

**PUBLIC COMMENTS AND IDL RESPONSES
VIDEO CONFERENCE – MARCH 26, 2009**

PUBLIC COMMENTS	IDL RESPONSE
Conservation Leases	
<p>Conservation leases will not provide maximum return or best management of the endowment lands:</p> <ul style="list-style-type: none"> • I am concerned this is a major policy shift involving the inclusion of conservationist on equal footing with traditional revenue generating activities such as grazing and cropland leases which produce long-term revenue for endowment lands. • Conservation leases simply do not warrant being considered a conflict lease. There is just so much potential out there on some of the leases for improvement and the present lessee probably knows better than anyone what needs to be done. • Conservation uses on state land would most likely involve no management of the vegetative resource, minimal maintenance of any infrastructure used by the previous lessee, and little revenue supporting the local communities or county infrastructures. • In most sites long periods of no vegetative harvest would lead to decadence and on mesic sites with brush, grasses and forbs, it would significantly reduce the value for future grazing leases. If conservation leases are going to be considered, their value should be based on factors other than AUM production. • Income produced from conservation leases will be minimal but the costs associated with agency management of a conservation lease could be substantial, and the burden placed on state grazing lessees will, be costly and disruptive. • Depreciation of the grazing potential of the land must be considered along with the amenities which give conservation easements their value in the market today. It makes little economic sense to base the value of conservation use on the land's ability to produce forage in an attempt to simplify and gain equity in the bidding process. The entity that has disrupted the competitive bidding process for several years and increased the legal and management costs to the school trust will continue to do so under a conservation use lease. • The IDL proposed conservation use has the appearance of transferring the wrath of a disgruntled conflict applicant to the grazing leaseholders in Idaho rather than the using sound criteria identifying an applicant that is not qualified and who will not generate the required long term net revenue to the school trust. • Under the current conservation use proposal, I believe more overall equity and school trust income is lost than gained. Generally conservation easements (conservation use) ensure development does not fragment open space and habitat. Serious conservation organizations recognize the value and pay accordingly. These groups are becoming very supportive of grazing interests in the West and recognize their value to open space. Seldom do these groups use conservation as a weapon to change land use in rural areas. • A conservation lease is the same as growing a crop and not harvesting it, most range 	<p>The Land Board approved Asset Management Plan provides for consideration of alternative uses for endowment lands and recognizes "conservation" as an asset type.</p> <p>Consistent with the Idaho Constitution, the Board must consider all proposed uses of endowment lands to determine what use will result in the maximum long-term return to the endowment beneficiary.</p> <p>The revised proposal seeks to make the current leasing proposal more transparent and reassure market participants of an open, competitive market-driven process.</p> <p>Lease rates in conflict situations with incompatible uses will be established by the highest revenue of the two uses.</p> <p>In the short term, conservation lease rates will be tied to the use which would be precluded if the uses are incompatible. In the long term, IDL will be able to establish market rates for all of its leases based on market analysis and the development of business plans that align with the Asset Management Plan adopted by the Land Board.</p> <p>The appropriate method to address</p>

enclosures, riparian areas, spring heads, etc., turn into weed enclosures, and a haven for a wildfire. If the state lets lands go into Conservation leases and a wildfire starts there, they should be held responsible. Generally speaking, a Conservation lease should not be recognized, as having the same status as a grazing lease. It contributes nothing to the local business economy and leaves the lands, improvements, etc, vulnerable to degradation and being open to wildfires.

- Conservation leases will open the door to more conflict between traditional users and the environmental groups.
- There is no unit of measure presented for the conservation leases. In other words, grazing leases are prepared on the basis of the number of animal unit months (AUMs) of forage that a parcel will support. An agricultural lease is based upon the acreage of the site. There does not appear to be a similar measure to base the conservation leases upon. Our fear is that groups who apply for the conservation leases will base the amount upon the existing grazing lease or agricultural lease for the specific parcel, rather than upon the perceived conservation benefit of the site. Without a unit of measure, there does not appear to be a basis for charging for the lease, other than an annual lump-sum payment to the Endowment. Efforts should be made to ensure that the conservation lessee of state land quantifies and values the proposed use.
- Conservation is not a land use. Rather, it is the result of good management practices employed while making a productive use of land resources. Good grazing management practices conserve the land and renewable resources produced on the land while providing society with necessary goods and service.
- In the context used in these proposed leasing policies, conservation leasing implies “no use”. We do not believe issuing no-use leases represents good management of the state endowment lands, nor is it in the overall best interest of Idaho’s economy.
- We support the inclusion of multi-tier leases (conservation, communication, agriculture, traditional grazing) as long as these are viewed as complementary rather than competitive categories for leases. Traditional grazing leases must be kept as part of the mix. This will allow ranching operations to continue their use of state lands while allowing additional potential revenue from the same parcel of land.
- The conservation lease poses many problems. First it reduces money to local economies. Money generated in agriculture turns over in the community and generates money that conservation leases simply cannot match. Also these lands are grazing lands, when left not grazed they can and will pose fire hazard to itself and all adjoining properties. I am sure you have heard these arguments many times so how about the suggestion of having conservation leases pay a considerable premium to exist?
- We believe that the availability of conservation leases sets a dangerous precedence and sends the message that wildlife goals and livestock grazing are incompatible, when in fact, conservation can be achieved while preserving the land’s production capability. When the land is “set aside” from production, the resultant economic loss to rural communities is significant. In planning for school endowment funds, the shrinking tax base from “rested” productive lands should be considered. The difficulty of administering conservation leases, i.e. managing for treatment of buildup of fine fuels for wildfire protection, fencing to control neighboring livestock, will cause more workload for staff.

fire suppression, fencing or environment-related issues where a proposed use is for conservation purposes is through careful formulation of lease provisions. This approach additionally facilitates the Land Board’s constitutional and statutory duty to maximize long-term return to beneficiaries and to preserve the trust “res”—*i.e.*, the affected endowment lands.

