AS 14.40.350, regarding the authority of the University Board of Regents, states:

> Sec. 14.40.350. Board of Regents authorized to lease lands. The Board of Regents may execute leases for mining, agriculture, or other purposes to the lands granted for the benefit of an agricultural college and school of mines for Alaska by the Act of Congress approved March 4, 1915, for such time and at such rent or royalty as may seem just and as provided by law.

AS 14.40.360 states:

> Sec. 14.40.360. Board of Regents authorized to select and to sell or lease lands granted by Act of Congress. The Board of Regents may select the lands granted to Alaska by the Act of Congress approved January 21, 1929, and may sell or lease them and deposit the proceeds in the state treasury in conformity with that Act.

Pursuant to the statutes, regulations have been adopted providing for the sale or lease of state land, with appropriate provisions where university lands may be involved. It is evident that the state statutes have been interpreted to require management of the university lands, together with other state lands, by the Department of Natural Resources and the Division of Lands.

II

School Lands

A. Federal Statutes. The federal statute granting surveyed sections 16 and 36 to the Territory of Alaska (48 U.S.C. Sec. 353) has been previously quote with regard to university lands granted by the same act. That statute, as originally enacted in 1915, provided only for the lease of such lands, and did not specifically allow the Territory to sell school lands. Further, the income derived from the lease of school lands was to be appropriated for the permanent fund, and only the income earned by that fund was to be used for school purposes.

Pursuant to the school grant, by 1975 Alaska had applied for 110,905.2 acres of federal lands, and had received patent to 100,202.3 acres.

In 1958, the Alaska Statehood Act was adopted, and provided in Section 6(k), as previously quoted, that grants previously made to the Territory were to be confirmed and transferred to the State of Alaska upon its admission, to the Union, repealing the Act of March 4, 1915 and granting them to the State "for the purposes for which they were reserved".

B. State Constitution and Statutes. The State constitutional provisions regarding the State public domain and the sale and lease of State lands, quoted previously in the context of university lands, are equally applicable to school lands received by the State.

The state statutes at Title 38, pertaining to the duties of the Commissioner of Natural Resources and the Director of the Division of Lands, quoted in the context of the university lands, apply equally to the administration of school lands. In addition, other state statutes specifically concern school lands. AS 38.05.365(14) states:

> 'School lands' means those rectangular sections 16 and 36 within each township surveyed on or before January 3, 1959, and confirmed and transferred to the State of Alaska upon its admission under Section 6(k), Alaska Statehood Act, 72 Stat. 339, and any other lands designated solely for school revenues.

AS 35.05.030(e), pertaining to exceptions to the general sale and lease policy of the State, states:

> The sale, lease or other disposal of school land under the jurisdiction of the Department shall be made by the commissioner in accordance with the provisions of this chapter. However, disposal of school lands, under this subsection, other than disposal by lease for a term of years, shall be made only for sites for school facilities or for public park and public recreation purposes. School lands may be exchanged for (1) state lands; (2) vacant, unappropriated and unreserved public lands, and (3) lands owned by a city, borough or other public entity. In the case of unequal value, cash may be used to equalize land values. If the Department determines that it is in the best interest of the State to dispose of the school lands located in Sections 16 and 36 in an organized borough or city of any class,

the borough or city is authorized, and has preference for six months after notice, to acquire the land at the appraised value by purchase or exchange of land acceptable to the Department. No sale, lease, exchange or other disposal of school lands may be made without the approval of the State Board of Education. The State Board of Education shall act as a trustee of school lands. The Board may obtain private counsel or other professional assistance when necessary, to carry out its duties as a trustee.

AS 38.05.032 states:

SCHOOL LAND DISPOSITION PROCEDURES. (a) Before the sale, lease or other disposal of school land, the director shall

(1) cause the preparation of a development plan which adequately describes the manner in which the land will be developed or utilized; however, no development plan is required for an exchange of school land to a public entity;

(2) make notice under sec. 345 of this chapter of the proposed development plan, stating that a disposal of the land for such use is under consideration, and that interested persons may make comments and submit alternative proposals for development and use within 30 days of the last publication of notice; and

(3) notify municipalities as provided in sec. 305 of this chapter at the same time notice is published or posted under (2) of this subsection; no further notice to municipalities need be given at the time of disposal.

(b) In the case of school land to be disposed of within municipalities, no disposal may be made until the municipal planning authority has held a public hearing on development plans and applications relating to the land

> to be disposed of. The director shall make development plans and applications available to municipal planning authorities for this purpose. No disposition of land may be made sooner than three weeks after a hearing held under this subsection. No disposition of land may be made unless the development plan is approved by the municipal planning authority.
>
> AS 38.05.070(c) states:
>
> A lease may be issued for a period up to 55 years . . . However, a nonrenewable lease for school lands may be issued for a period not to exceed 99 years.

School lands have been subject to lease for a term longer than the ten-year term originally set by the federal law in 48 U.S.C. Sec. 353, and such lands have also been subject to disposal by sale. It is thus clear that the interpretation given Section 6(a) of the Alaska Statehood Act is that upon confirmation of the grants previously received by the Territory for school and university purposes, the federal statute (48 U.S.C. Section 353-354 was repealed in its entirety, and only the purposes of the original grants, and not the conditions limiting the disposal of the original grants remained to govern State administration of these lands after statehood.

III

MENTAL HEALTH LANDS

A. Federal Law. On July 28, 1956, Public Law 830 (70 Stat. 709, 48 U.S.C. Sec. 46-3), entitled "Authority of the Territory of Alaska in the Field of Mental Health", was enacted. Title 2 of that Act made certain special grants to the Territory of Alaska for support of the mental health program, including certain land grants contained in Section 202 of the Act, in the following language:

> (a) The Territory of Alaska is hereby granted and shall be entitled to select, within ten years from the effective date of this Act, not to exceed one million acres from the public lands of the United States and Alaska which are vacant, unappropriated, and unreserved at the time of their selection . . .

(b) The lands authorized to be selected by the Territory of Alaska by Subsection (a) of this section shall be selected in such manner as the laws of the Territory may provide, and in conformity with such regulations as the Secretary of the Interior may prescribe. The authority to make selections shall never be alienated or bargained away, in whole or in part, by the Territory. . . .

(c) All grants made or confirmed under this section shall include mineral deposits; providing, however, that mineral deposits in lands which on January 1, 1956 were subject to Public Land Order No. 82 of January 22, 1942, shall not be included.

(d) Following the selection of lands by the Territory pursuant to Subsection (b), but prior to the issuance of final patents, the Territory shall be authorized to lease and make conditional sales of selected lands.

(e) All lands granted to the Territory of Alaska under this section, together with the income therefrom and the proceeds from any dispositions thereof, shall be administered by the Territory of Alaska as a public trust and such proceeds and income shall be first applied to meet the necessary expenses of the mental health program of Alaska. Such lands, income and proceeds shall be managed and utilized in such a manner as the legislature of Alaska may provide. Such lands, together with any property acquired in exchange therefor or acquired out of the income or proceeds therefrom may be sold, leased, mortgaged, exchanged, or otherwise disposed of in such a manner as the legislature of Alaska may provide, in order to obtain funds or other property to be invested, expended or used by the Territory of Alaska. The authority of the Legislature of Alaska under this subsection shall be exercised in a manner compatible with the conditions and requirements imposed by other provisions of this act.

The Alaska Statehood Act at Section 6(k), quoted previously, confirmed this grant of lands to the State of Alaska. However, the 1956 Mental Health Act was not repealed by the Statehood Act, since at that time Alaska had approximately eight years remaining within which it was permitted to select lands under the Act. As of 1975, Alaska had selected 1,026,147.9 acres of land under its mental health grant, and had obtained patent to 787,532.8 acres. In addition, it had obtained tentative approval to 187,294.1 acres of mental health selections.

