



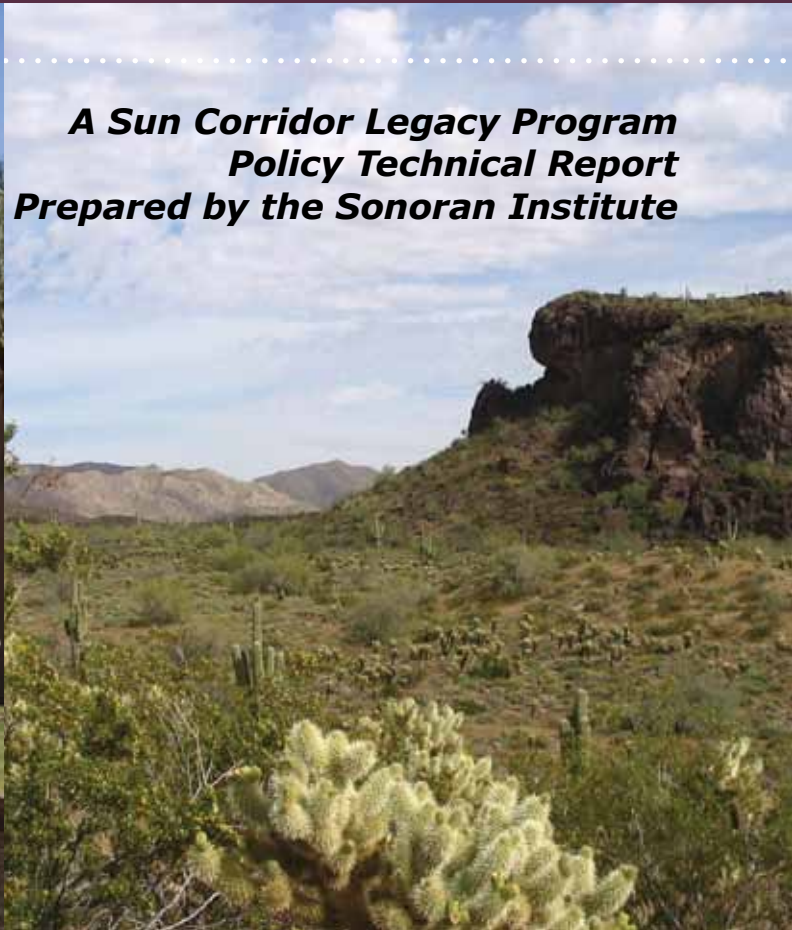
Shaping the Future of the West

***"If we open a quarrel between past
and present, we shall find that we
have lost the future."***

– Winston Churchill



The Quarrel Between Past and Present: *The Economics of Reforming Arizona's Century Old State Trust Land Rules*



***A Sun Corridor Legacy Program
Policy Technical Report
Prepared by the Sonoran Institute***

Sonoran Institute

Mission

The Sonoran Institute inspires and enables community decisions and public policies that respect the land and people of western North America.

Vision

The Sonoran Institute contributes to a vision of a West with:

- Healthy landscapes—including native plants and wildlife, diverse habitats, open spaces, clean air and water—from northern Mexico to western Canada.
- Vibrant communities where people embrace conservation to protect quality of life today and in the future.
- Resilient economies that support prosperous communities, diverse opportunities for residents, productive working landscapes, and stewardship of the natural world.

A Collaborative, Community-Based Approach

The nonprofit Sonoran Institute, founded in 1990, works across the rapidly changing West to conserve and restore natural and cultural assets and to promote better management of growth and change. The Institute's community-based approach emphasizes collaboration, civil dialogue, sound information, local knowledge, practical solutions and big-picture thinking.

Sonoran Institute Offices

44 E. Broadway Blvd., Suite 350
Tucson, Arizona 85701
520.290.0828; fax 520.290.0969

11010 N. Tatum Blvd., Suite D101
Phoenix, Arizona 85028
602.393.4310; fax 602.393.4319

201 S. Wallace Ave., Suite B3C
Bozeman, Montana 59715
406.587.7331; fax 406.587.2027

817 Colorado Ave., Suite 201
Glenwood Springs, Colorado 81601
970.384.4364; fax 970.384.4370

Field Offices

Magisterio #627
Col. Profesores Federales
Mexicali, Baja California C.P.
21370 Mexico
011.52.686.582.54.31

c/o Joshua Tree National Park
74485 National Park Drive
Twentynine Palms, California 92277
760.367.5567

1 East Alger St., Suite 211
Sheridan, Wyoming 82801
307.675.1970

www.sonoraninstitute.org

Acknowledgements



Arizona's state trust land management regulations continue to hinder the Arizona State Land Department. Beneficiaries are denied the benefits that could be reaped were the department allowed additional flexibility. The inability to make informed and reasonable land exchanges benefitting the trust and requirements that all transactions go to auction, even when a sound offer at the appraised value is available are obstacles that private owners do not face. The trust also lacks a sound policy addressing energy development on state land and the ability to place civic infrastructure on land in advance of development.

This Sonoran Institute report is the fourth in a six part series of Sun Corridor concept papers and the result of great cooperation. My appreciation goes to our author, Dan Hunting, who culled information from multiple sources to present an insightful look at state trust land management in a comparative manner highlighting the need for reform. The Arizona State Land Department was helpful in providing data and material for the report. Sun Corridor Legacy Program Director, Dave Richins, was instrumental in guiding and directing the project. Thanks to Erika Mahoney, Sonoran Institute intern, for her layout and design skills. I must applaud the efforts of Sonoran Institute staff who took time from busy schedules to peer review the report, offering important suggestions. Finally, I deeply appreciate the generous support and vision of the Thomas R. Brown Family Foundation. Its shared goal of improved management of state trust land is leading to a better Arizona.

A handwritten signature in black ink that reads "Luther Propst".

Luther Propst
Executive Director
Sonoran Institute
February 2011

About the Author

Dan Hunting is an Economic and Policy Analyst for the Sonoran Institute. His research interests include sustainable economic development specifically with regard to the Sun Corridor megapolitan concept, state trust land reform, and the role of arts and culture in economic development. After a career as a photojournalist, he pursued his interest in public policy at Arizona State University, where he worked to develop core concepts of the Sun Corridor geography at the Morrison Institute while earning his master's degree in Public Administration. Upon graduation, he accepted a position with the Arizona legislature as a fiscal analyst for the Joint Legislative Budget Committee. Duties included budget development and program analysis for nine state agencies, including the Arizona Department of Environmental Quality and Department of Administration. He has authored and contributed to works on domestic violence, sustainability, public art, and education.

Contents

2 Executive Summary

3 Introduction

What is State Trust Land?
Consequences of the Trust Responsibility
Fiscal Duties

6 The State's Largest Land Broker

7 The Problem

8 How a Private Owner Would Profit From the Land

Hire a Manager
Consolidate Lands
Clean up the Inholdings
 The State's Difficulty in Consolidating Lands
Build Infrastructure
Set Aside Some Choice Parcels
Make Deals and Find Partners
Capitalize on the Most Valuable Land
 Use Ranchers as Stewards of the Land
Regional Priorities
 Maricopa County
 Pima County
 Pinal County

20 The Case for Reform

22 Recommendations

Preserve 1,000,000 Acres of State Trust Land
Establish a Development Reserve
Continue to Support Grazing and Agricultural Uses
Find a Mechanism to Allow Land Exchanges
Make the Arizona State Land Department Self Funding
Increase Financial Flexibility for Arizona State Land Department

25 End Notes



Executive Summary

The issue of state trust land reform in Arizona has been debated, discussed, and argued. Reform has been pressed in the legislature and put forth for the voters multiple times only to meet with failure. The reason? State trust land is an enormously complicated issue, involving many interest groups and subject to federal and state statutes that are nearly 100-years-old and include complex court decisions.

State trust land in Arizona is managed by the Arizona State Land Department (ASLD), which acts as trustee for all the beneficiaries—institutions of the state, predominately K-12 public education—and is obligated to act in their best interest. When the required management practices of the ASLD are held in contrast with those of a private landowner, the differences are difficult to ignore. Reform is the key to bringing Arizona's trust land management into modern times and eliminating that which keeps the state from maximizing the value of state trust land.

The restrictions placed upon the ASLD were rightly intended to protect the trust from unscrupulous land dealings. A comparison between a hypothetical private land owner and ASLD highlights how some of these restrictions prevent the department from administering the trust effectively. However, the ASLD has responsibilities much wider than those of a private land holder. In addition to generating maximum financial returns for the trust beneficiaries, the trust must balance several other key functions in the state. With much of the state's future growth likely to occur on state trust land, proper management and development of these lands will shape the character of Arizona for years to come. Similarly, the opportunity to set aside a portion of state trust land as open space, recreational areas, and environmental preserves will determine what that future looks like. Finally, trust land has traditionally supported grazing, agriculture, and other industries; the state has a duty to ensure that while sustaining these activities, the land remains productive for future generations. To maximize returns to the trust, facilitate future growth, and preserve Arizona's precious open lands, the following reforms are suggested:

Identify trust land for development, which will provide enough acreage to support decades of economic development and job creation. Much of this land is already within or near existing city limits.

Designate specific lands for conservation to raise the value of nearby trust land designated for development, complete important habitats, and preserve the use of these areas for recreation and outdoor enjoyment.

Continue cattle grazing and agriculture uses to support an important historical and cultural industry while at the same time encourage ranchers and farmers to act as stewards of the land.

Plan for infrastructure development ahead of growth and identify mechanisms that allow the land department to leverage its resources to maximize returns for the trust.

Allow the department to fund its operations from its own revenues, instead of continuing to place this burden on taxpayers.

State trust land management requires explanation. It requires attention. Finally, it requires reform by synthesizing what rules remain valid from the past with rules that will improve management of state trust land in the future.



Arizona's State Trust Land system is based on 100-year-old assumptions that don't necessarily apply in a 21st century economy. Over the years, the arcane rules originally meant to protect the state from unscrupulous land dealings have been further complicated by a series of confining court decisions. The result is a creaky and complicated system that serves neither the users nor the beneficiaries of the trust well. Potential users of trust land find that straightforward business transactions are impossible in the current regulatory environment. The unwieldy restrictions placed on the management of trust land discourage innovative uses of the land and result in reduced revenue for the beneficiaries of the trust. Furthermore, cuts to the Arizona State Land Department (ASLD) General Fund budget due to the state's continuing fiscal crisis have diminished the department's ability to maximize revenue for trust beneficiaries.

