



# **TRUST LANDS ADMINISTRATION**

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## **RULES GOVERNING THE MANAGEMENT AND USE OF TRUST LANDS ADMINISTRATION IN UTAH**

**38<sup>th</sup> EDITION  
JANUARY, 2024**



## USE OF THIS MANUAL

The agency's rules are organized into two main categories: 1) Rules of General Application; and 2) Program Rules. Rules of General Application are rules that in general apply to most all the administration's activities. These rules include such areas as records access, public petitions for declaratory rulings, and administrative procedures. Program rules are the rules generally governing development activities on the surface and mineral estates administered by the agency.

The current effective date and current five-year review continuation date are listed on the last page of each rule section. A rule log is available for all the agency rule submissions to the Division of Administrative Rules. Contact the Records Officer for the submission rule log.

This edition of the *Rules Governing the Management and Use of Trust Lands Administration in Utah* contains all agency rules in effect at the time of publication. **For complete and up-to-date agency rules, please go to the agency's website at <http://trustlands.utah.gov> and select the *Policies/Rules* tab for a link to the Title R850 of Utah Administrative Code, maintained by the Division of Administrative Rules.** If you need additional information on the management of school and institutional trust lands, please feel free to contact any of the following agency offices:

### MAIN OFFICE

#### TRUST LANDS ADMINISTRATION

102 Tower  
102 South 200 East, Suite 600  
Salt Lake City, UT 84111  
801-538-5100  
(Fax) 801-355-0922  
[www.trustlands.utah.gov](http://www.trustlands.utah.gov)

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### AREA OFFICES

#### CENTRAL AREA OFFICE

2031 S. Industrial Park Road  
Richfield, UT 84701-7051  
435-896-2559  
(Fax) 435-896-0349

\* \* \* \* \*

#### SOUTHEASTERN AREA OFFICE

P. O. Box 215  
696 North Main Street  
Monticello, UT 84535  
435-259-7417  
(Fax) 435-259-7473

\* \* \* \* \*

#### VERNAL AREA OFFICE

Uintah County Office Building, 4th Floor  
152 East 100 North, 4<sup>th</sup> Floor South  
Vernal, UT 84078  
801-699-3463 (cell)  
435-781-5304 (office)

#### SOUTHWESTERN AREA OFFICE

1593 East Grapeview Crossing  
Washington, UT 84780  
435-522-7411

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#### SOUTHERN FORESTRY OFFICE

319 N Carbonville Road  
Price, UT 84501  
435-820-0067 (cell)  
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## **R850. School and Institutional Trust Lands, Administration.**

### **R850-1. Definition of Terms.**

#### **R850-1-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X, XVII and XX of the Utah Constitution, and Section 53C-1-302(1)(a)(ii) which authorize the Director of the School and Institutional Trust Lands Administration to provide definitions which apply to all rules promulgated by the director and agency unless otherwise provided.

#### **R850-1-200. Definitions.**

1. Animal unit (AU): is equal to one cow and calf or their equivalent.
2. Assignment: the transfer or sale of a lease, permit, contract, certificate, easement, or any other interest or privilege in trust land or its resources by the holder of such interest, including lessees, permittees, and grantees. The transfer of any interest in a grazing association, either between shareholders or with an outside party, is deemed to be an assignment.
3. Beneficiary as to school and institutional trust lands: the public school system and other institutions granted properties by the United States under the Enabling Act to the state of Utah in trust.
4. Board: School and Institutional Trust Lands Board of Trustees.
5. Board policy: actions taken by the School and Institutional Trust Lands Board of Trustees which comply with the definition of Policies found in Section 53C-1-103(5).
6. Carrying capacity: the maximum stocking rate possible which is consistent with maintaining or improving vegetation or related resources.
7. Commercial gain: compensation, in money, in services, or other valuable consideration rendered for products provided.
8. Cultural Resources: prehistoric and historic materials, features, artifacts.
9. Cultural Resource Survey:
  - (a) Class I: literature and site files search.
  - (b) Class II: sample field surface survey or inspection.
  - (c) Class III: intensive field surface survey.
10. Director: the director of the School and Institutional Trust Lands Administration.
11. Agency: School and Institutional Trust Lands Administration.
12. Easements: a right to use or restrict use of land or a portion of a real property interest in the land for a particular purpose granted by the agency to a qualified applicant including but not limited to transmission lines, canals and ditches, pipelines, tunnels, fences, roads and trails.
13. General Management Plans: plans prepared for school and institutional trust lands which guide the implementation of the school and institutional trust land management objectives.
14. High Value Grazing Lands: Trust lands used for grazing which are not located within the boundaries of a federal allotment and which are not managed by a federal agency, or trust lands which are located such that they can be managed independent of the influence of a federal agency, or trust lands for which management agreements with a federal agency are in place, or any other trust lands which the director has designated as High Value Grazing Land.
15. In-kind use: occupancy or use by a beneficiary of its institutional trust land for authorized purposes as a direct economic benefit to the institution.
16. Management Plans: General Management Plans, Resource Plans and Site-Specific Plans.
17. Multiple-use: the management of various surface and sub-surface resources so that they are utilized in the combination that will best meet the present and future needs of the beneficiaries.
18. Paleontological Resources (fossils): the remains or traces of organisms, plant or animal, that have been preserved by various means in the earth's crust.
19. Paleontological Resource Survey: an evaluation of the scientific literature or previous paleontological survey reports to assess the potential for discovery or impact to fossils by a proposed development, followed by a pedestrian examination of the exposed geological formations suspected of containing fossils of significance.
20. Paleontological Site: an exposure of a geologic formation having fossil evidence of scientific value as determined by professional consensus.
21. Planning Unit: the geographical basis of a general management plan; a consolidated block of state land, or a group of isolated state land sections or parts thereof, or a combination of blocks and isolated sections which provide common management opportunities or which have common commercial gain, natural or cultural resource concerns.

22. Preliminary Development Plan: the submittal, both of maps and written material, which shall identify and determine the extent and scope on a proposed unit development of the entire acreage under application. It shall illustrate, in phases, the development of the entire acreage and include a time table of the estimated schedule of development. The preliminary development plan shall identify density, open space, environmental reserves, site features, services and utilities, land ownerships, local master planning, zoning compliance and basic engineering feasibility.

23. Preliminary Development Plat: a plat which shall outline and specify the number of dwelling units, the type of dwelling units, the anticipated location of the transportation systems and description of water and sewage systems for the developed area on a Unit Development Lease.

24. Private Exchange: An exchange of trust lands, for land or other assets of equal or greater value, with a political subdivision of the state or agency of the federal government. Lands involved in a private exchange are not required to be advertised as open for competing exchange, lease, and sale applications.

25. Range condition: the relation between current and potential condition of the range site.

26. Record of Decision: a written finding describing an agency action, relevant facts, and the basis upon which the decision for action was made.

27. Resource Plans: a plan prepared for a specific resource, such as mining, timber, grazing or real estate.

28. Rights-of-Entry: a right to a specific, non-depleting land use granted by the agency to a qualified applicant that is temporary in nature, generally not to exceed one year in duration, including but not limited to seismic and land surveys, research sites, access across trust lands, and other temporary types of land uses.

29. School and institutional trust lands: those properties granted by the United States in the Utah Enabling Act to the state of Utah in trust, or other properties transferred to the trust, to be managed for the benefit of the public school system and the various institutions of the state in whose behalf the lands were granted.

30. Significant site: any site which is designated by the Division of State History as scientifically worthy of specific management.

31. Site: archaeological and cultural sites are places of prehistoric and historic human activity including aboriginal mounds, forts, buildings, earth works, village locations, burial grounds, ruins, caves, petroglyphs, pictographs, or other locations which are the source of prehistoric cultural features and specimens.

32. Site Specific Plans: plans prepared for trust lands which provide direction for specific actions. Site-specific plans shall include, but not be limited to:

(a) Records of Decision in either narrative or summary form.

(b) Board action that designates specific parcels of land for specific uses(s) or disposition.

33. Specimen: includes all man-made relics, artifacts, remains of a prehistorical, archaeological, or anthropological nature found on or below the surface of the earth, and any remains of prehistoric life.

34. Sublease: a situation where a permittee or lessee has granted or allowed the use of part or all of the permitted or leased premises to another person, but with the original permittee or lessee retaining some right or interest under the original permit or lease.

35. Trust lands: school and institutional trust lands and all other lands administered under the authority of the School and Institutional Trust Lands Board of Trustees.

36. Survey Report: report of the various site files and field surveys or inspections.

37. Sustained-yield: the achievement and maintenance of maximum non-depleting level of annual or periodic production of the various renewable resources of land without impairment of the productivity of the land.

38. Trust land use(s): any use of school and institutional trust lands based on multiple-use, sustained-yield principles or practices designed to maximize support of the beneficiaries.

**KEY: administrative procedure, definitions**

**Date of Last Change: January 21, 2016**

**Notice of Continuation: May 12, 2022**

**Authorizing, and Implemented or Interpreted Law: 53C-1-302(1)(a)(ii)**



**R850. School and Institutional Trust Lands, Administration.**

**R850-2. Trust Land Management Objectives.**

**R850-2-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-204(1) and 53C-1-302 which authorize the Director of the School and Institutional Trust Lands Administration and the Board of Trustees to prescribe the general land management objectives for school and institutional trust lands.

**R850-2-200. School and Institutional Trust Land Management Objectives.**

The general land management objective for school and institutional trust lands is to optimize and maximize trust land uses for support of the beneficiaries over time. The agency shall:

1. maximize the commercial gain from trust land uses for school and institutional trust lands consistent with long-term support of beneficiaries.
2. manage school and institutional trust lands for their highest and best trust land use.
3. ensure that no less than fair-market value be received for the use, sale or exchange of school and institutional trust lands.
4. reduce risk of loss by reasonable trust land use diversification of school and institutional trust lands.
5. upgrade school and institutional trust land assets where prudent by exchange.
6. permit other land uses or activities not prohibited by law which do not constitute a loss of trust assets or loss of economic opportunity.

**KEY: rules and procedures**

**Date of Last Change: 1991**

**Notice of Continuation: May 12, 2022**

**Authorizing, and Implemented or Interpreted Law: 53C-1-204(1); 53C-1-302**



**R850. School and Institutional Trust Lands, Administration.****R850-3. Applicant Qualifications, Application Forms, and Application Processing.****R850-3-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Subsection 53C-1-302(1)(a)(ii) and Section 53C-2-404 which authorize the Director of the School and Institutional Trust Lands Administration (Trust Lands Administration) to prescribe the applicant requirements and the form of application.

**R850-3-200. Applicant Qualifications.**

Any person qualified to do business in Utah, and not in default under the laws of the state of Utah relative to qualification to do business within the state, or not in default on any previous obligation with the Trust Lands Administration, shall be a qualified applicant for sale, exchange, lease, or permit.

**R850-3-300. Application Forms.**

Application for the purchase, exchange, or use of trust lands or resources shall be on forms provided by the Trust Lands Administration, exact copies of its forms, forms retrieved from electronic sources, or forms submitted electronically.

**R850-3-400. Application Processing.**

1. Within 15 days from receipt of an application for a Special Use Lease, Easement, Sale, Exchange, Modified Grazing Permit, Materials Permit, or Renewable Energy Lease, the Trust Lands Administration shall conduct an initial evaluation of the application. Trust Lands Administration may refuse the application if it determines, in its sole discretion, that:

- (a) activities with higher priorities would be adversely impacted by processing the application;
- (b) an existing or planned application or activity on the parcel would be adversely impacted by processing the application;
- (c) an agency-initiated activity would be adversely impacted by processing the application; or
- (d) proceeding with the proposal would not be in the best interests of the trust land beneficiaries.

2. No fees shall be collected from the applicant before the evaluation reference in Subsection R850-3-400(1). If the Trust Lands Administration chooses to refuse the application, it shall notify the applicant in writing. If the Trust Lands Administration chooses to accept the application, it shall inform the applicant of any further information, material, deposits, and fees which may be required to accept the application and commence processing. Failure to provide the requested items by the deadline established by the Trust Lands Administration may result in the application being rejected. A determination refusing an application shall not be subject to administrative review.

**R850-3-500. No Interest Conveyed by Submitting Application.**

1. Until an executed instrument of conveyance, lease, permit, or right is delivered or mailed to the successful applicant, applications for the purchase, exchange, or use of trust lands or resources shall not convey or vest the applicant with any rights or interests.

2. The Trust Lands Administration may reject any application before execution if it determines that rejection is in the best interest of the trust.

3. If an application is rejected, all moneys tendered by the applicant, except the application fee, shall be refunded.

4. Should an applicant desire to withdraw the application, the applicant must make a written request. If the request is received before the time that the application is considered for formal action, all moneys tendered by the applicant, except the application fee and any amounts expended on advertising or appraisals before the receipt of the withdrawal request, will be refunded. If the request for withdrawal is received after the application is approved, all moneys tendered are forfeited to the Trust Lands Administration, unless otherwise ordered for a good cause shown.

5. Any deposit to cover advertising, appraisal costs and processing fees shall be forfeited if any lease, permit, grant, or certificate is offered but not executed by the applicant.

**R850-3-600. Rule Changes During Application Processing.**

Applications shall be processed in accordance with the applicable rules in effect when the application was accepted except that the Trust Lands Administration may apply rule changes that become effective during the processing of an application if the Trust Lands Administration determines that the application of the rule change is in the best interest of the beneficiary of the land. If the applicant objects to compliance with changes in the rules, then

the applicant may elect to withdraw the application, or the Trust Lands Administration may reject the application. For applications which are withdrawn or rejected under Section R850-3-600, all fees, except application fees, shall be refunded to the applicant without penalty.

**KEY: administrative procedures, residency requirements**

**Date of Last Change: August 8, 2022**

**Notice of Continuation: May 12, 2022**

**Authorizing, and Implemented or Interpreted Law: 53C-1-302(1)(a)(ii); 53C-2-404**

**R850. School and Institutional Trust Lands, Administration.**

**R850-4. Application Fees and Assessments.**

**R850-4-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Section 53C-1-302(1)(a)(ii) which authorizes the Director of the School and Institutional Trust Lands Administration to adopt rules necessary to fulfill the purposes of Title 53C.

**R850-4-200. Fee Schedule.**

The fees are established by the agency pursuant to policy set by the School and Institutional Trust Lands Board of Trustees. A copy of the fee schedule is available at the School and Institutional Trust Lands Administration offices listed in R850-6-200(2)(a).

**R850-4-300. Fee Waivers.**

1. The director may waive any fees when appropriate and when doing so would not be adverse to the interests of the beneficiaries.

2. The director shall provide a semi-annual report to the Board of Trustees of any fees waived and the reasons for waiving the fees.

**KEY: administrative procedure, filing fees, rates**

**Date of Last Change: May 16, 2006**

**Notice of Continuation: May 26, 2022**

**Authorizing, and Implemented or Interpreted Law: 53C-1-302(1)(a)(ii)**



**R850. School and Institutional Trust Lands, Administration.****R850-5. Payments, Royalties, Audits, and Reinstatements.****R850-5-100. Authorities.**

This rule is authorized by Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution and Subsection 53C-1-302(1)(a)(ii) entitling the Director of the School and Institutional Trust Lands Administration to establish fees, procedures, and rules for management of the agency.

**R850-5-200. Payments.**

Payments include rentals, royalties, or any other financial obligation owed under the terms of a lease, permit, or any other agreement.

1. As a matter of convenience, the agency allows parties other than the obligee to remit payments on the obligee's behalf; however, this practice in no way relieves the obligee of any statutory or contractual obligations concerning the proper and timely payments or the proper and timely filing of reports. For practical reasons, the agency often makes direct requests for reports and other records from parties other than the obligees. Payors should be aware that their actions subject leases to cancellation or subject delinquent royalties to interest charges. It is, therefore, in the best interest of each party to cooperate in responsibly discharging their obligations to each other and to the Trust Lands Administration.

2. The obligee bears final responsibility for payments. Payments must be for the full amount owed. Partial payments will only be accepted if approved in writing by the agency before submission. To fulfill payment obligations of a lease, permit, or other financial contract with the agency, payments must be received as defined in Subsection R850-5-200(3) of this rule by the appropriate due dates and must be accompanied by the appropriate report. If the obligee submits payment by electronic fund transfer then appropriate supporting documentation must be submitted by electronic data transfer on the same day.

3. Payments will be considered received if sent by electronic fund transfer, delivered to the agency, or if the postmark stamped on the envelope is dated on or before the due date. If the post office cancellation mark is illegible, erroneous, or omitted, the payment will be considered timely if the sender can establish by competent evidence that the payment was deposited in the United States mail on or before the date for filing or paying. If the due date or cancellation date falls upon a Saturday, Sunday, or legal holiday, the payment shall be considered timely if received as defined in Section R850-5-200 by the next business day.

4. A \$30 return-check charge or the actual charge levied by the bank, whichever is greater, will be assessed on any checks returned by the bank. The check must be replaced by cash, certified funds, or immediately available funds. The Director may require future payments with certified funds when notified in writing. If replacement funds are received after the required due date, Subsection R850-5-200(6) will be applied.

5. Any financial obligation not received by its contractual due date will initiate a written cancellation notice by certified mail, return receipt requested. The cancellation date for any lease, permit, or other contractual agreement unless otherwise specified by the contract, is defined as 30 days after the postmark date stamped on the U.S. Postal Service Receipt for Certified Mail of the cancellation notice. In the event payment is not received by the agency on or before the cancellation date, the lease, permit, or other contractual agreement will be subject to cancellation, forfeiture, or termination without further notice.

A default in the payment of any installment of principal or interest due under the terms of any land purchase agreement not received by the agency more than 30 days after the due date shall initiate a certified billing, return receipt requested. If any sums then due and payable are not received within 30 days after the mailing of the U.S. Postal Service certified notice, the agency may elect any of the remedies as outlined in Subsection R850-80-500(8). If the cancellation date falls on a weekend or holiday, payment will be accepted the next business day until 5 p.m.

6. A late penalty of 6% or \$30, whichever is greater, shall be charged after failure to pay any financial obligation, excluding royalties as provided in Subsection R850-5-300(2), within the time limit under which such payment is due.

7. Subject to Section R850-4-300, rental payments received after the due date which do not include a late fee may be returned to the lessee by certified mail, return receipt requested. Payment may only be accepted for the full amount due.

**R850-5-300. Royalties.****1. Royalty Reports and Reporting Periods**

(a) All royalty payments shall be made payable to the School and Institutional Trust Lands Administration and shall be accompanied by a royalty report on a form specified by the agency. Failure to provide such a report may,

after proper notification, subject the lease to cancellation. Check stubs or other report forms are unacceptable and do not satisfy the reporting requirement of this section.

(b) Any report not sufficiently complete and accurate to enable the agency to deposit the royalty to the correct institutional fund must be promptly corrected or amended by the payor. Failure to provide such a report may, after proper notification, subject the lease to cancellation.

(c) Any report submitted which includes entries as described in Subsections R850-5-300(1)(c)(i) through (iii), may not be accepted by the agency and may be returned.

(i) Any report submitted 24 months after the royalty due date.

(ii) Amendments to prior report periods creating a net adjustment of less than \$10.

(iii) Any oil and gas royalty report line of original entry submitted after the first 180 days following the month of first production with a volume entry of zero which is subsequently amended with the actual volume.

## **2. Interest on Delinquent Royalties**

Interest shall be based on the prime rate of interest at the beginning of each month as approved by the Director and documented in the agency's Director's Actions, plus 4%.

## **R850-5-400. Audits.**

The agency shall have the right at reasonable times and intervals to audit the books and records of any lessee, permittee or payor and to inspect the leased or permitted premises and conduct field audits to determine whether there has been compliance with the rules or the terms of agreement.

## **R850-5-500. Reinstatements.**

1. The Director may reinstate the following specific leases, permits, and easements, in the event of their cancellation, upon filing of a request for reinstatement, the payment of all late fees, reinstatement fees, and rental fees in arrears, based on a written finding that a reinstatement would be in the best interest of the trust beneficiaries:

(a) Special use leases issued using a competitive process within 60 days of cancellation.

(b) Special use leases issued without using a competitive process within 60 days of cancellation if:

(i) there are no apparent competing interests,

(ii) the cost of requiring a competitive process would be excessive in light of the potential revenue,

(iii) a negotiated settlement appears to present greater opportunity for increased compensation than a competitive settlement, or

(iv) there exists compelling reason establishing that the best interests of the trust would be met by waiving the competitive process.

(c) Grazing permits within 60 days of cancellation with the exception that grazing permits cancelled for reasons of non-payment of grazing fees may be reinstated by the Director without a written finding.

(d) Easements within 60 days of cancellation provided that:

(i) if the easement term is perpetual, then the easement shall be amended so that the term is 30 years beginning as of the original effective date. However, if the remaining number of years on an easement so amended is less than 15, the ending date of the easement shall be set so that there will be 15 years remaining in the easement;

(ii) if the easement term is not perpetual, easements shall be reinstated only for the balance of the original term; and

(iii) the applicant for an easement reinstatement agrees to pay the difference between what was originally paid for the easement and what the agency would charge for the easement when the request for reinstatement is submitted.

(e) Materials permits within 60 days of cancellation.

(f) Materials permits issued without using a competitive process within 60 days of cancellation if:

(i) there are no apparent competing interests,

(ii) the cost of requiring a competitive process would be excessive in light of the potential revenue,

(iii) a negotiated settlement appears to present greater opportunity for increased compensation than a competitive settlement, or

(iv) there exists compelling reason establishing that the best interests of the trust would be met by waiving the competitive process.

(g) Renewable energy leases within 60 days of cancellation.

(h) Renewable energy leases issued without using a competitive process within 60 days of cancellation if:

(i) there are no apparent competing interests;

(ii) the cost of requiring a competitive process would be excessive in light of the potential revenue;



(iii) a negotiated settlement appears to present greater opportunity for increased compensation than a competitive settlement; or

(iv) there exists compelling reason establishing that the best interests of the trust would be met by waiving the competitive process.

2. The Director may reinstate any application for lease, permit, easement, exchange, or sale cancelled pursuant to Rules R850-30 and R850-80 and Subsection R850-40-700(3) upon the filing of a request for reinstatement and the payment of applicable reinstatement fees, and based on a written finding that a reinstatement would be in the best interest of the trust beneficiaries.

**KEY: audits, payments, reinstatements, royalties**

**Date of Last Change: August 8, 2022**

**Notice of Continuation: May 26, 2022**

**Authorizing, and Implemented or Interpreted Law: 53C-1-302(1)(a)(ii); 53C-2-404**



**R850. School and Institutional Trust Lands, Administration.**

**R850-6. Government Records Access and Management.**

**R850-6-100. Purposes and Authority.**

1. This rule provides procedures for appropriate access to agency records under the Government Records Access and Management Act.

2. This rule is authorized by Sections 6, 8, 10, and 12 of the Utah Enabling Act; Articles X and XX of the Utah Constitution; and Sections 63A-12-104, 63G-2-204, and 53C-1-201(3)(a)(i)(A).

**R850-6-200. Definitions.**

In addition to the terms defined in R850-1, the term "records specialist" when used in R850-6, means the individual designated by the director to assist the public in gaining access to records maintained by the agency.

**R850-6-300. Requests for Records.**

1. A person may request a record by submitting a request to the records specialist using the agency's form or as otherwise provided in Section 63G-2-204. Failure to submit the records request on the agency's form may delay the agency's response.

2. In addition to the reasons set forth in Title 63G, Chapter 2, Part 3 of the Utah Code, the agency shall deny a request for records that are confidential under 53C-2-102 and R850-13.

**KEY: GRAMA, government documents, public records**

**Date of Last Change: September 8, 2021**

**Notice of Continuation: May 26, 2022**

**Authorizing, and Implemented or Interpreted Law: 53C-1-201(3)(a)(i)(A)**



**R850. School and Institutional Trust Lands, Administration.****R850-8. Adjudicative Proceedings.****R850-8-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Subsections 53C-1-204(3), 53C-1-204(10)(c), and Section 53C-1-304.

**R850-8-200. Scope.**

This rule governs adjudicative proceedings conducted by the School and Institutional Trust Lands Administration Board of Trustees or any hearing examiner designated by the board, and judicial review of all such proceedings.

**R850-8-300. Definitions.**

1. Adjudicative proceeding - means a review by the board of a final agency action that directly determines the legal rights, duties, or other legal interests of one or more identifiable persons.

2. Board - means School and Institutional Trust Lands Administration Board of Trustees. References to the board shall also apply to any hearing examiner appointed unless the context of rules requires otherwise.

3. Director's Actions - means the weekly compendium of actions taken by the director and posted on the agency's website to provide public notice for record-keeping purposes.

4. Final agency action - means a written determination by the Trust Lands Administration of the legal rights, duties, or other legal interests of one or more identifiable persons. The determination may be in any form deemed appropriate by the Trust Lands Administration including, but not limited to, a notation on the Director's Actions, a narrative record of decision, a notice that an instrument will be canceled for nonpayment issued pursuant to R850-5-200(5), or a decision letter. Decisions by the director or the agency to sell, exchange, or lease specific real property are not subject to administrative review pursuant to Subsection 53C-1-304(2)(b), and therefore do not constitute final agency actions.

5. Party - means the Trust Lands Administration or other person commencing an adjudicative proceeding, all respondents, all persons permitted by the board to intervene in the proceeding, and all persons authorized by statute or Trust Lands Administration rule to participate as parties in an adjudicative proceeding.

6. Person - means an individual, group of individuals, partnership, corporation, association, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character, or another agency.

7. Petitioner - means a person who requests the initiation of any proceeding.

8. Respondent - means a person against whom an adjudicative proceeding is initiated, or whose property interest is directly affected by a proceeding initiated by the board or by another person.

**R850-8-400. Liberal Construction.**

This rule will be liberally construed to secure just, speedy, and economical determination of issues presented to the board.

**R850-8-500. Deviation from Rules.**

The board, in its sole discretion, may permit a deviation from this rule for good cause including, but not limited to, situations where compliance is impractical or unnecessary, or in the furtherance of due process or the statutory obligations of the board.

**R850-8-600. Appearances and Representations.****1. Natural Persons.**

A natural person may appear on his or her own behalf and represent himself or herself at hearings before the board.

**2. Attorneys.**

Except as provided in R850-8-600(1), representation at hearings before the board will be by attorneys licensed to practice law in the state of Utah, or in the discretion of the board, attorneys licensed to practice law in another jurisdiction.

**R850-8-700. Conferences Encouraged.**

This rule does not preclude the Trust Lands Administration or the board at any time from holding conferences with parties and interested persons to encourage settlement, clarify the issues, simplify the evidence, facilitate discovery in formal adjudicative proceedings, or otherwise expedite the proceedings.

**R850-8-800. Filing of Pleadings.**

An original and ten copies of all documents, including any exhibits, required or permitted to be filed, shall be filed at the office of the director. The director shall not accept less than the required number of copies. Each party filing documents with the director shall send one copy by first class mail to each other party to the proceeding.

**R850-8-900. Final Agency Action.**

1. The final agency action shall be in writing. Except for a notice that an instrument will be canceled for nonpayment issued pursuant to R850-5-200(5), the final agency action shall be signed by the director or his designee.

2. Nothing in this rule 850-8 shall require the agency to mail notice of routine administrative and record-keeping matters otherwise noted on the Director's Actions to any person including, without limitation, assignments, reinstatements, notifications of the expiration of any lease or instrument by its own terms, cancellations of instruments for nonpayment after a notice of cancellation issued pursuant to R850-5-200(5), voluntary relinquishments or amendments, approvals of range improvements or grazing permit renewals, or fee waivers.

3. Final agency actions requiring the payment of funds; providing notice pursuant to R850-5-200(5) that an instrument will be subject to cancellation unless payment of funds is made; exercising any discretionary right of the agency to readjust or otherwise modify an existing agreement; declaring any default under an existing agreement; declining or conditioning any assignment; making rule-based determinations where administrative review is provided by rule; or otherwise directly determining the legal rights or obligations of a person will be mailed to that person and any other person with a right to notice by statute, rule or contract.

**R850-8-1000. Appeal of Final Agency Action.**

1. The Trust Lands Administration may by rule specifically designate certain categories of Trust Lands Administration actions that are not subject to appeal.

2. Except where no appeal is available pursuant to statute or rule, an appeal may be initiated only by a party to a contract that is the subject of a final agency action, or whose legal interests are directly determined by the final agency action. A written petition must be filed within 14 days of the mailing date of the final agency action requesting an adjudicative proceeding, unless a longer date is specified in writing in the final agency action or required by statute, rule, or contract. In the event an appeal is not filed in the applicable time period, the final Trust Lands Administration action shall become unappealable. The petition for an adjudicative proceeding shall be filed according to the following requirements:

(a) the petition shall be filed at the office of the director pursuant to R850-8-800.

(b) the petition shall state:

- i) all facts upon which the petition is based;
- ii) any statute, rule, contract provision, or board policy which the final agency action is alleged to violate;
- iii) the nature of the violation of the final agency action with the statute, rule, contractual provision or board policy, and the injury that is specific to the petitioner arising from the final agency action. If the injury identified by the petition is not peculiar to the petitioner as a result of the action, the board will decline to hear the appeal; and
- iv) the relief requested.

3. Upon receipt of a petition, the director shall initially stay any further actions with respect to the matter for which the adjudicative proceeding is being sought by the petitioner. The board, in its discretion, may lift such suspension or condition the continuation of the stay upon filing of a surety, in an amount specified by the board, sufficient to protect the interests of the beneficiaries.

4. Upon receipt the director shall promptly mail the petition to the board.

5. When the date of mailing is at least ten days prior to a regularly scheduled board meeting, the board may consider the petition at that meeting. In the event that the date of mailing is within ten days of a regularly scheduled board meeting, the petition will be considered at the next succeeding board meeting.

6. In its initial consideration of any petition, the board may schedule the petition for hearing at a future date, make determinations concerning whether the adjudicative proceeding will be formal or informal, address procedural matters such as stays, discovery, etc., or hear the matter on the merits.

7. The board may decline to conduct adjudicative proceedings in response to a petition, in which case the petitioner shall be entitled to judicial review pursuant to Section 63G-4-402.

**R850-8-1100. Designation of Adjudicative Proceedings as Formal or Informal.**

1. The board, in its discretion, shall determine whether to conduct an adjudicative proceeding formally or informally.

2. Any time before a final order is issued in any adjudicative proceeding, the board may convert a formal adjudicative proceeding to an informal adjudicative proceeding, or an informal adjudicative proceeding to a formal adjudicative proceeding if conversion of the proceeding does not unfairly prejudice the rights of any party.

**R850-8-1200. Procedures for Informal Adjudicative Proceedings.**

1. The Trust Lands Administration may, but is not required, to file an answer or other pleading responsive to the allegations contained in the petition.

2. The parties to the proceeding shall be permitted to testify, present evidence, and comment on the issues.

3. Hearings will be held only after timely notice to all parties.

4. Discovery is prohibited, but, the board may issue subpoenas or other orders to compel production of necessary evidence.

5. All parties shall have access to information contained in the Trust Lands Administration's files and to all materials and information gathered in any investigation, to the extent permitted by law.

6. Intervention shall be in accordance with R850-8-1400.

7. All hearings shall be open to all parties.

8. Within a reasonable time after the close of an informal adjudicative proceeding, the board shall issue a signed order in writing that states the following:

(a) the decision, and when appropriate, the reasons for the decision;

(b) a notice of any right of judicial review available to the parties;

(c) the time limits for filing an appeal.

9. A copy of the board's order shall be promptly mailed to each of the parties.

10. Recordation of Hearing.

(a) The board may record or have a transcript prepared of any hearing.

(b) Any party, at its own expense may record or have a reporter approved by the board prepare a transcript of the hearing, subject to any restrictions that the board is permitted by statute to impose to protect confidential information disclosed at the hearing.

**R850-8-1300. Procedures for Formal Adjudicative Proceedings.**

1. An original and ten copies of all papers permitted or required to be filed shall be filed with the Trust Lands Administration and one copy shall be sent by mail to each party.

2. In addition to the final agency action, and the petition for the appeal of the final agency action, additional motions may be submitted for the board's decision on either written or oral argument and the filing of affidavits in support or contravention may be permitted. Any written motion may be accompanied by a supporting memorandum of fact and law.

3. The board may permit or require pleadings in addition to the final agency action and the appeal of the final agency action.

4. Upon motion of a party, and for good cause shown, the board may authorize discovery against another party, including the Trust Lands Administration, in the manner provided by the Utah Rules of Civil Procedure.

5. Subpoenas and other orders to secure the attendance of witnesses or the production of evidence shall be issued by the board when requested by any party, or may be issued upon its own motion.

6. Hearing procedure.

(a) The board shall regulate the course of the hearing to obtain full disclosure of relevant facts and to afford all the parties reasonable opportunity to present their positions.

(b) On its own motion or upon objection by a party, the board:

i) may exclude evidence that is irrelevant, immaterial, or unduly repetitious;

ii) shall exclude evidence privileged in the courts of Utah;

iii) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all pertinent portions of the original document;

iv) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the board, and of technical or scientific facts within the board's specialized knowledge.

(c) The board may not exclude evidence solely because it is hearsay.

(d) The board shall afford to all parties the opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence.

(e) The board may give persons not a party to the adjudicative proceeding the opportunity to present oral or written statements at the hearing.

(f) All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.

(g) The hearing shall be recorded at the board's expense.

(h) Any party, at his own expense, may have a person approved by the board prepare a transcript of the hearing, subject to any restrictions that the board is permitted by statute to impose to protect confidential information disclosed at the hearing.

(i) All hearings shall be open to all parties.

(j) This section does not preclude the presiding officer from taking appropriate measures necessary to preserve the integrity of the hearing.

7. Intervention shall be in accordance with R850-8-1400.

8. Orders.

(a) Within a reasonable time after the hearing, or after the filing of any post-hearing papers permitted by the board, the board shall sign and issue an order that includes:

i) a statement of the board's findings of fact based exclusively on the evidence of record in the adjudicative proceedings, or on facts officially noted;

ii) a statement of the board's conclusions of law;

iii) a statement of the reasons for the board's decision;

iv) a statement of any relief ordered by the board;

v) a notice of any right to judicial review of the order available to aggrieved parties;

vi) the time limits applicable to any review (or reconsideration).

(b) The board may use its experience, technical competence, and specialized knowledge to evaluate the evidence.

(c) No finding of fact that was contested may be based solely on hearsay evidence unless that evidence is admissible under Utah Rules of Evidence.

(d) This section does not preclude the board from issuing interim orders to:

i) notify the parties of further hearings;

ii) notify the parties of provisional rulings on a portion of the issues presented; or

iii) otherwise provide for the fair and efficient conduct of the adjudicative proceeding.

#### **R850-8-1400. Informal or Formal Adjudicative Proceedings - Intervention.**

1. Any person not a party may file a signed, written petition to intervene in an adjudicative proceeding with the Trust Lands Administration.

2. The person who wishes to intervene shall mail a copy of the petition to each party. The petition shall include:

(a) a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceeding, or that the petitioner qualifies as an intervenor under any provision of law; and

(b) a statement of the relief that the petitioner seeks from the Trust Lands Administration.

3. The board shall grant a petition for intervention if it determines that:

(a) the petitioner's legal interests may be substantially affected by the formal adjudicative proceeding; and

(b) the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing intervention.

4.

(a) Any order granting or denying a petition to intervene shall be in writing and sent by mail to the petitioner and each party.

(b) An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative proceeding that are necessary for a just, orderly, and prompt conduct of the adjudicative proceeding.

(c) the board may impose the conditions at any time after the intervention.

#### **R850-8-1500. Formal Adjudicative Proceeding - Designation of Hearing Examiner.**

1. The board may in its discretion, on its own motion or motion of one of the parties, designate a hearing examiner for purposes of taking evidence and recommending findings of fact and conclusion of law to the board. Any member of the board, or any person designated by the board may serve as a hearing examiner, other than an employee of the Trust Lands Administration.

2. Powers.

The order appointing a hearing examiner may specify or limit the hearing examiner's powers and may direct the hearing examiner to report only upon particular issues: to do or perform particular acts or to receive and report evidence only; and to fix the time and place for beginning and closing the hearing and for filing a report. Unless the



hearing examiners's authority is limited the hearing examiner will be vested general authority to conduct hearings in an orderly and judicial matter, including authority to:

- (a) summon and subpoena witnesses;
- (b) administer oaths, call and question witnesses;
- (c) require the production of records, books and documents;
- (d) take such other action in connection with the hearing as may be prescribed by the board.
- (e) make evidentiary rulings and propose findings of fact and conclusions of law.

3. Conduct of hearings.

Except as limited by the board's order, hearings will be conducted under the same rules and in the same manner as hearings before the board.

4. Rulings, Findings, and Conclusions of the hearing examiner.

During the hearing, objections to evidence will be ruled upon by the hearing examiner. Where a ruling sustains objections to an admission of evidence, the party affected may insert in the record, as a tender of proof, a summary written statement of the evidence excluded and the objecting party may then make an offer of proof in rebuttal. Upon completion of the hearing, the hearing examiner will prepare a written summary of all such rulings and will make proposed findings of fact and conclusions of law in a proposed order in conformance with R850-8-1300(8). All such proposed rulings, findings, and conclusions will be distributed to the parties and filed with the board.

