc) that were placed on the leased land at the encouragement of the Idaho Department of Lands during the last seven decades?

Some history on cottage sites at Priest Lake

Over 70+ years ago, starting in the 1930's, hundreds of families began entering a kind of trust with the State of Idaho. Families from Washington, Idaho and other surrounding states were invited to Priest Lake by the State of Idaho and encouraged to lease lots, clear the land, put up cabins and help build an economy in a place that previously employed poachers and bootleggers.

Over 350 families came to Priest Lake between the 1930's and 1960's to lease property from the State of Idaho. The lease payments started out low, only a few hundred dollars per year, as Idaho saw the benefit of gaining additional revenue by attracting renters to the state. By 2013, the annual lease payments had risen to on average \$11,000 per year per lot for what are primarily summer-only use cabins.

Special assurances and the possibility for ownership keeps renters renting

Many of the current lessees can trace their roots back to the 1930's on Priest Lake. During these past many decades, the State of Idaho has kept hundreds of renters and their families engaged by dangling a carrot of ownership. There have always been plenty of examples of past land exchanges to lead lessees to believe that someday in the future Idaho would allow the lessees to purchase (through land exchange) their lots. After all, similar transactions between lessees and the State had been executed under the State's Constitutional guidelines for auctions and land exchanges for leased lands.



In 1990, the State legislature even provided assurances to the lessees through an Idaho statute called the *Right of Continuation* (I.C. 58-310A) that protected cottage sites from public auction. Under the new plan, the lessees gathered more peace of mind and invested heavily into their lots. The lake as a whole experienced a boom in building, renovation and sales on the cottage sites.

Under the protection of the statute, lessees continued to invest in their lots by replacing any remaining outhouses with expensive septic systems and drain fields and replacing old one-room structures with newer cabins using local contractors to build improved and larger structures on their lots. Over \$100 million in improvements sit on Idaho's cottage sites at Priest Lake.
<http://www.idl.idaho.gov/am/cottage-site-plan/Overview-Cottage-Sites.pdf>

Cottage sites: Rents support schools

Lessees on Priest Lake have also been a part of the Idaho community, knowing that every rent check they wrote to the Idaho Department of Lands was going to support school students in Idaho whose educational programming is funded through the State's Endowment Lands and the land leases that are attached to millions of acres of forest lands, agricultural and grazing lands and mineral leases throughout Idaho and cottage sites on both Priest and Payette Lakes.

The stability of long-term rental agreements and payments from 100's of leases have contributed to the State's operating budget for education.

From Renters to Owners: Idaho's Land Board announces plan to "unify ownership" for cottage sites on both Priest and Payette Lakes.

In February, 2010, it appeared lessees would soon be able to purchase their lots through a land exchange. The Idaho Land Board voted to begin drafting a plan for the orderly transfer of 354 lots on Priest Lake from state-ownership into private ownership. (The same transfer of ownership was offered to lessees on Payette Lake.) <http://www.idl.idaho.gov/am/cottage-site-plan.html>

Working in concert with the Priest Lake Lessees Association, Idaho Department of Lands laid all of the groundwork for the transfer of lots (cottage sites) from public to private ownership. The lessees played a key part in crafting language for CC&R's (Covenants Conditions and

Restrictions), Homeowners Associations and the details specific to the much anticipated transactions

Several documents describe in detail how the process will work. There were several meetings with lessees throughout the process, Land Board hearings and other activities, all geared toward transferring ownership of cottage sites to private ownership over an estimated 20 years. <http://www.idl.idaho.gov/am/cottage-site-transactions.html>

Preparing for the so called "disposal" of the cottage site lands, the Land Board directed the Idaho Department of Lands to do lot appraisals on all 354 lots on Priest Lake. Those were begun last year and completed a few months ago.

Supreme Court decision changes rules for lessees

A lawsuit that was filed in December, 2010, by Attorney General Wasden challenged the idea that cottage sites couldn't be put up for public auction. Settled in 2012, the Supreme Court said that there could be public auction when two or more applicants are interested in leasing the same site. The ruling overturned the *Right to Continuation* and created new uncertainty about how lessees and millions of dollars' worth of their improvements would be handled by the State of Idaho. <http://www.idl.idaho.gov/am/cottage-site-plan/Overview-Cottage-Sites.pdf>

Idaho Department of Lands releases new 2014 appraisals and lease rates – some lessees see their rent increase by up to 272% above 2013 rates.

- Idaho Department of Lands released the 2014 lot appraisals that will be used to set both "exchange values" and new rental rates starting in 2014. Rather than offering these lots at a fair market value – a price that would be within the grasp of the current tenants – Idaho's new 2014 lot appraisals have marked up the price for purchasing and/or renting lots on Priest Lake to a level that will price a large number of current lessees out of the market essentially forcing a large number of long-time lessees off of their lots.

Decision time: Many families to appeal the appraisals while others plan to walk away from their lots. The future of millions of dollars' worth of improvements become huge issue for lessees and State of Idaho; with a crisis brewing on Constitutional issues and property rights

The reaction from long-time lessees on Priest Lake was at first shock and then came the hard decisions by an increasing number of lessees who will be forced to give up their cottage site lots under the new 2014 lease rates. Others are retaining their own independent appraisals and plan to appeal their values within the next three weeks.

Idaho's New 2014 lot appraisals found to be lacking

- Many lessees have already begun to challenge the qualifications of the appraisers, the accuracy of both the methodology used to develop the new lot appraisals and the actual lot values.

One lot has been increased in appraised value from \$260,000 in 2013 to \$700,000 for 2014. Another property that still has an outhouse, is surrounded by swamp land and is unlikely to ever be granted a permit to have a septic system saw its value increased from \$200,000 in 2013 to \$510,000 for 2014. Bear in mind, these values are for raw land only without improvements. Adding the improvements to these values would increase the purchase price to \$700,000 to \$1.2 million. According to some in the real estate business, these prices are more in line with primary lake properties on Coeur d'Alene and Pend Oreille lakes which are both located near moderate sized towns with year around access, schools, stores and healthcare providers.

All 354 appraisals were based on only three "comps" for fee simple sales on Priest Lake, a real estate market that has only seen one waterfront property sale per year for the last three years.

What is the future for \$100 million in improvements?

The current question on everyone's mind: If lessees are not able to purchase their lots or continue as renters next year, what will happen to the millions of dollars' worth of improvements that lessees placed on their lots at the encouragement of the State of Idaho? Confusion abounds as lessees are told that under the 2013 lease requirements they can be forced to remove their improvements (cabins, drain fields, docks, etc.) at their own personal cost from the lots that they have been leasing for decades. Some lessees are holding to the hope that if they must give up their lot, that the Idaho Department of Lands will reimburse them for improvements when – and if – they can find new lessees to take over the new expensive annual leases and purchase their improvements. Others are not so hopeful and see all of this ending up in court as lessees seek relief under the Federal laws that protect private property and guarantee due process to every American, including lessees on Priest Lake. Idaho.

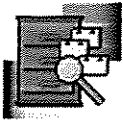
In the meantime, what is the state's plan for maintaining and protecting the improvements during the time that the properties are vacant? Given the hostile climate of Northern Idaho, it only takes a year for properties on Priest Lake to decline rapidly. Who will be responsible for the declining returns, if any, to the original lessees?

How much will these new 2014 appraisals cost Idaho's school students?

Not only is the Idaho Department of Lands gambling with the entire Northern Idaho economy, they are gambling with what has been a stable source of income for thousands of Idaho students.

Does anyone really believe that prices in Northern Idaho have increased 84% since last year? The current tenants don't buy it and they will likely answer that question with their feet or their lawsuits—the end result being less money for school funding and countless lots sitting vacant and unrented on the east side of Priest Lake.

[Create a website at CityMax.com](#)



Idaho Statutes

Repealed

TITLE 58 PUBLIC LANDS

CHAPTER 3 APPRAISEMENT, LEASE, AND SALE OF LANDS

58-310. TWO OR MORE APPLICANTS FOR SAME LAND -- AUCTION OF LEASE. Except as otherwise authorized in sections 58-310A and 58-310B, Idaho Code:

(1) When two (2) or more persons apply to lease the same land, the director of the department of lands, or his agent, shall, at a stated time, and at such place as he may designate, auction off and lease the land to the applicant who will pay the highest premium bid therefor, the annual rental to be established by the state board of land commissioners.

(2) The director shall give notice by letter at least fourteen (14) days prior to the date of such auction, which notice shall be sent in the course of regular mail, to each of the applicants, notifying them of the time and place such auction is to be held. The notice shall be sent to the name and address exactly as it is given in the application.

(3) If any applicants fail to appear in person or by proxy at the time and place so designated in said notice, the director may proceed to auction and lease any part or all of the lands applied for.

(4) The state board of land commissioners shall have power to reject any and all bids made at such auction sales, when in their judgment there has been fraud or collusion, or for any other reason, which in the judgment of said state board of land commissioners justified the rejection of said bids.

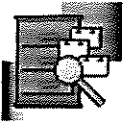
(5) The challenger of the current lease shall be required to provide payment of one (1) year's rental on the lease payable at the time of application to lease. If the amount of the annual rental bid be not paid forthwith by the successful bidder, together with the expense of such sale, if the state board of land commissioners shall require the same to be paid as hereinbefore provided, or if for any reason the successful bidder does not accept the lease on the terms offered, the lease may be immediately reoffered in the same manner at public auction, without further notice.

(6) Only those persons who have filed applications in the manner and at the time provided for by statute or rule shall be permitted to bid at any such auction for the lease of state lands.

History:

[(58-310) 1905, p. 131, sec. 18; reen. R.C. & C.L., sec. 1577; C.S., sec. 2910; am. 1921, ch. 18, sec. 1, p. 26; am. 1923, ch. 117, sec. 1, p. 149; I.C.A., sec. 56-310; am. 1951, ch. 73, sec. 1, p. 114; am. 1974, ch. 17, sec. 62, p. 308; am. 1978, ch. 283, sec. 2, p. 689; am. 1981, ch. 350, sec. 1, p. 723; am. 1992, ch. 241, sec. 6, p. 715; am. 1995, ch. 231, sec. 1, p. 783.]

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Idaho Statutes

Commercial

TITLE 58 PUBLIC LANDS

CHAPTER 3 APPRAISEMENT, LEASE, AND SALE OF LANDS

58-307. TERM OF LEASE -- APPLICATION FOR RENEWAL -- ALLOWANCE FOR IMPROVEMENTS. (1) No lease of state trust lands shall be for a longer term than twenty (20) years.

(2) Notwithstanding any other provisions of law, all state lands may be leased for a period of up to twenty-five (25) years to the federal government, to federal agencies, state agencies, counties, or cities, school districts or political subdivisions when leased for public purposes. Such leases for public purposes may be entered into by negotiation and shall secure a rental amount based on the fair market value of the state land.

(3) Notwithstanding any other provisions of law, all state endowment trust lands may be leased for a period of up to thirty-five (35) years for residential purposes as determined by the state board of land commissioners including, but not limited to, single family, recreational cottage site and homesite leases.

(4) Notwithstanding any other provisions of law, all state endowment trust lands may be leased for a period of up to forty-nine (49) years for commercial purposes under such terms and conditions as may be set by the board, provided that, for such leases in excess of twenty (20) years, the board consults with the county commissioners of the county in which the lands are located before leasing the lands, and the use for which the land is leased shall be consistent with the local planning and zoning ordinances insofar as is reasonable and practicable. For each lease in excess of twenty (20) years, the department shall hold a hearing in the county in which the parcel is located.

(5) The term "commercial purposes" means fuel cells, low impact hydro, wind, geothermal resources, biomass, cogeneration, sun or landfill gas as the principal source of power with a facility capable of generating not less than twenty-five (25) kilowatts of electricity, industrial enterprises, retail sales outlets, business and professional office buildings, hospitality enterprises, commercial recreational activities, multifamily residential developments and other similar businesses. For purposes of this section, farming leases, grazing leases, conservation leases including lands enrolled in federal conservation programs such as the conservation reserve enhancement program (CREP), noncommercial recreation leases, oil and gas leases, mineral leases, communication site leases, single family, recreational cottage site and homesite leases, and leases for other similar uses, are not considered leases for commercial purposes. The terms fuel cells, low impact hydro, wind, geothermal resources, biomass, cogeneration, sun or landfill gas shall have the same definitions as provided in section 63-362200, Idaho Code.

(6) The board may require that all fixed improvements constructed upon land leased for commercial purposes be removed or become the property of the state upon termination of the lease, and that any heirs,

encumbrances or claims of third parties with respect to any improvements shall be expressly subordinate and subject to the rights of the state under this section.

(7) Except for oil and gas, mineral and commercial leases, the lease year shall run from January 1 through December 31, and all leases shall expire on December 31 of the year of expiration.

(8) All applications to lease or to renew an existing lease which expires December 31 of any year, shall be filed in the office of the director of the department of lands by the thirtieth day of April preceding the date of such expiration. Such applications will be considered by the state land board and be disposed of in the manner provided by law; except that the board may reject conflicting applications for a lease for commercial purposes if the lessee exercises the preference right to renew clause, and provided such right is specified in the lease.

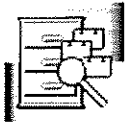
(9) Where conflicts appear upon leases, except for mineral leases which, pursuant to chapter 7, title 47, Idaho Code, contain a preferential right to renew clause, such applications shall be considered as having been filed simultaneously. However, nothing herein shall be construed to prevent the state board of land commissioners from accepting and considering applications for new leases at any time.

(10) In case improvements have been made on land while under lease which is expiring, and the former lessee is not the successful bidder, but the land is leased to another, the amount of such improvements shall be paid to the former lessee. The following shall be considered improvements: plowing done within one (1) year, provided no crop has been raised on the plowed land after such plowing, fencing, buildings, cisterns, wells, growing crops and any other asset which shall be considered an improvement by the director.

(11) Commercial leases of the state lands shall not be subject to the conflict auction provisions of section 58-310, Idaho Code. The board may, at its discretion, consider individual applications or call for proposals and sealed bids by public advertisement, and may evaluate said proposals and award the lease to the bidder whose proposal achieves the highest return over the term of the lease and who is capable of meeting such terms and conditions as may be set by the board; in the alternative, the board may call for lease applications by public advertisement and if more than one (1) person files an application to hold an auction in the same manner as provided in section 58-310, Idaho Code. In all cases, the board must obtain a reasonable rental, based upon fair market value of the state land, throughout the duration of the lease. The board may reject any or all proposals and any or all bids, and may reoffer the lease at a later date if the board determines that the proposals or bids do not achieve the highest and best use of the land at market rental.

History:

[58-307, added 1905, p. 131, 15; reen. R.C., sec. 1574; am. 1915, ch. 167, sec. 1, p. 36; compiled and reen. C.L., sec. 1574; C.S., sec. 2907; am. 1921, ch. 28, sec. 1, p. 36; I.C.A., sec. 56-307; am. 1941, ch. 162, sec. 1, p. 324; am. 1970, ch. 10, sec. 1, p. 17; am. 1972, ch. 108, sec. 1, p. 222; am. 1974, ch. 17, sec. 61, p. 308; am. 1979, ch. 25, sec. 1, p. 40; am. 1980, ch. 107, sec. 1, p. 244; am. 1987, ch. 111, sec. 1, p. 224; am. 1993, ch. 331, sec. 1, p. 1229; am. 1995, ch. 174, sec. 1, p. 655; am. 1995, ch. 185, sec. 1, p. 671; am. 1997, ch. 36, sec. 1, p. 63; am. 1999, ch. 84, sec. 1, p. 280; am. 1999, ch. 86, sec. 1, p. 285; am. 2000, ch. 84, sec. 3, p. 177; am. 2000, ch. 187, sec. 1, p. 460; am. 2003, ch. 234, sec. 1, p. 599; am. 2003, ch. 295, sec. 1, p. 798; am. 2004, ch. 155, sec.



Idaho Statutes

TITLE 55 PROPERTY IN GENERAL

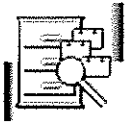
CHAPTER 1 PROPERTY AND OWNERSHIP -- GENERAL PROVISIONS

55-101A. "LANDS" DEFINED. Lands are the material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock or other substance, and include free or occupied space for an indefinite distance upwards as well as downwards, subject to limitations upon the use of airspace imposed and rights in the use of airspace granted, by law.

History:

[55-101A, added 1965, ch. 104, sec. 1, p. 190.]

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Idaho Statutes

TITLE 55 PROPERTY IN GENERAL

CHAPTER 1 PROPERTY AND OWNERSHIP -- GENERAL PROVISIONS

- 55-101. REAL PROPERTY DEFINED. Real property or real estate consists of:
1. Lands, possessory rights to land, ditch and water rights, and mining claims, both lode and placer.
 2. That which is affixed to land.
 3. That which is appurtenant to land.

History:

[(55-101) R.S., sec. 2825; reen. R.C. & C.L., sec. 3056; C.S., sec. 5325; I.C.A., sec. 54-101.]

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**Idaho State
Board of Land Commissioners**

**State Trust Lands
Asset Management Plan**

December 20, 2011

updated

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This plan was originally adopted December 20, 2007 and updated July 30, 2008 to include policy statements governing financial assets (Section II).

