



Shaping the Future of the West



Routes, Rails, and Roads: *Transportation Infrastructure Development on State Trust Land*

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*A Sun Corridor Legacy Program Concept Paper
Prepared by the Sonoran Institute*



Sonoran Institute

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

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Transportation drives the economy of the Sun Corridor megaregion – the area from Nogales in the south to Prescott in the north, with Phoenix and Tucson at its core. Getting goods from producers to consumers and commuters to and from work efficiently contribute to regional prosperity. The transportation network also enables people to live even in remote areas without foregoing access to necessities and conveniences.

Yet, the singular routes through the heart of the Sun Corridor often cause delays. To avoid delays and provide sustainable options for commuters and shipping, the transportation network needs to improve existing routes and build new infrastructure. Undeveloped state trust land can provide the necessary acreage to accommodate these goals, while benefitting education and other beneficiaries of the trust. The Arizona State Land Department (ASLD), however, lacks the authority, tools, and resources necessary to plan for infrastructure on state trust land. This report, the fifth in the series, examines policies that would allow the ASLD to better plan for infrastructure.

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

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Executive Summary

Options for transportation infrastructure siting on state trust land are limited by constitutional and statutory regulations. This report presents options that would allow the Arizona State Land Department (ASLD) to better collaborate with other government entities and developers to improve Arizona's transportation future. These options would increase revenues for the beneficiaries and create a more sustainable and efficient transportation network for the state. Thoughtful planning, well in advance of development, and wise use of land and resources can increase the value of state trust land near transportation infrastructure improvements.

Maximizing the State's ability to reap the rewards of improved transportation infrastructure will require reform to existing state trust land regulations through either a legislative referendum or a ballot initiative. Either way, it is essential that lawmakers and the public understand the principles of Arizona state trust land, the logic behind the suggested changes, and the benefits to the trust. To that end, this report recommends a variety of tools that are both general policies and specific statutory changes to provide the ASLD additional flexibility to incentivize transportation infrastructure investment:

Continue planning with Arizona Department of Transportation for the infrastructure necessary to meet Arizona's future transportation needs. Transportation projects take decades to design, fund, and build, so advance work is crucial.

Use transportation infrastructure to stimulate and shape future growth. Well-planned transportation infrastructure can facilitate livable growth patterns.

Efficiently use land and resources by carefully weighing the costs and benefits of transportation options.

Increase the value of land near improved infrastructure. Thoughtful placement of transportation infrastructure can make state trust land much more valuable, which will increase revenue to the beneficiaries of the trust, Arizona's schoolchildren.

Allow the sale of rights-of-way without auction. A constitutional change to allow this would lower up-front transportation infrastructure costs and increase the value of trust land.

Allow liens against state trust land. Municipalities commonly issue bonds to finance needed infrastructure. A constitutional amendment is required to make this tool available on state trust land.

Allow master developer leases. This statutory change would permit the state to enter into partnerships with private developers and share in the proceeds of the project.



People need to get to work on time. Goods need to get to market on time. Arizona's transportation network of roads and rails makes this possible on a daily basis. To maintain the vital economic pulse of efficient transportation, policymakers need to prepare today for the transportation needs of tomorrow. State trust land will be a critical component of these plans, yet legal constraints on the Arizona State Land Department make this effort a challenging task.

In 1913, the first tour book was published to help automobile enthusiasts find their way around the new state of Arizona.¹ With no highway system in place, the state's transportation system was a loose collection of unmaintained dirt paths. Travelers between Phoenix and Wickenburg were advised to watch for heavy sand when fording washes and to stay away from the 'very bad' road that followed the railroad tracks west of the Agua Fria River. The writers of this little guidebook showed appreciation of the connection between transportation and commerce when they wrote, "it will be but a short time until the whole State will be gridironed with travelable roads, giving easy and comfortable access to the scenic, agricultural and industrial sections of this rich commonwealth."² In addition to maps, the book features descriptions of towns that are designed to lure new residents with boasts of the fine soil for farming, the quality of schools, and the many business opportunities that are enhanced by easy automobile access.

Nearly a century after publication of that first guidebook, Arizona has a transportation network that is so well developed that we take it for granted. Travelers between Tucson and Phoenix set the cruise control at 75 miles per hour and don't give much thought to the infrastructure that makes the journey so easy. Business professionals shuttling between the nodes of the Sun Corridor share the road with trucks laden with goods coming in and going out of the region while many more tons of supplies rumble along the railroad tracks paralleling the freeway. The highways and railroads that form the arteries of commerce didn't just materialize out of thin air. Plans and financing mechanisms that began decades ago have brought us to the point where a lunch meeting in Phoenix is an ordinary occurrence for a Tucson resident. However, the drive up to Phoenix may be slowed by commuters clogging the freeway. An overturned semi-trailer might close Interstate 10 creating hours of delay on the only freeway connecting the state's largest cities.

Transportation drives our economy. A reliable, efficient transportation network is needed for goods to flow from producers to consumers and for workers to commute from home to the workplace. Transportation networks also enable growth by making once-remote areas accessible and desirable for homes and businesses.

The economy of Arizona is closely tied to the health of our transportation network. The development of this network will come in two areas; reinforcement of existing connections and building new infrastructure to serve new developments. State trust land will play a major role in both of these areas. There are huge blocks of undeveloped trust land in the state and they are natural sites for transportation rights-of-way. However, the state is highly constrained in its ability to place infrastructure on trust land. This paper suggests some policies that could better enable siting transportation infrastructure on state trust land and looks at alternatives to manage those challenges.



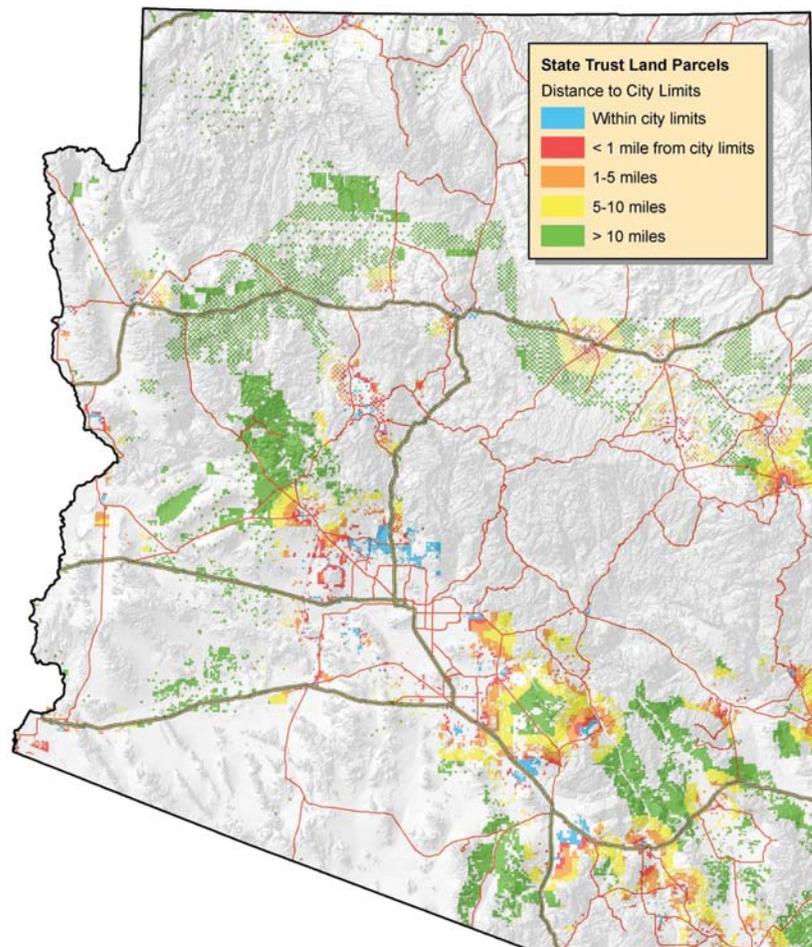
State Trust Land Background

The Arizona State Land Department (ASLD) acts as trustee for 9.3 million acres of trust land scattered across the state. This land covers an area larger than the states of New Jersey and Connecticut combined. It is important to note that the State of Arizona does not actually own this land, but rather holds it in trust for a series of beneficiaries. Arizona school systems are the beneficiaries for almost 90% of the trust land acreage. This trust responsibility restricts the state's handling of the land, most notably by the requirement that all sales and any lease of trust land must take place at open auction and for no less than market value.

