

R652. Natural Resources; Forestry, Fire and State Lands.

R652-30. Special Use Leases.

R652-30-100. Authority.

This rule implements Section 65A-7-1 which authorizes the Division of Forestry, Fire and State Lands to prescribe standards and conditions for the leasing and development of surface resources on state lands.

R652-30-200. Surface Leasing of Sovereign Lands.

1. The division may issue special use leases for terms of up to 51 years for surface uses, excluding grazing, on all sovereign lands.
 2. In exceptional cases, the division may issue leases for a term of up to 99 years when it has been determined that such a term would be in the best interest of the beneficiaries.
 3. The division shall issue leases for the term most consistent with land management objectives found in R652-2.
- The term of a lease will not normally be for a period longer than specified below for a particular lease type.

- (a) Military: ten years
- (b) Agricultural: 20 years
- (c) Recreational: 20 years
- (d) Telecommunications: 20 years
- (e) Commercial: 51 years
- (f) Industrial: 51 years
- (g) Residential: 51 years
- (h) Governmental (Other than Military): 51 years

R652-30-300. Classifications of Special Use Leases.

Special use leases are classified either as standard or unit development special use leases. Applications may be made under the following categories.

1. Standard

The standard classification may include the following uses:

- (a) Commercial: Restaurants, service stations, boating facilities, motels, retail businesses.
 - (b) Industrial: Testing sites, mining or extraction facilities, manufacturing plants.
 - (c) Residential: A lease on which the applicant intends, at the time of lease issuance, to establish a private, permanent home and legal domicile.
 - (d) Agricultural: Crop production, improved pasture lands.
 - (e) Recreational: Outdoor sports, picnicking facilities, open space, conservation zones, recreational cabin sites.
2. Unit Development Special Use Lease

The unit development lease may be issued when the proposed land use requires a planning and decision process beyond the scope of the standard special use lease procedures.

R652-30-310. Requests for Proposals.

1. The division may issue requests for proposals (RFP) for any sovereign land on which the director has determined the potential for development exists.
2. A proposal submitted in response to the RFP may be for sale, lease, joint development, or exchange and shall receive protected status until the director selects the preferred proposal.
3. Proposals will be evaluated on the criteria found in R652-30-500(2)(g).
4. Requests for proposals shall be advertised pursuant to R652-30-500(2)(d) as well as any other advertising methods which the director determines will increase exposure of the subject property to qualified applicants. The advertisement shall indicate where a person interested in submitting a proposal may obtain an information packet.
5. Proposals shall contain a non-refundable application and review fee as specified in R652-4.
6. Applicants selected in an RFP process shall be exempt from R652-30-500(2)(b) through R652-30-500(2)(e).

R652-30-400. Lease Rates.

1. The division shall receive at least fair market value for surface leases. Fair market value of the subject property shall be determined by the division based upon a market analysis including:
 - (a) the income-producing ability of the highest and best use of the property; and
 - (b) a market study of comparable values of similar properties.
2. Lease rates shall be based on fair market value. Lease rates may be determined by the division by:
 - (a) multiplying the fair market value of the subject property by the current division-determined interest rate.
 - (b) comparable lease data which may include percentage rent based on either net or gross income with a guaranteed minimum.
 - (c) using either a fixed rate per acre or a crop-share formula for agricultural leases providing that the rental rate is customary and reasonable. The division may require the lessee to acquire adequate crop insurance.
3. The division may periodically establish minimum lease rates for special use leases based on the costs incurred in administering the leases, and a desired minimum rate of return.

