521 HRES HB 904

WORKSHOP

Introduction

On Tuesday, November 29, 1977, the State Lands Subcommittee of the Federal-State Land Use Planning Commission (FSLUPC) held a workshop to discuss State land disposal policy. Legislators were invited to attend the session, as well as a variety of opinion leaders and experts in the fields of land management and real estate economics. People familiar with the costs and impacts of land development were represented also.

Formal Workshop Participants:

Virgina dal Piaz, Land Planner and Environmentalist
Bob Arwezon, Anchorage Real Estate Developer
John Norman, Managing Partner, Cole, Rhodes, Hartig, Norman, and Mahoney
Wes Howe, Matanuska-Susitna Borough Manager
Ted Smith, Director, Division of Lands and Water
Herb Lang, President, Anchorage Sand and Gravel
Don Karabelnikoff, Real Estate Consultant, City and Borough Development
Earl Miller, Vice President, Alaska Mutual Savings
David McCabe, General Partner. Alaska Mortgage Group
Andy Hoge, Attorney - Hoge, Lekisch, Cardwell, and Lawrence
James Hurley, FSLUPC, Commissioner
Hugh Gellert, President, Bear-Fritz, Inc.
Phil Holdsworth, FSLUPC, Commissioner
Steve Reeve, Chief - Classifications, Alaska Division of Lands
Dale Tubbs, Land Management Consultant, Moening-Grey & Associates
Norman Gorsuch, FSLUPC, Commissioner
Esther C. Wunnicke, FSLUPC, Federal Co-Chairman
Walter B. Parker, FSLUPC, State Co-Chairman
Janet McCabe, FSLUPC, Land Management Planner

AGENDA

8:30 Introduction

Briefing on Supply, Location and Accessibility of State Land

9:00 Statutory Guidelines for State Land Disposal

1. Do the existing statutes provide adequate guidance to the administration in terms of purpose, amount, location, and timing of State land disposal?
2. In deciding about disposal actions and programs, what should be the role of the legislature and what should be the role of the administration?
3. If you were to write a guidelines for State land disposal--purposes, amounts, and timing--what would you include?

10:30 Disposal Methods

1. Considering the various forms of demand for State lands, what is the public interest in disposing of public lands for various purposes? Which types of demand for State land should be accommodated?
2. How would you identify the different types of demand for which State land should be made available and which methods of disposal are best suited to each type? What is your advise on tract size and pricing as well as the method of conveying rights to land?

1:30 Leasing

1. In what locations and situations is leasing an appropriate method of land disposal?
2. What were the problems with the State's prior leasing program and what were the reasons for these problems?
3. In the past, leasing has been a barrier to financing. Is this situation changing?
4. What will be the affects of the new leasing law? Would you recommend that it be amended? If so, how?

2:30 Trust Lands

1. How have the trust lands influenced land planning and management?
2. What advantages and disadvantages have prior management of trust lands had for the State as a whole and for the trusts?
3. Are there changes in legislation, regulations, or management of trust lands that you would advise?

3:30 Budgetary Implications

1. What is a typical pattern of public cost and revenue for new settlement on State lands in a remote area?
2. What budetary adjustments will be necessary if the State embarks on a program of disposing of individually sized lots provided with access?
3. What are the administrative and budgetary implications of disposing of lands in a manner which retains some rights in State ownership?

Workshop Proceedings On
State Land Disposal Policy

Statutory Guidelines for State Land Disposal

The workshop opened with a discussion of statutory guidelines for State land utilization. Virginia dal Piaz, Alaska Center for the Environment, joined Bob Arwezon, Anchorage real estate developer, and John Norman, past State assistant attorney general and local attorney, in this discussion.

Following the introductory remarks, Virgina dal Piaz, representing an environmental perspective, preceded the discussion of statutory guidelines for State land disposal by noting Alaska's role as the last frontier. For years we have been the most prodigal of people with land and we have wasted it, along with other finite resources, with impunity. Peoples' right to land is one of the most basic principles of our national heritage. There was always so much of it and no matter how we fouled it, there was always more over the next hill--or so it seemed.

We are now at the "last frontier" as development in the United States has spread over the continent from East to West and now North. Alaska is probably one of the last places on Earth where we know enough about mistakes made elsewhere that land use and development can take place compatably with the environment and character of the Northland. America needs a new land ethic--and attitude that considers the needs and requirements of the land first and which then attempts to foster human relationships with the land to the greatest extent possible. The farther removed people are from the land and responsibility for it, the more careless and destructive they are of it.

She felt that the existing statutory guidelines were inadequate because we do not fully know the amount and location of all State lands. The role of the legislature should consist of gathering input from the administration, public, and possibly consultants; and then setting a comprehensive policy with broadly stated goals for State land disposal. The administration should conduct research and planning, as well as manage and enforce the policy set forth by the legislature.

Dal Piaz recommended the following guidelines: The State should rely on leasing for specified uses and should avoid land sales. Before disposing of additional land, the State should complete an inventory of lands that consider location and physical suitability for development. It appears that there is very little State land suitable for development, and the bulk of State land should be left for future generations. The State should move slowly and only lease a few tracts per year, with a future

maximum of 10% of the State lands under lease. Land disposal should take place after careful thought and consideration and only after a comprehensive policy has been set. Agencies involved in land disposal should be adequately staffed and funded in order to carry out the disposal programs expediciously. Actual land disposal should occur on a regular basis, for example, each spring and fall, depending on the rate at which land is disposed.

Dal Piaz aknowledged that there is a strong public interest and a great sense of frustration by people who for one reason or another do not own land but would like to. Witness the homestead initiative which demands the State "give away" its land to residents "free". This type of legislation is to be avoided at all costs, and is not in the best interests of intelligent, reasoned and planned State land disposal. It would be in the State's best interest to have firm land disposal guidelines in the statutes to avoid this type of knee jerk reaction legislation. She noted the possibility of setting up a land use board to oversee the entire disposal process. Such a board could be made up of representatives from the legislature, administration, and the public.

Bob Arwezon, a realtor, differed with Virgina dal Piaz on the merits of private land ownership, feeling that it is desireable. He maintained that, "In looking at the problem, I probably have got to set out some basic guidelines that I think I, and other people, the citizens of Alaska, consider or look at. One is that the ownership, private ownership of land isn't a bad thing. Fee simple ownership is what this country's built on, and it is desirable. I know, in Vancouver, B.C., and I know in the United Nations, that this is a concept that is being attacked, but I don't think the citizens of Anchorage or citizens of Alaska feel that the right to own private property is wrong."

"The other concept that I operate from is that land is perhaps one of the only things that man does not and cannot destroy. Land is always there. We can use it, we can grow things on it, we can mine, we can alter it, we can build on it, but that piece of land is always there. It is not something that is disposable. Land always remains. I would prefer to think of it as a State land utilization policy or program, and not disposal."

Arwezon also felt that the existing land disposal statutes were inadequate. He blamed this, in part, on the Legislature which has failed to set out an explicit State land policy. This leaves too much discretion with the administrator and results in programs that lose touch with what people want. Arwezon thought that, "the government bureaucrats may not agree with the way the private sector operates, and the way the people feel, but if they don't operate and make available, in a good orderly process, the lands, then we are going to see legislation which is not going to be based on good planning concepts." As he saw it, "one of the reasons that you have -- I shouldn't say 'knee-jerk' but it might be suitable -- legislation or referendums or initiatives passed that perhaps are not

well thought out, is that people feel that State land policy is not responsive to their needs." In addition, Arwezon felt that the formulation of realistic legislative policy required private sector involvement.

According to Arwezon, utilization of land is the key to a good land disposal policy. Speculation is not necessarily bad and happens when the State disposes of land too quickly. He said that the timing of land disposal is important in order to best serve the needs of the people as well as providing appropriate financial returns to the State. Planning and land use controls should be the responsibility of local governments. In the unorganized borough, the legislature should take an active role in planning.

John Norman, an Anchorage attorney, then spoke about land as a finite resource which requires a shift in public land policy toward a realization that development is not the only goal for land use. At the same time, the human demand for fee simple land ownership must be recognized to avoid a reaction resulting in an unmanagable land situation.

Regarding current statutory guidelines, the State constitution expounds maximum utilization and settlement on a sustained yield basis, but guidelines for interpreting what this really means are inadequate. According to Norman, "This gets into very basic questions, questions of philosophy, questions of how people feel. But I think that an administrator is owed some direction here, because as evidenced right now by the actions of various administrations, there really aren't those guidelines, and the administrations sort of react the way they think they ought to." Statues do exist, but with the exception of preference rights, there is still a basic lack of policy. Policy should be broad enough to allow administrative management flexibility without sacrificing a clear policy direction. Classification by itself is not an adequate land use management tool because it is too ambiguous. "But the point I'm making is," said Norman, "if I was a new guy on the job at ADL, looking at what I was supposed to do, I'd find some specific tasks that I had laid out for me, but my end goal wouldn't be that clear in my mind, still. I would still wonder, am I to manage these things and husband them and put as many restrictions as possible on them, or is my job to get them out and let the private sector take over. And that's an area that I think needs to be addressed, it can be debated one way or the other, but I think it does need to be addressed."

Norman felt that the legislature should limit itself to gathering input and advice, and setting policy for administrative implementation. He recommended the following disposal guidelines:

1. complete a comprehensive State land inventory including navigable water bottoms;
2. manage and dispose of lands with a minimum of restrictions because the State should not be in a landlord role;

3. make lands available for maximum public use as well as maximum private ownership; and
4. strive for long range consistency of State land management and disposal policy to increase public confidence.

Ted Smith generally agreed with the points made by Norman and added that the Constitution does not define "public interest" as it relates to land disposal. He doesn't think that the Administration has too much power, but rather that there has been inadequate direction from the Legislature. The Legislature is not qualified to do planning, and they should leave that up to the administration. Smith also added that given the present leasing law, future State land leasing was not very likely.

Wes Howe, Matanuska-Susitna Borough Manager, suggested that land disposal be carried out on a per capita basis. Once a policy is set, then available land could be increased according to corresponding population increases. Currently in the Mat-Su Borough there are approximately 30,000 parcels of land in private ownership and only 5,000 households. He made the point that the number of households in the borough theoretically could increase several-fold without further subdivision.

Norman then pointed out that Federal land disposal programs were wasteful and no longer met legitimate public needs. Homesteading and the 1872 Mining Law, which encourage random rural settlement, are no longer appropriate. Land disposal programs should not be a tool of social policy and should be carried out at fair market value. As he put it, "if the land is put out to private ownership, which I think it ought to be, it ought to be done in a sensible way, making sure that there is access and so forth, and with a fair return to the State, fair market value."

Herb Lang felt that the State has been holding back land supply which has created the current speculative climate. The State should also keep a careful eye on the market to avoid dumping too much land for too low a price. Timing of land disposal is critical if it is to be done properly.

Bob Arwezon pointed out that, "... being in the real estate business, I know everybody wants two and a half to five acres, with a stream, and a moose that walks through the back yard during hunting season, and with a view of the mountains or the inlet. But they also -- they also want it with a sidewalk and streetlights, sewer and water, curbs, gutters, paving." Dale Tubbs and Smith joined Arwezon to voice the "no such thing as free land" point of view. Land disposal is expensive because it requires surveying, planning, access, and other administrative costs. The true costs of land disposal should be born by the private land owner. Smith estimated that current costs to the State for the disposal of 5-acre homesite parcels will amount to approximately $1,000 to $1,200 each, not counting roads.

Phil Holdsworth suggested that land planning in the unorganized borough be carried out by the legislature with the advise of the Department of Natural Resources. He also felt that the State should sell land with no strings attached.

David McCabe, an appraiser, advised that the State should avoid wholesale disposal by providing lands in small, discreet areas where the needs are particularly striking. Relating to Howe's earlier comments about the per capita land situation, McCabe noted that a significant portion of private land parcels in the State are patented mining claims, cannery sites, or eroding coastal areas where public development is unlikely to take place. So per capita measurements can be misleading.

Disposal Methods and Techniques

Herb Lang, from Anchorage Sand and Gravel, began his discussion of land disposal methods by stating that the demand for fee simple land was strong. If this demand is not provided for, there can be serious political backlash. Lang stated, "So whatever idea there may develop on the disposal of land, it has to take into consideration what the people really want. We cannot always play "good for you" type of commander. The troops don't allow it. We have this homestead referendum, which anybody working the land would find really not a very good idea, very inefficient, and a very expensive disposal of resources. But I think it comes about because of the State land policies employed in the last two years." The current lease law came about in this fashion too, because lessees in Alaska were frustrated. People who want to build homes desire and need fee simple ownership in order to get financing. Leasing for residential use is not always appropriate. Business property leases are better.

Leasing programs, especially difficult ones, will not survive and the public will demand a reversal of leasing policy if it is not responsive. Unlike the present leasing law, leasing should be carried out carefully and in a sophisticated manner or it should not be attempted. The State should acknowledge that leasing agricultural rights amounts to a social policy. Farmers are generally more interested in fee simple ownership. So in order to make an agricultural rights leasing program work, the State is going to have to give up a certain amount of income by offering these lands at less than their usual value. Lang also noted that any State land disposal should be accompanied by road development.

Ted Smith, Director of the Division of Land and Water, began his presentation by stating that mechanisms already exist for most land disposal needs. Having just heard from 600 people at a series of eight hearings on land disposal regulations, he could see that the public was eagerly awaiting the availablity of State land. From these hearings, he perceives five types of demand for land.

1. Commercial/industrial: which could be provided by trust land leases.
2. Residential: which could be provided by public auction or by the homesite program (although there is a general shortage of land suitable for this purpose). Leasing is inappropriate here.
3. Agricultural: which could best be provided by fee simple ownership and zoning, but this is not currently politically feasible. Leasing of agricultural rights will probably be the most common method of supply.
4. Recreational second homes: This demand is somewhat nebulous but strong. Could be met by the open-to-entry and homesite programs. There are State lands that are appropriate for this use. Leasing is not appropriate.
5. "Remote" or "Lifesyle" residences: the present land disposal techniques do not meet this demand, with the exception of a few open-to-entry sites. Generally, however, open-to-entry sites are too clustered. This demand might be met by some sort of use permit system.

Smith felt that, "-- one of the goals that I think we need to keep in mind in building these disposal programs, is that we need to minimize the State's downstream involvement in administering these lands. There's very little that I can do sitting behind a desk that a farmer in the field, for instance, can't do better. And I think there must be some kind of a law, if there isn't, I think I'll invent it, that says that the farther from the site where a decision is applied that that decision is made, the worse the decision is likely to be." On the other hand, there is a legitimate need for a certain amount of ongoing management, for example, zoning in the unorganized borough. At the homesite hearings Smith expressed amazement that bush residents didn't seem to be offended by State zoning.

Wes Howe from the Matanuska-Sustina Borough then talked about the merits of clustered vs. scattered settlement patterns. As Howe sees it, "So as far as the public interest is concerned, I think we've got to look at the public interest of -- not necessarily minimizing, but at least keeping to some sensible level the cost of government with respect to providing a widely scattered population." He noted that providing services to rural populations is expensive. High transportation costs in Mat-Su Borough for school children on Oil Well Road and from Skwentna has spawned experiments to try out alternative transportation means. Another costly service, fire protection, must generally be available within five miles of a dwelling in order to receive fire insurance. It is in the public interest to keep government costs down, which can best be achieved by limiting scattered settlement. Land disposal policies that are designed to meet a "psychic demand" alone are expensive. Howe felt that two-thirds of Alaskans don't really even care about public land policy.

Don Karabelnikoff, a real estate consultant, spoke next about supply and demand of State land. He stated that land should be disposed of when needed for community expansion and when such disposal would not hurt other State interests. The demand for land is closely related to economic activity. The State should carry out a sophisticated analysis of land economics in the local market in order to avoid flooding the market or causing an unnecessary scarcity of usable land.

Leasing is an appropriate method of land disposal for commercial/industrial and agricultural uses, although it requires careful management. In the course of leasing State lands which will be the site of substantial improvements, consideration must be given to the requirements of the lending institutions if the State basing program is to be successful. Lands for residential purposes should be sold in fee simple through auction, negotiated sale, or over-the-counter sale with all sales at market value unless overiding State interests dictate otherwise.