With over two million acres of state trust land located less than five miles from existing city limits (Figures 1 and 2), it is clear that much of the state's future growth will occur on trust land. If this land is to be developed, accommodation must be made for the transportation needs of future residents. Transportation infrastructure must be placed to meet the need of people to circulate within their communities as well as the need to connect these newly developed areas to other areas of the state. The first case calls for the development of networks to connect homes with local shopping, schools, and other amenities. The latter necessitates more intense freeway and rail connections between newly developed areas and employment and commerce centers some distance away.

Trust Land Parcels in Relation to City Limits *source: Sonoran Institute*

1





Acres of State Trust Land Near Existing City Limits *source: Sonoran Institute*

2

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

The ASLD is highly constrained in its ability to support the development of transportation infrastructure.³ If the state land department were unencumbered to facilitate best practices regarding infrastructure placement, it would be able to promote the overall growth of the state while increasing the trust land revenue that is paid to Arizona’s education system.

The Lassen Decision

Between 1929 and 1967 the Arizona granted rights-of-way across trust land for road construction at no charge. The rationale behind this practice was that roads would enhance the value of surrounding trust land, offsetting the loss of revenue from the right-of-way through the increased value of other land. Approximately 900 easements were granted in this manner until the practice was halted by the United States Supreme Court in the *Lassen v. Arizona* decision.⁴ In *Lassen*, the court ruled that the State had been disposing of trust land at less than ‘true value’ by giving away land for roadways, and required public auctions for all further dispositions.

The Lassen decision has complicated the construction of transportation infrastructure on trust land and reduced the state’s ability to plan the development of trust land parcels. Although a number of strategies have been developed to work around the restrictions imposed by Lassen, these mechanisms are neither straightforward nor reliable.⁵ The complicated agreements drawn up by ASLD to satisfy the requirements of Lassen have not held up well as economic shocks have bankrupted some of the ASLD’s partners.



Suggested Transportation Infrastructure Policies

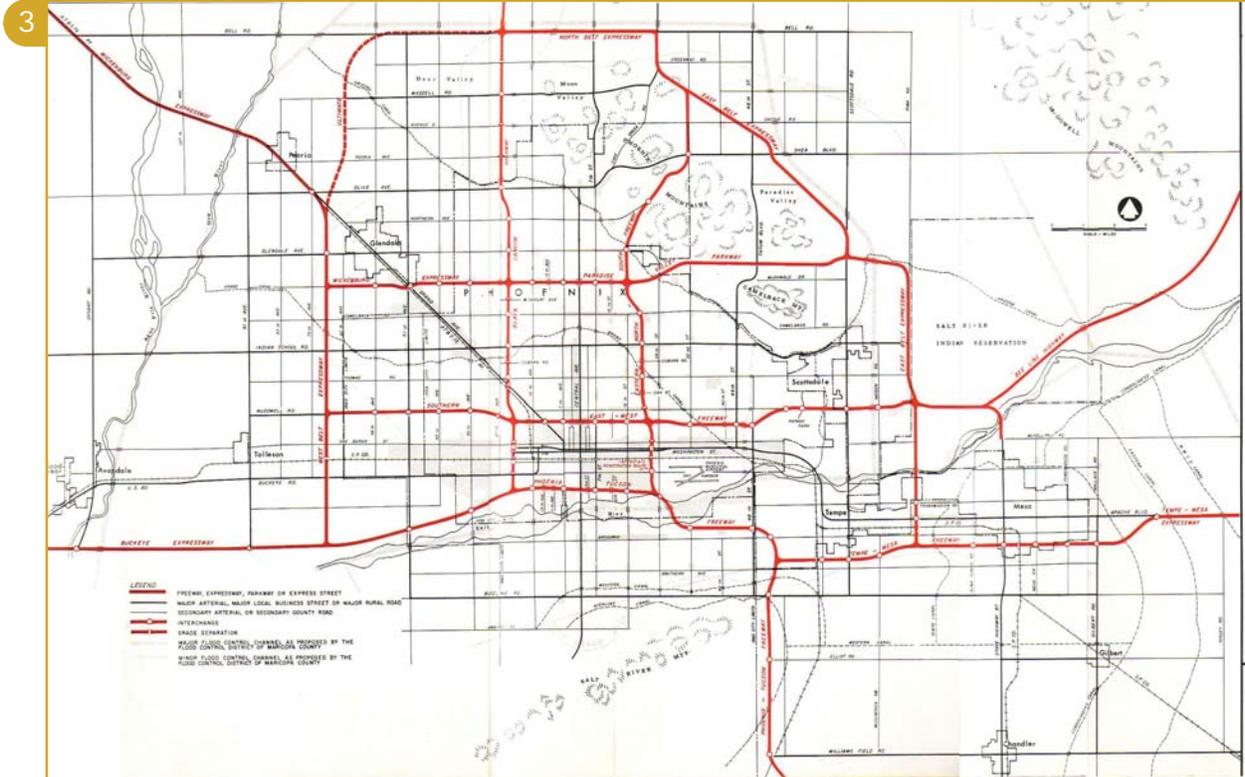
General Policies and Goals

Before specific policies can be formulated and enacted, the State needs to come to agreement on broad policy directions and goals. Below are policy initiatives that provide some options for the best use of state trust land in relation to transportation corridors.

Start Planning Now

Transportation projects take decades to plan and construct. Right-of-way acquisition, engineering, financing, and actual construction of this infrastructure all take time. The importance of planning well in advance is evident when comparing two maps of the metro Phoenix freeway system. In 1960, a plan was drawn up showing an ambitious network of freeways crossing the valley (Figure 3). This planning exercise was well before construction began, at a time when most of the valley was farmland or desert. The freeway network that has developed 50 years later (Figure 4) is easily recognizable from that early drawing. There have been tweaks and changes to the original plan, but the lesson is that what we dream today is likely to come to pass in the future. Long range transportation planning efforts such as Arizona Department of Transportation's Building a Quality Arizona (bqAZ) program need to be fully supported by thoughtful research and analysis.⁶

Proposed Freeway System for Maricopa County in 1960, Before Construction Began source: Arizona Highway Department now known as Arizona Department of Transportation

