

Recreation on Idaho Endowment Lands

Informational Presentation
Natural Resources Interim Committee
October 16, 2015

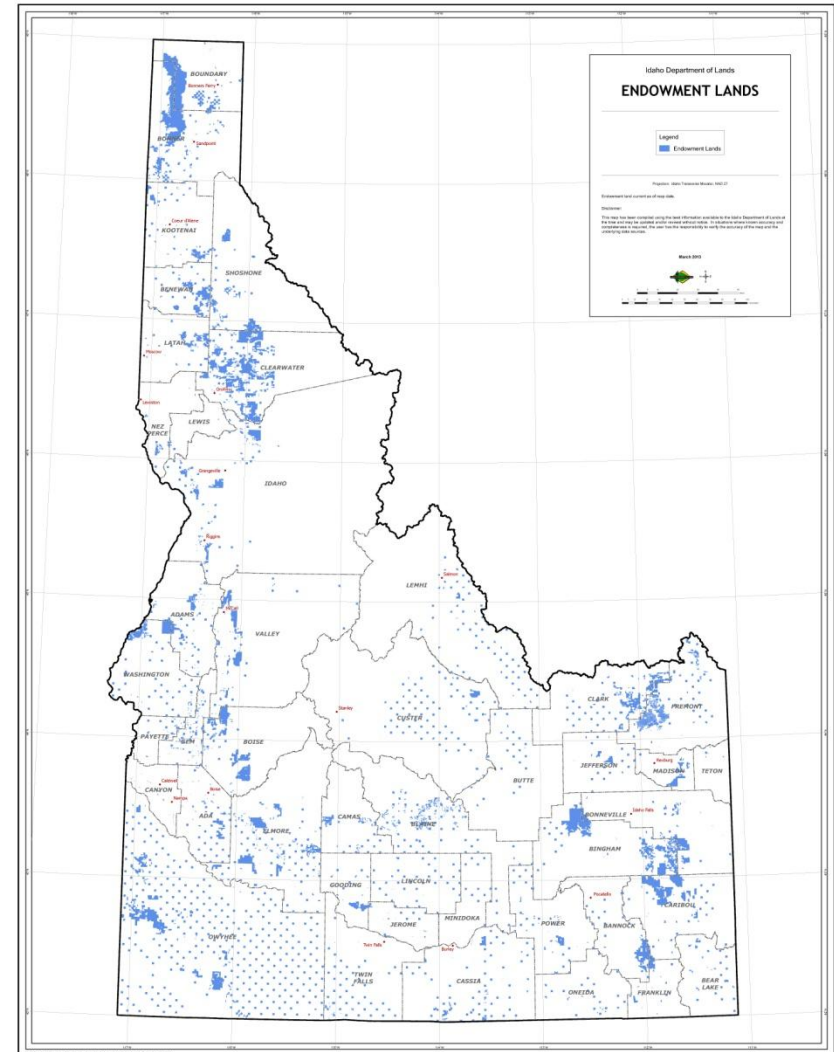


Outdoor Recreation

Part of Idaho's History & Culture



- Idahoans value the outdoors
- Idahoans value access to Idaho lands
- 70 percent of Idaho's 2.4 million acres of endowment lands are *legally* accessible and used by the public for recreation



Dispersed Recreation on Endowment Lands

- Dispersed recreation is secondary use on endowment land
- No formal policy for dispersed recreation
- IDL land managers have been faced with questions about when to exclude the public from using endowment lands for dispersed recreation
 - Proposals for exclusive use leases for recreation purposes, such as exclusive hunting operations





Past Actions that Address Public Access

- In absence of formal Land Board policy on dispersed recreation, IDL land managers find guidance for dealing with dispersed recreation elsewhere
 - Land Board policies
 - Idaho Constitution
 - Idaho Statute
 - IDL policies, instruments, administrative processes

Closures for Public Safety

- Closures put in place on limited, short-term, case by case basis for public safety reasons
 - Active fire operations, rehabilitation
 - Timber harvesting
 - Mining, reclamation activities
- IDL does not typically put in place large-scale closures for fire *prevention*
 - Difficult to enforce
 - Public likes access
 - Fire prevention measures already in place – restrictions, public education





Exclusive Use Leases

- IDL has not offered exclusive use leases for *recreation* purposes, such as an exclusive hunting operations
- IDL does have lease language authorizing limitations on public use and exclusive use
 - Examples: Wind, solar, geothermal leases
- Operational considerations that restrict surface use for safety reasons
 - Example: Close gates on IDL roads for timber harvesting
- Outfitter Leases – Exclusive of other outfitters, but still public access



Other States

- **Colorado**: Closed unless under lease for recreation
 - “State Trust Land Public Access Program” – Lease arrangement with Colorado Parks and Wildlife
- **Montana**: Open with charge
 - State Land Recreation Use License Fee - \$5 to \$20
 - Conservation License Fee - \$2 surcharge on hunting, fishing licenses
- **Utah**: Open with charge
 - Hunter access agreement with Utah Division of Wildlife Resources
 - \$1.50 surcharge on OHV registration

Other States

- **Washington**: Open with charge
 - Discover Pass – Required for vehicle access to lands and facilities managed by three State agencies, including trust lands agency
- **Wyoming**: Open, no charge
 - Rules for use of trust lands
- **Federal Government**: Forest Service and BLM charge for use at specific locations
- **Potlatch**: User Fee Permit System



Formal Land Board Policy on Recreation

- There is a need for the Land Board to adopt a formal policy for dispersed recreation on endowment lands
- Clarity to IDL land managers in their efforts to successfully balance dispersed recreation with other priorities
 - Direction needed on how to evaluate proposals for exclusive use leases for recreation purposes, such as exclusive hunting operations
- Formal policy could recognize the value Idahoans put on recreational access to endowment lands

Policy Options

- **Option #1-A: Retain current approach**
 - Accessible lands open
 - No charge to public for use
 - Land Board would not consider exclusive use leases for recreation purposes, such as an exclusive hunting operation
 - Continue to issue leases with exclusive use provisions where appropriate
 - Continue to close lands on limited, short term, case by case basis for public safety reasons
 - Liability not a concern

Policy Options

- **Option #1-B: Retain most of current approach, but consider exclusive use leasing for recreational purposes**
 - Accessible lands **open**
 - **No charge** to public for use
 - Land Board **would consider exclusive use leases for recreation purposes**, such as an exclusive hunting operation
 - Continue to issue leases with exclusive use provisions where appropriate
 - Continue to close lands on limited, short term, case by case basis for public safety reasons
 - Liability not a concern

Policy Options

- **Option #2: Keep lands open but charge for recreational use**
 - Accessible lands **open**
 - **Charge** the public for use
 - Direct fee or lease arrangement with another State agency
 - Land Board **would not consider exclusive use leases for recreation purposes**, such as an exclusive hunting operation, since the endowments would be compensated for secondary dispersed recreation
 - Continue to issue leases with exclusive use provisions where appropriate
 - Continue to close lands on limited, short term, case by case basis for public safety reasons
 - **Liability may be a concern**
 - Changes to Idaho Code may be necessary if charging individuals
 - Liability protection not necessary if compensated through Idaho Department of Fish and Game's Access Yes! program



Questions

STATE BOARD OF LAND COMMISSIONERS
September 15, 2015
Information Agenda

SUBJECT

Dispersed Recreation on Endowment Lands

BACKGROUND

Idaho's endowment trust lands yield more than just a steady stream of income to public schools and other important State institutions. The lands also provide an abundance of opportunities for Idahoans to recreate. The Idaho Department of Lands (IDL) has legal access on approximately 70 percent of the 2.4 million acres of endowment lands, and thousands of people use endowment lands each year to hunt, fish, camp, hike, mountain bike, snowmobile, ride off-highway vehicles, berry pick, and enjoy for other recreational purposes.

Idahoans value recreational access to endowment lands. Hunting, fishing, and outdoor recreation are part of the fabric of Idaho's history and culture.

DISCUSSION

IDL land managers have been faced with questions about when to exclude the public from using endowment lands for dispersed recreation. Dispersed recreation is a secondary use on endowment land.

Right now, IDL land managers close portions of endowment lands to the public for safety reasons on a limited, short-term, case-by-case basis, such as during timber harvesting, mining or reclamation activities, or during fire operations and rehabilitation.

There are some instances in which the nature of a leased activity precludes secondary dispersed recreation – such as a lease for a shooting range, wind farm, commercial building, and other examples. As a practical matter, there are operational considerations for some uses of endowment lands that restrict surface use and secondary dispersed recreation for safety reasons, or for the efficient operation of revenue generating activities. IDL utilizes lease language that authorizes restrictions on public access and exclusive use where appropriate.

However, historically IDL has not offered exclusive use leases for recreation purposes, whereby a lessee can lease endowment lands for an exclusive recreation-related use – such as an exclusive hunting operation – under special provisions that eliminate the possibility for the public to access the same lands for recreation. Recognizing the value Idahoans put on recreational access to endowment lands, IDL has been reluctant to issue exclusive use leases for recreation, and instead has been willing to work with individuals on proposals that enable new revenue generating uses of endowment lands without barring public access on endowment lands.

There is no standalone policy adopted by the Land Board addressing dispersed recreation on endowment lands. There have been actions taken by the Land Board, IDL, and the Idaho Legislature over the years to address public access to endowment lands, and past actions could act as precedent in guiding IDL land management decisions involving dispersed recreation.

Funds are not allocated to construct or maintain facilities or trails for the *primary* purpose of providing recreational opportunities on endowment lands. However, where necessary, IDL field staff work to mitigate impacts from secondary recreation uses in a number of ways. Most recreational users of endowment lands do so without damaging resources, but resource damage does occur. There is not one solution that will result in no impacts to the lands from dispersed recreation, but IDL land managers see some opportunities for improvement through more structured partnering, more funding dedicated to recreation, and a standalone Land Board policy on dispersed recreation.

IDL recognizes there is a need for the Land Board to adopt a formal policy for dispersed recreation on endowment lands. A formal recreation policy would provide clarity to IDL land managers in their almost daily efforts to successfully balance dispersed recreation with other priorities. If the Land Board is interested in deviating from the status quo and excluding the public from some endowment lands to enable exclusive use leases for recreation purposes – such as an exclusive hunting operation – then IDL land managers need that direction. Also, a formal policy could recognize the value Idahoans put on recreational access to endowment lands.

The Land Board and IDL can look to other states to examine different approaches to managing dispersed recreation on state trust lands.

If a new recreation policy is bolstered by additional funding from direct fees or a lease arrangement with another State agency, then the Land Board would:

1. Secure additional funding for public schools and other endowment beneficiaries from compensation for dispersed recreation uses;
2. Provide the public the long-term assurance of access to endowment lands for secondary dispersed recreation uses;
3. Improve stewardship and enhance recreational opportunities on endowment lands for the public.

A report detailing many aspects of recreation on endowment land was prepared by IDL (Attachment 1).

ATTACHMENTS

1. Report: Recreation on Idaho Endowment Lands



Recreation on Idaho Endowment Lands

Prepared by the Idaho Department of Lands, September 2015

Contents of Document

Page:

1-2	Introduction
3-7	Historical Perspective
8-11	Current State of Dispersed Recreation on Endowment Lands
12-13	Managing Dispersed Recreation on State Trust Lands: <i>Comparing Idaho to Other Western States</i>
14-16	Policy Options

Page: Appendices:

17	A	1973 Land Board Policy
20	B	Asset Management Plan excerpt
22	C	IDL OHV Fund Policy
25	D	Department OM 1625
27	E	Department OM 1606
29	F	IDL-IDFG Road Closure Supplement
32	G	Fact sheet on Ponderosa Area camping
33	H	MOA Affecting Recreational Use of State School Trust Lands between Montana DFWP and DNR
36	I	Landowner liability laws in Idaho and Montana

Introduction

When Idaho was admitted to the Union as the 43rd state in 1890, it was granted approximately 3,672,000 acres of land under the condition that the lands be managed in perpetuity as a trust for public schools and other beneficiary institutions. The mandate was codified in Article IX Section 8 of the Idaho Constitution, which states that the lands are to be managed, "...in such a manner as will secure the maximum long term financial return" to public schools and other important state institutions.

