

State Board of Land Commissioners Open Meeting Checklist

Meeting Date: February 16, 2021

Regular Meetings

1/27/2021	Meeting Notice posted in prominent place in IDL's Boise Director's office five (5) or more calendar days before meeting.
1/27/2021	Meeting Notice posted in prominent place in IDL's Coeur d'Alene staff office five (5) or more calendar days before meeting.
1/27/2021	Meeting Notice posted in prominent place at meeting location five (5) or more calendar days before meeting.
1/27/2021	Meeting Notice emailed/faxed to list of media and interested citizens who have requested such notice five (5) or more calendar days before meeting.
1/27/2021	Meeting Notice posted electronically on IDL's public website www.idl.idaho.gov five (5) or more calendar days before meeting.
2/10/2021	Agenda posted in prominent place in IDL's Boise Director's office forty-eight (48) hours before meeting.
2/10/2021	Agenda posted in prominent place in IDL's Coeur d'Alene staff office forty-eight (48) hours before meeting.
2/10/2021	Agenda posted in prominent place at meeting location forty-eight (48) hours before meeting.
2/10/2021	Agenda emailed/faxed to list of media and interested citizens who have requested such notice forty-eight (48) hours before meeting.
2/10/2021	Agenda posted electronically on IDL's public website www.idl.idaho.gov forty-eight (48) hours before meeting.
1/27/2021	Land Board annual meeting schedule posted – Boise Director's office, Coeur d'Alene staff office, and IDL's public website www.idl.idaho.gov

Special Meetings

	Meeting Notice and Agenda posted in a prominent place in IDL's Boise Director's office twenty-four (24) hours before meeting.
	Meeting Notice and Agenda posted in a prominent place in IDL's Coeur d'Alene staff office twenty-four (24) hours before meeting.
	Meeting Notice and Agenda posted at meeting location twenty-four (24) hours before meeting.
	Meeting Notice and Agenda emailed/faxed to list of media and interested citizens who have requested such notice twenty-four (24) hours before meeting.
	Meeting Notice and Agenda posted electronically on IDL's public website www.idl.idaho.gov twenty-four (24) hours before meeting.
	Emergency situation exists – no advance Meeting Notice or Agenda needed. "Emergency" defined in Idaho Code § 74-204(2).

Executive Sessions *(If only an Executive Session will be held)*

	Meeting Notice and Agenda posted in IDL's Boise Director's office twenty-four (24) hours before meeting.
	Meeting Notice and Agenda posted in IDL's Coeur d'Alene staff office twenty-four (24) hours before meeting.
	Meeting Notice and Agenda emailed/faxed to list of media and interested citizens who have requested such notice twenty-four (24) hours before meeting.
	Meeting Notice and Agenda posted electronically on IDL's public website www.idl.idaho.gov twenty-four (24) hours before meeting.
	Notice contains reason for the executive session and the applicable provision of Idaho Code § 74-206 that authorizes the executive session.

Renee Jacobsen

Recording Secretary

February 10, 2021

Date



Idaho State Board of Land Commissioners

Brad Little, Governor and President of the Board

Lawrence E. Denney, Secretary of State

Lawrence G. Wasden, Attorney General

Brandon D Woolf, State Controller

Sherri Ybarra, Superintendent of Public Instruction

Dustin T. Miller, Secretary to the Board

PUBLIC MEETING NOTICE FEBRUARY 2021

The Idaho State Board of Land Commissioners will hold a Regular Meeting on Tuesday, February 16, 2021 at Idaho Department of Lands, Garnet Conference Rooms, 300 N 6th Street, Suite 103, Boise. The meeting is scheduled to begin at 9:00 AM (Mountain).

**The State Board of Land Commissioners will conduct this meeting by virtual means;
at least one Board member will attend the meeting at the physical location.**

This meeting is open to the public. The Governor's [Stage 2 Stay Healthy Order](#), dated 12/30/2020, limits gatherings, including public meetings, to 10 persons or less in physical attendance. Individuals are highly encouraged to watch online or via webinar.

Meeting will be streamed live at <https://www.idahoptv.org/shows/idahoinsession/>
or via Facebook: <https://www.facebook.com/IdahoDepartmentofLands>

Members of the public may register to attend the meeting via Zoom at the following link:
https://idl.zoom.us/webinar/register/WN_wTOCxwKyS3GT0oPbwlpYRA

All in-person attendees must comply with current COVID-19 safety protocols for public gatherings in the City of Boise, including but not limited to wearing face coverings and observing physical distancing. Physical distancing measures reduce the meeting room's normal attendance capacity.¹

¹ www.cityofboise.org/departments/mayor/coronavirus-covid-19-information/ AND www.cdhd.idaho.gov/dac-coronavirus

First Notice Posted: 1/27/2021-IDL Boise; 1/27/2021-IDL CDA

This notice is published pursuant to § 74-204 Idaho Code. For additional information regarding Idaho's Open Meeting law, please see Idaho Code §§ 74-201 through 74-208.

Idaho Department of Lands, 300 N 6th Street, Suite 103, Boise ID 83702, 208.334.0242



Idaho State Board of Land Commissioners

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Lawrence E. Denney, Secretary of State
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Brandon D Woolf, State Controller
Sherri Ybarra, Superintendent of Public Instruction
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State Board of Land Commissioners Regular Meeting

February 16, 2021 – 9:00 AM (MT)

Final Agenda

Idaho Department of Lands, Garnet Conference Rooms, 300 N 6th Street, Suite 103, Boise, Idaho

**The State Board of Land Commissioners will conduct this meeting by virtual means;
at least one Board member will attend the meeting at the physical location.**

This meeting is open to the public. No public comment will be taken.

The Governor's [Stage 3 Stay Healthy Order](#) dated 2/2/2021 allows for gatherings, including public meetings, of up to 50 persons in physical attendance. This meeting location was selected while the state was under a Stage 2 order; therefore, room capacity is limited to 10 persons or less.

Individuals are highly encouraged to watch online or via webinar.

Meeting will be streamed live at <https://www.idahoptv.org/shows/idahoinsession/>

or via Facebook: <https://www.facebook.com/IdahoDepartmentofLands>

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Physical distancing measures reduce the meeting room's normal attendance capacity.¹

1. Department Report – Presented by Dustin Miller, Director

Trust Land Revenue

- A. Timber Sales – January 2021
- B. Leases and Permits – January 2021

Status Updates

- C. Legislative Summary
- D. Resource Protection and Assistance Report

¹ www.cityofboise.org/departments/mayor/coronavirus-covid-19-information/ AND www.cdhd.idaho.gov/dac-coronavirus

2. Endowment Fund Investment Board Report – *Presented by Chris Anton, EFIB Manager of Investments*

- A. Manager's Report
- B. Investment Report

Consent—Action Item(s)

3. Approval of Draft Minutes – January 19, 2021 Regular Meeting (Boise)

Regular—Action Item(s)

- 4. Tidwell Idaho Foundation Appeal of Auction for Communication Site Lease No. M700084 and Auction Results** – *Presented by Steve Strack, Deputy Attorney General, Office of the Attorney General, and Dylan Lawrence, Principal, Varin Wardwell LLC*
- 5. Omnibus Rulemaking – Adoption of Temporary Fee Rules** – *Presented by Scott Phillips, Policy and Communications Chief*
- 6. Negotiated Rulemaking IDAPA 20.03.09, Easements on State-Owned Submerged Lands and Formerly Submerged Lands** – *Presented by Mick Thomas, Division Administrator-Minerals, Public Trust, Oil and Gas*
- 7. Negotiated Rulemaking IDAPA 20.02.01, Rules Pertaining to the Idaho Forest Practices Act** – *Presented by Craig Foss, Division Administrator-Forestry and Fire*

Information

None

Executive Session

None



Idaho Statutes

TITLE 74
TRANSPARENT AND ETHICAL GOVERNMENT
CHAPTER 2

OPEN MEETINGS LAW

74-206. EXECUTIVE SESSIONS – WHEN AUTHORIZED. (1) An executive session at which members of the public are excluded may be held, but only for the purposes and only in the manner set forth in this section. The motion to go into executive session shall identify the specific subsections of this section that authorize the executive session. There shall be a roll call vote on the motion and the vote shall be recorded in the minutes. An executive session shall be authorized by a two-thirds (2/3) vote of the governing body. An executive session may be held:

(a) To consider hiring a public officer, employee, staff member or individual agent, wherein the respective qualities of individuals are to be evaluated in order to fill a particular vacancy or need. This paragraph does not apply to filling a vacancy in an elective office or deliberations about staffing needs in general;

(b) To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, or public school student;

(c) To acquire an interest in real property not owned by a public agency;

(d) To consider records that are exempt from disclosure as provided in chapter 1, title 74, Idaho Code;

(e) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations;

(f) To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement;

(g) By the commission of pardons and parole, as provided by law;

(h) By the custody review board of the Idaho department of juvenile corrections, as provided by law;

(i) To engage in communications with a representative of the public agency's risk manager or insurance provider to discuss the adjustment of a pending claim or prevention of a claim imminently likely to be filed. The mere presence of a representative of the public agency's risk manager or insurance provider at an executive session does not satisfy this requirement; or

(j) To consider labor contract matters authorized under section 74-206A (1)(a) and (b), Idaho Code.

(2) The exceptions to the general policy in favor of open meetings stated in this section shall be narrowly construed. It shall be a violation of this chapter to change the subject within the executive session to one not identified within the motion to enter the executive session or to any topic for which an executive session is not provided.

(3) No executive session may be held for the purpose of taking any final action or making any final decision.

(4) If the governing board of a public school district, charter district, or public charter school has vacancies such that fewer than two-thirds (2/3) of board members have been seated, then the board may enter into executive session on a simple roll call majority vote.

History:

[74-206, added 2015, ch. 140, sec. 5, p. 371; am. 2015, ch. 271, sec. 1, p. 1125; am. 2018, ch. 169, sec. 25, p. 377; am. 2019, ch. 114, sec. 1, p. 439.]

STATE BOARD OF LAND COMMISSIONERS

February 16, 2021
Trust Land Revenue

Timber Sales

During January 2021, the Department of Lands sold four endowment timber sales at auction. The endowment net sale value represents a 52% up bid over the advertised value. The Atlasta Jungle and Father Roothaan sales had competitive bidding from IFG Timber LLC and Stimson Lumber Company. The Lower Falls Cedar sale contained one helicopter harvest unit which led to the sale being sold for its appraised value. The Woodhead Johnson Salvage sale was a fire salvage sale from the Woodhead fire and had competitive bidding from Woodgrain Inc., IFG Timber LLC, and Tamarack Mills.

TIMBER SALE AUCTIONS								
Sale Name	Area	Sawlogs MBF	Cedar Prod MBF	Pulp MBF	Appraised Net Value	Sale Net Value	Net \$/MBF	Purchaser
Atlasta Jungle	PL	4,100			\$ 660,779.50	\$1,294,733.00	\$315.79	IFG Timber LLC
Father Roothaan	PL	3,260			\$ 328,707.50	\$ 574,200.00	\$176.13	IFG Timber LLC
Lower Falls Cedar	POND	5,295	145		\$1,734,715.00	\$1,734,715.00	\$318.88	Stella-Jones Corp
Woodhead Johnson Salvage	PAY	11,995			\$ 928,415.00	\$1,929,546.10	\$160.86	Woodgrain Inc
		24,650	145	0	\$3,652,617.00	\$5,533,194.10	\$223.16	

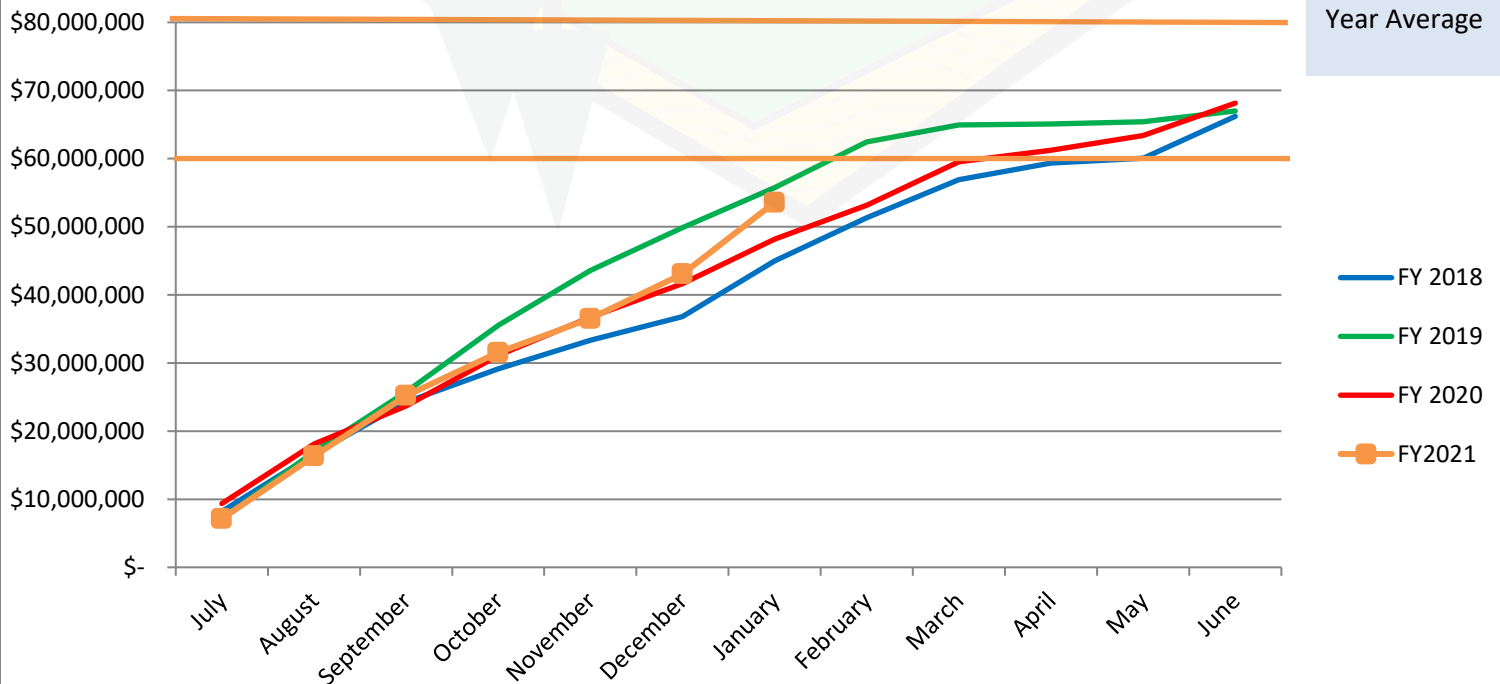
PROPOSED TIMBER SALES FOR AUCTION				
Sale Name	Volume MBF	Advertised Net Value	Area	Estimated Auction Date
North Operations				
Baldy Bear Cedar	7,555	\$ 2,713,185	Clearwater	2/11/2021
Big Face	11,670	\$ 3,120,850	Clearwater	2/11/2021
Big Bear	4,060	\$ 1,035,165	Pend Oreille	2/23/2021
Hello Elk	3,625	\$ 610,617	Pend Oreille	2/23/2021 2nd Auction
Totals	26,910	\$ 7,479,816		

VOLUME UNDER CONTRACT as of January 31, 2021				
	Public School	Pooled	Total	3 Year Avg.
Active Contracts			164	164
Total Residual MBF Equivalent	350,576	207,213	557,789	502,178
Estimated residual value	\$83,005,995	\$59,284,163	\$142,290,158	\$142,131,312
Residual Value (\$/MBF)	\$236.77	\$286.10	\$255.10	\$284.15

	TIMBER HARVEST RECEIPTS						
	January			FY to date		February Projected	
	Stumpage		Interest		Harvest Receipts	Stumpage	Interest
Public School	\$	4,576,249.95	\$	522,539.88	\$ 34,471,010.81	\$ 3,013,867.06	\$ 285,559.36
Pooled	\$	4,862,072.79	\$	549,938.55	\$ 19,081,002.46	\$ 5,217,161.09	\$ 488,919.54
General Fund	\$	0.28	\$	0.00	\$ 13,088.70	\$ 0.28	\$ 0.00
TOTALS	\$	9,438,323.02	\$	1,072,478.43	\$ 53,565,101.97	\$ 8,231,028.43	\$ 774,478.90

	STATUS OF FY 2021 TIMBER SALE PROGRAM					
	MBF Sawlog			Number Poles		
	Public School	Pooled	All Endowments	Public School	Pooled	All Endowments
Sold as of January 31, 2021	97,343	62,608	159,952	16,869	10,204	27,073
Currently Advertised	11,578	17,901	29,479	1,107	2,050	3,157
In Review	1,400	0	1,400	0	0	0
Did Not Sell ¹	0	0	0	0	0	0
TOTALS	110,321	80,510	190,831	17,976	12,254	30,230
FY-2021 Sales Plan			284,238			28,810
Percent to Date			67%			105%

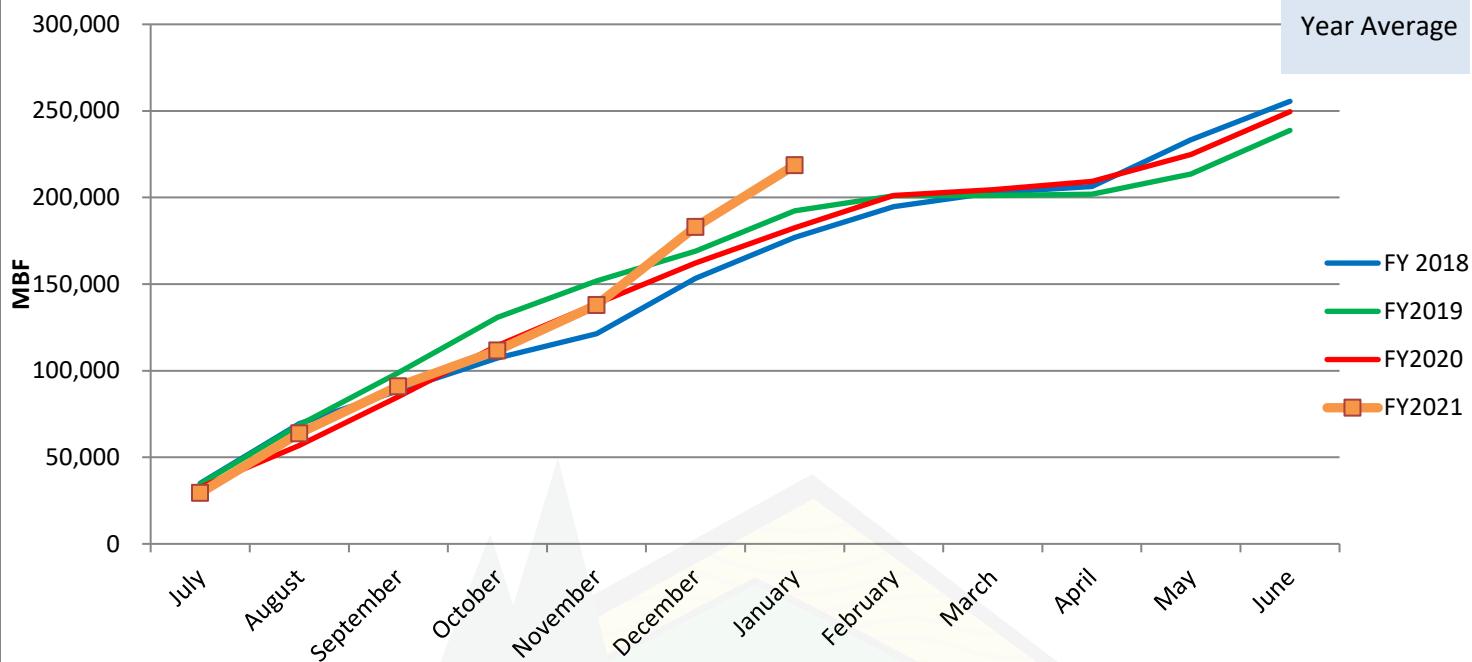
Cumulative Harvest Receipts



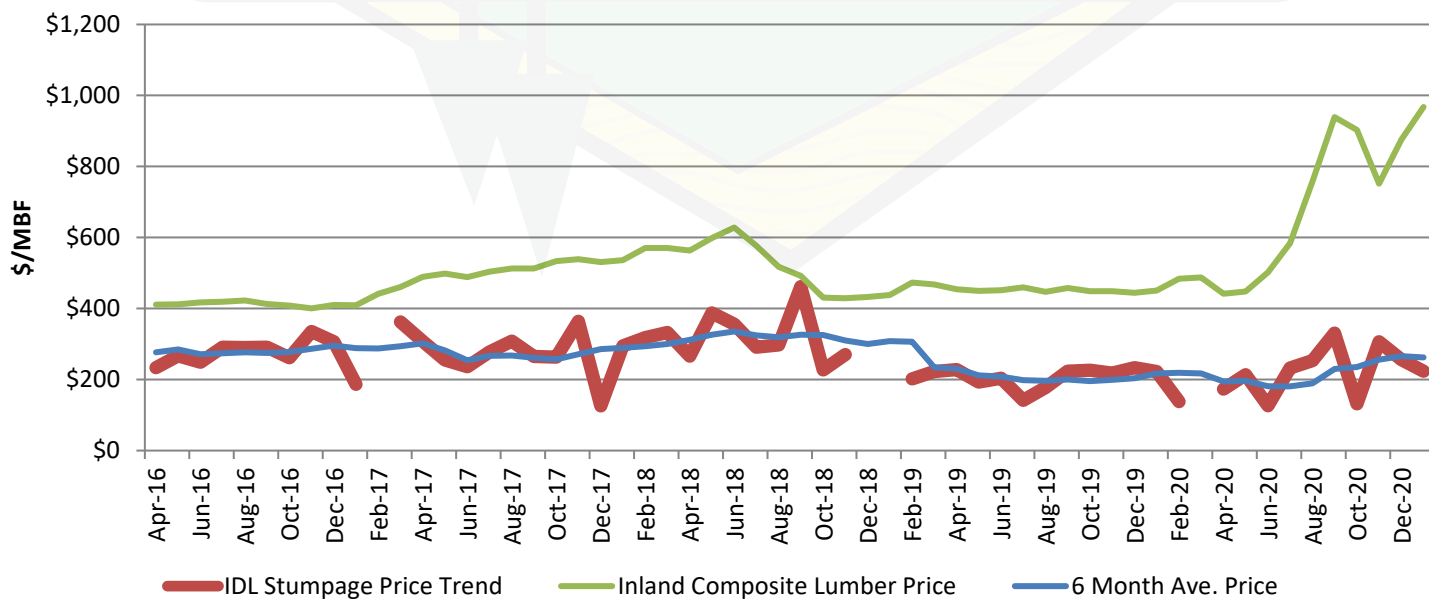
¹ After three attempts at auction.

Cumulative Harvest Volume

Current FYTD
is 119% of 3
Year Average

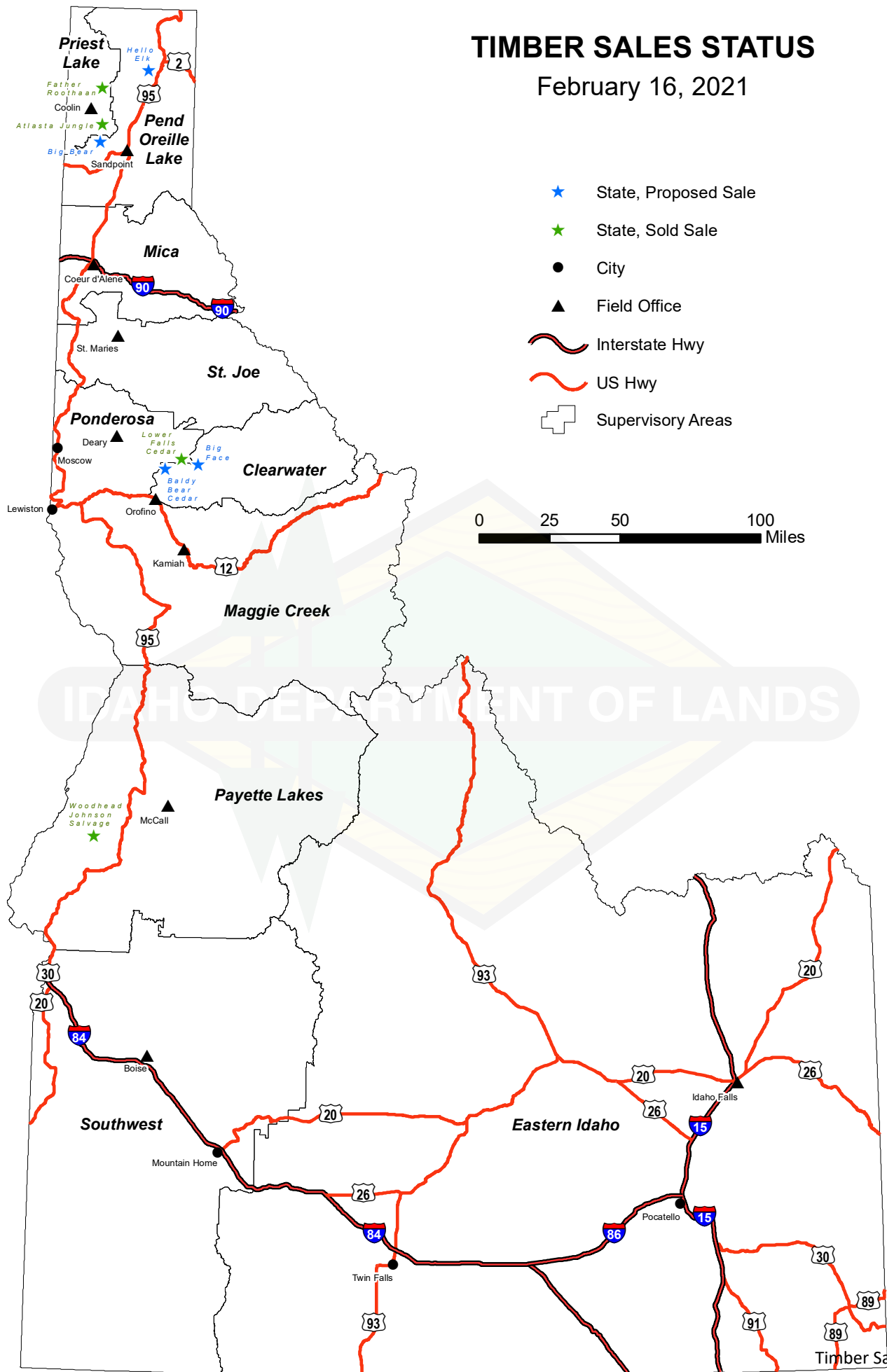


Monthly Lumber and Stumpage Price



TIMBER SALES STATUS

February 16, 2021



STATE BOARD OF LAND COMMISSIONERS

February 16, 2021
Endowment Transactions

Leases and Permits

FISCAL YEAR 2021 – LEASING & PERMITTING TRANSACTIONS BY MONTH – through January 31, 2021														
ACTIVITY	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	EST	FYTD
SURFACE														
Agriculture	-	-	-	-	-	-	-						1	0
Assignments	-	-	-	-	-	1	-						1	1
Communication Sites	-	-	-	-	-	-	-						31	0
Assignments	-	-	-	-	-	-	1						1	1
Grazing	7	2	1	1	1	1	-						14	13
Assignments	-	3	4	-	2	-	1						32	10
Residential	-	2	4	-	-	-	1						18	7
Assignments	-	1	1	2	-	1	-						18	5
COMMERCIAL														
Alternative Energy	-	-	-	-	-	-	-						1	0
Industrial	-	-	-	-	-	-	-						6	0
Military	-	-	-	-	-	-	-						4	0
Office/Retail	-	-	-	-	-	-	-						2	0
Recreation	-	-	-	-	-	-	-						11	0
Assignments	-	-	-	-	-	1	-						-	1
OTHER														
Conservation	-	-	-	-	-	-	-						0	0
Assignments	-	-	-	-	-	-	-						-	0
Geothermal	-	-	-	-	-	-	-						4	0
Minerals	13	-	-	1	-	-	-						57	14
Assignments	-	-	-	-	3	1	-						-	4
Non-Comm Recreation	-	-	-	-	-	-	-						-	0
Oil & Gas	-	-	-	-	-	-	-						0	0
PERMITS														
Land Use Permits	10	5	12	6	7	1	3						NA	44
TOTAL INSTRUMENTS	30	13	22	10	13	6	6						NA	100

Real Estate

FISCAL YEAR 2021 – REAL ESTATE TRANSACTIONS BY MONTH – through January 31, 2021													
ACTIVITY	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	FYTD
Deeds Acquired	-	-	-	-	-	-	-						0
Deeds Granted	-	-	9	6	3	-	-						18
Deeds Granted - Surplus	-	-	-	-	-	-	-						0
Easements Acquired	-	-	-	-	-	-	-						0
Easements Granted	-	-	-	-	-	-	-						0
Assignments	-	1	-	-	-	-	-						1

Land Exchanges:

[Avimor](#) : Working through due diligence.

[DeAtley](#) : Working through due diligence.

[IFG](#) : Working through due diligence.

[Eastern Idaho Solid Waste](#) : Working through due diligence.

[Owyhee](#) : Working with the BLM on closeout.

TRUST LAND MANAGEMENT DIVISION
2021FYTD GROSS REVENUE (non-timber) - ACTUAL AND FORECASTED
through January 31, 2021

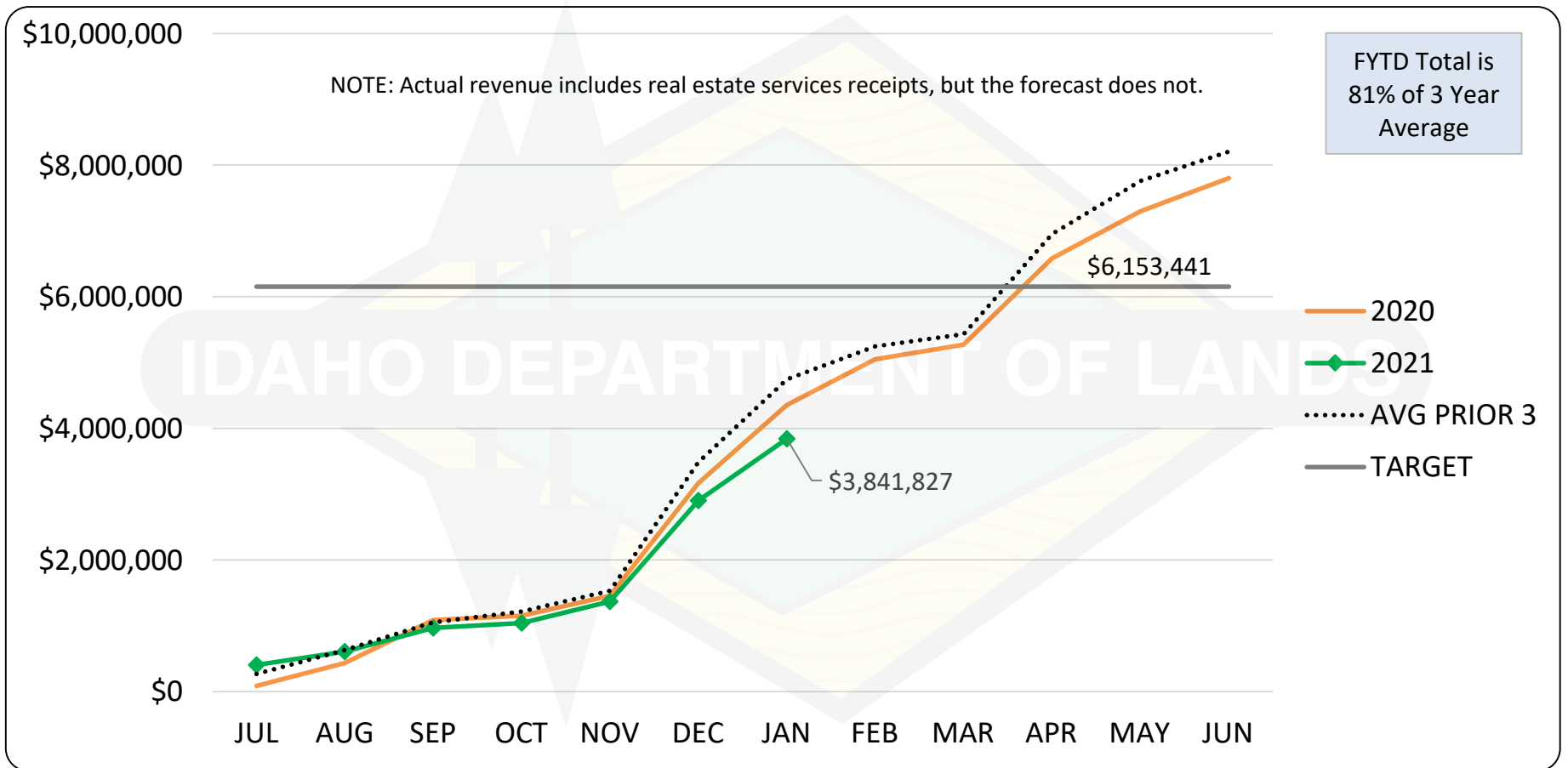
	ACTUAL RECEIPTS AS OF 1.31.2021	REVENUE EXPECTED BY 1.31.2021**	REVENUE EXPECTED BY 06.30.2021
SURFACE			
AGRICULTURE	\$ 441,984	\$ 414,624	\$ 471,740
COMMUNICATION SITES	\$ 846,213	\$ 476,126	\$ 548,359
GRAZING	\$ 32,685	\$ 72,443	\$ 1,822,510
RESIDENTIAL	\$ 1,040,763	\$ 951,379	\$ 1,450,328
COMMERCIAL			
COMMERCIAL ENERGY RESOURCES	\$ 23,935	\$ 10,634	\$ 12,715
COMMERCIAL INDUSTRIAL	\$ 105,590	\$ 73,313	\$ 73,313
COMMERCIAL MILITARY	\$ -	\$ 32,776	\$ 62,438
COMMERCIAL OFFICE/RETAIL	\$ 660,843	\$ 708,117	\$ 997,011
COMMERCIAL RECREATION	\$ 326,844	\$ 438,984	\$ 470,323
OTHER			
CONSERVATION LEASES	\$ 65,281	\$ 81,473	\$ 103,951
GEOTHERMAL	\$ (1,000)	\$ 2,000	\$ 5,000
MINERAL	\$ 20,638	\$ 11,886	\$ 70,492
NON-COMMERCIAL RECREATION	\$ 93,433	\$ 51,171	\$ 52,129
OIL AND GAS LEASES	\$ 7,319	\$ 13,133	\$ 13,133
Sub Total	\$ 3,664,529	\$ 3,338,058	\$ 6,153,441
*LAND SALES/RECORDS	\$ 177,297		
*REAL ESTATE SERVICES	\$ -		
Grand Total	\$ 3,841,827		

* These categories are not included in the annual forecast.

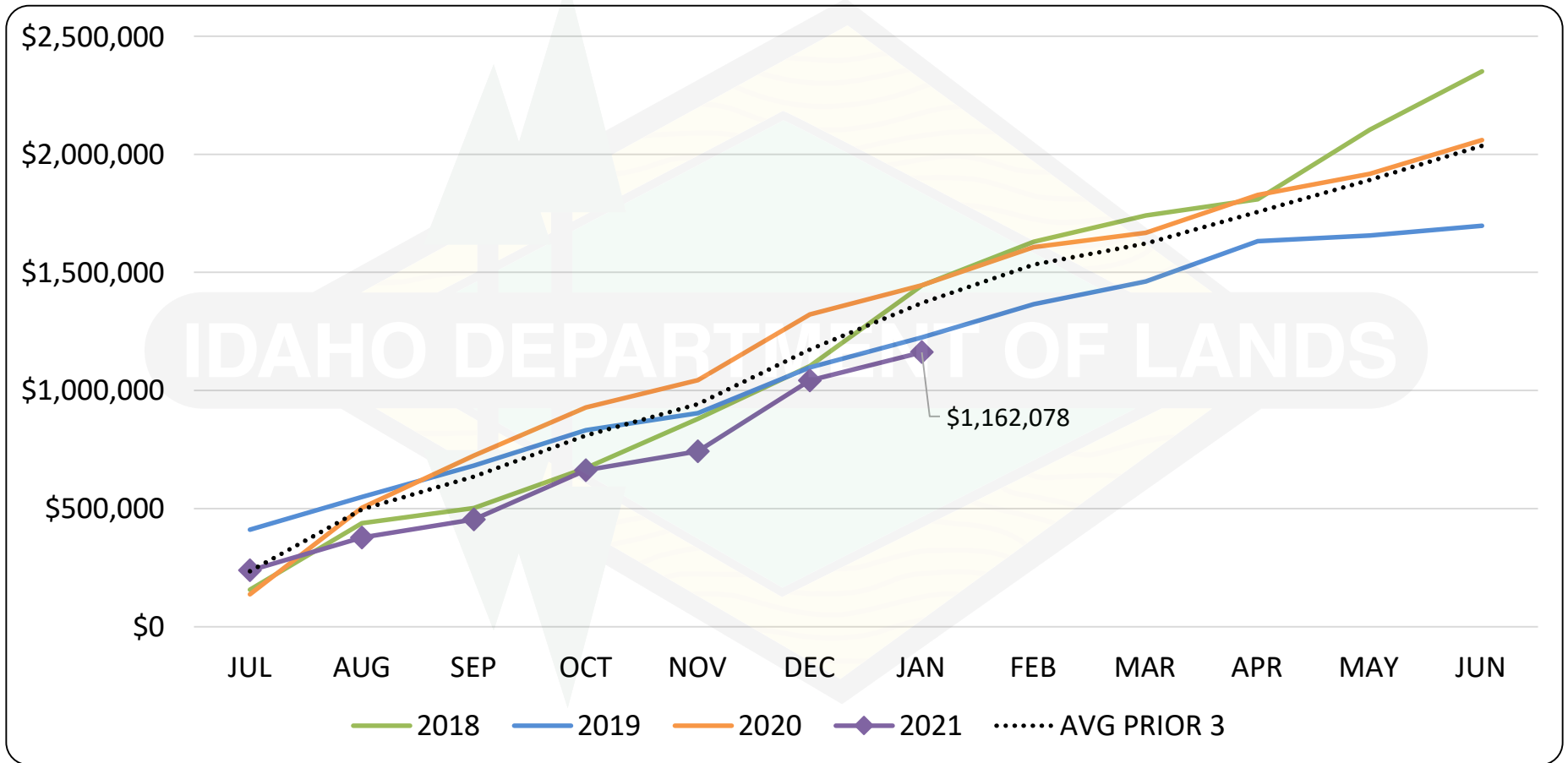
** These figures are based on "normal" timing of revenue/billing throughout the year.

NOTE: The Department prepares the annual endowment revenue forecast by ASSET CLASS (not by Program). For this table, we have attempted to further breakdown the forecast by program by applying trend data.

Cumulative Trust Land Program Receipts - Earnings Reserve - All Programs excluding Timber FY2020 - FYTD2021



Cumulative Trust Land Permanent Fund Revenue/Royalties
(Does NOT include Land Bank Revenue)
FY18 - FYTD21



STATE BOARD OF LAND COMMISSIONERS

February 16, 2021
2021 Legislative Summary

Status of legislation monitored by the Department of Lands

IDL Pending Rules

[20-0000-2000F](#) – Omnibus Fee

Status: Senate Resources and Environment Committee – Approved. House Resources and Conservation Committee – Approved.

IDL Legislation

Budget

IDL budget setting before JFAC – February 25.

EFIB budget setting before JFAC – March 9.

[H0023 ENDOWMENT LAND](#) – Repeals existing law relating to the exchange of certain lands.

Status: House passed 69-0-1; Senate Resources and Environment Committee – hearing pending.

[H0024 IDAHO BOARD OF SCALING PRACTICES](#) – Amends existing law to revise provisions regarding board compensation.

Status: House passed 69-0-1; Senate Resources and Environment Committee – hearing pending.

Other Legislation Being Monitored

Miscellaneous

RS28546 – Snowmobiles, fees.

Status: House Transportation and Defense Committee – hearing scheduled February 12.

[H0053 PUBLIC NOTICES](#) – Amends and adds to existing law to provide for the electronic publication of public notices by a governmental entity on the entity's website.

Status: House failed 32-38-0.

[H0061 RECREATIONAL ACTIVITIES](#) – Amends existing law to increase fees for snowmobile use and to allocate such funds regarding snowmobile use and opportunities.

Status: House – Third Reading, held until February 18.

[H0086 TRANSPORTATION](#) – Amends existing law to provide for revised snowmobile and off-highway vehicle licensing and oversight.

Status: House Transportation and Defense Committee – hearing pending.

[H0101 ATTORNEY GENERAL](#) – Amends existing law to revise the duties of the Attorney General's office and to provide that state departments and agencies may contract for legal services outside of the Attorney General's office.

Status: House State Affairs Committee – hearing pending.

[H0112 SALES TAX](#) – Adds to existing law to provide a sales tax rebate on certain road construction materials.

Status: House Transportation and Defense Committee – hearing pending.

[H0113 BIG PAYETTE AND CASCADE LAKES](#) – Repeals and adds to existing law to provide for the Big Payette and Cascade Lakes Water Quality Act.

Status: House Environment, Energy and Technology Committee – hearing pending.

[H0118 DEPARTMENT OF LANDS](#) – Amends existing law to prohibit the Department of Lands from engaging legal counsel from the Attorney General's office.

Status: House Resources and Conservation Committee – hearing pending.

[S1009 STATE FIRE MARSHAL](#) – Amends existing law to clarify that the state fire marshal and the state fire marshal's deputies are considered firefighters for purposes of the Public Employee Retirement System (PERSI) and certain worker's compensation benefits for first responders.

Status: Senate passed 32-1-2; House Commerce and Human Resources Committee – hearing pending.

[S1020 LANDOWNERS](#) – Amends existing law regarding the limitation of liability of landowners toward persons entering land for recreational purposes.

Status: Senate passed 30-3-2; House Committee – hearing pending.

[S1031 STATE DISASTER EMERGENCY ACCOUNT](#) – Amends existing law to revise provisions regarding the Disaster Emergency Account.

Status: Senate State Affairs Committee – hearing pending.

[S1042 PUBLIC CONTRACTS](#) – Amends existing law to revise provisions regarding professional service contracts.

Status: Senate – To 14th Order for amendment.

[S1090 DEPARTMENT OF LANDS](#) – Amends existing law to revise provisions regarding legal representation of the Idaho Department of Lands.

Status: Senate Resources and Environment Committee – approved for printing.



STATE BOARD OF LAND COMMISSIONERS

February 16, 2021

Resource Protection and Assistance Bureau Biannual Report

The Resource Protection and Assistance (RPA) Bureau houses the non-endowment regulatory functions within the Division of Minerals, Public Trust, and Oil and Gas. The Public Trust Program administers mostly lake encroachment permits and submerged lands leases, and the Minerals Program administers the surface mining reclamation plans, dredge and placer permits, and abandoned mine land projects. The Public Trust Program is self-supported through a dedicated account, and the Minerals Program is supported through a mixture of general fund and dedicated fund sources.

Public Trust Program

PAST 6-MONTH HIGHLIGHTS

- **Instrument Activity.** Instruments issued FY2014 through first half of FY2021:

Table 1: Public Trust Historical Instrument Numbers								
Instrument Type	2014	2015	2016	2017	2018	2019	2020	2021
Encroachment Permits Issued	208	282	327	289	338	412	383	253
Active Submerged Land Leases	182	179	185	192	180	172	179	165
New Submerged Land Leases	12	26	11	8	36	48	24	16
Active Riverbed Mineral Leases	4	3	2	2	2	2	3	2
New Riverbed Mineral Leases	0	0	1	0	0	0	0	0
Active Exploration Locations	14	10	2	3	4	2	3	4
New Exploration Locations	0	2	0	1	2	4	0	1
New Submerged Land Easements	13	11	27	6	2	3	2	1
New Disclaimers of Interest	9	2	2	1	3	0	1	0

- **2020 Lake Protection Act (LPA) Inspection Goal.** In an attempt to focus on strategies to proactively administer the Lake Protection Act, the Department set a goal to conduct 190 LPA inspections in 2020. Department staff exceeded this goal by conducting a total of 210 inspections. During these inspections, staff were able to communicate with the public about the LPA and the Department's role in managing public trust lands. Staff identified noncompliances during approximately half of the inspections. These noncompliances will be addressed in 2021.

- **Dock Storage.** The Department has been working with three marine contractors over the last 18 months to bring their winter dock storage areas into compliance. Four storage areas are on Lake Coeur d'Alene and one is on Hayden Lake. The Department denied the application for the Cougar Bay site as an encroachment but provided a potential path forward under a submerged lands lease. The Department is working through that leasing process.
- **Administrative Hearings.** Between July 1, 2020 and December 31, 2020, the Department has ordered four public hearings and two contested case hearings on encroachment permit applications. One application was conditionally approved, two were denied, one has a decision pending, and two others have not yet been heard.

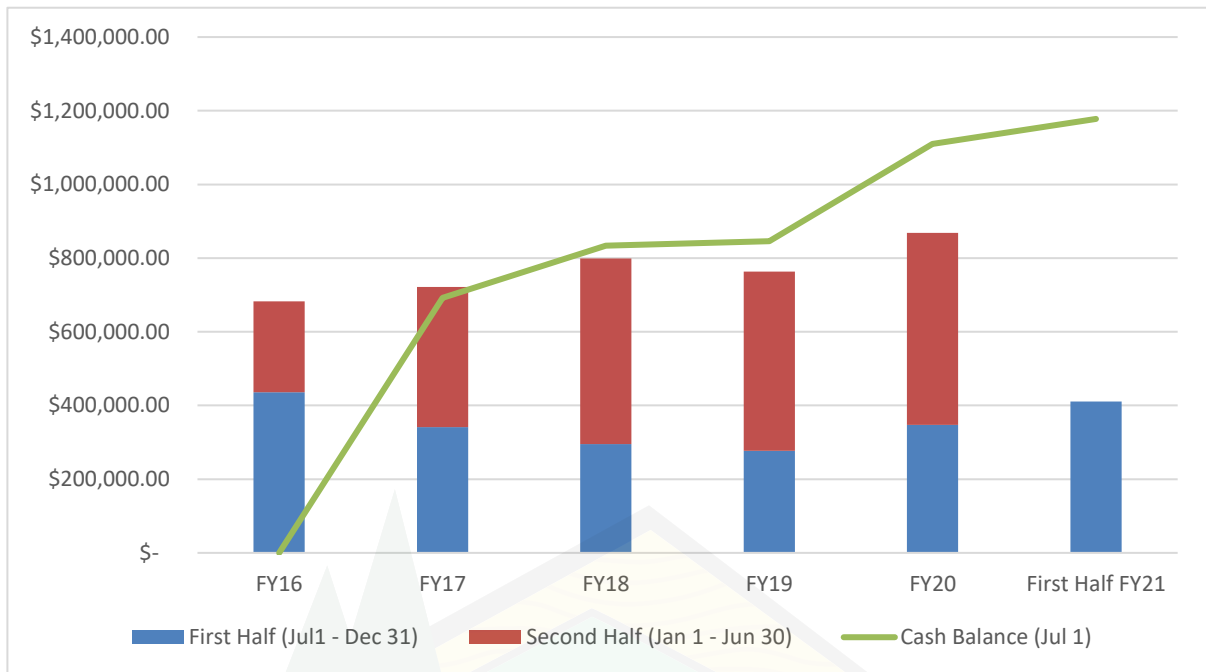
NEXT SIX MONTHS

- **New Resource Specialist in North Idaho.** The Department filled the new Resource Specialist position located in its Mica Area Office. The new employee will start in February of 2021. This new position is dedicated to the Public Trust Program.
- **2021 Lake Protection Act Inspection & Enforcement Goal.** The Department is finalizing its 2021 inspection goal, but the number of inspections will decrease to ensure staff follow through on noncompliances identified during the inspections. The 2021 goal will include finalizing inspection reports and if necessary, issuing notices of noncompliance, within two weeks from an inspection.
- **Rulemaking.** In compliance with Executive Order 2020-01, the administrative rule "Easements on State-Owned Submerged Lands and Formerly Submerged Lands," IDAPA 20.03.09, will be negotiated in 2021 prior to the old rules being repealed in 2022. The Department has started the administrative work and research needed to rewrite this rule. A proposal for negotiated rulemaking will be brought to the Land Board in February of 2021.

FINANCIAL UPDATE

- The Department generated \$411,148.36 from navigable waterways in the first half of FY21. This is 20% more than the 5-year average of \$339,618 for this 6-month period. The Public Trust Program remains on track with its moonshot goal of having dedicated funds cover 100% of the navigable waterways' management costs.

Figure 1: Public Trust Program Revenue and Cash Balance



Regulatory Minerals Program

PAST 6-MONTH HIGHLIGHTS

- **Large Mine Reviews.** The Department is reviewing a modified proposed action from Midas Gold for the Stibnite Gold Project. Modifications were due to public comments made during the review of the Draft Environmental Impact Statement (DEIS). The reclamation plan for Simplot's Dairy Syncline phosphate mine is currently being reviewed, and an EIS process has started for Itafos' Husky 1 North Dry Ridge phosphate mine.
- **Negotiated Rulemaking for IDAPA 20.03.02.** Negotiations on the Mined Land Reclamation Rules were wrapped up and included in the Omnibus rulemaking being presented to the 2021 legislature.

LOOKING FORWARD

- **Inspection Schedules.** An inspection prioritization and five-year schedule is being reviewed with Operations staff. Implementation will start this year.
- **Implementation of Financial Assurance Calculators.** Researching updates for the Cost Data File is ongoing. This data is needed to obtain Idaho wage and cost data to replace the Nevada data used in the software.

TOTAL PERMITS AND BONDING

The Department currently administers 1,565 mine sites covered by reclamation plans and 28 covered by dredge and placer permits. The mines are presented in Table 2 by area and category, and Table 3 has historical plan numbers.

Table 2: Current Mine Permit Categories by IDL Supervisory Area				
IDL Area	Sand and Gravel Mines (IDAPA 20.03.02.069)	Hardrock, Phosphate & Complex Industrial (IDAPA 20.03.02.070)	Cyanidation Mines (IDAPA 20.03.02.071)	Dredge and Placer Permits (IDAPA 20.03.01)
Clearwater	33	-	-	-
Eastern	719	20	-	1
Maggie Creek	59	3	-	2
Mica	33	1	-	6
Payette Lakes	111	2	-	2
Pend Oreille Lake	131	-	-	-
Ponderosa	58	1	-	-
Priest Lake	15	-	-	-
Southwest	309	3	-	1
St. Joe	67	-	-	16
TOTAL	1,535	30	-	28

Table 3: Regulatory Minerals Historical Instrument Numbers										
Instrument Type	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Mined Land Reclamation										
New Reclamation Plans	36	20	20	25	36	24	18	28	17	3
Retirements	23	7	17	14	36	15	22	9	13	5
Total Reclamation Plans	1,496	1,536	1,537	1,528	1,530	1,542	1,540	1,561	1,580	1565
Dredge and Placer										
New/Amended Permits	4	1	0	1	3	3	1	2	0	0
Retirements	-	-	-	-	-	2	0	1	0	0
Total Permits	24	25	25	25	25	26	27	28	28	28
Note: Inspections, Amendments, and Non-compliance are not currently tracked but will be with the implementation of the Land Information Management System (LIMS)										

Mine operators are eligible to provide bonding through traditional methods or the Bond Assurance Fund (BAF). Tables 4 and 5 list the acres and bond amounts currently in place for different types of mining operations. Created in 2006, the BAF provides another reclamation

bonding option for small operators on private and state lands. This is a dedicated account with revenue from annual fees of approximately \$158,000 per year. Billings are mailed in September with a November 1 due date. Table 6 has revenue from the FY2021 billing. Figure 2 illustrates the revenue, expenditures, and balance for this fund.

Table 4: Bonding for Sand and Gravel, Light Industrial, and Placer Permits								
	Reclamation Plans (IDAPA 20.03.02.069)				Dredge and Placer Permits (IDAPA 20.03.01)			
	Plans	Affected Acres	Total Bond	Bond/Acre	Permits	Affected Acres	Total Bond	Bond/Acre
Traditional Bond ¹	278	16,662	\$13.5 Million	\$3,021	21	150	\$211K	\$1,402
Bond Assurance Fund	617	5,531	n/a	n/a	7	53	n/a	n/a

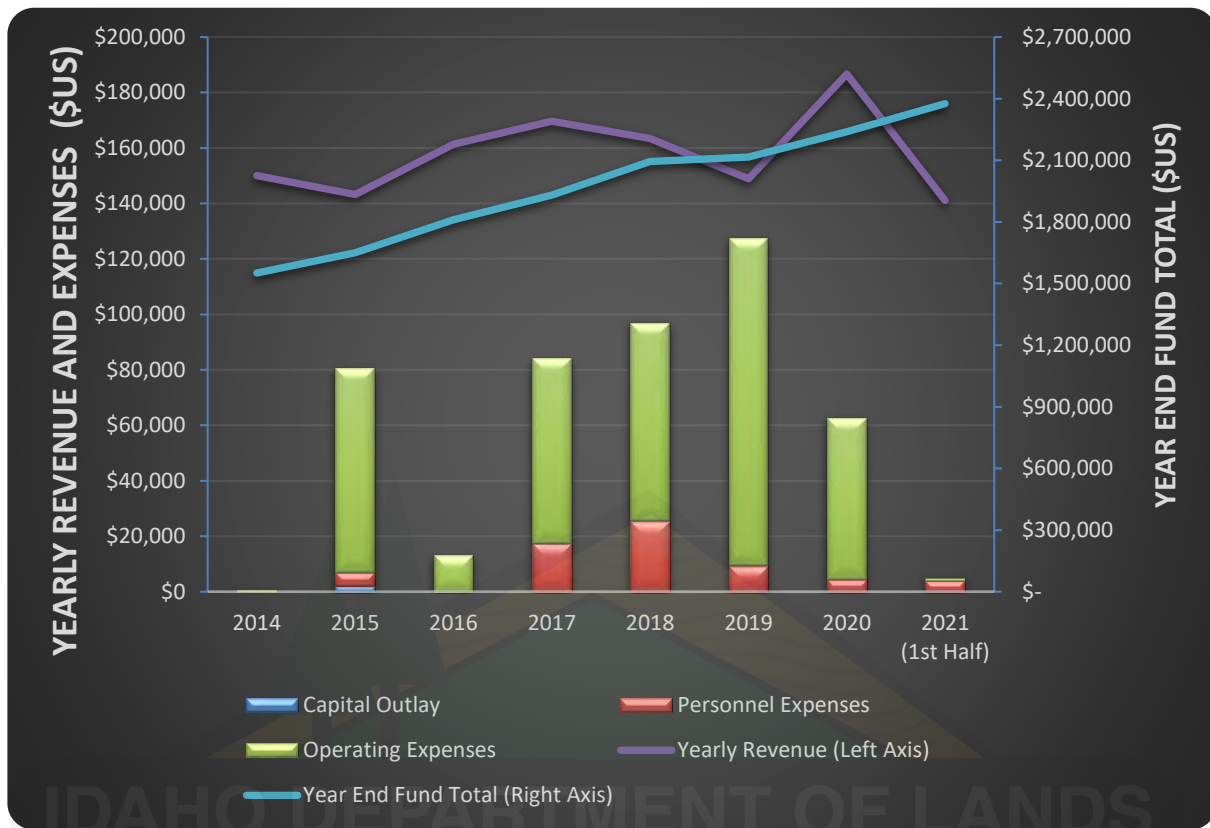
¹ Surety Bond, Letter of Credit, Certificate of Deposit, or Cash

Table 5: Bonding for Hardrock, Phosphate & Complex Industrial				
	Reclamation Plans (IDAPA 20.03.02.070)			
	Permits	Permitted Acres	Total Bond	Bond/Acre
Traditional Bond ¹	29	21,907	\$110 Million	\$5,021

¹ Surety Bond, Letter of Credit, Certificate of Deposit, or Cash

Table 6: Bond Assurance Fund Billing (For FY 2020)				
Disturbance (ACRES)	Annual Fee Schedule (\$)	Total Permits Distribution	Total Annual Fees Due (\$)	Annual Fees Collected Through 12/31/2020
Mineral Leases	\$100	0	\$0	\$0
2 acres or less	\$100	151	\$15,100	\$12,500
> 2 acres ≤ 5 acres	\$200	157	\$31,400	\$27,400
> 5 acres ≤ 10 acres	\$250	147	\$36,750	\$34,000
> 10 acres ≤ 15 acres	\$300	62	\$18,600	\$16,500
> 15 acres ≤ 20 acres	\$350	39	\$13,650	\$12,250
> 20 acres ≤ 25 acres	\$400	28	\$11,200	\$11,200
> 25 acres ≤ 30 acres	\$450	20	\$9,000	\$8,550
> 30 acres ≤ 35 acres	\$500	7	\$3,500	\$3,500
> 35 acres ≤ 40 acres	\$550	12	\$6,600	\$6,050
TOTAL		623	\$145,800	\$131,950

Figure 2: Bond Assurance Fund – Revenue, Expenditures, and Fund Balance

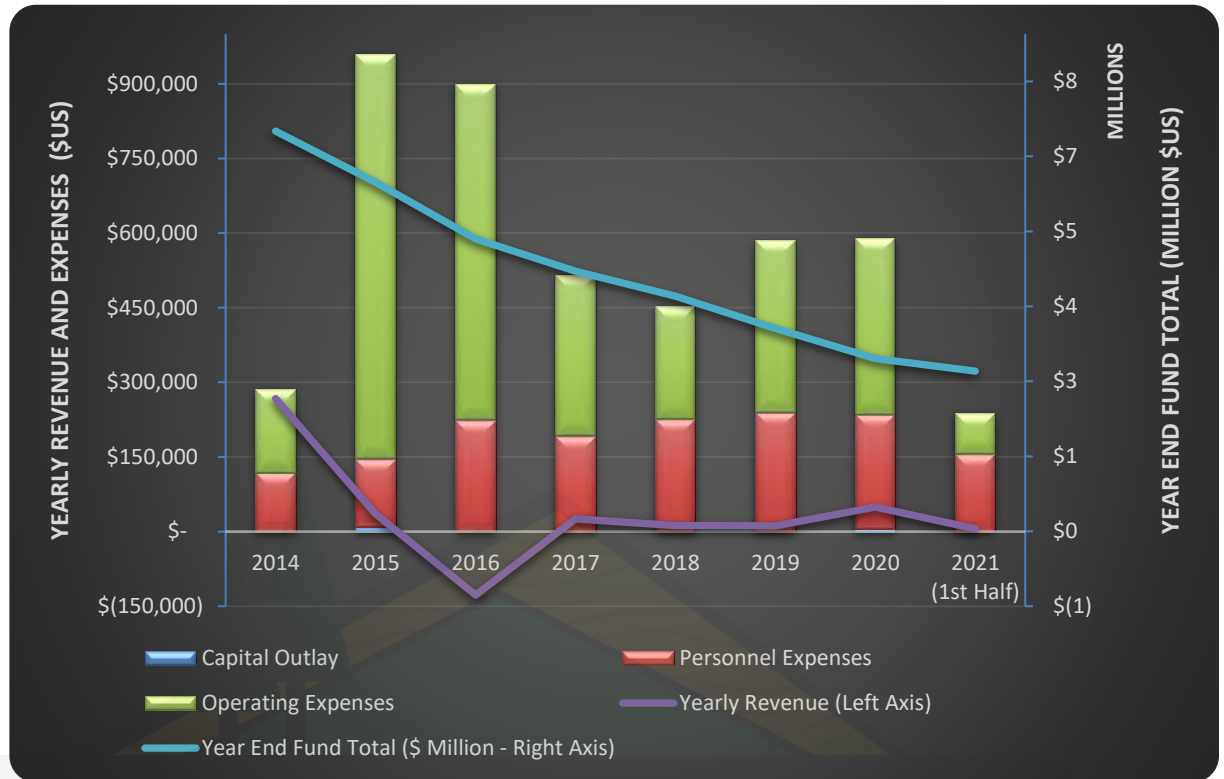


ABANDONED MINE LANDS

The abandoned mine lands (AML) program is funded through 34% of Idaho's Mine License Tax, a 1% net tax of Idaho's mining industry (excluding sand and gravel as described in Idaho Code § 47-1205). The Department's share of income for the first half of FY21 was \$5,513. Table 7 lists the projects worked on in the first half of FY2021. Figure 3 illustrates the revenue, expenditures, and balance for this fund.

Table 7: Abandoned Mine Lands Projects July through December, 2020	
Project Name	Project Description
Triumph Mine	Sampling, ground water modeling, site drainage, NPDES permitting.
Idaho Geological Survey	AML information compilation and digitization.
Gilmore District	2 mine openings closed.

Figure 3: AML Fund – Revenue, Expenditures, and Fund Balance



IDAHO DEPARTMENT OF LANDS



M. Dean Buffington :: Chairman
Jerry F. Aldape Gary L. Mahn
Warren R. Bakes Richelle A. Sugiyama
Steven C. Harris Thomas J. Wilford
Irving Littman Chuck Winder
Chris J. Anton :: Manager of Investments

Monthly Report to the Board of Land Commissioners

Investment performance through January 31, 2021

Month: -0.5% Fiscal year: 17.6%

The portfolio was up most of the month, but retreated during the last week. Equity markets have had an incredible rebound since the COVID induced selloff in March, so it was not surprising to see some profit taking. Corporate fourth quarter earnings announcements have generally beaten expectations, but valuations are stretched, vaccine deployment has experienced challenges and potentially dangerous virus mutations have entered the U.S. Efforts by retail investors to take on short sellers in stocks like GameStop and AMC also created some turmoil in the markets.

Status of endowment fund reserves

Distributions for FY2021 and FY2022 are well secured.

Significant actions of the Endowment Fund Investment Board

None.

Compliance/legal issues, areas of concern

Material deviations from Investment Policy: None.

Material legal issues: None.

Changes in board membership or agency staffing: None.

Upcoming issues/events

JFAC Budget Presentation – February 5, 2021

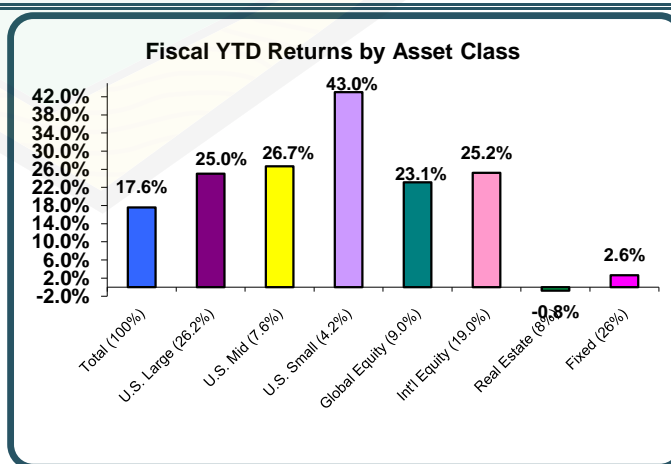
EFIB Board Meeting – February 11, 2021

	<u>Month</u>	<u>FYTD</u>
Beginning Value of Fund	\$ 2,815,499,603	\$ 2,395,398,968
Distributions to Beneficiaries	(7,043,400)	(49,303,800)
Land Revenue net of IDL Expenses	12,337,451	42,545,989
Change in Market Value net of Investment Mgt. Expenses	(21,048,438)	411,104,059
Current Value of Fund	\$ 2,799,745,216	\$ 2,799,745,216

<u>Gross Returns</u>	<u>Current Month</u>	<u>Calendar Y-T-D</u>	<u>Fiscal Y-T-D</u>	<u>One Year</u>	<u>Three Year</u>	<u>Five Year</u>	<u>Ten Year</u>
Total Fund	-0.5%	-0.5%	17.6%	15.9%	9.3%	12.1%	9.3%
Total Fund Benchmark*	-0.4%	-0.4%	15.9%	13.9%	8.2%	11.3%	8.7%
Total Fixed	-0.6%	-0.6%	2.6%	4.5%	5.7%	4.2%	3.8%
85% BB Agg, 15% TIPS	-0.6%	-0.6%	1.2%	5.4%	5.6%	4.1%	3.8%
Total Equity	-0.6%	-0.6%	26.1%	22.4%	11.0%	15.8%	11.5%
38% R3 19% Ax 9% AC	-0.3%	-0.3%	24.5%	18.2%	9.1%	14.6%	10.8%
Domestic Equity	-0.5%	-0.5%	27.4%	23.6%	12.6%	17.2%	13.8%
Russell 3000 (R3)	-0.4%	-0.4%	24.7%	20.5%	12.4%	16.7%	13.5%
Global Equity	-2.0%	-2.0%	23.1%	21.0%	10.4%	14.5%	8.8%
MSCI ACWI (AC)	-0.5%	-0.5%	23.4%	17.0%	7.9%	13.6%	8.9%
Int'l. Equity	0.1%	0.1%	25.2%	20.9%	8.4%	13.2%	6.4%
MSCI ACWI ex-US (Ax)	0.2%	0.2%	24.6%	14.0%	3.1%	10.5%	4.8%
Real Estate			-0.8%	0.2%	4.8%		
			-1.8%	1.3%	4.2%		

* Benchmark: 38% Russell 3000 19% ACWI ex-US 9% AC 26% BB Agg. 8% ODCE

	<u>Mkt Value (\$M)</u>	<u>Allocation</u>
Domestic Equity	\$ 1,077.6	38.5%
Large Cap	740.4	26.4%
Mid Cap	215.0	7.7%
Small Cap	122.1	4.4%
Global Equity	253.3	9.0%
Int'l Equity	551.3	19.7%
Fixed Income	709.8	25.4%
Real Estate	190.9	6.8%
Cash	16.9	0.6%
Total Fund	\$ 2,799.7	100%



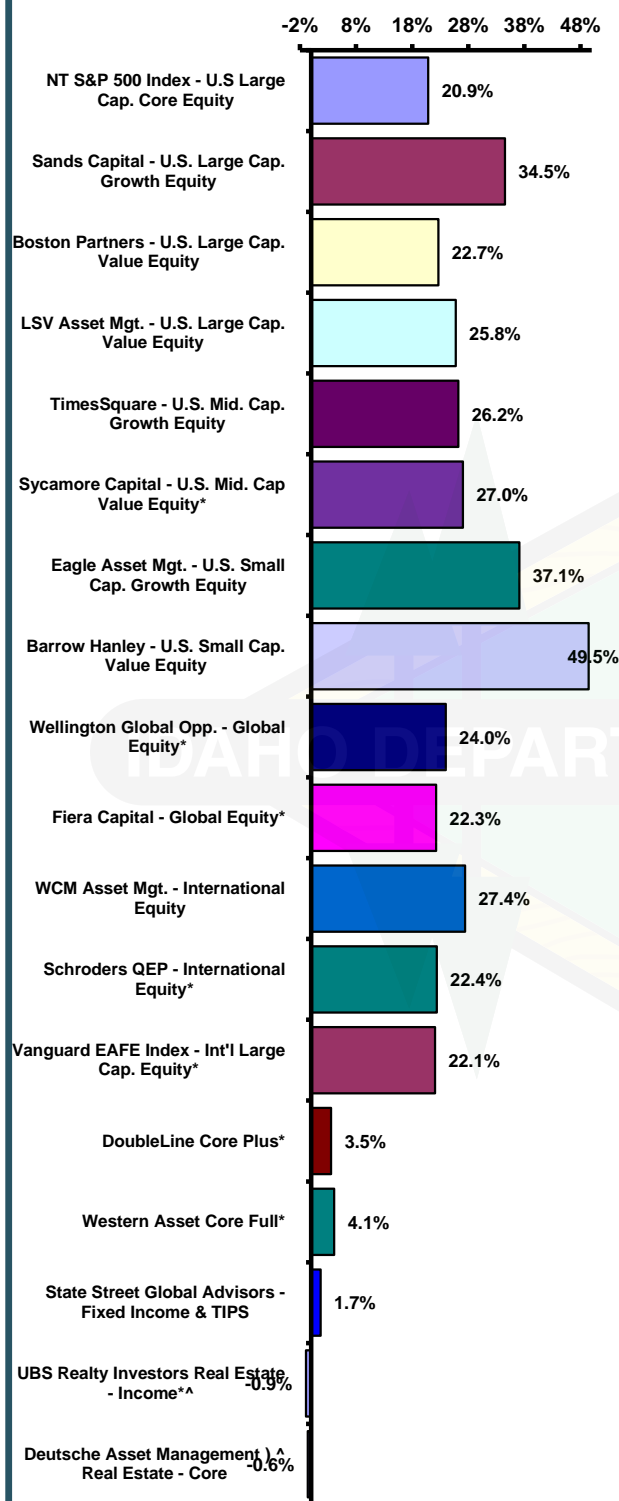
Endowment Fund Staff Comments:

The portfolio was up most of the month, but retreated during the last week. Equity markets have had an incredible rebound since the COVID induced selloff in March, so it was not surprising to see some profit taking. Corporate fourth quarter earnings announcements have generally beaten expectations, but valuations are stretched, vaccine deployment has experienced challenges and potentially dangerous virus mutations have entered the U.S. Efforts by retail investors to take on short sellers in stocks like GameStop and AMC also created some turmoil in the markets.

