MINUTES
Approved by the Committee
Endowment Asset Issues Interim Committee
Wednesday, October 01, 2014
9:00 A.M.
WW02 - Lincoln Auditorium - State Capitol - Boise, Idaho
Boise, Idaho

Co-chair Senator Cliff Bayer called the meeting to order at 9:05 a.m. and requested a silent roll call. Members present were: Co-chairs Senator Cliff Bayer and Representative John Vander Woude and Senators Shawn Keough, Jeff Siddoway, Bert Brackett, and Janie Ward-Engelking; Representatives Neil Anderson, Jason Monks, Rick Youngblood, John Gannon and Grant Burgoyne (ad hoc). Legislative Services Offices (LSO) staff members present were Katharine Gerrity, Ray Houston, Elizabeth Bowen and Charmi Arregui.

Panel discussion members included: Dr. Peter Crabb, Northwest Nazarene University; Mr. Tim Hurst, Idaho Chief Deputy, Idaho Secretary of State's Office; Mr. Larry Johnson, Endowment Fund Investment Board (EFIB); Mr. Jeff Lord, Lord Ranch; Mr. Scott Phillips, Deputy Controller, Office of the Idaho State Controller; Mr. .Jim Riley, President, Riley & Associates; Director Tom Schultz, Idaho Department of Lands (IDL); Mr. Clive Strong, Office of the Attorney General; Mr. Lynn Thomas, Former Idaho Solicitor General and Mr. David New, Growing Excellence, Inc. Others in attendance were: Mr. Robert Forrey; Mr. John Foster, Ms. Kate Haas, Kestrel West; Mr. Dan Goicoechea, State Controller's Office; Mr. Tyler Mallard, Risch Pisca; Ms. Jan Sylvester, Ms. Teresa McCallum, Mr. Mark Finley, Mr. Tom Wielgos, and Mr. John Runft.

Co-chair Bayer welcomed everyone to the committee and announced that he was opening up the meeting for public testimony.

TERESA McCALLUM

Ms. Teresa McCallum stated that she was a resident of Elmore County and that she and her husband have grazing and ranching interests there, leasing more than 15,000 acres of state endowment lands. She said that most of the lands have no all-purpose legal access or have very poor physical access. She added that this is a problem for the state of Idaho across much of the 1.5 million acres of the state endowment grazing lands. She said that she believes there is a constitutional mandate and statutory responsibility for management of these state lands to maximize the long-term sustainable income to the public schools and other endowment institutions. **Ms. McCallum** said that Inherent in this mandate is the need for the trustee and managers of the lands to solve the 1.5 million acre dilemma. She stated that purchasing easements to perfect access to realize other higher and better uses to increase net cash return on the asset would seem a simple solution. However, the financial, legal and political cost of this approach would be a tall task and a burden on the state and would cost beneficiaries many years of lost income. She noted that IDL and the Land Board have had over 120 years to solve this problem. She said that asset management plans have done little to solve this problem. The exception, she said, were a few successful land exchanges to dispose of scattered, under-performing state lands for acquisition of private lands to consolidate and provide all-purpose legal access to new and existing state lands. **Ms. McCallum** said that state grazing lands have generated less than one-tenth of one percent net cash return on assets. In recognition of this problem, the Land Board and IDL have undertaken a grazing rental study to determine fair market rent for grazing. She added that if the rent tripled from its current rate, that rate increase would amount to less than a fraction of one percent of return on assets to beneficiaries. She said this is hardly worth the time, effort and expense, and a more profitable solution would be land exchanges. She said that the fair market value of the 1.5 million acres of state lands is estimated at nearly $1 billion; acres generating less than 1% net cash return on assets could and should be exchanged and converted to other natural resources, including farms, minerals and timberlands. Those lands would

generate a 4-5% return on assets and appreciate at a reasonable rate. She stated that land exchanges have been successful in other land grant states. Exchanges and net gain in acres with all-purpose legal access would benefit the public and help to mitigate conflict with private landowners. She said it is imperative that the Legislature exercise its constitutional legislative oversight responsibility per Section 8, Article IX, of the Idaho Constitution. Her testimony is on LSO's website at: http://www.legislature.idaho.gov/sessioninfo/2014/interim/endowment0930_mccallum.pdf

Representative Vander Woude asked **Ms. McCallum** if she thought that exchanges are the only way to go, believing it would be difficult to auction off every section of state-owned land in her ranch and she responded: "Absolutely. How can you put a value on an auction when nobody else can play?"

Senator Siddoway asked what lands **Ms. McCallum** would select of the lands she currently owns to exchange for state lands, and would she shop for new lands for that exchange. **Ms. McCallum** said she would first pick lands within her private acreage to ease access issues. She said she might look at other lands just to make the exchange work. **Senator Siddoway** asked what lands she would give up to the state and she said she would look for other lands the state could utilize, first looking at growth potential properties that are consolidated for a better return. She said she thinks working with multiple entities will be necessary for the state to get large enough chunks for better value.

Senator Brackett asked **Ms. McCallum** what land she would offer to trade and whether there is a place for three-way trades. **Ms. McCallum** said it was her understanding that there are other agencies that need land that can consolidate lands for the state, but a mechanism is needed for financing

MARK FINLEY

Mr. Mark Finley said that several members of his family have been lessees at Priest Lake since the inception of the cottage site leasing program in the 1920s. He said that he believes that IDL is focusing on increasing rents rather than preventing abandonments. He stated that the state's market reputation with respect to personal property rights is at stake. He said he believes that cottage site lessees are paying above market rents. He went on to say that a lessee who sold improvements at a great loss is reflected by IDL in its monthly lease assignment report at the tax assessed value rather than appraised value. **Mr. Finley** requested that any legislation regarding the Land Board and IDL's management of the state's endowment lands include provisions requiring the following:

> (1) Appraisals of endowment lands should be in compliance with USPAP standards conducted by MAI appraisers and should attribute the value of all improvements paid for by lessees to the lessee, not to the land itself; (2) Minimum bids at voluntary auctions of cottage site endowment lands should not be greater than the appraisal-based valuation used to set rents for the year of the auction; (3) If lessees do not renew the lease of a cottage site because of an increase in rent, the state should pay to the lessee the value of the improvements; (4) If lessees of cottage sites request the exchange or sale at auction of such lands, such exchanges or sales should take place within the term of the then-existing lease.