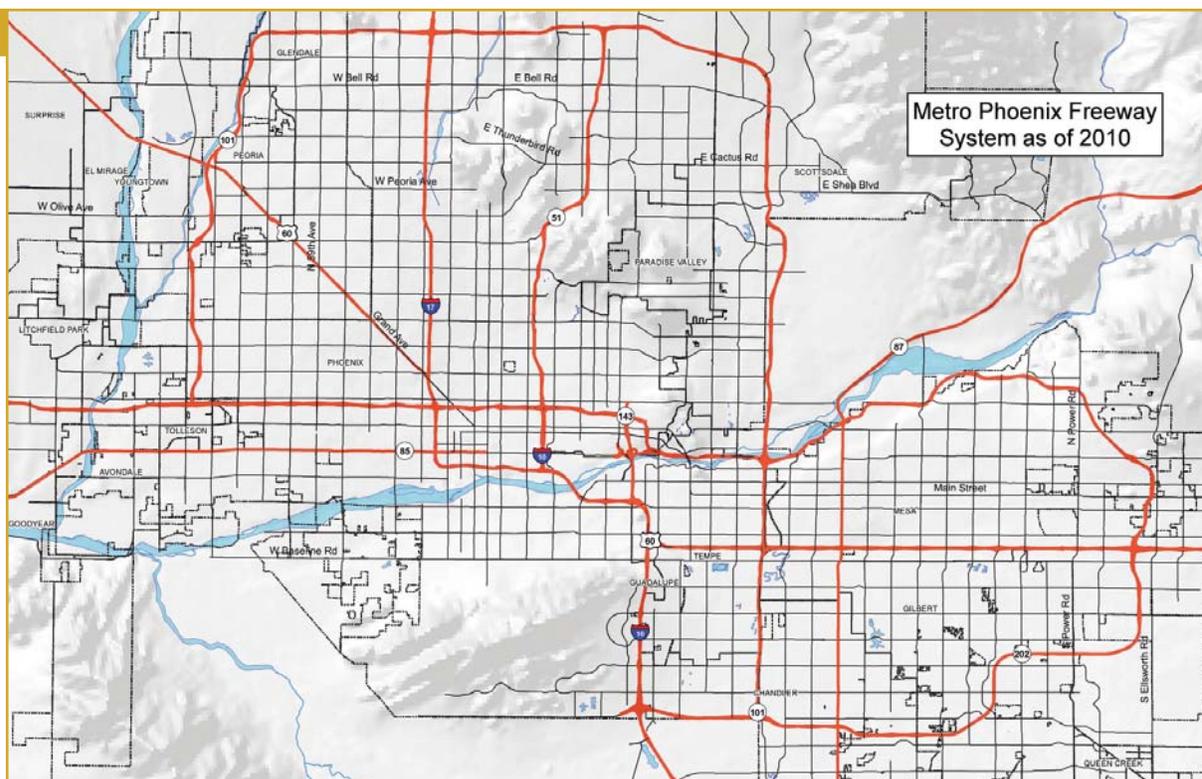




The Freeway System as Built Closely Resembles the Early Plan

source: Sonoran Institute

4



Use Transportation Infrastructure to Stimulate and Shape Future Growth

If transportation networks are planned well in advance of population growth, policymakers have the opportunity to shape the urban form of the state. Development naturally occurs in close proximity to transportation corridors so the character and location of those corridors have a dramatic effect on what is ultimately built.

Efficiently Use Land and Resources

In addition to shaping development patterns, transportation infrastructure also determines how land is used and how resources are consumed. A new eight lane freeway across Pinal County might encourage large numbers of people to purchase large-lot homes and commute many miles by car to Phoenix or Tucson. A high-speed rail line along the same route might encourage denser developments in close proximity to transit stations. The costs and benefits of these alternatives need to be carefully weighed.

Increase the Value of Land Near Improved Infrastructure

The State will benefit from the increased population and commerce spurred by developing transportation infrastructure, but it gains additional benefit as these improvements enhance the value of its trust land. This increased value directly augments returns to the beneficiaries of the state trust, largely the state's school systems. Careful planning can result in both an efficient transportation system and maximum proceeds for the state's schoolchildren.



Specific Technical Policies

Once the general direction of the state's transportation infrastructure policy has been settled, the ASLD can pursue the specific technical tools needed to implement those goals. These policies should be considered for inclusion in a package of reforms for the ASLD.

Allow the Sale of Rights-of-Way Without Auction

Currently, rights-of way must be sold at auction and for 'true value.' This requirement means that before construction can begin, developers must pay tremendous up-front costs that cannot be recovered until the project is completed. Since a constitutional amendment is required for this policy change, it would have to be put to a vote of the electorate as part of a state trust land reform package.

Allow Liens Against State Trust Land

Municipalities commonly finance infrastructure improvements through the issuance of bonds. Proceeds from the sale of the bonds fund the needed infrastructure, and tax receipts repay the bondholders over time. This commonly accepted practice is currently impossible on state trust land because bonds are a lien against the land in the event of default. Since the state constitution forbids liens against trust land, bonding is not available to fund transportation infrastructure.

Pass Legislation to Allow Master Developer Leases

A master developer lease mechanism similar to that used in Utah, would allow the State to enter into joint ventures with private investors. In this scenario, ASLD would provide the land for new developments while private developers would pay the costs of construction. Both parties would then share the proceeds. This approach would give developers access to state trust land at reasonable rates, while allowing the ASLD to sell or lease the land at a higher rate once the infrastructure and other improvements are in place. This proposal has the advantage of requiring only a statutory change, rather than a difficult constitutional amendment.

Conclusion

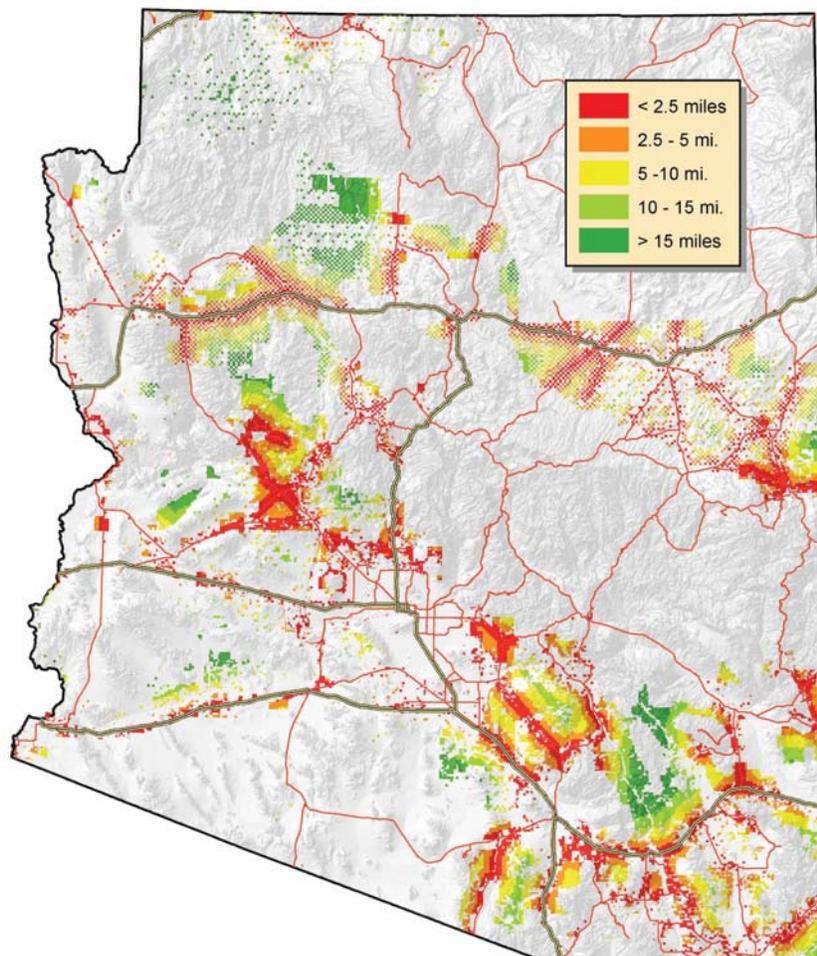


State trust land will play an important role in the development of Arizona's road and rail infrastructure. With 2.8 million acres of trust land within two miles of an existing major road, 20 percent of the trust is located in areas where the transportation network will be improved or extended (Figure 5). Policymakers need to carefully consider mechanisms that would loosen the strictures that prevent ASLD from efficiently developing the state's future transportation infrastructure.

The state's options for financing infrastructure on trust land have been given a thorough legal analysis in *Wires, Roads and Water: Developing Sustainable Infrastructure on State Trust Land*, one of a series of reports on trust land issues published by the Sonoran Institute. These options are reprinted below to provide an overview of the current ability of ASLD to facilitate infrastructure development on trust land.

Trust Land Parcels in Relation to Major Roads *source: Sonoran Institute*

5





Current Status of Infrastructure Financing Mechanisms

The following section reproduces portions of *Wires, Roads and Water*. These excerpts describe financing mechanisms that have special relevance to transportation infrastructure.

Sale of Rights-of-Way

One of the most common means of providing for the development of common infrastructure is through the sale of rights-of-way. Pursuant to Arizona statute, ASLD is permitted to grant rights-of-way on or across trust land “for any purpose it deems necessary.”⁷ In addition, ASLD has special authority to grant rights-of-way for transportation purposes to federal and state agencies and political subdivisions (such as cities and towns) without public auction.⁸ Rights-of-way can be applied for and granted on any parcel of state trust land absent an insurmountable conflict with existing rights, and irrespective of the consent of surface or subsurface lessees.⁹ ASLD is permitted to require a bond or other assurance to ensure restoration of the surface after closure of a right-of-way.¹⁰

Rights-of-way for a term of 50 years or less can be granted without a public auction; although in no event can a right-of-way be conveyed for less than appraised value. However, aside from grants to public agencies as noted above, any right-of-way that “amounts to the disposition of or conveys a perpetual right to use the surface of the land” must be sold at public auction. These sales are conducted in the same manner as land sales...¹¹ Also, regardless of the process of sale, rights-of-way must always be conveyed for no less than their appraised value.¹² ASLD is also permitted to dispose of sites for reservoirs, dams, power plants, irrigation plants, and other purposes under the same rules governing the disposal of rights-of-way.

