

## State Board of Land Commissioners Open Meeting Checklist

Meeting Date: September 20, 2022

### Regular Meetings

9/1/2022	Meeting Notice posted in prominent place in IDL's Boise Director's office five (5) or more calendar days before meeting.
9/1/2022	Meeting Notice posted in prominent place in IDL's Coeur d'Alene staff office five (5) or more calendar days before meeting.
9/1/2022	Meeting Notice posted in prominent place at meeting location five (5) or more calendar days before meeting.
9/1/2022	Meeting Notice published on Townhall Idaho website <a href="https://townhall.idaho.gov">https://townhall.idaho.gov</a> five (5) or more calendar days before meeting.
9/1/2022	Meeting Notice emailed/faxed to list of media and interested citizens who have requested such notice five (5) or more calendar days before meeting.
9/1/2022	Meeting Notice posted electronically on IDL's public website <a href="https://www.idl.idaho.gov">https://www.idl.idaho.gov</a> five (5) or more calendar days before meeting.
9/15/2022	Agenda posted in prominent place in IDL's Boise Director's office forty-eight (48) hours before meeting.
9/15/2022	Agenda posted in prominent place in IDL's Coeur d'Alene staff office forty-eight (48) hours before meeting.
9/15/2022	Agenda posted in prominent place at meeting location forty-eight (48) hours before meeting.
9/15/2022	Agenda published on Townhall Idaho website <a href="https://townhall.idaho.gov">https://townhall.idaho.gov</a> forty-eight (48) hours before meeting.
9/15/2022	Agenda emailed/faxed to list of media and interested citizens who have requested such notice forty-eight (48) hours before meeting.
9/15/2022	Agenda posted electronically on IDL's public website <a href="https://www.idl.idaho.gov">https://www.idl.idaho.gov</a> forty-eight (48) hours before meeting.
4/26/2022	Land Board annual meeting schedule posted – Boise Director's office, Coeur d'Alene staff office, and IDL's public website <a href="https://www.idl.idaho.gov">https://www.idl.idaho.gov</a> .

### 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 published on Townhall Idaho website <a href="https://townhall.idaho.gov">https://townhall.idaho.gov</a> 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 <a href="https://www.idl.idaho.gov">https://www.idl.idaho.gov</a> 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 posted at meeting location twenty-four (24) hours before meeting.
	Meeting Notice and Agenda published on Townhall Idaho website <a href="https://townhall.idaho.gov">https://townhall.idaho.gov</a> twenty-four (24) hours before meeting.
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	Meeting Notice and Agenda posted electronically on IDL's public website <a href="https://www.idl.idaho.gov">https://www.idl.idaho.gov</a> 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.

Kylie LaBonte  
Recording Secretary

9/15/2022  
Date

IDAHO DEPARTMENT OF LANDS



## **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

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# **NOTICE OF PUBLIC MEETING SEPTEMBER 2022**

The Idaho State Board of Land Commissioners will hold a Regular Meeting on Tuesday, September 20, 2022 in the **State Capitol, Lincoln Auditorium (WW02), Lower Level, West Wing, 700 W. Jefferson St., Boise, Idaho**. The meeting is scheduled to begin at 9:00 AM (Mountain).

*Please note location.*

**The State Board of Land Commissioners will conduct this meeting in person and by virtual means. This meeting is open to the public. No public comment will be taken.**

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

First Notice Posted: 9/1/2022-IDL Boise; 9/1/2022-IDL CDA

This notice is published pursuant to Idaho Code § 74-204. 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

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

### State Board of Land Commissioners Regular Meeting

September 20, 2022 – 9:00 AM (MT)

#### Amended Final Agenda

Capitol, Lincoln Auditorium (WW02), Lower Level, West Wing, 700 W. Jefferson St., Boise, Idaho

**The State Board of Land Commissioners will conduct this meeting in person and by virtual means.  
This meeting is open to the public. No public comment will be taken.**

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

*For the record, pursuant to Idaho Code § 74-204(4)(c), the published agenda was amended at the start of this September 20, 2022 meeting. Refer to meeting minutes for the amendment motion.*

#### 1. **Department Report** – Presented by Dustin Miller, Director

##### **Trust Land Revenue**

- A. Timber Sales – August 2022
- B. Leases and Permits – August 2022

##### **Status Updates**

- C. Fire Season Report

#### 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. **Disclaimer of Interest Request DI600305-Spencer Hill, South Fork Boise River** – Presented by Eric Wilson, Bureau Chief-Resource Protection and Assistance

#### 4. **Disclaimer of Interest Request DI600306-Aaron Fuhrman, South Fork Boise River** – Presented by Eric Wilson, Bureau Chief-Resource Protection and Assistance

State Board of Land Commissioners  
Amended Final Agenda  
Regular Meeting – September 20, 2022  
Page 1 of 2



5. **Approval of Draft Minutes** – August 16, 2022 Regular Meeting (Boise)

**Regular—Action Item(s)**

6. **FY2024 Department of Lands Budget** – *Presented by Rhonda McFarland, Financial Manager*

7. **University of Idaho CAFE Project Proposal** – *Presented by Josh Purkiss, Bureau Chief-Real Estate Services, IDL; Scott Green, President, University of Idaho; Mark McGuire, Associate Dean of CALS, UI; Brian Foisy, Chief Financial Officer, UI; and Kent Nelson, General Counsel, UI*

~~8. **Cottage Site Leasing: 2025 Plan** – *Presented by Josh Purkiss, Bureau Chief-Real Estate Services*~~

~~9.~~ **Avimor Land Exchange** – *Presented by Josh Purkiss, Bureau Chief-Real Estate Services*

~~10.~~ **Brisbie LLC Land Exchange** – *Presented by Josh Purkiss, Bureau Chief-Real Estate Services*

~~11.~~ **Carey Act Lands Transfer (Idaho Department of Water Resources)** – *Presented by Mark Cecchini-Beaver, Deputy Attorney General, IDWR*

**Information**

None

**Executive Session**

None

IDAHO DEPARTMENT OF LANDS



# Idaho Statutes

Idaho Statutes are updated to the web July 1 following the legislative session.

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

September 20, 2022

Trust Land Revenue

## Timber Sales

During August 2022, the Department of Lands sold four timber sales at auction. One sale had competitive bidding. The net sale value represents 2% up bid over the appraised value. One endowment timber sale did not sell at auction. This was the third and final attempt for the salvage sale.

TIMBER SALE AUCTIONS								
Sale Name	Area	Sawlog MBF	Cedar Prod MBF	Pulp MBF	Appraised Net Value	Sale Net Value	Net \$/MBF	Purchaser
Goat Creek Salvage	SJ	5,760			\$ 192,333.00	\$ 192,333.00	\$33.39	Stimson Lumber Co
Middle Fork Cedar	PL	1,490			\$ 601,942.00	\$ 601,942.00	\$403.99	Stella-Jones Corporation
Deet Ton	PAY	990			\$ 225,114.44	\$ 272,576.40	\$275.33	Tamarack Mill LLC
Golden Yacht	POL	6,170			\$ 2,159,751.00	\$ 2,159,751.00	\$350.04	IFG Timber LLC
<b>Endowment</b>		<b>14,410</b>	<b>0</b>	<b>0</b>	<b>\$ 3,179,140.44</b>	<b>\$ 3,226,602.40</b>	<b>\$223.91</b>	

## IDAHO DEPARTMENT OF LANDS

PROPOSED TIMBER SALES FOR AUCTION				
Sale Name	Volume MBF	Advertised Net Value	Area	Estimated Auction Date
North Operations				
Powder Brush	7,790	\$2,117,195.00	Ponderosa	9/8/2022
Last Teakean Cedar	9,050	\$3,655,072.00	Ponderosa	9/21/2022
Second Goat Cedar	12,725	\$3,406,908.00	St. Joe	9/22/2022
<b>TOTALS</b>	<b>29,565</b>	<b>\$9,179,175.00</b>		
South Operations				
Golden Glen	4,885	\$1,501,603.00	Maggie Creek	9/14/2022
Ove Dent OSR	3,225	\$1,142,902.50	Clearwater	9/29/2022
<b>TOTALS</b>	<b>8,110</b>	<b>\$2,644,505.50</b>		

VOLUME UNDER CONTRACT as of August 31, 2022				
	Public School	Pooled	Total	3 Year Avg.
Active Contracts			180	177
Total Residual MBF Equivalent	315,591	190,300	505,891	548,793
Estimated residual value	\$89,385,180	\$52,498,827	\$141,884,007	\$143,023,562
Residual Value (\$/MBF)	\$283.23	\$275.87	\$280.46	\$260.61

	TIMBER HARVEST RECEIPTS									
	August					FY to date		September Projected		
	Stumpage		Interest		Harvest Receipts		Stumpage		Interest	
Public School	\$	5,719,348.32	\$	616,149.51	\$	10,969,704.66	\$	4,878,673.30	\$	590,675.56
Pooled	\$	3,702,159.26	\$	436,862.40	\$	6,164,628.46	\$	3,993,877.42	\$	400,303.96
General Fund	\$	192.74	\$	44.98	\$	239.00	\$	1.65	\$	0.00
TOTALS	\$	9,421,700.32	\$	1,053,056.89	\$	17,134,572.12	\$	8,872,552.37	\$	990,979.52

	Status of FY 2022 Timber Sale Program					
	MBF Sawlog			Number Poles		
	Public School	Pooled	All Endowments	Public School	Pooled	All Endowments
Sold as of August 31, 2022	185,424	93,141	278,565	25,993	17,886	43,879
Currently Advertised	0	4,885	4,885	0	0	0
In Review	19,170	0	19,170	2,500	0	2,500
Did Not Sell*	4,430	0	4,430	0	0	0
<b>TOTALS</b>	209,024	98,026	307,050	28,493	17,886	46,379
FY-2022 Sales Plan			311,195			20,600
Percent to Date			99%			225%

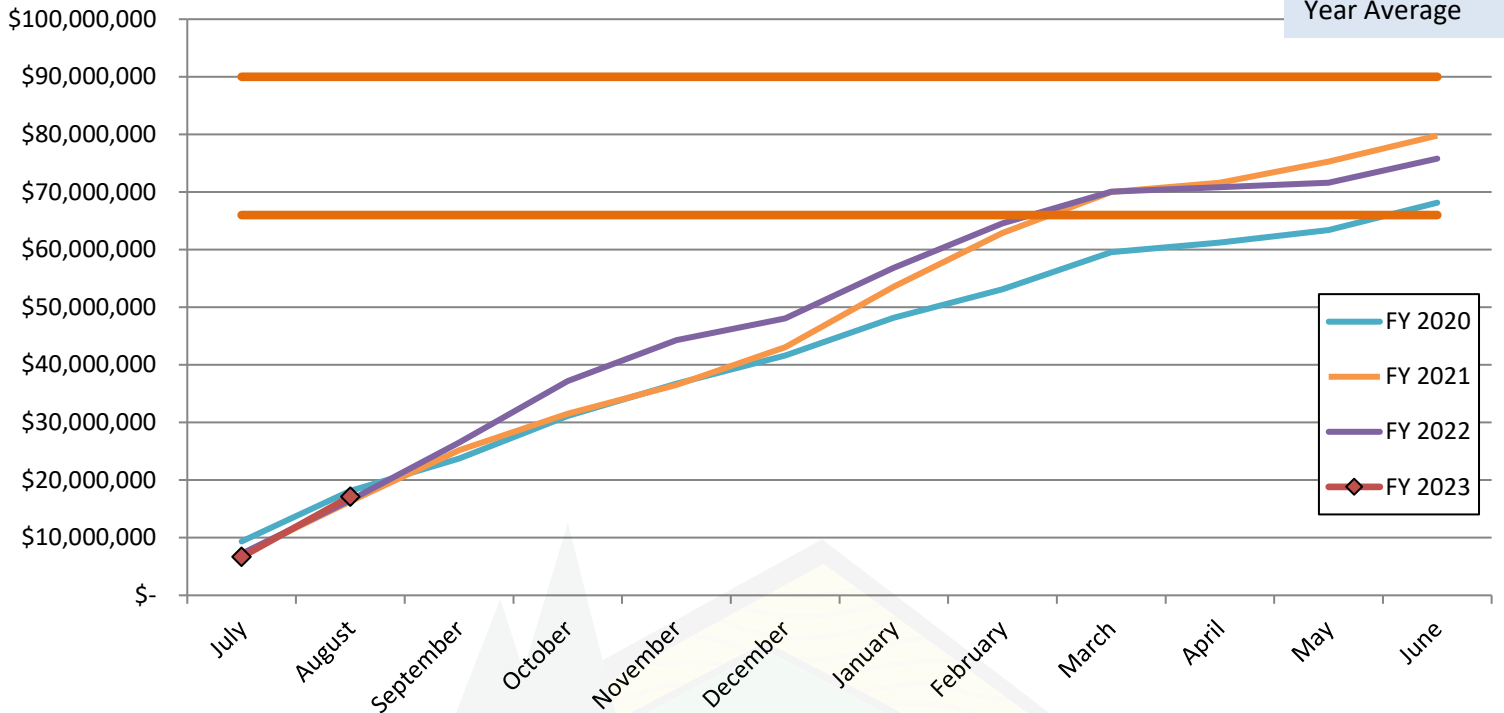
\* After three attempts at auction.

	Status of FY 2023 Timber Sale Program					
	MBF Sawlog			Number Poles		
	Public School	Pooled	All Endowments	Public School	Pooled	All Endowments
Sold as of August 31, 2022	6,835	1,304	8,139	0	0	0
Currently Advertised	26,374	11,621	37,995	4,039	191	4,230
In Review	21,380	4,930	26,310	150	510	660
Did Not Sell*	0	0	0	0	0	0
<b>TOTALS</b>	54,589	17,855	72,444	4,189	701	4,890
FY-2023 Sales Plan			326,000			20,000
Percent to Date			22%			24%

\* After three attempts at auction.

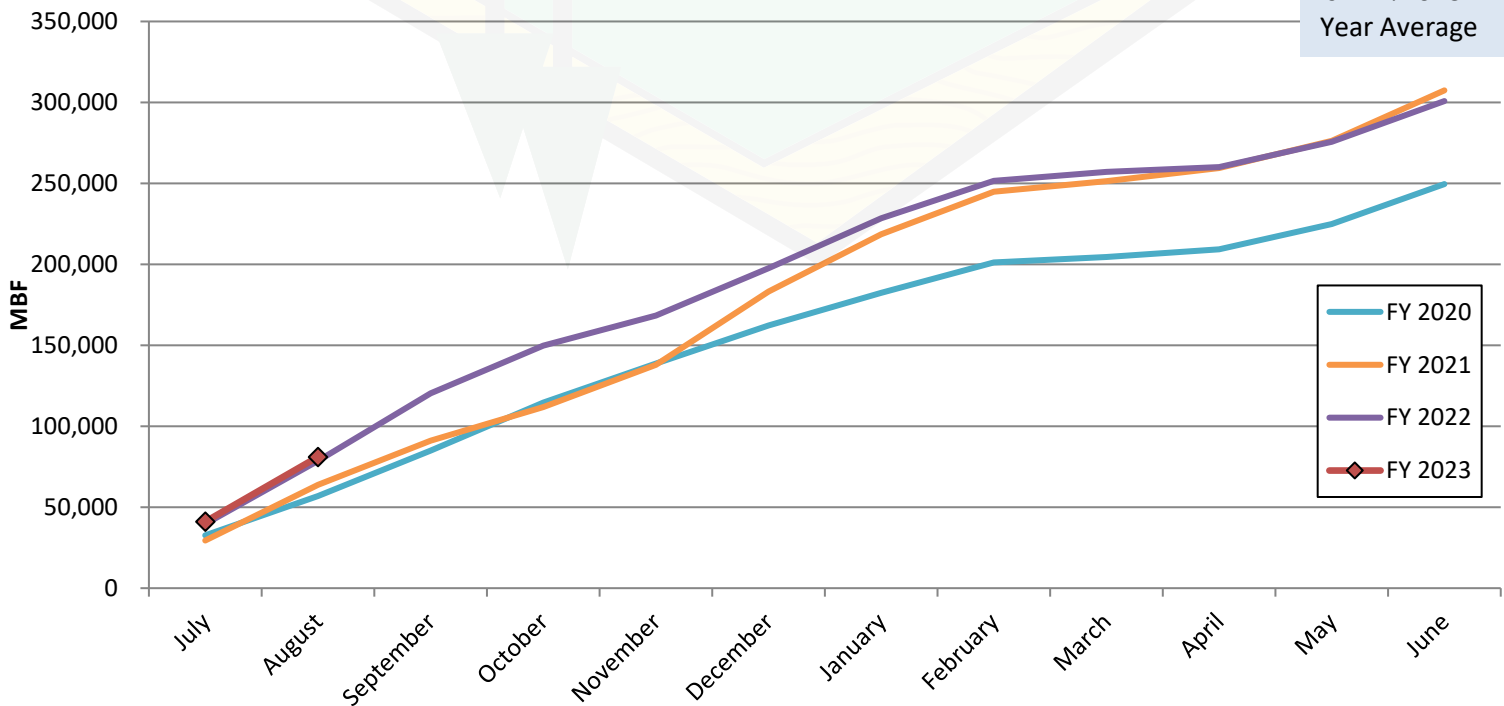
## Cumulative Harvest Receipts

Current FYTD  
is 101% of 3  
Year Average



## Cumulative Harvest Volume

Current FYTD  
is 122% of 3  
Year Average



## Monthly Lumber and Stumpage Price



IDL Stumpage Price Line is a 6-month average of the net sale price.

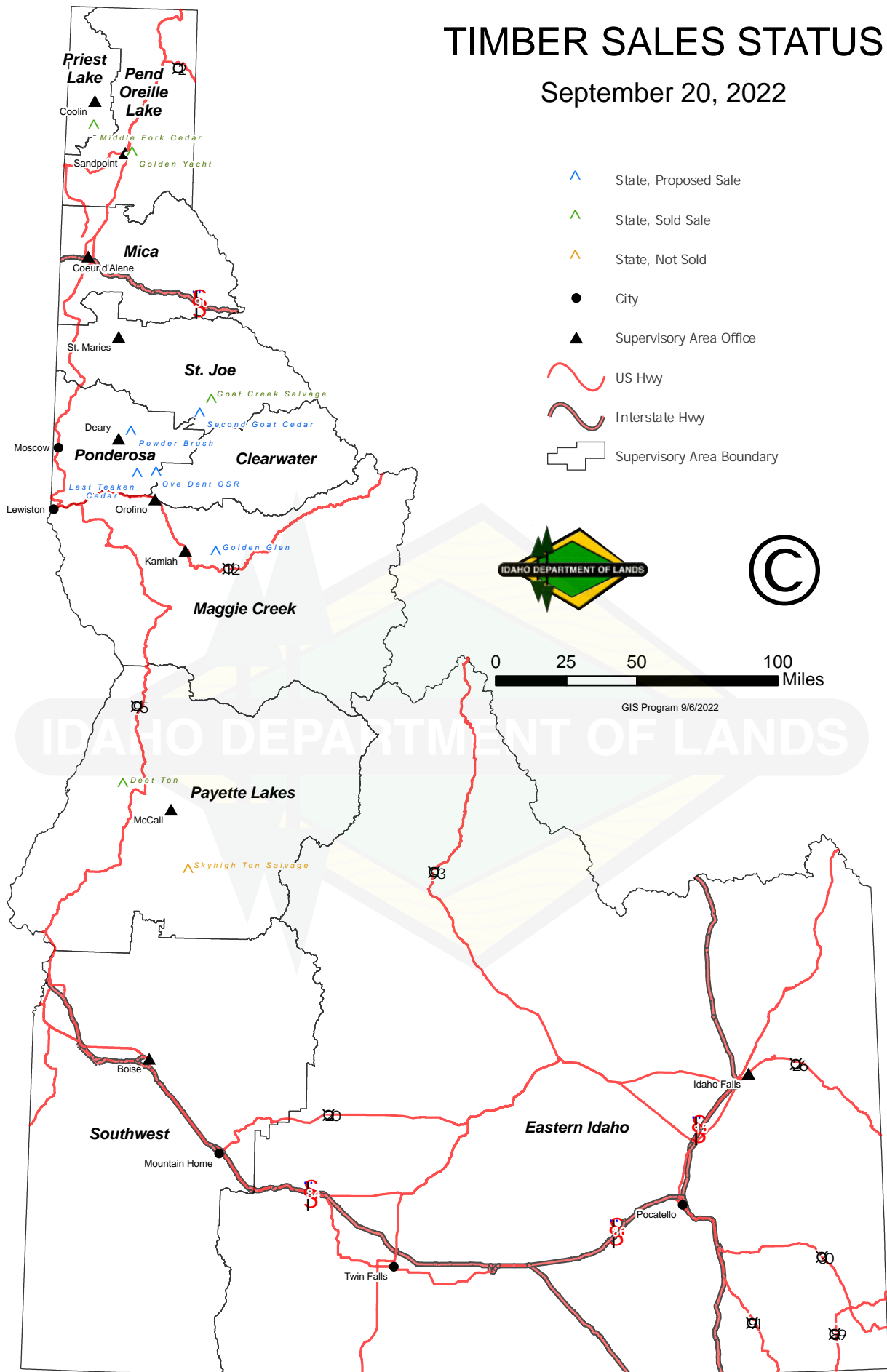
August 2022 6-month average price is \$312.33.

August 2021 6-month average price was \$270.14.

IDAHO DEPARTMENT OF LANDS

# TIMBER SALES STATUS

September 20, 2022





# STATE BOARD OF LAND COMMISSIONERS

September 20, 2022  
Endowment Transactions

## Leases and Permits

FISCAL YEAR 2023 – LEASING & PERMITTING TRANSACTIONS BY MONTH – through August 31, 2022													
ACTIVITY	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	FYTD
<b>SURFACE</b>													
Agriculture	-	1											1
<i>Assignments</i>	-	-											0
Communication Sites	-	-											0
<i>Assignments</i>	1	2											3
Grazing	-	-											0
<i>Assignments</i>	3	2											5
Residential	-	4											4
<i>Assignments</i>	-	-											0
<b>COMMERCIAL</b>													
Alternative Energy	-	-											0
Industrial	-	-											0
Military	-	-											0
Office/Retail	1	-											1
Recreation	-	-											0
<b>OTHER</b>													
Conservation	-	-											0
Geothermal	-	-											0
Minerals	2	2											4
<i>Assignments</i>	1	-											1
Non-Comm Recreation	-	-											0
Oil & Gas	-	-											0
<b>PERMITS</b>													
Land Use Permits	6	5											11
<b>TOTAL INSTRUMENTS</b>	<b>14</b>	<b>16</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>30</b>

## Real Estate

FISCAL YEAR 2023 – REAL ESTATE TRANSACTIONS BY MONTH – through August 31, 2022													
ACTIVITY	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	FYTD
Deeds Acquired	-	-											0
Deeds Granted	-	-											0
Deeds Granted - Surplus	-	-											0
Easements Acquired	-	1											1
Easements Granted	2	1											3
<u>Land Exchange Update :</u> Avimor - On the September Land Board agenda for approval to close.													

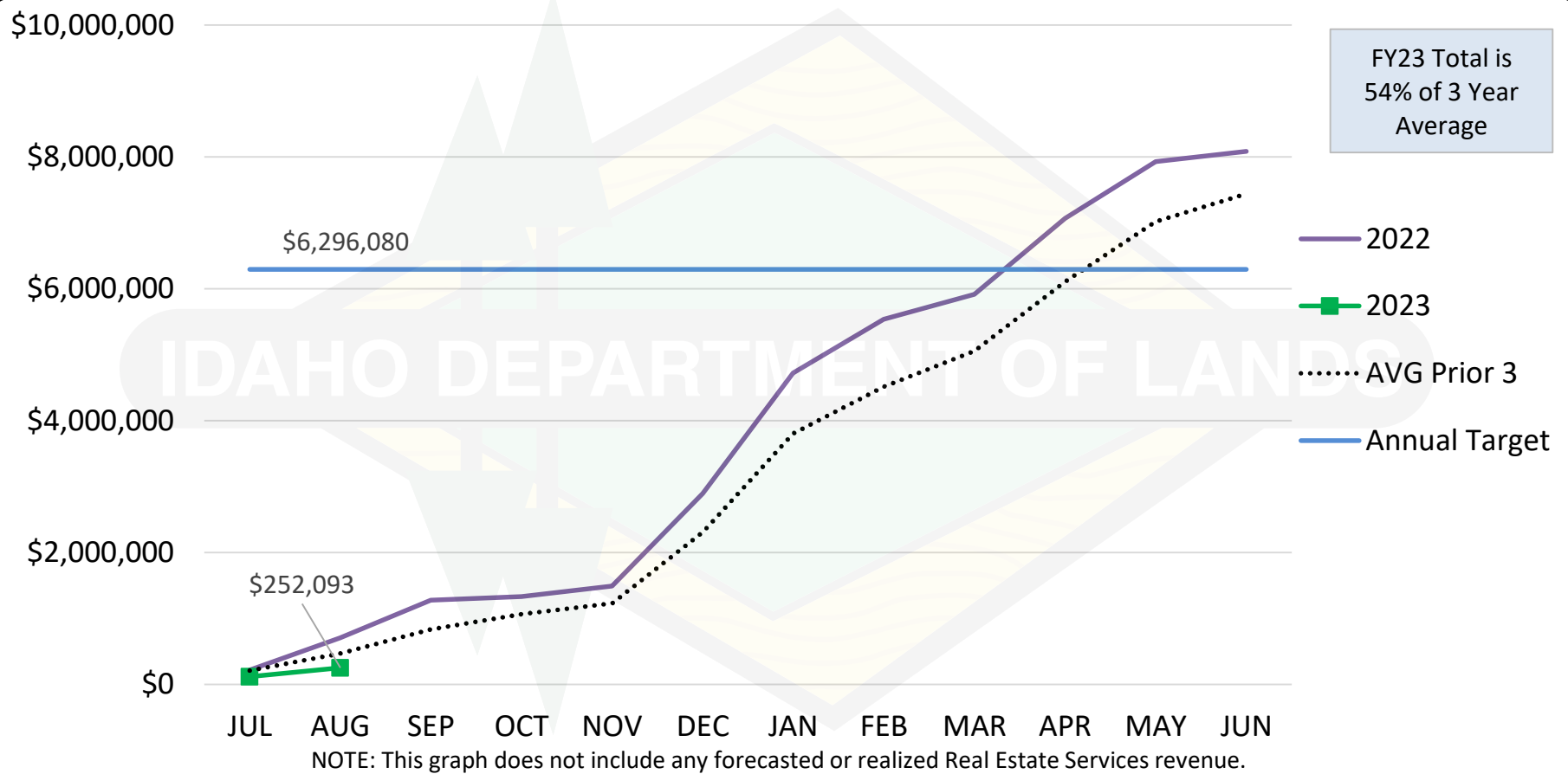
**TRUST LAND MANAGEMENT DIVISION**  
**FY2023 GROSS REVENUE (non-timber) - ACTUAL AND FORECASTED**  
**through August 31, 2022**

	ACTUAL RECEIPTS AS OF 08.31.2022	REVENUE EXPECTED BY 08.31.2022**	REVENUE EXPECTED BY 06.30.2023
<b>SURFACE</b>			
AGRICULTURE	\$ 250	\$ -	\$ 505,000
COMMUNICATION SITES	\$ 74,778	\$ 114,510	\$ 1,009,239
GRAZING	\$ 35,917	\$ 4,000	\$ 1,870,000
RESIDENTIAL	\$ 179	\$ 319	\$ 1,095,851
<b>COMMERCIAL</b>			
COMMERCIAL ENERGY RESOURCES	\$ -	\$ -	\$ 47,763
COMMERCIAL INDUSTRIAL	\$ 4,725	\$ 8,211	\$ 74,504
COMMERCIAL MILITARY	\$ 250	\$ -	\$ 91,117
COMMERCIAL OFFICE/RETAIL	\$ 92,844	\$ 48,978	\$ 527,352
COMMERCIAL RECREATION	\$ 18,302	\$ 60,140	\$ 899,978
<b>OTHER</b>			
CONSERVATION LEASES	\$ 500	\$ -	\$ 65,000
GEOTHERMAL	\$ 3,901	\$ -	\$ -
MINERAL	\$ 20,266	\$ 1,943	\$ 105,403
OIL AND GAS LEASES	\$ 180	\$ 550	\$ 4,874
<b>Sub Total</b>	<b>\$ 252,093</b>	<b>\$ 238,651</b>	<b>\$ 6,296,081</b>
*REAL ESTATE SERVICES	\$ 87,110		
<b>Grand Total</b>	<b>\$ 339,203</b>		

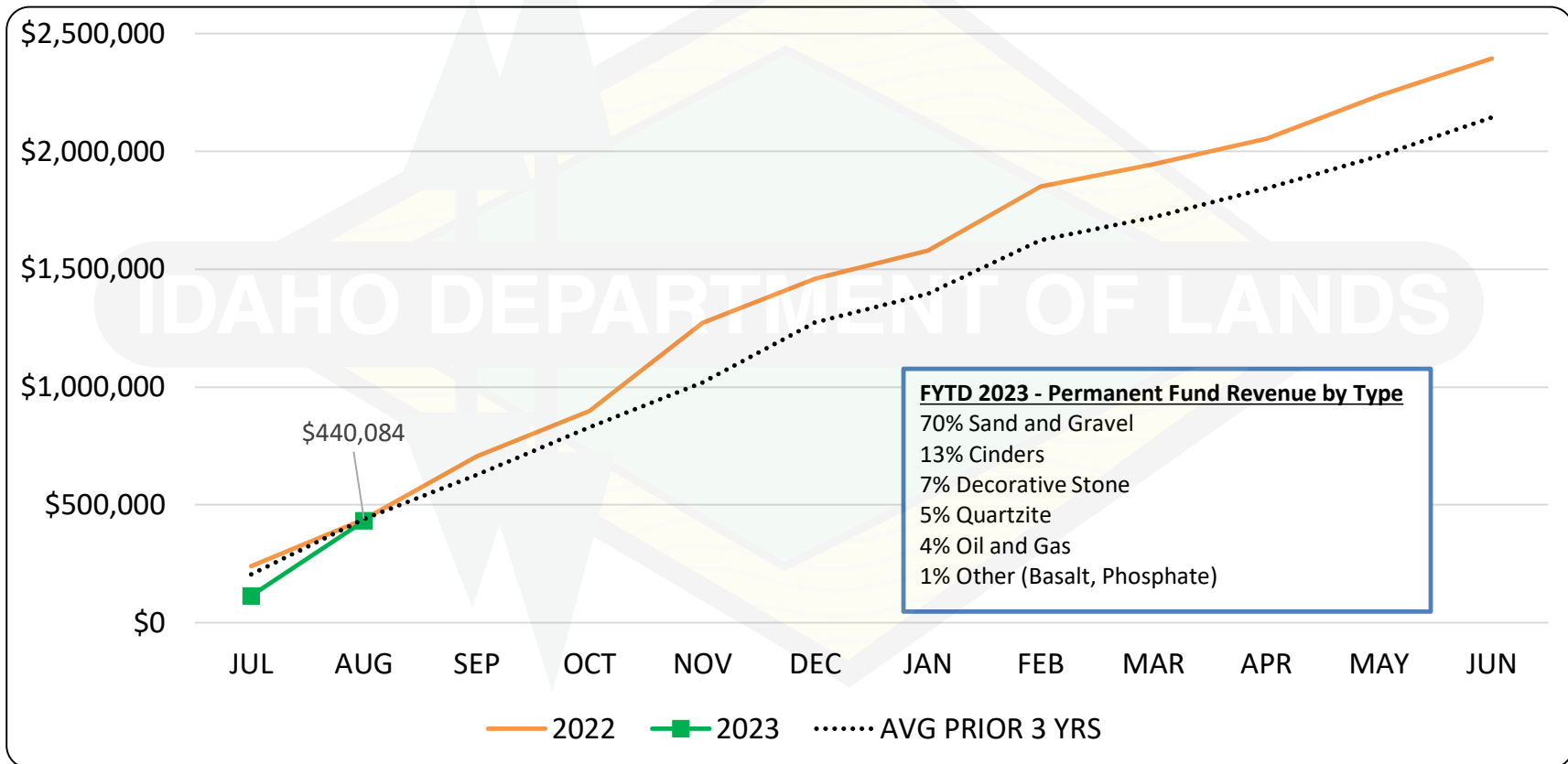
\* This category is not included in the annual forecast.

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

# Cumulative Trust Land Program Receipts Earnings Reserve - All Programs excluding Timber FY 2022 - FYTD 2023



# Cumulative Trust Land Permanent Fund Revenue/Royalties (Does NOT include Land Bank or Timber Program Revenue) FY2022 - FYTD2023



# STATE BOARD OF LAND COMMISSIONERS

September 20, 2022

Department Report

## Subject

Fire Season Update

## Background

As of September 13, Emergency Fire Suppression expenditures are estimated to be \$18,740,000. The Suppression Account will recover an estimated \$5,900,000 of reimbursable costs, for a net obligation of \$12,840,000. The total obligation includes the 2022 contracted aircraft costs and prepositioned contract engines to assist with resource scarcity. These engines are assigned across the state to boost initial attack resources.

## Discussion

On September 8, the Prospect fire was detected 23 miles NNE of Moscow. It is approximately 286 acres in logging slash and heavy timber. The North Idaho Type 3 Incident Management Team 2 began managing the fire September 5. It is now 100 percent contained and being managed by the local district.

As shown by the table below, fire occurrence to date for 2022 is 90 percent of the 20-year average, while the acres burned is 16 percent of the 20-year average.

### Fire Season Comparison to Date

Number of Fires				
Year	Human	Lightning	Total	Acres
2019	130	92	222	1263
2020	173	49	222	6020
2021	227	155	382	141,883
2022	112	134	246	3887
20 Yr. Average			272	24,599

Numbers in table are YTD for prior years and YTD for the current year.

August was much warmer and drier than average. Fire size and frequency has been increasing throughout IDL protection. Nationally resources are stretched thin and resource competition remains high. Idaho is currently in very high to extreme fire danger. Some rain is forecasted throughout the next week. Fires have been burning actively, although the shortening days, cooler nights, and smoke shading are assisting firefighting efforts.

## Significant Fires Outside of IDL Protection

### Kootenai River Complex

Agency/Management: Idaho Panhandle National Forest (USFS)

General Location: 7 miles NW of Bonners Ferry, ID

Acres burned: 20,742 acres, 79 percent completed

### Ross Fork Fire

Agency/Management: Sawtooth National Forest (USFS)

General Location: 2 miles West of Smiley Creek, ID

Acres burned: 37,731 acres, 26 percent completed

### Williams Creek Fire

Agency/Management: Nez Perce-Clearwater National Forests (USFS)

General Location: 5 miles West of Orogrande, ID

Acres burned: 15,773 acres, 31 percent completed

### Four Corners Fire

Agency/Management: Payette National Forest (USFS)

General Location: 6 miles West of Cascade, ID

Acres burned: 13,725 acres, 96 percent contained

### Moose Fire

Agency/Management: Salmon-Challis National Forest (USFS)

General Location: 17 miles North of Salmon, ID

Acres burned: 130,077 acres, 47 percent contained

Total Acres Burned by Ownership 9/14/2022	
Surface Owner	Acres
Idaho Department of Lands	2414
Other State Lands	104
Private	20,541
Bureau of Land Management	30,124
Other Federal	6888
U.S. Forest Service	287,800
<b>Total Acres</b>	<b>347,871</b>

Only fires with perimeters in the Fire Enterprise Geospatial Portal and the IDL Lands Resource Manager system have been included in the analysis.