The State should avoid getting into intensive real estate development as this is best done by private developers. According to Karabelnikof, "... where there's demand for smaller parcels, that is, residential homesites, or for smaller lots, something around an acre, a half acre or two or three acres, I suggest that very large parcels be made available to people who are involved in the development business, in other words, if you're talking about residential neighborhoods, sell 160 acres." Large parcels could be sold to developers who would submit a development plan and then contract the development on a bid basis. This method of land disposal would permit greater efficiency and would combine the best of State and private abilities. "Because real estate developers are manufactures in the true sense of the word. They take a raw product, piece of land, and they put a lot of capital into it, and they hire a lot of people to do things, like build roads, and make whatever other improvements are necessary, and lot of engineering consultants and planners, and they come up with a product that people apparently want. The government, either local or State, to me is far less efficient, and I don't think that the State ought to put itself in the role of being a real estate developer when it comes to projects. I think the State has -- has got enough problems of its own without trying to become a subdivider." Rural residential land demand could be met by leasing or life-estate permits.

Karabelnikoff defined the speculator as someone who holds land as inventory until it is developed. If land will not be immediately used, because of site conditions or lack of demand for the property, it will remain vacant until it is needed in the community development process. In this case, only a speculator would have an interest in owning the land. He noted that the State is the largest speculator. "The role of the speculator, as I understand it, is that he provides liquidity for owners who no longer want to own their property, and nobody else can do anything with it right now." Speculation is a logical function of the market place when supply exceeds demand. In summary, State lands should

be conveyed to the private sector only when there is a demonstrated need to use the land for some purpose. Preferably, these disposals should be at market value unless other benefits accrue to the State.

Ted Smith then commented that the State is not quite like a business because it is publically accountable for its actions. This drives up costs which makes the above mentioned development plan idea look good. On the other hand, Dale Tubbs expressed the notion that develpment plans would place too many restrictions on the honest bidder and could actually stifle development. He was concerned that the program could become a meaningless blue print show-and-tell. He felt that the currently required agricultural development plans were overly restrictive and inflexible. Wes Howe followed by expressing his dissatisfaction with the downstream problems with development plans, citing inflexibility and difficult administrative follow-through. Walt Parker attributed part of this problem to inadequate financing of administrative efforts which might be changed by the State in the future.

Toward the end of the discussion about land disposal methods, Lang mentioned that fee simple land auctions allowed people to choose what they wanted. Norman agreed with this and went on to say that whenever the State imposes restrictions on land, there will always be those who will scheme to get around them. He added, "there are as many wants and desires as there are people. And there's no way the State is ever going to please all the people, and if you try, you'll wind up with kind of a mess with nobody really happy. So I think the goal is to achieve a balance, set aside enough in the public sector, those lands that really should be protected, and for the remainder, get it out and don't be afraid to get it out in fairly large chunks." Armezon liked the idea of granting permits for those who wanted to live in the remote wilderness (Smith's "fifth" demand) because it allowed people to live there for a finite time period without conveying any land or rights, thus reducing administrative requirements.

Leasing

The first topic discussed after the lunch break was State leasing policy. The panelists were Earl Miller, Vice-President of Alaska Mutual Savings; David McCabe, Appraiser and General Partner of Alaska Mortgage Group; Andrew Hoge, Attorney for numerous lending institutions and developers; and Hugh Gellert, President of Bear-Fritz, Inc., a land development firm. Generally, the panelists agreed that leasing was one useful disposal method for the management of State lands. Past problems with the leasing program stem largely from inappropriate use of this management tool. Administrative inflexibility and inefficiency have contributed to the problems as well. But these technical difficulties can be remedied, and the need for State land managers to be able to utilize leasing as a management technique was advocated by all of the panelists.

Earl Miller believes that leasing can be a useful tool in any land disposal situation as long as it is administered in an effective manner. Good administration, timely, flexible, and tailored to the situation and character of the leasehold is essential to an effective program. A special burden is placed on public land managers because their leasing negotiations must be carried out in the public eye. This arrangement does not always lend itself to good business management. But the fish bowl of public scrutiny is a fact of life in State land policy, so an effective program demands personnel of high caliber operating under guidelines that spell out the management philosophy and policy of the State in a clear and concise fashion. Miller sees the lack of policy guidelines as one key shortcoming in past State leasing practice. A second problem area he identified is the limited quantity and quality of State lease management personnel.

Miller agreed that financing has been difficult on some State leaseholds in the past. One reason for this difficulty was the fact that State land management personnel were unfamiliar with the requirements of lending institutions. A second problem, which has been generally remedied now, was the need for clarification of the right of assignment. The right to assign a lease to a lender is a fundamental requirement of most lending institutions. The final point made by Miller regarding the financing aspects of State lease management was repeated throughout the day. If the State wants to run an effective leasing program it must adopt stable consistent operating procedures. Uncertainty is unacceptable. Said Miller, "-- my feelings are that the biggest thing from a financing standpoint is trusting the State in their actions. What's going to follow after that lease is signed, are they going to come back in a couple years and say 'whoops, we made a mistake, and we're going to renege and back up and cause problems'. We've lost a lot of trust in what the State's actions will be after the lease is signed." Lenders demand to know what to expect from the State and continual change in statute, regulation, or administration does not inspire trust.

In conclusion, Miller briefly analyzed the statutory changes in the leasing law that were made by the 1977 legislature. He felt that the perspective develcped by Alaska Advocate reporter Bill Lazarus in the November 2, 1977 edition of that paper was a fairly accurate one. The absence of an escalator clause for the first two and one-half decades of the lease term coupled with a 50 percent adjustment limit after this period limits the ability of the State to keep pace with the rising of cost of living. Such a program will have a devastating effect on trust land management. Miller did not think that the trust board officers could possibly operate under the provisions of the new statute and still maintain their statutory fiduciary responsibility. Miller also thought the concept of rental adjustment limits was a good one because it allowed lenders to determine with some certainty what to expect over the long run. But the length of the reappraisal period and the extent of the adjustment limitations in the recently adopted statute are essentially a giveaway of State resources.

Anchorage appraiser David McCabe was the second panelist to speak. He focused on the locations and situations when leasing can be an effective method of land management policy. A prime reason for the State to lease a particular parcel of ground results from the need for the State to maintain physical control of the parcel. For instance, land situated in areas with unique geographic values fits this category. Parcels with access to deep water, transportation corridors, or other location values fit here too. Another possibility might be certain soil types potentially valuable for agriculture, over which the State would want to exercise use control beyond that possible through sale covenants or local land use controls. The important factor here is that land ownership is probably the single most effective means of land use management. In cases where the State recognizes unique values that require public retention to insure productive use, but wishes to encourage use and development for specific purposes the lease is an appropriate land management tool.

A second situation where the lease can prove effective occurs where the intended use will be temporary. McCabe offered the example of Livengood. Once a viable gold rush and mining community, this town virtually vanished as interior mining activity dwindled in the early 20th century. After a sleep of some 30 years, Livengood boomed again as a key intersection on the North Slope haul road. The Lost River bornite development is another situation where the term of activity is likely to be fixed on the longevity of the mining operation. For situations of this nature and other similar uses where the tenure will be limited or temporary, the lease is a very effective land mangement tool.

A third type of situation which McCabe thought would fit well into a leasing mode were those locations where land values are high and the properties are complex. This possibility arises repeatedly with regards to the trust lands, whether they be selected for school, university, or mental health purposes. The trust lands were selected in many cases because of their good location and high or potential value. The leasing of these lands could be a real money-maker for the State, particularly for the trust programs. In an active market, the lease manager finds it a good deal easier to keep abreast of value appreciation. In addition, complex properties with prime location are attractive to lessees.

McCabe proposed an interesting approach to property taxation as the fourth appropriate use of the leasing tool. He argued that in the unorganized borough the lease rental could serve in lieu of property taxes. The revenues could pay for occasional services as needed. This would save the State from the immense burden of assessing all of the properties in an unorganized borough which would result from a disposal program of fee estates. McCabe thought, "as a real estate appraiser, that just curdles my blood, to think of the State trying to get into that." Another value of leasing was that it provided an opportunity for a lessee who was short on capital to get established. Whether the use was industrial or agricultural, it was demonstrated how in the first 15

or 20 years of a lease term development is encouraged by offering a virtual loan of the property's value, then charging annual rental considerably lower than payments for land purchased for the same term. By giving a lessee an advantage on the front end, the State could use leasing to promote economic growth.

Past problems with the leasing program stem mainly from uneven and sometimes inequitable management. The crux of the problem has been the absence of timely reappraisal and adjustment of annual rentals. As this task was brought up to date in 1976 and current market values calculated, the resulting rental adjustments were astronomical. Many lessees had made development decisions based on land values near $.25 per foot, and their development choices were no longer economically feasible when values were more accurately established at $4. The lessees found themselves locked into subleases which were based on inappropriate land values. The lessees also found the administration inflexible and insensitive to their problems. Trust in State land managers was scuttled and the lessees saw no recourse but a legislative reprieve.

The new statute relieves problems for many current lessees by granting them a windfall profit for their political efforts. Unfortunately, it might also eliminate the future use of the leasing tool. Certainly, the revenue raising goals of the trust boards will be frustrated by the statute. In addition, McCabe demonstrated how the purchasing power of a dollar earned from a State lease would dwindle to $.21 after 25 years and $.17 after 35 years at minimum inflation rates if the rental adjustment limits in the current statute were maintained. A more reasonable limit would be 100 percent on a 5-year reappraisal basis, in McCabe's eyes. This approach would offer the certainty required by the lenders, but would enable the State to capture some share of the value appreciation. As it stands, the current statute makes the State able to compete unfairly with the private sector in the land management business and provides a subsidy to a special class of Alaskans at the same time. Private landowners, particularly Native corporations who expect to derive considerable income from land rents, cannot compete with the uneconomic terms offered by the State.

McCabe also criticized the use of the complicated reappraisal system. He felt that merely the cost of two MIA appraisals would discourage many reappraisal efforts. He stated, "It's a provision that makes sense if you're dealing with properties that are worth $100,000 or more. Because the nut is big enough to stand the expense of the valuation. If you are talking about a half-acre that some guy wants to lease to put a diesel plant on, or a State lot at Aniak, where the value of the land is three or four hundred dollars, it is totally unworkable. It's going to make it that much more difficult to do business in many, many parts of the State." This alone would frustrate attempts to keep the program current. McCabe concluded with the observation that, "... for the State to get into a leasing business, which is so far removed from typical market terms, in many places is going to ruin the market for Native corporations

to lease their lands, and for private owners to develop and lease land that they may own. And, you know, I am of the opinion that the -- the lease of surface rights is, for many of the -- many of the Native corporations, the best chance that they are going to have to survive as viable entities. I think this is a very, very serious problem for them."

Andrew Hoge was the next panelist to enter the fray. As an attorney for various lending institutions, Hoge provided a valuable perspective on the leasing program from the point of view of both the financial institution and the developer. He esd familiar with numerous leaseholders who had found past difficulty with the State leasing program, and actively monitored attempts to enhance the program's effectiveness by legislative action. Hoge believed that leasing was an appropriate tool whenever the use of the property planned by the lessee was known or could be determined. Thus, land along an airport, well suited for air related commercial and industrial development, should be leased for those purposes. Recreation parcels, on a particular lake, stream, or viewpoint, also lend themselves well to leasing. Even residential land can be leased. Leasing is less effective, however, when the use cannot be identified. Leasing land in large tracts for purposes well served by small tracts is an example of inappropriate use of leasing techniques which causes problems down the road. Understanding the importance of timing is also key to the appropriate use of the leasing tool. When land for use is scarce, people are willing to lease land. When land gluts the market, leases will be less attractive. The good manager must read the market and utilize his management techniques at the proper time.

According to Hoge, "I suspect a couple of things were wrong with the State's prior leasing program, and this -- this is not a charge against the present administration, it really is a historical problem." When the State first began to lease lands, the parcels were small and value of improvements placed on them was not too significant. However, as loan amounts began to rise and the extent of development broadened, lender scrutiny increased as well. Lenders usually consult a checklist of 15 or 20 items before they will loan funds for some undertaking. As financing requirements increase, the lenders turn to ADL to establish the certainty of the situation they are evaluating. In the past, lenders have found a lack of qualified people at ADL who understood their business and also an absence of the administrative flexibility needed to adapt to changing conditions.

Hoge argued that there are legitimate commercial requirements and it takes experienced administrators to be responsive to these demands. As Hoge put it, "I use the words 'certainty and stability'. There is absolutely no reason for a lender to -- to rely on the State of Alaska. I mean, if every deal can be challenged, why make the loan. And if you're going to make the loan, you're going to cut it down one way or the other. You're going to cut down the amount of money you're going to

lend, or you're going to increase the interest rate." In order to operate, lenders must be able to trust the State. In the past, this has not always been that easy to do. The State has been responsive in some cases, for instance, the basic changes that permitted assignments have certainly made financing easier. Hoge pointed out that escalator clauses were common in some private sector leasing. But, usually lenders require that the ascertainable rental provisions be fixed at least 10 years (or a decade) in addition to the term of their loan. In the case of savings and loan institutions, this is required by law and generally, my experience with lending institutions in Alaska, require it as a matter of practice. In a few instances with insurance companies, these provisions requiring ascertainable rental may be somewhat less, in the range of 7 or 8 years on a 25 or 30 year term loan. "The purpose of this provision is," I think, "a reasonable one; in other words, if a borrower was in financial trouble, the additional period gives the lender an opportunity to work out the loan and stretch out the amortization so as to reduce the principal and interest payment."

Hoge offered the absence of limits and administrative inflexibility as the two main reasons that lessees wanted to see that the statute was amended. Realistic application of the regulations is mandatory for successful administration. In order to be effective, valuations must be current and should reflect what is happening in the market. But when the State fell behind and then caught up in a hurry, it put many lessees at a disadvantage. Hoge was the only panelist that believed the new lease law was really workable. He recognized that current leasholders would enjoy a windfall when they converted to the new leasing system. But, he believed that the economic advantage granted to lessees of State land would be reflected in increased bid prices at State land auctions in the future. Hoge felt that a well run bidding procedure would capture this added incentive to lease State lands.

Hugh Gellert, President of Bear-Fritz, Inc., was the final panelist to take the floor. Many points had been covered by this time, and he acknowledged that he could support the majority of the comments offered by his colleagues. He approached the new leasing statute as a case study of why the State has had, and will probably continue to have, problems in the leasing business. The willingness of the legislature to change the statute in response to hot, but essentially limited pressure encourages anyone with an administrative problem to go directly to the legislature. This approach was encouraged by the current administration who refused to flex in response to demonstrated hardship and pointed the complaining lessees towards Juneau. The few who were injured went, and the resulting changes will reward them and essentially punish the public interest. As an example of stability, the way the issue was resolved is unfortunate. By way of encouragement to special interest pressure, the example could only lead to further activity along these same lines.

Gellert made a special point of the fact that land leasing and associated contract administration is a very sophisticated enterprise. "I think

under the previous State system, the lessee probably never really understood the implications of what was written on the paper. Possibly because it was written in such small obscure language that very few people did understand it. It says, for the State's defense, if you read it a few times, that yes, the State can really grab you anywhere along the line. And many of these people who were the original lessees testified, you know, they never knew that's what it said. And they struck me as honest people. They probably never did know what it said. For years and years the State let these appraisals lapse, underappraised, and things were fine. And then all of a sudden here comes the -- somewhere close to the market appraisal and everbody falls down in a dead faint." For that matter, real property appraisal requires highly skilled and motivated people as well. For leasing to be effective and appropriate, it takes a degree of sophistication on both sides. In the instant situation, neither side was particularly well prepared. Gellert served on the Governor's ad hoc land management practices committee. In testimony before the ad hoc board, lessee after lessee testified that they did not know what their leases said. Although they received a copy of the document they hadn't read it because they believed they could trust the State. Gellert was surprised by this testimony. But he was equally surprised by the inexperienced appraisers, tardy valuations, and generally inefficient administration of the leasing program which became apparent through the Ad Hoc Committee's investigation.

Gellert felt that the sophistication necessary for successful leasing was noticeably absent from both lessor and lessee. If the State wanted to actively lease lands, they should certainly upgrade the quality of their appraisal and contract administration programs. He also thought that the windfall gained by current lessees would not be diminished by the open bidding procedure for future lessees of State land. Gellert disagreed with Hoge's observation that a well run auction would produce bids which reflected the advantages of leasing State land under present law. The way the State has administered their land programs in the past prompted Gellert to foresee continuing problems. The necessary expertise and command of the market situation was just not available at ADL.

