

STATE BOARD OF LAND COMMISSIONERS

March 21, 2023

Regular Agenda

Subject

Request approval to proceed with due diligence for Benewah County land exchange

Question Presented

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

Background

In February 2022, the Idaho Department of Lands (Department) received an application for a land exchange from Benewah County (County), care of County Commissioner Bob Short (Attachment 1). The proposed exchange would trade approximately 120 acres of County owned timberland for approximately 60 acres of endowment land. All lands involved in this proposed exchange are located in Benewah County. An overview map of the project is included as Attachment 2.

The County's parcels are 15 miles south of St. Maries in Benewah County, in the Tyson Creek drainage where the Department manages 9,000 acres of core endowment timberland. The Benewah County land is surrounded on all sides by existing endowment timberland. A map of the Benewah County parcels is included as Attachment 3.

The approximately 60 acres of School of Science endowment land are located 9 miles south of St. Maries, in Benewah County. The endowment land involved in this exchange is not contiguous. The property includes a 20-acre parcel fronting State Highway 3, commonly known as the Rodeo Grounds, and a nearby 40-acre parcel containing 35 acres of regenerative young timber and a 5-acre rock quarry. There are currently three leases on the endowment land involved in the exchange. The Department will work with the lessees to ensure they are treated fairly throughout the land exchange process. A map of the endowment land is included as Attachment 4.

A meeting was held between the Department and Benewah County Commissioners on February 13, 2023. All three Benewah County Commissioners are supportive of the land exchange and have agreed to split the cost of due diligence evenly with the Department. Both parties desire an equal value exchange, with a maximum of ten percent (10%) difference in land values. This may require some "balancing" during the due diligence process, whereby more or less land than has been previously stated may ultimately be exchanged by either party. Any necessary balancing of the land involved in this proposed land exchange will take place during the appraisal process.

Discussion

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

Specific benefits of the exchange include:

- Return on Asset: While a return on asset (ROA) cannot be finalized until due diligence work is completed, it is anticipated that the long-term ROA for the Benewah County property as timberland will be higher than the lease revenue on the endowment land.
- The proposed land exchange will improve legal and physical access to existing endowment land in the Tyson Creek drainage.
- The proposed land exchange will block up existing endowment land which will provide increased efficiency with regard to forest management and timber harvest activities.

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

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

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

Recommendation

Approve proceeding with due diligence for the Benewah County land exchange proposal.

Board Action

Attachments

1. Benewah County LEX Application
2. Overview Map
3. Benewah County Parcel Map
4. Endowment Land Parcel Map
5. Due Diligence Checklist

LAND EXCHANGE APPLICATION TERMS AND CONDITIONS

(Please read carefully before completing)

IMPORTANT CONSIDERATIONS:

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

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

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

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

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

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

TRANSACTION COSTS BORNE BY THE APPLICANT

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

APPLICATION PROCESS

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

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

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

Cottage Sites

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

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

Applicant's Property

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

1. Financial Analysis *N/A*
 - a. Identify all sources of Revenue for the Property and Provide two (2) years' Financial Statements
 - b. Provide a rent roll
 - c. Indicate an appropriate Vacancy Rate
 - d. Provide two (2) years' Operating Statements
 - e. List all capital improvements made during the life of the building
 - f. Provide a deferred maintenance schedule and an appropriate reserve account balance
2. Market Analysis *N/A*
 - a. Identify supporting and competing properties in the surrounding market area
 - b. List growth industries in the surrounding market area and region
 - c. Provide population and employment projections
3. Describe the improvements *N/A*
 - a. Year Built
 - b. Number of Stories
 - c. Gross Land Square Footage
 - d. Gross Building Square Footage
 - e. Gross Rentable Area per BOMA standards
 - f. Describe type of construction for the improvements,
 - g. Attach interior and exterior photos, including aerial photos of the buildings
4. Tenant Analysis *N/A*
 - a. Describe the operational objectives of each tenant
 - b. Provide a Lease Abstract for each lease agreement
 - c. Provide a two year lease payment schedule, highlighting defaults, if any
5. Property Analysis
 - a. Provide site plan, map of the property and surrounding area, aerial photos and most recent survey of the subject property.
 - b. List any water rights affecting the property *None*
 - c. List all utilities available to the property *None*
 - d. Provide a complete listing of any waste dumps, landfills or other hazardous material issues on or near the applicant's property. *None*
 - e. Provide other data relevant to the use of the site, i.e. timber cruise, site productivity data, site regeneration data *None*

