



STATE BOARD OF LAND COMMISSIONERS

C. L. "Butch" Otter, Governor and President of the Board  
 Ben Ysursa, Secretary of State  
 Lawrence G. Wasden, Attorney General  
 Donna M. Jones, State Controller  
 Tom Luna, Superintendent of Public Instruction

George B. Bacon, Secretary to the Board

Final Minutes  
 Regular Land Board Meeting  
 February 13, 2007

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, February 13, 2007 in Boise, Idaho. The meeting began at 9:00 a.m. in the second floor courtroom of the Borah Post Office building. The Honorable C. L. "Butch" Otter presided. The following members were present:

Honorable Attorney General Lawrence G. Wasden  
 Honorable State Controller Donna M. Jones  
 Honorable Superintendent of Public Instruction Tom Luna

Secretary to the Board Interim Director George Bacon

Secretary of State Ben Ysursa was absent for this meeting.

• **CONSENT**

A motion was made by Controller Jones to approve Consent Agenda items one through seven. Attorney General Wasden seconded the motion. The motion carried on a vote of 4-0, with Secretary of State Ysursa being absent for this vote.

**1. Director's Report – approved**

- A. Interest Rate on Department Transactions – December 2006; January 2007
- B. Timber Sale Official Transactions – November 23, 2006 through January 26, 2007
- C. Timber Sale Activity Report
- D. Legal Matter Summary
- E. Bureau of Surface and Mineral Resources, Official Transactions – November, December 2006

**2. Timber Sales – Staffed by Roger Jansson, Operations Chief-North, and Steve Douglas, Operations Chief-South – approved**

|                      |            |         |     |            |
|----------------------|------------|---------|-----|------------|
| A. Saddler           | CR-20-0260 | 2,800   | MBF | Bonner     |
| B. Whiskey Buck Pole | CR-40-0776 | 705     | MBF | Clearwater |
|                      |            | 203,750 | LF  |            |
| C. Cranberry Bench   | CR-40-0785 | 1,355   | MBF | Clearwater |
| D. Falls Crossing    | CR-40-0788 | 6,565   | MBF | Clearwater |
| E. Evans             | CR-40-0790 | 4,750   | MBF | Clearwater |

3. **Qualified Bidders List – Timber Sales** – Staffed by Bob Helmer, Chief, Bureau of Forest Management – **approved**

A. Stella-Jones Corporation, Post Office Box 217, Bangor, WI 54614-0217

4. **Request to Sell Surplus Property for the Department of Commerce and Labor at Caldwell** – Staffed by Perry Whittaker, Chief, Bureau of Real Estate – **approved**

*DEPARTMENT RECOMMENDATION:* Direct the Department to advertise the property for sale and conduct a public auction to dispose of this surplus property.

*BOARD ACTION:* Approved.

5. **Request to Accept Deed from the Idaho State Building Authority** – Staffed by Joanna Guilfooy, Deputy Attorney General, Department of Administration – **approved**

*DEPARTMENT RECOMMENDATION:* It is recommended that the Land Board approve to accept a deed from the ISBA for the property.

*BOARD ACTION:* Approved.

6. **Approval Request for Disclaimer of Interest to Steven and Janet Adams for Accretion Land Adjacent to the Salmon River in Lemhi County** – Staffed by Keith O'Connor, Bureau of Real Estate – **approved**

*DEPARTMENT RECOMMENDATION:* Direct the Department to issue a disclaimer of interest for one parcel totaling 4.49 acres of the former bed of the Salmon River and to require Steven G. and Janet L. Adams to pay a fee of \$600.00 to the Department of Lands for this transaction.

*BOARD ACTION:* Approved.

7. **Final Approval Request to Sell Elk Valley Subdivision Lots 10 and 11 in Elmore County** – Staffed by Tracey Rauch, Bureau of Real Estate – **approved**

*DEPARTMENT RECOMMENDATION:* Direct the Department to advertise and sell Lot 10 and Lot 11 of the Amended Elk Valley Subdivision, located in Elmore County, Idaho, at public auction based on a minimum bid of \$300,000 for each lot with proceeds to be deposited in the land bank for future acquisition of real property.

