

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 86/2

728 SCOM122: ALASKA LANDS FILE 1977-78

THE FOLLOWING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
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PLACE	LOC
MO	NO

11-041 2200000

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START

3rd Ave

10	1	11,652 sq. ft.	79x155 7'	474.00 - 530 16
10	2	14,998 sq. ft.	100x147.1	435.00 - 490 16
10	3	14,993 sq. ft.		430.00
10	4	14,545 sq. ft.		480.00
10	5 - 6	14,994 sq. ft.		480.00
10	7	14,993 sq. ft.		480.00
10	8	13,052 sq. ft.		420.00
10	9	28,495 sq. ft.		915.00
10	10	23,535 sq. ft.		684.00
10	11	22,299 sq. ft.		654.00
10	12	20,707 sq. ft.		480.00
10	13	14,782 sq. ft.		480.00
10	14	15,011 sq. ft.		480.00
10	15	15,010 sq. ft.		480.00
10	16	15,008 sq. ft.		480.00
10	17	15,000 sq. ft.		480.00
10	18	15,000 sq. ft.		480.00
10	19	14,293 sq. ft.		480.00
10	20	42,719 sq. ft.		316.00
10	21	20,000 sq. ft.		252.00
10	22	20,000 sq. ft.		252.00
10	23	20,000 sq. ft.		252.00
10	24	20,000 sq. ft.		252.00
10	25	20,000 sq. ft.		252.00
10	26	20,000 sq. ft.		252.00
10	27	20,000 sq. ft.		252.00
10	28	18,312 sq. ft.		252.00
10	29	18,000 sq. ft.		252.00
10	30	17,533 sq. ft.		252.00
10	31	13,662 sq. ft.		252.00
10	32	15,000 sq. ft.		252.00
10	33	27,000 sq. ft.		252.00
10	34	19,810 sq. ft.		252.00
10	35	30,415 sq. ft.		252.00

Bids will be accepted at public auction to be held at the office of the Director of Finance, 364 Sixth Avenue, Albany, N.Y. 12202, from May 2, 1961, and to which will be accepted for lease the minimum annual rental as listed above.

The successful bidder shall deposit at the time of the award a sum of not less than 25% of the high bid, plus \$24.00 to cover appraisal and advertising fees, in cash, any/or certified check, and/or cashiers' check, and/or money order, or combinations thereof.

Following approval of the high bid by the Commissioner, leases for a period of 55 years will be issued on all lots except Lots 1, 2, 3, 4, 5, 6, 7 and 8 of Block 2, Lots 7, 8 and 9 of Block 3, and Lot 25 of Block 10, which will be leased for a period not in excess of 10 years, and the leases shall stipulate that the Director may revoke the same at any time upon thirty (30) days written notice.

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

Paul E. Holdsworth, Commissioner
Department of Natural Resources

Publish April 8, 15 and 22, 1961.

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

Revised July, 1960

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

Lease No. ADL 03066

LEASE AGREEMENT

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

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

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

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

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

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

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

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

IN TRUST, ONE
MUSKEE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22. If, upon the expiration of this lease, the Lessee desires a renewal lease on the lands, properties or interests covered herein, he shall within 30 days before the expiration of this lease, make application to the Lessor on Form 91-74 entitled "Application for Renewal of Lease," in which he must certify under oath as to the character and value of all the improvements existing upon the land, the purposes for which he desires a renewal and such other information as the Director of the Division of Lands may require. Along with the application the applicant shall deposit a sum equal to 50% of the current annual rental, as provided herein, but in no event to exceed the sum of \$50.00. The Lessor may thereupon lease said lands in compliance with the provisions herein enumerated, Chapter 169, S.A. 1959, as amended, and the rules and regulations promulgated thereunder, allowing a preference right to the Lessee herein.

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

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

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

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

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

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

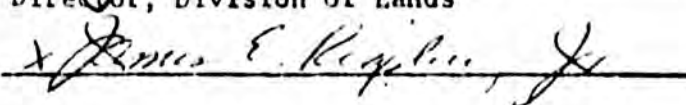
It is agreed that the covenants, terms and agreements herein contained shall be binding upon the successors and assigns of the respective parties hereto.