There is consensus that Arizona's system for managing state trust land needs rethinking. Propositions that have been presented to the voters over the years confirm the fact. Since 1990, there have been 11 measures on the ballot dealing with trust land. Many more attempts at reform have died in the legislature, and multiple initiative proposals have failed to reach the ballot. These efforts have produced little real change in the century-old state trust land system. The three propositions voters approved give the ASLD somewhat more flexibility in handling its finances, but do not address fundamental issues of managing the land and increasing returns to the trust.¹ All eight ballot measures that addressed comprehensive land reform were defeated.

Why has there been such reluctance on the part of the voters to fix a system that nearly everyone acknowledges is broken, especially when reform has the potential to generate millions for the state? The problem may be that the issue is just so complicated and difficult to understand that people simply vote for the status quo. A basic explanation of the current state trust land management system is in order. This report articulates the rationale for changing the trust land system that has been in place for a century. It highlights the difficulties facing Arizona's trust land system by examining how a private land owner might manage large holdings of land spread across the state.

What is State Trust Land?

To understand the nature of state trust land, one must look back to when Arizona was largely wilderness. With the exception of a few land grants left over from the Spanish colonial days, no one "owned" the land in Arizona. When the Territory that would become Arizona became part of the United States through the Treaty of Guadalupe Hidalgo in 1848 and the Gadsden Purchase in 1853, the federal government controlled nearly all the land in the fledgling Territory. Throughout the territorial period, much of this land was disposed: some was sold to private interests, some was designated for Native American reservations, National Forests, National Parks, and other uses. State trust land is essentially land that was otherwise unallocated at the time of statehood and given by the federal government to the state of Arizona.



As states entered the Union through the 19th century, the federal government developed the practice of giving land to the new states to foster the development of the frontier. Designated square-mile sections of land were granted in a regular pattern to the states. The states were directed to use the proceeds from the sale of these land grants to finance education and other essential services (Figure 1). Many states admitted to the Union in the early part of the century sold their land quickly, leaving little lasting benefit to the schools. Additionally, there were tremendous opportunities for fraud and sweetheart deals in the sale of the land. Over the years, Congress imposed progressively tighter restrictions on this land, culminating in the Arizona-New Mexico Enabling Act of 1910. This act, which created the states of Arizona and New Mexico, made the new states *trustees* of the land, with schools and other institutions as *beneficiaries of the trust*. These legal terms create specific obligations for the states—obligations that are designed to ensure that the beneficiaries will be supported by the trust in perpetuity. At statehood, Arizona received 10.5 million acres of trust land from the federal government, with detailed instructions about how it could be managed to help a variety of beneficiaries. Revenue from the sale of this land would be invested, and the annual earnings from those investments would be distributed to the beneficiaries. Lease payments would flow directly to the beneficiaries. With land being gradually sold off since statehood, approximately 9.3 million acres now remain in the trust in over 23,000 parcels (Figure 1). Revenue from the lease or sale of trust land flows to the specific beneficiary associated with that parcel. This process creates the possibility that a single beneficiary might reap large revenues if they are the designated recipient of a particularly valuable parcel.

Beneficiaries of State Trust Land *source: ASLD 2008-2009 Annual Report*

1 Beneficiaries	Acres
K-12 Schools	8,097,290
Universities	695,172
School for the Deaf & Blind	82,560
Legislative, Executive & Judicial Buildings	64,257
State Hospital	71,248
Miner's Hospital	95,429
State Charitable, Penal, and Reformatory	77,231
Penitentiary	76,111
Total	9,259,298

Although trust land was supposed to be granted in a regular pattern across the state, many of these parcels were already spoken for at the time of Arizona's statehood. Native American tribes had their allotments of land, and Uncle Sam retained areas, such as the Grand Canyon and the best forest areas, for national use. To compensate for this loss of land Arizona was allowed to choose other parcels of available land for its trust; resulting in some large blocks in addition the usual checkerboard pattern of holdings. Although this grant was an enormous endowment for the new state, the land was, at the time, generally remote and of little value other than for grazing cattle. As the state's metropolitan areas expanded, these previously isolated tracts of land became highly valuable and the trust's revenues increased due to the sale and lease of land to support the state's rapid growth.



Consequences of the Trust Responsibility

Court decisions over the years have determined that the Enabling Act and state constitution set up a legal trust with the State acting as trustee for a number of beneficiaries.² Conflicts can arise when the state’s duty as trustee is at odds with wider responsibilities to the public good. As trustee, the state is obligated to operate in the best interests of the beneficiaries, which may or may not be in the best interest of the state as a whole. As with any trust, the trustee has two primary responsibilities: maximize the returns to beneficiaries and preserve the corpus of the trust. The corpus, or body, of the trust in this case is the trust land itself. As a result, courts have determined that the state is forbidden from selling or leasing trust land for less than “true value”, and that all leases and sales must be conducted via a public auction.³

Although the state trust land system functions in many ways like a private trust, there are some key differences. The beneficiaries of state trust land are not a specific set of individuals, but rather a general class of state institutions. The trust exists in perpetuity as well, so any gains to the trust from current actions must be compared to future losses to the trust.

Fiscal Duties

Revenue from the trust is to be distributed to several beneficiaries, the largest of which, by far, is the state’s K-12 public schools. Two revenue streams arise out of this arrangement. *Permanent Funds* hold the proceeds from the sale of state trust land. These funds cannot be directly used by the beneficiaries because the trust must be maintained in perpetuity. Permanent Fund revenues are instead invested by the State Treasurer and each year the investment earnings are returned to the beneficiaries. In FY 2009, \$143.3 million was deposited in Permanent Funds, raising their value to over \$2.2 billion, while \$59.4 million was returned to beneficiaries through the Treasurer’s distribution. The Treasurer’s distribution and revenue from the lease of state trust land form the *expendable revenue* that is distributed annually to the beneficiaries (Figure 2).

Expendable Revenue by Beneficiary source: ASLD 2008-2009 Annual Report

2 Beneficiaries	FY 2009 Expendable Revenue	Percent of Expendable Revenue
K-12 Schools	\$ 139,304,636	87.4%
Universities	5,142,530	3.2%
School for the Deaf & Blind	318,808	0.2%
Legislative, Executive & Judicial Buildings	299,127	0.2%
State Hospital	972,217	0.6%
Pioneer’s Home	7,041,955	4.4%
Department of Juvenile Corrections	2,536,953	1.6%
Department of Corrections	3,763,184	2.4%
Total	\$ 159,379,411	100.0%

Although the revenue derived from state trust land seems at first glance to be a princely sum, it actually represents just a small percentage of the beneficiaries’ total budgets. For example, the \$139 million distributed to K-12 schools from state trust revenue in FY 2009 represents just 3.45% of the Arizona Department of Education’s \$4 billion budget. The \$5 million in trust revenue given to the state’s universities is 0.18% of their \$2.9 billion total budget.⁴

These percentages show that while state trust land reform has the potential to increase revenues to beneficiaries of the trust, reform will not be a panacea to resolve the wider issue of educational funding. Even if ASLD were somehow able to double the revenue for K-12 schools, trust land funding would amount to less than 7% of the total Arizona Department of Education expenditures. This amount is far less than the \$218 million cut from the department’s budget in FY 2011 by eliminating all-day kindergarten to help balance the State’s budget.



The State's Largest Land Broker

Imagine that a very wealthy and eccentric uncle has included you in his will. In a scene straight out of the movies, the family gathers after the funeral to hear the old man's lawyer read the will. Priceless artwork, fine automobiles, and country estates are parceled out to the various relatives as you wait your turn. Although you've always known that your dear uncle held you in high regard, you are shocked when you realize the size of your inheritance. Uncle Moneybags has left you all of his Arizona landholdings. As the lawyer reads on, your mind races with thoughts of how your life has changed:

With an acre of land, I might consider subdividing the lot and putting up a few houses. Maybe the land is better suited to a Starbucks or, if the economy is in bad shape, then maybe I'd just hold on to the land until conditions improve.

With 100 acres, I'd have more options to profit from the land—a nice housing development, a shopping center, or a dairy farm. With 1,000 acres, I'd start dreaming of bigger projects and bigger profits—a master-planned community perhaps. A thousand acres would give me a lot of interesting choices ...

But your uncle was wealthier than you had ever dreamed. Rather than hundreds or even thousands of acres, he has bequeathed to you over nine million acres of land spread over much of the state. However, being a Hollywood-style rich, eccentric uncle, he has added some unusual provisions to his will. To ensure that you don't just sell the land for a quick buck, he has stipulated that you can't profit directly from the sale of the land. If you sell your land, you have to invest the money and directly receive only the interest. You can also collect lease payments from people who use your property. Your uncle has legally obligated you to seek maximum economic return from that land at all times and to ensure that the land produces revenue today, tomorrow, and forever. With such a huge inheritance, the opportunities are endless, but the challenges are daunting. What will you do next?

The largest land broker in Arizona controls millions of acres in every corner of the state, an area larger than the land mass of Connecticut and New Jersey combined.⁵ The holdings include prime land ripe for development, barren desert, high-country grazing land, and remote wilderness areas, including thousands and thousands of disconnected parcels of land. Arizona's largest land broker is the ASLD, which controls the sale and lease of 9.3 million acres of state trust land (Figure 3). The state of Arizona does not actually own these parcels of land, but acts as trustee, holding them in trust for a variety of beneficiaries.⁶ The largest of these beneficiaries is the state's K-12 school system, which receives revenue from over eight million acres of land.

