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Alaska Land Lines



STATE OF ALASKA - DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LANDS - 344 6th Ave. ANCHORAGE

Volume II No. 4 April 1961

BR29301

A MESSAGE FROM THE DIRECTOR:

This issue marks the first anniversary of the publication of the "Alaska Land Lines" as the official information channel of the Alaska Division of Lands. This has been a busy, full and eventful year for the Division. Since Statehood much of the groundwork of the State's resource management program has been laid which included the drafting and adoption of the following seven sets of regulations, with full participation by the public in many public hearings:

Classification
Tide and Submerged Lands
Homestead Entries
Sale of Lands
Leasing of Lands
Disposal of Timber and Materials
Mineral Leasing including Oil and Gas and Coal

During the first year the "Land Lines" has carried announcements of the first of the State tidelands patents issued to cities, the first clay sale, the right of way for the marine terminal at Nikishki Beach now carrying over 10,000 barrels of oil a day, the selection of many thousands of acres of potentially valuable land, the development of area-land-use plans, tidelands and uplands classifications, plans for broad land and resource disposal and management programs for the future.

Our purpose in initiating this publication in April of last year was set forth at that time and remains the same today: to keep the public fully informed of actions taken by the Division of Lands in the business of creating opportunities in Alaska through wise use of our land resources. We visualize the state land resources as being the foundation for economic development of Alaska and are anxious to keep the public posted as to our trusteeship of these resources. In so doing we invite as we did one year ago this month, and will continue to do, your questions, your comments, and, if our actions merit it, your criticism.

ROSCOE E. BELL, Director
Division of Lands

INDUSTRIAL SUBDIVISION AUCTION SCHEDULED

The Division of Lands has set May 2, 1961 as the date for the public auction at which 72 lots in the Alaska Industrial Subdivision and the First Addition thereto will be put up for lease. The auction will take place at 1:30 p.m. at the office of the Division of Lands, 344 Sixth Avenue, Anchorage.

The property lies within the city limits of Anchorage, in the Merrill Field area, and is subject to applicable city ordinances and zoning restrictions. Specifically, the area is located between Third and Fifth Avenues, in Section 16 (school section), T13N, R3W, SM.

The State's appraisal of the fair market value of each lot will serve as the minimum acceptable bid for the annual rental on the same, and no bids will be accepted for less. The lots range in size from 11,652 sq. ft. to 77,683 sq. ft.; minimum annual rentals range from $174 to $1080. Leases on all lots, save 12, will be for 55 years; the 12 excepted are for a period not in excess of 10 years and shall be subject to a 90-day revokable clause.

The successful bidder shall deposit at the time of the award the sum of not less than 25% of the high bid, plus $20.00 to cover appraisal and advertising costs, in cash, and/or certified check, and/or cashier's check, and/or money order, or combination thereof.

Detailed information and plats covering the area are available at the Division office.

SURVEY CONTRACT LET

A contract was entered into with F. M. Lindsey of Anchorage to survey the proposed Cheri Lake Subdivision, which lies in Section 36, T18N, R3W, SM.



* * *

DISPOSAL OF TWO ANCHORAGE TRACTS CONSIDERED

Two tracts in the Anchorage area are presently under consideration for disposal by the Division. One 12 acre portion lies facing Turnagain Arm approximately four miles west of Seward Highway on Sand Lake Road, in Section 16, T12N, R4W, SM. The second is a 100 acre tract in Section 36, T13N, R4W, SM, and is legally described as the E½NE¼NE¼, the SW¼NE¼NE¼, the SE¼NE¼ and that portion of the SW¼NE¼ lying along the north side of International Airport road, east of the Alaska Railroad right-of-way. Anyone interested in developing these tracts, or who would like to comment on their disposal, or offer suggestions, should contact the Division. Further information will be furnished upon request.

* * *

FIRST COMPETITIVE TIDELAND LEASE LET

Mr. Donald King of Ketchikan was the successful bidder in the State's first competitive tideland lease sale. A 1.2 acre tract several miles outside of Ketchikan went for $150.00 minimum annual rental.

* * *

NOTICE: The Delta Junction maps mentioned on the front page of last month's issue of the Land Lines are being revised and will not be available for purchase until further notice.

* * *

THE FOLLOWING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES

NOTICE OF LAND SALE NO. 59-30-08

Subject to the provisions of Chapter 169, SLA 1959, as amended, and pursuant to the regulations promulgated thereunder, the Director of the Division of Lands, or his authorized representative, will receive sealed bids to the highest qualified bidder for the following described parcels of land:

ALASKA INDUSTRIAL SUBDIVISION

BLOCK NO.	LOT NO.		AREA	APPRAISED RENTAL	
1	9	- muddy	18,502 sq. ft.	214.00	360 - 15
1	10	" "	18,501 sq. ft.	[illegible]	
1	11	" "	29,868 sq. ft.	371.00	
1	12		22,500 sq. ft.	036.00	
1	13		25,653 sq. ft.	318.00	
1	14		21,807 sq. ft.	338.00	
1	15		19,809 sq. ft.	030.00	
2	20		16,500 sq. ft.	156.00	
2	21		18,500 sq. ft.	234.00	300 - 6
2	22		18,500 sq. ft.	234.00	360 - 10
2	23		18,503 sq. ft.	234.00	320 - 7
2	24	- muddy	20,[illegible] sq. ft.	261.00	350 - 14
3	1 in block of 2		14,500 sq. ft.	132.00	
3	2		14,[illegible]00 sq. ft.	612.00	
3	10		15,939 sq. ft.	1003.00	
3	11 in block of 14		15,[illegible]39 sq. ft.	316.00	

FIRST ADDITION - ALASKA INDUSTRIAL SUBDIVISION

3	1	OK	34,[illegible]84 sq. ft.	$ 558.00	
3	2	OK	22,000 sq. ft.	192.00	
3	3	"	22,000 sq. ft.	180.00	
3	4	"	22,000 sq. ft.	180.00	
3	5	"	22,000 sq. ft.	180.00	
3	6	"	22,330 sq. ft.	180.00	
3	7	"	24,684 sq. ft.	198.00	
3	8	"	30,123 sq. ft.	240.00	
9	1	- muddy corner	77,683 sq. ft.	978.00	
9	2		65,259 sq. ft.	744.00	
9	3		43,413 sq. ft.	492.00	
9	4		41,155 sq. ft.	474.00	
9	5		41,154 sq. ft.	474.00	
9	6		41,171 sq. ft.	372.00	
9	7		46,978 sq. ft.	384.00	
9	8		47,719 sq. ft.	384.00	
9	9		68,713 sq. ft.	552.00	
9	10		41,250 sq. ft.	474.00	
9	11		41,[illegible]50 sq. ft.	[illegible].00	510 - 5
9	12		41,250 sq. ft.	420.00	510 15
9	13		64,575 sq. ft.	[illegible].00	15

OK 3 Blocks

90 days

START

OK 2nd. ave 5th ave

90 day

90 day

90 day

Block No.	Lot No.		Area		Rental
10	1		11,652 sq. ft.	79 x 150 ?	474.00 — 530 16
10	2		14,998 sq. ft.	100 x 149.9	480.00 — 490 16
10	3		14,998 sq. ft.		480.00 — 7
10	4		14,995 sq. ft.		480.00 — 6
10	Mayo St	— 5 — Separate	14,994 sq. ft.		480.00 — 9
10	Mayo St	— 6 — Separate	14,993 sq. ft.		480.00 — 17
10	7		13,059 sq. ft.		420.00 — 10
10	8		28,496 sq. ft.		918.00 — 24
10	9		28,938 sq. ft.		918.00
10	10		22,299 sq. ft.		684.00
10	11		20,707 sq. ft.		654.00 580 7
10	12		14,782 sq. ft.		480.00 [illegible]
10	13		15,011 sq. ft.		480.00 [illegible]
10	14		15,010 sq. ft.		480.00 540
10	15		15,008 sq. ft.		480.00 [illegible]
10	16		15,005 sq. ft.		480.00 [illegible]
10	17		15,004 sq. ft.		480.00 590 20
10	18		15,002 sq. ft.		480.00 630 20
10	19		14,893 sq. ft.		510.00 730 20
10	20	90 day	42,789 sq. ft.		316.00
10	21		20,000 sq. ft.		252.00
10	22		20,000 sq. ft.		252.00 310 22
10	23		20,000 sq. ft.		252.00 330 22
10	24		20,000 sq. ft.		252.00 330 22
10	25		20,000 sq. ft.		252.00
10	26		20,000 sq. ft.		252.00 330 8
10	27		20,000 sq. ft.		252.00 [illegible] 7
10	28		18,312 sq. ft.		[illegible] 8
10	29		18,012 sq. ft.		248.00 [illegible]
10	30		17,935 sq. ft.		222.00 [illegible]
10	31		13,662 sq. ft.		174.00 190 10
10	Mayo St	32 sealed	15,000 sq. ft.		189.00 [illegible] 11
10	Mayo St	33 sealed	27,000 sq. ft.		342.00 420 17
10		34 [illegible] corner	19,812 sq. ft.		252.00 340 15
10	35		30,415 sq. ft.		384.00 470 17

START

Sled Run

Bids will be accepted at public auction to be held at the office of the Division of Lands, 344 Sixth Avenue, Anchorage, Alaska at 1:30 p.m. Nov 2, 1961, and no bids will be accepted for less than the minimum annual rental as listed above.

The successful bidder shall deposit at the time of the award a sum of not less than 25% of the high bid, plus $20.00 to cover appraisal and advertising costs, in cash, and/or certified check, and/or cashier's check, and/or money order, or combinations thereof.

Following approval of the high bid by the Commissioner, leases for a period of 55 years will be issued on all lots except Lots 1, 2, 3, 4, 5, 6, 7 and 8 of Block 2, Lots 7, 8 and 9 of Block 9, and Lot 20 of Block 10, which will be leased for a period not in excess of 10 years, and the leases shall stipulate that the Director may revoke the same at any time upon thirty (30) days written notice.

The right is reserved to waive technical defects in this publication and reject any and all bids. Further information concerning the auction may be obtained from the Director of the Division of Lands, 344 Sixth Avenue, Anchorage, Alaska.

Phil R. Holdsworth, Commissioner
Department of Natural Resources

Publish April 8, 15 and 22, 1961.

THE PRECEDING DOCUMENT(S) MAY NOT FILM LEGIBLY BECAUSE OF POOR QUALITY OF THE ORIGINAL.

DL-37
Revised July, 1960

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LANDS
344 Sixth Avenue
Anchorage, Alaska

Lease No. ADL 03066

LEASE AGREEMENT

THIS INDENTURE made and entered into this 2nd day of May 19 61, by and between the STATE OF ALASKA, through the Director of the Division of Lands, with the consent and approval of the Commissioner of the Department of Natural Resources, acting for and on its behalf under and pursuant to Chapter 169, SLA 1959, as amended, and the regulations promulgated thereunder, as amended or hereafter amended, hereinafter referred to as the LESSOR; and James E. Rigsbee, Jr. of 2005 - 20th Avenue, Anchorage, Alaska. hereinafter referred to as the LESSEE:

WITNESSETH, that whereas the Lessor has classified the lands herein demised as: Commercial - Industrial lands on April 24, 19 61, pursuant to Chapter 169, SLA 1959, as amended; and

WHEREAS, the Lessor has caused the lands herein demised to be appraised and such appraisal was made and approved on or after February 23, 1961; and

WHEREAS, the Lessor has caused a notice of intent to lease the lands herein demised to be published as required by law or caused notices of intent to lease to be posted as required by law; and

WHEREAS, an auction of the within demised property was held at the time and place designated by notice and said sale was approved by the Director of the Division of Lands, Department of Natural Resources, State of Alaska:

NOW THEREFOR, the Lessor has agreed to let and does hereby let and demise to the Lessee, and the Lessee has agreed to take and does hereby take from the Lessor all that lot, piece, or parcel of land more particularly bounded and described, as follows: Lots One (1), and Two (2), Block Ten (10), First Addition to the Alaska Industrial Subdivision, within the Northeast Quarter of Section Sixteen, Township Thirteen North, Range Three West, Seward Meridian, containing 0.61 acres, more or less, according to the official plat thereof, on file and of record with the Recorder of Deeds, Anchorage Recording Precinct, Anchorage, Alaska.

TO HAVE AND TO HOLD the said demised premises for a term of fifty-five (55) years commencing on the 2nd day of May, 19 61 and ending at 12 o'clock midnight on the 1st day of May, 2016, unless sooner terminated as hereinafter provided.

The Lessee shall pay to the Lessor rental as follows: Equal quarterly payments, in advance, on or before the 2nd day of August, November, February and May of every year during said term at the rate of Two Hundred and Fifty-five and NO/100---------- Dollars ($ 255.00-------) per quarter

such payments to be subject to adjustment at each five year interval from the effective date hereof, if the lease term hereof exceeds five years, such adjustment to be based primarily upon a reappraised annual rental value of land in a state of improvement similar to that of the land described herein at the time this lease was entered into.

It is hereby mutually covenanted and agreed that this indenture is made upon the foregoing, and upon the following agreements, conditions, covenants, and terms, VIZ:

1. The word "Lessor" as and wherever used in the lease, shall be construed to include, and shall include, bind and inure to the benefit of, the State of Alaska, its successor and assigns, at any time during the term of this lease or any renewal thereof; and the word "Lessee" as and wherever used in this lease shall be construed to include and shall include and bind and inure to the benefit of the Lessee, his successors and assigns.

2. It shall be the responsibility of the Lessee to properly locate himself and his improvements within the confines of the property leased herein.

3. The Lessor, Alaska, hereby expressly saves, excepts and reserves out of the grant hereby made unto itself, its lessees, successors, and assigns forever, all oils, gases, coal, ores, minerals, fissionable materials, and fossils of every name, kind or description, and which may be in or upon said lands above described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, fissionable materials, and fossils, and it also hereby expressly saves and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right to enter by itself, its or their agents, attorneys, and servants upon said lands, or any part or parts thereof, at any and all times, for the purpose of opening, developing, drilling and working mines or wells on these or other lands and taking out and removing therefrom all such oils, gases, coal, ores, minerals, fissionable materials and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right by its or their agents, servants and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads, pipelines, powerlines, and railroads, sink such shafts, drill such wells, remove such soil, and to remain on said lands or any part thereof for the foregoing purposes and to occupy as much of said lands as may be necessary or convenient for such purposes hereby expressly reserving to itself, its lessees, successors, and assigns, as aforesaid, generally all rights and power in, to and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and rights hereby expressly reserved.

Provided, however, no rights shall be exercised by Alaska, its lessees, successors or assigns, until provision has been made by Alaska, its lessees, successors or assigns, to pay to the owner of the land, upon which the rights herein reserved to Alaska, its lessees, successors, or assigns are sought to be exercised, full payment for all damages sustained by said owner, by reason of entering upon said land; provided, that if said owner for any cause whatever refuses or neglects to settle said damages, Alaska, its lessees, successors or assigns or any applicant for a lease or contract from Alaska for the purpose of prospecting for valuable minerals, or option contract or lease for mining coal or lease for extracting petroleum or natural gas, shall have the right, after posting a surety bond with the Director in a company qualified to do business in Alaska or in a form as determined by the Director, after due notice and opportunity to

be heard, to be sufficient in amount and security to secure the said owner full payment for all such damages, to enter upon the land in the exercise of said reserved rights, and shall have the right to institute such legal proceedings in a court of competent jurisdiction wherein the land is situated, as may be necessary to determine the damages which the surface lessee of such lands may suffer.

4. The lands leased herein have been classified as shown on page 1 of this agreement and in accordance with the Classification Regulations, Title 11, Division 1, Chapter 1, Subchapter 1, and any use thereof which shall be in material conflict with said classification shall, if not remedied after due notice thereof has been served on the Lessee, constitute a breach of this lease and the Lessor may thereupon terminate same in accordance with provisions herein contained. The Lessor does not warrant that by such classification the land is ideally suited for the use authorized thereunder and the Lessor gives no guaranty, actual or implied, that the utilization under said classification will be profitable.

5. All coal, oil, gas and other minerals and all deposits of stone or gravel valuable for extraction and utilization and all materials subject to Title 11, Division 1, Chapters Four (4), Five (5), and Six (6), Alaska Administrative Code, as amended or as shall hereafter be amended are excepted from the operation of this lease. Viz: The Lessee shall not sell or remove for use elsewhere any timber, stone, gravel, peatmoss, or any other material valuable for building or commercial purposes; provided, however, that material required in the enjoyment of this lease may be used after a written permit therefor has been obtained from the Lessor.

6. The Lessor expressly reserves the right to grant easements or rights-of-way across the land herein leased if it is determined to be in the best interests of the State to do so; provided, however, that the Lessee shall be entitled to compensation for all improvements or crops which are damaged or destroyed as a direct result of such easement or right-of-way.

7. The Lessee shall not commit waste or injury upon the lands leased herein. Any violation of this agreement shall not only subject the offender to civil liability, but upon conviction thereof he may be fined in any sum not exceeding $1000.00.

8. If the lands leased herein are classified and leased as grazing or agricultural lands the Lessee shall not prevent or deny the lawful pursuit or the hunting of game or the taking of fish; provided, however, the Director, upon request in writing, may allow the lands leased herein, or portions thereof, to be posted to prohibit hunting and fishing when it appears necessary in order to properly protect the Lessee and his property.

9. Should the lands herein leased lie within the jurisdiction of any authorized building or zoning authority they shall be utilized in accordance with the rules and regulations promulgated by said authority.

10. The Lessee shall take all reasonable precaution to prevent, and take all reasonable action to suppress grass, brush and forest fires on the land herein leased.

11. The Lessee shall allow the Lessor, through its duly authorized representative, to enter upon the leased premises, at any reasonable time, for the purpose of an inspection thereof.

12. When the Lessee shall use the lands leased herein to construct any form of hydraulic project or employ any equipment or engage in any activity which will use, divert, obstruct, pollute or change the natural flow or bed of any river, lake or stream or that will utilize any of the waters of the State or materials from any river, lake or stream beds, the Lessee shall, prior to the commencement of any such operations, procure the approval of the Commissioner of the Department of Fish and Game and the original or an image copy thereof shall be filed with the Lessor prior to the commencement of such activity.

13. The Lessee may assign the lands, or portion thereof, herein demised, provided, he first makes application to the Lessor for a permit and the Lessor, in his discretion, may issue such permit if he finds it to be in the best interest of Alaska. Upon an assignment being granted, the assignee thereunder shall become subject to and be governed by the provisions of this lease in the same manner as though he were the original Lessee.

14. This lease may not be modified orally or in any manner other than by an agreement in writing signed by all parties hereto or their respective successors in interest.

15. This lease may be cancelled, in whole or in part, under one or more of the following conditions:

A. While in good standing by the mutual agreement in writing of the respective parties hereto.

B. If issued in error with respect to material facts.

C. If the leased premises are being used for an unlawful purpose.

16. If the Lessee should default in the performance of any of the terms, covenants or stipulations herein contained or of the regulations promulgated pursuant to Chapter 169, SLA 1959, as amended, and said default shall not be remedied within 30 days after written notice of such default has been served upon the Lessee by the Lessor, the Lessee shall be subjected to such legal action as the Lessor shall deem appropriate, including but not limited to, the forfeiture of this lease. No improvements may be removed by the Lessee during any period in which this lease is in default. In the event that this lease shall be terminated because of a breach of any of the terms, covenants, or stipulations contained herein the annual rental payment last made by the Lessee shall be retained by the Lessor as liquidated damages.

17. Any notice or demand which must be given or made by the parties hereto shall be in writing, and shall be complete by sending such notice or demand by United States registered or certified mail to the address shown on the lease or to such other address as the parties shall designate in writing from time to time. A copy of any such notice shall be forwarded by the Lessor to any lienholder who has properly recorded his interest in the lease with the Lessor.

18. In the event that this lease is terminated as herein provided, by summary proceedings or otherwise, or in the event that the demised lands, or any part thereof, should be abandoned by the Lessee during the term of this lease, the Lessor may immediately, or at any time thereafter, enter or re-enter and take possession of said lands, or any part thereof, and without liability for any damage therefor, remove all

persons and property therefrom either by summary proceedings or by a suit at law or proceeding at law; provided, however, that the words "entry" and "re-entry," as used herein, are not restricted to their technical legal meaning. Any entry or re-entry, possession, repossession, dispossess, and/or disposession by the Lessor, whether had or taken by summary proceedings, or otherwise, shall not be deemed to absolve, relieve, release or discharge the Lessee, either in whole or in part, from any liability hereunder.

19. Upon the expiration, termination or cancellation of this lease, unless the same has been renewed, the Lessee shall quietly and peaceably leave, surrender and yield up unto the Lessor all of the leased land on the last day of the term of the lease.

20. The receipt of rent by the Lessor, with or without knowledge of any breach of the lease by the Lessee or of any default on the part of the Lessee in observance or performance of any of the conditions or covenants of this lease, shall not be deemed to be a waiver of any provision of this lease. No failure on the part of the Lessor to enforce any covenant or provision herein contained, nor any waiver of any right hereunder by the Lessor, unless in writing, shall discharge or invalidate such terms or covenants or affect the right of the Lessor to enforce the same in the event of any subsequent breach or default. The receipt by the Lessor of rent or any other sum of money or the termination, in any manner, of the term herein demised, or after giving by the Lessor of any notice hereunder to effect such termination, shall not reinstate, continue or extend the resultant term herein demised, or destroy, or in any manner impair the efficacy of any such notice of termination as may have been given hereunder by the Lessor to the Lessee prior to the receipt of any such sum of money or other consideration, unless expressed in writing and signed by the Lessor.

21. The Lessee, after written request therefor has been filed with the Lessor and prior to the commencement of such work, may receive credit toward current or future rentals, provided the contemplated work, to be accomplished on or off the area leased herein, in the discretion of the Lessor, shall result in increased valuation to other State owned lands. The Lessee's authorization to proceed with the work for rental credit, if granted, shall stipulate the type and extent of improvements, standards of construction to be followed and the maximum allowable rental credit therefor; provided further that no credit shall accrue to the Lessee until the work has been completed and the Lessee has complied with all conditions in accordance with the provisions of said authorization.

22. If, upon the expiration of this lease, the Lessee desires a renewal lease on the lands, properties or interests covered herein, he shall within 30 days before the expiration of this lease, make application to the Lessor on Form BLNR-74 entitled "Application for Renewal of Lease," in which he must certify under oath as to the character and value of all the improvements existing upon the land, the purposes for which he desires a renewal and such other information as the Director of the Division of Lands may require. Along with the application the applicant shall deposit a sum equal to 50% of the current annual rental, as provided herein, but in no event to exceed the sum of $50.00. The Lessor may thereupon lease said lands in compliance with the provisions herein enumerated, Chapter 169, HRS 1959, as amended, and the rules and regulations promulgated thereunder, allowing a preference right to the Lessee herein.

23. The Lessee hereunder shall, upon the expiration of this lease or the prior termination thereof by mutual agreement, be allowed a preference right to re-lease the lands leased herein if all other pertinent factors are substantially equivalent. If the renewal lease does not require public auction the preference rightholder shall exercise his right within 30 days before the expiration of this lease by written notice directed

to the Lessor and failure to do so shall result in forfeiture and cancellation of such preference right. In the event that the lease is subject to and is offered at public auction the preference rightholder shall, at the close of bidding, indicate his desire to exercise his preference right and meet the highest bid. In the event the preference right holder does not elect to exercise his right and fails to do so at this time his preference right shall be forfeited and forever lost.

24. Improvements owned by a Lessee on Alaska lands shall within 60 days after the termination of the lease be removed by him; provided, such removal will not cause injury or damage to the lands; and further provided, that the Lessor may extend the time for removing such improvements in cases where hardship is proven. The retiring Lessee or permittee may, with the consent of the Lessor, sell his improvements to the succeeding lessee or permittee.

If any improvements and/or chattels having an appraised value in excess of $10,000.00 as determined by the Lessor are not removed within the time allowed, such improvements and/or chattels shall upon due notice to the Lessee, be sold at public sale under the direction of the Lessor. The proceeds of sale shall inure to the Lessee who placed such improvements and/or chattels on the lands after paying to Alaska all rents due and owing and expenses incurred in making such sale. In case there are no other bidders at any such sales, the Lessor is authorized to bid, in the name of Alaska, on such improvements and/or chattels. The bid money shall be taken from the fund to which said lands belong and the said fund shall receive all monies or other value subsequently derived from the sale or leasing of such improvements and/or chattels. Alaska shall acquire all the rights, both legal and equitable, that any other purchaser could acquire by reason of said purchase.

If any improvements and/or chattels having an appraised value of $10,000.00 or less, as determined by the Lessor, are not removed within the time allowed, such improvements and/or chattels shall revert to and absolute title shall vest in Alaska.

25. If any clause, or provision, herein contained, shall be adjudged to be invalid, it shall not affect the validity of any other clause or provision, of this lease or constitute a cause of action in favor of either party as against the other.

It is agreed that the covenants, terms and agreements herein contained shall be binding upon the successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the State of Alaska, Lessor, acting through the Director of the Division of Lands of the Department of Natural Resources, lawfully authorized thereunto, has caused these presents to be executed at Anchorage, Alaska, in duplicate and the said Lessee has hereunto set his hand, agreeing to keep, observe and perform the rules and regulations promulgated under Chapter 169, SLA 1959, as amended, the terms, conditions and provisions herein contained, on the Lessee's part to be kept, observed and performed; and executed said instrument, in duplicate on the 15th day of May, 19 61.

APPROVED:

Director, Division of Lands

COMMISSIONER, DEPARTMENT OF NATURAL RESOURCES
STATE OF ALASKA

LESSEE(S)

STATE OF ALASKA)
) ss.

THIS IS TO CERTIFY that on the 23rd day of June, 1961, before me, the undersigned Notary Public, personally appeared [illegible] known to me and known by me to be the Director of the Division of Lands of the Department of Natural Resources, and acknowledged to me that he executed the foregoing lease for and on behalf of said State, freely and voluntarily and for the use and purposes therein set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Notary Public in and for the State of Alaska
My commission expires March 27 1965

UNITED STATES OF AMERICA)
State of Alaska) ss.

THIS IS TO CERTIFY that on this 23rd day of June, 1961, before me, the undersigned, a Notary Public in and for Alaska duly commissioned and sworn, personally appeared James E. Fugate, Jr to me personally known to be one of the persons described in and who executed the within instrument and the said James E. Fugate, Jr acknowledged to me that he signed and executed the same freely and voluntarily for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Sharon E. Barton
Notary Public in and for the State of Alaska
My commission expires March 27, 1965

Approved as to Form:

Ralph E. Moody
Attorney General

By George M Hayes

Title Assistant Attorney General

RENT ADJUSTMENTS FOR

STATE LEASED LANDS

1975

ADL No.	Old Rental	New Rental	Per cent Increase (Decrease)
01227	112.50	1,575.00	1,300
51107	110.00	1,100.00	900
02534	608.50	25,500.00	4,090
01302	75.00	248.00	230
25068	100.00	380.00	280
38895	180.00	1,404.00	680
25305	1,425.00	2,886.00	103
52370	6,075.00	13,032.00	115
00273	6,780.00	14,400.00	112
52167	970.00	9,600.00	890
52209	195.00	2,040.00	946
52168	830.00	8,500.00	924
50738	1,400.00	5,280.00	277
44569	175.00	350.00	100
49723	150.00	605.00	303
41417	225.00	670.00	198
50598	50.00	630.00	1,160
00775	1,000.00	24,960.00	2,396
17103	1,000.00	18,800.00	1,780
51238	145.00	1,680.00	1,059
51515	160.00	1,680.00	950
51621	180.00	1,410.00	683
51428	220.00	1,770.00	704
50938	190.00	1,940.00	921
51065	210.00	1,700.00	709
46473	60.00	260.00	333
46474	60.00	260.00	333
52177	150.00	180.00	20
52182	250.00	285.00	14
21477	45.00	265.00	489
52185	300.00	320.00	7
51147	40.00	170.00	325
52422	40.00	170.00	325
52421	40.00	170.00	325
52187	75.00	175.00	133
52186	75.00	175.00	133
52190	40.00	100.00	150
52191	100.00	680.00	580
52714	40.00	165.00	312
52208	80.00	100.00	25

ADL No.	Old Rental	New Rental	Per Cent Increase (Decrease)
52205	50.00	220.00	340
52194	150.00	100.00	(50)
52192	250.00	235.00	(6)
50172	155.00	755.00	387
50688	75.00	175.00	133
52199	55.00	135.00	145
26653	235.00	470.00	100
26654	235.00	470.00	100
52179	235.00	470.00	100
52180	260.00	545.00	110
52170	325.00	575.00	77
52365	125.00	245.00	96
52430	125.00	245.00	96
52213	315.00	325.00	3
52171	150.00	295.00	97
52172	150.00	295.00	97
52213	315.00	295.00	(7)
52174	160.00	325.00	103
50587	150.00	385.00	157
50588	145.00	325.00	124
52703	40.00	100.00	150
45008	65.00	2,400.00	3,592
40014	220.00	2,430.00	1,005
45586	80.00	150.00	88
45585	460.00	675.00	47
26511	1,000.00	5,525.00	452
46628	140.00	1,680.00	1,100
46620	160.00	1,620.00	912
46383	110.00	600.00	445
49755	125.00	390.00	212
25956	125.00	390.00	212
47414	150.00	834.00	456
49060	250.00	702.00	181
22348	260.00	390.00	50
24099	215.00	420.00	95
36015	180.00	250.00	39
21928	1,260.00	10,920.00	767
01380	1,190.00	3,552.00	198
51395	820.00	3,054.00	272
00889	2,600.00	5,976.00	130
01308	7,170.00	10,014.00	40
49685	145.00	1,260.00	769
49795	175.00	1,500.00	757
25988	240.00	275.00	15
26269	165.00	190.00	15

RENT ADJUSTMENTS FOR

STATE LEASED LANDS

1976

ADL No.	Old Rental	New Rental	Per Cent Increase (Decrease)
71326		3,500.00	
22526	360.00	2,150.00	497
22525	175.00	3,360.00	1,820
22654	95.00	1,192.00	1,155
50603	85.00	840.00	888
22652	155.00	4,350.00	2,706
44351	100.00	438.00	338
44350	80.00	744.00	830
46483	110.00	750.00	582
02380	880.00	6,540.00	643
39877	1,000.00	2,280.00	128
30489	240.00	2,350.00	879
26632	1,835.00	6,900.00	276
32919	1,020.00	2,760.00	171
31328	120.00	840.00	600
54326	175.00	910.00	420
54331	165.00	910.00	452
54365	205.00	950.00	363
54332	225.00	950.00	322
40806	355.00	690.00	94
54345	200.00	550.00	175
54346	175.00	550.00	214
54347	210.00	550.00	162
54349	190.00	575.00	203
54333	260.00	665.00	156
54334	250.00	690.00	176
54335	105.00	605.00	476
54336	120.00	605.00	404
54337	110.00	625.00	468
54338	145.00	690.00	376
54339	210.00	690.00	228
54340	200.00	690.00	245
54341	280.00	690.00	146
54342	270.00	690.00	156
32128	115.00	690.00	500
32065	115.00	665.00	478
54344	160.00	635.00	297
54351	430.00	870.00	102
03045	3,985.00	32,800.00	723
03042	2,925.00	22,360.00	664

ADL No.	Old Rental	New Rental	Per Cent Increase
03050	990.00	7,400.00	647
53595	1,775.00	11,760.00	562
03041	1,340.00	9,360.00	598
03049	700.00	6,160.00	780
51395	820.00	6,160.00	651
03040	820.00	6,160.00	651
03059	820.00	6,160.00	651
03070	950.00	7,000.00	637
47382	680.00	5,000.00	635
03058	1,010.00	6,680.00	561
03067	700.00	5,160.00	637
03044	8,495.00	75,440.00	788
47378	1,720.00	14,400.00	737
47598	3,260.00	27,360.00	739
03051	1,410.00	13,680.00	870
03062	1,635.00	13,680.00	737
03071	1,410.00	13,680.00	870
03069	800.00	6,000.00	650
03066	1,745.00	11,600.00	565
03063	945.00	6,600.00	598
03048	945.00	6,600.00	598
03068	945.00	6,600.00	598
03073	945.00	6,600.00	598
03039	1,425.00	10,280.00	621
03052	2,490.00	18,400.00	639
03102	3,955.00	28,640.00	624
03064	1,305.00	9,120.00	599
03104	930.00	6,520.00	601
49686	1,835.00	13,240.00	622
57237	1,835.00	13,240.00	622
03065	3,670.00	26,480.00	622
03057	3,665.00	27,040.00	638
03053	890.00	6,640.00	646
30746	915.00	6,880.00	652
03043	910.00	6,680.00	654
47983	135.00	1,300.00	863
49430	175.00	1,400.00	700
47809	175.00	1,450.00	728
49172	120.00	1,300.00	983
46499	270.00	1,650.00	511
53444	140.00	1,200.00	757

State Leased Lands, 1976

ADL No.	Old Rental	New Rental	Per Cent Increase (Decrease)
27894	135.00	155.00	15
27948	200.00	230.00	15
50816	40.00	180.00	350
50669	40.00	120.00	200
47776	42.00	100.00	138
36315	40.00	100.00	150
47777	40.00	100.00	150
47778	40.00	100.00	150
35199	40.00	100.00	150
47775	42.00	100.00	138
41843	40.00	100.00	150
46609	72.00	100.00	39
47151	90.00	100.00	11
00037	700.00	5,250.00	650

MEMORANDUM State of Alaska

TO: The Honorable Guy R. Martin
Commissioner
Department of Natural Resources

DATE: June 4, 1976

FILE NO:

TELEPHONE NO:

FROM: AVRUM M. GROSS
ATTORNEY GENERAL

SUBJECT: Waiver of reappraisal and adjustment of rent

BY: Rodger W. Pegues
Assistant Attorney General

This is further to the opinion of June 1, 1976, by Assistant Attorney General Reeves on this subject. In that opinion, we advised that you were without authority under then existing law to grant a blanket waiver of all rental increases exceeding 100 percent which was requested by the Alaska Land & Lease Owner's Association. Since that opinion was written, new legislation was adopted which further restricts your authority to grant a waiver. FCCS SCSHB 139.

AS 38.05.105 has been amended to delete the language authorizing a waiver or extension of reappraisal "when development of the land is not otherwise possible due to special conditions" and to provide for an extension or waiver "only if residential development actually occurs, and only if it is necessary for obtaining primary long-term financing." As a result of the amendment, the Director of the Division of Lands may now grant a waiver or lengthen



ALASKA LAND & LEASE OWNERS ASSOCIATION

The Chairperson's Report Number 3 To The Members

During the past several months, the Alaska Division of Lands has reappraised a number of leases, In many cases the lease fees have been set at such ridiculously high rates, that many Alaskans will have to give up their leases and, insome instances, sacrifice substantial investments that have been made in improvements. For example, some of the leased property reppraised in 1975 has had the lease payments increased over one thousand percent (Yes, 1,000 %). We, of course, have no way of knowing what future increases other leasees may face, when additional leases reach the five year mark. Sufficient to say, only a few Alaska State leases have incorporated a clause limiting the increase in lease payments every five years.

Because of this situation, and other inequities, which effect investments in land purchased or leased from the State of Alaska, the A.L.A.L.O.A. was formed to present the case of all Alaska land and lease owners to the Alaska Division of Lands, the Commissioner of Natural Resources, the Governor and the Legislature.

Our specific goals are to:

1. Obtain from the Division of Lands, a moratorium and subsequent reduction in payments on those leaseholdings which have been reappraised and now require increased payments far beyond the fair value of the lease.

2. Establish a vehicle whereby the Alaska Land & Lease Owners Association is able to assist the State of Alaska in obtaining better use of State of Alaska lands for all Alaskans.

3. Encourage distribution of Alaska State Lands thru a planned program of sale and lease of additional parcels of land, to both present and future Alaskans.

4. Bring about more equitable formulas for taxation of Alaska fee lands and leaseholds.

5. Encourage the multiple use of Alaska land.

We are pleased to report that some progress has been made toward our first goal, the reevaluation of leasehold land programs and that our fourth goal, equitable formulas for taxation of Alaska fee lands and leaseholds has met with limited sucess.