Mr. Finley's written testimony is on LSO's website at: http://www.legislature.idaho.gov/sessioninfo/2014/interim/endowment0930_finley.pdf

Co-chair Vander Woude asked for clarification on his second point and the difference in what he was proposing versus what is currently being done. **Mr. Finley** replied that fear exists that the new comp base is going to be used to get a new appraisal, so appraisals done in August 2013 will have expired. Some people unified, and the value they agreed to may not have been voluntary. **Co-chair Vander Woude** clarified that there may be another appraisal coming out, higher than an existing appraisal, and he asked about the lessee getting credit for land improvements made, instead of just the building, and he asked if that was correct. **Mr. Finley** explained that lessees should get credit for land improvements made and paid for by them, many of which were mandated, and lease rental rates kept rising ten times faster than CPI. He said that then the improvements paid for by

lessees get ascribed all that value to the land value in the underlying fee, paying for it basically a third time in the unification process.

Representative Burgoyne disclosed that he has discussed this issue with **Mr. Finley** outside of these proceedings. He asked if **Mr. Finley** thinks the appraisals are inflated. **Mr. Finley** clarified that there were sixteen cases of lease assignments since last June and he doesn't see how any of them occurred with anything but a negative leasehold value. He went on to say it means that the buyer is getting a direct subsidy from the seller because of the above-market rental rate and the economics are convoluted. He noted that buyers often cannot afford the cost of long-term leases because they don't have any visibility on unification. He said buyers may not see a date certain for unification. If there is a very low-valued improvement, a person has to pay someone to take on a lease, and they are being given away, in his opinion. He stated that people do not want to suffer the cost of removal. **Representative Burgoyne** asked for more detail on the problem with regard to uniform appraisal standards with the appraisals. **Mr. Finley** stated that he was not an appraiser, but he was a witness in litigation and he did extensive analysis of the numbers generated both by the original appraisals done in 2012 and also the most recent appraisals. He said that the most recent appraisals essentially disregard the value of an easement; an assumption was made that for two-month yearly vacation properties that easements don't matter and don't affect the price. He said he believes easements definitely matter and affect value.

Senator Siddoway asked about **Mr. Finley's** possible solution, that being for the state to purchase the assets. **Mr. Finley** said that was a proposed solution, the idea being that houses, although humble, served tenants well for many generations. He said that if that tenant can no longer afford that lease, it doesn't seem right that they should have to pay good money to destroy that structure. **Senator Siddoway** said that public testimony at these meetings had clearly indicated that they don't want the state competing with private business on commercial properties. He said it sounded to him like **Mr. Finley** was suggesting that the state get into the residential property business. He asked if **Mr. Finley** was suggesting that the state get into the housing business. **Mr. Finley** answered that this was a slippery slope; there are many competing interests with regard to disposition of these assets. He added that the state would not be breaking new ground to purchase improvements and that the state has already purchased several sets of improvements at Payette Lake.

TOM WIELGOS

Mr. Tom Wielgos said he represented lessees who were scared to attend the meeting. He said that he lives on Priest Lake and is a past lessee who now owns the land underneath his home. He said he purchased the land for what he believes was far too much money, under duress, since there were no other options. **Mr. Wielgos** said he'd spent a great deal of time on this project going through legal briefs, court, etc. and is very familiar with this issue. He said the Idaho Constitution gives specific instructions to the Legislature in defining property and land, adding that land is dirt. He noted that he believes that Idahoans would prefer keeping Idaho land while upgrading to better lands through exchanges. He stated he believes that all existing endowment land rentals are and have been unconstitutional and illegal. He thinks the Land Board has been remiss for the last 125 years in addressing the constitutional mandate to "judiciously locate" land to maximize the long-term financial returns to beneficiaries. He said that cottage sites with joint ownership, to him, are a legal nightmare. **Mr. Wielgos** suggested that the committee get independent, constitutional legal counsel. He wants at least 15 illegal statutes to be revised on leasing and land acquisitions to make them constitutional. He stated that he wants to institute a leasing "time-out" until the Legislature can pass the legislation. He concluded by saying that he wants specific legislation enacted to follow the Constitution and "judiciously locate" lands to maximize long-term returns to beneficiaries through rapid land exchanges. **Mr. Wielgos's** written public testimony is on LSO's website at: http://www.legislature.idaho.gov/sessioninfo/2014/interim/endowment0930_wielgos.pdf

Representative Youngblood asked when **Mr. Wielgos** leased his property and the purchase process, including numbers, if possible. **Mr. Wielgos** shared that the right to lease and the building cost

$50,000 in 1989. He said that past history had shown that leasing land from the government worked out okay, so he elected to replace that building with a permanent home in 2008 costing over $1 million. He added that politics changes things, sometimes not for the better. He said that he thought that an exchange was a logical way to go, he got his own appraisal from multiple local appraisers. He said that what they refer to as the "fab four" appraisals were ridiculously high and were considered to be unfounded, even by the Land Board, so another appraiser in Utah was sought and the process was short-circuited. He said that he had no choice but to overpay significantly to keep his home. **Representative Youngblood** asked what the rent cost was on the land in 1989 and **Mr. Wielgos** said it was about $100 monthly, but started going up slowly and then astronomically, to roughly $20,000 per year when they bought the land. **Representative Youngblood** asked if the process was by auction, and that was affirmed, and **Mr. Wielgos** said he was the only bidder. He told the committee that he had to purchase or tear down his $1 million home, and he said he paid $470,000 for the land, appraised by other appraisers at closer to $300,000.

Representative Burgoyne asked if there was a minimum bid at the auction, and **Mr. Wielgos** replied that the Constitution provides for, in sales and sales only, a minimum bid being the appraised value. He stated that In his particular case, he didn't think there was any question about his land being over-appraised. He added that there is nothing in the Constitution, on purpose, that calls for a minimum bid for disposition of leasing. Nothing about a minimum bid is found in rentals; it is very illusive. He said the only way to determine rental bids is through public auction, and the only way to get there, especially with joint ownership, is with no minimum bids.

Representative Vander Woude said that he wondered if it was fair to say that improvements added by **Mr. Wielgos** on the lot made the lot more valuable. **Mr. Wielgos** said that was more than fair to say. **Representative Vander Woude** asked about trying to put together exchanges for lots on Priest Lake; how was the value of **Mr. Wielgos's** lot determined when going through the exchange process. **Mr. Wielgos** said there were two groups involved and one wanted to trade for commercial which met with extreme resistance, and the other group went with moving from 4% maximum to 6-7% timber. He said that values were determined by taking two of the highest appraisals and comparing those to independent appraisals to find the approximate value. People were promised that appraisals could be appealed, and the Land Board reneged on that promise. He told the committee that under duress, he stayed in it, and it cost him a lot of money.