The Problem

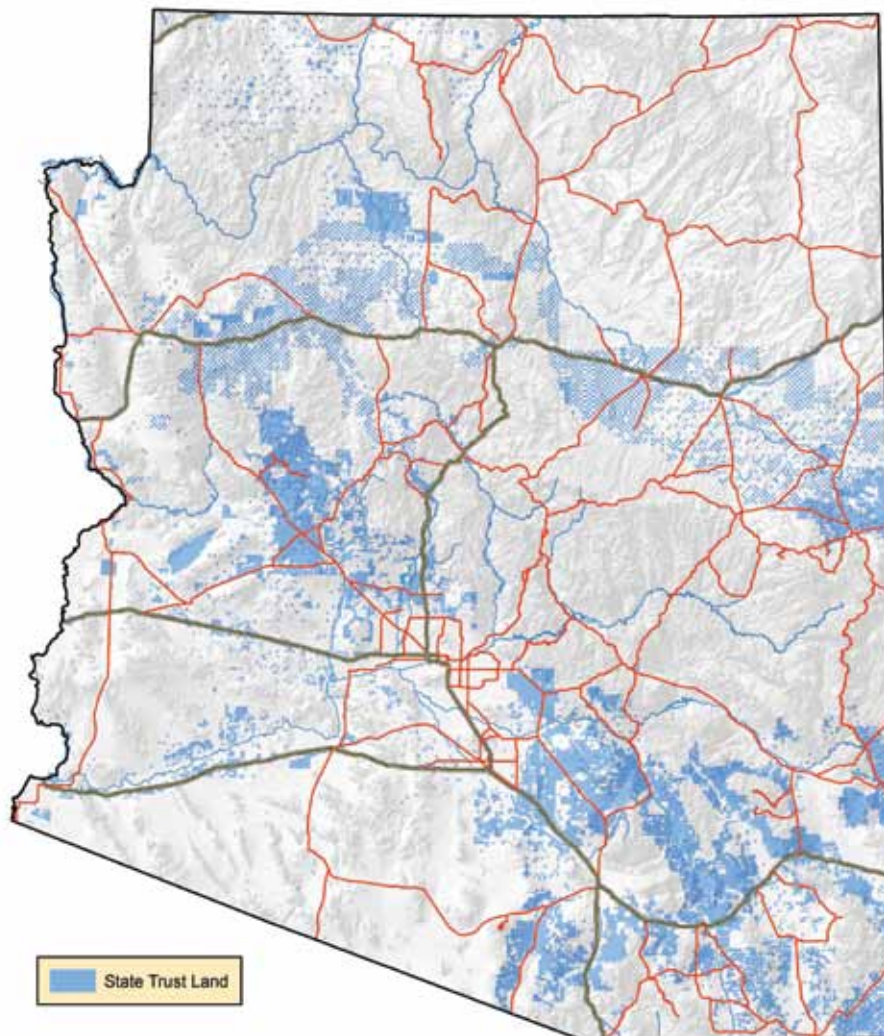


The ASLD is legally obligated to reap maximum return for the beneficiaries of state trust land, but a complex web of federal and state laws hinders this mission. The situation is complicated by a series of court decisions, which further restrict the department's ability to act. Laws that were meant to protect the state from unscrupulous land deals are now so constraining that the land does not provide maximum returns to the beneficiaries. Furthermore, the state is not able to ensure the preservation of state trust parcels for conservation or recreational purposes. Even in cases where there is a clear consensus to preserve state trust land, ASLD's mandate for maximum returns makes preservation difficult.

The underlying laws governing state trust land were enacted a century ago to ensure that the benefits of state land were distributed to the people of Arizona and to prevent individuals from unduly profiting from a state asset. However, Arizona has matured from a dusty frontier territory to a modern, heavily urbanized state, and the rules set in place during horse-and-buggy days need updating. As a result of this antiquated legal environment, Arizona's state trust land is an underperforming asset.

Trust Land in Arizona *source: Sonoran Institute*

3





How a Private Owner Would Profit From the Land

If a private individual or corporation, instead of the state, controlled 9.3 million acres of trust land, the situation would be very different from the current one. Of course the state of Arizona cannot, and should not, be expected to behave as a private developer or land broker. The unique responsibility of acting as trustee for a perpetual trust creates very different motivations than simple short-term gain. Furthermore, in addition to its duty to trust beneficiaries, the state has wider duties to the public at large. These wider duties include the provision of infrastructure and the protection of the state's natural resources. An examination of the options available to a private party can highlight the difficulties facing ASLD and pinpoint areas most in need of reform. The following are steps a rational, private broker might take to best manage the land in the state trust system. Each is accompanied by an analysis of how the state's options differ due to its status as both a trustee and as a public entity constrained by the constitution, statutes, and judicial findings.

Hire a Manager

Managing 9.3 million acres of land is a big job and getting professional help would be a top priority for any owner. The manager would ensure that the property is maintained, that tenants pay their rent on time and keep the fences mended, and supervise lease and sale negotiations. Many private trusts allow for managers to be paid out of the proceeds of the trust. The fees paid to these managers can be money well spent if the value of the trust is increased through good oversight and active management.

The state of Arizona has just such a manager in the ASLD. However, the department is not allowed to fund its operations from trust proceeds. The courts have determined that all revenue from state trust land must flow directly to the beneficiaries and that retaining a percentage of these funds to operate the department violates the state constitution.⁷ As a result, ASLD's operational expenses are paid by the taxpayers through a General Fund appropriation of about \$10 million annually. With the state enduring years of financial crises, this amount is under constant threat of budget cuts. General Fund support for ASLD has been cut to the point where the department is unable to effectively manage the trust land portfolio. Authorizing the ASLD to retain a portion of trust revenues would allow the department to more effectively manage its portfolio and increase revenues for the beneficiaries. A constitutional change is needed for the department to become self-funded out of trust proceeds.

Consolidate Lands

One of the first issues a private owner might consider is to consolidate land holdings. A developer that owns several small lots in a neighborhood will often try to buy adjoining parcels or make mutually beneficial trades with other land owners. This consolidation can greatly increase the value of the land. For instance, several small, scattered lots, each suitable for building a single house, are not nearly as valuable as one large lot that is capable of supporting an office building.

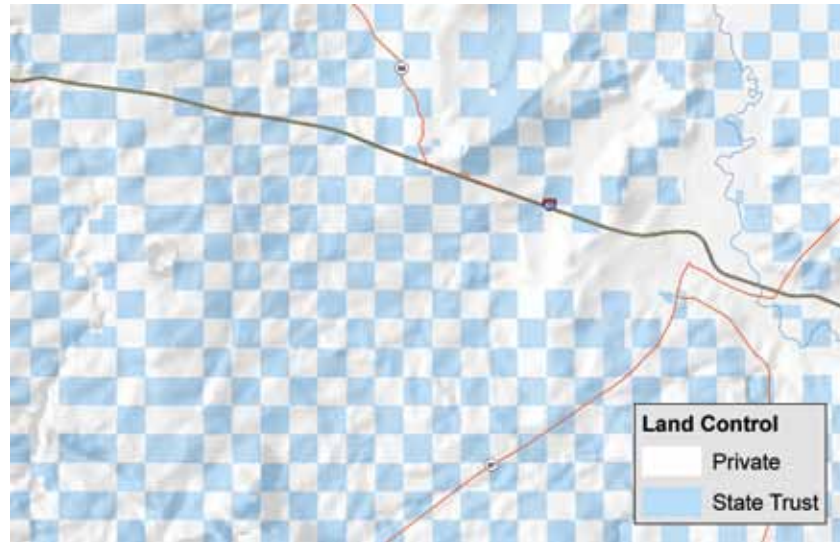
Over two million acres of Arizona's trust land consists of one square mile parcels, often arranged in an alternating checkerboard pattern with private land. This pattern is especially apparent across the northern part of the state near Interstate 40 (Figure 4). Typically, a rancher will lease state trust land parcels in an area of the checkerboard. The ranch may own the surrounding private parcels, or lease them from the owner. It is not uncommon for ranches in Arizona to be comprised of an amalgam of private, trust, National Forest, and Bureau of Land Management (BLM) land.



Trust Land "Checkerboarded" With Private Land near Winslow

source: Sonoran Institute

4

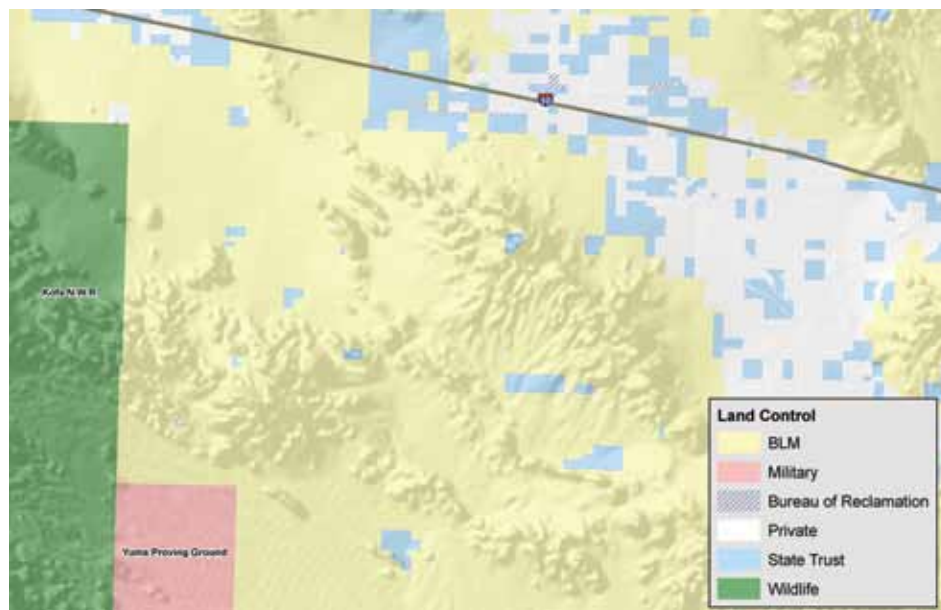


Although the system of building up ranches out of hundreds of small, checkerboard parcels may be unwieldy, it has served the ranching interests of the state reasonably well for a hundred years. This arrangement becomes problematic, however, in areas where rural grazing and agricultural land are being converted to commercial and residential use. These more intensive uses of the land are better suited to larger, contiguous parcels. A private land developer would attempt to consolidate by buying adjacent parcels or exchanging unneeded land for a more useful parcel. ASLD is prohibited from doing this absent an act of Congress.

State Trust Land Inholding Parcels in Western Maricopa County

source: Sonoran Institute

5





Clean up the Inholdings

A special case of consolidation involves a peculiar feature of the state's trust land known as inholdings (Figure 5). These parcels are completely surrounded by land controlled by another authority. They are often surrounded by federal BLM land, but National Forest, National Park, and military lands also are found surrounding trust land. There are 478,208 acres of these inholdings in 1,094 parcels, mostly in La Paz and Mohave counties (Figure 6). Many of these inholdings are relatively small, one square mile parcels that are far removed from infrastructure such as water and roads. Some are completely surrounded by federal wilderness areas or otherwise cut off from outside access.

State Trust Land Inholdings *source: Sonoran Institute*

6	County	Parcels	Acres
	Apache	42	23,114
	Cochise	16	3,083
	Coconino	97	48,153
	Gila	11	1,373
	Graham	10	4,155
	Greenlee	2	360
	La Paz	278	124,569
	Maricopa	109	41,083
	Mohave	326	147,010
	Navajo	14	6,839
	Pima	41	20,733
	Pinal	60	21,962
	Yavapai	40	14,773
	Yuma	48	21,001
	Grand Total	1,094	478,208

Trust land parcels that are completely surrounded by BLM or other land produce little to no profit. Their sales value is minimal, so most of these lands are leased for cattle grazing. Grazing leases on state trust land generate an average of 30 cents per acre annually.⁸ Inholdings and checkerboard parcels are unlikely to be used for anything other than grazing. Consolidation of these parcels through exchanges with the BLM would facilitate better management of the land and allow ASLD to consider alternative uses with potential to increase the value of state land.

