



Certification Page

Regular and Emergency Rules

Revised August 2023

Emergency Rules (Complete Sections 1-3 and 5-6)

Regular Rules

1. General Information			
a. Agency/Board Name*			
Office of State Lands and Investments/Board of Land Commissioners			
b. Agency/Board Address	c. City	d. Zip Code	
122 W 25th St W103	Cheyenne	82002	
e. Name of Agency Liaison	f. Agency Liaison Telephone Number		
Jason Crowder	307.777.3428		
g. Agency Liaison Email Address	h. Adoption Date		
jason.crowder@wyo.gov	10/05/2023		
i. Program			
Board of Land Commissioners			
Amended Program Name (if applicable):			
* <input type="checkbox"/> By checking this box, the agency is indicating it is exempt from certain sections of the Administrative Procedure Act including public comment period requirements. Please contact the agency for details regarding these rules.			
2. Legislative Enactment			
For purposes of this Section 2, "new" only applies to regular (non-emergency) rules promulgated in response to a Wyoming legislative enactment not previously addressed in whole or in part by prior rulemaking and does not include rules adopted in response to a federal mandate.			
a. Are these non-emergency or regular rules new as per the above description and the definition of "new" in Chapter 1 of the Rules on Rules?			
<input type="checkbox"/> No. <input checked="" type="checkbox"/> Yes. If the rules are new, please provide the Legislative Chapter Number and Year Enacted:		Chapter: 81, 120, 158, 159 <input checked="" type="checkbox"/>	Year: 2023
3. Rule Type and Information			
For purposes of this Section 3, "New" means an emergency or regular rule that has never been previously created.			
a. Provide the Chapter Number, Title* and Proposed Action for Each Chapter. Please use the "Additional Rule Information" form to identify additional rule chapters.			
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input checked="" type="checkbox"/> Amended <input type="checkbox"/> Repealed	
4	Grazing and Agricultural Leasing		
Amended Chapter Name (if applicable):			
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input checked="" type="checkbox"/> Amended <input type="checkbox"/> Repealed	
5	Special Use Leasing		
Amended Chapter Name (if applicable):			
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input checked="" type="checkbox"/> Amended <input type="checkbox"/> Repealed	
6	Wind Energy Leasing		
Amended Chapter Name (if applicable):			
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed	
Amended Chapter Name (if applicable):			
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed	
Amended Chapter Name (if applicable):			

4. Public Notice of Intended Rulemaking

a. Notice was mailed 45 days in advance to all persons who made a timely request for advance notice. No. Yes. N/A

b. A public hearing was held on the proposed rules. No. Yes. Please complete the boxes below.

Date:	Time:	City:	Location:

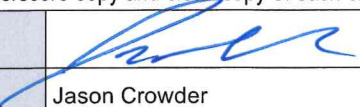
5. Checklist

a. For regular rules, the Statement of Principal Reasons is attached to this Certification and, in compliance with Tri-State Generation and Transmission Association, Inc. v. Environmental Quality Council, 590 P.2d 1324 (Wyo. 1979), includes a brief statement of the substance or terms of the rule and the basis and purpose of the rule

b. For emergency rules, the Memorandum to the Governor documenting the emergency, which requires promulgation of these rules without providing notice or an opportunity for a public hearing, is attached to this Certification.

6. Agency/Board Certification

The undersigned certifies that the foregoing information is correct. By electronically submitting the emergency or regular rules into the Wyoming Administrative Rules System, the undersigned acknowledges that the Registrar of Rules will review the rules as to form and, if approved, the electronic filing system will electronically notify the Governor's Office, Attorney General's Office, and Legislative Service Office of the approval and electronically provide them with a copy of the complete rule packet on the date approved by the Registrar of Rules. The complete rules packet includes this signed certification page; the Statement of Principal Reasons or, if emergency rules, the Memorandum to the Governor documenting the emergency; and a strike and underscore copy and clean copy of each chapter of rules.

Signature of Authorized Individual	
Printed Name of Signatory	Jason Crowder
Signatory Title	Deputy Director
Date of Signature	10/13/2023

7. Governor's Certification

I have reviewed these rules and determined that they:

1. Are within the scope of the statutory authority delegated to the adopting agency;
2. Appear to be within the scope of the legislative purpose of the statutory authority; and, if emergency rules,
3. Are necessary and that I concur in the finding that they are an emergency.

Therefore, I approve the same.

Governor's Signature	
Date of Signature	

STATEMENT OF PRINCIPAL REASONS FOR ADOPTION OF RULES

It is necessary to adopt amendments to Chapter 4 of the Board of Land Commissioners' Rules and Regulations as regular rules to incorporate changes to the leasing of state lands for the purpose of grazing and agricultural uses. Pursuant to House Enrolled Act No. 35 (State lands – use of land qualification requirements), House Enrolled Act No. 59 (State land leasing – improvements), House Enrolled Act No. 82 (State Lands – grazing of non-owned livestock), and House Enrolled Act No. 83 (State land lease deficiencies – cure process) of the Sixty-Seventh Legislature of the State of Wyoming (collectively “the Acts”), the Legislature enacted the Acts to become effective on July 1, 2023.

Additionally, the Acts insert the following general changes:

- 1) A requirement that every applicant of a grazing and agricultural lease must have actual and necessary use of the land for the production of agricultural commodities in order to be qualified to lease state lands;
- 2) Amending the minimum improvement amount needing approval from two thousand dollars (\$2,000.00) to four thousand dollars (\$4,000.00), and changing the valuation method from the “contributory value” to the “current market value” as defined within House Enrolled Act No. 59;
- 3) Providing criteria in which a sublease does not need to be approved by the Director of the Office of State Lands and Investments (“OSLI”) when the lessee allows livestock it does not own to graze the state lands; and
- 4) Adjusting the date renewal applications are due, inserting a process for OS LI to notify a lessee of a missing or delinquent application and providing a maximum cure period to the lessee, and adjusting the date rental payments are due and inserting a notice process to the lessee of a missing or deficient payment.

These rules will conform the administration of grazing and agricultural leasing with the Acts.

STATEMENT OF PRINCIPAL REASONS FOR ADOPTION OF RULES

It is necessary to adopt amendments to Chapter 5 of the Board of Land Commissioners' Rules and Regulations as regular rules to incorporate changes to the request for proposals process the Office of State Lands and Investments ("OSLI") must now utilize when seeking to solicit proposals for uses of state trust land. Pursuant to House Enrolled Act No. 86 (House Bill 171) of the Sixty-Seventh Legislature of the State of Wyoming ("the Act"), the Act is effective on July 1, 2023.

The Act requires notice be given not less than thirty (30) days on OSLI's website, in a newspaper of general circulation in the county or counties where a project will take place, and to the current lessees of the state lands and owners of adjoining lands by certified mail prior to OSLI initiating a request for proposal process.

These rules will conform OSLI's process of soliciting proposals for uses of state trust land with the Act.

STATEMENT OF PRINCIPAL REASONS FOR ADOPTION OF RULES

It is necessary to adopt amendments to Chapter 6 of the Board of Land Commissioners' Rules and Regulations as regular rules to incorporate changes to the request for proposals process the Office of State Lands and Investments ("OSLI") must now utilize when seeking to solicit proposals for uses of state trust land. Pursuant to House Enrolled Act No. 86 (House Bill 171) of the Sixty-Seventh Legislature of the State of Wyoming ("the Act"), the Act is effective on July 1, 2023.

The Act requires notice be given not less than thirty (30) days on OSLI's website, in a newspaper of general circulation in the county or counties where a project will take place, and to the current lessees of the state lands and owners of adjoining lands by certified mail prior to OSLI initiating a request for proposal process.

These rules will conform OSLI's process of soliciting proposals for uses of state trust land with the Act.

Recommendation of Changes after Comment Period

Chapter 4 – Grazing and Agricultural Leasing

The Office of State Lands and Investments (“OSLI”) has advertised for public comment the proposed rules for a period of forty-seven (47) days, ending September 26, 2023. During this period, one (1) comment was received. Following is the comment received and OSLI’s recommendation of changes.

Comment:

Section 5. Applications (d)(iv)—The final sentence in the first paragraph states “The Office shall issue deficient application notices not later than ten (10) days after the filing of a lease renewal application by an existing lessee pursuant to W.S. 36-5-104(b).” Immediately following this statement, the first sentence of subsection (v) repeats this same information. To avoid any confusion that these two statements are intended to identify a distinct process, WSGA suggests that the last sentence of subsection (iv) be deleted.

Recommendation:

OSLI agrees that duplication of statements may cause confusion. OSLI proposes to delete the last sentence in subsection (iv) as shown below.

(iv) Any conflicting lease application to lease grazing and agricultural lands under any existing lease shall be filed in the Office not earlier than one hundred twenty (120) days prior to, and not later than ninety (90) days prior to the expiration date of the existing lease. Upon receipt of a conflicting lease application the Office shall notify the current lessee via certified mail that a conflicting lease application has been received and shall provide the current lessee not less than thirty (30) days from receipt of notice to file a lease renewal application together with payment of the first year’s rental that meets the highest bid offered by another qualified application as provided in W.S. 36-5-105(c). ~~The Office shall issue deficient application notices not later than ten (10) days after the filing of a lease renewal application by an existing lessee pursuant to W.S. 36-5-104 (b).~~

Comment:

Section 10. Subleases and Other Contracts (b)(ii) requires the lessee grazing unowned livestock in a manner not deemed to be a sublease to provide documentation to the Office. The rule is unclear as to at what point the documentation must be provided. The intent of the legislature was to provide needed flexibility to lessees to bring in non-owned livestock as range conditions may warrant. To maintain this flexibility, WSGA recommends that the subsection be amended to state “The lessee provides documentation of the lessee’s grazing of non-owned livestock not later than at the time of submission of the annual lease payment for the subsequent year.” The form that accompanies the annual rental payment, as well as the form for lease renewal, could include a line where the lessee would indicate the total number of livestock grazed the previous year as well as the number of non-owned livestock.

Recommendation:

The language within the proposed rule is an exact replica of language within House Enrolled Act No. 82 (“the Act”). OSLI agrees that a time period in which a lessee provides the required documentation may help to ensure the activity of grazing non-owned livestock does not exceed the time period prescribed within the Act. However, OSLI is concerned that allowing the lessee to provide the required documentation at the lease’s anniversary date will introduce more complexity to the lease renewal process should a conflicting bid be placed on the lease. Therefore, in order to maintain the lessee’s flexibility to allow non-owned livestock to graze the leased area as conditions warrant, to ensure that the lessee does not exceed the requirements as prescribed by the Act, and

to reduce the complexity of the lease renewal process, OSLI proposes a time period be added to Section 10, Subsection (b)(ii) of the proposed rules as follows:

(ii) The lessee provides documentation of the lessee's grazing of non-owned livestock to the Office not more than sixty (60) days following the first day non-owned livestock are allowed to graze the leased area on a form provided by the Office; and



WYOMING STOCK GROWERS ASSOCIATION

Guardian of Wyoming's Cow Country since 1872

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Region IV Vice President- Vance Broadbent, *Evanston*
Executive Vice President- Jim Magagna, *Cheyenne*

September 20, 2023

Board of Land Commissioners
Office of State Lands and Investments
Herschler Building
Cheyenne, WY 82002

RE: Proposed Rules—Chapters 4, 5, and 6

Dear Board:

The Wyoming Stock Growers Association appreciates the work of the Office of State Lands and Investments in proposing revisions to Chapters 4, 5, and 6 to reflect statutory changes made in 2023. WSGA fully supports the proposed rules while offering the following items for your consideration.

CHAPTER 4 Grazing and Agricultural Leasing

Section 5. Applications (d) (iv)—The final sentence in the first paragraph states “The Office shall issue deficient application notices not later than ten (10) days after the filing of a lease renewal application by an existing lessee pursuant to W.S.36-5-104 (b).” Immediately following this statement, the first sentence of subsection (v) repeats this same information. To avoid any confusion that these two statements are intended to identify a distinct process, WSGA suggests that the last sentence of subsection (iv) be deleted.

Section 10. Subleases and Other Contracts (b) (11) requires the lessee grazing unowned livestock in a manner not deemed to be a sublease to provide documentation to the Office. The rule is unclear as to at what point the documentation must be provided. The intent of the legislature was to provide needed flexibility to lessees to bring in non-owned livestock as range conditions may warrant. To maintain this flexibility, WSGA recommends that the subsection be amended to state “The lessee provides documentation of the lessee’s grazing of non-owned livestock not later than at the time of submission of the annual lease payment for the subsequent year.” The form that accompanies the annual rental payment, as well as the form for lease renewal, could include a line where the lessee would indicate the total number of livestock grazed the previous year as well as the number of non-owned livestock.