The constitutional requirement that rights-of-way be disposed at auction and for their “true value” has frequently had unfortunate consequences in practical application. In many cases, rights-of-way have little actual value to the trust, such that the time, cost, and effort required to conduct an auction for a right-of-way cancels out or even exceeds the revenues to the trust from the sale. Nevertheless, ASLD cannot refuse to process these applications as a practical matter, since (given the size of the trust portfolio) trust land would otherwise constitute an insurmountable barrier to necessary infrastructure.

Worse, in many cases the high cost of siting rights-of-way across trust land has led public infrastructure to be routed around trust land. This bypassing occurs despite the fact that placing infrastructure on trust land would substantially increase its value and, from a financial standpoint, the trust would benefit from granting the right-of-way for free. There are numerous instances where the trust has ended up actually losing money as a result of charging for infrastructure. For example, many cities assess development fees against trust land that incorporate the costs of acquiring the rights-of-way, plus an administrative fee. In essence, the trust is charged more for the right-of-way than the trust can expect to receive.



Infrastructure Planning in Development Plans

Once a conceptual plan for state land is in place, ASLD can designate land as suitable for a development plan. The development plan, which must be consistent with the existing conceptual plan, can be prepared by ASLD using its own resources or pursuant to a planning contract issued to the lowest and best bidder.¹³ ASLD may issue a planning permit to a bidder at auction; the planning permittee is then responsible for planning and entitling the property and submitting the plan to ASLD for approval.¹⁴ If necessary, ASLD can also develop or contract/permit for the development of a secondary plan to enhance an approved development plan.

The development or secondary plan defines specific land uses, densities, development timing, provisions for assured water supply, zoning and land use controls, and other development planning elements. The development plan also defines infrastructure components, including public facilities, water and wastewater infrastructure, transportation, parks and recreation, school sites, and other infrastructure components.¹⁵ If existing infrastructure is inadequate to serve trust land, a development plan located within a city or town may also include provisions for a master plan area of 160 acres or larger. In this case, the plan can instead identify a set of design guidelines, conditions, and restrictions, as well as provisions for infrastructure planning, phasing, and funding.¹⁶

When the plan is approved, ASLD can then reclassify the land included in the plan in preparation for sale.¹⁷ Classification is required to be based on a determination that “reclassification is in the best interest of the trust and of the State.”¹⁸ The reclassification may be appealed by any person adversely affected.^{19,20} If no appeal is taken, or if the decision of the Commissioner is upheld, any lease on the reclassified land is automatically cancelled, with a limited preferred right to lease the reclassified land given to the former lessee.²¹

Upon reclassification, the land can be sold for development.²² As a condition of sale and when a certificate of purchase is issued to the buyer (or as the terms of any commercial lease), ASLD can impose enforceable covenants and conditions on the buyer/lessee to implement the elements of the development or secondary plan. A breach of these conditions can lead to reversion of the parcel to ASLD.²³

To accomplish the development of planned infrastructure in the development or secondary plan, ASLD can attach the value of the various easements and infrastructure sites (such as those for parks, schools, open space, and other public facilities) to parcels that will be sold or leased for development as a means of obtaining the required appraised value for these parcels. ASLD has substantial flexibility in establishing the value of the infrastructure components in the development plan, provided that the total revenues derived from all parcels within the development plan are not less than the aggregate appraised value of the land located within the plan.^{24,25}

A recent ruling from the Arizona Court of Appeals in *Northeast Phoenix Holdings, LLC v. Winkleman* suggests that this statutory tool may be of significant importance in navigating around the strictures of the *Lassen* decision (holding that the ASLD must receive true value for any right-of-way across trust land). In *Northeast Phoenix Holdings*, the court found that it was constitutional for the Commissioner to bundle a parcel of land together with associated rights-of-way for purposes of appraisal and auction, and to then assign a total value to the combined property. Because the successful bidder was required to expend



significant amounts of money to construct infrastructure on these rights-of-way as a condition of the 99-year commercial lease, the practical effect of this action was that the resulting appraisal applied a significant “discount” to the value of the rights-of-way, since the costs that would be incurred by the bidder were quite substantial in comparison to the value of the interests granted in the trust land.²⁶

The court found that there was no harm to the trust associated with this approach to the appraisal and auction process. This holding relied, at least in part, on the Commissioner’s statutory authority to assess the value of rights-of-ways or parcels to be used for public purposes and assign those values to particular parcels “within the scope of an approved development or secondary plan” for urban land.²⁷ It is also critical to note that in this case the court specifically found that it was not a violation of the Arizona constitution, Enabling Act, or the trust responsibility to approach the appraisal and disposal of property in this manner. This decision confirmed that ASLD has substantial flexibility to bundle infrastructure, rights-of-way, financing, and land development together into a single package for purposes of land sales and leases.

This mechanism has allowed ASLD to put together complex, large scale development plans in which the purchasers or lessees of each parcel agree to build a portion of the infrastructure required for the development as a whole. In ASLD’s massive Desert Ridge development project in northern Phoenix, the owner of each certificate of purchase was responsible for constructing both the infrastructure required for the development of their particular parcel, as well as the common infrastructure required to access and provide utility service to neighboring parcels. For example, the developer of Parcel A would construct the interchanges and roads necessary to access both Parcel A and neighboring Parcels B and C, along with oversize sewer and water lines that would serve all three parcels. The developer of Parcel B would then extend that infrastructure throughout Parcel B and also to Parcel C. In turn, the developers of Parcel A and B would receive development fee credits for the construction of this “excess” infrastructure, and the developer of Parcel C would then reimburse both through the payment of development fees to underwrite the infrastructure construction.

Although workable in theory, this strategy has proved to be unreliable in practice. In the aforementioned Desert Ridge project, the recent downturn resulted in several major developers either defaulting or threatening to default on their certificates of purchase and/or commercial leases. Other developers experienced significant construction delays due to lack of housing demand, and sought corresponding delays in their infrastructure construction obligations. Given the overlapping and interdependent nature of the infrastructure construction agreements that held the project together, the resulting combination of delays and defaults left ASLD with a literal patchwork of half-constructed infrastructure, which in turn left many surviving developers without the completed roads, water, and sewer lines necessary to connect their own projects to existing public infrastructure.



Constitutional Lien Authority

One approach to providing for public infrastructure financing that has been examined as part of previous reform discussions is to create an exception to the constitutional restrictions against liens on state land that otherwise apply by virtue of Article IX of the Arizona constitution. This proposed constitutional exception would allow, pursuant to further legislative authorization, trust land to be included in a special taxing district, such as a community facility district (CFD), provided that certain criteria are met, including a provision of security adequate to prevent foreclosure of the lien.

Although this provision has appeared in at least two different versions of recent trust reform measures, it remains unclear how this change could be practically implemented as this proposed reform raises both substantial practical and legal issues. From a practical standpoint, the issue is that in order for a potential CFD on trust land to be able to accomplish anything from a financing perspective, the CFD will require identified methods of both creating a revenue stream and securing the trust land such that the bonds issued by the CFD would be marketable.

Both of these complex issues will require a substantial supporting statutory and/or administrative rulemaking framework in order to succeed. For purposes of the former, it will be necessary to develop a methodology and approach to the formation and implementation of a CFD that could occur early enough in the development cycle for a large project to provide a viable alternative for financing public infrastructure, while still having enough of an identified, known, and certain revenue stream that it could support a marketable bond issue. The latter will require identifying methods of securing the trust land against the liens created by a CFD obligation such that trust land will not be forfeited if things go badly.