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

APPROVED:

COMMISSIONER, DEPARTMENT OF NATURAL RESOURCES
STATE OF ALASKA


Director, Division of Lands



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

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

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

UNITED STATES OF AMERICA)
State of Alaska) ss.

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

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

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

Approved as to Form:

Ralph E. Moody
Attorney General

By George H. Hughes
Title Assistant Attorney General

RENT ADJUSTMENTS FOR
STATE LEASED LANDS

1975

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

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

RENT ADJUSTMENTS FOR
STATE LEASED LANDS

1976

<u>ADL No.</u>	<u>Old Rental</u>	<u>New Rental</u>	<u>Per Cent Increase (Decrease)</u>
71326		3,500.00	
22526	360.00	2,150.00	497
22525	175.00	3,360.00	1,820
22654	95.00	1,192.00	1,155
50603	85.00	840.00	888
22652	155.00	4,350.00	2,706
44351	100.00	438.00	338
44350	80.00	744.00	830
46483	110.00	750.00	582
02380	880.00	6,540.00	643
39877	1,000.00	2,280.00	128
30480	240.00	2,350.00	879
26632	1,835.00	6,900.00	276
32919	1,020.00	2,760.00	171
31328	120.00	840.00	600
54326	175.00	910.00	420
54331	165.00	910.00	452
54365	205.00	950.00	363
54332	225.00	950.00	322
40806	355.00	690.00	94
54345	200.00	550.00	175
54346	175.00	550.00	214
54347	210.00	550.00	162
54349	190.00	575.00	203
54333	260.00	665.00	156
54334	250.00	690.00	176
54335	105.00	605.00	476
54336	120.00	605.00	404
54337	110.00	625.00	468
54338	145.00	690.00	376
54339	210.00	690.00	228
54340	200.00	690.00	245
54341	280.00	690.00	146
54342	270.00	690.00	156
32128	115.00	690.00	500
32065	115.00	665.00	478
54344	160.00	635.00	297
54351	430.00	870.00	102
03045	3,985.00	32,800.00	723
03042	2,925.00	22,360.00	664

State Leased Lands, 1976

<u>ADL No.</u>	<u>Old Rental</u>	<u>New Rental</u>	<u>Per Cent Increase</u>
03050	990.00	7,400.00	647
53595	1,775.00	11,760.00	562
03041	1,340.00	9,360.00	598
03049	700.00	6,160.00	780
51395	820.00	6,160.00	651
03040	820.00	6,160.00	651
03059	820.00	6,160.00	651
03070	950.00	7,000.00	637
47382	680.00	5,000.00	635
03058	1,010.00	6,680.00	561
03067	700.00	5,160.00	637
03044	8,495.00	75,440.00	788
47378	1,720.00	14,400.00	737
47598	3,260.00	27,360.00	739
03051	1,410.00	13,680.00	870
03062	1,635.00	13,680.00	737
03071	1,410.00	13,680.00	870
03069	800.00	6,000.00	650
03066	1,745.00	11,600.00	565
03063	945.00	6,600.00	598
03048	945.00	6,600.00	598
03068	945.00	6,600.00	598
03073	945.00	6,600.00	598
03039	1,425.00	10,280.00	621
03052	2,490.00	18,400.00	639
03102	3,955.00	28,640.00	624
03064	1,305.00	9,120.00	599
03104	930.00	6,520.00	601
49686	1,835.00	13,240.00	622
57237	1,835.00	13,240.00	622
03065	3,670.00	26,480.00	622
03057	3,665.00	27,040.00	638
03053	890.00	6,640.00	646
30746	915.00	6,880.00	652
03043	910.00	6,680.00	634
47985	135.00	1,300.00	863
49430	175.00	1,400.00	700
47809	175.00	1,450.00	728
49172	120.00	1,300.00	983
46499	270.00	1,650.00	511
53444	140.00	1,200.00	757

Real Estate for
State Leased Lands, 1976

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

TO: The Honorable Guy E. Martin
Commissioner
Department of Natural Resources
FILE NO:
TELEPHONE NO:

DATE: June 4, 1976

FROM: AVRUH M. GROSS
ATTORNEY GENERAL

SUBJECT: Waiver of reappraisal and
adjustment of rent

BY: Rodger W. Pegues
Assistant Attorney General

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

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



ALASKA LAND & LEASE OWNERS ASSOCIATION

The Chairperson's Report Number 3 To The Members

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

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

Our specific goals are to:

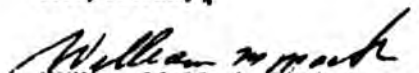
1. Obtain from the Division of Lands, a moratorium and subsequent reduction in payments on those leaseholdings which have been reappraised and now require increased payments far beyond the fair value of the lease.
2. Establish a vehicle whereby the Alaska Land & Lease Owners Association is able to assist the State of Alaska in obtaining better use of State of Alaska lands for all Alaskans.
3. Encourage distribution of Alaska State Lands thru a planned program of sale and lease of additional parcels of land, to both present and future Alaskans.
4. Bring about more equitable formulas for taxation of Alaska fee lands and leaseholds.
5. Encourage the multiple use of Alaska land.

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

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

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

Respectfully,


William M. Mack, Chairperson

WMM:ih

formula for re-appraisal appears to be the problem.

defeating
frustrated
education
attrition
balanced view

George Atkinson
owner Alaska Industrial Park
3800 per year rent to \$45,000
Agricultural lands for life lease
re-appraisal to state
this assessment
Recreational lands
utility lands
state should have received title to
they ~~should~~ haven't received title to
from the feds.

Can school lands
be sold

272-5955

Memo?



Jack Cole
John Miller
2 lots
Rocky Lake
5600 acres

PROTEST

Submitted By -
RISBEE

July 15, 1976

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

APPEAL

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

Dear Sir:

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

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

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

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

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

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

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

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

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

POU BUN

4. (continued)
of security and minimal fire year losses.

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

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

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

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

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

Sincerely,

James E. Nicholas Jr.
James E. Nicholas, Jr.
2015 Berouille Drive
Anchorage, AK, 99503

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

ALASKA LAND AND LEASE OWNERS ASSOCIATION

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

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

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

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

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

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

1. Bank financing is virtually unobtainable on lease land because of the uncertainties associated with the "five year adjustment" clause.
2. Renewal of lease is not assured at end of a 55 year period.
3. Use of land may be limited at ADL's discretion.
4. No equity accrues in the property.

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

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

We recommend several possible solutions:

1. Lands could be sold outright rather than leased.
2. Lands could be leased with an option to purchase at end of five years.
3. Rental could be:
 - a. Fixed for the fifty-five year lease period with leasee charged a percentage of any gain realized.
 - b. Increased annually at a fixed rate such as five percent.
 - c. Increased at the inflation or recession rate reflected in the Consumer Price Index.

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

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

Respectfully Submitted:

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

Box 740
Nasilla, Alaska 99687
June 19, 1976

Governor Jay Hammond
Juneau, Alaska 99801

Dear Governor Hammond:

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

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

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

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

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

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

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

Governor Hammond
June 19, 1976

Page two

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

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

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

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

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

Sincerely,

Joe Wilhour
Box 740
Wasilla, Alaska 99687

Phone 376-6601

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

JAY S. HAMMOND, Governor

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

June 25, 1976

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

Re: ADL 03039 - Lease of Alaska Land

Dear Mr. Brown;

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

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

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

Very truly yours,

MICHAEL C. T. SMITH, DIRECTOR

Roberta Staats
By Roberta Staats, Accounting Technician I

2 Lots
Q 80' x 150'
Q 80' x 200'

022
356.25

Dear Editor:

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

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

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

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

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

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

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

Which totals: $\$595,845,926,195.00$
Five hundred ninety-five billion, eight hundred forty-five million, nine hundred twenty-six thousand, one hundred ninety-five dollars! For less than two acres!