JOHN RUNFT

Mr. John Runft said he was appearing on behalf of the Tax Accountability Committee and handed out a proposal for a joint resolution regarding the fundamental question as to whether the state should sell off lands and commit proceeds to the permanent endowment fund. His suggested resolution can be found on LSO's website at:
http://www.legislature.idaho.gov/sessioninfo/2014/interim/endowment0930_runft.pdf

Mr. Runft handed out testimony which he said had been presented in committees last session, and that handout can be found on LSO's website at:
http://www.legislature.idaho.gov/sessioninfo/2014/interim/endowment0930_runft2.pdf

DAVID NEW

Mr. David New told the committee that he represented the Association of Multiparty Land Exchanges and that he was an officer of two large forest product companies, managing over 3.5 million acres in seven states in the U.S. and had jurisdiction over about 7 million acres in several countries earlier in his career. He said that he considers IDL to be very good land managers, having to deal with checkerboard land ownership where parcels of land are landlocked, often facing the need to divest or be exchanged. He added that divesting land at auction does not always return the highest return to shareholders. He thinks that land exchanges should continue to be a tool used

for improving and rationalizing endowment lands. He thinks there continues to be confusion that auctions provide the highest return; he said this is not the case.

Co-chair Bayer announced that the committee would transition to questions for the panel and **Co-chair Vander Woude** asked for clarity about testimony saying that all leases are unconstitutional. **Mr. Thomas** said he thought that reference had to do with the invalidity of leases that were not issued in accordance with the public auction requirement. He added that as a technical matter, he said those are void; the courts have generally said that a void document is unenforceable. He stated that the question then comes up as to what you do about it and what the remedies are. He said that remedies would vary from case to case, depending on circumstances. **Mr. Strong** said that he concurred with **Mr. Thomas** and he added that the issue really comes back to whether the cottage site leases, in particular, that were issued without going through public auction are void or voidable, and he thought the conclusion was that "yes they are," but as a practical matter that issue has been resolved because they have expired by their term. They are now looking at getting those leases back into conformity, but there is no constitutional prohibition against leases. In fact, he said that the court has expressly recognized the opportunity to do leases and that they are to go through the conflict auction process and that was the nature of the issue in the *Wasden* case and the *Idaho Watershed Project* case. **Co-chair Vander Woude** asked about commercial properties that are leased, asking if those leases are also void, and can any of those lessees walk away at any time, even though they have a signed lease. **Mr. Strong** replied that a question with such a broad context could not be simply answered. He said that each individual lease that was entered into would have to be looked at. Looking at the statutory requirements, he said that it's not that there would actually be a conflict auction. He stated that what it requires, under statutory provisions that were approved in the *Wasden* case, is that there be an opportunity for a conflict auction and, if nobody appears, then the board goes forward with leases, and in many instances there hasn't been a conflict bid filed. So, in that instance, it was his opinion, that those leases are valid and continue to be enforceable, absent somebody coming forward. He said there must be an advertisement process to give the public an opportunity to file a conflict bid. **Co-chair Vander Woude** asked about leased office space and conflict auctions.. **Mr. Strong** said it that would be fact specific; he couldn't speak to that since he didn't know about particular buildings. He said that if a business manager had been hired to manage an operation, that business manager opportunity would have to go out for conflict auction. He noted that if IDL is managing a property and they are offering a leased area, then IDL must advertise that leased area for the opportunity for anyone who might want to lease that area. He went on to say that if there was a conflict, then the conflict auction process would be used. **Co-chair Vander Woude** gave the example of the building which houses IDL, owned by the endowments; IDL gets a rental rate, and he asked where the option was for somebody else to lease that building when a government agency is there, or even for IDL to have a say in the lease rate. **Mr. Strong** said that example is different than a typical public auction requirement. In his example, IDL implements the board's policy, so it's a subsidiary of the Land Board itself and the Land Board is simply using an available asset under the endowment principles. He added that it is a way to avoid costs. From a fiduciary standpoint, he noted that it is appropriate for the Land Board to use that facility to accomplish the outcome of the trust purposes, as long as they are not paying above-market rent. He went on to say that It needs to be looked at not from the conflict auction standpoint, but rather whether it is a reasonable cost that is being incurred in order to protect the endowment assets.

Representative Burgoyne said he'd wondered for some time about commercial properties, specifically the urban commercial property office buildings and how public auction requirements are dealt with as to each individual office in those buildings. He said that the state endowments own a commercial building in a downtown location and there are five office suites, for example. He asked whether the endowments are putting these individual suites out to bid and, if not, what is the process and how does that comport with the public auction requirements. **Director Schultz** answered that office spaces are leased out by advertising through commercial brokers. He said that if there were two competing interests, there would have to be an auction process, and that has not

yet been encountered because the *Wasden* case came down after most of the leases were in place. **Representative Burgoyne** said he'd shopped for commercial office space and is usually told what a space costs per square foot. He wondered if a leasing agent has a price to quote a perspective buyer and how, in practical terms, does a broker interest a buyer without giving a price or conversely, is a statement made up front that it will first be determined who is interested, and then there will be an auction. He asked whether there a cutoff point for an auction. **Director Schultz** answered that before *Wasden*, market surveys were done of what rents were in downtown locations and those numbers would be discussed between the broker and the potential lessee; if that rate is accepted, you move forward. He added that now, after *Wasden*, there is not a requirement to hold an auction, but there needs to be opportunity for someone to make application. He added that if there's an application by two or more, then there's competition and an auction must be held. He said this is the process for everything, including grazing lands. He noted that IDL gets competitive auctions on about 3% of grazing lands. If there is application for a conflict, then an auction is held. He stated that auctions are not held unless someone comes forward to say "I want to conflict that property." The auction is not initiated unless there is a second application. **Representative Burgoyne** expressed confusion about what kind of publicity there is and how a party would know about a deadline to submit interest to IDL to potentially participate in a conflict auction. He asked if there is a perspective purchaser, does that trigger a period of time in which a notice goes out. **Director Schultz** explained that on IDL's website, there is a column entitled "leasing" and all leases due to expire are listed there. He said that there are currently ten cottage sites and roughly twenty grazing leases, and they are advertised in advance of lease expiration. He said IDL is looking to improve the marketability of those sites. He went on to say that commercial is done differently; with those being advertised through a leasing agent, and the lease tenure is shorter in duration on commercial sites. **Representative Burgoyne** focused on commercial leases being advertised through a leasing agent; and asked how the general public knows that commercial space in a building owned by the endowments in a downtown area is coming up for lease. **Director Schultz** said it was not a specialized process and that the commercial leasing agent would be contacted. **Co-chair Vander Woude** said he understood there was an agent who now does commercial leasing; he asked if that agent has the right to negotiate a rate that is competitive and acceptable to an interested party. **Director Schultz** said that agent does not have unilateral discretion to do that; the agent would have to get IDL's agreement on a rate, and rates are typically informed by market rentals in a specific area. **Representative Burgoyne** asked for the panel's reaction to the described process. He added that it seems like the results are predetermined as to what the results will be on leasing commercial properties. **Director Schultz** said he wanted to broaden this discussion beyond commercial properties, because commercial property represents less than 1% of what IDL deals with, since most leases are grazing leases. He stated that two years in advance of a lease expiring, IDL put that notice on the IDL website advertising that it will be available to bid on. If someone makes application to competitively bid, then IDL calls that a conflict auction application. He said that people need to understand what they are bidding on. When that auction date is identified, it is wildly advertised. He added that once a decision has been made to conduct an auction, there are legal requirements regarding advertising for consecutive weeks in newspapers. He said that IDL advertises on Craigslist for grazing leases once a determination is made to conduct an auction. He sensed that the frustration is in advance of the determination to have an auction, how known is that information, and he added that the information is on IDL's website for 95-99% of IDL's leases. The commercial properties are listed through a leasing agent, but once a decision is made, based on a second application for a same piece of ground, the auction date is set and there is significant advertising to make the public and interested parties aware of that auction date. **Representative Burgoyne** said he was not asking about the 99%; he was asking about commercial property. How people become interested in commercial property matters. He said he had no clear sense that when someone inquired about commercial property, that a party might get involved in an auction. He added that he worries that people just may move on. The process currently does not comport with the marketplace, in his opinion. He stated that it seems important to him that if IDL wants a public auction process, there needs to be a mechanism for

