SAHBA
the community builder
Southern Arizona Home Builders Association

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February 1, 2024

Ms. Lynn Cordova
Arizona State Land Department
1110 W. Washington St. Suite 510
Phoenix, AZ, 85007

RE: Proposed ASLD Rule Changes

Dear Ms. Cordova:

Thank you for the opportunity to comment on the proposed changes to Arizona State Land Department (ASLD) rule changes. The Southern Arizona Home Builders Association (SAHBA) appreciates the outreach by ASLD, and we look forward to working with you. Based on feedback from our members, we offer the following questions and comments:

ARTICLE 1, R12-5-101. Items 9, 12, & 20:

9. Under new language, "'Linear Right-of way' means a Right-of-Way issued for State Trust Land for utilities (including without limitation water, electrical, and communication) which are linear and non-exclusive.
12. "Non-Linear Right-of-Way" means a Right-of-Way issued for State Trust Land for utilities (including without limitation water, electrical, and communication) such as reservoirs, dam sites, and power or irrigation plant sites which are non-linear or appurtenant to a Linear Right-of-Way, inherently exclusive, and not otherwise classified as commercial
20."Right-of-way" means a non-exclusive right of use and passage over, through, or beneath the surface of State land State Trust Land, for an express purpose or to travel to a specific location, and includes Linear Rights-of-Way and Non-Linear Rights-of way

- *Non-linear Right-of-Way are sometimes issued as commercial lease or special land use permits for towers, transmission, repeaters, etc. Will those leases come up for renewal and will they be converted to right of way once these rules are complete?*
- *The new rules potentially conflict in how they are defined: All Right-of-Way as "non-exclusive"- meaning other rights of way on the same land can be issued. However, the rules also define non-linear right as "inherently exclusive". Often non-linear right of ways holds transmission stations, which have fencing that protect it from outside disturbance. Could you please clarify on the defined Right-or Ways?*

R12-5-102 B: Under existing language, "The Commissioner shall extend a time period only if the person making a request shows good cause for the extension."

- *Could you please provide clarity on what "good cause" refers to?*

R12-5-104, Application Forms; Legal Status; Submission of Applications; Applications Confer No Rights, Filing Requirements

C: Submission of application, report, document, or other instrument Requirement to pay fees to file documents. A person shall submit an application, report, document, or other instrument electronically or otherwise to the Department along simultaneous with payment of any required fee.

D: Incomplete or deficient applications and filings. If any application, or any of an application's corresponding attachments, does not contain the information required by statute or this Chapter, the Department shall immediately provide written notice of the deficiency to the applicant. The Department shall then allow 20 days from the date on the written notice from the Department for the applicant to cure the deficiency.

- *Currently the application process allows you to apply through an online portal and it is not until the end of the submittal that you receive an application number and a request to pay the fees. Most companies need the application number to request a check to pay the fee and this takes time. Proposal of a formal request to the commissioner to allow the applicant 30 day vs. the 20 to allow for more time to cure possible deficiency. Getting revisions for surveys take time. It appears that these proposed changes will not improve the processing time for applications. Could you please advise?*

R12-5-104: F-2: Under new language, **"**If a prior lessee or permittee should not be awarded a renewed lease or permit, the Department may assess and collect from said lessee or permittee the reasonable value of the use of said land pending action upon the application to renew said lease or permit."

- *Could you please clarify how would the Department determine if it will assess and collect from a prior lessee and permittee?*

R12-5-104. G: Under new language, "Rights reserved to the Department. The Department may grant any rights in or license to use State Trust Land without the consent of a surface or subsurface lessee, permittee, or grantee of a Right-of-Way, except when otherwise restricted or prohibited by an instrument or contract."

- *Could you please provide clarity on how often the Department anticipates invoking this right? Could you offer some examples of when the Department would be doing this?*

R12-5-105 A Forms: Under new language, "All instruments and contracts issued by the Department shall be on forms prescribed by the Department."

