

## H. Trust Lands Management in Utah

Utah has approximately 3.5 million surface acres and 4.5 million subsurface acres of trust lands. These lands are scattered throughout the state, primarily in a checkerboard pattern, with the state holding only a few larger, consolidated parcels. Approximately half of the lands granted to Utah at statehood have been sold into private ownership, such that approximately 30 percent of the private land in Utah was once trust land.<sup>1</sup> Nearly 70 percent of Utah's land is held by the federal government (largely the Bureau of Land Management); as a result, trust land is one of the few sources of available land for development in Utah.

### 1. Utah's Land Grant

Utah's road to statehood was not a smooth one. Its first attempt in 1849-1850 failed due to concerns over the political power of the Mormon Church, in combination with the fact that Utah (then hoping to become the state of Desert) did not have the sixty thousand eligible voters required for admission as a state. A second attempt in 1856 met with Congressional disapproval of the Mormon Church's acceptance of polygamy, as did a third attempt in 1862 that led to the passage of federal legislation prohibiting plural marriage. A fourth attempt in 1876 was rejected over concerns that the political power of the Mormon Church would lead to insufficient separation between church and state. In 1887, the Mormon Church authorized the insertion of a clause prohibiting polygamy into the Utah Constitution, but Congress again rejected statehood based on concerns that Church leaders were not specifically committed to the prohibition. With the help of some influential politicians and the Church's eroding commitment to polygamy, Utah finally achieved statehood in 1896, although admission was reached through a compromise that stipulated Utah would not be admitted until after the congressional term had expired in order to insulate hesitant Congressmen from criticism.<sup>2</sup>

The Enabling Act of 1894 granted Utah sections two, sixteen, thirty-two, and thirty-six in every township, plus *in lieu* lands, for the support of the common schools.<sup>3</sup> In addition, the following lands were granted to Utah: 500,000 acres for water reservoirs; 100,000 acres for an insane asylum; 100,000 acres for the school of mines; 100,000 acres for the deaf and dumb asylum; 100,000 acres for a state reform school; 100,000 for the state normal school; 50,000 acres for the miner's hospital; 200,000 acres for the state agricultural college; 110,000 acres plus the equivalent of two townships for the University of Utah; and 100 sections for public buildings.<sup>4</sup> The common schools are the largest beneficiary of the trust lands, holding approximately 95 percent of the total trust land in Utah. Utah retains approximately 44 percent of its original trust land grant of 7.5 million acres.

### 2. Enabling Act and Constitutional Requirements

By the time Utah became a state in 1896, Congress had begun the practice of reserving mineral rights in the lands granted to the states. Utah bargained with Congress for these mineral rights as part of the school land program. Congress also required that a "permanent fund" be established from the proceeds of the sales of granted lands, the interest of which was to be used to support the common schools. Unlike previous state enabling acts, Utah's Enabling Act did not establish a minimum sales price or any restrictions regarding the lease of these lands.

Utah's Constitution established a Permanent State School Fund that is derived from the proceeds from trust land sales and revenues from nonrenewable resources, as well as from the net sale proceeds from federal lands in Utah (5 percent), and other legislative appropriations. The Constitution also declares that interest of the Fund "shall [only] be expended for the support of the public elementary and secondary schools" and "shall be guaranteed by the state against loss or diversion."<sup>5</sup>

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<sup>1</sup> Utah State and Institutional Trust Lands Administration, *About Us*, available at: <http://www.utahtrustlands.com/about/>.

<sup>2</sup> Edward L. Lyman, *Struggle for Statehood*, *Utah History Encyclopedia*, available at: <http://historytogo.utah.gov/statehood.html>. The enabling act of 1894 did not result in statehood until 1896 because Democrats feared the recent trend in Utah territorial elections, which were against Democrats, would hurt them in the upcoming elections.

<sup>3</sup> Utah Enabling Act, 28 Stat. 107 § 6 (1894).

<sup>4</sup> *Id.* at §§ 6, 7, 8, and 12.

<sup>5</sup> UTAH CONST. Art. X § 5.