**R850-8-1600. Default.**

1. The board may enter an order of default against a party if:
  - (a) a party in an informal adjudicative proceeding fails to participate in the adjudicative proceeding; or
  - (b) a party to a formal adjudicative proceeding fails to attend or participate in a properly scheduled hearing after being given proper notice.
2. An order of default shall include a statement of the grounds for default and shall be mailed to all parties.
3.
  - (a) A defaulted party may seek to have the Trust Lands Administration set aside the default order, and any order in the adjudicative order, by following the procedures outlined in the Utah Rules of Civil Procedure.
  - (b) A motion to set aside a default and any subsequent order shall be made to the board.
4.
  - (a) In an adjudicative proceeding that has other parties besides the party in default, the board shall, after issuing the order of default, conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default.

**R850-8-1700. Reconsideration and Modification of Existing Orders.**

1. Any person affected by a final order or decision of the board may file a petition for reconsideration within 20 days after the date the order was issued.
2. A copy of the request for reconsideration shall be sent by mail to each party by the person making the request.
3. The petition for reconsideration will set forth specifically the particulars in which it is claimed the board's order or decision is unlawful, unreasonable, or unfair. If the petition is based upon a claim that the board failed to consider certain evidence, it will include an abstract of that evidence. If the petition is based upon newly discovered evidence, then the petition will be accompanied by an affidavit setting forth the nature and extent of such evidence, its relevancy to the issues involved, and a statement that the party could not with reasonable diligence have discovered the evidence prior to the hearing.
4. All other parties to the proceeding upon which a reconsideration is sought may file a response to the petition with the director at any time prior to the hearing at which the petition will be considered by the board. Such responses will be served on the petitioner at or before the hearing.
5. The board will act upon the petition for a rehearing at its next regularly scheduled meeting following the date of its filing. If no action is taken by the board within such time, the petition will be deemed to be denied. The board may set a time for a hearing on said petition or may summarily grant or deny the petition.
6. The filing of the request is not a prerequisite for seeking judicial review of the order.

**R850-8-1800. Judicial Review - Exhaustion of Administrative Remedies.**

1. A party aggrieved may obtain judicial review of a final order issued in an adjudicative proceeding, except where judicial review is expressly prohibited by statute.

2. A party may seek judicial review only after exhausting all administrative remedies available, except that a party seeking judicial review need not exhaust administrative remedies if any statute or rule states that exhaustion is not required.

3.

(a) A party shall file a petition for judicial review of a final order issued by the board within 30 days after the date that the order is issued or considered issued.

(b) The petition shall name the Trust Lands Administration and all other appropriate parties as respondents.

#### **R850-8-1900. Judicial Review.**

To seek judicial review of a final board action resulting from informal or formal adjudicative proceedings, the petitioner shall file a petition for review of a board order with the appropriate court in the manner required by Sections 63G-4-402 and 63G-4-403, as appropriate.

#### **R850-8-2000. Judicial Review - Stay and Other Temporary Remedies Pending Final Disposition.**

1. The board may grant a stay of its order or other temporary remedy during the pendency of judicial review if it determines a stay would be in the interest of justice and would not unduly harm the beneficiaries. The board, in its discretion, may condition the continuation of the stay upon filing of a surety, in an amount specified by the board, sufficient to protect the interests of the beneficiaries.

2. If the board denies a stay or denies other temporary remedies requested by a party, the board's order of denial shall be mailed to all parties and shall specify the reasons why the stay or other temporary remedy was not granted.

#### **R850-8-2100. Emergency Adjudicative Proceedings.**

1. The board may issue an order on an emergency basis without complying with the requirements of this section if:

(a) the facts known by the board or presented to the board show that an immediate and significant danger to the public health, safety, or welfare exists; or

(b) an immediate and irreparable threat to the beneficiaries exists; and

(c) the threat requires immediate action by the board.

2. In issuing its emergency order, the board shall:

(a) limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare; or

(b) the immediate and irreparable threat to the beneficiaries; and

(c) issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the agency's utilization of emergency adjudicative proceedings; and

(d) give immediate notice to the persons who are required to comply with the order.

3. If the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party, the board shall commence an adjudicative proceeding in accordance with the other provisions of this section.

#### **R850-8-2200. Waivers.**

Notwithstanding any other provision of these rules, any procedural matter, including any right to notice or hearing, may be waived by the affected person by a signed, written waiver in a form acceptable to the board.

#### **R850-8-2300. Severability.**

In the event that any provision, section, subsection or phrase of these rules is determined by a court or body of competent jurisdiction to be invalid, unconstitutional, or unenforceable, the remaining provisions, sections, subsections or phrases shall remain in full force and effect.

#### **R850-8-2400. Time Periods.**

Nothing in this section shall be interpreted to restrict the director, or, the board from lengthening or shortening any time period prescribed herein.

**KEY: administrative procedures, public petitions, right of petition, adjudicative proceedings**

**Date of Last Change: December 22, 2011**

**Notice of Continuation: October 7, 2021**

**Authorizing, and Implemented or Interpreted Law: 53C-1-204(3); 53C-1-204(10)(c); 53C-1-304**

**R850. School and Institutional Trust Lands, Administration.**

**R850-10. Expedited Rulemaking.**

**R850-10-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Section 53C-1-201(3)(c), which authorize the Director and Board of the School and Institutional Trust Lands Administration to develop a procedure for expedited rulemaking.

**R850-10-200. Expedited Rulemaking Procedures.**

When the criteria listed below are satisfied, the agency may pursue rulemaking in an expedited manner, expediting the traditional process provided for in 63G-3.

1. Material supporting the director's proposal should be provided to the board so that there is sufficient time for review prior to the meeting, when conditions permit.

2. The proposed action will be included on the published agenda for the board meeting.

3. The agency will provide a list of individuals who have been contacted and/or involved in the drafting of the proposed rule. Those individuals shall be invited to the board meeting.

4. A written finding shall be presented to the board which shall include the information required by Subsection 53C-1-201(3)(c)(i) through (iii).

5. The presentation of the proposed rule will include the existing language, if any, with new language underlined and language to be removed indicated by brackets and strike through. A copy of the proposed rule as it would appear after adoption will also be provided.

6. The agency shall disclose at the board meeting its anticipated effective date for the rule, and proposed actions to be taken upon implementation.

**KEY: rulemaking procedures, administrative procedures**

**Date of Enactment or Last Substantive Amendment: April 3, 1995**

**Notice of Continuation: November 7, 2019**

**Authorizing, and Implemented or Interpreted Law: 53C-1-201(3)(a)(ii)**



**R850. School and Institutional Trust Lands, Administration.****R850-11. Procurement.****R850-11-100. Authorities.**

This rule is authorized by Sections 6, 8, 10, and 12 of the Utah Enabling Act; Articles X and XX of the Utah Constitution, and Subsection 53C-1-201(3)(e).

**R850-11-150. Purposes.**

Subsection 53C-1-201(3)(e) permits the agency to be exempted from the Utah Procurement Code upon board approval and adoption of alternative procurement procedures. This rule provides alternative procurement procedures that the agency may follow when procuring any goods and services related to the administration of the agency or the management, development, leasing or sale of trust lands. Nothing in this rule shall be deemed to prevent the agency from procuring goods and services pursuant to the Utah Procurement Code or other applicable law whenever deemed advisable by the agency, or in circumstances where this rule is not applicable.

**R850-11-200. Definitions.**

For the purposes of this rule:

1. Provider: means an individual or firm engaged in the business of providing goods or services deemed necessary by the agency.
2. Professional Services: any professional services related to the administration of the agency or the management, development, leasing or sale of trust lands, including management consulting, accounting, auditing, engineering, land planning, marketing, environmental, geological, mining engineering, architectural, surveying, appraisal, archaeological, real estate brokerage, planning, or such other services as needed.
3. Legal Services: a licensed professional service provided by attorneys or law firms to address issues of law, whether litigation or otherwise.

**R850-11-300. Professional or Legal Services.**

1. The agency may from time to time request providers of professional or legal services to submit a statement of qualifications containing information that the agency deems relevant to the provider's ability to provide quality services and the provider's hourly rates. At least once annually, the agency will advertise statewide its intent to accept statements of qualifications, and will maintain a list of qualified providers with approved rates.

2. The purpose of prequalification is to provide the agency with basic information regarding providers for the agency's convenience. The agency is not required to solicit each or any prequalified provider for a particular service when it undertakes a procurement.

3. When the procurement of professional or legal services is estimated to cost less than \$50,000, the agency may select the provider directly from either the list of providers who have submitted annual statements of qualifications, or from other qualified providers if necessary.

4. When the procurement is estimated to exceed \$50,000, a written request for proposal (RFP) shall be prepared which describes the agency's requirements and sets forth the evaluation criteria for the procurement. Consideration shall be given to publishing the RFP in a newspaper of general circulation or otherwise advertising the RFP to elicit additional responses from potential providers. The agency shall select the provider offering, as determined in the discretion of the director, the best combination of price, expertise, and other relevant factors. The director shall make a written determination, supported by the following reasons, that the selected provider is best qualified to provide the particular services being procured by the agency:

(a) competence to perform the services as reflected by technical training and education, general experience, experience in providing the required services and the qualifications and competence of persons who would be assigned to perform the services;

(b) ability to perform the services as reflected by workload and the availability of adequate personnel, equipment, and facilities to perform the services expeditiously;

(c) past performance as reflected by the services of the firm with respect to factors such as responsiveness, control of costs, quality of work, and an ability to meet deadlines; and

(d) a determination that the provider's fees are reasonable.

5. The agency may in its discretion issue contracts for professional or legal services by competitive bid pursuant to R850-11-400 or R850-11-500 instead of utilizing the procedures in this section.

**R850-11-400. Bidding Procedures - Other Procurements.**

1. Competitive bids are not required for procurements under \$3,000 unless the responsible agency staff member believes that the potential financial benefit to the trust beneficiaries from obtaining bids outweighs the staff time and costs associated with soliciting bids.

2. For procurements over \$3,000 and less than \$50,000, except for procurements of professional or legal services undertaken pursuant to R850-11-300, the responsible agency staff member shall seek to obtain no less than two competitive bids. Bids may be solicited and received by telephone or other means, but shall be noted in writing by the responsible agency staff member.

3. The provider offering the lowest bid shall be selected unless the director makes a written determination that a provider submitting a higher bid is better qualified to provide the particular services being procured by the agency.

4. Nothing in this rule shall prevent the agency from using existing statewide contracts for supplies, services and construction as set forth in R33-3-301(2).

**R850-11-450. Bidding Procedures - Large Contracts.**

1. For procurements anticipated to exceed \$50,000, except for procurements of professional or legal services undertaken pursuant to R850-11-300, the agency shall prepare a written request for proposals (RFP) or invitation to bid describing information required by the agency in evaluating the proposal, which may include a description of the services required, a statement of the provider's experience and qualifications, any performance schedule or deadlines, billing rates, bid specifications, and other information relevant to the particular project.

2. The responsible agency staff member shall seek to obtain at least three written responses to the RFP. Consideration shall be given to publishing the RFP in a newspaper of general circulation or otherwise advertising the RFP to elicit additional responses from potential providers.

3. The provider offering the lowest bid shall be selected unless the director makes a written determination, supported by detailed reasons, that a provider submitting a higher bid is better qualified to provide the particular services being procured by the agency.

**R850-11-500. Sole Source Procurements.**

Where the agency has identified a provider that has special familiarity or qualifications with respect to a project, or that has previously worked on a related project, the agency may hire the provider without soliciting bids from other providers if the director finds in writing that hiring the particular provider is in the best interests of the trust beneficiaries, and that the provider's fee is reasonable.

**R850-11-600. Real Estate Brokerage Services.**

1. The agency is not required to solicit bids for real estate brokerage services, and may list trust lands with a licensed Utah broker as it sees fit.

2. Where the agency has not listed a property with a broker, but has undertaken internal marketing efforts, the agency is authorized but not obligated to pay a commission or finder's fee no greater than the prevailing market rates in the area to real estate brokers who have previously registered their client as directed by the agency, and who are the procuring cause of:

(a) the sale of trust lands; or

(b) a development transaction entered into by the agency pursuant to R850-140.

3. Commission amounts will be determined in the discretion of the agency based on type of transaction, prevailing market conditions, and any other relevant factors.

**R850-11-700. Debt and Equity Investments.**

Debt and equity investments made by the agency shall be exempt from the Utah Procurement Code, provided that such investments are part of a development transaction reviewed by the board and entered into by the agency pursuant to R850-140.

**R850-11-800. Documentation.**

The agency will determine, based on the type of service requested and complexity of the project, the level of contractual documentation necessary in order to adequately protect the best interests of the trust. Formal contract documentation shall be subject to approval as to form by a representative of the attorney general's office.

**R850-11-900. Bonding for Construction Services.**

1. For construction services costing \$50,000 or higher, the agency shall require the chosen provider to deliver to the agency a performance bond and a payment bond in amounts equal to 100% of the price specified in the contract and executed by a surety company authorized to do business in this state or in any other form satisfactory to the agency;

2. For construction services costing less than \$50,000, the agency may require a performance bond and a payment bond as described in R850-11-700(1) if it determines that requiring such bonds is in the best interests of the trust.

**R850-11-1000. Conflicts of Interest.**

The agency shall not enter into any contract with a provider which violates or, on account of the factual circumstances or person involved, gives the appearance of a conflict of interest or a potential violation of the Utah Public Officer's and Employee's Ethics Act.

**R850-11-1100. Appeals.**

Appeals of agency procurement decisions shall be governed by 63G-6. All initial appeals shall be directed to the director of the agency, with a copy to the Director of the Division of Purchasing. The disposition of any appeal shall take into account the intended purpose of Subsection 53C-1-201(3)(a)(iv), which is to provide the agency with broad discretion and flexibility in procurement to facilitate businesslike management of trust lands.

**KEY: government purchasing**

**Date of Last Change: January 21, 2016**

**Notice of Continuation: April 4, 2022**

**Authorizing, and Implemented or Interpreted Law: 53C-1-201(3)**





**R850. School and Institutional Trust Lands, Administration.**

**R850-12. Prohibited and Restricted Uses of Trust Lands.**

**R850-12-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, Section 53C-1-302(1)(a)(ii) of the Utah Code, and Board Policy #2021-01. The purpose of this rule is to prohibit certain activities and to permit with limitations other activities on trust lands.

**R850-12-200. Definitions.**

In addition to the terms defined in R850-1, the terms below, when used in Section R850-12 are defined as follows:

1. "Authorized Route" means a route:
  - (a) designated as open to the public for motor vehicle use under Subsection R850-110-200;
  - (b) established by grant or dedication to a governmental entity for public use; or
  - (c) as otherwise established by law for public use.
2. "Low-impact activities" means activities that have minimal or negligible impact to trust lands.

**R850-12-300. Prohibited Activities.**

In addition to Section 53C-2-301(1), except as authorized in writing by the agency, the following activities are prohibited on trust lands:

1. posting or distributing printed materials;
2. managing or controlling trust lands, including prohibiting, preventing, or obstructing public entry on trust lands or blocking access to an Authorized Route;
3. activities authorized under this Section R850-12 that continue for more than 15 consecutive days or more than 15 days within any 30-day period;
4. parking a motorized or recreational vehicle more than 100 feet from an Authorized Route;
5. leaving unattended personal property on trust lands for longer than 72 hours;
6. using or possessing explosives, fireworks, or firecrackers;
7. using poisons, herbicide, insecticides, or pesticides;
8. using or possessing any noxious weeds or noxious weed seeds, as designated in Sections R68-8-2 and R68-9-2, and/or feeds, supplements or forages containing any, in whole or in part, of the weeds designated as noxious weeds in Section R68-9-2;
9. metal detecting;
10. searching for treasure, artifacts, or other natural or man-made items;
11. leaving or disposing of human or animal fecal matter unless:
  - (a) the fecal matter is buried at least 8 inches deep and at least 200 feet from any campsite or water source; and
  - (b) all toilet paper and hygiene products are removed from trust lands;
12. installing new technical rock climbing or slack lining equipment or hardware;
13. affixing devices including trail cameras to structures, trees, or any other natural or made-made fixture;
14. using or possessing glass containers outside of enclosed vehicles, tents, trailers, or recreational vehicles, except that removing glass discarded by others on trust lands is permitted;
15. constructing, using, moving, occupying, or destroying any structures on trust lands including fences, water control devices, roads, surveys and section markers, or signs;
16. destructing, marking, or defacing trust lands, including without limitation, cross-country travel using human-powered, mechanized or motorized vehicles (other than approved mobility devices for the impaired or over-snow travel authorized pursuant to R850-110-400), creating new routes, human-powered, mechanized or motorized vehicle travel on routes other than Authorized Routes;
17. carving tree trunks, marking/defacing rocks, graffiti, destruction of natural formations on trust lands (e.g. knocking over sandstone pillars), tossing, throwing, or rolling of rocks or other materials into valleys or canyons or down hills and mountains;
18. any activity prohibited under any other local, state, or federal statute, ordinance, rule, or regulation;
19. any activity that requires authorization from the agency or any other local, state, or federal authority under any local, state, or federal statute, ordinance, rule, or regulation.

**R850-12-400. Non-Commercial Low-Impact Activities.**

Non-commercial low-impact activities are permitted on trust lands without written authorization from the agency, subject to the prohibitions and restrictions in this Section R850-12, unless written authorization is required for such activity by the agency's statutes, rules, director's findings, handbook, or other publication available to the public.

**R850-12-500. Non-Commercial Camping.**

1. A person may maintain a non-commercial low-impact campsite on trust lands without written authorization from the agency, subject to the prohibitions and restrictions in this Section R850-12.

2. A person may not maintain a campsite in the same location for more than 15 consecutive days or relocate a campsite to any trust lands within a 5-mile radius of the original campsite for at least 15 consecutive days following the end of the camping period.

3. A person may not maintain a campsite within 100 feet from any water source.

**R850-12-600. Animals on Trust Lands.**

1. A person may bring an animal onto trust lands without written authorization, subject to the prohibitions and restrictions in this Section R850-12. These prohibitions and restrictions do not apply to those activities permitted under a valid grazing permit or other written authorization issued by the agency.

2. A person may not leave an animal unattended on trust lands unless the animal is restrained.

3. A person may not bring more than 16 animals at a time onto trust lands.

4. A person may not bring onto trust lands any animal reasonably likely to cause physical harm to people, other animals, or property.

5. A person may not engage in commercial dog training on trust lands.

6. A person may not board any animal within 100 feet from any water source, riparian area, or culinary system on trust lands.

**R850-12-700. Fires and Burning Material.**

1. Campfires on trust lands are permitted without written authorization, subject to the prohibitions and restrictions in this Section R850-12, if:

(a) the campfire is within an established fire ring;

(b) the fire is not left unattended;

(c) all adequate provisions are taken to prevent the fire from spreading, including having a readily accessible means to extinguish a fire available;

(d) all ashes, unburned fuel, and trash are removed from trust lands; and

(e) the fire is completely extinguished when not in use and prior to being left unattended.

2. A person may not construct a new fire ring on trust lands without written authorization from the agency.

3. A person may only burn clean, dry, cord-type firewood or charcoal on trust lands. Burning or discarding materials containing nails, screws, or other metal hardware (such as from wood pallets and construction debris) is prohibited.

4. A person may collect downed wood or woody vegetation for fires on trust lands but may not cut standing vegetation (living or dead). A person may not remove firewood from trust lands without written authorization from the agency.

5. A person may not throw or drop a lighted cigarette or other burning material onto trust lands.

**R850-12-800. Target Shooting.**

1. A person may engage in target shooting on trust lands without authorization, subject to the prohibitions and restrictions in this Section R850-12.

2. A person engaged in target shooting on trust lands may only use shooting targets manufactured or assembled for that purpose and that do not explode, ignite, shatter, or pose a hazard to people, animals, or property, except that clay pigeons are permitted.

3. A person may not shoot at any target that is on, over, or within 50 feet of a water source. A person may not engage in target shooting from or within 50 feet of a water source.

4. A person that brings shooting targets or ammunition onto trust lands shall remove the shooting targets and ammunition, including spent shells, from trust lands.

**R850-12-900. Agency may Limit or Prohibit Activities.**

1. The agency may limit or prohibit any activities authorized by this Section R850-12 for the reasons and time periods deemed necessary by the agency to protect trust lands from damage, preserve trust lands, protect people or animals from harm, or for any other reason that the agency determines is in the best interest of its beneficiaries.

2. To further limit or prohibit an activity on trust lands, the agency may:

- (a) post notice at the area, trailhead, or campsite to which the limitation or prohibition applies; or
- (b) post notice of the limitation or prohibition on its website.

3. The agency may reduce the limitations or prohibitions in this Section R850-12 by complying with Subsection R850-12-900(2).



**R850. School and Institutional Trust Lands, Administration.****R850-13. Confidential Treatment of Proprietary Information.****R850-13-100. Authorities.**

1. This rule implements Section 53C-2-102(3), which gives the agency independent authority to keep information owned by third parties confidential.

2. This rule is authorized by Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302(1)(a)(ii) and 53C-2-102(3) of the Utah Code.

**R850-13-200. Definitions.**

In addition to the terms defined in R850-1 and Section 53C-2-102, the terms below, when used in R850-13 are defined as follows:

1. "Propriety information" means information in any form that is owned or controlled by the provider, which the agency could not reasonably obtain through public sources, and which provides a competitive business advantage to the provider, including financial, business, engineering, and geologic information and analysis.

2. "Provider" means a prospective applicant, applicant, partner, permittee, lessee, or any other third party that provides the agency with proprietary information for the purpose of entering into a potential transaction or as required by the agency under the terms of any permit, lease, or other business arrangement.

**R850-13-300. Request for Proprietary Information.**

1. The agency may require that a provider submit proprietary information:

- (a) to evaluate a potential or submitted application, bid, proposal, or agreement;
- (b) as part of negotiating a potential agreement with a third party; or
- (c) to assess the value and uses of trust lands for potential sale, lease, permit, exchange, or other business arrangement.

2. The agency may reject an application, request for proposal, or other transaction if the provider fails to submit the required proprietary information.

3. The agency may require that a lessee, permittee, or any other party in a contractual relationship with the agency submit proprietary information to the agency as the agency deems reasonable and necessary to determine the provider's compliance with the terms of the contract.

**R850-13-400. Submitting Proprietary Information Under Confidentiality.**

1. If the agency requires and/or a provider desires to submit proprietary information to the agency under confidentiality, the provider shall make a written request for confidentiality to the director. The request for confidentiality must contain:

- (a) a claim that the information is of a proprietary nature and a concise statement of reasons supporting the claim;
- (b) a claim that the information has not been publicly disclosed; and
- (c) a request for confidential treatment of any or all of the proprietary information.

2. The director shall notify the provider in writing of whether the director agrees that any or all of the information is of a proprietary nature. To the extent possible, the agency shall not review the substantive details of the information submitted under a confidentiality request until after the director has agreed that the information is proprietary in nature. If the director does not agree that the information is proprietary, the director shall notify the provider and upon the provider's request, return the information to the provider.

3. A provider may make a confidentiality request prior to or after submitting the proprietary information to the agency. Failure to request confidential treatment of proprietary information before the agency discloses the information to a third party constitutes waiver of a claim of confidentiality with respect to the proprietary information so disclosed.

4. The director and provider may agree in writing that certain categories of information are proprietary and such agreement means that all information previously submitted, or thereafter submitted, within the agreed-upon category will be treated as confidential pursuant to R850-13-500(1).

5. The agency may execute a confidentiality agreement with a provider consistent with these rules.

**R850-13-500. Confidentiality Obligations of the Agency.**

1. The agency shall keep confidential all information:

- (a) submitted under a request for confidentiality pursuant to R850-13-400(1) that the director agrees is of a proprietary nature; or

- (b) that is proprietary information and submitted pursuant to R850-13-400(4) or R850-13-400(5).
- 2. The agency may not disclose proprietary information subject to confidentiality under R850-13-500(1) to third parties unless:
  - (a) the provider agrees to the disclosure in writing;
  - (b) the information becomes publicly available other than through disclosure by the agency;
  - (c) the information is provided to the agency by a third party that has no confidentiality obligation to the provider with respect to the disclosed information;
  - (d) the information is independently developed by the agency without use of the proprietary information;
  - (e) the information is required to be disclosed by an administrative or judicial order; or
  - (f) federal or state law requires the information to be of a non-proprietary nature.

**R850-13-600. Return or Destruction of Proprietary Information.**

- 1. At the request of the provider, the agency shall return all proprietary information to the provider and destroy any proprietary information held in digital form, except that the agency may retain:
  - (a) proprietary information related to the characteristics of trust lands; and
  - (b) proprietary information required to be submitted under a lease or other contract through the term of the contract.
- 2. The agency is not required to destroy proprietary information held in digital back-up files or archives if retaining the information is consistent with the State's records retention policy so long as the agency uses reasonable efforts to ensure proprietary information remains confidential.

**KEY: proprietary information, confidential, information, confidentiality**

**Date of Enactment or Last Substantive Amendment: September 8, 2021**

**Authorizing, and Implemented or Interpreted Law: 53C-1-302(1)(a)(ii); 53C-2-102(3)**

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**R850. School and Institutional Trust Lands, Administration.****R850-21. Oil, Gas and Hydrocarbon Resources.****R850-21-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Utah Code Title 53C et seq. which authorize the Director of the School and Institutional Trust Lands Administration to establish rules for the issuance of oil, gas and hydrocarbon leases and which govern the management of trust-owned lands and oil, gas and hydrocarbon resources.

**R850-21-150. Planning.**

Pursuant to Subsection 53C-2-201(1)(a), this category of activity carries no planning obligations by the agency beyond existing rule-based analysis and approval processes. Oil, gas and hydrocarbon development activities are regulated by UDOGM pursuant to Utah Administrative Code Rule R649.

**R850-21-175. Definitions.**

Except as specifically defined below, the definitions set forth at R850-1-200 shall be applicable. The following words and terms, when used in Section R850-21, shall have the following meanings:

1. Anniversary Date: the same day and month in succeeding years as the effective date of the lease.
2. Assignment(s): a transfer of all or a portion of the lessee's record title or operating rights in a lease.
  - (a) Mass Assignment: an assignment that affects two or more leases and identifies the leases affected thereby on an attached exhibit to the assignment.
  - (b) Non-leasehold Assignment: an assignment that transfers an interest in a lease that is not record title or operating rights, for example, but not limited to, overriding royalty, net profits, or other production payments.
3. Certification of Net Revenue Interest: a written declaration of oath to the agency that must accompany assignments of record title or operating rights in leases issued beginning April 1, 2005, certifying that the total net revenue interest (NRI) in the lease has not been reduced to less than 80 percent of 100 percent NRI.
4. Designated Operator: the person or entity that has been granted authority through a Designation of Operator form to conduct operations on the lease or a portion thereof.
5. Diligent Operations: the continuation of drilling or re-working operations in the secondary term of the lease which are prosecuted in a timely and good and workmanlike manner to establish production or restore production of leased substances. Diligent Operations may include cessations of operations which do not exceed ninety (90) days in duration or a cumulative period in excess of one hundred eighty (180) days in a lease year without prior agency approval.
6. Effective Date: the date as defined in the lease.
7. Gas Well: a well capable of producing volumes exceeding 100,000 cubic feet of gas to each barrel of oil from the same producing horizon where both oil and gas are produced; or, a well producing gas only from a formation or producing horizon.
8. Lease Year: the twelve-month period commencing at 12:01 a.m. on the month and day of the effective date of the lease and ending at midnight on the last day of the twelfth month.
9. Minimum Royalty: the minimum amount of money payable to the agency which accrues beginning in the first year of the secondary term of the lease or after first production is obtained. The amount due is calculated on the difference, if any, between the amount of the minimum royalty specified in the lease and the actual royalty paid from production in the lease year.
10. Operating Rights Interest: the interest or contractual obligation created out of a lease that authorizes the operating rights interest owner to enter upon the leased land to conduct drilling, production and other related operations. Operating rights interest may be stratigraphically limited.
11. Other Business Arrangement (OBA): an agreement entered into between the agency and a person or entity consistent with Section 53C-2-401-(1)(d)(ii) and approved by the Board of Trustees. By way of example, but not of limitation, OBAs may be for joint ventures, farmout agreements, exploration agreements, or other agreements for the disposition of hydrocarbon deposits on trust lands.
12. Paying Quantities: unless otherwise defined in the lease, production that allows the lessee to realize a profit after deducting taxes, the agency's royalty, and the cost of the operations.
13. Record Title Interest: the primary ownership of a lease that includes the obligation to pay rentals, the rights to assign or relinquish a lease, and the ultimate responsibility to the agency for obligations under the lease. Record title interest to a lease may not be stratigraphically limited.
14. Rental: a sum of money as prescribed in the lease payable annually in advance to the agency on or before midnight on the last day of the lease year.

15. Shut-in Gas Well: a gas well that is physically capable of producing gas in paying quantities that cannot be marketed at a reasonable price due to lack of market or transportation facilities, the status of which has been confirmed through the filing of a completion report or other documentation with UDOGM.

16. Shut-in Gas Well Payment: beginning at the commencement of the secondary term of the lease, the amount of money accruing and payable to the agency, in addition to other obligations defined in the lease, when gas is not being sold or marketed from the lease for a shut-in gas well.

17. Spud: the first boring of a hole in the drilling of a well and continuation of operations until surface casing is set.

18. UDOGM: the Division of Oil, Gas, and Mining of the Department of Natural Resources of the State of Utah.

#### **R850-21-200. Classification of Oil, Gas and Hydrocarbons.**

Oil, gas and hydrocarbon leases may cover oil; natural gas, including gas producible from coal formations or associated with coal-bearing formations; natural gas liquids; other hydrocarbons (whether the same is found in solid, semi-solid, liquid, vaporous, or any other form); sulfur; helium; and other gases not individually described. The oil, gas and hydrocarbon category shall not include coal, oil shale, asphaltic-bituminous sands or gilsonite.

#### **R850-21-300. Lease Application Process.**

1. The agency may issue leases competitively, non-competitively or enter into OBAs with qualified applicants as set forth in R850-3-200 for the development of oil, gas and hydrocarbon resources.

##### **2. Competitive Leasing.**

The director may designate lands for bidding by electronic means as a vehicle for competitive leasing. Electronic bidding may be in addition to, or in place of, the bidding processes set out at Section 53C-2-407 at the discretion of the director. A list of available land and a link to the bidding form and procedure will be provided at the agency website.

(a) Competitive Bid Offering: when the agency designates lands for competitive bidding, it shall award leases on the basis of the highest bonus bid per acre made by a responsible, qualified bidder.

(b) Minimum Bonus Bid Amount: the minimum acceptable bonus bid for competitive bid offering for leases shall not be less than \$1.00 per acre or fractional acre thereof, as set by the director.

(c) Notice of Offering: notices of the offering of lands for competitive bid shall:

(i) run for a period of not less than fifteen (15) consecutive days after the notice is posted in the agency's office or online;

(ii) provide the legal description of the land;

(iii) state the last day on which bids may be received.

(d) Identical Bids: in the case of identical successful bids, the agency may award the lease by public drawing or oral auction between the identical bidders, held at the agency's offices.

(e) Awarding of Leases: the winning bid shall be disclosed in the agency's office at 10 a.m. on the first business day following the last day on which bids may be received.

##### **3. Non-Competitive Leasing.**

(i) the director may designate lands for non-competitive leasing if the lands have been offered in a competitive offering and have received no bids. Designated lands may be offered for a period of three (3) months from the date the competitive sale closed for which no bids were received. The procedure for non-competitive leasing will be posted on the agency website.

(ii) where two or more applications for the same lease contain identical successful bids, the agency may award the lease by public drawing or oral auction between the identical bidders held at the agency's office.

##### **4. Other Business Arrangement.**

(i) the agency may, with board approval, enter into joint ventures, farmout agreements, exploration agreements, or other agreements for the development of oil, gas and hydrocarbon resources if the agency deems it is in the best interest of the trust to do so.

(ii) The application for an OBA must be written and directed to the Assistant Director for Oil and Gas for review on a case-by-case basis.

#### **R850-21-400. Availability of Lands for Lease Issuance.**

1. A lease shall not be issued for lands comprising less than a quarter-quarter section or surveyed lot, unless the land the agency owns is less than the whole of a quarter-quarter section or surveyed lot, in which case the lease will be issued only on the entire area owned by the agency.

2. Leases shall be limited to no more than 2560 acres or four sections and must all be located within the same township and range, unless a waiver is approved by the director.

**R850-21-500. Lease Provisions.**

The following provisions, terms and conditions shall apply to all leases granted by the agency:

**1. Rentals and Credits.**

(a) The rental rate shall not be for less than \$1 per acre, or fractional acre thereof, per year, at the time the lease is offered.

(b) The minimum annual rental on any lease, regardless of the amount of acreage, shall in no case be less than \$500.00.

(c) Rental payments must be received on or before the end of the lease year notwithstanding R850-5-200(3), unless otherwise stated in the lease.

(d) Any overpayment may, at the option of the agency, be credited toward the lease account.

(e) The agency may accept lease payments made by any party provided, however, that the acceptance of such payment(s) shall not be deemed to be recognition by the agency of any interest of the payee in the lease. Ultimate responsibility for such payments remains with the record title interest owner.

(f) Rental credits, if any, shall be governed by the terms of the lease which provide for such credits.

**2. Continuance of a Lease After Expiration of the Primary Term.**

Unless otherwise provided in the lease, a lease shall be continued after the primary term has expired so long as:

(a) the leased substance is being produced in paying quantities from the leased trust lands or from other lands pooled, communitized or unitized therewith, and lessee pays the annual minimum royalty set out in the lease; or

(b) the agency determines that the lessee or designated operator is engaged in diligent operations which are determined by the director to be reasonably calculated to restore production of the leased substance from the leased trust lands or from other lands pooled, communitized or unitized therewith, and lessee pays the annual minimum royalty set out in the lease; or

(c) subject to the requirements of R850-21-500(4), if the leased trust lands, or lands pooled therewith, contain a shut in gas well capable of producing paying quantities and lessee makes all payments required by the lease.

**3. Pooling, Communitization or Unitization of Leases.**

(a) Upon prior written authorization of the director, lessee may commit the leased trust lands or portions of such lands to units, or cooperative or other plans of development under such conditions as the director may prescribe.

(b) The director may, with the consent of the lessee, modify any term of a lease for lands that are committed to a unit, or cooperative or other plan of development.

(c) Production allocated to the leased trust lands under the terms of a unit, or cooperative or other plan of development shall be considered produced from the leased lands whether or not the point of production is located on the leased trust lands.

(d) Lease payments for leases included in any unit, cooperative or other plans of development shall be at the rate specified in the lease, subject to change at the discretion of the director or as may be prescribed in the terms of the lease.

(e) For active leases in a validated federal or state unit as of the effective date of these Rules that are either contracted out of such unit or upon unit termination which occurs before January 1, 2021, the agency will:

(i) grant a one-time, two (2) year extension from the date the lease was eliminated from the unit either by contraction or unit termination and so long thereafter as the leased substances are produced in paying quantities, or

(ii) continue the lease to the end of its primary term, whichever is longer.

**4. Shut-in Gas Wells Producing Gas in Paying Quantities.**

(a) To qualify as a shut-in gas well capable of producing in paying quantities:

(i) if the well is a new well, the operator must have filed with UDOGM a completion form or other documentation verifying that the well is capable of production in paying quantities, and if the well is an existing well, the operator must have obtained an approval of shut-in status from UDOGM; and

(ii) the lessee shall have complied with the lease terms providing the basis upon which the minimum royalty is to be paid for a shut-in gas well.

(b) The director may, at any time, require written justification from the lessee that the well qualifies as a shut-in gas well.

(c) A shut-in gas well will not extend a lease more than five (5) years beyond the original primary term of the lease unless otherwise extended at the discretion of the director.

**5. Oil/Condensate/Gas/Natural Gas Liquids Reporting and Records Retention.**

(a) Notwithstanding the terms of the lease, gas and natural gas liquid report payments are required to be received by the agency on or before the last day of the second month succeeding the month of production.

(b) The extension of payment and reporting time for gas and NGLs does not alter the payment and reporting time for oil and condensate royalty which must be received by the agency on or before the last day of the calendar month succeeding the month of production.

(c) Records of production, sales, transportation, and all other documents pertaining to the calculation of royalties shall be maintained for seven (7) years after the records are generated unless the director notifies the record holder that an audit has been initiated or an investigation begun involving such records. When so notified, records shall be maintained until the director releases the record holder of the obligation to maintain such records.

6. Other Lease Provisions.

(a) Any lease may be terminated by the agency in whole or in part upon lessee's failure to comply with any lease term, covenant or any applicable law or agency rule. Subject to the terms of any lease issued hereunder, any final agency action is appealable pursuant to R850-8-1000, in accordance with the provisions of the rules of the agency.