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

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

Joe Wilhour

Box 740 Wasilla Alaska 99687

Joe Wilhour

3350 COMMERCIAL DRIVE, ANCHORAGE

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

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

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

PAYER

ANCHORAGE CAMPER CENTER

~~CLARK WICHARDSON FRES~~

2756 COMMERCIAL DRIVE

ANCHORAGE

AK 99501

PURPOSE	FROM	PERIOD	TO	AMOUNT
QUARTERLY RENTAL	06-01-76	11-01-76		6,620.00
ARREARAGE				917.50

RECEIVED BY	DATE	RECEIPT AMOUNT	PAY THIS AMOUNT	7,537.50

REMARKS

PER A.S. 35.05.020, THE DIVISION OF LANDS IS PROHIBITED FROM
GRANTING EXTENSIONS OF TIME TO MAKE PAYMENT.

MAIL OR DELIVER TO

RETURN THIS COPY WITH YOUR REMITTANCE

DIVISION OF LANDS

323 EAST 4TH AVENUE
ANCHORAGE, ALASKA 99501

MAKE REMITTANCE PAYABLE TO

DO NOT ACCEPT THIS COPY AS A RECEIPT
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DEPARTMENT OF REVENUE
CUSTOMER BILL

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

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

DATE	TYPE	SERIAL NUMBER	CUSTOMER ID	SUBJECT	AMOUNT
06-09-76	2	03065-7	16247	LAND LEASE	076

PAYOR

ANCHORAGE CAMPER CENTER
~~CLARK-BENHARDT-HILL~~
2756 COMMERCIAL DRIVE
ANCHORAGE AK 99501

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

RECEIVED BY	DATE	RECEIPT AMOUNT	PAY THIS AMOUNT	AMOUNT
				6,620.00

REMARKS

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

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DEPARTMENT OF REVENUE

CUSTOMER BILL

DATE	TYPE	SERIAL NUMBER	CUSTOMER ID	SUBJECT	NOTICE OR REL NO.
06-30-76	2	003066-5	00450	LAND LEASE	790243

PAYOR

JAMES E RIGSBEE JR

2015 BOREALIS DR

ANCHORAGE

AK 99503

xck 10034 by same

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

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

REMARKS

PAID with Protest

Present Rent

*rent Increased
Billing*

RECEIPT

RECEIPT

$\$436.25$ to $\$1,744$ year

$\$2,900$ Per year

$\begin{array}{r} 354 \\ 240 \\ \hline 700 \end{array}$

Started at
 $\begin{array}{r} 22 \\ 255 \\ \hline 4 \\ 1020 \end{array}$

$\$1020$ year

$\begin{array}{r} 1020 \\ 566 \\ \hline 58720 \\ 1000 \\ \hline 20720 \end{array}$

$\begin{array}{r} 32245 \\ 1745 \\ \hline 8720 \end{array}$

MARSHALL K. CORYELL

ATTORNEY AT LAW

TRANSAMERICA TITLE BUILDING

705 WEST SIXTH AVENUE, SUITE 607

ANCHORAGE, ALASKA 99501

TELEPHONE (907) 277-7311

July 13, 1976

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

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

Dear Mr. Martin:

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

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

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

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

"It is understood and agreed between the parties that the rental of \$40.00 per acre shall remain in effect from the date of this agreement, May 6, 1964, for a five (5) year period, ending May 6, 1969. On or before the 6th day of May, 1969, the Lessor shall re-appraise the lands herein leased and the annual rental, for the balance of the lease term, shall then be adjusted to reflect an annual rental predicated upon the then current fair market value of the lands herein leased.

It is the intent of this provision to permit the Lessee during the five year period of reduced rental, to clear the land and accomplish such other prerequisites as shall be necessary to bring the land, or portions thereof, into cultivation and thereby make it economically feasible for the Lessee to pay a rental predicated upon the market value of agricultural lands in the area."

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

"(a) School lands or university lands when classified as agricultural lands may be leased at a rental of not less than \$0.10 per acre for the first five years of a lease awarded to the highest bidder at public auction for a term of 55 years or less. At the expiration of the first five year term the lands so leased shall be appraised and the lessee shall pay the then current fair market rental on the leased land for the balance of the term. Such appraisal shall not contemplate the improvements made by the lessee during the five-year period.

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

The Honorable Guy R. Martin
July 13, 1976
Page 3

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

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

Sincerely,


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

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

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

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

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

What are the benefits? According to N D P, the following would occur:

- 1) A big chunk of extra purchasing power for every family in the nation.
- 2) The yearly dividends spent for goods and services, or plunked into savings accounts, should increase production, create jobs, and give workers a direct stake in the success of American business; all business, not simply a workers own employer.