### 3. Utah's Trust Responsibility

The relative absence of restrictions in Utah's Enabling Act has led the Tenth Circuit Court of Appeals to find that there was no federal trust created under the Utah Enabling Act for the grant of lands to benefit the Miner's Hospital. While the court did not address the other land grants under the Enabling Act, presumably the court's rationale would apply to other federal land grants as well. It is clear however, that the lands are held in trust pursuant to the Utah Constitution, which expressly declares that the lands are "held in trust by the State for the respective beneficiaries and purposes stated in the Enabling Act grants."<sup>6</sup> The legislature requires the state to be concerned with "both income for the current beneficiaries and the preservation of trust assets for future beneficiaries, which requires a balancing of short- and long-term interests so that long-term benefits are not lost in an effort to maximize short-term goals."<sup>7</sup>

### 4. Governance of Trust Lands in Utah

Prior to 1994, the Utah Division of State Lands and Forestry managed Utah's state trust lands. But due to sluggish revenue production, the agency was overhauled and modernized, and was reformed into the School and Institutional Trust Lands Administration (SITLA).<sup>8</sup>

SITLA is responsible for the management of all school and institutional trust lands and assets, under the leadership of a Director.<sup>9</sup> SITLA's operations are funded by a portion of the revenues generated by trust land management activities.<sup>10</sup>

The Director of SITLA is appointed by a majority vote of a Board of Trustees,<sup>11</sup> which establishes policies for the management and administration of the trust lands.<sup>12</sup> The Board consists of seven members appointed by the Governor on a non-partisan basis, with the consent of the Senate, for non-consecutive six-year terms. Each candidate is to possess "outstanding professional qualifications pertinent to the purposes and activities of the trust," including non-renewable resource management or development, renewable resource management or development, and real estate.

Six of the candidates for the Board are selected by an eleven-member nominating committee, which is appointed via a complex representative process intended to allow input from a variety of stakeholders. The State Board of Education appoints five members of the Committee from different geographic areas of the state. The Governor also appoints five members as follows: one from a nomination list of at least two persons knowledgeable about institutional trust lands submitted by the University of Utah and Utah State University on an alternating basis every four years; one from a nomination list of at least two persons submitted by the livestock industry; one from a nomination list of at least two persons submitted by the Utah Petroleum Association; one from a nomination list of at least two persons submitted by Utah Mining Association; one from a nomination list of at least two persons submitted by the executive director of the Department of Natural Resources after consultation with state wildlife and conservation organizations. Finally, the president of the Utah Association of Counties designates the chair of the Public Lands Steering Committee, who must be an elected County Commissioner or Councilor, to serve as the eleventh member of the Committee.

The Director and Board are additionally required to meet with an Advisory Committee at least three times per year.<sup>13</sup> The Advisory Committee consists of five county commissioners appointed by

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<sup>6</sup> *Id.* at Art XX § 2.

<sup>7</sup> UTAH CODE ANN. § 53C-1-102(2)(c).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at § 53C-1-201(3)(b)(i).

<sup>10</sup> STATE OF UTAH SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION ANNUAL REPORT, FISCAL YEAR 2003, at 5 (2004) (hereinafter "2003 ANNUAL REPORT").

<sup>11</sup> UTAH CODE ANN. § 53C-1-103(4).

<sup>12</sup> *Id.* at § 53C-1-103(5)(a).

<sup>13</sup> *Id.* at § 53C-1-204(7)(a)(i).

the Utah Association of Counties,<sup>14</sup> and is intended to evaluate the impact of trust land management on rural economies.

Utah has divided its trust land activities into three groups: Surface, Minerals, and Planning and Development. The Surface Group governs the use of trust lands for commercial and industrial purposes, telecommunication, cabin sites, farming, grazing, easements, rights-of-way, filming, and other organized events such as cross-country racing, and the selling of trust lands (the major responsibility of the group).<sup>15</sup> Responsibilities for land sales are shared between the Surface Group and the Planning and Development Group, which manages 1 percent of the lands managed by SITLA,<sup>16</sup> and seeks to capture revenues through “well structured, creative transactions with the private sector, always with an eye toward quality planning, preserving open space, and meeting larger community needs.”<sup>17</sup> The Minerals Group manages mineral and subsurface resources, which have significant leasing potential and currently generate the largest returns to the trust.<sup>18</sup>

### 5. Trust Land Management in Utah

The management objectives for state trust lands are detailed in a Utah administrative rule that implements the Enabling Act, constitutional, and statutory provisions regarding state trust lands. The main objective is to “optimize and maximize trust land uses for support of the beneficiaries over time.”<sup>19</sup> Specific goals include:

- Maximizing the commercial gain from trust land uses consistent with long-term support of the beneficiaries;
- Managing school trust lands for their highest and best use;
- Ensuring that no less than fair-market value be received for the use, sale, or exchange of school trust lands;
- Reducing the risk of loss through reasonable trust land use diversification;
- Upgrading school trust land assets where prudent through exchange; and
- Permitting other land uses and activities not prohibited by law which will not result in a loss to the trust assets or a loss of economic opportunity.<sup>20</sup>

Utah’s trust management activities can be roughly divided into three categories: surface uses, subsurface uses, and land sales and other uses.

