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STATE OF ALASKA  
THE LEGISLATURE

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May, 1986

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Jeanie Henry

SENATE RESOURCES COMMITTEE

5/9/85, 3:00

"

"

5/10/85, 1:30

House Resources Committee, 3/22/85, 8:30 am

# Alaska State Legislature

ARLISS STURGULEWSKI, Chairman  
BETTYE FAHRENKAMP, Vice Chairman  
JACK COGHILL  
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JUNEAU, ALASKA. 99811  
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## Senate Committee on Resources

MEMORANDUM

May 8, 1985

TO: Senate Resources Committee Members

FROM: Senate Resources Committee Staff *MJA*

RE: SENATE CS for CS for HB 248 (Resources)  
"An Act relating to leases on certain land formerly described as university grant land; and providing for an effective date."

There are a number of persons who hold leases on state land that was formerly university-grant land. Many of these persons would like to buy that land from the state.

For many years, that was not possible because the land was tied up in a long term legal dispute between the university and the state. That legal dispute has now been settled and the state has clear legal control of the disputed land and could sell that land to the leasees.

Section 1 (a) and (b) of the CS establish that leasees may buy the land they are leasing from the state at current fair market value appraised as though in fee simple ownership.

Section 1 (c) allows leasees who wish to purchase from DNR to do so at a price previously established. This option is open until January 1, 1986.

Section 1 (d) allows leasees who wish to purchase from DNR but who dispute the established price, to get a new appraisal. The property is to be appraised as though it were in fee simple ownership and as June 17, 1983 (the date of the university - state settlement). This option is also open until January 1, 1986.

Section 1 (e) makes plain that purchasers of university-grant land that is classified as agricultural only receive the agricultural rights to the land they purchase.

Section 1 (f) makes plain that leasees who purchase their land relinquish their lease rights.

Section 1 (g) requires the Commissioner of DNR to notify all eligible leasees within 90 days of the effective date of this bill.

Section 1 (h) by reference sets out the mechanics of the purchase arrangement.

Section 2 is an immediate effective date clause.

Copies of all statutes that are referenced in the CS are attached to this memo.

The main points of contention in this bill have been on three issues.

1) Whether the price for the lands should be determined by current value or by a value at some date in the past.

2) How long lessees have to take advantage of a price based on a date in the past.

3) Whether the value of the parcels should be based on the state's leased fee interest or upon upon a value as though the land was in fee simple ownership.

includes the utilization of shore gill nets or set nets for the taking of fish. Every lease issued under this section shall reserve to the public a right-of-way for access to navigable waters and other tide and submerged land.

(b) The director may classify land as subject to leases for fisheries development, and publicly invite applications for lease of the selected areas. Each application shall be accompanied by an affidavit to the effect that the applicant presently intends to personally utilize the leased area for fishing purposes the following season. If two or more applications are received for the same shore area, the director shall award the lease to the most qualified applicant. In determining the qualifications of applicants, the director shall consider the length of time during which the applicant has been engaged in set netting, the proximity of the past fishing sites of the applicant to the land to be leased, the present ability of the applicant to utilize the location to its maximum potential, and other factors relevant to the equitable assignment of the disputed area. If the director cannot determine a preference between conflicting applicants for the same lease site on the basis of qualifications, the director shall select between the applicants by lot. An aggrieved applicant may appeal to the commissioner within five days for a review of the director's determination.

(c) A lease for set net fishing may be issued for any period not exceeding 10 years. If the commissioner determines that the land is not being utilized for the purpose for which the lease is issued, the lease may be declared void. The director shall establish a reasonable rental for the lease, equal to the administrative costs involved in processing the leasehold applications.

(d) Subleasing and renewals of leases are governed by AS 38.05.095 and 38.05.102.

(e) The lease of submerged land conveys no interest in the water above the land or in the fish in the water. (§ 2 ch 93 SLA 1963; am § 99 ch 6 SLA 1984)

*Effect of amendments.* — The 1984 amendment changed the internal reference in subsection (d).

*Opinions of attorney general.* — This section, which authorizes shore fishery leases, does not create an exclusive right of fishery and therefore is not

unconstitutional under § 15, art. VIII, of the state constitution. 1983 Op. Att'y Gen. No. 03.

This section can be amended to limit the issuance of state tidelands leases for fisheries development to residents of Alaska. 1983 Op. Att'y Gen. No. 03.

**Sec. 38.05.085. Term of lease.** (a) The lease shall provide that

(1) for the initial 25-year period of the lease, the lessee shall pay the state a fixed base annual rent to be agreed upon by the parties in compliance with the provisions of this chapter;

(2) the fixed base annual rent to be paid by the lessee shall be readjusted when the initial 25-year period of the lease has expired and, thereafter, every 10 years; and

(3) the readjusted annual rent may not exceed 10 per cent of the value of the property as determined in (b) of this section or 50 per cent more than the amount paid each year during the initial period or the preceding 10-year period, whichever is lower.

(b) When it becomes necessary to determine the fair market value of property as required by (n) of this section, the director shall have the property appraised by a qualified appraiser. If the lessee disagrees with the appraisal obtained by the director, the lessee may appoint a qualified appraiser to make an appraisal of the property in question. If the two appraisers agree upon the fair market value, the determination is binding on the parties. In the event the two appraisers are unable to agree, they shall appoint a third qualified appraiser who shall then make an 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 resultant sum shall be the fair market value of the property in question and absolutely binding on the parties. All costs incurred in making the appraisals provided for in this subsection shall be borne by the state and the lessee equally.

(c) The lessee shall make advance payments of the annual rent or portion of it as the director, with the approval of the commissioner, may require.

(d) A preference right lessee of grazing or forest land may follow the payment schedule established in the cancelled federal lease or grazing permit if the lessee so desires.

(e) Notice of all actions by the department affecting the rights of a lease or lessee shall be given to the lessee.

(f) A violation of a provision of this chapter or of a term or provision of a lease subjects the lessee to appropriate legal action, including, but not limited to, a forfeiture of the lease.

(g) In this section,

(1) "annual rent" means the amount of rent paid annually determined by multiplying the fair market value by the rental rate computed at the time of the initial 25-year period of the lease or of each subsequent 10-year period of the lease;

(2) "qualified appraiser" means a senior member of the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers, a person meeting the requirements for certification as an appraiser II by the division of personnel, Department of Administration, or a person qualified according to regulations adopted by the commissioner under the Administrative Procedure Act (AS 44.62);

(3) "rental rate" means the rate, expressed as a percentage of fair market value, which a comparable class of privately owned property would bring in the open market with the same conditions of lease as offered by the state. (§ 3 art V ch 169 SLA 1959; § 11 ch 61 SLA 1960; § 4 ch 74 SLA 1961; am § 9 ch 138 SLA 1977; am §§ 8, 9 ch 182 SLA 1978)

**Sec. 38.05.300. Classification of lands.** (a) The commissioner shall classify for surface use land in areas considered necessary and proper. This section does not prevent reclassification of land where the public interest warrants reclassification, nor does it preclude multiple purpose use of land whenever different uses are compatible. State land, water, or land and water area may not, except by act of the state legislature, be closed to multiple purpose use if the area involved contains more than 640 acres.

(b) Not later than February 1 of each year, the commissioner shall submit a written report to each house of the legislature which describes and shows the location of all classifications of state land made under (a) of this section during the preceding year. (§ 1 art III ch 169 SLA 1959; am § 2 ch 31 SLA 1964; am §§ 33, 34 ch 85 SLA 1979; am § 40 ch 152 SLA 1984)

**Cross references.** — For state land and water restricted to use as public recreation areas and state parks, see AS 41.21.

**Effect of amendments.** — The 1984 amendment made a series of technical changes throughout subsection (a).

NOTES TO DECISIONS

Department of Natural Resources agricultural classification of lottery parcels proper. — The requirement that an act of the legislature is required where multiple purposes are closed in parcels exceeding 640 acres applied to the management of retained state land, not the disposal of it; thus, Department of Nat-

ural Resources agricultural classification of lottery parcels was proper, even though it did foreclose multiple purposes. *State v. Weidner*, Sup. Ct. Op. No. 2788 (File Nos. 6220, 6240, 6272), P.2d (1984).  
Quoted in *Southeast Alaska Conservation Council, Inc. v. State*, Sup. Ct. Op. No. 2662 (File No. 5855), P.2d (1983).

**Sec. 38.05.305. Notice and review.** [Repealed, § 45 ch 113 SLA 1981. For current law see AS 38.05.945.]

**Sec. 38.05.321. Restriction on sale, lease or other disposal of agricultural land.** (a) The sale, lease or other disposal of state land classified as agricultural land transfers only rights for agricultural purposes, and all other interests in the land remain with the state unless otherwise required by law.