No matter what, we do need your continued support if we are to form chapters is other parts of Alaska and if we are to continue these programs. We urge you to make ever effort to seek new members, who will join their voice to ours in helping to make Alaska a fine home for all of us to enjoy.

Ask one friend today. If you have not already done so, fill out the attached membership form, enclose your check for $25.00 and pass to our treasurer. Please join now.

Respectfully,

William M. Mack, Chairperson

WMM:ih

STAR ROUTE BOX 2761 · WASILLA, ALASKA 99687 · TELEPHONE: 907-892-6250 · TELEX: 090-25-132

formula for re-appraisal appears to be the problem.

Strongest opposition: Industrial Page owner Alaska Industrial Page
Center raised to $1,500 per year
9800 per year 1st 5 years for life of lease
Agricultural leases and 3rd re-appraisal to stands
Recreational leases
Utility lands
State should stop selling land &
they should transit received title to
from the Feder-

defeating
frustrated
education
attrition
balanced view

Can school lands
be sold

272-5955

Malone ?

PROTEST

Submitted By—
Kigsbee

July 15, 1976

Michael C.T. Smith, Director
Division of Lands
323 East 4th Avenue
Anchorage, AK 99501

APPEAL

Subject: Land Lease 2-003066-5- Lots 1 and 2, Block 10, First Addition to Alaska Industrial Subdivision, Anchorage, Alaska

Dear Sir:

I am herewith appealing the exorbitant increase of my leasehold rent--from $1,745.00 per year to $11,600.00! I am protesting this for the following reasons:-

1. I think it is not legal and very unfair. Our lease clearly states (and this was the impression given us at time of the auction sale) that the method of reappraising will be by comparison to other rental values of lands in a like area and same state of improvement ours was at the time of original lease, quote---

> "such payments to be subject to adjustment at each five year interval from the effective date hereof, if the lease term hereof exceeds five years, such adjustment to be based primarily upon a reappraised annual rental value of land in a state of improvement similar to that of the land described herein at the time this lease was original issued."

When these lands were auctioned and leased, they were in heavy growth of birch, spruce and underbrush and had to be cleared, leveled, top soil removed and gravel backfilled, roads and utilities brought in. We even had our own culverts put in along the roadway.

Are you using such a raw land basis for your appraisal?

2. It appears to be a premeditated "land grab" to take the leases back, since you advise in advance that the Division of Lands is "prohibited" from granting any extensions (which has been done in the past) and you are raising the rent too high for people to stay in business.

> If it takes an "Act of God" to extend the rent due, I should think you would need God's permission for you to make such an unreal raise in rent.

3. Improved land with utilities in, ready for a building, rents for 10¢ per sq. ft. per year, in a good location. You are trying to charge us 43¢ after we have made all the improvements. $1000.00 a month would rent a great shop, including utilities.. how can we pay that for land only?

4. I consulted your appraiser and I feel that the formula used and the "few" overpriced properties he used as a comparison (already developed) are neither fair nor legal. I also was advised by him that the "state was in the leasing business to make as much profit as possible...and if we made any profit it would have to from buildings, etc.," or words to that effect. At the rent you are trying to charge...who could build or make any profit. People can only pay so much, there is a limit...and at this rent rate, the land is not even saluable. No one in his right mind would purchase our lease knowing he could never have a deeded title and looking forward to a future

Ron Bun

4. (continued)

of insecurity and continual five year hassles.

We understood at the time of purchase that we could not own these lands, that during the lifetime of the lease we would probably pay as much rent as it would cost to purchase it. However, we did not expect to have to pay the purchase price over and over during the term of our lease.

Most of the leaseholders are long time Alaskan citizens who love their state and have helped pioneer and settle and develop this country.

We have worked hard for the good of Alaska and at the time we leased these lands, we had good faith that our Government would keep it's word--and could be trusted--but things like this are beginning to make us doubtful. We are becoming very discouraged as well as older--trying to keep up with all the zoning ordinances, rules and restrictions and cost of living, etc., and especiallythis new method of interpreting the land laws to suit your favor.

Greediness is driving away some of the big investors, are you now starting on the small ones?

Please reconsider these appraisals and get back to a feasible and workable plan as before. Thank you.

Sincerely,

James E. Rigsbee Jr

James E. Rigsbee, Jr.
2015 Boreallis Drive
Anchorage, AK, 99503

cc: Hon. Jay S. Hammond, Governor
Office of the Governor, Juneau
Commissioner, Department of Natural Resources
Leaseholders Association

ALASKA LAND AND LEASE OWNERS ASSOCIATION

A number of Alaskans have leased State land from the Alaska Division of Lands. Most leases were written for a period of fifty-five years with renewal rights, subject to appropriate application and approval.

During the past year, ADL has reviewed the rental rates on a number of lots and parcels and, in some cases, has raised them over 1000%, others at a lesser rate but most increases seem excessive. Much of this land is in the Matanuska-Susitna Borough.

We recognize that there has been a great deal of speculation on fee simple land in the Borough because of the publicity attendant to the Capitol relocation. These speculative values, however, do not necessarily apply to lease lands. However, we have been informed by ADL personnel that the new rental rates have been arrived at by appraising a limited number of fee simple parcels (not leased parcels), estimating their sales value and taking 6% of that figure as the annual rent.

A.S. 38.05.105 says "rental payment is subject to adjustment at five-year intervals and charges or adjustments shall be based primarily on a reappraised annual rental value" i.e. not sale value.

There is no direct relation between the value of a title and the value of a lease, particularly when most rural land in Alaska is undeveloped. The situation differs with apartment rentals whereby when the supply is short and demand great rental value increases, but even there Governor Hammond has set up rent control boards to limit rent increases to a reasonable amount.

There are many reasons why a State leasehold cannot be equated to a title. Let me cite a few:

1. Bank financing is virtually unobtainable on lease land because of the uncertainties associated with the "five year adjustment" clause.

2. Renewal of lease is not assured at end of a 55 year period.

3. Use of land may be limited at ADL's discretion.

4. No equity accruses in the property.

In regard to point No. 4, most rural fee simple property could be purchased in a ten to twenty year period outright at or close to many of the new State rental fees and, most important, a great deal of rural land is available for fee simple purchase from individual owners, reducing the relative value of State Lease Lands, in view of the long term unpredictability of State Lease payment levels and absence of any accrued equity after long term lease.

We feel that ADL's method for adjusting lease rentals is not a fair or a correct procedure and, in fact, is in violation of State Statutes. We also feel that the procedures being used, particularly the "five year clause" deny much needed tax revenue to local governments. Putting the problem on a personal basis, many Alaskans will be forced to terminate their State leases, give up hopes for planned development, and sacrifice valuable improvements if the present policies and reappraisal methods are not improved.

We recommend several possible solutions:

1. Lands could be sold outright rather than leased.

2. Lands could be leased with an option to purchase at end of five years.

3. Rental could be:

   a. Fixed for the fifty-five year lease period with leasee charged a percentage of any gain realized.

   b. Increased annually at a fixed rate such as five percent.

   c. Increased at the inflation or recession rate reflected in the Consumer Price Index.

The members of the Alaska Land and Lease Owners Association will appreciate and remember any positive action that can be taken on behalf of all State Land Leaseholders.

We appreciate you already having taken time to hear our views.

Respectfully Submitted:

William M. Mack
Chairman, Board of Directors
Alaska Land and Lease Owners Association

Box 740
Wasilla, Alaska 99687
June 19, 1976

Governor Jay Hammond
Juneau, Alaska 99801

Dear Governor Hammond:

I request an appointment with you to discuss my state land lease #ADL 003045-3.

At auction in 1956 I bid and won this lease - land which was previously rented for 50 cents an acre - for about $1000.00 per year, with full realization that every five years it would be reappraised, as the lease states, "to represent the true appraised rental value of the leased area". It has increased steadily; I paid $3,985.00 for the year 1975.

About a week ago I received notice that the new lease appraisal will be $32,800.00 per year - approximately 850 per cent increase!

I am one of many. A group of leaseholders made an appointment to discuss this with Mr. Smith, the Director of the Lands Division, who would not see us when we arrived. We did talk to Mr. Bruce Ackerson, the chief appraiser, who was very nice, and sympathetic, and unable to help. He explained that due to someones interpretation of the law, "fair price" has been changed to "fair market price", thereby increasing the annual rental 2% in addition to a new market appraisal value.

In viewing the States side, persistance of this rental policy will undoubtedly make re-leasing, or leasing other lands, very negligable. Also, the banks will be extremely hesitant to loan monies for building - either or both of which will incur less in taxes. I notice the Mat-Su Borough land auction June 26th states the lease amount is not subject to reappraisal. The highest bid establishes the annual rental for the 55 year term of the lease.

In viewing my side, I am an Alaskan since 1941, with continual residency except my years in service from 1943 to 1946. The last twenty years I've worked to improve this leased land and now have several substantial buildings, tho I owe the bank over $400,000.00. I have worked and provided for increases, such as the Municipality of Anchorage tax bill which is $20,000.00 this year; a modest raise that is tolerable. But who of us can afford 850 per cent increases?

I feel quite sure it is not the intent of the State to bankrupt me, my leaseholding neighbors, or my tenants. I approached several of my tenants who were outraged at the amount I will have to increase their rents. With only one exception, they informed

me they will have to move on or go out of business.

Nor do I believe it is the intent of the state to show bias; though we are aware that just down the street Bob Penney and the Teamsters Union are leaseing larger tracts of land, of greater value, for pennies, where we are paying dollars. Bob Penneys averages about $750.00 per acre and the Teamsters have a better deal yet. Mine averages over $19,000.00 per acre. How can this be justified?

We who have paid many times the original value, held it, and improved it should be entitled to justice. Instead, for our efforts, the State has seen fit to impose a highly inflationary and unfair rental fee, thereby not only taking back the property but also our entire investment in the land and all it's improvements, and leaving leaseholders of twenty plus years with insurmountable debts.

It seems impossible that twenty years of work and investment can be wiped out with one stroke of a pen - in this country! Particularly so, when it does not appear beneficial to the State Government, or her resident Alaskans. This may create more damage than the 1964 earthquake, to those of us involved in both.

Please consider my request for an appointment to discuss this with you. I will be anxiously awaiting your reply.

Sincerely,

Joe Wilhour
Box 740
Wasilla, Alaska 99687

Phone 376-5601

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LANDS, 323 E. 4TH AVENUE ANCHORAGE 99501

June 25, 1976

Leon T. Brown
3001 Mountain View Dr.
Anchorage, Alaska 99504

2 Lots
@ 80'x150',
@ 80'x200'

Re: ADL 03039 - Lease of Alaska Land

Dear Mr. Brown;

C & C
35635

After consideration of the late mailing of your quarterly billing notice for the period 05-02-76 to 08-02-76 , your new rental rate of 2570.00 per quarter, based upon our reappraisal, will become effective for the quarter beginning 08-02-76 . As you have made payment at the previous rate no further payment will be due until 08-02-76 .

Your next quarterly courtesy billing, which will reflect our reappraisal, will be mailed to you in the usual manner.

No employee or official of the Division of Lands has the authority to grant an extension of time for the making of payments. The Commissioner of the Department of Natural Resources is the only person with authority to do so, and his power is limited to cases where "war, riots, or acts of God" have prevented timely payment.

Very truly yours,

MICHAEL C. T. SMITH, DIRECTOR

Roberta Staats

By Roberta Staats, Accounting Technician I

Dear Editor:

I am one of the "fortunate" State land leaseholders who just received an 850 per cent increase in rent. Possibly this is a little inflationary as I now have to increase my tenants rent and they in turn will have to raise their prices to the consumer. But that's the way it goes.

I wonder if this will require an impact statement? My lease land could be more valuable than Prudhoe Bay, tho I hope the State doesn't spend the money before I pay it.

The Legislators should get busy and think what they are going to do with all this money. The State should be able to borrow enough to get them through the budget crises for the last session, and they can increase their employees so Alaska will have no more unemployment. Or they can move the Capital. Possibly they can lease all of Alaska and buy the United States - and then lease it! Or we could pay off the National Debt as a friendly gesture. Or maybe the State should change their lease policy?

Joe Wilhour

Can these figures be correct? My calculator ran out of spots.

If the rent policy remains the present rate, I will pay the State a lease rental over the next 40 years $32,800.00 X 40 = $1,312,000.00.

However, if the State decides to raise the rent the same 850 per cent every five year period, I will pay the following:

At the end of the first five years	$ 164,000.00
At the end of the second five years	1,394,000.00
At the end of the third five years	11,849,000.00
At the end of the fourth five years	100,716,500.00
At the end of the fifth five years	856,090,250.00
At the end of the sixth five years	7,276,767,125.00
At the end of the seventh five years	61,852,520,560.00
At the end of the eighth five years	525,746,424,760.00
Which totals:	$595,845,926,195.00

Five hundred ninety-five billion, eight hundred forty-five million, nine hundred twenty-six thousand, one hundred ninety-five dollars! For less than two acres!

The state owns 640 acres - Section 16 - in the Anchorage area. If all of this were leased at the same rate the State could collect One hundred ninety trillion, six hundred forty-four billion, five hundred thirty-five million, six hundred thirty-nine thousand, forty Dollars. ($190,644,535,639,040.00) And just from Section 16 for the next 40 years.

Anyone want to buy a State lease? Improvements extra, of course.

Joe Wilhour
Box 740 Wasilla Alaska 99687

3350 COMMERCIAL DRIVE, ANCHORAGE.

10-125 ©1

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LANDS
323 EAST 4TH AVENUE
ANCHORAGE, ALASKA 99501

DATE	TYPE	SERIAL NUMBER ADL	CUSTOMER ID	SUBJECT	NOTICE OR BILL NO.
06-30-76	2	003065-7	16247	LAND LEASE	790242

PAYOR

ANCHORAGE CAMPER CENTER
~~CLARK-NICHOLS-FRIES~~
2756 COMMERCIAL DRIVE
ANCHORAGE , AK 99501

PURPOSE	PERIOD FROM	PERIOD TO	AMOUNT
QUARTERLY RENTAL	08-02-76	11-02-76	6,620.00
ARREARAGE			917.50

	DATE	RECEIPT AMOUNT		
RECEIVED BY			PAY THIS AMOUNT	7,537.50

REMARKS

PER A.S. 38.05.020, THE DIVISION OF LANDS IS PROHIBITED FROM GRANTING EXTENSIONS OF TIME TO MAKE PAYMENT.

MAIL OR DELIVER TO

RETURN THIS COPY WITH YOUR REMITTANCE

DIVISION OF LANDS
323 EAST 4TH AVENUE
ANCHORAGE, ALASKA 99501

MAKE REMITTANCE PAYABLE TO

DEPARTMENT OF REVENUE
CUSTOMER BILL

DO NOT ACCEPT THIS COPY AS A RECEIPT
THIS IS A BILL OR NOTICE

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LANDS
323 EAST 4TH AVENUE
ANCHORAGE, ALASKA 99501

DATE	TYPE	SERIAL NUMBER ADL	CUSTOMER NO	SUBJECT	ACCT
06-09-76	2	03065-7	16247	LAND LEASE	076

PAYOR

ANCHORAGE CAMPER CENTER
[redacted]
2756 COMMERCIAL DRIVE
ANCHORAGE AK 99501

PURPOSE	PERIOD FROM	PERIOD TO	AMOUNT
QUARTERLY RENTAL AT NEW APPRAISAL	05-02-76	08-02-76	6,620.00

	DATE	RECEIPT AMOUNT		
RECEIVED BY_____			PAY THIS AMOUNT	6,620.00

REMARKS

MAIL OR DELIVER TO

RETURN THIS COPY WITH YOUR REMITTANCE

DIVISION OF LANDS
323 EAST 4TH AVENUE
ANCHORAGE, ALASKA 99501

MAKE REMITTANCE PAYABLE TO

DEPARTMENT OF REVENUE

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THIS IS A BILL OR NOTICE

CUSTOMER BILL

ANCHORAGE, ALASKA 99501

DATE	TYPE	SERIAL NUMBER AFN	CUSTOMER ID	SUBJECT	MEMO OR BILL NO.
06-30-76	2	003066-5	05450	LAND LEASE	790243

PAYOR

JAMES E RIGSBEE JR
2015 BOREALIS DR
ANCHORAGE AK 99503

xck 10034 by same

PURPOSE	FROM PERIOD	TO	AMOUNT
QUARTERLY RENTAL	08-02-76	11-02-76	2,900.00

	DATE	RECEIPT AMOUNT		
RECEIVED BY jb	8/02/76	436.25		2,900.00

REMARKS

Pays with Protest Present Rate

New Increased Billing

RECEIPT

RECEIPT

3
2900
4
$11,600.00

$436.00 to

4
1744 year

Per year

35
2400
10
7

Started at

22
255
4
1020

$1020 year

1020
1000
58
1000
20,720

3224
1744
8720

MARSHALL K. CORYELL
ATTORNEY AT LAW
TRANSAMERICA TITLE BUILDING
705 WEST SIXTH AVENUE, SUITE 602
ANCHORAGE, ALASKA 99501
TELEPHONE [907] 277-[illegible]

July 13, 1976

The Honorable Guy R. Martin
Commissioner
Department of Natural Resources
Pouch M
Juneau, Alaska 99811

Re: My Clients: Don H. Clark, Beth Clark, D. Craig Clark and Bonnie Clark
Subject Land Lease No. 022652-5
Customer I.D. No. 80759
Term of Lease: May 6, 1964 to May 5, 2019
Property Description: Unit L-12: Lots 1, 2, S 1/2 NE 1/4, SE 1/4 of Section 4, Township 24 North, Range 4 West, Seward Meridian, containing 320.37 acres. Subject to right of way reservation 60 feet in width as designated on the records of the Division of Lands, State of Alaska.

Dear Mr. Martin:

Mr. Craig Clark and I conferred with Mr. Bruce Atkinson, Chief Appraiser of Division of Lands a short time ago regarding the above-entitled lease and another lease also. I think a brief recitation of the background on this matter might be of assistance:

The lease was entered into on or about May 6, 1964, and the original lease provided that the annual lease rate would be $40.00 per annum. In or about 1969, the annual lease rate was re-appraised and raised to $155.00 per annum.

In 1976 the Division re-appraised the land and reassessed the annual lease rental to the sum of $4350.00 per year. The first quarterly installment of $1,087.50 due on or about May 10, 1976 has been paid.

The original agreement classified the lands as agricultural on page 1 of the agreement. Also, on page 1 of the lease agreement there is the wording "note special provision on page eight of this agreement." Page 8 of the lease agreement provides as follows:

> "It is understood and agreed between the parties that the rental of $40.00 per annum shall remain in effect from the date of this agreement, May 6, 1964, for a five (5) year period, ending May 6, 1969. On or before the 6th day of May, 1969, the Lessor shall re-appraise the lands herein leased and the annual rental, for the balance of the lease term, shall then be adjusted to reflect an annual rental predicated upon the then current fair market value of the lands herein leased.
>
> It is the intent of this provision to permit the Lessee during the five year period of reduced rental, to clear the land and accomplish such other prerequisites as shall be necessary to bring the land, or portions thereof, into cultivation and thereby make it economically feasible for the Lessee to pay a rental predicated upon the market value of agricultural lands in the area."

This land was classified as University lands from the beginning and the billings for several number of years, specifically indicated that the lands were University lands and classified as agricultural. 11 AAC 58.120 entitled School Lands and University Lands provides as follows:

> "(a) School lands or university lands when classified as agricultural lands may be leased at a rental of not less than $0.10 per acre for the first five years of a lease awarded to the highest bidder at public auction for a term of 55 years or less. At the expiration of the first five year term the lands so leased shall be appraised and the lessee shall pay the then current fair market rental on the leased land for the balance of the term. Such appraisal shall not contemplate the improvements made by the lessee during the five-year period.
>
> (b) Th purpose of this provision is to make it economically feasible for a lessee to develop agricultural lands that are not available for purchase. (Eff 7/1/60, Reg. 1;am 8/15/64, Reg. 17;am 3/20/66, Reg. 22)"

It appears that upon our review of the lease agreement and the supporting regulation, that it was the intent of the Division to comply with this regulation when they granted the original lease. Since one re-appraisal period has gone by, it is Mr. and Mrs. Clark's position that no further re-appraisals are in order or in fact allowed by law. For these reasons Mr. and Mrs. Clark will not make any additional payments as our interpretation of the lease and regulation does not require them to make such increased payments. In fact, the lease payments are prepaid thru mid-year of 1982.

Based upon the foregoing we would request being advised of the position of the Department of Natural Resources in order that we might take appropriate legal action, if necessary. We will appreciate your response.

Sincerely,

Marshall K. Coryell
Attorney for Don H. Clark
and Beth P. Clark and D. Craig Clark and Bonnie Clark

cc: Mr. & Mrs. Don H. Clark
2731 Valley Forge Circle
Anchorage, Alaska 99502

Mr. Bruce Atkinson
Chief Appraiser
Division of Lands
Anchorage, Alaska 99501

Mr. James N. Reeves
Assistant Attorney General
360 "K" Street
Anchorage, Alaska 99501

United States Government?" First, let us realize that corporations are currently only paying about 15% of all tax revenues and the National Dividend Plan sponsors feel this program would be instituted over a five year period with phasing at 20% increase per year. The results would boost personal income tax sufficiently to cover the loss of the corporate taxes. Of course, this is based upon no increase in federal spending.

What are the benefits? According to N D P , the following would occur: 1) A big chunk of extra purchasing power for every family in the nation. 2) The yearly dividends spent for goods and services, or plunked into savings accounts, should increase production, create jobs, and give workers a direct stake in the success of American business; all business, not simply a workers own employer.

3) Thousands of families receiving $1500 or more a year would be lifted above the poverty line. Welfare rolls would be reduced, thereby lessening government spending at a federal, state, and local levels. The goal of the program is to reduce government spending. Individuals needing special help still would get it according to N P D sponsors, but need would diminish as family incomes grew through the Dividend Plan.

Home builders, would this type of program be worthwhile to sponsor? In my opinion, it would be a step in the right direction because it would encourage support of the free enterprise system throughout this country. Further, it would give each and every registered voter in the United States additional tax-free disposable income with which to invest, or increase his standard of living. More particularly it would aid in getting welfare recipients off the rolls. Could we, as an organization, not support such a program? It seems to me that this is an adequate challenge to change our tax structures.

ANOTHER WAY, LEASED LAND

by William Schlegel, Broker

For several years, Anchorage has experienced a large annual increase in housing costs. While a good portion of these costs have come from inflation in the labor field and in material cost, the largest single contribution has been the increases in the cost of land and its development.

In the last five years the land cost has increased about 20% per year. In 1970, good builder lots retailed for $10,000. Today, the same quality lot, if you can find it, goes for $20,000 to $22,000. The land developer who converts raw land into usable city size lots (ie 9000 ft2) invests approximately $13,500 to provide water, sewer, paving and fire hydrants to each lot. These costs do not include such niceties as street lighting, electricity or telephone service.

The obvious solution to these spiraling costs is to reduce the building size and or reduce the lot size to obtain more density. As an alternate innovative, realtor-builder teams have been endeavoring to provide better living and cost control by more imaginative use of the land through town house and condominium developments under the Municipality planned unit development.

A third attraction on reducing sales price has been the leased land concept that was pioneered in Hawaii which has proven to be so useful there. Probably the most successful project of this type has been James Wong's 144 unit Mt. Vernon Commons Condominium project in Anchorage. Mt. Vernon Commons combined imaginative land use, the saving in construction inherent in condominium common wall construction concepts, and the reduction in land cost through leasing and the "near fee ownership" created by this 75 year lease.

The cost advantages of leased land are that you substantially reduce your monthly payment yet you enjoy the same basic land use that you would experience if you own the land outright (ie in fee simple). In most aspects a 75 year lease is tandamont to fee ownership because you control the land for over two generations. When you remember that our country is only 200 years old, 75 years represents over a third of the lifetime of our country.

When an owner buys a home, you pay for it out of his home loan at current market rate. If you have a 9½% loan, and your lot costs you $20,000, you would pay $168.00 per month. If you leased the same property at the typical basic 8% lease, your monthly cost would be $133.00, a $35.00 per month saving. In addition to this, your purchase price should be reduced by $20,000 thereby reducing your down payment by $2,000.00. Many times these costs reductions make the difference in qualifying for a loan.

As the buying public becomes more knowledgeable about leasing concepts , we can expect to see more sophisticated uses of leasing. For the first time we now see the leased land concepts used on single family. One builder offering this type of purchase option is Foremost Homes. Their Crestwood project offers 1¼ acre heavily treed estate sized tracts off Birch Road. Because of the tract size, all homes are hidden from each other and offer an unusual park-like setting for rural living within fifteen minutes from town and with a substantial reduction in purchase price.

Buyers; you owe it to yourself to become familiar with the lease concept because of the financial benefits of such purchases.

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- CONVENTIONAL
- CONSTRUCTION

Assembly modifies petition ordinance

An ordinance outlining the ground rules for initiative and referendum petitions has been amended and approved by the Anchorage Assembly.

The ordinance sets down the acceptable procedure for the petitions which are the first step for citizen repeal or enactment of ordinances.

UNDER THE REVISED ordinance, individuals have 90 days from the date when the petition was first circulated to procure the number of signatures needed. Under the municipal charter, a petition must be signed by at least 10 per cent of the number of voters casting ballots at the last regular mayoral election.

Some individuals have been vocal in their criticism of the new time limit, claiming it makes petition requirements more difficult to meet, potentially limiting citizen participation.

However at Tuesday's assembly meeting, municipal clerk Mary Coffey noted that the ordinance does not set a time limit on starting a petition, technically allowing individuals to repeatedly attempt to gather the necessary signatures within any given 90-day time frame.

"I think 90 days is a happy medium," Coffey said. "If the referendum is not valid, there is no time limit on starting another petition for a referendum."

ASSEMBLYMAN Ben Marsh agreed, saying, "It seems that only 30 per cent of voters go to the polls. If you can't get those 10 per cent in 90 days, then it's not a very good petition."

Another amendment to the referendum procedure removes the assembly's jurisdiction over whether a petition is acceptable. Under the original ordinance, individuals could appeal to the assembly if the municipal clerk rejected their petition.

However the assembly Tuesday amended that provision to send the appeal directly to the superior court.

ASSEMBLY PRESIDENT Dave Rose introduced the amendment, saying petitions — which were probably started out of dissatisfaction with some assembly action — should be kept clear of the political process.

The other major amendment in the ordinance removed the requirement that petitions embrace "only a single comprehensive subject."

Although Coffey told the assembly the passage was intended to encourage conciseness in petitions, assembly member Tony Knowles questioned how a subject could be both singular and comprehensive.

"Would that we could by ordinance give the entire community clarity by virtue of ordinance," he said. "I would endorse it wholeheartedly."

Irate leaseholders will get to appeal

Mountain View leaseholders who are upset by substantial rent increases will have a chance to appeal at a hearing probably in mid-October, Mike Smith, director of the State Division of Lands, said Tuesday.

The Lands Division will send its standard warning letters soon to some 30 leaseholders on industrial tracts in Mountain View who paid their rent last month at old rates in protest of the increases.

THE WARNING LETTERS also notify leaseholders of the right to appeal, and Smith said a hearing will be set up after responses from the warning letters indicate how many people intend to appeal.

Leaseholders in the Alaska Industrial Subdivision, a state lease area between Commercial Drive and Mountain View Drive, were met with rental increases of 800 per cent and more when the state reappraised the tracts and sent out bills due in early August.

The leases are for 55 years, and the state reappraises them every five years. This year, rent on those leases up for reappraisal rose more dramatically than ever before.

Juneau sawmill proposed

JUNEAU (AP) — A new sawmill with a projected cost of $20 million has been proposed for a 60-acre site on the Gastineau Channel here.

The two-plant mill planned by Alaska Timber Corp. of Klawock would represent an initial investment of nearly $14 million. Alaska Timber has established the Alaska-Juneau Forest Products, Inc., to build and operate the proposed mill.

ED HAD, president of the southeastern firm, said Friday the first plant will mill rough timber and tips for export to Japan. The second mill, equipped with planers and

Kenai Native Association
3rd Annual Stockholders Meeting
CONVENTION

STATE OF ALASKA

THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

State land hearing

September 10, 1976

The Honorable Jalmar M. Kerttula
Box Z
Palmer, Alaska 99645

Dear Senator Kerttula:

Attached please find a draft letter to Commissioner Martin which we have prepared for your signature.

We hope this covers the subject matter adequately. However, should you wish to be more detailed and explicit regarding the surface leasing regulations, or if you want to have the matter handled differently, please advise us.

We are also enclosing certain back-up data and working notes which we utilized to come to grips with the sometimes conflicting and/or confusing regulations. We thought they might be helpful to you.

If there is anything further we can do, please let us know.

Sincerely,

Elke Kallab

Elke Kallab
Research Analyst

EK:jm
Enclosures

DRAFT: Elke Kallab
9/10/76

Dear Commissioner Martin:

While investigating protests of leaseholders regarding recent rent increases, it has come to my attention that the regulations governing surface leasing policy of the state are frequently not only confusing and outdated, but also contradictory and inconsistent.

As chairman of the Administrative Regulation Review Committee I am writing to you to determine what the Department of Natural Resources plans to do to revise its regulations to bring them into compliance with existing statutory authorities and to standardize them so they are consistent and can be more readily understood.

Following is a listing of some of the areas which appear to be in need of attention, particularly as they apply to surface leasing of state lands.

1. The variety of expressions and phrases used throughout Chapter 58 to establish the rental price of state leased lands is, to say the least, confusing and open to erroneous interpretation. Here is a sampling:

   - fair market value
   - appraised price determined by the division

- **current fair market rental**
- **appraised value**
- **approved appraised annual rental**
- **change in value**
- **(Re)Appraisal annual rental value**

Only fair market value is defined. It is not surprising that leaseholders should be in disagreement with the Division of Lands over what certain wording means. There is no reason why the language cannot be uniform and consistent throughout, just as there is no reason why significant and special words or phrases cannot be defined in order to prevent misunderstandings and arguments over what means what.

2. Related to the above are the differences of definitions for various classified lands. For instance, definitions of grazing, material, mineral, private recreation, public recreation and timber lands in Chapter 52 are not the same as in Chapter 58. Why should the same lands be defined differently in different chapters?

Along the same lines, classified lands available for leasing, such as industrial, utility, and watershed lands, are not even defined in Chapter 58, although Chapter 52 states that they may be leased "in accordance with regulations issued as Chapter 58..."

3. **Another deficiency which applies to several regulations is that the authorities cited are general instead of specific. Sec. 44.62.040(b) states that "...citation of specific statutory sections being implemented, interpreted or made clear, shall follow the text of each regulation submitted..."**

By not referring to the specific statutory authority it is most difficult to determine where the specific authority for the regulations derives from.

An excellent example of the above problem can be found in 11 AAC 58.520 which cites as authorities:

38.05.020 - authorities and duties of the commissioner of the Department of Natural Resources.
38.05.035 - authorities and duties of the director of the Division of Lands
38.05.075 - leasing procedure

However, the above regulation deals with the periodic rental adjustment of leased lands for which a specific statutory authority exists, namely 38.05.105-periodic rental adjustments.

Regulation 11 AAC 58.370 is another example where the specific authority should be cited. (AS 38.05.135)

I strongly urge that the applicable specific statutory author-

ities be cited with each regulation, along with the general authorities provided for in Sec. 44.62.040(b).

4. It seems to me that regulation 11 AAC 58.120 clearly needs to be revised. As the regulation presently reads, four leaseholders who show lease agreements with special provisions regarding the times their leases can be reappraised have a quite reasonable case against the Division of Lands. Since there is no specific statutory authority for regulation 11 AAC 58.120, it appears that at the time the four leases were issued the intent of the Department of Natural Resources (Division of Lands) was to grant these leaseholders special privileges. Otherwise, why write a separate regulation to make it possible? If the provision in the regulation is illegal as has been ruled by the attorney general's office, it should be revised at the earliest opportunity.

The above examples are but a few of the areas which appear to be in need of attention. I suspect that revisions and up-dating for all of Title 11 is in order.

I would appreciate being advised as soon as possible how soon and how extensively you intend to pursue the matter.

Sincerely,

Jay Kerttula

(The intent of the surface leasing regulation is "to insure the equitable leasing of AK land in a manner that will encourage development for its highest and best use".)

Regulation 11 AAC 58.040 (b) - Preference Right Grazing Lease and Forest Service Permittee Lease - states that "the director shall offer the land for leasing to the permittee for not less than its fair market value . . ."

Regulation 11 AAC 58.660 (b) - Preference Rights - talks about how land under preference rights is to be leased "at an appraised price determined by the division".

Regulation 11 AAC 58.660 (c) (3) - Preference Rights -states that lands (leased under preference rights for the unexpired term of the lease) is to be leased "at an annual rental to be predicated on the fair market value of (said) lands". This is on lands which have been classified agricultural.

Regulation 11 AAC 58.120 - School Lands & University Lands - refers to "current fair market rental . . ."

Regulation 11 AAC 58.370 - Public and Charitable Use -states that state lands may be leased "for less than appraised value" as determined by director and approved by commissioner to any state, federal or political subdivisions, or public service or function providing agency (utility); also charitable and non-profit organizations--all organizations exempt from federal income tax.

The director may decide, at his discretion, the annual rent considering the financial resources of the applicant for the lease, but such rental may be "no less than one percent of fair market value" on lands primarily acquired for development, or "no less than 5% of the fair market value on school, university, mental health or acquired lands".

Regulation 11 AAC 58.390 - Appraisal - states that no lands shall be leased or renewed unless the land has been "appraised" within 90 days prior to date fixed for leasing. If lands have been offered at public leasing but were not leased, then the land will be available by negotiation "at no less than the approved appraised annual rental". "No reappraisal

of the lands has occurred".

Regulation 11 AAC 58.510 - Annual Rental - states that "annual minimum rentals shall be computed from the approved appraised market value".

Regulation 11 AAC 58.520 - Adjustment of Rental - states that "all leases shall stipulate that the annual rental payment, (which is pegged to the approved appraised market value) shall be subject to adjustment by the director at 5 year intervals and any changes or adjustments shall be based primarily upon the reappraised annual rental value."

When reappraising the annual rental value, the director shall take into consideration the following factors:

- Value of comparable lands in the same or similar areas, exclusive of improvements provided by lessee.

The commissioner may waive rental adjustments or lengthen reappraisal periods when lessee (who is improving the leased property) can show he needs this "special treatment" to obtain financing or loan insurance for development of the leased land.

Regulation 11 AAC 58.740 - Rights-of-Way - states that damages sustained by the lessee as a result of the state granting a right-of-way across the leased land "shall be determined by fair market value".