I. Overview

A. Background

Endowment assets of the State of Idaho consist of both land and funds. All endowment assets are held in trust by the State in nine endowment trusts. The State initially received grants of over 3.65 million acres of land in trust from the federal government in the Idaho Admissions Bill and through other federal acts. Historians of Idaho's Constitutional debates note, "The land was to be managed according to private trust law and free from political influence and consideration...to support education [and] with the profits from these lands to relieve taxpayers from the burden."¹ Over time, properties were sold or exchanged, with proceeds from the sales and certain other income deposited in the endowment funds.

The State Constitution establishes the State Land 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. Similarly, Idaho Code 57-718 created the Endowment Fund Investment Board (EFIB) which formulates policy for, and manages the investment of, the financial assets.

B. Mission

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

A significant challenge for the trustee is managing revenue generating activities within a government agency. This includes a concern expressed by some members of the public that the trust unfairly competes with private enterprise.

¹ Colson, Dennis C. (2011). Compilation of notes from the Idaho Constitutional Convention in Boise, Idaho held July 4, 1889. Idaho Endowment Lands and The Idaho Constitution, p. 4 and 8.

C. Asset Management and Investment Philosophy

To fulfill its fiduciary duties to each individual endowment, the Land Board as trustee for the State of Idaho will:

1. Invest in real estate and financial instruments consistent with the powers and limitations imposed by the Constitution.
2. Manage the endowed land and financial assets as a whole trust on a total return basis (see Appendix P).
3. Seek to optimize return from both the endowments' land and financial assets by managing risk through diversification of holdings over time.
4. Ensure that significant land holdings will be maintained in perpetuity, since they provide material diversification and inflation protection to an endowment's portfolio.
5. 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.
6. Provide for the appropriate and reasonable management expenses of each endowment from its own income.
7. Accommodate public use of endowment lands, to the extent feasible, provided such use does not impair financial returns.

D. Performance Objectives

1. Over time, ensure real returns for each endowment (after inflation and net of management expenses), perform at or above median compared to relevant peers.
2. Assets will be grouped into classifications of similar character to facilitate performance monitoring and analyses of portfolio diversification and risk. Each asset class will have a targeted rate of return and is expected to perform at or above median compared to relevant peers (see Section III, B, 3, Table 1 and Appendix, Exhibit 1, *Endowment Fund Asset Mix*).
3. Over time, the return of land assets should compete favorably with the return of financial assets. Where determination of land value is problematic, performance will also be measured by discounting expected net cash flows.

E. Protection of Principal

1. Proceeds from the sale of endowment lands will never be distributed, but must be reinvested in land within five years or transferred to the Permanent endowment funds. In deciding whether to reinvest in land or deposit the proceeds of a land sale in the Permanent fund, the Board should make its investment choice based upon consideration of the return for the trust as a whole.

2. Proceeds from extracted mineral resources will never be distributed but must be deposited to the Permanent endowment funds.
3. The principal of the Permanent endowment funds, adjusted for inflation, will never be distributed, to protect the future purchasing power of the beneficiaries.

F. Distributions to Beneficiaries

1. Renewable income from the land assets as well as cash income and capital gains above inflation from the Permanent endowment funds will be deposited in the Earnings Reserve accounts.
2. The Earnings Reserve accounts should buffer fluctuations in revenues to provide stable and predictable payouts to the beneficiaries. If an endowment's Earnings Reserve account falls to zero, distributions must stop.
3. Long-term spending policy and annual distributions are recommended by the EFIB and approved by the Land Board. The Legislature considers the approved distributions in setting annual appropriations for the beneficiaries. The Legislature also appropriates the operating budgets for the IDL and the EFIB from the Earnings Reserve accounts.

II. Financial trust assets

A. History, Structure and Governance

1. History of the Endowment Funds

Since the original grants of land from the federal government, proceeds from the sale of land and income from the grant lands has been accumulated in endowment funds. These funds were managed first by the State Treasurer and later by the Department of Finance. By June 1966, the total endowment fund assets had grown to \$69 million. On March 25, 1969, the State Legislature created the "Endowment Investment Land Board", which held its first meeting on April 11, 1969. In later years, the name of the Land Board was changed to the Endowment Fund Investment Land Board and oversight of other investment pools were added to its responsibilities, including the reserves and surplus of the State Insurance Fund, the assets of the Judges' Retirement Fund, and the Ritter Island Endowment Fund. The EFIB hired its first staff member in 1971.

Originally, the State Constitution only permitted endowment funds to be invested in fixed income securities and all interest income was distributed annually to the beneficiaries. From inception, most revenues from endowment lands, including timber harvest receipts, were deposited in the Permanent endowment funds. However, from the early 1970's to June 2000, the IDL retained 10% percent of the income it generated for capital and management expenditures necessary to preserve the asset base (e.g. replanting, road construction and range

improvements). The remaining lands receipts, such as annual grazing and cottage site lease revenue, along with interest on unharvested timber contracts were distributed directly to the beneficiaries. By June 2000, the endowment funds had grown to \$811 million, plus approximately \$25 million held by the IDL.

A major restructuring of the endowment funds was implemented in July 2000. The Land Board was given governance authority over the EFIB and all endowment funds, investment restrictions were made consistent with the Idaho Prudent Investor Act (Idaho Code title 68, chapter 5), and each endowment fund (except for the Capitol Permanent Fund) was split into a Permanent Fund and an Earnings Reserve Fund. In the second half of 2000, 70% of the assets of the endowment funds were shifted to the equity markets.

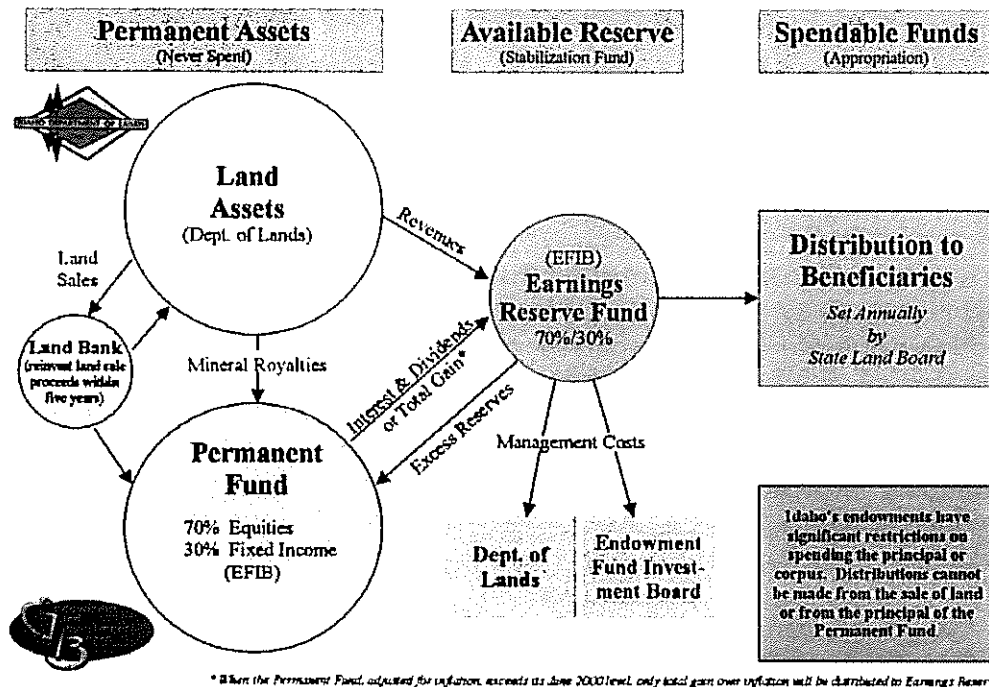
Information on endowment fund balances, distributions and asset mix is shown in Exhibit 1.

2. Structure of the Endowment Funds

Each endowment (with the exception of the Capitol Permanent Fund²) has two types of assets: permanent assets, which can never be distributed, and a reserve or buffer fund, from which distributions can be made. As shown below, the permanent assets consist of endowment land and a Permanent Fund. Renewable revenues from the land (e.g. timber harvest and rental income) and income from the Permanent Fund flow into the Earnings Reserve fund. Payments of management expenses and beneficiary distributions are made from the Earnings Reserve Fund. If the Earnings Reserve Fund balance ever falls to zero, then distributions must stop because the principal of the Permanent Funds can never be distributed. The Land Board Distribution Policy as set forth in Section II, D is designed to prevent such an occurrence.

² The Capitol Permanent Endowment Fund has some unique characteristics. It is governed by the constitutional provisions that apply generally to the endowment funds, e.g. protect the endowments in a manner designed to secure the maximum long term financial return to the beneficiary. However, the statutes applicable to the Capitol Permanent Endowment differ from the other endowments. There is no earnings reserve fund and the Land Bank cannot be used for the sale and reinvestment of real property. Additionally, there is no strict statutory prohibition on spending the principal of the fund, but instead a requirement that distributions must take into account the preservation and growth of the fund over time. Lastly, Idaho Code 67-1610 states that distributions from the fund to the beneficiary, the Capitol Commission, are determined by the EFIB rather than the Land Board.

STRUCTURE OF IDAHO'S ENDOWMENT ASSETS



Currently, per Idaho Code 57-724A, interest and dividends from the Permanent Fund are added to the Earnings Reserve Fund each year. However, the flow of investment income to the Earnings Reserve Fund changes as each endowment's Permanent Fund passes its Gain Benchmark (essentially the June 2000 level adjusted for inflation and certain deposits). A year after the gain benchmark is achieved the total gain (interest, dividends, and capital gains/losses) above inflation will flow to the Earnings Reserve Fund annually. While this change increases potential revenues due to the inclusion of capital gains, it results in zero revenues flowing to reserves in years when there are capital losses in the stock market. Historically, capital losses in a 70% equity, 30% fixed income portfolio have occurred in one year out of three. Also, in each twenty-five-year period there has been one period in which capital losses were severe enough that no income would have accrued to earnings reserve for five consecutive years.

This revised flow of income helps protect the inflation-adjusted corpus or principal in the Permanent Fund, since interest and dividends will be used to offset capital losses. However, that means interest and dividend income is no longer available every year to help fund distributions.

When Earnings Reserves exceed an adequate level, the Land Board may consider transferring the excess reserves to the Permanent Fund. If the Permanent Fund is already at the Gain Benchmark, then the Land Board may designate any transfer as increasing the Gain Benchmark to preserve additional corpus for future beneficiaries. If the Permanent Fund is below the Gain Benchmark, the Land Board may choose not to apply the transfer toward increasing the Gain Benchmark. This will allow the Permanent Fund to recover any shortfall in purchasing power more quickly.

3. Governance of Endowment Funds

The Idaho Constitution provides that the endowment funds are held in trust and administered by the Land Board as trustees. The constitution further provides that Idaho Legislature may establish a statutory structure for administration that is consistent with the nature of the trusts. Accordingly, the Idaho Legislature created a structure that established the EFIB and the appropriations process for the trust management expenses and the beneficiary distributions. The constitutional and statutory provisions, together with Land Board policy, establish the following responsibilities.

The Land Board is responsible for:

- Overseeing the activities of the EFIB.
- Reviewing appropriation requests of the IDL from Earnings Reserves for consideration by the legislature.
- Approving allocation of Earnings Reserve Funds, specifically how much is:
 - Distributed annually to beneficiaries (Distribution Policy);
 - Retained for future distribution; and,
 - Transferred to the Permanent Funds to build corpus.

The EFIB is responsible for:

- Establishing investment policy for the funds, including:
 - Setting asset mix; and,
 - Defining allowed and prohibited investments.
- Recommending Distribution Policy and transfers of Earnings Reserves to the Land Board.
- Establishing Distribution Policy for the Capitol Permanent Fund.
- Selecting and monitoring investment managers, consultants, and custodians.
- Preparing audited financial statements for the funds and selecting an independent auditing firm.
- Selecting and directing staff.
- Approving an investment management expense budget from Earnings Reserve for consideration by legislative appropriation.

The Idaho Legislature is responsible for:

- Legislating methodology for restoring losses to the Public School and Agricultural College funds.
- Appropriating Earnings Reserve funds for operation of the IDL and the EFIB.
- Considering approved endowment distributions in setting beneficiary appropriations.

B. The Endowment Fund Investment Board

1. Mission of the EFIB

The mission of the EFIB is to provide professional investment management services to its stakeholders consistent with its constitutional and statutory mandates.

2. Structure of the EFIB

The EFIB, pursuant to Idaho Code 57-718, consists of nine members, appointed by the Governor and confirmed by the Senate. These members are:

- One State Senator, one State Representative;
- One professional educator; and,
- Six members of the public familiar with financial matters.

The EFIB must meet at least quarterly and currently has a staff of four persons.

As permitted in Idaho Code 57-720, the fund assets of all nine endowments, both Permanent Funds and Earnings Reserve Funds, are comingled in a single investment pool for more efficient management oversight and to achieve economies of scale in fees.

The endowment funds are invested by professional investment firms. No funds are managed internally.

The EFIB also employs one or more outside consulting firms to provide specialized expertise and assist in, among other things, asset allocation, manager selection and monitoring, and performance measurement.

C. Fund Investment Management Philosophy

1. Investment Policy and Return Objectives

As perpetual funds, per state Constitution and statute, the endowment funds have a long-term investment horizon. All of the portfolios managed by the EFIB are subject to the variability of the financial markets and to the threat of eroding purchasing

power due to inflation. The EFIB will mitigate some of the market risk by investing in diversified portfolios of assets so that the expected variation in the whole portfolio is less than the sum of the variations of each part.

With a citizen board and small staff, the EFIB will make strategic allocations and generally avoid making tactical calls, maintaining an asset mix that is expected to have reasonable performance over a market cycle. The asset mix of the fund takes into account the entire endowment portfolio – i.e. the fact that the revenues of the endowment lands, net of IDL expenses, will be contributed to the endowment funds.

The EFIB will maintain a detailed Investment Policy specifying responsibilities and containing guidelines for asset mix as well as allowed and prohibited investments. The current endowment fund asset mix of 70% equity and 30% fixed income is expected, over the long term, to earn 4.0% annually after inflation and investment expenses.

2. Performance Reporting to the Land Board

As required by Idaho Code §57-720, the endowment funds will be audited annually by an independent public accounting firm. In addition, the EFIB will provide relevant, proactive reports on governance and performance to assure the Land Board that endowment fund assets are being prudently and profitably managed and to highlight any areas of concern.

Each month, EFIB staff will provide the Land Board with:

- Investment performance, both absolute and relative to benchmark.
- An evaluation of the sufficiency of earnings reserve balances (measured by coverage ratio: reserve balance divided by the distribution).
- A summary of any significant actions by the EFIB.
- Any compliance/legal issues, areas of concern, or upcoming events.

Part-way through the fiscal year, generally at the May meeting, the EFIB shall provide the Land Board with a brief financial summary of fiscal year-to-date activity.

After the end of the fiscal year, generally at the November meeting, the EFIB shall provide the Land Board with:

- A financial summary for the recently completed fiscal year.
- The report of the Audit Committee of the EFIB regarding control deficiencies identified by the independent auditor.
- An update on the EFIB's Strategic Plan.
- Investment performance for the fund versus strategic (longer-term) measures.
- A report on EFIB meetings; including number of meetings and attendance.

D. Distributions to Beneficiaries

1. Objectives

The ultimate purpose of Idaho's land grant endowments is to provide a perpetual stream of income to the beneficiaries. In determining distributions, the Land Board, with assistance from the EFIB, considers the following for each endowment:

- Actual and expected return on the fund and income from the land.
- Expected volatility of fund and land income.
- The adequacy of distributable reserves to compensate for volatility of income.
- The beneficiary's ability to tolerate declines in distributions.
- Need for inflation and purchasing power protection for future beneficiaries.
- Legal restrictions on spending principal.

To guide the determination of future distributions for Idaho endowments, the following objectives, in priority order, have been established by the Land Board:

1. Avoid reductions in total endowment distributions.
2. Maintain adequate Earnings Reserves to protect distributions from temporary income shortfalls.
3. Grow distributions and permanent corpus faster than inflation and population growth.
4. Define the Distribution Policy in simple, broad terms. Treat all endowments the same unless there is a compelling reason to differentiate.

2. Distribution Policy

Based on the above objectives and expected returns of the entire portfolio (lands and funds), the Land Board has established the following Distribution Policy³:

- Distributions are determined individually for each endowment (currently 5% for all endowments except State Hospital South which is 6%).
- Distributions are calculated as a percent of the three-year rolling average Permanent Fund balance for the most recently completed three fiscal years. The Land Board may adjust this amount, depending on the amount in the Earnings Reserve, transfers to the Permanent Fund, and other factors.
- The level of Earnings Reserves deemed adequate is five years of future distributions.

³ The Distribution Policy is different for the Capitol Permanent Fund. Idaho Code 67-1601 specifies that on July 1 of each fiscal year, the EFIB shall distribute a percentage of the value of the Capitol Permanent Fund. The percentage is approved by the EFIB and must be calculated to provide a stable source of funds while still preserving and increasing over time the value of the fund. The EFIB, after considering expected revenues from endowment land, has established that percentage as 5% of the three-year average value of the Capitol Permanent Fund.

- The Land Board may transfer any balance in an Earnings Reserve Fund in excess of an adequate level to the corresponding Permanent Fund and designate whether the transfer will or will not increase the Gain Benchmark.