(b) State land classified as agricultural land which has been selected by a municipality under former AS 29.18.190 — 29.18.200 or 29.18.205(e) may be approved by the director for patent under AS 29.18.205(f); however, only rights in the land for agricultural purposes may be transferred and all other interests in the land will remain with the state. Agricultural land approved for patent to a municipality under AS 29.18.205(f) shall be credited, acre for acre, toward fulfillment of that municipality's entitlement under AS 29.18.201 — 29.18.203. If the director later determines it to be in the best interests of the state to transfer some or all of the additional rights in that approved or patented agricultural land, those rights shall pass without

consideration to the municipality in which the land is located. The notice and review provisions of AS 38.05.945 are applicable to conveyance of rights under this section.

(c) The provisions of this section do not apply  
(1) to state land classified as agricultural land that has been selected by a municipality under the provisions of former AS 29.18.190 — 29.18.200 if the selection is an approved selection before April 1, 1978 and is otherwise valid under AS 29.18.205(b); or  
(2) a quitclaim of the interest of the state to the federal government under AS 38.05.035(b)(9). (§ 3 ch 71 SLA 1976; am § 3 ch 180 SLA 1978; am § 43 ch 152 SLA 1984)

**Revisor's notes.** — In 1984 "former" was inserted before the references to AS 29.18.190 — 29.18.200 in subsections (b) and (c). Those sections were repealed by § 5, ch. 180, SLA 1978. AS 29.18.205(e), referred to in subsection (b), was repealed by § 45, ch. 85, SLA 1979.

**Effect of amendments.** — The 1984 amendment, in subsection (c), designated the language beginning with "to state land" as paragraph (1), added paragraph (2), and made related technical changes in paragraph (1).

**Sec. 38.05.325. Homestead entry.** [Repealed, § 45 ch 85 SLA 1979. For current law see AS 38.09.]

**Sec. 38.05.347. Transfer of state land to cities.** [Repealed, § 6 ch 218 SLA 1976; § 15 ch 257 SLA 1976.]

**Sec. 38.05.360. Waste or injury to land.** [Repealed, § 21 ch 166 SLA 1978. For current law see AS 11.46.]

**Sec. 38.05.362. Agricultural land classification.** [Repealed, § 88 ch 152 SLA 1984.]

Article 12. State Control of Certain Land

Section	Section
500. Electorate determinations	503. Treaties and compacts
501. Management	504. Proceeds to the general fund
502. Property of the people	505. Exclusive enforcement

**Revisor's notes.** — Enacted as AS 38.05.500 — 38.05.570 (now 38.05.605). Renumbered in 1983.

**Opinions of attorney general.** — Ballot Measure No. 5 is unconstitutional because it is in direct conflict with the disclaimer provisions of §§ 12 and 13, art. XII, of the state constitution, and as a result, neither the Department of Natural Resources nor any other public agencies (e.g., the Department of Public Safety, etc.)

should attempt to implement its provisions. 1983 Op. Att'y Gen. No. 2.

Ballot Measure No. 5 probably is unconstitutional under provisions of the United States Constitution. 1983 Op. Att'y Gen. No. 2.

Any state claim to ownership of public lands under the "equal footing" doctrine, which insures that new states are admitted to the Union with the same sovereign political rights and powers as all

## NOTES TO DECISIONS

Quoted in *Gilman v. Martin*, Sup. Ct. (1983); *Stato v. Weidner*, Sup. Ct. Op. No. Op. No. 2652 (File No. 5937), 662 P.2d 120 (1983); *LeResche v. Lustig*, Sup. Ct. Op. No. 2656 (File No. 6058), 663 P.2d 542 (1984).

*Sec. 38.05.058. Land discount program. (Repealed, § 19 ch 67 SLA 1983.)*

**Sec. 38.05.059. Limitation on purchases of agricultural land.** A person may purchase from the state a total of not more than one parcel of land that is part of an agricultural development project under AS 44.33.475 during any eight-year period. (§ 3 ch 129 SLA 1982)

**Sec. 38.05.060. Rejection of bids.** Before the signing of the formal conveyance by the director, the commissioner may reject all bids when the best interests of the state justify this action. Land offered at public sale but not sold may be made available at private sale for not less than its appraised value. (§ 2 art IV ch 169 SLA 1959; am § 9 ch 61 SLA 1960; am § 2 ch 137 SLA 1962)

## NOTES TO DECISIONS

Cited in *State v. University of Alaska*, Sup. Ct. Op. No. 2303 (File No. 4579), 624 P.2d 807 (1981).

*Sec. 38.05.063. Sales for pipeline purposes. (Repealed, § 31 ch 3 FSSLA 1973.)*

**Sec. 38.05.065. Terms of contract of sale.** (a) The contract of sale for land sold at public auction under AS 38.05.055 shall require the remainder of the purchase price to be paid in monthly, quarterly or annual installments over a period of 20 years, with interest at the prevailing rate for real estate mortgage loans made by the federal land bank for the farm credit district for Alaska at the time the contract is signed. Installment payments plus interest shall be set on the level-payment basis.

(b) The contract of sale for land sold under AS 38.05.057 and under AS 38.05.078 shall require the remainder of the purchase price to be paid in monthly, quarterly, or annual installments over a period of not more than 20 years. Installment payments plus interest shall be set on the level-payment basis. The interest rate to be charged on installment payments is the prevailing rate for real estate mortgage loans made by the federal land bank for the farm credit district for Alaska at the time the contract is signed.

(c) The director shall, for contracts under (a) or (b) of this section, set out in the contract for each sale the period for the payment of install-

ments and the total purchase price plus interest. The director, with the consent of the commissioner, may also include in contracts under this section conditions, limitations and terms considered necessary and proper to protect the interest of the state. Violations of any provision of AS 38.05.005 — 38.05.990 or the terms of the contract of sale subject the purchaser to appropriate administrative and legal action, including but not limited to specific performance, foreclosure, ejectment, or other legal remedies in accordance with applicable state law.

(d) If a contract for a sale of state land has been breached, the director may issue a decision to foreclose and terminate the contract at any time 31 days after delivering by certified mail a written notice of the breach to the address of record of the purchaser. A breach caused by the failure to make payments required by the contract may be cured within 30 days after the notice of the breach has been received by the purchaser by payment of the sum in default together with the larger of a fee of \$50 or five percent of the sum in default. If there are material facts in dispute between the state and the purchaser, the purchaser may submit a written request for a public hearing for the review of the facts within 30 days after the notice of the breach has been received.

(e) On a determination that there has been a breach of the contract based on the administrative record and the evidence presented at a hearing, the director shall issue a decision foreclosing the interest of the purchaser and terminating the contract. The obligation to make payments under the contract continues through the date of the decision to foreclose by the director.

(f) The director shall deliver the decision to foreclose and terminate personally to the purchaser or send it certified mail, return receipt requested to the address of record of the purchaser. If the breach is a failure to make payments required by the contract, the decision shall include a notice to the purchaser that if within 30 days the purchaser pays to the state the full amount of the unpaid contract price, including all accrued interest, and any fees assessed under (d) of this section, the department shall issue to the purchaser a deed to the land. If full payment is not made within 30 days or the breach is for other than failure to make payment, the decision forecloses and terminates all legal and equitable rights the purchaser has in the land.

(g) The purchaser may appeal the director's decision to the commissioner within 30 days. The final decision by the department is reviewable under AS 44.62.560.

(h) The commissioner may declare a moratorium of up to five years on payments on a sale of agricultural land under this section if

(1) the commissioner determines that the moratorium is in the best interest of the state;

(2) the commissioner certifies and the contract purchaser agrees to perform farm development, crop production, and harvesting, not including land clearing or related activity, requiring the expenditure

of amounts equivalent to the payments that would otherwise be made during the moratorium;

(3) the sale of the agricultural land takes place after July 1, 1979; and

(4) the contract purchaser is in compliance with the development plan specified in the purchase contract at the time the purchaser applies for a moratorium under this subsection and remains in compliance with the development plan during the moratorium. Interest payments are subject to the moratorium but interest continues to accrue during the moratorium. (§ 3 art IV ch 169 SLA 1959; am § 5 ch 176 SLA 1978; am §§ 26, 27 ch 85 SLA 1979; am §§ 17, 18 ch 113 SLA 1981; am §§ 23, 24 ch 152 SLA 1984; am § 1 ch 165 SLA 1984)

Reviser's notes. — Subsection (h) of this section was enacted as (c). Renumbered in 1984.

Effect of amendments. — The 1981 amendment added "under AS 38.05.055" following "public auction" and substituted "20" for "ten" preceding "years" in the first sentence of subsection (a). In subsection (b), the amendment deleted "the procedures specified in" following "land sold under" and substituted "and under AS 38.05.078" for "(lottery disposals)" preceding "shall require the remainder" in the first sentence.

