

STATE BOARD OF LAND COMMISSIONERS

December 19, 2023

Information Agenda

Subject

Endowment Land Commercial Ground Leasing Policy

Background

As part of ongoing efforts to fulfill fiduciary responsibilities to endowment beneficiaries, the State Board of Land Commissioners (Land Board) tasked the Idaho Department of Lands (Department) to regularly review and recommend necessary policies and procedures for leasing activities on endowment lands. The Department recognized the need for a policy governing commercial ground leasing practices. The implementation of such a policy will improve efficiencies and allow for increased activity in the commercial leasing portfolio.

Discussion

Over the past two months, Department staff worked internally, and with the Office of the Attorney General (through redline, providing comments, and approval of terms), to review the Department's commercial ground leasing process and develop a policy for commercial ground leasing activities on endowment lands. The commercial ground leasing policy identifies some of the activities that the Department deems commercial uses (as defined in Idaho Code § 58-307(5)), details how the Department will proceed with lease applications initiated by a proponent versus parcels internally nominated for advertisement and describes criteria for when to implement a Request for Proposal (RFP) process rather than following the traditional lease advertisement process.

The Department's goal is to provide a streamlined, uniform way to perform commercial leasing transactions while abiding by all applicable statutes. This will allow the Department to explore additional opportunities to increase revenue generating activity on endowment lands. The commercial ground leasing policy and related procedures will foster the greatest level of competition between proponents, identify highest and best use potential of transition lands, and work with existing leasing programs to explore further ways to meet the fiduciary mission of endowment lands.

Attachments

1. Commercial Ground Leasing Policy draft



Commercial Ground Leasing Policy

Purpose

This policy describes and delegates certain decision-making authority to the Director for matters related to commercial ground leasing on endowment lands.

Agency Contact

Bureau Chief - Real Estate Services

Policy

I. Allowed Types of Commercial Leases

- A. The Department has the discretion to evaluate commercial ground lease applications, initiate the Request for Proposal (RFP) process, and create and maintain leasing processes for activities falling within the purview of an existing commercial ground leasing portfolio. These include ground leases for industrial enterprises, retail sales outlets, business and professional office buildings, hospitality enterprises, commercial recreational activities, multifamily residential developments, and other similar businesses.
- B. The Department may consider proposals for ground leasing for multifamily residential developments such as apartments or townhome complexes only when there is no direct lease agreement between the residential occupants and the Department; and, the residential occupants do not own any improvements (all improvements will be owned by the commercial lessee).
- C. The Department will not consider joint-venture or partnership agreements or similar arrangements with private entities in violation of Art. VIII, § 4, Id. Const.

II. Criteria for Seeking Land Board Approval of Commercial Lease or RFP Proposals

- A. Proposed activities on commercial properties that are likely to elicit public involvement or complaints, that are politically sensitive in nature, or could otherwise be problematic for the Department, will be brought to the Land Board for approval.
- B. Novel, complex commercial use proposals that do not fit within the existing leasing portfolio will be brought to the Land Board for approval before the Department proceeds with the leasing or RFP process.

III. RFP Versus Traditional Lease Application Process

- A. The Department will have discretion as to which lease opportunities are best suited for RFP versus the traditional lease advertisement process. The Department (Area and Bureau staff) will consider various factors when making that decision, including, but not limited to, prevailing market conditions, recent expressions of interest in leasing opportunities, ongoing development activities in the vicinity, the strategic objectives outlined by Department

leadership, the project's public perception, managerial complexities, and whether the concerned lands are in transition.

- B. The Land Board's commercial property advisor may be utilized in this process.
- C. Factors that favor an RFP include: a novel commercial use, substantial outside interest, desire for long-term lease (more than 20 years), availability for multiple uses, and/or uncertainty as to highest and best use.
- D. Factors that favor the traditional lease process include: an existing commercial activity that is generating market revenue; or characteristics of the property that result in a high degree of certainty there will not be competition for competing uses (properties with poor access, properties located in areas with limiting geographic features, limiting environmental or zoning factors, etc.).
- E. If a proponent applies for a use that is consistent with what the Department has determined to be the highest and best use for a parcel that has not already been nominated for an RFP process, the Department will initiate the traditional lease application process. The initial terms of the lease, including rent, will be communicated to applicants during the advertisement period. At the end of the advertisement period, if there is only one applicant, the lease will be awarded to that applicant. If the lease has more than one applicant during the advertisement period, the lease will be offered in the form of a live auction among the applicants. The bidding during the live auction will determine a one-time premium bid for the right to execute the lease.
- F. Bureau or Area staff may identify a parcel to nominate as a candidate for a lease through the RFP process. The highest and best use will be determined by analyzing the responses to the RFP and the financial offering from the proponents. At the end of the RFP period, a lease will be negotiated by Bureau and Area staff with input from the selected proponent of the RFP. Once lease terms have been agreed upon, the resulting lease and land will be publicly advertised as available for lease. If there is only one applicant, then the applicant will be offered the lease. If there are two or more applicants, then a live auction will be held among the applicants.
- G. All leases will be reviewed and approved by the Office of the Attorney General prior to being executed by the Office of the Governor and notarized by the Office of the Secretary of State.

Revision History (Board Action)

DATE First approved iteration of this policy.