SB 213

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB 213
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date: 17-Apr-89
Agency Affected: Natural Resources
Title: An Act relating to commercial development leasing of state land.
BRU: Land & Water Mgmt
Sponsor: Senator Kertulla
Components: Land & Water Mgmt
Requestor: Senate Resource

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0					

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Larry Ostrovsky
Phone: 465-2400
Division: Commissioner's Office
Date: 17-Apr-89

Approved by Commissioner: Lennie Gorsuch
Date: 17-Apr-89
Agency: Department of Natural Resources

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

SB213

RESOURCES COMMITTEE SUBSTITUTE FOR H.B. 290 (CSHB 290(Res))

The Department of Natural Resources (DNR) believes that CSHB 290(Res) would considerably improve and modernize the process of leasing state-owned land for hunting and fishing lodges, resorts, and other recreational facilities. It does not change existing land use laws, but instead provides a special process for this type of lease. The bill offers the following distinct advantages:

- Existing general-purpose leasing laws are not only old, they are poorly suited to recreation site leasing because they were designed for other uses. CSHB 290(Res) incorporates up-to-date concepts of recreational facilities leasing, including full public review of the lease's specifics, better safeguards of the public interest, and more careful control over the development process.

- Existing laws require a high-bid auction with no negotiating, giving DNR and the Alaskan public little control over the "style" of the development. Though negotiating such details is unnecessary for a fish processing plant or a warehouse, it is essential for a recreational facility intended to attract Alaskans and visiting tourists. Under CSHB 290(Res), developers will bid competitively for the opportunity to negotiate a lease. The negotiating process gives state agencies, nearby communities, and the general public a full voice in determining how the site will be developed. The final decision to issue the lease is not made until most project details have been established and exposed to agency and public review.

- Similarly, existing laws do not always provide a fair return to the state if used for recreational leases. At present, the department must lease land only at approved, appraised market value (with minor exceptions). However, the appraised value of a lease does not include the value added to a lodge or resort by the surrounding acreage of pristine forest land and streams. Charging on the basis of a lodge's gross receipts or a ski area's total clientele might be much more appropriate to ensure a fair return for the state. CSHB 290(Res) provides the flexibility to set lease payments in these and other ways, depending upon specific circumstances.

- Existing laws also freeze lease payments for 25 years, prohibiting any adjustment for inflation. CSHB 390(Res) allows lease payments to be adjusted every five years for changed circumstances and to ensure the state is adequately compensated.

If enacted, CSHB 290(Res) will expand opportunities for Alaskans to develop visitor facilities, provide better incentive for the state to market a prime resource, and give the public and agencies the information needed for full participation and wise recreational leasing decisions.

Proposed amendments to SB 213

AMENDMENT #1

Page 1, lines 27-28
Section 1, paragraph (c)

Insert after "this section,":

"...the commissioner may solicit proposals from potential lessees. The..."

AMENDMENT #2

Page 2, line 16
Section 1, paragraph (d)

After "state", delete "." and insert:

"and in a local newspaper in general circulation in the region where the land is located."

AMENDMENT #3

Page 3, line 15
Section 1, paragraph (g)

After the sentence ending "public and state agencies." and before the sentence beginning "The preliminary decision...." insert new sentence:

"The commissioner may hold public hearings in the regions where the land proposed for lease is located."

6-0841H
Bannister
4/6/90

Original sponsor(s): SEN. KERTTULA

IN THE SENATE BY THE RESOURCES COMMITTEE

CS FOR SENATE BILL NO. 213 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the leasing of state land for recreational facilities development."

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

* Section 1. AS 38.05 is amended by adding a new section to read:

Sec. 38.05.073. RECREATIONAL FACILITIES DEVELOPMENT LEASING. (a) To identify land suitable for recreational facilities development leasing, the commissioner shall make the identification through a regional land use plan or a site-specific land use plan adopted under AS 38.04.065. If an adopted land use plan specifically allows the type of development under consideration, the commissioner may request proposals from potential lessees under (c) of this section. Consistent with AS 38.04.065, the development of a land use plan used to identify land suitable for recreational facilities development leasing must consider the supply of recreational opportunities and alternatives, economic and social factors, and fish, wildlife, and other resources affected by the specific type and location of recreational facilities development under consideration.

(b) AS 38.05.070(a), 38.05.085(c), 38.05.090, and 38.05.103 apply to leasing under this section. The other provisions of AS 38.-05.070 - 38.05.105 do not apply to leasing under this section.

(c) If the commissioner identifies land for recreational facilities development leasing under (a) of this section, the commissioner shall prepare a written request for proposals that includes

(1) the specific type of recreational facilities

development for which the land may be leased;

(2) the form of compensation that the commissioner intends to require for the lease under (1) of this subsection;

(3) the selection criteria that the commissioner will use to determine the eligibility of a developer, including the developer's financial backing and capability, experience in the proposed undertaking, ability to meet bonding or insurance requirements, and ability to comply with resource and environmental analysis requirements; and

(4) the criteria that the commissioner will use to determine the suitability of proposals.

(d) After preparing a request for proposals under (c) of this section, the commissioner may issue the request to solicit proposals from persons who are interested in leasing the land for recreational facilities development. The request for proposals must be advertised at least three times in a newspaper of general circulation in the state. The proposals submitted to the commissioner must include the specific facts on which the potential lessee bases its ability to develop the land, including its ability to comply with the items identified in (c)(1) - (4) of this section.

(e) After soliciting proposals under (d) of this section, if the commissioner determines that only one potential lessee is acceptable, the commissioner may begin negotiations with the potential lessee to develop the terms and conditions for the lease.

(f) After soliciting proposals under (d) of this section, if the commissioner determines that two or more potential lessees are acceptable, the commissioner may select the potential lessee who submits the highest bid during an auction or by sealed bids, whichever method the commissioner chooses. The minimum bid must equal the amount established by the commissioner plus the administrative fee established

under (j) of this section. The commissioner shall also require the potential lessee to make an earnest money deposit under AS 38.05.-860(b). After the commissioner selects a potential lessee, the commissioner may begin negotiations with the potential lessee to develop the terms and conditions for the lease.

(g) After developing proposed lease terms and conditions with a potential lessee under (e), (f), or (i) of this section, the commissioner may issue a preliminary decision under AS 38.05.035(e) that leasing the land to the potential lessee on the proposed terms and conditions serves the best interests of the state. During preparation of the preliminary decision, the commissioner shall consult with affected state agencies regarding issues within the agencies' areas of responsibility and expertise. The commissioner shall give public notice of the preliminary decision under AS 38.05.945 and request comments from the public and state agencies. The preliminary decision must include

(1) a statement of the specific type of recreational facilities development for which the land will be leased;

(2) an analysis of alternative sites;

(3) a statement of the terms and conditions to be required in the proposed lease agreement;

(4) a statement of the compensation that the state may require under the proposed lease agreement;

(5) a statement of the potential economic, social, and environmental effects of the proposed development, including the effect on water quality and the traditional and recreational uses of the land;

(6) a statement of the long-term commitments of fish, wildlife, and other natural resources that would be involved in the

proposed development;

(7) a statement of alternatives to the commitments identified under (6) of this subsection and alternatives or measures that may reduce or eliminate the effects identified under (5) of this subsection;

(8) an identification of any studies, including economic feasibility studies, or plans to be required by the commissioner; and

(9) for a large project, a preliminary assessment of the project's economic feasibility based on available information.

(h) After reviewing the comments received under (g) of this section, the commissioner shall make a final determination whether the proposed lease will serve the best interests of the state. If the commissioner determines that the proposed lease will serve the best interests of the state, the commissioner shall offer the lease to the proposed lessee subject to the terms, conditions, and study requirements the commissioner determines to be necessary. If a study or plan is required, the potential lessee may be required to provide and pay for the study or plan. For a large project where the commissioner has determined under (g) of this section that there may be significant economic, social, or environmental effects or long-term commitments of fish, wildlife, or other natural resources, the commissioner shall require the potential lessee to prepare and submit a comprehensive economic feasibility study to be completed no later than 18 months after the execution of the lease. State agencies with pertinent expertise or responsibilities shall be involved in the review of required plans and studies. If the plan or study involves fish, game, or customary and traditional use of natural resources, the Department of Fish and Game shall review the methodology and scope of the plan or study. If the Department of Fish and Game determines that the

methodology and scope are appropriate for the plan or study, the methodology and scope may be used for the plan or study.

(i) If a potential lessee who was selected under (f) of this section declines the lease offer made under (h) of this section, the commissioner may begin negotiations with the potential lessee who provided the next highest bid under (f) of this section to develop under (f) of this section the terms and conditions for a lease.

(j) The commissioner shall require the potential lessee awarded the right to negotiate a lease under (e), (f), or (i) of this section to pay a nonrefundable administrative fee of at least $250.

(k) The commissioner shall reject all proposals or bids for a lease when it is in the best interest of the state.

(l) The compensation to be paid to the state for a lease issued under this section may include, in the discretion of the commissioner,

(1) a percentage of the annual gross receipts as reported to the United States Internal Revenue Service;

(2) a guaranteed annual minimum rent or a percentage of gross receipts, whichever is greater;

(3) the fair market rental value;

(4) a fixed annual rent that is not less than the fair market rental value of the land;

(5) a fee for each user;

(6) other compensation acceptable to the commissioner; or

(7) a combination of the above.

(m) The annual compensation paid to the state for a recreational facilities development lease shall be reevaluated and adjusted at five-year intervals. The annual compensation for each five-year period after the initial five years of the lease shall be calculated by the same method used to establish the compensation for the initial

five-year period.

(n) Before a lease is issued under this section, the land to be covered by the lease shall be surveyed. The survey must be adequate to describe the land to be covered by the lease.

(o) Before entering into a lease under this section, the commissioner shall require the lessee to post a performance bond or provide other security acceptable to the commissioner to cover the costs to the department of one or more of the following, as determined by the commissioner:

(1) completing the development, including site planning, under the terms and conditions of the lease;

(2) maintaining the development under the terms and conditions of the lease;

(3) restoring the lease site if the lease is abandoned or terminated.

(p) The term of the lease may not exceed 55 years. At the expiration of the lease, the commissioner may offer the lessee a right of first refusal on a new lease under this section for the same land if the commissioner determines that leasing the land for an additional term serves the best interests of the state.

(q) The lessee's violation of a provision of this section or of a term or provision of a lease issued under this section subjects the lessee to appropriate legal action and penalties, including a forfeiture of the lease.

(r) The commissioner of administration shall separately account for all money collected under this section that the department deposits in the general fund. The annual estimated balance in the account may be used by the legislature to make appropriations to the department to carry out the purposes of this section.

(s) In this section, "recreational facilities development" includes the development of lodges, resorts, and other tourism and recreation-related facilities.

6-0814H
Bannister
3/30/90

Original sponsor(s): SEN. KERTTULA

IN THE SENATE BY THE RESOURCES COMMITTEE

CS FOR SENATE BILL NO. 213 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

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(c) If the commissioner identifies land for recreational facilities development leasing under (a) of this section, the commissioner shall prepare a written request for proposals that includes

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development for which the land may be leased;

(2) the form of compensation that the commissioner intends to require for the lease under (1) of this subsection;

(3) the selection criteria that the commissioner will use to determine the eligibility of a developer, including the developer's financial backing and capability, experience in the proposed undertaking, ability to meet bonding or insurance requirements, and ability to comply with resource and environmental analysis requirements; and

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(d) After preparing a request for proposals under (c) of this section, the commissioner may issue the request to solicit proposals from persons who are interested in leasing the land for recreational facilities development. The request for proposals must be advertised at least three times in a newspaper of general circulation in the state. The proposals submitted to the commissioner must include the specific facts on which the potential lessee bases its ability to develop the land, including its ability to comply with the items identified in (c)(1) - (4) of this section.

(e) After soliciting proposals under (d) of this section, if the commissioner determines that only one potential lessee is acceptable, the commissioner may begin negotiations with the potential lessee to develop the terms and conditions for the lease.

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under (j) of this section. The commissioner shall also require the potential lessee to make an earnest money deposit under AS 38.05.-860(b). After the commissioner selects a potential lessee, the commissioner may begin negotiations with the potential lessee to develop the terms and conditions for the lease.

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(6) a statement of the long-term commitments of fish, wildlife, and other natural resources that would be involved in the

proposed development;

(7) a statement of alternatives to the commitments identified under (6) of this subsection and alternatives or measures that may reduce or eliminate the effects identified under (5) of this subsection;

(8) an identification of any studies, including economic feasibility studies, or plans to be required by the commissioner; and

(9) for a large project, a preliminary assessment of the project's economic feasibility based on available information.

(h) After reviewing the comments received under (g) of this section, the commissioner shall make a final determination whether the proposed lease will serve the best interests of the state. If the commissioner determines that the proposed lease will serve the best interests of the state, the commissioner shall offer the lease to the proposed lessee subject to the terms, conditions, and study requirements the commissioner determines to be necessary. If a study or plan is required, the potential lessee may be required to provide and pay for the study or plan. For a large project where the commissioner has determined under (g) of this section that there may be significant economic, social, or environmental effects or long-term commitments of fish, wildlife, or other natural resources, the commissioner shall require the potential lessee to prepare and submit a comprehensive economic feasibility study to be completed no later than 18 months after the execution of the lease. State agencies with pertinent expertise or responsibilities shall be involved in the review of required plans and studies. If the plan or study involves fish, game, or customary and traditional use of natural resources, the Department of Fish and Game shall approve the methodology and scope of the plan or study.

(i) If a potential lessee who was selected under (f) of this section declines the lease offer made under (h) of this section, the commissioner may begin negotiations with the potential lessee who provided the next highest bid under (f) of this section to develop under (f) of this section the terms and conditions for a lease.

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(m) The annual compensation paid to the state for a recreational facilities development lease shall be reevaluated and adjusted at five-year intervals. The annual compensation for each five-year period after the initial five years of the lease shall be calculated by the same method used to establish the compensation for the initial five-year period.

(n) Before a lease is issued under this section, the land to be

covered by the lease shall be surveyed. The survey must be adequate to describe the land to be covered by the lease.

(o) Before entering into a lease under this section, the commissioner shall require the lessee to post a performance bond or provide other security acceptable to the commissioner to cover the costs to the department of one or more of the following, as determined by the commissioner:

(1) completing the development, including site planning, under the terms and conditions of the lease;

(2) maintaining the development under the terms and conditions of the lease;

(3) restoring the lease site if the lease is abandoned or terminated.

(p) The term of the lease may not exceed 55 years. At the expiration of the lease, the commissioner may offer the lessee a right of first refusal on a new lease under this section for the same land if the commissioner determines that leasing the land for an additional term serves the best interests of the state.

(q) The lessee's violation of a provision of this section or of a term or provision of a lease issued under this section subjects the lessee to appropriate legal action and penalties, including a forfeiture of the lease.

(r) The commissioner of administration shall separately account for all money collected under this section that the department deposits in the general fund. The annual estimated balance in the account may be used by the legislature to make appropriations to the department to carry out the purposes of this section.

(s) In this section, "recreational facilities development" includes the development of lodges, resorts, and other tourism and

recreation-related facilities.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

April 17, 1989

The Honorable Bettye Fahrenkamp
Chair, Senate Resources Committee
P.O. Box V
Juneau, AK 99811

Dear Senator Fahrenkamp:

Subject: SB 213, Commercial Development Leasing

Position: The Department of Natural Resources supports the concept of this new commercial development leasing statute. We believe our existing leasing statutes are inadequate to allow the department to capture a meaningful revenue return for the long-term use of state land and resources for commercial recreational purposes. The department does have some suggested changes to this bill which we believe will enhance its effectiveness.

Background: Under current leasing statutes rental is fixed for a 25-year period. It cannot be adjusted to reflect changes in the lease's fair market value. This makes it impossible to ensure that large commercial developments will bring a fair return to the state. Furthermore, there is no opportunity to employ alternative revenue generation techniques, such as percentage of gross receipts or user fees.

In order to ensure that proposed developments generate a fair return for the resources being utilized, a commercial development lease that allows the department more flexibility in negotiating a greater return would benefit the state. The proposed statute would allow the department to do business in a manner more consistent with private industry, as well as that already being used by many other public land agencies (i.e. U.S. Forest Service).

Recommendations: The department recommends the following modifications to SB 213.

1. Under (a), the commissioner requests the authority to apply AS 38.05.085(c), AS 38.05.085(f) and AS 38.05.095(a) to leases issued under this section.

2. Under (b), the area plan should be adopted prior to soliciting expressions of interest. The process for adopting a plan would require adequate public notice; therefore, (c) is redundant and could be deleted.

3. The commissioner requests the authority to set a minimum bid for the auction or sealed bid for the right of first refusal under (f).

4. Under (g), if the potential developer who is offered the lease declines, the commissioner is forced to begin the negotiations with the second highest bidder, thus requiring another preliminary decision, public notice and final finding. As an alternative, if the potential developer declines the offer, the same offer could be made to subsequent bidders until one of the potential developers accepted the offer.

5. The commissioner requests the authority to reappraise and adjust the annual compensation at five year intervals to ensure a fair return to the state.

6. The justification for a performance bond should be expanded to include the ability to complete and/or maintain a project in the event the lessee defaults on a condition of the lease. The department also needs the ability to cash in the bond for use on the project. In the past, the Department of Law has questioned whether bond proceeds could actually be used for such purposes. If the bond proceeds must be deposited into the general fund and an appropriation sought during the next budget cycle, the attendant delays could result in a great deal of interim damage.

7. Under (j), the lease appears to be renewable. The lease should not be automatically renewable, however. The commissioner should reserve the right to offer the lessee the right of first refusal if the land is going to be offered again as a commercial development lease.

8. The commissioner requires the ability to terminate the lease for a breach of a term or condition of the lease.

9. The income generated from commercial development leases should be accounted for separately by the Commissioner of Administration to allow the Legislature to make appropriations to carry out the purposes of AS 38.05.073.

We appreciate the opportunity to work with the committee and offer our continued assistance to the committee and staff on this important piece of legislation.

Sincerely,

Lennie Gorsuch
Commissioner

cc: Bill Sponsor
Committee Members
Denby Lloyd, Special Staff Assistant
Office of the Governor
Bob Evans, Legislative Liaison
Office of the Governor
Gary Gustafson, Director
Division of Land and Water Managment
Department of Natural Resources

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

February 28, 1990

The Honorable Ron Larson
Alaska State Representative
P.O. Box V
Juneau, AK 99811

Dear Representative Larson:

Thank you for your gracious comments following the unfortunate news of Mitsui & Co.'s lease termination. Mitsui's exit may be considered a temporary setback, but it will by no means set the tone for the future of the magnificent Hatcher Pass area.

You are correct, the recreational development potential of the Hatcher Pass area is now well documented. Mitsui representatives have repeatedly indicated to us that their decision to terminate was linked directly to timing and immature market conditions. Actual site development potential does not appear to have been a significant factor.

As you know, I have placed a great deal of importance on the ability to incorporate flexibility and achieve realistic objectives in our leasing process. Passage of the commercial recreation leasing bill, HB 290, currently under legislative consideration could help us meet those goals. The practical effect of amended statutes guiding our leasing procedures will be felt statewide. It will greatly increase our chances of success with the next Hatcher Pass leasing package. Your support of this bill is appreciated.

With the experience gained administering the Mitsui lease, the department looks forward to renewed opportunities for the Hatcher Pass area.

Sincerely,

Lennie Gorsuch

Lennie Gorsuch

RECEIVED

TESTIMONY ON CS FOR HB 290 (3/9/90 Draft)
By Susan Flensburg, Bristol Bay Coastal Resource Service Area

House Finance Committee
March 28, 1990

My name is Susan Flensburg and I'm the Director of the Bristol Bay Coastal Resource Service Area which has an approved coastal management program for the the Bristol Bay region. We support HB 290 and have followed the progress of this bill very closely because the issue of leasing state lands for recreational development has been a controversial one in our region, and because of the current and anticipated demand for future leases in our area. We've been fortunate in that the departments of Natural Resources and Fish and Game, along with our CRSA Board, are cooperatively preparing a recreation management plan for two major river systems in our region covering almost 6 million acres of state land. The plan, which is nearing completion, specifically addresses where leases and permits for recreational development will be allowed, and is a good example of the coordination that can exist between the state and local areas.

There are two major reasons why we support the committee substitute for HB 290. First, it will allow DNR to negotiate a more equitable financial return to the state on leases issued, which is clearly needed. This should also benefit ANCSA corporations in that potential developers may be more inclined to enter into a lease or other financial arrangement with corporations and private landowners. One of the things we have consistently heard from some of the corporations in our region is that the current fee structure for permits and leases on state land is so low, that it serves as a disincentive for developers to work with those corporations interested in developing their lands.

The other reason we support HB 290, as amended, is because it is a vast improvement over the current leasing process. The bill would establish specific procedures to be followed and require consideration of the impacts associated with a proposed lease as part of the decision-making process, such as the effects on traditional and other existing uses of state land and resources.

It seems that much of the debate over this bill has stemmed from the perception that it is a back-door attempt to promote development by allowing DNR to identify lands suitable for leasing and to solicit proposals from potential developers. Part of the problem is that people or organizations opposed to the bill do not realize the law already requires DNR to prepare a regional or site specific land use plan before it can even consider offering a lease, or that there is nothing in statute to prevent DNR from soliciting proposals instead of waiting until someone applies for a lease. This approach, in conjunction with the rest of the leasing process outlined in the bill, makes more sense and should help weed out speculative proposals or economically infeasible projects. We also believe the bill contains enough safeguards,

agency and public involvement so that local interests will be given fair and due consideration throughout the leasing process.

In closing, we would like to state again our support of CS for HB 290, and encourage the House Finance Committee to take favorable action on the bill as soon as possible.

Thank you for the opportunity to testify.

Bills would alter land development assessment rules

By BILL KELDER
Times Valley Bureau

WASILLA — Legislation that would allow Alaska's land managers more flexibility in dealing with proposed commercial recreation development on state land has won support from Matanuska-Susitna Borough officials and the Department of Natural Resources.

The bills, SB 218 and HB 700, also would enhance development of Alaska tourism and mean more money for the state, their sponsors claim. The House bill was sponsored by Rep. Curt Menard, D-Wasilla; the Senate version by Sen. Jay Kerttula, D-Palmer.

Menard said state law requires the division to lease state land for commercial ventures at its current assessed value.

"But that law also requires that DNR not take a look at the assessed value again for 25 years. Our bills will provide for a value reassessment every five years," Menard said in a telephone interview from his Juneau office.

Commercial recreational and tourism could include developments such as ski resorts, campgrounds and fishing camps.

The bills, as written, would allow the state to charge more for the leases if the value of the state property increased, or to give the leaseholder a break if the value decreased.

Statutes allow the Natural Resources commissioner to seek compensation through a percentage of gross receipts, user fees, guaranteed minimum annual re-

> 'That provision gives the type of flexibility necessary to help a tourism or recreational development project succeed.'
>
> John Duffy,
> Mat Su Planning Director

by allowing the agency to negotiate with a developer.

"That provision gives the type of flexibility necessary to help a tourism or recreational development project succeed," said John Duffy, the borough's planning director.

Duffy said the borough supports the bills, but would like to see a provision requiring consultation with local government.

"To me, it is only logical to want that consultation up front. That way the developer making the proposal knows early on if there are local zoning, permitting or land use requirements with which he will have to comply," Duffy said. "No developer wants to get to the end of all the state requirements only to find there are local requirements to deal with."

Tom Hawkins, DNR assistant commissioner, and Gary Gustafson, director of the Land and Water Division, said their agency supports the bills.

The measures still would require the department to consult with other state agencies, such

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OFFICE OF THE COMMISSIONER

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

April 17, 1989

The Honorable Bettye Fahrenkamp
Chair, Senate Resources Committee
P.O. Box V
Juneau, AK 99811

Dear Senator Fahrenkamp:

Subject: SB 213, Commercial Development Leasing

Position: The Department of Natural Resources supports the concept of this new commercial development leasing statute. We believe our existing leasing statutes are inadequate to allow the department to capture a meaningful revenue return for the long-term use of state land and resources for commercial recreational purposes. The department does have some suggested changes to this bill which we believe will enhance its effectiveness.

Background: Under current leasing statutes rental is fixed for a 25-year period. It cannot be adjusted to reflect changes in the lease's fair market value. This makes it impossible to ensure that large commercial developments will bring a fair return to the state. Furthermore, there is no opportunity to employ alternative revenue generation techniques, such as percentage of gross receipts or user fees.

In order to ensure that proposed developments generate a fair return for the resources being utilized, a commercial development lease that allows the department more flexibility in negotiating a greater return would benefit the state. The proposed statute would allow the department to do business in a manner more consistent with private industry, as well as that already being used by many other public land agencies (i.e. U.S. Forest Service).

Recommendations: The department recommends the following modifications to SB 213.

1. Under (a), the commissioner requests the authority to apply AS 38.05.085(c), AS 38.05.085(f) and AS 38.05.095(a) to leases issued under this section.

2. Under (b), the area plan should be adopted prior to soliciting expressions of interest. The process for adopting a plan would require adequate public notice; therefore, (c) is redundant and could be deleted.

3. The commissioner requests the authority to set a minimum bid for the auction or sealed bid for the right of first refusal under (f).

4. Under (g), if the potential developer who is offered the lease declines, the commissioner is forced to begin the negotiations with the second highest bidder, thus requiring another preliminary decision, public notice and final finding. As an alternative, if the potential developer declines the offer, the same offer could be made to subsequent bidders until one of the potential developers accepted the offer.

5. The commissioner requests the authority to reappraise and adjust the annual compensation at five year intervals to ensure a fair return to the state.

6. The justification for a performance bond should be expanded to include the ability to complete and/or maintain a project in the event the lessee defaults on a condition of the lease. The department also needs the ability to cash in the bond for use on the project. In the past, the Department of Law has questioned whether bond proceeds could actually be used for such purposes. If the bond proceeds must be deposited into the general fund and an appropriation sought during the next budget cycle, the attendant delays could result in a great deal of interim damage.

7. Under (j), the lease appears to be renewable. The lease should not be automatically renewable, however. The commissioner should reserve the right to offer the lessee the right of first refusal if the land is going to be offered again as a commercial development lease.

8. The commissioner requires the ability to terminate the lease for a breach of a term or condition of the lease.

9. The income generated from commercial development leases should be accounted for separately by the Commissioner of Administration to allow the Legislature to make appropriations to carry out the purposes of AS 38.05.073.

We appreciate the opportunity to work with the committee and offer our continued assistance to the committee and staff on this important piece of legislation.

Sincerely,

Lennie Gorsuch
Commissioner

cc: Bill Sponsor
Committee Members
Denby Lloyd, Special Staff Assistant
Office of the Governor
Bob Evans, Legislative Liaison
Office of the Governor
Gary Gustafson, Director
Division of Land and Water Managment
Department of Natural Resources

STATE OF ALASKA
DEPARTMENT OF FISH AND GAME
OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 3-2000
JUNEAU, ALASKA 99802-2000
PHONE: (907) 465-4100

March 23, 1990

The Honorable Curt Menard
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Menard:

Thank you for the opportunity to address our concerns on the legislation you have proposed pertaining to the leasing of state land for recreational facilities. I was pleased that you incorporated the amendments jointly proposed by the Departments of Fish and Game (ADF&G) and Natural Resources into the new version of the bill. Accordingly, I want to restate the position that the Department of Fish and Game supports Committee Substitute for House Bill 290 (Resources).

I anticipate that as the bill continues to move through the Legislature, many questions will be raised about the amendments incorporated in your bill and the concerns the Department of Fish and Game has had with the bill. We will be restating our position before the House Finance committee on Wednesday, March 28, and for your convenience I wanted to take the time to reiterate in writing the nature of our concerns that serve as the basis for our support.

The bill addresses two distinct purposes. First, the bill proposes changes to the current statute to allow the state to receive a better financial return for leasing state land for recreational development. In the wake of the recent experience with the proposed Mitsui ski area in Hatcher Pass, these changes are fully warranted and fiscally responsible.

Secondly, the bill proposes revisions to the procedure for identifying and leasing state land for recreational facilities.

In order to ensure the success of recreation development and to generate the maximum economic benefits from recreation facilities, it is crucial to ensure protection of fish, wildlife, and other resources that serve as the primary attraction of visitors, tourists, and the Alaskan public seeking recreation opportunities.

We believe that recreation facilities development can occur compatibly with fish and wildlife resources, and in turn support long-term economic benefits, provided the conditions now in the bill and discussed below are adequately addressed.

1. ADF&G has an appropriate role in the identification and leasing process.

2. The public is involved as much, or more so, than is currently provided.

3. User conflicts are taken into account.

4. Proper planning and management tools are in place.

5. Sites are selected, taking into account the ability of the resource to sustain increased pressure and use.

6. Mitigating measures are allowed.

I believe these concerns have been addressed in CSHB 290 (Resources) and will allow for long-term economic benefits by protecting fish and wildlife resources of concern to the public.

Because the long-term benefits depend on adequate protection for fish and wildlife resources, the list of concerns discussed above will continue to serve as a basis for evaluating any amendments that may be proposed to the bill.

Your continued support for these provisions is most appreciated. If any additional information would helpful, please do not hesitate to contact me or my staff.

Sincerely,

Don W. Collinsworth
Commissioner

cc: Senator Fahrenkamp, Chairman, Senate Resources Committee
Senator Binkley, Co-chair, Senate Finance Committee
Senator Uehling, Co-chair, Senate Finance Committee
Senator Kerttula, Vice-chair, Senate Resources Committee
Senator Eliason, Senate Resources Committee
Senator Frank, Senate Resources Committee
Senator Halford, Senate Resources Committee
Senator Sturgulewski, Senate Resources Committee
Senator Zharoff, Senate Resources Committee
Representative Davidson, Co-chair, House Resources Committee
Representative Hoffman, Co-chair, House Finance Committee
Representative Larson, Co-chair, House Finance Committee
Senate Sponsor of Companion Bill
Commissioner Lennie Gorsuch

Norman A. Cohen
Warren W. Wiley
Denby Lloyd
Bob Evans
Larry Ostrovsky
Gary Gustafson
Deborah Greenberg
Molly McCammon
Frank Rue
Lance Trasky
Steve Behnke
Lew Pamplin

TALAHEIM LODGE

An Alaskan Adventure

Jan. 23, 1990

Nancy Peterson
Resource Comm.
P.O. Box V
Juneau, AK. 99811

Dear Nancy,

I would like this letter to be recored with SB 213 when it comes up on the floor. I would also like to beable to speack in that hearing whether in person or through Teleconference.

Title: "An Act relating to commercial development leasing of state land."

I am the only one currently holding a long term lease in Alaska that not only pays a annual payment but a percentage of my gross annual income.

I am not against the leases; I am not against a fair annual lease payment. What I am against is a percentage of gross income.

My reasoning: I have less than one acre on the Talachulitna River 80 airmiles west of Anchorage. I pay now $2000 per year annual lease plus a $1700 additional fee which is 3% of my gross three years ago. The gross is revaluated every five years. With just the annual payment the state would net $110,000 in 55 years. Not bad for one acre of land valued at $15,000 to $20,000. Add on a percentage of gross and you can double to triple that figure. I think this is rape of private business. A one acre lease from the State of Alaska on Lake Hook in Anchorage currently runs about $2000 annually. Certainly one acre on Lake Hood is worth more than 80 miles from the nearest road where income can be only generated three to four months each year...not 12 months like in Anchorage.

Another failure of the percentage of ones gross is this: I certainly hope that the state of Alaska is trying to cut down its state workforce. This bill if left unchanged would require one, possible serveral more state employees. These employees would have to be trained to audit. We would have to form a state bureau like that of the IRS. Lodge owners are not selling products, they sell a service. Much of the money they take in is cash. Business like fishing and hunting lodges may just be base camps...much of the income is actually generated from "Spike" camps that may be 100 miles away from the lease. The state would have to carefully investitage each lease holder. If just a fair annual lease is charged than the state would not have to have any additional imployees to implemate this kind of lease. It is already in effect.

In conclussion: I think that the state should charge a fair market value lease which in the past has been 10% of the apprased value of the land yearly. The state should stimulate the tourist industry and private development in that industry...not strangle it and make the individual cheat and hide income like we all have towards the IRS. Leases in remote places should be well spaced as not to overcrowd. Alaska is getting a bad reputation as being too crowded when it comes to fishing lodges in some locations...that is now too late.

Mark Miller, Registered Alaskan Guide and Outfitter

1317 West Northern Lights #643 • Anchorage, Alaska 99503 • Telephone (907) 563-3272 • Fax (907) 279-6626

SB213

TALAHEIM LODGE

An Alaskan Adventure

Jan. 23, 1990

Bettye M. Fahrenkamp
Kurt Menard
P.O. Box V
Juneau, AK. 99811

Dear Bettye and Kurt,

There is a SB 213 that I think you in the house will be writting your side of that bill. The bill is titled "An Act relating to commercial development leasing of state land."

I would like to speak through teleconference if the house comes up with a bill that is similar. I think that I qualify to talk in such that I am the only one currently holding a wilderness lease who pays not only a annual payment but a percentage of my gross.

I am not against the leases; I am not against a fair annual lease payment. What I am against is a percentage of gross income.

My reasoning: I have less than one acre on the Talachulitna River, 80 airmiles west of Anchorage. For my lease I pay the state $2000 each year annual payment plus $1700 which represents 3% of my annual gross several years ago. The gross is to be evaluated every five years. With just the annual payment the state would net $110,000 in 55 years. Not bad for less than one acre. Add on the percent of gross payment and you can triple that figure. I call that rape of private business. An acre of land on lake hood which is leased by the state of Alaska is currently going for about $2000. I would suggest that a acre on Lake Hook could generate more business than one in the wilderness that can only be worked four months a year...not 12 like in Anchorage.

Another failure of the percentage of ones gross is this: I certainly hope that the state of Alaska is trying to cut down its state workforce. This bill if left unchanged would require one, possible several more state employees. These employees would have to be trained to audit. We would have to form a state bureau like that of the IRS...what a lovely thought! Lodge owners are not selling products like that in the airport terminals, they are selling a service. Businesses like hunting and fishing lodges generate much of their business from "out camps" which can be miles away from the leased ground. The state would have to carefully audit each lease owner. It would be too easy to hide income under other businesses. The state already is set up to lease land under just a annual payment.

IN conclussion: I think that the state should charge a fair market value lease which in the past has beeen 10% of the appraised value yearly. The state should stimulate the tourist industry and private development in that industry...not strangle it and make the individual cheat and hide income like we "all" have towards the IRS. Leases in remote places should be well spaced as not to over-crowd. Alaska is getting a bad reputation as being too crowded when it comes to fishing lodges in some locations...that is now too late and degrading our industry.

CYER

Mark Miller, Registered Alaskan Guide and Outfitter

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STATE OF ALASKA
THE LEGISLATURE

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M April 2, 1990

SUBJECT: Ambiguities in draft CSSB 213 (Resources)

TO: Senator Bettye Fahrenkamp
Chair, Senate Resources Committee

FROM: Theresa L. Bannister TB
Legislative Counsel

This memo accompanies an amendment that you have requested for the above-referenced bill. The amendment addresses two ambiguities in the bill.

1. First Ambiguity. With regard to the first sentence of sec. 38.05.073, it is my understanding that the intent is to prohibit the commissioner from making the land identification unless the commissioner does it through certain land use plans. However, due to the nature of the word "only", the sentence could be interpreted differently from that intent. The "only" could be read as modifying "recreational facilities development leasing" or as modifying "through a regional land use plan...." If it is read as modifying the development leasing phrase, the sentence would not prohibit the commissioner from making the identification through other approaches than the land use plans. The amendment contains language that would eliminate the ambiguity.

2. Second Ambiguity. It is my understanding that the intent is for the Department of Fish and Game to review and perhaps establish the methodology and scope for certain plans and studies. The relevant language begins on page 4, at line 26. Because the sentence uses "shall approve" without any qualification, the sentence could be interpreted to mandate that the department approve the methodology and scope of the plan or study even if it does not believe that the methodology and scope are appropriate. If the sentence were interpreted that way, the intent would not be achieved. The amendment contains language that would remove the problem.

If I can be of further assistance with this matter, please advise.

TLB:lmb
L10/045

Enclosure

6-0841Ha
Bannister

A M E N D M E N T

OFFERED IN THE SENATE BY THE RESOURCES COMMITTEE

TO: CSSB 213 (Resources) (6-0841H, 3/30/90)

Page 1, lines 11 - 13:

Delete "The commissioner may identify land suitable for recreational facilities development leasing only through a regional land use plan or a site specific land use plan adopted under AS 38.04.065."

Insert "To identify land suitable for recreational facilities development leasing, the commissioner shall make the identification through a regional land use plan or a site specific land use plan adopted under AS 38.04.065."

Page 4, line 28, following "shall", through line 29:

Delete all material.