The first 1984 amendment added subsections (d)-(g) and, in subsection (c), inserted "but in the contract" in the first sentence and substituted "considered" for "which he considers" in the second sentence.

The second 1984 amendment added subsection (h).

Quoted in *State v. Weidner*, Sup. Ct. Op. No. 2788 (File Nos. 6220, 6240, 6272), P.2d (1984).

Collateral references. — 63 Am. Jur. 2d, Public Lands, § 46 et seq.  
73A C.J.S., Public Lands, § 184.

*Sec. 38.05.066. Preference to persons for fishery purposes. [Repealed. § 34 ch 94 SLA 1980.]*

**Sec. 38.05.067. Veterans preference.** (a) Except as provided in (e) of this section, before offering to the general public any unoccupied residential land, the director shall offer the land at a restricted sale at which only veterans may buy.

(b) The director shall not sell the land under this section at less than the fair appraised market value. The director shall adopt regulations necessary to ensure that land sold under this section is for bona fide residential use and not for speculation.

(c) When not in conflict with this section, other provisions of AS 38.05.045 — 38.05.067 apply to sales under this section.

(d) In this section "veteran" means a person with 90 days or more of active service in the armed forces of the United States who has been honorably discharged.

(e) This section does not apply to the sale of state land under AS 38.04.020(g)(2) and AS 38.09. (§ 4 art IV ch 169 SLA 1959; added by ch 102 SLA 1962; am § 1 ch 28 SLA 1963; am § 1 ch 1 SLA 1968; am §§ 28, 29 ch 85 SLA 1979; am § 35 ch 94 SLA 1980; am §§ 19, 20 ch 113 SLA 1981; am § 6 ch 103 SLA 1983)

Effect of amendments. — The 1981 amendment rewrote subsection (d) and substituted "AS 38.04.020(g)(2)" for "AS 38.05.077 and 38.05.078 in subsection (e). 38.05.047(f)" in subsection (e). The 1983 amendment substituted the reference to AS 38.09 for references to AS 38.05.077 and 38.05.078 in subsection (e).

**Sec. 38.05.068. Forest Service permittees' sales preference.**

(a) Before offering to the public any land which is subject to a valid existing United States Forest Service permit in effect on the day before that land is tentatively approved for patent to the state, or which is subject to a lease issued under AS 38.05.087, the director shall offer the land for sale to the permittee or a successor in title, if the permittee or a successor in title of the permittee can be found.

(b) When not in conflict with this section, the provisions of AS 38.05.045 — 38.05.069 apply to sales under this section.

(c) If the permit described in (a) of this section is for a recreational cabin, recreational residence, nonrecreational residence, or a residence of a community nature and the land is used for noncommercial residential or recreational purposes, the purchase price offered to a permittee or the successor of a permittee shall be an amount determined by the commissioner which is equal to the state money required to be spent in order to sell the land plus the cost of survey or resurvey, if the survey or resurvey is made by the department or a contractor of the department.

(d) If the permit described in (a) of this section is for a use other than a use listed in (c) of this section, the purchase price offered to a permittee or the successor of a permittee shall be not less than the appraised fair market value of the land. (§ 1 ch 26 SLA 1963; am § 39 ch 127 SLA 1974; am §§ 1, 2 ch 26 SLA 1979)

**Sec. 38.05.069. Preference to persons for agricultural purposes.** (a) On a determination that the highest and best use of unoccupied land is for agricultural purposes and that it is in the best interests of the state to sell or lease the land, the commissioner shall grant to an Alaskan resident owning and using or leasing and using land for agricultural purposes a first option at the auction to purchase or lease the unoccupied land situated adjacent to land presently held by the Alaskan resident for the amount of the high bid received at public auction. If more than one Alaskan resident qualifies for a first option under this section, eligibility for the first option shall be determined by lot and the option must be exercised on the conclusion of the public auction. A parcel of agricultural land sold under this section may not be less than 20 acres and a parcel of agricultural land that is

CSHB 248 FIN AM  
 AN ACT RELATING TO LEASES ON CERTAIN LAND FORMERLY DESCRIBED AS UNIVERSITY-GRANT LAND; AND PROVIDING FOR AN EFFECTIVE DATE.

PRIME SPONSOR: SHULTZ  
 CO-SPONSORS: SUND, MILLER, MM, MARROU

\$000 GENERAL(FNOTE) \$000 OTHER(FNOTE)

CURRENT STATUS: (S) RES

DATE		PAGE	ACTION
03/01/85	(H)	483	READ THE FIRST TIME
03/25/85	(H)	697	RES RPT W/CS 5DP 2NR 1OTHER
03/25/85	(H)	697	FISCAL NOTE ZERO
04/25/85	(H)	1077	FIN RPT W/CS 5DP 6NR
05/02/85	(H)		RLS TO CALENDAR 5/2/85
05/02/85	(H)	1235	READ THE SECOND TIME
05/02/85	(H)	1235	CSHB 248(FIN) ADOPTED UNAN CONSENT
05/02/85	(H)	1235	AM NO 1 ADOPTED UNAN CONSENT
05/02/85	(H)	1236	ADVANCED TO THIRD READING UNAN CONSENT
05/02/85	(H)	1236	READ THE THIRD TIME CSHB 248(FIN)AM

DATE		PAGE	ACTION
05/02/85	(H)	1236	PASSED Y38 N- A2
05/02/85	(H)	1236	EFFECTIVE DATE SAME AS PASSAGE
05/02/85	(H)	1255	TRANSMITTED TO (S)
05/03/85	(S)	1034	READ THE FIRST TIME
			RESJURCES
			RULES

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

**REQUEST**

Bill/Resolution No.: CSHB 248  
Title: University grant land leases

**FISCAL DETAIL**

Agency Affected: Natural Resources  
Program Category Affected: NRMEC

Sponsor: Shultz  
Requestor: \_\_\_\_\_  
Date of Request: \_\_\_\_\_

BRU, Program or Subprogram(s) Affected: \_\_\_\_\_  
Land and Water Management

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>		-0-	-0-	-0-	-0-	-0-

<b>CAPITAL</b>						
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<b>REVENUE</b>						
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		-0-	-0-	-0-	-0-	-0-

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** Attach a separate page if necessary

No fiscal impact.

Prepared By: Ned Farquhar  
Division: Commissioner's Office

Phone: 465-2400  
Date: 22 March 1985

Approved by Commissioner: Mark D Arnold, Deputy  
Agency: Natural Resources

Date: 22 March 1985

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

# FOLLETT & ASSOCIATES

4141 B Street, Suite 402, Anchorage, Alaska 99503 (907) 562-4279



Richard H. Follett, MAI  
Eric G. Follett, MAI

February 18, 1985

Ms. Bev Aleck  
2524 Redwood  
Anchorage, Alaska 99504

Regarding: Former University of Alaska Lands leased  
by the State of Alaska.

Dear Ms. Aleck:

The following letter sets forth the terminology, definitions and appraisal practices used in valuing real estate, when the property is affected by a lease. The eighth edition of The Appraisal of Real Estate, published by the American Institute of Real Estate Appraisers states, "The bundle of rights Theory holds that total real property ownership, or title in fee, includes several distinct rights, each of which can be separated from the bundle and conveyed by the fee owner to other parties in perpetuity or for limited time periods. When a right is separated from the bundle and transferred, a partial, or fractional property interest is created

"Lease practice is one practical application of the Bundle of Rights Theory. An owner of the total bundle (a lessor) may convey to a tenant (a lessee) rights to use and occupy a property for a fixed time period. In return, the tenant assumes an obligation to pay an agreed upon periodic rent."

It goes on to say that, "A leasehold interest is said to have value when contract rent is less than market rent, which is the amount a property could earn in a competitive real estate market. Market rent is not profit from a business operated on the premises. It is the rent the real estate could command in the market. In a perfectly negotiated lease, contract rent would probably not differ from market rent. When market rent exceeds contract rent, the leasehold interest acquires value."

Under the Canons and Regulations of the American Institute of Real Estate Appraisers, it would be unethical for an appraiser to render an opinion of market value for a property, and not take into consideration the effect of any leases on that property. If the tenant had a favorable lease at below market rent, whereby a leasehold interest existed, the market value of the property would be of the leased fee estate, which can be found by deducting the value of the leasehold interest from the total property value in fee simple. It would be unethical for the appraiser to merely value the property in fee simple and not take into account a favorable lease creating a leasehold interest by the lessee.