<ul style="list-style-type: none"> • Conflict auction will invite people whose interest is to set aside land for no use that may lead to build up of fuel, a potential fire hazard. • Most state land is not fenced. Who will keep out cows of state land that is intermingled with federal land if the lease goes to conservation? • You mentioned that conservation leases will be kept on a competitive level with other leases. How will you accomplish this and what are the details? • Conservation leases should be monitored like any other lease. • If a lease is bought for conservation purposes, will public access still be provided? Also, with all the new roadless and wilderness study areas being pushed right now, how will access be maintained? We are concerned that if a lease is bought for conservation purposes, the new lessees will lobby for grazers to fence their cattle off the conservation lease as opposed to the law stating cattle must be fenced out, in this case by the conservation lessee. 	
<p>Conservation leases do provide maximum return and best management of the endowment lands:</p> <ul style="list-style-type: none"> • The changes to the rules to permit conservation leases would improve the opportunities to secure both more funding and careful preservation of the lands. • A conservation use of these lands best fulfills this mandate, as the very root definition of “conservation” is to “conserve.” The grazing uses of the endowment lands have not, in many instances, furthered the careful preservation of these lands, but rather have resulted in the degradation of them. 	<p>The Land Board approved Asset Management Plan provides for consideration of alternative uses for endowment lands and recognizes “conservation” as an asset type.</p> <p>Consistent with the Idaho Constitution, the Board must consider all proposed uses of endowment lands to determine what use will result in the maximum long-term return to the endowment beneficiary.</p>
<p>Land Classification/Change in Land Use</p>	
<p>Procedures for reclassification and changes in land use are not clear:</p> <ul style="list-style-type: none"> • The Asset Management Plan refers to classifying lands according to their primary purpose. Will this practice be discontinued? Will this change in policy be limited to the four uses listed in the proposal? Will these changes apply to uses not listed or contemplated by this proposal? Energy leases for windmills, solar panels. Would this policy allow the primary purpose to be determined by the auction, high bid? Would that prevent the department changing the primary purpose within the lease term or just for the four lease types in the proposal? Would it still be permissible to change the use of all these leases with 30 day notice? • Do these changes mean that someone interested in a conservation lease can only apply for that lease when a grazing lease expires? • Changes in state land use should not be at the whim of anyone who simply files a conflicting non-compatible leasing application. Changes in land use should be based on 	<p>All endowment lands have been and will continue to be classified by asset type based on the current predominant use. The asset types are identified and described in the Land Board approved Asset Management Plan.</p> <p>The current classification of a parcel will not automatically preclude changes to another use. The Department may consider and approve a change in use at any time</p>

<p>the Land Department's land inventory and classification system. If changes in land use are driven by the filing of a non-compatible leasing application, then existing lease holders would be open to malicious harassment when their leases expire.</p> <ul style="list-style-type: none"> • The revised process indicates that the Land Board will determine well in advance (2 years) if a new lease will be issued. As this proposal only applies to four uses; does that mean that the Board retains the right to change the use from grazing to a Timber project, a mineral lease, commercial lease etc. within the thirty day time currently allowed in grazing leases? Why the disparity between these different uses? Since this proposal proposes to allow competitive bidding on four types of leases then the decision to discontinue the lease would only apply to timber, commercial, recreation non-commercial mineral and misc leases or total non-use. What would happen if the determination was not made two years in advance, would the lease be issued for one year or ten? If the lease was issued for anything less than two years the concept of a two year notice would be circumvented. • The proposal states that the Land Board will review expiring leases well in advance—at least 2 years—to determine if the current use is in the beneficiaries' best interest. First, the criteria for this determination should be specified, and second, the Land Board should retain the discretion to make this determination in less than 2 years before the lease's expiration if conditions merit it. 	<p>if a change is determined to be in the best interest of the beneficiary. Formal reclassification of a parcel will not occur until after the use of the land changes. Provisions to address changes in land use will be included in all leases. The proposed modifications are directed only to instances where a new lease is being issued and do not address reclassification-related issues.</p> <p>The two (2) year notification time frame prior to lease expiration is a goal and intended to be a soft deadline that triggers the Department to identify any impending changes in land use. The Land Board will still have the discretion to change or discontinue a current use even if the two (2) year advanced notice cannot be met.</p>
<p>Application Fees</p>	
<p>The \$250 application fee is excessive and when it is required in IDL's review process is not clear:</p> <ul style="list-style-type: none"> • The proposed increase in the lease application fee to \$250.00 appears to be excessive and exceeds the annual rental, value of many state leases on small, isolated parcels of state land. • How long would the staff have to review the proposed use with the applicants? Would this be prior to the \$250 fee? Would requiring the \$250 fee prior to meeting with the applicant effectively save staff time? Would the fee ever be reimbursable? 	<p>The current application fee of \$10 does not cover the administrative costs to process an application. The proposed fee of \$250 is the Department's estimate of the actual cost of processing applications.</p> <p>The non-refundable application fee is required with the application and will be required as part of the lease application.</p>
<p>The \$250 application fee is reasonable and should be nonrefundable:</p> <ul style="list-style-type: none"> • I would be willing to pay the \$250 fee. • The application fee should be non-refundable. Would that be appealable to the Board if 	<p>The proposed application fee of \$250 will be non-refundable under all circumstances.</p>

