

State Board of Land Commissioners Open Meeting Checklist

Meeting Date: October 18, 2022

Regular Meetings

10/5/2022	Meeting Notice posted in prominent place in IDL's Boise Director's office five (5) or more calendar days before meeting.
10/5/2022	Meeting Notice posted in prominent place in IDL's Coeur d'Alene staff office five (5) or more calendar days before meeting.
10/5/2022	Meeting Notice posted in prominent place at meeting location five (5) or more calendar days before meeting.
10/5/2022	Meeting Notice published on Townhall Idaho website https://townhall.idaho.gov five (5) or more calendar days before meeting.
10/5/2022	Meeting Notice emailed/faxed to list of media and interested citizens who have requested such notice five (5) or more calendar days before meeting.
10/5/2022	Meeting Notice posted electronically on IDL's public website https://www.idl.idaho.gov five (5) or more calendar days before meeting.
10/14/2022	Agenda posted in prominent place in IDL's Boise Director's office forty-eight (48) hours before meeting.
10/14/2022	Agenda posted in prominent place in IDL's Coeur d'Alene staff office forty-eight (48) hours before meeting.
10/14/2022	Agenda posted in prominent place at meeting location forty-eight (48) hours before meeting.
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10/14/2022	Agenda posted electronically on IDL's public website https://www.idl.idaho.gov 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 https://www.idl.idaho.gov .

Special Meetings

	Meeting Notice and Agenda posted in a prominent place in IDL's Boise Director's office twenty-four (24) hours before meeting.
	Meeting Notice and Agenda posted in a prominent place in IDL's Coeur d'Alene staff office twenty-four (24) hours before meeting.
	Meeting Notice and Agenda posted at meeting location twenty-four (24) hours before meeting.
	Meeting Notice and Agenda published on Townhall Idaho website https://townhall.idaho.gov 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 https://www.idl.idaho.gov twenty-four (24) hours before meeting.
	Emergency situation exists – no advance Meeting Notice or Agenda needed. "Emergency" defined in Idaho Code § 74-204(2).

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

	Meeting Notice and Agenda posted in IDL's Boise Director's office twenty-four (24) hours before meeting.
	Meeting Notice and Agenda posted in IDL's Coeur d'Alene staff office twenty-four (24) hours before meeting.
	Meeting Notice and Agenda posted at meeting location twenty-four (24) hours before meeting.
	Meeting Notice and Agenda published on Townhall Idaho website https://townhall.idaho.gov 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 https://www.idl.idaho.gov twenty-four (24) hours before meeting.
	Notice contains reason for the executive session and the applicable provision of Idaho Code § 74-206 that authorizes the executive session.


Recording Secretary

October 14, 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

NOTICE OF PUBLIC MEETING OCTOBER 2022

The Idaho State Board of Land Commissioners will hold a Regular Meeting on Tuesday, October 18, 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: 10/5/2022-IDL Boise; 10/5/2022-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



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State Board of Land Commissioners Regular Meeting

October 18, 2022 – 9:00 AM (MT)

Final Agenda

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

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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/>

1. Department Report – Presented by Dustin Miller, Director

Trust Land Revenue

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

Status Updates

- C. Fire Season Report-Final
- D. Land Bank Fund

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

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

Consent—Action Item(s)

- 3. **Forest Legacy—Hartland Conservation Easement** – Presented by Craig Foss, Division Administrator-Forestry and Fire
- 4. **Disclaimer of Interest Request DI800275-Stillwater Holdings, LLC, Henrys Fork Snake River** – Presented by Eric Wilson, Bureau Chief-Resource Protection and Assistance
- 5. **Approval of Draft Minutes** – September 20, 2022 Regular Meeting (Boise)

State Board of Land Commissioners

Final Agenda

Regular Meeting – October 18, 2022

Page 1 of 2

Regular—Action Item(s)

6. **Approval of Wildcat Cedar Timber Sale** – *Presented by Jeremy Shawver, Section Manager-Timber Sales*
7. **Adoption of Pending Rule IDAPA 20.02.14, Rules for Selling Forest Products on State-Owned Endowment Lands** – *Presented by Jeremy Shawver, Section Manager-Timber Sales*
8. **Adoption of Pending Fee Rule IDAPA 20.03.17, Rules Governing Leases on State-Owned Navigable Waterways** – *Presented by Eric Wilson, Bureau Chief-Resource Protection and Assistance*

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

October 18, 2022
Trust Land Revenue

Timber Sales

During September 2022, the Department of Lands sold five timber sales at auction. Three sales, Golden Glen, Last Teakean Cedar, and Second Goat Cedar, had competitive bidding. The net sale value represents 23% up bid over the appraised value.

TIMBER SALE AUCTIONS								
Sale Name	Area	Sawlog MBF	Cedar Prod MBF	Pulp MBF	Appraised Net Value	Sale Net Value	Net \$/MBF	Purchaser
Powder Brush	POND	7,790			\$2,117,195.00	\$ 2,117,195.00	\$271.78	IFG Timber LLC
Golden Glen	MC	4,885			\$1,501,603.00	\$ 2,361,974.50	\$483.52	IFG Timber LLC
Last Teakean Cedar	POND	8,940	110		\$3,655,072.00	\$ 5,006,057.90	\$553.16	Stella-Jones Corporation
Second Goat Cedar	SJ	12,725			\$3,406,908.00	\$ 3,868,119.45	\$303.98	Alta Forest Products LLC
Ove Dent OSR	CLW	3,225			\$1,142,902.50	\$ 1,142,902.50	\$354.39	IFG Timber LLC
Endowment		37,565	110	0	\$11,823,680.50	\$14,496,249.35	\$384.77	

PROPOSED TIMBER SALES FOR AUCTION				
Sale Name	Volume MBF	Advertised Net Value	Area	Estimated Auction Date
North Operations				
Higbee Camp	7,055	\$1,448,378.10	Mica	10/25/2022
High Low Cedar	4,600	\$1,146,373.00	Pend Oreille	10/27/2022
TOTALS	11,655	\$2,594,751.10		
South Operations				
Fall East Ton	5,205	\$1,096,558.85	Payette	10/18/2022
Sloans Point GNA Ton	4,400	\$460,989.13	Payette	10/20/2022
Dream Weaver	4,050	\$914,542.50	Maggie Creek	10/26/2022
TOTALS	13,655	\$2,472,090.48		

VOLUME UNDER CONTRACT as of September 30, 2022				
	Public School	Pooled	Total	3 Year Avg.
Active Contracts			177	176
Total Residual MBF Equivalent	311,757	188,585	500,342	555,543
Estimated residual value	\$89,331,844	\$52,921,157	\$142,253,001	\$145,750,067
Residual Value (\$/MBF)	\$286.54	\$280.62	\$284.31	\$262.36

	TIMBER HARVEST RECEIPTS				
	September		FY to date	October Projected	
	Stumpage	Interest	Harvest Receipts	Stumpage	Interest
Public School	\$ 4,742,741.47	\$ 604,609.08	\$ 16,317,055.21	\$ 3,958,890.30	\$ 588,390.94
Pooled	\$ 4,105,092.70	\$ 400,492.06	\$ 10,670,213.22	\$ 2,979,782.59	\$ 238,412.24
General Fund	\$ 1.77	\$ 0.00	\$ 240.77	\$ 1.77	\$ 0.00
TOTALS	\$ 8,847,835.94	\$ 1,005,101.14	\$ 26,987,509.20	\$ 6,938,674.66	\$ 826,803.18

	Status of FY2022 Timber Sale Program					
	MBF Sawlog			Number Poles		
	Public School	Pooled	All Endowments	Public School	Pooled	All Endowments
Sold as of September 30, 2022	185,424	98,026	283,450	25,993	17,886	43,879
Currently Advertised	7,055	0	7,055	0	0	0
In Review	12,115	0	12,115	2,500	0	2,500
Did Not Sell*	4,430	0	4,430	0	0	0
TOTALS	209,024	98,026	307,050	28,493	17,886	46,379
FY2022 Sales Plan			311,195			20,600
Percent to Date			99%			225%

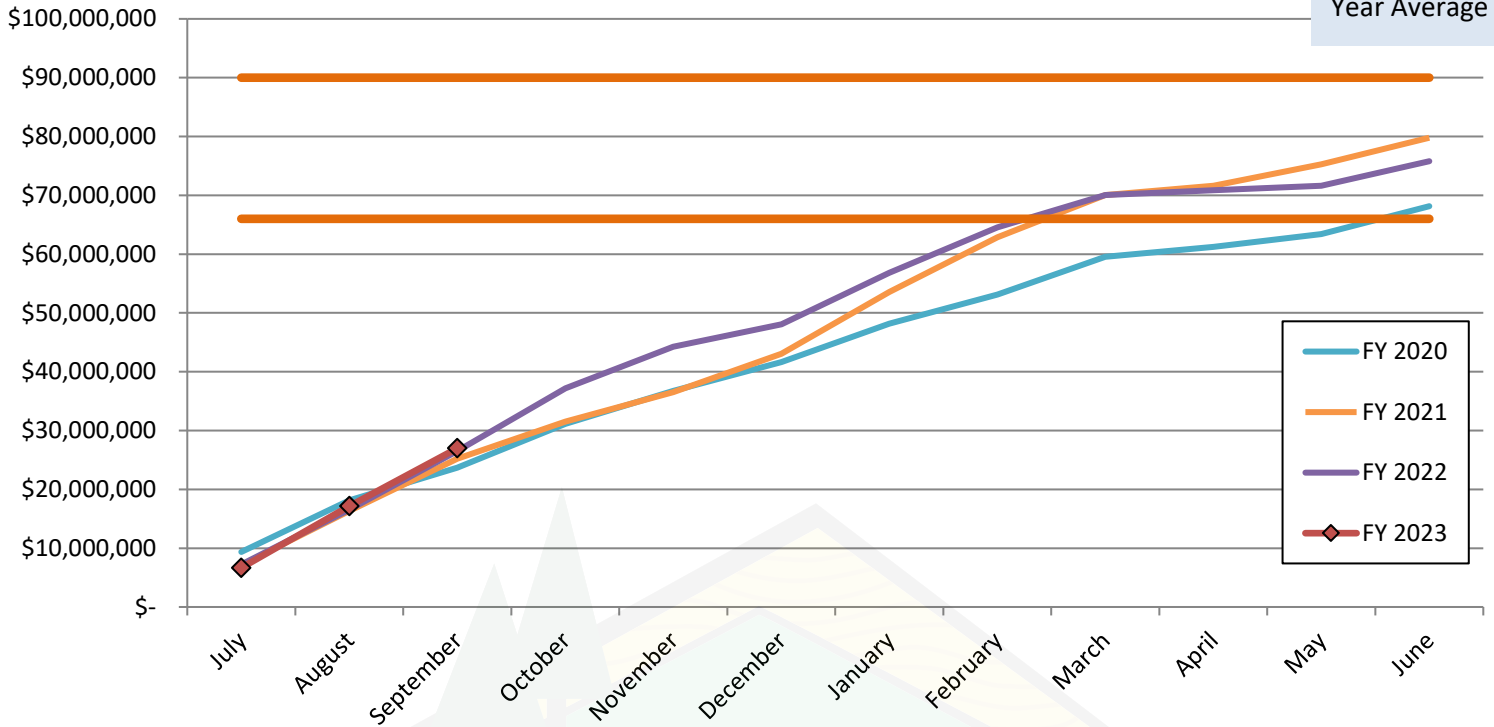
* After three attempts at auction.

	Status of FY2023 Timber Sale Program					
	MBF Sawlog			Number Poles		
	Public School	Pooled	All Endowments	Public School	Pooled	All Endowments
Sold as of September 30, 2022	32,472	8,850	41,322	4,039	191	4,230
Currently Advertised	15,716	4,424	20,140	1,600	0	1,600
In Review	32,474	8,829	41,303	830	680	1,510
Did Not Sell*	0	0	0	0	0	0
TOTALS	80,662	22,103	102,765	6,469	871	7,340
FY2023 Sales Plan			326,000			20,000
Percent to Date			32%			37%

* After three attempts at auction.

