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**IDAPA 20
TITLE 03
CHAPTER 14**

**20.03.14 - RULES GOVERNING GRAZING, FARMING, CONSERVATION,
NONCOMMERCIAL RECREATION, AND COMMUNICATION SITE LEASES**

000. LEGAL AUTHORITY.

These rules are promulgated by the Idaho State Board of Land Commissioners pursuant to Section 58-104, Idaho Code. (3-13-02)

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 20.03.14, "Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases." (3-12-10)

02. Scope. These rules constitute the Idaho Department of Lands' administrative procedures for leasing of state endowment trust land for grazing, farming, conservation, noncommercial recreation, communication sites and other uses that are treated similarly under the provisions of Section 58-307, Idaho Code, regarding a ten (10) year lease term restriction, and under the provisions of Section 58-310, Idaho Code regarding lease auctions. These rules shall be construed in a manner consistent with the duties and responsibilities of the Idaho State Board of Land Commissioners as set forth in Title 58, Chapter 3, Idaho Code; Article 9, Sections 3, 7 and 8, of the Idaho Constitution; and Section 5 of the Idaho Admission Bill. (3-12-10)

002. WRITTEN INTERPRETATIONS.

The Board does not rely on any written interpretive statements concerning these rules. (3-13-02)

003. ADMINISTRATIVE APPEALS.

01. Board Appeal. All decisions of the Director are appealable to the Board. An aggrieved party desiring to make such an appeal shall, within twenty (20) days after receiving notice of the final decision which is being appealed or in case of a conflict auction within twenty (20) days after the auction is held, file with the Director a written notice of appeal setting forth the basis for the appeal. The Board has the discretion to accept or reject any timely appeal. In the event that the Board rejects hearing the appeal, the decision of the Director will be deemed final. (3-13-02)

02. Board Decision. In the event the Board hears an appeal, it will do so at the earliest practical time or, in its discretion, appoint a Board sub-committee or a hearing officer to hear the appeal. The Board sub-committee or hearing officer will make findings and conclusions which the Board shall accept, reject or modify. The decision of the Board after a hearing, or upon a ruling concerning the Board sub-committee or hearing officer's findings and conclusions, shall be final. (3-13-02)

03. Judicial Review. Judicial review of the final decision of the Board shall be in accord with the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code. (6-14-88)

004. INCORPORATION BY REFERENCE.

The Board does not rely upon any documents that are incorporated herein by reference. (3-13-02)

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

Idaho Department of Lands, 300 N. Sixth Street, Suite 103, Boise, Idaho 83720; office hours are 8 a.m. to 5 p.m. (MST); mailing address is Idaho Department of Lands, PO Box 83720, Boise, Idaho 83720-0050. (3-12-10)

006. PUBLIC RECORDS ACT COMPLIANCE.

All records relating to this chapter are public records except to the extent such records are by law exempt from disclosure. (3-13-02)

007. -- 009. (RESERVED).

010. DEFINITIONS.

01. Amortization. The purchase of Department authorized, lessee installed, lease improvements by the Department through allowance of credit to the lessee's annual lease payments. (3-13-02)

02. Animal Unit Month (AUM). The amount of forage necessary to feed one (1) cow or one (1) cow with one (1) calf under six (6) months of age or one (1) bull for one (1) month. One (1) yearling is considered seven tenths (.7) of an AUM. Five (5) head of sheep, or five (5) ewes with lambs are considered one (1) AUM. One (1) horse is considered one and one-half (1 1/2) AUM. (3-12-10)

03. Assignment. The Department approved transfer of all, or a portion of, a lessee's right to another person wherein the second person assumes the lease contract with the Department. (3-13-02)

04. Board. The Idaho State Board of Land Commissioners or such representatives as may be designated. (3-13-02)

05. Conflict Application. An application to lease state endowment trust land for grazing, farming, conservation, noncommercial recreation or communication site use when one (1) or more applications have been submitted for the same parcel of state endowment trust land and for the same or an incompatible use. (3-12-10)

06. Department. The Idaho Department of Lands. (6-14-88)

07. Director. The Director of the Department of Lands, or such representative as may be designated by the Director. (3-13-02)

