



State of Utah
School & Institutional
Trust Lands Administration

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MEMORANDUM

TO: All archaeologists working in the state of Utah

FROM: Kenny Wintch, Lead Staff Archaeologist
Utah School and Institutional Trust Lands Administration

DATE: 09 February 2009

RE: Field Work Authorization and Other Requirements

The purpose of this memo is to inform you of an important change to the requirements we make of you when conducting archaeological work on school and institutional trust lands in Utah. Additionally, the School and Institutional Trust Lands Administration (the "Trust Lands Administration" or "SITLA") wishes to remind you of our other requirements for working on state trust lands. Please understand that it is in your best interest to take these requirements seriously and thus, ensure their fulfillment, as failure to do so will have negative consequences.

The Trust Lands Administration is dropping the requirement for pre-field agency notification, replacing it with a more stringent demand that archaeologists obtain written authorization from SITLA prior to entering trust lands to conduct field investigations. The purpose of the investigation does not matter. This system will be very much like the BLM's field work authorization process. This change becomes effective immediately. Before discussing this new requirement or any others in detail I would like to briefly identify and discuss the statutory and regulatory language regarding archaeological work on trust lands.

Relevant Statutory Language

Utah Code Annotated (U.C.A.) § 9-8-305 requires that all archaeological work conducted on lands belonging to the state (including trust lands) be authorized by a permit issued by the Governor's Public Lands Policy Coordination Office (PLPCO). PLPCO issues two kinds of archaeological permits: Principal Investigator Permits and Data Recovery Permits. Permittees are required to adhere to PLPCO's rules (found in *Utah Admin. Code* R694-1 [<http://www.rules.utah.gov/publicat/code/r694/r694-001.htm>]) when working under authority of either type of permit. PLPCO's permit requirements, application forms and contact information can be found on their website: <http://governor.utah.gov/publiclands>. The appropriate permit must be in your possession, or you must be able to demonstrate that you are working under the authorization of someone possessing such a permit, in order to legally conduct archaeological field work on any kind of state land, including school and institutional trust land.

U.C.A. § 9-8-305 also allows state agencies to seek a delegation of authority from PLPCO to issue Data Recovery Permits. Please be aware that SITLA is seeking such a delegation from PLPCO. Regardless, the Trust Lands Administration simply *must* be your "first stop" if you intend to conduct any kind of testing or excavation project on trust land, especially if it's being done in the name of statutory compliance for a proposed undertaking.



Accordingly, we require that you to contact us as soon as possible, definitely before you develop a testing plan or data recovery research design for the proposed investigation. The Trust Lands Administration will likely be legally responsible for the nature and scope of your proposed investigation. Ergo, our involvement in the development of your plan or design is critical. After you have developed an appropriately scaled testing plan or research design (in close consultation with us) SITLA will forward the document to the SHPO and the Antiquities Section for their review. We will act with alacrity on our end of the process, but you will need to budget enough lead time for all this to occur before you are scheduled to leave for the field.

Two other statutes are also relevant here. The first is the state's Cultural Sites Protection Act, is *U.C.A.* § 76-6-901 through 903 (http://le.utah.gov/~code/TITLE76/76_06.htm). The relevant portion of this law states that "It is unlawful for any person to intentionally alter, remove, injure or destroy antiquities from state lands or private lands without the landowner's consent." Minimum penalty is a class B misdemeanor; a more likely scenario is third degree felony prosecution and forfeiture of all property related to or used in association with the crime. The second statute is known as the School and Institutional Trust Lands Management Act, found in *U.C.A.* Title 53C (<http://le.utah.gov/~code/TITLE53C/TITLE53C.htm>). This statute implements the constitutional purpose of school and institutional trust lands, and gives the director and the board of trustees authority to make and enforce rules relating to the lawful use of trust lands. Importantly, section 53C-2-301 defines unlawful uses of trust land (or "trespass"). While this section includes obvious actions like damaging, destroying or stealing cultural resources from trust lands, it also forbids the non-recreational use of trust lands without either entering into a contract with or securing prior permission from SITLA. The rules that further implement the trust lands management act (Title 53C) are found in *Utah Admin. Code* Title R850 (<http://www.rules.utah.gov/publicat/code/r850/r850.htm>). Two sections of this rule are important here: the agency's "Rights-of-Entry" rule (R850-41) and its cultural resource rule (R850-60). Suffice it to say that the pre-field notification process we have required for years and the new field work authorization process that we are requiring from this day forward are a direct result of these two portions of R850. It is, thus, imperative for you to be diligent in the fulfillment of all demands made in this memo, particularly the new field work authorization process.