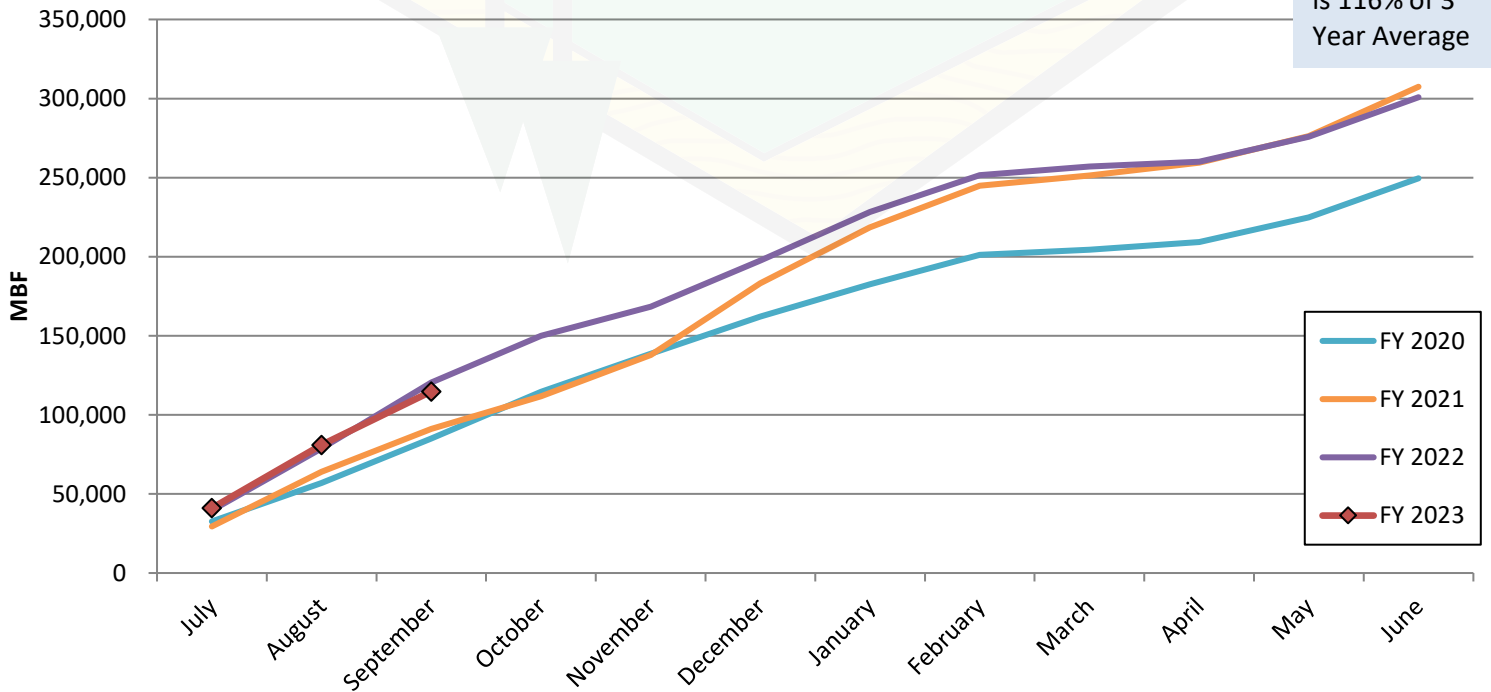
Cumulative Harvest Receipts

Current FYTD
is 107% of 3
Year Average

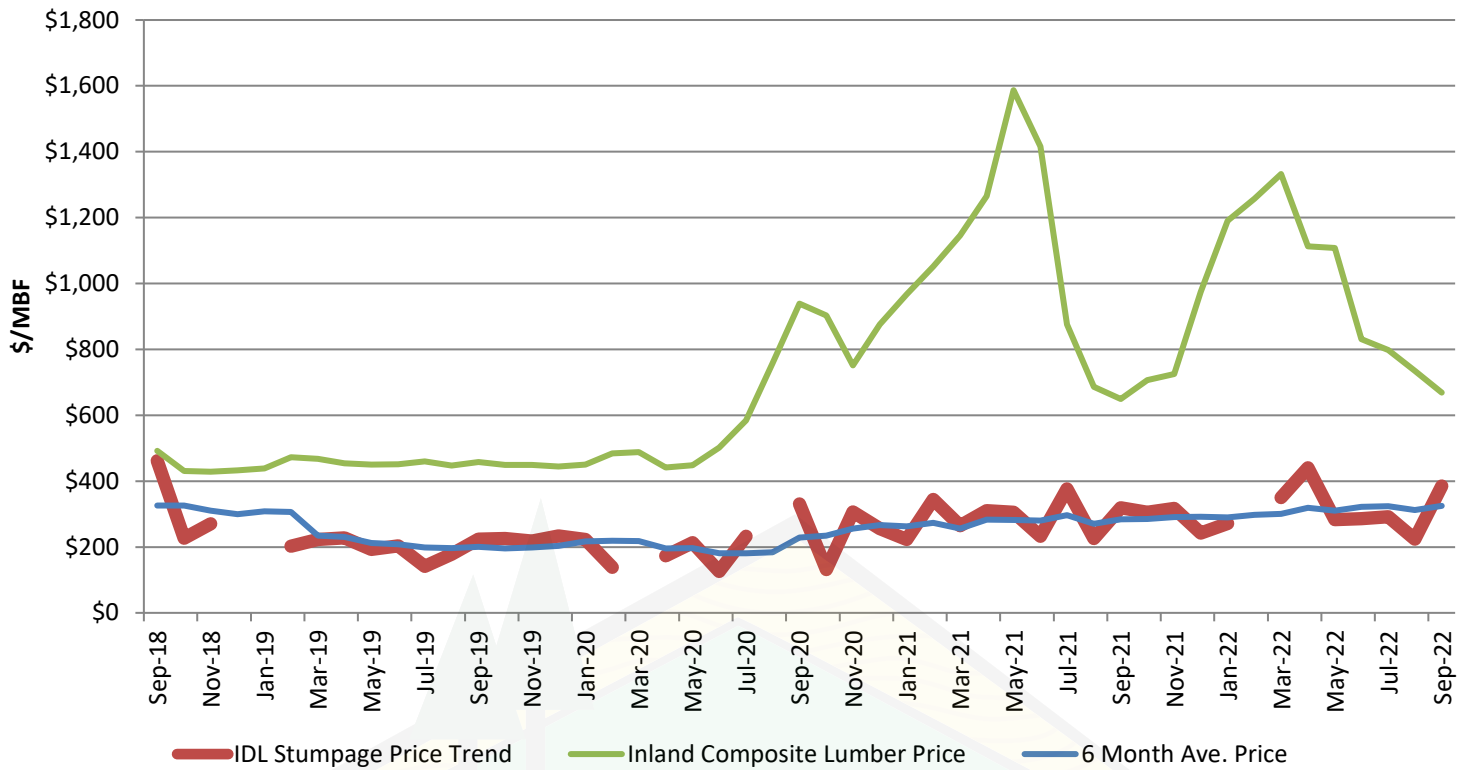


Cumulative Harvest Volume

Current FYTD
is 116% of 3
Year Average



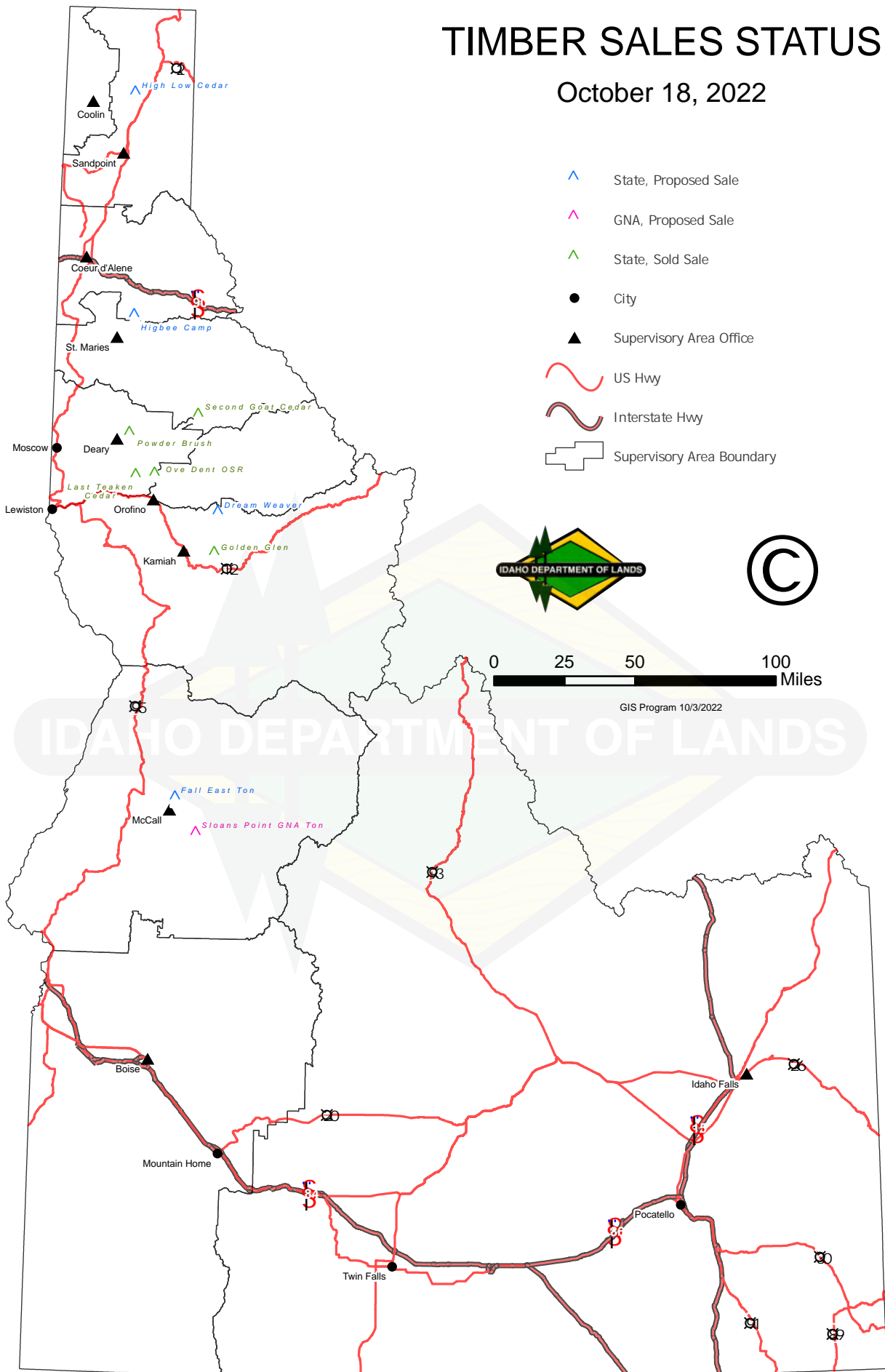
Monthly Lumber and Stumpage Price



September 2022 6-month average price is \$324.97.
September 2021 6-month average price was \$284.50.

TIMBER SALES STATUS

October 18, 2022



STATE BOARD OF LAND COMMISSIONERS

October 18, 2022
Endowment Transactions

Leases and Permits

FISCAL YEAR 2023 – LEASING & PERMITTING TRANSACTIONS BY MONTH – through September 30, 2022													
ACTIVITY	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	FYTD
SURFACE													
Agriculture	-	1	-										1
Assignments	-	-	-										0
Communication Sites	-	-	-										0
Assignments	1	2	-										3
Grazing	-	-	-										0
Assignments	3	2	-										5
Residential	-	4	-										4
Assignments	-	-	-										0
COMMERCIAL													
Alternative Energy	-	-	-										0
Industrial	-	-	-										0
Military	-	-	-										0
Office/Retail	1	-	-										1
Recreation	-	-	-										0
OTHER													
Conservation	-	-	-										0
Geothermal	-	-	-										0
Minerals	2	2	1										5
Assignments	1	-	-										1
Non-Comm Recreation	-	-	-										0
Oil & Gas	-	-	-										0
PERMITS													
Land Use Permits	6	5	4										15
TOTAL INSTRUMENTS	14	16	5	0	0	0	0	0	0	0	0	0	35

Real Estate

FISCAL YEAR 2023 – REAL ESTATE TRANSACTIONS BY MONTH – through September 30, 2022													
ACTIVITY	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	FYTD
Deeds Acquired	-	-	-										0
Deeds Granted	-	-	5										5
Deeds Granted - Surplus	-	-	-										0
Easements Acquired	-	1	-										1
Easements Granted	2	1	-										3

Notes

[Avimor Land Exchange](#) - Working on final PSA and review/approval of state deeds.
[Brisbie Land Exchange](#) - Public outreach in progress; title commitment under review.
[Deeds Granted](#) - Cottage Site: 3 VAFO and 2 ULA lots.

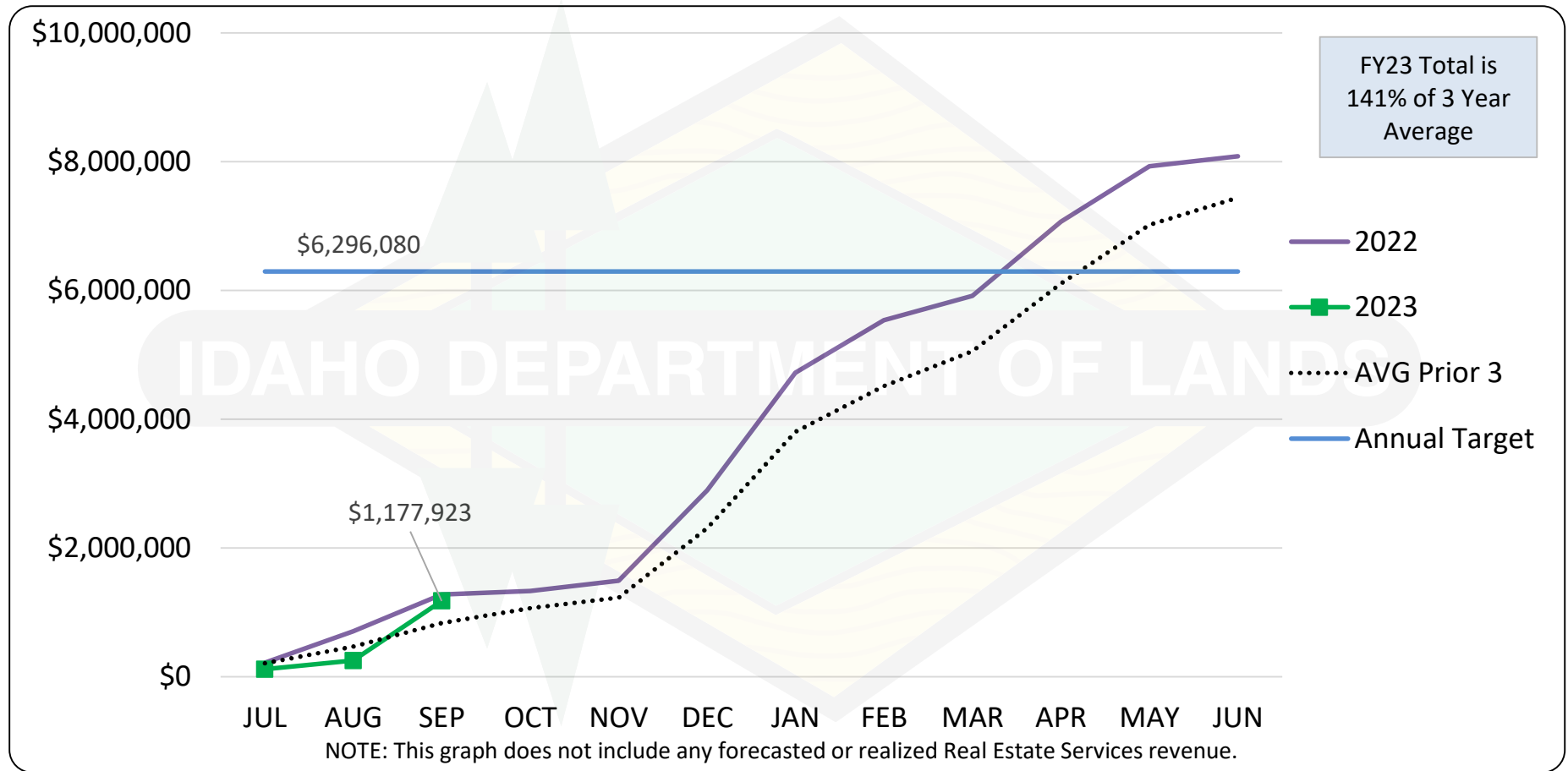
TRUST LAND MANAGEMENT DIVISION
FY2023 GROSS REVENUE (non-timber) - ACTUAL AND FORECASTED
through September 30, 2022

	ACTUAL RECEIPTS AS OF 09.30.2022	REVENUE EXPECTED BY 09.30.2022**	REVENUE EXPECTED BY 06.30.2023
SURFACE			
AGRICULTURE	\$ 550	\$ -	\$ 505,000
COMMUNICATION SITES	\$ 77,704	\$ 114,510	\$ 1,009,239
GRAZING	\$ 36,204	\$ 4,000	\$ 1,870,000
RESIDENTIAL	\$ (18,703)	\$ 319	\$ 1,095,851
COMMERCIAL			
COMMERCIAL ENERGY RESOURCES	\$ -	\$ -	\$ 47,763
COMMERCIAL INDUSTRIAL	\$ 6,962	\$ 8,211	\$ 74,504
COMMERCIAL MILITARY	\$ 250	\$ -	\$ 91,117
COMMERCIAL OFFICE/RETAIL	\$ 585,964	\$ 48,978	\$ 527,352
COMMERCIAL RECREATION	\$ 471,912	\$ 60,140	\$ 899,978
OTHER			
CONSERVATION LEASES	\$ 500	\$ -	\$ 65,000
GEOTHERMAL	\$ (6,339)	\$ -	\$ -
MINERAL	\$ 20,766	\$ 1,943	\$ 105,403
OIL AND GAS LEASES	\$ 2,152	\$ 550	\$ 4,874
Sub Total	\$ 1,177,923	\$ 238,651	\$ 6,296,081
*REAL ESTATE SERVICES			
	\$ 119,310		
Grand Total	\$ 1,297,233		

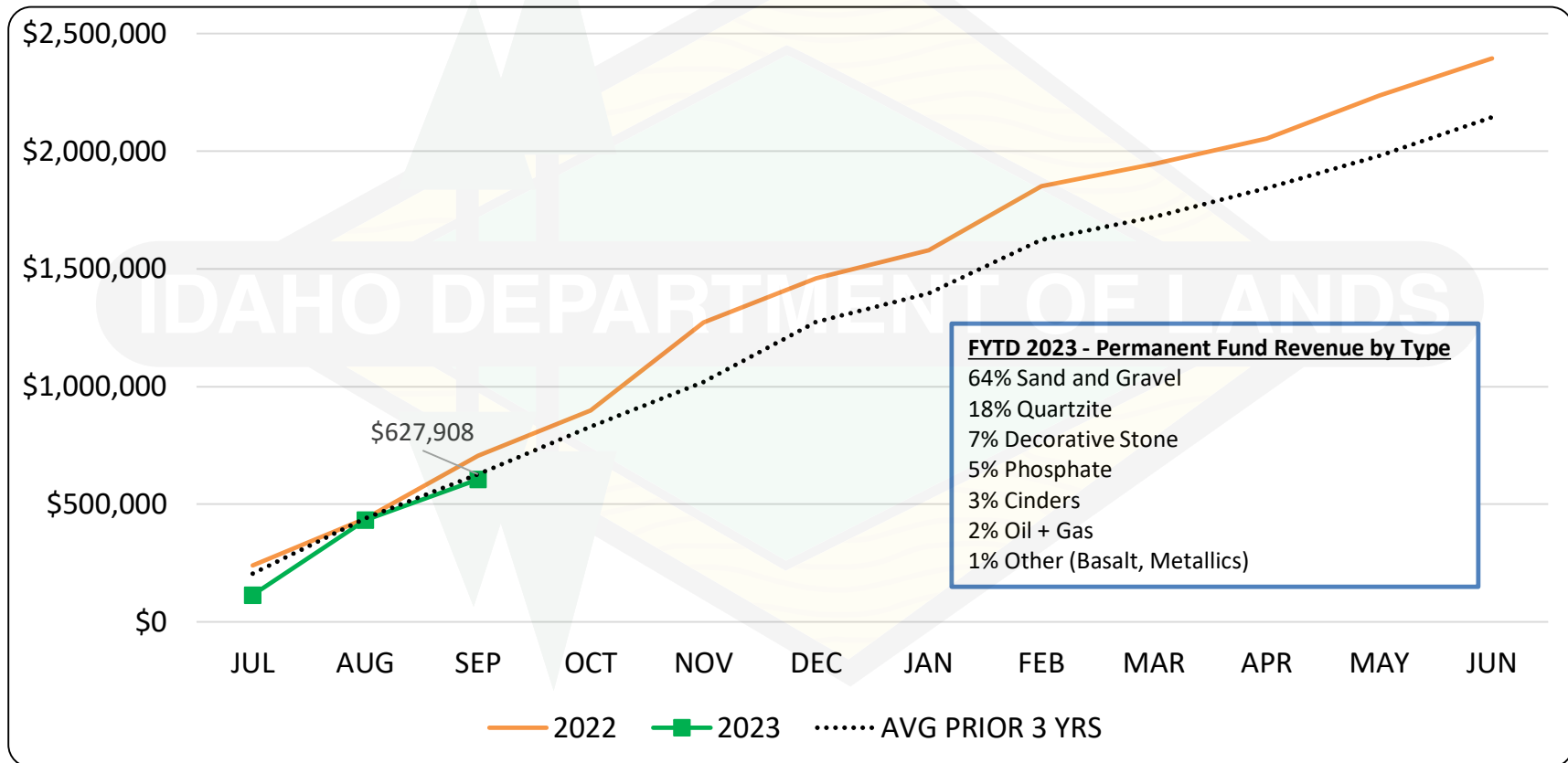
* This category is not included in the annual forecast.

** 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

October 18, 2022

Department Report

Subject

Fire Season Update

Background

As of October 11, Emergency Fire Suppression expenditures are estimated to be \$25,700,000. The Suppression Account will recover an estimated \$8,560,000 of reimbursable costs, for a net obligation of \$17,140,000. The total obligation includes the 2022 contracted aircraft costs and prepositioned contract engines that assisted with resource scarcity. These engines were assigned across the state to boost initial attack resources.

Discussion

As shown by the table below, fire occurrence to date for 2022 is 95 percent of the 20-year average, while the acres burned is 18 percent of the 20-year average.

Fire Season Comparison to Date

Number of Fires				
Year	Human	Lightning	Total	Acres
2019	137	94	231	1,436
2020	190	50	240	6,879
2021	240	155	395	141,997
2022	128	153	281	4,629
20 Yr. Average			296	25,107

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

September was warmer and drier than average which led to increased active fire behavior. Idaho is currently in moderate to high fire danger. No season ending event is forecasted. Fire danger is expected to be average for the remainder of October. All statewide fire restrictions have been lifted. However, fire managers are looking at the weather and forecasts very closely to determine if extension of closed fire season is needed in certain areas of the state.

Total Acres Burned by Ownership	
10/11/2022	
Surface Owner	Acres
Idaho Department of Lands	6,754
Other State Lands	121
Private	30,832
Bureau of Land Management	53,322
Other Federal	14,882
U.S. Forest Service	309,086
Total Acres	414,997

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	\$390,000	5 Contract engines to boost IA statewide, 8/1/2022 – 9/15/2022
IDL Team Fires	\$4,550,000	Lions Roar (PLS), Quinn (CMS), Prospect (PDS)
IDL Non-Team Fires	\$4,300,000	IDL/Assn fires including pre-positioning
Other Suppression	\$4,900,000	Coeur d'Alene Cache, Dispatch
Other Suppression	\$8,560,000	Reimbursable (IDL and Fire Department resources supporting non-IDL fires)
Total Estimate YTD	\$25,700,000	

Suppression Spending History

Fire Season Estimated Costs from Annual Reports			
	Idaho Fire Suppression Costs	Reimbursable	Idaho Obligation
2019	\$ 13,600,000	\$ 2,100,000	\$ 11,500,000
2020	\$ 28,500,000	\$ 3,100,000	\$ 25,400,000
2021	\$ 74,600,000	\$ 7,200,000	\$ 67,400,000
2022	\$ 25,700,000	\$ 8,560,000	\$ 17,140,000

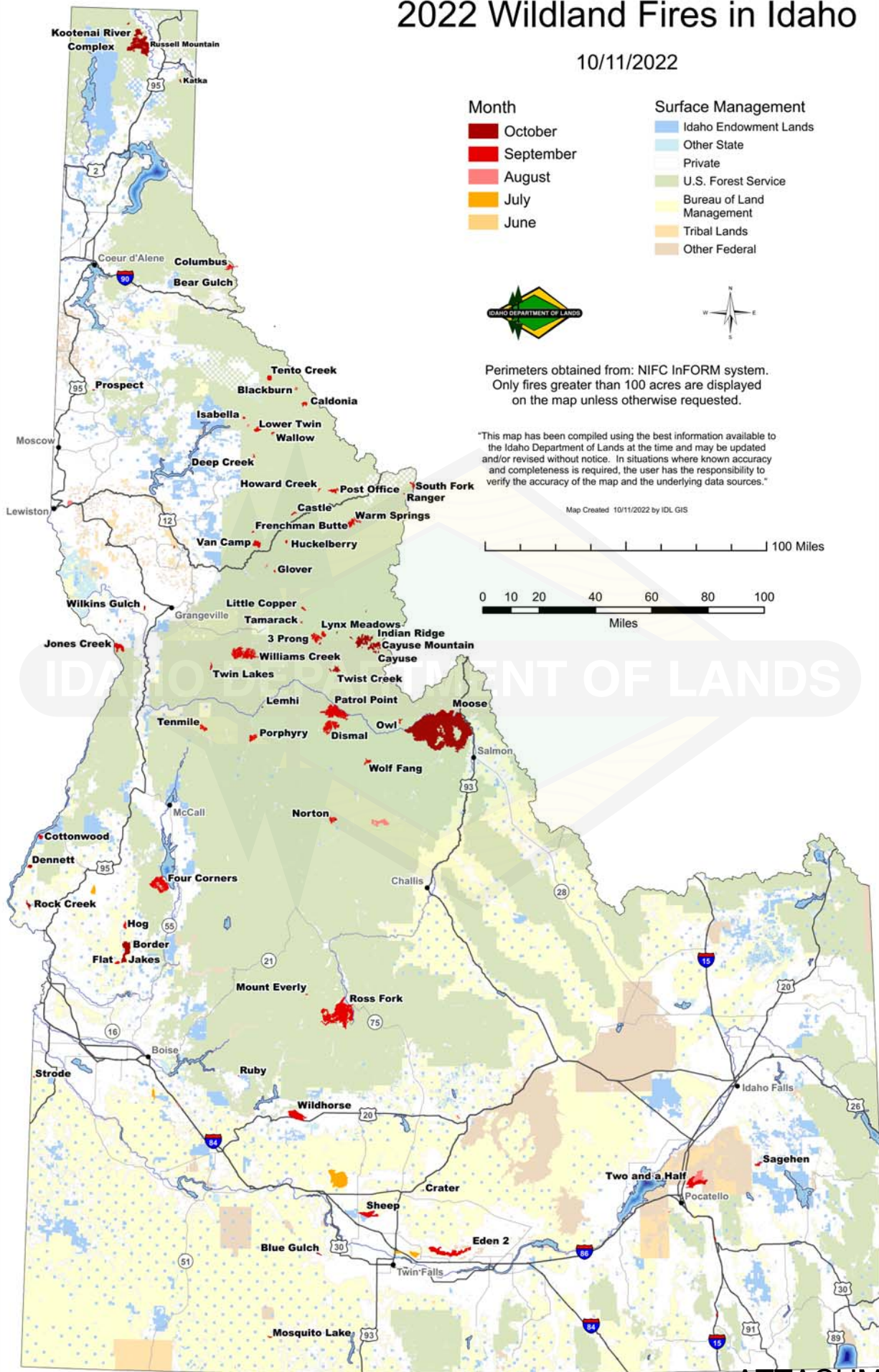
Numbers for 2022 are YTD.