<p>extenuating circumstances? For example misrepresentation, inadequate, incomplete or additional management concerns by the department.</p>	
<p>Application Review & Processing</p>	
<p>Application process for different land uses (beside the four mentioned in the presentation) is not clear:</p> <ul style="list-style-type: none"> • The very first paragraph of the proposal limits the process to grazing, farming, conservation and communication site lease applications. Why are recreation non-commercial and other miscellaneous leases not included? 	<p>The former Miscellaneous leases have been reclassified according to the Western States Land Commissioners Association’s asset classification and most have been placed in the Commercial asset type.</p> <p>We currently do not have any non-commercial recreation leases; however, new leases of this type would be included in this process and their inclusion will be made explicit in implementing rules.</p>
<p>The procedure for handling management concerns is not clear:</p> <ul style="list-style-type: none"> • When will the Department determine if it has concerns? How do these concerns differ from concerns the department might have throughout the lease term? Other than an impediment to renewal of the lease and a potential appeal to the land board they are the same concerns that might come up throughout the term of the lease and be handled in a different manner with different consequences. 	<p>Department staff will determine if there are concerns on an expiring lease through various means including but not limited to file reviews, contact with other land management agencies, and/or on-site inspections.</p>
<p>How IDL will use the evaluation criteria and develop lease provisions in various situations is not clear:</p> <ul style="list-style-type: none"> • ... under the “Mitigation measures” bullet, a line should be added that would reinforce the need to maintain existing improvements. • Conflict bidding between different uses, where improvements placed on state lands to increase production and ensure resource stewardship are present or improvements are needed to separate lands with uses that are not compatible, will be difficult to assess without some standards for qualification of applicants. • On grazing leases where parcels of state are intermingled with other lands and/or a management plan has been developed and improvements are made to increase production and facilitate good land stewardship, conflicting applicants would need to meet some pretty limiting standards and make substantial resource commitments to be eligible to bid. This is the step in the conflict bidding process where equity is established and 	<p>One of the most significant challenges in managing 2.5 million acres of endowment land is the variations in manageability. For this reason, the proposed application process shifts the focus away from responses to a generic resource assessment to an evaluation of each applicant’s proposed use based on criteria that are identified up front in the process.</p> <p>Through discussions with each applicant for a conflicted lease or a</p>

would identify bidders that are not qualified or are being arbitrary and capricious to the current lessee or land use. The state grazing fee is substantially higher than the federal rate because state land is dedicated to generating revenue through resource production.

- ...the issue of cherry-picking leases to drive surrounding leases out of production. When this question was brought up, the answer was in my mind insufficient. If the action in the future is the same action as in the past, nothing from the state level will happen and it will be left up to the grazers, because they are the ones most affected by these types of situations, to threaten the state to withdraw all surrounding leases for a decision to be made. Hopefully in the future, the state will be able to discern when these situations are happening and diffuse them before everyone's time and money are wasted.
- As a mitigation measure it is important that a successful conflicting applicant maintain and build infrastructure that allows this lease to stand alone. Standards and criteria must be developed to prevent cherry picking, especially from large leases. It is important that an applicant can be rejected by the department if not qualified. How will IDL determine how much of a bond would be required?
- How will IDL determine the cost and number of inspections that would be needed if someone new takes over a lease?
- With these new conservation leases, what will be the penalty for not living up to the terms of the lease (weed control, access, maintenance of previous improvements, etc.)? With grazers, if the agreement is not lived up to, the grazer is removed. Will the same standard apply to conservation leases?
- How will the department deal with concerns that are missed in the first attempt at developing lease criteria? Significant factors have historically been missed by the department. Will there be time for all applicants to submit criteria for the department to consider? Is it the intention of this proposal to limit Board's evaluation of appeals to the criteria developed by staff? Currently the Board is allowed to use wide discretion in its fiduciary capacity to select the winning application. This would appear to take that power away from the Board.
- Are there provisions to protect the state from situations that have occurred in the past where a conservation entity outbid on a lease (grazing) and subsequently dropped the lease the following year resulting in an abandoned lease generating no income for the states?
- I seriously doubt conservation groups will be interested in maintaining fences and other existing improvements. It costs a lot to put out fires and control weeds; that will be a consequence of not grazing and managing land. How will IDL determine what improvements a conservationist would need to make to get a lease?

lease that has management concerns, IDL Area staff will develop lease provisions that are specific to the applicant's proposed use to address issues of access, fencing, impacts to other endowment land parcels ("cherry-picking"), vegetation management, season of use, etc. These lease provisions will be reviewed by IDL Bureau staff to ensure consistency in implementation of the process. Adjustments to the lease provisions may be needed following Bureau Staff review which would require a follow up discussion between IDL Area staff with the applicant.

All state leases, regardless of use, will have provisions addressing weed control, improvement maintenance, etc. to clarify roles and responsibilities.

Any lessee, regardless of use, who is not in compliance with the provisions of the lease, will be subject to penalties up to and including lease cancellation.

Bonding amounts will be based on the cost of Department identified mitigation work in the event the lessee defaults on specific performance requirements.

The number and cost of inspections does not have to be determined at the time of application. Lease provisions requiring a lessee to pay for non-standard inspections will specify that payment will be based on the actual costs to perform the inspection.

<p>IDL should guard against unfair biases and barriers to competition:</p> <ul style="list-style-type: none"> • IDL should guard against use of unfair barriers to entry for newcomers, e.g. requirements for bonds, or to pay “administrative costs” and the like – more often than not, such requirements are just unlawful pretexts for discrimination against new entrants, and do not further the essential purposes of endowment land program. • IDL should guard against undue bias in favor of long-term lessees: “tenure”, so to speak, in and of itself should not be a factor to be considered, because such consideration would unlawfully restrict competition for leases (prior performance – good or bad- arguably can be a factor to consider but tenure un-tethered to evaluation of performance should not be). • IDL’s focus should be on long-term interests of endowment beneficiaries—it should guard against dilution of this focus by favoring or accommodating private economic interests of individual lessees or applicants. 	<p>The proposed process is designed to ensure transparency and treat all applicants fairly. However, due to variations in each applicant’s proposed use, operations and experience, as well as lease manageability, there will likely be differences in lease provisions offered to applicants for the same parcel of land. The potential or likelihood of materially higher administrative costs associated with a particular lease may be one such consideration.</p>
<p>IDL should have the ability to reject an application and IDL determinations should be appealable to the Land Board:</p> <ul style="list-style-type: none"> • This paragraph [application rejection] needs to be revised so that the Department has the ability to reject an applicant if it is deemed that the applicant is unable to meet the provisions of the lease. As it is currently worded, the application will be rejected only if it is deemed unacceptable by the applicant. The language should state, “If either party does not agree with or is unable to meet the provisions of the lease, the application will be rejected.” • Would the determinations of staff be appealable to the Land Board? Would conflict applications be provided to all applicants? Would they have the opportunity to critique the proposal for concerns that may not have been considered by staff? Would staff determination of compatible leases be appealable to the Board? The current practice is to allow compatible leases whenever the opportunity arises. Will this change? 	<p>Through discussions with the applicant, the Department will develop and offer a lease with specific provisions that address the Department’s concerns. The applicant will have the option to accept or reject the lease as offered. The Department will not offer a lease that it would subsequently reject.</p> <p>Department decisions are appealable to the Board unless specifically exempted from appeal. If an unsuccessful bidder believes that the successful bidder’s lease terms are inappropriate, the unsuccessful bidder may argue that, notwithstanding the higher bid, the Land Board should exercise its discretion under Idaho Code 58-310(4) to award the lease to it.</p> <p>The proposed modifications will not affect the availability of multiple leases for a particular parcel if those uses are compatible.</p>