Applicant's property interest offered for Exchange

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

Endowment Land

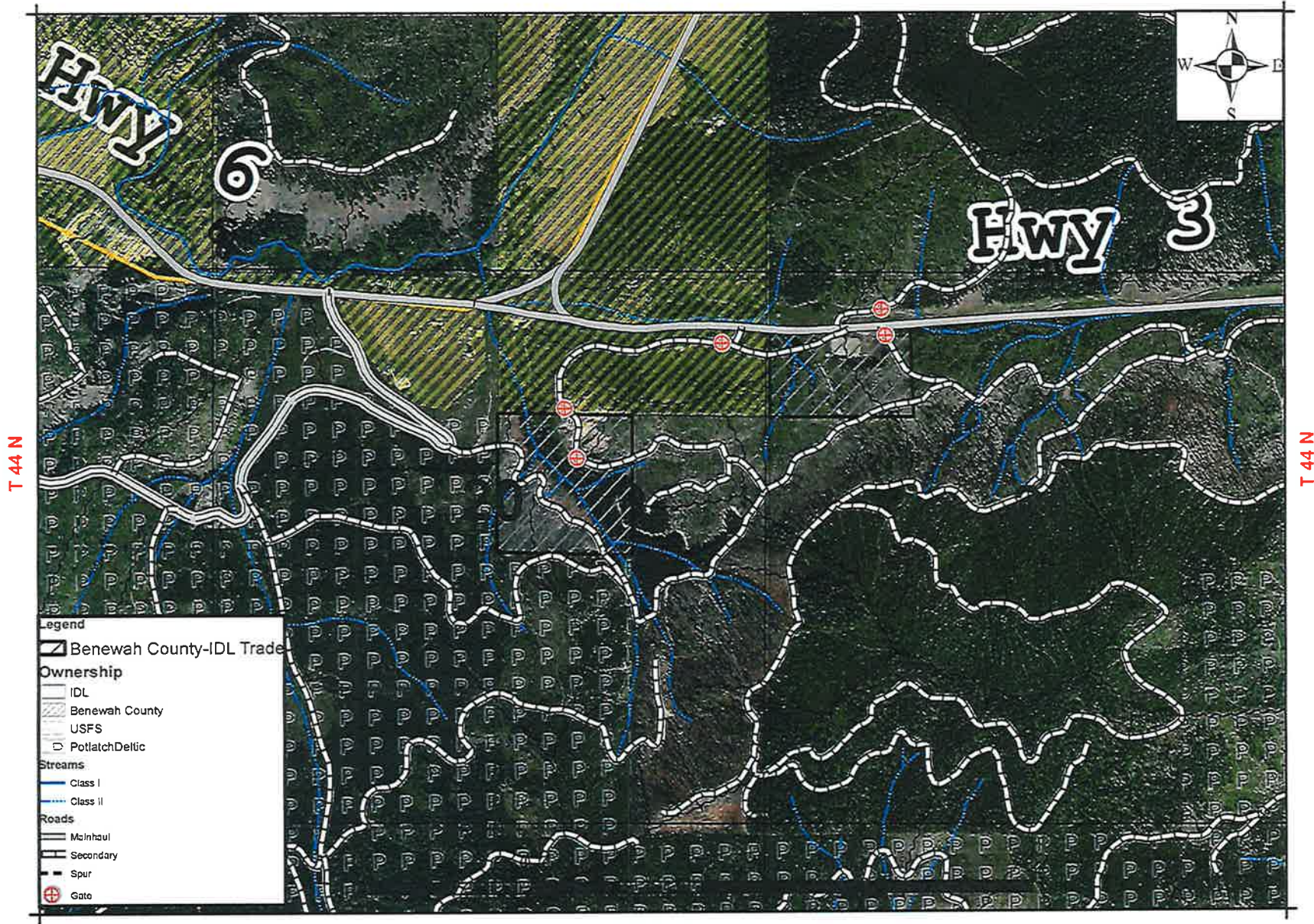
Parcel	Twp	Rge	Section	Subdivision	Acres	County	Type of Land (forest, range, agriculture, commercial, residential)	Fund (IDL Staff)
A	44N	1W	20	SWNE	40	Beneath	Forest Commercial	
B	44N	1W	21	pts. NWNW South Highway 3	23.4	Beneath	Forest	
C								
D								
E								
F								