making that more clear. **Director Schultz** said that the conundrum is that the marketplace for commercial property is not typically through the competitive bidding process. He said that IDL is constrained by the Constitution and by Idaho Code; they cannot operate as a private entity would operate. He went on to say that the process is that a leasing agent makes that commercial lease information available, and if a second party is interested, based on the *Wasden* case, make that property available for a conflict application process. That has not yet occurred. He agreed that it is, to some degree, like trying to put a square peg in a round hole. **Mr. Strong** agreed that the process is convoluted because of legislative enactments over time that have in some instances been designed to be anti-competitive. He said that the question left is similar to Section 58-310A, Idaho Code. That was intended to provide an advantage to a select group of people to avoid the public auction requirements. He submitted that there are other provisions in code that fit within that category; that is an appropriate area, as defined by the Constitution, for the Legislature to define. Given the *Wasden* decision, it seemed to him to be an appropriate time to go back and examine those provisions to square up the processes in place with what the Constitution requires. It is not only the Land Board that has that fiduciary responsibility, he said, but the Legislature as well. **Representative Burgoyne** said he agreed with that, believing that looking at those statutes is long overdue to make sure the proper degree of competitiveness is present in the public auction process. **Mr. Thomas** said he did not entirely disagree with **Mr. Strong's** description that the process is a difficult one. Given the breadth of the court's decision in the *Wasden* case, which essentially describes any kind of lease as a disposition, it makes it very difficult to practically deal with problems of the kind described here. However, he said that if anything is done with respect to a lease except hold a public auction, in theory, a violation has occurred based on the *Wasden* decision.

Representative Anderson asked about exchanging an isolated 40 acres on a ranch for something else, and he wondered what the process would be. He asked whether the size of the parcel is considered, the proximity to access, water and whether there is an appraisal done on both pieces of property. **Director Schultz** answered that historically the process would have been that if someone had grazing land they wanted to trade to the state, parcels owned privately would be appraised as well as parcels owned by the state, and they could be exchanged. He said that trading out a 40 acre parcel interior to a ranch and acquiring a 40 acre parcel on the periphery of that ranch, the cost of the transaction probably would exceed the revenue generated. He added that if the intent really is to improve performance over the long term, trading interior grazing lands for exterior grazing lands probably is not improving performance and probably would not benefit the endowments. He cautioned about doing three-way trades due to concern about the question as to avoidance of the auction requirement. He said there is also risk from a private landowner to go buy something and offer it to the state to acquire a trade. He stated that the real question in his mind is when someone wants a parcel interior to a ranch, but they don't own what they want to trade to the state, so what mechanism is there for the state to acquire one piece for another when the party doesn't own that parcel. That is where it gets more complex. He said that IDL is not opposed to land exchanges and he agrees that some make perfect sense.

Mr. Lord said that he felt comfortable that IDL approaches this situation in a very businesslike manner, stating that the asset mix will be analyzed and adjusted accordingly. He said that, assuming that occurs, if there is a desire to redistribute grazing lands for another asset, he thinks that is the opportunity for exchanges, and the easiest way to accomplish large-scale modification of the asset mix. He stated that he hoped IDL went into the consult with an open mind, allowing for a range of opportunities.

Representative Gannon commented on the appraisal process for cottage sites; he asked about the appeal process and, if not satisfactory to everyone, has there been any consideration of using processes used with eminent domain and condemnation. **Director Schultz** said the answer was not simple, adding that there are leasing scenarios where the appraised values have been contested and IDL is involved in that process currently. Those involved in the auction process were not allowed to

challenge their appraisals. He said that out of 74 lessees who started down the auction road, 59 went to auction. When a lease is signed, that is a contract, and it prescribes a conflict resolution process. **Representative Gannon** asked about the 128 lessees contesting the appraisal and he asked who makes that decision in April and whether there is any appeal right to the court. **Director Schultz** explained that a second appraisal is being conducted and, if within 10%, that ends the process. Values outside the 10% window will continue on and yet another appraiser would review the first two appraisals. **Mr. Strong** said he thought it was important to step back and talk about a situation that is not entangled. The disposition of endowment lands is within the discretion of the Land Board. It is not required to sell lands, but it may, as long as it is at an appraised value. He said that the Land Board has a choice whether to sell the land or not. The dilemma is with a split estate, someone has improvements on land, and the Land Board owns the land for beneficiaries. To unentangle that situation, a process was developed to get consensus around the appraised value, but it still comes back to the question of whether the lease is expired and when a value cannot be agreed upon, then the Land Board is not required to sell that land and you fall back to the provisions of the lease that dictate how improvements will be dealt with. He stated that it is not a matter subject to judicial review. **Mr. Thomas** didn't disagree about this being a complicated situation, but he said that when a leaseholder is required to forego the right to appeal with the administrative process or otherwise in order to secure protection for valuable property, red flags about due process and property rights go up all over. **Mr. Strong** replied that would be handled in the courtroom and not here.