WSGA thanks you for your consideration of these recommendations.

Sincerely,

Jim Magagna
Executive Vice President

“Shaping and Living The Code of The West”

P.O. BOX 206, CHEYENNE, WY 82003 • PH: 307.638.3942

EMAIL: INFO@WYSGA.ORG • WEBSITE: WWW.WYSGA.ORG • BLOG: WWW.REALRANCHERS.COM

Recommendation of Changes after Comment Period

Chapter 5 - Special Use Leasing
Chapter 6 - Wind Energy Leasing

The Office of State Lands and Investments (“OSLI”) has advertised for public comment the proposed rules for a period of forty-seven (47) days, ending September 26, 2023. During this period, one (1) comment was received. Following is the comment received and OSLI’s recommendation of changes.

Comment:

We would like to refine the language to clarify the current grey area in the regulations and bring them in line with federal mineral leasing provisions that could potentially cause confusion regarding additional use fees applying to appurtenant facilities. The extraction of minerals from state lands and the contiguous lease blocks surrounding state lands are already subject to significant royalties and severance taxes. The installation of surface works, buildings, plants, structures, equipment, and appliances necessary to bring the mineral into salable form should not be subject to additional use fees. As such, we respectfully request clarifying language, such as the addition of “and necessary surface appurtenances” after “extraction of minerals” to Chapter 5, Section 2 (d) Special Use Leasing.

Additionally, in order to preserve and protect the senior rights in Existing Lease(s), we request the addition of a new section to Chapter 6, Section 4 providing for a wind energy lease applicant to have to acknowledge known potential interference with the land and subsequently provide an indemnity for existing lessees in their rights under their Existing Lease(s). Such requested language may be inserted as new section (f) and state something like the following: “If the Existing Lease(s) could result in subsidence of the surface, the wind energy lease applicant must acknowledge in writing that they are aware of such potential surface subsidence, that the existing lessee(s) shall not responsible or liable for any costs, losses, or damages incurred by the wind energy lease applicant (subsequently the wind energy lessee) due to any subsidence related to the Existing Lease(s), and the wind energy lessee shall release, indemnify and hold harmless the existing lessee(s) from and against any and all claims, losses, damages, costs, and liabilities of every kind and character arising out of or relating to any surface subsidence or impacts therefrom.”

Recommendation:

The comments appear to address items within existing rule that are not within the scope of the proposed rule changes. Consideration of the comment would require additional analysis by the OSLI, and an additional public comment period. OSLI proposes that it work with the commentor to further vet the suggested changes and bring those back for Board consideration at a later time. Therefore, OSLI does not recommend any changes to the proposed rules at this time.



September 26, 2023

Office of State Lands and Investments
122 W. 25th Street
Cheyenne, WY 82002

ATTN: Jason Crowder

Re: **Notice of Intent to Adopt Proposed Rules -- Comments**
Chapter 5 - Special Use Leasing
Chapter 6 - Wind Energy Leasing

Dear Jason:

Genesis Alkali operates a multi-faceted trona mining and natural sodium products production facility in Green River, Wyoming, supplying essential mineral products used around the globe. We operate the western hemisphere's largest natural soda ash mine and production site and strive to harness the latest technological innovations to better serve our customers.

We recognize the critical importance of acting sustainably for the benefit of our people, our communities, and our state. Our growth strategy includes developing innovative production processes that create a sustainability advantage while minimizing the overall impact of our operations and supply chain. We do this by using resources effectively and responsibly.

We have thousands of acres of sodium mineral leases in Sweetwater County, Wyoming, including a significant holding of Wyoming Trona and Associated Minerals Mining Leases. With the Notice of Intent to Adopt Proposed Rules related to amendments to Chapter 5 - Special Use Leasing and Chapter 6 - Wind Energy Leasing, Genesis Alkali would like to provide the following comments.

We would like to refine the language to clarify the current grey area in the regulations and bring them in line with federal mineral leasing provisions that could potentially cause confusion regarding additional use fees applying to appurtenant facilities. The extraction of minerals from state lands and the contiguous lease blocks surrounding state lands are already subject to significant royalties and severance taxes. The installation of surface works, buildings, plants, structures, equipment, and appliances necessary to bring the mineral into salable form should not be subject to additional use fees. As such, we respectfully request clarifying language, such as the addition of "and necessary surface appurtenances" after "extraction of minerals" to Chapter 5, Section 2 (d) Special Use Leasing.

Additionally, in order to preserve and protect the senior rights in Existing Lease(s), we request the addition of a new section to Chapter 6, Section 4 providing for a wind energy lease applicant to have to acknowledge known potential interference with the land and subsequently provide an indemnity for existing lessees in their rights under their Existing Lease(s). Such requested language may be inserted as new section (f) and state something like the following: "If the Existing Lease(s) could result in subsidence of the surface, the wind energy lease applicant must acknowledge in writing that they are aware of such potential surface subsidence, that the existing lessee(s) shall not responsible or liable for any costs,



losses, or damages incurred by the wind energy lease applicant (subsequently the wind energy lessee) due to any subsidence related to the Existing Lease(s), and the wind energy lessee shall release, indemnify and hold harmless the existing lessee(s) from and against any and all claims, losses, damages, costs, and liabilities of every kind and character arising out of or relating to any surface subsidence or impacts therefrom.”

We appreciate the opportunity to comment and look forward to continuing to work with the State of Wyoming!

Sincerely,

A handwritten signature in blue ink, appearing to read 'Aaron Reichl'.

Aaron Reichl
Vice President Technology and Business Development

Chapter 4

Grazing and Agricultural Leasing

Section 1. Authority. This chapter is promulgated under the authority of Wyoming Statute 36-2-107.

Section 2. Definitions. As used in this chapter:

(a) “AUM” means an “animal-unit-month,” which is equivalent to the quantity of forage necessary to sustain one cow and one calf for one month.

(b) “Board” means the Board of Land Commissioners.

(c) “Current Market Value” means the replacement value of the lessee’s improvement at the time of transition of the lease, after the remaining useful life of the improvement is considered.

(d) “Director” means the Director of the Office of State Lands and Investments.

(e) “Full Management Responsibility” means all duties, obligations and liabilities as if the livestock were owned by the lessee.

(f) “Office” means the Office of State Lands and Investments.

(g) “Parity Ratio” means a measure of price received for agricultural products divided by the parity index. The parity ratio is an indication of the per unit purchasing power of agricultural commodities generally in terms of the goods and services currently bought by agriculturalists, in relation to purchasing power of agricultural products in the 1910 - 1914 base period.

(h) “Preference” means the elevated position of an applicant to participate in the vacant land bidding process as described in subsection 6(d) of this chapter, above applicants who are not the owners, lessees or lawful occupants of adjoining lands in good standing with the Board.

(i) “Surface impact payment” means money paid by a user of state lands in compensation for potential negative impacts to the fee simple or leasehold estate, including, but not limited to, destruction of forage, disruption of grazing, agricultural, or commercial operations, nuisance, inconvenience, and for incidental use of the land surface.

(j) “Vacant land” means land not currently subject to a grazing and agricultural lease from the Board.

Section 3. Lease Purposes. The Board may lease suitable state land for the grazing of livestock, production of crops, or other agricultural purposes under the provisions of this chapter.

Section 4. Term of Leases. Leases for grazing or agricultural purposes shall be for a term of ten years, unless a shorter term is designated in special circumstances by the Board.

Section 5. Applications.

(a) **Forms.** All applications to lease lands for grazing or agricultural purposes shall be made on forms furnished by the Office. Application forms must be completed in full. Any false or incomplete statement willfully made that materially affects the application will be considered as fraud, deceit, or misrepresentation and shall be cause for the rejection of the application.

(b) **Qualifications.** No applicant shall be qualified to lease state lands for grazing and agricultural purposes without having actual and necessary use of the land for the production of agricultural commodities.

(c) **Signature.** If an application is signed by a party other than the lessee, the legal instrument authorizing such signature, e.g., power of attorney, letters of administration, letters testamentary, final decree of distribution, etc., together with the required filing fee must accompany the application.

(d) **Filing Periods.**

(i) All applications to renew a lease of grazing and agricultural lands under outstanding leases must be filed in the Office not earlier than one hundred twenty (120) days prior to and not later than sixty (60) days prior to the expiration date of the existing lease.

(ii) The Office shall provide notice by certified mail to all existing lessees of the expiration of their lease(s) not earlier than one hundred twenty (120) days prior to expiration of the lease.

(iii) The Office shall notify the lessee not later than forty (40) days before the expiration of the exiting lease if the lessee fails to file an application or submits a deficient application for lease renewal. The notice shall:

(A) Be made by certified mail unless the lessee can be reached in an equally effective alternative manner. Such alternative manner shall be documented by the Office;

(B) Identify the deficiencies in the application for lease renewal or provide notice that no application for renewal has been filed;

(C) Provide the lessee not less than thirty (30) days from receipt of the notice to file a lease renewal application or to remedy all deficiencies in the lessee's renewal application;

(D) Provide notice that the lessee's failure to submit a renewal application or to remedy all deficiencies in the lessee's renewal application before expiration of the lease may result in the leased lands becoming vacant.

(iv) Any conflicting lease application to lease grazing and agricultural lands under any existing lease shall be filed in the Office not earlier than one hundred twenty (120) days prior to, and not later than ninety (90) days prior to the expiration date of the existing lease. Upon receipt of a conflicting lease application the Office shall notify the current lessee via certified mail that a conflicting lease application has been received and shall provide the current lessee not less than thirty (30) days from receipt of notice to file a lease renewal application together with payment of the first year's rental that meets the highest bid offered by another qualified application as provided in W.S. 36-5-105(c).

(v) In the event of a conflicting lease application being filed, the Office shall provide notice of a deficient application for lease renewal to the lessee not later than ten (10) days after filing of a lease renewal application by an existing lessee. The notice shall:

(A) Be made by certified mail unless the lessee can be reached in an equally effective alternative manner. Such alternative manner shall be documented by the Office;

(B) Identify the deficiencies in the application for lease renewal;

(C) Provide the lessee not less than twenty (20) days from receipt of notice to remedy all deficiencies in the lessee's renewal application;

(D) Provide notice that the lessee's failure to remedy all deficiencies in the lessee's renewal application may result in rejection of the application.

(iv) If an expiration date falls on a Saturday, Sunday or legal holiday, applications shall be accepted on the following workday.

(v) Specific filing periods for particular tracts of vacant land will be established pursuant to Section 6 below.

(e) Conflicting applications. If two or more applications to lease the same land for grazing and agricultural purposes are filed within the filing periods established in subsection (c) of this section, they shall be considered to be in conflict and shall be handled under the provisions of W.S. 36-3-102, 36-5-105, and 36-5-108 and Chapter 1 of these rules.

Section 6. Vacant Land.

(a) The Office may offer vacant land for lease, and shall do so recognizing its fiduciary duty to the state land trust beneficiaries and in a manner as shall inure to the greatest benefit of the state land trust beneficiaries.

(b) No applicant shall be qualified to lease vacant lands unless that applicant is qualified under the provisions of W.S. 36-5-101, has actual and necessary use for the land, has or can gain access to the land and offers to pay an annual rental at not less than fair market value, as determined by the economic analysis pursuant to W.S. 36-5-101(b), for the same or similar use of the land for a period of (10) years and who has not been found to have significantly violated any laws or regulations related to state lands.

(c) Conflicting applications. If two (2) or more applications to lease the same vacant land for grazing and agricultural purposes are filed within the filing periods established in subsection (b) of this section, they shall be considered to be in conflict and shall be handled under the provisions of W.S. 36-3-102, 36-5-105, 36-5-108 and Chapter 1 of these rules.

(d) Specific filing periods for particular tracts of vacant land will be established by advertisement. However, before accepting applications to lease vacant land, the Director shall provide notice on the Office's website, and directly to each adjoining private landowner as recorded within the real property records with the County Assessor's office.

(e) Preference shall be given to applicants who are the owners, lessees or lawful occupants of adjoining lands, unless the Board determines that the preference should not be recognized for good cause.

(i) In instances where one (1) applicant is eligible for the preference and a competing bidder is not, the applicant eligible for the preference may elect to meet the highest bid of the applicants not eligible for the preference.

(ii) When two (2) or more applicants are eligible for the preference, in determining to which applicant to award the lease, the Director shall request a final bid from the applicants eligible for the preference in a manner as directed by the Director to determine the successful applicant.