#### a. Surface Uses

Surface uses on trust lands (including leases and sales, development, and grazing/forestry activities) contributed about 27 percent or \$14.1 million of the overall net revenues of \$52.5 million in 2004.<sup>21</sup> Surface leases may be entered into by negotiation, public auction, or other public competitive bidding process.<sup>22</sup> If a lease contains an option to purchase, the lease must be entered into through a public competitive process.<sup>23</sup>

SITLA is required to receive at least the fair market value for all surface leases,<sup>24</sup> as determined by a market analysis that examines the income-producing ability of the highest and best use of the property and a market study of comparable properties. Minimum lease rates may be

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<sup>14</sup> *Id.* at § 53C-1-204(7)(b).

<sup>15</sup> State of Utah SITLA, *Surface Management*, available at: <http://www.utastrustlands.com/surface/>.

<sup>16</sup> State of Utah SITLA, *Development*, available at: <http://www.utastrustlands.com/development/>.

<sup>17</sup> *Id.*

<sup>18</sup> State of Utah SITLA, *Minerals*, available at: <http://www.utastrustlands.com/minerals/>.

<sup>19</sup> UTAH ADMIN. CODE § R850-2-200.

<sup>20</sup> *Id.* at § R850-2-200 §§ 1-6.

<sup>21</sup> STATE OF UTAH SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION ANNUAL REPORT, FISCAL YEAR 2004, at 8, 29 (2005) (hereafter “2004 ANNUAL REPORT”).

<sup>22</sup> UTAH CODE ANN. § 53C-4-201(3).

<sup>23</sup> *Id.* at § 53C-4-201(3)(ii).

<sup>24</sup> UTAH ADMIN. CODE § R850-30-400.

determined based on the costs associated with the administration of the lease.<sup>25</sup> Special use surface leases, excluding grazing, may be issued for up to fifty-one years, and up to ninety-nine years in exceptional cases.<sup>26</sup>

Grazing leases (referred to as grazing permits) are issued for no longer than fifteen years and must include terms and conditions that protect the interests of the trust beneficiaries in regards to securing payment, and terms and conditions that protect the range resources from improper and unauthorized use.<sup>27</sup> Existing grazing permittees have a preferential right to the permit if that permittee agrees to match or exceed the highest competing application bid.<sup>28</sup> Fees for grazing permits are established and reviewed annually;<sup>29</sup> the fee for grazing in 2003 was \$2.05 per "Animal Unit Month" (i.e., one cow for one year = 12 AUMs) plus a 5¢ noxious weed fee.<sup>30</sup> In fiscal year 2003, SITLA also adopted rules requiring grazing lessees to make beneficial use of water rights associated with grazing leases or risk losing the permit to graze.<sup>31</sup>

Forest product permits or sales fall into three categories: permit sales (consisting of \$300 or less), noncompetitive sales (\$2000 or less), and finally, competitive sales (all sales over \$2,000).<sup>32</sup> All competitive sales are administered through a competitive bidding process and are subject to public notice requirements. Sales are awarded to the highest qualified bidder.<sup>33</sup>

Commercial leases are classified as special use leases and include restaurant, recreation, service station, boating facilities, motels, and retail businesses. Commercial leases are generally issued for terms of fifty-one years.<sup>34</sup>

Grazing and forestry generated \$713,147 for Utah's trust land beneficiaries in fiscal year 2003<sup>35</sup> and approximately \$525,000 in fiscal year 2004.<sup>36</sup> These types of uses, generating well under \$1 per acre, are a relatively minor revenue source for the trust beneficiaries compared with average revenues in 2003 of \$7.31 per acre for use permits, \$18.46 per acre for agricultural uses, \$170.20 per acre for commercial leases.<sup>37</sup>

#### *b. Subsurface Uses*

Oil and gas production is usually the largest revenue source on Utah's school trust lands.<sup>38</sup> Oil and gas revenues for fiscal year 2004 were more than \$36.8 million, a \$13.8 million increase over fiscal year 2003.<sup>39</sup> Oil and shale leases are issued on terms of up to twenty years, with all other mineral leases administered on ten year terms.<sup>40</sup> There are also significant coal reserves in Utah that generated revenues of \$4.3 million in fiscal year 2004.<sup>41</sup>

Subsurface leases, with a few minor exceptions, are let through a competitive, sealed bidding process that is administered on a periodic basis by SITLA. Mineral leases are awarded to the highest, responsible, qualified bidder<sup>42</sup> and are limited in size to 2,560 acres. Alternatively, the Director may

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<sup>25</sup> *Id.* at § R850-30-400(3).

<sup>26</sup> *Id.* at § R850-30-200.

<sup>27</sup> *Id.* at § R850-50-600.