The State's Difficulty in Consolidating Land

Although the state's Enabling Act implicitly allows land exchanges, the practice is effectively forbidden. The Arizona Supreme Court has declared exchanges to be unconstitutional because they constitute a "sale" without the constitutionally required auction.⁹ There have been numerous proposals to amend the state constitution to allow ASLD to propose exchanges of trust land. The most recent measure was primarily intended to shield areas around the state's military installations from urban encroachment, but also to allow exchanges "for proper management, protection, or conversion to public use of state lands."¹⁰ This would have opened the door for a range of land exchanges, however, the door would have been opened just a crack. The language required a lengthy public-hearing process



and approval in a statewide election. Although exchanges would have been possible under this scenario, they would not have been a simple matter of swapping land in a handshake deal, but would have required a process that could stretch on for years.

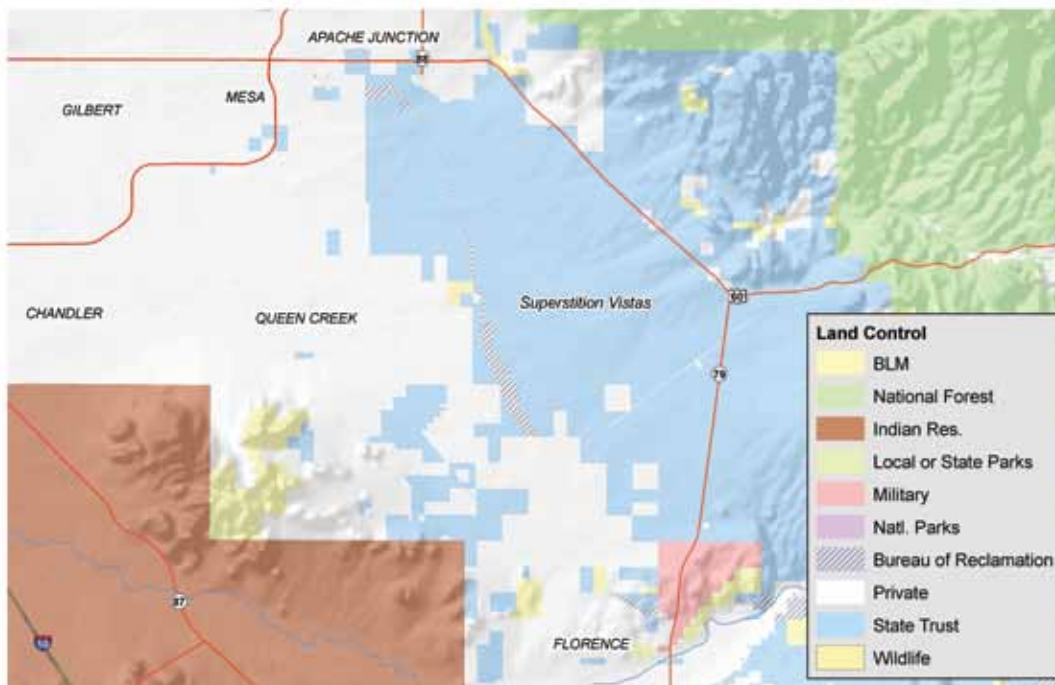
A private landowner often increases the value of his land by adding infrastructure to the property. Acres of bare dirt, with no road access, water, sewer, or electrical service are not nearly as attractive to potential tenants or buyers as land already featuring these improvements. A savvy landowner knows that an investment today in infrastructure can pay off handsomely at a later date.

Build Infrastructure

A well-studied example of the enormous potential of state trust land is the 275-square-mile area known as Superstition Vistas (Figure 7). Located to the east of Gilbert and Apache Junction, this area of open desert is poised to bloom into a major population center in the coming years. Arizona’s schools, as beneficiaries of the trust land, will receive millions of dollars from the sale or lease of this increasingly valuable land. Investments in transportation, electrical, and water infrastructure would pay off in two ways. First, these utilities would increase the value of the land to developers, resulting in greater returns to the trust when it is sold at auction. Second, the location and nature of infrastructure improvements will determine the form of development that takes place at Superstition Vistas. If the land is auctioned off with no infrastructure in place, development will necessarily be piecemeal, resulting in a mass of disconnected subdivisions. However, if well thought-out infrastructure were in place at Superstition Vistas, development could be shaped so that the final result is a sustainable, pleasant place to live that generates tremendous revenue for the trust and creates a vibrant economy for all Arizonans.

Superstition Vistas *source: Sonoran Institute*

7





It is very difficult for ASLD to build the infrastructure on state trust land that would yield greater returns and provide the possibility of more sustainable communities. For half a century after statehood, ASLD provided rights-of-way across trust land to the state highway department. These rights-of-way were free of charge, not auctioned at market value. The logic was that the loss to the trust from the highway land would be more than offset by a larger increase in the value of surrounding trust land. The land adjacent to the new highway would be much more valuable so the value of the state trust was improved, not diminished, by making trust land available for infrastructure improvements. This practice was forbidden by the United States Supreme Court in the 1967 decision *Lassen v. Arizona*. The *Lassen* decision held that the trust must always obtain full compensation for its land.

Additional constraints on ASLD's ability to develop infrastructure arise from the fact that it is not possible to issue bonds against state trust land. Because liens against state land are illegal, trust land is not permitted to be put up as collateral to back infrastructure bonds as would be the case on private land. Another common infrastructure financing mechanism, the establishment of special taxing districts in advance of development, is unavailable until the land has been sold or leased by the state. A more in-depth examination of the problem of providing infrastructure on state trust land can be found in *Wires, Roads, and Water: Developing Sustainable Infrastructure on State Trust Land*.¹¹

Set Aside Some Choice Parcels

Private developers know that the overall value of their land is enhanced when a portion of that land is set aside for recreation or scenic appeal. Spectacular views and access to preserved land, as well as open spaces such as golf courses and public parks, are touted heavily in promoting housing developments.¹² Homes with mountain views and access to hiking and biking trails sell for more than those without access to natural amenities. Therefore, it is not in the developer's best interest to put a house on every available acre. More money can be made by strategically setting aside some land for open space, parks, or golf courses, which can increase the value of the remaining lots.

"DC Ranch is a nationally acclaimed private golf and residential community in Scottsdale, Arizona. The community's location at the base of the McDowell Mountains provides panoramic views of Scottsdale and Phoenix below. Developed with a deep respect for the integrity of the land and a commitment to the preservation of open desert space, DC Ranch is a living tribute to the Sonoran Desert landscape."

DC Ranch website

The state is in a similar position with its trust land. Setting aside a portion of the portfolio for conservation would increase the value of other surrounding trust land. There have been ongoing discussions about which parcels of trust land should be conserved with general agreement on approximately 700,000 acres.¹³ The precise means by which this conservation will occur has not been spelled out and official action has yet to be taken on these parcels.

The public nature of trust land creates additional obligations beyond the purely economic concerns that motivate a private developer. Trust land has an important role to play in maintaining the environmental integrity of the state by protecting surface water and scarce habitats and providing essential wildlife corridors. There are important



recreational, archaeological, and historical features that the state may wish to preserve as well. The state has a responsibility to ensure the health of these complex systems which in turn affect the prosperity and livability of the state as a whole.

Make Deals and Find Partners

Private land developers are seldom engaged in the business of constructing improvements on their land. Developers assemble the land parcels and leave the actual building to others. Often developers will team up with builders forming a mutually beneficial partnership that caters to the strengths of each party.

The land department has the ability to enter into partnerships called participation contracts that allow the state to sell its land at a lower price in exchange for a portion of the revenue generated at a later date when the land is sold or leased by the purchaser. The state is well suited to carry out such deals and has used them to good effect in some cases.

Capitalize on the Most Valuable Land

Anyone managing 9.3 million acres of land would find it impossible to deal with the entire portfolio at once, so it is imperative to develop a list of priorities to determine which parcels offer the best opportunities to generate revenue. By focusing on these lands early on, profits can start flowing immediately while plans are made for how to deal with the remainder of the portfolio. This process involves analyzing the factors considered above, setting priorities, and deciding which parcels need to be consolidated, which should be preserved, and finally, which promise to deliver the most return for the least amount of investment.

Of the 9,259,298 acres in the state trust, a small portion of urban commercial land is immensely valuable, but much of the rest is remote and leased for cattle grazing.¹⁴ The land portfolio of ASLD is best understood when viewed in terms of urban and rural land and the comparative revenue generated through the sale or lease of each type of land. The rural part of the portfolio comprises the vast bulk of acreage, but generates a small percentage of revenue. On the other hand, the department's urban parcels generate the vast majority of revenue. The economic potential for trust land in close proximity to metropolitan Phoenix and Tucson is enormous.

50 Years Ago . . .

"There continues to be a belt of very valuable land surrounding both Tucson and Phoenix. This land is being leased at a very nominal rate although the appraised valuation is between \$2,000 and \$4,000 per acre. I feel that something should be done toward getting the land on the tax rolls in a systematic and orderly manner."

Obed M. Lassen
State Land Commissioner
From the 1960 Annual Report

Between fiscal years 2003 and 2009 ASLD sold a total of 18,325 acres of land at auction. The average per-acre price of urban land was 4.5 times higher than rural parcels (Figure 8). This disparity between urban and rural land applies to the department's lease revenues as well. More than 90 percent of trust land is leased for grazing purposes. These 8.4 million acres generated \$2.6 million for ASLD in 2009, which amounted to 6.2 percent of the



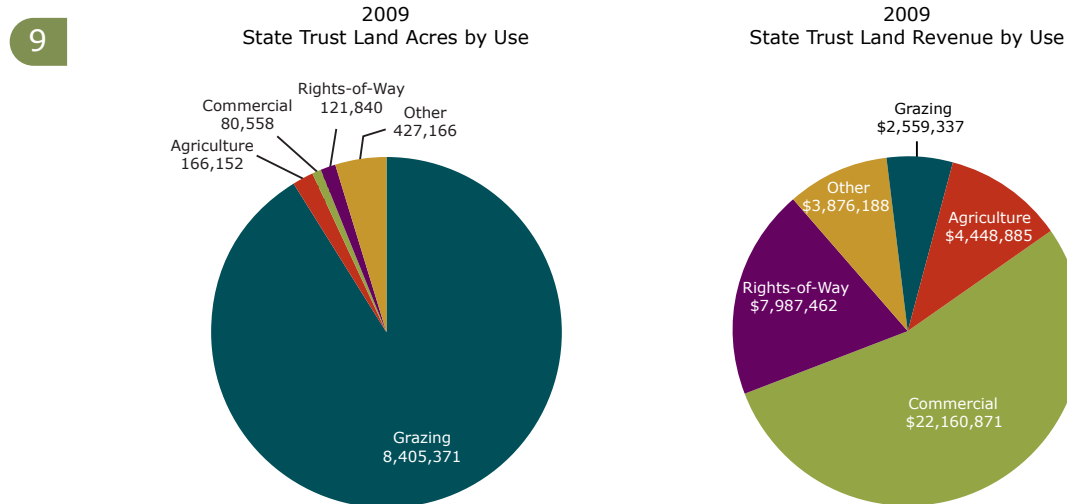
total lease revenue. This amount represents just 0.8% of the department's total FY 2009 revenue of \$303 million.¹⁵ Conversely, the commercial leases of state trust land generated \$22 million in FY 2009 from just 80,558 acres, producing 54 percent of the department's lease revenue from less than one percent of its land (Figure 9).¹⁶ Commercially leased state trust land generates 917 times the revenue per acre as grazing land.

