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**IN THE SEVENTH JUDICIAL DISTRICT COURT
IN AND FOR SAN JUAN COUNTY, STATE OF UTAH**

KIM ERIC ACTON and IDA ELIZABETH
ACTON,

Plaintiffs,

v.

TOWN OF BLUFF, a municipal
corporation of the State of Utah,

Defendant.

VERIFIED MOTION TO INTERVENE

Case No. 230700025
Judge Don M. Torgerson

Pursuant to Rule 24, Utah Rules of Civil Procedure, nonparty the State of Utah School and Institutional Trust Lands Administration (“SITLA”) hereby moves to intervene in the above-captioned action.

INTRODUCTION

This case involves a petition to disconnect certain lands from the Town of Bluff, which was incorporated in southeastern Utah in 2018. The case was initiated by the Actons, who are the largest private landowner in the proposed disconnection area, owning 6.7% of the relevant land. By comparison, movant SITLA (a non-private landowner) owns 77.5% of the relevant land, and also wants to disconnect. Therefore, SITLA should be allowed to intervene so that it can

represent its interests regarding the proposed disconnection. A proposed complaint in intervention is attached as Exhibit A.

ARGUMENT

A. SITLA Should Be Allowed to Intervene as of Right Pursuant to Rule 24.

The court “must” permit a movant to intervene of right if the movant claims “an interest relating to the property” and is so situated that a judicial decision may “impair or impede” the movant’s interest. *See* Utah R. Civ. P. 24(a). The courts have restated these elements for intervention of right as follows:

A court must allow a party to intervene if that party can establish that (1) its motion to intervene is timely, (2) the party has an interest in the subject matter of the litigation, (3) the party's interest is or may be inadequately represented if their intervention is not permitted, and (4) the party is or may be bound by a judgment in the action.

Carlsen v. Bd. of Adjustment of City of Smithfield, 2012 UT App 260, ¶ 26, 287 P.3d 440, 450–51 (bracketing and quotation omitted). SITLA satisfies each of these elements.

First, SITLA’s motion is timely given that it comes less than 30 days after Bluff issued the resolution (“Resolution”) denying the Petition for Municipal Disconnection (“Petition for Disconnection”). *See* Resolution (09/25/23), attached as Exhibit B. This motion is also filed only one week after the plaintiffs’ complaint was filed so there will be no disruption to the litigation process. *See* Dkt. – Complaint (10/18/23).

Second, SITLA has an interest in the litigation given that it is, by far, the largest landowner of the proposed disconnection area, owning 77.5% of the relevant land. *See* Resolution, ¶ 2; *see also* Verification (below). Thus, SITLA has an “interest in the subject matter of the litigation”—i.e., disconnection from Bluff—as required by *Carlsen*. 2012 UT App 260, ¶ 26.

Third, the interests of SITLA are, or “may be,” inadequately represented by plaintiffs Kim Eric Acton and Ida Elizabeth Acton (“Actons”). By statute, SITLA must manage its lands and the revenues generated from those lands for the benefit of Utah’s schools and other beneficiary institutions. *See* Utah Code § 53C-1-102. Bluff has subjected SITLA’s land to a more restrictive zone than the zone applied to the Acton’s land. *See* Resolution, ¶ 5. In addition, while the Actons “have not sought any development approval from the Town” related to their land, SITLA has issued a lease for a commercial solar electricity generation facility over nearly 1,000 acres of trust lands. *Id.* at ¶¶ 6, 7; Verification. Although the Town characterizes itself as having an open mind toward the proposed solar development, (*id.*), SITLA’s experience with the Town on this issue thus far indicates that the Town has no interest in approving or allowing the project. *See* Verification. Therefore, SITLA will, or may, be inadequately represented if it is not allowed to intervene.

Fourth, SITLA will, or “may be,” bound by this Court’s judgment in this action. SITLA joined the Acton’s Petition for Disconnection from Bluff, which resulted in one petition covering the Acton’s land, SITLA’s land, and land belonging to others. This combined effort is exactly how the Utah legislature intended these petitions to function. That is why the legislature allowed petitions for disconnection can be brought by only “50% of any private real property in the area.” *See* Utah Code Ann. § 10-2-501(2)(b)(i). Otherwise, if a single landowner tried to disconnect on its own, there would be a much higher likelihood that the disconnection would result in impermissible “islands or peninsulas of unincorporated territory.” *See* Utah Code Ann. § 10-2-502.7(3)(c)(iii). The decisions regarding city boundaries should not be done piecemeal, and the Court’s determination regarding the Petition for Disconnection (which includes SITLA’s land) will, or “may,” bind SITLA. Therefore, SITLA should be allowed to intervene as of right.

B. The Court Should Permit SITLA to Intervene Pursuant to Rule 24.

Even if SITLA could not intervene as of right, the Court should still permit SITLA to introduce in this case. The Court “may” permit a movant to intervene if the movant has a claim that shares “a common question of law or fact” with the main action. *See* Utah R. Civ. P. 24(b). For the reasons stated above, SITLA’s claim for disconnection shares “a common question of law or fact” with the Acton’s claim for disconnection. Indeed, both entities are asking the same Court to review the same Petition for Disconnection under the same statute and addressing the same relevant facts. Therefore, the Court should permit SITLA to intervene.

