

# STATE BOARD OF LAND COMMISSIONERS

December 20, 2022

Regular Agenda

## Subject

Adoption of Endowment Land Exchange Policy

## Question Presented

Shall the Land Board approve the policy on Endowment Land Exchange, which provides guidance to the Department for the criteria and process for evaluating proposals to exchange endowment land?

## Background

The Asset Management Plan identifies the need for the Land Board Investment Subcommittee (Investment Subcommittee) to approve a land exchange policy that provides guidance to the Idaho Department of Lands (Department) for exchanging endowment land. The Department, working with the Office of the Attorney General, composed the draft endowment land exchange policy (Attachment 1) for presentation to the Investment Subcommittee.

The Department presented the land exchange policy to the Investment Subcommittee on September 7, 2021. The land exchange policy was discussed in detail, and the Investment Subcommittee authorized the endowment land exchange policy for presentation to the Land Board for approval.

At the November 21, 2021 Land Board meeting this item was presented. The Department received feedback to revise the policy and firm up parts of the process. This new policy has incorporated that feedback.

## Discussion

As the trustee for and acting in the best interest of endowment land beneficiaries, the Land Board has the power and discretion to exchange properties of equal values with federal agencies, other State of Idaho agencies, or private landowners.

The Department has completed and is in the process of completing numerous land exchange transactions under the authority of Idaho Code §§ 47-701(3), 47-711, 58-104(8), 58-133, 58-138, 58-505, and in accordance with the mandates in the Idaho Constitution Article IX, §§ 7 and 8. Those land exchange projects have provided benefits to the endowments including: blocking up larger parcels of existing endowment lands, adding or improving access to existing endowment lands, and other benefits, such as donated land value in some transactions when the exchange land is more valuable than the endowment land.

As the state of Idaho's population continues to grow, so will the opportunities and, potentially, the complexity of exchanges. Therefore, the Department and the Investment Subcommittee agree that this Land Board policy on exchanging endowment land is a timely and prudent guidance document.

### **Recommendation**

Adopt the Endowment Land Exchange Policy.

### **Board Action**

### **Attachments**

1. Draft Endowment Land Exchange Policy



## Endowment Land Exchange

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### **Purpose**

To provide State Board of Land Commissioners' (Land Board) guidance to Idaho Department of Lands (IDL) for the criteria and process for evaluating exchanges of endowment lands

As the trustee for and acting in the best interest of endowment beneficiaries, the Land Board has the power and discretion to approve or reject any proposed land exchange. Given the broad discretion granted to the Land Board, this policy will assist applicants and IDL staff in evaluating the merits of a particular land exchange and establish the process for an exchange.

### **Scope**

The criteria and text contained within this policy document are intended as guidance only. Legal requirements, which shape the Land Board's review of land exchanges, are found within the following constitutional and statutory provisions:

1. Idaho Constitution Article IX, §§ 7 and 8
2. Idaho Admission Bill §§ 5 - 12
3. Idaho Code §§ 47-701(3), 47-711, 58-104(8), 58-133, 58-138, 58-505

### **Agency Contact**

Real Estate Services Bureau Chief

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### **Policy**

IDL will evaluate proposals for land exchange, whether with private parties or other public entities, using the legal authorities set forth above, guided by the criteria set forth in this policy. IDL may recommend approval of an exchange proposal, and the Land Board may approve an exchange, if the exchange is in the best interest of and maximizes the long-term financial return to endowment beneficiaries.

#### **I. Land Exchange Initiation**

- A. A land exchange proposal may be initiated by IDL, a private party, or a government entity. IDL and the exchange proponent(s) (Proponent) should meet prior to the exchange application's filing. That pre-application meeting may occur at the local Supervisory Area (Area) office or with the Real Estate Services (RES) Bureau in the Boise staff office. The pre-application meeting, although not mandatory, is critical in setting expectations.
- B. The optional pre-application meeting between the Proponent and IDL should focus on the exchange process, expense, and timeframe. IDL will provide guidance for desired outcomes in exchanges, including the criteria that IDL will use to evaluate the exchange proposal. If the Proponent does not own the land they would like to exchange, IDL will not direct the Proponent regarding which lands the Proponent should acquire for exchange. Upon completing the pre-application meeting, the Proponent may submit an application and the required application fee of \$1,000.

