

A Performance Audit of the

# Trust System Entities

Improving Oversight Over Beneficiary  
Spending

Office of the Legislative  
Auditor General

Report to the UTAH LEGISLATURE





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August 20, 2024

TO: THE UTAH STATE LEGISLATURE

Transmitted herewith is our report:

“A Performance Audit of the Trust System Entities: Improving Oversight Over Beneficiary Spending” [Report #2024-12].

An audit summary is found at the front of the report. The scope and objectives of the audit are included in the audit summary. In addition, each chapter has a corresponding chapter summary found at its beginning.

This audit was requested by Representative Steven Lund and Senator David Hinkins.

*Utah Code* 36-12-15.3(2) requires the Office of the Legislative Auditor General to designate an audited entity’s chief executive officer (CEO). Therefore, the designated CEO for the Land Trusts Protection and Advocacy Office is Committee Chair Richard Ellis and for the School and Institutional Trust Funds Office is Board Chair Marlo Oaks. These chairs have been notified that they must comply with the audit response and reporting requirements as outlined in this section of *Utah Code*.

We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any item contained in the report in order to facilitate the implementation of the recommendations.

Sincerely,

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Auditor General

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## PERFORMANCE AUDIT

### AUDIT REQUEST

Through risk assessment during *A Performance Audit of The School and Institutional Trust Lands Administration (2024-13)*, the audit team found some risk in the other entities that make up the trust system, leading us to issue this separate audit report.

### BACKGROUND

To effectively generate revenue and coordinate oversight of lands granted to Utah upon statehood, the Legislature has created several entities that constitute the School and Institutional Trust Lands System. This report evaluates beneficiary oversight, performance of the Land Trusts Protection and Advocacy Office (LTPAO), and The School and Institutional Trust Fund Office's (SITFO) strategic plan.

## TRUST SYSTEM ENTITIES



### KEY FINDINGS

- ✓ 1.1 Lack of Guidance Has Contributed to Varied and Potentially Misapplied Use of Beneficiary Funds, Stronger Guidelines for Spending Is Needed
- ✓ 1.2 Statutory Guidance Can Provide the Trust Lands System with an Oversight Mechanism, Ensuring Funds Are Being Spent on the End Beneficiary
- ✓ 2.1 The Legislature Could Clarify LTPAO's Role, or Consider Eliminating the Office
- ✓ 2.2 Because of Poor Governance and Not Following Best Practices, LTPAO Lacks Direction and Value



### RECOMMENDATIONS

- ✓ 1.1 The Legislature should consider creating guidelines for non-public education beneficiaries on how they can use their distributions.
- ✓ 1.2 The Legislature should consider requiring non-public education beneficiaries to develop spending plans and year end summaries and post these plans publicly.
- ✓ 2.1 The Legislature should consider clarifying the Land Trusts Protection and Advocacy Office's review and protection responsibilities and role in the trust system.
- ✓ 2.2 The Legislature should consider including beneficiary distribution review in the Land Trusts Protection and Advocacy Office's statute. If the Legislature feels that the Land Trusts Protection and Advocacy Office review is not needed and that beneficiary oversight could be accomplished by the School LAND Trust, the State Auditor's Office, or an internal audit function, the Legislature could consider eliminating the Land Trusts Protection and Advocacy Office.

*Summary continues on back >>*





### REPORT SUMMARY

#### *Non-Public Education Beneficiaries Have Great Discretion over Trust Money Use, but Little Accountability or Transparency*

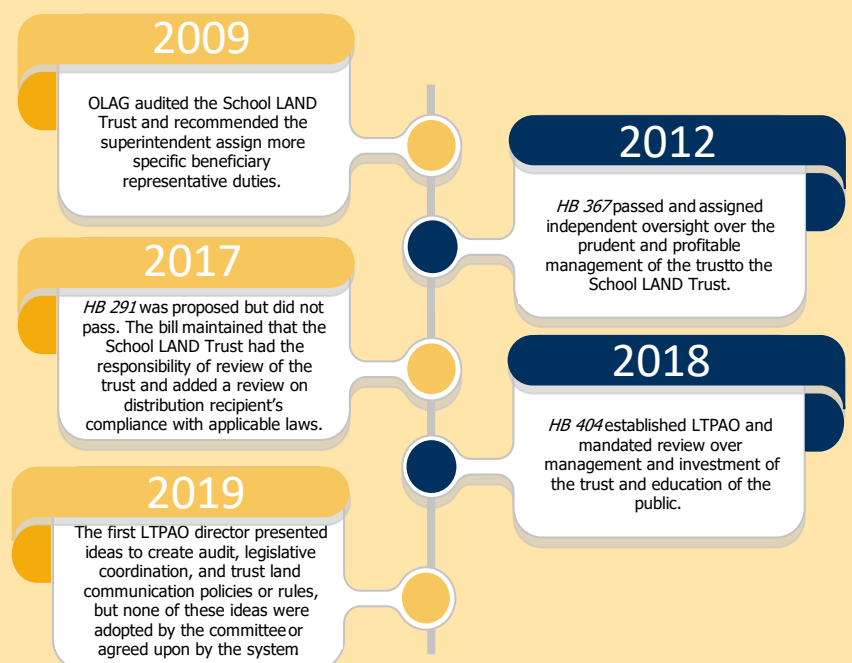
Public education beneficiaries have clear guidance in statute for their distribution spending. Compared to strong Legislative guidance and established oversight for public education’s spending, the non-public school beneficiaries in Utah, which receive about 5% of yearly distributions (about \$5 million in Fiscal Year 2023), receive only minimal guidance in *Utah Code*. We believe this, in part, has led to the considerably varied use of trust lands funds and provides insufficient mechanisms for complete oversight. Given this gap in oversight, the Legislature can consider if they would like to provide guidance for non-public education beneficiary spending, which could include LTPAO reviewing such spending.

#### *The Legislature Could Clarify the Land Trusts Protection and Advocacy Office’s Role or Reconsider the Need for the Office*

LTPAO’s impact to the trust system is difficult to document and measure. In initial Legislative discussions surrounding the creation of LTPAO, the office was characterized as an entity that should be looking at the trust funds and operations with a microscope, but that language was not included in statute. Much of the value that LTPAO reports providing occurs in discussions, but in these instances, it is difficult to determine what influence LTPAO’s input had on decisions being made, although LTPAO reportedly is a strong voice. The Legislature can consider adjusting statute to clarify LTPAO’s role in the trust system or consider eliminating the office.

#### *Efforts to Expound LTPAO Responsibilities Have Not Been Fully Realized*

This figure shows that LTPAO’s role has never been fully defined despite greater clarity being sought by several entities over the years. The Legislature, LTPAO, and OLAG have all attempted to define the protection and advocacy responsibilities originally held by the School LAND Trust and now held by LTPAO. Without this clarity, there is unsurety among trust system entities as to the role LTPAO should play and what weight LTPAO’s input has.





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## Introduction

Through risk assessment during *A Performance Audit of The School and Institutional Trust Lands Administration* [Report #2024-13], the audit team found some risk in the entities that make up the trust system, leading us to issue this separate audit report. This audit evaluates the trust beneficiaries, The Land Trusts Protection and Advocacy Office (LTPAO), and The School and Institutional Trust Funds Office (SITFO). The School LAND Trust is also within the trust land system but is not addressed in depth in this audit.

### There Are Four Entities in the Utah School and Institutional Trust Lands System

Thomas Jefferson created the *Land Ordinance of 1785*, which established a way to help fund public education by giving states specific sections of land as they entered the union. Through the *Utah Enabling Act of 1894*, the federal government endowed lands to Utah at statehood. The proceeds from land management on these lands would support common schools and various institutions, referred to as beneficiaries, listed in the Act. Additionally, *The Utah Constitution* Article X, Section 5 establishes the state School Fund, and says only earnings received from investment of the fund may be distributed.<sup>1</sup>

To effectively generate revenue and coordinate oversight of these lands, the Legislature has created several entities that constitute the School and Institutional Trust Lands System. When the system was created, the permanent funds stood at about \$50 million, and about half of trust lands granted at statehood had been sold. The funds now stand at about \$3.2 billion with only 10 percent of the remaining lands having been sold since 1995.