REAL ESTATE APPRAISERS • CONSULTANTS • MARKET ANALYSTS

At this point it may be helpful to define some of the terms used in this letter: (1)

- Lessor - One who holds title and conveys the right to use and occupy a property under a lease agreement.
- Lessee - One who possesses the right to use or occupy a property under lease agreement.
- Lessor's Interest - Leased Fee Interest - The present (discounted) value of the contract (lease) rents in addition to the present (discounted) value of the reversion (a leased fee).
- Lessee's Interest - The market value of the property less the value of the lessor's interest.
- Leasehold Value - The value of the leasehold interest; that is, the right to the use, enjoyment and profit existing by virtue of the rights granted under a lease instrument. The value of the leasehold interest is the present (discounted) worth of the rent saving, when the contractual rent at the time of appraisal is less than the current market rent.
- Reversion - The returning of an item of real estate to its grantor, such as the return of the future use of real estate to a lessor at the expiration of the lease controlling it.

In the case of the University of Alaska Lands, which were leased by the State of Alaska, these properties all have an existing valid lease which must be taken into consideration when an appraiser estimates the current market value of the property. The State of Alaska is the lessor and owns the leased fee interest, which is the right to receive rent and to get the property back at the end of the lease.

The individual leaseholders own the leasehold interest, which is the right to use the property for a specific period of time, and may include improvements to the property or subleasing.

- (1) Definitions are from the Appraisal Terminology and Handbook, published by the American Institute of Real Estate Appraisers.

Most of the University Land Leases were made in the early 1970's, and contain a clause allowing the lease payment to be increased to market rent upon reappraisal every five years. They were 55 year leases with an option to renew the lease for an additional 55 years at market rent.

In the late 1970's the State offered a conversion program whereby the lessees could convert the lease to a level payment, 25-year lease, after which the lease payment could be increased on every ten year anniversary, but the lease payment could not be greater than 150% of the payment during the previous 10 year period.

In all the instances reviewed by the appraiser, this created a substantial leasehold interest for the lessees.

The State of Alaska is now offering to sell the properties to the leaseholders. Since the properties are affected by valid leases, and the lessees have a saleable leasehold interest, the market value of the portion of the property owned by the State of Alaska is the leased fee interest.

In the Addenda of this letter, is an example analysis of a leased property which has been patterned after an actual leasehold under consideration. The assumptions in this example are as follows:

Current Land Value: \$280,000 (160 acres @ \$1,750/acre)  
Beginning of Lease: 7/23/74  
End of Lease: 7/23/2029  
Lease Term: 55 years  
Option: Additional 55 years at market rent.  
Lease Rate: 25-year level payment at \$950 per quarter beginning 1/23/78. The lease rate may increase up to 50% of the previous period every 10 years.

A survey of land leases in the market indicates that land lease rates for this type property would be about 8% of value annually. This would indicate a quarterly lease payment of \$5,600 ( $.08 \times \$280,000 \div 4 = \$5,600$ ). The lessee has a substantial leasehold advantage of \$4,650 per quarter (\$5,600 less \$950 equals \$4,650). A typical investor would expect this property to increase in value approximately 70% every 10 years. For example, a property valued at \$20,000 today would be worth \$34,000 ten years hence. Thus, the lease advantage will increase over time, since the lease payment is level for 25 years and then only can be increased 50% every 10 years.

The lease goes to market rent at the beginning of the option period during the 55-year option. Therefore, the lessee's leasehold interest is calculated for only the initial 55 year term of the lease.

The underlying logic for estimating the market value of the leasehold interest, or the leased fee interest, is that a person would not pay a dollar today for a dollar received in the future. The difference in the amount paid is reflected by the discount rate, or interest rate.

Addendum A represents the calculations for a leased fee interest where the property is leased under the above terms and conditions, except the lease payment is at market rent and can be increased every 10 years. It shows that the present value of the discounted lease payments at 12% interest, plus the present value of the reversion of the property at 12% interest equals the present value of the property in fee simple. This calculation is used to check the assumptions and discount rates to make sure the discounted cash flows of the model equals the current fee simple market value of the property.

Addendum B shows the calculations for the leased fee interest using the discount rates from the model and applying the terms and conditions of the lease to this property. This example shows the leased fee interest has a current value of \$50,733. This is the State of Alaska's Leased Fee Interest. Subtracting this amount from the value in fee simple of \$280,000 indicates that the leasehold interest is worth \$229,267.

As a check against these calculations, the appraiser can also estimate the value of the leasehold interest directly. It is based on the discounted cash flow of the rental advantage from the lease. During each time period, the rental advantage between market rent and the rent stated in the contract is discounted to present value.

Addendum C summarizes these calculations, indicating a total leasehold interest based on the above lease information and assumptions, of \$228,470. Adding the estimated value of the leased fee interest yields a total property value estimate of \$279,203, ( $\$228,470 + \$50,733 = \$279,203$ ) which is very close to the current market value of the property (\$280,000).

It is the appraiser's hope that the example outlined in the Addenda will help clarify the University Land Leasehold situation and help identify the proper procedure to estimate the current market value of a property involving a lease. This paper shows the method of valuing both a Leased Fee Interest and the Leasehold Interest.

The time value of money is not considered in the 1st example but is in the 2nd example. This substantially distorts the comparison.

It is interesting to note that in this example, if the lease continues, the State of Alaska will receive a total of \$294,262 in lease payments, plus the right to get back the property (the reversion) at the end of the lease, at which time the property will have appreciated to an estimated value of \$2,970,000. *MAI*

Alternately, if the State of Alaska sells its Leased Fee Interest for \$50,733 (see Addendum B), and puts the money in an account receiving 10% interest compounded monthly, the investment would grow to \$4,265,000 by the end of the lease (7/23/2029).

I would like to reemphasize that when a property is appraised for "Fair Market Value" and there is an existing lease, the appraiser must analyze the lease, and appraise the Leased Fee Interest (sometimes called Leased Fee Estate).

If we can be of any further help to you regarding the analysis of leases, please call us.

Sincerely yours,  
FOLLETT & ASSOCIATES

*Eric G. Follett*

Eric G. Follett, MAI

ADDENDUM A

Leased Fee Interest Calculations - at Market Rents

As a check of the model, if we apply a market rent to the lease of a \$280,000 property. The Present Worth of the lease payments and reversion should equal today's market value of the property.

Annual market rent would be 8% of land value (8% x \$280,000 = \$22,400), or \$5,600 quarterly. An investor would also expect land values to increase 70% every 10 years, which would also increase the rent 70% every 10 years.

1st Period - 1/23/85 to 1/23/95

The Present Worth Factor for 40 quarters at 12% interest is 23.808 (from Compound Interest Tables).  
The lease rate is \$5,600.

$\$5,600 \times 23.808 = \$133,326$

2nd Period - 1/23/95 to 1/23/2005

The Present Worth Factor for 40 quarters, deferred 40 quarters at 12% interest is (31.107 - 23.808) = 7.299  
The lease rate can be increased by 70% to \$9,520.

$\$9,520 \times 7.299 = \$ 69,486$

3rd Period - 1/23/2005 to 1/23/2015

The Present Worth Factor for 40 quarters, deferred 70 quarters at 12% interest is (33.344 - 31.107) = 2.237.  
The lease rate can be increased by 70% to \$16,184.

$\$16,184 \times 2.237 = \$ 36,204$

4th Period - 1/23/2015 to 1/23/2025

The Present Worth Factor for 40 quarters, deferred 120 quarters at 12% interest is (34.030 - 33.344) = .686.  
The lease rate can be increased 70% to \$27,513.

$\$27,513 \times .686 = \$ 18,874$

5th Period - 1/23/2025 to 7/23/2029

The Present Worth Factor for 18 quarters, deferred 160 quarters at 12% interest is (34.155 - 34.030) = .125.  
The lease rate can be increased 70% to \$46,771.

$\$46,771 \times .125 = \underline{\$ 5,846}$

Present Worth of Market Lease Payments \$263,736

Present Worth of Reversion

The estimated land value in year 2029 is \$2,970,000, which reflects a 70% increase in land value every 10 years, simple interest.

Present Worth Factor for \$1.00 received after 178 quarters at 12% annual interest is .0052

$\$2,970,000 \times .0052 = \underline{+ 15,444}$

Total Indicated Present Value of Lease Payment and Reversion \$279,180

The model checks, since this is equal to the current value of the property in fee simple interest.

ADDENDUM B

Leased Fee Interest Calculations - Based on the Lease Terms

The "converted" lease states the quarterly rent on this property is \$950 until 1/23/2003. The payment can then be increased up to 50% every 10 years.