- *How often are the forms changed? What is the process for making changes? Are they administratively changed or done with input from contracting parties?*

R12-5-105 B Terms: Under new language, "All instruments and contracts shall contain such provisions, covenants, conditions, and restrictions as may be prescribed by the Department."

- *Please describe the process for how the provisions, covenants, conditions and restrictions are determined and/or changed. Is there a public process that accompanies any changes?*

R12-5-105 C: Under new language: "the Department shall mail out two duplicate, unsigned original copies of the document to be signed by the applicant."

- *Could you provide clarity in what timeframe this is to be completed?*

R12-5-105 D: Under new language: "Failure to execute document. If the Department offers out a contract for execution and an applicant does not execute and return the contract, together with full payment as indicated by the included statement, within 60 days from the date of mailing by the Department, the application shall be deemed withdrawn; provided, however, that should the applicant object to an appraised rental value, they may appeal the appraisal as provided by law and the rules and regulations of the Department to the Board of Appeals of the State Land Department without prejudice to his rights to the offered contract."

- *Is this consistent with current practice? Does "execute and return" mean postmarked or receipt?*

R12-5-106 A,4: Under new language, "The person has paid rent for the upcoming year if the application has been filed less than 30 days prior to the rent due date; and 2.5. In the case of an assignment, The Commissioner the Department has approved the assignment in writing."

- *Could you please clarify the Department's obligation as it pertains to time to accomplish?*

R12-5-106 A.5: Under new language, "In the case of an assignment, The Commissioner the Department has approved the assignment in writing."

- *Would electronic communication such as email suffice as in writing?*

R12-5-106 C: Under new language, "No assignment shall be made without the consent of all parties of record in the Department in writing who may have a lien or encumbrance upon the applicable interest in the land. The assignee shall assume all rights and obligations of the assignor."

- *Could you please clarify who is considered, "all parties"?*

R12-5-107: Under new language in Section C: "All rent due under an instrument or contract must be paid annually in advance, except as may be provided in a contract or otherwise authorized and directed in writing by the Department. All rental amounts due under a contract and bills issued that fall under subsection (B) above shall be paid prior to the issuance of a new or renewal contract."

- *Is this a new requirement or was this pulled from another location and/or is consistent with is this current practice?*

R-12-5-705 G: In deleted text, "The Commissioner recognizes that the removal of cedars, mesquite and juniper trees from grazing land is a conservation measure that will maintain or increase the range carrying capacity and that the removal of these trees in most cases would benefit state land."

- *Could you please provide clarity on why the Department removed this language?*

R12-5-110 B: Under new text, "the Department shall publish the decision of the Commissioner to pay or not pay a commission for the sale or long-term commercial lease of State Trust Land and the amount and terms of the commission offers, if any, in the public notice of auction."

- *Could you please disclose the percentage of the commission?*

R12-5-110 B: Under new text, "The Department shall publish the decision of the Commissioner to pay or not pay a commission for the sale or long-term commercial lease of State Trust Land and the amount and terms of the commission offered, if any, in the public notice of auction."

- *Could you please provide clarification if the percentage of the commission needs to be disclosed?*

R12-5-110 C: Under new text, "A broker that represents an applicant bidder shall register their representation with the Department no later than 7 days following acceptance of an application by the Department."

- *Does the reference to "no later than 7 days refer to "Calendar or business days"?*

R12-5-110 E: Under new text, "The Department shall pay the commission to the broker representing the successful purchaser or long-term commercial lessee at the time of delivery of the certificate of purchase or patent, or lease, or after final disposition of any protests or appeals resulting from the auction, whichever occurs later.

- *It sounds like a broker can register AFTER the acceptance of an application, without the acknowledgement of the applicant. We would like to request that the applicant/bidder must acknowledge the broker to ensure that the broker is not cut out of the process by State Land or by the applicant. The bidder should acknowledge to State Land that they are working with a broker.*

R12-5-110 E: Under new text, "The Department shall pay the commission to the broker representing the successful purchaser or long-term commercial lessee at the time of delivery of the certificate of purchase or patent, or lease, or after final disposition of any protests or appeals resulting from the auction, whichever occurs later.