<p>Extensions of existing leases should be granted for unresolved leases:</p> <ul style="list-style-type: none"> We recommend that this section include a line that states that if the lease is not resolved prior to the expiration of the lease, a one year extension shall be granted to the existing lessee. 	<p>Extensions of 10-year term leases would violate the current statute which limits leases to 10 years. Therefore, the Department will continue to issue temporary permits in the case of unresolved leases.</p>
<p>Inspections/Resource Assessments</p>	
<p>Resource Assessments should continue to be required and how leases will be monitored for compliance is not clear:</p> <ul style="list-style-type: none"> Common sense dictates that fewer inspections, with less detail, are necessary where the land is being allowed to rest for conservation purposes, rather than where it is getting utilized in an intensive livestock or crop operation. Also, resource assessments should continue to be required for expiring leases, based on scientifically based land and water health indicators. The proposal states that resource assessments will no longer be conducted and that resource management concerns will be addressed in the lease. We need to see specifics of how this will look. How will IDL monitor whether or not those resource concerns are being addressed by the lessee. 	<p>Resource Assessments have now been completed on all endowment lands leased for grazing. These assessments indicate that relatively few leases have significant resource concerns that are directly attributable to current grazing practices. Consequently, continuing a blanket requirement to inspect all expiring leases is not cost effective. Under the proposal, targeted monitoring and inspections would be conducted at the discretion of the IDL Area staff. Area staff could still use the Resource Assessment process as an evaluation tool.</p>

Improvement Crediting

The value of improvements still exists even after the proposed USDA life expectancy and should be recognized if the current lessee loses the lease:

- I disagree with the assumption that if fencing is depreciated out it is of no value after 20 years; there is still full functional value if one has properly maintained the fence.
- Fences and water developments last longer than 20 years—mostly, these developments will last in the 50 to 100 year range.
- The depreciation of improvement schedule- is troublesome. Many improvements can last many more years than the 20 years that is being recommended, for instance, fences.
- We strongly disagree with the proposal's method of valuing improvements. The utility of those improvements on the ground must be a key consideration in their valuation. We recommend that this section be removed from the proposal in its entirety.
- In your discussion you stated that these improvements have a life expectancy of 20 years. Most of the ranchers in my area have had leases far longer than 20 years and have fences that were originally constructed far longer than that. With proper upkeep and annual care, these fences will last far longer than 20 years.
- We disagree with your proposed to depreciate any improvements in a certain length of time.
- We have many fences that are decades old and still in fantastic shape because of maintenance.
- Better constructed improvements generally cost more, have more functionality and last longer.
- Value of and maintenance of improvements such as fences and water developments are an important part of grazing leases. Due to the increasing cost of labor and materials, the value of improvements should increase over time if well maintained. The value of improvements in a conflict bid should be determined at that time and reflect the current values along with condition of improvements.
- The proposal to value lessee's authorized improvements on the basis of a fixed life expectancy and straight-line depreciation is unfair to the lessee who built the improvements and provides an undeserved benefit to a conflict lease applicant.
- The scheduled straight line depreciation used by USDA for life expectancies does not consider the level of maintenance which can be provided by the Lessee.
- I reject the validity, accuracy and equity of using a straight line depreciation schedule based on USDA Life Expectancy tables for evaluation determinations of improvements in

The Subcommittee does not dispute that there can be a functional value to maintained improvements beyond the time specified in the USDA life expectancy tables. This value has been recognized by the Department historically in its valuation of improvements. It therefore considered carefully the various comments and has modified the improvement-credit recommendation.

As modified, the existing improvement credit-valuation methodology will continue for all improvements approved as of July 1, 2009, whose established value has not already been determined, unless otherwise provided for by the involved lease or improvement permit.

For improvements approved after July 1, 2009, the Department will establish at the time of authorization a valuation using NRCS cost tables or actual value, whichever is less. If the improvement is maintained consistently with the lease terms, the lessee will be entitled to recover that value from any new lessee or, at the Department's option, from the Department. Alternatively, the existing lessee will be entitled to remove the improvement if so authorized in writing by the Department.

The Subcommittee believes that this approach will encourage lessees to make and maintain appropriate

