

John Y. Ferry, Chairman  
Kevin S. Carter, Director

MINUTES OF THE MEETING OF THE  
SCHOOL & INSTITUTIONAL TRUST LANDS ADMINISTRATION  
BOARD OF TRUSTEES

DATE: JANUARY 7, 2010

PLACE: SALT LAKE CITY, UTAH

ATTENDING:

BOARD

John Y. Ferry  
Mike Brown  
Dan Lofgren  
Steve Ostler  
Dave Ure

STAFF

Kevin S. Carter  
Doug Buchi  
Lisa Schneider  
NormaLee McMichael  
Sonja Wallace  
LaVonne Garrison  
Kim Christy  
Tom Faddies  
Elise Erler  
Michelle McConkie  
Stephanie Barber-Renteria  
Alexa Wilson  
John Andrews  
Eric Baim  
Jenn Springer  
Kenny Wintch  
Joel Boomgarden  
Rodger Mitchell  
Lynda Belnap

OTHERS IN ATTENDANCE

Paula Plant, State Office of Education  
Margaret Bird, State Office of Education  
Tim Donaldson, State Office of Education  
Jon Johnson, State Auditor's Office  
Scott Parke, State Auditor's Office  
Ivan Djambov, Legislative Fiscal Analyst's Office  
Tyler Slack, Utah PTA  
Cliff Strachan, Governor's Office of Planning & Budget

I N D E X

<u>ITEM</u>	<u>PAGE NO.</u>
1. Approval of Minutes	3
2. Confirmation of Upcoming Meeting Dates	3
3. Chairman's Report	
a. Audit Report Review	4
4. Director's Report	
a. Director's Update on issues	5
I. Discussion on Governor's Budget	5
II. Other Issues	7
b. Associate Director's Report	
I. Report on Land Exchange Activity	8
II. Coral Canyon SunCor Lease Amendment	8
c. Surface Group Report	
I. Request For Consideration and Adoption of Board Policy 2010-01 Regarding Cultural Resources	10
d. Oil and Gas Group Report	
I. FY 2010 Objective Report on Oak City RFP	14
5. Consent Calendar	
a. Other Business Agreement - Tar Sands - - PR Springs	15
b. Assignment of Sienna Hills Fiber Optic Lease From Broadweave	15
c. Negotiated Land Sale - Nielson Asphalt - - Carbon County, UT	15
d. Ft. Pierce JV - Multiple User Wireless Communication Facility	15

Chairman Ferry welcomed Board members, Staff, and guests to the Board meeting.

1. Approval of Minutes

The Board approved the Board minutes of November 12, 2009.

Ure / Brown. Unanimously approved.

“I move that we approve the Board minutes of November 12, 2009.”

Roll Call:

Mr. Brown - - yes

Mr. Lofgren - - yes

Mr. Ostler - - yes

Mr. Ure - - yes

Mr. Ferry - - yes

The Board approved the Board minutes of December 8, 2009.

Ostler / Ure. Unanimously approved.

“I move that we approve the Board minutes of December 8, 2009.”

Roll Call:

Mr. Brown - - yes

Mr. Lofgren - - yes

Mr. Ostler - - yes

Mr. Ure - - yes

Mr. Ferry - - yes

2. Confirmation of Upcoming Meeting Dates

The Board, without motion, confirmed the following upcoming meeting dates:

February - - No meeting

March 18 - - Salt Lake City (change from March 11)

April 8 - - Salt Lake City

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3. Chairman's Report

a Audit Report Review

Ms. Schneider introduced Jon Johnson and Scott Parke, from the State Auditor's Office. They have recently performed, at the Board's request, an audit on the agency for FY 09. They gave the Board a copy of the Management Letter audit report.

Mr. Johnson addressed the Board regarding the issues they found in the audit. The Trust Lands' activities are published in their year-end booklet, which covered the Permanent Fund issues and the agency issues.

Mr. Johnson noted they were able to give "clean" opinions on activities of the Trust Lands Administration. They noted that management has done a good job in reporting the financial issues of the agency. They are required to report to the governing body any fraud activities dealing with management, etc. He noted about two-thirds of their audits have a finding of some sort. There is one issue they need to discuss with management.