(b) When the agency approves the amendment of an existing lease by substituting a new lease form for the existing form, the amended lease will retain the effective date of the original lease.

(c) The agency may require, in addition to the lease provisions required by these rules, any other reasonable provisions to be included in the lease as it deems necessary but which do not substantially impair the lessee's rights under the lease.

**R850-21-600. Transfer by Assignment or Operation of Law.**

1. Record Title or Operating Rights Transfer by Assignment. Any lease may be assigned as to all or part of the acreage, to any person, firm, association, or corporation qualified to hold a lease provided, however that:

(a) record title or operating rights assignments must be approved by the director. No record title or operating rights assignment is effective until approval is given.

(b) Any attempted or purported assignment of record title or operating rights made without approval by the director is void.

2. Non-leasehold assignments. Non-leasehold assignments of overriding royalty interests must be filed with the agency for record keeping purposes only. Other non-leasehold interest assignments may be filed with the agency for record keeping purposes only.

3. Requirements for Assignments.

(a) An assignment of either a record title or operating rights interest in a lease must:

(i) be expressed in a good and sufficient written legal instrument;

(ii) be properly executed, acknowledged and clearly set forth:

(A) the serial number of the lease;

(B) the land involved;

(C) the name and address of the assignee;

(D) the name of the assignor;

(E) the interest transferred;

(F) interest retained, if any; and

(G) a certification of net revenue interest, if applicable.

(b) Lessees who are assigning a record title or operating rights interest shall:

(i) prepare and fully execute the assignments, complete with acknowledgments;

(ii) require that all assignees execute the acceptance of assignment; and

(iii) submit the prescribed assignment fee.

(c) If approval of any assignment of record title or operating rights is withheld by the director, the assignee shall be notified of such decision and its basis. Any decision to withhold approval may be appealed pursuant to R850-8 or any similar rule in place at the time of such decision.

(d) An assignment shall be effective following approval by the director. The assignor or surety, if any, shall continue to be responsible for performance of any and all obligations as if the assignment had not been executed until approval by the director. After approval by the director, the assignee is bound by the terms of the lease to the same extent as if the assignee were the original lessee, any conditions in the assignment to the contrary notwithstanding; provided, however, that the approved record title interest owner(s) shall retain ultimate responsibility to the agency for all lease obligations.

(e) An assignment of an undivided 100% record title interest in less than the total acreage covered by the lease shall cause a segregation of the assigned and retained portions. Segregated leases shall continue in full force and effect for the primary term of the original lease or as further extended pursuant to the terms of the lease. The agency may re-issue a lease with a new lease number covering the assigned lands. The agency may, in lieu of re-issuing a lease, note the assignment in its records with all lands covered by the original lease maintained with the original lease number and with

each separate tract or interest resulting from an assignment with an additional identifying designation to the original number.

(f) Any assignment of record title or operating rights affecting leases issued beginning April 1, 2005, which would create a cumulative royalty and other non-working interest burdens in excess of twenty percent (20%) thereby reducing the net revenue interest in the lease to less than eighty percent (80%) net revenue interest shall not be approved by the agency. The agency reserves the right to void any assignment in which the certification of net revenue interest is found to be false and the assignment results in an aggregate burden in excess of 20% including the agency's retained royalty.

(g) Mass assignments are allowed, provided the requirements set forth in R850-21-600(3) are met.

(h) To the extent a legal foreclosure upon interests in leases occurs under the terms of a mortgage, deed of trust or other agreement, assignments must be prepared as set forth in this section and filed with and approved by the agency.

(i) The agency by approving an assignment does not adjudicate the validity of any assignment as it may affect third parties. Agency approval does not estop the agency from challenging any assignment which is later adjudicated by a court of competent jurisdiction to be invalid or ineffectual.

4. Transfer by Operation of Law.

(a) Death: if an applicant or lessee dies, his/her rights shall be transferred to the heirs or devisees of the estate, as appropriate, upon filing of:

(i) a certified copy of the death certificate, together with other appropriate documentation to verify change of ownership as required under Section 75-1-101 et seq., such as a court order determining intestate heirs or letters testamentary and a deed by the personal representative of the estate;

(ii) a list containing the serial number of each lease interest affected;

(iii) a statement that the transferee(s) is a qualified interest owner;

(iv) a required filing fee for each separate lease in which an interest is transferred; and

(v) a bond rider or replacement bond for any bond(s) previously furnished by the decedent.

(b) Corporate Merger: if a corporate merger affects any interest in a lease, no assignment of any affected lease is required. A notification of the merger, together with a certified copy of the certificate of merger issued by the Utah Department of Commerce, shall be furnished to the agency, together with a list by serial number of all lease interests affected. The required filing fee must be paid for each separate lease in which an interest is affected. A bond rider or replacement bond conditioned to cover the obligations of all affected corporations will be required as a prerequisite to recognition of the merger.

(c) Corporate Name Change: if a change of name of a corporate lessee affects any interest in a lease, the notice of name change shall be submitted in writing with a certificate from the Utah Department of Commerce evidencing its recognition of the name change accompanied by a list of lease serial numbers affected by the name change. The required filing fee must be paid for each separate lease in which an interest is affected. A bond rider or replacement bond, conditioned to cover the obligations of all affected corporations, is required as a prerequisite to recognition of the name change.

**R850-21-700. Plan of Operations and Reclamation.**

1. Prior to conducting any operations that may disturb the surface of lands contained in a lease, the lessee or designated operator shall submit for approval simultaneously to the agency and to UDOGM, a plan of operations and must receive the approval of the plan by both agencies. Said plan shall include, at a minimum, all proposed access and infrastructure locations and proposed site reclamation. Prior to approval, the agency may require the lessee or designated operator to adopt a special rehabilitation program for the particular property in question. The agency will review any request for drilling operations and will grant approval provided that the contemplated location and operations are not in violation of any rules or order of the agency. Agency approval of the plan of operations for oil, gas or hydrocarbon resources is required prior to approval by UDOGM, unless otherwise waived in writing to UDOGM by the agency.

2. Prior to approval of the plan of operations, the agency shall require the lessee or designated operator to:

(a) provide when requested, a cultural, paleontological or biological survey on lands under an oil, gas and hydrocarbon lease, including providing the agency a copy of any survey(s) required by other governmental agencies; and

(b) when requested, provide for reasonable mitigation of impacts to other trust resources occasioned by surface or sub-surface operations on the lease; and

(c) negotiate with the agency a surface use agreement, right-of-way agreement, or other agreement for trust lands other than the leased lands where the use of said lands is necessary for the development of the lease.

3. During drilling operations, lessee or designated operator shall keep a log of geologic data accumulated or acquired by the lessee or designated operator about the land described in the lease and will deposit any geological data related to exploration drill holes with the agency upon request.

4. Oil and gas drilling, or other operations which disturb the surface of the leased lands shall require surface rehabilitation of the disturbed area as prescribed and as required by the rules and regulations administered by the agency and UDOGM.

All pits, excavations, roads and pads shall be shaped to facilitate drainage and control erosion by following the best management practices. In no case shall the pits or excavations be allowed to become a hazard to persons or livestock. All material removed from the disturbed area shall be stockpiled and be used to fill the pits and for leveling and reclamation of roads and pads, unless consent of the agency to do otherwise is obtained. At the termination of the lease, the land will as nearly as practicable approximate its original configuration. All drill holes must be plugged in accordance with rules promulgated by UDOGM. All mud pits shall be filled and materials and debris removed from the site.

All topsoil in the affected area shall be removed, stockpiled, and stabilized on the leased trust lands until the completion of operations. Upon reclamation, the stockpiled topsoil will be redistributed on the affected area and the land revegetated as prescribed by the agency.

5. All lessees or designated operators shall be responsible for compliance with all laws, notification requirements, and operating rules promulgated by UDOGM with regard to oil, gas and hydrocarbon exploration, or drilling on lands within the state of Utah under The Oil and Gas Conservation Act (Section 40-6-1 et seq.). Lessees or designated operators shall fully comply with all the rules or requirements of other agencies having jurisdiction and provide timely notifications of operations plans, well completion reports, or other information as may be requested or required by the agency.

#### **R850-21-800. Bonding.**

##### **1. Bond Obligations.**

(a) Prior to commencement of any operations which will disturb the surface of the land covered by a lease, the lessee or designated operator shall post with UDOGM a bond in a form and in the amount set forth in R649-3-1 et seq or any successor rule.

(b) A separate bond shall be posted with the agency by the lessee or the designated operator to assure compliance with remaining terms and conditions of the lease not covered by the bond to be filed with UDOGM, including, but not limited to payment of royalties.

(c) These bonds shall be in effect even if the lessee or designated operator has conveyed all or part of the leasehold interest to an assignee(s) or subsequent operator(s), until the bonds are released by UDOGM and the agency either because the lessee or designated operator has fully satisfied bonding obligations set forth in this section or the bond is replaced with a new bond posted by an assignee or designated operator.

(d) Bonds held by the agency shall be in the form and subject to the requirements set forth herein:

##### **(i) Surety Bonds.**

Surety bonds shall be issued by a qualified surety company, approved by the agency and registered in the state of Utah. Surety company must maintain an A credit rating. Lessee or designated operator has thirty (30) days to cure a devalued rating, or lessee or designated operator will not be allowed to continue to work on the leased trust lands until a new surety bond has been filed and accepted by the agency;

##### **(ii) Personal Bonds.**

Personal bonds shall be accompanied by:

(A) a cash deposit to the School and Institutional Trust Lands Administration. The agency will not be responsible for any investment returns on cash deposits; or

(B) a cashier's check or certified check made payable to the School and Institutional Trust Lands Administration; or

(C) negotiable certificates of deposit. The certificates shall be issued by a federally insured bank authorized to do business in Utah. The certificates shall be made payable or assigned only to the agency both in writing and upon the records of the bank issuing the certificate. The certificates shall be placed in the possession of the agency or held by a federally insured bank authorized to do business in Utah. If assigned, the agency shall require the banks issuing the certificates to waive all rights of setoff or liens against those certificates; or

(D) an irrevocable letter of credit. Letters of credit shall be issued by a federally insured bank authorized to do business in Utah and will be irrevocable during their terms. Letters of credit shall be placed in the possession of and payable upon demand only to the agency. Letters of credit shall be automatically renewable or the operator shall ensure continuous bond coverage by replacing letters of credit, if necessary, at least thirty (30) days before their expiration date with other acceptable bond types or letters of credit; or

(E) any other type of surety approved by the agency.

2. Bond Amounts.

The bond amount required for an oil, gas and hydrocarbon exploration project to be held by the agency for those lease obligations not covered by the bond held by UDOGM shall be:

(a) a statewide blanket bond in the minimum amount of \$15,000 covering exploration and production operations on all agency leases held by lessee; or

(b) a project bond covering an individual, single-well exploration project involving one or more leases. The amount of the project bond will be determined by the agency at the time lessee gives notice of proposed operations. This bond shall not be less than \$5,000.

3. Bond Default.

(a) Where, upon default, the surety makes a payment to the agency of an obligation incurred under the terms of a lease, the face of the bond and surety's liability shall be reduced by the amount of such payment.

(b) After default, where the obligation in default equals or is less than the face amount of the bond(s), the lessee or designated operator shall either post a new bond, restore the existing bond to the amount previously held, or post an adjusted amount as determined by the agency. Alternatively, the lessee or designated operator shall make full payment to the agency for all obligations incurred that are in excess of the face amount of the bond and shall post a new bond in the amount previously held or such other amount as determined by the agency. Operations shall be discontinued until the restoration of a bond or posting of a new bond occurs. Failure to comply with these requirements may subject all leases covered by such bond(s) to be cancelled by the agency.

(c) The agency will not give consent to termination of the period of liability of any bond unless an acceptable replacement bond has been filed or until all terms and conditions of the lease have been met.

(d) Any lessee or designated operator forfeiting a bond will be denied approval of any future oil, gas or hydrocarbon exploration on agency lands except by compensating the agency for previous defaults and posting the full bond amount for reclamation or lease performance on subsequent operations as determined by the agency.

4. Bonds may be increased at any time in reasonable amounts as the agency may order, providing the agency first gives lessee thirty (30) days written notice stating the amount of the increase and the reason for the increase.

5. The agency may waive the filing of a bond for any period during which a bond that meets the requirements of this section is on file with another agency.

**R850-21-1000. Multiple Mineral Development (MMD) Area Designation.**

1. The agency may designate any land under its authority as a multiple mineral development area. In designated multiple mineral development areas the agency may require, in addition to all other terms and conditions of the lease, that the lessee furnish a bond or evidence of financial responsibility as specified by the agency, to assure that the agency and other lessees shall be indemnified and held harmless from and against unreasonable and all unnecessary damage to mineral deposits or improvements caused by the conduct of the lessee on trust lands. Lessee shall give written notice to all oil, gas and hydrocarbon and other mineral lessees holding a lease for any mineral commodity within the multiple mineral development area. Thereafter, in order to preserve the value of mineral resources the agency may impose any reasonable requirements upon any oil, gas and hydrocarbon or other mineral lessee who intends to conduct any mineral activity within the multiple mineral development area. The lessee is required to submit to the agency in advance written notice of any activities to occur within the multiple mineral development area and any other information that the agency may request. All activities within the multiple mineral development area are to be deferred until the agency has specified the terms and conditions under which the mineral activity is to occur and has granted specific permission to conduct the activity. The agency may hold public meetings regarding mineral development within the multiple mineral development area.

2. The agency may grant a lease extension under a multiple mineral development area designation, providing that the lessee or designated operator requests an extension to the agency prior to the lease expiration date, and that the lessee or designated operator would have otherwise been able to request a lease extension as provided in Section 53C-2-405(4).

**KEY: oil gas and hydrocarbons, administrative procedures, lease provisions, operations**

**Date of Enactment or Last Substantive Amendment: June 1, 2019**

**Notice of Continuation: January 6, 2020**

**Authorizing, and Implemented or Interpreted Law: 53C-1-302(1)(a)(ii); 53C-2 et seq.**





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**R850. School and Institutional Trust Lands, Administration.**

**R850-22. Bituminous-Asphaltic Sands and Oil Shale Resources.**

**R850-22-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Utah Code Title 53C et seq. which authorize the Director of the School and Institutional Trust Lands Administration to establish rules for the management of bituminous-asphaltic sands and oil shale resources and for the issuance of leases for such resources on trust lands.

**R850-22-150. Planning.**

Pursuant to Subsection 53C-2-201(1)(a), this category of activity carries no planning obligations by the agency beyond existing rule-based analysis and approval processes. Bituminous-asphaltic sands and oil shale development activities are regulated pursuant to R649.

**R850-22-175. Definitions.**

The following words and terms, when used in Section R850-22 shall have the following meanings, unless otherwise indicated:

1. Act: Utah Code 53C-1 et seq.
2. Agency: School and Institutional Trust Lands Administration or its predecessor agency.
3. Anniversary Date: the same day and month in succeeding years as the effective date of the lease or permit.
4. Beneficiaries: the public school system and other institutions for whom the State of Utah was granted lands in trust by the United States under the Utah Enabling Act.
5. Bonus Bid: a payment reflecting an amount to be paid by an applicant in addition to the rentals and royalties set forth in a lease application as consideration for the issuance of such lease.
6. Assignment(s): a conveyance of all or a portion of the lessee's record title interest or royalty interest in a lease.
  - (a) Certification of Net Revenue Interest: the certification by oath of an assignor to the agency that the total net working revenue interest (NRI) in the lease which the assignment affects has not been reduced to less than 80 per cent of 100 per cent NRI. Certification shall only be required for leases issued after April 1, 2005.
  - (b) Mass Assignment: an assignment that affects more than one lease, including assignments which affect record title, working or non-working interests.
  - (c) Non-Working Interest Assignment: an assignment of interest in production from a lease other than the agency's royalty, the record title, or the working interest including but not limited to overriding royalties, production payments, net profits interests, and carried interests assignments but excluding liens and security interests.
  - (d) Record Title Assignment: an assignment of the lessee's interest in a lease which includes the obligation to pay rent, the rights to assign or relinquish the lease, and the ultimate responsibility to the agency for obligations under the lease.
  - (e) Working Interest Assignment: a transfer of a non-record title interest in a lease, including but not limited to wellbore assignments, but excepting overriding royalty, oil payment, net-profit, or carried interests or other non-working interests.
7. Board of Trustees: the School and Institutional Trust Lands Board of Trustees created under Section 53C-1-202.
8. Committed Lands: a consolidation of all or a portion of lands subject to a lease approved by the director for unitization which forms a logical unit for exploration, development or drilling operations.
9. Designated Operator: the person or entity that has been granted authority by the record title interest owner(s) in a lease and has been approved by the agency to conduct operations on the lease or a portion thereof.
10. Director: the person designated within the agency who manages the agency in fulfillment of its purposes as set forth in the Act.
11. Effective Date: unless otherwise defined in the lease, the effective date shall be the first day of the month following the date a lease is executed by the agency. An amended, extended or segregated lease will retain the effective date of the original lease.
12. Lease: a bituminous-asphaltic sands or oil shale lease covering the commodities defined in R850-22-200 issued by the agency.
13. Lease Year: the twelve-month period commencing at 12:01 a.m. on the month and day of the effective date of the lease and ending on the last day of the twelfth month at 12 midnight.
14. Leasing Unit: a parcel of trust land lying within one or more sections that is offered for lease as an indivisible unit through a competitive lease application process which would constitute one lease when issued.
15. Lessee: a person or entity holding a record title interest in a lease.

16. Other Business Arrangement ("OBA"): an agreement entered into between the agency and a person or entity consistent with the purposes of the Act and approved by the Board of Trustees. By way of example, but not of limitation, OBAs may be for farmout agreements or joint venture agreements. An agreement for an OBA may be initiated by the agency or by a proponent of an agreement by filing a proposal for an OBA with the agency.

17. Over-the-Counter Lease: the issuance of a lease through application on a first come, first served basis.

18. Production in Paying Quantities (also referred to in older mineral leases as Production in Commercial Quantities): production of the leased substance in quantities sufficient to yield revenue in excess of operating costs.

19. Rental: the amount due and payable on or before the anniversary date of a lease to maintain the lease in full force and effect for the following lease year.

20. Record Title: the legal ownership of a mineral lease as established in the records of the agency.

21. Sub-lease: a transfer of a non-record title interest in a mineral lease.

22. Surveyed Lot: an irregular part of a section identified by cadastral survey and maintained in the official records of the agency.

23. Trust Lands: those lands and mineral resources granted by the United States in the Utah Enabling Act to the State of Utah in trust, and other lands and mineral resources acquired by the trust, which must be managed for the benefit of the state's public education system or the institutions designated as beneficiaries.

24. UDOGM: the Division of Oil, Gas and Mining of the Utah State Department of Natural Resources.

25. Except as specifically defined above, the definitions set forth at R850-1-200 shall also be applicable.

#### **R850-22-200. Classification of Bituminous-Asphaltic Sands and Oil Shale.**

1. The term "bituminous-asphaltic sands" means rock or sand impregnated with asphalt or heavy oil and is synonymous with the term "tar sands." This category does not cover any substances, either combustible or non-combustible, which are produced in a gaseous or rarefied state at ordinary temperature and pressure conditions other than gas which results from artificial introduction of heat. Nor does this category embrace any liquid hydrocarbon substance which occurs naturally in a liquid form in the earth regardless of depth, including drip gasoline or other natural condensate recovered from gas. The bituminous-asphaltic sands category does not include coal, oil shale, or gilsonite.

2. The oil shale category shall include any sedimentary rock containing kerogen.

#### **R850-22-300. Lease Application Process.**

1. The agency may issue leases competitively, non-competitively or enter into OBAs with qualified interest owners for the development of bituminous-asphaltic sands and oil shale resources.

(a) Competitive Bid Offering: when the agency designates leasing units for competitive bidding it shall award leases on the basis of the highest bonus bid per acre made by qualified application.

(i) Minimum Bonus Bid Amount: the minimum acceptable bonus bid for competitive bid offering for leasing units shall be not less than \$1.00 per acre, or fractional acre thereof, which will constitute the (advance) rental for the first year of the lease.

(ii) Notice of Offering: notices of the offering of lands for competitive bid shall:

(A) run for a period of not less than fifteen (15) consecutive days after the notice is posted in the agency's office;

(B) describe the leasing unit;

(C) indicate the resource available for leasing; and

(D) state the last date on which bids may be received.

(iii) Opening of Bid Applications: bid applications shall be opened in the agency's office at 10 a.m. of the first business day following the last day on which bids may be received.

(iv) Content of Applications: each application shall be submitted in a sealed envelope which clearly identifies:

(A) the competitive bid;

(B) leasing unit number; and,

(C) the date of offering for which the bid is submitted.

(v) The application envelope must:

(A) describe only one leasing unit per application; and,

(B) contain one check for the application fee and a separate check for the amount of the bonus bid.

(vi) Withdrawal of Applications: applicants desiring to withdraw an application which has been filed under these competitive bid filing rules must submit a written request to the agency. If the request is received before sealed bids have been opened, all money tendered by the applicant, except the filing fee, shall be refunded. If a request is received after sealed bids have been opened, and if the applicant is awarded the bid, then unless the applicant accepts the offered lease, all money tendered shall be forfeited to the agency.

(vii) Non-Complying Applications: if the agency determines prior to lease issuance that an application did not comply with these rules at the time of bid opening, the application fee shall be retained by the agency and the application returned to the applicant without further consideration by the agency.

(viii) Identical Bids: in the case of identical successful bids, the agency may award the lease by public drawing or oral auction between the identical bidders, held at the agency's offices.

(b) Non-Competitive Leasing By Over-The-Counter Filing.

(i) The director may designate lands for non-competitive leasing by over-the-counter application if the lands have been offered in a competitive offering and have received no bids.

(ii) The minimum acceptable offer for over-the-counter applications to lease designated lands shall be not less than \$1 per acre, or fractional acre thereof.

(iii) Applications for over-the-counter leases, when authorized, shall be filed on approved forms received from the office of the agency or as made available on its web site and delivered for filing in the main office of the agency during office hours. Except as provided, all over-the-counter applications received by personal delivery over the counter, are to be immediately stamped with the date and time of filing. All applications presented for filing at the opening of the office for business on any business day are stamped received as of 8 a.m., on that day. All applications received in the first delivery of the U.S. Mail of each business day are stamped received as of 8 a.m. on that day. The time indicated on the time stamp is deemed the time of filing unless the director determines that the application is materially deficient in any particular way. If an application is determined to be deficient, it will be returned to the applicant with a notice of the deficiency.

If an application is returned as deficient and is resubmitted in compliance with the rules within fifteen (15) days from the date of the determination of deficiency, it shall retain its original filing time.

If the application is resubmitted at any later time, it is deemed filed at the time of resubmission.

(iv) Where two or more applications for the same lease contain identical bids and bear a time stamp showing the said applications were filed at the same time, the agency may award the lease by public drawing or oral auction between the identical bidders, held at the agency's office.

(v) If an application or any part thereof is rejected, any money tendered for rental of the rejected portion shall be refunded or credited to applicant, minus the application fee.

(vi) An applicant who desires to withdraw its application must submit a written request to the agency. If the request is received prior to the time the agency approves the application, all money tendered by the applicant, except the application fee, shall be refunded. If the request is received after approval of the application, then, unless the applicant accepts the offered lease, all money tendered is forfeited to the agency.

#### **R850-22-400. Availability of Lands for Lease Issuance.**

1. A lease shall not be issued for lands comprising less than a quarter-quarter section or surveyed lot, unless the trust land managed by the agency within any quarter-quarter section or surveyed lot is less than the whole thereof, in which case the lease will be issued only on the entire area owned and available for lease within the quarter-quarter section or surveyed lot.

2. Leases shall be limited to no more than 2560 acres or four sections and must all be located within the same township and range unless a waiver is approved by the director.

3. Any lease may be terminated by the agency in whole or in part upon lessee's failure to comply with any lease term or covenant or applicable laws and rules. Subject to the terms of any lease issued hereunder, any final agency action is appealable pursuant to Section 53C-2-409, in accordance with the provisions of the rules of the agency.

#### **R850-22-500. Bituminous-Asphaltic Sands and Oil Shale Lease Provisions.**

The following provisions, terms and conditions shall apply to all leases granted by the agency:

1. Rentals and Rental Credits.

(a) The rental rate shall not be for less than \$1 per acre, or fractional acre thereof, per year at the time the lease is offered.

(b) The minimum annual rental on any lease, regardless of the amount of acreage, shall in no case be less than \$500.

(c) Rental payments shall be paid in advance each year on or before the lease anniversary date, unless otherwise stated in the lease.

(d) Any overpayment of rental occurring from the lease applicant's incorrect calculation of acreage of lands described in the lease may, at the option of the agency, be credited toward the applicant's rental account.

(e) The agency may accept lease payments made by any party provided, however, that the acceptance of such payment(s) shall not be deemed to be recognition by the agency of any interest of the payee in the lease. Ultimate responsibility for such payments remains with the record title interest owner.

(f) Rental credits, if any, shall be governed by the terms of the lease which provide for such credits.

2. Royalty Provisions: during the primary term of the lease, the lessee shall pay lessor a production royalty on the basis of eight percent (8%) of the gross value, including all bonuses and allowances received by lessee, of each marketable product produced from the leased substance and sold under a bonafide contract of sale. The royalty may, at the discretion of the lessor, be increased after the ten (10) year primary term at a rate not in excess of one percent (1%) per annum to a maximum of twelve and one-half percent (12.5%).

3. Primary Lease Term: no lease shall establish a primary term in excess of ten (10) years.

4. Continuance of a Lease after Expiration of a Primary Term.

(a) A lease shall be continued after the primary term has expired so long as:

(i) the leased substance is being produced in paying quantities from the leased premises or from other lands communitized or unitized with committed lands; or

(ii) the agency determines that the lessee or designated operator:

(A) is engaged in diligent operations which are determined by the director to be reasonably calculated to advance or restore production of the leased substance from the leased premises or from other lands communitized, or unitized with committed lands; and

(B) pays the annual minimum royalty set forth in the lease.

5. Communitization or Unitization of Leases.

(a) Lessees, upon prior written authorization of the director, may commit leased trust lands or portions of such lands to unit, cooperative or other plans of development with other lands.

(b) The director may, with the consent of the lessee, modify any term of a lease for lands that are committed to a unit, cooperative, or other plan of development.

(c) Production allocated to leased trust lands under the terms of a unit, cooperative, or other plan of development shall be considered produced from the leased lands whether or not the point of production is located on the leased trust lands.

(d) The term of all leases included in any cooperative or unit plan of development or operation in which the agency has joined, or shall hereafter join, shall be extended automatically for the term of the unit or cooperative agreement. Rentals on leases so extended shall be at the rate specified in the lease, subject to change in rates at the discretion of the director or as may be prescribed in the terms of the lease.

(e) Any lease eliminated from any cooperative or unit plan of development or operation, or any lease which is in effect at the termination of a cooperative or unit plan of development or operation, unless relinquished, shall continue in effect for the fixed term of the lease, or for two (2) years after its elimination from the plan or agreement or the termination thereof, whichever is longer, and so long thereafter as the leased substances are produced in paying quantities. Rentals under such leases shall continue at the rate specified in the lease.

6. When the agency approves the amendment of an existing lease by substituting a new lease form for the existing form(s), the amended lease will retain the effective date of the original lease.

7. Other Lease Provisions.

The agency may require, in addition to the lease provisions required by these rules, any other reasonable provisions to be included in the lease as it deems necessary, but which does not substantially impair the lessees' rights under the lease.

#### **R850-22-600. Transfer by Assignment or Operation of Law.**

1. Any lease may be assigned as to all or part of the acreage, to any person, firm, association, or corporation qualified to hold a lease provided, however, that all assignments must be approved by the director. No assignment is effective until approval is given. Any attempted or purported assignment made without approval by the director is void.

2. Transfer by Assignment.

(a) An assignment of either a record title, working or non-working interest in a lease must:

(i) be expressed in a good and sufficient written legal instrument;

(ii) be properly executed, acknowledged and clearly set forth:

(A) the serial number of the lease;

(B) the land involved;

(C) the name and address of the assignee;

(D) the name of the assignor;

(E) the interest transferred;

- (iii) be accompanied by a certification that the assignee is a qualified interest owner; and
- (iv) include a certification of net revenue interest.
- (b) Lessees who are assigning a lease shall:
  - (i) prepare and execute the assignments in duplicate, complete with acknowledgments;
  - (ii) provide that each copy of the assignment have attached thereto an acceptance of assignment duly executed by the assignee; and
  - (iii) provide that all assignments forwarded to or deposited with the agency be accompanied by the prescribed fee.
- (c) The director shall approve any assignment of interest which has been properly executed; if the required filing fee is paid for each separate lease in which an interest is assigned, and the assignment complies with the law and these rules, so long as the director determines that approval would not be detrimental to the interests of the trust beneficiaries.
- (d) If approval of any assignment is withheld by the director, the transferee shall be notified of such decision and its basis. Any decision to withhold approval may be appealed pursuant to Rule R850-8 or any similar rule in place at the time of such decision.
- (e) Any assignment of a portion of a lease, whether of a record title, working or non-working interest, covering less than a quarter-quarter section, a surveyed lot, or an assignment of a separate zone or a separate deposit, shall not be approved.
- (f) An assignment shall be effective the first day of the month following the approval of the assignment by the director. The assignor or surety, if any, shall continue to be responsible for performance of any and all obligations as if no assignment had been executed until the effective date of the assignment. After the effective date of any assignment, the assignee is bound by the terms of the lease to the same extent as if the assignee were the original lessee, any conditions in the assignment to the contrary notwithstanding; provided, however, that the approved record title interest owner(s) shall retain ultimate responsibility to the agency for all lease obligations.
- (g) A record title assignment of an undivided 100% record title interest in less than the total acreage covered by the lease shall cause a segregation of the assigned and retained portions. After the effective date of the approved assignment, the assignor shall be released or discharged from any obligation thereafter accruing to the assigned lands. Segregated leases shall continue in full force and effect for the primary term of the original lease or as further extended pursuant to the terms of the lease. The agency may re-issue a lease with a new lease number covering the assigned lands for the remaining unexpired primary term. The agency may, in lieu of re-issuing a lease, note the assignment in its records with all lands covered by the original lease maintained with the original lease number, and with each separate tract or interest resulting from an assignment with an additional identifying designation to the original number.
- (h) Any assignment which would create a cumulative royalty and other non-working interest in excess of twenty per cent (20%) thereby reducing the net revenue interest in the lease to less than eighty per cent (80%) NRI shall not be approved by the agency.
  - (i) Mass assignments are allowed, provided:
    - (i) the requirements set forth in paragraph R850-22-600(2) are met;
    - (ii) the serial number, the lands covered thereby, and the percent of interest assigned therein are expressly described in an attached exhibit;
    - (iii) the prescribed fee is paid for each lease affected; and
    - (iv) a separate mass assignment is filed for each type of interest (record title, working or non-working interest) that is assigned.
  - (j) The agency shall not accept for filing, mortgages, deeds of trust, financing statements or lien filings affecting leases. To the extent a legal foreclosure upon interests in leases occurs under the terms of such agreements, assignments must be prepared as set forth in this section and filed with the agency, which will then be reviewed and approved in due course.
- (k) The agency by approving an assignment does not adjudicate the validity of any assignment as it may affect third parties, nor estop the agency from challenging any assignment which is later adjudicated by a court of competent jurisdiction to be invalid or ineffectual.

### 3. Transfer by Operation of Law.

- (a) Death: if an applicant or lessee dies, his/her rights shall be transferred to the heirs, devisees, executor or administrator of the estate, as appropriate, upon the filing of:
  - (i) a certified copy of the death certificate together with other appropriate documentation to verify change of ownership as required under the probate laws of the state of Utah (Section 75-1-101 et seq.);
  - (ii) a list containing the serial number of each lease interest affected;
  - (iii) a statement that the transferee(s) is a qualified interest owner;
  - (iv) the required filing fee for each separate lease in which an interest is transferred; and

(v) a bond rider or replacement bond for any bond(s) previously furnished by the decedent.

(b) Corporate Merger: if a corporate merger affects any interest in a lease because of the transfer of property of the dissolving corporation to the surviving corporation by operation of law, no assignment of any affected lease is required. A notification of the merger, together with a certified copy of the certificate of merger issued by the Utah Department of Commerce, shall be furnished to the agency, together with a list by serial number of all lease interests affected. The required filing fee must be paid for each separate lease in which an interest is transferred. A bond rider or replacement bond conditioned to cover the obligations of all affected corporations will be required as a prerequisite to recognition of the merger.

(c) Corporate Name Change: if a change of name of a corporate lessee affects any interest in a lease, the notice of name change shall be submitted in writing with a certificate from the Utah Department of Commerce evidencing its recognition of the name change accompanied by a list of lease serial numbers affected by the name change. The required filing fee must be paid for each separate lease in which an interest is transferred. A bond rider or replacement bond, conditioned to cover the obligations of all affected corporations, is required as a prerequisite to recognition of the name change.

#### **R850-22-700. Operations Plan and Reclamation.**

1. All lessees, permittees or designated operators shall submit to the agency, and receive approval for, a plan of operations prior to any surface disturbance, drilling or other operations which disturb the surface of trust lands subject to a lease or permit. The operations plan shall include at a minimum proposed access and infrastructure locations and proposed site reclamation. Prior to approval, the agency may require the lessee, permittee or designated operator to adopt a special rehabilitation program for the particular property in question. Before the lessee, permittee or designated operator shall commence actual operations or prior to commencing any surface disturbance associated with the activity on lands subject to a lease or permit, the permittee, lessee or designated operator shall provide a plan of operations to the agency simultaneously with the filing of any required plan of operations or permit application with UDOGM. The agency will review any request for approval of operations and will grant approval providing that the proposed location and operations are not in violation of any rules or order of the agency. Before operations can commence, approval must be granted by the UDOGM, if required by statute, and by the agency. Notice of approval by the agency shall be given in an expeditious manner to UDOGM.

2. Prior to approval of any surface disturbing operation, the agency may require the lessee, permittee or designated operator to:

(a) provide when requested, a cultural, paleontological and biological survey on lands under lease or permit, including providing the agency a copy of any survey(s) required by other governmental agencies;

(b) provide for reasonable mitigation of impacts to other trust resources occasioned by surface or sub-surface operations on the lease;

(c) negotiate with the agency a surface use agreement, right-of-way agreement, or both for trust lands other than the leased or permitted lands, where the surface of said lands are necessary for the development of the lease or permit.

3. Maintain a record of geologic data accumulated or acquired by the lessee, permittee or designated operator concerning the land described in the lease or permit. This record shall show the formations encountered and any other geologic or development information reasonably required by the agency and shall be available upon request by the agency. A copy of the record, as well as any other data related to geologic exploration or resource development on trust lands shall be deposited with the agency at the agency's request.

4. All operation which disturbs the surface of lands contained within or on trust lands shall be required to be reclaimed by rehabilitation of the disturbed area as described in the plan of operations approved by the agency, and as required by the laws administered by the UDOGM or as required by any other state or federal agency.

(a) In all cases, at a minimum, the lessee, permittee or designated operator shall agree to establish a slope on all excavations to a ratio not steeper than one foot vertically for each two feet of horizontal distance, unless otherwise approved by the agency and UDOGM prior to commencement of operations. The establishment of a stable slope shall be a concurrent part of the operation of the leased or permitted premises such that operations shall at no time constitute a hazard. All pits, excavations, roads and pads shall be shaped to facilitate drainage and control erosion by following the best management practices.

(b) In no case shall the pits or excavations be allowed to become a hazard to persons or livestock. All material removed from trust lands shall be stockpiled and be used to fill the pits and for leveling and reclamation of roads and pads unless consent of the agency, and if applicable of UDOGM, to do otherwise is obtained, so at the termination of the lease, the land will as nearly as practicable approximate its original horizontal and vertical configuration. All drill holes must be plugged in accordance with rules promulgated by UDOGM.



(c) The agency shall require of the lessee, permittee or designated operator that all topsoil in the area of surface disturbance be removed, stockpiled, and stabilized on the trust lands until the completion of operations and satisfactory use in reclamation. At the time of reclamation, the stockpiled topsoil shall be redistributed on the area of surface disturbance and the land revegetated as prescribed by the UDOGM and the agency. All mud pits and temporary debris and settlement basins shall be filled and materials and debris removed from the site.

5. All lessees, permittees or designated operators shall be responsible for compliance with all laws and notification requirements and operating rules promulgated by UDOGM or any other federal or state agency that may have regulatory jurisdiction over mineral development on trust lands or the leased or permitted substance.

#### **R850-22-800. Bonding.**

##### **1. Bond Obligations.**

(a) Prior to commencement of any operations which will disturb the surface of the land covered by a lease, the lessee or designated operator shall post with UDOGM, a bond in a form and in the amount set forth in R647-3-1 et seq. and approved by UDOGM to assure compliance with those terms and conditions of the lease and these rules, involving costs of reclamation, damages to the surface and improvements on the surface and all other related requirements and standards set forth in the lease, rules, procedures and policies of the agency and UDOGM.