08. Extension. An approved delay in the due date of the rental owed on a farming lease without risk of loss of the lease. (3-12-10)

09. Improvement Valuation. The Land Board approved process or processes of estimating the value of Department authorized improvements associated with a lease. (3-12-10)

10. Lease. A written agreement between the Department and a person containing the terms and conditions upon which the person will be authorized to use state endowment trust land. (3-12-10)

11. Herd Stock. Livestock leased or managed, but not owned, by the lessee. (3-13-02)

12. Lease Application. An application to lease state endowment trust land for grazing, farming, conservation, noncommercial recreation, or communication site purposes. (3-12-10)

13. Manageable Unit. A unit of state endowment trust land designated by the Department, geographically configured and sufficiently large to achieve the proposed use. (3-12-10)

14. Mortgage Agreement. Department authorization for the lessee to obtain a mortgage on a state lease. (3-12-10)

15. Person. An individual, partnership, association, corporation or any other entity qualified to do business in the state of Idaho and any federal, state, county, or local unit of government. (3-13-02)

16. Sublease. An agreement in which the state lease holder conveys the right of use and occupancy of the property to another party on a temporary basis. (3-13-02)

011. -- 018. (RESERVED).

019. LESSEE MAILING ADDRESS.

Unless otherwise notified by the lessee, all lease correspondence from the Department shall be sent to the name and address as it appears on the lease application. It is the lessee's duty to notify the Department, in writing, of any change in mailing address. (3-13-02)

020. APPLICATIONS AND PROCESSING.

01. Eligible Applicant. Any person may submit an application to lease state owned endowment land provided he has reached his eighteenth birthday, or if not eighteen (18) is married, is a citizen of the United States or has declared his intentions to become such, and is not indebted to the state of Idaho or delinquent on any payments to the state of Idaho. To be eligible for a grazing or cropland lease, an applicant must intend to use the land for domestic livestock grazing or for cropping purposes, and must certify such. (3-13-02)

02. Application Process. All lease applications must be submitted to the Department on the appropriate Department form. The applications must be signed by the applicant, must be submitted in such manner as determined by the Department, and must meet the following criteria: (3-12-10)

a. Non-refundable Fee. Each application for a lease shall be accompanied by a non-refundable application fee in the amount specified by the Board. (3-13-02)

b. Application Deadline. The deadline to apply to lease a parcel of state endowment trust land already covered by a lease shall be as established by the Department for the year the existing lease expires. Applications to lease unleased state endowment trust land may be submitted at any time, or at such time as designated by the Department. (3-12-10)

c. Legal Description on Application. All applications must include a legal description of the state endowment trust land applied on. The Department reserves the right to require an amendment of the legal description of state endowment trust lands identified in a lease application to ensure the parcel is a manageable unit or for any other reason deemed appropriate by the Department. If the applicant fails to provide an amended application, referencing a manageable unit as designated by the Department, the application shall be considered invalid. (3-12-10)

d. Nonconflicted Applications. (3-12-10)

i. If the current lessee is the only applicant and the Department does not have concerns with the lessee's current management of the leased state endowment trust land, a new lease will be issued. (3-12-10)

ii. If the current lessee is the only applicant and the Department has concerns with the lessee's current management of the state endowment trust lands, or if the only applicant is not the current lessee, the applicant shall meet with the Department to develop the terms and conditions of a proposed lease specific to the applicant's proposed use. (3-12-10)

e. Conflicted Applications. (3-12-10)

i. All applicants submitting conflict applications shall meet with the Department to develop the terms and conditions of a proposed lease specific to each applicant's proposed use. (3-12-10)

ii. The Department will provide all applicants for conflicted leases with the list of criteria that will be used to develop lease provisions. Among the factors to be addressed in the criteria are the following: (3-12-10)

(1) The applicant's proposed use and the compatibility of that use of the state endowment trust parcel with preserving its long-term leasing viability for purposes of generating maximum return to trust beneficiaries; i.e., the impact of the proposed use and any anticipated improvements on the parcel's future utility and leasing income potential. (3-12-10)

(2) The applicant's legal access to and/or control of land or other resources that will facilitate the proposed use and is relevant to generating maximum return to trust beneficiaries. (3-12-10)