3. Role of the Endowment Fund Investment Land Board

Each year, the EFIB shall present the following recommendations to the Land Board for its consideration:

- Whether any change should be made to the Distribution Policy.
- The amount of distributions for the next fiscal year for each endowment.
- What is considered to be an adequate level of earnings reserves for each endowment.
- The amount, if any, to be transferred from each earnings reserve to the corresponding permanent fund and whether such transfer should increase the gain benchmark.

4. Role of the Department of Lands

As requested by the EFIB or the Land Board, the IDL shall prepare, for each endowment, a forecast of expected land revenues and expenses.

E. Restoring Losses in Endowment Funds

The state has a legal obligation to make up losses in contributed principal in two of the nine endowment funds⁴. Responsibility for making up these losses ultimately rests with the state legislature. However, if the Land Board determines that a fund's Earnings Reserve is sufficient, the Land Board may chose to make up all or part of a loss by transferring funds from Earnings Reserve to the Permanent Fund.

⁴ Article 9, Section 3 of the state Constitution requires the state to make up any losses in the principal of the Public School Permanent Endowment Fund. Idaho Code 57-724 specifies that these losses must be made up after ten consecutive years of cumulative losses. Over time, expected transfers from Earnings Reserves to the Permanent Fund will significantly reduce the likelihood of the fund falling into a loss position. U.S.C. Title 7, Chapter 13, Subchapter I, Section 304, a federal statute, requires the state to make up any losses in principal in the Agricultural College fund.

III. Land trust assets

The land trust consists of real estate, which is defined by case law and in statute⁵ as land and possessory rights to the land, ditches, water rights, mining claims, structures and improvements affixed to the land and all things for an infinite distance above as well as below the surface of the land. Assets owned by the endowment trusts must possess legal, transferable ownership, and must exist within the boundaries of the State of Idaho.

A. Overview of ownership (asset mix)

1. History

Idaho's endowment lands were granted to Idaho by the Federal Government to be held in "trust" and to provide financial support for the various institutions⁶. The first land grant was made under the Territorial Act of 1863, granting sections 16 and 36 of each township for the support of public schools. The Territorial Act of 1883 granted 46,080 acres for the support of the State University. Upon admission as a state on July 3, 1890, the Idaho Admission Bill reconfirmed the previous grants, and provided an additional 50,000 acres for the support of the State University, plus lands for the support of 7 additional institutions.

Because many of the sections granted for the support of the Public Schools were already in private ownership prior to statehood, the Bill directed the state to select replacement lands from the Public Domain. The exact acreage due the Public Schools was determined by assuming 1/18 of the total area of the State as published in the June 30, 1931, annual report of the General Land Office (53,688,320 acres).⁷

From the outset, there was considerable debate over whether or not to sell the endowment lands and invest the proceeds in a permanent fund, or whether the lands should be retained and managed. Initially, Idaho chose to concentrate on selecting high valued agricultural and grazing lands with the

⁵ Idaho Code §55-101, Black's Law Dictionary, Reynard v. City of Caldwell, 55 Idaho 342, , 42 P.2d 292, 296 (1935).

⁶ Pursuant to the Idaho Constitution, endowment lands, like other state property, are exempt from taxation. Article VII, Section 4 states in part, "The property of ...the state, counties, towns, cities, villages, school districts and other municipal corporations and public libraries shall be exempt from taxation." The reason for such exemption is that it impedes the purpose and use of the property. The exemption is offset by the fact that endowment lands provide resources for local businesses which in turn pay taxes and employ people in the local communities. *The Economic Activity of Idaho's Endowment Trust Lands*, Dr. Peter R. Crabb, Ph.D., July 2011, estimated as of the end of fiscal year 2010 that Idaho's Endowment Trust Lands contribute \$133 million in annual economic activity (net of management expenses) and support nearly 2000 jobs in the State of Idaho.

⁷ The other institutions were also directed to select lands to fulfill their grants from the Public Domain.

intention of selling them.⁸ Timberlands were selected with the intention of removing the timber and then selling the land as agricultural or grazing lands. Because many of the granted lands were within National Forest Reserves, they were traded for lieu lands of equal value lying in more convenient locations.

Idaho began selling land immediately, resulting in about 33 percent of the original land grant acreage being sold to date. The majority of lands were sold between 1900 and 1940, with over 12 percent of the total acres granted being sold between 1911 and 1920 alone. While land sales significantly reduced acreage between 1890 and 1940, over the past 60 years some acres returned to the trusts through land sale contract forfeitures, loan foreclosures, purchases and land exchanges. The following table illustrates the ownership of the various institutions through time.

Endowment Ownership Through Time

<u>Institution</u>	<u>Total Acres</u>		
	<u>1890</u>	<u>1940</u>	<u>2010</u>
Public School	2,982,683	2,543,962	2,080,249
Agricultural College	90,000	42,836	33,526
Charitable Institutions	150,000	86,085	77,211
Normal School	100,000	53,389	60,046
Penitentiary	50,000	34,051	29,067
School of Science	100,000	74,714	75,875
State Hospital South ⁹	50,000	30,315	31,414
University of Idaho	96,080	51,316	54,646
Capitol ¹⁰	32,000	14,719	7,222
Totals	3,650,763	2,931,387	2,449,256

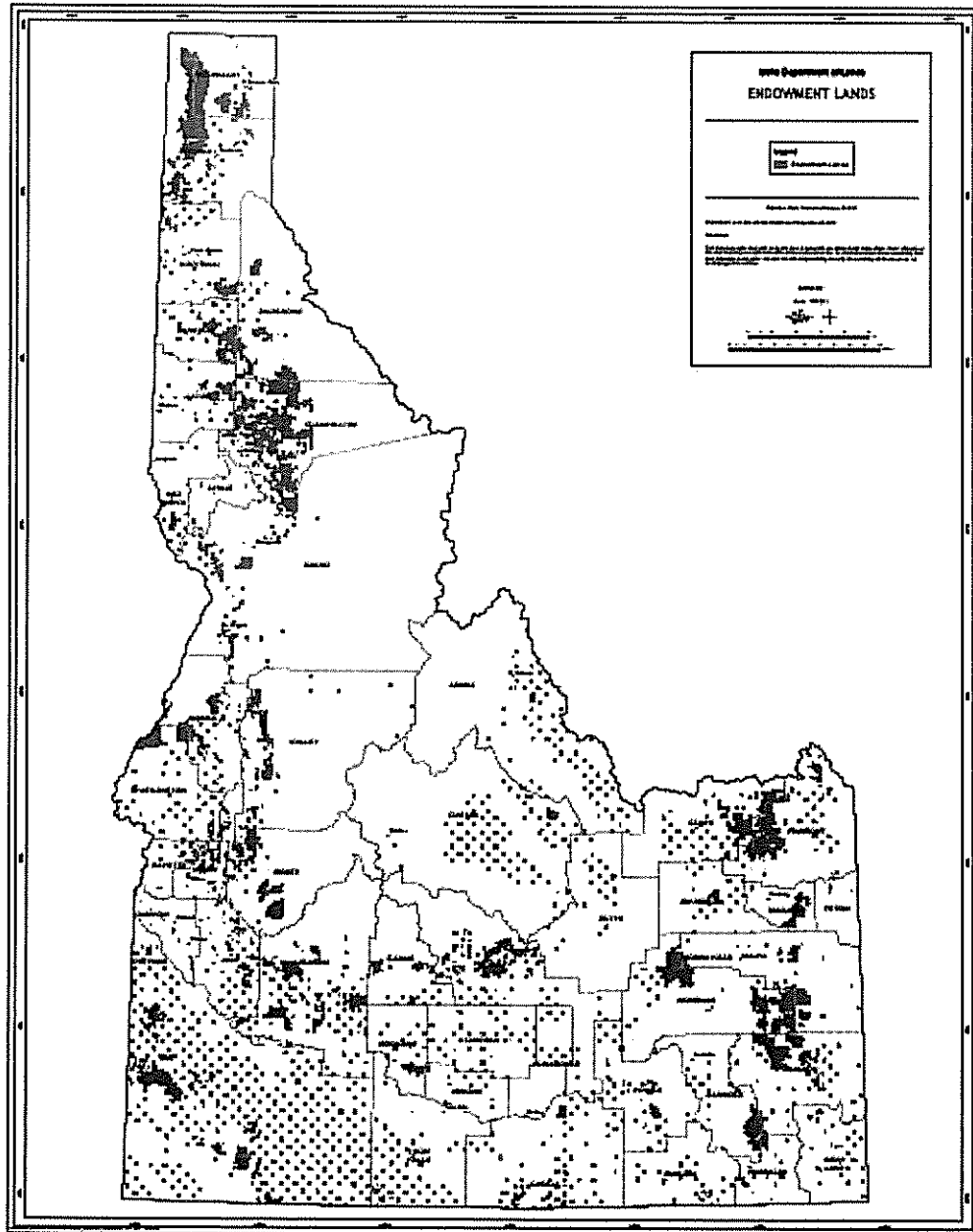
⁸ A Preliminary Report on Management of State-Owned Lands In Idaho. Prepared by The Technical Advisory Committee on Land Management for The Idaho State Planning Land Board, December 1940.

⁹ At statehood, the State Hospital South endowment lands were originally granted as the Insane Asylum endowment

¹⁰ At statehood, the Capitol endowment lands were originally designated as the Public Building endowment.

As can be seen in the current Endowment Land Ownership map below, the ownership pattern is very scattered and disjointed due to the original Public School land grants, the selection process for replacement, lieu and other endowment lands, and the selling or exchange of various lands.

Endowment Land Ownership Map



2. Current Land Acres by Endowment

Endowment Ownership - 2010		
	Acres	% Total
Public School	2,080,249	85.0%
Agricultural College	33,526	1.4%
Charitable Institutions	77,211	3.1%
4/15 Idaho State University		
4/15 Juvenile Corrections Center		
4/15 State Hospital North		
5/30 Veterans Home		
1/30 School for the Deaf & Blind		
Normal School	60,046	2.5%
1/2 Lewis-Clark State College		
1/2 Idaho State University		
Penitentiary	29,067	1.2%
School of Science	75,875	3.1%
State Hospital South	31,414	1.3%
University of Idaho	54,646	2.3%
Capitol * no earnings reserve account	7,222	0.3%
Totals	2,449,256	100.0%

3. Asset Mix

Land trust assets are classified according to their "primary" use. Other uses are allowed when they do not adversely impact the "primary" use and the intended financial return. This is unlike federal lands or other public lands which are managed for multiple uses or for the benefit of the general public regardless of their financial return. Land asset classifications can be changed to meet changing markets or to capitalize on emerging alternative opportunities.

Categorizing lands into asset classifications allows:

- Land managers to customize plans and strategies so they can optimize returns based on specific asset characteristics.
- Monitoring performance by benchmarking against similar private industry (National Council of Real Estate Investment) and other trust land managers.
- Land managers to make informed decisions regarding portfolio risk resulting from lack of diversification, liquidity, environmental laws and other societal pressures.

Asset Classification	Asset Description
Forestland	Lands capable of regenerating and growing successive crops of commercial forest products on a sustainable basis
Agriculture	Lands used for growing cultivated plants or agricultural produce (grains, vegetables, and/or fruits).
Rangeland	Lands supporting natural vegetation, generally grasses, forbs and small brush, suitable for grazing by domestic livestock & wildlife.
Commercial Real Estate	Lands normally recognized as "commercial" in local zoning regulations, including retail and light industrial businesses, public facilities, energy resources (wind, hydro, wave), communication sites, ski resorts, etc.
Residential Real Estate	Land intended for sale or lease for residential subdivision, individual parcels or lots (includes cottage or cabin sites)
Minerals	Includes lands managed for the production and sale of sand and gravel, oil and gas, coal, and other minerals including precious metals, decorative rock, phosphates, etc.
Conservation	Conservation lands are generally lands for which certain real property rights have been removed or otherwise restricted temporarily or permanently to maintain temporary or permanent rights for open space, preservation of habitat, natural areas, parks, or other such purposes.

B. Land Management Philosophy

The land management philosophy of the Land Board is guided, first, by the directive in Article IX §8 of the Idaho Constitution requiring the Land Board to "provide for the location, protection, sale or rental of all the lands heretofore, or which may hereafter be granted or acquired by the state by or from the general government, under such regulations as may be prescribed by law, and in such a manner as will secure the maximum long term financial return to the institution to which granted..." As the Supreme Court stated in *Barber Lumber Co. v. Gifford*, it is the "land business of the state that is placed in the hands of the state Board of land commissioners." 25 Idaho at 669, 139 P. at 562. Consistent with this constitutional directive, the Land Board will manage the real estate in its endowment portfolio to capture the full economic value of such lands and improvements for endowment beneficiaries. In pursuit of this objective the Land Board will contract with private entities to operate business activities upon the land trust assets. The Land Board, as trustees of Idaho's endowment trusts, will be guided in its management by the "prudent investor rule," 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 § 68-502(2). This section further delineates the Land 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.

2. Risk – Return Considerations

The sale of timber accounts for about 85 percent of the total annual land trust revenue (Appendix F). Over dependence on one source of revenue, especially during changing market trends, adds concentration risk and is not a prudent investment strategy. This does not mean the timber asset should be aggressively sold to rebalance the land assets. Rather, the IDL should pursue strategies that lift the performance of other assets, ensure assets are classified appropriately to maximize revenue, and evaluate land assets in context of the total land and financial portfolio with the goal of reducing risk and increasing prospects for immediate, sustainable income. Appendix G demonstrates the sensitivity of gross revenue to fluctuations in Forestland receipts and resource management costs. Revenue and management cost implications are addressed in further detail by each underlying business plan by asset classification.

It is the Land Board's objective to optimize risk and rewards of the overall portfolio - the combination of the financial trust assets and the land trust assets. To achieve this optimization, the IDL and the EFIB will regularly evaluate the diversity and expected return of their respective asset mixes, keeping in mind the impact of their portfolio on the structure of the overall portfolio. The Land Board further recognizes the need to maintain a long-term investment and management focus despite inevitable short-term volatility. This ensures that non-reactive, structured revisions to Land Board

philosophy and policy are based on long-term considerations and not in response to speculation or short-term market and value fluctuations.

3. Performance Measurement

In order for the land assets to contribute to the overall trust return objectives established by the Land Board, rate of return thresholds are targeted for each asset type (classification). The rate of return thresholds will be based on both expected cash income and the estimated long-term value appreciation potential of the real estate asset. Current beneficiaries can only receive distributions from the cash income derived from managing the real estate, but value can also be created for future beneficiaries by holding land parcels with attractive future appreciation potential, even if they have low current income. Therefore, as a real estate manager with a perpetual investment horizon, the Land Board will hold both assets with attractive current cash income as well as assets whose primary value lies in their appreciation potential. Performance measurement will consider both sources of value.

Management systems are dynamic and require modification from time to time, therefore the asset classifications defined in Table 1 may represent target asset classifications not yet formally established. Table 1 also identifies general characteristics of each asset classification including the range of returns currently demonstrated in the market and generally expressed as a return on asset (ROA), and the recommended valuation method and valuation frequency.

Table 1: Asset Classification, Valuation and Proposed Benchmarks			
Asset Class	Peer ROA¹	Valuation Method	Frequency
Forestland	3% - 8%	<ul style="list-style-type: none"> • Various Stumpage Price Indices • Independent or Internal Appraisal - Management Recommendation 	Annual Index, 5 year mass appraisal
Agriculture	2% - 5%	Independent or Internal Appraisal	Annual Index, 5 year mass appraisal
Rangeland	.5% - 5%	Independent or Internal Appraisal	Annual Index, 5 year mass appraisal
Commercial Real Estate	3% - 15%	Independent or Internal Appraisal - Management Recommendation	Annual Index, 5 year mass appraisal
Residential Real Estate	3% - 12%	Independent or Internal Appraisal - Management Recommendation	Annual Index, 5 year mass appraisal
Minerals	3% - 18%	<ul style="list-style-type: none"> • Unproven Site – bare land value only • Proven, Unopened Site – bare land value only or NPV of future earnings less development cost • Producing Sites – NPV future 	Dictated by changing stages of property characteristics and uses

Table 1: Asset Classification, Valuation and Proposed Benchmarks			
Asset Class	Peer ROA ¹	Valuation Method	Frequency
		earnings • Closed / Abandoned Site – reversion value, possible liability to reclaim	
Conservation	1% - 5%	Western states survey	Annual
Rights-of-Way ²	% of FMV	Western states survey	Annual

¹ Peer ROA represents the variation of returns demonstrated by Western states, including but not limited to MT, WA, OR, CO, NM, AZ, and researching other private real estate portfolio returns.

² The granting or receiving of rights-of-way can occur in combination with any asset type. Rights-of-way are shown in this table to demonstrate a means to compare peer pricing of such rights.

ROA is a profitability measure determined by the following formula:

$$\frac{(\text{Gross Revenue} - \text{Management \& Development Expense}) + (\text{Ending Asset Value} - \text{Beginning Asset Value})}{\text{Beginning Asset Value}}$$

The use of ROA is desirable because it transcends public and private sector boundaries. The calculation also normalizes the variability of cash receipts within the same asset class. For example, forage values differ across landscapes such that certain regions command higher lease rates. Transition values aside, the higher earnings capacity of the land generally translates to a higher asset value per acre, but the return on asset should be similar to peer assets meeting the definition of the Rangeland classification.