Attachments

1. Map – Significant Fires Throughout Idaho

2022 Wildland Fires in Idaho

10/11/2022



LAND BANK AGING REPORT							
Current Remaining Principal Balance By Quarter Received - As of September 30, 2022							
FY Quarter IN	Public School	Agriculture College	Normal Schools	State Hospital South	University of Idaho	All Endowments	FY Quarter EXPIRES
2019-01	\$ -	\$ -	\$ 2,428,000	\$ 1,442,000	\$ -	\$ 3,870,000	2024-01
2019-02	\$ 25,121,760	\$ -	\$ -	\$ -	\$ -	\$ 25,121,760	2024-02
2019-03	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	2024-03
2019-04	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	2024-04
2020-01	\$ -	\$ -	\$ 2,582,500	\$ 1,670,000	\$ -	\$ 4,252,500	2025-01
2020-02	\$ 12,793,400	\$ -	\$ -	\$ -	\$ -	\$ 12,793,400	2025-02
2020-03	\$ 866,000	\$ -	\$ -	\$ -	\$ -	\$ 866,000	2025-03
2020-04	\$ 52,134	\$ -	\$ -	\$ -	\$ -	\$ 52,134	2025-04
2021-01	\$ 5,159,720	\$ -	\$ -	\$ -	\$ -	\$ 5,159,720	2026-01
2021-02	\$ 6,595,000	\$ -	\$ -	\$ -	\$ -	\$ 6,595,000	2026-02
2021-03	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	2026-03
2021-04	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	2026-04
2022-01	\$ 1,500,720	\$ -	\$ -	\$ -	\$ -	\$ 1,500,720	2027-01
2022-02	\$ 10,140,720	\$ 23,250,000	\$ -	\$ -	\$ -	\$ 33,390,720	2027-02
2022-03	\$ 9,890,500	\$ -	\$ -	\$ -	\$ -	\$ 9,890,500	2027-03
2022-04	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	2027-04
2023-01	\$ 6,125,000	\$ -	\$ -	\$ -	\$ -	\$ 6,125,000	2028-01
TOTAL PRINCIPAL REMAINING	\$ 78,244,954	\$ 23,250,000	\$ 5,010,500	\$ 3,112,000	\$ -	\$ 109,617,454	

LAND BANK CASH BALANCE (with Interest)	\$ 79,770,279	\$ 23,373,618	\$ 5,375,119	\$ 3,427,779	\$ 5,603	\$ 111,952,398
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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 September 30, 2022

Month: -7.1% Fiscal year: -4.4%

The broad sell-off in financial markets carried over from the end of August as central banks delivered outsized interest rate hikes and signaled more increases are forthcoming to combat inflation. Global equity markets fell 9.5% in September and are down over 25% calendar year-to-date. Rising borrowing rates and a very strong dollar have tightened financial conditions and harmed economic activity around the world. Manufacturing activity is contracting and real estate prices have stalled as mortgage rates nearly doubled. Higher interest rates are beginning to have an impact, but despite initial signs of slowing the U.S. economy has generally remained resilient. Only time will tell if central banks can cure the cancer without impairing the health of the patient.

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

Preliminary Report (Land Grant Fund)

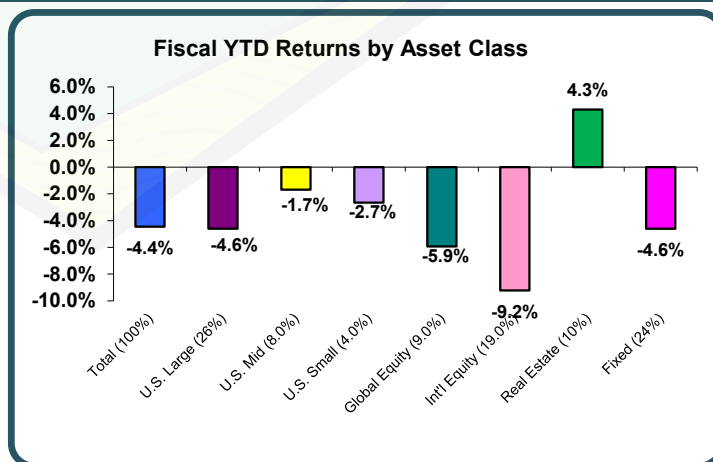
September 30, 2022

	Month	FYTD
Beginning Value of Fund	2,783,608,178	\$ 2,723,562,805
Distributions to Beneficiaries	(8,359,583)	(25,328,749)
Land Revenue net of IDL Expenses	16,175,874	19,279,700
Change in Market Value net of Investment Mgt. Expenses	(205,452,471)	(131,541,759)
Current Value of Fund	\$ 2,585,971,997	\$ 2,585,971,997

	Current Month	Calendar Y-T-D	Fiscal Y-T-D	One Year	Three Year	Five Year	Ten Year
Gross Returns							
Total Fund	-7.1%	-20.4%	-4.4%	-17.0%	4.2%	5.3%	7.2%
Total Fund Benchmark*	-6.9%	-19.2%	-4.8%	-15.1%	3.5%	4.6%	6.8%
Total Fixed	-4.4%	-14.9%	-4.6%	-14.6%	-2.8%	0.0%	0.9%
BBG U.S. Agg. (Ag)	-4.3%	-14.3%	-4.8%	-14.0%	-2.6%	0.1%	0.9%
Total Equity	-9.2%	-26.6%	-5.7%	-22.3%	5.8%	6.5%	9.3%
57% R3 29% Ax 14% AC	-9.5%	-25.3%	-6.4%	-20.2%	4.5%	5.3%	8.6%
Domestic Equity	-8.9%	-24.8%	-3.8%	-20.2%	7.7%	8.5%	11.4%
Russell 3000 (R3)	-9.3%	-24.6%	-4.5%	-17.6%	7.7%	8.6%	11.4%
Global Equity	-8.5%	-27.6%	-5.9%	-22.3%	5.5%	5.8%	6.7%
MSCI ACWI (AC)	-9.6%	-25.6%	-6.8%	-20.7%	3.7%	4.4%	7.3%
Int'l. Equity	-10.0%	-29.4%	-9.2%	-26.5%	2.0%	2.9%	5.2%
MSCI ACWI ex-US (Ax)	-10.0%	-26.5%	-9.9%	-25.2%	-1.5%	-0.8%	3.0%
Real Estate			4.3%	24.5%	11.1%	9.3%	
NCREIF ODCE Index (OD)			4.5%	28.3%	11.7%	9.6%	

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

	Mkt Value	Allocation
Domestic Equity	\$ 958.2	37.1%
Large Cap	644.8	24.9%
Mid Cap	210.0	8.1%
Small Cap	103.3	4.0%
Global Equity	231.2	8.9%
Int'l Equity	478.4	18.5%
Fixed Income	590.5	22.8%
Real Estate	310.1	12.0%
Cash	17.8	0.7%
Total Fund	\$ 2,586.0	100.0%



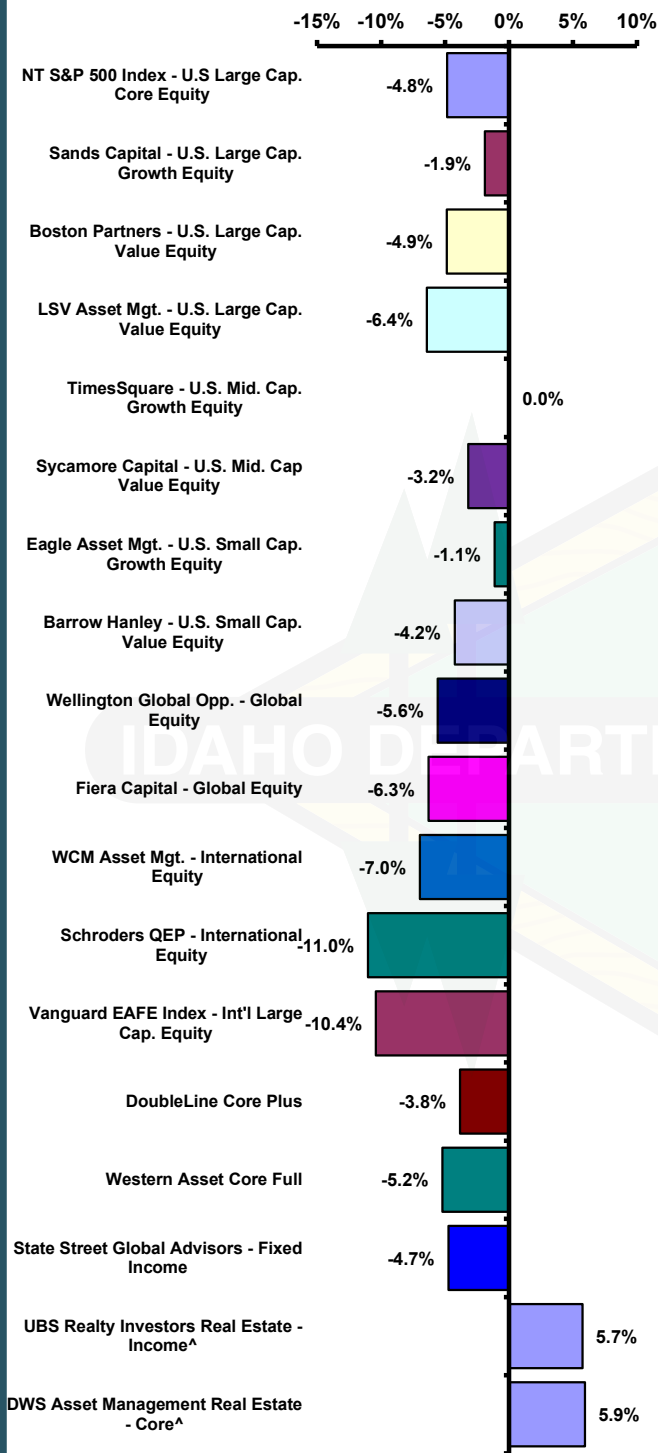
Endowment Fund Staff Comments:

The broad sell-off in financial markets carried over from the end of August as central banks delivered outsized interest rate hikes and signaled more increases are forthcoming to combat inflation. Global equity markets fell 9.5% in September and are down over 25% calendar year-to-date. Rising borrowing rates and a very strong dollar have tightened financial conditions and harmed economic activity around the world. Manufacturing activity is contracting and real estate prices have stalled as mortgage rates nearly doubled. Higher interest rates are beginning to have an impact, but despite initial signs of slowing the U.S. economy has generally remained resilient. Only time will tell if central banks can cure the cancer without impairing the health of the patient.

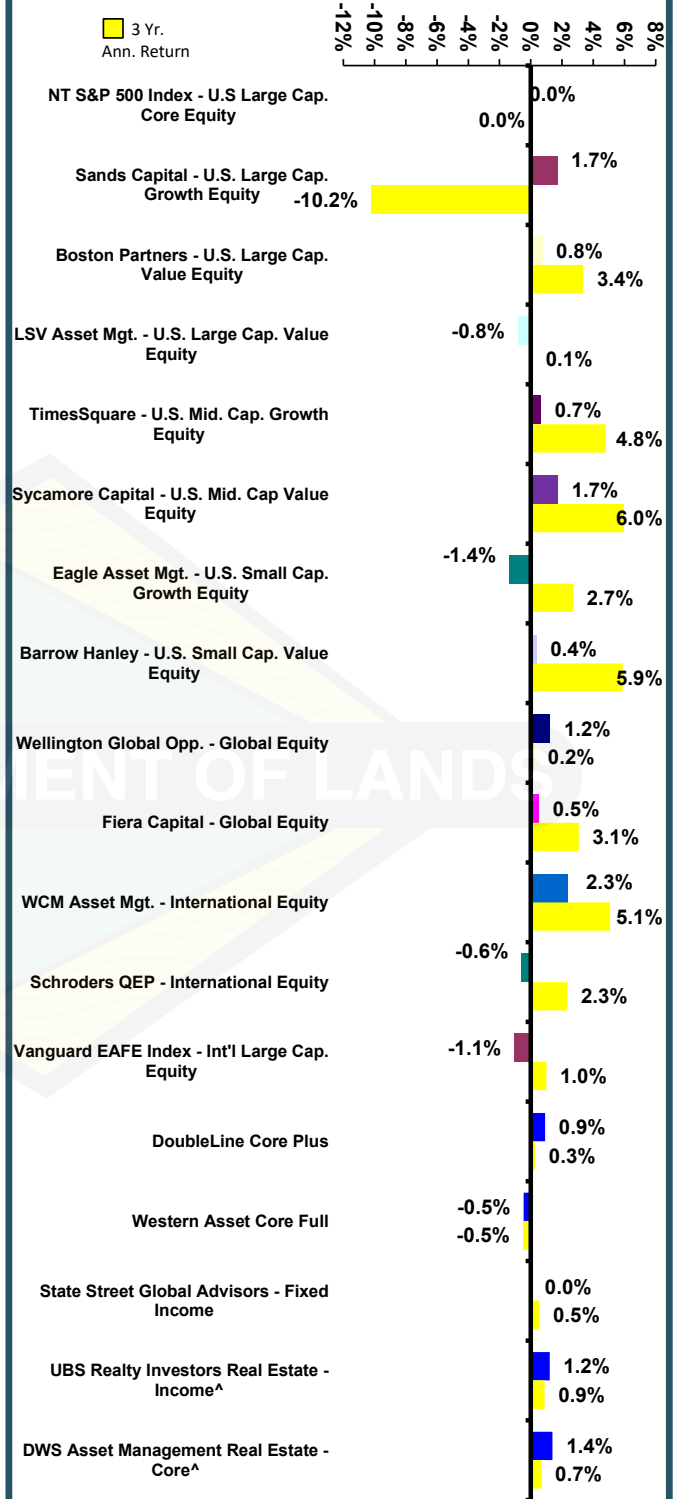
September 30, 2022

INVESTMENT REPORT

FYTD Manager Returns



Manager Relative Returns Fiscal YTD and 3-Yr Ave*



^ Most recent valuation.

STATE BOARD OF LAND COMMISSIONERS

October 18, 2022

Consent Agenda

Subject

Authorization to purchase one Forest Legacy Program conservation easement, known as Hartland, comprising 166 acres of privately-owned forestland in Boundary County

Question Presented

Shall the Land Board authorize the Department to acquire the Hartland conservation easement?

Background

- The Idaho State Board of Land Commissioners authorizes the Idaho Department of Lands to acquire such interests by voluntary, cooperative means and to create a conservation easement pursuant to Idaho Code Title 55, Chapter 21.
- The Cooperative Forestry Assistance Act (the "Act") of 1978 (16 U.S.C. 2101 et. seq.), as amended by Section 1217 and Title XII of the Food, Agriculture, Conservation Trade Act of 1990 (16 U.S.C. 2103c), established the federal Forest Legacy Program to protect environmentally important forestlands threatened with conversion to non-forest use.
- The Forest Legacy Program is funded through the Land and Water Conservation Fund, which was established by Congress in 1965, in part, to assist states in conserving vital working lands, wildlife habitats, and outdoor recreation. These are not taxpayer dollars, but a small portion of the royalties paid by energy companies drilling for oil and gas on public land on the Outer Continental Shelf.

Discussion

The Forest Legacy Program (FLP)—a federal program in partnership with states—seeks to keep working forests working (Attachment 1 - FLP Fact Sheet). Through a federal grant, Idaho's FLP purchases conservation easements (CEs) on private forestlands that might otherwise be converted to non-forest uses. Idaho's FLP CEs are designed to conserve the economic and environmental values that forestlands provide without removing the property from private ownership.

The FLP is an entirely voluntary program that offers willing landowners the opportunity to capture part of the "development value" of their land while receiving assurance that the forestland will remain a working forest forever. Idaho's FLP CEs restrict development and subdivision, require sustainable forestry practices through the implementation of a Forest Stewardship Plan, and protect other environmental values. Federal grant funds provide up to 75% of the program costs for the purchase of CEs on private forestlands with a 25% non-federal match requirement. Eligible program costs include conservation easement value as well as associated due diligence expenses. Eligible non-federal cost-share includes fully donated CEs, bargain sale CEs, in-kind services, and non-federal cash contributions.

The Hartland CE is part of the federal FY2019 Boundary Connections 2 FLP Project (Attachment 2 - Map). This is one of six tracts in this project; four have already closed. Hartland LLC wishes to convey this CE to the Department to conserve this forestland in perpetuity, thereby protecting the economic and environmental values while keeping the property in private ownership. This CE acquisition will be a bargain sale in which the 25% non-federal match will consist of donated easement value. The table below summarizes the conservation easement costs.

Landowner	Appraised CE Value	Landowner Donation	FLP Contribution
Hartland LLC	\$365,000	\$91,250	\$273,750

The Hartland conservation easement is consistent with the goals and objectives of Idaho's FLP and will protect the following significant conservation values:

- **Timber:** Idaho's Forest Action Plan identifies the area where the project lands are located as one of the highest priority areas for forestland protection in the state. According to Boundary County's Comprehensive Plan, the harvest of timber and other products from forestland in Boundary County is essential to the local economy.
- **Wildlife Habitat:** Project lands contain some of the most valuable wildlife habitat in Idaho, supporting an abundant assortment of game and non-game species including federally-listed threatened species such as grizzly bear and Canada lynx.
- **Landscape Scale Conservation Impact:** The Boundary Connections 2 project is located in an area of high conservation priority. Over twenty existing FLP conservation easements are located within 10 miles of this property.

The project has garnered broad public support by various public and private entities (Attachment 3 - Public Support). These forestlands have substantial and significant conservation and economic values that are of great importance to the people of Idaho. The protection of these values will yield a significant public benefit.

Recommendation

Authorize the Department to acquire the Hartland conservation easement.

Board Action

Attachments

1. Forest Legacy Program Fact Sheet
2. Map
3. Public Support



Forest Legacy Program

Fact Sheet

The Forest Legacy Program (FLP) is a program that seeks to protect privately owned, economically and environmentally important forestlands that are threatened by conversion to non-forest uses. FLP is a voluntary program that, through the purchase of conservation easements, operates on the “willing buyer, willing seller” principle. Lands covered by a FLP conservation easement stay in private ownership and continue to be managed for traditional uses such as forest management.

1. What is a conservation easement?

A legal instrument through which certain rights, such as subdivision and development, are transferred from a landowner to a non-profit organization or government agency.

The grantee organization does not gain the right to subdivide or develop; rather, it holds those restrictions “in trust” and ensures that no one uses the rights restricted by the grantor.

A conservation easement is perpetual and runs with the land. Idaho Code Title 55, Chapter 21 is Idaho’s Uniform Conservation Easement Act.