4. Rental Review Procedures for Special Use Leases

(a) Standard

i) Base rentals shall be adjusted as of the effective date specified in the respective lease through a lease review conducted by the division. Any lease which is reviewed within one year of the effective date specified in the lease shall be deemed to have been reviewed timely and any adjustment in base rentals shall be as of the effective date.

ii) Adjustments in base rentals may be based upon changes in the market value, changes in established indices, or other methods which may be appropriate and in the best interest of the beneficiaries. The determination of which method to use may be based upon an analysis of the cost effectiveness of performing the review.

iii) When using established indices, the rate of adjustment shall be the sum of the indices established for the years involved in the review period, unless the rate of adjustment exceeds a maximum adjustment rate, or fails to reach a minimum rate of adjustment as specified in the respective lease. If no maximum adjustment rate or minimum rate of increase is specified in the lease, then the percent change will increase or decrease according to the above described rate of adjustment.

iv) The index/indices used by the division shall reflect the percent of change to be required in the base rental of applicable leases. The index/indices may be amended at any time during the first quarter of the calendar year using information from any or all of the following sources:

(A) Changes in assessed value for the most current year for the appropriate category of land as published by the State Tax Commission

(B) The applicable component of the CPI-U

(C) The applicable Implicit Price Deflators for the Gross National Product

(D) Data from market analyses of comparable leases

(E) Public comment

v) A separate index shall be established for each of the following lease types:

(A) Commercial/industrial

(B) Residential

(C) Agricultural

(D) Recreational

vi) For the purpose of this rule, the Military, Telecommunications, and Governmental lease types shall be adjusted using the Industrial Index.

vii) The adjusted rental amount as determined pursuant to this rule shall be rounded to the nearest number evenly divisible by \$10.

(b) Unit Development

Rental adjustments for unit development leases shall be based upon changes in the market value of the property or the applicable index as may be appropriate as determined by the division.

(c) Suspension, Deferral, and Waiver of Lease Rental Adjustment

The director may suspend, defer, or waive the adjustment of base rentals in specific instances when justified by natural disasters or periods of economic crises, based on a written finding that the suspension, deferral, or waiver is in the best interest of the beneficiaries.

R652-30-500. Application Procedures.

1. Submittal

Applications for surface leases may be submitted to the Salt Lake Office, or area offices during office hours.

2. Competitive Leasing

(a) The division may advertise a parcel of land as open and available for lease.

i) The advertising shall be done pursuant to R652-30-500(2)(d) and R652-30-500(2)(e), as well as any additional advertising the director deems appropriate and shall be considered as a substitute for the competitive advertising process described in R652-30-500(2)(b).

ii) Applications received in response to division advertising will be evaluated pursuant to R652-30-500(2)(g).

(b) Upon receipt of any special use lease application, the division shall solicit competing lease applications except as provided for under R652-30-500(3). If the subject parcel meets the established criteria for sale then applications to purchase shall also be solicited.

(c) The applicant may request an exemption from R652-30-500(2)(b) by petitioning the director to provide for rules exempting that particular class of applications from the competitive process. Pursuant to this rule, the following classes of leases are exempt from the requirements of R652-30-500(2):

i) Communication sites within division approved Communication Site Locations.

ii) Mineral and oil and gas extraction facilities when the division does not own the mineral estate.

(d) Competing applications will be solicited through publication at least once a week for three consecutive weeks in one or more newspapers of general circulation in the county in which the lease is offered. At least 30 days prior to auction or acceptance of a bid, certified notification will be sent to lessees/permittees of record, adjoining permittees/lessees and adjoining landowners. Notices will also be posted in the local governmental administrative building or courthouses.

(e) Notification and advertising shall include a general description of the parcel including township, range, and section, and any other information which may create interest in the parcel without violating the confidentiality of the initial application. The successful applicant shall bear the cost of the advertising.

(f) An applicant may claim that information provided to the division on the initial application except for the legal description and the lease type should be protected under Section 63G-2-305(1) or 63G-2-305(2). The claimant shall submit a written request for protected records status pursuant to R652-6-500(3). The appropriate information shall receive protected records status during the solicitation period.

(g) The division shall allow all applicants at least 20 days from the date of mailing of notice, as evidenced by the certified mail posting receipt (Postal Service Form 3800), within which to submit a sealed bid containing their proposal to lease, purchase or exchange the subject parcel. Applicants not submitting a proposal within the prescribed time period shall have their application(s) rejected. The sealed bid proposal for a lease shall contain the first year's rental. A sealed bid proposal for a sale shall contain 10% of the offer to purchase. These deposits are refundable if the applicant is not successful or if the applicant withdraws the application prior to the issuance of the record of decision. Competing bids are evaluated using the following criteria:

- i) Income potential,
- ii) Ability of proposed use to enhance adjacent state property,
- iii) Proposed timetable for development,
- iv) Ability of applicant to perform satisfactorily, and
- v) Desirability of proposed use.