(3) The applicant's previous management of land leases, land management plans, or other experience relevant to the proposed use or ability/willingness to retain individuals with relevant experience. (3-12-10)

(4) Potential environmental and land management constraints that may affect or be relevant to assessing the efficacy or viability of the proposed use. (3-12-10)

(5) Mitigation measures designed to address trust management concerns such as: (3-12-10)

(a) Construction of improvements at lessee's expense. (3-12-10)

(b) Payment by lessee of additional or non-standard administrative costs where the nature of the proposed use and/or the applicant's experience raises a reasonable possibility that greater monitoring or oversight by the Department than historically provided will be necessary to ensure lease-term compliance. (3-12-10)

(c) Bonding to ensure removal of any improvements installed for the lessee's benefit only and which would impair the future utility and leasing income potential of the state endowment trust land. (3-12-10)

(d) Bonding to ensure future rental payments due under the lease in cases where the lessee is determined by the Department to pose a significant financial risk because of lack of experience or uncertain financial resources. (3-12-10)

(6) Any other factors the Department deems relevant to the management of the state endowment trust parcel for the proposed use. (3-12-10)

f. Proposed Lease. Within ten (10) days of the final meeting with the applicant to discuss lease provisions, the Department will provide the applicant with a proposed lease containing those terms and conditions upon which it will lease the state endowment trust land. If the applicant does not accept in writing the lease as proposed by the Department within seven (7) days of receipt, the application will be rejected in writing by the Department. Within twenty (20) days of the date of mailing of the rejection notice, the applicant may appeal the Department's determination as to the lease's terms and conditions to the Land Board. No auction shall be held until the Land Board resolves any such appeal. (3-12-10)

03. Expiring Leases. Lease applications will be mailed by the Department to all holders of expiring leases no less than thirty (30) days prior to the application deadline. Signed applications and the application fee must be returned to the Department by the established deadline or postmarked no later than midnight of that date. It shall be the lessee's responsibility to ensure applications are delivered or postmarked by the deadline. (3-12-10)

04. Rental Deposit. (3-13-02)

a. Existing Lessee. If the existing lessee is the sole applicant, the lessee may submit the rental deposit at the normal due date. If a conflict application is also filed on the expiring lease and the existing lessee is awarded the lease by the Land Board, the lessee must deposit, with the Department, the estimated first year's rental for the lease at the time the lease is submitted to the Department with lessee's signature. (3-12-10)

b. New Applicants. (3-12-10)

i. Expiring Lease. New applicants for expiring leases must submit the estimated first year's rental to the Department at the time of the application's submission. (3-12-10)

ii. Unleased State Endowment Trust Land. All applicants for unleased state endowment trust land are deemed new applicants. If an applicant for unleased state endowment trust land is the sole applicant, the applicant may submit the rental deposit at the normal billing cycle, unless the time of application and desired time of use do not coincide with the normal billing cycle, in which case payment must be rendered at the direction of the Department. When more than one (1) application is received for unleased state endowment trust land, all applicants must deposit, with the Department, the estimated first year's rental for the lease prior to auction. (3-12-10)

021. RIGHTS RESERVED TO THE DEPARTMENT.

The Department expressly reserves the right: (3-13-02)

01. Reservations. To all mining rights, timber rights, water rights, easements and rights of way, and the

fee title to the leased land. (3-13-02)

02. Other Leases. To maintain present, and to issue future mineral, oil and gas, geothermal and other subsurface leases as provided by Title 47, Idaho Code. Annual rental may be adjusted to reflect any utility loss to the lessee from such activities. (3-13-02)

03. Grazing Restrictions. To restrict or prohibit grazing on all, or portions of, the leased land to accommodate other resource management objectives. The lessee will be given one hundred eighty (180) days written notice, prior to turn out of livestock on the lands leased, of any such restrictions or termination of grazing use together with a map of the restricted area. The Department will work with lessee to find alternate forage sources on endowment lands to minimize the financial impact to the endowment. Annual rental will be adjusted to reflect any utility loss to the lessee from such activities should alternate sources of forage not be found. (3-13-02)

04. Seed Harvest. To harvest seed from plants on land not under a cropland lease. The Department will coordinate harvesting activities with lessee to minimize impacts on livestock operations. If loss of use occurs from harvesting activities the rental will be adjusted in the amount of lost use. (3-13-02)