## II. Application Evaluation

- A. Upon receiving the application from the Proponent, the RES Bureau will review the application with the Area and check for completeness and accuracy including verification of land ownership with land records. If the application is complete and accurate, the RES Bureau and Area will begin the initial review of the proposed exchange, including estimating whether the land the Proponent wishes to exchange (Proponent's Land) is similar in value to the endowment land that is the subject of the proposed exchange (Endowment Land). The RES Bureau will rely on comparable properties that are active, pending, or sold to estimate the range of land values involved in the exchange. Additional valuation data may be obtained by studying statewide market conditions and consulting local real estate brokers regarding the local market conditions. If the Proponent's Land appears to be valued at 90% or less of the Endowment Land, the Proponent will be notified that the exchange application will be denied unless they include additional lands as part of the exchange. IDL may exchange into more valuable lands if the Proponent is willing to donate the remaining value to the endowments.
- B. The RES Bureau may, at its discretion, contract with third-party advisors to assist at any stage of an exchange evaluation.
- C. If the Proponent's and Endowment Lands are determined to be similar in value, the RES Bureau will further review the proposal using the following Land Exchange Criteria (Criteria):
  - **Equal or Greater Value:** Land acquired by the State must be at least as valuable as the Endowment Land. The value of Endowment Lands should be determined by the highest and best use of the land. For example, if the exchange were proposed in which the Endowment Lands were currently leased for grazing, and the land was in the path of urban or commercial development, the land would be appraised by a Member of the Appraisal Institute ("MAI") for its highest and best use rather than the existing use as grazing land.
  - **Consolidation of Endowment Lands:** Consideration will be given to a land exchange that results in the consolidation of existing endowment lands.
    - Consolidation should produce additional benefits that may be covered by other criteria such as economies of scale, reduced management costs, or access.
    - The land exchange should be neutral in its net effect on the consolidation of endowment land, and not further fractionalize endowment land holdings by creating isolated parcels of endowment land.
  - **Access:** Consideration will be given to a land exchange where the land acquired by IDL will improve access to existing endowment lands.
    - After the exchange, the lands acquired by the endowments must have feasible and legal access.
    - A land exchange should not diminish the amount or quality of access to existing endowment lands.

- **Equal or Greater Income to the Trust:** Consideration will be given to a land exchange that results in the State receiving equal or higher revenue for the endowments. The potential income from the Proponent's Land will be compared to the current income from leases, licenses, and other sources of the Endowment Lands. For comparison purposes, IDL will also consider identifiable future incomes, including income from the extraction of natural resources such as minerals and forest products.
  - **Potential for Long-term Appreciation:** Consideration will be given to a land exchange where the Proponent's Land is likely to increase in value or revenue potential at a greater rate than the Endowment Land. IDL and the Land Board must protect the long-term financial interests of the trusts.
  - **Proponent's Land:** The Proponent must show evidence of ownership or an ability to acquire through a valid, unredacted contract on the land they are proposing to exchange. In addition, the Proponent must provide proof of funds or a letter of credit confirming that the buyer has an adequate source of funding to complete the purchase. This requirement may be waived if the buyer is a government or tax-supported agency.
  - **Disguised Sale:** If any of the below criteria are met when reviewing applications, IDL should seek legal advice from the Office of the Attorney General to determine if the transaction may be considered a disguised sale.
    - The lands to be exchanged are significantly different in type or value.
    - The Proponent does not own the land being offered for exchange or cannot prove the ability to purchase and close prior to completion of the potential land exchange. The potential exchange would require a significant cash contribution due to differences in valuation.
    - The proposed exchange involves more than two parties.
    - The endowment land is located within a rapidly appreciating real estate market.
- D. IDL may determine whether to pursue or continue an exchange based on the most significant quantifiable benefit to the endowment. Applications that do not meet the criteria above, do not satisfy the constitutional mandates of Article IX, § 8 of the Idaho Constitution, or are likely to be considered a disguised sale, may be rejected by the RES Bureau Chief or Area Manager. If the application is determined to be in the best interest of the endowment by meeting some or all of the criteria, the RES Bureau Chief will present the exchange to the Asset Management Steering Committee.