Lands selected and tentatively approved to the State under the Mental Health Act have also been selected by various Native Village corporations under the Alaska Native Claims Settlement Act. The Alaska Native Claims Appeal Board has ruled that those Native selections are not valid, since mental health lands did not "pass to" the State of Alaska pursuant to ANCSA, but were a previous grant prior to Statehood, and thus not subject to selection under ANCSA. It is expected that further Court proceedings may be anticipated to resolve this issue.

B. State Constitution and Statutes. The State constitutional provisions applicable to mental health lands, as part as the State public domain, have been previously quoted in the section discussing university lands. State statutory provisions concerning the authority of the Commissioner of Natural Resources and the Director of the Division of Lands, quoted previously, apply with equal force to the management of mental health lands, with some additions. AS 38.05.365(8) states:

> 'Mental Health Lands' means lands granted under Title II, Section 202, of Public Law 830, 84th Congress, 2nd Session, as heretofore or hereafter amended.

AS 38.05.035, regarding the powers and duties of the Director of the Division of Lands, states in subsection (a)(13) that the Director shall:

> select, administer and dispose of mental health lands for the support of the mental health program, except that no mental health lands may be disposed of without the approval of a board composed of the director of the Division of Mental Health, Chairman of the Mental Health Advisory Council, and the Commissioner of Revenue.

IV

COURT DECISIONS

There have been no Supreme Court decisions in Alaska regarding an interpretation of the trust status of school, university or mental health lands. A 1975 Alaska Supreme Court case had the opportunity to examine the specific deed restrictions imposed on university lands granted for the site of the University. U. of Alaska v. National Aircraft Leasing, Ltd., 536 P.2d 121 (1975). A 1964 opinion of the Attorney General, which has some persuasive effect but which does not have the force of law, determined that trust lands, after they are transferred to the State of Alaska, under the Alaska Statehood Act, were subject to the express proviso that they be used for the purpose for which they were originally reserved. A copy of this Opinion of the Attorney General is attached hereto.

State courts in other states have discussed the trust responsibilities of states regarding lands granted to them under the terms of a particular federal act, and have generally held that the administration of the lands must conform to the grant, and to the acceptance of that grant by the State. Magnolia Petroleum Co. v. Price, 206 P. 1033 (Okla. 1922); State Highway Commission v. State, 297 N.W. 194 (N.D. 1941); Application of Dasburg , 1133 P.2d 569 (N.M. 1941). This subject has also been discussed by the Supreme Court of the United States in Lassen v. Arizona, 385 U.S. 458, 17 L.Ed. 2d 515 (1967).

This brief discussion of applicable case law is not intended to be exhaustive or analytical, but merely to indicate that there is general case-law support for the position that the administration of school, university and mental health trust lands is a trust responsibility, and is governed to a degree by the language and conditions of the original statutory grant of lands. The extent to which such original grant still controls details of the methods and terms under which such lands may be leased or sold, however, is not discussed here, as it is a subject upon which there are no clear guidelines in Alaska at the present time.

TEM:dr

UNIVERSITY OF ALASKA TRUST LAND MANAGEMENT

by Dale Tubbs, Moening Grey and Associates
December, 1977

Recommended Proposal for Improved Management of University Trust Lands

Management of the University Trust Lands has been a role of the Alaska Division of Lands with little input from University of Alaska Board of Regents. The land management policies developed have been those derived for other state lands with little or no specific direction from the Board. The purpose of this proposal is to formulate policies and directives, define the Board's objectives for university land management, relieve itself of housekeeping tasks by delegating certain responsibilities to the University's administrative officers, and provide the Alaska Division of Lands with specific direction for university land management.

Implementation of the improved land management objectives will require some legislative action to maintain the trust and provide uniformity. The major emphasis will be placed on Board policy from which the Division of Lands will operate.

The proposals being considered are with the assumption the Division of Lands will continue to act as the Board's land management agent.

Recommended Board of Regent Procedural Changes

All transactions involving university land do not warrant full Board involvement. It is recommended the Board delegate to the President of the University of Alaska those transactions similarly delegated to the director of lands and

the Board retain for its action all transactions parallel to those of the Commissioner of Natural Resources. An exception to this delegated authority could be the approval of land classification orders.

The purpose of this change is to relieve the Board from having to consider land transactions with little or no adverse impact on the university lands. It will also speed the process for making lands and resources available to the public. A further modification is to have a committee within the Board provide the approvals comparable to those of the Commissioner. If the disposal request fits within the Board's policy and guidelines, little or no further Board involvement should be necessary.

In regard to the agency relationship with the Division of Lands, the Board is recommened to cancel or revise the existing Management Agreement[1/] entered into on October 12, 1960. The agreement was signed by Wm. R. Wood, then President of the University of Alaska, and Phil R. Holdsworth, then Commissioner of Natural Resources. This agreement has become out dated and the Board's new approach to land management needs to be discussed with the Division of Lands.

The implementation of a revised land management policy is suggested on several fronts. These include: legal research to basic questions involving the trust lands and their use; recommended legislative changes to benefit the trust lands; Board of Regent land management policy directives; and directives to the Division of Lands for land management action. Each are elaborated below.

Legal Research

Obtain legal opinion to determine:

1. If university lands are included in the term state lands as used throughout the text of AS 38. with special emphasis on As 38.05. 365(16).[2/]

2. If the University of Alaska is required to deposit the fair market rental value into the trust fund when it uses its own lands for university purposes.

3. If university lands can be staked under the mineral location laws (AS 38.05.185-.280)[3/] without providing a return to the trust fund.

4. If a lease that is being assigned can be reappraised to establish a new rental fee.

5. If gift, endowment and purchased lands are exempt from disposal procedures as established in AS 38. Also, determine the impact of AS 38.05.030(d)[4/] in regard to endowment lands.

6. If land management costs can be recovered from the trust fund and the applicability of making the funds available to the Division of Land by using a reimburseable services agreement.

7. If Chapter 138 1977 SLA[5] that repealed and re-enacted AS 38.05.085 and .105, violates the fair market return required for trust grant lands.

8. The extent to which the Board of Regents may delegate authority to the President of the University and/or staff members and meet the intent of AS 38.05.030(a)[6] Can a parallel be struck similarly to the Commissioner of Natural Resources and the Division of Lands Director.

Legislative Changes

Existing statutes were identified in the land management study having an effect on reducing the income that can be derived from university trust lands. The following revisions are recommended to benefit the income potential:

1. Revise AS 14.40.350 to conform with AS 14.40.360[7] to allow for disposal other than by lease only.

2. Revise AS 38.05.067, .069, and .321[8] to remove preference rights that limit competition when university lands are offered. This will offer the university land to a larger market.

3. Revise AS 38.05.315(a)[9] to exclude university lands from being included in state lands to be made available at less than market value to governmental entities.

4. Revise AS 38.05.315(b-d)[10/] to exclude university land from being made available to non-profit organizations at less than market value.

5. Revise AS 38.05.185[3/] to exclude university land from being available to mineral location by claim staking but make them available by lease for mineral development. Further, provide for land rental and a royalty for minerals removed.

6. Revise AS 38.05.365(16)[2/] definition of state land to exclude university land unless specifically included by name as used throughout AS 38.

New legislation passed in the 1977 session has brought about a major change in determining land rentals and limitations on the adjustment of rents. (AS 38.05.105)[5/] It is recommended the Board appoint a committee of two or three Regents to meet with representatives of the State Board of Education and the Mental Health Board to determine remedial action to the legislation. Advisors to such a meeting should include an investment counselor and an appraiser in addition to the attorney giving the opinion regarding the law.