Definitions

	11 AAC 52.220	11 AAC 58.910
Agricultural Lands	Those lands which, because of location, adjacent development, physical and climatic features, are or may be made suitable for the production of agricultural crops.	Those lands which, because of location, adjacent development, physical and climatic features, are or may be made suitable for the production of agricultural crops.
Commercial Lands	Those lands which, because of location, physical features or adjacent developments, may best be utilized for non-industrial business purposes.	Those lands which, because of location, physical features or adjacent developments may best be utilized for non-industrial business purposes.
* Grazing Lands	Those lands which have the physical and climatic features that make them primarily useful for the pasturing of domestic livestock.	Those lands which in their natural state have the climatic features that make them primarily useful for the pasturing of domestic livestock. (Forage crops allowed for lessee's own use only - 11 AAC 58.030).
Industrial Lands	Those lands which, because of location, physical features, or adjacent developments, may be best utilized for industrial purposes.	None
* Material Lands	Those lands that are chiefly valuable for materials, including, but not limited, to the common varieties of sand, gravel, stone, pumice, pumicite, cinders and clay and where the removal of the material would seriously interfere with the surface utilization.	Those lands that are chiefly valuable for materials, including, but not limited to, the common varieties of the following: sand, gravel, stone, pumice, pumicite, cinders and clay. (May be leased for purpose other than removal of materials, so long as it is consistent with primary classification - 11 AAC 58.050).
* Mineral Lands	Those lands that are chiefly valuable for minerals, including, but not limited to coal, phosphate, oil shale, sodium, sulphur and potash and where the removal of the material would seriously interfere with surface utilization.	Those lands that are chiefly valuable for minerals, including, but not limited to coal phosphate, oil shale, sodium sulphur, potassium, wherever it appears probable that the surface use for the extraction of such minerals would preclude other utilization.
* Private Recreation Lands	Those lands which, because of location, physical features or adjacent developments, are chiefly	Those lands which, because of [illegible] physical features or adjacent [illegible]

	11 AAC 52.220	11 AAC 58.910
	valuable as outdoor rural areas and may best be utilized by private non-commercial development.	chiefly valuable as outdoor recreational areas and may best be utilized by private non-commercial development. (One residence per lot leased - 11 AAC 58.070).
* Public Recreation Lands	Those lands which, because of location, physical features or adjacent development, may best be utilized by the public for, but not limited to, natural and developed recreational and historical areas.	Those lands which, because of location, physical features or adjacent development, may best be utilized by the public for, but not limited to, parks, scenic overlooks, campgrounds, historical sites, and fishing-hunting access sites. (May be leased for other purposes than recreation so long as it is consistent with primary classification - 11 AAC 58.110).
Residential Lands	Those lands which, because of location, physical features or adjacent development, may best be utilized for single or multiple unit dwellings.	Those lands which, because of location, physical features or adjacent development, may best be utilized for single or multiple unit dwellings.
* Timber lands	Those lands which, because of physical, climatic and vegetative conditions, are presently or potentially chiefly valuable for the production of timber and other forest products.	Those lands which are primarily useful for production of forest products or watershed protection.
Utility Lands	Those lands which, because of size of tracts, physical features, adjacent developments or location, may be suitable for a variety of uses or which do not lend themselves to classification under the other designations herein contained.	None
Watershed Lands	A drainage area which may best be utilized as a public water source.	None

* Inconsistency between various chapters.

	11 AAC 56.610(5)	11 AAC 52.220(5) & 11 AAC 58.910(5)
* Classification	The systematic designation of lands according to their highest and best use.	The designation of lands according to their apparent best use.

Fair Market Value	Means the highest price, estimated in terms of money, which the property would bring if exposed for sale for a reasonable time in the open market, with a seller, willing but not forced to sell, and a buyer, willing but not forced to buy, both being fully informed of all the purposes for which the property is best adapted or could be used. (11 AAC 58.910(11))

* Inconsistency between various chapters.

THE FOLLOWING DOCUMENT(S) MAY NOT FILM LEGIBLY BECAUSE OF POOR QUALITY OF THE ORIGINAL.

11 AAC 58.510. LEASE UTILIZATION. Land leased shall be utilized for purposes within the approved use and land classification. Utilization or development for other than the allowed uses shall constitute a violation of the lease. A development plan may be required on all leases involving 640 acres or more. Failure to make substantial use of the land, consistent with the development plan, within five years, shall, in the director's discretion, constitute grounds for cancellation. (Eff. 7/1/60, Reg. 1; am 8/15/64, Reg. 17; am 3/22/66, Reg. 22)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

11 AAC 58.520. ADJUSTMENT OF RENTAL. All leases shall stipulate that the annual rental payment shall be subject to adjustment by the director at five-year intervals and any changes or adjustments shall be based primarily upon the reappraised annual rental value. The director shall take into consideration the following factors in reappraising the annual rental value: the value of comparable lands in the same or similar areas, exclusive of buildings, structures, appurtenances, equipment, land fill, clearing, leveling or roads owned by the lessee. The commissioner may waive one or more of the periodic rental adjustments or lengthen the reappraisal period, when a lessee who has acquired a tract of land for multiple unit housing, commercial, or industrial development can demonstrate to the satisfaction of the commissioner that such action is essential in order to obtain the primary long term financing or loan insurance required for development of the leased land. In order to qualify, applicants must furnish written evidence that, in requiring a waiver of rental adjustment, the lending or insuring agency is applying a generally applicable rule. Waivers shall remain in effect only during the term of the loan but shall not exceed 40 years. (Eff. 7/1/60, Reg. 1; am 8/15/64, Reg. 17; am 3/20/66, Reg. 22)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

Specific authority → 105

11 AAC 58.530. SUBLEASING. Any lessee may sublease the lands or portion thereof upon which he has a lease; provided, that before any sublessee shall be permitted to sublease any of such lands or portion thereof, he shall make application to the director for a permit and the director may issue such permit if he finds it in the best interest of Alaska. Leases that have improvements thereon shall not be subject. Subleasing shall be allowed of leases or portions thereof that have improvements thereon, when, in the director's opinion, the improvements are substantially the reason for the subleasing. Sublessees shall not be allowed to further sublease their interest. All subleases shall be in writing. (Eff. 7/1/60, Reg. 1; am 8/15/64, Reg. 17; am 3/20/66, Reg. 22)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

11 AAC 58.540. ASSIGNMENTS. Any lessee may assign the lands or portion thereof upon which he has a lease; provided, that before any lessee shall be permitted to assign any of such lands or portion thereof, he shall make application to the director for a permit and the director may issue such permit if he finds it in the best interest of Alaska. Applications for assignment shall be made in writing to the director on form DL-50 "Assignment of Lease" or an image copy thereof. The assignee shall be subject to and governed by the provisions of the lease and regulations applicable thereto. (Eff. 7/1/60, Reg. 1; am 8/15/64, Reg. 17; am 3/20/66, Reg. 22)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

11 AAC 58.550. MODIFICATION. A lease may not be modified orally or in any manner other than by an agreement in writing signed by all parties thereto or their respective successors in interest. (Eff. 7/1/60, Reg. 1; am 8/15/64, Reg. 17; am 3/20/66, Reg. 22)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

11 AAC 58.560. CANCELLATION - FORFEITURE. (a) Leases in good standing may be cancelled in whole or in part, at any time, upon mutual written agreement by the lessee and the director.

(b) A lease is subject to cancellation in whole or in part if improperly issued through

[illegible] this title and sec. 380 of this chapter, no land within or adjacent to an incorporated municipality or other organized community may be leased or a renewal lease issued until the proposed use of the land has been studied and reviewed jointly by the director and the local authorized planning agencies. (Eff. 7/1/60, Reg. 1; am 8/15/64, Reg. 17; am 3/20/66, Reg. 22)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

11 AAC 58.370. PUBLIC AND CHARITABLE USE. (a) The lease, sale or other disposal of any Alaska lands or resources may be made to any Alaska or federal agency or political subdivision, or the lease, sale or other disposal for less than the appraised value as may be determined by the director and approved by the commissioner to be fair and proper and in the best interests of the public, with due consideration being given to the nature of the public services or function rendered by the said agency, subdivision or utility making application therefor, and of the terms of the grant under which the land was acquired by Alaska.

(b) The director upon application filed by an applicant eligible under this subsection may, by negotiation and without public auction in the manner prescribed in this subsection, lease any lands of the state for a term not in excess of 55 years. Before leasing, the director shall prepare a land use plan and a land classification to insure that the proposed use is compatible with area utilization. Before the land may be leased under this subsection, it must be shown to the satisfaction of the director that the land is to be used for an established or definitely proposed project, and that the eligible applicant, as hereinafter described, has the financial ability to carry out the project. The commissioner may establish limitation on the acreage which may be leased pursuant to this subsection to any applicant.

(c) [illegible] applicants under this section shall be limited to nonprofit corporations, associations, clubs, or societies organized and operated exclusively for charitable, religious, scientific or educational purposes, or for the purpose of social welfare, if the project for which land is desired conforms to those purposes. Every such applicant shall submit evidence that it is exempt from payment of federal income tax.

(c) The director may lease such land to an eligible applicant at a reasonable annual rental, taking into consideration the purposes for which the lands are to be used and the financial resources of the applicant, but in no case may such rental be less than one percent of the fair market value on lands acquired primarily for development, or less than five percent of the fair market value on school, university, mental health or acquired lands. Renewal leases may be issued at the discretion of the director upon the expiration of any primary or renewal term. Each lease shall contain a provision for its termination as to all or part of the lands upon a finding by the director that the land or any part of it has not been used by the lessee for the purpose specified in the lease for a period of two years. No lease may be assigned or subleased, except with the consent of the director, and in any case may only be transferred to an applicant eligible under this subsection. A lessee may not change the use specified in the lease to another or additional use except with the consent of the director. If, at any time after the lands are leased, the lessee attempts to assign the lease or transfer control over these lands to another, or if the lands are devoted to a use other than that for which the lands were leased without the consent of the director, the lease automatically terminates. (Eff. 7/1/60, Reg. 1; am 8/15/64, Reg. 17; am 3/20/66, Reg. 22)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

Sponsor's auth → 315

11 AAC 58.380. TERM OF LEASE. Lease may be issued for a period up to 55 years, if it appears to be in the best interests of Alaska and if approved by the commissioner; provided, however, if the intial annual rental of a lease does not exceed $1000, the approval of the commissioner is not required. (Eff. 7/1/60, Reg. 1; am 8/15/64, Reg. 17; am 3/20/66, Reg. 22)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

11 AAC 58.390. APPRAISAL. No lease shall be issued or [illegible]

(c) The lessee may elect to abandon his rights under the cancelled federal lease, as herein provided, and make application to the director for a state lease for a term up to 55 years. If the lessee should elect, he shall be afforded the same preference right as an expiring lessee as provided in sec. 660 of this chapter. (Eff. 7/1/60, Reg. 1; am 8/15/64, Reg. 17; am 3/20/66, Reg. 22)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

11 AAC 58.050. MATERIAL LANDS. Land classified as material lands shall be available for lease under this chapter. Material lands may be leased for purposes other than the removal of materials, provided such proposed use is consistent with the primary classification. (Eff. 6/30/60, Reg. 1; am 8/15/64, Reg. 17; am 3/22/69, Reg. 28)

Authority: AS 38.05.020
AS 38.05.070

11 AAC 58.060. MINERAL LANDS. Land classified as mineral lands shall be available for lease under this chapter. Mineral lands may be leased for purposes other than the removal of minerals, provided such proposed use is consistent with the primary classification. (Eff. 6/30/60, Reg. 1; am 8/15/64, Reg. 17; am 3/22/69, Reg. 28)

Authority: AS 38.05.020
AS 38.05.070

11 AAC 58.070. PUBLIC RECREATION LANDS. Land classified as public recreation lands shall be available for lease. Public recreation lands may be leased for purposes other than public recreation, provided such proposed use is consistent with the primary classification. (Eff. 6/30/60, Reg. 1; am 8/15/64, Reg. 17; am 3/22/69, Reg. 28)

Authority: AS 38.05.020
AS 38.05.070

11 AAC 58.080. PRIVATE RECREATIONAL LANDS. Lands classified as private recreational [illegible] leased for that purpose shall be used for [illegible] recreational purposes. No [illegible] residence shall be constructed on [illegible] leased. However, the director may, [illegible] consistent with the [illegible] of such parcel of land, [illegible]

proper notice, cancel the existing lease. (Eff. 7/1/60, Reg. 1; am 8/15/64, Reg. 17; am 3/20/66, Reg. 22)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

11 AAC 58.090. RESIDENTIAL LANDS. Lands classified as residential lands and leased for that purpose shall be used for residential purposes only and in accordance with any applicable building and zoning codes. In the absence of such codes the lessee, shall, at least 30 calendar days prior to commencement of construction or utilization, file with the director a plot plan and a general description of contemplated construction. The director shall reject said plan within 30 calendar days after receipt thereof if he deems such utilization or construction contrary to the orderly development of the area or incompatible with existing development. (Eff. 7/1/60, Reg. 1; am 8/15/64, Reg. 17; am 3/20/66, Reg. 22)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

11 AAC 58.100. RESERVED USE LANDS. Reserved use lands are available for leasing and may be utilized under an Inter-agency Land Management Transfer. Lands transferred to a qualified agency may be utilized by sublease or any other manner, provided such utilization shall be consistent with the function assigned said agency and the provisions of the Land Act and these regulations unless otherwise exempted. (Eff. 6/30/60, Reg. 1; am 8/15/64, Reg. 17; am 3/22/69, Reg. 28)

Authority: AS 38.05.020
AS 38.05.070

11 AAC 58.110. TIMBER LANDS. Timber lands are available for lease. Timber lands may be leased for purposes other than the removal of timber, provided such proposed use is consistent with the primary classification. (Eff. 6/30/60, Reg. 1; am 8/15/64, Reg. 17; am 3/22/69, Reg. 28)

Authority: AS 38.05.020
AS 38.05.070

11 AAC 58.120. SCHOOL LANDS AND [illegible] LANDS. [illegible] School Lands or [illegible] be available for [illegible]

lands may be leased at a rental of not less than $20.00 per acre for the first five years of a lease awarded to the highest bidder at public auction for a term of 55 years or less. At the expiration of the first five year term the lands so leased shall be appraised and the lessee shall pay the then current fair market rental on the leased land for the balance of the term. Such appraisal shall not contemplate the improvements made by the lessee during the five-year period.

(b) The purpose of this provision is to make it economically feasible for a lessee to develop agricultural lands that are not available for purchase. (Eff. 7/1/60, Reg. 1; am 8/15/64, Reg. 17; am 3/20/66, Reg. 22)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

11 AAC 58.130. RESOURCE MANAGEMENT LANDS. Resource management lands are available for lease under the terms and provisions of this chapter. (Eff. 3/22/69, Reg. 28)

Authority: AS 38.05.020
AS 38.05.300

11 AAC 58.140. OPEN-TO-ENTRY LANDS. Open-to-entry lands are available for lease subject to the provisions of AS 38.05.077. (Eff. 3/22/69, Reg. 28)

Authority: AS 38.05.020
AS 38.05.077

ARTICLE 2. PERMITS

Section
200. Right-of-way or easement permit
210. Special land use permit
220. Roads to subdivided state lands

11 AAC 58.200. RIGHT-OF-WAY OR EASEMENT PERMIT. (a) The director, without the prior approval of the commissioner, may issue permits for roads, trails, ditches, pipelines, drill sites, log storage, telephone and transmission lines or similar uses or improvements. Application shall be made on form DL-75 completed in full or an image copy thereof and include therewith the required plats or application fee.

(b) In the granting of any permit or easement on tide or submerged lands, the upland owner shall have the first preference to the use of such land which is contiguous and seaward of the upland property of such upland owner and which is needed by such upland owner for any of the purposes for which the permit or an easement may be granted.

(c) In the event the use authorized under said permit is a hydraulic project, or uses any equipment that will use, divert, obstruct, pollute or change the natural flow or bed of any river, lake or stream or that will utilize any of the waters of the state or materials from any river, lake or stream bed, the applicant shall notify the Commissioner of the Department of Fish and Game and shall obtain his approval prior to the commencement of operations.

(d) In the event the use authorized under said permit shall require navigable water or in any way interfere with navigation, permission of the Corps of Engineers, Department of Army, shall be obtained prior to use. (Eff. 7/1/60, Reg. 1; am 8/15/64, Reg. 17; am 3/20/66, Reg. 22)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

11 AAC 58.210. SPECIAL LAND USE PERMIT. The director, without prior approval of the commissioner, may issue special land use permits on such terms and conditions as he deems to be in the best interests of Alaska. (Eff. 7/1/60, Reg. 1; am 8/15/64, Reg. 17; am 3/20/66, Reg. 22)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

11 AAC 58.220. ROADS TO SUBDIVIDED STATE LANDS. (a) It is the purpose of this section to provide access to subdivided state lands which are programmed for surface disposal, and to provide access roads at the lowest possible cost.

(b) The director of the Division of Lands may contract with private persons for the construction of roads to and on subdivided state lands programmed for surface disposal which are not more than six miles from existing roads or highways.

MEMORANDUM State of Alaska

TO: Michael C. T. Smith
Director
Division of Lands

DATE: October 3, 1975

FILE NO:

TELEPHONE NO:

FROM: James N. Reeves
Assistant Attorney General
ACO - Anchorage

SUBJECT: Harry Cummings Lease;
ADL 21928

This is a 1963 lease of University lands classified as agricultural. Two independent legal problems have recently arisen. Over the summer, I gave your office informal advice on these problems, but it was apparently lost and forgotten.

On September 9, Mr. Atkinson of your office delivered the entire file to me and requested that I handle the problems it raises, stating that he and Mr. Ballback regard them as "legal." Charles Tulin, attorney for Mr. Cummings, has since contacted me at the suggestion of your office regarding one of the two problems. I feel that it would be more appropriate for your office to handle this matter on the basis of the legal advice which follows, but I will do it myself if for some reason your office cannot.

This lease was sold at public auction in November, 1973. Cummings was the high bidder. Thereafter, between the signing of Mr. Cummings' conditional receipt and agreement to lease and the issuance of the lease agreement itself, certain "Special Provisions" were added to the lease agreement. These Special Provisions, apparently unique to this lease, give rise to two illegal questions.

1. Is the Division foreclosed by the Special Provisions from raising the rent based upon five year reappraisals?

The statute applicable when this lease was issued was the original unamended Section 105 of the Alaska Land Act, which then read:

> All leases shall stipulate that the annual rental payment shall be subject to adjustment at five-year intervals and any charges for adjustments shall be based primarily on a reappraised annual rental value.

The standard lease form used in this transaction is consistent with that statute; it provides that rental payments will be "subject to adjustment at each five-year interval from the effective date" of the lease.

One provision of the Special Provisions could be interpretted as conflicting with that foregoing provision:

> **On or before the 19th of November 1968 [the five-year anniversary date] the Lessor shall re-appraise the lands herein leased and the annual rental for the balance of the lease term, shall then be adjusted to reflect an annual rental predicated upon six (6) percent of the then current fair market value of the lands herein leased.**

The Special Provisions recite that this procedure was approved in 1963 by the President of the University and by the Commissioner of Natural Resources.

This is a fifty-five year lease with a statutory right of renewal. The original annual rent of the 720 acre parcel was set in 1963 at $300. In 1968, it was reappraised pursuant to the above provisions of the lease and rent was raised to $1,260 per year. In 1973, the Division notified the lessee that it intended to reappraise and raise the rent again. For some reason, reappraisal took 18 months; on May 22, 1975, the Division notified the lessee that the rent had been raised to $10,920 per year.

The lessee and his attorney naturally take the position that no readjustment of rent may occur for the balance of the term. They base this argument upon the Special Provision of the lease which seems to waive the State's power to make five-year rent readjustments. Over the life of the lease, this question is obviously one which could be worth hundreds of thousands of dollars to the parties.

It is my opinion that for at least two reasons the Division should continue to readjust rents at five-year intervals based upon up-dated reappraisals.

In the first place, the statute under which the land was leased required adjustments at five-year intervals. AS 38.05.105 (before 1964 amendment). Therefore, the Special Provision which purports to waive readjustment conflicts with the statute which required it. For that reason the Director acted in excess of statutory authority in attempting to waive

rental readjustment provision in 1963. Cummings' attorney has taken the position that AS 38.05.105 as it presently reads clearly authorizes such a waiver; what he overlooks or fails to acknowledge is that the waiver authority now found in the second sentence of that statute was not a part of the Land Act when this lease was issued, but was added by an amendment in 1964. See, Chapter 44 SLA 1964. Certainly the 1964 statute did not authorize a waiver in 1963.

There is another, independent reason why the Special Provision purporting to waive rental readjustment is unenforceable. As is required by statute, this lease was sold at public auction. But it appears that the lease was offered to the public at auction without the Special Provision which purports to waive the rental readjustment. Had the Division in 1963 possessed statutory authority to offer a long term lease with a waiver of rental readjustments, it would certainly have been obligated to do so at public auction. Indeed, had this lease been offered at public auction with the waiver, it would almost certainly have brought substantially larger bids. For this reason, it is my opinion that the waiver, even if otherwise authorized by law in 1963, could not legally be engrafted to the transaction by the Division after it had been offered at public auction without that "bonus." Mr. Cummings bid on what was offered, and that is all he got. 1/

2. Is the Special Provision purporting to authorize the commercial harvesting of timber from the leased land valid?

This 720 acre parcel apparently supports a commercially-valuable stand of timber. The Division has asked whether Cummings may be permitted to harvest that timber for economic gain rather than personal use. It is my opinion that he may not.

The Alaska Land Act authorizes the sale of timber on State lands either by sealed bids or public auction. AS 38.05.120. As I understand it, no timber sale has been held with respect to this property; instead, the State has leased the land.

1/ Because these two independent grounds so clearly establish the invalidity of the lease's purported waiver of rent readjustments, I have not addressed the question of whether, had AS 38.05.105 read in 1963 as it does today, the Director could have leased these university lands at public auction with the rental readjustment waiver without violating some fiduciary obligation imposed by 43 U.S.C. § 354 or other laws.

Again, the form lease agreement used by the Division in this case deals specifically with this question. Paragraph five of the lease states that "the lessee shall not sell or remove for use elsewhere any timber, . . . provided, however that material required in the enjoyment of this lease may be used after a written permit therefor has been obtained from the lessor." The lease also provides that "the lessee shall not commit waste or injury upon the lands leased herein." These standard lease provisions are consistent with regulations on the same subject. Although timber lands are leasable for other purposes (11 AAC 58.110), the timber itself may be sold for commercial purposes only under the timber sale regulations, 11 AAC 76.005-.385. Leasing of the surface with unrestricted rights to remove and sell the timber would circumvent the specific statutory limitations upon the sale of timber.

This implicit statutory prohibition of the sale or lease of land as a device to avoid the timber sale provisions of the Land Act is expressly reiterated in the Division's land leasing regulations. 11 AAC 54.110 permits the lease of timber lands, but only "for purposes other than the removal of timber." When timber lands or other lands chiefly valuable for the materials occurring thereon are leased, the lessee of the surface rights is not permitted to "sell or remove for use elsewhere any timber, . . . or any other material valuable for building or commercial purposes [except insofar as that material may be] required for the development of the leasehold." 11 AAC 58.730.

In accord with these statutes and regulations, the standard lease and sale contract forms used for more than a decade by the Division all contain provisions unequivocally prohibiting commercial harvesting of timber. The Cummings lease is a good example. It specifically states that

> the Lessee shall not sell or remove for use elsewhere any timber, . . . or any other material valuable for building or commercial purposes; provided, however, that material required in the enjoyment of this lease may be used after a written permit therefore has been obtained from the Lessor.

Likewise, the lease provides that "the lessee shall not commit waste or injury upon the lands leased herein."

The misunderstanding concerning Cummings' right to harvest timber, like that concerning rental readjustment, springs from the unique Special Provisions added to this lease following the auction. One of them reads as follows:

> Permission is hereby granted the Lessee to remove all or any portion of the timber now growing on the lands included in this lease agreement and to dispose of the timber so removed in such manner as he shall see fit.

For precisely the same reasons which compel the conclusion that the attempted waiver of the State's right to readjust rents is void, the Special Provision concerning timber harvest is void as well. The law applicable when the sale was held forbade the granting of rights to harvest timber for other than personal use as a part of a land lease. Furthermore, even if such a grant were then permitted by law, the lease offered to the public at auction did not contain this valuable right, and therefore it could not be engrafted upon the transaction by negotiation or simple generosity.

I suppose that this opinion will generate problems for the Division of Lands, particularly with regard to the timber problem - for the Division has vacillated on that issue in connection with this lease and ultimately advised Mr. Cummings in 1973 that he was entitled to take the timber. Having reluctantly concluded that that advice was in error, I urge that it be countermanded immediately.

Perhaps the personnel of the Division of Lands should be reminded that they have no carte blanche authority to deal with state lands. Their power derives entirely from the legislature. In some areas, the Commissioner has by regulation limited the Director's ability to implement or use statutory authority by voluntarily imposing additional conditions and limitations upon the powers given him by statute. The Division's personnel must examine every proposed Division action to determine whether the legislature has authorized it by statute and, if so, whether Division regulations permit it. Unless both questions are answered in the affirmative, the proposed action should not be taken.

JJS:lj

done to the land by its lessee or liable for any claims of any third party or to any claims that may arise from ownership. In the event the state does receive title to the land under lease, the conditional lease shall then have the same standing, force and effect as a non-conditional lease issued under the regulations of this chapter. (Eff. 7/1/60, Reg. 1; am 8/15/64, Reg. 17; am 3/20/66, Reg. 22)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.077

ARTICLE 4. SHORT TITLE AND DEFINITIONS

Section
900. Short title
910. Definitions

11 AAC 58.900. SHORT TITLE. This chapter pertains to the leasing of lands of the State of Alaska and to the jurisdiction of the Division of Lands, Department of Natural Resources and related matters. The intent of this chapter is to insure the equitable leasing of Alaska land in a manner that will encourage development for its highest and best use. This chapter may be referred to as the "Surface Leasing Regulations." (Eff. 7/1/60, Reg. 1; am 8/15/64, Reg. 17; am 3/20/66, Reg. 22)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

11 AAC 58.910. DEFINITIONS. In these regulations the following terms shall have the meaning indicated unless the context clearly requires a different meaning:

(1) "agricultural lands" means those lands which, because of location, adjacent development, physical and climatic features, are or may be made suitable for the production of agricultural crops;

(2) "Act" means the Alaska Land Act, AS 38.05;

(3) "Alaska" means State of Alaska;

(4) "Alaska lands" means all lands including inland tide and submerged lands, or resources belonging to or hereafter in any manner acquired by Alaska;

(5) "classification" means the designation of lands according to their apparent best use;

(6) "commercial lands" means those lands which, because of location, physical features or adjacent developments, may best be utilized for non-industrial business purposes;

(7) "commissioner" means the Commissioner of the Department of Natural Resources;

(8) "department" means the Department of Natural Resources;

(9) "director" means the Director of the Division of Lands, Department of Natural Resources;

(10) "division" means Division of Lands within the Department of Natural Resources. Administrative powers and other delegated duties as prescribed by law or regulations are vested in the director;

(11) "fair market value" means the highest price, estimated in terms of money, which the property would bring if exposed for sale for a reasonable time in the open market, with a seller, willing but not forced to sell, and a buyer, willing but not forced to buy, both being fully informed of all the purposes for which the property is best adapted or could be used;

(12) "grazing lands" means those lands which in their natural state have the physical and climatic features that make them primarily useful for the pasturing of domestic livestock;

(13) "preference right grazing lease" means a grazing lease granted to a lessee whose federal grazing lease was cancelled to allow the land under lease to be selected by the state;

(14) "land" means all lands under the jurisdiction of the division;

(15) "lease" means a surface lease issued or held pursuant to the Act and these regulations;

(16) "mineral lands" means those lands that are chiefly valuable for materials, including, but

(1) Consistency !!!!

THE PRECEDING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

Problems with Chapter 58

1) Definition of various classifications of lands vary from chapter to chapter in the regulations. They should be consistent at all times. See chapters 56 and 58, for instance.

2) Every chapter ought to have the same number of definitions; i.e., commercial lands should be defined, as should be industrial, not just one or the other. For instance, Chapter 58 dealing with state leases does not have a definition of industrial lands, yet a goodly number of state leases are just that.

3) Commercial-Industrial classification (11 AAC 56.610) no longer exists, yet it still is on the books.

4) a. Public recreation lands classification should be outdoor recreation areas (which include parks, scenic overlooks, campgrounds, etc., etc.); it should be removed from private recreation lands because it conjures up the image of public use.

b. Some more descriptive term (such as cabin site or leisure or recreational purposes) should be substituted for outdoor recreational areas under private recreation lands.

5) Classification of lands is supposedly the systematic designation of lands according to their highest and best use, according to 11 AAC 56.610; yet 11 AAC 58.910(5) says "apparent best use", even though 11 AAC 58.900

states "highest and best use".

6) Authorizing statutes must be shown in the regulations. Someone ought to check that in minute detail. We came across a couple of omissions just checking on problems with state leases. (Omission of AS 38.05.105 authorizing specifically half of 11 AAC 58.520. Instead, they cite the very general and broad .020, .035 and .075. The same thing is true of AS 38.05.135 which deals specifically with public and charitable uses on leased land, but 11 AAC 58.370 just mentions the old standbys of .020, .035 and .075.)

7) What constitutes the annual rental rate? How it is to be arrived at needs to be spelled out in the regulations.

8) Related to 7) above, annual rental value (which should not be pegged to the fair market value, but in fact is determined by it due to the non-existence of private leases comparable to those offered by the state) should be defined, which it is not now, in the regulations.

9) Watershed Lands/Timber Lands-Classified. Defined separately in Chapter 52; combined in Chapter 58. Must/should be consistent.

10) What is the difference between "may not be disposed by sale" (52.060) and "shall not be sold" (52.080)? If they should be identical, make it one or the other.

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM September 14, 1976

SUBJECT: Surface Leasing Policy of State Owned Lands

TO: The Honorable Kay Poland

FROM: Elke Kallab
Research Analyst

This memorandum addresses various issues which have been raised in conjunction with recent rent increases on state leased lands and, as you requested, comments on points brought up by leaseholders protesting the readjustment of their rents on a variety of grounds. Only the area of surface leasing of state owned lands has been investigated.

In summary we found that the rent increases appear to be in compliance of current, applicable statutes. However, we did discover numerous irregularities and inconsistencies in the regulations which govern surface leasing of state lands. We believe that the various shortcomings and ambiguities of the regulations have contributed significantly to the leaseholders' perceptions that the increases are illegal or arbitrary. The information and data pertaining to surface leasing regulations have been submitted to the chairman of the Administrative Regulation Review Committee, as is a copy of this memorandum.

* * * * * * * * * * * * *

I. Rent Increases

Substantial increases of rents in the process of reappraisal did not begin this year. Attached to this report are two lists which show the old and current rental rates on every state lease which came up for reappraisal in 1975 and 1976 as supplied to us by the Division of Lands. As can be seen, some of the steeper increases occurred in 1975.

Records show that the Division of Lands adopted the policy to use "market rental rates" for appraisals and reappraisals of state lands, when and where a comparable private rental market existed, as early as March 10, 1975. This decision was made because the Division of Lands believed that enough private leases existed by then which were comparable to certain types of state leases to institute market rental rates rather than charging contract rents at the rate of six percent of the fair market value of the property as was and continues to be the case when no market exists. So far, this policy has been limited in application primarily to industrial and commercial leases in the Anchorage area, since a private market for other types of leases does not exist at this time. However, a subdivision is presently being built in Anchorage in which the lots are being leased rather than being sold. Therefore, state leased lands in Anchorage which are classified as residential may soon be (re)appraised on the basis of economic rather than contract rental rates as established by the Division of Lands.

Current private market rates in Anchorage are comparable to those charged leaseholders in the Anchorage Industrial Subdivision according to the Division of Lands. (The Alaska Industrial Subdivision is located on Sec. 16 school land in downtown Anchorage.) For instance, we have been advised by the Division of Lands that Alaska Industrial Park, a private industrial subdivision on the southwest corner of C and 44th Streets charges an annual rental of eight percent of the "appraised fair market value," with a periodic five year rent adjustment provision part of the lease. Calais Company and Carr-Gottstein Properties lease their industrial lands at a rate of seven percent. However, unlike Alaska Industrial Park, they will not subordinate their lands; i.e., take a "back seat" to the improvements on the land which have been financed by a third party.

Leaseholders have charged that the Division of Lands has not used comparable parcels or proper appraisal methods when it reappraised certain leases in the Alaska Industrial Subdivision in Anchorage and a utility lease in the Matanuska Valley. However, all attempts to have these charges substantiated by the leaseholders with supporting data have been unsuccessful to date. We have looked at a randomly selected appraisal done by the Division of Lands to familiarize ourselves with appraising methods employed by the Division of Lands. Although we claim no special expertise in this field, the appraisal appeared to be thorough, extensive and impartial.

The Constitution (Article VIII, Sec.2) and various sections of Title 38 direct that state lands shall be selected, sold or leased to provide the maximum benefits to the people of the state. It is therefore difficult to find fault with the Division, in the absence of some other statutory definition, for attempting to maximize the monetary returns on state leased lands. How they set about doing it, however, is another subject.

The decision to use market rental rates was further refined and delineated when the Board of Education instructed the Division of Lands at its August 28, 1975 meeting in Kodiak that henceforth the Division was to obtain "fair market rental" 1/ on all leased school lands. Since Sec. 16 and 36 lands were conveyed to the state to generate school revenues, it is only reasonable to expect that rents should reflect this when they come up for periodic adjustment, particularly in light of the directive issued by the Board of Education to charge market rental value.

The Division of Lands is quite willing to admit that in the past the Appraising Section in the Division of Lands was viewed as a "poor relation", which accounts for the continuing low rents over the years in violation of the law which provides that "... no land may be sold or leased for less than the approved, appraised market value..." (38.05.310). The Division is now applying the law, thereby correcting past neglect which resulted in low rental rates on state leased lands, benefitting the individual leaseholders, but not necessarily the people of Alaska in general.

A legal opinion (copy attached) from the Attorney General's office to Commissioner Martin prevents the Commissioner from waiving or lowering the increases.

II. Rate of Contract Rents

The statutes provide that the initial rent shall be determined based on the "approved, appraised market value" (38.05.310), and that subsequent readjustments of the rents be based on a "reappraised annual rental value" (38.05.105)

Much controversy has arisen over the term "annual rental value". Protesting leaseholders claim that rental value cannot be pegged to the market value, that it is something less. The sources we have checked for a definition of rental value state that rental value is--

> "(T)he monetary amount reasonably expectable for the right to the agreed use of real estate.... Usually, it is established by competitive conditions." 2/

1/ Memo from W. Bruce Atkinson, ADL, to File, dated November 17, 1975.

2/ Real Estate Appraisal Principles and Terminology, Society of Real Estate Appraisers, p. 164; and Real Estate Appraisal Manual, Jerome Knowles, Jr. and Associates, p. 286.

From the above it appears that rental value is established by market conditions. The problem which has and continues to exist in Alaska, though, is that in most instances the state (Division of Lands) makes its own market. There is no private market to speak of for agricultural, grazing, recreational and other classified lands. Therefore, the state historically has used a percentage rate of the fair market value instead of rental value to determine rents on leased lands. As mentioned earlier, where a private market exists the Division is charging market rental value.

Until 1968 this rate was five percent. There is nothing in writing which explains why the rate was set at five percent, but we have been told that the five percent figure was a minimim amount derived from the Public and Charitable Use statute of the Alaska Land Act which stipulates that the rental shall be not less than five percent of the fair market value on school, university and mental health, or acquired lands (38.05.315(d)). Also, the rate of interest on the unpaid balance of contract sales of state lands was five percent at that time, and the reasoning, according to Division personnel, was to standardize the contract sale and contract rent rates. In 1968, then Commissioner of Natural Resources, Tom Kelly, raised the rate to six percent because he felt five percent was too low. Again, there is nothing in writing which would substantiate this. The Division of Lands now charges six percent of the fair market value when there is no private lease market and the lease is of a non-revenue producing nature. The Division charges up to eight and one-half percent (8 1/2%),or the market rental rate, when a private lease market exists and when the land is a potential revenue producer; i.e., land which is classified and/or zoned commercial, industrial, or residential.

The raising of the lease rental percentage rates, in some instances (such as the Alaska Industrial Subdivision), together with reappraising the leases based on fair market value have been responsible for the steep increases. The Division of Lands is quite cognizant of the potential hardships such a policy creates for certain leaseholders, particularly for those individuals who hold non-income producing leases. 3/

Much of the bad feeling that was generated over the rent increases probably could have been avoided if the Division of Lands had been more approachable and open in what it was doing. By not being advised of significant changes in policy, even when they are justifiable and defensible, and by being confused by or ignorant of appraisal terminology as used by the Division of Lands, it is not surprising that leaseholders feel that the Division has been acting arbitrarily and capriciously.

3/ Memo from W. Bruce Atkinson, ADL, to Michael C. T. Smith, ADL, dated November 4, 1975.

III. Special Provisions on Certain Leases Limiting Reappraisal to One Time

According to the Division of Lands, four leases exist which have a special provision on the back side of the last page which indicates that the lease will be reappraised but once five years after issuance of the initial lease. These leases have been reappraised now for a second time, and the four leaseholders are protesting the reappraisals.