CONCLUSION

For the foregoing reasons, the Court should allow SITLA to intervene in this action, either of right or by permission, with a pleading that is substantially the same as the complaint in intervention attached to this motion as Exhibit A.

DATED this 25th day of October 2023.

YORK HOWELL

/s/ Landon A. Allred
Landon A. Allred
Attorneys for SITLA

Verification

I, Keli Beard, Senior Legal Counsel for movant State of Utah School and Institutional Trust Lands Administration, declare under criminal penalty under the law of Utah that the information provided above with the citation “Verification” is true and correct to the best of my knowledge.

Signed: October 25, 2023

/s/ Keli Beard
Keli Beard, Senior Legal Counsel
State of Utah School and Institutional Trust Lands
Administration
(signed with permission via email)

CERTIFICATE OF SERVICE

I hereby certify that, on this 25th day of October 2023, I caused a true and correct copy of the foregoing **MOTION TO INTERVENE** to be served as follows:

Bruce R. Baird (176)	<u> X </u>	E-Filing
BRUCE R. BAIRD, PLLC	<u> </u>	US Mail
2150 South 1300 East, Suite 500	<u> </u>	E-Mail
Salt Lake Town, Utah 84106		
Telephone: (801) 647-1400		
Email: bbaird@difficultdirt.com		
<i>Attorney for Kim Eric Acton and Ida Elizabeth Acton</i>		

Town of Bluff	<u> </u>	E-Filing
c/o Recording Officer	<u> X </u>	US Mail
PO Box 324	<u> X </u>	E-Mail
Bluff, Utah 84512		
Email: linda@townofbluff.org		

YORK HOWELL

 /s/ Madison Olsen
Madison Olsen

EXHIBIT A

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If you do not respond to this document within applicable time limits, judgment could be entered against you as requested.

**IN THE SEVENTH JUDICIAL DISTRICT COURT
IN AND FOR SAN JUAN COUNTY, STATE OF UTAH**

KIM ERIC ACTON and IDA ELIZABETH
ACTON,

Plaintiffs,

v.

TOWN OF BLUFF, a municipal
corporation of the State of Utah,

Defendant.

STATE OF UTAH SCHOOL AND
INSTITUTIONAL TRUST LANDS
ADMINISTRATION,

Intervenor.

COMPLAINT IN INTERVENTION

Case No. 230700025
Judge Don M. Torgerson

TIER 2

Intervenor the State of Utah School and Institutional Trust Lands Administration (“SITLA”) hereby files this Complaint (“Complaint”) against defendant Town of Bluff (“Town”) and alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. SITLA is an independent agency of the State of Utah charged with the management of certain lands for the benefit of Utah’s schools and other beneficiary institutions.

2. SITLA manages, among other properties, approximately 7,370 acres of land in the Town (“SITLA’s Properties”) that are part of the proposed lands for disconnection (“Disconnection Properties”).

3. Plaintiffs Kim Eric Acton and Ida Elizabeth Acton (“Actons”) are the owners of approximately 640 acres of real property located in the Town (“Actons’ Property”) that are part of the Disconnection Properties.

4. The Town is a municipal corporation of the State of Utah.

5. The Court has jurisdiction over the subject matter of this case pursuant to Utah Code § 10-2-502.5 which is a part of Utah Code § 10-2-501, *et seq.* (“Disconnection Statute”).

6. Venue is proper in this Court pursuant to Utah Code §§ 78B-3-301 and -307.

7. Pursuant to Utah Rule of Civil Procedure 26(c)(5), the relief sought in this case qualifies as Tier 2 for standard discovery because no damages are sought.

BACKGROUND FACTS

The Town Incorporated to Prevent Development on Surrounding Lands

8. The Town incorporated in 2018.

9. The occupied area of the Town is approximately one mile wide and a few blocks deep.

10. The Town currently has approximately 245 residents.

11. The Town covers a total land area of more than 36 square miles.

12. Therefore, the Town has a population density of less than 7 people per square mile.

13. For comparison, Kanab, Utah has a density of approximately 320 people per

square mile, and nearby Blanding, Utah has a density of approximately 275 people per square mile.

14. After incorporating, the Town zoned SITLA's Properties as "Agricultural A-1," which only allows for "open space, green space, public parks, public lands, cemeteries, and public restroom facilities."

15. The Town zoned the Acton's Property as "Agricultural A-2," which only allows for "all uses in the A-1 district, and agriculture, silviculture, ranching, farming, including the raising of domestic animals, the growing of crops, orchards, or forage, and all necessary or incidental agriculture structures; single-family dwellings; accessory dwelling units; accessory structures."

16. The minimum lot size in the zone for the Acton's Property is three acres, with a maximum of two dwelling units per acre (including accessory dwelling units).

The Town Denied the Disconnection Petition

17. On May 5, 2023, the Actons submitted to the Town a Petition for Disconnection ("Disconnection Petition") asking the Town to allow approximately 9,514 acres (the Disconnection Properties) to disconnect from the Town.