Insert "review the methodology and scope of the plan or study. If the Department of Fish and Game determines that the methodology and scope are appropriate for the plan or study, the methodology and scope may be used for the plan or study."

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-1100
Mail Stop 1100
(907) 465-3991

March 27, 1989

MEMORANDUM

TO: Representative Curt Menard

ATTN: Johanna Munson

FROM: Gretchen Keiser G. Keiser
Legislative Analyst

RE: Leasing State Lands for Commercial Development
Research Request 89.329

You asked us to obtain information on the provisions other states make for the leasing of state lands for commercial development. You were specifically interested in provisions for land-use planning, solicitation of bids, compensation to the state and other lease terms and conditions, and public notice, as proposed under Senate Bill No 213 (Attachment A). You asked us to consider commercial development in general and specifically development of recreational facilities, as elaborated in SB 213.

In the time available, I was able to obtain information for Colorado, Montana, Vermont, and Washington. Since many commercial recreational facilities, particularly ski resorts, in the western states are located on National Forest lands, I also contacted the U.S. Forest Service (USFS) in order to determine how it allows for commercial development of federal lands. This memorandum summarizes the main points, and several attachments provide more details for your review.

Summary

The other states and the USFS follow a different sequence for the leasing of public lands for commercial development than is proposed in SB 213. They determine the minimum acceptable compensation to the state or federal government prior to requesting proposals and do not restrict the award of leases to the highest bidder. In cases where one developer approaches the states or USFS with a commercial proposal and no other interest exists, the public agency still conducts sufficient market analysis to determine fair market value of the proposed lands for that type of commercial development.

Land-use Planning

States' approaches vary with respect to the extent of state land-use planning that specifically identifies potential sites for commercial development. Montana classifies and reclassifies state lands for grazing, timber, agricultural, and "other" (including commercial activities) purposes (Attachment B). According to Reed Lommen, land management specialist, Montana Department of State Lands, the state--rather than initiate development proposals itself--often responds to a proposal by a private developer who wishes to lease state lands for commercial activities (e.g., apple orchards, Christmas tree farms, or industrial buildings).

During the 1980s, **Washington** has begun to designate more of its state "resource" lands--traditionally managed for their timber, oil/gas, or agricultural value--as "transition" lands available for leasing for commercial development. To date, most of the commercial leasing has been highly urban in nature (i.e., buildings, supermarkets, etc.) although the state is investigating the potential for land exchanges with the U.S. Forest Service in order to obtain title to existing ski developments and adjacent federal land in order to expand into overnight accommodations and encourage tourism. Attachment C provides considerable detail on Washington's Transition Lands program and policy.

In Vermont, there has been considerable public sentiment since the 1970s against further recreational skiing developments because of the rapid development and urbanization of formerly rural areas since ski resorts blossomed in the early 1960s. As a result, the state has had a policy that there will be no new leasing of state lands for ski developments.[1] The **Colorado State Board of Lands**, as a general rule, contracts for land-use planning services and requests the consultant to identify potential recreation sites.

On the other hand, the **U.S. Forest Service** undertakes an in-house land management planning process and has been in the mode of identifying sites and permitting ski developments on federal lands since the 1930s. The USFS planning process includes a survey of state and local officials and the public to get a sense of the public need and marketability of a new recreational development.

All individuals noted that their agencies react to a private developer's specific proposal as much as actively designate specific sites for potential commercial or recreational development. Proposals are examined in light of existing land-use plans for serious conflicts which would preclude further consideration. The USFS conducts an in-house public need/marketability analysis as part of its preliminary review of unsolicited proposals. It does not appear to be unusual for states to have the flexibility to modify existing

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[1]Rod Barber, Assistant Director of State Lands, Vermont Department of Forests, Parks, and Recreation, personal communication, March 22, 1989.

land-use plans or to reclassify state lands for other purposes. Senate Bill 213 appears to provide for this flexibility and also references AS 38.04.065, which specifies several factors that must be taken into consideration by the commissioner of the Department of Natural Resources (DNR) in land-use planning decisions.

Solicitation of Proposals for Commercial Development

Without exception, the individuals I contacted indicated that their agency identifies the minimum acceptable state compensation and other major elements of the lease document prior to the solicitation of proposals or bids for commercial development of state lands.[2] In general, the solicitation requires information on a developer's financial backing/capability, experience in the proposed commercial undertaking, development idea/project, and what the developer is willing to pay (at or above the state's minimum)--all of which constitute selection criteria. Although the bid is an important criteria, the other factors are given serious consideration, and the various states contacted apparently do not specify the automatic selection of the highest bidder.

Although the USFS issues long-term special use permits instead of leases, they also define conditions and require detailed information from respondents to their prospectus. For your information, Attachment D provides USFS regulations governing special use applications and Attachment E presents a 1987 USFS prospectus seeking interest in a tour boat operation on Portage Lake south of Anchorage. Even in the case where a developer approaches an agency regarding a specific development proposal, the state or USFS will, at a minimum, issue a public notice regarding the proposal/application and seek other potential competitors. Several individuals noted that the public solicitation ensures that competitors have an opportunity and that the state receives fair market value.

Under SB 213, the DNR would provide the public an opportunity to comment on the agency's intent to seek proposals for commercial development of specific state lands. Following public review, the DNR would issue a written decision that is was in the state's best interest to solicit development proposals. Senate Bill 213 specifies that 1) the written decision would present eligibility criteria for "potential lessees," 2) the Commissioner would select the highest bid if two or more potential lessees were acceptable, and 3) the department would then begin negotiations on the terms and conditions of the lease. It is unclear to me what potential lessees would bid on if the lease terms and conditions--particularly the minimum acceptable compensation to the state--are not in hand at the time proposals or bids are solicited.

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[2]Alaska's procedures for leasing of state lands for oil and gas activities involve detailed specification of the lease terms and conditions at the time of a lease sale. Companies offer bids on the basis of these lease specifications.

State Compensation and Other Lease Terms and Conditions

Unlike Alaska, much of the state lands in western states is trust land received from the federal government at statehood. These lands are to be managed for the maximum benefits to the designated trust beneficiaries (e.g., public school, universities, mental hospitals, etc.) Montana, Colorado and Washington are required to obtain fair market value for state lands which they lease for commercial development. Larned Waterman, of the Colorado State Board of Lands, suggested that Alaska has to determine what is a minimum acceptable rate of return for private use of state land; Colorado and Washington seek returns of ten and 11 percent, respectively. Today, these states lease lands under varying combinations of up to ten to 11 percent fair market annual rental (typically reappraised every five years) and 3.0 to 5.0 percent of the annual gross receipts. Vermont's leases for state lands in several of its well known ski areas of Killington, Stowe, Jay Peak, Smuggler's Notch and Okemo require five percent of gross receipts. A percentage of gross receipts is preferred because it allows for a development stage and also encourages efficiency in operations by not basing the state's share on net receipts.

Unlike the states--which are more oriented toward economic development--the Forest Service approaches commercial recreational development from a perspective of seeking private partners who are willing to provide a recreation opportunity for the general public on federal lands. The Forest Service employs a fairly complicated, graduated rate fee system which generally translates to about three percent of gross receipts.[3]

Several individuals offered caution regarding commercial development leasing, noting that commercial real estate experience is a crucial requirement for state staff. Rod Hilden, real estate manager in the Washington Department of Natural Resources, said that states cannot expect foresters or recreation planners to have the in-house expertise needed to conduct preliminary market studies, determine fair market values, and negotiate successfully with private developers. Attachment F provides a copy of a sample commercial lease from the Washington Department of Natural Resources.

Lease terms are typically 30 to 55 years, depending upon the type of commercial development. The USFS is operating under recent federal legislation which extended the maximum term for special use permits for winter sports from 30 years to 40 years.

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[3]Jim Cochrane, director, Recreation, Subsistence and Cultural Resources Section, U.S. Forest Service, Alaska Regional Office, personal communication, March 23, 1989.

Public Notice

All the states contacted and the USFS generally provide for public notice and public participation throughout the land-use planning and commercial leasing process. Likewise, requests for development proposals are widely advertised. In general, previous research that I have conducted regarding various states' public process with respect to the leasing or sale of public resources suggests that Alaska's statutes (Title 38: Public Lands) provide comparatively greater opportunities for public participation.

Please contact me if you have any questions regarding this information.

Attachments

ATTACHMENT A
Senate Bill 213

IN THE SENATE BY KERTTULA

SENATE BILL NO. 213

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to commercial development leasing of state land."

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

* Section 1. AS 38.05 is amended by adding a new section to read:

Sec. 38.05.073. COMMERCIAL DEVELOPMENT LEASING. (a) The commissioner may identify land suitable for commercial development leasing. Commercial development leases for the identified land are governed by this section. Except for AS 38.05.070(a), 38.05.090, and 38.05.103, AS 38.05.070 - 38.05.105 do not apply to leasing under this section.

(b) If the commissioner decides to proceed with commercial development leasing for land identified under (a) of this section, the commissioner shall initiate the preparation of a site-specific land use plan under AS 38.04.065 unless a land use plan has been prepared for the land. If a land use plan has been prepared for the land but does not permit the type of development under consideration, the commissioner shall propose a revision of the existing land use plan under AS 38.04.065.

(c) Before soliciting expressions of interest from potential lessees under this section, the commissioner shall give public notice that the land is being considered for commercial development leasing and provide state agencies, affected local governments, and members of the public with an opportunity to comment.

(d) If, after evaluating the information and comments obtained

under (b) and (c) of this section, the commissioner determines that solicitation of expressions of interest from potential lessees best serves the interests of the state, the commissioner shall issue a written decision and give public notice of the decision. The written decision must describe the specific types of commercial development for which the land may be leased and request that persons who are interested in leasing the land for commercial development submit certain information to the commissioner. The requested information must include the specific facts on which the potential lessee bases its ability to develop the land. The decision must state the criteria that the commissioner will use to determine the eligibility of a potential lessee.

(e) After soliciting proposals under (d) of this section, if the commissioner determines that only one potential lessee is acceptable, the commissioner may begin negotiations with the potential lessee to develop the terms and conditions for the lease.

(f) After soliciting proposals under (d) of this section, if the commissioner determines that two or more potential lessees are acceptable, the commissioner may select one potential lessee with whom to negotiate a lease. The commissioner shall select the potential lessee who submits the highest bid during an auction or by sealed bids, whichever method the commissioner chooses. After the commissioner selects the potential lessee, the commissioner may begin negotiations with the potential lessee to develop the terms and conditions for the lease.

(g) After developing proposed lease terms and conditions with a potential lessee under (e), (f), or (h) of this section, the commissioner may issue a preliminary decision that leasing the land to the potential lessee on the proposed terms and conditions best serves the

interests of the state. The commissioner shall give public notice of the decision and request comments from the public. If, after the public notice and comment period, the commissioner makes a final determination that a lease with the potential lessee will best serve the interests of the state, the commissioner shall offer the lease to the potential lessee.

(h) If a potential lessee under (f) of this section declines the lease offer made under (g) of this section, the commissioner may begin negotiations with the potential lessee who provided the next highest bid under (f) of this section to develop the terms and conditions for a lease.

(i) The compensation to be paid to the state for a commercial development lease issued under this section may include

(1) a percentage of the annual gross receipts;

(2) a guaranteed annual minimum rent or a percentage of gross receipts, whichever is greater;

(3) the fair market rental value;

(4) a fixed annual rent that is not less than the fair market rental value of the land;

(5) a fee for each user; or

(6) a combination of the above.

(j) Before issuing or renewing a lease under this section, the commissioner shall require the lessee to post a performance bond or provide other security to cover the costs to the department of restoring the lease site if the lease is abandoned or terminated.

(k) The term of the lease may not exceed 55 years.

(l) The commissioner may reject all bids for leases when it is in the best interest of the state.

(m) In this section, "commercial development" includes the

development of lodges, resorts, other tourism facilities, and other recreational facilities.

ATTACHMENT B
Montana Statute Governing Leasing State Land

MONTANA CODE ANNOTATED

disposal or valuation of any fixtures or improvements placed upon the property by the then-current licensee or lessee and shall require the subsequent licensee or lessee whose bid is accepted by the board to purchase those fixtures or improvements in the manner required by the board.

(3) Nothing in this section may be construed as a delegation of rulemaking authority to the board.

History: En. Sec. 1, Ch. 459, L. 1983.

Cross-References

Legislative History Act, Title 5, ch. 4, part 4.

77-1-209. Leasing rules. The board may prescribe rules relating to the leasing of state lands as it considers necessary in order that the use and proceeds of these lands may contribute in the highest attainable measure to the purposes for which they are granted to the state of Montana.

History: En. Sec. 37, Ch. 60, L. 1927; re-en. Sec. 1805.37, R.C.M. 1935; amd. Sec. 24, Ch. 428, L. 1973; R.C.M. 1947, 81-423; MCA 1981, 77-6-104; redes. 77-1-209 by Code Commissioner, 1983.

Cross-References

Promulgation of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

77-1-210 reserved.

77-1-211. Acceptance of federal land grants. (1) The board may accept any grant of lands from the United States to the state made in carrying out the provisions of The Enabling Act and also any other grant for any special purpose that may be made by the United States to the state, except as provided in subsection (2).

(2) Legislative approval is required for any acceptance of land by the state of Montana from the United States if the land was acquired by the United States through condemnation procedures.

History: En. Sec. 113, Ch. 60, L. 1927; re-en. Sec. 1805.113, R.C.M. 1935; amd. Sec. 70, Ch. 428, L. 1973; R.C.M. 1947, 81-1101(part); amd. Sec. 1, Ch. 452, L. 1979.

Cross-References

Secretary of State to record conveyances to state, 2-15-401.

77-1-212. Acceptance of federal facilities and installations — title in state. The board may, on behalf of the state, accept donations of federal installations, facilities, lands, or properties. All title to the installations or facilities shall be vested in the name of the state for its use. This section does not limit, reduce, or supersede Title 18, chapter 5, part 2.

History: En. Sec. 1, Ch. 252, L. 1965; amd. Sec. 71, Ch. 428, L. 1973; R.C.M. 1947, 81-1101.1.

Cross-References

Secretary of State to record conveyances to state, 2-15-401.

77-1-213. Acceptance of gifts, donations, grants, legacies, and devises to the state. (1) The board is hereby authorized and empowered to accept on behalf of the state from any natural person gifts, donations, grants, legacies, and devises having a value of not less than $250 from each person

All lands passing to the state under of law shall be managed as other st be applied in accordance with the o subject to all constitutional limitatio

(2) All money realized from the erty and all gifts, donations, grants the equivalent of money shall be a of the specific purposes designate received and as further regulated by shall apply to gifts, donations, gra the state and now under the admi any specific provisions made therei received.

History: En. Sec. 114, Ch. 60, L. 1927; re 100, L. 1973; R.C.M. 1947, 81-1102.

Cross-References

Secretary of State to record conveyances t state, 2-15-401.

77-1-214. Donations of land accept gifts, donations, or contribut purposes and enter into agreement agencies for acquiring by lease, pur judgment of the board are desirable f

History: En. Sec. 1, Ch. 159, L. 1937; amd

Cross-References

Secretary of State to record conveyances t state, 2-15-401.

77-1-215. Expenditures auth leased under 77-1-214, the board is h

(1) make expenditures from an management, development, and utiliz

(2) sell or otherwise dispose of pr

(3) make such rules as may be 77-1-214 through 77-1-217 and 77-1-2

History: En. Sec. 2, Ch. 159, L. 1937; R.C.

Cross-References

Adoption of rules governed by Montan Administrative Procedure Act, Title 2, ch. 4 part 3.

77-1-216. Disposition of reve from lands acquired under the provi the state treasurer for the use of the development, and use of such lands paid in full. Thereafter, 50% of all n tion of such lands shall be applicable prescribe and 50% shall be paid into lands are located.

History: En. Sec. 3, Ch. 159, L. 1937; R.C.

ty schools equalization revenues,
l.
st and income money, 20-9-141 through
l.

ons. Obligations for the acquis-
e authority of 77-1-214 shall be
ived from such lands and shall
t and taxing power of the state.
-1106.

e Lands

ous forestry functions transferred from
of Natural Resources and Conservation,
4, 77-2-213, 77-2-214, 77-5-104.

epartment. (1) Under the direc-
of the selecting, exchange, clas-
ale, or other disposition of the
s the board directs, the purpose
quire.
payable to the state through its
lties, or payments on mortgages
from any other source. It shall
ever requested by the payer.
5.8, R.C.M. 1935; amd. Sec. 2, Ch. 26,
nd. by Sec. 5, Ch. 428, L. 1973; R.C.M.

to identify, protect, and develop heritage
ies and paleontological remains on state
2-3-424.
rtment to administer abandoned railroad
f-way until needed for transportation,
11.

nt may prescribe fees, with the
g, or making of a copy of any

05.120, R.C.M. 1935; amd. Sec. 19, Ch.
3, R.C.M. 1947; redes. 81-108 and amd.

by mistake. If any money is
t, lease, certificate of purchase
e department shall refund tha
oper fund.
1805.116, R.C.M. 1935; Sec. 81-1109,
L. 1973; R.C.M. 1947, 81-107.

f lands granted by United
ard and as rapidly as the appro-
tment shall select and locate all

lands granted to this state by the United States for any purpose and not located by the grant itself. It shall also select and locate lands in lieu of all those lands in sections 16 and 36 and in the other federal land grants which for any reason have been lost to the state. All selections shall as far as possible be in legal subdivisions. In the selection and location of these lands, careful attention shall be given to the water available and which may be appropriated for these lands for domestic use, livestock, and irrigation.

History: En. Sec. 15, Ch. 60, L. 1927; re-en. Sec. 1805.15, R.C.M. 1935; amd. Sec. 7, Ch. 428, L. 1973; R.C.M. 1947, 81-301; amd. Sec. 1, Ch. 286, L. 1985.

Cross-References

Appropriations, permits, and certificates of water rights, Title 85, ch. 2, part 3.

Part 4

Classification of State Lands

77-1-401. Classes of land. The state lands are classified as follows:

(1) Class 1—lands which are principally valuable for grazing purposes;

(2) Class 2—lands which are principally valuable for the timber that is on them or for the growing of timber or for watershed protection;

(3) Class 3—lands which are principally valuable for the production of crops;

(4) Class 4—lands which are principally valuable for uses other than grazing, crop production, timber production, or watershed protection.

History: En. Sec. 16, Ch. 60, L. 1927; re-en. Sec. 1805.16, R.C.M. 1935; amd. Sec. 8, Ch. 428, L. 1973; amd. Sec. 1, Ch. 8, L. 1974; R.C.M. 1947, 81-302(1).

Cross-References

Classification required, Art. X, sec. 11, Mont. Const.

77-1-402. Basis for classification or reclassification. (1) The classification or reclassification shall be so made as to place state land in the class which best accomplishes the powers and duties of the board as specified in 77-1-202 and 77-1-203(1). When state lands are classified or reclassified in accordance with these duties and responsibilities, special attention shall be paid to the capability of the land to support an actual or proposed land use authorized by each classification.

(2) It is the duty of the department to classify or reclassify state lands so that no state land will be sold, leased, or used under a different classification from that to which it actually belongs.

History: En. Sec. 16, Ch. 60, L. 1927; re-en. Sec. 1805.16, R.C.M. 1935; amd. Sec. 8, Ch. 428, L. 1973; amd. Sec. 1, Ch. 8, L. 1974; R.C.M. 1947, 81-302(part).

77-1-403. Capability inventory. A capability inventory shall be made prior to changing the classification of state lands. Such inventory shall include, when appropriate to the classification, information on soils capability, vegetation, wildlife use, mineral characteristics, public use, aesthetic values, cultural values, surrounding land use, and any other resource, zoning, or planning information which is related to the classification.

History: En. Sec. 16, Ch. 60, L. 1927; re-en. Sec. 1805.16, R.C.M. 1935; amd. Sec. 8, Ch. 428, L. 1973; amd. Sec. 1, Ch. 8, L. 1974; R.C.M. 1947, 81-302(part).

ll field books, plats, maps, and
lass to which each tract therein
schools of the state or to a state
rant or instrument by which title
all also show whether or not the
ed by the United States and shall
t considers necessary.
05.16, R.C.M. 1935; amd. Sec. 8, Ch. 428,
02(4).

on Payments

nty. The department shall, before
pare and transmit a statement to
ch county in which the state has
and area of the county and from
or forest income. The statement
d by the state in that county and
al, or forest land.
Ch. 391, L. 1973; amd. Sec. 77, Ch. 428,

equalization payment. (1) The
amount of taxes which would be
property as if it were owned by

to be listed shall be determined
roperty within the county where
ts per grazing acre, 35 cents per
. The average tax may be derived
department of revenue. The total
ed the gross assessment figure.
e determined by dividing the per-
otal land area of the county into
gross assessment figure, and the

subtracted from the gross assess-
nent.
Ch. 391, L. 1973; R.C.M. 1947, 81-1116.

y county agent of the depart-
rovide a form to be followed and
of revenue in each county. The
putations required and submit to
shall show the computations and
alization payment.
Ch. 391, L. 1973; amd. Sec. 78, Ch. 428,

77-1-504. Processing of county statements. The department shall examine the statement returned by the agent of the department of revenue for accuracy, and in no case shall the state land equalization payment be approved unless the state exemption figure is deducted from the gross assessment figure in the statement. The department shall, before November 1 of each year, prepare and file a claim with the department of administration for all counties who are eligible for state land equalization payments, and this claim shall show the amount of money each eligible county will receive.

History: En. Sec. 4, Ch. 235, L. 1967; amd. Sec. 57, Ch. 391, L. 1973; amd. Sec. 79, Ch. 428, L. 1973; R.C.M. 1947, 81-1118.

77-1-505. Warrant for payments to counties. The department of administration shall, before December 1, approve and authorize the issuance of a warrant on the general fund of the state made payable to the county treasurer of the counties shown on the claim for the payment of the state land equalization payment.

History: En. Sec. 5, Ch. 235, L. 1967; amd. Sec. 80, Ch. 428, L. 1973; R.C.M. 1947, 81-1119.

77-1-506. County distribution. The county treasurer shall distribute the money received under this part within his county as hereinafter provided:

(1) Sixty percent of total payment shall be broken down into cents per acre of total state-owned land within the county and apportioned between the elementary school districts in accordance with the amount of state-owned land in each elementary district.

(2) Forty percent shall be allotted to the county road fund.

History: En. Sec. 6, Ch. 235, L. 1967; R.C.M. 1947, 81-1120.

Cross-References
County School Equalization Fund, 20-9-331.
County road funds, 7-14-2501.

77-1-507. School district use of proceeds. The money received by any school district under this part shall be designated as district money for the general maintenance and operation of the elementary schools of the district. Such money may be used by the district as all other cash balances are used in accordance with the provisions of 20-9-335.

History: En. Sec. 7, Ch. 235, L. 1967; amd. Sec. 81, Ch. 428, L. 1973; R.C.M. 1947, 81-1121.

77-1-508. Repealed. Sec. 1, Ch. 214, L. 1979.

History: En. Sec. 9, Ch. 60, L. 1927; re-en. Sec. 1805.9, R.C.M. 1935; Sec. 81-205, R.C.M. 1947; redes. 81-1122 and amd. by Sec. 6, Ch. 428, L. 1973; R.C.M. 1947, 81-1122.

Part 6
Development of State Lands

77-1-601. Statement of policy. It is in the best interest and to the great advantage of the state of Montana to seek the highest development of state-owned lands in order that they might be placed to their highest and best use and thereby derive greater revenue for the support of the common schools, the university system, and other institutions benefiting therefrom, and that in so doing the economy of the local community as well as the state is benefited as a result of the impact of such development.

History: En. Sec. 1, Ch. 295, L. 1967; R.C.M. 1947, 81-2401.

Cross-References
Board to direct and control state lands, Art. X, sec. 4, Mont. Const.
Department of Fish, Wildlife, and Parks management of centennial acre, Title 2, ch. 89, part 2.
Use of coal severance tax proceeds for development, operation, and maintenance of state parks, recreational areas, monuments, or historical sites, 15-35-108.

77-1-602. Definition of terms. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Account" means the resource development account in the state special revenue fund.

(2) "Income" means all proceeds received for the use of state land except revenues required by law to be placed in the Montana nonexpendable trust fund type.

History: En. Sec. 2, Ch. 295, L. 1967; amd. Sec. 106, Ch. 428, L. 1973; R.C.M. 1947, 81-2402; amd. Sec. 36, Ch. 281, L. 1983.

Cross-References
Trust and agency fund types — state special revenue fund, 17-2-102.
School Trustees to hold property in trust, 20-6-602.
Interest and income money, 20-9-341.
Income from state lands:
land donated for forestry purposes, 77-1-216.
for granting an easement, 77-2-106.
sale of state land, 77-2-337.
prospecting permits, 77-3-106.
mining lease, 77-3-116.
nonmetallic minerals except coal, oil, and gas, 77-3-206.
coal, 77-3-318.
oil and gas — credited to general fund unless otherwise disposed of, 77-3-436.
underground storage of natural gas, 77-3-501.
geothermal resources, 77-4-127.
surface leases, Title 77, ch. 6, part 5.

77-1-603. Rules. The board shall adopt such rules as it considers necessary and proper for the purpose of carrying out the provisions of this part.

History: En. Sec. 8, Ch. 295, L. 1967; amd. Sec. 112, Ch. 428, L. 1973; R.C.M. 1947, 81-2408.

Cross-References
Adoption of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

77-1-604. Resource development account. A resource development account in the state special revenue fund in the state treasury is created to be used solely for the purpose of investing in the improvement and development of state lands acquired by grant or foreclosure in order to increase the revenue to be derived therefrom for common school support and support of the other entities, institutions, and objects for which the lands are held in trust. Appropriations from the account shall be expended for no other purposes.

History: En. Sec. 3, Ch. 295, L. 1967; amd. Sec. 107, Ch. 428, L. 1973; R.C.M. 1947, 81-2403(part); amd. Sec. 1, Ch. 277, L. 1983.

Cross-References
Treasury fund structure — state special revenue fund, 17-2-102.

77-1-605. Types of developments. The developments contemplated may include those projects that will develop or conserve the various state land resources, including water, both surface and underground, grazing land, agricultural land, and timber land to the benefit of the state. They may also include expenses necessary to perfect title to lands claimed by the state which

are suitable for development an
ment of the board are desirable
the value of the land or the reve
History: En. Sec. 3, Ch. 295, L. 1
81-2403(part).

77-1-606. Restriction on
tional lands. Moneys in the a
school lands, university lands,
lands, normal school lands, capi
be expended by the department
and expenses necessarily incur
trust. If the board determines t
and moneys in the account fr
necessary costs and expenses
moneys from other trusts in th
is transferred shall be reimburse
History: En. Sec. 4, Ch. 295, L. 1967
L. 1973; R.C.M. 1947, 81-2404.

77-1-607. Deductions fro
maximum percentage. The bo
of income, not to exceed 2 ½%,
this part and shall provide by r
age from the income which is s
the trusts benefited by this part.
History: En. Sec. 5, Ch. 295, L. 1967

77-1-608. Crediting of de
made in accordance with 77-1-6
ance of the proceeds shall be pa
proper account.
History: En. Sec. 6, Ch. 295, L. 1967

77-1-609. Investment of
board of investments shall inve
account in safe interest-bearing
History: En. Sec. 7, Ch. 295, L. 1967

Cross-References
Unified investment program, Title 17
part 2.

Ownership Rec

77-1-701. Definitions. Wh
ing clearly appears from the con
(1) "Ownership record" mea
instrument signifying state owne
(2) "State agency" means ar
officer of the state.

e of coal severance tax proceeds for devel-
nt, operation, and maintenance of state
, recreational areas, monuments, or his-
il sites, 15-35-108.

as the context requires otherwise,

opment account in the state spe-

d for the use of state land except
he Montana nonexpendable trust

, Ch. 428, L. 1973; R.C.M. 1947, 81-2402;

prospecting permits, 77-3-106.
mining lease, 77-3-116.
nonmetallic minerals except coal, oil, and
77-3-206.
coal, 77-3-318.
oil and gas — credited to general fund
s otherwise disposed of, 77-3-436.
underground storage of natural gas,
-501.
geothermal resources, 77-4-127.
surface leases, Title 77, ch. 6, part 5.

ot such rules as it considers neces-
out the provisions of this part.
, Ch. 428, L. 1973; R.C.M. 1947, 81-2408.

ccount. A resource development
n the state treasury is created to
in the improvement and develop-
reclosure in order to increase the
on school support and support of
for which the lands are held in
ll be expended for no other pur-

. 107, Ch. 428, L. 1973; R.C.M. 1947,

The developments contemplated
or conserve the various state land
d underground, grazing land, agri-
efit of the state. They may also
o lands claimed by the state which

are suitable for development and other expenses or costs which in the judgment of the board are desirable or necessary in order to develop or increase the value of the land or the revenue therefrom.

History: En. Sec. 3, Ch. 295, L. 1967; amd. Sec. 107, Ch. 428, L. 1973; R.C.M. 1947, 81-2403(part).

77-1-606. Restriction on use of income from school and institutional lands. Moneys in the account derived from the income from public school lands, university lands, agricultural college lands, scientific school lands, normal school lands, capitol building lands, or institutional lands shall be expended by the department solely for the purpose of defraying the costs and expenses necessarily incurred in developing public lands of the same trust. If the board determines that public lands in a trust may be developed and moneys in the account from that trust are insufficient to defray the necessary costs and expenses incurred, the board may transfer sufficient moneys from other trusts in the account. Trust accounts from which money is transferred shall be reimbursed by a method approved by the board.

History: En. Sec. 4, Ch. 295, L. 1967; amd. Sec. 1, Ch. 180, L. 1973; amd. Sec. 108, Ch. 428, L. 1973; R.C.M. 1947, 81-2404.

77-1-607. Deductions from income for development account — maximum percentage. The board shall determine the amount or percentage of income, not to exceed 2 ½%, which is necessary to achieve the purposes of this part and shall provide by rule for deductions of that amount or percentage from the income which is secured from the lands by the department for the trusts benefited by this part.

History: En. Sec. 5, Ch. 295, L. 1967; amd. Sec. 109, Ch. 428, L. 1973; R.C.M. 1947, 81-2405.

77-1-608. Crediting of deductions. All deductions from gross proceeds made in accordance with 77-1-607 shall be paid into the account, and the balance of the proceeds shall be paid into the state treasury to the credit of the proper account.

History: En. Sec. 6, Ch. 295, L. 1967; amd. Sec. 110, Ch. 428, L. 1973; R.C.M. 1947, 81-2406.

77-1-609. Investment of moneys in development account. The board of investments shall invest the moneys in the resource development account in safe interest-bearing securities for the benefit of the account.

History: En. Sec. 7, Ch. 295, L. 1967; amd. Sec. 111, Ch. 428, L. 1973; R.C.M. 1947, 81-2407.

Cross-References

Unified investment program, Title 17, ch. 6, part 2.

Part 7

Ownership Records of State-Owned Land

77-1-701. Definitions. When used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Ownership record" means the original deed, abstract, and any other instrument signifying state ownership or other interest in real property.

(2) "State agency" means any board, bureau, department, commission, or officer of the state.

ATTACHMENT C
Washington's "Transition Lands Policy Plan"

TRANSITION LANDS POLICY PLAN

WASHINGTON STATE DEPARTMENT OF
Natural Resources

Brian Boyle - Commissioner of Public Lands
Art Stearns - Supervisor

June 1, 1988

Preface

The Department of Natural Resources manages over three million acres of trust land for the support of various public institutions. Historically, these lands have been managed for a sustained yield of natural resources. However, individual site characteristics and the changing context of surrounding land uses mean that many of these properties have become either too valuable or inefficient to administer and manage for natural resource production. These transition land properties are presently underutilized assets in the portfolio of the trusts. The purpose of this Transition Lands Policy Plan is to provide a systematic framework for addressing changing values and opportunities on these lands. This program will be the basis for the department's future management activities, including commercial leasing, on selected trust lands.

The conceptual heart of this document is a strategic plan for the management of the transition lands portfolio. Viewing the income-producing potential of the land assets of the trusts as an issue in portfolio management is a new direction for the department. This program provides the means for the department to purposefully deploy these real property assets and thus diversify and increase future trust incomes. Since each type of property asset contains a different combination of risk and income potential, the policies emphasize the need for periodic evaluation and assessment of the portfolio to protect the trusts' interests.

To develop this policy plan, the department brought together 16 working groups to address specific issue areas identified by Department of Natural Resources staff, state and local government officials, and the public. Working group members included state agency managers from the State Career Executive Program, faculty members from the University of Washington and department staff. Team members and their professional affiliations are listed on the inside front cover. These 16 teams developed alternative policy proposals for addressing each issue area. Policies presented here are the preferred choices among numerous alternatives considered. The preferred policies were selected by an executive review team including the Commissioner of Public Lands and top department managers.

A draft Transition Lands Policy Plan was issued in late August of 1987. Copies were distributed to local and state government agencies, organizations and individuals. Seven public hearings were held around the state in late September and early October. The written comment period was extended to early November to allow interested parties ample time to respond to the draft plan. The following document incorporates comments received from that review process.

This document is organized into four major sections: Basic Principles, Analysis of Transition Lands, External Relations, and Management Activities. Each major section contains chapters describing various aspects of the department's proposed policy plan. The goals of the program are presented at the beginning of Part I.

Each chapter opens with applicable goal statements, followed by a set of objectives, and a short narrative. As specific issues are addressed, proposed policies derived from the discussion appear in *italic*. These policies constitute the Summary following this Preface. The reader should note that the first appearance of unfamiliar terms appears in bold face. A glossary of these terms begins on page 95. Also note two chapters of this report, *A strategic plan for managing transition land assets*, and *Economic models and evaluation* contain many technical terms and concepts. We have made every attempt to make these sections as readable and accessible as possible.

State laws significant to the Transition Lands Program

The State Environmental Policy Act (RCW 43.21C)

The department is required to follow the guidelines and procedures specified in Chapter 43.21C RCW in planning and decision-making. This program document constitutes the first phase of State Environmental Policy Act compliance for the Transition Lands Program. Designation by the Board of Natural Resources of properties as urban (RCW 79.66.080) requires separate State Environmental Policy Act review. The department will also comply with the substantive requirements of State Environmental Policy Act by site-specific environmental review and analysis.

The Multiple Use Act (RCW 79.68)

The department is directed to use a multiple use concept in managing and administering department-managed lands when in the best interests of the state and the general welfare of the citizens and consistent with applicable trust provisions.

Urban lands - Cooperative planning, development (RCW 79.01.784)

The department is directed to cooperate with applicable local governments when planning management activities for state-owned urban lands.

The department shall contact those local governments which have planning, zoning, and land-use regulation authority over areas where urban lands under department jurisdiction are located, thus facilitating annual or other meetings.

This statute defines urban lands as:

... those areas which within ten years are expected to be intensively used for locations of buildings, structures, and usually have urban governmental services.

Identification of transition lands

DNR will use these definitions in the transition lands identification and designation process:

Transition Lands: Land currently being managed for natural

resource production that has characteristics indicating an opportunity for more efficient management to obtain a higher economic return by the conversion of the land to another use.[1]

DNR is required to designate certain transition lands as urban under RCW 79.66.080. DNR will be guided by the following definition:

Urban Lands : Land expected to be urban due to designation as "urban " by local land use plans; or authorization for commercial, industrial or residential uses by local government; or where capital improvements and services exist or are scheduled to be available.

Transition lands identification and urban designation process

Based on these definitions the department will identify and inventory transition lands. Periodically reviewing and identifying the trust land base for changing circumstances allows DNR, the public and other governmental agencies to examine alternative opportunities.

The process contains three major activities:

- o Department trust land asset evaluation process
- o Transition Lands Program process
- o Urban designation process

These three major activities and steps are in Figures 3-4 on pages 24-26 to illustrate the timing of each action and how the transition lands identification and urban designation processes will be implemented.

By using this identification and designation process DNR intends to:

- o Show the department's perception of changing land uses or values.
- o Recognize changes in local zoning/comprehensive plan designation.
- o Provide opportunity for comment and input about appropriate interim management strategies.
- o Provide notice to local government and other state agencies to facilitate their acquisition, if desired.
- o Provide notification to the public regarding urban designated properties.

[1] Some indicators of opportunities for higher economic returns include: changing land values, market forces of supply and demand, urban land use trends, demographic projections and surrounding land uses.

Figure 3 Major Steps

Transition land identification and urban designation process

IDENTIFICATION PROCESS

Department trust land asset evaluation process

The department will develop an overall asset management program to guide trust land allocation and management strategies. The asset evaluation process will be an integral part of this program. While overall program formation will occur outside the scope of the Transition Lands Program, discussion of a conceptual asset evaluation process will demonstrate generally how properties will be assigned to the Transition Lands Program.