In light of recent credit market conditions, identifying a means of meeting both needs will likely require substantial discussion among the ASLD and local development interests. Previous reform efforts assumed that a variety of credit forms would be readily available to developers for purposes of securing a trust land lien; however, more recent experience suggests that credit may be extraordinarily difficult to arrange. In this new context, a stakeholder discussion to evaluate and define an acceptable financing structure and approval process will be essential.

Expansion of Participation Contract Authority

In light of the substantial concerns associated with the development of constitutional lien authority, an alternative approach would be to expand the ASLD's current participation authority. As discussed above, the participation statute framework permits the formation of something akin to a limited joint venture, in which the developer can obtain access to state land at a substantially lower cost, in exchange for providing the ASLD a percentage of back-end revenues.

While the participation contract statute already allows the ASLD to participate in this type of transaction, this process has not been widely viewed as a desirable approach, and there are well documented reasons as to why it has not been frequently employed. The most significant reason is that a participation contract



requires a relatively high down payment of 2.5 percent. For a large project the developer is required to cover a substantial amount of additional financing costs up front - costs that could probably be better employed improving the value of the land in preparation for sale. This requirement has the effect of limiting the potential size of projects, since the larger the project, the greater the financing burden placed on the developer therefore making the investment less likely.

Similarly, and perhaps more importantly, related requirements of the participation statute oblige the developer to provide even more up-front costs, at least ten percent, prior to reaching critical entitlement stages of planning and zoning.²⁸ This requirement limits the potential size of projects and creates incentives to delay entitlements for as long as possible to avoid incurring costs, both of which are contrary to the interests of the trust. Worse, the statute imposes a similar ten percent requirement before the developer can begin making physical improvements to the property, including grading activities as well as the construction of required infrastructure.²⁹

These requirements are only complicated by the partial patent rules discussed earlier which are applied to a participation project. Under those rules, ASLD can only issue a patent for less than the entire property where the remaining value of the property is greater than the amount owed under the certificate of purchase, and that the value already paid for the acreage subject to the partial patent exceeds the per-acre purchase price for the entire property.³⁰ Partial patents cannot be issued for less than ten acres or less than $\frac{1}{4}$ of the total land (whichever is smaller), although if the original land tract is less than 40 acres in size, partial patents may be issued for as little as five acres.³¹ These requirements substantially limit flexibility in project design and disposal, and are only made more restrictive by an additional statutory requirement that no partial patent disposals can occur under a participation contract until the ten percent requirement has been met.³² Taken together, these rules require developers to cover an enormous additional amount of financing costs and risks, creating substantial disincentives for use of this mechanism that likely make use of the participation mechanism uneconomical in many circumstances.

Appendix I provides a series of suggested amendments to the existing participation statutes that would address at least some of these concerns by relaxing a few of the most problematic requirements. It is critical to recognize that the closer the statute gets to authorizing something that looks like a joint venture, the more risk it entails to the state land trust. Many, if not most of these risks can be addressed through the inclusion of appropriate contractual protections on a case-by-case basis, but mitigating risk in this manner will require a high degree of vigilance and sophistication on the part of the ASLD; capabilities that will be a challenge to maintain in light of current budgetary limitations.



The Master Developer Lease

A final, and perhaps the most promising approach, would be the development of a master developer lease framework similar to that employed in certain other Western states, notably Utah. The master developer lease concept is an attempt to provide for an entirely different approach, in which the ASLD can follow something closer to a true joint venture, but with far more limited exposure than in a true joint venture.

In a typical private joint venture, the landowner/investor puts up the land, the developer puts up the development costs, and they share in the proceeds. The master developer lease is an effort to provide something similar, avoiding the partial patent problems, down payment issues, and other restrictions by allowing the ASLD to continue to own the land throughout the primary process of development, therefore letting the developer take advantage of the ASLD's low carrying costs.

Appendix II contains a proposed version of a master developer lease statute. Under the statute, developers bid on a "master developer lease" through a multiple-phase auction process that would allow the ASLD to properly qualify bidders. The lease can then provide for varying levels of detail requirements related to planning, entitlement, development of infrastructure, and other requirements, mirroring the ASLD's existing authorities to delegate such tasks, while providing the developer with a far more reliable means of cost recovery and reasonable expectations of profit. The lease effectively provides a master developer with a deliberately low-cost approach to obtaining access to state trust land for development and disposal, compensating the developer with a participation mechanism, while ensuring higher revenues to the ASLD by allowing them to participate in land sales and leases after substantial entitlement and/or development has occurred.

The lease also preserves the opportunity for multiple strategies for ultimate land disposal, by specifying that land subject to the lease can be sold by the master developer subject to participation by the ASLD, but also permitting land developed under the lease to be sold by ASLD at auction, subject to a similar participation element. This would allow for a flexible disposal plan that would combine the potential benefits of state land auctions for the disposal of large parcels and sections of a master plan (requiring the private developer to undertake the complex planning and permitting that is generally beyond the capacity of the ASLD), while allowing smaller parcels and rights-of-way to be disposed of by the developer for the sake of efficiency and/or profitability (again, while taking advantage of ASLD's low carrying costs).

While recognizing the somewhat higher legal risk with this approach, the master developer lease concept should in fact pass constitutional muster provided that the terms of the lease are clearly defined, the lease is appraised properly, and it is sold competitively at auction. It is important to note that the proposed master developer lease notice and auction requirements are intended to follow the same requirements as those of a sale. These requirements are necessary because this process, to the extent that it includes a lessee's participation, could be viewed effectively as either a lease or as a two-stage sale, whereby the master developer lease represents the sale of the future lessee's participation subject to the risks undertaken by the developer, and the eventual sale/lease of the land itself by the ASLD (or by the developer) represents the sale of the remainder interest.



Previous case law evaluating the legality of “holding leases” suggests that this type of structure should be permissible. In *Havasu Heights Ranch and Development Corporation v. State Land Department of Arizona*, the court was asked to evaluate the validity of “holding leases” issued by the ASLD to Havasu Heights.³³ The leases, labeled “commercial,” were issued “for the purpose of holding for future commercial uses as may be approved by lessor” and prohibited any actual current use of the land.³⁴

The ASLD was in the practice of issuing such leases essentially for speculative purposes based on the value of the preferred right of renewal granted by statute in the instance that the land was subsequently reclassified for urban land development.³⁵ The leases were challenged on a number of grounds, including that “holding for speculation” is not a valid commercial “use” within the version of A.R.S. § 37-101 that was then applicable.

The court denied this challenge, finding that “use” can mean “purpose,” which is an “end, objective, plan or project” and does not require “actual use.”³⁶ Furthermore, the definition of “commercial” land included (and still does under the present statute) “business” purposes and “any general purpose other than agricultural, grazing, mining, oil, homesite or rights-of-way.”³⁷ The court found that holding for potential future profit could fit into either of these categories.³⁸ The court observed that its statutory interpretation was supported by the requirements that the ASLD make the “best use” of trust land and maximize the financial benefits flowing from the trust. Keeping options open, the court observed, may in some circumstances be the “best use” of trust land and consistent with the duty to maximize the value of the trust.³⁹



Proposed Statutory Language Changes to Improve Participation Agreement Structure and to Improve Patent Issuance Process for the Arizona State Land Department

37-239. Participation contracts: planning and disposition proposals

A. The commissioner may enter into participation contracts and may charge a fee to an applicant to retain one or more consultants to assist in negotiating or preparing a participation contract. If the applicant is not the successful bidder, the commissioner shall refund the fee.

B. Before recommending any participation contract to the board of appeals, the commissioner shall consider and report on:

1. The methodology for determining any reimbursable infrastructure costs.
2. An analysis of the state trust revenue to be derived from the proposed participation contract.
3. The historical trends in land values in the area by types of proposed land uses.
4. An analysis of the financial feasibility of the planned development's proposed build-out schedule.
5. An evaluation of the potential economic risks and benefits to the trust arising from the participation contract.
6. An analysis of the economic and financial impact, and other factors determined by the commissioner, regarding alternative dispositions or no disposition of the lands.