18. SITLA joined the Disconnection Petition.

19. The Disconnection Properties constitute slightly more than 40% of the total incorporated land in the Town.

20. The Disconnection Petition contained all the information required by the Disconnection Statute. *See* Utah Code § 10-2-501.

21. The Town provided the public notices required by Utah Code § 10-2-501(3).

22. The Town held a public hearing (“Disconnection Hearing”) on August 15, 2023.

23. On September 25, 2023, the Town Council issued a resolution (“Disconnection Resolution”) to deny the Disconnection Petition.

**Disconnection is Justified Under the Disconnection Statute
(Utah Code § 10-2-502.7)**

24. The vast majority of the Disconnection Properties are raw land.

25. As a result, the cost of providing services to the Disconnection Properties is minimal.

26. Likewise, the tax revenue generated from the Disconnection Properties is minimal.

27. The Disconnection Properties were in the county—paying taxes to the county and receiving services from the county—for the 150 years prior to the Town’s incorporation in 2018.

28. Allowing disconnection is viable given that returning the Disconnection Properties to the county would simply return the area to its historical status.

29. Similarly, the proposed disconnection would not have any material financial impact on the Town with regard to services provided.

30. The proposed disconnection would not make it economically or practically unfeasible for the Town to continue to function given that the Disconnection Properties are almost entirely raw land that exists outside of the developed area of the Town.

31. SITLA and the Actons, together, represent nearly 85% of the Disconnection Properties.

32. The Bureau of Land Management (“BLM”) represents another 14% of the Disconnection Properties, but the BLM typically does not weigh in on these types of issues.

Indeed, the BLM did not voice any opinion about whether to stay in the Town or disconnect.

33. The only remaining landowner in the Disconnection Properties opposes disconnection, but only owns 1.7% of the relevant land.

34. It is just and equitable for the Court to honor the wishes of the owners of nearly 85% of the relevant land against the wishes of the owner of 1.7% of the land.

35. SITLA has informed the Town that it wishes to install a solar development on part of SITLA's Properties.

36. The solar development would be situated atop a bluff such that it would not be visible from the developed area of the Town.

37. Still, Bluff indicated that it will not approve SITLA's solar development.

38. It is not just or equitable for the Town to force the Disconnection Properties to remain subject to the Town's zoning decision that prevent development of those properties.

39. The proposed disconnection would not result in any islands or peninsulas of unincorporated territory.

40. Disconnection would not harm the community as a whole because, among other things, the developed area of the Town is separated geologically from almost all of the Disconnection Properties by the bluff.

41. The Disconnection Properties are also almost entirely vacant, so their disconnection would not affect the community.

42. Disconnection would not harm adjoining landowners because, as one example, the adjoining landowners are almost exclusively separated geologically by the bluff.

43. Disconnection would not negatively affect projected streets or public ways.

44. The Town does not own any roads in the Disconnection Properties.
45. The byways in the Disconnection Properties are almost exclusively unpaved and exist for the sole benefit of the respective landowners.
46. The Town also does not expend any material funds maintaining the byways in the Disconnection Properties.
47. Disconnection would not have any negative effect on the Town's water mains or water services.
48. The Town does not provide water services to approximately 98% of the Disconnection Properties.
49. On information and belief, disconnection of the one property receiving water services from the Town would not have a material impact on the Town's services.
50. On information and belief, disconnection would not have any negative effect on the Town's sewer mains or sewer services because the Town does not provide those services. Instead, Town residents use septic tanks.
51. Disconnection would not have any negative effect on the Town's law enforcement because the Disconnection Properties are almost entirely vacant land that have not received any material law enforcement services.
52. Moreover, on information and belief, the Town's law enforcement is provided pursuant to a contract with the county, so removing the Disconnection Properties from the Town into the county would make no material change on the operation of law enforcement.
53. Disconnection would not have any negative effect on permissible zoning.

54. The Town's current zoning structure is designed such that Town's residents created a buffer for themselves in the form of the Disconnection Properties that are zoned to prevent development and surround the residents' existing developments.

55. That type of zoning is not enforceable and, therefore, cannot serve as a justification to prevent disconnection.

56. Disconnection will not have any negative effect on any other municipal services in the Town.

FIRST CLAIM FOR RELIEF
(Order of Disconnection, Utah Code § 10-2-502.7(5))

57. SITLA incorporates paragraphs 1 through 56 as if set forth herein.

58. SITLA is entitled to an order declaring that the Disconnection Properties shall be disconnected from the Town.

PRAYER FOR RELIEF

On the foregoing reasons, SITLA prays for relief as follows:

1. For a determination by the Court that disconnection of the Disconnection Properties subject to the Disconnection Petition is proper and required by Utah Code § 10-2-502.7;
2. For an order disconnecting the Disconnection Properties from the Town; and
3. For such other and further relief as the Court may deem appropriate.

DATED this ___ day of _____, 2023.

YORK HOWELL

/S/ _____
Landon A. Allred
Attorneys for SITLA