Commercial Lease Implementation Guidelines

2022

Subject: Commercial Lease Management

Purpose: This document lists the guidelines related to existing and new commercial leases for recreation related businesses along the Lower Colorado River, including, but not limited to, planning and overall management of commercial leases administered by the BLM for the benefit of ensuring compliance as well as successful visitor services opportunities.

Objectives: These implementation guidelines apply to BLM employees and commercial leaseholders involved in the management of commercial leases for recreation related businesses.

Under this guidance, all existing leases will be revised to comply with the 43 CFR 2920 regulations and BLM Instructional Memorandum No. WO-2016-030 as soon as practicable. Existing leases may continue to be operated until they are transferred, renewed, or amended.

Authority: Federal Land Policy and Management Act, 43 U.S.C. 1701, et seq., 43 U.S.C 1732, as codified at 43 CFR 2920.

Definitions:

Commercial Leases: A commercial lease is a lease for a privately owned commercial business (considered cooperative management areas) that supports appropriate public recreation uses and provides facilities, goods, or services for which revenues are collected. A commercial lease involves the use and development of federally managed lands with real property improvements.

Compliance (Lease): Existing commercial recreation leases must be brought into compliance with the current BLM commercial lease management guidelines as soon as practicable. If a lease expires or is terminated because of operator default or for other reasons, any subsequent issued lease or application associated with said expired lease must comply with this guidance until the Bureau provides new superseding policy and/or regulations for commercial recreation lease management.

Compliance (Environmental): Commercial recreation leaseholders will address all activities with potential environmental impacts resulting from the release of hazardous materials to the environment including, but not limited to, the following: pesticides, herbicides, sewage effluents, petroleum products, and liquid waste (gray water). Leaseholders are required to follow all applicable Federal, State, and local laws, rules, and regulations related to hazardous substance use, storage, and disposal. Application for and acquisition of all required certifications and permits are the responsibility of the leaseholder.

Fair Market Value (FMV): The amount in cash or on terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal. All government appraisals shall conform to the Uniform Standards of Professional Appraisal Practice and the Uniform Appraisal Standards of Federal Land Acquisitions (49 C.F.R. § 24.103), as implemented in accordance with the Department of the Interior's Appraisal Services Directorate Appraisal Policy Manual (602 DM 1), or any succeeding

standards and manuals.

Special Recreation Permit (SRP): A leaseholder's request to provide recreation and recreation-related services outside of the leased area on public lands and waters will be processed as a special recreation permit with approval by the Authorized Officer in accordance with 43 CFR 2930. An SRP is a separate action and is unrelated to the commercial leasing process.

Visitor/Recreational services: accommodations, facilities and services for public use and enjoyment of public lands and access to the river for a fee or charge. The fee or charge paid by the visitor may be direct or indirect as part of the provision of comprehensive visitor services. Visitor services may include, but are not limited to, lodging, campgrounds, food service, boat ramp usage, recreational activities, and equipment rental.

Policy:

Public land must be retained and managed under the BLMs multiple-use programs, unless the Bureau's inventory and land-use planning procedures reveal that the public lands have location or site values making them highly suitable for commercial leasing under arrangement with individuals or non-Federal entities. If the site and location values of the land outweigh the protection, management, utilization, or extraction of resources under the Bureau's multiple use management program, or if the proposed use would enhance BLM programs, the lands may be made available to the private sector for authorized land use under the following criteria:

A. Conformity. The use of the public lands must conform with BLM policy, objectives, and/or resource management plans.

B. Need. There must be a legitimate and demonstrated need for the use of the land that cannot be achieved under BLM multiple-use management programs.

C. Availability. There are no private lands reasonably available or suitable for the proposed use.

D. Legality. The proposed use of the public lands is not prohibited by Federal, State, or local government laws, planning, and/or zoning.

E. Fees. The United States must receive fair market value for use of the public lands as well as resources used, removed, or destroyed in preparing the site for the authorized use.

F. Public Benefit. If the ·public lands have potential for two or more uses, priority is given to that use, or combination of uses, which will provide the greatest public benefit.

G. Outdoor Recreation. Commercial leases for outdoor recreation related business are issued primarily to provide essential public services, serve the national interest, or meet public need and demand. Commercial leases are not granted solely because a profitmaking opportunity exists.

General Requirements:

A. Commercial leases on lands that are administered by the BLM consist of one instrument authorized under the Federal Land Policy and Management Act, 43 U.S.C. 1701, et seq., 43 U.S.C 1732, as codified at 43 CFR 2920. Under this implementation guidance, all existing commercial leases will be revised to comply with the 43 CFR 2920 regulations as soon as practicable and only in response to requests for renewals, amendments, or transfers. Existing leases may continue to be operated until they are transferred, renewed, or amended at which time the lease will be reevaluated for compliance with IM No. WO-2016-030 and this implementation guidance. Renewals must be initiated 2 years prior to the expiration date.