1 Statewide land use evaluation.
2 Perform preliminary physical/environmental inventory and assessment on trust parcels utilizing existing information from federal, state and local agencies and programs.
3 Intradepartment review.
4 Review information with state and local government agencies to assess potential uses and environmental elements of parcels.
5 Present information and gather comments through appropriate public forums.
6 Perform property evaluation and determine range of alternative uses.
7 Designation of appropriate management regime and functional responsibility. (Asset allocation)

Department of Natural Resources management functions:
Agriculture land management
Forest land management
Transition/urban land management
Mineral land management
Sale for conservation/preservation
Disposal to other public or private entities

Transition lands program process

1 Parcel assigned to Transition Lands Program through trust land asset evaluation and allocation process.
2 Department develops management plan for parcel to guide management in the short- and long-term.
3 Continued management of parcel for interim uses.
4 Increased monitoring of local land use activities to note changes indicating residential, commercial, or industrial land use trends in surrounding areas.
5 Based on noted changes above, update physical/environmental inventory.
6 Update land use inventory.
7 Evaluate updated information and (1) propose for urban designation; or (2) maintain parcel in transition land management status; or (3) assign to other functional program.

URBAN DESIGNATION PROCESS

Public and governmental input process

1 Notify state and other government entities of pending public hearings on the proposed designation of urban lands.
2 Notify affected government and local officials of proposed urban land additions to inventory and pending public hearings.
3 Notify local planning departments, elected officials, and the general public of pending hearings on the proposed designation of urban lands.
4 Hold public hearings on action to designate urban lands. Evaluate comments of public and local government.
5 Set aside socially or politically sensitive properties for further study to result in either: (1) mitigation actions or (2) removal from current consideration for urban land designation, or (3) determination of another method of disposal.

State Environmental Policy Act process

1 Complete environmental checklists for each proposed urban land parcel.
2 Make threshold determination of environmental significance.
3 Defer from current consideration specific sites that may need more analysis.
4 Issue Determinations of Environmental Nonsignificance for nonsensitive sites for 15-day comment period.
5 Receive and evaluate comments on Determinations of Nonsignificance.
6 Defer from current consideration specific sites that may need more analysis based on comments.

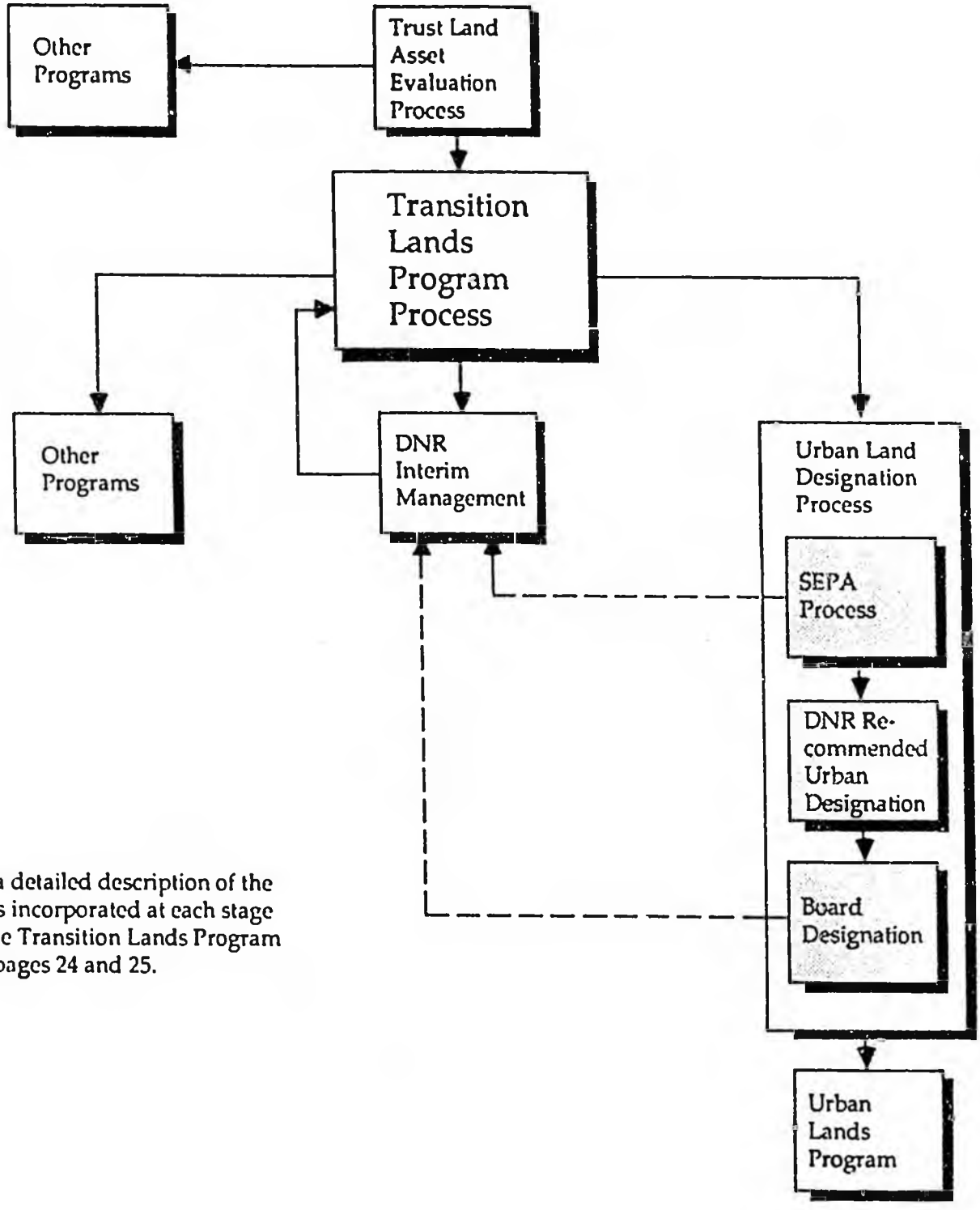
Department and Board of Natural Resources action

1 Recommend to Board of Natural Resources specific sites for urban designation.
2 Send maps of sites proposed for designation to affected governments and resource agencies identified in RCW 79.66.
3 Designate urban properties by resolution of Board of Natural Resources.
4 Notify county, city or town where designated lands are located.
5 Notify local governments at regular meetings of proposed management actions.

Urban Lands program

1 Management of property as urban land.

Figure 4 Transition Lands Program Process



For a detailed description of the steps incorporated at each stage of the Transition Lands Program see pages 24 and 25.

A strategic plan for managing transition land assets

Applicable goals :

Effectively manage transition lands to enhance the financial performance of trust assets.

- o *Manage transition land to optimize land value.*
- o *Manage land assets to achieve an optimum relationship between income and risk.*
- o *Increase the level of financial support to trust beneficiaries.*
- o *Diversify further the sources of income to trust beneficiaries.*
- o *Balance short- and long-term needs of the trust beneficiaries.*

Objectives :

- o *Develop a strategic plan for the transition land assets.*
- o *Identify appropriate investment objectives for these assets*
- o *Prescribe a framework for managing these assets.*
- o *Provide direction for creating and composing a commercial real estate portfolio.*

The department initially focused its attention on the underlying assets of the various trusts (the trust portfolios). These assets provide the basis from which a strategic plan is developed. Historically, the trust assets managed by the department have been natural resource-producing real estate. The financial assets of the Permanent Fund are managed by the State Investment Board. The department now has the opportunity to purposefully reposition certain land assets and acquire other properties with income production potential to more effectively meet its fiduciary obligations.

In formulating a strategic plan, the department adopts the principles of modern portfolio management[1], particularly the need to consider individual investments as components of an overall portfolio. Accordingly, policies relating to transition lands need to be developed in light of overall asset management objectives. The land assets held by the department for proprietary management purposes are a composite of the

[1] The means by which the portfolio is operated is called a plan formulated to achieve objectives. Responsible asset management also requires a system of performance evaluation be established to monitor and evaluate the effectiveness of the plan in achieving its goals. The modern theory of portfolio management is a set of perspectives for analyzing investment opportunities and managing portfolios. The conceptual framework is designed around the notion of maximization of the present value of net cash flows (income which includes changes in asset values); that efficient investment analysis requires a consideration of all achievable opportunities; that estimates of future earnings are of a probabilistic nature; and that an efficient portfolio is one in which diversifiable risks associated with any given income expectation are minimized. (C. D'Ambrosio, *Principals of Modern Investment*; Haley and Schall, *The Theory of Financial Decisions.*)

decisions spanning more than 130 years. Initially, the state received an endowment of lands at statehood. This ownership has been modified, supplemented or decreased by numerous decisions to buy, sell or exchange lands. The development of this policy plan provides an appropriate opportunity for the department to re-evaluate these land assets.

Modern portfolio theory is consistent with both legislative directive to the department and common law duties of a trustee. RCW 79.01.095 directs that:

> Periodically at intervals to be determined by the Board of Natural Resources, the Commissioner of Public Lands shall cause an economic analysis to be made of those state lands held in trust, where the nature of trust makes maximization of the economic return to the beneficiaries of income from state lands the prime objective. The analysis shall be by specific tracts, or where such tracts are of similar economic characteristics, by groupings of such tracts.
>
> The most recently made analysis shall be considered by the Department of Natural Resources in making decisions whether to sell or lease state lands, standing timber or crops thereon, or minerals therein, including but not limited to oil and gas and other hydrocarbons, rocks, gravel and sand.
>
> The economic analysis shall include, but shall not be limited to the following criteria: (1) Present and potential sale value; (2) present and probable future returns on the investment of permanent state funds; (3) probable future inflationary or deflationary trends (4) present and probable future income from leases or the sale of land products; and (5) present and probable tax income derivable therefrom specifically from potential private development of land currently used primarily for grazing and other similar low priority use; such private development would include, but not be limited to, development as irrigated agricultural land. (emphasis added)

Various statutory directives also constrain the range of alternative investments to be considered. For example, RCW 79.66.010 recognizes that:

> ...it may be desirable for the department of natural resources to sell state lands which have low income potential for natural resource management or low income-generating potential or which, because of geographical location or other factors, are inefficient for the department to manage. However, it is also important to acquire lands for long-term management to replace those sold so that the publicly owned land base will not be depleted and the publicly owned forest land base will not be reduced.

Although individual parcels may be disposed of, a primary activity of the department will remain forest land management.

In managing and relocating trust lands, the department will neither deplete the publicly-owned land base nor reduce the publicly-owned forest land base.

General considerations in developing an asset plan for transition lands

The goals for the Transition Lands Program need to be consistent with the objectives of the portfolios of the various trusts. Actions taken on transition land assets of the trusts will affect the overall performance of the portfolio. The plan for transition lands must recognize and work with management plans for other portfolio assets, such as the timber production plans embodied in the Forest Land Management Program, and how those plans relate to the overall trust objectives.

Viewing the portfolio of the trust as a whole, rather than treating different classes of assets as relatively distinct, isolated or separately managed activities has the advantage of integrating actions taken regarding specific trust assets to advance overall trust objectives. This approach recognizes that the policies of the Transition Lands Program can affect overall portfolio performance.

The following considerations are part of the investment objectives upon which this strategic plan will be based.

- o Expected income from assets
- o Financial risk
- o Asset value
- o Timing of income
- o Management costs

The department will develop an overall asset management program for the trusts incorporating overall financial objectives in accordance with the economic analysis statute (RCW 79.01.095).

Expected income from assets

The department recognizes that financial risk and expected rate of return are interrelated and adopts a policy of optimizing the income of the trusts relative to that risk.

The department will optimize the income of the trusts relative to financial risk.

Financial risk

The department has been relatively risk-averse (e.g., being conservative in relation to risk) (*Forest Land Management Program*, p. xiii). Historically, the focus of asset management plans has been on the natural resource issues involved. Since there is a necessary relationship between the degree of acceptable financial risk and the expected rate of return, the department requires a policy that explicitly recognizes the relationship between expected income and financial risk.

The department will establish a policy defining acceptable levels of financial risk and develop an asset management strategy consistent with that policy.

Asset value

Most assets held by the trusts were received at statehood from the federal government without cost. Because these assets were managed for resource production, valuation of these trust assets was not seen as a significant concern. However, the authority granted the department to dispose of certain assets, or to use assets for purposes other than resource management (RCW 79.66) raises this issue. If certain trust assets have higher and better uses than natural resource production, in many instances this will be indicated by their underlying asset values. To determine the total rate of return on capital employed both the value of an asset and any additional capital to be invested should be accounted for.

Asset valuation involves a range of methods from basic staff estimates to a formal appraisal process. Currently, the department establishes value of land assets before requesting capital budget funds for lease, sale or exchange activities. In the future, the values of transition land assets need to be established when assets are assigned to the program. A primary advantage of valuation is the role these values play in identifying assets that can be put to better uses. Asset valuation will also help the department make more rational investment decisions by directing additional capital investments where the returns, balanced against appropriate risks, are expected to be highest. Regular or periodic valuations measure the effectiveness of management activities in meeting overall objectives of the trusts.

Large parcels currently devoted to forest use represent the highest and best use because of location or other factors. For these holdings, asset valuation is not worth the cost of establishing this information. Although the forest base must be maintained, the location or use of individual components of that base may change over time for a variety of reasons. The definition of transition lands (p. 22) suggests there may be many characteristics leading to considering a parcel transitional. Some characteristics that suggest the need for asset valuation include resource management conflicts, strategic location of a parcel near commercial activity or proximity to a major transportation corridor.

Valuation of assets allows the department to make more rational investment decisions, assists in allocating its resources and provides a basis for determining how effective management activities are in meeting overall objectives of the portfolio.

Such policy implementation requires developing procedures to determine when and how asset valuation should be accomplished. Assets in the transition land base must be valued at the start.

In accordance with RCW 79.01.095(1), the department will establish asset values for each individual asset or for grouping of assets in the transition lands portfolio as soon as possible.

Timing of income: the trade-off between capital gains and current income

In a typical private trust, there are income beneficiaries and holders of remainder interests. Income beneficiaries receive the income generated

from investment of trust assets; holders of remainder interests receive the assets of the trust at the time the trust terminates. What a benefit accruing to such a trust is called can have important financial consequences for the holders of these different interests. If a benefit is called income, it would be available for distribution to the beneficiaries. If it is called principal, it would ultimately be distributed to the holders of the remainder interests in the trust.

Because the state constitution does not consider distribution of the assets of trusts managed by the department to trust beneficiaries, whether receipts are considered income or principal only affects the timing of income between current income beneficiaries and future income beneficiaries. The value of trust assets has increased substantially since being placed in trust at the time of statehood. There are no specific legal restrictions on increasing the total dollar value of the assets held in trust.

Economists define income as not only cash receipts minus the expenses of earning the income, but also net changes in asset values. In contrast, normal business accounting practices treat positive changes in asset values as income, but only when the assets are sold. The department treats increases in asset values (capital gains) as additions to principal. When real estate assets of the trusts are sold for cash, the proceeds are added to the principal balance of the permanent fund. When real estate assets are exchanged, any increase in the value of disposed property is reflected in the value of the property acquired by the exchange. This practice is consistent with the requirements of the Washington Principal and Income Act.

Regarding replacement investments for the real estate portfolio, trust managers often can structure the transaction so the total expected return can be allocated (to varying degrees) between income during the life of the investment and increases in capital value which can be realized when the investment is disposed of. Ground leasing transactions, for example, adjust readily to this variable structuring. If income can be shifted from one period to another within the life of the investment, it can affect the timing of the beneficiaries' receipt of income. The amount of current income foregone in favor of increasing asset values reduces cash flow during the life of the investment. However, increases in the value of the assets of the trust presumably increase the potential income to be received by future beneficiaries when these assets are disposed of and the proceeds reinvested. Portfolio management policies guide trust managers in structuring the portfolio in relation to this trade-off between current income and capital gains. Within the portfolio of a specific trust, different assets can be structured in different ways regarding this trade-off. The net present value analysis used by the department in making investment decisions evaluates overall gain from the investment, but does not provide an answer about which investment is preferred for cash flow reasons. Pricing the existing assets in the real estate portfolio must also be considered since it is difficult to determine an appropriate current income/capital gains trade off without knowledge of how much appreciation is occurring with existing assets.

Varying needs of the beneficiaries of the various trust assets managed by the department suggest that different policies are appropriate for different periods of time for managing the various trusts. Likewise, within the portfolio of a specific trust, different assets can be structured in different ways. Different policy alternatives concerning the trade-off between current income and capital appreciation include:

- o Manage assets of the trusts for reasons independent of the effect that management has on the current income/capital appreciation trade-off.

- o Structure investments to maximize cash flow (current income).

- o Aggressively structure assets to increase total asset values recognizing that this implies corresponding reduction in income available for current distribution to trust beneficiaries.

- o Structure investments to balance current income and asset appreciation.

For transition lands, structuring investments to balance current income and asset appreciation will be the preferred policy.

Management costs

Historically, the department was limited to acquiring assets for natural resource production. The ability to acquire commercial income-producing property gives the department various options for replacing underproductive assets with more productive assets. However, different assets with similar income/risk characteristics can vary markedly in the amount of management required. Certain assets have attractive rates of return, but when management costs are considered, the returns are significantly diminished.

Life cycle management costs can also significantly affect the net return of a given investment. The financial analysis of alternative investments should include these costs.

When considering acquiring new trust assets, the department will acquire assets that minimize life cycle management costs for given levels of income/risk.

Risk

The economic analysis statute, court decisions (such as Skamania vs. Washington), and other precedents, require that the prime objective of trust land management is the maximization of the economic return to the beneficiaries of income from state lands. However, all forms of trust management involve certain levels of risk. Since expected returns and risk rise together, it is important that asset managers have a well-defined set of objectives on risk and income as well as an understanding of the many forms that risk may assume in any given transaction.

There are two primary forms of financial risk to trust assets: the risk that an asset will not produce the expected income and the risk that the value of trust assets may decline. Focusing on the rate of return based solely on cash receipts for a particular period does not address the risks of negative (or possible positive) change in asset values. The risk of change also varies over time. For instance, renewable resource trust assets may require capital inputs, such as reforestation and competition control costs, to sustain their income production. Therefore, the analysis of investment alternatives should include risk in view of expected rates of return.

Economic models and evaluation

Applicable goals :

- *Manage transition land to optimize land value.*
- *Manage land assets to achieve an optimum relationship between income and risk.*
- *Seek interim uses that fully utilize the current potential of the property yet preserve and enhance the qualities that attract higher and better uses.*

Objectives :

- *Develop a framework for economic evaluation that identifies the highest and best use for each tract of transition land.*
- *Select an economic model(s) for evaluating investment alternatives.*
- *Identify an appropriate discount rate, time period and means to incorporate risk and uncertainty when evaluating trust investments.*
- *Determine a method of comparing actual and expected economic performance for evaluating trust investments.*
- *Determine a method of comparing actual and expected economic performance of transition lands assets.*

Economic analysis

Commercial real estate management is a complex segment of the department's total land management operation. Economic modeling is needed in planning new or enlarged projects and in evaluating and comparing both current projects and new opportunities. Within each of these areas, the department makes decisions relating to:

- Disposal: sale or exchange, with or without value enhancement
- Leasing: marketing, promotion and negotiation
- Acquisitions: feasibility analysis
- Property management: future impacts

Economic analysis is needed to determine whether the above activities are cost effective for the benefits sought. Economic analysis also assists the department in determining holding costs for lands held in the transition lands inventory. Finally, economic analysis and performance review allows the department to estimate the time required to recover

capital investments made to enhance property value in preparation for disposal or leasing.

Economic models are systematic methods of measurement from which business decisions are drawn while considering other related information and professional expertise. The department recognizes it cannot develop exacting economic models for each type of transaction contemplated or for each investment decision.

Economic models used by the department must satisfy statutory requirements and aid in the selection of the highest and best uses for tracts of trust land. Models selected should allow sensitivity analysis of the values imparted by possible alternative uses of the tract. When a preferred use is selected, the department should be able to determine the appropriate intensity of use, as well as the appropriate level of improvement for the tract in question. Tests of varying degrees of investment by the department should show which level of investment and development generates the highest level of revenue for the trust consistent with other adopted policies.

During the entire process of managing trust properties, cost and price projections must be tested. Specific questions need to be asked. For example:

- How accurate are the plans and projections?
- Is the project profitable?
- How can the department improve the management of similar properties in the future?

The answers to these questions guide the department to improve future activities and policies.

Limitations exist in the development process. These may be physical, technical, economic, legal or institutional and may limit the activity, thus increasing costs and/or reducing revenue production. The models chosen to evaluate each activity should be able to measure in some way the impact of each constraint. For example, exposure to risks, timing of events, market activities and liabilities incurred under different contractual arrangements all are potentially constraining.

Economic methodology must reflect costs and benefits or revenues that result from investment choices and policy decisions. In making investment decisions, the department is obligated to identify the highest and best uses for each tract of trust land. Alternative management proposals are evaluated and produce the information necessary to accept, reject or condition a proposal.

By comparing the rates of return for each property management option, the most suitable economic development strategy can be determined—that which provides the department the highest positive net present value on feasible projects, consistent with acceptable levels of risk and other considerations.

Management options

Economic analysis must address whether the department should retain full responsibility for future use/management of any specific property or groups of properties. If so, at what level of involvement and at what costs or benefits to the trust.

One result of the transition lands program process (p.22) is an inventory of land parcels which could be converted from current natural resource uses to higher and better economic uses. The inventory process provides an orderly mechanism for periodically reviewing the most appropriate use(s). When a property is allocated to the program, the department will consider the socio-economic environment, the characteristics of the land parcel and the staff and financial resources available for management. The department will also review the priority of other projects underway or planned, the staff skill levels and market demands the parcel could serve. The department will then select the option which best serves the trusts from a range of management options.

The following management alternatives should be considered each time such an evaluation is conducted:

- o Active operational management by the department
- o Passive management through ground leases
- o Active joint proprietary management
- o Exchange or sale of property asset

Active operational management by the department

Active operational management can range from one or more direct management activities, such as planting and fertilizing trees to complete vertical integration. For any land use activity undertaken by the department a decision must be made as to the appropriate level of involvement (stages of production) or extent of vertical integration. Economic modeling can be useful in determining incremental impacts of proceeding to each added step toward more complete vertical integration of management.

Passive management via ground lease

The current policy of retaining ownership of land with the department administering commercial ground leases to provide for rental incomes represents a passive position regarding vertical integration and degree of participation in proprietary functions. Such leases represent a decision that alternative land uses other than natural resource production are the most economically viable for the specific land parcel or site, but that the department should play only a minimal role in the ongoing proprietary function.

The distinguishing feature of this management alternative is that the department be dissociated from the ongoing functional management

once the improvements, if any, are made. The proprietary management functions are contracted through a lease to other parties. Conditional restrictions can be placed on the lessee about use, management activities, etc., as deemed desirable to maximize the economic value to the trusts. Economic analysis must permit the department to distinguish between the relative advantages of such ground leases and passive management from other management alternatives. It must also permit evaluating the most appropriate level of capital receipts and the scope of conditional lease restrictions.

Active joint proprietary management

If the department has decided about the appropriateness of proprietary management for a specific use, it must also decide about department management of specific proprietary functions.

The economic analysis will be capable of discriminating between functional land uses most advantageous for specific sites, and stages of production (vertical integration) and level of participation most advantageous once a functional use is identified. Within constraints of legality and other policies in this plan, the option for department retention and full or partial participation should be explicitly evaluated. Economic analysis should be capable of indicating when such an involvement is in the best interest of the trust.

Disposal of property assets

Specific assets may have negative or reduced returns to the state under either continued management by the department or through retained owner/passive management ground leases. As indicated in the *Strategic Plan* section, the state may be best served through disposal of the land/assets. Replacement land is acquired and the future use of the disposed property is determined by the new owner (public or private).

The economic analysis should distinguish between the reasons for asset disposal. If the reasons for rejecting retained ownership are economic, the underlying reasons leading to this will be reflected in the net asset value obtainable by the state through disposal.

The distinguishing characteristic of this option is that the disposal decision is based on the economic evaluation of future management potential of the property independent of any reinvestment decision.

The land exchange alternative represents two separate decisions undertaken jointly for expediency, or to overcome other constraints, such as limited cash flows for investment.

First, a decision is implied that specific assets subject to disposal are either unproductive under alternative management options or less profitable than another available option.

They are deemed *unsatisfactory performers* in the current portfolio due to either current (and projected) economic circumstances and/or constraints placed on department management programs. By law and policy, the asset cannot be disposed of for less than fair market value. Subject to this, once disposal is judged as the appropriate course of action the department must determine how the assets will be reinvested.

Second, a reinvestment decision is implied; the asset is acquired through exchange or trade representing a *preferred* way of reinvesting capital resources released through the disposal decision.

Investment decisions will represent a conscious choice of a more productive option available to the department. Such acquisitions must be thoroughly evaluated, trust-quality assets. With careful analysis, an exchange of land assets can simultaneously meet the requirements of both disposal and investment decisions.

Usually it is preferable that the economic analysis of the disposal decision and the investment decision be made on separate grounds. The analysis should identify any constraints requiring an exchange in preference to separable decisions. It should also identify the opportunity cost (if any) represented by the loss of value incurred because of limitations placed on considering other alternatives. This option provides a desirable way to diversify various trust portfolios.

Diverse expectations will be placed on the evaluation of any management alternative. The economic models used for the Transition Lands Program require that the range of management alternatives be evaluated and contrasted before a specific option is chosen. A program of complete economic analysis, using the appropriate economic methodology for the issues involved, combined with evaluating noneconomic factors, can enhance overall economic results of trust management. This will require not only *planning* analysis for decision-making, but also adequate monitoring and reporting to permit performance evaluation and review of actual results.

Selection of economic models

Economic modeling

Economic modeling provides a logical and consistent means for evaluating investment alternatives supporting the goals and objectives of transition land management. Net present value, internal rate of return and benefit-cost analysis are the most useful for this program. In addition, some quasi-economic formulations, such as the pay back period and the break even period, may be useful for certain analyses.

Time is critical in evaluating measures of economic value—because a dollar today has more value than a dollar at a later time, all future values (both costs and benefits) must be discounted to their present value. The discount rate (or interest rate) is a measure of this difference in value. Properly applied, net present value, internal rate of return and benefit-cost ratio all depend on discounted values. Net present value is calculated by subtracting the sum of discounted costs from the sum of discounted benefits or revenues. Internal rate of return is the interest rate at which the sum of discounted costs equals the sum of discounted revenues. That is the interest rate at which net present value equals zero. The benefit-cost ratio is determined by dividing discounted benefits by discounted costs.

Net present value or present net worth models analyze the values in a project with the proper measurement of the impact of time preference.

The net present value model maintains a measure of the magnitude of the values in the computations. When different time periods are involved in the projects being compared, there is a tendency (when discount rates are high) for projects with shorter time spans to be favored over projects with long time spans. When discount rates are low, long-term is favored over short-term. These biases can be overcome by using a modification to annualize the results. One input variable in the calculation is the alternate rate of return or discount rate selected by the agency for similar projects.

Net present value appears to measure the return to the trusts in the most comprehensive and direct way. It always shows the magnitude of the projects and the discounted value. It can reflect results without time-span bias, can be used to compare diverse activities and will always show the proper order of economic desirability. However, measures such as internal rate of return, financial internal rate of return, benefit-cost ratio and pay back period may be best suited for some specific questions.

The department will use net present worth as the primary model for evaluating investments.

Discount rate

Using the net present value model requires the selection of a discount rate to bring all costs and returns to the present. The discount rate or alternate rate of return chosen should reflect the next most desirable rate available in the market. Several alternatives considered were: the prime rate, State Treasurer's Money Management Fund rate, bank rates, Permanent Fund rates for new funds and trust permanent fund portfolio average rates.

Trust Permanent Fund rates on new funds show the rates that can be earned by money invested in current low risk securities markets. Securities purchased for the Permanent Fund accounts normally mature in 5 to 30 years. Yields reflect current investor expectations about the impact of inflation on rates of return. This provides an objectively determined opportunity cost of capital that can be revised periodically from the portfolio lists of the trust Permanent Fund. Current portfolio composition reflects the market opportunity cost of capital for long-term projects on trust lands.

The current market yield on the Permanent Funds portfolio will be used by the department as a minimum acceptable discount rate.

Time period

The time period of investments is an important consideration because the comparison between net present values for various management alternatives must be comparable. For instance, a comparison of the net present value of a 20-year investment with the net present value of a 50-year investment may distort the priority ranking of projects. In general, if investment periods extend at least 50 years, the net present values will not be affected by benefits and costs that occur beyond that time.

The department will review investment decisions by annualizing the values, placing values in terms of an infinite time period, or by taking them to a common point in time.

Risk and uncertainty

Risk and uncertainty are two measures of impacts that cause other than expected results from a project. Risk is defined to include occurrences happening in a repetitive sequence that can be described statistically, such as long-term appreciation trends, inflation, financial rates of return, market absorption and rental rates. Uncertainty contains all occurrences that cannot be statistically described.

Risk analysis is an important consideration in trust management. The department wants to make prudent investments which will receive yields commensurate with the level of risk.

Sensitivity analysis changes assumptions for variables, such as inflation and other factors. Exploring various alternatives provides information about how the final outcomes would be affected under different assumptions. Generally, the most *robust* option (that alternative least sensitive to changing assumptions) will be chosen.

Sensitivity analysis, rather than discount rate adjustment or ad hoc handling of risk, will be the technique chosen by the department for assessing the impacts of risk.

Performance review

The department must be able to evaluate options before decision-making. However, it is also essential that the department be able to review decisions after they have been made to know how well the decision-making process works and to adjust the analysis where weaknesses appear. The analysis of the results of past decisions can be a powerful tool for making better decisions in the future.

Performance review entails periodic analysis of each project to compare its actual performance with the expected performance under the economic assumptions made to justify the project. Since some projects have an economic life of 50 years or more, this is a long-term process. Such comparisons will be made using appropriate economic models selected to measure the assumed costs, prices, constraints and actual results.

The department can analyze the progress of the transition lands portfolio by using a periodic financial report that includes an income statement. Conventional accounting methods will be employed that identify sources of realized income and known expenditures, as well as estimates of asset value. As a further evaluation tool, select projects will be isolated and accounted for individually. This will also apply to specific project evaluation. By evaluating projects separately (for an optimum relationship between economic return and risk), the portfolio income will be enhanced. Separate project accounting also provides a history which allows for more informed future decision-making.

The department will maintain records that trace (1) the return on past capital investments (2) the status of current investment and (3) plans for future capital investment. The department will prepare a periodic financial report for the transition lands portfolio.

ATTACHMENT D
U.S. Forest Service Special Use Application Regulation
36 C.F.R. Ch. 11 § 251.54

Forest Service (see § 212.10 of this chapter);

(k) Permits under the Land and Water Conservation Fund Act of September 3, 1964, 78 Stat. 897, as amended (16 U.S.C. 4601-6a(c)), for recreation events and other specialized recreation uses;

(l) Permits, leases and easements under the Federal Land Policy and Management Act of 1976, 90 Stat. 2776 (43 U.S.C. 1761-71) for rights-of-way for:

(1) Reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, tunnels, and other facilities and systems for the impoundment, storage, transportation, or distribution of water;

(2) Pipelines and other systems for the transportation or distribution of liquids and gases, other than water and other than oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom and for storage and terminal facilities in connection therewith;

(3) Pipelines, slurry and emulsion systems, and conveyor belts for transportation and distribution of solid materials, and facilities for the storage of such materials in connection therewith;

(4) Systems and related facilities for generation, transmission, and distribution of electric energy, except that the applicant, in addition to obtaining Forest Service special use authorization, shall also comply with all applicable requirements of the Federal Energy Regulatory Commission under the Federal Power Act of 1935, as amended, 49 Stat. 838 (16 U.S.C. 791 et seq.);

(5) Systems for transmission or reception of radio, television, telephone, telegraph, and other electronic signals and other means of communication;

(6) Roads, trails, highways, railroads, canals, tunnels, tramways, airways, livestock driveways, or other means of transportation except where such facilities are constructed or maintained in connection with commercial recreation facilities;

(7) Such other necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way over, upon, under, or through National Forest System lands; and

(8) Any Federal department or agency for pipeline purposes for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any product produced therefrom;

(m) Permits under the Archaeological Resources Protection Act of 1979, 93 Stat. 721 (16 U.S.C. 470aa).

[45 FR 38327, June 6, 1980; 45 FR 43167, June 26, 1980, as amended at 49 FR 25449, June 21, 1984]

§ 251.54 Special use applications.

(a) *Preapplication activity.* When occupancy and/or use of National Forest System land is desired, a proponent is encouraged to contact the Forest Service office(s) responsible for management of the affected land as early as possible so potential constraints may be identified, the proposal can be considered in land management plans, and processing of an application can be tentatively scheduled. The proponent will be given guidance and information about: (1) Possible land use conflicts as identified by review of land management plans, landownership records, and other readily available information sources; (2) application procedures and probable time requirements; (3) applicant qualifications; (4) fees, charges, bonding and security requirements; (5) necessary associated clearances, permits, and licenses; (6) environmental and management considerations; (7) special conditions; and (8) identification of on-the-ground investigations which will require temporary use permits. If requested by the proponent, the Forest Service officer will, to the extent reasonable and authorized by law, not disclose project and program information revealed during preapplication contacts.

(b) *Filing applications.* Applications for special uses will be filed with the District Ranger or Forest Supervisor having jurisdiction over the affected land (§ 200.2 of this chapter) except:

(1) Applications for projects on lands under the jurisdiction of two or more administrative units of the Forest Service may be filed at the most convenient Forest Service office having jurisdiction over part of the project and the applicant will be notified where subsequent communications should be directed;

(2) Applications for cost-share and other road easements to be issued under § 251.53(j) will be filed in accordance with regulations in § 212.10 (c) and (d) of this chapter; and

(3) Applications for oil and gas pipeline rights-of-way crossing Federal lands under the jurisdiction of two or more Federal agencies shall be filed with the State Office, Bureau of Land Management, pursuant to regulations in 43 CFR 2882.

(c) *Coordination of applications.* Authorizations for use of National Forest System land may be conditioned to require State, county, or other Federal agency license, permit, certificate or other approval document, such as Federal Communication Commission license, Federal Energy Regulatory Commission license, State water right, or county building permit. Applicants filing applications with such agencies for a project, will simultaneously file an application with the Forest Service under this section. To minimize duplication, pertinent information from the application made to the other agency can be attached and referred to in the Forest Service application.

(d) *Rights of applicants.* No rights or use privileges are conveyed without a special use authorization.

(e) *Application content.* As a minimum, applications shall include the information contained in paragraphs (e)(1) through (5) of this section.

(1) *Applicant identification.* Identification of the applicant shall be sufficient that the Government will know the true identity of the entity and/or individuals applying. The authorized officer shall give due deference to the findings of another agency such as a public utility commission, the Federal Energy Regulatory Commission, or the Interstate Commerce Commission, in lieu of another detailed finding. If this information is already on file with the Forest Service, it need not be refiled if reference is made to the previous filing date, place and case number. The applicant's name and address is required and, if the applicant is not an individual, the name and address of

the applicant's agent who is authorized to receive notice of actions pertaining to the application. If called for by the authorized officer, an applicant in one of the following categories shall also furnish the additional information listed:

(i) A State and local government agency: a copy of the authorization under which the application is made;

(ii) A public corporation: the statute or other authority under which it was organized;

(iii) A Federal government agency: the title of the agency official delegated the authority to file the application;

(iv) A private corporation: (A) Evidence of incorporation and its current good standing; (B) if reasonably obtainable by the applicant, the name and address of each shareholder owning 3 percent or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote; (C) the name and address of each affiliate of the entity; (D) in the case of an affiliate which is controlled by the entity, the number of shares and the percentage of any class of voting stock of the affiliate that the entity owns either directly or indirectly; or (E) in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, either directly or indirectly, by the affiliate; or

(v) A partnership, association or other unincorporated entity: a certified copy of the partnership agreement or other similar document, if any, creating the entity, or a certificate of good standing under the laws of the State.

(2) *Technical and financial capability.* Sufficient evidence will be required to satisfy the authorized officer that the applicant has, or prior to commencement of construction will have, the technical and financial capability to construct, operate, maintain, and terminate the project for which authorization is requested, and is otherwise acceptable.

(3) *Project description.* A project description, including map(s), shall be required in sufficient detail to enable the authorized officer to determine the feasibility of the project or activity proposed, its impacts on the environment, any benefits provided to the public, the safety of the proposal, the lands to be occupied or used, the terms and conditions to be included, and whether the proposal will comply with applicable laws, regulations and orders.

(4) *Environmental protection plan.* The applicant's proposed measures and plans for the protection and rehabilitation of the environment during construction, operation, maintenance and termination of the project shall be required.