Today, more than 2.4 million acres of state endowment trust land (endowment land) across Idaho are managed by the Idaho Department of Lands (IDL) under the direction of the State Board of Land Commissioners (Land Board). Authorized activities on the lands – such as timber harvest, grazing, mining, and other uses – provide millions of dollars in funding to public schools and ancillary benefits to Idahoans such as jobs, income, and the sale of products.

Endowment lands yield more than just a steady stream of income to public schools and other state institutions. The lands also provide an abundance of opportunities for Idahoans to recreate. Based on a 2014 analysis by IDL, approximately 70 percent of endowment lands have legal access and approximately 30 percent have no documented legal access or known access. Thousands of people use the accessible endowment lands each year to camp, hike, fish, hunt, mountain bike, snowmobile, ride off-highway vehicles, berry pick, and enjoy for other recreational purposes. **Idahoans value recreational access to endowment lands. Hunting, fishing, and outdoor recreation are part of the fabric of Idaho's history and culture.**

This report addresses the following aspects of the issue of public access and recreation on endowment lands:

- The report lays out **actions taken by the Land Board, IDL and the Idaho Legislature** over the years to address public access to endowment lands. There is no standalone policy adopted by the Land Board addressing dispersed recreation on endowment lands, so the actions act as precedence in guiding IDL land management decisions involving dispersed recreation.
- The report provides information on **how IDL land managers deal with impacts of recreation** on endowment lands, and the funding sources that exist to mitigate those impacts. It offers the land managers' perspective on how to improve the management of recreation on endowment lands.
- To provide additional context to the discussion about a policy on dispersed recreational use of endowment lands, this report also examines **other states' programs** for managing public recreational access to state trust lands.
- Lastly, the report provides a description of some **options the Land Board could consider for a policy** dealing with dispersed recreation on endowment lands. The IDL recognizes there is a need for the Land Board to adopt a formal policy for dispersed recreation on endowment lands for the following reasons:
 - **A formal recreation policy would provide clarity to IDL land managers in their almost daily efforts to successfully balance dispersed recreation with other priorities.** This essentially comes down to whether to close endowment lands to dispersed recreation. Right now, IDL only closes endowment lands on a limited, case-by-case, short term basis for safety reasons, such as during timber harvesting, mining or reclamation activities, and fire operations. Recently, IDL has been faced with questions about excluding the public from endowment lands – on a large scale as long as fire danger levels warrant closures – as a fire prevention measure. Also, IDL has received proposals for exclusive use leases for recreation, whereby one lessee can lease endowment lands for recreational purposes and exclude the public from using the lands for the same reason. IDL currently does not offer exclusive use leases for recreation. It has been difficult for land managers to evaluate whether a decision to limit public access is consistent with Land Board direction because there is no consistent formal policy limiting dispersed recreation.
 - **A formal recreation policy could recognize the value Idahoans put on recreational access to endowment lands.** Recent discussions about State land management and federal land management reflects a misunderstanding among the public about public recreational access to endowment lands. Some individuals who have spoken publicly on the issue have mischaracterized public access to endowment lands, saying the State can shut out the public to make money. That is not consistent with how dispersed recreation is handled, and a recreation policy from the Land Board would ensure the public has a clear understanding about access to endowment lands for recreational purposes.

Historical Perspective

Over the years the Land Board has adopted various policies that *in part* address public access to endowment lands. There is no standalone policy adopted by the Land Board addressing dispersed recreation on endowment lands, so past actions could act as precedent in guiding IDL land management decisions involving dispersed recreation.

Land Board policies addressing public recreation on endowment lands

In 1973 the Land Board formally adopted a policy that states, in part:

“It is the policy of the State Board of Land Commissioners to protect and preserve the present and future public interests for recreational, fishing, hunting, or access values in State lands. Sale or lease applications should be individually evaluated by the Department of Public Lands to protect these values.”

Grazing and farming leases were amended to read, *“These lands are not to be closed at any time to the use of the general public for hunting and/or fishing purposes without the written permission, in advance, of the Department of Public Lands...”*

The full 1973 policy is included as [Appendix A](#) to this document.

Non-commercial recreational use of endowment lands is addressed on pages 28-29 of the updated Asset Management Plan adopted by the Land Board on Dec. 20, 2011. The plan states, *“Incidental public recreation is not an asset class, but the issues associated with allowing such activity on endowment lands must be managed,”* and outlines management objectives, challenges, and opportunities with mitigating dispersed recreational uses of endowment lands. The general direction is that public use of endowment lands is to be accommodated to the extent feasible, provided that such use does not impair financial returns.

A copy of the excerpt of the policy is [Appendix B](#).

Idaho Constitution

In 2012 Idaho voters approved a constitutional amendment that added the right to hunt, fish and trap in the state. The amendment confirmed the value Idahoans place on hunting, fishing and trapping as recreational opportunities in the state. [Article I Section 23 of the Idaho Constitution](#) now states, in part:

“ The rights to hunt, fish and trap, including by the use of traditional methods, are a valued part of the heritage of the State of Idaho and shall forever be preserved for the people and managed through the laws, rules and proclamations that preserve the future of hunting, fishing and trapping...”

Idaho Statute addressing public recreation on endowment lands

The Idaho Legislature has passed laws over the years addressing recreational access on endowment lands. The following summary may not be an exhaustive list of all the laws directly or indirectly addressing public recreational access to endowment lands, but it captures the more significant ones.

Idaho law addresses access to endowment lands in Title 36 Chapter 16. The law says a person cannot exclude the public from using endowment lands without holding a lease from IDL providing exclusive use to the land. Specifically, Idaho Code [§ 36-1603\(b\)](#) states:

“No person shall post, sign, or indicate that any public lands within this state, not held under an exclusive control lease, are privately owned lands.”

The use of the term “public lands” refers to endowment lands as they are described in Article IX Section 8 of the Idaho Constitution.

Idaho law also prohibits IDL from selling lands that are deemed valuable for **recreation**. Idaho Code [§ 58-133](#) states, “all state-owned lands classified as chiefly valuable for forestry, reforestation, recreation and watershed protection are hereby reserved from sale and set aside as state forests.”

In 2009, the Idaho Legislature established a mechanism in law to direct one dollar to IDL from every off-highway vehicle (OHV) registration. Idaho Code [§ 67-7126](#) established a dedicated fund where the funds are deposited (OHV Fund). It can be used by IDL to provide OHV opportunities and to repair damage directly related to OHV use, thereby supporting the preservation of OHV recreation opportunities on endowment lands.

Idaho law also addresses trespass and occupation of endowment lands by members of the public without a lease in Idaho Code [§ 58-312](#) and [§ 6-211](#).

Idaho Code [§ 36-104\(10\)](#) says Idaho Department of Fish and Game (IDFG) may enter into cooperative agreements with landowners (including IDL) for enforcement purposes, “provided, however, the commission shall not enter into such agreements for lands which either lie outside or are not **adjacent to any adjoining the proclaimed boundaries of the national forests in Idaho.**”

IDL policies, instruments, and administrative processes addressing public recreation on endowment lands

The IDL Off-Highway Vehicle (OHV) Fund Policy establishes the department’s policy for planning, reviewing, and funding the OHV Fund projects. The policy is included as **Appendix C**.

Department Operations Memorandum numbers 1625 and 1606 (**Appendices D-E**) were issued Nov. 7, 1977, and Nov. 1, 2000, respectively, and addressed unauthorized occupancy and use and trespass of state land. The memorandums read in part:

- *Occupancy of state land for recreational uses with non-permanent structures such as tent camps, mobile homes or campers containing facilities for living, sleeping, eating or cooking will*

be restricted to a period of no longer than ten (10) days without written approval of the Area supervisor.

- *Recreational users of state land may be curtailed or restricted if the area is classified as unsafe, if there is existing fire danger, or if sanitary conditions present a hazard to health and/or a pollution problem.*

Today, IDL maintains a provision in grazing leases pertaining to the use of endowment lands for recreational purposes. The provision states:

“Public Use. Lessee must allow the general public the right to use the Leased Premises for any lawful use available to the public for lands owned by the State of Idaho. However, nothing in this Lease authorizes or purports to authorize trespass on private lands to reach state-owned lands, including the Leased Premises. Public use of State lands shall not be restricted without prior written approval of Lessor. This Lease is not an exclusive control lease as described under Idaho Code § 36-1603(b).”

Cottage site leases also maintain a “quiet enjoyment” provision that limits the public’s use of a leased cottage site lot if the use is incompatible with the lessee’s right to “quietly have, hold and enjoy the leased premises.”

Some IDL leases have provisions that spell out when the lessee may restrict public access to the leased premises. One provision states that, in part, during operations the lessee can regulate public access and vehicular traffic for safety reasons, and the restrictions on access must be approved by IDL as part of a plan of operations.

There also is lease language authorizing exclusive use of portions of the leased endowment lands.

The lease provisions are included in their entirety below.

2.3.11 Public Use.

Lessee must allow the general public the right to use the lands described in the Lease for any lawful use authorized by the State Board of Land Commissioners for lands owned by the State, except for any such use which is incompatible with Lessee's use under the terms of this Lease, and further excepting exclusive use areas approved by Lessor pursuant to Section 6.3.5. However, nothing in this Lease authorizes or purports to authorize trespass on private lands to reach State-owned lands. Lessee shall not restrict public use of State lands authorized by the State Board of Land Commissioners without prior written approval of Lessor; provided however, nothing in this Lease shall be deemed a limitation on Lessor's authority to control public use of the Leased Premises where such use is authorized by the State Board of Land Commissioners. This Lease is not an exclusive control lease as described under Idaho Code § 36-1603(b). During operations, the Lessee will regulate public access and vehicular traffic to protect human life, wildlife, livestock and property from hazards associated with the operations. For this purpose, the Lessee will provide warning, fencing, flagmen, barricades, well and hole coverings and other safety measures as appropriate. Restrictions on access must be approved by the Lessor as part of a plan of operations. Lessee will not at any time fence any watering place upon leased lands where the same is the only accessible and feasible watering place upon the lands within a radius of one (1) mile without first having secured the written consent of the Lessor.

6.3.3 Areas of Exclusive Lessee Use.

The portion(s) of the Leased Premises that Lessee proposes to hold for its exclusive use and to exclude the public and other lessees of Lessor from accessing. Lessor shall describe the basis for excluding the public and other lessees of Lessor from such portions of the Leased Premises

Additionally, the Priest Lake Supervisory Area has two special use management areas to protect recreational and aesthetic values – the Selkirk Crest Special Management Area and the Upper Priest Lake Scenic Area. Endowment lands in these areas have been withdrawn from the timber base. According to the 1992 Land Use Plan for Priest Lake adopted by the Land Board by Resolution, “it has been recognized that these lands are in an attractive and unspoiled condition. This condition...led to the development of special management constraints to protect their unique characteristics.”

As noted in the Priest Lake Forest Asset Management Plan, the Selkirk Crest Special Management Area includes approximately 6,600 acres and 45,554 MBF. The construction of roads and the implementation of commercial timber sales are prohibited in this area by the 1971 memorandum of understanding between the U.S. Forest Service and the State of Idaho. The Upper Priest Lake Scenic Area includes approximately 1,700 acres and 11,992 MBF. The construction of roads and the implementation of commercial timber sales are prohibited in this area by the 1965 memorandum of understanding between the U.S. Forest Service and the State of Idaho.

Closures for Public Safety

IDL closes endowment lands on a limited, short term, case-by-case basis for public safety purposes during timber harvesting, mining or reclamation activities, or during active fire operations or rehabilitation. IDL does not typically put in place large-scale closures of endowment lands for fire *prevention* because, as a practical matter, it cannot be enforced, it could create consternation among the public, and there are numerous fire prevention measures already in place, such as fire restrictions and fire prevention programs.