Relevant peers include western states whose primary mission is to manage similar endowment trust lands, and private trust or investment firms in similar market sectors. To the extent possible, private sector firms should be chosen who operate in Pacific Northwest markets. It is recognized that a financial statement comparison between the IDL and similar private sector firms will require the development and conversion of financial statements, both an income statement and a balance sheet, from a government accounting basis to traditional accrual basis.

Meaningful and timely information is essential to optimizing trust management performance. The IDL will present a report showing the performance of the entire Land Trust and each of its components at least semi-annually to the Land Board. Such report shall include components of overall profitability and management efficiency compared to expectation and, annually, compared to peer performance (Appendices C, D and E). The evaluation reports will include a semi-annual or annual presentation, as appropriate.

4. Underperforming Assets

Periodic evaluations shall examine the performance of underperforming parcels within each asset classification. The IDL shall have plans to remedy underperformance, either for the entire asset class or for particular properties in an asset class. Performance plans will include discussion toward progress in remedying previously identified underperformance from prior plans, and reasons for any lack of progress. Assets that have underperformed for longer than a period of five (5) years shall be considered for transition (see section III, F).

C. Management Objectives by Asset Class

This document represents a framework to drive further planning. Detailed underlying business plans are required for each asset classification to ensure that management activities are consistent with and contributing to the overall asset management goals. The underlying business plans highlight the need for developing and participating in appropriate benchmark studies to confirm the adequacy of valuations and economic return targets (see Appendix A – *Asset Business Plan Template*). Such plans will:

- Provide an executive summary of the plan for the asset classification.
- Describe the current and future influences on plan implementation and performance.
- Analyze past and present return on asset performance, current asset value, current asset characteristics, and future expected returns.
- Recommend long-term financial and land management objectives for the asset.
- Detail opportunities and challenges the asset faces and specify plans for capitalizing on opportunities and dealing with challenges.

1. Forestland Asset

Idaho's forest asset consists of approximately 1 million acres managed primarily for sawlog and cedar pole products. Management complies with all applicable federal and state statutes, such as the Federal Clean Water Act and the Idaho Forest Practices Act.

Management Objectives

- Manage the forestland asset prudently, efficiently, and with accountability to the beneficiaries.
- Reduce risk and increase prospects for immediate, sustainable income.

- Realize an overall return on asset at or above the median return compared to relevant peers.
- Produce forest products that meet market demands.
- Identify and dispose of or transition underperforming forestland assets to increase economic performance and improve land asset diversity.

Challenges

- Ensuring all-purpose, permanent legal access to forestland parcels.
- Balancing management expenses against revenue generated.
- Changing social and political attitudes and values, markets, and products.
- Legal challenges to interpretation and application of the Endangered Species Act and the Clean Water Act.
- Changing ownership and land management practices of federal and private land holdings.
- Changes in the forest industry and potential impacts on demand and pricing for endowment forest products.

Opportunities

- Changing sawmill technology, markets, and products that provide new business opportunities.
- Productive and diverse forests.
- Forestlands adjacent to population centers present transition land opportunities.

2. Residential Real Estate

Idaho has been leasing residential sites since 1932. These properties consist of cabins and single family homes where the lessee is authorized to construct and own the improvements. Currently, the endowments lease over 540 sites, with the majority located on Priest and Payette Lakes. The ability to garner asset appropriate rental rates has long been debated. Experience and basic economic principles demonstrate that in instances of split ownership of land and improvements the economic potential of the property is often captured by the owner of the improvements without a corresponding benefit to the land owner. In February 2010, the Land Board voted to unify the cottage site estate; recognizing that the continuation of a long-term cottage leasing program falls short of maximizing the financial return that could be generated from alternative investments.

Management Objectives

- Execute the approved Cottage Site Plan to unify the estate in a business savvy manner to maximize return to the trust beneficiaries.
- For the duration of the cottage site leasing program, develop and manage residential leases that appropriately compensate the endowments.

- Identify additional high value (undeveloped) residential sites to maximize return to the trust beneficiaries.
- Identify and transition residential sites that may return more value to the trust if transitioned to a higher and better use.

Challenges

- Volatile real estate values associated with lake side or lake view property results in fluctuating annual rent making it difficult to achieve an appropriate and consistent return on asset.
- Executing the Cottage Site Plan in a business savvy manner to provide an orderly market transition, both in disposition and reinvestment.
- Resolving historic land access issues that affect value and marketability of title.

Opportunities

- Survey, plan and plat existing and potential residential sites to add value to resulting unification processes.
- There is a potential for over 200 additional residential sites on Priest and Payette Lakes, and numerous other potential sites on other lakes and endowment lands that could be developed and transitioned in a manner to bring diversification to the trust land portfolio.

3. Commercial Real Estate

Idaho has a long history of leasing properties for various commercial activities (e.g. communication sites, commercial recreation services, wind farms, etc.), but only began acquiring commercial office and retail properties in 1998. Idaho currently manages eight parking lots and seven office-retail properties of various age and quality designations¹¹ located principally in downtown Boise. Commercial real estate properties include, but are not limited to, office, retail and light industrial business designations, public facilities, hospitality, energy resources (wind, hydro, geothermal), communication sites, ski resorts, etc.

Commercial real estate provides an opportunity, over time, for diversification of the land asset portfolio. The value of commercial properties, in many instances, is derived not only from location, but also by the nature and quality of commercial improvements thereon and by their fitness for meeting market demands. Where ownership of improvements results in higher returns and an appropriate level of risk to the beneficiary, fiduciary obligations require the Land Board to retain ownership of such improvements. Leases and contracts for commercial management services

¹¹ Commercial office and retail properties are designated as Class A, B, or C. The property class impacts lease rates and is driven by property age, location, construction quality, caliber of tenants and professional property management.

will be offered based on business principles that will ensure the maximum long term financial return to the endowment beneficiaries. For example, gross leases, NNN leases or percent of gross receipts contracts are commonly used, but not uniformly applied across all commercial lease arrangements.

Management Objectives

- Develop and manage long term commercial leases that achieve a rate of return consistent with peer ROA.
- Ensure lease terms and conditions comport with industry standards.
- Ensure tenant improvement allowances associated with the commercial leasing program represent necessary structural and finish requirements to property but not personal property of a prospective tenant.
- Contract property management and leasing activities, where appropriate, to ensure professional, consistent and quality service.
- Add properties to the commercial portfolio to achieve economies of scale in contract property management.
- Add properties to the commercial portfolio to improve diversity in land asset revenue streams.

Challenges

- Managing deferred and future maintenance, including capital improvements, on endowment owned facilities to accommodate market needs.
- Ensuring that lessees manage deferred and future maintenance, including capital improvements, on non-endowment owned improvements.
- Comparing performance measures to industry benchmarks, given the differences between private sector and governmental accounting practice, including but not limited to private investor practices such as accrual accounting, depreciation of capital improvements over time, and the use of leverage.
- Providing for the support of the prorata cost of health, life, safety services benefiting the property and tenants.

Opportunities

- Increase endowment trust land revenue stream through acquisition of or transition to higher yielding real estate.
- Geographically consolidate management of endowment land.
- Invest in properties that are within communities that demonstrate sustained growth potential.
- Actively pursue entitlements on transition lands to create future long term leasing opportunities.

4. Agriculture

Idaho's agriculture asset consists of approximately 17,000 acres of dryland and irrigated cropland administered through 110 leases. Some agriculture uses are leased in combination with grazing uses. In most cases, the state's lessee rather than the state holds the water right on the irrigated cropland. The agriculture asset includes lands used for cultivating grains, vegetables, and hay, as well as vineyards and orchards.

Management Objectives

- Develop and manage long term agricultural leases that achieve a rate of return consistent with relevant peers.
- Identify and acquire additional agriculture lands.
- Enroll endowment lands in federal agricultural programs, when appropriate.

Challenges

- Acquiring water rights.
- Obtaining an appropriate share of any federal agricultural program payments associated with the leasing of endowment lands.
- Ensuring endowment lands remain eligible for enrollment in federal agricultural programs.
- Capturing economies of scale.

Opportunities

- Diversifying the endowment land revenue stream.
- Geographically consolidating management of endowment land.
- Acquiring agricultural lands in the path of urban growth that present intermediate revenue and long term transition opportunities.
- Developing agricultural use on existing endowment ownership through the acquisition of water rights.

5. Rangeland

Idaho's Rangeland asset consists of approximately 1.4 million acres of rangeland administered through more than 1300 grazing leases and other instruments covering a variety of activities. Livestock forage productivity and availability varies significantly across the state due to factors of climate, vegetation types, topography and access to water. Some lands are of sufficient size and productivity to stand alone as a grazing unit; however, most endowment lands are managed in conjunction with adjoining ownerships.

Management Objectives

- Manage the Rangeland asset prudently, efficiently, and with accountability to the beneficiaries.
- Develop and manage long term grazing leases that achieve a rate of return consistent with relevant peers.
- Identify and dispose of or transition underperforming Rangeland assets to increase economic performance and improve land asset diversity.
- Minimize contractual and environmental risks.
- Identify programmatic or statutory changes that maximize income.

Challenges

- Consolidating land ownership through federal and private land exchanges.
- Ensuring all-purpose, permanent legal access to high value, core rangeland parcels.
- Improving management regimes.
- Environmental constraints.
- Ineffective market structure.
- Balancing management expenses against revenue generated.
- Changing social and political attitudes and values, markets, and products.
- Operating a profit oriented business within a government agency.

Opportunities

- Geographically consolidating management of endowment Rangeland when it makes economic sense for long-term management or strategic opportunities.
- Rangelands adjacent to population centers present transition land opportunities.

6. Conservation

Similar to the issues associated with non-commercial public recreation, there is increasing pressure to manage endowment lands for conservation purposes. Scenic, cultural, fish and wildlife habitat, riparian areas, and other ecological values are receiving specific interest. Conservation lands are lands where certain real property rights are restricted or removed, either temporarily or permanently, for the purpose of preserving and protecting these environmentally important values.

Management Objectives

- Improve public awareness that endowment lands classified as Conservation lands must be appropriately compensated for the restricted property rights, including the expenses to manage the encumbrance.

- In situations where a permanent encumbrance is appropriate, such lands should be targeted for sale or exchange to an entity capable of long-term protection or preservation.

Challenges

- Comprehensive land use plans of local jurisdictions tend to classify undeveloped endowment lands as conservation and/or open space.
- Public perception appears to embrace the endowments administering such lands without appropriate compensation.
- Limited endowment resources to participate in all federal, state, county, and city land use planning and zoning processes, and other private development activities that affect endowment lands.
- Obtaining an appropriate share of any federal conservation program payments associated with the leasing of endowment lands.
- Ensuring endowment lands remain eligible for enrollment in federal conservation programs.

Opportunities

- Improving public awareness of the endowment's mission.
- Identifying land where conservation encumbrances can coexist with other uses to enhance endowment earnings.

7. Minerals

Idaho has mineral rights on approximately 2.5 million acres of surface ownership and on approximately 0.5 million acres where mineral rights were reserved but the land was sold. On average about 50,000 acres of the mineral estate is leased annually, and of this amount only about 25% is in active production. Both numbers fluctuate with market conditions. Phosphate and sand-gravel are the principle products extracted from endowment lands. Management complies with all applicable federal and state statutes, such as the Federal Clean Water Act, the Idaho Surface Mining Act, and the Idaho Dredge and Placer Mining Protection Act.

Management Objectives

- Realize an overall return on asset at or above the median return compared to relevant peers.
- Manage the mineral asset prudently, efficiently, and with accountability to the beneficiaries.
- Minimize contractual and environmental risks associated with extractive industries.
- Produce mineral products that capitalize on market demands.
- Identify programmatic or statutory changes that maximize income from mineral assets.

Challenges

- Ensuring that returns from mining activity adequately compensate for post-mining land use and values.
- Identifying high value mineral resources that are marketable.
- Balancing management expenses against revenue generated.
- Changing social and political attitudes and values, markets, and products.
- Operating a profit oriented business within a government agency; traditionally perceived as a nonprofit environment.

Opportunities

- Changing markets and products that provide new business opportunities.
- Aggregate sources proximal to areas of high growth.
- Widespread and diverse mineral resources.
- Providing incentives for increasing production revenue.

D. Recreation (non-commercial)

Idaho's endowment lands contain some of the most diverse landscapes in the Pacific Northwest. They include pristine mountain lakes, majestic mountain peaks, high alpine forests, desert lands, rugged breaklands, and river valleys. Because of this diversity, thousands of people use endowment lands each year for camping, hiking, fishing, hunting, bicycling, OHV use, berry picking, and mushroom picking. Incidental public recreation is not an asset class, but the issues associated with allowing such activity on endowment lands must be managed.

Management Objectives

- Improve public awareness that endowment lands are not public lands.
- Accommodate public use of endowment lands, to the extent feasible, provided such use does not impair financial returns.
- Minimize or eliminate the adverse impact to endowment resources and uses due to dispersed public recreation.
- Promote and improve inter-agency cooperation and education for recreation on endowment land.

Challenges

- Lack of public awareness that the purpose of endowment lands is to generate revenue.
- Controlling the location and type of dispersed recreation (OHV, motorized vehicles, etc.).
- Vandalism and sanitization issues associated with dispersed recreation and camping.

Opportunities

- Mitigate cost and generate revenue through user fees or assessments.

- Taking advantage of available grant programs for management of recreation on endowment lands.

E. Rights-of-Way

Rights-of-way are temporary or permanent property rights that have been either granted or acquired, for roads, utilities, or public use access. It is desirable that the IDL have permanent, all purpose legal access to state endowment lands.

Each Area office shall prepare a rights-of-way acquisition plan, which identifies access needs and tentative time frame for acquisition. Needs shall be prioritized and based on the following management objectives:

- Achieve short and long-term financial objectives:
 - a. Maximize long term ability to provide income
 - b. Improve income generating potential
 - c. Provide future investment potential
 - d. Improve the stability of the asset
- Improve the manageability of the land asset:
 - a. Improve access i.e. multiple routes or points of entry
 - b. Consolidate ownership patterns
 - c. Leverage management resources with other agencies or entities

Rights-of-way may be negotiated and acquired in the following ways:

- Easement for minimal monetary consideration or donation
- Easement exchange
- Work-in-kind easements
- Easement purchase
- Co-op agreements
- Purchase property (fee simple) to reserve right-of-way, then resell excess

Granted rights-of-way generally detract from the value or reduce the flexibility of endowment land management. It is the duty of the Land Board and IDL, as trustees, to protect the long-term productivity of trust lands for the beneficiaries; therefore care must be taken to ensure rights-of-way benefit the trust. While the state receives compensation for the property interest disposed of, this compensation often does not capture the superior value afforded to private lands as a result of enhanced access. This is especially the case in those instances wherein the private lands are considered for development. In development situations, compensation for such rights-of-way must properly account for the amount of endowment land encumbered, the bundle of rights granted, impacts to endowment land management and the increased administrative burden.

F. Transition

Transition lands are those parcels that may, within the next twenty years, be suitable for a higher and better use than the current asset classification. Often these properties exhibit high property values and low annual revenues (underperforming), and may be encroached upon by urban development. A Transition Property business plan, similar to the underlying asset business plans, is required (see Appendix A – *Asset Business Plan Template*).

Management activities will focus first on transition land at the high end of market values (Best Markets), and then on land possessing Best Market potential within the next ten to twenty years (Emerging Markets). Criteria used in identifying transition lands are:

- Appraised values above the value normally indicative of the current use.
- Regional land use planning studies.
- Resource trends and demographic changes.

Underperforming assets present transition opportunities. IDL will identify and analyze such lands to determine the best solution to resolving the underperformance. Such analysis will consider:

- Whether management costs can be minimized?
- Whether the lands can be managed differently to increase performance?
- Whether the parcel can be developed into a higher and better use?
- Who is the best long-term owner of the asset?

Area managers shall develop and maintain management plans to specifically identify transition opportunities (Appendix H). The identification of transition lands or parcels should be more, rather than less, inclusive. Before issuing leases, granting easements or temporary permits, or offering timber sales, managers must consider the impacts on future development opportunities.

G. Land Acquisition and Disposal Strategy

The Land Board seeks to maintain a land base with a diverse set of asset classes (see section III – Land Assets, B – Land Management Philosophy, I – Management Goals). To accomplish this, the Land Board will consider the disposal, acquisition, or development of real property provided transactions enhance value and improve revenue streams to the beneficiaries.

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.
- The target holding period for land assets shall be for long-term investment (generally 10 years or more).

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."
- Evaluating and prioritizing acquisition and disposal transactions in an environment of limited resources.
- Communicating endowment investment objectives.
- Conducting commercial investment transactions in a political environment.
- Executing revised procedures designed to foster the agency's ability to be competitive in the real estate market.

Opportunities

- Utilizing agent agreements to conduct proactive searches for properties based on criteria herein.
- Utilizing non-binding and binding agreements to become more competitive in the real estate market.
 - Buyer Agency Agreement
 - Letter of Intent, *including Buyer Agency Agreement* (Appendix I)
 - Agreement to Initiate (Appendix J)
 - Purchase Sale Agreement, *including Buyer Agency Agreement* (Appendix K)

Implementation Strategy

Using the diversification and target return objectives as criteria, the IDL shall implement acquisition and disposal processes that incorporate due diligence and modern real estate tools. Such tools include:

- The real estate agreements mentioned previously under *Opportunities*.
- The Parcel Nomination Process

A filtering process used to reject or assign priorities and resources to potential transactions.