In the ensuing discussion, Ted Smith, Director of the State's Division of Land and Water, took issue with the oft stated observation that you could not trust the State of Alaska. He argued that trust and stability is a two-way street, and the lessee had certain obligations to keep the program operating as well. Another item that came up during the comment period was an exchange between Senator Croft and McCabe. McCabe offered an example of two tracts, side by side, each worth $10,000, with one leased and one sold. Assuming a land value increase of 10 percent per year, an effective tax rate of 52 percent, with the land sale on a 10 percent down and 8 percent interest basis and a 20 mill property tax, the land buyer would pay $27,470 over the first 9 years. The leaseholder, on the other hand, would have paid $8,882 over the same 9 years.

McCabe was demonstrating the front-end advantages to the lessee over the purchaser in the first decade. Senator Croft wanted to know at what point the two sets of figures were equal. The model had not been developed to this point. But the point where leasing becomes equal to purchase for the developer is a good ways down the road. A number of factors including opportunity cost, asset value, and other tax assumptions would be required to make the model wholly workable.

Land and Water Director Smith said that under the current statutes the State administration did not expect to apply the leasing tool to any State lands. He also stated that he understood that the trust boards were quite uncomfortable with the new policy as well. Very recently, the Board of Education, charged with trust responsibility for the common school lands, filed a suit testing the new statute. Virginia dal Piaz pointed out that the discussion had been very technical and the real truth and beauty inherent in retention of public lands and leasing for use purposes had not received enough attention. John Norman thought it would be useful to calculate the costs of not having enough land in fee simple ownership. He felt sale was more appropriate than leasing and built stronger communities as well. David McCabe spoke, agreeing with dal Piaz but acknowledging the fact that if leasing was going to be a good tool in the land managers kit it required a well honed, sophisticated approach. It was time to recognize that leasing wasn't universally appropriate and that a good program demands competent administration. Ted Smith concluded the section with the observation that, "I think that we do have a problem in the leasing program, in that we only have one program. Whatever we have on the books, that's the only method that's available. With trust lands in particular. I think we need a wider array of tools. Some of the tools that the private market uses, like leasing for a percentage of the gross, and other techniques should be available to the State."

Trusts

The second topic of the afternoon session was the trust lands and how they are managed. The basic questions around which the discussion was framed was:

1. How have the trust lands influenced land planning and management?
2. What advantages and disadvantages have prior management of trust lands had for the State as a whole and for the trusts?
3. Are there changes in legislation, regulations, or management of trust lands that you would advise?

The trust land panelists were Steve Reeve, newly appointed Chief of Classifications for ADL who formerly served as the Planning Director of the Ketchikan Borough; FSLUP Commissioner Phil Holdsworth, past Commissioner of the State's Natural Resources Department; and Dale P. Tubbs, former Deputy Director of ADL now a private land management consultant for Moening-Gray and Associates.

Steve Reeve led off and presented particularly valuable insights based on his experience working in SE Alaska. Many trust lands were selected during territorial days and high value lands were chosen when possible. A number of communities in SE are heavily impacted by trust land holdings. Producing revenue is the operating goal of the trust land managers and their land utilization practices are not always consonant with local growth plans. Reeve used the Juneau trust land map developed by FSLUPC staff to demonstrate how the trust lands occupied virtually all of the useable land within the City. In Ketchikan the problem is even worse as the U.S. Forest Service has not permitted residential development in the surrounding Forest to the extent allowed in Juneau. For Ketchikan the experience has been that only intense local pressure results in disposal for use purposes near the City.

The location of the trust lands has also had a deleterious effect on certain land development patterns in SE. Besides escalating the value of land by withholding so much of it from the market, the nondevelopment of the trust lands has forced community growth to leap frog the underutilized trust property. Local input into the sale and management of trust lands has been negligible. The absence of a community voice in trust land management decisions is particularly galling to Reeve who says, "-- it is crucial that communities that are surrounded by these lands have a significant role in identifying which lands are to be disposed of, are to be sold, and which lands are to be retained and when that's going to occur." If the lands were general selection State lands, they could be conveyed to the municipality and the local government would be able to utilize the property in accordance with the Borough's comprehensive development plan. Unfortunately, this possibility seems remote as the Borough cannot afford to satisfy the revenue requirements of the trust setup as it is currently aligned.

The overall effect of these land holdings has not been entirely negative. For one thing the absence of available land has forced many towns to develop a compact land use pattern. Since the fringe lands are unavailable for development the opportunity for sprawl is substantially reduced. In addition, public ownership of the lands has tended to inhibit growth in many SE communities. This has some benefits as well. Reeve would like to see active local control of trust lands, particularly where they inhibit community development. But he recognizes that the statutory obligations of the trust boards must be dealt with by statute or regulatory adjustments before new management arrangements are really practicable. In addition, Reeve questioned the idea presented throughout the day that land use control should be a local affair when he pointed out that, "-- that isn't possible without some kind of assistance from the State. I think that's an issue that the State has not dealt with adequately. In terms of general planning programs throughout all of the smaller communities, I would say everwhere except Anchorage, land use planning programs are poor, and they are understaffed. They are expected to do certain things, like, for example, put together a meaningful nomination to the State for selections from national forest, or develop coastal

management programs, or other matters of State interest as well as local interest. But they simply do not have the ability to do that. And I think that any time you expect them to do certain things, I think you should help them out. And whatever form that takes, whether it's financial assistance, manpower, a stronger and more active Department of Community and Regional Affairs, or whatever it may be, you cannot shift responsibility for land use control to local government in any meaningful fashion until you have taken measures to improve their ability to do the job."

The second speaker was FSLUPC Commissioner Phil Holdsworth who outlined the history of the trust lands and the manner and authority by which they were selected. An outline of his historical summary is attached to these proceedings.

Commissioner Holdsworth outlined the legislation that created the first trust lands. School and university grants date back to 1915 but, because they depended on survey, the State did not receive considerable acreage. Yet, the acreage they did receive was usually good because the survey process was most likely to be initiated in and around developed areas. Federal legislation was specific about the restrictions on the management of these lands. School and university land managers were restricted to leasing, and only the income earned was available for the school programs. At the time of Statehood, these land grants were confirmed by the Federal government and transferred to the State for management in accordance with the purposes for which they were originally reserved.

In 1956, the Territory was encouraged to select not more than 1,000,000 acres to provide an economic base for the mental health program. The management restrictions for these lands were not as strict as those outlined for school and university lands. However, the Territory was to administer them as a "public trust", and the mental health programs were to be primary recipients of the income. The Statehood Act confirmed this grant as well. With mental health land selections there was no requirement that the land be surveyed. Therefore, considerable selection flexibility was allowed and many parcels with high value were selected.

State statutes have delegated management authority for these lands to the Division of Lands, Department of Natural Resources. ADL conducts this management program subject to the approval of the Board of Regents (university lands), Board of Education (school lands) and Mental Health Land Trust Board.

After sketching the legislative foundation of the trust lands, Holdsworth raised a number of issues that currently cause concern for trust land managers. Many board members are dissatisfied with ADL management services. ADL, who is not compensated for managing the trust lands, seeks a more equitable arrangement in exchange for their efforts. In addition, the legislature has made the trust lands subject to many Alaska statutes that conflict with the revenue producing goals of the

trust land legislation. Under these conditions, there seems to be agreement that changes must be made in the manner by which State trust lands are managed.

Commissioner Holdsworth discussed this matter with a number of administration personnel. While he found a consensus that management practices should be evaluated and enhanced, there were a variety of opinions as to exactly what changes would be the most productive. One approach suggested that the trust boards should get a fixed percentage of total State land revenues. Mangement decisions on trust lands would be made on the same basis as the decisions made for other State lands. Another way of looking at this situation called for trust land management to be separated from ADL and authority delegated to private managers who could be more responsive to the Trust Board's revenue goals. Other options between these two poles were presented as well. But the agreement that change is needed underlines the importance of carefully considering the range of choices available.

Commissioner Holdsworth outlined present trust land disposal practices and pointed out that accounting procedures were such that revenues were not directed to the funds who owned the lands earning the revenues. He also alerted the panel to certain State statutes that may be in conflict with federally imposed trust responsibilities. Examples of conflict arise in both the permanent fund legislation and the newly enacted leasing statute. Finally, Mr. Holdsworth explained how most of the trust lands were selected well before the general selections permitted by the Statehood Act. For this reason many Mental Health land parcels are centrally located. Land management problems can cause community problems because of the strategic location.

Mr. Dale Tubbs was the final trust land panelist. He spoke from prepared remarks and they are attached to this paper. It should be mentioned that Tubbs recently completed an exhaustive Study of the trust land situation for the University of Alaska Board of Regents. His recommendations take on a certain added dimension as they were adopted by the regents at their recent Kenai meeting and now represent management policy for the university lands. Tubb's written comments also have application for the remaining trust lands.

Early on, Tubbs made the distinction that trust lands should not be considered part of the State public domain lands. Too often in the past, management decisions have not always treated the trust lands as though they were private lands to be managed for a distinct purpose. Part of the blame for this management policy must fall on the trust boards which have not spelled out management guidelines for the ADL. But the managers themselves are to blame as well. It has been more expeditious in many situations to treat the trust lands as though they were part of the State's general land endowment. However, until they are managed like corporate private lands, their value as an endowment is going to be diminished by policy and legislation which ignore the trust distinction.

Trust land management has been spotty. The mental health lands have received the most attention because of their location and the fact that no mental health trust land board was available to evaluate ADL practices. University and school lands have suffered in the market place as well. As Tubbs put it, "In management, the trust land boards must require more aggressive management from the Division of Lands if the Division of Lands is going to continue as the manager. The trust boards must require the Division of Lands to show funds being requested in their budget and earmark them for management of that particular fund, and keep it identifiable in the final outcome of the budget. Too often what happens is the Division of Lands has said, 'Okay, university and school, we're watching out, we're budgeting monies'. And then the budget gets first cut by the Commissioner, then it gets cut by the Governor, then it gets cut by the Legislature, and what's left goes back, the program is revised, priorities are rearranged, and your trust land management funds are lost." Few funds have been available to ADL to survey, build roads, and, in other ways, satisfy local subdivision requirements. Tracts of inappropriate size have been forced on the market to avoid these requirements. This has not benefited the trust concept either. Of course, there are examples of success in trust land development. Alaska Industrial Subdivision is one example. Residential subdivisions like Windemere have been well developed as well.

Dale Tubbs saw a need for changes in the legislation that effects trust lands. Primarily, his emphasis was aimed at guaranteeing that trust lands were not treated as State public domain but were recognized as lands separate from general land legislation. He also called on the legislature to observe their trust responsibilities when these lands were placed into the State's amenity land system such as parks and refuges. Tubbs also called for the adoption of legislation that would improve the capabilities of the trust land managers.

Regulations for trust land management do not reflect Trust Board policy. This is primarily true because the trust boards have failed to articulate management objectives in the past. However, the regents have taken a new look at this situation and are now working on developing such a management program for their lands. But the blame cannot all be place on the boards. If ADL designs trust land management regulations, they should reflect trust board contributions. A need to broaden the communication between the managers and the boards is evident.

Tubbs also offered a series of suggestions for improving the management and administration of State trust lands. Basically the thrust of his comments outlined the conflicts inherent in being the manager of both public and trust lands. As Tubbs sees it, "the Division of Lands has a conflict of interest in managing the three trust funds when like lands occur in the same area. How can the Division get the most for any one when each are competing for the same market. And this has shown up repeatedly. You try to get the School Board to lay down and play dead while the university can do something, or the other way around." In

addition, day to day management suggetions such as making lease terms more specific to the parcel being leased were mentioned. State policy on log exports may make social sense but when applied to trust land timber, the effect is to limit revenue. Sand and gravel disposal is another revenue producing opportunity that is essentially foregone on most trust lands. All in all, if the goal is revenue, then adminstration of trust and public lands in the State must be on different terms administratively.

Tubbs also made the telling point that since local governments control zoning assignments they also have authority over the VALUE of trust lands. For instance a vast majority of the Mental Health Lands in Anchorage are zoned PLI. Mr. John Norman argued that this was an excellent opportunity for some basic policy decisions. He suggested that trust lands should be exchanged for Slope reservoir lands or other lands with a known current value. The the trust boards can just clip coupons while the State can have a more flexible management program. Commissioner Hurley wondered wondered how three separate district boards with little land management experience could be effective managing the trust lands. He opted for a more unified approach to trust land management.

Budget

The meeting closed with a brief discussion of the costs of land management and State land disposal programs. Ted Smith stated that for ADL, "at the moment, our annual budget's about five million dollars. So that gives you a ballpark figure." He went on to describe in detail the costs that had resulted from the homesite program in the first year. Speaking of preimplementation estimates he said, "... like any estimate, we found holes in it when we actually started to do it. First of all, you note that it makes some assumptions on economies of scale. We talk about 100 units, and 1,000 units, and like, 300 homesites, 3,000 homesites. And the way the bill was actually implemented, you don't get those economies of scale, because you can't find sufficient blocks of land that meet all those requirements that you can get the surveying savings and platting savings and all like that. So far, I've just checked, and we've spent $103,000 -- on contract costs for the surveying of these 183 sites so far. And that amounts to about $562 per parcel. And unfortunately, it does not include platting, administration expenses, and soil tests which will bring costs to $1,000 per parcel or more." Smith seemed sensitive to the land management budget questions and explained that his staff is evaluating the prospect of using contract appraisers. This possibility could become operational if the price is right. David Simpson, Matanuska-Susitna Planner, echoed Wes Howe and talked about the costs of providing services to scattered residential dwellers. This theme was picked up and followed by many of the panelists.

Commissioner Gorsuch summed up the day well when he said that it all seemed pretty simple until he heard the facts. He found that the panelists had contributed extensively to his understanding of certain issues. He

thought there was a need to clarify basic State land disposal policy and to create a process that would encourage certainty, stability, and trust in the system. Statute should state policy and the legislature could be more effective if it were less involved in stating day to day management operating procedure and put more emphasis on stating basic policy guidelines for future State land disposal. Commissioners Hurley and Holdsworth also described the value of the discussion and extended appreciation to the contributors.

Walt Parker, State Co-Chairman, captured the mood of the day in his closing comments, "I wish to thank you all for coming today, it was certainly one of the more provacative sessions we've had in the five years of the Commission's existence. I would echo my colleague, Mr. Hurley, that the great question of whether it is better to retain control of the public lands through leasing, or to dispose of them through private ownership is solvable within our State system. In a state with 103 million acres both interests should be able to be accommodated with some equity on each side. And that doesn't mean in the sense of compromise with anybody's basic philosophy. I think it's just a simple recognition that possibly some lands are better handled through conveyance as rapidly as possible into the private system, and some lands are better handled through retaining a substantial hold on the public equity in those lands."

"Some of the things that came through to me today were the need to simplify our declaration of State land policy. Policy making should not try to get too subtle in trying to control the public wealth through statutes. I think the review of past land legislation, where that attempt has been done, reveals to all of us the problems we get into there, trying to overcontrol the public. We need to have a trust in the certainty and stability of the system, certainly an important point that was brought up here today. I think this idea extends to many areas in our beleaguered State. Until we get certain major land issues behind us and do get the system settled down a little bit, we're all going to live with uncertainty that creates what appear to be policy dichotomies that really may not be."

Land Availability

L A N D

A V A I L A B I L I T Y

CONTENTS

Land Availability

Introduction

There are approximately 365 million acres of land in Alaska. The Statehood Act gave Alaska 25 years to complete the selection of its full entitlement of more than 103 million acres of this land. The status of this selection process is approximately as follows:

Land Selection Status
January 1, 1978

Grant Type	Entitlement Acreage	Selected Acreage*
General	102,550,000	71,162,999.22
Community	400,000	83,792.44
Community National Forest	400,000	47,292.27
Mental Health Trust	1,000,000	1,017,215.59
University Trust	100,000	99,414.48
School Trust	---	109,073.43

*Selected Acreage also includes lands tentatively approved and patented.

Recent State land selection activity has identified considerable additional acreage for selection under the general grant and National Forest community grant authority. These selections will probably be completed in 1978. The State now has management authority, resulting from tentative approval or patent of its selections, for more than 36 million acres of land.