2. Where does FLP funding come from?

- Federal FLP grant funds **are not** tax-payer dollars.
- FLP is funded through the Land and Water Conservation Fund (LWCF), which was established in 1965, in part, to assist states in conserving vital working lands, wildlife habitats and outdoor recreation.
- Each year, a small percentage of royalties paid by energy companies drilling for oil and gas on public land on the Outer Continental Shelf is deposited into the LWCF account in the federal treasury. The premise of LWCF is essentially to protect one natural resource in exchange for the depletion of another.
- The U.S. Forest Service (USFS) administers the program at the national level and provides grants from LWCF to states to carry out the FLP.

3. What qualifies projects for consideration?

- Meets FLP’s primary objective to keep working forests working
- 75% forested
- Privately owned
- Includes a minimum 25% non-federal match
- Must be within a Priority Landscape Area as identified in Idaho’s Forest Action Plan
- Must be carried out in partnership with another state agency or land trust organization

4. How are projects evaluated and selected?

- Projects are evaluated using the following criteria:
 - Importance: criteria reflect the environmental, economic and social values the forest provides
 - Threat: criteria evaluate the likelihood of conversion from forest to non-forest uses that would result in a loss of forest values and public benefits
 - Strategic: criteria reflect the relevance to conservation efforts in a broader perspective (contributes to a conservation strategy and complements other intact forests)
- Projects are evaluated and ranked by a national review panel in Washington DC. The review panel, comprised of 6 state agency representatives and 6 USFS representatives from across the U.S., is tasked with ranking all projects submitted nationwide.

5. How are conservation easement values determined?

- A conservation easement purchase price is determined by an appraisal which conforms to the guidelines of two professional appraisal standards: the Uniform Standards of Professional Appraisal Practice (USPAP) and the Uniform Appraisal Standards of Federal Land Acquisitions (UASFLA or “Yellow Book”). Prior to the acquisition, the FLP requires an independent appraisal review.
- Appraisers meet rigorous private and federal appraisal standards, education, and training and must have considerable experience appraising projects of the same type and complexity.

6. How are federal funds conveyed for Forest Legacy acquisitions?

- Federal funds are directly distributed by the USFS to a title company that handles the closing transaction and recording of the conservation easement.
- The federal funding used to purchase a conservation easement cannot be higher than the appraised fair market value.

7. Who holds title to the FLP easement?

The State of Idaho

8. How do conservation easements impact property taxes?

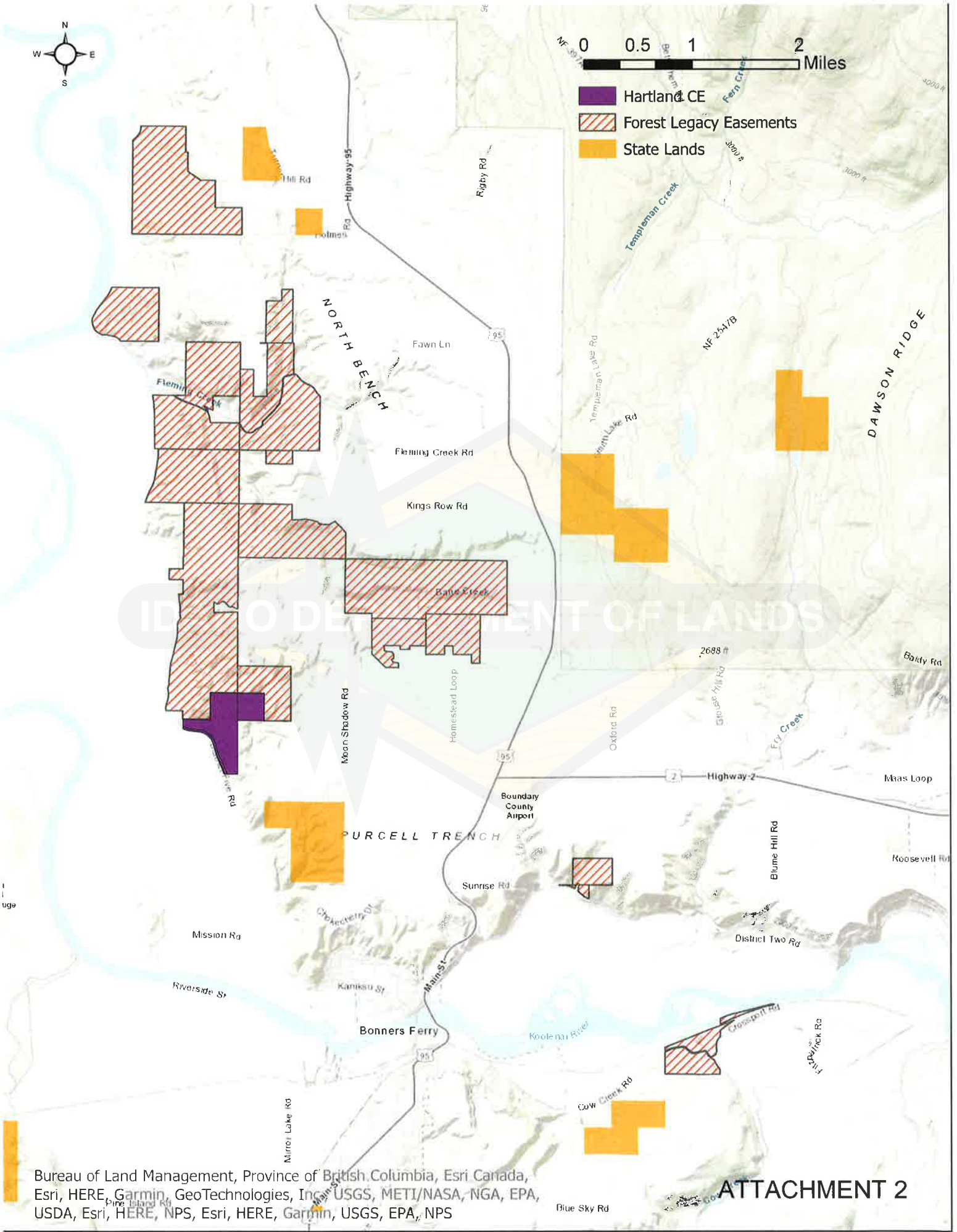
The property is still in private ownership and taxed as such. Current property taxes are not impacted.

9. Do these FLP conservation easement acquisitions result in any impact on the state general fund?

No. Project funds are allocated directly from the USDA Forest Service for the conservation easement purchase. No general fund dollars are used for the acquisition, nor are they used to fund administration of the Idaho FLP.

For more information, visit:

<http://www.idl.idaho.gov/forestry/forest-legacy-program>



Bureau of Land Management, Province of British Columbia, Esri Canada, Esri, HERE, Garmin, GeoTechnologies, Inc., USGS, METI/NASA, NGA, EPA, USDA, Esri, HERE, NPS, Esri, HERE, Garmin, USGS, EPA, NPS

Public Support of the FY2019 Boundary Connections 2 Project in Boundary County

The following local, state and federal government agencies and local, state and regional conservation organizations provided written letters in support of the purchase of a conservation easement on the Boundary Connections 2 project lands:

- Former Idaho State Senator Shawn Keough
- City of Bonners Ferry
- US Fish & Wildlife Service
- US Forest Service – Idaho Panhandle National Forest
- Bureau of Land Management
- Idaho Department of Fish and Game
- Idaho Forest Owners Association
- Idaho Forest Group
- Foust Logging, Inc.
- Yellowstone to Yukon Conservation Initiative
- Vital Ground Foundation
- Inland NW Land Conservancy
- FY2010 Bane Creek FLP landowners
- FY2012 Boundary Connections 1 FLP landowners
- FY2016 Kootenai Valley FLP landowners

The Boundary County commissioners received a project update on 11/02/2021. As with recent FLP projects, they have stated they continue to remain neutral regarding Forest Legacy projects in Boundary County. Two commissioners are very receptive to conservation easements because they do not like the current immigration/land fragmentation. In general, the commissioners view conservation easements as private property rights that do not warrant government interference.

STATE BOARD OF LAND COMMISSIONERS

October 18, 2022

Consent Agenda

Subject

DI800275, Disclaimer of Interest for the former bed of the Henrys Fork of the Snake River, Fremont County, Idaho.

Question Presented

Shall the Land Board approve Disclaimer of Interest DI800275?

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

Stillwater Holdings LLC has applied for a disclaimer of interest for one parcel of accretion land totaling 0.84 acres, more or less. This parcel is located within the original surveyed river meander lines of the Henrys Fork of the Snake River adjacent to the applicant's deeded property in Government Lot 2, Section 32, Township 8 North, Range 41 East (Attachment 1-Map).

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

Stillwater Holdings LLC 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 Henrys Fork of the Snake River.

Recommendation

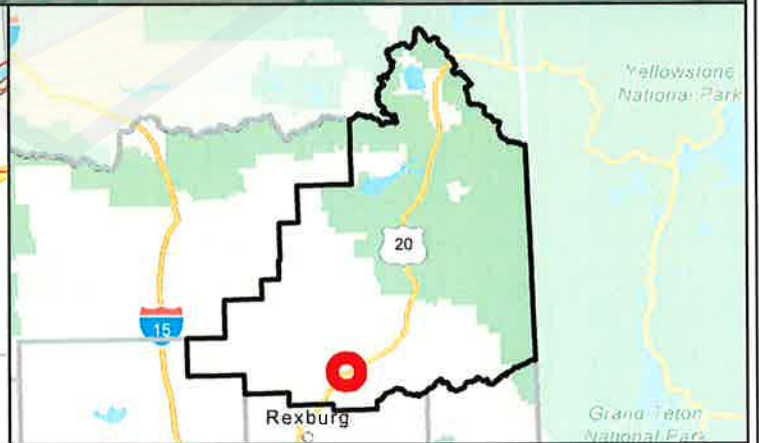
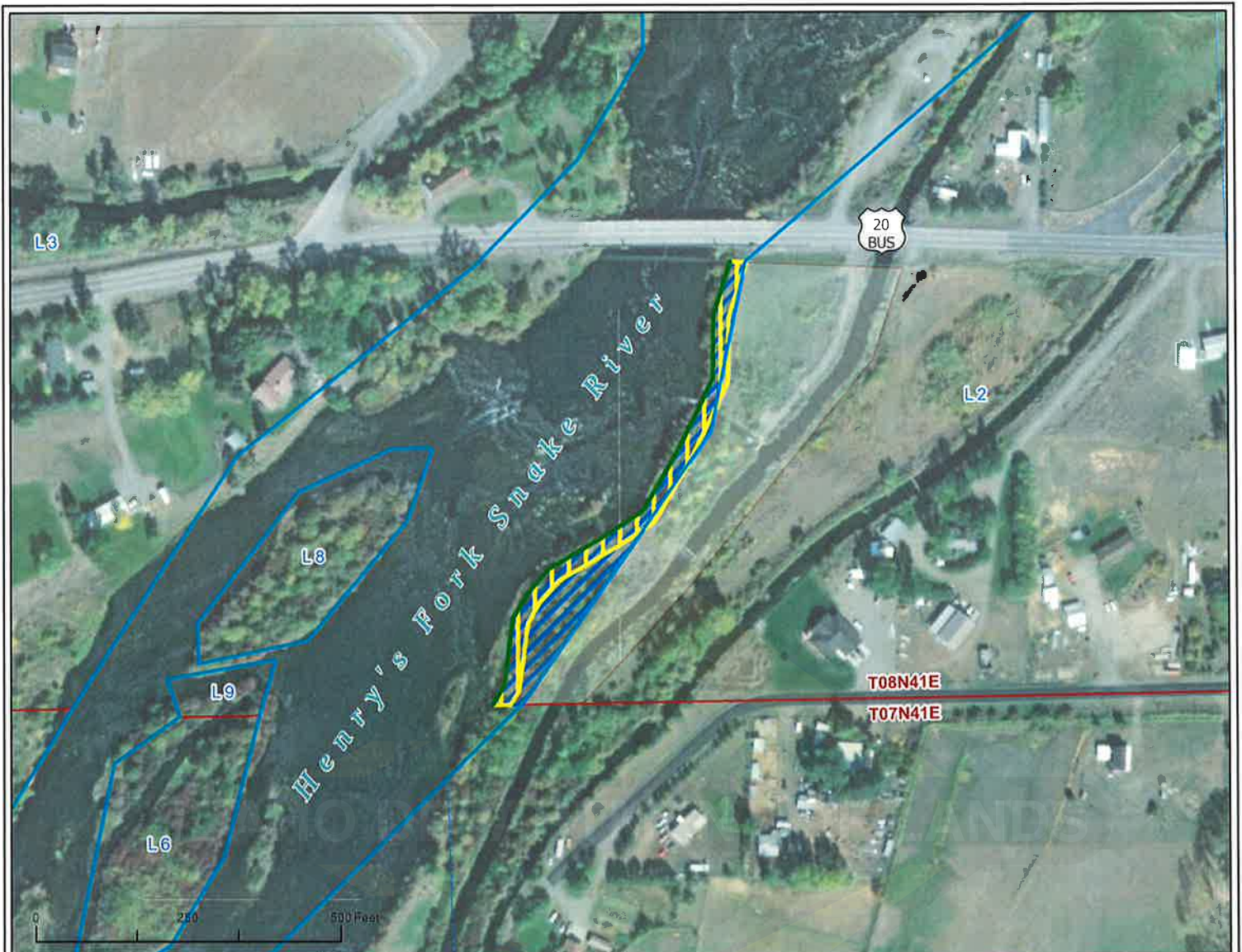
Direct the Department to issue a Disclaimer of Interest for one parcel totaling 0.84 acres of the former bed of the Henrys Fork of the Snake River, to Stillwater Holdings LLC following their payment to the Department of the remaining processing fee of \$300.

Board Action

Attachments

1. Map





- Meander Line
- Ordinary High Water Mark
- Access Easement
- Disclaimed BY State
- Township
- Section
- Subsection

DI800275

Stillwater Holdings LLC
Sec 32 - T08N - R41E

9/14/2022



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.

Vicinity Map





Idaho State Board of Land Commissioners

Brad Little, Governor and President of the Board

Lawrence E. Denney, Secretary of State

Lawrence G. Wasden, Attorney General

Brandon D. Woolf, State Controller

Sherri Ybarra, Superintendent of Public Instruction

Dustin T. Miller, Secretary to the Board

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

Draft Minutes

State Board of Land Commissioners Regular Meeting

September 20, 2022

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, September 20, 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 State Controller Brandon Woolf

Honorable Superintendent of Public Instruction Sherri Ybarra

Three Land Board members were present at the physical location; Secretary of State Denney and Attorney General Wasden were absent.

For the record, a motion was made by Controller Woolf to amend the agenda pursuant to Idaho Code § 74-204(4)(c) to remove agenda item 8, the Cottage Site Leasing 2025 Plan. Controller Woolf explained his reason for this amendment and motion is to have more time to consider the issue and allow the Department to provide additional information to the Land Board. Superintendent Ybarra seconded the motion. The motion carried on a vote of 3-0.

Director Miller recognized seven Department employees, from various area offices around the state. These individuals are in Boise participating in an onboarding event which includes experiencing a Land Board meeting. Director Miller asked them all to stand and thanked everyone for being here.

[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 – August 2022

B. Leases and Permits – August 2022

Discussion:

Controller Woolf: Back on page one at the very top on the timber sales you talk about the third and final attempt for a salvage sale that did not sell. Are you able to learn or gain some feedback from the market, from the loggers, the owners...what is taking place and what can we do on this?

Director Miller: Governor and Controller Woolf, after a third sale we take a look at that, we work with potential purchasers, understand what the concerns were. Our foresters have this dialed in very well. I believe we will try a direct sale on moving this volume. After the third attempt, we have limited options. In order to recoup some value and remove that wood, we will be having conversations about likely moving forward with a direct sale on that particular sale.

Status Updates

C. Fire Season Report

Discussion:

Governor Little: Director, I met with the Chief [Randy Moore] last week on the negotiations that your team is having with the Forest Service on cost share. It sounds like they are going to move the deadline out, but they were fairly complimentary about the negotiations; you are doing a good job. Are we and Montana the only states that do not have a final agreement?

Director Miller: Yes, Governor that is correct. We had a long week with our federal partners at Forest Service and BLM, going through maps and working to get closer to an agreement on how we trade acres that is more equitable and works for all agencies. I am very optimistic with how things are going so I appreciate your assistance.

Governor Little: The net of this is had the Department not engaged in this negotiation, we would have firefighters passing each other, Forest Service going to one fire and us going to another fire which would not have looked very good. I cannot believe these other states have acquiesced. For the Board members' awareness, it is the result of an audit in California that was not necessarily applicable to Idaho. Nice job on that.

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

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

Discussion:

Chris Anton: Governor and members of the Land Board, good morning. August was definitely a month of two very different halves. Financial markets started the month in positive territory as inflation appeared to have peaked. Corporate earnings and job openings remained resilient and prospects that the Federal Reserve could contain inflation quickly without pushing us into an inflation appeared plausible. Federal Reserve Chair Jerome Powell, however, in his speech in Jackson Hole, made it very clear that the Federal Reserve is committed to returning inflation to its 2% target, increasing interest rates – what they believed to be considered their long-term neutral rate to achieve this goal – and remaining at these restrictive interest rate levels for some time because history cautions strongly against premature loosening of policy. Financial markets sold off as it became increasingly clear that there was no quick or pain-free resolution to the

inflation problem. To give you a feel for the numbers, at one point the portfolio was up almost 9% around midmonth but we ended up down 3% during the month, which left us up 0.29% fiscal year-to-date. Through yesterday, we are up 1.3%; we are down slightly more than we were at the end of August. The Federal Reserve is expected to increase the federal funds rate by 0.75% to 3.25% when they conclude their two-day meeting tomorrow. We will see what Federal Reserve Chair Jerome Powell has to say. If you look at their dot plot, they are now expecting to increase rates to almost 4.5% by early 2023. They are certainly pushing the rates up hoping to get inflation under control. We have not seen a lot of evidence that inflation is coming down yet, but some elements of the economy are slowing. Overall, Governor, our reserves are still healthy, and we are well secured for our distributions in FY23.

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*

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.

Discussion: *Item 3 and item 4 discussion was held after presentation of item 4. See Discussion section for item 4, below.*

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

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.

Discussion:

Governor Little: Eric, do we record these easements at the county level?

Eric Wilson: We do, sir.

Governor Little: One of the items in this document says the threat of adverse possession, to my knowledge there is no adverse possession on public land. I do not think you can do adverse possession on public land.

Mr. Wilson: The Idaho Supreme Court in the Rutledge case determined that when lands have lost their public trust character, when they are now above the ordinary high water mark, they are subject to adverse possession at that point.

Governor Little: They are no longer public?

Mr. Wilson: Exactly.

Governor Little: Well, we will talk later. I think it takes action by us to change it to public land, but this is into the future. The other issue that I have asked before is does \$300 cover all our costs in these accreted lands.

Mr. Wilson: The initial application fee is \$300; at the end of the process, we look at our hours and add up what our total costs are, then they pay an additional minimum of \$300 or a greater sum. We do not issue the disclaimers until we get the final payment of \$300 or that additional sum. There is an Idaho Attorney General's opinion regarding disclaimers and easements and that lays out the justification and the reasoning why these disclaimers are the appropriate way to come to an agreement by the property owners on a property line. It is a boundary by agreement.

Controller Woolf: Eric, we almost see these monthly, what is the long-term plan. Is this up to each citizen as they come forward to say hey, I want to pay my \$300 to get my disclaimer of land. Is there a process or opportunity that the Department has talked about to handle this going forward?