 - Parcel Nomination Coversheet (Appendix L)
 - Parcel Nomination Packet Checklist (Appendix M)
- Property plans
 - acquisition
 - disposal

- exchange
 - transition
- Due diligence checklist (Appendix N)
The timing and performance of various due diligence activities is different for each transaction. Expending significant resources on due diligence should not occur until the proposed property is secured by one of the aforementioned real estate agreements.
- The Land Bank Fund
Idaho Code §58-133 provides for the sale and reinvestment in real property through a land bank. The Land Board views the land bank fund as an essential transition tool that can be used to address underperforming assets while new opportunities are targeted.

Throughout the implementation process the IDL will keep the Land Board apprised of progress, but will only seek Land Board approval at such time as sufficient data is available to make a final decision.

IV. Appendix/Exhibits

Exhibit 1
Endowment Fund Assets, Distributions and Asset Mix

Idaho Land Grant Endowment Fund Assets					
<i>(Amounts in millions)</i>					
	<i>Fiscal Year End</i>				
	<u>1966</u>	<u>2000*</u>	<u>2011</u>		
			<i>Permanent</i>	<i>Earnings</i>	
		<i>Total</i>	<i>Fund**</i>	<i>Reserve**</i>	
Public School	45.7	556.0	808.2	714.7	93.5
Agricultural College	2.6	14.8	25.9	20.2	5.7
Charitable Institutions	4.4	54.5	83.4	68.6	14.8
Normal School	4.2	47.3	76.1	62.8	13.4
Penitentiary	2.6	18.3	34.8	28.6	6.2
School of Science	4.3	54.8	85.1	70.1	15.0
State Hospital South	2.0	23.4	60.2	45.9	14.3
University	3.2	42.4	72.2	59.4	12.8
	<u>69.0</u>	<u>811.5</u>	<u>1,245.9</u>	<u>1,070.2</u>	<u>175.6</u>
Capitol Permanent***	<i>not avail.</i>	<i>not avail.</i>	21.9	<i>not applicable</i>	

* Excludes approximately \$25 million of endowment-related funds held by the IDL which were transferred to the EFIB in July 2000 to become the beginning balance of Earnings Reserves.
** Reflects \$28.6 million of approved transfers from Reserves to Permanent effective 9/1/2011.
*** The Capitol Permanent Fund was managed separately from the other endowments until 2004.

Endowment Fund Distributions					
<i>(Amounts in millions)</i>					
	<i>Fiscal Years</i>				<i>Coverage</i>
	<u>1966</u>	<u>2000</u>	<u>2007</u>	<u>2013A</u>	<i>Ratio*</i>
Public School	3.0	42.8	24.6	31.3	3.0
Agricultural College	0.2	1.0	0.7	0.9	6.2
Charitable Institutions	0.3	3.8	2.4	3.0	5.0
Normal School	0.3	3.9	2.1	2.7	5.0
Penitentiary	0.2	1.3	0.8	1.2	5.0
School of Science	0.3	3.8	2.4	3.0	5.0
State Hospital South	0.1	2.5	1.1	2.9	5.0
University	0.2	3.1	1.8	2.6	5.0
Total	<u>4.7</u> ^f	<u>62.0</u>	<u>35.8</u>	<u>47.5</u>	<u>3.7</u>
Capitol Permanent**	<i>not avail.</i>	<i>not avail.</i>	-	<i>not avail.</i>	<i>not applic.</i>

* 2011 Earnings Reserves (after transfers) divided by 2013 Distributions
** The Capitol Permanent Fund was managed separately from the other endowments until 2004. The beneficiary chose to forgo a distribution in 2007 and 2013's has not yet been established.

Endowment Fund Asset Mix

	<i>Target % Of Assets Invested</i>	<i>Ten-Year Expected Return*</i>	<i>Annual Absolute Risk</i>
<u>Equities</u>			
Developed markets			
U.S.	48%	8.0%	18%
Foreign	18%	7.9%	20%
Emerging markets	4%	8.4%	28%
Private equity	0%	9.1%	30%
High yield debt	0%	5.6%	12%
Total Equities	70%	8.0%	18%
<u>Fixed Income</u>			
Treasuries/Agencies			
T-Bills/Cash	0%	3.0%	5%
Standard	9%	3.2%	3%
Inflation-protected	5%	3.5%	6%
Mortgages (agency)	8%	3.8%	5%
Mortgages (non-agency)	1%	3.9%	5%
Corporates, other	7%	4.6%	11%
Foreign bonds	0%	3.4%	10%
Total Fixed Income	30%	3.8%	4.0%
Real Estate	0%	6.8%	16%
Absolute Return	0%	5.9%	10%
Total	100%	7%	13%

Duration/Maturity of Fixed Income (in years) 4.5

* Assumes annual inflation rate of 2.5%. Returns are 10-year geometric.

Source: Callan Associates, EFIB staff. Return and risk assumptions as of January 2011.

Appendix A

Asset Business Plan Template

- A. Executive Summary
- B. Introduction
- C. Description of Business
 - 1. Asset Mission Statement
 - 2. Asset Goals, & Objectives
 - a. Short and long term financial goals & objectives
 - b. Short and long term resource management goals & objectives
 - 3. Brief History of the Business
 - 4. Business Strengths & Core Competencies
 - 5. Challenges & Opportunities Facing the Business
 - a. Immediate
 - b. Long term
 - 6. Future Outlook for the Business
- D. Business Products and Services
 - 1. Detailed Description of Trust Products and Services
 - a. Current Resource Information (detailed)
 - b. Current Asset Values (brief summary)
 - 2. Describe our Competitive Advantages and Disadvantages.
 - 3. Describe our Methodology for Pricing Trust Products
- E. Market Analysis (both resource and financial)
 - 1. Customer (purchaser) Analysis
 - a. Who They Are
 - b. Their Location
 - c. The Size of the Firms
 - d. Their Products and Capacity
 - 2. Competitor (may be a purchaser also) Analysis
 - a. Identify and Describe our Competition
 - 1.) Who They Are
 - 2.) Their Location
 - 3.) The Size of the Firms
 - 4.) Describe Competing Resources
 - 5.) Describe Competitor Strengths & Core Competencies
 - 6.) Describe Competitor Products and Production Capacity
 - b. Describe Asset Position
 - 1.) Size of the market
 - 2.) Percentage of market participation
 - 3.) Current demand for Trust products
 - 3. Growth History and Trends

4. Barriers to implementing the marketing plan

- a. Funding
- b. Training/skills
- c. Political climate
- d. Government regulations
- e. Changing economy
- f. Changes in our industry

5. Marketing Strategy

- a. Promotion
- b. Budget
- c. Pricing
- d. Locations
- e. Forecasts

6. Identify Research Needs

F. Operational Plan

1. Management and Organization (Current & Future)

- a. Personnel
- b. Location
- c. Production

2. Describe Challenges & Opportunities

3. Discuss How to Meet Future Resource and Financial Goals and Objectives

G. Financial Statement

- a. Brief History
- b. Detailed Description of Asset Values
- c. Projections

H. Appendices

Land Board Lease Extensions.

At the November 12, 2013 special Board meeting, the Land Board voted to extend 188 leases at Priest Lake and Payette Lake for cottage site lessees.

All of the current leases expire on Dec. 31, 2013. In order to extend or write new leases, the Board is required by the Idaho Constitution to hold an auction. (Art IX, Sec.8).

The Land Board is also required to "secure the maximum long term financial return" for the school endowment fund and the Idaho Supreme Court has ruled, " for this reason competitive bidding is made mandatory." The Court also stated in Wasden V. Land Board, Opinion No. 104, 2012, that "...the Board breached its duty as trustee when it failed to lease endowment lands to the highest bidder in a public auction."

This Court opinion went on to say, "...it is clearly unconstitutional as - in eliminating the conflict auction procedure and instead requiring "market rent." Market rent is established by holding an auction and the Court says the auction is mandatory.

In spite of these requirements, all five of the Land Board members voted to extend the expiring leases for one year without holding an auction.

Another problem facing the Land Board is the lot appraisals conducted during 2012 - 2013.

Many of the lessees complained about the values of the appraisals and refused to sign new lease agreements. The Board is now spending more money to re-appraise the properties. One must question the competence of the appraisers in the first place.

The current members of the Land Board seem to lack any understanding of basic business principles, the Idaho Constitution, and little concern about wasting school endowment funds.

Robert Forrey / Former Legislator / 888-5451 /

LAND BOARD LUP (LAND USE PERMIT)

The members of Idaho's Land Board have devised a new scheme to circumvent the requirement in the Idaho Constitution that requires the disposal of school endowment lands to be done by holding an auction.

The purpose of the auction is two fold. First, it brings the highest monetary return to the school endowment fund and second, it gives every Idaho Citizen an opportunity to obtain a particular parcel of land, not just a select few.

The Board is offering a new "Land Use Permit" (LUP) for cottage site lessees who choose not to renew their 2014 lease. This LUP is offered for a period not to exceed two years. This is essentially a disposal of school endowment land to a selected party without holding an auction.

Following are Idaho Supreme Court rulings concerning the disposal of school endowment lands. Wasden vs. Idaho Land Board 2012.

"The Attorney General contends that Article IX Sec.8 requires a public auction for any "disposal" of endowment land..." (emphasis added)

"The Idaho Constitution specifies the Board's duties in managing State endowment lands.. Art. IX Sec.8, expressly states endowment lands must be held in trust to secure the maximum long term financial return, subject to "disposal" at public auction."

"...the state shall receive the greatest amount for the lease of school lands...and for this reason competitive bidding is made mandatory."

"In addition to "disposal," the Section variously refers to "sale, "rental," or other dispositions of such lands." (emp added)

"The disposal" or "disposition" of public lands obviously includes the sale thereof and just as obviously includes other types of disposal or disposition." (emp. added)

Blacks Law Dictionary defines "disposition" as the act of transferring something to another's care or possession." This would include a Land Use Permit.

A Land Use Permit (LUP) allows the permittee the exclusive use of endowment land by paying an arbitrary fee set by the Land Board without holding an auction. In effect this is a short term lease in which a rightful possessor of real property conveys the right to use and occupy that property in exchange for consideration."

In this case the Land Board has no idea whether or not they are receiving the maximum financial return on endowment land. This is why the Idaho Supreme Court ruled that "...and for this reason competitive bidding is made mandatory." (emp. added)

STATE BOARD OF LAND COMMISSIONERS

April 15, 2014
Regular Agenda

SUBJECT

Cottage Site Land Use Permit

BACKGROUND

On May 21, 2013 the Land Board approved the issuance of a Land Use Permit (LUP) to cottage site lessees that were not interested in signing a long-term lease beginning in 2014. This Land Board approval is included as Attachment 1. At that time lessees were offered the option of signing a new long-term lease at the advertised appraised value or requesting a reappraisal. Those lessees requesting reappraisal were subsequently offered a one (1) year lease extension by the Land Board to allow the re-appraisal process to be resolved during 2014, thereby negating the need for the LUP. Accordingly, no cottage sites lessees selected the LUP option at that time.

Cottage site lessees under an expiring 2014 lease extension are again faced with a decision regarding a future authorization instrument. A portion of these lessees are on the Voluntary Auction for Ownership (VAFO) track and will not need a 2015 authorization if their auction is successful. However, any lessee falling out of the auction process or any current lessee that is not conflicted following the application deadline will need to decide whether they are prepared to sign a long-term lease beginning January 1, 2015. Consistent with the Land Board's past action in May of 2013, the Department is prepared to again offer a LUP option as an "exit strategy" for those lessees not interested in a long-term lease.

DISCUSSION

For those cottage site lessees with an expiring 2014 lease extension that do not wish to sign a long-term lease beginning in 2015, the Department proposes to offer an LUP that includes the following basic terms:

- Two (2) year permit period beginning January 1, 2015 and ending December 31, 2016.
- Four Percent (4%) of appraised land value as annual rent.
- Rent paid in four equal six (6) month installments.
- Permittee and Department will cooperate in the marketing of the property for lease or sale at auction during the permit period. Obtaining an LUP does not guarantee that an auction slot will be available during the term of the LUP. Availability for future voluntary auctions will be subject to the Land Board's established auction goals.
- Permittee allowed to fully occupy site, but may not interfere with marketing of the cottage site.
- Permittee may defer the amount of increased rent from 2014 for the two (2) years of the LUP, with complete payment due (including six percent (6%) interest on the deferred amount) by December 31, 2016, which is the end of the LUP period.

Land Use Permit

- Prior to entering into the LUP, lessees wishing to enter into an LUP must provide to IDL: 1) Eight hundred dollars (\$800) toward the cost of a title commitment to determine whether liens are present on the leased lot; and 2) a written agreement with any lienholders that the lienholders agree to: a) subordinate its lien to IDL's landlord lien, if any; and b) that the lienholders claims against the lessee, including all related fees and costs, do not exceed eighty percent (80%) of the appraised value of the Personal Property on the leased lot (known as "improvements"). Individuals are eligible to bid at auction on a different lot, provided that the LUP has been terminated, Permittee has removed its personal property from its lot, restored the property to its natural condition, and is not indebted to IDL.
- LUP is not renewable, assignable, or subject to conflict auction.
- Permittee may not challenge the appraised value of their personal property, if generated for leasing or public auction purposes.
- Removal of improvement is required at the end of the LUP, if a new lease is not established or if the property is not sold at public auction during the LUP period.
- Permittee is required to maintain one million dollars (\$1,000,000.00) homeowner's insurance.

The LUP template, included as Attachment 2, was developed with the assistance of the Attorney General's office and contains the terms approved by the Land Board on May 21, 2013. If approved by the Land Board, the LUP template would be posted on the Department's website and would be offered by the Department to any lessee as an alternative to signing a long-term lease.

RECOMMENDATION

→ Direct the Department to offer a two (2) year LUP to those cottage site lessees with an expiring 2014 lease extension that do not wish to sign a long-term lease beginning January 1, 2015.

BOARD ACTION

No Auction - A Lease is a Disposal
1st District Judge Barbara Buchanan says - You
can't do this. Copy Attached.

ATTACHMENTS

1. May 21, 2013 Land Board Memo - Approval of 2014 Cottage Site Appraisal Process
2. Land Use Permit (template)

Cabins?

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2014 JUN 27 P 3:30

CLERK DISTRICT COURT

Bm
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

JEAN T. ADAMS, MICHAEL)
 ALTRINGER, DOUGLAS G. & HELEN G.)
 AMSBURY, GARY & GLENDA)
 BAKKEN, VERNA E. BANKS, WILLIAM)
 M. & BARBARA T. BATES, JAMES W. &)
 GAY L. BECH, JEFFERY E.)
 BLACKWELL, TERENCE R. & MOLLY)
 K. BROMLEY, LARRY M. & JANICE E.)
 BROWN, TRAVIS H. & DORI BROWN,)
 CLIFFORD D. BERGERON, LEES J.)
 BURROWS, JAMES & DRUANNE)
 CHAPADOS, ANDREW J. & SUSAN P.)
 CHRISTOFF, THOMAS L. & SANDRA)
 CLEVINGER, BRADLEY COSSETTE,)
 MARGO COSTA, ROBERT L. DELSMAN,)
 RICHARD L. DENO, TRAVIS DIX,)
 WILLIAM S. & CAROL ELLIS, JOHN P. &)
 GINA M. EMINGER, ERIC R. & K.)
 CHRISTINE FEHR, MARK & MICHELE)
 FINLEY, MICHAEL GENOVA,)
 RAYMOND & JEANNE GIVENS, JAMES)
 & JENIFER GUNN, EDWIN HANFORD,)
 THOMAS R. & CLAUDIA E.)
 HARTANOV, ANN E. &)
 JAMES K. HEIDENREICH, CURTIS R. &)
 ERIKA HENNINGS, TERESA M. HOLUM,)
 GRAHAM & KERRY HUTCHINSON,)
 RONALD H. & KAREN L. JENSEN,)
 ROBIN JOHNSON, G. CRAIG & SHARON)
 A. LEE, DOROTHY LEEDS, RUSSELL &)
 KATHY MAGER, MARIE A. MARTELL)
 AS TRUSTEE OF THE MARTELL)
 FAMILY TRUST, ROBERT & TESSA)
 MCCRAY, JOY MCKENNA, ROBERT E.)
 & SUSAN M. MOE, LAVERNE &)
 BERNICE MOORE, EDWARD A. &)
 NANCY I. NARANJO, JAMES L. &)

CASE NO. CV 2014 - 0000737

MEMORANDUM DECISION AND
ORDER DENYING PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION

District Judge
Barbara Buchanan

from an independent source such as state law-rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.

Board of Regents v. Roth, 408 U.S. 564, 577 (1972).

entitlement action
The plaintiffs assert that they have a constitutionally protected property right to renew their cottage sites leases—in essence a property right in the next lease. They are before the court seeking extraordinary relief—asking this court to enjoin the actions of the Land Board in carrying out its constitutional and statutory duties to protect, sell and lease the state endowment lands. As noted above, a preliminary injunction “is granted only in extreme cases where the right is very clear and it appears that irreparable injury will flow from its refusal.” *Harris v. Cassia County*, 106 Idaho at 518, 681 P.2d at 993. On the record before it, this court does not find that the plaintiffs have established that they hold any state law property right to renew their leases. *entitled on question*

Under Idaho law, leases of endowment land are for a fixed term of years. Idaho Code § 58-307. Any person who uses or occupies state land for more than thirty days after expiration of a lease is regarded as a trespasser and subject to criminal penalties. Idaho Code § 58-312. In this court's view, the Idaho Supreme Court's recent decision in *Wasden* makes it very clear that the Idaho Constitution prohibits recognition of any property right in a lease of state endowment land—the very relief the plaintiffs are seeking.