Board of Regent Land Management Policies

Written Board of Regent land management policies will assist the land manager and the public. An established policy will also provide uniform treatment to like situations.

The following policies are recommended for adoption:

1. Revise the present policy on leasing land to provide for the sale of university land when it is offered for residential purposes. This policy can also apply to large parcels being offered under a residential development plan concept. The development sale concept would only become final if the land is in fact subdivided and provided with streets, sewer, water and other utilities.

   Included in a policy to sell could be lands dedicated to public use when the topography renders the site undevelopable by reasonable standards. Examples of such areas are swamp land included in state game refuges, rock out crop areas in state parks, and lands within watershed areas prohibiting development or marketable use. Sales in these instances would be an alternative to land exchanges. These sales should also have a reverter clause to return the land to the university if the public use is discontinued or abandon.

2. Provide rights-of-way without cost for development roads and utilities that enhance use and occupancy of university land. Such rights-of-way are limited to underground utilities, above ground utilities and roadways directly servicing the tract. In no instance is the easement to exceed 20 feet in width for utilities or 60 feet in width for roads. Variances to this policy must be submitted to the Board for their action.

3. Provide rights-of-way for other utilities and roads by lease or purchase agreement. Any such purchase agreement is to include a reverter clause to reconvey the right-of-way back to the university without cost

unless the adjacent lands have been sold.

4. Companion easements are required from adjacent property owners for those easements following common property boundaries. Easements granted for roads shall be for public use and have physical access to existing public ways or dedicated public access.

5. Gift, endowment and purchased lands are not subject to AS 38.05.030(a).

6. Provide materials disposed of under AS 38.05.110-.120 to governmental agencies at market value. The market value shall be supported by an appraisal.

7. Provide materials disposed of under AS 38.05.110-.120 to the private sector by competitive bidding only. No negotiated disposals are encouraged because of the limited monetary return vs the administrative cost to monitor the take and regroom the site. No free use permits will be authorized.

8. Negotiated timber sales are not encouraged and will not receive favorable consideration unless the sale results in cleaning up the area, salvaging damaged, dead, or logging waste timber.

9. Land appraisals shall take into account the commercial timber and material value included in the tract evaluation.

10. Land exchanges proposed to remove university land from the readily available market place will not receive favorable consideration from the Board.

11. Mineral development is encouraged on university land where minerals may occur. Mining is to be by lease only with compensation to the university based on an acreage rental and royalty return.

12. Agricultural development is encouraged for Class II and Class III soils when the Board determines it is in the best interest of the university.

13. Greater utilization of existing leases is encouraged by allowing subdividing for subleasing or assignment when the best interest of the university are served. Prior approval of the University is required before subdividing and the development must meet platting standards required by local government.

14. Requests to change the land use as allowed in a lease will require Board approval. Any changes, if granted, shall require a relinquishment of the lease and a re-offering by public auction. No preference right inures to the former lessee.

Division of Lands Directives

It is recommended the following directives be considered for instructing the

Division of Lands in the management of university land.

1. Submit all regulations affecting university land and resources proposed for public hearing to Board of Regent members and the President of the University for review and comment. The same applies to the final form of the proposed regulation prior to being submitted to the lieutenant governor for filing.

2. Policy directives affecting the availability or non-availability of university land or resources be reviewed and approved by the university prior to implementation.

3. The division devise a program of making recreation sites available by lease or permit within the Haines forest management area. A first draft proposal to be available for discussion within 120 days of this request.

4. The division provide the university land staff with a list of delinquent lease contracts to allow prospective assignees to acquire the lease and keep it active.

5. Complete the pending university land exchanges by December 31, 1978.

6. Discontinue the policy of offering university lands classified as agriculture for 10¢ per acre per year as authorized by the University

of Alaska letter dated June 25, 1963 and directed in your Division Order #69 dated October 7, 1963.

7. Provide the University Land Management office with appeal notices, hearing dates, and hearing officer decisions relating to University leases. Prior to making a final decision consultation is to be made with President of the University or his designee.

8. Complete the 100,000 acre land grant selections provided by the Act of 1929, P.L. 679. Submit the proposed selections to the President of the University for concurrance prior to finalizing the selection.

9. Provide the University Land Management office with all actions involving university land as spelled out in AS 38.05.305.[11/]

10. Discontinue offering or making available university lands to non-profit organization or governmental entities at less than market value.

11. Identify and propose land to be considered for exchange for the university lands located within the State Parks and Game Refuge Systems.

12. Provide for a 30 day concellation clause in all special land use permits issued under AS 38.05.330. Such permits shall be for

temporary use, and not have a damaging effect on the land.

13. Provide the University with proposed mineral closing orders and justification for taking the action. President approval will be required for such actions.

14. Budget for manpower, services and contractual money in an identifiable manner to earmark funds that will be spent for university land management.

15. Prepare a land disposal package for university land in the City of Valdez for a 1978 or 1979 offering.

16. Begin preparation of a land use plan for university land within the Willow capital site and present a progress report to University staff in October, 1978.

17. Prepare a report outlining the effect of Chapter 138, 1977 Session Laws of Alaska on existing leases with comments and suggested recommendations.

18. Prepare a report outlining management problems encountered by the Division of Lands in the management of University Trust Lands and discuss same with University staff and Board of Regent land committee.

H O M E S I T E S -
A S S O C I A T E D
P U B L I C C O S T S

homesites

CONTENTS

State Homesites - Associated Public Costs

Introduction

In 1977, the Alaska Legislature amended Title 38 of the Alaska Statutes by adding Chapter 8 which directed that 25,000 acres of State land be made available for homesites. The maximum size of the parcels to be granted to voting age Alaskans with at least 6 years residency was set at 5 acres. Title to the land can only be acquired after an applicant occupies the land for at least 21 months, constructs a habitable, permanent, single-family residence, and reimburses the State for survey and platting costs. Applicants for the limited number of parcels available each year in rotating judicial districts of the State will be chosen by lottery.

The bill requires that public services be available, that the area be zoned residential, that soils have sufficient drainage and be suited for on-site sewage disposal, and that choice of homesite lands avoid agricultural and mineralized lands and fish regeneration areas. Availability of services and the existence of land use guidance regulations implies that the homesite disposals should be near settled areas and within the boundaries of existing political subdivisions. Uncertainty concerning the ultimate conveyance of municipal land entitlements has caused many boroughs to resist State land disposals within their boundaries. In addition, the Legislature did not fund the program sufficiently to allow the provision of access. Where road construction is a municipal subdivision requirement, and State road funds are lacking, disposal of State homesites would require a waiver of existing local requirements.

The combination of these factors has directed homesite activity outside existing municipal boundaries. In the 4th judicial district where activity is centered for the first year of the program, the homesite offerings are scheduled in Delta, Tok, Rex, and Circle. In each case, the lands which have been surveyed for implementation of the program lie outside of the organized governmental boundaries. Therefore, the zoning required by the bill is the responsibility of the Alaska Division of Lands, for they are charged with land use regulation in the unorganized borough. Regulations have been drafted and public hearings produced a generally favorable response to these early State zoning efforts. Final publication and adoption of these regulations will be forthcoming.

Cost figures for disposing parcels of land in the unorganized but accessible and partially serviced portions of the State are not complete. Basic service estimates combined with early actual experience in the first four activity areas offer a glimpse of what these costs might be. An analysis of these figures, administrative costs, and required technical services must accompany the implementation of this bill in order to keep in perspective the financial requirements of State land disposal programs.