- In 1994, after research from a nonpartisan task force, the Legislature created the **School and Institutional Trust Lands Administration**

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<sup>1</sup> *Utah Code* 53F-9-201: “‘Annual distribution calculation’ means, for a given fiscal year, the average of 4% of the average market value of the State School Fund for that fiscal year; and the distribution amount for the prior fiscal year, multiplied by the sum of one; the percent change in student enrollment from the school year two years prior to the prior school year; and the actual total percent change of the consumer price index during the last 12 months as measured in June of the prior fiscal year.”

*Utah Code* 53C-3-102: “Distributions to the respective institutions from the associated permanent funds created from lands granted in Sections 8 and 12 of the Utah Enabling Act shall consist of 4% of the average market value of each institutional permanent fund over the past 20 consecutive quarters.”

(SITLA). SITLA is responsible for land management, including energy and mineral leases, real estate planning, and leasing and selling surface land. It is reviewed in more detail in *A Performance Audit of The School and Institutional Trust Lands Administration* [Report #2024-13].

- In 1999, the Legislature established the **School LAND Trust Program**. The School LAND Trust Program is responsible for distributing funds to schools and providing oversight through compliance reviews, and training. We did not include a review of The School LAND Trust because there is clear guidance in statute for public school distribution spending. Additionally, OLAG completed an audit of this office in 2009 and recommendations were reported as implemented, no longer applicable or shifted to LTPAO's responsibility. We therefore directed our focus to those processes as we reviewed LTPAO.
- In 2014, the Legislature created **The School and Institutional Trust Funds Office (SITFO)**. SITFO's purpose is to invest the profits from SITLA for the sole benefit of the respective beneficiaries.
- In 2018, the Legislature created the **Land Trusts Protection and Advocacy Office (LTPAO)**. The office was created to represent and advocate on behalf of current and future trust beneficiaries. They also have some review requirements over SITFO and SITLA.

The beneficiaries listed in the *Utah Enabling Act* include:

- Public Schools
- Schools for the Deaf and Blind
- Miners Hospital
- Utah State Hospital
- Juvenile Justice Services
- The Reservoir Trust
- University of Utah
- Utah State University
- Public Buildings
- University of Utah, College of Mines and Earth Sciences
- Colleges of Education<sup>2</sup>

Public schools receive a significantly larger distribution than other beneficiaries. They receive about 95 percent of the overall distributions while the other 11 beneficiaries collectively receive 5 percent. Approximately \$102 million was

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<sup>2</sup> The College of Education Trust benefits the colleges of education based on the number of teaching degrees granted to students. The schools include Utah State University, Weber State University, University of Utah, Utah Valley University, Southern Utah University, and Utah Tech University.



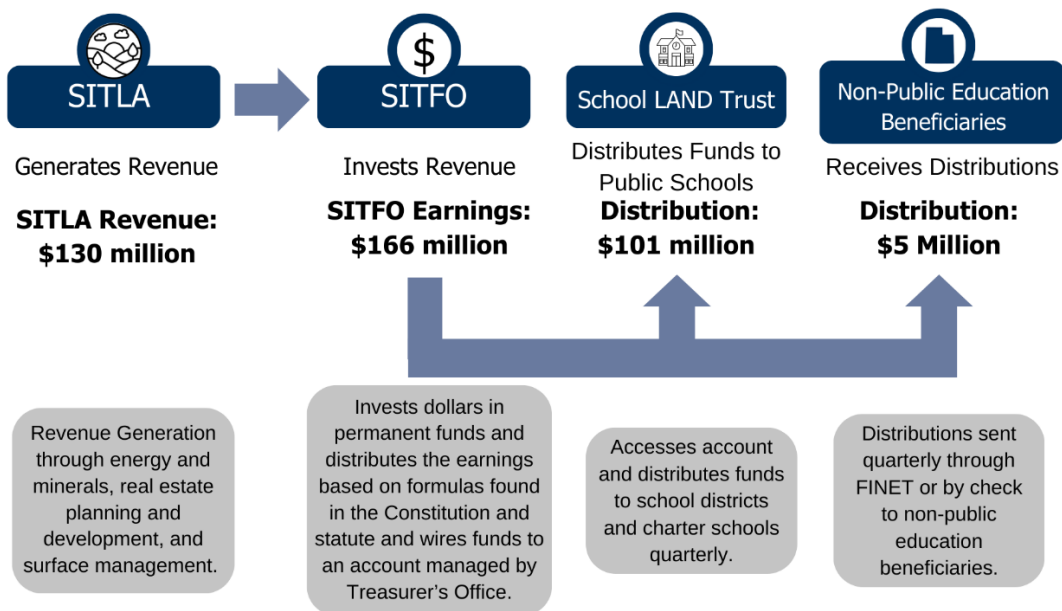
received by public schools in 2023, with the remaining beneficiaries receiving approximately \$5 million.

## Money Flows through the Trust Entities to Reach the Beneficiaries

The audit request specified that we follow the flow of money through the trust system. The flow of funds is as follows:

- *Utah Code* grants the SITLA director broad authority to generate revenue off the endowed lands.
- The SITLA director then transfers to SITFO all revenue received, less SITLA operating costs, accompanied by a statement showing the respective sources of this money.
- SITFO invests the monies into the permanent funds.
- Annually, SITFO calculates the distribution for each beneficiary and uninvests those funds. SITLA distributes the funds to the School LAND Trust Program and non-public school beneficiaries.
- The School LAND Trust Program distributes funds to schools.

Revenue invested in the permanent funds varies from year to year, with an average of \$101.5 million over the last five years. The following graphic depicts the flow of funds through the trust system, showing an average of what revenue was generated, invested, and distributed in Fiscal Year 2023.



Source: Auditor generated from SITFO's Annual Comprehensive Financial Report.



This information is presented to the public in various forms through the annual report presented by LTPAO and through SITFO's and SITLA's reporting to the Legislature. However, corroborating the information needed to generate this chart proved difficult, and we believe this information could be presented more transparently and accessibly. Transparency in reporting will be discussed in *A Performance Audit of The School and Institutional Trust Lands Administration* [Report #2024-13].

### **Trust Entities Are Funded through Trust Earnings**

Like other state entities, the Trust Offices are required to submit their appropriations requests to the Legislature, but each of the Trust Offices are funded through trust fund earnings rather than through the state's General Fund.

As of Fiscal Year 2023, the balance of the permanent funds was around \$3.2 billion. Money flowing into the permanent funds (see infographic on the previous page) totaled \$296.8 million; SITFO investments earnings totaled \$166.3 million and revenue invested from SITLA's land management activities totaled \$130.5 million. In Fiscal Year 2023, the expenses to generate this inflow to the permanent funds were allotted to SITLA around \$17.3 million, to SITFO around \$4.6 million, and to LTPAO around \$450,000 for a total of about \$22.4 million, or 7.5 percent of the overall flows into the funds. The Trust Lands System distributed approximately \$107 million to trust beneficiaries that year. Thus, of the money flowing into the funds in Fiscal Year 2023, 36 percent was distributed to beneficiaries, 7.5 percent covered administrative expenses, and about 56.4 percent was retained in the permanent funds.

**Fiscal Year 2023  
Permanent Fund Balance**

**\$3.2 Billion**

### **This Report Contains Policy Options the Legislature Can Consider for Strengthening Guidance in the Utah School and Institutional Trust Lands System**

This report found that oversight of beneficiary spending could be strengthened and LTPAO's oversight responsibility could be clarified. The report provides policy options for the Legislature to consider in the following chapters:

- **Chapter 1** makes recommendations to the Legislature to create guidance for beneficiary spending and accountability.
- **Chapter 2** makes recommendations to the Legislature to consider clarifying LTPAO's responsibilities or eliminating the office.



### BACKGROUND

Public education beneficiaries receive about 95 percent of trust distributions and the non-public beneficiaries receive the remaining five percent (about \$5 million in 2023). Compared to strong Legislative guidance and established oversight for public education's beneficiary spending, non-public school beneficiaries receive little guidance in *Utah Code*.