There were no difficulties in dealing with management. They were all very helpful.

Scott Parke discussed the three accounting adjustments, as noted in the report given to the Board. He also noted the auditors' recommendations and the agency's response.

Ms. Schneider explained the process we have used in the past regarding defaults on sales. There are difficulties in determining when the actual default occurs. Possibly, we should look at changing our sale date to help this issue. Ms. Schneider noted we will pay extra attention in June to any transactions that may be having problems early in June.

Mr. Parke noted that the second finding was regarding inadequate supporting documentation. There needs to be reconciliation of what is in the suspense fund. There is no indication of any money being misspent, however.

Ms. Bird stated that, if we don't know who has what portion of the suspense account, how is it determined who gets the interest? Ms. Schneider stated we have a much better knowledge of what is in that fund now. She explained further how interest is distributed to which beneficiary.

Mr. Johnson stated that audit reports typically deal with the negative. However, he would commend management on their good job in managing this agency. The Board thanked the auditors for their diligence in helping us.

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4. Director's Report

a. Director's Update on Issues

Director Carter gave the Board an update on issues; i.e., Dave Hebertson's progress after breaking his arm and the West Tavaputs Programmatic Agreement in the Nine Mile Canyon area and ceremony. He noted this agreement will help all the agencies better manage this area. He recognized and expressed appreciation to Kenny Winch and Kristine Curry who helped get this agreement finished.

I. Discussion on Governor's Budget

Director Carter discussed the Governor's budget with the Board through a power-point presentation as follows:

- \* Board adopted FY 2011 budget in September
- \* Met with Governor in October
- \* Governor submits budget
  - \* 3 percent cut for FY 2010
  - \* Very few increases in FY 2011
  
- \* Supplemental Request
  - \* \$3,500,000 increase to capital budget - - Approved
    - \* Water rights at Eagle Mountain
  - \* \$47,200 increase to operating budget - DP - - Not approved
    - \* Tri-annual license fee for Microsoft products
  
- \* FY 2011 Request - - One Time
  - \* Development capital - - \$3,400,000 - - Approved
    - \* Water acquisition
  - \* Surface - - \$46,300 - - Not approved
    - \* Continue ROW program
  - \* Oil & Gas - - \$50,000 - - Not approved
    - \* Participate in educational program
  - \* Director's Office - \$300,000 - - Not approved
    - \* Implement land exchange
  - \* Data processing - \$580,000 - - Not approved
    - \* Phase One - - LMBS Re-write

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4. Director's Report (cont'd)

a. Director's Update on Issues (cont'd)

I. Discussion on Governor's Budget (cont'd)

- \* FY 2011 Request - - Ongoing
  - \* Renewable Resource Specialist - \$101,500 - - Not approved
    - \* FTE for renewable program
  - \* Fees From On-line Module - - \$20,000 - - Not approved
    - \* Appropriation of fees from on-line credit card collections
- \* Budget Summary
  - \* Approved
    - \* Supplemental for Water - \$3.5 MM
    - \* One-time increase for water - \$3.4 MM
  - \* Denied
    - \* License Fee - \$47.2 K
    - \* ROW Program - \$46.3 K
    - \* Oil and Gas Education Program - \$50K
    - \* Land Exchange - - \$300K
    - \* Business System Re-write - \$580K
    - \* Renewable Resource Specialist - \$101.5 K
    - \* Appropriate Fees From On-line Module - \$20K

Director Carter asked the Board's input on what they feel Staff should ask the legislature to appropriate that was not approved in the Governor's budget. After some discussion, the Board asked that Staff request appropriations be restored for the right-of-way program, the land exchange, the business system re-write, and the oil and gas education program.

4. Director's Report (cont'd)

a. Director's Update on Issues (cont'd)

II. Other Issues

Mr. Andrews reported to the Board on the Mathis coal case. He had earlier sent the Board a summary of the outcome of this case. This was an effort of the agency to rectify some early coal fraud activities that took land out of the Trust in the early 1900's. He reviewed the history of this property for the Board.