State Trust Land Auctioned FY 2003 – 2009 source: ASLD 2003-2009 Annual Reports

8	County	Acres Sold	Total Sales Price*	Avg. Price Per Acre*	% of Sales Revenue
	Urban	15,302	\$1,921,274,051	\$125,557	96%
	Rural	3,023	\$84,569,691	\$27,975	4%
	Total	18,325	\$2,005,843,741		

*in 2009 dollars

State Trust Land Leased Acreage and Revenue source: ASLD 2009 Annual Report



The expansion of Arizona's urban areas has put a sizeable percentage of trust land in close proximity to the state's growing cities. Over 335,000 acres of trust land, nearly four percent of the total, are already inside established city limits (Figure 10). Of this amount over 40,000 acres have already been identified as potential conservation lands for local parks and open space. The remaining nearly 300,000 acres is undoubtedly the most economically valuable land in the trust. *Also note that over two million acres of state trust land, nearly 23 percent of the total acreage, lies within five miles of a city boundary.* These land parcels are the most likely to be developed in the future and will generate the greatest revenue for the system, although many are included in city or county open space plans, or are likely candidates for conservation through other means.

As shown in Figure 8 and Figure 9, urban land generates much more revenue than rural land. An acre of urban land sold for an average of \$52,143 in 2009 while an acre of rural grazing land leased for 30 cents per year. The sale of a single acre of urban trust land generated as much revenue as leasing an acre of grazing land for 173,810 years.¹⁷



Although grazing doesn't generate much revenue per acre, it accounts for the great majority of the leased acreage. Of all the leased state trust land in Arizona 91.4% is currently used for grazing. Although that acreage will shrink somewhat as urban areas grow, agriculture will continue to be the dominant user of trust land into the foreseeable future. To understand why, note that the maximum number of acres of trust land sold in one year by ASLD since FY 2003 is 4,262, at the peak of the recent boom. If ASLD were to sell grazing land at that unlikely rate for 291 years, grazing would still use 90 percent of state trust land.¹⁸

State Trust Land in Proximity to Urban Areas *source: Sonoran Institute*

10	Maricopa County	Pima County	Pinal County	Balance of State	State Total	Running Total
Within City Limits	151,259	75,276	37,036	72,240	335,812	335,812
<= 1 mile from C/L	137,117	44,077	103,119	225,799	510,112	845,924
1-5 Miles	120,445	89,921	358,599	693,516	1,262,481	2,108,405
5-10 Miles	74,151	163,069	501,417	1,108,369	1,847,007	3,955,412
> 10 Miles	157,412	488,080	204,384	4,459,954	5,309,831	9,265,243
Grand Total	640,385	860,424	1,204,556	6,559,878	9,265,243	

These facts don't diminish the significance of the cattle industry to the state of Arizona, but rather show that the industry can expect stability in the coming years. ASLD will not, under any likely scenario, sell anywhere near enough trust land to impact the cattle business, nor does it have any incentive to do so. Most ranchers effectively act as caretakers for state trust land, and if the cattle industry were to disappear, ASLD would not have the resources to monitor the 8.4 million acres currently leased for grazing.

The best course of action for the state land department is to focus its revenue-generating attention on the relatively small percentage of valuable land near the cities and let the grazing lands take care of themselves. The management of the more remote land will need marginal adjustments occasionally, but ASLD need not seek major changes to the management of grazing and agricultural lands whether they are included in a conservation designation or not. Instead, the department should ensure that these users act as responsible stewards of the land, maintaining it in good condition for future generations.

Use Ranchers as Stewards of the Land

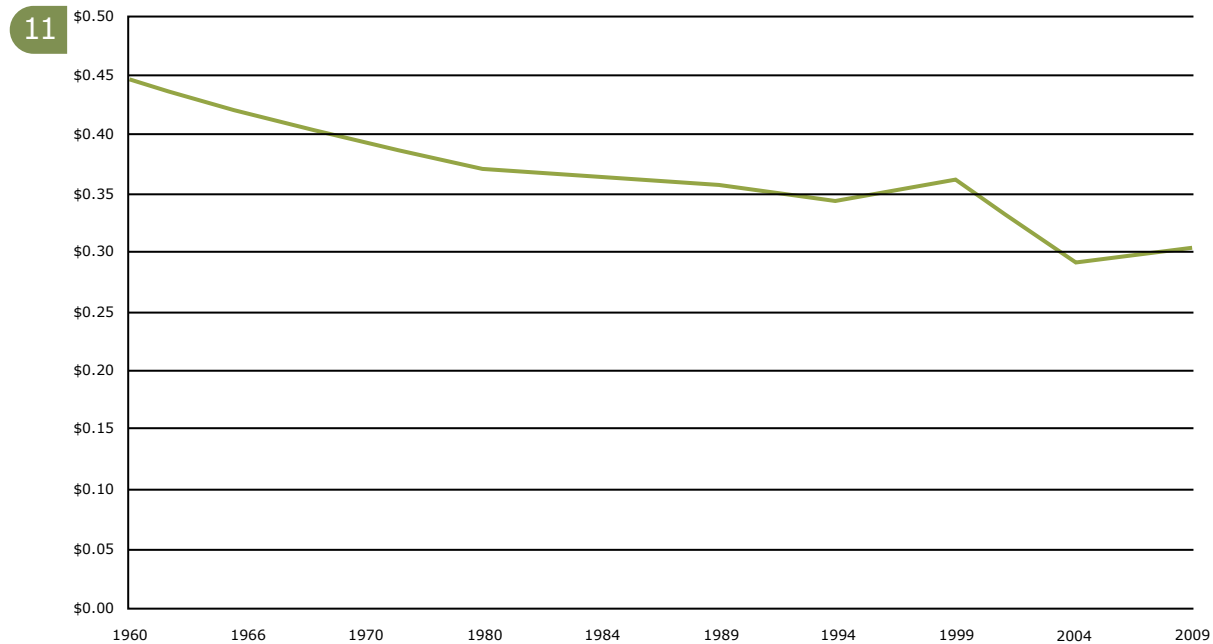
It would be a huge job for a private landowner to ensure that 9.3 million acres of land remain in good condition. There are miles of fences to inspect and repair, trespassers to chase off, and the occasional cleanup of an illegal dumping site. One would have to enlist a small army of watchmen to look after these holdings, but perhaps one could find some tenants who would lease the land and keep an eye on it.

Arizona already has people watching over 91% of its state trust land. Ranchers have been grazing cattle on this land for generations; although grazing brings little in the way of revenue, ranching is an opportunity to protect and improve the condition of trust land. The state leases the vast majority of its trust land to ranchers at an average rate of 30 cents per acre, per year, which is about a third less than what was charged in 1960 (Figure 11). To the extent that ranchers have acted as good stewards of the land and maintained the value of the trust over the years, ASLD has received fair compensation from the cattle industry. In exchange for extremely low lease rates,



the department gets tenants that help to look after the land. ASLD should encourage holders of grazing leases to maintain the land by offering longer term leases. In addition to offering stability to their operations, longer leases would allow ranchers to finance improvements to the land and give them an incentive to maintain the health of the range over the long term rather than exhausting the productive capacity of the land in just a few years. In return, ranchers could apply to state trust land the best practices that the cattle industry is developing for grazing on federal public land.

Grazing Revenue per Acre 1960-2009 (in 2009 dollars) *source: ASLD Annual Reports*



Arizona's Ranching Heritage

Arizona's cattle industry has a long and honorable tradition; its presence, particularly in rural areas, is of great cultural importance. However, a thorough analysis of state trust land requires that grazing be put into proper perspective. Crop and animal production in total represents 0.8 percent of Arizona's domestic product.¹⁹ The cattle industry represents 22 percent of the total farm economy in the state, contributing an estimated \$431 million, or 0.18 percent of total GDP to the state's economy.²⁰ To put this in perspective, Arizona's cattle industry is about 25 percent smaller than the state's furniture and related product manufacturing industry, which contributed \$582 million to the GDP in 2007. Arizona has transformed from a dusty frontier to a center of commerce and industry over the last 100 years. The cattle industry was a major component of the state's economy when trust land was established in 1912, but Arizona now hosts a sophisticated, modern economy. Although the image of the cattle rancher still captures the spirit of Arizona, the economic reality is that the \$19.2 billion finance and insurance sector of our economy is 45 times the size of the cattle industry. A continuing challenge facing state trust land reform will be to find ways to maintain the state's traditional ties to ranching while ensuring that critical land is conserved and optimum returns are generated for the trust.

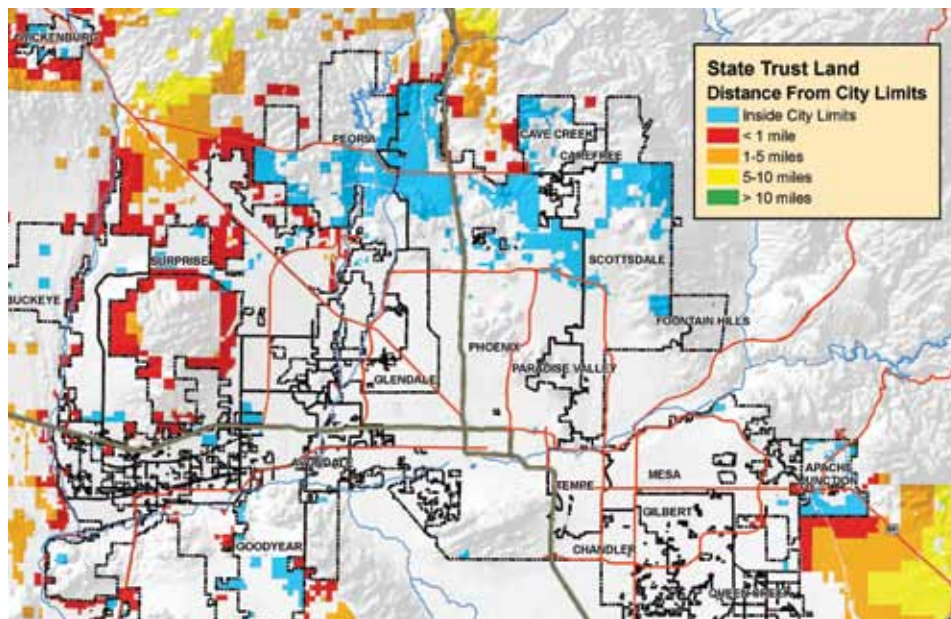


Regional Priorities

There are distinct opportunities and challenges to managing state trust land in different areas of the state. Reform measures need to be developed that address the specific needs in these areas.