C. Each participation contract shall:

1. Provide that subsequent sales or leases of state land that are subject to a participation contract shall be based on the criteria and the phasing and disposition plan included in the participation contract and the formula for determining the amount of revenue to the trust as a result of the subsequent sale or lease.
2. Prescribe rights and remedies in the case of default including rights to cure, forfeiture and other appropriate remedies.

D. This state's share of the revenues from the sale of land under a participation contract shall be deposited, pursuant to sections 35-146 and 35-147, in the appropriate perpetual fund.

E. A participation contract may be offered on lands that do not have a development plan approved by the commissioner or on land that may require the successful bidder to further plan and zone property after the auction. Before auctioning a contract requiring planning and zoning, the commissioner may solicit planning and disposition proposals, through advertisement for at least five consecutive days in a newspaper of general circulation in the county in which the lands are located, or if

there is no daily newspaper of general circulation in that county, the advertisement shall be published as many times within a thirty-day period as the newspaper is



published but not more than five times. The commissioner may require information regarding the projected planning and zoning, the estimated costs of the planning and zoning and the financial feasibility of the proposal. The proposals shall also contain proposed participation payments. The commissioner may provide that some of the information that is contained in the proposals will remain confidential, if the information is proprietary, until the commissioner recommends a contract to the board of appeals. After the proposals are received, the commissioner may conduct preauction conferences regarding the proposals. The commissioner may then auction a participation contract that, at the commissioner's option, may incorporate information that was acquired through the proposal process. A participation contract that is entered into pursuant to this subsection shall:

1. Require the successful bidder to pay a nonrefundable down payment of at least two and one-half per cent of the minimum bid for the property, **UNLESS THE COMMISSIONER DETERMINES THAT A LOWER AMOUNT WILL IMPROVE THE MARKETABILITY OF THE PARTICIPATION CONTRACT. IN ADDITION TO THE REQUIRED DOWN PAYMENT, THE SUCCESSFUL BIDDER SHALL BE REQUIRED TO PAY** ~~plus~~ the required fees prescribed in section 37-108 and, if the successful bidder did not pay the consultant fee pursuant to subsection A of this section, any fee charged pursuant to subsection A of this section, by cashier's check at the time of the auction. The down payment does not include participation payments.
2. Require an additional payment to be made within thirty days if the amount bid for the land exceeds the minimum bid, so that the total down payment, including the down payment paid on the date of the sale, will equal the required percentage down payment of the total amount bid. The additional payment does not include participation payments.
3. Require the successful bidder to post within thirty days after the auction a surety bond or another form of collateral that the commissioner considers to be sufficient to cover the costs of the required planning and zoning.
4. Provide for the forfeiture of the contract and any accompanying certificate of purchase or lease if the successful bidder fails to provide the required collateral.
5. Describe the land to be planned and zoned, which may include land that is retained by the department and not auctioned with the contract.
6. Contain guidelines for expected planning and zoning and time frames for the planning and zoning consistent with the guidelines.
7. Provide for the forfeiture of the contract and any accompanying certificate of purchase or lease if the successful bidder fails to accomplish the planning and zoning within the prescribed time, unless extended in writing by the commissioner based on good cause shown.
8. ~~Require at least ten per cent of the total purchase price to be paid by the time the planning and zoning are completed, unless extended in writing by the commissioner based on good cause shown.~~
9. Provide for absolute approval authority by the commissioner of any planning and zoning actions.



~~10. Deny the successful bidder the right to physically develop the property, including grading or leveling, until at least ten per cent of the purchase price has been paid.~~

~~11. Deny the issuance of partial patents for the property until at least ten per cent of the purchase price has been paid and the requirements of section 37-251 have been met.~~

1012. Contain such other terms that the commissioner considers to be necessary or appropriate.

F. After it is accepted by the commissioner, a planning and zoning proposal submitted to the local governing body by the successful bidder shall be administered as a state general plan or development plan as appropriate, according to the procedures described in article 5.1 of this chapter.

37-251. Issuance of patents for state lands

A. Upon filing the certificate of purchase, together with evidence of full payment of principal and interest, for the entire tract of land sold, and evidence that all terms and conditions of the certificate of purchase have been satisfied, the department shall issue to the purchaser a patent under the seal of the state, signed by the governor and countersigned by the secretary of state.

B. On application by the purchaser a patent for less than the entire tract may be issued to the purchaser if the commissioner finds that it is in the best interest of the applicable trust, subject to the following:

1. The parcel to be patented may consist of one or more pieces of land, described either by metes and bounds or by legal subdivision.

2. A patent shall not be issued for less than one-fourth of the tract sold or less than ten acres, whichever is smaller, except that:

(a) If the original tract is less than forty acres, a patent may be issued for parcels of not less than five acres each.

(b) In the case of a right-of-way the actual parcel needed for the right-of-way may be patented.

3. Before any parcel less than the entire tract is patented the department shall determine that the remaining lands are of greater value than the unpaid balance of the certificate of purchase and that the remaining lands have development potential independent of the acreage that is being patented. Before patenting, the commissioner shall require to be paid an amount, on the lands to be patented, in excess of the purchase price per acre of the entire tract until the total price of the entire tract has been paid. In establishing the amount to be paid for the partial patent the commissioner shall take into account the amount of the down payment made on the entire tract. Nothing in this paragraph affects certificates of purchase issued before September 30, 1988.

4. When paid, the partial purchase price shall be credited on the total purchase price stated in the certificate of purchase. The department may issue a supplement to the certificate of purchase deleting the land patented and reducing the amount of each of the remaining annual installments to that amount which, when all installments are



paid in full, will discharge the entire unpaid balance due on the original certificate of purchase.

5. IN THE CASE OF LANDS SOLD PURSUANT TO A PARTICIPATION CONTRACT, PATENTS MAY BE ISSUED CONSISTENT WITH THE TERMS OF THE PARTICIPATION CONTRACT.

C. Any land patented under this section is subject to existing valid rights-of-way.

D. If the purchaser has died, and the land described has been sold and confirmed by order of court, the patent shall be issued to the purchaser to whom confirmation of sale was made. If the estate of the deceased person is distributed by order of the court, the patent shall be issued to the heirs of the deceased person, or to the person to whom the lands are distributed. Patents issued to a deceased person shall inure to the benefit of the heirs or assigns of the deceased person.

E. If an assignment of the certificate of purchase has been filed with and approved by the department, the patent shall be issued to the assignee, and if proper evidence of a transfer of the certificate by operation of law is filed with the department, the patent shall be issued to the transferee.

F. A record of all patents issued shall be kept in the records of the department.



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Proposed Statutory Language to Create a Master Developer Lease Provision for State Trust Lands in Arizona

37-281.05 (ALT. 37-335.05). LEASING URBAN LANDS FOR MASTER DEVELOPER PURPOSES

A. URBAN LANDS MAY BE LEASED FOR MASTER DEVELOPER PURPOSES FOR A TERM OF UP TO FIFTY YEARS IN ACCORDANCE WITH THE CONSTITUTION OF ARIZONA, STATE LAW AND THE RULES OF THE DEPARTMENT. A MASTER DEVELOPER LEASE SHALL BE TREATED AS A COMMERCIAL LEASE AND SHALL BE SUBJECT TO THE REQUIREMENTS OF A.R.S. §37-281.02, WHERE NOT IN CONFLICT WITH THE PROVISIONS OF THIS SECTION.

B. THE DEPARTMENT MAY RETAIN ONE OR MORE CONSULTANTS TO ASSIST IN NEGOTIATING OR PREPARING A MASTER DEVELOPER LEASE, AND MAY CHARGE A FEE TO ANY APPLICANT TO DO SO. IF THE APPLICANT IS NOT THE SUCCESSFUL BIDDER, THE DEPARTMENT SHALL REFUND THE FEE.