A legal opinion issued by the Attorney General's office, dated October 3, 1975, holds that the Division of Lands exceeded its authority granting the special provisions on several grounds.

A. No statutory authority existed to grant the exemption from five year rent adjustments. Apparently all four leases were issued prior to passage of a 1964 bill which amended 38.05.105 providing for waivers due to special conditions.

B. However, even if they had been issued after this amendment became law, the special provision would still be invalid since 38.05.075 stipulates that a lease has to be on a form approved by the attorney general. Clearly, these leases were not on an approved form.

C. Finally, the special provisions are invalid because the leases were offered at public auction without the special provision being part of the terms of the lease.

As a result of the above legal opinion, parts of regulation 11 AAC 58.120, which allows for the special provision on university and school lands, should be changed immediately.

While checking into the above matter, we found that the Division of Lands is apparently in violation of 38.05.075 - Leasing Procedures. This section states that "(T)he director or his representative shall immediately issue a receipt containing a description of the land or interest leased, the price bid, and the terms of the lease." According to Division of Lands personnel this has never been done. It would appear that either the Division of Lands should provide the bidder the "terms of the lease" at the time it issues the receipt, or the reference to the "lease terms" should be removed from 38.05.075.

IV. Improvement to Leased Properties

The charge has been made by several leaseholders in the Alaska Industrial Subdivision that their land has been reappraised improperly because improvements to the land have been taken into consideration, even though the lease states quite clearly that the land is to be reappraised in a state of improvement similar to that of the land described in the lease at the time the lease was issued.

("... in a state of improvement similar to that of the land described herein at the time this lease was entered into.").

The Division of Lands maintains that while leaseholders cannot be and, for that matter, have never been penalized for the improvements made to their leased lands, improvements which were made at public expense and which as a consequence raised the value of the area or the lands under lease should be reflected in the reappraisal. We are told that this practice is consistent and standard procedure in the reappraising business. While we are not appraisers, the reasoning seems to make sense.

Short of being provided with data by the leaseholders (which we have asked for but not received) which would bear out their charge that improvements they have made to their properties were being included in the reappraisal, we cannot assume that the Division is not reappraising the properties exclusive of improvements owned by the individual leaseholders, or that they are not applying professional standards when appraising lands.

* * * * * * * * * *

Conclusions

Our investigations indicate that substantive and/or long term relief to the leaseholders regarding the periodic rent adjustment of their leaseholdings is probably not possible under the existing statutes. If it is believed that increases of rents should be limited in some way , or that rents be readjusted on a different basis than percentage of fair market value or fair market rental value as is the practice now, it will be necessary to legislate to that effect.

No new legislation will be necessary to require the Department of Natural Resources (Division of Lands) to bring their regulations into compliance with existing, applicable statutes or to "clean them up" so that the ambiguities regarding meaning and the inconsistencies of the language and definitions used in the regulations are eliminated. While no new legislation is necessary for the revision and up-dating of the regulations, it is recommended that the applicable, authorizing statutes be revised as necessary to be consistent and clear throughout. They are not now, in some instances.

EK:jm
Attachments

cc: The Honorable Jalmar Kerttula

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

JAY S. HAMMOND, Governor

DIVISION OF LANDS

323 E. FOURTH AVENUE – ANCHORAGE 99501

October 22, 1976

Mr. Milt Barker
Legislative Finance Division
Pouch WF-State Capitol
Juneau, Alaska 99801

Re: Data Request. Land Lease Reappraisal Costs.

Dear Mr. Barker:

This is in reply to your telephone request of October 20, 1976 for data regarding costs of appraising State leases during the last year.

Our records indicate a total number of 661 parcels have been appraised during the last 12 month period, roughly from October, 1975 to October, 1976. Of these 661 units 176 tracts have been reappraisals of leased properties. Considering the percentage of staff time spent on these leases, including salary, per diem, travel expense, appraisal review, and secretarial help, it is calculated that approximately $31,900.00, or roughly $180.00 per parcel, was expended in reappraising these properties.

I hope this data is adequate for your needs. Should you require further information feel free to call on us.

Sincerely

W. Bruce Atkinson

W. Bruce Atkinson
Chief, Contracts Administration

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

copy sent to Commissioner Martin

JAY S. HAMMOND, GOVERNOR

per

DIVISION OF LANDS / 323 E. 4TH AVENUE – ANCHORAGE 99501

RCD 10/15/76

October 6, 1976

J. H. Hogan, Director
Legislative Finance Division
Pouch WF - State Capitol
Juneau, Alaska 99801

Re: Data Request. Land Lease Reappraisal Cost.

Dear Mr. Hogan:

This is a sadly delayed response to your letter of August 25, 1976 requesting information on costs of "the reappraisal program recently conducted by the State for much of its leased land".

Regretably we are unable to send you the data you request as it is not exactly clear what you are seeking. Reappraisal efforts here at the Division of Lands is a continuing process. We handle reappraisals of State lease lands, statewide, as the need (lease anniversary date) arises.

If you could be more explicit regarding the particular appraisal effort perhaps we could help you.

Yours truly,

W Bruce Atkinson

W. Bruce Atkinson
Acting Chief, Lands & Water

Roderick says Martin or Mike Smith will respond

STATE OF ALASKA
JAY S. HAMMOND, GOVERNOR
DEPARTMENT OF NATURAL RESOURCES
OFFICE OF THE COMMISSIONER
11TH FLOOR, STATE OFFICE BLDG.
POUCH M – JUNEAU 99811

February 17, 1977

The Honorable Kay Poland
Chairperson, Senate Resources
Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Poland:

As you are aware, there has been a great deal of concern lately over State land disposal policies and procedures. This is occasioned particularly by the recent problems in reappraisal of certain leases in the Anchorage area.

Responding to this concern, the Governor in October of last year appointed an Ad Hoc Committee on State Land Practices and Procedures which has been meeting since, in an effort to bring together expertise on this continuing problem. Members of that committee include Bill Mack, Chairman of the Alaska Land and Leaseholders Association; John Norman, an attorney with the firm of Cole, Hartig, Rhodes & Norman; Hugh Gellert, President of Bear Fritz, Inc., (a land development company with interests in Anchorage and the Kenai Peninsula); Lidia Selkregg, Anchorage Assemblywoman and Professor of Regional Planning at the Arctic Environmental Information and Data Center; Jamie Love, Director of the Alaska Public Interest Research Group; Grant Geisler, Vice President of Alaska Mutual Savings Bank; Carl Marrs, land manager for Cook Inlet Region, Inc.; David McCabe, professional appraiser representing the Real Estate Appraisers' Association; and Herb Lang, former Anchorage Assemblyman and President of Alaska Sand and Gravel Company. Legislative members appointed to the committee were Senator Mike Colletta and Representative Ted Smith. Upon Representative Smith's resignation he was replaced by Representative Clark Gruening.

This committee has held meetings on a weekly basis since its inception in October and has also convened one evening meeting for the purpose of taking public testimony. We presently anticipate that their deliberations will be complete by the end of February and that they will at that time have a report prepared for delivery to the Governor. We expect this report to include several changes in law, numerous changes in regulatory authority of the Department and a number of policy changes in how those laws and regulations are executed.

We are also proposing that the committee meet with Legislators and other interested parties in Juneau prior to finalizing its report. We look forward to setting a time for that meeting.

We want to assure you that we share your concern over proper administration of the State's resources and look forward to an opportunity to discuss the land disposal policy in detail in the near future.

Sincerely,

Guy R. Martin
Commissioner

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

COMMENTS AND SUGGESTIONS OF THE ALASKA INDUSTRIAL SUBDIVISION LEASEHOLDERS ON SB 159

By virtue of the fact that the leaseholders of state lands within the Anchorage area designated as the Alaska Industrial Subdivision have a great deal, if not everything, to lose if remedial legislation is not forth coming which would (in some manner) alleviate the untenable situation they presently face, it would seem only befitting that they offer their comments on SB 159 which was introduced in the Legislature on February 15, 1977.

Prior to undertaking a section-by-section analysis or critique of SB 159, the state leaseholders think it may be beneficial to submit a brief outline of the pertinent facts which surround this controversy. Specifically, the purpose of this background material is twofold: first, to familiarize the reader with the dramatic changes which have occurred recently in state land leasing policy and to emphasize how those harsh changes now threaten the economic survival of the state leaseholders in Alaska; second, such facts establish and support the leaseholders' contentions brought out later in the discussion of SB 159.

1. In 1958 the territorial government of Alaska made the policy determination that an area of government-owned land located east of and nearly inaccesible to Anchorage be leased for commercial and industrial purposes. This area of Anchorage was then leased to the highest bidder at public auction for a term of 55 years. The area in question was designated the Alaska Industrial Subdivision, and during subsequent years other lands in it were leased under terms comprable to those written into the initial leases. One of the basic provisions of these leases, and the one bringing this controversy into existence, was codified

into state law in 1959 (§7, art. V, Ch. 169, SLA 1959). This statute (AS 38.05.105) reads in part:

> Each lease shall stipulate that the annual rental payment is subject to adjustment at five-year intervals and charges or adjustments shall be based primarily on a reappraised rental value . . .

2. Upon statehood, the Department of Natural Resources, Division of Lands for the State of Alaska, officially reaffirmed the prior land lease policy mentioned in number 1 above, in adopting its administrative regulations on July 1, 1960. The regulation which set forth the intent behind adopting the "Surface Leasing Regulations" read in part:

> . . . The intent of this chapter is to insure the equitable leasing of Alaska land in a manner that will encourage development for its highest and best use. (Emphasis added) (11 AAC 58.900)

This regulation and its intent still remain on the books, and the state has never changed or attempted to change the highest and best use classification of the Alaska Industrial Subdivision from its original designation as commercial industrial lands.

3. During the period of 1958 through the spring of 1976 the leaseholders in the Alaska Industrial Subdivision developed their lands and established business enterprises at a considerable expense in both money (substantial portions being borrowed) and time. The state Division of Lands during this same period had followed rather consistent and tolerable annual rental readjustment practices under the authority of AS 38.05.105. Annual rentals were adjusted upward from 40% to 100% during this period without undue protest from the leaseholders.

4. In the spring of 1976 numerous leaseholders holding state leases in the Alaska Industrial Subdivision were given notice that their leases were to be reappraised and five-year annual rental readjustments made. Such notice caused no particular concern among the leaseholders because of past state policy.

5. In May and June of 1976 the state Division of Lands advised the leaseholders whose lease rentals had come up for readjustment that their new annual rental payments had increased anywhere from 600% to 800%, and in some cases even more. To say the least, this came as an overwhelming shock to the leaseholders and they immediately registered protests with the Division of Lands. These same protests for an independent appraisal or some form of compromise, however, fell upon deaf ears with the Division of Lands, and the leaseholders in the Alaska Industrial Subdivision were thereby faced with exceedingly harsh possibilities of (a) abandoning all the work, time and money they had devoted to the economic endeavors and have their leases forfeited to the state; (b) trying to salvage what they could from their ongoing businesses and attempt, at great personal and monetary sacrifice, to re-establish their business interests on fee simple land in other parts of Anchorage; or (c) try and have the impossible situation remedied in a fair and equitable manner through the proper judicial and legislative channels. The leaseholders in this case chose the latter option as the only one realistically open to them.

6. The leaseholders of the Alaska Industrial Subdivision demanded and were afforded an administrative hearing (held the 14th, 15th, 20th and 21st of December 1976) before a hearing panel consisting of George Hollett from the state Division of Lands; Kenneth Zamzou, an appraiser with the state Division of Petroleum Revenue; and Timothy G. Middleton, an attorney in private practice in Anchorage. During the four days of administrative hearings tremendous amounts of testimony and other evidence were elicited from both the state and the leaseholders. The Hearing Panel's Proposed Decision and Recommendations in this matter are attached hereto and marked as Attachment "A". While there is no need here to summarize this decision or the recommen-

dation, special attention is directed to the Summary and Findings of Facts (p. 15), Conclusions of Law (p. 17), and Recommendations (p. 18) found therein.

7. By virtue of the fact that the Hearing Panel's decision submitted January 20, 1977 so strongly supported the leaseholders' position, and because of their own personal feelings of indignation, the leaseholders have now decided to bring their case before the members of the First Session of the Tenth Alaska Legislature.

CRITIQUE OF SB 159

While the leaseholders of state land in the Alaska Industrial Subdivision believe the basic format of SB 159 offers a good solid foundation upon which equitable relief could be structured, it contains, in its present form, a number of serious deficiencies which must be changed or altered if the impossible situation being faced by state leaseholders is to be resolved with any degree of certainty.

The specific points of contention and the resolution of them can be basically set forth as follows:

1. *Section 1 of SB 159 provides in AS 38.05.085(a)(1) [p. 1, line 12] that the parties shall agree on a fixed base annual rental to run for an initial ten-year period. While the leaseholders realize and appreciate that this new lease period is double the existing length, it nevertheless completely fails the test of economic reality. What is meant by this is that with a short initial period of ten years before the state can readjust the fixed base annual rental, the financial institutions of this and other states will not loan money to leaseholders to develop and improve their leased property. During the administrative hearing held on this matter the testimony of John Kemper, an Anchorage banker, and Andrew Hoge, an Anchorage attorney having done considerable work in this field, brought out the fact that lending institutions require a high degree of certainty that the

borrower will be able to repay a loan under the terms of a ground lease. It was well established that, under normal economic circumstances, to expect a borrower to lease land, develop commercial establishments and be able to repay the borrowed money with interest within a period of ten years is totally unrealistic. In effect whet lenders require is that before loans can be made on unsubordinated ground leases the rental to be paid annually must be either a level term or a rent which is ascertainable for a period of ten to fifteen (or in some cases even more) years after the term of the loan. Because this is a rather complicated matter, a full and thoughtful discussion is left to pages 5 through 7 of the transcribed testimony of Andrew Hoge which is affixed hereto as Attachment "B". For further discussion on this point, also see pages 12 through 15 and 24 through 29 of the Hoge transcript. From this discussion, which reveals the generally accepted practices of the lenders in this state and elsewhere and the testimony of a practicing attorney who is well versed in the field of ground lease financing, it becomes apparent that a short ten-year initial fixed rental will prohibit the leaseholders from acquiring the financing necessary for developing and improving the leasehold property. In light of these circumstances, the leaseholders cannot see any other answer to their economic plight but to have their fixed base annual rental increased from ten years to at least 25 years during the initial period.

2. *Section 1 of SB 159 further provides in AS 38.05.085 (a)(1) [p. 1, line 15] that the initial fixed base annual rental may not exceed 8% of the fair market value of the property. To demonstrate that this percentage figure is much too high, one only has to consult the Hearing Panel's discussion of the appraisal techniques (see Rental Rate, pages 12 through 14 of Attachment "A") and its Findings No. 5, which states:

> The rental rate of 8% is excessive, considering the private lease market and the disadvantageous provisions in the State lease,

including: (a) no subordination of fee, (b) no rent ceilings, (c) unilateral adjustment with no arbitration, (d) floating easements, (e) lack of option to purchase. Specifically, the private leases examined contained one or more of the following advantageous conditions: (a) subordination, (b) an option to purchase, (c) rent ceilings, (d) arbitration; and none contained floating easements provisions.

3. Section 1 of SB 159 provides in AS 38.05.085(a)(2) and (3)[p. 1, lines 17-24] that once the initial lease period has expired, the annual rental is to be readjusted every five years thereafter, so long as the new rental does not exceed 8% of the fair market value of the property or 50% more than the amount paid the preceeding period, whichever is higher. These provisions represent a number of major points of contention and disagreement which the leaseholders have with SB 159.

First, the requirement that the annual rental payments be readjusted every five years after the short ten-year initial period has run only compounds many times over the critical problem which has been discussed in number 1 above with regard to obtaining any financing for developing or making improvements on the land. With a statutory provision requiring the rentals to be paid be readjusted eight times after the initial period gives the leaseholders and their potential lenders absolutely no way to estimate the intermediate or ultimate rental payments to be required. As already noted in number 1 above, the lending institutions making development or improvement loans would not do so where the potential rental liability is so uncertain and unascertainable.

Second, the requirement in this provision of SB 159 that the leaseholder pay a readjusted rental every five years after the initial ten-year period which is the higher of 8% of the reappraised fair market value of the property or no more than 50% of the rental he has paid the preceding period not only further contributes to the problem of making the state lease unbankable because the future rental payments cannot be ascertained with any degree of certainty, but it also penalizes the

state leaseholder over lessees of privately-owned land throughout the lease period to a point which is nearly beyond comprehension. Just how the state leaseholders would be so severely penalized under this "higher" of two limits or ceiling can be fully appreciated from the computations made in Attachment "C" which is attached hereto.

Third, the leaseholders further contend that the 8% figure used in this portion of SB 159 also is unrealistically high considering the unfavorable aspects of state leases in comparison to private commercial leases (see p. 16, Finding No. 5, Attachment "A").

4. Subsection (b) of AS 38.05.085 as proposed in Section 1 of SB 159 (p. 1, line 25 through p. 2, line 10) establishes what the leaseholders believe to be an excellent procedure for appraising state lease land in a fair and certain manner. Further, this provision corresponds with the Hearing Panel's Recommendation No. 4 (see p. 19 of Attachment "A"). The only difficulty the leaseholders have with this proposal is that, because of the frequency of appraisals needed under Section 1 of the bill, they think that the sharing of appraisal costs (p. 2, line 10) would be a highly expensive proposition.

5. The leaseholders earnestly believe that a new section should be inserted between *Section 1 and *Sec. 2 of SB 159. This new section would repeal and reenact AS 38.05.090 and would read as follows:

> Sec. 38.05.090. REIMBURSEMENT FOR FIXTURES AND IMPROVEMENTS. (a) A lessee of state land shall be reimbursed by a succeeding lessee or purchaser for fixtures constructed and installed on the land and improvements made to the land. If the retiring lessee and the new lessee or purchaser do not agree on the fair market value of the fixtures or improvements, or both, then such value shall be determined as provided in (b) of this section.
>
> (b) When it is necessary to determine the fair market value of the property under

the provisions of (a) of this section, the lessee shall appoint an M.A.I. appraiser and the new lessee or purchaser shall appoint an M.A.I. appraiser. The two appraisers so appointed shall, within a specified period of time agreed upon by the parties, make their appraisals of the property in question. If the two appraisers agree upon the fair market value then that determination is absolutely binding on the parties. In the event that the two appraisers are not able to agree, then they shall together appoint a third M.A.I. appraiser and he shall then make his appraisal of the property in question. When the third appraisal is completed, the two of the three appraisals which are nearest each other in their determination of the fair market value shall be averaged and the resulting sum shall be the fair market value of the the matter in question and absolutely binding on the parties. The cost incurred in making the appraisals provided for in this subsection shall be borne by the parties equally.

The reason that this repeal and reenactment of AS 38.05.090 is necessary is that much of the existing provisions of this section are antiquated and internally inconsistent. This present state of affairs subjects the leaseholders to a great deal of unnecessary uncertainty with regard to their rights (or lack thereof) for reimbursement for improvements made to the state land if they must give up their leases. The amendatory language would eliminate any such problems.

6. The only other modification which the leaseholders believe necessary in SB 159 relates to *Sec. 3 (p. 3, lines 16-20). By virtue of what the leaseholders have suggested in numbers 1 and 3 above, the provision should naturally be redrafted to change the initial lease period to 25 years and readjustments to be made at intervals of ten years or more.

In conclusion, it may be fairly stated that the leaseholders sincerely believe that, in order for them to economically survive in the Alaska Industrial Subdivision, the changes to SB 159 stated herein are essential and not merely wishful thinking.

BEFORE A HEARING PANEL OF
THE ALASKA DIVISION OF LANDS

In the Matter of Protests)
of Various Leaseholders in)
ALASKA INDUSTRIAL SUBDIVISION)

RECEIVED
JAN 24 1977
Matthews, Dunn & Baily

HEARING PANEL PROPOSED DECISION AND RECOMMENDATION

I

INTRODUCTION

Pursuant to a letter of November 2, 1976, written by Michael Smith, Director, Division of Lands, to lessees holding leases in the Alaska Industrial Subdivision, an administrative hearing was held December 14, 15, 20 and 21, 1976. The hearing was called to give the lessees an opportunity to protest the five-year reappraisal of certain state leases within the Alaska Industrial Subdivision, said reappraisal resulting in substantially higher annual rental payments. The hearing panel consisted of George Hollett from the Division of Lands; Kenneth Zamzow, an appraiser with the State Division of Petroleum Revenue; and Timothy G. Middleton, an attorney in private practice.

The Division of Lands (Division) was represented at the hearing by John Gissberg from the Attorney General's Office. Representing various leaseholders was Douglas Baily, and representing leaseholder Groh & Benkert, a partnership, was Clifford Groh.

Testifying as witnesses for the Division were Ronald Bunn, an appraiser with the Division; Robert Kesling, a forester with the Division; and Eugene Harp with the Department of Highways.

ATTACHMENT "A"

Testifying as witnesses for the lessees were Leon Brown, Jim Cristopher, Joe Wilhour, lessees; Fred Ferrara, and Erroll Simmons, appraisers; John Kamper, a banker; Andrew Hoge, an attorney; and Paul Kimball from Lynden Transport, a lessee.

The relevant provisions of the lease form, regulations and statute are set out as follows:

(1) State lease provision calling for reappraisal:

> "[S]uch payments to be subject to adjustment at each five-year interval from the effective date hereof, if the lease term hereof exceeds five years, such adjustment to be based primarily upon a reappraised annual rental value of land in a state of improvement similar to that of the land described herein at the time this lease was entered into.

(2) Regulations governing rental: 11 AAC 58.520 and 11 AAC 58.410:

> 11 AAC 58.520. ADJUSTMENT OF RENTAL. All leases shall stipulate that the annual rental payment shall be subject to adjustment by the director at five-year intervals and any changes or adjustments shall be based primarily upon the reappraised annual rental value. The director shall take into consideration the following factors in reappraising the annual rental value: the value of comparable lands in the same or similar areas, exclusive of buildings, structures, appurtenances, equipment, land fill, clearing, leveling or roads owned by the lessee. The commissioner may waive one or more of the periodic rental adjustments or lengthen the reappraisal period, when a lessee who has acquired a tract of land for multiple unit housing, commercial, or industrial development can demonstrate to the satisfaction of the commissioner that such action is essential in order to obtain the primary long term financing or loan insurance required for development of the leased land. In order to qualify, applicants must furnish written evidence that, in requiring a waiver of rental adjustment, the lending or insuring agency is applying a generally applicable rule. Waivers shall remain in effect only during the term of the loan but shall not exceed 40 years.
>
> 11 AAC 58.410. ANNUAL RENTAL. Annual minimum rentals shall be computed from the approved appraised market value, except in the case of a preference right grazing lease, and shall be the lowest acceptable bid in the event of an auction. Annual rental shall be the basis of bidding for

all surface leases, except as provided in sec. 440 of this chapter. Annual rentals in amounts up to and including $250.00 shall be paid on an annual basis. Annual rentals in amounts above $250.00 shall be paid either annually or in quarterly installments, at the discretion of the lessee. All rentals shall be paid in advance.

11 AAC 58.900. SHORT TITLE. This chapter pertains to the leasing of land of the State of Alaska and to the jurisdiction of the Division of Lands, Department of Natural Resources and related matters. The intent of this chapter is to insure the equitable leasing of Alaska land in a manner that will encourage development for its highest and best use. This chapter may be referred to as the "Surface Leasing Regulations."

(3) Statutory provision dealing with rental adjustments in effect as of May 1, 1976:[1]

AS 38.05.105. PERIODIC RENTAL ADJUSTMENTS. Each lease shall stipulate that the annual rental payment is subject to adjustment at five-year intervals and charges or adjustments shall be based primarily on a reappraised annual rental value. However, when development of the land is not otherwise possible due to special conditions, the reappraisal period may be lengthened or waived under regulations adopted by the commissioner.

Because the hearing panel is composed of an appraiser, lawyer and a representative of the Division of Lands, it is considered appropriate in formulating recommendations to the Director that the panel exercise independent judgment based on expert testimony presented and exhibits offered. Accordingly, we do not accord the Division's position any special deference which might be applied in an administrative appeal in the judicial process.

The basic question to be resolved in this hearing is the determination of a fair rental for certain lots within the Alaska Industrial Subdivision. This fair rental is to be determined for the five-year period May 2, 1976, through May 1, 1981, the third rental adjustment period since the leases

[1] This section has since been amended, §1, Ch. 267 SLA 1976.

commenced on May 2, 1961. The Division had adjusted the annual rental of the leases in question as of May 1, 1976. This adjustment had been based on a reappraised fair market value and an increase in the rental rate from 6% to 8%. The reappraisal and adjustment were based on the relevant provision of the statute and regulations quoted above. Additionally, the term "fair market value" is defined in 11 AAC 58.910(11) as:

> "Fair market value" means the highest price, estimated in terms of money, which the property would bring if exposed for sale for a reasonable time in the open market, with a seller, willing but not forced to sell, and a buyer, willing but not forced to buy, both being fully informed of all the purposes for which the property is best adapted or could be used.

II

ISSUES

The issues appear to be the following:

(1) An interpretation of the lease, regulatory and statutory provisions, as to the nature of improvements to be included in the appraised value.

(2) Whether or not the term "primarily" as used in the lease, regulations and statute means that the Division should consider other factors in arriving at a reappraised annual rental value.

(3) Whether the Division's appraisal was in accord with the law and consistent with the relevant market conditions, particularly as to (a) use of comparables and (b) determination of original condition.

(4) Whether the 8% rental rate is appropriate in view of market conditions, the provisions of the state lease not found in private leases.

III

DISCUSSION

A. State of Improvements

The lessees represented at this hearing interpret the term "state of improvement" to mean the state of improvement of the entire Alaska Industrial Subdivision. Specifically, the lessees interpret this to mean that any improvements made outside of lot boundaries since 1961, such as roads and utilities, are to be excluded from consideration in the fair market value of the subject lots. The appraisals conducted by Messrs. Ferrara and Simmons for the lessees and presented at the hearing reflected adjustments in value to account for the cost of those improvements, particularly cost of access. This was based on language in the lease indicating value should be based on land in a similar state of improvement as land described in the lease at the time the lease was entered into; thus, the reference to "original condition." The regulations, however, are more explicit in determining what improvements are to be excluded. The Panel believes it would be inappropriate, in view of regulations and principles of equity, to exclude from the value of the leased property improvements off the property, especially when such improvements were paid for by the lessor. When a lessee can demonstrate that such off property improvement was paid for by him or his predecessor in interest, a different approach should be used. Both the State and the lessees agree that any improvements made within lot boundaries by lessees are to be disregarded in the valuation. The Panel finds in favor of the State in interpreting this phrase "state of improvement" to mean only the condition within the subject lots and that all improvements made since the leases were entered into which lie outside of the lot boundaries, specifically roads, water, sewer, power, and any other amenities

which affect the value of the subject lots are to be included in the fair market value of those lots.

A further disagreement among the parties involving the "state of improvement" is that of the original condition of the lots before any tenant improvements were made. The State's appraisal witness, Mr. Bunn, testified that as far as he could determine after reference to soil maps, aerial photos and consultation with various knowledgeable individuals, that the soils were basically adequate for building development with a minimum of site preparation required for any development, that no substantial amount of overburden needed to be removed. Mr. Bunn admitted his findings in this regard were based largely on the lack of evidence to the contrary. He did not, apparently, attempt to gather evidence from individuals who developed the leased land. Several other witnesses testified as to moderate to severe conditions of peat and unstable soil conditions at the time the leases were originally entered into. The lessees' appraisers, Mr. Simmons and Mr. Ferrara, after thoroughly investigating the original soil conditions with various knowledgeable people indicated that it was still not clear exactly what the soil conditions were on each parcel. There was adequate testimony given that most, if not all, of the subject lots had conditions of unstable peat soils in depths ranging from one to four feet, with testimony given concerning individual spots where the depth of peat extended 14 feet. In Mr. Ferrara's appraisal of Lot 1, Block 2; Lot 12, Block 10; Lot 10, Block 9; Alaska Industrial Subdivision, he stated that soil conditions probably varied from two to three feet of overburden along Commercial Drive on the north with overburden deepening in the area of Rampart Drive and reaching depths of two to three feet

again along Mc. View Drive. Mr. Ferrara testified that although he was uncertain as to the actual soil conditions at the time the leases were entered into, he felt a realistic condition was that approximately two feet of fill was required on the average for development of those lots which he estimated would cost, at the time of reappraisal, $.50 per square foot. Mr. Simmons' appraisal report and testimony regarding soil conditions were similar to those of Mr. Ferrara. In Mr. Simmons' appraisal of Lots 8 and 30, Block 10, he estimated a current cost of surcharging the peat with gravel in an amount adequate to support parking and storage yards was $40,000, which divided by total site area of 46,021 square feet equals $.87 per square foot. In the Panel's opinion, the investigation and analysis by the lessees' two appraisers were reasonably well supported and much more creditable than the investigation, analysis and testimony given by the Division.

B. Meaning of Primarily

The lessees contended that because the lease, regulation and statute all use the adverb "primarily" to modify the verb in, "such adjustment to be based primarily upon a reappraised annual rental value," that the State should consider other factors in arriving at an annual rental value. The lessees point to 11 AAC 58.900 wherein the intent of the regulations is spelled out, i.e., to "insure equitable leasing" to "encourage development." Accordingly, the lessees presented evidence, unrefuted by the Division, of the difficulty in obtaining financing for development of the leaseholds.

The Division's position was that the word meant nothing now with respect to the leases under question, but that it referred to the since repealed provisions for waiver

of five-year adjustments in cases where such a waiver is necessary to obtain long-term financing. The Division stressed the point that the lessees never attempted to obtain the waiver. The Panel finds the Division's argument to be without merit. First of all, the word "primarily" applies, if at all, to the reappraisal. The waiver would mean there would be no reappraisal at all. The suggestion that the lessees should have attempted to get the waiver is also without merit. The date of the reappraisal was May 1, 1976; the date the waiver repeal became effective was June 22, 1976. Assuming that the lessees had notice of the reappraisal simultaneously with the reappraisal, there would be only six weeks in which to get the waiver after reappraisal. The lessees indicated such actual notice of reappraisal came much later, in June and July; this was not rebutted. It is also unrealistic to believe that the State would have agreed to such a waiver.

The word "primarily", taken along with 11 AAC 58.900, is not without meaning. The Panel believes that the Division should consider other factors besides a determination of open market rent. The present state of the lease and regulations makes it difficult to arrive at a readily ascertainable meaning, especially in view of the duty owed to the people of Alaska by its government to obtain a good return from the State land. While principles of legislative interpretation dictate that the word be given meaning, the Panel finds it difficult to do so. Because nothing was presented to resolve this dilemma, the Panel refrains from attempting a definition beyond suggesting that doubts or ambiguities be resolved in favor of the lessee.

C. Appraisal.

11 AAC 58.410 states that annual minimum rentals shall be computed from the approved appraised market value. Rent paid for land in the open market place is typically determined by, and expressed as, a percentage of the market value of the land. Therefore, a reasonable estimate of the fair market value of the land in question must first be made before a market rent can be derived. The generally accepted method of appraising vacant land, and that which was used by all three appraisal witnesses, is the direct market comparison approach. All three of the appraisal witnesses utilized definitions in 11 AAC 59.810(11), and 11 AAC 58.520 regarding the use of comparable land sales. All three appraisers used the same basic techniques in adjusting comparable land sales for differences in comparison with the subject lots. The major factors for which adjustments were made were for increase in price levels between the dates of sale and the date of appraisal, neighborhood location, specific location (corner or inside lot, street improvements, utilities available, zoning, etc.), and physical characteristics of the comparables, including such things as soils, topography, shape and easements. As the panel finds that offsite improvements made since 1961, specifically water, sewer, power and road improvements are to be included in arriving at the fee market value of the land, the Panel addressed itself to the major points of disagreement between the State and the lessees' appraisers which are adjustments for time increment, neighborhood and an electrical transmission line easement.

(1) Time Adjustment

All three appraisal witnesses agreed that a rapidly rising trend of price levels for industrial land was evident

during the two-year period prior to the appraisal date of May 2, 1976. Mr. Bunn testified his conclusion was that a time increment of 3.5% per month was appropriate; both Mr. Ferrara and Mr. Simmons concluded a time increment of 2% per month was appropriate. Mr. Bunn used 10 comparable sales which indicated a range of time increment from 2.8% per month to 4% per month. One example which tended to limit Mr. Bunn's testimony in this regard was where he compared the sale of one parcel with a later sale of another parcel to arrive at an indication of time trend. Mr. Bunn did not adjust for other factors but compared the two sites as equal in value when actually one of the sale sites had much less utility than the other due to its very odd shape. Also, Mr. Bunn utilized sales in a faster growing area of Anchorage (South Anchorage) in arriving at a time adjustment. The Panel believes a reasonable upward adjustment for time increment to be 2% per month. This belief is based on the fact that Ferrara and Simmons used sales of property more likely to reflect accurately the increase in value in the Mountain View area. The Panel finds the lessees' appraisers more persuasive on this point.

(2) Neighborhood Locations.

Mr. Bunn used 18 comparable land sales with two from the immediate Mountain View area, two from the Anchorage Industrial Park in the Ship Creek area and 14 in the South Anchorage area in the vicinity of International Airport Road. Mr. Bunn's testimony was that the Alaska Industrial Subdivision is comparable in location to the other industrial areas of Anchorage, that price levels for industrial land was similar and that no adjustments were required for

neighborhood location to the comparable sales used. Mr. Simmons and Mr. Ferrara both agreed that the Alaska Industrial Subdivision neighborhood was inferior in price levels to either of the Ship Creek or South Anchorage Industrial area. Testimony was given and agreed by all parties that the Alaska Industrial Subdivision is well located in proximity to the downtown business center of Anchorage, is close to transportation facilities, and has good arterial access. However, testimony was given that the type and intensity of uses, as well as the rate of development within the Alaska Industrial Subdivision are inferior to the Ship Creek and South Anchorage Industrial areas. The Panel agrees with the lessees' appraisers in this regard and finds that the prices of comparable land sales from the Ship Creek and South Anchorage Industrial areas should be adjusted downward before arriving at a comparable market value for subject lots in the Alaska Industrial Subdivision.

(3) Electrical Transmission Line Easement.

Testimony was given and evidence presented concerning an electrical transmission line easement 45 feet in width which crosses diagonally through the Alaska Industrial Subdivision. According to testimony, no permanent structures may be built within the easement right-of-way and no structures may be placed closer than 10 feet vertically and horizontally from the electrical wires or supports. Mr. Bunn testified that the transmission line easement was not important and would not result in any loss in value to those lots crossed by the easement.

Mr. Ferrara testified that there is a loss of value in varying degrees caused by the easement, depending upon its location within each affected lot. Although Mr. Ferrara said he did not have time to investigate the effect

on value to a sufficient degree to estimate what loss in value would be involved for specific lots, he said one measure of the loss in value would be the cost of relocating the easement either within the public street right-of-way or along the property boundaries.

Mr. Leon Brown, a lessee in the Alaska Industrial Subdivision since May, 1958, to the present, testified as to the problems encountered in developing four lots which were affected by this transmission line easement. The Panel notes here that Mr. Wilhour said he complained to Peanuts Main on the staff of the Division of Lands with a resultant rent reduction because of the effect of the easement.

The Panel believes that the evidence is conclusive, and common sense dictates, that the electrical transmission line easement has an adverse effect on value. The Panel suggests that the testimony of Mr. Ferrara as to the cost to cure method, that is the cost of relocating the transmission line, is only one way of measuring this loss in value and that other appropriate means of estimating loss of value may be used. Before Mr. Ferrara's method is used, an investigation of the feasibility and likelihood of moving the line should be made. The Panel notes that the transmission line affects in a substantial way four of the reappraised lots. One method might be an actual computation of the value of the lost area.

(4) Rental Rate.

The May 1, 1976, adjustment, in addition to using a higher fair market value as a basis for computing the annual rent, also increases the rental rate from 6% to 8%. This, Mr. Bunn testified, was done because his review and analysis of private leases in the community indicated that 8% was the more appropriate rate.