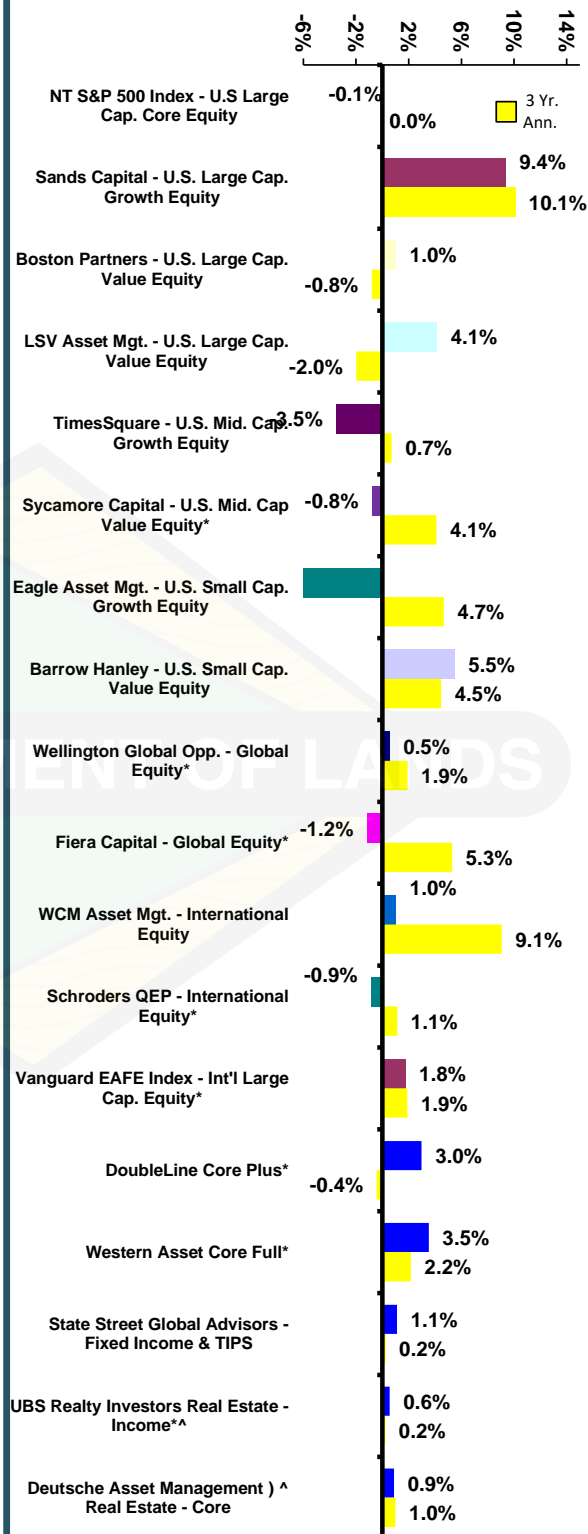
January 31, 2021

INVESTMENT REPORT

FYTD Manager Returns



Manager Relative Returns Fiscal YTD and 3-Yr Ave*



*ITD return used when manager has less than 3 years. ^ Most recent valuation.



Idaho State Board of Land Commissioners

Brad Little, Governor and President of the Board

Lawrence E. Denney, Secretary of State

Lawrence G. Wasden, Attorney General

Brandon D Woolf, State Controller

Sherri Ybarra, Superintendent of Public Instruction

Dustin T. Miller, Secretary to the Board

Be it remembered, that the following proceedings were had and done by the State Board of Land Commissioners of the State of Idaho, created by Section Seven (7) of Article Nine (IX) of the Constitution.

Draft Minutes

State Board of Land Commissioners Regular Meeting

January 19, 2021

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, January 19, 2021 at the Idaho Department of Lands, Garnet Conference Rooms, Suite 103, Boise, Idaho, and via webinar. The meeting began at 9:00 a.m. The Honorable Governor Brad Little presided. The following members were in attendance:

Honorable Governor Brad Little
Honorable Secretary of State Lawrence Denney
Honorable Attorney General Lawrence Wasden
Honorable State Controller Brandon Woolf
Honorable Superintendent of Public Instruction Sherri Ybarra

For the record, due to the Governor's Stage 2 Stay Healthy Order, dated 12/30/2020, gatherings, including public meetings, were limited to 10 persons or less in physical attendance. Controller Woolf was present at the physical meeting location; all other Board members joined via Zoom webinar.

1. Department Report – Presented by Dustin Miller, Director

Trust Land Revenue

- A. Timber Sales – December 2020
- B. Leases and Permits – December 2020

Status Updates

- C. Land Bank Fund

Discussion: None.

2. Endowment Fund Investment Board Report – Presented by Chris Anton, EFIB Manager of Investments

- A. Manager's Report
- B. Investment Report

Discussion: Mr. Anton reported that the fund ended calendar year 2020 very strong, up 3.7% for the month of December and 16.3% for the calendar year. The fund was up 18.2% for the first six months of the fiscal year and through Friday [January 15] it was up 19.9%. Looking back at

calendar year 2020 the performance of the portfolio really stood in stark contrast to the impact experienced by people of the COVID-19 virus. In March, the financial markets declined sharply. The S&P was at 30% as communities were isolated and all were concerned about the spread of the virus. The Federal Reserve, however, jumped in very quickly; they enacted emergency programs in March and April to provide liquidity to the financial markets and breathe life into the employment market. Congress enacted the CARES Act – \$2.2 trillion in funding to individuals and small businesses most affected by the crisis – and near the end of 2020 another \$900 billion of stimulus was provided to the economy. This support, and extraordinary efforts around the world to develop vaccines, gave investors hope that over time the economy would heal, and everyone would return to a more normal way of living. This is really what drove the forward-looking performance in the market; hopefully by later this calendar year there will be health in the economy.

Large cap technology stocks rallied first off the bottom in March because they were best positioned to the nation's new way of living and working from home. This can be seen in the performance of the fund's large cap growth manager, Sands, which was up 72.8% for the year. Later in the calendar year as the vaccines were approved by the FDA and distribution started, there became more optimism that the recovery would broaden so smaller cap stocks began to outperform; they actually for the year beat large cap stocks, but their performance came in the last quarter of the calendar year.

As 2021 gets underway, there are challenges ahead. The nation is not through COVID-19 by any stretch of the imagination. There is optimism that vaccines will be deployed extensively and anticipation that by summer much of this will be past and there will be a broadening and strengthening in the economy.

Reserves are fully at target levels given the performance the fund had in the markets. In terms of upcoming events, EFIB has its budget presentation on February 5th and the next Investment Board meeting is scheduled for February 11th.

Controller Woolf asked if he had heard correctly that the fund went over the \$3 billion mark for a short time. Mr. Anton clarified it was \$3 billion for the entire portfolio, which includes the endowment fund plus some money for Parks and Recreation, Department of Environmental Equality, Fish and Game, and Department of Lands. It was close to \$2.9 billion for just the land grant portfolio [endowments]. Governor Little asked if that included the insurance fund that EFIB administers. Mr. Anton said no, that is a separate figure of about \$900 million; nearly \$4 billion for all financials combined.

Mr. Anton warmly recognized his dear friend and colleague, Dean Buffington, who passed away in December. Dean served on the Endowment Fund Investment Board for 19 years and as its chairman for 17 years. Dean enjoyed working closely with Governor Little, the Land Board, and staff at the Department of Lands. Mr. Anton offered kind praise for Dean, remarking that he was a really great guy and was responsible for much of the success of the Endowment Fund Investment Board during his time. Mr. Anton shared that he would miss Dean and wanted to acknowledge Dean and thank him for all he did for EFIB and for the state of Idaho.

For the record, a motion was made by Attorney General Wasden that the Land Board prepare a certificate or other commemoration of Dean Buffington's years of service to be sent to his family

giving thanks to Dean for his many years of service. There being no objection Governor Little so ordered. Governor Little mentioned that he was a Senate member of the Investment Board when Dean first became chairman and there are not very many people in Idaho that have as tirelessly and effectively led a board. Governor Little continued that there are a lot of boards around the state and one attribute that the five Land Board members could dependably rely on was Dean's steadfast commitment to the people of Idaho and the Land Board's trust obligation. Governor Little remarked that the Investment Board's performance over the time that Dean was there, and some of the crises that the market endured, Dean's steady hand and his leadership were in evidence; every beneficiary of the endowments should be thankful for Dean's service.

Consent—Action Item(s)

3. Approval of Draft Minutes – December 15, 2020 Regular Meeting (Boise)

Consent Agenda Board Action: A motion was made by Attorney General Wasden that the Land Board adopt and approve the Consent Agenda. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

Regular—Action Item(s)

4. Due Diligence for Eastern Idaho Regional Solid Waste District Land Exchange – Presented by Josh Purkiss, Program Manager-Real Estate, and Cameron Arial, District Municipal Advisor, Eastern Idaho Regional Solid Waste District

Recommendation: Direct the Department to proceed with due diligence for the Eastern Idaho Regional Solid Waste District land exchange proposal.

Discussion: Attorney General Wasden drew attention to Attachment 2, the red cross-hatched section in the upper right quadrant and acknowledged this is just proposed and the actual outcome is not yet known. Attorney General Wasden noted there are two L-shaped parcels that peaked his interest, one to the immediate south of the red hatched portion and one to the immediate east of the hatched portion, and wondered if those parcels would be isolated, either from access or from other state lands. Mr. Purkiss responded that the Department is trying to use Land Bank funds to acquire a parcel in the shape of a W just to the east of that bottom L-shaped parcel. The Department is concerned about the access. During the due diligence phase, staff will ensure that if there are any remnant parcels, they will have all lawful access and the final package will address that issue.

Governor Little said it would be good for the Department to reach out to all of the landowners adjacent of both the property slated for disposal and the property slated for acquisition. Governor Little asked why not just sell the property rather than exchange it, and also surmised the land is going to be reclassified from either agriculture or dry grazing into a municipal site which will happen simultaneous with the proposal. Mr. Purkiss addressed public outreach, saying the District has been talking to the surrounding neighbors and will have public meetings to receive feedback on the exchange, and that will be brought back to the Board at the final approval. Mr. Purkiss responded to the question about selling the property that the Department is prohibited from selling land over 320 acres which is why staff steered this towards an exchange. Mr. Purkiss affirmed that the land acquired will be reclassified to dry crop ag. Governor Little inquired if the Department is not planning to do any outreach and only the

advocates will do it? Mr. Purkiss clarified that both the Department and the District will be performing outreach; the District already began their effort, and the Department will provide additional information.

Board Action: A motion was made by Attorney General Wasden that the Land Board adopt the Department recommendation that is approve due diligence on this transaction. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

5. Final Approval for Owyhee Land Exchange – Presented by Ryan Montoya, Bureau Chief-Real Estate Services

Recommendation: The Idaho Department of Lands recommends that the Land Board approve the exchange and direct the Department to complete and close the Owyhee Land Exchange.

[Editor's note: Due to duration, the Discussion and Public Comment portions of this item are written in first-person format. This is not a verbatim transcript.]

Discussion:

Ryan Montoya: Thank you, Governor, members of the Land Board. My name is Ryan Montoya, Real Estate Services Bureau Chief for the Idaho Department of Lands. Also on the video conference are representatives from the BLM, should there be any questions that they need to address. This agenda item is to request direction from the Land Board to complete the Owyhee Land Exchange. Just for clarification, this item has gone through due diligence and is ready for closing. I would like to thank the many Department staff members who've worked on this project for over a decade, as well as the stakeholders who've been instrumental in getting this exchange to where it is at today. In 2008, the Land Board directed the Department to enter into a land exchange agreement with the BLM to exchange state lands scattered in sage grouse and wilderness habitat for federal lands that would block up and provide access to the endowments. Since 2008, the Department has worked with the BLM as well as performed substantial public outreach to state lessees, federal permittees, and many stakeholders. In addition, the State has worked with the BLM on extensive due diligence. With due diligence complete, and as shown in Attachment 1, the BLM is prepared to issue the Notice of Decision upon the Land Board's final approval to complete the exchange. Attachment 2 – the screen that I am sharing – is the map of the exchange. For a quick background, the Land Board has directed the Department to pursue land exchanges that block up land, gain access, and increase revenue to endowment beneficiaries which in this case is the Public School endowment. On the map you will notice that there are identifiers as B and S. The B properties are those that are currently owned by the BLM, which will be acquired by the State. You will notice the brown area is the areas designated as wilderness. There are substantial land holdings within the wilderness area. The objective was to exchange out of those areas that were immediately in or adjacent to the wilderness area into areas that are in larger blocks such as B12 and other areas that block up our existing ownership. Notice in the background that there are the blue and the pink parcels which are being blocked up within those state areas. I will present a summary of some of the due diligence in the following presentation that was prepared in cooperation with the BLM. *[Mr. Montoya went through the slides – Attachment 3.]*

In addition to the information in the presentation, there's an increase in endowment revenue through the additional AUMs. Based on the 2021 grazing rate, there will be an annual increase in revenue of \$2,976. As I previously mentioned, since 2008 there's been substantial outreach. Since 2016 some of the highlighted outreach has been:

- In February 2016, a presentation for approval from the Land Board on the Restated Agreement to Initiate which outlined the terms of the exchange agreement as well as the parcels in the exchange.
- In June 2019, the BLM issued the environmental assessment, received comments, and sent letters to the permittees as well as other stakeholders. There were over 145 letters sent out; only 2 permittees responded and that was the Miller Land Company and Simplot.
- In May 2019, there were presentations to the Owyhee County Commissioners as well as the Owyhee Initiative.
- In 2018 and 2019, the Department updated its website and fact sheets.
- In 2018, 2019, and 2020 the Department presented in front of the Idaho Joint Land Use Study to provide an update on the status of the exchange.
- In 2019 and 2020, presentations were made to the Idaho Cattlemen's Association.
- In July 2020, August 2020, and December 2020 letters were sent to the lessees regarding the exchange.
- January 12, 2021, there was a presentation to the Owyhee Cattlemen's Association.
- The Department met individually with stakeholders and those who had questions or voiced concerns regarding the exchange.

The next steps:

- Obtain Land Board approval.
- BLM will sign Environmental Assessment Record of Decision; publish the Notice of Decision and have the 45-day public comment period.
- BLM will work to resolve any protests and appeals.
- Agencies will work through the closing process.

We anticipate that the closing will be in May or June if there are no appeals or protests. In conclusion, the following benefits will be experienced by the Public School endowment if the land exchange is approved and closed:

- Efficient management of the asset
- Reduced management costs
- Acquisition of property with access
- Blocking up of state lands
- Disposition of state lands lacking access
- Increased returns

The Department recommends that the Land Board approve the exchange and direct the Department to complete and close the Owyhee Land Exchange.

Public Comment:

John Robison: Good morning, Governor, and members of the Land Board. My name is John Robison and I am the Public Lands Director for the Idaho Conservation League. Thank you for the opportunity to call in today to testify in support of the Owyhee Land Exchange. Over the last year the Idaho Conservation League has pointed out several areas for improvement regarding Department of Lands' proposals and processes. We believe that the process used in the case of the Owyhee Land Exchange could serve as a model for other proposals of high public interest. We think that the Department of Lands staff have done an exemplary job of working with stakeholders. They have been transparent, inclusive, patient, and adaptive in their approach. The public process was extensive and took the time it needed. The Department of Lands staff went out in the field, listened to stakeholders, and then worked with the BLM to tailor the land exchange to address these concerns. I witnessed the public outreach firsthand. The Department of Lands dropped several state sections from the exchange to address concerns from permittees and others. For the remaining parcels, the Department of Lands worked with the BLM and other stakeholders to develop provisions to minimize disruption and increase certainty. The high degree of coordination between the Department of Lands, the BLM, and the stakeholders paid off in the end. We believe the proposal before you is a win-win as it will benefit both state beneficiaries and the public and is a credit to the Department of Lands staff. Thank you again for the opportunity to testify and I'd be happy to stand for any questions.

Craig Gehrke: Good morning, Governor, and members of the Land Board. My name is Craig Gehrke; I am testifying today as the Vice Chairman of the Owyhee Initiative. My day job is the State Director for the Idaho office of The Wilderness Society. I appreciate this opportunity to testify for the Owyhee Initiative in support of the Owyhee Land Exchange. A little bit of background – the Owyhee Initiative this year is starting its 20th year of a collaborative effort to address certain natural resources out in Owyhee County. The Owyhee County area is very diverse, and it brings together a diverse constituency of people who care very deeply about it. I want to reiterate for the Land Board very quickly the members of the Owyhee Initiative who have worked together for 20 years in a collaboration. The members of the Initiative include the Owyhee County Farm Bureau, the Owyhee County Soil Conservation Districts, the Owyhee County Cattlemen's Association, the Owyhee Borderlands Trust, Backcountry Horsemen of Idaho, the Idaho Outfitters and Guides, the Idaho Wild Sheep Foundation, the Southwest Idaho Desert Racing Association, The Nature Conservancy, the Idaho Conservation League, Idaho Rivers United, the Sierra Club, and The Wilderness Society. The Owyhee Initiative worked for over a decade in the preparation and participation of the Owyhee Land Exchange. The Owyhee Initiative voted twice without dissent to support the Owyhee Land Exchange. I want to compliment both the Idaho Department of Lands staff and the BLM staff in their outreach efforts on this land exchange. They met with the Initiative out in Murphy numerous times to go through the proposal, prepared fact sheets, left behind the latest information to keep us all abreast of how the land exchange was proceeding. Again, I want to compliment the staff from both agencies for the outreach effort they put in now for 10 years to make this exchange a success. The Owyhee Initiative supports the land exchange; like I said, we voted twice without dissent to support this. We urge that the Land Board approve that this land exchange take place. Thank you and I will take any questions.

Tim Lowry: Governor Little and Land Board members, I am Tim Lowry and I am speaking on behalf of L U Ranching Company, a small family ranch. I want to thank the Board for postponing this decision whether to move forward to allow time to work on a solution with the issue regarding the exchange. Unfortunately, the issue I am here to talk about today remains. I want to make my position clear: I am not opposed to this, or any other exchange. I understand why it makes sense from a management perspective and creates a more desirable unit for competitive bidding for the State. However, the issue of recognizing, acknowledging, and protecting existing rights including stock water and grazing preference rights must be resolved. This issue has been raised many times over the years at meetings where the exchange has been discussed. It was raised in my 2015 letter to Director Schultz, it is addressed in Idaho Farm Bureau policy, Owyhee Cattlemen Association policy, and the Owyhee County land use and management plan for federal and state managed lands. It did not suddenly appear within the last six months. The lands that the State will receive are not a blank slate. These rights, which are appurtenances of the base property, exist on these lands; however, I don't think their existence should be a barrier to an exchange. 58-138 section 2 of Idaho Code gives the Board authority to receive less than fee simple title and allows impairment of title as may be in the State's best interest. I believe the State can acquire these lands and at the same time honor the existing rights. But I don't believe these rights can constitutionally, simply be extinguished in an exchange. I'd say only two formal meetings have been held since my letter of 2015 to address this issue. First on September 3, 2020 where I explained the issue and suggested there be future meetings to include the Idaho Farm Bureau, Owyhee Cattlemen and Owyhee County since they had explicit policy on these rights, and possibly some legislators since it seemed likely that legislative action may be required to settle the issue. Second meeting was on December 3, 2020 where a plan was presented to trade L U Ranching into the remaining BLM land and out of the exchange land. That plan is unacceptable for a couple of reasons and, had I been consulted in its development, I could have saved everyone some time. I still believe, and hope, that this issue can be resolved. It will take some work and a serious approach, but I am convinced a solution can be found to the present problem that will eliminate any problems in future exchanges. Thank you.

Russ Hendricks: Governor Little, Land Board members, good morning. I am Russ Hendricks representing the Idaho Farm Bureau. On October of 2014, the Department sent a letter to all BLM permittees involved in the proposed exchange stating that any exchange would be strictly voluntary for those permittees. Unfortunately, this has not happened in practice and that's what brings us here today. Our 80,000 plus member families recognize the Land Board's constitutional fiduciary duty to the endowment; however, that duty is not superior to and cannot override the constitutionally protected rights of Idaho citizens. These property rights are defined in Idaho law; Idaho Code 25-901 clearly and unambiguously declares that a federal grazing preference right is a property right. Fortunately we have the legislative record to bolster our position. Two brief examples are: Representative Frances Field, the sponsor of the preference language, stated according to committee minutes, "This proposed addition to Idaho law would verify the property right and interest of these historic grazing rights in the context of current federal statutes." Mr. Stan Boyd stated, "Ranchers want to be compensated for their legal rights." This law was passed in 1998 because of the changes to BLM grazing regulations in 1995 under Secretary Babbitt, as well as several lawsuits which were working their way through the federal court system at that time. The record shows the legislature fully intended to ensure federal grazing preference was a property right, compensable under Idaho law. The Attorney General analyses have done a masterful job of citing seemingly relevant federal regulations and federal court cases

attempting to demonstrate that the exchange as proposed is within the law. Unfortunately, these analyses sidestep the fact that this is a state action under state law; federal references are not relevant here. Neither analyses cite any state court cases or other evidence. It is simply their stated opinion that grazing preference is not a property right under Idaho law, denying the clear text of the statute. Similarly these analyses implicitly recognize a loss will occur if the current exchange is approved, but they go out of their way to establish that under federal regulations and federal court precedent they are non-compensable losses. Again, that may be true under federal law, but this is a state action under state laws. In conclusion, our members therefore respectfully ask the Board to postpone a decision and direct IDL to make a good faith effort to truly work with Mr. Lowry through meaningful collaboration to come to a mutually agreeable resolution under the law before a decision is finalized. Thank you and I would be happy to answer any questions.

George Bennett: Idaho Land Board members, our ranch is one of the places that was involved in the trade of the state land and the BLM. We are adjacent to the wilderness and have some BLM that is mixed out through our state leases. I might add that for the last 30 some years our grazing permit has been 90%-plus state land. We do have some BLM mixed around and it will make it easier for everybody if it gets exchanged. Down through the years the State has managed these lands for the BLM because it was remote and no access and hard to manage. We have been involved in Juniper eradication and have some great strides in this through water for our ranch increased along with the return of sage grouse. We have signed up for Juniper eradication at least twice and had to turn it down because of the delay in the Land Board and the BLM to make this exchange. We are willing to sign up one more time, but we'd like to ask that this goes on through and gets done in the next little while. We are definitely in favor of the state land and BLM land exchange. Thank you.

Stephen Miller: Good morning, Governor Little, and Land Board members. My name is Stephen Miller; I am the President of the Miller Land Company, Inc., an Idaho S-corporation that owns private ranchland in Owyhee County west of Triangle along Flint Road, from Spencer Reservoir past Boulder Creek. The company has two BLM allotments: West Antelope and the Miller FFR. The proposed land exchange includes the entire Miller FFR allotment and approximately one-third of our West Antelope allotment. We also have a state grazing lease for two parcels which join the West Antelope allotment. I want to comment on two issues. The first is the issue of the stock water rights owned by the Miller Land Company. There are three in the Miller FFR and one in the West Antelope allotment. I share some of the same concerns presented by Mr. Lowry concerning water rights. I am not sure how these will be treated in the long run. Once our state grazing lease expires, it could result in a loss of these rights if at auction another party secures the lease. I view these rights as property and a loss without due compensation could be a taking. I assume and hope that this concern will be addressed in a manner through a legal review that would be satisfactory to all parties. The second issue is just a clarification to the rules about the land exchange. The Miller Land Company, through ownership of private land, has the BLM grazing preference for both allotments mentioned. In other words, the BLM grazing decision for allotments has all AUMs associated with the allotments because they're derived from the base property owned by the company. The Miller Land Company has a lease agreement with the Kershner family which gives control of the base property but not ownership and thus allows the BLM grazing permit to be solely in the name of Kershner. Kershner is actually responsible to graze their cattle on the allotments in accordance with the BLM rules and permit. They also graze their

cattle on the state land that is leased by the Miller Land Company. The Miller Land Company pays the fees for both the BLM and the state grazing. The rules guiding the land exchange only references the BLM permit for determining the length of the new state grazing lease after the exchange is completed. It should be noted that the Miller Land Company will need to be the lessee of the state land for grazing just as it is currently today. The expiration date of the existing BLM permit will be used. The lease will continue to be subleased to Kershner as their lease agreement with the Miller Land Company. I thank you for the opportunity to discuss these matters with you.

Chris Black: Hello, Governor, and Land Board; I am here to speak on my personal experience with this land exchange. I have a big BLM allotment out there that includes state; I have two wilderness areas within that allotment. It's been my experience that all due diligence has been met with this. I'm in favor of the exchange. We've had an opportunity to opt out if we need to on any of these parcels being exchanged, and we have the opportunity to acquire the grazing on the exchange pieces that fall within our allotments. Those things being met, that has met all of the criteria that I needed for my ranch. With this huge process going on, and as long as it has gone on, I have faith in the Land Department of being able to work through any other problems or issues that come up with it. That's all I have to say is with my experience and with some of the boards that I have been associated with, the Owyhee Initiative Board, we had some votes on this and there wasn't any opposition to it. The State and BLM have reached out to us through mailings and through meetings. I feel that my input has been heard. Thank you very much.

Additional Discussion:

Governor Little: Unless there is somebody else signed up, I believe that is it. Ryan do you want to address part of the testimony, or does anyone else?

Ryan Montoya: Prior to the commencement of your decision, there was discussion on some of the legal aspects of this. We consulted with the Attorney General's Office and I believe that Mr. Strack, Deputy Attorney General, is prepared to provide some background and information to the Land Board in response to some of the comments that were made today, so with that I will turn it over to him.

Steve Strack: Thank you, Governor, members of the Board. My name is Steven Strack; I am a Deputy Attorney General in the Natural Resources Division. I have been there for 33 years and have dealt with these kinds of issues for much of that time. I think some background information might be useful for the Board. The lands that Mr. Lowry was speaking to are in the South Mountain grazing allotment. That's a mix of federal, state, and private lands but it is all grazed together; the state and the federal governments issue separate permits and leases but the cattle graze throughout the allotment. If this exchange goes through, the allotment would still be a mix of federal, state, and private lands but there would be a higher percentage of state land. Right now Mr. Lowry holds the right to graze 165 AUMs on the federal lands within the allotment. If the exchange goes through, he will still hold 62 of those AUMs and the other 103 would be under a state lease on the lands that the state would acquire. The exchange doesn't take away any rights to graze for Mr. Lowry. He will still have the right to graze on the state lands if he accepts the state's offer of the land use permit. He will still have access to the water sources on state lands because those state lands are not fenced off from the rest of the allotment. The primary difference that Mr. Lowry would hold before and after the exchange is that under federal

regulations Mr. Lowry holds what is called a grazing preference which basically gives him a priority right to any future federal permits for the number of AUMs that are associated with his base property which within the allotment was 165. The practical effect of the exchange on Mr. Lowry is that he is no longer in line for future leases on the state lands; he is still first in line for future leases on the federal lands. On the state lands, at the expiration of the 5-year permit which he would be offered as part of the exchange, he would be subject potentially to public auction due to a conflict application that's received. Is that a taking of property without compensation? I think Mr. Hendricks referenced that our analysis is primarily based on federal law but that's because the grazing preference is itself a creature of federal law. Mr. Hendricks noted the committee minutes from Idaho Code 25-901 which talks about grazing preferences as an appurtenance of base property. He mentioned that one of the committee members noted that the purpose of the legislation was to basically describe the property right in the context of federal statutes. Again, that's because the federal statutes are the basis for creating these rights and recognizing these rights. Mr. Lowry is correct, a grazing preference in itself can be very valuable; it adds a lot of value to the base property. But, not everything of value qualifies as property under the Fifth Amendment or Idaho Constitution. Article I Section 14, which is Idaho's takings clause, prohibits taking of private property for public use. The Taylor Grazing Act which is the basis for grazing permits and grazing preferences provides, and the U.S. Supreme Court has affirmed, that a grazing permit and a grazing preference does not create any property interest in federal land. A grazing preference exists only so long as the federal government recognizes it. In that sense, it is not so much a property right, but it is a form of government benefit. Like any government benefit, like a tax credit or whatever, it can add a tremendous value to your business and can add tremendous value to your private property, but if the government stops providing that benefit it is not a taking of property. It is simply a cessation of a benefit. The courts have held that a grazing preference is much like a benefit that is bestowed by the government on ranches that use public lands, those are called base properties; it's a preference to deal with a particular rancher if those federal lands are made available for grazing but if those lands are no longer available for grazing under a federal permit, and here they're not because they are being conveyed to the state, then there is no taking of property, there's no plan for compensation. I think Mr. Hendricks noted that this is a state action, but in fact, Mr. Lowry is losing his permit by means of the federal government disposing of these lands to the state through an exchange. It is the federal action that basically cancels out the grazing preference. The state, as a government, can't cancel anything. Only the federal government can dispose of those lands; only the federal government can cancel the grazing preference.

In terms of water rights, they do require a bit of a different analysis because they are created by state law, not federal law. Our Idaho Supreme Court has held that state-based stock watering rights on federal lands do not include the right to enter the federal land unless the federal government itself grants permission. In other words, a water right holder has to obtain grazing access rights from the federal government for those water sources that are on federal property; access is not part of the property right or the water right. Federal courts have held that cancellation of grazing privileges does not take state water rights because access is simply not part of the bundle that makes up that state water right. Our Idaho Supreme Court has basically affirmed that water rights do not include access rights. As a practical effect, if Mr. Lowry was to lose his federal grazing permits it may eventually prevent use of his state water rights, but it does not take away any part of the state water rights itself. And since this is a grazing allotment and Mr. Lowry would still hold permits to graze on the federal lands that are part of the allotment, he

would not be fenced off from using those state lands at this point in time. He would still have access to those water sources to water the cattle that he is permitted to continue grazing within the allotment. There is a potential at some future point, again it is only a potential, that once those state grazing leases are made available for public auction, someone could come in with a lease on the state property and fence it off. Again it is a possibility at some point that it could be fenced off; whether or not the Department would allow that is a decision that would have to be made in the context of a grazing management plan. The assertion that Mr. Lowry is going to lose his water rights at any point in the future is just speculation. Until those lands are fenced off, he continues to have access.

Finally, I think Mr. Lowry made a reference that he is losing some economic value because he is losing his grazing preference. That is certainly true. Grazing preference can add a lot of value to Mr. Lowry's base property, but again the federal courts have looked at that issue in the context of whether or not a taking of base property should include the value of grazing preferences. The federal courts have concluded that a grazing preference is a benefit that the federal government provides and certainly adds value to Mr. Lowry's property, or to the holder of the base property, but it's not property itself. The government is not liable for the reduction in value of the base property that is lost if a grazing preference is cancelled. Again, because a grazing preference is a creature of federal law, that is the appropriate source to look to in terms of whether or not a grazing preference is itself a compensable property right. Governor, that concludes my remarks and I will stand for any questions.

Attorney General Wasden: I have looked at Idaho Code section 25-901 and I want to read some language to you, Steve, and ask you about that. 25-901 says that livestock ranches are bought, sold, traded, and inherited with assurance that appurtenant grazing preference rights will be transferred to the new base property owner. Therefore, a grazing preference right shall be considered an appurtenance of the base property through which the grazing preference is maintained. That's the last two sentences of 25-901. But in the proposed exchange, the base property is not bought, sold, traded, or inherited as I read it and so it doesn't appear to me that 25-901 on its face applies because the base property is still in the hands of the same holder. So this language really doesn't apply in that context. I am just asking for your thoughts on that specific provision.

Steve Strack: Governor, Attorney General, that is entirely correct. The statute declares a grazing preference to be an appurtenance to base property, but that only becomes an issue if the base property itself is conveyed or transferred. It's much like a water right. A water right is appurtenant to state property and if you transfer the state property the water right can go with it, just like a grazing preference can go with the base property. Declaring it an appurtenance does not mean that it has any separate existence under state law; it is federal law that creates the grazing preference, so we look to federal law to determine whether or not this kind of disposal of federal property results in the taking. The federal courts have been very clear in concluding that it does not.

Attorney General Wasden: Follow up question. Changing the subject a little bit, Steve, and that's regarding water. I want to make sure that I understand. Currently some property holders have a stock watering right. It is a water right that is recognized in the SRBA [Snake River Basin Adjudication], it is recognized by the Idaho Supreme Court, it is recognized by the state, and it applies on grazing permits on federal land. The question here seems to be if it exchanges and

those properties are held by the state, somehow that will impact that water right because there may be some point in the future when the allottee doesn't hold that water right and that water right can be forfeited. But that risk actually exists today, recognizing there's a preference and that sort of thing, but if the current holder was to lose that grazing permit, they still would run the risk of forfeiture at some point if they failed to access that water at the appropriate point. What I am trying to say is the fact that it is held by the state or the federal government – the land itself – the risk of forfeiture still exists, maybe lesser so in the hands of the federal government, but it still exists. I wanted to see if what I am thinking is correct.

Steve Strack: Again, you're correct. Anytime you establish a water right on someone else's property whether it be state property, private property, or federal property you are doing so at the risk that at some future point you may lose the right to access that property. The Idaho Supreme Court has established this as a matter of water law that a water right does not create a right of access to property. It doesn't create a trespass. You can't trespass on someone else's property to exercise your water right; you always need the landowner's permission. When you do so on federal property you are doing so at the risk that at some point that permit could be cancelled. That raises another interesting point of federal grazing permits and grazing preferences is that they are not guarantees. Mr. Lowry has a grazing preference which puts him first in line if the federal government issues a permit to graze that property in the future. There's no guarantee that a permit will be issued. The federal government always has the discretion to not issue permits and to not graze certain properties. That basically establishes that what we're looking at is not a property right per se, and so no taking.

Attorney General Wasden: Follow up. Steve, would you agree with me that with regard to those water rights it's not the exchange that puts the water right at risk, it is the nature of the water right itself.

Steve Strack: Yes, it is the nature of the water right itself. Again, a water right does not include a right of access. Mr. Lowry would retain all of his water rights even if he was fenced off from that property at some point in the future, and that water right could be transferred to the new lessee, so it still has value.

Board Action: A motion was made by Attorney General Wasden that the Land Board fulfill the Department recommendation that is approve the exchange and direct the Department to complete and close the Owyhee Land Exchange. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

Information

None

Executive Session

None

There being no further business before the Land Board, at 10:27 a.m. a motion to adjourn was made by Attorney General Wasden. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.



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December 21, 2020

DEPT. OF LANDS

DEC 21 2020

BOISE, IDAHO

VIA HAND DELIVERY

Idaho Department of Lands
Board of Land Commissioners
300 N. 6th Street, Suite 103
Boise, Idaho 83702

Re: *Notice of Appeal*

To Whom It May Concern:

Enclosed please find one (1) original and five (5) copies of a Notice of Appeal in the Matter of Communication Site Lease No. M700084 Awarded to Newmax LLC being submitted on behalf of our client, The Tidwell Idaho Foundation, Inc. Please do not hesitate to contact our office if you have any questions or need additional information.

Thank you in advance for your assistance in this matter.

Sincerely,

VARIN WARDWELL LLC

A handwritten signature in blue ink that reads "Alison Berriochoa".

Alison S. Berriochoa
Paralegal

Enclosures

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Attorneys for The Tidwell Idaho Foundation, Inc.

BEFORE THE BOARD OF LAND COMMISSIONERS
OF THE STATE OF IDAHO

IN THE MATTER OF COMMUNICATION
SITE LEASE NO. M700084 AWARDED
TO NEWMAX LLC

Case No. _____

NOTICE OF APPEAL

The Tidwell Idaho Foundation, Inc. ("Appellant" or "TIF") hereby files this formal Notice of Appeal pursuant IDAPA 20.03.14.002.01 and 20.01.01.003. The basis of this notice of appeal follows:

THE PARTIES

1. Appellant is a duly organized non-profit corporation in good standing with the State of Idaho.
2. Respondent Idaho Department of Lands ("IDL") is an agency of the State of Idaho, charged with the duty to review, evaluate, and process applications to lease lands owned by the State of Idaho.

GENERAL ALLEGATIONS

3. This matter involves State-owned land located off of Buttercup Road in Sections 28, 29, and 33 of Township 3 North, Range 18 East, Blaine County, Idaho (the “Buttercup Parcel”).

4. The Buttercup Parcel has a surface area of approximately 106.6 acres.

5. On December 3, 2020, IDL held a conflict auction regarding proposed Communication Site Lease No. M700084 (the “Lease”).

6. The Lease includes a leased premises of approximately 0.23 acres within the Buttercup Parcel for the placement of a cellular communication tower, equipment shelter, access road, and related infrastructure (the “Leased Premises”).

7. Notice of the ability to apply to lease the Leased Premises was published beginning in December 2019, and the deadline for applications to lease the Leased Premises was January 10, 2020.

8. Beginning on June 7, 2019, TIF has submitted an application and proposed amendments thereof to IDL to lease the Buttercup Parcel in order to construct modular, removable single-family residences that would be powered by an onsite solar array and energy storage battery (collectively, the “TIF Application”).

9. The general concept of the TIF Application is that, over time, single-family modular, removable dwellings would be developed within the Buttercup Parcel to match the underlying density of the R-2 zoning within Blaine County, with TIF sub-leasing individual parcels to residents as the dwellings are developed over time.

10. As of the January 10, 2020 cutoff date for applications to bid on the Lease, TIF was proposing to pay \$35,000 in annual rent to the State of Idaho beginning in year 1 of a lease,

plus an additional \$2,500 per acre per year as land was developed for the entire 106.6-acre parcel, including the communication tower site.

11. In addition, on November 27, 2020, TIF proposed to pay \$250,000 per year in annual rent for a 49-year lease of the Buttercup Parcel.

12. However, IDL has not moved forward with processing the TIF Application.

13. In addition, TIF was not able to place a bid on the Lease at the December 3, 2020 auction.

14. Instead, only Newmax, LLC and Sun Valley Media Group, LLC were allowed to place bids at the December 3, 2020 auction.

15. As a result of the auction, IDL awarded the Lease to Newmax, LLC.

COUNT ONE

(Violation of Idaho Const. art IX, § 8)

16. The presence of a cellular communication tower within the Buttercup Parcel will reduce demand for use of the Buttercup Parcel for residential purposes as contemplated in the TIF Application and for other potential uses.

17. Therefore, the Lease of a portion of the Buttercup Parcel for use as a cellular communication tower site substantially impairs the viability of the TIF Application and will reduce demand for applications to lease the remainder of the Buttercup Parcel.

18. Under Article IX, Section 8 of the Idaho Constitution, IDL and the Board of Land Commissioners have a duty to “secure the maximum long term financial return” when leasing state lands.

19. Because the TIF Application would provide more revenue to the State over a longer period of time than the Lease, and because the Lease will reduce demand for additional

uses of the remaining portions of the Buttercup Parcel, issuing the Lease to the detriment of other potential uses and to the detriment of the earlier-filed TIF Application violates Article IX, Section 8 of the Idaho Constitution.

COUNT TWO

(Violation of Idaho Code § 58-310)

20. Idaho Code Section 58-310(1) states that, “[w]hen two (2) or more persons apply to lease the same land, the director of the department of lands, or his agent, shall....auction off and lease the land to the applicant who will pay the highest premium bid therefor....”

21. By not allowing TIF to bid on the Lease, IDL has violated Idaho Code Section 58-310.

PRAYER FOR RELIEF

22. Based on the foregoing, TIF respectfully requests an order from the Board of Land Commissioners:

- a. Vacating the issuance of the Lease to Newmax LLC; and
- b. Requiring IDL staff to process the TIF Application before taking further action on the Lease or Leased Premises.

DATED this 21st day of December, 2020.

VARIN WARDWELL LLC


By: 
Dylan Lawrence
Attorneys for Appellant

VERIFICATION

STATE OF IDAHO)
) ss.
County of Blaine)

I, Leslie Anne Tidwell, being first duly sworn upon oath, hereby depose and say that I am the President of The Tidwell Idaho Foundation, Inc., the Appellant in this action, that I have read the foregoing Notice of Appeal, and that the matters alleged in the Notice of Appeal are true and correct to the best of my knowledge and belief.

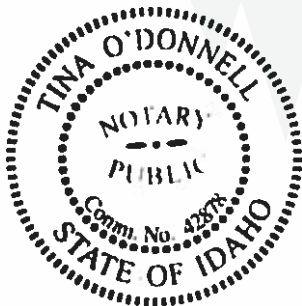
DATED this 21st day of December, 2020.




Leslie Anne Tidwell

IDAHO DEPARTMENT OF LANDS

SUBSCRIBED AND SWORN to before me this 21st day of December, 2020.





Notary Public for Idaho
Commission expires: 11.26.25

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 21st day of December, 2020 filed one (1) signed original and five (5) copies of the foregoing Notice of Appeal by the method indicated below, and addressed to the following:

Idaho Board of Land Commissioners
300 N. 6th Street, Suite 103
Boise, Idaho 83702

☐ U.S. Mail ☐ Fax ☒ By hand ☐ Overnight


Dylan Lawrence

IDAHO DEPARTMENT OF LANDS

JAN 07 2021

Boise, Idaho

LAND BOARD MEMORANDUM
February 16, 2021 Land Board Meeting
Regular Agenda

SUBJECT

Appeal of Auction for Communication Site Lease No. M700084, filed by The Tidwell Idaho Foundation, Inc. App.R. 1-6.¹

BACKGROUND

The Land Board holds in trust for the University of Idaho three parcels of land north of Hailey, Idaho. Together, the three parcels form a triangular-shaped, approximately 106 acre parcel commonly known as the Buttercup Parcel. App.R. 45. There is one current lease on the parcel, Lease M700077, which authorizes an AM radio tower on two acres at the southern tip of the Parcel. *Id.* As a practical matter, the radio tower is segregated from the remainder of the Buttercup Parcel by an Idaho Power Company distribution line. App.R. 74. In September 2018, the Department received an application to lease .23 acres for a cellular tower, to be located adjacent to the AM radio tower and behind the distribution lines. App.R. 86.

Processing of the application was suspended while the Department, in response to a March 19, 2019 Land Board directive, examined the processes involved in granting leases. At its October 17, 2019 meeting, the Department presented, and the Land Board approved, the advertising and auction process for crop, grazing, conservation and residential leases, which is consistent with the leasing application process in the Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases (IDAPA 20.03.14). The Department further noted that “[c]ertain lease types, such as some commercial leases, will require additional evaluation or review due to their unique nature.” App.R. 76-78.

Following the Land Board’s approval of the leasing process, the Department began processing the lease application for the communication (cellular) site. In December 2019 and January 2020, IDL advertised the opportunity to apply for the communications site lease (M700084) for four weeks on its website, in the pertinent local paper, and in the Boise staff office and Eastern area offices, in accordance with the lease auction process. IDL received three applications (one eventually dropped out before auction). On December 3, 2020, the Department held a virtual auction. The winner of the auction was Newmax LLC, which bid \$15,500 as the highest bonus payment, and will pay a first year of rent of \$18,969.03, with annual 3% increases for the life of the 20-year lease. The rent will increase if co-locators are

¹ This Memorandum is accompanied by a 163 page record of documents gathered by staff that are relevant to the issue raised in the Foundation’s appeal. The documents are Bates-stamped in the upper right-hand corner.

added in the future. The tower is expected to be 120 feet tall. Over the 20-year life of the lease, \$525,204.94 gross revenue will be generated for the University of Idaho.

During this same approximate time period, the Department was in communication with another potential lessee of the Buttercup Parcel. On June 13, 2019, The Tidwell Idaho Foundation, Inc. (hereinafter “the Foundation”) applied to lease ten acres of the Buttercup Parcel for the purpose of installing a solar array, energy storage battery, and five affordable modular homes. App.R. 7-72. The stated purpose of the project was to provide “a more affordable housing solution for longtime [Blaine] County residents.” App.R. 8. In its application, the Foundation admitted that “[t]his is not a financially lucrative project,” App.R. 22, and proposed a lease rate of \$250 per developed acre, for an initial annual rent of \$2,500. App.R. 8. The Foundation additionally sought the option to expand its project in 10-20 acre increments until the entire Parcel was under lease, with a payment of \$1,000 per year to retain such option. *Id.* The Foundation’s application did not include those portions of the Buttercup Parcel occupied by the radio tower and then-pending Lease M700084. App.R. 21.

After initial discussions with IDL staff, the Foundation, via an August 30, 2019 email, purported to “update” its offer to \$25,000 per year for the ten acres the Foundation intended to eventually develop as homesites, and \$10,000 for the remainder of the parcel. App.R. 146. The email reiterated that in order “to get the houses more affordable, the lease rent of the property has to work within a narrow range.” *Id.*

On November 14, 2019, the Department, in response to the Foundation’s updated offer of August 30, 2019, informed the Foundation that it was “struggling to determine what the total financial benefit to the endowments would be,” and asked for certain clarifications of the Foundation’s lease proposal, including a spreadsheet showing what the Foundation proposed to develop over ten years, a map indicating the lands the Foundation wanted to lease, and whether the Foundation was proposing flat lease rates or rates with an annual CPI adjustment. App.R. 145. The requested information was never provided by the Foundation, though the Foundation did inquire as to the status of its updated offer on October 6, 2019, and was informed that the Department was awaiting final input from the attorney general’s office before finalizing a leasing process for commercial leases. App.R. 132.

Once the opportunity to apply for the communications site lease was advertised in December 2019, Kiki Tidwell (President of The Tidwell Foundation), sent an email to IDL objecting to the proposed cell tower lease, stating that “looking at the location of this across from the entrance to my subdivision, I am going to have a problem with it.” App.R. 140. The email was sent in her personal capacity, and did not purport to represent the Foundation. *Id.* The next day she emailed the Department threatening to initiate an advertising campaign opposing the proposed cellular site with a heading “The Idaho Land Board could give a rip about our community’s zoning and comp plan.” App.R. 088. Neither Ms. Tidwell nor the Foundation applied to bid for the communications site lease, Lease M700084.

As the December 3, 2020 auction date for the cell tower lease approached, Ms. Tidwell tried to stop the auction. On November 27, 2020, Tidwell sent an email to IDL purporting to amend the Foundation's lease application to pay "\$250,000 per year annual lease rent, on the entire 106.6 acres of land as detailed in the appraisal report including the celltower site, 49 years lease term, with options to renew lease," but stating that "[t]his updated offer is withdrawn if the celltower site is auctioned off." App.R. 130. On December 2, Tidwell sent another email stating: "I see that the auction for the cell tower site on this property is scheduled for 11 am tomorrow. Please understand that our offer is withdrawn if this auction goes through as a cell tower will decimate the value of this property for homes." App.R. 143.

IDL responded to Tidwell emails, indicating that they understood her to have withdrawn her leasing application, but informing her that IDL was preparing a RFP for development of the Buttercup Parcel and would welcome responses from the Foundation at that time. App.R. 143.

LEGAL STANDARDS

Idaho Code § 58-310 provides that when two or more persons apply to lease the same land, the director shall "auction off and lease the land to the applicant who will pay the highest premium bid therefor, the annual rental to be established by the state board of land commissioners." The same statute further provides that "[o]nly those persons who have filed applications in the manner and at the time provided for by statute or rule shall be permitted to bid at any such auction for the lease of state lands."

Idaho Code § 58-310(4) also provides that the Land Board "shall have power to reject any and all bids made at such auction sales, when in their judgment there has been fraud or collusion, or for any other reason, which in the judgment of said state board of land commissioners justified the rejection of said bids." The statutory provision recognizes that under the Board's constitutional authority, "[i]t is within the judgment of the Board whether the leasing to a particular lessee of particular land at a particular time, for whatever rental, would 'secure the maximum possible amount therefor' . . . to grant or reject a lease is a discretionary power of the Board." *Allen v. Smylie*, 92 Idaho 846, 850, 452 P.2d 343, 347 (1969).

The Board's Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases provide that an "aggrieved party" may appeal the result of a conflict auction within twenty (20) days after the auction is held. IDAPA 20.03.14.002.01. "The Board has the discretion to accept or reject any timely appeal. In the event that the Board rejects hearing the appeal, the decision of the Director will be deemed final." *Id.* If the Board decides to accept the appeal, the appeal may be heard by the Board, or the Board, "in its discretion, [may] appoint a Board sub-committee or a hearing officer to hear the appeal." IDAPA 20.03.14.002.02.

DISCUSSION

The threshold question that must be addressed is whether the Foundation is an “aggrieved party,” which is a prerequisite to filing an appeal under IDAPA 20.03.14.002.01. The Board’s rules do not define the term “aggrieved party,” but it is well established that a person is “aggrieved” by an agency action if the agency action “affects his or her present personal, pecuniary, or property interest.” *Vickers v. Idaho Bd. of Veterinary Med.*, 167 Idaho 306, 469 P.3d 634, 640 (2020) (quoting *Ashton Urban Renewal Agency v. Ashton Mem’l, Inc.*, 155 Idaho 309, 311, 311 P.3d 730, 732 (2013)). The effect on those interests, however, “must be more than a possible or remote consequence of the order.” *Id.* “To render a party aggrieved by an order, so as to entitle him to appeal therefrom, the right invaded must be immediate, not merely some possible, remote consequence, or mere possibility arising from some unknown and future contingency.” *Application of Fernan Lake Vill.*, 80 Idaho 412, 415, 331 P.2d 278, 279 (1958) (quoting 4 C.J.S. Appeal and Error § 183 b, pp. 559 and 561). In order to determine if an interest is too remote to render a person “aggrieved,” Idaho courts apply a simple test: “Would the party have had the thing if the erroneous judgment had not been entered? If the answer be yea, he is a party aggrieved.” *Id.* (quoting *State v. Eves*, 6 Idaho 144, 53 P. 543, 544 (1898)).

Here, the Foundation asserts two “counts” in its appeal: first, it asserts that the Land Board violated its fiduciary duty by proceeding with the auction of Lease M700084 because the lease “substantially impairs the viability of the [Foundation’s] Application and will reduce demand for applications to lease the remainder of the Buttercup Parcel.” Second, it alleges that IDL prevented the Foundation from bidding on Lease M700084. Both counts of the appeal fail for the simple reason that the Foundation fails to demonstrate that the auction of Lease M700084 affects any presently-existing personal, pecuniary, or property interest of the Foundation.

1. *The Foundation’s application to lease the Buttercup Parcel does not create a personal, pecuniary, or property interest in the disposition of the Buttercup Parcel.*

As the Idaho Supreme Court has repeatedly held, the simplest test for determining whether a party is aggrieved by an agency action is to ask whether the asserted right is immediate and vested—if the asserted right is a mere possibility arising from some unknown and future contingency, the party is not “aggrieved” by its loss. Here, the asserted right is the Foundation’s interest in leasing the Buttercup Parcel. The Department’s lease of M700084 did not deprive the Foundation of its interest in the larger Parcel for two reasons: first, the Foundation’s interest in leasing the Parcel was contingent upon a number of steps, many beyond the Foundation’s control: It would have to submit a lease application with sufficient assurance of financial ability and projected future returns; such returns would have to be in line with Board policies; other terms and conditions would have to be negotiated; the lease would have to be advertised for public auction; the Foundation would have to win the

auction; and finally, the lease would have to survive the Board's discretionary review of auction results (see Idaho Code § 58-310(4) ("the Board "shall have power to reject any and all bids made at such auction sales, when in their judgment there has been fraud or collusion, or for any other reason, which in the judgment of said state board of land commissioners justified the rejection of said bids"))).

Hence, there are simply too many contingencies laying between the current status of the Foundation's application and the ultimate award of a lease to render the Foundation an aggrieved party if the Board proceeds with the award of Lease M700084. The Department had continuing concerns that the initial application provided inadequate financial returns to the University of Idaho endowment—while the Foundation suggested in subsequent emails it was willing to pay more than it initially offered, it never formally amended its lease application to provide financial projections demonstrating that the project would provide sufficient cash flow to make such payments.² Thus, at this stage the Foundation has not formally amended its application to provide the required financial information demonstrating that the project will generate sufficient income to pay the suggested rent of \$250,000 per year. At best, the email exchanges between the Department and the Foundation indicate a continued interest in maintaining a dialog regarding future lease possibilities, but are do not constitute the type of commitment necessary to establish a pecuniary or property interest substantial enough to support an appeal of Lease M700084.

The second reason for finding that the Foundation is not aggrieved by the issuance of Lease M700084 is that the Lease encumbers less than a quarter-acre of the 106 acre Buttercup Parcel, is located next to an existing radio tower, and is segregated from the remainder of the parcel by power lines. The remainder of the Parcel remains open for lease proposals. In the subjective view of the Foundation, the presence of the cell tower may render the remaining parcel less desirable for its proposed use as a low-income housing project, but the issuance of Lease M700084 does not prevent the Foundation from applying for use of the remainder of the parcel. Moreover, the primary concern with the cell tower was expressed not by the Foundation, but by its President, who was plainly acting in her personal capacity when she wrote to the Department that "looking at the location of this across from the entrance to my subdivision, I am going to have a problem with it."

Succinctly, the Foundation can claim to be aggrieved only if it would have acquired the lease to the larger Buttercup Parcel absent the issuance of Lease M700084. Whether the Foundation would have been successful in acquiring the lease is unknowable. There is a possibility that the Foundation would have prevailed in a future lease auction, but it is just that—a possibility. In other words, the issuance of Lease M700084 does not deprive the Foundation of any present pecuniary or property interest—nor has the Department acted to

² The balance sheet in the Foundation's initial application (App.R. 34) indicated that the Foundation's total assets were slightly more than \$1 million, raising questions as to its sustained ability to pay the suggested rent of \$250,000 per year.

prevent the Foundation from applying for the future lease of those portions of the Buttercup Parcel aside from the .23 acres that are subject to Lease M700084. Given the inchoate nature of the Foundation's interest, it is not an aggrieved party and cannot challenge the outcome of the auction for Lease M700084 on the basis that it interferes with the Foundation's proposed use of the larger Buttercup Parcel.

2. *The Foundation lacks any legally protected interest allowing it to assert that the Board violated its fiduciary duties by entering into a cell tower lease that, in the Foundation's view, rendered the Parcel less desirable for the Foundation's intended uses.*

The Foundation asserts that the Board violated its fiduciary obligation to the University of Idaho because, in its view, Lease M700084 will reduce demand for the remaining portions of the Buttercup Parcel. The Foundation provides no support for this conjecture other than its single, factually unsupported email proposing to pay \$250,000 per year for lease of the Parcel, and its dissatisfaction with the cell tower's presence.

Even assuming the truth of the conjectured and highly speculative loss in endowment income, the Foundation itself is not injured by such reduction. The Idaho Supreme Court has held that the Board has broad discretion to determine "whether the leasing to a particular lessee of particular land at a particular time, for whatever rental, would 'secure the maximum possible amount therefor.'" *Allen v. Smylie*, 92 Idaho 846, 850, 452 P.2d 343, 347 (1969). While the Board must exercise its discretion in a manner consistent with its fiduciary obligations, only direct beneficiaries of state endowments, or the attorney general acting on their behalf, have a legally protected interest in challenging the Board's administration of the endowment land trust for violation of such fiduciary obligations. *Selkirk-Priest Basin Ass'n, Inc. v. State ex rel. Andrus*, 127 Idaho 239, 242, 899 P.2d 949, 952 (1995); *Wasden v. State Bd. of Land Comm'rs*, 153 Idaho 190, 196, 280 P.3d 693, 699 (2012). The only other instance in which a party has standing to contest the constitutionality of a board action is where the Board takes "direct action," such as denying a lease application, that causes such party to suffer a "distinct and palpable" injury, not "one suffered alike by all citizens in the jurisdiction." *Idaho Watersheds Project v. State Bd. of Land Comm'rs*, 133 Idaho 64, 66–67, 982 P.2d 367, 369–70 (1999) (quoting *Selkirk-Priest Basin Ass'n*, 128 Idaho at 833–34, 919 P.2d at 1034–35).

Here, the Board has not denied the Foundation the opportunity to lease endowment land; rather the Foundation has merely asserted that it or others may not be willing to pay as much for a future lease as they would if the cell tower is not present. The Foundation is not injured by the asserted and highly speculative loss of future endowment income, and has no legally protected interest allowing it to challenge Board decisions for alleged failures to fulfill fiduciary duties. Given those facts, the Foundation is not an aggrieved party under the terms of IDAPA 20.03.14.002.01 and cannot challenge the award of Lease 700084 on the basis that future endowment income may be reduced.

3. *The Foundation never applied to lease M700084 and is not aggrieved by the award of the lease to a qualified bidder.*

In Count II of its appeal, the Foundation asserts that the auction of Lease M700084 violated the terms of Idaho Code § 58-310, because the Foundation was not allowed to bid on the lease. The Foundation's assertion, however, is simply untrue: the Foundation had the same opportunity as everyone else to apply to bid on Lease M700084—it simply chose not to apply, and instead attempted to circumvent the Department's auction procedures.

Idaho Code § 58-310 provides that when two or more persons apply to lease the same land, the director shall "auction off and lease the land to the applicant who will pay the highest premium bid therefor, the annual rental to be established by the state board of land commissioners." Idaho Code § 58-310(1) (emphasis added). The same statute further provides that "[o]nly those persons who have filed applications in the manner and at the time provided for by statute or rule shall be permitted to bid at any such auction for the lease of state lands." Idaho Code § 58-310(6).

The Board's rules further define lease application requirements. The Rules provide that lease applications must be submitted to the Department on the appropriate Department form, must be signed by the applicant, must be accompanied by a non-refundable fee, and must be submitted by the deadline designated by the Department. IDAPA 20.03.14.020.02.

Notice of the availability of Lease M700084 for public auction was published on the IDL website and for four weeks in the Idaho Mountain Express. App. R. 122. The published legal notice stated that lease applications had to be submitted by 5:00 PM on January 10, 2020. *Id.* The public notice clearly informed potential applicants that they would have to comply with the application instructions available on the IDL website and pay the application fee. *Id.* The Foundation had notice of such requirements—the Department notified the Foundation of the then-pending application period via mail on December 10, 2019 (App.R. 138-39), and Ms. Tidwell responded on December 11, 2019, that she would "like to bid on this." App.R. 138. On December 19, 2019, she was specifically directed to the IDL website and informed that the "application number for the Buttercup facility manager/cellular co-locator potential communication site lease is M700084." App.R. 136. Despite such notice, neither Ms. Tidwell nor the Foundation filed a lease application for M700084, and instead chose to protest based on the site's location "across from the entrance of my subdivision." App.R. 136. When, after closure of the application period, Ms. Tidwell indicated in a phone call the desire to bid on the lease, she was informed that only applicants could submit bids (personal communication with Meribeth Lomkin). Thus, while it is technically true that the Foundation was not allowed to bid on Lease M700084, it was barred not by Department action, but by its own failure to apply.

In sum, IDL carried out the advertising and auction of Lease M700084 in accordance with the directives of the Idaho Code, the Board's Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases, and the lease auction policy approved by the Board at its October 17, 2019 meeting. The Foundation has failed to identify any violation of law, rule, or policy that would render it an aggrieved party or require vacation of the auction results. To the extent the Foundation desired to prevent others from acquiring Lease M700084, it had the opportunity to apply for the lease, and failed to do so. Given such failure, there is no basis for overturning the auction results.

RECOMMENDATION

The Foundation's appeal should be rejected, and the results of the auction for Lease M700084 should be affirmed by the Board.

BOARD ACTION

The logo of the Idaho Department of Lands is a large, stylized diamond shape. It features a light green diamond in the center, surrounded by a yellow border with a wavy pattern. The entire logo is set against a light gray background. The text "IDAHO DEPARTMENT OF LANDS" is written in white, bold, capital letters across the middle of the logo.

IDAHO DEPARTMENT OF LANDS

JAN 29 2021

BOISE, IDAHO

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BEFORE THE BOARD OF LAND COMMISSIONERS
OF THE STATE OF IDAHO

IN THE MATTER OF COMMUNICATION
SITE LEASE NO. M700084 AWARDED
TO NEWMAX LLC

RESPONSE MEMORANDUM

The Tidwell Idaho Foundation, Inc. (“Appellant” or the “Foundation”) hereby files this response to the Land Board Memorandum of February 16, 2021. This response memorandum is supported by the Declaration of Leslie A. “Kiki” Tidwell, filed contemporaneously herewith.

Introduction

The Foundation timely filed its written Notice of Appeal in this matter on December 21, 2020—within the 20-day window established by Rule 002.01 of the Board’s “Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases,” IDAPA 20.03.14 (hereinafter, the “Leasing Rules”). The Idaho Department of Lands (“IDL”) submitted its “Land Board Memorandum” on January 7, 2021, to be considered at the Board’s meeting scheduled for February 16, 2021. Based upon exchanges of correspondence with counsel for IDL, the Foundation is submitting this response to the Land Board Memorandum, with the intent that it is timely enough to be considered by the Board at its February 16, 2021

meeting and to provide IDL with sufficient time to submit a written reply if it is so inclined.

The Buttercup “Parcel” Is Composed of Three Separate Legal Parcels

As an initial matter, it is important to understand that the Buttercup “Parcel” is, as the Land Board Memorandum acknowledges, composed of three separate legal parcels of land. A subsequent section of this response memorandum will establish the legal significance of this fact, but for now, it will be helpful for the Board to orient itself regarding these three separate parcels.

More specifically, attached hereto as Exhibits A, B, and C are parcel information and aerial imagery regarding the three parcels obtained from the Blaine County Assessor’s website. A table summarizing the three parcels follows:

<u>Exhibit</u>	<u>Parcel No.</u>	<u>General Description / Location</u>	<u>Acres</u>
A	RP03N180290010	Small triangle in northwest portion of State’s Buttercup holdings	4.5 acres
B	RP03N180280010	Square in northern portion of State’s Buttercup holdings	52.9 acres ¹
C	RP03N180330010	Near-triangle in southern portion of State’s Buttercup holdings	48.6 acres

For ease of reference, this memorandum will refer to these as Parcels A, B, and C, corresponding to their exhibit labels. The lease that is the subject of the Foundation’s notice of appeal (Lease No. M700084) involves land within Parcel C. (*See* App.R. at 097, 098.)

Summary of the Foundation’s Application

The Foundation submitted its initial application to lease State land on June 13, 2019. (App.R. at 007, 039.) The application packet included the State’s lease application form (App.R.