<p>general and especially for evaluation for lease conflicts or grazing leases terminated for other uses.salvage value is the estimated value of an asset at the end of its useful life. In accounting, the salvage value of an asset is its remaining value after depreciation. This is also known as residual value, utility value or scrap value. As long as an improvement is functional, it has value. Not recognizing utility value is not only inequitable, it does not follow accepted accounting procedure.</p> <ul style="list-style-type: none"> • Do all improvements lose their value by changing to depreciation policy? • We have real reservations on improvement crediting, especially after July 1, 2009. For improvements authorized after July, 2009, the IDL proposes to use some kind of standard cost table to determine initial value and a straight line depreciation schedule based on the USDA-NRCS Length of Life of Conservation Technical Guide to determine value at the time of a lease conflict. • There is mathematically a direct relationship between improvements and revenues generated from agricultural and grazing leases. Both the lessor and lessee benefit. The state lands we lease are intermingled and. managed as grazing units. The units are fenced and watered to facilitate time controlled grazing. This gives us more production while limiting grazing during the growing season, especially spring. 	<p>cost-effective improvements, while simultaneously allowing potential lessees to assess the economic feasibility of filing a conflict application where an improvement credit valuation has been established. The approach additionally will reduce, at least as to post-July 1, 2009 improvements, administrative costs that, under the recommended revisions, will be passed on to auction bidders in the form of a minimum bid.</p>
<p>The state should use actual costs in determining improvement credit and offer a settlement agreement option to the lessees:</p> <ul style="list-style-type: none"> • Cost of an improvement is site specific and it would be difficult to generate an equitable cost using a standard table. Initial cost could be positive or negative using a table because cost is determined by site specific conditions and applications. Actual cost figures would be more accurate. • The State Department of Lands could propose to the lessee a settlement for improvement credits based on life expectancy guidelines. The lessee could then accept or reject the amount offered. If a rejection was submitted, the State of Idaho and lessee would jointly share the cost of an appraisal by a state licensed appraiser qualified to make the appraisal of the improvement credits. This appraisal would be required to meet all legal standards for such appraisals, and would become the final determination of value for improvement credits.” • ...it is doubtful that the IDL will participate much in the costs of improvements after July 1, 2009, so one would expect that the lessee would be more frugal since he would be footing the entire bill. I do not think that using a standard cost table is an equitable method to determine initial value of an improvement. 	<p>These comments have been addressed in the revised improvement credit-valuation method described above.</p>
<p>Improvement crediting is a barrier to competition for leases and should be eliminated:</p> <ul style="list-style-type: none"> • Improvements authorized prior to July 1, 2009 should not be assessed against successful conflict bidders using the current methodology; this entire area needs to be re-written to avoid imposing artificial barriers on competing bidders. Money paid to a prior lessee for “improvements” that in many instances may be devaluing the property does not benefit the schools. We recommend that the department remove any improvement crediting for 	<p>The Subcommittee recognizes that any additional cost imposed on conflict applicants in the form of improvement credits may create an economic disincentive to seek a lease in a particular situation. However, it must be remembered</p>

<p>installations on endowment lands. Any improvement crediting requiring reimbursement of prior owners only serves as a disincentive for robust competition for these leases.</p>	<p>that the conflicting applicant, if ultimately awarded the lease, ordinarily will acquire ownership of the improvement and the value that it may bring to the affected parcel. The Subcommittee therefore concluded that the most important consideration was ensuring that the process used resulted in a fair valuation—preferably a value established prior to a potential lessee's having to make the determination on whether to seek a lease. The process as to post-July 1, 2009 improvements is designed to achieve this objective.</p>
<p>If the state assumes ownership of improvements, this is a taking and the new lessees get them for free which is not fair:</p> <ul style="list-style-type: none"> • If the State wants to own the improvements after 20 years, It should pay the lessee for them at the appraised value, otherwise it is a taking and that cannot be condoned by any agency or governmental department • Improvements enhance the value of Endowment Lands. It is one thing to make a parcel attractive to a conflict bidder. It is quite something different if that conflict bidder does not have to compensate the present lessee for his time and expense in providing the improvement. The present lessee will find himself in the position of bidding against the conflict bidder to pay for the improvements that he has already paid for and the State took from him. This is totally unacceptable. • The depreciation of land improvements to state lands by leasers appears to be an asset grab by this state agency. This will make it much easier for non-grazing leasers to enter into a conflict bid with grazing lessees. Many of these operations depend greatly on the land lease and the improvements made to the land. • We were led to believe that the state will gain the improvements made by the original lease holder, which also includes spring development, fences etc. with no compensation to the original lease holder if the improvements were 20 years or older (depreciated out). • After the meeting, the feeling in the room was that the state basically just gave itself permission to steal fences after the lease is up. I guess it would not be a problem if they were not maintained, but that is not the case. • One huge concern I have is over the depreciation schedule. Materials are not the only input in a well maintained fence. Then you have other improvements like water 	<p>The recommended process does not result in an uncompensated taking under the federal or state constitution. No one has contended that the current process—which will apply to improvements authorized as of July 1, 2009, effects a taking, while the process recommended for post-July 1, 2009 improvements will result in an agreed-upon valuation in the event the lease and the associated improvements are acquired by a third party or the Department.</p>

<p>developments, access roads, irrigation systems, and many others improvements that lessees are going to put a lot of money and time into which will essentially be confiscated by the state when their lease is up. Not only is this wrong, but it creates a larger barrier of mistrust between the lessee and the state.</p>	
<p>Proposed changes to improvement crediting are a disincentive to make or maintain improvements on state land:</p> <ul style="list-style-type: none"> • If a lessee knows that he will lose the improvement at the end of 20 years, there is no incentive to maintain it. The true value of all improvements across Endowment Lands will deteriorate. • If a lessee loses the value of the improvement over 20 years, it will be a huge disincentive to provide future improvements on Idaho public lands. • Considering the cost of fencing, how much new fence do you think anyone would build with a cap on life span of 20 years? • To put improvements on a straight line 20 year life will discourage investments in long term range betterment. This will result in deterioration of the range which in turn may decrease the number of billable AUM's. It will be difficult to justify the investment required to drill deep wells and install miles of buried pipeline and permanent troughs if they will lose all value for investment crediting in only 20 years. • The proposed evaluation of new improvements will kill the lessee incentives to improve state land and will decrease the long term revenue generating capacity of state grazing land. I would suggest a cost analysis using private contractors rather than department personnel for improvement evaluations. With the loss of current lessee preference rights in the bidding process, it may be appropriate that the conflict applicant pay for the improvement appraisal. • The Improvement Valuation Criteria should remain the same as it has been, otherwise the lessee won't have the incentive to maintain them, especially towards the end of the lease. The type of improvements we're talking about on range need yearly maintenance, so they should maintain their value. • This provision will in effect discourage lessees from making proper effort to maintain improvements throughout the live of the lease, and only minimal maintenance could be detrimental to the State Department of Lands interest and mission. • The new process serves as a strong disincentive for lessees to improve the state land or to maintain existing improvements. • The intention that by decreased values of leasehold improvements would encourage competitive bidding may yield some unintended consequences. Improvements which allow the lease to have value, such as water developments, boundary fences could become dysfunctional requiring applicants to construct these developments prior to using the lease. These costs could discourage competition. 	<p>These comments have been addressed in the revised improvement credit-valuation method described above.</p>