*BOARD ACTION:* Approved.

8. **Minutes** – **approved**

- A. Regular Land Board Meeting – December 12, 2006
- B. Special Land Board Meeting – December 22, 2006

*BOARD ACTION:* A motion was made by Attorney General Wasden to approve Consent Agenda item eight, December 12 and 22, 2006 meeting minutes. Superintendent Luna seconded the motion. The motion carried on a vote of 4-0, with Secretary of State Ysursa being absent for this vote.

- **REGULAR**

**9. Morrill Act Restrictions on Agricultural College Endowment** – *Presented by Kent Nelson, Counsel, University of Idaho*

*DEPARTMENT RECOMMENDATIONS:* (1) Direct the Department to prepare a letter to Idaho's Congressional delegation recommending the proposed changes; (2) Direct the Department to work in conjunction with the University of Idaho, and Idaho's Congressional Delegation, to amend the Morrill Act, 7 USC. Sections 303, 304 and 305 at the earliest possible opportunity to provide for the management of Agricultural College Endowment cash, land and expenses in the same fashion as other state endowments.

*DISCUSSION:* Governor Otter asked what the ramifications would be if the Board moved the Department's recommendation. Mr. Kent Nelson, Chief Legal Counsel, University of Idaho, responded that the University of Idaho is asking for authority to join with the Department of Lands to request that the Congressional delegation move forward to change the Morrill Act. If that action is successful, the Department and the University of Idaho would appear in front of the Board on other occasions to request approval for further actions on specific projects. Based on that additional explanation, Governor Otter stated he is more comfortable with the Department's recommendation.

As a side note, Attorney General Wasden recognized Mr. Nelson as a former employee of the Office of the Attorney General. He praised Mr. Nelson for his many years of service and stated that Mr. Nelson was instrumental in a variety of large projects, including Tamarack. Attorney General Wasden added for the record that Mr. Nelson is missed by his colleagues.

*BOARD ACTION:* Attorney General Wasden moved that the Board adopt the recommendations of the Department and that the Board direct the Department to prepare a letter to Idaho's Congressional delegation recommending the proposed changes as outlined in the briefing book. Also that the Board direct the Department to work in conjunction with the University of Idaho and Idaho's Congressional delegation to amend the Morrill Act, 7 USC, Sections 303, 304 and 305 at the earliest possible opportunity and to provide for the management of Agricultural College Endowment cash, land and expenses in the same fashion as other state endowments. Controller Jones seconded the motion. The motion carried on a vote of 4-0, with Secretary of State Ysursa absent for this vote.

**10. Endowment Fund Investment Board Manager's Report** – *Presented by Larry Johnson, Manager of Investments, EFIB*

Mr. Johnson reported that fiscal year-to-date returns are 9.8%. For the benefit of new Board members, Mr. Johnson stated he generally attends every Land Board meeting to briefly discuss monthly results and to highlight areas of concern. The Endowment Fund Investment Board attends two Land Board meetings each year to provide a more in-depth report on the Endowment Fund and to discuss annual audit results. In addition, the Endowment Fund Investment Board meets at least once every quarter to review all of its managers.

No action was taken on this agenda item.

**11. Final Approval Request for Davison Land Exchange** – Presented by Bob Brammer, Acting Assistant Director, Lands, Minerals, Range

*DEPARTMENT RECOMMENDATION:* Direct the Department to complete the exchange with L. G. Davison & Sons, Inc.

*DISCUSSION:* Governor Otter asked if the difference in price for the harvest averaged out between the two properties. Mr. Perry Whittaker, Chief, Bureau of Real Estate, responded that the Department made sure it harvested X dollars of timber based on the appraisal at that point to achieve an equal value trade. Governor Otter noted it was a “push.” Mr. Whittaker agreed.

Controller Jones commented that land exchanges make sense. She applauded the action of the Department.

