

Recreation on State Trust Land:

Clearing the air on the dust issue

It's been over thirty years since the Land Department issued its first Recreation Permit. In the preceding sixty-three years, little thought or attention was given to the impact of recreation on State Trust Land. Today, recreation is big business and often with an equally big impact. Thousands of dollars per year are spent pursuing various passions & hobbies that often involve the use of State Trust Land. The impact of this recreation ranges from hardly noticeable to down-right destructive.

Managing State Trust Land has been an evolutionary process from the start. Early in the Department's history, the primary use of State Trust Land was for Grazing and Agriculture. Indeed, much of the 9.3 million acres of the Trust Land portfolio is leased or permitted for those endeavors. However, as Arizona has diversified and the population grown, demand for Commercial and Residential Development has moved to the forefront. The result has been record numbers in revenue generated for the Trust and its beneficiaries. In the past 5 years, the Department has raised more revenue from Development than the previous 50 years combined.

While demand for commercial and residential development has increased, so has demand for recreational use of State Trust Land. Unfortunately, the minimal revenues associated with Individual & Family Recreation Permits, do not even benefit the Trust, but are instead sent to the Legislature's General Fund (recent legislative changes allows the Department to recover some of the processing cost thru fee increases, but the funds do not go to the trust or trust beneficiaries). Consequently, Recreation Permits have always posed a degree of liability to the trust without real compensation.

Until recently, the amount of liability posed by recreation remained unnoticed. But with sweeping environmental & dust regulations handed down from the Environmental Protection Agency (EPA), and subsequent laws and ordinances by various cities and counties pursuant to Senate Bill 1552, the Department like any other reasonable land owner/manager has been exploring options to limit its potential liability. Most of these regulations are limited to a boundary called "Area A" largely within Maricopa County, and the Department is primarily concerned with Trust Lands within that area.

The Land Department is not a regulatory agency like the EPA, but rather it acts as a trustee with a fiduciary duty to the trust beneficiaries. In this respect the recreation dilemma is purely an economic puzzle of costs and benefits, not one motivated by politics or idealism.

Unfortunately, the reality on the ground is that in fiscal year 2008, the Arizona State Land Department received a record number of 30 dust violations from the Maricopa County Air Quality Division, of which only one (1) was not related to off-highway vehicles. Due to the new focus on air quality, this is almost a 400% increase in annual violations received by the Department on behalf of OHV use.

The Land Department is not inherently opposed to recreation on State Trust Land. But the Land Department has a fiduciary duty to the trust it manages, and to the beneficiaries it helps to fund. Merriam-Webster's Dictionary of Law defines fiduciary duty as “a duty obligating a fiduciary (as an agent or trustee) to act with loyalty and honesty and in a manner consistent with the best interests of the beneficiary of the fiduciary relationship (as a principal or trust beneficiary)”. In short, when it comes to recreation, the Land Department must be prudent in permitting certain types of activities, especially when such activities pose a potentially significant liability to the Trust.

The Department’s numerous lessees and commercial permittees, who lease or are permitted by contract to use certain parcels of State Trust Land, are required to abide by Department policies, and all Federal, State, and local ordinances, as a condition of their lease or contract. This is the Department’s way of protecting the trust.

Furthermore, the proceeds of these leases and commercial permits financially benefit the trust beneficiaries. It is for this reason that the Department has explored the alternative Special Land Use Permit (SLUP) as a means for recreation on State Trust Land within Area A. What is necessary is an applicant who is able and willing to comply with strict state and local ordinances to manage trail systems and prevent illegal dust generation in a specified area. A SLUP of this sort might allow for a commercial business to operate by charging a fee for service; or it might be issued to a non-profit or even a government agency that has an interest in keeping certain areas open for public recreation.

The Land Department has made repeated and similar offers, to certain organizations who are better suited to this type of management, to evaluate and process their applications and proposals; and the offer still stands. However, as long as a known recreational area remains open, unmaintained and continues to generate dust, then the trust is left to foot-the-bill. It is not within our fiduciary duty to allow that to happen.

The Land Department is accepting applications for Recreational Special Land Use Permits at 1616 W. Adams, Phoenix, AZ 85007. The Department advises prospective applicants to request a pre-application meeting to discuss their proposal; the application fee is non-refundable and approval of the application is not guaranteed. For more information please contact Kenneth Lamb, Recreation Administrator for the State Land Department @ (602)542-3322 or by email @ klamb@land.az.gov.