State Trust Land Near Phoenix *source: Sonoran Institute*

12



Maricopa County

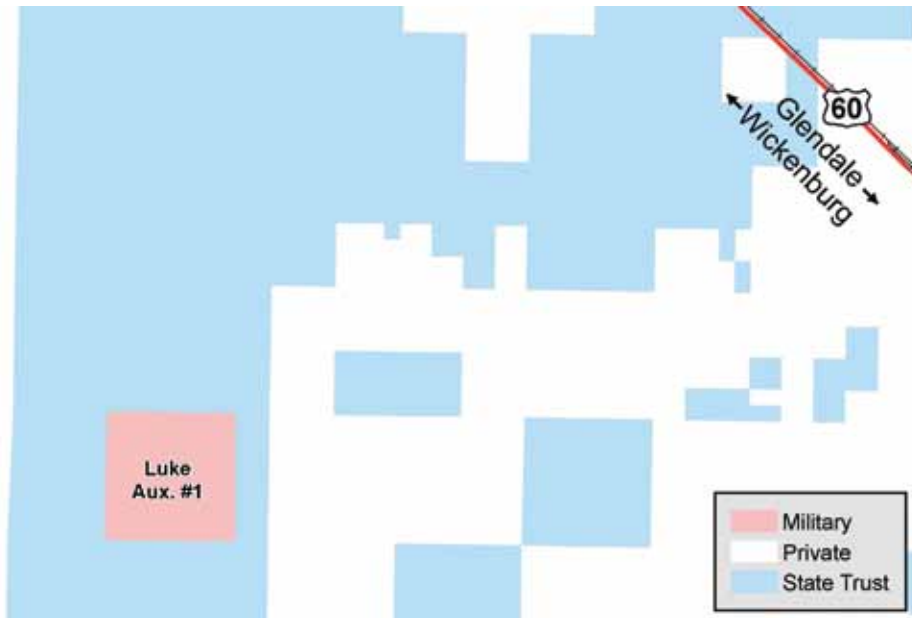
There is incredible variety in the 640,385 acres of state trust land in Maricopa County. Nearly a quarter of this land, 151,259 acres, is located within existing city limits, predominantly spread across the northern reaches of the county (Figure 12). On the urban boundaries, undeveloped trust land parcels are becoming valuable sites for future development. Cities across the valley are facing tough choices. Developing trust land within the city limits brings more residents and potentially greater prosperity for all, while vacant trust land in a rapidly urbanizing area may represent a city's best hope for securing open space and preserved desert. In fact, residents who have used trust land for recreational purposes for decades likely view these areas as protected already, not realizing they are available for development. As development consumes more acreage, the remaining land becomes increasingly valuable for conservation and recreation. Cities must walk a fine line between encouraging development and protecting the natural environment that has been proven to be both valued by current residents and a major attraction for future residents. To that end, nearly 25,000 acres of trust land inside city limits in the county have already been identified as ripe for conservation.²¹

The rural areas of western Maricopa County present a different set of problems. The area has many inholdings of trust land that are difficult to fully utilize. Flight operations out of Luke Air Force Base influence many land use decisions in the area. Luke contributes over \$1 billion annually to the local economy so leaders are wary of land uses that adversely affect the base.



Luke Auxiliary Airfield Surrounded by Trust Land source: Sonoran Institute

13



Although little trust land exists in immediate proximity to Luke, other trust parcels have the potential to cause problems for the base. Luke Auxiliary Airfield #1 is 15 miles northwest of the main base (Figure 13). This airfield is used for 13,000 aircraft landings annually and is surrounded by state trust land.²² Any development of this land will raise safety and noise issues, which could impact the base. Other military areas require attention as well: south of Gila Bend an auxiliary airfield is used as an emergency landing strip, and the whole flight corridor from Luke down to the Barry M. Goldwater Range, just south of Interstate 8, requires protection against infringement. Trust land issues are likely to arise in any solution.

Pima County

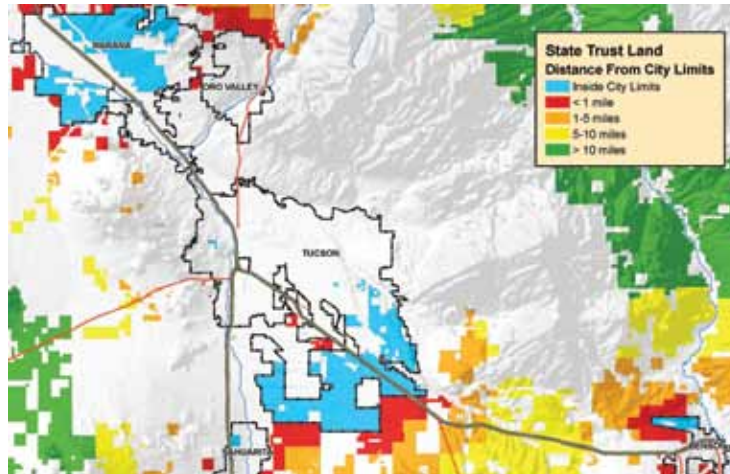
The issues in Pima County are in many respects similar to those faced in Maricopa County. It is necessary to strike a balance between development and conservation and ensure that land use decisions do not damage critical military operations. There are 75,276 acres of Pima County trust land within city limits concentrated in large parcels in Marana and south of Tucson (Figure14).

Nearly 17,000 acres of trust land within the Marana city limits have been proposed for conservation on the east side of Interstate 10. Much larger areas are considered for conservation south of Tucson. Even allowing for these conservation areas there are still tens of thousands of acres of trust land to the south and west of Tucson. Here Tucson's future population growth will likely live, so skillful management of these areas is critical both for the state land department and metropolitan Tucson.



Trust Land Near Tucson *source: Sonoran Institute*

14

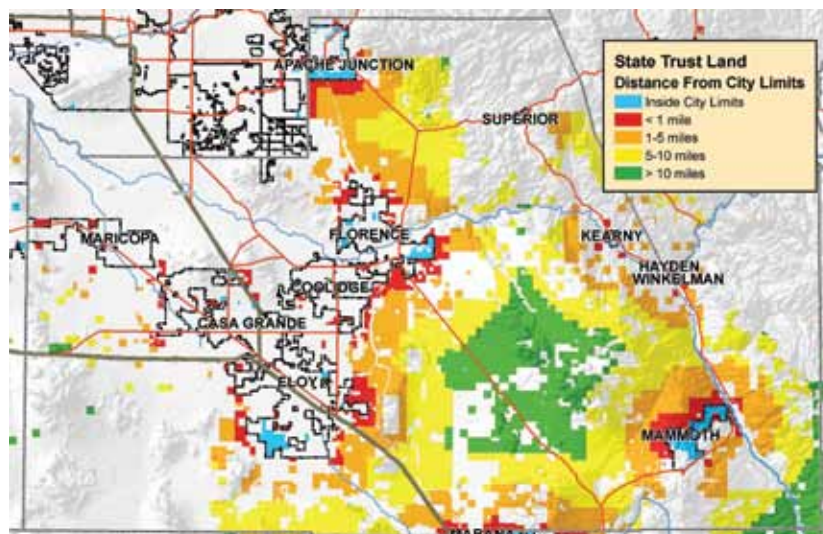


Pinal County

Pinal County presents a much different picture than its neighbors to the north and south. With 1.2 million acres of state trust land, the county has over 13 percent of the state’s total trust land, which is highly valuable for development purposes. Trust land is destined to be the primary site of future growth in Pinal County due to the high percentage of trust land in the county. With 40 percent of the county set aside as Native American reservations or under federal control, state trust land comprises 35 percent of the county and becomes the inevitable target for growth. Superstition Vistas, located in Pinal County, is a well-known example of trust land that has the potential to generate massive revenue for the state and change the development pattern for the region. A great deal of trust land in the county is near the Interstate 10 and State Route 79 transportation corridors; over 500,000 acres are located within three miles of a major road (Figure 15). The location is significant because development is naturally attracted to easily accessible areas. These lands will become increasingly valuable as the metropolitan areas of Tucson and Phoenix continue to grow toward each other.

Trust Land in Pinal County *source: Sonoran Institute*

15





As Arizona approaches its centennial it is time to reevaluate how the trust land granted at the time of statehood is currently being utilized. The strict regulations on the early 20th century bequest of land stemmed from 19th century abuses in the administration of similar land in other states. These precautions, such as requiring that all land be sold at open auction for no less than full market value, were meant to protect the beneficiaries of the trust from unscrupulous deals that had plagued other states. This system worked well in the early years of Arizona, but it is now an anachronism that needs to be updated.

The current system impedes the Arizona State Land Department's duty as trustee to generate optimum long-term benefit from the land. Equally important, the outdated system restricts the state's options for sustainable use of the land. The state, in addition to simply getting the most return for the beneficiaries of the trust, has a larger obligation to make sure that the 9.3 million acres of trust land are put to the best use for the people of the state. As such, the ASLD needs to be free to pursue land policies that preserve natural resources and amenities and encourage development that is economically, socially, and environmentally sensible.