<sup>28</sup> *Id.* at § R850-50-400(6).

<sup>29</sup> *Id.* at § R850-50-500.

<sup>30</sup> 2003 ANNUAL REPORT, *supra* note 813, at 14.

<sup>31</sup> *Id.* at 21.

<sup>32</sup> UTAH ADMIN. CODE §§ R850-70-400, 500, 600.

<sup>33</sup> *Id.* at § R850-70-800.

<sup>34</sup> *Id.* at § R850-30-200(3)(e).

<sup>35</sup> 2003 ANNUAL REPORT, *supra* note 813, at 4.

<sup>36</sup> 2004 ANNUAL REPORT, *supra* note 824, at 29.

<sup>37</sup> 2003 ANNUAL REPORT, *supra* note 813, at 14.

<sup>38</sup> *Id.* at 12.

<sup>39</sup> 2004 ANNUAL REPORT, *supra* note 824, at 10.

<sup>40</sup> UTAH ADMIN. CODE § R850-20-3900.

<sup>41</sup> 2004 ANNUAL REPORT, *supra* note 824, at 10.

<sup>42</sup> UTAH CODE ANN. § 53C-2-407(2).

authorize a public auction and set the minimum bid of the mineral interest available for lease.<sup>43</sup> A requirement that mineral rights be reserved when trust lands are sold has allowed the state to retain a substantial mineral acreage for revenue production. If a lessee waives or relinquishes to the trust a prior mining claim, mineral lease, or other right which might otherwise defeat or encumber the selection of newly acquired land or cloud the title to those lands, the Director may award the mineral lease without following competitive bidding procedures.<sup>44</sup> Mineral production generated just over \$7.5 million for Utah's trust land beneficiaries in 2003.<sup>45</sup>

*c. Land Sales and Other*

Trust lands may not be sold for less than fair market value.<sup>46</sup> The Director determines whether to retain or dispose of trust lands according to the best interests of the beneficiary.<sup>47</sup> If the Director finds that disposition of the trust land is in the best interest of the beneficiary, the Director must advertise the impending sale, lease, or exchange in a reasonable manner consistent with the Director's fiduciary duty.<sup>48</sup> Any tract may be subdivided under the supervision of the Director.<sup>49</sup> Competitive bidding procedures must be followed for the sale of trust lands.

Prior to the sale of trust lands for development, the Director designates the parcel of trust land as development property. To qualify for designation, the parcel must be near an urban or high growth area or must otherwise be suitable for development activities, such that development would be the highest and best use of the property, and a development transaction would be in the best interest of the beneficiary.<sup>50</sup> The State Planning Coordinator and SITLA operate under a Memorandum of Understanding under which SITLA submits development proposals to the Resource Development Coordinating Committee prior to sales of trust land.<sup>51</sup>

Land sales in Utah are generally of two types. The first is the Surface Group sales, which are held twice a year.<sup>52</sup> Usually ten to twenty parcels of various sizes are offered for sale at auction. The second type are Development Group sales.<sup>53</sup> The Development Group works to increase land values with the use of an approved capital budget. The intent is to produce higher profits for beneficiaries by allowing development of the parcels before selling them. SITLA is also authorized to become a member of a limited liability company in connection with joint ventures for the development of trust lands and minerals.<sup>54</sup>

In 2003, the state's trust land sales generated over \$14 million for the various beneficiaries of the trusts.<sup>55</sup> In the past ten years, SITLA has sold 5,300 acres for \$42 million.<sup>56</sup>

Trust lands may be exchanged, however, the Resource Development Coordinating Committee must first review any proposed land exchange.<sup>57</sup> Trust lands must be exchanged for lands or assets of equal or greater value, with the assets consisting of no more than 25 percent cash.<sup>58</sup> SITLA is required to solicit competitive exchanges through advertising in much the same way as for a sale or lease of trust land.<sup>59</sup>

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<sup>43</sup> *Id.* at § 53C-2-407(4).

<sup>44</sup> *Id.* at § 53C-2-407(5).

<sup>45</sup> 2003 ANNUAL REPORT, *supra* note 813, at 4.

<sup>46</sup> UTAH CODE ANN. § 53C-4-102(1).

<sup>47</sup> *Id.* at § 53C-4-102(2).

<sup>48</sup> *Id.* at § 53C-4-102(3).

<sup>49</sup> *Id.* at § 53C-4-102(4).

<sup>50</sup> UTAH ADMIN. CODE § R850-140-300.

<sup>51</sup> *Id.* at § R850-80-100.

<sup>52</sup> 2003 ANNUAL REPORT, *supra* note 813, at 13.

