

Industrial Leasing of State Trust Lands



Authority:

Special use leases issued by the Trust Lands Administration (the "Agency") are governed by the administrative rules of the Agency (Utah Administrative Code, Title R850). For rules pertaining specifically to special use leases, please see the administrative rules under *R850-30, Special Use Leases*. The Utah Administrative Code is available online at <https://adminrules.utah.gov/public/search/R850/Current%20Rules>.

Industrial Special Use Leases:

This category of special use leases includes the use of the trust land for purposes such as oil & gas processing plants, compressor stations, wastewater disposal facilities, mining or extraction facilities, manufacturing facilities, and other industrial uses.

Initial Application Procedures:

In order to apply for an industrial special use lease, please submit the following items:

1. "Lease of Trust Land Application" attached to this packet, or available online at trustlands.utah.gov or by contacting the Agency at 801-538-5100.
2. A preliminary plan of development or similar document including the following information:
 - The intended purpose of the lease and desired lease term
 - Description of any processes/activities to occur on the site
 - Buildings (temporary or permanent), equipment, and infrastructure to be located on the site
 - Raw and processed materials to be located on the site
 - Potential environmental risks and environmental protection measures to be employed on the site
 - Hazardous materials located on the site and how they will be stored
 - Solid waste, wastewater and sewage handling practices
3. Map(s) and/or diagram(s) detailing the location and footprint of the proposed lease and proposed site layout.
4. Any other pertinent information regarding the proposal that may be helpful for the Agency's consideration of the application.
5. Applications deemed incomplete may be rejected by the Agency.

Preliminary Review of Application:

Upon receipt of a complete application, the Agency will undertake a 15-day preliminary review of the application. At the end of this review period, the Director will determine whether to accept or reject the application.

The applicant will be informed of the Director's determination at the end of the initial review period. If the application is accepted, a non-refundable \$250.00 application fee is due. A determination to reject the application is not appealable and not subject to administrative review.

Solicitation of Competing Applications:

Upon acceptance by the Director of a completed application, in most cases the Agency must solicit competing applications. Competing applications are solicited for a period of 30-days as follows:

- Publication of a notice at least once a week for three consecutive weeks in one or more newspapers of general circulation in the county where the subject property is located.
- Notification of lessees/permittees of record on the subject property and adjoining landowners as shown on county records.
- Notice posted in a local governmental administrative building or courthouse.

Sealed Bid Submittal:

At the conclusion of the advertising and notification process, the Agency may require the applicant to submit a sealed bid containing the applicant's proposed annual rental for the lease. The sealed bid shall contain payment of the proposed first year's rental. The bid deposit is refundable if the applicant is not the successful applicant or if the bid is rejected by the Agency.

Preferred Application Determination:

If a competing application to lease, purchase or exchange the subject property is received, the Agency may select the preferred applicant through either a sealed bid process or a negotiation process. Competing proposals will be evaluated based on income potential, the ability of the proposed use to enhance adjacent trust lands, the proposed timetable for development, the ability of the applicant to perform satisfactorily, the desirability of the proposed use, or any other criterion deemed appropriate by the Director.

Other Reviews/Requirements:

- Resource Development Coordinating Committee Review: Lease applications involving new ground disturbing activities will require review by the State Resource Development Coordinating Committee (the "RDCC"). During the

initial 15-day review period, a determination will be made as to whether the application requires review by the RDCC. The RDCC review requires 30 days and gives local government and other state & federal agencies the opportunity to review the lease application and submit comments regarding the application to the Agency. The applicant will be informed of any comments or additional requirements at the end of this review period.

- Cultural Resources (Archaeological) Survey: During the initial 15-day review period, a determination will be made as to whether the proposed lease will require a survey for cultural resources and whether special accommodations will need to be made for cultural resources within the proposed project area. If a cultural resource survey is required, it is the responsibility of the applicant to obtain this survey and bear all costs associated with the survey. Contact the Agency's staff archeologist for more information regarding cultural resource requirements on trust lands.
- Paleontological Resources Survey: If the proposed lease is located within an area where potential paleontological resources may exist, the Utah Geological Survey (UGS) requires that a paleontological survey be conducted. If a paleontological survey is required, it is the responsibility of the applicant to obtain the survey and bear all costs associated with the survey.
- Other Requirements: Occasionally environmental, wildlife, or other concerns will arise during the above-mentioned review processes that will need to be resolved prior to final approval of the lease application. If any of these concerns arise, the applicant will be promptly notified.

Initial Site Inspection:

An initial site inspection with the successful applicant is typically required in order to document the condition of the premises and to discuss the proposed lease.