¹ The acreage for Parcel B is presumed, based upon the acreages of Parcels A and C and IDL’s representation that the State’s entire Buttercup holdings total approximately 106 acres, though, visually, Parcel C appears to be larger than Parcel B. For some reason, the profile for Parcel B obtained from the Blaine County Assessor’s website depicts the acreage of Parcel B as “0,” which is obviously not correct.

at 039) and a variety of supporting materials, including a detailed narrative description of the proposed project (App.R. at 007-010), a financial feasibility analysis (App.R. at 022-023), a discussion of the Foundation's capability (App.R. at 024-031), and financial records. (App.R. at 032-038.) The Foundation slightly revised its narrative description on June 17, 2019. (App.R. at 017-020).

In summary, the Foundation's initial application sought to lease approximately 80 acres of State land for 20 years in order to provide affordable residential housing.² (App.R. at 017-018.) The individual, single-family residences would be modular homes and would be powered by an onsite solar array and energy storage battery. (*Id.*) The application proposes to develop the leased land in phases, starting initially with 10 acres for five homes and associated solar facilities, until full build-out of the 80 acres, with annual rentals increasing as development occurs. (App.R. at 018.) At the end of the lease, the modular homes, concrete pads, and solar facilities would be removed if needed. (App. R. at 20.) Critically, the land proposed to be leased by the Foundation encompasses a substantial portion of Parcel C. (*See* App.R. at 021, 045-047.)

IDL argues the Foundation chose not to apply for Lease M700084. (Land Bd. Mem., p. 7.) Subsequent sections of this memorandum will explain why the Foundation's existing application should have been treated as a "Conflict Application" under the Leasing Rules without the need for an additional application for the cell tower site. However, it is also worth noting here that when IDL was re-vamping its leasing advertisement procedures in 2019, it stated that "[p]otential lessees who have already submitted an application may choose to have their previous application processed, or to withdraw their application for an application fee refund."

² IDL's characterization of the Foundation's application as for "low-income housing" is not accurate. (*See* Land Bd. Mem., p. 5.) Instead, the Foundation is "attempting to supply somewhat affordable housing" for "baby boomer locals who are interested in down-sizing to smaller houses on leased pads." (App.R., p. 133.)

(App.R., p. 077.) Given how persistent the Foundation was in following up on its application during this same time period, there is no basis to conclude the Foundation had elected to withdraw its application in exchange for a refund of its application fee. (See App.R., pp. 144-148 (emails from Aug.-Nov. 2019).) And, to the extent the Foundation was required to take some affirmative action in response to the revamping of those procedures, there is nothing in the record suggesting IDL ever informed the Foundation of that, or even of the fact that the Buttercup Parcel was being discussed at the May 12, 2020 Land Board meeting. (See generally App.R., pp. 082-084.) To the contrary, IDL indicated the Foundation's application was under active consideration.

Discussion of the State Land Leasing Rules

IDL issued Lease M700084 pursuant to the Leasing Rules in IDAPA 20.03.14 (hereinafter, the "Leasing Rules"). Under those Rules, when a "conflict application" has been filed, there are additional steps that are required before an auction is held and a lease is issued. These include a meeting between IDL and all of the applicants submitting conflict applications to develop the terms and conditions of a proposed lease and IDL providing all applicants with "the list of criteria that will be used to develop lease provisions." Leasing Rule 020.02(f)(i), (ii). Therefore, the definition of the phrase "conflict application" is critical here:

Conflict Application. An application to lease state endowment trust land for grazing, farming, conservation, noncommercial recreation or communication site use when one (1) or more applications have been submitted for the *same parcel of state endowment trust land* and for the same or an incompatible use.

Leasing Rule 010.05 (emphasis added).

Paraphrasing, this definition can be broken down into three elements: (1) an application to lease state endowment land has been filed for one of the enumerated uses; (2) one or more

applications have been submitted regarding the “same parcel” of state endowment trust land; and (3) the applications are for the “same” use or for uses that are “incompatible.”

First Element: The Proposed Use of the State Land

As to the first element, certainly, the two applications filed for the cell tower site satisfy this element because they are both for a “communication site.” While the Foundation’s application is primarily for residential use of State land and residential uses are not expressly enumerated in the definition of “Conflict Application,” a closer examination of the Leasing Rules reveals that the Foundation’s application is also subject to those Rules. More specifically, Rule 001.02 defines the scope of the Leasing Rules and provides:

Scope. These rules constitute the Department’s administrative procedures for leasing of state endowment trust land for grazing, farming, conservation, noncommercial recreation, communication sites *and other uses that are treated similarly under the provisions of Section 58-307, Idaho Code, regarding a lease term for no longer than twenty (20) years*, and under the provisions of Section 58-310, Idaho Code regarding lease auctions.

Leasing Rule 001.02 (emphasis added).

Section 58-307, in turn, draws a clear distinction between uses of state lands for “commercial purposes” and non-commercial purposes. *See* IDAHO CODE § 58-307(5), (11).

First, that statute defines “commercial purposes” as:

...[F]uel cells, low impact hydro, wind, geothermal resources, biomass, cogeneration, sun or landfill gas as the principal source of power with a facility capable of generating not less than twenty-five (25) kilowatts of electricity, industrial enterprises, retail sales outlets, business and professional office buildings, hospitality enterprises, commercial recreational activities, *multifamily residential developments* and other similar *businesses*.

IDAHO CODE § 58-307(5) (emphasis added).

The statute then proceeds to specifically exclude certain uses from the definition of “commercial purposes:”

For purposes of this section, farming leases, grazing leases, conservation leases including lands enrolled in federal conservation programs such as the conservation reserve enhancement program (CREP), noncommercial recreation leases, oil and gas leases, mineral leases, *communication site leases*, *single family*, recreational cottage site and *homesite leases*, and leases for *other similar uses*, are not considered leases for commercial purposes.

IDAHO CODE § 58-307(5) (emphasis added).

The residential uses proposed by the Foundation's application fall within the express exclusions from "commercial purposes." The only residential use specifically included within the definition of "commercial purposes" is for "multifamily residential developments." While the land leasing statutes and Leasing Rules do not specifically define that phrase, the Idaho Legislature has made it clear that "multifamily" refers to apartment complexes, condominiums, townhouses, and other similar structures that are distinct from single family dwellings. Perhaps most explicit on this issue is Idaho Code Section 18-8331, which defines a "[r]esidential dwelling unit" to include:

[S]ingle family dwellings and units in multifamily dwellings including units in duplexes, apartment dwellings, mobile homes, condominiums and townhouses in areas zoned as residential.

IDAHO CODE § 18-8331(2)(b) (emphasis added).

If the term "multifamily" included single family dwellings, the Legislature would not have listed them separately. And, the fact that the statute refers to multifamily dwellings as including units in structures such as apartments, condominiums, and townhouses further illustrates the distinction between single family dwellings and multifamily dwellings. *See also* IDAHO CODE §§ 67-6205, 63-3022V, 54-5017 (all drawing distinction between single family and multifamily dwellings). It is also telling that IDL itself described the Foundation's application as a "*residential*/solar proposal." (App.R., pp. 079, 083 n.1 (emphasis added).)

And, while it is true that the Foundation's application includes a solar component, that solar use is ancillary to, and supportive of, the proposed residential use. This is abundantly clear from the appeal record, as the Foundation clarified in communications with IDL that the solar component was "to supply the electricity just for the houses on the property, not a commercial solar project like Idaho Power proposed." (App.R., p. 134 (8/30/19 email).) Despite this clarification, IDL staff continued to process the Foundation's application as commercial in nature. (App.R., pp. 131, 132 (10/10/19 and 11/14/19 emails); *see also* Tidwell Declaration, Ex. C.)

The ancillary solar component is not sufficient to convert the Foundation's application to a "commercial" application. The specific language of Section 58-307(5) confirms this by ending with the phrase "and other similar businesses." Here, the Foundation's application does not propose to generate income from or otherwise operate the solar component as a "business."

In this regard, IDL notes the emails from the Foundation as the auction approached stating its updated offer would be withdrawn if the cell tower lease was auctioned off. (Land Bd. Mem., p. 3.) To the extent IDL notes those emails as relevant to its standing and "aggrieved party" arguments, it is important to note that those emails were a direct result of IDL's failure to process the Foundation's application as a Conflict Application under the Leasing Rules and to otherwise move it forward.

Second Element: The "Same Parcel" of State Land

IDL argues that "the Foundation's application did not include those portions of the Buttercup Parcel occupied by...Lease M700084." (Land Bd. Mem., p. 2.) However, whether the Foundation's application physically overlaps with other applications is not the relevant inquiry under the Leasing Rules.

“Interpretation of a[n] [administrative] rule should begin...with an examination of its literal words,” which “should be given its plain, obvious, and rational meaning”). *State v. Besaw*, 155 Idaho 134, 142, 306 P.3d 219, 227 (App. 2013). Here, the plain language of Leasing Rule 010.05 defines a Conflict Application as when “one (1) or more applications have been submitted for the *same parcel* of state endowment trust land.” (Emphasis added).

As previously discussed, Lease No. M700084 involves land within Parcel C described above. (See App.R. at 097, 098.) By the time IDL first published notice of the lease in December 2019, the Foundation had already submitted its application also proposing use of land within Parcel C. (See App.R. at 21, 45-47.) Therefore, “the same parcel of state endowment land” was the subject of multiple applications.

And, even if this were not the case, it is also important to note that the Foundation did eventually offer to lease the entire Buttercup Parcel:

[W]e agree to \$250,000 per year annual lease rent, on the entire 106.6 acres of land as detailed in the appraisal report including the celltower site....

(App.R., pp. 130, 143-144.)

That updated offer was made on November 27, 2020. (*Id.*) This was before the deadline for lease applications closed on January 10, 2020. (See Land Bd. Mem., p. 1.) In this regard, IDL’s observation that the Foundation “never formally amended its lease application to provide financial projects demonstrating that the project would provide sufficient cash flow to make such payments,” falls flat when one reviews the exchanges between the Foundation and IDL staff. For example, after the Foundation extended this updated offer, IDL staff responded: “I will inform our leadership of your revised proposal and get back to you with their response. I would expect a response in the next couple of weeks.” (App.R., pp. 129-130, 143.) Far from suggesting the Foundation needed to formally amend its application or to submit an entirely new

application after the revamping of IDL's leasing procedures, IDL staff led the Foundation to believe its new offer was being actively considered internally at IDL.

Third Element: Same or Incompatible Use

The final element of a "Conflict Application" is that the multiple applications that have been filed for the "same parcel" of land are either for the same use or an "incompatible use." Leasing Rule 010.05. In this regard, the Foundation voiced its opinion multiple times that a cellular communication tower was incompatible with the Foundation's proposed use. (App.R. at 130, 143.) However, IDL never rebutted or evaluated the Foundation's assertion, and never made a formal determination regarding the compatibility of the proposed uses.

While not directly applicable at this stage of the proceedings, the standards for judicial review of agency actions under the Idaho Administrative Procedure Act (APA) are instructive and would apply upon an appeal to the judicial system. Under the APA, factual findings by an agency must be "supported by substantial evidence on the record as a whole" in order to be affirmed on appeal. *See* IDAHO CODE § 67-5279(3)(d). Here, there is simply no evidence in the record to support the conclusion that the uses are compatible, particularly where there are specific assertions that the uses are incompatible. In fact, quite the contrary is true. According to IDL:

The Department has received a number of letters and emails from the public as well as Blaine County regarding the communication tower. There have been concerns that if a 5G tower is installed, there could be underlying health effects from the 5G as well as the scenic effects of a tower in the area.

(App.R., p. 083.)

Lease Criteria and Development Under Rule 020.02(f)

It is certainly true that there was some back-and-forth email communication between IDL staff and the Foundation regarding its lease application. (*See, e.g.,* App.R., pp. 079, 131.)

However, none of that communication ever culminated in the development of lease terms, conditions, and criteria as Leasing Rule 020.02(f) requires. Indeed, IDL acknowledged that it was “reluctant to engage in lease proposals” for the Buttercup land and that the Foundation “voiced frustration with the leasing process” and “believes that the Department has been ignoring [its] proposal.” (App.R., p. 081.)

Standing and “Aggrieved Party”

IDL asserts that the Foundation is not an “aggrieved party” under the Leasing Rules and lacks standing to pursue this appeal for three separate reasons. The Foundation will address each of them in turn:

First, IDL argues the Foundation does not qualify as an “aggrieved party” under the Leasing Rules because “the Foundation’s interest in leasing the Parcel was contingent upon a number of steps, many beyond the Foundation’s control....” (Land Bd. Mem., p. 4.) According to IDL, “there are simply too many contingencies laying between the current status of the Foundation’s application and the ultimate award of a lease to render the Foundation an aggrieved party....” (Land Bd. Mem., p. 5.) The flaw in this reasoning is the assumption that the Foundation’s claimed injury is the denial of a lease issued to it. That is not the injury the Foundation claims and it is not the relief the Foundation seeks in this appeal. (*See* Not. of App. of 12/21/20, ¶ 22.)

As previously explained, because IDL did not recognize the Foundation’s application as a “Conflict Application,” it did not comply with the leasing criteria requirements in Leasing Rule 020 as to the Foundation’s application. The Foundation is simply asking the award of the Lease to Newmax to be vacated and remanded back to IDL so that IDL can comply with those requirements.

Obviously, no applicant for any type of permit or approval from the State has a vested right in the permit before it is issued, whether it is a lease from the Land Board, a water right from the Department of Water Resources, or a permit to emit air pollutants from the Department of Environmental Quality. But in all such cases, the applicant has standing as an aggrieved party to appeal an adverse decision to the judicial system. *See, e.g.,* IDAHO CODE §§ 42-203A(6) (IDWR); 39-105 (DEQ); Leasing Rule 002.03 (Land Board).

As an applicant to lease State lands, the Foundation's protectible interest is the processing of that application in accordance with the rules adopted by the Land Board. For example, the Idaho Supreme Court has held a number of times that a liquor license is a "privilege" in that it is "a temporary permit to do that which would otherwise be unlawful." *Nampa Lodge No. 1389 v. Smylie*, 71 Idaho 212, 215, 229 P.2d 991, 993 (1951). Despite that, the Idaho Supreme Court has also held that, "[a]lthough a liquor license is a privilege and not a property right...***the licensing procedure can not be administered arbitrarily.***" *Crazy Horse, Inc. v. Pearce*, 98 Idaho 762, 765, 572 P.2d 865, 868 (1977) (emphasis added).

Second, IDL argues that the Foundation does not qualify as an "aggrieved party" under the Leasing Rules because "the remainder of the [Buttercup] Parcel remains open for lease proposals." (Land Bd. Mem., p. 5.) The Foundation has, in effect, already addressed this argument. Again, "Conflict Application" is defined as a situation in which there are multiple applications to lease the same "parcel" of State land, *see* Leasing Rule 010.05, and both the Lease and the Foundation's application relate to the parcel the Foundation as labeled as "Parcel C" in previous sections of this memorandum. And as previously explained, the Foundation did update its offer to include the entire Buttercup Parcel before the January 10, 2020 application deadline.

Third, IDL further argues that the Foundation lacks “a legally protected interest in challenging the Board’s administration of the endowment trust land for violation of such fiduciary obligations,” citing multiple Idaho Supreme Court opinions for that proposition. All of those opinions are highly distinguishable. (Land Bd. Mem., p. 6.)

In *Selkirk-Priest Basin Association, Inc. v. State ex rel. Andrus*, environmental interest organizations were challenging a Land Board decision to sell timber from school endowment trust lands on the basis that “erosion detrimental to Trapper Creek and the Land Board’s state-wide harvest goals will result in deleterious longterm effects to the value of school endowment trust lands.” 127 Idaho 239, 240, 899 P.2d 949, 950 (1995). The plaintiffs had not filed a competing application for the timber, and the issue in that case was “whether the environmental groups or the members of the environmental groups face ‘injury.’” 127 Idaho at 242, 899 P.2d at 952. In fact, the Idaho Supreme Court cited with authority the proposition that, “[t]here is no question that an association may have standing in its own right *or seek judicial relief from injury to itself and to vindicate whatever rights and immunities the association itself may enjoy.*” 127 Idaho at 241, 899 P.2d at 951 (emphasis added). The Foundation is vindicating its own rights by seeking to have its application processed in accordance with Leasing Rule 020.

In *Wasden v. State Board of Land Comm’rs*, the Idaho Supreme Court held that the Attorney General has standing to challenge the constitutionality of a statute governing the leasing of State endowment lands. 153 Idaho 190, 194-196, 280 P.3d 693, 697-699 (2012). It does not purport to restrict the ability of a leasing applicant to challenge a leasing decision, and in fact, articulates Idaho’s standing inquiry as a consideration of “whether the complaining party has alleged a particularized injury, caused by his or her adversary, which is redressable by a favorable decision in the litigation.” 153 Idaho at 194, 280 P.3d at 697. Because it filed its own

application for the same parcel of State land, the Foundation has a “particularized injury,” and the other two elements of causation and redressability are easily satisfied here.

IDL’s reliance on the 1999 *Idaho Watersheds Project v. State Bd. of Land Com’rs* is particularly curious. In that case, the plaintiff “submitted twenty-four conflict grazing lease applications.” 133 Idaho 64, 65, 982 P.2d 367, 368 (1999). In addressing the State’s argument that the plaintiff lacked standing, the Idaho Supreme Court stated the plaintiff, “as an applicant to become a lessor of state endowment public grazing lands, has a personal stake” in the outcome of the litigation and, therefore, had standing. 133 Idaho at 66, 982 P.2d at 369.

And, finally, in the 1996 *Idaho Watersheds Project v. State Bd. of Land Com’rs* case, the Idaho Supreme Court held that the Land Board lacks authority to “reject[] the sole bid placed at a conflict auction, and then grant[] the lease to a person who appeared, but did not bid, at the conflict auction.” 128 Idaho 761, 766, 918 P.2d 1206, 1211 (1996). In that case, the initial recipient of the lease overtly stated both before and during the conflict auction that he would not be placing a bid, even though he was allowed to participate in the auction. 128 Idaho at 762, 763, 766, 918 P.2d at 1207, 1208, 1211.

Here, by contrast, the only access to the auction provided to the Foundation was as a member of the “public to watch or listen.” (App.R., p. 142.) This was despite the fact that the Foundation had a Conflict Application on file and had previously stated it “would like to bid” on the pending communication site. (App.R., p. 138.) And again, the Foundation is not arguing that it is entitled to a lease at this time. Instead, it is arguing that IDL failed to recognize that the Foundation’s application should have been treated as a Conflict Application under Leasing Rules 010.05 and 020.02(f).

Land Board Duties

As IDL notes, the Land Board has a significant amount of discretion in its leasing of State endowment lands. (See generally Land Bd. Mem., p. 3.) However, it is also important to recognize that such discretion is not unique to the Land Board, in that all State agencies exercise discretion and are granted deference by the courts within their respective areas of expertise. This is reflected in general statements by the Idaho Supreme Court recognizing a “strong presumption of validity” of State agency actions. See, e.g., *Young Elec. Sign Co. v. State ex rel. Winder*, 135 Idaho 804, 807, 25 P.3d 117, 120 (2001). It is also reflected in the standards of judicial review of agency action under the Idaho APA, which the Idaho Supreme Court has held apply equally to Land Board decisions. IDAHO CODE § 67-5279; *Idaho Watersheds Project*, 128 Idaho at 764; 918 P.2d at 1209.

What *does* distinguish the Land Board from other State agencies, however, is the fact that it is charged with the “constitutional obligation to maximize long-term financial returns....” *Wasden*, 153 Idaho at 198; 280 P.3d at 701. One of the procedural mechanisms the Land Board has adopted to ensure that obligation is fulfilled is the lease development process in Rule 020.02(f) for Conflict Applications. If those procedures have not been complied with, then remand is necessary to fulfill the Board’s constitutional obligations.

Further support for this conclusion in this particular case is the fact that, based on the appeal record, it is clear the Foundation was willing to increase the financial terms proposed in its initial application. For example, in IDL’s own words, once it provided the Foundation with a copy of the appraisal³ for the Buttercup land, “it provided an updated yearly rental offer of

³ Even though the Foundation submitted its initial application in June 2019, IDL did not provide the Foundation with a copy of the appraisal until November 2019. (App.R., p. 130, Tidwell Decl., ¶ 6.)

\$101,000, which included a phased payment portion that would not take place until after site development and third-party lease.” (App.R., p. 083 n.1; *see also* App.R. pp. 129, 130, 134, 143 (emails with increased offers).)

While IDL argues the Foundation “never formally amended its lease application to provide financial projections,” (Land Bd. Mem., p. 5), the Leasing Rules only require amendment of an application when a different legal description of the leased property is necessary for it to be a “management unit.” *See* Leasing Rule 020(d). Therefore, the fact that the Foundation did not formally amend its application to reflect the updated financial terms is not relevant, particularly given that such terms would have been addressed in the course of the Rule 020.02(f) process. And as previously noted, rather than suggesting the Foundation submit a more formal amended application, IDL staff actively represented that the Foundation’s revised proposals were being considered. (*See, e.g.*, App.R., p. 143 (“I will inform our leadership of your revised proposal and get back to you with their response”).)

Finally, IDL’s memorandum asserts that “the Foundation admitted that ‘[t]his is not a financially lucrative project.’” (Land Bd. Mem., p. 2 (*citing* App.R., p. 22).) That reference comes from the Foundation’s initial application, *before* it suggested increased financial terms. And, in any event, that statement was clearly made from the perspective of the Foundation—not the State. (Tidwell Decl., ¶ 7.) The profitability of the project to the Foundation is not the same inquiry as whether the Board is maximizing return to the State. That isolated reference is not a sufficient basis to evaluate the financial aspects of the Foundation’s application or render a decision in this appeal.

In summary, as this memorandum and the Tidwell Declaration have established, IDL was not transparent with the Foundation regarding the status of its application and did not go through

the lease criteria and development procedures of Leasing Rule 020.02(f) with the Foundation. Regardless of the effects to the Foundation, in order to comply with its duty to maximize return to the State, the Board should vacate Lease No. M700084 so those procedures can be followed.

Incomplete Appeal Record

The Foundation recognizes that the immediate decision before the Board is whether to “accept” the appeal, not necessarily to determine or rule on its merits. *See* Leasing Rule 002.01. In this regard, in addition to its legal arguments regarding the Leasing Rules and the “Conflict Application” issue, the Foundation believes a separate reason justifying acceptance of the appeal is that the existing appeal record appears to be incomplete. For example, attached as Exhibits B and C to the Tidwell Declaration are additional emails between the Foundation and IDL staff that contain exchanges relevant to the issues raised in this appeal. In Exhibit C, the Foundation states that “it still stands ready to undertake” a lease of a portion of the Buttercup Parcel, to which IDL responds that it is treating the Foundation’s application as a commercial lease. In Exhibit B, IDL staff describes providing the Foundation’s “lease application packet and all of the additional background information on similar projects...plus a 2 page cover memo” to IDL’s Boise office on June 21, 2019. However, the two emails and the referenced “2 page cover memo” do not appear to be present within the existing appeal record. There is also very little in the appeal record related to the other applications for Lease No. M700084 and any communications between IDL staff and those applicants. It is difficult to put the processing of the Foundation’s application into context without also having the ability to compare it to the processing of the other applications. Accepting the appeal will allow a complete administrative record to be developed.

Conclusion

According to Leasing Rule 002.01, after a written notice of appeal has been filed, “[t]he Board has the discretion to accept or reject any timely appeal.” If the Land Board accepts the appeal, it has further discretion to (a) hear the appeal itself, (b) appoint a subcommittee of the Land Board to hear the appeal, or (c) appoint a hearing officer to hear the appeal. Leasing Rule 002.02. Based on the foregoing, the Foundation respectfully requests that the Land Board accept this appeal.

DATED this 29th day of January, 2021.

VARIN WARDWELL LLC

By: 
Dylan Lawrence
Attorneys for Appellant

Pursuant to Idaho Code Section 9-1406 and under penalty of perjury pursuant to the law of the State of Idaho, I declare that the documents attached to this Response Memorandum as Exhibits A, B, and C are true and correct copies of records I obtained from the Blaine County, Idaho assessor’s website on January 19, 2021.

By: 
Dylan Lawrence

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of January 2021, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

One original and five hard copies to:

Idaho Board of Land Commissioners
300 N. 6th Street, Suite 103
Boise, Idaho 83702

☐ U.S. Mail
☐ Overnight Mail
☒ Hand Delivery
☐ Fax
☐ Email

With copies to:

Angela Schaer Kaufmann
P.O. Box 83720
Boise, Idaho 83720-0010
angela.kaufmann@ag.idaho.gov

☐ U.S. Mail
☐ Overnight Mail
☐ Hand Delivery
☐ Fax
☒ Email

Renee Jacobsen
Idaho Department of Lands
300 N. 6th Street, Suite 103
Boise, Idaho 83702
rjacobsen@idl.idaho.gov

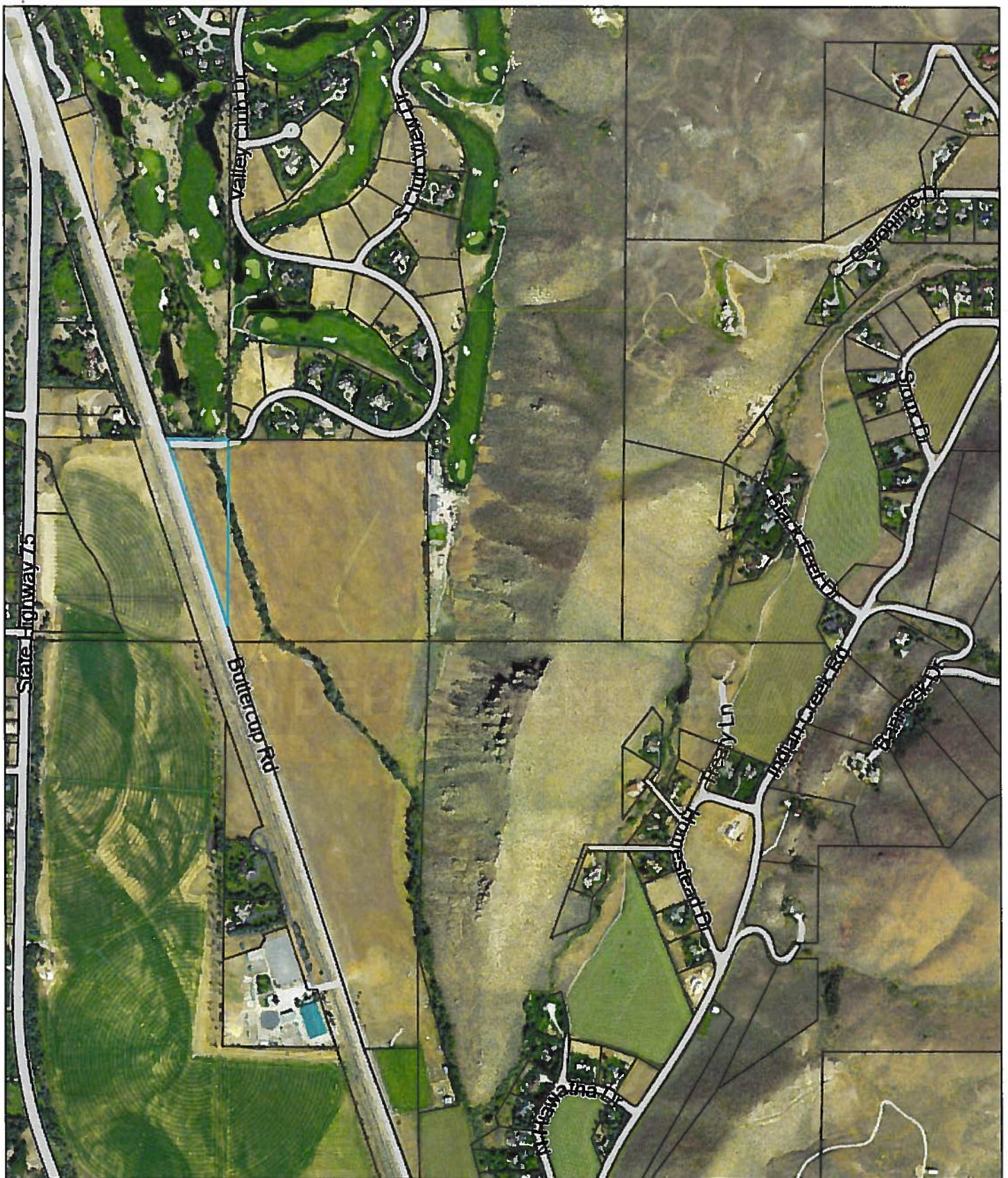
☐ U.S. Mail
☐ Overnight Mail
☐ Hand Delivery
☐ Fax
☒ Email








Dylan Lawrence

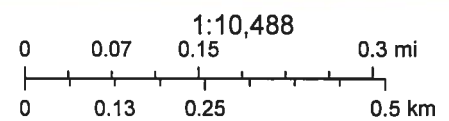
Exhibit A





1/19/2021, 2:28:11 PM

-  Adjainers
-  Road Centerlines
-  Highway
-  Road
- 

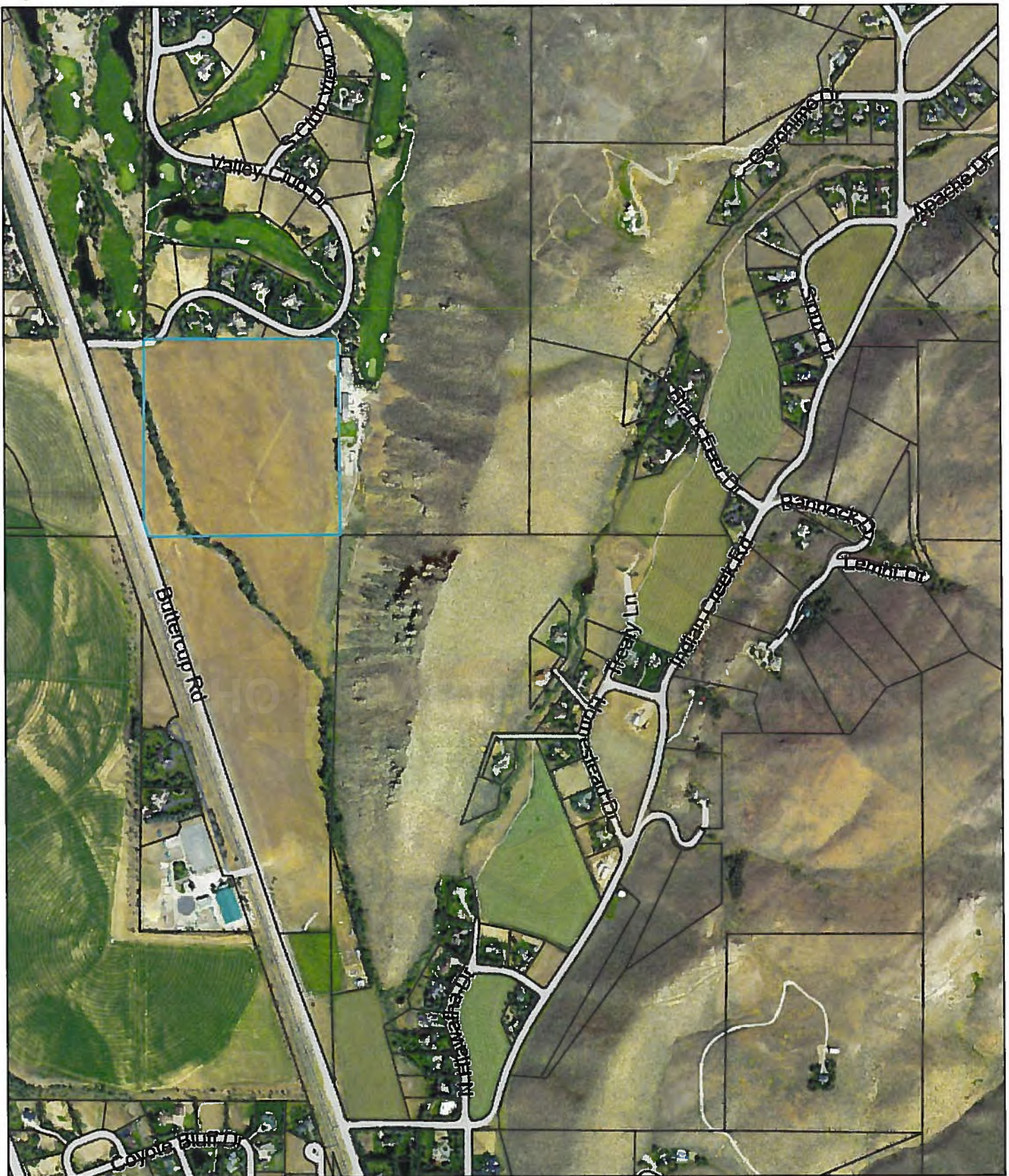


Assessor's Information for Parcel Number:RP03N180290010






Parcel Number	RP03N180290010
Owner	IDAHO DEPT OF LANDS
Address	
Legal Description	FR SESE TL 2058 SEC 29 3N 18E
Mailing Address	324 S 417 E STE 2 JEROME ID 83338-0000
Acres	4.487
Land Value	\$0
Farm Value	\$0
Commercial Value	\$0
Residential Value	\$0
Manufactured Value	\$0
Personal Property Value	\$0
Market Value	\$0
Home Owner Exemption	\$0
Taxable Value (2020)	\$0
Sketch	N/A

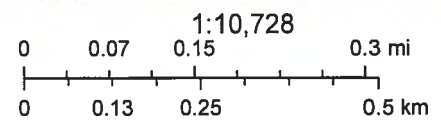
Exhibit B





1/19/2021, 2:17:28 PM

-  Adjoiners
-  Road Centerlines
-  Highway
-  Road
- 



Assessor's Information for Parcel Number:RP03N180280010

Parcel Number	RP03N180280010
Owner	IDAHO DEPT OF LANDS
Address	
Legal Description	FR SWSW TL 2057 SEC 28 3N 18E
Mailing Address	324 S 417 E STE 2 JEROME ID 83338-0000
Acres	0
Land Value	\$0
Farm Value	\$0
Commercial Value	\$0
Residential Value	\$0
Manufactured Value	\$0
Personal Property Value	\$0
Market Value	\$0
Home Owner Exemption	\$0
Taxable Value (2020)	\$0
Sketch	N/A

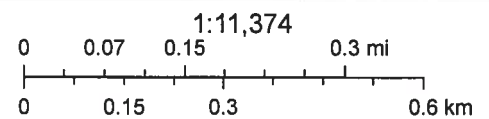
Exhibit C





1/19/2021, 2:23:39 PM

-  Adjoiners
-  Road Centerlines
-  Highway
-  Road
- 



Assessor's Information for Parcel Number:RP03N180330010

Parcel Number	RP03N180330010
Owner	IDAHO DEPT OF LANDS
Address	2400 BUTTERCUP RD
Legal Description	FR W1/2NW TL 2055 & TL 2056 SEC 33 3N 18E
Mailing Address	324 S 417 E STE 2 JEROME ID 83338-0000
Acres	48.596
Land Value	\$0
Farm Value	\$0
Commercial Value	\$0
Residential Value	\$0
Manufactured Value	\$0
Personal Property Value	\$0
Market Value	\$0
Home Owner Exemption	\$0
Taxable Value (2020)	\$0
Sketch	N/A

JAN 29 2021

BOISE, IDAHO

Dylan B. Lawrence ISB #7136
J. Will Varin ISB #6981
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dylanlawrence@varinwardwell.com
willvarin@varinwardwell.com

Attorneys for The Tidwell Idaho Foundation, Inc.

BEFORE THE BOARD OF LAND COMMISSIONERS
OF THE STATE OF IDAHO

IN THE MATTER OF COMMUNICATION
SITE LEASE NO. M700084 AWARDED
TO NEWMAX LLC

**DECLARATION OF LESLIE A.
“KIKI” TIDWELL**

Pursuant to Idaho Code Section 9-1406, Leslie A. “Kiki” Tidwell states and declares as follows:

1. My name is Leslie A. “Kiki” Tidwell. I am of sound mind and the age of majority. I have access to the files and records relevant to this matter, and I make this declaration based upon my own personal knowledge.
2. I am the President of The Tidwell Idaho Foundation, Inc., the appellant in this matter that has also filed an application to lease portions of the three parcels of State-owned endowment land collectively referred to as the “Buttercup” Parcel. Pages 028 through 031 of the appeal record in this matter contain my resume. That resume accurately describes and reflects my education and my professional, volunteer, investing, and philanthropic experience.
3. I have reviewed the appeal record and the Land Board Memorandum filed by the Idaho Department of Lands in this matter in detail. I am providing this declaration in order to

correct and clarify certain statements in those documents that I believe are misleading or inaccurate.

4. I am aware that the Land Board has a duty to maximize returns in its leasing and management of State endowment lands. Therefore, I am also aware that when the Land Board and IDL evaluate a leasing proposal, they must evaluate the proposal from the State's perspective. In this regard, there are a few points I would like to make:

5. First, there are multiple references in the appeal record in which IDL memorandums represent that IDL had "advised [the Foundation] that the proposed rates were grossly under market and the Department would not move the proposal forward," in reference to the initial applications the Foundation submitted in June of 2019 (App.R., pp. 079, 083, n. 1.) I believe those representations are inaccurate, as I do not recall ever being informed by IDL staff that the Foundation's proposed financial terms were "grossly under market" and that IDL "would not move the proposal forward." As I believe the record as a whole reflects, the Foundation and I were proactive and persistent in our attempts to lease the Buttercup Parcel, and I believe I would remember if that message had been conveyed. And, we were not provided with copies of those IDL memorandums or otherwise invited to comment on their contents.

6. Second, those same IDL memorandums state that the Foundation "was then provided with a copy of the 2019 appraisal." (App.R., pp. 079, 083, n. 1.) However, I believe the timing is notable. I was not made aware of the appraisal report until November 20, 2019. (See App.R., pp. 130-131.) Attached hereto as Exhibit A is a true and correct copy of the appraisal report from IDL's Dropbox, showing that it is effective February 11, 2019. Again, the Foundation filed its initial application on June 13, 2019. (See App.R., p. 007.) In other words,

the Foundation had its application on file for five months before it was made aware of the appraisal report.

7. Third, in its appeal memorandum, IDL quotes the Foundation's statement that "[t]his is not a financially lucrative project." (Land Bd. Mem., p. 2 (*quoting* App.R. 022).) It appears IDL is suggesting the Foundation was describing the financial return to the State. However, that is not the case. My statement that "[t]his is not a financially lucrative project" was from the perspective of the Foundation. The Foundation is a charitable foundation seeking to advance its mission goals of developing a demonstration project of all-electric homes being supplied by solar power in a micro-grid, that also provides more affordable housing for local workers in Blaine County. It is perfectly acceptable for a charitable foundation like the Foundation to invest in projects that advance their mission goals even if they are not financially lucrative. As opposed to a real estate developer, a charitable foundation can invest in projects that provide less financial return. To my knowledge, the financial return to the Foundation is irrelevant to the Land Board's duty to maximize return to the State.

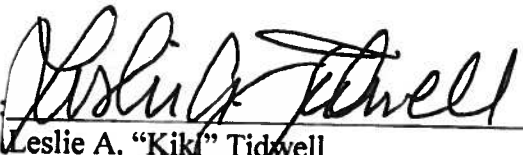
8. In short, the Foundation and I believed we had a viable lease application that was actively being considered by IDL, and I believe a review of the appeal record as a whole shows that to be a reasonable interpretation of the situation. And yet, no version of the Foundation's application was ever moved forward in the leasing process.

9. Finally, I have attached hereto as Exhibits B and C true and correct copies of email correspondences between IDL staff and me that do not appear to be in the appeal record.

I declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

[Signature page follows.]

DATED this 28th day of January, 2021.

By: 
Leslie A. "Kiki" Tidwell
President, The Tidwell Idaho Foundation, Inc.



IDAHO DEPARTMENT OF LANDS

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of January 2021, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

One original and five hard copies to:

Idaho Board of Land Commissioners
300 N. 6th Street, Suite 103
Boise, Idaho 83702

☐ U.S. Mail
☐ Overnight Mail
☒ Hand Delivery
☐ Fax
☐ Email

With copies to:

Angela Schaer Kaufmann
P.O. Box 83720
Boise, Idaho 83720-0010
angela.kaufmann@ag.idaho.gov

☐ U.S. Mail
☐ Overnight Mail
☐ Hand Delivery
☐ Fax
☒ Email

Renee Jacobsen
Idaho Department of Lands
300 N. 6th Street, Suite 103
Boise, Idaho 83702
rjacobsen@idl.idaho.gov

☐ U.S. Mail
☐ Overnight Mail
☐ Hand Delivery
☐ Fax
☒ Email



Dylan B. Lawrence

Exhibit A



APPRAISAL REPORT
ON THE
106.6± ACRES OF LAND
(BUTTERCUP PARCEL)

LOCATED
EAST OF HIGHWAY 75, SOUTH OF VALLEY CLUB DRIVE,
ALONG BUTTERCUP ROAD
IN
HAILEY, BLAINE
COUNTY, IDAHO

FOR
STATE OF IDAHO DEPARTMENT OF LANDS
ATTENTION: MR. KEVIN GRAHAM
300 N. 6TH ST, SUITE 103
BOISE, IDAHO 83702

EFFECTIVE DATE OF VALUE:
FEBRUARY 11, 2019

L&A FILE NO. 19.1034V.REV2

PREPARED BY
BY
SAM LANGSTON, MAI
IDAHO CGA# 195
&
GREG J. CONTOS
IDAHO CRA#13

Exhibit B



Kiki Tidwell

From: Meribeth Lomkin <MLomkin@idl.idaho.gov>
Sent: Wednesday, June 26, 2019 6:08 PM
To: Kiki Tidwell
Cc: Pat Brown
Subject: RE: Funny, Idaho Power has been talking to IDL about buttercup parcel

Hi Kiki,

I was in the field today and I am traveling to Idaho Falls for meetings & field work on Thursday. Answering your questions in this email might be easier by phone, but I'll give it a try here and you can let me know how I do. I am copying my supervisor (Pat Brown) with this email, as he likes to stay in the loop when IDL is mentioned in our various local newspapers.

Short answer, I was aware of Idaho Power's interest in the Buttercup parcel, but as far as I knew, we had not received an application. I did check with folks in Boise when you and I first started talking to determine whether there was a currently pending solar application from Idaho Power for the Buttercup parcel and their answer was NO. I think the phrasing that I would use for the Buttercup parcel conversations between IDL and Idaho Power is "discussing possibilities and process" not "negotiate a solar project". I was part of one IDL conference call on the idea, and provided some local knowledge of the parcel to one of our real estate bureau folks after that. Both of those "touches" that I had with the idea were nearly a year ago (I think July or August 2018).

I don't even know whom I should be talking to about things in Boise IDL at this point, so I wish I could assist you better, but I'm not sure how.

I sent your lease application packet and all of the additional background information on similar projects to your proposal, plus a 2 page cover memo from me summarizing the relevant conversations that we have had and some background information on the parcel and its history to Boise IDL on 6/21/19. I haven't heard anything back, nor did I expect to. As I think I mentioned in one of our phone conversations, the IDL Leasing Bureau program staff are currently very focused on a review of IDL's application, advertising, and leasing process, and not many more wheels are turning.

RE: the second radio tower site – Pending the above mentioned "review of IDL's application, advertising, and leasing process", the proposed lease has been withdrawn by IDL, and processing of those applications through IDL's conflict application process has ended. Although I am not certain, I think that once the above mentioned "review of IDL's application, advertising, and leasing process" is complete, we will re-open the application/advertising period for that parcel, and at that time you could file an application for our consideration.

Thanks.
Meribeth

From: Kiki Tidwell <ktinsv@cox.net>
Sent: Wednesday, June 26, 2019 8:48 AM
To: Meribeth Lomkin <MLomkin@idl.idaho.gov>
Subject: Funny, Idaho Power has been talking to IDL about buttercup parcel

Meribeth,

I sit in the Commissioner meetings each Tuesday to further my knowledge of what the job entails.

It was surprising yesterday to hear that Idaho Power has been trying to negotiate a solar project on the Idaho Dept of Lands Buttercup parcel for the past year. https://www.mtexpress.com/news/blaine_county/costs-lead-to-questions-on-community-solar/article_7ac512b6-979c-11e9-9003-3f29d76a91e5.html

It seems like when you and I spoke on the phone, you said there weren't any solar projects being proposed for IDL lands? Wondering if there is a different IDL team Idaho Power was talking to and can I meet with the same team?

Also, I would like to bid on the second site for the radio tower – for a net metering solar installation. How do I do that? Thank you,
Kiki

Kiki Tidwell
Advisory Council, E8 Angels
www.e8angels.com
President, Idaho Land & Pine, Inc.
650-388-2108

The logo of the Idaho Department of Lands is a large, stylized diamond shape. It features a light green center with a yellow border. The text "IDAHO DEPARTMENT OF LANDS" is written in white, bold, capital letters across the middle of the diamond.

IDAHO DEPARTMENT OF LANDS

Exhibit C



Kiki Tidwell

From: Meribeth Lomkin <MLomkin@idl.idaho.gov>
Sent: Wednesday, April 29, 2020 5:24 PM
To: Kiki Tidwell; Josh Purkiss
Cc: daveverst@cox.net
Subject: RE: Update please on cellphone tower lease Buttercup Rd

Hi Kiki and Dave,

Idaho Department of Lands (IDL) continues to work through our process regarding the three pending communication site lease applications for the Buttercup parcel.

As I think you are aware, the initial communication site facility manager lease application for this site was received by IDL in late 2018 and we started into the advertising/conflicted application process in late 2018/early 2019. That process was "frozen" while IDL reviewed our application advertising process and communication site lease template.

The application advertising process was re-started in accordance with IDL's new process in December 2019 and that advertising/application period ended January 10, 2020 with a total of three applications submitted for a communication site lease on the site. The new communication site lease template was recently completed and IDL is moving forward with the conflicted application process described in the Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases (IDAPA 20.03.14). Only those who applied prior to the application due date (January 10, 2020) may participate in the conflict auction for a lease. The conflict auction date has not been set.

Thank you for the photograph of the A.M. Radio lease area. I will contact IDL's lessee regarding removing the shipping crates left from last year's site construction and any other issues/cleanup there.

IDL is currently reviewing our commercial ground leasing process and applications such as the Buttercup parcel application filed by Tidwell Idaho Foundation, Inc. are being held until the review is complete. At this time, nothing more is needed from you regarding the pending application. IDL will be in contact if/when additional information is needed.

Thanks.
Meribeth

From: Kiki Tidwell <ktinsv@cox.net>
Sent: Monday, April 27, 2020 1:08 PM
To: Meribeth Lomkin <MLomkin@idl.idaho.gov>; Josh Purkiss <jpurkiss@idl.idaho.gov>
Cc: daveverst@cox.net
Subject: Update please on cellphone tower lease Buttercup Rd

Meribeth,

Last I heard from Idaho Department of Lands, you had taken applications for the cellphone tower site on the IDL land on Buttercup Rd, but the live auction had not occurred.

When is the live auction scheduled for? Again, please note this cellphone tower will adversely affect the value of rest of the IDL Buttercup parcel that you want to sell or lease by a tremendous amount.

Please e-meet my neighbor, spine surgeon Dave Verst, who is very concerned that any 5G tower sited across the street from our residences may impact the health of his kids and other family members.

I will be send you pictures of the dumping ground situation of your existing radio tower lease on this land – it is a mess. IDL can do better than to be so disrespectful of homeowners who live next to your land.

Finally, our Foundation still stands ready to undertake a partial lease of this property. Please let us know how to proceed.

Thank you,
Kiki

Kiki Tidwell
President, Tidwell Idaho Foundation, Inc.
208-578-7769 Idaho Office
208-481-7810 cell



From: Josh Purkiss [<mailto:jpurkiss@idl.idaho.gov>]
Sent: Monday, December 2, 2019 8:19 AM
To: Kiki Tidwell
Subject: RE: Here's a smaller portion idea

Kiki,

Thanks for sending over the rough sketch of the plan. Let me meet with my Bureau Chief to gauge interest in pursuing.

JP

From: Kiki Tidwell <ktinsv@cox.net>

Sent: Sunday, December 01, 2019 5:48 PM

To: Josh Purkiss <jpurkiss@idl.idaho.gov>

Subject: Here's a smaller portion idea

Josh –

I am loath to spend a bunch of money on pretty engineered plans until I get a glimmer of interest from IDL. As we discussed, here is a potential idea for part of the 100 acres. It takes the worst part of the property and puts solar under the power lines (however, Idaho Power may have a 100 foot clear easement without any structures) and community garden in the avalanche area. It keeps the 1 home per 2 acre zoning on the road, and clusters some density in the smaller cottage lots idea in the middle. I am guessing that the portion I have broken off is around 20 acres and that only half of it is useable for housing. Does this pique any interest?

Kiki

Kiki Tidwell

President, Idaho Tidwell Idaho Foundation, Inc.

208-578-7769 Idaho Office

650-388-2108 cell

IDAHO DEPARTMENT OF LANDS

LAND BOARD SUPPLEMENTAL MEMORANDUM
February 16, 2021 Land Board Meeting
Regular Agenda

SUBJECT

Appeal of Auction for Communications Site Lease No. M700084, filed by The Tidwell Idaho Foundation, Inc.

BACKGROUND

The staff memorandum recommending rejection of the Appeal of Auction for Communications Site Lease No. M700084, filed by The Tidwell Idaho Foundation, Inc. (hereinafter "Foundation"), was provided to the Foundation, which filed a Response Memorandum for the Land Board's consideration. This Supplemental Memorandum replies to the arguments and assertions in the Response Memorandum and affirms the recommendation that the appeal should be rejected.

DISCUSSION

A virtual auction for the Blaine County Buttercup communications site lease (M700084) was conducted on December 3, 2020. The winner of the auction was Newmax LLC, which bid \$15,500 as the highest bonus payment. The first year of rent will be \$18,969.03 with annual 3% increases for the life of the 20-year lease. The rent will increase if co-locators are added in the future. Over the 20-year life of the lease, at least \$525,204.94 gross revenue will be generated for the University of Idaho.

The Foundation appealed the auction results, asserting that it is "aggrieved" by the auction of Communications Site Lease No. M700084 because it was a "conflict applicant" for the "same parcel" of state endowment land, and was damaged by IDL's alleged failure to process the Foundation's application in accordance with Rule 020 of the Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases on Conflict Application (IDAPA 20.03.14) (hereinafter "Leasing Rules").

The Foundation disputes the accuracy of the December 26, 2019 Department memo stating that the Foundation had been informed that its then-proposed lease rates were "grossly under market" and that IDL "would not move the proposal forward." App. R. 79. For purposes of appeal, the Foundation's dispute of the memo is irrelevant, because the Department did later inform the Foundation that its application, when considered together with emails proposing higher lease payments, remained under consideration.

See App. R. 129-30 (November 27, 2020 email stating “I will inform our leadership of your revised proposal”); Tidwell Decl. Ex. C (informing Foundation on April 29, 2020 that its application was “being held” pending completion of IDL’s review of leasing process). For purposes of replying to the Foundation’s Response Memorandum, this memorandum assumes that the Foundation’s application remained under consideration up to, and through the time that the auction for M700084 was conducted.

The Foundation’s assertion that it was an applicant for the “same parcel” of endowment lands that was the subject of Lease No. M700084 is based on Rule 010.05 of the Leasing Rules. The rule defines the term “Conflict Application” as follows:

An application to lease state endowment trust land for grazing, farming, conservation, noncommercial recreation or communication site use when one (1) or more applications have been submitted for ***the same parcel of state endowment trust land*** and for the same or an incompatible use.

Leasing Rule 010.05 (emphasis added). While the Foundation expends a great deal of energy arguing that its application is subject to the Leasing Rules, in the end it does not matter, because regardless of what rules apply to the Foundation’s application, the Foundation did not timely apply to lease the “same parcel of state endowment land” that was the subject of proposed Lease No. M700084.

First, as the Foundation notes, the larger Buttercup property lies within three different quarter-quarter sections, and is typically described as including three “parcels.” App. R. 82. The Foundation refers to the parcels as A, B, and C. Generally speaking, the term “parcel” has no particular legal meaning—it simply refers to a “tract or plot of land.” *Merriam-Webster Online Dictionary*. Likewise, the description of the Buttercup property as three “parcels” has no particular management significance—for purposes of leasing land, the Board may combine parcels or lease portions of parcels.

The 80 acres of land that the Foundation applied to lease was delineated by a pink outline on a map submitted with its application. App R. 21 (copy attached); see also App. R. 018 (“The Tidwell Idaho Foundation, Inc., seeks a 20 year land lease with the State of Idaho Lands Endowment for the approximate 80 acres (Exhibit A, pink outline) Blaine Buttercup Parcel”). The area within the pink outline includes most of Parcel A, all of Parcel B, and a portion of Parcel C. The map also indicates the “Approximate Location Pending Lease M 700084.” *Id.* The portion of Parcel C that the Foundation applied to lease ***did not include*** the .23 acres of land designated as Pending Lease M700084.

Nonetheless, the Foundation asserts that because its application and the lease applications for M700084 both included lands within the 48.6 acres that the Foundation calls "Parcel C," they sought to lease the "same parcel."

The Foundation's argument is contrary to the meaning of the phrase "the same parcel of state endowment trust land" as used in the Leasing Rules. In the Leasing Rules, the term "parcel" is used to refer to that *specific* parcel of land designated in the leasing application. The Leasing Rules provide:

All applications must include a legal description of the state endowment trust land applied on. The Department reserves the right to require an amendment of the legal description of state endowment trust lands identified in a lease application to ensure the *parcel* is a manageable unit or for any other reason deemed appropriate by the Department. If the applicant fails to provide an amended application, referencing a manageable unit as designated by the Department, the application is considered invalid.

Leasing Rule 020.02.d (emphasis added). In short, the term "parcel," for purposes of the Leasing Rules, refers to the manageable unit of land described in the lease application. Here, the Department, working with the applicants, designated two separate "manageable units" within Parcel C: the lands within the pink outline that the Foundation applied to lease, and the .23 acres designated as Pending Lease M700084. App. R. 21. Both units were clearly delineated on the attached map that accompanied the Foundation's application. App. R. 92.

The Leasing Rule's use of the term "parcel" to refer to the specific lands designated in a lease application is the only interpretation consistent with the Board's fiduciary duties and with Idaho Code § 58-310. An application to lease a portion of an endowment holding does not encumber the remainder of the holding: it remains open to other lease applications. Idaho Code § 58-310 recognizes this fact when it limits conflict auctions to situations where "two (2) or more applicants apply to lease the same land." This requires that there be an actual physical overlap between the lands identified in the applications. Otherwise, an applicant for a portion of an endowment holding would be vested with control over the leasing process for the remainder of the holding by asserting, as the Foundation does here, that all other applications within the holding are in conflict, and must be considered in the same auction. In short, the Foundation asserts that when there are multiple applications to lease different portions of a holding, only one auction may be held, and only one lease may be awarded, even if the holding is large enough to support multiple leases. Maximization of endowment income

requires that the Board retain the authority to consider concurrent leases on different portions of endowment holdings.

For the reasons given above, it is recommended that the Board reject the Foundation's assertion that its original application to lease a portion of the Buttercup property provides a sufficient basis to sustain its appeal of the auction for Lease M700084. The Foundation's original application did not include the lands that were the subject of Lease No. M700084. Therefore, under the terms of Idaho Code § 58-310 and the Leasing Rules, it was not a conflict applicant for the "same parcel" as Lease No. M700084.

Likewise, the Board should reject the Foundation's assertion that it timely amended its application to include the lands that are the subject of M700084. The Foundation asserts that an email to Josh Purkiss on November 27, 2020, stating a desire to lease the "entire 106.6 acres of land" (App. R. 130), "amended" its lease application to include "the entire Buttercup Parcel." Foundation Resp. 8. The Foundation then asserts:

That updated offer was made on November 27, 2020. (Id.) This was before the deadline for lease applications closed on January 10, 2020.

Foundation Resp. 8. The November 27, 2020 email, however, was submitted more than eleven months *after* the published January 10, 2020 deadline for applications to lease M700084. App. R. 122. Thus, even if the email could serve as an amendment to the Foundation's application, it was untimely, and cannot serve as a basis for the Foundation's purported appeal of the M700084 auction.

CONCLUSION AND RECOMMENDATION

Because the Foundation, in its original application, did not apply to lease the "same parcel" that was the subject of Lease M700084, and because the Foundation did not timely amend its pending application to include such parcel, it cannot claim that the award of Lease M700084 injured it or aggrieved it in a manner allowing it to appeal the results of the auction. The Foundation's appeal should be rejected, and the results of the auction for Communications Site Lease M700084 should be affirmed by the Board.

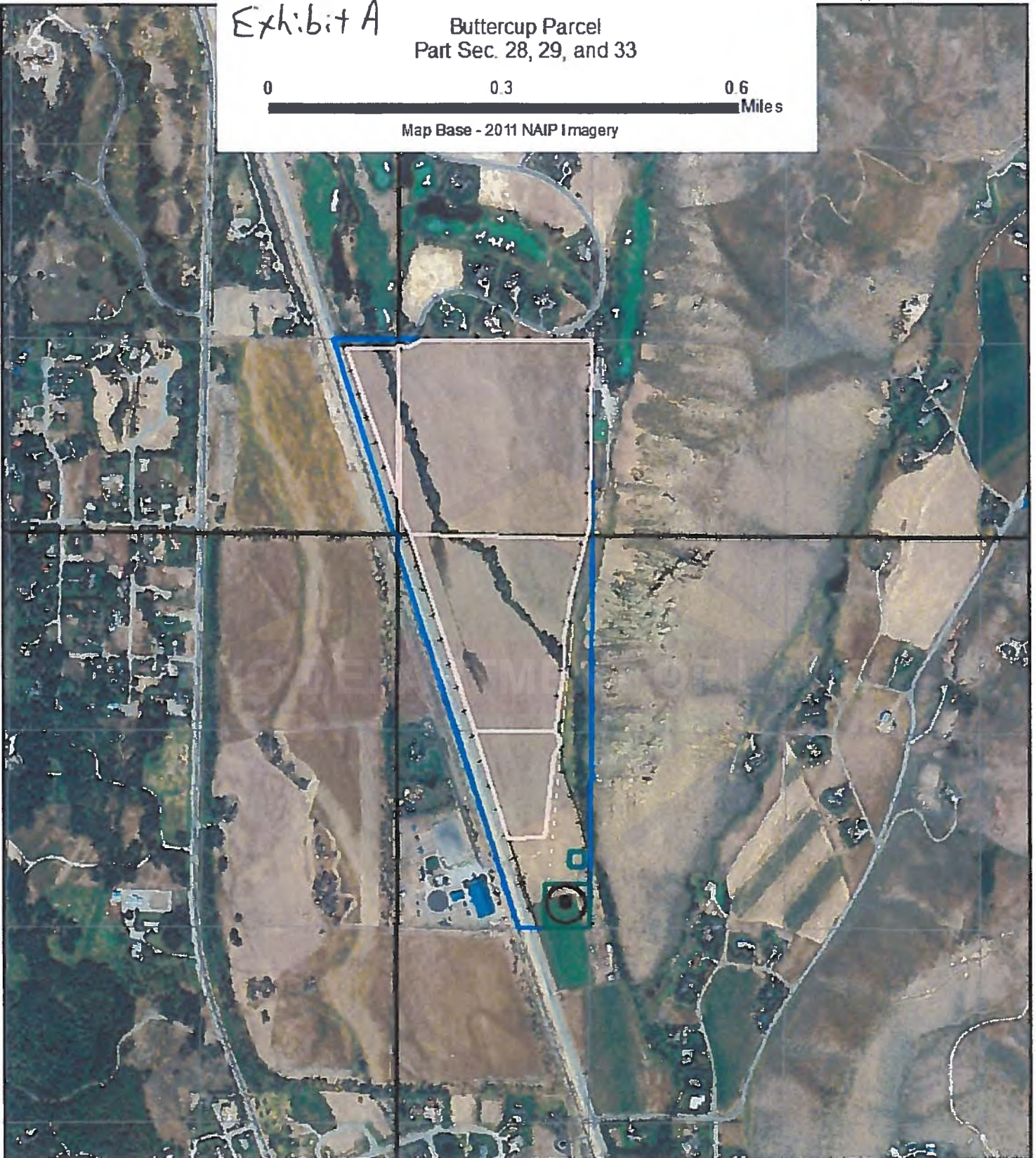
BOARD ACTION

Exhibit A

Buttercup Parcel
Part Sec. 28, 29, and 33

0 0.3 0.6
Miles

Map Base - 2011 NAIP Imagery



—+— Approximate Location - Existing Fence

— Highways

□ Quarter-Quarter Lines

□ Sections

□ Endowment Land

□ Approximate Location Pending Lease M700084

□ Approximate Location M700077

□ Approximate Location Solar Lease Application Area

● M700077 - Approx. Tower Location

○ M700077 - Approximate Area Occupied by Ground Radials
Power_Line

N

ML - 6/19

Dept. of Lands

FEB 03 2021

Boise, Idaho

BEFORE THE BOARD OF LAND COMMISSIONERS
OF THE STATE OF IDAHO

IN THE MATTER OF
COMMUNICATION SITE LEASE
NO. M700084 AWARDED TO
NEWMAX LLC

RECORD ON APPEAL

IDAHO DEPARTMENT OF LANDS

DEPT. OF LANDS

DEC 21 2020

BOISE, IDAHO

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willvarin@varinwardwell.com

Attorneys for The Tidwell Idaho Foundation, Inc.

BEFORE THE BOARD OF LAND COMMISSIONERS
OF THE STATE OF IDAHO

IN THE MATTER OF COMMUNICATION
SITE LEASE NO. M700084 AWARDED
TO NEWMAX LLC

Case No. _____

NOTICE OF APPEAL

The Tidwell Idaho Foundation, Inc. ("Appellant" or "TIF") hereby files this formal Notice of Appeal pursuant IDAPA 20.03.14.002.01 and 20.01.01.003. The basis of this notice of appeal follows:

THE PARTIES

1. Appellant is a duly organized non-profit corporation in good standing with the State of Idaho.
2. Respondent Idaho Department of Lands ("IDL") is an agency of the State of Idaho, charged with the duty to review, evaluate, and process applications to lease lands owned by the State of Idaho.

GENERAL ALLEGATIONS

3. This matter involves State-owned land located off of Buttercup Road in Sections 28, 29, and 33 of Township 3 North, Range 18 East, Blaine County, Idaho (the “Buttercup Parcel”).

4. The Buttercup Parcel has a surface area of approximately 106.6 acres.

5. On December 3, 2020, IDL held a conflict auction regarding proposed Communication Site Lease No. M700084 (the “Lease”).

6. The Lease includes a leased premises of approximately 0.23 acres within the Buttercup Parcel for the placement of a cellular communication tower, equipment shelter, access road, and related infrastructure (the “Leased Premises”).

7. Notice of the ability to apply to lease the Leased Premises was published beginning in December 2019, and the deadline for applications to lease the Leased Premises was January 10, 2020.

8. Beginning on June 7, 2019, TIF has submitted an application and proposed amendments thereof to IDL to lease the Buttercup Parcel in order to construct modular, removable single-family residences that would be powered by an onsite solar array and energy storage battery (collectively, the “TIF Application”).

9. The general concept of the TIF Application is that, over time, single-family modular, removable dwellings would be developed within the Buttercup Parcel to match the underlying density of the R-2 zoning within Blaine County, with TIF sub-leasing individual parcels to residents as the dwellings are developed over time.

10. As of the January 10, 2020 cutoff date for applications to bid on the Lease, TIF was proposing to pay \$35,000 in annual rent to the State of Idaho beginning in year 1 of a lease,

plus an additional \$2,500 per acre per year as land was developed for the entire 106.6-acre parcel, including the communication tower site.

11. In addition, on November 27, 2020, TIF proposed to pay \$250,000 per year in annual rent for a 49-year lease of the Buttercup Parcel.

12. However, IDL has not moved forward with processing the TIF Application.

13. In addition, TIF was not able to place a bid on the Lease at the December 3, 2020 auction.

14. Instead, only Newmax, LLC and Sun Valley Media Group, LLC were allowed to place bids at the December 3, 2020 auction.

15. As a result of the auction, IDL awarded the Lease to Newmax, LLC.

COUNT ONE

(Violation of Idaho Const. art IX, § 8)

16. The presence of a cellular communication tower within the Buttercup Parcel will reduce demand for use of the Buttercup Parcel for residential purposes as contemplated in the TIF Application and for other potential uses.

17. Therefore, the Lease of a portion of the Buttercup Parcel for use as a cellular communication tower site substantially impairs the viability of the TIF Application and will reduce demand for applications to lease the remainder of the Buttercup Parcel.

18. Under Article IX, Section 8 of the Idaho Constitution, IDL and the Board of Land Commissioners have a duty to “secure the maximum long term financial return” when leasing state lands.

19. Because the TIF Application would provide more revenue to the State over a longer period of time than the Lease, and because the Lease will reduce demand for additional

uses of the remaining portions of the Buttercup Parcel, issuing the Lease to the detriment of other potential uses and to the detriment of the earlier-filed TIF Application violates Article IX, Section 8 of the Idaho Constitution.

COUNT TWO

(Violation of Idaho Code § 58-310)

20. Idaho Code Section 58-310(1) states that, “[w]hen two (2) or more persons apply to lease the same land, the director of the department of lands, or his agent, shall....auction off and lease the land to the applicant who will pay the highest premium bid therefor....”

21. By not allowing TIF to bid on the Lease, IDL has violated Idaho Code Section 58-310.

PRAYER FOR RELIEF

22. Based on the foregoing, TIF respectfully requests an order from the Board of Land Commissioners:

- a. Vacating the issuance of the Lease to Newmax LLC; and
- b. Requiring IDL staff to process the TIF Application before taking further action on the Lease or Leased Premises.

DATED this 21st day of December, 2020.