(5) *Additional information.* The authorized officer may require any other information and data necessary to determine feasibility of the project or activity proposed; impacts on the environment; compliance with applicable laws, regulations, and orders; compliance with requirements for associated clearances, certificates, permits, or licenses; and suitable terms and conditions to be included in the authorization. Requests for additional information if needed will be in writing.

(f) *Processing applications.* The authorized officer will acknowledge receipt of the application in writing.

(1) The authorized officer will assess the applicant's qualifications; complete an environmental analysis, assessment and/or an environmental impact statement under the National Environmental Policy Act of 1969; determine compliance with other applicable laws, regulations and orders; consult with other agencies, local officials, or interested parties and hold public meetings upon reasonable notice when sufficient interest exists to warrant the time and expense; and take any other action necessary to fully evaluate and make a decision to approve or deny the application and prescribe suitable terms and conditions.

(2) Federal, State, and local government agencies and the public will be given adequate notice and an opportunity to comment upon special use proposals in accordance with Forest Service practices established under the National Environmental Policy Act, and other pertinent direction.

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(g) *Special application procedures.* (1) Oil and gas pipeline rights-of-way. These will include the citizenship of the applicant(s) and disclose the identity of its participants as follows:

(i) Citizens of another country, the laws, customs, or regulations of which deny similar or like privileges to citizens or corporations of the United States, shall not own an appreciable interest in any oil and gas pipeline right-of-way or associated permit; and

(ii) The authorized officer shall notify the House Committee on Interior and Insular Affairs and the Senate Committee on Energy and Natural Resources promptly upon receipt of an application for a right-of-way for a pipeline twenty-four (24) inches or more in diameter, and no right-of-way for such a pipeline shall be granted until sixty (60) days (not counting days on which the House of Representatives or the Senate has adjourned for more than three (3) days) after a notice of intention to grant the right-of-way, together with the authorized officer's detailed findings as to terms and conditions he proposes to impose, has been submitted to such committees, unless each committee by resolution waives the waiting period.

(2) *Electric power transmission lines 66 KV or over.* Each application for authority to construct and maintain a facility for the generation of electric power and energy or for the transmission or distribution of electric power and energy of 66 kilovolts or higher under this section shall be referred to the Secretary of Energy for consultation.

(h) *Denial of applications for a special use other than a special event.* An application for a special use other than a special event may be denied if the authorized officer determines that:

(1) The proposed use would be inconsistent or incompatible with the purpose(s) for which the lands are managed, or with other uses; or

(2) The proposed use would not be in the public interest; or

(3) The applicant is not qualified; or

(4) The use would otherwise be inconsistent with applicable Federal and State laws; or

(5) The applicant does not or cannot demonstrate technical or financial capacity.

(i) *Denial of application for special event.* An application for a special event shall be granted unless the authorized officer determines that:

(1) The special event would conflict with another use which has been previously approved by special use authorization, contract, or approved operating plan, under this part or Part 222, 223, or 228 of this chapter; or

(2) The special event would present a clear and present danger to the public health or safety; or

(3) The special event would be of such nature or duration that it could not reasonably be accommodated in the particular place and time applied for; or

(4) The application proposes activities that are contrary to the provisions of Part 261 of this chapter or the provisions of any other Federal or State criminal law.

When an application is denied on the basis of paragraph (i)(1) or (i)(3) of this section, the authorized officer shall provide the applicant the opportunity to accept an alternative site or time selected by that officer.

[45 FR 38327, June 6, 1980; 45 FR 43167, June 26, 1980, as amended at 48 FR 29122, June 24, 1983; 49 FR 25449, June 21, 1984; 49 FR 46895, Nov. 29, 1984]

§ 251.55 Nature of interest.

(a) A holder is authorized only to occupy such land and structures and conduct such activities as is specified in the special use authorization. The holder may sublet the use and occupancy of the premises and improvements authorized only with the prior written approval of the authorized officer, but the holder shall continue to be responsible for compliance with all conditions of the special use authorization.

(b) All rights not expressly granted are retained by the United States, including but not limited to (1) continuing rights of access to all National Forest System land (including the subsurface and air space); (2) a continuing right of physical entry to any part of the authorized facilities for inspection,

ATTACHMENT E
U.S. Forest Service, "Portage Lake Tour
Boat Prospectus"

United States
Department of
Agriculture

Forest Service

Alaska
Region
R10-MB-25

Portage Lake Tour Boat Prospectus

Chugach National Forest

PROSPECTUS

Portage Lake Tour Boat Operation
USDA Forest Service
Chugach National Forest
Alaska Region

October 1987

The information in this prospectus is from generally reliable sources but no warranty as to the accuracy thereof is made. Each bidder is expected to make their own appraisal of the business opportunities offered by this proposal.

USDA Forest Service
Chugach National Forest
Anchorage Ranger District
Monarch Mine Road
P.O. Box 129
Girdwood, Alaska 99587

(907)783-3242

INDEX

PROSPECTUS
Portage Lake Tour Boat Operation

I INTRODUCTION

This prospectus solicits bid proposals from private interests for the development and operation of a tour boat concession and support facilities/services on National Forest System lands on the western shore of Portage Lake, approximately 55 miles southeast of Anchorage, Alaska (see Map 1).

The objective is to expand the overall recreational and interpretive opportunities available to the public in Portage Valley and to complement and support the exhibits, movie and interpretive programs in the Begich, Boggs Visitor Center (BBVC). A boat tour will provide visitors the opportunity to see, first hand, many of the physical features described in the BBVC. Sightseeing and photography will be important activities that must be considered in the boat design. Portage Valley receives high visitation during the summer months and this prospectus seeks to add to the overall variety of opportunities in which visitors may participate. Prospective bidders are advised to read the prospectus and sample special use permit carefully and make their own estimates of development, operation and maintenance costs. The Forest Service estimates total investment for this project at $1,000,000 to $2,000,000. This prospectus and the accepted bid proposal shall become part of the special use permit for the tour boat concession and support facilities.

The bidder selected will be issued a special use permit for the development and operation of a tour boat and associated facilities on Portage Lake with an annual fee based on: (1) graduated rates applied to the concessionaires' gross sales and (2) a surcharge expressed as a percentage of the basic fee calculated in (1) above.

Many of the stipulations described in this prospectus are the result of an Environmental Assessment and a Decision Notice completed in 1986. The Portage Glacier Access Environmental Assessment and Decision Notice and Finding of No Significant Impact shall, by reference, be a part of this prospectus. That Assessment and the Decision Notice established certain criteria that must be followed in the development of this prospectus and in implementation by the eventual permit holder. The Environmental Assessment and Decision Notice are available for review at the Anchorage Ranger District, Monarch Mine Road, Girdwood, AK.

II DESCRIPTION OF THE PROJECT

Purpose and Location

The intent of the tour boat concession is to provide an interpretive opportunity to Forest visitors by taking them close to the face of Portage Glacier and providing information on glaciology and other designated topics.

II DESCRIPTION OF THE PROJECT (cont)

The proposed site is about 55 miles southeast of Anchorage via the Seward and Portage Highways (see Map 2). The dock and other base facilities necessary for the tour boat operation will be based on the western shore of Portage Lake, about 1 mile south of the Begich, Boggs Visitor Center (BBVC) and 1/2 mile from the Byron Glacier Trailhead. No roads exist to the proposed site.

The exact area of the permitted site will be determined after acceptance of a bid proposal, issuance of a permit, and after a survey is done to identify and mark the permit boundaries. Lake operation will begin at the site, with travel restricted to the western shore of the lake, to the Portage Glacier and across its face, returning via the same route.

Service/Activity to be Offered

Services to be provided through this prospectus are the operation and maintenance of a tour boat on Portage Lake for the interpretation of glaciology and related features unique to Portage Lake and Portage Glacier. The boat will be capable of carrying 125 to 200 passengers. The permit holder will be permitted to construct the necessary facilities to support such an operation. All development to successfully meet the requirements will be the responsibility of the permit holder. Prospective bidders will need to consider the number of visitors that will be served and the fee to be charged.

III DESCRIPTION OF THE SETTING

Climate

The Portage area is noted for its severe weather. Annual precipitation near BBVC is about 60 inches; near the glacier, it's about 100 inches. Many of the storms that come through Portage Valley have very strong winds. Winds of more than 100 mph are not uncommon. Temperatures are generally cool, with average summer days getting up to 60-65 degrees at best, and evenings are around 45-50 degrees.

Related to the weather, one of the main attractions at the lake is the large number and size of icebergs. These float about the lake at the whim of the wind. Most often, they are massed in front of the BBVC. Prevailing winds are from the east, but westerly winds will move the icebergs all across the lake. Bidders must take into account the unpredictable nature of the icebergs including their constant movement on the lake and their ability to roll at any time without warning.

III DESCRIPTION OF THE SETTING (cont)

Area Management

The entire area identified in this prospectus is within the Chugach National Forest. All of Portage Valley is within the boundaries of the Municipality of Anchorage.

Recreation Use

Portage Valley, and more specifically the BBVC site, is the most visited recreation attraction in the state of Alaska. Last year, 1986, the Forest Service estimates that 610,000 people visited the Portage Lake area. Of those, more than 400,000 went into the Visitor Center. Most visitation is by individuals or families travelling by private vehicle. However, an ever increasing number of visitors arrive via motorcoach, based out of Anchorage. Tour company visitation for 1986 was estimated at 20,000 people.

In addition to the BBVC, there are 3 campgrounds in Portage Valley with a total of 48 campsites, 3 short trails totalling about 2.3 miles, and interpretive sites along the highway. The average stay in the valley was about 2 hours, but ranged from about 15 minutes for those passing through, to 24 hours or more for those camping in the valley.

In 1986 there were a number of private concession operations under special use permit in the Valley. The largest is the Portage Glacier Lodge. Services provided are food (hot and cold) and gift sales. Portage Glacier Lodge has been in operation many years and is in the process of planning for future expansion. Another operation under special use permit in the valley is a Portage Creek rafting/float trip. There is one other small outfitter/guide offering ice climbing/mountaineering in and around Byron Glacier. Several motorcoach tours, usually based out of Anchorage, operate under special use permits and provide package tours of 1/2 to 3 days that include Portage Valley. In addition, all three campgrounds in Portage Valley are operated for the Forest Service by a concessionaire.

Other Resource Information

The site proposed for development of the base facilities for the tour boat operation is located near a lateral moraine. The terrain is very dissected with small areas of standing water and minor drainage channels toward Portage Lake. Vegetation over most of the area is alder brush, about 15 to 20 feet high. Scattered cottonwood and an occasional spruce tree are found in the area.

A small number of moose have been sighted in the area. Bear, coyote, wolf, sheep and goat are known to occur in the general area, but are not known to reside on the area proposed for development. There is no known resident fish population in Portage Lake. A small salmon run occurs in the fall with fish headed for Placer Creek on the north shore of Portage Lake.

III DESCRIPTION OF THE SETTING (cont)

Cultural Resources

A survey was done as part of the Environmental Assessment for this project. At that time, no cultural resources or historical features were found. If, at any time during construction, any cultural or historical resources are discovered, all work or operation will be halted or modified until the discovery is evaluated and mitigation measures developed.

Access

Access to Portage Valley is via the Seward Highway from either the north or south and then via the Portage Highway. Anchorage is 55 miles and Girdwood is about 15 miles away. Both are to the northwest.

This project will require the construction of about 1/2 mile of road, including a bridge across Byron Creek, from the end of the existing Byron Glacier Road to directly access the area available for development.

IV SPECIAL USE PERMIT

Term/Area: A twenty (20) year term special use permit will be issued to the successful bidder. The permit will include authorization to use a certain portion of Portage Lake and will cover the area required for the on-shore site of the tour boat operation. The on-shore site is estimated to be 15 acres.

Services Authorized: The following are the only services that will be authorized under this permit:

- Sale of tickets for boat tour of Portage Glacier

Services Prohibited: Prohibitions include, but are not limited to:

- Gambling
- Pornography
- Peddling, soliciting, selling or otherwise providing
  - goods (including film), services or activities not specifically approved by the Forest Service.
- Alcoholic or non-alcoholic Beverages
- Gift Sales
- Food Service
- Automotive products (i.e. gas, oil)

IV SPECIAL USE PERMIT (cont)

Construction: The construction of the on-shore facilities may be divided into stages, and if so, it shall be necessary to obtain approval from the Forest Service before the next stage can be started. The maximum time allowable for completion of all the construction is twenty-four (24) months after the issuance of the special use permit.

Inspection The Forest Service reserves the right to inspect the area, all facilities and the operation on the lake at any time and upon written notification to the permit holder may suspend such operations that are not in full compliance with the terms of the special use permit.

Fees During the construction period, the fees will be based on the amount that would be owed, using the Graduated Rate Fee System described below, on gross revenue up to the break-even point with Gross Fixed Assets of $1,500,000. This fee is estimated to be $7,500/yr.

After operation begins, fees for this use will be calculated using the Graduated Rate Fee System (GRFS).

Fees based on sales, the Graduated Rate Fee System, which is used in determining concession fees, operates by applying a selected rate from an established schedule of graduated rates to the concessionaire's gross sales. The rate, or rates to be used is determined by the relationship of the sales to the permit holder's Gross Fixed Assets (GFA). GFA is defined as the total of the original undepreciated cost of the permit holder's investment in improvements and fixtures, plus the cost of equipment necessary to generate sales or other income. See clauses in sample special use permit for further discussion of the fee system.

The annual fee due the United States under this use shall be calculated according to the schedule shown in clause 21 in the sample special use permit (subject to nation-wide rate redetermination upon the availability of more current information).

A weighted average break-even point (called the break-even point) and a weighted average base rate (called the base rate) will be calculated and used when applying the schedule to mixed business. The fee on sales below the break-even point will be calculated using 50 percent of the base rate. The fee on sales between the break-even point and twice the break even point will be calculated using 150 percent of the base rate. The fee on sales above twice the break-even point will be calculated using the balance of sales rate.

IV SPECIAL USE PERMIT (cont)

Fees (cont)

The use of Forest Service Form 2700-19 will simplify computation; a sample is shown in Appendix C.

Gross sales by sub-lessees will be reported by the permit holder and included in the above mentioned fee calculations.

In addition to the fee calculated from the schedule described above, each bidder will indicate the surcharge they are willing to pay. This surcharge will be expressed in terms of a percentage to be applied to the basic fee. Such a surcharge will apply for the full term and will apply to this use whether ownership changes or not.

V INTERPRETIVE PROGRAM

Interpretation of glaciers and their effect on life and the landscape is the overall theme of any development or activity in Portage Valley. This theme is best seen in the Begich, Boggs Visitor Center, but also applies to other sites in the Valley. The interpretive program on the tour boat on Portage Lake will expand on that overall theme. Bidders shall be required to provide the support necessary to present a high quality interpretive program to the public.

Following are the minimum requirements bidders must consider in developing their bid proposal:

Interpreters: The Forest Service will recruit, train and supervise the interpreters and provide the interpretive program for all trips. These interpreters will wear Forest Service uniforms and be paid by the permit holder through a collection agreement between the Forest Service and the permit holder. This will require a minimum of three (3) GS-4 "Forest Interpreters". These individuals presently receive a salary of $76 per day. In addition, a thirty-five (35) percent overhead assessment will be made to cover administrative costs.

Stage: A cleared area with a minimum dimension of six feet (6') by six feet (6') must be provided on-board the tour boat to accommodate interpretive programs. The bidder should include as part of the bid proposal the percentage of passengers who will have a clear and unobstructed view of the area. The intent of the Forest Service is to have maximum visibility available to a minimum of 50% of the passengers.

V INTERPRETIVE PROGRAM (cont)

Stage (cont)

The bidder should provide for the comfort and convenience of both the interpreters and the passengers in the area in any kind of weather.

Microphone & Speaker System: A two channel microphone and speaker system must be included on the tour boat. The microphone must be of the cordless type and speakers should be spaced close enough together so volumes may be kept to a minimum. This is important so noises are not heard off the tour boat by individuals on the shore. Speakers on the boat should be placed so that everyone on board can hear the interpretive message even though they may not be able to see the interpretive presentation.

Storage Space: Storage space must be provided on board the tour boat and on shore for interpretive materials. On shore, a minimum space of three feet wide (3') by four feet deep (4') by eight feet high (8') is required. On the tour boat, a space of three feet wide (3') by three feet deep (3') by four feet high (4') is required. These spaces must be secure and inaccessible to the public.

Advertising Literature: No distribution of commercial literature or any other marketing material, other than that for the Portage Lake tour boat operation, will be permitted to be on display. No other commercial advertising or endorsements will be permitted on the tour boat or on or in any of the shore facilities.

Additional Exhibits: Bidders may provide additional static interpretive exhibits either on the tour boat or on shore. Such exhibits must stay within the theme of the Valley. Bidders are encouraged to describe any proposed exhibits including the topic, method of display, and approximate location. Any exhibits that are proposed must be reviewed and approved by the Forest Service. Topics may include, but are not limited to:

Human History of Portage Valley
Evidence of Glacial Activity
Biology/Wildlife of Portage Valley
Lake Safety
Weather/Climate

VI DESCRIPTION OF TOUR BOAT OPERATION

This section is divided into two parts. The first specifies the physical design requirements of the tour boat to be utilized for lake travel. The second part addresses the operational aspects of the boat while performing its intended purpose. After issuance of a special use permit, the permit holder shall be required to submit all plans and designs to the Forest Service for approval before any development is authorized.

Because Portage Lake is classified as a non-navigable lake and the U.S. Coast Guard has no jurisdiction over boats operating there, the Forest Service will use the American Bureau of Shipping standards as minimum requirements for the design and construction of the tour boat. The Forest Service will adopt the U.S. Coast Guard standards as the minimum acceptable for the operation of the tour boat.

Physical Design Requirements for Tour Boat

Tour Boat Size: Maximum overall length shall not exceed eighty (80) feet. The boat will be restricted to one level enclosed seating with the maximum height of the upper deck restricted to 15' (fifteen feet). An open upper deck for outside viewing would be in keeping with these restrictions.

No size limit shall be established for the beam.

Maximum passenger capacity (not including crew members) shall not exceed 200 individuals.

Minimum passenger capacity (not including crew members) shall be 125 individuals.

Seating must be provided for a minimum of 75% of the passenger capacity of the boat.

Tour Boat Speed: Normal cruising speed shall not exceed 6 to 8 mph. Top design speed may be higher, but would only be utilized in emergency situations.

Tour Boat Safety: The permit holder shall be responsible for all aspects of the tour boat design as related to passenger safety. The tour boat design shall meet the American Bureau of Shipping (ABS) rules for building and classing vessels under two hundred feet, and the finished boat shall be certificated by the ABS.

Passenger Protection: Tour boat shall be designed so all passengers can be sheltered from the weather. This protection shall, to the extent possible, not restrict the viewing of the area or the ability to take photographs.

VI DESCRIPTION OF TOUR BOAT OPERATION (cont)

Wake: Hull shall be designed to create the least wake possible at the normal cruising speed. Bidder should indicate the height of the wake one hundred (100) feet behind the tour boat at normal operating speed.

Materials: Construction material for the tour boat is the choice of the bidder. It is expected that any material selected shall be of the highest quality and intended to insure public safety for the intended purpose. Materials selected, including windows, shall minimize reflection as seen from the side.

Color: Tour boat shall be colored so as to blend with the surrounding area and minimize reflection. Recommended colors are tones of grey or brown.

Engines: A minimum of two (2) engines shall be required for safety purposes. Both do not have to run simultaneously.

Restrooms/ Heads: Tour boat shall have at least 4 heads (2 men, 2 women) with an approved marine sanitation system. One men's and one women's restroom must have handicapped access. No dumping of effluent into Portage Lake will be permitted at any time under any circumstances. There is no dump site anywhere on the Chugach National Forest. Disposal plans must meet State of Alaska requirements as found in their Wastewater Disposal Regulations, 18 AAC 72, and their Solid Waste Management Regulations, 18 AAC 60. All of these are published by the State of Alaska Dept. of Environmental Conservation. The proposed method for disposal should be included in the bid proposal.

Water and food: Tour boat shall have fresh drinking water available for passengers. A drinking fountain is preferred to eliminate cups or glasses. No food or beverage service will be permitted on the tour boat, and clients and crew will not be permitted to bring food or beverages onboard.

Lights: Only those running lights required in the U.S. Coast Guard navigation rules for inland waters will be permitted. No interior lights will be permitted except those required for passenger safety. The tour boat exterior and interior lighting should be designed to minimize visibility from the BBVC area.

Handicap Access: Tour boat shall be designed to fully accommodate handicapped access in the loading and unloading facilities and throughout the public space of the tour boat.

VI DESCRIPTION OF TOUR BOAT OPERATION (cont)

Inter-pretation: Tour boat shall be designed to include space for interpretive presentations and talks. Interpretation requirements are more thoroughly described in Section II, Interpretive Program.

Exhaust/ Noise: Noise from water or engines shall be kept to a minimum. A major concern of visitors to the Portage Valley is the amount of noise and exhaust a tour boat will add. Designs should seek ways to minimize the noise the tour boat produces and eliminate visible exhaust. Noise from the tour boat shall not be heard from the vicinity of the BBVC. Also, the noise should not be loud enough to interfere with the interpretive presentation on the tour boat.

Bidders may submit drawings, photos, or models to fully describe the type, size and capacity of the tour boat included in the bid proposal. At a minimum the design specifications submitted with the bid proposal shall address: ice strengthening, stability (use exposed waters standards), adequate subdivision to survive a collision with an iceberg which opens at a minimum 2 adjacent compartments, fire protection/prevention, machinery standards, electrical standards, lifesaving appliances, rescue boat/platform, and passenger ingress and egress. Additionally, bidders should indicate whether the tour boat described already exists or will be designed and built for this operation. In designing or locating a tour boat, consider that there is no major water access to Portage Lake and transportation of the tour boat will have to occur overland for at least a portion of the delivery. Bidders must determine the best means of boat delivery, including the identification of limiting factors such as road and bridge widths. Partial on-site construction of the boat may be approved.

Bidders should include information on how they intend to get the tour boat to Portage Lake, how it will be launched, what methods of mooring will be utilized, and how the boat will be pulled and/or stored for maintenance and winter storage. Bidders should also describe how they plan to protect the docked tour boat from iceberg damage.

Operational Requirements for Tour Boat

Area of Operation: Tour boat operation will be limited to a direct route between the base facilities and the glacier face along the western shore and across the face of the glacier. The tour boat will not be allowed to operate within one mile of the BBVC and must stay a minimum of 250 to 300 yards away from the face of the glacier.

Calving: There shall be no use of noise to cause calving of the glacier.

VI DESCRIPTION OF TOUR BOAT OPERATION (cont)

Safety Plan: An outline for a safety plan shall be required as part of the bid. Items to include, as a minimum, are: passenger comfort and convenience; tour boat breakdown; person overboard and rescue; medical emergency; fire; flooding; loss of propulsion; sea sickness; ship to shore and landline communication; lifeboats/life jackets; safe operating distances from the shoreline, glacier face and icebergs; weather limitations in relation to iceberg movement, strong winds at docking, wind and wave action on the tour boat at the glacier, gale and hurricane conditions, etc.; lake level fluctuations; safe storage of tour boat during non-operation; passenger loading and unloading; weather conditions that will require service to be interrupted or halted (winds, waves, icebergs, etc.); posting of fire control-lifesaving plans. Pending approval of an Interagency Agreement, the U.S. Coast Guard will review the safety plan to Coast Guard regulations as adopted by the Forest Service. Bidders should propose those Coast Guard regulations which should apply. Acceptance of minimum proposed safety standards will be the sole discretion of the Forest Service.

Tour Boat Operators: All tour boat operators shall be U. S. Coast Guard licensed for the capacity and size proposed as if operated on navigable waters.

Oil/Fuel Spills: Permit holder shall provide for the containment and clean up of oil or fuel spills on land and water. The permit holder shall obtain oil spill clean up insurance in an amount large enough to clean up the maximum quantity of oil possible to spill.

Hazardous Materials: Permit holder shall provide for bilge water treatment and other hazardous materials.

Interpretation: Interpretation of glaciology and related subjects is the primary purpose of the boat operation. In scheduling tour boat trips, a minimum of 20 minutes shall be spent at the face of the glacier allowing time for photographs, sightseeing, and ample time for an interpretive program to be completed.

Reservations: A reservation system may be used. Bidder should describe any reservation system to be used. No more than 40% of the tour boat capacity (on a per trip basis) may be reserved by tour companies, booking agents or other commercial operators.

Tour Boat Speed: Tour boat speed shall be limited to 6-8 miles per hour.

VI DESCRIPTION OF TOUR BOAT OPERATION (cont)

Trips per Day:	Trips shall not begin prior to 9:00 am on any day and the last trip shall end by 7:00 pm. Maximum number of trips per day shall be seven (7).
Number of Tour Boats:	Only one tour boat will be authorized. A second tour boat will not be permitted. Bid proposals that include a second tour boat, either for immediate use or long range plans, will be considered non-responsive to this prospectus and will be rejected in total. The exception to this will be the need for some type of rescue/emergency boat. This boat, if needed, shall be fully described in the safety plan. It cannot ever be substituted for the tour boat normally used for lake operation.
Operating Season:	Minimum operating season shall be seven days per week between Memorial Day weekend through Labor Day weekend excluding close-down periods for extreme weather conditions. Bidders should fully describe the proposed season of operation including scheduled out-of-service maintenance days.

Bidders are encouraged to operate a service that can accommodate the greatest number of visitors for a reasonable price and provide a service of the quality commensurate with the BBVC.

VII DESCRIPTION OF ON-SHORE/SUPPORT OPERATION

This section will describe shore based facilities or services that will be permitted and may be a part of any bid proposal. The primary purpose of the shore facilities is to provide a waiting area for passengers prior to loading and after unloading the tour boat. Secondary to that, but of some importance, are the needs for service and maintenance of the tour boat and shore facilities. The base area is within the Municipality of Anchorage, therefore Municipality Building Codes and requirements for construction apply to these facilities. Portage Valley is in earthquake Zone 4.

This prospectus describes the maximum level of development that will be permitted. If the bidder intends to phase any development, this should be clearly described in the bid proposal. Bidders are encouraged to look for options that may reduce the amount of development required.

Shore and Lakeside Facilities: The following structures may be permitted:

Storage Building:	One building for storage of equipment and maintenance related to the tour boat, shore facilities and road will be permitted. This facility may be about 900 square feet in size.

VII DESCRIPTION OF ON-SHORE/SUPPORT OPERATION (cont)

Tour Boat Launching & Dry Docking: A marine way or similar method of launching and dry docking the tour boat will be permitted. The bidder should describe the method and structures needed. Dry docking will be required every 3 years so that the bottom of the tour boat can be inspected.

Ticket Sales/ Waiting Building: One building will be permitted. This facility may be about 6,500 square feet in size. Public restrooms shall be provided. This building must accommodate 100% of the maximum passenger capacity of the tour boat. Seating must be provided for a minimum of 50% of the maximum tour boat passenger capacity. Drinking water shall be provided. A water fountain is preferred. If desired, an apartment may be constructed in this building to provide housing for a caretaker/security person.

Parking Area: A paved parking area to accommodate 5 buses and 115 vehicles of which 20% are RV-type vehicles shall be developed. A parking lot of this capacity requires about 62,000 square feet.

Access Road: Permit holder shall be required to extend the Byron Glacier Road to the shore facilities site. This road would be approximately 3,400 feet in length. It shall also be necessary to construct a bridge across Byron Creek. The approximate location of this extension is shown on Map 2. The design standard should be fully described in the bid proposal.

VIII DESIGN REQUIREMENTS FOR ON-SHORE DEVELOPMENT

The above facilities are the only on-shore facilities that will be permitted. Bid proposals that reduce the number of facilities or the size of development are encouraged.

Prior to any development, the permit holder shall be required to submit all plans to the Forest Service for approval.

Following are the design limits that will be required, as a minimum, in developing the on-shore facilities.

Inspections The permit holder shall be required to provide all construction inspections and testing for all facilities, roads, bridges, etc. constructed as a result of this prospectus and provide certified reports to the Forest Service for their approval.

VIII DESIGN REQUIREMENTS FOR ON-SHORE DEVELOPMENT (cont)

Visibility: All on-shore facilities and land modifications shall be designed so they are not visually evident from the Begich, Boggs Visitor Center and are compatible with the surrounding landscape.

Parking Area: The minimum requirements for the parking area are 4 inches of crushed aggregate base paved with 2 inches of bituminous surface. The parking area shall contain planter islands.

Byron Glacier Road: The extension of Byron Glacier Road shall be a part of all bid proposals. The permit holder shall be responsible for the construction and design of the road from the present Byron Glacier Trailhead to the proposed site. The permit holder shall be responsible for the maintenance of the road past the location of the new trailhead and to the proposed site. A gate may be erected to limit access when the facility is not operating.

The road shall be built to the same standard as the existing Byron Glacier Road (Forest Highway #802) as a minimum requirement. The standards for the existing road are: 28 foot subgrade, 24 foot travel way, 20 foot paved with 2 inches of bituminous surface over 4 inches of crushed aggregate base. Bidders should describe the road standard and expected use in the bid proposal. Gravel for construction may be acquired from a source adjacent to Portage Creek, approximately Milepost 2 of the Portage Highway (referred to as the Airport Pit). Removal of gravel shall be done according to designs approved by the Forest Service which enhance fish habitat. The Forest Service makes no representation as to the quality or quantity of gravel from this source. A separate mineral materials permit will be issued to the firm developing the gravel source. Permit holder shall be responsible for development of the source and restoration/revegetation after completion. Bidders should indicate in their bid proposals if this source will be used.

Byron Creek Bridge: A bridge will be required to cross Byron Creek. The permit holder shall be responsible for the design, construction, operation and maintenance of the bridge. The bridge design and construction shall be in accordance with the Standard Specifications for Highway Bridges, thirteenth edition with all current interim specifications, published by the American Association of State Highway and Transportation Officials.

VIII DESIGN REQUIREMENTS FOR ON-SHORE DEVELOPMENT (cont)

Byron Creek Bridge (cont)

Bridge design criteria are: 24 foot minimum width, curb to curb; HS 20-44 live load; length as necessary to provide a waterway capable of passing a 50 year flood with a suitable freeboard. Operation and maintenance of the bridge shall be in accordance with the intent of the National Bridge Inspection Standards (23 CFR 650), except that the permittee shall have the responsibility normally assigned to the State Highway Department, and shall report all inspections and load ratings, as required, to the Forest Service.

Byron Glacier Trailhead: The Byron Glacier Trailhead must be relocated, redesigned and reconstructed by the permit holder. Minimum requirements for the trailhead are 4 inches crushed aggregate base paved with 2 inches of bituminous surface. It must have the capacity for 25 cars and 5 car/trailers. Adequate space must be provided for turn-around of large vehicles. This will require an area of approximately 16,000 square feet.

Byron Glacier Trail: The Byron Glacier Trail may be shortened to provide the necessary road access to the site. As part of the trailhead reconstruction, any trail alteration must be explained in the bid proposal. The trail shall be rebuilt to the same standard as presently exists.

Reveg/Rehab Erosion Plans: All land altering activities shall include a complete revegetation/rehabilitation plan. An erosion plan shall be completed and approved by the Forest Service.

Utilities: All utilities shall be placed underground.

Height: The maximum height for any facility shall be 1 1/2 stories above grade.

Colors: Colors for all buildings and facilities shall be earth-tone. Materials shall be compatible to the area.

Facility Design & Weather: Facility design should take in to account the extremely variable and sometimes violent weather that occurs in Portage Valley. Facilities shall be designed with a snow load capacity on horizontal surfaces of at least 60 pounds per square foot and wind loading for vertical walls for 150 mph winds. Uplift should also be considered in the design of any facility. Facility design shall meet municipal building code requirements.

Handicap Access: The Ticket Sales/Waiting Building and parking areas shall be designed to fully accommodate handicapped access.

VIII DESIGN REQUIREMENTS FOR ON-SHORE DEVELOPMENT (cont)

Employee Housing: Employee housing on the site will be limited to one small efficiency apartment not to exceed nine hundred (900) square feet to provide on-site security. This apartment, if needed, must be constructed within the Ticket Sales/Waiting Building. No other on-site housing shall be authorized. All other employees, sub-lessees or persons otherwise involved in the operation are to be housed off National Forest System Lands. Facilities for this security housing should be described in the bid proposal.

Fuel Storage: On-site fuel storage will be permitted. Storage tanks must be placed underground. Permit holder shall be required to meet all State and Federal permit requirements and standards for storage of fuels. Permit holder must also submit a plan to the Forest Service for containment of any fuel or oil spill. Permit holder may propose off-site, mobile fuel sources.

Permits: Permit holder shall be required to obtain all necessary permits from State or Federal agencies as needed. Some permits that may be required are from the Army Corps of Engineers, Municipality of Anchorage and State of Alaska Department of Fish and Game. It shall be the permit holder's responsibility to obtain, in advance, the necessary permits for any development that occurs.

Human & Solid Waste: Bidders shall describe how they intend to handle both human and solid waste. On-site disposal of solid waste will not be approved. Water supply and waste disposal plans must meet State of Alaska requirements as found in their Drinking Water Regulations, their Wastewater Disposal Regulations, 18 AAC 72, and their Solid Waste Management Regulations, 18 AAC 60. All of these are published by the State of Alaska Dept. of Environmental Conservation.

Processing: Bidders shall describe how people will be processed for entering and exiting the tour boat.

Restrooms: A minimum of 6 restroom stalls (2 men with 2 urinals, 4 women) shall be provided in or near the waiting area. At least one men's and one women's stall shall provide access for the handicapped.

VIII DESIGN REQUIREMENTS FOR ON-SHORE DEVELOPMENT (cont)

Signing: Off site directional signing will be limited to one (1) sign at the junction of the Byron Glacier and Portage Highways. On site signing will be limited to one (1) sign on the entrance road, just prior to entry to the boat development parking area. Other signs for traffic control may be required. All signage will be subject to Forest Service approval.

Survey: The permit holder shall be required to survey and mark the approved permit boundaries after the development plan is accepted by the Forest Service. This must be done by a licensed surveyor of the State of Alaska and shall become a part of the special use permit.

IX MISCELLANEOUS REQUIREMENTS

In addition to the specific requirements described previously, there are several general requirements that will apply to any bid proposal and special use permit.

Advertising: Advertising outside of the buildings included as part of the special use permit shall be restricted to attractive and approved signs that simply state the services available at the site. Advertising on National Forest System lands shall be limited to the number and location as described previously in Section VIII.

Publicity materials shall indicate that this operation is located on National Forest System Lands of the Chugach National Forest, and is operated under a special use permit from the U.S.D.A. Forest Service. No mention of the U.S. Coast Guard shall appear in any advertising.

Insurance: The holder shall have in force public liability insurance covering: (1) property damage in the amount of $25,000 and (2) damage to persons in the minimum amount of $500,000 in the event of death or injury to one individual and the minimum amount of $1,000,000 in the event of death or injury to more than one individual.

The coverage shall extend to property damage, bodily injury, or death arising out of the holder's activities under the permit including, but not limited to, the occupancy or use of the land and the construction, maintenance, and operation of the structures, facilities, or equipment authorized by this permit. Such insurance shall also name the United States as additional insured and provide for specific coverage of the holder's contractually assumed obligation to indemnify the United States.

IX MISCELLANEOUS REQUIREMENTS (cont)

Insurance: (cont)

The policy shall also contain a specific provision or rider to the effect that the policy will not be cancelled or its provisions changed or deleted before thirty (30) days written notice to the Forest Supervisor, 201 E. 9th Avenue, Suite 206, Anchorage, AK 99501, by the insurance company. Upon issuance of the special use permit, the successful bidder must be able to provide proof of liability insurance for each phase of the development, from construction through full operation.

Performance Bond: To guarantee the satisfactory construction of the on site facilities at Portage Lake, the permit holder must furnish the Forest Service a Surety Bond in the sum of $1,000,000. The bond is to be furnished within 30 days after the permit holder is selected and prior to issuance of the permit. The bidder must show proof of ability to furnish such bonds as a part of the bid proposal.

Nondiscrimination: The permit holder will be required to comply with all nondiscrimination provisions set forth in the special use permit. These regulations assure that the permit holder will not discriminate against any bidder, must consider all qualified bidders, and will treat all employees without regard to race, color, religion, sex, or national origin. It also assures that the permit holder shall send a representative of the workers to each labor union with which he has a collective bargaining agreement or understanding. The permit holder shall include and require compliance with the nondiscrimination provisions in any subcontracts made with respect to operation under this permit. The permit holder is required to post in a conspicuous place as directed by the Forest Service, notices setting forth the provisions advising workers of the commitments or understandings he has with these labor unions.

The permit holder shall not discriminate in the services offered the public in accord with Title VI of the Civil Rights Act.

XI MISCELLANEOUS REQUIREMENTS (cont)

Nondiscrimination: (cont)

In the event of the permit holder's noncompliance with the nondiscrimination clause of this permit or any such rules, regulations or orders, this permit may be cancelled in whole or part and the permit holder may be declared ineligible for any further government contracts.

