

This policy replaces #93-2

**STATE OF COLORADO**  
**DEPARTMENT OF NATURAL RESOURCES**  
**State Board of Land Commissioners**  
Date: October 19, 2001

#36

Board Order 2001-76

Policy No. 2001-4

**POLICY ON AGRICULTURAL LEASE COMPETITIVE APPLICATIONS ON STATE TRUST LANDS**

WHEREAS, the Constitution of the State of Colorado, Article IX, Section 10 requires the State Board of Land Commissioners ("Board") to prudently manage the property it holds in trust in order to produce reasonable and consistent income over time; and

WHEREAS, C.R.S. § 36-1-118(1)(b)(I) requires the Board, in determining the renewal of any expiring lease, to consider the care and use given the land and the development work done by the lessee in conserving and promoting the productivity thereof and in promoting benefit for the trusts; and

WHEREAS, C.R.S. § 36-1-118(1)(b)(II) requires the Board, in determining the renewal of any expiring agricultural or grazing lease, to consider the benefit that continued agricultural and grazing use of the land contributes to the purposes of the respective trusts through the preservation of the stability of the local agricultural community, the revenue provided for trust purposes, and the lessee's stewardship of the land; and

WHEREAS, C.R.S. § 36-1-118(1)(c) provides direction to the Board concerning the necessary steps to follow when it wants to continue to lease the land for agricultural or grazing, but wants to lease the land to a different lessee; and

WHEREAS, C.R.S. § 36-1-118(3)(b) requires that all applicants, except the current lessee on a parcel, pre-pay the first year's rental; and

WHEREAS, the Board recognizes that citizens may desire to compete for the privilege of acquiring an agricultural lease on state trust land; and

WHEREAS, the Director of the State Board of Land Commissioners ("Director") shall, subject to the general policies of the Board, have administrative direction over the activities of the State Board of Land Commissioners, as stipulated in C.R.S. § 36-1-102 and pursuant to C.R.S. § 36-1-131 the Board may delegate any initial decision to the Director; and

WHEREAS, the Board desires to delegate its administrative decision-making authority concerning competitive applications for agricultural leases to the Director.

NOW THEREFORE BE IT RESOLVED THAT, the Board adopts the following policy concerning competitive applications for agricultural leases:

1. In order to preserve the opportunity to be considered for renewal of an existing lease, the current lessee must submit a complete renewal application packet at least 180 days prior to the expiration of the current lease. In accordance with C.R.S. § 36-1-118(3)(b) renewal applications do not need to be accompanied by a pre-payment of the first year's rental in order to be deemed a complete application.
2. All agricultural lease applications, whether submitted as a renewal application or a competitive application, will be evaluated on an equal basis against each other. The evaluation will be based on the factors set forth in C.R.S. §§ 36-1-118(1)(b)(I) and 36-1-118(1)(b)(II). The three factors in § 36-1-118(1)(b)(II) are: 1) preservation of the stability of the local agricultural community; 2) the revenue



provided for trust purposes; and 3) the lessee/applicant(s) stewardship of the land. Two of the three factors, revenue provided for trust purposes and the lessee/applicant(s) stewardship of the land, will be weighted equally in the decision-making process because they each have an equal and direct impact on the interests of the Trust. The third factor, preservation of the stability of the local agricultural community, will be weighted less in the decision-making process because it has an indirect impact on the interests of the Trust. The factors outlined in § 36-1-118(1)(b)(I) are: 1) the care and use given the land; and 2) the development/improvement work done by the lessee in conserving and promoting the productivity thereof and in promoting benefit for the trusts. These factors will be considered as part of the Stewardship factor in § 36-1-118(1)(b)(II). Evaluation of all applications, based on the three factors, will result in the selection of the preferred applicant.