Mr. Wilson: The current process that has been laid out since the 1980s is a voluntary process by the landowners when they want to clear up title, when they need to clear up their title to get a bank loan, or just to get that satisfaction of a cleared title. The Department of Lands has taken the long view in regard to these disclaimers and easements. The city of Boise greenbelt system has benefited from this approach. The greenbelt has been developed over more than 40 years and it is still expanding today. This has led the cities of Garden City and Eagle to develop their greenbelts and to connect to each other. The cities of Star and Fruitland, and others, are also working on greenbelts built in part on these easements. Predicting where the development, demand, and those community partners will all come together is a very difficult task. We take the long view; we reserve the easements that make these things possible at some point in the future when all of those things come together.

Governor Little: All of these that we have done since I have been on the Board, they have all been isolated somewhere where there was not any connectivity to them. The question is, and you do not have to answer this now, but can we expect every Land Board meeting for the next 50 years to have disclaimers of interest on all of the rivers of Idaho forever?

Mr. Wilson: Development pressures kind of drive the disclaimer process and right now there is a lot of building going on.

Governor Little: So, the answer is yes. *[laughter]*

Mr. Wilson: If Boise will stop winning most desirable city in the United States...

Governor Little: I do not know that Featherville is the most favorable city...

Mr. Wilson: There is a lot of spillover; we have an easement almost two miles long that is just a mile downstream of where these two easements are. There is an opportunity in the not too distant future that those could connect and then you would have almost 4 miles of greenbelt up in the Featherville area. It is not too far from Forest Service land, and I could see that being an amenity that would also attract people up in the forest.

Governor Little: Everybody has access to the navigable waters anyway, it is just where do they get to them.

Mr. Wilson: Those access points are critical, that is true.

Governor Little: At some point, we ought to have a policy discussion about how we handle these going forward, if there is a simpler way, what other states do, because you look at these maps of that parcel and that river has not been on that ground for a long, long time. Those parcels are adjacent to each other, and it makes me wonder how many more of these we are going to do.

Mr. Wilson: Potentially thousands, Governor.

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

Consent Agenda Board Action: A motion was made by Controller Woolf that the Land Board approve and adopt the Consent Agenda. Superintendent Ybarra seconded the motion. The motion carried on a vote of 3-0.

Regular—Action Item(s)

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

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

Discussion:

Controller Woolf: Welcome, Rhonda and thank you for your work. One quick question, were there any major changes from what the Department presented on August 16th at the last Board meeting compared to what was submitted to DFM?

Rhonda McFarland: Governor, Controller Woolf, there were no significant changes.

Board Action: A motion was made by Controller Woolf that the Land Board approve the Department's FY2024 budget request as submitted to the Division of Financial Management and Legislative Services Office on Wednesday, August 31, 2022. Superintendent Ybarra seconded the motion. For the record, Governor Little recused himself from this vote. The motion carried on a vote of 2-0.

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; Kent Nelson, General Counsel, UI; and Brian Foisy, Chief Financial Officer, UI

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.

Discussion:

Governor Little: Does that mean if a student enrolls at the University of Idaho, is engaged at this, that revenue all rolls through the CAFE and not through the University system or are we double counting that?

Brian Foisy: No, we would certainly receipt that tuition in the same place that we receive all other tuition revenues at the institution. They are unrestricted revenues, though, so that does give us the flexibility to apply those to the CAFE project.

Governor Little: Still sounds like you are double counting them, but that is okay.

Mr. Foisy: Well, we certainly will not spend twice.

Controller Woolf: Brian, if you could go back to page 12 on the slide deck; it is the financial analysis. The top part you have the \$29.9 million for improvements, construction bid and then, two more lines down, the buildings and offices. What is the difference of those, \$6 million set aside for the land, \$17.2 million for construction of the milk parlor; where does that \$17.2 million fit into this if you could help me out.

Mr. Foisy: Do we have access to exhibit B? [*technical issues encountered*] Well, I can give you the short answer, and I will just use my paper copies of the slides and work from there, but within the \$29.9 million total for improvements on the construction bid, that actually incorporates activity for phase 1 and phase 2; we would be selecting certain of the projects from that improvement/construction bid of \$29.9 million to establish the ownership for Land Board assets including the milking system, the milking parlor. [*Exhibit B located and displayed on screen*] It is quite small, but you can see phase 1 construction 2023, the first lettered item there, B, is the milking parlor as well as the land ownership for the two separate parcels.

Controller Woolf: Thank you. Brian, one of the things you shared previously with us was the cost of construction. With the market and where it is going right now, will the \$17.2 million fully cover the cost of the milking parlor, item B, or will it only cover a portion of it, based on where the bids come in. Help me understand how that will work for the Board.

Mr. Foisy: Obviously there is some estimation or projection going into this, Controller Woolf, but I will say that these numbers are far more solid than perhaps just an estimate might indicate. We received bids for phase 1 of the dairy, we actually had full blown bids received from contractors. We used the experience in comparing those bids to our estimates to adjust our estimate for phase 2; we feel we have a very strong basis for the cost and associated financial calculations going into this. It may actually come out between the land and the milking parlor is slightly under the \$17.25 million, of course the \$23.25 million in total. We would have to work through those details very carefully as construction proceeds.

Controller Woolf: I do not know if this is for you or for Mr. Nelson, or others, but section 3 of the operating agreement discusses ownership of the building and fixtures to be constructed and refers to exhibit B. Exhibit B was not in our packet; it was just emailed to me during your presentation. We have not seen any of the exhibits; they are all listed as draft. It is a little hard for us to soak that in. But I did not see exhibit B attached. My question concerns the possible need to amend exhibit B, the percentage of ownership of certain improvements, based on the actual versus estimated construction costs. I understand the need to ascertain ownership, however, I would like to avoid the fractional ownership of an improvement. What provisions are in the operating agreement to prevent this from happening?

Kent Nelson: Thank you, Governor, Mr. Controller, I appreciate that question and I think this is an important clarification that we can make for you. There will not be fractional ownerships of improvements. We are committed to that. Some of this language in this section of the agreement, although it could still be applicable, was more attuned when we believed that there would be funds beyond the milking parlor and the barn. We want to be able to clarify as we solidify the available funds to construct improvements so that it was very clear, ultimately, what the endowment owned that was built with the \$17.25 million of additional proceeds. In the event we are somewhat short, for example, on the milking parlor then that could be made up by the University, but we will not create a fractional ownership; that parlor will still be owned 100% by the dairy. I have been in discussions with our controller and looked over how we book these sorts of things. We will be booking the \$6 million of funds that we have applied to the underlying site preparation as well. We are prepared to make sure that there are no fractional ownerships between the endowment and the University.

Controller Woolf: Kent, thank you. One concern I had was this is a different type of request from others and what the other beneficiaries may come and ask for if this takes place. Can you explain the situation, how it is unique and how it is different from a typical reinvestment of Land Bank proceeds. Are we opening something up that other endowment beneficiaries could come to us and request something similar?

Mr. Nelson: No, this is unique in two respects. Number one, you do not have very many endowments that have simply a single, identifiable beneficiary, such as the Ag College endowment. Two, none of the endowments except for the Ag College endowment have the language that we added to the Morrill Act that specifically calls for the furnishing of endowment assets, land, and buildings to the beneficiary for the purpose of an experimental farm. That is the language we are operating under for this request; no other endowment has that.

Controller Woolf: What makes this unique is, all other things we look into what is the endowment receiving back on an annual basis, where on this part we are not really receiving anything annually or anything future unless we sell. And the milk parlor is a single use. Not seeing any annual income coming off of this and having grown up in the dairy industry, disclaimer there, there are fewer dairy farms today, the volatility of the dairy market and such, in having a single use of this. Help me understand and grasp a feeling of confidence, the risk that we are putting in place as a Board to make this investment.

Mr. Nelson: Governor, Controller Woolf, thank you for that question as well. That is something that we have thought about quite a bit for a number of years. The first thing I would say is that the job of the endowment, of course, is to benefit the beneficiary. One of the ways that the endowment benefits the beneficiary is to utilize income-producing assets, take that income and have that distributed into the beneficiary, and that is the classic way, no doubt about that. Another way that is unique to this endowment is to let the endowment assets themselves benefit the beneficiary, and our analysis is that we get a better benefit from this asset because of the way that the University can utilize it. When Vice President Foisy went through the numbers for how we finance this, nearly all of those numbers, with the exception of the endowment assets, are money that is coming into the University for the purpose of this dairy. The University would not be able to utilize that money but for this dairy project. So even that utilization is a benefit to the University that we could not get simply from an income-producing asset. Our overall analysis is that the operational benefits, the benefit to the University, in increased

student enrollment, in increased research capabilities and the like, outperforms the benefit that we would get from an income-producing asset.

Governor Little: You talked earlier about the conversation that took place last night, I just want to paper the file, after this \$23.5 million, the Ag College endowment has no further liability, whether cost overrun, whether it is liability, fill in the blank, that the amendments that were proposed and talked about last night, basically says \$23.5 million from a non-performing asset, the land at Caldwell, what was the rent on it, a hundred bucks a year or something. I think the endowment was given a hundred dollars a year on a \$23 million asset; not necessarily the internal rate of return we like to have. So, we are taking one non-performing asset and putting it to one that might perform but has a much higher risk because of the operations part of it. At the end of the day, the record will reflect that we as trustees are capping our liability for the endowment going forward with the amendments and addendums that are going to be added to some of the agreements we have seen and some of them we have not seen. Basically, what I was asking is, notwithstanding all other agreements, the Land Board has no further liability, because this is the right thing to do for the University of Idaho, it is the right thing to do for agriculture, it is the right thing to do for the State. One question I have is if I remember the Morrill Act, you can build a laboratory, you can buy land, but it says offices...was the amendment to the Morrill Act, did it say offices? I thought that was the taboo part of the Morrill Act that you could not build an administration building, sell Morrill Act Land, and build an administration building. Do I have that correct or not?

Mr. Nelson: Governor, you have that historically correct. In fact, the University of Idaho has a Morrill Hall that was not built by the endowment assets; almost every Morrill Act institution has something along those lines. What we changed in 2008 were two things. One was the limitation on acquiring land but not buildings, so the State of Idaho has the ability to use the Morrill Act proceeds for buildings. The other one was to remove a limitation of 10% of the endowment assets although I do not think we are approaching that. We can build buildings. There will be more buildings for the dairy than just the milking parlor, office buildings and pure research buildings, for example, that the University will fund separately.

Governor Little: I thought it was laboratories and not buildings was the historic language in the Morrill Act and then we put a little more flexibility in it.

Mr. Nelson: Actually, the Morrill Act itself simply said experimental farms, but no buildings. There is not a lot of case law on the Morrill Act.

Superintendent Ybarra: While we are talking about case law, can you just clarify for me is the legal review complete or not. I thought I heard earlier that it was not.

Mr. Nelson: We are addressing the last-minute questions to completing these documents. A term that I generally use in these sorts of situations is that we have a document that you can say that the final documents will be in substantial conformation to that, because there are no material things at issue at this point. There is clarification on the language; the University is committed to making sure that the documents clarify number one, the limitation of the obligation of the endowment, and number two, that liability and responsibility is on the University. That is where we are at with those documents. I cannot put something in front of you right now that I would ask you to sign, but we are close.

Governor Little: But the minutes will reflect that the intent when we get to the final vote, the intent is that the endowment be sheltered for any liabilities above the \$23.5 million.

Mr. Nelson: Correct.

Josh Purkiss: I will wrap up. It sounds like you discussed most of the things that I wanted to hit upon, so I will be fairly brief. We are all aware of what they are trying to do. Really, the Board has three options for this revenue: transfer the funds from the Land Bank to the permanent fund, leave the funds in the Land Bank for potential reinvestment in timberland, or do as what is being requested by CALS, invest in the Minidoka property, and construct a milking parlor. For our internal review we took a look at what this revenue would be worth for the beneficiaries at the 5% annual distributions, if we grew the endowment from the \$32 million that it sits at today up to about \$55 million, if we move those Land Bank proceeds into it. We used the 5.8% appreciation, 4% discount rate, and we looked at that at an 8-, 25- and 50-year horizon. The eight year, which they used in their slides, shows a net present value of distributions at just under \$6 million. Twenty-five years, that would equate to \$20 million, and 50 years at \$30 million. That is one option that the Board has, direct the Department to move the funds into the permanent fund. Option two is to acquire the Minidoka property, and we worked with the University to look at what revenue that they were projecting, whether that is grants, increased enrollments, research trials, but in the end the endowment would actually own the ground and the milking parlor which is the main parts of the dairy facility so there is benefit there. In addition, the operating agreement talks about them keeping it well-maintained, so if at a time in the future it is no longer a research facility, the endowment will have a functional dairy, basically a dairy facility, with the appreciation of the ground; there is benefit there to the endowment. With all the upside to the beneficiaries, we believe that option two, to acquire the Minidoka property and fund the construction of the milking parlor is in the best interest of the endowment. We presented this to the Investment Subcommittee yesterday [9/19]; they recommended the investment of the proceeds from the Caldwell sale to acquire the Minidoka property and fund construction of the milking parlor. The Department's recommendation given the authority granted in the Morrill Act, the value to the endowment, and the direct benefits to CALS as the endowment beneficiary, for the Land Board to approve acquiring the Minidoka property for \$6 million and distribute the remaining balance of \$17.25 million to fund the construction of the milking parlor.

Controller Woolf: How does that money transfer, that \$6 million and then the \$17.25 million.

Mr. Purkiss: The \$6 million would be similar to any type of real estate transaction we do; we would use this memo and the authority granted to the Department by the Land Board at closing to work with Fiscal to transfer the funds over to the University. The second part, there is still a couple questions there, but again, the authority from the Board today would...it is my understanding we would hold that balance and as DPW, Public Works, requires funding for this project to be built, we would issue those proceeds to the Department of Public Works.

Board Action: A motion was made by Controller Woolf that, given the authority in the Morrill Act, and the value to the endowment and direct benefits to CALS as the endowment beneficiary, the Land Board adopt the Department's recommendation and approve the acquisition of the Minidoka Property for \$6,000,000 and distribute the remaining balance of \$17,250,00 to fund construction of the milking parlor pending final legal review between the University of Idaho and the Attorney General's Office. Superintendent Ybarra seconded the motion. The motion carried on a vote of 3-0.

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

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.

Discussion:

Governor Little: One of the memorandums from CenturyPacific talked about access. There is county road on both sides of it and I assume in the document if they have a strip of land between the county road and this parcel that we have full ingress and egress to the property. Is that going to be in the documents?

Mr. Purkiss: Governor, members of the Board, yes that is correct. We just wanted to vet the underlying ownership of that easement. There are no strips of land that are in between the endowment land and that road.

Controller Woolf: This has been going on for a little while, and probably for your happiness, on your last day, to see it through. One of my questions is the validity of the appraisal and the length of it. When was it done, is it still valid and is there still value for value today.

Mr. Purkiss: That is a great question, Controller, Governor, members of the Board. Whenever we are doing exchanges, we have an appraisal that is set with a certain effective date. They both have the same effective date so when you do that exchange it is that value for that value at that date. Have things changed over the last year and half since that appraisal was done? Sure. It has appreciated quite a bit. The endowment land that is being traded out of does not have legal access; when we initially had appraisals done, there was a first round of appraisals done on this property, the endowment land was appraised at \$700,000 and Avimor's land was appraised at \$2 million, because of the lack of access. However, because Avimor was absorbing this into their ownership and they had access, we asked the appraiser to take another look at it and say, look, appraise it as if it has access. Right now, that \$1.99 million is what it is worth if it had legal access, and it does not, so it is a huge win. It is not necessary to have an updated appraisal in my opinion because of the significant benefits to the endowment on this exchange.

Board Action: A motion was made by Controller Woolf to approve the exchange, subject to the 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. Superintendent Ybarra seconded the motion. The motion carried on a vote of 3-0.

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

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

Discussion:

Governor Little: Josh, who pays for all this stuff?

Mr. Purkiss: The proponent.

Controller Woolf: Josh, I do not know if this is for you or maybe Darrell. My question is, and I know this is just due diligence and maybe this will come down further, help me walk through a disguised sale and how does this proposal present in that case, because this to me looks somewhat like that, and smells like that, looks like duck...help me understand that this is not a disguised sale.

Darrell Early: Governor, members of the Land Board, for the record, Darrell Early, Division Chief of Natural Resources. I do not want to go into a lot of details of course because this involves our legal analysis, and we are on the open record here and so we want to keep it at a high level. As you know, the statutes that authorize land exchanges actually contemplate these kind of multi-stage transactions, including third-party transactions like this. It has not been challenged in Idaho; we do not have an Idaho case law under Idaho statutes and Idaho's constitutional provisions relating to the disguised sale issues. We have flagged those issues in the past to the Board because other states who have similar constitutional provisions have looked at and found these types of transactions to pose that type of legal risk. What this presents for the Board is a question of a case of first impression in Idaho and the legal risks associated with that. At the time this comes before the Board we will have provided the Board with that legal analysis of risk versus reward and then the Board will be able to make a policy decision on whether or not to move forward with this proposal in light of that analysis, but as outlined, at least at this stage, the reward is potentially significant to the endowments in the sense that we may be getting effectively something for nothing. That is our analysis at this stage.

Board Action: A motion was made by Controller Woolf that the Land Board adopt the Department's recommendation and approve proceeding with due diligence for the Brisbie land exchange proposal. Superintendent Ybarra seconded the motion. The motion carried on a vote of 3.0.

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

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

Discussion:

Governor Little: Full disclosure, I know a little bit about the 40 acres in Gem County, a family member runs livestock on it; I have been on it. Part of it has the Black Canyon canal through it,

part of it is below the canal. I am looking at a map of it right now, it shows on the county maps that it is state land right now.

Mark Cecchini-Beaver: Correct.

Governor Little: But in essence, because it is Carey Act land, we are going to get it and give it to the BLM, is that correct?

Mr. Cecchini-Beaver: Correct, that would be the net effect of this.

Governor Little: There are no issues with the right of way for the Emmett Irrigation District canal that goes across it? There is a power line across it also.

Mr. Cecchini-Beaver: Governor, members of the Board, no, there are no issues related to those.

Board Action: A motion was made by Controller Woolf that the Land Board adopt the Department of Water Resources' recommendation to accept the conveyance of Parcels 1, 2, and 3 from IDWR; and convey Parcels 1, 2, and 3 via state deeds to the United States acting through the Department of Interior, Bureau of Land Management. Superintendent Ybarra seconded the motion. The motion carried on a vote of 3-0.

Information

None

Executive Session

None

There being no further business before the Land Board, at 10:22 a.m. a motion to adjourn was made by Controller Woolf. Superintendent Ybarra seconded the motion. The motion carried on a vote of 3-0.

STATE BOARD OF LAND COMMISSIONERS

October 18, 2022

Regular Agenda

Subject

Wildcat Cedar Timber Sale with development costs exceeding 50% of net sale value

Questions Presented

Shall the Land Board approve the Wildcat Cedar Timber Sale with development costs exceeding 50% of net sale value.

Background

At its December 15, 2015 meeting, the Land Board adopted a timber sale governance structure whereby the Idaho Department of Lands (Department) would only present individual proposed timber sales for Land Board approval that fall outside of established Land Board policies. Timber sales with development costs exceeding 50% of net appraised value are one type of sale to be submitted for approval.

This sale's proposed development work will replace the existing, single lane bridge that is the only access to approximately 46,000 acres of public-school endowment lands. The existing bridge was installed by the Department in 1967. The location of the proposed bridge replacement and chip seal surface treatment can be seen on the maps in Attachments 1 and 2. Bonner County is the current maintainer of the East Shore Road from the Cavanaugh Bay Road to the end of the pavement (17 miles). This work, in conjunction with the chip sealing project, is a continuation of the work with Bonner County to assume maintenance for the remaining 2.5 miles of road. Bonner County Road and Bridge will dedicate \$300,000 of work in-kind, and Idaho Department of Parks and Recreation (IDPR) has allocated \$150,000 from their current fiscal year budget.

