

# STATE BOARD OF LAND COMMISSIONERS

October 17, 2019

Regular Agenda

## Subject

Endowment Leasing Update and Auction Process Approval

## Question Presented

Shall the Board approve the Department's proposed lease auction process.

## Background

At the March 19, 2019 State Board of Land Commissioners' (Land Board) regular meeting, Attorney General Wasden made a motion that the Idaho Department of Lands (Department), in association with the Office of the Attorney General (OAG), examine current endowment auction and leasing processes and determine how they could be improved, and in fulfilling the Board's fiduciary duty.

As part of the examination, the Department evaluated its auction advertising and public awareness process and determined a need for improvement. With the assistance of the OAG, the Department prepared a new advertising and public awareness process for leasing opportunities and auctions.

On July 16, 2019, the Department provided the Land Board with an update to the lease auction advertising process and the status of certain leases. In that presentation, the Department demonstrated an example of the website and online mapping tool to be used for endowment leasing opportunities.

At the September 13, 2019 Land Board meeting, the Department presented its new lease auction advertising process, including the new online leasing page discussed at the July Land Board meeting. The presentation included a demonstration of the current website, online map, and proposed timeline for certain leases. At the September 13th meeting, the Land Board tabled the matter until October so that further legal questions could be addressed.

## Discussion

The Department has implemented a new advertising process that facilitates greater public awareness regarding lease auction opportunities, and provides increased opportunities for alternative proposals and competitive bidding. Advertising that is robust and encourages competitive bidding generates the maximum long-term financial return to endowment beneficiaries, and fulfill the Department's and the Land Board's fiduciary obligations.

The Department will begin the auction process by advertising leases available for application for auction in the newspaper of record for the county where the land is situated, for at least four weeks.<sup>1</sup> Those advertisements will be posted in the Department's area offices (either on a bulletin board, or on an electronic reader). The Department will also advertise leases that are expiring or otherwise available for application and auction on its website. The website provides readily accessible information, including a detailed description of the property, allowing users to better identify the location and property available for lease application and auction. Certain leases or lease types may be advertised in industry appropriate media, for example, commercial real estate websites. Additionally, properties the Department is promoting for application may have signs placed on the property to foster interest.

The Department temporarily suspended offering certain new leases for auction while it examined its leasing process. As a result, there will be a revised schedule and process to issue the 2020 leases. Generally, the Department will re-start the auction process for leases that have not been executed, auctioned, or conflicted beginning with re-advertisement for application.

This means that the previous advertising and applications of leases for 2020 will go through the new auction advertising process. Potential lessees who have already submitted an application may choose to have their previous application processed, or to withdraw their application for an application fee refund.

The following process will be followed for 2020 lease applications for crop, grazing, conservation and residential leases:<sup>2</sup>

- Land Board approval – October 17, 2019
- Week of October 21, 2019 – Department begins the auction process by advertising the open application period for crop, grazing, conservation, and residential
- Advertising for application period – 30 days (example: October 21 – November 20)
- Scenario 1
  - If only one application is received by the application deadline, the auction is deemed complete, with the sole applicant deemed the successful bidder
    - Lease and document preparation (example: November 21 – December 20)
    - Lease review (OAG) (example: November 21 – December 20)
    - Lease issued and executed (example: as reviewed by OAG – January 31, 2020)

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<sup>1</sup> Weekly newspaper advertising in the county where the property is located is consistent with Idaho Code § 58-313.

<sup>2</sup> Certain lease types, such as some commercial leases, will require additional evaluation or review due to their unique nature.

- Scenario 2
  - If two or more applications are received by the application deadline, a live auction (sometimes referred to as a "conflict auction") must be held
    - TBD – the timing depends on the number of applications for a particular lease, as well as other factors. For example, weather may be a factor for grazing leases for which there are two or more applicants, because the Department must value the improvements prior to live auction.

The Department and Land Board have previously promulgated the *Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases* (IDAPA 20.03.14.000 *et seq.*). The Department will continue to adhere to the processes and standards set forth in those rules, including the auction application process (IDAPA 20.03.14.020) and the requirement to hold a **live** auction only if there is more than one application (Idaho Code § 58-310 and IDAPA 20.03.14.105). If there is only one application for auction, the auction will be deemed complete as of the application deadline. The Department will also adhere to other rules concerning leasing activities, including the *Administration of Cottage Site Leases on State Lands* (IDAPA 20.03.13.000), *Rules Governing Geothermal Leasing on Idaho State Lands* (IDAPA 20.03.15.000), and *Rules Governing Oil and Gas Leasing on Idaho State Lands* (IDAPA 20.03.16.000). The Department will continue working with the Office of the Attorney General regarding leases for which there are no applicable administrative rules, such as most commercial leases.

The Department will send letters to auction applicants and certain stakeholders explaining the proposed process, and schedule.

## Recommendation

Approve the Department's proposed lease advertising and auction process.

## Board Action

A motion was made by Attorney General Wasden that the Board adopt the Department recommendation to approve the Department's proposed lease advertising and auction process. Controller Woolf asked if there was any public comment regarding this matter. Secretary of State Denney noted that no one signed up to provide public testimony. Controller Woolf seconded the motion. For the record, Governor Little recused himself from discussion and from this vote. The motion carried on a vote of 3-0.