Fire Deficiency Warrant Spending - 2022 Fire Season YTD		
Category	Estimated Costs	Notes
Aviation Resources	\$3,000,000	4 SEATS, 2 Fire Bosses, 2 Type 2 Helicopters
Preposition Engines	\$385,000	5 Contract engines to boost IA statewide, 8/1/2022 – 9/15/2022
IDL Team Fires	\$4,400,000	Lions Roar (PLS), Quinn (CMS), Prospect (PDS)
IDL Non-Team Fires	\$2,325,000	IDL/Assn fires including pre-positioning
Other Suppression	\$2,730,000	Coeur d'Alene Cache, Dispatch
Other Suppression	\$5,900,000	Reimbursable (IDL and Fire Department resources supporting non-IDL fires)
<b>Total Estimate YTD</b>	<b>\$18,740,000</b>	

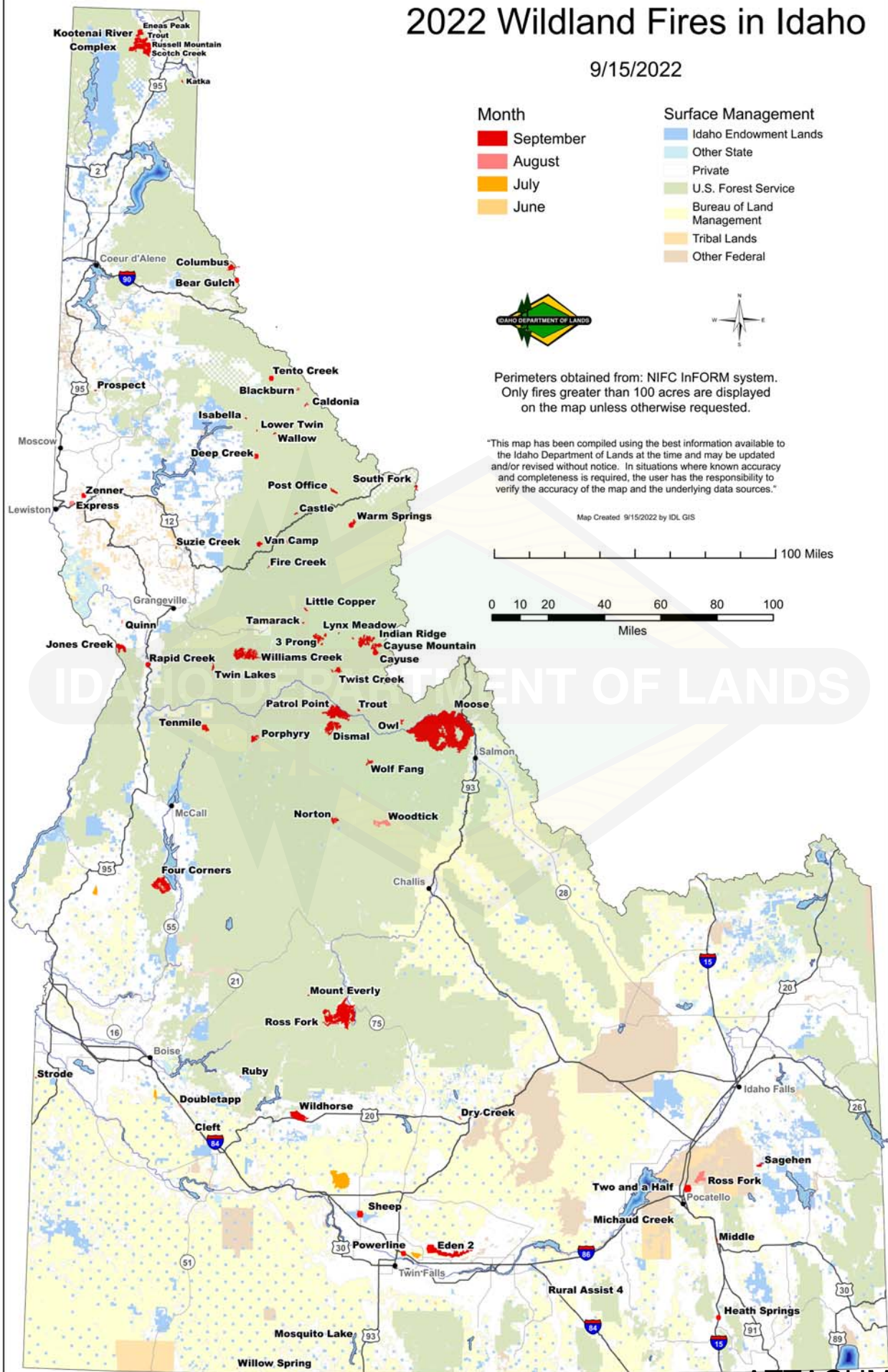
## Attachments

1. Significant Fires Throughout Idaho
2. Current Fire Restrictions Map



# 2022 Wildland Fires in Idaho

9/15/2022



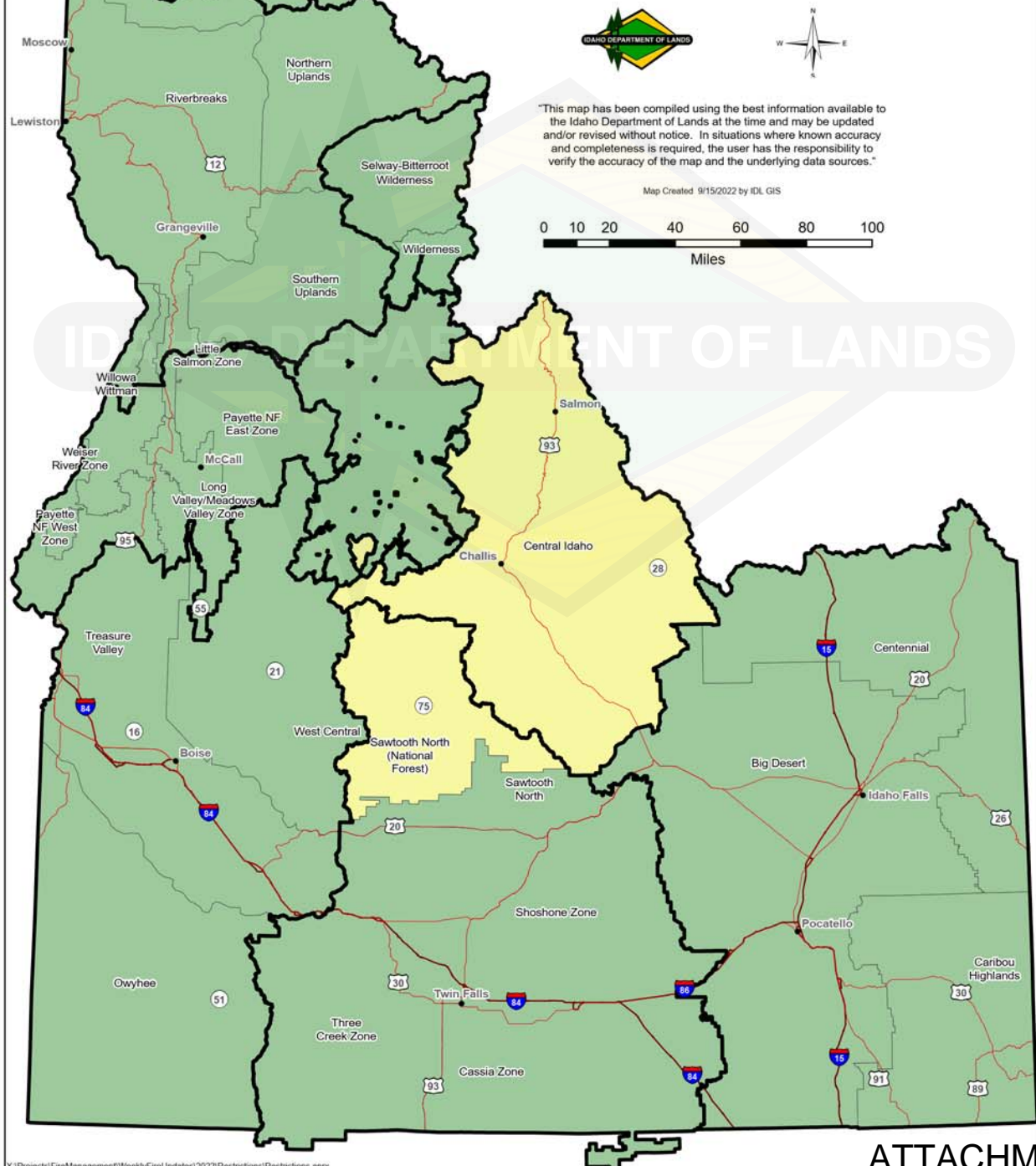
# Idaho Fire Restrictions

9/20/2022

## Restriction Stage

Stage I  
No Restriction

Restriction Area	Restriction Zone	Restriction	Date Enacted
Boise	Owyhee, Treasure Valley, West Central	None	
Central Idaho	Central Idaho	Stage I	Tuesday, July 26
Coeur d'Alene	North Zone, South Zone	None	
East Idaho	Big Desert, Caribou Highlands, Centennial	None	
Grangeville	Northern Uplands, Southern Uplands	None	
Grangeville	Riverbreaks	None	
Payette	Little Salmon, Long/Meadows Valley, Payette NF West, Payette NF East, Weiser River	None	
South Central	Sawtooth North (Within National Forest)	Stage I	Sunday, September 11
South Central	Cassia, Shoshone, Three Creek	None	





Thomas J. Wilford :: Chairman  
Jerry F. Aldape      Irving Littman  
Bob Donaldson      Richelle A. Sugiyama  
Joseph Forney      Chuck Winder  
Steven C. Harris      Brian Yeargain  
  
Chris J. Anton :: Manager of Investments

## Monthly Report to the Board of Land Commissioners

### Investment performance through August 31, 2022

**Month: -3.0%      Fiscal year: 2.9%**

Financial markets started the month in positive territory as inflation peaked, corporate earnings and job openings remained resilient and the prospect the Fed could contain inflation quickly without significant damage to the economy appeared plausible. Fed Chair Jerome Powell in his speech from Jackson Hole, however, made it abundantly clear that the central bank is committed to returning inflation to its 2% target, increasing interest rates beyond what they consider the long-term neutral rate to achieve this goal and remaining at restrictive levels for some time because history cautions strongly against premature loosening of policy. Financial markets sold off as it became increasingly apparent that there is no quick or pain-free resolution to the inflation problem.

### Status of endowment fund reserves

Distributions for FY2022 and FY2023 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

Board Meeting – November 15, 2022

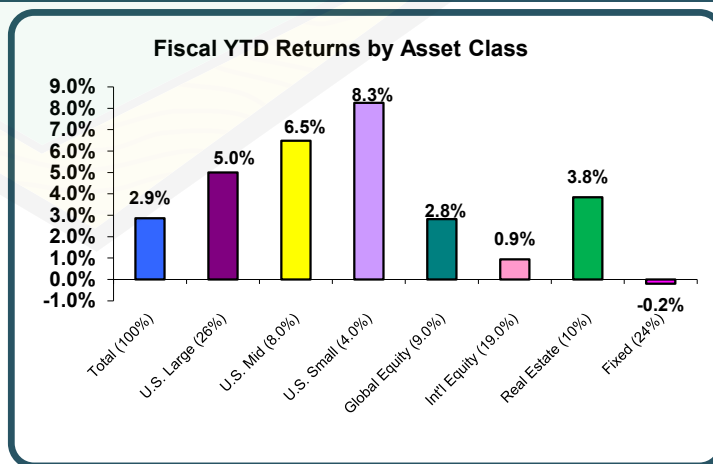


	Month	FYTD
<b>Beginning Value of Fund</b>	<b>2,868,376,022</b>	<b>\$ 2,723,562,805</b>
Distributions to Beneficiaries	(8,359,583)	(16,969,166)
Land Revenue net of IDL Expenses	4,741,652	10,300,725
Change in Market Value net of Investment Mgt. Expenses	(81,149,913)	66,713,814
<b>Current Value of Fund</b>	<b>\$ 2,783,608,178</b>	<b>\$ 2,783,608,178</b>

	Current Month	Calendar Y-T-D	Fiscal Y-T-D	One Year	Three Year	Five Year	Ten Year
<b>Gross Returns</b>							
<b>Total Fund</b>	<b>-3.0%</b>	<b>-14.3%</b>	<b>2.9%</b>	<b>-13.2%</b>	<b>7.1%</b>	<b>7.2%</b>	<b>7.8%</b>
Total Fund Benchmark*	-3.0%	-13.2%	2.2%	-11.3%	6.4%	6.4%	7.3%
<b>Total Fixed</b>	<b>-2.4%</b>	<b>-10.9%</b>	<b>-0.2%</b>	<b>-11.3%</b>	<b>-1.5%</b>	<b>0.9%</b>	<b>1.5%</b>
BBG U.S. Agg. (Ag)	-2.8%	-10.5%	-0.5%	-10.9%	-1.4%	0.8%	1.5%
<b>Total Equity</b>	<b>-3.6%</b>	<b>-19.1%</b>	<b>3.9%</b>	<b>-17.8%</b>	<b>9.8%</b>	<b>9.1%</b>	<b>10.0%</b>
57% R3 29% Ax 14% AC	-3.6%	-17.4%	3.5%	-15.4%	8.8%	7.9%	9.3%
<b>Domestic Equity</b>	<b>-2.9%</b>	<b>-17.5%</b>	<b>5.7%</b>	<b>-15.6%</b>	<b>11.8%</b>	<b>11.2%</b>	<b>11.7%</b>
Russell 3000 (R3)	-3.7%	-16.9%	5.3%	-13.3%	11.8%	11.3%	12.0%
<b>Global Equity</b>	<b>-4.3%</b>	<b>-20.9%</b>	<b>2.8%</b>	<b>-18.8%</b>	<b>9.0%</b>	<b>8.2%</b>	<b>8.8%</b>
MSCI ACWI (AC)	-3.7%	-17.8%	3.0%	-15.9%	8.0%	7.0%	8.4%
<b>Int'l. Equity</b>	<b>-4.6%</b>	<b>-21.5%</b>	<b>0.9%</b>	<b>-21.3%</b>	<b>6.3%</b>	<b>5.4%</b>	<b>6.8%</b>
MSCI ACWI ex-US (Ax)	-3.2%	-18.3%	0.1%	-19.5%	2.9%	1.7%	4.1%
<b>Real Estate</b>			<b>3.8%</b>	<b>24.0%</b>	<b>11.0%</b>	<b>9.3%</b>	
NCREIF ODCE Index (OD)			0.0%	27.3%	10.3%	8.9%	

\* Benchmark: 38% Russell 3000 19% ACWI ex-US 9% AC 24% BB Agg. 10% OD

	Mkt Value	Allocation
<b>Domestic Equity</b>	<b>\$ 1,054.4</b>	<b>37.9%</b>
Large Cap	711.2	25.6%
Mid Cap	228.0	8.2%
Small Cap	115.2	4.1%
<b>Global Equity</b>	<b>253.2</b>	<b>9.1%</b>
<b>Int'l Equity</b>	<b>533.1</b>	<b>19.2%</b>
<b>Fixed Income</b>	<b>619.1</b>	<b>22.2%</b>
<b>Real Estate</b>	<b>310.1</b>	<b>11.1%</b>
<b>Cash</b>	<b>12.6</b>	<b>0.5%</b>
<b>Total Fund</b>	<b>\$ 2,783.6</b>	<b>100.0%</b>



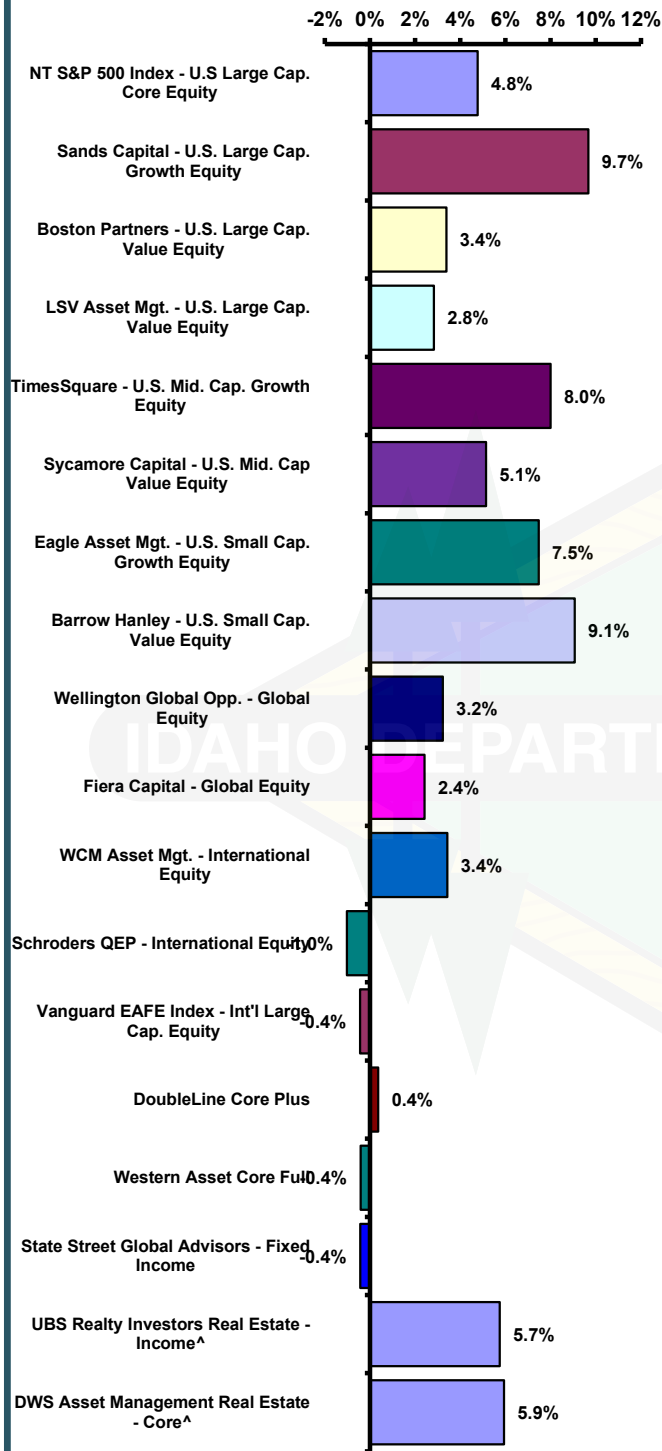
## Endowment Fund Staff Comments:

Financial markets started the month in positive territory as inflation peaked, corporate earnings and job openings remained resilient and optimism the Fed would contain inflation quickly without significant damage to the economy appeared plausible. Fed Chair Jerome Powell in his speech from Jackson Hole, however, made it abundantly clear that the central bank is committed to returning inflation to its 2% target, increasing interest rates beyond what they consider the long-term neutral rate to achieve this goal and remaining at restrictive levels for some time because the historical record cautions strongly against premature loosening of policy. Financial markets sold off as it became increasingly apparent that there is no quick or pain-free resolution to the inflation problem.

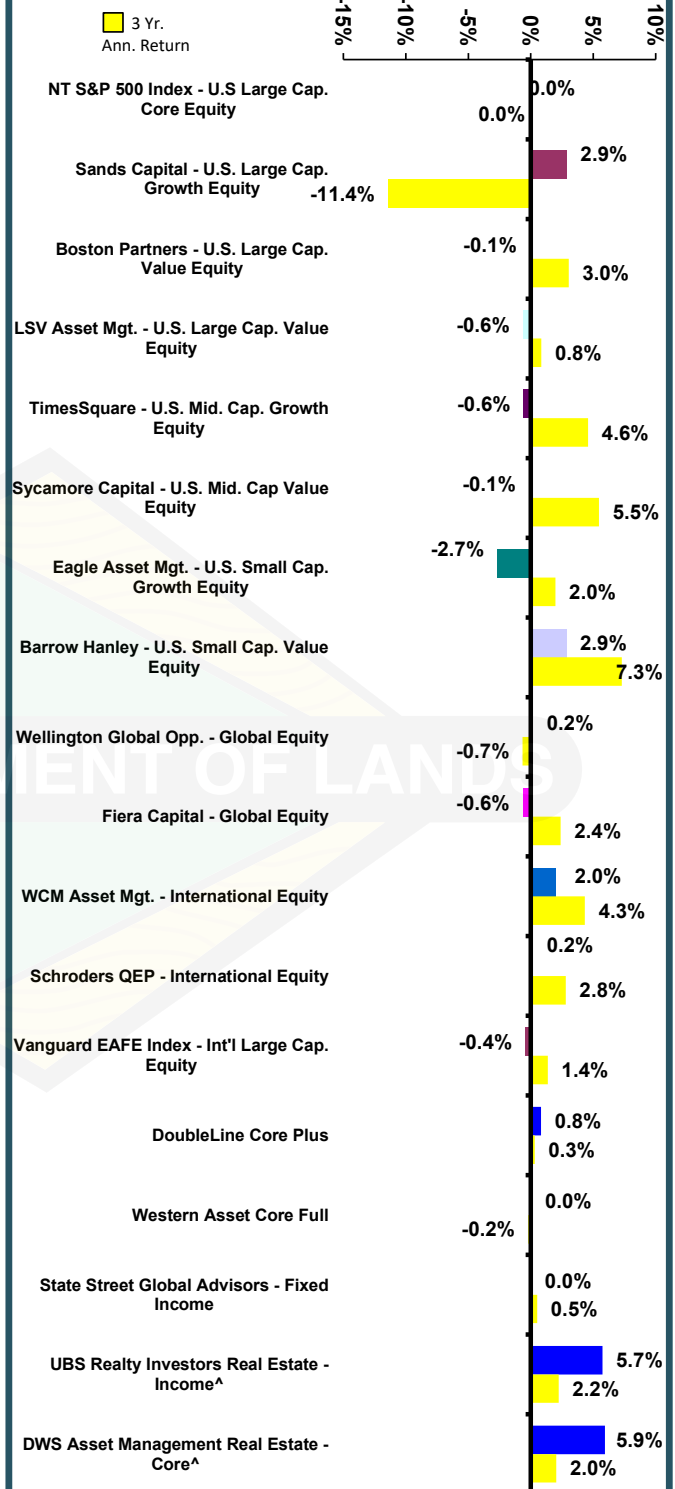
August 31, 2022

# INVESTMENT REPORT

## FYTD Manager Returns



## Manager Relative Returns Fiscal YTD and 3-Yr Ave\*



^ Most recent valuation.

## STATE BOARD OF LAND COMMISSIONERS

September 20, 2022

Consent Agenda

### Subject

DI600305, Disclaimer of Interest for the former bed of the Boise River, Elmore County, Idaho.

### Question Presented

Shall the Land Board approve Disclaimer of Interest DI600305?

### Background

Idaho holds title to the beds and banks of navigable waterways below the ordinary high water mark (OHWM). The State Board of Land Commissioners (Land Board) is the statutorily designated trustee of these lands. When a river moves due to accretion (the natural, gradual process whereby deposited material causes the river to move), title to the riverbed moves as well. These accreted lands are subject to adverse possession by the adjacent upland landowner through a quiet title action. Land Board policy directs the Idaho Department of Lands (Department) to work with these landowners and pursue disclaimers of interest for clearing title to the accreted land.

### Discussion

Spencer and Sara Hill have applied for a disclaimer of interest for one parcel of accretion land totaling 0.93 acres, more or less. This parcel is located within the original surveyed river meander lines of the South Fork Boise River adjacent to the applicants' deeded property in E2 of Government Lot 8 of Section 10, Township 3 North, Range 10 East (Attachment 1-Map).

After the applicant paid the \$300 application fee, the Department identified the OHWM on site and the applicants' licensed surveyor completed a survey. The Department reviewed the survey, deeds, and tax documents, and determined that the disclaimer was ready to move forward.

Spencer and Sara Hill will grant the State of Idaho an easement 25 feet in width for a public use right of way along, and adjacent to, the existing OHWM of the South Fork Boise River.

### Recommendation

Direct the Department to issue a Disclaimer of Interest for one parcel totaling 0.93 acres of the former bed of the South Fork Boise River to Spencer and Sara Hill following their payment to the Department of the remaining processing fee of \$300.

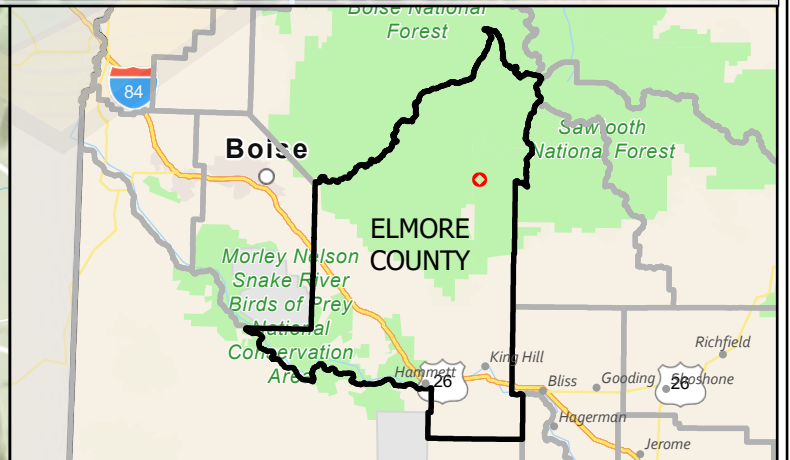
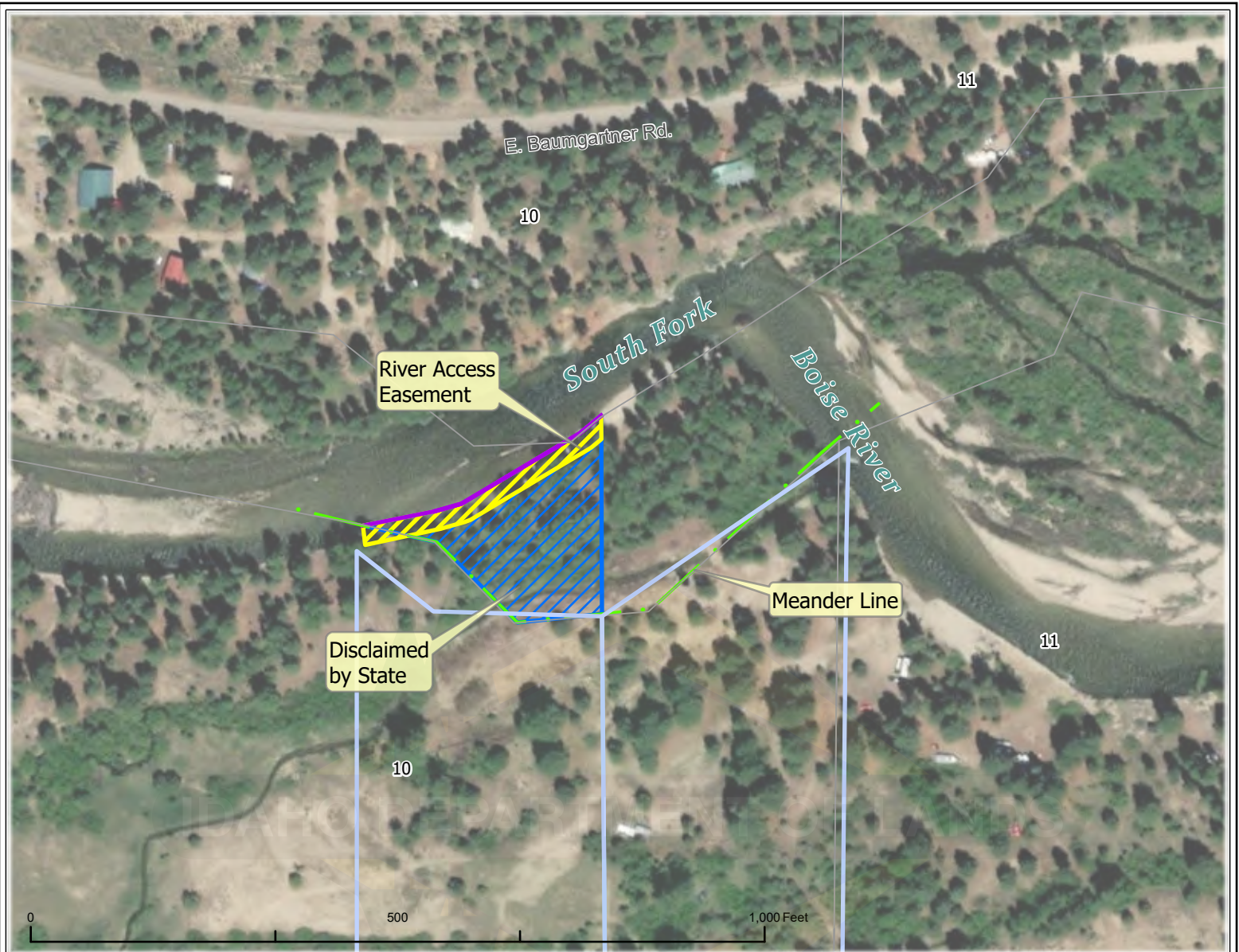
## **Board Action**




## **Attachments**

1. Map







<ul style="list-style-type: none"> <li><span style="color: green;">—</span> Meander Line (north meander line not included in the survey)</li> <li><span style="color: purple;">—</span> Ordinary High Water Mark</li> <li><span style="background-color: yellow; border: 1px solid black; display: inline-block; width: 20px; height: 10px;"></span> River Access Easement Parcel</li> <li><span style="background-color: blue; border: 1px solid black; display: inline-block; width: 20px; height: 10px;"></span> Disclaimed BY State</li> <li><span style="border: 1px solid black; display: inline-block; width: 20px; height: 10px;"></span> Section</li> <li><span style="border: 1px solid blue; display: inline-block; width: 20px; height: 10px;"></span> Parcel</li> </ul> <div style="text-align: center;">  <p><b>DI600305</b> Sec 10 - T03N - R10E 7/26/2022</p> </div> <div style="text-align: center;">  </div>	<p><b>Map Notes</b></p> <p>Projection: Idaho Transverse Mercator, NAD 83</p> <p>Map Notes and Data Sources</p> <p><b>Disclaimer:</b> This map has been compiled using the best information available to the Idaho Department of Lands at the time and may be updated and/or revised without notice. In situations where known accuracy and completeness is required, the user has the responsibility to verify the accuracy of the map and the underlying data sources.</p> <div style="text-align: right;"> <p><b>Vicinity Map</b></p>  </div>
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## **STATE BOARD OF LAND COMMISSIONERS**

September 20, 2022

Consent Agenda

### **Subject**

DI600306, Disclaimer of Interest for the former bed of the South Fork Boise River, Elmore County, Idaho.

### **Question Presented**

Shall the Land Board approve Disclaimer of Interest DI600306?

### **Background**

Idaho holds title to the beds and banks of navigable waterways below the ordinary high water mark (OHWM). The State Board of Land Commissioners (Land Board) is the statutorily designated trustee of these lands. When a river moves due to accretion (the natural, gradual process whereby deposited material causes the river to move), title to the riverbed moves as well. These accreted lands are subject to adverse possession by the adjacent upland landowner through a quiet title action. Land Board policy directs the Idaho Department of Lands (Department) to work with these landowners and pursue disclaimers of interest for clearing title to the accreted land.

### **Discussion**

Aaron and Caroll Fuhriman have applied for a disclaimer of interest on one parcel of accretion land totaling 1.60 acres, more or less. This parcel is located within the original surveyed river meander lines of the South Fork Boise River adjacent to the applicants' deeded property in E2 of Government Lot 8, Section 10, Township 3 North, Range 10 East (Attachment 1-Map).

After the applicant paid the \$300 application fee, the Department identified the OHWM on site and the applicants' licensed surveyor completed a survey. The Department reviewed the survey, deeds, and tax documents, and determined that the disclaimer was ready to move forward.

Aaron and Caroll Fuhriman will grant the State of Idaho an easement 25 feet in width for a public use right of way along, and adjacent to, the existing OHWM of the South Fork Boise River. In addition, Aaron and Caroll Fuhriman will also grant the State of Idaho a disclaimer of interest to the South Fork Boise River north of the OHWM adjacent to their property.

## **Recommendation**

Direct the Department to issue a Disclaimer of Interest for one parcel totaling 1.60 acres of the former bed of the South Fork Boise River to Aaron and Carol Fuhrman following their payment to the Department of the remaining processing fee of \$300.

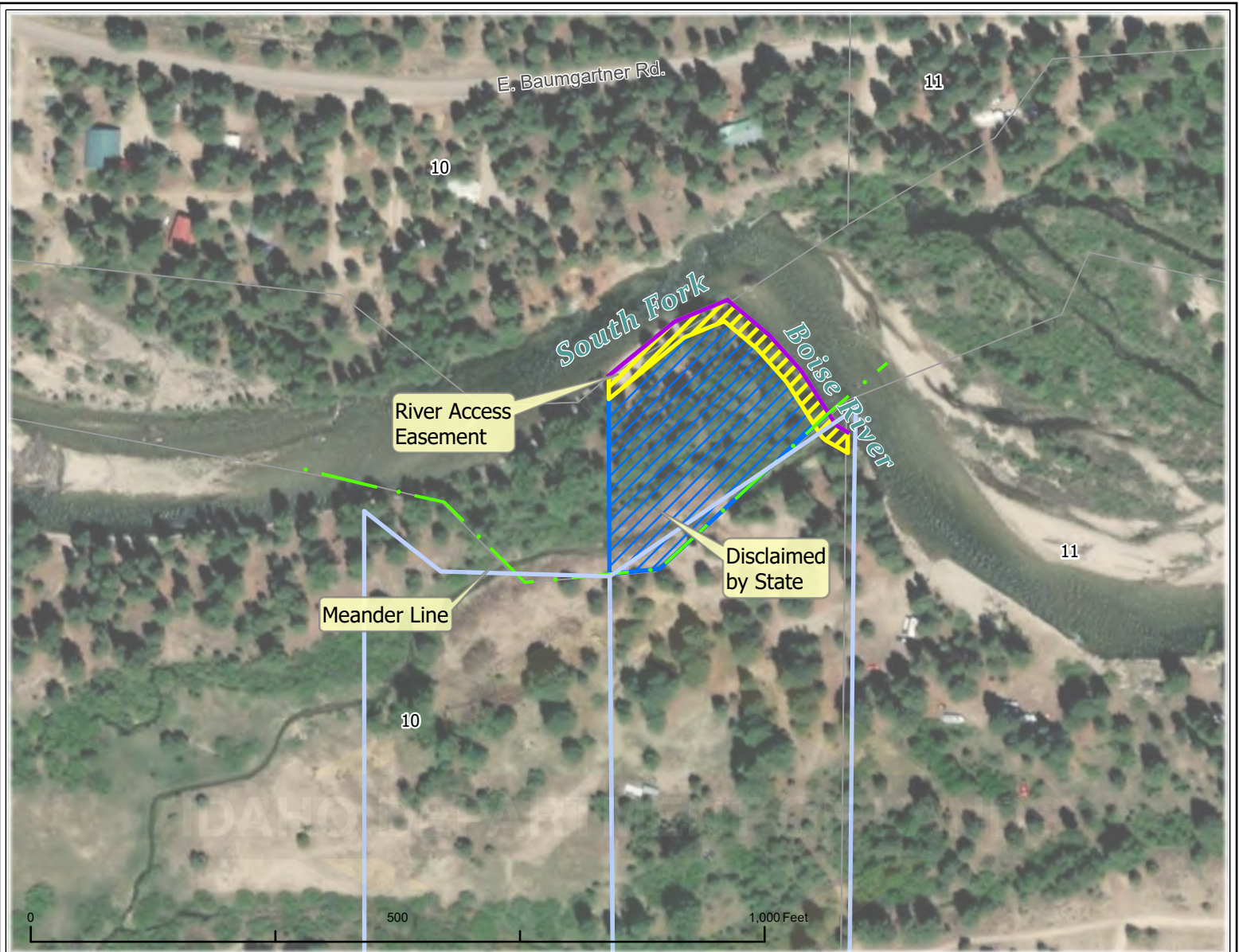
## **Board Action**

## **Attachments**

1. Map







<ul style="list-style-type: none"> <li><span style="color: green;">—</span> Meander Line (north meander line not included in the survey)</li> <li><span style="color: purple;">—</span> Ordinary High Water Mark</li> <li><span style="background-color: yellow; border: 1px solid black; display: inline-block; width: 20px; height: 10px;"></span> River Access Easement Parcel</li> <li><span style="background-color: blue; border: 1px solid black; display: inline-block; width: 20px; height: 10px;"></span> Disclaimed BY State</li> <li><span style="border: 1px solid blue; display: inline-block; width: 20px; height: 10px;"></span> Parcel</li> <li><span style="border: 1px solid black; display: inline-block; width: 20px; height: 10px;"></span> Section</li> </ul>	<p><b>DI600306</b>            Sec 10 - T03N - R10E            7/26/2022</p>			<p><b>Map Notes</b></p> <p>Projection: Idaho Transverse Mercator, NAD 83</p> <p>Map Notes and Data Sources</p> <p><b>Disclaimer:</b>            This map has been compiled using the best information available to the Idaho Department of Lands at the time and may be updated and/or revised without notice. In situations where known accuracy and completeness is required, the user has the responsibility to verify the accuracy of the map and the underlying data sources.</p>	<p><b>Vicinity Map</b></p>
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## 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

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*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

August 16, 2022

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, August 16, 2022 at the State Capitol, Lincoln Auditorium (WW02), Lower Level, West Wing, 700 West Jefferson, 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 State Controller Brandon Woolf

Honorable Superintendent of Public Instruction Sherri Ybarra

For the record, four Land Board members were present at the physical location; Attorney General Wasden was absent.

*[Editor's note: the Discussion portions, if any, for agenda items are written in first-person format. This is not a verbatim transcript.]*

#### 1. Department Report – Presented by Dustin Miller, Director

##### Trust Land Revenue

A. Timber Sales – July 2022

B. Leases and Permits – July 2022

##### Discussion:

**Controller Woolf:** Director, you mentioned in the Timber Sales report the three endowment timber sales that did not sell at auction. Is that anything of concern and how are you going forward with those?