1st Period - 1/23/85 thru 1/23/2003

The Present Worth Factor for 72 quarters at 12% interest is 30.246. The current lease rate is \$950 per quarter.

$$\$950 \times 30.246 = \$28,734$$

2nd Period - 1/24/2003 thru 1/23/2013

The Present Worth Factor for 40 quarters, deferred 72 quarters at 12% interest is  $(33.080 - 20.246) = 2.834$ . The lease rate can be a maximum of \$950 plus 50%, or \$1,425.

$$\$1,425 \times 2.834 = \$4,038$$

3rd Period - 1/24/2013 thru 1/23/2023

The Present Worth Factor for 40 quarters, deferred 112 quarters at 12% interest is  $(33.949 - 33.080) = .869$ . The lease payment can be a maximum of \$1,425 plus 50%, or \$2,137.50

$$\$2,137.50 \times .869 = \$1,857$$

4th Period - 1/24/2023 thru 7/23/2029

The Present Worth Factor for 26 quarters, deferred 152 quarters at 12% interest is  $(34.155 - 33.949) = .206$ . The lease payment can be a maximum of \$2,137.50 plus 50%, or \$3,206.25.

$$\$3,206.25 \times .206 = \$660$$

Present Value of Lease Payment \$35,289

Reversion

At the end of the 55 year lease the leaseholder has the option of renewing the lease for another 55 years, but the lease payment can be increased to market rent. Thus, the appraiser assumes that the leaseholder would no longer have a leasehold interest at that point, and the value of the Leased Fee Interest would equal the value of the Fee Simple Interest. The estimated value of the property in the year 2029 is \$2,970,000, which reflects a 70% increase in land value every 10 years.

Present Value of Reversion

Present Worth Factor for \$1 received after 178 quarters at 12% annual interest is .0052.

$$\$2,970,000 \times .0052 = \$15,444$$

Total Estimated Market Value of Leased Fee Interest \$50,733

Note: This represents the market value of the State of Alaska's Leased Fee Interest in the property.

ADDENDUM C

Leasehold Interest Calculations

Based on Lease Terms and Investor Expectations in Market

Period - 1/23/85 thru 1/23/95

PW of the rental advantage of \$4,650 (\$5,600 - \$950)  
per quarter for 40 quarters discounted at 12% interest.  
The Factor is 23.808

\$4,650 x 23.808 = \$110,708

Period - 1/23/95 thru 1/23/2003

Present Worth of the Rental Advantage of \$8,570  
(\$9,520 - \$950) discounted at 12% interest for  
32 quarters, deferred 40 quarters. The Factor  
is 30.246 - 23.808 = 6.438

\$8,570 x 6.438 = \$ 55,174

Period - 1/23/2003 thru 1/23/2005

Present Worth of the Rental Advantage of \$8,095  
(\$9,520 - \$1,425) discounted at 12% interest for  
8 quarters, deferred 72 quarters.  
The Factor is 31.107 - 30.246 = .861

\$8,095 x .861 = \$ 6,968

Period - 1/23/2005 thru 1/23/2013

Present Worth of the Rental Advantage of \$14,759  
(\$16,184 - \$1,425) discounted at 12% interest  
for 32 quarters, deferred 80 quarters.  
The Factor is 33.080 - 31.107 = 1.973

\$14,759 x 1.973 = \$29,125

Period - 1/23/2013 thru 1/23/2015

Present Worth of the Rental Advantage of \$14,046  
(\$16,184 - \$2,138) discounted at 12% interest  
for 8 quarters, deferred 112 quarters.  
The Factor is 33.344 - 33.084 = .264

\$14,046 x .264 = \$ 3,711

Period - 1/23/2015 thru 1/23/2023

Present Worth of the Rental Advantage of \$25,375  
(\$27,513 - \$2,138) discounted at 12% interest  
for 32 quarters, deferred 120 quarters.  
The Factor is 33.949 - 33.344 = .605

\$25,375 x .605 = \$15,357

Period - 1/23/2023 thru 1/23/2025

Present Worth of the Rental Advantage of \$24,307  
(\$27,513 - \$3,206) discounted at 12% interest  
for 8 quarters, deferred 152 quarters.  
The Factor is 34.030 - 33.949 = .081

\$24,307 x .081 = \$ 1,972

Period - 1/23/2025 thru 1/23/2029

Present Worth of the Rental Advantage of \$43,565  
(\$46,771 - \$3,206) discounted at 12% interest  
for 18 quarters, deferred 160 quarters.  
The Factor is 34.155 - 34.030 = .125

\$43,565 x .125 = + \$ 5,455

Total Discounted Present Value of Leasehold Interest \$228,470

Add: Leased Fee Interest +50,733

TOTAL of Leasehold and Leased Fee Interests \$279,203

Note: This is equal to the value in Fee Simple of \$280,000, which provides a check against the assumptions and calculations.

## APPRAISER'S QUALIFICATIONS

ERIC G. FOLLETT, MAI

American Institute of Real Estate Appraisers, Designation — MAI



### EDUCATION

College: B.S. in Mathematics, University of Washington, 1973

Courses: American Institute of Real Estate Appraisers:

AIREA Course IA - Seattle Pacific, 1974

AIREA Course IB - University of Portland, 1977

AIREA Course II - University of Colorado, 1978

AIREA Course IV - Litigation - U. of Portland, 1980

### BUSINESS EXPERIENCE

Appraiser - FOLLETT & ASSOCIATES, Anchorage, AK, 1/77 to present

Appraiser - ERICKSON & ASSOCIATES, Anchorage, AK, 4/75 to 7/81

Programer/Analyst - SAFECO INSURANCE CO., Seattle, WN, 3/73 to 4/75

### SCOPE OF ASSIGNMENTS

Appraisals of commercial property, office buildings, medical buildings, industrial buildings, residential, special use properties and vacant land. Feasibility studies, and Consulting. Qualified as an expert witness. Assignments located in Municipality of Anchorage, Matanuska-Susitna Borough, Kenai Borough, Valdez, Cordova, Seward, Kodiak, Bethel, Dutch Harbor, Juneau, Haines, Sitka, and numerous "Bush Communities".

### MAJOR ASSIGNMENTS (over \$1,000,000)

Jewel Lake Shopping Center & Bowling Alley, Anchorage  
Alaska Hospital & Professional Building, Debarr Rd., Anchorage  
Eastgate Shopping Center, Boniface Parkway, Anchorage  
"Alyeska" Office Building Complex, Bragaw Street, Anchorage  
Viewpoint Subdivision - 128 Lots  
Bowling Alley and Bar, Sitka, Alaska  
Vagabond Mobile Home Park, Anchorage, Alaska  
Medical Clinic, Anchorage, Alaska  
"Cottonwood Village" Condominiums - 104 Units  
Wasilla Business Park, Wasilla, Alaska  
Apartment Complex - 24-unit, Kenai, Alaska

### TYPICAL CLIENTELE

All major Banks in Alaska  
Carr-Gottstein Properties  
Jack White Company  
Area Realtors  
Bureau of Land Management  
Hines Investments  
State of Alaska Division of Parks

Alaska State Housing Authority  
Calista Native Corporation  
Kuskokwim Management Corp.  
Parker Drilling Company  
Union Oil Company  
Professional Contractors  
U.S. Postal Service

Bradley  
3/21/85 ✓

Original sponsors: Shultz, Sund,  
M.M.Miller and Marrou

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 248 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to leases on certain land formerly  
7 described as university-grant land; and providing for  
8 an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. (a) A person and the assignee of a person who was a  
11 lessee of university-grant land on June 17, 1983, and whose lease is, on  
12 the effective date of this Act, managed by the Department of Natural Re-  
13 sources may request the commissioner of natural resources to issue a  
14 quitclaim deed conveying the land.

15 (b) Except as provided in (c) of this section, a lessee who holds a  
16 lease of former university-grant land under AS 38.05.070 may purchase the  
17 land for the lower of

18 (1) the appraised fair market value of the land under the lease  
19 as specified in Appendix F of the Settlement Agreement between the Depart-  
20 ment of Natural Resources, the Department of Revenue, the Department of  
21 Administration, and the University of Alaska and its Board of Regents as  
22 trustee for the University of Alaska as ratified in ch. 22, SLA 1983; or

23 (2) its appraised fair market value on June 17, 1983, as de-  
24 termined under AS 38.05.085(b).

25 (c) A lessee who holds a lease of former university-grant land that  
26 was subject to reappraisal under AS 38.05.085(a) may purchase the land for  
27 the lower of

28 (1) the appraised fair market value of the land under the lease  
29 as the value has been determined under Paragraph 15 of the Settlement

1 Agreement between the Department of Natural Resources, the Department of  
2 Revenue, the Department of Administration, and the University of Alaska and  
3 its Board of Regents as trustee for the University of Alaska as ratified in  
4 ch. 22, SLA 1983; or

5 (2) its appraised fair market value under the lease on June 17,  
6 1983, as determined under AS 38.05.085(b).

7 (d) A lessee on the effective date of this Act who was a lessee on  
8 June 17, 1983, and who would have been entitled to rights under former  
9 AS 38.05.058 before its repeal may exercise those rights in a purchase  
10 under (b) or (c) of this section.