Administrative cost scenarios have been developed by the Department of Natural Resources. The manpower and publication costs were estimated for the provision of 300 to 3,000 homesites per year. Acreage limitations in the bill suggest that a total of 5,000 to 10,000 parcels could be conveyed. But in the first year only 188 parcels will be offered. So the high range costs in terms of the scope of the program are probably over-ambitious. But it is clear that in order to achieve an orderly homesite disposal program that can be responsible to rural area land requirements, additional staffing will be necessary. Appendix I outlines DNR's estimates of State administrative costs. It also indicates the approximate value of the lands that the State would dispose in such a program.

Technical services must also be considered in a land disposal program of this nature. The Division of Lands survey costs will average about $600 per lot if the sites are grouped in 20-50 parcel clusters, existing section corners are nearby and monumentation requirements are minimal. This is a bare bones estimate that will limit cadastral engineering efforts to a basic gridiron approach with little sensitivity for existing topography and natural features. An additional $200-400 per lot will be required to contract for soil analysis required by DEC in rural areas to insure on-site water and sewer compatibility.

The costs described so far are those required to make land available for development consonant with program requirements. Early entrymen will face immediate access problems. Rights-of-way will be surveyed and ownership retained by the State, but actual road development will be the responsibility of the new residents. State programs exist to aid these efforts. The primary source of funding will probably be the Local Service Roads and Trails Program which is administered by the Department of Transportation. Currently, these funds are available to communities within established transportation network development plans. The time period between application by a recognized entity and actual construction usually runs about three years. Bob Hainline who directs this program for DOT estimates that per mile costs using State equipment are approximately $75,000 and in those areas where local contractors are available the costs run as high as $125,000 per mile. These figures are for local collector road construction with a completed width of 16 feet. The costs of secondary road access from the primary road net to the subdivisions themselves are pegged much higher at $750,000 per mile. Yearly maintenance of local roads and trails is set at $1,500 per year. Secondary road maintenance is correspondingly more expensive.

There are other costs that must be recognized as well. School transportation costs vary from area to area. In Willow, these costs average $1.65 per mile while near Fairbanks these costs can run as high as $2.18 per mile. Average family size in Alaska exceeds 3 persons so the settlement of 188 parcels could mean an increase in the number of students traveling to school. The peripheral location of these homesite developments will probably require bussing of students. Other services that

are supported by State funding and revenue sharing are police enforcement, fire protection, and parks and recreation expenditures. The exact effect of the homesite disposals on these State programs will not be evident until experience demonstrates whether the availability of land encourages in-migration or a redistribution of local populations.

For purposes of study, an examination of the costs associated with the disposal of 68 tracts in the Tok area was undertaken. These estimates are approximate but should serve to provide a yardstick of those costs that can be expected as the program developes.

Technical services, which are eventually reimbursed by the entryman, ran around $600 per parcel in Tok. Survey costs were low because of existing work that had already been done in the area. Soil analysis costs were kept low too because DEC allowed ADL to utilize core samples and drill logs available from nearby private development. These opportunities and resulting economies will not always be present.

The Tok homesite parcels are bounded on three sides by existing roads. But, in order to develop the interior parcels in the tract, approximately 2.75 miles of collecter roads will be required. At a minimum cost of $75,000 per mile these roads would cost roughly $206,250. With local contractor's equipment being used rather than the State's, these costs will run closer to $343,750. We must remember that these are minimum roadways at best and further widening and surfacing would cost considerably more. So, in order to build the least expensive road at the low cost scenario, an expenditure of around $3,000 per parcel can be expected.

The Alaska Gateway REAA claims that sufficient space is available for the 68 assumed additional students. The cost to transport these students to the school at current rates runs about $15 a day because the Tok homesites are only a little under 3 miles from existing facilities. For a 180-day school year, school transportation costs would increase about $2,750.

State revenue sharing for fire protection is based on population. If we assume an average family size of three and substantial in-migration, the State would pay an increased allotment at $7.50 per capita which at the maximum would mean an additional $1,500 per year. A public water and/or sewer system requires too many assumptions to permit accurate price predictions. At first, such improvements would be unnecessary because lot size permits on site development. However, as development proceeds, these expenditures may be mandatory and should be recognized. Without hydrants, fire insurance costs are exorbitant, even with modern volunteer fire departments.

This summary of costs for the Tok disposal is, of course, sketchy. But it is easy to see that even when homesite disposal is close to developed areas, as required by the bill, and much of the existing service infrastructure has been established, the real costs to the State of Alaska

are high. Where settlement results in a new community with seven or more elementary school aged children and no school is within bussing distance, the State is obligated to provide a school. A minimal 2 classroom structure costs at least $500,000.

Appendix II gives development costs for a range of areas in Alaska. The costs may be reduced to three elements. First, there are the costs associated with making the land legally available for settlement. A second layer of expenditures result from building the roads and other necessary service facilities. Finally, we must recognize the recurring costs associated with providing services and annual maintenance.

These costs will vary from site to site. There are only 20 lots in the Rex disposal area but one way to the school house in Anderson is almost 7 miles. There are 42 parcels near Circle and they will require at least 2 miles of service road. Appendix II contains information about these disposal areas. Accurate record keeping and a joint information effort between State agencies will be required in order to keep track of the financial facts of land diposal programs. As these parcel offerings occur throughout the State, we can develop a meaningful picture of the costs of free land.

Enclosures (3)
1. Appendix I - Homesite Administrative Cost Estimates.
2. Appendix II - CRA estimates of public service costs in southcentral Alaska areas
3. Appendix III - Copy of bill authorizing state land to be made available as homesites.

I. Cost Estimates - Homesite Program

Administrative Costs

The estimated costs of the program are based on the following scenarios: The program, which would be set up on a statewide basis, must furnish homesite lands from existing patented or tentatively approved state lands. These lands would need to be field inspected for their homesite suitability and land planning reports prepared. After being approved by the Planning Section and/or the Land Use Planning Commission, the land would be classified. During this time, systems must be set up to qualify the applicants by checking the application background material against court recordings, title recordings, voter registrations, etc. Once this was accomplished, provisio for choosing recipients would be established. Following this prepara tion, actual management of the program would begin. This would inclu enforcement capability during the three-year residency period.

The following estimates of personnel and travel expenses are based upon the assumptions and the knowledge of time and costs involved in the initiation and management of the past Open-to-Entry Program.

Selections: This phase would require the services of a full time Land Management Officer IV (L.M.O.IV) and a Land Management Officer (L.M.O. II) and a Land Management Assistant I (L. M. A. I) to adequately supervise and coordinate the program on a state-wide basis. The services of a Cartographer II and two Planners would be required. District offices would need additional personnel for initial field examination in the category of an L.M.O. I plus budgetary monies for remote as well as close-in travel and per diem. Land planning reports instigated by thedistricts would need processi thereby necessitating additional classification workload and thus personnel.

Qualifying of Applicants: An adequate, though not necessarily stringent check of the applicant's legal qualification would be necessary requiring adding personnel to existing district's rosters, as well as personnel to set up and oversee the auctions and/or lotteries.

Enforcement of Management: Enforcement for compliance would require that field inspection be a continuing and time consuming item requiring coordination and administration work by people out of the District as well as headquarter offices.

District Office Expenses: The District offices would require two new positions and a substantial increase in travel funding. The estimates set forth below assume a minimum program of 100 and a maximum program of 1,000 homesites per District per year.

District Office Expenses

in Dollars/year

District	Personnel Salaries (a)	Regional Travel Costs			
		100 Units/District		1,000 Units Distric	
		Remote Areas(b)	Close-in Areas (c)	Remote Areas	Close-in Areas
Southeastern					
L.M.O. II	27,224	18,000	3,600	180,000	36,000
L.M.A. I	17,742				
Southcentral					
L.M.O. II	27,224	18,000	3,600	180,000	36,000
L.M.A. I	17,742				
Northcentral					
L.M.O. II	31,516	18,000	3,600	180,000	36,000
L.M.A. I	20,271				
TOTALS	141,719	54,000	10,800	540,000	108,000

(a) Employees' salaries include base salary plus State provided benefit costs.