The lessees protested that this increase was unwarranted. They argue that various provisions of the state lease make it less desirable than a private lease and that therefore the rental rate should be lower. The major differences which made the state lease less desirable were asserted as follows:

(a) Lack of subordination. Many private leases allow for subordination of the fee to any encumbrance placed on the property to secure debt financing. The state lease does not provide for this, it only allows the financing agency to step into the shoes of the lessee by way of a "collateral assignment of interest." Mr. Bunn testified that this provision was substantially the same as subordination; thus, no downward adjustment should be made in the rental rates to allow for this. The testimony of Andy Hoge, an attorney heavily involved in lease financing, and John Kamper of Peoples Bank persuade the Panel that Mr. Bunn's perception of subordination is simply wrong. The lack of subordination in the State lease is a very significant factor for which adjustment in rental rate should be made.

(b) Lack of arbitration and rent ceiling. Many private leases provide for arbitration of disputes over rent or rent ceilings or rent payments adjusted in accordance with the cost of living index. The State's lease contains none of these provisions. Mr. Bunn made no attempt to adjust for these provisions. The lessees argue, with considerable merit, that provisions such as rent ceilings, linking adjustments to the consumer price index, and arbitration provisions provide some degree of predictability as to what the rent will be in the future. This predictability is absent in the State leases, which provide for a unilateral adjustment

of rentals by the lessor.

(c) Option to purchase. Many private leases also provide an option to purchase. The State's lease contains no such provision.

(d) Floating easement. The State's lease contains a floating easement giving the lessor the right to grant easements or rights-of way across the leased land with compensation for improvements damaged or destroyed, but does not provide for consequential damage. The private leases do not reserve this kind of easement.

Most private leases contain one or more provisions which make them more advantageous to the lessee than the State's lease. Contrary to testimony of Mr. Bunn, the State's lease contains no provisions more advantageous to the lessees. Given the long term of the State lease, the Panel does not believe the right to renew is of significant benefit to the lessee. The evidence is overwhelming on this point. The banker, attorney, and lessee's appraisers all testified to the more noxious State lease. Thus, the Panel believes the increase in rental rate to 8% is unjustified. The general market rate for private leases is no doubt in the 8% range; however, some allowance should be made for the less desirable features of the State lease. For the above reasons, the Panel believes a return to the 6% rate would accurately reflect the market rental value for a State lease.

IV

SUMMARY AND FINDINGS OF FACT

In summary, the Panel makes the following findings:

1. The Division incorrectly made no allowance for site preparation to arrive at a fair market value in accord with the lease. The evidence was overwhelming that there was substantial overburden to remove, from one to four feet with some fill required perhaps on most lots.

2. The Division's appraiser incorrectly arrived at a time increment to use for upward adjustment of comparable sales. The Panel finds that the 2% per month time adjustment suggested by the lessees' appraisers to be well founded and the correct one to apply in the appraisal of the subject lots.

3. The Division's appraiser used some 14 sales from the South Anchorage area as comparables in his reappraisal. Only four comparable sales were taken from an area near the subject property. The Panel is cognizant that Mr. Bunn was attempting to find land of the same zoning classification as the subject lots to use as comparables. However, the Panel finds that the rate of development is higher in South Anchorage and that the type and intensity of uses is greater. Some appropriate downward adjustment should be made before arriving at an appraised value of subject lots from these South Anchorage sales. Additionally, the Division's appraiser should consider the comparable sales used by the lessees' appraisers, even though they were of differing zoning classifications.

4. The Division's appraiser should have, but did not, adjust downward the value of the lots which have an electrical transmission line running through them. The Panel finds from the map submitted by the Division that this line has caused a

substantial diminution in the value of at least four of the reappraised lots. Additionally, the Panel finds that the adjustment suggested by Mr. Ferrara to be appropriate only if it were economically feasible to move the line, and likely that such a cure could be consummated.

5. The rental rate of 8% is excessive, considering the private lease market and the disadvantageous provisions in the State lease, including: (a) no subordination of fee, (b) no rent ceilings, (c) unilateral adjustment with no arbitration, (d) floating easements, (e) lack of option to purchase. Specifically, the private leases examined contained one or more of the following advantageous conditions: (a) subordination, (b) an option to purchase, (c) rent ceilings, (d) arbitration; and none contained floating easements provisions.

6. The Panel finds that subordination and collateral assignment are not the same as suggested by the Division's appraiser. The evidence on this point is overwhelming, consisting of the testimony of a disinterested expert, Mr. Hoge, that financing of a leasehold interest is typically much more favorable to a lessee when the land lease contains a subordination agreement. Mr. Kamper, Mr. Simmons and Mr. Ferrara agreed with this assertion.

7. The advantages alleged to be present in the State lease are more illusory than real. Any advantages to the right to renew the 55-year State lease and removing improvements is insignificant in relation to the disadvantageous features described in Finding No. 5. This is supported by weight of the testimony of expert witnesses.

8. The lessees had no real opportunity after they had received notice of the reappraisal and before the effective

date of the repeal of the waiver of adjustment to seek such a waiver. It was unrealistic to think they might have reason to seek such a waiver prior to receiving notice of the reappraisal.

9. The effect of the adjusted rentals is to discourage development of the subject area rather than to further the objective of encouraging development, which is the intent of the leasing regulations (11 AAC 58.900).

10. A new reappraisal by the Division should be conducted.

V

CONCLUSIONS OF LAW

The Panel having heard legal argument and read the memoranda submitted makes the following conclusions of law:

1. The lease and regulations read together require that the Division include in its appraisal of subject lots the increment of value generated by offsite improvements, such as installation of roads and utilities into the subdivision, with the provision that any utility hook-up to a main trunk line which was paid for by the lessee or a predecessor not be included, even if it is off the subject property.

2. The terms "such adjustment to be based primarily upon a reappraised annual rental value of land" and "any changes or adjustments shall be based primarily upon the reappraised rental value" found in the State's lease and 11 AAC 58.520 mean that the Division should consider other factors besides a reappraised annual rental value in arriving at an adjusted rental. This is so because of the use of the adverb "primarily" to modify the verb "based." The principles of interpretation dictate it be given meaning; without the presence of this word the Division would be able to consider only the reappraised annual rental value.

3. The reappraisal of May 1, 1976, the subject of this hearing, was not done consistent with the provisions of 11 AAC 58.900, which expresses the intent of the leasing chapter of the Administrative Code.

4. Subordination of the fee and collateral assignment are substantially different as a matter of law. Subordination of the fee means the fee can be encumbered to secure debt financing for the lessee. The holder of a collateral assignment merely steps into the shoes of the lessee.

VI

RECOMMENDATIONS

Implicit in the above discussion and findings is that the Panel finds the Division's reappraisal unacceptably high. Therefore, the Panel recommends that the subject lots in the Alaska Industrial Subdivison be reappraised by the Division in a manner consistent with the above discussion, findings and conclusions.

In addition, the Panel believes further recommendations are appropriate. The present lease and the present leasing policy should be modified. These modifications should be designed to put the State on a competitive footing to the degree possible with private lessors and are as follows:

1. In accord with the provisions of the lease, the lessees should be encouraged to record expenses incurred in site preparation so that the "original condition" can be more adequately ascertained.

2. The lease language should be clarified to remove any possible inconsistencies with 11 AAC 58.520.

3. To increase some predictability, place some cap on the size of the rental increase through utilization of a ceiling

on the size of the increase in rental every five years.

4. Provide for arbitration of disputes over the annual rental arrived at after a reappraisal process and overinterpretation of other sections of the lease. This would ameliorate the current unilateral nature of rent adjustments.

5. Eliminate the floating easement. The State could exercise the right of eminent domain to condemn. The condemnation would result probably in greater compensation for damages to the lessee, especially in view of the Supreme Court decision in State v. Hammer, 550 P.2d 820, thus the lease would be more attractive to the leasing market. Additionally, the language in the current lease is ambiguous as to damages compensable. This ambiguity only encourages litigation.

6. These above recommendations, if adopted, would assure the State a competitive position in the lease market, encourage development of the leaseholds consistent with the intent of the leasing regulations, and be equitable to the lessee. The Panel also believes the State should be able to obtain a good return on its land. Accordingly, if the recommendations as to the lease are adopted, the rental rate should be changed to reflect the removal of the undesirable aspects of the State lease.

7. Suggest an amendment as to AS 38.05.105 to eliminate the term "primarily" from the statute, and also eliminate this term from the regulation and the lease. This is ambiguous, and assuming it has meaning, it may encourage individual accommodation of lessees by the Division. This, the Panel believes, is not in the State's best interest in that it could encourage political maneuvering to attempt to obtain this accommodation, and may well mean uses other than the highest and best use would be perpetuated. Also, the presence of such an ambiguity

could lead to an excess of administrative discretion.

8. Finally, should some or all of the above general recommendations be ultimately adopted, then legislation should be suggested for enactment providing all present lessees the opportunity to negotiate modifications consistent with the changes adopted.

RESPECTFULLY SUBMITTED at Anchorage, Alaska, this 20th day of January, 1977.

TIMOTHY G. MIDDLETON
Hearing Panel Member

KENNETH E. ZAMZOW
Hearing Panel Member

GEORGE K. HOLLETT
Hearing Panel Member

TESTIMONY OF

ANDREW HOGE

before the

Division of Lands Hearing Panel
meeting to consider various appeals of the
reappraisals of leases in the
ALASKA INDUSTRIAL SUBDIVISION

Hearing convened 10:00 A.M., December 14, 1976.

ATTACHMENT "B"

ANDREW HOGE

Anchorage attorney

BY TIMOTHY MIDDLETON, HEARING OFFICER:

Q: Do you want to state your name for the record?

A: Andrew Hoge.

Q: And your address?

A: My work address is 3201 "C" Street, Suite 706, Anchorage 99503. My home address is 1370 Bennington Drive, Anchorage, 99504.

Q: Okay, thank you. Mr. Baily.

BY DOUGLAS BAILY, ATTORNEY REPRESENTING LEASEHOLDERS

Q: Will you tell us what your business or profession is?

A: I'm an attorney at law.

Q: And you're in private practice?

A: In private practice.

Q: And to take one of the risks that lawyers shouldn't take, I'm going to ask you some questions that I haven't discussed with you. You have been asked to come down here today to testify by myself on behalf of the leaseholders?

A: Yes.

Q: And it is correct, is it not, that you and I have not discussed in any detail your testimony?

A: Yes.

Q: And is it also correct to say I believe that the that the position, the opinions that you will express today were not prepared or derived at my request or in conjunction with any preparation for this hearing?

A: No.

Q: Do you represent any of the leaseholders in Alaska Industrial Subdivision to your knowledge?

A: To the best of my knowledge, I do not. I used to represent Inside Alaska Tours, but they have sold their property, so ... And I still represent them. They hold the second mortgage. Other than that, I don't know of anybody. Our firm might, but ...

Q: The point is, that it is correct ...

A: But I don't, ah, I mean I don't know of it. There's a likelihood we do have some ...

Q: But is it your understanding that I contacted you concerning your testifying here because I had heard that you have prepared a position, independently of this hearing, for presentation to the Governor's Task Force?

A: Yes. (Inaudible)in the state lease programs.

Q: It is also my understanding that I have been advised by Mr. Rasmussen that you are, have been authorized by

National Bank of Alaska to state what the position of NBA would be with respect to commercial lending on state leases in Alaska Industrial Subdivision?

A: Yes.

Q: I wonder if you would relate them to the hearing panel, and I ask, Mr. Hoge, that you give this presentation in comparative summary with respect to the (inaudible) knowledge of the lease terms contained in the standard state lease forms which are utilized in Alaska Industrial Subdivision and some of the difficulties which he sees with respect to financing institutions participating in real estate loans and commercial loans in Alaska Industrial Subdivision (inaudible).

BY MR. MIDDLETON

Q: Is this his position, or NBA's?

BY MR. BAILY

Andy represents NBA.

BY MR. HOGE

I represent NBA on a case-by-case basis, and I've dealt with one loan at Henlin Subdivision for NBA most recently on an interim loan; and I've dealt with ground leases, in fact representing the developer on a parking garage over here which is similar to the state ground lease. And I've dealt with other

ground leases, both subordinated and unsubordinated, for National Bank of Alaska, Washington Mortgage. I represent several lenders outside and in the state, and I gather I'm reflecting what conclusions I've drawn from that experience as to what lenders generally require of loans of this nature. The state has a policy, which I understand, of leasing its lands. However leasing its lands has several provisions which cause concern to lenders and really affect the possibility of financing the project. Maybe in narrative form I could ... I've got a pad here, just to keep track of the main headings and then maybe after I've testified I can give some ranking to what I think are the more important ones. The obviously most important one is that the state will not subordinate. And that really is the most crucial one, because when that occurs that means that the lender must, if he forecloses his security instrument, which usually is a deed of trust, must come in and assume the responsibilities of the lessee. Now, that may not sound like much, but you've got to realize in the lending business that the lender, when he does come in for foreclosure, means that his borrower's gotten into trouble. And, usually, if he's gotten into trouble on the loan--the real estate project--there are a whole number of defaults which the lender then must of necessity cure to protect his security. And, obviously, if his borrower is in trouble, he can't go against his borrower--his borrower is probably bankrupt or nearly so--so he's got to look to his security, which is the project, to protect

himself. Now, that is a risk in the lending business. I think most lenders accept that. But, when they in addition have to deal with a third party, the State of Alaska in this case--but anybody else, it could be the City of Anchorage, or that--who are sitting there with a defaulting borrower ... I mean, a defaulting lessee ... the pressure is on the lender to cure all these defaults and try to make something rational out of really a messed up situation. So that's why subordination is just very important. It makes another difference, too, in evaluating the project, because if there is subordination it means that the lender can come in and take the fee. It also means that fee is available as security for the loan. If it's just a ground lease that can go up every five years, or whenever your reappraisal increments are stated for in the lease, then that lease really has very little security, you know, towards your project. You really are looking to the commercial project then to carry one of the loans. So, subordination is a very critical thing. Now, the state is taking the position that it will not or cannot subordinate. So, the things then that lenders look to when they make what we call unsubordinated ground lease loans become even more critical, and those things--again, not in terms of importance, but all of them, I think have some value--are first, what happens to the rent? In other words, if you're making a loan, and you make the evaluation of the project--and, again, I'm talking about how lenders evaluate it, maybe not like a real estate appraiser,

although there's a similarity--you've got to say, "Can this project bear the costs associated with that, and pay back the loan?" I mean, that's ultimately what it has to do. If one of those factors, which is usually a major factor in the ground rent, can dramatically increase, then you get into a very critical situation as to whether there's enough money coming back to pay off the loan. So, generally, lenders request that there either be a level term rent or that the rent be ascertainable. And in fact for at least savings and loans, by federal law, that's a regulation that is required, and the regulation when I last looked at it a couple years ago provided that the rent has to be ascertainable for a term of at least ten years after the term of the loan. And I'll explain why that's required. That also, while not necessarily a legal requirement, is generally followed by most banks in Alaska, and some insurance companies, depending on whether they're what we call an eastern life insurance company out of New York, have other terms, like 80 per cent of the loan term. Now the reason for that is that if the lender has to come in on an unsubordinated loan, he can extend the terms of payment to eventually recapture his loan. In other words, he can push the payments out for five years if there's a default. Five years to go. Then you can push them out to fifteen and presumably recapture your loan. I might add I made a comment to the Governor's Committee on that, that while regulations now provide for level term, I mean they provide for level term payments during the term

of the loan, it ought to be the term of the loan and up to ten years. So, the rent is very important.

The next item that causes real difficulty is that the regulations are totally inadequate to cure defaults. The regulation says that if the ground lease is forfeited, then the state will recognize the lienholder, presumably the mortgagee or the lender. But this is only after the lease is terminated. That is not of much help to anybody, because that procedure can take a certain amount of time because of the requirement, as I understand in the McCarrey case, that any lessee who is being defaulted can get a hearing... I mean, that can drag on forever. And you need, you know, if you've got problems--I can tell you in the lending business, I've been in some loans that haven't always worked out as well as the lender planned--you've got to get in there and solve the problems now. The problems only compound themselves if you're forced to wait. So, your default provisions in the present state ground lease are totally inadequate. And I gave the illustration to the Governor's Committee, and I've given it to you here, because I think there's some importance to it. The assignment lease form that you are required to use and analyze it has about two sentences. And I brought along, just to show you what it looks like. This is a copy of the ground lease with the City of Anchorage for the parking garage. And most of those provisions govern the type of construction, the type of the project, curing of defaults, what happens in the event of condem-

nation, what happens in the event of casualty. Yet the state really never addresses any of these really critical problems in their ground lease assignment forms. So, one of the things we've attempted to do ... I know in the first Penny loan, when this whole general problem started coming up ... was we drafted our own assignment. We finally agreed to that with the state, and I think it's four legal pages of single-typed space, it was, every word was negotiated. Not necessarily the most satisfactory thing, but acceptable to the lender. I'm not abdicating either that you have to have big ground leases like this, but there certainly ... there should be discretion, and it should be recognized that various projects require various loan conditions. And then I think you've got to address that, and the fact that you don't have it makes it very risky. Really, what is happening, I think you will find, is the projects that are being and will be developed until these areas are resolved or there's some reasonable policy on some of these things, is the lenders will make some loans--I'm not saying they will never make a loan--but they'll make them on the credit of the borrower, and not on the project. In other words, obviously if you're dealing with General Motors Corporation they can sign a note and, you know, they're not going to be as concerned. But, when you talk about the kinds of people that deal in Alaska who are not of the financial caliber of General Motors, then the lender is going to be looking to that project to make those payments, and not to the particular lender.

So, I think it's just going to cut off and has to have an adverse effect on financing, especially, I think, with some of the dramatic rent increases. You just wouldn't, as a lender, be too enthusiastic about making a loan if you know that rent can jump that dramatically every five years. It just, you know, that's ... to me that's just common sense.

Another area that becomes important, I think, is in these ground leases--and they've ... there's a little variety in them, the aviation lease is, I think, a little different than the Division of Lands, but it's the same problem. One, a condemnation and putting through public roads and improvements. I know in the Penney ground lease they tried to negotiate some of those points. In other words, the reason why you do that is you, when you get a state ground lease or make a development, you're planning to put "X" building here, "Y" building there, "Z" building here. If you were building a shopping center, it's critical that you have certain tenants--what they call "anchor tenants", "national tenants", "regional tenants". If the state can come through and build a road and say--I guess in some of the aviation leases they only have to pay you for the land--but, if they can just go through and, without any regard to your planning, take condemnation, that's another risk that the lender's gotta' take. While true, there's the right of private condemnation in any project, but the prevailing thing of that is, at least the little experience I had with the Department of Highways, both as an attorney general

and outside of it, is obviously the state's going to look to use state lands before it condemns private lands. I mean, that's logical, 'cause it costs the state something. (inaudible). You've got to recognize some of those protections. I don't know that casualty insurance becomes significant to the state, but obviously on the parking garage here that's very significant, I mean casualty insurance. So, those are what I call normal lease provisions that really aren't adequately provided for under the state regulations, and I've advocated to the Governor's Committee that, to the extent possible, there ought to be given discretion to the Director or someone in his office that these things can be negotiated. The state, of course, is ultimately protected because it never subordinates. And by never subordinating it will always have the land and the improvements on it. So, those are the ... I think ... the main areas I address myself to. I made comments to the Committee on some of the things that are involved. You get different problems, of course, with residential housing, FHA requirements ... but I think that general category of things that the general problem areas there's different solutions, of course. So, those generally would be the considerations that I think any lender is looking at in determining whether to make a loan; and, obviously, a lender is going to ... y'know, if you've got a good project on fee land or subordinated lease land versus a project on state land ... y'know, a comparable project, you've just ... the lender's got to be looking at the fee land. I mean, there's

just too much uncertainty in this area, and I really think the state needs to address those questions. And I hope they will. I mean, I think it's important if you're going to have state land and you're going to hold on to it and lease it, then you ought to provide the means to develop it. You know, unless you want to leave it as park land, but then if you want to leave it as park land, which may be a legitimate choice by the state, then you shouldn't be forced to lease it, and it should have never been given (inaudible). That's really the object of this (inaudible). That really is the areas that I would stress to this committee.

MR. BAILY

Your honor, I have nothing ... no further questions.

MR. MIDDLETON

Mr. Gissberg.

JOHN GISSBERG, ASSISTANT ATTORNEY GENERAL

Q: Right. Mr. Hoge, how long have you been in the Anchorage area?

A: Anchorage, Alaska? I've lived in Anchorage since 1965.

Q: And have you been familiar with the Alaska Industrial Subdivision?

A: I've served it, yes.

Q: You have, reviewed (inaudible) lease agreements for that particular area ...

A: In connection with this comments before the Committee I looked at a lease. I can't tell you for this hearing today I intimately reviewed it.

Q: The provisions that you mentioned, though, were from a state lease and they were applicable, of course (inaudible).

A: Yes, I think so.

Q: As far as (inaudible).

A: I mean, I think they're pretty standard provisions.

Q: Now, until ... you talked about this ten years' security period past the normal time of the loan. What's the normal term of a loan that your bank has been involved in?

A: Well, let me give you ... there's been a little change in that, and that's because of our inflation which we don't seem to be able to control. It used to be lenders would loan --and again--a variety of terms on ground lease loans. But say you're looking at a 20-year term, maybe a 25-year term of a loan. But what the lenders do now is make the payments amortize on either a 20-year basis, 25, 28, I've seen 29. But they have a balloon at the end of 15 years, and the balloon is there so that if the money market--in other words, the lenders traditionally got caught in four per cent when money rates are at ten. Now they could never get out of the loan for thirty years. So, as a compromise, they're looking at ten years, 15 years, a balloon, so

that at least they can look at the loan again. And then the nature of the provisions, at least I have written for National Bank of Alaska, Washington Mortage Savings and Loan in Washington, are that then they have an option to continue the payout over the next 20 years or 25 years. It varies, but that's one thing that's ... I've got to qualify my remark on. But, assuming you're dealing with a 20 or 25-year term, then the ten years you would add to the maximum term of the loan. But, as I stated, some of the New York life insurance companies, I may even have a letter on this, we have a ... when we were doing the parking garage, we had to put in a provision because our long-term commitment wasn't fully committed at that point to get enough term so we could make the loan to whoever came along, and I think it's 80 per cent--there may even be a few that are 75 per cent. So, if you have a 20-year term, you take in effect 20 per cent of the 20, which would be four additional years.

Q: Okay.

A: If you're an 80 per cent lender. If you're a 25 per cent lender, they want five additional years. If you're a 30 year loan, you'd have six years, if you're a 75 per cent lender you're, well, you're adding about eight years. If you're dealing with an S&L--savings and loan, federal--you're adding ten years. If you're doing with NBA, generally, obviously every lender where he's got discretion makes exceptions. I think they generally talk about ten years. They generally follow ten years. That's

been my experience.

Q: That's very complicated and interesting. I don't know it very well. If the state could ... if you got an application for somebody with one of these state leases, and, I mean, you looked at it on the basis of what you have said very possibly they might say no, we can't lend on this because we don't know what that rate is going to be in 15 years from now. It will have changed three times by then. The rental rate may have gone up quite high, so we ...

A: Yeh.

Q: You'd say, in light of the fact that there's no subordination, why, it would be difficult for us to loan on that. If your loan was for 20 years and if you were able to give them testimony, the lender, the person who wanted the money, evidence that no, we can't loan on this unless we know that that rate is going to be fixed for ten years beyond the term of our loan, and they came back with a statement from the Division of Lands that we will fix it at this rate for the length of your loan plus 20 years, then you would be able to lend on it, because you would know the rate. If that were possible.

A: Yes, that would eliminate that problem on rent.

Q: I presume you are familiar enough with what happens in the (inaudible) office lending at that, that it was possible to get waivers, like thru June 22 of this last year, when it became only possible to get waivers on residential property.

A: Yes. But that was PET land.

Q: That's exactly right.

A: (Inaudible) is maybe a good example, but before that statute was passed I can assure you it was not that easy to get the waiver. I think ...

Q: Do you know if anybody ever got one of those in those particular cases.

A: I don't know.

Q: Do you know of anybody in your experience in the bank that applied for one?

A: No.

Q: Can the loans that the bank made that you're aware of (inaudible).

A: The loans I was involved in, no. I don't think.

Q: How many loans, approximately, have you been involved in on state leases that don't provide for subordination?

A: On state leases, I've been involved with, directly involved with two on PET land and I'm familiar with three or four over there. I was involved in Inside Alaska Tours' loan on their building, and that to me wasn't on commercial real estate, it was on the strength of the borrower, Mr. Kniesol, who was very well-to-do by himself. I have been involved with other ground leases, unsubordinated ground leases, but I think those are the ones that you could call my most direct experience with the state. I've been involved in the City of Kenai, the City of Anchorage, private

parties.

Q: The loss of this opportunity for a commercial developer to get a waiver is to make them more risky for your loan?

A: Yes, it does.

Q: Now you also mention, I think you were referring to a (inaudible) lease, the need for what you call "anchor" tenants?

A: Well, I ... what I was trying to mention there was that the condemnation provision which gives just the state the right to build a road or use (inaudible) right-of-ways is too broad, just by itself. In other words, you have to make some agreement that can be exercised rationally, and I gave you an example of ... say you made a little shopping center--or a big shopping center--on state land. And you have Safeway and Pay'N Save or LaMonts and Pay'N Save as your anchor tenants. If the state should just decide that it wanted to put a road through there, you know, then that's a negative factor in deciding to make the loan, because it's more likely that the state will use free right-of-way than right-of-way it has to pay for. Based on my experience, and I think just common sense ...

Q: Okay. But now you would have loaned from the bank that amount of money you will (inaudible), or somewhat close to that, I mean, if we ...

A: Yeh. Well, I think the appraisers can tell you it

doesn't quite work that way. I'm talking about commercial real estate. You figure the income from the building or the project. Okay. You deduct the expenses, then you use a capitalization rate to get the amount that that project is worth in terms of income. Now it may cost you more to build it than it's worth in income, so you wouldn't build it. But assuming that the income producing ability of that building equals its construction cost, or nearly that, then you've got the discount that you make in a ground lease loan. You have the loan, the value ratio, and ...

Q: What is the discount because you're making a ground lease loan?

A: Well, because ...

Q: What is the (inaudible).

A: Well, because on a ground lease loan you can never get the appreciation of the land.

Q: You have a fixed discount?

A: Well, I ... it varies again by lender. But I've seen sixty-five to seventy per cent--this is on unsubordinated ground lease loans.

Q: What would be the range?

A: Sixty-five to seventy. Some may even go as high as seventy-five -- it depends on the quality of your project, what kind of income it's turning out. Whereas on a fee loan you might go as high as eighty. In fact under, I think, the state banking laws you can go up to eighty under the law. I mean,

that's ... you know, when you're looking at construction, that's pretty dramatic. That ten per cent is, y'know ... that may be what you need to make the project go. So, it, ah ... and when you're looking at multi-million dollar projects, which in Alaska more and more you look at, that stuff is very important.

Q: So you're looking carefully at the income producing aspect of it (inaudible)?

A: Right.

Q: Would it be unusual to loan more than the improvements cost?

A: Ah, that gets involved again. When you say what the improvements cost, okay. It's a mistake to have what they call "hard cost" -- that's the contract cost. Okay. And I won't name the project, but I'll give you -- this is a realistically -- this is a true example. On a project in this town that's going to cost -- construction cost -- seven million dollars, the loan has to be nine million dollars to take care of what we call "soft cost". Architects, loan fees, special utilities, fixtures, other improvements, attorneys' fees. So, to answer your question, you have to loan ... you have to meet all these costs. I mean, the buyer has to meet all these costs.

Q: So, in the event that ... let's say that this was a true example and that, okay, nine million dollars was lent, and it's a seven million dollar structure on fee land which the state came in and ...

A: Right.

Q: ... and condemned it. Now the state would pay for the cost ... the seven million dollars that the lender ...

A: Well, hopefully, the state'll pay for the nine million dollars. Because these soft costs are costs you can say go into the improvement ... are part of the improvement. But the state could go down to seven million dollars. They could say ...

Q: How much does it cost you to build that building?

A: The contract says seven million dollars.

Q: It might take litigation to decide it?

A: It would probably take litigation in proving that.

Q: How often (inaudible). Let's say you were able to get the nine million.

A: Okay.

Q: Well, let's say you only lent the loan for seven million.

A: Okay.

Q: Why ... Why is the subordination of the fee so important if you get it back from the improvements when that easement went through?

A: Well, okay. This is a changing area of law. Until -- and we ran into this on the parking garage -- until this past summer our supreme court had not ruled as to what extent if any they were gonna' recognize lessees. Ah, there's better recent supreme court where they'll ... decision recognizing lost

profits. But we don't know how far that's going to go.

Q: (inaudible)

A: I can't tell you the name of it, it was out of Fairbanks, it was on a bar. The guy had a bar and they started to recognize lost profits in the decision. But there is such a decision. And up till then negotiating with the city, they didn't want to recognize those values in a ground lease, and after we had a supreme court decision it was easier to negotiate on that. But, we don't know. I mean, we really don't know what recognition is going to be given to those values.

Q: (Inaudible)

A: I had understood up to that time they left that to be part of the award and then whatever agreement the parties made with the Division and so forth.

Q: So, it would be incorporated from the state, but the city ... as far as the city was concerned, what ... ?

A: Well, no ...

Q: I mean, it's a supreme court decision.

A: No, I'm just saying as I understood the state's past practice it determined what the value of the land or the building they were taking and that was their award. Now if that building was leased, the state said, "Here's the fair market value, that's all I'm required to give to you. Now you people fight." And I'm sure any of your appraisers who've been involved in that kind of litigation will tell you how interesting it gets,

ah ...

Q: Now we're talking ... I'd like to think about the case where the state is the ...

A: Right.

Q: ... lessor. Then if there's a multiple ... if there's multiple lessees ...

A: Division.

Q: ... then, of course, they would have to fight it out. That would depend on their subleases, and whatever they ...

A: Right. All I'm trying to point out is that that's an area of law that is changing, that there's really no definite policy on it, and obviously the state -- you can expect them to take this position -- is going to take the hardest position they can to protect the state. I ... I don't have any problem with that. But, in some of these areas there are ... in other words, you go to the California law ... they have gone through some of this litigation -- there are some set rules that you can agree to that at least are acceptable to the financial community. We really don't have those rules set up in Alaska.

Q: In California would they be more likely to lend on the ... with the use of improvements as security rather than requiring the subordination of the lease?

A. I ... I can't tell you what California lending practices ... California is unique in a lot of respects.

Q: I guess what I really don't understand -- and I

think you did explain it to, ah, me -- is if we ... if a lender can get seven million dollars out of improved ... the state is going to pay you ... compensate for those improvements. Why is the subordination ... (inaudible)?

A: I don't know how much the state's going to ... y'know, is the state gonna' pay the severance damages? You take the corner off of Safeway's building, and they lose the value there; and you take fifty per cent. You know, it's the severance damages to the whole project. Or, you build a planned-unit development -- a nice housing project -- you run a highway through the middle of it. Y'know. That ....

Q: So then what you really need is ...

A: ... dimishes. Well, sure, sure. I would stress ... my solution is better planning before you start so that will never happen.

Q: You plan it better.

A: Right. And then as a second resort have a fair ... And, I'm not saying the state should get cheated or anything. I'm saying a fair division of compensation. And that's all I advocate. And so everybody's treated fairly, that's all. Y'know.

Q: Thank you. And on the ... on this point about the state being treated fairly ... I think that's obviously what they ... the best interests of the state certainly ... the state is going to have to be served or we're not going to be involved in leases if we didn't think it was. What ... I mean, a lawyer

plays many roles, as you have in your long term of service in Anchorage. Could you assume now the role of a private attorney and I'm a person ready to, ah ... I come in and I have some property that I invested some money in, and I don't see much of an income from that property and I don't need ... I want to set it aside, and, in fact, I think I want to set it aside for a long term -- say a hundred years.

A: Okay.

Q: And, further, let's assume that we're talking about forty years ago. And, I'm going to rent it now -- I'm going to rent it to somebody for a hundred year term at three per cent. But in the year 2000 if the common rental rate in Anchorage is fifteen per cent, I'd like to make sure that whoever's going to benefit from that income is getting better than three per cent or four percent, whatever I said, of the fair market value. Now, you indicated the example of the bank, which is quite interesting, where they may on a long-term loan lend at a low -- at the going rate -- I say, four per cent, and have a balloon payment at a certain period of time. I think you said fifteen years would be a common one. And that doesn't necessarily mean that the guy has to pay it all, but then that part of the loan is renegotiated at the going rate at that time. Now, if the state was going to get involved, if a person was going to get involved in a long-term lease like this, what could they do that would be desirable concerning the lease rate, so that there would not be such a

windfall benefit to the person that picked up the lease in the beginning?

A: Well, one of the things I've told many ... I mean, you're going to back the value of the loan, but ... the Governor's Committee has put a lid on the rent. Obviously, it's one ... y'know, you can't have 300 and 400 and 600 per cent increases, but it would never go up by more than, say, 25 per cent.

Q: Put a lid on the per cent increase.

A: Yeah. Because that ... it's either a fixed rental or ascertainable rental. Then it would be up to lenders to decide whether even that's acceptable. In the Penland thing -- because I was dealing with the mobile home space -- and we had to show this to the state. Mr. Penney, I think, went to something like 25 lenders before he found one, and that lender was only going to go on a level term. And that was over a period of, y'know, four, five or six years. So, ah, y'know, that ascertainable rent, putting the lid, may work -- hopefully will work -- for most, but not all.

Q: Well, what do you think if you're in a, ah, property value situation where the market value of a piece of property could double in even as much as three months? I mean, would a 25 per cent lid every five years seem reasonable as a maximum?

A: Well, to me it does. Y'know, I'm trying to be impartial a little bit here. Y'know, I can see the state's point

of view to say, "Boy, we want what every per cent that value goes up we want some money for it." Okay.

Q: I'm trying to think ... and you said this is what the bank does, too.

A: Well, I mean, they consider ... you know ... they're trying to look at that. But, let's look at the other coin. If any leaseholder developed on fee land. Okay? Presumably he's paid at today's prices and the land appreciates. By upping the rent he never gets any benefit of the appreciation. And appreciation, of course, provides security for lenders, so the lender gets no benefit from that appreciation. In other words, I suppose you get philosophical then about market value. You ... a year ago, you were doing ... or maybe two years ago ... a subdivision, and there was a great demand for housing. Okay? You're just going like gangbusters. But, if you have a subdivision today, you don't have it sold, you've probably been talking to your banker. So the vagueries of market value ... trying to be ... trying to answer your question ... are maybe not that kind of concept you can pinpoint every second of the day. True, you know, I can understand that these -- especially in the last few years -- we've had some tremendous increases in market value of land. But, alot of people too, you've got to look at their use of the property. They build buildings for themselves -- for their companies. And those companies sometimes just can't respond to the inflation like the state can if it can just raise its

rent, or maybe an attorney can--he can raise his fees. Y'know. But they can't. They're selling a product; they've got a lot of competition; and, y'know, all of those things go into figuring market value. And, again, what's in the public interest? You know, it's kinda' like taxes--everything that you put against a person he's gotta' try to pass on to the consumer and go out of business.

Q: When you talk about the benefit of appreciation, do you see as a philosophy of the private leases you look at the fact that they start out at what the market will bear the first year and then thereafter it's ... it'll be below what (inaudible) were offering at that point?

A: I think it's been ... the lender's gotta' be looking at them as a definite (inaudible) at maturity. Maybe ... let me ... take the disaster situation. Y'know, you can say ... Take the Calais office building--that's where I have my office--okay. That's a great project right now. It's full, good tenants, you know. First-class tenant oil companies, title companies and Alyeska. But two years from now, okay, when Alyeska's done, they've got three or four floors they've gotta' rent out. And when the federal office building opens up that changes your whole market immediately, overnight. And I don't know what's going to happen. And is that building then worth, in terms of let's say--and I have no reason to believe this and I probably shouldn't use it as an example--but, let's say they had to going into Chapter

XI or something. Is that building now worth what it's worth today? The answer is no. Because the market value concept changes. Ah, and what is market value? Are you talking about terms, are you talking about wholesale market value, or are you talking about retail market value? Those are different. Market value to a developer is different that what you and I expect to pay for one lot in the subdivision. So, maybe that word market value gets elusive both in a disaster situation and what level are you talking about? At the development level? Or are you talking at the retail level?