Charges to the Public: Charges for use of the area by the public shall be limited to boarding of the tour boat for the lake tour. No other charges may be placed on access or services provided under this permit.

X QUALIFICATIONS OF BIDDER AND PROPOSAL REQUIREMENTS

The permit holder will be selected from all bidders based on an evaluation to determine who in the judgment of the Forest Service is best qualified to construct, operate and maintain an interpretive boating opportunity on Portage Lake based on, but not limited to, evidence submitted by bidders covering items listed below.

All costs incurred by the bidder for items submitted for this bid proposal shall be the sole responsibility of the bidder.

Managerial Experience & Background: Of primary interest when a public service is to be performed is the permit holder's ability to perform according to the permit terms.

The bidder should describe their experiences in the development and operation of this type or similar enterprises or related business or have, within the active directorate of a corporation, such expertise. The demonstrated ability to implement and operate the project described in this prospectus is a prime requisite. Business knowledge, experience, and "know-how" is an asset necessary to ensure a reasonable profit. Any operations previously conducted under a Forest Service special use permit should be identified.

At least three character references must be submitted with the bid proposal.

Financial Ability: Bidder shall submit a complete financial plan describing resources available for development of this project and operation. Bidders can anticipate that no revenue generating operation will be in place until the summer of 1989.

X QUALIFICATIONS OF BIDDER AND PROPOSAL REQUIREMENTS (cont)

Financial Ability (cont)

It will be important for each bidder to provide financial information that will allow the Forest Service to evaluate their bid proposal. This information will remain confidential, and should be detailed enough for complete evaluation of the bid proposal. The financial information should contain two primary sections: a Credit Package and a Projected Performance Statement.

The Credit Package should describe the bidder's ability to finance the project. This should include the following: a current credit statement from a recognized credit reporting agency; current financial statement including assets, liabilities, and net worth; credit references; letter(s) of intent from financial institutions if financing is proposed; and appropriate documentation describing business partnerships and/or agreements if applicable, such as major shareholders, limited partners, etc. The credit statement and the letter(s) of intent from the financial institutions must be mailed directly to the Forest Service and must be notarized or embossed with the company seal.

The Projected Performance Statement should describe the anticipated profit and/or loss. This should be a detailed description by quarter for the first three (3) operating years and annually for the life of the financing period or a minimum of ten (10) years. The Performance Statement should include construction, financing, design, and operation and maintenance costs; fees to be paid the government including surcharges if proposed; number of visitors served; fees to be charged (including any variable fees); and the estimated down time (maintenance, repairs, etc.).

The financial plan should also describe the operating season, if different than that stated in the prospectus.

Operation Specifications & Development Schedule:

Bidder shall make a bid proposal specifying how and when all of the aspects of this project will be provided. The bid proposal shall include as a minimum, the seasonal and daily schedule, type and quality of service, an estimate of the average number of visitors that will be able to ride the tour boat per trip, a description of the interpretive program to be provided (if more than the Forest Service provided interpretive program), conceptual plans for the tour boat to be used, a layout of the shore facilities and road, the architectural style to be used, and a development schedule.

X QUALIFICATIONS OF BIDDER AND PROPOSAL REQUIREMENTS (cont)

Charges to the Public: Bidder shall submit a proposed fee to be charged the public for access to the tour boat. Any differential price structure should also be described (e.g. children, military, senior citizens, weekend, weekdays, etc.). It is the primary objective of the Forest Service to provide satisfactory public service at moderate rates. Rates determined, by the Forest Service, to be excessive will not be considered.

Fees: Fees are discussed in section IV, Special Use Permit. The bidder shall state if a surcharge is offered, and if so, the percentage offered.

Sublease Arrangements: Bidders shall state if any of the development, facilities, or operation are to be subleased and if so, provide details. All subleases must be approved by the Forest Service and the permit holder is responsible for their compliance with the terms of the special use permit.

XI SUBMISSION OF PROPOSAL AND BID

All bid proposals must be submitted in writing to:

Chugach National Forest
Anchorage Ranger District
Monarch Mine Road
P.O. Box 129
Girdwood, Alaska 99587

All proposals and bids must be received by 2:00 p.m., Alaska Standard Time, January 15, 1988. Bidders must submit a minimum of twenty (20) copies of their proposal and bid. Incomplete proposals will not be returned to the bidder for more information. Material submitted with proposals, with the exception of financial information, will not be returned to the bidder.

A Pre-Bid Meeting will be held at 10 a.m. on November 4, 1987, in Room 106/108 in the Forest Supervisor's Office, 201 E. 9th Avenue, Anchorage, Alaska. The purpose of this meeting is to clarify items unclear in the prospectus and answer questions pertaining to this proposal. The day after the pre-bid meeting a trip to Portage Lake to review the site will be available. A boat trip on Portage Lake to the face of the glacier will be offered. Only one representative from each bidding group will be able to participate in the boat trip. This will be the only trip authorized on the lake prior to issuance of the special use permit.

XII EVALUATION CRITERIA, ACCEPTANCE OF PROPOSAL AND AWARD

Proposals will be evaluated by the Forest Service on the following criteria and those items discussed in Sections IV thru XIII of the prospectus.:

Cost to the public
Minimization or minimizing negative impacts of the land based development on Portage Valley and the Begich, Boggs Visitor Center
Qualifications of the bidder, any consultants, or corporate backing
Overall service to the public
Safety Plan outline
Special use permit fee
Strength of the conceptual design for the tour boat and on-Shore facilities
Strength of the financial plan/package

Within 60 days after the closing date for receipt of proposals, the Forest Service will determine the most qualified bidder. If clarification of the proposal is required, such persons, partnerships, or corporations will then be notified that they may be required to submit, within 15 days of the date of notification, clarifying evidence, satisfactory to the Forest Service, that verifies the bidder's ability to complete the development and operation as proposed.

Final acceptance for the bid proposal will not be made until such evidence is presented and is satisfactory to the Forest Service.

At that time, a special use permit covering the development, operation and service to be provided will be issued to the successful bidder. A sample copy of the special use permit is attached to this prospectus (Appendix A). Bidders should read this sample special use permit very carefully.

XIII SPECIAL CONDITIONS

Consideration of Bids: The government reserves the right to reject any or all proposals.

Verbal Modification: Any oral statement made by a representative of the Government modifying or changing any condition of this prospectus is an expression of opinion only and confers no rights upon any bidder.

Profitability: The Forest Service cannot ensure a profitable operation to the successful bidder. Therefore, each bidder is encouraged to make their own economic appraisal of the opportunity offered through this prospectus.

XIII SPECIAL CONDITIONS (cont)

Site Conditions:	No technical exploration has been done on the site such as soil or water table level testing. Bidders should consider construction techniques based on their own site analysis.

APPENDIX A

SAMPLE SPECIAL USE PERMIT

United States Department of Agriculture
Forest Service

TERM SPECIAL USE PERMIT

Act of March 4, 1915, as amended July 28, 1956, or Act of March 10, 1948
(Ref. FSM 2710)

a. Record no. (1-2)	b. Region	c. Forest (5-6)
70	Alaska 10	Chugach 04
d. District (7-8)	**e. User number (9-12)**	**f. Kind of use (13-15)**
Anchorage 01	----	Resort 133
g. State (16-17)	**h. County (18-20)**	**k. Card no. (21)**
Alaska 02	---	1

Permission is hereby granted to ______________________________

of ____,
hereinafter called the permittee, to use subject to the conditions set out below, the following described lands or improvements for the period of 20 years from the date thereof:

A tract of land along the western shore of Portage Lake, as shown on Map 2 and authorization to operate a tour boat on the lake. The Portage Lake Tour Boat Operation Prospectus and accepted bid proposal will become a part of this permit.

Pursuant to 36 CFR 251.53(d) and (1)(C), the construction and maintenance agreement signed on __________ is hereby attached to amd made a part of this permit.

Bidders Note: Map 2 will be revised to show the permit boundaries after they are marked and surveyed.

This permit covers approx. 15 acres and is issued for the purpose of:

Developing and operating a tour boat concession on Portage Lake. Facilities and operation will be limited to those items and/or location as described in the prospectus.

1. Construction or occupancy and use under this permit shall begin within 6 months, and construction, if any, shall be completed within 24 months, from the date of the permit. This use shall be actually exercised at least 365 days each year, unless otherwise authorized in writing.

2. In consideration for this use, the permittee shall pay to the Forest Service, U.S. Department of Agriculture, ~~XXXXXXX~~ see Clause 21 ~~Dollars ($XXXXXXXXXXXXXXXX) for the period from XXXXXXXX 19XXXXXX to XXXXXXXXXXXXXXXX 19XXXX and thereafter annually on XXXXXXXXXXXXXXXXXXXX Dollars ($XXXXXXXXXXXXXXXX)~~: *Provided, however,* That the charges for this use shall be readjusted as of, and effective on, the beginning of each 5-year period from the due date of the first annual payment in order to place the charges on a basis commensurate with the value of use authorized by this permit.

3. This permit is accepted subject to the conditions set forth herein, and to conditions 20 to 77 attached hereto and made a part of this permit.

PERMITTEE	NAME OF PERMITTEE	SIGNATURE OF AUTHORIZED OFFICER TITLE	DATE
ISSUING OFFICER	NAME AND SIGNATURE Dalton Du Lac	TITLE Forest Supervisor	DATE

4. Development plans; lay-out plans; construction, reconstruction, alteration of improvements; or revision of lay-out or construction plans for this area must be approved in advance and in writing by the forest supervisor. Trees or shrubbery on the permitted area may be removed or destroyed only after the forest officer in charge has approved, and has marked or otherwise designated that which may be removed or destroyed. Timber cut or destroyed will be paid for by the permittee as follows: Merchantable timber at appraised value; young-growth timber below merchantable size at current damage appraisal value; provided that the Forest Service reserves the right to dispose of the merchantable timber to others than the permittee at no stumpage cost to the permittee. Trees, shrubs, and other plant may be planted in such manner and in such places about the premises as may be approved by the forest officer in charge.

5. The permittee shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the forest officer in charge.

6. This permit is subject to all valid claims.

7. The permittee, in exercising the privileges granted by this permit, shall comply with the regulations of the Department of Agriculture and all Federal, State, county, and municipal laws, ordinances, or regulations which are applicable to the area or operations covered by this permit.

8. The permittee shall take all reasonable precaution to prevent and suppress forest fires. No material shall be disposed of by burning in open fires during the closed season established by law or regulation without a written permit from the forest officer in charge or his authorized agent.

9. The permittee shall exercise diligence in protecting from damage the land and property of the United States covered by and used in connection with this permit, and shall pay the United States for any damage resulting from negligence or from the violation of the terms of this permit or of any law or regulation applicable to the national forests by the permittee, or by any agents or employees of the permittee acting within the scope of their agency or employment.

10. The permittee shall fully repair all damage, other than ordinary wear and tear, to national forest roads and trails caused by the permittee in the exercise of the privilege granted by this permit.

11. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this agreement or to any benefit that may arise herefrom unless it is made with a corporation for its general benefit.

12. Except as provided in Clause 16 below, upon abandonment, termination, revocation, or cancellation of this permit, the permittee shall remove within a reasonable time all structures and improvements except those owned by the United States, and shall restore the site, unless otherwise agreed upon in writing or in this permit. If the permittee fails to remove all such structures or improvements within a reasonable period, they shall become the property of the United States, but that will not relieve the permittee of liability for the cost of their removal and the restoration of the site.

13. This permit is not transferable. If the permittee through voluntary sale or transfer, or through enforcement of contract, foreclosure, tax sale, or other valid legal proceeding shall cease to be the owner of the physical improvements other than those owned by the United States situated on the land described in this permit and is unable to furnish adequate proof of ability to redeem or otherwise reestablish title to said improvements, this permit shall be subject to cancellation. But if the person to whom title to said improvements shall have been transferred in either manner above provided is qualified as a permittee, and is willing that his future occupancy of the premises shall be subject to such new conditions and stipulations as existing or prospective circumstances may warrant, his continued occupancy of the premises will be authorized by a permit to him, which may be for the unexpired term of this permit or for such new period as the circumstances justify.

14. The permittee may sublease the use of land and improvements covered under this permit and the operation of concessions and facilities authorized; Provided the express written permission of the Forest Supervisor has been secured. The permittee shall continue to be responsible for compliance with all conditions of this permit by persons to whom such premises may be sublet.

15. This permit may be revoked upon breach of any of the conditions herein.

16. If during the term of this permit or any extension thereof, the Secretary of Agriculture or any official of the Forest Service acting by or under his authority shall determine that the public interest requires termination of this permit, this permit shall terminate upon thirty days' written notice to the permittee of such determination, and the United States shall have the right thereupon to purchase the permittee's improvements, to remove them, or to require the permittee to remove them, at the option of the United States, and the United States shall be obligated to pay an equitable consideration for the improvements or for removal of the improvements and damages to the improvements resulting from their removal. The amount of the consideration shall be fixed by mutual agreement between the United States and the permittee and shall be accepted by the permittee in full satisfaction of all claims against the United States under this clause: *Provided,* That if mutual agreement is not reached, the Forest Service shall determine the amount and if the permittee is dissatisfied with the amount thus determined to be due him he may appeal the determination in accordance with the Appeal Regulation (36 C.F.R. 211.20 - 211.37) and the amount as determined on appeal shall be final and conclusive on the parties hereto; *Provided further,* That upon the payment to the permittee of 75% of the amount fixed by the Forest Service, the right of the United States to remove or require the removal of the improvements shall not be stayed pending final decision on appeal.

~~17. The permittee agrees that the amount which the United States shall be required to pay for improvements in accordance with Clause 16 shall in no event exceed $ _____, and that this instrument may be introduced in any judicial proceedings for the acquisition of such improvements by the United States as the stipulation of the permittee and the United States with regard to the maximum amount which the United States shall be required to pay for the taking thereof.~~

18. In case of change of address the permittee shall immediately notify the forest supervisor.

19. In the event of any conflict between any of the preceding printed clauses or any provision thereof and any of the following clauses or any provisions thereof, the following clauses will control.

GPO 914-890

20. Definitions, Graduated-Rate Fee System. (A-2) (cont)

(9) Assets owned by and leased from others.

As of _____(date)_____, the initial GFA under this ownership has been determined to be $_____ as shown in detail on attached schedule (identify the schedule). If an error is found in the GFA amount, it shall be changed to the correct amount retroactive to the date the error occurred.

2. Sales. For the purpose of fee calculation, include
(1) revenue derived from all goods and services sold which are related to operations under this permit, and
(2) the value of gratuities not excluded by item (g). Gratuities include such goods, services, or privileges as discounts, gifts, dividends, or benefits that are furnished to such individuals as stockholders, owners, creditors or other obligees, officers, employees or their families, at rates or under conditions not available to the general public. Such gratuities shall be sales-priced by the holder at the current price to the public.

The following items shall be excluded from gross receipts or revenue to arrive at sales:

a. Refunds from returned merchandise and receipts from sales of real and nonrental personal property used in the operation. Sales of property, such as rental equipment, previously used for generating operating revenue, when sold on the premises, shall be included in gross receipts. Examples of this are such rental items as boats, motors, skis, or boots, which may be sold periodically and replaced. If such equipment is traded in or sold off premises, the value or revenue shall be excluded from sales.

b. Rents paid to the holder by sublessees, even if based on sales. (The gross sales of sublessees are included as provided under item (1).)

c. Amounts received from goods sold, services rendered, or privileges granted at a price lower than the holder's current price to the public. (The full value is included as provided under item (2).)

d. Sales taxes and Federal and State gasoline taxes collected from customers that were paid or are payable directly to taxing authorities.

e. Amounts paid or payable to a Government licensing authority or recreation administering agency from sales of hunting or fishing licenses and recreation fee tickets.

f. Value of sales where the holder is serving as a collection or sales agent for businesses not directly associated with the permitted operation. This includes such things as bus or sightseeing-ticket sales for trips not related to activities on the permitted area, telephone-toll charges, and accident-insurance sales.

20. Definitions, Graduated-Rate Fee System. (A-2) (cont)

g. Items listed in a policy statement prepared by the holder pertaining to gratuities previously approved in writing by the Forest Supervisor. The policy statement will describe how gratuities are to be recorded. A record of all gratuities shall be kept by the holder as a part of the records under this permit.

h. Franchise receipts. Defined as amounts paid the holder by sublessees, as determined at the time franchise operations are authorized, solely for the opportunity to do business at a specific location, possibly in addition to a stated rental fee. Franchise receipts may be in the form of fixed amounts of money or reduced prices for the franchiser's product or service. No franchise operations will be undertaken until approved, in advance, by the Forest Supervisor.

i. Commission payments received by the holder for serving as an agent or providing services such as those described in items e and f above.

21. Other Stipulations (Graduated-Rate Fee System) (A-3)

An annual flat fee shall be due the United States during the construction period (and until exceeded by fees determined by the Graduated-Rate fee System described below); Thereafter, the annual fees due the United States for those activities authorized by this permit shall be calculated on sales according to the schedule below.

Kind of Business	Break-even point (Sales to GFA) (Percentage)	Rate Base (Percentage)	Balance of sales rate (Percentage)
Outfitting, guiding	50	2.00	2.65

A weighed-average break-even point (called the break-even point) and a weighted-average rate base (called the rate base) shall be calculated and used when applying the schedule to mixed business. If the holder's business records do not clearly segregate the sales into the business categories authorized by this permit, they will be placed in the most logical category. If sales with a different rate base are grouped, place them all in the rate category that will yield the highest fee. Calculate the fee on sales below the break-even point using 50 percent of the rate base. Calculate the fee on sales between the break-even point and twice the break-even point using 150 percent of the rate base. Calculate the fee on sales above twice the break-even point using the balance of sales rate.

A surcharge of _____ percent will be applied to and added to the basic fee. The surcharge will be applied for _____ years beginning with the year that sales first occur under this operation.

21. Other Stipulations (Graduated-Rate Fee System) (A-3) (cont)

To the above basic fee will be added the fee for commissions calculated by applying the weighted average fee rate to revenue collected as commissions. The weighted average fee rate is derived by dividing the total basic fee by sales.

To the above fees will be added _____ percent of franchise receipts.

The minimum annual fee for this use, which is due in advance and is not subject to refund, will be equal to the fee that would result when sales are 40 percent of the break-even point. This fee will be calculated and billed by the Forest Service during the final quarter of the holder's fiscal year using the most recent GFA figure and previously reported sales data for the current year, plus, if the operating season is still active, estimated sales for the remainder of the year.

22. Rate Redetermination. (A-4).

Upon determination by the Chief of the Forest Service that sufficient changes have occurred in conditions relating to specific kinds of business to warrant review, break-even points and rates will be reexamined and, if appropriate, new schedules will be prepared by the Forest Service to be effective in all permits authorizing such business or businesses. The charges for this permit will be developed according to the new schedule, as of, and effective on, the beginning of the holder's business year following approval of the revised rate scheduled.

Provided, however, that the method of fee determination and/or the annual flat fee may be adjusted when determined necessary by the Forest Service in order to place the charges on a basis commensurate with the value of use authorized by this permit.

23. Concession Payment, Graduated-Rate Fee System. (A-5)

Reports and deposits required as outlined above shall be tendered in accordance with the schedule below. They will be sent or delivered to the Collection Officer, Forest Service, USDA, at the address furnished by the Forest Supervisor. Checks or money orders will be payable to "Forest Service, USDA."

The holder will pay a flat fee of _____ for the period from the effective date of this permit to December 31, 19__, and $7,500.00 per annum thereafter until sales occur and fees are determined by the Graduated-Rate Fee System). Thereafter,

(1) During the final fiscal quarter, pay within 15 days of billing by the Forest Service, the annual minimum fee for the next year.

(2) The holder shall send to the Forest Supervisor on or before (give date which shall be 30 days after the close of the holder's fiscal year) of each year a statement of sales as defined in the Sales Terms and Conditions of this permit for itself and each sublessee for the same period.

23. Concession Payment, Graduated-Rate Fee System. (A-5) (cont)

The holder must also provide within three (3) months after close of its operating year a balance of its business year, and annual operating statement reporting the results of operations including yearend adjustments for itself and each sublessee for the same period, and a schedule of gross fixed assets adjusted to comply with the terms of this permit in a format and manner prescribed by the Forest Service.

If the holder fails to report all sales in the period they were made or misreports gross fixed assets and the Forest Service determines that additional fees are owed, the holder shall pay the additional fee plus interest. Such interest shall be assessed at the rate specified in clause 24 and shall accrue from the date the sales or correct gross fixed assets should have been reported and fee paid until the date of actual payment of the underpaid fee.

(3) Within 15 days of receipt of a statement from the Forest Supervisor, pay any additional fee required to correct fees paid for the past year's operation.

(4) Report sales, calculate fees due and make payment each calendar month and periods in which no sales take place and the holder has notified the Forest Service that his operation has entered a seasonal shutdown for a specific period. Reports and payments will be made by the 15th of the month following the end of each reportable period.

The Forest Supervisor, prior to March 1, will furnish the holder with a tentative rate which shall be applied to sales in the fee calculation (item (4)), such rate to be one that will produce the expected fee based on past experience. The correct fee will be determined at the end of the year and adjustment made as provided under item (3). Any balance that may exist will be credited and applied against the next payment due.

All fee calculations and records of sales and GFA are subject to periodic audit. Errors in calculation or payment will be corrected as needed for conformance with those audits.

24. Late Payment Interest Charge. (A-6)

Pursuant to the Federal Claims Collection Act of 1966, as amended, 31 USC 3101, et seq., and regulations at 7 CFR Part 3, Subpart B, an interest charge shall be assessed on any payment not made by the payment due date. Interest shall be assessed using the most current rate prescribed by the United States Department of the Treasury's Fiscal Requirements Manual (TFRM-6-8020.20). Interest shall accrue from the date the payment was due. In addition, the cost of processing and handling the overdue payment shall be added to the amount due.

A penalty of 6 percent per year shall be assessed on any payment overdue in excess of 90 days from the payment due date.

24. Late Payment Interest Charge. (A-6) (cont)

Payments will be credited on the date received by the designated collection officer or deposit location. If the payment due date(s) falls on a nonworkday, the interest and penalty charges shall not apply until the close of business of the next workday.

25. Access to Records. (A-7)

For the purpose of administering this permit (including ascertaining that fees paid were correct and evaluating the propriety of the fee base), the holder agrees to make all the accounting books and supporting records to the business activities, as well as those of sublessees operating within the authority of this permit, available for analysis by qualified representatives of the Forest Service or other Federal agencies authorized to review the Forest Service activities. Review of accounting books and supporting records will be made at dates convenient to the holder and reviewers. Financial information so obtained will be treated as confidential as provided by law (5 U.S.C. 552) and in regulations issued by the Secretary of Agriculture (7 CFR 1.1).

The holder will retain the above records and keep them available for review for three years after the end of the year involved, unless disposition is otherwise authorized by the Forest Service in writing.

26. Accounting Records. (A-8)

The holder shall follow generally accepted accounting principles in recording financial transactions and in reporting results to the Forest Service. When requested by the Forest Service, the holder at own expense, will have the annual accounting reports audited by a public accountant acceptable to the Forest Service. The holder will require sublessees to comply with these same requirements. The minimum acceptable accounting system will include:

(1) Systematic internal controls and recording by kind of business the gross receipts derived from all sources of business conducted under this permit. Receipts should be recorded daily and, if possible, deposited into a bank account without reduction by disbursements.

Receipt entries should be supported by such source documents as cash-register tapes, sale invoices, room-rental records, and cash accounts from other sources.

(2) A record of all disbursements, including capital items, and a permanent record of investments in facilities (gross fixed assets).

(3) Preparation and maintenance of such special records and accounts as may be specified by the authorized forest officer.

(4) Bank accounts will be maintained separately for the businesses conducted under this permit and not comingled with those for other businesses of the holder.

27. Fee Clause (A-9)

The fees due the United States for this use shall be deposited with the Unit Collection Officer, Chugach National Forest, 201 E. 9th Avenue, Suite 206, Anchorage, AK 99501, in the form of check, draft, or money order made payable to "Forest Service, USDA".

28. Nondiscrimination, Employment. (B-1)

In connection with the performance of work under this permit, the holder agrees as follows:

1. The holder will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The holder will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The holder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Forest Service setting forth the provisions of the nondiscrimination clause.

2. The holder will, in all solicitations or advertisements for employees be placed by or on behalf of the holder, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

3. The holder will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be be provided by the Forest Service, advising the labor union or worker's representative of the holder's commitment under this clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The holder will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 31,1967, and of the rules, regulations and relevant orders of the Secretary of Labor.

5. The holder will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Forest Service and the Secretary of Labor for the purposes of investigation to ascertain compliance with such rules, regulations and orders.

28. Nondiscrimination, Employment. (B-1) (cont)

6. In the event of the holder's noncompliance with the discrimination clauses of this permit or with any of such rules, regulations, or orders, this permit may be cancelled or terminated in whole or part and the holder may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be invoked and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order or the Secretary of Labor or as otherwise provided by law.

7. The holder will include the provisions of the foregoing paragraphs (1) through (6) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The holder will take such action with respect to subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the holder becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Forest Service, the holder may request the United States to enter into such litigation to protect the interests of the United States.

29. Nondiscrimination, Services. (B-2)

During the performance of this authorization, the holder agrees that:

1. The holder and employees shall not discriminate by segregation or otherwise against any person on the basis of race, color, or national origin by curtailing or refusing to furnish accommodations.
2. Title VI attaches coverage to the holder's employment practices if discrimination in employment impeded the delivery of services and benefits to people on the basis of their race, color, or national origin.
3. The holder shall include and require compliance with this nondiscrimination provision in any subcontract made with respect to the operations under this authorization.
4. Signs setting forth this policy of nondiscrimination, to be furnished by the Forest Service, will conspicuously be displayed at the public entrance to the premises, and at other exterior or interior locations as directed by the Forest Service.

30. Boating Safety Plan. (B-4)

A comprehensive safety plan shall be jointly prepared by the holder and the authorized officer in charge and the provisions thereof will be executed and enforced by the holder. This plan shall be reviewed annually and revised as needed. It will include consideration of all hazards involved in the use and enjoyment of the permitted area and lake facilities.

30. Boating Safety Plan. (B-4) (cont)

It will include provisions for adequate instructions, signs, warnings, signals, banners, buoys, and other safety precautions necessary to provide public safety regarding mechanical equipment and other sources of personal injury.

31. Indemnification of United States. (B-8)

The holder shall indemnify the United States against any liability for damage to life or property arising from the occupancy or use of National Forest lands under this permit.

32. Insurance Clause. (B-10)

The holder shall have in force public liability insurance covering: (1) property damage in the amount of twenty-five thousand dollars ($25,000.00), and (2) damage to persons in the minimum amount of five-hundred thousand dollars ($500,000.00) in the event of death or injury to one individual and the minimum amount of one-million dollars ($1,000,000.00) in the event of death or injury to more than one individual. The coverage shall extend to property damage, bodily injury, or death arising out of the holder's activities under the permit including, but not limited to, the occupancy or use of the land and the construction, maintenance, and operation of the structures, facilities, or equipment authorized by this permit. Such insurance shall also name the United States as additional insured and provide for specific coverage of the holder's contractually assumed obligation to indemnify the United States. The holder shall send an authenticated copy of its insurance policy to the Forest Service immediately upon issuance of the policy. The policy shall also contain a specific provision or rider to the effect that the policy will not be cancelled or its provisions changed or deleted before thirty (30) days written notice to the Forest Supervisor, 201 E. 9th Avenue, Suite 206, Anchorage, AK 99501, by the insurance company.

33. Risks and Hazards. (B-24)

Avalanches, rising waters, high winds, falling limbs or trees, and other hazards are natural phenomena in the Forest that present risks which the holder assumes. The holder has responsibility of inspecting site, lot, right-of-way, and immediate adjoining area for dangerous trees, hanging limbs, and other evidence of hazardous conditions and, after securing permission from the Forest Service, of removing such hazards.

34. Construction Safety. (B-25)

The holder shall carry on all operations in a skillful manner, having due regard for the safety of employees; and shall safeguard with fences, barriers, fills, covers, or other effective devices, pits, cuts, and other excavations which otherwise would unduly imperil the life, safety, or property of other persons.

35. Area Maintenance. (B-31)

The permitted area will be maintained to present a clean, neat, and orderly appearance. Trash, debris, unusable machinery, improvements, etc., will be disposed of currently. Building materials, firewood, etc., will be neatly stacked.

36. Sanitation. (B-33)

The operation and maintenance of all sanitation, food service, and water-supply methods, systems, and facilities shall comply with the standards of the local department of health and the United States Public Health Service. The holder shall dispose of all garbage and refuse in a place and manner specified by the Forest officer in charge.

37. Refuse Disposal. (B-34)

The holder shall dispose of refuse resulting from this use, including waste materials, garbage, and rubbish of all kinds, in the following manner: removal from the site and deposit in a Municipality of Anchorage solid waste facility.

38. Site Development Schedule. (C-1)

As a part of this permit, a schedule for the progressive development of the permitted site and installation of facilities shall be prepared jointly by the holder and the Forest Service. Such a schedule shall be prepared by (180 days after permit issued), and shall set forth an itemized priority list of planned improvements and the due date for completion. This schedule shall be made a part of this permit. The holder may accelerate the schedule date for installation of any improvements authorized, provided the other scheduled priorities are met; and provided further, that all priority installations authorized are completed to the satisfaction of the Forest Service and ready for public use prior to the scheduled date.

All required plans and specifications for site, improvements and structures included in the development schedule shall be submitted to the Forest Service at least forty-five (45) days before the construction date stipulated in the development schedule. In the event there is agreement with the Forest Service to expand the facilities and services provided on the areas covered by this permit, the holder shall jointly prepare with the Forest Service a development schedule for the added facilities prior to any construction. Such schedule shall be made a part of this permit.

39. Site plan. (C-2)

The holder shall prepare site plans to show the location of all buildings, service areas, roads, and structures. Such plan shall be on a scale of 1"= 20' with one (1) foot contour intervals. The holder is encouraged to consult with the authorized officer during the preparation of the site plan to ensure that it is adequate and to gain multiple-use compliance. No construction shall be undertaken prior to site plan approval.

40. Site Grading Plans. (C-4)

The holder shall prepare grading plans, profiles, and cross-sections to show precise elevations, excavations, and other details related to the installation of buildings, structures, or improvements on the permitted-use area.

Such plans shall include provisions for drainage, retaining structures, seeding, and planting, to be made for the prevention and control of erosion on the permitted area and the National Forest lands adjacent to the permitted area, insofar as the latter may be influenced by the permitted us.

41. Building and Service System Plans. (C-6)

All plans and specifications for buildings shall be prepared by an architect licensed in the State in which the building will be located. The plans shall be in accordance with the Uniform Building Code.

Building plumbing shall be in accordance with the National Plumbing Code. The electrical system shall be in accordance with the National Electrical Code. Other systems shall be designated in accordance with recognized standards.

Plans shall be submitted to the authorized officer for approval prior to the beginning of construction.

The holder shall submit to the authorized officer a certification by the architect or engineer who inspected construction that the building has been constructed in accordance with the approved plans before the building is approved for use.

42. Plan, Map, and Specification Language. (C-13)

All plans, maps, and specifications shall be written in English and shall use American standards of measurement.

43. Site Development Plans. (C-16)

This permit is contingent upon the installation, layout, and development plans as submitted by the holder and approved as a part of this permit for this specific location. Any and all subsequent relocations, alterations, revisions, additions, construction, or reconstruction of housing and mounting facilities, including antenna towers or masts, shall require advance notification and approval of the Forest Service and advance modification of this permit.

44. Environmental Standards. (C-25)

Holder shall conduct all activities associated with the Portage Lake Tour Boat Operation in a manner that will avoid or minimize degradation of air, land, and water quality. In the construction, operation, maintenance, and termination of the Portage Lake Tour Boat Operation, holder shall perform its activities in accordance with applicable air and water quality standards, related facility siting standards, and related plans of implementation, including but not limited to standards adopted pursuant to the Clean Air Act, as amended (42 USC 1857) and the Federal Water Pollution Control Act, as amended (33 USC 1321).

45. Bonds, Performance. (C-3)

As a further guarantee of the faithful performance of the provisions of the attached construction plan, the holder agrees to deliver and maintain a surety bond in the amount of one million dollars ($1,000,000). Should the sureties or the bonds delivered under this permit become unsatisfactory to the Forest Service, the holder shall, within thirty (30) days of demand, furnish a new bond with surety, solvent and satisfactory to the Forest Service. In lieu of surety bond, the holder may deposit into a Federal depository, as directed by the Forest Service, and maintain therein, cash in the amounts provided for above, or negotiable securities of the United States having a market value at time of deposit of not less than the dollar amounts provided above.

The holder's surety bond will be released, or deposits in lieu of bond, will be returned thirty (30) days after certification by the Forest Service that priority installations under the development plan are complete, and upon furnishing by the holder of proof satisfactory to the Forest Service that all claims for labor and material on said installations have been paid or released and satisfied. The holder agrees that all moneys deposited under this permit may, upon failure on his part to fulfill all and singular the requirements herein set forth or made a part hereof, be retained by the United States to be applied to satisfy obligations assumed hereunder, without prejudice whatever to any rights and remedies of the United States.

Prior to undertaking additional construction or alteration work not provided for in the above terms and conditions or when the improvements are to be removed and the area restored, the holder shall deliver and maintain a surety bond in an amount set by the Forest Service, which amount shall not be in excess of the estimated loss which the Government would suffer upon default in performance of this work.

46. Site Planting Plans. (C-5)

The holder shall submit planting plans to reasonably restore or protect all areas disturbed during construction. Such plans will identify plant material by botanical name, size, and location. Each stage of construction will be considered complete only upon completion and acceptance of the successful seeding and planting in the vicinity of construction. All seeding and planting required on the permitted area shall be completed according to the development schedule.

47. Water Pollution. (D-2)

No waste or by-product shall be discharged into water if it contains any substance in concentrations which will result in harm to fish and wildlife, or to human water supplies.

Storage facilities for materials capable of causing water pollution, if accidentally discharged, shall be located so as to prevent any spillage into waters or channels leading into water, that would result in harm to fish and wildlife or to human water supplies.

48. Esthetics. (D-3)

The holder shall protect the scenic esthetic values of the area under this permit, and the adjacent land, as far as possible with the authorized use, during construction, operation, and maintenance of the improvements.

49. Surveys, Land Corners. (D-4)

The holder shall protect, in place, all public land survey monuments, private property corners, and Forest boundary markers. In the event that any such land markers or monuments are destroyed in the exercise of the privileges authorized by this permit, depending on the type of monument destroyed, the holder shall see that they are reestablished or referenced in accordance with (1) the procedures outlined in the "Manual of Instructions for the Survey of the Public Land of the United States," (2) the specifications of the county surveyor, or (3) the specifications of the Forest Service.

Further, the holder shall cause such official survey records as are affected to be amended as provided by law. Nothing in this clause shall relieve the holder's liability for the willful destruction or modification of any Government survey marker as provided at 18 U.S.C. 1858.

50. Vandalism. (D-5)

The holder will take reasonable measures to prevent and discourage vandalism or disorderly conduct, and when necessary, will call in the appropriate law enforcement officer.

51. Erosion Control. (D-6)

Slope stabilization and the prevention of soil erosion and gullying throughout the permitted area and adjacent lands will be accomplished by carrying out the provisions of an erosion control plan prepared by the holder and approved by the authorized officer.

52. Revegetation, Surface Restoration of Ground Cover. (D-9)

Holder shall be responsible for prevention and control of soil erosion and gullying on lands covered by this permit and adjacent thereto, resulting from construction, operations, maintenance, and termination of the permitted use. Holder shall so construct permitted improvements to avoid the accumulation of excessive heads of water and to avoid encroachment on streams. Holder shall revegetate or otherwise stabilize all ground where the soil has been exposed and shall construct and maintain necessary preventive measures to supplement the vegetation.

53. Revegetation, Surface Restoration, Seeding or Planting. (D-11)

Seeding or planting will be done at a time of the year, in a manner, and with species which the District Ranger considers offer the best chance of success and will be repeated annually until such areas are accepted in writing by the District Ranger as satisfactorily revegetated and stabilized.

62. Implied Permission. (X-3)

Nothing in this permit shall be construed to imply permission to build or maintain any structure not specifically named on the face of this permit, or approved by the authorized officer in the form of a new permit or permit amendment.

63. Animals and Fowl. (X-7)

No animals or fowl, other than household pets, shall be kept upon the premises.

64. Services Not Provided. (X-14)

This permit is for the occupancy of land for the purposes stated and does not provide for the furnishing of road maintenance, water, fire protection, or any other such service by a Government agency, utility, association, or individual.