Exclusive Use Leases

There are some instances in which the nature of a leased activity precludes secondary dispersed recreation – such as a lease for a shooting range, wind farm, commercial building, and other examples. As a practical matter, there are operational considerations for some uses of endowment lands that restrict surface use and secondary dispersed recreation for safety reasons, or for the efficient operation of revenue generating activities. The lease language authorizing restrictions on public access and exclusive use are outlined on pages 5-6.

In the past, IDL has not offered exclusive use leases for *recreation purposes*, whereby a lessee can lease endowment lands for a recreation-related use – such as an exclusive hunting operation – under special provisions that eliminate the possibility for the public to access the same lands for recreation. Recognizing the value Idahoans put on recreational access to endowment lands, IDL has been reluctant to issue exclusive use leases for recreation, and instead has been willing to work with individuals on proposals that enable new revenue generating uses of endowment lands without barring public access on endowment lands.

In the early 1990s, IDL denied an application from a landowner near Island Park to exclusively lease endowment lands intermingled with his ownership for a fenced elk shooter operation. In the mid 2000s,

IDL denied a similar proposal from an individual to exclusively lease endowment lands adjacent to his ranch in eastern Idaho for an elk shooter operation. In the early to mid 2000s, IDL denied a proposal from an individual near Blackfoot who proposed leasing endowment lands intermingled with his ownership for a bird shooter operation.

Recently IDL received interest from an individual seeking an exclusive use lease for a bird hunting operation in eastern Idaho. An application for the exclusive use lease is pending, and is expected to come before the Land Board soon.

Outfitter Leases

The IDL has 20 active permits and leases to outfitters that cover more than 800,000 acres of endowment lands. The FY15 income from these instruments was approximately \$13,250. The IDL outfitting leases and permits give the outfitter the right to use endowment lands exclusive of other outfitters, but the general public is still allowed to access the permitted or leased lands for recreational purposes.

Depending on the operating area, specific activities, and the nature of the operation proposed by an individual seeking to lease endowment lands for recreation-related uses, the individual may need to obtain a license from the Idaho Outfitters and Guides Licensing Board and/or relevant permits from the Idaho Department of Fish and Game or Idaho State Department of Agriculture, in order to operate legally.

Current State of Dispersed Recreation on Endowment Land

Features on endowment lands used by recreationists

Many roads and other features on endowment trust lands are put in place to enable primary revenue generating activities such as timber harvesting, but are utilized by dispersed recreationists as well.

Funds are not allocated to construct or maintain facilities or trails for the *primary* purpose of providing recreational opportunities. However, where necessary, IDL field staff work to mitigate impacts from secondary recreation uses in a number of ways. They may place signage informing recreationists to stay on trails, install gates to redirect recreationists off of certain roads for their safety and to protect the condition of roads, or conduct forest road repairs for damage caused in part by motorized recreation in order to make a timber sale accessible. Spending money on security contracts to monitor recreation and protect endowment resources is included in these activities. This is done on a targeted, case-by-case basis.

Expenses and Funding Associated with Dispersed Recreation on Endowment Lands

IDL receives \$1 from the registration of every OHV in Idaho annually. The money goes into an account dedicated to managing dispersed recreation on endowment lands. In the past, the money has been used on new signage, construction of bridges over streams, trailhead information, parking, trail inventories, rehabilitation of damaged areas, to improve roads for recreational access for OHVs and snowmobiles, and other infrastructure and activities. Some supervisory areas that are more heavily used by OHVs anticipate spending at least \$10,000-15,000 of OHV monies annually into the future to mitigate impacts from OHV use.

The balance of the OHV Fund as of March 2015 was approximately \$520,000 and the fund received approximately \$134,000 in FY14. The agency typically combines the OHV tag money with grant funds to mitigate recreation damage on endowment lands. To determine where and how the money will be spent on endowment lands, IDL carries out a process for ranking and prioritizing internal needs for recreation mitigation. The funds provided do not fully mitigate the cost to endowment lands, and any additional costs associated with mitigating recreation on endowment lands are paid out of the Earnings Reserve Fund, the fund from which distributions to endowment beneficiaries are made. The expenses are not broken out or identified as “recreation management” but rather as activities necessary to manage endowment trust lands for the long-term.

IDL spends some money on security contracts in various locations throughout northern Idaho. The contractors monitor endowment lands in areas where recreation has been known to interfere with the trust mandate (i.e., dumping of trash, damage to gates and roads, etc.). In FY14, IDL spent approximately \$31,000 on security contracts, paid from the Earnings Reserve Fund. Since FY14, the cost for security contracts across the state is expected to be higher, and OHV monies will be used to pay for some of the cost of security contracts.

Enforcement, Agreements, Citizen Support

There are no statewide agreements between IDL and other public or private entities pertaining to recreation, but 10 IDL Supervisory Areas that include 14 field offices have in place a number of local agreements with other agencies and groups related to recreation.

Enforcement - IDL has a master cooperative agreement with the Idaho Department of Fish and Game (IDFG) to enforce road closures on endowment lands. IDL signed a supplement to the agreement that enables IDFG to provide enforcement and monitoring of gate closures and winter closures on endowment lands in northern Idaho, primarily to protect endangered or at-risk species such as grizzly bear and woodland caribou. IDL pays \$30,000 annually to IDFG for providing the enforcement. A copy of the agreement with IDFG is [Appendix F](#). There are several other cooperative agreements between IDL and IDFG in other locations throughout Idaho for enforcement to protect fish and wildlife resources.

IDL also works cooperatively with county sheriffs. In some locations IDL also has hired private contractors to monitor endowment lands where recreation has been known to interfere with the trust mandate.

Local Agreements - The agency works with local partners throughout the year on access issues important to Idahoans in those areas. For instance, at the IDL Southwest Supervisory Area based in Boise, IDL worked with multiple partners, including Idaho Department of Parks and Recreation (IDPR) and ATV groups to repair some trails created by OHVs, put up signage to direct OHV traffic, and create a map to inform recreationists of recommended trails on endowment lands near Idaho City that are popular for recreationists.

At the Priest Lake Supervisory Area, which manages the largest contiguous block of endowment lands in all of Idaho, the East Shore Road cooperative agreement between IDL and other local partners maintains primary road access across 19 miles of state and private land that is heavily used by the recreating public. The Priest Lake Supervisory Area also permits snowmobile grooming, parking, and warming huts covering more than 100 miles of endowment roads, and maintains a winter access plan to restrict recreational access on endowment lands as needed in order to minimize impacts to woodland caribou. The Payette Lakes Supervisory Area also issues snowmobiling grooming permits to two counties, but the man hours to enforce the terms of the permit tend to cost more than the land use permit brings in.

Agreements with IDPR in some areas have enabled IDL to utilize IDPR staff to re-route trails and mitigate damages from recreation. However, IDPR is limited in its ability to lend support because of funding and staff constraints.

Citizen support – IDL land managers highlight the importance of citizen support in helping manage the impacts of recreation on endowment lands. At the Eastern Supervisory Area, the Mink Creek parcel located within the Caribou-Targhee National Forest a few miles south of Pocatello has been heavily used by recreationists for years. There were issues with long-term squatters leaving messes, high school keggers, meth labs, mudbogging, and other activities causing damage to the resources. In 2008, a local citizen led an effort to bring together city, county, and state officials, along with other interested citizens, to an on-site meeting to work cooperatively to address the problems. The efforts resulted in a plan to eliminate vehicle access and the creation of an MOU. Bannock County, the Idaho Transportation Department, the county sheriff, and IDFG all pitched in to help in the effort to limit vehicle access to the area, and there have been no problems since the community took notice of the project.

Volunteers - The Mica Supervisory Area based in Coeur d'Alene introduced the Healthy Endowment Land Protection (HELP) program that uses volunteers to monitor recreational activities on endowment lands and casually educate users about the purpose of endowment lands. The HELP volunteers mostly live near or right next to an endowment land parcel. They have helped pick up garbage, report trespasses to law enforcement, talk to the public about endowment lands, and maintain information

signs and boards located at many of the gated roads on the endowment parcels. There are HELP volunteers assigned to six isolated endowment blocks surrounded by urban development, and the Area plans to expand the program into the Silver Valley.

Challenges

The type and extent of dispersed recreation varies by location and proximity to population centers across the state.

Most recreational users of endowment lands do so without damaging resources. However, damage does occur and increased recreational use of endowment lands is expected to increase due to rising population and diminishing opportunities to recreate on other lands.

The following types of dispersed recreation have presented challenges for IDL land managers in some parts of Idaho.

- **Overuse of roads and trails** – Roads and trails created on endowment lands are utilized heavily in some areas by OHVs, motorcycles, horses, mountain bikes, and by foot. In some places, four-wheel-drive vehicles are used for “mudbogging,” creating sedimentation and access issues. Environmental damage, lost production value, and water quality violations are attributed to heavy uses of roads and trails in some places.
- **Target shooting** – In some places, long range shooting is occurring near residences, creating safety concerns.
- **Mushroom picking and huckleberry picking** can be confrontational in places that are overwhelmed by recreational users.
- **Long-term camping** – Generally, endowment lands are open to dispersed camping for no longer than 10 days, after which the person(s) will be asked to move.

Some areas offer land use permits for individuals who wish to camp in an area for more than 10 days. The Ponderosa Supervisory Area charges \$100 per month per trailer through the issuance of land use permits (see [Appendix G](#) for a fact sheet). The application fee is an additional \$250 and insurance is required of the permittee; IDL requires General Liability insurance in the amount of at least \$1,000,000 per occurrence and Automobile Liability insurance in the amount of at least \$1,000,000 per occurrence. The Southwest Supervisory Area also came up with a policy letter that closely resembles how the Forest Service manages camping in undesignated areas. Campers are allowed to stay for 14 days straight for free. After that they must remove the campsite off endowment land or sign a land use permit and pay \$100 per month.

In some parts of Idaho, IDL land managers come across homeless people living out of cars and campers on endowment lands. IDL coordinates with corporate neighbors and law enforcement to monitor activities and track them, and to make sure IDL is not harboring fugitives. IDL reports suspicious sites in remote areas to the county sheriff. There have been instances of campsites that have been slightly developed, where low grade (out of code) septic systems were installed and had to be removed and cleaned up.

- Other challenging management issues that are connected to recreational access on endowment lands include:
 - More required maintenance on forest roads, completed in conjunction with timber sales
 - Firewood theft
 - Illegal dumping
 - Vandalism
 - Damage to gates
 - Marijuana growing
 - Spread of noxious weeds
 - Garbage and damage at party spots
 - Trespass behind closed gates
 - Risk of wildfire potential (in one supervisory area, a camper burned and had to be buried on site)

Solutions

There is not one solution to managing dispersed recreation on endowment lands so that no impacts occur. However, some steps may produce incremental improvements for addressing recreation impacts more effectively so that Idahoans can continue to access and enjoy endowment lands.

IDL land managers have expressed that a standalone Land Board policy providing guidance and sideboards on how IDL should manage for recreation and a position on whether the public should be charged for certain recreational uses uniformly across the state would be helpful.

More structured partnering with IDPR, IDFG, and the counties is part of what IDL land managers say they need to better manage recreation on endowment lands. IDL does not have law enforcement authority so there is little point in hanging signs with use restrictions without active, vigorous, support from law enforcement agencies. Improved agreements with IDFG and county sheriffs – backed up with financial support for these agencies – is a fundamental element of successfully managing recreational use of endowment lands more closely. IDL land managers say the support and cooperation of local government and local concerned citizens is important.

IDL would greatly benefit from designating one or two regional recreation impact coordinators to manage security contracts, review impacts, share ideas for mitigation strategies, assist with MOUs, and perform other duties associated with managing recreation on endowment lands.

Of course, more funding dedicated to managing recreation would make it easier for IDL land managers to justify spending larger amounts of money on projects strictly related to recreational uses. Area managers confirm that OHV monies have been helping, since the money then does not come out of their Area budgets (Earnings Reserve).