**Director Miller:** Nothing to be real concerned of right now. The Sand Mountain was a salvage sale from the fire we had at Leland Complex up north last summer. It is a salvage sale, small diameter; it was difficult to get that one sold. We will try to go direct sale to get that volume

moved. The West Benton sale has been paused. The market is a little saturated and there is also concern over insect activity affecting the cedar poles. We will be reassessing that sale and offering later on down the road.

**Governor Little:** Very good.

#### **Status Updates**

- C. Fire Season Report
- D. Land Revenue Forecast
- E. Resource Protection and Assistance Report

#### **Discussion:**

**Director Miller:** Adding to item C, Fire Season Report, we recently had one fire that was being managed by our own Type 3 Incident Management team. Currently this 45-acre fire is 100% contained and was turned back over to the Priest Lake Area. Just to give you some real time information, Governor, and Land Board members, we had some weather late last week that brought substantial thunderstorm activity into the region but with some moisture this has changed the numbers in front of you. As of August 15th, there have been a total of 134 fires in IDL protection, 80 of which were human caused and 54 were lightning caused. Our folks have been very busy the last the few days, but they have caught everything. Very impressed with the speed of our crews to get these fires put out. July was much warmer than the average and this pattern has continued into August. As mentioned, fire frequency is increasing, and an above-average fire season is predicted for the state to the end of September. Many of our seasonal firefighters are now leaving to go back to school so we will be relying on our non-fire staff to participate in suppression activities for the duration of the fire season. Currently the only fire restrictions in place are in Central Idaho. The largest fire in the state outside of IDL protection is being managed by a Type 1 Incident Management team. This is the Moose Fire on the Salmon-Challis National Forest. This fire is over 78,000 acres and 34% contained. IDL has sent a number of resources to this fire.

#### **Consent—Action Item(s)**

##### **2. Approval of Draft Minutes – July 19, 2022 Regular Meeting (Boise)**

**Consent Agenda Board Action:** A motion was made by Controller Woolf that the Land Board adopt and approve the Consent Agenda. Secretary of State Denney seconded the motion. The motion carried on a vote of 4-0.

#### **Regular—Action Item(s)**

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

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



## **Discussion:**

**Chris Anton:** Good morning, members of the Land Board, thank you for having me. Financial markets staged a modest recovery in July and in early August as quarterly profits surprised to the upside and were largely resilient to the economic slowing. The portfolio is up 6% during July and through yesterday we are up 8.9%. A growing number of economic indicators have started to reflect slowing of consumer demand, but strong employment has allowed the Federal Reserve to continue the process of raising rates to calm inflation. Since I wrote this report, we have seen inflation hopefully peak, came down from about 9.2% to 8.5%. The market is reflecting anticipation of that rate continuing to decline in the months going forward. The yield curve however has inverted meaning that short-term yields are higher than long-term yields and historically that has been a leading indicator of a recession. Time will tell if the Federal Reserve can calm inflation without pushing us into a recession. Anyway, off to a good start so far in this new fiscal year. At the end of fiscal year '22 our reserve levels stood at 5.9 years for Public School and about 6.9 years for the other endowments. Using yesterday's balance, given that we are up 8.9%, I think Public School reserves are up to about 6.5 years and other funds are between 6 and 7 years of reserves.

### **C. Reclass FY2022 Earnings Reserve Transfer**

**Recommendation:** Approve reclassification of the FY2022 Earnings Reserve Transfer of \$486,409,000 to exclude it from the Gain Benchmark.

## **Discussion:**

**Governor Little:** The calculation of inflation is 7.1%. I know we have State code, what code section determines that? Because our other job of trying to figure out whether land works, we have a 2.5% inflation. Here we put in 7.1%. Square that for me.

**Chris Anton:** Governor, yes, the same code section I referenced earlier today [Idaho Code § 57-724] defines the way inflation is calculated. It compares the 12-month average of the CPI for the prior fiscal year. The headline CPI as I have talked about is at 8.5-9%. This is kind of comparing a 12-month average to a 12-month average. We have to earn above that before anything can move into the earnings reserves fund. That challenge continues into the new fiscal year.

**Governor Little:** We have done multiple studies and I think our baseline for buying timber ground we still have a 2.5% inflation in there. Does the Investment Board have any particular advice for us about what we should do with that?

**Chris Anton:** I think if you talk with Callan, or you look at what the financial markets are implying in terms of what inflation will be longer term, for example, at the difference between the nominal treasury and the CHIPS yield, it implies that inflation over the next 10 years will come down to average about 2.5%, so that assumes a fairly steep decline in inflation. We are all hoping we will begin to see that later this year. That seems to be what most people are saying is the longer-term inflation rate, even though we have a problem today.

**Controller Woolf:** Chris, you talked about where we last year as a Board, we approved that transfer of the \$486 million. Help me understand the timing of why this is now versus then; the transfer was made I think September 1 a year ago. How does that timing work?



**Chris Anton:** According to statute, transfers for the sale of land...land bank transfers automatically go into the permanent fund and mineral royalties, which are depletions of land assets, automatically go into the permanent fund. For this transfer we have discretion. I will take the fault. When I looked back historically, we tended to treat these transfers as additions to the gain benchmark. When I made my recommendation, I had that on there; however, those transfers have typically been relatively small numbers. It has not made a big difference. This is a huge number because we made 30% last year. To be honest, I did not fully think it through. When it came to the process of closing the books and looking at what that gain benchmark number really was going to be with that transfer, it is a big deal, it is a big issue. That prompted me to go back and do the research and the statute does not indicate any reason why we should add that to the gain benchmark. In terms of timing, as we are closing the fiscal year, we have discussed this with our auditors and if we make the decision now, we can still make the reclassification in fiscal year '22, in the last fiscal year.

**Governor Little:** In your background, you said a year ago almost to the day, we approved the transfer of \$486 million over there and now we are talking about not doing the transfer of \$486 million.

**Chris Anton:** We are not talking about not doing the transfer. The transfer is still approved, was done in the last fiscal year in September. It is just a matter of how we report that transfer in our closing books at the end of the fiscal year. The money is in the permanent fund, but we are not going to add it to the gain benchmark. It is an accounting issue that we can adjust in the fiscal year; even though we are in August now, we are technically still in the fiscal year, from an accounting perspective.

**Board Action:** A motion was made by Controller Woolf that the Land Board approve reclassification of the FY2022 Earnings Reserve Transfer of \$486,409,000 to exclude it from the Gain Benchmark. Secretary of State Denney seconded the motion. The motion carried on a vote of 4-0.

#### D. FY2024 Beneficiary Distributions

**Recommendation:** The Endowment Fund Investment Board recommends that the Land Board approve FY2024 beneficiary distributions of \$100,315,000.

#### Discussion:

**Chris Anton:** Moving to item D, the question before the Land Board is shall the Land Board approve beneficiary distributions of \$100,315,000 in fiscal year '24? Included in your packet is a PowerPoint and I will go through this quickly. First, a review of the distribution policy. The Land Board has adopted the following principles: first, that we distribute 5% of a 3-year average of each permanent fund annually with the exception of State Hospital South which is 7%.

**Governor Little:** Part of the reason State Hospital South historically is 7% is because of cabin site income; they had a lot of money coming from cabin sites. As we go through cabin sites, is there going to be a point in time when we want to move that 7% down or are they solvent enough that they will be fine?

**Chris Anton:** I think it is worth revisiting that percentage. That mathematical calculation certainly can be adjusted by the Land Board because we need to take into consideration our level of reserves, transfers, and any other relevant factors. For example, if we anticipated timber revenue dropping significantly, we certainly do not after we saw Jim's presentation earlier, but we may want to adjust that amount. The goal is to maintain earnings reserves at the target levels, which is 7 years of beneficiary distributions, and to consider transferring any excess earning reserves back to the permanent fund. During fiscal year 2022 the portfolio had a loss of 13% and inflation of 7.2% so a real loss of 20.2%. Department of Lands generated \$56.5 million in net revenue and ended the year with a strong backlog of \$151.1 million dollars of timber pre-sold. Earnings reserves dropped below the target levels as you will see on the next page. We were at 5.8 years of reserves for Public School and between 5.4 and 6.7 years for the other beneficiaries. Table 5 shows the history of distributions and I think it is important to realize that from fiscal year '22 to fiscal year '23 we had a 13.8% increase, from \$88.1 million to \$100.3 million in this fiscal year. Today the Investment Board is recommending that the Land Board hold beneficiary distributions flat in fiscal year '24 at \$100,315,000. The rationale for this is that earning reserves are below target levels. We still are facing significant inflation hurdle. Financial markets are expected to remain volatile given the uncertainty surrounding our ability to fight inflation without pushing us into a recession.

**Controller Woolf:** I know the Investment Board made this recommendation; if we were following our policy, what would the dollar amount distribution have normally been?

**Chris Anton:** Governor, Controller Woolf, if we followed the 5% calculation the number would be \$106.4 million.

**Board Action:** A motion was made by Controller Woolf that the Land Board approve FY2024 beneficiary distributions of \$100,315,000. Secretary of State Denney seconded the motion. The motion carried on a vote of 4-0.

#### **4. FY2024 Department of Lands Budget Enhancements** – *Presented by Dustin Miller, Director*

**Recommendation:** Direct the Department to include the enhancement requests as outlined in Attachment 1 in the Fiscal Year 2024 budget proposal due on September 1, 2022.

**Discussion:**

**Controller Woolf:** I am glad Representative Troy is here is to help us get through these budget discussions and help her JFAC friends understand this. One high level question, Director, what is the method or process of how you determine what the funding source will be for these? How do you determine general fund versus earnings reserve versus dedicated?

**Director Miller:** I will take a stab at answering, then turn it over to Debbie Buck for additional information. With the fire decision units, for example, the dedicated funding account is currently headed towards a deficit spending situation; that dedicated account is paid into by the timberland owners who pay \$0.60 an acre, as do the endowments. Ideally, we would like to pay for more resources out of that, but we are just unable to. Also, these are suppression resources we are talking about in a lot of these decision units, many of those have typically gone on the general fund for the enhancement request. I will kick it over to Debbie to talk a little bit more about some of those details given which programs are paid out of the various funding sources.

**Debbie Buck:** Good morning, Governor, Land Board, for the record my name is Debbie Buck. I am the Finance Officer for the Department of Lands. In addition to what the Director has said, some of the acres in our state are assessed and they pay into the assessments and that is what becomes our dedicated funding source. The other funding source we have is general fund and we do protect land that is not assessed. Historically, we have balanced that between the acres of protection that are not assessed and the ones that are assessed. That is how some of our requests get on to general fund. The other thing that is important to mention here is a lot of our capital outlay requests start with general fund and then we charge a rate when we send those vehicles out to fires or to our federal partner fires. That rate goes into the WERF fund and then in the future the WERF fund will be replacing that equipment.

**Controller Woolf:** One more question. We approved last year the STAR report, said do several of these and take them forward. The Department made the decision there were so many of them they probably would not be able to get all of them through fiscal year '23. Now that we are doing some of these and we are asking for a supplemental, does the Department have the capacity to do these if you were able to receive these as supplementals.

**Director Miller:** Governor and Mr. Controller, yes, I believe we do. We did a lot of planning over the last several months trying to address our needs, taking a look at what the Land Board approved last year that we could not get done and having conversations about trying to get a jump start on procurement of resources needed to continue to modernize the fire program. Having these as supplementals, assuming we get through the legislative process with them, will enable us to get a jump start on the purchasing and give us more time ahead of fire season. I believe we do have the capacity to implement all of these decision units this fiscal year. Last year was just a challenge given the number of things that were included in the budget request, which we greatly appreciate because that gave us a big boost in our efforts to modernize the program. We have evaluated this, and we do have the capacity to implement these actions for FY23 assuming there is carryover authority, as well as the FY24 line items.

**Board Action:** A motion was made by Controller Woolf that the Land Board direct the Department to include the enhancement requests as outlined in Attachment 1 in the Fiscal Year 2024 budget proposal due on September 1, 2022. Secretary of State Denney seconded the motion. For the record, Governor Little recused himself from this vote. The motion carried on a vote of 3-0.

## Information

*Background information was provided by the presenter(s) indicated below. No Land Board action is required on the Information Agenda.*

- 5. Future of Cottage Site Leasing: 2025 Plan** – Presented by Josh Purkiss, Bureau Chief-Real Estate Services

**Discussion:** None.

- 6. University of Idaho CAFE Project Proposal** – Presented by Josh Purkiss, Bureau Chief-Real Estate Services, IDL; Scott Green, President, University of Idaho; Brent Olmstead, CALS Director of Government Relations, UI; Brian Foisy, Chief Financial Officer, UI; and Kent Nelson, General Counsel, UI

## **Discussion:**

**Governor Little:** Beginning of Josh's note had the proceeds of \$23,250,000; how does that square with the \$17,250,000 up there?

**Brian Foisy:** We have \$17,250,000 plus the line at the very bottom, Governor, the \$6 million; those two numbers together are the \$23,250,000 from the auction proceeds. In fact, I will discuss those now, sir. The proposal as currently configured assumes the University will convey to the Land Board, at the appraised value of \$6,000,000, two parcels of land, one that the University currently owns, and one currently owned by the Idaho Dairymen's Association that they intend to convey to the University. That accounts for the bottom line there of \$6,000,000. Again, the proposal as currently configured assumes that the University will further convey to the Land Board other non-land real assets that would be constructed on the dairy site and of course that is the balance of the \$23,250,000 to the \$17,250,000 that you see there.

**Governor Little:** Mr. Nelson, does everybody agree this is in full compliance with the Morrill Act? Are there differing opinions?

**Kent Nelson:** I do not believe there are.

**Controller Woolf:** Not sure if it is a question for Mr. Nelson or Mr. Foisy, but of the \$17.25 million that will go for construction – I do not know if you have the answers today or if in preparation for next month – is that a portion of a building, is that the milk parlor, is it a couple of the others, and by then will we be able to identify. I do not think the University of Idaho nor the Land Board itself want to have that we are 0.8 owners of the milk parlor, and you are 0.2. That is one thing to look at.

**Kent Nelson:** Governor, Controller Woolf, we anticipate that we will have specifically identified assets that are complete in and of themselves that would be owned by the endowment and others specifically identified. We may not hit \$17,250,000 on the nail but we will be as close as we can.

## **Executive Session**

None

There being no further business before the Land Board, at 10:27 a.m. a motion to adjourn was made by Controller Woolf. Secretary of State Denney seconded the motion. The motion carried on a vote of 4-0.

## STATE BOARD OF LAND COMMISSIONERS

September 20, 2022

Regular Agenda

### Subject

Fiscal Year 2024 Idaho Department of Lands (Department) Budget Request

### Question Presented

Shall the Land Board approve the Department's FY2024 budget request as submitted to Division of Financial Management (DFM) and Legislative Services Office (LSO) on Wednesday, August 31, 2022?

### Discussion

The budget was developed in accordance with guidelines provided by the DFM that prescribe 1% change in employee compensation (CEC), 24% variable benefit rate, and \$13,750 health benefit per full-time employee for the agency. The request includes an additional 8.82 FTE bringing the agency's total FTEs to 358.27.

On August 16, 2022, the Land Board approved the Department's FY2024 enhancement decision units (Attachment 1).

The Department's FY2024 total budget request by funding source is as follows:

FUND TYPE	AMOUNT
General Fund	\$10,192,532
Earnings Reserve Fund	\$36,146,277
Federal Funds	\$19,056,500
Other Dedicated Funds	\$19,870,554
<b>TOTAL REQUEST</b>	<b>\$85,265,863</b>

The FY2024 budget request reflects the following changes above the maintenance level appropriation:

FUND TYPE	\$ CHANGE	% CHANGE
General Fund	\$3,161,232	35.9%
Earnings Reserve Fund	\$4,588,677	14.5%
Federal Funds	\$18,600	0.1%
Other Funds	\$1,496,854	8.1%

### **Recommendation**

Approve the Department's FY2024 budget request as submitted to Division of Financial Management and Legislative Services Office on Wednesday, August 31, 2022.

### **Attachments**

1. Approved Board Memo – August 16, 2022

IDAHO DEPARTMENT OF LANDS

# STATE BOARD OF LAND COMMISSIONERS

August 16, 2022

Regular Agenda

## Subject

Fiscal Year 2024 Department of Lands Budget Enhancements

## Question Presented

Shall the Land Board direct the Department to include the enhancement requests as outlined in Attachment 1 in the Fiscal Year 2024 budget proposal due on September 1, 2022?

## Background

The Idaho Department of Lands (Department) is requesting concurrence on the proposed FY2024 Enhancement Decision Units. Pursuant to Idaho Code § 67-3502, agencies must submit their budget request to the Division of Financial Management (DFM) and the Legislative Services Office (LSO) by September 1, 2022. The Land Board briefing and meeting schedules prevent the Department from having the full budget request ready for the August meeting. The complete budget will be presented for Land Board approval at its September meeting.

## Discussion

The Department is asking for consideration of the attached decision units. The proposed decision units align with the strategic goals that are detailed in the Department's strategic plan document. The strategic plan is organized around four foundational Department-wide goals: (1) Financial Stewardship – Maximize returns through prudent management of resources and funds, (2) Customer Focus – Exemplary professional service to all customers, (3) People – A high performing workforce, and (4) Process – Effective policies, procedures, and systems to drive informed decision making. Additionally, the Department has outlined six future-proofing goals to include: (1) Classification & Compensation, (2) Office Facilities, (3) Seasonal Housing Facilities, (4) Fire Program Modernization, (5) Fund Integrity, and (6) Policy & Procedures.

The Department is developing a budget submission for FY2024 that includes FY2023 supplemental and FY2024 new enhancements that will further efforts to meet these Department goals. In Attachment 1, the Department's proposed enhancements are listed in order of priority.



As outlined in Attachment 1, the FY2023 supplemental requests for one-time general fund enhancements equals \$1,771,400 and are all one-time requests.

The enhancements in the Department's budget request reflect the following increases over the FY2023 ongoing appropriation:

Fund Type	Increase from FY2023 Base Budget	
	All Ongoing <u>and</u> One-Time Requests Total	All Ongoing Requests Total
General Fund	\$2,873,700 (32.6%)	\$1,077,850 (12.2%)
Earnings Reserve Fund	\$3,096,000 (9.8%)	\$2,500,000 (7.9%)
Lands Dedicated Fund	\$326,600 (1.8%)	\$184,250 (1.0%)
Federal Funds	\$0 (0%)	\$0 (0%)

The Department has worked with the DFM Administrator and Governor's office contact in developing its budget request as outlined in the June 2, 2022 FY 2024 Budget Overview memo from DFM. As the Department moves through the rest of the budgeting submission process, staff will continue to follow DFM guidelines.

## Recommendation

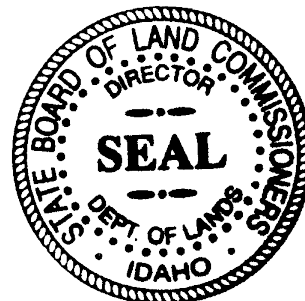
Direct the Department to include the enhancement requests as outlined in Attachment 1 in the Fiscal Year 2024 budget proposal due on September 1, 2022.

## Board Action

A motion was made by Controller Woolf that the Land Board direct the Department to include the enhancement requests as outlined in Attachment 1 in the Fiscal Year 2024 budget proposal due on September 1, 2022. Secretary of State Denney seconded the motion. For the record, Governor Little recused himself from this vote. The motion carried on a vote of 3-0.

## Attachments

1. FY2024 Enhancement Decision Unit Requests



**IDL DRAFT ENHANCEMENT BUDGET REQUESTS - FY2024 + FY2023 Supplementals**

IDL DRAFT ENHANCEMENT BUDGET REQUESTS - FY2024 + FY2023 Supplementals						
No.	Budget Unit	Enhancement Description	Amount	Object Ongoing or One-Time	Funding Source (%) GF/DED/ER	FTP Requested
1	LAAD: Fire	Establish Cottonwood District - Staffing	\$700,300 TOTAL OF PRIORITY #1			
		One Warden 1.0 FTP	\$90,500	PC - Ongoing	100% GF	5.82
		Two Asst Wardens 2.0 FTP	\$163,400			
		Three Resource Foreman 2.49 FTP (.83 each)	\$175,200			
		Office Specialist 0.33 FTP	\$11,700			
		Nine Seasonal Firefighters	\$150,000			
		Travel, Training, Fuel, Supplies	\$56,000	OE - Ongoing		
Dispatch Center Cost Sharing	\$50,000					
Software Licenses (O365 + VOIP)	\$3,500					
2	LAAD: Fire	Establish Cottonwod District - Equipment - FY23 SUPPLEMENTAL	\$340,400 TOTAL OF PRIORITY #2			
		Three Command Vehicles	\$144,000	CO - One-Time	100% GF	
		One Crew Cab	\$76,400			
		Communication Equipment	\$90,000			
		Computer Equipment + Office Setup	\$30,000			
3	LAAD: Fire	Strategically Located Engines - Staffing	\$275,000 TOTAL OF PRIORITY #3			
		Seasonal Firefighters (15+)	\$250,000	PC (TPC) - Ongoing	100% GF	
		Fuel + Maintenance for Five Engines	\$25,000	OE - Ongoing		
		4	LAAD: Fire	Fire Equipment - FY23 SUPPLEMENTAL		
Five Type 5 Engines - For Strategic Locations (above)	\$630,000			CO - One-Time	100% GF	
Two Command Vehicles (Teaken and North Booster Crew)	\$96,000					
Fire Detection Cameras	\$50,000					
CTS Repeaters	\$30,000					
Pallet Wrapper	\$25,000					
5	LAAD: Fire	Fire Zone Manager - South	\$103,100 TOTAL OF PRIORITY #5			
		One Lands Program Manager 1.0 FTP	\$98,600	PC - Ongoing	50% GF/50% DED	1
		Travel, Training + Office Supplies	\$1,500	OE - Ongoing		
		Computer Equipment + Office Setup	\$3,000	CO - One-Time		
6	LAAC: TLM	Forest Management Projects - Additional Spending Authority	\$2,500,000 TOTAL OF PRIORITY #6			
		Management Project Funding to Meet Increased Harvest Levels	\$2,500,000	OE - Ongoing	100% ER	

7	LAAC: TLM	<b>Seasonal Housing Facility (Kamiah, ID) - FY23 SUPPLEMENTAL</b> Housing for up to 20 Seasonals	<b>\$600,000 TOTAL OF PRIORITY #7</b> \$600,000	OE/CO - One-Time	100% GF	
8	LAAB: FRM	<b>GNA Staff</b> One Lands Resource Specialist, Sr. One 1/2 Ton Pickup Truck Computer Equipment + Office Setup	<b>\$127,600 TOTAL OF PRIORITY #8</b> \$81,700 \$42,900 \$3,000	PC - Ongoing CO - One-Time	100% DED	1
9	LAAB: FRM	<b>GNA Equipment</b> Four ATVs, Two Track Systems + Two Trailers	<b>\$72,000 TOTAL OF PRIORITY #9</b> \$72,000	CO - One-Time	100% DED	
10	LAAB: FRM	<b>FPA Staff</b> One Lands Resource Supervisor Travel, Training + Fuel One 1/2 Ton Pickup Truck Computer Equipment + Office Setup	<b>\$150,900 TOTAL OF PRIORITY #10</b> \$90,500 \$14,500 \$42,900 \$3,000	PC - Ongoing OE - Ongoing CO - One-Time	50% GF/50% DED	1
11	LAAC: TLM	<b>Commercial Building Repairs</b> Capitol Park Plaza HVAC and Roof Replacement	<b>\$500,000 TOTAL OF PRIORITY #11</b> \$500,000	OE - One Time	100% ER	
12	LAAC: FRM	<b>Scaling Program Vehicles</b> Three small SUV	<b>\$96,000 TOTAL OF PRIORITY #12</b> \$96,000	CO - One-Time	100% ER	
**	LAAD: Fire	<b>Timber Protection Associations (TPAs)</b> CPTPA 1% CEC and 1% Inflation Adjustment SITPA 1% CEC and 1% Inflation Adjustment SITPA Dispatch Center Contribution	<b>\$23,800 TOTAL OF PRIORITY #13</b> \$8,500 \$4,200 \$11,100	T&B - Ongoing T&B - Ongoing T&B - Ongoing	100% GF	
<b>SUMMARY DATA</b>			\$1,795,850 One-Time GF Requested \$1,077,850 Ongoing GF Requested \$738,350 One-Time "Other" Funds Requested \$2,684,250 Ongoing "Other" Funds Requested <b>\$6,296,300 Total Requested</b>			
			\$1,771,400 FY2023 Supplemental Requests \$4,524,900 FY2024 Requests <b>\$6,296,300 Total Requested</b>			
*All FY2023 supplementals will require carry forward authority. **The TPA's enhancement request will not be submitted through IDL's budget request.			<b>8.82 New FTPs</b>			

# STATE BOARD OF LAND COMMISSIONERS

September 20, 2022

Regular Agenda

## Subject

Reinvestment of the Agricultural College Endowment Land Bank Funds

## Question Presented

Shall the Land Board authorize the use of the Agricultural College Land Bank funds for the purchase of land and the construction of a milking parlor for the CAFE project?

## Background

The Idaho Department of Lands (Department) has worked with the Agricultural College since 2017 to sell 282 acres of Agricultural College endowment land (Caldwell Property) located in the city of Caldwell that was no longer used for experimental farming. The Department requested approval to sell the property at the March 2021 State Board of Land Commissioners (Land Board) meeting (Attachment 1). The Land Board approved the request, and the Caldwell Property was sold at a public auction in November of 2021 for \$23,250,000. Pursuant to Idaho Code § 58-133, the auction proceeds were placed in the "land bank fund" to be used for the acquisition of real property or moved to the Endowment Fund Investment Board (EFIB) at the discretion of the Land Board.

## Discussion

The College of Agricultural and Life Sciences (CALS), as the beneficiary of the Agricultural College endowment, is requesting that the proceeds from the sale of the Caldwell Property be used to acquire 638.11 acres of farmland (Attachment 2) located 13 miles north of Rupert in Minidoka County (Minidoka Property). In addition to purchasing the land, CALS is requesting that the remaining balance of land bank funds be used to construct a milking parlor on the Minidoka Property.

The Land Board has three options for the proceeds from the Caldwell Property disposition:

- Transfer the associated amount from the land bank to the permanent fund (analyzed by the Department, details under Option 1 below)
- Leave the funds in the land bank for potential reinvestment in timberland
- Use the proceeds to acquire the Minidoka Property and construct a milking parlor for the CAFE project (recommended by the Department, details under option 2 below).

For the Land Board's consideration, the Department analyzed the transfer to the permanent fund or investment in the CAFE project options.

### **Option 1 – Transfer the Proceeds to the Permanent Fund**

The Land Board has the option to move the land bank funds to the permanent fund to be managed by EFIB. This option would result in a financial benefit to the beneficiary that would be equal to an annual 5% distribution based on a 3-year rolling average of the permanent endowment fund. The Department modeled the Net Present Value (NPV) of the distribution proceeds to the beneficiary using a 4% discount rate, 5.8% appreciation of the fund, and a 5% annual distribution to determine an 8, 25, and 50-year NPV. The results of the analysis are below.

8 Years NPV of Distribution	\$5,922,696.10
25 Years NPV of Distribution	\$20,017,257.66
50 Years NPV of Distribution	\$30,303,558.44

### **Option 2 – Acquire Minidoka Property and Fund Construction of Milking Parlor**

The Land Board's second option is to acquire the Minidoka Property and fund the construction of a milking parlor. This option results in Agricultural College endowment ownership of real assets including farmland and essential dairy facilities. The endowment can expect to benefit from land appreciation and ongoing ownership of well-maintained dairy facilities that may be leasable or salable for the planned use or for other types of use upon termination of the agreement. This option also results in many benefits to CALS, including increased enrollment, a research dairy that will generate revenue through milk sales, and ongoing revenue from research grants and gifts. The revenue from grants and gifts can only be forecasted for eight years but would likely continue after that time.

Working with the University of Idaho, the Department forecasted these benefits for eight years based on the information provided. The model included a 4% discount rate, a conservative 3% appreciation of the land, and discounted those numbers back to the present value.

8 years NPV of land appreciation	\$1,338,903.17
8 years NPV of Cafe grant revenues	\$11,631,960.48
8 years NPV of Cafe research trials revenues	\$9,887,166.41
8 years NPV of Cafe enrollment revenues	\$2,180,992.59

These benefits result in a sum NPV of \$25,039,022. The endowment would benefit from the land appreciation while CALS, the beneficiary, would receive the other financial benefits. The NPV of the other financial benefits may ultimately be higher but for this analysis is limited to the eight-year period for which data was available.

If approved by the Land Board, the Department will work with the Office of the Attorney General to finalize the Draft Purchase and Sale Agreement (Attachment 3) and the Draft Operating Agreement (Attachment 4). Once finalized, the purchase and sale agreement will be routed for signature and the closing for the land will be held on or before December 22, 2022.

### **Investment Subcommittee**

The Department presented both options as mentioned above in the memorandum to the Investment Subcommittee on September 19, 2022. The committee recommended using the Caldwell property proceeds to acquire the Minidoka Property and funding the construction of the milking parlor.

### **Recommendation**

Given the authority granted in Morrill Act, the value to the endowment and the direct benefits to CALS as the endowment beneficiary, the Department recommends that the Land Board approve the acquisition of the Minidoka Property for \$6,000,000 and distribute the remaining balance of \$17,250,000 to fund construction of the milking parlor.

### **Board Action**

### **Attachments**

1. March 16, 2021 Approved Memo – Approving the Sale of the Caldwell Assemblage
2. Map of Minidoka Property
3. Draft Purchase and Sale Agreement
4. Draft Operating Agreement

IDAHO DEPARTMENT OF LANDS

## STATE BOARD OF LAND COMMISSIONERS

March 16, 2021

Regular Agenda

### Subject

Approval to offer for auction Agricultural College endowment (Agricultural Endowment) land, known as the Caldwell Area Property Assemblage (Property), located at East Homedale Road and South 10th Avenue, Caldwell, Idaho

### Question Presented

Shall the Land Board direct the Department to dispose of the Property?

### Background

In September 2016, the Idaho Department of Lands (Department) met with representatives from the University of Idaho (University) seeking consideration from the Department and eventually, the State Board of Land Commissioners (Land Board), to dispose of the Property.

The Property considered for disposition is approximately 282 acres, divided into two separate legal lots of 161.73 and 120.25 acres, located in Canyon County (Attachment 1). The land came into state endowment ownership through the "in-lieu" land process. The State of Idaho and the General Land Office (federal land office) worked together to identify these lands for addition to the Agricultural Endowment portfolio. The Property was subsequently transferred into State of Idaho ownership with Clear List AC018BOI (Attachment 2) on January 31, 1908.

On land adjacent to the Property, the University built and maintained a veterinarian training facility commonly known as the Caine Veterinary Teaching Facility (CVTF). In addition, the University housed staff in structures on the Property and allowed the Idaho Department of Fish and Game to use a portion for storage and big game studies.

In 2020 the University sold the CVTF facility and the approximately 40 acres of land it owned adjacent to the Property. The University determined that the Property no longer serves the best interest of the University and would like to dispose of the Property.

The University requested and was granted an easement (Attachment 3) for the Property in 1947 to use as an "experimental farm and improvements thereon" for \$1. As part of the disposition process, the Department will require the easement to be released or terminated before the Property's marketing begins.



## Discussion

As part of the due diligence process, the Department sought guidance from CenturyPacific LLLP (CenturyPacific), the Land Board's real estate advisor, to determine if it is in the best interest of the Agricultural Endowment to divest of the Property. CenturyPacific completed a business plan (Attachment 4) that recommends "the Property should be aggressively marketed and sold pursuant to a sale process that is consistent with the State of Idaho constitution."

Over the past five years, the Department completed the necessary due diligence to prepare the Property for disposition which included appraisals, review appraisals, title commitment, ALTA survey, conceptual land-use plan, and an environmental site assessment. Upon Land Board approval, the Department will begin the process of hiring a real estate broker to market and facilitate the auction. The broker will post all due diligence materials for interested parties, including property-specific appraisals, review appraisals, environmental assessments, and preliminary title commitments. After the marketing period, the Department will offer the property for sale at auction in one or more parcels with the combined auction price beginning at the appraised value of \$5,726,000. The Department will follow the statutory requirements for the disposition of endowment land as provided in Idaho Code § 58-313 *et seq.*

The proposed schedule:

- Create a Property Information Portal for due diligence: 3/16/21
- Contract a real estate broker: 3/18/21 – 5/1/21
- Release or termination of easement executed
- Market the Property for a minimum of 60 days
- Advertise the legal notice for the public auction in the Idaho Statesman for five weeks prior to the auction
- Auction held between 7/15/21 – 8/30/21
- Closing to be held within 60 days of the auction

The terms of the sale will include:

- Live public auction held in Ada or Canyon County
- Starting bid not less than appraised value
- Bidders required to post a nonrefundable bid deposit equal to the greater of 3% of the appraised value or \$10,000, unless otherwise approved by the Department
- A buyer's premium of 3% added to the successful bid price
- No contingencies
- Buyer responsible for all closing costs and title insurance
- Closing within 60 days after close of auction

## **Recommendation**

Direct the Department to offer the Caldwell Area Property Assemblage for sale at auction in Ada or Canyon County upon confirmation of the University of Idaho's relinquishment of the 1947 easement.

## **Board Action**

A motion was made by Attorney General Wasden that the Land Board direct the Department to offer the Caldwell Area Property Assemblage for sale at auction in Ada or Canyon County upon confirmation of the University of Idaho's relinquishment of the 1947 easement. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

## **Attachments**

1. Caldwell Area Property Assemblage map
2. Clear List Deed
3. University of Idaho Easement
4. Property Business Plan by CenturyPacific



IDAHO DEPARTMENT OF LANDS



Subject Property

Parcels

## Ownership

Bureau of Land Management

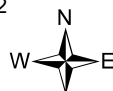
Bureau of Reclamation

Private

## CAFÉ Center Land

Sec. 17 - T07S - R24E  
Minidoka County, Idaho

8/4/2022



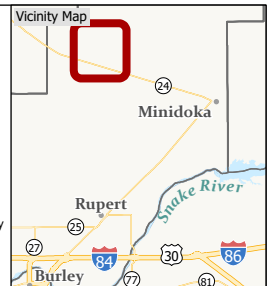
0 0.25 0.5 Miles

## Map Notes

Projection: Idaho Transverse Mercator, NAD 83

Map Notes and Data Sources

**Disclaimer:**  
This map has been compiled using the best information available to the Idaho Department of Lands at the time and may be updated and/or revised without notice. In situations where known accuracy and completeness is required, the user has the responsibility to verify the accuracy of the map and the underlying data sources.



## **PURCHASE AND SALE AGREEMENT**

THIS PURCHASE AND SALE AGREEMENT (“**Agreement**”) is entered into between the **BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO**, a state educational institution and body politic and corporate organized and existing under the Constitution and laws of the State of Idaho, whose mailing address is 875 Perimeter Drive MS 3168, Moscow, Idaho, 83843-3168 (“**Seller**”), and the **STATE OF IDAHO, STATE BOARD OF LAND COMMISSIONERS**, whose administrative agent is the **IDAHO DEPARTMENT OF LANDS**, whose mailing address is 300 North 6<sup>th</sup> Street, Suite 103, Boise, Idaho 83702, acting by and for the benefit of the **AGRICULTURAL COLLEGE ENDOWMENT** (“**Buyer**”) (Seller and Buyer collectively “**Parties**”). Seller’s College of Agriculture and Life Sciences is the beneficiary of that certain Constitutional Endowment Trust created by Article IX, Section 8 of the Idaho Constitution and the Idaho Admission Bill. Buyer is the Constitutional Trustee of endowment property and assets controlled and managed by Buyer for the benefit of the Agricultural College Endowment beneficiary.

### **1. Purchase and Sale.**

Seller shall sell and Buyer shall purchase that certain real property located in the County of Minidoka, State of Idaho, and more particularly described in **Exhibit A**, which exhibit is attached and incorporated herein together with all easements, rights and appurtenances thereto, including, but not limited to, water rights, irrigation improvements, access, easements, and existing fixtures and improvements thereon (“**Property**”).



**2. License for Entry.**

Seller grants to Buyer a license to enter upon the Property for all purposes reasonably related to a full and adequate determination of its suitability, including, without limitation, the right to conduct surveys, soils tests, engineering studies, and environmental tests and audits.

**3. Purchase Price.**

The purchase price of the Property is Six Million Dollars (\$6,000,000) (“**Purchase Price**”).