More than 1 million acres were in private ownership prior to the Alaska Native Claims Settlement Act (ANSCA). In addition, ANCSA will convey about 44 million more acres into private ownership by Native Corporations. Altogether, after ANCSA is implemented, there will be more than 45 million acres in private hands. With Alaska's small population, this results in a per capita private land ownership in the State of 112 acres. The nation wide average stands at 7.5 acres.

Less than 150,000 acres of Alaska's private land is intensively used for residential, industrial, commercial, agricultural, or recreational purposes. The Soil Conservation Service reports that only 7 million acres of the lands selected by the State are "good" for intensive use. Even in those railbelt boroughs where economic activity is high, the intensity of land use is not. The Matinuska-Susitna Borough reports an 85 percent private land parcel vacancy rate. Unimproved parcels on the Kenai Peninsula make up 76 percent of the available private land. In Anchorage, the land parcel vacancy rate is almost 50 percent.

Private land is available in significant quantities in the railbelt region. Land is less abundant in southeastern communities, but the upcoming National Forest selections could relieve the scarcity. In western Alaska, some communities have witnessed the price of land raising rapidly due to a scarcity of parcels in private ownership. Implementation of ANCSA could relieve this problem.

Other than trust lands, the State does not own considerable acreage that is in a location suitable for residential use. Most of the State-owned lands are beyond reasonable commuting distance. But State lands are suited for other uses, such as agriculture, rural-remote living experiences, recreation, small scale timber operations, and other uses less dependent on easy daily access. Also, the State has an opportunity to make better use of its trust lands, which are, for the most part, well located. More intensive use of the trust lands could satisfy land scarcity problems in some areas, and, at the same time, produce needed revenues for State operations.

Land ownership near population centers, primary access routes, and waterfronts will be influenced by the resolution of the borough and municipal land selection issue. The State's largest boroughs have already filed extensive selections. The North Slope Borough is in court attempting to establish the extent of their selection rights. The community lands situation will also be affected by the 1,280-acre ANCSA 14(c)3 lands which will be conveyed to municipalities for public use by the village corporations that receive their entitlements. In southeast, the municipalities are looking to the State selections from National Forests to solve their community expansion needs.

Sales and leases of land surface have not been a very important source of revenue for the State. About $2 million per year, or less than $35 million, have been generated since statehood. This is an insignificant portion of the State's current budget. More intensive management of well located trust lands could increase these revenues. But, for the most part, State lands are not located where surface use demand is high, and surface management will not be very productive in terms of revenue.

The State has recently renewed its interest in land disposal programs. In the past, these efforts have been primarily limited to public land sale auctions, lease sale auctions, and the Open-To-Entry (OTE) program. The OTE program has been suspended since 1973, but recently new regulations have been drafted that could put the process in motion once again. Also, the State will unveil the new Homesite program in 1978 with the offering of nearly 200 parcels near Fairbanks in the 4th Judicial District. Agricultural land rights will be leased in the Tanana and Delta Junction areas as well.

To date, the State has transferred nearly 140,000 acres into private fee simple ownership through competitive bidding. More than 325,000 acres of State land are leased for agricultural, grazing, and recreational uses.

Almost 15,000 acres will be transferred to private ownership through the original OTE program. All of these activities will continue in 1978. The State will emphasize making lands available for homesite and agricultural purposes. There is talk of a remote cabinsite permit program, too.

The land facts presented here may appear confusing. In terms of raw numbers, we are confronting a wide range of acreage statistics. But when the lands are viewed in a use context, or seen in terms of location and relation to access or other supply networks, the acreage figures are more refined. This concept is explored further in the article by Sally Gibert entitled, "State Owned Land: Where Is It? - How Could It Be Used?"

INFORMATION ITEM

733 W. FOURTH AVE.
ANCHORAGE, ALASKA

FEDERAL-STATE LAND USE PLANNING COMMISSION, FOR ALASKA

STATE-OWNED LAND
WHERE IS IT LOCATED? HOW COULD IT BE USED?

By Sally Gibert

In recent months, there has been a growing public interest in State land disposal programs which would place more land in private ownership. Recent hearings on the State's open-to-entry and homesite programs, and the current Alaska homestead initiative have generated considerable debate. The following article offers important information about the location and supply of State land, as well as a discussion of some of the factors, both positive and negative, that go along with making public land available for private ownership.

Sally Gibert is a Natural Resources Specialist on the staff of the Federal-State Land Use Planning Commission. The Commission has been studying the location and accessibility of State, Federal, municipal, and private lands around Alaska's main growth centers and analyzing various methods of making public land available for private use. Commission recommendations on policy guidelines for the retention and disposal of State lands will be presented to the Legislature this month.

State-owned Land
Where is it located? How could it be used?

For most people, land is symbolic of many things of important personal significance like security, wealth, power, and happiness. Thus, Alaskan dreams about land range from thoughts of building a cabin in the woods, to the hope of acquiring financial security by selling land on a rising market.

Images like these and the hard realities of private land costs have created an increasing public clamor for converting more public land to private use. This demand is closely tied to the lure of the "Alaskan Life-style." Genuine attempts to accommodate these needs through the disposal of State lands should be carried out. But in order to be effective, we must have full awareness of the availability of appropriate lands and the subsequent results of their disposal.

The existing private land ownership patterns in Alaska stem primarily from Federal land disposal programs which began before Statehood. These Federal programs have provided about 877,000 acres of Alaska's private land, mostly from the Homestead and other settlement programs which were effectively closed in 1974.

Subsequent State land disposal programs have been primarily public land sale auctions (138,000 acres), land lease auctions (323,000 acres), and the open-to-entry program (14,000 acres leased, 1,900 acres patented to date). The results of these combined programs have placed over a million acres of land in private hands.

It should also be remembered that the 44 million acres of land granted to the Natives under the Alaska Native Claims Settlement Act (ANCSA) will be private lands that may be sold at any time after conveyance. At this time, however, it is difficult to predict the amount of land that may be sold or leased by the Native corporations because their management programs are so new. Only a few million acres have actually been conveyed so far, though recent efforts to speed up the pace of conveyance are starting to yield results.

Most of the people who feel that more private land is desirable in Alaska are demanding that it come from the seemingly vast supply of State lands. But, despite the fact that the State has selected some 70 million acres of land and will be selecting another 35 million acres, there is a relative scarcity of the kind of land that is useable for community growth. Most is far too remote from centers of employment and commerce.

It is natural to ask why the State has a shortage of lands that are really useable for development. The answer lies in the timing of Statehood rather than in the quality of land selection. Statehood and State selections came after lands had been homesteaded and private landowners

had acquired properties near communities and along the existing transportation systems. State selections also came after prime lands had been set aside for the congressionally mandated trust programs. The best of the remaining State lands were chosen by the boroughs and some were sold to private parties.

To see who owned the accessible and buildable lands in the vicinity of the new capital site, the Federal-State Land Use Planning Commission studied in detail the land ownership and soil characteristics of lands within one mile of road or rail access from Talkeetna to Palmer. To someone driving along the Parks Highway north of Palmer, the relatively vacant land pattern is deceptive. Many would assume that much of it is State land. However, the Commission found that less than 9,000 acres (10%) of the lands suitable for residential development are general State selections. On the other hand, 82% are already privately owned. The remaining 8% are trust lands or borough lands. A similar pattern exists for the lands around Fairbanks. In the Anchorage bowl, where State lands are particularly scarce, there are less than 240 acres of uncommitted State lands.

Around Alaska's smaller communities, a different, yet parallel, land pattern has emerged. Over 200 Native corporations have selected a sizeable portion of the lands suitable for intensive land uses along the coast and river systems and around lakes. Native villages, like communities in general, have traditionally been established in the most habitable areas, so it follows that a large percentage of Alaska's buildable lands are Native selected, about one-third according to U.S. Soil Conservation Service data. State lands, which frequently border these first priority Native selections, contain only about one-fifth of the buildable lands in Alaska. A sample study in the Dillingham vicinity showed that only % of the accessible, buildable lands were State selected while 67% w : selected by the Natives of that region.

The fact is that much of the State's lands are inaccessible or difficult to develop because of steep or difficult topography, swamps, or severe permafrost. This situation should be kept in mind when designing land disposal programs that will maximize the use of both private and public lands at the least cost.

Most of those who contemplate owning 40 to 160 acres "somewhere out there" think of a cabin in the woods on gentle terrain, hopefully on a lake, stream, or near a road. This trend can be illustrated by looking at the locations where people staked open-to-entry leases. Almost 80% were clustered around lakes and streams which provided easy access and potable water. There are, of course, available State lands that fit this description. But they are limited and should be disposed of judiciously.

A wholesale giveaway of State lands will allow the lucky few who jump in first to acquire large blocks of the most desirable or close-in lands--

far in excess of their ability to use them. Then, as the best land rapidly dwindles, the remaining people would be forced to select from a pool of increasingly remote or unuseable land. Consequently, smaller scale land disposal, like the State's new 5-acre homesite and updated open-to-entry programs, will allow more people an opportunity to acquire useable State land.

In addition to those who want accessible land near existing communities, there is a sizeable segment of the population who would prefer a more rural setting. This group, typically young people, still need access, schools, and possibly other services like fire protection. Rural State lands with existing services are in extremely short supply. In fact, because so few State lands have road access, the State Division of Lands actually had difficulty locating appropriate lands to be made available this spring under the 5-acre homesite program.

While the supply of accessible land is small, there is a significantly larger quantity of State land suitable for residential or recreational use in remote areas. The limiting factor for remote land disposal programs is cost. The high public costs of remote and rural land disposal are not necessarily prohibitive, but they do demand public recognition of the choices involved.

Recent laws and court interpretations are forcing the State government to provide expensive services to resident landowners, even to those in remote areas. In Skwentna, for example, the State must pay the costs of flying bush children to school. Although this example is extreme--it indicates a trend toward increased State and local responsibility to rural residents involving great costs to taxpayers.

To minimize these high costs, remote land disposal programs should be carefully planned to consolidate transportation, survey, administrative, and educational requirements. The Division of Lands has estimated that the costs of land surveys, soil analysis, and other purely administrative costs (roads, schools, etc., not included) for the 5-acre homesite program will be about $1,000-1,200 for each lot in the subdivision. Scattered sites would be more expensive. Lack of planning prior to any major land disposal will permit randomly dispersed subdivisions which would be extremely costly. For example, at the present price tag of $125,000 per mile for construction of modest rural roads, and $1,500 per mile per year for maintenance, the State cannot afford a proliferation of rural routes.

There are some Alaskans, however, who do not want roads, schools, and other amenities associated with an urban or rural residential life-style. These people would prefer to live in the relative isolation of wilderness or semi-wilderness. To satisfy their needs at minimal expense, the State could retain the land in public ownership and simply give the individual a permit to build and occupy a cabin for a number of years. When the permittee vacated the cabin, it would become public property to be used by the next permittee.

This approach is in keeping with traditional Alaska back country views of land and cabin rights. Sites would be sufficiently isolated so public schools would not be required or expected. By granting "use permits" for remote State lands, the government could reduce the necessity of providing costly and unwanted services, while still allowing scattered residential use of the land that would otherwise remain vacant.

While attempting to meet the demand for additional private land in Alaska, we should not lose sight of the importance of retaining adequate accessible recreational land in public ownership. Alaskans still have the opportunity to avoid the frustration of mile after mile of "No Trespassing" signs. This is critical for those who want to hunt, fish, hike, ski, or snowmobile on public lands.

If public lands important for present and future recreational use are not identified and retained prior to land disposal, Alaska will experience a private land ownership pattern will diminish Alaska's unique life-style. A diversified and discreet land disposal program could promote additional private land opportunities without sacrificing these public values.

policy

POLICY FOR LAND RETENTION AND DISPOSAL

CONTENTS

Policy For Land Retention and Disposal

Introduction

The State's primary policy statement about land disposal is in the Constitution.

> "It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use and development consistent with the public interest." (Constitution of the State of Alaska, Article VIII, Section 1.)

The statutes modify this mandate slightly by saying

> "Disposal and use of State lands shall conform to the constitution of the State of Alaska and the principles of multiple purpose use consistent with the public interest." (Alaska Statutes, Section 38.05.285.)

Both of these statements are so general as to be of little use when it comes to making day-to-day decisions about the extent, timing, and location of State land disposal. In the absence of legislative guidance, the administration has been left to make the major decisions. Administrative policy has varied widely over the years. During the late 1960s and early 1970s, the State sold 138,000 acres, an area 9 times the extent of the development of the Anchorage bowl. This land went to approximately 4,000 buyers. In recent years, disposals have been held to a minimum.

Instead of setting policy guidelines, the Legislature has responded by legislating programs, such as the 1977 Homesite Law and the new leasing law. So the State remains without a clear policy to guide land disposal or retention. In recognition of this lack, Senator Kay Poland, Chairman of the Senate Resources Committee, requested the Commission to develop recommendations about State land disposal policy. During its December meeting, the Commission debated this policy.

The following documents provide a glimpse of land disposal policies which have been developed by other major public land holders. First, we included the statement of land management policy adopted by the Greater Anchorage Area Borough several years ago; then a summary of the land policy and practices of other major land holding states; and finally, an excerpt from the Federal Land Policy and Management Act of 1976 which governs Federal Bureau of Land Management lands.

STATEMENT OF POLICY ON THE USE OF BOROUGH-OWNED LANDS

Anchorage Municipality, 1975

The policy of the Greater Anchorage Area Borough concerning use of Borough-owned lands by persons or organizations other than the Borough itself is set by Article 20.20 of the Borough Code of Ordinances. Borough lands which are subject to uses of this nature under Article 20.20 are lands which are in the Borough Land Trust Fund. Other Borough lands which are not in the Land Trust Fund are managed by specific Borough departments. Any use which is contemplated for non-Trust Fund lands must be requested through the department managing these lands, such as the Department of Public Works or the Department of Parks and Recreation.

It has been the general policy of the Greater Anchorage Area Borough to permit the use of Land Trust Fund lands by persons or organizations other than the Borough itself only when such use is demonstrated to be in the public interest. In the past, the only private uses permitted have been for park and recreation developments which are open to the general public without restriction. Section 20.20.070 specifies that the preferred management policy for Land Trust Fund lands requires that the lands be leased and not sold. Section 20.20.070(c) permits the lease of these lands to "duly-qualified non-profit corporations", for a period not to exceed 55 years, with a yearly lease payment of not less than 2 1/2 % of the appraised fair market value, and with required re-appraisals at five-year intervals. Land Trust Fund lands leased to private parties who do not qualify under the "non-profit corporation" requirement may be leased for a period not to exceed 55 years, at normal fair market value rates, with required five-year reappraisals. All leases or other disposals of Land Trust Fund property which have been negotiated by the Land Trust Fund Council must be reviewed by the Borough Assembly prior to becoming final.

As previously, stated private uses of Borough-owned lands have been restricted to park and recreation purposes open to the public at large. The Borough has not looked with favor upon private developments on public lands which would be restricted in scope or in actual use to any one group or organization, or to any class of persons smaller than the general body of borough citizens. Uses may not be limited to members of an association or club, or to activities sponsored by an association or club, even though membership in that club may easily be obtained. Since these public lands belong to all of the citizens of the Borough, and to

both present and future generations, any private use of Borough lands must sufficiently protect the property rights in these lands which are owned by all citizens.

If these basic criteria for private use of Borough lands are met, then additional considerations should be taken into account. The drastic alteration of existing topography or vegetation is not generally permitted. Site development should be no more than necessary for the use permitted, and should be of such nature that the land will re-vegetate or otherwise restore itself if use of the site for the permitted purpose ceases in the future. Requirements may be imposed for sanitary facilities, trash removal, supervision of activities by qualified personnel, and any other aspect which may be needed to assure the clean, safe and orderly use of the site. Depending upon the activity, insurance may also be required to protect the Borough against claims for damage to persons or property as a result of use of the site under lease from the Borough. It is apparent that the person or organization seeking such a lease should be a recognized legal entity, qualified to obtain insurance and to accomplish the requirements necessary to protect the public interest.

Land Disposal Policy In Other States

In June of 1976, David Hanson, Chief of the Alaska Department of Natural Resources Planning and Research Section, wrote letters to the land departments of many states with situations similar to those of Alaska. The focus of the questions asked by Hanson was on the land disposal policy employed by the various State land departments. The responses from the different states varied, but many interesting issues were raised. Some of the states' only responded as to the policies utilized with regard to their school lands. But the responses shed a little light on a number of topics important to a discussion of State land disposal policy.