*BOARD ACTION:* A motion was made by Controller Jones to direct the Department to complete the exchange with L. G. Davison & Sons, Inc. Attorney General Wasden seconded the motion. The motion carried on a vote of 4-0, with Secretary of State Ysursa being absent for this vote.

**12. Floathome Rental Rates** – Presented by Mike Murphy, Chief, Bureau of Surface and Mineral Resources

*DEPARTMENT RECOMMENDATION:* (1) The Department recommends that the Board rescind the second paragraph of the July 6, 1999 “Maintenance and Moorage Rate Facility Policy” related to floathome moorage rates, thereby allowing the market and individual commercial operator’s business situations to establish floathome moorage rates. Should the Board not adopt this recommendation; the Department recommends that the Board establish a subcommittee to develop potential lease terms and a floathome moorage rate structure. Based on the Board’s discussion during the November 12, 2006 meeting, the Department has already collected leasing information from neighboring states related to floathomes and continues to pursue leasing options and relevant market information. (2) The Department recommends that if the portion of the Board policy related to floathome moorage rates is rescinded, that the remaining portions of the policy stay in place under the new title of “Marina Maintenance Policy” in order to protect public trust values. (3) The Department also recommends that the Board direct the Department to issue a letter to the floathome owners and commercial marina operators clarifying the Board’s position on this matter and its authority relative to the Floating Homes Residency Act.

*DISCUSSION:* A written transcript is available upon written request. Contact Susan Terry, Idaho Department of Lands, Post Office Box 83720, Boise ID 83720-0050 or email [sterry@idl.idaho.gov](mailto:sterry@idl.idaho.gov).

*BOARD ACTION:* Controller Jones moved that the Board establish a subcommittee to develop lease terms and floathome moorage rate structure, and other tasks as assigned by this Board, and to report back to the committee within ninety days. In adding to the comments on this motion, Governor Otter noted that these problems have been around for a long time. The motion carried on a vote of 4-0, with Secretary of State Ysursa being absent for this vote.

**13. Tamarack Resort Lease M-5042 Authorization for Collateralization of Ski Lift Financing** – Presented by George Bacon, Interim Director, Department of Lands

*DEPARTMENT RECOMMENDATION:* Direct the Department to execute the “Authorization for Ski Lift Financing” to authorize and approve Tamarack’s sale/leaseback agreement of the Whitewater and Wildwood ski lifts on the leased premises under the stated terms and conditions and contingent on Tamarack demonstrating to the Department that an approximate equal value (\$5,088,279.41) of improvements are planned and will, in fact, be constructed on the ski hill as it benefits the leased premises over the next 72 months.

*DISCUSSION:* Attorney General Wasden asked about the lease-back and lease purchase provisions. He asked if the State is at risk in terms of cash flow for its ownership of underlying lands. Mr. Follett stated he does not believe there is any significant risk to the underlying lands, and there would be a reclamation bond to the extent that the two lifts were ultimately removed from the ski hill. He noted that the lifts, while to some extent marketable, are designed specifically for that ski hill and retrofitting, along with the actual cost of removing and replacing the lifts on another hill, would be relatively significant. If the buyout provision of the sixty-month mark is not effected, then at seventy-two months Tamarack will be able to purchase the lifts, but they will then be required to pay more than they would under a typical lease with an option to purchase arrangement. That typical lease, with a typical buyout provision, would be effective on the sixtieth month option but not on the seventy-two month option. If Tamarack does choose to go to beyond the sixtieth month to the seventy-second month provision, they would be paying more to reacquire the lifts. He noted there may be a greater risk that Tamarack may not be able to come up with the additional money at the time of the seventy-second month option. However, in the worst case scenario, if the two lifts were to be removed, there would be a reclamation bond that would replace the status of the hill prior to the entrance of the lifts.