11 (e) A lessee who holds a lease of former university-grant land that  
12 is classified as agricultural land may purchase the land under (b) or (c)  
13 of this section subject to AS 38.05.321(a).

14 (f) The commissioner of natural resources shall advise each lessee  
15 who may have rights under this section of the enactment of this section.

16 (g) A lessee of former university-grant land who does not give the  
17 commissioner of natural resources notice of an intent to purchase within  
18 180 days after receiving the notice of rights provided for in (f) of this  
19 section may purchase the former university-grant land for its appraised  
20 fair market value at the time the notice of an intent to purchase is given.

21 (h) A purchase of land under this section extinguishes all rights and  
22 claims arising out of the lease against the state by a lessee.

23 \* Sec. 2. This Act takes effect immediately in accordance with AS 01.-  
24 10.070(c).

ANALYSIS OF HB 248

- Sec. 1 (a) Would allow a person who leased University Grant land on June 17, 1983 and whose lease is managed by the Commissioner of Natural Resources when this bill takes effect, to request the Commissioner to issue a patent to the land.
- Sec. 1 (b) <sup>e</sup> The person who holds a lease of former University Grant land under AS 38.05.07 (c) or .085 (a) (allows a lease to be issued for up to 55 years and sets out rules for reaching a fair appraisal price) may buy the land for the lower of the Appraised fair market value as set out in the Settlement Agreement between the Department of Natural Resources, Revenue, Administration and the University of Alaska or the appraised value on June 17, 1983 under AS 38.085 (b) (under this law the Director of the Division of Land had to have the property appraised)
- Sec. 1 (d) A person who holds a lease on the land when this bill becomes law and who leased the land on June 17, 1983 and who would have been entitled to rights under the former AS 38.05.085 before its repeal, may exercise the purchase rights outlined above. (Sec. 1 (b) and (c)).
- Sec. 1 (e) A person who holds a lease of former university grant land that is classified as agricultural may purchase it subject reservations by the State of all interests except agricultural rights.
- Sec. 1 (f) The Commissioner of Natural Resources is responsible for advising lessee's who may have rights under this law when it is enacted.
- Sec. 1 (g) A lessee of former university grant land who does not give the Commissioner notice of intent to purchase with 180 days after receiving notice may purchase the land at its appraised fair market value at the time the notice of intent to purchase is given
- Sec 2. Provides Act takes effect immediately.

APPENDIX "F" \*280,000 - 2 = \*\*140,000

① LEASE PAYMENTS 294,262  
\*\*REVERSION 1,169,294  
1,463,556

② LEASE PAYMENTS 294,262  
\*REVERSION 2,970,000  
3,264,262

③ SALE/LEASE FEE ~~50,733~~  
Comp Int/ ]0% 4,214,267  
4,265,000

④ ANNUAL RENT ~~3,800~~ ÷ annual lease rate (.06) =  
MARKET VALUE ~~63,333~~

⑤ SALE/ RENTAL  
MARKET VALUE 63,333  
Leased Fee Value 50,733  
12,600 Gain 25%

d) The Department shall assist the University for two years after the University receives title to University-grant lands and other state lands as a result of this Agreement by providing available resource and planning information.

14. Future Management of University-Grant Lands. The Board of Regents, as trustee for the University of Alaska, shall have the responsibility and duty to control, administer, and manage all lands which are transferred to the University pursuant to this Agreement, for the exclusive use and benefit of the University and for its financial enhancement and security. The Board of Regents shall manage such lands for educational purposes and to produce the maximum amount of income for the University. The Board of Regents shall not have responsibility for, or control over, the fish and game on, or the appropriation of water from, University-grant lands, both of which shall be subject to applicable state laws and regulations. The University shall provide legal access to all navigable and public waters on or adjacent to the lands which are the subject of this Agreement. The University recognizes that lands underlying navigable waters are owned in fee by the State, and are not subject to the provisions of this Agreement. The management of such lands shall be coordinated by the State with the Board of Regents' management of adjacent lands which have been conveyed by this Agreement. Nothing in this Agreement shall prevent the University from applying for a permit to appropriate water pursuant to the Alaska Water Use Act, A.S. 46.15.

15. Interim Management. After signing of this Agreement creation of any third party interests in the University grant land or lands reserved for selection by the University pursuant to paragraph 12 shall require approval by the University with the exception of lease conversions pursuant to Section 12, ch 138, SLA 1977 as amended, Ch. 182 SLA 1978, H.B. Ch. 113 SLA 1981. University-grant lands which are the subject of municipal selections will not be conveyed to the applicant until the University has approved replacement lands as contemplated by AS 29.18.206(d).

16. Resumption of Litigation. In the event that the University does not receive the total dollar amount owed in cash or land as provided in this Agreement by October 30, 1983, the parties shall be deemed not to have waived any right they may have otherwise had to

ATTACHMENT #1

STATE - UNIVERSITY / LEASES

**BACKGROUND:**

University Trust Lands were Leased by the State, Division of Lands, during the period 1968 to 1975, as Long Term 55yr., Renewable Leases. From 1975-1977 Lessees of All State Land, (Mental Health, School, University, etc.), were appealing absorbitant rental increases, resulting in the Legislature passing New Lease, Amendment Laws in 1977, 1978, (repealing the former Disposal/Lease Laws), providing an option to "Request Convrnsion, prior to January 1, 1979", of State Leases in effect on or before June 23, 1977, under the "New Laws"; thereby, was to follow an executed Lease amendment. At that time All Leases of State-owned land, including Mental Health, School, Municipality, etc., were amended, and Leaseholder's were permitted to buy their lands at the amended Lease Appraisal Valuation.

With rare exception, by early 1978, University Land Leases were not amended, even though the Lessees filed Lawful "Conversion Requests", (nor allowed to be sold to an applicant) because the University objected, "At its meeting February 15-16, 1978, the Board of Regents declined to approve conversion of Leases", although dictated by the State Statutes.

The University filed a lawsuit on April 23, 1979 vs the State, "allegding mismanagement", also filing a Lis-pendens on all University Trust Land, (including Leased Land, and "some" other land, not belonging to the University). They sought an injuction to stop Lease Conversions, (Amendments), Lease Renewal, or any Dispoal thereof, seeking ultimate management of all University Lands. The State sought to enjoin the Lessees as defendants in the Suit; But failed to show the Court how Third Party Lessee's would be damaged. In February, 1981, the Supreme Court ruled that the "State, not the University, owned th Land and could dispose of it only by law, and only the Legislature makes the Law".

XXX On March 11, 1982, the State and University entered into a tentative, (without predjudice), "Settlement Agreement", subject to ratification by the Legislature. Whereby: Compensation for Damages by the State would be paid; Leases were agreed to be binding, and management would be continued by the State, until transfer was requested by the University; Lease Conversion, (Amendments) could finally be completed; All University Lands would be conveyed to the University by the State, except any "unduly encumbered land, including any Lease's" the University elected not to retain, which would be replaced by other State land. Legislative concurrence and the Governors approval finally occurred on June 17, 1983, thru passage of SB 41. During this time Leaseholders complained to Legislators of their ongoing plight, and the Unviversity decided to give up ALL Leased Land to the State, and to speed up the schedule of reconveyance of Leases. Thru all this time the Lis-pendens has remained, until the final reconveyance.

XXX In the meantime, following the March 11, 1982, tentative "Settlement Agreement", the Division of Lands started processing University Lease (Amendments), which still remained unexecuted by the Lessor and Lessee, subsequent to the "Conversion Request" Agreement (to Amend), previously entered into by the Lessee and the State prior to 1-1-79. The old 1977, 1978 paperwork was dug out, completely ignoring a Lease Conversion Amendment to the 1977, 1978 Lease Conversion Laws enacted in 1981, (SLA 113, Sec.44.), and made effective retroactively to July 18, 1978. THREE different Conversion Law provisions could now apply; per the "REQUEST" Agreement, Stipulating Provisions/Instructions on back.

(1) 1977 Conversion Law created "New" lease, (rental) based on last appraisal prior to 1-1-75 brought forward to 1-1-76 @ 10% a year, or, if leased after 1-1-75 @ the original lease rate.

(2) 1978 Conversion Law "Amends" lease, (rental) based on last appraisal prior to 1-1-75 brought forward to 1st quarter following request @ 10% a year, or, if leased after 1-1-75 "@ the original leased rate". (SLA 182, Sec.21. "If leased after 1-1-75 a New lease is the fair market value brought forward to conversion date @ 10% per year).

(3) 1981 (SLA 113, Sec.44., Retroactive to 7-18-78) Conversion Law "Amends" lease, (rental) based on last appraisal prior to 1-1-74 brought forward to 1st quarter following request @ 10% a year, or, if leased after 1-1-74 @ 10% per year to date of request.