The Idaho Constitution specifies the Board's duties in managing State endowment lands. Article IX, § 8, expressly states that endowment lands must be held in trust to secure the maximum long term financial return, subject to “disposal” at public auction:

It shall be the duty of the state board of land commissioners to provide for the location, protection, sale or rental of all the [endowment] lands ... in such manner as will secure the maximum long-term financial return to the institution to which granted or to the state if not specifically granted.... 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....

Idaho Const. art. IX, § 8. ...

Reading "disposal," in Article IX, § 8, to include both leases and sales of land is consistent with the Court's earlier decisions and the context of the word. The Court has recognized that "[t]he Board does not have the discretion to grant a lease to an applicant who does not place a bid at an auction, based upon Idaho's constitutional and statutory mandate that the Board conduct an auction. Idaho Const. art. IX, § 8; I.C. § 58-310." *Idaho Watersheds Project v. State Bd. of Land Comm'rs*, 128 Idaho 761, 766, 918 P.2d 1206, 1211 (1996) (*IWP I*). In *IWP I*, the Court did not explicitly state that Article IX, § 8 is the only basis for the auction requirement, but it implied that the Constitution is one mandatory basis for auctions, while statutory provisions are another. *Id.* This conclusion follows *East Side Blaine Cnty. Livestock Ass'n v. State Bd. of Land Comm'rs*, where the Court explained that

[t]he dominant purpose of [Idaho Const. art. IX, §§ 7, 8] and of the statutes enacted thereunder is that the state shall receive the greatest possible amount for the lease of school lands for the benefit of the school funds, and for this reason competitive bidding is made mandatory.

34 Idaho 807, 814, 198 P. 760, 763 (1921) (emphasis added).

Wasden v. State Bd. of Land Com'rs, 153 Idaho at 196-97, 693 P.2d at 699-700.

The Idaho Supreme Court's discussion of the Payette Lake lessees' claims that they had acquired a contractual right to renew their 2001 leases for an additional ten years on the same terms and conditions is instructive:

Although we do not rule on the merits of the contract action, it must be observed that the Payette Lake Lessees face a daunting task in establishing that they have an unconditional right to renew their 2001 leases for a ten-year period on the same terms and conditions, including the 2.5% rental rate. They will also need to convince the district court that the provisions of the 2001 leases, which were drafted to comport with I.C. § 58-310A, are still valid despite this Court's holding that the statute is unconstitutional. Even if they are able to do that, the Board has a constitutional obligation to "secure the maximum long term financial return" on leases and sales of endowment lands. Idaho Const. art. IX, § 8. The Board has determined that, at a minimum, an annual rent of 4% of the fee-simple value of the property constitutes market rent, i.e., the rent required for maximum financial return. The Payette Lake Lessees will need to convince the district court

that the 2.5% rental rate constitutes market rent and that the Board erred in determining it to be 4%. If they are unsuccessful in this regard, they will have the unenviable task of trying to convince the court to force the adoption of an unconstitutional rental rate. And, of course, they will need to convince the district court that its seemingly reasonable interpretation of the lease language in the administrative proceeding was incorrect.

Id. at 199-200, 280 P.3d at 702-703.

V. CONCLUSION AND ORDER

NOW, THEREFORE, this court holds that the plaintiffs' 42 U.S.C. § 1983 claim fails due to their failure to establish any property interest protected by the Constitution. As the plaintiffs have failed to establish a clear right to their requested relief, IT IS HEREBY ORDERED THAT the motion for a preliminary injunction is denied.

IT IS SO ORDERED.

DATED this 27 day of June, 2014.



Barbara Buchanan
District Judge

Idaho Land Board Gives Approval to First U.S. Destination Resort With Skiing Since Mid-1980s

Note: There was no auction held.

BOISE, Idaho, May 14 /PRNewswire/ -- The senior elected officials of Idaho

today granted approval to a lease of approximately 2,100 acres of state land

alongside a mountain lake in west central Idaho to help create the first year-

round U.S. destination resort with skiing since the mid-1980s -- WestRock Lake

Cascade. *Tamarack SKI Resort.*

The members of Idaho's constitutionally-created Board of Land

Commissioners -- Governor Dirk Kempthorne, Secretary of State Pete Cenarrusa,

Attorney General Al Lance, Superintendent of Public Instruction Marilyn Howard

and Controller J.D. Williams -- voted 4-1 to approve a lease refined over

nearly two years of work by the WestRock Lake Cascade team led by Chief

Executive Officer Jean-Pierre Boespflug. *No Auction*

"Idaho's senior elected officials today determined that this team has

earned the opportunity to create substance from the blueprint we have drawn

together," Boespflug said. "We are energized for the next stage of our hard work."

Governor Dirk Kempthorne, who chairs the Idaho Board of Land

Commissioners, credited the WestRock Lake Cascade team for its preparation as

he cast his yes vote in the public meeting.

"We've made significant changes, modifications and mitigations, requirements of financial resources, so that we now have an opportunity for these entrepreneurs to go do something spectacular," Governor Kempthorne said.

"That's what we're asking them to do. That's what we believe they can do."

"Idaho is making an affirmative statement that it wants to be known as an important destination for visitors from across the world," said Alfredo

Miguel, chairman of the board of WestRock Lake Cascade.

"Whether those visitors want a great round of golf, like I do, or whether they want a walk of discovery in Idaho's pristine backcountry, WestRock Lake Cascade can be their gateway."

WestRock Lake Cascade will encompass approximately 1,500 acres of private land and 2,100 acres of state land. The resort has been approved for

approximately 2,000 units of housing and will offer all traditional resort amenities, with special emphasis on baby-boomer pursuits such as mountain biking, cross country skiing, and other active sports.

Because of its rent for mountain lands of a minimum of \$200,000 per year,

→ WestRock will become one of the largest generators of money for the Idaho

Public School Endowment, which is primarily funded by state land leases.

"I believe Idaho's top officials voted so strongly to support WestRock

because our team has shown that it works well with the community," said Don

Weilmunster, president of WestRock Associates, L.L.C.

"We're proud that

relationship came across as clearly as it did today in the Land Board's vote."

Tom Grott

Credit Suisse to sell off building materials at Tamarack Resort

July 15 sale comes day before planned auction of Village Plaza

BY DAN GALLAGHER
for The Star-News

June 24, 2013

Credit Suisse is moving to sell off building materials at the unfinished Village Plaza at Tamarack Resort before the buildings themselves are sold.

Uninstalled items such as elevator cabs, heating and cooling equipment, bathtubs, wooden timbers and other materials will be sold at auction at 10 a.m. on Monday, July 15, at the resort.

Also listed for sale is a pedestrian bridge, structural steel members, sheet metal, electrical conduit, furniture, a "quantity of vehicle tires" and restaurant equipment.

"They're construction materials that were destined for Village Plaza, but weren't installed," said David Papiez, controller and asset manager of Tamarack Resort LLC.

"This sale should be viewed as another step in the completion of the larger Tamarack foreclosure," Papiez said.

A sheriff's sale is set for Tuesday, July 16 at the Valley County Courthouse in Cascade for the Village Plaza complex as well as the unfinished wing of the Lodge at Osprey Meadows.

Progress on the envisioned \$1.5 billion Tamarack project ground to a halt in 2008 when Credit Suisse bank filed suit, saying it was owed \$343 million from the resort's developers.

Other firms followed suit over properties such as the lodge wing, parcels on which tennis stars Andre Agassi and Stefanie Graf had proposed building a Fairmont Hotel; and the unfinished Trillium Townhomes.

The completed plaza would have included 129 residential condos, a movie theater, 23 boutiques, shops and restaurants. The total price tag was set at \$91 million.

While some of the condos have been completed to the drywall stage, some have merely been enclosed to protect them from the elements.

Since the stopping of construction in 2008, Tamarack Resort LLC has undertaken annual winterization construction projects to protect the incomplete buildings.

The uninstalled construction materials are controlled by Credit Suisse and are not part of the July 16 building auction, Papiez said.

The material can be sold as a whole or in separate lots and buyers must supply cash or a cashier's check.

If Credit Suisse is the highest bidder, the materials can be purchased by crediting the purchase price against the balance of the unpaid loan owed to the Swiss bank.

The purchased items must be removed from the plaza within five days after the sale.

Tamarack
Ski
Resort

IDAHO STATE BOARD OF LAND COMMISSIONERS

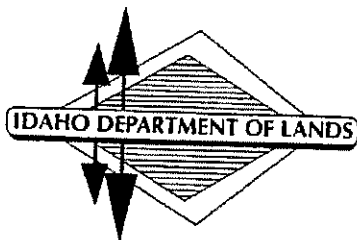
Governor C. L. "Butch" Otter, President of the Board
Secretary of State Ben Ysursa
Attorney General Lawrence G. Wasden
State Controller Brandon D. Woolf
Superintendent of Public Instruction Tom Luna

NOTICE OF PUBLIC MEETING

STATE BOARD OF LAND COMMISSIONERS TO HOLD A SPECIAL MEETING ON TUESDAY, NOVEMBER 12, 2013

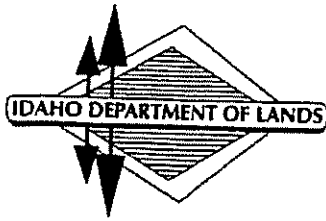
The State Board of Land Commissioners will hold a Special Meeting on Tuesday, November 12, 2013 in the State Capitol, Hearing Room WW53, Lower Level, West Wing, 700 W Jefferson St, Boise. The meeting is scheduled to begin at 10:30 A.M. (Mountain Time).

Topic: Approval of 2014 cottage site lease terms and rates.



Thomas M. Schultz, Jr., Director and
Secretary to the Idaho State Board of Land Commissioners
300 North 6th Street, Suite 103, Boise, ID 83702

This notice is published pursuant to §67-2343 Idaho Code. For additional information regarding Idaho's Open Meeting law, please see Idaho Code §§ 67-2340 through 67-2347.



STATE BOARD OF LAND COMMISSIONERS
C. L. "Butch" Otter, Governor and President of the Board
Ben Yursa, Secretary of State
Lawrence G. Wasden, Attorney General
Brandon D. Woolf, State Controller
Tom Luna, Superintendent of Public Instruction

Tom Schultz, Secretary to the Board

FINAL Agenda
State Board of Land Commissioners' Special Meeting
November 12, 2013 – 10:30 A.M.
Hearing Room WW53, Lower Level, West Wing, 700 W Jefferson St, Boise

- **REGULAR**

1. **2014 Cottage Site Lease - 1 Year Extension** – *Presented by Mike Murphy, Bureau Chief-Endowment Leasing*
[Please note: No testimony will be taken on land exchanges.]

- **EXECUTIVE SESSION**

- A. Idaho Code 67-2345(1)(f) – to communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. [TOPIC: Potential litigation related to cottage sites.]

- A FINAL AGENDA will be available at the Idaho Department of Lands, 300 North 6th Street, Suite 103, Boise, Idaho, two (2) days preceding the meeting. If you have questions or would like to arrange auxiliary aides or services for persons with disabilities, please contact Dept. of Lands at (208) 334-0242. Accommodations for auxiliary aides or services must be made no less than five (5) working days in advance of the meeting.
- The CONSENT AGENDA addresses routine items the board may approve without discussion.
- The REGULAR AGENDA addresses policy and program items the board may wish to discuss prior to making a formal recommendation.
- The INFORMATION AGENDA provides information only.
- The EXECUTIVE SESSION is a special closed session to consider confidential matters pursuant to Idaho Code § 67-2345.
- An item may be moved from one agenda to another by the Board.
- The agenda is subject to change.

STATE BOARD OF LAND COMMISSIONERS
November 12, 2013
Regular Agenda

SUBJECT

2014 Cottage Site Lease – 1 Year Extension

BACKGROUND

In 2012-13 the Department completed new appraisals for all cottage site lots at Payette Lakes and Priest Lake. The appraisals were completed in order to establish the fee-simple market value of the endowment-owned lots in anticipation of carrying out transactions that could begin transitioning lots into private ownership. The appraisals were also to be the basis for the 2014 lease payments (the first year payments on the offered 5-10 year leases).

The Department offered leases to those lessees at Priest Lake and Payette Lakes that were willing to accept the initial appraised value. To date the Department has offered 63 leases at Priest Lake and 125 leases at Payette Lakes. Given concerns about the 2013 appraisals, the Department also offered to re-appraise the lots for the remaining lessees that did not want to accept their initial appraised value. These re-appraisals are currently being conducted and will not be completed in time for the issuance of new leases beginning January 1, 2014 or in time for the normal annual billing cycle. *No Auction*

Re-appraisals of cottage sites are in progress. Department staff will review and provide comments on the draft appraisals as they are received. Final appraisal reports for each lake will be issued and made available to all affected lessees once the appraiser has received and incorporated comments for all draft appraisals.

DISCUSSION

In order to create a bridge to a new lease during the re-appraisal process, the Department is proposing that the existing lease that expires December 31, 2013 be extended up to 12 months. The extension would utilize the 2013 rent values and require payment for at least the first six months of 2014 by January 1, 2014, with a second half payment due June 1, 2014. The extension would allow for a conflict process for applications related to a new lease that would be offered after the completion of the re-appraisal process. *NO Auction*

RECOMMENDATION

Direct the Department to proceed with offering an extension of the 2013 lease expiring December 31, 2013 to those lessees that opted to have their leased site re-appraised for the 2015 rent.

BOARD ACTION

The Board voted 5-0 to Approve.

A.G. Wasden - Motion to accept (5 yes)

Danny Christensen - Priest Lake Assn. - Reduce Lease from 4% to 2.5%

Mike Murphy

*2.5% } Tom Lunde moved to reduce
4.0% } rent from 4% to 2.5%
Motion failed - no 2nd*

Interim Committee Testimony on Lands

2014

1.

The Idaho Land Board members have struggled for years in their attempt to manage the public school and other endowment lands granted to Idaho by the United States Congress.

Law suits and legal actions involving the Land Board have become common place in recent years partly because the Board refuses to honor mandates set down in the Idaho Constitution, and they twist the meaning and interpretation of words.

For example, AG Opinion No. 02-1, "The rules governing interpretation of a statute have recently been reiterated by the Idaho Supreme Court: The interpretation should begin with an examination of the literal words of the statute, and this language should be given its **plain**, **obvious**, and **rational** meaning." (emphasis added)

Now consider the word "land". What is the plain, obvious, and rational meaning of the word "land" in Idaho Code 55-101 A? *In Part,*

"LANDS" DEFINED. Lands are the material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substances, ..."

Blacks Law Dictionary defines "land" this way: "Land is not the fixed content of that space, although, ~~as we shall see~~, the owner of that space may well own those fixed contents. Land is immovable, as distinct from chattels, which are moveable; it is also, in its legal significance, indestructible. The contents of the space may be physically severed, destroyed, or consumed, but the space itself, so the "land" remains immutable."

The Idaho Land Board members seem to be confused between the definitions of Land and Real Estate. Idaho Code 55-101 defines real estate in part as "That which is affixed to land," and "That which is

appurtenant to land.” Blacks Law Dictionary defines “appurtenant” as:

“Something that belongs or is attached to something else, something annexed to a more important thing.”

That “more important thing” is land. The Noah Webster 1828 Dictionary defines land as, “Any small portion of the superficial part of the earth or ground. The solid matter which constitutes the fixed part of the surface of the globe.”

Now, the question must be asked, what did Congress grant to Idaho through the 1889 Idaho Admission Bill?

“Paragraph 4. School lands- sections numbered 16 and 36 in every township of said state... are hereby granted to said state for the support of common schools,...”

“Paragraph 5. Proceeds of the sale of school land... may be deposited in the land bank fund to be used to acquire, in accordance with State law, other land in the State...”

“Land granted for educational purposes under this Act may be exchanged for other public or private land.” (emphasis added)

Notice there is no mention of real estate, businesses, or buildings.

Art. IX, Sec. 8 of the Idaho Constitution is consistent with the Admission Act.

“Location and Disposition of Public Lands. It shall be the duty of the State Board of Land commissioners to provide for the location, protection, sale, or rental of all the lands... granted to or acquired by the state by or from the general government...”

“The legislature shall... provide by law... that the general grants of land... shall be subject to disposal at public auction...”

“The legislature shall have power to... exchange granted or acquired lands... for other lands...”

Idaho Constitution Art. IX, Sec. 4. “...proceeds from the sale of school lands may be... used to acquire other lands...”

Again, no mention of commercial real estate, office buildings, retail and light industrial business designations, hospitality, ski resorts, etc., as listed in the Board's Asset Management Plan.

Idaho's Attorney General will argue that land is not only dirt and natural growth, but includes anything that may be built or placed upon the land such as buildings or other structures.