(iii) When two (2) or more applicants are eligible for the preference and one (1) or more applicants are not eligible for the preference, those applicants who are eligible for the preference may elect to match the highest bid. If two (2) or more applicants who are eligible for the preference elect to meet the highest bid, the lease shall be awarded pursuant to subsection 6(e)(ii) of this chapter.

(f) In the event the Office receives conflicting applications, the Director shall issue a Director's Decision conditionally awarding the lease pursuant to this subsection. Should the Director determine good cause exists not to recognize a preference under subsection (e) of this

section, the Director shall include in the Director's Decision a statement describing the reasons not to recognize the preference.

(g) Any applicant may appeal the Director's Decision. The petition shall be treated as a contested case pursuant to W.S. 16-3-107 et seq. A hearing officer shall preside over the contested case hearing and make a recommended decision. The decision of the Board awarding a grazing and agricultural lease shall constitute final agency action.

Section 7. Rentals for Non-Conflicted Leases.

(a) The annual rental for all non-conflicted leases shall be the amount bid by the applicant, if accepted by the Board. In no event shall the annual rental be less than the minimum rate established in subsection (b) of this section.

(b) The minimum annual rental shall be:

(i) For grazing land, as established by formula as follows:

(A) Private land lease rate on a per AUM basis, averaged for the five years preceding the current year, as estimated by the Wyoming Agricultural Statistics Service; times the five year weighted average "parity ratio" for beef cattle per cwt. as established by the National Agricultural Statistics Service as an adjustment for changing resource conditions, market demand and industry viability; less 20% to reflect contributions made by the lessee.

(ii) For hay and dry cropland, the average production shall be converted to AUM's and assessed at the rate established in paragraph (i) of this subsection.

(iii) Rental for irrigated cropland shall be based on fair market value for the same or similar use of the land, less the value of lessee's interest in the irrigation system and improvements, as determined by an economic analysis.

(c) All leases are subject to change upon reappraisal or reclassification of the land, or a change in the minimum annual rental as provided for in subsection (b) of this section.

(d) Upon notice provided not less than sixty (60) days prior to the anniversary date of a lease, all rentals accruing to the state, except those for the first year, shall become due and payable at the Office on the anniversary date of the lease. If the rent is not paid on the anniversary date, the Office shall again notify the lessee or the lessee's authorized agent by certified mail that the lease may be canceled if the rent and a late fee equal to ten percent (10%) of the annual rental is not received within thirty (30) days following the date of the certified notice. If the lease is canceled, the Director shall as soon as possible, thereafter, advertise the lands in the county where located, as vacant and subject to lease.

Section 8. Rentals for Conflicted Leases.

(a) In no event shall the annual rental be less than the minimum rate established in Section 7(b).

(b) The maximum rental that may be accepted shall not be more than 120% of the maximum fair market value as determined by the board based on the previous year's values for the State, District or County, whichever is most localized and available, as determined by the National Agricultural Statistics Service utilizing:

(i) The private land lease rate per AUM for Wyoming grazing leases; or

(ii) The private land irrigated or nonirrigated cropland lease rate, as applicable, for Wyoming cropland leases on irrigated or nonirrigated cropland; and

(iii) A downward adjustment of 20 percent to reasonably reflect lessee contributions typically provided as a part of a private land grazing lease rate or a private cropland lease rate, as applicable.

(c) The maximum rental bid shall constitute the annual rental for the entire term of the lease unless the minimum annual rental exceeds the conflict bid.

(d) All leases are subject to change upon reappraisal or reclassification of the land,

(e) Upon notice provided not less than thirty (30) days prior to the anniversary date of a lease, all rentals accruing to the state, except those for the first year, shall become due and payable at the Office on the anniversary date of the lease. If the rent is not paid on the anniversary date, the Director shall notify the lessee or his authorized agent by certified mail that the lease will be canceled if the rent and a late fee equal to ten percent (10%) of the annual rental is not received within thirty (30) days following the date of the notice. If the lease is canceled, the Director shall, thereafter, advertise the lands in the county where located, as vacant and subject to lease.

Section 9. Assignments.

(a) Any grazing or agricultural lease assigned without the approval of the Director is subject to cancellation. Lessees shall request approval of assignments, pursuant to W.S. 36-5-105(d), on a form provided by the Office.

(b) If a request for approval of an assignment is signed by a party other than the lessee, the legal instrument authorizing such signature must accompany the request.

Section 10. Subleases and Other Contracts.

(a) Any grazing and agricultural lease is subject to cancellation if the lessee subleases the leased premises or enters into any contract or agreement of any kind concerning the leased premises, except "price support and production adjustment" contracts of the Farm Service Agency, without the approval of the Director. Lessees shall request approval of subleases or other contracts, pursuant to W.S. 36-5-105(d), by submitting a copy of the sublease or other agreement to the Office. In no event shall lands be subleased unless one-half (1/2) of the excess rental is paid to the State.

(b) The grazing of livestock that are not owned by the lessee shall not be deemed to be a sublease, contract or agreement concerning the leased premises as defined in subsection (a) provided that:

(i) The ratio of owned to non-owned livestock grazed by the lessee does not exceed one to one (1:1) for more than two (2) years in any ten (10) year period;

(ii) The lessee provides documentation of the lessee's grazing of non-owned livestock to the Office not more than sixty (60) days following the first day non-owned livestock are allowed to graze the leased area on a form provided by the Office; and

(iii) The lessee retains full management responsibility of the livestock that graze on the state lands.

(c) If the annual rental under a sublease agreement is a share of production, the lessee shall report annual production to the Office on a form furnished by the Office. The Office shall calculate the additional rental due.

Section 11. Security Interests in Leases. Whenever a security interest in a leasehold is created or released, the secured party shall notify the Office on a form provided by the Office.

Section 12. Improvements.

(a) Lessees of state land shall have the right to construct or make improvements upon the land in an amount not to exceed \$4,000.00 per section for each separate improvement, without first obtaining permission.

(b) Lessees shall request permission, on a form provided by the Office, prior to construction of any improvement valued in excess of \$4,000.00 per section for each separate improvement.

(c) The Director shall have authority to grant permission to construct improvements in excess of \$4,000.00 per section for each separate improvement for fencing, water development, livestock handling facilities and range enhancements. However, any improvement,

regardless of value, which will restrict existing public access or alter existing authorized use(s) of the lands must be approved by the Board.

(d) Any other improvement in excess of \$4,000.00 per section for each separate improvement shall be applied for under a special use lease in accordance with Wyoming Statute 36-5-114 and Chapter 5 of Board rules.

(e) Any applicant applying to lease state lands upon which there are improvements of any kind belonging to another shall, before receiving the lease, pay to the Director for the use and benefit of the owner or maker of any improvements at the time of the execution of the lease, the current market value of improvements unless a different value is agreed to between the owner of the improvements and the applicant. Alternatively, the owner of the improvements shall have the right to remove the improvements in a manner which minimizes injury to the land; provided, that the improvements be removed within a period of one hundred twenty (120) days from the expiration of the lease or final Board decision in a related contested case proceeding. Should the owner of the improvements elect to remove the improvements, the owner must notify the Director in writing within thirty (30) days from the expiration of the lease or final Board decision in a related contested case proceeding. For the purposes of this section “contributory value” means the increased value of the property after the lessee’s improvements are considered.

Section 13. Cancellation. The Office shall investigate any allegation of fraud, deceit, or misrepresentation in the procurement of leases and shall monitor all leases for violations of lease covenants. When grounds for cancellation exist under W.S. 36-5-113 or the terms and provisions of the lease, the Director shall request that the Board cancel leases under the procedure at Chapter 1, Section 9, of these rules.

Section 14. Weed and Pest Control. Lessee is required to work in cooperation with the Office to make every reasonable effort to control noxious weeds and pests. Lessee may work in conjunction with County Weed and Pest Control Districts to develop projects to be submitted to the Office for reimbursement pursuant to Chapter 28 of these rules.

Section 15. Surface Impact Payments.

(a) Anyone desiring to enter upon the leased premises shall contact the lessee prior to entry, unless otherwise provided in subsection (c) of this section.

(b) For all entries, the lessee may negotiate a surface impact payment provided that any payment is consistent with payments for impacts to adjacent lands. By separate checks or money orders, the payor shall remit the lessee’s share of the surface impact payment directly to the lessee and the Board’s share of the surface impact payment directly to the Office, in accordance with the following schedule:

(i) For the first five thousand dollars (\$5,000), the lessee’s share shall be forty percent (40%), and the Board’s share shall be sixty percent (60%).

(ii) For that portion of a payment exceeding five thousand dollars (\$5,000), through ten thousand dollars (\$10,000), the lessee's share shall be thirty percent (30%), and the Board's share shall be seventy percent (70%).

(iii) For that portion of a payment exceeding ten thousand dollars (\$10,000), the lessee's share shall be twenty percent (20%), and the Board's share shall be eighty percent (80%).

(iv) For annual payments, the lessee's share shall be twenty percent (20%), and the Board's share shall be eighty percent (80%). For purposes of this section, "annual payments" means any portion of a surface impact payment remitted subsequent to the initial remittance on periodic basis, regardless of the length of the period.

(c) The following shall not be subject to the requirements of this section:

(i) The Board and its representatives when entering for purposes of management or administration of state lands.

(ii) Members of the public when entering for purposes of hunting and fishing and casual recreational use pursuant to the provisions of Chapter 13 of these rules.

(iii) Applicants for, or holders of, an easement issued under Chapter 3 of the Board's rules.

(iv) Applicants for, or holders of, a temporary use permit issued under Chapter 14 of the Board's rules.

(d) If the person desiring entry upon state lands is unable to reach an agreement with a lessee regarding a surface impact payment after having negotiated with the lessee in good faith for a period of ninety (90) days, the person desiring entry and/or the lessee may submit evidence to the Office to establish the surface impact payment.

(i) The evidence and any information the Director deems relevant will be analyzed by the Director, whereupon, the Director will enter an order establishing the surface impact payment and recommend the decision to the Board for final approval.

(ii) Either party may appeal the Director's decision. The petition shall be treated as a contested case pursuant to W.S. 16-3-107 et seq. A hearing officer shall preside over the contested case hearing and make a recommended decision. The decision of the Board establishing the surface impact payment shall constitute final agency action.

(iii) The person desiring entry may immediately enter the state lands while negotiations with the lessee are proceeding, upon providing the Office with a deposit for the surface impact payment in an amount determined by the Office. When the Director enters an order establishing the surface impact payment, the Office shall forward the lessee's share of the surface impact payment to the lessee and return any excess money on deposit to the petitioner, without interest.

(iv) The costs of the contested case hearing, including hiring a hearing officer, shall be paid in equal shares by the person desiring entry and the lessee.

Chapter 5

Special Use Leasing

Section 1. Authority

This chapter is promulgated under the authority of W.S. 36-2-107 and W.S. 36-5-114 through W.S. 36-5-116.

Section 2. Definitions

As used in this chapter:

- (a) “Board” means the Board of Land Commissioners.
- (b) “Director” means the Director of the Office of State Lands and Investments.
- (c) “Office” means the Office of State Lands and Investments.
- (d) “Special use” means any use of state land other than for grazing, agriculture, the extraction of minerals, or uses authorized under easements granted pursuant to Chapter 3 of the Rules and Regulations of the Board, or hunting, fishing and general recreational uses pursuant to Chapter 13 of the Rules and Regulations of the Board. Specifically, “Special use” includes leases for industrial, commercial and recreational (as defined by W.S.36-5-115) purposes.
- (e) “Surface impact payment” means money paid by a user of state lands in compensation for potential negative impacts to the fee simple or leasehold estate, including, but not limited to, destruction of forage, disruption of grazing, agricultural, or commercial operations, nuisance, inconvenience, and for incidental use of the land surface.

Section 3. Lease Purposes

- (a) The Board may lease suitable state land for special uses under the provisions of this chapter.

Section 4. Existing Lease Impairment

- (a) The leased premises of a special use lease may coincide with the leased premises of an existing surface lease. Prior to issuing a special use lease, the Board shall determine whether or not the proposed special use lease would result in substantive impairment of an existing surface lease.
- (b) Lessee consultation and consent. If the applicant obtains written consent from the existing lessee(s) to the issuance of a special use lease, the special use lease shall be deemed to

not result in substantive impairment of the existing lease(s). Such consent shall also specify the division of mutually held lease rights, if any, as to the common surface area of the leases.

(c) Board determination. If the applicant is unable to obtain written consent from the existing lessee(s) to the issuance of the special use lease, the Board shall determine whether the issuance of the proposed special use lease will substantively impair the existing lease(s). The Office shall notify the existing lessee(s) at least 20 days before the proposed special use lease is to be considered by the Board.