The case was argued in May 2009. We received a decision last month that was unfavorable in that it upheld the trial court's decision that the statute of limitations did apply to this. It did state, however, that there is a constitutional trust to the beneficiaries; but it does not mean that it can go after third parties when the state itself has made mistakes. The only recourse for the Trust at this point is for them to ask the state to replenish that lost amount. Enforcing that claim against the legislature would be very difficult.

Chairman Ferry asked how this would set a precedent? Mr. Andrews stated it does set a precedent on innocent third-party purchasers for less than fair value. We cannot void that transaction on the basis that it was for less than fair-market value.

Personnel Issue

At this point, there was a personnel issue to be discussed.

Brown / Ure. Unanimously approved.

“I move that we go into closed session for the discussion of the character and competence of an individual.”

Roll Call:

Mr. Brown - - yes

Mr. Lofgren - - yes

Mr. Ostler - - yes

Mr. Ure - - yes

Mr. Ferry - - yes

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1/7/10

Page No. 7

4. Director's Report (cont'd)

a. Director's Update on Issues (cont'd)

Personnel Issue (cont'd)

The Board went into closed session at 10:02 a.m. Those in attendance were Board members, Director Carter, Kim Christy, John Andrews, and Margaret Bird. The Board returned to open session at 11:12 a.m.

b. Associate Director's Report

I. Report on Land Exchange Activity

Mr. Andrews reported on the land exchange activity. He and Director Carter met with Bob Abbey, the Secretary of the Interior, on December 18 and his Assistant Director of the Interior. The issue of that meeting was what level of environmental study the Department needs to do to accommodate the land exchange. We don't feel any would be necessary because of the direction the legislation gave. Interior still wonders if they don't need to do the EIS. We did successfully convey the message of what is needed; and they will commit the resources and staff to get the exchange completed within the original time frame, which is 360 days from December 18, 2009. Since that time, we have been working with BLM to get it underway.

We are going to come up with four or five land packages and have them appraised separately. He thinks this will be more economical than having one appraisal done on the entire land exchange package. The only large-scale appraisal will be a mineral report. We will begin in the next month or so to spend some money on a natural resources report on trust lands in the exchange. We will begin paying appraisers to get mobilized on these items.

II. Coral Canyon/SunCor Lease Amendment

Mr. Andrews discussed this issue with the Board and gave Board members deal points and clarifications on this transaction. Shea Homes was the successful bidder. We have exercised our right of first refusal on one of the buildings.

The issue outstanding on the entire transaction is the assignment of the primary lease. Mr. Andrews reviewed this with the Board through a power-point presentation as follows:

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1/7/10

4. Director's Report (cont'd)

b. Associate Director's Report (cont'd)

II. Coral Canyon/SunCor Lease Amendment (cont'd)

- \* Coral Canyon Lease Assignment
  - \* SunCor sale of master-planned community assets to Shea Homes
  - \* Shea proposed partnership with Angelo Gordon, Inc. (AG), NYC-based real estate hedge fund specializing in distressed real estate
  - \* AG request for lease modification as condition of closing
  
- \* Proposed Modifications
  - \* Permission to terminate portions of lease
  - \* Future transfers
    - \* Parameters of full assignment
    - \* Permission for partial assignment
    - \* Release upon assignment
  - \* Pre-purchase of lots with subsequent reconciliation
  - \* Estoppel

Mr. Andrews noted that he, Mr. Buchi, and Mr. Rodger Mitchell met yesterday with the Real Estate Committee (Mr. Lofgren and Mr. Ostler) on this issue. They seemed to feel that permission to terminate portions of the lease should not be allowed. The committee did not agree with some of the proposed points. Mr. Andrews noted we need guidance from the Board on how to move forward.

Mr. Lofgren stated the recommendation from the Real Estate Committee is that we instruct Mr. Andrews to invite his counterpart in for a meeting and we share with them that the request to terminate parts of the lease is not acceptable. Regarding the question of transfer, we are satisfied with the way the lease is currently written and would not look for any modifications. With respect to the pre-payment of lot process, the proposal is well and good; but we would like to have some input for the true-up. There also would have to be a floor for the true-up. With respect to the estoppel, that is a customary element of a proposed transaction. The committee is o.k. with it. The committee would also authorize Mr. Andrews to negotiate other issues dealing with insurance, etc. Any right of approval for further modifications would be at the Board's approval. Mr. Lofgren stated the committee also was uncomfortable with pre-qualifying entities for approval.