05. Entry. To enter upon and inspect the lands leased at any reasonable time to insure protection of the Department's interest. (3-13-02)

06. Easements. To grant easements and rights of way across or upon the lands leased. The Department shall coordinate with the lessee before processing any easement applications on the leased land. Annual rental will be adjusted to reflect any utility loss to the lessee from any such easements or rights of way. Acreage of the lands described within the lease may be adjusted to reflect any such easements or rights of way that permanently remove such lands from grazing use. (3-13-02)

07. Public Access. To exclusively regulate public access on state lands. Grazing or cropland leases will not be considered exclusive use leases as described under Title 36, Chapter 16, Idaho Code. These rules do not authorize or purport to authorize trespass on private lands to reach state-owned lands. Use of state lands shall not be restricted without prior written approval of the Department. (3-13-02)

08. Water Rights. To all water rights appurtenant to state lands. Lessees may not appropriate any water rights that are appurtenant to state lands, including instream livestock use or stock watering rights. Any water right appropriated on state land shall be appropriated in the name of the state of Idaho. (3-13-02)

09. Road Closures. To close roads for road protection, wildlife protection or administrative purposes. Planned road closures will be reviewed with the lessee prior to action. The lessee will have the right of due process when decisions affect the lessee's use of the lease. (3-13-02)

10. Special Leases. To grant special leases upon the lands described in the grazing lease. If the special lease conflicts with the grazing use or makes consumptive use of forages, the grazing rental will be adjusted to reflect such loss of use. (6-14-88)

11. Permanent Improvements. To claim all permanent improvements placed upon the land remaining after six (6) months in cases of abandonment by the lessee or to take possession immediately in cases of cancellation upon breach of any of the conditions of the lease. No improvements will be disposed of by the Department until all appeals have been exhausted. (3-13-02)

022. LENGTH OF LEASE.
The Department may issue a lease for any period of time up to the maximum term provided by law. (3-12-10)

023. -- 029. (RESERVED).

030. CHANGE IN LAND USE.
The Director may change the use of any state endowment trust land, in whole or in part, for other uses that will better achieve the objectives of the Board. (3-12-10)

01. Termination of Existing Lease. In case of a change in land use to a use other than provided for under these rules, the existing lease may be terminated, in whole or in part, upon one hundred eighty (180) days written notice to the lessee. If a lease is terminated due to a change in land use, improvement credit will be addressed in accordance with these rules. (3-12-10)

031. -- 039. (RESERVED).

040. RENTAL.

01. Rental Rates. Rental rates shall be determined by the Board. The rental rate for livestock grazing leases shall be based on the number of allowable AUMs. The rental rate for cropland leases shall be based on the number of acres used for crop production. (3-13-02)

02. Special Uses. Fees for special uses requested by the lessee and approved by the Department, including, but not limited to, concentrated feeding areas or structures/buildings enhancing management of the land, shall be determined by the Department. (3-13-02)

03. Rental Due Date. Lease rentals are due in accordance with the terms of the lease. (3-12-10)

041. CHANGE OF RENTAL.

The Department reserves the right to increase the annual lease rental. Notice of any increase will be provided in writing to the lessee at least one hundred eighty (180) days prior to the lease rental due date. (3-13-02)

042. LATE PAYMENTS.

Rental not paid by the due date shall be considered late. Late payment charges from the due date forward shall be specified in the lease. (3-12-10)

043. -- 048. (RESERVED).

049. BREACH.

01. Non-Compliance. A lessee is in breach if the lessee's use is not in compliance with the provisions of the lease. (3-12-10)

02. Damages for Breach. A lessee is responsible for all damages resulting from breach and other damages as provided by law. (3-13-02)

050. LEASE CANCELLATION.

Leases may be cancelled by the Director for the following reasons: (3-13-02)

01. Non-Compliance. If the lessee is not complying with the lease provisions or management plan provisions or if resource damage attributable to the lessee's management is occurring to state land within a lease, the lessee shall be provided written notification of the violation by regular and certified mail. The letter shall set forth the reasons for the Department's cancellation of the lease and shall provide the lessee thirty (30) days notice of the cancellation. (3-13-02)