Attorney General Wasden asked if there was a default on the lease-back payments on the lifts to the extent that if the lifts would be removed or inoperable, would the State have much risk as opposed to the refurbishment of the ground itself. Would the State lose the potential for owning and operating the facility with regard to those two lifts. Mr. Follett stated that is correct. The State would lose the value of those two lifts. In terms of the overall operation of the ski hill, it is useful to note that the Phase I underlying functional ski hill would remain completely functional even if the two lifts were removed from the ski facility. Mr. Follett noted one further point might be that to the extent Tamarack defaults on this lease, they would then be in default of the underlying land lease, and the State could affect remedies on a breach of the entire underlying land lease.

Attorney General Wasden commented that having a viable ski operation is in the State’s best interest because the viability of Tamarack creates the greatest value for the lands that the State is leasing. Maintaining this kind of variability in Tamarack’s financing scheme works to the State’s advantage in the long run. Mr. Follett stated from his legal perspective it serves the business purposes and benefits of the State to assist Tamarack in continuing to develop and to continue its viability in terms of its business operation, which improves and increases the viability of the State’s land and the operation of the lease. As Mr. Bacon indicated, this authorization would require Tamarack to add improvements to the ski hill area in an amount equal to this loan, approximately \$5 million. The State’s understanding is that Tamarack has committed and intends, for example, to build a mid-mountain lodge. Tamarack will be adding that improvement which will be in value probably in excess of the amount of this loan request.

Superintendent Luna asked if Tamarack would be in breach of the original agreement reached on this land lease should they default on the new loan. He asked if a performance bond is attached to the lease to protect the State in case that should happen. Mr. Follett stated his understanding is that the performance bond would not cover this situation, and the reason is that the performance bond covered the construction of the Phase I development, the underlying necessary functional lifts and certain other improvements. If Tamarack were to default on this lease payment and lose those two lifts, the State would not then be in a position to reacquire those lifts or to have those lifts placed back on the mountain.

Director Bacon noted there is no performance bond for the project. There is a reclamation bond. If things need to be restored back to the original condition due to a need to dismantle the ski hill, funds would be available. A performance payment bond was required in the original lease. That term was modified and is no longer required. Those bonds covered proposed buildout so that basically Tamarack had to place in escrow an amount of money equal to the amount of money they expected to spend that year. If they expected to spend \$5 million building a restaurant on state land, they had to put \$5 million in escrow ahead of time so the Department knew it had the money to pay workmen, et cetera, should a default occur. After Tamarack was established, the Department decided that the performance payment bond requirement was onerous on the continued success of the operation, and the lease was modified to delete that requirement.

Attorney General Wasden stated his understanding is that the Board is being asked to authorize an action that has already taken place. He asked if that is correct. Mr. Follett stated that is correct. This financing arrangement was effected by Tamarack in December 2006. It has been represented by Tamarack that if they do not acquire Land Board approval, they will undo that deal.

Attorney General Wasden noted the presence of Tamarack representatives in the audience. He stated he would like to ask them some questions with the Governor's approval.

Tamarack Representatives, Steve Millemann and Scott Turlington, joined the meeting.

Attorney General Wasden commented he is concerned that this financing arrangement was completed prior to Land Board approval. He asked if they could help him understand why that occurred. Mr. Millemann responded the simple answer is that Tamarack understood, based on the 2006 authorization given by the Land Board, that this mechanism had already been approved. The current authorization before the Board is essentially identical to the 2006 authorization, save and except, that authorization was to use the mechanism to acquire and construct the lifts. This authorization is to use exactly the same mechanism to finance construction and operational activities. Tamarack did not learn until January that the matter needed to come before the Board in the discretion of the Department, whose discretion Tamarack deferred to in this matter. The transaction closed in December pursuant to an expressed written condition that it was subject to the Department's, and this Board's, final approval. That condition has been confirmed in writing.

Attorney General Wasden stated his understanding is that each time one of these matters is considered by Tamarack in the future, Tamarack needs to come back to the Board for approval. He asked Mr. Millemann if that is also his understanding on behalf of Tamarack. Mr. Millemann stated that is his understanding.

