

STATE BOARD OF LAND COMMISSIONERS

May 16, 2023
Regular Agenda

Subject

Old Penitentiary Historic District Memorandum of Understanding (MOU)

Question Presented

Shall the Land Board authorize the Director to execute the revised MOU?

Background

The Old Penitentiary Historic District (District) consists of approximately 161 acres of Penitentiary reserve land and approximately 129 acres of Penitentiary acquired land. These lands are shown on Attachment 1. About 189 acres of Penitentiary endowment land is adjacent to the Penitentiary reserve and acquired lands.

Idaho Code § 58-337 (Attachment 2) provides the authority and the mechanism for lease of lands within the District, including direction that the Land Board may relinquish control over all or part of the District to other state agencies willing to assume control.

A 1995 MOU provides the Idaho State Historical Society (ISHS) with the responsibility for security and maintenance of the District, plus the authority to authorize short-term uses of the property (5 years or less). Long-term uses of the property (more than 5 years) would be presented to the Land Board for approval.

Under the MOU the Idaho Department of Lands (Department) retained authority over all leases and permits on the adjacent Penitentiary endowment land.

Discussion

The Department has worked with ISHS and the Office of the Attorney General to develop a revised MOU for Land Board consideration (Attachment 3). The intent of this revision is to update the MOU and provide clarity to ISHS for their administration of the District. The substantive changes proposed in the revised MOU are as follows:

1. The Land Board relinquishes and transfers jurisdiction and control over the District to ISHS.
2. ISHS is authorized to lease any part of the District for a term not to exceed fifty (50) years.
3. Neither the Land Board nor the Department will act as an advisor or have any right to approve any lease, permit, easement, or use agreement within the District, with the exception of geothermal and oil and gas leases which will be administered by the Department.

4. The Land Board retains jurisdiction and control of the adjacent Penitentiary endowment land.
5. The revised MOU is recommended for review at a 10-year recurring interval and is subject to termination with 90 days' written notice from either party.

Recommendation

Authorize the Director to execute the revised memorandum of understanding with the Idaho State Historical Society for the management of the Old Penitentiary Historic District.

Board Action

Attachments

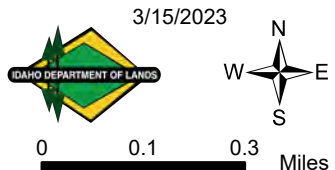
1. Map of Old Penitentiary Historic District and Vicinity
2. Idaho Code § 58-337
3. Proposed Revised MOU



HISTORIC PENITENTIARY DISTRICTS

- ENDOWMENT LAND PARCEL
- RESERVE LANDS
- ACQUIRED LANDS

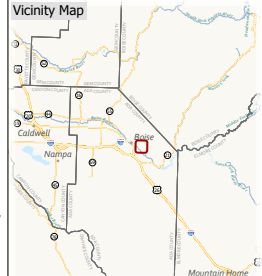
Old Penitentiary Historic District
Sections: 12,13, 18 - T03N - R02N, R03E



Map Notes

Projection: Idaho Transverse Mercator, NAD 83
Map Notes and Data Sources

Disclaimer:
This map has been compiled using the best information available to the Idaho Department of Lands at the time and may be updated and/or revised without notice. In situations where known accuracy and completeness is required, the user has the responsibility to verify the accuracy of the map and the underlying data sources.





Idaho Statutes

TITLE 58
PUBLIC LANDS
CHAPTER 3

APPRAISEMENT, LEASE, AND SALE OF LANDS

58-337. LEASE OF OLD PENITENTIARY SITE. To preserve and enhance the cultural, educational, recreational and scenic values of the old penitentiary site at Boise, the state board of land commissioners or any other state agency having jurisdiction and control over the site is authorized to lease any part of the site to private persons, firms, or corporations for a term not to exceed fifty (50) years. The board is also authorized to relinquish control and custody over any part of the old penitentiary site to other state agencies for use as building or office space. Unless otherwise prohibited by law, proceeds from the rental of the old penitentiary site beyond cost of maintenance and historic interpretation shall be credited to the permanent building fund. For purposes of this act [section], the old penitentiary site at Boise includes all penitentiary reserve and acquired lands owned by the state of Idaho in:

Sections 12 and 13, Township 3 North, Range 2 East, Boise Meridian, and the west half of Section 18, Township 3 North, Range 3 East, Boise Meridian.

History:

[58-337, added 1974, ch. 301, sec. 1, p. 1768.]

How current is this law?

Search the Idaho Statutes and Constitution

MEMORANDUM OF UNDERSTANDING
IDAHO STATE HISTORICAL SOCIETY
IDAHO DEPARTMENT OF LANDS, on behalf of the
STATE BOARD OF LAND COMMISSIONERS

This MEMORANDUM OF UNDERSTANDING (“MOU”) is made and entered this ____ day of _____, 2023 (“Effective Date”), by and between the IDAHO STATE HISTORICAL SOCIETY (“ISHS”) and the STATE BOARD OF LAND COMMISSIONERS (“Board”), acting through the IDAHO DEPARTMENT OF LANDS (“IDL”), to transfer management and administration of the below-described lands from the Board to ISHS, and to clarify the relationship and responsibilities of each entity towards the other.