Over the past 100 years, Arizona has been transformed in ways that its founders could never have imagined. The old economy based on agriculture and mining has developed into a complex, globally connected economy centered on services and high technology. Our management of state trust land needs to be reconsidered in light of this transformation. State trust land reform has the potential to increase revenue to the beneficiaries. However, reform of state trust land management cannot be seen as a means to solve the budget problems facing the state. Improvements in revenue generation are possible but there are more significant reasons to pursue reform. The trust frequently doesn't serve the needs of the people of Arizona. Both users and beneficiaries of trust land are currently being shortchanged. The regulations that were originally intended to promote honest and fair transactions are now working against that goal. Several areas must be addressed in any comprehensive reform process:

- 1 The ASLD currently has a very weak set of tools to set aside trust land for conservation or recreation purposes. Statute requires that nearly all state trust land is subject to sale to the highest bidder, even if there is wide agreement that such a sale is not in the best interest of the state.²³
- 2 Similarly, ASLD has struggled with limitations on its ability to enhance the value of trust land through the installation of infrastructure.
- 3 The inability to exchange land with other parties, particularly the federal government, means that many acres of trust land will remain low-value parcels in perpetuity.
- 4 Auction requirements for sales and leasing of state trust land are cumbersome and may discourage some buyers from the market.

The time has come to allow the ASLD and to expand its role as trustee of Arizona's state trust land, from not only acting in the best interest of the beneficiaries, but to serving the needs of the state and the people of Arizona. The current system has hindered Arizona long enough, preventing ASLD from generating optimum revenue from the land, and restricting the state's options for intelligent use of the land.



The Pioneer Living History Museum

The Pioneer Living History Museum was established in 1962. The museum leased 92 acres of state trust land 30 miles north of downtown Phoenix and began moving historic buildings from Arizona's territorial days to the site. Generations of school children and tourists have visited the location to learn about pioneer days from guides dressed in period costumes. At the time of its founding, the museum's desert location far from the city helped to evoke 19th century life in Arizona. By the early years of the 21st century, however, the city had grown around the museum and the leased land had become very valuable. With the museum's lease up for renewal, the law required that the new lease rate was to be no less than the 'actual value' of the land. The non-profit organization that ran the museum was sure to be priced out of its home. The City of Phoenix stepped in with a solution. The city would purchase the land and then offer the museum affordable lease terms. The Phoenix Parks and Recreation Department was authorized to bid up to \$3.2 million for the land at auction, and the museum's future seemed secure.

The legal requirement to sell the land at auction yielded a surprise. A private party bid \$3,210,000 against the city's bid of \$3,200,000 and purchased the land. The new owner of the museum property operates a mobile home park on leased state trust land adjacent to the museum, and agreed to lease the property to the museum for \$1 per year. Despite the unexpected outcome of the auction, it looked like the museum might survive. The optimism didn't last long. In August of 2010, the museum was given 10 hours notice that its water would be shut off. Another legal restriction on state trust land had come in to play. Water pumped from state trust land to private land must be sold at auction to the highest bidder. A small well at the nearby mobile home park supplied water to the museum land, but the land was now private, so the water supply system was now illegal. Workers scrambled to move the museum's livestock to other locations where they could be watered.

In return for leasing the museum property back to the city, the new owner now asked the City of Phoenix to provide extensive water and sewer improvements at an estimated cost of \$10 million. These improvements would allow the private owner to convert much of the property to lucrative commercial uses. The museum was essentially being held hostage to force the city to subsidize private development. At this point, the city officials decided to play hardball as well, threatening to exercise their power of eminent domain to condemn the property and render it useless to the new owner. The owner relented and agreed to sell the parcel back to the city, after being reimbursed for legal expenses.

The arcane rules controlling state trust land were largely responsible for the confusion and aggravation surrounding this case. Had the state land department been allowed to simply sell the parcel to their preferred purchaser for an agreed upon price, the matter would have been quickly settled.

Ironically, the schoolchildren of Arizona are the designated beneficiaries for the land where the museum sits. It could be argued that a slightly higher selling price for the land is not in the best interests of the beneficiaries. Perhaps the educational needs of the state are better served by having a historical museum for students to visit, but the state is prohibited from making that decision due to the imperative to sell land to the highest bidder.

Arizona nearly lost an important cultural amenity in this case. It is worth considering what other cultural and environmental features, such as recreational areas, open space, and natural habitat, are jeopardized due to the rules controlling trust land.



Recommendations

Reform of Arizona's state trust land system is a daunting task as demonstrated by the many attempts that have failed at the ballot box. The existing system of state statutes, constitutional issues, the federal Enabling Act, and decades of court decisions is not amenable to quick fixes. Beyond the very specific fiscal and legal responsibilities that arise from the trust, state trust land fulfills many economic, social, and environmental functions. These functions are frequently in conflict with each other; reforms of the state trust land system need to address these diverging interests. While a single solution is unlikely, there are a number of intermediate goals that may be pursued.

- 1 Preserve 1,000,000 Acres of State Trust Land
- 2 Establish a Development Reserve
- 3 Continue to Support Grazing and Agricultural Uses
- 4 Find a Mechanism to Allow Land Exchanges
- 5 Make the Arizona State Land Department Self Funding
- 6 Increase Financial Flexibility for Arizona State Land Department

Preserve 1,000,000 Acres of State Trust Land

There is broad agreement that some trust land is well suited to conservation and should not be sold. This land is valuable not only on environmental grounds, but also because much of it offers prime recreational opportunities in close proximity to the state's urban areas. Conserving these parcels of state trust land not only serves the environmental and recreational needs of the state, but also increases the value of adjacent trust land.

Approximately 700,000 acres of trust land has been tentatively identified for conservation (Figure 16). In early 2010 conservation groups, municipalities, and legislative interests were close to reaching a deal to set aside the specific lands, but legislation was never passed. This work can be expanded upon to conserve a full one million acres statewide. Formally setting aside state trust land that needs to be preserved will allow the remainder of the portfolio to be fully utilized to its maximum benefit.

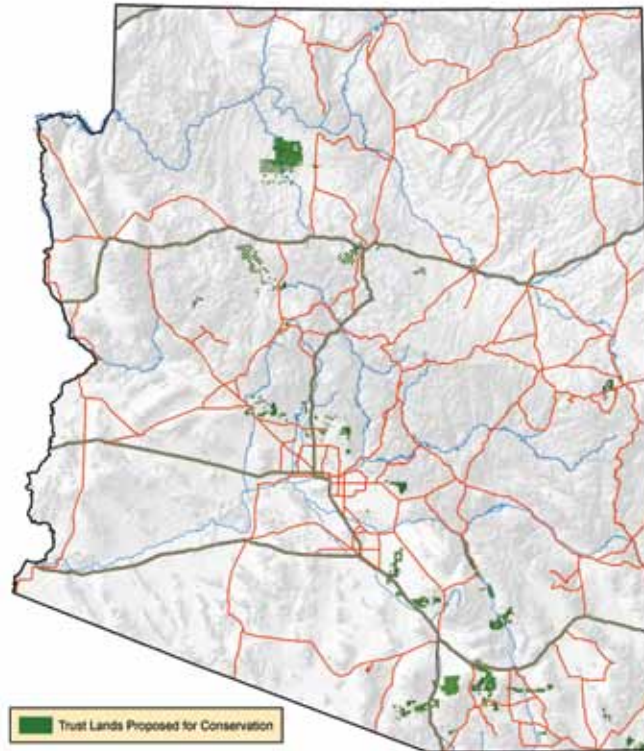
Establish a Development Reserve

The flip side to identifying conservation land is to identify land best suited for development. Arizona should consider establishing a development reserve to designate which parcels of trust land will be targeted for future development. A large percentage of Arizona's future growth will occur on state trust land, so this land is critical to shaping the state's future growth. Better managed development of trust land will benefit cities, developers, builders, and the people of Arizona. For city governments, better management of state trust land sales would allow them to construct infrastructure such as water lines, roadways, and fire stations in a manner that makes best use of scarce resources. For the development and building industries, identifying which parcels will be sold for development provides certainty about what the future housing market will look like. While for the people of the state, a plan for the disposition of state trust land fosters the creation of sustainable, more livable communities that provide residents a better lifestyle. The ASLD, working with city planners, the development industry, and



Trust Lands Proposed for Conservation *source: Arizona State Land Department*

16



conservation interests could identify trust land most appropriate for development. This concept would complement the existing paradigm of protecting land for conservation purposes. A development reserve of 300,000 acres would be sufficient to supply land for the next 120 years of growth at the current rate.²⁴ A development reserve of state trust land would promote sensible development that is efficient, economical, and sustainable rather than poorly planned scattershot development that results in snarled traffic and high taxes through inefficient provisioning of infrastructure.

Continue to Support Grazing and Agricultural Uses

With one million acres of trust land set aside for conservation purposes and 300,000 acres designated for future development the balance of the trust portfolio remains for its traditional uses of grazing and agriculture. In addition to supporting important industries, these uses are an essential social and cultural resource for the state. To the degree that farmers and ranchers are good stewards of the land, they provide additional environmental protection to many millions of acres of the state. To maintain the value of the state trust it is incumbent upon the land department to monitor grazing and farming practices on leased trust land. Land that has been exhausted at the end of the lease and is no longer productive can represent a serious loss to both the state and the cattle industry. To ensure that the value of the trust is maintained, ASLD should engage the cattle industry’s current effort to develop best practices for the management of public rangelands. This effort includes the development of a range management manual that helps ranchers understand the expectations of land management on BLM, Forest Service, and other public lands. This manual should include Arizona state trust land as well. Extended lease terms should be considered in order to provide a financial



incentive for ranchers to remain good stewards of the land and allow them to amortize improvements made on state land over a longer period of time.

Find a Mechanism to Allow Land Exchanges

The inability of the state to trade its trust land with other land owners, particularly the BLM, has hamstrung the land department for decades. The half million acres of trust land that is completely surrounded by federal land can never be fully utilized under the current system. Additionally, trust land near military bases poses a special threat to the state. The state is currently obligated to sell these lands to the highest bidder even if that jeopardizes operations at military facilities. Housing developments sprouting on trust land near Luke Air Force Base for instance, could easily help sway the decision by the Defense Department about where to train F-35 fighter pilots. If these vulnerable trust land parcels could be traded for BLM land that could be easily preserved, Luke would remain an attractive site for training Air Force pilots. The model for land exchanges that was put to the voters in 2010's Proposition 110 provides a starting point for developing a new exchange mechanism. To ensure passage of the next proposition, the conditions for exchanges under Prop 110 need to be simplified and explained thoroughly to the electorate.

Make the Arizona State Land Department Self-Funding

Continued reliance on the declining General Fund appropriations has left ASLD chronically underfunded and unable to cope with the demands of managing state trust land. Trust land agencies in 12 other western states are funded at least partially by revenues generated from trust land. Only Arizona and South Dakota lack any form of self-funding. New Mexico's State Land Office, for example, is entirely funded by a portion of revenues from its 8.9 million acre land trust rather than tax receipts passed to the office through legislative appropriation. A constitutional change allowing ASLD to use a portion of state trust land revenue to fund department operations would have several positive effects. The overall state budget would benefit as the \$10 million in General Fund tax revenue that now goes to ASLD would be available to help resolve the ongoing deficit. At the same time, ASLD would be free from the annual struggle with the legislature for adequate funding. Finally, if the ASLD were allowed to keep a percentage of proceeds, the department would be incentivized to negotiate the best sales and leasing deals possible, which will increase returns to the trust beneficiaries. Self-funding will allow the department to become more entrepreneurial and seek the highest returns for its portfolio.