C. IF THE COMMISSIONER DETERMINES THAT LEASING OF THE LAND UNDER THE MASTER DEVELOPER LEASE IS IN THE BEST INTEREST OF THE STATE, THE TRACT OR TRACTS SHALL BE OFFERED FOR LEASE TO THE HIGHEST AND BEST BIDDER AT A PUBLIC AUCTION. THE AUCTION SHALL BE CONDUCTED AT THE PLACE, IN THE MANNER, AND AFTER THE NOTICE BY PUBLICATION PROVIDED FOR SALES OF SUCH LANDS, EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION. EACH OFFER FOR LEASE SHALL RESERVE THE RIGHT IN THE DEPARTMENT TO REJECT ANY AND ALL BIDS AND TO AGAIN OFFER THE TRACT OR TRACTS FOR LEASE IF THE BIDS RECEIVED ARE NOT ACCEPTABLE TO THE DEPARTMENT.

D. A MASTER DEVELOPER LEASE SHALL PROVIDE FOR THE USE AND POSSESSION OF TRUST LANDS BY A PARTY SERVING AS A MASTER DEVELOPER FOR THE PURPOSES OF ONE OR MORE OF THE FOLLOWING:

1. PLANNING AND ZONING URBAN LANDS;
2. MAKING IMPROVEMENTS TO URBAN LANDS TO FACILITATE THEIR SUBSEQUENT LEASE OR SALE FOR DEVELOPMENT;
3. PROVIDING FOR THE SUBSEQUENT SALE OR COMMERCIAL LEASE OF URBAN LANDS FOR DEVELOPMENT, RIGHTS-OF-WAY, CONSERVATION, OR PURPOSES ANCILLARY TO THE SAME BY THE LESSEE OR THE DEPARTMENT;
4. PROVIDING FOR THE SUBSEQUENT SALE OR LEASE OF URBAN LANDS FOR DEVELOPMENT, RIGHTS-OF-WAY, CONSERVATION, OR PURPOSES ANCILLARY TO THE SAME UNDER A PARTICIPATION CONTRACT.

E. THE MASTER DEVELOPER LEASE MAY REQUIRE THE LESSEE TO UNDERTAKE ONE OR MORE OF THE ACTIVITIES LISTED IN SUBSECTION D ON SUCH TERMS AS THE COMMISSIONER MAY DEEM APPROPRIATE, SUBJECT TO THE REQUIREMENTS OF THIS SECTION. THE RENTAL FOR A MASTER DEVELOPER LEASE SHALL BE DETERMINED BASED ON THE APPRAISED VALUE OF THE LEASE, WHICH SHALL BE REDUCED IN ACCORDANCE WITH THE IMPROVEMENTS, COSTS, AND EFFORTS TO BE UNDERTAKEN AND INCURRED BY THE LESSEE



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UNDER THE TERMS OF THE LEASE AND SHALL CONSIDER THE INCREASED VALUE TO THE TRUST ANTICIPATED TO RESULT FROM THE SUBSEQUENT SALE OR LEASE OF LANDS AS A RESULT OF THE SAME.

F. A MASTER DEVELOPER LEASE THAT REQUIRES THE LESSEE TO UNDERTAKE PLANNING AND ZONING OF PROPERTY SUBJECT TO LEASE SHALL REQUIRE THE APPROVAL OF THE COMMISSIONER FOR ANY PLANNING AND ZONING ACTIONS, AND MAY INCLUDE PROVISIONS FOR REIMBURSEMENT OF PLANNING COSTS AS PROVIDED IN 37-388.

G. A MASTER DEVELOPER LEASE MAY REQUIRE THE LESSEE TO IMPROVE LANDS SUBJECT TO LEASE VIA THE INSTALLATION OF IMPROVEMENTS ON STATE LANDS, AND IF THE LESSEE WILL NOT RECEIVE FULL COMPENSATION FOR SUCH IMPROVEMENTS VIA A PARTICIPATION ELEMENT PURSUANT TO SUBSECTION H OF THIS SECTION, MAY PROVIDE FOR THE REIMBURSEMENT OF THE COSTS OF SUCH IMPROVEMENTS AT A COMMERCIALY REASONABLE RATE OF INTEREST, ON SUCH TERMS AS THE COMMISSIONER MAY DEEM APPROPRIATE. THE LEASE MAY INCORPORATE OR PROVIDE FOR AGREEMENTS FOR OFF-SITE IMPROVEMENT OF URBAN LANDS PURSUANT TO A.R.S. §37-335.02 OR AGREEMENTS TO FUND, INSTALL, AND REIMBURSE COSTS OF INFRASTRUCTURE ON URBAN LANDS PURSUANT TO THE REQUIREMENTS OF A.R.S. 37-335.06. NOTWITHSTANDING ARTICLE 5 OF THIS TITLE AND THE PROVISIONS OF A.R.S. §37-335.01, A MASTER DEVELOPER LESSEE SHALL NOT BE ENTITLED TO COMPENSATION FOR IMPROVEMENTS MADE UNDER A MASTER DEVELOPER LEASE EXCEPT AS PROVIDED IN SUCH AGREEMENT OR AS OTHERWISE SPECIFICALLY PROVIDED IN THE TERMS OF THE LEASE.

H. A MASTER DEVELOPER LEASE MAY INCLUDE PROVISIONS FOR THE SUBSEQUENT SALE, LEASE, OR SUBLEASE OF LANDS BY THE DEPARTMENT OR THE LESSEE, AS THE COMMISSIONER MAY DEEM APPROPRIATE, AS FOLLOWS:

1. IF ANY LANDS SUBJECT TO THE LEASE WILL BE SUBSEQUENTLY LEASED OR SOLD BY THE DEPARTMENT, PROVISIONS FOR COMPENSATION TO THE LESSEE FOR THE LESSEE'S INVESTMENTS IN PLANNING AND IMPROVEMENTS TO THE LANDS SHALL BE CLEARLY STATED AND DEFINED IN THE MASTER DEVELOPER LEASE. A MASTER DEVELOPER LEASE WHICH INCLUDES SUCH PROVISIONS MAY INCLUDE A PARTICIPATION ELEMENT WHEREBY THE LESSEE MAY RECEIVE A PERCENTAGE OF THE REVENUES GENERATED BY SUBSEQUENT SALES OR LEASES OF THE LANDS BY THE DEPARTMENT IN FULL OR PARTIAL COMPENSATION OF THE LESSEE'S INVESTMENTS IN PLANNING AND IMPROVEMENTS TO THE LANDS. ANY LEASE CONTAINING SUCH A PARTICIPATION ELEMENT SHALL BE TREATED AS A PARTICIPATION CONTRACT AND SHALL BE SUBJECT TO THE PRIOR APPROVAL OF THE BOARD OF APPEALS UNDER A.R.S. §37-239, PROVIDED THAT THE REQUIREMENTS OF A.R.S. § 37-239, SUBSECTION E SHALL NOT APPLY TO A MASTER DEVELOPER LEASE.

2. A MASTER DEVELOPER LEASE MAY ALTERNATIVELY INCLUDE PROVISIONS FOR THE SUBSEQUENT SALE OR COMMERCIAL LEASE OF LANDS BY THE LESSEE PURSUANT TO A PARTICIPATION ELEMENT WHEREBY THE DEPARTMENT WILL RECEIVE A SHARE OF THE REVENUES GENERATED BY SUBSEQUENT SALES OR LEASES UNDERTAKEN BY THE LESSEE. ANY SUCH LEASE SHALL BE TREATED AS A PARTICIPATION CONTRACT AND SHALL BE SUBJECT TO THE PRIOR APPROVAL OF THE BOARD OF APPEALS UNDER A.R.S. §37-239, PROVIDED THAT THE



REQUIREMENTS OF A.R.S. § 37-239, SUBSECTION E SHALL NOT APPLY TO A MASTER DEVELOPER LEASE.