**4. Conditions for Closing.**

Notwithstanding anything to the contrary in this Agreement, Buyer shall not be obligated to purchase the Property and Seller shall not be obligated to sell unless at or prior to closing each of the following conditions have been met or waived in writing. The parties agree to cooperate with one another to execute any documents which may be necessary or convenient to the performance of these conditions:

(a) **Buyer’s due diligence.** Seller makes no representations as to the title, or status of the Property other than as specifically set forth herein and Buyer shall have a due diligence period from the date of execution hereof until December 16, 2022, to perform such examination of the Property and the title thereto to satisfy Buyer, including but not limited to:

(i) Title Insurance. Buyer may obtain, at Buyer’s cost, from a title insurance company authorized to do business in the State of Idaho, a commitment for a policy of title insurance, including any endorsements reasonably required by Buyer in the full amount of the Purchase Price, insuring marketable fee simple title to the Property in Buyer.

(ii) Unrecorded Lease. The Property is currently subject to an unrecorded lease between Seller and Grant 4-D Farms, LLC, an Idaho limited liability company (“**Existing Farm Lease**”), which is attached and incorporated herein as **Exhibit B**. Buyer and Seller agree that prior to or concurrent with closing of this transaction, Seller shall assign its interest in the lease to Buyer. Seller shall not enter into any additional lease or occupancy agreement affecting the Property or any portion thereof unless first approved in writing by Buyer.

(iii) Boundary Survey and Environmental Hazards. Such surveys of the boundary and examination of environmental conditions of the Property deemed necessary by Buyer to determine the status of the Property with respect to property lines, hazardous materials and other relevant conditions which, in Buyer’s sole opinion, are acceptable for Buyer’s intended purposes for purchase.

(b) While Seller makes no representation or warranty with regard to the title or status of the Property, given the unique relationship between Buyer as trustee and Seller, acting on behalf of the beneficiary, the University of Idaho College of Agricultural and Life Sciences, and the fact that the Property will largely be managed by Seller for the operation of an experimental farm following Buyer’s acquisition in accordance with provisions of the Morrill Act and the Idaho Admission Bill; and, given that Seller has previously negotiated for and acquired the Property with the intention of using it as an experimental farm; Seller agrees to provide to Buyer copies of the following documents, instruments, and information that Buyer or its agents may possess related to Seller’s acquisition of the Property in order to assist Buyer in its due diligence review, including, but not limited to: copies of any and all acquisition documents; purchase and sale agreements;

exhibits; attachments; deeds; easements; contracts; studies; reports; private or otherwise; appraisals; title commitments; title policies; phase 1 studies as well as any other environmental studies or hazardous materials studies performed; surveys; soil tests/samples; etc., that Seller has conducted on the Property, either internally through any University of Idaho affiliate or affiliation, or that it had performed for Seller or on Seller's behalf and that Seller relied on in acquiring the Property.

**(c) Buyer's and Seller's Board Approval.** Neither Buyer nor Seller is obligated to close this transaction until the Board of Regents and the Land Board have specifically approved this Agreement in accordance with their respective policies and procedures and in the manner otherwise prescribed by the terms of this Agreement. The parties acknowledge that the execution and delivery of this Agreement is made prior to presentation of the proposed transaction and the terms hereof to either party's governing board for the foregoing required approval. Multiple appearances before the respective boards may be necessary in order for a board to reach a final determination or approval of the transaction. This Agreement permits both parties to complete appropriate due diligence prior to submitting the transaction for final approval to their respective governing boards. The determination of the Board of Regents and Land Board, respectively, whether to approve the transaction and permit closing to proceed is an independent decision of each board, and nothing herein shall be deemed to bind either board in favor of approval, or to limit its discretion in granting such approval.

**(d) Termination Resulting from Dissatisfaction from Buyer's Due Diligence or Failure to Receive Board Approval.** At any time during the due diligence period, Buyer may elect to terminate this Agreement upon fifteen (15) days' prior written notice to Seller



and this Agreement shall terminate. In the event either Board of Regents or Land Board denies approval of this Agreement, or Buyer's approval is not obtained prior to the end of the due diligence period, this Agreement shall terminate, and each party shall be solely responsible for the costs and expenses incurred by each party to that point, including, but not limited to, due diligence and attorney fees. In the event of any such termination of this Agreement, both parties shall be released from any further obligations hereunder.

(e) **Experimental Farm Agreement.** The Parties agree that as a term of this Agreement, and as a condition precedent to closing, the Parties shall execute in substantially the same form attached and incorporated herein as **Exhibit C**, an "Agricultural College Endowment Experimental Farm Operations Agreement" (hereafter simply referred to as the "**Experimental Farm Agreement**") in which Seller shall commit to Buyer to utilize all Purchase Price proceeds received for the Property from Buyer for experimental farm purposes consistent with the Morrill Act and the Idaho Admission Bill. Seller shall use and manage the Property for the sole purpose of operating an experimental farm consistent with the Morrill Act and the Idaho Admission Bill.

## **5. Closing Agent.**

First American Title Company, 199 Country Lane Jerome, ID 83338, shall serve as the Closing Agent. Seller shall deliver to the Closing Agent on or before December 20, 2022, the following: i) a duly executed and acknowledged Special Warranty Deed ("**Deed**"), in substantially the form attached and incorporated herein as **Exhibit D**, conveying all of Seller's right, title and interest in the Property to Buyer, together with instructions to deliver and record Deed after Buyer deposits the Purchase Price with the Closing Agent. On or before December 10, 2022, Buyer shall notify Seller and Closing Agent, in writing that Buyer is satisfied with the conditions of transaction

closing as set forth in Section 4 of this Agreement. Upon acknowledgment that all conditions of transaction closing as set forth in Section 4 have been met by Buyer and Seller, Buyer shall deposit the Purchase Price prior to December 22, 2022, with the Closing Agent, with instructions to disburse the Purchase Price to Seller upon recordation of the Deed by Closing Agent.

**6. Closing.**

Once all conditions of transaction closing (as described in Section 4 of this Agreement) have been satisfied, the Deed is delivered, the Purchase Price is deposited, and the Experimental Farm Agreement is executed by both parties, the Closing Agent shall complete the transaction as prescribed by this Agreement (“**Closing**”). Upon Closing, possession of the Property shall pass to Buyer.

**7. Costs.**

Seller shall pay closing fees, which will be deducted from proceeds. Utilities shall remain in name of Seller and all expenses for utilities before and after closing shall remain the responsibility of Seller for so long as Buyer retains ownership of the Property and the Experimental Farm Agreement is in effect. The Property is exempt from property taxes while in the possession of Seller and will remain exempt upon transfer to Buyer.

**8. Commissions.**

Each party represents and warrants that it has not dealt with or contracted with any broker, agent, or finder to act in their behalf in connection with this transaction.

## **9. Seller's Representations and Warranties.**

(a) Seller represents and warrants that Seller has authority to enter into this Agreement (subject to the condition listed in Section 4 (b) herein) and to grant the license granted in Section 2.

(b) Seller represents and warrants that there are no pending or threatened condemnation proceedings that are known to affect all or any portion of the Property, or the performance by Seller of any of its obligations set forth in this Agreement.

(c) Seller represents and warrants that, to Seller's knowledge, there are no attachments, executions, assignments for the benefit of creditors, or voluntary or involuntary proceedings contemplated by, or pending or threatened against, Seller that could prevent or delay the consummation of this transaction.

(d) Seller represents and warrants that execution, delivery and performance of this Agreement has been duly authorized and approved by all actions necessary by Seller, on the part of Seller, and that this Agreement (subject to the condition described by Section 4(b) herein) constitutes valid and binding agreement of Seller in accordance with its terms.

The representations and warranties set forth in this Section 9 shall constitute continuing representations and warranties and shall be deemed to be true and correct as of the date of closing of Buyer's purchase of the Property.

## **10. Condemnation.**

Should any entity having the power of condemnation bring an action or otherwise indicate an intent prior to the time of closing to acquire all or any portion of, or any interest in, the Property, Buyer or Seller, at either party's sole option, may elect to terminate this Agreement by giving

written notice to the other party at any time prior to the time of closing. If neither party chooses to terminate this Agreement as provided herein, then Buyer and Seller shall complete the purchase and sale as provided herein with Seller immediately appointing Buyer its attorney-in-fact to negotiate with said condemning entity as to its interest in the Property and assigning to Buyer all amounts to be awarded for the Property. Seller agrees to provide Buyer, within ten (10) days after Seller's receipt of same, but in no event later than the time of closing, written notice of any actual or threatened condemnation proceeding.

**11. Successors.**

This Agreement shall be binding on the successors and assigns of the parties hereto.

**12. Default.**

A party shall be deemed to be in default of this Agreement if that party is in material breach of any warranty, term, condition, covenant or obligation under this Agreement and fails to cure that breach within thirty (30) days written notice thereof.

**13. Notices.**

(a) All notices given pursuant to this Agreement shall be in writing and shall be given by personal service, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the appropriate party at the address set forth below, and with a copy to said party to be sent via email as set forth below:

Seller: Board of Regents of the University of Idaho  
Vice President, Finance & Administration  
875 Perimeter Dr MS 3168  
Moscow ID 83844-3168  
Email: \_\_\_\_\_

Buyer: State Land Board  
c/o Idaho Department of Lands  
300 North 6<sup>th</sup> Street, Suite 103  
Boise, ID 83702  
Email: jelbin@idl.idaho.gov

The person and address to which notices are to be given may be changed at any time by any party upon written notice to the other party. All notices given pursuant to this Agreement shall be deemed given upon receipt.

(b) For the purpose of this Agreement, the term “**receipt**” shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to subparagraph (a) above as shown on the return receipt; (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to subparagraph (a) above; or, (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery; (B) the date of the postmark on the return receipt; or, (C) the date of receipt of notice of refusal or notice of nondelivery by the sending party.

#### **14. Captions and Headings.**

The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

#### **15. Entire Agreement.**

This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

**16. Venue and Governing Law.**

Any legal proceeding instituted between the parties shall be in the courts of the County of Ada, State of Idaho, and each of the parties agrees to submit to the jurisdiction of such courts. It is further agreed that this Agreement shall be governed by the laws of the State of Idaho.

**17. Counterparts.**

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single instrument, and shall be effective upon execution of one or more of such counterparts by each of the parties hereto.

**18. Survival.**

All of the representations and warranties set forth in this Agreement shall constitute continuing representations and warranties, shall be deemed to be true and correct as of the date of Closing, and shall survive Closing.

**19. No Third-Party Beneficiary Rights.**

This Agreement is not intended to create, nor shall it in any way be interpreted or construed to create, any third-party beneficiary rights in any person not a party hereto.



EXECUTED as of the date first above written.

**SELLER:**

Board of Regents of the University of Idaho

**BUYER:**

Idaho Department of Lands  
for and on behalf of State Land Board

\_\_\_\_\_  
Lee Espey  
Operations Officer, Finance and Admin  
University of Idaho

\_\_\_\_\_  
Dustin T. Miller  
Director of Idaho Department of Lands

Date \_\_\_\_\_

Date \_\_\_\_\_

IDAHO DEPARTMENT OF LANDS

### **List of Exhibits and Schedule**

Exhibit A – Legal Description of the Property

Exhibit B – Existing Farm Lease

Exhibit C – Experimental Farm Agreement

Exhibit D - Special Warranty Deed



**EXHIBIT A**  
**SUBJECT PROPERTY**



**EXHIBIT B**  
**EXISTING FARM LEASE**



**EXHIBT C**  
**EXPERIMENTAL FARM AGREEMENT**



## EXHIBIT D

### SPECIAL WARRANTY DEED

#### SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED ("Deed"), is made this \_\_\_\_ day of \_\_\_\_\_, 2022, by **BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO**, a state educational institution and body politic and corporate organized and existing under the Constitution and laws of the State of Idaho, whose mailing address is 875 Perimeter Drive MS 3020, Moscow, Idaho, 83843-3020 ("**Grantor**"), and the **STATE OF IDAHO, STATE BOARD OF LAND COMMISSIONERS**, whose administrative agent is the **IDAHO DEPARTMENT OF LANDS**, whose mailing address is 300 North 6<sup>th</sup> Street, Suite 103, Boise, Idaho 83702 ("**Grantee**").

**WITNESSETH**, that Grantor, for and in consideration of the sum of TEN DOLLARS (\$10.00) lawful money of the United States of America, and other good and valuable consideration, to Grantor in hand paid by Grantee, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and by these presents does grant, bargain, sell, convey and confirm unto Grantee, and to Grantee's heirs and assigns forever, all of the following described real property located in Minidoka County, State of Idaho, which property is legally described as follows, to-wit:

[See Exhibit "A", attached hereto and incorporated herein by reference]

**SUBJECT TO** all matters of record, and all existing easements or claims of easements, patent reservations, rights of way, protective covenants, zoning ordinances, and applicable building codes, laws and regulations, encroachments, overlaps, boundary line disputes and other matters which would be disclosed by an accurate survey or inspection of the premises.

**TOGETHER WITH** the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and any reversions, any remainders, rents, issues and profits therefrom; and all estate, right, title and interest in and to said property, as well in law as in equity, of Grantor.

**TO HAVE AND TO HOLD** the premises and the appurtenances unto Grantee, and to Grantee's heirs and assigns forever. Grantor covenants to Grantee only that Grantor has not conveyed the property or any right, title or interest therein to any other person than to Grantee, and that the property is free from encumbrances created or suffered by Grantor, excepting those as may be herein set forth.

In construing this Deed and where the context so requires, the singular includes the plural.

**IN WITNESS WHEREOF**, Grantor has executed the within instrument the day and year first above written.



**GRANTOR:**

**BOARD OF REGENTS OF  
THE UNIVERSITY OF IDAHO,**

a state educational institution and  
body politic and corporate organized  
and existing under the Constitution  
and laws of the State of Idaho.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 )ss.

County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me, a Notary Public in and for said State, personally appeared \_\_\_\_\_, known or identified to me to be the \_\_\_\_\_ of the **BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO**, a state educational institution and body politic and corporate organized and existing under the Constitution and laws of the State of Idaho, an agency or entity of the State of Idaho, that executed the instrument and the person who executed the instrument on behalf of said **BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO** and acknowledged to me that such state agency or entity executed the same.

(seal)

\_\_\_\_\_  
Notary Public for State of \_\_\_\_\_

Residing at: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**AGRICULTURAL COLLEGE ENDOWMENT  
EXPERIMENTAL FARM OPERATIONS AGREEMENT**

**THIS AGRICULTURAL COLLEGE ENDOWMENT EXPERIMENTAL FARM OPERATIONS AGREEMENT (“Experimental Farm Agreement”)** is entered into by and between the **STATE OF IDAHO, STATE BOARD OF LAND COMMISSIONERS**, acting through the **IDAHO DEPARTMENT OF LANDS**, whose mailing address is 300 North 6<sup>th</sup> Street, Suite 103, Boise, Idaho 83702, as trustee for the **AGRICULTURAL COLLEGE ENDOWMENT (“Landowner”)**, and the **BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO**, a state educational institution and body politic and corporate organized and existing under the Constitution and laws of the State of Idaho, whose mailing address is 875 Perimeter Drive MS 3168, Moscow, Idaho, 83843-3168, acting by and for the benefit of the **UNIVERSITY OF IDAHO (“Operator”)**.

**RECITALS:**

**WHEREAS**, Landowner serves as the constitutional trustee for state endowment lands obtained from the federal government at statehood, which lands are to be managed “in such manner as will secure the maximum long term financial return to the [endowment beneficiaries]” in accordance with Article IX, § 8 of the Idaho Constitution and the Idaho Admission Bill (26 Stat. 215, ch 656, am. 1998, P.L. 105-296), including an amendment to § 10 of the Idaho Admission Bill in 1997 (P.L. 110-77); and

**WHEREAS**, Landowner acquired two hundred eighty-two (282) acres of agricultural college endowment land in Caldwell, Idaho, in 1908 pursuant to the federal Morrill Act, 7 U.S.C. §§ 301, *et. seq.* (the “Original Morrill Act Land”); and

**WHEREAS**, on December \_\_, 2021, the Original Morrill Act Land sold for \$23,250,000 (the “Caldwell Proceeds”) and Landowner deposited the Caldwell Proceeds in the land bank fund pursuant to Idaho Code § 58-133(2); and

**WHEREAS**, the University of Idaho is Idaho’s land grant college and beneficiary of the agricultural college endowment, and Operator serves as the governing body for the University of Idaho. *See e.g.*, Idaho Code §§ 33-2813 and 33-2802, respectively; and

**WHEREAS**, the Morrill Act authorize Landowner to purchase land for sites and experimental farms whenever authorized by the state legislature. 7 U.S.C. §§ 304, 305; and

**WHEREAS**, the 2007 amendment to § 10 of the Idaho Admission Bill authorizes Landowner to use proceeds from the sale of agricultural college endowment land for the purchase, erection, preservation, or repair of buildings. P.L.110-77 (2007); and

**WHEREAS**, Landowner has determined that execution of this Experimental Farm Agreement will be consistent with its fiduciary obligations as set forth Article IX, § 8 of the Idaho Constitution, including the obligation to secure the maximum long term financial return to the endowment beneficiary; and

**WHEREAS**, the legislature has given its assent to all the provisions of the Morrill Act, and acts amendatory thereof and supplementary thereto. Idaho Code § 33-2901; and

**WHEREAS**, Landowner consents to Operator's request to operate an experimental farm or experimental farms on certain agricultural college endowment land as provided for in the Morrill Act and in accordance with the terms and conditions of this Experimental Farm Agreement; and

**WHEREAS**, Operator has the expertise and desire to operate an experimental farm or experimental farms on certain agricultural college endowment land as allowed and provided for in the Morrill Act;

#### **AGREEMENT:**

**NOW THEREFORE**, in consideration of the foregoing Recitals which are incorporated into the contractual provisions of this Experimental Farm Agreement, and for other good and valuable consideration, the parties further agree as follows:

**SECTION 1: Designation and Management of Experimental Farm.** Landowner hereby designates Operator as the manager, occupant and sole operator of that certain real property Landowner owns and which is described in **Exhibit A** (which is attached and incorporated herein, and which shall be known as "**Original Farm**"). Operator hereby agrees to manage and operate Original Farm and any existing or future facilities, structures and appurtenances located thereon or related thereto that are deemed necessary by Operator for the purpose of developing and operating experimental farm uses at this site.

**SECTION 2: Term.** The term of this Experimental Farm Agreement and the designation of Original Farm by Landowner for exclusive occupancy and operation by Operator shall commence upon the acquisition of Original Farm by Landowner and shall continue until such time as Operator notifies Landowner in writing of its intent to terminate the Experimental Farm Agreement or as otherwise provided herein. Such termination shall be in accordance with the more specific provisions of Section 11 of this Experimental Farm Agreement.

**SECTION 3: CAFE Project Development.** Landowner and Operator hereby agree that Original Farm is to be developed and utilized by Operator as an experimental farm, and more particularly, it shall initially be developed and operated as a research dairy to be known at the time of commencement as the Center for Agriculture, Food, and the Environment ("**CAFE**"). As manager, occupant and sole operator of Original Farm, Operator hereby agrees to design, construct, and operate CAFE facilities as described in **Exhibit B** (which is attached and incorporated herein). Exhibit B identifies buildings and fixtures to real property ("**Improvements**") that will be owned by Landowner as well as those Improvements that will be owned by Operator as permitted by this Experimental Farm Agreement. In recognition that Landowner will not acquire more real property and Improvements than the value of the Caldwell Proceeds, and the Operator will retain all other real property improvements it constructs on the Original Farm, the parties mutually agree (if necessary upon the completion of construction) to amend Exhibit B in a manner that ensures the actual construction cost of listed real property Improvements to be owned

by Landowner approaches but does not exceed the value of the Caldwell Proceeds. In the event actual construction costs differ from the estimated costs reported in Exhibit B at the date of execution of this Experimental Farm Agreement, the parties will amend Exhibit B to identify the revised values and ownership assignment of those real property improvements.

The proposed development and construction upon Original Farm set forth Exhibit B may be conducted in phases by Operator directly or through the State of Idaho Division of Public Works ("DPW"). Attached hereto as **Exhibit \_\_\_\_** and incorporated herein by reference is a letter from DPW stating its assent to bill Landowner for any development and construction conducted by DPW.

Operator shall provide Landowner with the anticipated costs of construction of each phase prior to commencing or authorizing work on any phase, and shall provide Landowner with no less than \_\_\_\_ days to review and authorize said costs. Landowner shall pay all construction costs for those real property Improvements identified on Exhibit B as "Endowment Buildings/Improvements" as periodically billed by Operator or DPW during construction, provided that Landowner has authorized those costs and that the total costs submitted to Landowner do not exceed the Caldwell Proceeds.

During construction Operator is responsible for determining and directing satisfactory capital project completion of each Improvement funded with the Caldwell Proceeds. Landowner and Operator agree that upon Operator's receipt of a State of Idaho Division of Occupational and Professional Licensing-issued "certificate of substantial completion", the Improvement to which the certificate pertains shall be owned by Landowner.

**SECTION 4: Investment of Operator's proceeds from Landowner's purchase of Original Farm.** Operator hereby agrees to apply all proceeds from its sale of Original Farm to Landowner to the purchase and/or construction of real estate assets deemed necessary by Operator for the development of the CAFE project café on the Original Farm.

**SECTION 5: Existing Lease.** Upon acquisition of Original Farm by Landowner, the unrecorded lease between Operator and 4-D Farms, LLC ("**Existing Farm Lease**"), which is attached and incorporated herein as **Exhibit C**, will be assigned to Landowner as the lessor. Landowner hereby authorizes Operator to continue to manage the Existing Farm Lease on behalf of Landowner.

**SECTION 6: Water Rights and Irrigation Equipment.** Operator is the owner of the water rights listed in **Exhibit D**, which is attached and incorporated herein ("**Existing Water Rights**"). Landowner and Operator agree that they will be joint owners of the Existing Water Rights. Operator agrees that, simultaneous with closing, it will execute and file with the Idaho Department of Water Resources a "Notice of Change of Water Right Ownership," listing Landowner and Operator as joint owners of the Existing Water Rights. Landowner agrees that Operator may continue to use the Existing Water Rights in connection with the CAFE. Operator is further authorized to use, manage and secure, jointly in Landowner and Operator's name, any additional water rights that Operator may deem necessary for the convenient operation of the experimental farm purposes such as CAFE. Additionally, Operator may continue to use any and all real property irrigation improvements on Original Farm as well as retain ownership of any and all personal

property irrigation equipment described in **Exhibit E** (specifically identifies all such personal property irrigation equipment, and is attached and incorporated herein). Operator may continue Operator's use of those water rights and improvements as well as ownership of personal property irrigation equipment referred to herein until such time as Operator terminates this Experimental Farm Agreement as provided in Section 11.

In the event of a water delivery call, curtailment order, mitigation requirement, or any other circumstance requiring or resulting in Operator's inability to use the full quantity of water set forth in the water rights listed in **Exhibit D**, it shall be Operator's obligation to secure such additional water as may be necessary for the experimental farm and CAFE operation. Landowner shall have no obligation to secure additional water or water rights.

**SECTION 7: Authority to grant licenses, permits, leases and temporary easements.** Prior to entering into any new licenses, permits or temporary easements on the Original Farm, Operator shall first provide Landowner with notice of its intent to issue the license, permit or temporary easement, along with such details as Landowner shall deem necessary to facilitate its review of the proposed request. Upon Landowner's authorization, which shall not be unreasonably withheld, Operator may enter into new licenses, permits, and temporary easements reasonably related to Operator's practical operation of Original Farm for experimental farm purposes, such as CAFE as more specifically described above; provided however, that any such license, permit, or temporary easement shall not, under any circumstance, continue beyond the term of this Experimental Farm Agreement, but shall terminate automatically upon the termination of this Experimental Farm Agreement for any reason. Such authorization does not extend to any license, permit, or easement that does not directly facilitate some utility, service, or activity deemed reasonably consistent with experimental farm purposes. Operator is not authorized to grant any instrument which encumbers title to Original Farm.

**SECTION 8: Revenue Generation from Original Farm/CAFE operations.** Landowner acknowledges that the operations and production of this experimental farm, and CAFE in particular, may result in revenue generation to Operator as CAFE operator and that any such revenue shall be the sole property of Operator and is not deemed a revenue source for Landowner so long as any such revenue is used by Operator for the purchase and/or construction, maintenance and repair, of real estate assets, fixtures and improvements deemed necessary by Operator for the development of an experimental farm, including, but not limited to, CAFE, or for operational expenses directly attributable to the use, development, or management of an experimental farm, including to or for CAFE. No later than August 31 of each year, Operator shall provide a report to Landowner detailing the production and financial results of operations for the fiscal year ending on July 31 of that year. The annual report shall also specify how the operating revenue generated (if any) was expended in accordance with this Section 8.

**SECTION 9: CAFE Expansion and Conveyance of Additional Farm Property to Landowner.** Subject to approval from Landowner in advance of construction by Operator, additional real property improvements (beyond those already anticipated for conveyance to Landowner as provided by Section 3 and described in Exhibit B of this Experimental Farm Agreement), may subsequently be constructed or operated by Operator on Original Farm and shall remain the property of Operator unless and until this Experimental Farm Agreement is terminated



as provided herein. Landowner agrees to make reasonable effort to review building plans or diagrams submitted by Operator within thirty days of receipt by Landowner. In the event any additional land or real property improvements beyond the Original Farm and those real property improvements identified in Exhibit B are proposed by Operator for conveyance to Landowner, such conveyance shall be subject to an approval from Landowner that is separate from and not consented to by this Experimental Farm Agreement. If separately approved by Landowner as required by this section, each subsequent conveyance of land or real property improvement from Operator to Landowner shall be referred to herein as "Additional Farm Property". Additional Farm Property shall be subject to the terms of development, occupancy, operation, and termination as established by this Experimental Farm Agreement for Original Farm.

**SECTION 10: Costs of Operation, Maintenance, and Improvements.** Operator agrees to pay all costs of operation, maintenance and improvements related to or resulting from Operator's use, occupancy and operation of Original Farm and Additional Farm Property, including but not limited to employment-related taxes and benefits.

**SECTION 11: Termination of Experimental Farm Operations. O**

In the event Operator is unable to continue the experimental farm operations that are the subject of this Agreement, or Operator determines that discontinuing such operations is in the best interest of Operator, Operator shall provide not less than one hundred eighty (180) days' written notice of Operator's intention to close operations to Landowner. Upon receipt of notice of intention to close operations, and consistent with its fiduciary responsibilities to the Agricultural College Endowment, Landowner may evaluate Original Farm, Additional Farm Property and any buildings, improvements and fixtures located thereon, whether owned by Landowner or Operator (collectively, "Real Property and Related Assets"), and determine the highest and best use of the Real Property and Related Assets as that use may exist at the time of operation closure, or in the future. Following evaluation, Landowner may determine whether disposal, retention, or any other action allowed by law is in the best interest of and will fulfill Landowner's fiduciary obligations to the Agricultural College Endowment. Operator shall cooperate with such evaluation as requested by Landowner.

In the event Landowner determines that a sale of the Real Property and Related Assets is necessary to meet Landowner's fiduciary responsibilities as trustee, the Real Property and Related Assets will be appraised pursuant to Landowner's procedures for sale of endowment property. Buildings, improvements and fixtures which remain under Operator's ownership ("Operator Assets") will be included in the appraisal and will be separately valued. If Operator Assets or any of such Operator Assets are determined not to add value to the highest and best use of the Real Property and Related Assets or be detrimental thereto, then Operator shall remove any such Operator Assets at Operator's sole cost and expense upon demand by Landowner. Upon sale, the purchaser, if other than Operator, will pay to Operator the appraised value, if any, of the Operator Assets. Operator will cooperate with the sale, including any transfer of any property rights, whether real or personal, necessary for a complete transfer at the time of sale.

In the event Landowner determines that leasing of the Real Property and Related Assets is necessary to meet Landowner's fiduciary responsibilities as trustee, the Real Property and



Related Assets will be appraised pursuant to Landowner's procedures for leasing real property (including determination of fair rental value). Operator Assets will be included in the appraisal and separately valued. If Operator Assets or any of such Operator Assets are determined not to add value to the highest and best use of the Real Property and Related Assets or be detrimental thereto, then Operator shall remove any such Operator Assets at Operator's sole cost and expense upon demand by Landowner. Upon lease, the lessee, if other than Operator, will pay to Operator the appraised value, if any, of the Operator Assets. Operator will cooperate with the lease process, as necessary for a complete lease. Rent payments under the lease will be paid to IDL as trustee for the Agricultural College Endowment, and placed in the earnings reserve fund.

The parties acknowledge that circumstances surrounding the closure of operations by Operator and the evaluation, as of the time of closure, of the Real Property and Related Assets may require revisions to this Section 11 in order to satisfy Landowner's fiduciary duties to the Agricultural College Endowment. The parties agree to confer and negotiate in good faith for any necessary revisions while remaining within the framework of the Landowner's fiduciary responsibilities including fair compensation to Operator for the value of Operator's buildings and improvements.

Nothing contained in this Section 11 shall be construed as preventing or prohibiting Landowner from making reasonable inspection of the Real Property and Related Assets at any time.

**SECTION 12: Damage, Destruction and Condemnation.** In the event of any damage, destruction, or condemnation of Original Farm and/or Additional Farm Property, or any part thereof, the net proceeds of any insurance or condemnation awards with respect to Original Farm and/or Additional Farm Property shall be used and applied to repair, restore, rebuild, or replace Original Farm and Additional Farm Property; provided however, that in the event of total or substantial destruction or condemnation, or in the event that the aforesaid insurance proceeds or condemnation awards are not sufficient to repair, restore, rebuild, or replace Original Farm and Additional Farm Property, then Landowner, upon consultation with Operator, may elect not to repair, restore, rebuild, or replace, in which case the net proceeds of all insurance and condemnation awards, together with all other available funds, shall be applied by Landowner as it deems appropriate in the best interest of the endowment beneficiary. Any such repair, restoration, rebuilding, or replacement may be in accordance with such different design, plans, and specifications approved by Operator and Landowner as will or may provide facilities of the same or different nature or use, but still held and used for the purpose of experimental farms, and so long as any such change therein or thereof shall not reduce or otherwise adversely affect the value and purpose of Original Farm and/or Additional Farm Property.

**SECTION 13: Relationship of the Parties and Responsibility for Management.** Operator will control the operations and management of the Original Farm and any Additional Farm Property, including the day-to-day operations and contracting with any party with whom Operator chooses to contract for the use or purposes of operating an experimental farm or CAFE.

**SECTION 14: General Provisions.**

A. **Insurance.** Landowner and Operator are both agencies of the State of Idaho and are provided a comprehensive liability plan through the Risk Management Program established under Idaho Code § 67-5773 *et seq.*, funded and in effect subject to limitation on liability of the Tort Claims Act, Idaho Code § 6-901 *et seq.*

1. Apportionment of Liability. Landowner and Operator shall be responsible only for the acts, omissions or negligence of such party's own employees. The term "employee" is defined for the purposes of this section as set forth in Idaho Code § 6-902. The parties acknowledge that both Landowner and Operator participate in the State of Idaho Risk Management Program comprehensive liability plan utilizing the Retained Risk Account ("Risk Program"). Each of the parties is obligated to notify the Division of Risk Management and the other party upon receipt of notice or in the event it has knowledge of any claim or damage arising out of this Agreement.

2. Nothing in this Experimental Farm Agreement shall extend the tort responsibility or liability of either Landowner or Operator beyond that required by the Idaho Tort Claims Act, Idaho Code § 6-901 *et seq.* Any covered third-party tort liability claim, suit or loss arising from this Experimental Farm Agreement shall be allocated to one or both parties by the Division of Risk Management for purposes of the respective loss experiences and subsequent allocation of self-insurance assessments.

3. Landowner and Operator shall each be responsible for damage to property of the other party caused by its employees in the performance of this Experimental Farm Agreement. If any property damage arises in the performance of this Experimental Farm Agreement and is covered by the Risk Program, the Division of Risk Management shall charge the damage or loss to the responsible party's loss history, and the responsible party shall pay the deductible, if any.

4. If a claim or damage is not covered by the Risk Program, the responsible party shall pay the costs arising from any such claim or damage. If a claim or damage arises from both parties' performance of this Experimental Farm Agreement or is not allocable to either party individually, then each party shall pay the costs to such party arising from the claim or damage.

B. **Hazardous Materials.** Operator shall not, nor shall it allow others to, accumulate, use, or store on Original Farm or any Additional Farm Property any materials classified as hazardous, biomedical or toxic waste except in compliance with all applicable environmental laws and other applicable state, federal, or local laws, ordinances, rules or regulations. Operator shall comply and require any and all authorized users of Original Farm and any Additional Farm Property, including, but not limited to, licensees, permittees, lessees, temporary easement holders, contractors, and subcontractors to comply with such environmental laws and to comply with any lawful order by any entity with authority to regulate the use, accumulation, storage or disposal of hazardous waste. As used herein, the term "environmental laws" shall mean the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (CERCLA) the Resource Conservation Recovery Act, as amended (RCRA), the Federal Water Pollution Control Act, the Clean Air

Act and any applicable local, state or federal law, rule, ordinance or regulation. As used herein, the term “hazardous materials” shall mean any hazardous substance, pollutants, contaminants, or other hazardous waste or toxic substances defined in any environmental laws including, without limitation, petroleum and petroleum products, asbestos and asbestos containing materials, PCBs and urea-formaldehyde. In the event Operator or any authorized user of Original Farm or Additional Farm Property, including, but not limited to, licensees, permittees, lessees, temporary easement holders, contractors or subcontractors place hazardous materials in violation of any environmental laws on Original Farm or Additional Farm Property, Operator shall, at Operator’s sole cost and expense, cause such testing to be performed and shall cause any such hazardous materials to be removed, remediated or abated in compliance with all applicable environmental laws.

C. **Notice.** Any notice under this Experimental Farm Agreement shall be in writing and be delivered in person or by public or private courier service (including US Postal Service Express Mail and Federal Express) or registered or certified mail or by email. Any notice given by registered or certified mail shall be sent with return receipt requested. Any notice of default given by email shall be accompanied by a phone call to the alleged defaulting party if such party has designated a specific personal contact and telephone number and email address to the other party. All notices shall be addressed to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing.

If to Landowner: State Land Board  
c/o Idaho Department of Lands  
300 North 6<sup>th</sup> Street, Suite 103  
Boise, ID 83702  
Email: \_\_\_\_\_

If to Operator: Regents of the University of Idaho  
Vice President, Finance and Administration  
875 Perimeter Dr MS 3168  
Moscow ID 83844-3168  
Email: \_\_\_\_\_

Either party hereto may, by proper notice to the other, designate any other address (including email) for the giving of notice. Any notice shall be deemed to have been given on (a) actual delivery or refusal, (b) the day of mailing by registered or certified mail, or (c) the day of email delivery “sent”.

D. Reserved.

E. **Officials Not Personally Liable.** In no event shall any official officer, employee or agent of the State of Idaho or Operator or Landowner be liable or responsible for any representation, statement, covenant, warranty or obligation contained in, or made in connection with this Experimental Farm Agreement.

F. **No Third-Party Beneficiary Rights.** Nothing in this Experimental Farm Agreement shall be construed as creating or giving rise to any rights in any third parties or any persons other than the express parties hereto.

G. **Severability.** In case any one or more of the provisions of this Experimental Farm Agreement shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions, and this Experimental Farm Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

H. **Governing Law and Venue.** This Experimental Farm Agreement shall be governed by and construed under the laws of the State of Idaho and the parties hereto consent to the jurisdiction of the state courts of Ada County in the State of Idaho in the event of any dispute with respect to this Experimental Farm Agreement.

I. **Written Modification.** This Experimental Farm Agreement may be modified or amended only by an agreement in writing signed by a duly authorized representative of the Landowner and Operator.

IN WITNESS WHEREOF, the parties have executed this Experimental Farm Agreement to be effective as provided herein.