Q: On this benefit of appreciation where the lease is renegotiated every five years to take it back into what the lease market will bear, wouldn't the lessee have the benefit of appreciation as soon as the market started going up and land developers in three months can start getting some benefit from (inaudible)?

A: For how long? For four years, three years?

Q: Well, wouldn't he have it ... wouldn't he have it until the next adjustment to take it back to market value?

A: Well, generally not, because his people that lease from him ... Let's say he builds a building to lease. Okay? They want their fixed rent as long as they can have it. You know.

Q: But what he would give is not the same curve, I suppose he would change his...

A: He would try... obviously he would try to pass

through the increases that he could.

Q: If he did have anybody on the property he would be getting the benefit of leasing land at less than the actual leasehold interest for at least four years, I presume.

A: He, he might. He might, if he could. It depends on his terms. You know, a person in 1970, 71 or 74 could have made terms for a ten-year lease, not thinking there was going to be a big increase in rental. And he's locked in. I mean, he's dead.

Q: Well, let's say it's, ah, let's...

A: And he can't renegotiate these.

Q: Let's look at the state lease. Would, wouldn't there be for every five years ... it's a 55-year lease, and every five years it comes into the market (inaudible).

A: Right.

Q: Then, if the market continues to go up as it has, would he be renting for at least four years below the market rate; and, so, wouldn't that be a favorable deal for him?

A: No. No, no. Oh, I don't think so necessarily. In other words, let's say he made a lease in '74 for ten years. He agreed to.

Q: But let's say it's (inaudible), and every five years...

A: Well, no. I'm talkin' about the owner of the building. In other words, one measure of market value to him is

what can he rent the building out at. Okay? Or rent out part of it. He rents it out. He agrees for ten years to a certain term. The state comes in and with this rather huge increase. It's something he can't pass on. So what... I mean, what's the market value to him? Y'know, he might have a ... I heard testimony in one of the governor's ad hoc committee work ... somebody had, ah ... they were makin' money on a lease. You know, it didn't sound like an outrageous profit from land. And because of the rent increase they're losing money. And they're ... they're tied into a big term.

Q: Well, for example, you probably do...

A: So, if you were gonna' say, "What's the market value of your lease, Mr. Jones?", and he says, "Well, it's a great deal, I'm only losing $12,000 a year." What are you gonna' pay him for it? What are you going to pay for a $12,000-a-year loss? Y'know, the state doesn't reflect those things in its appraisals, I don't think.

Q: Sounds to me like what you might be saying is that, not only would you find it difficult to loan on such a lease that the state has, but you would ... you would probably not be inclined to enter into such a lease agreement yourself.

A: I would find that difficult, yes. I mean, realistically, you know, if you're talking about big projects--multi-million dollar projects--boy, you know the lender's gotta' look at those things.

Q: I sure appreciate your testimony on this. I'm gonna have to point away (inaudible).

A: Okay, John.

Q: And, ah, I'm sure that it's also been very valuable to the ad hoc committee. We've been... Some of the things we've been talking about have hit specific words and I want to make sure that I know you meant in the beginning of your narrative you indicated that the regulations are inadequate defaults, and then later on you mentioned provisions. Alright. Were you talking about the paragraph in the lease when you stated ... when you said that? I believe you said that.

A: I'm referring to the regulations.

Q: Alright. Which one are you specifically talking about?

A: Let me see what we've got in here. I at one point had these regulations in this file, but if you have them I can point them out to you. Yeah, I've got it. Not necessarily readily. Okay, ah, when you talk about defaults, if you look at 11 AAC 58.540, that's what I call the DL-50 form, which is this two sentence form that is supposed to protect these somewhat large loans. Maybe it's right that the bank accuses me of writing too much, so they like to keep it concise. So maybe they like that form, I don't know. But, anyhow, you look at the assignment provision. You have to use that form. And that form to me, representing lenders, is adequate. Okay? I mean, I can say that

unqualifiably, and I'll show you ... I gave some sources to the committee that (inaudible). I referred them to ... there's about three good books on ground lease practice, that I thought he should look at. Then look at the rights of mortgagee or lien-holder, 11 AAC 58.590. Okay? And notice of default, 11 AAC 58.570.

Q: What specifically about .590, would you make reference to?

A: Well, in .590 it says that in the event of cancellation or forfeiture of the lease, okay?

Q: Um-hum.

A: The holder of a suborted mortgage, conditional assignment--I haven't figured out what that is--or a collateral assignment--well, the collateral means more to me--will have the option to acquire the lease or the unexpired terms thereof, subject to the same terms and conditions as the original lease. Okay. Number one. And some of these leases have some peculiar conditions in 'em. I don't know whether they do in the Industrial Subdivision, but the lender comes in, and a lender really can cure things with money. I mean, you know, that's one thing generally a lender has, is money. But, if the lessee was supposed to do something that has to be cured, ah, then... Let's say he does. In other words, he has to assume the obligations of the lessee. That's difficult, number one. What I call "non-monetary defaults."

Q: If the obligations are more than paying money.

A: Right.

Q: If, for example, you're thinking of something specific.

A: Well, let's make it like if you had to put in sewers, and you hadn't put in sewers. Or, he was supposed to build something for the state or put in a beacon. He hasn't done those things. And, you know, one, can he do them? Is he capable of doing them? I gather some of the--I'm not talking about the Industrial Subdivision, but some other leases that I've heard about--have some peculiar provisions. I mean they're peculiar in the sense that they're particular to a certain project but not generally applicable. So, you've gotta' comply with those. So, anyhow--and I'm not sure how the state does all this, I've never... I don't think they've really thought it through. But, you go back to 11 AAC 58.560, you can cancel it, basically, on 30 days' notice. Okay? And let's say one of the things that you're cancelling for is the input into sewers. Well...

Q: But does it say mutual ... doesn't it say mutual in this agreement? It can't be unilateral then at all, can it?

A: Well, for a default--I'm talking about a default--the guy is defaulted. He was supposed to put in sewers by July 1, 1976 and didn't put it in; we got the loan; you try to cancel it. Okay. You cancel it in the middle of the winter; he says, "Well, I had trouble with the borough, etc., give me some more

time." You give him some more time. The lender doesn't know. I mean, he can't come in to really take over if you read literally .590. "Cause you can ... the lender can only come in and assume that lease if you cancel it. You never cancel, that creates an ambiguity that I think is unnecessary. So, what I try to write into my assignment forms is a provision talking about what happens if we take over by reason of foreclosure, judicial or non-judicial. Okay? In other words, the reality of the lending industry is we come in on foreclosure, not when you cancel the lease. And you don't--I'm saying you, but I mean the State of Alaska--never dresses that question.

Q: Is forfeiture ... it says forfeiture, too ... is that closer to default than ...

A: What does forfeiture mean? I mean, I don't know what... The word cancellation I understand. But, if you cancelled and forfeited the lease, how can you tell me to assume a lease that's not in existence? I mean that ... it's ... the language isn't even accurate. How can you assume you cancelled ...

Q: Well you have acquired. Let's say you've acquired the lease, so you acquired... I mean, whatever happens that lease goes back to the state, wouldn't you think that then you have a right to acquire that lease. Doesn't that... Who has it, then? Doesn't... It says you have the right to acquire... (Inaudible.)

A: I think we could agree that the words could be

more precise, without arguing the point.

Q: As far as curing the default, one of the things that is required of all leases in .510--58.510?

A: Um-hum.

Q: Is on use utilization. And, there it says that failure to make substantial use of the land (inaudible) within five years shall, on discretion, constitute cancellation.

A: Um-hum.

Q: I presume if you lose ... if you did lend money, though, you would make sure that there was ... it was going to be used for the purpose that it was applied so that, at least as far as Alaska Industrial Subdivision is concerned here, have you ever been concerned with anything other than payment of money for a ...

A: Yes, in fact we were concerned with that with the Penland development, and I was supposed to ...

Q: Well, I know that, but I was just wanting to talk about Alaska Industrial Subdivision.

A: No. Okay, well I...

Q: You have been concerned about...

A: It's the same kind of problem. Let me explain the problem. Ah, the land out there might have certain zoning restrictions or utilization restrictions. In other words, apart from the state there might be some zoning or some other restrictions placed on the land. Another problem we've had, like with the

Penland lease ... there's no provision for the ground lessor to file an estoppel agreement, although I always require it. I write it into the ground lease. I said in granting and approving this assignment the State of Alaska says there are no known defaults. You know, that's the only prudent thing to do, is make them commit themselves in writing that there aren't any. And I tell 'em to go ahead and check it, too. 'Cause we don't wanta' make the loan if there's defaults. And obviously we don't want the state, the day we fund a two or three million dollar loan, to come back and say, "We're cancelling the lease." Y'know.

Q: Are you aware at this time of any permanent action required of any lessee on a parcel of Alaska Industrial Subdivision lease (inaudible).

A: I'm not aware of any. I'm just suggesting that that's a problem and can be a problem. In other words, when I get a loan package from the bank, the bank says, "We're going to make X loan on this property, you put the paperwork together." So I, y'know, I'll go over to the state lease file and read it and talk to the state lease people, y'know the administrators of the program and say, "Do you know of anything wrong," and "What's your view of the project?" and, y'know, check with the borough, or the municipality, now.

Q: I really didn't understand that when you first explained, I think I do now.

A: Okay.

Q: One other thing related to that which you mentioned is preference and assignment lease form that is required to be used ... and you used the words required to use ... and then looking at .540, it does say that application for assignment shall be made in writing to the director on forms with the assignment of lease or attach a copy thereof. Now you have indicated that you have prepared a better assignment and have had that approved...

A: I'm not saying it's better, but at least...

Q: No, no, well I mean longer...

A: It was longer.

Q: It was more satisfactory to you?

A: Yes. More confortable, at least...

Q: Doesn't that seem to indicate that this DL-50, although it's called an assignment of lease is an application for the assignment; and, if it's approved it should reference something else, such as you or a private attorney might prepare to make it a better collateral assignment for that...

A: If you'd review the files that the lenders have filed you'd find a variety of attempts to solve this problem. And they vary. I mean, each bank has been different. All I'm trying to point out you is that that--if you read that regulation literally I suppose you could read that's all you could ever have in there. I've read it and add things that aren't otherwise covered in here. And, all I've advocated to the Governor's

Committee, and maybe even this panel, is that there has to be some flexibility in there to make what we call in lending make the lease bankable.

Q: There was... At least you were able to persuade ... corrected there was enough flexibility to make your (inaudible).

A: Well they, y'know, you give 'em to them, you don't argue with them. You say, "This is what we need to make the loan, you sign it." If they sign it I figure they're bound by it. But, you know, I recognize and advise the clients, well, they can argue the other way. The big thing in any real estate transaction--I think any attorney who does a lot of it will tell you--and this has been a big problem in Alaska. We have absolutely no certainty in our law or our procedures or our practices. You know. And that's what hurts Alaskans. We pay an extra penny, I mean an extra point in interest--not solely because of that, part of it is our isolation. But lenders have told me outside of this state. "Lookit. We're fifteen hundred miles away from you, we're based in Seattle--I'm talking about some of these big ones--and you people have no certainty in your law. Absolutely no certainty in your law or your procedures."

Q: And because of that it should be defined more specifically?

A: Yes. Yes, uh-huh. Sure. If the lender comes in and he feels comfortable with your procedures and practices, y'know. Then that's gonna' allow development. And if he doesn't feel comfortable, then I think it's going to be charged to him.

BY MR. MIDDLETON

Q: It's past noon already, and I'd like to complete Mr. Hoge's examination. I just really have one question. Ah, with respect to, ah, the rental provisions in the state leases. Ah, let's... And more particularly the one's that resulted from the reappraisal ... let's kind of draw, ah, make a hypothetical here. Ah, y'know, assume that there perhaps had been an under-valuation for the purpose of this question. That in fact the rental payments were lower than they should have been considering the standards that have been set up.

A: Um-hum.

Q: i.e., appraised value based on the fair market value, or appraised rental based on fair market value. Ah, and, then assume that there was ... there was what you might refer to as a correction of that, coupled with a tremendous jump in real estate values generally in a certain period of four or five years. Ah, would the bank be quite so concerned by the dramatic increase?

A: The answer is that they would always be concerned. Now, how adverse that would be would depend upon, ah, what the particular loan transaction was. If the transaction were one that, say there couldn't be a dramatic increase in rent necessarily. In other words, it depends on your lease. Some of these leases, ah, like a Safeway lease or that. The ones I've seen, they've got a base rent and they go on profits. Okay. I ... I mean

percentage of sales and volume. That, coupled with a dramatic increase of the underlying ground lease--and that is also reflective of another thing that's going up, is that the real property taxes presumably are going up. This is, I understand, although I got into this again with the parking garage. The municipality has a variety ... has used a variety of methods ... it's not legally committed to one over the other ... of evaluating these ground lease projects. Y'know. And that's a whole 'nuther area. But, to answer your question directly, Mr. Middleton, I think one, yes, it is of concern. Two, it depends on the project--how big a factor that would be.

Q: Well, what I'm... What I'm getting at is they all, look, they jumped this rental payment six, seven hundred per cent and, and, God knows, they're gonna' do it every five years. Y'know. When the truth of the matter may be, Gentlemen, that this is a one-time thing, resulting from, y'know, these two or three factors. Specifically a possible undervaluation. A tremendous jump in real estate prices, y'know. In other words, an increase in ... of the market value. And that in five years you may see ... you may see a reversion to the trend that--you weren't here-but the earlier trend in the rental adjustments was ... was substantial, but not in the neighborhood of six or seven hundred per cent. It was maybe fifty per cent over five years or something like that. People felt they could live with it.

A: Obviously that's a judgment thing, but I just

remember reading in the Alaska Land Lines, put out by the Division of Lands--a very good publication, I recommend that everybody get it--but, they were talking about the speech of the governor gave recently. And, I don't have the correct figures, but he was pointing out that of all the land in Alaska maybe one per cent is in private ownership. And then, I don't know what small per cent is in Anchorage. You know. And the trend that I see in Anchorage is everybody wants to live in Anchorage. Maybe people want to live in the capitol and the valley. Obviously, there's more development in that area. But, I don't ... I guess I don't see the trend that you might see, but you may be right, y'know. That it may normalize out. Maybe people will move to the other side of the inlet and develop their warehouses in other places. But I don't know that.

Q: Well, I'm just concerned that maybe the bank and the lenders ... the banks and the lenders are saying ... are getting nervous about a six or seven hundred per cent increase that may not be really something that can be projected as a trend. And they may get all nervous about this. Obviously, y'know, the provisions of the lease are there.

A: Yeah.

Q: And they're concerned about that. But, is it simply because this one time, you know, we've seen a really very, very dramatic increase?

A: Well, that could obviously be. But it is, y'know,

part of all of this is in Alaska--and I think this may have come out at the governor's committee the day I was there--y'know we accepted ... I'm sure banks made loans on these ground leases and never questioned them. They just ... things went along. The rental increases were always moderate, and you just accepted that as a way of life. Now, I think with the Penney matter, the Teamsters matter, this matter, and the general increased value, y'know, you've awakened the lenders and say, "Oh, we're not gonna' get in that." Y'know, whether itis gonna' go up or not, because you've gotta' say, "God, it went up six hundred per cent this time, is it gonna' go six hundred per cent again?" And I've, y'know ... I don't know that that's gonna' always happen. God, I hope not. I really do. But, ah, y'know the lenders gotta be saying, "What kind of people are we dealing with?" Y'know. If they can always change the rules, then you've taken out of lending--at least on state ground land--the certainty that you need. Especially when it's unsubordinated. That's what really hurts the lenders. If it was subordinated, then, y'know, the lender... The lender will always know he'll get his project back if the state ever pushes too hard on the rents. But, when he doesn't have that subordination, that ... that's where he's gotta' really have certainty. He's gotta' know what his relationship is.

Q: Alright, I don't have any more questions.

BY CLIFFORD GROH, ATTORNEY REPRESENTING INDIVIDUAL LEASEHOLDER

Q: Very, very quickly I would like (inaudible). But, Mr. Hoge, there's some discussion by the Attorney General about the benefit of the appreciation the lessee has because there's been an appraisal and then there's not another reappraisal for five years, there's a benefit to the lessee in some fashion. But there's really nothing the lessee can do with that appreciation, is there?

A: No, I ... I... In terms of a five-year term, there's not enough ... there's not enough time to get any benefit out of it.

Q: Well, he can't sell it. He can't buy it. He can endeavor to renegotiate his lease, if he's successful in doing so, but as you and I know it's a very difficult proposition.

A: It is difficult.

Q: Okay. Now, there has been some confusion in this hearing among some of us about the basic difference between a subordination and a so-called collateral assignment. And let's you and I see if we can straighten this up. Okay. In a subordination, what really happens is the lessor agrees that the lender may have the fee if the lessee defaults. Is that correct?

A: That's right.

Q: Okay. Now in an assignment, or a so-called "collateral" assignment, all that really happens is that the lessee assigns to his lender his ... gives the lender the right to cure

the default if there's a default?

A: That's true.

Q: And that is the basic difference?

A: Yeah. It's more dramatically. In one case on subordination the lender's getting the asset, and on an assignment he's really getting a liability, potentially.

Q: Right.

A: In other words, the potential liability is he'd have to cure the defaults, assume ... pay the rent on the ground lease.

Q: And any suggestion that the two things are equivalent just isn't, ah, legally correct?

A: No. No, they ... both in lending and law, they're about 180 degrees apart ... maybe not quite that.

BY MR. GISSBERG:

Q: Well, would you take one that had no subordination and no collateral assignment?

A: Well, you wouldn't ... I mean, you wouldn't be... Well, I'm sure the Controller of the Currency would be putting you in jail if you ever made a loan like that. I mean, you've gotta' have at least the assignment of the ground lease, unless you're a charitable institution, and banks, believe me, are not. I don't say that facetiously, they've gotta' make a profit. You don't... What you would be doing is saying, here, I'm gonna'

lend five million dollars. Build a building on this property. The state comes along and cancels the gound lease, gets the property. Even though they've got this permission that you can move the improvement in 30 days, but you're not gonna' remove a parking garage. You're not gonna' remove any kind of five million dollar building. So, in effect, the lender's made a charitable contribution, because he'll never get his building back, and he'll never get his security. He's gotta have at the minimal the collateral assignment, and much preferred is lease subordination. Much, much preferred.

Q: Could you have a subordination on the leasehold interest. That's the collateral assignment?

A: No, that's meaningless, because you'd still have the fee interest. I mean, that... You can have-there's another word for it that doesn't come to mind--a partial subordination thing, but it wouldn't be realistic, nor, I don't think, applicable in terms of what you're dealing with in state ground leases. In other words, the state either, y'know, the state probably is at this point not going to subordinate; and, if it's not going to subordinate, then it has to take care of these other problems.

Q: Is subordination always included in collateral assignments?

A: Ah, yeah, I've done one like that. "A" owns the fee. "A" leases to "B", a developer. Ah, developer "B" leases to "C". Well, you wouldn't have it in terms of the state ground

lease, but in that situation the developer will assign his tenant leases to the bank as security for the loan. Ah, the ground lessor may subordinate to the loan. Y'know, "A" will subordinate to the lender, and "B" will also be assigning his leases, but you wouldn't have it on the same lease, you'd have different leases in order to accomplish it.

MR. MIDDLETON:

Q: Okay, anything further? Thank you, Mr. Hoge.

A: Okay, thank you.

END OF TESTIMONY

ALASKA INDUSTRIAL SUBDIVISION [illegible]

EFFECT OF SENATE BILL #159 ON MY PROPERTY LOCATED BLOCK 3, LOT 7A, ALASKA INDUSTRIAL SUBDIVISION. LOT SIZE APPROXIMATELY 64,000 SQ. FT. APPRAISED AT $65,640.00 TO BE REAPPRAISED 1978.

TERM	% INC TERM	% ORIG VALUE	NEW APPRAISED VALUE	LEASE PAYMENTS	ACCUMULATED COST TO LEASEE
1-10	0%	100%	$ 65,640.00	$ 52,512.00	$ 52,512.00
10-15	50%	150%	98,460.00	39,384.00	91,896.00
15-20	50%	225%	147,690.00	59,076.00	150,972.00
20-25	50%	337.5%	221,535.00	88,614.00	239,586.00
25-30	50%	506.25%	332,302.00	132,920.80	372,506.80
30-35	50%	759.38%	498,454.00	199,381.60	571,888.40
35-40	50%	1,139.07%	747,686.00	299.074.40	870,962.80
40-45	50%	1,708.61%	1,121,531.00	448,612.64	1,319,575.44
45-50	50%	2,562.92%	1,682,301.00	672,920.28	1,992,495.72
50-55	50%	3,844.38%	2,523,451.00	1,009,380.40	3,001,876.12

1. Above is MINIMUM
2. Rates are compounded
3. When lease finished, leasee will have paid 45.73 times value (3,001,876 ÷ 65,640)

ATTACHMENT "C"

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

BEFORE A HEARING PANEL OF
THE ALASKA DIVISION OF LANDS

In the Matter of Protests)
of Various Leaseholders in)
ALASKA INDUSTRIAL SUBDIVISION)

RECEIVED
JAN 24 1977
Matthews, Dunn & Baily

HEARING PANEL PROPOSED DECISION AND RECOMMENDATION

I

INTRODUCTION

Pursuant to a letter of November 2, 1976, written by Michael Smith, Director, Division of Lands, to lessees holding leases in the Alaska Industrial Subdivision, an administrative hearing was held December 14, 15, 20 and 21, 1976. The hearing was called to give the lessees an opportunity to protest the five-year reappraisal of certain state leases within the Alaska Industrial Subdivision, said reappraisal resulting in substantially higher annual rental payments. The hearing panel consisted of George Hollett from the Division of Lands; Kenneth Zamzow, an appraiser with the State Division of Petroleum Revenue; and Timothy G. Middleton, an attorney in private practice.

The Division of Lands (Division) was represented at the hearing by John Gissberg from the Attorney General's Office. Representing various leaseholders was Douglas Baily, and representing leaseholder Groh & Benkert, a partnership, was Clifford Groh.

Testifying as witnesses for the Division were Ronald Bunn, an appraiser with the Division; Robert Kesling, a forester with the Division; and Eugene Harp with the Department of Highways.

Testifying as witnesses for the lessees were Leon Brown, Jim Cristopher, Joe Wilhour, lessees; Fred Ferrara, and Errol Simmons, appraisers; John Kamper, a banker; Andrew Hoge, an attorney; and Paul Kimball from Lynden Transport, a lessee.

The relevant provisions of the lease form, regulations and statute are set out as follows:

(1) State lease provision calling for reappraisal:

> "[S]uch payments to be subject to adjustment at each five-year interval from the effective date hereof, if the lease term hereof exceeds five years, such adjustment to be based primarily upon a reappraised annual rental value of land in a state of improvement similar to that of the land described herein at the time this lease was entered into.

(2) Regulations governing rental: 11 AAC 58.520 and 11 AAC 58.410:

> 11 AAC 58.520. ADJUSTMENT OF RENTAL. All leases shall stipulate that the annual rental payment shall be subject to adjustment by the director at five-year intervals and any changes or adjustments shall be based primarily upon the reappraised annual rental value. The director shall take into consideration the following factors in reappraising the annual rental value: the value of comparable lands in the same or similar areas, exclusive of buildings, structures, appurtenances, equipment, land fill, clearing, leveling or roads owned by the lessee. The commissioner may waive one or more of the periodic rental adjustments or lengthen the reappraisal period, when a lessee who has acquired a tract of land for multiple unit housing, commercial, or industrial development can demonstrate to the satisfaction of the commissioner that such action is essential in order to obtain the primary long-term financing or loan insurance required for development of the leased land. In order to qualify, applicants must furnish written evidence that, in requiring a waiver of rental adjustment, the lending or insuring agency is applying a generally applicable rule. Waivers shall remain in effect only during the term of the loan but shall not exceed 40 years.
>
> 11 AAC 58.410. ANNUAL RENTAL. Annual minimum rentals shall be computed from the approved appraised market value, except in the case of a preference right grazing lease, and shall be the lowest acceptable bid in the event of an auction. Annual rental shall be the basis of bidding for

all surface leases, except as provided in sec. 440 of this chapter. Annual rentals in amounts up to and including $250.00 shall be paid on an annual basis. Annual rentals in amounts above $250.00 shall be paid either annually or in quarterly installments, at the discretion of the lessee. All rentals shall be paid in advance.

11 AAC 58.900. SHORT TITLE. This chapter pertains to the leasing of land of the State of Alaska and to the jurisdiction of the Division of Lands, Department of Natural Resources and related matters. The intent of this chapter is to insure the equitable leasing of Alaska land in a manner that will encourage development for its highest and best use. This chapter may be referred to as the "Surface Leasing Regulations."

(3) Statutory provision dealing with rental adjustments in effect as of May 1, 1976:[1]

AS 38.05.105. PERIODIC RENTAL ADJUSTMENTS. Each lease shall stipulate that the annual rental payment is subject to adjustment at five-year intervals and charges or adjustments shall be based primarily on a reappraised annual rental value. However, when development of the land is not otherwise possible due to special conditions, the reappraisal period may be lengthened or waived under regulations adopted by the commissioner.

Because the hearing panel is composed of an appraiser, lawyer and a representative of the Division of Lands, it is considered appropriate in formulating recommendations to the Director that the panel exercise independent judgment based on expert testimony presented and exhibits offered. Accordingly, we do not accord the Division's position any special deference which might be applied in an administrative appeal in the judicial process.

The basic question to be resolved in this hearing is the determination of a fair rental for certain lots within the Alaska Industrial Subdivision. This fair rental is to be determined for the five-year period May 2, 1976, through May 1, 1981, the third rental adjustment period since the leases

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[1] This section has since been amended, §1, Ch. 267 SLA 1976.

commenced on May 2, 1961. The Division had adjusted the annual rental of the leases in question as of May 1, 1976. This adjustment had been based on a reappraised fair market value and an increase in the rental rate from 6% to 8%. The reappraisal and adjustment were based on the relevant provision of the statute and regulations quoted above. Additionally, the term "fair market value" is defined in 11 AAC 58.910(11) as:

> "Fair market value" means the highest price, estimated in terms of money, which the property would bring if exposed for sale for a reasonable time in the open market, with a seller, willing but not forced to sell, and a buyer, willing but not forced to buy, both being fully informed of all the purposes for which the property is best adapted or could be used.

II

ISSUES

The issues appear to be the following:

(1) An interpretation of the lease, regulatory and statutory provisions, as to the nature of improvements to be included in the appraised value.

(2) Whether or not the term "primarily" as used in the lease, regulations and statute means that the Division should consider other factors in arriving at a reappraised annual rental value.

(3) Whether the Division's appraisal was in accord with the law and consistent with the relevant market conditions, particularly as to (a) use of comparables and (b) determination of original condition.

(4) Whether the 8% rental rate is appropriate in view of market conditions, the provisions of the state lease not found in private leases.

III

DISCUSSION

A. State of Improvements

The lessees represented at this hearing interpret the term "state of improvement" to mean the state of improvement of the entire Alaska Industrial Subdivision. Specifically, the lessees interpret this to mean that any improvements made outside of lot boundaries since 1961, such as roads and utilities, are to be excluded from consideration in the fair market value of the subject lots. The appraisals conducted by Messrs. Ferrara and Simmons for the lessees and presented at the hearing reflected adjustments in value to account for the cost of those improvements, particularly cost of access. This was based on language in the lease indicating value should be based on land in a similar state of improvement as land described in the lease at the time the lease was entered into; thus, the reference to "original condition." The regulations, however, are more explicit in determining what improvements are to be excluded. The Panel believes it would be inappropriate, in view of regulations and principles of equity, to exclude from the value of the leased property improvements off the property, especially when such improvements were paid for by the lessee. When a lessee can demonstrate that such off property improvement was paid for by him or his predecessor in interest, a different approach should be used. Both the State and the lessees agree that any improvements made within lot boundaries by lessees are to be disregarded in the valuation. The Panel finds in favor of the State in interpreting this phrase "state of improvement" to mean only the condition within the subject lots and that all improvements made since the leases were entered into which lie outside of the lot boundaries, specifically roads, water, sewer, power, and any other amenities

which affect the value of the subject lots are to be included in the fair market value of those lots.

A further disagreement among the parties involving the "state of improvement" is that of the original condition of the lots before any tenant improvements were made. The State's appraisal witness, Mr. Bunn, testified that as far as he could determine after reference to soil maps, aerial photos and consultation with various knowledgeable individuals, that the soils were basically adequate for building development with a minimum of site preparation required for any development, that no substantial amount of overburden needed to be removed. Mr. Bunn admitted his findings in this regard were based largely on the lack of evidence to the contrary. He did not, apparently, attempt to gather evidence from individuals who developed the leased land. Several other witnesses testified as to moderate to severe conditions of peat and unstable soil conditions at the time the leases were originally entered into. The lessees' appraisers, Mr. Simmons and Mr. Ferrara, after thoroughly investigating the original soil conditions with various knowledgeable people indicated that it was still not clear exactly what the soil conditions were on each parcel. There was adequate testimony given that most, if not all, of the subject lots had conditions of unstable peat soils in depths ranging from one to four feet, with testimony given concerning individual spots where the depth of peat extended 14 feet. In Mr. Ferrara's appraisal of Lot 4, Block 2; Lot 12, Block 10; Lot 10, Block 9; Alaska Industrial Subdivision, he stated that soil conditions probably varied from two to three feet of overburden along Commercial Drive on the north with overburden deepening in the area of Rampart Drive and reaching depths of two to three feet

again along Mt. View Drive. Mr. Ferrara testified that although he was uncertain as to the actual soil conditions at the time the leases were entered into, he felt a realistic condition was that approximately two feet of fill was required on the average for development of those lots which he estimated would cost, at the time of reappraisal, $.50 per square foot. Mr. Simmons' appraisal report and testimony regarding soil conditions were similar to those of Mr. Ferrara. In Mr. Simmons' appraisal of Lots 8 and 30, Block 10, he estimated a current cost of surcharging the peat with gravel in an amount adequate to support parking and storage yards was $40,000, which divided by total site area of 46,021 square feet equals $.87 per square foot. In the Panel's opinion, the investigation and analysis by the lessees' two appraisers were reasonably well supported and much more creditable than the investigation, analysis and testimony given by the Division.

B. Meaning of Primarily

The lessees contended that because the lease, regulation and statute all use the adverb "primarily" to modify the verb in, "such adjustment to be based primarily upon a reappraised annual rental value," that the State should consider other factors in arriving at an annual rental value. The lessees point to 11 AAC 58.900 wherein the intent of the regulations is spelled out, i.e., to "insure equitable leasing" to "encourage development." Accordingly, the lessees presented evidence, unrefuted by the Division, of the difficulty in obtaining financing for development of the leaseholds.

The Division's position was that the word meant nothing now with respect to the leases under question, but that it referred to the since repealed provisions for waiver

of five-year adjustments in cases where such a waiver is necessary to obtain long-term financing. The Division stressed the point that the lessees never attempted to obtain the waiver. The Panel finds the Division's argument to be without merit. First of all, the word "primarily" applies, if at all, to the reappraisal. The waiver would mean there would be no reappraisal at all. The suggestion that the lessees should have attempted to get the waiver is also without merit. The date of the reappraisal was May 1, 1976; the date the waiver repeal became effective was June 22, 1976. Assuming that the lessees had notice of the reappraisal simultaneously with the reappraisal, there would be only six weeks in which to get the waiver after reappraisal. The lessees indicated such actual notice of reappraisal came much later, in June and July; this was not rebutted. It is also unrealistic to believe that the State would have agreed to such a waiver.

The word "primarily", taken along with 11 AAC 58.900, is not without meaning. The Panel believes that the Division should consider other factors besides a determination of open market rent. The present state of the lease and regulations makes it difficult to arrive at a readily ascertainable meaning, especially in view of the duty owed to the people of Alaska by its government to obtain a good return from the State land. While principles of legislative interpretation dictate that the word be given meaning, the Panel finds it difficult to do so. Because nothing was presented to resolve this dilemma, the Panel refrains from attempting a definition beyond suggesting that doubts or ambiguities be resolved in favor of the lessee.

C. Appraisal.

11 AAC 58.410 states that annual minimum rentals shall be computed from the approved appraised market value. Rent paid for land in the open market place is typically determined by, and expressed as, a percentage of the market value of the land. Therefore, a reasonable estimate of the fair market value of the land in question must first be made before a market rent can be derived. The generally accepted method of appraising vacant land, and that which was used by all three appraisal witnesses, is the direct market comparison approach. All three of the appraisal witnesses utilized definitions in 11 AAC 59.810(11), and 11 AAC 58.520 regarding the use of comparable land sales. All three appraisers used the same basic techniques in adjusting comparable land sales for differences in comparison with the subject lots. The major factors for which adjustments were made were for increase in price levels between the dates of sale and the date of appraisal, neighborhood location, specific location (corner or inside lot, street improvements, utilities available, zoning, etc.), and physical characteristics of the comparables, including such things as soils, topography, shape and easements. As the panel finds that offsite improvements made since 1961, specifically water, sewer, power and road improvements are to be included in arriving at the fee market value of the land, the Panel addressed itself to the major points of disagreement between the State and the lessees' appraisers which are adjustments for time increment, neighborhood and an electrical transmission line easement.

(1) Time Adjustment

All three appraisal witnesses agreed that a rapidly rising trend of price levels for industrial land was evident

during the two-year period prior to the appraisal date of May 2, 1976. Mr. Bunn testified his conclusion was that a time increment of 3.5% per month was appropriate; both Mr. Ferrara and Mr. Simmons concluded a time increment of 2% per month was appropriate. Mr. Bunn used 10 comparable sales which indicated a range of time increment from 2.8% per month to 4% per month. One example which tended to limit Mr. Bunn's testimony in this regard was where he compared the sale of one parcel with a later sale of another parcel to arrive at an indication of time trend. Mr. Bunn did not adjust for other factors but compared the two sites as equal in value when actually one of the sale sites had much less utility than the other due to its very odd shape. Also, Mr. Bunn utilized sales in a faster growing area of Anchorage (South Anchorage) in arriving at a time adjustment. The Panel believes a reasonable upward adjustment for time increment to be 2% per month. This belief is based on the fact that Ferrara and Simmons used sales of property more likely to reflect accurately the increase in value in the Mountain View area. The Panel finds the lessees' appraisers more persuasive on this point.

(2) Neighborhood Locations.

Mr. Bunn used 18 comparable land sales with two from the immediate Mountain View area, two from the Anchorage Industrial Park in the Ship Creek area and 14 in the South Anchorage area in the vicinity of International Airport Road. Mr. Bunn's testimony was that the Alaska Industrial Subdivision is comparable in location to the other industrial areas of Anchorage, that price levels for industrial land was similar and that no adjustments were required for

neighborhood location to the comparable sales used. Mr. Simmons and Mr. Ferrara both agreed that the Alaska Industrial Subdivision neighborhood was inferior in price levels to either of the Ship Creek or South Anchorage Industrial area. Testimony was given and agreed by all parties that the Alaska Industrial Subdivision is well located in proximity to the downtown business center of Anchorage, is close to transportation facilities, and has good arterial access. However, testimony was given that the type and intensity of uses, as well as the rate of development within the Alaska Industrial Subdivision are inferior to the Ship Creek and South Anchorage Industrial areas. The Panel agrees with the lessees' appraisers in this regard and finds that the prices of comparable land sales from the Ship Creek and South Anchorage Industrial areas should be adjusted downward before arriving at a comparable market value for subject lots in the Alaska Industrial Subdivision.

(3) Electrical Transmission Line Easement.