Field Work Authorization Process

Please familiarize yourself with the enclosed field work authorization form. This form is available online at <http://trustlands.utah.gov> (click on the "Forms and Applications" link on the main page and then find this form under the heading of "Other Forms"). This expandable form may be submitted physically or digitally. If you intend the former, you may copy the attached form or print it out from SITLA's webpage and fill out by hand, or you may fill it out online and then print it for "snail mail" submission. If you intend the latter, you may fill it out online and save it as a pdf file for electronic (i.e., email) transmittal to SITLA. No matter which method is chosen, each form submitted to us must be accompanied by one or more color maps that clearly show the location and extent of the trust lands you will be working on. Maps at too small a scale or too large a scale are not useful, nor are maps that don't show the boundaries and limits of the trust lands involved in your investigation. You need to clearly communicate to us the location and extent of your investigation on school and institutional trust lands.

If you are submitting a printed-out form with an attached paper map, you must address your submission to me via the address at the top of this memo. You would do well to follow up with a phone call to ensure that your form was received. (If I am out of the office I will make this clear on my voice mail; in that case, please call Ms. Curry.) If you are submitting the form and map by email, then please make sure that you send it to both Ms. Curry and myself. Facsimile submissions are not allowed, due to the inability of fax technology to transmit colored maps.

You are not authorized to begin the proposed work on those trust lands until you have received written authorization from either SITLA staff archaeologist Kristine Curry or myself. Please be aware that

authorization shall consist of either (1) the return of your “hard copy” form with either her or my signature on it, or (2) an email from Ms. Curry or myself clearly indicating approval of your request. Importantly, you are now required to submit a photocopy of your written approval to us with your post-investigation deliverables (see below) or risk their rejection. Please contact either Ms. Curry or myself if you have any questions about any of this. Our contact information can be found at the end of this memo.

Other Requirements

As mentioned above, the Trust Lands Administration wishes to remind you of a handful of other requirements that have been in place for some time now. These are all considered standard conditions of your authorization to work on trust land. Each of these will be discussed in detail. None of these supercede or replace any PLPCO requirements (though we do not see any such conflict between their requirements and ours).

Post-Investigation Deliverables. The Trust Lands Administration continues its requirement to submit to us at least one set of “original” (i.e., Antiquities Section-acceptable) deliverables that include your report and an IMACS site form or addendum for each site investigated or located wholly or partially on trust land in your project area. If your proposed work is limited to previously recorded sites, then an IMACS addendum or update with encoding sheet that includes both your new data and those from the previous recording is also required.

(1) If your investigation is located entirely on trust land, then you must submit two (2) Antiquities Section-acceptable sets of deliverables to SITLA under cover of a filled-out SHPO Cover Page. We will submit one set to SHPO on your behalf and in support of our consultation for the undertaking. We will keep the other set in accordance with our long-standing requirement that you submit one set of deliverables to SITLA.

(2) If the undertaking involves both federal *and* trust land, and the federal land-managing agency (or other federal agency [e.g., FERC]) has agreed to be the lead for the project, then submission of one set of Antiquities Section-acceptable deliverables to SITLA will suffice. (However, in that case you should then be submitting two sets of deliverables to the lead federal agency...)

(3) If the undertaking is multi-jurisdictional but involves *no* federal land, then please contact either Ms. Curry or myself to ascertain how many sets of deliverables you will need to submit to SITLA. (Please be aware that you may need to submit “original” site forms for sites recorded entirely off of trust lands in this case.)