**LANDOWNER:**

**OPERATOR:**



**University of Idaho**

College of Agricultural  
and Life Sciences

# **CALDWELL PROCEEDS AND CAFE EXPERIMENTAL FARM**

Presentation to Idaho State Board of  
Land Commissioners  
September 20th, 2022

# IDAHO CAFE

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## IdahoCAFE

Center for Agriculture, Food and the Environment

### A REGIONAL MODEL

Experimental Farm / Research Dairy

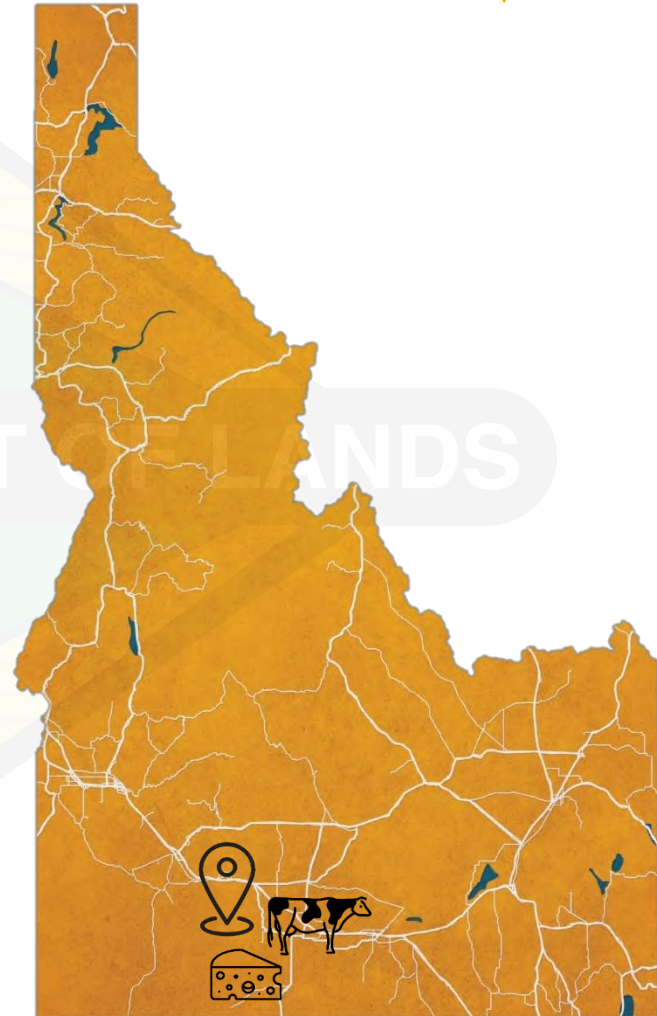
Rupert (*Minidoka County*)

Discovery Center, classrooms, labs, faculty offices

Crossroads I-84/Hwy93 (*Jerome County*)

Food processing pilot plant, workforce training/edu facility

CSI Campus (*Twin Falls County*)





# IDAHO CAFE



## IdahoCAFE

Center for Agriculture, Food and the Environment

- U of I has a need for an experimental farm to better serve Idaho agriculture
- Idaho dairy industry is #3 in the nation
- #1 agricultural commodity in Idaho
- With the close and sale of the Caldwell experimental farm, CALS only has one off-campus farm focused on large animals
- CAFE is critical to the continued delivery of the WIMU Veterinary Medicine program

# RESEARCH AT CAFE

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- Representative of the **size of a modern dairy** (cows and acres) to conduct experiments relevant for Idaho producers
- Located where the dairy industry thrives
- Integrates **animal and agronomy research** on the same site through forage production & nutrient management
- Develop waste management systems to **create byproducts** like fertilizers for crops

# RESEARCH AT CAFE

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- Develop strategies to **mitigate greenhouse gas emissions** from animals, housing areas, waste systems, and in-field applications, thereby advancing the dairy industry's **nationwide net zero initiative**
- Incorporate **sensors** and **artificial intelligence** to appropriately apply nutrients, including water, to crops and aid in animal well-being
- Support the **economic viability** of agriculture through sustainable crop rotational patterns focused on maintaining healthy soil and efficient use of water

# PROPOSAL FRAMEWORK

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## Purchase and Sale Agreement

- UI proposes to sell approximately 640 acres of land in Rupert to the Endowment at the appraised value of \$6M
- Purchase price to come from funds in the Land Bank generated from 2021 sale of Endowment property in Canyon County
- This land will encompass the entirety of the Operating Dairy

## Experimental Farm Operating Agreement

- Build-out of an Operating Dairy
- Operations
- Liquidation at end of agreement

# PROPOSAL FRAMEWORK

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## Build-out of the Operating Dairy

1. Operating Agreement authorizes UI to construct Buildings/Improvements for the Operating Dairy
2. Land Bank Funds up to \$17.25M will be applied to Buildings/Improvements as follows:
  - a) Site Preparation: UI will use \$6M from sale of property to the Endowment plus additional internal UI funds to complete
  - b) Endowment Buildings/Improvements with Land Bank Funds:
    - Construction of the Milking Barn and Parlor by UI for the Endowment with construction funded using \$17.25M balance

# PROPOSAL FRAMEWORK

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Build-out of the Operating Dairy (cont'd)

c. UI Additional Buildings/Improvements (UI Funds)

Operating Agreement allows UI to build additional Buildings/Improvements on Endowment Lands after approval. There are two anticipated categories:

1. Operating Dairy. Those buildings in addition to Endowment Buildings/Improvements necessary to complete an operational dairy
  2. Additional Buildings/Improvements. UI may construct and fund additional Buildings / Improvements for use in conjunction with the Operating Dairy
- ❖ UI retains ownership of these buildings/fixtures

# PROPOSAL FRAMEWORK

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## Operations Post Build-out

- Land Board designates University of Idaho as manager, occupant, and sole operator to develop and operate the experimental farm and research dairy in accordance with the Morrill Act
- UI will be responsible for all operations and maintenance of the Operating Dairy, including the land and all Buildings/Improvements



# PROPOSAL FRAMEWORK

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## Liquidation of Dairy at the End of the Agreement

1. Endowment Land and Buildings/Improvements/Fixtures
  - a. Proceeds from sale, including appreciation in value, return to the endowment
2. UI Buildings/Improvements/Fixtures
  - a. Sold contemporaneously with the Endowment lands/buildings/fixtures; proceeds are paid by the purchaser to UI
3. Format For Sale of the Combined Assets
  - a. Entire Operating Dairy (Endowment & UI assets) appraised at highest and best use;
  - b. Endowment Land with Buildings/Improvements sold at auction; all proceeds go to Endowment
  - c. UI Buildings/Improvements given separate value to determine purchase price for purchaser

# FINANCIAL ANALYSIS

## Sources of Funds

Source:	Amount:
State of Idaho	\$ 10,000,000
State of Idaho Land Board - Caldwell Proceeds	17,250,000
Federal (ARS)	1,000,000
Federal (ARS) - expected \$6mm rec'd in 2024	6,000,000
CALS	2,290,000
CALS - Phases 1 and 2 pledges	2,170,000
Central	1,400,000
Additional Fundraising Goal	3,202,007
Land Board Purchasing Original Farm Land	6,000,000
<b>Total Sources of Funds:</b>	<b>\$ 49,312,007</b>

# FINANCIAL ANALYSIS

## Uses of Funds

<b><u>Capital Expenditures</u></b>		
Improvements - construction bid	\$ 29,962,845	
Machinery & Equipment	1,999,102	
Buildings & Offices	11,762,590	
Rolling Stock	1,290,000	
<b>Capital Expenditures:</b>		<b>\$ 45,014,537</b>
<b><u>Initial Feed Purchases</u></b>		
Forages	\$1,467,500	
Grain	345,970	
<b>Initial Feed Purchases:</b>		<b>\$1,813,470</b>
<b><u>Original Purchase of Herd</u></b>		
# Milking Cows	1,200	
% Dry Cows	15%	
# Dry Cows	180	
\$/Milking Cow	\$1,800	
\$/Dry Cow	\$1,800	
Milking Cow Purchases	\$2,160,000	
Dry Cow Purchases	324,000	
<b>Original Herd Value:</b>		<b>\$2,484,000</b>
<b>Total Uses of Funds:</b>		
		<b>\$ 49,312,007</b>

# FINANCIAL ANALYSIS

## Return on Investment

<b>Initial Investment Amount - University-Controlled Funds</b>	\$ (45,014,537)			
		<b>Change in Debt</b>	<b>Land Appreciation</b>	<b>Return in Year:</b>
Cash Flow, Year 1:	\$ -	\$ (1,627,350)		\$(1,627,350)
Cash Flow, Year 2:	-	2,815,750		2,815,750
Cash Flow, Year 3:	2,301,282	452,306		2,753,588
Cash Flow, Year 4:	5,079,845	-		5,079,845
Cash Flow, Year 5:	5,226,585	-		5,226,585
Cash Flow, Year 6:	5,177,059	-		5,177,059
Cash Flow, Year 7:	4,735,601	-		4,735,601
Cash Flow, Year 8:	5,292,321	-		5,292,321
Balance Sheet Equity - End of Year 8 Less Cash, Plus A/D factor:			\$ 1,600,620	\$46,629,459
<b>Internal Rate of Return - Cash:</b>	<b>7.20%</b>			

# FINANCIAL ANALYSIS

## Return to Beneficiary

	Investment Fund	CAFE
<b>NPV of 8 years, 4% discount rate</b>		
\$23.25M invested in endowment	\$ 5,922,696	\$ -
Additional grant revenues	-	11,631,960
Research trial fee revenues	-	9,887,166
Enrollment revenues	-	2,180,993
<b>Total Return per Year</b>	<b>\$ 5,922,696</b>	<b>\$ 23,700,119</b>

## Return to Endowment

NPV of 8 years, 4% discount rate	CAFE
Land Appreciation (3% growth per year)	\$ 1,338,903
<b>Total Return per Year</b>	<b>\$ 1,338,903</b>

## Total 8-year NPV CAFE Return

**\$25,039,022**

# ANTICIPATED **TIMELINE**

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- UI Regents Approval October 20, 2022
- 640 acres closing by December 20, 2022
- CAFE Phase 1 construction to bid in December 2022 – January 2023
- Phase 1 construction completed by end of 2024
- Phase 2 construction completed by February 2026

IDAHO DEPARTMENT OF LANDS

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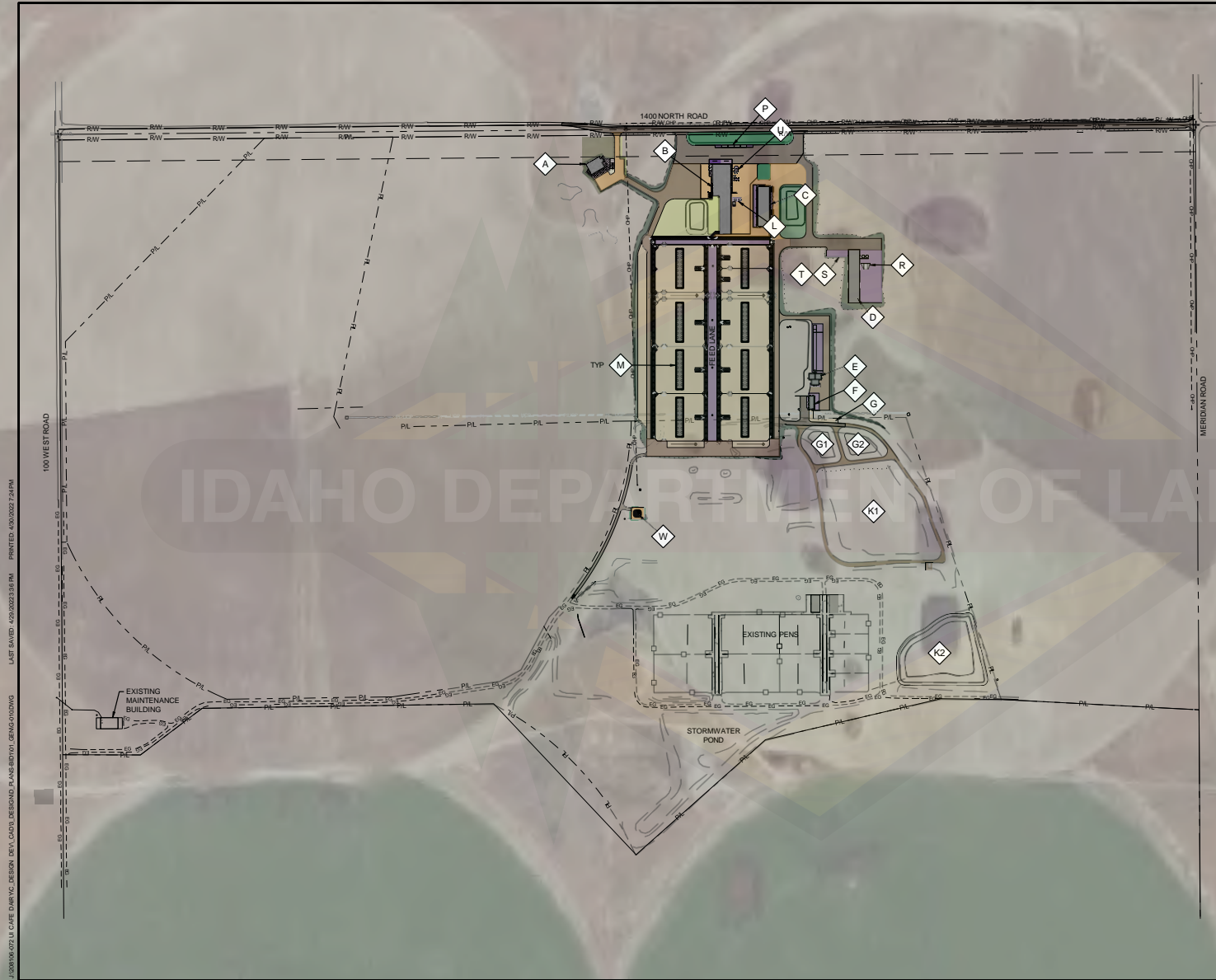
The logo of the Idaho Department of Lands is a large, light gray diamond shape. Inside the diamond, there is a stylized landscape with a green mountain peak, a yellow sun or moon, and a blue body of water. The text "IDAHO DEPARTMENT OF LANDS" is written in white, uppercase letters across the center of the diamond. Overlaid on this logo is a dark gray rounded rectangle containing the word "QUESTIONS?" in white, bold, uppercase letters.

**QUESTIONS?**



## Exhibit B – CAFE Facilities

Drawings Envelope ID: DBFFAF8D8C-4E4-5E2D-AE2D00F02A



### Buildings/Improvements

#### Phase 1 Construction (2023)

- All Excavation / Site Preparation
- B. Milking Parlor
- L. Reuse Water & Flush Water Tank
- U. Trash Enclosure
- W. Well House Building

#### Phase 2 Construction (2024)

- A. Office Building
- C. Calving & Research Barn
- D. Commodity Barn
- E. Manure Pump Station
- F. Manure Processing Building
- G. Settling Pond Splitter Box
- G1. Settling Pond 1
- G2. Settling Pond 2
- K1. Upper Storage Pond
- K2. Lower Storage Pond
- M. Shade Structures
- P. Milk Truck Scale
- R. Loading Ramp
- S. Fueling Station
- T. Emission Tanks

#### Endowment Buildings/Improvements

- B. Milking Parlor (~\$17M)

**ARCHITECTURAL & ENGINEERING SERVICES****PROJECT BUDGET MODEL****Project: CAFE Research Dairy, Rupert, Idaho DPW 18-257**

Scope of Work: Milking Parlor

UI Project Number: CP200017

Capital Construction Index: 674783

Date: 2 September, 2022

PROJECTED EXPENDITURES		Est. Expense Item
<b>FEES:</b>		
	Consulting A/E Services	1,366,256
	Reimbursables Allowance, A/E	69,000
	Design Phase Consulting CM/GC Services	98,336
	Reimbursables Allowance, CM/GC	10,800
	Project Administrative Support	
	Advertisement, A/E Services	74
	Advertisement, CM/GC	76
	RFQ, A/E	64
	RFQ, CM/GC	64
	DOPL Plan Check Fee	15,100
	Detail Site Survey (Included in Keller design services contract)	0
	Geotechnical Services (Included in land purchase agreement)	0
	Construction Materials Testing (Allowance)	30,000
	Testing and Balancing (Allowance)	20,000
	Commissioning (Allowance)	25,000
	Soils Testing/Compaction (Allowance)	40,000
	<b>Sub-Total Fees Category</b>	<b>1,674,770</b>

<b>CONSTRUCTION, CONTRACTOR:</b>		
Milk Parlor, construction		11,895,673
	Sub-Total	11,895,673
Construction Contingency @ 10%		1,189,567
DOPL Building Permit		37,750
	<b>Sub-Total Construction, Contractor Category</b>	<b>13,122,990</b>
<b>CONSTRUCTION OWNER:</b>		
UI Facilities (Support)		
UI Shops Support (Submittal Review, Allowance)		5,000
Fixed, Installed Equipment		
Rotary Milker, DeLaval/Total Dairy Solutions		1,999,102
Main Electrical Service (Idaho Power, Allowance)		100,000
Telephone Infrastructure (Allowance)		80,000
Data Connection to the Site (Allowance)		80,000
Audio/Visual Systems (Allowance)		20,000
Computer Cabling/Electronic Switches/TIP Plates (Allowance)		25,000
	<b>Sub-Total Construction, Owner, Category</b>	<b>2,309,102</b>

<b>FURNISHINGS/FIXTURES:</b>		
Lump Sum "Owner Cost & FFE" Estimate		
Fixed Equipment		
Furnishings		20,000
Artwork / Graphics		
Public Art Program (@ 1.5% of Const Cost)		
Interior Architectural ID and Wayfinding Signage		5,000
Exterior Architectural Identity Signage		7,500
Donor Recognition Signage		5,000
Non-Fixed Equipment		
<b>Sub-Total Furnishing/Fixtures Category</b>		<b>37,500</b>
<b>PROJECT SUB-TOTALS:</b>		
<b>Sub-Total Project Category</b>		<b>17,144,362</b>
<b>PROJECT CONTINGENCY:</b>		
Project Contingency Budgeted (2.5%)		428,609
<b><i>CAPITAL PROJECT TOTAL, ROUNDED</i></b>		<b><i>\$ 17,572,971</i></b>

# EXPERIMENTAL FARM IN RUPERT

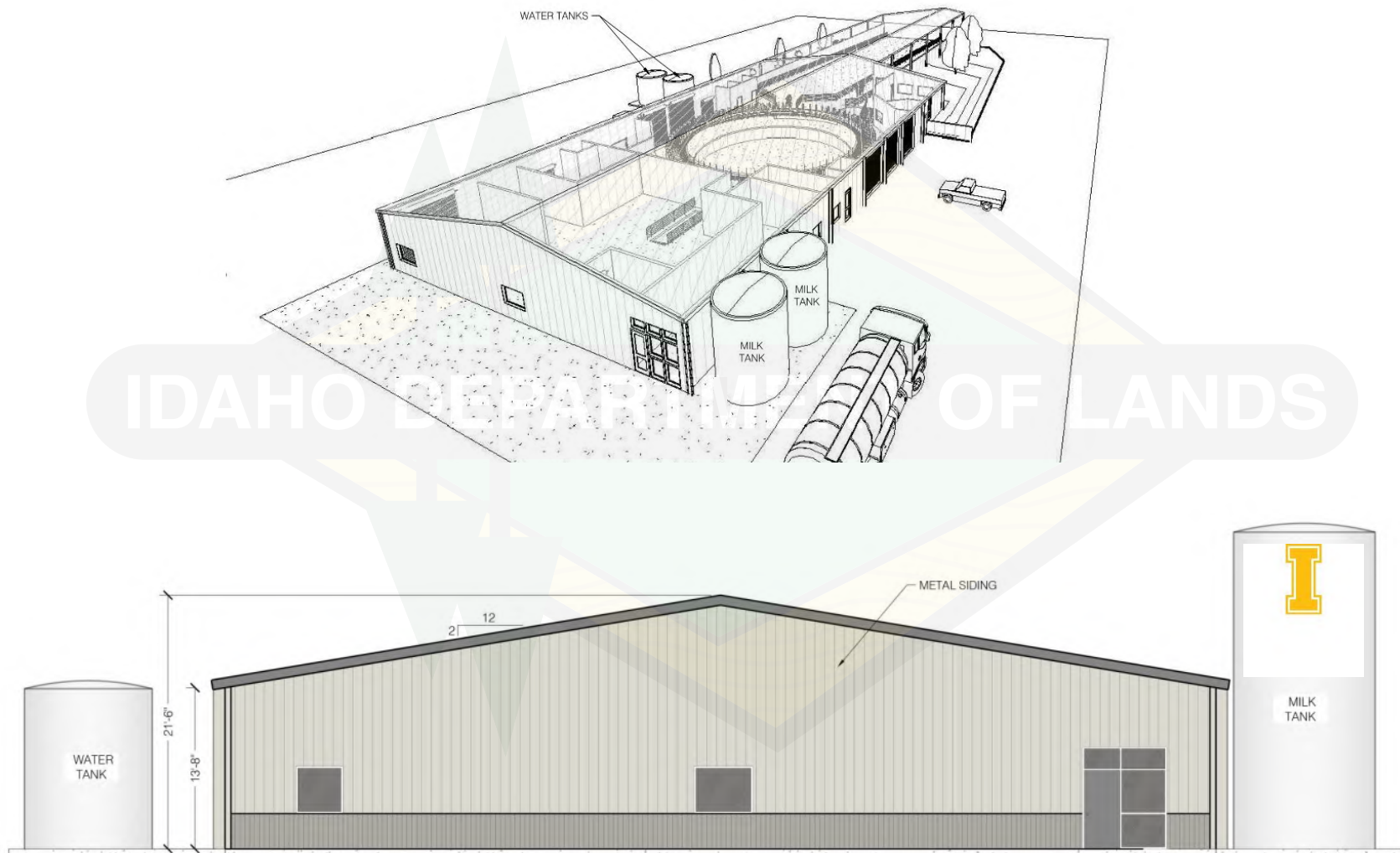


University  
of Idaho

Idaho  
Dairymen'  
s  
Associatio  
n

640 acres purchased in March 2019

# STATE OF THE ART MILK BARN (PH 1)





# STATE OF THE ART MILKING SYSTEM (PH 1)



# STATE BOARD OF LAND COMMISSIONERS

September 20, 2022

Regular Agenda

## Subject

Final Approval of the Avimor Land Exchange

## Question Presented

Shall the Land Board authorize the Department to complete the land exchange with Avimor?

## Background

In April 2020, the Idaho Department of Lands (Department) received an application for a land exchange from Avimor Partners, LLC<sup>1</sup>, as the beneficiary of Dual Beneficiary Trust<sup>2</sup> (Avimor). Avimor proposed exchanging 800 acres of land it owns in Boise County for 796.5 acres of endowment land just to the south near where the Ada, Gem, and Boise County lines meet. The endowment land consists of scattered 40-acre parcels located in all three counties.

On October 20, 2020, the State Board of Land Commissioners (Land Board) approved the request to proceed with due diligence 5-0 (Attachment 1).

Upon receiving approval from the Land Board, the Department completed the due diligence analysis required for the Avimor land exchange. The due diligence included financial analysis, encumbrance review, public comment, Member of the Appraisal Institute (MAI) appraisals, review of the MAI appraisals, and the independent third-party analysis completed by the Land Board's Real Estate Advisor, Michael Finch of CenturyPacific, LLLP. The review completed by Mr. Finch (Attachment 2) recommends the land exchange and notes, "Based on my review of the information presented and a property tour on May 17, 2021, the proposed exchange appears to be a true like-for-like exchange based on property value – and affords the exchanging parties to derive unique value due to the characteristics of the property exchanged (location, contiguity, etc.). For the reasons noted below and consistent with the October 20, 2020 memorandum to the Land Board, I am of the opinion that the proposed land exchange is of benefit to the Land Board."

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<sup>1</sup> An Idaho limited liability company

<sup>2</sup> Owner of Avimor land is First American Title Insurance Company, a California corporation, as Trustee of the Dual Beneficiary Trust Created Pursuant to the Subdivision Trust Agreement Dated October 8, 2003, as amended and First American Title Insurance Company, a California corporation, as Trustee of the Dual Beneficiary Trust Created Pursuant to the Subdivision Trust Agreement Dated October 8, 2002, as amended, as their interests appear of record.



## **Discussion**

### **Existing Endowment Land**

The Public School endowment land proposed for the exchange is 796.5 acres of grazing land near the borders of Ada, Boise and Gem Counties converge (Attachment 3). The endowment land consists mainly of scattered 40-acre parcels, some of which have limited or no access. There are parcels of endowment land in all three of the counties mentioned above involved in the exchange.

The existing grazing lessee of the endowment property is one of the constituent parties of the proponent (Avimor Partners, LLC), who will no longer need the lease after the exchange and consents to its termination.

Appraisals completed by Langston and Associates, Inc. Sam Langston, MAI, estimated the market value of both properties. The appraisal shows the endowment land worth \$1,990,000, with the proponent's property valued at \$2,000,000. The appraiser notes the highest and best use for the endowment land is agricultural dry grazing with areas of large acreage single-family residential development.

### **Avimor Proposed Land**

The Avimor land proposed in the exchange consists of 800 contiguous acres located in Boise County, near State Highway 55 where it summits Horseshoe Bend Hill (Attachment 4). It is mainly undeveloped except for Summit Ridge Road, which traverses the property on the eastern side. The appraiser concluded that the highest and best use of the Avimor property is agricultural dry grazing with areas of large acreage single-family residential development. During the due diligence, the Department met with, or otherwise contacted the impacted county commissioners at Ada, Gem and Boise Counties. Ada County commissioners sent a letter indicating a neutral stance on the exchange. Boise County took a neutral stance on the exchange but did cite their concerns regarding the loss of tax revenue. Gem County supports the exchange because of a slight increase to their tax base.

Based on the Department's Draft Land Exchange Policy, the Department contacted all of the surrounding landowners to inform them of the exchange. The Department received comments from six of the neighboring landowners (Attachment 6). None of the comments indicated opposition to the exchange, and three of the letters the Department received specified support for the land exchange. All of the letters received indicated the desire for the land to become an unmanaged state park.

As part of the due diligence, the Department identified one remaining item that must be removed before closing the transaction. The Department has worked with the Office of the Attorney General to review the release that will resolve this remaining title issue.

### **Benefits to the Endowment**

Block up existing endowment lands – The proposed exchange would replace the scattered and isolated endowment land parcels with a large block of exchange land that has direct access to State Highway 55. This will lead to increased management efficiency and better access to the exchange lands when compared to the access options on the existing endowment lands.

Added value to the endowment – The value of the Avimor property is \$10,000 higher than the value of the endowment land. Avimor intends to donate the difference in land values to the endowment. This means that there is \$10,000 of added value to the endowment which will be recognized immediately upon closing of the land exchange transaction.

### **Recommendation**

Approve the exchange, subject to assurances that the title issues are fully resolved and will be released of record and that the Department and legal counsel are comfortable with the final Exchange Agreement and direct the Department to complete and close the as-proposed Avimor land exchange.

### **Board Action**

### **Attachments**

1. October 20, 2020 Approved Memo Avimor Land Exchange
2. CenturyPacific, LLLP Memo Recommending the Land Exchange
3. Map of Endowment Land
4. Map of Avimor Land
5. Vicinity Map
6. Comments from Neighboring Landowners

# STATE BOARD OF LAND COMMISSIONERS

October 20, 2020

Regular Agenda

## Subject

Approval to proceed with due diligence for Avimor land exchange

## Question Presented

Shall the Land Board authorize the Department to proceed with due diligence for the proposed land exchange?

## Background

In June 2020, the Idaho Department of Lands (Department) received an application for a land exchange from Avimor Partners, LLC (Avimor). Avimor proposes exchanging 800 acres of its land for 800 acres of endowment land located in the Boise foothills (Attachment 1). Area staff and Department leadership have reviewed the proposal and believe it warrants further formal evaluation via the due diligence process.

The Public School endowment land proposed for exchange consists of approximately 800 acres, referred to as the "Endowment Lands." The Endowment Lands are located in Ada and Boise counties. A legal description of the Endowment Lands (Attachment 2) and a map (Attachment 3) are attached.

The Avimor properties consist of 800 acres in Boise County. The land is contiguous as seen on the existing ownership map (Attachment 4). The land exchange would consolidate the endowment land into two large blocks, as seen on the proposed ownership map (Attachment 5).

## Discussion

This proposed land exchange would improve the long-term value and block up endowment grazing land.

Specific benefits of the exchange include:

- Block up endowment land: Currently, the Endowment Lands are scattered in 40- to 160-acre blocks which reduces the opportunities for leasing endowment land.
- Suburban Interface: The existing Endowment Lands are in the path of development for the Avimor subdivision which will reduce the ability to lease for grazing.
- Return on Asset: While a return on asset (ROA) cannot be finalized until due diligence work is completed, it is anticipated that the long-term ROA on the Avimor property will be higher than the Endowment Lands because of the ability to lease for grazing.
- County Tax Assessments: As a result of the proposed exchange, there would be an estimated \$350 reduction to Boise County tax rolls due to the State's exemption from

property taxes. As part of the due diligence process, the Department will seek comments from the Boise County Commissioners. Conversely, Ada County would add an estimated 480 acres to its tax roll, forecasted to generate approximately \$350 per year.

Upon Land Board approval, the next steps for the land exchange would be for the Department to perform due diligence consistent with the following (also listed in Attachment 6):

- Order a preliminary title report to review the legal descriptions and the current exceptions to title on the properties.
- Complete a Phase 1 Environmental Site Assessment to review the environment history of the property. The report is intended to identify actual and potential problems based on a review of historical documentation, regulatory agency databases, and a physical on-site investigation.
- Verify the properties have legal access.
- Review the existence of any endangered species at the site. The presence of threatened/endangered species can significantly reduce the value of a property.
- A real estate appraisal will be completed by a Member of the Appraisal Institute (MAI) appraiser to determine the market value for the property. Appraisals will be reviewed by a second MAI appraiser to verify the report meets Uniform Standards of Professional Appraisal Practice (USPAP).
- Review the recorded surveys, verify survey pins are placed at the corners, and determine if there is a need to order a survey.

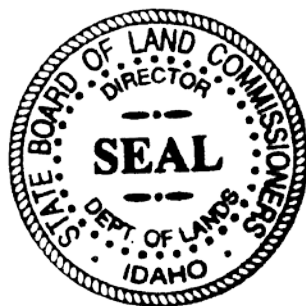
Based on the review of the due diligence, Department leadership will approve or terminate the land exchange for further consideration. If Department leadership approves, it will be brought back to the Land Board for final approval to proceed.

### **Recommendation**

Approve proceeding with due diligence for the Avimor land exchange proposal.

### **Board Action**

A motion was made by Attorney General Wasden that the Land Board adopt and approve the Department's recommendation that is approve proceeding with due diligence for the Avimor land exchange proposal. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.



## **Attachments**

1. Avimor land exchange application
2. Endowment parcel legal descriptions
3. Existing endowment parcel map
4. Existing ownership map
5. Proposed ownership map
6. Due diligence checklist





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**MEMORANDUM**

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**DATE:** June 14, 2021  
**TO:** Mr. Josh Purkiss, Bureau Chief, Idaho Department of Lands (IDL)  
**FROM:** Michael E. Finch  
**RE:** Proposed Avimor Land Exchange

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**SUMMARY**

Thank you for the opportunity to review information created and procured in connection with the proposed land exchange between the State Board of Land Commissioners (Land Board) and Avimor Partners, LLC (Avimor). As outlined in Avimor's land exchange application (June 2020) and the memorandum to the Land Board (October 2020), Avimor is proposing to exchange ±800 contiguous acres of vacant land owned by Avimor in Boise County (Avimor Property) for ±796.51 acres of vacant land – in ten non-contiguous holdings – in Ada, Boise, and Gem Counties under the control of the Land Board (Endowment Property). Based on my review of the information presented and a property tour on May 17, 2021, the proposed exchange appears to be a true like-for-like exchange based on property value – and affords the exchanging parties to derive unique value due to the characteristics of the property exchanged (location, contiguity, etc.). For the reasons noted below and consistent with the October 20, 2020 memorandum to the Land Board, I am of the opinion that the proposed land exchange is of benefit to the Land Board.

**SUPPORTING INFORMATION**

The opinion summarized above is informed by the following:

- Appraisal Report dated December 11, 2020 by Langston & Associates Inc. and Appraisal Review dated May 11, 2021 by Valbridge Property Advisors: Based on the Appraisal Report (the integrity of which is supported by the Appraisal Review), the market value of the fee simple estate of the Endowment Land is \$1,990,000 and the corresponding appraised market value of the Avimor Land is \$2,000,000.
- Site visit: The site visit on May 17, 2021 was informative, as the combination of topography, poor contiguity and challenging accessibility of the Endowment Property – as compared to the contiguous, accessible Avimor Property – supports a land exchange. The proposed land exchange will provide Avimor with infill parcels to their current assemblage and will provide the Land Board with a single, contiguous 800-acre assemblage separate from the Avimor development.

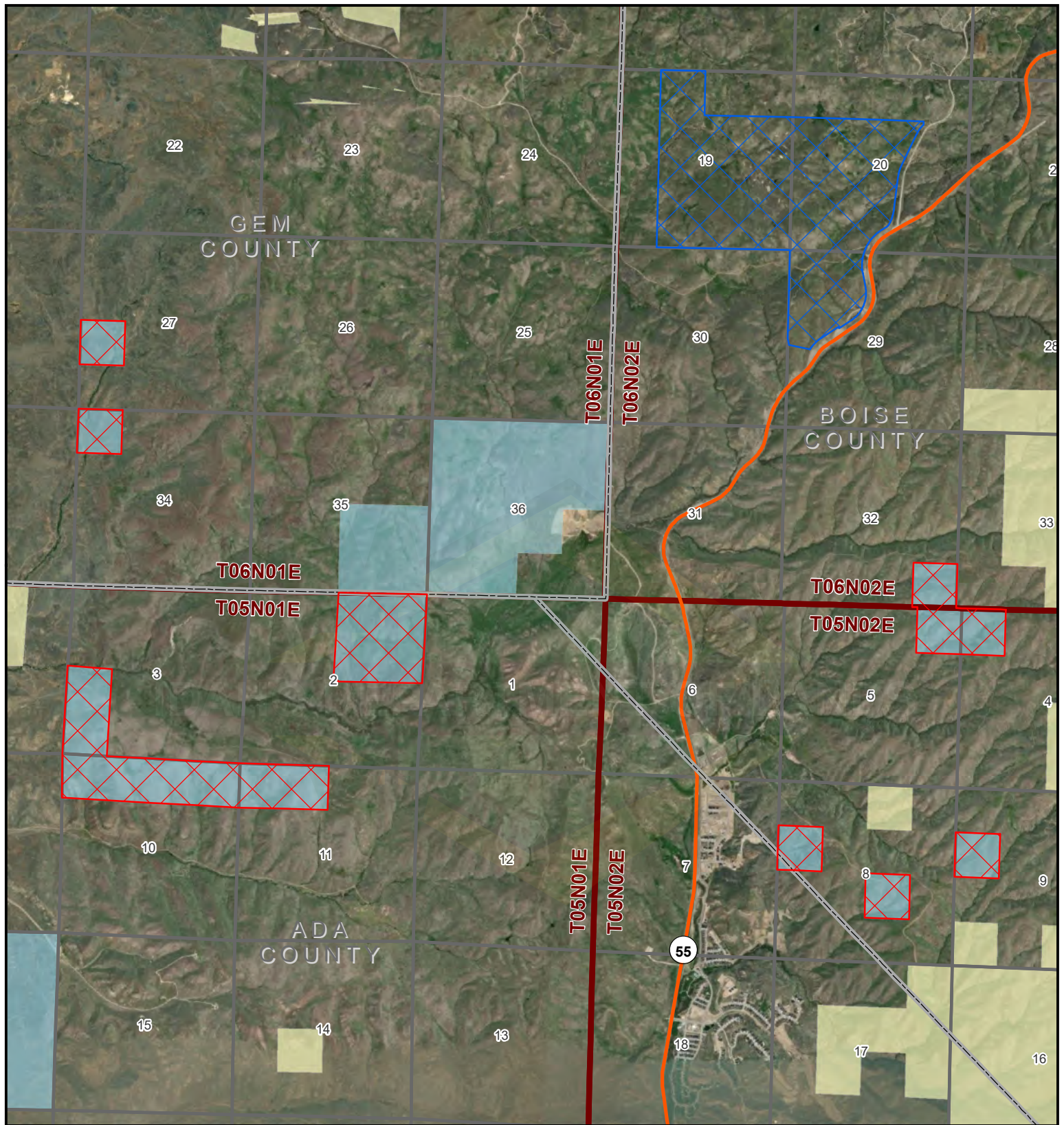
- IDL notification, discussion and correspondence with Ada, Boise and Gem Counties: Based on correspondence presented and described by IDL, Ada, Boise nor Gem Counties take issue with the proposed exchange.
- IDL correspondence with neighboring land owners: IDL's outreach to six neighboring land owners solicited no feedback to the proposed land exchange.










### **POTENTIAL ADDITIONAL INQUIRY**

Based on my review of the information provided, there are a couple of matters that, as a result of the subject-specific nature of the issues, may require confirmation:

1. Environmental: I recommend IDL ensure the proposed Avimor property is anticipated to be free of environmental contamination. A Phase I ESA of the 800-acre Avimor property is recommended.
2. Subsurface aggregates and minerals: Based on my untrained visual reconnaissance, the proposed Endowment Property does not appear to benefit from the rock and aggregates, as the surface condition of the Endowment Lands appears to be visually dissimilar to the surface of portions of the Avimor-controlled property with rock deposits.
3. Legal access: Based on my property visit, it appears there is legal access to the Avimor Property that would benefit the Land Board in the event of a successful exchange. A property survey reflecting existing title matters should confirm legal access to the Avimor Property. Given the adjacency of Summit Ridge Road and Pearl Road to the Avimor Property, a partial survey may suffice.