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

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

ANOTHER WAY, LEASED LAND

by William Schlegel, Broker

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

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

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

A third attraction on reducing sales price has been the leased land concept that was pioneered in Hawaii

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

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

When an owner buys a home, you pay for it out of his home loan at current market rate. If you have a 9% loan, and your lot costs you \$20,000, you would pay \$168.00 per month. If you leased the same property at the typical basic 8% lease, your monthly cost would be \$133.00, a \$35.00 per month saving. In addition to this, your purchase price should be reduced by \$20,000 thereby reducing your down payment by \$2,000.00. Many times these costs reductions make the

difference in qualifying for a loan.

As the buying public becomes more knowledgeable about leasing concepts, we can expect to see more sophisticated uses of leasing. For the first time we now see the leased land concepts used on single family. One builder offering this type of purchase option is Foremost Homes. Their Crestwood project offers 1 1/2 acre heavily treed estate sized tracts off Birch Road. Because of the tract size, all homes are hidden from each other and offer an unusual park-like setting for rural living within fifteen minutes from town and with a substantial reduction in purchase price.

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

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• CONVENTIONAL

• CONSTRUCTION

Assembly modifies petition ordinance

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

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

UNDER THE REVISED ordinance, individuals have 90 days from the date when the petition was first circulated to procure the number of sig-

natures needed. Under the municipal charter, a petition must be signed by at least 10 per cent of the number of voters casting ballots at the last regular mayoral election.

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

However at Tuesday's assembly meeting, municipal clerk Mary Coffey noted that the ordinance does not

set a time limit on starting a petition, technically allowing individuals to repeatedly attempt to gather the necessary signatures within any given 90-day time frame.

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

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

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

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

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

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

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

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

Irate leaseholders will get to appeal

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

The Lands Division will send its

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

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

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

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

Juneau sawmill proposed

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

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

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

Kenai Native Association
3rd Annual Stockholders Meeting
PROCEEDINGS

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

FO. 104 STATE CAPITAL
NORTH ALASKA 99501
SEP 10 1976

*State hand
hearing*

September 10, 1976

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

Dear Senator Kerttula:

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

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

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

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

Sincerely,



Elke Kallab
Research Analyst

EK:jm
Enclosures

DRAFT: Elke Kallab
9/10/76

Dear Commissioner Martin:

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

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

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

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

- fair market value
- appraised price determined by the division

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

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

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

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

3. Another deficiency which applies to several regulations is that the authorities cited are general instead of specific. Sec. 44,62.040(b) states that "...citation of specific statutory sections being implemented, interpreted or made clear, shall follow the text of each regulation submitted..."

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

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

38.05.020 - authorities and duties of the commissioner
of the Department of Natural Resources.

38.05.035 - authorities and duties of the director of
the Division of Lands

38.05.075 - leasing procedure

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

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

I strongly urge that the applicable specific statutory author-

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

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

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

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

Sincerely,

Jay Kerttula

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

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

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

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

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

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

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

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

of the lands has occurred.

Regulation 11 AAC 58.410 - Annual Rental - states that "annual minimum rentals shall be computed from the approved appraised market value".

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

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

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

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

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

Definitions

11 AAC 52.220

Agricultural Lands	Those lands which, because of location, adjacent development, physical and climatic features, are or may be made suitable for the production of agricultural crops.
Commercial Lands	Those lands which, because of location, physical features or adjacent developments, may best be utilized for non-industrial business purposes.
* Grazing Lands	Those lands which have the physical and climatic features that make them primarily useful for the pasturing of domestic livestock.
Industrial Lands	Those lands which, because of location, physical features, or adjacent developments, may be best utilized for industrial purposes.
* Material Lands	Those lands that are chiefly valuable for materials, including, but not limited, to the common varieties of sand, gravel, stone, pumice, pumicite, cinders and clay and where the removal of the material would seriously interfere with the surface utilization.
* Mineral Lands	Those lands that are chiefly valuable for minerals, including, but not limited to coal, phosphate, oil shale, sodium, sulphur and potash and where the removal of the material would seriously interfere with surface utilization.
* Private Recreation Lands	Those lands which, because of location, physical features or adjacent developments, are chiefly

11 AAC 58.910

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

11 AAC 52.220

valuable as outdoor rural areas and may best be utilized by private non-commercial development.