Lease Fees, Annual Rentals, Percentage Rents:

- Application Fee: Upon acceptance of the application by the Director, a non-refundable \$250.00 application fee is assessed.
- Lease Processing Fee: Prior to final issuance of the lease, a \$700.00 lease processing fee is assessed.
- Advertising Fee: Any costs associated with advertising the lease application are assessed.
- Annual Rental: The annual lease rental is based on the market value and/or income producing capability of the subject property. Property appraisals, market analysis, evaluation of comparable lease data, and other methods may be used in the determination of the annual lease rental.
- Percentage Rents: The Agency may require the payment of percentage rents and/or royalties.

Lease Term:

Industrial leases are typically issued for terms of 30 years or less. Longer terms are allowed by rule, provided that the term is consistent with agency management objectives for the subject property.

Plan of Development/Site Layout Plan:

Prior to the issuance of a lease, the successful applicant will be required to submit a detailed plan of development and/or site layout plan. The plan of development will be attached as an exhibit to the lease agreement and all improvements constructed on the lease premises shall be constructed in accordance with this plan.

Legal Description of Lease Boundary:

Lease boundaries are typically defined with metes & bounds legal descriptions, although in some cases an aliquot parts description may be appropriate. Survey costs associated with obtaining a metes & bounds legal description of the lease boundary are the responsibility of the successful applicant. Metes & bounds descriptions must be prepared by a licensed surveyor. Shapefiles and projection information need to be submitted to the Agency. The legal description must be reviewed and accepted by the Agency prior to the issuance of a lease.

Bonding:

The Agency typically requires that the successful applicant post a bond to assure compliance with all terms and conditions of the lease including performance, payment and reclamation. The Agency may require the applicant to submit a third-party estimate of site reclamation costs. The bond must stay in effect throughout the duration of the lease term and will only be released by the Agency upon satisfactory compliance with all terms of the lease agreement. The Agency accepts surety bonds with an approved corporate surety registered in Utah, letters of credit, and cash bonds. The applicant will be notified of the required bond amount prior to final execution of the lease agreement.

Insurance:

- Liability Insurance: At all times during the lease term the lessee is required to maintain liability insurance with limits for each occurrence of not less than \$3,100,000, combined single limit. The lessee must maintain a current certificate of insurance on file with the Agency as policy periods renew. The certificate must list the School and Institutional Trust Lands Administration as an additional insured.
- Other Coverages: The Agency may specify additional insurance coverage that will be required pursuant to the terms of the lease. The lessee is required to maintain all other insurance policies required by applicable law and consistent with industry standards applicable to the lessee's business.

Lease Approval:

Upon satisfactory completion of all application requirements and payment of the required fees and first year's rental, the application will be submitted to the Director for approval. The approval is documented on the Director's Minutes, which documents final agency actions.

Lease Agreement:

Upon approval of the application on the Director's Minutes, the Agency will prepare a draft lease agreement for review by the applicant. Once the lease form is acceptable to the applicant and the Agency, two copies of the agreement will be sent to the applicant for execution, which must both be returned to the Agency within 60 days. The Director will then execute both copies, and one original will be returned to the applicant. Upon execution of the agreement by the Director it becomes a legally binding contract with the Trust Lands Administration.

Lease Reviews:

Special use leases are reviewed by the Agency at specified intervals throughout the lease term. The lease review includes a site inspection to verify compliance with the terms of the lease and typically results in a rental adjustment, pursuant to the terms of the lease. The Agency also reserves the right to inspect leases for compliance at any time throughout the duration of the lease.

Environmental and Regulatory Compliance:

Lessees are expected to practice good stewardship of the trust lands that they are leasing. Substandard performance with respect to upkeep of the premises, improper storage of materials and equipment, non-compliance with environmental and other regulatory requirements, etc. will not be tolerated.

Lessees of trust lands are required to fully comply with all laws, orders, rules, regulations, directives, ordinances and requirements of all governmental authorities having jurisdiction over the leased premises.

Reclamation Upon Lease Termination:

Upon termination of the lease, the lessee will be required to reclaim the lease premises by properly removing all structures, equipment and debris, re-contouring the premises to their approximate original contour, and re-vegetating the premises as prescribed by the Agency.

The lessee will also be required to abate any hazardous condition on or associated with the lease premises and provide certification to the Agency all actions necessary have

been taken to protect human health and the environment with respect to any hazardous substances and/or used oil.

Questions:

Please contact Jim Davis at the Trust Lands Administration at 801-538-5162 or by email at jimdavis1@utah.gov for more information.