Senator Brackett asked **Mr. Lord** about multiple party land exchanges after hearing suggestions, going forward about a constitutional amendment or having a group of experts formulate a path forward. He wondered what **Mr. Lord** would suggest to restore multiple party trades as a viable tool for IDL. **Mr. Lord** said his comfort level was that IDL was analyzing their asset mix; he hopes IDL will look at opportunities and come to the conclusion that exchanges are a good way to change IDL's asset mix, and probably the only way. **Senator Brackett** reiterated that IDL is justifiably cautious, but taken to the extreme, nothing happens. **Mr. New** said he believes that the answer lies within the existing asset management plan approved by the Land Board in 2012 where it calls upon IDL to have in place a plan relative to underperforming assets. He thinks the Legislature should positively encourage, possibly through statute, that multiparty land exchanges can form a major part of how IDL fulfills that asset management plan. He thinks it should be a concern to everyone that the Land Board is not addressing underperforming assets. He said he believes that exchanges are a valuable tool going forward. **Director Schultz** responded that cottage site disposition has been the major focus of IDL and these transactions are controversial. He said that this year the timber program had a record revenue year and he said that IDL is focused. **Mr. Strong** said that problems are often defined in the context of the current issue, which is cottage sites. That doesn't mean that the other 99% of IDL or the lands are in dispute or there is a problem in those areas. He went on to say that until the conflicts are dealt with on a specific set of assets, it is difficult to focus on bigger issues. He thinks this will get resolved, but it is an ongoing problem.

Representative Anderson asked who decides what is of interest to the state going forward. **Director Schultz** said that is the question IDL has asked Callan Consultants and that report will inform EFIB, the Land Board and IDL what is appropriate, moving forward.

Representative Gannon said it seemed to him that IDL and the process itself are in contradiction. He said they say they want to facilitate land exchanges, especially on underperforming lands, and he asked for ideas to facilitate land exchanges and find other land to get the system to work without regulations, statutes, and rules that may make it too cumbersome to accomplish much. **Director Schultz** cautioned that more oversight makes things more difficult over time. He said that his job was to engender the trust of the Legislature, the Land Board and have a transparent process that can be trusted. He admitted that IDL was still working on issues. He thinks there needs to be tolerance for risk, everyone as a group needs to understand where that risk lies, and how to quantify that risk and define where it is comfortable accepting risk and where it is not comfortable. He said

he thinks the frustration is that a law was passed and it still is not clear where the line is. This can help the process, and he doesn't know if there is a legislative fix to the issue. He said he thinks that a constitutional amendment could make the issue become even more unclear. People want to know how the government does business, and when that is understood then things can get done. He thinks that caution with regard to exchanges has caused a roadblock, especially in three-way exchanges.

In response to a comment by **Co-chair Vander Woude, Mr. Strong** clarified that he did not testify earlier that all three-way exchanges are unconstitutional, but rather he testified to the contrary. He said that when there is a three-way exchange, what must be looked at is the motivation of the Land Board and how you identify what lands are appropriate for the asset mix for endowments. He said one must ask whether it is appropriate to acquire parcels of land being offered in order to advance the interest of endowments or whether it is being done to avoid the public auction requirement, and that is where challenges will come. **Co-chair Vander Woude** said he'd heard the term "disguised sale" and he asked for further clarification. He asked what legislation would be required or necessary to give the AG's office comfort that a particular type of sale would be authorized through legislation regarding methods of exchanges. **Mr. Strong** said that he didn't believe any legislation was required. He went on to say that the question at hand is when the Land Board is looking at the transaction before it, is it making that decision because it is in the best interest of the endowment beneficiaries, or is it making that decision because of political expediency to avoid the public auction requirement. It's a factual determination for each sale.

Representative Burgoyne said that the issue of governance was one of particular importance to him, and he asked **Mr. Hurst** whether the current Land Board makeup of constitutionally elected officers is a model that works. He asked whether any amendments to that model would make sense and whether there are other models that might work better or should be explored. He also asked how the Land Board is funded for its activities and whether funds come from the endowments or through legislative appropriation. He also asked whether the Land Board have the staff necessary to do this job, or has the job become so complex that there are perhaps unknown stresses and strains. **Mr. Hurst** replied that he did not know if this way was the best way. He said that in 1972, the Legislature decided it wasn't the best way and they passed SJR 101 to remove those constitutional officers from the Land Board, as a constitutional amendment. They also passed a bill saying that based on the outcome of that constitutional amendment that the Governor would appoint the Land Board members by regions around the state. That amendment failed by 56%, and the discussion has been going on for a long time. He says that for now, it's the best that we have, and in his mind he believes that Secretary Ysursa is very active, and very interested in his responsibilities there, and spends a lot of time dealing with the Land Board. He doesn't think that the Land Board needs additional staff. He didn't know what the position of the next Secretary of State would be. He said he finds it interesting that the five most political people in the state manage the trust, and he thinks that tempers the Land Board to some extent, and it also creates some problems. For many years, cottage site lessees have argued with constitutional officers about what rates should be, and they always thought the rate should be less. He added that Land Board members are very available to the public.

Senator Bayer asked the panel members if they would be able to return to answer questions if the committee recessed for lunch, and **Director Schultz** said that he had an oil and gas meeting at 1:00 p.m. and would be unable to attend in the afternoon. **Senator Bayer** recessed the committee at 12:18 p.m. for lunch and reconvened the meeting at 1:20 p.m.

Representative Burgoyne restated his question about governance and if the Secretary of State's office had enough resources to serve the Land Board, as well as whether the governance structure in place is what we ought to have, or if other models might be favored. **Mr. Hurst** said that the model in place may not be the best, but it's the best we have currently. He said that over lunch, it came to mind that a few years ago there was a proposal by a lessee to lease grazing land south of Boise on which to put a 50,000 head hog farm, so basically 1 million pigs annually, and IDL said "no." The state is exempt from zoning ordinances, so they can do whatever they want to do. Having

the political, constitutional officers on the Land Board sometimes temper some decisions that a single administrator might say were fine. He said that Utah has a different model than Idaho, and he wasn't sure how well it works. He thinks it may be of value to look at other models, but he said he didn't have a problem with the current Land Board since it seems to work. He did add that he hoped the Land Board would not end up micromanaging IDL, and he thinks they have done a good job of not doing that. IDL has the necessary staff, and he said that IDL knows timber, and he thinks it behooves the Land Board to stay out of that, since timber is doing so well.

Mr. Scott Phillips said he was the Deputy Controller for the State Controller, and he thought that his office was adequately staffed to provide advice to the Controller. He said that the job of the Land Board was certainly complex, but making it more difficult is a renewed effort and redoubled focus from the perspective of the Land Board to really look at what is indeed in the best interest of beneficiaries. **Mr. Phillips** said he thinks that governance of the current Land Board is working, even though there are many different models out there. He noted that the tension described earlier was a normal part of the process, adding that there are often split votes and sometimes there is tension between the Land Board and the Legislature, causing much dialogue. He added that there is tension between the Land Board and lessees, which he believes is good because it causes checks and balances that ultimately, in his opinion, result in good decisions being made for the endowment beneficiaries.