Section 5. Term of Leases

(a) Leases for special uses, including industrial, commercial and recreational purposes may be for any term, up to seventy five years, in the discretion of the Board.

(b) The Board shall determine that the proposed lease does not adversely affect its management goals, as set forth in its policy preamble to these rules and regulations, on the land proposed for lease and on the adjacent state lands during the term of the lease. The Board may instruct the Director to prepare a detailed analysis of the parcel for lease and any adjoining state lands, including:

(i) An appraisal of the market value of the parcels;

(ii) The income-generating potential of the parcel, individually and in combination with any adjoining state parcel;

(iii) The manageability of the parcel, individually and in combination with any adjoining state parcel;

(c) The Board must set the term of the lease for a period that does not exceed the anticipated economic life of the proposed lease use.

(d) The Board may extend the lease term if the Board determines that the economic life of the proposed use has not been reached, provided:

(i) All of the criteria within this section of the rules are still met; and

(ii) The overall term of the lease does not exceed seventy five years

Section 6. Applications

(a) Forms. All applications to lease lands for special uses shall be made on forms furnished by the Office. Application forms must be completed in full, setting forth the location and estimated value of any and all improvements to be constructed on the leased area. Any false or incomplete statement willfully made that materially affects the application will be considered as fraud, deceit, or misrepresentation and shall be cause for the rejection of the application.

(b) Signature. If an application is signed by a party other than the applicant, the legal instrument authorizing such signature, i.e., power of attorney, letters of administration, letters testamentary, final decree of distribution, etc., together with the required filing fee must accompany the application.

(c) Filing periods.

(i) For land under an expiring lease, applications shall be accepted for a period of 90 days prior to the expiration of the lease. If the expiration date falls on Saturday, Sunday or legal holiday, applications shall be accepted on the following workday. At least 90 days prior to the expiration of a lease, the Office shall mail a lease application form to the lessee or his authorized agent.

(d) Conflicting applications. If two or more applications to lease the same land for incompatible purposes are filed within the filing periods established in subsection (c) of this section, they shall be considered to be in conflict and shall be handled under the provisions of W.S. 36-3-102 and Chapter 2 of these rules.

(e) Legal Description. All applications for special use leases will require a legal description which identifies the property proposed for lease. At the discretion of the office, a legal survey and plat may be required identifying the location of all proposed improvements.

(f) Planning and Zoning Laws.

(i) The applicant shall include evidence with the application that all proposed uses within the proposed lease are in compliance with all applicable land use planning and zoning laws for the jurisdictions where the property is located; or

(ii) The Board may approve a lease application contingent upon the State's ability to acquire the necessary changes to the existing land use planning and zoning laws that will allow the intended uses on the state land within the lease.

(g) Requests For Proposals.

(i) When the Office initiates a request for proposals to lease state lands, the Office shall provide not less than thirty (30) days notice be provided:

(A) On the website of the Office;

(B) In a newspaper of general circulation in the county or counties where the state lands are to be leased; and

(C) To current lessees of the state lands and owners of adjoining lands by certified mail.

Section 7. Rentals

- (a) The annual rental for special use leases shall be:
 - (i) The amount bid by the applicant, if accepted by the Board, or
 - (ii) As set by the Board as part of its decision in a case of conflicting applications. However, in no event shall the rental be less than the minimum rate as established in subsection (b).
- (b) The minimum annual rental shall be based on fair market value for the same or similar use of the land and any improvements owned by the State after an economic analysis is made. In cases where annual rental can not be established based on fair market value for the same or similar use of the land, the minimum rental shall not be less than \$250.00 or 5 1/2% of the appraised land value and any improvements owned by the State.
- (c) All rental rates are subject to review and adjustment as specified in the special use lease.
- (d) Upon notice provided not less than thirty (30) days prior to the anniversary date of a lease, all rentals accruing to the state, except those for the first year, shall become due and payable at the Office on the anniversary date of the lease. If the rent is not paid on the anniversary date, the Director shall notify the lessee or his authorized agent by certified mail that the lease will be cancelled if the rent and late fee equal to ten percent (10%) of the annual rental is not received within thirty days following the date of the notice.

Section 8. Board Approval of Assignments

- (a) A special use lease may not be assigned without prior approval of the Board. Lessees or their assignees shall request Board approval of proposed assignments, pursuant to W.S. 36-5-116, on a form provided by the Office.
- (b) If a request for Board approval of an assignment is signed by a party other than the lessee, the legal instrument authorizing such signature must accompany the request.

Section 9. Subleases

- (a) The leased premises under a special use lease may not be subleased in any manner or made subject to any contract or other agreement of any kind, without prior approval of the Director. Such approval may be conditioned upon payment of additional rental. Lessees shall request approval of proposed subleases, by submitting a copy of the proposed sublease agreement to the Office.

Section 10. Security Interests in Leases

(a) Whenever a security interest in a leasehold is created or released, the secured party shall notify the Office on a form provided by the Office.

Section 11. Improvements

(a) The lessee shall request permission from the Director to construct or make any improvements not approved concurrently with the granting of the special use lease. The Director shall prepare an informational board matter pursuant to Chapter 1.

(b) Any applicant applying to lease state land shall pay to the Director the contributory value of improvements of any kind authorized under Section (a) of this section or the owner of the improvement may upon giving notice to the Director in writing remove only those improvements, within a 120 day period, which will not cause injury to the land.

Section 12. Cancellation

(a) The Office shall investigate any allegation of fraud, deceit or misrepresentation in the procurement of leases and shall monitor all leases for violations of lease covenants. When grounds for cancellation exist under W.S. 36-5-113 the terms and provisions of the lease, the Director shall request that the Board cancel leases under the procedure at Chapter 1, Section 8, of these rules.

Section 13. Surface Impact Payments

(a) Anyone desiring to enter upon the leased premises shall contact the lessee prior to entry, unless otherwise provided in subsection (c) of this section.

(b) For all entries, the lessee may negotiate a surface impact payment, provided that any payment is consistent with payments for impacts to adjacent lands. By separate checks or money orders, the payor shall remit the lessee's share of the surface impact payment directly to the lessee and the Board's share of the surface impact payment directly to the Office, in accordance with the following schedule:

(i) For the first five thousand dollars (\$5,000), the lessee's share shall be forty percent (40%), and the Board's share shall be sixty percent (60%).

(ii) For that portion of a payment exceeding five thousand dollars (\$5,000), through ten thousand dollars (\$10,000), the lessee's share shall be thirty percent (30%), and the Board's share shall be seventy percent (70%).

(iii) For that portion of a payment exceeding ten thousand dollars (\$10,000), the lessee's share shall be twenty percent (20%), and the Boards share shall be eighty percent (80%).

(iv) For annual payments, the lessee's share shall be twenty percent (20%), and the Board's share shall be eighty percent (80%). For purposes of this section, "annual

payments” means any portion of a surface impact payment remitted subsequent to the initial remittance on periodic basis, regardless of the length of the period.

(c) The following shall not be subject to the requirements of this section:

(i) The Board and its representatives when entering for purposes of management or administrations of state lands.

(ii) Members of the public when entering for purposes of hunting and fishing and casual recreational use pursuant to the privilege extended by the Board under the provisions of Chapter 13 of these rules.

(iii) Applicants for, or holders of, an easement issued under Chapter 3 of the Board’s rules.

(iv) Applicants for, or holders of, a temporary use permit issued under Chapter 14 of the Board’s rules.

(d) If the person desiring entry upon state lands is unable to reach an agreement with a lessee regarding a surface impact payment after having negotiated with the lessee in good faith for a period of ninety (90) days, the person desiring entry or the lessee may submit evidence to the Office to establish the surface impact payment.

(i) The evidence will be analyzed by the Director, whereupon, the Director will enter an order establishing the surface impact payment and recommend the decision to the Board for final approval.

(ii) Either party may appeal the Director’s decision. The petition shall be treated as a contested case pursuant to W.S. 16-3-107 et seq. A hearing officer shall preside over the contested case hearing and make a recommended decision. The decision the Board establishing the surface impact payment shall constitute final agency action.

(iii) The person desiring entry may immediately enter the state lands while negotiations with the lessee are proceeding, upon providing the office with a deposit for the surface impact payment in an amount determined by the Office. When the Director enters an order establishing the surface impact payment, the Office shall forward the lessee’s share of the surface impact payment to the lessee and return any excess money on deposit to the petitioner, without interest.

(iv) The costs of the contested case hearing, including hiring a hearing officer, shall be paid in equal shares by the person desiring entry and the lessee.

Section 14. Bonding Provisions

(a) The Board may require a bond as a condition of a special use lease sufficient to assure compliance with all terms and conditions of the lease. All bonds posted on special use

leases may be used by the Board for payment for costs of reclamation and for compliance with all other terms and conditions of the lease and rules pertaining to the lease.

(b) The bond shall be in effect even if the board subsequently approves an assignment of the lease pursuant to Chapter 5, Section 8, of these rules.

(c) Additional bonding to cover risks not anticipated at the time of the original lease may be required at any time by the Director, provided the Director first gives the lessee 30 days written notice stating the reason and amount of the bond. The bond will remain in place until the unanticipated risk is diminished.

(d) Bonds may be accepted in any of the following forms at the discretion of

(i) Surety bond with a corporate surety registered in Wyoming.

(ii) Certificate of deposit in the name of the "Board of Land Commissioners", with a state or federally insured financial institution in Wyoming. The lessee shall be entitled to all interest payments.

(iii) Other forms of surety as may be acceptable to the Director.

(e) The Director shall prepare an informational board matter pursuant to Chapter 1 whenever additional bonding has been required under (c) in this section.

Chapter 6

Wind Energy Leasing

Section 1. Authority

This chapter is promulgated under the authority of W.S. 36-2-107 and W.S. 36-5-114 through W.S. 36-5-116.

Section 2. Definitions

As used in this chapter:

- (a) “Board” means the Board of Land Commissioners.
- (b) “Director” means the Director of the Office of State Lands and Investments.
- (c) “Existing Lease” means a surface or subsurface lease of state land or state minerals approved by the Board and in effect prior to the wind energy lease.
- (d) “Surface Impact Payment” means money paid by a wind energy lessee to an existing surface lessee in compensation for potential negative impacts to the leasehold estate, including, but not limited to, destruction of forage, disruption of grazing, agricultural, or commercial operations, nuisance, inconvenience, and for incidental use of the land surface.
- (e) “Wind Energy Leasing” means leasing of state land for the exclusive right to convert wind energy into electrical energy including collecting and transmitting the electrical energy so converted to the substation from which the electricity will be transmitted from the wind energy development to the interconnection of the transmission grid.

Section 3. Lease Purposes

- (a) The Board may lease suitable state land for wind energy development under the provisions of this chapter. The wind (wind resource, wind energy, or wind right) is considered an unseverable interest in the surface estate and the right to use the wind for wind energy development is included in a wind energy lease.
- (b) The Board shall determine that the proposed lease does not adversely affect its management goals on the land proposed for lease and on the adjacent state lands during the term of the lease. The Board may instruct the Director to prepare a detailed analysis of the parcel for lease and any adjoining state lands, including:
 - (i) An appraisal of the market value of the parcels;

(ii) The income-generating potential of the parcel, individually and in combination with any adjoining state parcel; and

(iii) The manageability of the parcel, individually and in combination with any adjoining state parcel.

Section 4. Existing Lease Impairment

(a) The leased premises of a wind energy lease may coincide with the leased premises of an Existing Lease(s) and is subject to any Existing Lease(s).

(b) Prior to issuing a wind energy lease, the Board shall determine whether or not the proposed wind energy lease would result in substantive impairment of an Existing Lease(s).

(c) Upon application, the wind energy lease applicant shall advise the Office of the planned or contemplated improvements to be placed on state land and the Office shall consult with the existing lessee(s) to determine if the existing uses are anticipated to interfere with the contemplated wind energy development.

(d) The wind energy lease applicant shall notify the existing lessee(s) of the application and such notification shall include a description of the proposed use. If the wind energy lease applicant obtains written consent from the existing lessee(s) to the issuance of a wind energy lease, the wind energy lease shall be deemed to not result in substantive impairment of the Existing Lease(s).

(e) If the wind energy lease applicant is unable to obtain written consent from the existing lessee(s) to the issuance of the wind energy lease, the Board shall determine whether the issuance of the proposed wind energy lease will substantively impair the Existing Lease(s). The Office shall notify the existing lessee(s) at least twenty (20) days before the proposed wind energy lease is to be considered by the Board.