#### FINDING 1.1

**Lack of Guidance Has Contributed to Varied and Potentially Misapplied Use of Funds, Stronger Guidelines for Spending Are Needed**

**NO RECOMMENDATIONS**

#### FINDING 1.2

**Statutory Guidance Can Provide an Oversight Mechanism for Non-Public Education Beneficiaries, Ensuring Funds Are Being Spent on the End Beneficiary**

#### RECOMMENDATION 1.1

The Legislature should consider creating guidelines for non-public education beneficiaries on how they can use their distributions.

#### RECOMMENDATION 1.2

The Legislature should consider requiring non-public education beneficiaries to develop spending plans and year end summaries and post these plans publicly.



### CONCLUSION

We believe the lack of guidance, in part, has led to the considerably varied and potentially misapplied use of trust lands funds and provides poor mechanisms for complete oversight. The Legislature should consider if they would like to create stronger guidelines for beneficiary use of funds.







# Chapter 1

## Non-Public Education Beneficiaries Have Great Discretion over Trust Money Use, but Little Accountability or Transparency

Public education beneficiaries receive 95 percent of trust land distributions and there is clear guidance in statute for their distribution spending. Compared to strong Legislative guidance and established oversight for public education's spending, the non-public school beneficiaries in Utah receive only minimal guidance in *Utah Code*. In 2023, it is estimated they received about \$5 million, accounting for approximately 5 percent of the distribution. We believe this, in part, has led to the considerably varied use of trust lands funds and provides insufficient mechanisms for complete oversight. Given this gap in oversight, the Legislature can consider if they would like to provide guidance for non-public education beneficiary spending.

### 1.1 Lack of Guidance Has Contributed to Varied and Potentially Misapplied Use of Beneficiary Funds, Stronger Guidelines for Spending Are Needed

Because of lack of guidance, the use of funds among beneficiaries varies widely. Trust lands personnel also reported instances many years ago where trust funds were not fully directed to the appropriate end beneficiaries for the Miners Hospital and Colleges of Education. Additionally, several beneficiaries currently save their entire distribution or portions of their distribution, including the University of Utah College of Education, University of Utah College of Mines and Earth Sciences, Utah Valley University College of Education, and the Miners Hospital. Poor record keeping makes it difficult to determine exactly how much money has been misapplied over the years, further showing the need for better accountability.

### Stronger Guidance and Controls Could Maximize Benefits as Trust Lands Continue to Be Sold

Revenues from the School and Institutional Trust Lands Administration's (SITLA) land management activities are becoming more limited as most beneficiary lands (except for public education) have been sold. As Figure 1.1 illustrates, no beneficiary besides public education maintains more than 14 percent of the original lands allocated to them upon statehood.



**Figure 1.1 Forty-Four Percent of the Original Surface Acres Granted to Beneficiaries at Utah’s Statehood Remain Today.** As land revenue capacity continues to diminish there is risk that beneficiaries will face limited benefit from the funds if they are misapplied.

<b>Beneficiary</b>	<b>1894 Acres</b>	<b>1995 Acres</b>	<b>2023 Acres</b>	<b>Percent Remaining</b>
Public Youth Development Center	100,000	1,593	19	0.02%
Institution for the Blind	100,000	19,141	456	0.46%
Colleges of Education	100,000	7,057	4,612	4.61%
School for the Deaf	100,000	6,263	4,691	4.69%
Miners Hospital	100,000	7,140	4,998	5.00%
University of Utah College of Mines and Earth Sciences	100,000	6,722	6,901	6.90%
Reservoirs	500,000	52,249	35,633	7.13%
University of Utah	156,080	15,295	16,016	10.26%
Utah State University	200,000	26,896	27,228	13.61%
Public Schools (Uniform School Fund)	6,035,100	3,580,365	3,230,000*	53.52%

*Source: Acreage data reported by SITLA and the Land Trusts Protection and Advocacy Office.  
 Note: According to SITLA records, almost 50 percent of all trust lands were sold in the first 100 years of statehood. With no remaining acres, the Utah State Hospital and Public Buildings, who initially had 100,000 and 64,000 acres respectively, can no longer benefit from SITLA’s land management activities. However, revenues are invested by SITFO in individual funds which continue to provide distributions to beneficiaries.*

*\*This was provided as a rounded number.*

Reduced lands have limited capacity to provide financial benefits from SITLA’s revenue generating activities. Therefore, prudent management and stronger spending guidelines would help ensure the intended beneficiaries get the best possible benefit from state trust lands. The following sections illustrate instances of fund misapplication and the risks that limited guidelines can produce.

### **Trust Funds Have Been Misapplied in the Past, Revealing Potential Need for More Guidance**

The Land Trusts Protection and Advocacy Office committee signaled to us past concerns about beneficiary distributions. We reviewed their concerns in a limited capacity and believe these instances reveal the potential risks that exist due to lack of guidance, oversight, and accountability for beneficiary spending. We were told of a third concern with one beneficiary, but could not assess it due to insufficient historical records kept by the beneficiary. This example, along with the following two, illustrate the need for improved guidance and oversight.



**The Miners Hospital:** In 2003, federal courts upheld an allegation<sup>3</sup> that the miners trust funds (which receives an annual distribution from trust land revenues) were not being spent for the exclusive use of miners. The funds were not used solely for the miners; instead, they were directed to the University of Utah's Rehabilitation Center to support all patients. The lawsuit concluded that the funds should be redirected to the University of Utah Health Science Center's (UUHSC) Department of Rehabilitation and used exclusively for the care of miners.<sup>4</sup>

**Colleges of Education:** The funds for colleges of education within Utah's System of Higher Education used to be directed fully to the University of Utah. As there are various colleges that produce teachers, the Legislature adjusted this distribution in 2005 to ensure that each of them would receive some of the trust lands distribution.

### **There Is Varied Use of Funds Among Beneficiaries**

Arguably, public schools have strong accountability requirements because they receive 95 percent of fund distributions. The result is that controls at the local education agency level (LEA) are much stronger than for other beneficiaries that receive a comparable distribution. For comparison of distribution amounts, Wayne School District received a distribution of about \$278,600 in Fiscal Year 2023 while Utah State University received a distribution of about \$254,500 that same year. Because of less stringent controls and transparency, little is known about the use of non-public education spending. The risk of trust asset misapplication in light of diminishing land revenue generating opportunities could lead to reduced overall impact of trust funds on the beneficiaries.

There is no data maintained by SITLA, SITFO or LTPAO detailing how funds are used by beneficiaries. The audit request letter asked that we track the flow of funds through the trust system, so we conducted in-person visits with six beneficiaries and conducted a survey with an additional six beneficiaries to understand how funds are spent. We did not receive information on distribution use from two beneficiaries: SUU College of Education and the Utah State Hospital. Because there is no trust entity that maintains data on how non-public

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<sup>3</sup> This lawsuit was brought by the United Mine Workers of America against the State of Utah and SITLA.

<sup>4</sup> Money was directed to UUHSC because disabled miners would be able to receive more services within UUHSC than they would be able to in a standalone miner's hospital. UUHSC was also ordered to rename their "Department of Rehabilitation" to "Department of Rehabilitation and Miners Hospital." Today, the staff at the Miners Hospital use this settlement as a guide for completing their work.



education beneficiaries use their distributions, all the information on beneficiary spending was self-reported. A summary of what beneficiaries have spent their funds on is shown in Figure 1.2.

**Figure 1.2 Self-Reported Spending Shows Varied and Potentially Misapplied Use.** Some beneficiaries did not use their funds while others put them towards uses that may not directly impact beneficiaries.