Testimony was given and evidence presented concerning an electrical transmission line easement 45 feet in width which crosses diagonally through the Alaska Industrial Subdivision. According to testimony, no permanent structures may be built within the easement right-of-way and no structures may be placed closer than 10 feet vertically and horizontally from the electrical wires or supports. Mr. Bunn testified that the transmission line easement was not important and would not result in any loss in value to those lots crossed by the easement.

Mr. Ferrara testified that there is a loss of value in varying degrees caused by the easement, depending upon its location within each affected lot. Although Mr. Ferrara said he did not have time to investigate the effect

on value to a sufficient degree to estimate what loss in value would be involved for specific lots, he said one measure of the loss in value would be the cost of relocating the easement either within the public street right-of-way or along the property boundaries.

Mr. Leon Brown, a lessee in the Alaska Industrial Subdivision since May, 1958, to the present, testified as to the problems encountered in developing four lots which were affected by this transmission line easement. The Panel notes here that Mr. Wilhour said he complained to Peanuts Main on the staff of the Division of Lands with a resultant rent reduction because of the effect of the easement.

The Panel believes that the evidence is conclusive, and common sense dictates, that the electrical transmission line easement has an adverse effect on value. The Panel suggests that the testimony of Mr. Ferrara as to the cost to cure method, that is the cost of relocating the transmission line, is only one way of measuring this loss in value and that other appropriate means of estimating loss of value may be used. Before Mr. Ferrara's method is used, an investigation of the feasibility and likelihood of moving the line should be made. The Panel notes that the transmission line affects in a substantial way four of the reappraised lots. One method might be an actual computation of the value of the lost area.

(4) Rental Rate.

The May 1, 1976, adjustment, in addition to using a higher fair market value as a basis for computing the annual rent, also increases the rental rate from 6% to 8%. This, Mr. Bunn testified, was done because his review and analysis of private leases in the community indicated that 8% was the more appropriate rate.

The lessees protested that this increase was unwarranted. They argue that various provisions of the state lease make it less desirable than a private lease and that therefore the rental rate should be lower. The major differences which made the state lease less desirable were asserted as follows:

(a) Lack of subordination. Many private leases allow for subordination of the fee to any encumbrance placed on the property to secure debt financing. The state lease does not provide for this, it only allows the financing agency to step into the shoes of the lessee by way of a "collateral assignment of interest." Mr. Bunn testified that this provision was substantially the same as subordination; thus, no downward adjustment should be made in the rental rates to allow for this. The testimony of Andy Hoge, an attorney heavily involved in lease financing, and John Kamper of Peoples Bank persuade the Panel that Mr. Bunn's perception of subordination is simply wrong. The lack of subordination in the State lease is a very significant factor for which adjustment in rental rate should be made.

(b) Lack of arbitration and rent ceiling. Many private leases provide for arbitration of disputes over rent or rent ceilings or rent payments adjusted in accordance with the cost of living index. The State's lease contains none of these provisions. Mr. Bunn made no attempt to adjust for these provisions. The lessees argue, with considerable merit, that provisions such as rent ceilings, linking adjustments to the consumer price index, and arbitration provisions provide some degree of predictability as to what the rent will be in the future. This predictability is absent in the State leases, which provide for a unilateral adjustment

of rentals by the lessor.

(c) Option to purchase. Many private leases also provide an option to purchase. The State's lease contains no such provision.

(d) Floating easement. The State's lease contains a floating easement giving the lessor the right to grant easements or rights-of way across the leased land with compensation for improvements damaged or destroyed, but does not provide for consequential damage. The private leases do not reserve this kind of easement.

Most private leases contain one or more provisions which make them more advantageous to the lessee than the State's lease. Contrary to testimony of Mr. Bunn, the State's lease contains no provisions more advantageous to the lessee. Given the long term of the State lease, the Panel does not believe the right to renew is of significant benefit to the lessee. The evidence is overwhelming on this point. The banker, attorney, and lessee's appraisers all testified to the more noxious State lease. Thus, the Panel believes the increase in rental rate to 8% is unjustified. The general market rate for private leases is no doubt in the 8% range; however, some allowance should be made for the less desirable features of the State lease. For the above reasons, the Panel believes a return to the 6% rate would accurately reflect the market rental value for a State lease.

IV

SUMMARY AND FINDINGS OF FACT

In summary, the Panel makes the following findings:

1. The Division incorrectly made no allowance for site preparation to arrive at a fair market value in accord with the lease. The evidence was overwhelming that there was substantial overburden to remove, from one to four feet with some fill required perhaps on most lots.

2. The Division's appraiser incorrectly arrived at a time increment to use for upward adjustment of comparable sales. The Panel finds that the 2% per month time adjustment suggested by the lessees' appraisers to be well founded and the correct one to apply in the appraisal of the subject lots.

3. The Division's appraiser used some 14 sales from the South Anchorage area as comparables in his reappraisal. Only four comparable sales were taken from an area near the subject property. The Panel is cognizant that Mr. Bunn was attempting to find land of the same zoning classification as the subject lots to use as comparables. However, the Panel finds that the rate of development is higher in South Anchorage and that the type and intensity of uses is greater. Some appropriate downward adjustment should be made before arriving at an appraised value of subject lots from these South Anchorage sales. Additionally, the Division's appraiser should consider the comparable sales used by the lessees' appraisers, even though they were of differing zoning classifications.

4. The Division's appraiser should have, but did not, adjust downward the value of the lots which have an electrical transmission line running through them. The Panel finds from the map submitted by the Division that this line has caused a

substantial diminution in the value of at least four of the reappraised lots. Additionally, the Panel finds that the adjustment suggested by Mr. Ferrara to be appropriate only if it were economically feasible to move the line, and likely that such a cure could be consummated.

5. The rental rate of 8% is excessive, considering the private lease market and the disadvantageous provisions in the State lease, including: (a) no subordination of fee, (b) no rent ceilings, (c) unilateral adjustment with no arbitration, (d) floating easements, (e) lack of option to purchase. Specifically, the private leases examined contained one or more of the following advantageous conditions: (a) subordination, (b) an option to purchase, (c) rent ceilings, (d) arbitration; and none contained floating easements provisions.

6. The Panel finds that subordination and collateral assignment are not the same as suggested by the Division's appraiser. The evidence on this point is overwhelming, consisting of the testimony of a disinterested expert, Mr. Koga, that financing of a leasehold interest is typically much more favorable to a lessee when the land lease contains a subordination agreement. Mr. Kamper, Mr. Simmons and Mr. Ferrara agreed with this assertion.

7. The advantages alleged to be present in the State lease are more illusory than real. Any advantages to the right to renew the 55-year State lease and removing improvements is insignificant in relation to the disadvantageous features described in Finding No. 5. This is supported by weight of the testimony of expert witnesses.

8. The lessees had no real opportunity after they had received notice of the reappraisal and before the effective

date of the repeal of the waiver of adjustment to seek such a waiver. It was unrealistic to think they might have reason to seek such a waiver prior to receiving notice of the reappraisal.

9. The effect of the adjusted rentals is to discourage development of the subject area rather than to further the objective of encouraging development, which is the intent of the leasing regulations (11 AAC 58.900).

10. A new reappraisal by the Division should be conducted.

V

CONCLUSIONS OF LAW

The Panel having heard legal argument and read the memoranda submitted makes the following conclusions of law:

1. The lease and regulations read together require that the Division include in its appraisal of subject lots the increment of value generated by offsite improvements, such as installation of roads and utilities into the subdivision, with the provision that any utility hook-up to a main trunk line which was paid for by the lessee or a predecessor not be included, even if it is off the subject property.

2. The terms "such adjustment to be based primarily upon a reappraised annual rental value of land" and "any changes or adjustments shall be based primarily upon the reappraised rental value" found in the State's lease and 11 AAC 58.520 mean that the Division should consider other factors besides a reappraised annual rental value in arriving at an adjusted rental. This is so because of the use of the adverb "primarily" to modify the verb "based." The principles of interpretation dictate it be given meaning; without the presence of this word the Division would be able to consider only the reappraised annual rental value.

3. The reappraisal of May 1, 1976, the subject of this hearing, was not done consistent with the provisions of 11 AAC 58.900, which expresses the intent of the leasing chapter of the Administrative Code.

4. Subordination of the fee and collateral assignment are substantially different as a matter of law. Subordination of the fee means the fee can be encumbered to secure debt financing for the lessee. The holder of a collateral assignment merely steps into the shoes of the lessee.

VI

RECOMMENDATIONS

Implicit in the above discussion and findings is that the Panel finds the Division's reappraisal unacceptably high. Therefore, the Panel recommends that the subject lots in the Alaska Industrial Subdivison be reappraised by the Division in a manner consistent with the above discussion, findings and conclusions.

In addition, the Panel believes further recommendations are appropriate. The present lease and the present leasing policy should be modified. These modifications should be designed to put the State on a compatitive footing to the degree possible with private lessors and are as follows:

1. In accord with the provisions of the lease, the lessees should be encouraged to record expenses incurred in site preparation so that the "original condition" can be more adequately ascertained.

2. The lease language should be clarified to remove any possible inconsistencies with 11 AAC 58.520.

3. To insure some predictability, place some control over the size of the rental increase through utilization of a ceiling

on the size of the increase in rental every five years.

4. Provide for arbitration of disputes over the annual rental arrived at after a reappraisal process and overinterpretation of other sections of the lease. This would ameliorate the current unilateral nature of rent adjustments.

5. Eliminate the floating easement. The State could exercise the right of eminent domain to condemn. The condemnation would result probably in greater compensation for damages to the lessee, especially in view of the Supreme Court decision in State v. Hammer, 550 P.2d 820, thus the lease would be more attractive to the leasing market. Additionally, the language in the current lease is ambiguous as to damages compensable. This ambiguity only encourages litigation.

6. These above recommendations, if adopted, would assure the State a competitive position in the lease market, encourage development of the leaseholds consistent with the intent of the leasing regulations, and be equitable to the lessee. The Panel also believes the State should be able to obtain a good return on its land. Accordingly, if the recommendations as to the lease are adopted, the rental rate should be changed to reflect the removal of the undesirable aspects of the State lease.

7. Suggest an amendment as to AS 38.05.105 to eliminate the term "primarily" from the statute, and also eliminate this term from the regulation and the lease. This is ambiguous, and assuming it has meaning, it may encourage individual accommodation of lessees by the Division. This, the Panel believes, is not in the State's best interest in that it could encourage political maneuvering to attempt to obtain this accommodation, and may well mean uses other than the highest and best use would be perpetuated. Also, the presence of such an ambiguity

could lead to an excess of administrative discretion.

8. Finally, should some or all of the above general recommendations be ultimately adopted, then legislation should be suggested for enactment providing all present lessees the opportunity to negotiate modifications consistent with the changes adopted.

RESPECTFULLY SUBMITTED at Anchorage, Alaska, this 20th day of January, 1977.

TIMOTHY G. MIDDLETON
Hearing Panel Member

KENNETH E. ZAMZOW
Hearing Panel Member

GEORGE K. HOLLEY
Hearing Panel Member

NATIONAL Bank of Alaska
Fifth Avenue Office: P. O. Box 3-3859 • Anchorage, Alaska 99501 • 907/274-1621

See Page 2

February 22, 1977

Mr. R. Ford
Anchorage Camper Center

Re: Senate Bill #159

Dear Mr. Ford,

We have reviewed Senate Bill #159, and feel that if inacted it's passage would seriously hamper long term financing for business affected by the Bill. The reason for this comment Mr. Ford, is that lending institutions would be wary of the repayment knowing what the lease expense would be at a further date without the same guarantee from the business's profits.

I hope this memo will answer your question. My reply is general, but I feel sound. Any further questions on the matter you may have I will try to answer.

Regards,

Ben A. Barrera
Vice President

Motor Homes
Truck Campers
Trailers

Sales
Parts
Service

Anchorage Camper Center

Alaska's Recreation Vehicle Supermarket

2756 Commercial Drive Anchorage, Alaska 99501

907-277-0556 907-274-4434

Feb. 22, 1977

Mister Chairman

Ladies & Gentleman

My name is Robert Ford, President of Anchorage Camper Center, Vice President of Boysen Investment Corporation - Alaska Excavating Contrs., and owner of R & M Rentals, a company dealing in leasing in the private market.

I am here today to speak on behalf of Anchorage Camper Center, presently holding ADL Lease 003065-7, Lots 15,16,22 and 23 Block 10 Alaska Industrial Subdivision comprising 70,000 square feet. I speak for myself, but I am sure the appreciation for your time and effort in getting our proposed bill in the Legislation is felt by all the leaseholders of Alaska Industrial Subdivision..

In reviewing SB 159, I feel that somewhere along the way we were not able to express our position and also the lending agents position in clear cut terms or you would not have seen fit to change Sec-1 38.05085. Let's explore that change from 25 years level term to ten years.

Ten years is not acceptable to the bank to protect their loan where there is no subordination of the fee. The state will not subordinate so the only way we can obtain a loan for improvements on lease land is to either have a healthy bank account yourself, which very few now days have, or have a lease with a long enough level term lease on the front end to convince the lending people that you will be able to amortize the loan and also stay in business.

I feel safe in stating that any loans for improvements in our sector in the last ten years have been made on the financial statement of the man, not on the lease. Therefore I stongly support the twenty five year fixed base annual rental concept so that we may secure long term money for expansion. That way we can improve and upgrade our leases to the best use of the land.

I would like to comment at this time and submit figures to illustrate that the 50% increase every five years after the level term is not in my estimation a viable solution and this is the breakdown of my lease at the appraised value as of January 1, 1975

ALASKA INDUSTRIAL BLOCK 10, LOTS 15, 16, 22, 23 and 24

APPRAISED LAND VALUE $61,167.00

TERM	% INC TERM	% ORIG VALUE	NEW APPRAISED VALUE	LEASE PAYMENTS	ACCUMULATED COST TO LEASEE
1-10	0%	100%	$ 61,167.00	$ 48,933.00	$ 48,933.00
10-15	50%	150%	91,750.00	36,700.00	85,633.00
15-20	50%	225%	137,625.00	55,050.00	140,683.00
20-25	50%	337.5%	206,438.00	82,575.20	223,258.20
25-30	50%	506.25%	309,656.00	123,862.40	347,120.60
30-35	50%	759.38%	464,487.00	185,794.80	532,915.40
35-40	50%	1,139.07%	696,731.00	278,692.40	811,607.80
40-45	50%	1,708.61%	1,045,100.00	418,040.00	1,229,647.80
45-50	50%	2,562.92%	1,567,653.00	627,061.20	1,856,709.00
50-55	50%	3,844.38%	2,351,479.00	940,591.60	2,797,300.60

Ladies and Gentleman, I can not comprehend paying the astronomical figure of $2,797,300.00 for 70,000 square feet of land over the next 55 years. I realize inflation is on the rise but God help us all if we are to be faced with figures like these and more, especialy land we can never own.

I thank you for your kind attention.

TESTIMONY ON SENATE BILL #159

By Joe Wilhour

Ladies and Gentlemen:

First, I would like to thank you for your time and efforts in consideration of our "headache"; and second, I would like to request you "hang in there" -- we're improved, but not cured.

On my lot 7-A, Block 3, Alaska Industrial Subdivision, the proposed lease payments of Bill 159 would total over three million dollars. That's 45 times the 1975 valuation, or approximately 600 times the appraised value when first leased in 1958.

I contend that this is not a fair lease. Not to me, not to future leaseholders, and not to the State of Alaska. It will not encourage development; in all probability it will force the leaseholders to do unto others as the State of Alaska has done unto them; increase our tenants rent, increase the price of our products and services to the extent they are not competitive, thereby forcing us out of business and to abandon our State leases. Within 10 to 15 years, Section 16 could easily be mistaken for a slum area.

I built a 12,500 foot warehouse for over $200,000.00, and have it leased to Mammoth Trucking for 35 cents per foot, which is a fair market value for the location. This is a gross annual income of $52,500.00. With annual expenses as follows:

Bank payments	$21,000.00
Utilities	4,274.59
Taxes, Insurance	6,311.14
Maintenance, Misc.	5,400.64
Land Lease	3,940.00
Total:	$40,926.37

This produces a net profit, before taxes, depreciation inflation, vacancies, etc. of $11,573.63. Senate Bill #159 would allow me to hold the property for approximately 10 years, which would relieve my present situation and allow the leaseholders time to seek additional corrective legislation, but both my inability to obtain bank financing and my common sense would prohibit improvements or further development. Look at the statistics:

ALASKA INDUSTRIAL SUBDIVISION LEASEHOLDERS ASSOCIATION

EFFECT OF SENATE BILL #159 ON MY PROPERTY LOCATED BLOCK 3, LOT 7A, ALASKA INDUSTRIAL SUBDIVISION. LOT SIZE APPROXIMATELY 64,000 SQ. FT. APPRAISED AT $65,640.00 TO BE REAPPRAISED 1978.

TERM	% INC TERM	% ORIG VALUE	NEW APPRAISED VALUE	LEASE PAYMENTS	ACCUMULATED COST TO LESSEE
1-10	0%	100%	$ 65,640.00	$ 52,512.00	$ 52,512.00
10-15	50%	150%	98,460.00	39,384.00	91,896.00
15-20	50%	225%	147,690.00	59,076.00	150,972.00
20-25	50%	337.5%	221,535.00	88,614.00	239,586.00
25-30	50%	506.25%	332,302.00	132,920.80	372,506.80
30-35	50%	759.38%	498,454.00	199,381.60	571,888.40
35-40	50%	1,139.07%	747,686.00	299.074.40	870,962.80
40-45	50%	1,708.61%	1,121,531.00	448,612.64	1,319,575.44
45-50	50%	2,562.92%	1,682,301.00	672,920.28	1,992,495.72
50-55	50%	3,844.38%	2,523,451.00	1,009,380.40	3,001,876.12

1. Above is MINIMUM
2. Rates are compounded
3. When lease finished, lessee will have paid 45.73 times value (3,001,876 ÷ 65,640)

What amount would I, or anyone, have to invest to make this land support a State lease under SB#159? And where and how could it be financed?

Regardless of the formula used, as I said before, whether it be a percentage of the reappraised value every five years, a comparison to private leases, the number of quills on a porcupine divided by pi, or the number of moose in the Mat-Su Valley times the square root, if the total monetary figure exceeds six times the appraised value of the land at the time of lease, it will not be a fair rental that will enhance development and be acceptable to future leasees.

This is but one example of many, so again I request your cooperation. Put your feet in my boots and walk a mile, and I'm confident we can pass a better law that will be fair to present leaseholders, more desirable to all future leaseholders and non-leaseholders, and beneficial to our State Government both now, and in the future.

THE FIRST NATIONAL BANK OF ANCHORAGE

February 22, 1977

Mrs. Kay Poland
Resource & Finance
Legislature of Alaska
Juneau, Alaska

Dear Mrs. Poland:

This concerns our bank's attitude in providing funds for the purpose of financing leasehold improvements on land leased from the State of Alaska.

Our loans on improved real estate are governed by certain regulations made by the Comptroller of the Currency, United States Treasury Department. Any leasehold, against which we are lending money, must have a firm lease extending at least ten (10) years beyond the term of our loan. In calculating the amount of the loan against a leasehold, we must project the expenses incident to the operation of the property. This includes lease payments that are subject to increases of an unknown amount. We are understandably reluctant to make such loans.

Our bank's policy is to loan against leaseholds for a term in which we are assured of a reasonable fixed payment. We will not make loans when we are not able to accurately forecast the lease payments during the term of our loan.

Sincerely,

David G. Freund
Vice President

DGF/er

The following comments, opinions, and recommendations regarding State land leasing are offered to further acquaint you with the bill we are submitting this session.

I first leased property in Section 16 in 1958 in an advertised competitive bid sale. Mr. Chipperfield, Territorial Director of Lands at the time, told the group that we would pay no taxes on the land because we didn't own it. This is not true - the city of Anchorage came up with what they call lease-hold-interest, and we have paid taxes every year. Also, we were told that over the 55 year period we would be paying more than the land could sell for, but not having to pay taxes, it would be very little more. Many of the present leaseholders acquired their land at the original sale and were told that the State wanted to develop a tax base, and develop the land.

I was in my thirties in 1958, so a 55 year lease represented my life span. Either through stupidity or unwarranted faith in the integrity of the State, I have spent most of my, and my wifes, available time and money that was not absolutely necessary for a growing family, on the development of these leases. A lot of this time and money was spent improving the land itself; stripping the trees and top soil, filling a large gully which ran from the road through the property and along the south side and adding gravel. I now lease these improvements back from the State.

Until recently the State has adjusted our rent every five years from approximately 40 to 100 percent, which is high, but workable. Now that the land has been developed and put to good use, forming a tax base by the investment of millions of dollars, and creating employment for over a thousand people, the State has adjusted our rent 850 percent to over 1000 percent.

Are we reverting back to a feudal system? Or State Land Baron vs sharecropper leasees? Or a con-game? One wonders, but with lease payments so high it's the equivalent of the State condemning the land! Through their reappraisal, the State has, in effect, condemned the leases.

Under the current policy the State has turned a 55 year lease into a 5 year lease. This year there has been less development in Section 16 than in any other part of town. It is impossible for the leaseholders to get financing, which has stopped development. See paper from the First National Bank of Anchorage attached. One questions whether it is advisable to repair a leaky roof.

My position is impossible. My annual rent increased from $3,940.00 to $32,800.00. I cannot increase my investment because the financing has been made impossible. I cannot raise my tenants rent and compete with fee-simple land rents. To raise my rents accordingly will only create vacancies and undermine my chances of making lease payments if and when the State does come up with a fair rental. And I cannot afford to just walk away from my 20 years investment of time and money, with only part of the money repaid to the bank.

At the 1975 rate of $3940.00 per year, I would pay the State, for my less than 2 acres, a lease rental for my remaining 37 years, $145,780.00 - nearly 15 times the original appraised value, plus what's already been paid the past 18 years.

At the current rate of $32,800.00 per year, and with no additional reappraisals but precariously assuming I could hold onto the property, I would pay the State for my less than 2 acres, a lease rental for my remaining 37 years, $1,213,600.00, plus what's already been paid the past 18 years.

If the State raises my rent the same 850 percent every 5 years, I would pay the State a lease rental for my less than 2 acres, for my remaining 37 years, $272,151,090,464.00, plus what's already been paid the past 18 years. Fantastic!

I built a 12,500 foot warehouse for over $200,000.00, and have it leased to Mammoth Trucking for 35 cents per ft. which is a fair market value for the location. This is a gross annual income of $52,500.00. With expenses as follows: (annually)

Bank payments	$21,000.00
Utilities	4,274.59
Taxes, Insurance	6,311.14
Maintenance, Misc.	5,400.64
Land Lease	3,940.00
Total	$40,926.37

This produces a net profit, before taxes, depreciation, inflation, etc. of $11,573.63. With the land lease raised to $32,800.00, an increase of $28,860.00, it will show a loss of $17,286.37. It appears the State not only wants their land back, but also my warehouse! Who pays the bank? What amount would I have to invest to make it support a State lease? Few, if any of us, would not give up our leases if we could recover our investments.

In comparison to the Fishing land leases, the lease for set-net fishing, not to exceed 10 years, quote, "The Director shall establish a reasonable rental for the lease, equal to the Administration costs involved in processing the leasehold application." These leases, however, may produce large profits for the leasee with small, comparable investment, and cost less than $50.00 a year.

In comparison of individual tracts of land, Bob Penney and the Teamsters Union are leasing larger tracts, of greater value, for pennies where many are paying dollars. Mr. Penney averages about $750.00 per acre. The Teamsters Union averages about $3,500.00 per acre - with no reappraisal. My lease averages over $19,000.00 per acre. If I, and my banker, had chosen to be dishonest we could have arranged a similiar situation, but that is not justification for bias on the States behalf.

In comparison to housing, the State has passed a law of rent control whereby the leasor must justify any housing rent increase. No law exists for State leaseholders and rents may be unjustly raised. No law states we cannot just pass this increase on to our tenants, but there is no way we could still compete with fee-simple land rents so we will only create vacant land and buildings. Because, however,

additional expenses must be commensurate with additional income if we are to survive financially, a large measure, or all, of such additional expense must be passed on to our tenants, or added to the cost of our product or services. The State should not be the leader increasing such inflation, but should take every action possible to hold it down.

In comparison to other land lease policies, the Mat-Su Borough pamphlet of June 26th states the lease amount is not subject to reappraisal. The highest bid establishes the annual rental for the 55 year term of the lease. With the capital move to Willow, how will the State lease land in the Willow area?

Some possible recomendations:

1. level payments, similar to the recent Mat-Su Borough auction, not changed every time the administration is changed. Eliminate the State "open-end" policy. A stable lease enables the leasee to plan ahead and this ridiculous predicament won't happen again in the future.
2. Some arrangement should be made whereby a lease is bankable. A long term lease should be comparable and competitive in price at time of lease, with fee-simple sales.
3. Taxes, if any, on the land itself, should be at a percentage rate, on all state-owned lease land.
4. Consideration and lowering lease rate scale for value of improvements made, due to additional taxes incurred and as incentive to develop industry, and protect human rights.
5. Some method to renew a lease 15 to 20 years prior to its current expiration date, in order to secure financing and continue to develop the property.
6. Maximum return for State leased land should be a fair rental encouraging leasing and development of additional State land, and not exorbitant returns and the eventual forced voidance of the approximately one percent of state land now leased. Forced voidance of the present land leases, and continuance of the existing policy so no one will be dumb enough to lease additional lands, will surely not benefit the State, and just as surely will not benefit her residents.
7. Some formula giving retroactive credit for money already paid into the land lease and credit for development and investments already made. Also, a fair appeal process - fair to both the State and the leasee.
8. The present blanket easement should be eliminated from the leases not only because it is not bankable, but also because, if exercised, it would take all value out of the leasehold interest, and could ruin the leasee business without any compensation.
9. A public hearing would be informative and advisable. I would recommend such public hearing be held in the Anchorage area where the majority of lease holders can attend.

As I see it, the recommendations should result in a lease policy that make leases desirable to you as individuals, and all residents of the State. They shouldn't change every 5 years. They should be bankable and have a value, especially after payments have been made for some 20 years or more. They should, as the Constitution states, "enhance development". The State will get their maximum return by

taxing the development and its income, and by being able to lease their millions of surplus lands. Reappraisal and any adjustment of increased values due to inflation should come at the end of the lease period. If this can't be done, the land should be sold, allowing credits for those who have for a long time paid lease rents, paid to improve the land itself, and paid to develop the property into taxable use.

The State gets three shots at its leaseholders; (a) land lease rental payments, (b) taxes on improvements and (c) income tax. By taking an unfair advantage of the lease rental payments, the State will, or possibly has already, eliminated all three.

On Thursday morning, Dec. 16th, I attended the Governors Advisory Committee meeting where two representatives of F.H.A. testified that the appraisal clause and other parts of the State leases would not be acceptable for F.H.A. commercial or residential loans.

Mr. Paul Troch, (344-4665) a constitutional lawyer and teaching professor testified he has clients who are going to bring suit if that is the only way to get the State to comply with the regulations provided in its charter, which reads the State must provide a way to distribute its lands to the public for development.

Thursday afternoon I saw Mr. Richard Ullrich, Loan Examiner of the State Veterans Affairs. After explaining the terms of our State leases, he said the State Veterans would not, or could not, make a loan under the terms of our leases. Especially the reappraisal clause which the State Division of Lands claims is a fair rental.

Also, Thursday, I visited the Alaska State Bank where I couldn't help but notice the pictures of Anchorage, taken about 1915, on the walls. And compare the Anchorage of today through the windows. I wondered what Anchorage would look like now if the Territory, or Federal Government, had used the present state land policy to develop the area.

There is no way the leaseholders can unreasonably increase the price of their rentals, products, or services, every five years to meet the increased rentals which the State Division of Lands claims are fair. Local competition in the town and the State, as well as State and Federal regulations, such as the trucking industry who must abide by ICC regulations, eliminate the possibility. Other businesses in town, grocery stores, department stores, banks, etc. do not raise the price of their products and services because of the appreciation of the land their businesses are occupying. They must compete too.

It would seem the State is in the same position with their excess lands as the banks are with their money. Both need people to manage it. The banks, thanks to comptition and regulations, do not change their interest rates every five years on committed loans. The State should be forced by law to adopt the same policy and not be allowed to take advantage of their monoply of State land, or the few dumb tenants they have trapped.

I think that six percent annual rental of the original appraised

value of the land for 55 years would be a fair rental which would enhance development. This would net the State over three hundred percent more income than could be derived from the sale of the lands, plus considerable savings in State administration and litigation costs, plus the return of the land to lease again or re-evaluation of the leases at their expiration, which would be acceptable to the citizens of the State, be they present or prospective leaseholders, or non-leaseholders who none-the-less derive benefits from the money collected.

Regardless of the formula used - whether it be a percentage of the reappraised value every five years, a comparison to private leases, the number of quills on a porcupine divided by pi, or the number of moose in the Mat-Su Valley times the square root, if the total monetary figure exceeds 300 percent of the appraised value of the land at the time of lease, it will not be a fair rental that will enhance development and be acceptable to future leasees.

The problem as I see it, is not the few leasees who now hold State leases. They are insignificant. It is restoring the credibility of the State as a monopolistic landlord, and creating a workable policy of developing and utilizing a portion of Alaskas millions of acres of land, whether by leasing or selling. The people of this State cannot afford, and will not allow this, or any other administration, to lock up their 100 million acres of land in a non-productive policy. A percentage of it must be made productive to support the parks, animal habitats, scenic lands, wild rivers, and so forth.

Senator Stevens newsletter is attached, informing us of an amendment signed by President Ford with regard to Federal leasing in Alaska. The law will allow individuals to gain a right to and an interest in federal lands by actively working to develop and use the land productively. I intend to find out what their lease policy is.

Addressing the 30 day default clause of the lease; I, and other leaseholders have paid our lease rentals for about 20 years and have invested millions of dollars in improvements and have borrowed large sums from banks for development of our leases. Surely our credit has been established beyond thirty days! There are many justified occasions for not being able to meet this 30 day default clause in a 55 year lease. Death, mental or physical health difficulties, temporary memory loss, temporary or permanent financial ability, lack of communication, or the States unfair interpretation of the fair rental value, to name a few. I would recommend that the 30 day default be changed to the same rules the banks or the public comply with. Foreclosure through legal procedures, then sale of the lease and improvements with the balance of the money derived from such sales, minus state expenses, reverting to the leasee.

With regard to the adjustment of rents, the State method this time was an April 1 notice of future re-appraisal and a retroactive bill dated June 7th, that I owed $15,403.00 by August 1st. This not only made it improbable that the leasee could comply, but also locked the State into a figure they will not easily recind. I think the State would be more justified if they gave six months notice and explained why, and the method used, to increase rentals, and accepted input,

and in general considered their leasees ability to comply. Many years ago I anticipated some difficulity in meeting my obligations to the bank, and consulted them on this. I was told not to worry, if necessary I could make interest payments only for a period of time, or make lesser payments over an extended period of time. Fortunately I did not have to do either. But I feel both the leaseholder and the State would benefit from a negotiation clause, similar in principal, written into each lease. The land policy of the State, if not changed or altered, has been and will be, more devastating to the State and its present leasees than the 1964 earthquake. High prices are caused by the scarcity of land, which is caused by the State.

In closing, I would like to state that I have been an Alaskan since 1941 with continual residence except for my years in service from 1943 to 1946. The last 20 years I've worked to improve this leased land and now have several substantial buildings, tho I owe the bank over $400,000.00 in personal guaranteed loans. I've worked hard. I've provided for increases such as inflation and taxes, but who of us can afford 850 percent increases? We who have paid many times the original value, held it, and improved it, should be entitled to justice. It seems impossible that 20 years of work and investment can be wiped out with one stroke of a pen - in this country! Particularly so, when it does not appear beneficial to the State government, or her resident Alaskans.

Ask yourself if the present land rental is fair and will enhance development. If the answer is yes, I am quite sure all leases in Section 16 are available for a "steal". If the answer is no, will you help us change it?

Thank you.

Joe Wilhour
Box 740
Wasilla, Alaska 99687
Phone 376-5601

THE FIRST NATIONAL BANK OF ANCHORAGE

June 18, 1976

Mr. Joe Wilhour
Anchorage, Alaska

Dear Mr. Wilhours:

We have reviewed your informal request to consider financing a new building on Commercial Row, the loan to be secured by an assignment of the State land lease and the building placed on the lease.

At this time it is impossible for us to give you a commitment for construction until we can confirm what the future rental on the building will be. We have reviewed the other financing that we have done for you on your property and find that the quarterly rent has been raised from $996.00 to $8,200.00, an increase of 850%. A further review of the lease indicates that every five years it can be similarly raised.

Under these circumstances, it is impossible for us to guess what the future land rentals will be, and therefore, unless you are able to secure a lease of an equal term to the mortgage wherein the tenant agrees to pay the increased land rental, it will be impossible for us to advance the credit requested.

Sincerely,

D. H. CUDDY
President

DHC:mh

Ted Stevens
411 Old Senate Office Building, Washington, D.C. 20510 (202) 224-3004
United States Senator for Alaska
NEWSLETTER
Vol. 8, No. 9

S-N
Steve N.S
News
Letter

TIONAL PARK -- Claudia Louis, a member of the Washington, D.C. Staff, presents the ceremonial pen used by President Ford to sign S. 98, the Klondike Park bill, into law to Mayor John Edwards (right) of Skagway and Ward A. Hisman (left), Superintendent of the White Pass & Yukon Route Railway.

BLM Bill

President Ford has signed a bill which will allow Alaskans to continue to use public lands to build homes, farms, or trade or manufacturing concerns, under provisions added to the bill in the Senate by Senator Stevens.

The amendment allows the Secretary of the Interior to grant long term leases for habitation, cultivation, trade or manufacturing on the lands.

The National Resource Lands Management Act, S. 507, also known as the BLM Organic Act, repeals homesteading in 10 years and this amendment was needed to enable individuals to continue to use and develop public lands, despite the repeal of homesteading laws.

The authority of the new law -- designed to provide for the management, protection and development of public domain lands not committed to other uses -- extends to the unreserved federal land in Alaska remaining after Alaska Native Claims Settlement Act and Statehood Act withdrawals are made.

It was pointed out that the passage of this law with this amendment will provide some type of incentive for people to come in and carve a livelihood out of the wilderness. The law will allow individuals to gain a right to and an interest in federal lands by actively working to develop and use the land productively.

The leases could be used to build new communities, farms, small sawmills and small manufacturing plants needed in isolated rural areas.

Wonder what Trans Lease policy is?

Mid-Decade Census Law

A bill which could mean substantially increased federal funding for Alaska from programs based on population has been signed into law by President Ford.

The bill, cosponsored by Senator Stevens, authorizes a national census and July 1, 1975, Alaska's population increased by 16.3 percent. An official census every five years would allow this rapid change to be reflected in federal funding and programs.

The Office of Management and Budget estimates that about $39 billion in federal funds are distributed every year to the states according to formulas based on population.

IN SUPPORT OF THE LEASEHOLDERS BILL

In support of the 6% annual rental rate, I would like to request you re-read the Hearing Panel Proposed Decision and Recommendations, page 12, ¶4, which quite clearly defines our position.

The total lease rental for the 55 year period proposed in our bill would amount to $379,411.00. This is 5.78 times the 1975 appraised value, or 75.88 times the 1958 appraised value. Under SB#159, the total lease rental for the 55 yr. period would amount to over three million dollars. This is 45 times the 1975 appraised value, or approximately 600 times the 1958 appraised value.

In my opinion, our bill provides the maximum rental to be beneficial to all concerned; an excellent return to the State, a fair settlement to the existing State leaseholders, a fair opportunity for future leaseholders, as well as the maximum rental allowable to encourage development and bank financing. Whereas SB#159 is not beneficial to all concerned. It is a maximum return to the State from current leaseholders with existing improvements, from 10 to maybe 15 years when they will be forced to give up their leases, it is not a fair settlement to the existing leaseholders, it is not a fair opportunity to future leaseholders, it will not encourage development, and it is not acceptable to the banks for financing.

I would also suggest the elimination of the floating easement be added to SB#159, as recommended by the Hearing Panel on page 19, ¶5 of their report.