(b) A separate bond shall be posted with the agency by the lessee or the designated operator to assure compliance with all remaining terms and conditions of the lease not covered by the bond to be filed with UDOGM, including, but not limited to payment of royalties.

(c) These bonds shall be in effect even if the lessee or designated operator has conveyed all or part of the leasehold interest to an assignee(s) or subsequent operator(s), until the bonds are released by UDOGM and the agency either because the lessee or designated operator has fully satisfied bonding obligations set forth in this section or the bond is replaced with a new bond posted by an assignee or designated operator.

(d) Bonds held by the agency shall be in the form and subject to the requirements set forth herein:

##### **(i) Surety Bonds.**

Surety bonds shall be issued by a qualified surety company, approved by the agency and registered in the state of Utah.

##### **(ii) Personal Bonds.**

Personal bonds shall be accompanied by:

(A) a cash deposit to the School and Institutional Trust Lands Administration. The agency will not be responsible for any investment returns on cash deposits. Such interest will be retained in the account and applied to the bond value of the account unless the agency has approved the payment of interest to the operator; or

(B) a cashier's check or certified check made payable to the School and Institutional Trust Lands Administration; or

(C) negotiable bonds of the United States, a state, or a municipality. The negotiable bond shall be endorsed only to the order of, and placed in the possession of, the agency. The agency shall value the negotiable bond at its current market value, not at the face value; or

(D) negotiable certificates of deposit. The certificates shall be issued by a federally insured bank authorized to do business in Utah. The certificates shall be made payable or assigned only to the agency both in writing and upon the records of the bank issuing the certificate. The certificates shall be placed in the possession of the agency or held by a federally insured bank authorized to do business in Utah. If assigned, the agency shall require the banks issuing the certificates to waive all rights of setoff or liens against those certificates; or

(E) an irrevocable letter of credit. Letters of credit shall be issued by a federally insured bank authorized to do business in Utah and will be irrevocable during their terms. Letters of credit shall be placed in the possession of and payable upon demand only to the agency. Letters of credit shall be automatically renewable or the operator shall ensure continuous bond coverage by replacing letters of credit, if necessary, at least thirty (30) days before their expiration date with other acceptable bond types or letters of credit; or

(F) any other type of surety approved by the agency.

##### **2. Bond Amounts.**

The bond amount required for an exploration or development project to be held by the agency for those lease obligations not covered by the bond held by UDOGM shall be:

(a) a project bond covering an individual, single- exploration project involving one or more leases. The amount of the project bond will be determined by the agency at the time lessee gives notice of proposed operations.

##### **3. Bond Default.**

(a) Where, upon default, the surety makes a payment to the agency of an obligation incurred under the terms of a lease, the face of the bond and surety's liability shall be reduced by the amount of such payment.

(b) After default, where the obligation in default equals or is less than the face amount of the bond(s), the lessee or designated operator shall either post a new bond, restore the existing bond to the amount previously held, or post an adjusted amount as determined by UDOGM or the agency. Alternatively, the lessee or designated operator shall make full payment to the agency for all obligations incurred that are in excess of the face amount of the bond and shall post a new bond in the amount previously held or such other amount as determined by the agency. Operations shall be discontinued until the restoration of a bond or posting of a new bond occurs. Failure to comply with these requirements may subject all leases covered by such bond(s) to be cancelled by the agency.

(c) The agency will not give consent to termination of the period of liability of any bond unless an acceptable replacement bond has been filed with UDOGM or the agency, or until all terms and conditions of the lease and all reclamation obligations of UDOGM have been met.

(d) Any lessee or designated operator forfeiting a bond is denied approval of any future oil, gas or hydrocarbon exploration on agency lands except by compensating the agency for previous defaults and posting the full bond amount for reclamation or lease performance on subsequent operations as determined by the agency.

4. Bonds may be increased at any time in reasonable amounts as the agency may order, providing the agency first gives lessee thirty (30) days written notice stating the increase and the reason for the increase.

5. The agency may waive the filing of a bond for any period during which a bond meeting the requirements of this section is on file with another agency.

#### **R850-22-1000. Multiple Mineral Development (MMD) Area Designation.**

1. The agency may designate any land under its authority as a multiple mineral development area. In designated multiple mineral development areas the agency may require, in addition to all other terms and conditions of the lease, that the lessee furnish a bond or evidence of financial responsibility as specified by the agency, to assure that the agency and other lessees shall be indemnified and held harmless from and against unreasonable and all unnecessary damage to mineral deposits or improvements caused by the conduct of the lessee on trust lands. Written notice shall be given to all lessees holding a lease for any mineral commodity within the multiple mineral development area. Thereafter, in order to preserve the value of mineral resources the agency may impose any reasonable requirements upon any mineral lessee who intends to conduct any mineral activity within the multiple mineral development area. The lessee is required to submit advance written notice of any activities to occur within the multiple mineral development area to the agency and any other information that the agency may request. All activities within the multiple mineral development area are to be deferred until the agency has specified the terms and conditions under which the mineral activity is to occur and has granted specific permission to conduct the activity. The agency may hold public meetings regarding the mineral development within the multiple mineral development area.

2. The agency may grant a lease extension under a multiple mineral development area designation, providing that the lessee or designated operator requests an extension to the agency prior to the lease expiration date, and that the lessee or designated operator would have otherwise been able to request a lease extension as provided in Subsection 53C-2-405(4).

**KEY: bituminous-asphaltic sands, oil shale, administrative procedures, lease provisions**

**Date of Enactment or Last Substantive Amendment: March 20, 2006**

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**Authorizing, and Implemented or Interpreted Law: 53C-1-302(1)(a)(ii); 53C-2 et seq.**

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**R850. School and Institutional Trust Lands, Administration.****R850-23. Sand, Gravel and Cinders Permits.****R850-23-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, Subsections 53C-1-302(1)(a)(ii) and 53C-4-101(1) which authorize the Director of the School and Institutional Trust Lands Administration to prescribe agency objectives, standards and conditions for the issuance of sand, gravel, and cinders permits and for conveyances for common varieties of sand, gravel, cinders, and similar materials on trust lands.

**R850-23-125. Mineral Estate Distinctions.**

Common varieties of sand and gravel and volcanic cinder are not considered part of the mineral estate on trust lands in Utah. These commodities may only be obtained through a materials permit approved by the director and in accordance with this rule.

**R850-23-150. Planning.**

Pursuant to Subsection 53C-2-201(1)(a), the agency shall also undertake to complete the following planning obligations, in addition to the rule-based analysis and approval processes that are prescribed by this rule:

1. to the extent required by the Memorandum of Understanding between the State Planning Coordinator and the School and Institutional Trust Lands Administration, submit the proposal for review by the Resource Development Coordinating Committee (RDCC) if the proposed action may have a significant impact upon natural or cultural resources of the state;
2. evaluation of and response to comments received through the RDCC process; and
3. evaluation of and response to any comments received through the solicitation process conducted pursuant to Subsection R850-23-500(2).

**R850-23-175. Definitions.**

1. Permit: a sand, gravel, or cinders permit.
2. Permittee: a person or entity holding a record title interest in a sand, gravel, or cinders permit.

**R850-23-200. Sand, Gravel, and Cinders Permits Issued on Agency Lands.**

1. The agency may issue permits or may convey profits a prendre or similar interests on all trust lands, and, when the agency deems it consistent with agency land use plans and trust responsibilities.
2. The agency may issue permits when the sale of the permitted materials would be exempt from sales tax under Subsection 59-12-104(2) or 59-12-104(28).
3. The agency may issue profits a prendre in all other instances according to the procedures and provisions of this chapter.

**R850-23-300. Rentals and Royalties.**

1. Rentals.
  - (a) Rental rates shall be \$10 per acre, or fractional part thereof, each year.
  - (b) The minimum annual rental on permits shall be determined periodically by the agency pursuant to board policy.
2. Royalty Rates and Provisions.
  - (a) The agency shall charge full market value for any permitted materials purchased under a sand, gravel, or cinders permit. Market value will be determined by the agency through analysis of the local market.
  - (b) The agency, pursuant to board policy, may annually establish minimum royalty rates for permits based on the type of permitted material being removed.

(c) Royalty payments shall be remitted to the agency on a quarterly basis or on such other basis as may be required by the terms and conditions of the permit and shall be accompanied by an agency approved "Production and Settlement Transmittal Form."

#### **R850-23-400. Terms of Sand, Gravel, and Cinders Permits.**

Permits issued under this rule shall be issued for a term which allows for the most beneficial use of the resource, as specified in the terms and conditions of the permit, but no longer than necessary to accomplish the extraction and removal of the materials subject to the sale, and to accomplish any required reclamation work. In no event shall a permit continue for a period of longer than five years without readjustment in its terms and conditions, by the director, as may be determined to be in the best interest of the trust beneficiaries.

#### **R850-23-500. Application Procedures.**

##### **1. Application Filing.**

(a) Applications for permits may be submitted to any office of the agency during office hours pursuant to Rule R850-3.

(b) The director may approve applications for permits for common varieties of sand, gravel, or cinders in accordance with the bid solicitation process described in Subsection R850-23-500(2), subject to Section R850-23-1400, Over-the-Counter Sales.

##### **2. Bid Solicitation Processes.**

(a) In the absence of any valid permit, or any valid lease for the same commodity upon the same land, the agency may offer for competitive bid permits when exposing the site to the market could reasonably be expected to produce permitted materials sales. A notice of lands available for competitive filing for permits shall be made in a manner to reasonably solicit competitive bid applications. Notices of competitive filing shall contain the procedure by which the agency shall award the permit.

(b) Upon acceptance of any permit application for common varieties of sand, gravel, or cinders the agency shall solicit competing applications through publication at least once a week for two consecutive weeks in one or more newspapers of general circulation in the county in which the permit is offered. At least 30 days before bid opening, certified notification will be sent to permittees of record, adjacent permittees or lessees, and adjacent landowners. Notices will also be posted in the local governmental administrative building or the county courthouse. Notification and advertising shall include the legal description of the parcel and any other information which may create interest in the parcel. The successful applicant shall bear the cost of the advertising.

(c) The agency shall allow all applicants at least 20 days from the date of mailing of notice, as evidenced by the certified mail posting receipt, Postal Service form 3800, within which to submit a sealed bid containing their proposal for the subject parcel. Competing bids shall be evaluated using the criteria found in Sections R850-30-500, R850-80-200, R850-90-200, and R850-170-900, for special use leases, sales, exchanges, or renewable energy leases, respectively.

(d) If no competing applications involving sale, lease, or exchanges are received by the deadline published pursuant to Subsection R850-23-500(2)(b), then the agency shall award the permit based on the following criteria:

- (i) amount of bonus bid;
- (ii) amount and rate of proposed materials extraction; and
- (iii) other criteria and assurances of performances as the agency shall require by permit or advertise before bidding.

#### **R850-23-600. Permit Execution.**

The permit shall be executed by the applicant and returned to the agency within 30 days from the date of applicant's receipt of the permit. Failure to execute and return the documents to the agency within the 30-day period may result in cancellation of the permit, the forfeiture of any fees, and the discharge of any obligation of the agency arising from the approval of the application.

**R850-23-700. Sand, Gravel, and Cinders Permit Provisions.**

Each permit shall contain provisions necessary to ensure responsible surface management including the following provisions: The rights of the permittee; rights reserved to the permitter; the term of the permit; payment obligations; transfers of permit interest by permittee; permittee's responsibility for reclamation; terms and conditions of permit forfeiture; and protection of the agency from liability from any actions of the permittee.

**R850-23-800. Bonding Provisions.**

Before the issuance of a permit, or for good cause shown at any time during the term of the permit, and upon 30 days written notice, the applicant or permittee, as the case may be, may be required to post with the agency a bond in the form and amount as may be determined by the agency to assure compliance with any terms and conditions of the permit.

1. All bonds posted on permits may be used for payment of all monies, rentals, and royalties due to the agency, also for costs of reclamation and for compliance with any other terms and conditions of the permit, and rules pertaining to the permit. The bond shall be in effect even if the permittee has conveyed all or part of the permit interest to a sub-lessee, assignee, or subsequent operator until the permittee fully satisfies the permit obligations, or until the bond is replaced with a new bond posted by the sub-lessee or assignee.

2. Bonds may be increased in reasonable amounts, at any time as the agency may decide, provided the agency first gives permittee 30 days written notice stating the increase and the reasons for such increase.

3. Bonds may be accepted in any of the following forms at the discretion of the agency:

(a) Surety bond with an approved corporate surety registered in Utah.

(b) Cash deposit. However, the agency will not be responsible for any investment returns on cash deposits.

(c) Certificates of deposit in the name of "School and Institutional Trust Lands Administration and permittee, c/o permittee's address," with an approved state or federally insured banking institution registered in Utah. Such certificate of deposit must have a maturity date no greater than 12 months, be automatically renewable, and be deposited with the agency; the permittee will be entitled to and receive the interest payments. All certificates of deposit must be endorsed by the permittee before acceptance by the director.

(d) Other forms of surety as may be acceptable to the agency.

**R850-23-900. Insurance Requirements.**

Before the issuance of a permit for sand, gravel, and cinders, the applicant may be required to obtain insurance of a type and in an amount acceptable to the agency. Proof of insurance shall be in the form of a certificate of insurance containing sufficient information to satisfy the agency that insurance provisions of the permit have been complied with.

1. Such insurance, if required, shall be placed with an insurer with a financial rating assigned by the Best Insurance Guide of A:X or higher, unless this requirement is waived in writing by the agency.

2. The agency shall retain the right to review the coverage, form, and amount of the insurance required at any time and to require the permittee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection upon 30 days written notice.

**R850-23-1000. Plans of Operation.**

1. Before the commencement of any activity authorized by a permit the permittee shall submit, for the director's approval, a plan of operations which shall include the following:

(a) A map or plat showing:

(i) the location and sequence of areas from which material is to be excavated;

(ii) the location of any processing or stationary equipment or improvements which will be placed on the premises;

(iii) transportation and access routes across the premises and adjacent properties;

(iv) the location of any fuel storage tanks; and

- (v) the location of stockpile areas.
  - (b) Elevation drawings of the premises before and after the excavation of materials.
  - (c) Reclamation plans acceptable to the director, upon review by the School and Institutional Trust Lands Administration.
  - (d) Copy of any required notification of the proposed operation to the Utah Division of Oil, Gas and Mining and any other government agencies.
  - (e) Copy of notification of the proposed operation to the owner of the surface estate, owners of the mineral estate, and to any other parties having any valid existing lease or permit upon the same lands.
2. Within 60 days of receiving such plan of operation, the agency shall review the plan and request any additional information necessary to complete the review. The permittee shall not commence any operations which may disturb the lands until the agency has reviewed the plan of operation submitted by the permittee and has given its written approval to the permittee for the commencement of such operations.
3. Each permittee holding a current permit shall within 30 days of each annual anniversary date of the issuance of the permit, submit to the agency a report of any activities under the permit for the previous year. Such report shall include a description of new excavations and surface disturbances, the type and quantity of the materials produced and sold or stockpiled, a description of mined land reclamation work completed or in progress, and any other information requested by the agency to reasonably monitor the permittee's operations under the permit.

#### **R850-23-1050. Conduct of Operations and Compliance with Rules.**

All exploration, mining or other operations performed under any permit, shall be performed in a good and workman like manner to ensure the conservation of the materials deposits, any other deposits of common and uncommon varieties of mineral resources, and other natural resources upon the lands. Each permittee of a permit shall at all times take whatever measures are necessary to be in compliance with all applicable rules of any federal or state agency pursuant to the activities and operations of the permittee or operator upon the lands.

#### **R850-23-1100. Existing Lease and Permit Conversion.**

Existing sand and gravel leases or permits issued before the effective date of these rules and in good standing on such date shall continue for the term specified in the lease or permit and shall be subject to the conditions and provisions contained in the lease or permit; provided, however, the agency may allow such lessees or permittees to convert such existing leases or permits to the new permit, providing such conversion will not conflict with the valid existing rights of any other lessee or permittee or owner upon the same lands.

#### **R850-23-1200. Sand, Gravel, and Cinders Permit Assignments.**

A permit may be assigned to any person, firm, association, or corporation qualified under Section R850-3-200, provided that the assignments are approved by the agency; and no assignment is effective until written approval is given. Any assignment made without such approval is void.

1. An assignment shall take effect the day of the approval of the assignment. On the effective date of any assignment, the assignee is bound by the terms of the permit to the same extent as if such assignee were the original grantee, any conditions in the assignment to the contrary notwithstanding.

2. An assignment must be a sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the easement number, and land involved, and the name and address of the assignee.

3. An assignment shall be executed according to agency procedures.

#### **R850-23-1300. Reclamation Requirements.**

Following the completion of excavations, the agency shall require reclamation measures to stabilize and restore natural surface conditions. Reclamation measures will generally consist of sloping and stabilization of highwalls, contouring of slopes at a ratio not greater than three feet horizontal for each one foot vertical or as otherwise specified by the agency, stabilization of access roads or the closure of access



roads as determined by the agency, replacement of natural topsoils, revegetation using a seed mixture and rate of application as may be specified by the agency, removal of all trash and debris, and the prompt removal of all equipment, buildings, and structures owned by the permittee or permittee's agents.

**R850-23-1400. Over-the-Counter Sales.**

Permits for common varieties of sand, gravel, or cinders may be issued on an "over-the-counter" basis in areas which have been designated by the director as open for such sales.

**R850-23-1500. Termination of Sand, Gravel, and Cinders Permit.**

Any permit issued by the agency on trust land may be terminated in whole or in part for failure to comply with any term or condition of the permit or applicable laws or rules. Upon determination by the director that a permit is subject to termination pursuant to the terms of the permit or applicable laws or rules, the director shall issue an appropriate instrument terminating the permit.

**R850-23-1600. Collection of Sales Tax.**

The agency shall require all permittees not exempt pursuant to Section 59-12-104 to remit sales taxes with the "Production and Settlement Transmittal Form" submitted pursuant to Subsection R850-23-300(2)(c).

**KEY: sand, gravel, cinders, permit provisions**

**Date of Last Change: October 11, 2022**

**Notice of Continuation: February 4, 2020**

**Authorizing, and Implemented or Interpreted Law: 53C-1-302(1)(a)(ii); 53C-2-201(1)(a); 53C-4-101(1)**



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**R850. School and Institutional Trust Lands, Administration.****R850-24. General Provisions: Mineral and Material Resources, Mineral Leases and Material Permits.****R850-24-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Subsections 53C-1-302(1)(a)(ii) and 53C-2-402(1) of the School and Institutional Trust Lands Management Act which authorize the Director of the School and Institutional Trust Lands Administration to establish rules for the issuance of mineral leases or material permits and management of trust lands and mineral and material resources.

**R850-24-125. Planning.**

Pursuant to Subsection 53C-2-201(1)(a), this category of activity carries no planning obligations by the agency beyond existing rule-based analysis and approval processes. Mineral and material development activities are regulated pursuant to Titles R645, R647, and R649.

**R850-24-150. Scope - Mineral Estate Distinctions.**

1. Mineral and material resources include hardrock minerals; building stone; and coal. Additional rules specific to these categories are found in Rule R850-25 for hardrock and material resources; and Rule R850-26 for coal. These general provisions do not cover oil, gas and hydrocarbons; bituminous-asphaltic sands and oil shale; or sand, gravel and cinders.

2. Common varieties of sand and gravel and volcanic cinder are not considered part of the mineral estate on trust lands in Utah. These commodities may only be obtained through a sand and gravel or volcanic cinder permit approved by the agency, pursuant to Rule R850-23.

**R850-24-175. Definitions.**

The following words and terms, when used in Rules R850-24 through R850-26 of this chapter shall have the following meanings, unless otherwise indicated:

1. Act: the School and Institutional Trust Lands Management Act, Section 53C-1 et seq.
2. Agency: School and Institutional Trust Lands Administration or its predecessor agency.
3. Anniversary Date: the same day and month in succeeding years as the effective date of the lease or permit.
4. Assignments and Transfers of Interest:
  - (a) Assignment: a transfer of all or a portion of the lessee's or permittee's record title interest in a mineral lease or material permit.
  - (b) Assignment of Overriding Interests: a transfer of an interest in a mineral lease or material permit that creates a right to share in the proceeds of production from the lease or permit, but confers no right to enter upon the leased or permitted lands or to conduct exploration, development or mining operations on the lands.
  - (c) Partial Assignment: an assignment of the lessee's record title interest in a part of the lands in a mineral lease or material permit and a segregation of the assigned lands into a separate lease or permit.
  - (d) Sublease or Operating Rights Assignments: a transfer of a non-record title interest in a mineral lease or materials permit, which authorizes the holder to enter upon the leased or permitted lands to conduct exploration, development and mining operations, but does not alter the relationship imposed by a lease on the lessor and the lessee.
  - (e) Transfer of Interest: any conveyance of an interest in a mineral lease or material permit by assignment, partial assignment, sublease, operating rights assignment, or other agreement.
5. Beneficiaries: the public school system and other institutions for whom Utah was granted lands in trust by the United States under the Utah Enabling Act.
6. Board of Trustees: the board created under Section 53C-1-202.
7. Bonus Bid: a payment reflecting an amount to be paid by the applicant in addition to the rentals and royalties set forth in a lease or permit as consideration for the issuance of such lease or permit.
8. Designated Operator: the person or entity that has been granted authority by the record title interest owners in a lease or permit and has been approved by the agency to conduct operations on the lease, permit or a portion of.
9. Director: the director as defined in Subsection 53C-1-103(3) and Sections 53C-1-301 through 303, or a person to whom the director has delegated authority.
10. Effective Date: unless otherwise defined in the lease or permit, the effective date shall be the first date of the month following the date a lease or permit is executed. An amended, extended, segregated or readjusted lease or permit will retain the effective date of the original lease or permit.

11. Lessee: a person or entity holding a record title interest in a mineral lease under Rule R850-25, or coal lease under Rule R850-26.

12. Mining Unit: a consolidation of trust mineral lands approved by the director forming a logical exploration, development, or mining operation.

13. Other Business Arrangement (OBA): an agreement entered into between the agency and a person or entity consistent with the purposes of the Act and approved by the Board of Trustees. By way of example, but not of limitation, OBAs may be for farmout agreements or joint venture agreements. An agreement for an OBA may be initiated by the agency or by a proponent of an agreement by filing a proposal for an OBA with the agency's assistant director for minerals or other designated person.

14. Over-the-Counter Permits: the issuance of a material permit through open sales on a first-come, first-served basis.

15. Permittee: a person or entity holding a record title interest in a material permit under Rule R850-25.

16. Record Title Interest: a lessee's or permittee's interest in a lease or permit which includes the obligation to pay rent, the rights to assign or relinquish the lease or permit, and the ultimate responsibility to the agency for obligations under the lease or permit.

17. Sublease: a transfer of a non-record title interest in a mineral lease or material permit.

18. Surveyed Lot: an irregular part of a section identified by cadastral survey and maintained in the official records of the agency.

19. Trust Lands: those lands and mineral resources granted by the United States in the Utah Enabling Act to the State of Utah in trust, and other lands and mineral resources acquired by the trust, which must be managed for the benefit of the state's public education system or the institutions designated as beneficiaries.

20. UDOGM: the Division of Oil, Gas and Mining of the Utah Department of Natural Resources.

#### **R850-24-200. Insurance Requirements.**

Before the issuance of a permit or lease for mineral and material resources, the applicant may be required to obtain insurance of a type and in an amount acceptable to the agency. Proof of insurance shall be in the form of a certificate of insurance containing sufficient information to satisfy the agency that insurance provisions of the permit have been complied with.

1. Such insurance, if required, shall be placed with an insurer with a financial rating assigned by the Best Insurance Guide of A:X or higher, unless this requirement is waived in writing by the agency.

2. The agency shall retain the right to review the coverage, form, and amount of the insurance required at any time and to require the permittee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection upon 30 days written notice.

#### **R850-24-400. Preference Rights for Unleased Mineral or Material.**

1. Any lessee or permittee who discovers any mineral or material on lands leased or permitted from the agency which are not included within that lease or permit shall have a preference right to a lease or permit covering the unleased mineral or unpermitted material, provided the unleased mineral or unpermitted material when discovered is not included within a lease or permit application by another party.

2. The preference right lease or permit is subject to the rental, royalty, and development requirements provided in these rules and in the lease or permit form.

3. The preference right shall not extend to any unleased mineral or unpermitted material which have been withdrawn from leasing or permitting.

4. The preference right shall continue for a period of 60 days after the discovery of the unleased mineral or unpermitted material, provided the applicant notifies the agency within ten days after the discovery and makes application to lease the unleased mineral or permit the unpermitted material within the 60-day period after date of discovery.

#### **R850-24-500. Multiple Mineral and Material Development Area (MMDA).**

The agency may designate any land under its authority as a multiple mineral development area (MMDA).

1. In designated MMDAs, the agency may require, in addition to all other terms and conditions of a mineral lease or material permit, that the lessee or permittee in an area capable of multiple mineral or material development furnish a bond beyond that required in Subsection R850-24-600(1)(a) or evidence of financial responsibility as specified by the agency, to assure that the agency and other mineral lessees, material permittees, sand and gravel permittees under Rule R850-23, or bituminous-asphaltic sands lessees under Rule R850-22 be indemnified and held

harmless from and against any unreasonable and unnecessary damage to the leased resource, mineral or material deposits or improvements caused by the conduct of the lessee or permittee on trust lands.

2. Where a lessee or permittee intends to conduct multiple mineral or material development activities, the lessee or permittee shall submit advance written notice to the agency and to other lessees or permittees holding a lease or permit for any mineral commodity within the MMDA of any activities that are to occur within the multiple mineral or material development area.

3. Any activities within the MMDA are to be deferred until the agency has specified the terms and conditions under which the mineral activity is to occur and has granted specific written permission to conduct the activity.

4. To preserve the value of the mineral or material resources, the agency may impose additional requirements upon any lessee or permittee, or designated operator who intends to conduct any multiple mineral or material development activity within a multiple mineral or material development area.

5. The agency may hold public meetings regarding the mineral or material development in a multiple mineral or material development area.

6. The agency may grant an extension to a mineral lease or material permit in a multiple mineral or material development area provided that the mineral lessee, material permittee, or designated operator requests an extension before the expiration date of the lease or permit, and that the lessee, permittee, or designated operator would have otherwise been able to request a mineral lease or material permit extension as provided in the Act.

#### **R850-24-600. Bonding.**

##### **1. Bond Obligations.**

(a) Before commencement of any operations which will disturb the surface of the land covered by a mineral lease or material permit, the lessee, permittee, or designated operator shall post with the Utah Division of Oil, Gas and Mining a bond in the form and in the amount set forth in Section R647-3-1 et seq. and approved by UDOGM to assure compliance with those terms and conditions of the mineral lease or material permit involving costs of reclamation, damages to the surface and improvements on the surface, and any other requirements and standards set forth in the mineral lease, material permit, rules, procedures, and policies of the agency and the Utah Division of Oil, Gas, and Mining.

(b) A separate bond may be posted with the agency by the lessee or the designated operator to assure compliance with all remaining terms and conditions of the lease or permit not covered by the bond to be filed with UDOGM, including payment of rentals and royalties.

(c) These bonds shall remain in effect even if the mineral lessee, material permittee, or designated operator has conveyed all or part of the leasehold interest to sublessees, assignees, or subsequent operators, until the bond is released by UDOGM or the agency either because the lessee, permittee, or designated operator has fully satisfied the bonding obligations set forth in this section or the bond is replaced with a new approved bond posted by a sublessee, assignee, or new designated operator.

(d) The agency may waive the filing of a bond for any period during which a bond meeting the requirements of this section is on file with another agency.

(e) Bonds held by the agency shall be in the form and subject to the requirements set forth in Rule R850-24:

(i) Surety Bonds: shall be issued by a qualified surety company, approved by the agency and registered in Utah;

(ii) Lessee or Permittee Bonds: shall be accompanied by:

(A) a cash deposit to the School and Institutional Trust Lands Administration. The agency will not be responsible for any investment returns on cash deposits. Such interest will be retained in the account and applied to the bond value of the account unless the agency has approved the payment of interest to the operator; or

(B) a cashier's check made payable to the School and Institutional Trust Lands Administration; or

(C) negotiable bonds of the United States, a state, or a municipality. The negotiable bond shall be endorsed only to the order of, and placed in the possession of, the agency. The agency shall value the negotiable bond at its current market value, not at the face value; or

(D) negotiable certificates of deposit. The certificates shall be issued by a federally insured bank authorized to do business in Utah. The certificates shall be made payable or assigned only to the agency both in writing and upon the records of the bank issuing the certificate. The certificates shall be placed in the possession of the agency or held by a federally insured bank authorized to do business in Utah. If assigned, the agency shall require the banks issuing the certificates to waive all rights of setoff or liens against those certificates; or

(E) an irrevocable letter of credit. Letters of credit shall be issued by a federally insured bank authorized to do business in Utah and will be irrevocable during their terms. Letters of credit shall be placed in the possession of and payable upon demand only to the agency. Letters of credit shall be automatically renewable or the operator shall

ensure continuous bond coverage by replacing letters of credit, if necessary, at least 30 days before their expiration date with other acceptable bond types or letters of credit; or

(F) any other type of surety approved by the agency.

2. Increased amount of bonds.

The agency may increase the required bond amount at any time. The lessee, permittee, or designated operator shall be given 30 days written notice stating the reasons for the increase and the new bond amount.

3. Bond Default.

(a) Where, upon default, the surety makes a payment to the agency of an obligation incurred under the terms of a mineral lease or material permit, the face of the bond and the surety's liability shall be reduced by the amount of such payment.

(b) After default, where the obligation in default equals or is less than the face amount of the bond, the lessee, permittee, or the designated operator, shall either post a new bond, restore the existing bond to the amount previously held, or post an adjusted amount as determined by the agency. Alternatively, the lessee, permittee, or designated operator, shall make full payment to the agency for any obligations incurred that are in excess of the face amount of the bond and shall post a new bond in the amount previously held or such other amount as determined by the agency. Operations shall be discontinued until the restoration of a bond or posting of a new bond occurs. Failure to comply with these requirements may subject all mineral leases or material permits covered by such bonds to be cancelled by the agency.

(c) The agency will not give consent to termination of the period of liability of any bond unless an acceptable replacement bond has been filed or until all the terms and conditions of the mineral lease or material permit have been met.

(d) Any lessee, permittee, or designated operator forfeiting a bond shall be denied approval of any future exploration or mining on trust-owned lands, except by compensating the agency for previous defaults and posting the full bond amount required by the agency.

**R850-24-700. Operations Plan and Reclamation.**

1. All lessees, permittees or designated operators shall submit to the agency, and receive approval for, a plan of operations before any surface disturbance, drilling or other operations which disturb the surface of trust lands subject to a lease or permit. The operations plan shall include at a minimum proposed access and infrastructure locations and proposed site reclamation. Before approval, the agency may require the lessee, permittee or designated operator to adopt a special rehabilitation program for the particular property in question. Before the lessee, permittee or designated operator shall commence actual operations or before commencing any surface disturbance associated with the activity on lands subject to a lease or permit, the permittee, lessee or designated operator shall provide a plan of operations to the agency simultaneously with the filing of any required plan of operations or permit application with UDOGM. The agency will review any request for approval of operations and will grant approval providing that the proposed location and operations are not in violation of any rules or order of the agency. Before operations can commence, approval must be granted by the UDOGM, if required by statute, and by the agency. Notice of approval by the agency shall be given in an expeditious manner to UDOGM.

2. Before approval of any surface disturbing operation, the agency may require the lessee, permittee or designated operator to:

(a) provide when requested, a cultural, paleontological and biological survey on lands under lease or permit, including providing the agency a copy of any surveys required by other governmental agencies;

(b) provide for reasonable mitigation of impacts to other trust resources occasioned by surface or sub-surface operations on the lease;

(c) negotiate with the agency a surface use agreement, right-of-way agreement, or both for trust lands other than the leased or permitted lands, where the surface of said lands are necessary for the development of the lease or permit.

3. Maintain a record of geologic data accumulated or acquired by the lessee, permittee or designated operator concerning the land described in the lease or permit. This record shall show the formations encountered and any other geologic or development information reasonably required by the agency and shall be available upon request by the agency. A copy of the record, as well as any other data related to geologic exploration or resource development on trust lands shall be deposited with the agency at the agency's request.

4. Any operations which disturb the surface of lands contained within or on trust lands shall be required to be reclaimed by rehabilitation of the disturbed area as described in the plan of operations approved by the agency, and as required by the laws administered by the UDOGM or as required by any other state or federal agency.



(a) In all cases, at a minimum, the lessee, permittee or designated operator shall agree to establish a slope on any excavations to a ratio not steeper than one foot vertically for each two feet of horizontal distance, unless otherwise approved by the agency and UDOGM before commencement of operations. The establishment of a stable slope shall be a concurrent part of the operation of the leased or permitted premises such that operations shall at no time constitute a hazard. Any pits, excavations, roads and pads shall be shaped to facilitate drainage and control erosion by following the best management practices.

(b) In no case shall the pits or excavations be allowed to become a hazard to persons or livestock. Any material removed from trust lands shall be stockpiled and be used to fill the pits and for leveling and reclamation of roads and pads unless consent of the agency, and if applicable of UDOGM, to do otherwise is obtained, so at the termination of the lease, the land will as nearly as practicable approximate its original horizontal and vertical configuration. Any drill holes must be plugged in accordance with rules promulgated by UDOGM.

(c) The agency shall require of the lessee, permittee or designated operator that all topsoil in the area of surface disturbance be removed, stockpiled, and stabilized on the trust lands until the completion of operations and satisfactory use in reclamation. During reclamation, the stockpiled topsoil shall be redistributed on the area of surface disturbance and the land revegetated as prescribed by the UDOGM and the agency. Any mud pits and temporary debris and settlement basins shall be filled and materials and debris removed from the site.

5. Lessees, permittees or designated operators shall comply with any laws and notification requirements and operating rules promulgated by UDOGM or any other federal or state agency that may have regulatory jurisdiction over mineral development on trust lands or the leased or permitted substance.

#### **R850-24-800. Transfer by Assignment, Sublease or Otherwise and Overriding Royalties.**

Any mineral lease or material permit may be transferred as to all or part of the acreage, to any person, or entity firm, association, or corporation qualified to hold a lease or permit, provided however, that any transfers of interest are approved by the director. No transfer of interest is effective until written approval is given. Any transfer of interest made without approval is void.

1. The director shall not withhold approval of any transfer of interest which has been properly executed, for which the required filing fee has been paid for each separate lease or permit in which an interest is transferred, and the transfer complies with the law and these rules, unless the director determines that approval would interfere with the development of the mineral or material resources, or be detrimental to the interests of the trust beneficiaries. If approval of any transfer is withheld by the director, the transferee shall be notified of such decision and the reasons therefore. Any decision to withhold approval may be appealed pursuant to Rule R850-8 or any similar rule in place.

2. Unless otherwise authorized by the agency, a transfer of interest of a portion of a mineral lease or material permit covering less than a quarter-quarter section, a surveyed lot, an assignment of a separate zone or of a separate deposit will not be approved.

3. A transfer of interest shall take effect the first day of the month following the approval of the transfer by the director. The assignor, sublessor or surety, if any, shall continue to be responsible for performance of any obligations as if no transfer of interest had been executed until the effective date of the transfer. After the effective date of any transfer, the transferee is bound by the terms of the mineral lease or material permit to the same extent as if the transferee were the original lessee or permittee, any conditions in the transfer agreement to the contrary notwithstanding.

4. A partial assignment of any mineral lease or material permit shall segregate the assigned or retained portions of and, after the effective date, release or discharge the assignor from any obligation thereafter accruing with respect to the assigned lands. Segregated leases or permits shall continue in effect for the primary term of the original lease or permit or as further extended pursuant to the terms of the lease or permit.

(a) The agency may re-issue a lease with a new lease number covering the assigned lands for the remaining unexpired primary term; or

(b) the agency may note the partial assignment in its records with the lands covered by the original lease maintained with the original lease number, and with each separate tract or interest resulting from an assignment with an additional identifying designation to the original lease number.

5. A transfer of interest in a mineral lease or material permit or of an overriding royalty must be a good and sufficient legal instrument, properly executed and acknowledged, and shall clearly set forth the serial number of the lease or permit, the land involved, the name and address of the transferee, and the interest transferred.

6. A transfer of interest must affect or concern only one mineral lease or material permit or a portion of.

7. Any transfer of interest which would create a cumulative overriding royalty in excess of 20% will not be approved by the agency. Any agreement to create or any assignment creating overriding royalties or payments out of

production removed or sold from the leased or permitted lands is subject to approval by the agency, after notice and hearing, to require the proper parties to suspend or modify the royalties or payments out of production in such a manner as may be reasonable when and during such period as they may constitute any undue economic burden upon the reasonable operations of the mineral lease or material permit.