-  County
-  IDL to Acquire
-  IDL to Dispose
-  State Highway
-  Township
-  Section
-  Endowment Land
-  BLM
-  Private

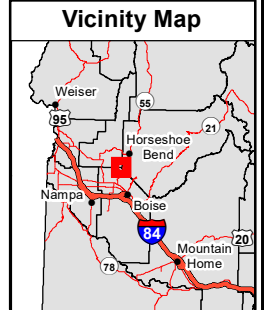
# **Avimor LEX** **IDL to Dispose** Ada, Boise, and Gem County 8/26/2021



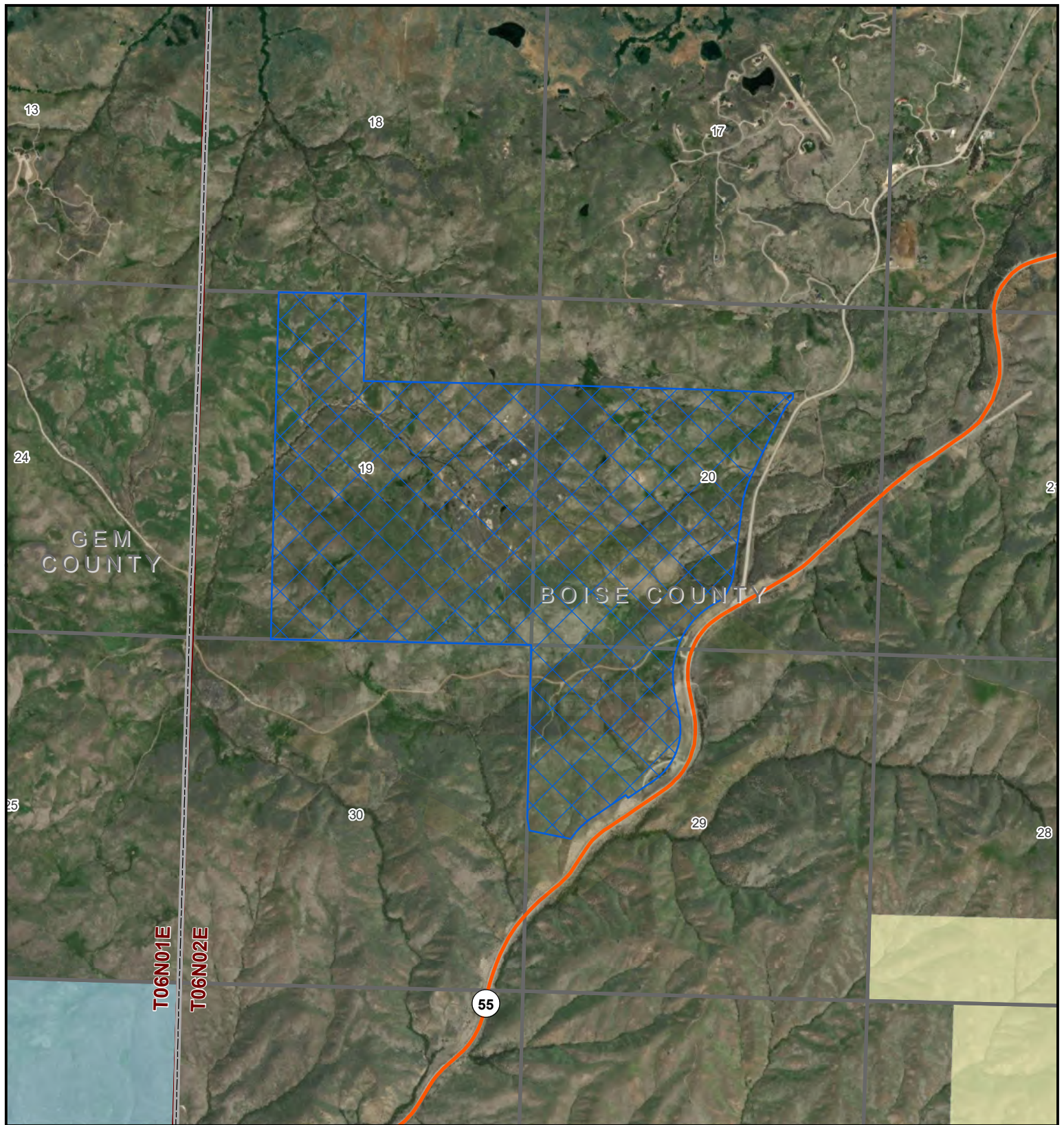
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


Disclaimer:  
 This map has been compiled using the best information available to the Idaho Department of Lands at the time and may be updated and/or revised without notice.  
 In situations where known accuracy and completeness is required, the user has the responsibility to verify the accuracy of the map and the underlying data sources.







-  County
-  IDL to Acquire
-  State Highway
-  Township
-  Section

-  Endowment Land
-  BLM
-  Private

## Avimor LEX IDL to Acquire

Boise County

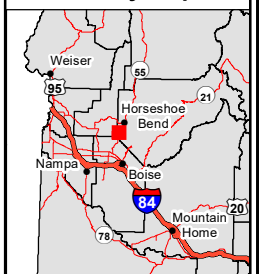
8/26/2021



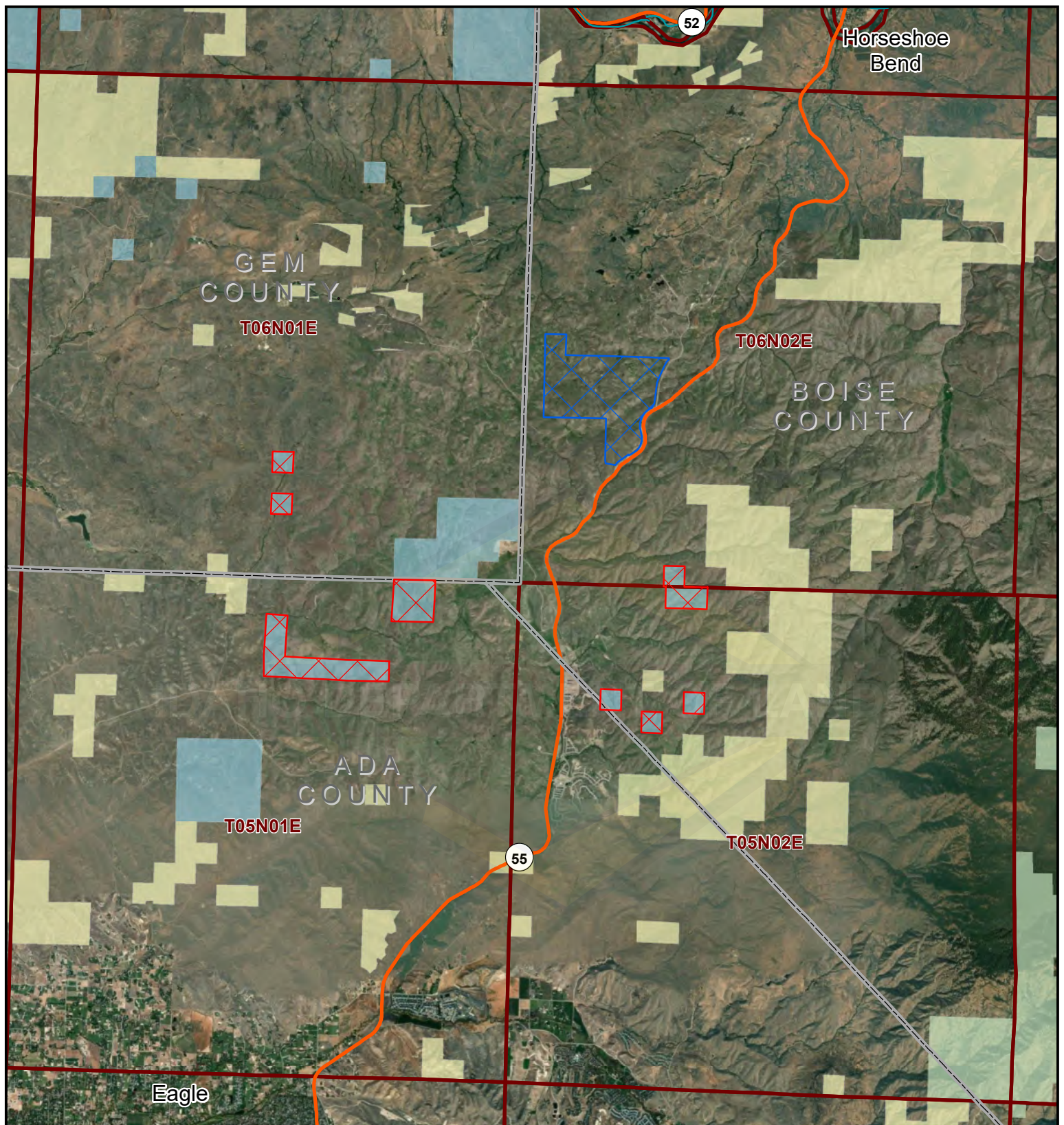
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Disclaimer:  
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In situations where known accuracy and completeness is required, the user has the responsibility to verify the accuracy of the map and the underlying data sources.

### Vicinity Map







- |  |                |  |                |
|--|----------------|--|----------------|
|  | County         |  | Endowment Land |
|  | IDL to Acquire |  | BLM            |
|  | IDL to Dispose |  | USFS           |
|  | State Highway  |  | Private        |
|  | Township       |  |                |

## Avimor LEX Overview

Ada, Boise, and Gem County

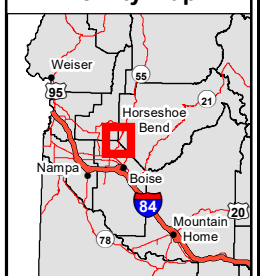
8/26/2021



0 1 2 Miles

**Disclaimer:**  
This map has been compiled using the best information available to the Idaho Department of Lands at the time and may be updated and/or revised without notice.  
In situations where known accuracy and completeness is required, the user has the responsibility to verify the accuracy of the map and the underlying data sources.

### Vicinity Map





Norm Zachary  
12 Lakeview Dr.  
Horseshoe Bend, Id  
83629

February 2, 2022

Zane Lathim  
Idaho Department of Lands  
300 N 6<sup>th</sup> St. Suite 103  
P O Box 83720  
Boise, Idaho 83720-0050

Re: Property consolidation and land exchange with Avimor off Pearl Road in southwest Boise County

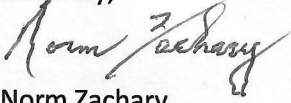
Dear Mr. Lathim:

I spoke with you about a week ago concerning the impending land swap between Avimor Development Corporation and the State of Idaho. I am a nearby resident to what I believe to be the approximate 800+- acres the State would receive for several smaller landlocked parcels within the Avimor Development area. As news gets around, the word was that the assumption of this land might become an unmanaged state park. You explained to me that there hadn't been any discussions of a park yet, but didn't dismiss possible considerations in the future but that it would be a Land Board decision. You also reminded me that the Land Board is bound by State statute to manage land under its jurisdiction for the highest return with the proceeds going to the State School Endowment fund. You pointed out there is a significant return to the schools from the State timber properties but when property is basically grassland the return is negligible except the small amount returned on grazing contracts. You did point out that the State, once it takes ownership, allows access to the property by many other users (I didn't understand what restrictions might apply?) I assumed this might apply to hikers, bikers, horseback riders, and birders to name a few.

The personal side of my writing you, I believe I also explained to you in our phone conversation, was to show strong support for the 800+- acres to become an unmanaged State Park but fenced and gated so a livestock lease could be put in place to provide some monetary return to the State and at the same time allow for many different user's enjoyment. One major hurdle is a Shooting range being proposed across Pearl Road and just to the southeast of your expected acquisition. This would be an incompatible combination of peaceful and tranquil uses, described in the potential activities above, for your land with an extremely noisy adjacent activity. My ask, and that of my several neighbors, is that the Land Board engage Avimor and the gun club proponents to hold off on advancing the Application to the Boise County Commissioners until the Land Board has a chance to determine the best interest of the State in this matter.

Thank you Zane for your attention to this consideration. I know these issues need to be run up the chain of command but any efforts you make to expedite will be greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Norm Zachary".

Norm Zachary

P.S. I'm sure you'll be hearing from several people here on the Hill.

A large, faint watermark logo for the Idaho Department of Lands. It features a stylized mountain range in the background with a central diamond shape. The diamond is divided into four quadrants: top-left is green, top-right is yellow, bottom-left is green, and bottom-right is yellow. A horizontal grey bar with rounded ends is superimposed over the center of the diamond, containing the text "IDAHO DEPARTMENT OF LANDS" in white, bold, sans-serif capital letters.

IDAHO DEPARTMENT OF LANDS



February 18, 2022

To: Zane Lathim

Real Estate Specialist

ID Dept. of Lands

Dear Mr. Lathim,

I am writing in regards to the proposed land swap, land used as a Park.

I encourage land near Hwy 55 and Pearl Road to be used as a Recreational Park for the citizens of Idaho. This property can make a beautiful Park site location and really lends itself well to the same features many of us Idahoans value. This particular location off Pearl Road has natural beautiful views of wildlife and the Treasure Valley. This land use would be a perfect fit for so many to this natural setting for healthy outdoor exercise.

Boise area has many local parks and these Parks add much value to the quality of Idaho lifestyle, the property values, and why so many of us want to live Idaho. This proposed park near Hwy 55 and Pearl Road can add value and appeal to both the Boise and Ada County residents. This Pearl Road location is a jewel showcasing beautiful Foothill peaceful views and various wildlife habitat that appeals to so many of us Idahoans.

This Park would be a perfect fit and location.

Sincerely,

Larry Limberg

February 20, 2022

To: Mr. Zane Lathim

Real Estate Specialist

ID Dept of Lands

Dear Mr. Lathim,

I would love to see the land from the land swap off Pearl Road become a park for the people of Idaho. This area has lots of wildlife living, and/or, traveling through this area: (migrating Elk, different species of birds, ducks, geese, Sand hill Crane, Blue Heron, Deer, natural plants, vegetation, fox, coyotes, and even skunks! etc). These Foothills are so valuable to everyone living in this area. Views are spectacular and could be enjoyed by so many.

IDAHO DEPARTMENT OF LANDS

I encourage this land be used as a Park. It is a natural fit to help promote the many things we all love about Idaho and adding Value consistent with current Foothills use. I know of no Parks of this type that are in this area open to the public. We are running out of room with all the housing growth going on in our Foothills. It's a Great Healthy Peaceful Opportunity for many of our diverse Idaho Citizens who cherish the outdoors we love.

Thank you for your time and interest in this land swap.

Sincerely,

Terri Limberg

Attn: Idaho Department of lands  
Re: Avimor land trade

My Name is Ryan Haskins and I own land adjoining Avimor land. The 800 + acres south of me is in the process of being traded from Avimor land to Idaho State land. I write today to express some of my concerns as a neighbor and as an Idaho resident. I would like to start by saying I like the idea of the land swap if the lands are used for public recreation, cattle grazing leases and remain a wild life habitat. Those uses would benefit the public.

I have concerns regarding the proposed Crowfoot Shooting Range being placed adjacent to these lands on Pearl Road. Avimor is sponsoring the development and donating the land. This range being proposed is a large 115 car parking stall lot with 50-60 shooting bays open 6 days a week Wednesday –Monday one hour after dawn to one hour before dusk. It is 40+ acres in size and will be open to the Avimor residents and general public. The site will have no permanent facilities (bathrooms or running water), just portable toilets. If the Range is permitted by the County and constructed the near by land will be so blanketed in obnoxious noise it would detour any recreation, hiking, horseback riding, mountain biking etc.... Wildlife and elk migrations will move out of the area and will have a negative affect on cattle grazing. Lack of utilities and facilities- water, electricity, sewer raises alarm to sanitation and health and its affect it will have on neighboring lands. Gun ranges in general present a high fire risk, Crowfoot Range will have no employees and/or employed range master to prevent prohibited uses of ammunition, targets and weapons that commonly start fires and no way to call help. Again putting neighboring lands at risk.

I believe today's appraisal will differ greatly from the future appraisal after Crowfoot Range exists, neighboring lands will devalue greatly and there options for use. I have a couple questions I would like answered.

1. Has any of this information been disclosed by Avimor to the IDL staff?
2. Can and will the state appraisers factor this in on the trade?
3. Does the State see these nuisance concerns to be issues?
4. Is this a good deal for Idahoans if Crowfoot Range is built?
5. Will the Crowfoot Range interfere with maximizing the land use for the state?

I greatly appreciate your time reading this letter and addressing these questions.

Thank you,  
Ryan Haskins  
50 Teds Cabin Rd., HSB  
Ryno.ex@gmail.com

February 15, 2022

Idaho State Land Board  
300 N. 6th Street, Suite 103  
Boise, ID 83702

To Whom It May Concern,

I am writing to voice my excitement for the state land swap between Avimor and the State of Idaho, and to specify my preference for the use of the resulting reconciled land, as an unmanaged state park. As one of the closest neighbors to the proposed swap area, this issue directly affects me. Hikers, bikers, equestrians, birders, and anybody else who enjoys nature will directly benefit from this proposed use of the land.

I chose to move to this location because I desired the quiet this rural area promised. The tranquility of my home has been dwindling, however, due to homes and subdivisions being developed all the way from Highway 55 in Eagle to Horseshoe Bend. An unmanaged state park just minutes from my home would help preserve the rural nature of the area I deliberately sought when I moved here.

Throughout the year I share my property with various raptors, migratory birds, and other animals, including deer, foxes, elk, and antelope. I am concerned that all of the recent development in the area is having a negative impact on wildlife, because I have been seeing wildlife less frequently and have been noticing dead animals on my property. Undeveloped, yet protected, land at this site would allow sanctuary for these animals to continue to live in this area unmolested.

Please consider maintaining the resulting land swap area as an unmanaged state park, to provide enjoyment for humans and animals for the future.

Sincerely,

Kimberly Bowers  
Concerned Neighbor  
45 Summit Ridge Road  
Horseshoe Bend, ID 83629

Mr. Lathim,

We hope you can recognize the value of turning that open space into a State park on Horseshoe Bend Hill. We support the protection of that quiet piece of property, home to so much wildlife and flora. If this could meet the standards set for an unmanaged state park, I'm certain the neighbors could be called upon to protect, monitor, and periodically report on it to the Idaho Department of Parks and Recreation. It's a perfect place to hike and birdwatch. Thank you for considering such a gentle, noninvasive use for those wonderful acres. Jon and Carol Axelrod, Horseshoe Bend landowners (10 Lakeview Drive).



# STATE BOARD OF LAND COMMISSIONERS

September 20, 2022

Regular Agenda

## Subject

Request approval to proceed with due diligence for Brisbie land exchange.

## Question Presented

Shall the Land Board authorize the Department to proceed with due diligence for the proposed land exchange?

## Background

In July 2022, the Idaho Department of Lands (Department) received an application for a land exchange from Brisbie, LLC (Attachment 1). Area staff and Department leadership have reviewed the proposal and believe it warrants further formal evaluation via the due diligence process.

Brisbie, LLC is proposing to exchange 125 acres of land it has the contractual right to purchase in Shoshone County for 205 acres of endowment mineral estate only on former endowment land (referred to as "mineral estate").

The mineral estate proposed for exchange consists of approximately 205 acres in Ada County near the town of Kuna. The mineral estate on this land was reserved to the State of Idaho upon conveyance of the property from the State to private ownership in 1937 and 1940. A map of the mineral estate (Attachment 2) is attached.

The Brisbie property consists of 125 acres in Shoshone County. The land is contiguous as seen on the existing ownership map (Attachment 3). The land exchange would add to a block of approximately 1,000 acres of endowment timberland.

## Discussion

This proposed land exchange would improve the long-term value and help block up endowment timberland.

Specific benefits of the exchange include:

- **Return on Asset:** While a return on asset (ROA) cannot be finalized until due diligence work is completed, it is anticipated that the long-term ROA for the Brisbie property as timberland will be higher than the mineral estate. The mineral estate does not include sand and gravel or geothermal resources. Also, the mineral estate does not contain commercially valuable mineral deposits. The State has never leased the mineral estate.
- **County Tax Assessments:** As a result of the proposed exchange, there would be an estimated one time \$800 reduction to Shoshone County tax rolls due to the state's

exemption from property taxes. As part of the due diligence process, the Department will seek comments from the Shoshone County Commissioners.

Upon Land Board approval, the next steps for the land exchange would be for the Department to perform due diligence consistent with the following and Attachment 5:

- Review the preliminary title report to confirm the legal descriptions and the current exceptions to title on the properties.
- Complete a Phase 1 Environmental Site Assessment to review the environmental history of the property. The report is intended to identify actual and potential problems based on a review of historical documentation, regulatory agency databases, and a physical on-site investigation.
- Verify the properties have legal access.
- The properties with merchantable timber will require a timber cruise to determine the species, quality, and quantity of harvestable timber. Sufficient data must be obtained to create a statistically reliable sample for the timber modeling.
- Review the existence of any endangered species at the site. The presence of threatened/endangered species can significantly reduce the value of a property.
- A real estate appraisal will be completed by a Member of the Appraisal Institute (MAI) appraiser to determine the market value for the property. Appraisals will be reviewed by a second MAI appraiser to verify the report meets Uniform Standards of Professional Appraisal Practice (USPAP).
- Review the recorded surveys, verify survey pins are placed at the corners, and determine if there is a need to order a survey.

Based on the review of the due diligence, the Department leadership will approve or terminate the land exchange for further consideration. If Department leadership approves, it will be brought back to the Land Board for approval to proceed.

## **Recommendation**

The Department recommends the Land Board approve proceeding with due diligence for the Brisbie land exchange proposal.

## **Board Action**

## **Attachments**

1. Brisbie LLC Application
2. Mineral Estate Parcel Map
3. Brisbie Parcel Map
4. Brisbie Overview Map
5. Due Diligence Checklist



601 W. Bannock Street  
PO Box 2720  
Boise, ID 83701  
Telephone: 208-388-1200  
Facsimile: 208-388-1300  
[www.givenspursley.com](http://www.givenspursley.com)

Preston N. Carter  
208-388-1222  
[prestoncarter@givenspursley.com](mailto:prestoncarter@givenspursley.com)

Gary G. Allen  
Charlie S. Baser  
Christopher J. Beeson  
Jason J. Blakley  
Clint R. Bolinder  
Jeff W. Bower  
Preston N. Carter  
Jeremy C. Chau  
Michael C. Creamer  
Amber N. Dina  
Bradley J. Dixon  
Thomas E. Dvorak  
Morgan D. Goodin  
Debora Kristensen Grasham  
Donald Z. Gray  
Brian J. Holleran

Kersti H. Kennedy  
Elizabeth A. Koeckeritz  
Neal A. Koskella  
Michael P. Lawrence  
Franklin G. Lee  
David R. Lombardi  
Lars E. Lundberg  
Kimberly D. Maloney  
Kenneth R. McClure  
Alex P. McLaughlin  
Melodie A. McQuade  
Christopher H. Meyer  
L. Edward Miller  
Judson B. Montgomery  
Deborah E. Nelson  
W. Hugh O'Riordan, LL.M.

Samuel F. Parry  
Randall A. Peterman  
Blake W. Ringer  
Michael O. Roe  
Danielle M. Strollo  
Cameron D. Warr  
Robert B. White  
Michael V. Woodhouse

William C. Cole (Of Counsel)

Kenneth L. Pursley (1940-2015)  
James A. McClure (1924-2011)  
Raymond D. Givens (1917-2008)

July 28, 2022

**VIA HAND DELIVERY**

Dustin Miller, Director  
Idaho Department of Lands  
300 N. 6th Street, Suite 103  
Boise, ID 83702

**Re: Application for Land Exchange**

Dear Director Miller,

We are pleased to present the Idaho Department of Lands with an application for a land exchange on behalf of our client, Brisbie LLC ("Brisbie"). As explained in more detail below, Brisbie proposes to provide to the State of Idaho fee title to timber land in Shoshone County in exchange for a severed mineral estate associated with property in the City of Kuna. In our view, this proposal provides value to both parties: Brisbie receives the certainty associated with fee title to its property, while IDL receives valuable, income-producing timber property rather than a severed mineral estate that holds little or no prospect of providing revenue to the State.

An executed, completed Application Form is attached to this letter. The Application Form has several exhibits: a Certificate of Good Standing for Brisbie (Exhibit 1); the deeds that reflect the reserved mineral estate (Exhibit 2); a map that depicts the reserved mineral estate (Exhibit 3); a map that depicts the timber property (Exhibit 4); and an inventory summary of the timber property (Exhibit 5). The nonrefundable application fee is provided along with this letter. This letter contains the information referred to in the Application as the Property Information Packet.

We look forward to engaging with the Department throughout this process. Please let us know if you have questions about this Application or would otherwise like to discuss.

**BACKGROUND**

Brisbie has acquired property within the City of Kuna to be used for a large-scale industrial project ("Project"). The Project, with support from the City of Kuna and other local

stakeholders, will provide significant benefits to the area, including economic development, infrastructure improvements, and increased tax base.

Title research identified two deeds that reserved to the State of Idaho certain minerals associated with two parcels totaling approximately 205 acres (the “Mineral Estate”). These mineral reservations occurred in 1940 and 1937, respectively, and therefore do not include sand and gravel or geothermal resources. To our knowledge, the State has never leased, and has no intent or expectation that it would ever lease, the Mineral Estate.

Brisbie holds the contractual right to purchase approximately 125 acres of timber property (the “Timber Property”) in Shoshone County and proposes to convey the Timber Property to the State, in fee simple, in exchange for the Mineral Estate. The exchange of an idle mineral estate for productive timber property will support IDL’s mission to maximize long-term financial return of State endowment lands; will enable significant investments in the State by facilitating the Project; and is otherwise in the best interests of the State.

#### **SUBJECT PROPERTIES**

**Property 1: The Mineral Estate.** Two parcels associated with the Project are subject to mineral estates that were reserved to the State of Idaho upon conveyance of the property from the State to private ownership in 1940 and 1937. The deeds are attached to the Application as Exhibit 2. The parcels subject to the mineral reservations, which amount to approximately 205 acres, are depicted on Exhibit 3 to the Application. A few aspects of the Mineral Estate are worth noting.

First, the Mineral Estate does not include sand and gravel or geothermal resources. As established in *Treasure Valley Concrete, Inc. v. State*, until 1981 and 1986, the operative statutes reserved to the State only coal, oil, oil shale, gas, phosphate, sodium, asbestos, gold, silver, lead, zinc, and antimony. 132 Idaho 673, 675-76 (1999) *overruled as to attorney fees only by City of Osburn v. Randel*, 132 Idaho 673 (2012). The limited scope of this reservation is confirmed by the deeds themselves. *See* Exhibit 2.

Second, the Mineral Estate does not appear to contain commercially valuable mineral deposits. Brisbie commissioned two geological studies to evaluate the Mineral Estate. Neither study found evidence of any appreciable mineral deposit; indeed, both determined that geological conditions would not support commercially valuable mineral deposits.

Third, to our knowledge IDL has never leased the Mineral Estate, or similar reserved mineral estates in this geographical area. Accordingly, the Mineral Estate is not currently generating, and would not be expected to ever generate, revenue for the State endowment.

**Property 2: The Timber Property.** Brisbie holds the contractual right to purchase the Timber Property, which consists of approximately 125 acres of timber property in Shoshone County. The Timber Property is depicted on Exhibit 4 to the Application. As demonstrated on Exhibit 4, the Timber Property is sandwiched between two parcels owned by IDL. An access road that connects the two IDL parcels crosses the Timber Property.

The Timber Property consists of a mixture of planted and naturally regenerated stands that are dominated by the grand fir/western red cedar timber type, indicative of a high site for timber production. Timber harvesting operations have not occurred on this tract since it was acquired in 2012. The inventory indicates that the last harvest operation was in the mid-1990's, with the most recent establishment year of 1994 on stand 002. This tract has good stocking throughout and good access on Olson Creek Rd through IDL property. An inventory summary of the Timber Property is attached as Exhibit 5 to the Application. According to GIS records, there is one seasonal or intermittent stream on the tract, which is likely to classify as a minor class 2 stream.

The purchase price of the Timber Property is consistent with market conditions. Property values have increased dramatically in this region of the State. We anticipate that the Timber Property will continue to increase in value, providing yet more value to the State.

#### **FACTORS RELEVANT TO THE EXCHANGE**

Brisbie respectfully submits that the proposed exchange meets the factors considered by the Department in evaluating land exchanges.

**The proposed exchange maximizes return on endowment property and is in the best interest of the State.** First and foremost, the Department is tasked with maximizing the return on endowment lands. In the proposed exchange, the Department will obtain fee title to valuable timber property, in exchange for relinquishing a severed mineral estate that provides no current or expected financial return. In addition, the exchange will facilitate the Project, which will foster economic development, increase tax base, and provide other benefits for the City of Kuna and surrounding areas. In short, the proposed exchange will maximize the financial return of endowment property and is otherwise in the best interest of the State.

**The lands to be acquired by the State are at least as valuable as the endowment land.** The Timber Property is significantly more valuable than the Mineral Estate. This difference in value has not been quantified with precision, though appraisals and review appraisals will be conducted in accordance with IDL policy as part of the exchange process. Brisbie will donate to the State the difference in value between the Properties.

**The proposed exchange will result in the consolidation of existing endowment lands.** As shown in Exhibit 4 to the Application, the Timber Property is located between two existing IDL parcels. An access road that connects the two IDL parcels runs through the Timber Property. The proposed exchange will consolidate IDL's parcels and allow seamless access using the existing road.

**The proposed exchange will improve access to existing endowment lands.** As noted, an access road connecting two IDL parcels runs over the Timber Property. The proposed exchange will improve access to existing endowment lands by placing the access road entirely on IDL-owned property.

**The proposed exchange will result in equal or higher revenue for the endowment.** The proposed exchange involves conveyance of fee title to timber property in exchange for a reserved mineral estate. Geological studies indicate that the Mineral Estate does not contain commercially valuable mineral deposits. To Brisbie's knowledge, the Mineral Estate has not produced, and is not expected to produce, any financial return to the State. By contrast, through the exchange the State will acquire fee title to timber property in an area of the State with appreciating property values. The proposed exchange will materially improve the endowment's position, financially and otherwise.

**The land offered to the State in this exchange has the potential for long-term appreciation.** Property values near the Timber Property have appreciated in recent years. Appreciation is expected to continue in the short and long term. In addition, the Timber Property provides value in the form of future timber harvests, and by improving access to existing endowment lands.

**The Proponent has the right and ability to acquire the property.** Brisbie has the right and ability to acquire the Timber Property pursuant to an executed, enforceable contract. Brisbie is happy to review the contract with IDL at IDL's convenience.

#### CONCLUSION

Brisbie looks forward to engaging with the Department to facilitate the proposed exchange. Please let us know if the Department would like to discuss any aspects of this application, or if we can provide additional information to assist the Department going forward.

Sincerely,



Preston N. Carter

PNC/sw  
Enclosures

cc: Josh Purkiss, Real Estate Program Manager, IDL

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# LAND EXCHANGE APPLICATION

The Land Exchange Application process is used by Idaho Department of Lands (IDL) to evaluate land exchange proposals for Endowment Lands. **Please provide all information to ensure that the Land Exchange Application is complete. Incomplete applications will be returned to applicant without review.**

DEPT. OF LANDS

JUL 28 2022

BOISE, IDAHO

## Exchange Application Instructions:

- Meet with the Deputy Director or designee prior to filing a Land Exchange Application
  - Submit a completed Exchange Application and \$1,000 Application Fee to the Idaho Department of Lands.
- Note: Please read Exchange Application Information carefully for additional terms and conditions prior to filing.

**Exchange Application Fee: \$1,000.00 (Nonrefundable)**

**APPLICANT DATA:** The full legal name of the Applicant or the business entity name on file with the Idaho Secretary of State.  
**Certificate of Good Standing must be provided for all business entities.**

Applicant or Business Name: <b>Brisbie, LLC</b>	Contact Name: <b>Givens Pursley, LLP - Preston Carter</b>
Street Address: <b>c/o Givens Pursley, LLP 601 W Bannock St</b>	Position or Title: <b>Attorney</b>
City: <b>Boise</b>	Mailing Address (if different from Street Address): <b>c/o Givens Pursley, LLP</b>
State: <b>ID</b>	PO Box (if applicable) <b>PO Box 2720, Boise, ID</b>
Email Address(es): <b>pnc@givenspursley.com</b>	Zip +4: <b>83701</b>
Website Address(es):	Work Phone: <b>208-388-1200</b>
Fax:	Cell/Mobile:
Home Phone:	
Broker Representation, If applicable Business Name:	
Broker's Name:	
Street Address:	Work Phone:
City: State	Cell/Mobile:
Email Address:	

## The applicant must provide the following information:

- A Property Information Packet that includes the items identified on Attachment A
- Describe and list Idaho Department of Lands parcels on Attachment B.

I hereby certify that I am the Applicant and the above listed broker is my Authorized Representative and that the information contained in the Land Exchange Application is true and correct to the best of my knowledge. I acknowledge that falsification of any information contained herein, or provided herewith, will be grounds for rejection of the Land Exchange Application and forfeiture of any fees paid.

  
Signature

7/28/22  
Date

Preston Carter  
Print/Type Name

Attorney  
Title (if applicable)

## IDL Staff Use Only

Instrument # \_\_\_\_\_ Project # \_\_\_\_\_ \$ \_\_\_\_\_

TC: 104 PCA: 11487 Subsidiary: 3204750

- ☐ Exchange Application – Complete and in Review
- ☐ Exchange Application – Incomplete, please complete and resubmit

☐ Exchange Application Denied

Deputy Director or Designee \_\_\_\_\_ Date \_\_\_\_\_

PAID



# LAND EXCHANGE APPLICATION TERMS AND CONDITIONS

(Please read carefully before completing)

## **IMPORTANT CONSIDERATIONS:**

All endowment assets of the State of Idaho must, per the state Constitution, be managed "in such manner as will secure the maximum long term financial return" to the trust beneficiaries. Applicants are encouraged to review the Idaho State Board of Land Commissioner's Asset Management Plan (AMP) available at <http://www.idl.idaho.gov/am/amfiles/122011-AMP-final.pdf> prior to submission of an Application.

An endowment land exchange is subject to the following Idaho Constitution or statutory references:

1. Idaho Constitution - Article IX, Sections 8 and 10
2. Idaho Admissions Act - Section 5 (b)
3. Idaho Code Sections 58-104 (8), 58-138, 58-505

A land exchange is generally defined as an exchange between two owners of like-kind real property (including improvements, if any) where one party exchanges its real property for real property of equivalent value owned by the other party. It is expected that the Applicant is the owner of record of the property proposed for exchange at the time the application is submitted to IDL.

Submission of this application does not guarantee that the land will be exchanged. The Land Board or Director may determine that a land exchange would not be in the best interest of the Endowments at any point prior to Land Board approval and close of escrow.

Prior to filing an Exchange Application, the applicant is required to schedule a pre-application meeting with the Deputy Director or designee.

## **TRANSACTION COSTS BORNE BY THE APPLICANT**

1. Exchange Application Fee: \$1,000.00 The Exchange Application Fee is nonrefundable.
2. Transaction costs are generally borne by the applicant but may be negotiated subject to Asset Management Steering Committee [AMSC] direction. Transaction costs include but are not limited to appraisals, land surveys, Environmental Site Assessment(s) and Property Condition Assessment Report.
3. An administrative fee will be negotiated with each Applicant.
4. All endowment lands will be appraised as though with all purpose legal access.

## **APPLICATION PROCESS**

Each Exchange Application is reviewed on a case by case basis. Evaluation of the application includes but is not limited to an analysis of income potential to the endowment, proposed use and impact to adjacent endowment lands, access, and proximity to existing development, parcel size, and conformance with local regulations.

The application process is initiated with the submittal of a completed Land Exchange Application, non-refundable application fee of \$1,000, and the Property Information Package for the applicant's property. IDL will strive to determine whether or not the Land Exchange Application is accepted, denied or deemed incomplete within thirty (30) calendar days of receipt of the exchange application. The Land Exchange Applicant will be notified in writing of IDL's determination.

Transaction costs borne by the applicant will be negotiated prior to the commencement of due diligence activities. State Land Board approval of the Land Exchange Agreement will be requested after completion of due diligence. Close of escrow will occur after completion and satisfaction of all conditions and provisions in the Land Exchange Agreement.

## **Cottage Sites**

Cottage sites eligible for exchange will be identified by IDL subsequent to the acceptance of the Application and prior to execution of a Land Exchange Agreement. Indicate the inclusion of Cottage Sites for this application on Attachment B.