VARIN WARDWELL LLC

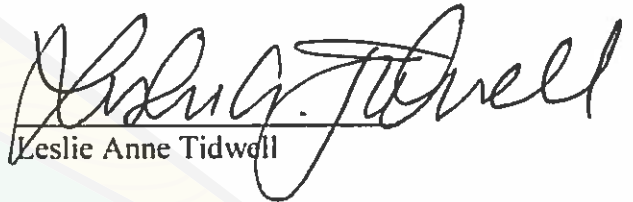
By: 
 Dylan Lawrence
 Attorneys for Appellant

VERIFICATION

STATE OF IDAHO)
) ss.
 County of Blaine)

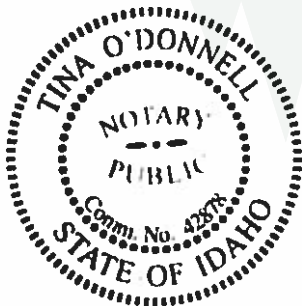
I, Leslie Anne Tidwell, being first duly sworn upon oath, hereby depose and say that I am the President of The Tidwell Idaho Foundation, Inc., the Appellant in this action, that I have read the foregoing Notice of Appeal, and that the matters alleged in the Notice of Appeal are true and correct to the best of my knowledge and belief.


DATED this 21st day of December, 2020.


 Leslie Anne Tidwell

IDAHO DEPARTMENT OF LANDS

SUBSCRIBED AND SWORN to before me this 21st day of December, 2020.




 Notary Public for Idaho
 Commission expires: 11.26.25

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 21st day of December, 2020 filed one (1) signed original and five (5) copies of the foregoing Notice of Appeal by the method indicated below, and addressed to the following:

Idaho Board of Land Commissioners
300 N. 6th Street, Suite 103
Boise, Idaho 83702

☐ U.S. Mail ☐ Fax ☒ By hand ☐ Overnight


Dylan Lawrence

IDAHO DEPARTMENT OF LANDS

App.R:007
In original Application Packet. Revised by
Applicant via email on 6/17/19

Idaho Department of Lands Application

Author: Kiki Tidwell 6/7/19



Statement of the applicant's project proposal:

The Tidwell Idaho Foundation, Inc. proposes a microgrid demonstration project for Blaine County 03N Section 18E parts of Sections 28, 29, and 33, approximating 100 acres, Buttercup Rd, Blaine County Idaho (Blaine Buttercup Parcel). For quite some time, the Foundation has had a mission goal for rural economic development through renewable energy. To further this goal, the Foundation has lent low interest funds for a roof-mounted solar installation for a small business in Hailey, given seed funds to a wind energy project developer, and loaned funds to several other commercial scale solar projects and cleantech businesses. South Carolina has 200 microgrids installed today. Idaho has none. Our charitable foundation can provide the capital to undertake this demonstration of this technology as a mission investment or program related investment, whereas a for-profit developer would not see enough profit in the project to warrant investment, nor proper development of the land. The Foundation would like to demonstrate that battery storage technology combined with distributed solar generation coordinated in a resilient microgrid now is economically feasible and will provide critical backup power to homeowners in emergency situations, as well as provide a more affordable all-electric housing solution.

The Idaho Department Lands' partnership is key to the success of this project by providing viable leased land for the microgrid demonstration project matching the initial life of a 20 year solar project and eliminating the financial burden of purchasing the land up front which would make it unfeasible. The state of Idaho benefits in the financial success of this project in the lease income, but it also benefits from a top-notch project which is designed to be compatible with Blaine County's rural character vision for this part of the County and solves the County's pressing needs. Part of this development will be kept in agriculture. There is a tremendous need in the County right now for affordable housing as well as for emergency power backup generation. This project provides both. In coordination with the creation of energy through solar arrays, a residential planned unit development component of the project will be undertaken, with land-lease pads for modular all-electric home installations which become direct off-takers of the energy generated on the site. A success with this demonstration project will positively benefit other Idaho communities with resilient microgrid solar generation solutions.

The target market and customers for this project are 1) demonstration homes of modular construction on leased pads on the property which become the direct offtakers of solar power generation as all-electric homes with Electrical Vehicle charging. The Tidwell Idaho Foundation, as master lessee of the project lands, becomes the manager of a master electrical meter to the site but the majority of the power generated or consumed is behind the meter; the modular homes have gross land leases which include their electrical power. As well, any power sold into the grid under Rule 84 net metering rules supports the grid and helps Idaho Power reach its new goal of 100% renewable energy by 2045, and this project enables Idaho Power to experience and work with 2019 battery storage technology, which it then can deploy elsewhere in Idaho. It is hoped that Hailey-located company Power Engineers, and which Idaho Power already works with, can design the project with the microgrid components with the appropriate

controller technology that will enable the solar farm to work successfully with the grid and island itself when necessary.

Land Use Authorization Requested.

The Tidwell Idaho Foundation, Inc. seeks a 20 year land lease for a 10 acre initial part of the Blaine Buttercup Parcel, with options to expand in 10-20 acre increments over time as the improvements can be proven out, until the entire 100 acre parcel is utilized. Battery storage technology and solar project costs are declining rapidly each year and the technology is rapidly improving. On its end, the Idaho Department of Lands can review each phase after development before another phase is authorized to proceed. The Foundation would like options to extend the initial lease term. The Foundation proposes a \$250 per acre lease with the State of Idaho on the acreage developed or under development, starting with the 10 acres of Parcel A, and an additional \$1000 per year to keep the additional acreage on option to develop. As more acres are developed over the next 5-7 years, the overall lease rent increases with more developed property on line. This property would be difficult to develop to any higher residential density/higher lease rent due to the limited ability to provide adequate sewer and water for higher density; it is far from any city service connections.

For the first 10 acre parcel (Parcel A), a solar array and energy storage battery will be sited as well as five clustered homes. Parcel A development will reflect the rural character and open space of existing mid-Valley County R-2 zoning in the number of homes and the siting and placement of homes. The intention of this demonstration project is to enable a more affordable housing solution for longtime County residents who are interested in down-sizing into modular, leased pad-homes which can be removed at the end of the 20 year project period. The stability of the residents' electric power cost and vehicle charging will also contribute to a cost effective housing solution. The modular homes will be built in factories, but will be 2019 products that look just like site-built homes of a Western rural character. It is anticipated that a central Electric Vehicle car charging barn and community garden may be components of the PUD.

The Foundation will be advised by experienced developer partners, and the project may include other financial partners, including Kiki Leslie A. Tidwell, the Foundation's founder and donor.

Location:

Please see attached Exhibit A.

Proposed Improvements.

- a) Proposed permanent and temporary improvements and their estimated costs

For Parcel A, 10 acre initial development:

Up to 100 kW solar array \$175,000

Primus Power 25kW 5 hour duration EnergyPod Battery \$60,000

(The average home uses 1-2 kW at any given time, one Pod can support 12-20 homes. 125 kWh = 5 hrs backup)

Well & water system \$100,000

Septic system with common pump chamber drain field \$100,000

Homesite pad infrastructure
 Gravel road
 Interconnection to Idaho Power's electrical distribution line on Buttercup Rd.
 Microgrid design and controller

b) Anticipated operation and maintenance requirements and responsibilities

The Tidwell Idaho Foundation is partnering with experienced solar developer OneEnergy Renewables to develop the solar portion of the project. We will contract O&M with OneEnergy or similar reputable company to maintain the solar facilities. The Foundation is being advised by experienced subdivision developer Seaboard Corp. to develop the home sites in the subdivision. A reputable property management company will be hired to maintain and lease the residential part of the development post-construction.

c) The projected schedule for development and operation, including development phases.

Even though the first Parcel A development will address only 10 acres, the entire property will be master planned with engineers, land surveyor, and DEQ for any potential full buildout of the 100 acres to correctly site water and septic services. A solar project can be built within 6-8 months. Solar project investment tax credits currently start phasing out after 2019. An interconnection agreement must be designed with Idaho Power as well as the microgrid plan. It is anticipated that the road, water, septic, and other improvements for Parcel A could be completed within a year. As much will be learned from the first microgrid development on Parcel A, adjustments can be incorporated in further development. A reasonable pace of additional Parcel development in 10-20 acre parcel sizes could proceed in one to two year spacing.

d) The use and ownership of adjacent lands which are dependent on the project:

The adjacent lands are primarily residential and are not affected by the development of this property if it is developed within current R-2 zoning guidelines. The increased traffic on Buttercup Rd is allowed to this density. There is a farmer farming to the South, who possibly could be an offtaker of solar power for irrigation pumping.

2. Analysis of Impact.

a) The potential environmental impacts that may be caused by the proposed use both during construction and operation and after project completion

Elk have traditionally used part of this property for access to other areas and for wintering. The project will be designed to allow elk to continue to use corridors of open space. No vegetation will be planted that is hazardous to wildlife. No toxic chemicals will be sprayed on this property.

There are significant cliffs on the East boundary of the property. Any development will need to be kept clear of potential avalanche paths.

Topsoil will be removed from road development areas but re-utilized in common area planting.

The proposed Primus Power battery is not lithium-ion and does not have a fire risk potential.

- b) Provide a rehabilitation/reclamation plan for the site, to be implemented should the proposed use cease operation

At the end of 20 years, if the Idaho Department of Lands desires to continue the lease, the solar project panels can be updated and replaced fairly simply to continue the life of the solar project. However, if not, the solar arrays can be removed, as well as their support structure foundations. The modular homes could be lifted off of their sites and relocated and the concrete home pads could be broken up and removed if needed. Any water systems, roads, and septic system/drainfields are not anticipated to be removed. Any community barn structure would also remain.

3) Government Regulation/Permits and Other Authorization.

- a) Describe any federal, state, county and city permits or authorizations required for the proposed use and an approval time line.

Since this is on Idaho State Endowment lands, it is exempt from local planning and zoning processes. However, applicant is extremely knowledgeable about the zoning ordinances for this part of the County and any development would be respectful of and consistent with those ordinances as well as conform to Blaine County's Comprehensive Plan's vision for rural open space and agriculture in between the cities. Idaho's DEQ would review and approve any water and sewer infrastructure. Idaho Power would review and approve any electrical interconnection agreement, as well as any interface with the microgrid controller.



- Approx. Tower Location
- Approx. Lease Area
- Quarter-Quarter Lines
- Sections
- ▭ Endowment Land

M700077
Proposed AM Radio Site
Part Sec. 33, T3N, R18E



June 12, 2019

To whom It May Concern,

I have been a resident of the Wood River Valley since 1986 and have been a friend of Kiki Tidwell's for many years. I have always been aware of her interest in alternative forms of energy and her constant efforts to challenge restrictive regulations and raise public awareness. We have often discussed our changing world and the environmental issues challenging it and also the world our children and grandchildren will inherit. I find the latter half of the above sentence the biggest concern.

I have resided in my current home for 24 years and have decided to put it on the market in the near future. I have recently become an "empty nester" and the house utility bills and the 1.4 acres it sits on are burdensome. I would like to remain in the Wood River Valley on a smaller lot with smaller carrying costs and a smaller carbon footprint.

On a recent, walk I was delighted to hear Kiki's thoughts about creating a development in the Wood River Valley which would demonstrate a more sustainable way of living. Her purpose is to model for future residents, neighbors, the county, the state and others that living responsibly is not difficult and not expensive. I was so excited to think that I could afford to be part of a community which would generate its own power and offer tasteful homes. As an aging baby-boomer, I am looking forward to downsizing and setting an example of a more sensible lifestyle for my children and future grandchildren. I have already told Kiki to put me on the list for a place in her community and I am grateful that she is willing to pave the way for me to a more responsible lifestyle in a place that I love.

Sincerely,
Alison Stone
202 Starweather Drive



APPLICANT INFORMATION REQUEST

Applicants shall provide the following information for evaluation by the Idaho Department of Lands in conjunction with the Application for Use and the corresponding application fee.

A. PROJECT SUMMARY

1) Proposal.

Provide a statement of the applicant's project proposal. Include information regarding the business/development philosophy and targeted markets and customers.

2) Authorization Requested.

Describe the land use authorization requested (e.g. lease, permit, and easement) and the length of time needed to make the project feasible.

3) Location.

Provide a vicinity map, site plans and aerial photographs including Township, Range and Section references.

B. PROPOSED DEVELOPMENT

1) Proposed Improvements.

Please describe the following:

- a) Proposed permanent and temporary improvements and their estimated costs
- b) The anticipated operation and maintenance requirements and responsibilities
- c) The projected schedule for development and operation, including development phases, if applicable. For phased developments, describe the nature of the phase and the estimated time required to complete the phase
- d) The use and ownership of adjacent lands which are dependent on the project. Describe the necessity of the use of adjacent lands for operations or access. Describe any written agreements pending or in place with adjacent landowner

2) Analysis of Impact.

Please describe the following:

- a) The potential environmental impacts that may be caused by the proposed use both during construction and operation and after project completion
- b) Provide a rehabilitation/reclamation plan for the site, to be implemented should the proposed use cease operation

3) Government Regulation/Permits and Other Authorization.

Please provide the following:

- a) Describe any federal, state, county and city permits or authorizations required for the proposed use and an approval time line.

C. APPLICANT CAPABILITY

1) Business and Background Information.

- a) Identify the individual and contact information for the person authorized to negotiate with the State (single point of contact).
- b) Discuss and identify the type of the business organization and nature of its business. Include all subsidiaries, affiliates and related companies, and the following information:
 - i) The type of each business entity;
 - ii) Year organized;
 - iii) The state where organized and principal place of business and submit a certificate indicating the business entity is in good standing with the Idaho Secretary of State's Office;
 - iv) A description of how the business entity is related to all others listed under this section.
- c) Identify the directors, executive officers, significant employees, promoters, control persons of the applicant and all subsidiaries, affiliates, and related companies. Proposals must include, at a minimum, the following information:
 - i) Names, positions held, term of office;
 - ii) Disclosure of any family relations with State of Idaho employees or elected officials;
 - iii) Professional qualifications, licenses, and business experience;
 - iv) Involvement in civil legal proceedings including: bankruptcy, court orders or judgment enjoining business practices;
 - v) Conviction of, or entered a plea of guilty, no contest, or had a withheld judgment to a felony;
 - vi) Role in governance and policy making for the business; and
 - vii) A resume (maximum 2 pages) for each individual identified.
- d) Provide information detailing the relevant experience of the applicant on similar projects during the last five (5) years.
- e) Provide the names and contact information for three (3) references. References should be individuals who can attest to the applicant's experience and qualifications, capability, and financial performance history on projects of similar scope and complexity to the development opportunity offered by this project.
- f) If applicable and known, give the business name and address of any organization with which the applicant will subcontract for any services for the project and mechanisms for assuring effective and efficient operations.

2) Financial Statements.

- a) Provide audited or signed financial statements for all subsidiaries, affiliates, and related companies, including the documents requested below.
 - i) Balance sheets for the past three (3) calendar years;
 - ii) Income statements for the past three (3) calendar years;
 - iii) Current cash flow statements; and
 - iv) Statements of shareholders' equity.

D. FINANCIAL FEASIBILITY OF THE PROJECT

1) Project Plan.

- a) Submit a project plan for the proposal. The plan should include an organization chart with the names and responsibilities of individuals and subcontractors (if known) who comprise the project team, and an explanation of the relationship between them, financial projections for the project (see below), and the source of capital required for implementation (see below).

2) Financial Projections.

- a) Provide the following financial projections and information for the project:
 - i) Cash flow projections for the project;
 - ii) Detailed analysis of capital purchases or improvements; and
 - iii) Offered return to the endowment beneficiary under various project scenarios.
 - iv) Production estimates, if applicable.

3) Source of Capital.

- a) Provide a description of the capital required for the project, including but not limited to:
 - i) Amount of capital needed and how it will be raised;
 - ii) Amount of capital raised to date, if any, and its source(s); and
 - iii) If institutional financing is required, proposals must include:
 - (1) The percentage of the project budget that relies on financing; and
 - (2) Evidence of commitments from lenders obtained to date.

E. NO OBLIGATION/RIGHT TO REJECT

Acceptance of an application and provision of the requested project and proposer information does not obligate the State to enter an agreement.

This request is not a solicitation for competitive bids. The State expressly reserves the right to review the project and take any of the following actions during the project evaluation process:

- 1) Reject any or all of the project proposal with or without cause;
- 2) Verify and investigate the qualifications and financial capacity of the proposer and information provided in the project description;
- 3) Request additional information from an applicant, as necessary to make an adequate and fair evaluation of each proposal;
- 4) Obtain input from any federal, state or local governmental entity, or from consultants; and
- 5) Accept or reject any item or a combination of items contained in a proposal.

F. PUBLIC RECORDS AND CONFIDENTIALITY OF INFORMATION

All information shall become the property of the State and unless otherwise exempted under Idaho Public Records Law, Idaho Code § 9-337- to 9-348, will become official public records subject to disclosure after the completion and issuance of an agreement to proposer. The Idaho Public Records Law allows the open inspection and copying of public records.

Public records include any writing containing information relating to the conduct or administration of the public's business prepared, owned, used or retained by a State or local agency regardless of the physical form or character. If a proposer considers any element of a proposal to be exempt from disclosure, pursuant to the Idaho Public Records Law, the proposer must so indicate by marking each page of the pertinent document and include the reasons the information should be exempt from disclosure. Marking the entire proposal as exempt is not acceptable, nor is a statement that all or most of the proposal is exempt from disclosure. Such requests will not be honored. The State, to the extent allowed by law and in accordance with this provision, will not disclose records exempt under the public records law.

G. OTHER GENERAL CONDITIONS

- 1) The State is not liable for any cost incurred by the proposer prior to issuing an agreement or authorization to proceed. All information will become the property of the State and will not be returned to the proposer.
- 2) The State shall not be bound by any oral or written representations, statements or explanations other than those made in this Applicant Information Request (AIR) or in responses to inquiries regarding this AIR.
- 3) The State is not liable for any omissions or misrepresentations made in this AIR or for representations as to the condition of the land itself.
- 4) Lease payments, rental rates or other instrument fees will be evaluated and negotiated subsequent to the review of the information provided in this AIR; however, additional information from the applicant may be required.

Idaho Department of Lands Application

Author: Kiki Tidwell 6/7/19

Statement of the applicant's project proposal:

The Tidwell Idaho Foundation, Inc. proposes a microgrid demonstration project for Blaine County 03N Section 18E parts of Sections 28, 29, and 33, approximating 100 acres, Buttercup Rd, Blaine County Idaho (Blaine Buttercup Parcel). For quite some time, the Foundation has had a mission goal for rural economic development through renewable energy. To further this goal, the Foundation has lent low interest funds for a roof-mounted solar installation for a small business in Hailey, given seed funds to a wind energy project developer, and loaned funds to several other commercial scale solar projects and cleantech businesses. South Carolina has 200 microgrids installed today. Idaho has none. Our charitable foundation can provide the capital to undertake this demonstration of this technology as a mission investment or program related investment, whereas a for-profit developer would not see enough profit in the project to warrant investment, nor proper development of the land. The Foundation would like to demonstrate that battery storage technology combined with distributed solar generation coordinated in a resilient microgrid now is economically feasible and will provide critical backup power to homeowners in emergency situations, as well as provide a more affordable all-electric housing solution.

The Idaho Department Lands' partnership is key to the success of this project by providing viable leased land for the microgrid demonstration project matching the initial life of a 20 year solar project and eliminating the financial burden of purchasing the land up front which would make it unfeasible. The state of Idaho benefits in the financial success of this project in the lease income, but it also benefits from a top-notch project which is designed to be compatible with Blaine County's rural character vision for this part of the County and solves the County's pressing needs. Part of this development will be kept in agriculture. There is a tremendous need in the County right now for affordable housing as well as for emergency power backup generation. This project provides both. In coordination with the creation of energy through solar arrays, a residential planned unit development component of the project will be undertaken, with land-lease pads for modular all-electric home installations which become direct off-takers of the energy generated on the site. A success with this demonstration project will positively benefit other Idaho communities with resilient microgrid solar generation solutions.

The target market and customers for this project are 1) demonstration homes of modular construction on leased pads on the property which become the direct off-takers of solar power generation as all-electric homes with Electrical Vehicle charging. The Tidwell Idaho Foundation, as master lessee of the project lands, becomes the manager of a master electrical meter to the site but the majority of the power generated or consumed is behind the meter; the modular homes have gross land leases which include their electrical power. As well, any power sold into the grid under Rule 84 net metering rules supports the grid and helps Idaho Power reach its new goal of 100% renewable energy by 2045, and this project enables Idaho Power to experience and work with 2019 battery storage technology, which it then can deploy elsewhere in Idaho. It is hoped that Hailey-located company Power Engineers, and which Idaho Power already works with, can design the project with the microgrid components with the appropriate



controller technology that will enable the solar farm to work successfully with the grid and island itself when necessary.

Land Use Authorization Requested.

The Tidwell Idaho Foundation, Inc. seeks a 20 year land lease with the State of Idaho Lands Endowment for the approximate 80 acre (Exhibit A, pink outline) Blaine Buttercup Parcel, for \$1000 per year. The Foundation also proposes increasing the lease rent as sub-parcels of the site are developed as a solar farm and housing project, at \$250 per developed acre lease. As more acres are developed over the next 5-7 years, the overall lease rent increases with more developed property on line. If possible, the Foundation would like options to extend the initial lease term. This property would be difficult to develop to any higher residential density/higher lease rent due to the limited ability to provide adequate sewer and water for higher density; it is far from any city service connections. The Foundation is proposed a phased development project as battery storage technology and solar project costs are declining rapidly each year and the technology is rapidly improving.

For the first 10 acre sub parcel (Parcel A), a solar array and energy storage battery will be sited as well as five clustered homes. The entire site development will reflect the rural character and open space of existing mid-Valley County R-2 zoning in the number of homes and the siting and placement of homes. The intention of this demonstration project is to enable a more affordable housing solution for longtime County residents who are interested in down-sizing into modular, leased pad-homes which can be removed at the end of the 20 year project period. The stability of the residents' electric power cost and vehicle charging will also contribute to a cost effective housing solution. The modular homes will be built in factories, but will be 2019 products that look just like site-built homes of a Western rural character. It is anticipated that a central Electric Vehicle car charging barn and community garden may be components of the PUD.

The Foundation will be advised by experienced developer partners, and the project may include other financial partners, including Kiki Leslie A. Tidwell, the Foundation's founder and donor.

Location:

Please see attached Exhibit A.

Proposed Improvements.

- a) Proposed permanent and temporary improvements and their estimated costs

For Parcel A, 10 acre initial development:

Up to 100 kW solar array \$175,000

Primus Power 25kW 5 hour duration EnergyPod Battery \$60,000

(The average home uses 1-2 kW at any given time, one Pod can support 12-20 homes. 125 kWh = 5 hrs backup)

Well & water system \$100,000

Septic system with common pump chamber drain field \$100,000

Homesite pad infrastructure

Gravel road



Interconnection to Idaho Power's electrical distribution line on Buttercup Rd.
 Microgrid design and controller
 Total all development \$1,210,000

b) Anticipated operation and maintenance requirements and responsibilities

The Tidwell Idaho Foundation is partnering with experienced solar developer OneEnergy Renewables to develop the solar portion of the project. We will contract O&M with OneEnergy or similar reputable company to maintain the solar facilities. The Foundation is being advised by experienced subdivision developer Seaboard Corp. to develop the home sites in the subdivision. A reputable property management company will be hired to maintain and lease the residential part of the development post-construction.

c) The projected schedule for development and operation, including development phases.

Even though the first sub Parcel A development will address only 10 acres, the entire property will be master planned with engineers, land surveyor, and DEQ for any potential full buildout of the 100 acres to correctly site water and septic services. A solar project can be built within 6-8 months. Solar project investment tax credits currently start phasing out after 2019. An interconnection agreement must be designed with Idaho Power as well as the microgrid plan. It is anticipated that the road, water, septic, and other improvements for Parcel A could be completed within a year. As much will be learned from the first microgrid development on sub Parcel A, adjustments can be incorporated in further development. A reasonable pace of additional sub Parcels development in 10-20 acre parcel sizes could proceed in one to two year spacing.

d) The use and ownership of adjacent lands which are dependent on the project:

The adjacent lands are primarily residential and are not affected by the development of this property if it is developed within current R-2 zoning guidelines. The increased traffic on Buttercup Rd is allowed to this density. There is a farmer farming to the South, who possibly could be an offtaker of solar power for irrigation pumping.

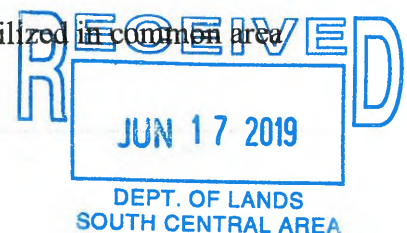
2. Analysis of Impact.

a) The potential environmental impacts that may be caused by the proposed use both during construction and operation and after project completion

Elk have traditionally used part of this property for access to other areas and for wintering. The project will be designed to allow elk to continue to use corridors of open space. No vegetation will be planted that is hazardous to wildlife. No toxic chemicals will be sprayed on this property.

There are significant cliffs on the East boundary of the property. Any development will need to be kept clear of potential avalanche paths.

Topsoil will be removed from road development areas but re-utilized in common area planting.



The proposed Primus Power battery is not lithium-ion and does not have a fire risk potential.

- b) Provide a rehabilitation/reclamation plan for the site, to be implemented should the proposed use cease operation

At the end of 20 years, if the Idaho Department of Lands desires to continue the lease, the solar project panels can be updated and replaced fairly simply to continue the life of the solar project. However, if not, the solar arrays can be removed, as well as their support structure foundations. The modular homes could be lifted off of their sites and relocated and the concrete home pads could be broken up and removed if needed. Any water systems, roads, and septic system/drainfields are not anticipated to be removed. Any community barn structure would also remain.

3) Government Regulation/Permits and Other Authorization.

- a) Describe any federal, state, county and city permits or authorizations required for the proposed use and an approval time line.

Since this is on Idaho State Endowment lands, it is exempt from local planning and zoning processes. However, applicant is extremely knowledgeable about the zoning ordinances for this part of the County and any development would be respectful of and consistent with those ordinances as well as conform to Blaine County's Comprehensive Plan's vision for rural open space and agriculture in between the cities. Idaho's DEQ would review and approve any water and sewer infrastructure. Idaho Power would review and approve any electrical interconnection agreement, as well as any interface with the microgrid controller.



Exhibit A

Buttercup Parcel
Part Sec. 28, 29, and 33

0 0.3 0.6
Miles

Map Base - 2011 NAIP Imagery



—+— Approximate Location - Existing Fence

— Highways

□ Quarter-Quarter Lines

□ Sections

□ Endowment Land

□ Approximate Location Pending Lease M700084

□ Approximate Location M700077

□ Approximate Location Solar Lease Application Area

● M700077 - Approx. Tower Location

○ M700077 - Approximate Area Occupied by Ground Radials

— Power_Line

N

ML - 6/19

Financial Feasibility of the Project

1) Project Plan

Kiki Tidwell, President of the Tidwell Idaho Foundation, Inc, and of family office Idaho Land & Pine, Inc, experienced real estate investor, will work with:

One Energy Renewables to develop the solar part of the project,
with Seaboard Corporation to develop the subdivision design,
with Bruce Smith, land surveyor ,who has topographic mapping from working with previous developer on the site, to engineer best land use,
with Steve Butler, geotechnical engineer, for water and septic systems design
with GivensPursley, attorneys, to develop subdivision legal aspects and the interconnection and net metering agreements

2) Financial Projections

This is not a financially lucrative project. Other experienced developers such as Harry Rinker have tried to pencil something on this land. It is challenging due to the topography of avalanche zones, a transmission line crossing the property and running up the entire east side of the property, and a land lease, which precludes the generation of ultimate sale proceeds.

The Tidwell Idaho Foundation, Inc. is ideally suited to develop this property as its primary goal is charitable purpose; it can put funds into this property solely for the value of the microgrid demonstration project and be patient about any return of capital. As well, Kiki Tidwell is the sole donor to the Foundation, and puts additional contributions into the Foundation almost every year. She is a high net worth individual who has available funds to loan to this project. If the annual cash flow does not ultimately have the ability to fully pay principal and interest to both Tidwell and Foundation, Tidwell will donate debt forgiveness to the Foundation as a charitable donation. At the end of 20 years, it will be enough return if the capital has been paid back to the foundation with very low interest payments. Since this will be a Program Related Investment, investment of any dollars will more than satisfy the requirements of the Foundation to charitably grant out 5% of its net asset value each year, so there are no other cash demands on the Foundation.

Cash Flow:

Tidwell Idaho Foundation Cash available for project	\$470,000
Loan from Kiki Tidwell to project	740,000
	\$1,210,000
Improvements Parcel A	(\$1,210,000)

Modular homes are presold before construction

With deposits and progress pmts

Developer markup on 5 homes	400,000
Retire portion of debt to Kiki Tidwell	(400,000)
less possible financing of solar project separately	(72,000)

Annual proforma

Land lease net income of home sites incld power	\$60,000
Idaho Dept of Lands lease pmt 10 acres + option	(\$3500)

Net positive cash flow then is divided up:

Principal returned to Foundation over 20 years as

low interest Program Related Investment

Principal returned to Tidwell low interest 20 yrs

Principal & Interest pmts on 20 solar loan



IDAHO DEPARTMENT OF LANDS

C. APPLICANT CAPABILITY

1) Business and Background Information

a) Individual and contact information for the person authorized to negotiate with the State

Kiki Leslie A. Tidwell, President, Tidwell Idaho Foundation, Inc.
300 Let Er Buck Rd. Hailey, ID 83333 208-578-7769

b) The type of the business organization and nature of its business

The Tidwell Idaho Foundation, Inc, is a tax-exempt charitable private foundation under section 509(a) of the IRS, recognized Apr 15, 1994

It was incorporated in the State of Idaho August 10, 1993.

Its principal place of business is 300 Let Er Buck Rd, Hailey, ID 83333

c) Directors, executive officers

i)

Kiki Leslie A. Tidwell, President, Director
Jean E. Rolles, Treasurer, Director
Elise G.B. Lufkin, Secretary, Director
Madison Jean Tidwell, Director

ii) No family relations with State of Idaho employees

Kiki Leslie A. Tidwell has announced her candidacy for Blaine County Commissioner, November 2020 election

iii) Professional qualifications, licenses, business experience:

Jean E. Rolles, Institute of Real Estate Management Certified Property Manager of the Year Awardee, real estate agent, real estate investor, philanthropist

Kiki Tidwell, trained as real estate appraiser and property manager, real estate investor/developer, philanthropist

iv) Involvement in civil legal proceedings - Kiki Tidwell currently in a case

v) 0 convictions, pleas, judgments to a felony

vi) Role in governance and policy making for the business

Directors make the policy for the Tidwell Idaho Foundation, Inc. and have adopted a policy of 50% mission related investments for the Foundation

vii) Resumés attached

d) Provide information detailing the relevant experience of the applicant on similar projects during the last five years

The Tidwell Idaho Foundation, Inc. has worked with solar developer AltEnergy Inc. to install solar panels on the Wood River Inn, Hailey Idaho, and has lent funds to the Inn owners as a Program Related Investment of the Foundation to promote the mission goal of Rural Economic Development through Renewable Energy.

The Foundation has lent funds to One Energy Renewables, Inc. for construction funding of solar projects for several projects.

The Foundation has invested in renewable energy projects and companies including Retrolux, Inc. (debt) , Rainbow Ranch wind farms, MicroEnergy Credits Corp, E+Co.

Kiki Tidwell has accomplished subdivision projects (Jean Bob Sub, Ketchum) and subdivision replats, commercial and residential construction projects, and property management of retail malls.

The logo of the Idaho Department of Lands is a large, stylized diamond shape. It features a light green central area with a yellow border. The text "IDAHO DEPARTMENT OF LANDS" is written in white, bold, capital letters across the center of the diamond. The background of the logo is a light gray.

IDAHO DEPARTMENT OF LANDS

BIOGRAPHY

JEAN E. ROLLES

Vice President, Community Affairs Outrigger Enterprises, Inc.

Born in Honolulu, Hawaii.

Graduated from Punahou School, the School of Hotel Administration at Cornell University (Bachelor of Science degree) and Chaminade University (Master of Science in Japanese Business Studies). Held a Hawaii Real Estate License 35 years and was a Certified Property Manager (Institute of Real Estate Management) for 29 years.

Helped establish the original Chuck's Steak House restaurant in 1959 and worked 25 years for this company, which developed into a chain of 50 restaurants throughout the United States.

Joined Outrigger Hotels Hawaii January 20, 1982 as Property Manager for five hotels. Responsibilities expanded to all of the commercial space, which encompassed 300 leases in 21 hotels. As of January 1, 1998, promoted to Vice President, Community Relations for the company and continued in that position until the company was sold as of November 30, 2017

Currently serves on the following Boards

Chaminade University - Regent
Crown Prince Akihito Scholarship Foundation - Trustee
Hawaii Opera Theatre – Vice President
Hawaii Sister-State Committee Member
Honolulu Museum of Art – Trustee
Japan America Society of Honolulu – Board Member (Past Chair 1998-2000)
Pacific Asian Affairs Council – Vice President
Pacific Forum - -Board Member

Community Affairs:

Advisory Council for Shilder College of Business University of Hawaii at Manoa
I'olani Palace Docent (40 years)
Kennedy Center (Washington D.C.) – National Committee for the Performing Arts
Nature Conservancy of Hawaii – Board Member 32 years
Pacific Air Forces Civilian Advisory Council
American Red Cross Board, Hawaii Chapter –Board member 2 terms
Yushinkai (Urasenke - Hawaii)

JEAN E. ROLLES
Vice President, Community Affairs
Outrigger Enterprises, Inc.

Former Community Activities:

Camp Mokuleia – Board of Director (5 years)
 C. Brewer & Company, Ltd. - Director
 Children's Hospital – Board Member
 Disciplinary Board, Hawaii Supreme Court – Board Member (7 years)
 East-West Center Board of Governors (6 years)
 East-West Center Foundation Board 6 years (Former Chair)
 Governor's Committee for a Beautiful Hawaii – Co-Chair (2 years)
 Hawaii State Family Court – Probation Aide (4 years)
 Hawaii Visitors Bureau – Board Member (3 years)
 Institute of Real Estate Management – Former Hawaii Chapter President
 John Howard Association - Board Secretary
 Junior League of Honolulu – Corresponding Secretary/Public Affairs Chairman
 Kailua Drug Clinic Representative on Special Federal Drug Training
 Kapi'olani Hospital – Board Member
 National Junior League Conference – Environmental Representative
 (Currently sustaining member of Junior League of Honolulu)
 University of Hawaii, Ahahui Koa Anuenue – Secretary (7 years)
 Waikiki Improvement Association Aloha Patrol - Founder
 YWCA of Hawaii – Board Member 6 years

Awards:

1998 Institute of Real Estate Management (IREM) - Certified Property Manager of the Year Award – Hawaii Chapter
 2000 Distinguished Alumnae Award – Chaminade University
 2000 Japanese Imperial Decoration – Order of the Sacred Treasure, Gold Rays with Rosette
 2001 Outstanding Volunteer Fundraiser, Association of Fundraising Professionals
 2003 YWCA LeaderLuncheon Honoree
 2003 Worldwide Nature Conservancy – Golden Oak Leaf Award
 2006 Woman Community Leader of the Year, Pacific Business News
 2006 The Laura Nott Dowsett Award, Junior League of Honolulu
 2007 Hall of Honor for the UH Shidler College of Business
 2007 Kama'aina of the Year, Historic Hawai'i Foundation
 2008 Pacific and Asian Affairs Council Paul S. Bachman Memorial Award
 2010 Japan-America Society of Hawaii, Bridge Award
 2010 Pacific Buddhist Academy, Inspirational Leader Award
 2012 Arts Alliance Alfred Presis Awards
 2013 Charles S. Judd, Jr. '38 Humanitarian Award, Punahou School
 2015 Chaminade University's Silversword Hall of Fame Inductee
 2016 Waikiki Community Center Kahiau Awardee
 2017 2016 Sales Person of the Year, SME Honolulu

300 LETTERBUCK RD. • HAILEY, ID 83333
 PHONE 208-578-7769 • FAX 208-578-9503 • E-MAIL KTINSV@COX.NET

KIKI LESLIE A. TIDWELL

EDUCATION

1977-1981 University of Denver Denver, Colorado
Bachelor of Science in Business Administration, School of Hotel & Restaurant Management

- Cum Laude Honors, Beta Gamma Sigma, Sigma Pi Eta

July 2010-July 2012 Center for Venture Education Palo Alto, CA
Kauffman Fellow, Class 15, Kauffman Fellows Program

August 2013 University of Pennsylvania, The Wharton Aresty Institute
 of Executive Education San Francisco, California
Wharton Private Wealth Management Program

ANGEL INVESTING/VENTURE CAPITAL EXPERIENCE

2016-current Board Advisor, E8 Angels

2017-current, Member, Stanford Angels & Entrepreneurs

2010-2012 Board Member, Northwest Energy Angels (now E8 Angels)

- Initiated an Investor Discussion Group on Portfolio Investments
- Initiated an Advisory Board for NWEA
- Participated in hiring an Executive Director
- Developed a Board matrix on skill sets for new board recruitment
- Developed a Conflict of Interest Policy for the Board

Angel Portfolio construction 2003-current

- Invested in 12 portfolio companies currently
- Exits -Ridgeline Energy (sold to Veolia Environmente), PakSense, One Energy Renewables, Clario

Limited Partner Nth Power Fund IV

Limited Partner, CalCEF Angel Fund

Limited Partner, Good Capital Social Enterprise Expansion Fund

Limited Partner, Aligned Partners

Limited Partner, TrueBridge Capital Partners Kauffman Fellows Fund

Limited Partner, DBL Investors
 Limited Partner, SJF Ventures (Idaho Land & Pine, Inc. Investment)
 Limited Partner, Owl Ventures
 Limited Partner, Element8 Fund
 Limited Partner, Ulu Ventures
 Limited Partner, Genoa Ventures
 Limited Partner, Portfolia Enterprise Fund

VOLUNTEER EXPERIENCE

Founding Member, Tech Advisory Group, Stanford University Handa Center for Human Rights

K-12 Grants Committee Social Venture Partners

Board Member, Idaho Community Foundation

Grants Panelist, Idaho Community Foundation

Grants Panelist, Idaho Children's Trust Fund

Member, Governor's Coordinating Council for Families & Children

Chair, Blaine County Foster Parent Support Group

Board Member, Animal Shelter of the Wood River Valley

HOTEL & RESTAURANT EXPERIENCE

1984-2004 Outrigger Hotels Hawaii Honolulu, Hawaii

Advisory Board Member

1991-1994 Outrigger Hotels Hawaii Honolulu, Hawaii

Board Member

1985-1988 Riley's Run Delivery Pizza & Mama Riley's Ketchum, Idaho

Founder, Owner, Manager

1982-1985 Outrigger Hotels Hawaii Honolulu, Hawaii

Management trainee

MIS Dept- Computers; Mainframes to PC's – Trained Coopers & Lybrand accounting firm and others in first Lotus spreadsheets

1973-1982 Restaurant work:

Chuck's Steak House Hawaii Kahala, Hawaii Kai, Mililani, Creekside Bar & Grill Ketchum, Idaho The Paradise Bar & Grill, The Colorado Mine

Company, Govnr's Park Restaurant Denver, Colorado *Waitress, Bookkeeper, hostess, bartender, cashier, manager*, assisted new restaurant openings

REAL ESTATE EXPERIENCE

1990-Present	Idaho Land & Pine, Inc.	Hailey, Idaho
	<i>President, Director, Shareholder</i>	
1989-Present	Turf Plaza LLC & TPM LLC	Hailey, Idaho
	<i>Owner</i>	
1983-1985	Bishop Trust Building, OEI Inc.	Honolulu, Hawaii
	<i>Property Manager</i>	
1980	Don Oldis Realty	Denver, Colorado
	<i>Real Estate Agent</i>	

ADDITIONAL EDUCATION RELATING TO REAL ESTATE

1991-1992	Appraisal Institute
	<i>Standards of Professional Practice, An Introduction to Appraising Real Property</i>
1991	Institute of Real Estate Management
	<i>Leasing & Management of Shopping Centers and Retail Space, Managing Real Estate as an Investment, Financial Management Conference, Ethics for the Real Estate Manager</i>

EMPLOYMENT - OTHER

1993-Present	Tidwell Idaho Foundation	Ketchum, Idaho
	<i>President, Board Member</i>	
1992-1998	Hornocker Wildlife Institute	Ketchum, Idaho
	<i>Director of Development</i>	
	<ul style="list-style-type: none"> ▪ International Wildlife Conservation with an \$1.5 million annual budget to be raised 	
1988-1990	Engelmann Design/Building Inc.	Ketchum, Idaho
	<i>Office Manager</i>	
	<ul style="list-style-type: none"> ▪ Set up for the company first-ever computerized construction accounting system, Lotus spreadsheets project construction cost estimating, and development proformas. 	

ADDITIONAL EDUCATION ANGEL INVESTING/VENTURE CAPITAL

Kauffman Fellowship, Center for Venture Education, Palo Alto July 2010-2012

February 2, 2011 Angel Capital Education Foundation & Ewing Marion Kauffman Foundation, *Due Diligence and the Valuation of Early Stage Companies*

April 23, 2010 The Seminar Group, Alliance of Angels
Venture Capital Financing

February 11 ,2009 Ewing Marion Kauffman Foundation, Tacoma Angel Network, Angel Capital Education Foundation
Doing the Deal: The Power of Angel Investing

November 19, 2008 Ewing Marion Kauffman Foundation, Tacoma Angel Network, Angel Capital Education Foundation
Doing the Deal: Term Sheet and Valuation and Portfolio Strategy

REFERENCES

Dr. Maurice Hornocker 208-788-6188

Senator Mike Crapo 208-734-2515, 202-224-6142

Former Secretary of the Interior Dirk Kempthorne

06/07/19
Accrual Basis

Tidwell Idaho Foundation, Inc.
Balance Sheet
As of December 31, 2018

	Dec 31, 18
ASSETS	
Current Assets	
Checking/Savings	
US Bank 1449	35,519.56
Total Checking/Savings	35,519.56
Other Current Assets	
Alpha Mortgage Fund - TIDWELL	-292.00
Total Other Current Assets	-292.00
Total Current Assets	35,227.56
Fixed Assets	
Folio Properties Inc	
Folio Riverbend LLC	9,065.00
Folio Verano	7,006.00
Folio Westbury	9,639.00
Folio Properties Inc - Other	-1,348.26
Total Folio Properties Inc	24,361.74
UBS	
UBS Cash	201,551.46
UBS Equities	100,304.34
Total UBS	301,855.80
Total Fixed Assets	326,217.54
Other Assets	
MISSION RELATED INVESTMENTS	
Ardley Partners RenewableEngFu	154,625.00
HIP Portfolio 1200D	
HIP Cash (Sweep)	1,582.52
HIP Securities	146,567.74
HIP Portfolio 1200D - Other	925.20
Total HIP Portfolio 1200D	149,075.46
MicroEnergy Credits Corp	29,432.00
OneEnergy Interest Accrued	8,333.33
OneEnergy, Inc. (Loan 2018)	125,000.00
ORIGINALLY E+CO	
NonCore Liquidation LLC	8,196.00
Outsourced Assets LLC	16,920.87
Persistent Energy Partners Fund	2,698.00
Total ORIGINALLY E+CO	27,814.87
Retrolux Loan	30,000.00
Solarcity/Tesla Bonds	
Accrued Interest	1,389.28
Solar Bonds	71,000.00
Total Solarcity/Tesla Bonds	72,389.28
Total MISSION RELATED INVESTMENTS	596,669.94
PROGRAM RELATED INVESTMENTS	
PRI Loan to Solar WR Inn	92,146.49
Total PROGRAM RELATED INVESTMENTS	92,146.49
Total Other Assets	688,816.43
TOTAL ASSETS	1,050,261.53

	Dec 31, 18
LIABILITIES & EQUITY	
Equity	
Net Assets	851,342.61
UBS Unrealized gains/losses	-16,415.22
Unrealized Gains/Losses	131,663.55
Net Income	83,670.59
Total Equity	1,050,261.53
TOTAL LIABILITIES & EQUITY	1,050,261.53



IDAHO DEPARTMENT OF LANDS

Tidwell Idaho Foundation, Inc.

Balance Sheet

06/07/19

Accrual Basis

As of December 31, 2017

	Dec 31, 17
ASSETS	
Current Assets	
Checking/Savings	
US Bank 1449	115,969.49
Total Checking/Savings	115,969.49
Other Current Assets	
Merrill Lynch Income #2339	381,118.41
Total Other Current Assets	381,118.41
Total Current Assets	497,087.90
Fixed Assets	
Folio Properties Inc	
Folio Riverbend LLC	9,065.00
Folio Verano	7,006.00
Folio Westbury	9,639.00
Total Folio Properties Inc	25,710.00
Total Fixed Assets	25,710.00
Other Assets	
MISSION RELATED INVESTMENTS	
Ardsley Partners RenewableEngFu	165,096.00
HIP Portfolio 1200D	
HIP Cash (Sweep)	1,569.78
HIP Securities	152,423.76
Total HIP Portfolio 1200D	153,993.54
MicroEnergy Credits Corp	29,432.00
ORIGINALLY E+CO	
NonCore Liquidation LLC	8,196.00
Outsourced Assets LLC	16,920.87
Persistent Energy Partners Fund	2,698.00
Total ORIGINALLY E+CO	27,814.87
Solarcity/Tesla Bonds	
Accrued Interest	1,389.28
Solar Bonds	71,000.00
Total Solarcity/Tesla Bonds	72,389.28
Total MISSION RELATED INVESTMENTS	448,725.69
PROGRAM RELATED INVESTMENTS	
PRI Loan to Solar WR Inn	101,862.43
Total PROGRAM RELATED INVESTMENTS	101,862.43
Total Other Assets	550,588.12
TOTAL ASSETS	1,073,386.02
LIABILITIES & EQUITY	
Equity	
Net Assets	866,876.59
Unrealized Gains/Losses	222,043.41
Net Income	-15,533.98
Total Equity	1,073,386.02
TOTAL LIABILITIES & EQUITY	1,073,386.02

06/07/19
Accrual Basis

Tidwell Idaho Foundation, Inc.
Balance Sheet
As of December 31, 2016

	Dec 31, 16
ASSETS	
Current Assets	
Checking/Savings	
US Bank 1449	39,003.41
Total Checking/Savings	39,003.41
Other Current Assets	
Alpha Mortgage Fund - TIDWELL	31,310.13
Merrill Lynch Income #2339	334,359.07
Total Other Current Assets	365,669.20
Total Current Assets	404,672.61
Fixed Assets	
Folio Properties Inc	
Folio Riverbend LLC	13,887.00
Folio Verano	29,895.00
Folio Westbury	27,467.00
Total Folio Properties Inc	71,249.00
Total Fixed Assets	71,249.00
Other Assets	
MISSION RELATED INVESTMENTS	
Ardsley Partners RenewableEngFu	145,871.00
HIP Portfolio 1200D	146,911.97
MicroEnergy Credits Corp	29,432.00
OneEnergy, Inc. (Loan 2018)	100,000.00
ORIGINALLY E+CO	
NonCore Liquidation LLC	8,211.00
Outsourced Assets LLC	27,377.00
Persistent Energy Partners Fund	2,698.00
Total ORIGINALLY E+CO	38,286.00
Solarcity/Tesla Bonds	73,298.34
Total MISSION RELATED INVESTMENTS	533,799.31
Total Other Assets	533,799.31
TOTAL ASSETS	1,009,720.92
LIABILITIES & EQUITY	
Equity	
Net Assets	883,609.03
Unrealized Gains/Losses	142,844.33
Net Income	-16,732.44
Total Equity	1,009,720.92
TOTAL LIABILITIES & EQUITY	1,009,720.92

06/07/19
Accrual Basis

Tidwell Idaho Foundation, Inc.
Profit & Loss
January through December 2018

	Jan - Dec 18
Ordinary Income/Expense	
Income	
Bank Interest Income	46.16
HIP Income	
HIP Dividends	744.03
HIP Interest	0.01
Interest	0.01
HIP Income - Other	854.09
Total HIP Income	1,598.14
Investment Income	367.31
Merrill Lynch Income	
Merrill Lynch Dividends	4,914.93
Merrill Lynch Interest	399.04
Merrill Lynch Income - Other	4,338.42
Total Merrill Lynch Income	9,652.39
One Energy Loan Interest	8,333.33
PRI Solar Array Interest Income	2,435.74
Realized Gains/Losses	64,797.09
Riverbend Income	3,527.72
Solar City Bonds Interest	3,677.50
Verano Income	813.00
Westbury Income	208.00
Total Income	95,456.38
Expense	
Bank Service Charges	35.03
Foreign Tax Expense	
Foreign Tax Expense HIP	29.17
Foreign Tax Expense Merrill Lyn	49.73
Total Foreign Tax Expense	78.90
Grant Distribution	5,000.00
Investment Expenses	
Management Fees HIP	481.23
Management Fees Merrill Lynch	1,307.17
Investment Expenses - Other	474.68
Total Investment Expenses	2,263.08
Professional Fees	
Accounting	5,100.00
Consulting	2,000.00
Total Professional Fees	7,100.00
Total Expense	14,477.01
Net Ordinary Income	80,979.37
Other Income/Expense	
Other Income	
Folio Properties Income	2,691.22
Total Other Income	2,691.22
Net Other Income	2,691.22
Net Income	83,670.59

06/07/19
Accrual Basis

Tidwell Idaho Foundation, Inc.
Profit & Loss
January through December 2017

	Jan - Dec 17
Ordinary Income/Expense	
Income	
Bank Interest Income	86.23
HIP Income	
HIP Dividends	6,793.70
HIP Interest	1.20
Total HIP Income	6,794.90
Merrill Lynch Income	
Merrill Lynch Dividends	17,735.23
Merrill Lynch Interest	132.90
Total Merrill Lynch Income	17,868.13
One Energy Loan Interest	1,687.67
PRI Solar Array Interest Income	1,531.91
Riverbend Income	-3,184.00
Solar City Bonds Interest	3,677.50
Verano Income	-2,942.00
Westbury Income	212.00
Total Income	25,732.34
Expense	
Bank Service Charges	14.39
Dues and Subscriptions	1,000.00
Foreign Tax Expense	
Foreign Tax Expense HIP	54.87
Foreign Tax Expense Merrill Lyn	315.76
Total Foreign Tax Expense	370.63
Grant Distribution	15,000.00
Investment Expenses	
Management Fees HIP	1,890.52
Management Fees Merrill Lynch	5,501.91
Total Investment Expenses	7,392.43
Miscellaneous	631.00
Professional Fees	
Accounting	8,100.00
Total Professional Fees	8,100.00
Total Expense	32,508.45
Net Ordinary Income	-6,776.11
Other Income/Expense	
Other Income	
Gains/Losses	-8,819.87
Interest Income	62.00
Total Other Income	-8,757.87
Net Other Income	-8,757.87
Net Income	-15,533.98

06/07/19
Accrual Basis

Tidwell Idaho Foundation, Inc.
Profit & Loss
January through December 2016

	Jan - Dec 16
Ordinary Income/Expense	
Income	
Bank Interest Income	30.68
HIP Income	
HIP Dividends	5,717.73
HIP Gain/Loss	966.64
HIP Interest	2,609.19
Total HIP Income	9,293.56
Merrill Lynch Income	
Merrill Lynch Dividends	18,072.28
Merrill Lynch Interest	0.17
Total Merrill Lynch Income	18,072.45
One Energy Loan Interest	8,657.51
Riverbend Income	-15,102.00
Solar City Bonds Interest	1,409.06
Verano Income	-1,495.00
Westbury Income	730.00
Total Income	21,596.26
Expense	
Bank Service Charges	20.47
Dues and Subscriptions	1,000.00
Foreign Tax Expense	277.51
Grant Distribution	15,000.00
Investment Expenses	
Management Fees HIP	1,924.47
Management Fees Merrill Lynch	5,166.80
Total Investment Expenses	7,091.27
Miscellaneous	1,811.00
Professional Fees	
Accounting	12,822.19
Total Professional Fees	12,822.19
Total Expense	38,022.44
Net Ordinary Income	-16,426.18
Other Income/Expense	
Other Income	
Gains/Losses	-891.26
Interest Income	585.00
Total Other Income	-306.26
Net Other Income	-306.26
Net Income	-16,732.44



APPLICATION FOR USE OF STATE LANDS

Note: All application fees are non-refundable. Incomplete applications will be rejected and returned to applicant.

APPLICANT DATA: All documents must contain the full legal name of the applicant or the business entity on file with the Idaho Secretary of State. A Certificate of Good Standing must be provided for all business entities.

Individual or Family Trust Name

Last Name: TIDWELL
First Name: KIKI LESLIE
Middle Name: ANNE
DBA:

Business or Entity Name: TIDWELL IDAHO FOUNDATION
Tidwell Idaho Foundation, Inc. (The) 4/26/14/19
Business or Entity Registration No: (or proof of pending application):
C102983 4/26/14/19

ADDRESS OF RECORD (FOR ALL CORRESPONDENCE) AND CONTACT INFORMATION

Street: 300 JETTER BLVD Business:

PO Box:

City: HAILEY

State: ID

Zip +4: 83333

Country:

Attention:

Title: PRESIDENT

Contact Name:

Fax:

Contact Name:

Home:

Contact Name:

Cell (Area Code/Phone #):

Contact Name:

Email Address(es):

I hereby certify that I am the applicant or authorized representative of the applicant and that the information contained in this application is true and correct to the best of my knowledge and further acknowledge that falsification of any information contained herein, or provided herewith, will be grounds for rejection of the application.

Date: 6/4/19

Applicant Signature

Printed Name

State of Idaho)

County of Blaine) ss.

TIDWELL IDAHO FOUNDATION, INC
Complete Authorized Legal Entity Name (if applicable)

PRESIDENT
Title (if applicable)

On this 6th day of June, in the year 2019, personally appeared Kiki Tidwell, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she/they executed the same.

Notary Public

My Commission Expires: 11.26.19

DESCRIBE PROPOSED USE HERE (check here ☐ and attach additional pages if needed):

PROVIDE LEGAL DESCRIPTION(S) ON ATTACHMENT A
IF ADDITIONAL APPLICANTS, CHECK HERE ☐ AND COMPLETE ATTACHMENT B.

AREA OFFICE USE ONLY
INSTRUMENT # _____ ACTIVITY Energy Resources USE Solar FEE \$ 250.00
Residential Cottage Site
LENGTH OF LEASE: 20 years Check # 1214



SECRETARY

State of Idaho

Department of State

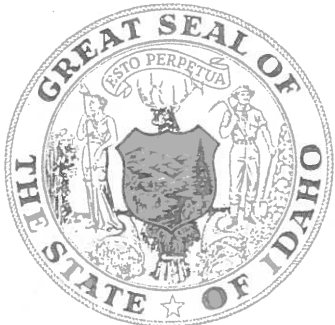
CERTIFICATE OF INCORPORATION OF

THE KIKI AND BRUCE TIDWELL FOUNDATION, INC.

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, hereby certify that duplicate originals of Articles of Incorporation for the incorporation of THE KIKI AND BRUCE TIDWELL FOUNDATION, INC. duly signed pursuant to the provisions of the Idaho Nonprofit Corporation Act, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I issue this Certificate of Incorporation and attach hereto a duplicate original of the Articles of Incorporation.

Dated: August 10, 1993



Pete T. Cenarrusa
SECRETARY OF STATE

By *Cara Seibel*

No. C 102983		Due no later than Aug 31, 2018		2. Registered Agent and Address (NO PO BOX)	
Return to: SECRETARY OF STATE 700 WEST JEFFERSON PO BOX 83720 BOISE, ID 83720-0080 NO FILING FEE IF RECEIVED BY DUE DATE		Annual Report Form 1. Mailing Address: Correct in this box if needed. TIDWELL IDAHO FOUNDATION, INC. (THE) LESLIE A TIDWELL 300 LET ER BUCK RD HAILEY ID 83333		LESLIE ANNE TIDWELL 300 LET ER BUCK RD HAILEY ID 83333	
				3. <u>New</u> Registered Agent Signature:*	
4. Corporations: Enter Names and Business Addresses of President, Secretary, and Directors. Treasurer (optional).					
Office Held	Name	Street or PO Address	City	State	Country Postal Code
TREASURER	JEAN E ROLLES	2375 KUHI O AVE	HONOLULU	HI	USA 96815
SECRETARY	ELISE GB LUFKIN	2817 10TH AVE E.	SEATTLE	WA	USA 98102
PRESIDENT	LESLIE A TIDWELL	300 LET 'ER BUCK RD	HAILEY	ID	USA 83333
DIRECTOR	LESLIE A. TIDWELL	300 LET ER BUCK RD	HAILEY	ID	USA 83333
DIRECTOR	ELISE G.B. LUFKIN	2817 10TH AVE E.	SEATTLE	WA	USA 98102
DIRECTOR	JEAN E ROLLES	2375 KUHI O AVE	HONOLULU	HI	USA 96815
DIRECTOR	MADISON JEAN TIDWELL	1793 BEACON ST UNIT 6	BROOKLINE	MA	USA 02445
5. Organized Under the Laws of: ID C 102983		6. Annual Report must be signed.* Signature: Leslie A Tidwell Name (type or print): Leslie A Tidwell			
		Date: 06/20/2018 Title: President			
Processed 06/20/2018		* Electronically provided signatures are accepted as original signatures.			



IDAHO DEPARTMENT OF LANDS



STATE OF IDAHO

Lawrence Denney | Secretary of State

Business Office

450 North 4th Street

PO Box 83720

Boise, ID 83720

Kiki Leslie A. Tidwell
300 LET ER BUCK RD
HAILEY, ID 83333

June 7, 2019

Request Type: Certificate of Existence/Filing

Request #: 0003533653

Receipt #: 000197224

Issuance Date: 06/07/2019

Copies Requested: 0

Regarding: TIDWELL IDAHO FOUNDATION, INC. (THE)

Filing Type: Non-Profit Corporation (D)

Formation/Qualification Date: 08/10/1993

Status: Active-Good Standing

Duration Term: Perpetual

File #: 318174

Formation Locale: IDAHO

Inactive Date:

Certificate of Existence

I, Lawrence Denney, Secretary of State of the State of Idaho, do hereby certify that effective as of the issuance date noted above

TIDWELL IDAHO FOUNDATION, INC. (THE)

is a Corporation duly incorporated under the law of this State with a date of incorporation and duration as given above.

Lawrence Denney

Idaho Secretary of State

Processed By: Business Division

Verification #: 002719724

Department of the Treasury
Internal Revenue ServiceP.O. Box 2508, Room 4010
Cincinnati OH 45201In reply refer to: 4077550279
Sep. 29, 2008 LTR 4168C 0
82-0465656 000000 00 000
00022844
BODC: TETIDWELL IDAHO FOUNDATION INC
PO BOX 2919
KETCHUM ID 83340-2919191

022085

Employer Identification Number: 82-0465656
Person to Contact: Sophia Brown
Toll Free Telephone Number: 1-877-829-5500

Dear Taxpayer:

This is in response to your request of July 11, 2008, regarding your tax-exempt status.

Our records indicate that a determination letter was issued in April 1994, that recognized you as exempt from Federal income tax, and discloses that you are currently exempt under section 501(c)(3) of the Internal Revenue Code.

Our records also indicate you are a private foundation described under section 509(a) of the Code.

Donors may deduct contributions to you as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to you or for your use are deductible for Federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106, and 2522 of the Code.

If you have any questions, please call us at the telephone number shown in the heading of this letter.

Sincerely yours,

A handwritten signature in cursive script that reads "Cindy Westcott".

Cindy Westcott
Manager, EO Determinations

Enter as text
with leading zero

Total number of Acres	
--------------------------	--

Total number
of CRP Acres
*CRP Acres
are part of the
Total Acres in
column H*

Sage Grouse Habitat
*Sage Grouse Acres are part
of the Total Acres in column
H*

[illegible]

Buttercup Parcel
Part Sec. 28, 29, and 33

App.R. 045

0 0.3 0.6
Miles

Map Base - 2011 NAIP Imagery



--- Approximate Location - Existing Fence

— Highways

Quarter-Quarter Lines

Sections

Endowment Land

Approximate Location Pending Lease M700084

Approximate Location M700077

Approximate Location Solar Lease Application Area

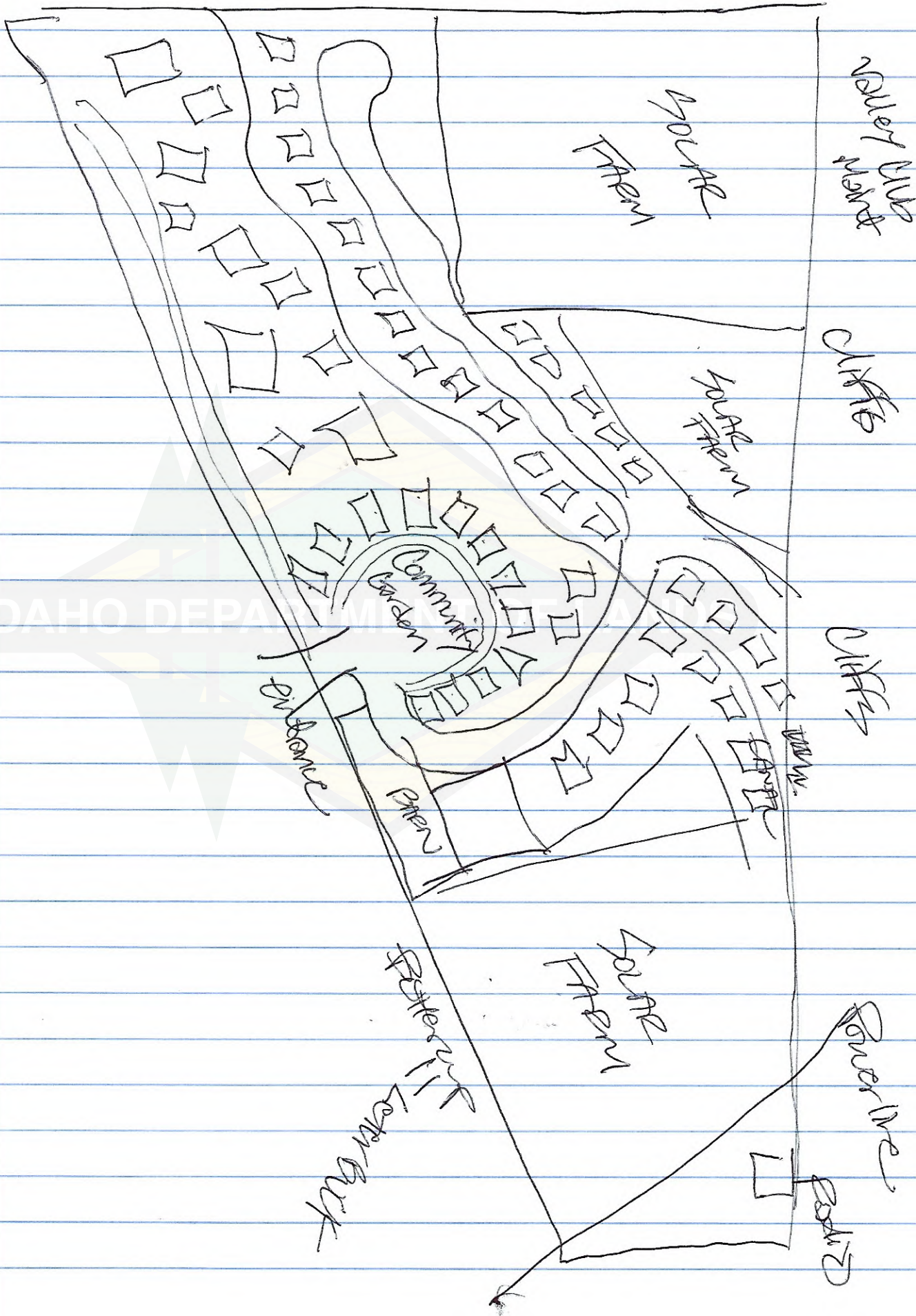
M700077 - Approx. Tower Location

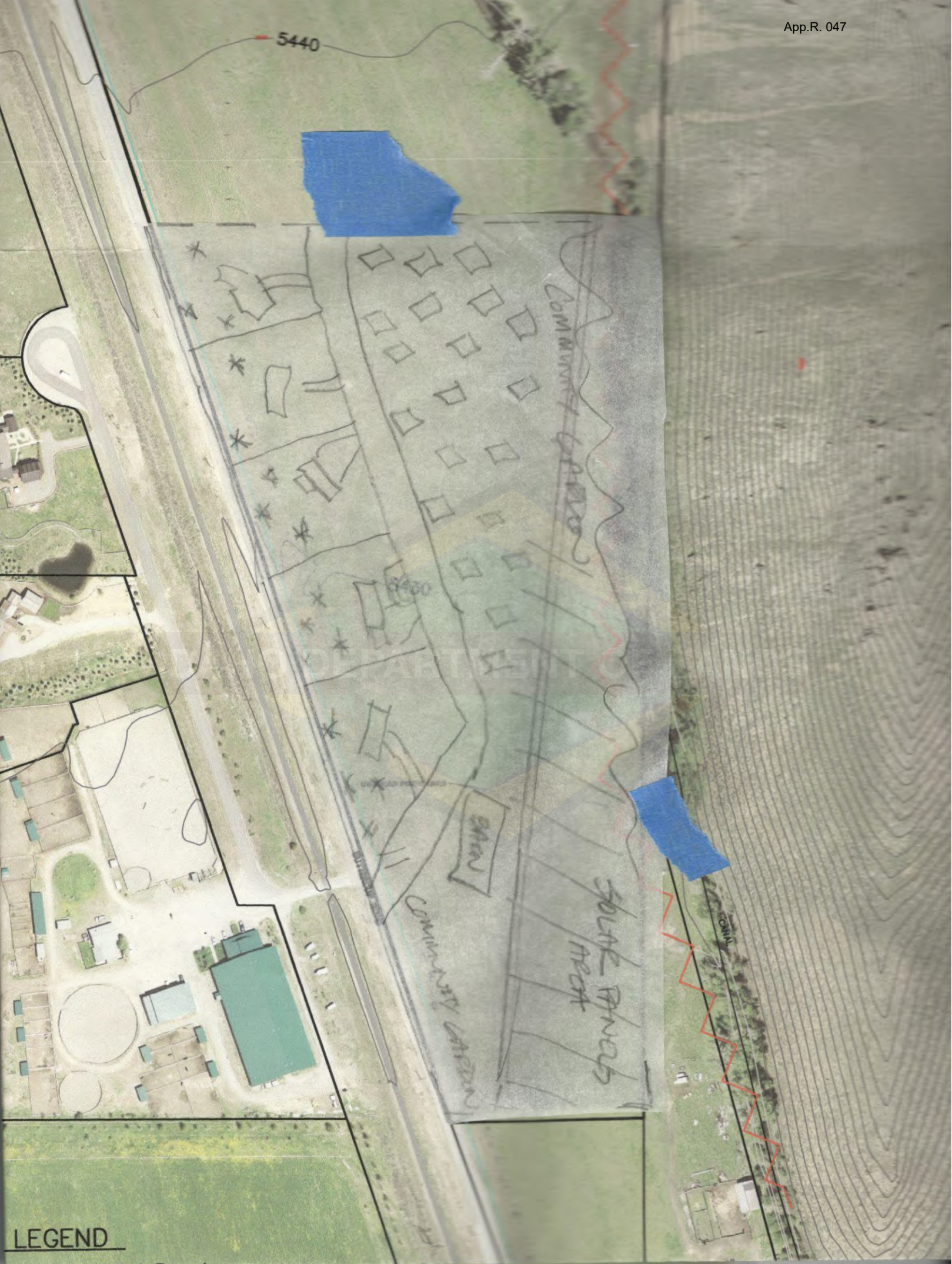
M700077 - Approximate Area Occupied by Ground Radials

Power_Line

N

ML - 6/19







KAUFFMAN FELLOWS IDAHO DEPARTMENT OF LANDS REPORT



Publisher

Kauffman Fellows Press

Executive Editor

Phil Wickham

Managing Editor

Anna Fitzpatrick Doherty

Associate Editor

Leslie Peters

Production and Design

Anna Fitzpatrick Doherty

Leslie Peters

Printer

Shoreline Printing

www.shorelinevisual.com

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Under no circumstances shall any of the information provided herein be construed as investment advice of any kind.