8. Mineral lessees or material permittees who are transferring an interest in their mineral lease or material permit shall:

- (a) prepare and execute the transfer of interest agreements in duplicate, complete with acknowledgments;
- (b) provide that each copy of the transfer of interest agreement have attached thereto an acceptance of transfer executed by the transferee; and
- (c) provide that all transfer of interest agreements forwarded to or deposited with the agency be accompanied by the prescribed fee.

9. If an applicant, lessee, or permittee dies, their rights shall be transferred to the heirs, devisees, executor or administrator of the estate, as appropriate, upon the filing of a death certificate together with other appropriate documentation as the agency may require to verify change of ownership, and a list, by serial number of all mineral lease or material permit interests affected and a statement that all parties are qualified to do business with the agency. The required filing fee must be paid for each separate mineral lease or material permit in which an interest is transferred. A bond rider or replacement bond may be required by the agency for any bonds previously furnished by the decedent.

10. If a corporate merger affects mineral leases or material permits where the transfer of property of the dissolving corporation to the surviving corporation is accomplished by operation of law, no transfer of any affected lease permit is required. A notification of the merger shall be furnished with a list, by serial number of all lease or permit interests affected. The required filing fee must be paid for each separate lease or permit in which an interest is transferred. A bond rider or replacement bond conditioned to cover the obligations of all affected corporations may be required by the agency as a prerequisite to recognition of the merger.

11. If a change of name of a lessee or permittee affects mineral leases or material permits the notice of name change shall be submitted in writing with appropriate documentation evidencing the name change accompanied by a list of leases or permits affected by the name change. The required filing fee must be paid for each separate lease or permit subjected to a transfer of interest. A bond rider or replacement bond to accommodate the name change, conditioned to cover the obligations of all affected corporations may be required by the agency as a prerequisite to recognition of the change of name.

12. Pre-approval by the agency of a transfer of interest may be sought by the lessee or permittee, and if pre-approval is granted in writing by the director, it shall be binding on the agency subject to conclusion of the particular transfer for which such pre-approval was granted.

#### **R850-24-900. Lease Non-Execution or Cancellation - Fees Forfeited.**

If an applicant fails to sign and return a mineral lease or material permit as instructed by the agency, or a lease is cancelled for any other reason, all fees, advance rentals, and advance minimum royalties are forfeited by the applicant, lessee or permittee unless non-forfeiture or a refund is approved by the director.

#### **R850-24-1000. Readjustment of Leases and Permits.**

1. All mineral leases and material permits shall contain a provision setting forth the agency's right to readjust the terms and provisions of the mineral lease or the material permit on a periodic basis. The director shall establish as a term of the lease or the permit a schedule for readjustment when the lease or permit is offered. A mineral lease which is continued beyond its primary term shall remain subject to such readjustment provisions.

2. All terms and conditions of a mineral lease and a material permit are subject to readjustment by the agency, including the amount of rent, minimum rental, royalty, minimum royalty, or any other provision as provided in the lease or permit.

3. The terms of the mineral lease or material permit, if readjusted, shall become effective as of the anniversary date specified for readjustment set forth in the lease or permit upon written notification of the readjusted terms.

4. Notice of intent to exercise the agency's right to readjust under the terms of the lease or permit as of the specified anniversary date is timely given if given in writing before the specified anniversary date set forth in the lease or permit.

5. The agency shall have up to one year after exercising its option to readjust to review and communicate in writing the final terms of the lease or permit as readjusted.

6. Unless otherwise approved by the director, the lease or permit shall incorporate the terms of the current agency mineral lease or material permit form when readjusted.

7. Failure of the lessee or permittee to accept or appeal the terms of any readjustment within 60 days of mailing by the agency to the last known address of the lessee or permittee, as reflected in the records of the agency, shall be considered a violation of the terms of the lease or permit and shall subject the same to forfeiture.

8. In the event of a conflict between this section and the terms of a readjustment provision in any lease or permit, the lease or permit terms shall supersede to the extent of the conflict.

9. A lessee or permittee may request a readjustment of a lease or permit, and if the director finds the readjustment to be in the best interest of the beneficiaries, such readjustment shall be made.

**KEY: mineral leases, material permits, mineral resources, lease operations**

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## **R850. School and Institutional Trust Lands, Administration.**

### **R850-25. Mineral Leases and Materials Permits.**

#### **R850-25-100. Classification of Mineral and Material Substances.**

Mineral leases and material permits shall be issued in accordance with the classifications described below. No mineral leases will be issued in conflict with this classification.

##### **1. Mineral Classification.**

(a) Metalliferous Minerals: shall include aluminum, antimony, arsenic, beryllium, bismuth, chromium, cadmium, cesium, columbium, cobalt, copper, fluor spar, gallium, gold, germanium, hafnium, iron, indium, lead, mercury, manganese, molybdenum, nickel, platinum, group metals, radium, silver, selenium, scandium, rare earth metals, rhenium, tantalum, tin, thorium, titanium, tungsten, thallium, tellurium, vanadium, uranium, ytterbium, zinc, and zirconium.

(b) Potash: shall include the chlorides, sulfates, carbonates, borates, silicates, and nitrates of potassium.

(c) Phosphate: shall mean any phosphate rock containing one or more phosphate minerals such as calcium phosphate and shall include all phosphatized limestones, sandstones, shales, and igneous rock.

(d) Clay Minerals: shall mean a fine grained, natural, earthy material composed primarily of hydrous aluminum silicates, plastic-like when wetted, rigid when dried en-masse, and vitrified when fired to a sufficiently high temperature, which shall include kaolin, bentonite, ball clay, fire clay, fuller earth, and clays and clay minerals or shales having unique characteristics giving the mineral deposit distinct and special value, such as carbonaceous shale, humic shale, and baked shale, where the primary value or use is other than building, construction or landscaping.

(e) Humic shale: shall refer to a dark colored shaley material containing humic acids or small particles of carbon, original organic tissue or other carbonaceous matter derived from plants and distributed throughout the whole mass. This classification does not include oil shale, bituminous-asphaltic sands, or coal.

(f) Limestone: shall include sedimentary rock having a predominant composition chiefly composed of calcium carbonate or calcium magnesium carbonate where the primary value or use is other than building, construction, or landscaping.

(g) Gemstone and Fossil: shall include precious, semi-precious or collectable mineral, and petrified material or stone having intrinsic value derived from its attractiveness or uncommon characteristics. This designation includes agate, amber, beryl, calcite, chert, coral, corundum, diamond, feldspar, garnet, geodes, jade, jasper, olivine, opal, pearl, quartz, septarian nodules, spinel, spodumene, topaz, tourmaline, turquoise, and zircon; and coquina, petrified wood, trilobites, and other common fossilized flora and invertebrate fauna.

(h) Gypsum: a natural hydrated calcium sulfate that includes alabaster, anhydrite, gypsite, satin spar, and selenite

(i) Gilsonite: a solid asphaltum found in place, in a vein, a lode, or rock.

(j) Volcanic Material: includes volcanic pyroclastic material such as ash, blocks, bombs, and tuff; glassy volcanic glass material including obsidian, perlite, pitchstone, pumice, scoria, and vitrophyre; and other uncommon volcanic materials where the primary value or use is other than building, construction, or landscaping.

(k) Industrial Sands: includes uncommon, naturally occurring sands having properties or containing minerals having special use in industrial processes or applications as determined by the director. This designation includes abrasive sands, filler sands, foundry sands, frac sands, glass sands, lime sands, magnetic sands, and silica sands.

(l) Mineral Salts: shall include all naturally occurring salts.

##### **2. Material Classification.**

(a) Material permits may be issued for common varieties of clay or stone having a primary value or use in building, construction, or landscaping, including basalt, common clay, conglomerate, flagstone, gabbro, granite, lava aggregate, limestone, marble, onyx, quartzite, rhyolite, rip-rap, sandstone, serpentine, shale, slate, soapstone, trapstone, travertine, whether crushed, sized, dimensioned, or unprocessed, and when the director deems it consistent with agency plans and trust responsibilities.

(b) No material permits will be issued in conflict with the Mineral Lease Classification under R850-25-100(1).

##### **3. Non-Classified Minerals or Materials.**

Mineral leases or material permits may also be issued for minerals or materials not listed under Subsections R850-25-100(1) and (2) at the discretion of the director. Alternatively, the director may issue a mineral lease or material permit for a non-classified mineral or material that is closely associated with a classified mineral or material so long as the mineral or material is specified as a leased or permitted substance in the mineral lease or material permit.

##### **4. Close Association Minerals or Materials.**

A mineral lease or material permit may include other minerals or materials found in close association with the expressly leased mineral or permitted material, when the substance cannot reasonably be mined separately or mined and separated.

5. Multiple Classified Minerals.

Mineral leases may also be issued to include a combination of classified minerals.

**R850-25-200. Mineral Lease Issuance.**

1. The director may issue mineral leases competitively, non-competitively or enter into joint ventures or other business arrangements for the disposition of mineral deposits in accordance with the Act.

2. A mineral lease shall not be issued for a parcel less than a quarter-quarter section or surveyed lot unless approved by the director.

3. Mineral leases shall be limited to no more than 2,560 acres or four sections unless approved by the director.

4. A mineral lease may be terminated by the director in whole or part for lessee's failure to comply with any term or condition of the lease or applicable laws and rules.

**R850-25-300. Mineral Lease Provisions.**

1. Rentals and Rental Credits.

(a) The director shall establish the rental rate for the primary lease term at the time the mineral lease is offered. The rental shall not be less than \$1 per acre per year.

(b) Rental payments shall be paid in advance each year on or before the mineral lease anniversary date, unless otherwise stated in the mineral lease.

(c) The minimum annual rental on any mineral lease shall not be less than \$500.

(d) The rental payment for a mineral lease year may be credited against production royalties only as they accrue for that lease year, unless otherwise provided for in the mineral lease.

(e) Any overpayment of rental occurring from the mineral lease applicant's incorrect listing of acreage of lands described in the application may, at the option of the director, be credited toward the applicant's rental account.

(f) The director shall accept rental payments made by any party, but the acceptance of rental shall not be deemed to be recognition of any interest of the payee in the lease.

2. Royalty and Minimum Royalty.

(a) The director shall establish the production royalty rate(s) at the time the mineral lease is offered.

(b) The director shall establish the annual minimum royalty rate(s) at the time the mineral lease is offered.

3. Primary Mineral Lease Term.

(a) The director shall establish the mineral lease primary term at the time the lease is offered.

(b) The primary lease term for any mineral lease shall not exceed ten (10) years unless approved as part of an OBA.

4. Continuance of Mineral Lease After Expiration of Primary Term.

A mineral lease shall be continued after the primary term has expired so long as:

(a) the leased substance is being produced in paying quantities from the mineral lease or an approved mining unit; or

(b) the director determines that the lessee:

(i) is engaged in diligent operations, exploration, or development which is reasonably calculated to advance development or production of the leased substance; or

(ii) has made substantial financial investments for the direct purpose of advancing development or production of the leased substance; and

(iii) pays the annual minimum royalty set forth in the mineral lease.

5. Readjustment of Mineral Lease.

All mineral leases shall contain a provision setting forth the agency's right to readjust the terms and provisions of the mineral lease on a periodic basis, and such readjustment shall be made in accordance with R850-24-1000.

6. Other Lease Provisions.

The agency may require, in addition to the lease provisions required by these rules, any other provisions to be included in the mineral lease as it deems necessary.

**R850-25-400. Material Permit Issuance.**

1. The agency may issue material permits competitively, non-competitively, or enter into joint ventures or other business arrangements for the disposition of material deposits. In the event that a material permit is offered competitively and there are competing applications submitted, the agency will award the material permit based on the following criteria:

(a) amount of bonus bid;

(b) amount and rate of proposed materials extraction; and



- (c) other criteria and assurances of performance as the agency shall require prior to bidding.
- 2. The agency may issue material permits "over-the-counter" in areas that have been designated by the director as open for such sales.
- 3. A material permit shall not be issued for a parcel less than one quarter-quarter section, or surveyed lot unless approved by the director.
- 4. Any material permit may be terminated by the agency in whole or part for permittee's failure to comply with any term or condition of the permit or applicable laws or rules.

**R850-25-500. Material Permit Provisions.**

- 1. Rentals.
  - (a) The director shall establish the rental rate for a material permit, which shall not be less than \$10 per acre, or fractional part thereof, per annum.
  - (b) The minimum annual rental on material permits shall be determined periodically by the agency.
- 2. Royalty and Minimum Royalty.
  - (a) The director shall establish the royalty rate based upon the agency's analysis of the local market for the commodity.
  - (b) The director will establish annual minimum royalty rates for material permits based on the type of material being removed. The agency may adjust the rates at any time in accordance with the terms of the permit.
- 3. Material Permit Term.
  - (a) Material permits issued under these rules shall be for a term as specified in the terms and conditions of the material permit.
  - (b) All material permits shall expire at the end of five years, unless otherwise specified in the permit. Upon request of the permittee, the director may reissue the permit on the same terms or on readjusted terms. In no event shall a material permit continue for a period longer than five years without review and a determination by the director that reissuance on the same or readjusted terms is in the best interest of the beneficiaries.
- 4. Other Permit Provisions.

The director may require, in addition to the above permit provisions, other provisions to be included in the material permit as it deems necessary.

**R850-25-600. Existing Mineral Lease and Material Permit Conversion.**

Existing mineral leases and material permits issued prior to the effective date of these rules and in good standing on such date shall continue for the term specified in the lease or permit and shall be subject to the terms and provisions contained in the lease or permit. The agency may however, allow such lessees/permittees to convert such existing leases or permits to the new lease or permit, providing such conversion will not conflict with the valid existing rights of any other mineral lessee or material permittee or owner upon the same lands.

**R850-25-700. Mineral Lease and Material Permit Application Process.**

- 1. Applications for mineral leases or material permits, except in the case of competitive filing, are received for filing in the office of the agency during office hours. Except as provided, all the applications received by personal delivery over the counter, shall be immediately stamped with the exact date and time of filing. All applications presented for filing at the opening of the office for business on any business day shall be stamped received as of 8 a.m. on that day. All applications received in the first delivery of the U.S. Mail of each business day shall be stamped received as of 8 a.m. on that day. The time indicated on the time stamp is deemed the time of filing unless the agency determines that the application is materially deficient in any particular or particulars. If an application is determined to be deficient, it will be returned to the applicant.
- 2. Except in cases of competitive filing, if two or more applications for the same mineral lease or material permit contain identical bids and bear a time stamp showing the applications were filed at the same time, the agency will award the mineral lease or material permit by public drawing or oral auction.
- 3. Competitive Filing.
  - (a) The minimum acceptable bid for competitive filing of applications for a mineral lease or material permit shall be at least equal to the rental rate for the first year of the lease.
  - (b) Notices of the offering of lands for competitive filing will run for a period of not less than fifteen (15) consecutive days after the notice is posted in the agency's office.
  - (c) Where applicants wish to submit applications for competitive filing, such applications shall be submitted in separately sealed envelopes and marked for competitive filing.

4. Rejection.

If an application, or any part thereof, is rejected, any money tendered for rental on the rejected portion shall be refunded or credited.

5. Application Withdrawal.

(a) Should an applicant desire to withdraw his/her application, the applicant must submit a written request to the agency. If the request is received prior to the time the agency approves the application, all money tendered by the applicant, except the filing fee, shall be refunded. If the request is received after approval of the application, then, unless the applicant accepts the offered mineral lease or material permit, all money tendered is forfeited to the agency, unless otherwise approved by the director for good cause shown.

(b) Applicants desiring to withdraw an application which has been filed under the competitive filing rules above, must submit a written request to the agency. If the request is received before sealed bids for rental have been opened, all money tendered by the applicant, except the filing fee, shall be refunded. If the request is received after sealed bids for rental have been opened, and if the applicant is awarded the bid, then unless the applicant accepts the offered mineral lease or material permit, all money tendered shall be forfeited to the agency, unless otherwise approved by the director for good cause shown.

**R850-25-800. Operations Notification and Plan.**

1. At least 60 days prior to the commencement of any surface disturbance, drilling, mining or other operations, the lessee/permittee shall submit a plan of operations to the agency in accordance with the terms and conditions established by the agency, as set forth in R850-24-700. Under no circumstance shall the lessee/permittee commence operations without a plan of operation approved by the agency.

2. The agency shall require the lessee/permittee to meet agency reclamation requirements as set forth in R850-24-700.

**KEY: mineral classification, lease provisions, administrative procedures, permit terms**

**Date of Enactment or Last Substantive Amendment: April 1, 2005**

**Notice of Continuation: February 4, 2020**

**Authorizing, and Implemented or Interpreted Law: 53C-1-302(1)(a)(ii); 53C-2-201(1)(a); 53C-2-402(1)**

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**R850. School and Institutional Trust Lands, Administration.****R850-26. Coal Leases.****R850-26-100. Definitions.**

In addition to those applicable definitions in R850-24-175, the following definitions also apply to this section:

1. Lease: a lease in a coal resource as defined in R850-26-150.
2. Lessee: a person or entity holding an interest in a coal lease.

**R850-26-150. Classification of Coal Resources.**

"Coal" shall include black or brownish-black solid fossil fuel that has been subjected to the natural processes of coalification and which falls within the classification of coal by rank: I Anthracite, II Bituminous, III Sub-Bituminous, and IV Lignitic.

**R850-26-200. Coal Leasing of Lands Acquired in Public Law 105-335 Exchange.**

1. Acquired lands shall mean lands acquired by the agency pursuant to the Utah Schools and Lands Exchange Act of 1998, Public Law 105-335, 112 Stat. 3139 (1998)(the "Exchange Act").

2. Leasing of coal interests in the acquired lands shall be governed by applicable provisions of state law, the Exchange Act, that certain Memorandum of Understanding Between the Utah School and Institutional Trust Lands Administration, the United States Department of Agriculture, and the United States Department of the Interior dated January 5, 1999, as amended from time to time, and by those certain provisions of R850-24 and R850-26 not in conflict with this section.

3. The director shall have broad discretion to determine terms, conditions and procedures for leasing coal interests in the acquired lands by competitive filing, including without limitation:

- (a) the determination of rental rates;
- (b) lease forms and lease stipulations for particular tracts;
- (c) the amount of any required bid deposit;
- (d) the minimum acceptable bid for particular tracts;
- (e) terms of payment for bonus bids; and
- (f) bidding procedures generally.

4. The director may, but is not obligated to, disclose the minimum acceptable bid in advance of offering the lease by competitive filing.

5. In the event that the high bid in any competitive bid filing does not meet the minimum acceptable bid previously determined by the director, the director may, but is not obligated to, negotiate with the high bidder to obtain a negotiated bid that, in the discretion of the director, represents fair market value. Alternatively, the director may re-offer the lands for competitive filing, hold an oral auction of the lands pursuant to Subsection 53C-2-407(4), or withdraw the lands from leasing.

6. Nothing in this rule shall prevent the agency from leasing or otherwise disposing of coal interests in the acquired lands pursuant to Subsection 53C-2-401(1)(d)(ii), subject to compliance with applicable law.

**R850-26-300. Coal Lease Provisions.**

1. Royalty and Minimum Royalty.

- (a) The director shall establish the production royalty rate, not to be less than 8%.
- (b) The director shall establish the annual minimum royalty rate(s) at the time the lease is offered.

2. Size of Leaseable Tract.

A lease shall not be issued for a parcel less than a quarter-quarter section or surveyed lot unless approved by the director.

3. Primary Coal Lease Term.

The primary lease term for any lease may not exceed ten (10) years.

4. Continuance of Coal Lease After Expiration of Primary Term.

A lease shall be continued after the primary term has expired so long as:

- (a) coal is being produced in paying quantities from the lease or an approved mining unit; or
- (b) the agency determines that the lessee:
  - (i) is engaged in diligent operations, exploration, or development which is reasonably calculated to advance development or production of the coal resource; or
  - (ii) has made substantial financial investments for the direct purpose of advancing development or production of the coal resource; and
  - (iii) pays the annual minimum royalty set forth in the lease.

5. Readjustment of Coal Lease.

All leases shall contain a provision setting forth the agency's right to readjust the terms and provisions of the lease on a periodic basis, and such readjustment shall be made in accordance with R850-24-1000. A lease continued after expiration of its primary term shall be subject to such readjustment provision(s).

6. Other Lease Provisions.

(a) The agency may require, in addition to the lease provisions required by these rules, any other provisions to be included in the lease as it deems necessary.

**R850-26-400. Existing Coal Lease Conversion.**

Existing leases issued prior to the effective date of these rules and in good standing on such date shall continue for the term specified in the lease and shall be subject to the terms and provisions contained in the lease. The agency may, however, allow such lessees to convert such existing leases to the new lease, providing such conversion will not conflict with the valid existing rights of any other lessee or owner upon the same lands.

**R850-26-450. Coal Exploration Permit.**

The director may issue non-exclusive short-term exploration permits upon unleased trust lands for the purpose of conducting exploration drilling operations, according to the following terms:

1. Applications for a coal exploration permit shall include an application fee.
2. The application shall specify the location and number of exploratory drilling holes, and applicant shall pay a drilling fee as specified on the agency's fee schedule for each exploratory drilling hole approved by the agency.
3. Prior to commencing operations, the coal exploration permittee must obtain a coal exploration permit from UDOGM, and must provide 60 days' notice of intent to drill to the agency.
4. A bond for reclamation and drill hole plugging must be posted prior to the commencement of operations.
5. The coal exploration permittee must file a true and complete copy of all drilling logs and geological reports associated with the drilling project with the agency at the conclusion of drilling operations.

**R850-26-500. Operations Notification and Plan.**

1. At least 60 days prior to the commencement of any surface disturbance, drilling, mining or other operations, the lessee shall submit a plan of operations to the agency in accordance with the terms and conditions established by the agency, as set forth in R850-24-700. Under no circumstance shall the lessee/permittee commence operations without a plan of operation approved by the agency.

2. The agency shall require the lessee to meet agency reclamation requirements as set forth in R850-24-700.

**KEY: coal, lease provisions, administrative procedures, plan of operation**

**Date of Enactment or Last Substantive Amendment: April 1, 2005**

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**R850. School and Institutional Trust Lands, Administration.****R850-30. Special Use Leases.****R850-30-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Subsections 53C-1-302(1)(a)(ii) and 53C-4-101(1) which authorize the director to establish criteria for the leasing of trust lands.

**R850-30-150. Planning.**

In addition to those other planning responsibilities described in this Rule R850-30, the agency shall:

1. Submit proposals to lease trust lands to the Resource Development Coordinating Committee (RDCC) unless the proposal is exempt from such review;
2. Evaluate comments received through the RDCC process; and
3. Evaluate comments received through the request for proposal process pursuant to Section R850-30-310 or the solicitation process pursuant to Section R850-30-500, as applicable.

**R850-30-200. Terms of Leases.**

Lease terms should not normally be for longer than 30 years, except that telecommunication and agricultural leases should not normally be for longer than 20 years. Extensions to a lease term should not normally be for longer than 20 years. The agency may issue leases for a term longer than 30 years or extend a term for longer than 20 years if a longer term is consistent with the land management objectives found in Rule R850-2.

**R850-30-300. Categories of Special Use Leases.**

Special use leases are categorized as follows:

1. Commercial;
2. Industrial;
3. Agricultural;
4. Telecommunications;
5. Residential; and
6. Governmental.

**R850-30-305. Other Business Arrangements.**

1. The agency may enter into other business arrangements (OBAs), such as joint venture and lease to sell agreements, that are consistent with the purposes of the Act.
2. OBAs are exempt from these R850-30 rules.
3. OBAs and any amendments to OBAs must be approved by the Board of Trustees.

**R850-30-310. Requests for Proposals.**

1. The agency may issue a request for proposals (RFP) for surface uses of trust lands.
2. The agency shall give notice of the RFP to lessees or permittees of record on the subject property and shall advertise the RFP by methods determined by the agency to increase exposure of the subject property to qualified applicants.
3. In response to the RFP, an applicant may propose a sale, lease, joint development, exchange, or other business arrangement.
4. The agency shall evaluate proposals using the following criteria:
  - (a) income potential;
  - (b) potential enhancement of trust lands;
  - (c) development timeline;
  - (d) applicant qualifications;
  - (e) desirability of proposed use; and
  - (f) any other criterion deemed appropriate by the agency.
5. The agency may charge non-refundable application and review fees, as specified in the RFP.
6. Applicants selected in the RFP process are exempt from the application process in Section R850-30-500.

**R850-30-400. Lease Rates.**

1. The agency shall base lease rates on the market value or income producing capability of the subject property and may require any commercially reasonable type of consideration, including rent, percentage rent, use

payments, impact charges, escalating charges, balloon payments, and in-lieu payments. The agency may base lease rates on any of the following criteria, in combination or otherwise:

- (a) the market value of the subject property multiplied by the current agency-determined interest rate;
- (b) comparable lease data;
- (c) market value of the proposed use of the subject property;
- (d) rates schedules approved by the director;
- (e) the administrative costs of leasing the subject property and a desired minimum rate of return; and
- (f) a fixed rate per acre or a crop-share formula for agricultural leases providing that the lease rate is customary and reasonable.

2. The agency may base lease rates on a value other than the market value of the subject property if the director determines it is in the best interest of the beneficiaries and the agency has the right to terminate the lease before the end of the term.

3. Lease Review and Adjustment Procedures.

(a) The agency shall review special use leases periodically as specified in the lease agreement and may adjust lease rates, the amount of financial guaranty, the amount of required insurance, and other similar lease provisions to ensure the agency receives no less than fair market value for the subject property and is adequately protected against a lessee's breach. Periodic lease reviews should normally be no longer than every five years.

(b) The agency may base lease rate adjustments on changes in market value including appreciation of the subject property, changes in established indices, or other methods that are appropriate and in the best interest of the trust beneficiaries.

(c) If the lease does not specify the rate of adjustment, the rate of adjustment will be based on the Consumer Price Index, published by the U.S. Bureau of Labor Statistics, All Urban Consumers, Western Region Average, All Items (1982-84 = 100), or if the Consumer Price Index is no longer published, a substitute index published by a governmental agency and comparable to the Consumer Price Index. The adjusted lease rate cannot be less than the lease rate for the immediately preceding review period.

(d) The director may suspend, defer, or waive lease adjustments in specific instances, based on a written finding that the suspension, deferral, or waiver is in the best interest of the trust beneficiaries.

**R850-30-500. Solicitation of Competing Applications.**

1. On acceptance by the agency of a completed special use lease application, the agency shall solicit competing interest in the subject parcel. The director may waive this requirement if it is in the best interest of the trust beneficiaries.

2. The following classes of leases are exempt from the requirements of Subsection R850-30-500(1):

- (a) Telecommunications; and
- (b) Mineral and oil and gas extraction facilities to extract the mineral estate of the subject property when the mineral estate is not a trust asset.

3. The agency shall solicit competing interest in the subject parcel by giving at least 30 days' notice by certified mail to:

- (a) the legislative body of the county in which the subject parcel is located;
- (b) lessees or permittees of record on the subject property; and
- (c) adjoining landowners as shown on readily accessible county records or other credible records.

4. In addition to the notices required under Subsection R850-30-500(3), the agency may solicit competing interest in the subject parcel by methods determined by the agency to increase exposure of the subject property to qualified applicants.

5. The notice of solicitation of competing interest must include:

- (a) a general description of the subject parcel and a brief description of its location, including township, range, and section;
- (b) the contact information of the agency office where interested parties can obtain more information; and
- (c) any other information that may create interest in the subject parcel that does not violate the confidentiality of the initial application. The successful applicant is responsible for the cost of the advertising.

6. The agency may solicit competing interests on trust lands when no application has been received by advertising a parcel pursuant to the process described in this Section R850-30-500 or any other means, when in the best interest of the trust beneficiaries.

7. In response to a solicitation, an applicant may propose a sale, lease, joint development, exchange, or other business arrangement.

**R850-30-510. Competing Proposals.**

If the agency receives credible competing proposals in response to the solicitation process conducted pursuant to Section R850-30-500, the agency may select a proposal using the following methods:

- (a) Sealed Bid Process.
  - (i) The agency shall give the competing applicants notice setting forth the date on which the applicants must submit a final sealed proposal to the agency.
  - (ii) The agency may reject proposals received after the established due date.
  - (iii) The agency may require proposals for a lease to include the first year's rental, proposals for a sale to include a down payment on the proposed purchase price, and payments to cover the agency's costs of advertising and application fees.
  - (iv) The agency shall evaluate proposals using the following criteria:
    - (A) income potential;
    - (B) potential enhancement of trust lands;
    - (C) development timeline;
    - (D) applicant qualifications;
    - (E) desirability of proposed use; and
    - (F) any other criterion deemed appropriate by the agency.
  - (b) The agency may negotiate with the applicants or interested persons to create a proposal that best satisfies the objectives of Rule R850-2.
- 2. The agency may terminate the application process at any time in its sole discretion.

**R850-30-550. Lease Determination Procedures.**

The agency may not lease trust lands when leasing:

- 1. would be inconsistent with board policy or would not be in the best interest of the trust beneficiaries;
- 2. would create significant obstacles to future mineral development; or
- 3. would foreclose future development or management options that would likely result in greater long term economic benefit.

**R850-30-600. Special Use Lease Provisions.**

Each lease must contain provisions necessary to ensure responsible surface management, including those provisions enumerated under Section 53C-4-202, and the following provisions:

- 1. the term of the lease;
- 2. the lease rate and other payments due to the agency;
- 3. reporting of technical and financial data;
- 4. reservation for mineral exploration and development and other compatible uses, unless waived by the director;
- 5. operation requirements;
- 6. lessee's consent to suit in any dispute arising under the terms of the lease or as a result of operations carried on under the lease;
- 7. procedures of notification;
- 8. transfers of lease interest by lessee;
- 9. terms and conditions of lease forfeiture; and
- 10. protection of the state from liability associated with the actions of the lessee on the subject property.

**R850-30-800. Financial Guaranties.**

- 1. The agency may require a lessee to provide a financial guaranty to the agency to ensure compliance with lease terms including performance, payment, and reclamation. The financial guaranty must be in a form and in an amount acceptable to the agency.
- 2. If a lessee assigns a lease, the agency is not obligated to release the financial guaranty of the assignor until the assignee submits an equivalent replacement financial guaranty or any lease obligations, including reclamation, have been satisfied.
- 3. The agency may increase the amount of the financial guaranty in reasonable amounts at any time by giving lessee 30 days' written notice stating the increase and the reasons for the increase.

**R850-30-900. Lease Assignments and Subleases.****1. Assignments.**

(a) A lessee may only assign a lease if the agency consents to the assignment. Any assignment made without such approval is voidable in the agency's discretion.

(b) On the effective date of the assignment, the assignee is bound by the terms of the lease to the same extent as if the assignee were the original lessee, any conditions in the assignment to the contrary notwithstanding.

(c) An assignee must provide the agency with a copy of the assignment document, which must be a sufficient legal instrument, properly executed, with the lease number, the land involved, the name and address of the assignee, and the interest transferred clearly indicated.

(d) As a condition of the approval of an assignment, the agency shall require:

(i) the assignee to accept the most current applicable lease form unless continuation of the existing form is clearly in the best interests of the trust beneficiaries; and

(ii) the assignee be satisfactory to the agency.

**2. Subleases.**

(a) A lessee may only sublease a lease if the agency consents to the sublease. A sublease made without such approval is voidable in the agency's discretion.

(b) The lessee must indemnify the agency for actions or inactions of the sublessee and the agency may look to either the lessee or the sublessee for compliance with the lease.

(c) A lessee must provide the agency with a copy of the sublease document, which must be a sufficient legal instrument, properly executed, with the lease number, the land involved, the name and address of the sublessee, the interest subleased, and the financial benefit to lessee clearly indicated.

(d) The agency may require lessee and sublessee to provide annual financial documentation that clearly identifies the revenue generated on the property by sublessee and the revenue paid by sublessee to lessee.

(e) The agency may charge the lessee sublease rates based on the then current market rental value of the subject property, the revenue paid by sublessee to lessee, and such other factors as the agency deems reasonable.

**R850-30-1000. Lease Amendments.**

1. The agency may amend a lease if the amendment would be consistent with Rule R850-2. Unless waived by the director, the agency shall solicit competing interest pursuant to Section R850-30-500 if:

(a) the total amended acreage exceeds 150% of the original acreage;

(b) the lease term, including any extensions is longer than 50 years; or

(c) the proposed amended purpose of the lease is substantially different from the original purpose.

2. The agency may condition approval of an amendment on the lessee accepting the current lease form.

**KEY: administrative procedures, leases, trust land management, request for proposals**

**Date of Last Change: August 8, 2022**

**Notice of Continuation: May 26, 2022**

**Authorizing, and Implemented or Interpreted Law: 53C-1-302(1)(a); 53C-4-101(1); 53C-4-202**

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**R850. School and Institutional Trust Lands, Administration.****R850-40. Easements.****R850-40-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302 and 53C-4-203 which authorize the director to establish rules for the issuance of easements on, through, and over trust land, and to establish price schedules for this use.

**R850-40-150. Planning.**

The agency shall:

1. Submit proposed easements for review by the Resource Development Coordinating Committee (RDCC) unless the proposal is exempt from such review; and
2. Evaluate and respond to comments received through the RDCC process.

**R850-40-200. Easements Issued on Trust Lands.**

1. The agency may issue exclusive, non-exclusive, and conservation easements on trust lands if the agency determines such action would be in the best interests of the trust beneficiaries.

**R850-40-250. Determination of the Status of Temporary Easements and Rights-of-Entry.**

1. In order to determine the existence and continuation of any temporary easements or rights-of-entry granted pursuant to Section 72-5-203 on a specific parcel of trust land (the subject property), the agency may undertake the notification process set forth in R850-40-250(2). This evaluation does not adjudicate the status of any highway crossing the subject property that may have been established pursuant to any federal statute, such as R.S. 2477. Highways established in accordance with the requirements of federal law, including R.S. 2477, prior to the state taking title to the subject property are recognized as valid existing rights.

2. In order to determine the existence of a statutory temporary easement or right-of-entry on the subject property, the agency shall give notice to responsible authorities, as defined in Subsection 72-5-202(1). This notice is intended to provide information to any responsible authority wishing to assert a temporary easement or right-of-entry on the process used to file an application to make such temporary easement or right-of-entry permanent (the "application"). The application must contain a description of the facts which lead the applicant to believe that a statutory temporary easement or right-of-entry exists on the subject property, and other information that may be required by the agency to verify the assertion. Notice shall be provided as follows:

(a) Certified notice shall be mailed by the agency to the Attorney General and the executive body of the county in which the subject property is located. This notice shall include the legal description of the subject property and a map showing its location. The executive body of the county shall have 30 days from the date of the notice within which to submit an application.

(b) Notice to other responsible authorities who may have an interest in the subject property shall be given through publication at least once a week for three consecutive weeks in one or more newspapers of general circulation in the county where the subject property is located. In addition to the legal description of the subject property, the advertisement shall put responsible authorities on notice that the agency may take action extinguishing the temporary easement or right-of-entry. Other responsible authorities shall have 30 days from the first date of publication within which to submit the application.

3. Upon the receipt of an application to convert a temporary easement or right-of-entry into an authorized easement or right-of-entry, the agency shall evaluate the request pursuant to the fiduciary responsibilities of the agency. Prior to the agency approving or rejecting an application, if any, the agency shall review the supporting documentation submitted by the applicant. The agency shall consider material submitted by any responsible authority pursuant to the applicant's appropriate statutory authority. If no application is received after notice is given pursuant to R850-40-250(2), or if an application to make the temporary easement or right-of-entry permanent is not approved, any statutory temporary easement or right-of-entry on the subject property shall automatically be extinguished. The agency will not sell trust lands for at least 14 days after a final decision to disapprove an application to make a statutory temporary easement or right-of-entry permanent.

**R850-40-300. Easement Acquisition.**

1. Easements across trust lands may be acquired only by application and grant made in compliance with these rules and the laws applicable thereto.

2. Easements, or other interests in trust lands, may not be acquired by:

- (a) prescription,

- (b) adverse possession, or
- (c) any other legal doctrine except as provided by statute.

**R850-40-400. Easement Charges.**

The charge for any easement granted or renewed under these rules, including those granted to municipal or county governments or agencies of the state or federal government, may be based on either the market value of the use or the market value of the land encumbered by the easement.

**R850-40-600. Minimum Charges for Easements.**

The agency may establish a minimum charge for an easement based on the cost incurred by the agency in administering the easement.

**R850-40-700. Application Procedures.**

1. All applications shall be made on agency forms. The filing of an application form is deemed to constitute the applicant's offer to purchase an easement under the conditions contained in the conveyance document and these rules.

2. Application approval by the director constitutes acceptance of the applicant's offer.

3. The easement shall be executed by the applicant and returned to the agency within 60 days from the date of applicant's receipt of the written easement. Failure to execute and return the documents to the agency within the 60-day period may result in cancellation of the conveyance and the discharge of any obligation of the agency arising from the approval of the application.

**R850-40-800. Term of Easements.**

Easements granted under these rules shall normally be for no greater than a 30 year term. Longer or shorter terms may be granted upon application if the director determines that such a grant is in the best interest of the trust beneficiaries.