WHEREAS, under Section 9 of the Idaho Admission Bill, the United States granted the State of Idaho approximately 160 acres located in Sections 12 and 13, Township 3 North, Range 2 East, Boise Meridian, and the west half of Section 18, Township 3 North, Range 3 East, Boise Meridian for a state penitentiary (“Penitentiary Reserve Lands”);

WHEREAS, the State of Idaho acquired an additional approximately 148 acres also located in Sections 12 and 13, Township 3 North, Range 2 East, Boise Meridian, and the west half of Section 18, Township 3 North, Range 3 East, Boise Meridian, also for a state penitentiary (“Penitentiary Acquired Lands”);

WHEREAS, together the Penitentiary Reserve Lands and Penitentiary Acquired Lands constitute the lands referred to herein as the “Old Penitentiary Historic District”;

WHEREAS, under Section 11 of the Idaho Admission Bill, the United States granted the State of Idaho 50,000 acres of land for the support of the state penitentiary, including approximately 187.27 acres (the “Penitentiary Endowment Land Parcel”), which are adjacent to and on the east side of the Old Penitentiary Historic District, but are, by the terms of this Agreement, specifically excluded from such District;

WHEREAS, Idaho Code § 58-337 provides the authority and mechanism for lease of lands within the Old Penitentiary Historic District;

WHEREAS, Idaho Code § 58-337 contemplates that the Board may relinquish control over all or a portion of the Old Penitentiary Historic District to other state agencies willing to assume control under the terms and conditions expressed in Idaho Code § 58-337;

WHEREAS, the Board previously has transferred portions of the Old Penitentiary Historic District to other state agencies, including the Department of Agriculture and Health and Welfare, for the construction of facilities for the use of those state agencies;

WHEREAS, the Board and ISHS have entered prior agreements pertaining to management of the Old Penitentiary Historic District including a Memorandum of Agreement executed by the IDL Director on December 20, 1994, and the ISHS Director on July 27, 1995,

which superseded a Memorandum of Agreement between the parties dated September 10, 1985, which in turn superseded a Memorandum of Agreement between the parties dated February 2, 1976;

WHEREAS, ISHS agrees to assume all jurisdiction and control of the Old Penitentiary Historic District;

NOW THEREFORE, the parties agree as follows:

1. The Board, acting through IDL, hereby relinquishes and transfers jurisdiction and control over the Old Penitentiary Historic District to ISHS.
2. ISHS hereby accepts jurisdiction and control over the Old Penitentiary Historic District.
3. Pursuant to Idaho Code § 58-337, ISHS is authorized to lease any part of the Old Penitentiary Historic District to private persons, firms, or corporations for a term not to exceed fifty (50) years, with the exception of geothermal water leases or oil and gas leases, which will be administered by IDL.
4. Neither the Board nor IDL will act as an advisor or have the right to approve any lease, permit, easement, or use agreement into which ISHS may hereafter enter regarding the Old Penitentiary Historic District.
5. Nothing contained herein shall affect the Board's jurisdiction and control over the Penitentiary Endowment Lands Parcel. The Penitentiary Endowment Lands Parcel will be administered to secure the maximum long term financial return for the support and maintenance of the state penitentiary.
6. This MOU does not modify any existing agreement with third parties pertaining to use of the Old Penitentiary Historic District. Any rights reserved to the Board in such existing agreements are hereby assigned to ISHS. If ISHS wishes to renegotiate or renew any existing agreement pertaining to use of the Old Penitentiary Historic District, approval of the Board shall not be requested or required.
7. No waiver, modification, or amendment of this MOU or of any covenant or condition herein contained shall be valid unless in writing duly executed by both the Board and ISHS.
8. It is recommended that this MOU be reviewed and modified as deemed necessary on a 10-year recurring interval. Periodic review notwithstanding, this MOU shall remain in effect until terminated in accordance with Section Nine. The Board and ISHS both reserve the right to revisit and change the terms of the MOU at any time they deem necessary, in accordance with Section 7.

9. Either party hereto may terminate this MOU at any time by giving the other party written notice of such termination. Such termination shall be effective not earlier than ninety (90) days following the date of the party receiving said written notice, except by mutual agreement of both agencies.

10. This MOU supersedes and replaces all prior agreements between the parties regarding the Old Penitentiary Historic District.

STATE OF IDAHO,
State Board of Land Commissioners, acting by and through:

Idaho Department of Lands

Dustin T. Miller
Director

Date

STATE OF IDAHO,
Idaho State Historical Society

Janet Gallimore
Executive Director

Date