65. Archeological-Paleontological Discoveries. (X-17)

If, during excavation or other ground disturbing activities, historic, prehistoric, or paleontological objects or sites are discovered, the holder must cease such activities in the area of the discovery. The holder must then notify the Forest Service, and must not resume excavation or other ground disturbing activities there until written approval is given.

The holder is responsible for the protection of any discovered resource, and the alteration of project plans to avoid further disturbance of the discovered resource, as the Forest Service determines is necessary after consultation with the holder. The holder may perform the salvage of the discovered resource if, and in the manner, approved by the Forest Service.

Items of historic, prehistoric, or paleontological value are protected under various Federal laws, including the Antiquities Act of 1906 (16 USC 433), the Archeological Resources Protection Act of 1979 (16 USC 470ee), and Federal regulations. Failure to comply with this clause may result in criminal prosecution of the holder for violation of a Federal law or regulation.

66. Area Access. (X-19)

The holder agrees to permit the free and unrestricted access to and upon the premises at all times for all lawful and proper purposes not inconsistent with the intent of the permit or with the reasonable exercise and enjoyment by the holder of the privileges thereof.

67. Regulating Services and Rates. (X-22)

The Forest Service shall have the authority to check and regulate the adequacy and type of services provided the public and to require that such services conform to satisfactory standards. The holder may be required to furnish a schedule of prices for sales and services authorized by the permit. Such prices and services may be regulated by the Forest Service: Provided, that the holder shall not be required to charge prices lower than those charged by comparable or competing enterprises.

75. Performance by Other Than Holder. (X-69)

The acquisition or assumption by another party under an agreement with the holder of any right or obligation of the holder under this permit shall be ineffective as to the Forest Service unless and until signed by the authorized Forest Officer. A subsequent acquisition or assumption shall not:

1. Operate to relieve the holder of the responsibilities or liabilities they have assumed hereunder, or

2. Be given unless such other party

(a) Is acceptable to the Forest Service as a holder, and assumes in writing all of the obligations to the Forest Service under the terms of this permit as to the incomplete portion thereof, or

(b) Acquires the rights in trust as security and subject to such conditions as may be necessary for the protection of the public interests.

76. Holder representative. (X-71)

The holder or a designated representative shall be present on the premises at all times when the facilities are open to the public. The holder will notify the District Ranger in writing who the representative will be.

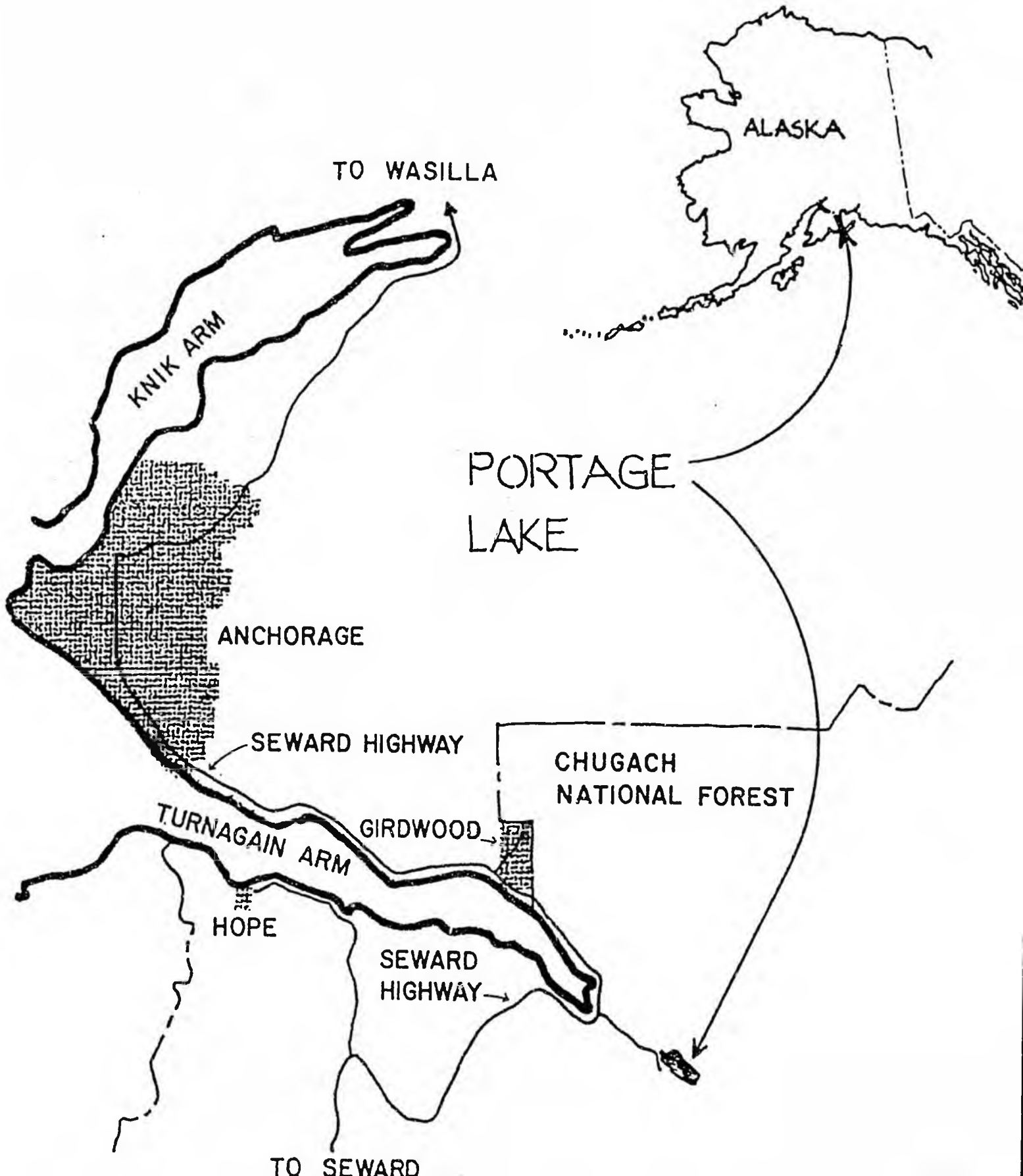
77. Designation of Holder Representative. (X-201)

The holder must designate in writing to the Forest Supervisor, the name and title of the person who is authorized to act in all matters connected with the privileges authorized by this permit. In the event the designated representative is to be changed for any reason, the Forest Supervisor must be notified of the replacement as soon as possible.

APPENDIX B

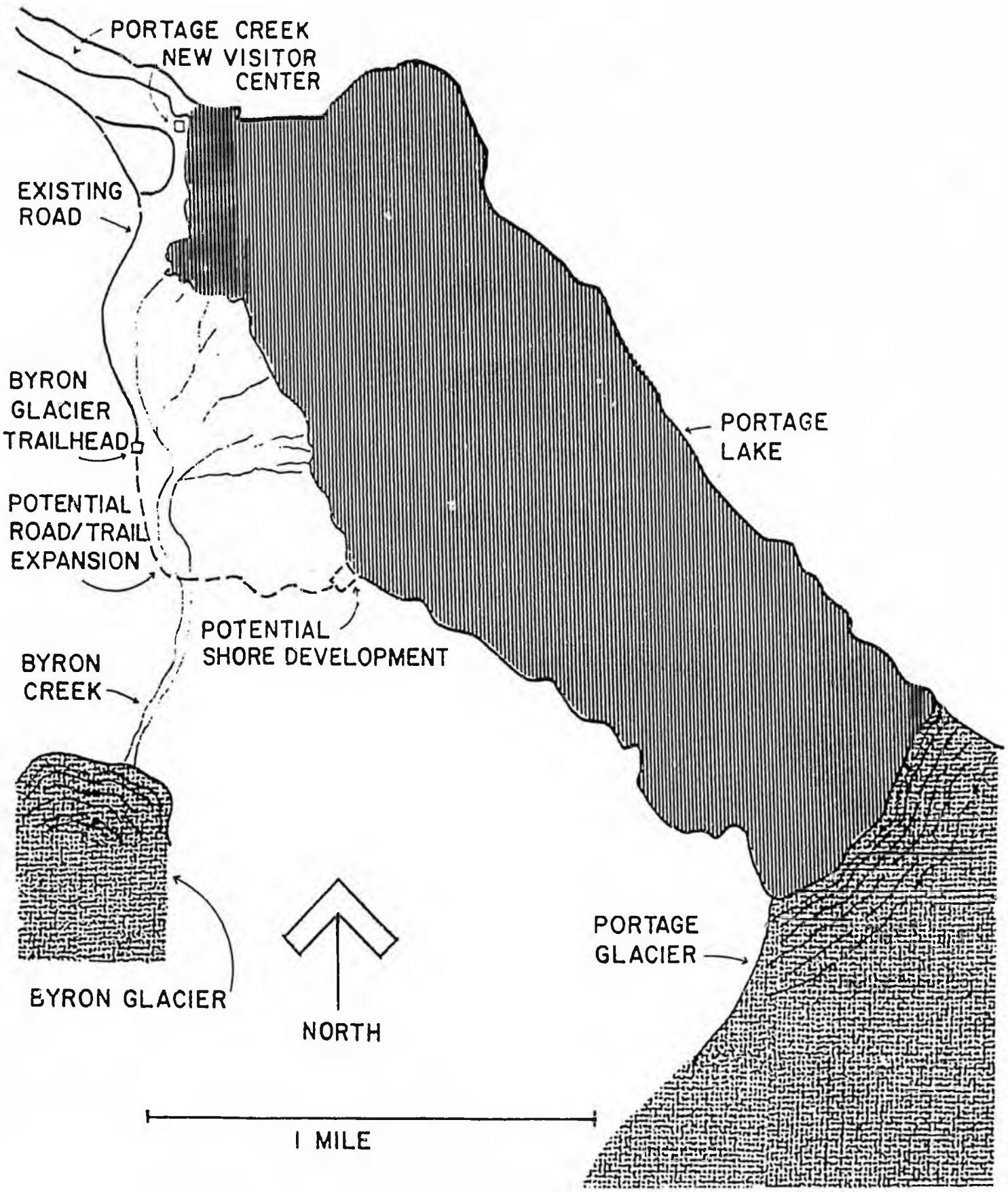
MAPS

LOCATION MAP 1



PORTAGE LAKE

MAP 2



APPENDIX C

FOREST SERVICE FORM 2700-19
(Fee Calculation for Concession Permits)

FORM APPROVED OMB No 0596-0076
(Expires 7/31/84)

USDA - FOREST SERVICE	A. PERMITTEE (Name and address)	B. LUR IDENTITY CODE
FEE CALCULATION FOR CONCESSION PERMITS		7 0

C. PERIOD	D. FEE CALCULATION SALES	E. GROSS FIXED ASSETS (GFA)
	$	$

SOURCE OF SALES	SALES FOR FEE CALCULATION		BREAK EVEN POINT (SALES TO GFA)		RATE BASE		BALANCE OF SALES RATE	
	AMOUNTS	%	%		%		-	
	$							
TOTAL	$							

ITEMS	RATE %	SALES	FEE
1. COMPOSITE BREAK-EVEN POINT			
2. COMPOSITE RATE BASE			
3. COMPUTATION OF BASIC FEE a - on sales below break-even		$	$
b - on sales from break-even to twice break-even			
c - on sales greater than twice break-even			
4. TOTALS (Sales and Basic Fee)		$	$
5. WEIGHTED AVERAGE FEE RATE			
6. SURCHARGE (if any)	$ (TOTAL BASIC FEE) × (SURCHARGE RATE) =		$
7. COMMISSIONS AND OTHER INCOME	$ (COMMISSIONS) × (WEIGHTED AVG. FEE RATE) =		$
8. FRANCHISE PAYMENTS	$ (FRANCHISE PAYMENTS) × (FRANCHISE RATE) =		$
9. FEE EARNED (G./T payments to be billed separately) →			$
10. MINIMUM FEE PAID →			$
11. TOTAL FEE DUE →			$
12. PAYMENT TO DATE including credits →			$
13. BALANCE DUE/CREDIT (Strike Out One) →			$

PREPARED BY:	DATE	CHECKED BY:	DATE

Previous edition is obsolete

(See Reverse for Instructions)

FS-2700-19 (6 83)

APPENDIX D

FOREST SERVICE FORM 6500-24
(Financial Statement)

OMB NO. 0596-0012

USDA – FOREST SERVICE

FINANCIAL STATEMENT

(Ref. 36 CFR 223.7(e), 36 CFR 251.54(e)(2), Federal Acquisition Regulation 48 CFR 9.104-1.)

INSTRUCTIONS: Forest Service (FS) requires the respondent to provide the most recent fiscal year financial statement. FS may also request the respondent to provide two additional years of financial data, on a case by case basis. If more space is needed to fully answer any item below, attach additional sheets.

1. NAME OF CORPORATION, PARTNERSHIP, OR PROPRIETORSHIP *(Include any names the organization/firm operated under during past three years and specify the year operated for each name):*

2. STATE INCORPORATED	3 DATE INCORPORATED	4. ADDRESS OF PRINCIPAL PLACE OF BUSINESS *(with ZIP CODE)*

5. IF PARTNERSHIP, NAMES OF PARTNERS, AND THEIR PARTNERSHIP INTERESTS

6. NAMES, TITLES, AND ADDRESSES OF CORPORATE OFFICERS AND DIRECTORS, WITH NUMBER OF SHARES OF STOCK OWNED BY EACH:

FULL NAME	TITLE	ADDRESS *(Number, Street, City, State, and ZIP CODE)*	SHARES OWNED

7. REFERENCES *(At least three should be given, preferably banks):*

FULL NAME	ADDRESS *(Number, Street, City, State, and ZIP CODE)*

NOTE: Respondents may submit certified financial statements in lieu of answering PARTS A through C on the next pages. However, respondents must complete either certification statement PART D(1) or PART D(2) at the bottom of the last page.

Previous edition is obsolete.

FS-6500-24 (3/84)

PART A. BALANCE SHEET

	CURRENT YEAR (MO/DA/YR)	PAST YEAR (MO/DA/YR)	THIRD YEAR (MO/DA/YR)
YEAR ENDED	/ /	/ /	/ /
ASSETS			
CURRENT ASSETS:			
CASH			
RECEIVABLES–TRADE			
LESS ALLOWANCES FOR DOUBTFUL ACCOUNTS	( )	( )	( )
INVENTORIES (LIST MAJOR CATEGORIES):			
SUPPLIES AND MISCELLANEOUS			
MARKETABLE SECURITIES			
PREPAID EXPENSES			
SUPPLIES INVENTORY			
OTHER CURRENT ASSETS:			
TOTAL CURRENT ASSETS			
FIXED ASSETS:			
LAND			
BUILDINGS			
MACHINERY AND EQUIPMENT			
PLANT			
LEASEHOLD IMPROVEMENTS			
OTHER			
LESS ALLOWANCE FOR DEPRECIATION	( )	( )	( )
BOOK VALUE–FIXED ASSETS			
OTHER ASSETS			
DEPOSITS–CASH			
DEPOSITS–SECURITIES			
TOTAL–OTHER ASSETS			
TOTAL ASSETS			

LIABILITIES AND OWNER EQUITY	CURRENT YEAR	PAST YEAR	THIRD YEAR
CURRENT LIABILITIES:			
ACCOUNTS PAYABLE–TRADE			
ACCRUED PAYROLL			
ACCRUED PAYROLL TAXES AND INSURANCE			
NOTES PAYABLE			
INCOME TAXES–CURRENT			
OTHER TAXES			
CURRENT PORTION OF LONG–TERM DEBT			
OTHER CURRENT LIABILITIES (SPECIFY):			
TOTAL CURRENT LIABILITIES			
OTHER LIABILITIES:			
DEFERRED INCOME TAXES			
LOANS FROM OFFICERS/PARTNERS			
LONG-TERM OBLIGATIONS–LESS CURRENT AMOUNT			
TOTAL OTHER LIABILITIES			
TOTAL LIABILITIES			
OWNER EQUITY:			
CAPITAL STOCK OUTSTANDING			
RETAINED EARNINGS (DEFICIT)			
PARTNERS' INVESTMENT (DEFICIT)			
TOTAL OWNER EQUITY			
TOTAL LIABILITIES AND OWNER EQUITY			

PART B. SUPPLEMENTAL DATA

THIS STATEMENT IS ON THE–CASH BASIS _____ ACCRUAL BASIS _____

INVENTORIES ARE–LIFO _____ FIFO _____ COST OR MARKET WHICHEVER IS LOWER _____

NAMES OF CONTRACTORS OR SUB-CONTRACTORS USED (IF ANY):

ATTACHMENT F
Washington State Sample Lease

WASHINGTON STATE DEPARTMENT OF
Natural Resources

BRIAN BOYLE
Commissioner of Public Lands

Real Estate Division
1450 Metropolitan Park Building
1100 Olive Way
Seattle, Washington 98101
Tele (206) 464-6416

WASHINGTON STATE DEPARTMENT OF
Natural Resources
Brian Boyle - Commissioner of Public Lands

Real Estate Division
1450 Metropolitan Park Building
1100 Olive Way
Seattle, Washington 98101

To:

SAMPLE LEASE

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STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
BRIAN J. BOYLE, COMMISSIONER OF PUBLIC LANDS

GROUND LEASE

THIS GROUND LEASE AGREEMENT (hereinafter referred to as "this Lease") is made and entered into this _____ day of _____, 198_____, by and between STATE OF WASHINGTON, acting through the Department of Natural Resources (hereinafter referred to as "State"), and _____
_____
a _____
(hereinafter referred to as "Lessee").

WHEREAS, State is the owner of that certain real property [and certain personal property thereon as set forth in Exhibit_____] located in [the City of _____ _____
_____ County, Washington [commonly known as _____], the legal description of which is set forth in Exhibit A, attached hereto and incorporated herein by this reference; and

WHEREAS, Lessee desires to lease, hire and rent the real [and personal] property from State, and State desires to lease, hire and rent the real [and personal] property to Lessee;

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions set forth herein, the parties hereto agree as follows:

1. PREMISES

For and in consideration of Lessee's covenant to pay the rental and other sums for which provision is made in this Lease, and the performance of the other obligations of Lessee hereunder, State leases to Lessee and Lessee leases from State, that certain real property [and personal property] described above, together with all rights of State, if any, in and to the streets adjacent to the real property (excluding any reversionary rights in and to streets or rights-of-way which may subsequently be vacated or abandoned), and together with all existing rights of air, light and view, for Lessee, its customers, invitees, sublessees, and employees. Subject to easements and encumbrances of record as of the date hereof as noted in the records of _____ County, and/or on file in the Office of the Commissioner of Public Lands, Olympia, Washington. Not included herein are any mineral rights, rights to remove merchantable timber, water rights or any other right to excavate or withdraw minerals, gas, oil or other material, except as specifically granted herein. State further reserves reasonable access to its adjacent real property, if any, and the right to grant easements on the real property which is the subject of this Lease, provided such grants do not unreasonably interfere with Lessee's use of the Property or with a Project approved by State pursuant to Section 6 below. Said property and rights leased hereby are hereinafter referred to as "the Property."

4.1 Utilities. From and after the Commencement Date, Lessee shall pay all charges for electricity, water, gas, telephone and all other utility services used on the Property. Lessee shall indemnify and hold State harmless against and from any loss, liability or expense resulting from any failure of Lessee to pay all such charges when due.

4.2 Leasehold Taxes. From the Commencement Date and continuing throughout the Term, Lessee shall pay to State the tax ("Leasehold Tax") established and defined in Chapter 82.29A R.C.W. Any delinquent taxes shall be a debt to State, and in the event any penalties or interest are due because of the failure of Lessee to timely pay the Leasehold Tax, such penalties shall be payable by Lessee to State.

4.3 Taxes and Assessments.

(a) The term "Taxes," as used herein, shall mean all taxes and other governmental charges, general and special, ordinary and extraordinary, of any kind whatsoever, applicable or attributable to the Property and Lessee's use and enjoyment thereof, excluding Assessments as defined below. Lessee shall pay when due all Taxes commencing with the Commencement Date and continuing throughout the Term.

(b) The term "Assessments," as used herein, shall mean all assessments for public improvements or benefits which heretofore or during the Term shall be assessed, levied, imposed upon, or become due and payable, or a lien upon the Property, any improvements constructed thereon, the leasehold estate created hereby, or any part thereof. Lessee shall not cause or suffer the imposition of any Assessment upon the Property, without the prior written consent of State. In the event any Assessment is proposed which affects the Property, Lessee shall promptly notify State of such proposal after Lessee has knowledge or receives notice thereof. Any Assessment upon the Property shall be made in compliance with all applicable statutes, including, but not limited to, Chapter 79.44 R.C.W. Lessee shall pay the total amount of all Assessments levied with respect to the Property and the leasehold estate created hereby. In no event shall State be obligated to pay any Assessment or any portion thereof levied or created during the Term, irrespective of whether such Assessment or any portion thereof was specifically allocated to the Property or State's reversionary interest therein. No Assessment shall be payable in installments without State's prior written consent, which State may condition upon the posting by Lessee of a satisfactory bond guaranteeing the payment of such installments as they become due.

4.4 Payment Date and Proof. All payments to State by Lessee for Leasehold Tax, Taxes, and/or Assessments shall be made by Lessee on or before ten (10) days before the last day on which such payments or any installments thereof permitted hereunder may be made without penalty or interest. Lessee shall furnish to State receipts or other appropriate evidence establishing the payment of such amounts. Lessee may comply with this requirement by retaining a tax service to notify State when the taxes have been paid.

4.5 Failure to Pay. In the event Lessee fails to pay any of the expenses or amounts specified in this Section 4, State may, but shall not be obligated to do so, pay any such amount and the amounts so paid shall immediately be due and payable by Lessee to State and shall thereafter bear interest at the rate specified in Section 22.7 below. Any failure to pay any expense or amount specified in this Section 4 or any other amount to be paid by Lessee under the terms of this Lease shall be a

changes and alterations to the Project or any part thereof so long as such changes and alterations are not substantial and do not change the character of the Project. Changes and alterations to the Project or any series or group of changes or alterations involving a cost in excess of Fifty Thousand Dollars ($50,000) within any twelve (12) month period may be made only with the prior written consent of State and shall be subject to the following:

(a) The plans or specifications for such changes or alterations, including amendments of such plans or specifications, shall be submitted to State for its approval. Within twenty (20) days after receipt of said plans or specifications, State shall, in writing, either approve or disapprove the plans or specifications or inform Lessee of the additional time required to complete the review thereof. If State fails to disapprove or inform the Lessee in writing of the need for additional time within the twenty (20) day period, State shall be deemed to have approved the plans or specifications as submitted.

(b) No such change or alteration shall be made except under the supervision of an architect or engineer selected by Lessee and approved in writing by State.

(c) Lessee shall provide State, at Lessee's sole expense, a completion bond in form and substance satisfactory to State as required in Section 6.3 below, in an amount not less than the total projected cost of such changes or alterations.

No change or alteration shall be undertaken until Lessee shall have procured and paid for all required permits, licenses and authorizations and shall have furnished State evidence thereof. All changes and alterations shall be made in a good and workmanlike manner and in compliance with all applicable building and zoning codes and other legal requirements. Upon completion of construction, Lessee shall furnish State with a certificate of substantial completion executed by the architect for the Project, and a complete set of "as built" plans for the Project. Lessee shall thereafter furnish State with copies of the updated plans showing all changes and modifications thereto. Lessee shall also furnish to State copies of Certificates of Occupancy or other similar documents issued to certify completion of construction in compliance with applicable requirements.

6.2 Fixtures and Equipment. In constructing the Project upon the Property, Lessee and its sublessees may place or install in the Project such trade fixtures and equipment as Lessee or its sublessees shall deem desirable for the conduct of business therein. Personal property, trade fixtures and equipment used in the conduct of business by Lessee and its sublessees (as distinguished from fixtures and equipment used in connection with the operation and maintenance of the Project) placed by Lessee or its sublessees on or in the Project shall not become part of the real property, even if nailed, screwed or otherwise fastened to the improvements or buildings of the Project, but shall retain their status as personal property. Such personal property may be removed by Lessee or its sublessees at any time and so long as Lessee is not in default under this Lease and so long as any damage to the property of State occasioned by such removal is thereupon repaired. All other fixtures, equipment and improvements (including but not limited to the Project and all fixtures and equipment necessary for its operation and maintenance) constructed or installed upon the Property shall be deemed to become part of the real property

and, upon the Termination Date, shall become the sole and exclusive property of State, free of any and all claims of Lessee or any person or entity claiming by or through the Lessee. In the event Lessee or sublessees do not remove their personal property and trade fixtures which they are permitted by this Section 6.2 to remove from the Project within forty-five (45) days following the Termination Date, State may treat said personal property and trade fixtures as abandoned and (i) retain the personal property and treat the trade fixtures as part of the Property, or (ii) have the personal property and trade fixtures removed and stored at Lessee's expense. Lessee shall promptly reimburse State for any damage caused to the Property by the removal of personal property and trade fixtures whether removal is by Lessee or State.

6.3 Mechanics and Labor Liens.

(a) Lessee agrees that it will not permit any claim of lien made by any mechanic, materialman, laborer, or other similar liens to stand against the Property for work or materials furnished to Lessee or its sublessees in connection with any construction, improvements or maintenance or repair thereof made by Lessee or its agents or sublessees upon the Property. Lessee shall cause any such claim of lien to be fully discharged within thirty (30) days after the date of filing thereof; provided, however, that in the event Lessee, in good faith, disputes the validity or amount of any such claim of lien, and if Lessee shall give to State such security as State may reasonably require to insure payment thereof and prevent any sale, foreclosure, or forfeiture of the Property or any portion thereof by reason of such nonpayment, Lessee shall not be deemed to be in breach of this Section 6.3 so long as Lessee is diligently pursuing a resolution of such dispute with continuity and, upon entry of final judgment resolving the dispute, if litigation or arbitration results therefrom, discharges said lien within the time limits specified above.

(b) Lessee shall provide security for the completion of the Project, and all changes or alterations thereto, and for the payment in full of claims of all persons for work performed in or materials furnished for construction by either of the following methods:

(i) Posting a surety bond issued by a corporate surety acceptable to State in an amount equal to the cost of each improvement, said bond to be deposited with State and to remain in effect until the Project shall have been constructed and insured as provided in this Lease, and the entire cost of the Project, or any alterations thereto, shall have been paid in full, free from all liens and claims of contractors, subcontractors, mechanics, laborers and materialmen. Said bond shall be conditioned upon the faithful performance of the provisions of this Lease by Lessee, and shall give all claimants the right to action to recover upon such bond.

(ii) Any other method first approved in writing by State.

6.4 Development Rights. Lessee shall not undertake development of the Property other than to construct the Project and the changes and alterations thereto approved by State in accordance with Section 6.1 above. Lessee shall not represent to any person, governmental body or other entity that Lessee is the fee owner of the Property, Lessee shall not subject the Property, or any portion thereof, to the provisions of the Horizontal Property Regimes Act, nor shall Lessee execute any petition, application, permit, plat or other document on behalf of State, without State's express prior written consent, which may be

withheld for any reason whatsoever. Lessee shall notify State in writing of any proposed or pending governmental action of which Lessee becomes aware which affects the Property, its zoning or the right to develop the Property for any future use.

6.5 Hold Harmless. Lessee shall indemnify, protect and hold harmless State and the Property from and against all claims and liabilities arising by virtue of or relating to construction of the Project or repairs made at any time to the Project (including repairs, restoration and rebuilding). Lessee shall regularly and timely pay any and all amounts properly payable to third parties with respect to such work and will maintain its books and records in the State of Washington, with respect to all aspects of such work and materials therefore, and will make them available for inspection by State or its representatives as requested.

6.6 Permits; Compliance with Codes. All building permits and other permits, licenses, permissions, consents and approvals required to be obtained from governmental agencies or third parties in connection with construction of the Project and any subsequent improvements, repairs, replacements or renewals to the Property or Project shall be acquired as required by applicable laws, ordinances or regulations by and at the sole cost and expense of Lessee. Lessee shall cause all work on the Property during the Term to be performed in accordance with all applicable laws and all directions and regulations of all governmental agencies and the representatives of such agencies having jurisdiction.

6.7 Ownership of Improvements. During the Term of this Lease, the Project and all other improvements constructed by Lessee, including without limitation all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein, shall be the property of Lessee. At the expiration or earlier termination of this Lease, the Project and all improvements and all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein shall become the property of State. Throughout the term of this Lease, any liens, encumbrances or claims of third parties with respect to any of the foregoing, including any part of the Project's mechanical or electrical systems or the Project's elevators, shall be expressly subordinate and subject to the rights of State under this sentence.

6.8 Control and Indemnification. During the Term of this Lease, Lessee shall have exclusive control and possession of the Property, and State shall have no liabilities, obligations or responsibilities whatsoever with respect thereto or with respect to any plans or specifications submitted to State pursuant to this Lease. State's review of any plans or specifications is solely for its own purposes, and State does not make any warranty concerning the appropriateness of any such plans or specifications for any other purpose. State's approval of (or failure to disapprove) any such plans and specifications shall not render State liable therefore, and Lessee hereby covenants and agrees to indemnify, defend and hold State harmless from and against any and all claims arising out of or from the use of such plans and specifications.

7. LEASEHOLD MORTGAGES

7.1 Leasehold Mortgage Authorized. State consents to Lessee receiving a Purchase Money Leasehold Mortgage upon a sale and assignment of the leasehold estate created by this

Lease, subject to compliance by Lessee with this Section 7, if Lessee has obtained the prior written consent by State to the sale and assignment of the leasehold estate pursuant to the provisions of Section 13 below. State consents to Lessee mortgaging or otherwise encumbering Lessee's leasehold estate to an Institutional Investor (as hereinafter defined) under one or more Leasehold Mortgages, subject to compliance by Lessee with this Section 7. This Lease may be assigned as security for such Purchase Money Leasehold Mortgage(s) or Institutional Investor Mortgage(s). Except as specifically authorized in this Section 7 with respect to Purchase Money Leasehold Mortgage(s) and Institutional Investor Mortgage(s), Lessee shall not have the right to assign, hypothecate, mortgage or otherwise pledge the leasehold estate created hereby without State's express prior written consent, as provided in Section 13 below.

7.2 Notice to State.

(a) (i) If upon sale and assignment of the leasehold estate, Lessee shall, on one or more occasions, take back a Purchase Money Leasehold Mortgage for a term not beyond the Termination Date, Lessee shall provide State notice of such Purchase Money Leasehold Mortgage together with a true copy thereof. Any Purchase Money Leasehold Mortgage shall contain a statement which disclaims any interest or lien against State's fee interest in the Property and which provides that State shall have no liability whatsoever in connection with said Mortgage or the instruments and obligations secured thereby.

(ii) Upon receipt of such notice, State shall promptly acknowledge by an instrument in recordable form that State consents to such Purchase Money Leasehold Mortgage for so long as Lessee holds such instrument, or shall promptly notify Lessee that State does not consent to such Mortgage as not conforming to the requirements of Section 7.2(a)(i) above, and shall specify the specific basis of such nonconformity.

(b) (i) If Lessee shall mortgage Lessee's leasehold estate to an Institutional Investor for a term not beyond the Termination Date, and if the holder of such Leasehold Mortgage shall provide State with notice of such Leasehold Mortgage together with a true copy of such Leasehold Mortgage and the name and address of the Mortgagee, State and Lessee agree that, following receipt of such notice by State, the provisions of this Section 7 shall apply in respect to each such Leasehold Mortgage held by an Institutional Investor. In addition to the foregoing requirements, an Institutional Investor Leasehold Mortgage shall contain a statement which disclaims any interest or lien against State's fee interest in the Property and which provides that State shall have no liability whatsoever in connection with said Mortgage or the instruments and obligations secured thereby.

(ii) In the event of any assignment of a Leasehold Mortgage or in the event of a change of address of a Leasehold Mortgagee or of an assignee of such Leasehold Mortgage, notice of the new name and address shall be provided to State; provided, however, any such assignee shall be an Institutional Investor as defined herein.

(c) Promptly upon receipt of a communication purporting to constitute the notice provided for by Section 7.2 (b)(i) above, State shall acknowledge by an instrument in recordable form receipt of such communication as constituting the notice provided by Section 7.2(b)(i) above or, in the alternative, notify Lessee and the Leasehold Mortgagee of the rejection of such communication as not conforming with the provisions of Section 7.2(b)(i) above, and specify the specific basis of such nonconformity.

(d) After State has received the notice provided for by Section 7.2(a)(i) or Section 7.2(b)(i) above, Lessee shall with reasonable promptness provide State with copies of the note or other obligation secured by such Purchase Money Leasehold Mortgage or Leasehold Mortgage and of any other documents pertinent to the Purchase Money Leasehold Mortgage or Leasehold Mortgage as specified by State. Lessee shall thereafter also provide State from time to time with a copy of each amendment or other modification or supplement to such instruments. All recorded documents shall be accompanied by the appropriate certification of the appropriate official of the recording office as to their authenticity as true and correct copies of official records. All nonrecorded documents shall be accompanied by a certification by Lessee that such documents are true and correct copies of the originals. From time to time upon being requested to do so by State, Lessee shall also notify State of the date and place of recording and other pertinent recording data with respect to such instruments as have been recorded.

7.3 Definitions.

(a) The term "Institutional Investor" as used in this Section 7 shall refer to any reputable and solvent (i) savings bank, (ii) savings and loan association, (iii) commercial bank, (iv) trust company, (v) credit union, (vi) insurance company, (vii) college, (viii) university, (ix) real estate investment trust or (x) pension fund. The term "Institutional Investor" shall also include other reputable and solvent lenders of substance which perform functions similar to any of the foregoing, and which have assets in excess of Fifty Million Dollars ($50,000,000) at the time the Leasehold Mortgage loan is made.

(b) The term "Leasehold Mortgage" as used in this Section 7 shall include a mortgage, a deed of trust, a deed to secure debt, or other security instrument by which Lessee's leasehold estate is mortgaged, conveyed, assigned, or otherwise transferred, to secure a debt or other obligation which is held by an Institutional Investor.

(c) The term "Leasehold Mortgagee" as used in this Section 7 shall refer to the Institutional Investor which is the holder of a Leasehold Mortgage in respect to which the notice provided for by Section 7.2 above, has been given and received and as to which the provisions of this Section 7 are applicable.

7.4 Consent of Leasehold Mortgagee Required. No cancellation, surrender or modification of this Lease shall be effective as to any Leasehold Mortgagee unless consented to in writing by such Leasehold Mortgagee; provided, however, that nothing in this Section 7.4 shall limit or derogate from State's rights to terminate this Lease in accordance with the provisions of this Section 7.

7.5 Default Notice. State, upon providing Lessee any notice of: (i) default under this Lease, or (ii) an intention to terminate this Lease, or (iii) demand to remedy a claimed default, shall contemporaneously provide a copy of such notice to every Leasehold Mortgagee. From and after such notice has been given to a Leasehold Mortgagee, such Leasehold Mortgagee shall have the same period, after the giving of such notice upon it, for remedying any default or causing the same to be remedied, as is given Lessee after the giving of such notice to Lessee, plus in each instance, the additional periods of time specified in Sections 7.6 and 7.7 below,to remedy, commence remedying or cause to be remedied the defaults specified in any such notice. State shall accept such performance by or at the instigation of such Leasehold Mortgagee as if the same had been done by Lessee.

Lessee authorizes each Leasehold Mortgagee to take any such action at such Leasehold Mortgagee's option and does hereby authorize entry upon the Property by the Leasehold Mortgagee for such purpose.

7.6 Notice to Leasehold Mortgagee.

(a) Anything contained in this Lease to the contrary notwithstanding, if any default shall occur which entitles State to terminate this Lease, State shall have no right to terminate this Lease unless State shall notify by a Termination Notice every Leasehold Mortgagee of which State has been notified pursuant to Section 7.2(b)(i) above, of Lessor's intent to so terminate at least thirty (30) days in advance of the proposed effective date of such termination, if such default is capable of being cured by the payment of money, and at least forty-five (45) days in advance of the proposed effective date of such termination, if such default is not capable of being cured by the payment of money. The provisions of Section 7.7 below shall apply if, during such thirty (30) or forty-five (45) day Termination Notice Period, any Leasehold Mortgagee shall:

(i) Notify State of such Leasehold Mortgagee's desire to nullify such noti ; and

(ii) Pay or cause to be paid the Rent, additional rent,if any, and other monetary obligations then due and in arrears as specified in the Termination Notice to such Leasehold Mortgagee and which may become due during such thirty (30) or forty-five (45) day period; and

(iii) Comply with all non-monetary requirements of this Lease then in default and, as determined by State, reasonably susceptible of being complied with by such Leasehold Mortgagee (lack of or failure to expend funds not to adversely affect the susceptibility of cure), and proceed to comply with reasonable diligence and continuity with such requirements not reasonably susceptible of being complied with by such Leasehold Mortgagee within the notice period; provided, however, that such Leasehold Mortgagee shall not be required during such forty-five (45) day period to cure or commence to cure any default consisting of Lessee's failure to satisfy and discharge any lien, charge or encumbrance against the Lessee's interest in this Lease or the Property junior in priority to the lien of the Leasehold Mortgage held by such Leasehold Mortgagee.