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1/7/10

4. Director's Report (cont'd)

b. Associate Director's Report (cont'd)

II. Coral Canyon/SunCor Lease Amendment (cont'd)

Mr. Andrews stated the lease does not contain language for the Board's involvement. The Board is involved because of the size of the transaction and the Board's policy and rules regarding transactions.

The Board approved the Real Estate Committee's recommendations.

Lofgren / Ostler. Unanimously approved.

"I move that we adopt the recommendations of the committee."

Roll Call:

Mr. Brown - - yes

Mr. Lofgren - - yes

Mr. Ostler - - yes

Mr. Ure - - yes

Mr. Ferry - - yes

c. Surface Group Report

I. Request For Consideration and Adoption of Board Policy 2010-01  
Regarding Cultural Resources

Mr. Christy stated that, in the five-year plan, Surface was assigned to complete a re-write of the cultural resources rules. We need a policy on this before considering the rule re-write. The Board had a proposed copy of the policy. Mr. Christy asked Kenny Wintch to give the Board an overview of why cultural resources are such an important part of the agency's work.

Mr. Lofgren asked if there is some specific situation that brings up this re-write and new policy? Mr. Christy noted the current rules are quite old, and we need to update them.

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1/7/10

Page No. 10

4. Director's Report (cont'd)

c. Surface Group Report (cont'd)

I. Request For Consideration and Adoption of Board Policy 2010-01  
Regarding Cultural Resources (cont'd)

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Mr. Kenny Wintch gave the Board a tutorial power-point presentation on the cultural resources overall issue and the importance of it to the agency. He explained what cultural resources are and why they matter, their social and legal contexts and why the agency engages with cultural resource management, and what our approach to cultural resource management has been for nearly 18 years.

Archaeological (or cultural) resources are the tangible, physical patterning of human-produced material older than 50 years. There are state laws that protect these resources and require state agencies to protect them. We try to preserve these resources while the agency still fulfills its mission. We have to go through the cultural resources consideration process, but the Trust mandate is the foremost consideration. Cultural resource management is a cost of doing business. This cost represents litigation prevention. We have to find the balance point of doing a good job, while still protecting our revenue stream.

Mr. Wintch noted that we have some challenges in this program of keeping costs down while still doing a good job and protecting the agency's revenue stream. He explained the Federal law Section 106 - the National Historic Preservation Act of 1966 and noted this law only applies to federal agencies. The Utah Legislature passed an essentially equivalent act, found in Utah Code Annotated § 9-8-404. These acts require the agency to provide an appropriately scaled "burden of proof" for each action (undertaking) and to provide the State Historic Preservation Officer (SHPO) a reasonable opportunity to comment on that particular burden of proof.

There was some discussion of how the rules of the SHPO perceive the federal rules and their adherence. Mr. Ure suggested that perhaps we could influence how the state rules are written so as to better fit our situation. Mr. Brown asked what we are actually doing to make sure the mitigation of sites moves as quickly as possibly in order that they may proceed with their work. Mr. Wintch noted agency personnel work very quickly to get the mitigation done in a timely manner.

4. Director's Report (cont'd)

c. Surface Group Report (cont'd)

I. Request For Consideration and Adoption of Board Policy 2010-01  
Regarding Cultural Resources (cont'd)

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The proposed policy is as follows:

The Board of Trustees  
of the  
School and Institutional Trust Lands Administration

New Policy

Amends Policy No.

Repeals Policy No.

Policy Statement No. 2010-01

Subject: Management of Archaeological and  
Historic Resources on School and Institutional  
Trust Lands

The Board of Trustees of the School and Institutional Trust lands Administration met in open, public session on January 7, 2010, and by majority vote declares the following to be an official policy of the Board:

WHEREAS, the Utah Legislature, in UCA § 9-8-301(1), has declared that the general public and the beneficiaries of the school and institutional land grants have an interest in the preservation and protection of the state's archaeological and anthropological ("cultural") resources and a right to the knowledge gained from the scientific study of those resources; and