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

Potential IDL-Benewah County Land Exchange

IDL Parcels-Santa Y

R 01 W

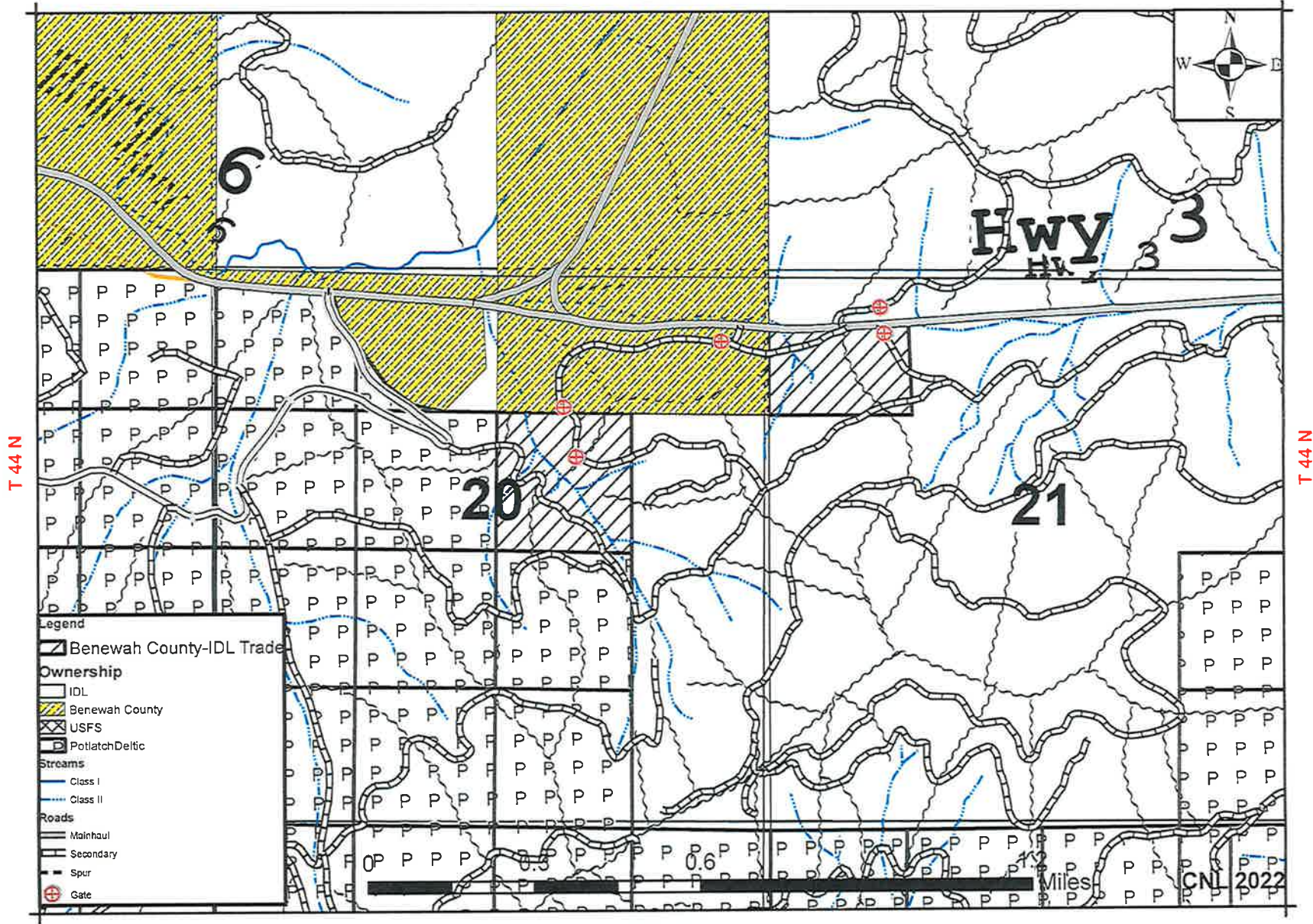


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Potential IDL-Benewah County Land Exchange