<ul style="list-style-type: none"> • New improvements that could increase revenue to the endowment would be discouraged by this proposal. Additional staff time may be required to determine the value under two sets of rules rather than one. • Many water projects run across ownership boundaries, and by encouraging competition and devaluing investments, it will increase the number of abandoned water facilities. • If we are discouraged from improving the land, and are competed out of business by folks with deep pockets and no desire to actually produce a marketable product, and regulated to the gills when we do pony up to buy a lease, the frustration that is already deeply entrenched will fester to the point of explosion and folks will leave state land. Then, the state will be begging ranchers to come back, as they did in the 80s and 90s. • I believe it was asked, "What incentive is there to improve the land then?" and the answer was basically, "You have to because it is in your lease agreement." That answer is both simplistic and insulting. Are you looking at any other method to depreciate range improvements? 	
<p>Allow the lessee to remove improvements if they are depreciated to zero.</p> <ul style="list-style-type: none"> • If the improvements are going to be depreciated to zero, can the lessee take down the improvements and keep them when the lease is over? If they are worth nothing, then this shouldn't be a problem. 	<p>Existing leases state that removal, relocation, or alteration of any improvement requires prior written permission from the lessor. Clarification of removal rights can be addressed by the Department on a case-by-case basis through lease provisions. Lessees currently have either the option or obligation to remove certain improvements that were permitted for "Lessee's Benefit Only" as described in the improvement permit. This process will be continued as to improvements authorized after July 1, 2009.</p>
<p>Continue with the current process and consider other alternatives to shift cost of the improvement valuation off the state:</p> <ul style="list-style-type: none"> • All improvements on Endowment Lands that receive a conflict bid application must be appraised and the present lessee be paid for that value by the person initiating the conflict bid if the present lessee loses the conflict auction. I understand the Department's unwillingness to absorb the expense of the appraisal. • I would suggest a cost analysis using private contractors rather than department personnel for improvement evaluations. With the loss of current lessee preference rights in the bidding process, it may be appropriate that the conflict applicant pay for the improvement appraisal. 	<p>These comments have been addressed in the revised improvement credit-valuation method described above.</p>

<ul style="list-style-type: none"> • Since it is the person that instigates the conflict that causes the need for the appraisal, he should be required to pay for it. That requirement would be noted on the bid application form. • The functional (appraisal) value should be the criteria used when determining the cost to a conflict bidder. 	
Conflict Auctions/Withdrawal Penalties	
<p>Other alternatives should be considered that reduce costs, are less complicated, and recognize the lack of manageability of most state land parcels:</p> <ul style="list-style-type: none"> • As far as conflict auctions are concerned, I think there is probably a better alternative. Instead of the present lessee and the state both spending money on a conflict auction, I think it would yield a greater long term benefit if they would put the money into improvements to increase the carrying capacity. • Generally speaking, regarding the use of conflict auctions, we see this process as an unnecessary drain on IDL’s time and resources. We recommend that the Subcommittee continue to look into this and consider changes that would enable the implementation of a more cost-effective method for leasing state grazing lands. We understand that this may require a constitutional change, but feel that this one change could result in tremendous cost savings to IDL. • We believe that Utah, Montana, and Oregon have less complicated lease bid procedures with a resultant efficiency of dollars spent in staff, etc. It seems that encouraging competition will increase, not decrease, the staff work load. • Many, if not most, state land parcels are not stand-alone management units and must be used in conjunction with other grazing lands~ whether public or private. Conflict applications in these situations serve no useful purpose. • With well over 80 percent of the parcels being intermingled within public and private lands, the leasing opportunities are extremely limited and preference should be given to the surrounding landowner or permit holder for that lease. Unless the parcel is fenced and has access, it would appear that the probability of leasing to “outside” sources is limited. Management costs associated with these scattered parcels can and should be minimized. • For intermingled parcels that cannot be managed as a unit, preference should be given to surrounding land owners. 	<p>Article IX, Section 8 of the Constitution and Title 58, Idaho Code establish that endowment lands can only be disposed of (sale or lease) through public (oral) auction. This mandate applies equally to all endowment lands regardless of individual parcel characteristics. Preference cannot be given to one entity at the exclusion of another who is equally able to manage the endowment land to the satisfaction of the Land Board and Department.</p> <p>The Department is continuing to evaluate other methods, including those of other states, to determine what long term procedures will provide the greatest financial benefit to the beneficiaries.</p>
<p>Withdrawal penalties prior to auction might result in net losses to the state:</p> <ul style="list-style-type: none"> • All applicants must pay the \$250 application fee regardless of conflict auctions and management concerns. Current lessees would need to pay that fee to protect their investment through the end of the valuation process. If satisfied with the valuation of improvements they would have to stay in auction process to avoid forfeiture of the value of the improvements. The endowment would then have to incur the cost of an auction. This could result in a net loss to the endowment if a token bid is made by the current lessee. 	<p>The proposed process provides safeguards against financial loss to the state. The increased application fee (\$250, up from \$10) and a minimum starting bid at the auction are designed to ensure the state recovers its administrative costs even if token bidding occurs above</p>