IDAHO DEPARTMENT OF LANDS

About the Editor

Anna Fitzpatrick Doherty is an experienced editor and writing instructor with a unique collaborative focus in her work. Recent edited books include *Forget Not the Sparrows: Unfinished Conversations With My Grandmother* by Yene Assegid (Shola Stories, 2011), Frank Sloodman's *TAPE SUCKS: Inside Data Domain, A Silicon Valley Growth Story* (CreateSpace, 2011), *Dying for Triplicate: A True Story of Addiction, Survival, and Recovery* by Todd Zalkins (Create Space, 2010), and *A Better Way of Dying: How to Make the Best Choices at the End of Life* (Penguin, 2010). She has 19 years as a writing instructor and editor on three continents in a variety of business industries, and graduated *summa cum laude* from Georgetown University.



SOCIETY OF KAUFFMAN FELLOWS

www.kauffmanfellows.org

Town & Country Village • 855 El Camino Real, Suite 12 • Palo Alto, CA 94301

Phone: 650-561-7450 • Fax: 650-561-7451

Venture Investment's Potential to Further Mission Impact for Charitable Foundations

Kiki Tidwell
Class 15

No matter what size the foundation, there are always too many grant requests, too much need, and too little grant money to give to the problems a charitable foundation would like to address. Venture capital investment has resulted in mission impacts that many charitable foundations would like to achieve, including sustainable economic growth, jobs and employment, and new medical breakthroughs that have saved lives or improved quality of life for large numbers of people. Yet at best, only 2.5 percent¹ of the \$590 billion² of U.S. charitable foundation assets are estimated to be invested in the venture asset class today.³ This disconnect has developed because venture capitalists do not understand the unique pressures under which

charitable foundation trustees and management operate, and in turn, foundation representatives do not understand what the venture asset class can do for them in terms of achieving mission goals without jeopardizing the financial stability of endowments.

We are right at the tipping point: mission-related investing is gaining traction in the foundation world, much as the heavily-private-equity-weighted Modern Portfolio Theory of Investing with a higher risk allocation became standard after the Yale Endowment proved it to be superior.⁴ The traditional asset allocation model for foundations is about to be disrupted. For charitable foundations this will mean dedicating resources to explore alternative investments, as well as reviewing existing endowment investments for their ability to survive public scrutiny. For venture capitalists, this will mean potentially a new pool of limited partners (LPs) as investors who will be asking for delivery and measurement of mission returns. In this article, I examine the legal restrictions on and the culture of U.S. charitable foundations, consider how those factors have made the venture asset class challenging for foundations, and discuss the ways venture can create mission returns.

¹ Commonfund, "2010 Commonfund Benchmarks Study of Foundations: Alternative Strategies Asset Mix for Fiscal Year 2009," <http://www.commonfund.org/InvestorResources/CommonfundNews/PublishingImages/2010%200701%20Press%20Release%20Fig%2007.jpg>. Of the sample of 173 foundations with assets above \$10 million, totaling \$103 billion in assets, 35% is invested in alternative strategies, 7% of which is invested in venture, or 2.55%. A \$103 billion sample size out of \$590 billion may be non-representative of the entire investment universe of foundations, as larger foundations invest in venture more than small foundations.

² The Foundation Center, "Aggregate Fiscal Data by Foundation Type," 2009, http://foundationcenter.org/findfunders/statistics/pdf/01_found_fin_data/2009/02_09.pdf.

³ Jessica Matthews, MRI Group Manager, Cambridge Associates, interview, 21 October 2010.

⁴ Josh Lerner, Felda Hardymon, Ann Leamon, *Venture Capital and Private Equity: A Casebook*, 4th ed., (Hoboken, NJ: Wiley, 2009), 43.

Leveraged Impact

Leverage is an issue for foundations, as most foundations find themselves turning down worthy requests with regularity. When I served on the grantmaking panels of the Idaho Community Foundation, I read through two to four thick binders of grant requests per cycle, of which the ICF could fund only a small portion. Foundation staff and trustees spend countless hours in conference sessions like *How to Leverage Grant Dollars to Have Greater Impact*.⁵

Statistics show that venture investment can have significant leverage. In the hardscrabble, boom-and-bust economy of Seattle in 1981, \$2 million of venture capital was invested in Microsoft, reportedly by David Marquardt⁶—the only venture money invested in the company. As of November 2010, Microsoft had a market capitalization of \$230 billion.⁷ In 2008, 12.1 million jobs were located in venture-backed companies, representing 11 percent of total U.S. private sector employment.⁸ According to the National Venture Capital Association (NVCA), “For every dollar of venture capital invested from 1970-2008, \$6.36 of revenue was generated in 2008.”⁹ Venture-backed companies earned almost \$3 trillion in revenue in 2008, one fifth of the USA’s GDP.¹⁰

Venture investing utilizes several of the skill sets foundations already employ for best grantmaking practices. Grantmakers are accustomed to analyzing whether the value of the outputs justifies the resource inputs before funding a grant. **Due diligence on a grant request is very similar to due diligence on a fund investment:** Is this team qualified to undertake this work? What is their track record in previous efforts? What are the chances they

⁵ For examples, see the Council on Foundations Annual Conference Sessions list: <http://www.cof.org/events/conferences/2011Annual/sessions.cfm>.

⁶ Robert A. Finkel, with David Greising, *The Masters of Private Equity and Venture Capital: Management Lessons from the Pioneers of Private Investing* (New York: McGraw Hill, 2010), 159.

⁷ Available from <http://www.ameritrade.com/>.

⁸ National Venture Capital Association (NVCA), *Venture Impact: The Economic Importance of Venture Capital-Backed Companies to the U.S. Economy*, 5th ed., 2. Available from <http://ncva.org/>.

⁹ *Ibid.*, 10.

¹⁰ *Ibid.*, 9.

will achieve the goals they have set? What will be achieved by the investment of this amount of dollars—will there be significant impact or leverage of those dollars?

Unique Investment Pressures on Charitable Foundations

Given these parallels and the sustainable economic leverage created by venture, it is notable that charitable foundations do not seem to understand the mission benefits of or seek investments in the asset class. The answer lies in the particular investment pressures faced by foundations.

“Prudent Man” Parameters

Charitable foundation laws have been crafted to ensure that foundation endowment dollars are invested within “prudent man” parameters: if a venture is too risky for their peer foundation investors, it may be considered a “jeopardizing” investment that would put the charitable status of the foundation at risk. To gain access to foundation investors, venture capitalists need to understand how important peer actions are to foundation trustees and the dependence of those trustees on paid outside expert advisors to validate their decisions.

Viewing venture investing from the prudent-man perspective, a foundation must be of a minimum size to get adequate diversity of asset class, managers within the class, and vintage year. To adequately diversify an investment, a 14 percent alternative asset allocation of private equity for a \$10 million foundation is \$1.4 million—close to the minimum entry level for many venture capital funds—and thus one venture investment would compose the entire alternative asset class, providing no diversity of manager risk or vintage year.

Cambridge Associates recommends that foundations only consider the asset class if they have an endowment of at least \$100 million.¹¹ Furthermore, Cambridge will advise charitable foundations that it is difficult to make a good return in venture unless you are allowed into the

¹¹ Jessica Matthews, interview.

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top quartile funds—and the top quartile funds do not want new LPs. Bill Gurley of Benchmark Capital readily admits that their fund does not actively court new LPs (including charitable foundation LPs); they want LPs who are committed to the asset class, will not panic in low-liquidity times, and know what they are getting into. A top-quartile fund doesn't see its duty as training novice entrants into the asset class.¹²

Many times a family member founder of a foundation may be highly interested in and understand the risk/reward of venture capital mission investing, and small family foundations would therefore seem to be “low hanging fruit” for venture investment prospects. However, 64 percent of family foundations in 2009 had an endowment of less than \$1 million.¹³ I started my own family foundation when my daughter was born, after deep thinking about inherited wealth and my values; however, it will not be fully endowed until my death.

Disincentive versus Incentive Orientation and Headline Risk Even billion-dollar foundations are essentially overseen by

volunteers; with some exceptions, most foundation trustees are unpaid or reimbursed for meetings at nominal amounts.¹⁴ Trustees are recruited because of their stature in their communities and because they are deemed to be “good stewards.” In contrast to venture capital partners, trustees have nothing to personally gain from investments that do well financially; however, they have significant personal image risk and perhaps personal liability if their investment decisions on behalf of the foundation reduce endowment value.

Rather than personal financial incentives, trustees are motivated by disincentives and operate under headline risk. Their first objective is to maintain the value of the endowment

corpus, and their second objective is to ensure their actions are similar to their peers' and endorsed by advisors so they will be deemed prudent even if the endowment declines in value.

Cash Payout Pressure

Although overall return may be improved by adding the venture asset class, unlike educational institutions, **charitable foundations have unique cash payout pressures**. U.S. foundations are required by tax law to grant out 5 percent of their net asset value to charitable recipients each year, putting pressure on investment committees. Not only do committee members need to avoid corpus loss and act prudently, they must also generate cash returns above 5 percent plus potential overhead costs of 1-3 percent or more to avoid using their endowment capital.

This problem is exacerbated with a long-term investment asset (e.g., raw land real estate or venture capital) that does not generate current cash returns but contributes to overall asset value; a higher return must be generated somewhere else to “cover” the 5 percent per year on the value of the venture capital investment. A foundation must consider whether its current investments cover the loss of current income from a non-liquid venture investment that may not return capital for seven or eight years.

Lean Staffing

Charitable foundations are not homogeneous entities; they can vary from no-staff, no-assets (pass-through giving from the founders) to several billion dollars of assets with highly paid, sophisticated, career-dedicated staff—and every variation in between. The Paul G. Allen Family Foundation generally gives out \$20-\$30 million in grants each year, has no substantial endowment commensurate with its payout, but does have staff.¹⁵

A foundation may or may not have a dedicated staff person to manage the endowment's portfolio; a volunteer investment-

¹² Bill Gurley, question and answer session, Palo Alto, 4 November 2010.

¹³ The Foundation Center, *Key Facts on Family Foundations* (Author, 2011), http://foundationcenter.org/gainknowledge/research/pdf/keyfacts_fam_2011.pdf.

¹⁴ Council on Foundations, *Board Composition and Compensation*, Foundation Management Series, available from <https://personify-web.cof.org/EbusPPROD/OnlineStore/ProductDetail/tabid/55/Default.aspx?ProductId=8607>.

¹⁵ *Paul G. Allen Family Foundation 2009 Tax Return*, retrieved from Foundation Center archive: http://dynamodata.fdncenter.org/990pf_pdf_archive/943/943082532/943082532_200912_990PF.pdf.

committee chair will likely manage the endowment by retaining the part-time services of an investment advisor. Other committee members may have a financial services background, perhaps now retired. The committee often meets only quarterly and will rarely undertake subcommittee work between meetings.

The volunteer investment committee will depend heavily upon the advice of the investment advisor, and any change of money managers will take several quarters of debate to enact. Any change to the asset allocation target percentages would take much longer, and adding an asset class might take years.

Staffing is generally extremely small at foundations to maximize charitable payouts and reduce overhead costs. In many small family foundations, family members are actively involved in the daily operation of the foundation, from grant-making, to determining the mission direction of the foundation, to financial management.

Recent Developments in Mission Investing

Up until this point, foundation trustees have believed in an either/or proposition for investing in mission ways. Either the investment committee achieves the maximum possible return with traditional asset allocation, or the foundation has to bear below-market returns and risk their corpus to undertake mission-related or impact investing.

However, **pioneering foundations are proving it is possible to achieve good returns while investing in mission-related ways.** With nearly half of its endowment today invested in mission-related ways, the F.B. Heron Foundation has achieved an annualized 15-year total return of 9.81 percent through December 31, 2009, well above its median peer group according to Cambridge Associates.¹⁶

¹⁶ Luther Ragin, Jr., Vice President of Investments, F.B. Heron Foundation, interview 2010.

Headline Risk Inspires the Evaluation of Endowment Portfolios

Foundations are starting to remember that their overriding mission is charitable impact, not just growing ever-larger endowments; furthermore, headline risk is pressuring foundations to examine their endowment investments. Most famously, *L.A. Times* reporters in 2007 questioned this cultural schizophrenia in The Bill & Melinda Gates Foundation: the Foundation was simultaneously providing malaria treatment to children in Africa and also investing in a company that owned a factory upstream which was poisoning those same children.¹⁷

As profiled in a Harvard Kennedy School Case Study, Doug Stamm, CEO of the Meyer Memorial Trust, actually mocked up a fictional newspaper front page to get his trustees' attention and show them how their endowment investments could come under challenge.¹⁸ "When the five Meyer trustees and their 31 money managers entered the conference room, the first thing they saw were copies of a front page article in the *Portland Oregonian*: 'Dark Cloud Over Meyer Memorial Trust Investments.'" A story followed detailing the hypocrisy of the Meyer Memorial Trust's initiatives to reduce pulmonary disease while at the same time investing in tobacco companies. A large photo of the five trustees ran alongside the story, and as Stamm recalled, "You could see words being mouthed around the table like, 'Oh, my God.'"¹⁹

Mission Investing for Foundations is Gaining Traction

In 2009, the Bill & Melinda Gates Foundation announced a \$400 million allocation in their budget for Program-Related Investments (PRIs), noting on their website that PRIs would leverage their resources "to catalyze broader support for [their] mission."²⁰ Foundations such as the F.B.

¹⁷ Charles Piller, Edmund Sanders, and Robyn Dixon, "Dark Cloud Over Good Works of Gates Foundation," *Los Angeles Times*, 7 January 2007, <http://www.latimes.com/news/la-na-gatesx07jan07,0,2533850.story>.

¹⁸ Rob Bleiberg, Alicia Cacace, Baylee DeCastro, Anne Perkins, Alvin Sheng Hui Tan, Chris Toomer, and Sandra Wirth, "\$650 Million Ain't What it Used to Be (A) The Meyer Memorial Trust Considers Mission Related Investing," Harvard Kennedy School, John F. Kennedy School of Government, 3 May 2010, <http://www.mmt.org/sites/default/files/Meyer%20Case.pdf>.

¹⁹ Ibid., 7.

²⁰ Bill & Melinda Gates Foundation, "Program-Related Investments: Leveraging Our Resources to Catalyze Broader Support for Our Mission," <http://www.gatesfoundation.org/about/Pages/program-related-investments-faq.aspx>.

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Heron Foundation, the Rockefeller Foundation, the Annie E. Casey Foundation, and the Meyer Memorial Trust have formed new organizations like More For Mission²¹ and PRIMakers²² to encourage and educate more foundations and public charities on how to invest their \$3 trillion of endowments in mission-related ways. In fact, these organizations have challenged the charitable foundation community to raise their mission-related investments to at least 2 percent of their assets—an estimated \$10 billion increase.

The F.B. Heron Foundation has developed a spectrum of mission-related investment opportunities for charitable foundations with returns below-market, market, or above market.²³ The Mary Reynolds Babcock Foundation has further populated this spectrum.²⁴ Rockefeller Philanthropy Advisors have developed the publication *Solutions for Impact Investors: From Strategy to Implementation*,²⁵ and Boston College's Institute for Responsible Investment has developed a *Handbook on Responsible Investment Across Asset Classes*²⁶ for impact investors.

In recent years, Cambridge Associates formed the MRI Group in response to the increase in requests from clients in mission-related investing, which they attribute to the efforts of More for Mission and other groups.²⁷ In an arena where financial products are sold, not bought, this is an impressive, customer-driven development. Cambridge has developed a master list of venture funds offering mission investment opportunities.²⁸ In August

2010, they had 342 mission-related investment funds across all asset classes in their database and 17 clients had made mission-related investments, with 51 additional clients having expressed interest in MRI. There is now a searchable mission investment database for charitable foundations and accredited investors at the Global Impact Investing Network's website, www.impactbase.org.

Because they are held to peer investment standards, foundations can reduce the risk of entering a “jeopardizing investment” if they undertake such investment alongside their peers. In one example, three foundation clients of Cambridge Associates requested an investment opportunity in emerging markets for managers screening for Environmental, Social, and Governance (ESG) goals: Cambridge put out an RFP for an ESG emerging markets fund manager, all three foundations undertook due diligence with Cambridge, and all were eventually placed in the manager identified by the RFP.²⁹ Even Julie Sunderland of the Bill & Melinda Gates Foundation has stated, “We don’t want to do this on our own.”³⁰

Financial-First versus Mission-First Investment

Current foundation law and practice strongly influence a foundation to decide if it is a financial-first investor or a mission-first investor when looking to add the venture asset class. If a foundation is investing out of its endowment, it has to be a financial (return) first investor and seek entrance into high performing, top-quartile venture funds with significantly high minimum financial commitments. This way, the venture asset class can increase overall financial return for the foundation's endowment.

Historically, venture has provided good returns to financial first investors. Yale University Investments data from 1978-2006 show a 79 percent per annum 10-year return for the venture portion of its portfolio and a 34 percent

²¹ <http://www.moreformission.org/page/15/about-us>.

²² <http://www.primakers.org/>.

²³ F.B. Heron Foundation, *Impact Across the Mission-Related Investment Portfolio* (Author, n.d.), http://www.fbheron.org/documents/ar.2007.mri_gatefold.pdf.

²⁴ Mary Reynolds Babcock Foundation, *Mission Investing* (Author, n.d.), <http://www.moreformission.org/assets/files/SECF-MRI-1109.pdf>.

²⁵ Available from the Rockefeller Philanthropy Advisors website: http://give.rockpa.org/ideas_and_perspectives/publications/solutions-for-impact-investors/.

²⁶ Boston College Center for Corporate Citizenship, *Handbook on Responsible Investment Across Asset Classes* (Chestnut Hill, MA: Author, n.d.), <http://www.cof.org/files/images/ExecEd/bcrespinvesthndbk.pdf>.

²⁷ Jessica Matthews, interview.

²⁸ More for Mission Investing, “Members Only Portal,” 2008, <http://www.moreformission.org/page/46/members-only-portal>.

²⁹ Jessica Matthews, interview.

³⁰ Julie Sunderland, Bill & Melinda Gates Foundation, interview 12 November 2010.

return since inception.³¹ The 2011 Preqin Global Private Equity Report states, “Venture funds operate in a notoriously risky industry, but one with the potential for high returns.”³² To potential LPs, Rob Mazzoni from Truebridge Capital Partners makes the case that higher risk asset classes are essential to increase the overall returns of an endowment, and that venture industry returns have shown consistent outperformance over time. Truebridge’s target IRR is 15-30 percent, but they reiterate that as a fund of funds, they have access to top fund managers.³³

Alternately, a foundation can achieve mission impact (e.g., economic development, jobs creation, or poverty reduction) through venture investment: Rather than endowment dollars, it can invest out of its grants 5 percent payout budget through PRIs. Investing through PRIs eliminates the “jeopardizing investments” lens used on foundation investments; investments are permissible that further a foundation’s mission goals first and put financial returns second.

In fact, **for PRIs, a foundation cannot have an expectation of a market return, or the investment has to be of above average risk for a market investor.** It is therefore difficult for a foundation to pursue a PRI in a venture fund’s Fund IV when Funds I, II, and III had top quartile returns and a similar good return is expected.

The case of the DBL Bay Area Equity Fund I (BAEF I) illustrates this effect. Nancy Pfund and Cynthia Ringo raised the BAEF I in 2004,³⁴ which was groundbreaking in that it had a double-bottom-line mission to create jobs in the Bay Area as well as to achieve financial returns. The BAEF I was only able to secure charitable foundation investment through PRI program investments; foundations were generally only willing to risk funds out of their grants budget. Since it was a first-time fund and it was trying to

achieve social missions as well as financial returns, the investment was risky enough to qualify as a PRI.

DBL Investors had target goals for cumulative jobs created over the life of the Fund, and as of March 31, 2010 they had achieved 142 percent of that goal with a total of 7,700 projected jobs created at the end of investment exits—many of those jobs created in low income enterprise zones. As well, the fund has achieved top quartile financial returns for their vintage year of 2004 funds and has realized several portfolio exits and returned significant capital to their investors.³⁵

BAEF I’s success is impressive, but limiting for further charitable foundation PRI investment. Foundations cannot invest in DBL’s second fund through a PRI because the argument cannot be made, based on historical financial returns, that the next fund’s returns will not be market rate—and in order to invest out of grants through PRIs, the foundation must be a mission-first investor. Regarding their PRI investments, Julie Sunderland of the Bill & Melinda Gates Foundation says there are not many market venture funds where they are investing their PRIs because those are difficult places to make financial returns.³⁶

Mission Outcomes of Venture Capital Investing

As more venture funds like DBL, Good Capital’s Social Enterprise Expansion Fund, and others start to have good financial returns, such funds will be acceptable to more charitable foundations as mainstream investments. The Community Development Venture Capital Alliance (CDVC) cites a 15.5 percent gross IRR based on an analysis of 32 exits from three CDVC fund investments made prior to 1997.³⁷

However, **there has long been a firewall between the retired investment bankers traditionally recruited to foundation investment committees** (the financial-first

³¹ Josh Lerner, Felda Hardyman, and Ann Leamon, *Venture Capital and Private Equity: A Casebook*, 4th ed. (New York: Wiley, 2009), 50.

³² Tim Friedman, ed., *Preqin Global Private Equity Report 2011* (New York: Preqin Ltd., 2011), 62. Available from <http://www.preqin.com/item/2011-preqin-global-private-equity-report/1/3362>.

³³ Rob Mazzoni, Senior Associate, TrueBridge Capital Partners, interview, 10 September 2010.

³⁴ Nancy Pfund, DBL Equity Fund, interview, 12 October 2010.

³⁵ Ibid.

³⁶ Julie Sunderland, interview.

³⁷ InSight at Pacific Community Ventures, *Community Equity Capital* (San Francisco: Author, 2010), 12, retrieved from http://www.pacificcommunityventures.org/media/pdf/Community_Equity_Capital_InSight_2010.pdf.

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investors) and grantmaking

committees (the mission-first investors).

Nancy Pfund encountered measurable resistance in raising funds from foundations and found that in general, a charitable endowment's financial management is isolated from its program side.³⁸

The larger the foundation (e.g., the Ford and MacArthur Foundations), the more bifurcated the division between program and investment.³⁹

Foundation investment committees and trustees should educate themselves on how venture can result in mission outcome byproducts.

Venture capitalists look to invest in untested, disruptive new systems or technology, which leads to the establishment of companies that can grow more quickly. Revenue growth from 2006-2008 was 5.3 percent in venture-backed companies, compared to total U.S. revenue growth of 3.5 percent.⁴⁰

Josh Lerner, leading researcher on entrepreneurial ecosystems, noted that

...venture capital, even though it on average amounted to less than 3% of corporate R&D in the U.S. from 1983 to 1992, was responsible for a much greater share—perhaps 10%—of U.S. industrial innovations this decade.⁴¹

Genetech, Amgen, Intel, Microsoft, Fedex, Amazon, Facebook, Cisco, eBay, Apple, and Google were all backed by venture.

Economic Development

The standard practices of venture investing become key components to sustainable economic change. Josh Lerner writes,

Entrepreneurs seem better at developing and commercializing new ideas. And no matter how one looks at the numbers, venture capital clearly serves as an important source industry for innovation . . . these investors both provide important guidance to young

firms and relieve all-too-common capital constraints.⁴²

Venture capitalists work on the boards of portfolio companies and work closely with company management to nurture them to success, viewing mentoring as a key part of their work. They share information with emerging entrepreneurs about good governance, milestone setting, capital efficiency, commitment to ongoing research and development, and the necessity of adjusting business models to market feedback on a timely basis. Lerner further notes,

Academic research has highlighted the role of entrepreneurship and venture capital in stimulating innovation. Venture financiers and firms have developed tools that are very well suited to the challenging task of nurturing high-risk, but promising new ideas.⁴³

In 1977, Seattle and the Puget Sound area were economically tied to the fortunes of one dominant company, Boeing. In 2011, after venture investment to Microsoft, Amazon, and Starbucks, among others, there is a diversified base of profitable companies providing employment, as well as many new startup companies and clusters.

Indeed, venture investment can change entire financial ecosystems.

A community that has a stable economy can support not only the essentials of community life, but also the organizations that constitute an improvement in the overall quality of life in a city, town or region. . . symphony, ball fields and recreational opportunities, better libraries and parks, or social services to assist the less fortunate.⁴⁴

Many former Microsoft employees are not only involved in creating new companies, but in giving back to their community through direct philanthropy or engagement in philanthropic organizations like Social Venture Partners. Bill and Melinda Gates have endowed the largest

³⁸ Nancy Pfund, interview.

³⁹ Ibid.

⁴⁰ NVCA, *Venture Impact*, 2.

⁴¹ Josh Lerner, *Boulevard of Broken Dreams: Why Public Efforts to Boost Entrepreneurship and Venture Capital Have Failed—and What to Do About It*, Kauffman Foundation Series on Innovation and Entrepreneurship (Princeton, NJ: Princeton University Press, 2009), 62.

⁴² Ibid., 63.

⁴³ Ibid., 9.

⁴⁴ Gerald L. Gordon, *The Formula For Economic Growth On Main Street America*, American Society for Public Administration Book Series on Public Administration & Public Policy (Boca Raton, FL: CRC Press Taylor & Francis Group, 2010), 17.

charitable foundation in history, and Paul Allen is not far behind with his foundation efforts.

In support of his point that “more economic activity and a better quality of life depend vitally on a steady supply of new technologies and approaches,”⁴⁵ Josh Lerner compares the experience of two small countries, Singapore and Jamaica. Both had similar per capita GDP in 1965 and similar attributes such as a centrally located port and a strong capitalist orientation.

But four decades later...Singapore had climbed to a per capita GDP of \$31,400 [2006 data], while Jamaica’s figure was only \$4,800....In explaining Singapore’s economic growth, it is hard not to give considerable credit to its policies toward entrepreneurship.⁴⁶

Research on Innovation and New Technologies

In addition to economic development, **venture commercializes research innovation**; people benefit from new medicines, medical devices, and tools in technology. Michaela Platzer lists angioplasty, cardiac therapy, drug delivery systems, MRI and ultrasound, diagnostic imaging, implantable defibrillators, spinal implants, and glucose self-monitoring devices among the achievements of venture-backed research innovation. As evidence of the broad impact, she cites research showing that “more than 100 million (1 out of 3) Americans have been positively impacted by innovations developed and launched by venture capital backed life sciences companies during the past 20 years.”⁴⁷

Venture can also have broad social impact, as African cell phone provider Celtel International demonstrates.

Because of the low average income, the African market had little penetration in either wireless or landline phones. Celtel grew by recognizing the large cash-based informal sector, addressing the low income of users by selling prepaid time in small, affordable

units....These initiatives had broad-reaching social consequences. In many cases, the cell phone has been an income generator for village entrepreneurs....Small-scale farmers and traders in particular have benefited from better knowledge of prices, allowing the market to converge to a point more beneficial to the small player. The cell phone is also used for low-cost banking, targeting low-income users underserved by traditional banks.⁴⁸

Small Business Support

Foundations have actually been successfully investing in impact venture since at least the 1980s, through what is often called “small business support.” The MacArthur Foundation started using PRIs in the mid-1980s for a community development mission, and by 2004 had invested \$100s of millions in low-cost loans and equity investments. Jonathan Fanton from the MacArthur Foundation stated in 2004, “We think this investment in small business makes good sense. As all of you know, small business is the true driver of job creation in the American economy.”⁴⁹ Furthermore, direct equity mission investments may provide non-correlated diversification.

Mission Investors May Add Complexity to Venture Funds’ Operations

Charitable foundations will undertake mission investing somewhat differently than other venture investors. In particular, foundations will conduct and document formalized due diligence procedures that may seem lengthy and arduous to venture funds, and once invested, foundations require mission goals reporting from their funds, adding a layer of reporting work for VCs.

Formal and Documented Due Diligence

Because of “prudent man” investing rules and guidelines for foundations, charitable foundations will follow clear procedures in due diligence of a venture investment. One such due

⁴⁵ Lerner, 63.

⁴⁶ Ibid., 18.

⁴⁷ Michaela Platzer and Content First, *Patient Capital: How Venture Capital Investment Drives Revolutionary Medical Innovation* Arlington, VA: National Venture Capital Association, 2011), 9.

⁴⁸ Lerner, 49.

⁴⁹ Jonathan Fanton, “Welcoming Remarks to the Small Business Investment Alliance, September 30, 2004,” <http://www.macfound.org/site/apps/nlnet/content2.aspx?c=IkLXJ8MQKrH&b=6479579&ct=1270207>.

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diligence checklist created by the Rockefeller Foundation is provided as a template for member foundations on the PRIMaker's website.⁵⁰ In the "Prudent Man" Rule Clarification of 1979,⁵¹ pension funds were officially allowed to include venture under their "prudent man" rules. Although charitable foundations have invested in the asset class for much, much longer, they must defend any investment decision with significant due diligence and rigor surrounding the investment decision.

Emphasis on the Measurement of Mission Goals

Foundations have evolved sophisticated effectiveness-measurement tools for their grants, and are extending this work to evaluating mission investments. DBL and the Ford Foundation together designed systems and developed metrics to measure mission impact of the venture investments in their fund.⁵² Josh Lerner notes that where government social-mission venture has failed, there had been a "failure to design appropriate evaluative mechanisms."⁵³ Foundations then will find comfort in the fact that mission as well as financial outcomes can be measurable in venture—jobs created, carbon reduced, tax dollars collected from new companies.

Mission outcome measurement tools are emerging to standardize such evaluations. The Global Impact Investing Rating System (GIIRS) provides ratings on how well funds and companies are achieving environmental, social, and governance goals in their activities.⁵⁴ At the September 20, 2011 annual meeting of the Clinton Global Initiative, impact investors with \$1.5 billion of impact assets declared their preference for GIIRS-rated funds and

companies.⁵⁵ The Impact Reporting and Investment Standards (IRIS) is attempting to provide a standardized set of measurements of non-financial performance so that investors can evaluate funds and portfolio companies effectively.⁵⁶

Possible Additional Steps for Program-Related Investments (PRIs)

Since PRIs allow charitable organizations to invest in for-profit companies, foundations are spending considerable effort to verify that an investment truly qualifies as a PRI; for example, they may take the extra step of obtaining a side letter from the IRS ruling that the investment qualifies before they invest. The Annie E. Casey Foundation has spent considerable effort ensuring that they satisfy the IRS grantee expenditures reporting requirements with their PRIs.⁵⁷ Foundations are legally required to establish withdrawal rights from equity investments if the company or fund moves away from the original investment and diverges from mission goals; numerous foundations, including the Bill & Melinda Gates Foundation⁵⁸ report successfully negotiating the necessary withdrawal rights in their PRIs.

Direct Investments Over Venture Funds

Some foundations like the Omidyar Network have actually opted to **bypass investing in funds and have instead focused on direct equity investments in start-up companies to retain a laser focus on mission.** Julie Sunderland at the Bill & Melinda Gates Foundation says it is much easier to demonstrate mission with direct investments; in their experience, there is too much mission dilution in a fund.⁵⁹ They find that mission investment generally lacks something

⁵⁰ Available from the PRIMakers Network website: <http://primakers.net/>.

⁵¹ Paul A. Gompers, 1994, "The Rise and Fall of Venture Capital," *Business and Economic History*, 23, no. 2, 1-26. <http://www.h-net.org/~business/bhcweb/publications/BEHprint/v023n2/p0001-p0026.pdf>.

⁵² Nancy Pfund, interview.

⁵³ Lerner, 14.

⁵⁴ <http://www.giirs.org/>.

⁵⁵ B Lab/B Corporation, "Launch of the World's First Ratings and Analytics Platform for Impact Investing: 15 Pioneer Investors with \$1.5 Billion in Impact Assets Declare Investment Preference for GIIRS-rated Funds and Companies," 20 September 2011, http://www.csrwire.com/preview/press_release/YGpEmK4WpnNNI53cXcxsLO8iEJ4hkWIQ1TKRM65Y.

⁵⁶ <http://iris.thegiin.org/about-iris>.

⁵⁷ Tracy Kartye, Annie E. Casey Foundation, interview December 2011.

⁵⁸ Jenny Rooke, Bill & Melinda Gates Foundation, telephone conference, November 2011.

⁵⁹ Julie Sunderland, interview.

vital: the clear link between the investment and the social benefit.

Cautionary Notes for Charitable Foundation LPs

Charitable foundations enthusiastic about mission venture investing should remember, however, that **mission impact is a beneficial side outcome of the traditional venture investment process—venture will fail if social goals hamstring the investment decision process.** For example, restricting investments only to those creating a certain number of jobs would constrain the investment selection too much and doom the fund to failure in its financial goals, or if narrow geographic constraints are used then deal flow may be too constricted and fund returns may also suffer.

According to Nancy Pfund, one of the key aspects of her BAE Fund is that they co-invest alongside traditional mainstream venture fund investors, albeit selectively in investments that will have social goals “by-products.”⁶⁰ BAE has co-invested alongside Kleiner Perkins Caufield & Byers, Draper Fisher Jurvetson, Mayfield, New Enterprise Associates, Sequoia Capital, and others—partners who use only traditional financial goals in investment selection.

The private equity model itself, while a potentially powerful instrument of growth, is fundamentally an instrument of precision. Most successful portfolio companies share a number of qualities. These include sound financial practices, prospects for significant growth, excellent management willing to work in partnership with new owners, a unique product or service, and a clear exit strategy.⁶¹

Further, entrepreneurial ecosystems cannot be “plopped down” just anywhere—like seeds, startup companies need rich soil in the form of support systems professionals (i.e., attorneys,

accountants, and investment bankers who understand the needs of high growth companies). Deal flow is best where technology is coming out of university and government labs and where there is already a culture of entrepreneurialism—in other words, where individuals understand what it takes to start and run a new business with financial acumen.

To encourage new company startups in areas where such an ecosystem does not already exist, foundations are well advised to supplement their PRI or mission-investment dollars with grant dollars for entrepreneurial training and other support. They should also expect less financial return in funds geographically restricted to areas that are not traditionally entrepreneurial.

Finally, foundations are advised to **define mission goals first—before undertaking mission investing.** In working with charitable foundations to place mission investments, Jessica Matthews of Cambridge Advisors has found that if a foundation is too limited in its mission focus, there is too little opportunity for investment.⁶²

Looking Ahead

Although foundations are differing in their tolerance of and adoption of mission investing, there will undoubtedly be significant change in the charitable foundation investment landscape in the near future. The marketplace is rapidly evolving new products in response to investor demand, and start-up companies are asking for more patient, mission-focused capital to achieve double-bottom-line success.

The traditional venture model can achieve significant mission outcomes as by-products of its current standard practices; however, **the marketplace may demand more from venture in the future as investors increase their sophistication in mission investing.** Foundation mission investors may be harbingers of a “sea change” in the investment landscape: In ten years, perhaps most investors will measure their venture investments with a double-bottom-line lens. It is hoped that venture capitalists and charitable

⁶⁰ Nancy Pfund, interview.

⁶¹ Laura and David Gladstone, as cited by Insight at Pacific Community Ventures, “Community Equity Capital: The Opportunities and Challenges of Growth,” December 2010, http://www.pacificcommunityventures.org/media/pdf/Community_Equity_Capital_InSight_2010.pdf, 16.

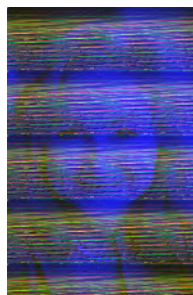
⁶² Jessica Matthews, interview.

Venture Investment's Potential to Further Mission Impact for Charitable Foundations

foundation trustees will take the time to understand the pressures under which each operate, and find common ground in the double bottom line.

Thanks go to the following interviewees who gave generously of their time, in alphabetical order: Peter Berliner, Managing Director, PRI Makers Network; Nancy Floyd, Founder and Managing Director, Nth Power; Tim Freundlich, Good Capital, Giving Assets at the Calvert Foundation; Eric Hallstein, former Director, Investments, Omidyar Network; Denis Hayes, President and CEO, The Bullitt Foundation; Tracy Kartye, Associate Director of Social Investments, The Annie E. Casey Foundation; Lisa Kleissner, Founder, KL Felicitas Foundation; Jessica Matthews, MRI Group Manager, Cambridge Associates; Rob Mazzoni, Truebridge Capital Partners; Jennifer Nice, Vice President of Business Development, Good Capital Social Enterprise Expansion Fund; Nancy Pfund, Managing Partner, DBL Investors Bay Area Equity Fund; Susan Phinney Silver, Program-Related Investment Officer, David and Lucile Packard Foundation; Luther M. Ragin, Jr., former CIO, F.B. Heron Foundation, and CEO, Global Impact Investing Network; Andy Rappaport, Partner, August Capital, and Founder, Rappaport Family Foundation; Jenny Rooke, Senior Program Officer, Bill & Melinda Gates Foundation;

Morgan Simon, Director of Toniic; and Julie Sunderland, Senior Program Investment Officer, Bill & Melinda Gates Foundation.



Kiki Tidwell

Kiki is President of the Tidwell Idaho Foundation. She has also served on the board and finance

committee of the Idaho Community Foundation (ICF), as well as volunteered as a charitable grants panelist for ICF and the Idaho Children's Trust Fund. Kiki was involved in angel, clean tech, and impact investing before she knew that these had titles, but eventually joined Northwest Energy Angels and recently completed two years on its board. She has an active portfolio of angel investments and has served on portfolio company boards and advisory boards. Kiki is also a Limited Partner in several venture funds: Nth Power Fund IV, CalCEF Angel Fund, Good Capital's Social Enterprise Expansion Fund, SJF Ventures Fund III, TrueBridge Capital Fund II, and Aligned Partners.

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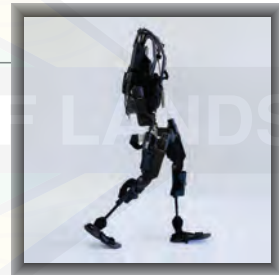
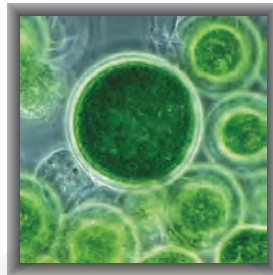
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EDF Ventures
EMBL Ventures
Emergence Capital Partners
Endeavor
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Essex Woodlands Health Vent.
European Investment Fund
Fidelity Biosciences
Finance Wales
Flagship Ventures
Flatiron Partners
Flywheel Ventures
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Gabriel Venture Partners
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Genesis Partners
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Good Energies
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Gray Ghost Ventures
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US Venture Partners
Valhalla Partners
VantagePoint Venture Partners
Velocity Venture Capital
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September 5, 2017

Major solar project installed on hotel

Tidwell Foundation provides rural economic loan for AltEnergy project

Tony Evans Aug 30, 2017 □ 2



Technicians work last week on the installation of the largest photovoltaic solar array in the Wood River Valley, at the Wood River Inn in Hailey.

Express photo by Willy Cook

“There are a lot of people in this valley who can afford to do this, they just don’t know it.”

Ryan Allison

*Wood River Inn
owner*

The Wood River Inn on Main Street in Hailey received a low-interest loan from a local family foundation to install the largest solar system in the Wood River Valley and improve its operating costs as a business.

“There are a lot of people in this valley who can afford to do this, they just don’t know it,” said Wood River Inn owner Ryan Allison.

Billy Mann, the owner of AltEnergy Inc. (formerly Sagebrush Solar) helped Allison apply for a U.S. Department of Agriculture grant and secure a low-interest loan from the Tidwell Idaho Foundation, to complete the project last week.

The 55-kilowatt photovoltaic project covers 3,200 square feet of space on the roof of the hotel.

“Assuming snow completely covers the panels from early December through early March, this solar system will offset about 40 percent of the Wood River Inn’s annual electricity demand,” Mann said.

He said that would save Allison about \$7,800 per year in electrical costs over the next 25 years.

“Most years, when the roof is clear all winter, savings will be about 15 percent better,” he said.

Mann secured an \$8,000 grant through the USDA Rural Energy for America Program last year for a solar project on the Wood River Community YMCA in Ketchum. Though that project has not yet used the grant money, the benefits of providing a grant award attracted the attention of a small family foundation based in Hailey, the Tidwell Idaho Foundation.

“A core charitable mission of the Tidwell Idaho Foundation is to promote rural economic development in Idaho through renewable energy adoption,” said Kiki Tidwell, founder and president of the foundation. “Because this project fell squarely within our mission goals, the foundation was able to loan money for the project at a below-market, low-interest rate.”

Tidwell said she would encourage other foundations to explore the use of similar “program-related investment” loans to invest in other solar projects to help businesses in Idaho.

She said the Tidwell Idaho Foundation loaned Allison \$107,000 of the solar project’s \$132,000 cost. Allison contributed \$25,000.

Tidwell said the project was completed in time to take advantage of solar tax incentives available for small businesses, due to expire in 2018.

“We live in Sun Valley, so let’s put solar on our rental homes and our businesses. Let’s convert our energy needs into savings,” Allison said.

Mann said AltEnergy has several other “shovel-ready” solar projects seeking funding in the Wood River Valley.



Tony Evans



ENERGY STORAGE (/ARTICLES/CATEGORY/STORAGE)

Sonnen Brings Homebuilder Strategy to Illinois With Passive Home Project

The battery company expanded its effort to put high-end batteries into new-build, eco-friendly homes.

JULIAN SPECTOR | MAY 24, 2019



Sonnen will outfit each house with a 20-kilowatt-hour ecoLinx battery system.

Photo Credit: Evolutionary Home Builders

The U.S. branch of battery company sonnen will move into the Illinois market to supply an entire residential development of environmentally friendly houses with high-end energy storage systems.

Sonnen will outfit each house with a 20-kilowatt-hour ecoLinx battery system in an upcoming development by Evolutionary Home Builders. The 28-home "Wildwood of Marengo" project, located due west of Chicago, will meet the standards of the Passive House Institute United States, and feature a 120-acre ecological restoration of the surrounding prairie.

Evolutionary has finished the model home and will move ahead with development this summer, said founder Brandon Weiss.

In its home market of Germany, sonnen operates a network of thousands of residential batteries that function as a distributed power plant. That achievement helped win the attention of Shell, which acquired sonnen (<https://www.greentechmedia.com/articles/read/oil-supermajor-shell-acquires-sonnen-for-home-battery-expansion#gs.dk96da>) in February.

The U.S. regulatory landscape hasn't allowed a direct replica of that business model, so sonnen's local branch prioritized partnerships with homebuilders to put batteries in each unit of a neighborhood development.

The company first partnered with Mandalay Homes to outfit a 2,900-home development in Arizona (<https://www.greentechmedia.com/articles/read/sonnen-virtual-power-plant-us-2900-home-project#gs.ddpxad>). Then came Pearl Homes, which wants to put sonnen systems in a 148-home community in coastal Florida (<https://www.greentechmedia.com/articles/read/battery-storage-for-renters-florida-homebuilder-picks-sonnen-to-supply-720#gs.dcd03g>), followed by an even larger rental project.

Why sonnen picked Illinois

Illinois makes for an unexpected followup, because it has seen minimal residential storage activity to date. Its 108 megawatts of installed solar capacity puts the state 36th in the nation (<https://www.seia.org/state-solar-policy/illinois-solar>) for that resource, according to the Solar Energy Industries Association, although the group expects precipitous growth in the next five years.

On top of that, electric rates in utility ComEd's territory, where Wildwood will be, do not encourage storage adoption.

"ComEd's residential rates are cheap and they don't have time-of-use rates," said energy storage analyst Brett Simon of Wood Mackenzie Power & Renewables. "However, as we well know, emotion has driven a fair amount of residential storage deployment in the U.S."

Time-of-use rates can encourage storage adoption because they charge more for peak power and less for midday power; that creates a price signal to store midday solar generation for use in the evening. ComEd does offer an unusual hourly pricing rate (<https://hourlypricing.comed.com/about/>) pegged to the wholesale markets; it's unclear how that would impact home battery economics.

Even without those price signals, Weiss said he wants to design the homes so that they add value to the grid rather than stressing it. Simply dumping each house's 6-kilowatt generation capacity onto the grid at noon could one day contribute to a "duck curve" effect, if Illinois follows through on plans for a massive renewables scale-up.

Instead, he wants his customers to be able to store their production with the ecoLinx batteries and use it when the system is more strained by demand.

"Being able to reduce peak power demand is really cool," Weiss said. "We want to do the right thing ecologically and from a sustainability standpoint."



Banking on future grid value and backup power

The combined energy storage capacity of the homes will surpass half a megawatt, which could be a nontrivial amount for local grid balancing during peak events. That said, sonnen did not announce any formal agreement with ComEd to put that capacity to work for grid services.

This mirrors the earlier sonnen homebuilder projects, where the company decided to move ahead with construction in the absence of a utility contract, banking on there being future value in the portfolio of dispatchable batteries. If the homebuilder can sign up customers looking for a self-sustaining lifestyle, then future utility revenue will just be an added bonus.



Idaho Agriculture Solar Power - Renewable Energy | Solar Panel

horizonpwr.com

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Clean backup power for the all-electric homes will also attract customers in Illinois, Weiss said. The Midwest climate will throw snowstorms, ice storms, high winds and hail at the houses, which lack a gas hookup to feed a generator. But the battery will be ready to step in.

The ecoLinx model is the top-shelf version of sonnen's product suite (<https://www.greentechmedia.com/articles/read/sonnens-new-strategy-raise-price-sell-to-high-end-home-automation-market#gs.dktf5w>), because it can interact with high-end home automation systems and respond automatically to incoming storms that might knock out power to the grid. Weiss said he liked that the product has the flexibility to let homeowners choose whichever home automation platform they prefer.

Sonnen's higher price point presents a challenge in a market with cheaper options such as the Tesla Powerwall and the LG Chem Resu. That dynamic is visible in data from California's Self-Generation Incentive Program, which subsidizes small-scale storage. Of the home batteries installed with that incentive last year, Tesla and LG Chem split the pool almost fifty-fifty, with sonnen picking up 1 percent, according to WoodMac's *Energy Storage Monitor*. (<https://www.woodmac.com/research/products/power-and-renewables/us-energy-storage-monitor/>)

Partnering with specialized homebuilders lets sonnen wrap the price of its systems into the overall home purchase. This symbiosis also enables homebuilders to pitch environmentally conscious customers on self-sufficient clean energy, which needn't meet the standard of strictly economic return on investment.

Perhaps most importantly for sonnen, it means that winning over one counterparty can unlock hundreds or thousands of unit sales, a far more efficient approach than selling customer by customer.

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Comparative Energy

App.R. 070



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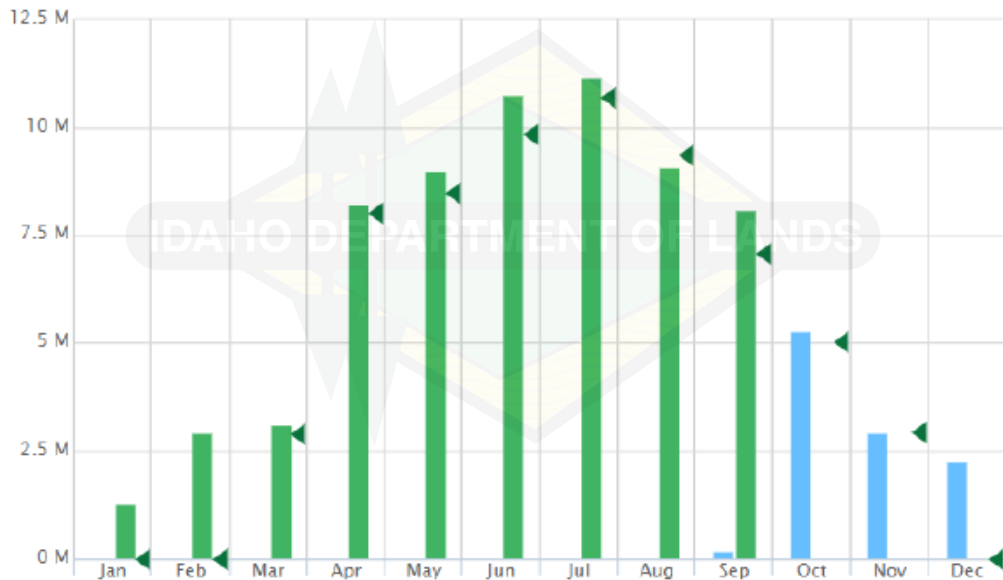
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Year

2017 2018 Estimated

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Press Release

Contact: Billy Mann, AltEnergy, Inc.
Phone 208-720-4624
Email: bmann@altenergyincorporated.com
www.altenergyinc.com

Wood River Inn Receives Rural Economic Loan for Solar Project

Altenergy Completes Project Installation

Hailey, ID, August 23, 2017: • Local solar company, Altenergy Inc. (formerly Sagebrush Solar), helped Hailey hometown business, The Wood River Inn, apply for a USDA grant and secure a low-interest loan from a local family foundation to install the largest solar system in the Wood River Valley and to improve its operating costs as a business in economically challenged rural Idaho.

The 55kw, or 3200 square foot, solar system was completed this week. According to Mann, "Assuming snow completely covers the panels early December thru early March, this solar system will offset about 25% of the Wood River Inn's annual electricity demand and, when you factor in ID Power's average annual rate increase, will save The Wood River Inn an average \$7800 per year in electrical costs over the next 25 years. Most years, when the roof is clear all winter, savings will be about 15% better."

A large portion of a hotel's operating budget is spent on energy. Wood River Inn owner, Ryan Allison, had already invested in other energy-saving measures including installation of LED lights and energy-saving thermostats in all guest rooms. When Billy Mann brought the solar project numbers to Allison, he says, "I looked at the math and it just made sense".

For the electricity demand offset by this system, the Wood River Inn is effectively locking in an electrical rate of about 4 cents per kilowatt hour for the next 25 years, compared to the rate he would otherwise be paying to Idaho Power over the course of this project, currently 7 cents per kilowatt hour and potentially up to 18 cents per kilowatt hour by the end of the system's life-cycle. These operating savings will help The Wood Inn remain competitive as a rural business.

The USDA Rural Energy for America Program (REAP), which is "committed to helping improve the economy and quality of life in rural America", offers \$500,000 per year in grant funding to rural small businesses for renewable energy systems. Billy Mann, of AltEnergy, secured an \$8,000 REAP grant last year for a solar project on the YMCA in Ketchum. Although this project has not secured the REAP grant award to date, the possibility of a grant award attracted the attention of small family foundation based in Hailey, The Tidwell Idaho Foundation.

A core charitable mission of the Tidwell Idaho Foundation is to promote rural economic development in Idaho through renewable energy adoption. Because this project fell squarely within their mission goals, the Foundation was able to loan money for the project at a below-market, low interest rate. The Tidwell Idaho Foundation encourages other foundations to explore the use of similar PRI loans to invest in other solar projects for businesses in Idaho. AltEnergy has several shovel-ready solar projects seeking funding.

Mann has determined that after the system pays for itself, Allison will end up saving approximately \$148,000 over the 25 year guaranteed life of the panels – money that would have otherwise gone to Idaho Power and out of the Wood River Valley. Overall, our Valley spends approximately \$450 million dollars each year on electricity. When those resources are kept from leaving the Valley and spent within our community, the original project becomes an investment with ever increasing returns, circulating back around to sustain other businesses and services over and over again.

The largest barrier for business owners, however, can be the up-front costs, which Mann believes he's found an answer for: he's made it his mission to make sure his clients have options to fund their projects. New funding options have allowed significant progress to be made with homeowners who already taking up solar in droves.

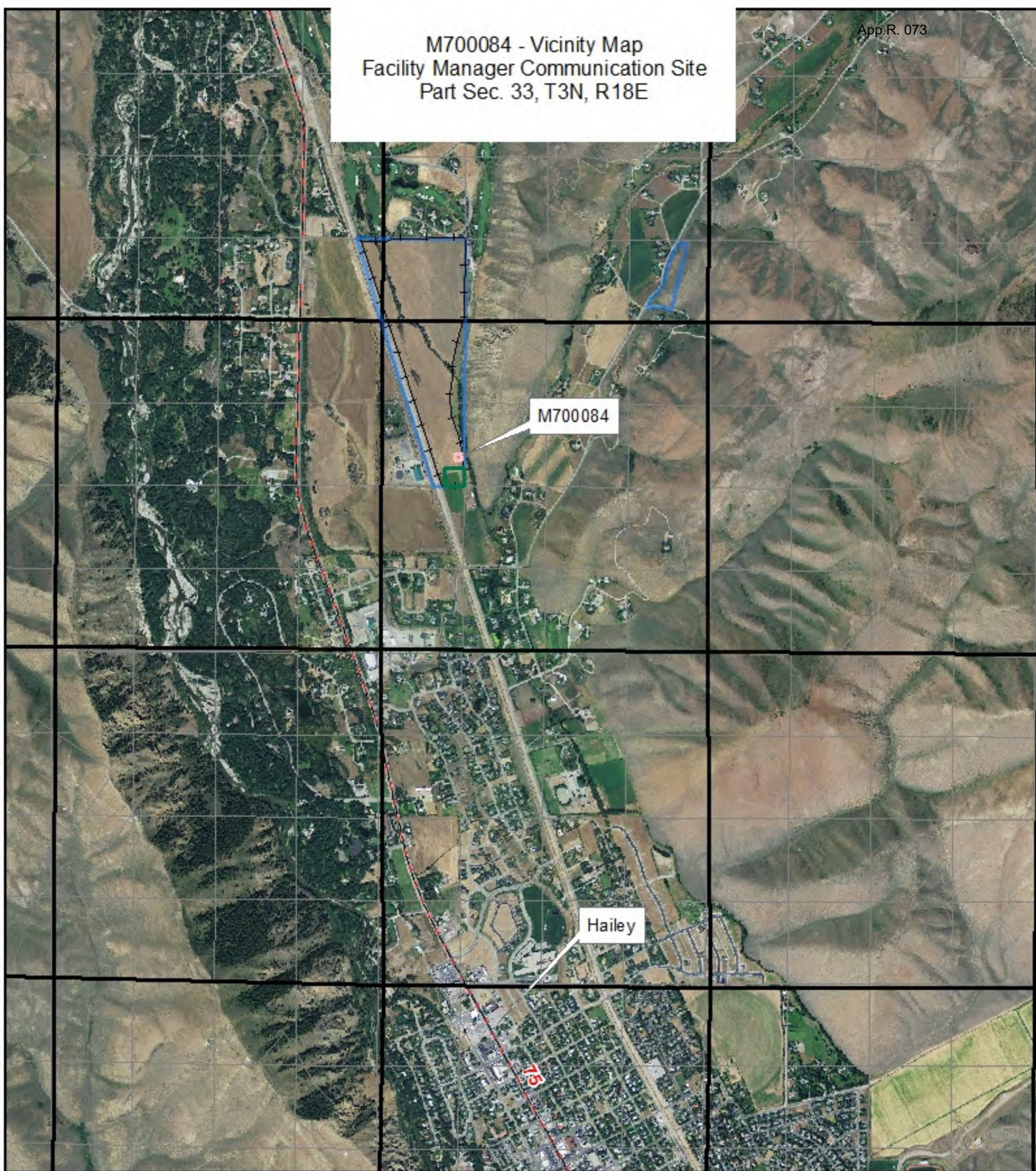
"There's a lot of people in this Valley who can afford to do this, they just don't know it", said Allison, "We live in Sun Valley, let's put solar on our rental homes and our businesses; let's convert our energy needs into savings and reduce the 450 million dollars that goes out of our economy each year! Can you imagine taking even a small percentage of that number and putting that back into our community? The compounded impact is much bigger than just one solar panel project."

The logo of the Idaho Department of Lands is a large, stylized diamond shape. It features a light green center with a yellow border. The text "IDAHO DEPARTMENT OF LANDS" is written in white, bold, capital letters across the middle of the diamond.

IDAHO DEPARTMENT OF LANDS

M700084 - Vicinity Map
Facility Manager Communication Site
Part Sec. 33, T3N, R18E

App.R. 073



--- Approximate Location - Existing Fence

--- Highways

□ Quarter-Quarter Lines

□ Sections

□ Endowment Land

□ Approximate Location M 700084

□ Approximate Location M 700077

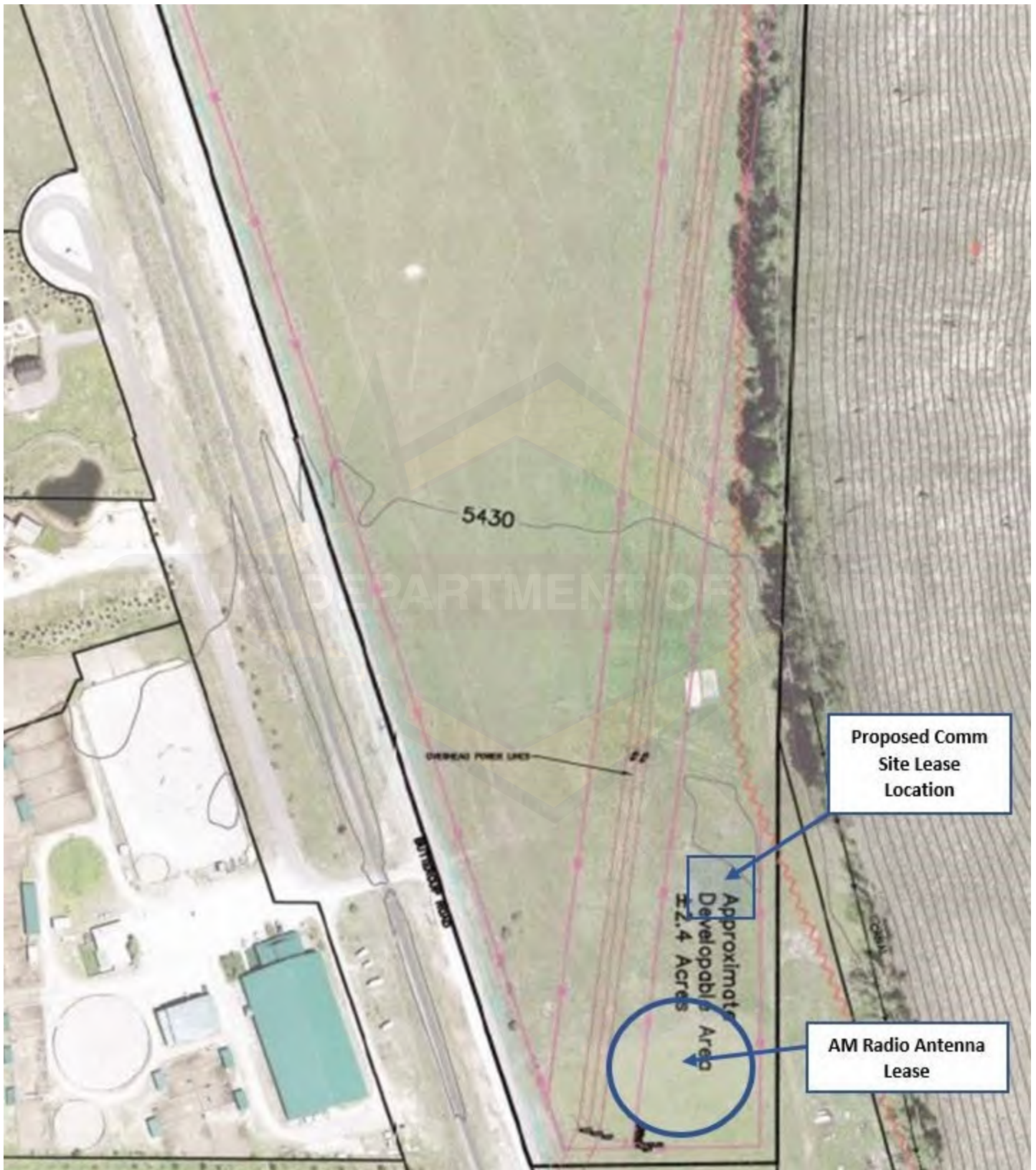
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Map Base - 2011 NAIP Imagery

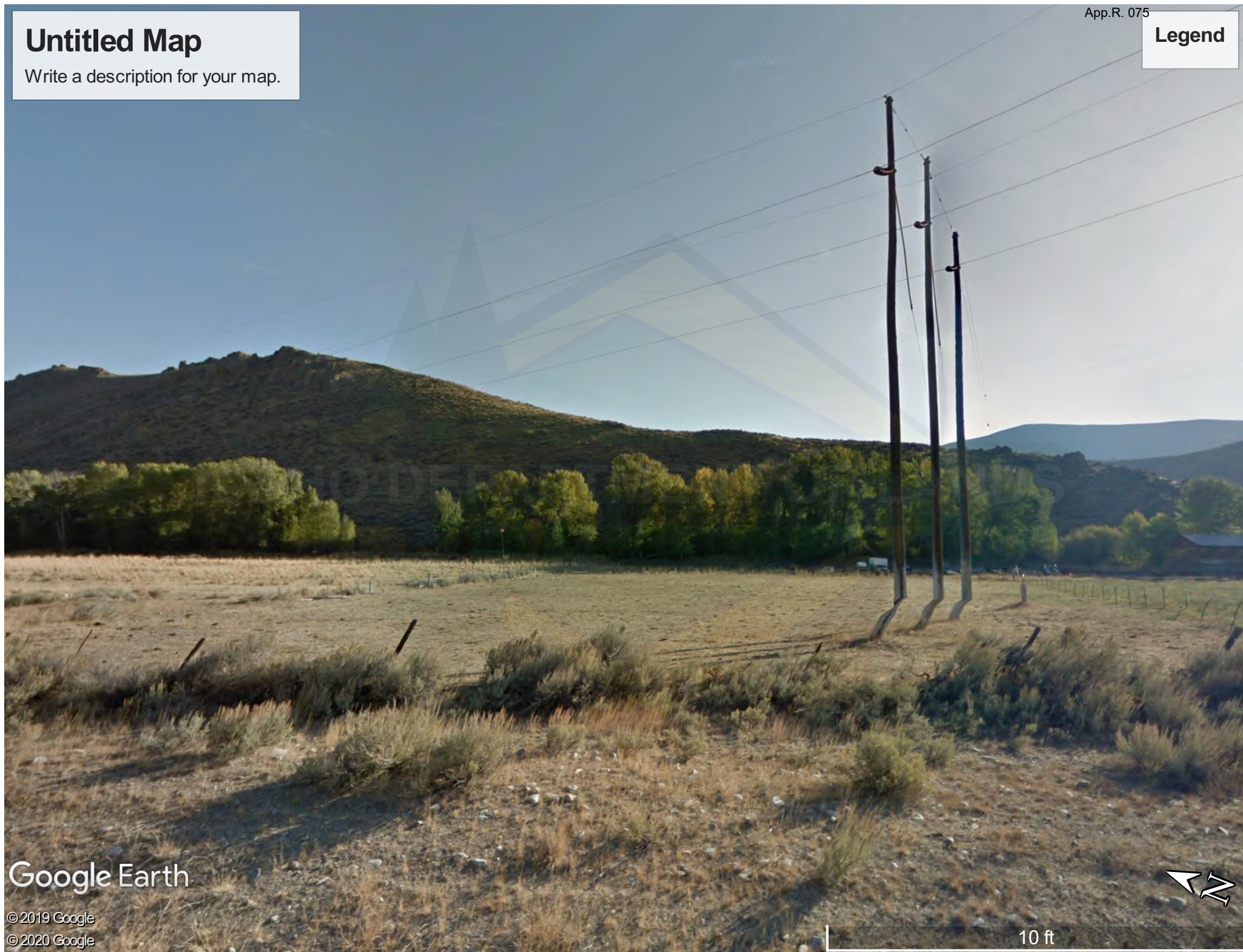


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Legend



Google Earth

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STATE BOARD OF LAND COMMISSIONERS

October 17, 2019

Regular Agenda

Subject

Endowment Leasing Update and Auction Process Approval

Question Presented

Shall the Board approve the Department's proposed lease auction process.