We prefer that reports less than one centimeter thick be sent to us unbound; if larger than that, either unbound or spiral-bound is preferred. Finally, we realize that we cannot *require* you to provide us with copies of IMACS forms for sites that are not located (even partially) on trust lands (unless we are acting as lead agency for the project). We would prefer to receive them anyway, as we are continually trying to “beef up” our in-house database of site records. Finally, *and importantly*, as discussed above, you will need to submit a copy of your written, pre-field authorization for the investigation along with your deliverables, which will not be accepted without it. Thanks very much in advance for your compliance with this new requirement.

Vandalism or Looting. The Trust Lands Administration continues its requirement to report incidents of active or ongoing archaeological looting or vandalism you see occurring on trust lands to either Ms. Curry or myself as soon as possible, and that you take care not to contaminate the crime scene. This means not walking over the site if possible and definitely not handling, moving or destroying the perpetrator’s screens, shovels, etc. These are often important pieces of information that can facilitate prosecution and, hopefully, conviction. Utah’s Cultural Sites Protection Act (*U.C.A. § 76-6-902*) and SITLA’s own section of Utah code

(U.C.A. § 53C) criminalize the act of damaging, destroying or removing cultural resources from trust lands without explicit authorization from SITLA. These matters are taken *very* seriously by SITLA and we need your help in catching the bad guys. We will likely ask you to contact the local law enforcement jurisdiction (most often the county sheriff's department) and show them the crime scene while you're still out in the field. Thanks very much in advance for your help in this regard.

Discovering Human Remains. U.C.A. § 76-9-704 requires anyone who discovers human remains to refrain from their disturbance and to report them immediately to the appropriate law enforcement agency. *Utah Admin. Code* R850-61 also requires that you notify SITLA at the same time that you notify law enforcement. We appreciate your cooperation to that end.

Oil and Gas Undertakings. The process for facilitating statutory compliance for oil and gas undertakings on trust lands remains unchanged since 2003. Ergo, you are still required to submit two Antiquities Section-ready sets of deliverables to SITLA when conducting surveys in advance of proposed oil and gas exploration or production facilities or features (e.g., well sites) on trust lands. As mentioned above, we will send one set of deliverables to the SHPO on your behalf and in support of our consultation for the undertaking. We also require you to clearly identify the client and well site name (e.g., XTO Energy Inc.'s State of Utah 17-7-2-33) in the title of the report when conducting well pad locations on trust lands. Thanks very much for your cooperation and consideration of our needs in this regard.

Locational and Jurisdictional Accuracy Matters. We believe that locational accuracy for your investigation is critically important – make sure you are looking where you're supposed to and that you represent the sites you find as accurately as possible. Similarly, we ask that you be aware that not all state lands are trust lands, and that it is important to be clear about which kind of state land you are working on. While school and institutional trust lands are by far the largest category of state lands, there are also a number of other types of state-owned land that are managed by other state agencies. Most of these are public lands managed by three agencies within the state's Department of Natural Resources (i.e., the Divisions of Forestry, Fire and State Lands; Wildlife Resources; and Parks and Recreation). The Utah Department of Transportation (UDOT) also manages state land within their highway rights-of-way and associated facilities. Importantly, while these other categories of state land are generally considered public land, school and institutional trust lands are **not** considered public lands; rather, they are held in trust for the generation of financial support for a dozen named public beneficiaries (the largest of which is the state's public education system).

The point I am trying to make here is that it is not very helpful to any of these agencies or to SITLA just to say "state" lands on your IMACS forms and in the body of your report. While there is only one IMACS code for "state" lands (i.e., "ST"), there is sufficient space in line 17 of Part A of the IMACS form (and of course, in the body of the report) to specify the kind of state land on which a site is located (e.g., "state trust land" or "SITLA" land). If you are unclear about the ownership of a particular piece of state land, please contact either Ms. Curry or myself and we will be able to definitively tell you if it's trust land or not. We may possibly even be able to help you determine which other state agency manages that land if it is not trust land. Again, we appreciate your help and cooperation in this regard.

Thanks very much and please let either Ms. Curry or myself know if you have any questions or concerns about any of the above. Again, Ms. Curry can be reached by calling (801) 538-5181 or by email at kristinecurry@utah.gov; I can be reached by calling (801) 538-5168 or by email at kennywintch@utah.gov. We appreciate your respect for our needs and sincerely look forward to working with all of you.