<p>What criteria will determine what participation in the auction is?</p>	<p>the minimum starting bid.</p> <p>Based on case law, and as provided in the Rules Governing Grazing and Cropland Leases, IDAPA 20.03.14.105 Conflict Auctions, an applicant who appears at the auction and bids for the lease is deemed to have participated in the auction.</p>
<p>Withdrawal penalties after the auction are not clear and appear to be unfair:</p> <ul style="list-style-type: none"> • Your proposal that the second highest bidder be required to deposit his bid as well as the highest bidder may discourage “stink” bids that only elevate the bid. • I don’t understand the conflict bidding process in regard to the winning bidder being able to step out and leave the second bidder stuck with the lease. In the question and answer section of the meeting, I gathered that you were not sure how you would handle the situation if the runner up bidder stepped out also. I can see opportunities for mischief on both the grazing and “conservation” side of this process. • I am concerned about somebody running up the bidding price in an auction, winning by \$1 and then giving up their winning bid and the second bidder is stuck with paying the high bid. This needs to be remedied and maybe a way to do that would be to divvy up the difference so the second highest bidder doesn’t get stuck with it. • The proposed changes to the refund policy for bid deposits to the high bidder and second high bidder who withdraw their bids after the conflict auction would treat the second high bidder unfairly. Why will bid deposit refunds for high bidders who withdraw their bid after the auction be different than bid deposit refunds for other auction bidders who withdraw their bids? • According to the proposal, bid deposit refunds for high bidders who withdraw their high bid prior to the Land Board action will be their bid deposit minus the difference between the high and second high bid. This difference between the two bids, in many cases, could be very slight, perhaps only a few dollars. Other bidders who withdraw their bids prior to Land Board action would be refunded their bid deposit minus the minimum bid. We do not understand why the minimum bid plus the difference between the high and second high bids are not deducted from the high bidder’s refund. This provides a conflicting applicant an incentive to run the bidding up and then later withdraw his bid. • Why is the penalty for withdrawal by the high bidder less than that of the losing bidder? If the losing bidder waits for the high bidder to withdraw in the case of two applicants, would the penalty for withdrawal then become the total bid? If it is allowable to require all auction 	<p>IDL agrees that the proposed penalties are not equitable and based on the comments provided IDL is revising the auction process to more appropriately address withdrawal penalties.</p> <p>The proposed process is designed to eliminate the delays in awarding a lease, as experienced in the past.</p>

<p>participants to pay their full bid at the time of auction, wouldn't it be sufficient to prohibit withdrawal or refunds until the Land Board review and action provided it is timely. This is all overkill if the intention of the proposal is to make all appeals to the board to be based on high bid.</p> <ul style="list-style-type: none"> • This policy will discourage competitive bidding. How long can bid be held with appeals? • The proposed penalty of withdrawing after the bid (difference between highest and second highest bidder) is not enough. I would suggest that the highest bidder pay half of the highest bid and the second highest bidder pay the other half in case of withdrawal to discourage those who just want to drive the bid up and then withdraw. • You asked for suggestions on how many times a high bidder may withdraw their bid before not being considered anymore, and my suggestion is about one time. There is a difference between someone withdrawing because of legitimate financial or other hardship, and someone driving the bid up just to inflict monetary damage on the high bidder. • Specific to the proposal, in the "High Bid Deposits" section, we suggest that the proposal includes a 60 or 90 day time limit for Board Decisions to be made. Otherwise, we are concerned that IDL could be holding onto the applicants' bid amounts for an unrealistic period of time. In the "Withdrawal Prior to Auction" section, the wording states that applicants who withdraw their application with "forfeit all or part". This amount should be specifically delineated, not either/or. 	
<p>Overall Evaluation of the Grazing Program and Application/Conflict Auction Proposal:</p>	
<p>IDL has failed to acknowledge its Constitutional mandate to "carefully preserve" the land grants:</p> <ul style="list-style-type: none"> • We are concerned that the Department has failed to include any acknowledgment of the following provision of Idaho's Constitution found in Article IX Section 8: "... that the general grants of land made by congress to the state shall be judiciously located and carefully preserved and held in trust..." That these lands shall be "carefully preserved" seems not to have entered into the discussion and creation of the draft rules. Without an acknowledgment of this section of the Constitution along with an understanding that conservation leasing is perhaps the best way to achieve both the "maximum long-term financial return" and the careful preservation of all endowment lands unless and until they are disposed of or developed for higher uses. In addition to the need to carefully preserve these lands, the Constitutional requirement of fiduciary trust responsibility (also found in section 8) for the land trust also needs to be further underlined in the new rules. 	<p>A principal objective of the lease provision formulation process is to develop terms that ensure the parcel's long-term economic and environmental utility. The Department is acutely aware of the constitutional constraints under which the Land Board operates and the relationship between achieving long-term financial return and preservation of the underlying land's capacity to generate such return.</p>

<p>The benefits and costs and effectiveness of the process proposal have not been addressed:</p> <ul style="list-style-type: none"> • It does not appear that IDL and/or the Subcommittee addressed issues such as the benefits and costs of this policy shift, an important consideration in dealing with the State Endowment. The program appears to have been designed with the only intent in mind being to keep IDL and the Land Board out of court proceedings, regardless of the costs and potential losses in revenue of the action. • As it is, IDL effectively has two criteria to evaluate the effectiveness of this proposal. Those unwritten, yet real criteria are: a) minimizing time spent in litigation, and b) the generation of a positive net income stream for the Endowments. Until specific criteria are developed, there will be no way of determining whether the department's proposed leasing program is effective. 	<p>The proposed process has been designed to address the Land Board's concern that the lease application and conflict auction processes are not transparent. Transparency will be achieved by providing applicants with the proposed use evaluation criteria and resolving any management issues prior to an auction.</p> <p>The proposed process has also been designed to reduce the workload in the grazing program which in turn will reduce costs and increase net revenue.</p>
<p>The current proposal is a significant revision from the original and the Subcommittee's process for moving forward is unclear:</p> <ul style="list-style-type: none"> • The revised process was a substantial departure from the original proposal. Has the subcommittee published the process they will follow as they present these proposals and subsequent modifications? Will comments be published with responses as to how the committee addressed those concerns? • I understand from past conversations with subcommittee staff that the subcommittee will listen to all sides and develop policy from that input. This approach would work if this were a onetime decision such as title to property. This issue is much different as it deals with the day to day business of IDL. The prospects of this resulting in a workable policy would be greatly enhanced through a process similar to the negotiated rule process as representatives of all interest group work through the issues. • Many of the questions received during the public meeting were off subject and lacked focus with respect to what the process has been, and where it may go. I was unable to determine from the proposal at the public meeting what course the subcommittee will follow with this proposal, if approved by the subcommittee would it be submitted to the entire land board for approval with rules developed pursuant to the negotiated rule process. Would there be changes to constitution or additional legislation? 	<p>The Subcommittee concluded, after considering the original proposal and responses to it and giving the issue further internal deliberation, that a new approach in leasing processes was warranted to implement the Land Board's constitutional and statutory duties.</p> <p>The Subcommittee's final recommendation will be submitted to the full Land Board for review and action at its May 19, 2009 meeting.</p>

