**R850. School and Institutional Trust Lands, Administration.**

**R850-170. Renewable Energy Lease Agreements.**

**R850-170-100. 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), which authorize the director to establish rules for leasing trust lands.

**R850-170-150. Planning.**

(1) In addition to those other planning responsibilities described in Rule R850-170, the director shall:

(a) submit proposals to lease trust lands for renewable energy projects to the Resource Development Coordinating Committee (RDCC) unless the proposal is exempt from review;

(b) evaluate comments received through the RDCC process; and

(c) evaluate comments received through the request for proposal process pursuant to Section R850-170-600 or the solicitation process pursuant to Section R850-170-800.

**R850-170-200. Exemption from Development Transaction Rules.**

The director may exempt renewable energy leases issued on Development Property as defined in Subsection R850-140-250(1) from Rule R850-140 if the renewable energy leases are issued according to Rule R850-170 and if the exemption is consistent with the land management objectives found in Rule R850-2.

**R850-170-300. Terms of Leases.**

Lease terms, including extensions, should not normally be for longer than 51 years. The director may issue leases for a term longer than 51 years if a longer term is consistent with the land management objectives found in Rule R850-2.

**R850-170-400. Categories of Renewable Energy Leases.**

(1) Renewable energy leases are categorized as follows:

(a) solar;

(b) wind;

(c) energy storage; and

(d) geothermal.

(2) The director may grant exploration and options to lease the renewable resources on a parcel according to the requirements of Rule R850-170 if doing so would encourage exploration of undefined resources.

**R850-170-500. Other Business Arrangements.**

(1) The director may enter into other business arrangements (OBAs), such as joint venture agreements, that are consistent with the purposes of the Act.

(2) OBAs are exempt from Rule R850-170.

(3) OBAs and any amendments to OBAs must be approved by the board.

**R850-170-600. Requests for Proposals.**

(1) The director may issue a request for proposals (RFP) for renewable energy projects on trust lands.

(2) The director 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 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 director 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 director.

(5) The director 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 R850-170-800.

**R850-170-700. Lease Rates.**

(1) The director may not lease trust lands for less than the fair market value of the leasehold. The director 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 director may base lease rates on any of the following criteria, in combination or otherwise:

(a) the market value of the subject property multiplied by the current agency-determined interest rate;

(b) responses to RFPs, pursuant to Section R850-170-600, or solicitations for competing applications, pursuant to Section R850-170-800;

(c) comparable lease data;

(d) market value of the proposed use of the subject property;

(e) rates schedules approved by the director; and

(f) the administrative costs of leasing the subject property and a desired minimum rate of return.

(2) Lease Review and Adjustment Procedures.

(a) The director shall review renewable energy 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 longer than every five years.

(b) The director 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.

**R850-170-800. Solicitation of Competing Applications.**

(1) On acceptance by the director of a completed application, the director 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) Renewable energy facilities to support extraction of the mineral estate of the subject property when the mineral estate is not a trust asset is exempt from the requirements of Section R850-170-800.

(3) The director shall solicit competing interest in the subject parcel in a manner designed to increase exposure of the subject property to qualified applicants. The director may implement the solicitation through print media, internet, signage, direct mail, or other appropriate marketing methods. The director shall also give at least 30 days' notice by certified mail to:

(a) the legislative body of the county in which the subject parcel is located; and

(b) lessees or permittees of record on the subject property.

(4) 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.

(5) The director may solicit competing interests on trust lands when no application has been received by advertising a parcel pursuant to the process described in Section R850-170-600 or any other means, when in the best interest of the trust beneficiaries.

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

**R850-170-900. Competing Proposals.**

(1) If the agency receives credible competing proposals in response to the solicitation process conducted pursuant to Section R850-170-800, the director may select a proposal using the following methods:

(a) Sealed Bid Process.

(i) The director 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 director may reject proposals received after the established due date.

(iii) The director 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 director 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 director.

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

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

**R850-170-1000. Lease Determination Procedures.**

The director may not lease trust lands when a lease:

(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.

**R850-170-1100. Renewable Energy Lease Provisions.**

Each lease must contain provisions necessary to ensure responsible management of trust lands, 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.

**R850-170-1200. Financial Guaranties.**

(1) The director 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.

(2) If a lessee assigns a lease, the director 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 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.

**R850-170-1300. Lease Assignments and Subleases.**

(1) Assignments.

(a) A lessee may only assign a renewable energy lease if the director consents to the assignment. Any assignment made without such approval is voidable at the director's option.

(b) On the effective date of an 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 assignor must provide the director 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 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.

(2) Subleases.

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

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

(c) The director 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.

(d) A lessee must provide the director 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, and the interest subleased clearly indicated.

(e) The director 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 director deems reasonable.

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

**R850-170-1400. Lease Amendments.**

(1) The director may amend a lease if the amendment would be consistent with Rule R850-2. Unless waived by the director, the director shall solicit competing interest pursuant to Section R850-170-800 if:

(a) the total amended acreage exceeds 150% of the original acreage;

(b) the lease term, including any extensions, is longer than 51 years; or

(c) the proposed amended purpose of the lease is substantially different from the original purpose.

(2) The director 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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**Authorizing, and Implemented or Interpreted Law: 53C-1-302(1)(a); 53C-4-101(1); 53C-4-202**