Background

At the March 19, 2019 State Board of Land Commissioners' (Land Board) regular meeting, Attorney General Wasden made a motion that the Idaho Department of Lands (Department), in association with the Office of the Attorney General (OAG), examine current endowment auction and leasing processes and determine how they could be improved, and in fulfilling the Board's fiduciary duty.

As part of the examination, the Department evaluated its auction advertising and public awareness process and determined a need for improvement. With the assistance of the OAG, the Department prepared a new advertising and public awareness process for leasing opportunities and auctions.

On July 16, 2019, the Department provided the Land Board with an update to the lease auction advertising process and the status of certain leases. In that presentation, the Department demonstrated an example of the website and online mapping tool to be used for endowment leasing opportunities.

At the September 13, 2019 Land Board meeting, the Department presented its new lease auction advertising process, including the new online leasing page discussed at the July Land Board meeting. The presentation included a demonstration of the current website, online map, and proposed timeline for certain leases. At the September 13th meeting, the Land Board tabled the matter until October so that further legal questions could be addressed.

Discussion

The Department has implemented a new advertising process that facilitates greater public awareness regarding lease auction opportunities, and provides increased opportunities for alternative proposals and competitive bidding. Advertising that is robust and encourages competitive bidding generates the maximum long-term financial return to endowment beneficiaries, and fulfill the Department's and the Land Board's fiduciary obligations.

The Department will begin the auction process by advertising leases available for application for auction in the newspaper of record for the county where the land is situated, for at least four weeks.¹ Those advertisements will be posted in the Department's area offices (either on a bulletin board, or on an electronic reader). The Department will also advertise leases that are expiring or otherwise available for application and auction on its website. The website provides readily accessible information, including a detailed description of the property, allowing users to better identify the location and property available for lease application and auction. Certain leases or lease types may be advertised in industry appropriate media, for example, commercial real estate websites. Additionally, properties the Department is promoting for application may have signs placed on the property to foster interest.

The Department temporarily suspended offering certain new leases for auction while it examined its leasing process. As a result, there will be a revised schedule and process to issue the 2020 leases. Generally, the Department will re-start the auction process for leases that have not been executed, auctioned, or conflicted beginning with re-advertisement for application.

This means that the previous advertising and applications of leases for 2020 will go through the new auction advertising process. Potential lessees who have already submitted an application may choose to have their previous application processed, or to withdraw their application for an application fee refund.

The following process will be followed for 2020 lease applications for crop, grazing, conservation and residential leases:²

- Land Board approval – October 17, 2019
- Week of October 21, 2019 – Department begins the auction process by advertising the open application period for crop, grazing, conservation, and residential
- Advertising for application period – 30 days (example: October 21 – November 20)
- Scenario 1
 - If only one application is received by the application deadline, the auction is deemed complete, with the sole applicant deemed the successful bidder
 - Lease and document preparation (example: November 21 – December 20)
 - Lease review (OAG) (example: November 21 – December 20)
 - Lease issued and executed (example: as reviewed by OAG – January 31, 2020)

¹ Weekly newspaper advertising in the county where the property is located is consistent with Idaho Code § 58-313.

² Certain lease types, such as some commercial leases, will require additional evaluation or review due to their unique nature.

- Scenario 2
 - If two or more applications are received by the application deadline, a live auction (sometimes referred to as a "conflict auction") must be held
 - TBD – the timing depends on the number of applications for a particular lease, as well as other factors. For example, weather may be a factor for grazing leases for which there are two or more applicants, because the Department must value the improvements prior to live auction.

The Department and Land Board have previously promulgated the *Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases* (IDAPA 20.03.14.000 *et seq*). The Department will continue to adhere to the processes and standards set forth in those rules, including the auction application process (IDAPA 20.03.14.020) and the requirement to hold a **live** auction only if there is more than one application (Idaho Code § 58-310 and IDAPA 20.03.14.105). If there is only one application for auction, the auction will be deemed complete as of the application deadline. The Department will also adhere to other rules concerning leasing activities, including the *Administration of Cottage Site Leases on State Lands* (IDAPA 20.03.13.000), *Rules Governing Geothermal Leasing on Idaho State Lands* (IDAPA 20.03.15.000), and *Rules Governing Oil and Gas Leasing on Idaho State Lands* (IDAPA 20.03.16.000). The Department will continue working with the Office of the Attorney General regarding leases for which there are no applicable administrative rules, such as most commercial leases.

The Department will send letters to auction applicants and certain stakeholders explaining the proposed process, and schedule.

Recommendation

Approve the Department's proposed lease advertising and auction process.

Board Action

Attachments



DUSTIN T. MILLER, DIRECTOR
EQUAL OPPORTUNITY EMPLOYER

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PO Box 83720
Boise, Idaho 83720-0050
Phone (208) 334-0200
Fax (208) 334-5342

MEMORANDUM

From: Ryan Montoya, RES BC

To: Dustin T. Miller, Director

Date: 12/26/2019

Subject: Tidwell Proposal and Buttercup Communication Site Lease

Over the past five months, Real Estate Program Manager, Josh Purkiss, has been working with Kiki Tidwell on a residential/solar proposal for the Buttercup parcel located in Blaine County. The proposal was originally for an 80-acre development that included low-income housing, a solar farm, and a community garden at a rate of \$1,000 per year for 80-acres, plus \$250 per acre of developed ground on the property. Josh advised her that the proposed rates were grossly under market and the Department would not move the proposal forward. Ms. Tidwell was then provided with a copy of the 2019 appraisal that places the market value at \$6,000,000. Ms. Tidwell provided an updated yearly rental offer of \$101,000, which included a phased payment portion that would not take place until after site development and third-party lease.

The proposals and discussions took place during the Department's lease process review. The Department delayed any consideration or application period on the Buttercup parcel as well as other lease applications until the process was approved by the State Board of Land Commissioners ("Land Board"). Due to the delay in processing 2020 lease applications, the Department's priority has been to process the 2020 lease applications prior to offering and advertising for new leases, for example, Buttercup.

Properties like Buttercup fall within a category of "Transitional" Department managed lands. These lands are considered to be suitable for a higher and better use than the current asset classification. The Transitional properties typically produce limited income for the endowments based on their market value and may be encroaching upon urban development. The overall objective for these properties is to evaluate potential highest and best uses and determine whether to lease or sell. (See Statement of Investment Policy, dated July 17, 2018).

The Buttercup parcel is located about one-half mile north of Hailey City limits and totals approximately 106 acres, which is broken into three legal parcels. (Attachment A). The

Buttercup parcel is zoned for planned residential development R-2, which allows for one residential unit per 2-acres. The southern 48.5-acre parcel is within the Area of City Impact. The property is surrounded by:

- Buttercup Road, a paved Blaine County road, located along the western boundary line;
- The private Valley Golf Course and subdivision is adjacent to the north;
- To the east is private undeveloped hillside and rangeland; and
- To the south is private land that has structures and farmland.

The parcel is bisected by the Hiawatha Canal, which traverses north to south through the parcel. There are several easements and encumbrances on the property, including Idaho Power distribution lines and an avalanche exclusion zone. The distribution lines cross a southern portion of the property and traverse along the eastern boundary line.

In April 2017, the Department received an application for an AM radio tower site on the Buttercup parcel. The Department worked with the applicant and determined that the proposed tower would be appropriately located to the south of the transmission lines and east of the transmission towers. (Attachment B). Lease M700077, commenced on July 1, 2018, for the use of an AM radio tower. In September 2018, the Department received an application for a three co-locator cellular site on the Buttercup parcel. The proposed location was adjacent to the AM radio tower site.

During the cellular site application period, the Department began the lease review process and suspended the application until the Land Board approved the leasing process. With the Land Board's approval in October 2019, the Department began preparing the communication (cellular) site for lease applications in-line with the recently approved leasing process. The Department is currently advertising for application of the proposed communication site lease in the Idaho Mountain Express, Department staff and area offices, and the Department's website.¹

On December 20, 2019, Ms. Tidwell emailed Josh threatening an advertisement regarding the proposed cellular site with a heading "The Idaho land Board could give a rip about our community's zoning and comp plan". The email indicated she would include the Land Board's pictures and a photo of a cellphone tower.² (Attachment C). The email was in addition to conversations Josh had with her regarding her opposition to the cellular site due to the close proximity to her property and that the proposal does not meet Blaine County's zoning ordinances.³ According to Josh, Ms. Tidwell stated that she would

¹ Lease M700084 - <https://www.idl.idaho.gov/leasing/commercial/index.html#commsiteuntil> January 10, 2020

² The photo of the cell tower is from an article in the Mountain Express Newspaper regarding 5G (see https://www.mtexpress.com/news/blaine_county/citizens-plan-petition-against-g-in-blaine-county/article_e622f0ec-22bf-11ea-b7aa-570a8d87a2b2.html)

³ Kiki filed a Petition to Intervene before the Idaho Public Utilities Commission for the proceedings regarding Idaho Power's overhead transmission lines proposed in front of her property. Kiki

challenge this legally, be a very vocal opponent, and send a letter to the Governor. Additionally, Ms. Tidwell has voiced frustration with the leasing process for her proposal and believes that the Department has been ignoring her proposal.

According to Blaine County records, “Leslie A. Tidwell,” whom is believed to be Kiki Leslie A. Tidwell, lives across the street from Buttercup. Ms. Tidwell has announced her candidacy for Blaine County Commissioner in 2020 and is an opponent/litigant of Idaho Power’s proposed transmission lines in the County.

The Department has received inquiries into the Buttercup parcel. Due to competing priorities and leasing concerns (political and use restraints, for example residential), the Department has been reluctant to engage in lease proposals. The Department is evaluating options and working with a land-use planner to identify potential uses or layouts based on the most likely use of the property. As such, the Department will work with proponents and bring forth those proposals as appropriate.

The logo of the Idaho Department of Lands is centered on the page. It features a stylized mountain range in the background, with a large, light blue diamond shape in the foreground. Overlaid on the diamond is a yellow and green geometric pattern. A horizontal banner across the middle of the diamond contains the text "IDAHO DEPARTMENT OF LANDS" in white, uppercase letters.

IDAHO DEPARTMENT OF LANDS

claimed the transmission lines would cause economic harm to her property as well as her ability to enjoy open views, etc.

STATE BOARD OF LAND COMMISSIONERS

May 12, 2020

Land Board Staff Briefing - Information Item

Subject

Buttercup – Telecommunication Site Leases

Background

The Buttercup parcel is located about one-half mile north of Hailey City limits (Blaine County) and totals approximately 106 acres, which is broken into three legal parcels. (Attachment 1). The Buttercup parcel is zoned for planned residential development R-2, which allows for one residential unit per 2-acres. The southern 48.5-acre parcel is within the Area of City Impact. The property is surrounded by:

- Buttercup Road, a paved Blaine County road, located along the western boundary line;
- The private Valley Golf Course and subdivision is adjacent to the north;
- To the east is private undeveloped hillside and rangeland; and
- To the south is private land that has structures and farmland.

The parcel is bisected by the Hiawatha Canal, which traverses north to south through the parcel. There are several easements and encumbrances on the property, including Idaho Power distribution lines and an avalanche exclusion zone. The distribution lines cross a southern portion of the property and traverse along the eastern boundary line.

Properties like Buttercup fall within a category of “Transitional” Idaho Department of Lands (“Department”) managed lands. These lands are considered to be suitable for a higher and better use than the current asset classification. The Transitional properties typically produce limited income for the endowments based on their market value and may be encroaching upon urban development. The overall objective for these properties is to evaluate potential highest and best uses and determine whether to lease or sell. (See Statement of Investment Policy, dated July 17, 2018).

In April 2017, the Department received an application for an AM radio tower site on the Buttercup parcel. The Department worked with the applicant and determined that the proposed tower would be appropriately located to the south of the transmission lines and east of the transmission towers. (Attachment 2). This site was chosen due to the permanent nature of the transmission lines and because it was the furthest location from the subdivision to the north. (Attachment 3). Lease M700077, commenced on July 1, 2018, for the use of an AM radio tower.

In September 2018, the Department received an application for a three co-locator cellular site on the Buttercup parcel. The proposed location was adjacent to the AM radio tower site and behind the transmission lines.

The proposals and discussions of the communication site took place during the Department's review of its lease process. The Department delayed any consideration or application period on the Buttercup parcel as well as other lease applications until the process was approved by the State Board of Land Commissioners ("Land Board") in October of 2019.

With the Land Board's approval in October 2019, the Department began preparing the communication (cellular) site for lease applications in-line with the recently approved leasing process. The Department advertised for applications of the proposed communication site lease in the Idaho Mountain Express, Department staff and area offices, and the Department's website. The Department received two additional applications for the lease.

The Department has received a number of letters and emails from the public as well as Blaine County regarding the communication tower. There have been concerns that if a 5G tower is installed, there could be underlying health effects from the 5G as well as the scenic effects of a tower in the area.

Discussion

The Department has received inquiries into the Buttercup parcel.¹ Due to competing priorities and leasing concerns the Department has been reluctant to engage in lease

¹ In 2019, Kiki Tidwell submitted a proposal for development of a residential/solar proposal for the Buttercup parcel. The proposal was originally for an 80-acre development that included low-income housing, a solar farm, and a community garden at a rate of \$1,000 per year for 80-acres, plus \$250 per acre of developed ground on the property. The Department advised her that the proposed rates were grossly under market and the Department would not move the proposal forward. Ms. Tidwell was then provided with a copy of the 2019 appraisal that places the market value at \$6,000,000. Ms. Tidwell provided an updated yearly rental offer of \$101,000, which included a phased payment portion that would not take place until after site development and third-party lease.

On December 20, 2019, Ms. Tidwell emailed the Department threatening an advertisement campaign regarding the proposed cellular site with a heading "The Idaho land Board could give a rip about our community's zoning and comp plan". The email indicated she would include the Land Board's pictures and a photo of a cellphone tower. (Attachment 4). The email was in addition to conversations the Department had with her regarding her opposition to the cellular site due to the close proximity to her property and that the proposal does not meet Blaine County's zoning ordinances. Ms. Tidwell stated that she would challenge this legally, be a very vocal opponent, and send a letter to the Governor. Additionally, Ms. Tidwell has voiced frustration with the leasing process for her proposal and believes that the Department has been ignoring her proposal.

proposals. The Department is evaluating options and working with a land-use planner to identify potential uses or layouts based on the most likely use of the property. As such, the Department will work with proponents and bring forth those proposals as appropriate.

However, concerning the communication site, the Department is in the process of preparing for the live auction with the three applicants. Upon successful auction, the Department will work with the successful bidder on the final lease.

Attachments

1. Lease Vicinity Map
2. Map of Location
3. Street View
4. Email from Kiki Tidwell

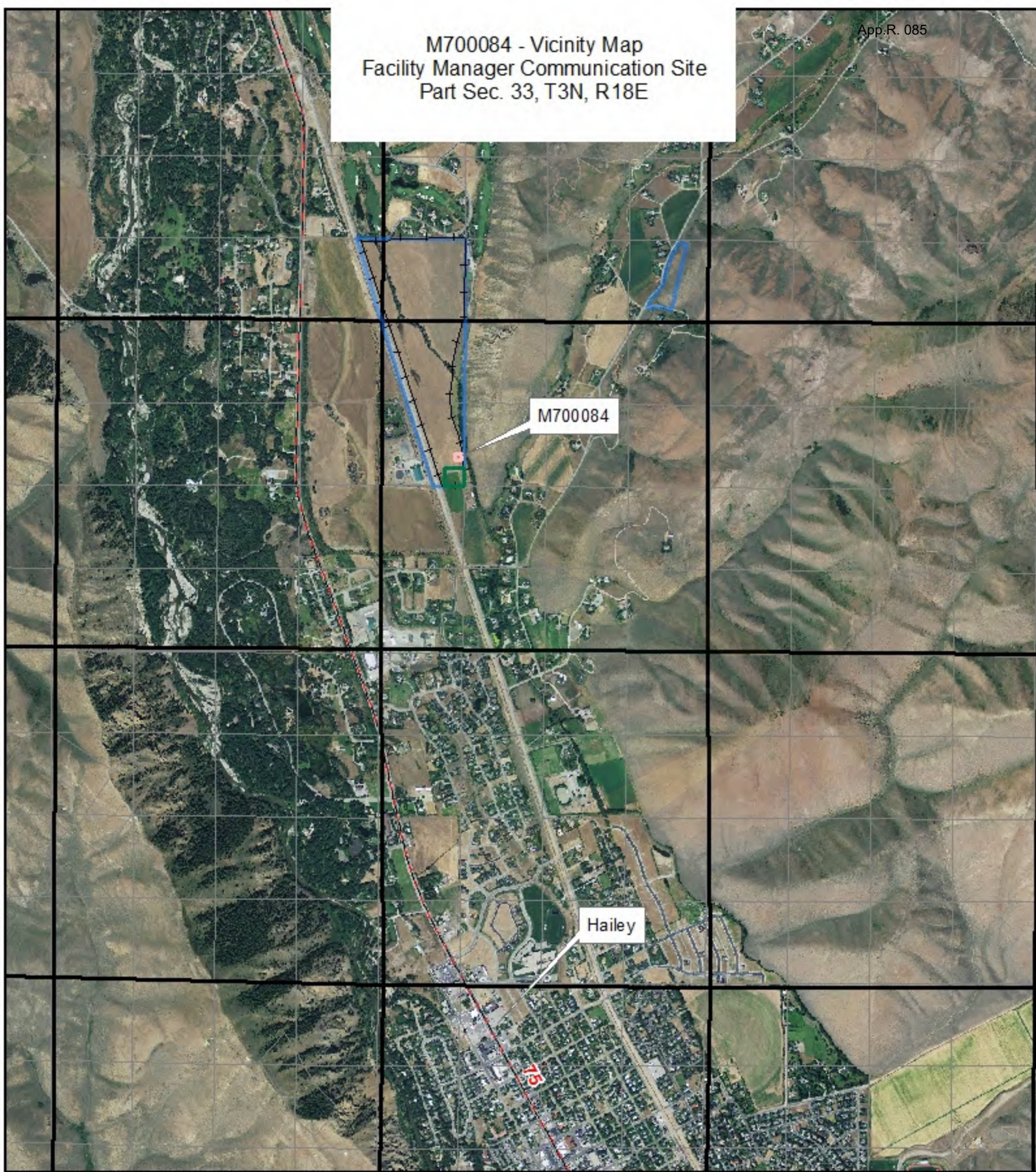
A large, faint watermark of the Idaho Department of Lands logo is centered on the page. The logo features a stylized mountain range in the background, with a central shield containing a sun and a river. Overlaid on the shield is a large, semi-transparent banner with the text "IDAHO DEPARTMENT OF LANDS" in white, uppercase letters.

IDAHO DEPARTMENT OF LANDS

According to Blaine County records, “Leslie A. Tidwell,” whom is believed to be Kiki Leslie A. Tidwell, lives across the street from Buttercup. Ms. Tidwell has announced her candidacy for Blaine County Commissioner in 2020 and is an opponent/litigant of Idaho Power’s proposed transmission lines in the County.

M700084 - Vicinity Map
Facility Manager Communication Site
Part Sec. 33, T3N, R18E

App.R. 085



--- Approximate Location - Existing Fence

--- Highways

□ Quarter-Quarter Lines

□ Sections

□ Endowment Land

□ Approximate Location M 700084

□ Approximate Location M 700077

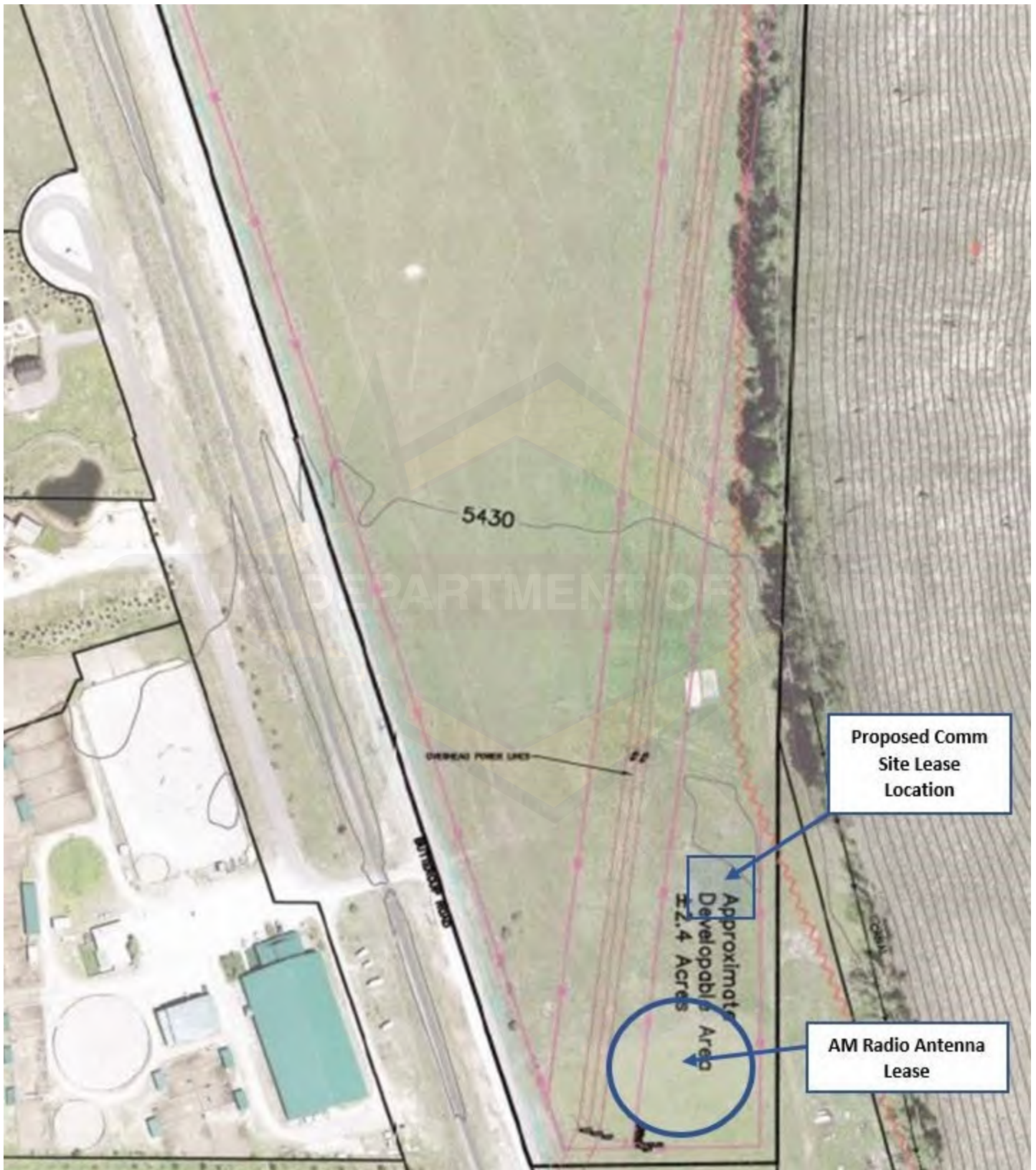
N



0 0.75 1.5 Miles

ML - 12/18

Map Base - 2011 NAIP Imagery

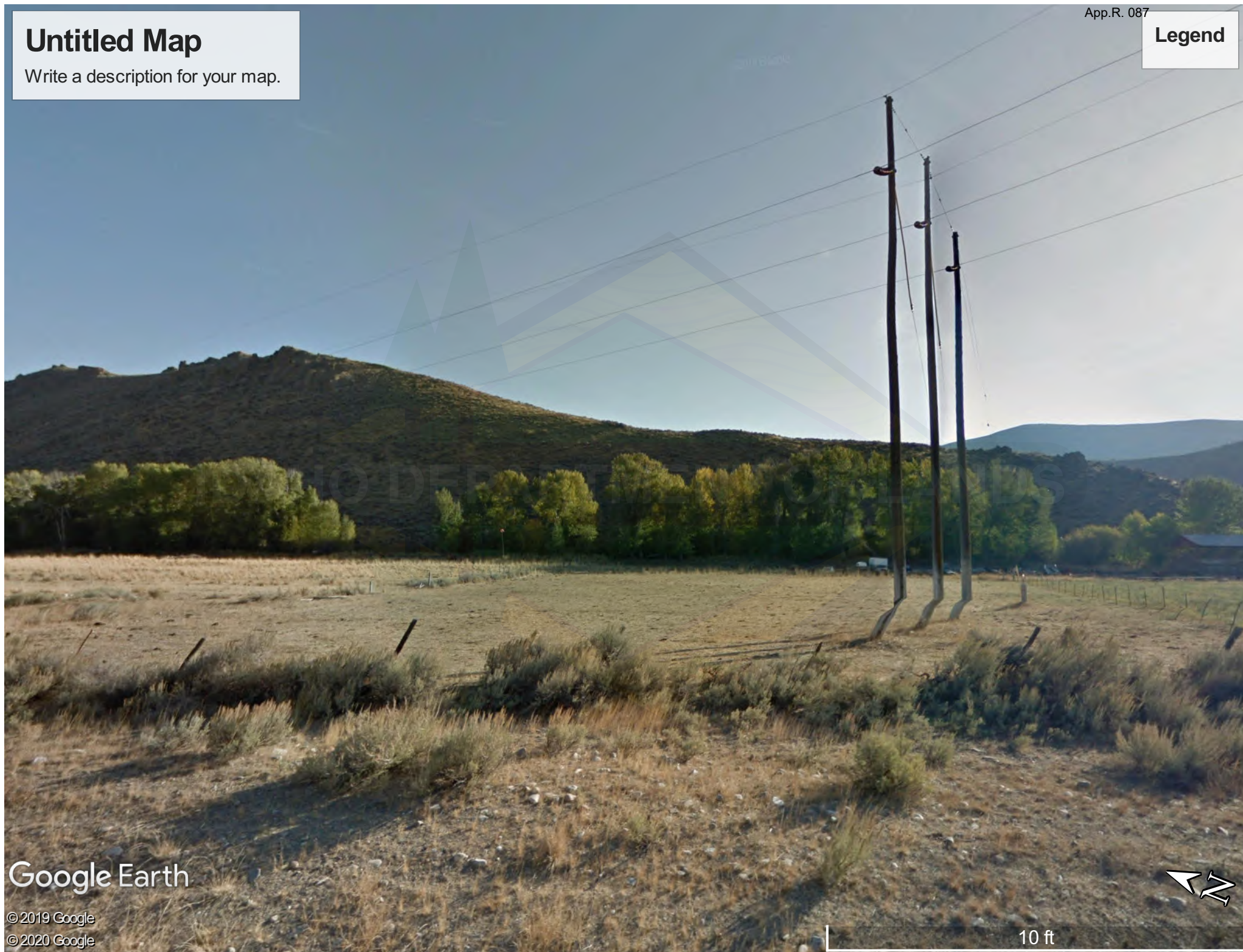


Untitled Map

Write a description for your map.

App.R. 087

Legend



Google Earth

© 2019 Google
© 2020 Google

10 ft

Ryan Montoya

From: Josh Purkiss
Sent: Friday, December 20, 2019 3:27 PM
To: Ryan Montoya
Subject: FW: Attached is an ad I ran this past summer
Attachments: Act locally ad.pdf

[Do you think we should loop in Sharla?](#)

From: Kiki Tidwell <ktinsv@cox.net>
Sent: Friday, December 20, 2019 3:25 PM
To: Josh Purkiss <jpurkiss@idl.idaho.gov>
Subject: Attached is an ad I ran this past summer

Josh,
I am going to start mocking up a new version of this ad, with the ID Dept of Land Board's pictures and this cellphone tower. Working on wording, but something along the lines of:

The Idaho Land Board could give a rip about our community's zoning and comp plan

Kiki



IDAHO DEPARTMENT OF LANDS



Kiki Tidwell
Investor
President, Idaho Land & Pine, Inc.
208-578-7769 Idaho Office
650-388-2108 cell



[Upgrade account](#)

Dropbox › Commercial Leasing 2019 Expiring PUBLIC FOLDER › M700084

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Name ↑	Modified ▾	Members ▾	⋮ ▾
 DRAFT-LEASE-TEMPLATE-Co...unication12/9/2019 6:13 am	12/9/2019 6:13 am	5 members	⋮
 LegalNotice-ApplicationsFo...-2019-...	12/18/2019 1:00 pm	5 members	⋮
 M700084_FactSheet.pdf	12/17/2019 11:34 am	5 members	⋮
 M700084-Map-Detail-2018-12-21....	12/9/2019 8:38 am	5 members	⋮
 M700084-Map-Vicinity-2018-12-2...	12/9/2019 8:38 am	5 members	⋮

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Personal

Only you



M700084 - Detail Map
 Facility Manager Communication Site
 Part Sec. 33, T3N, R18E



--- Approximate Location - Existing Fence

--- Highways

--- Quarter-Quarter Lines

--- Sections

--- Endowment Land

--- Approximate Location M700084

--- Approximate Location M700077

● M700077 - Approx. Tower Location

○ M700077 - Approximate Area Occupied by Ground Radials

0

0.075

0.15

Miles

N

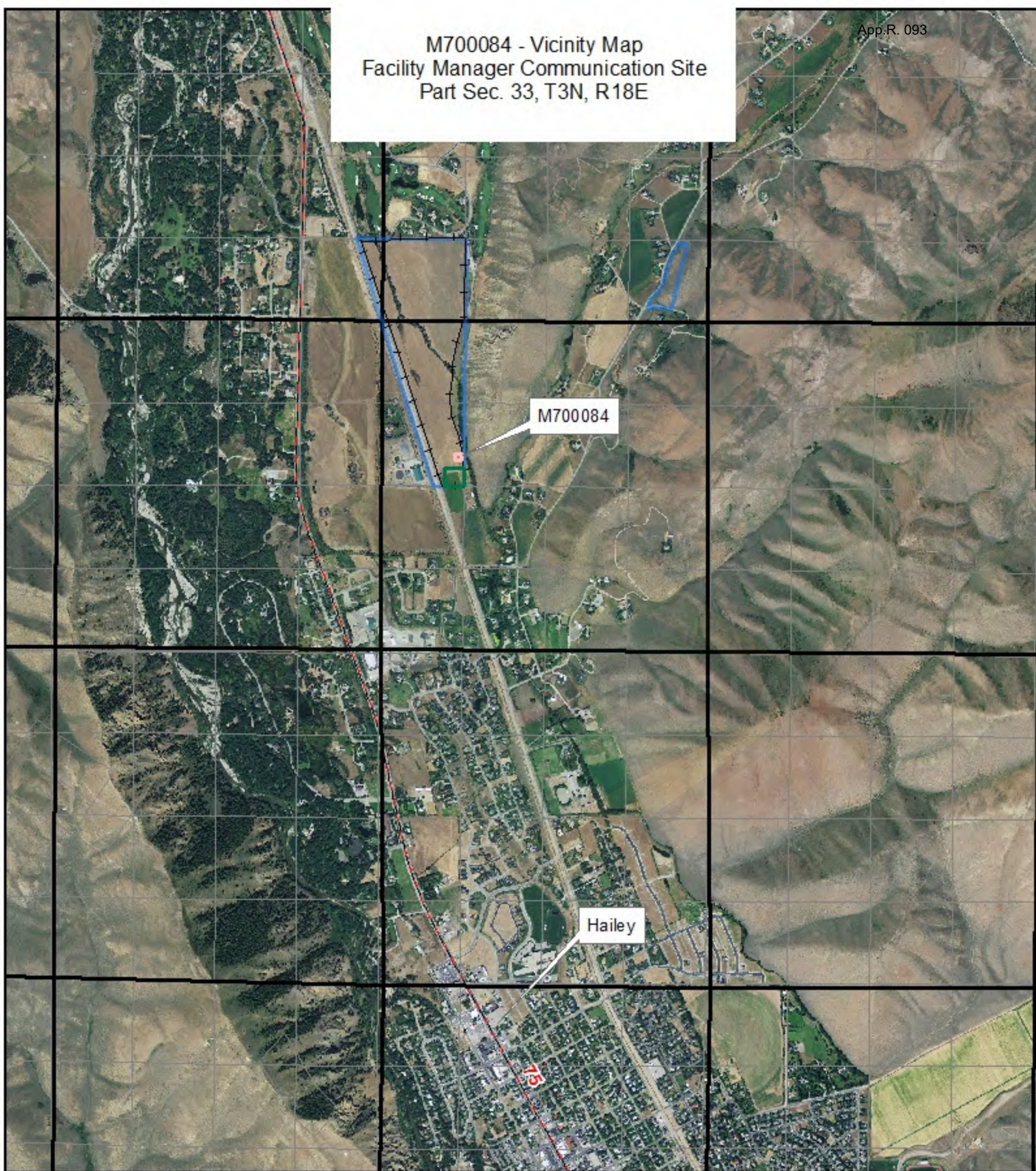


ML - 12/18

Map Base - 2011 NAIP Imagery

M700084 - Vicinity Map
Facility Manager Communication Site
Part Sec. 33, T3N, R18E

App.R. 093



--- Approximate Location - Existing Fence

--- Highways

□ Quarter-Quarter Lines

□ Sections

□ Endowment Land

□ Approximate Location M 700084

□ Approximate Location M 700077

N



0 0.75 1.5 Miles

ML - 12/18

Map Base - 2011 NAIP Imagery

LEASE FACT SHEET: LEASE OPPORTUNITY

Lease Number:	M700084	Report Date:	11/18/2019
Applications Accepted:	12/09/2019 – 01/01/2020	Public Auction Date:	TBD
Supervisory Area:	Eastern Area, Jerome Field Office	Office Contact:	Meribeth Lomkin
Asset Classification:	Farmland	Office Number:	(208) 324-2561
County:	Blaine County		

EXPIRING LEASE

Lease Status:	NEW	Primary Current Use:	Communication Site
Lease Start Date:	N/A		
Lease End Date:	N/A		

PROPOSED LEASE

Lease Start Date:	01/01/2020	Proposed Primary Activity:	Communication Site
Lease End Date:	12/31/2039	Commodity Type:	Facility Manager
Proposed Term Length:	20 YEARS	Total Proposed Acres:	3 Co-locators - Cellular
Access:	YES	Animal Unit Months (AUM):	0.23
First Year Rent:	\$18,416.53	Water Rights:	N/A
Annual Increase:	3%	Secondary Current Use:	N/A
Royalty:	N/A	Proposed Higher or Better Use:	Alternative uses may be proposed to IDL

Proposed Special Terms & Conditions: See Lease Draft

Related Instruments:

[illegible]

DISCLAIMER: The Idaho Department of Lands (IDL) provides this product for informational purposes only. Consumers of this information should review or consult the primary data and information sources to ascertain the viability of the information for their purposes. IDL provides these data in good faith and in no event shall be liable for any incorrect information, result or analysis, any lost profits and special, indirect or consequential damages to any party, arising out of or in connection with the use or the inability to use the data or the product provided. IDL makes no warranty, express or implied, in connection with this data and product available as a convenience to the public, and for no other purpose. IDL reserves the right to change or revise published data and/or the product at any time.

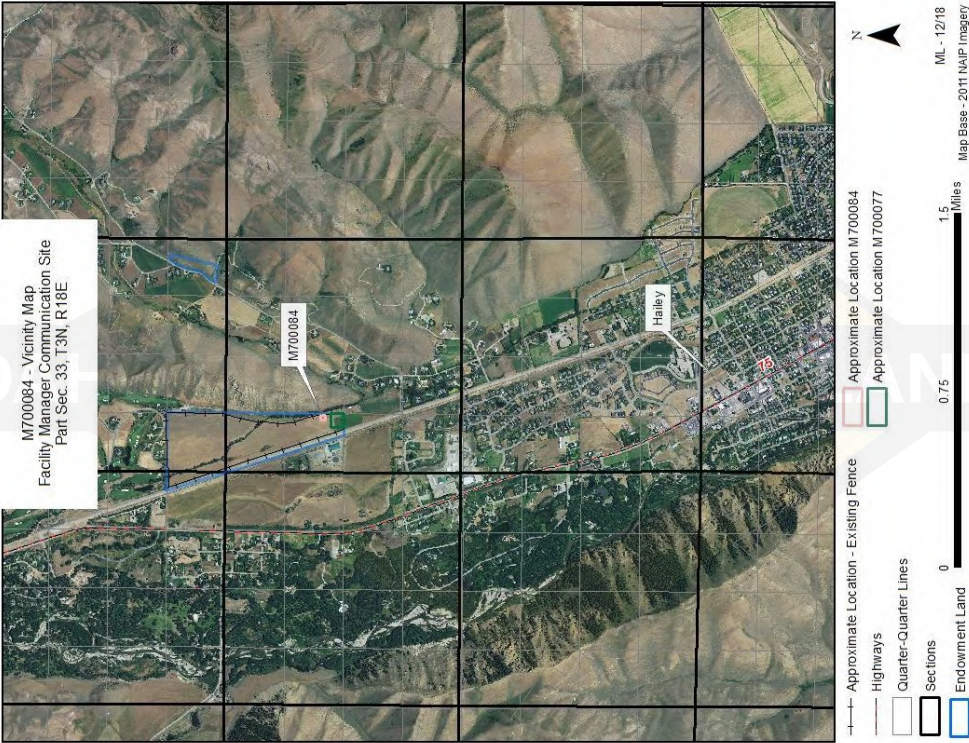
Exhibit B: EXISTING IMPROVEMENTS

IMPROVEMENT OWNERSHIP ADDITIONAL BILLED USE

N/A	N/A	N/A

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Exhibit C: VICINITY MAP



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Exhibit D: LEASE MAP



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Legal Notice
STATE OF IDAHO LAND LEASE OPPORTUNITY
ACCEPTING APPLICATIONS FOR AUCTION OF LEASE

Notice is hereby given pursuant to Article IX, § 8 of the Idaho Constitution and Idaho Code §§ 58-307, -310 and -313, the State of Idaho, Department of Lands (hereinafter "IDL"), will accept lease applications for public auction of the lease set forth below. **Lease application deadline is Friday, January 10, 2020 by 5:00 PM.**

If more than one application is received for a lease(s), IDL will schedule a date, time and location for a live auction. The lease(s) will then be awarded to the bidder who will pay the highest premium bid therefore. Annual rental rates have been established by IDL.

General information regarding each lease is set forth below. Detailed information regarding each lease, including a specific legal description of the property to be leased, rental rates, and instructions to complete an application, and the application fee may be obtained by visiting IDL's website at <https://www.idl.idaho.gov/>.

Lease No.: M=Communication Site, Length, Use, Legal Description

Contact Meribeth Lomkin at 208-324-2561 for more information.

M700056, 10yr, Facility Manager, .23 acres located in PT SENWSW, T02N-R18E-S16.

M700084, 20yr, Facility Manager/3-Co-locator-Cellular, .23 acres located in PT SWNW, T03N-R18E-S33.

DO NOT PRINT IN AD
200 WORDS, 2 LEASES

ADVERTISING in **BLAINE COUNTY NEWSPAPER**
Idaho Mountain Express
legalnotices@mtexpress.com

**** DRAFT TEMPLATE - Insurance section 17 is currently under review and is subject to change.**



COMMUNICATION SITE LEASE
No. MXXXXXX
LESSEE OF RECORD, LEGAL NAME NATURAL PERSON(S)

SUMMARY OF LEASE PROVISIONS:

Lessor Name and Address: State Board of Land Commissioners ("Land Board"), whose administrative state agency is the Idaho Department of Lands
 300 North 6th Street, Suite 103
 PO Box 83720
 Boise, ID 83720-0050
 Email: commercialprogram@idl.idaho.gov
 Phone: 208-334-0200
 Fax: 208-334-3698

Lessee Name and Address: Lessee of Record, Legal Name Natural Person(s)
 Address 1
 Address 2
 City, State, Zip, Country if not USA
 Email:
 Phone:
 Fax:

Lease Term: Commencement Date: January 1, 2000
 Expiration Date: December 31, 2000

Rent: Rent shall be INSERT RENT AMOUNT HERE (\$0,000.00) for the first year of the Lease as outlined in the chart below. Rent will increase annually at the rate of 3%.

<u>Use</u>	<u>Year</u>	<u>Annual Rent</u>

Legal Description of Leased Premises: See Attachment B.

Use of Leased Premises: Communication Site
 See Section 3., Use of Premises, below.

Bond: \$10,000.00 bond. See Section 5, Bond, below.

Liability Insurance: \$1,000,000.00 Commercial General Liability
 See Section 17, Insurance, below.

Lease Index: SUMMARY OF LEASE PROVISIONS
 LEASE PROVISIONS
 SIGNATURE PAGE
 ATTACHMENT A – SPECIAL TERMS AND CONDITIONS
 ATTACHMENT B – LEGAL DESCRIPTION OF LEASED PREMISES
 ATTACHMENT C – SITE MAP(S)
 ATTACHMENT D – REPORTS
 ATTACHMENT E – EXISTING IMPROVEMENTS

***This Summary of Lease Provisions ("Summary") is for convenience and ease of review only. The**

information stated in the Summary is intended to be accurate and consistent with the contract terms set forth in the following Lease. In the event any information stated in the Summary is inconsistent with the Lease Provisions or Attachments, the Lease Provisions and Attachments will control.

[Remainder of page intentionally left blank]

TEMPORARY
IDaho DEPARTMENT OF LANDS
LEASE

LEASE PROVISIONS

1. Lessor, in consideration of the rent paid and the covenants, conditions and restrictions set forth in the Lease (including all Attachments), does hereby lease and demise unto Lessee the lands described in Attachment B for the uses specified herein.

2. **Rent.**

Lessee shall pay directly to Lessor, in lawful money of the United States, each year's rent on or before January 1 of each successive year throughout the term of this Lease unless otherwise directed by Lessor in writing. Lessee shall pay Lessor, as rent for the Leased Premises, the amount(s) set forth in the Summary. Lessee shall pay the annual rental to Lessor without abatement, offset or deduction of any kind unless otherwise authorized by Lessor through a complete Lease Adjustment form provided by Lessor.

- A. Annual Rent Subject to Modification. Lessor reserves the right to increase or decrease the annual rent to be paid by Lessee. Lessor will provide Lessee with written notification one hundred and eighty (180) calendar days prior to an increase in the annual rental amount, and any such increase shall be effective as of and payable no later than January 1 of the year following said notice.
- B. Accrual of Interest and Late Payment Charges. In the event any rent or other financial obligation due by Lessee to Lessor under the terms of the Lease is not paid in full when due, Lessee shall also pay: 1) interest accruing thereon at the statutory rate of interest as provided by law (12% per annum) until payment is made in full; and, 2) a late charge which shall accrue in full as of the first day of each and every calendar month of such delinquency until payment is made in full in the amount of twenty-five dollars (\$25.00) or one percent (1%) of the unpaid principal obligation(s), whichever is greater. All payments shall be applied first to the payment of accrued interest and to accrued late charges, and then to unpaid principal. The parties acknowledge and agree that the late charge described herein is a reasonable attempt to estimate and to compensate Lessor for higher administration costs associated with administering such late payments, and is not intended as a penalty. By assessing interest and late charges, Lessor does not waive any right to declare a breach, or to pursue any right or remedy available to Lessor by reason of such breach available at law or in equity, after the expiration of any applicable notice or cure period.
- C. Lien. The amount of the unpaid rent, late charges, and interest, shall constitute a lien in favor of Lessor against all of Lessee's improvements and other personal property on the Leased Premises.

3. **Use of Premises.**

- A. Lessee leases the Leased Premises for **[State specific Uses]**.
- B. Any new or additional use of the Leased Premises requires Lessor's prior written consent, through a written amendment to this Lease. Any new or additional use by Lessee without the authorization of Lessor is prohibited and is grounds for termination of the Lease.
- C. Lessee shall not permit any unlawful use of the Leased Premises, nor permit any use thereof except for the purposes stated herein.
- D. Communications Equipment. Use of communications equipment is contingent upon the possession of a valid Federal Communications Commission (FCC) authorization or any other appropriate or applicable federal, state, or local agency authorization. Use of communications equipment is also contingent upon strict compliance with applicable requirements of the FCC or other appropriate federal, state, or local agency. Installation of towers, poles, antennas or other equipment shall not exceed applicable FCC standards.
- E. Interference with Existing Lessees. Lessee and any authorized sublessee shall ensure that equipment within the Leased Premises (including tenant and customer equipment) operates in a manner that will not cause harmful interference with the operation of existing lessees' authorized use or existing equipment on or adjacent to or within range of the Leased Premises. If Lessor or an authorized FCC official determines that Lessee's use interferes with existing equipment or existing lessees, then Lessee will promptly take all necessary steps to eliminate or reduce the harmful interference to the satisfaction of Lessor or the authorized FCC official. The cost for additional frequency filtering devices, as well as costs for engineering tests and installation of devices which may be required to establish protection, shall be borne entirely by Lessee.

- F. **Compatibility Tests.** Lessee shall be responsible for scheduling and conducting compatibility tests of all equipment installed after the commencement of the Lease, and modifying Lessee's equipment if its operation interferes with that of another existing state lessee, or authorized sublessee, located on the Leased Premises or on sites adjacent to or within range thereof. Lessee must provide written notice of the tests to other lessees or sublessees at least two (2) weeks prior to the test date. If, subsequent to initial testing, Lessee installs equipment that operates on a different frequency or power output than the existing equipment, Lessee must schedule and conduct additional compatibility tests in accordance with this section for all lessees and authorized sublessees existing at that time.
- G. **Reports.** Lessee shall complete and submit an "ANNUAL CO-LOCATOR INVENTORY and CERTIFICATION OF FACILITY OWNER OR MANAGER" report (Attachment D) to Lessor's [REDACTED] Supervisory Area office by January 31st of each year throughout the term of the Lease. Lessor may, at its sole discretion, require additional reports, including, but not limited to, reports containing technical information related to equipment located on the Leased Premises.

4. **New Lease.**

If Lessee has fully and faithfully complied with the terms and conditions of this Lease, and is not then in default, then Lessee may apply for a new lease by filing an application with Lessor prior to April 30 of the year in which this Lease expires in accordance with Idaho Code § 58-307(8). Lessee understands that the terms and conditions of any new lease are in Lessor's sole discretion and may be materially different than the terms and conditions of this Lease. A new lease is subject to the auction requirement of Article IX, § 8 of the Idaho Constitution and the conflict auction provisions of Title 58, Chapter 3, Idaho Code, and any applicable rules promulgated thereunder. Lessor shall value the creditable improvements prior to any conflict auction for a new lease in accordance with any then-existing applicable statute or rule. If Lessee is not the successful lessee of a new lease for the Leased Premises, then Lessee shall, prior to the termination or expiration of this Lease, vacate the Leased Premises, and Lessee shall be paid the value of the approved Lessee-owned improvements.

5. **Bond.**

Concurrent to the execution of this Lease by Lessee, Lessee will furnish a good and sufficient bond in the amount specified in the Summary of Lease Provisions in favor of the State of Idaho to protect Lessor against loss related to this Lease. The period of liability of any bond shall not terminate until all terms and conditions of the Lease Provisions and any Special Terms and Conditions have been fulfilled and the bond is released in writing by the Director of the Idaho Department of Lands.

6. **Sublease and Assignment.**

- A. **Written Approval Required.** Lessee shall not assign the Lease, or sublease or authorize another person to use any part of the Leased Premises without the prior written consent of Lessor. to be evidenced by Lessor's execution of consent forms provided by Lessor for that purpose. Any request for approval of a sublease or assignment must be filed in writing and with the appropriate processing fee, and must comply with the statutes and rules governing subleasing or assignment. Any request for approval of an assignment or sublease must be accompanied by a copy of the proposed assignment or sublease agreement. Lessor may withhold consent for any reason. Any attempt by Lessee to sublease all or any part of Lessee's interest in the Leased Premises, or to assign the Lease, shall be void and this Lease subject to termination unless Lessor has given its prior written consent. No request for Lessor's approval of any assignment or sublease will be considered unless all rent and accrued interest and late charges has been paid in full, and Lessee is in good standing under the terms of this Lease and all other contracts with Lessor. No sublease or assignment will act as a release of Lessee's obligations hereunder unless Lessor executes a separate written release of Lessee. Lessor has no obligation to release Lessee hereunder, and Lessor can withhold such release at Lessor's sole discretion. Any sublease or assignment shall be subject to the provisions of this Lease, as well as such additional terms and conditions as Lessor may require. No sublease shall not extend beyond the term of the Lease.
- B. **Specific Transaction Only.** Any consent by Lessor herein contained or hereafter given to any sublease or assignment shall be held to apply only to the specific sublease or assignment thereby approved.

- C. **Proof of Assignment.** In cases of an assignment due to the sale of Lessee's interest, Lessee must provide to Lessor one copy of the purchase agreement or contract of sale signed and acknowledged by the buyer (Assignee) and seller (Assignor). In the case of assignment without a sale, appropriate documentation must be provided to Lessor establishing that the Lease should be assigned. This may include, but is not limited to, a deed or bill of sale transferring Lessee's interest in the Lease and in Lessee's improvements and personal property which may be the result of a sale or gift; a divorce decree; or a copy of will or probate order. Lessor may require additional proof as necessary.
- D. **Additional Rent Due.** If Lessee allows the Leased Premises or any portion thereof to be used by a Co-Locator for any use, then Lessee shall, in addition to Lessee's annual rent, pay to Lessor as additional rent an amount equal to twenty-five (25%) of Lessee's rent for any such use(s) payable by Lessee for each such use by each such Co-Locator.
- E. **Improvements.** Upon an approved assignment, the ownership of any existing Lessee-owned improvements under the Lease must be separately negotiated between Lessee and such assignee, and title to the improvements transferred to the assignee.
- F. **Copies to be Filed with Lessor.** Copies of all assignments, subleases, or any other agreement of any kind or nature involving the use of the Leased Premises by an individual or entity other than Lessee shall be timely delivered by Lessee to Lessor.
- G. **A Co-Locator is considered a sublessee under this Lease.** As used herein, a Co-Locator is another user of the Leased Premises who uses separate broadcast and/or receiver equipment; has separate FCC frequencies; or is licensed separately by the FCC regardless of who owns the equipment, frequency, or license.
- H. **Lessee may sublease portions of its specific improvements to additional users, provided that each such sublease shall be subject to all terms of this Lease, including termination of Lessee's interest under this Lease. Any such sublease shall be subject to and subordinate to the rights of the Lessor under this Lease, and any such sublease shall include, but not be limited to, the following terms:**
 - i. No sublease shall relieve Lessee of its responsibility to pay and perform all of its obligations under this Lease to Lessor.
 - ii. The term of the sublease may not exceed the term of this Lease.
 - iii. Lessor is not liable for acts or omissions of Lessee.
 - iv. The Sublessee will abide by all terms of this Lease.
 - v. The Lessor is not liable for any pre-payment, security deposit or other pre-paid charges made to Lessee by sublessees should this Lease be terminated.

7. Leasehold Mortgage.

Lessee shall not mortgage, pledge, hypothecate or otherwise transfer Lessee's interest in this Lease, or any portion thereof, including any Lessee-owned improvements or fixtures on the Leased Premises, without the prior written consent of Lessor. Lessee shall use mortgage or deed of trust forms provided by Lessor, and shall submit completed forms and any required fee to Lessor for review and approval. The term of a mortgage agreement shall not exceed the term of the Lease, and shall terminate if this Lease is terminated for any reason. Lessor may accept or reject a leasehold mortgage in its sole discretion.

8. No Liens.

Lessee shall not permit or suffer any lien of any kind or nature to be placed on or enforced against the Leased Premises, the leasehold interest, or any improvements thereon, including, but not limited to, tax liens, judgment liens, mechanics' liens or material suppliers' liens. Lessee shall ensure that full payment is made for all labor performed at Lessee's instance and for any and all materials joined or affixed to the Leased Premises and for any improvements thereon.

9. Lessee's Compliance with Applicable Laws and Rules.

- A. Full compliance. Lessee shall fully comply with all applicable federal, state, or local laws, rules, regulations and ordinances now existing or hereafter enacted or ratified. This shall include all applicable rules, regulations and standards promulgated by the State Board of Land Commissioners or the Idaho Department of Lands, including, but not limited to, the rules governing leasing of endowment lands, IDAPA 20.03.14.
- B. No Waste or Nuisance. Lessee shall not use the Leased Premises in any manner that would constitute loss or waste, nor shall Lessee allow the same to be committed thereon. Lessee shall not do anything which will create a nuisance or a danger to persons or property.
- C. Lessee shall cooperate with Lessor and any other agency authorized to undertake programs for control or eradication of noxious weeds. Lessee shall take measures to control noxious weeds on the Leased Premises in accordance with Title 22, Chapter 24, Idaho Code, except those resulting from activities beyond Lessee's control. Costs for control of noxious weeds on the Leased Premises shall be the responsibility of Lessee, unless otherwise provided for in the Lease.

10. Environmental, Safety, and Sanitary Requirements.

- A. Sanitary Requirements. Lessee shall at all times keep the Leased Premises in a clean and sanitary condition, free of trash, garbage and litter, and in the same or better condition as when the Lease was issued. Lessee shall not dispose of sewage except in conformity with applicable federal, state, and local laws, rules, regulations and ordinances. Lessee shall dispose of sewage on the Leased Premises only if specifically authorized by Lessor. Lessee shall not store trash on the Leased Premises nor transport trash, garbage, litter or debris onto the Leased Premises. Lessee shall dispose of all trash and garbage in conformity with all applicable federal, state, and local laws, rules, regulations and ordinances. Lessee is responsible for all costs associated with sewage, garbage and litter disposal.
- B. Fire and Safety Regulations. Lessee shall comply with all applicable federal, state and local laws, rules, regulations and ordinances for fire protection, prevention and burning. Lessee agrees to keep the Leased Premises free from fire hazards as determined by Lessor. Lessee is prohibited from any burning on the Leased Premises, including, but not limited to, the burning of wood, weeds or other debris, but excepting campfires if necessary for the use under the Lease, without the prior written permission of Lessor.
- C. No Hazardous Materials. Lessee shall neither commit nor permit the use, placement, transport or disposal of any hazardous waste, substance or material, including petroleum products, such as oil, gasoline, or any other substance that is known, or is suspected to be a hazardous waste, substance or material on the Leased Premises except in the acceptable and customary use associated with weed and pest control, machinery, equipment and vehicles. Lessee shall be responsible, and shall pay all costs, for the removal or other appropriate remedial action regarding any hazardous waste, substance or material that Lessee may have caused or allowed to be introduced on the Leased Premises. Any such remediation or removal or storage must be conducted in accordance with all applicable federal, state, and local laws, rules, regulations and ordinances. Lessee shall immediately, upon the introduction of any hazardous waste, substance or material on the Leased Premises, contact Lessor and the Idaho Department of Environmental Quality ("DEQ"), and enter into a consent order for remediation with DEQ. Provided however, that Lessee shall not forestall Lessee is so authorized in writing by Lessor. In the event of the introduction of any hazardous waste, substance or material, Lessor may require Lessee to enter into any consent order or other agreement with any other relevant agency. Lessee shall indemnify, defend and hold Lessor harmless from any and all costs, expenses, damages and fines, including, without limitation, all reasonable attorney fees and costs, including attorney fees and costs on appeal, relating to and including any hazardous waste, substances, materials, or pollution. The amount of any costs incurred by Lessor due to Lessee's violation of this provision shall constitute a non-standard administrative cost and a lien in favor of Lessor against all of Lessee's interest in the Lease and all improvements and other property on the Leased Premises.

11. No Warranty of Suitability.

- A. No Warranty of Title. Lessor does not warrant title to the Leased Premises or the resources that may exist on the Leased Premises. The Lease is issued only under such title as the State of Idaho may have as of the date of commencement, or as may be subsequently acquired. Lessee is solely responsible for satisfying

itself with respect to the ownership of the Leased Premises. If Lessor is subsequently divested of said title, no liability will be incurred by Lessor by virtue of the Lease for any loss or damage to Lessee. Nor will any claim for refund, rents, or other amounts paid to Lessor be made by Lessee, its successors or assignees.

- B. No Warranty of Merchantability or Fitness. Lessee expressly acknowledges that neither Lessor, nor any agent or representative of Lessor, has made any representation of warranty, either express or implied, with respect to the title, merchantability, or fitness of the Leased Premises for any particular purpose or use, including the uses for which the Lease is granted. Lessee accepts the Leased Premises in "as is" condition, and relies solely on Lessee's own inspection of the Leased Premises.
- C. Nonexclusive Use. Lessee acknowledges that the Lease is nonexclusive, and Lessor retains the right to use the Leased Premises, or to grant rights to others for use of the Leased Premises to the extent any such use does not materially interfere with Lessee's purpose and use allowed hereunder, unless otherwise provided for in the Lease.

12. Payment of Taxes and Assessments.

On or before any due date, Lessee agrees to pay any and all real or personal property taxes, assessments or fees of any nature that may be legally assessed or levied against Lessee or the Leased Premises, or any portion of the Leased Premises, or on any improvements. Lessee shall make such payment directly to the taxing authority and hold Lessor harmless from any such tax, claim, assessment or fee.

13. Water Rights.

- A. Future Water Rights and Water Use Generally. The establishment of any new water right by Lessee or Lessor on the Leased Premises during the term of the Lease shall be by and for Lessor, and no claim thereto shall be made by Lessee. If a new water right is established on the Leased Premises during the term of the Lease, Lessee agrees that its application of water to beneficial use is on behalf of and as an agent for Lessor. Lessee may act as an agent for Lessor only for the purpose of applying water to beneficial use. Such water rights shall attach to and become appurtenant to the Leased Premises, and Lessor shall be the owner thereof. The use of any water rights by Lessee shall be in conformance with Idaho water law. Lessee must receive the prior written consent of Lessor, and the prior written consent of any department or agency of the State of Idaho having jurisdiction to regulate water rights or water use in and for the State of Idaho for any of the following:
 - i. To drill and use a water well;
 - ii. To develop and use any source of water;
 - iii. To cause any water to be conveyed or diverted off the Leased Premises; or
 - iv. To bring water onto the Leased Premises.
- B. Water Systems. If water is supplied to the Leased Premises by a water system operated by the State of Idaho, including Lessor, the use of such system and the supply of water provided thereby may be curtailed or terminated upon thirty (30) calendar days' written notice to Lessee from Lessor. Neither Lessor nor its agents or employees, nor any entity of the State of Idaho shall be liable in any manner for damage or inconvenience to Lessee by reason of the failure of, damage to, termination or curtailment of the operation of any water system or source supplying water to the Leased Premises.
- C. Improvements in Aid of Water Use. Improvements, whether pre-existing or future, made in aid of any and all water use on, or diversion from, the Leased Premises are subject to the improvement permit requirements of the Lease.
- D. No Right of Access to Water Rights upon Termination. Upon the termination of the Lease for any reason, Lessee shall have no right to access any point of diversion or any place of use of any water right on the Leased Premises without the prior written consent of Lessor.

14. Construction of Improvements.

- A. Construction of Improvements. No construction of improvements upon or over the Leased Premises is allowed without prior consent of Lessor.

B. Treatment of Improvements. Upon termination of the Lease for any reason:

- i. Lessor shall have the right to require Lessee to remove any and all improvements, whether approved or non-approved, placed upon the Leased Premises, and to require Lessee to restore the Leased Premises, as nearly as is reasonably practical, to its natural or previous condition existing prior to any lease, all at Lessee's sole cost and expense.
- ii. Lessor has the right to enter the Leased Premises and remove any and all of the improvements, whether approved or non-approved, or otherwise dispose of such improvements, to restore the Leased Premises, and to charge the cost of removal and/or disposal and restoration to Lessee. Lessee shall also be responsible for all collection costs, including, but not limited to, legal fees and interest.
- iii. Lessee shall quietly surrender the Leased Premises to Lessor.
- iv. Lessor reserves the right to purchase existing approved Lessee-owned improvements from Lessee at a reasonable market value, as defined in Section 14.D, as of the date of termination.

C. Treatment of Improvements upon Abandonment. If this Lease is terminated for any reason, and no new lease is issued to a lessee who is obligated to purchase the Lessee-owned improvements, and if there are Lessee-owned improvements remaining on the Leased Premises following such termination for which Lessor, in its sole discretion, does not require to be removed by Lessor or by Lessee, then at Lessor's discretion, all right, title and interest of Lessee in and to any such improvements shall, upon thirty (30) days written notice to Lessee, or at a date determined at the sole discretion of Lessor, but not less than thirty (30) days, be deemed to be abandoned by Lessee, and title shall be deemed to transfer to Lessor automatically and by operation of law.

D. Market Value. Market value is defined in this Lease as "the most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms for which the specified improvements should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest and assuming that neither is under undue duress."

E. Treatment of Non-Approved Improvements. Lessor shall have the right to require Lessee to remove any and all non-approved improvements placed, or caused to be placed upon the Leased Premises at any time during the term of this Lease, and to require Lessee to restore the Leased Premises, as nearly as is practical, to its natural or previous condition prior to any such non-approved improvements, all at Lessee's sole cost and expense. Lessor further has the right, at its sole election, to enter the Leased Premises and remove any and all of the non-approved improvements, or otherwise dispose of such improvements, to restore the Leased Premises, and to charge the cost of removal and/or disposal and restoration to Lessee. Lessee shall also be responsible for all collection costs including, but not limited to, attorney fees and interest. If removal of any non-approved improvements has not occurred by the date that the Lease terminates, for any reason, then at Lessor's discretion, all right, title and interest of Lessee in and to any of the non-approved improvements shall, upon thirty (30) days written notice to Lessee, or at a date determined at the sole discretion of Lessor, but not less than thirty (30) days, be deemed to be abandoned by Lessee, and title shall be deemed to transfer to Lessor automatically and by operation of law.

15. Sale, Exchange or Change in Use of Leased Premises.

- A. Sale. Lessor may sell all or any portion of the Leased Premises during the term of this Lease. The Leased Premises may be sold subject to, or free of, the Lease. Lessor will notify Lessee that the Leased Premises are being considered for sale at auction and whether the proposed sale will be subject to, or free of, the Lease at least thirty (30) calendar days prior to the date of any such auction. If the sale is to be free of the Lease, then the Lease shall terminate upon closing of the sale following the auction, or as otherwise provided by Lessor pursuant to the auction. If the Leased Premises are to be sold free of the Lease with creditable improvements present thereon, then Lessor shall value the creditable improvements prior to the auction in accordance with Idaho Code § 58-313, or the then-existing applicable statute or rule, and Lessee shall be paid the value of the improvements by the purchaser on the day of the closing of the sale. Lessee shall deliver immediate possession of all or any portion of the Leased Premises sold upon the termination of the Lease, or as Lessor may otherwise instruct.

- B. **Consent to Land Exchange.** Lessee acknowledges that the Leased Premises, or any portion thereof, may be the subject of a future land exchange by Lessor, and Lessee hereby consents to the inclusion of the Leased Premises, or any portion thereof, in any land exchange deemed necessary or appropriate by Lessor. This consent is given in compliance with Idaho Code § 58-138. If Lessor includes the Leased Premises, or any portion thereof, in any future land exchange, then Lessor shall provide Lessee with at least thirty (30) days written notice. Upon the consummation of any such land exchange, that portion of Leased Premises included within the exchange shall be removed from the Lease, and if the entire Leased Premises is subject to the exchange, then the Lease shall be terminated. And, if only a portion of the Leased Premises is subject to the exchange, then Lessee's rent obligation for the ensuing year shall be reduced proportionately. Lessee shall be entitled to continue to use the Leased Premises, or any portion thereof, included within any such exchange for the balance of the year in which the exchange occurs unless otherwise notified in writing by Lessor, in which event the Lease payment for such year shall be prorated.
- C. **Change in Use.** The Lease may be terminated in whole or in part upon one hundred eighty (180) calendar days' written notice by Lessor if the use of the Leased Premises is to be changed to any other use that is incompatible with the use authorized by this Lease, as designated by Lessor. If the Lease is terminated early due to a change in land use, then Lessee will be entitled to the prorated refund of the premium bid for a conflicted lease, if any.

16. Relations of the Parties.

Lessee is not an officer, employee, or other authorized agent of the State of Idaho for any purpose other than the development of water rights as set forth in Section 13., Water Right and Water Use, above. In no event shall any official, officer, employee or agent of Lessor or of the State of Idaho be in any way personally liable or responsible for any covenant or obligation contained in the Lease, express or implied, nor for any statement, representation or warranty made by Lessee in connection herewith.

17. Insurance.

For the duration of this Lease and until all activity in accordance with this Lease is completed, Lessee must have and maintain, at Lessee's expense, the policies of insurance set forth below. Lessee must comply with all terms and conditions of such insurance, and must require all of its contractors and subcontractors to maintain the same types of insurance and limits. By requiring the insurance policies, Lessor does not represent that coverage and limits will be adequate to protect Lessee; and, such coverage and limits will not be deemed as a limitation on Lessee's liability to Lessor or under any indemnities granted to Lessor in this Lease.