WHEREAS, in UCA § 9-8-301(2), the Legislature finds that policies allowing for the investigation of cultural resources on school and institutional trust lands and the preservation and development of sites on school and institutional trust lands for scientific and educational purposes are consistent with the trust land grants, so long as primary consideration is given to the support of the trust land grant beneficiaries; and

WHEREAS, the Utah Legislature, in UCA § 9-8-404, has directed all state agencies to "take into account the effect" of each undertaking on significant historic and archaeological resources and to provide the state historic preservation officer with a reasonable opportunity to comment thereon; and

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1/7/10

Page No. 12

4. Director's Report (cont'd)

c. Surface Group Report (cont'd)

I. Request For Consideration and Adoption of Board Policy 2010-01  
Regarding Cultural Resources (cont'd)

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WHEREAS, every dollar spent by the Trust Lands Administration on compliance with the above two statute represents a dollar that does not go toward supporting the trust land beneficiaries; and

WHEREAS, the Trust Lands Administration has successfully balanced the requirements of UCS Title 9, Chapter 8 with its mandate of optimizing revenue generation on behalf of the trust beneficiaries for nearly 18 years' time now; and

WHEREAS, UCA § 53C-1-201(5) directs the School and Institutional Trust Lands Board of Trustees to provide policies for the management of all trust land assets and for treatment of Native American human remains discovered on or excavated from school and institutional trust lands.

NOW, THEREFORE, the School and Institutional Trust Lands Administration's Board of Trustees (the "Board"), having met in open, public session on January 7, 2010, and by majority vote has declared the following to be official policy of the Board:

- \* Cultural resources on school and institutional trust lands are assets that should be managed prudently, profitably, and for the benefit of the trust lands' beneficiaries.
- \* The value of the Trust's cultural resource assets lie in the scientific and educational benefit recognized by the Utah Legislature. This value is lost when cultural resources are disturbed or destroyed without benefit of scientific investigation.
- \* Compliance with § 9-8-404 often requires scientific investigation and, at a minimum, requires retention of staff to manage the compliance process on behalf of the agency. These costs represent an expenditure of financial resources that would otherwise go toward financial support of the Trust beneficiaries.
- \* Given all of the above, we believe that the expenditure of financial resources necessary to comply with § 9-8-404 represents an appropriate cost of doing business for the Trust Lands Administration.

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1/7/10

4. Director's Report (cont'd)

c. Surface Group Report (cont'd)

I. Request For Consideration and Adoption of Board Policy 2010-01  
Regarding Cultural Resources (cont'd)

- \* However, as with any cost of doing business, the Board directs the Trust Lands Administration to minimize the cost of § 9-8-404 compliance as much as possible, while still protecting the scientific and educational value of the Trust's cultural resource assets and, most importantly, protecting the agency's ability to manage all other trust lands' assets as prudently and profitably as possible on behalf of the trust lands beneficiaries.
- \* In summary, the Board directs the Trust Lands Administration to continue to vigilantly seek and find the optimum balance in § 9-8-404 compliance while ever remembering the Legislature's directive in § 9-8-301(2) to ensure that primary consideration is always given to the support of the trust land grant beneficiaries.

The Board approved the above policy.

Ure / Ostler. Motion approved.

"I move that we adopt the policy as written."

Roll Call:

Mr. Brown - - yes	Mr. Lofgren - - absent at vote
Mr. Ostler - - yes	Mr. Ure - - yes
Mr. Ferry - - yes	

d. Oil and Gas Group Report

I. FY 2010 Objective Report on Oak City RFP

Ms. Garrison noted that this was an objective for FY 2010. She is in the process of dealing with this and gave the Board information on it thus far. She will continue to work on it throughout the fiscal year.

5. Consent Calendar

a. Other Business Agreement - - Tar Sands - PR Springs

There were no comments on this item, so it is approved.

b. Assignment of Sienna Hills Fiber Optic Lease From Broadweave

There were no comments on this item, so it is approved.

c. Negotiated Land Sale - Nielson Asphalt - Carbon County, UT

There were no comments on this item, so it is approved.

d. Ft. Pierce Joint Venture - Multiple User Wireless Communication Facility

There were no comments on this item, so it is approved.

Upon motion by Mr. Brown, the meeting adjourned at 12:25 p.m.