<sup>53</sup> *Id.* at 13

<sup>54</sup> UTAH CODE ANN. § 53C-1-103(6).

<sup>55</sup> 2003 ANNUAL REPORT, *supra* note 813, at 4.

<sup>56</sup> 2004 ANNUAL REPORT, *supra* note 824, at 16.

<sup>57</sup> UTAH ADMIN. CODE § R850-90-100.

<sup>58</sup> *Id.* at § R850-90-200.

<sup>59</sup> *Id.* at § R850-90-400.

Exclusive, non-exclusive, and conservation easements may be granted by SITLA when deemed consistent with the trust responsibilities.<sup>60</sup> The minimum charge for the easement is based on the costs incurred by SITLA and the fair market value of the particular use.<sup>61</sup> Easements are generally for no longer than thirty years. However, the Director may adjust this term if it is in the best interest of the trust beneficiaries.<sup>62</sup> Conservation easements must specify the resource being conserved and the conditions under which the easement may be terminated.<sup>63</sup>

Conservation sales are also allowed as long as the beneficiary receives full compensation for this use of the land. Buyers interested in protecting land for conservation purposes may purchase the land, or the lands may be exchanged with the federal government for parcels that would better suit the trust purposes.<sup>64</sup> Utah also engages in habitat mitigation programs that conserve trust lands – including a successful prairie dog relocation program<sup>65</sup> – that earn the state credits that can be used to mitigate the loss of habitat through development of other trust lands or private lands.<sup>66</sup>

**Table V(H): FY 2003 Revenues – Utah School and Institutional Trust Lands Administration**

Source	% of Revenue	Receipts
<b>Surface Uses</b>		
Development Rents	1%	\$409,413
Grazing & Forestry	1%	\$713,147
Surface Leases	4%	\$2,051,665
<b>Total Surface</b>	<b>6.0%</b>	<b>\$3,174,225</b>
<b>Subsurface Uses</b>		
Oil & Gas	46%	\$23,035,410
Other minerals	15%	\$7,587,292
<b>Total Subsurface</b>	<b>61.0%</b>	<b>\$30,622,702</b>
<b>Sales and Other</b>		
Surface Sales	9%	\$4,596,179
Development Sales	21%	\$10,469,686
Interest from operations	3%	\$1,396,565
Other Activities	0.01%	\$8,021
<b>Total Sales and Other</b>	<b>33.0%</b>	<b>\$16,470,451</b>
<b>Grand Total</b>	<b>100%</b>	<b>\$50,267,378</b>
<b>Agency Budget*</b>		<b>\$9,397,011</b>

\* Includes operating costs and capital expenses.

Source: Utah School and Institutional Trust Lands Administration FY 2003 Annual Report. (The data from the 2003 report was used for this chart as the most recent 2004 Annual Report does not include a detailed list of revenues and expenditures).

<sup>60</sup> *Id.* at § R850-40-200.

<sup>61</sup> *Id.* at § R850-40-600.

<sup>62</sup> *Id.* at § R850-40-800.

<sup>63</sup> *Id.* at § R850-40-900(2).

<sup>64</sup> 2003 ANNUAL REPORT, *supra* note 813, at 31.

<sup>65</sup> *Id.* at 29.

<sup>66</sup> *Id.*

## 6. Trust Revenue Distribution in Utah

Utah ranks near the top among states in per taxpayer burden for funding public education, but near the bottom in per pupil spending due to the large average size of Utah families.<sup>67</sup> Traditionally, payments from the state trust land fund have done little to ease the burden on Utah's taxpayers or to improve the financial situation. In fiscal year 2000, the fund distributed around \$3.8 million to Utah's education programs, accounting for just 0.115 percent of the \$3.3 billion state education revenues.<sup>68</sup> However, these revenue contributions are increasing: by fiscal year 2003 these distributions had grown to approximately \$9 million.<sup>69</sup>

There are twelve beneficiaries of the trust lands in Utah: the common schools; reservoirs, Utah State University, University of Utah, School of Mines (University of Utah), Miners' Hospital, Normal School (at University of Utah), Utah School for the Deaf, Public Buildings, State Hospital, Utah School for the Blind, and the Youth Development Center. Of these beneficiaries, the common schools are by far the largest, accounting for approximately 95 percent of the trust land in the state. The revenues from each beneficiary's grant lands are managed as a separate fund from which the beneficiary receives interest payments.