IDL Parcels-Santa Y

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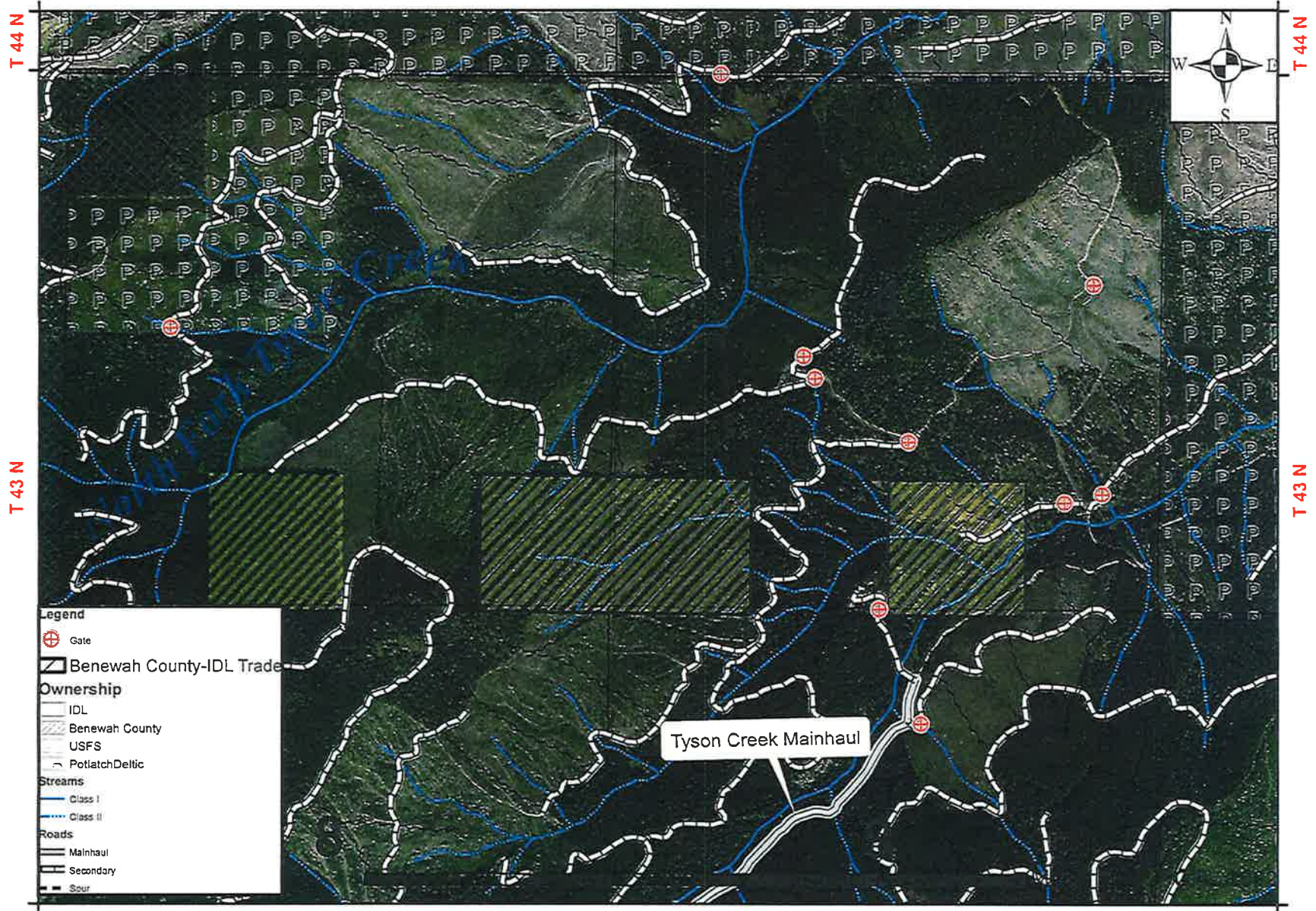


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Potential IDL-Benewah County Land Exchange