- *Could you please clarify whether the commission payment is over the term of the lease or if it's paid in one lump sum – unclear. If it's a negotiated payment plan, it appears to be missing information for the terms.*

R12-5-702 B, 1&2: Under new text, "Ten years for an agricultural lease or a renewal of an agricultural development lease: and Two years for an initial agricultural development lease.

- *Could you please provide clarification: The language is unclear - does this mean that an agricultural lessees can lease the land for up to 22 years which includes; 2 years initial agricultural development lease, 10 years for agricultural development lease, and then 10 years for an agricultural development lease?*

R12-5-702 C: Under new text, "Farm areas are geographically determined within the State and appraised by farm area every 10 years, or as market and other conditions dictate pursuant to A.R.S. 37-282.01(G)"

- *Could you please provide clarity on any changes related to water and if this includes foreign ownership?*

R12-5-702 D: Under new text, "Sequence of development and improvement of land of an agricultural development lease. 1. The lessee of an agricultural development lease must initially only develop the leased land to the extent necessary and incident to the acquisition of a water supply adequate for the development of the leased land. The lessee must apply to the Department to make an improvement for said development of the leased land."

    - *Could you provide clarification on what this means? Is this a change in practice? Is this a new requirement for a lessee to go through ADWR processes and/or acquire new water?*

R12-5-702 D 2: Under new text, "To make an improvement on the leased land which is not necessary to the accomplishment of subsection (D)(1) above, the lessee of an agricultural development lease must apply to the Department. The Department may not approve an application to place an improvement which is not necessary to the accomplishment of subsection (D)(1) above until after the acquisition of such water supply has been accomplished or assured."

- *Could you provide clarification on who makes this determination and how is it determined?"*

R12-5-702 E: Under new text, "Compliance with regulations made by other state and federal agencies; remedies for non-compliance. When rules and regulations promulgated by state or federal regulatory agencies would affect state land State Trust Land under an agricultural lease or an agricultural development lease or crops grown thereon, and when, in his opinion, the best interests of the state would be so served, the State Land Commissioner the Department may require the lessee to conform with these regulatory practices to prevent the deterioration of the soil or crops grown thereon. If the lessee fails to comply with the requirements of the Commissioner, the Commissioner Department may have the required remedial work accomplished and bill the lessee the amount due the Department expended for the remedial work. Failure by the lessee to pay for such remedial work will shall, after the proper notice, subject the lease to forfeiture for nonpayment and noncompliance."

- *What is the Department's notice to Lessee and the Lessee's time to comply?*

R12-5-703: Commercial Leases (language removed)

- *Has the language that was struck in this section been relocated and if so, where? Our understanding is that the State Land Department no longer sells land for commercial purposes, only leases as an interpretation of their constitutional authority. This has been problematic. It appears that all language is struck and there is even less information about what the future holds for the possibility of commercial state land.*

R12-5-703 I: Under new text, "Division of leases. The State Land Commissioner Department may at any time divide a commercial lease into two or more separate leases when such division would, in the opinion of the Commissioner, facilitate administration and management of the subject land or would result in separating one commercial use from another.

- *Why are the Rights of the Lessor not clearly stated in this process? Are they stated elsewhere?*

R12-5-705 A1: Under new text, "In this article, terms used herein shall have the meanings as defined in A.R.S. § 37-101 and § 37-285 and as below: Average market price of cattle" means the average price by the hundredweight received during the calendar year under consideration by producers of cattle, exclusive of calves, in the states of Arizona, New Mexico, California, Utah, Nevada, Colorado, Wyoming, Montana, Idaho, Washington, and Oregon, as determined by the United States Department of Agriculture, and, if that service is not available, from such sources as the Department determines best to establish said price.

- *Has the department engaged the Arizona Cattle Growers Association or other stakeholders that would be affected by this?*

R12-5-705 A2: Under text, "Carrying capacity" means the average number of animal units which can be supported by a section of grazing land with due consideration for sustained production of the forage consistent with conservative range management.