(b) Remote area refers to any area which cannot readily be inspected, but requires a charter (boat or plane) to inspect. Known costs are transposed with emphasis on flying as the fastest means of verification of compliance. 10/25 inspections per day within a 100-mile radius of the district offices. If areas greater than 100 miles are opened, then inspection time/costs will increase in proportion.

(c) Close-in refers to areas available to highway, railbelt and nearby water access which can be reached with relative ease. After the fact costs are predicated on a monthly check basis, with between 25/50 inspections per day.

Headquarters Expenses: A staff of seven full-time employees to oversee selections, classifications, contracts, lotteries and servicing of the program would be needed in the Anchorage headquarters office.

Headquarters Expenses

in Dollars/year

Position Title	Salary	Travel Costs (a)	
		Remote	Close-in
1 L.M.O. IV	32,058	1,500	300
2 L.M.O. II	54,448	3,000	600
1 Carographer II	21,800	1,200	1,200
1 L.M.A. II	20,271		
2 Planners - 16	23,490		
- 18	27,224		
TOTAL EXPENSES	179,291	5,700	2,100

(a) Travel costs are limited to one trip for three headquarters personnel to District Offices to observe field work. The Cartographer would be expected to make several trips for record coordination purposes.

Advertising Costs: Three days public notice in a major paper would costs $250.00. Such a notice would have to be printed at least twice a year in a paper in each District with a total cots of $1,500.00.

Total Administrative Costs

in Dollars/year

	300 Homesites		3,000 Homesites	
	Remote	Close-In	Remote	Close-In
3 District Offices				
Salaries	141,719	141,719	141,719	141,719
Travel	54,000	10,800	540,000	108,000
Headquarters				
Salaries	179,291	179,291	179,291	179,291
Travel	5,700	2,100	5,700	2,100
Newspaper Costs	1,500	1,500	1,500	1,500
TOTAL COSTS	382,210	335,410	868,210	432,659

Value of State Public Land Given in the Program

Sales in the various districts indicate approximate values which can be used in estimate value lost if the State provides homesite land free rather than at the fair market value. Though great disparity exists between individual values for both remote and close-in properties, the median values have been used for this analysis. Land in remote areas has been valued at $400 to $500 an acre and land close in to settled areas valued at $2,000 to $2,500 an acre. All homesites are assumed to be of the 2-acre lot size.

Values of Homesite Lands

in Dollars/Year

District	100 Sites/District		1,000 Units/District	
	Remote	Close-in	Remote	Close-In
Southeastern	100,000	500,000	1,000,000	5,000,000
Southcentral	80,000	400,000	800,000	4,000,000
Northcentral	80,000	400,000	800,000	4,000,000
TOTAL COSTS	260,000	1,300,000	2,600,000	13,000,000

Summary

Summary of State Homesite Program Costs
(Land Value and Administration Expenses)a

In Dollars/Year

Site Processed Per Year	Remote Areas			Close to Settlement Areas		
	Land Value[d]	Admin	Total	Land Value[e]	Admin.	Tot
300[b]	260,000	382,210	642,210	1,300,000	335,410	1,635,
	2,600,000					
3,000[c]	2,600,000	868,210	3,468,210	13,000,000	432,659	13,432,

a. Does not include ancillary costs to the State for required service such as new schools, etc.

b. 100 sites per District for 3 districts.

c. Maximum number of sites - 1,000 per district for 3 districts.

d. Assumes a cost of $400 to $500 an acre for remote areas.

e. Assumes a cost of $2,000 to $2,500 an acre for close to settlement areas.

State Costs per Homesite Unit

in Dollars/Unit

Location	Per Year	Total Costs	Per Site[a]	Per Acre
Remote	300	642,210	2,140.70	1,070.35
Remote	3,000	3,468,210	1,156.07	578.04
Close-in	300	1,635,410	5,451.37	2,725.68
Close-in	3,000	13,432,659	4,475.55	2,237.77

a. A site is assumed to be 2 acres.

II PUBLIC COSTS - STATE LAND DISPOSALS

SOUTHCENTRAL

ITEM	COST
1. Roads	
DOT/PF:	$800,000/mi., Primary Paved $700,000/mi., Secondary Paved (Engineering & Construction, No ROW) $2200/mi., Maintenance (Secondary Unpaved)
LSR&T:	$110,000/mi., Contracted $65,000/mi., State $1500/mi., Maintenance (Revenue Sharing) (Gravel & ROW Provided by Municipality)
2. Schools	
Buildings	
Transportation	$1.65/mi., (Willow, Talkeetna) $1.55/mi., (Glacier View)
Teacher Salary	
3. Police	
$/Population	$12/capita, Revenue Sharing
4. Fire	
$/Population	$7.50/capita, Revenue Sharing
5. State Troopers	
	$60,000/man, Budgeted - Includes Equipment
6. Parks & Recreation	
	$5/capita, Revenue Sharing

7. Sewer

Construction $/ft.	$50-$60/ft Laterals, $100+/ft. collectors (Engineering and Construction) - Anchorage
Treatment Plant	$4 mill/plant, $800,000/68,000' Interceptor ... mill/57,000' Collector, 5,000-11,000 pop.
Average $/mo.	$100,000/yr., Maintenance

8. Water

Construction $/ft.	$50-65/ft. 12" Main + Service Lines + Hydrant (Engineering and Construction) - Anchorage
Treatment Plant	$180,000/16" Diameter Well + Treatment + Generator; 70,000 - 80,000 population served

9. Electricity

Construction $/ft.	$2500-3500/pole, 1st 165' to House free $1500-2500/lot Underground

10. Telephone

Lines #/ft.

TOK HOMESITES

68 lots

Roads

80' ROW: 22" @660'/" = 14520' secondary roads (2.75 mi.)

LSR&T: $110,000/mi. x $\frac{14,520}{5,280}$ = $302,500; Main $4125/yr.

State: $700,000/mi. x $\frac{14,520}{5,280}$ = $1,925,000; Main $6050/yr.

Sewer Lines

22" @660'/" = 14520' laterals

Laterals: $60/ft x 14,520' = $871,200

Service: $20/ft x 200' x 68 lots = $272,000

Assume collectors present, houses 200' from road

Water

Same as sewer + $1100/hydrant

Assume 6 hydrants: $1,149,800

Telephone

Electricity

No charges levied if under 325' from existing line.

School Transportation

2.8875 mi. one way = 11.55 mi/day = $14.90/day

For a school year of 180 days = $2681.91

Alaska Gateway REAA claims sufficient space available for additional students - no new construction would be needed.

