



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 16, 2010

Prior to beginning the State Board of Land Commissioners' meeting, Governor Otter presented a Certificate of Service to Department of Lands' North Operations Chief Roger Jansson in recognition of his forty years of service to the Land Board and to the citizens of the State of Idaho.

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, February 16, 2010, in Boise, Idaho. The meeting began at 9:02 a.m. in the second floor courtroom of the Borah Building. The Honorable Governor C. L. "Butch" Otter presided. The following members were present:

Honorable Secretary of State Ben Ysursa
Honorable Attorney General Lawrence Wasden
Honorable State Controller Donna Jones
Honorable Superintendent of Public Instruction Tom Luna

For the record, Governor Otter noted that all members of the Board were present.

• **CONSENT**

A motion was made by Secretary of State Ysursa to accept the Consent Agenda in its entirety. Attorney General Wasden seconded the motion. The motion carried on a vote of 5-0.

1. Director's Report – approved

- A. Interest Rate on Department Transactions – February 2010
- B. Timber Sale Activity Report
- C. Timber Sale Official Transactions – January 2010
- D. Legal Matter Summary
- E. Division of Lands, Minerals, Range Official Transactions – January 2010
- F. Fire Settlement Information

2. Timber Sales – Staffed by Roger Jansson, Operations Chief-North, and Kurt Houston, Operations Chief-South – approved

<u>NORTH OPERATIONS</u>				<u>COUNTY</u>	<u>AREA OFFICE</u>
A. POL Poles 2010	CR-200276	725	MBF	Bonner	Pend Oreille (Sandpoint)
		6500	POLES	Bonner	Pend Oreille (Sandpoint)
B. McCormick Meadows	CR-200283	3700	MBF	Bonner	Pend Oreille (Sandpoint)
C. Last Boathouse	CR-410050	5550	MBF	Clearwater	Ponderosa (Deary)
<u>SOUTH OPERATIONS</u>					
D. Pumpkin Patch	CR-434017	2992	MBF	Idaho	Craig Mt (Craigmont)
E. North End	CR-600176	7762	TONS	Boise/Valley	Southwest (Boise)
F. Kelly West	CR-800106	5125	MBF	Madison	Eastern (Idaho Falls)

3. Lava Hot Springs Foundation, Tumbling Waters Motel Lease – Staffed by Mark Lowe, Executive Director, Lava Hot Springs Foundation and Jennifer Marcus, Deputy Attorney General, Contracts and Administrative Law Division, Office of the Attorney General – approved

DEPARTMENT RECOMMENDATION: That the Board approve the Lava Hot Springs Tumbling Waters Motel lease and direct the Lava Hot Springs Foundation to proceed with lease issuance.

DISCUSSION: Superintendent Luna noted that 10% of gross receipts and 5% of quarterly receipts are collected as rent. He asked what those revenues generate in relation to the market value of the property. Deputy Attorney General Jennifer Marcus stated it is her understanding that the revenue is comparable to the revenue under the prior lease.

Superintendent Luna asked if there has been any effort to tie the percent of collected gross receipts to what the return is as it relates to the current market value of the property. Ms. Marcus stated she does not believe that analysis has been done. Superintendent Luna stated he would like to have that analysis at some point considering the conversation the Board will be engaged in later in this meeting concerning rents and leases and their relationship to market value.

Governor Otter asked if Superintendent Luna wished to defer this agenda item. Superintendent Luna stated no, but he would like to have the information soon. He is interested in figures for the past ten years.

Governor Otter informed Director Bacon that the Board is making a request to review the figures and the market value information.

BOARD ACTION: Approved.

4. Revision of Memorandum of Understanding between the Idaho State Historical Society, Idaho Department of Lands and Idaho Botanical Garden – Staffed by Janet Gallimore, Executive Director, Idaho State Historical Society – approved

DEPARTMENT RECOMMENDATION: That the Board approve the revised MOU between the ISHS, IBG and IDL, which changes IDL’s role in the MOU from Administrator to Advisor.

DISCUSSION: Governor Otter requested the same information on this agenda item that Superintendent Luna requested in the Lava Hot Springs Foundation, Tumbling Waters Motel lease agenda item. He asked if the Memorandum of Understanding reflects market value. Ms. Janet Gallimore, Director of the Idaho State Historical Society, stated the Memorandum of Understanding has no fiscal impact. The MOU is programmatic in nature. The Idaho Botanical Garden and the Idaho State Historical Society is currently engaged with legal counsel to revise the lease, and an analysis of the market value is being worked on at the present time. It is expected that the lease will come forward to the Board for approval no later than July 2010.

BOARD ACTION: Approved.

5. Endowment Fund Investment Board Manager's Report – Staffed by Larry Johnson, Manager of Investments, EFIB – approved

A. Monthly Report

- 1) The fund has at least three years of reserves for each endowment fund.
- 2) The Endowment Fund Investment Board will meet on February 17, 2010.
- 3) The Investment Board's proposed administrative rules relating to school bonds were rejected by the germane House and Senate Committees. However, the Investment Board retains legal authority to issue guarantees through the end of the legislative session and is optimistic that a permanent solution can be found before that authority expires.

B. Investment Report

- 1) The fund lost 2.3% in January as equity markets were down.
- 2) Fiscal year-to-date returns are 15.4%.
- 3) The fund is 70 basis points ahead of its benchmark for the seven months of the fiscal year.
- 4) To date, February returns have been barely positive so the fund has held at about the 15.4% level through February 15, 2010.

DISCUSSION: Governor Otter asked what the 2.3% represents in dollars. Mr. Johnson stated that would be approximately \$20 million.