Managing Dispersed Recreation on State Trust Lands: *Comparing Idaho to Other Western States*

There are different approaches to managing public recreational access to state trust lands across the West.

According to StateTrustLands.org, “Arizona, Colorado, Louisiana, Minnesota, Montana, New Mexico, and Washington all offer types of recreational use licenses and permits to enable recreation on state trust lands. For a relatively small fee, the permits give users access to state trust lands for recreational purposes. As with permits for federal public lands, the permits have terms and conditions that must be followed by the user.”¹

Colorado² state trust lands are not available for public use unless made available through specific leases with third parties. There are 3 million surface acres of Colorado state trust lands, and 550,000 acres are available for public recreational access through the State Trust Land Public Access Program. The Public Access Program is a lease arrangement between the Colorado Parks and Wildlife (CPW) and the State Land Board that began in 1993. CPW pays the State Land Board approximately \$816,000 per year for the public access program. Through this lease agreement, these lands are available to the public for a specified time during the year for hunting, fishing and other wildlife-related activities. The lands may have several lease activities occurring on them during the year which includes farming, livestock grazing, mining and logging.²

Montana³ has a State Land Recreation Use License Fee and a Conservation License Fee. Approximately \$1 million in revenue from these fees are collected by Montana Fish, Wildlife, and Parks (FWP) and passed on to fund public use of endowment trust lands annually. A State Land Recreation Use Permit is required for anyone conducting a non-commercial activity on state trust lands not related to hunting and fishing. Fees for the State Land Use Fee are between \$5 and \$20 depending on age and whether the license is for an individual or family. Public use of trust lands in Montana for hunting and fishing is covered by a \$2 surcharge on each Conservation License. A Conservation License is needed before you can buy any fishing or hunting license that Montana FWP issues. Montana also issues permits for trapping on trust lands and leases lands for hunting clubs, outfitters, guides and other private recreation oriented business operations. Enforcement is provided by the Montana Department of Fish, Wildlife, and Parks. The Memorandum of Agreement Affecting Recreational Use of State School Trust Lands between Montana Department of Fish, Wildlife, and Parks and Montana Department of Natural Resources and Conservation is [Appendix H](#).

1 – From <http://www.statetrustlands.org/current-issues/recreational-uses.html>

2 – From <http://cpw.state.co.us/placestogo/Pages/StateTrustLands.aspx> and [http://case.epaperflip.com/coloradolands/mobile/index.html?doc=CC92AF22CF95DA1FBBB45F42E73EF524#{"docid":"CC92AF22CF95DA1FBBB45F42E73EF524"}\]](http://case.epaperflip.com/coloradolands/mobile/index.html?doc=CC92AF22CF95DA1FBBB45F42E73EF524#{)

3 – From <http://dnrc.mt.gov/index/divisions/trust/recreational-use-of-state-land> and <http://fwp.mt.gov/recreation/permits/stateLandUse.html> and <http://dnrc.mt.gov/divisions/trust/recreational-use-of-state-land/rec-use-forms-and-permits/recreational-use-guide>

Utah⁴ – In 2007 the Utah Trust Lands Administration entered into a hunter access agreement with the State of Utah Division of Wildlife Resources (UDWR). The terms of the agreement allow for public hunting access on trust lands in exchange for an annual payment to the Trust Lands Administration by the UDWR. The UDWR hunter access payment for FY14 was scheduled for \$703,550, and an additional \$1,514,392 was received in FY14 to pay for FY15 and FY16 as well. The agreement allows the Trust Lands Administration to fulfill its mandate of generating revenue for the trust beneficiaries while preserving hunting opportunities for the general public. Additionally, Utah has addressed OHV use and damage remediation with a \$1.50 annual surcharge on OHV registration. The OHV registration surcharge proceeds totaled just under \$320,000 for FY14, and that amount has been fairly steady over the last several years.

Washington⁵ – Approximately 2.2 million acres of state trust lands across Washington are accessible to the public for recreation through the purchase of a Discover Pass. The Discover Pass is a motor vehicle permit only. People do not need the pass to access state trust lands by boat or by non-motorized means (foot, horse, bicycle, etc.). The Washington State Legislature and Governor created the Discover Pass in 2011 to offset steep reductions in general tax support for parks and other recreation lands and facilities. Revenues from the Discover Pass “help keep state recreation lands open.” The Discover Pass is required for vehicle access to lands and facilities operated by three state entities – Washington State Parks, the Washington Department of Fish and Wildlife and the Washington State Department of Natural Resources (DNR). The annual pass is \$30 and a day use pass is \$10.

Wyoming⁶ – Legally accessible state trust lands in Wyoming are open to public recreation, with a few rules for use, unless otherwise closed by direction of the Land Board. Cultivated croplands are not open to public use. Off-road vehicle use, overnight camping, and open fires are prohibited on Wyoming state trust lands. All motorized vehicles must remain on established roads. New roads cannot be created, nor can established roads be extended by public users. Activities that would damage state lands, roads, improvements, or lessee property interests also are prohibited. The Land Board may close specific state trust lands, roads and areas on a temporary or permanent basis where damage occurs from public recreation. For decades the public could not use state trust lands without the permission of the State’s lessees. In 1988, the Land Board adopted rules extending to the public the privilege of hunting, fishing and general recreational use on much of the remaining 3.5 million acres of state trust lands.

Federal Government

Federal land agencies such as the U.S. Forest Service and Bureau of Land Management retain a majority of their recreation fees to be used at the site where they are collected.⁷

Private: Potlatch’s User Fee Permit System

According to the Potlatch web site⁸, forest lands owned by Potlatch “will continue to be available for public use; however, visitors are required to obtain a Recreation Permit. Visitors are required to adhere to the Recreation Permit, Terms, Policies and Regulations as in the past, and Potlatch will continue to monitor public use of our private forest lands.” The permit costs vary based upon the vehicles you choose to use on Potlatch land.

4 – From <http://trustlands.utah.gov/business-groups/surface/recreational-use-of-trust-lands/hunting/> and personal correspondence with Utah Trust Lands staff

5 – From <http://discoverpass.wa.gov/>

6 – From <http://lands.wyo.gov/resources/recreation> and <http://slf-web.state.wy.us/Surface/brochure.pdf>

7 – From “Divided Lands: State vs. Federal Management in the West,” Property and Environment Research Center, 2015 available at <http://www.perc.org/articles/divided-lands-state-vs-federal-management-west>

8 – From <https://recreation.potlatchcorp.com/id/FAQ/>

Policy Options

Option #1-A: Adopt a policy retaining the current approach

*Accessible lands generally are **open with no charge** to the public for dispersed recreational use. The Land Board **would not consider the exclusive use of endowment lands for recreation purposes**, whereby a lessee can lease endowment lands for a recreation-related use – such as an exclusive hunting operation – under special provisions that eliminate the possibility for the public to access the same lands for recreation.*

The Land Board adopts a standalone policy stating endowment lands are open to secondary dispersed recreation where the use does not conflict with management operations, safety, or another permitted use. Local IDL managers would continue to address the more egregious damage situations to provide compliance to state and federal regulations. The approach to road use – open unless posted closed – as well as the agreements and enforcement described on pages 8-9 would remain in place. Since current funding mechanisms would continue to pay for necessary management costs associated with mitigating recreational use, liability protection* would not be an issue.

The Land Board would not consider proposals to lease endowment lands for exclusive recreation purposes – such as an exclusive hunting operation – under special provisions that exclude dispersed recreation.

There would continue to be instances in which the nature of a leased activity precludes secondary dispersed recreation – such as a lease for a shooting range, wind farm, commercial building, and other examples. As a practical matter, there are operational considerations for some uses of endowment lands that restrict surface use and secondary dispersed recreation for safety reasons, or for the efficient operation of revenue generating activities. IDL would continue to utilize lease language that authorizes restrictions on public access and exclusive use where appropriate.

IDL still would have the ability to close endowment lands on a limited, short term, case-by-case basis for safety reasons, such as during timber harvesting, mining or reclamation activities, or during active fire operations or rehabilitation.

****Liability** – If the public pays a fee for recreational access to endowment lands, the Land Board may have to deal with the issue of liability. Idaho Code [§36-1604](#) limits landowner liability for recreational purposes if there is no charge to “any persons.” In the past, liability concerns have been the driving force behind the decision not to pursue a fee to use endowment lands for recreational purposes. In *Allen v. State by and through IDPR*, 136 Idaho 487, 36 P.3d 1275 (2001), the plaintiffs were injured on lands managed by the Idaho Department of Parks and Recreation after paying a \$2 parking fee; that was sufficient to eliminate the State’s liability immunization.*

Montana laws restrict landowner liability in a similar way, but specifically extend the liability limitations to its state land recreational use license fee program and its conservation license program authorizing hunting, fishing, and trapping on legally accessible state trust lands ([MCA 70-16-302](#)).

Although IDL can require insurance coverage on permits and leases for specific recreational activity, there would be no such coverage if the State of Idaho charges a fee for dispersed recreation on endowment lands. If the Land Board decided to pursue a funding model that involves fees to use endowment lands for recreational purposes, then without legislative changes similar to Montana’s, the issue would have to be examined to see if endowment lands could retain limited liability coverage, in which case even more funds need to be collected to self-insure.

*However, if compensation comes from an arrangement with another State agency for access rather than direct fees applied to individuals, then liability protection may be upheld. For example, based on communication with the Idaho Department of Fish and Game (IDFG), Idaho Code [36-1604](#) upholds liability protection for landowners participating in the Access Yes! program <http://fishandgame.idaho.gov/ifwis/huntplanner/accessyesguide.aspx>, which compensates landowners who provide access, because in a contract with a governmental agency for recreational access, the fee is not being paid by “any persons.” (36-1604. LIMITATION OF LIABILITY OF LANDOWNER. (e) Provisions Apply to Leased Public Land. Unless otherwise agreed in writing, the provisions of this section shall be deemed applicable to the duties and liability of an owner of land leased to the state or any subdivision thereof for recreational purposes. **Appendix I** includes Idaho’s landowner liability law and Montana’s landowner liability law.*

Option #1-B: Adopt a policy retaining most of the current approach, but consider exclusive use leasing for recreational purposes

*Accessible lands generally are **open with no charge** to the public for dispersed recreational use. The Land Board **would consider exclusive use leases for recreational purposes**, whereby a lessee can lease endowment lands for a recreation-related use – such as an exclusive hunting operation – under special provisions that eliminate the possibility for the public to access the same lands for recreation.*

The Land Board adopts a standalone policy stating endowment lands are open to secondary dispersed recreation where the use does not conflict with management operations, safety, or another permitted use. Local IDL managers would continue to address the more egregious damage situations to provide compliance to state and federal regulations. The approach to road use – open unless posted closed – as well as the agreements and enforcement described on pages 8-9 would remain in place. Since current funding mechanisms would continue to pay for necessary management costs associated with mitigating recreational use, liability protection* would not be an issue.

The Land Board would consider proposals to lease endowment lands for exclusive recreation purposes – such as an exclusive hunting operation – under special provisions that exclude dispersed recreation.

There would continue to be instances in which the nature of a leased activity precludes secondary dispersed recreation – such as a lease for a shooting range, wind farm, commercial building, and other examples. As a practical matter, there are operational considerations for some uses of endowment lands that restrict surface use and secondary dispersed recreation for safety reasons, or for the efficient operation of revenue generating activities. IDL would continue to utilize lease language that authorizes restrictions on public access and exclusive use where appropriate.

IDL still would have the ability to close endowment lands on a limited, short term, case-by-case basis for safety reasons, such as during timber harvesting, mining or reclamation activities, or fire operations.