Increase Financial Flexibility for Arizona State Land Department

Finally, the ASLD needs to be free to take advantage of the same innovative financing arrangements available to a private land owner. Although ASLD has some limited capacity to enter into "participation agreements", a more robust ability to engage in public-private partnerships would benefit both the state and those seeking to develop trust land. For example, Arizona's trust land presents some of the best opportunities to develop solar energy facilities in the nation however, the strictures placed upon the department make pursuing this growth industry problematic. The ASLD is unable to enter into partnerships with the developers of solar and wind-powered electrical generation plants, which is financially advisable and also supports the state's commitment to a sustainable energy policy. Similarly, if ASLD were granted greater flexibility to develop civic infrastructure such as roads and sewers on parcels like Superstition Vistas, revenue to the trust would be increased while creating a more desirable development model for Arizona's future residents.



¹ Proposition 102 (1998) allowed the state to invest proceeds from the sale of trust lands in stocks. Proposition 303 (1998) set aside \$20 million annually to purchase state trust land for the purpose of preservation. Proposition 300 (2002) specifies that trust land revenues are to be dedicated to education.

² See *Ervien v. United States* and *Lassen v. Arizona*.

³ For more on Arizona's trust land responsibilities, see *Trust Lands in the American West: A legal Overview and Policy Assessment*. Sonoran Institute, 2005.

⁴ Budget figures for the Department of Education and Universities taken from the FY 2011 Appropriations Report. <http://www.azleg.gov/jlbc/11app/apprpttoc.pdf>.

⁵ Current ASLD inventory is 9,268,230 acres, or 14,482 square miles. New Jersey and Connecticut have areas of 8,721 and 5,543 square miles, respectively, for a total of 14,264 square miles.

⁶ For more on Arizona's trust land responsibilities, see *State Trust Lands in the West: Fiduciary Duty in a Changing Landscape*, Lincoln Institute of Land Policy, 2006.

⁷ *Rumerg V. Martin*, Superior Court of Arizona (2010).

⁸ Arizona State Land Department Annual Report 2008-2009, p. 38.

⁹ *Fain Land & Cattle Co. V. Hassell*, 163 Ariz. (1990).

¹⁰ <http://www.azsos.gov/election/2010/general/ballotmeasuretext/SCR%201047.pdf> .

¹¹ *Wires, Roads, and Water: Developing Sustainable Infrastructure on State Trust Land* (2011) Sonoran Institute.

¹² See <http://www.dcranch.com/aboutdcranch/>.

¹³ See maps at http://www.land.state.az.us/news/2009/062609_reform.htm.

¹⁴ Arizona State Land Department Annual Report 2008-2009, p. 40.

¹⁵ Total revenue for ASLD in FY 2009 was \$303 million. Of this amount, \$143 million went to the Permanent Fund and was not directly available to the beneficiaries. Proceeds from the investment of the Permanent Fund totaling \$59 million were given to the beneficiaries as the Treasurer's Distribution. \$100 million, mostly from lease revenue, was also distributed to the beneficiaries through the Expendable Fund.

¹⁶ Arizona State Land Department Annual Report 2008-2009, p. 38, reports total surface lease receipts as \$91,183,507 for FY 2009. Of this amount, \$10,840,725 is in the form of "School Leases." Lease payments for public schools on STL are deposited in the New School Facilities Fund, which flows back to the schools. These funds are not revenue for either ASLD or the beneficiaries, so they are excluded from Figure 9. Additionally, \$39,310,039 represents one-time collections from STL lands that had been sold at auction. When the buyers could not continue to make payments on the land they had purchased, ASLD repossessed the land. The payments that had been made were then transferred to the "Other" category of the Lease Receipts table. This amount has also been excluded from Figure 9.

¹⁷ \$0.30 per year x 173,810 years = \$52,143, the average selling price of an acre of STL in FY 2009.

¹⁸ Per ASLD's 2008-2009 annual report, there are currently 9,201,087 acres leased by ASLD, of which 8,405,371 are used for grazing. If that acreage was reduced by 4,262 acres per year, after 291 years there would be 7,165,129 grazing acres, which is 90% of the 7,960,845 acres that would remain in the trust.

¹⁹ Bureau of Economic Analysis (BEA), *Gross Domestic Product by State*, 2007. www.bea.gov/regional/gsp/.

²⁰ BEA, *Farm Income and Expenses*, 2007. www.bea.gov/regional/spi/default.cfm?selTable=SA45.

²¹ See maps at http://www.land.state.az.us/news/2009/062609_reform.htm.

²² <http://www.luke.af.mil/library/factsheets/factsheet.asp?id=6401> .

²³ A.R.S. §37-231A.

²⁴ From FY 2004 through FY 2009, ASLD sold an average of 2,461 acres of land each year. Assuming that rate of sale, a 300,000 acre reserve would last 122 years.

About the Sun Corridor Legacy Program

The "Sun Corridor" refers to Arizona's megapolitan area stretching from Nogales in the south to Prescott in the north, with Phoenix and Tucson at its core. The megapolitan is growing at a tremendous rate, and that rapid growth comes with the challenge of conserving natural desert and open space while improving urban quality of life. As one of the four keystone initiatives of the Sonoran Institute, the Sun Corridor Legacy Program addresses growth and change as models for sustainable development. Our five goals include:

Promote a rail system effectively linking the entire Sun Corridor

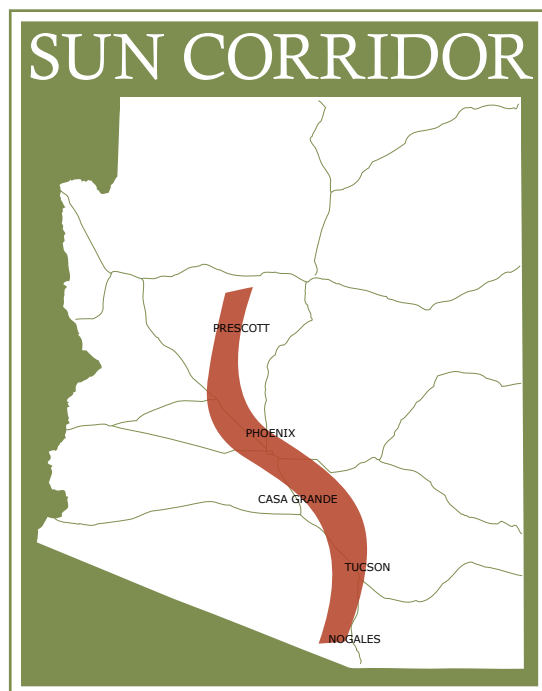
Create a world-class model for sustainable desert cities

Advance the availability of clean and secure energy for the Sun Corridor

Conserve more than one million acres in Arizona for future generations

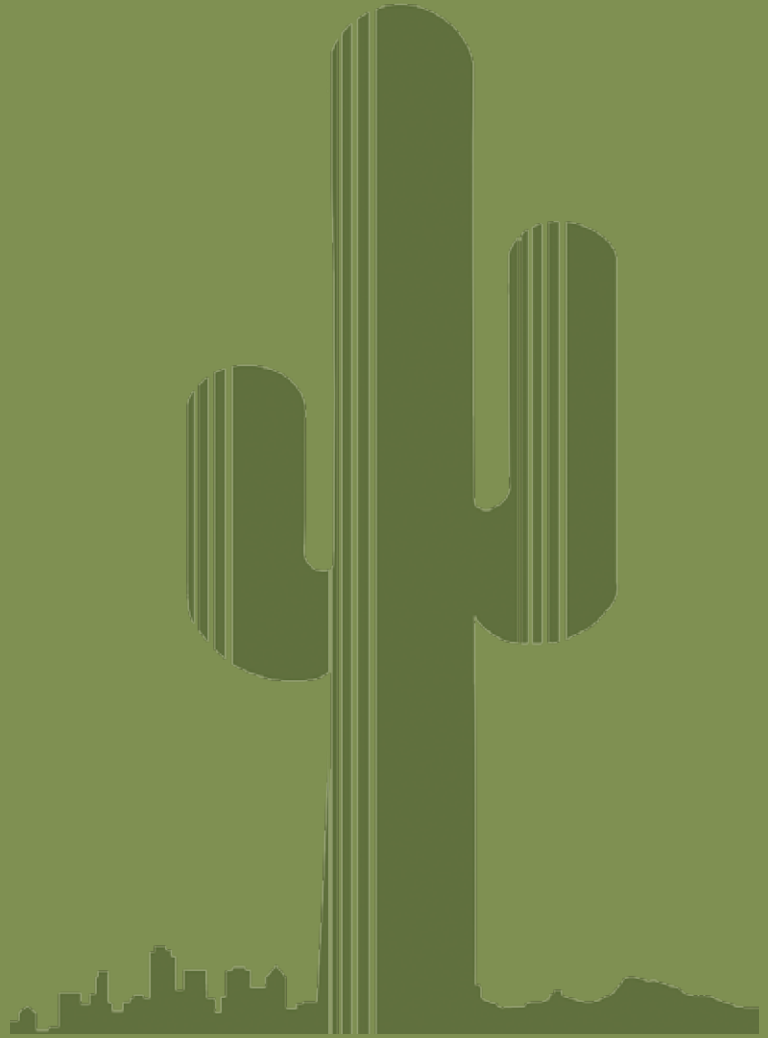
Encourage state policies that protect and restore free flowing rivers in Arizona

The Sun Corridor's desirable climate, housing options, and relatively low cost of living are reasons why this area continues to attract new residents. The area's future quality of life, environmental quality, and economic prosperity will be determined largely by how well growth is managed. Going forward, regional solutions that comprehensively address conservation, development, transportation, water, and energy issues will be critical to a sustainable future.



Arizonans must make better decisions about how to develop communities, preserve cherished open spaces, ensure an adequate high-quality water supply, protect our quality of life, and enhance economic prosperity. New approaches to leadership are needed to make this happen and Sonoran Institute finds them through work with federal, state and local governments and stakeholder groups to determine the best mix of use and conservation for lands in this region. To find out more about the program's work, visit www.sonoraninstitute.org.





www.sonoraninstitute.org

44 E. Broadway Blvd., Suite 350
Tucson, Arizona 85701

520.290.0828
fax 520.290.0969



Shaping the Future of the West