* Public Recreation Lands

Those lands which, because of location, physical features or adjacent development, may best be utilized by the public for, but not limited to, natural and developed recreational and historical areas.

Residential Lands

Those lands which, because of location, physical features or adjacent development, may best be utilized for single or multiple unit dwellings.

* Timber lands

Those lands which, because of physical, climatic and vegetative conditions, are presently or potentially chiefly valuable for the production of timber and other forest products.

Utility Lands

Those lands which, because of size of tracts, physical features, adjacent developments or location, may be suitable for a variety of uses or which do not lend themselves to classification under the other designations herein contained.

Watershed Lands

A drainage area which may best be utilized as a public water source.

11 AAC 58.910

chiefly valuable as outdoor recreational areas and may best be utilized by private non-commercial development. (One residence per lot leased - 11 AAC 58.070).

Those lands which, because of location, physical features or adjacent development, may best be utilized by the public for, but not limited to, parks, scenic overlooks, campgrounds, historical sites, and fishing-hunting access sites. (May be leased for other purposes than recreation so long as it is consistent with primary classification - 11 AAC 58.110).

Those lands which, because of location, physical features or adjacent development, may best be utilized for single or multiple unit dwellings.

Those lands which are primarily useful for production of forest products or watershed protection.

None

None

11 AAC 56.610(5)

* Classification

The systematic designation of lands according to their highest and best use.

11 AAC 52.220(5) & 11 AAC 58.910(5)

The designation of lands according to their apparent best use.

Fair Market Value

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

* Inconsistency between various chapters.

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

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

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

11 AAC 58.520. ADJUSTMENT OF RENTAL.

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

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

Specific Authority → 105

11 AAC 58.530. SUBLEASING. Any lessee may lease the lands or portion thereof upon which he has a lease; provided, that before any lease shall be permitted to sublet any of such lands or portion thereof, he shall make

application to the director for a permit. The director may issue such permit if he finds it in the best interest of Alaska. Leases not having improvements thereon shall not be sublet. Subleasing shall be allowed of lands or portions thereof that have improvements thereon, when, in the director's opinion, the improvements are substantially the reason for the subleasing. Sublessees shall not be allowed to further sublease their interest. All subleases shall be in writing. (Eff. 7/1/60, Reg. 1; am 8/15/64, Reg. 17; am 3/20/66, Reg. 22)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

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

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

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

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

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

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

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

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

11 AAC 58.370. PUBLIC AND CHARITABLE

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

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

(c) Eligible applicants under this section shall be limited to nonprofit corporations, associations, clubs, or societies organized and operated exclusively for charitable, religious, scientific, educational purposes, or for the promotion of social welfare, if the profits for the applicant are used exclusively for the promotion of social welfare. The applicant shall

submit evidence that it is exempt from payment of federal income tax.

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

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

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

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

11 AAC 58.390. APPROVAL. No lease shall be issued, or a renewal lease issued, except on the basis of an application and approval of the director and the commissioner.

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

Authority: AS 38.05.020

AS 38.05.035

AS 38.05.075

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

Authority: AS 38.05.020

AS 38.05.070

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

Authority: AS 38.05.020

AS 38.05.070

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

Authority: AS 38.05.020

AS 38.05.070

11 AAC 58.080. PRIVATE RECREATIONAL LANDS. Lands classified as private recreational lands shall be available for lease. Private recreational lands may be leased for that purpose shall be used for non-commercial recreational purposes. No building or residence shall be constructed on these lands. However, the director may, if authorized by the board, allow a building or residence to be constructed on these lands for the purpose of providing recreational facilities. (Eff. 6/30/60, Reg. 1; am 8/15/64, Reg. 17; am 3/22/69, Reg. 28)