The majority of the endowment owned cottage sites are currently encumbered by a state land lease and improvements owned by IDL lessees. The exchange is for the land only; current lessees would retain ownership of their improvements.



## Applicant's Property

**Submit a Property Information Package that includes the following (if applicable):**

1. Financial Analysis
  - a. Identify all sources of Revenue for the Property and Provide two (2) years' Financial Statements
  - b. Provide a rent roll
  - c. Indicate an appropriate Vacancy Rate
  - d. Provide two (2) years' Operating Statements
  - e. List all capital improvements made during the life of the building
  - f. Provide a deferred maintenance schedule and an appropriate reserve account balance
2. Market Analysis
  - a. Identify supporting and competing properties in the surrounding market area
  - b. List growth industries in the surrounding market area and region
  - c. Provide population and employment projections
3. Describe the improvements
  - a. Year Built
  - b. Number of Stories
  - c. Gross Land Square Footage
  - d. Gross Building Square Footage
  - e. Gross Rentable Area per BOMA standards
  - f. Describe type of construction for the improvements,
  - g. Attach interior and exterior photos, including aerial photos of the buildings
4. Tenant Analysis
  - a. Describe the operational objectives of each tenant
  - b. Provide a Lease Abstract for each lease agreement
  - c. Provide a two year lease payment schedule, highlighting defaults, if any
5. Property Analysis
  - a. Provide site plan, map of the property and surrounding area, aerial photos and most recent survey of the subject property.
  - b. List any water rights affecting the property
  - c. List all utilities available to the property
  - d. Provide a complete listing of any waste dumps, landfills or other hazardous material issues on or near the applicant's property.
  - e. Provide other data relevant to the use of the site, i.e. timber cruise, site productivity data, site regeneration data

### Applicant's property interest offered for Exchange

- |   |                             |   |
|---|-----------------------------|---|
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | <b>Fee Simple/Leased Fee: surface plus subsurface</b> |
| <input type="checkbox"/> Yes            | <input type="checkbox"/> No | <b>Subsurface Minerals only</b>                       |
| <input type="checkbox"/> Yes            | <input type="checkbox"/> No | <b>Surface only</b>                                   |
| <input type="checkbox"/> Yes            | <input type="checkbox"/> No | <b>Other _____</b>                                    |

## Endowment Land

Parcel	Twp	Rge	Section	Subdivision	Acres	County	Type of Land (forest, range, agriculture, commercial, residential)	Fund (IDL Staff)
A S1531300000	2N	2E	31	n/a	+/- 205.12	Ada	Reserved Mineral Estate	
B								
C								
D								
E								
F								

☐ Check this box if Endowment Lands proposed for exchange are leased cottage sites to be identified by IDL at a later date.

IDAHO DEPARTMENT OF LANDS

# **EXHIBIT 1**



# **EXHIBIT 1**

# Delaware

The First State

Page 1

*I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "BRISBIE LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE TWENTY-SIXTH DAY OF JULY, A.D. 2022.*

*AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN PAID TO DATE.*

IDAHO DEPARTMENT OF LANDS



6999610 8300

SR# 20223086062

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

A handwritten signature in black ink, appearing to read "JBullock", is written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed.

Jeffrey W. Bullock, Secretary of State

Authentication: 204007372

Date: 07-26-22

# EXHIBIT 2



# EXHIBIT 2

## STATE OF IDAHO

To All to Whom These Presents Shall Come, Greetings:

Whereas, on the 17th day of December, 1940, all that tract or parcel of Public School Foreclosed land of the State of Idaho, hereinafter mentioned and particularly described, was sold in the manner provided by law to

\_\_\_\_\_ F. A. McNEAL \_\_\_\_\_  
 of \_\_\_\_\_ Kuna \_\_\_\_\_, State of \_\_\_\_\_ Idaho \_\_\_\_\_, for the aggregate price of  
 \_\_\_\_\_ ONE THOUSAND SEVENTY AND NO/100 \_\_\_\_\_ DOLLARS

And Whereas, the said sum of \_\_\_\_\_ ONE THOUSAND SEVENTY AND NO/100 \_\_\_\_\_ DOLLARS  
 has been fully paid to the proper receiving officer for the State of Idaho, by

\_\_\_\_\_ F. A. McNEAL \_\_\_\_\_

as shown by the records in the office of the State Board of Land Commissioners, the said sum being the whole amount of the purchase price for the said tract or parcel of land hereinafter described:

Now, Know Ye, That the said State of Idaho, in pursuance of law in such case made and provided, and in consideration of the premises aforesaid, and of the aforesaid sum of

\_\_\_\_\_ ONE THOUSAND SEVENTY AND NO/100 \_\_\_\_\_ DOLLARS

to the said State of Idaho paid, doth by these presents grant, bargain, sell, convey and confirm, in fee, unto the said

\_\_\_\_\_ F. A. McNEAL \_\_\_\_\_

his heirs and assigns, all of the said tract and parcel of land situated in the County of \_\_\_\_\_ Ada \_\_\_\_\_  
 and State of Idaho, and described as follows, to-wit:

Lots Three (3) and Four (4), East One-half ( $E\frac{1}{2}$ ) of the Southwest Quarter ( $SW\frac{1}{4}$ ),  
 of Section Thirty-one (31), Township Two (2) North, Range Two (2) East, Boise Meridian,  
 containing 165.12 acres, more or less, together with all water, ditch, and canal rights  
 thereto belonging, or in any wise appertaining.

To have and to hold the said premises and parcel of land above particularly described, with the appurtenances thereon, unto the said

\_\_\_\_\_ F. A. McNEAL \_\_\_\_\_

his heirs and assigns, in fee simple forever, subject to the provisions of Section 58-604, Idaho Code, which grants over all lands belonging to the state a right of way for ditches, ~~summit and telephone and cross-section lines~~, constructed by authority of the United States and to the provisions of Section 47-701, Idaho Code, reserving to the State all Mineral rights in lands sold subsequent to the 8th day of May, 1923.

In Witness Whereof, I, \_\_\_\_\_ Len Jordan \_\_\_\_\_, the Governor of the State of Idaho,  
 have hereunto signed my name and caused the Great Seal of the State of Idaho and the Seal of the  
 Board of Land Commissioners to be hereunto affixed, this 3rd day of July, 1954 A.D.

Countersigned:

\_\_\_\_\_ Secretary of State. \_\_\_\_\_ Governor of Idaho and President of  
 State Board of Land Commissioners.

Countersigned:

\_\_\_\_\_ State Land Commissioner

STATE OF IDAHO, } ss.  
 County of Ada, }

On this 23rd day of July, in the year 1954, before

me, a Notary Public in and for said State, personally appeared \_\_\_\_\_ Len Jordan \_\_\_\_\_,  
 known to me to be the Governor of the State of Idaho, and \_\_\_\_\_ Ira H. Masters \_\_\_\_\_,  
 known to me to be the Secretary of the State of Idaho, and \_\_\_\_\_ Arthur Wilson \_\_\_\_\_,  
 known to me to be the Land Commissioner of the State of Idaho, who executed said instrument and  
 acknowledged to me that such 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 residing at Boise Idaho





## STATE OF IDAHO DEED

Number 8716  
Certificate No 20176

To All to Whom These Presents Shall Come, Greetings:

Whereas, on the 8th day of January 19 37, all that tract or parcel of Public School Foreclosure land of the State of Idaho, hereinafter mentioned and particularly described, was sold in the manner provided by law to

~~~~~ F. A. McNEAL ~~~~~  
of Kuna, State of Idaho, for the aggregate price of  
~~~~~ Five Hundred and No/100 ~~~~~ DOLLARS

And Whereas, the said sum of ~~~~~ Five Hundred and No/100 ~~~~~ DOLLARS  
has been fully paid to the proper receiving officer for the State of Idaho, by

~~~~~ F. A. McNEAL ~~~~~  
as shown by the records in the office of the State Board of Land Commissioners, the said sum being the whole amount of the purchase price for the said tract or parcel of land hereinafter described:

Now, Know Ye, That the said State of Idaho, in pursuance of law in such case made and provided, and in consideration of the premises aforesaid, and of the aforesaid sum of

~~~~~ Five Hundred and No/100 ~~~~~ DOLLARS  
to the said State of Idaho paid, doth by these presents grant, bargain, sell, convey and confirm, in fee, unto the said  
~~~~~ F. A. McNEAL ~~~~~

his heirs and assigns all of the said tract and parcel of land situated in the County of Ada  
and State of Idaho and described as follows, to-wit

Southwest Quarter of the Southeast Quarter (SW $\frac{1}{4}$ SE $\frac{1}{4}$ ), of Section Thirty-one (31),  
Township Two (2) North, Range Two (2) East, Boise Meridian, containing 20 acres,  
more or less, together with all water, ditch, and canal rights thereunto belong-  
ing, or in any wise appertaining.

To have and to hold the said premises and parcel of land above particularly described with the appurtenances thereon, unto the said

~~~~~ F. A. McNEAL ~~~~~

his heirs and assigns in fee simple forever, subject to the provisions of Section 58-604 Idaho Code as amended by Chapter 11, 1951 Session Laws; which grants over all lands belonging to the state a right of way for ditches constructed by authority of the United States and to the provisions of Section 47-701, Idaho Code reserving to the State all Mineral rights in lands sold subsequent to the 8th day of May 1923.

In Witness Whereof, I Robert F. Smylie, the Governor of the State of Idaho  
have hereunto signed my name and caused the Great Seal of the State of Idaho and the Seal of the  
Board of Land Commissioners to be hereunto affixed this 15th day of January, 1937. A.D.

Counterigned:

*Jack Young*  
Secretary of State  
County of Idaho and President of  
State Board of Land Commissioners

Counterigned

*Arthur Wilson*  
State Land Commissioner

STATE OF IDAHO ) ss  
County of Ada,

On this 15th day of January in the year 1937 before  
me, a Notary Public in and for said State, personally appeared Robert F. Smylie  
known to me to be the Governor of the State of Idaho and  
known to me to be the Secretary of the State of Idaho and  
known to me to be the Land Commissioner of the State of Idaho, who executed said instrument and  
acknowledged to me that each 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

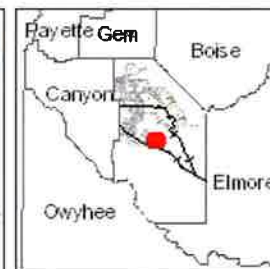
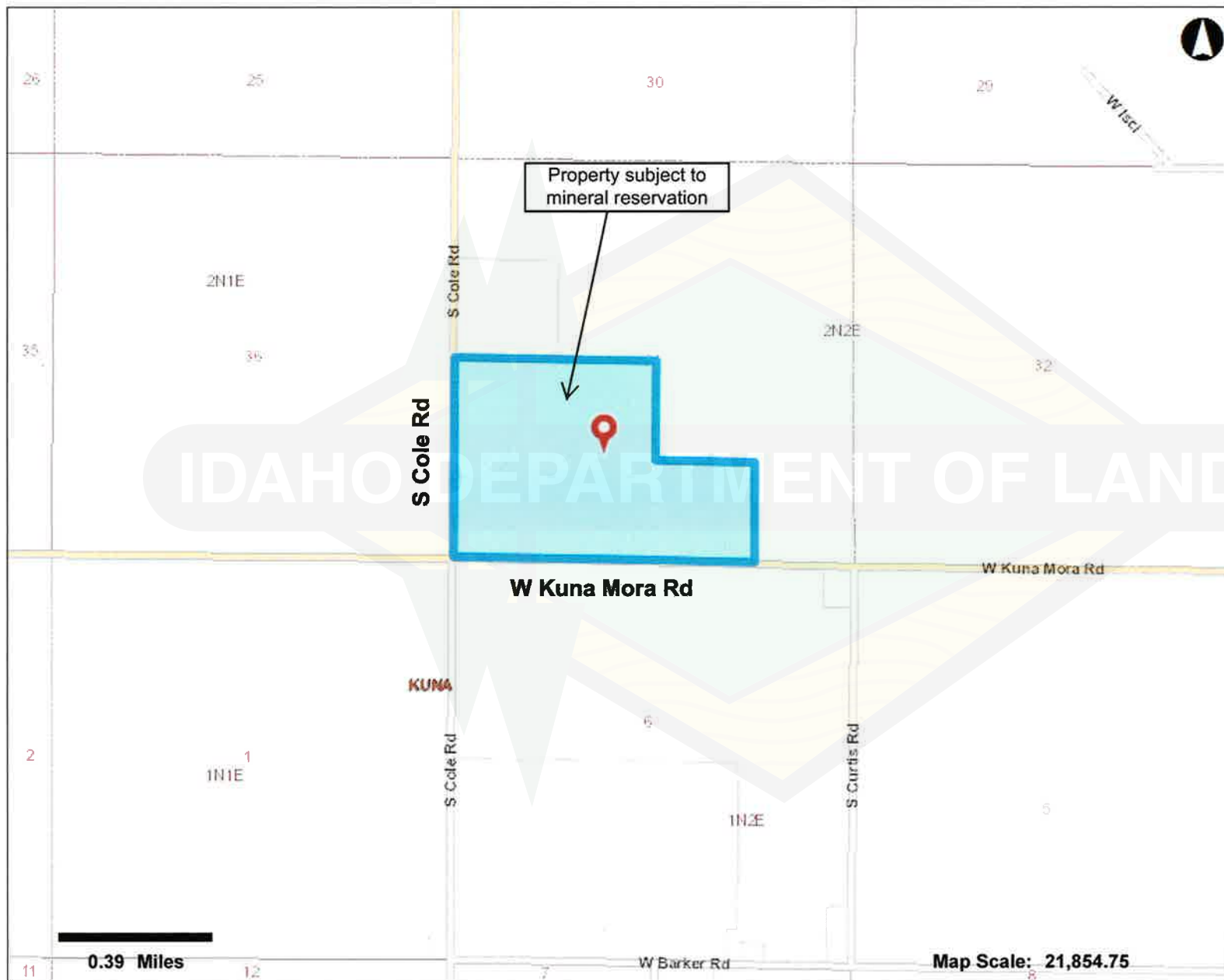
Notary Public in and for the State of Idaho





**EXHIBIT 3**

**EXHIBIT 3**



0.39 Miles

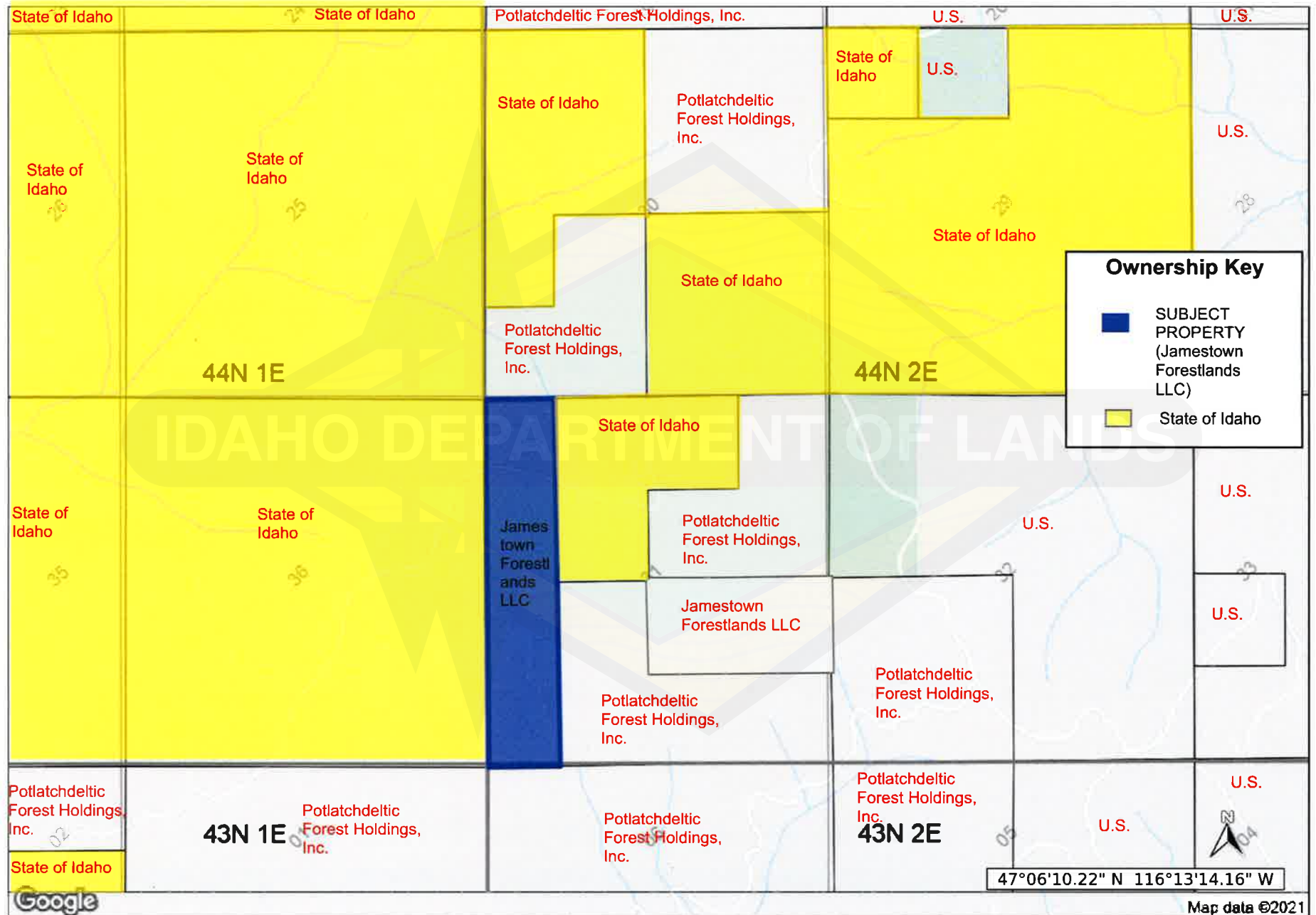
Map Scale: 21,854.75

# EXHIBIT 4



# EXHIBIT 4

# Molpus Timberland Property



# **EXHIBIT 5**



# **EXHIBIT 5**

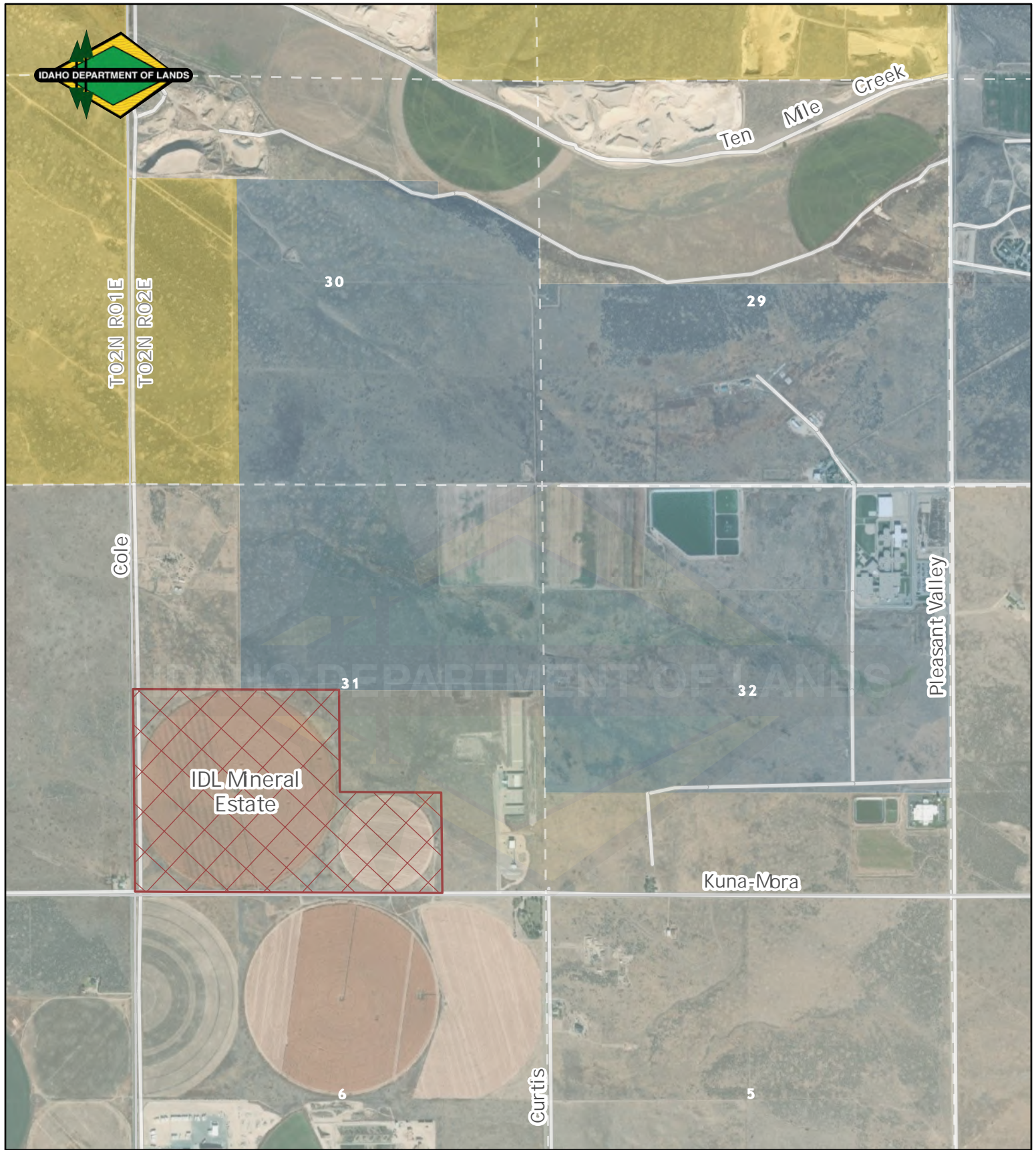


| Relate     | Acres | Timber Type        | Dom Species      | Co Dom Species | STRATA | STATUS | Est Yr | Site Index | DF SAW<br>MBF/ACRE | WL SAW<br>MBF/ACRE | GF SAW<br>MBF/ACRE | WH SAW<br>MBF/ACRE | RC SAW<br>MBF/ACRE | PP SAW<br>MBF/ACRE |
|------------|-------|--------------------|------------------|----------------|--------|--------|--------|------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| 0173010002 | 64.74 | Conifer Plantation | Grand Fir        |                | CH11   | NIH    | 1994   | 75         | 0.11               | 0.10               | 0.14               | 0.05               | 0.10               | 0.02               |
| 0173010003 | 24.81 | Conifer Plantation | Western Redcedar | Douglas Fir    | WR21   | NIH    | 1977   | 90         | 0.00               | 0.00               | 0.00               | 0.00               | 0.64               | 0.00               |
| 0173010004 | 23.37 | Conifer Upland     | Western Redcedar | Subalpine Fir  | WR31   | NIH    | 1953   | 85         | 0.06               | 0.00               | 0.13               | 0.00               | 0.57               | 0.00               |
| 0173010005 | 10.87 | Conifer Upland     | Grand Fir        |                | CH21   | NIH    | 1933   | 69         | 0.44               | 0.08               | 1.18               | 0.22               | 0.46               | 0.06               |
| 0173010098 | 1.45  | Company Roads      |                  |                | NF     | NIH    |        | 90         |                    |                    |                    |                    |                    |                    |

IDAHO DEPARTMENT OF LANDS

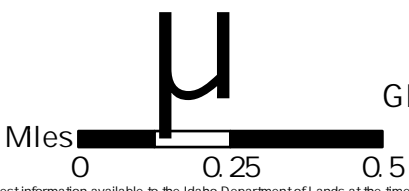
| WP SAW   | LP SAW   | ES SAW   | AF SAW   | MH SAW   | OC SAW   | HW SAW   | TOTAL HEW | TOTAL     |      | DF BA | WL BA | GF BA | WH BA | RC BA | PP BA | WP BA | LP BA | ES BA | AF BA |
|----------|----------|----------|----------|----------|----------|----------|-----------|-----------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| MBF/ACRE | MBF/ACRE | MBF/ACRE | MBF/ACRE | MBF/ACRE | MBF/ACRE | MBF/ACRE | TONS/ACRE | PULP      |      |       |       |       |       |       |       |       |       |       |       |
|          |          |          |          |          |          |          |           | TONS/ACRE |      |       |       |       |       |       |       |       |       |       |       |
| 0.00     | 0.00     | 0.00     | 0.00     | 0.00     | 0.00     | 0.01     | 0.46      | 1.23      | 1.99 | 1.26  | 4.84  | 1.94  | 2.47  | 0.53  | 0.12  | 0.14  | 0.02  | 0.05  |       |
| 0.00     | 0.00     | 0.00     | 0.00     | 0.00     | 0.00     | 0.00     | 1.87      | 2.42      | 6.16 | 0.00  | 4.17  | 0.00  | 18.42 | 0.00  | 0.00  | 0.00  | 0.00  | 0.00  |       |
| 0.00     | 0.00     | 0.13     | 0.28     | 0.00     | 0.00     | 0.00     | 0.53      | 2.74      | 1.26 | 0.00  | 7.73  | 0.00  | 12.50 | 0.00  | 0.00  | 0.00  | 2.84  | 8.47  |       |
| 0.05     | 0.11     | 0.07     | 0.05     | 0.13     | 0.00     | 0.01     | 3.42      | 5.75      | 9.31 | 2.18  | 23.62 | 6.29  | 6.72  | 4.04  | 0.92  | 2.00  | 0.88  | 1.53  |       |

IDAHO DEPARTMENT OF LANDS



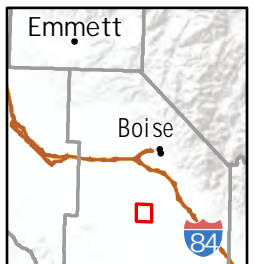
- To Be Disposed
- Roads
- BLM
- Private
- State

Idaho Department of Lands  
 Southwest Area  
 Ada County, Idaho  
 9/8/2022

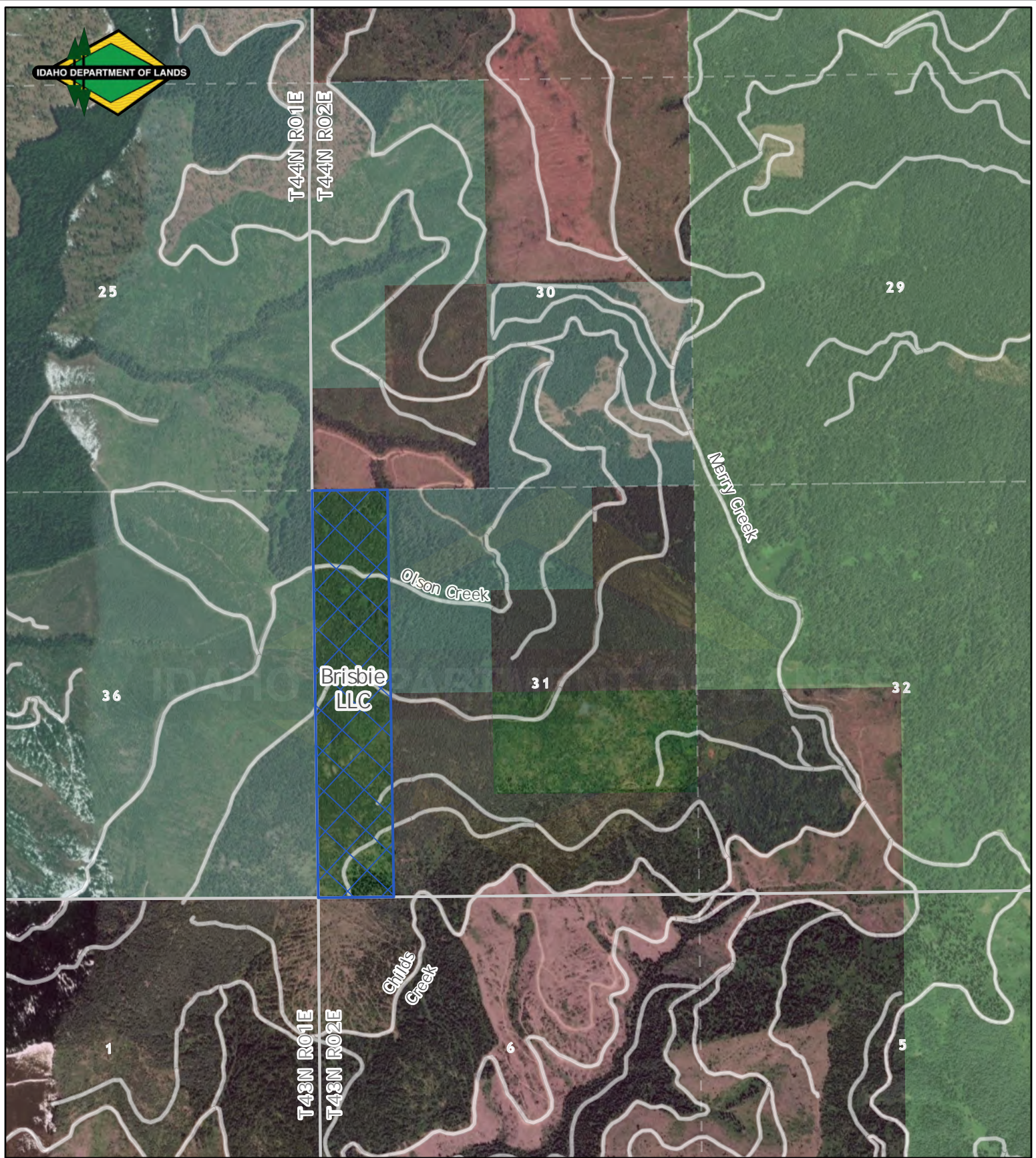







Land Exchange  
 IDL-Brisbie LLC  
 To Be Disposed  
 GIS Acreage = 250.12  
 Scale: 1: 20,000

Disclaimer: This map has been compiled using the best information available to the Idaho Department of Lands at the time and may be updated and/or revised without notice. In situations where known accuracy and completeness is required, the user has the responsibility to verify the accuracy of the map and the underlying data sources.

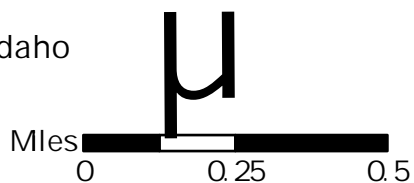






-  To Be Acquired
-  Roads
-  USFS
-  State
-  Potlatch

Idaho Department of Lands  
 St. Joe Area  
 Shoshone County, Idaho  
 9/8/2022

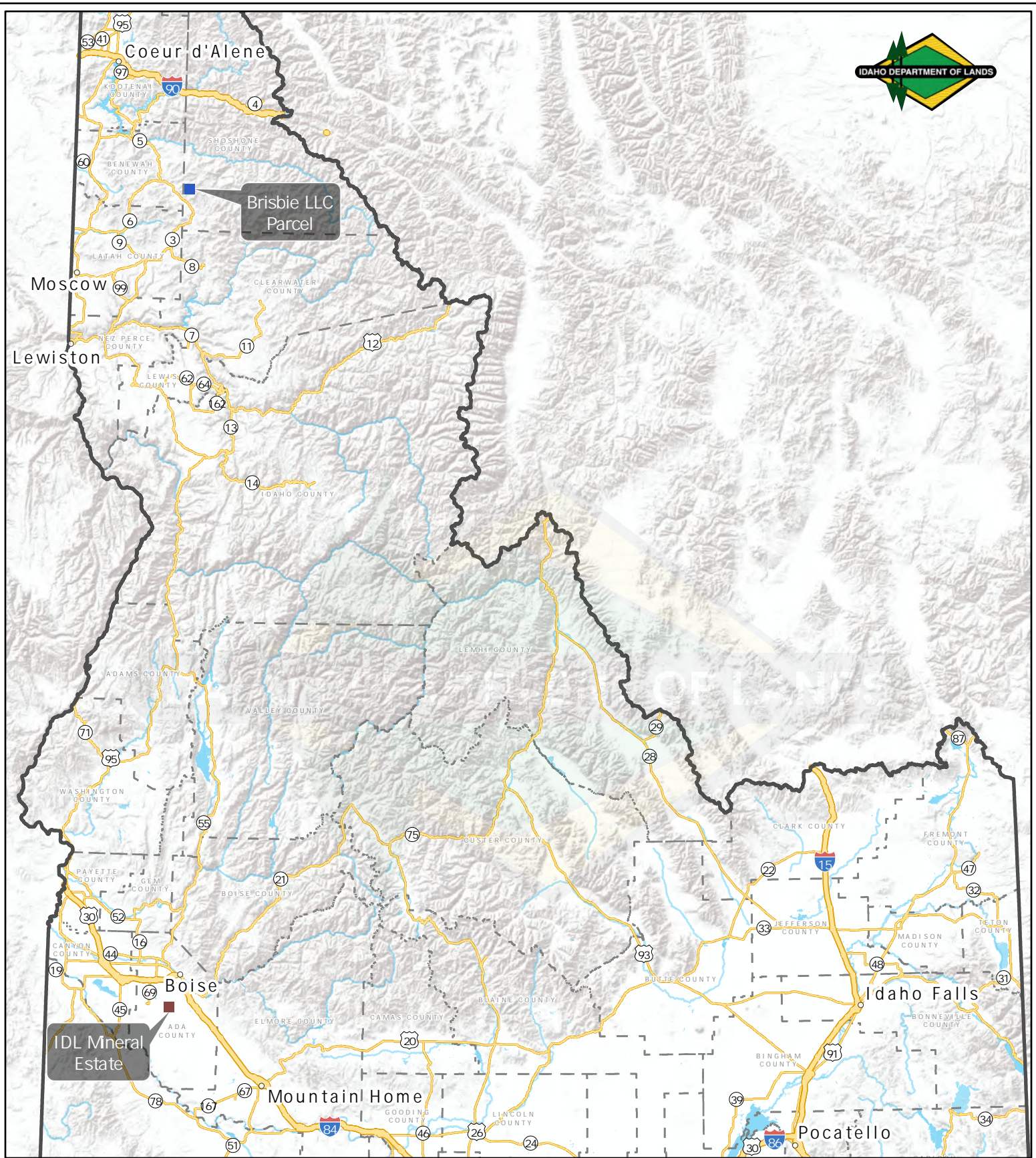


Land Exchange  
 IDL-Brisbie LLC  
 To Be Acquired  
 GIS Acreage = 125  
 Scale: 1: 20,000

Disclaimer: This map has been compiled using the best information available to the Idaho Department of Lands at the time and may be updated and/or revised without notice. In situations where known accuracy and completeness is required, the user has the responsibility to verify the accuracy of the map and the underlying data sources.

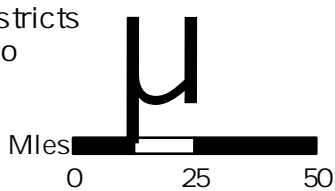






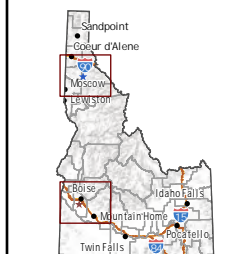
- To Be Acquired
- To Be Disposed
- Interstate
- Highways
- County

Idaho Department of Lands  
St. Joe & Southwest Districts  
Shoshone County, Idaho  
Ada County, Idaho  
9/8/2022



Land Exchange  
IDL-Brisbie  
IDL = 205 ac  
Benewah = 125 ac  
Scale: 2,500,000

Disclaimer: This map has been compiled using the best information available to the Idaho Department of Lands at the time and may be updated and/or revised without notice. In situations where known accuracy and completeness is required, the user has the responsibility to verify the accuracy of the map and the underlying data sources.





# Due Diligence Checklist

**“Due Diligence”** is a broad term that business, real property professionals and real estate attorneys use. The term is used here to refer to the inspection and investigation of real property being considered for acquisition. Due diligence is conducted to assist the buyer in making an informed purchase decision. Items considered under due diligence vary with each property type. The following checklist is a reference used to identify documents and conditions that should be considered in the purchase of real property.

       **Commitment for Title Insurance (All Properties).** A commitment for title insurance (Preliminary Title Report) should be obtained soon after the Purchase Sale Agreement is executed. This document includes the legal description for the property and provides a list of all current exceptions to title on the property such as property owner, unpaid taxes, easements, options to purchase, judgments, mortgages, recorded liens, deed of trust, timber harvest rights, mineral rights, water rights. The title review process is used to determine the condition of the title to be transferred to the buyer at closing, as well as identifying any potential title problems.