Discussion

The Wildcat cedar timber sale was first offered for auction in June 2022 and resulted in a no sale. Feedback from prospective purchasers expressed no interest in bidding due to the changing market conditions, fuel prices, yarder operator shortage, and the development appraisal. The prices of material, labor, and fuel all escalated in price, while delivered log prices for cedar continued to fall throughout the 2nd quarter of the year.

Following standard procedures, the Priest Lake Area reappraised the sale following feedback from purchasers. This included increasing costs for the development package and lowering delivered log prices for cedar. The development credit increased by 58% from the original appraisal while the gross sale value decreased by 30%.

The changes above resulted in a net sale value of \$1,409,156, while total development credits total \$1,082,756 (Attachment 3). The development costs account for approximately 77% of the net appraised value. The two biggest items contributing to the development costs are the bridge removal/installation and the chip seal surface treatment. These two items account for approximately 84% of the total development costs (Attachment 4).

Given the scope of the project and timing with other timber harvests, it was agreed to bring this to the board for approval outside of agency governance. The efficiency of having this under one contract eliminates the need to stack timing of different events and multiple equipment mobilizations to the site. The agreement with the County to take over maintenance of the road is a long-term cost savings to the endowment and building to a specification higher than needed for pure timber management is offset through the IDPR cost share.

Recommendation

Approve the Wildcat Cedar Timber Sale.

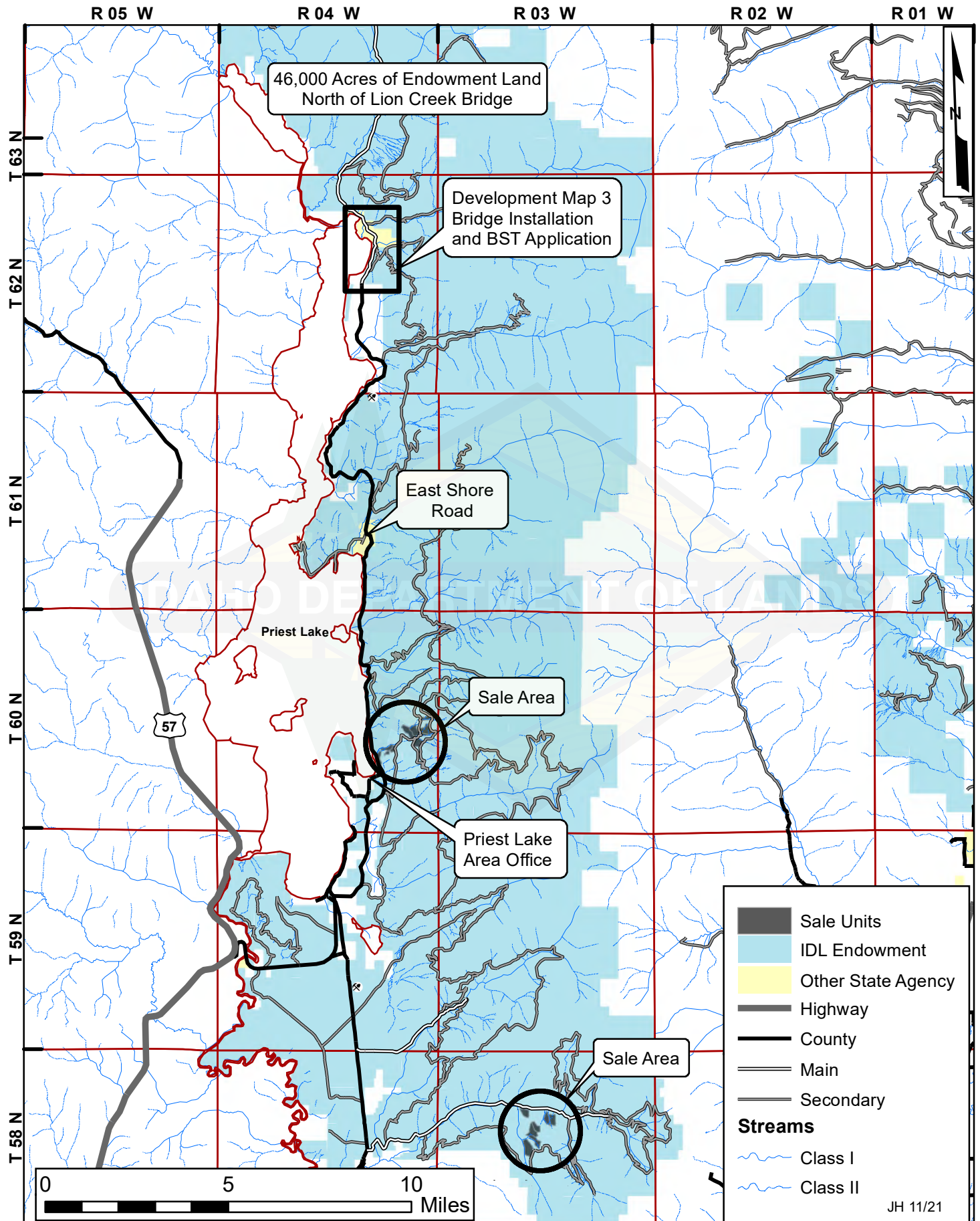
Board Action

Attachments

1. Vicinity Map
2. Development Map
3. Approval Memo
4. Development Costs

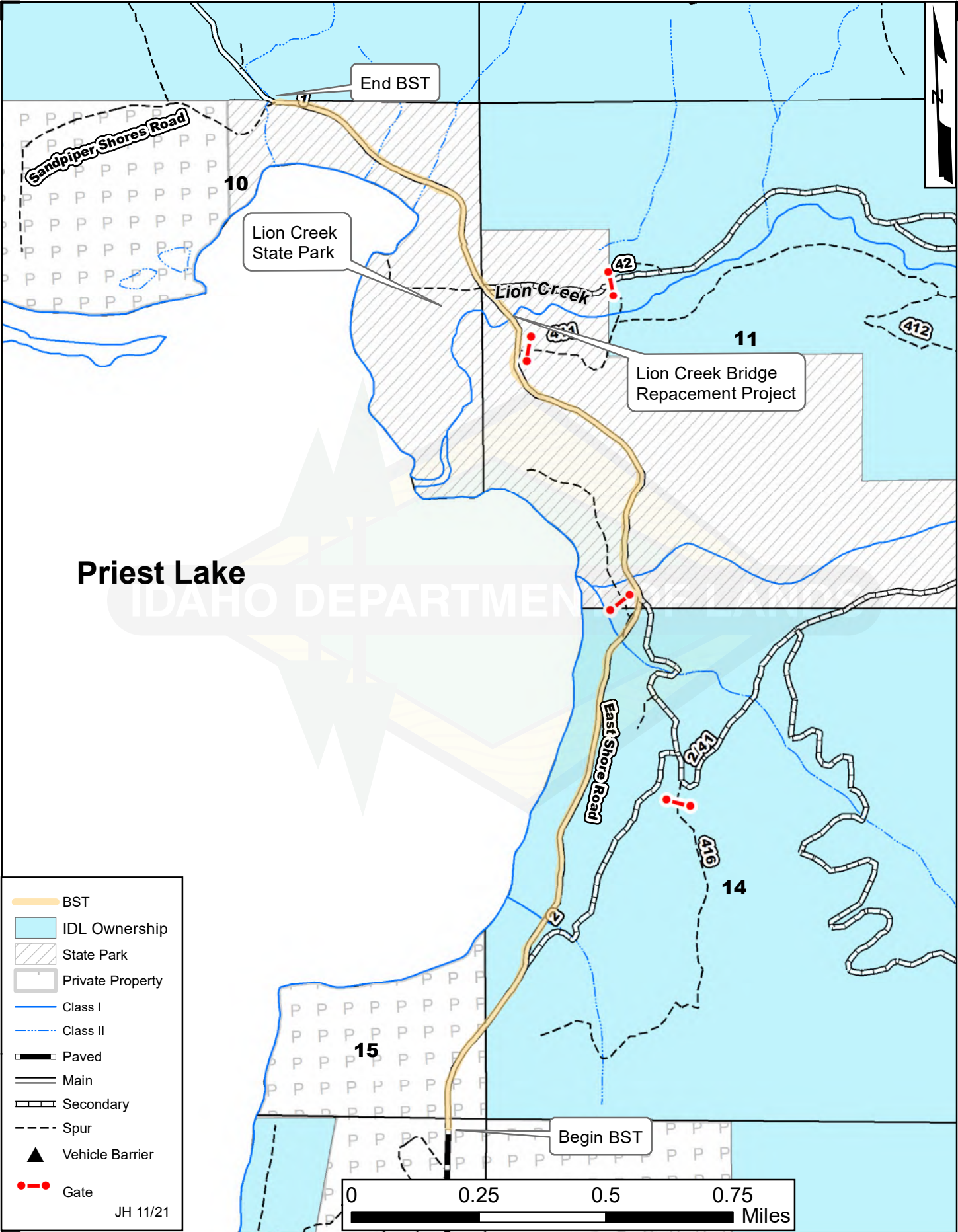
CR100480
WILDCAT CEDAR

VICINITY MAP



R 04 W

T 62 N



JH 11/21

DEPARTMENT OF LANDS
APPROVAL MEMO
TIMBER SALE PROPOSAL

DESCRIPTION				Sale Name	
SUBDIVISION	SECTION	TWP	RANGE	Wildcat Cedar	
Pts. SESW, Pts. S2SE	13	60N	04W	Cruise No.	Sales Plan Fiscal Year
Pts. Gov't Lot 4, Pts. NENE	23	60N	04W	CR100480	2022
Pts. NESW, Pts. SE	23	60N	04W	Acres	Duration (Yrs)
Pts. N2, Pts. NESW, Pts. NWSE	24	60N	04W	463	5 years
Pts. Gov't Lot 1	26	60N	04W	Fund Public School	
Pts. E2SW, Pts. SE	9	58N	03W		
Pts. SW	10	58N	03W	County	
Pts. N2NW	15	58N	03W	Bonner	
Pts. NE, Pts. E2NW, Pts. E2SW	16	58N	03W	Fire Suppression Rate	MBF Ton
Pts. N2SE, Pts. SWSE	16	58N	03W		\$0.12 \$0.021
				Sale Location	
				10 mile(s) SE of Coolin Idaho	

SPECIES or PRODUCT	RECOMMENDED PRICE PER UNIT MEASURE	QUANTITY (MBF)	VALUE EXTENDED
White Pine	\$154.30	30 MBF	\$4,629.00
Ponderosa Pine	\$101.50	0 MBF	\$0.00
Douglas-fir & Larch	\$219.90	1,940 MBF	\$426,606.00
Grand Fir, Hemlock, SAF	\$185.50	3,135 MBF	\$581,542.50
Cedar	\$737.60	1,955 MBF	\$1,442,008.00
Cedar Products	\$48.30	265 MBF	\$12,799.50
Spruce	\$185.70	70 MBF	\$12,999.00
Lodgepole Pine	\$188.80	60 MBF	\$11,328.00
Pulp (Optional)	\$10.00	0 MBF	\$0.00
			\$0.00
			\$0.00
Totals		7,455 MBF	\$2,491,912.00
		Less Developments	\$1,082,756.00
		Net Value	\$1,409,156.00

Estimated Number of Poles - 2,500

REMARKS:

This sale will utilize clearcut (Unit 2: 17 ac., Unit 10: 29 ac., Unit 11: 56 ac.) overstory removal, seedtree, and selection prescriptions. The clearcuts are silviculturally justified due to an insufficient number of quality seed trees of seral species to reliably regenerate the units. The developments of this sale will construct and reconstruct 12.6 miles of secondary and spur roads. The developments will also apply a Bituminous Surface Treatment (BST) to the East Shore Road and replace the Lion Creek bridge. This sale was prepared in accordance to Idaho Forest Practices Act. This sale is recommended.

Name:		Date:	
APPROVAL:	Forest Management Bureau		

DEVELOPMENT COST SUMMARY

**WILDCAT CEDAR
CR100480**

PRIMARY ROADS:

ROAD NUMBER	MILEAGE			CLEARING	EXCAVATION	DRAINAGE	SURFACING	TOTAL
	NEW	RECON./IMPROVE	OPEN					
East Shore		2.5						
Total:	0.0	2.5	0.0	\$0	\$0	\$0	\$0	\$0

SECONDARY ROADS:

ROAD NUMBER	MILEAGE			CLEARING	EXCAVATION	DRAINAGE	SURFACING	TOTAL
	NEW	RECON./IMPROVE	OPEN					
101		3.6		3,600.00	4,760.00		59,810.00	\$68,170
103		1.1		1,100.00	1,690.00		20,505.00	\$23,295
TOTALS:	0.0	4.7	0.0	\$4,700	\$6,450	\$0	\$80,315	\$91,465

SPUR ROADS:

ROAD NUMBER	NEW	RECON./IMPROVE	OPEN	CLEARING	EXCAVATION	DRAINAGE	SURFACING	TOTAL
1015		3.4		\$ 3,400.00	\$ 1,080.00			\$4,480
1016	0.1			\$ 180.00	\$ 1,255.00			\$1,435
10171		0.3		\$ 300.00	\$ 540.00			\$840
S1A	0.3			\$ 540.00	\$ 7,671.00	\$ 2,520.00	\$ 3,000.00	\$13,731
S2A	0.1			\$ 130.00	\$ 760.00			\$890
S3A	0.8			\$ 1,440.00	\$ 9,818.00	\$ 2,520.00	\$ 1,476.00	\$15,254
S4A	0.1	0.3		\$ 720.00	\$ 4,266.00			\$4,986
221	0.3			\$ 390.00	\$3,920	\$ 1,260.00		\$5,570
2210		0.5		\$ 1,000.00	\$ 2,230.00			\$ 3,230.00
S1	0.2			\$ 360.00	\$2,043	\$2,520		\$ 4,923.00
S11	0.1			\$ 180.00	\$530			\$ 710.00
S2	0.1			\$ 130.00	\$ 389.00	\$ 1,260.00		\$1,779
S3	0.2			\$ 360.00	\$ 585.00			\$ 945.00
S4	0.1			\$ 180.00	\$ 384.00			\$ 564.00
S5	0.3			\$ 1,200.00	\$ 2,270.00			\$ 3,470.00
R1		0.4		\$ 520.00	\$ 240.00			\$ 760.00
R2		0.3		\$ 429.00	\$ 1,080.00	\$ 3,780.00	\$ 2,916.00	\$8,205
Extra						\$1,260		\$1,260
TOTALS:	2.7	5.2	0.0	\$ 11,459.00	\$39,061	\$15,120	\$7,392	\$73,032

MISCELLANEOUS DEVELOPMENTS:

MOBILIZATION	GATES	SITE RESTORATION	ROAD CLOSURE	BRIDGE REMOVAL/ INSTALLATION	Bituminous Surface Treatment	TOTAL
\$3,020	\$8,000	\$2,226	\$298	\$599,995	\$304,720	\$918,259

TOTAL ALL DEVELOPMENTS: \$1,082,756

STATE BOARD OF LAND COMMISSIONERS

October 18, 2022

Regular Agenda

Subject

Adoption of Pending Rule, IDAPA 20.02.14 *Rules for Selling Forest Products on State-Owned Endowment Lands*

Question Presented

Shall the Land Board adopt the pending rule for IDAPA 20.02.14?

Background

Negotiated rulemaking for these rules was approved by the Land Board on January 18, 2022. Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter is scheduled for a comprehensive review in 2022 with the goal of simplifying and streamlining the rules for increased clarity and ease of use.

The Idaho Department of Lands (Department) sells forest products on endowment land to purchasers using various techniques. IDAPA 20.02.14 establishes a consistent process for selling forest products from state endowment lands by setting minimum requirements for timber sale auctions, initial deposits and bonding, stumpage and interest payment, and timber sale cancellation and termination.

Discussion

The Department's outreach for negotiated rulemaking included the following:

- Published the Notice of Negotiated Rulemaking in the Idaho Administrative Bulletin.
- Created a rulemaking webpage to post documents, scheduling information, and comments.
- Issued a press release.
- Emailed 71 industry representatives.
- Posted on social media.

Two negotiated rulemaking meetings were held in April 2022. Six participants attended the April 5 meeting in Coeur d'Alene, and eight participants attended the April 6 meeting in Lewiston. The draft rule changes were open to written public comments until May 11, 2022. No written comments were received.

Some minor changes were made based on the meeting discussions and internal discussions. Comments and the Department's responses are summarized in Attachment 1.

No changes were made during this rulemaking that change the context of the rule. While the changes are minor, the proposed rule reduces the regulatory burden by reducing the total word count (-19%) and the number of restrictive words (-11%).

The proposed rule was published in the September 7, 2022 Administrative Bulletin. The Notice of Proposed Rulemaking and published rule text are in Attachment 2. No comments were received, and the Department recommends no changes for the pending rule.

If approved by the Land Board, the Department will submit the Notice of Adoption of Pending Rule (Attachment 3) to the Office of the Administrative Rules Coordinator for the 2023 legislative session.

Recommendation

Adopt the pending rule for IDAPA 20.02.14 *Rules for Selling Forest Products on State-Owned Endowment Lands*.

Board Action

Attachments

1. Summary of Negotiated Rulemaking
2. Notice of Proposed Rulemaking with Rule Text
3. Draft Notice of Adoption of Pending Rule

Negotiated Rulemaking Summary

IDAPA 20.02.14 – Rules for Selling Forest Products on State-Owned Endowment Lands

Docket No. 20-0214-2201

The Idaho Department of Lands (IDL) initiated this rulemaking in compliance with Executive Order 2020-01: Zero-Based Regulation with the goal of simplifying and streamlining the rules for increased clarity and ease of use.

This administrative rule establishes a consistent process for selling forest products from state endowment lands by setting minimum requirements for timber sale auctions, initial deposits and bonding, stumpage and interest payment, and timber sale cancellation and termination.

Negotiated rulemaking was approved by the State Board of Land Commissioners (Land Board) on January 18, 2022. The Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking was published in the Idaho Administrative Bulletin on March 2, 2022.

Stakeholder Outreach

The department's outreach for negotiated rulemaking included the following:

- Published the Notice of Negotiated Rulemaking in the Idaho Administrative Bulletin
- Created a rulemaking webpage to post documents, scheduling information, and comments at <https://www.idl.idaho.gov/rulemaking/docket-20-0214-2201>
- Issued a press release
- Emailed 71 industry representatives
- Posted on social media

Negotiated Rulemaking Public Meetings

Two public meetings were held in April 2022 to discuss the draft rule changes:

- **4/5/2022: Public meeting in Coeur d'Alene (and Zoom)**
 - Six participants
 - Affiliations: PotlatchDeltic, Stella-Jones Corporation, Sun Mountain Lumber
- **4/6/2022: Public meeting in Lewiston (and Zoom)**
 - Eight participants
 - Affiliations: Clearwater Paper, Idaho Forest Group, Stella-Jones Corporation, Woodgrain Inc.

Summarized comments from the meetings are explained in the table below.

Table 1. Response to Comments on Draft Negotiated Rule at Public Meetings

Oral Comment	Rule Section	Response
Is IDL going to increase the direct sale limit to 200 MBF? <i>Ryan Dickison 4/5/2022</i>	020	The department will maintain the 100 MBF set in Land Board policy.