New Jersey Supreme Court 1956

But the AG and Land Board change their definition of land when it comes to the Priest and Payette Lakes lots. In their notice for auctions, they state, “The auction is an oral, public auction, and active bidding is for the LAND ONLY. The State owns the land, not the cabins on top of the land.” The auction notice continues: “The price for the houses and other improvements on top of the land... are not being bid on, only the land.”

Being inconsistent and confused about the definition and meaning of the word “land” has caused the Land Board a great deal of difficulty in recent years.

~~Perhaps the simple answer to the Board's confusion would be for them to listen to or read numerous court admonitions.~~

~~“The Court will give effect to the plain language of an unambiguous statutory or constitutional provision. It reviews the provision's language as a whole, considering the meaning of each word so as not to render any word superfluous or redundant.”~~

~~(Warden v. Land Board 2012)~~

There is little doubt that the members of the Land Board know the differences between land and real estate after reading their notice for auction of "LAND ONLY" at Priest and Payette Lakes.

However, as stated in their Asset Management Plan on page 24, their management objective is to "Add properties to the commercial portfolio to improve diversity in land asset revenue streams." And on page 31, the plan calls for "Opportunities... to become more competitive in the real estate market." Their Business Plan on page 35 calls for them to "Identify and Describe Our Competition."

The current Land Board justifies their entering into the commercial business world in competition with private enterprise by changing the meaning of the word "LAND".

1. The Legislature can correct this by writing a very clear definition of the word "land" in keeping with the intent of the Idaho Admission Act and our Constitution.

~~After all, the Idaho Constitution did not authorize the State Board of Real Estate. It established the State Board of LAND Commissioners.~~

2. *And this committee should take the steps necessary to make major changes in the Land Board's Asset Management Plan.*

Robert Forrey
Former Legislator
888-5451
baf4900@gmail.com

More About the Auctions and Land Values Used

- The Idaho Constitution requires a public auction for the disposal of state endowment trust land.
- The auction is an oral, public auction, and the active bidding is for the LAND ONLY. The State owns the land, not the cabins on top of the land. The lands cannot be sold for less than market value, or the appraised value of the lands. Auction participants will submit competing bids, and the individual who submits the largest bid wins.
- If an auction participant other than the current homeowner (current lessee of the lot being auctioned) is successful in submitting the winning bid, the individual must pay the homeowner for the value of the cabin after the auction. The price for the houses and other improvements on top of the land will be set prior to the auction and are not being bid on, only the land. Values of the improvements are non-negotiable and agreed to by all parties before participating in the auction.
- All cottage site auctions for ownership are **voluntary**. In other words, the currently leased lots are included in the auctions because the lessees of the lots (the families that lease the lot from the State but own the cabin on top of the land), approached IDL and voluntarily and willingly applied to participate in the auction.
- IDL hired private third party professional appraisers to value the endowment owned lands at both lakes in recent months and years. Up until recently, the lands at Priest Lake were valued by mass appraisals but new appraisals are site specific and appraisers were directed to value the lands as "vacant and unimproved." The appraisal instructions were consistent with the constitutional mandate, bolstered by an Idaho Supreme Court decision in 2012, to maximize returns from the use and sale of the lots. **The appraisal instructions and market trends are what contributed to increases in the values of the lots compared to previous years.**

News Media Contact:

Emily Callihan, Public Information Officer
(208) 334-0236 or

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Idaho Department of Lands | P.O. Box 83720 | Boise | ID | 83720

McCall

Lake

condos.

Robert Folley
888-5451

In Nov. 2012 the Land Board approved the purchase of two cabins located in McCall. These two cabins were located on school endowment land.

The Board paid \$120,000 for one cabin and \$50,000 for the other. Both of these structures are to be removed or destroyed.

The cost to complete site development and build two new rental units is estimated to be \$280,000 each plus \$15,000^{each} for furnishings. That is \$590,000 plus a 20% contingency fee. of \$118,000.

The total cost including the purchase of the homes, new rental units with furnishings plus the contingency is \$708,000.

The Board plans to rent these "cabins" for between \$500 and \$700 dollars per night.

The Board anticipates a vacancy of between 80% and 50% in the summer and between 90% and 80% in the winter.

This project is in direct competition with private cabin rentals in McCall.

Robert Forrey
4900 Ridgewood Rd.
Nampa, ID. 83687
888-5451

10 June 2013

CLIENT: Idaho Department of Lands
ATTN: Roger Titmus
300 N. 6th St, Suite 103
Boise, ID 83720

FROM: Platform Architecture Design
1008 S. Johnson Street
Boise, Idaho 83705

RE: **990 Syringa and 2030 Payette Drive Site Development – Conceptual Design**
Opinion of Probable Construction Cost

Dear Roger,

Platform is pleased to submit this opinion of probable construction costs for the above referenced project. The cost information is based on the conceptual site plan, floor plans and elevations generated to date. Based on the limited site information obtained to date, the scope of developing each site and accommodating each building on the site are unknown and, therefore, we have included a contingency factor of 20% for the site development costs. As additional site information becomes available (topographic survey, geotechnical report) the scope of improvements will be understood, developed and the contingency can be reduced.

Following your review and approval by the State Land Board, we can meet with you to discuss any revisions required in quantity, quality or budget which will allow us to proceed with the Construction Documents Phase. At this time, our opinion of estimated probable construction costs is between \$280,000-\$295,000 for each cabin and site. We based our opinion of probable construction costs using historical data of projects similar in size and scope and building cost reference materials. We have made certain qualifications and assumptions in developing the costs:

BUILDING - \$250,000-\$255,000

- Exterior (Shell) - Concrete foundation, wood joists floor and roof framing, 2x6 exterior walls, metal roofing, wood post/beam porch and deck construction, vinyl window, fiber cement siding, walk-out basement.
- Interior - Wood, carpet and sheet flooring, painted gypsum board walls, wood mouldings, wood cabinets with plastic laminate countertops, preformed shower and bathtub enclosures, solid core wood interior doors, built-in wood furniture(cushions, mattresses are included in FF&E), major appliances
- Plan review fees (additional fees may be required for sewer and water hook-ups, these are excluded from our costs)

SITE DEVELOPMENT - \$20,000-\$25,000

- Driveway and parking improvements to accommodate (4) vehicles and (1) RV
- Amenities to include BBQ area, fire pit, furnishings(table, chairs), constructed/reconstructed walking path to beach, dock
- New landscaped/lawn areas to be irrigated
- Connections to existing utilities
- Buried propane tank (if gas is not available)

FF&E - \$10,000-\$15,000

- Bedding and Bath– mattresses, pillows, sheets, towels, bath accessories
- Dinnerware, cookware, flatware, cutlery, glasses, kitchen storage, small appliances
- Seat cushions, television, lamps, loft furniture
- Site furnishings – chairs, tables, bbq

STATE BOARD OF LAND COMMISSIONERS

July 16, 2013
Regular Agenda

SUBJECT

Cabin Construction on 990 Syringa Way and 2030 Payette Drive, McCall, ID.

PURPOSE

The purpose of this agenda item is to request approval to improve two vacant cottage site lots at 990 Syringa Way and 2030 Payette Drive in McCall, ID.

DISCUSSION

The Land Board previously approved two key policy statements related to the management of cottage site lands. First, the Lot Solutions process (Feb 2010) and, second the Cottage Site Plan (May 2011), that are both designed to outline a business savvy approach to reposition endowment trust assets. It is important to note that while the Lot Solutions process prepares trust land for possible transition into private ownership, it is the Cottage Site Plan that articulates the need to retain strategically located sites. In November 2012, the Land Board approved the purchase of two cabins located on such sites. (Attachment 1)

Historically, land around Payette Lake has appreciated at higher rates than other land in Idaho, irrespective of asset class. As a result, ownership of lakefront lots on Payette Lake competes favorably with the total return on investment of other assets. With the exception of the most recent five years, short and long term appreciation rates have been in the six to ten percent range; greater than national and local average appreciation rates over the same time periods. Such rates are achievable when real estate is properly cared for and preserved.

Previously, the IDL identified the area in front of Syringa Park as an area to remain in endowment ownership to afford the Land Board flexibility into the future. Future opportunities such as redevelopment, ground leasing or sale of residential lots at future values are all methods to secure the property and retain overall value. This proposal preserves the value of retained sites through contracted construction of improvements.

Because there is an intention to continue to generate endowment trust revenue at this location, it is expected that a vacant site over the long term presents risks to land value, including the value of adjacent sites due to dispersed recreation and the inevitable trespass and site degradation. These risks can be mitigated through use of private security firms, but enforcement can be costly. Again, it is incumbent upon IDL to preserve the site by some means and protect the land value. Construction of the improvements at this location would preserve the character and desirability of the area and allow flexibility for the board to continue to analyze market conditions into the future, while continuing to earn revenue for trust beneficiaries through ongoing management of the property.

For the purpose of investment analysis, a "worst-case" leasing scenario is provided to illustrate the viability of the new cabins. Under such a scenario, a cabin would be constructed and the combined estate would be professionally managed through contract services as a short term vacation rental. Income from a vacation rental varies based on occupancy. A certain amount of expenses are fixed, but as occupancy increases, so do management fees, utilities, repairs and maintenance. Assumptions used for the analysis have been developed in conjunction with property management firms servicing the area. Assumptions and return calculations for both locations using the low and high ranges under the worst case vacation rental scenario are as follows:

	LOW RETURN	HIGH RETURN
Summer Occupancy (\$700/night)	45 nights ^{55 nights} 15%	75 nights ^{95 nights} 38%
Fall/Winter/Spring Occupancy (\$500/night)	10 nights	20 nights
Management Fees	25% of revenue	25% of revenue
Repair & Maintenance	10% of revenue	10% of revenue
Investment Payback Period	17.4 years	8.5 years
IRR	6%	13%
10 Year Average Return on Asset		
990 Syringa	6.97%	8.07%
2030 Payette	7.37%	8.92%

It is apparent the management of a unified estate under a variety of scenarios will preserve revenue, values and options into the future. While the above analysis is illustrative of a low risk return on asset, the preferred option for management is an open and competitive long term lease. Such a lease may be with an individual or a business and the instrument may be preferred over a conventional Cottage Site Lease as the cost to enter into the lease does not include the purchase of the improvements. These alternatives are consistent with the Land Board's stated objective of preserving its options for these sites.

To simplify the project and obtain maximum value, the design of the cabins is proposed to be the same for both sites. Design is programmed to provide desirable accommodations for users of lakefront property during all seasons. The attached preliminary design (Attachment 2) of an 1800 square foot cabin will be further detailed with the development of full construction drawings and in anticipation of plan check and permitting through the Division of Building and Safety with a summer/fall construction season.

Using the design-bid-build delivery method, IDL will solicit bids from third party general contractors to build the cabins. Cost to complete site development and build the cabins is expected to total \$270,000 - \$280,000 for each site, plus furnishings. (Attachment 3) These amounts, plus the lot value are included in the above financial analysis. The project costs and returns were compared with those of smaller and larger structures and found to be optimized by the design provided. Feedback from IDL's third party property management firm indicates the typical size and configuration of successful income properties on the lake are closely aligned with the design provided. (Attachment 4)

STATE BOARD OF LAND COMMISSIONERS
November 20, 2012
Regular Agenda

SUBJECT

Request to purchase improvements and personal property located at 2012 Payette Drive, McCall, ID currently leased under IDL Lease #R5037 to Ann and Stephen Murdoch.

PURPOSE

The purpose of this agenda item is to request approval to purchase the furnished three bedroom, two bath cabin located in the Syringa Park area on the southwest shore of Payette Lake.

DISCUSSION

The Land Board previously approved two key policy statements related to the management of cottage site lands. First, the Lot Solutions process (Feb 2010) and, second the Cottage Site Plan (May 2011), that are both designed to outline a business savvy approach to reposition endowment trust assets. It is important to note that while the Lot Solutions process prepares trust land for possible transition into private ownership, it is the Cottage Site Plan that articulates the need to retain strategically located sites. This proposed purchase unifies ownership through acquisition of improvements, rather than disposition of land. IDL has identified Syringa Park as an area to remain in endowment ownership to afford the Land Board flexibility into the future regarding other endowment trust opportunities. Those future opportunities may include redevelopment, ground leases, or sale of the residential lots at future values. Most important is the need to secure the property and retain overall value.

Historically, land around Payette Lake has appreciated at higher rates than other land in Idaho, irrespective of asset class. As a result, fee simple ownership of leased lakefront lots on Payette Lake competes favorably with the total return on investment of other assets. With the exception of the most recent five years, short and long term appreciation rates have been in the six to ten percent range; greater than national and local average appreciation rates over the same time periods. Such rates are achievable when real estate is properly cared for and preserved.

In discussions with the current lessee they express an intention not to pursue ownership of the lot and not to continue leasing. The lease contract provides that improvements be removed upon termination. Because there is an intention to continue to generate endowment trust revenue at this location, it is expected that a vacant site over the long term presents risks to land value, including the value of adjacent sites due to dispersed recreation and the inevitable trespass and site degradation. These risks can be mitigated through use of private security firms, but enforcement can be costly. Again, it is incumbent upon IDL to secure the site by some means and protect the land value.

Alternatively, the Land Board, acting as a prudent investor could authorize the purchase of the improvements and resolve one of many ownership dilemmas. Such action would preserve the character and desirability of the Syringa Park area, and allow flexibility for the board to continue to analyze market conditions into the future, while continuing to earn revenue for trust beneficiaries through ongoing management of the property.

In addition to the land and its attendant appreciation, it is expected that the combined estate under a long term lease will produce revenues at rates that compete with other residential leases around the lake. IDL would endeavor to secure such a long term lease to maximize the return from the unified asset.

However, for the purpose of acquisition analysis, a "worst-case" leasing scenario is provided to illustrate the viability of the investment. Under such a scenario, the combined estate would be professionally managed as a short term vacation rental. Income from a vacation rental varies based on occupancy. A certain amount of expenses are fixed, but as occupancy increases, so do management fees, utilities, repairs and maintenance. Also, for illustrative purposes, the uncertain development potential for the site fifteen to thirty years forward makes the terminal value for the investment based on a land value scenario without a structure. Therefore, the purchase is analyzed based on its payback period. Assumptions and Returns on Asset calculations for the low and high ranges are as follows:

30 yr.
Terminal
value

	LOW RETURN (low risk)	HIGH RETURN (high risk)
Summer Vacancy	70%	50%
Fall/Winter/Spring Vacancy	90%	80%
Payback Period for Purchase	14 years	6 years

It is apparent the acquisition and management of a unified estate under a variety of scenarios will preserve revenue, values and options into the future. The above analysis is illustrative of a low risk return on asset; however, the preferred option for management is an open and competitive long term lease. Such a lease may be with an individual or a business and the instrument may be preferred over a conventional Cottage Site Lease as the cost to enter into the lease does not include the purchase of the improvements.

The IDL (Purchaser) and Ann and Stephen Murdoch (Seller) have executed a Letter of Intent with the following Terms & Conditions:

- Purchase price residential site improvements, fifty thousand dollars (\$50,000) or appraised value, whichever is lower.
- Purchaser and Seller to split closing costs.
- Seller to provide a standard homeowners title insurance policy.
- Closing contingent on the following;
 - Purchaser's satisfactory review of an appraisal and home inspection.
 - Final approval by the State Board of Land Commissioners.
 - Delivery of title to the Purchaser's approval.
 - Seller to pay prorated taxes due for 2012, if any.

Why is the
Land Board obligated
to buy this house?

Stephen Murdoch

Murdoch 50,000

Alternatively, the Land Board, acting as a prudent investor could authorize the purchase of the improvements and resolve one of many ownership dilemmas. Such action would preserve the character and desirability of the Syringa Park area, and allow flexibility for the board to continue to analyze market conditions into the future, while continuing to earn revenue for trust beneficiaries through ongoing management of the property. In addition to the land and its attendant appreciation, it is expected that the combined estate under a long-term lease will produce revenues at rates that compete with other residential leases around the lake. IDL would endeavor to secure such a long term lease to maximize the return from the unified asset.