       **Phase One Environmental Site Assessment (Phase One ESA) (All Properties).** The Phase One ESA provides the buyer an overview of the environmental condition and environmental history of the property. The report is intended to identify actual and potential problems (e.g. contamination by hazardous substances, leaking underground storage tanks, landfills, etc.) based primarily on a review of historical use documentation, regulatory agency databases and a physical on-site investigation. If environmental conditions or potential environmental conditions are discovered during the investigation, the report will generally recommend specific follow-up testing, remediation and/or studies. A Phase One ESA typically does not include specific inspections for asbestos, lead paint, mold, radon, or wetland delineation. The final report has four components including: Records Review; Site Reconnaissance; Interviews with present and past owners, operators, occupants of the property and local government officials; and a Narrative Report.

       **Access (All Properties).** Evaluate the adequacy of access and determine whether additional rights may be obtained as part of an exchange or purchase transaction at closing. There are five (5) access classifications:

- 1) **Public Use Access:** A permanent public access typically from a county road, state or Federal highway, which has an approved approach designated for the purpose of which the property is currently being used, or designated for its current zoning. Width of approach needs to be sufficient for the properties designated use.
- 2) **Full Legal Administrative Access:** A designated permanent easement specifically identified for access to property for all management activities and access is transferable.



- 3) **Limited Legal Administrative Access:** A designated temporary or permanent access limited for specific activities that would be non-transferable. (Such as Timber harvest, for maintenance access, irrigation.)
- 4) **Physical Access:** Properties where there is an existing road to or across the property, but no permanent legal access is recorded. The road may be designated on a county map. The existing road may be primitive, in poor condition, or currently unusable.
- 5) **No Access:** Property with no legal or physical access established or identified by a recorded document or a county map.

\_\_\_\_\_ **Utilities (All Properties).** Identify existing utility infrastructure located on or adjacent to property such as power, water/well, septic/sewer, phone, natural gas, hot water, solar, wind and if they are provided by city services or located on site. Identify the capacity of the utilities; are they major transmission facilities which would encumber future use or development of the property, or are they of a capacity which could enhance the property for future development

\_\_\_\_\_ **Production Data (All Properties).** Obtain production information associated with the property being considered for purchase. Examples of production data for some property types:

- 1) **Cropland.** Parcel acreage, farmable acres, non-farmable acres, commodities grown, yields, total production, price per unit, and crop rotation. If the property will be acquired subject to a lease; name of tenant, term of lease, and type of lease (i.e. cash or crop share).
- 2) **Timberland.** Total acreage; delineation of acreage used for commercial timber, plantation, non-commercial timberland, and non-stocked; estimated timber volumes by species (i.e. MBF), and mean annual increment (MAI).
- 3) **Rangeland.** Parcel acreage, animal unit months (AUM's) of forage, season of use.
- 4) **Commercial.** Property operating data including cash flow analysis, vacancy rates, operating costs, rent vs. market rent, existing leases and lease terms.

\_\_\_\_\_ **Mineral Rights (All Properties).** The terms "mineral lands," "mineral," "mineral deposits," "deposit," and "mineral right," as used herein is construed to mean and include all coal, oil, oil shale, gas, phosphate, sodium, asbestos, gold, silver, lead, zinc, copper, antimony, geothermal resources, salable minerals, and all other mineral lands, minerals or deposits of minerals of whatsoever kind or character. This includes "salable minerals," meaning a mineral substance that can be taken from the earth and that has a value in and of itself separate and apart from the earth. The potential of mineral lands should be evaluated on annual rental, the amount of royalty, the basis upon which the royalty shall be computed and such other details as necessary in the interest of the state.

Determine whether the property to be acquired excludes mineral rights. To the extent that the mineral rights have been severed from fee ownership, determine to what extent, if any, those severed rights affect the use and value of the property by the buyer. Prior to purchase, determine who owns the mineral rights and what the owner's intent is regarding use and development of the mineral estate.

\_\_\_\_\_ **Water Rights (All Properties).** The constitution and statutes of the state of Idaho declare all the waters of the state, when flowing in their natural channels, including the waters of all natural springs and lakes within the boundaries of the state, and ground waters of the state, to be public waters. A water right is the right to divert the public waters of the state of Idaho and put them to a beneficial use, in accordance with one's priority date. Beneficial uses include such uses as domestic use, irrigation, stock-watering, manufacturing, mining, hydropower, municipal use, aquaculture, recreation, fish and wildlife, among others. The amount of the water right is the amount of water put to beneficial use. Determine the scope and nature of any water rights related to the property. If a property is fully serviced by water and sewer utility service, water rights will not be an issue. If water rights for the property have been separated from the fee interest or come from an off-site source, the purchase and sale agreement must address the transfer of necessary rights to the buyer at closing. The Idaho Department of Water Resources maintains a website to research water rights within the state of Idaho.

\_\_\_\_\_ **Physical Improvements (All Properties).** Improvements include buildings, fences, ponds, spring developments, and real property fixtures that are permanently part of the land. Improvements are generally attached to, embedded in or permanently resting on the land and cannot be removed without substantially damaging an improvement or the real property with which it is being used. An inventory of physical improvements on the property and who owns or claims to own the improvements will be made prior to requesting an appraisal.

\_\_\_\_\_ **Approvals and Entitlements (All Properties).** Determine the regulatory status of proposed property, and if it is based on the type or types of uses currently being made of the land. Review the current zoning, potential zoning, areas of impact, proposed future growth, any restrictive covenants or proposed restrictions which would encumber the property and its utilization in its highest and best use. Confirm that the existing use of the property complies with applicable zoning, building and life safety codes. Determine which land use entitlements will be necessary for intended use of the property.

\_\_\_\_\_ **Personal Property (All Properties).** Identify within the Purchase Sale Agreement what personal or intangible property will be included in the purchase. For example, furniture, trade fixtures, equipment, sprinkler pipe, pumps, etc. that are necessary for the buyer's use of the property. Determine any third party security interest in any of the personal property. Assess the need to purchase or transfer permits or licenses required to operate the property or related equipment and fixtures (e.g. franchises, trademarks, patents, copyrights, liquor licenses, etc.)

\_\_\_\_\_ **Rights-of-Way (Easement) Impacts (All Properties).** Rights-of-way are temporary or permanent property rights that have been either granted or acquired, for roads, utilities, or public use access. These are often conveyed through an easement and may or may not be recorded. In addition to roads and utilities some more obscure examples include:

- 1.) Conservation easements – limits the amount and type of development that can occur on a property in order to preserve its productive capacity and open character while keeping the property in the landowner's ownership and control.
- 2.) Solar/Scenic easements – protect an owner's view shed or path of sunshine and generally restrict the height of building construction.
- 3.) Airspace easement – permits the area above the surface of property to permit an imposition upon such property from excessive noise, vibration, discomfort, inconvenience, etc. that consequently reduces market value. Generally used for airport impact areas but can also apply to bridges and walkways.
- 4.) Maintenance easement – permits an individual to cross onto the property of another for the purpose of maintaining something owned or controlled by the dominant estate owner, such as, irrigation ditches, canals, culverts, power lines, water lines, etc.

\_\_\_\_\_ **Endangered Species (All Properties).** The Endangered Species Act of 1973, as amended, is one of the most far-reaching wildlife conservation laws ever enacted by any nation. The presence of threatened/endangered or potentially threatened/endangered species may significantly restrict the development potential, other potential uses, and market value of a property.

\_\_\_\_\_ **Copies of all leases affecting the property (All Properties).** Review all leases having an effect on the future use of or income from the property. For state lands involved in an exchange, ensure a land exchange addendum is signed by the lessee.

\_\_\_\_\_ **Appraisals and Appraisal Review (All Properties).** A real estate appraisal is required for all property types to determine the market value for the property or property rights or interest being disposed or acquired. At a minimum the appraisal is prepared in compliance with the *Uniform Standards of Professional Appraisal Practice (USPAP)*. Appraisals will be independently reviewed by IDL or another appraiser to ensure compliance with USPAP and to determine the adequacy and appropriateness of the report.

\_\_\_\_\_ **Property Boundary Survey (Optional).** Obtain copies of recorded Records of Survey for the property, if available. If a survey is necessary it should be initiated immediately after the Purchase and Sale Agreement has been executed to allow time to address any potential title problems identified by the survey prior to closing.

\_\_\_\_\_ **Timber Rights (Timberland).** Determine who has the legal right to harvest the timber on a parcel of land. A seller of forestland can choose to include or exclude timber rights as part of a fee ownership sale. Such rights can be severed for a specific period of time or permanently transferred.

\_\_\_\_\_ **Timber Cruise/Harvest/Road analysis and Check Cruise (Timberland).** Forested properties with merchantable timber being considered for acquisition will require a timber cruise to determine the quality and quantity of harvestable timber. The cruise will identify tree species and measurements within each plot. Sufficient plots must be

measured to obtain a statistically reliable sample for estimated gross volume, defect, piece size, general stand information, net merchantable volume, etc.

       **Conservation Reserve Program (Agriculture/Timberland).** Determine if the property is eligible for and currently enrolled in a variety of farm and agriculture programs. What is the impact in ownership change to enrollment eligibility? There are currently five (5) areas which can receive payment, including:

- 1) Wildlife Habitat Incentives (WHIP)
- 2) Wetland Reserve Program (WRP)
- 3) Forestry Incentive Program (FIP)
- 4) Farmland Protection Program (FPP)
- 5) Environmental Quality Incentives Program (EQIP)

       **Architecture/Engineering Analysis (Properties with Buildings).** Acquisition of properties with business related structures requires an analysis by architectural and engineering professionals to determine the condition of the building and identify any potential problem areas, such as deferred maintenance and necessary repairs. Such analysis will typically consider, but is not limited to an analysis of: structural integrity; roof, electrical, plumbing and HVAC systems age and condition; Americans with Disabilities Act (ADA), fire and safety code compliance; general service and maintenance logs; parking area requirements and surface age and condition; review of Phase One Environmental Site Assessment; and testing for asbestos, lead paint, or mold issues. If work is performed on improvements prior to closing, obtain copies of any design and construction drawings and contracts and determine whether the seller's rights under those contracts are assignable to the buyer. Ensure proper lien waivers have been obtained by the seller for work performed prior to closing.

## STATE BOARD OF LAND COMMISSIONERS

September 20, 2022

Regular Agenda

### Subject

Conveyance of three parcels of land patented to the State of Idaho in trust but never reclaimed pursuant to the Carey Act (43 U.S.C.A. § 641 *et seq.*).

### Question Presented

Shall the Land Board accept from the Idaho Department of Water Resources deeds conveying title to lands held pursuant to the Carey Act and convey those lands to the United States via a state deed?

### Background

The Carey Act enabled Idaho to manage the reclamation of a portion of its desert lands and the transfer of said lands to qualifying settlers. 43 U.S.C.A. § 641. In practice, the federal government, through the Department of the Interior (Interior) would donate, grant, and patent desert lands owned by the federal government that could be irrigated, reclaimed, and occupied, to Idaho, which, in turn, would convey to actual settlers upon their meeting certain conditions. *Id.* If reclamation did not occur according to the requirements of the Carey Act, the Secretary of Interior could “restore such lands not irrigated and reclaimed to the public domain.” *Id.* Where lands were conveyed to Idaho by patent pursuant to the Carey Act but never developed or reclaimed under the Carey Act, title may be revested by Interior.

The Question Presented relates to three parcels, described as follows:

- Parcel 1. T. 3 S, R. 33 E, sec. 28, NE1/4SE1/4 (Patent No. 168495)
- Parcel 2. T. 7 N, R. 1 W, sec. 28, NE1/4NE1/4 (Patent No. 368227)
- Parcel 3. T. 5 N, R. 33 E, sec. 6, N1/2SE1/4 and SW1/4SE1/4 (Patent No. 946311)

Parcels 1, 2, and 3 each were patented to the State of Idaho under the Carey Act and are administered by the Idaho Department of Water Resources (IDWR) under Idaho Code § 67-3301(2).

In the attached letter dated August 29, 2022, Interior concluded Parcels 1, 2, and 3 should be revested in the United States and its assigns (acting through the Department of Interior, Bureau of Land Management). Parcels 1 and 3 were not developed or reclaimed pursuant to the Carey Act, and no equitable claims to such lands under the Carey Act exist. Parcel 2 was not developed or reclaimed pursuant to the Carey Act, and, although two “equitable claims” have been alleged, IDWR has determined the alleged claims did not accrue prior to July 1, 1982. Therefore, Idaho Code § 67-3301(2) requires IDWR to convey the Parcel

1, 2, and 3 to the Idaho State Board of Land Commissioners (Land Board) for retention or disposal in accordance with applicable state law.

## Discussion

### The Carey Act

Land acquired by the State of Idaho under the Carey Act is a unique type of state land, an artifact of 19th Century federal desert reclamation efforts. The Carey Act's intent was to foster settlement and irrigation of desert lands by granting individuals title to land after certain reclamation conditions had been satisfied, and to allow the same individuals the ability to collectively finance the construction of irrigation projects. *See generally* Rosholt, John A., "The Carey Act Lands," *The Advocate*, Nov/Dec 2010, pp. 24-26.

Congress provided states the authority to manage the conveyance of reclaimed federal lands to actual, irrigating entrants on the land. 43 U.S.C.A. § 641. This authority enabled the states to enter into contracts to enable reclamation, induce settlement and cultivation, but the State was "not . . . authorized to lease any of said lands or to use or dispose of the same in any way whatever, except to secure their reclamation, cultivation, and settlement." *Id.*

The federal Carey Act Regulations explain that a state had 10 years from the date of the signing of the contract to cause said lands to be reclaimed, with Interior maintaining the authority to extend this period for up to 5 additional years or restore said lands to the public domain. 43 C.F.R. § 2611.2(a). Relevant to this discussion the regulations provide:

If there are portions [of land] which cannot be reclaimed, the nature, extent, location, and area of such portions should be fully stated. If less than 5 acres of a smallest legal subdivision can be reclaimed and the subdivision is not essential for the reclamation, cultivation, or settlement . . . such legal subdivision must be relinquished, and shall be restored to the public domain . . . .

#### 43 C.F.R. § 2612.1.

If a patent issued to a state:

[I]t is the responsibility of the State to assure that the lands are cultivated and settled. If the State does not dispose of the patented lands within 5 years to actual settlers who have cultivated at least 20 acres of each 160 acre tract, or if the State disposes of the patented lands to any person who is not an actual settler or has not cultivated 20 acres of the 160 acre tract, action may be taken to revest title in the United States.

#### 43 C.F.R. § 2612.3.

Idaho Code § 42-2001 *et seq.* governs Carey Act land grants under Idaho state law. Idaho Code § 42-2019 ("Proof of reclamation and settlement – Patent.") lays out requirements



for “proving up” a Carey Act claim. Proof of reclamation and settlement was to be submitted to IDWR:

[w]hen the works designed for the irrigation of lands under the provisions of this chapter shall be so far completed as to actually furnish an ample supply of water in a substantial ditch or canal to reclaim any particular tract of tracts of such lands, the State of Idaho shall, through [IDWR], make proof of such fact and shall apply for a patent to such lands in the manner provided in the regulations of the department of interior.

Idaho Code § 42-2019. Idaho Code § 42-2022 states “[u]pon issuance of a patent to any lands by the United States to the state, notice shall be forwarded to the settled upon such lands. It shall be the duty of [IDWR] to issue a patent to said lands from the state to the settler.” Idaho Code § 42- 2023.

The Idaho Legislature provided additional authority to IDWR through Idaho Code § 67-3301(2), which states, in relevant part:

Through this provision the department has authority to convey to equitable claimants, their heirs, successors or assigns, title to lands retained in state ownership which were patented to the state under the Carey Act prior to July 1, 1931, provided that the director determines that equitable claims to such lands have accrued prior to July 1, 1982, and are based upon the cultivation or improvement of such lands, or the payment property taxes thereon. Title to any such lands for which the director determines that an equitable claim has not accrued shall be conveyed to the state board of land commissioners for retention or disposal in accordance with applicable state law.

Section 67-3301(2) authorizes IDWR to convey Carey Act lands that were not formally conveyed to individuals who nevertheless had been cultivating or paying taxes on the land, as though they had formally acquired under the Carey Act. But if IDWR determines that such an equitable claim had not accrued before July 1, 1982, the land is to be conveyed to the Board for retention or disposal in accordance with state law.

### Parcels 1, 2, and 3

In some instances, land segregated under the Act and then patented to Idaho was never actually conveyed to a settler pursuant to the Carey Act or relinquished to the United States. Such is the case with Parcels 1, 2, and 3. Parcels 1, 2, and 3 are the last un-reclaimed Carey Act lands held by IDWR.

Title commitments to Parcels 1 and 3 show title with the State of Idaho, with a specific exemption for the relevant Carey Act patents. Parcels 1 and 3 were never reclaimed pursuant to the Carey Act or Idaho law implementing the Carey Act. No equitable claims regarding Parcels 1 and 3 have been presented to IDWR. Parcel 2 also shows title to an insurable certainty with the State of Idaho, with a specific exemption for Patent No. 368227. Parcel 2 was also

patented to the State pursuant to the Carey Act, but never successfully reclaimed, and, therefore, never conveyed to a settler pursuant to the Act.

At various times over the decades, IDWR sought out equitable claimants to Parcel 2 pursuant to Idaho Code § 67-3301(2). Having never found any, in 2018 IDWR began the process of conveying Parcel 2 to the Land Board, as contemplated in Idaho Code § 67-3301(2). Prior to the conveyance, IDWR conducted a survey of Parcel 2 which showed two encroachments. IDWR sent notices to cease and desist trespass to individuals encroaching on Parcel 2. Those individuals responded through counsel with “equitable claims” to those areas encroached upon under Idaho Code § 67-3301(2). IDWR has reviewed the alleged claims and has determined they did not accrue prior to July 1, 1982, as required by Idaho Code § 67-3301(2). A statement from the individuals asserting the equitable claims is attached for the Board’s consideration.

Parcels 1, 2, and 3 are eligible for conveyance from IDWR to the Land Board under Idaho Code § 67-3301(2). IDWR has inquired with Interior about whether Interior will seek to revest title to Parcels 1, 2, 3. In the attached letter dated August 29, 2022, Interior confirmed that title to all three parcels should be revested in the “United States of America and its assigns (acting through the Department of Interior, Bureau of Land Management).” In discussions about the revestiture process, the form of the conveyance to Interior was identified as an outstanding issue needing the Board’s resolution. Interior requests conveyance via warranty deed (or special warranty deed), unless a governing statute, regulation, policy, or corporate charter requires conveyance by a lesser instrument, such as a quitclaim deed. Interior’s August 29 letter further states that a resolution by the Land Board would be sufficient documentation of such a requirement. It is recommended that the Land Board direct that conveyance of the parcels to Interior be via quitclaim deed, which is commonly referred to as a state deed.

## **Recommendation**

1. Accept conveyance of Parcels 1, 2, and 3 from IDWR.
2. Convey Parcels 1, 2, and 3 via state deeds to the United States acting through the Department of Interior, Bureau of Land Management.

## **Board Action**

## **Attachments**

1. Letter dated August 29, 2022, to Tim Luke, IDWR Water Compliance Bureau Chief, from John Sullivan, Bureau of Land Management Supervisory Realty Specialist
2. Maps of parcels 1, 2, and 3
3. Statement dated September 8, 2022, to the Land Board, from Varden and Deborah Brendsel and Ellen Knapp and Charles Lox, regarding the return of Parcel 2 to Interior



## United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Idaho State Office  
1387 South Vinnell Way  
Boise, Idaho 83709-1657  
<https://www.blm.gov>



In Reply Refer To:  
2610 (933)

August 29, 2022

Mr. Tim Luke  
Chief, Water Compliance Bureau  
Idaho Department of Water Resources  
Idaho Water Center  
322 E. Front St., Ste. 648  
Boise, Idaho 83702-7371

Dear Mr. Luke:

Anne Briggs and I appreciated meeting with you, Mark Cecchini-Beaver, Robert Follett, and Josh Purkiss on August 26, 2022, to continue our discussion about the proposed reversion of three Carey Act parcels. The purpose of this letter is to update you regarding how the BLM will address administration of the three parcels previously patented to the State of Idaho for Carey Act purposes, but never developed as required under the Carey Act. The following parcels are currently managed by the Idaho Department of Water Resources, and have been identified as appropriate for reversion:

**Parcel 1.** T. 3 S., R. 33 E., sec. 28, NE1/4SE1/4 in Bingham County (Patent No. 168495).

There are no apparent outstanding issues associated with this parcel other than a lack of development under the Carey Act.

**Parcel 2.** T. 7 N., R. 1 W., sec. 28, NE1/4NE1/4 in Gem County (Patent No. 368227). This parcel contains encroachments by two adjoining private landowners. Once the parcel returns to the United States, and to BLM's administration, BLM will complete a formal determination of suitability for public land management. If the parcel is determined to be unsuitable for public land management, administration of the parcel will be transferred to the U.S. General Services Administration to be disposed of as excess property.

**Parcel 3.** T. 5 N., R. 33 E., sec. 6, N1/2SE1/4 and SW1/4SE1/4 in Jefferson County (Patent No. 946311). This parcel lies within the Idaho National Laboratory (INL) boundary. Federal lands within the INL boundary are federal public lands but are managed by INL under a withdrawal to the Department of Energy. As such, reconveyance should be to BLM as the default managing agency.

Based on the above information, State deeds reconveying the three parcels should designate the grantee as “United States of America and its assigns (acting through the Department of Interior, Bureau of Land Management).”

As we discussed in our call, the U.S. Department of Justice’s Title Standards require conveyances to the United States be via a Warranty Deed. We can make an exception to this general rule if it can be demonstrated that the grantor must convey via a lesser instrument (such as a statutory warranty deed, bargain and sale deed, or quit-claim deed) because of a governing statute, regulation, policy or corporate charter. The recipient agency (here, BLM) must also determine that the form of conveyance does not affect the quality of title. Robert Follett has opined the state’s anti-deficiency legislation may limit its ability to convey through other than a quit-claim deed. If that is the case, then a resolution by the State of Idaho’s conveying entity—presumably the Idaho Land Board or the Idaho Water Resources Board--will be sufficient documentation.

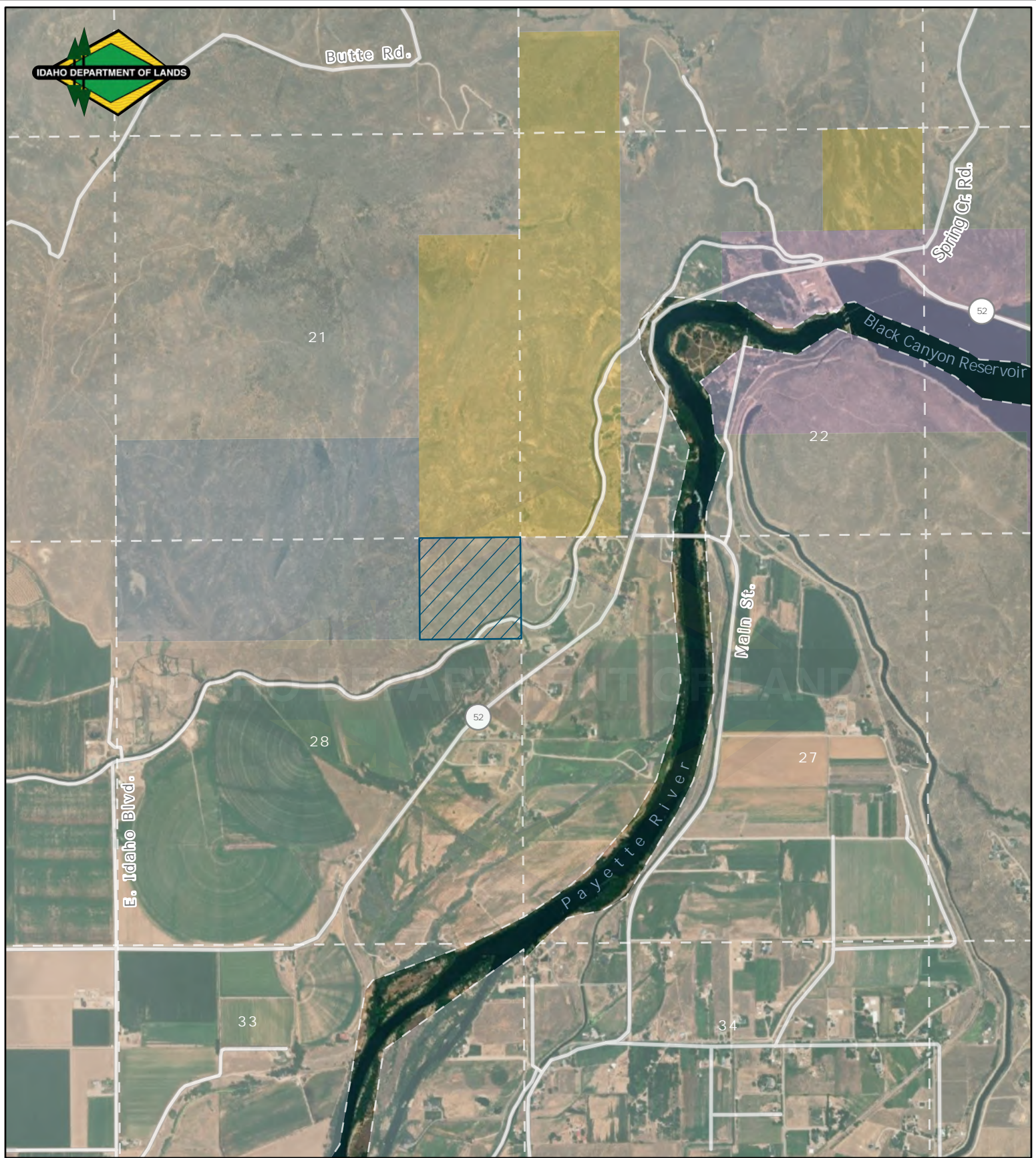
During our meeting, we also discussed the status of funds currently held in a segregated account following the Land Board’s sale of T. 4 S, R. 31 E, sec. 33, SW1/4NW1/4 and NW1/4SW1/4 as surplus property in 2015. This parcel was previously patented to the State for Carey Act purposes (Patent 168496) but was not subsequently conveyed into private ownership since it was never developed. The parcel should have reverted in the United States, but instead was sold at auction. Because the State’s disposal of the parcel was not in accordance with the Carey Act’s reversion provisions, the United States has a legitimate claim to the funds arising from the sale. During our meeting, Robert and Mark stated they will follow up to identify the process the BLM will need to follow to claim the proceeds. In the meantime, please accept this letter as a formal notice that BLM intends to file a claim.







Again, Anne and I appreciated meeting with you and look forward to finalizing the resolution of this issue. Please contact me at 208-373-3863 if you have any questions.

Sincerely,

John Sullivan  
Supervisory Realty Specialist

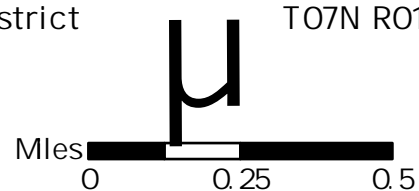




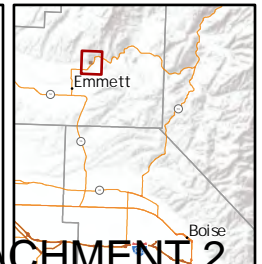
-  Carey Act Parcel
-  Roads
-  BLM
-  Private
-  State
-  BOR

Idaho Department of Lands  
 Southwest Area/District  
 Gem County, Idaho  
 9/8/ 2022

Carey Act Parcel Revestiture  
 T07N R01W - Sec. 28 - NENE  
 GIS Acreage = 40  
 Scale: 1: 20,000







Disclaimer: This map has been compiled using the best information available to the Idaho Department of Lands at the time and may be updated and/or revised without notice. In situations where known accuracy and completeness is required, the user has the responsibility to verify the accuracy of the map and the underlying data sources.



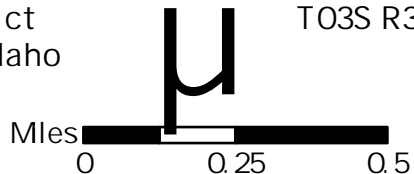




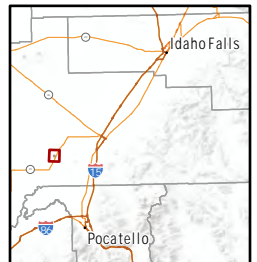
-  Carey Act Parcel
-  Roads
-  BLM
-  Private

Idaho Department of Lands  
 Eastern Area/District  
 Bingham County, Idaho  
 9/8/2022

Carey Act Parcel Revestiture  
 T03S R33E - Sec. 28 - NESE  
 Acreage = 40  
 Scale: 1: 20,000




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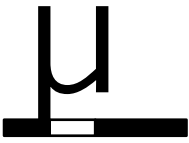


 Carey Act Parcel  
 Roads  
 Private  
 INL

Idaho Department of Lands  
 Eastern Area  
 Jefferson County, Idaho  
 9/8/2022

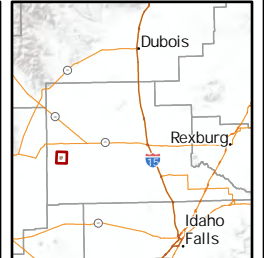
Carey Act Parcel Revestiture  
 T05N R33E - Sec. 6;  
 Pts. N½SE, SWSE  
 GIS Acreage = 120  
 Scale: 1: 20,000

Miles

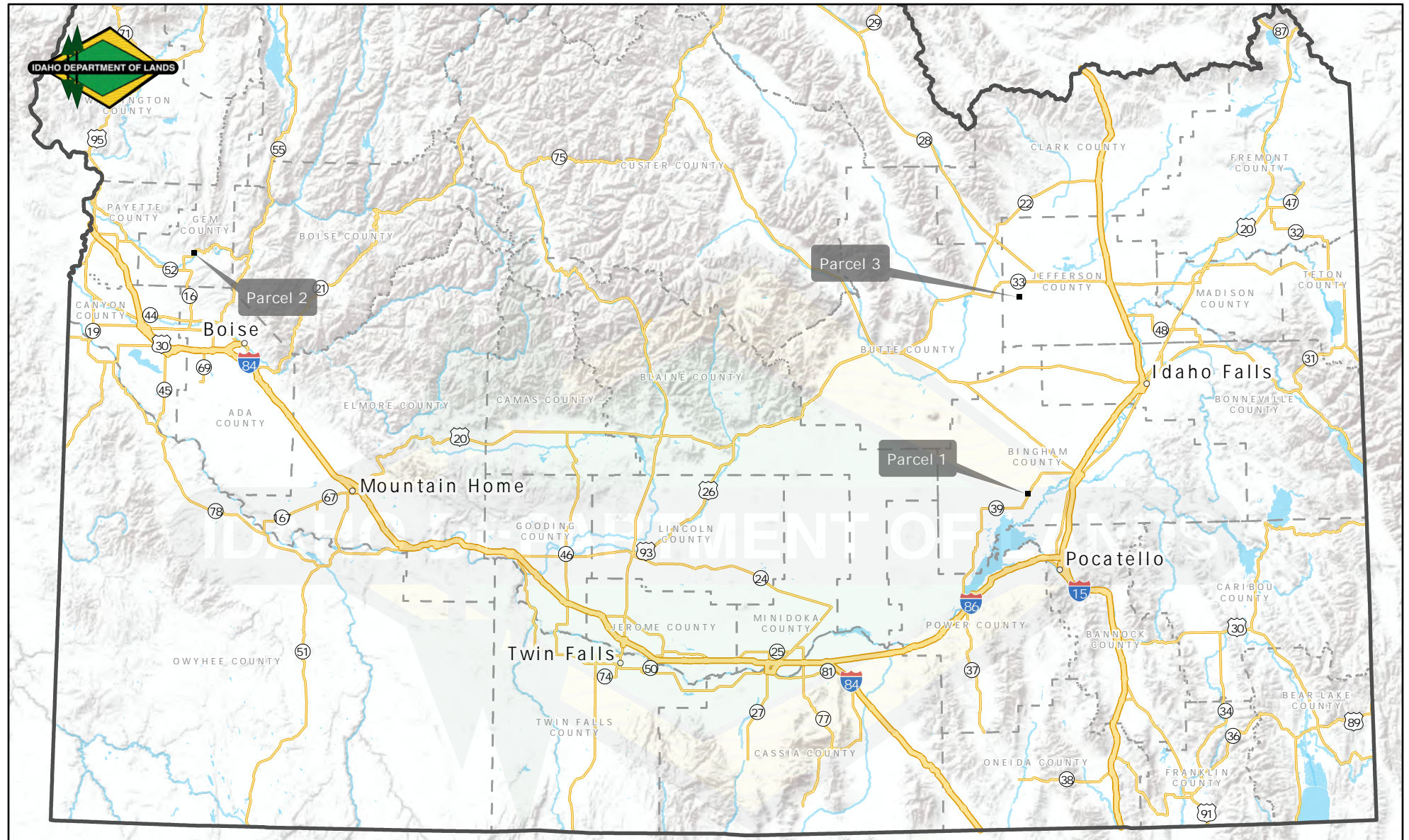


0 0.15 0.3

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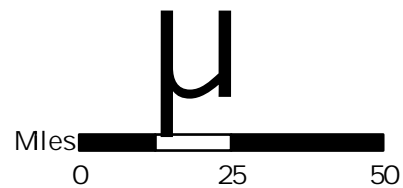






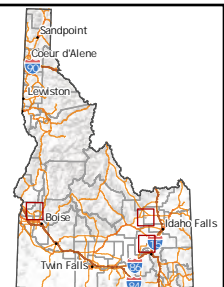
- Parcels
- Interstate
- Highways
- - - County
- Cities

Idaho Department of Lands  
 Southwest & Eastern Areas  
 Gem, Bingham, and  
 Jefferson Counties  
 9/13/2022



Carey Act Parcel Revestiture  
 Parcel 1 = 40 acres  
 Parcel 2 = 40 acres  
 Parcel 3 = 120 acres  
 Scale: 2,000,000

Disclaimer: This map has been compiled using the best information available to the Idaho Department of Lands at the time and may be updated and/or revised without notice. In situations where known accuracy and completeness is required, the user has the responsibility to verify the accuracy of the map and the underlying data sources.



Governor Little and Members of the Land Board:

**Regarding the return of the NE quarter of the NE quarter of section 28, a land-locked parcel, to the Department of the Interior.**

In February 2019, we (Brendsel and Knapp/Lox families) received separate letters from Tim Luke, Water Compliance Bureau Chief, IDWR demanding we “immediately cease and desist trespassing on State Land.” Continued trespass on State Land would “result in the Department turning the matter over to the Idaho Attorney General’s office for prosecution.” This was the first contact the State of Idaho had with either of us regarding any trespass concern. IDWR claimed the land - NENE Section 28 - was owned by the State as a result of the Carey Act. The letter caught us completely off guard.

We were highly proactive in addressing the issue to expedite a timely resolution. In March 2019, we and our attorney, Chris Bromley of McHugh Bromley, met with Tim Luke, IDWR, Garrick Baxter, DAG IDWR, and Ryan Montoya, IDL, to discuss the issue.

We have worked extensively on this issue and done much research, only to have all progress upended, resulting in the need to start over. This has caused much consternation and unneeded additional stress. There have been endless delays and we have been kept intentionally ignorant throughout most of this process.

In April 2019, we sent a letter to Gary Spackman, Director IDWR, documenting Carey Act requirements were met by us and supporting Carey Act equitable claims to the lands for both the Brendsel and Knapp/Lox families per Idaho Code section 67-3301.

In May 2019, IDWR received a Commitment for Title Insurance for NENE Section 28. Upon review of the report Tim Luke wrote in an email “the State of Idaho is confident that legal title is insurable to the State of Idaho.”

Between July 2019 and April 2021, Chris Bromley repeatedly requested status updates from Mr. Baxter and IDWR. Many requests came with no update. In January 2020, Mr. Baxter acknowledged the ball was in IDWR’s court to review the April 2019 letter we provided as to our Carey Act claims.

In mid-April 2021, more than two (2) years after the Cease and Desist letter, Sean Costello, DAG IDWR, informed our attorney, based on his legal research, that the land would return to the Department of the Interior.

We are in the fourth year without resolution to the issue and are now in the ninth month of 2022, more than one year after being informed the land will return to the Department of the Interior. Our hope is that once the land is returned to the Department of the Interior that the disposal decisions and processes remain the responsibility of the local Field Office resulting in the conveyance of the land to us.

We support the return of the land to the Department of the Interior. We understand this will: (1) result in clear title; and (2) pave the way for the Federal Government to convey the clear title to us.

We are requesting your support and oversight and ask for two things: (1) to ensure the Department of the Interior, BLM, and GSA proceed correctly and convey the land to us; and (2) ask for a statement from the Land Board that the land shall be conveyed to us from the Federal Government. If these requests are not possible, we ask, at a minimum, that the Land Board assist us to the greatest extent possible in our dealings with the Federal Government so we are treated fairly.

Thank you Governor Little and Members of the Land Board.

Respectfully,  
Varden and Deborah Brendsel  
Ellen Knapp and Charles Lox