02. Change in Land Use. A lease may be cancelled in whole or in part upon one hundred eighty (180) days written notice by the Department if the state endowment trust lands are to be leased for any other use as designated by the Board or the Department and the new use is incompatible with the existing lease. In the event of early cancellation due to a change in land use, the lessee will be entitled to a prorated refund of the premium bid for a conflicted lease. (3-12-10)

03. Land Sale. The Department reserves the right to sell state endowment trust lands covered under the lease. The lessee will be notified that the state endowment trust lands are being considered for sale prior to submitting the sales plan to the Board for approval. The lessee will also be notified of a scheduled sale at least thirty (30) days prior to sale. In the event of early cancellation due to land sale, the lessee will be entitled to a prorated refund of the premium bid for a conflicted lease. (3-12-10)

04. Mutual Agreement. Leases may be cancelled by mutual agreement between the Department and the lessee. (3-13-02)

051. LEASE REINSTATEMENT.

01. After Cancellation for Non-Payment. A lease may be reinstated within thirty (30) days after cancellation for non-payment when the rental, late payment charges, and a reinstatement fee have been paid. If not reinstated within the time specified the delinquent lessee must file a new lease application to lease the state endowment trust land or the lease may be offered to other parties. (3-12-10)

02. After Cancellation for Other Causes. Leases cancelled for violation of lease terms or for resource damage may be reinstated by the Department provided the former lessee submits a written request for reinstatement and commits to implement management actions that will address the resource management concerns and mitigate damages that may have occurred, as determined by the Department. (3-12-10)

052. LEASE ADJUSTMENTS.

01. Department Required. The Department may make adjustments to the lease for resource protection or resource improvement. (3-13-02)

02. Lessee Requested. Lessee requested changes in lease conditions must be submitted in writing and must receive written approval from the Department before implementation. (3-13-02)

053. EXTENSIONS OF ANNUAL FARMING LEASE PAYMENT.

01. Farming Lease Extensions. An extension of the annual lease payment may be approved for farming leases only. Each lease is limited to no more than two (2) successive or five (5) total extensions during any ten (10) year lease period. Requests for extensions must be submitted in writing and must include the extension fee determined by the Board. The lessee must provide a written statement from a financial institution verifying that money is not available for the current year's farming operations. (3-12-10)

02. Liens. When an extension is approved, the Department will file a lien on the lessee's pertinent crop in a manner provided by Idaho Code. If the subject state endowment trust land is covered under a Conservation Reserve Program contract with the federal government, the lessee must sign a transfer of payment, or a similar form provided by the federal government, transferring the federal payment to the Department if the rental payment is not received by the newly established deadline. (3-12-10)

03. Due Date. Rental plus interest at a rate established by the Board will be due not later than November 1 of the year the extension is granted. (3-13-02)

054. CROPLAND LEASE HARDSHIP CLAIMS.

01. Crop Loss. Adjustments in rental may be made because of unusual crop loss that occurs through no fault of the lessee. Such loss must be thoroughly substantiated by the lessee. (3-13-02)

02. Conditions to Meet. To qualify for a hardship claim the following conditions must be met: (3-13-02)

a. All requests for hardship claims must be submitted to the Department in writing immediately after the damage has occurred. (3-13-02)

b. Claims will be considered for the current growing season only. (6-14-88)

c. Any adjustments will be credited to next year's rental. (3-13-02)

d. Claims will only be approved for losses beyond the control of the lessee. (3-13-02)

e. The lessee will only receive a reduction in rental for yield losses that occur beyond the normal variation expected for similar land in the situated county. Normal variation will be calculated from the Idaho Statistical Reporting Service records. (3-13-02)

f. Average yields used to calculate the rental on the subject lands will be used to determine any lease rental adjustments for this purpose. The lease rental will only be adjusted for losses that exceed thirty-five percent (35%) of the average crop yield. (3-13-02)

g. Adjustments will not be made for losses if lessee is compensated through another government program or crop insurance. (6-14-88)

055. -- 059. (RESERVED).