Beneficiary	Use of Funds
UVU Education College	Uses funds for their creative learning studio which contains educational technology.
Utah State University	Distributes the funds to housing department.
Juvenile Justice and Youth Services	Uses the distribution money for Mill Creek Youth Center for youth supervision, education, and vocation training and care.
U of U Education College	Funds have been accumulating and not spent.
USU Education College	Funds are used in support of the college’s mission to provide teaching, service, and research.
WSU Education College	Uses funds for PPAT vouchers, scholarships, equipment, software, and supplies.
University of Utah	Uses funds in support of the university.
Miners Hospital	Funds are used to treat Utah mining residents with mining related injuries.
Utah Tech Education College	Funds are used for personnel, National Accreditation costs, meals, professional development opportunities for faculty, and travel costs.
Water Resources	The Water Resources board authorizes the use of funds to develop water conservation projects, provide loans and grants for dam safety, and upgrade dams.
School for the Deaf and Blind	Funds are used to provide specialized programming and experiential learning students might not otherwise experience because of circumstances related to their sensory disabilities.
U of U College of Mines	Funds support student activities, faculty activities, outreach activities, and some personnel expenditures including saving some funds for faculty start up packages.

Source: Auditor generated.



**Some beneficiaries save large portions of their annual distributions.**

While this information was self-reported, it is clear that the uses of these funds are varied, and we question whether the end beneficiaries are receiving their Constitutional benefit. Not shown in this figure is beneficiaries saving significant portions of the distribution year to year, institutions comingling

funding which makes it impossible to determine what funds were used for, and spending decisions that were frequently made by one or two individuals rather than a decision-making body.



A potential cause of the varied use of funds is a lack of guidance. In our survey, we asked beneficiaries if they had received guidance on how they should use their funds or if they had created internal guidance. Only two entities had created internal guidance and of those who had received guidance, there was no common or singular source of guidance. With little statutory guidance and no internal procedures there is risk of fund misuse by beneficiaries.



**Most beneficiaries have not received or created guidance on how to use distributions.**

## **1.2 Statutory Guidance Can Provide an Oversight Mechanism for Non-Public Education Beneficiaries, Ensuring Funds Are Being Spent on the End Beneficiary**

Statutory guidance for non-public education beneficiaries, which receive 5 percent of the beneficiary distributions (about \$5 million in 2023), will help ensure that beneficiaries receive the benefit of distributions. Although this is a small portion of the total distribution, the Legislature could consider providing guidelines for these beneficiaries like the requirements found in School LAND Trust statute, (*Utah Code* 53G-7). The School LAND Trust is an entity within the Utah State Board of Education and provides oversight over how public schools spend their beneficiary funds.

*Utah Code* 53G-7 provides strict guidelines for how public schools can utilize their funds. The School LAND Trust has also established further guidelines in *Administrative Rules*. Contrastingly, besides the Miners Hospital, other non-public education beneficiaries do not have statutory requirements to develop plans for the use of funds, have decision-making bodies, or develop end-of-year reports. Figure 1.3 depicts the requirements for public education beneficiaries compared to the condition of non-public education beneficiary requirements and spending.



**Figure 1.3 Public School Spending Requirements Compared to Non-Public Education Beneficiary Spending Requirements.** Compared to public schools, other beneficiaries are not held to similar standards of accountability on how they use their funds.

Comparison	Public Schools	Other Beneficiaries
Statutory Guidance	The School LAND Trust program is dictated in <i>Utah Code</i> 53G-7-1206.	Of the 12 beneficiaries , the School for Deaf and Blind, the Reservoir Trust, Miners Hospital, and Common Schools have statute guiding use of distributions.
Distribution Amounts	Distribution to individual schools is posted on the School LAND Trust Website.	Beneficiary distributions are shared with stakeholders in the Land Trusts Protection and Advocacy Office’s annual report.
Plans for Funds	Each school must create and post their plan for the distribution on the School LAND Trust Website.	The Miners Hospital is the only beneficiary outside of public education beneficiaries that has a statutorily dictated requirement to report on a plan for funds.
Reports on Use of Funds	Schools shall prepare a report on the success of the program and post the report on the School LAND Trust Website.	The Miners Hospital is the only beneficiary outside of public education beneficiaries that has a statutorily dictated reporting requirement.
Requirements for Fund Use	The distribution must be used to meet the schools most critical academic needs.	Other beneficiaries do not have statutory guidance for funds use.
Decision Making Bodies	Public Schools must create a decision-making body before they receive their distribution.	There are no requirements for decision making bodies and most beneficiaries do not have decision-making bodies except for the Reservoir Trust and the Miners Hospital.
Holdover of Funds	Schools cannot holdover more than 10% of their funds to the next year without justification.	Other beneficiaries do not have statutory requirements for holdover of funds.

*Source: Auditor generated.*

While we did not analyze each process, policy, and the impact of existing School LAND Trust structures extensively, they seem to adequately guide beneficiary spending in public education. We recommend the Legislature consider creating similar guidelines to provide guidance for how beneficiaries outside of public education can spend their funds. The following recommendations mirror the guidance for spending for public schools outlined in the School LAND Trust program statutes. As will be discussed in Chapter 2 of this report, review of





beneficiary spending could be handled by LTPAO, the School LAND Trust, or the State Auditor on an annual basis.

**RECOMMENDATION 1.1**

The Legislature should consider creating guidelines for non-public education beneficiaries on how they can use their distributions.

**RECOMMENDATION 1.2**

The Legislature should consider requiring non-public education beneficiaries to develop spending plans and end of year summaries on their plans and post these plans publicly.





### BACKGROUND

The Land Trusts Protection and Advocacy Office (LTPAO) was established in 2018 to advocate on behalf of current and future trust beneficiaries. Additionally, LTPAO was created to review decision making at the School and Institutional Trust Lands Administration (SITLA) and the School and Institutional Trust Funds Office (SITFO), and educate the public. Not all of these roles have been fulfilled.

#### FINDING 2.1

##### The Legislature Could Clarify The Land Trusts Protection and Advocacy Office's Role

#### RECOMMENDATION 2.1

The Legislature should consider clarifying the Land Trusts Protection and Advocacy Office's review and protection responsibilities and role in the trust system.

#### RECOMMENDATION 2.2

The Legislature should consider including non-public education beneficiary distribution review in the Land Trusts Protection and Advocacy Office's statute. If the Legislature feels that the Land Trusts Protection and Advocacy Office review is not needed and that beneficiary oversight could be accomplished by the School LAND Trust, the State Auditor's Office, or an internal audit function, the Legislature could consider eliminating the Land Trusts Protection and Advocacy Office.

#### FINDING 2.2

##### Because of Poor Governance and Not Following Best Practices, LTPAO Lacks Direction

#### RECOMMENDATION 2.3

The Land Trusts Protection and Advocacy Office should develop stronger governance by implementing all of the strategic plan elements and demonstrating their effectiveness through improved outcomes.

#### RECOMMENDATION 2.4

The Land Trusts Protection and Advocacy Office should develop, implement, and demonstrate effectiveness of administrative rules and policies that help to implement its statutory mandate.

#### RECOMMENDATION 2.5

The School and Institutional Trust Funds Office should improve its strategic plan by ensuring every objective and goal has at least one well-developed strategy and quantifiable performance measure associated with it.



### CONCLUSION

Duplicative responsibilities amongst trust entities LTPAO's work nonessential, and a lack of formalized internal direction has continued to diminish LTPAO's impact. The Legislature could choose to clarify LTPAO's responsibilities and include non-public education beneficiary review to help LTPAO provide increased value to the trust system, or the Legislature could determine that a strong review role for LTPAO is unnecessary and could choose to eliminate the office.





## Chapter 2

# The Legislature Could Refocus the Land Trusts Protection and Advocacy Office's Efforts or Reconsider the Need for the Office

The Land Trusts Protection and Advocacy Office (LTPAO) was established in 2018 to advocate on behalf of current and future trust beneficiaries. Additionally, LTPAO was created to review decision making at the School and Institutional Trust Lands Administration (SITLA) and the School and Institutional Trust Funds Office (SITFO), educate the public, and protect beneficiaries against any goal that is inconsistent with the purpose of the trust. While LTPAO has worked to fulfill its various statutory roles, duplicative responsibilities amongst trust entities and lack of internal direction have continued to obscure LTPAO's impact. *Utah Code* could be clarified to provide clearer authority, direction, and desired outcomes for LTPAO, including giving it statutory guidance to oversee how non-public education beneficiaries use their trust fund distributions. However, the Legislature could also consider whether that clarification is necessary, potentially assigning non-public education beneficiary oversight to a different entity, and disbanding LTPAO. We also found that SITFO could improve its strategic plan to include strategies and performance measures.