**Liability – See footnote on page 14*

Option #2: Adopt a policy to keep lands open but charge the public for recreational use

*Accessible lands generally are **open with a charge** to the public for dispersed recreation. IDL **would not consider exclusive use of endowment lands for recreation purposes** because the public would be paying for access through a new fee or lease arrangement with another agency.*

The Land Board adopts a standalone policy stating that endowment lands are open to secondary dispersed recreation where the use does not conflict with management operations, safety, or another permitted use, and new funding sources would be pursued – either direct fees or through a lease arrangement with other State agency – so that the public would pay for the opportunity to recreate on endowment lands and guarantee dispersed recreation as a secondary use. The additional funds would go to pay beneficiaries in addition to covering costs to mitigate recreational use. The approach to road use – open unless posted closed – would remain in place.

The Land Board would not consider proposals to lease endowment lands for exclusive recreation purposes – such as an exclusive hunting operation – under special provisions that exclude dispersed recreation.

There would continue to be instances in which the nature of a leased activity precludes secondary dispersed recreation – such as a lease for a shooting range, wind farm, commercial building, and other examples. As a practical matter, there are operational considerations for some uses of endowment lands that restrict surface use and secondary dispersed recreation for safety reasons, or for the efficient operation of revenue generating activities. IDL would continue to utilize lease language that authorizes restrictions on public access and exclusive use where appropriate.

IDL still would have the ability to close endowment lands on a limited, short term, case-by-case basis for safety reasons, such as during timber harvesting, mining or reclamation activities, or fire operations.

The States of Montana, Utah, and Washington adopted this approach. Pages 12-13 show more complete descriptions of the programs.

If the public pays a fee for recreational access to endowment lands, the Land Board may have to deal with the issue of liability*.

**Liability – See footnote on page 14*

September 11, 1973

GEOTHERMAL LEASING

Information was presented by Jack Barnett, Lowell Miller, and Ray Rigby on the interest of Eastern Idaho public power interests in the formulation of rules and regulations governing geothermal leasing. They informed the Board of work presently being conducted in that area by public power interests, some of it in cooperation with Aero Jet, the principal contractor with the Atomic Energy Commission. Mr. Rigby requested that interested parties be allowed access to the proposed rules and regulations before their final adoption by the Board.

Governor Andrus told them the Attorney General would appreciate the input from any interested parties while he was preparing the rules and regulations. He asked the Attorney General to inform the Board when the rules and regulations were finalized so a special meeting could be scheduled to allow the Board to take action on them.

ADMINISTRATION OF EASEMENTS AND LEASES WITHIN NAVIGABLE WATERS

Copies of the proposed rules for easements and leases of state lands within navigable waters in Idaho were distributed to the Board by Matthew Mullaney. Mr. Engelking moved that the Commissioner and Mr. Mullaney be responsible for holding public hearings in Coeur d'Alene, Lewiston, Idaho Falls, Pocatello, and Boise, to receive information from all interested persons. Mr. Park seconded the motion, which carried unanimously.

LEASE AND SALE POLICY - Public Access

Mr. Park moved that the Board adopt a policy statement submitted to them stating that, as in the past, the policy of the Board is to protect and preserve the present and future values of access, recreational, fishing, hunting for the public interest in state lands, evaluating sale or lease of lands individually to protect these values. It was further stated that other appropriate departments of State government be given opportunity to evaluate such parcels with suspected public values before sale or lease. The policy statement to be adopted with the addendum that it refers to both endowment and non-endowment lands administered by the Board. The motion was seconded by Mr. Engelking and carried. Mr. Williams and Mr. Cenarrusa voted against adoption.

Posting under lease would be allowed on an individual basis only with written permission of the Department of Public Lands. Grazing and farming leases would be amended with paragraph 18 to read as follows:

"These lands are not to be closed at any time to the use of the general public for hunting and/or fishing purposes without the written permission, in advance, of the Department of Public Lands, subject to the statute and/or rules and regulations of the Fish & Game Department, Section 36-2502, Idaho Code, notwithstanding."

LITIGATION TO REMOVE ENCROACHMENT - Big Wood River

Jim Weaver, Deputy Attorney General, briefed the Board on an encroachment in the Big Wood River adjacent to the property of Owen Simpson. Pictures and an aerial photo, taken over a period of several years, were shown. Mr. Williams moved that the Board authorize the Attorney General's office to proceed with litigation to remove the encroachment. Mr. Park seconded the motion, which carried unanimously.

MORATORIUM ON LAND SALE APPLICATIONS

Governor Andrus read a letter received from the League of Women Voters urging the Board to declare a moratorium on land sales until inventories and classifications are completed. Discussion of the matter followed, with members stating that the Board was proceeding as rapidly as possible with the classification and that presently all land being sold was classified before being put up for sale.

Mr. Trombley stated that his office had a backlog of perhaps 180 land sale applications and was considering exercising the mandate given him by the Board to declare a temporary moratorium on applications.

Mr. Park moved that the Board declare a moratorium on land sale applications until such time as the Commissioner advises that the backlog has been cleared up, then the Board would give further consideration to the request of the League of Women Voters. Mr. Williams seconded the motion. Voting was unanimous in favor of the moratorium.

LIEU LANDS - Phases III, IV, & VI

In response to requests in correspondence from Jerome and Twin Falls county officials, the Board, through a motion made by Mr. Park and seconded by Mr. Williams, voted unanimously to hold Phase III of the lieu lands selections in obayance until January 1974. This will allow the counties time to develop comprehensive plans for the area.

In further action, Mr. Engelking moved to adopt Phases IV and VI of the lieu lands selections. Phase IV consists of 2,680.46 acres in the Sun Valley-Hailey vicinity. Phase VI, known as the Hoodoo Unit, consist of 4,499.95 acres in the Priest River area. Mr. Williams seconded the motion, which carried unanimously.

LAND SALE APPLICATIONS - Approved

The application of Ross T. Parkinson, Jr., LSA 7871, was held at the July 26, 1973, meeting for vicinity maps and aerial photos showing ownership and access in the area in order to clarify the Department's recommendation to reserve a public use reservation for pedestrian traffic to fishing in Moody Creek. The application requests 40 acres of Indemnity School land in Madison county, NW¹/₄ NW¹/₄ Sec 34, Twp 6 N, Rge 41 E, BM, presently leased to applicant. Appraised at \$6,993.50.

After studying the maps, Mr. Williams moved to follow the department recommendation to sell subject to a public use reservation. Mr. Cenarrusa seconded the motion. Voting was unanimous.

9-11-73

LEASE AND SALE POLICY FOR STATE LANDS UNDER THE JURISDICTION
OF THE STATE BOARD OF LAND COMMISSIONERS
AND THE DEPARTMENT OF PUBLIC LANDS

It is the policy of the State Board of Lands Commissioners to protect and preserve the present and future public interests for recreational, fishing, hunting, or access values in State lands. Sale or lease applications should be individually evaluated by the Department of Public Lands to protect these values. If the Department determines that the land in question may hold public value, the Fish and Game Department, the Parks and Recreation Department, the Department of Environmental and Community Services, and other departments of State government as appropriate should be given the opportunity to evaluate parcels with suspected public values before further action to sell or lease. We understand that this is the present practice of the Department of Public Lands. It is the policy of the State Board of Land Commissioners that this practice should be continued.

Each parcel of State land bordering a lake or stream should automatically be considered for public interest values. Each parcel of State land with a significant spring should automatically be considered for public interest values.

Each parcel of State land should be further evaluated on the basis of its relation to adjoining parcels of State or Federal land so that access to such lands where fishing, hunting and other recreational values might exist will not be denied or made significantly more difficult by the sale or lease of State lands.

State land that is adjacent to or is in itself valuable to the public interest and which is under lease and seeded to crops not compatible with general public access should be administered so that an access way or corridor is provided through or around the crop.

Posting of State lands under lease should be allowed on an individual basis only with the written permission of the Department of Public Lands. A request by the lessee to post and Department approval should be had before posting occurs. Posting should be limited to a specific number of days depending upon the reason for posting.

To the end, paragraph 18 of the grazing and farming leases should be amended to read as follows:

These lands are not to be closed at any time to the use of the general public for hunting and/or fishing purposes without the written permission, in advance, of the Department of Public Lands, subject to the statute and/or rules and regulations of the Fish & Game Department, Section 36-2502, Idaho Code, not withstanding.

Before lands are leased or sold, any report by the Department recommending action to the State Board of Land Commissioners should include a discussion of the impact of the proposed sale or lease upon existing rights of way, recreation, access, hunting, fishing, and other values that have been practiced or may reasonably be anticipated upon the land.

Underlining not in original copy.

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.

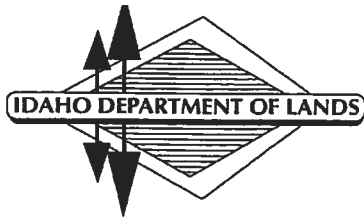
Each Area office shall prepare a rights-of-way acquisition plan, which identifies access needs and tentative time frame for acquisition. Needs shall be prioritized and based on the following management objectives:

- 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.



OFF-HIGHWAY VEHICLE FUND

1. REFERENCES:

Idaho Code § 67-7126 – Recreational Activities

2. DEFINITIONS:

Off Highway Vehicle Committee (OHV Committee) – The OHV Committee consists of the IDL Forest Management Bureau Chief, the IDL Endowment Leasing Bureau Chief, the IDL Regional Operations Chief North, the IDL Regional Operations Chief South, and the IDL Financial Officer. The Chairman of the OHV Committee is the IDL Regional Operations Chief North.

3. PURPOSE:

Idaho Code § 67-7126 established an account whereby \$1.00 from every Off-Highway Vehicle (OHV) registration is deposited into a dedicated fund (OHV Fund). The OHV Fund may be used by the Idaho Department of Lands (IDL) to provide off-highway vehicle opportunities and to repair damage directly related to off-highway vehicle use and thereby support the preservation of OHV recreation opportunities on state endowment trust lands. This document establishes the policy for planning, reviewing and funding of OHV Fund projects.

4. APPLICABILITY:

The OHV Fund may be applied to projects affecting state endowment trust lands or any other land where mitigation of damage from OHV activity is the responsibility of the IDL.

5. POLICY:

Assessing the Impacts of OHV Use

IDL Area Staff are responsible for assessing the impacts of OHV use on the lands within their Supervisory Area and prioritizing inspections for parcels where OHV use has historically or regularly had an adverse impact on lands managed by IDL.

Issues identified by Area Staff may require corrective action or other efforts to mitigate the impacts of past, current or future OHV use. If the estimated cost to address an identified issue exceeds the Supervisory Area's regular budget allocation, they may submit the project to the OHV Committee for consideration.

Submitting OHV Fund Project Requests

Area Staff shall prepare a Budget Request for OHV Funds Form for projects they consider worthy of consideration by February 1 of each year (see OHV Calendar below). Area Staff may submit more than one budget request, but should prioritize the projects to assist the Committee in their decision-making.

Submissions should include a concise narrative identifying and justifying the project along with a well defined budget. Submissions should provide all the pertinent information necessary for the OHV Committee to make informed funding decisions.

The OHV Committee will consider funding "emergency" projects outside of the OHV Calendar when Area Staff identify situations where immediate human health/safety concerns exist or resource damage has occurred that warrant more immediate action. Under these circumstances, Area Staff

should complete and submit the Budget Request for OHV Funds Form indicating on the form that the submission is an "emergency" request and stating the nature of the emergency (see attachment).

OHV Committee Review Criteria

The OHV Committee will review, prioritize and fund projects based on the following ordered criteria:

1. Human Health/Safety
2. Resource Protection
3. Planning/Management for current or future OHV opportunities
4. Expansion of OHV recreational opportunities
5. Educational Opportunities
6. Other

OHV Fund Calendar


On-going	Area Staff assess the impacts of OHV use on state endowment trust lands.
Jan 1	OHV Committee prompts Area Staff to submit OHV fund requests.
Feb 1	Deadline for submittal of OHV Fund requests to the OHV Committee for the coming fiscal year (beginning July 1).
Mar 1	OHV Committee prioritizes and funds/denies requests.
May 1	Financial Officer finalizes OHV Fund allocations in IDL budget and communicates project numbers to the Area Staff.
Aug 1	Financial Officer provides report to the OHV Committee on expenditures by project.
Sept 1	The OHV Committee coordinates the development of the annual report with financial information, narrative information and photographs as relevant to each project.
Oct 1	Financial Officer submits the final OHV report to the Asset Management Steering Committee, the Legislative Services Office, the Division of Financial Management, and the IDL Support Services Division Administrator.