B. Lease Term. The term of a lease must be sufficient to amortize the capital investment in the approved land use. Leases normally are not issued for less than 3 years.

C. Issuance of Leases. To ensure constancy of leases in the Colorado River District use the most recent lease template for Non-Federal Use of The Federal Lands. Field Solicitors will review all lease terms and conditions prior to issuance for legal sufficiency and compliance with 43 CFR 2920. This review may be waived for· routine actions (transfers or renewals with no changes to the existing lease) at the discretion of the Authorized Officer. The leases must include terms and conditions, and other requirements as necessary to protect the interest of the U.S. and the environment.

D. Bonding and insurance requirements should be used as tools for performance and reclamation standards in the terms and conditions of each lease. Where a bond is warranted, the authorized officer shall determine the bond amount using the reclamation cost estimate (RCE). Criteria to consider regarding a bonding determination: Potential loss, damage or injury to human health. Potential damages to the environment (e.g., cultural, historic, biological, or hazardous materials). Potential damages to property of the United States. National security of the project infrastructure. Other mitigating factors of the project (e.g., history of responsiveness, existing liability protection, existing agreements, compliance history, or salvage values). If you plan to use hazardous materials in the operation the lease, the lessee must provide a bond that covers liability for damages or injuries resulting from releases or discharges of hazardous materials.

E. Routine lease management activities on existing leases do not fall under these requirements. New and/or proposed commercial lease applications will be processed in accordance with 43 CFR 2920, WO IM 2016-030, and AZ PIM 2022-001, and this guidance. Field offices will make every effort to promptly respond to all requests for transfers, amendments, renewals, and new leases.

F. Commercial leases may be offered on a competitive basis if, in the judgment of the Authorized Officer, a competitive interest exists or if no equities, such as prior use of the lands, warrant non-competitive land-use authorization. Land-use authorizations shall be awarded on the basis of the public benefit to be provided, the financial and technical capability of the bidder to undertake the project, and the bid offered. A bid at less than fair market value shall not be considered. Each bidder shall submit information required by the notice of realty action.

G. Commercial leases may be offered on a negotiated, non-competitive basis, when, in the judgment of the Authorized Officer, equities, such as prior use of the lands, exist, no competitive interest exists, or where competitive bidding would represent unfair competitive and economic disadvantage to the originator of the unique land use concept, subject to H, below. The non-competitive bid shall not be for less than fair market value.

H. Renewals of existing leases would not require competitive bidding (see 2920.7 (3)(i). Competitive bidding should only be appropriate for new leases or when a lease expires or is abandoned, and the former lease holder has not resolved ongoing noncompliance or is in trespass.

I. Amendments would be required when there is any change or modification of the authorized use or the authorized level of development in the approved plan of development.

J. The Authorized Officer must approve any reconstruction or new construction in advance and in writing. Lease holders will be required to remove any unauthorized improvements or structures and perform site restoration as may be necessary. Prior to approval of any reconstruction or new construction, the site must be brought into compliance with the terms and conditions of the lease and approved plan of development.

K. All facility structures and improvements, including those related to health and safety issues and the building code compliance, permits and inspection issues, must be coordinated through the BLM Authorized Officer. All facility structures and improvements shall be constructed and maintained in accordance with applicable Federal, State, and/or local standards, whichever is more stringent, including those covering public health and safety, environmental protection, and siting, constructing, operating, and maintaining any facilities and improvements.

Accounting: Refer to PIM AZ 2021-001 Assessing 43 CFR 2920.8 Fees for Commercial Leases along the Lower Colorado River. Proper accounting is essential to the management and oversight of the commercial recreation lease program and will be the responsibility of the Authorized Officer. Oversight will be provided by the national, state, district, and field offices, as necessary, to assure compliance with agency accounting regulations and policies.

Once existing leases are transferred, renewed or amended and cost recovery agreements have been established for each individual lease to cover BLM incurred costs, the associated funds for each lease's cost recovery agreement will be deposited into sub-activity L5440 in individual accounts with a specific WBS and all rental payments received will be sent to the U.S. Treasury. After individual cost recovery agreements for each lease has been established along with an individual associated L5440 account for each lease, **L5440_LVCLAXXA5220** will no longer be used for any associated funds deposits. BLM employees working and charging to these accounts shall complete BLM Form 1323-1 (Reimbursable Project Log) each pay period. This form shall be signed by the Authorized Officer and placed in the lease case file.

The BLM Receipt of Payment and Depositing Process is as follows:

Per Collections and Billings System (CBS) Reference Guide:

Separation of Duties:

The BLM has three primary functions that should be separated. They include Mailroom (receiving), New Transaction (receipting), and Depositing. The BLM requires that different individuals perform these functions when staffing is available. When staffing is limited individuals can be assigned as many as two out of the three primary functions. The person receiving (over-the counter or in the mailroom) can issue receipts in CBS but should not be the individual depositing the funds.