The nature of the questions asked by Hanson is characterized by these examples.

1. What methods of programs would insure that land disposal would be restricted to conform with appropriate land uses as determined by statewide policy or local plan?

2. What methods of disposal would prevent or discourage land speculation yet recognize real needs for land?

3. What is your state's experience or policy in the application of restrictive covenants or use easements?

4. Has your state disposed of land by means of perpetual, non-possessory interests in land that are tied to a specific use, while retaining other development rights?

5. Has your state disposed of land with stipulations that the land be developed within a certain time period, and if so have stipulations been effective in meeting the particular objective?

6. What general classifications of land does your state sell or lease and what is your criteria for disposal or public retention?

7. What degree of administrative or land management responsibilities might be associated with the implementation of the above questions?

8. How much land does your state own and how much has been sold?

The responses, summarized and state-by-state follow:

California

William F. Northrup, Executive Officer of the State Lands Commission, responded by pointing out that the Commission administers school grant land, swamp and overflow lands, and tidelands in the state. Including tidelands, the Commission today controls more than 5 million acres of But 5 million acres of school lands have been sold along with 2.2 million acres of swamp land. There have been no land sales since 1970 except those needed by certain public agencies. Northrup characterized California as moving towards the long-term lease in the application of covenants and retained state rights in the land because perpetual covenants and sale deed restrictions had proved unworkable. Not only was it difficult to enforce deed covenants, but it was also near impossible to foresee the needs of the future. Leasing allows a vehicle for change to meet these changing needs. In California use restrictions have been used in leases which stipulate development within a certain time. Such restrictions have not been attempted in deeds of sale. Above all, reminds Northrup, that effectiveness of time constraints, or any other restriction, is only as good as the agency's management and police efforts.

Idaho

Natural Resource planner, Lynn Thaldorf, answered for this State's Department of Lands. Idaho received approximately 3.6 million acres at statehood and has sold a little over 1 million acres to date. State land sales are conducted with full notice to the appropriate county land use agency. Idaho retains lands valuable for timber, recreation, or watershed purposes. Lands useful for agriculture and grazing or which are isolated or surrounded by private property holdings are usually made available for sale. The state also carries on an active exchange program with the Federal government to compensate for the shotgun ownership pattern of some state lands. Idaho has had little experience with use restrictions, timed development, or scenic easements on state land disposals. Land sales are all on an oral auction basis. Patented sale tracts are nominated by the community at large. Land office agents then analyze the nominated parcel and determine whether a sale action is appropriate. Idaho has no regulations to restrict the use of lands once they are sold. Land use control is a function of local (county) governments.

Nevada

The Division of State Lands in Nevada now owns 2,796 acres. Deputy State Land Registrar, Kigoshi Nishikawa, writes that approximately 2.7 million acres of State lands have been sold. Nevada used to reserve mineral rights to land sold by the state, but an attorney-general's opinion ruled those reservations invalid. Nevada retains no authority to control land uses after the land has been sold. Land use controls

are a local perogative except in certain areas legislatively recognized for their critical environmental values. Nevada quit selling state lands in 1965 and has no experience with timed development, use restrictions, or any other land use controls. Nevada appears to have little interest in land use controls at the state level. Nishikawa suggests that management responsibilities are particularly onerous when the state attempts to tell people how to use lands in private ownership. Nevada could well serve as a model of the western land ethic.

Louisiana

C. J. Bonnecarrere, Secretary of the State Mineral Board, wrote an exceedingly friendly letter. In it he advised that Lousiana had made all of the mistakes that could be imagined in the disposal and management of their state's land. He reported that it was 1930 before the state began to take their management responsibility seriously and started the resource assessment work necessary for making good constructive planning decisions. Bonnecarrere pointed out that what was significant to Alaska as a state was also important to the nation as a whole. He urged the State to go slow and purposefully and not be afraid of developing innovative procedures. Bonnecarrere felt that the cost of multiple "gold rushes" would be prohibitive for the State and the nation. He warned that resource evaluation was very important so that use decisions take all values into account. He found single use management is destructive from either side of the coin. It must be remembered that the passage of time significantly affects the value of certain resources. Bonnecarrere spoke from 36 years of experience in the Louisiana land department and urged Alaska to recognize that retention of certain lands is in the best interests of the State and its people.

New Mexico

Assistant Attorney General, Ernest L. Padilla, of the State Land office wrote for the Commissioner of Public Lands in New Mexico. New Mexico was originally granted approximately 13 million acres of land. About 4 million of these were sold, although a current moratorium has suspended sales of state lands. The remaining 9 million acres are considered trust lands and are managed for revenue purposes. Padilla points out that the best interests of the trust do not always coincide with those of the general welfare of the state. The state moratorium on land sales is based on the view that, over the long run, land will continue being a much better asset. The state does make land available to municipalities. Leases, easements, water rights, timber and gravel sales are all administered by the Commissioner of Lands. The purpose of all land transaction is to get the best deal for the trusts. New Mexico depends on local government for land use controls.

Wyoming

Commissioner of Public Lands and Farm Loans, A. E. King, responded for Wyoming stating that his office adminstered 3.6 million surface acres

and 4.4 million acres of granted mineral land. King advises that the principle tool in restricting land use is to retain ownership. The only title reservation for state land sales is the mineral estate, and Wyoming does not utilize restrictive covenants because it is felt that they unfairly restrict the flexibility of the purchaser. In order to curb speculation, Wyoming often leases valuable lands and even if lands are sold, easements for public access for fishing, hunting, and other purposes are regularly reserved. The state retains development rights when they grant easements but use requirements, development timing, or length of tenure are not a subject of sales. Wyoming utilizes a homesite lease with development requirements for the planned development of recreation areas. State land disposals are only made when it is in the best interest of the taxpayers of the state. Wyoming also recognizes that land ownership requires land management and has a complete and professional staff of appraisers, foresters, and mineral landmen. Wyoming has sold a bit more than one half million acres of land of an original surface entitlement of 4.2 million acres. They have current leases on 3.6 million acres. The tone and competence of the letter was of high quality which may speak for Wyoming's land management program.

Montana

Acting Commissioner, Leo Berry, Jr., of the Department of State Lands wrote from Montana, and his response concerned school lands in the state. Montana sold 1.1 million acres of their original entitlement and currently manages the remaining 5.1 million acres. Policy since 1970 has been to not sell school lands because land ownership has been a better hedge against inflation. Agricultural lands have not been sold for more than 15 years because lease revenues have been more lucrative than returns from investment of land sale principal. Localities are responsible for land use control, but Montana believes that lease restrictions are more effective land use controls than deed covenants. For land sales, acreage limitations and use restrictions are the best way Montana has found to curb speculation, but Berry agrees that it is difficult to totally prevent it. Grazing land and "4th class land" is the only type of land sold in the past few years. Orderly development of subdivisions is the responsibility of the Community Affairs Department who watch over water and sewer requirements. 4th class land is only offered and sold in alternate lots of 5 acres and less. Revenue production is the chief purpose of trust land management. Timber and water shed lands are not sold under any circumstances. Montana sold school lands rapidly to establish a general fund in the 1890's. Since that time, Montana has restricted sales to lands of limitied resource value where management costs exceed returns.

Colorado

Raymond H. Simpson, President of the State's Board of Land Commissioners, responded to the Hanson questionaire. Simpson said that Colorado's land

use laws were the responsibility of the counties. The board cooperated with these local governments and state land was zoned according to local zoning restrictions. Simpson said large BLM ownership in their state reduced the land available for commercial purposes. Simpson thought strong zoning efforts could be successful in Alaska too. He felt that public lands should be subject to the same restrictions imposed on those lands privately owned. Colorado sold 1.7 million acres of their original entitlement of 4.7 million acres. Simpson stressed that leases must be managed and that covenants in patents have the same drawback. He suggested that future land use be controlled through the local zoning apparatus instead. Speculation can only be discouraged according to Simpson, when sufficient acreage is available. State land agencies must be careful to prevent a government created shortage. Retention of land is based on long term worth to the State. Agriculture and grazing leases are the dominant type employed in Colorado.

Utah

Utah has sold 5.5 million acres of an original grant of 9.5 million according to Donald G. Prince, Assistant Director of the Division of State Lands. Utah has no statewide land use policy, but any land owner is subject to local zoning requirements established by the respective county government. Utah sells lands on a competitive bid basis and reports that they have formed no method which would prevent or discourage land speculation. Utah does not employ restrictive covenants except for the reservation of mineral values. Sales of state land are only possible when the State Land Board determines that the action is in the best interest of the state. Sales are primarily for industrial development according to Prince although residential sales are being considered for the energy impact towns.

North Dakota

Owen L. Anderson of the State Land Department's legal staff replied for North Dakota. As it happens, North Dakota has neither statewide or local land use plans. Anderson could envision cooperation between the trust boards and the local land use regulations, if they are adopted, but reminded that the trust boards had a fiduciany duty above all else. Some use restrictions have been discussed for state lands but none have been implemented. Anderson expressed the opinion that speculation was the mechanism by which land evolved to its highest and best use. While speculation has had some harmful effects on the environment and economy of certain areas, it also serves to better manage the lands in others. For instance, a speculator is closer to the land and has a better feel for the value of a particular parcel. This is especially true when the state land agency doesn't have the luxury of a large number of field men. Anderson believes land use control comes through local comprehensive planning, enforced zoning and building codes, and reform of Federal tax laws that reward speculation. The best investment a state can make in good land use control is through local government.

North Dakota does not utilize restrictive easements and covenants in its land sales. But recently the Land Department has looked at the "scenic" easement favorably. The state has also considered selling only grazing rights to some lands so as to preclude the cultivation of native grasslands. The deeds to these lands would contain a reversionary clause which returned the land to the State if the owner ceased to use the lands for pasture and meadow purposes. This is only being discussed, and the state has no actual experience with the sale of limited rights in land. North Dakota has not considered requirements for timed development. Agricultural lands are sold while pasture and meadow lands are usually leased. Agricultural lands are sold because North Dakota legislature and trust boards feel that farmers are the best stewards of the land. Natural acres best suited for wildlife habitat, waterfowl production, or parks are not sold at public auction but are sold to other state agencies at private sales. Anderson feels that the fact that many state agencies manage their own lands is a deficiency in the system. But he also believes that a more rational centralized management would be politically impossible.

North Dakota, like all the states except Nevada, retains all minerals in the lands that are sold. The state originally owned 3.1 million acres of land and acquired an additional 1.5 million acres through farm foreclosures during the Depression. All but 40,000 acres of the farm lands have been sold and approximatley 750,000 surface acres are still managed by the State Land Department. Also the state controls more than 3 million acres of mineral lands, 800,000 of which are classified as coal lands. Anderson said that in order to utilize all of the techniques described in ADL's questionaire it would require a large highly professional permanent staff. He did not see this occurring in frugal North Dakota.

Oregon

William S. Cox, Director of the Division of State Lands complained that Oregon disposed of their grant lands rapidly and the methods could be characterized as a broad giveaway. Cox argues that by 1976 standards, the grant lands could have been the key to maintaining state policies on hunting, fishery, and other land use needs not recoginized by the Federal government. Cox asks Alaska if we are really clear about the purpose of state land ownership, wonders if disposal is really necessary, and urges consideration of the long term lease as a means for permitting use but maintaining ownership. Oregon no longer sells land and stopped sales back in 1969. During their active sales program they used no restrictive covenants except mineral reservations. Cox points out that the state can make such deed restrictions as it might choose, but they are often impossible to enforce after the first buyer in the chain.

Cox believes speculation can only be curbed when the government owns the land and permits its use through leasing. Long term ground leases will permit development and amortization of lessee's costs. Then at time of

renewal the situation can be reevaluated. Periodic rental adjustments reflect the increase in land value. The restrictions used in leases are considerably more effective than the same terms in a sale deed. Oregon leases grazing lands but most of the more productive properties have already been sold, many before 1910. But even for the 770,000 remaining state acres, Cox has a complete professional staff of timber, range, recreation, and wildlife managers. Cox calls for the utilization of professional expertise to translate the state's needs into specific management criteria. The level of staffing depends on the level of control desired and the intensity of use in Oregon creates different demands than that experienced in Alaska. But Cox stresses that ownership requires management. Oregon's original school grant was 3.5 million acres and the rapid sale of these lands has been chronicled as a sad day in Oregon history. Cox urges study of the Oregon experience in order to really understand the importance of land ownership.

Arizona

John M. Little, Administrator of the Land Use and Planning Section of the State Land Department answered briefly for Arizona. Although not responding to the eight specific questions, Little enclosed a copy of the State Land Department's Land Use Plan. The planning power was delegated to the State Land Commissioner in 1972 by a legislature that wanted the Land Department to "Make long range plans for the future use of state lands in cooperation with other agencies and local political subdivisions". Rather than halt business and create a PLAN for activities that had been going on for 75 years, the Land Department designed an Operating Program for Environment and Resource Advantages. The Land Department used program rather than plan so that people would realize that the scheme was already in action.

Little blames the failure of most State Land Use Plans on the fact that no one realizes that the point of beginning is not the plan but the need to state the objectives (or policy). Planners have a penchant for trying to overlay the natural tensions of society with a universal "plan". But it is difficult to formulate a system that would cover any and all needs for food, fiber, minerals, aesthetics, recreation, etc. Another planning shortcoming is the absence of compatible terminology between the different levels of practicing planners. This is true too in Alaska when we compare State and Federal land classification programs. In order to make a plan at all useful, we must be clear about the tangible purpose of our efforts.

Arizona follows this policy in its land use operating program:

> "It is the policy of the State of Arizona to manage its land and resources for perpetual production of food, fiber and timely recovery of minerals, and
>
> (a) establish workable criteria to modify the stated objectives of the policy, and

(b) within the standards of the policy, to allow the people of Arizona the highest degree of freedom to chose their life-style and the industries to accomodate these life-sytles."

In addition, Arizona considers all public property as a trust resource. Leases and sales are at fair market value. Water use law is also carefully proscribed. Arizona maintains as complete a resource inventory as they can afford. Land use decisions are designed by professional resource managers. Public input is sought and decisions reflect both local and statewide interests. Appeals are accommodated in the process as well. Once a program is adopted, the Land Department is responsible for implementation and enforcement. The management criteria established by the Commissioner for the professional managers is instructive.

Values: Every acceptable and available tool and theory is used to arrive at monetary market values and weigh these against values that may be lost by the activity proposed.

Leases: Grazing - the ability to use. Agriculture - availability of water.

Sales: Sell only when sale can be justified on some basis other than that there is a buyer.

Trades: Improve land ownership patterns for trust management and as a preference over sales.

Selections: The highest forseeable value and management patterns.

Water: Beneficial use on a priority basis as provided by law.

Arizona believes that its policy is based in law and its process is designed to achieve the challenges of real life, land management, and administration. The emphasis on clear statements of policy and the attitude that day-to-day operations cannot be suspended while a plan is being formulated could serve as good examples for Alaska.

TITLE I—SHORT TITLE, DECLARATION OF POLICY, AND DEFINITIONS

SHORT TITLE

43 USC 1701 note.

SEC. 101. This Act may be cited as the "Federal Land Policy and Management Act of 1976".

DECLARATION OF POLICY

43 USC 1701.

SEC. 102. (a) The Congress declares that it is the policy of the United States that—

(1) the public lands be retained in Federal ownership, unless as a result of the land use planning procedure provided for in this Act, it is determined that disposal of a particular parcel will serve the national interest;

(2) the national interest will be best realized if the public lands and their resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process coordinated with other Federal and State planning efforts;

(3) public lands not previously designated for any specific use and all existing classifications of public lands that were effected by executive action or statute before the date of enactment of this Act be reviewed in accordance with the provisions of this Act;

(4) the Congress exercise its constitutional authority to withdraw or otherwise designate or dedicate Federal lands for specified purposes and that Congress delineate the extent to which the Executive may withdraw lands without legislative action;

(5) in administering public land statutes and exercising discretionary authority granted by them, the Secretary be required to establish comprehensive rules and regulations after considering the views of the general public; and to structure adjudication procedures to assure adequate third party participation, objective administrative review of initial decisions, and expeditious decisionmaking;

(6) judicial review of public land adjudication decisions be provided by law;

(7) goals and objectives be established by law as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield unless otherwise specified by law;

(8) the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use;

(9) the United States receive fair market value of the use of the public lands and their resources unless otherwise provided for by statute;

(10) uniform procedures for any disposal of public land, acquisition of non-Federal land for public purposes, and the exchange of such lands be established by statute, requiring each disposal, acquisition, and exchange to be consistent with the prescribed mission of the department or agency involved, and reserving to the Congress review of disposals in excess of a specified acreage;

(11) regulations and plans for the protection of public land areas of critical environmental concern be promptly developed;

(12) the public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands including implementation of the Mining and Minerals Policy Act of 1970 (84 Stat. 1876, 30 U.S.C. 21a) as it pertains to the public lands; and

(13) the Federal Government should, on a basis equitable to both the Federal and local taxpayer, provide for payments to compensate States and local governments for burdens created as a result of the immunity of Federal lands from State and local taxation.