6. ATTACHMENTS:

1. Budget Request for OHV Funds Form

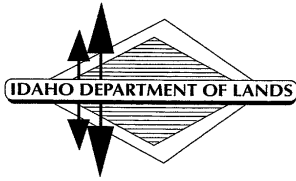
7. REVISIONS AND REVOCATION:

DEPARTMENT POLICY #10 is hereby superseded by this REVISION #1, dated May 5, 2015.


THOMAS M. SCHULTZ, JR.
Director

Date

5/5/15



Budget Request for OHV Funds Form

IDL Supervisory Area: _____

Project Name: _____

Request is for Fiscal Year: _____

Priority (if more than one request is submitted):

Concisely describe the proposed project:

Describe the proposed project budget and the funds requested from the OHV Committee (also identify any other available funding sources, e.g. grants or other agency funding):

What are the consequences if the project is not funded?

Is this an emergency funding request outside of the normal funding cycle? If yes, what justifies the immediate funding?

STATE OF IDAHO
DEPARTMENT OF LANDS
BOISE, IDAHO

OPERATIONS MEMORANDUM
NUMBER 1625

7 November 1977

LIMITATION OF USE OF STATE LANDS FOR HABITATION
(RECREATIONAL)

1. REFERENCE:

- a. Section 58-312 Idaho Code - Occupation of state lands without a lease or after lease cancellation. (Penalty mandatory shall be not less than \$25 nor more than \$500.)
- b. Section 6-211 Idaho Code - Trespass on state lands - damage actions. (Dumping trash or debris on state land.)
- c. Section 18-7008 Idaho Code - Trespass - acts constituting - subsection 8. Every person, except under landlord-tenant relationship, who, being first notified in writing, or verbally by the owner or authorized agent of the owner of real property, to immediately depart from the same and who refuses so to depart after being so notified: Is guilty of a misdemeanor.
- d. Section 18-7031 Idaho Code - Placing debris on public or private property a misdemeanor.

2. SCOPE: Occupation of any state endowment lands (other than those under lease or approved campsites) with tent camps, mobile homes, campers, or other types of structures containing facilities for living, sleeping, eating or cooking shall be covered by the policy statement below.

3. POLICY: Occupancy of state endowment lands will be restricted to a period of no longer than ten (10) days without written approval of the Area Supervisor. Such use may be curtailed or restricted if the area is classified as follows:

- a. Unsafe;
- b. Existing fire danger;
- c. Sanitary conditions present a hazard to health and/or a pollution problem.

4. ENFORCEMENT: Should a violation exist, the party or parties in violation shall be contacted personally or by certified mail, and served notice with Notice of Violation (form DL-837). Cite the appropriate section(s) of the

Operations Memorandum #1625, continued

statutes referenced above in composing the description of violation on the Notice of Violation form. Providing this approach is unsuccessful, then the assistance of local law enforcement agencies shall be utilized. The filing of a formal complaint through the county prosecuting attorney should be considered as a last resort, and such action taken only upon approval of the Area Supervisor.



GORDON C. TROMBLEY
Director



OPERATIONS MEMORANDUM 1606.1
Effective Date: November 1, 2000

**UNAUTHORIZED OCCUPANCY – USE
AND TRESPASS ON STATE LAND**

1. REFERENCE:

- A. Section 8, Constitution of the State of Idaho – Location and Disposition of Public Lands;
- B. Idaho Code §58-104 – State Land Board – Powers and Duties;
- C. Title 5, Chapter 2, Idaho Code – Waste and Willful Trespass on Real Property;
- D. Idaho Code §18-7008 – Trespass – Acts Constituting;
- E. Idaho Code §18-7031 – Placing Debris on Public or Private Property a misdemeanor;
- F. Idaho Code §18-7034 – Unlawful Entry a Misdemeanor;
- G. Idaho Code §58-312 – Occupation of Land Without Lease – Penalty – Suit for Civil Damages.

- 2. PURPOSE:** To establish a uniform procedure for remedial action and/or collecting damages, and/or penalties for unauthorized occupancy, unauthorized uses and trespasses on state land which do not involve timber, mineral or grazing trespass.

3. POLICY:

- A. Occupancy of state land for recreational uses with non-permanent structures, such as tent camps, mobile homes or campers containing facilities for living, sleeping, eating or cooking will be restricted to a period of no longer than ten (10) days without written approval of the Area Supervisor.
- B. Recreational users of state land may be curtailed or restricted if the area is classified as unsafe, if there is existing fire danger, or if sanitary conditions present a hazard to health and/or a pollution problem.
- C. All persons using or occupying state land with out a lease from the state, and all persons, who shall use or occupy state lands for more than thirty (30) days after the cancellation or expiration of a lease shall be regarded as trespassers.

4. PROCEDURE:

- A. The Area will make an investigation and prepare a full report as completely documented as possible. Should a violation exist, every reasonable effort will be made to learn the identity of the party or parties involved in the violation. The party or parties will be contacted personally or by certified mail and served notice with Notice of Violation (form DL-837).
- B. The Notice of Violation form will reference the appropriate statutes in the description of violation.
- C. If the use or trespass is an unauthorized project, such as road construction, the party or parties will be notified to cease operation until proper authorization is granted.
- D. In the event the state resource has been damaged, or if a penalty is in order, the Area will prepare a report to be forwarded to the Bureau outlining the damages, with recommendations concerning amount of damages and/or penalty that should be assessed; also, outline any restoration work to be completed. The Bureau will then forward the report to Executive Staff.
- E. If Executive Staff approves the charges, the Area will be notified to make the initial billing for payment by certified mail, as well as making any personal contact necessary to arrange for restoration work to be performed to the Department's satisfaction. If payment is not made or work accomplished, one follow-up demand shall be made by the Area. If this does not produce desired results, the Area shall file a claim in a Small Claims Court if the amount falls within Small Claims Court limitation. (See OM 240 concerning Small Claims Court procedure). Claims exceeding the Small Claims Court will be referred to the Bureau for subsequent referral to the Attorney General.
- F. If the unauthorized occupancy/use, or the trespass is accidental, or is reported by the party committing the trespass when discovered – the amount to be charged will be one and one half times the amount that would have been charged, if proper application had been made, plus actual damage to the State.

If not reported by offending party and discovered by the State, assess double the regular amount.

A triple rate will be assessed only when evidence is such that it can be proven in court that trespass was intentional and willfully committed.

- 5. REVOCATION: This Operation Memorandum supercedes OM 1625 dated November 7, 1977, which shall be withdrawn from the manual and destroyed.


STANLEY F. HAMILTON
Director

ROAD CLOSURE SUPPLEMENT
PRIEST LAKE, PEND OREILLE and KOOTENAI VALLEY AREAS

This Supplement, made this 8th day of February, 2012, by and between the Idaho Department of Fish and Game, Panhandle Region, hereinafter called the "Region", and the Idaho Department of Lands, Priest Lake, Pend Oreille and Kootenai Valley Supervisory Areas, hereinafter called the "Areas", is entered into for the purpose of protecting, conserving and managing fish and wildlife resources of the State of Idaho within the ownership of state endowment lands.

WHEREAS, Section 36-104 (b) (10), Idaho Code authorized the Idaho Department of Fish and Game to enter into cooperative agreements to enforce road closures for the protection of wildlife and wildlife habitat on state lands which lie within or adjacent to the proclaimed boundaries of the national forest, and

WHEREAS, the Master Cooperative Agreement between the Idaho Department of Fish and Game and Idaho Department of Lands to implement Section 36-104 (b) (10) Idaho Code provides for supplements to implement individual road closure programs and authorizes the appropriate Fish and Game Regional Supervisor and Lands Area Supervisor to execute these programs, and

WHEREAS, the Priest Lake, Pend Oreille and the Kootenai Valley Supervisory Areas are known to be an area of great concern for water quality and are also areas with significant wildlife values, and

WHEREAS, all parties agree that controlling access is important to accomplish the following objectives:

1. Reduce road erosion caused by hunters, fishermen and other recreationists.
2. Enhance security of wildlife.
3. Assist the Region and Areas in achieving management goals and objectives.
4. Reduce human caused grizzly bear mortality.

NOW, THEREFORE, all parties agree to provide for this cooperative road closure enforcement effort as follows:

A. It is mutually agreed and understood by and between the said parties:

1. A road Closure Map to include gate locations and the types of associated road closures will be updated annually by concurrence of the Region and the Areas.
2. That administrative access shall be limited to:
 - a. Access by the Idaho Department of Lands and the Idaho Department of Fish and Game for purposes of resource management, fire control and law enforcement.
 - b. Access by other private landowners to access their lands.
 - c. Access by parties with authorized written permits.
 - d. All gates will be closed year round to automobiles and trucks, but will be open to motorcycles, 4-wheelers and snowmobiles unless otherwise designated as critical grizzly bear or caribou habitat, or on the "Special Gate Restrictions" addendum

to this agreement. This addendum will be updated annually by the Areas and the Region.

- d. Gated roads which access active state timber sales will be kept open as necessary for management access. Except for roads in important grizzly bear or caribou habitat, the Areas may leave the road open after sales are completed for one season July through September to allow public access to firewood. The Areas will notify the Region of these temporary road openings.
3. That signing of gates will be accomplished and maintained, to specifications in Section 36-104 (b) (10), Idaho Code by the Areas.
4. That all public notification procedures will be developed and handled cooperatively by the Areas and the Region.
5. That meetings will be held as needed between the Areas and the Region to discuss problems and review/modify this agreement.

B. The Areas agrees to:

1. Provide copies of current road closure maps to the Region.
2. Cooperate in wildlife law enforcement by reporting violations or suspected violations to the appropriate conservation officer, the Region, or Citizen's Against Poaching (1-800-632-5999).
3. Provide \$30,000.00 annually to the Department for law enforcement efforts.

C. The Region agrees to:

1. Enforce Section 36-104 (b) (10) Idaho Code on road closures as agreed to in this road closure plan. This includes but is not limited to:
 - a. Making routine gate checks on as many different IDL gates as possible with emphasis on those gates and roads known to have frequent violations and damage. Primary responsibility for gate checks and enforcement will be with the grizzly bear officer. Other Region officers will assist and may in some cases handle the majority of gate checks and investigations depending on the locality and seasonal needs. A minimum of 200 gate checks will be made per year.
 - b. Conducting snowmobile patrols for area closures associated with IDL's Interim Winter Access Plan.
 - c. Conducting follow up investigations of gate and road violation.
 - d. Conducting surveillance techniques where appropriate, utilizing surveillance cameras and remote detection devices and plainclothes operations when necessary.
2. Recognize permits issued by the Areas to enter closed roads so long as activity is strictly work related.
3. Inform the Areas of gate conditions – damaged, open, with signs down, etc.

4. Make an annual report at the end of the calendar year to the Areas regarding numbers of gate checks, violations detected and outcome of court cases related to this agreement.

This agreement may be modified by mutual agreement. It may be terminated by either party by giving thirty (30) days notice in writing to the other. Unless so terminated, it shall remain in force indefinitely.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the last date written above.