Receiving: All remittance received in the mail will be entered into CBS Mailroom Log. Collections be entered into the CBS Mailroom Log as soon as it is received. If this is not possible then the collection will be placed in a safe until they can be entered. The transfer of remittances to collection personnel in the office is a three-step process. The mailroom person is responsible for entry and verification of payments.

Receipting: The individual responsible for receipting assumes the responsibility of the payment from the person receiving the payment. The receipting person accepts the collection, creates a new transaction, applies the payment, and generates and mails a receipt to the customer. Payments received over the counter will not be entered into the mailroom. They are applied directly to a new transaction.

Depositing: Collections should be deposited when they total $5,000, or once a week every Thursday, or on the last business day in a fiscal year, whichever comes first. Deposits should be limited to one per day and each office should have an internal cutoff time for receiving collections. This is to provide enough time to prepare the deposit and get it to the bank on time for processing the same business day.

Suspense: It is important that collections coded to suspense be monitored monthly to ensure that they are accounted for and earned when appropriate. Revenues will be understated in the general ledger if funds are not transferred out of suspense timely.

Unidentified Remittance: If a collection is received but you are not sure it belongs to the BLM, employees should spend no more than three days researching. Then it should be returned or deposited into the miscellaneous suspense account.

Cost Reimbursement: Proponents must be fully aware of the cost reimbursement requirements of 43 CFR 2920 and be given a rough estimate of the probable costs (or types of costs) involved in the issuance of a commercial lease. Refer to PIM AZ 2022-001.

Subleases: Are not permitted.

Processing Lease Requests: All proposals must be submitted in writing to the BLM Field Office having jurisdiction over the public lands covered by the proposal. Such proposals are not given application status until the required Notice of Realty Action is published**.**

Proposal Content: The proponent must submit formal proposals in writing. The following are the minimum content requirements that must be included in a proposal:

A. **Proposed Uses and Activities:** Proposals for a land-use authorization must include a sufficiently detailed description of the proposed land use to enable the Authorized Officer to evaluate the following:

1. Environmental Impact. The information provided should be sufficient to allow an informed judgment of the National Environmental Policy Act (NEPA) documentation required (i.e., categorical exclusion, environmental assessment or environmental impact statement).

2. Benefits. The written proposal should describe the public or other benefits to.be derived from the proposed land use.

3. Cost. The proponent's estimate of the cost of the proposed land use and development must be included.

4. Period or Term of Use. The period of use whether seasonal, monthly, or annual of the proposed land use must be described; or the number of years for which the commercial lease is being sought must be included.

5. Health and Safety. All aspects of the proposed land use that would pose a threat to public health and safety must be described by the proponent.

B. **Facilities/Improvements:** Describe all facilities and/or land improvements for which the commercial lease is being sought and include the following:

1. Site Plan. A sketch of the location with all proposed facilities and/or land requirements, access, water and power source, (Note: A detailed site plan, including contours, road and building location, etc., may be required at the application stage of a proposal.)

2. Map. A map in sufficient detail to allow BLM to locate and examine the land on which the use would occur.

C. **Construction:** The proposal should include a schedule for completing any facilities to be constructed and/or land improvements to be made, as well as an estimated date that the land use would begin.

D. **Publication Requirements:** The Notice of Realty Action must be published once in the Federal Register and once a week for 3 weeks thereafter in a newspaper of general circulation in the vicinity of the public lands included in the land-use proposal.

E. **Terms and Conditions:** In all commercial leases, the United States reserves the

right to use the public lands or to authorize the use of the public lands by the general public in any way compatible or consistent with the authorized land use and such reservations are included as a part of all land-use authorizations. To ensure constancy of leases in the Colorado River District use the lease template for Non-Federal Use of The Federal Lands for terms and conditions.

Renewals, Amendments and Transfers

Renewals: The holder of a commercial lease, who after complying with its provisions, files a request for renewal and is the preferred recipient of a new commercial lease, provided that the public lands are not needed for another use, renewal, if granted, is subject to new terms and conditions. Prior to expiration the lease holder must file for a renewal or relinquishment.

Amendments: The holder of a commercial lease must apply for an amendment where there is a proposed substantial deviation. Where the new use is significant, they must apply to amend the authorization; or treat the use as a new proposal for a commercial lease subject to the proposal requirements of this Section.

Transfers: All or part of a commercial lease may be transferred, unless expressly prohibited in the original lease.

Terms and Conditions: The Authorized Officer may modify the terms and conditions of the land-use authorization and the transferee must agree in writing to comply with and be bound by the terms and conditions of the authorization as modified.

Transfer Approval: Transfers do not take effect until approved by the Authorized Officer.

As BLM Arizona's Lower Colorado River commercial lease program evolves, this implementation guidance may be reevaluated to ensure that it is in agreement with all applicable laws, policies, rules, and regulations. The reevaluation process will occur every 5 years, or sooner, if applicable laws, policies, rules, or regulations have been implemented which require the guidance in this document to be amended.