Section 5. Term of Leases

(a) Wind energy leases may be for any term, up to seventy-five (75) years, at the discretion of the Board.

(b) The Board shall set the term of the lease for a period that does not exceed the anticipated economic life of the lessee improvements for wind energy development.

(c) The Board may extend the lease term if the Board determines that the economic life of the proposed use has not been reached, provided:

(i) All of the criteria within this section of the rules are still met; and

(ii) The overall term of the lease does not exceed seventy-five (75) years.

(d) The Board shall include provisions within the wind energy lease that promote development within a reasonable time including, but not limited to, provisions which provide that the lease may be cancelled in whole or in part if development does not occur within a reasonable time.

Section 6. Applications

(a) **Forms and Fees.** All applications to lease lands for wind energy development shall be made on forms furnished by the Office. Application forms must be completed in full, setting forth the proposed location and estimated value of any and all improvements to be constructed on the leased area. Any false or incomplete statement willfully made that materially affects the application will be considered as fraud, deceit, or misrepresentation and shall be cause for the rejection of the application. An application fee as determined by the Office must be submitted as indicated on the application form.

(b) **Signature.** If an application is signed by a party other than the wind energy lease applicant, the legal instrument authorizing such signature, i.e., power of attorney, letters of administration, letters testamentary, final decree of distribution, etc., together with the required filing fee must accompany the application.

(c) **Renewal periods.** The wind energy lessee must apply for renewal on forms provided by the Office at least ninety (90) days prior to the expiration of a wind energy lease. In such event, lessee and Office shall negotiate a new wind energy lease agreement evidencing the additional lease term not to exceed seventy-five (75) years from the effective date of the original wind energy lease. Any new wind energy lease agreement shall contain the terms and conditions (including the total rents to be paid under such new lease term) agreed to by Office and lessee, and approved by the Board.

(d) **Competitive interest.** If two or more applications are filed to lease the same land for wind energy development or if competitive interest exists, the Office shall consider issuing a Request for Proposal (RFP) to solicit competitive wind energy lease offers. Prior to issuing an RFP under this Subsection, the Office shall provide not less than thirty (30) days notice of its intent to issue an RFP:

(i) On the Office of State Lands website;

(ii) In a newspaper of general circulation in the county or counties where the state lands are to be leased;

(iii) To current lessees of the state land and owners of adjoining lands by certified mail.

(e) **Legal description.** All applications for wind energy leases will require a legal description which identifies the property proposed for lease. At the discretion of the Office, a legal survey and plat may be required identifying the location of all proposed improvements.

(f) Planning, zoning, and other laws applicable to state land. The wind energy lease applicant shall include evidence with the application that all proposed uses within the proposed lease are in compliance with all land use planning, zoning, and other laws applicable to state lands in the jurisdiction(s) where the property is located.

Section 7. Rentals

(a) The annual rental for wind energy leases shall be the amount determined by the Board on an individual lease basis.

(b) At a minimum, the annual rental shall be based on fair market value as determined by the Office for the same or similar use of the land and any improvements owned by the state after an economic analysis is made. In cases where annual rental cannot be established based on fair market value for the same or similar use of the land, the minimum annual rental shall be the greater of one thousand dollars (\$1000.00) or five and one-half percent (5 1/2%) of the appraised land value and any improvements owned by the state.

(c) All rental rates are subject to review and adjustment if specified in the wind energy lease.

(d) All rental payments are due and payable at the Office on the dates specified within the wind energy lease.

Section 8. Board Approval of Assignments

(a) A wind energy lease may not be assigned without prior approval of the Board.

(b) Lessees or their assignees shall request Board approval of proposed assignments on a form provided by the Office.

(c) If a request for Board approval of an assignment is signed by a party other than the lessee, the legal instrument authorizing such signature must accompany the request.

Section 9. Director Approval of Subleases

(a) The leased premises under a wind energy lease may not be subleased in any manner or made subject to any contract or other agreement of any kind, without prior approval of the Director.

(b) Lessees shall request approval of proposed subleases by submitting a copy of the proposed sublease agreement to the Office.

Section 10. Improvements

(a) Prior to construction, the wind energy lessee shall submit to the Office for approval a detailed description and location of the lessee improvements to be placed on state land.

(b) The Office shall approve the lessee improvements and locations thereof provided:

(i) The wind energy lessee is in compliance with the wind energy lease;

(ii) Substantive impairment to any Existing Lease(s) will not result (unless the existing lessee consents);

(iii) Lessee improvements on state land are necessary for wind energy conversion to electricity on state land; an

(iv) Impacts to state land are minimized.

(c) Once a wind energy lease is approved by the Office, any additional lessee improvements or changes to the approved location of lessee improvements shall require approval of the Office.

(d) Any improvements not approved concurrently with the granting of the wind energy lease may not be constructed without prior approval of the Board.

Section 11. Cancellation

(a) The Office shall investigate any allegation of fraud, deceit or misrepresentation in the procurement of leases and shall monitor all leases for violations of lease covenants.

(b) When grounds for cancellation exist, the Director shall request that the Board cancel leases under the procedure at Chapter 1, Section 8, of these rules.

Section 12. Surface Impact Payments and Surface Use Agreements

(a) Any wind energy lease applicant desiring to survey the state lands shall contact the existing surface lessee(s) prior to entry and comply with Chapter 16 of the Rules and Regulations of the Board of Land Commissioners.

(b) For all entries on the state land by the wind energy lessee or contactors thereof that occur during the term of the wind energy lease in which there is to be actual or potential negative impacts as defined in Section 2(e) of these rules to the surface leasehold estate, the wind energy lessee and the existing surface lessee(s) shall negotiate a Surface Impact Payment. The wind energy lessee shall remit directly to the existing surface lessee(s) the Surface Impact Payment and provide evidence of such payment to the Office.

(c) If the wind energy lessee is unable to reach an agreement with an existing surface lessee(s) regarding a Surface Impact Payment and having negotiated with the existing surface

lessee(s) in good faith for a period of ninety (90) days after having provided sufficient information to the existing surface lessee(s), the wind energy lessee and/or the existing surface lessee(s) may submit evidence to the Office to establish the Surface Impact Payment.

(i) The evidence and any information the Director deems relevant will be analyzed by the Director, whereupon, the Director will enter an order establishing the Surface Impact Payment and recommend the decision to the Board for final approval.

(ii) Either party may appeal the Director's decision. The petition shall be treated as a contested case pursuant to W.S. 16-3-107 et seq. A hearing officer shall preside over the contested case hearing and make a recommended decision. The decision of the Board establishing the Surface Impact Payment shall constitute final agency action.

(iii) The wind energy lessee may immediately enter the state lands while the Office is establishing and the Board is approving the Surface Impact Payment, upon providing the Office with a deposit for the Surface Impact Payment in an amount determined by the Office. When the Director enters an order establishing the Surface Impact Payment, the Office shall forward the Surface Impact Payment to the existing surface lessee and return any excess money on deposit to the wind energy lessee, without interest.

(iv) The costs of the contested case hearing, including hiring a hearing officer, shall be paid in equal shares by the wind energy lessee and the existing surface lessee(s).

(d) Surface use agreements or any agreement between a wind energy lessee and any existing lessee that defines the rights of the parties as to the use of the leased state land shall be provided to the Office.

(e) The wind energy lease shall provide for an installation/construction fee as compensation to the State for negative impacts to the fee simple interest in the state land.

Section 13. Financial Assurances

(a) The Board shall require financial assurances as a condition of a wind energy lease sufficient to assure compliance with all terms and conditions of the lease including decommissioning and site reclamation.

(b) Financial assurances shall remain in effect even if the Board subsequently approves an assignment of the wind energy lease pursuant to Chapter 6, Section 8, of these rules unless or until assignee provides adequate and sufficient financial assurances.

(c) Additional financial assurances to cover risks not anticipated at the time of the original wind energy lease may be required at any time by the Director, provided the Director first gives the wind energy lessee sixty (60) days written notice stating the reason for and the amount of the additional financial assurance. The Director shall prepare an informational board matter pursuant to Chapter 1 whenever such additional financial assurances are required. The financial assurance will remain in place until the unanticipated risk is diminished.

(d) Financial assurance may be accepted in any of the following forms at the discretion of the Director with consideration of credit worthiness, financial strength, credit history, credit rating, and debt:

(i) Surety bond with a corporate surety registered in Wyoming.

(ii) Certificate of deposit in the name of the “Board of Land Commissioners”, with a state or federally insured financial institution in Wyoming. The wind energy lessee shall be entitled to all interest payments.

(iii) Other forms of assurance such as corporate guarantee, letter of credit, insurance policy, security interest in net salvage value, or other forms as may be acceptable to the Director.

Chapter 4 Grazing and Agricultural Leasing

Section 1. Authority. This chapter is promulgated under the authority of Wyoming Statute 36-2-107.

Section 2. Definitions. As used in this chapter:

- (a) “AUM” means an “animal-unit-month,” which is equivalent to the quantity of forage necessary to sustain one cow and one calf for one month.
- (b) “Board” means the Board of Land Commissioners.
- (c) “Current Market Value” means the replacement value of the lessee’s improvement at the time of transition of the lease, after the remaining useful life of the improvement is considered.
- (d) “Director” means the Director of the Office of State Lands and Investments.
- (e) “Full Management Responsibility” means all duties, obligations and liabilities as if the livestock were owned by the lessee.
- (f) “Office” means the Office of State Lands and Investments.
- (g) “Parity Ratio” means a measure of price received for agricultural products divided by the parity index. The parity ratio is an indication of the per unit purchasing power of agricultural commodities generally in terms of the goods and services currently bought by agriculturalists, in relation to purchasing power of agricultural products in the 1910 - 1914 base period.
- (h) “Preference” means the elevated position of an applicant to participate in the vacant land bidding process as described in subsection 6(d) of this chapter, above applicants who are not the owners, lessees or lawful occupants of adjoining lands in good standing with the Board.
- (i) “Surface impact payment” means money paid by a user of state lands in compensation for potential negative impacts to the fee simple or leasehold estate, including, but not limited to, destruction of forage, disruption of grazing, agricultural, or commercial operations, nuisance, inconvenience, and for incidental use of the land surface.
- (j) “Vacant land” means land not currently subject to a grazing and agricultural lease from the Board.

Section 3. Lease Purposes. The Board may lease suitable state land for the grazing of livestock, production of crops, or other agricultural purposes under the provisions of this chapter.

Section 4. Term of Leases. Leases for grazing or agricultural purposes shall be for a term of ten years, unless a shorter term is designated in special circumstances by the Board.

Section 5. Applications.

(a) **Forms.** All applications to lease lands for grazing or agricultural purposes shall be made on forms furnished by the Office. Application forms must be completed in full. Any false or incomplete statement willfully made that materially affects the application will be considered as fraud, deceit, or misrepresentation and shall be cause for the rejection of the application.

(b) **Qualifications.** No applicant shall be qualified to lease state lands for grazing and agricultural purposes without having actual and necessary use of the land for the production of agricultural commodities.

(c) **Signature.** If an application is signed by a party other than the lessee, the legal instrument authorizing such signature, e.g., power of attorney, letters of administration, letters testamentary, final decree of distribution, etc., together with the required filing fee must accompany the application.

(d) **Filing Periods.**

(i) All applications to renew a lease of grazing and agricultural lands under outstanding leases must be filed in the Office not earlier than one hundred twenty (120) days prior to and not later than ~~sixty thirty (60 30)~~ sixty (60) days prior to the expiration date of the existing lease. ~~Any conflicting lease application to lease grazing and agricultural lands under any existing lease shall be filed in the Office not earlier than one hundred twenty (120) days prior to, and not later than ninety (90) days prior to the expiration date of the existing lease.~~

(ii) The Office shall provide notice by certified mail to all existing lessees of the expiration of their lease(s) not earlier than one hundred twenty (120) days prior to expiration of the lease.

(iii) The Office shall notify the lessee not later than forty (40) days before the expiration of the exiting lease if the lessee fails to file an application or submits a deficient application for lease renewal. The notice shall:

1. Be made by certified mail unless the lessee can be reached in an equally effective alternative manner. Such alternative manner shall be documented by the Office;

2. Identify the deficiencies in the application for lease renewal or provide notice that no application for renewal has been filed;

3. Provide the lessee not less than thirty (30) days from receipt of the notice to file a lease renewal application or to remedy all deficiencies in the lessee's renewal application;

4. Provide notice that the lessee's failure to submit a renewal application or to remedy all deficiencies in the lessee's renewal application before expiration of the lease may result in the leased lands becoming vacant.