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

Authority: AS 38.05.020

AS 38.05.035

AS 38.05.075

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

Authority: AS 38.05.020

AS 38.05.035

AS 38.05.075

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

Authority: AS 38.05.020

AS 38.05.070

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

Authority: AS 38.05.020

AS 38.05.070

11 AAC 58.120. SCHOOL LANDS AND EDUCATIONAL LANDS. School lands or educational lands shall be used for educational purposes only. (Eff. 6/30/60, Reg. 1; am 8/15/64, Reg. 17; am 3/22/69, Reg. 28)

lands may be leased at a rental of not less than \$10.10 per acre for the first five years of a lease awarded to the highest bidder at public auction for a term of 55 years or less. At the expiration of the first five year term the lands so leased shall be appraised and the lessee shall pay the then current fair market rental on the leased land for the balance of the term. Such appraisal shall not contemplate the improvements made by the lessee during the five-year period.

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

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

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

Authority: AS 38.05.020
AS 38.05.300

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

Authority: AS 38.05.020
AS 38.05.077

ARTICLE 2. PERMITS

Section

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

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

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

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

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

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

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

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

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

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

MEMORANDUM

State of Alaska

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

DATE: October 3, 1975

FILE NO:

TELEPHONE NO:

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

SUBJECT: Harry Cummings Lease;
ADL 21928

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

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

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

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

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

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

October 3, 1975

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

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

On or before the 19th of November 1963
[the five-year anniversary date] the
Lessor shall re-appraise the lands herein
leased and the annual rental for the
balance of the lease term, shall then be
adjusted to reflect an annual rental
predicated upon six (6) percent of the
then current fair market value of the
lands herein leased.

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

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

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

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

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

October 3, 1975

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

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

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

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

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

1/ Because these two independent grounds so clearly establish the invalidity of the lease's purported waiver of rent readjustments, I have not addressed the question of whether, had AS 38.05.105 read in 1963 as it does today, the Director could have leased these university lands at public auction with the rental readjustment waiver without violating some fiduciary obligation imposed by 48 U.S.C. § 354 or other laws.

October 3, 1975

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

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

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

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

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

October 3, 1975

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

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

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

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

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

MCS:ljl

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

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.077

ARTICLE 4. SHORT TITLE AND DEFINITIONS

Section

900. Short title

910. Definitions

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

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

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

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

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

(3) "Alaska" means State of Alaska;

(4) "Alaska lands" means all lands including mineral and submerged lands, or resources

belonging to or hereafter in any manner acquired by Alaska;

(5) "classification" means the designation of lands according to their apparent best use; ⁽²⁾

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

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

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

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

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

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

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

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

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

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

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

⁽¹⁾ Consistency!!!!

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

Problems with Chapter 58

- 1) Definition of various classifications of lands vary from chapter to chapter in the regulations. They should be consistent at all times. See chapters 56 and 58, for instance.
- 2) Every chapter ought to have the same number of definitions; i.e., commercial lands should be defined, as should be industrial, not just one or the other. For instance, Chapter 58 dealing with state leases does not have a definition of industrial lands, yet a goodly number of state leases are just that.
- 3) Commercial-Industrial classification (11 AAC 56.610) no longer exists, yet it still is on the books.
- 4)
 - a. Public recreation lands classification should be outdoor recreation areas (which include parks, scenic overlooks, campgrounds, etc., etc.); it should be removed from private recreation lands because it conjures up the image of public use.
 - b. Some more descriptive term (such as cabin site or leisure or recreational purposes) should be substituted for outdoor recreational areas under private recreation lands.
- 5) Classification of lands is supposedly the systematic designation of lands according to their highest and best use, according to 11 AAC 56.610; yet 11 AAC 58.910(5) says "apparent best use", even though 11 AAC 58.900

states "highest and best use".