(b) Any notice to be given by State to a Leasehold Mortgagee pursuant to any provision of this Section 7 shall be deemed properly addressed if sent to the Leasehold Mortgagee who served the notice referred to in Section 7.2(b)(i) above, unless notified of a change of Leasehold Mortgage ownership has been given to State pursuant to Section 7.2(b)(i) above.

7.7 Procedure on Default.

(a) If State shall elect to terminate this Lease by reason of any default of Lessee, and a Leasehold Mortgagee shall have proceeded in the manner provided for by Section 7.6 above, the specified date for the termination of this Lease as fixed by State in its Termination Notice shall be extended for a period of six (6) months, provided that such Leasehold Mortgagee shall during such six (6) month period:

(i) Pay or cause to be paid the Rent, additional rent, if any, and other monetary obligations of Lessee under this Lease as the same become due, and continue to perform all of Lessee's other obligations under this Lease, excepting (a)

obligations of Lessee to satisfy or otherwise discharge any lien, charge or encumbrance against Lessee's interest in this Lease or the Property junior in priority to the lien of the Leasehold Mortgage held by such Leasehold Mortgagee, and (b) past non-monetary obligations then in default and not reasonably susceptible of being cured by such Leasehold Mortgagee (lack of or failure to expend funds not to adversely affect the susceptibility of cure); and

(ii) If not enjoined or stayed, take steps to acquire or sell Lessee's interest in this Lease by foreclosure of the Leasehold Mortgage or other appropriate means and prosecute the same to completion with reasonable diligence and continuity. If such Leasehold Mortgagee is enjoined or stayed from taking such steps, the Leasehold Mortgagee shall use its best efforts to seek relief from such injunction or stay.

(b) If at the end of such six (6) month period such Leasehold Mortgagee is complying with Section 7.7(a) above, this Lease shall not then terminate, and the time for completion by such Leasehold Mortgagee of such proceedings shall continue so long as such Leasehold Mortgagee continues to comply with the provisions of Section 7.7(a) above and, is enjoined or stayed and thereafter for so long as such Leasehold Mortgagee proceeds to complete steps to acquire or sell Lessee's interest in this Lease by foreclosure of the Leasehold Mortgage or by other appropriate means with reasonable diligence and continuity. Nothing in this Section 7.7, however, shall be construed to extend this Lease beyond the original term, nor to require a Leasehold Mortgagee to continue such foreclosure proceedings after the default has been cured. If the default shall be cured and the Leasehold Mortgagee shall discontinue such foreclosing proceedings, this Lease shall continue in full force and effect as if Lessee had not defaulted under this Lease.

(c) If a Leasehold Mortgagee is complying with Section 7.7(a) above, upon (i) the acquisition of Lessee's estate herein by such Leasehold Mortgagee or any other purchaser at a foreclosure sale or otherwise and (ii) the discharge of any lien, charge or encumbrance against the Lessee's interest in this Lease or the Property which is junior in priority to the lien of the Leasehold Mortgage held by such Leasehold Mortgagee and which the Lessee is obligated to satisfy and discharge by reason of the terms of this Lease, this Lease shall continue in full force and effect as if Lessee had not defaulted under this Lease; provided, however, that such Leasehold Mortgagee or its designee or any other such party acquiring the Lessee's leasehold estate created hereby shall agree in writing to assume all obligations of the Lessee hereunder, subject to the provisions of this Section 7.

(d) For the purposes of this Section 7, the making of a Leasehold Mortgage shall not be deemed to constitute a complete assignment or transfer of this Lease or of the leasehold estate hereby created, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease or of the leasehold estate hereby created. The Leasehold Mortgagee, prior to foreclosure of the Leasehold Mortgage or other entry into possession of the leasehold estate, shall not be obligated to assume the performance of any of the terms, covenants or conditions on the part of Lessee to be performed hereunder. The purchaser (including any Leasehold Mortgagee) at any sale of this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignee or transferee in lieu of the

foreclosure of any Leasehold Mortgage shall be deemed to be an assignee or transferee within the meaning of this Section 7, and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Lessee to be performed hereunder from and after the date of such purchase and assignment.

(e) Any Leasehold Mortgagee of the leasehold estate of Lessee pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings may, upon acquiring Lessee's leasehold estate, without further consent of State, sell and assign the leasehold estate on such terms and to such persons and organizations as are acceptable to such Mortgagee; provided that such assignee has delivered to State its written agreement to be bound by all of the provisions of this Lease and the assignee has previously been approved in writing by State, which approval shall not be unreasonably withheld.

(f) Notwithstanding any other provisions of this Lease, any sale of this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignment or transfer of this Lease and of the leasehold estate hereby created in lieu of the foreclosure of any Leasehold Mortgage shall be deemed to be a permitted sale, transfer or assignment of this Lease and of the leasehold estate hereby created.

(g) Lessee shall not transfer, sell or assign any redemption rights from any foreclosure sale to any person which is not approved by State in accordance with the provisions of Section 13 below.

7.8 New Lease. The provisions of this Section 7.8 shall apply in the event of the termination of this Lease after default by Lessee resulting from failure of a trustee in bankruptcy to assume the executory portion of the term of this Lease. If a Leasehold Mortgagee shall have waived in writing its rights under Sections 7.6 and 7.7 above within thirty (30) days after such Leasehold Mortgagee's receipt of notice required by Section 7.6 above, State shall provide each Leasehold Mortgagee with written notice that this Lease has been terminated ("Notice of Termination"), together with a statement of all sums which would at that time be due under this Lease for such termination, and of all other defaults, if any, then known to State. State agrees to enter into a new lease ("New Lease") of the Property with such Leasehold Mortgagee for the remainder of the term of this Lease, effective as of the date of termination, at the Rent and additional rent, if any, and upon the terms, covenants and conditions (including all escalations of Rent, but excluding requirements which are not applicable or which have already been fulfilled) of this Lease, provided:

(a) Such Leasehold Mortgagee shall make written request upon State for such New Lease within sixty (60) days after the date such Leasehold Mortgagee receives State's Notice of Termination of this Lease given pursuant to this Section 7.8.

(b) Such Leasehold Mortgagee shall pay or cause to be paid to State at the time of the execution and delivery of such New Lease any and all sums which would at the time of execution and delivery thereof be due pursuant to this Lease but for such termination and, in addition thereto, all reasonable expenses which State shall have incurred by reason of such termination and the execution and delivery of the New Lease and which have not otherwise been received by State from Lessee or other party in interest under Lessee. Upon execution of such New Lease, State shall allow to the Lessee named therein as an

offset against the sums otherwise due under this Section 7.8 or under the New Lease, an amount equal to the net income derived by State from the Property during the period from the date of termination of this Lease to the date of the beginning of the lease term of such New Lease. In the event of a controversy as to the amount to be paid to State pursuant to this Section 7.8, the payment obligation shall be satisfied if State shall be paid the amount not in controversy, and the Leasehold Mortgagee or its designee shall agree to pay any additional sum ultimately determined to be due pursuant to arbitration as provided in Section 14 below, plus interest as allowed by law, and such obligation shall be adequately secured.

(c) Such Leasehold Mortgagee or its designee shall agree to remedy any of Lessee's defaults of which said Leasehold Mortgagee was notified by State's Notice of Termination and which, as determined by State, are reasonably susceptible of being so cured by Leasehold Mortgagee or its designee (lack of or failure to expend funds not to adversely affect the susceptibility of cure).

7.9 New Lease Priorities. If more than one Leasehold Mortgagee shall request a New Lease pursuant to Section 7.8 above, State shall enter into such New Lease with the Leasehold Mortgagee whose mortgage is prior in lien, or with the designee of such Leasehold Mortgagee. State, without liability to Lessee or any Leasehold Mortgagee with an adverse claim, may rely upon a mortgagee's title insurance policy or preliminary commitment therefore, issued by a responsible title insurance company doing business within the State of Washington, as the basis for determining the appropriate Leasehold Mortgagee who is entitled to such New Lease.

7.10 Leasehold Mortgagee Need Not Cure Specified Default. Nothing herein contained shall require any Leasehold Mortgagee or its designee as a condition to its exercise of right hereunder to cure any default of Lessee determined by State not to reasonably be susceptible of being cured by such Leasehold Mortgagee or its designee (lack of or failure to expend funds not to adversely affect the susceptibility of cure), including but not limited to the default referred to in Section 15 below, in order to comply with the provisions of Sections 7.6 or 7.7 above, or as a condition of entering into a New Lease provided for by Section 7.8 above.

7.11 Eminent Domain. Lessee's share, as provided by Section 11 of this Lease, of the proceeds arising from an exercise of the power of Eminent Domain shall, subject to the provisions of Section 11 below, be disposed of as provided for by any Leasehold Mortgage.

7.12 Casualty Loss. A standard mortgagee clause naming each Leasehold Mortgagee may be added to any and all insurance policies required to be carried by Lessee hereunder on condition that the insurance proceeds are to be applied in the manner specified in this Lease, and the Leasehold Mortgage shall so provide; except that the Leasehold Mortgage may provide a manner for the disposition of such proceeds, if any, otherwise payable directly to Lessee (but not such proceeds, if any, payable jointly to State and Lessee or payable to the Trustee of Insurance as provided in Section 8.8 below) pursuant to the provisions of this Lease.

7.13 Arbitration/Legal Proceedings. State shall give each Leasehold Mortgagee prompt notice of any arbitration or legal proceedings between State and Lessee involving obligations under this Lease. Each Leasehold Mortgagee shall have the right to intervene in any such proceedings and be made a party to such

proceedings, and the parties hereto do consent to such intervention. In the event that any Leasehold Mortgagee shall not elect to intervene or become a party to any such proceedings, State shall give the Leasehold Mortgagee notice of, and a copy of any award or decision made in any such proceedings, which shall be binding on all Leasehold Mortgagees not intervening after receipt of notice of arbitration. In the event Lessee shall fail to appoint an arbitrator after notice from State, as provided in Section 14 below, a Leasehold Mortgagee (in order of seniority if there be more than one) shall have an additional period of thirty (30) days after notice by State that Lessee has failed to appoint such arbitrator to make such appointment, and the arbitrator so appointed shall thereupon be recognized in all respects as if the arbitrator had been appointed by Lessee. In the event a Leasehold Mortgagee commences any judicial or non-judicial action to foreclose its Leasehold Mortgage or otherwise realize upon its security granted therein, written notice of such proceedings shall be provided to State at the same time notice thereof is given Lessee.

7.14 No Merger. So long as any Leasehold Mortgage is in existence, unless all Leasehold Mortgagees shall otherwise expressly consent in writing, the fee title to the Property and the leasehold estate of Lessee therein created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by State or by Lessee or by a third party, by purchase or otherwise. The foregoing shall not apply in the event of termination of this Lease after default by Lessee; provided that no Leasehold Mortgagee shall have requested and been granted a New Lease pursuant to the provisions of Section 7.8 above.

7.15 Estoppel Certificate. State shall, without charge, any time and from time to time hereafter, but not more frequently than twice in any one-year period (or more frequently if such request is made in connection with any sale or mortgaging of Lessee's leasehold interest or permitted subletting by Lessee), within ten (10) days after written request of Lessee to do so, certify by written instrument duly executed and acknowledged to any Leasehold Mortgagee or purchaser, or proposed Leasehold Mortgagee or proposed purchaser, or any other person, firm or corporation specified in such request: (a) as to whether this Lease has been supplemented or amended, and if so, the substance and manner of such supplement or amendment; (b) as to whether this Lease remains in full force and effect; (c) as to the existence of any default hereunder; (d) as to the existence of any offsets, counterclaims or defenses hereto on the part of Lessee; and (e) as to the commencement and expiration dates of the Term of this Lease. Any Leasehold Mortgagee and any other holder of any indebtedness secured by Lessee's leasehold estate shall provide State, upon State's written request, a statement as to (i) the current amount secured by the Leasehold Mortgage held by such Leasehold Mortgagee, (ii) whether any default exists under said Leasehold Mortgage, (or whether any event has occurred which, with notice or lapse of time, or both, would constitute a default), and (iii) whether there exist any offsets, claims or disputes with respect to said Leasehold Mortgage and the instruments secured thereby.

7.16 Notices. Notices from State to the Leasehold Mortgagee shall be mailed to the address furnished State pursuant to Section 7.2 above and, those from the Leasehold Mortgagee to State shall be mailed to the address designated pursuant to the provisions of Section 19 below. Such notices, demands and requests shall be given in the manner described in Section 19 below and, shall in all respects be governed by the provisions of that section.

7.17 Erroneous Payments. No payment made to State by a Leasehold Mortgagee shall constitute agreement that such payment was, in fact, due under the terms of this Lease; and a Leasehold Mortgagee having made any payment to State pursuant to State's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof provided the Leasehold Mortgagee shall have made demand therefore not later than one year after the date of its payment.

8. LESSEE'S INDEMNITY; LIABILITY AND CASUALTY INSURANCE

8.1 Indemnity. State shall have no responsibility or control with respect to any aspect of the Property or any activity conducted thereon from and after the Commencement Date. Lessee shall indemnify and save harmless State from any and all liability, damage, expense, cause of action, suits, claims or judgments by any reason whatsoever caused, arising out of the use, occupation, and control of the Property by Lessee, its sublessees, invitees, agents, employees, licensees or permittees except as may arise solely out of the willful or grossly negligent act of State or State's agents or employees. To the extent that R.C.W. 4.24.115 is applicable to any indemnification provision of this Lease, State and Lessee agree that provision shall not require Lessee to indemnify and save State harmless from State's sole or concurrent negligence, if any.

8.2 Acquisition of Insurance Policies. Lessee shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained during the entire Term, the insurance described in this Section 8 (or if not available, then its available equivalent), issued by an insurance company or companies licensed to do business in the State of Washington satisfactory to State reasonably covering and protecting Lessee.

8.3 Types of Required Insurance. Lessee shall procure and maintain the following:

(a) Comprehensive General Liability Insurance. Comprehensive general liability insurance covering all claims with respect to injuries or damages to persons or property sustained in, or about the Property and the Project, and the appurtenances thereto, including the sidewalks and alleyways adjacent thereto, with limits of liability (which limits shall be adjusted as provided in Section 22.9 below) no less than the following:

Bodily Injury and Property Damage Liability -- _____ Million Dollars ($_____) each occurrence, _____ Million Dollars ($_____) aggregate.

Such limits may be achieved through the use of umbrella liability insurance sufficient to meet the requirements of this Section 8 for the Property and Project.

(b) Physical Property Damage Insurance. Physical damage insurance covering all real and personal property, other than the personal property of subtenants, located on or in, or constituting a part of, the Property (including but not limited to the Project) in an amount equal to at least one hundred percent (100%) of replacement value of all such property. Such insurance shall afford coverage for damages resulting from (i) fire, (ii) perils covered by extended coverage insurance as embraced in the Standard Bureau form used in the State of Washington, (iii) explosion of steam and pressure boilers and similar apparatus located in the Project, (iv) earthquake or the shifting or moving of the earth, and (v) flood damage if the Property is located within a flood plain. Lessee shall not be required to maintain insurance for war risks; provided, however,

if Lessee shall obtain any such coverage, then, for as long as such insurance is maintained by Lessee, State shall be entitled to the benefits of: (i) the first sentence of Section 8.4 below; and (ii) Section 8.4(c) below.

(c) Builder's Risk Insurance. Contingent liability and builder's all risk insurance in an amount reasonably satisfactory to State during construction of the Project and during any subsequent restorations, alterations or changes in the Project that may be made by Lessee at a cost in excess of Fifty Thousand Dollars ($50,000) per job (adjusted every fifth Anniversary Date during the Term as provided in Section 22.9 below).

(d) Workmen's Compensation Insurance. Workmen's compensation and employer's liability insurance with respect to any work by employees of Lessee on or about the Property.

8.4 Terms of Insurance. The policies required under Section 8.3 above, shall name State as additional insured and Lessee shall provide promptly to State certificates of insurance and copies of policies obtained by Lessee hereunder. Further, all policies of insurance described in Section 8.3 above, shall:

(a) Be written as primary policies not contributing with and not in excess of coverage that State may carry.

(b) Contain an endorsement providing that such insurance may not be materially changed, amended or canceled with respect to State or the Trustee of Insurance except after thirty (30) days prior written notice from insurance company to State.

(c) Contain an endorsement containing express waiver of any right of subrogation by the insurance company against State's elected officials, agents and employees.

(d) Provide that the insurance proceeds of any loss will be payable notwithstanding any act or negligence of Lessee which might otherwise result in a forfeiture of said insurance.

(e) Expressly provide that State shall not be required to give notice of accidents or claims and that State shall have no liability for premiums.

(f) Provide that all proceeds shall be paid jointly to State and Lessee, or to the Trustee of Insurance.

8.5 State's Acquisition of Insurance. If Lessee at any time during the Term fails to procure or maintain such insurance or to pay the premiums therefore, State shall have the right to procure such substitute insurance as State deems appropriate (but shall be under no obligation to do so) and to pay any and all premiums thereon, and Lessee shall pay to State upon demand the full amount so paid and expended by State, together with interest thereon at the rate provided in Section 22.7 below, from the date of such expenditure by State until repayment thereof by Lessee. Any policies of insurance obtained by State covering physical damage to the Property or Project shall contain a waiver of subrogation against Lessee if and to the extent such waiver is obtainable and if Lessee pays to State on demand the additional costs, if any, incurred in obtaining such waiver.

8.6 Proceeds and Other Funds Held in Trust. All proceeds shall be received by the Trustee of Insurance, shall be held in trust, and, except as provided otherwise in Section 8.7 below, shall be applied in accordance with the provision of Section 11 below.

8.7 Application of Proceeds of Physical Damage Insurance. With respect to any insurance policies as described in Section 8.3(b) (Physical Property Damage Insurance) above, the application of insurance proceeds from damage or loss to property shall be determined in accordance with Section 11 below and, in the event of any repair, replacement, restoration or rebuilding, the Trustee of Insurance shall apply the proceeds of the insurance collected to the cost of such work upon certificate of progress and/or completion in form satisfactory to said Trustee by the licensed architect or engineer in charge of the work. Any amounts payable to Lessee or any affiliate of Lessee for work or services performed or materials provided as part of any such repair, replacement, restoration or rebuilding shall not exceed competitive rates for such services or materials and Lessee shall upon request of State, make available to State and its representatives at State's offices all books and records of Lessee relating to such work, services and materials.

8.8 Powers and Duties of the Trustee of Insurance.

(a) Trustee. The Trustee of Insurance shall be an Institutional Investor doing business in the State of Washington with authority to hold escrow funds and acceptable to State and Lessee. The Trustee shall not be a Leasehold Mortgagee. The Trustee shall retain in trust all policies of insurance or certificates thereof delivered to it as herein provided and shall not permit the withdrawal, termination or discontinuance of any such policy without State's consent, and, upon request, shall exhibit such policies or cer[redacted] to State or Lessee or any authorized representative o[redacted] or Lessee. Said Trustee of Insurance shall receive i[redacted]nly the proceeds of insurance specifically related to [redacted]cal Property Damage Insurance described in Section 8.3 above and shall make disbursements thereof as provided in Section 8.7 above and Section 11 below as determined, when applicable, in accordance with Section 8.7 above. The Trustee of Insurance shall recognize that one of the primary objectives of the parties is to insure that disbursements of funds held by the Trustee will be paid in a manner which will mitigate the imposition of liens or encumbrances upon the Property or the Project. Receipt and disbursement of other types of insurance proceeds may be undertaken by the Trustee upon written agreement with State and Lessee.

(b) Trustee's Liability. Neither State nor Lessee shall hold said Trustee liable for any mistake or error in judgment in the discharge of its duties, but the Trustee shall be liable only for willful neglect or breach of duty; and said Trustee shall not be liable or responsible for the collection of any monies or the failure or refusal of any insurance company or third person or corporation from whom money may be due to apply the same, but it shall be the duty of such Trustee, in case of failure or refusal of any insurance company or third person or corporation to pay any policies or money due, to use all proper and legal means in conjunction and cooperation with State and Lessee to recover the same but at the expense of Lessee.

(c) Trustee's Fees. All fees and charges of such Trustee of Insurance shall be paid by Lessee. Trustee's fees shall be based on its then current annual minimum fee plus out-of-pocket expenses. Administrative time is to be charged at the then prevailing hourly rate for such service.

(d) Trustee's Merger. If the Trustee of Insurance should merge into any other Institutional Investor or change its corporate name or should transfer its trust business to any other Institutional Investor, such successor institution shall succeed to all the powers, duties and authority given to the Trustee of Insurance hereunder.

(e) Trustee's Successors. The Trustee of Insurance may resign upon giving thirty (30) days notice in writing to State and Lessee of its desire to resign. Upon receipt of such written notice, or if the Trustee of Insurance named herein refuses to serve, State and Lessee shall promptly mutually agree upon a successor or alternate trustee and, in the event they are unable to agree upon a successor or alternate trustee during the said thirty (30) days, either State or Lessee may apply to the Presiding Judge of the Superior Court of the State of Washington for Thurston County, to name a successor or alternate trustee who shall be an Institutional Investor as defined in Section 7.3 above. The appointment of such successor or alternate trustee by said Judge in accordance herewith shall be binding upon both State and Lessee, and such successor or alternate trustee shall be entitled to receive from the former Trustee all securities or monies or policies held by it and shall be vested with all the rights and powers herein conferred upon the Trustee herein originally appointed.

(f) Investment of Proceeds. The Trustee of Insurance shall invest any insurance proceeds received as directed in writing jointly by State and Lessee; provided, however, if State and Lessee cannot agree to the investments to be made, the Trustee of Insurance may invest such funds in one or more of the following types of bonds and securities:

(i) Bills, certificates, notes or bonds of the United States;

(ii) Other obligations of the United States or its agencies;

(iii) Obligations of any corporation wholly owned by the government of the United States;

(iv) Indebtedness of the Federal National Mortgage Association; and

(v) Time deposits fully insured by the Federal Deposit Insurance Corporation in commercial banks.

In making investments in one or more of the said types of bonds and securities, the Trustee of Insurance shall be mindful of the probable necessity of payments from time to time of portions of the insurance proceeds and shall select investments with appropriate maturities. Income from the investments shall be treated as part of the insurance proceeds held by the Trustee of Insurance.

8.9 Insurance Surveyor. The determinations required under Section 11 below and this Section 8, shall be made by an independent qualified insurance surveyor selected by the parties, whose decision shall not be subject to arbitration. If the parties cannot agree on the insurance surveyor within thirty (30) days after the date of such damage or destruction, then the same shall be appointed by the Presiding Judge of the Superior Court of Thurston County, Washington upon the application of either party.

9. REPAIRS

9.1 Acceptance of Property. Lessee accepts the Property and any improvements thereon in the condition they are in on the date this Lease is executed without the obligation of State to make any repairs, additions or improvements thereto.

9.2 State's Repairs. State shall not be required or obligated to make any changes, alterations, additions, improvements, or repairs in, on, or about the Property, or any part thereof, during the Term of this Lease or any extension thereof.

9.3 Lessee's Repairs and Operation. At all times during the Term of this Lease or any extension thereof, Lessee shall neither commit nor suffer any waste to the Property and shall, at its sole cost and expense, keep and maintain the Property and all improvements thereon (including the Project) and all facilities appurtenant thereto in good order and repair and safe condition, and the whole of the Property, including all improvements (including the Project) and landscaping, in a clean, sanitary and attractive condition. Lessee shall make any and all additions to or alterations or repairs in and about the Property which may be required by, and shall otherwise observe and comply with, all public laws, ordinances and regulations which from time to time are applicable to the Property and/or the Project. All business operations conducted upon the Property shall comply with all applicable laws, statutes and ordinances. In no event shall Lessee undertake or suffer any activity to be conducted upon the Property or within the Project which constitutes a nuisance, which is immoral or obscene, or which is a threat to the welfare of the general public.

9.4 Condition at End of Lease. Upon vacating the Property on the termination date, Lessee shall leave the Property and all improvements thereon (including the Project) in the state of repair and cleanliness required to be maintained by Lessee during the Term of this Lease and shall peaceably surrender the same to State. At the option of State, Lessee shall at its sole expense remove all improvements constructed by Lessee upon the Property (including the Project) and return the Property to grade level free of all debris.

10. QUIET POSSESSION

State covenants that it is has full right, power and authority to make this Lease. State covenants that Lessee, so long as Lessee is not in default hereunder and subject to the provisions of this Lease, shall have quiet and peaceful possession of the Property during the entire Term of this Lease.

11. DAMAGE OR DESTRUCTION

11.1 Effect of Damage or Destruction.

(a) In the event of any damage to or destruction of the Property or any improvements thereon from any causes whatever, Lessee shall promptly give written notice thereof to State. Lessee shall promptly repair or restore the Property as nearly as possible to its condition immediately prior to such damage or destruction unless State and Lessee mutually agree in writing that such repair and restoration is not feasible, in which event this Lease shall thereupon terminate. All such repair and restoration shall be performed in accordance with the requirements of Section 6 above. Lessee's duty to repair any damage or destruction of the Property or any

improvements thereon shall not be conditioned upon the availability of any insurance proceeds to Lessee from which the cost of repairs may be paid. Unless this Lease is so terminated by mutual agreement, there shall be no abatement or reduction in Rent during such repair and restoration. Any insurance proceeds payable by reason of such damage or destruction shall be made available by the Trustee of Insurance to pay the cost of such reconstruction; provided, however, in the event Lessee is in default under the terms of this Lease at the time such damage or destruction occurs, State may elect to terminate this Lease and State shall thereafter have the right to retain all insurance proceeds payable as a result of such damage or destruction. Funds held by the Trustee of Insurance in excess of the cost of such reconstruction shall be paid to State and Lessee pro-rata based upon the unexpired term of this Lease, with Lessee receiving the fraction thereof which is equal to the then remaining term divided by the original term of this Lease, and State receiving the remainder; provided, however, State shall have a lien on Lessee's share of such proceeds to the extent Lessee has failed to pay any monies to State under the terms of this Lease.

(b) In the event such damage or destruction occurs within the last ten (10) years of the term of this Lease, and if such damage or destruction cannot be substantially repaired within one hundred eighty (180) days, either State or Lessee may elect by written notice to the other, within ninety (90) days after the date of such damage or destruction, to terminate this Lease. If neither State nor Lessee elect to terminate this Lease, Lessee shall repair or restore the Property as nearly as possible to its condition immediately prior to such damage or destruction or construct thereon such other improvements as may be approved by State subject to the provisions of Section 11.1(a) above. In the event State or Lessee elects to terminate this Lease, the Term of this Lease shall terminate one hundred twenty (120) days after the date of such damage or destruction. Any insurance proceeds payable shall be allocated between State and Lessee pro-rata based upon the unexpired term of this Lease as specified in Section 11.1(a) above and, subject to State's claim against Lessee's share of such proceeds in an amount equal to sums due from Lessee hereunder. In the event Lessee elects to restore the Property, and State does not terminate this Lease, any insurance proceeds payable by reason of such damage or destruction shall be made available to Lessee to pay the costs of such reconstruction and any funds remaining shall be allocated between State and Lessee as stated in Section 11.1(a) above.

12. CONDEMNATION

12.1 Definitions.

(a) Total Taking. The term "total taking," as used in this Lease, means the taking of the entire Property and any improvements thereon under the power of Eminent Domain either by judgment or settlement in lieu of judgment, or the taking of so much of the Property and improvements as to prevent the use thereof by Lessee or render the Property commercially impossible to operate for the uses and purposes hereinabove provided. In the event of a dispute between State and Lessee as to whether so much of the Property and improvements thereon have been taken as to prevent the use or render impossible the commercial operation thereof by Lessee, State and Lessee agree that the issue shall be submitted to binding arbitration as provided in Section 14 below.

(b) Partial Taking. The term "partial taking" means either a temporary taking or the taking of a portion only of the Property which does not constitute a total taking as defined above.

(c) Volunteer Conveyance. The terms "total taking" and "partial taking" shall include a voluntary conveyance to any agency, authority, public utility, person or corporate entity empowered to condemn property in lieu of formal court proceedings.

(d) Date of Taking. The term "date of taking" shall mean the date upon which title to the Property or a portion thereof passes to and vests in the condemnor or the effective date of any order for possession if issued prior to the date title vests in the condemnor.

12.2 Effect of Taking. If during the Term hereof there shall be a total taking under the power of Eminent Domain, then the leasehold estate of Lessee in and to the Property shall cease and terminate as of the date of taking. If this Lease is so terminated, all rentals and other charges payable by Lessee to State hereunder shall be paid by Lessee up to the date of taking by the condemnor, and the parties thereupon shall be released from all further liability in relation thereto.

12.3 Allocation of Award. Any award or payment made in respect to a total taking shall be allocated between State and Lessee as follows:

(a) Total Taking.

(i) Lessee shall receive that portion of the award which is equal to all sums so paid attributable to the taking of the improvements made by Lessee upon the Property as described in Section 12.3(b) below, multiplied by a fraction, the numerator of which is the number of years remaining, as of the date of the taking, in the original term of this Lease, and the denominator of which is the number of the years remaining as of the date of completion of such improvements in the original Term of this Lease. In the event that the improvements shall have been completed in more than one (1) year, the amount of Lessee's award shall be computed separately with respect to each such work of improvement.

(ii) If the portion of the award attributable to the taking of the improvements is not determined at the time the payment or award is made, the portion of the award attributable to the taking of the improvements shall be that portion of the award as the value of the improvements made upon the Property bear to the total value of the Property as improved which has been taken. These amounts shall be determined by a qualified real estate appraiser (as defined in Section 14 below) mutually selected by State and Lessee.

(iii) The balance of the award or payment after deducting the above sums shall be paid to State.

(b) Partial Taking.

All awards from a partial taking shall be paid to State. There shall be no abatement of Rent as a result of any partial taking.

13. ASSIGNMENT

13.1 Assignment. Except as provided in Section 7 above, Lessee shall not hypothecate, mortgage, assign, transfer or otherwise alienate this Lease, or any interest therein or sublet all or substantially all the Property or space within the improvements constructed thereon to a single sublessee, without the prior written consent of State. In granting such consent, State shall be entitled to consider, among other items, the proposed assignee's financial condition, business reputation, nature of the proposed assignee's business and such other factors as may reasonably bear upon the suitability of the assignee as a lessee of the Property. If Lessee is a corporation, partnership or other association, (i) the transfer of more than fifty percent (50%) of the ownership interest in such entity, or (ii) the sale of all or substantially all of the assets of such Lessee shall be deemed to constitute an "assignment" of this Lease which requires approval of State. The consent of State to any one assignment shall not constitute a waiver of State's right to approve subsequent assignments, nor shall consent of State to any one assignment relieve any party previously liable as Lessee from any obligations under this Lease. The acceptance by State of the payment of Rent following an assignment shall not constitute consent to any assignment, and State's consent shall be evidenced only in writing.

13.2 Right to Sublet. Except as provided in Section 13.1 above, Lessee shall have the right to sublet any part or parts of the Property or Project, or both, and to assign, encumber or renew any sublease so long as:

(a) Each sublease shall contain a provision satisfactory to State and to each Leasehold Mortgagee having an interest at the time the sublease is executed, requiring the sublessee to attorn to State, or in the event of any proceeding to foreclose any Leasehold Mortgage, to the Leasehold Mortgagee, or any person designated in a notice from the Leasehold Mortgagee, if Lessee defaults under this Lease and if the sublessee is notified of Lessee's default and instructed to make sublessee's rental payments to State or Leasehold Mortgagee or designated person as provided in this Section 13.2(a).

(b) Lessee shall promptly after execution of each sublease, furnish State a true copy thereof.

(c) Lessee shall not accept directly or indirectly more than three (3) months' prepaid rent from any sublessee.

(d) Each sublease is expressly subordinate to the interests and rights of State in the Property and under this Lease, and requires the sublessee to take no action in contravention of the terms of this Lease.

(e) Each sublease is of a duration less than the Term of this Lease.

(f) Subject to the rights of any Leasehold Mortgagee, as additional security for the performance of Lessee's obligations hereunder, Lessee hereby grants to State a security interest in and to all of Lessee's right to receive any rentals or other payments under such subleases and this Lease shall constitute a security agreement for such purposes under laws of the State of Washington. Lessee shall execute such financing statements as may be reasonably required to perfect such security interest.

14. ARBITRATION

14.1 Issues Subject to Arbitration. Any controversy which shall arise between State and Lessee regarding the provisions hereof relating to the amount of insurance to be maintained by Lessee, the allocation of any condemnation award, the degree of damage or destruction suffered by the Project or any matter specifically made subject to arbitration in this Lease shall be settled by arbitration.

14.2 Appointment of Arbitrators. Such arbitration shall be before one (1) disinterested qualified arbitrator if one can be agreed upon, otherwise before three (3) disinterested qualified arbitrators, one named by State, one named by Lessee, and one by the two thus chosen; provided, that if said two arbitrators cannot agree upon a third arbitrator within fifteen (15) days, then said third arbitrator shall be appointed by the Presiding Judge of Thurston County Superior Court upon motion of either State or Lessee. The appointment of arbitrators shall be signified in writing by each party to the other. If State or Lessee shall fail to so appoint an arbitrator for a period of twenty-five (25) days after written notice from the other party to make such appointment, then the arbitrator appointed by the party not in default hereunder shall appoint a second arbitrator and the two so appointed shall appoint a third arbitrator. A "disinterested arbitrator" shall be a person who shall not have direct or indirect financial or other interest in the decisions to be made by the arbitrator(s) and who shall not be an officer, director, employee, or agent of State or Lessee. In the case of arbitrations relating to the determination of values of real property, a qualified arbitrator shall mean a real estate appraiser who has a professional designation as an "MAI" or "SREA," or a member of a similarly recognized professional organization. Otherwise, a qualified arbitrator shall mean a person generally familiar with the subject matter of the controversy.

14.3 Arbitration Procedure. The arbitrator or arbitrators shall determine the controversy in accordance with the laws of the State of Washington as applied to the facts found by arbitrator(s) and in accordance with the rules of the Uniform Arbitration Act and the American Arbitration Association. The arbitrator or arbitrators shall make awards in strict conformity with such rules and shall have no power to depart from or change any of the provisions thereof. All arbitration proceedings hereunder shall be conducted in the City of Seattle, Washington. The arbitrator or arbitrators, after being duly sworn to perform all duties with impartiality and fidelity shall proceed to determine the question or questions submitted. The decision of the arbitrator or arbitrators shall be rendered within thirty (30) days after appointment, and such decision shall be in writing and in duplicate, one counterpart thereof to be delivered to each of the parties hereto. The award of the arbitrator or arbitrators shall be binding, final and conclusive on the parties, and judgment on such award rendered may be entered in any court having jurisdiction thereof. Fees of the arbitrator or arbitrators and the expenses incident to the proceedings shall be borne equally between State and Lessee. Fees of the respective counsel engaged by the parties, and fees of expert witnesses or other witnesses called for the parties shall be paid by the respective party engaging such counsel or calling or engaging such witness. Except as specifically provided in this Section 14, no other dispute or controversy between State or Lessee shall be determined by arbitration.

15. INSOLVENCY

If a receiver or trustee is appointed to take possession of all or substantially all of the assets of Lessee; or if any action is taken or suffered by Lessee pursuant to an insolvency, bankruptcy or reorganization act; or if Lessee makes a general assignment for the benefit of its creditors: and if such appointment, action or assignment continues for a period of thirty (30) days, it shall, at State's option, constitute a default by Lessee and State shall be entitled to the remedies set forth in Section 16 below, which may be exercised by State without prior notice or demand upon Lessee.

16. BREACH BY LESSEE

16.1 Breach and Default. In the event of any breach of any provision of this Lease by Lessee, the breach shall be deemed a default entitling State to the remedies set forth in this Lease or otherwise available at law, after State has delivered to Lessee notice of the alleged breach and a demand that the same be remedied immediately; provided that, if the breach pertains to a matter other than the payment of rent, Lessee shall not be in default after receipt of the notice if Lessee shall promptly commence to cure the default and shall cure the default within forty-five (45) days after receipt of the notice, or if the breach pertains to the payment of rent Lessee shall have fifteen (15) days after receipt of the notice to cure the breach; provided, however, if such default is non-monetary in nature, and as determined by State, is not reasonably susceptible of being cured in said forty-five (45) days (lack of or failure to expend funds not to adversely affect the susceptibility of cure), Lessee shall commence to cure such default within said period and diligently pursue such action with continuity to completion. If a breach has been cured within the grace periods permitted by this Section 16.1, it shall no longer constitute a default.