(iv) Any conflicting lease application to lease grazing and agricultural lands under any existing lease shall be filed in the Office not earlier than one hundred twenty (120) days prior to, and not later than ninety (90) days prior to the expiration date of the existing lease. Upon receipt of a conflicting lease application the Office shall notify the current lessee via certified mail that a conflicting lease application has been received and shall provide the current lessee not less than thirty (30) days from receipt of notice to file a lease renewal application together with payment of the first year's rental that meets the highest bid offered by another qualified application as provided in W.S. 36-5-105(c).

(v) In the event of a conflicting lease application being filed, the Office shall provide notice of a deficient application for lease renewal to the lessee not later than ten (10) days after filing of a lease renewal application by an existing lessee. The notice shall:

A. Be made by certified mail unless the lessee can be reached in an equally effective alternative manner. Such alternative manner shall be documented by the Office;

B. Identify the deficiencies in the application for lease renewal;

C. Provide the lessee not less than twenty (20) days from receipt of notice to remedy all deficiencies in the lessee's renewal application;

D. Provide notice that the lessee's failure to remedy all deficiencies in the lessee's renewal application may result in rejection of the application.

(iv) If an expiration date falls on a Saturday, Sunday or legal holiday, applications shall be accepted on the following workday. ~~At least 120 days prior to the expiration of a lease, the Office shall mail a lease application form to the lessee or his authorized agent at the address on file in the Office.~~

(v) Specific filing periods for particular tracts of vacant land will be established pursuant to Section 6 below.

(e) Conflicting applications. If two or more applications to lease the same land for grazing and agricultural purposes are filed within the filing periods established in subsection (c) of this section, they shall be considered to be in conflict and shall be handled under the provisions of W.S. 36-3-102, 36-5-105, and 36-5-108 and Chapter 1 of these rules.

Section 6. Vacant Land.

(a) The Office may offer vacant land for lease, and shall do so recognizing its fiduciary duty to the state land trust beneficiaries and in a manner as shall inure to the greatest benefit of the state land trust beneficiaries.

(b) No applicant shall be qualified to lease vacant lands unless that applicant is qualified under the provisions of W.S. 36-5-101, has actual and necessary use for the land, has or can gain access to the land and offers to pay an annual rental at not less than fair market value, as determined by the economic analysis pursuant to W.S. 36-5-101(b), for the same or similar use of the land for a period of (10) years and who has not been found to have significantly violated any laws or regulations related to state lands.

(c) Conflicting applications. If two (2) or more applications to lease the same vacant land for grazing and agricultural purposes are filed within the filing periods established in subsection (b) of this section, they shall be considered to be in conflict and shall be handled under the provisions of W.S. 36-3-102, 36-5-105, ~~and~~ 36-5-108 and Chapter 1 of these rules.

(d) Specific filing periods for particular tracts of vacant land will be established by advertisement. However, before accepting applications to lease vacant land, the Director shall provide notice on the Office's website, and directly to each adjoining private landowner as recorded within the real property records with the County Assessor's office.

(e) Preference shall be given to applicants who are the owners, lessees or lawful occupants of adjoining lands, unless the Board determines that the preference should not be recognized for good cause.

(i) In instances where one (1) applicant is eligible for the preference and a competing bidder is not, the applicant eligible for the preference may elect to meet the highest bid of the applicants not eligible for the preference.

(ii) When two (2) or more applicants are eligible for the preference, in determining to which applicant to award the lease, the Director shall request a final bid from the applicants eligible for the preference in a manner as directed by the Director to determine the successful applicant.

(iii) When two (2) or more applicants are eligible for the preference and one (1) or more applicants are not eligible for the preference, those applicants who are eligible for the preference may elect to match the highest bid. If two (2) or more applicants who are eligible for

the preference elect to meet the highest bid, the lease shall be awarded pursuant to subsection 6(e)(ii) of this chapter.

(f) In the event the Office receives conflicting applications, the Director shall issue a Director's Decision conditionally awarding the lease pursuant to this subsection. Should the Director determine good cause exists not to recognize a preference under subsection (e) of this section, the Director shall include in the Director's Decision a statement describing the reasons not to recognize the preference.

(g) Any applicant may appeal the Director's Decision. The petition shall be treated as a contested case pursuant to W.S. 16-3-107 et seq. A hearing officer shall preside over the contested case hearing and make a recommended decision. The decision of the Board awarding a grazing and agricultural lease shall constitute final agency action.

Section 7. Rentals for Non-Conflicted Leases.

(a) The annual rental for all non-conflicted leases shall be the amount bid by the applicant, if accepted by the Board. In no event shall the annual rental be less than the minimum rate established in subsection (b) of this section.

(b) The minimum annual rental shall be:

(i) For grazing land, as established by formula as follows:

(a) Private land lease rate on a per AUM basis, averaged for the five years preceding the current year, as estimated by the Wyoming Agricultural Statistics Service; times the five year weighted average "parity ratio" for beef cattle per cwt. as established by the National Agricultural Statistics Service as an adjustment for changing resource conditions, market demand and industry viability; less 20% to reflect contributions made by the lessee.

(ii) For hay and dry cropland, the average production shall be converted to AUM's and assessed at the rate established in paragraph (i) of this subsection.

(iii) Rental for irrigated cropland shall be based on fair market value for the same or similar use of the land, less the value of lessee's interest in the irrigation system and improvements, as determined by an economic analysis.

(c) All leases are subject to change upon reappraisal or reclassification of the land, or a change in the minimum annual rental as provided for in subsection (b) of this section.

(d) Upon notice provided not less than ~~sixty thirty~~ (60 30) days prior to the anniversary date of a lease, all rentals accruing to the state, except those for the first year, shall become due and payable at the Office on the anniversary date of the lease. If the rent is not paid on the anniversary date, the ~~Director-Office~~ shall again notify the lessee or the lessee's his

authorized agent by certified mail that the lease ~~may~~ will be canceled if the rent and a late fee equal to ten percent (10%) of the annual rental is not received within thirty (30) days following the date of the certified notice. If the lease is canceled, the Director shall as soon as possible, thereafter, advertise the lands in the county where located, as vacant and subject to lease.

Section 8. Rentals for Conflicted Leases.

(a) In no event shall the annual rental be less than the minimum rate established in Section 7(b).

(b) The maximum rental that may be accepted shall not be more than 120% of the maximum fair market value as determined by the board based on the previous year's values for the State, District or County, whichever is most localized and available, as determined by the National Agricultural Statistics Service utilizing:

(i) The private land lease rate per AUM for Wyoming grazing leases; or

(ii) The private land irrigated or nonirrigated cropland lease rate, as applicable, for Wyoming cropland leases on irrigated or nonirrigated cropland; and

(iii) A downward adjustment of 20 percent to reasonably reflect lessee contributions typically provided as a part of a private land grazing lease rate or a private cropland lease rate, as applicable.

(c) The maximum rental bid shall constitute the annual rental for the entire term of the lease unless the minimum annual rental exceeds the conflict bid.

(d) All leases are subject to change upon reappraisal or reclassification of the land,

(e) Upon notice provided not less than thirty (30) days prior to the anniversary date of a lease, all rentals accruing to the state, except those for the first year, shall become due and payable at the Office on the anniversary date of the lease. If the rent is not paid on the anniversary date, the Director shall notify the lessee or his authorized agent by certified mail that the lease will be canceled if the rent and a late fee equal to ten percent (10%) of the annual rental is not received within thirty (30) days following the date of the notice. If the lease is canceled, the Director shall, thereafter, advertise the lands in the county where located, as vacant and subject to lease.

Section 9. Assignments.

(a) Any grazing or agricultural lease assigned without the approval of the Director is subject to cancellation. Lessees shall request approval of assignments, pursuant to W.S. 36-5-105(d), on a form provided by the Office.

(b) If a request for approval of an assignment is signed by a party other than the lessee, the legal instrument authorizing such signature must accompany the request.

Section 10. Subleases and Other Contracts.

(a) Any grazing and agricultural lease is subject to cancellation if the lessee subleases the leased premises or enters into any contract or agreement of any kind concerning the leased premises, except "price support and production adjustment" contracts of the Farm Service Agency, without the approval of the Director. Lessees shall request approval of subleases or other contracts, pursuant to W.S. 36-5-105(d), by submitting a copy of the sublease or other agreement to the Office. In no event shall lands be subleased unless one-half (1/2) of the excess rental is paid to the State.

(b) The grazing of livestock that are not owned by the lessee shall not be deemed to be a sublease, contract or agreement concerning the leased premises as defined in subsection (a) provided that:

(i) The ratio of owned to non-owned livestock grazed by the lessee does not exceed one to one (1:1) for more than two (2) years in any ten (10) year period;

(ii) The lessee provides documentation of the lessee's grazing of non-owned livestock to the Office not more than sixty (60) days following the first day non-owned livestock are allowed to graze the leased area on a form provided by the Office; and

(iii) The lessee retains full management responsibility of the livestock that graze on the state lands.

(c) If the annual rental under a sublease agreement is a share of production, the lessee shall report annual production to the Office on a form furnished by the Office. The Office shall calculate the additional rental due.

~~If the annual rental under a sublease agreement is a share of production, the lessee shall report annual production to the Office on a form furnished by the Office. The Office shall calculate the additional rental due.~~

Section 11. Security Interests in Leases. Whenever a security interest in a leasehold is created or released, the secured party shall notify the Office on a form provided by the Office.

Section 12. Improvements.

(a) Lessees of state land shall have the right to construct or make improvements upon the land in an amount not to exceed \$4,000.00 ~~\$2,000.00~~ per section for each separate improvement, without first obtaining permission.

(b) Lessees shall request permission, on a form provided by the Office, prior to construction of any improvement valued in excess of \$4,000.00 ~~\$2,000.00~~ per section for each separate improvement.

(c) The Director shall have authority to grant permission to construct improvements in excess of \$4,000.00 ~~\$2,000.00~~ per section for each separate improvement for fencing, water development, livestock handling facilities and range enhancements. However, any improvement, regardless of value, which will restrict existing public access or alter existing authorized use(s) of the lands must be approved by the Board.

(d) Any other improvement in excess of \$4,000.00 ~~\$2,000.00~~ per section for each separate improvement shall be applied for under a special use lease in accordance with Wyoming Statute 36-5-114 and Chapter 5 of Board rules.

(e) Any applicant applying to lease state lands upon which there are improvements of any kind belonging to another shall, before receiving the lease, pay to the Director for the use and benefit of the owner or maker of any improvements at the time of the execution of the lease, the ~~contributory~~ current market value of improvements unless a different value is agreed to between the owner of the improvements and the applicant. ~~or Alternatively,~~ the owner of the improvements shall have the right to remove the improvements in a manner which minimizes injury to the land; provided, that the improvements be removed within a period of one hundred twenty (120) days from the expiration of the lease or final Board decision in a related contested case proceeding. Should the owner of the improvements elect to remove the improvements, the owner must notify the Director in writing within thirty (30) days from the expiration of the lease or final Board decision in a related contested case proceeding. For the purposes of this section “contributory value” means the increased value of the property after the lessee’s improvements are considered.

Section 13. Cancellation. The Office shall investigate any allegation of fraud, deceit, or misrepresentation in the procurement of leases and shall monitor all leases for violations of lease covenants. When grounds for cancellation exist under W.S. 36-5-113 or the terms and provisions of the lease, the Director shall request that the Board cancel leases under the procedure at Chapter 1, Section 9, of these rules.

Section 14. Weed and Pest Control. Lessee is required to work in cooperation with the Office to make every reasonable effort to control noxious weeds and pests. Lessee may work in conjunction with County Weed and Pest Control Districts to develop projects to be submitted to the Office for reimbursement pursuant to Chapter 28 of these rules.

Section 15. Surface Impact Payments.

(a) Anyone desiring to enter upon the leased premises shall contact the lessee prior to entry, unless otherwise provided in subsection (c) of this section.

(b) For all entries, the lessee may negotiate a surface impact payment provided that any payment is consistent with payments for impacts to adjacent lands. By separate checks or money orders, the payor shall remit the lessee's share of the surface impact payment directly to the lessee and the Board's share of the surface impact payment directly to the Office, in accordance with the following schedule:

(i) For the first five thousand dollars (\$5,000), the lessee's share shall be forty percent (40%), and the Board's share shall be sixty percent (60%).

(ii) For that portion of a payment exceeding five thousand dollars (\$5,000), through ten thousand dollars (\$10,000), the lessee's share shall be thirty percent (30%), and the Board's share shall be seventy percent (70%).