- *Please confirm why there is no agency determination of carrying capacity?*

R12-5-705 C: Under new text, "Upon receipt of an application for a grazing lease, the Department may issue a grazing lease for any State Trust Land, which are classified as grazing land and are not already subject to a grazing lease, for a term of one to ten years, as determined by the Department. However, if an application for a grazing lease includes State Land which are within the boundaries of an established ranch unit, the Department shall first offer such land to the owner of the land in the ranch unit. There is no limit to the amount of grazing land that may be leaded to any person."

- *Would the Department consider an initial term of longer than one year?*

R12-5-705 D: Under existing language, "Rental rates of grazing land; appraisal. No grazing lease shall provide for a rental of less than the appraised rate of the land, and in no event less than 2¢ per acre per annum, or a minimum of $2.50 per annum per lease, said minimum of $2.50 per annum per lease applying to one section or portion thereof."

- *What is the process for determining pricing?*

R12-5-705 E: Under new and existing language, "Rights of the Department to issue non-grazing leases for leased grazing land. All grazing leases granted by the Department are only a non-exclusive right to graze livestock and to use the land in a manner compatible with the terms of the lease. The Department may grant instruments for uses other than grazing on leased grazing land or for the removal of natural products therefrom. A grazing lessee shall not issue to any person any rights to use of land leased grazing land or to remove any products therefrom.

- *Could there be other uses for low-cost grazing leases?*

R12-5-705 G: Cutting of timber, standing trees or posts. 3: Under new and existing language, "When applicable, a grazing lessee must file an affidavit with the Department indicating the number of posts cut, the number used for improvement on the leased land, and the number used elsewhere or stockpiled for future use. At the time approval to cut posts is granted by the Department, the Department will determine the price, which will be comparable to the price of posts from the United States Forest Service. The price will then be payable at the time the affidavit indicating the number of posts cut is filed with the Department.

- *Is the Department referencing fence posts from on-site trees?*

R12-5-801: Linear Right-of-Way (language removed)

- *We would like to inquire where much of the content for Rights of Way was placed?*

R12-5-801 4 A: Rights of surface and subsurface lessees or permittees 1: Under existing text, "The Department may grant rights-of-way without the consent of a surface or subsurface lessee."

- *We would like to inquire how the lessee is informed? What if Right of Way impacts the Lessee?*

R12-5-801 4 C 4. C: Right-of-Way Provisions. Under new language, "The obligation of the grantee to install and maintain fencing, gates, cattleguards, and other protective measures deemed necessary by the Department.

- *We would like to inquire on an expanded list that would be considered "other protective measures deemed necessary by the Department."*

R12-5-801 4 C 4 d.: Under new text, "Provisions of Right-of-Way. D: The obligation of the grantee to restore the surface of the land within the right-of-way to a reasonable condition as required by the Department."

- *We would like to inquire, "what is considered reasonable?"*

R12-5-801 4 C 4 g.: Under the language, "The right of the grantee to assign the right-of-way, ~~provided that such an assignment shall not become effective until approved in writing by the Commissioner as being in the best interests of the state and until a copy thereof is filed with the Department.~~

R12-5-801 8: Under Reports of Completed Facilities and Construction, much of this section was struck-through.

- *As we understand, Report of Improvement to Report to Facilities and Construction may seem innocuous, but "improvement" means something in Land Department law. Improvements are reimbursable to the lessee should the Department decide to cancel the lease for some reason. Could you clarify if such reimbursements are going away?*

R12-5-802: Reservoir, Dam, and Other Sites (Repealed)

- *Could you please confirm and clarify if there are no longer general site leases?*

R12-5-1101: Policy: Use of Land

- *Why was this section deleted? Was it moved to another section? What are the practical implications associated with the removal of this section?*

On behalf of our members, we thank you for working with us. We welcome an opportunity for a follow-up conversation to discuss any of our comments and questions.

Sincerely,

BT Lyons

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