6. Minutes – approved

Regular Land Board Meeting – January 19, 2010

• **REGULAR**

7. Recommendations of the Cottage Site Subcommittee – Presented by Secretary of State Ben Yursa and Superintendent of Public Instruction Tom Luna, Cottage Site Subcommittee

Subcommittee Recommendations from the Cottage Site Subcommittee Report, February 16, 2010:

The Subcommittee is well aware of the constitutional mandate of Article IX, Section 8, and the duty of undivided loyalty to the beneficiaries of the endowment trust. However we also recognize that severely impairing or redoing longstanding business relationships with our lessees is not in the best interest of our trust beneficiaries. We are also aware that raising rents too high would result in these lands going unleased, to the detriment of the beneficiaries. Therefore your Subcommittee is proposing the following:

The Subcommittee believes that the long term solution to the never ending cottage site imbroglio is to dispose of the lots in a reasonable, market savvy manner. The proceeds could then be invested in other assets which could better enhance the endowments. In that vein, we recommend that the department conduct the necessary analysis and recommend to the Land Board by January 2011, specific long term land development plans of state endowment land on or adjacent to cottage sites. These plans shall deal with the sale or exchange options where practicable and in the best interests of the trusts, keeping in mind the unique circumstances including public and private ownership at each lake.

A target annual lease rent (“target rent”) will be calculated at 4.0% of the average appraised value of each lot over the most recent 10 years (the sum of the 10 prior years appraised or indexed values for each lot divided by 10). Actual rent will increase or decrease annually from the prior year’s rent at a constant percentage rate to reach the target rent in year five. Every five years from the effective date of the lease, the actual rent will be recalculated using this same methodology and appraised values of the lot for the most recent 10 years. Lot values shall be appraised by the applicable county assessor or determined by an Idaho Certified Appraiser, at the discretion of the department. At the end of each five year period under the lease, the target rent will be calculated at 4.0% of the average value for the duration of the lease.

The 4% used in the formula falls within the range of rates mentioned above and will still generate interest in the market. It provides a reasonable rate of return and generates a 9% per year increase over the first five years to the beneficiaries.

Premium rent is the proportion of leasehold value (sales price less the value of tenant improvements) that is paid to the State when the cottage sit lease is transferred from one party to another. Premium rent is currently set at 10% of the leasehold value. Since 2003, cottage site owners have realized in excess of \$25 million for the use of State endowment land while the endowment received only \$2.7 million.

To correct this inequity the Subcommittee recommends that the premium rent rate be increased gradually to 50% of the leasehold value upon transfer of the lease. The Subcommittee believes that a 50% premium rent rate will have the effect of maximizing the return to the beneficiaries, and that any higher rate would be counterproductive, and act as a disincentive for selling leaseholders to be active in seeking the maximum sale price.

Lease language will include a leasehold/premium rent calculation that will be phased in as follows:

<u>Year</u>	<u>Distribution of Leasehold Value</u>	
2011	10% to the State	90% to the lessee
2012	20% to the State	80% to the lessee
2013	30% to the State	70% to the lessee
2014	40% to the State	60% to the lessee
2015 and thereafter	50% to the State	50% to the lessee

The rental rate described above, coupled with the premium rent formula, meets the Land Board’s fiduciary responsibility and provides sound business practices to protect the market for cottage site leases.

The term of the lease is to be for 35 years, as was contemplated when the Land Board unanimously approved a motion to seek legislation allowing that length of lease. However, the proposed lease will also contain language which is in the current lease that would allow the Board to cancel the lease and sell or exchange the property upon proper notice.

DISCUSSION: A verbatim transcript is available by written request to Susan Terry, Idaho Department of Lands, P O Box 83720, Boise, Idaho 83720-0050, or by email to sterry@idl.idaho.gov.

BOARD ACTION:

1. A motion was made by Secretary of State Ysursa that the Board adopt the recommendation of the Subcommittee. Superintendent Luna seconded the motion. The motion was subsequently withdrawn by Secretary of State Ysursa with concurrence of Superintendent Luna.
2. A motion was made by Secretary of State Ysursa that the Board adopt the Subcommittee Recommendation Number One, and to include other language with the intent of unifying the ownership of the land either by sale, exchange or other means with everything on the table, and to have the Department of Lands report back to the Board by January 2011. Attorney General Wasden seconded the motion. The motion carried on a vote of 5-0. (Aye: Otter, Ysursa, Wasden, Jones, Luna; Nay: None)
3. A motion was made by Secretary of State Ysursa that the new leases be offered for ten years. He noted the leases contain the provision that the land can be sold or exchanged upon a hundred and eighty day notice. Controller Jones seconded the motion. The motion carried on a vote of 5-0. (Aye: Otter, Ysursa, Wasden, Jones, Luna; Nay: None)
4. A motion was made by Secretary of State Ysursa that items two (four percent; five-year phase-in on ten-year plan) and three (premium rent) of the Subcommittee report be deferred for one month. During that interim time, the Subcommittee will meet with Board members, staff, citizens and cottage site representatives, Mr. Lempesis and others, to try to work out something that can be brought back before the Board at the March meeting. Superintendent Luna seconded the motion. Superintendent Luna noted when the Board comes back next month his expectation is that a decision will be made. Secretary of State Ysursa stated that would be his sincere hope. Governor Otter reluctantly supported this motion and put the Board on notice that he will not delay this decision for another month after the March meeting. The motion carried on a vote of 5-0. (Aye: Otter, Ysursa, Wasden, Jones, Luna; Nay: None)

● **INFORMATION**

None

● **EXECUTIVE SESSION**

None