Fire - State Revenue Sharing

Assume average family size of 3; 204 people - 7.50/capita = $1530/yr

PUBLIC COSTS - STATE LAND DISPOSALS

DELTA JUNCTION

ITEM	COST
1. Roads	
DOT/PF:	$800,000/mi., Primary Paved $700,000/mi., Secondary Paved (Engineering & Construction, No ROW) $2200/mi., Maintenance (Secondary Unpaved)
LSR&T:	$110,000/mi., Contracted $65,000/mi., State $1500/mi., Maintenance (Revenue Sharing) (Gravel & ROW Provided by Municipality)
2. Schools	
Transportation	$2.04/mi., $2.18/mi. (1978) - (Fairbanks), $1.98/mi. (Delta Greely REAA)
3. Police	
$/Population	$12/capita, Revenue Sharing
4. Fire	
$/Population	$7.50/capita, Revenue Sharing
5. State Troopers	$60,000/man, Budgeted - Includes Equipment
6. Parks & Recreation	$5/capita, Revenue Sharing

7. Sewer

Construction $/ft	$60/ft Laterals, $20/ft Service, $100-$150/ft Collector & Interceptor; (Fairbanks)
Average $/mo.	$2.00/1000 Gal., Average Cost (Fairbanks)

$800,000 - 70 Homes, Lagoon System (Nenana - PHS)

8. Water

Construction $/ft	$60/ft Laterals, $20/ft Service, $1100/Hydrant (Fairbanks)
Average $/mo.	$2.29/1000 Gal., Monthly Fee (Fairbanks)

$500,000 - 45 Homes, Central Distribution, (Nenana-PHS)

PUBLIC COSTS - STATE LAND DISPOSALS

COPPER RIVER

ITEM		COST
1.	Roads	
	DOT/PF:	$800,000/mi., Primary Paved $700,000/mi., Secondary Paved (Engineering & Construction, No ROW) $2200/mi., Maintenance (Secondary Unpaved)
	LSR&T:	$110,000/mi., Contracted $65,000/mi., State $1500/mi., Maintenance (Revenue Sharing) (Gravel & ROW Provided by Municipality)
2.	Schools	COPPER RIVER REAA
	Buildings	Portable Classroom - $78,000
	Transportation	$1.70/mi.
	Teacher Salary	$25,000 + 15% Benefits/yr.
		ALASKA GATEWAY REAA
	Buildings	Portable $50,000, ($111/sq.ft.) Permanent $200/sq.ft.
	Transportation	$1.29/mi.
	Teacher Salary	$23,000 + 25% Benefits/yr.
3.	Police	
	$/Population	
4.	Fire	
	$/Population	$7.50/capita, Revenue Sharing (Unincorporated also)

5. State Troopers

$60,000/man, Budgeted - Includes Equipment

6. Parks & Recreation

7. Sewer

8. Water

9. Electricity

Construction $/ft — 1st 325' + Pole + Transformer + Drop Line - Free
Estimated Value, $1000 (Copper Valley Electric)

10. Telephone

Lines #/ft. — 1¢/ft/Pr for lines to House
Copper Valley Telephone covers Costs up to 7 times monthly service charge

LAWS OF ALASKA

1977

Source | Chapter No.

SCS CSHB 2 (Resources) am S | 142

AN ACT

Authorizing state land to be made available as homesites.

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

* Section 1. PURPOSE OF ACT. The longstanding policy of the state, declared in the Constitution of the State of Alaska (art. VIII, sec. 1) and the Alaska Land Act (AS 38.05.350), has been to encourage the settlement of the state's land and the development of its resources by making them available for maximum use consistent with the public interest. In authorizing the classification of land for settlement as homesites, this Act is intended to further that policy explicitly, by recognizing that the immediate production of revenues to the state through the auction of land to the highest bidder, virtually the only method by which state land has been made available to the public for residential use, is secondary in importance to the primary, and ultimately more beneficial and productive, goal of providing land for Alaskans to settle at a cost reasonably within their means, and that the highest and best use of some land may clearly be for habitation.

* Sec. 2. AS 38 is amended by adding a new chapter to read:

CHAPTER 8. HOMESITES.

Sec. 38.08.010. CLASSIFICATION OF LAND FOR HOMESITE ENTRY. (a) The director shall classify, survey, and plat for homesite entry 25,000 acres of state land which is otherwise vacant, unappropriated and unreserved and is suitable for erection of residential dwellings to use as a permanent abode.

(b) Land classified as homesite entry land shall be divided into parcels not exceeding five acres in reasonably compact form, with boundaries conforming as nearly as practicable to natural geologic and topographic features.

(c) No land may be classified for homesite entry which

(1) lacks drainage sufficient for construction of residential dwellings;

(2) has soil which has been classified and interpreted as appropriate for agriculture in soil surveys conducted by the Soil Conservation Service of the United States Department of Agriculture;

(3) is known to be mineralized with commercially valuable minerals;

(4) is located where homesites would threaten fish regeneration;

(5) is located where existing services provided by the state and political subdivisions of the state would be inaccessible;

(6) lacks sufficient water for a residential dwelling used as a permanent abode; or

(7) is unsuitable for on-site sewage disposal, if other methods of sewage disposal are not feasible.

Sec. 38.08.020. OFFERING OF LAND FOR HOMESITE ENTRY. Following classification of land for homesite entry, offerings of homesite entry land shall be made on a rotating basis from among the four judicial districts of the state. The director shall publish notice of the availability of the land for at least three consecutive weeks through the electronic media and in at least three newspapers of general circulation in the state, at least one of which, if possible, shall be a newspaper of general circulation in the vicinity of the available land.

Sec. 38.08.030. APPLICATIONS FOR HOMESITE ENTRY; FEES. (a) To qualify for a homesite entry permit, an applicant shall

(1) at the time of application have attained the age of 18;

(2) submit proof acceptable to the commissioner that he is a resident of the state at the time of application, and that he has been a resident of the state for not less than six years immediately preceding the date his application was submitted, or that he has been a resident for 20 years cumulatively;

(3) agree to comply with the requirements for obtaining a patent to land set out under sec. 60 of this chapter.

(b) Fees for filing an application may not exceed $10.

Sec. 38.08.040. ISSUANCE OF ENTRY PERMIT. (a) An applicant meeting the qualifications for homesite entry under sec. 30 of this chapter shall be issued a revocable

permit to occupy and improve the homesite in order to qualify for issuance of patent as provided in this chapter. The application fee is the sole rent chargeable on the permit for its duration.

(b) If the number of applicants qualified for homesite entry exceeds the number of available homesites offered, or if several applicants apply and qualify for the same homesite, priority in award of an entry permit shall be accorded to that applicant showing proof of the longest residency in the state.

(c) The permit may not be assigned, conveyed or otherwise transferred, but rights under the permit may devolve by testate or intestate succession. An attempt to assign, convey, or to otherwise transfer the permit, is void and constitutes a substantial breach.

(d) An applicant may apply for more than one available homesite. No person holding a homesite patent may apply for a homesite entry permit, no person may simultaneously hold more than one homesite entry permit, and no person who is a member of the homesite entry permit holder's household may be issued a homesite entry permit while a member of the homesite entry permit holder's household.

Sec. 38.08.050. REVOCATION OF ENTRY PERMIT. (a) The entry permit may only be revoked for failure to erect a dwelling as required under sec. 60 of this chapter, or for other substantial breach of the terms and conditions of the homesite entry permit.

(b) Upon revocation and termination of a permit, improvements or chattels upon the homesite shall be managed, and subsequent issuance of a permit for entry on the homesite shall be conditioned, in the same manner as provided in AS 38.05.090 for removal or reversion of improvements upon termination of leases of state land.

Sec. 38.08.060. ISSUANCE OF PATENT. (a) A person who enters upon homesite entry land under a permit issued by the director shall be issued a patent to the land conveying an unencumbered title if that person

(1) occupies the land for a cumulative total of 21 months within the three-year period following issuance of the homesite entry permit, or five months with 20 years Alaskan cumulative residence;

(2) erects a habitable, permanent, single-family dwelling on the homesite, which meets all applicable state and local regulations, within three years of the date of issuance of the homesite entry permit; for the purposes of this paragraph, mobile homes are not considered to be permanent dwellings unless they are placed on a permanent foundation;

(3) reimburses the state for the survey and platting undertaken in accordance with this chapter; the director shall provide by regulation for installment payments of this reimbursement.

(b) Nothing in this chapter shall be construed to prohibit a person issued a homesite entry permit from residing in a temporary habitable dwelling on the homesite until revocation of the homesite entry permit.