- 6) Authorizing statutes must be shown in the regulations. Someone ought to check that in minute detail. We came across a couple of omissions just checking on problems with state leases. (Omission of AS 38.05.105 authorizing specifically half of 11 AAC 58.520. Instead, they cite the very general and broad .020, .035 and .075. The same thing is true of AS 38.05.135 which deals specifically with public and charitable uses on leased land, but 11 AAC 58.370 just mentions the old standbys of .020, .035 and .075.)
- 7) What constitutes the annual rental rate? How it is to be arrived at needs to be spelled out in the regulations.
- 8) Related to 7) above, annual rental value (which should not be pegged to the fair market value, but in fact is determined by it due to the non-existence of private leases comparable to those offered by the state) should be defined, which it is not now, in the regulations.
- 9) Watershed Lands/Timber Lands-Classified. Defined separately in Chapter 52; combined in Chapter 58. Must/should be consistent.
- 10) What is the difference between "may not be disposed by sale" (52.060) and "shall not be sold" (52.080)? If they should be identical, make it one or the other.

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM

September 14, 1976

SUBJECT: Surface Leasing Policy of State Owned Lands

TO: The Honorable Kay Poland

FROM: Elke Kallab *Ek*
Research Analyst

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

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

* * * * *

I. Rent Increases

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

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

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

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

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

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

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

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

II. Rate of Contract Rents

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

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

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

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

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

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

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

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

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

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

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

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

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

- A. No statutory authority existed to grant the exemption from five year rent adjustments. Apparently all four leases were issued prior to passage of a 1964 bill which amended 38.05.105 providing for waivers due to special conditions.
- B. However, even if they had been issued after this amendment became law, the special provision would still be invalid since 38.05.075 stipulates that a lease has to be on a form approved by the attorney general. Clearly, these leases were not on an approved form.
- C. Finally, the special provisions are invalid because the leases were offered at public auction without the special provision being part of the terms of the lease.

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

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

IV. Improvement to Leased Properties

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

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

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

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

* * * * *

Conclusions

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

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

EK:jm
Attachments

cc: The Honorable Jalmar Kerttula

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LANDS

JAY S. HAMMOND, Governor

323 E. FOURTH AVENUE - ANCHORAGE 99501

October 22, 1976

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

Re: Data Request. Land Lease Reappraisal Costs.

Dear Mr. Barker:

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

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

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

Sincerely



W. Bruce Atkinson
Chief, Contracts Administration

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LANDS

323 E. 4TH AVENUE - ANCHORAGE 99501

copy sent to
Commissioner Martin

JAY S. HAMMOND, GOVERNOR

per

REC 10/15/76

October 6, 1976

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

Re: Data Request. Land Lease Reappraisal Cost.

Dear Mr. Hogan:

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

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

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

Yours truly,

W. Bruce Atkinson

W. Bruce Atkinson
Acting Chief, Lands & Water

Roderick says

Martin or Mike Smith will respond

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

11TH FLOOR, STATE OFFICE BLDG.
POUCH M - JUNEAU 99811

February 17, 1977

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

Dear Senator Poland:

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

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

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

February 17, 1977

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

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

Sincerely,

A handwritten signature in dark ink, appearing to read "Guy Martin", with a stylized flourish at the end.

Guy R. Martin
Commissioner

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CRITIQUE OF SB 159

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) When it is necessary to determine the fair market value of the property under

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

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

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

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

BEFORE A HEARING PANEL OF
THE ALASKA DIVISION OF LANDS

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

RECEIVED
JAN 24 1977

Matthews, Dunn & Baily

HEARING PANEL PROPOSED DECISION AND RECOMMENDATION

I

INTRODUCTION

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

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

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

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

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

(1) State lease provision calling for reappraisal:

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

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

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

11 AAC 58.410. ANNUAL RENTAL. Annual minimum rentals shall be computed from the approved appraised market value, except in the case of a preference right grazing lease, and shall be the lowest acceptable bid in the event of an auction. Annual rental shall be the basis of bidding for

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

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

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

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

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

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

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

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

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

II

ISSUES

The issues appear to be the following:

- (1) An interpretation of the lease, regulatory and statutory provisions, as to the nature of improvements to be included in the appraised value.
- (2) Whether or not the term "primarily" as used in the lease, regulations and statute means that the Division should consider other factors in arriving at a reappraised annual rental value.
- (3) Whether the Division's appraisal was in accord with the law and consistent with the relevant market conditions, particularly as to (a) use of comparables and (b) determination of original condition.
- (4) Whether the 8% rental rate is appropriate in view of market conditions, the provisions of the state lease not found in private leases.

III

DISCUSSION

A. State of Improvements

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