State law requires that all revenues generated by the common school trust lands be placed in the permanent fund.<sup>70</sup> The interest from this account is distributed to the individual schools based on the number of students at each school.<sup>71</sup> The Uniform School Fund, established by the Utah Constitution, consists of the State School Fund, money transferred to the fund through the Unclaimed Property Act, revenue from forfeited property, and any other allocations – either constitutional or legislative – including taxes on income or intangible property.<sup>72</sup> According to the Director in SITLA's 2003 Annual Report, the current balance of the permanent fund is around \$500 million,<sup>73</sup> up from approximately \$300 million in fiscal year 1999.<sup>74</sup>

The Uniform School Fund contains a restricted account called the Interest and Dividend Fund. This account consists of interest and dividends derived from the investment of the State School Fund monies and interest on account monies.<sup>75</sup> Funds in this account are used for the School LAND Trust Program (discussed below) and for teachers' classroom supplies.<sup>76</sup> Remaining funds may be appropriated by the state legislature for the support of public education.

Revenues from mineral leases are deposited into the Land Grant Management Fund.<sup>77</sup> The Land Grant Management Fund consists of all revenues derived from trust lands except from sales, interest earned by the fund, revenues collected from certain types of vehicle fees, and all other revenues obtained from other activities of the Director or administration.<sup>78</sup> All revenues in excess of that required to fund the budget are distributed to the various beneficiaries in shares proportionate to the amount obtained from each beneficiary during that fiscal year.<sup>79</sup>

Money from the lease, sale, rental, or use of school trust lands, or the natural resources on the school trust lands, including fees, forfeitures, and penalties, are deposited into the Permanent

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<sup>67</sup> Bill Hedden and Craig Bigler, *School Trust Lands in Utah*, GRAND CANYON TRUST, at 3 (2002). Available at <http://www.grandcanyontrust.org/media/PDF/forests/schtrust.pdf>.

<sup>68</sup> *Id.* at 4.

<sup>69</sup> 2003 ANNUAL REPORT, *supra* note 813, at 4.

<sup>70</sup> *Id.* at 10.

<sup>71</sup> *Id.*

<sup>72</sup> UTAH CONST. Art. XIII § 5(5) ("All revenue from taxes on intangible property or from a tax on income shall be used to support the systems of public education and higher education as defined in Article X, Section 2").

<sup>73</sup> 2003 ANNUAL REPORT, *supra* note 813, at 3.

<sup>74</sup> *Utah Public Education Financing and the State School Trust Fund*, Utah Foundation Research Report #632 (March/April 2000).

<sup>75</sup> UTAH CODE ANN. § 53A-16-101(2).

<sup>76</sup> *Id.* at § 53A-16-101(3).

<sup>77</sup> *Id.* at § 53C-2-402.

<sup>78</sup> *Id.* at § 53C-3-101.

<sup>79</sup> *Id.* at § 53C-3-101(3).

State School Fund.<sup>80</sup> All non-land sale revenue from surface uses and natural resources on other granted lands are distributed to the corresponding beneficiary.<sup>81</sup>

The Director transfers the funds received from the trust lands to the State Treasurer, classifying each source as a sale, rental, royalty, interest, fee, penalty, or forfeiture.<sup>82</sup> All revenue generated by the sale of school trust lands is deposited into the State School Fund.<sup>83</sup> Interest and dividends from the Permanent State School Fund are distributed for the maintenance of public elementary and secondary schools with realized and unrealized gains remaining in the State School Fund.<sup>84</sup>

Under the "State Money Management Act," adopted in 2002, the State Treasurer invests the fund proceeds primarily in equity securities and fixed income securities that do not to exceed a 80/20 percent balance, respectively. The investment activity is reviewed at least quarterly by the Investment Advisory Committee.<sup>85</sup>

The School LAND (Learning and Nurturing Development) Trust Program was established to provide financial resources to enhance student academic achievement.<sup>86</sup> This program is funded through the Interest and Dividends Account, which is a part of the Uniform School Fund. Interest and monies deposited into the Interest and Dividends account from the State School Fund, and interest earned from money already in the Interest and Dividends account are the sources of this funding. The program is funded up to an amount equal to 2 percent of the funds provided for the Minimum School Program each fiscal year.<sup>87</sup>

School districts receive 10 percent of the funds on an equal share basis each fiscal year.<sup>88</sup> The remaining 90 percent is distributed based on the number of students enrolled in the school district compared to total state student enrollment.<sup>89</sup> Each school district distributes the funds to the individual schools on an equal, per student basis.<sup>90</sup>

In order for schools to receive their allocation of the Interest and Dividends money, the school must have established a School Community Council. This council is a collaborative group of teachers, administrators, parents, community members, and sometimes students who make decisions for their particular school.<sup>91</sup> The School Community Council must develop a plan to use its allocation of the Investment and Dividends Fund to improve the school's most critical academic needs.<sup>92</sup> The local school board must approve this plan. Each school is required to implement the developed plan and report on the progress of the plan, as well as publicize to the general public and the patrons of the school how the funds it received were used.<sup>93</sup>

## *7. Recent Developments and Emerging Issues in Utah*

### *a. Permanent Fund Raid*

In the 1980's, Utah's permanent fund was raided due to a state budget crisis in funding for higher education. The state legislature shifted significant amounts of general funds from the public education system to the higher education system and replaced the general funds for public schools

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<sup>80</sup> *Id.* at § 53C-3-101(4).