(c) No person may be issued more than one patent during his lifetime, nor may any person who is a member of a patent holder's household be issued a patent while a member of the patent holder's household.

(d) If a dwelling is found to have been substantially completed under sec. 100 of this chapter, patent shall be issued upon completion of the dwelling, notwithstanding (a)(2) of this section.

Sec. 38.08.070. LAND LOCATED WITHIN MUNICIPALITIES. No state land which is located within the boundaries of an organized borough or city may be classified for homesite entry under this chapter until the proposed use of the land has been studied and approved jointly by the director and the local planning authority. Nothing in this section or AS 29.18.190 prevents the director from selecting and classifying for homesite entry land which would otherwise be available for borough or city selection under AS 29.18.-190. If classified for homesite entry, the land shall not be available for city or borough selection.

Sec. 38.08.080. REQUIRED ZONING. No state land which is located within the boundaries of a municipality which exercises planning and zoning authority under AS 29 may be offered by the director for homesite entry under this chapter until the land has been zoned by the governing body of the municipality for residential use only. No state land which is located within a municipality which does not exercise planning and zoning authority, or which is located in the unorganized borough, may be offered by the director for homesite entry under this chapter unless the division of lands has adopted zoning regulations to restrict the use of the land to residential purposes.

Sec. 38.08.090. DISCLAIMER OF INTENT TO PROVIDE SERVICES. Nothing in this chapter obligates the state to provide services to land which is the subject of homesite entry and patent.

Sec. 38.08.100. SUBSTANTIAL COMPLETION OF DWELLING. An entry permit may not be revoked for failure to erect a dwelling in the time required under sec. 60(a)(2) of this chapter if the director finds that erection of the dwelling has been substantially completed and progress toward completion is being made at the expiration of the time required.

Sec. 38.08.110. REGULATIONS. The commissioner shall adopt regulations in accordance with AS 44.62.180 - 44.62.-290 to carry out the purposes of this chapter.

Sec. 38.08.120. DEFINITIONS. In this chapter

(1) "commissioner" means the commissioner of natural resources;

(2) "habitable dwelling" means a dwelling of a permanent nature, together with fixtures and facilities, including sanitary facilities, required or customary in the vicinity of the land made available for homesite entry;

(3) "resident" means a person who is not claiming residence in another state and shows by all attending circumstances that his intent is to make this state his permanent residence.

* Sec. 3. AS 29.33.090 is amended by adding a new subsection to read:

(c) The assembly shall regulate and restrict the use of state land within the borough which is vacant, unappropriated and unreserved and which is found suitable for classification and disposal for homesite entry under AS 38.08.010. Compliance with the provisions of this subsection is a prerequisite to issuance of homesite entry permits for land within the borough.

* Sec. 4. AS 29.13.100 is amended by adding a new paragraph to read:

(37) AS 29.33.090(c) (zoning of state land for homesite entry)

* Sec. 5. No land may be classified and made available for homesite entry under AS 38.08.010 - 38.08.120 within any portion of the new capital site established under AS 44.06 before July 1, 1982.

Approved by the Governor: June 18, 1977
Actual Effective Date: September 16, 1977

L E A S I N G :

A G A P I N M E T H O D O L O G Y

CONTENTS

leasing

Leasing: A Gap In Disposal Methodology

Introduction

Leasing was selected as an area for special focus of staff study. News stories and interviews with opinion leaders indicated that the new leasing statute for State land passed in the 1977 session deserved a closer examiniation. It was a featured topic of the Workshop, and the proceedings indicate the variety of comments received on the topic of leasing.

On one hand, an increasing number of people believe that the State should make more extensive use of leases to satisfy the demands for use of State land while retaining underlying ownership for the benefit of the general public. On the other hand, there is considerable recognition that leasing requires sophisticated techniques and knowledgeable management personnel in order to be successfully implemented.

This section of the report contains some of the background information that the Commission consulted in forming their recommendations. The first paper is a copy of the current statute. It is followed by an excerpt from the final report of the Governor's Ad Hoc Advisory Committee on State Land Practices and Procedures. The third paper was prepared by the Commission staff and was circulated among the participants in the Workshop for background and discussion purposes. The final item is a news paper clipping describing the filing of a lawsuit to test the validity of the new leasing statute as it pertains to some of the trust lands and the response of some current leaseholders.

Sec. 38.05.085. TERM OF LEASE. (a) The lease shall provide that

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

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

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

(b) When it becomes necessary to determine the fair market value of property as required by (a) of this section, the lessee shall appoint an M.A.I. appraiser and the state shall appoint an M.A.I. appraiser. The two appraisers so appointed shall, within a specified period of time agreed upon by the parties, make their appraisals of the property in question. If the two appraisers agree upon the fair market value, the determination is absolutely binding on the parties. In the event the two appraisers are unable to agree, they shall together appoint a third M.A.I. appraiser who shall then make his appraisal of the property in question. When the third appraisal is completed, the two of the three appraisals which are nearest each other in their determination of the fair market value shall be averaged and the resultant sum shall be the fair market value of the matter in question and absolutely binding on the parties. All costs incurred in making the appraisals provided for in this subsection shall be borne by the state and the lessee equally.

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

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

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

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

(g) In this section,

(1) "annual rent" means the amount of rent paid annually determined by multiplying the fair market value by the rental rate computed at the time of the initial 25-year

period of the lease or of each subsequent 10-year period of the lease;

(2) "rental rate" means the rate, expressed as a percentage of fair market value, which a comparable class of privately owned property would bring in the open market with the same conditions of lease as offered by the state.

* Sec. 10. AS 38.05 is amended by adding a new section to read:

Sec. 38.05.103. RIGHTS OF HOLDER OF SECURITY INTEREST. (a) If there is a breach or default of a term of a lease or of the provisions of this chapter relating to a lease, the division shall provide written notice of the breach or default by personal service or by registered or certified mail to the lessee and to any holder of record having a security interest in the leased property. The notice shall also make demand upon the lessee to cure or remedy the breach or default within 60 days from the date of receipt of the notice and demand. If a lessee fails to cure or remedy the breach or default within 60 days, or within the additional time which the division may allow for good cause, the state may, subject to (b) of this section, exercise any right which it may have at law or as set out in the lease.

(b) If a lessee fails to cure or remedy a breach or default within the time allowed in (a) of this section, a holder of a security interest who has received notice under (a) of this section may cure or remedy the breach or default if the breach or default can be cured by the payment of money or, if this cannot be done, by performing or undertaking in writing to perform the terms, covenants, restrictions and conditions of the lease capable of performance by the holder. The holder shall act within 60 days from the date of receipt of notice under (a) of this section, or within an additional period as the director may allow for good cause.

* Sec. 11. AS 38.05.105 is repealed and re-enacted to read:

Sec. 38.05.105. PERIODIC RENT ADJUSTMENTS. (a) Each lease shall stipulate that at the conclusion of the initial 25-year period of the lease and at intervals of 10 years thereafter the annual rent payment is subject to adjustment. Charges or adjustments shall be based primarily on an adjusted fair market value. However, if the director of the division of lands determines that single-family residential development is the best use of the land, the reappraisal period may be lengthened or the readjustment waived in accordance with regulations adopted by the department. Before a waiver of rent adjustment is issued, the land shall have a current reappraisal. A waiver is valid only if single-family residential development actually occurs. The regulations adopted under this section shall ensure that the state receives a fair return from the land.

(b) The provisions of sec. 85(b) of this chapter are applicable to reappraisals of leases required by this section, except that, in determining an adjusted market value,

(1) changes in property value due to governmental actions, including zoning reclassifications, shall be included; and

(2) changes in property value due to private improvements made to the property or other privately owned or leased property since originally entering into the lease shall be excluded.