Benewah County Parcels- Tyson Creek

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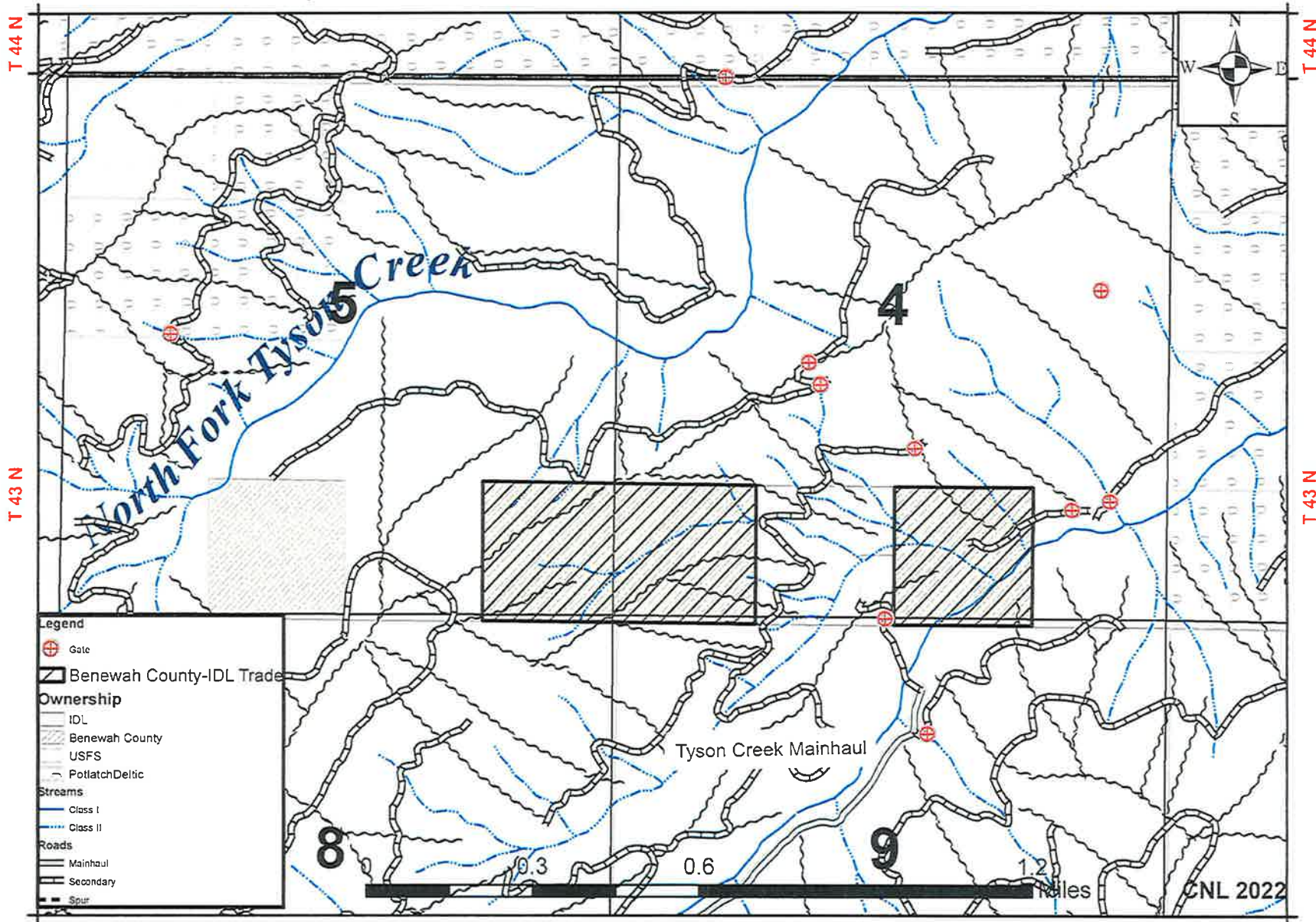


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Potential IDL-Benewah County
Land Exchange