(b) The policies of this Act shall become effective only as specific statutory authority for their implementation is enacted by this Act or by subsequent legislation and shall then be construed as supplemental to and not in derogation of the purposes for which public lands are administered under other provisions of law.

(continues)

M A K I N G S T A T E L A N D
A V A I L A B L E F O R
P R I V A T E U S E:
M E T H O D S

private use

CONTENTS

Making State Land Available For Private Use

Introduction

Alaskans want land for recreation headquarter sites. Some people fly to their sites, others prefer to use boats to travel rivers and lakes or bays and oceans for access. Other people prefer to ride the railroad or drive their car in order to reach a recreation cabin or campsite. Hiking, skiing, snowmachine, and ATV can also be used for access to recreation sites. The Alaska lifestyle makes demand for sites of this nature high.

Agricultural use of State lands is often the basis of demand for land. Potential agricultural uses range from 5,000-acre commercial grain farms to 10-acre subsistence farming efforts. Interest in grazing livestock on State lands exists as well. The variety of demands for agricultural lands requires a range of programs to satisfy the range of potential uses.

People want State lands for residential homesites. A portion of this demand is focused around urban centers while some of it is more rural in character. There are also those hardy souls looking for an isolated homesite. State lands are available to satisfy the latter demands while those who require their homesites close-in will have to look to other land owners. The same rule applies to business locations, although some commercial opportunities may be realized on State trust lands.

The papers in this section deal with disposal methodology. The first paper is a fact sheet on the homesite program. The second describes some changes in the Open To Entry program that were suggested by folks who entered land under its authority in the Talkeetna area. The third paper in this section looks at some varieties of demand for land in Alaska and illustrates, for discussion purposes, appropriate responses available to the land owner. The final paper is a listing of the pro's and con's of certain disposal methods that were analyzed by the Department of Natural Resources.

FACT SHEET ON HOMESITES

The homesite entry bill was approved by the last session of the State Legislature. The Division has received numerous inquiries about homesites. The following list of facts should help answer most of the questions raised:

1. There are no homesites available now. It's anticipated there will be by next spring.

2. The homesite entry lands still need to be classified and surveyed.

3. Regulations needed to implement the law also have to be developed. They are being written now and should be ready for public hearing around the end of August or the first of September.

4. The regulations will then go to public hearing. They will be held statewide. Times and places will be announced when the regulations are ready. The hearing process should take about 90 days.

5. The law specifies that land be made available in each of the four judicial districts on a rotating basis. The rotation will start in the Fourth Judicial District (Fairbanks), then to the Third (Anchorage) and then to the First (Southeast). The Second Judicial District (Arctic Slope) does not have any land that meets the criteria of the new law.

6. When homesite land becomes available it will be advertised for three consecutive weeks in newspapers and on radio and television.

7. An applicant must be 18 years old and a resident of Alaska for six years to qualify.

8. If there are more applications than land available, preference will be based on length of residency.

9. Before the homesite will be conveyed the applicant must build a habitable, permanent, single-family dwelling and occupy the land for a cumulative total of 21 months within a three-year period. Twenty-year residents only have to live on the land for five months.

10. The fee for filing an application will not exceed $10. The only other cost is for reimbursing the State for survey and platting work.

OPEN-TO-ENTRY, THE TALKEETNA EXPERIENCE

Excerpt from
Land: Bridge to Community in the OTE Area North of Talkeetna
by Dr. Robert A. Durr, August 1974

The dilemma the Entry lands people face is this: they recognize the right and des[illegible]y of the public's having access to the land just as they had, a[illegible] do not want to exclude anyone who wishes to share in the real va[illegible]f living on the land as they have (speculators and developers excepte[illegible]At the same time, they are clearly aware that, if the present O[illegible] Entry laws are maintained, allowing the occupancy of adjacent 5 [illegible]racts blanketing the land, the very values that brought the people to t[illegible] land and are bringing others would be destroyed.

In wrestling with this dilemma, the people have shaped the following recommendation for changes in the Open to Entry land laws. (insofar as the Open to Entry lands are microcosmic of the land situation in Alaska generally, these recommendations might apply to the overall question of land use.)

A) Perhaps the simplest solution deemed desirable by all the entrymen would be to close the present Open to Entry lands to further occupancy and open new areas to entry. As Don Sheldon put it, "If this particular area is saturated, (and) it looks to me that it is, and they intend to hold the line on the Open to Entry sites, I say close the local areas that are saturated and open some of the areas that are not saturated." He suggested, as possibilities the Kuskokwim, Colville, Yukon, Koyukuk areas, the Brooks Range, and the north side of the Alaska Range. Jim Barbeau agrees with the principle of widely dispersed Open to Entry areas: "These places shouldn't all be in one area----a large congregation in one area which would deplete the resources. They probably should be spread out all over the State."

Several people advised that a closure at this time, before things had gone too far altogether, would permit everyone, including the State, to assess over the next year, or five or ten years, what the Open to Entry Program has achieved and whatever and how its intitial policies should be changed or modified.

Mike Fisher of Talkeetna has been an interested and knowledgeable observer of the Program and its entrymen and believes it has been successful in the humanistic terms of this study:

> In general, I can say that I'm pretty pleased with what I've seen in the Open to Entry area of the survey. I've seen a lot of good old-fashioned nice neighborly things happeing out there. And I've met a lot of nice people who are helping themselves and their

neighbors, and they're living pretty well along the lines of what we'd call the good old days.....We do have a sense of community and a spirit out ther_, and we do h' hat I think has the potential for very nice things happening ıi that some of the kids that are raised out there will be ontributors to the society and the development of Alaska to come.

He therefore concludes that:

> If we have a human resource and a l. ouce in Talkeetna and around Talkeetna, and the results of this study indicate that people are bettering themselves, or attempting to better themselves, and the society is being served, and enlightened, and enhanced, then I say let's not run this thing into the ground; let's just say that with the present population density in this area of 20 persons per each 640 square acres, let's just see what develops out there.

Gene Roguszka concurs with the general principle and suggests that "when the filings reach the one third stage of land within a section, a moratorium be placed on further filings. The moratorim should last for a period of 36 months, the idea being this: give the opportunity for things in that particular area to stabilize." He adds that a provision would be necessary to prevent the unstaked areas from being used in the interim so that they would still be desirable if and when the Program were reopened in those areas.

B) The second most prevalent type of proposal was along the lines of an increase of acreage to each entryman. The specific numbers suggested ranged from 10 acres per person (a man and wife could than claim 20 acres between them) to 40 acres per family unit. (Surprisingly, perhaps, no one seriously urged the adoption of the homestead-scale of 160 acres, because they did not feel that much land to be necessary to subsistence and the best interests of the ecology and because they are aware of the abuses and specualtion that have plagued the Homestead Act.) The greater acreage allotment would be retroactive in that entrymen who have already filed on 5 acres could expand their present site to the maximum acreage allowed. In cases where 5 acre plots have been leased or bought adjacent to one another, as is frequently the case around lakes, the entrymen would have perforce to expand to the rear of his original 5 acres in "railroad car" fashion. This would at least be preferable to being restricted within the original allotment. It would have to be specified that the additional acreage be contiguous with the present site, in order to help obviate the temptation to speculate.

Most of the entrymen actually living on the land would agree with Joe Wilson's statement:

> I think where we need different land laws for different kinds of people is different laws for recreation-type people than you have

> for, you might say, homestead or live-on type people.....Five acres are fine for recreation..... to go out to a park for a weekend or so.....some people want to go out for, say a few years.....We've had all kinds of programs for national parks, national forests, and so forth, that are aimed at city people going out there for a short time. But I think that--- even though the people who want to live out in the bush aren't a great number of people and don't have a lot of voting power (as compared with the multitudes in the cities), I think there should be some provisions for people who want to go out into the bush and <u>live</u> there.

Jim and Gloria Barbeau of Talkeetna felt strongly that if a man or family can "prove up" by making a go of it on the land, the State should survey and give them the land. There is in fact widespread disgruntlement over the State "being in the real estate business": in effect managing the people's inheritance in order to sell it to them, as old-time bushman "Whitey" Rudder put it. It is argued that the revenue the State gets from the taxation of the land consequent to a person's receiving title is all that should be required.

C) Two other closely related proposals were:

1. To withdraw "green-belt" areas from occupancy around those localities which, because of desirability, have become densely populated, such as around most lakes and streams. This proposal would leave the "green-belt" acreage in the State's hands and open to the public for hiking, camping, and so forth, but it would permit the entrymen within its enclosure to utilize the resource, such as timber and firewood. The optimum extent of the "green-belt" that would afford a sustained yield of wood, berries, wildlife, and so forth, as well as guarantee an expanse of unoccupied land adequate to the psychological and spiritual needs of the people, can probably be best determined in consultation with forestry experts. But the people's initial estimate is that the "green-belt" would have to be no less than 60 acres deep on the score of the latter consideration alone.

2. A proposal to "checkerboard" the 5 acre plots was made by a couple from Anchorage who use their 5 acre site for recreational purposes. The idea is to prevent the possibility of the 5 acre sites being located immediately adjacent to one another, and thereby insuring a greater degree of privacy, quiet, and unspoiled landscape. This plan is obviously most feasible for the recreational use of the land and would be inadequate to the needs of the year-round homesteader. A combination of a "checkerboard" and "green-belt" patterning of certain areas might be better than either alone.

D) A large portion of the people living on the land expressed concern, anger, and resentment at the prevalence of speculation. With land for human use so much at a premium, they vigorously object to those who would "tie it up" just to make money from it. As one individual put it:

> Open Entry I think is being abused as much as the Homestead Act was. You know, people were supposed to homestead and farm and build communities. In Alaska they homesteaded, tore down the trees, and then they left, because that's how you get your land. So that program was badly abused. So now they come up with Open Entry, and it's supposed to be another deal where everybody gets land they want to use-----you know, it's actually written in there that you have to want to use the land yourself-----but it's being abused the same way. Everybody goes out and stakes, but they're not using it. They want it so they can sell it.

In everyone's opinion, it should not be possible for anyone to spend a few hours on the land, pay fees, and eventually obtain title. Mike Fisher sums it up:

> I'd like to see some aspect of the law that tended to preclude speculation with Open to Entry lands.....The law should have some provision in it that favors an individual who will go out and sustain himself on the land. And by sustain himself.....I mean actually go out there and live on the land, and learn some things and make some observations.....I think that a requirement to obtaining eventual title to this land should be at least a token amount of living on it. I don't believe it should be possible to just go out and set foot on the land once.....and wind up with that land. It's that sort of thing that encourages useless and blind and deleterious speculation.....

The people are not adamant about these recommendations as constituting the only solutions to their dilemma. They mainly wish to make their problem clear to those who represent them and are empowered to take whatever action would effect a solution in the best interests of the land and the people, preserving those essential life-values that the humanistic use of the land cultivates.

FSLUPC Staff Paper
November, 1977

Disposal Methods

This paper defines various typical forms of demand for private acquisition of State land; outlines the different expectations and requirements of both the user and the State in each case; and suggests disposal methods which meet private and public interests as far as possible.

We have assumed several common public objectives that apply to any form of land disposal. These are:

1. To enable the various types of users to acquire land in locations and forms they need and, conversely, to prevent the land offering from being usurped by speculative interests.

2. To accommodate the interests of both the user and the public as far as possible.

3. To assure that land is used in accordance with State and local land use plans.

4. To minimize administrative costs.

We are asking Advisory Committee and workshop members to analyze and criticize this draft so Commissioners can have the benefit of your thinking at the next meeting. In writing this piece, the author has assumed the role of both the private interest and the State somewhat facetiously, but with the hope that doing so will spark your interest, critique, and comment.

Case 1

The individual who wants a site for a permanent residence within daily commuting distance of a community. Generally, this individual needs to be able to drive daily to the central community where he earns his living, shops, and educates his children. He probably needs financing for his house, so the method of conveyance should not pose a barrier to lending. Though he expects to build soon, life is uncertain; he may run into financial or other difficulties, so he doesn't want to be obligated to build by a set time. Public sewer and water are desirable, but if unavailable, the lot size should be large enough for on-site water and sewer. In most areas, two acres is adequate for this purpose. He is willing and able to pay a reasonable price at residential property rates, but he can be outbid by buyers who may want the land for commercial, industrial, or speculative purposes.

State interests. The State has very little land of this type to offer. Where it does own land of this type, the State's primary objective is that the land be well developed in residential use.

The State realizes that gaps in the growth pattern, caused by failure to dispose of public lands or by speculative landholdings, can add to the costs of public utilities and services and increase commuting distances. Sometimes the public values of close-in public recreation space outweigh these costs, but our case deals with close-in lands that are better suited for private residential than for public recreational use.

Disposal methods. Since the land in question is within the immediate range of community growth, the local municipality will be the recipient of both the public costs and public revenues of development. By State law, the municipality has local planning authority for the total community. For these reasons, it is decided that disposal is most appropriately handled by the municipality.

To protect the basic State interest that the lands be well used, the State decides to require local zoning and subdivision regulations as a condition of conveyance of State lands to the municipality. The State believes that the municipality will have far more success establishing land use controls before rather than after lands are conveyed to private parties, and should be encouraged to do so.

Where the State does own land of this type outside the jurisdiction of a municipality, prospective disposal areas are carefully evaluated to determine whether the location is part of a desirable pattern of community growth and whether public services can be extended to the area with reasonable efficiency. In making this determination, the State works closely with nearby communities and with the Department of Community and Regional Planning. When, as a result of these considerations, the State decides to dispose of the land, the method chosen is sale by public auction followed by over-the-counter offerings of remaining tracts. The details of the sale are tailored to favor the individual home builder. Before sale lots are (1) subdivided into a size that is adequate but not excessive for on-site water and sewer; (2) provided with developed access and power (though arrangements with the company serving the area); and (3) zoned for single family or duplex residential purposes. The size of the lot, together with the residential zoning, discourages speculative purchasers and help keep bid prices within reach of the home builder.

Case 2

The commercial or industrial developer who needs a site for an immediate construction project. This case is exemplified by the Collier Chemical Company in Kenai or the Teamsters' Buildings in Anchorage, both of which are built on State leaseholds. Generally, the commercial or industrial company has a particular site in mind and very exacting locational requirements, such as accessibility to deep water or a central location in a community. Because cash flow is a primary consideration, the company would like to minimize its initial investment and is strongly interested in gaining tax benefits through its method of tenure.

State interests. The State has only a few sites that meet the exacting requirements of a commercial or industrial developer. Since the State sees development as being beneficial to the economy and to the welfare of the citizens of Alaska, it is important to State interests that the few prime sites available be well used, and not be conveyed to a party who might hold the lands for speculative profit.

The land is highly valuable, and the developer is well able to pay a fair price for the land. The State also has an obligation not to undercut private owners of competitive sites. For these reasons, the State sees a public interest in asking market value for the use of the land.

The State is also interested in environmental quality and wants sufficient control over the design of a project to establish environmental protection measures. The high public interest and considerable potential public revenue associated with these key sites, justifies the expenditure that may be necessary for adequate administration.

Disposal methods. As in the previous case, commercial and industrial development is generally located in a community expansion area. It is appropriate that the responsibility and revenue for disposal of such lands belong to the municipality, since the municipality will have to bear much of the cost of providing public services for the development as well as for the population growth that the added employment will generate. Thus, the State classifies most of this land for selection by the municipality. The State interest in the quality of use of these key parcels is protected by requiring adequate municipal planning, zoning, and subdivision regulation as a condition to conveyance.

In the few cases where the State retains this type of land, and handles disposal directly, the disposal method chosen is a lease under a development plan contract. This approach has been used successfully in similar situations in the past, for example, Collier Chemical Company. Under a development plan contract, bidders submit development plans and schedules which become part of the terms of the lease for successful bidders.