XXX "A YEAR" is compounded; XXXX "PER YEAR" is straight Annual Interest.

The Division of Lands, offered only ONE provision to all University Land Lessee's, which included AGREEING to NOW execute a Lease Amendment (@ approximately Double the current rental rate), unnecessarily back-dating the Amendment, retroactively to 1979, or earlier; Also, demanding the immediate payment of a retroactive Compounded rental rate increase, (Lessee's had never been notified of any "additional", accruing, rental-billing, prior to this demand). The Lessee's were forced to pay-up, or supposedly "lose their rights" under the provisions of the "Amended Lease Law" now in effect.

#### ISSUES:

Since the Lessee's were innocent Third Parties to the lawsuit between the University and the State, and the land was in limbo, the Lessee's feel the inequity they suffered was a gross injustice, which they had no control over. The only thing Lessee's could do during this period, was pay the Lease expenses, and the Taxes, and pray for a just outcome. In the interim: Lessee's lost the opportunity to utilize their Residency Credits, for purchase of their Leased Land; They had to forestall plans for building, improving, or even retiring. Some have died; and some just gave up!

Since it has been the policy of the State to dispose of lands to its citizens, allowing a preference right to Leaseholders; due to the forestated circumstances, it is respectfully requested the State agree "It is in the best interest of the State" to offer to sell its Equity in these leased lands to the present Lessee's, under an equitable, applicable Preference Right Statute, such as AS 38.05.035(b)2.

State Capital  
Ardis Murgulanski - Senator  
Pouch V  
Juneau, AK. 99811

F. DOUGLAS & GAIL R. KENYON  
1692 WINTERSET DR.  
ANCHORAGE, AK. 99508

4/14/85

1 of 5

RE: • 55 YEAR LEASE OF UNIVERSITY LAND - OPTION TO PURCHASE  
• ADL 34213 - BENKA LAKE SB, AK, BLK 2 LOT 3 (2.872 ACRES)  
• LOCATION - MILE 3 TALKEETNA SPUR RD. - APPX. 1 1/2 MI OFF HWY.

I. SUBJECT HISTORY:

- We have been residents of the state for 25 years, and entered into agreement to lease this property in Dec. 1966, 19 plus years ago, at the time we would have preferred to purchase, but it was not possible. We selected this site to use for recreation while our children were growing up, and to continually improve upon until we could use it as our retirement home, and ultimately to turn it over to our children. Our intentions have not changed over the years, as we have put in a great deal of hard work and considerable expense. We have a very deep sentimental and personal feeling about this property.
- I have inquired thru Mr. Ed Barber of the D. N. R. several times over the years about purchasing the property. The most recent problems being that the UNIV. of AK and the State DNR have had the lands tied up in internal disputes, thru legal litigations, which has lasted to my knowledge some "5" years.
- In approximately Feb 1984, Mr. Barber informed me that it appeared the lands would become available sometime in late 1984, and that as it stood then the purchase price would be based on Market Value prior to the beginning of litigation, 1979, and that the "Residency Credits" would be applicable.

- To continue I am enclosing copies of correspondence, mainly to bring attention to three points I consider important: (1) Time restraints placed on "us"; they were in litigation for 5 years, and it then took a year to prepare their proposal. (2) The term used, "NEGOTIATED SALE". (3) "Fair Market Value" at the present time.
  - ATCH I - Time restraint of 2 months to decide if and how to purchase the property, and the term Negotiated Sale, and a "Fixed Price" of 24,000.
  - ATCH II - My Intent to Purchase by "Negotiated Sale".
  - ATCH III - Time Restraint of 1 month, Fair Market Value established by DNR as of the present, No Negotiated Sale has taken place.
- \* NOTE - Pertaining to ATCH III, Per my written request a 1 month extension until MAY 1 was granted because of a scheduled month long out of state vacation, this still allows only 1 month to attend to the matter.

## II DISPUTES: Listed below are some of the items I consider UNFAIR and DISAGREE with DNR's policy on:

- FAIR MARKET VALUE NOW - The lands have been tied up by the state for years, it should be retroactive at least until before the DNR / UNIV. litigation.
- NEGOTIATED SALE TERM - There were no negotiations, DNR fixed the price.
- NO RESIDENCY CREDITS - was informed they would be applicable, again it should be retroactive to until before litigation. Other parcels have been conveyed with credits, under lease and other land programs. We have not exercised ours on other lands and programs because we were led to believe they could be applied to this property.
- 12.75 PERCENT INTEREST - It appears the state wants to make as much as possible on these lands. It is common in the private sector to purchase at 10%, have heard of even less than 10 in both private and other states programs.

- STATES VESTED INTEREST IN PROPERTY - I question what vested interest the state truly has in this property. We have made all the improvements over the past 19 years. It seems the most the state has done, is to tie up the land in internal battles, and to accept my annual lease payments. It seems I've read many times over the years of the state's good intentions of getting the lands out to the public. I would question this point.
- TIME RESTRAINTS - Lack of adequate time to make personal financial arrangements to purchase the property outright, to avoid paying a high interest rate of 12.75%. If I enter into contract this 24,000. price could end up at 50 to 60,000. It appears the state is in business to make as much as possible.
- CONTINUE LEASE OPTION - Does not appear a good option. The property has been re appraised and the annual payment will go up some 400 to 500 %, like it did the last time.
- APPRAISED PRICE - I would question DNR's price. Having spent considerable time in the area involved, the majority of unimproved lands sold by the private sector have ranged from 4,000. to 6,000. per acre. Are they charging me for my improvements? An interesting point comes to mind. Approximately 4 years ago, a 40 acre parcel adjacent to my property was sold by the MAT-50 Borough for 800. per acre, that's 36,000. for 40 acres.
- STATES RIGHTS - Some question arises in my mind of the state's right and apparent intent to be in the competitive Real Estate business, competing directly with private enterprise.

- STATES LAND DISPOSAL - In many past programs, the states theme seemed to be to get some of the lands out to the citizens under a FAIR and AFFORDABLE program of disposal. It appears in my case, that I do not fall into that category. I know of many of our younger and older citizens that simply cannot afford to purchase lands at today's Market Value. The older citizen category could include me, as I had planned to retire in the next 2 to 3 years.
- QUESTION - Does anyone have any control over DNR's dealings, or do they just do as they please, when they want to?

### III RECENT DEVELOPMENTS:

- Upon my return from vacation a few days ago, in desperation, I consulted an attorney. His opinion was that I could pursue the matter legally, but the cost of doing so would undoubtedly have a large impact on my families future financial security. In addition he advised that by not entering into contract, I may lose any future opportunity to purchase, and if I were to wait and continue leasing until possibly better terms could be arranged, the State (DNR) could simply refuse to allow purchase, by simply stating "It was Not In The States Best Interest". The conclusion we reached, was that the State has us between the proverbial "Rock and a Hard Spot".
- A few days ago I was told that legislation had been introduced in the House, that could be beneficial to me as a lease holder, and I assume to many others in the same position. I do not know the content of this Bill, but understand it is House Bill 248, and Senate Bill 255. I am sending copies of this letter to each of my district representatives and anyone else I can think of who might be interested.

- It appears that our last hope is that legislation has been introduced that would be beneficial. I am hopeful that our district representatives could at least review this legislation and if beneficial, request DNR to allow additional time on these lease contracts, so that all lease holders could share the same benefits, whatever they may be.
- It is our impression from several factors, and especially if legislation has been introduced, that the DNR is unduly pressuring us to conclude this transaction as soon as possible, apparently for reasons known only to them.

## IV CLOSING:

- We have been very disappointed, angered, and upset by the manner and procedure in which this entire matter has been handled over recent years, and especially the last six months.
- This is without doubt the longest letter I have ever written. To any recipient who reads the entire letter, my thanks for your patience. If anyone can be of any assistance, in any way, at this late date, we would be forever grateful, we have only until MAY 1, 1985.

Sincerely,  
E. Douglas Kenyon

E. DOUGLAS AND GAIL R. KENYON  
1692 WINTERSET DR.  
ANCHORAGE, AK 99508  
RES. No. 562-5282 AFTER 5<sup>00</sup> PM

P.S. My apology for not typing this, but it seems important to get it off ASAP.

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

### DIVISION OF LAND AND WATER MANAGEMENT

8/84

APR 19 1985  
CR 16

BILL SHEFFIELD, GOVERNOR

555 CORDOVA STREET  
POUCH 7-005  
ANCHORAGE, ALASKA 99510-7005  
PHONE: (907) 276-2853

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

~~August 20, 1984~~

ATCH I

E. Douglas Kenyon and  
Gail R. Kenyon  
1692 Winterset Dr.  
Anchorage, AK 99504

Re: ADL 34213 - Option to Purchase

Dear Mr. and Mrs. Kenyon:

This is a follow-up to this Division's letter dated June 28, 1984 offering the subject lease for sale. Please be advised that this offer expires ~~October 15, 1984~~. \* 2 mos.