### 2.1 The Legislature Could Clarify The Land Trusts Protection and Advocacy Office's Role

As it stands, LTPAO's impact to the trust system is difficult to document and measure. In initial Legislative discussions surrounding the creation of LTPAO, the office was characterized as an entity that should be looking at the trust funds and operations with a microscope, but that language was not included in statute and LTPAO is not fulfilling that intent. LTPAO conducts reviews of the trust system by attending meetings and providing input but has not completed any formal reviews of the trust. Much of the value that LTPAO reports providing occurs in discussions, but in these instances, it is difficult to determine what influence LTPAO's input had on decisions being made. We also found many duplicative efforts within the trust system. The duplicative efforts and lack of clarity for the office and its role over time suggest an opportunity for the Legislature. They could consider either clarifying and adjusting statute to enhance the value provided by LTPAO to the trust system or consider eliminating the office.



## Unclear Nature of LTPAO’s Statutory Responsibilities Creates Duplicative Work in the Trust System

We documented areas of duplicated effort within the trust system, such as:

- LTPAO represents the best interests of beneficiaries as do SITFO and SITLA boards and staff.
- LTPAO creates a joint annual report for the entire trust system. We identify the need for SITLA to create its own annual report in *A Performance Audit of The School and Institutional Trust Lands Administration* [Report #2024-13]. Producing SITLA’s annual report creates the impression that LTPAO is supporting SITLA, rather than reviewing SITLA.
- SITLA, SITFO, and LTPAO are all speaking directly with beneficiaries instead of funneling all communication with beneficiaries through one entity.

The unclear nature of statute may be one cause of duplicative work. Many of the mandates found in SITLA and SITFO statute are also included in the LTPAO statute with the qualifier of “advocate for,” as shown in Figure 2.1.

**Figure 2.1 Statutory Language Is Similar across Trust Entities.** In many cases it is not clear what the Legislature intended in “advocate for” when giving similar responsibilities to LTPAO that are identical to those of SITLA and SITFO.

Statute	LTPAO	SITLA	SITFO
Undivided Loyalty to Beneficiaries	✓	✓	✓
Preservation of Assets for Current and Future Beneficiaries	Advocate For ✓	✓	✓
Manage Lands in the Most Prudent and Profitable Manner	Advocate For ✓	✓	
Prudent and Profitable Investment of Funds	Advocate For ✓		✓
Accurate Record Keeping	Advocate For ✓	✓	✓
Ensure that Administration Is Run According to Law	✓	Board Responsibility ✓	Board Responsibility ✓

*Source: Auditor generated.*

Figure 2.1 therefore supports the notion that many of LTPAO’s responsibilities are similar to SITLA’s and SITFO’s. It should be noted that LTPAO has other statutory responsibilities beyond those listed in Figure 2.1. These include but are not limited to: reviewing activities involved in generating trust revenue and

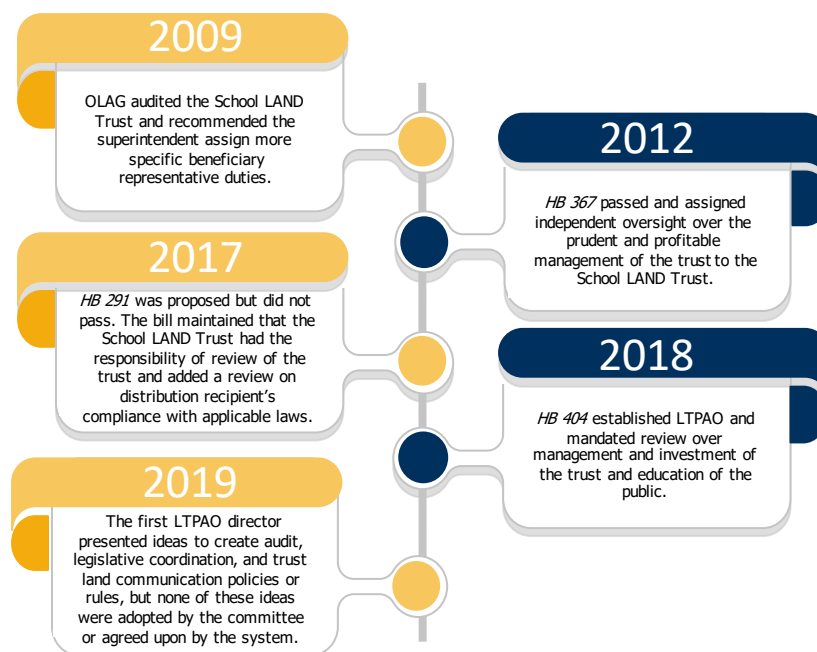


protecting trust assets, maintaining a direct relationship with each individual who is key to fulfilling the state’s trustee obligations, facilitating open communication among key individuals in the trust lands system, educating the public regarding the trust lands system, and providing staff support to the SITLA and SITFO board nominating committees. LTPAO has made efforts to fulfill these roles by staying informed on the trust system, maintaining contact with internal stakeholders, and collaborating with other trust entities to impact legislation and communicate with legislators. But the impact of these mandates is difficult to determine due in part to a lack of internal direction at LTPAO.

### LTPAO Has Struggled to Define Clear Roles of Responsibility

Compounding the lack of clarity in *Utah Code*, LTPAO has not provided direction through internal policy or *Administrative Rules*. As a result, LTPAO has conflated its responsibilities with those of other trust offices, diluting its impact and the value it provides to the trust system. There have been attempts—both by the Legislature and within the trust offices—to define the protection and advocacy responsibilities now held by LTPAO. The timeline in Figure 2.2 depicts the efforts to provide needed clarity over time.

**Figure 2.2 Efforts to Expound LTPAO Responsibilities Have Not Been Fully Realized.** This timeline depicts attempts by OLAG, the Legislature, and the first LTPAO director to better define advocacy and protection responsibilities first held by the School LAND Trust from 2009 to 2018 and now held by LTPAO.



Source: Auditor generated.





Figure 2.2 illustrates that LTPAO's role has never been fully defined despite greater clarity being sought over the years. The legislation passed in 2012 defined the School LAND Trust's oversight over the trust, and Legislation in 2017 attempted to define the School LAND Trust's role further but it did not pass. In discussion surrounding H.B. 404 (2018 General Session), the bill that created LTPAO, the protection and advocacy role was transferred to LTPAO. The office was characterized as an entity that should be looking at the trust funds and operations with a microscope. However, statute does not reflect this strong authority because it uses the term "review," and trust entities are unclear on what that review should look like.



**Advocacy and protection roles for the trust system have never been clearly defined despite greater clarity being sought.**

This has contributed to trust system entities voicing unsurety about LTPAO's role in the system. It is difficult for SITLA and SITFO to determine how they should consider LTPAO's input when they already have their own boards to report to. Once LTPAO was established, there was an attempt by the first director to create policies that would better define many of its roles. That director shared that their intent was to establish a definition for what is meant by "review," as cited in LTPAO's statute. Though such a policy would have been instrumental at aligning LTPAO's work with much of its statutory mandate, this work was not pursued, and the policy never passed. In short, there has been a lack of direction and definition over time for what review role LTPAO should play in the trust system. To help clarify the trust system's understanding about LTPAO's review and protection role, the Legislature could clarify that role in statute; however, as the next section will discuss, the Legislature could also determine if that protection and review role is unnecessary and could consider disbanding LTPAO. If the Legislature chooses to disband LTPAO, Recommendation 2.1 would be unnecessary.

#### **RECOMMENDATION 2.1**

The Legislature should consider clarifying the Land Trusts Protection and Advocacy Office's review and protection responsibilities and role in the trust system.

### **The Legislature Can Consider Refocusing LTPAO's Oversight Responsibilities or Disbanding the Office**

LTPAO exercises its review authority by attending meetings on SITLA transactions and providing input. Due to much of this input being provided in



meetings that were not recorded, it is difficult to determine exactly what role LTPAO's input played in the final decisions. In some instances, LTPAO provided strong input on land trust decisions and believes that its input significantly influenced the SITLA board's final decisions. LTPAO is one of many voices that are involved in SITLA's decision-making process. Because LTPAO has not well documented its involvement and there is little information other than testimonial evidence of its involvement, it is difficult to determine how much LTPAO's opinion has influenced decisions compared to others involved in the process.

