The Board of Trustees

of the

School and Institutional Trust Lands Administration

☒ *New Policy* ☐ *Amends Policy No.* _____ ☐ *Repeals Policy No.* _____

Policy Statement No. 2008-01 *Subject: Real Estate Development on Trust Lands*

The Board of Trustees of the School and Institutional Trust Lands Administration met in open. public session on January 17, 2008. and by majority vote declares the following to be an official policy of the Board.

In furtherance of the policies set forth in Policy Statement No. 2006-03 and pursuant to 53C-1-201(5)(a) and 53C-1-204(1)(a) of the School and Institutional Trust Lands Management Act ("Act"), the Board of Trustees ("Board") believes it is desirable and prudent to establish a policy governing the procedures for the oversight of Development Program transactions by the Board.

The Board acknowledges that the Director is: (i) vested with broad authority to enter into Development Program transactions pursuant to, among other provisions, 53C-1-302(1)(a)(i) and 53C-1-303(4)(d) of the Act; (ii) required to obtain Board approval of joint venture transactions and other business arrangements pursuant to 53C-1-303-(4)(e) of the Act; and (iii) required to inform the Board of the Administration's activities pursuant to 53C-1-303(1)(k) of the Act. In order to assist the Director in fulfilling his/her obligations under the foregoing, the Board adopts the following policy regarding informing the Board and, where required, obtaining the Board's approval of Development Program transactions.

1. Pursuant to the Act, the Director has broad authority to manage Trust assets and enter into transactions that comply with the requirements of the Act, provided, however, 53C-1-303(4)(e) of the Act requires Board approval of joint ventures and "other business arrangements". The Board finds that the term "other business arrangements" shall mean transactions which have substantially similar or greater risks as joint ventures and in which a material portion of the anticipated return to the Trust is contingent on the economic performance of the ultimate development of the Trust property. The agency's standard non-subordinated "development lease" is not considered an other business arrangement.

   The Director shall adopt procedures for the Board's approval of joint ventures ("JV") and other business arrangements ("OBA") consistent with the foregoing criteria.

2. Development Program transactions present different levels of risk, with JV's and OBA's typically involving greater risk than other types of transactions. The Board believes that its review process should be proportional to the potential risk and should take into account the value of the Trust assets committed in a transaction and distinguish between JV's and OBA's and other types of transactions. To that end, the Administration shall adopt procedures to categorize proposed transactions as either "Major Transactions" or "Minor Transactions" applying the following criteria:

   a. A "Minor Transaction" shall be:

      I. a transaction which is not a JV or OBA and which involves Trust assets (including the value of Trust property and capital commitments by the Trust) valued in an amount equal to or less than Five Million Dollars ($5,000,000); or

      II. a transaction which is a JV or OBA and involves Trust assets (including the value of Trust property and capital commitments by the Trust) valued in an amount equal to or less than Two Million Dollars ($2,000,000.)

   b. A "Major Transaction" shall be:

      I. a transaction which is not a JV or OBA and which involves Trust assets (including the value of Trust property and capital commitments by the Trust) valued in an amount greater than Five Million Dollars ($5,000,000):

      II. a transaction which is a JV or OBA and involves Trust assets (including the value of Trust property and capital commitments by the Trust) valued in an amount greater than Two Million Dollars ($2,000,000).

3. With regard to all transactions, the Administration should conduct an appropriate public advertising program designed to effectively solicit interested parties for each transaction and conduct appropriate due diligence with respect to the ownership, financial capacity, and character of its development partners, which shall include investigation into credit and financial capacity, business background, litigation and bankruptcy history, and other relevant factors. The Administration shall maintain this information in its files.