060. FEES.

Fees for lease administration will be periodically set by the Board and must be paid in full before a transaction can occur. All lease administration fees are non refundable. The Board shall have the authority to set fees related to administration of the leasing process including, but not limited to the following: (3-12-10)

01. Lease Applications. (3-13-02)

02. Full Lease Assignment. (3-13-02)

03. Partial Lease Assignment. (3-13-02)

04. Mortgage Agreement. (3-13-02)

05. Subleases. (3-13-02)

06. Late Rental Payment. (3-13-02)

07. Lease Reinstatement. (3-13-02)

08. Minimum Lease Fee. (3-13-02)

09. Lease Payment Extension Request. (3-13-02)

061. -- 069. (RESERVED).

070. SUBLEASING.

A lessee shall not authorize another person to use state endowment trust land without prior written approval from the Department. The lessee must provide the name and address of sublessee, purpose of sublease, and a copy of the proposed sublease agreement. Lessee controlled herd stock does not require sublease approval. (3-12-10)

071. ASSIGNMENTS.

The lessee shall not assign a lease, or any part thereof, without prior written approval of the Department. (3-13-02)

072. MORTGAGE AGREEMENTS.

The lessee shall not enter into a mortgage agreement that involves state endowment trust land lease without prior written approval of the Department. The lessee must submit the required filing fee. The term of a mortgage agreement shall not exceed the lease term. (3-12-10)

073. -- 079. (RESERVED).

080. GRAZING MANAGEMENT PLANS.

Prior to issuance of a lease, the lessee and the Department must agree to a written grazing management plan. (3-13-02)

01. Federal Plan. When state land is managed in conjunction with federal land, the management plan prepared for the federal land may be deemed by the Department, at its discretion, to satisfy the requirements of a management plan. (3-13-02)

02. Modification of Plan. The Department may review and modify any grazing management plan upon changes in conditions, laws, or regulations, provided that the Department shall give the lessee thirty (30) days notice of any such modifications prior to the effective date thereof. Modifications mutually agreeable to both the Department and lessee may be made at any time. (3-13-02)

081. -- 089. (RESERVED).

090. TRESPASS.

01. Loss or Waste. The lessee shall use the property within the lease in such manner as will best protect the state of Idaho against loss or waste. Unauthorized activities occurring on state land shall be considered trespass; these include dumping of garbage, constructing improvements without a permit, and other unauthorized actions. (3-13-02)

02. Civil Action by Lessee. The lessee is encouraged to take civil action against owners of trespass livestock on state lands to recover damages to the lessee for lost forage or other values incurred by the lessee. (3-13-02)

03. Continuing Trespass. When continued trespass causes resource damage, the Department will initiate proceedings to restrict further trespass and recover damages as necessary. (3-13-02)

04. Trespass Claims. Trespass claims initiated by the Department will be assessed as triple the current State AUM rate for forage taken. (3-13-02)

091. -- 099. (RESERVED).

100. CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS.

01. Prior Written Approval. The lessee must secure the written approval of the Department prior to constructing any improvements or buildings, or clearing any state endowment trust land. Failure to secure such approval shall eliminate any right to an improvement credit and may, at the Department's discretion, be deemed a material breach of the lease and cause for cancellation. Any arrangement for cost sharing or improvement crediting will be identified in the improvement permit. Routine farming practices identified in a farm plan will not require prior approval. (3-12-10)

02. Maintenance. All authorized improvements shall be maintained in functional condition by the lessee. The lessee may be required to remove or reconstruct improvements in poor or non-serviceable condition. Existing maintenance agreements on lands acquired from the federal government shall remain in effect until amended by the parties involved. If maintenance is not being accomplished, the Department shall provide a certified letter to the lessee informing the lessee of the rule violation. If work is not begun within thirty (30) days, the Department may contract repairs and add the amount to the annual rental. (3-13-02)

03. Bond. The Department may require the lessee to furnish a bond prior to constructing improvements as deemed necessary to protect endowment assets or to ensure performance under the lease. (3-12-10)

101. IMPROVEMENT CREDIT.

01. Sale or Auction. In the event of sale of the state endowment trust land covered under the lease or if the existing lessee is not the successful bidder at the auction of the lease, the creditable value of the authorized improvements, as determined by the Department, shall be paid to the former lessee by the Department or the purchaser where a sale occurs or by the successful bidder where a new lease is issued. (3-12-10)