**R850-40-900. Conveyance Documents.**

1. Each easement shall contain provisions necessary to ensure responsible surface management, including, the following provisions: the rights of the grantee, rights reserved to the grantor; the term of the easement; payment obligations; reporting of technical and financial data; reservation for mineral exploration and development and other compatible uses; operation requirements; grantee's consent to suit in any dispute arising under the terms of the easement or as a result of operations carried on under the easement; procedures of notification; transfers of easement interest by grantee; terms and conditions of easement forfeiture; and protection of the Trust Lands Administration from liability from all actions of the grantee.

2. In addition to the requirements of R850-40-900(1), conservation easements shall specify the resource(s) which is being protected and the conditions under which the conservation easement may be terminated.

**R850-40-1000. Bonding Provisions.**

1. Prior to the issuance of an easement, or for good cause shown at any time during the term of the easement, upon 30 days written notice, the applicant or grantee, as the case may be, may be required to post with the agency a bond in the form and amount as may be determined by the agency to assure compliance with all terms and conditions of the easement.

2. All bonds posted on easements may be used for payment of all monies due to the agency for costs of reclamation and compliance with all other terms and conditions of the easement, and rules pertaining to the easement. The bond shall be in effect even if the grantee has conveyed all or part of the easement interest to a sublessee, assignee, or subsequent operator until the grantee fully satisfies the easement obligations, or until the bond is replaced with a new bond posted by the sublessee or assignee.

3. Bonds may be increased in reasonable amounts, at any time as the agency may decide, provided grantor first gives grantee 30 days' written notice stating the increase and the reason(s) for the increase.

4. Bonds may be accepted in any of the following forms at the discretion of the agency:

- (a) Surety bond with an approved corporate surety registered in Utah.
- (b) Cash deposit. However, Trust Lands Administration will not be responsible for any investment returns on cash deposits.
- (c) Other forms of surety as may be acceptable to the agency.



**R850-40-1100. Conflict of Use.**

The agency reserves the right to issue non-exclusive easements or leases, or to dispose of the property by sale or exchange, on land encumbered by existing easements.

**R850-40-1200. Amendments.**

Any holder of an existing easement desiring to change any of the terms of, or the alignment described in the grant shall make application following the same procedure as is used to make an application for a new easement. An amendment fee pursuant to R850-4 must accompany the amendment request.

**R850-40-1300. Renewal of Easement.**

Prior to the expiration date of any easement, an application may be submitted for a renewal of the grant upon payment of the consideration as may then be required.

**R850-40-1400. Removal of Sand and Gravel.**

The removal of ordinary sand and gravel or similar materials from the land by grantee is not permitted except when the grantee has applied for and received a materials purchase permit.

**R850-40-1500. Removal of Trees.**

Forest products shall not be cut or removed from the easement unless and until a small forest product permit or a timber contract as provided for in agency rules has been obtained.

**R850-40-1600. Easement Assignments.**

1. An easement may be assigned to any person, firm, association, or corporation qualified under R850-3-200, provided that:

- (a) the assignment is approved by the agency;
- (b) if the easement term is perpetual, the easement shall be amended so that the term is 30 years beginning as of the original effective date. However, if the remaining number of years on an easement so amended is less than 15 years, the ending date of the easement shall be set so that there will be 15 years remaining in the easement; and
- (c) payment is made of either:
  - i) the difference in easement rental between what was originally paid for the easement and what the agency would charge for the easement at the time the application for assignment is submitted, or
  - ii) alternate consideration established by, and at the discretion of, the director. In allowing for any alternate consideration the director may consider the following factors:

A) the consideration established under R850-40-1600(1)(c)(i) would create an undue financial burden upon the applicant, or

B) the assignment facilitates an agency objective.

2. An assignment shall take effect the date of the approval of the assignment. On the effective date of any assignment, the assignee is bound by the terms of the easement to the same extent as if the assignee were the original grantee, any conditions in the assignment to the contrary notwithstanding.

3. An assignment must be a sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the easement number, land involved, and the name and address of the assignee and, for the purpose of this rule shall include any agreement which transfers control of the easement to a third party.

4. An assignment shall be executed according to agency procedures.

5. An assignment is not effective until approval is given by the agency. Any assignment made without such approval is void.

6. Assignments made for no consideration in money, services, or goods, to include assignments made to affiliates (e.g. wholly owned subsidiaries) of the easement grantee, and to include inter vivos or testamentary assignments made to immediate family members (parents, spouse, children, grandchildren, and full siblings) and assignments from and to business entities wholly owned by an immediate family member or members, may be exempt from the requirement to pay the difference in easement rental established under R850-40-1600(1)(c)(i).

**R850-40-1700. Termination of Easement.**

1. Any easement granted by the agency may be terminated in whole or in part for failure to comply with any term or condition of the conveyance document or applicable laws or rules.

2. Upon determination by the director that an easement is subject to termination pursuant to the terms of the grant or applicable laws or rules, the director shall issue an appropriate instrument terminating the easement.

**R850-40-1800. Abandonment.**

1. To facilitate the determination of an abandonment of easement, the grantee shall pay an administrative charge every three years during the term of the easement as provided in R850-4. The requirement to pay this administrative charge shall apply if:

- (a) the easement is an existing easement in agency records as of December 31, 2017, and
- (b) the easement term is perpetual, and
- (c) the requirement to pay this administrative charge was effective and included as a contract term at the time the easement was granted, and
- (d) the grantee is not a governmental entity. Governmental entities include but are not limited to municipal or county governments or agencies of the state or federal government.

2. The grantee shall not be required to pay this administrative charge for all easements issued or renewed on or after January 1, 2018.

3. This administrative charge shall not be construed as rent.

4. The agency may accept payment of the administrative charge submitted by any easement grantee.

**KEY: natural resources, management, surveys, administrative procedures**

**Date of Last Change: May 8, 2018**

**Notice of Continuation: May 26, 2022**

**Authorizing, and Implemented or Interpreted Law: 53C-1-302; 53C-2-201(1)(a); 53C-4-203**

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**R850. School and Institutional Trust Lands, Administration.****R850-41. Rights of Entry.****R850-41-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302(1)(a)(ii) and 53C-4-101(1) which authorize the Director of the School and Institutional Trust Lands Administration to establish criteria by rule for the sale, exchange, lease or other disposition or conveyance of Trust Lands Administration lands including procedures for determining fair-market value of those lands.

**R850-41-200. Right of Entry Permits on Trust Lands.**

1. The agency may issue non-exclusive right of entry permits on trust lands when the agency deems it consistent with agency rules and trust responsibilities.
2. The agency may establish categories and criteria for issuance of right of entry permits.
3. Events and activities that occur entirely on roads designated as open to motor vehicle use pursuant to R850-110-200 generally do not require a right of entry permit. The agency may require a right of entry permit for activities and events that the agency determines in its sole discretion may have impacts to adjacent trust lands.

**R850-41-300. Term of Right of Entry Permits; Termination.**

1. The agency may issue right of entry permits for one year or less, except that the agency may issue right of entry permits for longer terms for recurring annual events and other limited impact, ongoing, and non-exclusive uses that do not require a lease.
2. The agency may terminate a right of entry permit:
  - (a) on notice to permittee if there is a violation of the permit or of the R850 rules;
  - (b) on 60 days' notice to permittee if:
    - (i) the agency determines in its sole discretion that there are higher and better uses for the permitted property;
    - (ii) the agency intends to dispose of the permitted property; or
    - (iii) any management problems arise as determined in the sole discretion of the agency.

**R850-41-400. Permit Rates.**

The agency may establish right of entry permit rates based on the market value and income producing capability of the permitted property, the administrative burden of managing the permit, the potential impact to the permitted property, or any other criteria deemed reasonable by the agency.

**R850-41-500. Application Procedures.**

1. A person seeking a right of entry permit must submit an application to the agency, either in paper or electronic form.
2. The agency may deny a right of entry permit application for any reason.
3. The applicant shall pay all amounts due at the time of execution of the permit prior to the agency issuing the permit.
4. An applicant may withdraw a right of entry permit application by giving written notice to the agency.

**R850-41-600. Right of Entry Permit Provisions.**

Each right of entry must contain provisions necessary to ensure responsible surface management, including the following provisions: the rights and responsibilities of the permittee, rights reserved to the agency; the term of the right of entry permit; payment obligations; and protection of the agency from liability for all action of the permittee.

**R850-41-700. Bonding.**

Prior to issuance of a right of entry permit or at any time during the permit term, the agency may require the applicant or permittee to post a bond or other financial guaranty with the agency in the form and amount determined by the agency to ensure compliance with all terms and conditions of the right of entry permit.

**R850-41-800. Assignments.**

1. A permittee may not assign a right of entry permit without the prior written consent of the agency. Any assignment made without the agency's consent is void.
2. The assignee must assume all obligations of permittee under the right of entry permit.

**R850-41-900. Amendments.**

A permittee may request an amendment of a right of entry permit by following the same procedure as is used to make an application for a new right of entry permit.

**KEY: rights of entry, management, administrative procedures**

**Date of Last Change: April 1, 2021**

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**Authorizing, and Implemented or Interpreted Law: 53C-1-302(1)(a)(ii); 53C-2-201(1)(a); 53C-4-101(1)**

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## **R850. School and Institutional Trust Lands, Administration.**

### **R850-50. Range Management.**

#### **R850-50-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Subsection 53C-1-302(1)(a)(ii) and Section 53C-5-102 which authorize the Director of the School and Institutional Trust Lands Administration to establish rules prescribing standards and conditions for the utilization of forage, the qualifications of a grazing permittee, and related improvement of range resources on trust lands.

#### **R850-50-150. Planning.**

1. Pursuant to Subsection 53C-2-201(1)(a), the issuance of grazing permits carries no planning obligations by the agency beyond existing rule-based analysis and approval processes.

2. Range improvement projects authorized pursuant to this section carry the following planning obligations beyond existing rule-based analysis and approval processes:

(a) to the extent required by the Memorandum of Understanding with the State Planning Coordinator, the agency shall submit the proposal for review by the Resource Development Coordinating Committee (RDCC); and

(b) evaluate and respond to comments received through the RDCC process.

3. Applications for modified grazing permits which do not involve surface disturbing activities are governed by Subsection R850-150(1). Applications for modified grazing permits which involve surface disturbing activities are subject to the planning obligations set forth in Subsection R850-150(2).

#### **R850-50-200. Grazing Management.**

1. Management of trust lands used for grazing purposes is based upon carrying capacity which permits optimum forage utilization and seeks to maintain or improve range conditions.

2. Carrying capacity shall be established after consideration of historical stocking rates, forage utilization, range condition, trend, and climatic conditions.

3. To fulfill its constitutional mandate to its beneficiaries, the agency may set, and change, at its discretion, season of use, duration or time of use, and intensity of use, as well as numbers, distribution, and kind of livestock which are allowed by a grazing permit.

#### **R850-50-300. Applications.**

1. Grazing permit applications may be accepted on any trust lands not otherwise subject to a grazing permit unless the land has been withdrawn from grazing or has been determined to be unsuitable for grazing.

2. Trust lands may be deemed unsuitable for grazing if it is determined that:

(a) range conditions make it incapable of supporting economic grazing practices;

(b) grazing would substantially interfere with another use that is better able to provide for the support of the beneficiaries; or

(c) the agency's management costs would be excessive.

3. The determination to accept grazing permit applications is at the sole discretion of the director.

#### **R850-50-400. Permit Approval Process.**

1. On trust lands that are unpermitted and which are available for grazing, applications may be solicited through any method the agency determines appropriate, including notification of adjacent landowners and other permittees in an allotment.

2. On trust lands subject to an expiring grazing permit, competing applications shall be accepted from April 1 to April 30, or the next working day if either of these days is a weekend or holiday, of the year in which the permit terminates.

(a) Any expiring and terminated grazing permits shall be posted on the agency's website by January 1 of the year in which the permit expires or the year after the permit was terminated, provided that the

permitted property has been determined to be available for grazing by the agency. The website notice shall include any reimbursable investment made by an existing permittee on a range improvement. Notice that expiring grazing permits may be found on the agency's website may also be published.

(b) Grazing permits issued on trust lands acquired through an exchange with the federal government after the expiration of the federal permit, shall not be subject to this rule for two successive 15-year terms unless the permit has been sold or otherwise terminated.

3. A person holding an expiring grazing permit shall have the right to renew the permit, provided that no competing applications are received, by submitting a completed application along with the first year's rent and other applicable fees.

4. Persons desiring to submit a competing application must do so on forms acceptable to the agency. Forms are available at the offices listed in Subsection R850-6-200(2)(b) or from the agency's website. Applications must include:

(a) a non-refundable application fee;

(b) a one-time bonus bid; and

(c) an amount determined by the agency pursuant to Subsection R850-50-1100(7), which will be required to reimburse the holder of an authorized range improvement project should the competing application be accepted.

5. Bonus bids and range improvement reimbursements shall be refunded to unsuccessful applicants. Upon establishment of the yearly rental rate, the successful applicant shall be required to submit the first year's rental and other required fees.

6. Applications shall be evaluated by the agency and may be accepted only if the agency determines that the applicant's grazing activity will not create unmanageable problems of trespass, range and resource management, or access.

(a) For purposes of this evaluation, adjoining permittees and lessees, adjoining property owners, and adjoining federal permittees may be considered acceptable as competing applicants unless specific problems are demonstrated.

(b) Applicants not meeting the requirements in Subsection R850-50-400(6)(a), whose uses would not unreasonably conflict with the uses of other permittees in the area, may nevertheless be accepted if the size of the grazing area, the access to the grazing area, and other factors demonstrate that the applicant can utilize the area without adverse impact on the range resources, adjoining lands, or beneficiaries of affected trust lands.

(c) To evaluate an applicant's acceptability as a grazing permittee, the agency may consider:

(i) the applicant's ability to maintain any water rights appurtenant to the lands described in the application;

(ii) the applicant's ownership of private land in the area;

(iii) the applicant's ownership of grazing privileges in the BLM or Forest Service allotment where the trust land is located;

(iv) the type and number of livestock owned by the applicant; and

(v) management costs to the agency should the application be approved.

7. The holder of a permit which is expiring, on which a competing application has been received, shall have a preference right to permit the property provided the permit holder agrees to pay an amount equal to the highest bonus bid submitted by a competing applicant.

(a) If the existing permittee fails to match the highest bonus bid, the permittee may be refunded the value of the amount the permittee contributed to the cost of any approved range improvement project at the expense of the successful bonus bid applicant.

(b) If all, or a portion of, the property on which a bonus bid was submitted is sold, exchanged, or otherwise made unavailable, the permittee shall receive the refund of a prorated amount of the bonus bid based on the AUMs lost to the use of the permittee.

**R850-50-500. AUM Assessments and Annual Adjustments.**

1. An annual assessment shall be charged for each AUM authorized by the agency. This assessment shall be established by the board and shall be reviewed annually and adjusted if appropriate.

2. The annual assessment for lands designated as "High Value Grazing Lands" will be at a higher amount than trust lands not so designated. High Value Grazing Lands are typically, but not necessarily, contained in a named land block. Blocked or scattered lands may be designated as High Value Grazing Land through a Director's Finding.

3. If the agency acquires High Value Grazing Lands through an exchange with the federal government, the application of the agency's annual assessment to the holders of grazing privileges on the acquired land shall be phased in over a five-year period in equal increments after the term of the federal permit has expired.

4. The application of the agency's annual assessment on lands acquired through an exchange with the federal government, and not designated as High Value Grazing Lands, shall be phased in over a three-year period in equal increments after the term of the federal permit has expired.

5. Failure to pay the annual assessment within the time prescribed shall automatically work a forfeiture and termination of the permit and all rights thereunder.

**R850-50-600. Grazing Permit Terms.**

1. Grazing permits shall be issued for a maximum of 15 years and shall contain the following:

(a) terms, conditions, and provisions that shall protect the interests of the trust beneficiaries for securing the payment to the agency of any amounts owed;

(b) terms, conditions, and provisions that shall protect the range resources from improper and unauthorized grazing uses; and

(c) other terms, conditions, and provisions that may be deemed necessary by the agency or board in effecting the purpose of this rule and not inconsistent with any of its provisions.

2. The agency may terminate or suspend grazing permits, in whole or in part, after 30 days' notice by certified mail to the permittee when:

(a) a violation of the terms of the permit, or of this rule, including trespass as defined in Section R850-50-1400, has occurred;

(b) the agency, in its sole discretion, has identified a higher and better use for the permitted property;

(c) the agency intends to dispose of the permitted property; or

(d) any management problems arise as determined at the sole discretion of the agency.

**R850-50-700. Reinstatements.**

Trust land on which a grazing permit has been terminated and which is ineligible for reinstatement pursuant to Subsection R850-5-500(1)(c) may be advertised as available pursuant to Subsection R850-50-400(2). If the agency does not advertise the property, the person previously holding the permit may apply for a new permit by submitting an application and any applicable fees.

**R850-50-800. Grazing Permits--Legal Effect.**

1. A grazing permit transfers neither right, title, or interest in any lands or resources, nor any exclusive right of possession and grants only the authorized utilization of forage.

2. Locked gates on trust land, without written approval, are prohibited. If such approval is granted, keys shall be supplied to the agency and other appropriate parties requiring access to the area as approved by the agency, including those with fire and regulatory responsibilities.

**R850-50-900. Non-Use Provisions.**

1. The granting of non-use shall be at the discretion of the agency.
2. Applications for non-use must be submitted in advance or, if the trust land is within a federal grazing allotment, as soon as notification of non-use is received from the applicable federal agency.
3. Applications for non-use must be accompanied by the application fee and by any documentation which is the basis for the request. If the non-use application is approved, any annual assessment paid for the year shall be applied to the permittee's next year's annual assessment.
4. Non-use shall not be approved for periods of time exceeding one year except when the director finds that a longer period would be in the best interests of the beneficiaries.
5. Non-use for personal convenience with no payment of the annual assessment shall not be approved.

**R850-50-1000. Assignment and Subleasing of Grazing Permits.**

1. Permittee shall not assign, or sublease, in whole or in part, or otherwise transfer, dispose of, or encumber any interest in a permit without the written consent of the agency. To do so shall automatically, and without notice, work the forfeiture and termination of the permit.
2. The approval of a sublease shall be subject to the following restrictions:
  - (a) An annual assessment equal to 50% of the difference between the base AUM assessment established under Section R850-50-500, and the AUM payment received by the permittee through the sublease, multiplied by the number of AUMs subleased, or a \$1 per AUM minimum assessment, whichever is greater, shall be charged for the approval of any sublease.
  - (b) Applications to sublease a grazing permit shall only be approved after a determination that the sub-lessee meets the requirements of Subsection R850-50-400(6).
  - (c) Sublease approvals are valid for a maximum period of five years.
3. The approval of an assignment shall be subject to the following restrictions:
  - (a) A determination that the assignee meets the requirements of Subsection R850-50-400(6).
  - (b) A payment, based on the number of AUMs transferred multiplied by \$10, shall be paid to the agency before the approval of any assignment or partial assignment. Assignments made for no consideration in money, services, or goods, to include inter vivos or testamentary assignments made to immediate family members such as parents, spouse, children, grandchildren, and full siblings, and assignments from and to business entities wholly owned by an immediate family member or members, may be exempt from this additional payment. In such cases, a minimum assignment fee as listed on the Master Fee Schedule shall be assessed.
  - (c) For purposes of this rule, a shareholder or member of a grazing association or cooperative shall be deemed a permittee and subject to the requirements of Subsection R850-50-1000(3)(a). To facilitate the enforcement of this rule, each grazing association or cooperative shall submit a list of all members to the agency annually before June 30. This list shall include each member's contact information and the number of AUMs allowed.
4. The agency's consent to allow a mortgage agreement or collateral assignment is for the convenience of the permittee.
5. The mortgage agreement or collateral assignment shall:
  - (a) not exceed the remaining term of the permit; and
  - (b) contain an acknowledgment by the lender that the grazing permit is terminable pursuant to Subsections R850-50-600(2) and R850-50-1000(1) and that the agency assumes no liability in providing such consent.

**R850-50-1100. Range Improvement Projects.**

1. Applications for range improvement projects shall be submitted for approval on appropriate forms and shall be approved or denied by the agency based on a written finding.

2. A range improvement project must be approved by the agency in writing before construction begins. Line cabins and similar structures will not be authorized as range improvement projects. They may, however, be authorized by a special use lease pursuant to Rule R850-30.

3. Agency authorization for range improvement projects shall be valid for periods of time not to exceed two years from the date the applicant is notified of the authorization. Extensions of time may be granted only when the director finds that an extension of time would be in the best interests of the beneficiaries.

4. Range improvements constructed or placed upon trust land become the property of the agency.

5. Range improvements shall not be authorized if they would be:

(a) located on a parcel that the agency has determined has potential for sale, lease, or exchange and the possibility exists that improvements may encumber these actions;

(b) located on a parcel designated for disposal;

(c) unnecessary or uneconomical as determined by the agency; or

(d) determined by the agency to be ordinary maintenance.

6. Range improvements which are necessary to rehabilitate lands whose forage production has been diminished by poor grazing practices or poor stewardship of the permittee shall not be considered a reimbursable improvement but rather a requirement to keep the grazing permit in effect.

7. Authorized Range Improvement Projects:

(a) shall be depreciated using schedules consistent with typical schedules published by the USDA Natural Resources Conservation Service or any other depreciation schedules approved by the board; and

(b) do not grant any vested property interest to the permittee.

8. If the property, on which an approved range improvement is located is sold, exchanged, or withdrawn from use, the permittee shall receive no more than the amount the permittee contributed toward the original cost of the range improvement project, minus the indicated depreciation amount; or in the alternative, may be allowed 90 days to remove improvements pursuant to Subsection 53C-4-202(6).

9. If the range improvement project is designed to increase carrying capacity, the permittee shall agree to pay for the increase in AUMs annually starting no later than two years after project completion. The agency may allow any increase in fees to be phased in at 20% per year.

10. The agency may participate in the cost of designated range improvement projects, or maintenance of existing range improvement projects, by providing funding in amounts and at rates determined by the agency.

11. The agency's cost or share portion of the project may be in the form of project materials. In these instances, the permittee shall be required to provide any necessary equipment and manpower to complete the project to specifications required by the agency.

#### **R850-50-1200. Additional Leases.**

If the agency determines that there is unused forage available on a parcel of trust land resulting from temporary conditions, it may issue an additional permit or permits. These permits shall be issued in accordance to Section R850-50-400. Existing permittees shall have a first right of refusal to unused forage.

#### **R850-50-1300. Rights Reserved to the Agency.**

In any grazing permits, the agency shall expressly reserve the right to:

1. issue mineral leases, special use leases, timber sales, materials permits, easements, rights-of-entry, renewable energy leases, and any other interest in the trust land;

2. issue permits for the harvesting of seed from plants on the trust land. If loss of use occurs from harvesting activities, a credit for the amount of loss shall be made to the following year's assessment;

3. enter upon and inspect the trust land or to allow scientific studies upon trust land at any reasonable time;

4. allow the public the right to use the trust land for purposes and periods of time permitted by policy and rules. However, nothing in this rule purports to authorize trespass on private land to reach trust land;

5. require that all water rights on trust land be filed in the name of the agency and to require express written approval before the conveyance of water off trust land;
6. require a permittee, when an agency-owned water right is associated with the grazing permit, to ensure that the water right, to the extent allowed under the permit, is maintained in compliance with state law;
7. close roads for range or road protection, or other administrative purposes;
8. dispose of the property without compensation to the permittee, subject to Subsection R850-50-1100(7); and
9. terminate the grazing permit pursuant to Subsection R850-50-600(2).

**R850-50-1400. Trespass.**

1. Unauthorized activities which occur on trust land shall be considered trespass and damages shall be assessed pursuant to Section 53C-2-301. These activities include:
  - (a) the use of forage at times and at places not authorized by the permit;
  - (b) the use of forage in excess of that authorized by the permit;
  - (c) grazing or trailing livestock on or across trust land without a valid permit or right-of-entry;
  - (d) the dumping of garbage or any other material on the trust land; and
  - (e) allowing another person to graze or trail livestock on the permitted property without the express written consent of the agency.
2. The permittee shall cooperate with the agency in taking civil action against the owners of trespass livestock to recover damages for lost forage and other damages.

**R850-50-1500. Trailing Livestock Across Trust Land.**

1. The trailing of livestock across trust land by a person not holding a grazing permit may be authorized if no other reasonable means of access is available.
2. Written approval in the form of a right-of-entry shall be obtained in advance from the agency.
3. The authorization to trail livestock across trust land shall restrict and limit the route, the number and type of animals, and the time and duration, which shall not exceed two consecutive days, of the trailing.

**R850-50-1600. Modified Grazing Permit.**

1. At the discretion of the director, the agency may issue modified grazing permits in instances where the proposed use is grazing related but is more intensive than livestock grazing alone and when improvements, if any, are primarily temporary in nature. Such uses may include camps, corrals, feed yards, irrigated livestock pastures, or other related uses.
2. Modified grazing permits shall be subject to the following terms and conditions:
  - (a) The term of a modified grazing permit shall be no longer than 15 years and contain terms, conditions, and provisions the agency, in its discretion, deems necessary to protect the interest of the trust beneficiaries.
  - (b) A modified grazing permit is subject to termination pursuant to Subsection R850-50-600(2).
  - (c) The annual rental for a modified grazing permit shall be based on the fair market value of the permitted property. Fair market value of the permitted property and annual rental rates shall be determined by the agency pursuant to Section R850-30-400. Periodic rental reviews may be completed pursuant to Section R850-30-400.
  - (d) Upon termination of the modified grazing permit, the permittee shall be allowed 90 days to remove any personal property.
  - (e) Before the issuance of a modified grazing permit, or for good cause shown at any time during the term of the modified grazing permit, the applicant or permittee may be required to post a bond with the agency in the form and amount as may be determined by the agency to assure compliance with all terms and conditions of the permit. Any bond posted pursuant to this rule is subject to Section R850-30-800.

**R850-50-1700. Supplemental Feeding.**

1. Supplemental livestock feeding may be permitted subject to:
  - (a) written authorization by the agency;
  - (b) the designation of a specific area, length of time, number, and class of livestock; and
  - (c) a determination that this shall not inflict long term damage upon the property.
2. The agency may assess an additional fee for authorized supplemental feeding or may require the permittee to obtain a modified grazing permit.
3. Emergency supplemental feeding shall be allowed for ten days before notification.
4. The forage used for supplemental feeding shall be certified weed free.

**KEY: administrative procedures, range management**

**Date of Last Change: October 11, 2022**

**Notice of Continuation: May 26, 2022**

**Authorizing, and Implemented or Interpreted Law: 53C-1-302(1)(a)(ii); 53C-2-201(1)(a); 53C-5-102**





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**R850. School and Institutional Trust Lands, Administration.****R850-60. Cultural Resources.****R850-60-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Enabling Act, Articles X and XX of the Utah Constitution, and Subsections 53C-1-302(1)(a)(ii) and 53C-2-201(1)(a) which authorize the Director of the School and Institutional Trust Lands Administration to prescribe the management of cultural resources on trust lands. This rule outlines the manner by which the agency shall, pursuant to Section 9-8-404, take into account the effect of trust land uses on any historic property and provide the State Historic Preservation Officer with a written evaluation of the effect of the expenditure or undertaking on the historic property. This rule also outlines the manner by which the agency shall authorize pursuant to Section 9-8-305(3)(c) surveys and excavations on trust lands.

**R850-60-200. Definitions.**

For purposes of this rule:

1. "Area of potential effects" means the trust lands identified by the agency within which a land use activity will take place that has the potential to cause changes in the character or use of historic properties, if any such properties exist on the surface estate of such trust lands.
2. "Discovery property" means any site or archaeological resource that is encountered, found or otherwise made known during the course of land use conducted subsequent to approval of that use by the agency.
3. "Expenditure" means use of the agency's funds for an "undertaking" as defined herein.
4. "National Register" means the National Register of Historic Places, maintained by the United States Secretary of the Interior.
5. "Undertaking" means any trust land use that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects.

**R850-60-300. Authorization of Cultural Resource Work.**

1. No person shall alter, remove, injure or destroy antiquities or cultural resources on trust lands, without written permission from the agency.
2. For purposes of Section 76-6-902 "consent" to alter, remove, injure or destroy antiquities or cultural resources covered by a restrictive deed covenant means either:
  - (a) an amendment to the certificate of sale or patent evincing the agency's release of the deed covenant; or
  - (b) other specific written permission and an archaeological permit issued under Section 9-8-305.
3. No person shall conduct an archaeological survey or excavate (as defined by Section 9-8-302) any cultural resources on trust lands without first obtaining a permit under Section 9-8-305 and written authorization from the agency that fulfills the requirement set forth in R850-41-500.
  - (a) A condition of such written authorization shall be that the principal investigator, as defined by Section 9-8-302, shall provide the agency with a copy of any records resulting from all such investigations on trust lands that are conducted under the written authorization.
  - (b) Non-professional documentation of the location, nature, extent and condition of cultural resources on trust lands shall also be subject to R850-60-300(3)(a).
4. A person found in violation of R850-60-300 may be subject to civil and criminal penalties under Sections 76-6-903 and 53C-2-301.

**R850-60-400. Archaeological Excavation Permits.**

1. Subsection 9-8-305(3)(c) allows for delegation of authority to issue excavation permits to agencies that meet specified criteria. Should the agency obtain such delegation, it shall issue excavation permits for sites on trust lands in accordance with Section 9-8-305 and Rule R694-1.
2. Applications for excavation permits shall be made on forms created and maintained by the Public Lands Policy Coordination Office and submitted to the agency in a timely manner and with enough lead time to allow for review and modification of the excavation plan or research design for the proposed investigation.
  - (a) The agency shall respond to an application for excavation permit in a timely manner.
  - (b) The agency may request information other than what is required by Section 9-8-305 and Rule R694.
3. All excavation permits shall be issued with the following requirements:
  - (a) The permittee shall provide reports documenting results of the work and data obtained, and deliver relevant records, site forms, and reports to the agency within the time specified in the permit.
  - (b) Any permittee who discovers human remains shall notify the agency and other appropriate agencies pursuant to Section 76-9-704 and Rule R850-61.

(c) The agency may include other requirements as necessary.

4. Unless the proposed excavation is being conducted to facilitate execution of an expenditure or undertaking that is already the subject of Section 9-8-404 compliance, then the issuance of an excavation permit by the agency shall be considered an undertaking for purposes of Section 9-8-404.

#### **R850-60-500. Identifying Historic Properties.**

1. Following the agency's determination that a proposed trust land use constitutes an undertaking, the agency shall establish the undertaking's area of potential effects. Thereafter, the agency shall collect and review existing information about historic properties that may be located within the area of potential effects. As part of this process, the agency may seek information from the State Historic Preservation Officer (SHPO), Indian tribes, local governments, other state or federal agencies or any other interested parties likely to have knowledge or concerns about cultural resources in the area. The agency may delegate this collection of information to an appropriate person.

2. Based on this review, the agency shall make a reasonable and good faith effort to identify historic properties that might be affected by an undertaking and shall gather sufficient information to evaluate the eligibility of these properties for the National Register.

#### **R850-60-600. Identification Responsibilities.**

1. The agency may conduct cultural resource surveys on trust lands in the order of priority determined by the agency. The agency shall assign a higher priority to those cultural resource surveys for proposed uses which the agency has determined will best fulfill the trust land management objectives in R850-2-200. Agency personnel shall not normally conduct cultural resource surveys for mineral exploration or development, for easements, for surface use leases, or for projects where federal, other state or local government agencies are the applicants.

2. The director shall decide whether a cultural resource survey shall be conducted on behalf of the agency, by whom it shall be conducted, and the scope and extent to which it shall be conducted.

3. The director shall decide who will pay the cost of the cultural resource survey, when that cost shall be incurred, how much of the total cost shall be recovered, and from whom it shall be recovered. The agency may request from an applicant or interested party payment of the cost of a cultural resource survey prior to the survey being conducted.

(a) If the party providing payment for the cultural resource survey is successful in his or her bid for the use or purchase of the trust land in question, then the agency shall not reimburse the bidder for the cost of the survey.

(b) If the party providing payment for the cultural resource survey is unsuccessful in his or her bid for the trust land in question, the agency shall reimburse that party the same amount the agency received as payment for the cultural resource survey.

#### **R850-60-700. Evaluating Eligibility.**

1. The agency shall make a determination of the eligibility for the National Register for each site identified within the undertaking's area of potential effects. The passage of time, changes in the nature of the undertaking or changing perceptions of significance may justify re-evaluation of sites that were previously determined to be eligible or ineligible for purposes of Section 9-8-404.

2. If the agency finds that either there are no historic properties present within the area of potential effects or there are historic properties present but the undertaking will have no effect on them as defined herein, the agency shall make a finding of "No Historic Properties Affected" and provide the SHPO with a written evaluation in support of that finding. If the SHPO does not reply within the time specified in Subsection 9-8-404(3)(a) or within the time period agreed to by the parties, then the agency may presume that the SHPO concurs with the agency.

3. If the agency finds that there are historic properties within the area of potential effects and the undertaking may cause changes in the character or use of historic properties, the agency shall make an assessment of effect in accordance with R850-60-800.

#### **R850-60-800. Assessing Effects.**

1. The agency shall assess the effect of a proposed trust land use or disposition on historic properties by applying the following:

(a) Criteria of adverse effect. An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

(b) Examples of adverse effects. Adverse effects on historic properties include:

- i) physical destruction of or damage to all or part of the property;
- ii) alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation;
- iii) removal of the property from its historic location;
- iv) neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property; or
- v) disposal of trust lands without adequate restrictions or conditions to ensure long-term preservation of the property's historic significance.

(c) Finding of no adverse effect. The agency may make a finding of no adverse effect when the undertaking's effects do not meet the criteria of paragraph (1)(a) of this section or the undertaking is modified or conditions are imposed to avoid adverse effects.

2. The agency shall consult the SHPO regarding the finding of effect. If the SHPO does not provide the agency with comment within the time frame set forth in Section 9-8-404, the SHPO is presumed to agree with the agency's finding of effect.

3. The director may establish treatment options in consultation with the SHPO that may include:

- (a) archaeological data recovery;
- (b) "alternative" or "creative" mitigation;
- (c) physical treatment to alleviate or minimize the adverse effect(s);
- (d) historic property documentation; or
- (e) simple case documentation.

The director will make the final decision regarding any treatment options.

#### **R850-60-900. Discoveries.**

1. Upon discovering a site, a user of trust lands shall immediately cease all activities until such time as the discovery has been evaluated and treated to the director's satisfaction.

#### **R850-60-1000. Emergency Undertakings.**

The director may waive cultural resource management considerations when responding to wildland fires, flood control and other emergency actions.

#### **R850-60-1100. Programmatic Agreements.**

The agency may enter into programmatic agreements with the SHPO, or with other state or federal agencies, and with local governments for compliance with Section 9-8-404 or other pertinent state statutes. The agency may also cooperate with federal agencies in federal programmatic agreements where practicable and appropriate.

#### **R850-60-1200. Records.**

1. The agency shall submit one copy each of all site forms, survey and data recovery, treatment or mitigation reports prepared by the agency to the SHPO. All permittees preparing similar data or conducting work in accordance with R850-60-400 shall furnish two sets of the results of their work, one of which the agency will submit to the SHPO.

2. Records and data containing site location information which could jeopardize the integrity of those sites shall be provided protected records status pursuant to Subsection 63G-2-305(26).

#### **KEY: cultural resources**

**Date of Last Change: January 24, 2011**

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**Authorizing, and Implemented or Interpreted Law: 53C-1-302(1)(a)(ii); 53C-2-201(1)(a); 53C-2-301; 9-8-305; 9-8-404**



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**R850. School and Institutional Trust Lands, Administration.[] []**

**R850-61. Native American Grave Protection and Repatriation.**

**R850-61-100. Authorities.**

1. This rule implements Sections 6, 8, 10 and 12 of the Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302(1)(a)(ii) and 53C-2-201(1)(a) which authorize the Director of the School and Institutional Trust Lands Administration to prescribe the management of cultural resources on trust lands. This rule outlines the manner by which the agency shall, pursuant to Section 53C-1-201(5)(b), provide policies for the ownership and control of Native American remains as defined in Section 9-9-402, that are discovered or excavated on school and institutional trust lands.

**R850-61-200. Scope and Applicability.**

1. This rule applies to all Native American remains found on school and institutional trust lands.

**R850-61-300. Duties Upon Discovery of Remains.**

1. Human remains are to be treated at all times with dignity and respect. Any person who discovers human remains on school and institutional trust lands must immediately cease all activity which might disturb the remains, take reasonable steps to protect the remains, and report the discovery to local law enforcement (in accordance with Section 76-9-704) and to the Director

2. If discontinuation of the activity is reasonable and prudent, and consistent with the Director's fiduciary responsibilities, the immediate site shall be restored and all activity in the area shall be re-routed or discontinued to limit any further disturbance to the site

3. If discontinuation is not reasonable or prudent, the agency shall follow the Utah Division of Indian Affairs' process (as contained in Utah Administrative Code R230-1) except when the Director concludes by written finding that:

(a) the determination of whether the remains in question are Native American, pursuant to U.A.C. R230-1-6(3), will unduly impact an authorized use of trust lands; or

(b) the time needed to prepare a preservation plan or the requirements of such a plan, pursuant to U.A.C. R230-1-7(1), will violate the fiduciary duty to the trust. When such a finding is made, the Director will assume control over the process.