LTPAO is not equally involved in SITFO decisions, but provided the audit team with information on one instance where it believes it impacted a SITFO decision. LTPAO believes that its input plays a significant role in trust decision-making, but without documentation of the decision-making process, it is difficult to determine what impact LTPAO's input had on trust lands decisions. The Legislature can choose to provide more clarity on review expectations for LTPAO and this could help LTPAO more clearly demonstrate its impact.

LTPAO has not completed a formal review of the trust system or produced a report on the trust's compliance with law. LTPAO's impact is obscure, and the following points lead us to believe that the trust system has several levels of control and oversight without LTPAO review:

- SITLA and SITFO boards are also responsible for oversight of the management of their respective offices.
- LTPAO believes its review and protection role is unique and essential because its mandate is to look after the best interest of the beneficiaries, but as seen in Figure 2.1, *Utah Code* says that SITLA and SITFO boards and staff must act with "undivided loyalty to beneficiaries." Meaning the State, SITLA, SITFO and LTPAO all hold the responsibility to represent beneficiary interests.
- *Utah Code* does not afford beneficiaries any powers outside of offering input on land management and LTPAO reported that the individual beneficiaries are not involved in how trust lands are managed, although LTPAO provides input on behalf of beneficiaries. Therefore, the 12 beneficiaries do not dictate the terms of their respective trusts.
- Trust system staff have determined that LTPAO does not have authority outside of offering input on transactions, meaning SITLA and SITFO can proceed with a decision despite LTPAO's input.



**The effect of LTPAO's review is difficult to determine. Therefore, it is unclear what impact its advocacy has had.**

These reasons suggest that the effect of LTPAO's review responsibility is difficult to determine. Therefore, it is unclear the need for LTPAO to provide review through the lens of undivided loyalty to beneficiaries if 1) each trustee is mandated to serve the best interest of the beneficiaries and 2) the beneficiaries do not dictate the terms of their trust.

LTPAO could add some value if its responsibilities were to include a review of how non-public education beneficiaries use their distributions. But when compared to public schools, the remaining beneficiaries that LTPAO would potentially oversee receive a significantly smaller portion of the trust's total distribution. In 2023, non-public school beneficiaries received around \$5 million while public schools received around \$102 million. Currently, the School LAND Trust provides oversight over all public and charter schools. Given that the School LAND Trust already oversees public school trust distribution spending, the Legislature could consider assigning oversight of the 11 non-public school beneficiaries to them. This would allow for the elimination of LTPAO and doing so could return the annual cost of LTPAO (about \$450,000 in Fiscal Year 2023) to the permanent funds, or the funds could be used to address oversight elsewhere. If the Legislature believes that the School LAND Trust should not oversee non-public school beneficiary spending, they can explore other oversight options. These could include having the State Auditor audit the spending or assigning it to an independent internal audit function within SITLA or SITFO.

#### **RECOMMENDATION 2.2**

The Legislature should consider including non-public education beneficiary distribution review in the Land Trusts Protection and Advocacy Office's statute. If the Legislature feels that the Land Trusts Protection and Advocacy Office review is not needed and that beneficiary oversight could be accomplished by the School LAND Trust, the State Auditor's Office, or an internal audit function, the Legislature could consider eliminating the Land Trusts Protection and Advocacy Office.



## 2.2 Because of Poor Governance and Not Following Best Practices, LTPAO Lacks Direction

If the Legislature decides that LTPAO could be strengthened to add value to the Trust System, LTPAO needs to adjust its internal practices. We believe that poor governance and a lack of a strategic plan, performance metrics, *Administrative Rules*, and policies directly related to LTPAO's mandate have obscured its impact and made it unclear whether it is fulfilling all aspects of its statutory mandate. In comparison, SITFO's policies and strategic plan are much more developed, but it could also benefit from implementing strategies and performance measures.

### LTPAO Has Not Developed Internal Guidance for Implementing Mandate, Thereby Obscuring the Impact of Its Efforts

In the five years since the office was created, LTPAO has had three executive directors. Due in part to a lack of continuity, the office has not developed



**LTPAO told us that their committee recently created a subcommittee to address many of the internal guidance shortcomings.**

sufficient internal guidance and measures to show how it fulfills its statutory mandates. LTPAO told us that its committee recently created a subcommittee to address many of the internal mandate shortcomings that will be discussed in the following sections. *Utah Code* places many mandates upon LTPAO and its director. LTPAO has had success in staying informed on the administration, maintaining contact with

internal stakeholders, and collaborating with other trust entities to impact legislation and communicate with legislators. But success in other mandates is difficult to determine due in part to a lack of internal direction. If the Legislature chooses to keep LTPAO within the trust system and clarify its mandate, we believe LTPAO can provide better vision, direction, and continuity in office practices, enabling it to address all its statutory mandates more effectively.

### Compared to SITFO, LTPAO's Strategic Plan and Internal Direction Are Lacking

The LTPAO committee and director have failed to create needed internal guidance including a strategic plan, performance measures, and *Administrative Rules* and policies. All of these are tools that provide direction for an organization, as discussed in the following section.



**LTPAO Has Not Developed an Effective Governance Structure.** Effective governance broadly establishes the structures and processes necessary to direct, inform, manage, and monitor an organization. It fosters organizational success and augments the value the organization provides. The *Best Practice Handbook* outlines five layers of governance that help organizations succeed. *Utah Code* created a committee and director as the first layer of governance for LTPAO. However, the organization has not yet taken steps to establish the additional layers required for effective governance as shown in the following figure.










Source: Auditor generated from the [LAG Best Practice Handbook](#).

Governing bodies should monitor progress toward objectives set by management and determine how well these objectives contribute to the overall mission and vision. In essence, the governing body takes on the responsibility of determining what the organization’s overall mission and vision are and why. Executive management assumes primary responsibility for how the organization advances the mission and vision, while being held accountable by the governing body. Organizations that properly apply and execute principles of governance are more likely to achieve their objectives. We recommend that LTPAO establishes an effective governance structure to foster organizational success.

**LTPAO Has Not Developed a Strategic Plan.** LTPAO has no documented long-term planning, goals, or objectives. Without long term planning, LTPAO’s efforts have been disjointed—the office focusing on a few mandates while neglecting others. Using the principles of effective governance in developing and regularly referring to a strategic plan will promote effective work. Additionally, strategic planning will assist LTPAO in facilitating performance measurement. The Governor’s Office of Planning and Budget lists eight key elements of a strategic plan, which are shown in the following table.



What is the organization?	Does LTPAO have it?	Does SITFO have it?
 <b>VISION</b> What we aspire to: motivates and inspires change from "here" to "there."	NO	YES
 <b>MISSION</b> What we do and how we do it: identifies our reason for being and how we serve.	INCOMPLETE*	YES
 <b>CORE VALUES</b> Enduring, non-negotiable principles that we are truly committed: provides a purpose-driven foundation to guide our attitudes and behaviors.	NO	YES
What does the organization want to accomplish?		
 <b>GOALS</b> Long-term outcomes that lead to the fulfillment of the vision: aligns efforts towards a worthy end.	NO	YES
How does the organization achieve its goals?		
 <b>OBJECTIVES</b> A mid-range target that connects high-level goals and tactical strategies: highlights focus areas to assist in prioritizing resources to achieve the goal.	NO	YES
 <b>STRATEGIES</b> Short-term tactics to implement our goals: provides a plan of action.	NO	NO
 <b>PERFORMANCE MEASURES</b> Quantifiable representation of a result or goal: coordinates strategy resources, responsibilities, and timeline.	NO	NO
 <b>ANNUAL WORK PLAN</b> Map for strategic plan: outlines strategies to be accomplished, budget and resources needed, timeline, and champions for the strategy.	NO	NO

Source: Auditor generated from the [LAG Best Practice Handbook](#) and The Governor's Office of Planning and Budget.  
 \*LTPAO has a mission statement, but the statement does not meet standards of best practices.