3. Competitive applications must be :

- ◆ for a ten-year term;
  - ◆ submitted on an entire parcel as indicated in the notice and/or public posting, or on a portion of a leased parcel with the consent of staff;
  - ◆ received at least 180 days before expiration of the existing agricultural lease; and
  - ◆ submitted on the proper forms and accompanied by the first year's rent and applicable non-refundable fees.
4. Upon receipt of a complete competitive application, the present lessee shall be given ten days notice to begin negotiations and ninety days to complete negotiations with the Director concerning a new lease. The Director shall send notice by certified mail to the existing lessee indicating a competitive application(s) has been received against their agricultural lease renewal. The date the notice is received by the existing lessee and recorded on the return receipt is the date the ten-day notice period begins. Lessee must indicate in writing their desire to participate in the negotiation process by submitting a written highest and best offer in light of the competitive application within the ten-day period. The competing applicant will be notified that their application has been received and whether or not it was deemed complete. The competing applicant will not have an opportunity to offer a higher bid in response to the current lessee's highest and best offer.
5. In order to evaluate all applications, the Director can request additional information. For purposes of C.R.S. § 36-1-118(1)(c), the term "negotiations" refers to an amended rental offer and the provision of any additional information concerning the applicant relative to revenue, stewardship and agricultural community stability. When the Director evaluates these three factors, he/she will consider:
- **Revenue** - The revenue provided for trust purposes by an offer submitted by competing applicant(s) will be compared against the highest and best offer submitted by the current lessee.
  - **Stewardship** - Stewardship will be evaluated based on the care, use and condition of the land leased or owned by the applicants. This includes an evaluation of the existence of weeds, plant health and diversity, erosion, improvements that conserve and promote the productivity of the parcel, residual forage, management indicators, intended use of land, and estimated carrying capacity or productivity
  - **Stability of the Local Agricultural Community** - Stability of the local agricultural community will be evaluated based on but not limited to the intended use of the property, primary occupations of applicants, evidence of financial responsibility, acreage owned and/or leased, number of employees, livestock owned, length of time as an agricultural producer, etc.
6. Based on the three factors listed above, the Director will make the final decision on which applicant is successful. All applicants will be notified of this decision in writing and their right to appeal pursuant to the Board's Policy on Redress, Policy No. 00-5. If a competing applicant is unsuccessful, the first year's rent will be returned by certified mail. The application fees are non-refundable.
7. If an applicant other than the current lessee is successful, the successful applicant must purchase the existing approved reimbursable improvements from the existing lessee prior to taking possession of the leased premises. The successful applicant and the current lessee will be encouraged to make a good faith effort to

agree to the improvement value. If an agreement cannot be reached between the two parties, the District Manager will determine the value of the improvements. Continued disagreement will be handled in accordance with the Board's Policy on Redress, Policy No. 00-5.

8. The rental rate for the term of any lease issued shall initially be either the offered and accepted amount or the Board's standard agricultural rate for grazing or cropland, whichever is higher. The standard agricultural rates for grazing and cropland are subject to periodic review and adjustment. If the standard agricultural rate for grazing or cropland exceeds the offered and accepted rental amount at any time during the term of the lease, the lease rental rate will change to the standard rate at the time of the next rental billing cycle. The rental rate for the remainder of the lease term will be either the offered and accepted amount or the standard rental rate, whichever is higher.
9. For purposes of this policy, the following terms and definitions shall apply:
  - a. **Renewal Application** – Application submitted by the current agricultural lessee in good standing for the leased parcel within the required timeframe.
  - b. **Competitive Application** – Any application submitted by anyone other than the current agricultural lessee on a leased parcel received within the required timeframe.
  - c. **Complete Application** – Duly executed agricultural lease application form with all required information provided and that includes a rental rate offer, application fee, required attachments, and pre-paid first year's rent, if applicable.
  - d. **Highest and Best Offer** – Current lessee's final written rental rate offer. The highest and best offer may/may not be equal to the lessee's initial offer and/or the competitive offer. The highest and best offer will be the amount considered in the final evaluation of the application. The only lease term that may be modified by the highest and best offer is the rental rate.
10. The Director shall establish administrative procedures through the issuance of an administrative directive that directs staff and interested parties concerning competitive applications for agricultural leases and implements the provisions of this policy. The administrative procedures should address effective notification of competitive application opportunities and whether there are approved encumbrances on the leased parcel, and process timeframes and steps. In addition, the Director shall inform the Board on a regular basis of decisions concerning competitive applications for agricultural leases.

Any person or entity that believes they are adversely affected by a decision of the Director pursuant to this policy shall have the right to request a review of the decision as stated in the Board's Policy on Redress, Policy No. 00-5.

This policy supersedes all previous policy statements regarding this matter and is effective October 19, 2001 with the exception of the 180-day application submittal deadline, contained in Sections 1 and 3 above, which will be effective with leases that are to expire on or after July 1, 2002. The State Board of Land Commissioners has the discretion to grant exceptions to this policy where circumstances warrant.

#### STATE BOARD OF LAND COMMISSIONERS

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Diane Evans, President

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John Brejcha, Acting Director