The lease has a major advantage for the developer by minimizing capital investment in land. Since lease payments are a deductable business expense and since improvements on leased land can be depreciated over the term of the lease, the company gets a tax break. Leasing enables the State to establish desired land use controls and to receive fair value for the use of the property. In approving the development plan and schedule, and other terms of the lease, the State has an opportunity to negotiate with the company to secure environmental protection measures which may be necessary.

The company's obligation to meet annual lease payments together with the development schedule included in the terms of the lease help ensure that the State's prime land will be used productively.

Case 3

The individual who wants a recreation cabin site on waterfront land within a half day's travel from a major community. This person wants to build a summer cabin in a good recreation location, somewhere within a half day's drive or flight from the community where he lives. He wants his site to have some special recreational amenity, preferably water frontage, but a good view or a streamside site are also attractive. He needs to be able to reach his site easily, at least in the summer. If road building is necessary, he would prefer to share the costs of a public road construction project, rather than go through the hassle of lining up his neighbors and arranging for the construction himself. At any rate, the latter approach would not be feasible for more than a mile or so.

Generally, his cabin involves a significant cash investment. Since he works during the week, he has little time for a do-it-yourself project. Perhaps he will handle part of the construction himself, but he will purchase his building materials. He is definitely looking for a marketable title and, therefore, for a surveyed lot.

He is worried about vandalism and would prefer a few neighbors, but wants them far enough away from his cabin so he cannot see them. A site of two to three acres is adequate to his needs, assuming the surrounding area is laid out to include public open space available for general recreational purposes.

State interests. Most of the State lands of this type have been selected for the mental health trust, and must be managed to maximize revenues for this purpose. However, the State does have a limited supply of general grant lands of this type.

The State wants to plan these prime recreation locations carefully, especially the waterfront areas, to preserve public access to fishing lakes and key recreation sites. But, through detailed small area planning, the State identifies some areas that could be used by private parties. In fact, some argue that the mixture of public and private recreation lands enhances both forms of land use.

These lands have significant real estate value for the general public, and planning, surveying, and access development is costly. Furthermore, the prospective buyers are not hardship cases. Therefore, the State decides that it is in the public interest to charge fair market value.

Because these are scarce and desirable tracts, the State fears they may be acquired by speculators rather than users. The State has a constitutional mandate to choose a mode of conveyance that will favor the users as far as possible.

The State also wants to discourage the conversion of recreation cabins to year-round dwellings, since it does not want the public

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to have to shoulder the costs of elementary schools serving small isolated populations.

Disposal method. The State obtains topographic maps and other basic information about the land and prepares a detailed land use plan. In developing the plan, sites for lots are selected so that each will have some special recreation amenity, be it a good view or accessibility to a lake or stream. Areas for public recreation use are interwoven with areas for private acquisition, and particular care is taken to reserve campsites at lake outlets and intakes and public easements along the waterfront. Where the property is near the main road system, a summer road providing access to both public and private property is planned and developed. The lots are surveyed, roads are constructed, and arrangements are made with the Department of Highways for summer, but not winter, road maintenance.

There is a debate within the State administration about how to dispose of the land. It is generally agreed that the State should charge fair market value, that the offering should be limited to one lot per family unit and that the State should zone the property for recreational cabin use before the lots are offered to the public. Some think that a lease is the most effective method of putting the land into the hands of the users, but others point out that lease offerings are often left untaken at public auctions. Genuine users are few and far between and crop up gradually over time, rather than in a bunch at an auction.

It is finally decided that the most effective and flexible method of meeting both public and private objectives is to offer long-term leasehold interests, first at an auction and then to make remaining parcels available through an over-the-counter lease offering. Over time, the State expects that it will find enough parties who really want an attractive cabin site to pay off the costs of subdivision and access road development and, eventually, to compensate the State for the value of the use of the property. An additional reason for this approach is that the lease gives the State some future option of converting key recreation areas to public use as needed in the unforeseeable future.

Case 4

The farmer or agri-business wanting agricultural land for commercial agricultural purposes. This individual ranges from the small farmer who wants to make his living by farming to agri-businesses that may use a small quantity of land in combination with substantial capital improvements, to the barley farmer who must cultivate several thousand acres for an economically successful venture. Their common denominator is that they want to use land to produce food products and to do so at a profit. Essentially, they are businessmen for whom land is one of the factors of production.

Some of these farmers, though they are sincere in their wish to farm at present, see one of the long-term benefits of farming as being able to

subdivide and sell their property and reap the benefits of land value increases.

Their land requirements in terms of acreage vary widely, depending on the nature of their venture. A successful potato farm may use 40 acres, whereas a barley farm may require 2,000. Locational requirements also vary, since some regions are better for some types of agriculture than others. Access to the regional transportation system is vital for all.

All seek to minimize their investment in land, though some forms of farming with high productivity per acre are better able to tolerate high land prices and taxes than others. Barley farming, for example, probably could not survive under the high land prices in the Matanuska-Susitna Valley.

State interests. The State has made a policy decision to use part of its land base to encourage viable agriculture. There is a widespread belief that agriculture is a valuable, though minor sector of the economy, and a feeling generally that the citizens of Alaska would be poorer without local farming.

With this identified public interest in preserving and developing agriculture, the State is willing to dispose of agricultural land at below market values if this is necessary to encourage successful farming. But the State is very concerned that, in doing so, they put the land into the hands of true farmers. The State has had some bad experience with people who have used the "foot-in-the-door" technique to acquire rights to land under one set of conditions and then exerted pressure to change the conditions. In particular, previous State agricultural leasing programs have been abused in this manner.

Disposal methods. The State decides that it has a responsibility to the public to make sure that people who receive prime agricultural land have the necessary qualifications for successful farming. To this end, the State developes criteria and standards for screening applicants for agricultural land, including prior training and/or experience, and possession of necessary working capital. Applicants for agricultural land are selected on the basis of their qualifications as farmers, rather than by lottery or competitive bid. A blue ribbon commission of agricultural experts from the University, experienced farmers, and Soil Conservation Service personnel is established to make the selection.

To elicit applications, the State announces that it will sell agricultural development rights only at appraised market value to qualified applicants. Sale of limited rights means that market value and, hence, sale price is very low compared to value for full development rights.

Applicants must qualify by the standards of the screening commission and submit an acceptable farm development plan and schedule. Tract sizes are then tailored to fit the requirements of individual

applicants. The sale contract incorporates the farm development plan and schedule as part of the terms of the sale. The contract also specifies that the land reverts to the State should it be used for other than agricultural purposes.

Case 5

The individual who wants agricultural land primarily for residential or recreational purposes, rather than for commercial agriculture. This form of land demand is not easily represented by any one individual. Instead, there are several different types of people in this group. Some are retired persons who can afford to live away from a center of employment and who would like to have acreage to cultivate, more as an avocation than as a source of subsistence or income. Others are families whose wage earner works seasonally or intermittently at a remote site. He may be a construction worker, a military employee stationed at a remote site, or he may work on an oil rig. Since his commuting from home to job is infrequent, he is less troubled by a long commute than the person who commutes daily. Others are people whose version of recreation is more agricultural than water-related. They would like their weekend or summer home to be a place where they can keep horses, grow vegetables or mow a meadow. Still, others are people who want a "subsistence farm". They want to obtain part of what they eat through their own efforts, and have the cash to be able to afford to do so.

Most of these people find that 5 to 10 acres are actually enough for their purposes, though many of them think in terms of larger acreages, more for the satisfaction of ownership than for actual use. Most do not need to be within daily committing distance of employment centers but they do need access, often in both the winter and summer. Here again, if road construction is necessary for access, these people would find it less costly and more convenient to participate in the cost of a public project, than to try to gain an agreement of property owners along the right-of-way to develop their own road.

Most want agricultural land, but large units of level agricultural land are not essential. In fact, for some, a rolling or hillside location makes their site more attractive.

Members of this group are likely to have somewhat erratic sources of income. Their lives are generally less stable and predictable than regular commuters, and many would run into trouble if they were required to put up a structure by a given date as a condition of ownership.

Title to land is important to this group. They identify with the homesteading ethic, and ownership is a major part of their satisfaction with their property.

State interests. The State identifies several serious problems in accommodating the wishes of this type of individual. First, since many of these people will be building year-round residences in remote areas, the State is concerned that the public will be saddled with the extreme cost of providing schools wherever more than eight

children are located. If recipients of State lands subdivide their property, then the public costs of schools and other services to the remote area will be greater.

Secondly, there is a legislative policy that agricultural lands be devoted to agricultural purposes. Though many of these people seek agricultural land, it is dubious that their purpose is agricultural in the sense of developing that sector of the State's economy.

On the other hand, the State sees the land needs of these part-time or subsistence farmers as being a legitimate prospective use of State lands, and decides to accommodate their interests wherever it can be done without undue harm to the public interest.

Disposal methods. The State decides to dispose of some lands for this purpose along or near existing roads in areas that are already served by a rural school bus system. Outside of existing school bus routes, the State decides to limit disposal for this purpose to summer recreational use. They feel that it is possible to enforce the summer recreational restriction by locating in areas that are served by summer roads only and developing an agreement with the local government and the Department of Highways to maintain this policy. Zoning before disposal by either the State or the local municipality will reenforce the distinction between areas for summer recreational use and year-round residential use. It is doubtful, however, that zoning will be very effective in this regard unless it is coordinated with the highway maintenance program.

A further criterion in selecting lands for this form of disposal is to avoid large blocks of prime agricultural land, but, instead, to chose lands with lesser or scattered agricultural values. This approach will reserve the State's prime agricultural lands for commercial agriculture.

Once the location is identified, topographic maps are prepared and lots are carefully planned and subdivided to provide access, some agricultural acreage and, if possible, a view from each property.

In selecting the method of conveyance, the State considers home-siting, but decides against this method because it is felt that the prospective purchasers need more flexibility in the timing of their development than is allowable under the Homesite Law. Retirees, for example, may want to acquire their land sometime before they actually retire and build and live on it. Further, the lottery system in the Homesite Law makes it impossible for an individual who has a strong preference for a particular site to assert his preference by out-bidding others.

Instead, the State decides to sell lots of five acres at auction and to offer remaining unsold property-over-the-counter. Speculative acquisition for subdivision purposes will be discouraged by establishing residential zoning before the sale and by including a

covenant in the sales contract prohibiting subdivision and limiting use to accord with the regulations of zoning.

Case 6

The individual who wants an opportunity to live in a remote area. This person's primary objective is the experience of living in isolation in the Alaska wilderness. He is typified by some of the people who filed for land north of Talkeetna under the open-to-entry program, but who expressed dissatisfaction with the program because other people filed next to them. Typically, this person's wilderness experience is not a lifetime project, but a matter of "dropping out" for a year or more. Since he is removing himself from the economic mainstream, the cash resources which he can invest in land and structure are limited.

He respects the integrity of the land and appreciates the historic Eskimo concept that land is for all to use and cannot be divided up into special ownerships. Still, he wants to keep his neighbors at a considerable distance and he needs enough surrounding woodland to supply himself with firewood.

State interests. The State recognizes that, though this individual represents a very small segment of its citizens, he is a legitimate potential user of State lands. Unlike the other types of land users, this individual's needs are not as well met by private lands as by State lands. Private lands are more accessible, costly, and give our individual little guarantee of isolation. Therefore, perhaps the State has a special obligation to accommodate him. Further, the State sees this wilderness buff as a potential user of lands that are so isolated and inaccessible that they will have little use to most citizens. Thus, allowing this individual to use State lands is a way of extending the accessibility and usability of State lands. Cabins and trails in remote areas add to the safety and therefore the accessibility of wilderness areas.

On the other hand, the State does not want to commit land to a few individuals in a way that will be costly to the taxpayer. The State sees little public interest in assuming the considerable expense of surveying remote isolated tracts or of providing schools for small settlements in remote locations. Land appraisal in such areas is costly and uncertain because of the absence of an active market.

Disposal method. The State decides that the best approach to meet the public and private interests in this case would be to retain the land in public ownership and simply give the individual a permit to build and occupy a cabin for a number of years. He would acquire no ownership rights; his permit would not be assignable; and his cabin would be public property to be used by the next permittee. This approach is in keeping with traditional Alaska backcountry views of land and cabin rights.

The cabin location would not be staked or surveyed. Instead, the permit would be tied to a cabin location identified by a dot on an aerial photo. The State would identify a large remote area within which widely separated cabin site locations could be nominated by the prospective permittee. Through regulations, the State would establish certain ground rules for granting a permit, for example:

1. No cabin within a quarter mile of another.

2. Trails, but no roads to the cabin site.

3. Minimal standards for fire safety in cabin construction.

4. Renewable permit granted for a period of 10 years, with a requirement that the State must give the permittee 3 years' notice if it does not intend to renew the permit at the end of its term.

5. Permit is not assignable. If permit is terminated, cabin reverts to State and goes with the land. However, if the State decides to reissue the permit, the prior permittee has the right to nominate his successor and his nominee has a preference right to the permit, assuming he meets all other requirements.

6. Minimal annual permit fee, set in relation to administrative costs, not on the basis of land values.

7. Prospective permittee must attend a day's course at the Division of Lands, covering the concept of public ownership, fire safety, timber cutting to improve rather than harm the forest, etc.

Pros and Cons of Titles and Methods
of Disposal of Surface Interests in State Land
by
Gary Johnson
Alaska Department of Natural Resources, 1976

The first part of the following list will identify general pros and cons of various titles and rights to State land. The second part of this list will identify various pros and cons concerning methods of disposal. Although each of these subjects are very closely related, they are separated here for purposes of analysis. Any method of disposal might conceivably be used for conveying each land title or right listed below. The pros and cons have been determined in view of general public and State interests.

Part I

Titles and Rights

A. Fee Title

PROS	CONS
1. Few if any title questions or future complications	1. Opportunity for control over the use of land is lost (subject to local control such as zoning)
2. Allows highest and best economic use	2. Does not insure immediate use of the land
3. Simplifies land appraisal	3. Excludes public use of the surface
4. Puts land on the local tax roles	4. All surface development rights may be sold at a time and location that does not have optimum development of all rights
5. Gives private managers control over land for economic purposes	
6. Eliminates the responsibility of the State to pay local lien assessments	

7. Reduces the State's management responsibility (fire control)

8. Provides a land base and collateral for economic activity

9. An owner may take better care of the land because his misuse (erosion, dumping and vegetation removal) will subtract from the value when sold

B. Fee Title with real covenants

PROS

1. Controls the use of land without using police powers such as zoning

2.