Roger Jansson
Operations Chief, North
Idaho Department of Lands



Chip Corsi
Regional Supervisor, Panhandle Region
Idaho Department of Fish and Game



Camping on Endowment Lands Ponderosa Area, Deary



General Information:

Land Use Permits are required for those individuals who wish to camp in an area for more than 10 days

Permits will be issued at the discretion of the State on a first-come, first-served basis

Application fee for a Land Use Permit is \$250, proof of insurance will be required (see below)

Permit rate is \$100/camper/month

Permit duration will be determined by the State on a case-by-case basis

Permanent fences or structures are NOT permitted

Portable toilets will be required at all permitted sites

Insurance Requirements:

Insurance company must be authorized to do business in the State of Idaho

All policies and certificates must be signed copies

Policy cancellation language will provide written notice to the State as an additional insured upon expiration, material change, or cancellation of policy

General Liability Insurance:

Endorsement – Additional Insureds: “The Department of Lands, its agents, officials, employees, and the State of Idaho”

Minimum Limit of Liability: \$1,000,000 per occurrence (must be followed by 6 zeros)

Automobile Liability Insurance:

Owned autos, non-owned autos, hired autos

Minimum Limit of Liability: \$1,000,000 per occurrence (must be followed by 6 zeros)

Further Questions Please Contact the Ponderosa Area at 208-877-1121

**MEMORANDUM OF AGREEMENT
AFFECTING RECREATIONAL USE OF STATE SCHOOL TRUST LANDS**

between

MONTANA DEPARTMENT OF FISH, WILDLIFE, AND PARKS

and

MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

This Agreement is entered into by and between two departments of the State of Montana: 1) Department of Fish, Wildlife, and Parks (DFWP) and; 2) Department of Natural Resources and Conservation (department) and supersedes the previous Memorandum of Agreement as approved by these agencies in December, 2003.

WHEREAS, the department currently authorizes the public to engage in general recreational activities on state trust lands under authority contained in §77-1-802 and §77-1-815, MCA and rules pertinent thereto; and

WHEREAS, the State School Trust Fund continues to receive full market value compensation for all public *general* recreational use associated with hunting, fishing, trapping and other activities through the sale of recreational use and/or conservation licenses issued by DFWP; and

WHEREAS, while the primary general recreational uses of state school trust lands are hunting and fishing; the use of state lands by the public for these and other purposes has increased, particularly on lands adjacent to or near larger population centers in the state; and

WHEREAS, as a result, significant resource damage has or will likely occur on state lands and violations of the regulations governing such use has increased; and

WHEREAS, this has created an immediate need for additional public informational outreach, as well as increased and concentrated law enforcement presence on state school trust lands;

NOW, THEREFORE BE IT RESOLVED, that DFWP and the department mutually agree to the terms and conditions provided herein.

1. **Description of Affected Lands**

This agreement is valid for all legally accessible state school trust lands that have not been closed or restricted to recreational use as provided in department rules.

2. **Duration**

Upon the signatures of the department Director and the Director of DFWP, this agreement shall take effect on and shall remain in full force and effect up to and including unless terminated in accordance with Section of this agreement

3. **License Rental and Distribution of Proceeds**

Retroactive to March 1, 2004 and continuing through the term of this agreement, DFWP agrees to pay the department two dollars (\$2.00) for each conservation license sold in accordance with §87-2-202 MCA and two dollars (\$2.00) for each license sold pursuant to §§ 87-2-505, 87-2-510 and 87-2-511 MCA. These proceeds shall be deposited in accordance with §77-1-815 MCA. Additionally, it is agreed that persons who possess a Flathead Joint-Use Permit and appropriate stamps, have the option to obtain a state land "endorsement" from DFWP license providers that will authorize their use of legally accessible state lands for hunting, fishing, and trapping subject to the provisions provided herein. For each endorsement sold, the license provider has and shall continue to retain \$0.50 as a license

commission. DFWP shall forward the entire remaining \$1.50 per endorsement to the department. The entire \$1.50 proceed shall then be deposited to the trusts; no fee will be assessed for or deposited to the rec. use account. The due dates for quarterly payments transferred from DFWP to the department as provided in this part shall be due on April 1, July 1, October 1 and January 1 of each calendar year.

4. **Trapping**

In addition to obtaining a Montana Conservation License or state land endorsement and state trapping license issued by DFWP, all trappers are required to obtain a Special Recreational Use License (SRUL) from the department prior to conducting any licensed trapping activities on state school trust land

5. **Enforcement**

Incidental to other duties, DFWP agrees to assist the department in the enforcement of the requirements associated with recreational use of state school trust land (ARM 36.25.143 thru ARM 36.25.167); to monitor activities associated with recreational use of these lands. These include but are not limited to motor vehicle use, land closures and restrictions, compliance with the applicable rules and regulations; DFWP further agrees to issue criminal citations as appropriate or to issue or assist in the issuance of civil violations of these provisions in compliance with existing civil enforcement procedures as established by the department or to report violations to the department.

6. **Public Awareness and Outreach**

Many state land recreational use violations such as littering, dumping, unlawful vehicle use, and illegal firearm discharge, are committed by persons engaged in activities other than hunting, fishing and trapping. The number of infractions committed is increasing, especially on tracts located close to urban areas where intense and concentrated recreational use has risen significantly. This has resulted in the degradation of resources; such as increased soil erosion, loss of vegetative cover, and damage to improvements such as fences and gates, as well as trespass onto private lands. This type of use is not consistent with the leasehold interests, nor conducive to the overall long-term management goals of the department. By this cooperative effort, DFWP and the department hope to significantly reduce or alleviate these problems through coordinated and increased efforts. Means to address and resolve these problems include providing a greater enforcement presence, posting subject tracts with signs that identify ownership boundaries, providing notice of licensing requirements and/or pertinent restrictions, and enhancing overall public outreach. An important aspect would be to improve public awareness and understanding of the recreational use program through distribution of informational documents, news releases, and other forms of public education.

7. **Recreational Wardens**

As approved by the 2007 Legislature, 2.0 FTE Recreational Wardens and state special revenue in the amount of \$140,118 in FY 2008 and \$110,262 in FY 2009 will be used by FWP to enable more extensive and comprehensive law enforcement of recreational use rule violations on trust lands. Initially, one FTE will be located in FWP Region 1 (Kalispell) and the other in FWP Region 3 (Bozeman.) However, these locations are subject to change, if deemed necessary by DFWP and the department to ensure such location best fits the needs of the department. In addition to their function as state game wardens, they shall, in cooperation and coordination with the department Area Manager, Recreational Program Coordinator, and department information personnel, act as agents for the department in all civil enforcement actions and proceedings initiated by the officers, and shall take

actions, as necessary, to assist in investigations as well as assist or provide technical expertise with violations on a state-wide basis. Warden Captains shall act as the conduits with the department on state trust land enforcement issues. Assignments and work activities shall be made through the Regional Warden Captains. The wardens will regularly report to the Warden Captain on their activities and work with local DNRC staff. Wardens shall also act as department liaisons with other DFWP game wardens and staff in cooperation with the Area Manager and Recreational Program Coordinator to provide guidance, support, and encouragement in the enforcement of the recreational use regulations. In cooperation with department staff (Area Manager, Recreational Program Coordinator, and department public information specialists) they shall also develop and implement plans for a public outreach program as previously described under "Public Awareness & Outreach" (6 above.) These and all other activities shall be developed, implemented, and monitored under annual work plans and Warden District plans established and maintained between DFWP and the department. Quarterly reports on activities will be made to DNRC by FWP on the activities of the officers. Meetings between the department and FWP staff to discuss the program and assess work will be held on an as-needed basis.

8. **Limitation of Authority**

The department maintains sole discretion throughout the term of this agreement to identify legally accessible state school trust land and to make any other state trust land management decisions affecting this agreement. This agreement between the department and DFWP does not convey any additional authority to DFWP.

9. **Termination of Agreement**

Both the department and DFWP reserve the right to terminate this agreement by providing written notice of such intent, with reasons therefore, at least thirty (30) days prior to the effective date of such termination, unless such thirty-day period conflicts with the necessity to terminate the agreement in a more expeditious manner.


M. Jeff Hagener, Director
Department of Fish, Wildlife & Parks

7/16/07

Date


Mary Sexton, Director
Department of Natural Resources & Conservation

7/16/07

Date

APPENDIX I
Landowner Liability Laws

IDAHO

TITLE 36
FISH AND GAME
CHAPTER 16

RECREATIONAL TRESPASS -- LANDHOLDER LIABILITY LIMITED

36-1604. LIMITATION OF LIABILITY OF LANDOWNER. (a) Statement of Purpose. The purpose of this section is to encourage owners of land to make land, airstrips and water areas available to the public without charge for recreational purposes by limiting their liability toward persons entering thereon for such purposes.

(b) Definitions. As used in this section:

1. "Airstrips" means either improved or unimproved landing areas used by pilots to land, park, take off, unload, load and taxi aircraft. Airstrips shall not include landing areas which are or may become eligible to receive federal funding pursuant to the federal airport and airway improvement act of 1982 and subsequent amendments thereto.
2. "Land" means private or public land, roads, airstrips, trails, water, watercourses, irrigation dams, water control structures, headgates, private or public ways and buildings, structures, and machinery or equipment when attached to or used on the realty.
3. "Owner" means the possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises.
4. "Recreational purposes" includes, but is not limited to, any of the following activities or any combination thereof: hunting, fishing, swimming, boating, rafting, tubing, camping, picnicking, hiking, pleasure driving, the flying of aircraft, bicycling, running, playing on playground equipment, skateboarding, athletic competition, nature study, water skiing, animal riding, motorcycling, snowmobiling, recreational vehicles, winter sports, and viewing or enjoying historical, archeological, scenic, geological or scientific sites, when done without charge of the owner.

(c) Owner Exempt from Warning. An owner of land owes no duty of care to keep the premises safe for entry by others for recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes. Neither the installation of a sign or other form of warning of a dangerous condition, use, structure, or activity, nor any modification made for the purpose of improving the safety of others, nor the failure to maintain or keep in place any sign, other form of warning, or modification made to improve safety, shall create liability on the part of an owner of land where there is no other basis for such liability.

(d) Owner Assumes No Liability. An owner of land or equipment who either directly or indirectly invites or permits without charge any person to use such property for recreational purposes does not thereby:

1. Extend any assurance that the premises are safe for any purpose.

2. Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed.

3. Assume responsibility for or incur liability for any injury to person or property caused by an act of omission of such persons.

(e) Provisions Apply to Leased Public Land. Unless otherwise agreed in writing, the provisions of this section shall be deemed applicable to the duties and liability of an owner of land leased to the state or any subdivision thereof for recreational purposes.

(f) Provisions Apply to Land Subject to a Conservation Easement. Unless otherwise agreed in writing, the provisions of this section shall be deemed applicable to the duties and liability of an owner of land subject to a conservation easement to any governmental entity or nonprofit organization.

(g) Owner Not Required to Keep Land Safe. Nothing in this section shall be construed to:

1. Create a duty of care or ground of liability for injury to persons or property.

2. Relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this section to exercise care in his use of such land and in his activities thereon, or from legal consequences or failure to employ such care.

3. Apply to any person or persons who for compensation permit the land to be used for recreational purposes.

(h) User Liable for Damages. Any person using the land of another for recreational purposes, with or without permission, shall be liable for any damage to property, livestock or crops which he may cause while on said property.

History:

[36-1604, added 1976, ch. 95, sec. 2, p. 368; am. 1980, ch. 161, sec. 1, p. 349; am. 1988, ch. 230, sec. 1, p. 443; am. 1988, ch. 336, sec. 1, p. 1002; am. 1999, ch. 72, sec. 1, p. 194; am. 2002, ch. 346, sec. 1, p. 981; am. 2003, ch. 265, sec. 1, p. 702; am. 2006, ch. 279, sec. 1, p. 861.]

Montana Code Annotated 2014

70-16-302. (Temporary) Restriction on liability of landowner -- definitions. (1) A person who uses property, including property owned or leased by a public entity, for recreational purposes, with or without permission, does so without any assurance from the landowner that the property is safe for any purpose if the person does not give a valuable consideration to the landowner in exchange for the recreational use of the property. The landowner owes the person no duty of care with respect to the condition of the property, except that the landowner is liable to the person for any injury to person or property for an act or omission that constitutes willful or wanton misconduct. For purposes of this section, valuable consideration does not include the

state land recreational use license fee imposed under [77-1-802](#) or other funds provided under [77-1-815](#).