02. Exchange. In the event of exchange of the state endowment trust land covered under the lease, the creditable value of authorized improvements, as determined by the Department, shall be paid to the former lessee by the acquiring party, if other than the existing lessee. (3-12-10)

03. Crediting. Improvement credit may be allowed when the Department determines that such credit would further the objective of maximizing long-term financial return to trust beneficiaries if the improvements are: (3-12-10)

a. Authorized in writing by the Department or lacking written authorization, but in existence prior to 1970; (3-12-10)

b. Not expressly permitted “for lessee’s benefit only”; and (3-12-10)

c. Maintained during the lease term. (3-12-10)

04. Value Only to Lessee. Where improvements are approved, but due to their nature, are not acceptable to receive improvement credit because no value exists for a future lessee, a notation shall be made in the permit, “For lessee’s benefit only.” If the succeeding lessee or assignee chooses not to purchase the non-creditable improvements, the former lessee will be required to remove them. (3-13-02)

05. Maintenance Costs. Maintenance of improvements will be considered a normal cost of doing business and no improvement credit will be allowed, except that, with prior written approval from the Department, improvement crediting may be allowed for materials used for the maintenance of Department-funded improvements. (3-13-02)

06. Unauthorized Improvements. No credit will be allowed for unauthorized improvements. At the discretion of the Department, the lessee may be required to remove unauthorized improvements. (3-13-02)

07. Cost Sharing. Federal or state cost-share amounts shall not be included in the allowable improvement credit. (3-13-02)

102. VALUATION OF IMPROVEMENTS.

Credited improvements will be valued on the basis of replacement cost, including lessee provided labor, equipment and materials, less depreciation based on loss of utility. Improvements cannot be appraised higher than current market value, regardless of lessee's cost. Any improvement amortization or cost limitations identified by the Department will be considered in determining a final value. (3-19-07)

01. Applicant Review of Department Improvement Credit Valuation. All applicants for a conflicted lease will be provided a copy of the Department’s improvement credit valuation for review and a notice of objection form. Any applicant objecting to the appraisal will have twenty-one (21) days from the date of the valuation mailing to submit the notice of objection form to the Department. If no objections are received during the twenty-one (21) day review period, the lease auction will be scheduled and will proceed using the Department’s improvement credit valuation. (3-19-07)

02. Failure to File a Timely Notice of Objection. Failure to submit a notice of objection within the specified twenty-one (21) day period will preclude any applicant from further administrative remedies and the auction will proceed using the Department’s improvement credit valuation. (3-19-07)

03. Notice of Objection. Any applicant objecting to the Department improvement credit valuation must submit a complete and timely notice of objection form, and payment of two thousand five hundred dollars (\$2,500) or ten percent (10%) of the total Department improvement credit valuation whichever is greater, to pay for the services of an independent third party. Within five (5) days of receipt of the notice of objection, the Department will notify all applicants in writing that an objection has been received and provide them with a list of certified appraisers. (3-19-07)

04. Selection of an Independent Third Party. The applicants will have twenty-one (21) days from the date of the Department’s notification of an objection to select by mutual agreement, one individual from the list of

certified appraisers to serve as an independent third party. If the applicants cannot agree on an independent third party within the twenty-one (21) day time period, the Department will randomly select one individual from the list to serve as the independent third party. (3-19-07)

05. Duties of the Independent Third Party. The independent third party will review the Department improvement credit valuation and alternate valuations provided by the applicants. Following this review, the independent third party will select from among the Department valuation and alternate valuations, the one value that (s)he determines is the most accurate value of the improvements. The independent third party will notify the Department of this value in writing. (3-19-07)

06. Notification of Final Improvement Value. Within five (5) days of receiving the independent third party's final determination of improvement credit value, the Department will mail to each applicant an auction notice which shall reference the independent third party's determined value of improvements. The determination by the independent third party of the improvement value will be deemed final, and the appraised value of improvements will not be allowed as a basis for appeal of the auction. (3-19-07)

103. -- 104. (RESERVED).