Without a strategic plan, LTPAO has been unable to utilize performance measures. The following attempts show weaknesses in LTPAO's use of performance measures for office improvement and accountability:

- LTPAO started reporting six performance measures in 2024. These largely do not track its successes but rather they track the successes of other entities in the trust system. Only one measure directly relates to LTPAO's activities.<sup>5</sup>

<sup>5</sup> LTPAO is reporting its measures through the Compendium of Budget Information (COBI) maintained by the Office of the Legislative Fiscal Analyst (LFA). LFA publishes what is reported to them by agencies, but these documents have not included performance information for LTPAO until Fiscal Year 2025, despite the office's existence since 2018. Five of LTPAO's six performance measures track activities that more closely reflect SITLA's and SITFO's mandate.





- LTPAO submitted the following description to the Governor’s Office of Planning and Budget (GOPB) in Fiscal Year 2022 in lieu of a performance metric:

Question: What are the current performance metrics for the system or program?

“The successful performance of the Land Trusts Protection & Advocacy Office is measured by the Office’s ability to fulfill its statutory mandate as established by Legislature. Including, representing the beneficiary interests of the school and institutional trust, providing active monitoring of trust system activities and helping the key entities and the public understand and support these important endowments.”

This description does not constitute a performance measure. A good performance measure is quantifiable and demonstrates how well an agency achieves its desired outcomes or if its strategies are producing desired outcomes. The description provided by LTPAO lists several broad outcomes. However, it does not explain how these outcomes, such as representing beneficiary interests or providing monitoring of the trust system, can be measured and reported on. Developing an effective governance structure alongside a strategic plan and performance measures will help LTPAO complete effective work in line with its vision and show what that success looks like for the office.

### RECOMMENDATION 2.3

The Land Trusts Protection and Advocacy Office should develop stronger governance by implementing all of the strategic plan elements and demonstrating its effectiveness through improved outcomes.

**LTPAO Does Not Have Many Policies, Procedures, and Rules.** Finally, we reviewed the recording of a LTPAO committee meeting and while there was an attempt by the first LTPAO director to create policy specific to LTPAO’s review role, committee members did not take action to adopt policy on this issue. The LTPAO committee and director have not promulgated any *Administrative Rules* and have very few policies to direct their work. This is not in line with best practices, as the *Best Practice Handbook* states:





### Best Practice Handbook:

*“Well-defined, clear, and written policies that are regularly reviewed serve as the backbone of a well-run organization. When policies and procedures are too vague, or are missing, management and governing bodies cannot effectively direct the organization.”*

Thus, it is apparent that LTPAO’s effectiveness has been hindered by a lack of internal guidance. Interestingly, most of LTPAO’s existing policies do not directly affect the office’s ability to implement its mission. Currently, LTPAO only has a Communication Policy, Educational Assistance Policy, Electronic Meeting Policy, and an Incentive Policy.

### RECOMMENDATION 2.4

The Land Trusts Protection and Advocacy Office should develop, implement, and demonstrate effectiveness of administrative rules and policies that help to implement its statutory mandate.

### SITFO’s Strategic Plan and Policies Are More Developed than LTPAO’s:

SITFO’s board “has broad policymaking authority over the office and the trust fund.” Additionally, *Utah Code* requires the board to establish specific policies including:

- An investment management code of conduct and associated compliance policy.
- A policy for strategic allocation of trust fund assets.
- A soft dollar policy.
- A policy articulating the board’s investment philosophy for trust fund assets and the trust fund.

We have reviewed the policies established by the SITFO board, and it appears that the policies are in line with the requirements in statute. However, its strategic plan is missing certain elements: strategies, performance measures, and an annual work plan. Those elements are an important part of measuring whether the efforts to carry out the strategic plan are effective or not. Strategies



show what parts of long-term goals and objectives can be implemented in the short-term. Performance measures then provide a quantifiable way to show whether those goals and objectives are working. If they are not producing the desired results then the goals, objectives, and strategies can be adjusted. Without strategies and performance measures, SITFO cannot evaluate the effectiveness of its strategic plan and adjust it as needed.

**RECOMMENDATION 2.5**

The School and Institutional Trust Funds Office should improve its strategic plan by ensuring that every objective and goal has at least one well-developed strategy and one quantifiable performance measure associated with it.



# Complete List of Audit Recommendations





## Complete List of Audit Recommendations

This report made the following seven recommendations. The numbering convention assigned to each recommendation consists of its chapter followed by a period and recommendation number within that chapter.

### **Recommendation 1.1**

We recommend that the Legislature consider creating guidelines for institutional beneficiaries on how they can use their distributions.

### **Recommendation 1.2**

We recommend that the Legislature consider requiring institutional beneficiaries to develop spending plans and year end summaries and post these plans publicly.

### **Recommendation 2.1**

We recommend that the Legislature consider clarifying the Land Trusts Protection and Advocacy Office's review and protection responsibilities and role in the trust system.

### **Recommendation 2.2**

We recommend that the Legislature consider including non-public education beneficiary distribution review in the Land Trusts Protection and Advocacy Office's statute. If the Legislature feels that the Land Trusts Protection and Advocacy Office review is not needed and that beneficiary oversight could be accomplished by the School LAND Trust, the State Auditor's Office, or an internal audit function, the Legislature could consider eliminating the Land Trusts Protection and Advocacy Office.

### **Recommendation 2.3**

We recommend that the Land Trusts Protection and Advocacy Office develop stronger governance by implementing all of the strategic plan elements and demonstrating their effectiveness through improved outcomes.

### **Recommendation 2.4**

We recommend that the Land Trusts Protection and Advocacy Office develop, implement, and demonstrate effectiveness of administrative rules and policies that help to implement its statutory mandate.

### **Recommendation 2.5**

We recommend that the School and Institutional Trust Funds Office improve its strategic plan by ensuring that every objective and goal has at least one well-developed strategy and quantifiable performance measure associated with it.





# Agency Response





## **Land Trusts Protection and Advocacy Office**





Utah Land Trusts  
Protection &  
Advocacy Office

August 12<sup>th</sup>, 2024

Kade R. Minchey CIA, CFE, Auditor General  
Office of the Legislative Auditor General Utah State Capitol Complex  
Rebecca Lockhart House Building, SUITE W315  
PO Box 145315  
Salt Lake City, UT 84114-5315

Dear Mr. Minchey,

Thank you for the opportunity to provide this written response to the Legislative Auditor General's Performance Audit of Trust System Entities. The Land Trusts Protection and Advocacy Office (LTPAO) is committed to its role of representing the interests of Utah's 12 Trust Beneficiaries and appreciates recommendations from the Performance Audit that will clarify our statutory role and improve operations and effectiveness.

We support the recommendations of increasing accountability for beneficiary use of trust distributions, statutorily clarifying the LTPAO's role, and formalizing a meaningful strategic management plan. Please find a brief response to each of the Performance Audit recommendations below.

Sincerely,



Richard K. Ellis  
Chair, Land Trusts Protection & Advocacy Office Committee

## CHAPTER I

**Recommendations 1.1 and 1.2: The Legislature should consider creating guidelines for non-public education beneficiaries on how they can use their distributions, as well as requiring the development of spending plans and year-end summaries and posting plans publicly.**

Office Response: LTPAO supports codifying guidelines on how beneficiaries should be using their trust distributions as well as requiring the development of spending plans and year-end spending summaries. This would greatly enhance accountability and transparency. We welcome the opportunity to work with the Legislature to codify guidelines on distribution spending for non-public education beneficiaries and the requirement for beneficiaries to develop spending plans. Once codified, LTPAO would be pleased to accept the responsibility to ensure compliance.

## CHAPTER II

**Recommendation 2.1: We recommend that the Legislature consider clarifying the Land Trusts Protection and Advocacy Office's review and protection responsibilities and role in the trust system.**

Office Response: LTPAO agrees with this recommendation and welcomes the opportunity to work with the Legislature to further clarify its statutory responsibilities and role in the trust system. Clarifying and adjusting statute will enhance the value provided by LTPAO.