<sup>81</sup> *Id.* at § 53C-3-101(5).

<sup>82</sup> *Id.* at § 53C-3-102.

<sup>83</sup> *Id.* at § 53C-2-102(2).

<sup>84</sup> *Id.* at § 53C-3-103.

<sup>85</sup> *Id.* at § 51-7-12(2)(a).

<sup>86</sup> UTAH CODE ANN. § 53A-16-101.5.

<sup>87</sup> UTAH CODE ANN. § 53A-16-101.5(2)(b), as amended by H.B. 43 (2005), effective March 17, 2005.

<sup>88</sup> *Id.* at § 53A-16-101.5(3)(a)(i).

<sup>89</sup> *Id.* at § 53A-16-101.5(3)(a)(ii).

<sup>90</sup> *Id.* at § 53A-16-101.5(3)(b).

<sup>91</sup> *Id.* at § 53A-1a-108.

<sup>92</sup> *Id.* at § 53A-16-101(5).

<sup>93</sup> *Id.* at § 53A-16-101(6).

with permanent funds, resulting in a significant reduction to the principal balance.<sup>94</sup> Although the shift of funds was challenged, the Utah Supreme Court upheld the legislature's actions in *Jensen v. Dinehart*, finding that the state had been improperly withholding revenues from mineral royalties from the beneficiaries on the basis that lands of mineral character did not fall under the authority of the Enabling Act, but rather under the Jones Act of 1927. Utah distributed these funds to beneficiaries from 1983 through 1987, which included the entire amount of royalties in the permanent fund collected over the eighty-nine years since statehood.<sup>95</sup> The Utah Constitution was amended in 1988 to stem this practice; however, the result is that Utah's permanent fund was reduced to less than \$100 million by 1990.

The State Treasurer has since moved much of the State School Fund assets from fixed income securities into the stock market. This has resulted in a rapid increase in Utah's permanent fund assets. By fiscal year 2002 the fund held \$399 million. In fiscal year 2003, the fund had grown to \$445 million and by the end of fiscal year 2004 the fund balance was 469 million.<sup>96</sup> SITLA has indicated that it intends to rapidly replenish the Fund through dispositions of trust lands, and anticipates the permanent fund will increase to \$1 billion by 2010.

#### *b. Development Planning Efforts*

Based on the principle that "active engagement in property planning and development can greatly increase the value of lands and resulting revenues for the trust beneficiaries over the long run," SITLA's Planning and Development group is currently working on development opportunities on a variety of trust parcels around the state, primarily in St. George, Cedar City, and the counties of Utah and Tooele. Although SITLA has disposed of a number of smaller parcels of land through traditional auction processes, it has also begun to engage in joint venture arrangements with the private sector, including the development of investment properties (such as industrial parks), "development leases" (in which the land is leased by a developer during the development stage, with the trust receiving compensation based on the final sales price of developed lots), and arrangements in which the agency participates as a member of a limited liability company and obtains a share of the profits.

As a part of this transition, the Planning and Development Group has also initiated planning efforts in a number of communities to integrate trust lands planning with larger community planning; the Group represents that it has placed "particular emphasis on 'smart growth' issues such as open space, mixed uses, and maintenance of trail corridors, while keeping its legal obligations to the Trust beneficiaries." Recent efforts have included a community planning effort in the south end of Spanish Valley in Grand and San Juan Counties, a wetlands planning effort in Tooele County, and a series of planning "charettes" for an eight thousand acre trust parcel located near the St. George airport in Washington County.

Among the most significant developments undertaken by SITLA is the Coral Canyon master-planned community in Washington County, which is being undertaken through a "development lease" arrangement with SunCor, a major Arizona land developer. SITLA represents that Coral Canyon "is destined to be one of Utah's most scenic, livable, and desirable communities" and provides "a model of what can be accomplished through meticulous planning and creative business associations" that combine "private enterprises with state and local governments." When completed, the community will include homes for ten thousand people, a city center, shopping areas, churches, schools, office developments, golf courses, and recreational centers, with more than 50 percent of the total land area dedicated for open space.