Oral Comment	Rule Section	Response
Does IDL have any language in their timber sale contract that requests written cancellation? <i>Ryan Dickison 4/5/2022</i>	042	There is no specific language in our contracts about the cancellation process. The first sentence in Section 042 states written request is required to initiate cancellation. This matches IDL's procedure.
Definition 010.04 mentions road improvements but not "roads construction" – could this be misunderstood that construction might not be included in the rule? <i>Mike Reggear 4/6/2022</i>	010.04	IDL agrees. Changed draft rule to mention road construction and improvements.
Is the direct sale value set at 100 or 200 MBF? Is the \$15K limit going to be increased. <i>Mitch Reggear 4/6/2022</i>	020	The Idaho statute is 200 MBF with a 100 MBF Land Board policy. The department will maintain the \$15K value set in Land Board policy.
Recommend keeping "forthcoming fiscal year" in the rule text. <i>Mike Reggear 4/6/2022</i>	026	Added language, "Department's annual sales plan" to the rule text. The Land Board's Timber Sale Public Involvement Policy states the IDL presents this plan for approval at the April Land Board meeting.

No Written Comments

The department did not receive any written comments on the draft rules. The comment period was March 2 to May 11, 2022.

Concluding Negotiated Rulemaking

With no issues left unresolved, the department concluded the negotiated rulemaking process and submitted the rule changes for publication as a proposed rule in the September 7, 2022, edition of the Idaho Administrative Bulletin.

Key documents from the rulemaking record, including the proposed rule in legislative format to allow the reader to easily identify changes, are available at <https://www.idl.idaho.gov/rulemaking/docket-20-0214-2201/>.

Summary of Rule Changes

Some minor changes to the initial draft were made from comments at the meetings, internal discussions, and as recommended by the Deputy Attorney General to improve clarity and ease of use.

The draft rule text, posted to the rulemaking website on May 17, 2022, had some internal discussion about removing the incorporation by reference section. Section 002 Incorporation by Reference is removed in the proposed rule as the current rule text does not reference any external document. (The rule text that referenced the external document was removed in the 2016/2017 rulemaking for IDAPA 20.02.14.)

The regulatory burden has been reduced by decreasing both the total word count (-19%) and the number of restrictive words (-11%) in the proposed rule. No changes were made that change the context of the previous rule.

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

20.02.14 – RULES FOR SELLING FOREST PRODUCTS ON STATE-OWNED ENDOWMENT LANDS

DOCKET NO. 20-0214-2201 (ZBR CHAPTER REWRITE)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 58-104(6) and 58-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2022.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Idaho Department of Lands initiated this rulemaking in compliance with [Executive Order 2020-01: Zero-Based Regulation](#). This rule chapter is scheduled for a comprehensive review in 2022 with the goal of simplifying and streamlining the rules for increased clarity and ease of use.

The regulatory burden has been reduced by decreasing both the total word count (-19%) and the number of restrictive words (-11%) in the proposed rule. No changes were made that change the context of the previous rule.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the March 2, 2022, Idaho Administrative Bulletin, [Vol. 22-3, pages 22-23](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jeremy Shawver at (208) 666-8672 or jshawver@idl.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2022.

DATED this 7th day of September 2022.

David Greenwood, Timber Management Bureau Chief
Idaho Department of Lands
3284 West Industrial Loop
Coeur d'Alene, Idaho 83815
Phone: (208) 769-1525
Fax: (208) 769-1524
rulemaking@idl.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 20-0214-2201
(Zero Based Regulation (ZBR) Chapter Rewrite)

20.02.14 – RULES FOR SELLING FOREST PRODUCTS ON STATE-OWNED ENDOWMENT LANDS

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 38-1201, et seq.; 58-104(6); 58-105; 67-5201, et seq.; Idaho Code. ()

001. SCOPE.

These rules govern the selling of forest products from state endowment lands. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Board. The Idaho State Board of Land Commissioners. ()

02. Contract. Timber sale contract in a form prescribed by the Department. ()

03. Department. The Idaho Department of Lands. ()

04. Development Credits. A stumpage credit received by the purchaser for road construction and improvements. ()

05. Director. The director of the Idaho Department of Lands or his designee. ()

06. Forest Products. Marketable forest materials. ()

07. Net Appraised Value. The minimum estimated sale value of the forest products after deducting the development credit. ()

08. Net Sale Value. The final sale bid value of the forest products after deducting the development credit. ()

09. Purchaser. A successful bidder for forest products from a state sale who has executed a timber sale contract. ()

011. -- 018. (RESERVED)

019. FIREWOOD AND OTHER PERSONAL USE PRODUCT PERMITS.

Forest product permits for personal use will be sold on a charge basis. The Director will determine permit rates and maximum permit values. ()

020. DIRECT SALES.

The sale of forest products without advertisement may be authorized by the Director if the net appraised value does not exceed the maximum value established by the Board. The duration of a direct sale is six (6) months. The purchaser must furnish an acceptable performance bond in the amount of thirty percent (30%) of the sale value with a minimum bond of one hundred dollars (\$100). ()

021. TIMBER SALES.

Timber sales exceed the net appraised value or volume for direct sales established by the Board. ()

022. -- 025. (RESERVED)

026. ANNUAL SALES PLAN.

The Department's annual sales plan will be presented to the Board for approval annually and upon approval made available to all interested parties. The plan may be altered to respond to changing market conditions or to expedite the sale of damaged or insect-infested forest products. ()

027. -- 030. (RESERVED)

031. TIMBER SALE AUCTIONS.

01. Requirements. Timber and Delivered Products sales must be sold at public auction. ()

02. Requirements for Bidding. Bidders must: ()

a. Present a bid deposit in a form acceptable to the State in the amount of ten percent (10%) of the net appraised value. ()

b. Not be delinquent on any payments to the State at the time of sale. ()

c. Not be a minor as defined in Section 32-101, Idaho Code. ()

d. If a foreign corporation, have a completed and accepted foreign registration statement with the secretary of state and comply with Title 30, Chapter 21, Part 5, Idaho Code in order to do business in Idaho and be eligible to bid on and purchase State timber. ()

032. INITIAL DEPOSIT AND BONDS.

01. Initial Deposit. The initial deposit (ten percent (10%) of net sale value) is paid in cash and retained by the state as a cash reserve for the duration of the contract; the purchaser is not entitled to any interest earned thereon. All or a portion of the initial deposit may be applied to charges as the contract nears completion. Any remaining initial deposit will be forfeited in the event the contract is terminated without being completed. ()

02. Performance Bond. A bond of sufficient amount to ensure compliance with the terms and conditions of the sale contract or fifteen percent (15%) of the net sale value of the forest products (whichever is greater) must be executed within thirty (30) days from the date of sale and prior to contract execution. Failure to fully perform the contract may result in forfeiture of all or part of the performance bond. ()

03. Payment Bond. Prior to cutting any forest products, the purchaser must provide a bond acceptable to the Department as assurance of payment for products to be cut or removed, or both, within the succeeding ninety (90) days. The Department will determine the payment bond amount on delivered product sales. Failure to make full and timely payment per contract terms may result in forfeiture of all or a portion of the payment bond. ()

033. -- 040. (RESERVED)

041. STUMPAGE AND INTEREST PAYMENT.

The Department will prepare and forward to the purchaser a monthly stumpage summary of forest products measured during the prior month and a statement of account. The statement will include interest computed from the date of sale to the date of the billing at a rate specified in the contract. The purchaser must make payments within thirty (30) days of the end of the billing period or the payment is considered delinquent. Interest will not be charged on delivered product sales. ()

042. TIMBER SALE CANCELLATION.

It is the purchaser's responsibility to initiate cancellation by submitting a written request to the applicable supervisory area office. Once the cancellation process has finished, any credit balances and all cash bonds will be returned and/or transferred to other timber sale accounts within forty-five (45) days, as requested by the purchaser. ()

043. PREMATURE TIMBER SALE TERMINATION.

01. Request. A timber sale purchaser may, for reasons of hardship, make written request to terminate a timber sale contract before harvesting is completed. In such cases, the Board will determine if a hardship exists and if the contract should be terminated. ()

02. Termination Policy. ()

a. The Board may authorize premature termination of any sale under any terms considered reasonable and appropriate. Any remaining amount of the ten percent (10%) initial deposit will be retained in full and applied towards assessed damages and may not be used as payment for forest products cut and/or removed. Assessed damages in excess of the initial deposit will be applied against the performance bond. ()

b. The following damages will be assessed by the Board for premature sale terminations. The Board will seek payment: ()

i. Of the value of the overbid for the uncut residual volume. For example, if white pine had been bid up by five dollars (\$5) per thousand board feet over the appraised price and there are one hundred thousand (100,000) board feet of white pine remaining on the sale area, the purchaser will be assessed five hundred dollars (\$500) upon termination. ()

ii. Of the accrued stumpage interest due the endowed institutions based on the interest rate specified in the contract and calculated on all remaining volume from the date of sale to the date the Board approved termination of the contract. ()

iii. For any credits given for developments that remain incomplete at the time of termination. ()

iv. For estimated Department costs associated with reoffering the timber sale. ()

v. For other expenses including, but not limited to, legal costs and Department staff time. ()

c. If logging has occurred on the sale, the purchaser must complete the units that have been partially logged according to contract standards and complete all development work as specified in the contract to the extent of allowances that have been credited to the purchaser. ()

d. The purchaser who has terminated a timber sale contract is not eligible to rebid that particular sale unless specifically authorized to do so by the Board. ()

044. -- 999. (RESERVED)

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

20.02.14 - RULES FOR SELLING FOREST PRODUCTS ON STATE-OWNED ENDOWMENT LANDS

DOCKET NO. 20-0214-2201

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and the Idaho State Board of Land Commissioners and is now pending review by the 2023 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 58-104(6) and 58-105, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

Following Executive Order 2020-01: Zero-Based Regulation, this rule chapter is scheduled for a comprehensive review in 2022 with the goal of simplifying the rules for increased clarity and ease of use. The overall regulatory burden has been reduced by decreasing both total word count and the number of restrictive words in the new rule chapter.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 7, 2022, Idaho Administrative Bulletin, Vol. 22-9, pages 205-208. An unofficial strikethrough version of the proposed rule, which shows the changes made through the rulemaking process, is available on the agency website at <https://www.idl.idaho.gov/rulemaking/docket-20-0214-2201/>.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jeremy Shawver at (208) 666-8672 or jshawver@idl.idaho.gov.

DATED this 18th day October, 2022.

David Greenwood, Timber Management Bureau Chief
Idaho Department of Lands
3284 West Industrial Loop
Coeur d'Alene, Idaho 83815
Phone: (208) 769-1525
Fax: (208) 769-1524
rulemaking@idl.idaho.gov

STATE BOARD OF LAND COMMISSIONERS

October 18, 2022

Regular Agenda

Subject

Adoption of Pending Fee Rule, IDAPA 20.03.17 *Rules Governing Leases on State-Owned Navigable Waterways*

Question Presented

Shall the Land Board adopt the pending fee rule for IDAPA 20.03.17?

Background

Negotiated rulemaking for these rules was approved by the Land Board on February 15, 2022. Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter is scheduled for a comprehensive review in 2022 with the goal of simplifying the rules for increased clarity and ease of use.

The Idaho Department of Lands (Department) manages the beds of navigable lakes and rivers for the benefit of the public. IDAPA 20.03.17 establishes a consistent process to authorize specific uses on state-owned submerged lands and collect annual rent for those uses. These uses typically include marinas, community docks, non-navigational encroachments, and oversized private docks, which occupy the state's lakes.

Discussion

The Department's outreach for negotiated rulemaking included the following:

- Published the Notice of Negotiated Rulemaking in the Idaho Administrative Bulletin.
- Created a rulemaking webpage to post documents, scheduling information, and comments.
- Issued a press release.
- Emailed 143 customers and other interested parties.
- Mailed postcards to 236 customers.

Negotiated rulemaking meetings were held on April 27 and May 18, 2022. A total of 18 non-agency affiliated people attended these meetings, and two sets of written comments were received. Much of the discussion and one of the written comments centered on artificial high water mark versus ordinary high water mark. As defined in the rule, leasing would only occur on lands below the ordinary high water mark where the state owns the beds of the navigable waters. No changes were made based on written or oral comments. Some minor changes to the initial draft were made based on internal discussions and to further reduce

word count. Substantive comments and the Department's responses are summarized in Attachment 1.

The proposed rule was published in the September 7, 2022 Administrative Bulletin. The Notice of Proposed Rulemaking and published rule text are in Attachment 2. No comments were received and the Department recommends no changes for the Pending Rule.

The proposed rule reduces the overall regulatory burden by reducing the total word count and the number of restrictive words. The proposed rule includes the following changes:

- The \$150 application fee in place since 2008 is increased to \$425. This will cover the Department's cost of reviewing and issuing these leases.
- Assignment fee is raised from \$150 to \$200 to cover Department costs.
- Late payment policy is updated, and payment extensions are eliminated.
- Appraisals, if needed, will be paid for by the applicant and will not be performed by qualified Department staff.

If approved by the Land Board, the Department will submit the Notice of Adoption of Pending Fee Rule (Attachment 3) to the Office of the Administrative Rules Coordinator for the 2023 legislative session.

Recommendation

Adopt the pending fee rule for IDAPA 20.03.17 *Rules Governing Leases on State-Owned Navigable Waterways*.

Board Action

Attachments

1. Summary of Negotiated Rulemaking
2. Notice of Proposed Rulemaking with Rule Text
3. Draft Notice of Adoption of Pending Fee Rule

Idaho Department of Lands
Response to Comments on Draft Negotiated Rule
IDAPA 20.03.17, Rules Governing Leases on State-Owned Navigable Waterways

Comment	Rule Section	Response	Commenter
I am concerned that the proposed rule changes exceed the state's authority and conflict with the Lake protection Act 58-1301, Idaho code 42-101, Idaho code 58-1201 the Public Trust Doctrine, Idaho code 58-1310, Idaho Code 58-1311 and the State Constitution by asserting ownership of private property. Why is definition of "artificial high water mark" deleted?	General and 010.01	1. No conflict is present because these rules do not apply to private property above the ordinary high water mark of navigable waterways. The definition of "Artificial high water mark" is proposed for deletion because it is not actually used in the rule. Under the guidance for Executive Order 2020-01, definitions that are not used in a rule must be deleted from that rule. The leasing authority under this rule is clearly limited to "state-owned navigable waterways" as stated in Subsection 001.01. "State-owned navigable waterways" are then defined in Subsection 010.15: "As used in these rules, the beds of all navigable waterways up to the natural or ordinary high water mark as of the date Idaho was admitted into statehood. This includes any such bed that was formerly submerged and subsequently filled and is now uplands because of human activity (e.g., dikes, berms, jetties) or by natural processes, and includes islands within navigable waterways resulting from human activity or by natural processes."	Ralph Sletager 5/2/2022
Can the state treat lakes, rivers and streams the same? For example, on Lake Pend Oreille there is an easement to store water on private property in between the Ordinary High Water and the Artificial High Water in the summer. Many docks and encroachments are over private land not public land. Riparian owners have the "right" to wharf out to the line of navigability to exercise their riparian rights. These rights date back to English common law. Can the state charge rent for a property owner using his/her property?	Title	2. See above explanation under Response #1 for the change in terminology. IDL does not currently charge rent for those portions of an encroachment over private submerged lands, and the proposed rule changes will continue that practice.	Ralph Sletager 5/2/2022

ATTACHMENT 1

Comment	Rule Section	Response	Commenter
Definition of navigable waterways? Different than navigable waters. Clean water Act? Idaho code 36-1601 was an attempt to change the navigable water definition. Navigable waters was defined in 1890 at statehood. See 58-1201 below.	001.01	3. See above explanation under Response #1 for the change in terminology. This has no relation to the Clean Water Act, which is a federal statute written for a completely different issue. Idaho Code § 36-1601 is a Fish and Game statute that also has no bearing on these rules. The proposed definition in Subsection 010.15 references navigable waterways at statehood and borrows existing language from the current definition of "Formerly Submerged Lands" in Subsection 010.11.	Ralph Sletager 5/2/2022
Concerns implied about Subsection 001.02	001.02	4. This subsection was moved up from Subsection 025.10. It has been in this location since the rule was first adopted in 1997, although the wording has been slightly altered since then. This rule is not in conflict with the Lake Protection Act, as that act provides a regulatory oversight for all lake encroachments. This rule, however, exercises an ownership right over both state-owned navigable lakes and rivers.	Ralph Sletager 5/2/2022
Why are appeals eliminated?	002	5. They are not eliminated. This deletion was done under the guidance of Executive Order 2020-01. Appeals are still available under Title 67, Chapter 52, Idaho Code, and IDAPA 20.01.01. Removing those references from the rule does not affect their applicability to appeals under this rule, and Title 67, Chapter 52, Idaho Code is now referenced on the new cover sheet that all rule chapters have. See https://adminrules.idaho.gov/rules/current/20/200317.pdf	Ralph Sletager 5/2/2022
Why is the definition of "ordinary high water mark" different than the one in 20.03.04 (Encroachment rules)?	010.11	6. The definition is the same one used in IDAPA 20.03.09, "Easements on State-Owned Navigable Waterways", and more closely follows the definition in Idaho Code § 58-1202(2). IDL prefers this wording because it is more applicable to both rivers and lakes, whereas the definition in 20.03.04.010.23 only applies to lakes. Also, definitions apply only to the chapter, act, or rule in which they appear (Maguire v. Yanke, 99 Idaho 829, 836, 590 P.wd 85, 92 (1978)), so no conflict occurs with the different definitions.	Ralph Sletager 5/2/2022

Comment	Rule Section	Response	Commenter
Are out of state people not qualified to do business (or) qualify for a permit?	010.12	7. Individuals are always qualified to do business, regardless of being in-state or out-of-state, as that individual. When they wish to do business as a corporation, partnership, limited liability company, association, trust, unincorporated organization, or other legal entity they must first take the necessary steps to be qualified to do their business in the State of Idaho.	Ralph Sletager 5/2/2022
Potential conflict with the Lake Protection Act's definition of "riparian or littoral rights".	010.13	8. No conflict is present because these rules do not get their authority from the Lake Protection Act. The authority of these rules is shown in Section 000. Definitions apply only to the chapter, act, or rule in which they appear (Maguire v. Yanke, 99 Idaho 829, 836, 590 P.wd 85, 92 (1978)).	Ralph Sletager 5/2/2022
Potential conflicts with the definition of "state-owned navigable waterways".	010.15	9. See Response #1 above. These rules apply to both lakes and rivers, so the Lake Protection Act's definitions are not suitable for this rule.	Ralph Sletager 5/2/2022
Five or 10 years is not bankable or enough time to recoup a commercial investment. What difference does it make to the state? Why not a longer-term plan?	010.17	10. A temporary permit is for short duration uses that typically do not require commercial loans. A marina or similar commercial investment that will last 10 or more years would require a lease.	Ralph Sletager 5/2/2022
Concerns implied about Subsection 025.03 and how encroachment permit decisions are made on private submerged lands above the ordinary high water mark.	025.03	11. These rules are not concerned with issuing lake encroachment permits. The rules apply only to the leasing of lakes and rivers below the ordinary high water mark, and seek to provide a predictable method for IDL to generate revenue from specific commercial and private uses of these waterways. In almost all cases, permits have already been obtained before a lease is applied for.	Ralph Sletager 5/2/2022
Concerns implied about Subsection 025.08 and how the line of navigability is related to the low water mark, and how these might affect the waiver of lease requirements.	025.08	12. The line of navigability and the low water mark have no bearing on the location of the ordinary high water mark that determines the limit of applicability of these rules. The phrase "for water craft customarily in use on that particular lake" is ambiguous, has not been used by any potential lessee in an effort to waive lease requirements, and is not needed in this rule. IDL commonly waives lease requirements where need is demonstrated. As required by Executive Order 2020-01, unused or unnecessary language should be removed from the rule.	Ralph Sletager 5/2/2022
This appears to provide that leases may be required for encroachments already authorized by existing permits issued	001.02	13. This subsection was moved up from Subsection 025.10. It has been in this location since the rule was first adopted in 1997, although the wording has been slightly altered since then. This rule is not overbroad	John F. Magnuson 5/25/2022

Comment	Rule Section	Response	Commenter
decades ago. This appears overbroad and potentially in excess of IDL's authority.		and allows the state to generate revenue from commercial or private uses of navigable waterways. This rule is just exercising the state's ownership rights over both state-owned navigable lakes and rivers. Legally permitted encroachments are not in jeopardy due to this rule, but if an encroachment does not fall under an exception listed in Section 020, then a lease may be required in addition to the encroachment permit.	