16.2 Right of Re-entry. In the event of a default, State, in addition to any other rights or remedies that it may have, shall have the immediate right of re-entry. Should State elect to re-enter or take possession of the Property, it may either terminate this Lease, or from time to time, without terminating this Lease, relet the Property, or any part thereof for the account and in the name of Lessee or otherwise, for any such term or terms and conditions as State in its sole discretion may deem advisable with the right to complete construction of or make alterations and repairs to the improvements. Lessee shall pay to State, as soon as ascertained, the cost and expenses incurred in such reletting, completion of construction, or in making such alterations and repairs. Rentals received by State from such reletting shall be applied: First, to the payment of any indebtedness, other than Rent, due hereunder from Lessee to State; Second, to the payment of Rent due and unpaid hereunder and to any other payments required to be made by the Lessee hereunder and the residue, if any, shall be held by State and applied in payment of future rent or damages in the event of termination as the same may become due and payable hereunder and the balance, if any, at the end of this Lease shall be paid to Lessee. Should such rentals received from time to time from such reletting during any month be less than that agreed to be paid during the month by Lessee hereunder, Lessee shall pay such deficiency to State. Such deficiency shall be calculated and paid monthly. At any time after such re-entry, whether or not State shall have collected any monthly deficiencies as aforesaid, State shall be entitled to recover from Lessee and Lessee shall pay to State, on demand, as and for liquidated and agreed final damages for Lessee's default, an amount equal to the difference

between the Rent and all additional rent reserved hereunder, if any, for the period to the date upon which the Term would have ended but for the default of Lessee and the then fair and reasonable rental value of the Property for the same period. Nothing contained herein shall limit or prejudice the right of State to prove for and obtain as liquidated damages by reason of such default in an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceeds in which, such damages are to be proved, whether or not such amount be greater, equal to or less than the amount of the difference referred to in this Section 16.

16.3 Reletting. No such reletting of the Property by State shall be construed as an election on its part to terminate this Lease unless a notice of such intention be given to Lessee or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, State may at any time thereafter elect to terminate this Lease for such previous breach, provided that it has not been cured. Should State at any time terminate this Lease for any breach, in addition to any other remedy it may have, it may recover from Lessee all damages it may incur by reason of such breach.

17. STATE MAY INSPECT THE PROPERTY

Lessee shall permit State and its agents to enter into and upon the Property and the Project at all reasonable times for the purpose of inspecting the same.

18. HOLDING OVER

This Lease shall terminate without further notice at the expiration of the Term. Any holding over by Lessee without the express written consent of State shall not constitute a renewal or extension of this Lease or give Lessee any rights in or to the Property, and such occupancy shall be construed to be a tenancy from month-to-month on all the same terms and conditions as set forth herein, insofar as they are applicable to a month-to-month tenancy, except that the rent shall increase to an amount equal to Two Hundred Percent (200%) of the amount of Rent due for the last month of the term of this Lease.

19. NOTICES

Any notice required or desired to be given under this Lease shall be in writing with copies directed as indicated herein and shall be personally served or given by mail. Any notice given by mail shall be deemed to have been given when seventy-two (72) hours have elapsed from the time when such notice was deposited in the United States mails, certified and postage prepaid, addressed to the party to be served at the last address given by that party to the other party under the provisions of this Section 19. Any change in address shall be promptly given in writing to the other party. At the date of the execution of this Lease, the address of State is:

Department of Natural Resources
Real Estate Division
1450 Metropolitan Park Building
1100 Olive Way
Seattle, WA 98101

and the address of Lessee is:

20. SUCCESSORS

The covenants and agreements contained in this Lease shall be binding on the parties hereto and on their respective successors and assigns, to the extent the Lease is assignable, and upon any person, firm, or corporation coming into ownership or possession of any interests in the Property by operation of law or otherwise, and shall be construed as covenants running with the land.

21. TERMINATION

Upon the termination of this Lease by expiration of time or otherwise, the rights of Lessee and of all persons, firms, corporations and entities claiming under Lessee in and to the Property (and all improvements thereon, unless specified otherwise in Section 6.2 above) shall cease.

22. MISCELLANEOUS

22.1 Section Headings. The section headings used in this Lease are for convenience only. They shall not be construed to limit or to extend the meaning of any part of this Lease.

22.2 Amendments. Any amendments or additions to this Lease shall be made in writing executed by the parties hereto, and neither State nor Lessee shall be bound by verbal or implied agreements.

22.3 Waiver. The waiver by State of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The acceptance of Rent by State following a breach by Lessee of any provision of this Lease shall not constitute a waiver of any right of State with respect to such breach. State shall be deemed to have waived any right hereunder only if State shall expressly do so in writing.

22.4 Cumulative Remedies. Each right, power and remedy of State provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by State of any one or more of the rights, powers or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by State of any or all such other rights, powers or remedies.

22.5 Consent. In determining the reasonableness of any consent, approval or action by State hereunder, Lessee acknowledges that State is acting as a trustee of public lands and must observe a fiduciary duty in managing the Property in a manner which maximizes the benefit derived therefrom and which minimizes the risk incurred in connection therewith.

22.6 Time of Essence. Time is expressly declared to be of the essence of this Lease and each and every covenant of Lessee hereunder.

22.7 Late Charge and Interest. In the event Lessee fails to make any payment of Rent due hereunder upon the date due, State shall be entitled to collect from Lessee a late charge equal to six percent (6%) of the amount of the delinquent payment. In the event State pays any sum or incurs any expense which Lessee is obligated to pay hereunder, or which is made on behalf of Lessee, State shall be entitled to receive reimbursement thereof from Lessee upon demand, together with interest thereon from the date of expenditure at twice the maximum rate allowed by R.C.W. 19.52.020.

22.8 Entire Agreement. This Lease contains the entire agreement of the parties hereto with respect to the matters covered hereby, and no other agreement, statement or promise made by any party hereto, or to any employee, officer or agent of any party hereto, which is not contained herein, shall be binding or valid.

22.9 Escalation.

(a) Standard of Measurement. The dollar amount stated in Sections 6, 7 and 8 above, shall be adjusted on the fifth anniversary following the Commencement Date and every fifth anniversary date thereafter ("Anniversary Date") during the Term of this Lease to a dollar amount which bears the same ratio to the original dollar amount set forth herein as the following described index figure published for the latest date prior to the date such adjustment is to be effective bears to such index figure published for the latest month prior to the date hereof. The index figure to be utilized in calculating such adjustment shall be the Revised Consumer Price Index for Urban Wage Earners and Clerical Workers (All Items) for the Seattle-Everett, Washington Metropolitan Area (1967=100) (the "Index"), presently published by the United States Department of Labor. In the event the Index shall hereafter be converted to a different standard reference base or otherwise revised, the determination of the percentage increase shall be made with the use of such conversion factor, formula or table for converting the Index as may be published by the Bureau of Labor Statistics or, if said Bureau shall not publish the same, then with the use of such conversion factor, formula or table as may be published by Prentice Hall, Inc., or, failing such publication, by any other nationally recognized publisher of similar statistical information. In the event the Index shall cease to be published, then, for the purposes of this Lease, there shall be substituted for the Index such other index as State and Lessee shall agree upon, and if they are unable to agree within ninety (90) days after the Index ceases to be published, such matter shall be determined by arbitration in accordance with Section 14 of this Lease.

(b) Any provision in Section 22.9(a) above notwithstanding, under no circumstances shall the dollar amounts identified in Section 22.9(a) above, be less than stated in the sections referenced therein.

22.10 Language. The word "Lessee" when used herein, shall be applicable to one (1) or more persons, as the case may be, and the singular shall include the plural, and the neuter shall include the masculine and feminine, and if there be more than one (1), the obligations hereof shall be joint and several. The words "persons" whenever used shall include individuals, firms, associations and corporations. This Lease, and its terms,

have been freely negotiated by State and Lessee. The language in all parts of this Lease shall in all cases be construed as a whole and in accordance with its fair meaning, and shall not be construed strictly for or against State or Lessee.

22.11 Invalidity. If any provision of this Lease shall prove to be invalid, void or illegal, it shall in no way affect, impair or invalidate any other provision hereof.

22.12 Applicable Law. This Lease shall be interpreted and construed under and pursuant to the laws of the State of Washington. Any reference to a statute enacted by the State of Washington shall refer to that statute as presently enacted and any subsequent amendments thereto, unless the reference to said statute specifically provides otherwise.

22.13 Provisions Independent. Unless otherwise specifically indicated, all provisions set forth in this Lease are independent of one another, and the obligations or duty of either party hereto under any one provision is not dependent upon either party performing under the terms of any other provision.

22.14 Date of Execution. The date this Lease is executed shall be deemed to be the day and year first written above.

22.15 Survival. All obligations of Lessee to be performed after the Termination Date shall not cease upon the termination of this Lease, and but shall continue as obligations until fully performed.

22.16 Recordation. This Lease or a memorandum thereof shall be promptly recorded by Lessee in the county in which the Property is located. Lessee shall provide State with a true copy of the recorded document, showing the date of recordation and file number.

22.17 Conveyance by State. In the event State or any successor lessor shall convey or otherwise dispose of the Property, then that lessor shall thereupon be released from all liabilities and obligations under this Lease (except those accruing prior to such conveyance or other disposition) and such liabilities and obligations shall be binding solely on the then owner of the Property.

22.18 Net Lease.

(a) Fully Net Lease. This Lease is intended, and is hereby declared to be, a fully "net" lease, it being the intention of the parties hereto that State shall have and enjoy the rent herein reserved to it without deduction therefrom free of any expense, charge or other deduction whatsoever, with respect to the Property and the ownership, operation, management, maintenance, repair, use or occupation thereof during the Term. Nothing herein contained shall be construed, however, so as to require Lessee to pay or be liable for any gift, inheritance, estate, franchise, income, profit, capital or similar tax, or any other tax in lieu of any of the foregoing, imposed upon State, or the successors or assigns of State, unless such tax shall be imposed or levied upon or with respect to rents payable to State herein in lieu of real estate taxes upon the Property.

(b) No Reduction of Rent. No abatement, diminution or reduction of the rental or other charges payable by Lessee under this Lease shall be claimed by or allowed to Lessee for any inconvenience, interruption, cessation or loss of business or otherwise caused directly or indirectly by any present or future laws, rules, requirements, orders, directives,

ordinances or regulations of the United States of America or of the State, County or City government or any other municipal, government or lawful authority whatsoever, by damage to or destruction of any portion of or all of the improvements by fire, the elements or any other cause whatsoever, or by priorities, rationing, or curtailment of labor or materials or by war or any matter or things resulting therefrom or by any other cause or causes, except as otherwise specifically provided in this Lease.

23. HAZARDOUS SUBSTANCES.

23.1 Presence and Use of Hazardous Substances. Lessee shall not, without State's prior written consent, keep on or around the Property, for use, disposal, treatment, generation, storage or sale, any substance designated as, or containing components designated as hazardous, dangerous, toxic or harmful (collectively referred to as "Hazardous Substances"), and/or is subject to regulation, by federal, state, or local law, regulation statute or ordinance. With respect to any such Hazardous Substance, Lessee shall:

(a) Comply promptly, timely, and completely with all governmental requirements for reporting, keeping and submitting manifests, and obtaining and keeping current identification numbers;

(b) Submit to State true and correct copies of all reports, manifests, and identification numbers at the same time as they are required to be and/or are submitted to the appropriate governmental authorities;

(c) Within five (5) days of State's request, submit written reports to State regarding Lessee's use, storage, treatment, transportation,, generation,, disposal or sale of Hazardous Substances and provide evidence satisfactory to State of Lessee's compliance with the applicable government regulations;

(d) Allow State or State's agent or representative to come on the Premises at all times to check Lessee's compliance with all applicable governmental regulations regarding Hazardous Substances;

(e) Comply with minimum levels, standards or other performance standards or requirements which may be set forth or established for certain Hazardous Substances (if minimum standards or levels are applicable to Hazardous Substances present on the Property, such levels or standards shall be established by an on-site inspection by the appropriate governmental authorities and shall be set forth in an addendum to this Lease); and

(f) Comply with all applicable governmental rules, regulations and requirements regarding the proper and lawful use, sale, transportation, generation, treatment, and disposal of Hazardous Substances.

Any and all costs incurred by State and associated with State's inspection of the Property and State's monitoring of State's compliance with this Section 23, including State's attorneys; fees and costs, shall be additional rent and shall be due and payable to State immediately upon demand by State.

23.2 Cleanup Costs, Default and Indemnification.

(a) Lessee shall be fully and completely liable to State for any and all cleanup costs, and any and all other charges, fees, penalties (civil and criminal) imposed by any governmental authority with respect to Lessee's use, disposal, transportation, generation and/or sale of Hazardous Substances, in or about the Property.

(b) Lessee shall indemnify, defend and save State harmless from any and all of the costs, fees, penalties and charges assessed against or imposed upon State (as well as State's attorneys' fees and costs) as a result of Lessee's use, disposal, transportation, generation and/or sale of Hazardous Substances.

(c) Upon Lessee's default under this Section 23 in addition to the rights and remedies set forth elsewhere in this Lease, State shall be entitled to the following rights and remedies:

(i) At State's option, to terminate this Lease immediately; and/or

(ii) To recover any and all damages associated with the default, including, but not limited to cleanup costs and charges, civil and criminal penalties and fees, loss of business and sales by Lessee and other tenants of the Property, any and all damages and claims asserted by third parties and State's attorneys' fees and costs.

IN WITNESS WHEREOF, this Ground Lease is executed as of the day and year first above written.

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
BRIAN J. BOYLE
COMMISSIONER OF PUBLIC LANDS

By _____

Its _____

_____
(Lessee Name)

_____
By

_____
Its (Title)

Approved as to form
this _____ day of
_____, 198____,

_____
Assistant Attorney General

Department of Natural Resources Acknowledgment

STATE OF WASHINGTON)
)ss.
COUNTY OF _____)

On this _____ day of _____, 19_____
_____, before me personally appeared _____
to me known to be the _____
_____
of the Department of Natural Resources of the State of Washington, the Department that executed the within and foregoing instrument on behalf of the State of Washington, and acknowledged said instrument to be the free and voluntary act and deed of the State of Washington for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument and that the seal affixed is the official seal of the Commissioner of Public Lands for the State of Washington.

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

_____
Notary Public in and for the State of Washington,

residing at _____.

My commission expires_____.

Partnership Acknowledgement

STATE OF _____)
)ss.
COUNTY OF _____)

On this _____ day of _____, 19____, before me personally appeared _____ and _____, to me known to be the General Partners of _____, the partnership that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said partnership, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the said instrument.

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

_____
Notary Public in and for the State of

_____,

residing at _____.

My commission expires _____.

Corporate Acknowledgment

STATE OF _____)
)ss.
COUNTY OF _____)

On this_____day of _____,19_____, before me personally appeared _____ to me known to be the _____ of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

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

_____
Notary Public in and for the State of

_____.

residing at _____.

My commission expires _____.

Individual Acknowledgment

STATE OF _____)
)ss.
COUNTY OF _____)

On this _____ day of _____, 19_____, before me personally appeared _____ to be the individual(s) described in and who executed the within and foregoing instrument and acknowledged the same as his/her/their free and voluntary act and deed for the uses and purposes therein mentioned.

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

_____
Notary Public in and for the State of

_____,

residing at _____.

My commission expires _____.

EXHIBIT A

Address _____

_____

_____

Legal Description

EXHIBIT B

Percentage Rent

1.1 Definitions. These terms, when used in this Lease, shall have the following meanings:

(a) "Lease Year" shall mean the calendar year and "Month" shall mean each calendar month.

(b) "Affiliate" of any person, entity or party shall mean any affiliate of that person, entity or party as that term is defined in the United States Securities Act of 1933 and the rules and regulations promulgated thereunder.

(c) "Gross Revenue" shall mean all revenue received by Lessee or any Affiliate of Lessee with respect to the operation of the Property or any improvement thereon, including but not limited to sub-lessee reimbursement with respect to operation of the Prcperty, but excluding:

(i) Insurance and other receipts from claims for losses or damages to property except for proceeds from business interruption insurance;

(ii) Proceeds from condemnation or settlements in lieu thereof except for proceeds attributable to a temporary taking pursuant to Section 12 above;

(iii) Receipts from sub-lessees as reimbursement of costs incurred for special capital improvements financed by Lessee separately from the construction financing for the improvements constructed upon the Property; and

(iv) Sub-lessee deposits which, and so long as, Lessee if required to, and does, maintain them in one or more separate cash (or equivalent) accounts.

(d) "Gross Income" shall mean Gross Revenue less "Costs of Operating the Property." Costs of Operating the Property shall consist of:

(i) Operating Expenses (as defined in paragraph (e) below);

(ii) The following costs paid by Lessee as a consequence of re-leasing space in the improvement after the initial occupancy thereof by a sub-lessee:

(1) Leasing fees not exceeding competitive rates for comparable services in the community in which the Property is located; and

(2) Costs incurred by Lessee in refurbishing and/or remodeling such space and making additional tenant improvements to the extent such costs are not paid or reimbursed by sub-lessees.

(iii) The direct costs of capital improvements, except those for which Lessee is reimbursed, made subsequent to the initial development of the Property, amortized on a straight-line basis over the estimated actual useful life or lives of such improvements (to be determined without reference to the Internal Revenue Code) together with financing costs, if any,

as incurred, which improvements are (a) required to comply with building, fire and other codes, statutes, rules or regulations then in effect or the order of any lawful authority having jurisdiction over the Property; or (b) part of a major rehabilitation or refurbishing of the Property, or are otherwise designed with a reasonable probability of increasing the income producing potential of the Property; provided such amortization costs shall not exceed the reasonably expected increased income resulting from such expenditures; and

(iv) Reasonable cash (or equivalent) reserves established by Lessee to pay expenses described in paragraph (i) or (ii) of this paragraph (d), under the following circumstances:

(1) State is notified thereof in writing at or before the time any such reserve is established, which notice shall state the amount, purpose and timing of anticipated expenditures, together with such additional information as may reasonably be required to establish that such reserve is in compliance with the terms of this Lease and Lessee shall give State prompt notice of all changes to the matters described in such notice and to other information furnished to State under this paragraph;

(2) Such reserve is designed to fund reasonably anticipated expenses described herein;

(3) Any earnings on such reserve not reasonably required to be added to such reserve shall be included in Gross Revenue;

(4) Costs reserved against and covered by any such reserve shall not thereafter be deducted from Gross Revenue pursuant to either paragraphs (d) or (e), or otherwise;

(5) Any amount or amounts in such reserve which are not reasonable to be maintained therein (whether upon completion of and payment for the costs to be funded, or earlier) shall be included in Gross Revenue;

(6) Such reserves shall be maintained in a separate, identifiable account or accounts and shall not be pledged or encumbered to secure the performance of any obligation other than the purpose for which reserved and shall not be used, directly or indirectly, for any purpose other than the purposes for which they are established; and

(7) To the extent any amounts placed in reserve pursuant hereto are not utilized as intended within five (5) years after they are so placed in reserve, they shall be deemed returned to Gross Revenue upon the expiration of such period of five (5) years.

(v) It is the intent of the parties that any expense which is allowable as an exclusion from Gross Revenue under paragraph (c), or deductible in establishing Gross Income under paragraph (d), including items allowable as an Operating Expense under paragraph (e) shall, under any or all of such sections, be charged against Gross Revenue only once.

(vi) Prior to the incurrence of cost or the establishment of any reserves, Lessee shall submit to State for State's approval a plan for the improvements contemplated herein. In the event of a dispute as to the reasonableness of

the amount of amortization of costs or the amount to be reserved pursuant to paragraphs (d) or (e) hereof the dispute shall be resolved by arbitration pursuant to Section 14 above.

(e) "Operating Expenses" shall mean all expenses paid by Lessee (excluding such items as depreciation, amortization, interest, debt service, financing fees and loan participation costs) in connection with the Property (except Minimum and Percentage Rent, as hereinafter defined), for the following:

(i) Utilities, including any surcharges imposed thereon;

(ii) All reasonable expenses paid or incurred by Lessee for maintaining, operating and repairing the Property and the personal property used in conjunction therewith, including insurance premiums, licenses, permits and inspection fees (except those for construction of the Project and initial occupancy thereof), customary management fees, legal and accounting expenses and other costs, whether or not hereinabove described; provided that all such costs, in accordance with generally accepted accounting and management practices, would be considered an expense of maintaining, operating or repairing the Project and not a cost of constructing the Project; and further provided that any management fees or charges shall not exceed competitive rates for comparable services charged in the community in which the Property is located. Depreciation, as well as excessive, unreasonable or extraordinary expenses, shall not be included in the Cost of Operating the Property, and any dispute as to the reasonableness of an expenditure shall be resolved by arbitration pursuant to Section 14 above;

(iii) The Leasehold Tax as defined in Section 4.2 above;

(f) Except as defined herein, no other items shall be considered Operating Expenses.

1.2 Rent. Lessee covenants and agrees to pay State the following rent:

(a) Minimum Rent. Lessee shall pay as minimum rent ("Minimum Rent") hereunder the sum of _____ _____ _____ ($_____) per year in equal quarterly installments in advance on or before the first (1st) day of each calendar quarter, commencing on the Commencement Date.

(b) Percentage Rent. Commencing with the Commencement Date, in addition to the Minimum Rent provided for in Paragraph (a) above, Lessee shall pay to State percentage rent ("Percentage Rent") in an amount with respect to each Lease Year equal to the amount by which State's pro-rata share ("Pro-Rata Share") of Gross Income for such Lease Year exceeds Minimum Rent for such Lease Year. State's Pro-Rata Share shall be equal to _____ percent (_____%).

(c) Calculation of Percentage Rent. Percentage Rent shall be calculated on an annualized calendar year basis, or pro-rata portion thereof, and losses shall not be carried forward from one year to the next in making such computation. Lessee shall provide State by February 1 of each year an estimated pro forma statement for that Lease Year showing the expected Gross Revenue, Gross Income, Operating Expenses, Minimum Rent, and the amount of expected Percentage Rent calculated in good faith on the basis of information then

available to Lessee. Within thirty (30) days following the end of each calendar quarter during the Term, Lessee shall furnish to State a statement of operations of the Project for the preceding calendar quarter, including all items of revenue and expenses required to determine Percentage Rent payable hereunder.

(d) Payment of Percentage Rent. Lessee shall pay to State on or before the 30th day after the end of each calendar quarter during the Term an amount equal to the Percentage Rent for such calendar quarter.

(e) Annual Audited Statement. Lessee shall furnish to State not later than May 1 of each year an annual audited statement ("Annual Audited Statement") prepared by a nationally recognized independent firm of certified public accountants approved in writing by State showing accurately the Gross Income for the preceding calendar year, in such detail as reasonably necessary to establish the calculation of Percentage Rent, including the amounts of any reserves established. In the event Lessee has paid more than the Percentage Rent due for the preceding year, the amount of the overpayment shall be deducted by Lessee from the next succeeding payment or payments of Percentage Rent due hereunder. In the event Lessee has paid less than the Percentage Rent for the preceding year, Lessee shall pay State on or before the tenth (10th) day of the following month the amount of Percentage Rent due for the preceding year, plus an amount equal to interest thereon from the date payment thereof should have been made at the rate determined in accordance with Section 22.7 above.

(f) Audit by State. Lessee shall, upon reasonable notice from State, allow State or State's employees, agents or accountants to examine the books and records and review systems and procedures of Lessee for the purpose of verifying statements furnished or to be furnished pursuant hereto. To the extent expenses are unreasonable upon such an audit they shall not be deducted from the Gross Revenue to determine Gross Income, and any dispute as to the reasonableness of an expense shall be resolved by arbitration in accordance with Section 14 above. In the event State's examination shows that Lessee has underpaid the Percentage Rent during any Lease Year by an amount equal to the greater of Five Thousand Dollars ($5,000) or three percent (3%) of the total Percentage Rent payable during such Lease Year, Lessee shall promptly pay to State the reasonable expense incurred by State in making such review.

(g) Adjustment of Payments. If State's audit thereof shows that the Percentage Rent paid to State was less than the amount due, then Lessee shall pay such deficiency to State within thirty (30) days after the date of such audit together with an amount equal to interest thereon from the date payment thereof should have been made at the rate determined in accordance with Section 22.7 above. If payment of Percentage Rent was greater than the amount owing, such excess shall be credited against the next payments of Percentage Rent due hereunder.

(h) Maintenance of Books and Records. Lessee shall keep complete books of accounts and records of all operations in and with respect to the Property, including specifically the detailed records necessary to establish Gross Income and other facts necessary to establish the amount of rental owing hereunder, in accordance with generally accepted accounting principles consistently applied. All of the books and records shall be retained for seven (7) years and shall be physically located in the State of Washington.

EXHIBIT B

CPI With No Maximum

For the period commencing on _____, 19____, through _____, 19____, the annual rent shall be the sum computed by increasing the $_____ per year annual rent paid during the prior _____ year period by the percentage increase in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers for All Items for the Seattle-Everett Metropolitan Area ("CPI") from the level of said CPI as of _____ to the level of the CPI as of _____ or in other words:

Rent for the period _____ (Date) to _____ (Date) equals

$_____ (previous rent) times (CPI as of _____ (current date)

divided by CPI as of _____ (previous date)).

In the event the change in the CPI for such period is a negative value, the annual rent shall in no event be less than the annual rent for the preceding (_____) year period. Such annual rent for the _____ (_____) year period shall continue without adjustment through _____ (date), payable in four (4) equal payments on the quarterly payment dates specified above. At the end of each subsequent _____ (_____) year period, a similar adjustment in the annual rent shall be made; namely, that the annual rent for each _____ _____ (_____) year period shall be equal to the annual rent applicable in the preceding _____ _____ _____ (_____) year period, increased by the percentage increase in the CPI during such preceding _____ _____ (_____) year period; provided, however, that in the event the change in the CPI is a negative value, the annual rent shall not be less than the annual rent applicable during the immediately preceding period. In the event such price index ceases to be published, the most nearly comparable price index then published by the United States Government shall be substituted in its place. If State and Lessee cannot agree as to a substitute index, then a new index shall be determined through arbitration in accordance with Section 14 above. Failure on the part of State to establish a new annual rent on any anniversary of the Commencement Date of this Lease on which such adjustment is to be made shall not preclude State from doing so anytime thereafter.

In the event a computation of an adjustment in the annual rent requires the use of published information which is not available as of the effective date of such rental adjustment, the adjustment shall be determined as soon as practical after the adjustment date, and Lessee shall continue to make periodic rental payments equal to the annual rent previously applicable. Any adjustment in such payments shall be paid by Lessee within thirty (30) days after a determination of the proper adjustment has been made.

EXHIBIT C

Appraisal Adjustment.

At the end of the _____ (_____) year following the Commencement Date, the Property shall be appraised by State. If Lessee does not agree with the fair market value of the Property determined by such appraisal, then the Property shall be appraised by three (3) real estate appraisers (qualified as defined in Section 14 above). One (1) shall be selected by State, one (1) shall be selected by Lessee, and the third appraiser shall be selected by the two appraisers so selected. State and Lessee shall either agree upon the fair market value of the Property or each select their separate appraisers by no later than six (6) months prior to the (_____) anniversary of the Commencement Date. The appraisers so selected shall submit individual appraisal reports to State and Lessee in writing no later than six (6) months prior to the rental adjustment date. If either State or Lessee fails to appoint an appraiser within the time limit specified above, or if the two appraisers appointed fail to agree upon a third appraiser within the time limit specified above, such appraiser shall be appointed by the Presiding Judge of the Thurston County Superior Court, upon application by either party following ten (10) days notice to the other party. The appraisers shall determine the fair market value of the Property at its highest and best use, disregarding any improvements constructed thereon by Lessee. The fair market value determined by such appraisers, or in the event the appraisers fail to agree upon such a value, the majority decision of the appraisers shall be binding and conclusive upon State and Lessee. Each party shall bear the cost of the respective appraisers so selected, and the cost of the third appraiser shall be divided equally between State and Lessee. For the _____ (_____) year period commencing _____, ____, the annual rent shall be equal to _____ percent of the fair market value of the Property so determined. Thereafter, during each succeeding _____ _____ (_____) year period, the annual rent shall be adjusted again as provided in this paragraph. Notwithstanding submission of the evaluation to the appraisers, Lessee shall pay the rental amount as proposed by State on the due dates as required if no decision by the panel of appraisers has been made or if the panel has not yet formed. Failure on the part of State to establish a new rental on any anniversary of the Commencement Date of this Lease on which such adjustment is to be made shall not preclude State from doing so anytime thereafter.

EXHIBIT C

Appraisal Adjustment.

At the end of the _____ (_____) year following the Commencement Date, the Property shall be appraised by State. If Lessee does not agree with the fair market value of the Property determined by such appraisal, then the Property shall be appraised by three (3) real estate appraisers (qualified as defined in Section 14 above). One (1) shall be selected by State, one (1) shall be selected by Lessee, and the third appraiser shall be selected by the two appraisers so selected. State and Lessee shall either agree upon the fair market value of the Property or each select their separate appraisers by no later than six (6) months prior to the (_____) anniversary of the Commencement Date. The appraisers so selected shall submit individual appraisal reports to State and Lessee in writing no later than six (6) months prior to the rental adjustment date. If either State or Lessee fails to appoint an appraiser within the time limit specified above, or if the two appraisers appointed fail to agree upon a third appraiser within the time limit specified above, such appraiser shall be appointed by the Presiding Judge of the Thurston County Superior Court, upon application by either party following ten (10) days notice to the other party. The appraisers shall determine the fair market value of the Property at its highest and best use, disregarding any improvements constructed thereon by Lessee. The fair market value determined by such appraisers, or in the event the appraisers fail to agree upon such a value, the majority decision of the appraisers shall be binding and conclusive upon State and Lessee. Each party shall bear the cost of the respective appraisers so selected, and the cost of the third appraiser shall be divided equally between State and Lessee. For the _____ (_____) year period commencing _____, _____, the annual rent shall be equal to _____ percent of the fair market value of the Property so determined. Thereafter, during each succeeding _____ _____ (_____) year period, the annual rent shall be adjusted again as provided in this paragraph. Notwithstanding submission of the evaluation to the appraisers, Lessee shall pay the rental amount as proposed by State on the due dates as required if no decision by the panel of appraisers has been made or if the panel has not yet formed. Failure on the part of State to establish a new rental on any anniversary of the Commencement Date of this Lease on which such adjustment is to be made shall not preclude State from doing so anytime thereafter.

EXHIBIT B

Scheduled Rent

During the term of this Lease, annual rent shall be paid according to the following schedule, in equal quarterly installments, in advance, beginning on the Commencement Date of this Lease and due on the same day every third month thereafter during the Term.

Commencement Date through ________ 19___ $________________

($____________ quarterly payment)

____________, 19___ through $________________________

____________, 19___ ($____________ quarterly payment)

____________, 19___ through $________________________

____________, 19___ ($____________ quarterly payment)

____________, 19___ through $________________________

____________, 19___ ($____________ quarterly payment)

____________, 19___ through $________________________

____________, 19___ ($____________ quarterly payment)

____________, 19___ through $________________________

____________, 19___ ($____________ quarterly payment)

____________, 19___ through $________________________

____________, 19___ ($____________ quarterly payment)

____________, 19___ through $________________________

____________, 19___ ($____________ quarterly payment)

____________, 19___ through $________________________

____________, 19___ ($____________ quarterly payment)

____________, 19___ through $________________________

____________, 19___ ($____________ quarterly payment)

____________, 19___ through $________________________

____________, 19___ ($____________ quarterly payment)

____________, 19___ through $________________________

____________, 19___ ($____________ quarterly payment)

EXHIBIT B

CPI With No Maximum

For the period commencing on _____, 19____, through _____, 19____, the annual rent shall be the sum computed by increasing the $_____ per year annual rent paid during the prior _____ year period by the percentage increase in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers for All Items for the Seattle-Everett Metropolitan Area ("CPI") from the level of said CPI as of _____ to the level of the CPI as of _____ or in other words:

Rent for the period _____ (Date) to _____ (Date) equals

$_____ (previous rent) times (CPI as of _____ (current date)

divided by CPI as of _____ (previous date)).

In the event the change in the CPI for such period is a negative value, the annual rent shall in no event be less than the annual rent for the preceding (_____) year period. Such annual rent for the _____ (_____) year period shall continue without adjustment through _____ (date), payable in four (4) equal payments on the quarterly payment dates specified above. At the end of each subsequent _____ (_____) year period, a similar adjustment in the annual rent shall be made; namely, that the annual rent for each _____ _____ (_____) year period shall be equal to the annual rent applicable in the preceding _____ _____ _____ (_____) year period, increased by the percentage increase in the CPI during such preceding _____ _____ (_____) year period; provided, however, that in the event the change in the CPI is a negative value, the annual rent shall not be less than the annual rent applicable during the immediately preceding period. In the event such price index ceases to be published, the most nearly comparable price index then published by the United States Government shall be substituted in its place. If State and Lessee cannot agree as to a substitute index, then a new index shall be determined through arbitration in accordance with Section 14 above. Failure on the part of State to establish a new annual rent on any anniversary of the Commencement Date of this Lease on which such adjustment is to be made shall not preclude State from doing so anytime thereafter.

In the event a computation of an adjustment in the annual rent requires the use of published information which is not available as of the effective date of such rental adjustment, the adjustment shall be determined as soon as practical after the adjustment date, and Lessee shall continue to make periodic rental payments equal to the annual rent previously applicable. Any adjustment in such payments shall be paid by Lessee within thirty (30) days after a determination of the proper adjustment has been made.

EXHIBIT C

Periodic Reappraisal.

On _____, 19____, and at intervals of not less than _____ (_____) years thereafter, a new annual rental will be established. The new annual rental will be based on the fair market value of the Property multiplied by State's then current capitalization rate. However, in no event will the adjusted annual rental be less than the previous annual rental. The fair market value will be determined, exclusive of Lessee's improvements, by State's appraiser. The fair market value will be established as of the beginning of the rental adjustment period. In the event that agreement cannot be reached between the parties on the fair market value of the Property, such valuation shall be submitted to a panel of three appraisers (qualified as defined in Section 14 above). One appraiser shall be selected by Lessee and this expense shall be borne by Lessee; one appraiser shall be selected by State and this expense shall be borne by State; these appraisers so selected shall mutually select a third appraiser and such expenses shall be shared equally by Lessee and State. The majority decision of this panel of appraisers shall be binding and conclusive upon State and Lessee. Notwithstanding submission of the evaluation to the appraisers, Lessee shall pay the rental amount as proposed by State on the due dates as required if no decision by the panel of appraisers has been made or if the panel has not yet been formed. If additional payments or refunds are required as a result of this review, such monies shall be due and payable within thirty (30) days after such decision. Failure on the part of State to establish a new rental on any anniversary of the Commencement Date of this Lease on which adjustment is to be made shall not preclude State from doing so anytime thereafter.

EXHIBIT C

Appraisal Adjustment.

At the end of the _____ (_____) year following the Commencement Date, the Property shall be appraised by State. If Lessee does not agree with the fair market value of the Property determined by such appraisal, then the Property shall be appraised by three (3) real estate appraisers (qualified as defined in Section 14 above). One (1) shall be selected by State, one (1) shall be selected by Lessee, and the third appraiser shall be selected by the two appraisers so selected. State and Lessee shall either agree upon the fair market value of the Property or each select their separate appraisers by no later than six (6) months prior to the (_____) anniversary of the Commencement Date. The appraisers so selected shall submit individual appraisal reports to State and Lessee in writing no later than six (6) months prior to the rental adjustment date. If either State or Lessee fails to appoint an appraiser within the time limit specified above, or if the two appraisers appointed fail to agree upon a third appraiser within the time limit specified above, such appraiser shall be appointed by the Presiding Judge of the Thurston County Superior Court, upon application by either party following ten (10) days notice to the other party. The appraisers shall determine the fair market value of the Property at its highest and best use, disregarding any improvements constructed thereon by Lessee. The fair market value determined by such appraisers, or in the event the appraisers fail to agree upon such a value, the majority decision of the appraisers shall be binding and conclusive upon State and Lessee. Each party shall bear the cost of the respective appraisers so selected, and the cost of the third appraiser shall be divided equally between State and Lessee. For the _____ (_____) year period commencing _____, _____, the annual rent shall be equal to _____ percent of the fair market value of the Property so determined. Thereafter, during each succeeding _____ (_____) year period, the annual rent shall be adjusted again as provided in this paragraph. Notwithstanding submission of the evaluation to the appraisers, Lessee shall pay the rental amount as proposed by State on the due dates as required if no decision by the panel of appraisers has been made or if the panel has not yet formed. Failure on the part of State to establish a new rental on any anniversary of the Commencement Date of this Lease on which such adjustment is to be made shall not preclude State from doing so anytime thereafter.