(h) The director shall select the preferred applicant based on R652-30-500(2)(g). If the preferred application is for a lease, it shall proceed through the review process as outlined in R652-30-500(5). If the preferred application is for an exchange, it shall be reviewed pursuant to R652-80-200.

(i) If a competing application received pursuant to R652-30-500(2) qualifies as a unit development lease as defined in R652-30-1100, the division shall extend the sealed bid proposal deadline to 120 days.

3. Non-competitive Leasing

Subsequent to completing public notification requirements of Subsection 65A-7-5(4)(c) and R361-1-4(E), the division may enter into surface leases through negotiation rather than a competitive process. The proposed use shall be evaluated using the criteria in R652-30-500(2)(g) with particular attention to its desirability in the context of contributing to the sovereign land management objectives in R652-2. This action shall be documented in a record of decision which shall be subject to consistency review pursuant to R652-9.

4. Application Requirements

(a) All applications shall be received with an application processing charge, a deposit to cover applicable advertising and appraisal costs, and the lease processing charge as established by the division which shall all be refunded if the subject parcel is withdrawn for planning purposes. The director may waive any of these charges when the application is to be processed non-competitively.

(b) The deposit to cover advertising, appraisal costs and the lease processing charge shall be forfeited if the lease is offered but not executed by the applicant.

5. Refunds and Withdrawals

(a) If an application for a surface lease is rejected, all monies tendered by the applicant, except the application fee, will be refunded.

(b) Should an applicant desire to withdraw the application, the applicant must make a written request. If the request is received prior to the time that the application is considered for formal action, all monies tendered by the applicant, except the application fee and any amounts expended on advertising or appraisals prior to the receipt of the withdrawal request, will be refunded. If the request for withdrawal is received after the application is approved, all monies tendered are forfeited to the division, unless otherwise ordered by the division for a good cause shown.

6. Application Review

(a) Upon receipt of an application, the division shall review the application for completeness. Applicants submitting incomplete applications shall be allowed 60 days to provide the required data. Incomplete applications not remedied within the 60-day period may be denied, and the application fee forfeited to the division.

(b) The lease must be executed by the applicant and returned to the division within 60 days from the date of applicant's receipt of the written lease. Leases not received within the 60-day period shall be subject to immediate cancellation without further notice.

R652-30-600. Special Use Lease Provisions.

Each lease shall contain provisions necessary to ensure responsible surface management, including those provisions enumerated under Section 65A-7-6 and the following provisions: the rights of the lessee, rights reserved to the lessor; the term of the lease; annual rentals and royalties; reporting of technical and financial data; reservation for mineral exploration and development and other compatible uses; operation requirements; lessee's consent to suit in any dispute arising under the terms of the lease or as a result of operations carried on under the lease; procedures of notification; transfers of lease interest by lessee; terms and conditions of lease forfeiture; and protection of the state from liability from all action of the lessee.

R652-30-610. Utah Lake Agricultural Leases.

The division will manage agricultural use on the bed of Utah Lake with substantial deference to the interests of immediate upland owners and existing individual boundary agreements. Notwithstanding Sections R652-30-400, 500 and 600 these leases will be issued in accordance with the following:

1. Agricultural leases will be negotiated for historical agricultural use on sovereign land.
2. Lease applications must be submitted to the division by October 1 annually for agricultural use the following season. The applicant shall specify the number of acres requested and provide proof of historical use satisfactory to the division. The director shall waive the application fee or credit the application fee against rental due.
3. Unless otherwise specified in a sovereign land boundary agreement agricultural leases shall be limited to a term of one year with an option to extend the lease for one year at a time. If a longer term is negotiated in a boundary agreement, the lessee shall apprise the division by October 1 annually of lessee's intent to use the land the following season.
4. Leases will be issued only to the immediate upland owner or to another person with the consent of the immediate upland owner.
5. The lessee may fence the sovereign lands under lease. The fence may extend lakeward only to the water's edge and must be withdrawn as the lake level rises.
6. The lease fee will be determined by the division and in consultation with interested parties, who are invited to provide any information that may be relevant in setting lease fees. The division's calculations will be based on acreage. The fee will be reviewed every three years and adjusted to reflect fair market value.
7. A lease issued pursuant to a boundary agreement shall terminate upon conveyance of the upland to another owner.
8. Crops must be harvested from sovereign land before October 1 annually. The land under lease shall be open to the public for waterfowl hunting, upland game hunting and traditional public uses.
9. No land leveling, ditching, or watercourse alteration on the sovereign land will be allowed.
10. Public trust values will be considered prior to issuance of a lease. Lands with significant wildlife, wetland or other values may be excluded from leasing.
11. Issuance of a lease does not exempt the lessee from jurisdictional authority and requirements administered by the US Army Corps of Engineers.
12. Agricultural practices which adversely affect water quality will not be allowed. Implementation of improper practices, as determined by the appropriate state or federal agency, shall subject the lease to termination.

R652-30-800. Bonding Provisions.

1. At the time of initial lease payment, the lessee may be required to post with the division a bond in the form and amount as may be determined by the division to assure compliance with all terms and conditions of the lease.
2. All bonds posted on surface leases may be used for payment of all monies, rentals, and royalties due to the lessor, also for costs of reclamation and for compliance with all other terms and conditions of the lease, and rules pertaining to the lease. The bond shall be in effect even if the lessee has conveyed all or part of the leasehold interest to a sublessee, assignee, or subsequent operator until the lessee fully satisfies the lease obligations, or until the bond is replaced with a new bond posted by the sublessee or assignee.
3. Bonds may be increased in reasonable amounts, at any time as the division may order, provided lessor first gives lessee 30 days written notice stating the increase and the reason(s) for the increase.
4. Bonds may be accepted in any of the following forms at the discretion of the division:
 - (a) Surety bond with an approved corporate surety registered in Utah.
 - (b) Cash deposit. However, the state will not be responsible for any investment returns on cash deposits.
 - (c) Certificate of deposit in the name of "Utah Division of Forestry, Fire and State Lands and lessee, c/o lessee's address", with an approved state or federally insured banking institution registered in Utah. The certificate of deposit must have a maturity date no greater than 12 months, be automatically renewable, and be deposited with the division, the lessee will be entitled to and receive the interest payments. All certificates of deposit must be endorsed by the lessee prior to acceptance by the director.
 - (d) Other forms of surety as may be acceptable to the division.

R652-30-900. Lease Assignments and Subleases.

1. Any special use lease may be assigned or subleased to any person, firm, association, or corporation qualified to hold a state lease, provided, however, that all assignments and subleases are approved by the division; and no assignment or sublease is effective until approval is given. Any assignment or sublease made without such approval is avoidable at the division's option.
2. An assignment or sublease shall take effect the day of the approval of the assignment or sublease. On the effective date of any assignment or sublease, the assignee or sublessee is bound by the terms of the lease to the same extent as if the assignee or sublessee were the original lessee, any conditions in the assignment to the contrary notwithstanding.
3. An assignment must be a sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the lease number, the land involved, and the name and address of the assignee, and the interest transferred.
4. An assignment shall be executed according to division procedures.
5. Additional occupants of a telecommunication facility must abide by all the requirements of this rule. In addition, the division shall charge each communication site sublessee an amount equal to 50% of the current rental being charged the lessee.
6. As a condition of approval of assignments of sublease the division shall require:
 - (a) The assignee to accept the most current applicable lease form unless continuation of the existing form is clearly in the best interests of the beneficiaries.

- (b) The lessee to be acceptable to the lessor.

R652-30-1000. Lease Amendments.

1. Special use leases issued using a competitive process may be amended as to the following terms and conditions with the lessee's consent, and with prior notice to the division, upon the payment of all appropriate processing and other charges, and based on a written finding that the amendment would be consistent with the sovereign land management objectives found in R652-2.