105. CONFLICT AUCTIONS.

01. Two or More Applicants. When two (2) or more eligible applicants apply to lease the same state endowment trust land for grazing, farming conservation, noncommercial recreation, or communication site purposes and the Department determines the proposed uses are not compatible, the Department shall hold an auction. (3-12-10)

02. Applicant Notification. At least fourteen (14) days prior to the date of such auction, the Department shall give notice by letter, which notice shall be sent in the course of certified mail to each of the applicants for the lease, notifying them of the time and place such auction is to be held. The notice shall be sent to the name and address as it is given in the application. (3-13-02)

03. Minimum Bid. Bidding shall begin at two hundred fifty dollars (\$250) or the cost of preparing any required improvement valuation in connection with the expiring lease, whichever is greater. (3-12-10)

04. Auction Bidding. Each applicant who appears in person or by proxy at the time and place so designated in said notice and bids for the lease shall be deemed to have participated in the auction. A proxy must be authorized by the lease applicant in writing prior to the start of the auction. (3-13-02)

05. Withdrawal Prior to Auction. Applicants who withdraw their applications prior to the auction or fail to participate at the auction forfeit an amount equal to the lesser of the following: (3-12-10)

- a.** The Department's cost of making any required improvement credit valuation; (3-12-10)
- b.** For existing lessee applicants, any improvement credit payment that would otherwise be due if not awarded the lease; or (3-12-10)
- c.** For conflict applicants, the rental deposit made. (3-12-10)

06. High Bid Deposit. The high bidder is required to submit payment in the amount of the high bid at the conclusion of the auction. (3-12-10)

07. Auction Procedures. The Department shall prescribe the procedures for conducting conflicted lease auctions. (3-12-10)

08. Withdrawal After Auction. (3-12-10)

a. If the high bidder withdraws or refuses to accept the lease, the high bid payment will be retained by the Department. (3-12-10)

- i. If the auction involved only two (2) participants, the second high bidder shall be awarded the lease. (3-12-10)
- ii. If the auction involved more than two (2) participants, the lease will be reauctoned. (3-12-10)
- b. If an auction bidder other than the high bidder withdraws a bid before Land Board review and action on the auction results, no adjustment will be made in the payment deposited by the high bidder. (3-12-10)

106. BOARD REVIEW OF AUCTION.

The Board will review the proposed leases and auction results and make the determination required under Section 58-310, Idaho Code, consistent with its obligations under Article IX, Section 8 of the Idaho Constitution and all relevant statutory provisions. (3-12-10)

107. -- 110. (RESERVED).

111. NOXIOUS WEED CONTROL.

01. Weed Control. The lessee shall cooperate with the Department, or any other authorized agency, to undertake programs for control or eradication of noxious weeds on state endowment trust land. The lessee shall take measures to control noxious weeds on the leased land in accordance with Title 22, Chapter 24, Idaho Code. (3-12-10)

02. Responsibility. The lessee will not be held responsible for the control of noxious weeds resulting from other land management activities such as temporary permits, easements, special leases and timber sales. Control of noxious weeds on state grazing lands shall be shared by the lessee and Department, with the Department's share subject to funds appropriated for that purpose. (3-13-02)

112. LIVESTOCK QUARANTINE.

01. Cooperation. The lessee shall cooperate with the state/ federal agency responsible for the control of livestock diseases. (6-14-88)

02. Non-Compliance. Non-compliance with state/federal regulations will be considered a lease violation and may result in cancellation of the lease. (6-14-88)

113. ANIMAL DAMAGE CONTROL.

The lessee may request the services of USDA Animal and Plant and Health Inspection Service-Wildlife Services to remove animals causing crop damage or harassing/killing the lessee's livestock. The Department shall not be liable for any consequence from any animal control actions. (3-13-02)

114. LIABILITY (INDEMNITY).

The lessee shall indemnify and hold harmless the state of Idaho, its departments, agencies and employees for any and all claims, actions, damages, costs and expenses which may arise by reason of lessee's occupation of the leased parcel, or the occupation of the leased parcel by any of the lessee's agents or by any person occupying the same with the lessee's permission. (3-12-10)

115. RULES AND LAWS OF THE STATE.

The lessee shall comply with all applicable rules, regulations and laws of the state of Idaho and the United States insofar as they affect the use of the state endowment trust lands described in the lease. (3-12-10)

116. -- 999. (RESERVED).

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