4. With regard to Minor Transactions, the Administration shall adopt procedures for advising the Board, which procedures shall require, at a minimum, the following:

   a. The Administration shall deliver to the Board, in a consistent written format, key information about the Minor Transaction, including a summary of: (i) the economic analysis of the transaction; (ii) the competitive/advertising process used in soliciting offers for the transaction; (iii) a declaration of any conflicts of interest for staff with any interested parties; (iv) a list of key components of the transaction; and (v) all parties and any relevant background information regarding such parties derived from the Administration's due diligence activities described in Paragraph 3 above.

   b. If such Minor Transaction is not a JV or OBA, such matter shall be placed on the consent agenda for the next Board meeting for informational purposes and to allow an opportunity for the Board to comment on the transaction and/or provide guidance to the Director for future transactions.

   c. If such Minor Transaction is a JV or OBA, thereby requiring Board approval, such matter shall be placed on the consent agenda for the next Board meeting. Any member of the Board may request a review, discussion, and vote on such proposed transaction by the Board at such meeting. If no such review is requested, the proposed transaction shall be approved or rejected as part of the consent agenda at such meeting. If approved by the Board, the Administration shall be authorized to enter into binding agreements for the proposed JV or OBA on the terms so approved and in compliance with the requirements of the Act.

5. With regard to major Transactions, the Administration shall adopt procedures for the review and approval of such transactions by the Board, which procedures shall materially conform with the following:

   a. The Administration shall make an initial presentation to the Board, which presentation shall contain key information about the proposed transaction, including:

      (i) an executive summary of the Administration's perception of the values involved in the transaction;
      (ii) a discussion of the financial and other goals of the transaction;
      (iii) an analysis of the determination of timeliness of the transaction;
      (iv) the structure or structures if more than one is proposed for the transaction selected by the Administration;

(v) a discussion of the competitive processes that the Administration intends to use in soliciting proposals;
(vi) financial requirements of parties demonstrating the capability to complete the project; and
(vii) known political issues with proposed solutions.

The Administration shall solicit Board input on the proposed transaction and the Board's concurrence with moving forward to finalize the proposed transaction.

b. Subject to concerns expressed by the Board at the initial presentation, the Administration may, in its discretion, continue to pursue proposed transaction, including, among other things, conducting a competitive process to obtain proposals for the transaction, selecting one or more proposals and negotiating the key terms of the proposed transaction.

c. After selecting a proposal, the Administration shall make a second presentation to the Board which includes:

(i) a summary of the key terms of the transaction;
(ii) a description of the parties to the proposed transaction with all relevant background information about the parties derived from the due diligence activities described in Paragraph 3 above.
(iii) a projected financial pro forma of the transaction;
(iv) a summary of the competitive process(es) and advertising efforts used in selecting a proposal;
(v) the minimum financial criteria that will be conditions to the completion of the transaction; and
(vi) a declaration of any conflicts of interest for staff with any interested parties.

d. If such matter is a JV or OBA, thereby requiring Board approval, such matter shall be voted on by the Board. If approved by the Board, the Administration shall be authorized to enter into binding agreements for the proposed JV or OBA on the terms so approved and in compliance with the requirements of the Act.

e. If such matter is not a JV or OBA and provided the Board has not specifically directed the Administration to terminate the proposed transaction, the Administration shall be authorized to enter into binding agreements for the proposed transaction on the terms so approved and in compliance with the requirements of the Act.

f. Notwithstanding the foregoing, with respect to Major Transactions which do not involve a JV or OBA and where all relevant material information regarding the proposed transaction is available, the Administration may make at least one presentation to the Board regarding the proposed transaction.

g. The Administration shall provide the Board with updates on Major Transactions which have been reviewed or approved by the Board within six (6) months of such review or approval.

6. With respect to references in this Policy Statement to "competitive processes" or similar terms, the Board acknowledges that in certain circumstances with regard to certain types of lands, conducting a competitive process for the disposition of the property may not be appropriate nor in the best interest of the Trust. Some examples of such circumstances include, without limitation, exchange of property (when such exchanges further other goals with adjoining trust lands), sale to governmental entities when appropriate and in the best interest of the Trust (i.e., project parks, fire and safety such as firehouses and police stations, etc.), and sales of conservation properties when needed to further development of adjoining properties. In such instances, the Administration shall not be required to conduct a competitive process, but rather shall advise the Board of such instances and the Administration's rationale for such determination in advance of any such transaction.

7. In order to more efficiently conduct the Board oversight of Development Program transactions, the Board may, pursuant to 53C-1-204(9)(a)(i) of the Act, create a committee consisting of not less than one (1) member of the Board and such other members of the Administration and/or the public as is appropriate for the task of reviewing submittals concerning Development Program transactions and making recommendations to the Board. In such event, any submittals and presentations required to be made to the Board in connection with any Development Program transaction as described herein may be made to such committee.