(iii) For that portion of a payment exceeding ten thousand dollars (\$10,000), the lessee's share shall be twenty percent (20%), and the Board's share shall be eighty percent (80%).

(iv) For annual payments, the lessee's share shall be twenty percent (20%), and the Board's share shall be eighty percent (80%). For purposes of this section, "annual payments" means any portion of a surface impact payment remitted subsequent to the initial remittance on periodic basis, regardless of the length of the period.

(c) The following shall not be subject to the requirements of this section:

(i) The Board and its representatives when entering for purposes of management or administration of state lands.

(ii) Members of the public when entering for purposes of hunting and fishing and casual recreational use pursuant to the provisions of Chapter 13 of these rules.

(iii) Applicants for, or holders of, an easement issued under Chapter 3 of the Board's rules.

(iv) Applicants for, or holders of, a temporary use permit issued under Chapter 14 of the Board's rules.

(d) If the person desiring entry upon state lands is unable to reach an agreement with a lessee regarding a surface impact payment after having negotiated with the lessee in good faith for a period of ninety (90) days, the person desiring entry and/or the lessee may submit evidence to the Office to establish the surface impact payment.

(i) The evidence and any information the Director deems relevant will be analyzed by the Director, whereupon, the Director will enter an order establishing the surface impact payment and recommend the decision to the Board for final approval.

(ii) Either party may appeal the Director's decision. The petition shall be treated as a contested case pursuant to W.S. 16-3-107 et seq. A hearing officer shall preside over the contested case hearing and make a recommended decision. The decision of the Board establishing the surface impact payment shall constitute final agency action.

(iii) The person desiring entry may immediately enter the state lands while negotiations with the lessee are proceeding, upon providing the Office with a deposit for the surface impact payment in an amount determined by the Office. When the Director enters an order establishing the surface impact payment, the Office shall forward the lessee's share of the surface impact payment to the lessee and return any excess money on deposit to the petitioner, without interest.

(iv) The costs of the contested case hearing, including hiring a hearing officer, shall be paid in equal shares by the person desiring entry and the lessee.

Chapter 5

Special Use Leasing

Section 1. Authority

This chapter is promulgated under the authority of W.S. 36-2-107 and W.S. 36-5-114 through W.S. 36-5-116.

Section 2. Definitions

As used in this chapter:

- (a) “Board” means the Board of Land Commissioners.
- (b) “Director” means the Director of the Office of State Lands and Investments.
- (c) “Office” means the Office of State Lands and Investments.
- (d) “Special use” means any use of state land other than for grazing, agriculture, the extraction of minerals, or uses authorized under easements granted pursuant to Chapter 3 of the Rules and Regulations of the Board, or hunting, fishing and general recreational uses pursuant to Chapter 13 of the Rules and Regulations of the Board. Specifically, “Special use” includes leases for industrial, commercial and recreational (as defined by W.S.36-5-115) purposes.
- (e) “Surface impact payment” means money paid by a user of state lands in compensation for potential negative impacts to the fee simple or leasehold estate, including, but not limited to, destruction of forage, disruption of grazing, agricultural, or commercial operations, nuisance, inconvenience, and for incidental use of the land surface.

Section 3. Lease Purposes

(a) The Board may lease suitable state land for special uses under the provisions of this chapter.

Section 4. Existing Lease Impairment

(a) The leased premises of a special use lease may coincide with the leased premises of an existing surface lease. Prior to issuing a special use lease, the Board shall determine whether or not the proposed special use lease would result in substantive impairment of an existing surface lease.

(b) Lessee consultation and consent. If the applicant obtains written consent from the existing lessee(s) to the issuance of a special use lease, the special use lease shall be deemed to

not result in substantive impairment of the existing lease(s). Such consent shall also specify the division of mutually held lease rights, if any, as to the common surface area of the leases.

(c) Board determination. If the applicant is unable to obtain written consent from the existing lessee(s) to the issuance of the special use lease, the Board shall determine whether the issuance of the proposed special use lease will substantively impair the existing lease(s). The Office shall notify the existing lessee(s) at least 20 days before the proposed special use lease is to be considered by the Board.

Section 5. Term of Leases

(a) Leases for special uses, including industrial, commercial and recreational purposes may be for any term, up to seventy five years, in the discretion of the Board.

(b) The Board shall determine that the proposed lease does not adversely affect its management goals, as set forth in its policy preamble to these rules and regulations, on the land proposed for lease and on the adjacent state lands during the term of the lease. The Board may instruct the Director to prepare a detailed analysis of the parcel for lease and any adjoining state lands, including:

(i) An appraisal of the market value of the parcels;

(ii) The income-generating potential of the parcel, individually and in combination with any adjoining state parcel;

(iii) The manageability of the parcel, individually and in combination with any adjoining state parcel;

(c) The Board must set the term of the lease for a period that does not exceed the anticipated economic life of the proposed lease use.

(d) The Board may extend the lease term if the Board determines that the economic life of the proposed use has not been reached, provided:

(i) All of the criteria within this section of the rules are still met; and

(ii) The overall term of the lease does not exceed seventy five years

Section 6. Applications

(a) Forms. All applications to lease lands for special uses shall be made on forms furnished by the Office. Application forms must be completed in full, setting forth the location and estimated value of any and all improvements to be constructed on the leased area. Any false or incomplete statement willfully made that materially affects the application will be considered as fraud, deceit, or misrepresentation and shall be cause for the rejection of the application.

(b) Signature. If an application is signed by a party other than the applicant, the legal instrument authorizing such signature, i.e., power of attorney, letters of administration, letters testamentary, final decree of distribution, etc., together with the required filing fee must accompany the application.

(c) Filing periods.

(i) For land under an expiring lease, applications shall be accepted for a period of 90 days prior to the expiration of the lease. If the expiration date falls on Saturday, Sunday or legal holiday, applications shall be accepted on the following workday. At least 90 days prior to the expiration of a lease, the Office shall mail a lease application form to the lessee or his authorized agent.

(d) Conflicting applications. If two or more applications to lease the same land for incompatible purposes are filed within the filing periods established in subsection (c) of this section, they shall be considered to be in conflict and shall be handled under the provisions of W.S. 36-3-102 and Chapter 2 of these rules.

(e) Legal Description. All applications for special use leases will require a legal description which identifies the property proposed for lease. At the discretion of the office, a legal survey and plat may be required identifying the location of all proposed improvements.

(f) Planning and Zoning Laws.

(i) The applicant shall include evidence with the application that all proposed uses within the proposed lease are in compliance with all applicable land use planning and zoning laws for the jurisdictions where the property is located; or

(ii) The Board may approve a lease application contingent upon the State's ability to acquire the necessary changes to the existing land use planning and zoning laws that will allow the intended uses on the state land within the lease.

(g) Requests For Proposals.

(i) When the Office initiates a request for proposals to lease state lands, the Office shall provide not less than thirty (30) days notice be provided:

(A) On the website of the Office;

(B) In a newspaper of general circulation in the county or counties where the state lands are to be leased; and

(C) To current lessees of the state lands and owners of adjoining lands by certified mail.

Section 7. Rentals

- (a) The annual rental for special use leases shall be:
- (i) The amount bid by the applicant, if accepted by the Board, or
 - (ii) As set by the Board as part of its decision in a case of conflicting applications. However, in no event shall the rental be less than the minimum rate as established in subsection (b).
- (b) The minimum annual rental shall be based on fair market value for the same or similar use of the land and any improvements owned by the State after an economic analysis is made. In cases where annual rental can not be established based on fair market value for the same or similar use of the land, the minimum rental shall not be less than \$250.00 or 5 1/2% of the appraised land value and any improvements owned by the State.
- (c) All rental rates are subject to review and adjustment as specified in the special use lease.
- (d) Upon notice provided not less than thirty (30) days prior to the anniversary date of a lease, all rentals accruing to the state, except those for the first year, shall become due and payable at the Office on the anniversary date of the lease. If the rent is not paid on the anniversary date, the Director shall notify the lessee or his authorized agent by certified mail that the lease will be cancelled if the rent and late fee equal to ten percent (10%) of the annual rental is not received within thirty days following the date of the notice.

Section 8. Board Approval of Assignments

- (a) A special use lease may not be assigned without prior approval of the Board. Lessees or their assignees shall request Board approval of proposed assignments, pursuant to W.S. 36-5-116, on a form provided by the Office.
- (b) If a request for Board approval of an assignment is signed by a party other than the lessee, the legal instrument authorizing such signature must accompany the request.

Section 9. Subleases

- (a) The leased premises under a special use lease may not be subleased in any manner or made subject to any contract or other agreement of any kind, without prior approval of the Director. Such approval may be conditioned upon payment of additional rental. Lessees shall request approval of proposed subleases, by submitting a copy of the proposed sublease agreement to the Office.

Section 10. Security Interests in Leases

(a) Whenever a security interest in a leasehold is created or released, the secured party shall notify the Office on a form provided by the Office.

Section 11. Improvements

(a) The lessee shall request permission from the Director to construct or make any improvements not approved concurrently with the granting of the special use lease. The Director shall prepare an informational board matter pursuant to Chapter 1.

(b) Any applicant applying to lease state land shall pay to the Director the contributory value of improvements of any kind authorized under Section (a) of this section or the owner of the improvement may upon giving notice to the Director in writing remove only those improvements, within a 120 day period, which will not cause injury to the land.

Section 12. Cancellation

(a) The Office shall investigate any allegation of fraud, deceit or misrepresentation in the procurement of leases and shall monitor all leases for violations of lease covenants. When grounds for cancellation exist under W.S. 36-5-113 the terms and provisions of the lease, the Director shall request that the Board cancel leases under the procedure at Chapter 1, Section 8, of these rules.

Section 13. Surface Impact Payments

(a) Anyone desiring to enter upon the leased premises shall contact the lessee prior to entry, unless otherwise provided in subsection (c) of this section.

(b) For all entries, the lessee may negotiate a surface impact payment, provided that any payment is consistent with payments for impacts to adjacent lands. By separate checks or money orders, the payor shall remit the lessee's share of the surface impact payment directly to the lessee and the Board's share of the surface impact payment directly to the Office, in accordance with the following schedule:

(i) For the first five thousand dollars (\$5,000), the lessee's share shall be forty percent (40%), and the Board's share shall be sixty percent (60%).

(ii) For that portion of a payment exceeding five thousand dollars (\$5,000), through ten thousand dollars (\$10,000), the lessee's share shall be thirty percent (30%), and the Board's share shall be seventy percent (70%).

(iii) For that portion of a payment exceeding ten thousand dollars (\$10,000), the lessee's share shall be twenty percent (20%), and the Boards share shall be eighty percent (80%).

(iv) For annual payments, the lessee's share shall be twenty percent (20%), and the Board's share shall be eighty percent (80%). For purposes of this section, "annual

payments” means any portion of a surface impact payment remitted subsequent to the initial remittance on periodic basis, regardless of the length of the period.

(c) The following shall not be subject to the requirements of this section:

(i) The Board and its representatives when entering for purposes of management or administrations of state lands.

(ii) Members of the public when entering for purposes of hunting and fishing and casual recreational use pursuant to the privilege extended by the Board under the provisions of Chapter 13 of these rules.

(iii) Applicants for, or holders of, an easement issued under Chapter 3 of the Board’s rules.

(iv) Applicants for, or holders of, a temporary use permit issued under Chapter 14 of the Board’s rules.

(d) If the person desiring entry upon state lands is unable to reach an agreement with a lessee regarding a surface impact payment after having negotiated with the lessee in good faith for a period of ninety (90) days, the person desiring entry or the lessee may submit evidence to the Office to establish the surface impact payment.

(i) The evidence will be analyzed by the Director, whereupon, the Director will enter an order establishing the surface impact payment and recommend the decision to the Board for final approval.

(ii) Either party may appeal the Director’s decision. The petition shall be treated as a contested case pursuant to W.S. 16-3-107 et seq. A hearing officer shall preside over the contested case hearing and make a recommended decision. The decision the Board establishing the surface impact payment shall constitute final agency action.

(iii) The person desiring entry may immediately enter the state lands while negotiations with the lessee are proceeding, upon providing the office with a deposit for the surface impact payment in an amount determined by the Office. When the Director enters an order establishing the surface impact payment, the Office shall forward the lessee’s share of the surface impact payment to the lessee and return any excess money on deposit to the petitioner, without interest.

(iv) The costs of the contested case hearing, including hiring a hearing officer, shall be paid in equal shares by the person desiring entry and the lessee.