4. Ownership or control of any Native American human remains that are excavated or removed from the site shall be determined pursuant to Utah Code Annotated Section 9-9-401 et seq.

**KEY: cultural resources, Native American Grave Protection and Repatriation**

**Date of Enactment or Last Substantive Amendment: November 17, 2003**

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**R850. School and Institutional Trust Lands, Administration.****R850-70. Sale of Forest Products.****R850-70-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X, XVIII, and XX of the Utah Constitution, and Subsection 53C-1-302(1)(a)(ii) and authorizes the director to sell forest products from trust land.

**R850-70-150. Planning.**

In addition to those other planning responsibilities described in this Rule R850-70, the agency shall.

1. submit proposals for the sale of forest products to the Resource Development Coordinating Committee (RDCC) unless the proposal is exempt from such review;
2. evaluate comments received through the RDCC process; and
3. evaluate comments received through the advertising and notice processes described in Section R850-70-610.

**R850-70-200. Definitions.**

In addition to the terms defined in Rule R850-1:

1. "Forest products" means saw timber, saw logs, and POLs.
2. "POLs" means wood products that do not meet the definition of saw logs, such as firewood, post and poles, chips, and pulpwood.
3. "Qualified bidder" or "qualified applicant" means a bidder or applicant that meets the requirements of Section R850-3-200, has submitted a statement of qualifications pursuant to Section R850-70-310, and, if applicable, meets the qualification requirements set forth in the notice of request for referral, pursuant to Subsection R850-70-610(2)(b), or the notice of auction, pursuant to Subsection R850-70-620(2)(b).
4. "Saw log" means a roundwood product with two cuts ends that is usually eight feet in length or longer and is suitable to be sawn into lumber such as dimensional lumber, cants, or blocks.
5. "Saw timber" means standing trees that are large enough and of suitable quality to be sawn into lumber with a minimum diameter at breast height of ten inches.
6. "Stewardship contract" means a contract that is primarily a procurement contract for specified forest management services, but which may also include, as part of the contract, the sale of forest products to the contractor.
7. "Timber harvest plan" means a plan of operations for timber harvesting that includes timing of the harvesting, location, necessary equipment, anticipated surface disturbance, road construction, and reclamation activities.

**R850-70-310. Statement of Qualifications.**

1. The agency may request forest operators to submit a statement of qualifications containing information that the agency considers relevant to the operator's ability to perform under a sales contract or stewardship contract. The agency may prescribe a form for the statement of qualifications and make the form available to forest operators on its website. The agency may advertise its intent to accept statements of qualifications.
2. Forest operators may submit a statement of qualifications at any time.
3. The purpose of the statement of qualifications is to provide the agency with basic information regarding forest operators for the agency's convenience. The agency is not required to solicit from or advertise to any forest operator that submits a statement of qualifications when it sells forest products or enters into a stewardship contract.

**R850-70-410. POLs Permits.**

1. The agency may issue non-competitive permits for the sale of POLs worth less than \$500 per commodity each calendar year.
2. A POLs permit:
  - (a) cannot exceed a term of one year;
  - (b) must be non-exclusive; and
  - (c) must prohibit surface disturbing activities, other than transient overland foot traffic.
3. POLs permits are exempt from Sections R850-70-510 and R850-70-700.

**R850-70-510. Sale of Forest Products.**

1. The agency shall sell forest products worth more than \$50,000 on a competitive basis unless otherwise approved by the director. The agency may hold a competitive sale of forest products by issuing a request for proposals pursuant to Section R850-70-610 or holding a public auction pursuant to Section R850-70-620.
2. The agency may sell forest products worth \$50,000 or less on a non-competitive basis to a forest operator that has submitted a statement of qualifications pursuant to Section R850-70-310.
3. Except for those sales authorized under Sections R850-70-410 and R850-70-1210, the agency shall enter into a sales contract pursuant to Section R850-70-700 for the sale of forest products.

**R850-70-610. Requests for Proposals.**

1. At least 14 days before a response to a request for proposal (RFP) is due, the agency shall give notice of the RFP on the agency's website.

2. The notice of RFP must include:
  - (a) the deadline for submitting a response;
  - (b) bidder qualifications that are in addition to those qualifications in Section R850-3-200;
  - (c) instructions for submitting a response;
  - (d) a general description of the affected parcel;
  - (e) the species and estimated quantity of forest products; and
  - (f) the contact information of the agency office where interested parties can obtain more information.
3. The agency may advertise an RFP by any method determined by the agency to increase exposure of the forest products to qualified bidders.
4. The agency shall evaluate responses to an RFP using the following criteria:
  - (a) income potential;
  - (b) potential enhancement of trust lands;
  - (c) harvesting timeline;
  - (d) applicant qualifications; and
  - (e) any other criterion considered appropriate by the agency.
5. The agency may charge non-refundable application and review fees, as specified in the RFP.
6. The agency may withdraw an RFP at any time before execution of a sales contract.

**R850-70-620. Public Auction.**

1. At least 14 days before a public auction of forest products, the agency shall give notice of the public auction on the agency's website.
2. The notice of public auction must include:
  - (a) the date and time of the sale;
  - (b) bidder qualifications that are in addition to those qualifications in Section R850-3-200;
  - (c) whether the sale will be held virtually or in person;
  - (d) if the sale is held in person, the location of the sale;
  - (e) if the sale is held virtually, the ways in which a potential bidder may participate;
  - (f) a general description of the affected parcel;
  - (g) the species and estimated quantity of forest products; and
  - (h) the contact information of the agency office where interested parties can obtain more information.
3. The agency may advertise a public auction by any method determined by the agency to increase exposure of the forest products to qualified bidders.
4. Auction Procedures.
  - (a) The agency may conduct a public auction in person or virtually.
  - (b) The agency shall publish the bidding procedures at the agency's website, which procedures must include:
    - (i) information required to register for the auction, if applicable; and
    - (ii) payments required at the auction by the successful bidder, including the down payment and costs and fees assessed by the agency pursuant to Subsection R850-70-620(4)(g).
  - (c) Only qualified bidders may participate in an auction of forest products. The agency may require letters of recommendation and other conditions to ensure bidders have the technical capability to complete the harvest within the contract term.
  - (d) A bid constitutes a valid offer to purchase.
  - (e) The agency shall award the sale to the highest qualified bidder.
  - (f) The agency may withdraw, in its sole discretion, any forest products before execution of a sales contract. The agency shall return all fees paid by the successful bidder for the withdrawn sale.
  - (g) The agency may require the successful bidder to reimburse the agency for costs incurred by the agency in preparing the forest products for sale, including the costs of advertising, appraisal, cultural resource investigations, and environmental assessments. The agency may also charge a processing fee.
  - (h) At the conclusion of the auction, the successful bidder shall pay the agency the down payment and the costs and fees published pursuant to Subsection R850-70-620(4)(g).
  - (i) For forest products purchased at an auction, the successful bidder must execute the sales contract within 30 days of receipt from the agency. If the successful bidder fails to execute the contract within the 30-day period, the agency is not required to finalize the sale and may retain the down payment and costs paid by the successful bidder at the sale. The agency may offer the contract to the next highest qualified bidder.

**R850-70-700. Forest Product Sales Contracts.**

1. The sales contract must include:
  - (a) a legal description of the affected lands;
  - (b) the purchase price and any pre-paid amounts;
  - (c) dates on which obligations must be met;
  - (d) requirements for financial guaranties;

(e) requirements for a harvest operations plan to be submitted and approved by the agency before commencing activities; and  
(f) any other terms, covenants, or conditions to ensure the responsible harvest of forest products and compliance with the agency's rules.

2. The term of a sales contract should generally be no longer than three years, unless otherwise approved by the director.

3. The sales contract is not final until the purchaser and the director execute the contract.

**R850-70-810. Financial Guaranties.**

1. The agency may require a purchaser to provide a financial guaranty to the agency to ensure compliance with the sales contract including performance, payment, and reclamation. The financial guaranty must be in a form and in an amount acceptable to the agency.

2. The agency may seek payment under the financial guaranty if the purchaser fails to harvest the amount of forest products sold under a sales contract.

3. If a purchaser assigns a contract, the agency is not obligated to release the financial guaranty of the assignor until the assignee submits an equivalent replacement financial guaranty or all lease obligations, including reclamation, have been satisfied.

**R850-70-900. Assignments.**

1. Permittee may not assign a POLs permit. A purchaser may not assign a sales contract without the prior written consent of the agency. Any assignment made without the agency's consent is void.

2. As a condition of the approval of an assignment, the agency may require:

(a) the assignee to accept the most current applicable permit or contract form; and

(b) premiums on the total estimate of the sale.

3. The assignee must be a qualified applicant.

**R850-70-1000. Extensions to Sales Contracts.**

The agency may approve extensions to sales contracts in the agency's sole discretion if the agency determines it is in the beneficiaries' best interest.

**R850-70-1100. Forest Product Purchase Price.**

The agency may not sell or dispose of forest products at less than market value unless removing the forest products is essential to the management of trust lands.

**R850-70-1200. Long-Term Agreements.**

The agency may enter into a long-term agreement (LTA) that guarantees a purchaser an annual quantity of forest products over a set period. An LTA must meet the following criteria:

1. it must be competitively offered pursuant to Section R850-70-610 or R850-70-620;

2. it cannot be longer than ten years;

3. it cannot prohibit the agency from offering the same forest products on the same lands to other purchasers;

4. it must require reappraisal and adjustment of the sales price;

5. it cannot prohibit concurrent resource management activities and uses on the covered lands;

6. it must allow for early termination; and

7. it must require the purchaser to sign a forest products sales contract pursuant to Section R850-70-700 for each sale offered under the LTA.

**R850-70-1210. Stewardship Contracts.**

1. The agency may sell forest products to a forest operator that has submitted a statement of qualifications pursuant to Section R850-70-310 as part of a stewardship contract to reduce fuels and manage its forest assets.

2. A proposal for a stewardship contract must separate the costs and fees charged by the bidder or applicant for the services provided from the amount paid for the forest products.

3. The agency may set a minimum sales price for forest products sold as part of a stewardship contract.

4. Stewardship contracts are subject to Rule R850-11. Stewardship contracts are exempt from Sections R850-70-510, R850-70-700, and R850-70-1100.

**R850-70-1300. Fees and Procedures.**

The agency may establish fees and develop procedures necessary to provide for the administration and sale of forest products pursuant to Subsection 53C-1-302(1)(b).

**KEY: forest products, administrative procedures, timber**

**Date of Last Change: January 1, 2024**

**Notice of Continuation: November 22, 2022**

**Authorizing, and Implemented or Interpreted Law: 53C-1-302(1); 53C-2-201(1)(a)**





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**R850. School and Institutional Trust Lands, Administration.**

**R850-75. Sale of Plants and Wildland Seed.**

**R850-75-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X, XVIII, and XX of the Utah Constitution, and Subsection 53C-1-302(1)(a)(ii) and authorizes the director to sell plants and wildland seeds from trust land.

**R850-75-150. Planning.**

In addition to those other planning responsibilities described in this Rule R850-75, the agency shall.

1. submit proposals for the sale of plants and wildland seeds to the Resource Development Coordinating Committee (RDCC) unless the proposal is exempt from such review;
2. evaluate comments received through the RDCC process; and
3. evaluate comments received through the advertising and notice processes described in Subsection R850-75-600(1).

**R850-75-200. Definitions.**

In addition to the terms defined in Rule R850-1:

1. "Wildland plant" means any portion of a plant that includes the root and that grows without the aid of irrigation or other practices associated with farming.
2. "Wildland seeds" means seeds or fruiting parts of a plant that grows without the aid of irrigation or other practices associated with farming.

**R850-75-300. Sale of Plants and Wildland Seed.**

1. The agency may sell wildland plants and seeds on a non-competitive basis or pursuant to Section R850-75-400, as determined in the agency's sole discretion.
2. The agency shall enter sales contract pursuant to Section R850-75-500 for the sale of wildland plants and seeds.

**R850-75-400. Requests for Proposals.**

1. At least five days before a response to a request for proposal (RFP) is due, the agency shall give notice of the RFP on the agency's website.
2. The notice of RFP must include:
  - (a) the deadline for submitting a response;
  - (b) instructions for submitting a response;
  - (c) a general description of the affected parcel;
  - (d) the species of plants and wildland seeds; and
  - (e) the contact information of the agency office where interested parties can get more information.
3. The agency may advertise an RFP by any method.
4. The agency shall evaluate responses to an RFP using the following criteria:
  - (a) income potential;
  - (b) potential enhancement of trust lands;
  - (c) harvesting timeline; and
  - (d) any other criterion deemed appropriate by the agency.
5. The agency may charge non-refundable application and review fees, as specified in the RFP.
6. The agency may withdraw an RFP at any time before execution of a sales contract.

**R850-75-500. Sales Contracts.**

1. The sales contract must include:
  - (a) a legal description of the affected lands;
  - (b) the purchase price and any pre-paid amounts;
  - (c) the method of harvesting;
  - (d) dates on which obligations must be met; and
  - (e) any other terms, covenants, or conditions to ensure the responsible harvest of wildland plants and seeds and compliance with the agency's rules.
2. The term of a sales contract should generally be no longer than one year, unless otherwise approved by the director.
3. The sales contract is not final until the purchaser and the director execute the contract.

**R850-75-600. Financial Guaranties.**

1. The agency may require a purchaser to provide a financial guaranty to the agency to ensure compliance with the sales contract including performance, payment, and reclamation. The financial guaranty must be in a form and in an amount acceptable to the agency.
2. The agency may seek payment under the financial guaranty if the purchaser fails to harvest the amount of wildland plants and seeds sold under a sales contract.
3. If a purchaser assigns a contract, the agency is not obligated to release the financial guaranty of the assignor until the assignee submits an equivalent replacement financial guaranty or all lease obligations, including reclamation, have been satisfied.

**R850-75-700. Assignments.**

1. A purchaser may not assign a sales contract without the prior written consent of the agency. Any assignment made without the agency's consent is void.

2. As a condition of the approval of an assignment, the agency may require:

- (a) the assignee to accept the most current applicable permit or contract form; and
- (b) premiums on the total estimate of the sale.

**R850-75-800. Purchase Price.**

The agency may not sell or dispose of wildland plants and seeds at less than market value unless removing the plants and wildland seeds is essential to the management of trust lands.

**R850-75-900. Fees and Procedures.**

The agency may establish fees and develop procedures necessary to provide for the administration and sale of wildland plants and seeds pursuant to Subsection 53C-1-302(1)(b).

**KEY: wildland plant, wildland seed**

**Date of Last Change: January 1, 2024**

**Authorizing, and Implemented or Interpreted Law: 53C-1-302(1)(a)(ii)**

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**R850. School and Institutional Trust Lands, Administration.****R850-80. Sale of Trust Lands.****R850-80-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Subsections 53C-1-302(1)(a)(ii) and 53C-4-101(1), which authorize the director to prescribe the terms and conditions for the sale of trust lands.

**R850-80-150. Planning.**

In addition to those other planning responsibilities described herein, the agency shall:

- (1) Submit proposals for the sale of trust lands to the Resource Development Coordinating Committee (RDCC) unless the proposal is exempt from such review;
- (2) Evaluate comments received through the RDCC process; and
- (3) Evaluate any comments received through the notice and advertising processes conducted pursuant to R850-80-605 and R850-80-615.

**R850-80-200. Determination to Sell Trust Lands.**

(1) The director may sell trust lands if the director determines that the sale would be in the best interest of the trust beneficiaries. The director may take into account any factor and circumstances deemed relevant in determining whether to sell trust lands.

(2) In determining whether the sale of trust lands is in the best interest of the trust beneficiaries, the director may consider the following factors:

- (a) whether the subject parcel is appreciating in value at a higher rate than the anticipated rate of return on the purchase price;
  - (b) whether there is evidence of competitive market interest, unless the purpose of the sale is to test the market in a particular area;
  - (c) whether the sale would create obstacles to future mineral development on trust lands; or
  - (d) whether, in the director's sole discretion, the sale would foreclose future development or management options that would likely result in greater long-term economic benefits.
- (3) The director may not sell trust lands for less than fair market value.

**R850-80-250. Evaluation of Temporary Easements, Rights-of-Entry, and Other Existing Rights of Record.**

Prior to the sale of trust lands, the agency shall determine, pursuant to R850-40-250(2), whether temporary easements or rights-of-entry exist on the subject parcel. The agency shall also evaluate the presence and impact of other valid existing rights of record on the subject parcel prior to sale.

**R850-80-300. Determination of Fair Market.**

(1) If the director determines that the sale of a parcel of trust lands is in the best interest of the beneficiaries, the agency shall determine the fair market value of the parcel. In determining the fair market value of a parcel, the agency may consider:

- (a) an appraisal;
  - (b) a market analysis, including evaluation of real estate trends, market demand, opportunity costs of the sale, and the management costs of retention; and/or
  - (c) other information that the agency considers relevant.
- (2) The agency shall evaluate whether taking prudent and cost-effective actions would increase the fair market value of the parcel.

**R850-80-400. Deposits on Nominated Parcels.**

(1) If the director evaluates a parcel of trust lands for sale due to a nomination by an interested party, the agency may require the nominator to deposit funds to offset the costs incurred by the agency to prepare the parcel for sale.

(2) If the nominator purchases the parcel, the agency shall credit the deposit against those costs and fees charged by the agency pursuant to R850-80-610(4) and R850-80-620(4).

(3) If the agency does not offer the subject parcel for sale or if the nominator submits a credible bid on the subject parcel but is not the successful bidder, the agency shall refund the deposit to the nominator. A bid less than a disclosed minimum acceptable purchase price is not a credible bid.

**R850-80-500. Agency Financing.**

(1) The agency may offer financing at a variable interest rate on any unpaid portion of the purchase price or other costs owed by the purchaser.

(2) Unless otherwise determined by the director, the interest rate shall be equal to the greater of:

(a) the prime rate plus 2.5%, or

(b) 7.5%.

(3) The agency shall establish the interest rate for each payment due by determining the prime rate as of the date of billing, except for interest due pursuant to R850-80-610(6) and R850-80-620(4).

(4) Interest is calculated on a 365-day basis, except for interest due pursuant to R850-80-610(6) and R850-80-620(4).

(5) The agency shall use the prime rate established as of a date determined by the director prior to the sale to determine the interest due pursuant to R850-80-610(6) and R850-80-620(4).

(6) A purchaser that finances through the agency shall make annual payments on the debt for no longer than 20 years. The agency may establish a shorter financing period.

(7) The purchaser shall make the first payment on or before one year from the first day of the month following the date of sale. The purchaser shall make all subsequent payments on or before the first day of the same month of each year thereafter until the balance is paid in full. The agency may require more frequent payments.

(8) The agency shall apply amounts paid in excess of the current obligation to principal. The purchaser may pre-pay the unpaid balance and accrued interest at any time without penalty.

(9) If the purchaser fails to pay an annual payment or accrued interest when due, the agency shall send the purchaser notice of default and allow the purchaser to cure the default, including paying any late fees, within 30 days of the notice. If the purchaser fails to cure the default within the 30-day cure period, the agency may accelerate the debt, forfeit the purchaser's interest in the subject parcel, and pursue all other available contractual, legal, or equitable remedies, including specific performance.

(10) A purchaser that finances through the agency shall execute and acknowledge a quitclaim deed in favor of the agency for the subject parcel. The agency may not record the quitclaim deed unless the agency forfeits the purchaser's interest in the subject parcel pursuant to R850-80-500(5).

**R850-80-600. Methods of Sale.**

The director may sell trust lands using one of the methods described below:

(1) A public auction pursuant to R850-80-610, or

(2) A negotiated sale pursuant to R850-80-620.

**R850-80-605. Advertisement of Public Auction.**

(1) At least 45 days prior to a public auction, the agency shall give notice by certified mail to:

(a) the legislative body of the county in which the subject parcel is located;

(b) lessees/permittees of record on the subject parcel; and

(c) adjoining landowners as shown on county records.

(2) The notice of sale must include:

(a) the date and time of the auction;

(b) whether the auction will be held in person or by electronic means;

(c) if the auction is held in person, the location of the auction;

(d) if the auction is held electronically, the ways in which a potential bidder may participate;

(e) a general description of the subject parcel and a brief description of its location, including township, range, and section; and

(f) the contact information of the agency office where interested parties can obtain more information.

(3) The agency may advertise public auctions using other methods determined by the agency to increase competition at the auction.

**R850-80-610. Public Auction Rules and Procedures.**

(1) The agency may conduct a public auction in person or electronically.

(2) The agency shall publish the bidding procedures at the agency's website, which procedures must include:

(a) information required to register for the auction, if applicable;

(b) payments required to be paid at the auction by the successful bidder, including the down payment and costs and fees assessed by the agency pursuant to R850-80-610(4); and

(c) whether the agency is willing to finance the unpaid portion of the purchase price.



- (3) The agency may disclose the minimum acceptable purchase price for the subject parcel.
- (4) The agency may require that the successful bidder reimburse the agency for costs incurred by the agency in preparing the parcel for sale, including the costs of advertising, appraisal, cultural resource investigations, and environmental assessments. The agency may also charge a sale processing fee.
- (5) A bid constitutes a valid offer to purchase.
- (6) At the conclusion of the auction, the successful bidder shall pay the agency the down payment, the costs and fees published pursuant to R850-80-610(4), and if the successful bidder elects to finance through the agency, the interest on the unpaid balance as calculated from the date of sale to the first day of the following month.
- (7) If the successful bidder does not finance the remainder of the purchase price through the agency, the successful bidder shall pay the remainder of the purchase price at the conclusion of the auction. If the successful bidder fails to pay the purchase price at the auction, the agency is not required to finalize the transaction and may retain all amounts paid by the successful bidder at the auction.
- (8) If the successful bidder fails to pay the amounts required under R850-80-610(6) or fails to execute the certificate of sale within 30 days, pursuant to R850-80-700(2), the director may offer the subject parcel for sale to the person whose bid was second highest at the auction. The purchase price paid by the second highest bidder must meet or exceed the minimum acceptable purchase price. To accept the agency's offer, the second highest bidder shall submit all amounts owing under R850-80-610(6) or R850-80-610(7) and execute the certificate of sale within 30 days after the agency's offer.
- (9) If a third party owns improvements on a parcel of trust lands sold at auction that were installed pursuant to a valid permit or other right granted by the agency and such valid right does not survive the sale of the parcel, the purchaser shall permit the owner of the improvements to remove them within 90 days after the date of the auction.

**R850-80-615. Advertisement of Negotiated Sale.**

- (1) The agency shall give notice of a negotiated sale by certified mail to:
  - (a) the legislative body of the county in which the subject parcel is located;
  - (b) lessees/permittees of record on the subject parcel; and
  - (c) adjoining landowners as shown on county records.
- (2) The notice of sale must include:
  - (a) a general description of the subject parcel and a brief description of its location, including township, range, and section; and
  - (b) the contact information of the agency office where interested parties can obtain more information.
- (3) Negotiated sales must be advertised using methods determined by the agency to be in the best interest of the beneficiaries.

**R850-80-620. Negotiated Sale Procedures.**

- (1) If the agency receives an expression of competitive interest within the notice period, the agency shall evaluate the offer and determine what action is in the best interest of the beneficiaries.
- (2) The agency shall give the board and affected beneficiary prior notice of the proposed negotiated sale, which notice must describe the terms, reasons, and other pertinent facts of the proposed negotiated sale.
- (3) Board approval of a negotiated sale is required if:
  - (a) the fair market value of the subject parcel exceeds \$250,000.00;
  - (b) the subject property exceeds 320 acres; or
  - (c) the agency receives a competitive offer on the subject parcel.
- (4) The agency may require the purchaser to pay a down payment and the costs and fees described in R850-80-610(4)

**R850-80-700. Certificates of Sale.**

- (1) Following a public auction or on concurrence of the parties in a negotiated sale, the agency shall prepare and deliver a certificate of sale to the purchaser. The certificate must contain:
  - (a) a legal description of the subject parcel;
  - (b) the purchase price and any pre-paid amounts;
  - (c) costs assessed by the agency;
  - (d) financing terms, if applicable;
  - (e) the dates on which obligations must be met;
  - (f) the beneficiary of the subject parcel;
  - (g) remedies available to the agency on default by the purchaser, including forfeiture; and

(h) any other terms, covenants, deed restrictions, or conditions that the agency considers appropriate.

(2) For trust lands purchased at an auction, the successful bidder must execute the certificate of sale within 30 days of receipt from the agency. If the successful bidder fails to execute the certificate of sale within the 30-day period, the agency is not required to finalize the transaction and may retain the down payment and costs paid by the successful bidder at the auction.

(3) The agency may terminate a negotiated sale for any reason prior to finalization of the certificate of sale. If a negotiated sale is terminated by the proposed purchaser, the agency may retain the costs and fees paid pursuant to R850-80-620(4).

(4) A certificate of sale is not final until the purchaser and the director or other authorized agency representative executes the certificate.

(5) The purchaser under a certificate of sale may assign the certificate of sale to any person qualified to purchase trust lands. If the purchaser desires to assign the certificate prior to payment in full of the purchase price and all accrued interest, the purchaser must have the agency's prior written consent to the assignment. The agency may require the assignee to execute a quitclaim deed, as required under R850-80-500(6), as a condition to consent to the assignment. An assignment of a certificate of sale must clearly identify the subject parcel, the certificate of sale number, the name and address of the assignee, and be executed by both the assignor and assignee.

(6) Assignment of a certificate of sale does not relieve the assignor from any obligations arising prior to the date of assignment.

(7) Within a reasonable time after payment in full of the amounts owing under a certificate of sale, the agency shall seek issuance of a patent from the governor or the governor's designee to the purchaser of the property.

#### **R850-80-750. Partial Releases.**

(1) The director may authorize a partial release of trust lands sold under a certificate of sale if in the director's sole determination it is in the best interest of the trust beneficiaries. In considering whether a partial release is in the best interest of the trust beneficiaries, the director may consider the following:

- (a) whether access to the remainder of the parcel is preserved without restriction;
- (b) whether utilities and infrastructure, including water, sewer and storm drains, electric power, and natural gas, installed on trust lands covered by the certificate have the capacity and capability to service the whole of the parcel;
- (c) whether the value of the remaining portion of the parcel is less than the remaining principal balance of the certificate; and
- (d) any other factor the director deems reasonable to preserve the value of the remainder of the parcel.

**KEY: administrative procedures, sales**

**Date of Last Change: June 8, 2021**

**Notice of Continuation: May 26, 2022**

**Authorizing, and Implemented or Interpreted Law: 53C-1-302(1)(a)(ii); 53C-2-201(1)(a); 53C-4-101(1); 53C-4-102; 53C-4-202(6); 63G-2-305; 72-5-203(1)(a)(i); 72-5-203(2)(a)**

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**R850. School and Institutional Trust Lands, Administration.**

**R850-83. Administration of Previous Sales to Subdivisions of the State.**

**R850-83-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302(1)(a)(ii) and 53C-4-101(1) which authorize the Director of the School and Institutional Trust Lands Administration to establish rules for sales of land to subdivisions of the state.

**R850-83-150. Scope.**

The intent of this rule is to provide a process for administering reversions of land sold under Sections 65-1-29 and 65A-7-4(5), both of which have been repealed.

**R850-83-200. Definitions.**

The following term, as used in this section, is defined as follows:

1. Public Purpose - Use by a subdivision of the state that benefits the general public of the subdivision or public at large and that is approved by the agency.

**R850-83-300. Remedies for Breach of Determinable Fee Sale.**

1. The conditions of a determinable fee sale are breached, and a determinable fee estate shall terminate, upon the violation of any of the following:

(a) A provision of Utah common law or other applicable law or rule, such as a provision of Section 65-1-29 or 65A-7-4(5) as applicable at time of sale; or

(b) A "public purpose", a "subdivision of the state", or other condition relating to the grant of a determinable fee as stated in the deed or other instrument of conveyance.

2. In the event of a breach of a determinable fee sale provision, in which case all of the subject property shall revert, the agency may elect one, or a combination of, the following remedies consistent with the trust land management objectives listed in R850-2-200:

(a) Allow the reversion of the entire property to stand without further action by the agency.

(b) Enter into an agreement providing for final resolution of the breach, which agreement may include exchange of all or part of the reverted property, payment for all or part of the reverted property, or retention of all or part of the reverted property; provided the agreement fully compensates the trust for reasonably foreseeable losses caused in whole or part by the breach.

3. Any costs involved in the transaction described above shall be borne entirely by the applicant and, if applicable, shall be based on the current agency fee schedule.

4. The provisions of this rule are not intended to compel the agency to accept a particular resolution of a breach of a determinable fee limitation and shall not preclude the agency from settlement of disputes involving a breach of determinable fee sale on terms that are otherwise in the best interest of the applicable trust beneficiaries.

**KEY: subdivisions, sale procedures, administrative procedure**

**Date of Enactment or Last Substantive Amendment: 1993**

**Notice of Continuation: October 30, 2017**

**Authorizing, and Implemented or Interpreted Law: 53C-1-302(1)(a)(ii); 53C-4-101(1)**



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**R850. School and Institutional Trust Lands, Administration.****R850-90. Land Exchanges.****R850-90-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Subsections 53C-1-302(1)(a)(ii) and 53C-4-101(1) which authorize the Director of the School and Institutional Trust Lands Administration to specify application procedures and review criteria for the exchange of trust lands.

**R850-90-150. Planning.**

Pursuant to Subsection 53C-2-201(1)(a), the Trust Lands Administration shall also undertake to complete the following planning obligations, in addition to the rule-based analysis and approval processes that are prescribed by this rule:

1. To the extent required by the Memorandum of Understanding between the State Planning Coordinator and the School and Institutional Trust Lands Administration, submit the proposal for review by the Resource Development Coordinating Committee (RDCC);
2. Evaluation of and response to comments received through the RDCC process; and
3. Evaluation of and response to any comments received through the solicitation process conducted pursuant to Subsection R850-90-400(1).

**R850-90-200. Exchange Criteria.**

The agency may exchange trust land for land and other assets which the director finds suitable and of equal or greater value and utility.

1. Exchanges must clearly be in the best interest of the appropriate trust as documented in a director's finding. The finding shall address:

- (a) the appraised value of affected lands and other assets and the amount of cash involved;
- (b) the likelihood that the acquired land and other assets will provide income in excess of that being generated from existing trust land;
- (c) an analysis of the revenue potential of the existing trust land; and
- (d) potential management and administrative costs and opportunities.

2. The finding shall verify that the exchange will not result in an unmanageable or uneconomical parcels of trust land, nor eliminate access to a remnant holding, without appropriate remuneration or compensation.

3. The percentage of cash which may be included in an exchange shall not exceed 25% of the value of the trust land involved unless the director has determined that a higher percentage is in the best interests of the trust beneficiary.

**R850-90-300. Application Requirements.**

This section does not apply to exchange proposals initiated by the agency.

1. Preapplication review: To avoid unnecessary expenses, persons requesting an exchange shall be given the opportunity to discuss the concept of the exchange with the agency before submitting a formal application.
2. A completed application form must be received pursuant to Rule R850-3.

**R850-90-400. Competitive Offering.**

1. Upon receipt of an exchange application, the agency shall solicit competing exchange proposals, lease applications and sale applications. Competing applications will be solicited through publication at least once a week for three consecutive weeks in one or more newspapers of general circulation in the county in which the trust land is located. At least 30 days before consummation of an exchange, sale or lease, certified notification will be sent to permittees of record, adjoining permittees or lessees and adjoining landowners. Notices will also be posted in the local governmental administrative building or courthouse. Lease applications shall be processed in accordance with Section R850-30-500. Sale applications shall be reviewed pursuant to Section R850-80-200.

2. In addition to the advertising requirements of Subsection R850-90-400(1), the agency may advertise for competing applications for exchange, lease, or sale to the extent which the director has determined may reasonably increase the potential for additional competing applications.

3. The agency shall allow any applicants at least 20 days from the date of mailing of notice, as evidenced by the certified mail posting receipt (Postal Service form 3800), within which to submit a sealed bid containing their proposal for the subject parcel. Competing bids will be evaluated using the criteria found in Sections R850-30-510, R850-80-200, and R850-90-200.

**R850-90-500. Determination for the Exchange of Trust Lands.**

1. The agency shall choose the successful applicant by conducting a market analysis pursuant to Section R850-80-300 on each option for which an application has been received. The determination as to which application will be approved shall be based on Section R850-80-200 and Subsection R850-90-200(2).

2. The successful applicant shall be charged an amount equal to any appraisal and advertisement costs. Any monies, except application fees, tendered by unsuccessful applicants will be refunded.

3. The director may approve the exchange when the criteria specified in Section R850-90-200 have been satisfied.

4. Applicants desiring reconsideration of agency action relative to exchange determinations may petition for review pursuant to agency rule.

**R850-90-600. Land Exchange Appraisals.**

1. The agency shall contract for appraisals of properties proposed for exchange utilizing the deposit paid by the applicant. Appraisals to determine values of trust land shall be provided protected records status pursuant to Subsection 63G-2-305(7).

2. Appraisals for land exchanges with the federal government shall be, when possible, completed jointly and be subject to review and approval of both parties and to agreements undertaken pursuant to the Federal Land Exchange Facilitation Act, 43 U.S.C. 1716.

**R850-90-700. Private Exchange Procedures.**

1. Political subdivisions of the state and agencies of the federal government shall be eligible for private exchange.

2. To determine that a private exchange is in the best interests of the trust beneficiaries, advertising to provide notice of this action shall be required pursuant to Subsection 53C-4-102(3). The cost of this advertising shall be negotiated.

3. Any agency rules governing land exchanges shall apply to private exchanges except Sections R850-90-400 and R850-90-500. Subsections R850-90-300(2), R850-90-500(2), and R850-90-900(4) may be waived when the agency is a co-applicant.

**R850-90-800. Existing Improvements.**

Any exchange of trust land upon which authorized improvements have been made shall be subject to the reimbursement of the depreciated value of the improvements to the owner of the improvements by the person receiving the land in the exchange.

**R850-90-900. Mineral Estates and Leases.**

1. Trust Lands Administration mineral interests may be exchanged in accordance with Subsection 53C-2-401(2).

2. Mineral estate exchanges must clearly be in the best interest of the applicable trust as documented by the agency's record. The record shall address those criteria listed in Section R850-90-200.

3. In exchanges with persons other than the federal government, all mineral estates are reserved to the Trust Lands Administration unless exceptional circumstances justify the exchange of the mineral estate.

4. Upon the exchange of Trust Lands Administration mineral estate, Trust Lands Administration mineral leases shall continue to be administered by the agency until the termination, relinquishment or expiration of the lease. Upon termination of the mineral lease the administration of the mineral estate transfers to the acquiring party.

5. Acquired mineral estates shall be managed in accordance with Subsection 53C-2-407(3), and Sections 53C-2-412 and 53C-2-413.

**R850-90-1000. Existing Rights on Acquired Lands.**

Valid existing rights on lands acquired from the federal government will be managed in accordance with Subsections 53C-5-102(2) and 53C-4-301(2).

**R850-90-1100. Existing Leases and Permits.**

Before completion of exchanges, Trust Lands Administration lessees and permittees shall be notified and leases and permits cancelled or amended in accordance with the terms of the lease or permit.

**KEY: land exchange, administrative procedures**

**Date of Last Change: August 10, 2022**

**Notice of Continuation: January 6, 2022**

**Authorizing, and Implemented or Interpreted Law: 53C-1-302(1)(a)(ii); 53C-2-201(1)(a); 53C-4-101(1); 53C-4-102**



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**R850. School and Institutional Trust Lands, Administration.****R850-100. Trust Land Management Planning.****R850-100-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Subsections 53C-1-302(1)(a)(ii) and 53C-2-201(3) which require that planning procedures be developed for trust lands, and for the opportunity for interested parties to participate in the planning process.

**R850-100-150. Scope.**

Nothing in this rule is intended to supersede or replace the provisions of R850-21-150, R850-22-150, R850-23-150, R850-24-125, R850-30-150, R850-40-150, R850-50-150, R850-70-150, R850-80-150, R850-90-150, R850-120-150, or R850-140-350.

**R850-100-175. Definitions.**

The general definitions provided in R850-1-200 apply to this section. In addition, the words and terms used in Section R850-100-500 shall have the following-described meanings, unless otherwise indicated:

1. Public Lands: Lands and resources administered by the federal Bureau of Land Management or USDA Forest Service.
2. Interested Parties:
  - (a) The beneficiaries of the lands involved in any planning effort;
  - (b) local government officials.
3. Land Management, Tenure Adjustment, and Access Plans: A plan to evaluate and direct the management, disposal, and acquisition of lands in a specific area, and to provide for the establishment, maintenance, or both, of access to retained or acquired lands.
4. Local Government Officials: Elected county or municipal officials with jurisdiction over areas included in a planning effort.