<p>Long-term financial viability of grazing and other programs need additional evaluation:</p> <ul style="list-style-type: none"> • We recommend reconsideration of the grazing fee on endowment lands. The current fee fails to return a market rate to the endowments; and in several years has provided a negative return in violation of the Department's fiduciary responsibility. • I am concerned that these changes will lead us down a slippery slope to a point in which it is not economically viable for ranchers to actually produce something off unusable land, and a mass exodus from state lands will ensue. People are tired of dealing with the headache of continually fighting for their livelihood with seemingly no help from the various government agencies. I feel that several of these changes are going to foster nothing but bad relationships between agricultural lessees and the Idaho Department of Lands • We are concerned with the apparent lack of balance in determining asset value for the State Department of Lands holdings. It would appear that it is being weighted extremely heavily to a cash flow philosophy, which can lead to the deterioration of value over a longer period of time. Management should also consider stability and long term appreciation of the lands held by the State Department of Lands over the long term by placing weight on the long term rather than the short term cash flow philosophy. Then the State Department of Lands should have assets which remain stable and would increase in value and maintain a reasonable cash flow for the benefit of the schools. (Lands in good condition normally lease at the higher end of lease fees). • The Idaho State Land Board appears not to be following the income generating mandate of the Enabling Act and is costing the School Trust millions of dollars of revenue because fair market value is not being charged for general recreational use. This calls for the question: Is the Land Board treating all state land uses equally and equitably? 	<p>The Department will continue to evaluate all leasing programs through the development of individual program business plans as identified in the Asset Management Plan. Market studies to determine market rents (in the context of the state contract) and customer base stability will be included in this evaluation.</p> <p>Asset performance measures are described in the Asset Management Plan, and both cash-on-cash returns and land value appreciation are considered.</p>
<p>Lease Tenure</p>	
<p>Long term leases (more than 10 years) would be more stable and provide incentives for the lessee to invest in improvements:</p> <ul style="list-style-type: none"> • Our association supports the proposed 20 year term on leases. • The duration of grazing leases should be kept at 10 years or longer. This will allow livestock producers to plan for a longer term. • Lease terms should be longer than 10 years to give the lessee incentive for improvements. • The proposed increase in lease tenure from ten years to twenty years is strongly supported by our members. The longer term leases would reduce the administrative costs to the Department of Lands and would be an incentive for lessees to invest more of their time and resources into better management of the leases. Increased land tenure allows for more stability in planning and management of overall ranching units. • 20 year lease terms may be good to provide security to the lessee. • I agree that extending lease 15-20 years would (should) encourage more investment in improvements. 	<p>While the Department recognizes that an increased lease term could enhance asset performance, Idaho Code 58-307(1) states that no lease of state public school endowment lands, other than those valuable for stone, coal, oil, gas or other minerals, shall be for a longer term than ten (10) years. A code change would be required to allow leases longer than 10 years.</p>

<ul style="list-style-type: none"> • We support 20 year lease terms. • I like the 20 year life of the lease. • After listening to the comments of other people from the meeting it looks like people would favor a 20 year lease term in order to recoup the cost of improvements. • Many of us would up front the cost of improvement without asking for a rate reduction if we get improvement crediting and a 20 year lease term. This would also provide incentive to block state lands in intermingled and scattered sections. • Give serious consideration to extending the lease period from the existing 10 year period in order to provide security to lessees and the Endowment. • We feel that a twenty year lease would be economical for the state and of great value to lessees. Instead of being hindered by the risk associated with a possible conflicted lease every 10 years, lessees could plan for twenty years and our lands would benefit as a result. • [Long term leasing] allows the lessee to make improvements that increase production which would guarantee some degree of tenure. • If the current lessee is doing a good job they should be given renewal preference without going to auction. 	
<p>Long term leases reduce competition for leases:</p> <ul style="list-style-type: none"> • Ten-year leases provide twice as much opportunity for competition and allowing 20 year leases is simply another benefit for ranchers to avoid competition. The role of the Department of Lands is to support the interests of the beneficiaries of the land endowments not to provide certainty or continuity for ranchers. 	<p>Long term leases would be established to reduce administrative costs; increase the value of the lease, regardless of the use (lease type); and promote lessee investment in lease improvements. They would not be established to simply avoid lease competition.</p>
<p>Miscellaneous Comments</p>	
<p>Subleasing should be limited to three years:</p> <ul style="list-style-type: none"> • I believe subleasing of state grazing lands should not be allowed for more than 3 years. If the lessee changes management practices and is unable to use the lease for a short time, subleasing would be okay. However, I know several ranchers that have retired and are subleasing state lands for double the state rates. I believe there should be a 2 to 3 level value on grazing ground. A complete block of state land with water has greater value than 160 acres surrounded by a BLM allotment with no water. The value of AUMs on bigger blocks is double the value of smaller ones. 	<p>The issue of subleasing is outside the scope of the proposed changes; however, IDL and Land Board will review this issue in the future.</p>

Carbon Sequestration should be considered as an additional revenue stream:

- The states should consider selling carbon sequestration credits as an additional source of income along grazing.

The issue of carbon sequestration is outside the scope of the proposed changes; however, the Department is currently reviewing this issue for all land uses based on the direction of the Governor.