Co-chair Vander Woude commented that the Attorney General, who serves on the Land Board, sued the Land Board. He asked how well the current structure works if the legal advice comes from a member of that board who sued the Land Board on a split decision. **Mr. Phillips** explained that is an uncomfortable situation, but as a staff member, he said he'd seen the AG, who may have opinions of his own in pursuing a course of action, but at the same time he sees an AG who has acted with undivided loyalty in the interest of the beneficiaries. He said that while it may be difficult for a member of the Land Board to wear two hats, it has worked so far. **Mr. Hurst** agreed with **Mr. Phillips,** adding that it was very uncomfortable having a board member sue the rest of the board. He said he'd also seen instances where in discussions among Land Board members the AG has steered the Land Board away from certain decisions that would likely end up in litigation, since he has that expertise. He added that the AG has the right to take any action that affects the beneficiaries.

Co-chair Bayer asked **Mr. Strong** about the office and the responsibilities of the office, not personalities and not individuals who are elected to these partisan positions that are political. He noted that there are three responsibilities falling on the shoulders of the AG's office; being the legal guardian of all the trusts, including the endowment trusts, the legal counsel to the Land Board, and membership on the Land Board, and all of the disclosure that comes with that membership. **Co-chair Bayer** said that there are conflicts, but he thinks it worthwhile to have conversations about minimizing those conflicts without compromising the other responsibilities of an office. He asked whether it could hypothetically serve the Land Board well to have a less complicated legal counsel situation on behalf of and as legal guardian to the trusts to really have some checks and balances of the board. He pointed out that there are various boards around the country. He wondered about legal counsel wearing various multiple hats. He asked about creating a situation where legal counsel could really provide for checks and balances in a very uncompromising way to the other constitutional officers on behalf of the endowments. He invited dialogue from panel members. **Mr. Strong** said this had been thought about a lot and he clarified that he was speaking as someone advising the Legislature and also speaking as a representative of the Land Board, not necessarily of the constitutional officer, since the AG might have a different opinion. **Mr. Strong** said his role at this meeting was as a legal advisor for both the Legislature and the Land Board, and he has been on both sides of those equations. He went on to say that he thought it was important to ask why the governance system was being questioned and what the problem is that they are trying to solve. He suggested that every member of the committee read the constitutional debates on why the structure in place today was put in place. He submitted that as you read through that discussion,

the overriding concern was to avoid fraud and collusion with regard to the lands. Inherent in our governmental system is an effort by those who have influence to get advantage through the governmental process. He said that is called "rent-seeking," in economic terms. He noted that over the years, there have been rent-seeking opportunities, using the cottage site issue as an example. He asked whether any prudent fiduciary would go forward and allow the rental rates to stay at 1.7% of appraised value. He went on to say that looking at grazing lands, if grazing rates are substantially below what a private market rate is, whether the correct outcome is being achieved. He said the founders knew this was going to be a problem, and they wanted separation of powers, not vesting any one entity with exclusive authority over the lands, but they wanted a system of checks and balances. **Mr. Strong** submitted that checks and balances included the fact that somebody must make a decision, and you can't have someone that can be second-guessed with constant tension; therefore, they vested that power in the Land Board with the five constitutional officers, each with their diverse responsibilities. He stated that those members have undivided loyalty to beneficiaries; that is their constitutional duty and there is no debate about that duty. He said that five elected officials who run for office means there will always be some tension and some effort to influence that decision to a direction that may not be in the interest of beneficiaries. They all must be accountable for decisions made, and some will be subject to challenge. **Mr. Strong** said the *Wasden* case was an example of the AG carrying out his duty constitutionally; he was saying that there was an issue about what the scope and responsibility of the Land Board is and we need to get that sorted out. He stated that the court process was painful, but it ultimately got to the decision that gave guideposts from which to operate. From the Governor's perspective, there is a potential conflict; he has a responsibility not just to the trust, but to the state as a whole. Each member answers to one another, creating a healthy tension, and elections are part of the process. The conversation taking place currently is about transparency, and he submitted that these principles are ones that have guided the Land Board allowing a process that seldom results in litigation. He said there are still efforts, and appropriately so, from the public sector to try to influence policy decision in their favor; ultimately what the Land Board should do is to act independent of those political pressures and make decisions based on the best interests of the endowment beneficiaries. The system can be changed, but **Mr. Strong's** recommendation to this committee was to first examine what evil is trying to be cured. He thinks there is no evil, but rather a problem of dealing with this rent-seeking behavior, and that won't go away by changing the governmental structure. A good start is having oversight hearings and resolving tensions that exist between the Legislature and the Land Board. He added that the *Wasden* case made clear what the transaction process must be, although he'd heard testimony that public auctions are not the best way to get the highest return and, in the private sector, he submitted that was correct. However, regarding long-term financial return, that is not separated from other constitutional duties -- to follow the public auction. The founders made a trade-off; an advantage from private transactions is having transparency through the public auction process. The question is, if public auctions are done away with, is that going to enhance visibility or is it going to be advancing interests of the endowment beneficiaries, and that is the question that must be asked before governmental structure is changed. He added that there are different methods for doing that. He reiterated that the first step should be identifying the problem they are trying to solve.

Senator Keough asked in light of the separate branches of government, how the Legislature can hold the Land Board accountable which is what some constituents are asking for. She also inquired about the tension that some believe exists between the language in the Constitution and in statute, such as that reflected by SB 1277. She asked him to comment on whether there is a conflict of interest given the fact that the Office of the Attorney General is the legal advisor for the Legislature. **Mr. Strong** suggested posing the question as to whether a conflict really exists. He said that in the private sector, that is fairly easy to identify. He said that in government, there are competing interests throughout government. He went on to say that there is the duty to fund public schools, to generate as much money as possible, but the Land Board must be concerned that the Legislature