I. PRIOR TO ISSUING A MASTER DEVELOPER LEASE FOR AUCTION, THE COMMISSIONER MAY SOLICIT PROPOSALS FOR THE MASTER DEVELOPER LEASE THROUGH ADVERTISEMENT FOR AT LEAST FIVE CONSECUTIVE DAYS IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY IN WHICH THE LANDS ARE LOCATED, OR IF THERE IS NO DAILY NEWSPAPER OF GENERAL CIRCULATION IN THAT COUNTY, THE ADVERTISEMENT SHALL BE PUBLISHED AS MANY TIMES WITHIN A THIRTY-DAY PERIOD AS THE NEWSPAPER IS PUBLISHED BUT NOT MORE THAN FIVE TIMES. THE COMMISSIONER MAY REQUIRE INFORMATION REGARDING PROPOSED PLANNING AND ZONING, PROPOSED INFRASTRUCTURE INSTALLATION AND OTHER IMPROVEMENTS, ESTIMATED COSTS AND MEANS OF FINANCING, AND ANY OTHER INFORMATION THE COMMISSIONER DEEMS APPROPRIATE. THE RESPONDENTS MAY ALSO BE REQUIRED TO PROPOSE A COMPLETE COMPENSATION PACKAGE FOR THE MASTER DEVELOPER LESSEE, INCLUDING PROPOSED MEANS OF REIMBURSING THE LESSEE FOR TIME AND COSTS, INTEREST ON TIME AND COSTS, STRUCTURED FEES, AND ANY PARTICIPATION ELEMENTS. THE COMMISSIONER MAY PROVIDE THAT SOME OF THE INFORMATION THAT IS CONTAINED IN THE PROPOSALS WILL REMAIN CONFIDENTIAL, IF THE INFORMATION IS PROPRIETARY, UNTIL THE COMMISSIONER SELECTS A FINAL FORM FOR THE MASTER DEVELOPER LEASE. AFTER THE PROPOSALS ARE RECEIVED, THE COMMISSIONER MAY CONDUCT PREAUCTION CONFERENCES REGARDING THE PROPOSALS. THE COMMISSIONER MAY THEN AUCTION A MASTER DEVELOPER LEASE THAT, AT THE COMMISSIONER'S OPTION, INCORPORATES INFORMATION THAT WAS ACQUIRED THROUGH THE PROPOSAL PROCESS.

J. IN CONDUCTING AN AUCTION FOR A MASTER DEVELOPER LEASE, THE COMMISSIONER MAY REQUIRE BIDDERS TO BID ON MULTIPLE LEASE TERMS, INCLUDING THE AMOUNT OF LEASE PAYMENTS, PARTICIPATION TERMS, AND/OR PROVISIONS FOR LESSEE COMPENSATION.

K. IN SELECTING THE HIGHEST AND BEST BIDDER FOR A MASTER DEVELOPER LEASE, THE COMMISSIONER MAY REQUIRE THAT EACH BIDDER DEMONSTRATE THE NECESSARY EXPERIENCE, EXPERTISE AND FINANCIAL CAPABILITY TO SERVE AS A MASTER DEVELOPER FOR THE LANDS SUBJECT TO LEASE AND TO PLAN, IMPROVE, AND DISPOSE OF THE LANDS SUBJECT TO LEASE IN THE BEST INTEREST OF THE TRUST, INCLUDING THE QUALIFICATIONS OF ANY CONSULTANTS. THE COMMISSIONER MAY RETAIN ONE OR MORE INDEPENDENT EXPERTS TO ASSIST IN ASSESSING THE QUALIFICATIONS OF THE BIDDERS AND THEIR CONSULTANTS AND MAY CHARGE A FEE TO ANY APPLICANT TO DO SO. IF THE APPLICANT IS NOT THE SUCCESSFUL BIDDER, THE COMMISSIONER SHALL REFUND THE FEE.



End Notes

¹Arizona Good Roads Association. (1913) *Illustrated Road Maps and Tour Book.*, (Reprinted 1987) Phoenix: Arizona Highways magazine.

²Id. p.6.

³For an analysis of the restrictions that ASLD operates under, see *The Quarrel Between Past and Present: The Economics of Reforming Arizona's Century Old Trust Land Rules* (2011) Sonoran Institute.

⁴Mayer Unified School District v. Arizona State Land Department, 2 CA-CV 2007-0126 P. 15 (Ariz. Ct. App. 2008).

⁵*Wires, Roads, and Water: Developing Sustainable Infrastructure on State Trust Land* (2011) Sonoran Institute.

⁶[Http://bqaz.org/](http://bqaz.org/).

⁷A.R.S. § 37-461(A).

⁸A.R.S. § 37-461(B).

⁹A.A.C. R12-5-801(B)(2),(4).

¹⁰A.A.C. R12-5-801(B)(7).

¹¹A.R.S. § 37-461(B), AAC R12-5-801(B)(5)(c)(ii).

¹²A.A.C. R12-5-801(B)(5)(c)(iii).

¹³A.R.S. § 37-334.

¹⁴A.R.S. § 37-338.

¹⁵A.R.S. § 37-334(D).

¹⁶A.R.S. § 37-334.01.

¹⁷A.R.S. § 37-335.

¹⁸A.R.S. § 37-212(C); also *Koepnick v. Arizona State Land Department*, 1 CA-CV 07-0271 P.9 (Ariz. Ct. App. 2009).

¹⁹A.R.S. § 37-215 ("An appeal from a final decision of the State Land Commissioner relating to classification or appraisal of lands or improvements may be taken to the board of appeals by any person adversely affected by the decision.").

²⁰It should be noted that all Trust land within Maricopa County proposed for inclusion in the Project are leased by Project participants, which should minimize the potential for any adverse appeal of a reclassification.

²¹A.R.S. § 37-290.

²²Although ASLD is permitted to recover the costs of planning from the buyer, the recovered costs are paid to the state general fund; as such, ASLD's planning costs are essentially non-recoverable from a budgetary perspective.



²³A.R.S. § 37-335(G).

²⁴A.R.S. § 37-335(N).

²⁵Although a lessee is permitted to secure obligations related to a lease on the lessee's interest, it is important to note that the state's interest in a commercial lease cannot be encumbered for purposes of financing infrastructure or other requirements related to the lease. A.R.S. § 37-335(M).

²⁶193 P.3d 776 (Ariz. Ct. App. 2008).

²⁷*Id.* at 17.

²⁸A.R.S. § 37-239(E)(8).

²⁹A.R.S. § 37-239(E)(10).

³⁰A.R.S. § 37-251(B); also A.A.C. R14-5-408.

³¹*Id.*

³²A.R.S. § 37-239(E)(12).

³³764 P.2d 37, 39 (Ariz. App. 1988).

³⁴*Id.*

³⁵*Id.* at 41.

³⁶*Id.* at 42.

³⁷*Id.*; A.R.S. § 37-101(3).

³⁸Havasu Heights, 764 P.2d at 42.

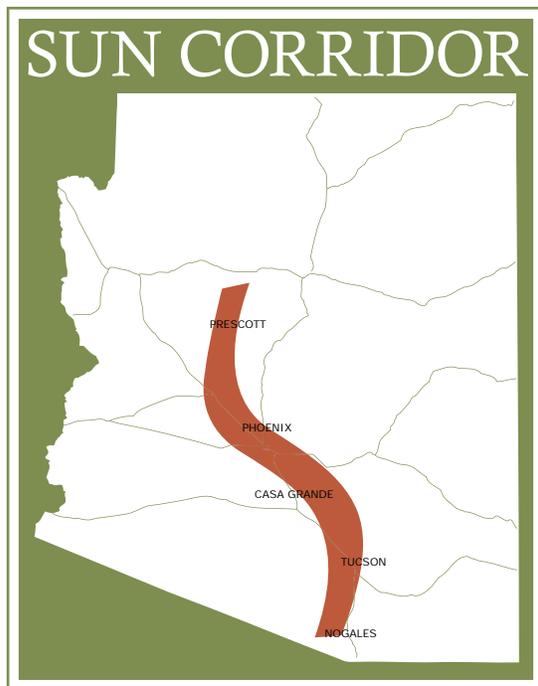
³⁹Although the court held that the Department thus had the authority to enter into holding leases, it also found that the specific lease at issue included conditions that were invalid, *id.* at 44, and that the Department had entered into a "holding lease program" without a rulemaking, which would be required to implement such a program, *id.* at 46.

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:

- 1 *Promote a rail system linking the entire Sun Corridor*
- 2 *Create a world-class model for sustainable desert cities*
- 3 *Advance the availability of clean and secure energy for the Sun Corridor*
- 4 *Conserve more than one million acres in Arizona for future generations*
- 5 *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.





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