Joe Wilhour

ALASKA INDUSTRIAL SUBDIVISION LEASEHOLDERS ASSOCIATION

EFFECT OF ALASKA LEASEHOLDERS ASSOCIATION PROPOSED BILL ON MY PROPERTY LOCATED BLOCK 3, LOT 7A, ALASKA INDUSTRIAL SUBDIVISION. LOT SIZE APPROXIMATELY 64,000 S.F. FT. APPRAISED AT $65,640.00 TO BE REAPPRAISED 1978.

TERM	% INC TERM	% ORIG VALUE	NEW APPRAISED VALUE	LEASE PAYMENTS	ACCUMULATED COST TO LEASEE
1-25	0%	100%	$ 65,640.00	$ 19,700.	$ 98,500.00
25-35	50%	150%	98,660.00	59,196.	157,696.00
35-45	50%	225%	147,990.00	88,794.	246,490.00
45-55	50%	337.5%	221,535.00	132,921.	379,411.00

1. Above is MAXIMUM
2. Rates are compounded
3. When lease finished, leasee will have paid 5.78 times value (379,411 ÷ 65,640)

TO: Senator Croft

FR: Jamie Love

RE: SB 159

2/22/77

As promised, I am providing you with comments on SB 159, which would change the state's leasing policies with regard to the methods of determining annual rents. As you are surely aware, rental readjustments on state leased lands have become quite a controversial subject. This first manifested itself in highly publicized transactions such as the Teamster's Mall lease and the Penney lease near Merrill field. In both cases leaseholders had obtained choice properties at rents substantially below market prices. One key provision of both leases was the state's waiver of rental increases for a period of forty years.

In response to these and other transactions, the legislature amended Title 38 last year to restrict the discretion of the Department of Natural Resources to give such waivers, except on properties developed for residential purposes. Also enacted was legislation which established a formal trust for all school lands, and gave the State Board of Education independent authority over the Division of Lands to insure that leasing policies protected the interests of the School Trust Fund. The State Board of Education and its chairwoman, Katie Hurley, have taken their new responsibilities very seriously and have educated themselves about the land leasing business thoroughly.

At the same time the Teamster and Penney leases were being addressed, it became clear that the state's entire leasing program was in serious trouble. Not only were those two transactions providing less than adequate rents to the state, but the Division of Lands was discovered to have been routinely under-appraising its properties and using out-of-date percentages on its rental readjustments. In 1975, the Division of Lands was leasing lands for a readjusted rental figure of six percent of the appraised value of the land, while most leases in the private market had been using eight percent and higher for some time. When asked to account for the six percent figure, Division of Lands officials could not explain why it was being used. Most thaought that six percent was called for either in the lease or the regulations, but it appeared neither there nor anywhere else. The combination of the six percent figure and the underappraisal for old and new leases alike resulted in returns vastly below market values.

Because the rents were so low, potential leaseholders were willing to pay substantial bonuses to take over leases from previous leaseholders. In one transaction, a party paid the

old leaseholder more than $250,000. for an assignment of a 20 acre tract of school land near downtown Anchorage. Bonus payments of this type were not uncommon, since the ADL practice of collecting low rents was well established under the Kennan administration.

After the Hammond administration cancelled the Teamster lease, and renegotiated the Penney lease, it undertook an overhaul of rent readjustment practices. Lease properties were appraised at market value and rents were adjusted to eight percent of the appraised value of the land. At that point in time land values all over Alaska were skyrocketing. Properties in Kenai, Wassila and Anchorage were appreciating anywhere from 300%-1000% during the period 1971-1976. Consequently, the combination of raising rental rates from six to eight percent, which represented a 33% increase, and more realistic appraisals, which increased the basis on which the eight percent was applied, resulted in rental increases of 400%-1000% for some leaseholders.

Such a dramatic change in the lease rents brought cries of outrage from the leaseholders, who had analyzed the viability of the state's leasing program more in terms of its past history than in terms of the leases themselves. Despite the hardships and problems that the sudden increase in rents caused, ADL maintained that the division was without legal authority to offer relief since the higher rents were just the result of the ADL staff applying the actual terms of the leases and obeying state statutes.

Many of the problems cited by the leaseholders were valid. Thinking that the state would continue as it had in the past, many leaseholders found the investments they made in buying old leases effectively wiped out, since the bonus represented the discounted cash value of below market rents. Other leaseholders had not developed their properties to the extent necessary to pay the new rents in anticipation of further subsidies by the state. Leaseholders found that financial institutions were leery of bankrolling projects on state leased lands in light of the large increases, which the bankers perceived as an indication of instability in the management of the leasing program. This "hands off" policy by bankers made it doubly hard for leaseholders to develop their properties to higher uses which would support the new rents.

As a result of these developments, the leaseholders began petitioning the ADL and the legislature for some relief. For several months ADL did not deal with the problem, which only added to the outrage felt by the leaseholders. The angier they got, the more extreme their "reform" proposals became, including some suggestions for blanket level term rents for all existing leaseholders and other major changes in leaseholder's obligations.

In the fall of 1976, the Hammond administration responded to the growing crisis by appointing an Ad Hoc task force for land disposition practices. Appointed to this committe were various representatives from the business, banking and professional communities, a representative from the leaseholders, and a public interest representative (myself). Meeting weekly for five months, the Ad Hoc committee heard countless hours of testimony from the leaseholders, the ADL staff, professional appraisers and the public at large. At this time, the committee is nearing its goal of recommending to the legislature and the Division of Lands proposed changes in its leasing policies, with provisions for relief for existing leaseholders.

In doing its work, the Ad Hoc committee sought to:

1) recommend leasing terms as closely parallel to the private leasing market as possible;

2) determine if the state had a moral responsibility to negotiate new terms for old leaseholders; and

3) to protect the interests of the state's taxpayers.

On the first goal, the committe reviewed the terms of approximately fifteen private leases currently let in the Anchorage area. The committee analyzed not only the rent readjustment periods and percentages, but also looked at right of way and condemnation clauses, subordination and security assignment and many other elements of both private and state lease instruments.

In the process of its work, it became apparent to the committee that different types of land use dictated different lease terms. For example, where it is common for a commercial or industrial lease to provide for five year reappraisal periods, residential properties are often leased for flat terms. Also, recreational and agricultural properties seemed to call for different treatment than commercial/industrial properties. To deal with this problem, the committe recommends four different lease forms, one for each different use. Since the commercial/industrial leases seemed to present the most pressing problems, the committee addressed that area first, and has finalized a recommended leasing form.

The major changes which the committee recommends, insofar as your legislation is concerned, is the establishment of fixed rent readjustment percentages in the lease document, and limitations on rent increases. Looking at the first issue, the committe found that leases in the private market use the figure of eight percent for properties leased recently. But the leases

do not say eight percent today and whatever the going rate is in five years. In other words, although eight may be the market today, and ten could be the market tomorrow, the lease would still charge only eight percent for the entire term of the lease. This is an important difference from the state lease form, which allows the percentage to be varied at each reappraisal period. The committee could find no examples of leases in the private market which used the states system. Hence, the committee recommendation is for a fixed percent in the lease document itself.

Based upon the committee's analysis of actual lease documents in the private market, and in particular recent leases which may be more sophisticated, the committee recommends limitations on rent increases of 100 percent every five years. This, the committee felt, was the closest parallel to the terms of private market leases, and, in the opinion of the committee, provided enough certainty to allow for longterm financing on leasehold properties.

The committee also decided that the state did have a moral obligation to offer the existing leaseholders the opportunity to exchange existing leases for the new one. The committee felt this could be justified on the basis of the hardships created for leaseholders by the vague and outdated language of the old forms (unchanged since statehood), and by virture of the benefits which would accrue to the state through renewed confidence in the state's leasing program.

To put it simply, the committee will recommend this: All current leaseholders will be give a period of time to swap their old leases for the new ones. As a condition of the exchange, the leaseholders would have their properties reappraised, except for leases which had been reappraised within the past two years. The percentage of the appraised value of the lease would be the percent which represented the market at the time the lease was entered into. For example, a lease entered into around 1965 might have the rent readjusted to six percent of the appraised value of the land, while a lease entered into in 1974 might use the eight percent figure. Whichever figure was used would then be written into the lease. As mentioned earlier, leases would have ceilings on prospective rent increases of no more than 100 percent every five years during the lease term.

A suggestion was made to go back to the original beginning of each lease and apply the limits forward to current rents, but this was rejected by the committee. First of all, there was no evidence that current appraised values would create unfair hardships, if the fixed percentages and ceilings were applied as explained above. Second, and more important, the committee found persuasive evidence that it would be grossly unfair to the state's taxpayers if the ceilings were applied retroactively.

The reason such a practice would be unfair is the state'e historic failure to charge realistic rents on its lands, leasing decisions which placed land on the market before it had more than a nominal value, and mismanagement by previous administrations. For example, in 1974, the same month as the capitol move vote, ADL leased 2400 acres of land five miles from the proposed site of the new capitol, at rents established in a 1971 appraisal. The old appraisal had set the rents at $6-$14 per year, per acre. To retroactively apply rent ceilings would be tantamount to just giving away 2400 acres of University trust lands. This is only one of many examples of gross mismanagement by the state which has provided windfalls in the past. To retroactively apply the rent ceilings would be to indiscriminately give away legitimate state interests in thousands of acres of university, school and mental health trust lands.

SB 159 is similiar to the Ad Hoc Committee's approach in many ways, but there are a few areas that should be examined. The bill establishes a figure of 8 per cent, as the maxium rate for readjusting rents. First of all, as previously stated, the terms of commerical and industrial leases might be substantially different than the terms of residential or agricultural leases. But more important, by using a figure which represents todays market of 8 per cent for most commercial leases, the act would lock the state into an inflexable system. 8 per cent may be alright today, but it might be considerably out of touch with market values in the future. Likewise, allthough 8 per cent may represent a market figure for Anchorage or Fairbanks, or other areas of long term sustained growth, the state might be better off using a figure of 10 to 14 per cent for leases in some area undergoing a short term boom. The higher rate might represent the market in an area that offers a short term economic life for the lease. Under the Committee's proposal, the rate would be fixed in the lease form itself, at the rate the market would bear at the time the lease was entered into.

The simplist approach would be to exaimine the recomendations of the Ad Hoc Committee, and if satisfactory, enact legislation which would permit ADL to offer an election to leaseholders, to enter into the new lease forms, similiar to the mechanism established in Sec. 4 of SB 159, except providing that all apprasials should be current within two years, and in the absence of a current appraisal, the election could be made at the next reappraisal period.

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TO: CINDY, JNU
FROM: APRIL, FBX

PLEASE DELIVER THE FOLLOWING MESSAGE TO SENATORS BUTROVICH AND HUBER:

MESSAGE: JUST RECIEVED A COPY OF SB 159 RE: LEASING OF STATE LAND. TRUST LANDS ARE NOT SPECIFICALLY MENTIONED BUT MUST ASSUME THE BILL APPLIES TO THEM. THE STATE BOARD OF EDUCATION, AS THE TRUSTEE OF SCHOOL TRUST LANDS, HAS SOME CONCERNS ABOUT CURRENT LEASING POLICIES AND WOULD LIKE TO REACT TO ANY BILLS DEALING WITH LEASING OF STATE LANDS, ESPECIALLY THE SCHOOL TRUST LANDS. WE WILL COMMENT ON SB 159 IN THE NEAR FUTURE.

DARWIN HEINE
VICE CHRMAN, STATE BD OF EDUCATION
1506 DENALI WAY, FBX 99701
PH: 456-5722

PLEASE ACK WHEN MESSAGE DELIVERED. THANKS. /A/ EOM

February 22, 1977

Jay S. Hammond, Governor
Pouch A
Juneau, AK 99811

Dear Governor Hammond: -

The Ad Hoc Committee on land policies and procedures has met on a weekly schedule since late October. We have addressed many problems dealing with the administration of the state's land patrimony. Many of these problems need resolution through the legislative process. Accordingly we are submitting these following recommendations as an interim report of the Committee, in the hope that the legislature may act during its current session.

Recommendation #1

The committee recommends that the State adopt a system of level payments in place of declining payments in its sales contracts. The system of level payments is in common use in the business world, and the payment figures are easily set forth in a contract. The disadvantage of the present method is that interest must be recalculated every year and the payments decrease each year. From both the State's and the buyers' viewpoints, the level payment method would be preferred. The State would receive slightly more in interest payments over the contract terms and the buyer would not have to make as high initial payments.

Section 2 & 3 of the attached draft bill would accomplish this.

Recommendation #2

The committee recommends that the State charge a market rate of interest in its sales contracts. The interest rate, at present 6%, is below market levels and may have contributed to inflated prices at state land sales. By setting interest rates at market levels, the State would help prevent inflated land prices and at the same time return more income to the State. To provide for a market rate of interest in sales contracts, no change in AS 38.05.065 would be required. The addition of a statement of market rate in this statute would be desirable, however.

Section 3 of the attached draft bill would accomplish this.

Recommendation #3

The Committee recommends that all sales contracts over $400.00 per year have the option of paying in quarterly installments instead of annual installments. It is the committee's belief that this would ease the financial strain on the buyer and yet not add significantly to the State's administrative costs.

Section 3 of the attached draft bill would accomplish this.

The committee recommends that the Director be given the authority to set the payment period from one to twenty years. This type of flexibility would allow the State and buyers greater market possibilities.

Section 3 of the attached draft bill would accomplish this.

Recommendation #5

The committee believes that the word "primarily" may imply special consideration to some lessees. In order to treat all lessees fairly and equitably the committee recommends that the word primarily be stricken. Deleting "primarily" would clarify the basis for reappraisal. This recommendation is also made by the hearing panel on the Alaska Industrial Subdivision leasing protest.

Section 8 of the attached bill will accomplish this.

Recommendation #6

Since public notice is covered in AS 38.05.345 the change to "appraisal" for AS 38.05.310 is warranted by its present content. The committee recommends that land may be appraised 120 days in advance of a sale or lease. The change from 90 to 120 days would be desirable in that minimum bid information could be given to the public well in advance of the actual sale or lease auction.

Section 10 of the attached draft bill will accomplish this.

Recommendation #7

The committee recommends that land offered over the counter be reviewed at 90 to 120 day intervals to determine if an increase in value has occurred. This review is desired so that parcels are not undervalued by progressive changes in the market.

Section 10 of the attached draft bill would accomplish this.

Recommendation #8

The committee recommends that in Title 38.05 of the statutes the terms "fair market value" be used in place of "fair appraised market value" and "market value." The meaning is meant to be the same in all cases. The committee would like to see one standard term used to avoid confusion and misunderstanding.

Sections 4, 5, 7, & 13 of the attached draft bill would accomplish this.

Recommendation #9

The duration of a lease and the economic life of substantial improvements, such as stores or factories may not coincide. In order to see that state leased land is used in a rational economically productive manner the committee recommends that lessees of long-term leases be given a renewal option for up to fifteen years. This type of option would grant the lessee more flexibility in maximizing

would also increase the lessee's planning possibilities for use of the leased ground. This action would also soften the impact of termination of the lease. Specifically, this would permit a lessee to work substantial repairs to a building when the remaining term of the lease would not otherwise justify it.

Section 6 of the attached draft bill would accomplish this.

Recommendation #10

In order to provide a uniform 55 year limit for all long-term leases the committee recommends deletion of the 99 year provision found in 38.05.070(c) for school lands.

Section 6 of the attached bill would accomplish this.

Recommendation #11

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Committee Members:

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Lidia Selkregg
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IN THE

BY RULES COMMITTEE BY REQUEST OF THE GOVERNOR

BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to state lands and providing for an effective date."

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* Section 5. AS 38.05.068(a) is amended to read:

Section 38.05.068(a). FOREST SERVICE PERMITTEES' SALES PREFERENCE. Before offering to the public any land which is subject to a valid existing United States Forest Service permit in effect in a state-selected area at the time the area was patented to the state, or which is subject to a lease issued under Section 87 of this chapter, the director shall offer the land for sale to the permittee or his successor in title, if he can be found, at not less than its fair (APPRAISED) market value before offering to the general public.

* Section 6. AS 38.05.070(c) is amended to read:

Section 38.05.070(c). A lease may be issued for a period of up to 55 years, if it appears to be in the best interest of the state and if the commissioner approves. A lease for a period in excess of 25 years shall grant the lessee an option entitling him to extend the term of the lease for up to 3 consecutive five year periods in addition to the original term. If the Commissioner determines that the land or a part of it which is the subject of a grazing

lease is not being used for the purpose issued, the lease may be declared void. (HOWEVER, A NONRENEWABLE LEASE FOR SCHOOL LANDS MAY BE ISSUED FOR A PERIOD NOT TO EXCEED 99 YEARS.)

* Section 7. AS 38.05.087(a) is amended to read:

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* Section 8. AS 38.05.105 is amended to read:

Section 38.05.105. Each lease shall stipulate that the annual rental payment is subject to adjustment at five year intervals and shall be based (PRIMARILY) on a reappraised annual rental value. Any increase due to reappraisal may not exceed 100% of the annual rental for the preceding 5 year period. However, if the director of the division of lands determines that residential development is the best use for the land, the reappraisal period may be lengthened or the readjustment waived in accordance with regulations adopted by the commissioner. Before a waiver of rental readjustment is issued, the land shall have a current reappraisal. A waiver is valid only if residential development actually occurs, and only if it is necessary for obtaining primary long-term financing. The regulations adopted under this section shall ensure that the state receives a fair return from the land.

* Section 9. AS 38.05 is amended by adding a new paragraph to read:

Section 38.05.106. CONVERSION OF LEASES. (a) Any person holding a valid lease as lessee of lands from the State under provisions of AS 38.05.070 - .105, or as an approved assignee of such lessee under the terms of such lease, may, at his option, convert his lease so as to obtain certain benefits, enumerated in subparagraph (b) below, which were not available to him at the date his lease was originally entered, if the lessee at the time of conversion makes all payments due under the conversion rate and is not in violation of any other lease provision.

(b) Those lease benefits which shall be made available to a lessee qualifying under subsection (a) of this section shall be all of those lease provisions authorized or made applicable by this act to new leases entered into by the State after the effective date of such statutes.

(c) The effective annual rental value at conversion shall be based on the most recent reappraisal provided that such reappraisal was within 2 years of the effective date of this act. In all other cases, the conversion shall be based on the next reappraisal.

(d) Any conversion as to trust lands shall be effective only if approved by the appropriate board of trustees.

(e) Applications for conversion must be made within 3 years of the effective date of this act.

*** Section 10. AS 38.05.310 is amended to read:**

Section 38.05.310 (NOTICE AND) APPRAISAL. (a) No land may be sold or leased, or a renewal lease issued (WITHOUT PUBLIC NOTICE) except in the case of an oil or gas or mineral lease, unless it has been appraised within 120 (90) **days before the date of (FIXED FOR THE) sale or lease. (WHEN LAND IS OFFERED AT PUBLIC SALE BUT IS NOT SOLD AND IS AVAILABLE)** For over the counter sale (AT THE PRIVATE SALE, NO) an (RE)appraisal is required unless the director finds (CONSIDERS) that a change in value of the lands has not (MAY HAVE) occurred. A grazing lease may be granted to a lessee of federal grazing lands without prior appraisal, if his federal lease was cancelled to allow the state to select the lands under lease. No land may be sold or leased for less than fair (THE APPROVED, APPRAISED) market value, except as provided in .315 and .320 of this chapter and .75 - .85 of this chapter. No land or interest in land may be sold, leased, or otherwise disposed of without public notice.

(b) When land is offered at public sale but is not sold, it may be available for sale over the counter. The director shall review the list

of lands available on a quarterly basis and shall certify that there has been no change in value since the last reappraisal. If an increase in value occurs in any parcel, the director shall withdraw that parcel from sale over the counter.

* Section 11. AS 38.05.345(a) is amended to read:

Section 38.05.345(a). Public notice of an auction sale (LEASE OR OTHER DISPOSAL) of land or interest in it shall be substantially as follows.

* Section 12. AS 38.05.345(e) is amended by adding a new subparagraph to read:

Section 38.05.345(e) Public notice of an action other than as specified in paragraph (a) above shall conform to the requirements of AS 38.05.305 and this paragraph. Such notice shall, when given pursuant to AS 38.05.305(c), be published at least once in a newspaper of general circulation in the vicinity in which the land affected by the proposed activities is located.

* Section 13. AS 38.05.365 is amended by adding a new subparagraph to read:

Section 38.05.365. "Market Value" or "Fair Market Value" means the highest prices, estimated in terms of money, which the property would bring if exposed for a sale for a reasonable time in the open market, with a seller, willing but not forced to sell, and a buyer, willing but not forced to buy, both being fully informed of all the purposes for which the property is best adapted or could be used.

* Section 14. AS 38.05 is amended by adding a new paragraph to read:

Section 38.05.380. STATE BOARD OF LAND APPEALS. (a) The State Board of Land Appeals shall consist of five members, one of whom shall be the Commissioner of Natural Resources or his designated representative. The other members of the board shall be appointed by the governor from the general public, with due regard for the desirability of prior legal, natural resource or real estate training and experience as criteria for selection of public members. All board members are subject to confirmation by a majority of the members of the legislature in joint session.

(b) The director of the division of lands shall provide administrative support for the board.

(c) The governor shall appoint the public members of the board for terms of three years each, except that the initial terms of one of the members first appointed under this chapter shall be for one year and one member for two years. The public members are entitled to compensation

in the amount of $50.00 per day for each day or portion of a day spent in actual meeting or on authorized official business incident to their duties, and to all other transportation and per diem expenses as provided by law.

(d) Jurisdiction of the board shall extend to all matters arising under the Alaska Land Act (AS 38.05) and the Water Act (AS 46.15) from which an appeal may be taken under statute or regulation to the commissioner from a decision of the director, division of lands. The board in all appeals filed after the effective date of this chapter, shall have the appellate authority formally vested in the commissioner by provisions of the Alaska Land Act. An appeal from a decision of the board, if taken, shall be to the Superior Court.

of a quorum shall be able to render a decision. The board shall adopt regulations governing its procedures, and may adopt other regulations which may be necessary or convenient in carrying out the purposes of this chapter.

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SB 159
Title Leasing of State land other than for extraction of Natural resources
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Natural Resources
Program Category Affected NRMEC
Budget Request Unit(s) Affected Land and Water Management

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

There would be no change in cost of administration due to this bill.

Revenues would be reduced substantially, especially trust fund revenues (see attached).

IV. DATE February 23, 1977 PREPARED BY Ted Smith
AGENCY Land and Water Management
PHONE 279-5577

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 10/76)

LEASE METHOD COMPARISONS

	LEASE (1)	LEASE (2)	LEASE (3)	LEASE (4)
Rent Per Present Law and State Appraisal	(a)$5,691	$5,232	$1,300	$1,650
Rent Per Lessess Appraisal	(b)$4,552	$4,160	N/A	N/A
Rent Per Ad Hoc Committee	a or b	a or b	$1,300	$1,650
Rent Per S.B. 159	$ 930	$ 800	$ 120	$ 270
Lease Commencement	1961	1961	1969	1969
Lease Term	55 yrs.	55 yrs.	55 yrs.	55 yrs.
Location	Anchorage	Anchorage	Susitna Valley	Susitna Valley
Size	14,782 S.F.	18,012 S.F.	40 Ac.	80 Ac.

LEASE NO. 1

Term	(a) Rent By S.B. 159	(b) Economic Rent Per Lessee's Appraisal	(c) Rent Savings (Per Period)	(d) Economic Rent Per State's Appraisal	(e) Rent Savings (Per Period)
76-81	$ 930	$4,552	$18,110	$5,691	$23,805
81-86	930	4,552	18,110	5,691	23,805
86-91	1,395	4,552	15,785	5,691	21,480
91-96	2,092	4,552	12,300	5,691	17,995
96-2001	3,138	4,552	7,070	5,691	12,765

Assume: (1) Land value does not rise beyond present value
(2) Economic lease rate does not rise

Column:

(a) Annual rent for each year under S.B. 159
(b) Present economic rent as determined by lessees appraisers
(c) Period rent savings under S.B. 159 (difference between column (a) and column (b)).
(d) Present economic rent as determined by states appraiser
(e) Period rent savings under S.B. 159 (difference between column (a) and column (d)

LEASE NO. 3

Term	(a) Rent By S.B. 159	(b) Economic Rent Per State's Appraisal	(c) Rent Savings (Per Period)
76-81	$120	$1,300	$5,900
81-86	120	1,300	5,900
86-91	180	1,300	5,600
91-96	270	1,300	5,150
96-2001	405	1,300	4,475
2001-2006	607	1,300	3,465
2006-2011	911	1,300	1,945

Assume:

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(2) Economic lease rate does not rise

Column:

(a) Annual rent for each year under S.B. 159
(b) Present economic rent as determined by states appraisal
(c) Period rent savings under S.B. 159

1) [illegible] @ $1000

@ 8% rent for 1st 10 yrs = $80/yr or $800/ten

2) Assume the property has increased in value $ $1500

then @ 8% rent for next 5 yrs = 120/yr or $600/5

~~Contd yrs~~ which is the maximum under this bill -

IQ:

Bill assumes 50% increase in value each 5 yrs -

February 22, 1977

Jay S. Hammond, Governor
Pouch A
Juneau. AK 99811

Dear Covernor Hammond:

The Ad Hoc Committee on land policies and procedures has met on a weekly schedule since late October. We have addressed many problems dealing with the administration of the state's land patrimony. Many of these problems need resolution through the legislative process. Accordingly we are submitting these following recommendations as an interim report of the Committee, in the hope that the legislature may act during its current session.

Recommendation #1

The committee recommends that the State adopt a system of level payments in place of declining payments in its sales contracts. The system of level payments is in common use in the business world, and the payment figures are easily set forth in a contract. The disadvantage of the present method is that interest must be recalculated every year and the payments decrease each year. From both the State's and the buyers' viewpoints, the level payment method would be preferred. The State would receive slightly more in interest payments over the contract terms and the buyer would not have to make as high initial payments.

Section 2 & 3 of the attached draft bill would accomplish this.

Recommendation #2

The committee recommends that the State charge a market rate of interest in its sales contracts. The interest rate, at present 6%, is below market levels and may have contributed to inflated prices at state land sales. By setting interest rates at market levels, the State would help prevent inflated land prices and at the same time return more income to the State. To provide for a market rate of interest in sales contracts, no change in AS 38.05.065 would be required. The addition of a statement of market rate in this statute would be desirable, however.

Section 3 of the attached draft bill would accomplish this.

Recommendation #3

The Committee recommends that all sales contracts over $400.00 per year have the option of paying in quarterly installments instead of annual installments. It is the committee's belief that this would ease the financial strain on the buyer and yet not add significantly to the State's administrative costs.

Section 3 of the attached draft bill would accomplish this.

Recommendation #4

The committee recommends that the Director be given the authority to set the payment period from one to twenty years. This type of flexibility would allow the State and buyers greater market possibilities.

Section 3 of the attached draft bill would accomplish this.

Recommendation #5

The committee believes that the word "primarily" may imply special consideration to some lessees. In order to treat all lessees fairly and equitably the committee recommends that the word primarily be stricken. Deleting "primarily" would clarify the basis for reappraisal. This recommendation is also made by the hearing panel on the Alaska Industrial Subdivision leasing protest.

Section 8 of the attached bill will accomplish this.

Recommendation #6

Since public notice is covered in AS 38.05.345 the change to "appraisal" for AS 38.05.310 is warranted by its present content. The committee recommends that land may be appraised 120 days in advance of a sale or lease. The change from 90 to 120 days would be desirable in that minimum bid information could be given to the public well in advance of the actual sale or lease auction.

Section 10 of the attached draft bill will accomplish this.

Recommendation #7

The committee recommends that land offered over the counter be reviewed at 90 to 120 day intervals to determine if an increase in value has occurred. This review is desired so that parcels are not undervalued by progressive changes in the market.

Section 10 of the attached draft bill would accomplish this.

Recommendation #8

The committee recommends that in Title 38.05 of the statutes the terms "fair market value" be used in place of "fair appraised market value" and "market value." The meaning is meant to be the same in all cases. The committee would like to see one standard term used to avoid confusion and misunderstanding.

Sections 4, 5, 7, & 13 of the attached draft bill would accomplish this.

Recommendation #9

The duration of a lease and the economic life of substantial improvements, such as stores or factories may not coincide. In order to see that state leased land is used in a rational economically productive manner the committee recommends that lessees of long-term leases be given a renewal option for up to fifteen years. This type of option would grant the lessee more flexibility in maximizing

his investment [illegible]. [illegible] would also increase the lessee's planning possibilities for use of the leased ground. This action would also soften the impact of termination of the lease. Specifically, this would permit a lessee to work substantial repairs to a building when the remaining term of the lease would not otherwise justify it.

Section 6 of the attached draft bill would accomplish this.

Recommendation #10

In order to provide a uniform 55 year limit for all long-term leases the committee recommends deletion of the 99 year provision found in 38.05.070(c) for school lands.

Section 6 of the attached bill would accomplish this.

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Section 38.05.067(b). The director shall not sell the lands under this section at less than their fair (APPRAISED) market value. The director shall make regulations necessary to ensure that lands sold under this section are for bona fide residential use and not for speculation.

* Section 5. AS 38.05.068(a) is amended to read:

Section 38.05.068(a). FOREST SERVICE PERMITTEES' SALES PREFERENCE. Before offering to the public any land which is subject to a valid existing United States Forest Service permit in effect in a state-selected area at the time the area was patented to the state, or which is subject to a lease issued under Section 87 of this chapter, the director shall offer the land for sale to the permittee or his successor in title, if he can be found, at not less than its fair (APPRAISED) market value before offering to the general public.

* Section 6. AS 38.05.070(c) is amended to read:

Section 38.05.070(c). A lease may be issued for a period of up to 55 years, if it appears to be in the best interest of the state and if the commissioner approves. A lease for a period in excess of 25 years shall grant the lessee an option entitling him to extend the term of the lease for up to 3 consecutive five year periods in addition to the original term. If the Commissioner determines that the land or a part of it which is the subject of a grazing

lease is not being used for the purpose issued, the lease may be declared void. (HOWEVER, A NONRENEWABLE LEASE FOR SCHOOL LANDS MAY BE ISSUED FOR A PERIOD NOT TO EXCEED 99 YEARS.)

* Section 7. AS 38.05.087(a) is amended to read:

Section 38.05.087(a). FOREST SERVICE PERMITTEES' LEASING PREFERENCE. Before offering to the public any land for lease which is subject to a valid existing United States Forest Service permit in effect in a state-selected area at the time the area was patented to the state, the director shall offer the land for leasing to the permittee at not less than its fair (APPRAISED) market value before offering it to the general public.

* Section 8. AS 38.05.105 is amended to read:

Section 38.05.105. Each lease shall stipulate that the annual rental payment is subject to adjustment at five year intervals and shall be based (PRIMARILY) on a reappraised annual rental value. Any increase due to reappraisal may not exceed 100% of the annual rental for the preceding 5 year period. However, if the director of the division of lands determines that residential development is the best use for the land, the reappraisal period may be lengthened or the readjustment waived in accordance with regulations adopted by the commissioner. Before a waiver of rental readjustment is issued, the land shall have a current reappraisal. A waiver is valid only if residential development actually occurs, and only if it is necessary for obtaining primary long-term financing. The regulations adopted under this section shall ensure that the state receives a fair return from the land.

* Section 9. AS 38.05 is amended by adding a new paragraph to read:

Section 38.05.106. CONVERSION OF LEASES. (a) Any person holding a valid lease as lessee of lands from the State under provisions of AS 38.05.070 - .105, or as an approved assignee of such lessee under the terms of such lease, may, at his option, convert his lease so as to obtain certain benefits, enumerated in subparagraph (b) below, which were not available to him at the date his lease was originally entered, if the lessee at the time of conversion makes all payments due under the conversion rate and is not in violation of any other lease provision.

(b) Those lease benefits which shall be made available to a lessee qualifying under subsection (a) of this section shall be all of those lease provisions authorized or made applicable by this act to new leases entered into by the State after the effective date of such statutes.

(c) The effective annual rental value at conversion shall be based on the most recent reappraisal provided that such reappraisal was within 2 years of the effective date of this act. In all other cases, the conversion shall be based on the next reappraisal.

(d) Any conversion as to trust lands shall be effective only if approved by the appropriate board of trustees.

(e) Applications for conversion must be made within 3 years of the effective date of this act.

* Section 10. AS 38.05.310 is amended to read:

Section 38.05.310 (NOTICE AND) APPRAISAL. (a) No land may be sold or leased, or a renewal lease issued (WITHOUT PUBLIC NOTICE) except in the case of an oil or gas or mineral lease, unless it has been appraised within 120 (90) days before the date of (FIXED FOR THE) sale or lease. (WHEN LAND IS OFFERED AT PUBLIC SALE BUT IS NOT SOLD AND IS AVAILABLE)For over the counter sale (AT THE PRIVATE SALE, NO) an (RE)appraisal is required unless the director finds (CONSIDERS) that a change in value of the lands has not (MAY HAVE) occurred. A grazing lease may be granted to a lessee of federal grazing lands without prior appraisal, if his federal lease was cancelled to allow the state to select the lands under lease. No land may be sold or leased for less than fair (THE APPROVED, APPRAISED) market value, except as provided in .315 and .320 of this chapter and .75 - .85 of this chapter. No land or interest in land may be sold, leased, or otherwise disposed of without public notice.

(b) When land is offered at public sale but is not sold, it may be available for sale over the counter. The director shall review the list

of lands available on a quarterly basis and shall certify that there has been no change in value since the last reappraisal. If an increase in value occurs in any parcel, the director shall withdraw that parcel from sale over the counter.

* Section 11. AS 38.05.345(a) is amended to read:

Section 38.05.345(a). Public notice of an auction sale (LEASE OR OTHER DISPOSAL) of land or interest in it shall be substantially as follows.

* Section 12. AS 38.05.345(e) is amended by adding a new subparagraph to read:

Section 38.05.345(e) Public notice of an action other than as specified in paragraph (a) above shall conform to the requirements of AS 38.05.305 and this paragraph. Such notice shall, when given pursuant to AS 38.05.305(c), be published at least once in a newspaper of general circulation in the vicinity in which the land affected by the proposed activities is located.

* Section 13. AS 38.05.365 is amended by adding a new subparagraph to read:

Section 38.05.365. "Market Value" or "Fair Market Value" means the nighest prices, estimated in terms of money, which the property would bring if exposed for a sale for a reasonable time in the open market, with a seller, willing but not forced to sell, and a buyer, willing but not forced to buy, both being fully informed of all the purposes for which the property is best adapted or could be used.

* Section 14. AS 38.05 is amended by adding a new paragraph to read:

Section 38.05.380. STATE BOARD OF LAND APPEALS. (a) The State Board of Land Appeals shall consist of five members, one of whom shall be the Commissioner of Natural Resources or his designated representative. The other members of the board shall be appointed by the governor from the general public, with due regard for the desirability of prior legal, natural resource or real estate training and experience as criteria for selection of public members. All board members are subject to confirmation by a majority of the members of the legislature in joint session.

(b) The director of the division of lands shall provide administrative support for the board.

(c) The governor shall appoint the public members of the board for terms of three years each, except that the initial terms of one of the members first appointed under this chapter shall be for one year and one member for two years. The public members are entitled to compensation

in the amount of $50.00 per day for each day or portion of a day spent in actual meeting or on authorized official business incident to their duties, and to all other transportation and per diem expenses as provided by law.

(d) Jurisdiction of the board shall extend to all matters arising under the Alaska Land Act (AS 38.05) and the Water Act (AS 46.15) from which an appeal may be taken under statute or regulation to the commissioner from a decision of the director, division of lands. The board in all appeals filed after the effective date of this chapter, shall have the appellate authority formally vested in the commissioner by provisions of the Alaska Land Act. An appeal from a decision of the board, if taken, shall be to the Superior Court.

of a quorum shall be able to render a decision. The board shall adopt regulations governing its procedures, and may adopt other regulations which may be necessary or convenient in carrying out the purposes of this chapter.