Benewah County Parcels- Tyson Creek

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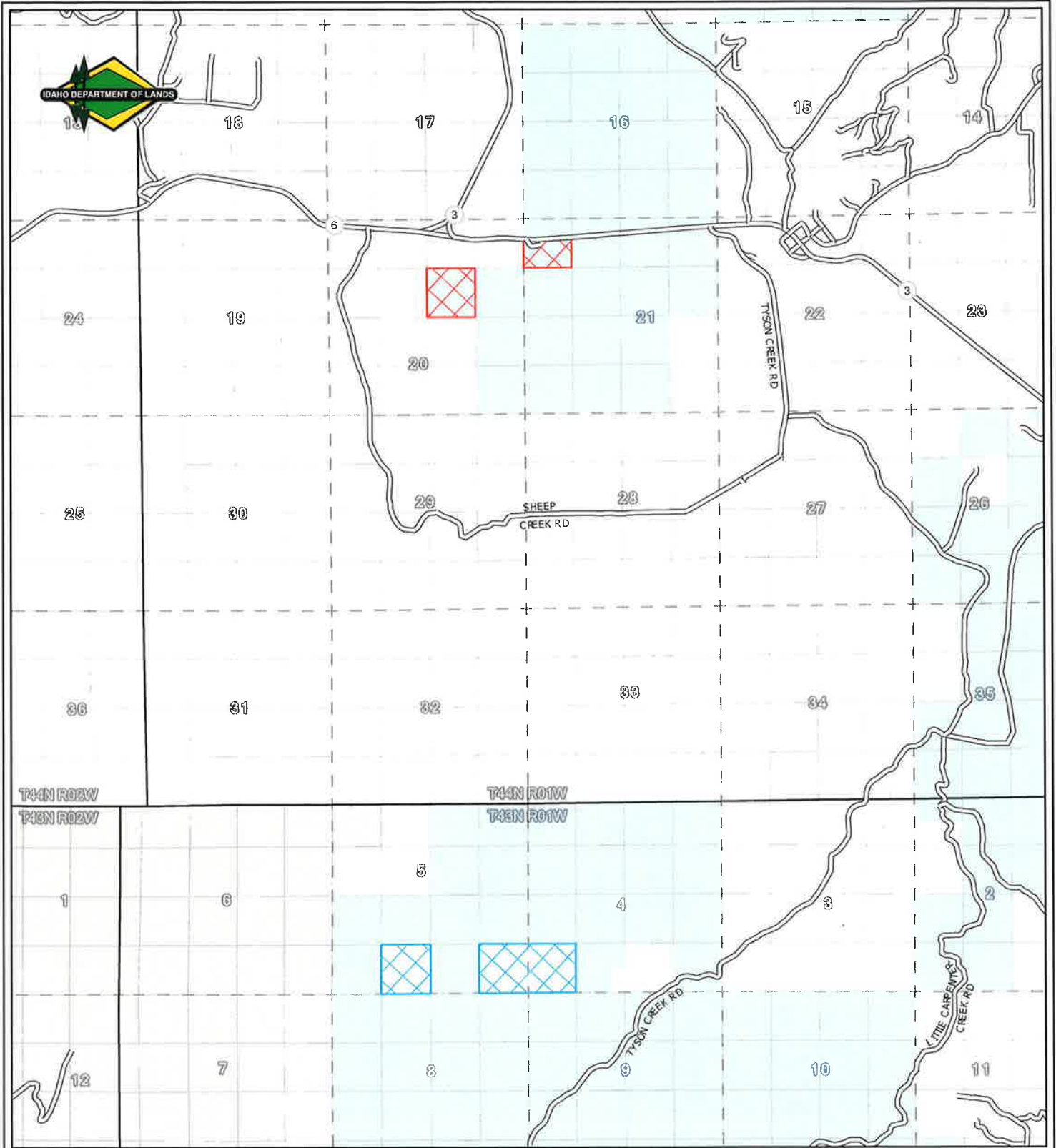
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Proposed Rodeo Rock City Forties Land Exchange

The St. Joe Area and Benewah County Commissioner, Bob Short, have had preliminary discussions regarding a proposed land exchange of one hundred and twenty (120) acres of land owned by Benewah County for sixty-three acres of endowment trust land in Benewah County, Idaho.

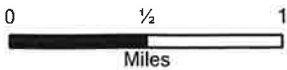
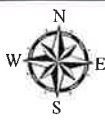
The characteristics of each parcel are as follows:

- IDL Parcels
 - Rock Pit Parcel
 - Acres: 40
 - Endowment: School of Science
 - SWNE, Sec 20, T44N, R01W.
 - Contains rock pit currently leased by Benewah County E 09247
 - Expires February 28, 2023.
 - Minimum annual royalty \$340.00 per year or \$0.60 per cubic yard or \$0.45 per ton, whichever is greater.
 - This “rock” is basically harder fill material, not material suitable for crushed aggregate.
 - It has little value to our endowment operations.
 - This pit has become a dumping site in the past.
 - Rodeo Parcel
 - Acres: 23.4
 - Endowment: Capitol Permanent
 - Pts. of the NWNW south of State Hwy 3, T44N, R01W
 - Contains lease M300005 Up River Saddle Club
 - Lease with local saddle club
 - Expires December 31, 2024
 - Current Annual Rent \$440.00
 - A shooting range was proposed (M300010) by the Benewah County Public Gun & Archery Range, Inc. They applied but have been unable to address our concerns regarding a better site plan, environmental planning, etc.
 - Our last formal contact was on March 10, 2020.



-  Acquire
-  Dispose
-  Township
-  Section
-  Subsection
-  USFS
-  Private
-  Endowment

Idaho Department of Lands
 St. Joe Area/District
 Benewah County, Idaho
 3/14/2023



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.

Land Exchange
 IDL-Benewah County
 IDL = 63.64 ac
 Benewah = 119.95 ac
 Scale: 1:42,000



Due Diligence Checklist

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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