- A. **Commercial General Liability.** Lessee shall maintain Commercial General Liability Insurance covering bodily injury and property damage caused by or resulting from the occupancy, use, and operations of any activity on the Leased Premises carried on by Lessee, its assigns, agents, operators or contractors. This insurance shall include personal injury coverage and contractual liability coverage for the indemnity provided under this lease. Coverage shall be combined single limit per occurrence, which shall not be less than One Million Dollars (\$1,000,000), or the equivalent. Each annual aggregate limit shall not be less than One Million Dollars (\$1,000,000), when applicable.
- B. **Property Insurance.** Lessee shall maintain property insurance for what is commonly referred to as "All Risk" coverage, excluding earthquake and flood, on Lessee's improvements and personal property.
- C. **Workers' Compensation.** Lessee shall maintain Workers' Compensation Insurance and Employer's Liability, together with all other coverages required therefor.
- D. **Additional Insured.** The liability insurance coverage required for performance of the Lease shall include the State of Idaho, the State Board of Land Commissioners, and the Idaho Department of Lands, its officers, agents, and employees as additional insureds, but only with respect to Lessee's activities (including the activities of Lessee's agents, operators, employees or contractors) relating to this Lease and/or any such activities upon, or related to, the Leased Premises.
- E. **Insurance Policy Requirements.** All policies required under this Section shall be written as primary policies and not contributing to or in excess of any coverage Lessor may choose to maintain. All insurers shall have a Bests' rating of A- or better, and be authorized to do business in the State of Idaho. There shall be no cancellation, material change, potential exhaustion of aggregate limits or intent not to renew insurance

coverage without thirty (30) days written notice from Lessee and its insurer to Lessor; provided however, that if such prior advanced written notice cannot reasonably be provided, then Lessee shall immediately notify Lessor as soon as Lessee becomes aware of any such cancellation, termination, material change, or intent not to renew. In any event, Lessee shall immediately notify Lessor of any such notice of cancellation, termination, material change, or intent not to renew any policy required by this Lease and shall deliver to Lessor a copy of any such notice upon receipt thereof from any insurer.

- F. **Proof of Insurance.** Prior to taking occupancy or commencing operations or construction, and at least annually thereafter, Lessee shall furnish Lessor with a certificate of insurance executed by a representative of each insurer duly authorized to bind coverage, together with a copy of any applicable policy and policy endorsement showing compliance with all insurance requirements set forth herein including evidencing Lessor as additional insured. Lessee shall provide certified copies of all insurance policies required above within fifteen (15) days of Lessor's written request for certified copies. Failure of Lessor to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Lessor to identify a deficiency from evidence that is provided shall not be construed as a waiver of Lessee's obligation to maintain such insurance.
- G. **No Limitation of Liability.** By requiring insurance herein, Lessor does not represent that coverage and limits will necessarily be adequate to protect Lessee, and such coverage and limits shall not be deemed as a limitation on Lessee's liability pursuant to this Lease.

18. Indemnification.

- A. Lessee shall indemnify, defend, and save harmless Lessor, the State of Idaho, its officers, agents, employees, and volunteers from and against any and all liability, claims, damages, losses, expenses, actions, settlements, attorney fees, and suits whatsoever caused by, arising out of, or in connection with Lessee's acts or omissions under this Lease or Lessee's failure to comply with any applicable state, local or federal statute, law, rule, regulation or ordinance.
- B. Upon the receipt by Lessee of Lessor's or the State of Idaho's tender of indemnity and defense, Lessee shall immediately take all reasonable actions necessary, including, but not limited to, providing a legal defense for Lessor and the State of Idaho, and to begin fulfilling its obligation to indemnify, defend, and save harmless Lessor and the State of Idaho. Lessee's indemnification and defense liabilities described herein shall apply regardless of any allegations that a claim or suit is attributable in whole or in part to any act or omission of Lessor or the State of Idaho under this Lease. However, if it is determined by a final judgment that Lessor or the State of Idaho's negligent act or omission is the sole proximate cause of a suit or claim, neither Lessor nor the State of Idaho shall be entitled to indemnification from Lessee with respect to such suit or claim, and Lessor and the State of Idaho in its discretion, may reimburse Lessee for reasonable defense costs attributable to the defense provided by any Special Deputy Attorney General appointed pursuant to Section 18.C.
- C. Any legal defense provided by Lessee to Lessor and the State of Idaho under this Section must be free of any conflict of interest, even if retention of separate legal counsel for Lessee, and Lessor and the State of Idaho, is necessary. Any attorney appointed to represent Lessor and the State of Idaho must first qualify as and be appointed by the Attorney General of the State of Idaho as a Special Deputy Attorney General pursuant to Idaho Code Sections 67-1401(13) and 67-1409(1).

19. Audit Rights.

Audit Rights. Lessor shall have the right to audit, in such a manner, and at all reasonable times as it deems appropriate, all activities of Lessee arising in the course of its operation under this Lease. Lessee must maintain its books, records, documents, and other evidence of accounting in accordance with generally accepted accounting principles so as to properly reflect its business. At the sole discretion of Lessor, an audit of Lessee's books or the supporting tax documents that have been filed with the Internal Revenue Service or the State Sales Tax Report may be performed by a Certified Public Accountant or agent of the Department of Lands. If gross receipts is applicable under this Lease, and if an audit of gross receipts shows a discrepancy of ten percent (10%) or more of any amounts due under this Lease, then any additional rental owed, including all late charges calculated from the date the additional rent would have been due, and the entire cost of the audit, shall be paid to Lessor within thirty (30) days written notice to Lessee, unless otherwise agreed upon in writing by Lessor.

20. Reservations by Lessor.

Lessor expressly reserves to itself the following rights:

- A. All rights not expressly granted to Lessee under the Lease, including all rights to timber, water, oil and gas, geothermal rights, mineral rights, easements and rights-of-way, fee title to the Leased Premises, and title to all appurtenances and improvements placed thereon by Lessor or abandoned by any lessee.
- B. To grant easements and rights-of-way over and across the Leased Premises provided such easements or rights-of-way do not materially affect Lessee's use and enjoyment of the Leased Premises under the terms of the Lease. Lessor shall coordinate with Lessee before approving any easement or right-of-way application on the Leased Premises. If the easement or right-of-way materially and adversely impacts the value of Lessee's improvements, then Lessor, as the grantee of such easement or right-of-way, shall, before exercising the same, pay Lessee the reasonable diminution in value of any permitted improvements. Said value shall be determined by Lessor's valuation.
- C. To issue other leases on the Leased Premises. Such other leases may be for any purpose deemed appropriate by Lessor provided such other leases do not materially affect Lessee's use and enjoyment of the Leased Premises under the terms of the Lease. Other lease purposes may include, but is not limited to, the exploration and development of oil or gas, geothermal, mineral deposits, and placer deposits as provided by Title 47, Idaho Code. In the event any such other lease is granted by Lessor which materially and adversely impacts the value of Lessee's improvements, the other lessee shall, before exercising the same, pay Lessee the reasonable diminution in value of any permitted improvements. Said value shall be determined by Lessor's valuation.
- D. To require that changes be made in the use under the Lease, and/or to the improvements on the Leased Premises, including, but not limited to, the sanitation or other facilities for the protection of public health, safety, preservation of property or water quality.
- E. To reserve as Lessor's sole property any and all water appurtenant to Lessor's land or from any source arising thereon, and to hold water rights for any beneficial use that may be developed as a result of the Lease, and as further provided in *Section 13., Water Right and Water Use*, herein.
- F. Rights of ingress, egress, and access, over, under and across the Leased Premises for Lessor and its lessees, permittees, contractors, and assigns on existing roads, or on suitable alternative roads provided by Lessee.
- G. To change the use of the Leased Premises, in whole or in part, for other uses that will better achieve the fiduciary obligations of Lessor to endowment beneficiaries. Upon a change in use, the Lease may, at Lessor's discretion, be terminated in whole or as to the affected part. In the event of any such termination due to a change in use, the provisions of *Section 14., Construction of Improvements*, herein, relating to compensation for permitted improvements shall apply.
- H. To sell timber on the Leased Premises or otherwise conduct forest management activities. Lessor reserves the right to restrict or prohibit Lessee's use on all or portions of the Leased Premises for timber management purposes. Lessee will be given not less than one hundred eighty (180) calendar days written notice of any such restrictions or termination, together with a map of the restricted area.
- I. To restrict or prohibit Lessee's use of all or any portion thereof of the Leased Premises in response to emergency conditions including fires, flooding and drought.
- J. To sell all or any portion of the Leased Premises at any time during the term of the Lease, and as further provided in *Section 15., Sale, Exchange or Change-in-Use of Leased Premises*, herein.
- K. To harvest seed from plants on any portion of the Leased Premises. Lessor will coordinate the harvesting activities with Lessee to minimize impacts on communications operations.
- L. To close roads for road protection, wildlife protection or administrative purposes. Planned road closures will be reviewed with Lessee prior to action by Lessor.
- M. To claim all improvements placed upon the Leased Premises remaining after abandonment by Lessee, or to take possession immediately in cases of termination upon breach, and Lessee's failure to cure, of any of the

conditions of this Lease, or to remove the same in Lessor's sole discretion at Lessee's cost. No improvements will be disposed of by Lessor until all administrative procedures have been exhausted, waived, or not timely acted on by Lessee.

21. Lessee's Default.

- A. Lessee's Failure to Comply. Lessee's failure to comply with the Lease shall be a breach giving rise to a basis for termination of this Lease. Upon default by Lessee, Lessor shall provide Lessee a notice of default providing at least thirty (30) calendar days' written notice of default and opportunity to cure. Notice of any intention to terminate the Lease upon failure to cure shall be provided to Lessee. If the default is non-financial in nature and cannot reasonably be cured within thirty (30) days, then the corrective action required of Lessee and a longer period to cure may be provided by Lessor. If the corrective action or cure is not taken within the specified time or does not occur, then the Lease shall automatically terminate on the date specified in the written notice without any further notice or demand by Lessor, unless otherwise agreed by Lessor in writing. Lessee shall not, while in default or breach, remove any of the improvements unless directed by Lessor. In addition to the rights and remedies granted or reserved to Lessor in the Lease, Lessor shall have all other rights and remedies against Lessee as are available at law or in equity. Lessor's pursuit of any particular right or remedy for breach shall not, in and of itself, constitute a waiver or relinquishment of any other compatible claim or remedy against Lessee.
- B. Obligations incurred by Reason of Lessee Default. In the event Lessee fails to perform any act or do anything which Lessee is required to do under the terms of this Lease, Lessor shall have the right, but not the obligation, to perform on behalf of Lessee, any such action. Lessee shall immediately reimburse Lessor for all costs and expenses, including attorney fees (including fees from the Office of the Attorney General of the State of Idaho), incurred by Lessor in performing any such act or thing. Lessee's obligation to pay costs hereunder shall be deemed to be a non-standard administrative cost.

22. Notices.

- A. Notices. Any notice or demand given under the terms of the Lease shall be deemed given and delivered on the date when personally delivered, or if mailed, the date written notice is deposited in the United States Mail, and mailed by regular or certified mail, postage prepaid and properly addressed to the appropriate party.
- B. Addresses. Unless changed by notice in writing, any notice, demand, and communication under the Lease shall be addressed to Lessor at:

Idaho State Board of Land Commissioners
c/o Idaho Department of Lands
300 North 6th Street, Suite 103
PO Box 83720
Boise ID 83720-0050

and to Lessee at the address set forth at the beginning of the Lease. Any notice or correspondence mailed to Lessee at the last identified address shall be deemed effective delivery. It is Lessee's duty to notify Lessor, in writing, of any change in mailing address.

23. Waiver.

The waiver by Lessor of any breach of any term, covenant, or condition of this Lease shall not be deemed to be a waiver of any past, present, or future breach of the same or any other term, covenant, or condition of this Lease. The acceptance of rent by Lessor shall not be construed to be a waiver of any term of this Lease. No payment by Lessee of any amount less than that due and owing, according to the terms of this Lease shall be deemed or construed to be other than a partial payment on account of the most recent rent due, nor shall any endorsement or statement of any check or letter accompanying any payment be deemed to create an accord and satisfaction.

24. Attorney's Fees and Costs.

In the event either party initiates a legal proceeding under the Lease, the prevailing party in that legal proceeding shall be entitled to such additional sums as the court may award for reasonable attorney fees (including fees from the Office of the Attorney General of the State of Idaho) and costs (including appraisal fees and expert fees) incurred in such proceeding, and on appeal.

25. Miscellaneous.

- A. Modification. The terms of the Lease, excluding the rent adjustments, may be modified only by the prior written consent of the authorized representatives of Lessor and Lessee.
- B. Appraisals and Valuations. Any appraisal or valuation by Lessor called for in this Lease shall be done by Lessor in accordance with applicable state laws and regulations, and the then-existing policy of Lessor, if any.
- C. Subject to Existing Leases/Easements. This Lease is expressly subject to any right-of-way permit, easement, lease or contract, including any present or future timber sale contract, that is now in force and effect, or that may hereafter be granted relating to the Leased Premises.
- D. Timber. This Lease does not authorize Lessee to cut any timber growing on the Leased Premises. Any unauthorized use of such timber by Lessee or with Lessee's knowledge or consent, shall result in termination of the Lease without notice and an opportunity to cure. Lessee shall be responsible for all damages incurred by reason of such breach, including treble damages for the value of any timber used or taken and all other damages. Said timber value will be determined by Lessor.
- E. Lessee's Non-Discrimination. Lessee shall not discriminate against any person because of race, creed, religion, color, sex, national origin or disability.
- F. Paragraph Headings. The paragraph headings, titles, and captions used in this Lease are not to be construed as interpretations, but are inserted for convenience and reference only.
- G. Entire Agreement. This Lease (including the Summary of Lease Provisions, Lease Provisions, Signature Pages and all Attachments) contains the entire agreement between the parties concerning the subject matter hereof and supersedes all prior agreements. The execution of this Lease has not been induced by either party, or any agent of either party, by representations, promises, or undertakings not expressed herein and further, there are no collateral agreements, stipulations, covenants, promises, inducements or undertakings whatsoever between the respective parties concerning this Lease except those expressly contained herein.
- H. Governing Law and Forum. This Lease shall be construed in accordance with and governed by the laws of the State of Idaho and the parties consent to the jurisdiction and venue of the Idaho State District Court located in Ada County in the event of any dispute with respect to this Lease or the Leased Premises
- I. Binding on Heirs and Successors. The Lease shall inure to the benefit of and be binding upon the heirs, executors, successors, sublessees, and assigns of the parties in accordance with the terms hereof.
- J. Severability. In the event any provision of this Lease shall be held invalid or unenforceable according to law, for any reason whatsoever, then the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.
- K. License/Authorizations. Lessee shall be responsible for paying any fees for any license or authorizations that may be required from other entities as required in the course of doing business as it relates to this Lease.

This Lease (including the Summary of Lease Provisions, Lease Provisions, Signature Pages, and all Attachments) is made and entered into by and between the State of Idaho, acting by and through Lessor, and Lessee.

LESSOR SIGNATURES

COUNTERSIGNED: STATE BOARD OF LAND COMMISSIONERS OF THE STATE OF IDAHO

Secretary of the State of Idaho

President of the State Board of Land Commissioners
and Governor of the State of Idaho

Director of the Department of Lands

STATE OF IDAHO) (SEAL)
COUNTY OF ADA) :ss

On this _____ day of _____, in the year _____, before me, a Notary Public in and for said State, personally appeared Brad Little, known to me to be the president of the State Board of Land Commissioners of the State of Idaho and the Governor of the State of Idaho; and Lawrence E. Denney, known to me to be the Secretary of the State of Idaho and Dustin T. Miller, known to me to be the Director, that executed the within instrument, and acknowledged to me that the State Board of Land Commissioners of the State of Idaho and the State of Idaho executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year last above written.

Notary Public: _____

Commission Expiration: _____

This Lease (including the Summary of Lease Provisions, Lease Provisions, Signature Pages, and all Attachments) is made and entered into by and between the State of Idaho, acting by and through Lessor, and Lessee.

LESSEE SIGNATURE(S)

(Lessee/Company)

(Date)

(Lessee/Company)

(Date)

STATE OF _____)

:ss

(SEAL)

COUNTY OF _____)

On this _____ day of _____, in the year _____, before me _____, a Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is (are) subscribed to the within instrument, and acknowledged that he (she) (they) executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year last above written.

Notary Public: _____

Commission Expiration: _____

ATTACHMENT A
SPECIAL TERMS AND CONDITIONS



ATTACHMENT B

LEGAL DESCRIPTION OF LEASED PREMISES

Instrument Number	Township	Range	Section	Legal Description	County	Endowment	Acres

Lessor may provide more specific legal description.

IDAHO DEPARTMENT OF LANDS

ATTACHMENT C

SITE MAP(S)



**ATTACHMENT D
REPORTS**

**ANNUAL CO-LOCATOR INVENTORY
and
CERTIFICATION OF FACILITY OWNER OR MANAGER**

Lessee shall submit an ANNUAL CO-LOCATOR INVENTORY report to Lessor by January 31st of each year. The report template is attached to this Lease and should be copied annually for use. Lessee is required to identify all Co-Locators as described in Sections 6.G. and 6.H. Information supplied in this report will include Co-Locator's legal entity name, the primary use for the Co-Locators equipment, and the date that the Co-Locator first installed equipment on/in the communication site. Lessee is required to certify and sign the annual report prior to submitting it.

IDAHO DEPARTMENT OF LANDS

ATTACHMENT D
REPORTS

STATE COMMUNICATION SITE LEASE

**ANNUAL CO-LOCATOR INVENTORY
and
CERTIFICATION OF FACILITY OWNER OR MANAGER**



Lessee Name: _____

Lease Number: _____

Do you, as the owner of this communications facility, operate any communications equipment in this facility?

☐ Yes

☐ No

If Yes, what is your Use? (See list below): _____

Co-Locator Inventory

List all Co-Locators in your facility as of January 1 of this year.

Co-Locator Name	Use *	Date/Year First In Facility

***Use Categories**

TV	Broadcast Television	Cell Phone	Cellular Telephone
AM/FM Radio	Broadcast AM/FM Radio	PMRS	Private Mobile Radio Services
Cable TV	Cable Television	Micro/ISP/Broad	Microwave/Internet Service Provider/Broadband uses
BT/LPTV/LPFM	Broadcast Translator/Low Power Television/Low Power FM Radio	Other	Small, unobtrusive, low power monitoring or controlling devices
CMRS/Fac Mgr	Commercial Mobile Radio Services (i.e., paging) / Facility Manager		

I certify that to the best of my knowledge the information provided above is true, correct, and complete. I acknowledge that inaccurate reporting of use may lead to the termination of my lease.

Printed Name _____

Signature _____

Date _____

Phone Number _____

Email Address _____

Please mail completed form to Area Office, Addr1, City, State Zip no later than January 31st

***** **Area and Bureau Office Use Only** *****

Area Reviewer: _____

(IDL DATE STAMP)

Form Distribution: Bureau File

ATTACHMENT E
EXISTING IMPROVEMENTS



LEGAL NOTICES

IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT FOR THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

IN RE: CARLOS E. PALOMERA
Legal Name

CASE NO. CV07-19-687
NOTICE OF HEARING ON
NAME CHANGE
(Adult or Emancipated Minor)

A Petition to change the name of Carlos E. Palomera, now residing in the City of Hailey, State of Idaho, has been filed in the District Court in Blaine County, Idaho. The name will change to Carlos Emilio Palomera Gonzalez. The reason for the change in name is: I am wanting to add my mother's maiden last name and correct middle initial to complete middle name.

A hearing on the petition is scheduled for 4:00 p.m. on January 14, 2020 at the Blaine County Courthouse. Objections may be filed by any person who can show the court a good reason against the name change.
Dated: November 15, 2019

CLERK OF THE DISTRICT COURT
By: /s/ Jolynn Drage
Deputy Clerk

PUBLISH
IDAHO MOUNTAIN EXPRESS
NOV. 27, DEC. 4, 11, & 18, 2019

IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT FOR THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

IN RE: JOEL PALOMERA
Legal Name

CASE NO. CV07-19-686
NOTICE OF HEARING ON
NAME CHANGE
(Adult or Emancipated Minor)

A Petition to change the name of Joel Palomera, now residing in the City of Hailey, State of Idaho, has been filed in the District Court in Blaine County, Idaho. The name will change to Joel Palomera Gonzalez. The reason for the change in name is: I am wanting to add my mother's maiden last name.

A hearing on the petition is scheduled for 4:00 p.m. on January 14, 2020 at the Blaine County Courthouse. Objections may be filed by any person who can show the court a good reason against the name change.
Dated: November 15, 2019
CLERK OF THE DISTRICT COURT
By: /s/ Jolynn Drage
Deputy Clerk

PUBLISH
IDAHO MOUNTAIN EXPRESS
NOV. 27, DEC. 4, 11, & 18, 2019

IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT FOR THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

IN RE: ACE LEVY ALGIERZ
DICE LEVY ALGIERZ
SNOW LEVY ALGIERZ
Legal names of children

CASE NO. CV07-19-694
NOTICE OF HEARING ON
NAME CHANGE (Minors)

A Petition to change the name of (1) Ace Levy Algierz, and the name of (2) Dice Levy Algierz, and the name of (3) Snow Levy Algierz, all minors, now residing in the City of Sun Valley, State of Idaho, has been filed in the District Court in Blaine County, Idaho. The name will change to (1) Ace Algiers Levy; (2) Dice Algiers Levy and (3) Snow Algiers Levy. The reason for the change in name is: Father is changing his own name back to his original name and spelling. Both parents want the children to have the same middle name and last name as the father.

A hearing on the petition is scheduled for 11:00 a.m. on January 7, 2020 at the Blaine County Courthouse. Objections may be filed by any person who can show the court a good reason against the name changes.
Dated: November 21, 2019

CLERK OF THE DISTRICT COURT
By: /s/ Andrea Logan
Deputy Clerk

PUBLISH
IDAHO MOUNTAIN EXPRESS
NOV. 27, DEC. 4, 11 & 18, 2019

IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT FOR THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

IN RE: DANIEL LUCAS LEVY ALGIERZ
Legal Name

CASE NO. CV07-19-696
NOTICE OF HEARING ON
NAME CHANGE
(Adult or Emancipated Minor)

A Petition to change the name of Daniel Lucas Levy Algierz, now residing in the City of Sun Valley, State of Idaho, has been filed in the District Court in Blaine County, Idaho. The name will change to Daniel Algiers Lucas Levy. The reason for the change in name is: When I was 23 years old I changed my name. Now I want to change it back to what it was originally before I changed it.

A hearing on the petition is scheduled for 11:00 a.m. on January 7, 2020 at the Blaine County Courthouse. Objections may be filed by any person who can show the court a good reason against the name change.
Dated: November 21, 2019

CLERK OF THE DISTRICT COURT
By: /s/ Andrea Logan
Deputy Clerk

PUBLISH
IDAHO MOUNTAIN EXPRESS
NOV. 27, DEC. 4, 11 & 18, 2019

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

IN THE MATTER OF THE ESTATE OF
HERSCHEL A COX,
Deceased.

Case No. CV07-19-00705
NOTICE TO CREDITORS

NOTICE IS HEREBY GIVEN that the undersigned have been appointed Co-Personal Representatives of the above-named decedent. All persons having claims against the decedent or the estate are required to present their claims within four months after the date of the first publication of this Notice or said claims will be forever barred.

Claims must be presented to the undersigned at the address indicated, and filed with the Clerk of the Court.

Dated this 22nd day of November, 2019.

/s/ Kathleen C. Miller
c/o Lee P. Ritzau
Luboviski, Wygle, Fallowfield & Ritzau
P.O Box 1172
Ketchum, ID 83340

/s/ Bart Cox
c/o Lee P. Ritzau
Luboviski, Wygle, Fallowfield & Ritzau
P.O Box 1172
Ketchum, ID 83340

PUBLISH
IDAHO MOUNTAIN EXPRESS
DEC. 4, 11 & 18, 2019

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Sun Valley Planning & Zoning Commission will hold a public hearing on Thursday, December 19th, 2019 at 9:00 AM at City Hall Council Chambers, 81 Elkhorn Road, Sun Valley, ID to hear comments from the public concerning the following applications:

• **DR2019-071:** Application for design review approval of exterior renovations to the New Villager Condominiums at Villager Condo Drive. Applicant: Buffalo Rixon for The New Villager Condominium Association. Location: New Villager Condos Common Area.

• **DR 2019-072:** Application for design review approval of one new single-family residence at 52 E Lane Ranch. Applicant: Janet Jarvis for Cynthia Dodge (Property Owner). Location: Lane Ranch Subdivision Lot 12.

• **DR 2019-075:** Application for design review approval of modifications to the existing AT&T Cell Tower at Sun Valley Lodge, 152 Baldy View Loop. Applicant: Tamara Shively with AT&T Mobility, for Sun Valley Company (Property Owner). Location: Sun Valley Village.

• **CUP 2019-01:** Application for conditional use approval of the AT&T Cell tower in the Commercial Core (CC) Zoning District at 152 Baldy View Loop. Applicant: Tamara Shively with AT&T Mobility, for Sun Valley Company (Property Owner). Location: Sun Valley Village.

At the aforementioned time and place, all interested persons may appear and shall be given an opportunity to comment on the matters stated above. Comments and questions prior to the public meeting should be directed to the City of Sun Valley Community Development Department at PO Box 416, Sun Valley, ID 83353, or emailed to cdcounter@sunvalleyidaho.gov. Written comments received prior to the meeting shall be made part of the public record at the meeting. Applications are on file in the Community Development Department located in City Hall for public inspection during normal City Hall business hours.

PUBLISH
IDAHO MOUNTAIN EXPRESS
DEC. 4, 11 & 18, 2019

IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT FOR THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

IN RE: EDEN JADE MCGOWAN
Legal Name

CASE NO. CV07-19-698
NOTICE OF HEARING ON
NAME CHANGE
(Adult or Emancipated Minor)

A Petition to change the name of Eden Jade McGowan, now residing in the City of Bellevue, State of Idaho, has been filed in the District Court in Blaine County, Idaho. The name will change to Eden Jade Grey. The reason for the change in name is: I no longer want to be associated with my biological father, whose name is McGowan.

A hearing on the petition is scheduled for 10:30 a.m. on January 7, 2020 at the Blaine County Courthouse. Objections may be filed by any person who can show the court a good reason against the name change.
Dated: November 22, 2019

CLERK OF THE DISTRICT COURT
By: /s/ Jolynn Drage
Deputy Clerk

PUBLISH
IDAHO MOUNTAIN EXPRESS
DEC. 4, 11, 18 & 25, 2019

DEPARTMENT OF
HOMELAND SECURITY

FEDERAL EMERGENCY
MANAGEMENT AGENCY

Proposed Flood Hazard Determinations for the Unincorporated Areas of Blaine County, Idaho, and Case No. 19-10-0919P. The Department of Homeland Security's Federal Emergency Management Agency (FEMA) solicits technical information or comments on proposed flood hazard determinations for the Flood Insurance Rate Map (FIRM), and where applicable, the Flood Insurance Study (FIS) report for your community. These flood hazard determinations may include the addition or modification of Base Flood Elevations, base flood depths, Special Flood Hazard Area boundaries or zone designations, or the regulatory floodway. The FIRM and, if applicable, the FIS report have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations. These determinations are the basis for the floodplain management measures that your community is required to adopt or show evidence of having in effect to qualify or remain qualified for participation in the National Flood Insurance Program. For more information on

the proposed flood hazard determinations and information on the statutory 90-day period provided for appeals, please visit FEMA's website at www.fema.gov/plan/prevent/fhm/bfe, or call the FEMA Map Information eXchange (FMIX) toll free at 1-877-FEMA MAP (1-877-336-2627).

PUBLISH
IDAHO MOUNTAIN EXPRESS
DEC. 4 & 11, 2019

NOTICE OF LIEN

Storage Plus will execute its lien of the contents of the storage space(s) named below, with StoragePlus taking possession of items at the following location and time. Items to be sold to the highest bidder on www.storage-treasures.com

StoragePlus, Hailey, 11819 HWY 75, Hailey, ID 83333, (208) 578-4018
On Friday, December 20, 2019 at 10:00 a.m.

Unit: B602
Tenant: Kimberly Crowson
Address: PO Box 1404
Hailey, ID 83333
Items: Dresser, chair, couch, clothing, books, multiple bags - unknown content

Unit: C68
Tenant: Hadley Barrett
Address: 161 East 25th St Apt 5A
New York, NY 10010
Items: Electra Townie Bike and an unknown piece of furniture

PUBLISH
IDAHO MOUNTAIN EXPRESS
DEC. 4 & 11, 2019

ORDINANCE 1205

AN ORDINANCE OF THE CITY OF KETCHUM, BLAINE COUNTY IDAHO, REPEALING KETCHUM MUNICIPAL CODE SECTION 10.08.310 USE OF WIRELESS COMMUNICATION DEVICES AND REPLACING WITH SECTION 10.08.310 USE OF HANDHELD WIRELESS DEVICES, PROHIBITING THE USE OF HANDHELD WIRELESS DEVICES WHILE OPERATING A VEHICLE UPON A STREET OR HIGHWAY WITHIN THE CITY OF KETCHUM AND ADOPTING A SAVINGS AND SEVERABILITY CLAUSE, A REPEALER CLAUSE, A PUBLICATION CLAUSE AND PROVIDING AN EFFECTIVE DATE

WHEREAS, distracted driving adversely impacts public safety by contributing to traffic accidents, injuries, and fatalities;

WHEREAS, the use of handheld wireless devices while operating a vehicle is a cause of distracted driving; and,

WHEREAS, distracted driving can be a cause of road rage which may lead to violence between motorists; and,

WHEREAS, in 2016 the City of Ketchum adopted Ordinance 1152 prohibiting use of wireless communication devices; and,

WHEREAS, The City of Ketchum Ordinance needs to be revised to reflect recent court decisions related to prohibiting the use of handheld wireless devises while operating a vehicle;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF KETCHUM, IDAHO:

Section 1. That section 10.08.310 is repealed from the Ketchum Municipal Code.

Section 2. That Section 10.08.310 be added to the Ketchum Municipal Code as follows:

10.08.310: USE OF HANDHELD WIRELESS DEVICES

A. PROHIBITED ACTS:

It shall be unlawful to use a handheld wireless device while operating a vehicle upon a street or highway within the City of Ketchum.

B. EXCEPTIONS:

Section 10.08.310 A shall not apply to the following:

1. Use of a handheld wireless device in a voice-operated mode, where the operator of the vehicle does not hold or manually operate the device, except to activate or deactivate the voice-operated function of the device.

2. Use of a navigation feature on a handheld wireless device, provided that the operator of the vehicle does not hold or manually enter information into the device, except to activate or deactivate the navigation feature on the device.

3. Use of a handheld wireless device to report an emergency to a law enforcement agency, fire department, health care provider, or other emergency services provider.

4. Use of a handheld wireless device while the vehicle is parked off the roadway.

5. Use of a handheld wireless device by a peace officer, firefighter, paramedic, emergency medical technician, or other public safety first responder during the performance of that person's official duties.

6. Use of a handheld wireless device by a public utility employee or contractor acting within the scope of that person's employment while responding to a public utility emergency.

C. DEFINITIONS:

The definitions set forth in Title 49, Chapter 1, Idaho Code shall apply to terms used in this Section. Further, for purposes of this Section, the following terms shall be defined as follows:

1. Handheld Wireless Device. Any handheld or portable electronic device capable of receiving, producing, displaying, or providing wireless data or voice communication. "Handheld wireless device" shall not include a radio designed for the citizen band service or the amateur radio service of the Federal Communications Commission or a commercial two-way radio communications device.

Section 3: SAVINGS AND SEVERABILITY CLAUSE. It is hereby declared to be the legislative intent that the provisions and parts of this Ordinance shall be severable. If any paragraph, part, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid for any reason by a Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

Section 4: REPEALER CLAUSE. All City of Ketchum Ordinances or parts thereof which are in conflict herewith are hereby repealed.

Section 5: PUBLICATION. This Ordinance, or a summary thereof in compliance with Section 50-901A, Idaho Code, substantially in the form annexed hereto shall be published once in the official newspaper of the City, and shall take effect immediately upon its passage, approval, and publication.

Section 6: EFFECTIVE DATE. This Ordinance shall be in full force and effect after its passage, approval and publication, according to law.

PASSED BY the CITY COUNCIL and APPROVED by the MAYOR of Ketchum, Idaho, on this 2nd day of December 2019.

APPROVED BY the Mayor of the City of Ketchum, Idaho, this 2nd day of December 2019.

APPROVED:

Neil Bradshaw, Mayor

ATTEST:

Robin Crotty, City Clerk

PUBLISH
IDAHO MOUNTAIN EXPRESS
DEC. 11, 2019

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

VIRGIN GRAND VILLAS – ST. JOHN CONDOMINIUM OWNERS ASSOCIATION
Plaintiff,

vs.

HILARY HARTER,
Defendant.

Case No. ST-19-CV-414
ACTION FOR DEBT FORECLOSURE OF LIEN AND BREACH OF CONTRACT

FIRST AMENDED SUMMONS

To:Hilary Harter
601 S. Main St. Apt. 12
Ketchum, ID 83340

Within the time limited by law (see note below) you are hereby required to appear before this Court and answer to a complaint filed against you in this action and in case of your failure to appear or answer, judgment by default will be taken against you as demanded in the First Amended Complaint, for

DEBT AND FORECLOSURE OF LIEN AND BREACH OF CONTRACT.

PURSUANT TO COURT ORDER FOR SERVICE BY PUBLICATION ENTERED BY HON. JUDGE KATHLEEN MACKAY ON OCTOBER 28, 2019.

Witness my hand and the Seal of this Court this 1st day of November, 2019.

ESTRELLA H. GEORGE
Clerk of the Court

By: Jeanette M. Smith
Deputy Clerk

Richard H. Dollison, Esq.
Michall J. LaRochelle, Esq.
Attorneys for Plaintiff,
Law Offices of Richard H. Dollison, P.C.
5143 Palm Passage, Ste. B28/29
P.O. Box 6135
St. Thomas, U.S.V.I. 00804

NOTE: This defendant, if served personally, is required to file his/her answer or other defenses with the Clerk of this Court, and to serve a copy thereof upon the plaintiff's attorney within twenty one (21) days after service of this summons, excluding the date of service. The defendant, if served by publication or by personal service outside of the jurisdiction, is required to file his/her answer or other defense with the Clerk of this Court within thirty (30) days after the completion of the period of publication or personal service outside of the jurisdiction, and to serve a copy thereof upon the attorney for the plaintiff, and in the case of any form of mailing requiring a signed receipt, within 30 days from the date of receipt as indicated by the signed receipt.

PUBLISH
IDAHO MOUNTAIN EXPRESS
DEC. 11, 18, 25, 2019 & JAN. 1, 2020

BLAINE COUNTY
ORDINANCE NO. 2019 - 11

AN ORDINANCE OF BLAINE COUNTY, IDAHO, AMENDING BLAINE COUNTY CODE, TITLE 9, ZONING REGULATIONS BY: AMENDING TITLE 9, CHAPTER 4, SECTION 7 (ZONING MAPS) BY THE ADOPTION OF A MAP REMOVING THE AREA OF MOUNTAIN OVERLAY DISTRICT FROM TAX LOT 7311 AND PORTIONS OF T1S, R20E, NE1/4, SESE of SECTION 18 AND NW1/4 of SECTION 17; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Blaine County's Planning and Zoning Commission, after holding an adequately noticed hearing on September 10, 2017, has reviewed this application pursuant to the relevant criteria and made a recommendation to approve an amendment to the zoning map, removing the area of Mountain Overlay District from Tax Lot 7311 and portions of T1S, R20E, NE1/4, SESE of Section 18 and NW1/4 of Section 17

due to a mapping error.

WHEREAS, Blaine County's Board of County Commissioners, after holding an adequately noticed hearing on November 19, 2019, has received the Commission's recommendation, reviewed the application pursuant to the relevant criteria and approved the corrective amendment to the zoning map.

NOW, THEREFORE, be it ordained by the Board of County Commissioners of Blaine County, Idaho:

Section 1. That the Zoning Map referenced in Blaine County Code, Title 9, Chapter 4, Section 7 shall be and the same is hereby amended, changed and altered by removing the area of Mountain Overlay District from Tax Lot 7311 and portions of T1S, R20E, NE1/4, SESE of Section 18 and NW1/4 of Section 17, as shown on attached Exhibit A.

Section 2. Severability Clause. The Board of County Commissioners intends that each separate provision of this Ordinance be deemed independent of all other provisions herein, and it is further the intention of said Board that if any of the provisions of this ordinance be declared to be invalid, then all other provisions thereof shall remain valid and enforceable.

Section 3. Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval and publication.

Regularly passed, approved and adopted by the Board of County Commissioners of Blaine County, Idaho, this 26th day of November, 2019.

BOARD OF COUNTY COMMISSIONERS OF BLAINE COUNTY, IDAHO

Jacob Greenberg, Chairman

Angenie McCleary, Commissioner

Dick Fosbury, Commissioner

ATTEST: JoLynn Drage, Clerk

PUBLISH
IDAHO MOUNTAIN EXPRESS
DEC. 11, 2019

LEGAL NOTICE
BLAINE COUNTY BOARD OF COUNTY COMMISSIONERS
JANUARY 14, 2020

On Tuesday, January 14, 2020, the Blaine County Board of County Commissioners ("Board") will hold a public meeting upstairs in the Old County Courthouse located at 206 First Ave. So., in Hailey. Items on their agenda include the following:

1:30 P.M. ACTION ITEM: CONTINUED LEES GULCH ROAD VALIDATION HEARING:
Pursuant to Idaho Code Section 40-203A, the Board of Blaine County Commissioners will continue a public hearing to consider the validation of a portion of Lees Gulch Road west of Bellevue from the intersection with Townsend Gulch Road to the western edge of Lot 2, Lees Gulch Subdivision in Government Lots 2 and 3 of Section 2, Township 1N, Range 18E, B.M. In other words, the validation proceeding will address only the portion of Lees Gulch Road crossing private property, not the portion on BLM land.

As they become available, materials relevant to this validation proceeding will be available for inspection at the Commissioners' Office in the Blaine County Courthouse and at the Land Use Office in the Annex Building Monday thru Thursday between 8 a.m. and 6 p.m. These materials are anticipated to include: (1) a survey of the portion of Lees Gulch Road that is the subject of the validation proceeding ("Survey"), (2) a report entitled Lee's Gulch Road History prepared at the direction of the Board by Stevens Historical Research Associates dated 7/16/2019 ("Historical Report"), (3) a memorandum of law prepared at the

direction of the Board by Christopher H. Meyer dated 9/6/2019 ("Legal Memorandum"), (4) a copy of the Idaho Road Law Handbook authored by Christopher H. Meyer dated 9/3/2019 ("Handbook"), (5) a Staff Report prepared at the direction of the Board, (6) any other materials as may be prepared by or at the direction of the Board (7) any other materials submitted to the County for the record in this proceeding. As they become available, these materials also will be posted to the County's website and made available at the following link: <https://www.co.blaine.id.us/199/County-Commissioner-Hearing-Application->

Written comments, legal argument, and documentary evidence of all types (collectively "Written Comments") are invited and welcome until December 31, 2019. Written Comments are particularly requested with respect to: (1) support or disagreement with the historical and legal materials referenced above, (2) any new evidence, and (3) matters of the public interest respecting public access, public safety, and private property. In order to ensure adequate time for review, consideration, and comment, the Board requests that Written Comments be submitted by December 31 2019.

Written Comments may be submitted to the Blaine County Board of Commissioners at the following address:

Board of Blaine County Commissioners
County Courthouse
206 1st Ave South, Suite 300
Hailey, Idaho 83333

Written Comments may also be sent by e-mail to pzcounter@co.blaine.id.us (10mb max.) or by fax to (208)788-5576.

At the hearing, the Board will first hear testimony from invited witnesses and persons, if any, who have made advance arrangements for presentations. Thereafter, the Board will hear oral comment and testimony from members of the public.

In addition to considering the Survey, Historical Report, Legal Memorandum, and Staff Report referenced above, during the hearing the Board will accept testimony and evidence from the public to determine whether the relevant portion of Lees Gulch Road is a public road, the width of the road, the type of property interest (easement versus fee), and whether validation of this portion of Lees Gulch Road is in the public interest.

At the conclusion of the hearing, the Board may deliberate and vote on the proposed validation or take the matter under advisement. Upon making a final decision, a written decision and order will be drafted and approved at a later date. Except by order of the Board, no additional evidence will be accepted after the close of the hearing.

In addition to the above, submissions of Written Comments, inquiries, and any questions should be directed to: Kristine Hilt, CFM
Code Compliance Specialist
Blaine County Land Use & Building Services
New Courthouse Annex Building
219 First Ave South, Ste 208
Hailey, ID 83333
khilt@co.blaine.id.us
Office: (208) 788-5570 x1177

PUBLISH
IDAHO MOUNTAIN EXPRESS
DEC. 11, 2019

LEGAL NOTICE
STATE OF IDAHO LAND LEASE OPPORTUNITY
ACCEPTING APPLICATIONS FOR AUCTION OF LEASE

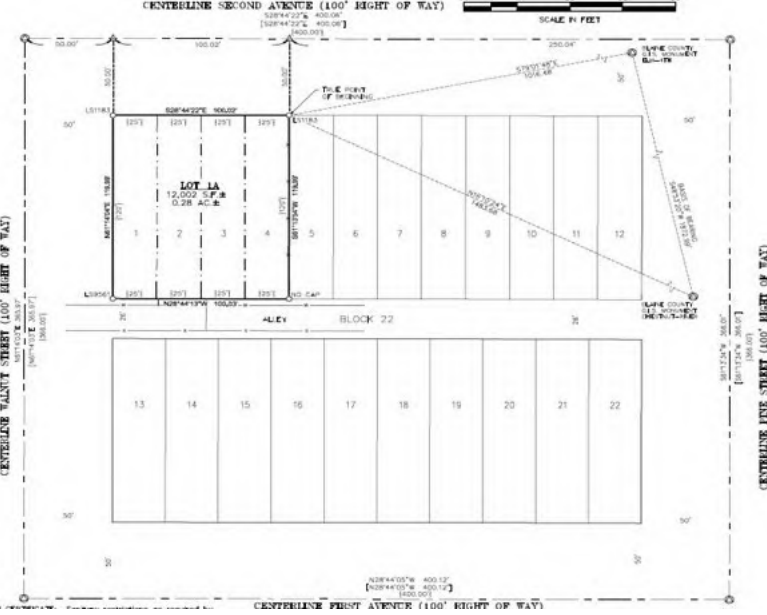
Notice is hereby given pursuant to Article IX, § 8 of the Idaho Constitution and Idaho Code §§ 58-307, -310 and -313, the State of Idaho, Department of Lands (hereinafter "IDL"), will accept lease applications for public auction of the lease set forth below. Lease application deadline is Friday, January 10, 2020 by 5:00 PM.

If more than one application is received for a lease(s), IDL will schedule a date, time and location for a live auction.

NOTICE OF PUBLIC COMMENT FOR LOT LINE ADJUSTMENT – CITY OF HAILEY
PUBLIC COMMENT PERIOD: DECEMBER 11, 2019 – JANUARY 2, 2020

Public Notice is hereby given the City of Hailey is seeking public comment on an Application for a Lot Line Adjustment, submitted by Galena Engineering on behalf of Hill Family Revocable Trust: James T. Hill Trustee, wherein the interior lot lines between Lots 1 - 4, Block 22, Hailey Townsite, are eliminated. This reconfiguration would form one lot, Lot 1A, comprising of 12,002 square feet. The Lot Line Adjustment is located at 303 South Second Avenue (Section 9, T.2 N., R.18 E., B.M., City of Hailey, Blaine County, Idaho). The parcel is located in the Transitional (T) and Townsite Overlay (TO) Zoning Districts.

Public comment will be received on this proposed Lot Line Adjustment from December 11, 2019 – January 2, 2020. Comments can be submitted via email to planning@haileycityhall.org, by phone (see number below), or by making an appointment with the Community Development Department by calling 208-788-9815.



PUBLISH
IDAHO MOUNTAIN EXPRESS
DEC. 11, 2019

The lease(s) will then be awarded to the bidder who will pay the highest premium bid therefore. Annual rental rates have been established by IDL.

General information regarding each lease is set forth below. Detailed information regarding each lease, including a specific legal description of the property to be leased, rental rates, and instructions to complete an application, and the application fee may be obtained by visiting IDL's website at <https://www.idl.idaho.gov/>.

Lease No.: M=Communication Site, Length, Use, Legal Description

Contact Meribeth Lomkin at 208-324-2561 for more information.

M700056, 10yr, Facility Manager, .23 acres located in PT SENWSW, T02N-R18E-S16.

M700084, 20yr, Facility Manager/3-Co-locator-Cellular, .23 acres located in PT SWNW, T03N-R18E-S33.

PUBLISH
IDAHO MOUNTAIN EXPRESS
DEC. 11, 18, 25, 2019 & JAN. 1, 2020

CITY OF SUN VALLEY, IDAHO
ORDINANCE NO. 542
ORDINANCE AMENDING ANNUAL APPROPRIATION ORDINANCE 531, FOR THE CITY OF SUN VALLEY, IDAHO
FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2018
ADOPTED BY THE CITY COUNCIL OF THE CITY OF SUN VALLEY, IDAHO
THIS 5TH DAY OF DECEMBER 2019
ORDINANCE NO. 542

AN ORDINANCE AMENDING ORDINANCE 531 FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2018 AND ENDING SEPTEMBER 30, 2019 AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Sun Valley is a unit of local government organized and existing pursuant to Title 50 of the Idaho Code; and

WHEREAS, pursuant to Idaho Code Section 50-1001 the City of Sun Valley fiscal year begins on the first day of October; and

WHEREAS, pursuant to Idaho Code Title 50 Chapter 10 Section 50-1003

the City Council shall adopt an annual appropriation ordinance prior to the commencement of each fiscal year, which in no event shall be greater than the amount of the tentative budget; and

WHEREAS, pursuant to Idaho Code Title 50 Chapter 10 Section 50-1003 the annual appropriation ordinance may be amended at any time during the current fiscal year if any additional revenue is available from any source; and

WHEREAS, the Sun Valley City Council considered said budget amendment and has conducted a public hearing thereon and determined that said budget should be adopted.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SUN VALLEY, IDAHO, COUNTY OF BLAINE, STATE OF IDAHO, AS FOLLOWS:

SECTION 1: That Ordinance 531, the appropriation ordinance for the City of Sun Valley, Idaho for the fiscal year beginning October 1, 2018 and ending September 30, 2019 and the same is hereby amended. The following sums are hereby appropriated:

	FY 2019 ORIGINAL BUDGET
	\$ 633,747
1% Local Option Tax (LOT) Fund	FY 2019 AMENDED BUDGET
	\$ 751,459

SECTION 2: All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

SECTION 3: This ordinance shall take effect and be in full force upon its passage, approval and publication according to law.

PASSED BY THE CITY COUNCIL OF THE CITY OF SUN VALLEY AND APPROVED BY THE MAYOR THIS 5th DAY OF DECEMBER, 2019.

APPROVED: /s/ Peter M. Hendricks, Mayor

ATTEST: /s/Nancy Flannigan, City Clerk

PUBLISH
IDAHO MOUNTAIN EXPRESS
DEC. 11, 2019

LEGAL NOTICES

IN THE DISTRICT COURT OF THE
FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR
THE COUNTY OF BLAINE
MAGISTRATE DIVISION

IN THE MATTER OF THE ESTATE
OF
JANICE VIVIAN KEENAN,
Deceased.

Case No. CV07-19-00716
NOTICE TO CREDITORS

NOTICE IS GIVEN that DEN-
NIS KEENAN, also known as DEN-
NIS KEENAN III, has been appointed
Personal Representative of the Estate
Decedent JANICE VIVIAN KEENAN.
All persons having claims against the
Decedent or the Estate are required
to present their claims within four (4)
months after the date of the first publica-
tion of this Notice or said claims will be
forever barred.

Claims must be presented to the
undersigned at the address indicated,
or filed with the Clerk of this Court.

Dated this 11th day of December, 2019.

Attorney for Personal Representative,
DENNIS KEENAN

/s/ John A. Seiller
John A. Seiller Attorney at Law PLLC
P.O Box 6090
Ketchum, ID 83340

PUBLISH
IDAHO MOUNTAIN EXPRESS
DEC. 11, 18 & 25, 2019

NOTICE OF
TRUSTEE’S SALES

NOTICE OF TRUSTEE’S SALE
TS NO: ID-19-849621-SW

NOTICE IS HEREBY GIVEN that on
4/9/2020, at the hour of 11:00 AM of
said day, Blaine County Courthouse
Front Steps Old Building 206 1st
Ave So Hailey ID 83333, said Trustee
will sell at public auction to the high-
est bidder, for cash in lawful money
of the United States of America, all
payable at the time of sale, the follow-
ing described real property situated
in the County of BLAINE, State of

Idaho, and described as follows, to-
wit: LOT 5 IN BLOCK 1 AND GARAGE
LOT 10 IN BLOCK 1 OF WILLOW
TOWNHOMES, ACCORDING TO
THE OFFICIAL PLAT THEREOF,
RECORDED AS INSTRUMENT NO.
323684, RECORDS OF BLAINE
COUNTY, IDAHO. The current trustee
is Robert W. McDonald, Esq, whose
address is 108 1st Ave. South, Suite
202, Seattle, Washington 98104 and
who can be reached by telephone
at (866) 925-0241. The Trustee has
no knowledge of a more particular
description of the above-described real
property, but for purposes of compli-
ance with Idaho Code Section 60-113,
the Trustee has been informed that the
street address of 741 WILLOW DRIVE
B5, HAILEY, ID 83333 may sometimes
be associated with said real property.
Said sale will be made, without cov-
enant or warranty regarding title, pos-
session or encumbrances, to satisfy
the obligation secured by and pursuant
to the power of sale conferred in the
Deed of Trust made and entered into
on 8/9/2007, by and among ROBERT
R SODERLING, JR., A SINGLE MAN,
as Grantor, and FIRST AMERICAN

TITLE NATIONAL, as Trustee, and
CITIFINANCIAL, INC., as Beneficiary;
said Deed of Trust having been filed of
record on 8/15/2007, as Instrument
No. 550579 reformed to include the
corrected legal description pursuant
to a Judgment entered 10/10/2019
recorded 10/15/2019 as instrument
No. 663977 Official Records of
BLAINE County, Idaho. The naming of
the above Grantor(s) is done to comply
with Idaho Code Sections 45-1506(4)
(a); no representation is made as to
the responsibility of Grantor(s) for this
obligation. The default for which this
sale is to be made is: The monthly
installment of \$1,046.23, which
may include principal, interest and
escrow, due on 8/14/2018, and all
subsequent installments of princi-
pal and interest through the date
of this Notice, plus amounts that
are due for late charges, delinquent
property taxes, insurance premi-
ums, advances made on senior
liens, taxes and/or insurance, trust-
ee’s fees, and any attorney fees and
court costs arising from or associ-
ated with the beneficiaries efforts
to protect and preserve its security,

all of which must be paid as a con-
dition of reinstatement, including
all sums that shall accrue through
reinstatement or pay-off. Nothing
in this notice shall be construed
as a waiver of any fees owing to
the Beneficiary under the Deed of
Trust pursuant to the terms of the
loan documents. The balance due
and owing as of the date hereof on
the obligation secured by said Deed of
Trust is the amount of \$198,294.23 in
principal; plus accrued interest at the
rate of 5.0000 percent per annum from
8/14/2018 adjusting, if at all, pursu-
ant to the terms of the note; plus
service charges, late charges, and
any other costs or expenses associ-
ated with this foreclosure as provided
by the Deed of Trust or Deed of Trust
Note, or by Idaho law. Dated this 26th
day of November, 2019. Robert W.
McDonald, Esq, Trustee By: TS No:
ID-19-849621-SW IDSPub #0158692

PUBLISH
IDAHO MOUNTAIN EXPRESS
DEC. 4, 11, 18 & 25, 2019

IDAHO DEPARTMENT OF LANDS

SUMMONS

To: Shannon Turner Maza

You have been sued by GENESIS RECOVERY SERVICES, INC., the Plaintiff, in the FIFTH District Court in and for BLAINE COUNTY, Idaho, Case No. CV07-20-161.

The nature of the claim against you is collection of money owed by you.

Any time after 21 days following the last publication of this summons, the court may enter a judgment against you without further notice, **unless** prior to that time you have filed a written response in the proper form, including the Case No., and paid any required filing fee to the Clerk of the Court at 201 2nd Ave S Ste 106, Hailey, ID 83333, and served a copy of your response on the Plaintiff's attorney MICHAEL J. ARCHIBALD, #8476 at M2 Law Group PC, P.O. Box 330, Meridian, ID 83680, telephone (208) 336-3331.

A copy of the Summons and Complaint can be obtained by contacting either the Clerk of the Court or the attorney for Plaintiff.

If you wish legal assistance, you should immediately retain an attorney to advise you in this matter.

Dated: 10/6/2020
JOLYNN DRAGE
BLAINE COUNTY District Court

By C Compton
Deputy

PUBLISH
IDAHO MOUNTAIN EXPRESS
OCT. 28, NOV. 4, 11 & 18, 2020

PUBLIC NOTICE

NOTICE IS HEREBY GIVEN that the Sun Valley Planning & Zoning Commission will hold a public hearing on Thursday, November 12th, 2020 at 9:00 AM at City Hall Council Chambers, 81 Elkhorn Road, Sun Valley, ID. The meeting will begin with a site visit at 9:00 AM for Preliminary Plat application SUBPP 2020-08 and Design Review application DR 2020-61 at the Sunshine Parcel on Village Way and will adjourn to Council Chambers directly thereafter to hear comments from the public concerning the following applications:

1. **DR 2020-68:** Application for design review approval of a six-foot fence at 304 Juniper Road. Applicant: Kate Rosso (Property Owner). Location: 304 Juniper Road; Elkhorn Village Sub 1 Lot 22.
2. **DR 2020-69:** Application for design review approval of an addition at 125 W Dandelion Way. Applicant: Scott Prentice for Charles & Michele Trout (Property Owner). Location: 125 W Dandelion Way; Sagehill Subdivision Unit 2 Lot 14.
3. **DR 2020-70:** Application for design review approval of a seven-foot tall privacy screen at 117 W Dandelion Way. Applicant: Michael Mattias for Mardo & Curtis Eaton. Location: 117 W Dandelion Way; Sagehill Subdivision Unit 2 Lot 18.
4. **ZMA 2020-02:** Application to rezone a 147.5-acre portion of parcel RPSVE000000350 from Open Recreation (OR-1) to Open Space (OS). Applicant: Sun Valley Elkhorn Association. Location: East of Elkhorn Road, North of Lupine Road, South of Juniper Road, North of Independence Creek Road.
5. **SUBPP 2020-08:** Application for preliminary plat approval of a new 51-unit townhome subdivision. Applicant: Stan Nix, Timberline Real Estate Partners for TVIV Sunshine LLC c/o Origami Capital Partners (Property Owner). Location: Sunshine Parcel; Tax lot 8546.
6. **DR 2020-61:** Application for design review approval of 27 new townhome units. Applicant: TVIV Sunshine LLC c/o Origami Capital Partners (Property Owner). Location: Sunshine Parcel; Tax lot 8546.
7. **ORD 550:** Proposed Ordinance to adopt the 2018 editions of the International Building, Residential, Existing Building, Energy Conservation, Fire, Pool & Spa, and Property Maintenance Codes.
8. Resolution 2020-13: Proposed revisions to the Building Permit Application Fee Schedule.
9. **ORD 551:** Proposed ordinance to

amend existing City Code language regarding residential building envelope and footprint standards.

10. **DR 2020-53:** Proposed revisions to previous approved design review application for a new single family residence at 103 Skyline Drive. Applicant: Anderson Architecture for Pär & Carol Arvidsson (Property Owners) Location: 103 Skyline Drive; Dollar Mountain Subdivision Lot 27B.

At the aforementioned time, all interested persons may appear and shall be given an opportunity to comment on the matters stated above. Comments and questions prior to the public meeting should be directed to the City of Sun Valley Community Development Department, at PO Box 416, Sun Valley, ID 83353, or emailed to cddcounter@sunvalleyidaho.gov. Written comments received prior to the meeting shall be made part of the public record at the meeting. Application materials are on file in the Community Development Department located in City Hall for public inspection during normal City Hall business hours and can be shared for public inspection through email by request.

PUBLISH
IDAHO MOUNTAIN EXPRESS
OCT. 28, NOV 4 & 11, 2020

SUMMONS

To: JC PAINTING DRYWALL & PLASTER, LLC and JORGE CASTRO, individually

You have been sued by L&W SUPPLY CORPORATION, the Plaintiff, in the FIFTH District Court in and for BLAINE COUNTY, Idaho, Case No. CV07-20-00326.

The nature of the claim against you is collection of money owed by you.

Any time after 21 days following the last publication of this summons, the court may enter a judgment against you without further notice, **unless** prior to that time you have filed a written response in the proper form, including the Case No., and paid any required filing fee to the Clerk of the Court at 201 2nd Ave S, Hailey, Id 83333, and served a copy of your response on the Plaintiff's attorney MICHAEL J. ARCHIBALD, #8476 at M2 Law Group PC, P.O. Box 330, Meridian, ID 83680, telephone (208) 336-3331.

A copy of the Summons and Complaint can be obtained by contacting either the Clerk of the Court or the attorney for Plaintiff.

If you wish legal assistance, you should immediately retain an attorney to advise you in this matter.

Dated: 10/26/2020
JOLYNN DRAGE
BLAINE COUNTY District Court

By Andrea Logan
Deputy

PUBLISH
IDAHO MOUNTAIN EXPRESS
NOV. 4, 11, 18 & 25, 2020

NOTICE OF PROPOSED CHANGE
OF WATER RIGHT
TRANSFER NO. 84422

DRINKERS OF THE WIND TRUST, PO BOX 476, BELLEVUE, ID 83313-0476 has filed Application No. 84422 for changes to the following water rights within BLAINE County(s): Right No(s). 37-4277; to see a full description of these rights and the proposed transfer, please see <https://research.idwr.idaho.gov/apps/waterrights/que-rynewtransfers>. The purpose of the transfer is to change a portion of the above rights as follows: Application for transfer proposes to move a 0.04 cfs portion of a ground water irrigation right for 2.0 acres from a parcel located approximately 0.3 to 0.8 miles south of Hwy 75 and Broadford Rd intersection in the City of Bellevue to a proposed new place of use on a contiguous parcel located to the south owned by the applicant. In addition the application proposes to drill a new well on the proposed place of use for the diversion of 0.04 cfs and the irrigation of 2.0 acres

For additional information concerning the property location, contact

LEGAL NOTICES

NOTICE OF LIEN

Storage Plus will execute its lien of the contents of the storage space(s) named below, with StoragePlus taking possession of items at the following location and time. Items to be sold to the highest bidder on www.storage treasures.com

StoragePlus, Hailey, 11819 HWY 75, Hailey, ID 83333. (208) 578-4018
On November 20, 2020 at 10:00 a.m.

Unit	Tenant	Address	City	State	Zip	Items
B18	Lucille Federico	851 Shenandoah Dr N104	Hailey	ID	83333	tvs, kids toys, computer box, air hockey box, pillow top mattress, crib
C56	Dan Newell	P.O. Box 3168	Kelchum	ID	83353	skis, fishing rod, snow boots, ski boots, air compressor, sleeping bag, power saw, tools

PUBLISH
IDAHO MOUNTAIN EXPRESS
NOV 4 & 11, 2020

Southern Region office at (208)736-3033. Protests may be submitted based on the criteria of Idaho Code Sec. 42-222. Any protest against the proposed change must be filed with the Department of Water Resources, Southern Region, 650 ADDISON AVE W STE 500, TWIN FALLS ID 83301-5858 together with a protest fee of \$25.00 for each application on or before November 23, 2020. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director

PUBLISH
IDAHO MOUNTAIN EXPRESS
NOV 4 & 11, 2020

LEGAL NOTICE

Blaine County has been notified by the Legislative Services Office that the following Local Governing Entities are noncompliant with the legal reporting requirements of Idaho Code §67-450E:

Fish Creek Irrigation District
Little Wood River Library District
Galena Ground Water District
Water District 370
Water Master Tax District 37 U Fish
Carey Valley Ground Water District

JoLynn Drage, Blaine County Clerk

PUBLISH
IDAHO MOUNTAIN EXPRESS
NOV 11, 2020

PUBLIC NOTICE REGARDING
THE RESOURCE TRUST, INC.

The annual report of The ReSource Trust, Inc. is available at the address below for inspection during regular business hours by any citizen who so requests within 180 days after publication of this notice.

The ReSource Trust, Inc.
Attn: Christy McPherson
101 E. Bullion Street Suite 2G
Hailey, ID 83333

The principal manager is William A. McMahan, President or Sheila Liermann, Secretary/Treasurer.

Dated: November 5, 2020

PUBLISH
IDAHO MOUNTAIN EXPRESS
NOV 11, 2020

LEGAL NOTICE
BLAINE COUNTY BOARD OF
COUNTY COMMISSIONERS
DECEMBER 1, 2020

On Tuesday, December 1, 2020, the Blaine County Board of County Commissioners will hold a public meeting upstairs in the Old County Courthouse located at 206 First Ave. So., in Hailey. Items on their agenda include the following:

1:30 PM ACTION ITEM: Bellevue Farms Plat Amendment-114 Quarter Horse Dr. Public hearing and consideration of an application by Katja Casson to amend Lot 5, Block 4, Bellevue Farms Subdivision, by vacating an existing 20' drainage easement in the center of the lot and platting a 20' water system easement along the south and east boundaries of the lot. The property is zoned Residential/Agricultural District (R-5).

2:00 PM ACTION ITEM: 30 Gimlet Rd. - Floodplain Conditional Use Permit. Public hearing and consideration of an application by James Daverman to extend an existing 12" pipeline to the river with a flap gate

to improve drainage from adjacent wetlands to the river. This project is located at 30 Gimlet Rd (Lot 18, Gimlet Sub. #10) and is zoned Planned Residential (R-2) with areas of Floodplain (FP), Riparian (R) and Wetland (WE) Overlay Districts.

This meeting is open to the public but attendees are **STRONGLY ENCOURAGED to attend by web access rather than in person.** The meeting agenda will be posted to the Blaine County website at <https://www.co.blaine.id.us/AgendaCenter> by the Thursday prior to the hearing. Please check the meeting agenda for further instructions for digital web access.

The materials associated with this meeting are available for review at Land Use and Building Services located in the Blaine County Annex at 219 First Avenue South, Suite 208 in Hailey and on the Blaine County web page at <https://www.co.blaine.id.us/199/County-Commissioner-Hearing-Materials>. To receive adequate consideration, written comments in excess of one page should be forwarded to Blaine County at least 4 days prior to the public hearing by mail, e-mail to pzcounter@co.blaine.id.us, or by fax to (208) 788-5576.

PUBLISH
IDAHO MOUNTAIN EXPRESS
NOV 11, 2020

NOTICE OF PUBLIC HEARING
HAILEY CITY COUNCIL
MONDAY, NOVEMBER 30, 2020
5:30PM

PUBLIC NOTICE IS HEREBY GIVEN that the Hailey City council will hold a Public Meeting at 5:30 p.m. on Monday, November 30, 2020, to be held virtually as a remote telecommunication meeting and in compliance with the Open Meetings Law. The phone number to call in for the meeting will be posted on the agenda on the city website by November 25, 2020. The telephonic Public Hearing will be conducted on the following item(s):

- Consideration of a City-Initiated Text Amendment to the Hailey Municipal Code, Title 18: Mobility Design, Chapter 18.14: Standard Drawings, Section 18.14.014: Miscellaneous, to modify E(1): Light Pole and Pedestal Details and E(2): Street Light Details. The current street light and pole design will be replaced with a new street light and pole design, similar in style and details as the existing street light and pole.

- Consideration of amendments to Title 17 of the Hailey Municipal Code, by amending Chapter 17.04, Establishment, Purposes and Uses within Zoning Districts, Articles B, C, D, E, F, G, L and M to reference new supplemental regulations for Accessory Dwelling Units; amending section 17.05.040, District Use Matrix, to permit Accessory Dwelling Units (ADU's) as a permitted use in the Limited Residential-1 (LR-1) and Limited Residential-2 (LR2) zoning districts subject to criteria, including design review and bulk requirements to establish maximum heights for ADU's and lot coverage for the LR-1 and LR-2 zoning districts; amending section 17.06.010.A to establish an administrative design review or full design review design process for ADU's depending on location; amending chapter 17.08, Supplementary Regulations, to establish a new Article D containing supplemental regulations for ADU's (purpose and intent; applicability; general provisions; registration; short-term rental occupancy restrictions; subordinate

scale and size; maximum floor area; livability; outdoor access); amending Chapter 17.09, Parking and Loading, Sections 17.09.020.05.B, 17.09.040.01, and 17.09.020.09.D to address parking requirements for ADU's.

Any and all interested persons are invited to attend this public hearing or submit written comments or direct questions to the Community Development Assistant at 115 South Main Street, Hailey, Idaho 83333, or planning@haileycityhall.org. For special accommodations or to participate in the noticed meeting, please contact the City Clerk 208.788.4221.

PUBLISH
IDAHO MOUNTAIN EXPRESS
NOV 11, 2020

LEGAL NOTICE
STATE OF IDAHO LAND LEASE
OPPORTUNITY
NOTICE OF LEASE AUCTION

Notice is hereby given pursuant to Article IX, § 8 of the Idaho Constitution and Idaho Code §§ 58-307, -310 and -313, the State of Idaho, Department of Lands (hereinafter "IDL"), will conduct public auctions of the leases set forth below. The lease(s) will be awarded to the bidder who will pay the highest premium bid therefore; annual rental rates have been established by IDL. **ONLY THOSE WHO HAVE APPLIED IN ADVANCE AND AGREED TO IDL'S LEASE TERMS WILL BE PERMITTED TO BID AT THE AUCTION.**

Detailed information regarding each lease, including a specific legal description of the property to be leased, existing improvements, and rental rates, can be obtained by visiting IDL's website at <https://www.idl.idaho.gov/>.