**R850-100-200. Simultaneous Use of Trust Land Assets.**

The agency shall encourage the simultaneous use of compatible, revenue generating activities on trust lands.

**R850-100-300. Joint Planning.**

The agency may participate in joint planning with other land management agencies when the director determines that the commitment of agency resources is justified, and trust management obligations will be facilitated.

**R850-100-400. Assessments of Natural and Cultural Resources.**

1. The Resource Development Coordinating Committee (RDCC) process provides a natural resource assessment for purposes of trust land management. No other natural resource analysis is required beyond consultation with the RDCC. The public may comment on proposed trust land plans and uses through the RDCC process.
2. Cultural resource analysis on specific actions shall be conducted pursuant to R850-60.

**R850-100-500. Land Management, Tenure, and Access Plans.**

1. The agency may develop land management, tenure adjustment, and access plans for selected geographical regions of the state.
2. The planning criteria, regions, and boundaries shall be established by the director.
3. Plans developed under this section may:
  - (a) Designate areas where particular uses will be permitted or denied;
  - (b) identify trust lands designated for disposal to the federal government or other entities;
  - (c) identify public lands desired for acquisition;
  - (d) identify other lands and assets for acquisition that are not located on public lands; and
  - (e) identify access routes across public lands necessary for the economic development of trust lands within the planning boundaries.
4. Before adopting a plan developed under this section, the agency shall submit the plan for approval by the board of trustees.
  - (a) Prior to presenting a plan to the board for approval, the agency shall solicit input from interested parties; and,
  - (b) submit the plan for review by the RDCC.

**KEY:** management, natural resource assessment, land use

**Date of Enactment or Last Substantive Amendment:** December 22, 2010

**Notice of Continuation:** August 8, 2022

**Authorizing, and Implemented or Interpreted Law:** 53C-1-302(1)(a)(ii); 53C-2-201(3)



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**R850. School and Institutional Trust Lands, Administration.****R850-110. Motor Vehicle Travel Designations.****R850-110-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Subsections 53C-1-302(1)(a)(ii) and 53C-2-301(1)(g) which authorize the Director of the School and Institutional Trust Lands Administration to establish rules consistent with general policies prescribed by the board of trustees, and regulate the unauthorized use or occupation of trust land, and Subsection 41-22-10.1(2) which authorizes the agency to designate trails, streets, or highways as open to off-highway vehicle use.

**R850-110-200. Travel Route Designations.**

1. Pending detailed route designations, all routes upon which exist a temporary public easement pursuant to Subsection 72-5-203(1)(a), other valid legal easement or right-of-way, or a permanent public access easement granted pursuant to agency rules are designated as open to motor vehicle use to the extent that such use is permitted by state law and local ordinances.

2. The agency may establish "Designated Use Only" areas.

(a) All routes within a "Designated Use Only" area are closed to motor vehicle use unless specifically designated open by the agency or authorized for a specific use through the issuance of a permit, easement, or lease.

(b) "Designated Use Only" areas may be established by the director through a written finding that such action is consistent with trust management objectives, current and projected land uses, and resource protection considerations.

3. All lands administered by the agency are closed to cross-country travel by all motor vehicles other than over-snow vehicles unless otherwise designated open or authorized for a specific use through the issuance of a permit, easement, or lease.

4. Except as authorized under Subsections (1) through (3), all trust lands are closed to motor vehicle use.

**R850-110-300. Route Designations on Roads Maintained by Local Government Entities.**

The agency may coordinate route designations with local government entities on routes maintained by them.

**R850-110-400. Over-snow Vehicles.**

All lands are open to cross-country travel by over-snow vehicles provided that:

1. the use is consistent with state law and not in conflict with current leases or permits; and

2. adequate snow depth exists to prevent resource degradation. Adequate snow depth is generally accepted to be at least 12 inches of consistent snow cover, but may vary depending on terrain or other ground conditions. The determination of whether there is adequate snow depth to prevent resource degradation shall be at the sole discretion of the agency.

**R850-110-500. Route Width Designations.**

Routes which have been designated as open to motor vehicle use by the agency may further be designated to allow for certain width classes of OHVs.

1. Twenty-six inches or less. Only OHVs under 26 inches wide may utilize routes designated in this class.

2. Fifty-two inches or less. Only OHVs under 52 inches wide may utilize routes designated in this class.

3. Routes which do not have a designated width class are open to all motor vehicles, provided that the vehicle width does not exceed the existing disturbed travel surface of the route.

**R850-110-600. Date and Time Restrictions.**

Routes which have been designated as open to motor vehicle use or areas which have been designated by the agency as open to cross-country travel, may be restricted to allow for use only within certain times of year or times of day.

**R850-110-700. Other Route or Area Restrictions.**

Additional restrictions or designations other than those specifically identified by rule may be placed upon routes or areas which have been designated as open to motor-vehicle use by the director. Such actions shall be authorized through a written finding by the director that the action is consistent with trust-management objectives, resource protection considerations, or other justified reasons.

**R850-110-800. Method of Designating Travel Routes.**

Travel routes may be designated as open to motor vehicle use and areas may be designated as open to cross-country travel by the director through a written finding that such action is consistent with trust-management objectives, current and projected land uses, and resource-protection considerations. Routes or areas that have been designated open to motor vehicle

use by the director shall be identified as specified in Subsection 41-22-10.1 by posting signs or designating by map or description. Additional designations with respect to route widths, date and time restrictions, or other restrictions shall also be identified through posted signs, map, or description. Posted signs shall conform to accepted interagency statewide OHV trail signing standards, and maps may be published in cooperation with other land-management agencies where practicable.

**R850-110-900. Director's Authority to Close Routes and Areas.**

The director may close specific routes and areas to motorized vehicle use, regardless of any previous route designation, when necessary for resource protection, to fulfill trust-management objectives, or for other justified reasons. Such action shall be documented in a written finding by the director. Amendments shall be made to existing route designation maps or descriptions and signs posted as necessary.

**R850-110-1000. Scattered Sections and Isolated Parcel Designations.**

The agency may coordinate route designations with adjacent land-management agencies to reduce confusion over ownership boundaries and complications with enforcement. Agency land-use and management objectives may be carefully considered when negotiating with other land-management agencies.

**R850-110-1100. Blocked Land Designations.**

The agency may coordinate designations of shared routes with adjacent land-management agencies to the extent that such designations are consistent with agency management objectives. All other routes and areas contained within land blocks shall be designated in accordance with trust-management objectives, current and projected land uses, and resource protection considerations.

**R850-110-1200. Off-Trail Game Retrieval.**

Use of a motor vehicle for the retrieval of downed game off of a designated route is prohibited, unless located within an area which has been designated as open for cross-country travel.

**R850-110-1300. Recreational Use Requiring a Lease or Permit.**

1. Commercial recreational use of trust lands, including competitive events or use of trust lands by commercial outfitters or tour operators, will be allowed only upon issuance of a Right-of-Entry Permit or Special Use Lease in accordance with current rules.

2. Long-term non-commercial recreational use of trust lands exceeding 15 consecutive days will be allowed only upon issuance of a Right-of-Entry Permit or Special Use Lease in accordance with current rules.

**R850-110-1400. Exemptions.**

The following uses are exempt from the restrictions and prohibitions set forth in this rule:

1. Administrative use by the agency.
2. Use in conjunction with the administration or operation of a valid lease or permit.
3. Use of any fire, military, emergency, or law-enforcement vehicle for emergency purposes.
4. Law-enforcement response to violations of law, including pursuit.

**KEY: land use, leases, permits, roads**

**Date of Enactment or Last Substantive Amendment: October 25, 2010**

**Notice of Continuation: November 8, 2018**

**Authorizing, and Implemented or Interpreted Law: 53C-1-302(1)(a)(ii); 53C-2-301(1)(g)**

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**R850. School and Institutional Trust Lands, Administration.****R850-120. Beneficiary Use of Institutional Trust Land.****R850-120-100. Authorities.**

This rule implements the Utah Enabling Act to allow use of land granted under Sections 7, 8 and 12 of that Act by its beneficiary institution as a direct economic benefit to the institution and specifies application procedures and review criteria under authority of Sections 53C-1-302(1)(a)(ii) and 53C-4-101(1).

**R850-120-150. Planning.**

Pursuant to Section 53C-2-201(1)(a), the Trust Lands Administration shall also undertake to complete the following planning obligations, in addition to the rule-based analysis and approval processes that are prescribed by this rule:

1. To the extent required by the Memorandum of Understanding between the State Planning Coordinator and the School and Institutional Trust Lands Administration, submit the proposal for review by the Resource Development Coordinating Committee (RDCC); and
2. Evaluation of and response to comments received through the RDCC process.

**R850-120-200. Scope.**

This rule applies to applications by those institutions named in Sections 7, 8 and 12 of the Utah Enabling Act for in-kind use of their respective institutional trust lands administered by the agency.

**R850-120-300. Application Requirements.**

1. A letter of application must be received with a non-refundable application fee. The application fee will be established separately for each application based upon the cost of processing the application. The letter of application must include:

- (a) the name and address of contact authority;
- (b) a legal description of the land involved;
- (c) a statement of the intended in-kind use;
- (d) documentation that describes the manner in which the intended in-kind use is consistent with plans and programs approved or under development by the institution, and the institution's statutory mandates.

2. Upon receipt of a letter of application, the agency shall review it for completeness. Institutions submitting deficient letters of application shall be allowed 120 days to provide the required information.

**R850-120-400. Review Criteria.**

The agency may enter into agreements for in-kind use of institutional trust land by its beneficiary. The criteria by which an application will be considered are:

1. The applicant must be the beneficiary of the land under application.
2. The agreed use must be a prudent use of the property, taking into account related plans and programs approved by the institution, the opportunity cost of the in-kind use and the effect of that use on the management of other institutional trust lands.
3. The in-kind use must not result in net derogation of trust asset value.
4. The in-kind use must be consistent with the institution's constitutional and statutory mandate.

**R850-120-500. Determination for Beneficiary Use.**

1. The director may approve the in-kind use when the criteria specified in R850-120-400 are satisfied.
2. Applicants desiring reconsideration of agency action relative to in-kind use determinations may petition for review pursuant to R850-9.
3. An in-kind use agreement may, in the discretion of the agency, contain stipulations including, but not limited to, the following:
  - (a) Provisions for periodic monitoring of the in-kind use to assure compliance with the purposes of the use agreement;
  - (b) Provisions allowing for the collection of compensation to the agency for frequent or extensive monitoring; and
  - (c) Provisions which will allow for cancellation or amendment of leases in order to comply with statutory changes.

4. Beneficiary institutions shall, at early stages of in-kind use proposal development, contact the agency regarding the feasibility of in-kind use. Beneficiary institutions may not use or otherwise occupy the property until a formal in-kind use agreement has been fully executed.

**KEY: beneficiaries, land use, administrative procedures**

**Date of Last Change: March 4, 2003**

**Notice of Continuation: January 6, 2022**

**Authorizing, and Implemented or Interpreted Law: 53C-1-302(1)(a)(ii); 53C-2-201(1)(a); 53C-4-101(1)**



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**R850. School and Institutional Trust Lands, Administration.****R850-140. Development Property.****R850-140-100. Authorities.**

This rule implements Sections 6, 8, 10 and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution and Subsection 53C-1-302(1)(a) and Section 53C-4-101, which authorize the director of the School and Institutional Trust Lands Administration to establish rules and criteria for the disposition of trust lands.

**R850-140-200. Purpose of Development Property Rules.**

This rule permits the agency to designate trust land as development property and thereby

1. subject agency activities in connection with such properties to this rule; and
2. exempt agency activities in connection with such properties from the rules listed in Section

R850-140-1000.

**R850-140-250. Definitions.**

For the purposes of this rule:

1. Development Property: a parcel of trust land that has been designated a development property pursuant to the director's determination that the parcel meets the criteria established in Subsection R850-140-300(1).

2. Development Transaction: a transaction entered into by the agency to generate financial returns to the trust from real estate development of a particular development property. Development transactions include sales, exchanges, ground leases, development leases, build-to-suit leases, joint ventures, and Other Business Arrangements with respect to development properties.

3. Joint Venture: a transaction in which the agency contributes trust assets to a joint undertaking in which such assets may be subject to risk of loss, including without limitation a transaction in which the agency becomes a member of a limited liability company in exchange for the commitment of trust assets.

4. Other Business Arrangement: a transaction other than a joint venture which involves similar risk of loss of trust assets as a joint venture and which involves material reliance on the economic performance of a third party or other contingent events to generate expected returns. The non-subordinated lease of trust property for development purposes, with the trust's returns based upon a percentage of final property sales, is not an Other Business Arrangement.

5. Supporting Transaction: a transaction entered into by the agency to prepare for or support real estate development on trust lands, but not directly conveying trust lands for real estate development purposes. Supporting transactions include without limitation: exchange, acquisition, or conveyance of lands for assemblage or configuration of development projects; agreements with local government entities with respect to development entitlements and provision of infrastructure; rights-of-entry, dedications and easements for development improvements and amenities on trust lands; and leasing or conveyance of trust lands for necessary development infrastructure and amenities.

**R850-140-300. Designation of Development Property.**

1. The director may designate a property as a development property upon the director's determination that the following criteria are met:

(a) The property is located in or near an urban area of the State or, in more rural locations, the property is of a character suitable for current or future commercial, industrial, resort, residential or other real estate development activities; or

(b) The agency has received inquiry from private parties concerning the potential for development of the property or the agency, after preliminary analysis, has determined that the probable highest and best use for the property is for development purposes.

2. The director shall maintain a database of each property designated as a development property. The director may remove property from development designation at the discretion as deemed appropriate for the best interests of the trust beneficiaries.

**R850-140-350. Planning.**

1. Before designating a property as a development property, the agency shall submit the proposed designation to the Resource Development Coordinating Committee (RDCC), and evaluate and respond to comments received through the RDCC process. Participation in the RDCC process shall constitute compliance with Subsection 53C-2-201(1).

2. If the agency chooses to participate in local government planning and entitlement processes, such participation constitutes an additional degree of planning supplemental to the RDCC process, but is not required under Subsection 53C-2-201(1).

**R850-140-400. Development Transactions - General Provisions.**

1. Subject to the board notice and approval provisions contained in Sections R850-140-500 and R850-140-600, the agency may solicit and reject proposals, make offers, counter offers and otherwise negotiate freely with interested parties in its efforts to arrange development transactions that are in the best interests of the trust. Development transactions will be structured according to the circumstances of the market and the attributes of the particular development property.

2. Before entering a development transaction, the agency shall initiate an appropriate advertising program designed to effectively solicit interested parties. Advertising may be implemented through print media, internet, signage, direct mail, or other appropriate marketing methods.

3. In negotiating development transactions, the agency shall undertake appropriate due diligence with respect to the proposed transaction, including consideration of the following criteria:

(a) The ownership, character, reputation, financial status, credit, and litigation history and prior real estate development experience of the party with whom the development transaction is proposed.

(b) The financial attributes of the proposed development transaction.

(c) The legal structure of the proposed development transaction.

(d) The potential effects of the proposed development transaction upon nearby trust lands; and

(e) Whether the proposed transaction will bring the highest long-term return to the trust compared to other reasonably foreseeable alternatives.

4. Development transactions shall result in the trust receiving not less than fair market value for the sale, use, or exchange of the development property in question.

5. The purchase, sale or exchange of land in connection with a development transaction shall be supported by either an appraisal or a detailed internal analysis of value.

6. Formal contract documentation of any development transaction shall be subject to approval by a representative of the attorney general's office. No party to a proposed development transaction shall have any vested rights in the transaction until the formal contract documents have been approved by the agency representative of the attorney general's office, approved by the board if required by rule or statute, approved and executed by the director, and delivered.

**R850-140-500. Development Transactions -- Approval of Minor Development Transactions.**

1. For purposes of this rule, a minor development transaction is a proposed development transaction that:

(a) involves a projected commitment of trust lands or assets of less than \$5 million; or

(b) if the proposed development transaction is a joint venture or Other Business Arrangement, involves a projected commitment of trust lands or assets of less than \$2 million.

2. The agency shall provide the board with the following information with respect to a proposed minor development transaction:

(a) a description of the parties to and terms of the proposed transaction;

(b) an economic analysis of the proposed transaction;

(c) a description of the competitive or advertising process used in soliciting offers for the transaction;

(d) a declaration of staff conflicts of interest, if any;

(e) if the transaction will involve the subordination of trust assets in connection with a joint venture or Other Business Arrangement, a description of the assets and an analysis of relevant risks to those assets; and

(f) other relevant information derived from the agency's due diligence activities.

3. The board must approve any proposed minor development transaction that is a joint venture or Other Business Arrangement in accordance with Subsection 53C-1-303(4)(e).

4. The director may approve any proposed minor development transaction that is not a joint venture or Other Business Arrangement after compliance with Subsection R850-140-500(2).

5. The board or director, as appropriate, may approve, conditionally approve, or reject any proposed minor development transaction consistent with their fiduciary obligations.

#### **R850-140-600. Development Transactions -- Approval of Major Development Transactions.**

1. For purposes of this rule, a major development transaction is a proposed development transaction that:

(a) involves a projected commitment of trust lands or assets of \$5 million or more; or

(b) involves a projected commitment of trust lands or assets of \$2 million or more if the proposed development transaction is a joint venture or Other Business Arrangement.

2. Before entering negotiations for a major development transaction, the agency shall provide the board with the following information:

(a) relevant information concerning the property and the financial aspects of a possible transaction, including:

(i) property value;

(ii) financial goals for a proposed transaction;

(iii) timeliness of a proposed transaction; and

(iv) type of transaction contemplated;

(b) a summary of the anticipated competitive process and advertising program to be utilized in soliciting proposals; and

(c) other information requested by the board to assist it in evaluating the proposed transaction.

3. Before seeking final board approval of a major development transaction, the agency shall provide the board with the following information:

(a) a statement of the key terms of the transaction;

(b) the results of the agency's due diligence activities under Subsection R850-140-400(3)(a);

(c) a projected financial pro forma for the transaction;

(d) the results of the competitive process and advertising process utilized to select the proposed transaction;

(e) a declaration of staff conflicts of interest, if any;

(f) a description of legal risks assumed by the trust;

(g) an analysis of the financial strength and commitment of the parties to the transaction; and

(h) if the transactions will involve the subordination of trust assets in connection with a joint venture or Other Business Arrangement, a description of the assets and an analysis of relevant risks to those assets.

4. The board must approve any proposed major development transaction before the director's execution of the transaction.

5. The board or director, as appropriate, may approve, conditionally approve, or reject proposed major development transactions consistent with their fiduciary obligations.

#### **R850-140-700. Amendments to Development Transactions.**

1. The agency may amend development transactions subject to the conditions contained in Subsections R850-140-700(2) through (4).

2. No amendment to a development transaction shall result in the trust receiving less than fair market value for the sale, use, or exchange of the property in question.

3. The director shall deliver a summary description of the terms of proposed material amendments to minor or major development transactions to the board with sufficient detail to permit the board to review the proposed amendment consistent with its statutory duties.

4. Any amendments that will materially change the financial terms of a joint venture, Other Business Arrangement, or major development transaction must be approved by the board.

**R850-140-800. Supporting Transactions.**

1. The agency may enter into supporting transactions as necessary to promote prudent and profitable development of trust lands designated as development properties.

2. The purchase, sale or exchange of land in connection with a supporting transaction shall be supported by either an appraisal or a detailed internal analysis of value.

3. The board must approve any proposed supporting transaction that involves the purchase, sale or exchange of land having a value in excess of \$500,000.

**R850-140-900. Deviation from Rules.**

In situations where the board determines that an economic opportunity favorable to the trust beneficiaries may otherwise be lost, or other good cause exists that is in furtherance of the statutory obligations of the board, the board may authorize the agency to deviate from the transactional approval processes set forth in this rule, so long as the board and agency's actions are otherwise in compliance with law.

**R850-140-1000. Exemption From Rules.**

The agency, in connection with its activities in managing and conveying development property, shall be subject to all rules applicable to the agency, except the following, which shall not be applicable:

1. Section R850-3-300. Application Forms.
2. Section R850-3-400. Application Processing.
3. Rule R850-4. Application Fees and Assessments.
4. Rule R850-30. Special Use Leases.
5. Rule R850-40. Easements.
6. Rule R850-41. Rights-of-Entry.
7. Rule R850-80. Sale of Trust Lands, except Section R850-80-250.
8. Rule R850-90. Land Exchanges.
9. Rule R850-170. Renewable Energy Lease Agreements.

**KEY: development, land sale, real estate**

**Date of Last Change: October 11, 2022**

**Notice of Continuation: September 9, 2021**

**Authorizing, and Implemented or Interpreted Law: 53C-2-201; 53C-4-101(1); 53C-4-103**

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**R850. School and Institutional Trust Lands, Administration.**

**R850-150. Rare Plant Species.**

**R850-150-100. Authorities.**

The activities of the School and Institutional Trust Lands Administration are authorized by Sections 6, 7, 8, 10 and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and the Utah Trust Lands Management Act, Section 53C-1-101 et seq. This rule is specifically authorized by Section 53C-2-202 which authorizes the director to make determinations with respect to the management, protection, and conservation of plant species located on trust lands which are listed under the federal Endangered Species Act.

**R850-150-200. Definitions.**

For purposes of this rule:

1. "Conservation Agreement" means that certain Conservation Agreement and Strategy for Graham's Beardtongue (*Penstemon grahamii*) and White River Beardtongue (*P. scariosus* var. *albifluensis*) dated July 22, 2014.
2. "Conservation Area" means any trust lands contained within a Conservation Area described in Appendices A and B of the Conservation Agreement.

**R850-150-300. Restriction on Surface Disturbance within Conservation Areas.**

1. Lessees or permittees of trust lands located within Conservation Areas may not undertake surface disturbance of trust lands without prior written permission of the agency.
2. Agency determinations with respect to requests to undertake surface disturbance within Conservation Areas will be governed by the terms of the Conservation Agreement.
3. Unauthorized surface disturbance of trust lands within Conservation Areas will be considered a trespass as provided in Section 53C-2-301.

**KEY: plants, conservation, endangered species**

**Date of Enactment or Last Substantive Amendment: June 22, 2015**

**Notice of Continuation: May 12, 2020**

**Authorizing, and Implemented or Interpreted Law: 53C-2-202**



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**R850. School and Institutional Trust Lands, Administration.****R850-160. Withdrawal of Trust Lands from Public Target Shooting.****R850-160-100. Authorities.**

The activities of the School and Institutional Trust Lands Administration are authorized by Sections 6, 7, 8, 10 and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and the Utah Trust Lands Management Act, Section 53C-1-101 et seq. This rule is specifically authorized by Section 53C-2-105 which authorizes the director to withdraw trust lands from public target shooting through rule enactment.

**R850-160-200. Definitions.**

For the purposes of this rule:

1. "Public Target Shooting" means the firing, discharging, or shooting of a firearm, bow, crossbow, or any other type of instrument designed to propel or throw projectiles or missiles.
2. "Withdrawal Area" means trust lands withdrawn from public target shooting.

**R850-160-300. Exemptions.**

This rule does not apply to:

1. Lawful hunting activities;
2. law enforcement activities by peace officers in the performance of their official duties;
3. discharging a firearm in the lawful defense of person or property;
4. use of the withdrawal area in conjunction with the administration or operation of a valid lease or permit;

or

5. administrative use of the withdrawal area by the agency.

**R850-160-400. Planning.**

In addition to those other planning responsibilities described herein, the agency shall:

1. Submit proposals to withdraw trust lands from public target shooting to the Resource Development Coordinating Committee (RDCC) unless the proposal is exempt from such review; and
2. evaluate and respond to comments received through the RDCC process.

**R850-160-500. Withdrawal Process.**

1. Prior to Board review of a rule that withdraws land from public target shooting, the director shall consult with:

- (a) The sheriff of the county where the withdrawal area is located; and
- (b) representatives from leading sports shooting organizations.

2. The director shall provide the board, for its review, the legal description of the withdrawal area and a justification statement identifying the criteria for withdrawal.

3. Each withdrawal area shall be codified as a new section under this rule and shall include a legal description of the withdrawal area.

**R850-160-600. Identification of Withdrawal Area.**

1. Upon codification of each withdrawal area, the agency shall:

- (a) Post signs delineating the boundary of the withdrawal area; and
- (b) make publicly available a map detailing the withdrawal area.

**R850-160-700. Eastern Lake Mountains Withdrawal.**

The following trust lands are withdrawn from public target shooting:

1. Eastern Lake Mountains, Utah County, described as: Township 7 South, Range 1 East, Salt Lake Base and Meridian, Section 6: E1/2NE1/4, NW1/4, NW1/4NE1/4, W1/2SW1/4; Township 7 South, Range 1 West, Salt Lake Base and Meridian, Section 21: Lots 6, 7, 8, 9, 10, 11; Township 7 South, Range 1 West, Salt Lake Base and Meridian, Section 22: S1/2 of Lot 9, NE1/4 of Lot 9, S1/2 of Lot 10; Township 7 South, Range 1 West, Salt Lake Base and Meridian, Section 23: Lots 1, 2, 6, 7, 8, 9, 10, 11, 12, SE1/4NE1/4, SE1/4NE1/4NE1/4, SE1/4SW1/4NE1/4NE1/4, SE1/4NE1/4NE1/4NE1/4, SE1/4SW1/4NE1/4, SE1/4SW1/4SW1/4NE1/4, SE1/4NE1/4SW1/4NE1/4, SE1/4 of Lot 3, SE1/4SW1/4 of Lot 3, SE1/4NE1/4 of Lot 3, SE1/4 of Lot 5, SE1/4SW1/4 of Lot 5, SE1/4NE1/4 of Lot 5; Township 7 South, Range 1 West, Salt Lake Base and Meridian, Section 27: E1/2NE1/4, NW1/4, NW1/4NE1/4; Township 7 South, Range 1 West, Salt Lake Base and Meridian, Section 29: NE1/4NE1/4, SE1/4NE1/4, NE1/4SE1/4, N1/2SE1/4SE1/4; Containing 1,533.68 acres, more or less.

**KEY: land withdrawal, public target shooting**  
**Date of Last Change: June 21, 2017**  
**Notice of Continuation: May 26, 2022**  
**Authorizing, and Implemented or Interpreted Law: 53C-2-105**

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**R850. School and Institutional Trust Lands, Administration.****R850-170. Renewable Energy Lease Agreements.****R850-170-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Subsections 53C-1-302(1)(a)(ii) and 53C-4-101(1), which authorize the director to establish rules for leasing trust lands.

**R850-170-150. Planning.**

1. In addition to those other planning responsibilities described in this Rule R850-170, the agency shall:
  - (a) Submit proposals to lease trust lands for renewable energy projects to the Resource Development Coordinating Committee (RDCC) unless the proposal is exempt from such review;
  - (b) Evaluate comments received through the RDCC process; and
  - (c) Evaluate comments received through the request for proposal process pursuant to Section R850-170-600 or the solicitation process pursuant to Section R850-170-800.

**R850-170-200. Exemption from Development Transaction Rules.**

The director may exempt renewable energy leases issued on Development Property as defined in Subsection R850-140-250(1) from Rule R850-140 if the renewable energy leases are issued according to this Rule R850-170 and if the exemption is consistent with the land management objectives found in Rule R850-2.

**R850-170-300. Terms of Leases.**

Lease terms, including extensions, should not normally be for longer than 51 years. The agency may issue leases for a term longer than 51 years if a longer term is consistent with the land management objectives found in Rule R850-2.

**R850-170-400. Categories of Renewable Energy Leases.**

1. Renewable energy leases are categorized as follows:
  - (a) solar;
  - (b) wind;
  - (c) energy storage; and
  - (d) geothermal.
2. The agency may grant exploration and options to lease the renewable resources on a parcel according to the requirements of this Rule R850-170 if doing so would encourage exploration of undefined resources.

**R850-170-500. Other Business Arrangements.**

1. The agency may enter into other business arrangements (OBAs), such as joint venture agreements, that are consistent with the purposes of the Act.
2. OBAs are exempt from these R850-170 rules.
3. OBAs and any amendments to OBAs must be approved by the Board of Trustees.

**R850-170-600. Requests for Proposals.**

1. The agency may issue a request for proposals (RFP) for renewable energy projects on trust lands.
2. The agency shall give notice of the RFP to lessees or permittees of record on the subject property and shall advertise the RFP by methods determined by the agency to increase exposure of the subject property to qualified applicants.
3. In response to the RFP, an applicant may propose a sale, lease, joint development, exchange, or other business arrangement.
4. The agency shall evaluate proposals using the following criteria:
  - (a) income potential;
  - (b) potential enhancement of trust lands;
  - (c) development timeline;
  - (d) applicant qualifications;
  - (e) desirability of proposed use; and
  - (f) any other criterion deemed appropriate by the agency.
5. The agency may charge non-refundable application and review fees, as specified in the RFP.
6. Applicants selected in the RFP process are exempt from the application process in Section R850-170-800.

**R850-170-700. Lease Rates.**

1. The agency shall base lease rates on the market value or income producing capability of the subject property and may require any commercially reasonable type of consideration, including rent, percentage rent, use payments, impact charges, escalating charges, balloon payments, and in-lieu payments. The agency may base lease rates on any of the following criteria, in combination or otherwise:

- (a) the market value of the subject property multiplied by the current agency-determined interest rate;
- (b) comparable lease data;
- (c) market value of the proposed use of the subject property;
- (d) rates schedules approved by the director; and
- (e) the administrative costs of leasing the subject property and a desired minimum rate of return.

2. The agency may base lease rates on a value other than the market value of the subject property if the director determines it is in the best interest of the beneficiaries and the agency has the right to terminate the lease before the end of the term.

3. Lease Review and Adjustment Procedures.

(a) The agency shall review renewable energy leases periodically as specified in the lease agreement and may adjust lease rates, the amount of financial guaranty, the amount of required insurance, and other similar lease provisions to ensure the agency receives no less than fair market value for the subject property and is adequately protected against a lessee's breach. Periodic lease reviews should normally be no longer than every five years.

(b) The agency may base lease rate adjustments on changes in market value including appreciation of the subject property, changes in established indices, or other methods that are appropriate and in the best interest of the trust beneficiaries.

(c) If the lease does not specify the rate of adjustment, the rate of adjustment will be based on the Consumer Price Index, published by the U.S. Bureau of Labor Statistics, All Urban Consumers, Western Region Average, All Items (1982-84 = 100), or if the Consumer Price Index is no longer published, a substitute index published by a governmental agency and comparable to the Consumer Price Index. The adjusted lease rate cannot be less than the lease rate for the immediately preceding review period.

(d) The director may suspend, defer, or waive lease adjustments in specific instances, based on a written finding that the suspension, deferral, or waiver is in the best interest of the trust beneficiaries.

**R850-170-800. Solicitation of Competing Applications.**

1. On acceptance by the agency of a completed application, the agency shall solicit competing interest in the subject parcel. The director may waive this requirement if it is in the best interest of the trust beneficiaries.

2. Renewable energy facilities to support extraction of the mineral estate of the subject property when the mineral estate is not a trust asset is exempt from the requirements of Section R850-170-800.

3. The agency shall solicit competing interest in the subject parcel in a manner designed to increase exposure of the subject property to qualified applicants. The agency may implement the solicitation through print media, internet, signage, direct mail, or other appropriate marketing methods. The agency shall also give at least 30 days' notice by certified mail to:

- (a) the legislative body of the county in which the subject parcel is located; and
- (b) lessees or permittees of record on the subject property.

4. The notice of solicitation of competing interest must include:

(a) a general description of the subject parcel and a brief description of its location, including township, range, and section;

(b) the contact information of the agency office where interested parties can obtain more information; and

(c) any other information that may create interest in the subject parcel that does not violate the confidentiality of the initial application. The successful applicant is responsible for the cost of the advertising.

5. The agency may solicit competing interests on trust lands when no application has been received by advertising a parcel pursuant to the process described in this Section R850-170-600 or any other means, when in the best interest of the trust beneficiaries.

6. In response to a solicitation, an applicant may propose a sale, lease, joint development, exchange, or other business arrangement.

**R850-170-900. Competing Proposals.**

1. If the agency receives credible competing proposals in response to the solicitation process conducted pursuant to Section R850-170-800, the agency may select a proposal using the following methods:

- (a) Sealed Bid Process.
  - (i) The agency shall give the competing applicants notice setting forth the date on which the applicants must submit a final sealed proposal to the agency.
  - (ii) The agency may reject proposals received after the established due date.
  - (iii) The agency may require proposals for a lease to include the first year's rental, proposals for a sale to include a down payment on the proposed purchase price, and payments to cover the agency's costs of advertising and application fees.
  - (iv) The agency shall evaluate proposals using the following criteria:
    - (A) income potential;
    - (B) potential enhancement of trust lands;
    - (C) development timeline;
    - (D) applicant qualifications;
    - (E) desirability of proposed use; and
    - (F) any other criterion deemed appropriate by the agency.
  - (b) The agency may negotiate with the applicants or interested persons to create a proposal that best satisfies the objectives of Rule R850-2.
- 2. The agency may terminate the application process at any time in its sole discretion.

**R850-170-1000. Lease Determination Procedures.**

The agency may not lease trust lands when a lease:

- 1. would be inconsistent with board policy or would not be in the best interest of the trust beneficiaries;
- 2. would create significant obstacles to future mineral development; or
- 3. would foreclose future development or management options that would likely result in greater long term economic benefit.

**R850-170-1100. Renewable Energy Lease Provisions.**

Each lease must contain provisions necessary to ensure responsible management of trust lands, including those provisions enumerated under Section 53C-4-202 and the following provisions:

- 1. the term of the lease;
- 2. the lease rate and other payments due to the agency;
- 3. reporting of technical and financial data;
- 4. reservation for mineral exploration and development and other compatible uses, unless waived by the director;
- 5. operation requirements;
- 6. lessee's consent to suit in any dispute arising under the terms of the lease or as a result of operations carried on under the lease;
- 7. procedures of notification;
- 8. transfers of lease interest by lessee;
- 9. terms and conditions of lease forfeiture; and
- 10. protection of the state from liability associated with the actions of the lessee on the subject property.

**R850-170-1200. Financial Guaranties.**

1. The agency may require a lessee to provide a financial guaranty to the agency to ensure compliance with lease terms including performance, payment, and reclamation. The financial guaranty must be in a form and in an amount acceptable to the agency.

2. If a lessee assigns a lease, the agency is not obligated to release the financial guaranty of the assignor until the assignee submits an equivalent replacement financial guaranty or any lease obligations, including reclamation, have been satisfied.

3. The agency may increase the amount of the financial guaranty in reasonable amounts at any time by giving lessee 30 days' written notice stating the increase and the reasons for the increase.

**R850-170-1300. Lease Assignments and Subleases.**

1. Assignments.

(a) A lessee may only assign a renewable energy lease if the agency consents to the assignment. Any assignment made without such approval is voidable at the agency's option.

(b) On the effective date of an assignment, the assignee is bound by the terms of the lease to the same extent as if the assignee were the original lessee, any conditions in the assignment to the contrary notwithstanding.

(c) An assignor must provide the agency with a copy of the assignment document, which must be a sufficient legal instrument, properly executed, with the lease number, the land involved, the name and address of the assignee, and the interest transferred clearly indicated.

(d) As a condition of the approval of an assignment, the agency shall require:

(i) the assignee to accept the most current applicable lease form unless continuation of the existing form is clearly in the best interests of the trust beneficiaries; and

(ii) the assignee be satisfactory to the agency.

2. Subleases.

(a) A lessee may only sublease a renewable energy lease if the agency consents to the sublease. A sublease made without such approval is voidable in the agency's discretion.

(b) The lessee must indemnify the agency for actions or inactions of the sublessee and the agency may look to either the lessee or the sublessee for compliance with the lease.

(c) The agency may require lessee and sublessee to provide annual financial documentation that clearly identifies the revenue generated on the property by sublessee and the revenue paid by sublessee to lessee.

(d) A lessee must provide the agency with a copy of the sublease document, which must be a sufficient legal instrument, properly executed, with the lease number, the land involved, the name and address of the sublessee, and the interest subleased clearly indicated.

(e) The agency may charge the lessee sublease rates based on the then current market rental value of the subject property, the revenue paid by sublessee to lessee, and such other factors as the agency deems reasonable.

**R850-170-1400. Lease Amendments.**

1. The agency may amend a lease if the amendment would be consistent with Rule R850-2. Unless waived by the director, the agency shall solicit competing interest pursuant to Section R850-170-800 if:

(a) the total amended acreage exceeds 150% of the original acreage;

(b) the lease term, including any extensions, is longer than 51 years; or

(c) the proposed amended purpose of the lease is substantially different from the original purpose.

2. The agency may condition approval of an amendment on the lessee accepting the current lease form.

**KEY: administrative procedures, leases, trust land management, request for proposals**

**Date of Last Change: August 8, 2022**

**Authorizing, and Implemented or Interpreted Law: 53C-1-302(1)(a); 53C-4-101(1); 53C-4-202**



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