isn't simply reaching over into the endowments trying to get money for present needs to offset issues trying to be resolved in other areas. He said that every aspect of government has tensions. The *Wasden* case clearly proved that healthy tensions are not conflicts of interest. He stated that the question becomes how best to solve political issues, and he believes that running to the courtroom is not what should be done first, but suggested dialogue first, and suing should be a last resort. He said they should look to respective authorities and determine if there is a conflict and then consult directors to resolve conflict. He noted that if something cannot be resolved in the Legislature because of conflicting responsibilities, then statutes can be changed. He added that dialogue is the best avenue, but it doesn't always work, and cited the Snake River Adjudication as an example. He said that sometimes a court is used to solve political problems, but first a problem should be taken to the executive branch and, lastly, to the courtroom. He stated that courts have a law interpreting function and if the problem is a policy issue, then they should look to the respective branches of government to resolve policy issues. He agreed that there are problems, but submitted that these problems are from a very small percentage of the public with a loud voice. He said that cottage sites are a political problem causing consternation, but there is good coming out of it. Exchanges can be one tool and considered as a possibility; from the Land Board's perspective, they've looked at exchanges carefully including legal risk, and ultimately the question was asked whether it was in the interest of endowment beneficiaries. The conclusion was that given the risks that were associated and the fact that proposals coming before the Land Board weren't vetted in terms of being in the best interest of endowment beneficiaries, that it wasn't appropriate to move forward with exchanges at that time. It doesn't mean they won't occur in the future. He said that the dilemma is that most people come to endowment issues with self-interest. An open mind considers fiduciary responsibilities and all factors must be weighed; the final decision will be one that may not be in the self-interest of some other party, but that is not the Land Board's duty. He stated that there should be undivided loyalty to the endowment beneficiaries and he submitted that the Legislature has that same responsibility to the extent of exercising oversight functions.

Mr. Riley told the committee that he'd been representing the forest products industry of Idaho for thirty years and over those years there have been hot-button issues that have come up. He said that in each instance the patterns of behavior have been similar. He said it comforts him that when necessary, the Legislature steps in, in some cases the judicial branch steps up to help guide fundamental laws about issues and the Land Board engages in very pointed discussions about what their fundamental obligations are to beneficiaries. He said he believes the Land Board members are very conscientious and dedicated to learning in order to discharge their responsibilities. He added that the issues surrounding cottage sites, land exchanges and commercial enterprises are a very small part of the more than $3 billion asset management obligation of the Land Board. While these issues are hugely important, he thinks that the checks and balances have worked under the existing government structure.

Co-chair Bayer asked about fairness to other constitutional officers when a member of the board, who is privy to everything including executive sessions, takes legal action against the board and then is also a part of choosing outside counsel. He said he thinks that is very convoluted. He asked whether it would be better if legal counsel were not in that situation. **Mr. Strong** invited the committee to look back at the *Wasden* case. He pointed out that the Attorney General brought information to the Land Board members to explain to them what his position was and the majority of the board members then chose to go a different direction, which is part of the process. He went on to say that the court said it is the obligation of the trustees to step forward and seek remedial action when there is a violation of that fiduciary duty going on. It wasn't that somebody was getting favored treatment, or something else. In fact, he said, when the issue arose the Land Board members were separate from one another, **Mr. Strong** stepped out of his role as advisor to the Land Board because his duty and loyalty was with the Land Board. There was appointment of separate counsel for the AG and there was appointment of separate counsel for the other board members, and all that was agreed upon by members. He emphasized that this was not unusual. He

suggested to the committee that this process does work and everyone benefits from knowing what the law is and that generates healthy debate.

Representative Burgoyne asked about the third-party exchange option issue and that he understood that IDL was advised to be cautious regarding such exchanges. He asked if there is any legislation that could be proposed to facilitate the use of the third-party exchange option. **Mr. Strong** said that he did not believe there was additional legislation necessary because ultimately the question of a disguised sale is a factual question. The question must be asked whether the transaction is being entered into for the benefit of the beneficiaries or is it being entered into for the purpose of avoiding or circumventing some other statutory or constitutional requirement. He added that he thinks that from a legislative standpoint, clarification of the process might help. However, he said that he does not believe that mandating third-party exchanges is within the Legislature's authority.

Mr. Lord mentioned that for two years parties worked with IDL on regulations on the appraisal process in conflict auctions. He said that he thinks that IDL's concern is the multiple risk factor, more economic than legal, and he thinks that perhaps a similar working group of legislators, industry, and professionals in the exchange process could develop a path forward that could work for everyone. A group of people with diverse interests could work on this issue and give confidence to IDL. He stated that he believes a working group might be the answer. **Mr. Lord** also stated risks do need to be dealt with to protect the state and the endowments for the beneficiaries. There needs to be a transparent process, but not so transparent that it eliminates the process, for the endowment purposes. He said he thinks that a working group also needs to deal with the grazing fee increase.

Mr. Strong pointed out that the 320 acre rule does not apply to the exchange. **Co-chair Vander Woude** asked if an exchange would be a method of avoiding the 320 acre limit and would that be a concern to the AG. **Mr. Strong** answered that the public has spoken on that. That is a constitutional provision that doesn't talk in terms of having a limitation of 320 acres apply to the exchange. **Co-chair Vander Woude** stated that a conflict auction was trying to be avoided which is required constitutionally, and that is why an exchange failed. The Constitution also limits 320 acres, he said, and he asked if it was possible to get an opinion that this exchange is to avoid the constitutional limit of 320 acres in a lifetime and, therefore, the exchange would also then not be beneficial or not in the best interest of the endowments. He said that was the clarification he was looking for. **Mr. Strong** said that the fundamental question that has to be asked is this whether the board is entering into a transaction because it is determined that it is in the best interest of the endowment beneficiaries or is it entering into a transaction for purposes other than achieving that outcome.

Mr. Lord said that when cottage sites are disposed of, he wondered whether it was better to convert that asset to cash to be reinvested or go to the endowment side, or exchange it. He assumed there was a way to exchange cottage sites, and asked why an exchange would be unsuitable. **Mr. Strong** said that everyone wants to keep this simple, but it is not simple. Can the Land Board, in making its decision, take into account the benefit to the economy, the benefit to individual industries, and the answer to that is no. He said that when the Land Board is looking at a transaction, its motivation must be that it has determined in its best business judgment that the transaction serves the long-term financial interest of the designated beneficiary. If it can answer that question, then it can go forward with that transaction, as long as it does not conflict with some other provision of law. He said the authority for exchanges has been determined to be within the power of the Legislature, so the Legislature can set up a process for the exchange, but whether an exchange goes forward or not is determined by whether the board has looked at diversification of the portfolio and at the overall assets and concluded that in its best business judgment this is in the long-term interest of the endowment beneficiaries. If that can be shown, then that transaction can go forward. **Mr. Strong** said that it is easy to say and very difficult to apply.