The auction will be held on Thursday, December 3, 2020, 11:00 a.m. MST. All auction participants and members of the public will access the auction through video conference or telephone. Administration of the auction will be done by IDL at the IDL - Eastern Area - Jerome Office, 324 S 417 E, Suite 2, Jerome ID 83338. Contact: Meribeth Lomkin at 208-324-2561.

Lease No. M700084, 20yr, Facility Manager/3-Co-locator-Cellular, 0.23 acres located in PT SWNW, T03N-R18E-S33, Blaine County.

PUBLISH
IDAHO MOUNTAIN EXPRESS
NOV 11, 18, 25 & DEC. 2, 2020

LEGAL NOTICES

acres and is within the Rural Remote 40 (RR-40) Zoning district with the following overlay districts: Wetland (W), Floodplain (FP), Avalanche (A), and Mountain Overlay (MOD). The lot is located within Sec 29, 30, & 32, T4N, R19E, B.M., Blaine County.

This meeting is open to the public but attendees are **STRONGLY ENCOURAGED** to attend by web access rather than in person. The meeting agenda will be posted to the Blaine County website at www.blainecounty.org by the Tuesday prior to the hearing. Please check the meeting agenda for further instructions for digital web access.

The materials associated with this hearing are available for review at Land Use and Building Services located in the Blaine County Annex at 219 First Avenue South, Suite 208 in Hailey and on the Blaine County web page at www.blainecounty.org. To receive adequate consideration, written comment in excess of one page should be forwarded to Blaine County at least 4 days prior to public hearing by mail, email to pzcouter@co.blaine.id.us, or by fax to (208) 788-5576.

PUBLISH
IDAHO MOUNTAIN EXPRESS
NOV 4, 2020

LEGAL NOTICE
STATE OF IDAHO LAND LEASE
OPPORTUNITY
NOTICE OF LEASE AUCTION

Notice is hereby given pursuant to Article IX, § 8 of the Idaho Constitution and Idaho Code §§ 58-307, -310 and -313, the State of Idaho, Department of Lands (hereinafter "IDL"), will conduct public auctions of the leases set forth below. The lease(s) will be awarded to the bidder who will pay the highest premium bid therefore; annual rental rates have been established by IDL. **ONLY THOSE WHO HAVE APPLIED IN ADVANCE AND AGREED TO IDL'S LEASE TERMS WILL BE PERMITTED TO BID AT THE AUCTION.**

Detailed information regarding each lease, including a specific legal description of the property to be leased, existing improvements, and rental rates, can be obtained by visiting IDL's website at <https://www.idl.idaho.gov/>.

Auction activities will be held on Thursday, December 3, 2020 at the IDL – Eastern Area - Jerome Office, 324 S 417 E, Suite 2, Jerome ID 83338. Contact: Meribeth Lomkin at 208-324-2561.

M700084, 20yr, Facility Manager/3-Co-locator-Cellular, .23 acres located in PT SWNW, T03N-R18E-S33, Blaine County (Auction at 11:00AM)

PUBLISH
IDAHO MOUNTAIN EXPRESS
NOV 4, 2020

NOTICE OF PUBLIC HEARING
HAILEY CITY COUNCIL
MONDAY, NOVEMBER 23, 2020
5:30PM

PUBLIC NOTICE IS HEREBY GIVEN that the Hailey City council will hold a Public Meeting at 5:30 p.m. on Monday, November 23, 2020, to be held virtually as a remote telecommunication meeting and in compliance with the Open Meetings Law. The phone number to call in for the meeting will be posted on the agenda on the city website by November 20, 2020. The telephonic Public Hearing will be conducted on the following item(s):

- Consideration of amendments to ordinances related to amending the Blaine County/Hailey Area of City Impact pursuant to Idaho Code Section 67-6526:

1) An Ordinance identifying a map that defines and establishes geographic boundaries modifying the existing Blaine County/Hailey Area of City Impact as adopted by Hailey Ordinance 649 (adopted November 14, 1994), amended by Ordinance 731 (adopted June 23rd, 1999) and amended by Resolution 2020-24. The geographic boundaries take into account trade areas, geographic factors, and areas that can reasonably be

expected to annex into the City in the future. Changes to the above maps have resulted from the Blaine County ACI public hearing and deliberation process.

2) An Ordinance providing for plans and ordinances for the Area of City Impact.

3) A Memorandum of Understanding providing for additional comment for certain lands outside of the Area of City Impact.

- Consideration of a Final Plat for InnTrusted Subdivision, by Hailey FF, LLC, for a commercial building and residential units, to be located at 711 North Main Street (Lot 1A, Block 1, Sutton Subdivision). The parcel is to be resubdivided into one (1) commercial unit (Fairfield Inn and Suites Marriott) and five (5) condominium units. This project is located in the Business (B) and Downtown Residential Overlay (DRO) Zoning Districts.

Any and all interested persons are invited to attend this public hearing or submit written comments or direct questions to the Community Development Assistant at 115 South Main Street, Hailey, Idaho 83333, or planning@haileycityhall.org. For special accommodations or to participate in the noticed meeting, please contact the City Clerk 208.788.4221.

PUBLISH
IDAHO MOUNTAIN EXPRESS
NOV 4, 2020

SUMMARY OF HAILEY
ORDINANCE NO. 1267

The Following is a summary of the principal provisions of Ordinance No. 1267 of the City of Hailey, Idaho, duly passed and adopted October 26, 2020, by the City Council and Mayor of the City of Hailey:

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, AMENDING TITLE 8, HEALTH AND SAFETY, BY ADDING A NEW SECTION 8.06, LIMITATION ON ENGINE IDLING, PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; PROVIDING A REPEALER CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

Hailey Ordinance No. 1267 Amends Hailey Municipal Code as follows:

Section 1 Amends Title 8, Health and Safety, by adding a new Chapter 8.06 Limitations on Engine Idling, it 1) provides a purpose for limiting idling on property within Hailey City Limits, 2) provides for definitions of terms, 3) provides applicability of limitation on engine idling to public property and private property open to the public, 4) mandates drivers of vehicles to turn off the engine upon stopping at a destination, to allow the engine to run for more than three (3) consecutive minutes or for periods aggregating more than three (3) minutes during any one (1) hour period, 5) provides exceptions when stopped at a traffic control device or signal; for traffic conditions outside drivers control; at the direction of peace officer; safety and maintenance; when necessary to serve the purpose for which equipment was designed, such as pumping or drilling; to safely load or unload passengers; necessary to charge a battery or to operate equipment that runs intermittently and for public safety and emergency vehicles, and 6) provides for an infraction penalty of \$100 for violations.

Section 2 provides for a severability clause.

Section 3 provides for a repealer clause.

Section 4 provides for an effective date of the ordinance.

The full text of Ordinance No. 1267 is available at Hailey City Hall at 115 South Main Street, Suite H, Hailey, Idaho 83333 and will be provided to any citizen upon request during regular business hours.

CERTIFICATION OF CITY
ATTORNEY

I, the undersigned Attorney at Law,

as attorney for the City of Hailey, Idaho, hereby certify that I have read the foregoing summary of Ordinance No 1267 of the City of Hailey, that I have compared it to the full text of Ordinance No 1267, and that in my opinion, the above summary is true and complete and provides adequate notice to the public of the contents of said Ordinance.

Dated this 26th day of October, 2020.

Christopher P. Simms, Hailey City Attorney

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IDAHO MOUNTAIN EXPRESS
NOV 4, 2020

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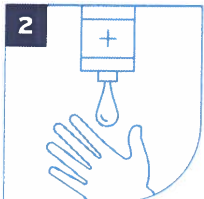


Care.
Be Aware.
Stop the
spread
of
COVID-19

HOW TO WASH YOUR HANDS



WET HANDS



APPLY SOAP



PALM TO PALM



PALM OVER DORSUM



FINGERS INTERLACED



BACKS OF FINGERS



THUMBS



FINGERNAILS



RINSE HANDS



USE PAPER TOWEL



TURN OFF FAUCET WITH TOWEL



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P.O. BOX 1013 • KETCHUM, IDAHO 83340-1013 • 208.726.8060

DEPT. OF LANDS

MAR 09 2020

BOISE, IDAHO


INVOICE

IDAHO DEPARTMENT OF LANDS
Attn: TAMMY ARMSTRONG
300 N 6TH ST, STE 103
BOISE ID 83702

ACCT. NO. DATE:
10002303 01/01/20

DATE	ORDER #	PUBLICATION	AD TYPE	SIZE	DESCRIPTION	AMOUNT
01/01/20	12610339	Idaho Mountain Express	Class Displa	1 X 7	Legal-Lease Auction M700056, M	176.76

AMOUNT DUE \$ \$176.76

Inv Date: 3/20/2020		Vendor #82031359400		
Enc #:		Inv #: 12610339		
Descrip: The Idaho Mountain Express (Express Publishing, Inc.), Account #10002303 Order No. 12610339, Commercial Legal Notice 12/11/19, 12/18/19, 12/25/29 & 01/01/20 and Affidavit				
SUBOBJ	PCA	TC	AMT	PROJ/PH
5190	42005	230	\$ 176.76	COADV-OE
Approved: 				

PLEASE DETACH THIS PORTION AND SEND WITH PAYMENT - THANK YOU!

Express Publishing, Inc. P.O. Box 1013, Ketchum, ID 83340
(208) 726-8060

ACCT. NO. DATE: ORDER #
10002303 01/01/20 12610339

IDAHO DEPARTMENT OF LANDS
Attn: TAMMY ARMSTRONG
300 N 6TH ST, STE 103
BOISE ID 83702

AMOUNT DUE \$ \$176.76

DUE UPON RECEIPT

AFFIDAVIT of PUBLICATION

State of Idaho

County of Blaine

Pam Morris, being the first duly sworn, deposes and says that she is the printer (publisher) of the Idaho Mountain Express, a newspaper published every week in Ketchum, County of Blaine, State of Idaho; that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once

each week for 4 consecutive issues in said newspaper proper and not in a supplement; that the date of the first

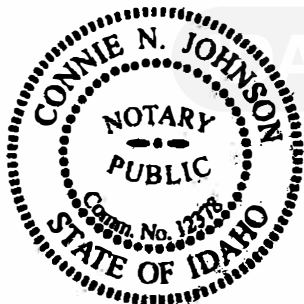
publication of said advertisement was on the 11th day of

Dec., 20 19, and the date of the last publication was on the 1st day of Jan., 20 20

Subscribed and sworn to before me this 2nd day of

Jan., 20 20.

Connie N. Johnson
NOTARY PUBLIC



RESIDING AT HAILEY, IDAHO
MY COMMISSION EXPIRES ON 7/10/2024

IDAHO MOUNTAIN EXPRESS
P.O. Box 1013
Ketchum, Idaho 83340
COST OF PUBLICATION

Number of Picas per Line 11.5

Number of Lines in Notice 53

Number of Insertions 4

53 Lines tabular at 48.76 9.0 cents/pica

159 Lines straight at 128.00 8.0 cents/pica

159 Subsequent lines at 176.76 7.0 cents/pica

TOTAL COST \$176.76

COPY OF NOTICE

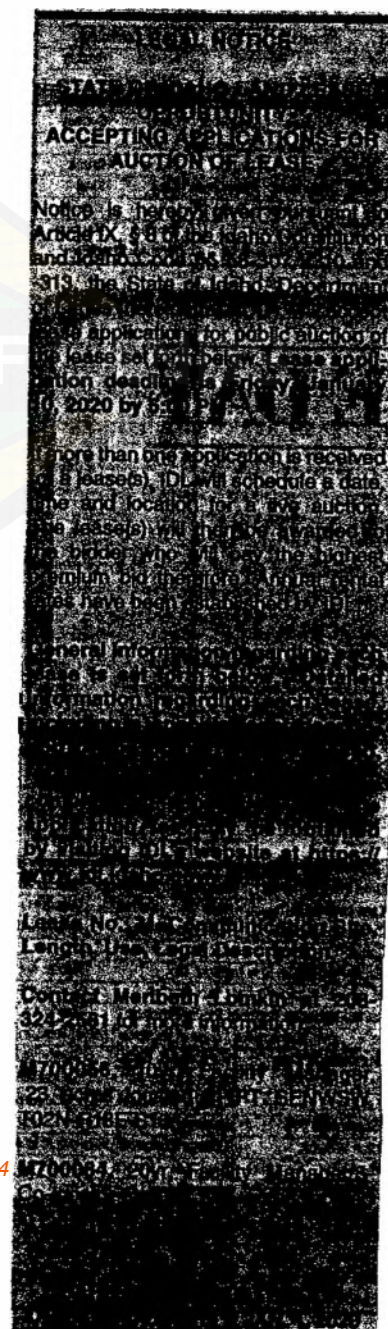
Legal Notice
TITLE OF NOTICE

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF

Idaho Dept. of Lands
BILL TO



M700084



Dept. of Lands

JAN 09 2020

Boise, Idaho

INVOICE

IDAHO DEPARTMENT OF LANDS
Attn: TAMMY ARMSTRONG
300 N 6TH ST, STE 103
BOISE ID 83702

ACCT. NO. DATE:
10002303 01/01/20

DATE	ORDER #	PUBLICATION	AD TYPE	SIZE	DESCRIPTION	AMOUNT
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AMOUNT DUE \$						\$176.76

IDAHO DEPARTMENT OF LANDS

PLEASE DETACH THIS PORTION AND SEND WITH PAYMENT - THANK YOU!

Express Publishing, Inc. P.O. Box 1013, Ketchum, ID 83340
(208) 726-8060

ACCT. NO. DATE: ORDER #
10002303 01/01/20 12610339

IDAHO DEPARTMENT OF LANDS
Attn: TAMMY ARMSTRONG
300 N 6TH ST, STE 103
BOISE ID 83702

AMOUNT DUE \$ \$176.76

DUE UPON RECEIPT

From: Josh Purkiss
Sent: Wednesday, December 02, 2020 8:46 AM
To: Ryan Montoya <rmontoya@idl.idaho.gov>
Subject: FW: Updating our State Land Lease application

Ryan,

Do you want to respond to this? I started to draft a response, but I don't know enough about the cell tower leasing process.

JP

From: Kiki Tidwell <ktinsv@cox.net>
Sent: Wednesday, December 02, 2020 7:45 AM
To: Josh Purkiss <jpurkiss@idl.idaho.gov>
Cc: 'Preston N. Carter' <prestoncarter@givenspursley.com>; Meribeth Lomkin <MLomkin@idl.idaho.gov>; 'dmiller@idl.idaho.gov'; governor@gov.idaho.gov; 'Kriss' <kriss.bivens.cloyd@ag.idaho.gov>; 'Lawrence.wasden@ag.idaho.gov'
Subject: RE: Updating our State Land Lease application

Josh,

I see that the auction for the cell tower site on this property is scheduled for 11 am tomorrow. Please understand that our offer is withdrawn if this auction goes through as a cell tower will decimate the value of this property for homes. IDL has an opportunity right now for a \$250,000, 49 year lease with us. I would hope that you could at least postpone the cell tower auction until you can explore our lease offer.

Best,

Kiki

Kiki Tidwell
 President, Tidwell Idaho Foundation, Inc.
 208-578-7769 Idaho Office
 208-481-7810 cell

From: Josh Purkiss [<mailto:jpurkiss@idl.idaho.gov>]
Sent: Friday, November 27, 2020 9:04 AM
To: Kiki Tidwell
Cc: 'Preston N. Carter'; Meribeth Lomkin
Subject: RE: Updating our State Land Lease application

Morning Kiki,

I will inform our leadership of your revised proposal and get back to you with their response. I would expect a response in the next couple of weeks.

JP

From: Kiki Tidwell <ktinsv@cox.net>
Sent: Friday, November 27, 2020 8:35 AM
To: Josh Purkiss <jpurkiss@idl.idaho.gov>
Cc: 'Preston N. Carter' <prestoncarter@givenspursley.com>; Meribeth Lomkin <MLomkin@idl.idaho.gov>
Subject: Updating our State Land Lease application

Josh,

I previously have submitted a State Land Lease Application, and Amended Application, for the Buttercup IDL parcels as described in the appraisal report below. I would now like to amend that application to these terms: we agree to \$250,000 per year annual lease rent, on the entire 106.6 acres of land as detailed in the appraisal report including the celltower site, 49 years lease term, with options to renew lease. We can the prepay first year's lease rent immediately upon signing lease contract.

I saw in our newspaper legals that the Buttercup celltower lease is scheduled to auction on Dec 3rd. This celltower will significantly diminish the value of IDL's larger parcel to the north of it, so our offer has to include this celltower parcel in our lease to protect the value of our homesites to be developed and we need IDL's agreement that no other celltower sites will be developed in the vicinity of our lease parcel. This updated offer is withdrawn if the celltower site is auctioned off.

Thank you,
 Kiki

Kiki Tidwell
 President, Tidwell Idaho Foundation, Inc.
 208-578-7769 Idaho Office
 208-481-7810 cell

From: Josh Purkiss [<mailto:jpurkiss@idl.idaho.gov>]
Sent: Wednesday, November 20, 2019 2:05 PM
To: Kiki Tidwell
Subject: RE: Has my updated offer been discussed

Hi Kiki,

It was nice speaking with you today. I have copied the link with the requested information below. The original appraisal was reviewed by an MAI appraiser, and

adjusted down a significant amount of money. In addition, I have attached a conceptual plan for marketing purposes, completed by WHPacific, that was developed using current zoning restrictions. After speaking with you, it sounds like it needs to be revised to include more of the county's requirements for developments as well as some avalanche areas.

[Dropbox](#)

[Land Board Materials](#) – If you look at the materials for October, it has the memo that was submitted. If you are looking for more information, please let me know.

JP

From: Kiki Tidwell <ktinsv@cox.net>
Sent: Wednesday, November 20, 2019 12:59 PM
To: Josh Purkiss <jpurkiss@idl.idaho.gov>
Subject: Re: Has my updated offer been discussed

Sorry I can't locate your phone number right now on my phone- can you call me at 6503882108 or provide number? Kiki

Sent from my iPhone

On Nov 14, 2019, at 1:20 PM, Josh Purkiss <jpurkiss@idl.idaho.gov> wrote:

Hi Kiki,

We did get our leasing process approved by the Land Board in October, but we are still waiting on an opinion from the attorney general's office regarding commercial ground leasing.

In reviewing your proposal below, I am struggling to determine what the total financial benefit to the endowments would be as well as what land you would like to lease. Can you provide a spreadsheet showing what you are proposing over ten years as well as a map indicating which lands you would want to lease? Will there be a CPI annual adjustment or are you proposing flat rates?

If you can provide clarification on the proposal, I can discuss it with our commercial advisors and see if they recommend moving forward on the project. That being said, we are at least 6 months away from issuing any commercial ground leases. There are several issues that need to be

vetted through the DAG's.

JP

From: Kiki Tidwell <ktinsv@cox.net>
Sent: Wednesday, November 13, 2019 11:01 AM
To: Josh Purkiss <jpurkiss@idl.idaho.gov>; Meribeth Lomkin <MLomkin@idl.idaho.gov>
Cc: prestoncarter@givenspursley.com
Subject: RE: Has my updated offer been discussed

Ping'ing you again – Thanks, Kiki

From: Josh Purkiss [<mailto:jpurkiss@idl.idaho.gov>]
Sent: Thursday, October 10, 2019 12:13 PM
To: Kiki Tidwell; Meribeth Lomkin
Cc: prestoncarter@givenspursley.com
Subject: RE: Has my updated offer been discussed

Hi Kiki,

We are still waiting for the Deputy Attorney General to provide an opinion regarding the commercial leasing process.

You will be the first person I contact when we get the process defined, and I can begin to advertise this property for lease.

JP

From: Kiki Tidwell <ktinsv@cox.net>
Sent: Sunday, October 06, 2019 9:27 AM
To: Josh Purkiss <jpurkiss@idl.idaho.gov>; Meribeth Lomkin <MLomkin@idl.idaho.gov>
Cc: prestoncarter@givenspursley.com
Subject: Has my updated offer been discussed

Josh, Meribeth,
Wondering if my updated lease offer here below has been considered at the Idaho Department of Lands? Can I provide you anything further at this time? Is there any other update from IDL?
Thanks,
Kiki

Kiki Tidwell
 President, Tidwell Idaho Foundation, Inc.
 300 Let Er Buck Rd.

Hailey, ID 83333
 208-578-7769 ofc
 650-388-2108 cell

From: Kiki Tidwell [<mailto:ktinsv@cox.net>]
Sent: Friday, August 30, 2019 10:30 AM
To: 'Meribeth Lomkin'; 'Josh Purkiss'
Cc: Preston N. Carter <prestoncarter@givenspursley.com>
 (prestoncarter@givenspursley.com)
Subject: Updated thoughts

Meribeth, Josh,

Thank you for getting back to me on this. It looks like by the time notice hits the papers, the application period has already closed.

Please, please, please keep me updated on the Buttercup parcel if any application period opens!

I am pushing around numbers to update my application on the Buttercup parcel. I am attempting to supply somewhat affordable housing on this project, rather than high-end lots. My target market is baby boomer locals who are interested in down-sizing into smaller houses on leased pads (less expensive than buying the dirt) and more of a community with shared amenities like a garden and common area barn. The 49 year lease term certainly helps. The houses would be all-electric, with electric vehicle charging from the community solar panels. The Foundation is taking on the project to prove the concept of all electric/solar/storage rather than trying to make a killing on another Valley Club-type development. I think that this works for the IDL as well – to have a really positive project in our Valley that meets our current housing needs, rather than just one more high-end development. A win-win. To get the houses more affordable, the lease rent on the property has to work within a narrow range however. As a Valley Club member, I just had occasion to go through all the land development numbers for the Valley Club West Nine project and am refining all the project costs, which are certainly extensive. The Valley Club also has a pressing need for 30 more beds of employee housing, which I could put in my project, up in the NorthEast corner of the property, by their existing employee housing. IDL would be a hero in Blaine County if we could address several layers of housing needs with this project.

Anyone other than Idaho Power would have a hard time developing a commercial solar project on this parcel because of the rules that Idaho Power has in place in Idaho as per PURPA projects, and net metering; they pay independent power producers an extremely low rate, the latest at 2.2 cents per kWh (Idaho Power sells retail electricity at 8 and 10 cents per kWh).

It seems reasonable to me to update my offer for the lease rent; for the acreage on the property that would have housing on it, a \$2500 per year annual rent for a 49 year lease period. However, a large part of the property is in an avalanche zone and next to the power lines and would be in community gardens or community solar farm production – to supply the electricity just for the houses on the property, not a commercial solar project like Idaho Power proposed. Perhaps just a bit of net metering to adjacent parcels for their agricultural irrigation. Would it be reasonable to pay \$25,000 per year total for the approx. 10 acres of housing total pads footprint (\$2500 per acre per year once it is developed), and \$10,000 per year for the remainder of the parcel, starting immediately? I could seize the window for the tax credits on the solar installation if so. IDL could start earning funds significantly more funds for the endowment right away.

Thank you,
Kiki

Kiki Tidwell
President, Tidwell Idaho Foundation, Inc.

From: Meribeth Lomkin [<mailto:MLomkin@idl.idaho.gov>]

Sent: Thursday, August 29, 2019 11:19 AM

To: Josh Purkiss; Kiki Tidwell

Subject: RE: Notice of IDL public auctions

Hi Kiki,

Josh did a great job of answering your questions with what we know from your description.

I've attached a scan of the Area office posting of the IDL public auction legal advertisement that I am aware is currently being published in Blaine County & Magic Valley newspapers. The attachment probably doesn't look exactly like the legal ad, because of formatting in the newspaper, but the content should be the same. If this is the legal notice that you are referencing, additional information can be found on the IDL web page here:

<https://www.idl.idaho.gov/leasing/grazing/leasing/index.html>

Please note the application period for the properties listed on the attached Notice has closed. As you are aware, IDL is updating our policy/procedure for handling applications, advertising applications and properties open to application, and some other processes. The attached Notice is a step towards the new process for some applications that were already in progress.

Nothing new on my radar from the last time we talked about the Buttercup parcel.

If you have further questions, feel free to contact us.

Thanks.

Meribeth

From: Josh Purkiss <jpurkiss@idl.idaho.gov>

Sent: Thursday, August 29, 2019 7:45 AM

To: Kiki Tidwell <ktinsv@cox.net>; Meribeth Lomkin <MLomkin@idl.idaho.gov>

Subject: RE: Notice of IDL public auctions

Kiki,

I am not sure which public auction notice you are referencing? Do you have a link?

We have some grazing and commercial leases offered for public auction, but none of them are for Buttercup. As of now, Idaho Power and you are the only proposals received for the Buttercup land.

JP

From: Kiki Tidwell <ktinsv@cox.net>

Sent: Thursday, August 29, 2019 6:52 AM

To: Josh Purkiss <jpurkiss@idl.idaho.gov>; Meribeth Lomkin <MLomkin@idl.idaho.gov>

Subject: Notice of IDL public auctions

Josh, Meribeth,

I saw the legal notice in the paper about the IDL public auctions. Is there a link to find out more about which properties are being auctioned? I am assuming that it is not the Buttercup Rd parcel, or you would have alerted me. Have you received other interest in that parcel at all?

Thanks,

Kiki

Kiki Tidwell
300 Let Er Buck Rd
Hailey, ID 83333
208-578-77690

Ryan Montoya

From: Josh Purkiss
Sent: Thursday, December 19, 2019 2:53 PM
To: Tamara Armstrong
Cc: Ryan Montoya; Meribeth Lomkin
Subject: FW: IDL website communications lease application advertising

Tammy,

See the comments below from Kiki.

I have played phone tag with Kiki this week, but I plan to speak with her soon and will keep you in the loop.

JP

From: Kiki Tidwell <ktinsv@cox.net>
Sent: Thursday, December 19, 2019 2:36 PM
To: Meribeth Lomkin <MLomkin@idl.idaho.gov>
Cc: Josh Purkiss <jpurkiss@idl.idaho.gov>
Subject: RE: IDL website communications lease application advertising

Meribeth,
 In looking at the location of this across from the entrance to my subdivision, I am going to have a problem with it. I will write the IDL board with my protest, but this is not good planning by you folks not to work with our existing zoning and uses. I thought that IDL really didn't want another black eye in Blaine County.

Kiki
 Kiki Tidwell
 300 Let Er Buck Rd.
 Hailey, ID 83333

From: Meribeth Lomkin [<mailto:MLomkin@idl.idaho.gov>]
Sent: Thursday, December 19, 2019 9:21 AM
To: Kiki Tidwell
Subject: IDL website communications lease application advertising

Hi Kiki,
 I think the last of the mistakes and problems with files not opening on the advertising page of the website were corrected yesterday, so feel free to take a look there and actually believe what you see. If you have further questions about the process or have problems with the site, let me know.

The site is here:
<https://www.idl.idaho.gov/leasing/commercial/index.html>

and the application number for the Buttercup facility manager/cellular co-locator potential communication site lease is M700084.

Thanks.
 Meribeth

Meribeth Lomkin

Sr. Resource Specialist

Idaho Department of Lands

Eastern Area - Jerome Field Office

324 South 417 East, Ste 2

Jerome, ID 83338

Phone: 208-324-2561

Fax: 208-324-2917

mlomkin@idl.idaho.gov



From: [Kiki Tidwell](#)
To: [Meribeth Lomkin](#)
Subject: RE: update - buttercup parcel communication site
Date: Friday, December 13, 2019 5:05:06 PM

Monday would be great. Also, is there a lease form that you are working from?

Kiki

From: Meribeth Lomkin [mailto:MLomkin@idl.idaho.gov]
Sent: Friday, December 13, 2019 4:12 PM
To: Kiki Tidwell
Subject: RE: update - buttercup parcel communication site

Hi Kiki,

No auction date is set until the application period is closed & we receive more than one application. At this time, the application period is open until January 10, 2020. We're still getting the kinks out of the advertising, so they could extend that, but it will not end before 1/10/2020.

Is there a day next week (not Monday morning or Tuesday afternoon) that we could discuss the process a bit more on the phone?

Thanks.
 Meribeth

From: Kiki Tidwell <ktinsv@cox.net>
Sent: Wednesday, December 11, 2019 10:07 AM
To: Meribeth Lomkin <MLomkin@idl.idaho.gov>
Subject: RE: update - buttercup parcel communication site

Meribeth,

Thank you so much for the heads up! I would like to bid on this. Is there a live auction date?

Thanks,
 Kiki

Kiki Tidwell
 Investor
 President, Idaho Land & Pine, Inc.
 208-578-7769 Idaho Office
 650-388-2108 cell

From: Meribeth Lomkin [mailto:MLomkin@idl.idaho.gov]
Sent: Tuesday, December 10, 2019 11:34 AM
To: Kiki Tidwell
Subject: update - buttercup parcel communication site

Hi Kiki,

I'm jotting this email to you while I'm thinking about it, even though I do not yet have all of the details. I'm in Boise for work (computer class) 12/11 and 12/12, so I might not be around when things get finalized and the ad runs for the first time.

Regarding the pending communication site application (new facility manager/cellular site) that we have discussed a few times on the Buttercup parcel – a legal ad will be appearing in the Idaho Mountain Express soon advertising an open application period for that communication site lease. Tentatively, I think the application period will be open until January 10, 2020.

I'm sure you'll see the ad, but I wanted to let you know as soon as the ball started rolling since you have asked to be in the loop on that one.

Thanks.
Meribeth

Meribeth Lomkin

Sr. Resource Specialist
Idaho Department of Lands
Eastern Area - Jerome Field Office
324 South 417 East, Ste 2
Jerome, ID 83338
Phone: 208-324-2561
Fax: 208-324-2917
mlomkin@idl.idaho.gov

IDAHO DEPARTMENT OF LANDS

From: [Josh Purkiss](#)
To: [Tammy Armstrong](#)
Cc: [Ryan Montoya](#); [Meribeth Lomkin](#)
Subject: FW: IDL website communications lease application advertising
Date: Thursday, December 19, 2019 2:53:06 PM

Tammy,

See the comments below from Kiki.

I have played phone tag with Kiki this week, but I plan to speak with her soon and will keep you in the loop.

JP

From: Kiki Tidwell <ktinsv@cox.net>
Sent: Thursday, December 19, 2019 2:36 PM
To: Meribeth Lomkin <MLomkin@idl.idaho.gov>
Cc: Josh Purkiss <jpurkiss@idl.idaho.gov>
Subject: RE: IDL website communications lease application advertising

Meribeth,

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Kiki

Kiki Tidwell

300 Let Er Buck Rd.

Hailey, ID 83333

From: Meribeth Lomkin [<mailto:MLomkin@idl.idaho.gov>]
Sent: Thursday, December 19, 2019 9:21 AM
To: Kiki Tidwell
Subject: IDL website communications lease application advertising

Hi Kiki,

I think the last of the mistakes and problems with files not opening on the advertising page of the website were corrected yesterday, so feel free to take a look there and actually believe what you see. If you have further questions about the process or have problems with the site, let me know.

The site is here:

<https://www.idl.idaho.gov/leasing/commercial/index.html>

and the application number for the Buttercup facility manager/cellular co-locator potential communication site lease is M700084.

Thanks.
Meribeth

Meribeth Lomkin

Sr. Resource Specialist
Idaho Department of Lands
Eastern Area - Jerome Field Office
324 South 417 East, Ste 2
Jerome, ID 83338
Phone: 208-324-2561
Fax: 208-324-2917
mlomkin@idl.idaho.gov



Meribeth Lomkin

From: Meribeth Lomkin
Sent: Thursday, December 03, 2020 9:43 AM
To: Ryan Montoya; Tamara Armstrong
Subject: RE: How does one observe the auction?
Attachments: M700084 Auction Info Sheet.pdf

Ryan,
 The Jerome Field Office prepared the attached "info sheet" for this purpose. Feel free to forward it directly to Kiki.
 Thanks.
 Meribeth

From: Ryan Montoya <rmontoya@idl.idaho.gov>
Sent: Thursday, December 03, 2020 9:41 AM
To: Meribeth Lomkin <MLomkin@idl.idaho.gov>; Tamara Armstrong <tarmstrong@idl.idaho.gov>
Subject: FW: How does one observe the auction?

Meribeth or Tammy,
 Can one of you send me the general call in number or link to allow someone from the public to watch or listen. See below.
 Thanks,
 Ryan

From: Kiki Tidwell <ktinsv@cox.net>
Sent: Thursday, December 03, 2020 7:25 AM
To: Ryan Montoya <rmontoya@idl.idaho.gov>
Cc: Josh Purkiss <jpurkiss@idl.idaho.gov>; prestoncarter@givenspursley.com; governor@gov.idaho.gov; mpdesignsolutions@hotmail.co.uk; kriss.bivens.cloyd@ag.idaho.gov; Lawrence.wasden@ag.idaho.gov; Dustin Miller <dmiller@idl.idaho.gov>
Subject: How does one observe the auction?

Ryan,
 That is certainly disappointing that the IDL staff is not maximizing value of these lands to the benefit of endowment funds in Idaho. With a large celltower adjacent, I am not sure that you will be receiving any bids on the larger parcel.

As well, IDL is receiving quite a bit of negative press and letters to the editor in our local paper about IDL's other celltower site by Redfish.

I am assuming that the celltower lease site will be on zoom or gotomeeting today due to elevated virus conditions? May I have log in information?
 Kiki

From: Ryan Montoya [<mailto:rmontoya@idl.idaho.gov>]
Sent: Wednesday, December 2, 2020 1:15 PM
To: ktinsv@cox.net
Cc: Josh Purkiss
Subject: RE: Updating our State Land Lease application

Dear Ms. Tidwell:

Thank you for your emails. The Idaho Department of Lands (Department) followed the Land Board approved process for processing and advertising the communication site lease auction. The Department plans to continue with the auction process. We understand that you will withdraw your offer to lease, for residential development, a nearby, larger piece of property based on your email. I anticipate that the Department will be issuing an RFP for that larger parcel of property in the near future and would welcome a proposal for lease at that time.

Regards,
Ryan Montoya

From: Kiki Tidwell <ktinsv@cox.net>
Sent: Wednesday, December 02, 2020 7:45 AM
To: Josh Purkiss <jpurkiss@idl.idaho.gov>
Cc: 'Preston N. Carter' <prestoncarter@givenspursley.com>; Meribeth Lomkin <MLomkin@idl.idaho.gov>; 'dmiller@idl.idaho.gov'; governor@gov.idaho.gov; 'Kriss' <kriss.bivens.cloyd@ag.idaho.gov>; 'Lawrence.wasden@ag.idaho.gov'
Subject: RE: Updating our State Land Lease application

Josh,
 I see that the auction for the cell tower site on this property is scheduled for 11 am tomorrow. Please understand that our offer is withdrawn if this auction goes through as a cell tower will decimate the value of this property for homes. IDL has an opportunity right now for a \$250,000, 49 year lease with us. I would hope that you could at least postpone the cell tower auction until you can explore our lease offer.

Best,
Kiki

Kiki Tidwell
 President, Tidwell Idaho Foundation, Inc.
 208-578-7769 Idaho Office
 208-481-7810 cell

From: Josh Purkiss [<mailto:jpurkiss@idl.idaho.gov>]
Sent: Friday, November 27, 2020 9:04 AM
To: Kiki Tidwell
Cc: 'Preston N. Carter'; Meribeth Lomkin
Subject: RE: Updating our State Land Lease application

Morning Kiki,

I will inform our leadership of your revised proposal and get back to you with their response. I would expect a response in the next couple of weeks.

JP

From: Kiki Tidwell <ktinsv@cox.net>
Sent: Friday, November 27, 2020 8:35 AM
To: Josh Purkiss <jpurkiss@idl.idaho.gov>
Cc: 'Preston N. Carter' <prestoncarter@givenspursley.com>; Meribeth Lomkin <MLomkin@idl.idaho.gov>
Subject: Updating our State Land Lease application

Josh,

I previously have submitted a State Land Lease Application, and Amended Application, for the Buttercup IDL parcels as described in the appraisal report below. I would now like to amend that application to these terms: we agree to \$250,000 per year annual lease rent, on the entire 106.6 acres of land as detailed in the appraisal report including the celltower site, 49 years lease term, with options to renew lease. We can the prepay first year's lease rent immediately upon signing lease contract.

I saw in our newspaper legals that the Buttercup celltower lease is scheduled to auction on Dec 3rd. This celltower will significantly diminish the value of IDL's larger parcel to the north of it, so our offer has to include this celltower parcel in our lease to protect the value of our homesites to be developed and we need IDL's agreement that no other celltower sites will be developed in the vicinity of our lease parcel. This updated offer is withdrawn if the celltower site is auctioned off.

Thank you,
Kiki

Kiki Tidwell
President, Tidwell Idaho Foundation, Inc.
208-578-7769 Idaho Office
208-481-7810 cell

From: Josh Purkiss [<mailto:jpurkiss@idl.idaho.gov>]
Sent: Wednesday, November 20, 2019 2:05 PM
To: Kiki Tidwell
Subject: RE: Has my updated offer been discussed

Hi Kiki,

It was nice speaking with you today. I have copied the link with the requested information below. The original appraisal was reviewed by an MAI appraiser, and adjusted down a significant amount of money. In addition, I have attached a conceptual plan for marketing purposes, completed by WHPacific, that was developed using current zoning restrictions. After speaking with you, it sounds like it needs to be revised to include more of the county's requirements for developments as well as some avalanche areas.

[Dropbox](#)

[Land Board Materials](#) – If you look at the materials for October, it has the memo that was submitted. If you are looking for more information, please let me know.

JP

From: Kiki Tidwell <ktinsv@cox.net>
Sent: Wednesday, November 20, 2019 12:59 PM
To: Josh Purkiss <jpurkiss@idl.idaho.gov>
Subject: Re: Has my updated offer been discussed

Sorry I can't locate your phone number right now on my phone- can you call me at 6503882108 or provide number? Kiki

Sent from my iPhone

On Nov 14, 2019, at 1:20 PM, Josh Purkiss <jpurkiss@idl.idaho.gov> wrote:

Hi Kiki,

We did get our leasing process approved by the Land Board in October, but we are still waiting on an opinion from the attorney general's office regarding commercial ground leasing.

In reviewing your proposal below, I am struggling to determine what the total financial benefit to the endowments would be as well as what land you would like to lease. Can you provide a spreadsheet showing what you are proposing over ten years as well as a map indicating which lands you would want to lease? Will there be a CPI annual adjustment or are you proposing flat rates?

If you can provide clarification on the proposal, I can discuss it with our commercial advisors and see if they recommend moving forward on the project. That being said, we are at least 6 months away from issuing any commercial ground leases. There are several issues that need to be vetted through the DAG's.

JP

From: Kiki Tidwell <ktinsv@cox.net>
Sent: Wednesday, November 13, 2019 11:01 AM
To: Josh Purkiss <jpurkiss@idl.idaho.gov>; Meribeth Lomkin <MLomkin@idl.idaho.gov>
Cc: prestoncarter@givenspursley.com
Subject: RE: Has my updated offer been discussed

Ping'ing you again – Thanks, Kiki

From: Josh Purkiss [<mailto:jpurkiss@idl.idaho.gov>]
Sent: Thursday, October 10, 2019 12:13 PM
To: Kiki Tidwell; Meribeth Lomkin
Cc: prestoncarter@givenspursley.com
Subject: RE: Has my updated offer been discussed

Hi Kiki,

We are still waiting for the Deputy Attorney General to provide an opinion regarding the commercial leasing process.

You will be the first person I contact when we get the process defined, and I can begin to advertise this property for lease.

JP

From: Kiki Tidwell <ktinsv@cox.net>
Sent: Sunday, October 06, 2019 9:27 AM

To: Josh Purkiss <jpurkiss@idl.idaho.gov>; Meribeth Lomkin <MLomkin@idl.idaho.gov>

Cc: prestoncarter@givenspursley.com

Subject: Has my updated offer been discussed

Josh, Meribeth,

Wondering if my updated lease offer here below has been considered at the Idaho Department of Lands? Can I provide you anything further at this time? Is there any other update from IDL?

Thanks,

Kiki

Kiki Tidwell

President, Tidwell Idaho Foundation, Inc.

300 Let Er Buck Rd.

Hailey, ID 83333

208-578-7769 ofc

650-388-2108 cell

From: Kiki Tidwell [<mailto:ktinsv@cox.net>]

Sent: Friday, August 30, 2019 10:30 AM

To: 'Meribeth Lomkin'; 'Josh Purkiss'

Cc: Preston N. Carter <prestoncarter@givenspursley.com> (prestoncarter@givenspursley.com)

Subject: Updated thoughts

Meribeth, Josh,

Thank you for getting back to me on this. It looks like by the time notice hits the papers, the application period has already closed.

Please, please, please keep me updated on the Buttercup parcel if any application period opens!

I am pushing around numbers to update my application on the Buttercup parcel. I am attempting to supply somewhat affordable housing on this project, rather than high-end lots. My target market is baby boomer locals who are interested in down-sizing into smaller houses on leased pads (less expensive than buying the dirt) and more of a community with shared amenities like a garden and common area barn. The 49 year lease term certainly helps. The houses would be all-electric, with electric vehicle charging from the community solar panels. The Foundation is taking on the project to prove the concept of all electric/solar/storage rather than trying to make a killing on another Valley Club-type development. I think that this works for the IDL as well – to have a really positive project in our Valley that meets our current housing needs, rather than just one more high-end development. A win-win. To get the houses more affordable, the lease rent on the property has to work within a narrow range however. As a Valley Club member, I just had occasion to go through all the land development numbers for the Valley Club West Nine project and am refining all the project costs, which are certainly extensive. The Valley Club also has a pressing need for 30 more beds of employee housing, which I could put in my project, up in the NorthEast corner of the property, by their existing employee housing. IDL would be a hero in Blaine County if we could address several layers of housing needs with this project.

Anyone other than Idaho Power would have a hard time developing a commercial solar project on this parcel because of the rules that Idaho Power has in place in Idaho as per PURPA projects, and net metering; they pay independent power producers an extremely low rate, the latest at 2.2 cents per kWh (Idaho Power sells retail electricity at 8 and 10 cents per kWh).

It seems reasonable to me to update my offer for the lease rent; for the acreage on the property that would have housing on it, a \$2500 per year annual rent for a 49 year lease period. However, a large part

of the property is in an avalanche zone and next to the power lines and would be in community gardens or community solar farm production – to supply the electricity just for the houses on the property, not a commercial solar project like Idaho Power proposed. Perhaps just a bit of net metering to adjacent parcels for their agricultural irrigation. Would it be reasonable to pay \$25,000 per year total for the approx. 10 acres of housing total pads footprint (\$2500 per acre per year once it is developed), and \$10,000 per year for the remainder of the parcel, starting immediately? I could seize the window for the tax credits on the solar installation if so. IDL could start earning funds significantly more funds for the endowment right away.

Thank you,
Kiki

Kiki Tidwell
President, Tidwell Idaho Foundation, Inc.

From: Meribeth Lomkin [<mailto:MLomkin@idl.idaho.gov>]
Sent: Thursday, August 29, 2019 11:19 AM
To: Josh Purkiss; Kiki Tidwell
Subject: RE: Notice of IDL public auctions

Hi Kiki,
Josh did a great job of answering your questions with what we know from your description.

I've attached a scan of the Area office posting of the IDL public auction legal advertisement that I am aware is currently being published in Blaine County & Magic Valley newspapers. The attachment probably doesn't look exactly like the legal ad, because of formatting in the newspaper, but the content should be the same. If this is the legal notice that you are referencing, additional information can be found on the IDL web page here:
<https://www.idl.idaho.gov/leasing/grazing/leasing/index.html>

Please note the application period for the properties listed on the attached Notice has closed. As you are aware, IDL is updating our policy/procedure for handling applications, advertising applications and properties open to application, and some other processes. The attached Notice is a step towards the new process for some applications that were already in progress.

Nothing new on my radar from the last time we talked about the Buttercup parcel.

If you have further questions, feel free to contact us.
 Thanks.
 Meribeth

From: Josh Purkiss <jpurkiss@idl.idaho.gov>
Sent: Thursday, August 29, 2019 7:45 AM
To: Kiki Tidwell <ktinsv@cox.net>; Meribeth Lomkin <MLomkin@idl.idaho.gov>
Subject: RE: Notice of IDL public auctions

Kiki,

I am not sure which public auction notice you are referencing? Do you have a link?

We have some grazing and commercial leases offered for public auction, but none of them are for Buttercup. As of now, Idaho Power and you are the only proposals received for the Buttercup land.

JP

From: Kiki Tidwell <ktinsv@cox.net>
Sent: Thursday, August 29, 2019 6:52 AM
To: Josh Purkiss <jpurkiss@idl.idaho.gov>; Meribeth Lomkin <MLomkin@idl.idaho.gov>
Subject: Notice of IDL public auctions

Josh, Meribeth,

I saw the legal notice in the paper about the IDL public auctions. Is there a link to find out more about which properties are being auctioned? I am assuming that it is not the Buttercup Rd parcel, or you would have alerted me. Have you received other interest in that parcel at all?

Thanks,
Kiki

Kiki Tidwell
300 Let Er Buck Rd
Hailey, ID 83333
208-578-77690

The logo of the Idaho Department of Lands is a large, stylized diamond shape. It features a light green central area with a yellow border. The text "IDAHO DEPARTMENT OF LANDS" is written in white, bold, capital letters across the middle of the diamond. The background of the logo is a light gray color.

IDAHO DEPARTMENT OF LANDS

STATE BOARD OF LAND COMMISSIONERS

February 16, 2021

Regular Agenda

Subject

Omnibus Rulemaking – Adoption of Temporary Fee Rules

Question Presented

Shall the Land Board adopt conditional temporary fee rules, to become effective only if the pending fee rules are not otherwise approved or rejected by the 2021 Idaho Legislature and/or not extended pursuant to the Idaho Administrative Procedure Act?

Background

All existing administrative rules in Idaho expire each year on July 1 unless reauthorized by the legislature. The legislature adjourned the 2019 session without reauthorizing all previously approved and codified administrative rules. Executive administrative action was required to ensure existing rules stayed in effect.

The Land Board adopted omnibus pending fee rules on October 17, 2019, which were submitted to the 2020 Idaho Legislature for review under docket number 20-0000-1900F. The 2020 Idaho Legislature did not pass a concurrent resolution approving any pending fee rules; however, the Land Board had conditionally adopted temporary fee rules on February 18, 2020. This proactive action taken to conditionally re-approve fee rules upon *sine die* ensured they remained in effect as temporary rules.

The temporary rules will expire at the end of the 2021 legislative session. The Land Board adopted omnibus pending fee rules on October 20, 2020, which were submitted to the 2021 Idaho Legislature for review under docket number 20-0000-2000F. The pending fee rules will become final rules if approved by a concurrent resolution.

Discussion

To ensure the continuity of administrative fee rules following adjournment of the 2021 legislative session, the governor and his staff have directed all state agencies to adopt omnibus temporary fee rules in preparation for post-*sine die* (Attachment 1). All agencies are required to submit an omnibus *Notice of Adoption of Temporary Fee Rules* to the Division of Financial Management (DFM) by March 4, 2021.

The attached draft notice lists previously approved fee rules under IDAPA 20, rules of the Idaho Department of Lands (Attachment 2). The majority of the rule chapters under IDAPA 20 are under the authority of the Land Board, and IDAPA 20 also includes rules pertaining to the conservation of oil and natural gas in the state of Idaho, authorized by the Idaho Oil and Gas

Conservation Commission (Oil and Gas Commission), and rules of the Idaho Board of Scaling Practices (Scaling Board).

If approved by the Land Board and other approving authorities, the Department will submit the notice of adoption of temporary fee rules to DFM. The rulemaking notice includes rules of the Oil and Gas Commission and Scaling Board because those rules are listed in IDAPA 20, the Department of Land's agency rules. However, the Department is not asking the Land Board to adopt the Oil and Gas Commission or Scaling Board rules.

Recommendation

Adopt as conditional temporary rules all of the Department's administrative fee rules, as set forth in Attachment 2. The rules will become effective only if the pending fee rules are not otherwise approved or rejected by the 2021 Idaho Legislature and/or not extended pursuant to the Idaho Administrative Procedure Act.

Board Action

Attachments

1. February 4, 2021 Memo from DFM: Preparing Administrative Fee Rules for Post-*Sine Die*
2. Notice of Omnibus Rulemaking – Adoption of Temporary Fee Rules (draft)

IDAHO DEPARTMENT OF LANDS



State of Idaho
DIVISION OF FINANCIAL MANAGEMENT
Executive Office of the Governor

BRAD LITTLE
Governor

ALEX J. ADAMS
Administrator

February 4, 2021

MEMORANDUM

TO: Executive Branch Agency/Department Heads
Rules Review Officers

FROM: Alex J. Adams

SUBJECT: **Preparing Administrative Fee Rules for Post-Sine Die**

In order to ensure the continuity of administrative rules following the adjournment of the 2021 Legislative session, this memo outlines the process that agencies will need to complete prior to **March 4, 2021**. While each agency must take these steps now, these temporary fee rules are conditional and will only become effective at *sine die* if the pending fee rules are not otherwise approved or rejected by the Legislature and/or not extended pursuant to the Idaho Administrative Procedure Act, including sections 67-5291 and 67-5292, Idaho Code.

1. Agencies must submit a completed Notice of Adoption of Temporary Rule form to DFM by March 4th.
 - A template Notice is enclosed for fee rules only.
 - Rules should be adopted as submitted to the 2021 Legislature.
 - a. The Fee Rules expire upon Sine Die if not approved by the legislature via concurrent resolution of both the Senate and House Floor.
 - b. The Non-Fee Rules that became final rules after the 2020 legislative session, expire on June 30th, 2021, if the legislature does not extend them pursuant to the Idaho Administrative Procedure Act, section 67-5292, Idaho Code. Guidance will be forthcoming to re-adopt non-fee rule chapters if they are allowed to expire. Non-fee rules will be addressed by DFM after *sine die*.
 - No ARRF will be required.
 - Please submit completed Notices to adminrule@dfm.idaho.gov.
2. If rulemaking authority is vested in a board or commission – not agency staff – the board or commission must convene to properly authorize the Notice. This is required by law. Please work closely with your attorney to ensure the Notice is properly authorized.
 - The meeting must be scheduled in a timeframe to submit a completed Notice of Temporary Fee Rulemaking to DFM prior to the March 4 deadline.
 - The motion should be made as follows:

“Pursuant to Section 67-5226, Idaho Code, the Governor has found that temporary adoption of this rule is appropriate to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens.

These rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws.

The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules.

The Governor has also found that the fee(s) or charge(s) being imposed or increased is/are justified and necessary to avoid immediate danger to the agency/department/board/commission's budget, to the state budget, to necessary state functions and services, and to avoid immediate danger of a potential violation of Idaho's constitutional requirement that it balance its budget.

Therefore, we are adopting this/these temporary fee rule(s) to be effective upon *sine die* of the 2021 session of the Idaho Legislature. The approval is conditional and will only become effective if the rules are not otherwise approved or rejected by the Legislature and/or not extended pursuant to the Idaho Administrative Procedure Act, including sections 67-5291 and 67-5292, Idaho Code.”

3. DFM will publish the fee notices of temporary rulemaking at or shortly after *sine die* with the rules having an effective date as of *sine die*.
4. For these temporary fee rules only, agencies do not have to accept written comments pursuant to 67-5222(a) as its requirement and deadline applies to “publication of the notice of *proposed* rulemaking in the bulletin” (emphasis added). Robust opportunity for public input on the fee rules occurred during 2020 rulemaking. The 2020 temporary fee rules were acted upon in open public meetings/hearings that allowed public comment throughout the rulemaking process.
5. Each agency must keep all records of this rulemaking process for at least two (2) years pursuant to Idaho Code § 67-5225. Please ensure the record is thorough and complete.

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

DOCKET NO. 20-0000-2100F

NOTICE OF OMNIBUS RULEMAKING - ADOPTION OF TEMPORARY RULES

EFFECTIVE DATE: The effective date of the temporary rules being adopted through this omnibus rulemaking is upon the adjournment date of the first regular session of the 66th Idaho State Legislature (sine die).

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to:

- Sections 38-132 and 38-402, Idaho Code;
- Title 38, Chapter 12, including Section 38-1208, Idaho Code;
- Title 47, Chapters 3, 7, 8, 15, 16 and 18, including Sections 47-314(8), 47-315(8), 47-328(1), 47-710, 47-714, and 47-1316, Idaho Code;
- Title 58, Chapters 1, 3, 6, 12 and 13, including Sections 58-104, 58-105, 58-127, and 58-304 through 58-312, Idaho Code;
- Title 67, Chapter 52, Idaho Code;
- Article IX, Sections 7 and 8 of the Idaho Constitution; and
- The Equal Footing Doctrine (Idaho Admission Act of July 3, 1890, 26 Stat. 215, Chapter 656).

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

Through this temporary rule, the Idaho Department of Lands adopts the following chapters under IDAPA 20:

- 20.02.14, Rules for Selling Forest Products on State-Owned Endowment Lands
- 20.03.01, Rules Governing Dredge and Placer Mining Operations in Idaho
- 20.03.02, Rules Governing Mined Land Reclamation
- 20.03.03, Rules Governing Administration of the Reclamation Fund
- 20.03.04, Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho
- 20.03.05, Riverbed Mineral Leasing in Idaho
- 20.03.08, Easements on State-Owned Lands
- 20.03.09, Easements on State-Owned Submerged Lands and Formerly Submerged Lands
- 20.03.13, Administration of Cottage Site Leases on State Lands
- 20.03.14, Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases
- 20.03.15, Rules Governing Geothermal Leasing on Idaho State Lands
- 20.03.16, Rules Governing Oil and Gas Leasing on Idaho State Lands
- 20.03.17, Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands
- 20.04.02, Rules Pertaining to the Idaho Forestry Act and Fire Hazard Reduction Laws

Through this temporary rule, the Idaho Board of Scaling Practices adopts the following chapter under IDAPA 20:

- 20.06.01, Rules of the Idaho Board of Scaling Practices

Through this temporary rule, the Oil and Gas Conservation Commission adopts the following chapter under IDAPA 20:

- 20.07.02, Rules Governing Conservation of Oil and Natural Gas in the State of Idaho

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These temporary rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules.
(insert one sentence on agency specific need)

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fees or charges being imposed or increased is justified and necessary to avoid immediate danger and the fees are described herein:

The fees or charges, authorized in Sections 38-122, 38-404, 38-1209, 47-315(5)(e), 47-316, 47-710, 47-1506(g), 47-1508(f), 47-1316, 47-1803, 58-104, 58-105 and 58-127, 58-304, 58-601, 58-603, 58-1307, Idaho Code, are part of the agency's 2021 budget that relies upon the existence of these fees or charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these temporary rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and immediate danger of a violation of Idaho's constitutional requirement that it balance its budget.

The following is a specific description of the fees or charges:

- 20.02.14 – Stumpage payments and associated bonding for removal of state timber from endowment land pursuant to timber sales.
- 20.03.01 – Application fee, amendment fee, assignment fee, and inspection fee for all dredge and placer permits in the state of Idaho.
- 20.03.02 – Application fee for permanent closure plans and assignment fee for reclamation plans and permanent closure plans.
- 20.03.03 – Annual payment for Reclamation Fund participation.
- 20.03.04 – Application fees for encroachment permits and deposits toward the cost of newspaper publication.
- 20.03.05 – Fees for applications, advertising applications, exploration locations, and approval of assignments for riverbed mineral leasing.
- 20.03.08 – Application fee, easement consideration fee, appraisal costs, and assignment fee for easements on state-owned lands.
- 20.03.09 – Administrative fee, appraisal costs, and assignment fee for easements on state-owned submerged lands and formerly submerged lands.
- 20.03.13 – Annual rental payment paid to the endowment for which the property is held.
- 20.03.14 – Lease application fee, full lease assignment fee, partial lease assignment fee, mortgage agreement fee, sublease fee, late rental payment fee, minimum lease fee, and lease payment extension request fee on state endowment trust lands.
- 20.03.15 – Application fee, assignment fee, and late payment fee for geothermal leases on state-owned lands.
- 20.03.16 – Exploration location permit fee, nomination fee, and processing fee for oil and gas leases on endowment lands.
- 20.03.17 – Application fee, rental rate, and assignment fee for leases on state-owned submerged lands and formerly submerged lands.
- 20.04.02 – Fee imposed upon the harvest and sale of forest products to establish hazard management performance bonds for the abatement of fire hazard created by a timber harvest operation, and fees imposed upon contractors for transferring fire suppression cost liability back to the State.
- 20.06.01 – Scaling assessment fee paid to a dedicated scaling account for all scaled timber harvested within the state of Idaho; administrative fees for registration, renewal, and transfer of log brands; fees for testing and issuance of a temporary scaling permit, specialty scaling license, and standard scaling license; fee to renew a specialty or standard scaling license; and fee for a requested check scale involving a scaling dispute.

- 20.07.02 – Bonding for oil and gas activities in Idaho and application fees for seismic operations; permit to drill, deepen or plug back; multiple zone completions; well treatment; pits and directional deviated wells.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rules, contact Scott Phillips at (208) 334-0294.

DATED this 4th day of March, 2021.

Dustin Miller
Director
Idaho Department of Lands
300 N. 6th St, Suite 103
P.O. Box 83720
Boise, Idaho 83720-0050
Phone: (208) 334-0242
Fax: (208) 334-3698
rulemaking@idl.idaho.gov

IDAHO DEPARTMENT OF LANDS

STATE BOARD OF LAND COMMISSIONERS

February 16, 2021

Regular Agenda

Subject

Negotiated rulemaking for IDAPA 20.03.09 *Easements on State-Owned Submerged Lands and Formerly Submerged Lands*

Question Presented

Shall the Land Board authorize the Department to initiate negotiated rulemaking for IDAPA 20.03.09 *Easements on State-Owned Submerged Lands and Formerly Submerged Lands*?

Background

The Idaho Department of Lands (Department) manages the beds of navigable lakes and rivers for the benefit of the public. IDAPA 20.03.09 establishes a consistent process to authorize specific uses of state-owned submerged lands. These uses include bridges, utility crossings, and some dams.

Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter is scheduled to be repealed and replaced in 2021 for review during the 2022 legislative session.

Discussion

The Department anticipates reducing the overall regulatory burden by reducing both total word count and the number of restrictive words in the new rule chapter. The Department will review the rule with stakeholders to ensure that it is right-sized. Preliminary research justifies increasing the application fee and assignment fee to cover the actual costs of processing. These fees have not changed since they were approved in 1993.

A proposed timeline for the rulemaking process is provided in Attachment 1.

Recommendation

Authorize the Department to initiate negotiated rulemaking for IDAPA 20.03.09 *Easements on State-Owned Submerged Lands and Formerly Submerged Lands*.

Board Action

Attachments

1. Draft rulemaking timeline



Draft Rulemaking Timeline

IDAPA 20.03.09

Easements on State-Owned Submerged Lands and Formerly Submerged Lands

February 16, 2021	Approval from Land Board to start negotiated rulemaking (regular agenda)
March 5, 2021	Last day to submit <i>Notice of Intent to Promulgate Rules</i> to the Office of the Administrative Rules Coordinator (OARC) for publication in April
March 2021	Post information on IDL website about this rulemaking
April 7, 2021	<i>Notice of Intent to Promulgate Rules</i> publishes in the Idaho Administrative Bulletin; public comment period opens
May 5, 2021	Negotiated rulemaking public meeting in Boise and via Zoom
May 12, 2021	Negotiated rulemaking public meeting in Boise and via Zoom
June 30, 2021	End of comment period for negotiated rulemaking
July 20, 2021	Present update on this rulemaking to the Land Board (information agenda)
August 16, 2021	Last day to submit proposed rule to DFM for the 2022 Legislature
August 30, 2021	Last day to submit <i>Notice of Proposed Rule</i> to OARC for the 2022 Legislature
October 6, 2021	Proposed rule publishes in the Idaho Administrative Bulletin and 21-day public comment period begins
October 13, 2021	Public hearing
October 27, 2021	End of public comment period on proposed rule
November 16, 2021	Request approval from Land Board to adopt pending fee rule (regular agenda)
November 26, 2021	Last day to submit <i>Notice of Pending Fee Rule</i> to OARC for publication in January 2022 Administrative Bulletin
	Pending fee rule to be reviewed during the 2022 legislative session

Note: All dates are subject to change.

STATE BOARD OF LAND COMMISSIONERS

February 16, 2021

Regular Agenda

Subject

Negotiated rulemaking for IDAPA 20.02.01 *Rules Pertaining to the Idaho Forest Practices Act*

Question Presented

Shall the Land Board authorize the Department to initiate negotiated rulemaking for IDAPA 20.02.01 *Rules Pertaining to the Idaho Forest Practices Act*?

Background

The Idaho Department of Lands (Department) administers the Idaho Forest Practices Act (Title 38, Chapter 13, Idaho Code), which sets standards for logging, road building, reforestation, streamside protection, and other forest activities.

The *Rules Pertaining to the Idaho Forest Practices Act* set minimum standards to assure the continuous growing and harvesting of forest tree species and to protect and maintain the forest soil, water resources, wildlife, and aquatic habitat. Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter is scheduled to be repealed and replaced in 2021 for review during the 2022 legislative session.

The Idaho Forest Practices Advisory Committee (FPAC) provides technical assistance to the Land Board, in cooperation with the Department, in matters relating to the Idaho Forest Practices Act and the rules promulgated thereunder. FPAC is composed of nine voting members from across the state of Idaho that represent family forest owners, industrial forest owners, logging operators, general forest practitioners, and fisheries biology. There are also ex officio members from other state agencies and technical specialties that advise the Department.

In 2013, FPAC recommended that the Department begin the rule promulgation process to implement changes to stream protection rules, specifically the new Shade Rule. That rule was derived from years of work to develop science-based requirements for retention of shade (trees) adjacent to Class I streams. The rule was implemented in 2014 with arrangements to follow implementation with a study of the effectiveness of the rule.

The Department worked with the Idaho Department of Environmental Quality (DEQ) and the University of Idaho to implement a Shade Effectiveness study to compare the modeled and measured (actual) changes in shade when applying the two Shade Rule options across different forest types. In January 2020, *The Effectiveness of Idaho's Class I Stream Shade Rule: Analysis of Before – After, Control – Impact Effective Shade Data* was published. The study found that the rule, when applied properly, did in fact limit shade losses from timber

harvesting in most cases. However, the rule is considered by many to be too complicated and difficult to implement.

During 2020, DEQ conducted its quadrennial audit titled *Idaho 2020 Interagency Forest Practices Water Quality Audit*. During this audit and three years of monitoring, IDL and DEQ staff visited sites across the state to evaluate forest practices rule implementation and effectiveness. As part of the audit, the Shade Rule was given special emphasis. With the study results, operator input, and observations made during these audits, a simpler way to write the rule to achieve the same results was realized. When the idea of the simplified Shade Rule was presented to FPAC, the committee formed a task force to develop specific language. The task force developed new rule language that provides very similar protection but is much easier to understand and implement.

Discussion

In December 2020, FPAC voted to approve preliminary language for a simplified Shade Rule. The language is an attempt to take lessons learned from the study and audit to update the rule. The objective is to provide management options to landowners while still affording appropriate protections to stream shade and large organic debris recruitment.

FPAC also identified a need to update rules specific to the use of ground-based equipment on steep slopes. The technology used in the industry has changed; machinery is now being used on steep slopes while tethered to another machine or anchor point with a winch to maintain tension. This traction-assistance allows the machine to operate safely with reduced soil disturbance. Existing rule language does not allow for the use of this new family of machines, and new rule language is needed to accommodate their use.

Given the opportunity to open rule promulgation to achieve the above objectives and in accordance with the Governor's Executive Order 2020-01, Zero-Based Regulation, FPAC has also recommended removing some unnecessary rule language and amending other rules to reduce verbiage and improve readability.

A proposed timeline for the rulemaking process is provided in Attachment 1.

Recommendation

Authorize the Department to initiate negotiated rulemaking for IDAPA 20.02.01 *Rules Pertaining to the Idaho Forest Practices Act*.

Board Action

Attachments

1. Draft Rulemaking Timeline



Draft Rulemaking Timeline

IDAPA 20.02.01

Rules Pertaining to the Idaho Forest Practices Act

December 17, 2020	Forest Practices Advisory Committee (FPAC) recommends rulemaking
February 16, 2021	Approval from Land Board to start negotiated rulemaking (regular agenda)
March 5, 2021	Last day to submit <i>Notice of Intent to Promulgate Rules</i> to the Office of the Administrative Rules Coordinator (OARC) for publication in April
March 2021	Post information on IDL website about this rulemaking
April 7, 2021	<i>Notice of Intent to Promulgate Rules</i> publishes in the Idaho Administrative Bulletin; comment period opens
April – June	Hold at least 3 negotiated rulemaking public meetings (dates and locations TBD)
June 7, 2021	End of comment period for negotiated rulemaking
June or July - TBD	FPAC meets to approve any substantive changes being made to the rules
July 20, 2021	Present update on this rulemaking to the Land Board (information agenda)
August 16, 2021	Last day to submit proposed rule to DFM for the 2022 Legislature
August 30, 2021	Last day to submit <i>Notice of Proposed Rule</i> to OARC for the 2022 Legislature
October 6, 2021	Proposed rule publishes in the Idaho Administrative Bulletin and 21-day public comment period begins
October	Hold at least 2 public hearings (dates and locations TBD)
October 27, 2021	End of comment period on proposed rule
November - TBD	FPAC meets to approve any substantive changes made to proposed rule
November 16, 2021	Request approval from Land Board to adopt pending rule (regular agenda)
November 26, 2021	Last day to submit <i>Notice of Pending Rule</i> to OARC for publication in January 2022 Administrative Bulletin
	Pending rule to be reviewed during the 2022 legislative session

Note: All dates are subject to change.