### III. Asset Management Steering Committee Review

- A. The Asset Management Steering Committee (AMSC), which is composed of the Director, the Deputy Director, the Division Administrator of Trust Land Management, and the Division Administrator of Operations, provides direction to the RES Bureau for land exchanges, acquisitions, dispositions, and complex leases.
- B. Land exchange proposals approved by the AMSC will be presented to the Land Board for its approval for IDL to proceed with due diligence, including but not limited to the appraisal and fair market value determinations described in Idaho Code § 58-138(5) and (6).

- C. IDL will provide the Proponent written notice within 30 days of the AMSC's decision to approve or deny the application.
- D. If the AMSC approves the land exchange concept, IDL will notify via certified mail the surrounding property owners of the Proponent's land and the endowment land, the existing IDL lessees, and county commissioners. The initial request to complete the land exchange will include any comments received. Communications with potentially affected interests will continue throughout the process.

#### **IV. Land Board Initial Approval**

Acting under the direction of the AMSC, IDL will prepare a memorandum for the Land Board requesting approval to proceed with the formal due diligence analysis of the exchange.

The request to the Land Board will focus on the benefits and potential concerns identified in the criteria set forth in Section II. In addition, the proposal must include maps, a due diligence budget, a term sheet, and any other pertinent information that will assist the Land Board in determining if the land exchange is in the best interest of the endowments.

#### **V. Formal Due Diligence**

- A. Upon receiving Land Board approval, IDL will complete the due diligence required for the exchange, with assistance from the Proponent as needed. The due diligence must align with what a prudent investor would require for land acquisition and disposition. A list of the potential due diligence items is attached to this policy as Attachment 1. The due diligence reports must name IDL as a client, and the RES Bureau will draft the scope of work. If appropriate, the RES Bureau will work with third-party experts to develop a scope of work to ensure the endowment's interests are protected.
- B. Once the appraisals are completed, IDL will review the report with the Proponent to determine if adjustments to the land involved in the exchange are necessary. Exchanges may have a delta in appraised value, but if the Proponent's land is appraised at 90% or less of the endowment land, the lands proposed in the exchange will need to be adjusted. The Proponent may bring up to ten percent (10%) of the appraised value in cash to equalize the value of the exchange.
- C. Upon completion of due diligence, the RES Bureau will present a detailed report and its recommendation to a third-party expert advisor for review and comment. Upon receipt of the advisor's comments, and report if one was requested, IDL will present the land exchange proposal to the Land Board for final consideration.
- D. If information obtained during or as a result of the formal due diligence process shows that the exchange is no longer in the best interest of the endowments, the Director may terminate the exchange. If the exchange is terminated or if the Proponent withdraws from the exchange, the Director will provide an update at the next regular Land Board meeting.

#### **VI. Land Exchange Agreement**

A land exchange agreement must be drafted and principally agreed upon by the Proponent and IDL before presenting the land exchange to the Land Board for final approval. This agreement will include, but is not limited to, the legal descriptions of the lands involved, appraised values,

additional terms of the transactions, due diligence expenses, legal access, how title is conveyed, closing costs, title insurance, appurtenances to the land, mineral rights, encumbrances, representations, and warranties of both parties.

## **VII. Land Board Final Approval**

- A. The memorandum seeking the Land Board's final approval to close the exchange will highlight the benefits to the endowments related to the land exchange criteria, a third-party review and recommendation, the draft land exchange agreement, and any relevant due diligence that the Land Board should consider when deciding whether to approve the land exchange. The Land Board may disapprove of any exchange, which, in its discretion, would not be advantageous to the endowments or is otherwise inconsistent with the Land Board's trustee obligations as set forth in Article IX, § 8 of the Idaho Constitution.
- B. Following the Land Board's final approval, the RES Bureau will work with the appropriate internal departments (e.g., Fiscal, Land Records) and the Office of the Attorney General to prepare final documentation for signature by the Director and Proponent.

### **Revision History**

MM/DD/YYYY Version 1.0 – First approved iteration of this policy.

This policy should be reviewed for necessary updates within five years.