

R850. School and Institutional Trust Lands, Administration.

R850-30. Special Use Leases.

R850-30-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Subsections 53C-1-302(1)(a)(ii), ~~and~~ 53C-4-101(1), ~~and~~ 53C-4-104(3) which authorize the director to establish criteria for the leasing of trust lands.

R850-30-120. Definitions.

The terms below, when used in ~~this Section~~ Rule R850-830 are defined as follows:

(1) “Eligible Property” means trust lands eligible for lease to the Utah Department of Natural Resources pursuant to Section 53C-4-104.

R850-30-150. Planning.

(1)- In addition to those other planning responsibilities described in ~~Section~~this Rule R850-30, the agency shall:

4(a)- Submit proposals to lease trust lands to the Resource Development Coordinating Committee (RDCC) unless the proposal is exempt from such review;

2(b)- Evaluate comments received through the RDCC process; and

3(c)- Evaluate comments received through the request for proposal process pursuant to Section R850-30-310 or the solicitation process pursuant to Section R850-30-500, as applicable.

(2)- ~~The director~~agency is not required to submit proposals to the RDCC for the lease of trust lands to the Utah Department of Natural Resources made pursuant to Section R850-30-700.

R850-30-200. Terms of Leases.

Lease terms should not normally be for longer than 30 years, except that telecommunication and agricultural leases should not normally be for longer than 20 years. Extensions to a lease term should not normally be for longer than 20 years. The ~~director~~agency may issue leases for a term longer than 30 years or extend a term for longer than 20 years if a longer term is consistent with the land management objectives found in Rule R850-2.

R850-30-300. Categories of Special Use Leases.

Special use leases are categorized as follows:

- (1)- Commercial;
- (2)- Industrial;
- (3)- Agricultural;
- (4)- Telecommunications;
- (5)- Residential; and
- (6)- Governmental.

R850-30-305. Other Business Arrangements.

(1)- The ~~director~~agency may enter into other business arrangements (OBAs), such as joint venture and lease to sell agreements, that are consistent with the purposes of the Act.

(2)- OBAs are exempt from ~~Rule~~these R850-30 ~~rules~~.

(3)- OBAs and any amendments to OBAs must be approved by the ~~board~~Board of Trustees.

R850-30-310. Requests for Proposals.

(1)- The ~~director~~agency may issue a request for proposals (RFP) for surface uses of trust lands.

(2)- The ~~director~~agency shall give notice of the RFP to lessees or permittees of record on the subject property and shall advertise the RFP by methods determined by the ~~director~~agency to increase exposure of the subject property to qualified applicants.

(3): In response to the RFP, an applicant may propose a sale, lease, joint development, exchange, or other business arrangement.

(4): The directoragency shall evaluate proposals using the following criteria:

- (a) income potential;
- (b) potential enhancement of trust lands;
- (c) development timeline;
- (d) applicant qualifications;
- (e) desirability of proposed use; and
- (f) any other criterion deemed appropriate by the directoragency.

(5): The directoragency may charge non-refundable application and review fees, as specified in the RFP.

(6): Applicants selected in the RFP process are exempt from the application process in Section R850-30-500.

R850-30-400. Lease Rates.

(1): The directoragency may not lease trust lands for less than the fair market value of the leasehold. The directoragency shall base the fair market lease rates on either the market value or income producing capability of the subject property and may require any commercially reasonable type of consideration, including rent, percentage rent, use payments, impact charges, escalating charges, balloon payments, and in-lieu payments. The directoragency may base lease rates on any of the following criteria, in combination or otherwise:

- (a) the estimated value of the subject property, as informed by an appraisal, market analysis, or other relevant data, multiplied by the current agency-determined interest rate;
- (b) responses to RFPs, pursuant to Section R850-30-310, or solicitations for competing applications, pursuant to Section R850-30-500;
- (c) comparable lease data;
- (d) market value of the proposed use of the subject property;
- (e) rates schedules approved by the director;
- (f) the administrative costs of leasing the subject property and a desired minimum rate of return; and
- (g) a fixed rate per acre or a crop-share formula for agricultural leases providing that the lease rate is customary and reasonable.

(2): If a lease rate is lower than the value calculated pursuant to Subsection R850-30-400(1)(a), the directoragency shall reserve the right to terminate the lease before the end of the term.

(3): Lease Review and Adjustment Procedures.

(a) The directoragency shall review special use leases periodically as specified in the lease agreement and may adjust lease rates, the amount of financial guaranty, the amount of required insurance, and other similar lease provisions to ensure the agency receives no less than fair market value for the subject property and is adequately protected against a lessee's breach. Periodic lease reviews should normally be no less frequent than every five years.

(b) The directoragency may base lease rate adjustments on changes in market value including appreciation of the subject property, changes in established indices, or other methods that are appropriate and in the best interest of the trust beneficiaries.

(c) If the lease does not specify the rate of adjustment, the rate of adjustment will be based on the Consumer Price Index, published by the U.S. Bureau of Labor Statistics, All Urban Consumers, Western Region Average, All Items (1982-84 = 100), or if the Consumer Price Index is no longer published, a substitute index published by a governmental agency and comparable to the Consumer Price Index. The adjusted lease rate cannot be less than the lease rate for the immediately preceding review period.