However, for the purpose of acquisition analysis, a "worst-case" leasing scenario is provided to illustrate the viability of the investment. Under such a scenario, the combined estate would be professionally managed as a short term vacation rental. Income from a vacation rental varies based on occupancy. A certain amount of expenses are fixed, but as occupancy increases, so do management fees, utilities, repairs and maintenance. Also, for illustrative purposes, the uncertain development potential for the site fifteen to thirty years forward makes the terminal value for the investment based on a land value scenario without a structure. Therefore, the purchase is analyzed based on its payback period. Assumptions and Returns on Asset calculations for the low and high ranges are as follows:

	LOW RETURN (low risk)	HIGH RETURN (high risk)
Summer Vacancy	80%	50%
Fall/Winter/Spring Vacancy	90%	80%
Payback Period for Purchase	13 years	5 years

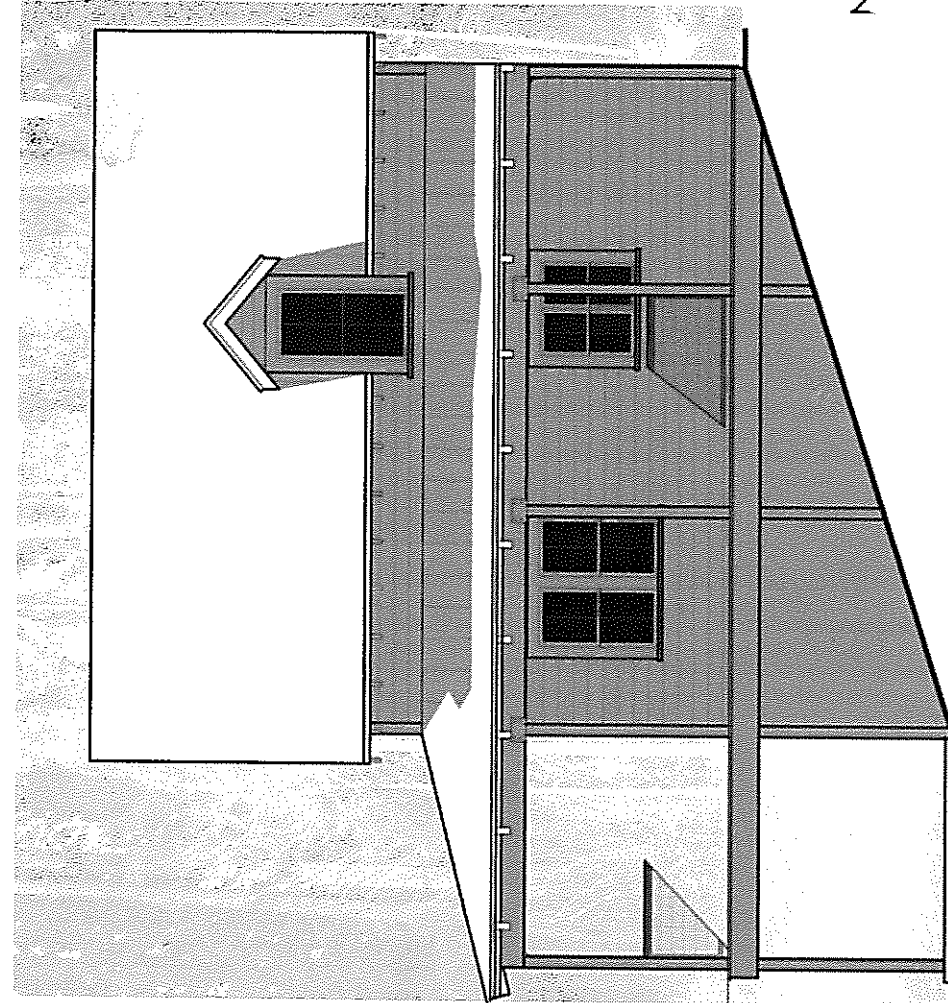
It is apparent the acquisition and management of a unified estate under a variety of scenarios will preserve revenue, values and options into the future. The above analysis is illustrative of a low risk return on asset; however, the preferred option for management is an open and competitive long term lease. Such a lease may be with an individual or a business and the instrument may be preferred over a conventional Cottage Site Lease as the cost to enter into the lease does not include the purchase of the improvements.

The IDL (Purchaser) and Tom and Mona Anderson (Seller) have executed a Letter of Intent with the following Terms & Conditions:

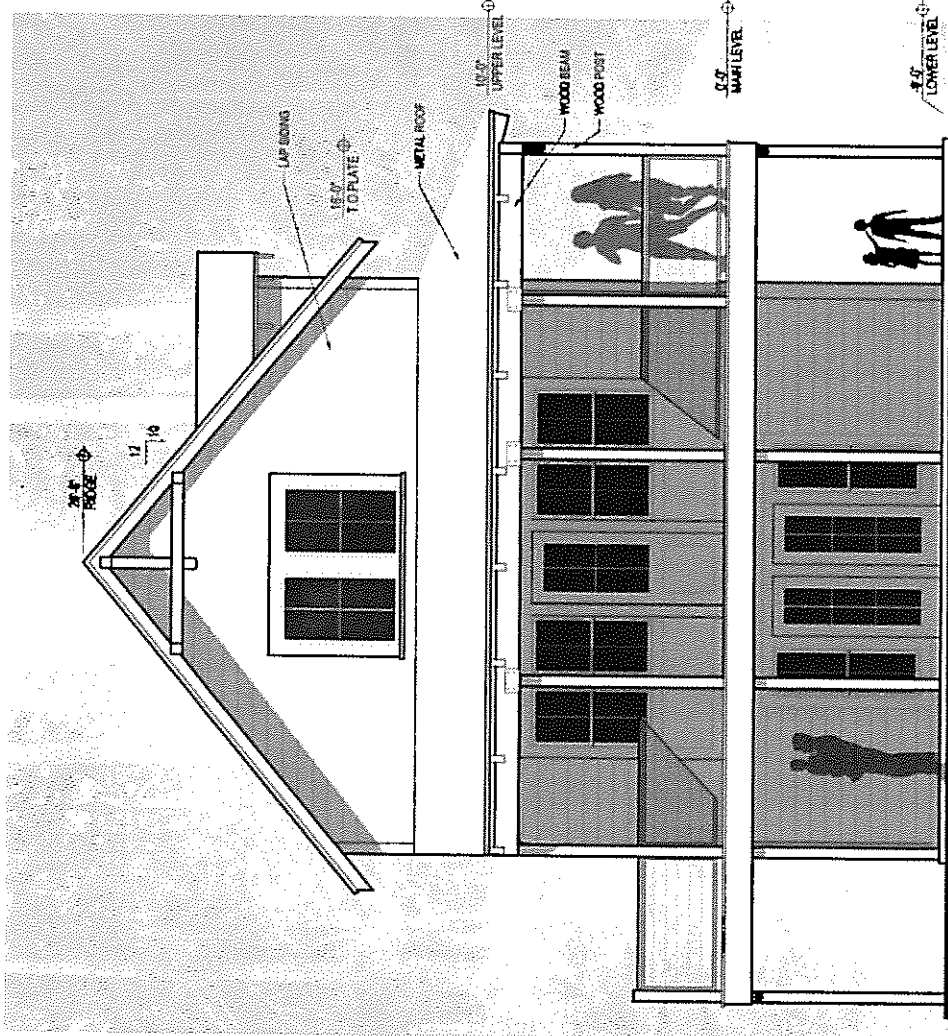
- Purchase price residential site improvements, one hundred twenty thousand dollars (\$120,000) or appraised value, whichever is lower.
- Purchaser and Seller to split closing costs.
- Seller to provide a standard homeowners title insurance policy.
- Closing contingent on the following:
 - Purchaser's satisfactory review of an appraisal and home inspection.
 - Final approval by the State Board of Land Commissioners.
 - Delivery of title to the Purchaser's approval.
 - Seller to pay prorated taxes due for 2012, if any.

Mona Anderson

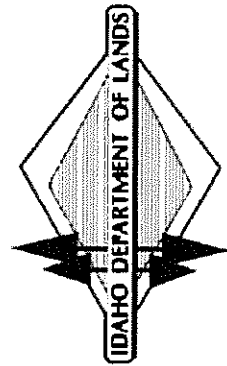
Anderson \$ 129,000



SIDE ELEVATION



LAKE SIDE ELEVATION



28' x 24', 3 levels, 2016 sq. ft.

PLATFORM
ARCHITECTURE . DESIGN

IDAHO DEPARTMENT OF LANDS

990 SYRINGA WAY AND 2030 PAYETTE DRIVE SITE DEVELOPMENT

145 per sq. ft. 270,000

MCCALL, IDAHO

ELEVATIONS



ATTACHMENT 2

Edward Ogara (208) 634-4257 725-5006
McCall Ketchem 1900

MY NAME IS EDWARD OGARA, A RESIDENT OF KETCHUM ID,

I am here to speak about the IDL plan to change the usage of 5 single family lots that are within the SW Payette Lake Cottage Sites plat map

I am a lessee of endowment land on which I have built a single-family house. My state lease site is adjacent to this proposed change of usage from single family residence to commercial rental.

Historically this area has been a neighborhood of state endowment lessees, neighbors that knew one another, look after each other's property and cooperated on neighborhood issues such as road maintenance.

When lease rates increase substantially in 2010 my neighbor to the south, Dick Copsey, chose not to renew his lease and the improvements reverted to IDL. IDL subsequently demolished his house and did not offer this endowment land to other interested lessees.

In 2012, on the next adjacent lot to the south, IDL acquired the house located on a state lease when the homeowner, Tom Anderson, was financially unable to renew his lease after attempting to rent the property to support his lease payments.

1900-608 197
cel #


mt.com
eogara@pricepmg.com

230 15

The next state lease lot to the south is the subject of negotiation between Gary Sherlock and IDL for the acquisition of his house in which IDL will have to pay between \$600,000 and \$900,000 to acquire the improvements on the leased lot.

Further to the south is the lot of the Murdochs' whose improvements were purchased by the IDL when Steve Mucdoch became terminally ill and his wife was not financially able to continue her lease payments.

The fifth lot is vacant and across a ravine and not proximately contiguous to the previous lots described.

 The result of these actions has been to take a neighborhood of neighbors and convert it to a commercial zone of properties that are held out or are to ^{BE} held out for rental on a daily, weekly or monthly basis.

All of this has been accomplished to quote from an IDL document "designed to outline a business savvy approach to reposition endowment trust assets".

Let's examine the business savvy approach of IDL. The former Anderson residence is listed for rent by IDL with McCall Cabins. The rental rate has just been reduced from \$700 a night to \$600 a night, which raises the question of the IDL obligation to competitively determine value of endowment property through the auction process. According to McCall Cabins website there have been 2 rental nights in June, 7 rental nights in July to date (these over the 4th of July) and 9 rental nights booked for August. Taking today's booking and increasing them by 100% results in summer bookings of gross revenue of \$21,600 less 25% of the gross revenue to McCall Cabins for booking and management. This results in \$16,200 of net revenue to IDL before repairs, maintenance, snow removal, depreciation etc. AND the not insignificant time required by IDL to manage the properties. Winter rental according to IDL proforma results in an increase in revenue of \$5,000 to a net revenue of \$21,300 BEFORE expenses. These numbers are very similar to the experience of Tom Anderson when he held the property out for rental during the period of his lease. I would be pleased to provide a detailed analysis of the business case based upon the input

of Tom Anderson and the largest home rental service in McCall, Accommodation Services. The underlying land is worth between \$800,00 to \$1,000,000, the house improvement cost basis is \$120,000. This income equates to less than 2% and would require extraordinary lot appreciation to exceed a lease/sale alternative. At \$1,000,000 valuation the sale/auction/exchange of this lot would increase the amount of the endowment by \$1,000,000 and at the IDL hurdle rate of return of 6.5% results in \$65,000 addition to the endowment trust NOW and an ongoing \$65,000 a year in perpetuity.

Additionally, IDL has proposed building homes on two of these lots at nearly \$300,000. The economics of this development would be similar to the economics of the Anderson property – only worse because of the higher capital investment. How does this meet the constitutional mandate to maximize revenue to the endowment?

This commercial operation by IDL takes no account of the nearly 20% increase lakefront rental units that will have to be absorbed by the market and the potential for competition and conflict with existing rental units by

individuals/families. Currently there are 20 lakefront properties for rent on the VRBO website and 8 lakefront properties for rent on Accommodation Services website. These properties are rented in many cases to amortize the cost of ownership so that lakefront property is affordable for those families. Does it seem reasonable that IDL will compete with these private individuals that bear the cost of both lot and property taxes in their cost of renting?

In conclusion I am requesting that the Land Board review closely the IDL proposal to convert these 5 endowment properties to commercial use. An unbiased analysis would reveal the only viable course of action to realize a constitutionally defensible return is to plat these lots like the rest of the Subdivision and sell them, with the proceeds appropriately invested. Please consider, additionally, the ramifications to this decision to both the neighborhood and neighbors, the diminution of value of surrounding endowment lands adjacent to this commercial operation and private property interests of other rental property owners in McCall.

Thank you for your attention.

Good morning, my name is Edward O’Gara, I am a resident of Ketchum, Idaho and a lessee of a cabin site in the Pinecrest Subdivision on Payette Lake

I am here to speak about the SW Payette CC&Rs and Association Bylaws that are proposed as they will effect the Pinecrest Subdivision.

As you are know, IDL has proposed not to plat a portion of the Pinecrest Subdivision. This unplatted portion of the Pinecrest Subdivision will not be subject to the SW Payette CC&Rs nor to the Association Bylaws. I am here this morning to respectfully request that the Land Board direct the IDL to plat all of the subdivision. The stated reason for not platting these five lake front lots and Syringa Park is quote “an area to remain in endowment ownership to afford the Land Board flexibility into the future “ unquote.

Of the five lake front lots, IDL has purchased leasehold improvements on two of these lots and is holding them out for rental. IDL purchased the improvements on one of these lots for \$50,000 and IDL’s appraiser has appraised this lakefront lot with the improvements at \$1,190,250. The previous lessee paid \$40,740 for cottage site lease alone. The property was offered for rent McCall Cabins and has been rented for one year for \$14,400 less real estate commissions, landlord expenses under the rental contract and IDL management time. The is an expensive exercise in quote “affording Land Board flexibility” unquote

When the Cottage Site Plan was prepared by IDL with assistance of Heartland LLC and presented to the Land Board in December of 2010 it stated quote “the objective of this document is to articulate a programmatic, “market savvy” process for divesting of residential cottage sites and

reinvesting the proceeds in institutional grade real estate assets" unquote. The conclusion of IDL and Heartland LLC were that the cottage lease sites were quote "an underperforming asset" unquote and went on to explain the risk, lack of efficiency, poor return expectations and liquidity issues associated with the cottage site leases. Further the report described what an institutional investor would expect on these measures including the following under the heading of risk quote" institutional investors generally avoid taking on construction or the initial lease risk of a new building" unquote. The question is now why an institutional investor, the Land Board, would move from one sub optimal investment to another, from leasing cottage sites to renting cottage sites on a daily, weekly, monthly or annual basis. The example of the one-year rental presented earlier is far inferior to the income of the cottage lease or exchange/sale of the property - yet this is the path that IDL has chosen for these valuable lake front properties.

The question now is how to get the true spirit of the Cottage Site Plan back on track, back to trading sub optimal investments for institutional grade investments. A large step forward could be achieved today if the Land Board were to direct IDL to plat the unplatted area of the Pinecrest Subdivision and make this area subject to the SW Payette CC&Rs. This positions the properties to be treated as every other cottage site on the lake, returns a neighborhood to its origins, allows IDL to avoid competing with other private property owners on the lake in the rental market and does not foreclose any reasonable mechanism IDL may have to maximize the value of these lake front lots.

Thank you for your attention.

Subject: RE: Payette Lake conceptual design of cabin lots
From: "Emily Callihan" <ecallihan@idl.idaho.gov>
Date: 7/29/2013 9:14 AM
To: "Robert & Barbara Forrey" <bbforrey@heritagewifi.com>
CC: "Public Records Request" <public_records_request@idl.idaho.gov>

Good morning Mr. Forrey,

Thank you for your questions. I provided responses to your questions in red below.

Emily Callihan | Public Information Officer
Idaho Department of Lands
(208) 334-0236 Phone
(208) 334-3698 Fax
[Facebook](#) | [Twitter](#) | [Web site](#)

-----Original Message-----

From: Sandra Allen On Behalf Of Public Records Request
Sent: Wednesday, July 24, 2013 8:13 AM
To: Robert & Barbara Forrey
Cc: Emily Callihan
Subject: RE: Payette Lake conceptual design of cabin lots

Mr. Forrey,

Your request is informational, as opposed to a public records request. I have forwarded your questions to our Public Information Officer Emily Callihan. Ms. Callihan is on vacation this week and will return on Monday, July 29. I appreciate your patience in waiting for her response.

Best Regards,
Sandra

Sandra J. Allen
Idaho Department of Lands
Public Records Requests
(208) 334-0244 - Phone
(208) 334-5342 - Fax

-----Original Message-----

From: Robert & Barbara Forrey [<mailto:bbforrey@heritagewifi.com>]
Sent: Monday, July 22, 2013 11:24 AM
To: Public Records Request
Subject: Payette Lake conceptual design of cabin lots

Following are questions I would like answered regarding development of lakeside lots in McCall.

1. Did the Dept. of Lands issue a Request For Proposal (RFP) or receive proposals or bids from anyone other than the Platform Arct. Design Co. for the Syringa and Payette Dr. site development proposal in McCall ID.?

On. The IDL issued a professional services contract with the company. Idaho's administrative rules allow for the issuance of professional services contracts for certain services under a certain cost. The IDL used this company primarily because it worked on similar projects for other state agencies in the area.

2. Is the Platform Architecture Design Co. the only proposal to be considered by the Land Board?

To be technically accurate, the Land Board has not considered any proposal and there are no plans to bring this item back on a specific date in the future, but to answer your question generally, this contract is the only one that currently has been issued for services related to architectural design work at these sites.

3. (a) What was the reason the proposal was removed from the July 16 Land Board agenda?

The Attorney General's Office requested that the agenda item be pulled from the July agenda to allow more time to study the proposal.

(b) Are there plans to introduce the proposal again and if so when?

Right now there are no plans to bring back this item on a specific date in the future, but the IDL will continue to work with Land Board members and staff to determine the appropriate time, if any, to bring this forward for Land Board consideration.

4. What was the cost to the Department of Lands for the conceptual design produced by the Platform Arch. Design Co.?

The final cost was \$2,335.00.

Robert Forrey
4900 Ridgewood Rd
Nampa, Idaho 83687
888-5451