Section 14. Bonding Provisions

(a) The Board may require a bond as a condition of a special use lease sufficient to assure compliance with all terms and conditions of the lease. All bonds posted on special use

leases may be used by the Board for payment for costs of reclamation and for compliance with all other terms and conditions of the lease and rules pertaining to the lease.

(b) The bond shall be in effect even if the board subsequently approves an assignment of the lease pursuant to Chapter 5, Section 8, of these rules.

(c) Additional bonding to cover risks not anticipated at the time of the original lease may be required at any time by the Director, provided the Director first gives the lessee 30 days written notice stating the reason and amount of the bond. The bond will remain in place until the unanticipated risk is diminished.

(d) Bonds may be accepted in any of the following forms at the discretion of the Director:

(i) Surety bond with a corporate surety registered in Wyoming.

(ii) Certificate of deposit in the name of the "Board of Land Commissioners", with a state or federally insured financial institution in Wyoming. The lessee shall be entitled to all interest payments.

(iii) Other forms of surety as may be acceptable to the Director.

(e) The Director shall prepare an informational board matter pursuant to Chapter 1 whenever additional bonding has been required under (c) in this section.

Chapter 6

Wind Energy Leasing

Section 1. Authority

This chapter is promulgated under the authority of W.S. 36-2-107 and W.S. 36-5-114 through W.S. 36-5-116.

Section 2. Definitions

As used in this chapter:

- (a) “Board” means the Board of Land Commissioners.
- (b) “Director” means the Director of the Office of State Lands and Investments.
- (c) “Existing Lease” means a surface or subsurface lease of state land or state minerals approved by the Board and in effect prior to the wind energy lease.
- (d) “Surface Impact Payment” means money paid by a wind energy lessee to an existing surface lessee in compensation for potential negative impacts to the leasehold estate, including, but not limited to, destruction of forage, disruption of grazing, agricultural, or commercial operations, nuisance, inconvenience, and for incidental use of the land surface.
- (e) “Wind Energy Leasing” means leasing of state land for the exclusive right to convert wind energy into electrical energy including collecting and transmitting the electrical energy so converted to the substation from which the electricity will be transmitted from the wind energy development to the interconnection of the transmission grid.

Section 3. Lease Purposes

- (a) The Board may lease suitable state land for wind energy development under the provisions of this chapter. The wind (wind resource, wind energy, or wind right) is considered an unseverable interest in the surface estate and the right to use the wind for wind energy development is included in a wind energy lease.
- (b) The Board shall determine that the proposed lease does not adversely affect its management goals on the land proposed for lease and on the adjacent state lands during the term of the lease. The Board may instruct the Director to prepare a detailed analysis of the parcel for lease and any adjoining state lands, including:
 - (i) An appraisal of the market value of the parcels;

(ii) The income-generating potential of the parcel, individually and in combination with any adjoining state parcel; and

(iii) The manageability of the parcel, individually and in combination with any adjoining state parcel.

Section 4. Existing Lease Impairment

(a) The leased premises of a wind energy lease may coincide with the leased premises of an Existing Lease(s) and is subject to any Existing Lease(s).

(b) Prior to issuing a wind energy lease, the Board shall determine whether or not the proposed wind energy lease would result in substantive impairment of an Existing Lease(s).

(c) Upon application, the wind energy lease applicant shall advise the Office of the planned or contemplated improvements to be placed on state land and the Office shall consult with the existing lessee(s) to determine if the existing uses are anticipated to interfere with the contemplated wind energy development.

(d) The wind energy lease applicant shall notify the existing lessee(s) of the application and such notification shall include a description of the proposed use. If the wind energy lease applicant obtains written consent from the existing lessee(s) to the issuance of a wind energy lease, the wind energy lease shall be deemed to not result in substantive impairment of the Existing Lease(s).

(e) If the wind energy lease applicant is unable to obtain written consent from the existing lessee(s) to the issuance of the wind energy lease, the Board shall determine whether the issuance of the proposed wind energy lease will substantively impair the Existing Lease(s). The Office shall notify the existing lessee(s) at least twenty (20) days before the proposed wind energy lease is to be considered by the Board.

Section 5. Term of Leases

(a) Wind energy leases may be for any term, up to seventy-five (75) years, at the discretion of the Board.

(b) The Board shall set the term of the lease for a period that does not exceed the anticipated economic life of the lessee improvements for wind energy development.

(c) The Board may extend the lease term if the Board determines that the economic life of the proposed use has not been reached, provided:

(i) All of the criteria within this section of the rules are still met; and

(ii) The overall term of the lease does not exceed seventy-five (75) years.

(d) The Board shall include provisions within the wind energy lease that promote development within a reasonable time including, but not limited to, provisions which provide that the lease may be cancelled in whole or in part if development does not occur within a reasonable time.

Section 6. Applications

(a) **Forms and Fees.** All applications to lease lands for wind energy development shall be made on forms furnished by the Office. Application forms must be completed in full, setting forth the proposed location and estimated value of any and all improvements to be constructed on the leased area. Any false or incomplete statement willfully made that materially affects the application will be considered as fraud, deceit, or misrepresentation and shall be cause for the rejection of the application. An application fee as determined by the Office must be submitted as indicated on the application form.

(b) **Signature.** If an application is signed by a party other than the wind energy lease applicant, the legal instrument authorizing such signature, i.e., power of attorney, letters of administration, letters testamentary, final decree of distribution, etc., together with the required filing fee must accompany the application.

(c) **Renewal periods.** The wind energy lessee must apply for renewal on forms provided by the Office at least ninety (90) days prior to the expiration of a wind energy lease. In such event, lessee and Office shall negotiate a new wind energy lease agreement evidencing the additional lease term not to exceed seventy-five (75) years from the effective date of the original wind energy lease. Any new wind energy lease agreement shall contain the terms and conditions (including the total rents to be paid under such new lease term) agreed to by Office and lessee, and approved by the Board.

(d) **Competitive interest.** If two or more applications are filed to lease the same land for wind energy development or if competitive interest exists, the Office shall consider issuing a Request for Proposal (RFP) to solicit competitive wind energy lease offers. Prior to issuing an RFP under this Subsection, the Office shall provide not less than thirty (30) days notice of its intent to issue an RFP:

(i) On the Office of State Lands website;

(ii) In a newspaper of general circulation in the county or counties where the state lands are to be leased;

(iii) To current lessees of the state land and owners of adjoining lands by certified mail.

(e) **Legal description.** All applications for wind energy leases will require a legal description which identifies the property proposed for lease. At the discretion of the Office, a legal survey and plat may be required identifying the location of all proposed improvements.

(f) Planning, zoning, and other laws applicable to state land. The wind energy lease applicant shall include evidence with the application that all proposed uses within the proposed lease are in compliance with all land use planning, zoning, and other laws applicable to state lands in the jurisdiction(s) where the property is located.

Section 7. Rentals

(a) The annual rental for wind energy leases shall be the amount determined by the Board on an individual lease basis.

(b) At a minimum, the annual rental shall be based on fair market value as determined by the Office for the same or similar use of the land and any improvements owned by the state after an economic analysis is made. In cases where annual rental cannot be established based on fair market value for the same or similar use of the land, the minimum annual rental shall be the greater of one thousand dollars (\$1000.00) or five and one-half percent (5 1/2%) of the appraised land value and any improvements owned by the state.

(c) All rental rates are subject to review and adjustment if specified in the wind energy lease.

(d) All rental payments are due and payable at the Office on the dates specified within the wind energy lease.

Section 8. Board Approval of Assignments

(a) A wind energy lease may not be assigned without prior approval of the Board.

(b) Lessees or their assignees shall request Board approval of proposed assignments on a form provided by the Office.

(c) If a request for Board approval of an assignment is signed by a party other than the lessee, the legal instrument authorizing such signature must accompany the request.

Section 9. Director Approval of Subleases

(a) The leased premises under a wind energy lease may not be subleased in any manner or made subject to any contract or other agreement of any kind, without prior approval of the Director.

(b) Lessees shall request approval of proposed subleases by submitting a copy of the proposed sublease agreement to the Office.

Section 10. Improvements

(a) Prior to construction, the wind energy lessee shall submit to the Office for approval a detailed description and location of the lessee improvements to be placed on state land.

(b) The Office shall approve the lessee improvements and locations thereof provided:

(i) The wind energy lessee is in compliance with the wind energy lease;

(ii) Substantive impairment to any Existing Lease(s) will not result (unless the existing lessee consents);

(iii) Lessee improvements on state land are necessary for wind energy conversion to electricity on state land; an

(iv) Impacts to state land are minimized.

(c) Once a wind energy lease is approved by the Office, any additional lessee improvements or changes to the approved location of lessee improvements shall require approval of the Office.

(d) Any improvements not approved concurrently with the granting of the wind energy lease may not be constructed without prior approval of the Board.

Section 11. Cancellation

(a) The Office shall investigate any allegation of fraud, deceit or misrepresentation in the procurement of leases and shall monitor all leases for violations of lease covenants.

(b) When grounds for cancellation exist, the Director shall request that the Board cancel leases under the procedure at Chapter 1, Section 8, of these rules.

Section 12. Surface Impact Payments and Surface Use Agreements

(a) Any wind energy lease applicant desiring to survey the state lands shall contact the existing surface lessee(s) prior to entry and comply with Chapter 16 of the Rules and Regulations of the Board of Land Commissioners.

(b) For all entries on the state land by the wind energy lessee or contactors thereof that occur during the term of the wind energy lease in which there is to be actual or potential negative impacts as defined in Section 2(e) of these rules to the surface leasehold estate, the wind energy lessee and the existing surface lessee(s) shall negotiate a Surface Impact Payment. The wind energy lessee shall remit directly to the existing surface lessee(s) the Surface Impact Payment and provide evidence of such payment to the Office.

(c) If the wind energy lessee is unable to reach an agreement with an existing surface lessee(s) regarding a Surface Impact Payment and having negotiated with the existing surface

lessee(s) in good faith for a period of ninety (90) days after having provided sufficient information to the existing surface lessee(s), the wind energy lessee and/or the existing surface lessee(s) may submit evidence to the Office to establish the Surface Impact Payment.

(i) The evidence and any information the Director deems relevant will be analyzed by the Director, whereupon, the Director will enter an order establishing the Surface Impact Payment and recommend the decision to the Board for final approval.

(ii) Either party may appeal the Director's decision. The petition shall be treated as a contested case pursuant to W.S. 16-3-107 et seq. A hearing officer shall preside over the contested case hearing and make a recommended decision. The decision of the Board establishing the Surface Impact Payment shall constitute final agency action.

(iii) The wind energy lessee may immediately enter the state lands while the Office is establishing and the Board is approving the Surface Impact Payment, upon providing the Office with a deposit for the Surface Impact Payment in an amount determined by the Office. When the Director enters an order establishing the Surface Impact Payment, the Office shall forward the Surface Impact Payment to the existing surface lessee and return any excess money on deposit to the wind energy lessee, without interest.

(iv) The costs of the contested case hearing, including hiring a hearing officer, shall be paid in equal shares by the wind energy lessee and the existing surface lessee(s).

(d) Surface use agreements or any agreement between a wind energy lessee and any existing lessee that defines the rights of the parties as to the use of the leased state land shall be provided to the Office.

(e) The wind energy lease shall provide for an installation/construction fee as compensation to the State for negative impacts to the fee simple interest in the state land.

Section 13. Financial Assurances

(a) The Board shall require financial assurances as a condition of a wind energy lease sufficient to assure compliance with all terms and conditions of the lease including decommissioning and site reclamation.

(b) Financial assurances shall remain in effect even if the Board subsequently approves an assignment of the wind energy lease pursuant to Chapter 6, Section 8, of these rules unless or until assignee provides adequate and sufficient financial assurances.

(c) Additional financial assurances to cover risks not anticipated at the time of the original wind energy lease may be required at any time by the Director, provided the Director first gives the wind energy lessee sixty (60) days written notice stating the reason for and the amount of the additional financial assurance. The Director shall prepare an informational board matter pursuant to Chapter 1 whenever such additional financial assurances are required. The financial assurance will remain in place until the unanticipated risk is diminished.

(d) Financial assurance may be accepted in any of the following forms at the discretion of the Director with consideration of credit worthiness, financial strength, credit history, credit rating, and debt:

(i) Surety bond with a corporate surety registered in Wyoming.

(ii) Certificate of deposit in the name of the “Board of Land Commissioners”, with a state or federally insured financial institution in Wyoming. The wind energy lessee shall be entitled to all interest payments.

(iii) Other forms of assurance such as corporate guarantee, letter of credit, insurance policy, security interest in net salvage value, or other forms as may be acceptable to the Director.