(d) The director may suspend, defer, or waive lease adjustments in specific instances, based on a written finding that the suspension, deferral, or waiver is in the best interest of the trust beneficiaries.

R850-30-500. Solicitation of Competing Applications.

(1)- On acceptance by the directoragency of a completed special use lease application, the directoragency shall solicit competing interest in the subject parcel. The director may waive this requirement if it is in the best interest of the trust beneficiaries.

(2)- The following classes of leases are exempt from the requirements of Subsection R850-30-500(1):

- (a) Telecommunications; and
- (b) Mineral and oil and gas extraction facilities to extract the mineral estate of the subject property when the mineral estate is not a trust asset.

(3)- The directoragency shall solicit competing interest in the subject parcel by giving at least 30 days' notice by certified mail to:

- (a) the legislative body of the county in which the subject parcel is located;
- (b) lessees or permittees of record on the subject property; and
- (c) adjoining landowners as shown on readily accessible county records or other credible records.

(4)- In addition to the notices required under Subsection R850-30-500(3), the directoragency may solicit competing interest in the subject parcel by methods determined by the directoragency to increase exposure of the subject property to qualified applicants.

(5)- The notice of solicitation of competing interest must include:

- (a) a general description of the subject parcel and a brief description of its location, including township, range, and section;
- (b) the contact information of the agency office where interested parties can obtain more information; and
- (c) any other information that may create interest in the subject parcel that does not violate the confidentiality of the initial application. The successful applicant is responsible for the cost of the advertising.

(6)- The directoragency may solicit competing interests on trust lands when no application has been received by advertising a parcel pursuant to the process described in this Section R850-30-500 or any other means, when in the best interest of the trust beneficiaries.

(7)- In response to a solicitation, an applicant may propose a sale, lease, joint development, exchange, or other business arrangement.

R850-30-510. Competing Proposals.

(1)- If the agency receives credible competing proposals in response to the solicitation process conducted pursuant to Section R850-30-500, the directoragency may select a proposal using the following methods:

(a) Sealed Bid Process.

(i) The directoragency shall give the competing applicants notice setting forth the date on which the applicants must submit a final sealed proposal to the agency.

(ii) The directoragency may reject proposals received after the established due date.

(iii) The directoragency may require proposals for a lease to include the first year's rental, proposals for a sale to include a down payment on the proposed purchase price, and payments to cover the agency's costs of advertising and application fees.

(iv) The directoragency shall evaluate proposals using the following criteria:

- (A) income potential;
- (B) potential enhancement of trust lands;
- (C) development timeline;
- (D) applicant qualifications;
- (E) desirability of proposed use; and
- (F) any other criterion deemed appropriate by the agency.

(b) The agency may negotiate with the applicants or interested persons to create a proposal that best satisfies the objectives of Rule R850-2.

(2) The ~~director~~~~agency~~ may terminate the application process at any time in its sole discretion.

R850-30-550. Lease Determination Procedures.

The ~~director~~~~agency~~ may not lease trust lands when leasing:

(1) would be inconsistent with board policy or would not be in the best interest of the trust beneficiaries;

(2) would create significant obstacles to future mineral development; or

(3) would foreclose future development or management options that would likely result in greater long term economic benefit.

R850-30-600. Special Use Lease Provisions.

Each lease must contain provisions necessary to ensure responsible surface management, including those provisions enumerated under Section 53C-4-202, and the following provisions:

(1) the term of the lease;

(2) the lease rate and other payments due to the agency;

(3) reporting of technical and financial data;

(4) reservation for mineral exploration and development and other compatible uses, unless waived by the director;

(5) operation requirements;

(6) lessee's consent to suit in any dispute arising under the terms of the lease or as a result of operations carried on under the lease;

(7) procedures of notification;

(8) transfers of lease interest by lessee;

(9) terms and conditions of lease forfeiture; and

(10) protection of the state from liability associated with the actions of the lessee on the subject property.

R850-30-700. Lease of an Eligible Property to the Utah Department of Natural Resources.

(1) When evaluating the ~~The agency may lease of an Eligible Property to the Utah Department of Natural Resources pursuant to Section 53C-4-104, the director shall consider the following factors:-~~

(a) whether selling the Eligible Property to the Utah Department of Natural Resources pursuant to Section R850-80-630 is in the best interest of the affected beneficiaries; and

(b) whether waiving the advertising requirements described in Subsection 53C-4-102(3) and Title R850 pursuant to Subsection 53C-4-104(1)(c) is in the best interest of the affected beneficiaries.

(2) The determination of the fair market value of the leasehold pursuant to Section R850-30-400 shall be informed by at least one valuation appraisal, as that term is defined in Section 61-2g-102(1)(a)(ii)(C).

(3) An appraisal conducted under this Section must comply with the current Uniform Standards of Professional Appraisal Practice and be conducted by a qualified independent third-party appraiser. The agency may require that appraisals comply with the Uniform Standards for Federal Land Acquisitions.