Senator Siddoway asked about an individual who provided public testimony who had parcels within her ranch, suggesting trading those parcels for other parcels of dissimilar lands, either with timber

or minerals. He said that most ranchers have an abundance of land and little money, so most don't want to spend money on land just to exchange. He said it would be much easier if he had a section of land within his ranch that's fenced off with no public access, not being used for wildlife, sportsmen, etc., and another chunk of land that he wanted to exchange, because that would be a net gain of zero to the beneficiary. He asked if the Land Board would deny that. **Mr. Strong** answered that he was not suggesting that. He said that the Land Board would look at that transaction and ask if the 640 acres being offered fits into the current portfolio and would that advance or make it better for the financial return of the endowment beneficiary. If not, then the Land Board should reject that exchange. If it does benefit the beneficiaries, then it could be exchanged, so it depends on what parcels of land are at stake. He said that regarding an inholding exchanged for a parcel on the edge of a ranch, what benefit is the beneficiary getting out of moving from an interior holding to another isolated parcel. However, he said, if other lands provide access to state lands or if they result in consolidation of state lands, then that would be in the interest of the beneficiaries. That is the test. **Senator Siddoway** asked if they do move out, did he understand if there is an ancillary benefit, that you have access to that land, then it may be considered for an exchange. **Mr. Strong** replied that it depends on whether there is some additional advantage. He asked why the endowment would enter into that transaction if it's not going to advance its interests. He said you have to ask how the proposed exchange advances the interest of the endowment.

Co-chair Bayer asked for panel feedback on the definition of terms for clarity and consistency, such as "lands," "real estate," "improvements" and "natural resources." **Mr. Strong** agreed that definitions are important; he said that in light of the *Wasden* decision, an AG guideline will address leases, sales, easement, right- of- way, how they fit within the context of the word "disposal" for the benefit of the Land Board and for the public. In terms of the definition of "lands," he said he would be happy to share the AG definition and he invited dialogue on that.

Representative Burgoyne asked about earlier testimony regarding the definition of "land" that exists in the Idaho Code. He said he was curious about how that statute is viewed and whether that definition does or does not get in the way of what he understands to be a broader view by some that the word "land" does not restrict the Land Board from investing endowment money in commercial property and businesses. **Mr. Strong** replied that one could say that every parcel of land the state owns is commercial property and so there is a definitional problem. He said that the board had not expressed an interest in a business. Given the constitutional restraints, he couldn't imagine the Land Board running a McDonalds, adding that was not a realistic outcome. He said the Land Board does typically act as a landlord of properties upon which improvements can be made. He acknowledged that storage units have caused consternation, and dialogue needs to continue on that issue. He added that under the common law definition of "lands," it includes any improvements attached to the land by the owner of the land. If improvements are owned by somebody else, then those are personal property and not improvements, since it is only when there is unity of title that it would fall under the definition. He said that is the problem with cottage sites since there is a split in title that must be sorted out. As long as the board owns the underlying property, the interpretation is that would include improvements built on the property at the behest of the board. If the contract or lease provides otherwise, that could result in a different outcome. He said he would be happy to look at the statutory definition and get back to the committee on that. **Co-chair Bayer** encouraged the committee to review statutory definitions. **Mr. Thomas** said he had the impression that there is a good deal of confusion about definitions. He said that he thinks definitions are helpful, especially when set in the context of a particular piece of legislation. He stated that the courts define and redefine the way things are to be interpreted. He said he thinks that anything the Legislature can do to clarify what is meant by terms like "lands" and "public lands" would be useful.

Senator Siddoway asked if any consideration had been given to consolidating lands where you have a large checkerboard lease in Idaho comprised of private, state and federal land. He said that as president of an association, they had resisted any consolidation in the past, but maybe it's time

that changed. **Mr. Strong** said he could envision some scenarios that would make sense from a beneficiary standpoint. He said that sometimes there is self-interest involved in not having a blockup occur because it keeps the state in some instances an advocate with regard to federally permitted lands or keeps the state as a barrier to someone else bidding on those particular lands. It comes back to the same basic problem of whether self-interest is injected into something intended to be a clean, fiduciary-responsible determination. **Senator Siddoway** asked if there was a consensus that should be the direction, or if a recommendation should be made to the Land Board and IDL. for ranchers having inholdings, that might be impetus to get those exchanges made. **Mr. Strong** said that to the extent there is a legislative interest in seeing something happen, an expression of that to the Land Board is something the board would always take into account. He didn't see how the Legislature could direct that, if the idea was to encourage the Land Board to examine opportunities for consolidation of ownership to help alleviate some self-interest issues that might crop up when the Land Board goes out to accomplish that outcome.

Mr. Lord referred to a brochure showing that the stock portfolio grew rather rapidly and underperforming grazing ground produced 7/10%. He contended that if you take the appreciation of the stock out, it would be a much different graph and more comparable. He said there is confusion between cash income and growth in value. If you take 1.4 million acres at $10 appreciation per acre, that amounts to $14 million the endowments earned. He said he thinks that costs incurred to manage grazing ground is a problem, but with regard to being totally underperforming, that is when you look at the total asset mix and ask how much of that asset is needed. He said we may want assets that generate more cash, and that may be a commercial property issue versus a bare land issue. He stated that he felt compelled to stick up for grazing land, since it is not that bad of an asset because of the appreciation that has occurred over time. He questioned the high FTE cost. He thinks that cash income is very important. He asked how IDL maximizes return to the endowments since it is very difficult to control income without knowing what costs are and match that up to revenue. He thinks that the committee could use more advice from accountants.

Co-chair Bayer expressed his appreciation for everyone's time, expertise and participation in the proceedings.

Mr. Johnson updated the committee on the consultant study by Callan and said that the rough draft had been completed and that will be transmitted to **Director Schultz** and **Mr. Johnson** for review. The asset mix portion of this study will not be completed until the following week. He assured the committee that the report will soon be forwarded to the Land Board, the committee members and any other interested parties. The consultant will make a formal presentation of that preliminary report to the Land Board at the meeting in late October. He said there is a great deal of complex information and subjective discretion, so they are interested in feedback on the report. A final draft will be presented to the Land Board in November.

Co-chair Bayer announced that the final meeting for this interim committee would be on November 14, 2014, and he referred the members to HCR 58 and the charge of the committee, since the entire Legislature has backed this effort and recognizes that there are issues to be discussed and addressed. He reiterated that all information, including public testimony, would be posted on LSO's website for review and deliberation. Staff will be available for any draft legislation, and he added that recommendations could be presented as well in the last meeting in November. He encouraged members to have as much dialogue as possible with one another and to take advantage of the many LSO resources, as well as consulting the many professionals on the panel who testified, as well as the public at-large.

Co-chair Vander Woude expressed hope that dialogue after this meeting would indicate the direction the committee wants to take, and he encouraged dialogue with IDL and the AG's office so everyone can get on the same page. He is anxious to see the consultant report and what dialogue that creates. That report will be included in the next committee meeting.

Co-chair Bayer adjourned the meeting at 2:48 p.m.