IDAHO DEPARTMENT OF LANDS

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

20.03.17 – RULES GOVERNING LEASES ON STATE-OWNED NAVIGABLE WATERWAYS

DOCKET NO. 20-0317-2201 (ZBR CHAPTER REWRITE, FEE RULE)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 58-104(6) and 58-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2022.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Idaho Department of Lands initiated this rulemaking in compliance with [Executive Order 2020-01: Zero-Based Regulation](#). This rule chapter is scheduled for a comprehensive review in 2022 with the goal of simplifying and streamlining the rules for increased clarity and ease of use.

The overall regulatory burden has been reduced by decreasing both total word count (-17%) and the number of restrictive words (-23%) in the proposed rule. Application and assignment fees have been increased to cover the costs of reviewing applications. Late payment policy is updated, and payment extensions are eliminated. Appraisals, if needed, will now be paid for by the applicant and will not be performed by qualified Department staff.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

The \$150 application fee in place since 2008 is increased to \$425. This fee is being imposed pursuant to Sections 58-104, 58-127 and 58-603, Idaho Code. The \$150 assignment fee is increased to \$200. This fee is being imposed pursuant to Sections 58-104 and 58-127, Idaho Code.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 6, 2022, Idaho Administrative Bulletin, [Vol. 22-4, pages 39-40](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Eric Wilson at (208) 334-0261 or ewilson@idl.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2022.

DATED this 7th day of September, 2022.

Eric Wilson, Resource Protection and Assistance Bureau Chief
Idaho Department of Lands
300 N. 6th Street, Suite 103
Boise, Idaho 83720-0050
P.O. Box 83720
Phone: (208) 334-0261
Fax: (208) 334-3698
rulemaking@idl.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 20-0317-2201
(Zero Based Regulation (ZBR) Chapter Rewrite)

20.03.17 – RULES GOVERNING LEASES ON STATE-OWNED NAVIGABLE WATERWAYS

000. LEGAL AUTHORITY.

This Chapter is adopted under the legal authorities of Title 58, Chapter 1, Idaho Code, Sections 58-104(6), 58-104(9), and 58-105; Title 58, Chapter 3, Idaho Code, Sections 58-304 through 58-312; Title 58, Chapter 6, Idaho Code; Title 58, Chapter 12; and Title 67, Chapter 52, Idaho Code. ()

001. SCOPE.

01. Scope. These rules govern the issuance of leases on state-owned navigable waterways. While the State asserts the right to issue leases for all encroachments, navigational or non-navigational, upon, in or above the beds or waters of navigable lakes and rivers, nothing in these rules may be construed to vest in the state of Idaho any property, right or claim of such right to any private lands lying above the natural or ordinary high water mark of any navigable lake or river. ()

02. Rules Applicable To All Existing And Proposed Uses And Encroachments. These rules apply to all existing and proposed uses and encroachments, whether or not authorized by permit under the Lake Protection Act, Title 58, Chapter 13, Idaho Code, or the Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code. These rules provide that a lease may be required in addition to existing permits. See Section 020 of these rules for information about exceptions to lease requirements. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Board. The Idaho State Board of Land Commissioners or its designee. ()

02. Commercial Marina. A commercial navigational encroachment whose primary purpose is to provide moorage for rental or for free to the general public. ()

03. Commercial Navigational Encroachment. A navigational encroachment used for commercial purposes. ()

04. Community Dock. A structure that provides private moorage for more than two (2) adjacent

littoral owners, or other littoral owners possessing a littoral common area with littoral rights including, but not limited to, homeowners' associations. No public access is required for a community dock. ()

05. Department. The Idaho Department of Lands or its designee. ()

06. Director. The director of the Idaho Department of Lands or his designee. ()

07. Dock Surface Area. Includes docks, slips, piers, and ramps and is calculated in square feet. Dock surface area does not include pilings, submerged anchors, or undecked breakwaters. ()

08. Encroachments in Aid of Navigation. Includes docks, piers, jet ski and boat lifts, buoys, pilings, breakwaters, boat ramps, channels or basins, and other facilities used to support water craft and moorage on, in, or above the beds or waters of a navigable lake, river or stream. The term "encroachments in aid of navigation" is used interchangeably with "navigational encroachments." ()

09. Encroachments Not in Aid of Navigation. Includes all other encroachments on, in, or above the beds or waters of a navigable lake, river or stream, including landfills, bridges, utility and power lines, or other structures not constructed primarily for use in aid of navigation. It also includes float homes and floating toys. The term "encroachments not in aid of navigation" is used interchangeably with "non-navigational encroachments." ()

10. Market Value. The most probable price at a specified date, in cash, or on terms reasonably equivalent to cash, for which the property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. ()

11. Natural or Ordinary High Water Mark. The line that the water impresses upon the soil by covering it for a sufficient period of time to deprive the soil of its vegetation and destroy its value for agricultural purposes. If, however, the soil, configuration of the surface, or vegetation has been altered by man's activity, the ordinary high water mark is located where it would have been if the alteration had not occurred. ()

12. Person. An individual, corporation, partnership, limited liability company, association, trust, unincorporated organization or other legal entity qualified to do business in the state of Idaho and any federal, state, tribal, or municipal unit of government. ()

13. Riparian or Littoral Rights. The rights of owners or lessees of land adjacent to navigable lakes, rivers or streams to maintain their adjacency to the lake, river, or stream and to make use of their rights as riparian or littoral owners or lessees in building or using aids to navigation but does not include any right to make any consumptive use of the waters. ()

14. Single-Family Dock. A structure providing noncommercial moorage that serves one (1) waterfront owner whose waterfront footage is no less than twenty-five (25) feet. ()

15. State-Owned Navigable Waterways and Navigable Waterways. As used in these rules, the beds of all navigable waterways up to the natural or ordinary high water mark as of the date Idaho was admitted into statehood. This includes any such bed that was formerly submerged and subsequently filled and is now uplands because of human activity (e.g., dikes, berms, jetties) or by natural processes, and includes islands within navigable waterways resulting from human activity or by natural processes. ()

16. Submerged Lands. The state-owned beds of navigable lakes, rivers, and streams below the natural or ordinary high water marks. ()

17. Temporary Permit. A revocable instrument authorizing a specific use on navigable waterways usually issued for five (5) years or less, but that may be issued for up to ten (10) years. ()

18. Two-Family Dock. A structure providing noncommercial moorage that serves two (2) adjacent waterfront owners having a combined waterfront footage of no less than fifty (50) feet. Usually the structure is

located on the common littoral property line. ()

19. Uplands. The land bordering on navigable waterways. ()

011. -- 019. (RESERVED)

020. APPLICABILITY.

Leases are required for all encroachments defined in subsections 010.08 and 010.09 that are above, across, over, in, through, upon, and under the beds of navigable waterways except: ()

01. Single -Family Docks. Single-family docks constructed: ()

a. On or before July 1, 1993, that occupy less than eleven hundred (1,100) square feet of dock surface area, and for which all required permits and approvals have been obtained. ()

b. After July 1, 1993, that occupy less than seven hundred (700) square feet of dock surface area, and for which all required permits and approvals have been obtained. ()

02. Two-Family Docks. Two-family docks that occupy less than eleven hundred (1,100) square feet of dock surface area, and for which all required permits and approvals have been obtained. ()

03. Noncommercial Encroachments Free to the Public. Noncommercial encroachments owned by any municipality, county, state, or federal agency for which the complete use is offered free to the public. ()

04. Temporary Permits or Easements. Uses or encroachments that are customarily authorized by temporary permits or easements, such as roads, railroads, overhead utility lines, submerged cables, and pipelines. Information on easements can be found in IDAPA 20.03.09, "Easements on State-Owned Navigable Waterways." ()

021. -- 024. (RESERVED)

025. POLICY.

01. Policy of the State of Idaho. It is the policy of the state of Idaho to regulate and control the use and disposition of the beds of navigable waterways so as to provide for their commercial, navigational, recreational or other public use; provided that the Board will take no action in derogation of or seeking to interfere with the riparian or littoral rights of upland landowners. ()

02. Director May Grant Leases. The Director may grant leases for uses that are in the public interest and consistent with these rules. ()

03. Requests or Inquiries Regarding Navigability. The State owns the beds of all lakes, rivers, and streams that were navigable in fact at statehood. Information about lakes, rivers, and streams deemed navigable by the State of Idaho is available from the Department. ()

04. Stream Channel Alteration Permit or Encroachment Permit. Issuance of a lease is contingent upon the applicant obtaining a stream channel alteration permit if required by the Idaho Department of Water Resources, pursuant to Title 42, Chapter 38, Idaho Code, or an encroachment permit if required by the Department pursuant to the Lake Protection Act, Title 58, Chapter 13, Idaho Code. ()

05. Submerged Lands Lease Required Upon Notification. All persons using submerged lands in a manner that requires a submerged land lease must obtain such a lease from the Director when notified to do so. ()

06. Term of Lease, Renewal of Lease. Leases are issued for a term of ten (10) years or as determined by the Board. Leases may be renewed for additional periods as determined by the Department based upon satisfactory performance during the present term. Renewals will be processed with a minimum of procedural requirements and

will not be denied except in the most unusual circumstances or noncompliance with the terms and conditions of the previous lease. A lease application fee is required for leases that are renewed upon expiration. Lease renewals are initiated by the Department. ()

07. Rights Granted. The lease grants only such rights as are specified in the lease. The right to use the navigable waterways for all other purposes that do not interfere with the rights authorized in the lease remains with the state. ()

08. Waiver of Lease Requirements. The Director may, in his discretion, waive lease requirements for single-family or two-family dock encroachments whose dock surface areas exceed square footages described in Subsections 020.01 through 020.02 of these rules when the additional dock surface area square footage is necessary to gain or maintain access to water of sufficient depth to sustain dock use. ()

09. Private Moorage at Commercial Marinas. ()

a. This Subsection does not apply to community docks. ()

b. Private moorage at commercial marinas is allowed as long as the requirements of IDAPA 20.03.04.015.03 are met. ()

c. The sale, lease, or rental of private moorage is not an encumbrance on navigable waterways. All transactions related to private moorage are subject to the submerged lands lease's terms. ()

d. Acquisition of private moorage must be documented with a disclosure that the transaction does not convey navigable waterways and only conveys the right to use the designated portion of the marina. ()

e. The Department does not regulate the cost of private moorage or resolve disputes between a marina and private moorage owners. ()

026. -- 029. (RESERVED)

030. LEASE APPLICATION, FEE, AND PROCEDURE.

01. Fee. The non-refundable lease application fee is four hundred twenty-five dollars (\$425) for new and existing encroachments. ()

02. Application to Lease and Fee. The lease application and fee must be submitted with the following information, in sufficient detail for the Department to determine an appropriate lease rate: ()

a. A completed application form. ()

b. A scale drawing of the proposed lease area with plans detailing all intended improvements, including reference to the nearest known property corner(s). An encroachment or stream channel alteration permit may satisfy this requirement. ()

03. Notification of Approval or Denial. The Department will notify the applicant in writing if the lease application is approved or denied, and if any additional requirements will be included. ()

031. -- 034. (RESERVED)

035. RENTAL.

Rental rates for submerged land leases are set by Board policy, which is available on the Department website at <http://www.idl.idaho.gov/>. ()

01. Standardized Rental Rates. The Board sets standard submerged land lease rental rates for common uses such as commercial marinas, community docks, float homes, restaurants, and retail stores. Rental rates for commercial marinas and other uses that produce revenue for the lessee will commonly be calculated as a

percentage of gross receipts, however, other methods may be used as the Board deems appropriate. ()

02. Nonstandard Rental Rates. The Board directs the Department to use a percentage of market value or gross receipts, or other methods determined appropriate by the Board, as the submerged lands lease rental rate for non-navigational encroachments or other uncommon uses. ()

036. YEARLY REPORTING.

01. Annual Report. Lessees must provide an annual report to the Department that includes: ()

a. A schedule of moorage rental rates, including moorage sizes and types. ()

b. The number and size of all public boat and float home moorages. ()

c. The number and size of all private boat and float home moorages. ()

d. Current proof of insurance as required by the lease. ()

02. Failure to Report. Failure to provide the annual report information is a violation of these rules. ()

037. -- 039. (RESERVED)

040. LATE PAYMENT.

01. Late Payment of Rent. Rent not paid by the due date is considered late and will result in the following monthly charges. ()

a. A late charge of \$25.00 or 1% of the unpaid principal obligation, whichever is greater. ()

b. An interest charge of 1% on the unpaid principal obligation. ()

02. Late Charge Accrual. The Department will send monthly statements with the outstanding balance that will remain on the account and will continue to accrue late charges and interest each month, or any portion of a month, until the balance is paid in full. All payments will be applied first to accrued interest and late charges, and then to principal. ()

041. -- 044. (RESERVED)

045. APPRAISAL PROCEDURES.

Appraisals may be used to determine the market value of adjacent uplands for calculating submerged lease rental rates. An appraisal will be conducted by a licensed appraiser selected by the Department, although the applicant may propose an appraiser to the Department. The Department will provide appraisal instructions. The appraisal will be performed in a timely manner, and a copy sent to the Department and the applicant. The expense of the appraisal will be borne by the applicant. ()

046. -- 049. (RESERVED)

050. LEASE AMENDMENT.

01. Encroachment Amendment. A lease amendment must first be authorized through a lake encroachment or stream alteration permit or permit amendment, if required. ()

02. Amendment of Existing Lease. Amendment of an existing lease will be processed in the same manner as a new lease application, but no fee will be required. Amendment includes change of use, location, size or scope of the lease site, but does not include ordinary maintenance, repair or replacement of existing structures or facilities. ()

03. Modification of Interior Facilities. If the proposed changes to a facility do not require a new encroachment permit, a lease amendment may still be needed as described in Subsection 050.02 of these rules. The lessee must give written notice to the Department at least ten (10) days in advance of making such changes. The Department will determine if a lease amendment is needed due to the proposed changes. When requested, the lessee must also furnish one (1) set of as-built plans to the Department within thirty (30) days following completion of changes. ()

051. -- 054. (RESERVED)

055. ASSIGNMENTS, ASSIGNMENT FEE.

01. Assignment of Lease. Leases may be assigned upon approval of the Director provided that the lease conforms with Subsection 025.02 and all other provisions of these rules. The assignor and assignee must complete the Department's standard assignment form and forward it to any Department office. ()

02. Assignment Fee. The assignment fee is two hundred dollars (\$200). ()

03. Permit Assignment. The encroachment permit/stream alteration permit pertinent to a lease must be assigned to a purchaser simultaneously with a lease assignment. A lease assignment will not be approved unless the permit is assigned. ()

04. Approval Required for Assignment. An assignment is not valid until it has been approved by the Director. ()

056. -- 059. (RESERVED)

060. CANCELLATION AND ADDITIONAL REMEDIES.

01. Cancellation of Lease for Violation of Terms. Any violation of the lease by the lessee, including non-payment of rent or any violation by lessee of any rule now in force or hereafter adopted by the Board may subject the lease to cancellation. The Department will provide the lessee with written notification specifying the violation, corrective action necessary, and a reasonable time to make the correction. If the corrective action is not taken within the specified time, the Department will notify the lessee of cancellation of the lease no later than thirty (30) days prior to the cancellation's effective date. ()

02. Lease Reinstatement. A lease may be reinstated within ninety (90) days after cancellation for non-payment by paying the rental, plus interest, and a reinstatement fee to be determined by the Board. ()

03. Cancellation of Lease for Use Other Than Intended Purpose. A lease not used for the purpose for which it was granted may be canceled. The Department will notify the lessee in writing of any proposed cancellation. The lessee has thirty (30) days to reply in writing to the Department to show cause why the lease should not be canceled. Within sixty (60) days, the Department will notify the lessee of the Department's decision in writing. The lessee has thirty (30) days to appeal an adverse decision to the Director. ()

04. Removal of Improvements Upon Cancellation. Upon cancellation, the Director will provide the lessee with a specific amount of time, not to exceed six (6) months from the date of final notice, to remove any facilities and improvements. Failure to remove any facilities or structures within such time period established by the Director will be deemed a trespass on navigable waterways. ()

05. Additional Remedies Available. In addition to termination of the lease for the material default of the lessee, the lease may provide for other remedies to non-monetary breach of the lease including, but not limited to: ()

a. Civil penalties as determined by the Board and to be collected as additional rent; ()

b. The reasonable costs of remedial action undertaken by the Department as a result of the lessee's

failure to perform a requirement of the lease. These costs will be collected as additional rent; and ()

c. Such other remedies as the Board deems appropriate. ()

061. -- 064. (RESERVED)

065. BOND.

01. Bond Requirement Determined by Director. Bonds may be required for commercial navigational, community dock, and nonnavigational leases. The need for bond will be at the discretion of the Director, who will consider the potential for abandonment of the facility, harm to state-owned submerged land and water resources, the personal and real property of adjacent upland owners and the personal and real property owned by the encroachment owner that is appurtenant to and supportive of the encroachment. ()

02. Performance Bond. In the event a bond is necessary, the lessee must submit a performance bond in favor of the state of Idaho and in a format acceptable to the Director before a lease is issued. Acceptable bonds include surety, collateral, and letters of credit. The amount of bond is the estimated cost of restoration as established by the Director in consultation with the lease applicant on a case by case basis. To determine restoration costs, the Director may consider the potential for damage to land, to improvements, and the cost of structure removal. ()

066. -- 074. (RESERVED)

075. OTHER RULES AND LAWS.

The lessee must comply with all applicable state, federal, and local rules and laws insofar as they affect the use of the lands described in the lease. ()

076. -- 999. (RESERVED)

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

20.03.17 - RULES GOVERNING LEASES ON STATE-OWNED NAVIGABLE WATERWAYS

DOCKET NO. 20-0317-2201

NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and the Idaho State Board of Land Commissioners and is now pending review by the 2023 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 58-104(6), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter is scheduled for a comprehensive review in 2022 with the goal of simplifying the rules for increased clarity and ease of use. The overall regulatory burden has been reduced by decreasing both total word count and the number of restrictive words in the new rule chapter. Application and assignment fees have been increased to cover the costs of reviewing applications. Late payment policy is updated, and payment extensions are eliminated. Appraisals, if needed, will now be paid for by the applicant and will not be performed by qualified Department staff.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 7, 2022, Idaho Administrative Bulletin, Vol. 22-9, pages 209-216. An unofficial strikethrough version of the proposed rule, which shows the changes made through the rulemaking process, is available on the agency website at <https://www.idl.idaho.gov/rulemaking/docket-20-0317-2201/>.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased.

The \$150 application fee in place since 2008 is increased to \$425. This fee is being imposed pursuant to Sections 58-104, 58-127 and 58-603, Idaho Code. The \$150 assignment fee is increased to \$200. This fee is being imposed pursuant to Sections 58-104 and 58-127, Idaho Code.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Eric Wilson at (208) 334-0261 or ewilson@idl.idaho.gov.

DATED this 18th day October, 2022.

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