Other significant SITLA development projects include a proposed twelve hundred acre development in Utah County, which was the subject of a development agreement between SITLA and the town of Eagle Mountain in 2003. This development will consist of approximately four thousand housing units, several hundred acres of mixed use and commercial developments, parks, school sites,

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<sup>94</sup> SOUDER AND FAIRFAX, *supra* note 4, at 54; *Jensen v. Dinehart*, 645 P.2d 32 (Utah 1980).

<sup>95</sup> SOUDER AND FAIRFAX, *supra* note 4, at 96.

<sup>96</sup> 2004 ANNUAL REPORT, *supra* note 824, at 8.

a town center, and a trail corridor, with advance funding provided for the construction of roads and utility infrastructure. SITLA is also in the process of planning a one thousand acre parcel in Washington County and a fifteen hundred acre parcel and separate seven acre industrial park in Cedar City.

#### *c. Castle Valley Community Planning Process*

SITLA has been engaged over the past few years in a significant community planning effort in Castle Valley area, a scenic area near Moab, Utah, and a well-known climbing resource that incorporates approximately forty-five hundred acres of trust lands. After heated political controversy surrounding the proposed auction of approximately two hundred twenty acres of trust lands near a local landmark at the base of Castleton Tower, SITLA eventually agreed to place a moratorium on land sales in Castle Valley pending the completion of an extensive planning process involving SITLA and a community advisory group, the Castle Rock Collaboration (CRC).

SITLA and CRC jointly hired a planning consultant to oversee the planning process, which ultimately divided the Castle Valley land into seven separate parcels ranging from between 141 acres and over 600 acres, with “developable” and “undevelopable” areas identified along with concepts for the type and style of permissible development to establish land values. A disposition schedule for these areas and appraisals were then developed that allow the community the first option to purchase the parcels for conservation, assuming that the money necessary to purchase them could be raised in time.

To date, the community has been able to raise millions of dollars to secure several key pieces of land, including a staging area for Castleton Tower, an internationally renowned rock climbing site. The implementation of the collaborative plan was complicated by controversy over some of the agreed elements of the plan between an incoming town government in Castle Valley (which had not participated in the collaborative process) and SITLA. The plan is currently on hold while the state explores a potential exchange of the Castle Valley lands for BLM lands with potential for oil and gas production.<sup>97</sup>

#### *d. School-Community Councils*

In order to more effectively distribute trust proceeds, the Utah legislature recently created a system of “School Community Councils.”<sup>98</sup> Rather than distributing the funds to schools on a strictly formulaic basis, the state requires school districts to plan for ways to spend the money that will achieve the state’s ultimate goal of having 90 percent or more of all third graders reading at grade level by 2006. Each school district is required to establish a Council which is responsible for preparing a “school improvement plan” subject to the approval of the local school board. The plan provides for school improvement, for staff professional development, and recommends expenditures of school trust revenues designed to improve academic achievement.

The trust funds provided to the School Community Councils through this program are one of the few sources of discretionary funds available to school districts. According to Utah trust managers, this is one of the key reasons that the program has grown so rapidly in popularity, as it provides a source of revenue that can be used to fund school activities and needs that cannot be served through regular educational funding programs. In addition, the program has had the effect of generating strong local constituencies in each district that take an active interest in trust lands and trust lands management, as council members and the recipients of the funds distributed by them develop an appreciation for the value that trust-related revenues can bring to public education.

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<sup>97</sup> For a more detailed description of the lands involved and the community planning process, see Brooke Williams, *Saving School Trust Lands*, WILD EARTH, 89-93 (Fall/Winter 2001-2002).

<sup>98</sup> UTAH CODE ANN. § 53A-1a-108.

*e. Land Exchanges*

As noted above, much of Utah's trust land is held in a checkerboard ownership pattern that corresponds to the section reservations from its original school land grant. This ownership pattern creates particular challenges for Utah trust managers because of the large federal land base in Utah, which is now operated under a preservation-oriented model, creating inherent conflicts between federal land management goals and the revenue generation goals of Utah's trust managers. To resolve these conflicts and accomplish the protection of environmentally sensitive trust lands, Utah has recently engaged in two large land exchanges with the federal government, including a three hundred seventy-five thousand acre transfer that exchanged lands in the Grand Staircase-Escalante National Monument and other Utah national parks and national forests for cash and mineral lands, and an exchange in 2001 for over one hundred thousand acres of trust lands in several proposed federal wilderness areas for larger, consolidated blocks of BLM lands with greater revenue potential.

Utah also recently proposed (in 2002) an exchange of scattered trust parcels in the San Rafael Swell and several other areas of environmentally sensitive lands for federal lands elsewhere in the state. This proposal met with public criticism and ultimately failed in the U.S. Senate.