(2) As used in this part, the following definitions apply:

(a) (i) "Airstrip" means improved or unimproved landing areas on private land used by pilots to land, park, take off, unload, load, and taxi aircraft.

(ii) The term does not include municipal airports governed under Title 67, chapter 10, part 1.

(b) "Flying of aircraft" means the operation of aircraft, including but not limited to landing, parking, taking off, unloading, loading, and taxiing of aircraft at an airstrip.

(c) "Landowner" means a person or entity of any nature, whether private, governmental, or quasi-governmental, and includes the landowner's agent, tenant, lessee, occupant, grantee of conservation easement, water users' association, irrigation district, drainage district, and persons or entities in control of the property or with an agreement to use or occupy property.

(d) "Property" means land, roads, airstrips, water, watercourses, and private ways. The term includes any improvements, buildings, structures, machinery, and equipment on property.

(3) The department of fish, wildlife, and parks, when operating under an agreement with a landowner or tenant to provide recreational snowmobiling opportunities, including but not limited to a snowmobile area, subject to the provisions of subsection (1), on the landowner's property and when not also acting as a snowmobile area operator on the property, does not extend any assurance that the property is safe for any purpose, and the department, the landowner, or the landowner's tenant may not be liable to any person for any injury to person or property resulting from any act or omission of the department unless the act or omission constitutes willful or wanton misconduct. (*Effective on occurrence of contingency*)

70-16-302. (*Effective on occurrence of contingency*) . Restriction on liability of landowner -- definitions. (1) A person who uses property, including property owned or leased by a public entity, for recreational purposes, with or without permission, does so without any assurance from the landowner that the property is safe for any purpose if the person does not give a valuable consideration to the landowner in exchange for the recreational use of the property. The landowner owes the person no duty of care with respect to the condition of the property, except that the landowner is liable to the person for any injury to person or property for an act or omission that constitutes willful or wanton misconduct. **For purposes of this section, valuable consideration does not include the state land recreational use license fee imposed under [77-1-802](#).**

(2) As used in this part, the following definitions apply:

(a) (i) "Airstrip" means either improved or unimproved landing areas on private land used by pilots to land, park, take off, unload, load, and taxi aircraft.

(ii) The term does not include municipal airports governed under Title 67, chapter

10, part 1.

(b) "Flying of aircraft" means the operation of aircraft, including but not limited to landing, parking, taking off, unloading, loading, and taxiing of aircraft at an airstrip.

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(d) "Property" means land, roads, airstrips, water, watercourses, and private ways. The term includes any improvements, buildings, structures, machinery, and equipment on property.

(3) The department of fish, wildlife, and parks, when operating under an agreement with a landowner or tenant to provide recreational snowmobiling opportunities, including but not limited to a snowmobile area, subject to the provisions of subsection (1), on the landowner's property and when not also acting as a snowmobile area operator on the property, does not extend any assurance that the property is safe for any purpose, and the department, the landowner, or the landowner's tenant may not be liable to any person for any injury to person or property resulting from any act or omission of the department unless the act or omission constitutes willful or wanton misconduct.

History: En. Sec. 1, Ch. 138, L. 1965; R.C.M. 1947, 67-808; amd. Sec. 3, Ch. 209, L. 1987; amd. Sec. 8, Ch. 440, L. 1987; amd. Sec. 2, Ch. 303, L. 1995; amd. Sec. 2, Ch. 596, L. 2003; amd. Sec. 2, Ch. 353, L. 2007.

Provided by Montana Legislative Services

Access and recreation go with state land ownership

Tom Schultz | Posted: Tuesday, October 6, 2015



Idahoans deeply value access to Idaho lands. I am a bow hunter and land manager who has an appreciation for access to state, private, and federal lands in Idaho. Ongoing discussion about maintaining recreational access on Idaho's state endowment trust lands, which financially support public schools and other state institutions, is important. The Idaho Department of Lands manages these lands under the direction of the Land Board, made up of Idaho's governor, attorney general, secretary of state, state controller and superintendent of public instruction.

Marty Trillhaase's Sept. 27 opinion piece titled, "State land ownership brings fences and fees," contained some information that warrants clarification.

Trillhaase stated 30 percent of Idaho's 2.4 million acres of Idaho endowment trust lands are "off limits" to public access because of the constitutional mandate to maximize long-term financial returns from the use of the lands. Actually, the reason those lands are not open to public access is because they are not legally accessible. Thirty percent of Idaho endowment trust lands are landlocked by other ownerships, preventing even IDL from accessing them legally.

Nearly all legally accessible endowment lands are open to public recreation. Generally, if endowment lands are closed to public access, it is done on a limited, short-term, case-by-case basis with approval from the agency because there is a threat to public safety, such as during active firefighting operations. Federal land managers do this, too.

In some cases, IDL does issue leases that contain exclusive use provisions. The provisions allow limitations to public access to protect the safety of the public and the investment of the lessee. For instance, an exclusive use provision may apply in an area leased for a wind farm so that the public cannot hunt, hike or otherwise access the area while it is under lease for that use.

The center of the issue at hand is whether IDL should issue exclusive use leases for private hunting operations. Several times in the past 20 years, IDL has received proposals to issue exclusive hunting

leases on endowment lands. Every time, the agency has denied the proposal. Rumors of a new proposal for an exclusive hunting operation in eastern Idaho have surfaced again.

The Land Board is being encouraged to consider a policy that would clarify public use of legally accessible endowment lands for recreation. A policy could address whether the Land Board would consider proposals for private, exclusive hunting operations.

The Land Board has a fiduciary responsibility to manage endowment lands under a constitutional mandate to maximize long-term financial returns for public schools and other endowed state institutions. Surrounding states of Utah, Montana and Washington, which have similar fiduciary responsibilities, have found ways to balance the public's desire for recreational access to state trust lands, while generating revenue for the beneficiaries.

The Land Board could decide to keep the status quo: continue allowing open, free public access to endowment lands and, on a case-by-case basis, consider proposals for exclusive hunting operations. However, the Land Board also has the option to formally authorize public recreational access on endowment lands through a compensatory program, probably in the form of a lease arrangement with another state agency such as Fish and Game. That option would set up a new framework for the Land Board in evaluating proposals for exclusive hunting operations on endowment lands. The new framework would consider that the public already has paid for access and that providing exclusivity for hunting or other recreational purposes is incompatible with a newly authorized use of dispersed recreation.

If a formal policy adopted by the Land Board identifies ways to compensate public schools for dispersed recreation uses, such as hunting, hiking and other activities, then they could provide ongoing public access to legally accessible endowment lands for dispersed recreation. Of course, IDL would still control public access on a limited basis where it is appropriate to do so, usually for the public's safety. The outcome could mean continued opportunities for public recreation on endowment lands, improved stewardship of the lands and more money for public schools.

Schultz is the director of the Idaho Department of Lands.

THE SPOKESMAN-REVIEW

September 20, 2015

Idaho weighs private leases of public land

Constitution requires maximizing financial return

Betsy Z. Russell

The Spokesman-Review

BOISE – State officials are debating if they should allow groups to lease public land in a way that could prevent public access.

A half-dozen times over the years, the Idaho Department of Lands has received applications for permission to lease state endowment land for an exclusive private hunting operation. Every time, the department has said no.

Now another application is on its way, from a group wanting to set up an exclusive pheasant hunting operation in eastern Idaho. State officials aren't inclined to go along, but the continuing proposals have prompted review of just how Idaho handles recreation on state lands that Idahoans cherish.

"It probably goes without saying: Idahoans love the outdoors, they love their access," said Emily Callihan, department spokeswoman. Seventy percent of Idaho's endowment lands have public access for hunting, fishing, hiking, berry-picking and the like; even lands leased for grazing still are required to be open to the public.

But the Idaho Constitution requires the state Land Board, which consists of the state's five top elected officials, to manage state endowment lands for "maximum long-term financial return," with the money going to the endowment's beneficiaries, the largest of which is the state's public school system. The state currently doesn't charge a fee for folks to go berry-picking, hiking or sightseeing on state lands. And several neighboring states make up to \$1 million a year from recreation on their endowment lands, either from user fees or leases with other state agencies, including parks and fish and game.

There's a downside to directly charging user fees in Idaho, however. Under the state's liability laws, it would be liable for claims from people recreating on the endowment lands if it directly charged a fee. A lease arrangement with another state agency could avoid that, however. Already, a small share – one dollar – of every off-highway vehicle license fee in Idaho goes to the state Department of Lands to offset the costs of managing recreational uses, including off-road riding.

Idaho has never issued exclusive leases for recreational operations on state endowment lands. Even its 20 active permits and leases to outfitters, while they are exclusive with regard to other outfitters, still let the public use the same areas.

State Land Board members are leery of the private pheasant-hunting plan. Secretary of State Lawrence Denney said he doesn't want the state going there.

"We haven't in the past," he said. "But I think it's something that we definitely need to look at, because our fiduciary responsibility is to get the highest return. There may be some ways we can get revenue for the state and still have it be totally open."

Gov. Butch Otter said that although private hunting operations are "very problematic," the concept can't be ignored.

"Here's the problem: If somebody offers us \$100,000 for a section of land, we have to manage this for the maximum best financial gain that we have for the endowments."

State Lands Department Director Tom Schultz said the latest proposal would affect 1,300 acres of state endowment land near Idaho Falls that has public use.

Otter last week asked Idaho Attorney General Lawrence Wasden to conduct a legal review of liability issues related to recreation on state endowment lands.

"We charge a fee for snowmobiles," he noted, "and we're not required to go out and say, 'Hey, this is an avalanche area.'"

The board hasn't taken any action on new policies on recreation, though its staff is reviewing the board's options. Current policies include one adopted in 1973 calling for the board to "protect and preserve the present and future public interests for recreational, fishing, hunting or access values in state lands," and requiring those interests to be protected in any sale or lease. The state's current asset management plan for endowment lands calls for dispersed recreational uses to be accommodated, provided that they don't impair financial returns from other uses like logging operations.

Current department rules limit camping on state lands to 10 days in most cases, and allow closures for safety reasons. Idaho has 2.4 million acres of state endowment lands, including big stretches of forest in North Idaho.

"I really think at this point that we're better off the way we are," said state schools Superintendent Sherri Ybarra, a Land Board member. "I believe Idahoans enjoy their access to public lands, and it's about what Idahoans are interested in, at the end of the day."

State reviews handling of public land leases

By - Associated Press - Monday, September 21, 2015

BOISE, Idaho (AP) - Idaho is reconsidering its land lease policies after years of denying requests from groups looking to set up publicly inaccessible hunting operations.

The Idaho Department of Lands has denied six previous proposals, and officials are expecting a request from a group looking to set up pheasant hunting on endowment land in the eastern part of the state, the Spokesman-Review reported (<http://bit.ly/1YvohfD>).

“It probably goes without saying: Idahoans love the outdoors, they love their access,” said department spokeswoman Emily Callihan.

Officials are concerned with balancing public use with the state’s mandate to get a maximum return on endowment land, which largely supports Idaho schools.

Secretary of State Lawrence Denney says there may be ways for the state to generate revenue without barring public access.

“It’s something that we definitely need to look at, because our fiduciary responsibility is to get the highest return,” he said. “There may be some ways we can get revenue for the state and still have it be totally open.”

Gov. Butch Otter says these problematic leases have to be managed for maximum financial gain.

State law, however, says charging user fees makes Idaho liable for claims that result from people using endowment lands for recreation. Leases with other state agencies avoid that.

Idaho has 20 active permits and leases to outfitters using endowment lands without barring the public. Otter has asked Idaho Attorney General Lawrence Wasden to review legal issues on endowment land.

“We charge a fee for snowmobiles, and we’re not required to go out and say, ‘Hey, this is an avalanche area,’” he said.

State Land Board staff members are reviewing the agency’s options.