(4) A qualified appraiser under this Section must:

(a) be a state-certified general appraiser, as that term is defined in Section 61-2g-102, and

(b) have demonstrated experience in appraising large rural properties.

(5) The director shall make a written finding that upon consideration of the factors listed in Section R850-30-550 and Subsection R850-30-700(1) the lease of an Eligible Property to the Utah Department of Natural Resources is in the best interest of the affected beneficiaries. The director shall provide the written finding to the board.

(6) The board ~~Board of Trustees~~ must consider the lease of an Eligible Property at an open meeting and take public comment on:

(a) the terms of the proposed lease, and

(b) the director's finding that waiving the advertising requirements pursuant to Subsection 53C-4-104(1)(c) is in the best interest of the beneficiaries.

(7) At least 30 days prior to the board's Board of Trustees' consideration of the lease at an open meeting, the director~~agency~~ shall give notice of the proposed lease to:

- (a) the legislative body of each county in which a portion of the Eligible Property is located,
- (b) lessees/permittees of record on the Eligible Property lease parcel,
- (c) adjoining landowners as shown on county records, and
- (d) the affected beneficiary institution, and
- (e) the Land Trusts Protection and Advocacy Office.

(8) The notice of lease must include:

(a) a general description of the Eligible Property and a brief description of its location, including township, range, and section, and

(a) the date, time, and location of the meeting of the Board of Trustees where the board will consider the lease.

(9) The lease of an Eligible Property under Section 53C-4-104 must be approved by the board~~Board of Trustees~~ before the director may execute the lease.

(10) The director~~agency~~ may require the Utah Department of Natural Resources to deposit funds in advance to offset the anticipated costs to prepare the parcel for lease.

(a) If the director terminates the lease application prior to finalization of a lease agreement, the director shall refund the deposit to the department.

(b) If the department withdraws the lease application prior to finalization of a lease agreement, the agency may retain the deposit.

R850-30-800. Financial Guarantees.

(1) The director~~agency~~ may require a lessee to provide a financial guaranty to the agency to ensure compliance with lease terms including performance, payment, and reclamation. The financial guaranty must be in a form and in an amount acceptable to the director~~agency~~.

(2) If a lessee assigns a lease, the director~~agency~~ is not obligated to release the financial guaranty of the assignor until the assignee submits an equivalent replacement financial guaranty or any lease obligations, including reclamation, have been satisfied.

(3) The director~~agency~~ may increase the amount of the financial guaranty in reasonable amounts at any time by giving lessee 30 days' written notice stating the increase and the reasons for the increase.

R850-30-900. Lease Assignments and Subleases.

(1) Assignments.

(a) A lessee may only assign a lease if the director~~agency~~ consents to the assignment. Any assignment made without such approval is voidable in the director's~~agency~~'s discretion.

(b) On the effective date of the assignment, the assignee is bound by the terms of the lease to the same extent as if the assignee were the original lessee, any conditions in the assignment to the contrary notwithstanding.

(c) An assignee must provide the agency with a copy of the assignment document, which must be a sufficient legal instrument, properly executed, with the lease number, the land involved, the name and address of the assignee, and the interest transferred clearly indicated.

(d) As a condition of the approval of an assignment, the director~~agency~~ shall require:

(i) the assignee to accept the most current applicable lease form unless continuation of the existing form is clearly in the best interests of the trust beneficiaries; and

(ii) the assignee be satisfactory to the director~~agency~~.

(2) Subleases.

(a) A lessee may only sublease a lease if the director~~agency~~ consents to the sublease. A sublease made without such approval is voidable in the director's~~agency~~'s discretion.

(b) The lessee must indemnify the agency for actions or inactions of the sublessee and the directoragency may look to either the lessee or the sublessee for compliance with the lease.

(c) A lessee must provide the agency with a copy of the sublease document, which must be a sufficient legal instrument, properly executed, with the lease number, the land involved, the name and address of the sublessee, the interest subleased, and the financial benefit to lessee clearly indicated.

(d) The directoragency may require lessee and sublessee to provide annual financial documentation that clearly identifies the revenue generated on the property by sublessee and the revenue paid by sublessee to lessee.

(e) The directoragency may charge the lessee sublease rates based on the then current market rental value of the subject property, the revenue paid by sublessee to lessee, and such other factors as the directoragency deems reasonable.

(f) Rather than approve the sublease, the directoragency may require that the proposed sublessee enter into a new lease with the agency for the subleased portion of the property.

(3). The Utah Department of Natural Resources may not assign or sublease a lease of an Eligible Property made pursuant to Section R850-30-700.

R850-30-1000. Lease Amendments.

(1). The directoragency may amend a lease if the amendment would be consistent with Rule R850-2. Unless waived by the director, the directoragency shall solicit competing interest pursuant to Section R850-30-500 if:

- the total amended acreage exceeds 150% of the original acreage;
- the lease term, including any extensions is longer than 50 years; or
- the proposed amended purpose of the lease is substantially different from the original purpose.

(2). The directoragency may condition approval of an amendment on the lessee accepting the current lease form.

KEY: administrative procedures, leases, trust land management, request for proposals

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