- (a) Purpose of the lease;
- (b) Term of the lease;
- (c) Rental or royalty amount;
- (d) Rental or royalty due date; and,
- (e) Decrease or increase in contiguous acreage, provided that total amended acreage cannot exceed 125% of the original acreage. If the total amended acreage exceeds 125% of the original acreage, the amendment must be advertised pursuant to R652-30-500(2).

2. Special use leases not issued using a competitive process may be amended as to the following terms and conditions with the lessee's consent, and with prior notice to the division, upon the payment of all appropriate processing and other charges, and based on a written finding that the amendment would be consistent with the sovereign land management objectives found in R652-2.

- (a) Purpose of the lease;
- (b) Term of the lease;
- (c) Rental or royalty amount;
- (d) Rental or royalty due date; and,
- (e) Decrease or increase in contiguous acreage, when the amendment to increase acreage is advertised pursuant to R652-30-500(2).

R652-30-1100. Unit Development Lease.

Leasing processes not specifically described under this section shall be administered using standard special use lease rules.

1. Applicant eligibility

The unit development lease may be issued at the discretion of the division when a complex relationship between numerous potential uses under the proposed lease indicate a planning and decision process requiring continuing division involvement to facilitate division management objectives. Parties continuing to have an interest in developing sovereign lands after pre-application discussions with the division may either file a letter of interest (R652-30-1200), or file an application for a unit development lease.

2. Application procedure

Individuals wishing to lease land under a unit development lease shall file the following material with the local division office:

- (a) The appropriate application fee pursuant to R652-4.
- (b) A form, as specified by the division, indicating tentative approval from city or county planning officials.
- (c) The applicant's public disclosure statement, as specified by the division.
- (d) The applicant's Qualifications and Financial Responsibility Statement, as specified by the division.
- (e) A preliminary development plan, as defined in R652-1-200(18).

3. Application Review and Acceptance

Upon receipt of an application, the division will review the documents to determine completeness. Applicants submitting incomplete applications shall be allowed 60 days to provide the required data. Applications not remedied within the 60-day period shall be rejected with the application fee forfeited to the state. Upon acceptance of an application, the applicant shall have 120 days within which to submit a preliminary development plan. During this 120-day period, the division shall solicit competing applications pursuant to R652-30-500(2)(b) and contract for an appraisal of the subject parcel. The appraisal shall divide the parcel into units of similarly valued lands and shall establish a specific value for each unit. The cost of this appraisal shall be borne by the ultimate lessee of the parcel. The division will also notify those individuals or groups who have filed letters of interest.

4. Lease Approval

Upon acceptance of an application following the competitive process, the division shall review the application and make a recommendation to the director to approve or deny the lease.

R652-30-1200. Letter of Interest.

1. Parties having a continued interest in developing a particular parcel of sovereign land, but who are not ready to commence the development at this time, may notify the division by a letter of interest stating the nature of continued interest.

2. The letter of interest shall remain in effect for a period not to exceed two consecutive years. Prior to the expiration of the two-year period, the interested party will be advised that the letter of interest is about to expire and that the party has the opportunity to renew under the current rules and fees.

3. The interested party shall include an address which will be used by the division for all correspondence with that party.
4. The interested party shall submit a non-refundable fee of \$100 for each contiguous tract which does not exceed 640 acres.
5. The right acquired by the fee paid is limited to the right to be notified by the division as described in R652-30-1200(6).
6. When the division receives an application for sale, lease, material permit or exchange for a parcel of land for which a current letter of interest is on file, the division shall notify by certified mail all parties having letters of interest on file, regarding the subject property and the applicant.
7. Parties who have submitted a letter of interest shall have 30 days from the date the notification was sent in which to respond by submitting a competing application pursuant to R652-30-500(2). If no application is received from the party having filed a letter of interest, it will be assumed that the party has no further interest in the subject property.

KEY: administrative procedures, leases

Date of Last Change: July 13, 2000

Notice of Continuation: March 7, 2022

Authorizing, and Implemented or Interpreted Law: 65A-7-1; 65A-7-5(4)