CONS

1. The burden of proof is placed on the State rather than the land owner in questions of land use when hardship is shown

2. A real covenant will tend to evaporate over the years and no longer be enforceable

3. Very often a court will not enforce a real covenant on equitable grounds

4. Difficulty and cost involved in in administration and enforcement

5. May affect resale financing of the land and its value as collateral

6. Different State administration may interpret covenants differently

C. Defeasible Fee Simple

PROS

1. Strongly controls the use of land without using police powers such as zoning because the title reverts to the State if the condition is breached

CONS

1. Difficulty and cost involved in administration and enforcement

2. Will affect resale, financing and the value of the land as collateral

2. It is possible to clearly prove that breach has occured

3. It will tend to be permanent

4. Equitable conditions will rarely be used to annul conditions creating a defeasible fee

3. Breach of conditions need to be acted on immediately

4. Jurors tend to be reluctant to return adverse judgements to their fellow land owners

5. Conditions which are applicable at the time of conveyance may not be applicable at a future date

D. Title to an interest in land for a specific limited use (easement)

PROS

1. State retains ownership of the land while conveying the use interest

2. Retains other development rights in State ownership

3. Land is taxed only on the development rights transferred

4. Provides for lower priced land sales

5. Additional development rights may still be used

6. The interest may be sold, leased or mortgaged

7. Use of the land is controlled by virtue of trespass rather than zoning or covenant

CONS

1. A use interest title may not be well understood because many uses are not ordinarily conveyed in this way

2. Not as much collateral would associated with the land

3. Some administration and inspection is involved

4. Complicates land appraisal

E. Leasehold

PROS

1. Helps insure use of the land

2. Retains the land in State ownership

3. Provides a continuous State income

CONS

1. Requires substantial administration and management

2. Requires reappraisal every five years

4. Provides for the use of land at lower cost

5. Controls the use of the land through classification or covenant

3. Management costs may outweigh income to State

4. May tend to encourage misuse of the land (erosion, dumping, vegetation removal) because has no right to sell the land

5. Use may conflict with local zoning

6. Title to the land seems to be more desirable to most people

F. Non real property surface interests (leases, permits or resource sales that do not apply to fixed, permanent, or immovable things such as buildings and land)

PROS

1. Allows use of the land for grazing, shore fishery use, timber, material or water

2. Allows use of land or resources without conveying title to the land

3. Other uses cannot be excluded

CONS

1. People cannot be kept off the land if that is necessary to the user

Part II

Methods of Disposal

A. Auction

PROS

1. Fewer administrative procedures

2. Returns highest market revenue for the land

3. Promotes economic efficiency

4. Apportions the land fairly in economic terms

CONS

1. The auction method may bid land beyond its real value

2. Promotes speculative risk

3. State revenue from land is minor compared with other revenue sources

4. Tends to exclude low income people

5. Higher cost of land tends to encourage a more productive use of the land

5. Administrative costs can be fairly high

B. Negotiated

PROS

1. Reduces administrative costs associated with auction
2. Can make land available at a lower price
3. Depending on the objectives of the public administrators, tends to promote economic growth and reduce speculative risk

CONS

1. May place too much discretionary power in the hands of public administrators
2. Can create inconsistency in administrative decisions
3. Lower cost of land tends to increase the likelihood that the land will not be used for its most productive purpose
4. May favor certain classes of people
5. Returns lower revenue for the land

C. Lottery

PROS

1. Provides an opportunity for people of all levels of income or qualifications to obtain land
2. Distributes wealth

CONS

1. Does not promote economic efficiency
2. Places power in the hands of public administrators who may qualify applicants according to certain classes of people

D. Claim (Selected and filed on by individuals)

PROS

1. Reduces State costs of survey
2. Provides an opportunity for people of all levels of income or qualifications to obtain land

CONS

1. Creates ownership boundary problems
2. This is the poorest system in terms of orderly development and proper land management

3. Creates administrative problems

4. Tends to reduce revenue from land

Preference right

PROS	CONS
Protects the interests of an owner while providing opportunity for other buyers and higher land revenue if the preference right holder is limited to meeting high bid	1. Increases administration cost
	2. Increases discretionary power of public administrators
Protects the interests of someone who qualifies under the law if the preference right is negotiated	

Land Exchange

PROS	CONS
Allows the exchange of land that is more appropriate for public ownership for land that is more appropriate for private ownership.	1. Administrative time involved in negotiation
	2. Determination of value
Administrative tool to obtain land that the State couldn't otherwise obtain	3. Complexities involved in a two-way transaction
	4. Agreeing on a piece of ground

Municipal Land Selections

PROS	CONS
Assists local units of government with revenue	1. The land selection program is inequitable among the boroughs
Transfers land for local purposes in some case	2. Opportunity for control over use of land by the State is lost
Incentive to form a borough	3. Has not always been effective in getting borough formed
	4. Legal selection problems

5. Costs the State to maintain land management agreements

6. Many complex legal problems

H. Development Plan Required

PROS

1. Helps insure use of the land

2. Controls use of land while under contract or lease

3. Qualifies people and helps insure use the land according to State objectives

CONS

1. Requires substantial administration and inspection for compliance

2. May be inflexible in terms of changing conditions

3. May conflict with local plans or controls

4. Limits number of people who can qualify and buy

5. Discretionary power to Director may be abused

GJ:dfw

T R U S T L A N D S

CONTENTS

trust lands

Trust Lands

Introduction

Before Statehood, the Federal government granted certain lands to the Territory of Alaska for benefit of the University of Alaska (100,000 acres), the public school system (109,000 acres), and the mental health program (1,000,000 acres). The legislation which granted this acreage established its management in a constructive trust program with certain restrictions. At Statehood, these established trust responsibilities were conveyed to the State of Alaska. Currently, the Alaska Division of Lands (ADL) manages the trust lands for the respective trust boards.

Recently there has been considerable debate over trust land management. One group believes that trust lands should be considered the same for management purposes as any other State lands, and the trust boards should get a fixed percentage of State land revenues. Another course calls for turst land management to be separated from the ADL so the trust boards would be free to contract for land management services with private firms who may be more responsive to their revenue orientation. It is generally agreed that some changes are needed, and this underlines the importance of carefully considering the range of choices available.

The two papers in this section provide excellent background material for the trust land discussion. The first was written by Tom Meacham of the Attorney General's office for the Governor's Ad Hoc Advisory Committee on State Land Practices and Procedures. The second was prepared by land management consultant, Dale Tubbs, who was retained by the Board of Regents to study the University trust land ownership situation. The recommendations made by Tubbs are applicable, for the most part, to all of the trust lands, although his work was performed specifically for the University.

MEMORANDUM State of Alaska

TO: Members, Ad Hoc Land Advisory Panel

DATE: February 8, 1977

FILE NO:

TELEPHONE NO:

FROM: Thomas E. Meacham
Assistant Attorney General
Anchorage - AGO

SUBJECT: Brief Synopsis of School, University and Mental Health Trust Land Statutes

I have been requested by members of the panel to prepare an outline of the legal constraints presently placed upon lands conveyed from the federal government to the former Territory of Alaska, and later the State, for specific support of school, university and mental health programs. This outline will discuss each of the three land grant programs separately, though several of their aspects are similar. An extensive discussion of the legal precedents applicable to administration of these programs will not be attempted, though some significant legal point will be mentioned. Some of the material in this outline was abstracted from Alaska's School, University and Mental Health Lands, by Ronald L. McCowan, a 1975 legal intern with the Division of Lands.

I

UNIVERSITY LANDS

A. Federal Law. University lands were first granted to the Territory of Alaska by the Act of March 4, 1915, 48 U.S.C. Sec. 353, which states at Sec. 353:

> Reservation of lands for educational purposes; proceeds or income set aside; lands excluded. When the public lands of the Territory of Alaska are surveyed, under direction of the Government of the United States, sections numbered 16 and 36 in each township in said Territory shall be reserved for the sale or settlement for the support of common schools in the Territory of Alaska; in section 33 of each township in the Tanana Valley between parallel 64, 65 north latitude, and between the 145th and 152nd degrees west longitude (meridian of Greenwich) shall be reserved from sale or settlement for the support of a Territorial agricultural college and school of mines established by the legislature of Alaska

> upon the tracts granted in Section 354 of this title; provided, however, that if settlement with a view toward homestead entry has been made upon any part of the section reserved by . . . other lands may be designated and reserved thereof in the manner and reserved thereof in the manner and reserved in lieu thereof in the manner provided in sections 851 and 852 of Title 3; provided further, that the Territory may, by general law, provide for leasing said land in area not to exceed one section to any one person, association or corporation for not longer than ten years at any one time; and provided further, that the entire proceeds or income derived from said reserved lands are appropriated and set apart as separate and permanent funds in the Territorial treasury, to be invested and the income from which shall be expended only for exclusive use and benefit of the public schools of Alaska or of the agricultural college and school of mines, respectively, in such a manner as the Legislature of Alaska may by law direct. . . ."

Section 354 of the same act granted Section 6, T 1 South, R. 1 West, Section 31, T. 1 North, R. 1 West, Section 1, T. 1 South, R. 2 West, and Section 36, T. 1 North, R. Two West, Fairbanks Meridian, to the Territory of Alaska, under the express conditions that they ". . . shall be forever reserved and dedicated to use as a site for an agricultural college and school of mines; . . ."

It is clear from the quoted statute that the university lands granted by the federal government to the Territory were to be subject to lease only, and that the "entire proceeds or income derived" were to be appropriated as a permanent fund for the university under the direction of the territorial legislature; and as to the enumerated sections of land transferred by Section 354, they were to be used exclusively as the physical location of the university.

On January 21, 1929, another federal act was adopted which granted additional lands to the Territory of Alaska for university purposes. 48 U.S.C. Sec. 354(a) states:

Agricultural college and school of mines; additional grant of public lands; conditions and limitations. In addition to the provision made by Sections 353 and 354 of this title, for the use and benefit of the agricultural college and school of mines, there is granted to the Territory of Alaska for the exclusive use and benefit of the agricultural college and school of mines, one hundred thousand acres of vacant non-mineral surveyed unreserved public lands in the Territory of Alaska, to be selected, under the direction and subject to the approval of the Secretary of the Interior, by the Territory, and subject to the following conditions and limitations:

(a) the college and school provided for in this section shall forever remain under the exclusive control of the said Territory, and no part of the proceeds arising from the sale or disposal of any lands granted herein shall be used for the support of any denominational or sectarian college or school.

(b) It is declared that all lands granted to said Territory and especially transferred and confirmed to the said Territory and shall be by the said Territory held in trust, to be disposed of, in whole or in part, only in the manner herein provided, and for the objects specified in the granting provisions, and that the natural products and money proceeds of any of said lands shall be subject to the same trusts as the lands producing the same. Disposition of any of said lands or of any money or thing of value directly or indirectly derived therefrom or any object other than that for which such particular lands or the lands from which such money or thing of value shall be derived or granted or in any manner contrary to the provisions of this section shall be deemed a breach of trust.

(c) No mortgage or other encumbrance of said lands shall be valid in favor of any persons for any purpose or any circumstances whatsoever. Said lands shall not be sold or leased, in whole or in part, except to the highest bidder at public auction, notice of which public auction shall first have been duly given by advertisement, which shall set forth the nature, time, and place of the transaction to be had, with full description of the lands to be offered, published once each week for not less than ten successive weeks in a newspaper of general circulation, published regularly at the capital and in a newspaper of like circulation which shall then be regularly published nearest to the location of the land so offered; nor shall any sale or contract for the sale of any timber or natural product of such lands be made, save at the place, in the manner and after the notice is thus provided for sales and leases of the lands themselves; provided however, that nothing herein contained shall prevent said territory from leasing any of said lands referred to in this section for a term of five years or less without such advertisement herein required.

(d) All lands, leasehold, timber and other products of the land before being offered shall be appraised at their true value, and no sale or other disposal thereof shall be made for a consideration of less than a value so ascertained, nor, in the case of the sale of the land, less than a minimum price of $5 per acre . . .

(e) A fund shall be established in the Territorial treasury to carry out the purposes of this section, . . . the Territorial treasurer shall keep all such money invested in sale interest bearing securities . . . the income from said fund may and shall be used exclusively for the purposes of such agricultural and school of mines, providing that no portion of said income shall be applied, directly or indirectly, under any pretense whatever, to the purchase, erection, preservation, or repair or any building or buildings.

> (f) Every sale, lease, conveyance, or contract of or concerning any of the lands granted or confirmed or the use thereof of the natural products thereof, not made in substantial conformity with the provisions of this section, shall be null and void. It shall be the duty of the Attorney General of the United States to prosecute in the name of the United States and in its courts such proceedings at law or in equity as may from time to time be necessary to enforce the provisions thereof relative to the application and disposition of the said lands and the products thereof, and the funds derived therefrom.

This act, unlike the Act of 1915, permitted the sale of university lands received under it, provided that proper notice, appraisal and sale procedures were first used. Like the 1915 act, the 1929 act required the holding of all income derived from university lands or from products of university lands to be placed in trust for the support of the university, with only the income earned by that trust account available for expenditures to support the university.

According to figures compiled in 1975, university lands applied for by the Territory under the 1915 act, (which granted Sections 33 only) totalled 11,000.43 acres with 8,666.8 acres of that total patented to the Territory. Under the 1920 additional university land grant, application had been made for 99,303.3 acres and patent had been received for 99,414.5 acres, the difference in acreage being accounted for by correction of surveys after patent was received.

On July 7, 1958, the Alaska Statehood Act was passed, which stated in Section 6(k):

> Grants previously made to the Territory of Alaska are hereby confirmed and transferred to the State of Alaska upon its admission. Effective upon the admission of the State of Alaska into the Union, Section 1 of the Act of March 4, 1915 [the school and university lands act], as amended, . . . [is] repealed and all lands therein reserved under the provisions of Section 1 as of the date of this Act, shall, upon the admission of said

> state into the Union, shall be granted to such state for the purposes for which they were reserved; but such repeal shall not affect any outstanding lease, permit, license or contract issued under said section 1, as amended, where any rights or powers with respect to such lease, permit, license, or contract, shall not effect the disposition of the proceeds or income derive prior to such repeal from any lands reserved under said section 1, as amended, or derived thereafter, from any disposition of reserved lands or interest therein made prior to such repeal.

This grant to the State of the university lands "for the purposes for which they were reserved" is the grant under which the State of Alaska presently administers the university lands. It is important to note that the "purposes" for which the lands were first reserved were preserved by the Statehood Act, but the explicit conditions under which the Territory was required to manage the lands were not expressly continued into statehood, and were arguably repealed by repeal of the underlying act.

On September 19, 1966 Public Law 89-588, 80 Stat. 811, an act which repealed sections 3 through 7 of the 1929 University Land Grant Act (which include paragraphs (b) through (f) quoted previously). The purpose of this repeal was to give the State and the university more freedom in administering and disposing of lands granted by the 1929 act, without being constrained by the restrictive conditions imposed by the original act, a purpose which was previously achieved by Section 6(k) of the Statehood Act with regard to the 1915 university and school land grant act.

B. State Constitution and Statutes

Article VIII, Section 6 of the Alaska Constitution states:

> State public domain. Lands and interest therein, including submerged and tide lands, possessed or acquired by the state and not used or intended exclusively for governmental purposes, constitute the state public domain. The legislature shall provide for the selection of lands granted to the state by the United States and for the administration of the state public domain.

Article VII, Section 8 of the Alaska Constitution states:

> Leases. The legislature may provide for the leasing of, and the issuance of permits for exploration of, any part of the public domain or interest therein, subject to reasonable concurrent uses . . .

Article VIII, Section 9 of the Alaska Constitution states:

> Sales and Grants. Subject to the provisions of this section, the legislature may provide for the sale or grant of state lands, or interests therein, and establish sale procedures. All sales or grants shall contain such reservations to the State of all resources as shall be required by Congress or the State and shall provide for access to these resources . . .

Article VIII, Section 10 of the Alaska Constitution states:

> Public Notice. No disposal of leases of state lands, or interests therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law.

Thus, subject to any reservations prescribed by Congress, university lands are subject to lease and sale under procedures adopted in conformity with the Constitution.

Article VII, Section 2 of the Alaska Constitution states:

> The University of Alaska is hereby established as the state university and constituted a body corporate. It shall have title to all real and personal property now or hereafter set aside for or conveyed to it. Its property shall be administered and disposed of according to law.

AS 38.05.365(16) defines "state lands" as follows:

> 'State lands' or 'lands' means all lands including shore, tide and submerged lands, or resources belonging to or acquired by the state.

AS 38.05.370(20) defines "university lands" as:

> 'University lands' means all Sections 33 reserved to the university under 38 Stat. 1214, as amended, 48 U.S.C. 353 and all lands granted to or reserved for the benefit of the university.

UNIVERSITY OF ALASKA

AS 38.05.020, concerning the authority and duties of the Commissioner of the Department of Natural Resources, contains the following provision:

> (a) The commissioner shall supervise the administration of the land division.

AS 38.35.035 concerning the powers and duties of the Director of the Division of Lands, contains the following provisions:

> (a) The director shall . . . (2) manage, inspect or control state lands and improvements on them belonging to the state and under the jurisdiction of the division . . .
>
> (4) prescribe application procedures and practices for the sale, lease or other disposition of available lands, resources, property, or interest in them; . . .
>
> (6) Under the conditions and limitations imposed by law and the commissioner, issue deeds, leases or other conveyances disposing of available lands, resources, property or any interests in them;
>
> (7) Have jurisdiction over state lands, except for those lands acquired by the Alaska World War II Veterans' Board and the Agricultural Loan Board . . .

Section 38.05.030, which is an exception to the general statutory provisions regarding the sale or lease of state lands, states as follows:

> (a) The sale, lease or other disposal of university lands shall be made by the commissioner in accordance with the provisions of this chapter. University lands may be exchanged for (1) state lands; (2) privately owned lands; (3) vacant, unappropriated and unreserved public lands; and (4) lands owned by a city, borough or other public entity. However, all lands exchanged for other university lands must have the same fair market value as the other university lands. No sale, lease, or other disposal of university lands may be made without the approval of the Board of Regents of the University of Alaska.