The litigation between the University of Alaska and the Department of Natural Resources has been settled. As a result of the settlement agreement the Department of Natural Resources may now proceed to sell you, ~~by negotiated sale~~, the lands you are leasing.

The purchase price is established at \$24,000.00, ~~the amount the State~~ \* ~~reimbursed the University and its~~ trust under the terms of the settlement. \* TRADED LANDS ? NO \$ PAID

An eligible veteran is entitled to a discount of 25% of the purchase price on lands classified for a use other than commercial and industrial. A discount may not be applied to survey costs, road development costs, utility assessments, or other cost that are determined to be reimbursable to the State. A veteran is entitled to only one discount during the veteran's lifetime.

If you elect to exercise your option to purchase, please notify Contract Administration, Land Management Section, Division of Land and Water Management, Pouch 7-005, Anchorage, Alaska 99510 by October 15, 1984.

On October 15, 1984 this option to purchase will expire then an agency review will be completed by the Southcentral District Office. You will be responsible for bearing the cost of a legal notice to be submitted to a newspaper serving the area in which the land is located.

You may choose to pay the entire purchase price and receive a title document or you may enter into a land sale contract. If you elect to enter into a contract the terms of payment require a 5% down payment,

E. Douglas Kenyon and  
Gail R. Kenyon

2

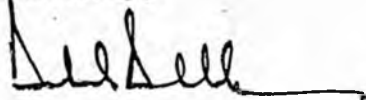
August 9, 1984

quarterly or annual installments on a 20 year level payment basis, and interest at the prevailing rate for real estate mortgage loans made by the federal land bank for Alaska. The interest rate at this time is 12½%, but is subject to change.

If you do not wish to purchase at this time, you can continue to lease according to the terms of your lease.

If you have any questions, please advise.

Sincerely,



Richard A. LeFebvre  
Deputy Director

ATCH I

PK/ljr

*Orig.*

~~September 28, 1984~~

State of Alaska - Dept. of Natural Resources  
Div. of Lands and Water Mgt.-Contract Admin.  
Pouch 7-0005 Anchorage, Ak. 99510

ATCH II

Mr. Richard A. LeFebvre - Dep. Director

Re: ADL 34213 - Option to Purchase - Benka LK AK BLK 2 LOT 3L

In reply to your letter of ~~Aug 9, 1984~~, advising us of the option to purchase by negotiated sale, the above identified property presently leased by us from the State of Alaska.

This is to notify you that "We do intend" to exercise the option to purchase this property by negotiated sale.

The result of a phone call to your offices, informed us that the sale associated title documents, contract agreements, and monetary arrangements would be ready and take place approximately the first of next year (1985).

If there are any changes in your departments intentions for this property, or in the monetary terms set forth in your letter, or in our understanding of the approximate time of transaction, we expect to be notified in reasonably advance notice by Certified Mail.

Sincerely,

*E. Douglas Kenyon*

RECEIVED

SEP 28 1984 1 PM

Div. of Land & Water Mgmt. Contract Admin.

*Hand Delivered.*

*→ Mrs Knapp*

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

### DIVISION OF LAND AND WATER MANAGEMENT

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

~~March 1, 1985~~

E. Douglas Kenyon and  
Gail R. Kenyon  
1692 Winterset Dr.  
Anchorage, AK 99504

Re: ADL 34213 - Land Lease Purchase  
Pursuant to AS 38.05.102

Dear Mr. and Mrs. Kenyon:

The agency review, legal advertising and final finding has been completed on ADL 34213. ~~The fair market value~~ for the above referenced parcel is established at \$24,000.00.

*1 mon \**  
The enclosed forms must be completed and returned to this office by ~~April 1, 1985~~ in order to enter into a contract or receive title to the parcel. The forms include:

1. RELINQUISHMENT AGREEMENT (Form 10-3131) - form must be completed in full.
2. DECLARATION OF INTENT (Form 10-1018) - form must be completed in full.
3. VETERAN ELIGIBILITY APPLICATION/AFFIDAVIT (Form 10-1086) - under AS 38.05.940 an eligible veteran may receive a discount of 25% of the purchase price. Information regarding discount eligibility may be found on the form's reverse. If you wish to claim a discount, please complete this form in full, and submit with proof of residency and the DD Form 214.

If you elect to enter into a contract, please remit a down payment of 5% of the purchase price or discounted purchase price and a \$50.00 document handling fee with the completed forms. Contracts shall be issued for a term of 20 years with interest at the prevailing rate for real estate mortgage loans made by the federal land bank for the farm credit district for Alaska at the time the contract is signed by the Director or his representative. The interest rate at this time is 12.75% and is subject to change.

3  
ORIG.

BILL SHEFFIELD, GOVERNOR

3801 C STREET  
SUITE 1030  
POUCH 7-005  
ANCHORAGE, ALASKA 99507

2/21/85  
Phoned DWR, spoke  
with Ms. Knapp - Ms.  
said files still in Co.  
CTL off - may be back  
in approx. 2 wks. Asked  
Ms. K. to note my file  
that I had called &  
would be out of state  
on VCTN for approx 1  
Mon., Beging 1st wk Mar.

ATCH III

E. Douglas Kenyon and  
Gail R. Kenyon

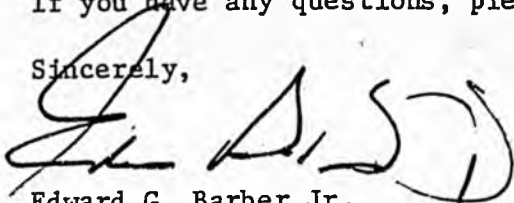
2

March 1, 1985

If you elect to receive title now, please remit the purchase price or discounted purchase price and a \$50.00 document handling fee with the completed forms.

If you have any questions, please advise.

Sincerely,



Edward G. Barber Jr.  
Chief, Contract Administration

~~ATCH III~~

Enclosures

cc: Accounting

PK/ljr

Original sponsors: Shultz, Sund,  
M.M.Miller and Marrou

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 248 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to leases on certain land formerly  
7 described as university-grant land; and providing for  
8 an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. (a) A person and the assignee of a person who was a  
11 lessee of university-grant land on June 17, 1983, and whose lease is  
12 managed by the Department of Natural Resources on the effective date of  
13 this Act and is in good standing, may apply to purchase the land and re-  
14 quest the commissioner of natural resources to

15 (1) issue a quitclaim deed conveying the land; or

16 (2) transfer the land under a contract of sale under AS 38.-  
17 05.065.

18 (b) Except as provided in (c) and (d) of this section, a lessee who  
19 holds a lease of former university-grant land may purchase the land for the  
20 current appraised fair market value of a fee simple ownership of the land.

21 (c) Except as provided in (d) of this section, a lessee who holds a  
22 lease of former university-grant land and who has accepted an offer to  
23 purchase the land before January 1, 1986, for the price specified under  
24 Appendix F of the Settlement Agreement as amended between the Department of  
25 Natural Resources, the Department of Revenue, the Department of Administra-  
26 tion, and the University of Alaska and its Board of Regents as trustee for  
27 the University of Alaska as ratified in ch. 22, SLA 1983, may purchase the  
28 land at the price specified in Appendix F as amended.

29 (d) A lessee who holds a lease of former university-grant land and

1 who files an application with the department before January 1, 1986 to  
2 purchase the land but disagrees with the price specified in Appendix F of  
3 the Settlement Agreement, as amended, may purchase the land for the fair  
4 market value of the fee simple ownership of the land on June 17, 1983.

5 (e) A lessee who holds a lease of former university-grant land that  
6 is classified as agricultural land may purchase the land subject to the  
7 reservation of non-agricultural rights by the state.

8 (f) An application to purchase under (b), (c), and (d) of this sec-  
9 tion constitutes a relinquishment of rights under the lease on

10 (1) the issuance of a quitclaim deed by the state; or

11 (2) the execution of a contract of sale under AS 38.05.065.

12 (g) Within 90 days after the effective date of this Act, the commis-  
13 sioner of natural resources shall advise each lessee who may have rights  
14 under this section of the enactment of this section.

15 (h) A lessee qualified to purchase under (b), (c), or (d) of this  
16 section may tender the commissioner an amount equal to five percent of the  
17 purchase price determined under (b), (c), or (d) of this section and pur-  
18 chase the land under AS 38.05.065.

19 \* Sec. 2. This Act takes effect immediately in accordance with AS 01.-  
20 10.070(c).