LTPAO was created to advocate, represent, and protect the interests of the Trust's 12 beneficiaries. The beneficiaries do not have the resources or expertise to monitor the activities of SITLA and SITFO. The 128-year history of trust lands disposition demonstrates the need for this type of advocacy. By design, LTPAO's role creates a healthy tension between LTPAO, SITLA, and SITFO.

LTPAO currently has multiple unique statutory duties that lead to positive outcomes for all beneficiaries. They include:

- Carefully monitoring and keeping beneficiaries informed on issues that impact them (Utah Code 53D-2-203(a),(b),(c) & (i));
- Advocating for legislative change on behalf of the beneficiaries (Utah Code 53D-2-203(m));
- From time to time and as necessary "advocating against the state using a trust asset to pursue a state goal that is inconsistent with a purpose of the trust associated with that asset" (Utah Code 53D-2-203(c));
- Speaking directly for the beneficiaries in specified circumstances (Utah Code 53D-2-203(l));
- Facilitating the nomination process for appointments to SITLA's and SITFO's boards of trustees (Utah Code 53D-1-501 and 53C-1-203); and,
- Educating the public regarding the trust lands system (Utah Code 53D-2-203(n)).

In alignment with these duties, there have been multiple instances, even in LTPAO's short history, where LTPAO directly impacted management and legislative actions to benefit current and future beneficiaries. Due to their sensitivity, LTPAO is not listing them here but will provide examples upon request of individual legislators. Such involvement helped the State to uphold its fiduciary responsibilities over the trust lands.

**Recommendation 2.2:** We recommend that the Legislature consider including non-public education beneficiary distribution review in the Land Trust Protection and Advocacy Office's statute.

If the Legislature feels that the Land Trusts Protection and Advocacy Office review is not needed and that beneficiary oversight could be accomplished by the School LAND Trust, the State Auditor's Office, or an internal audit function, the Legislature could consider eliminating the Land Trusts Protection and Advocacy Office.

Office Response: We support incorporating authority into the LTPAO statute to provide beneficiary distribution review for non-public education beneficiaries. We welcome the opportunity to take on this responsibility and to work with the Legislature to establish statutory beneficiary distribution review guidelines.

We have serious reservations about placing this responsibility with the School LAND Trust as it creates a conflict of interest wherein one beneficiary is representing other beneficiaries. As illustrated in Figure 2.2 of the Audit, the reason HB 367 was ineffective and HB 291 did not pass is because, in practice, one beneficiary cannot appropriately represent the interests of other beneficiaries. In fact, the higher education beneficiaries were compelled to contract with an individual who provided representation, reporting, and oversight to represent them without bias until LTPAO was created. In addition, the School LAND Trust has limited staffing and capacity to absorb additional tasks. We also believe the options of having beneficiary oversight conducted by the State Auditor's Office or an internal audit function would substantially compromise all necessary dimensions of advocacy representation currently established in statute.

**Recommendation 2.3:** We recommend that the Land Trusts Protection and Advocacy Office develop stronger governance by implementing all of the strategic plan elements and demonstrating their effectiveness through improved outcomes.

Office Response: LTPAO recognizes and supports the need to complete a formalized strategic plan for the office to enhance its effectiveness.

What: The LTPAO will develop a strategic plan with metrics to evaluate the effectiveness of the office's efforts to fulfill its statutory responsibilities as an advocate for the Trust's 12 beneficiaries.

How: The Protection and Advocacy Committee recently formed a subcommittee to assist with the implementation of any audit findings. The subcommittee in conjunction with the LTPAO staff will:

- Review the office's mission statement.
- Review the office's statutory responsibilities.;
- Develop priorities aligned with these responsibilities.
- Identify strategic metrics and projects to focus the office's efforts.

These metrics and projects will provide documentation for measuring and demonstrating LTPAO's performance and effectiveness. This work will begin after the audit becomes public.

When: The Protection and Advocacy Committee will adopt a formal strategic plan in its January 2025 committee meeting.

Contact: Kim Christy, LTPAO Director, kschristy@utah.gov

**Recommendation 2.4:** We recommend the Land Trust Protection and Advocacy Office develop, implement, and demonstrate effectiveness of administrative rules and policies that help to implement its statutory mandate.

Office Response: LTPAO and its governing committee agree with this recommendation and will develop appropriate administrative rules and policies in alignment with the statute and the strategic plan.

What: Staff will review the statute to identify areas which need clarification with administrative rules and policy.

How: The Protection and Advocacy Committee will appoint a subcommittee to work with staff.

- Staff will identify areas in the statute that need clarification with administrative rules.
- Staff will identify areas where policy will strengthen operations.
- Meet with the subcommittee to review the proposed administrative rules and policies.
- Present final administrative rule recommendations to the committee to go to the State Treasurer for adoption.
- Present final policies for approval by the Protection and Advocacy Committee.

When: We intend to initiate this effort immediately and have appropriate administrative rules and policies identified by the April 2025 Protection and Advocacy Committee meeting. Based on statutory clarifications, the committee will approve policies in its July 2025 meeting as well as recommend administrative rules for the State Treasurer to file. Final rules will be adopted by December 2025. The formal adoption of relevant rules and policies will be subject to clarifications of future advocacy responsibilities determined by the Legislature.

Contact: Kim Christy, LTPAO Director, [kschristy@utah.gov](mailto:kschristy@utah.gov).

## **School and Institutional Trust Funds Office**



UTAH SCHOOL & INSTITUTIONAL TRUST FUNDS OFFICE

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*To:*

Kade R. Minchey, Auditor General, CIA, CFE

Office of the Legislative Auditor General

W315 State Capitol Complex

Salt Lake City, UT 84114

*Date*

August 7, 2024

**Dear Mr. Minchey,**

The State of Utah, School & Institutional Trust Funds Office (SITFO) Board of Trustees and staff appreciate the diligence of the Legislative Auditor General and welcomes the recommendations resulting from the performance audit. This audit represents an opportunity for our office to reflect on our strategic practices, enhance transparency, and strengthen our commitment to our fiduciary duty. As stewards of Utah's educational and institutional trust funds, we recognize the importance of maintaining rigorous oversight and accountability to ensure the effective management of these vital funds. We appreciate the comprehensive analysis provided by the audit and are committed to addressing its recommendations proactively to further improve our governance and commitment to our beneficiaries. Our response will highlight the actions that SITFO has taken to address the audit report's recommendations.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Marlo Oaks'.

Marlo Oaks, State Treasurer and SITFO Board Chair

A handwritten signature in blue ink, appearing to read 'Peter Madsen'.

Peter Madsen, Director, and Chief Investment Officer



## Chapter # 2

**Recommendation 2.4:** The School and Institutional Trust Funds Office should improve its strategic plan by ensuring that every objective and goal has at least one well-developed strategy and one quantifiable performance measure associated with it.

Department Response: SITFO agrees with this recommendation and intends to enhance its strategic planning process.

Who: SITFO staff in collaboration with the SITFO Board of Trustees will be responsible for the implementation of this recommendation.

What: SITFO will improve its strategic plan to ensure that each objective and goal includes at least one well-developed strategy and one quantifiable performance measure.

How: To address this recommendation, the following steps will be taken:

- Review and Revision: Conduct a thorough review of existing objectives and goals within the office's strategic plan.
- Strategy Development: Develop specific strategies for each objective and goal to clearly outline how they will be achieved.
- Performance Measures: Define quantifiable performance measures that align with each objective and goal to track progress and success.

Documentation: Documentation to validate the implementation status will include:

- Revised strategic plan document with clearly outlined objectives, strategies, and performance measures.
- Meeting minutes or records of strategy development sessions to promote agency transparency.

Timetable: Milestones for implementation:

- Review and Assessment: Complete review of current strategic plan - by September 2024.
- Strategy Development: Develop strategies for each objective and goal - by October 2024.
- Performance Measures: Define quantifiable measures - by November 2024.

When: Anticipated deadline for full implementation of the recommendation: December 2024









THE MISSION OF THE LEGISLATIVE AUDITOR GENERAL IS TO

**AUDIT · LEAD · ACHIEVE**

WE HELP ORGANIZATIONS IMPROVE.

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