* Sec. 12. CONVERSION OF LEASES. The provisions of secs. 9 - 11 of this Act are applicable to state leases which are in existence on or before the effective date of this Act if a lessee under a lease elects, in writing, to be bound by this Act. When a lessee elects to be bound by the provisions of this Act, the state shall enter into a new lease with the lessee for a term equal to the remaining period of the original lease which is being terminated that is consistent with the provisions of this Act. However, for purposes of determining the annual rent by the state, the fair market value of the property which is used to establish the fixed base annual rent for the initial period of the lease may not exceed the fair market value as it was last appraised on or before January 1, 1975, brought forward to January 1, 1976, at the rate of 10 per cent a year, or, if the lease was entered into after January 1, 1975, on the basis of the fair market value at the time the lease was entered into.

* Sec. 13. The provisions of sec. 12 of this Act expire on January 1, 1979.

IV. FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

The findings of the committee were numerous but can be grouped into major categories:

1) State lessees are dissatisfied with the state interpretation of lease contract terms, especially those relating to appraisal. Many lessees testified before the committee as to their grievances.

2) The Division's regulations covering sales and leases are often outdated and conflicting with statutes in some cases.

3) The State's lease contract form is not in line with commercial contracts and has many ambiguities in it.

4) Some state statutes in Title 38.05 are vague and unclear.

5) Payment methods for state sales contracts do not match those used in the private sector and may contribute to ballooning land values.

These findings outline the basis for the committee's recommendations which follow.

The recommendations of the committee concern statute, policy, and regulation changes, and can be grouped by topic.

The following five items are of <u>general concern</u>:

1. The committee wishes to note that in the course of public testimony it was apparent that Division of Aviation lessees had significant problems with their current leases. This subject was not within the scope of the committee's deliberations and, therefore, not addressed.

2. To comply with new statutes the committee recommends a major overhaul of Division of Lands regulations. The committee has found many of the regulations now in effect to be outdated and superseded by statutes.

3. The committee recommends that the Legislature apply the provisions found in Title 38 to those in Title 3, Title 19, and Title 35. The rationale would be to make land laws uniform among the Division of Aviation, Department of Highways, and Division of Lands.

4. Looking to the future, when the Division appraisal workload gets even heavier, the committee recommends that all (or all significant) appraisals be done by contract appraisers, with the Division appraisers functioning as review appraisers.

5. The committee stands opposed to Senate Bill 234, since the needs as outlined in this bill are covered by present legislation; the committee finds SB 234 not in the best interests of the State or the land management of the State.

In order to provide predictability in appraisals and reappraisals, for the benefit of the State and the public, the committee recommends the following:

1. At present many lessees are suffering hardship due to rent increases of several hundred percent. To provide for this relief and as a curative for such future increases the statutory provisions found in section nine of the attached bill are recommended. Provision for optional conversion of present leases to ones that will place a ceiling of 100% on rental increases every five years will largely prevent future hardship cases and resolve satisfactorily the present cases. With a rent ceiling, lease rental increases will be more predictable resulting in more financial stability for the lessee. (The Alaska Industrial Subdivision hearing panel recommends insuring predictability by placing some control over the size of the rental increase through utilization of a ceiling on the size of the increase in rental every five years.)

   Sections 8 and 9 of the attached bill will accomplish the above recommendations.

2. The committee recommends that land offered over the counter be reviewed at 90 to 120 day intervals to determine if an increase in value has occurred. This review is desired so that parcels are not undervalued by progressive changes in the market.

   Section 10 of the attached bill would accomplish this.

3. Since public notice is covered in AS 38.05.345 the change to "appraisal" for AS 38.05.310 is warranted by its present content. The committee recommends that land may be appraised 120 days in advance of a sale or lease. The change from 90 to 120 days would be desirable in that minimum bid information could be given to the public well in advance of the actual sale or lease auction. In addition 11 AAC 54.140 should be repealed.

   Section 10 of the attached bill will accomplish this.

4. In order to provide a workable solution to the problems of confidentiality of appraisal data, the committee recommends that the Director of the Division of Lands refrain from including confidential information in any appraisal prepared for the Division of Lands use.

5. The committee believes that the word "primarily" may imply special consideration to some lessees. In order to treat all lessees fairly and equitably the committee recommends that the word "primarily" be stricken. Deleting "primarily" would clarify the basis for reappraisal. (This was also recommended by the Alaska Industrial Subdivision hearing panel.)

   Section 8 of the attached bill will accomplish this.

To improve <u>accounting policies</u> and <u>administrative procedures</u>, and to protect the State, the purchaser and the lessee, the following are recommended:

1. The committee recommends that the Division of Lands have the option of requiring all sales contracts over $400.00 per year to be paid in quarterly installments instead of annual installments. It is the committee's belief that this would ease the financial strain on the buyer and yet not add significantly to the State's administrative costs. To provide quarterly payments would require a change in AS 38.05.065 with the present annual payments deleted and the quarterly payment provision adopted in its place.

   Section 3 of the attached bill would accomplish this.

2. The committee recommends that a $10.00 fee charge to cover administrative costs be given to those who make sale or lease payments with checks that are returned. It is a standard business practice to provide for such charges and is recommended to protect the State's interests.

3. The committee recommends instituting default charges for late sale or lease payments. At present, there exists no penalty and many payments are late. The form of penalty recommended is notification charges to all delinquent payments and penalty charges to payments delinquent more than 30 s. The notification charge would be $5.00 for the t tice, $20.00 for the second notice and a pc rge of 6 percent of the payment.

It is suggested that the rges be adopted as a regulation under authori 38.05.035(4)(5) as follows:

11 AAC 54.365. Delinquent Payments.

In the event of a delinquent payment, the following charges will apply:

1. A $10.00 penalty for payment with a check that is returned.

2. A $5.00 penalty for notification of payments over thirty-five days late.

3. A $20.00 penalty for a second notification of payments more than fifty days late.

4. A penalty of 6 percent of the rental or sale payment for payments delinquent by more than thirty days.

4. The committee recommends adding the following to the end of 11 AAC 54.190: Upon execution of the contract of sale the director shall cause the original copy of the contract to be recorded in the recording district wherein the property is located.

5. The committee recommends that 11 AAC 58.490 have a section .495 added: Upon execution of the lease the director shall cause the original copy of the lease to be recorded in the recording district wherein the property is located.

6. The committee recommends adding in 11 AAC 58.830 Recordation of Assignments, Modifications, Changes in Rental or Cancellations: Upon any assignment, modification, change in rental or cancellation, the director shall cause to be recorded an original document which recites the changes made in the recording district in which the property is located.

7. The committee recommends that somewhere in 11 AAC 58 a section be added: Fees for Recordation. The Division of Lands shall absorb any expense of recording all existing contracts of sale, leases, assignments, modifications, changes in rent; hereafter the director shall collect the necessary fee for recording any contract of sale, lease, or change of application from the contract purchaser or lessee at the time of execution.

8. The committee recommends that the Attorney General draft for introduction to the next session of the Legislature a statute which will require all state agencies dealing in lands to record any such transaction (including any transaction dealing with plats and subdivisions) and further stating that failure to so record does not impose any liability on the State.

In order to achieve more flexibility and simplicity in handling land disposal transactions, the following are recommended:

1. The committee recommends that the State charge a market rate of interest in its sales contracts. The interest rate, at present 6%, is below market levels and may have contributed to inflated prices at state land sales. By setting interest rates at market levels, the State would help prevent inflated land prices and at the same time return more income to the State. To provide for a market rate of interest in sales contracts, no change in AS 38.05.065 would be required. The addition of a statement of market rate in this statute would be desirable, however.

   Section 3 of the attached bill would accomplish this.

2. The committee recommends that the State adopt a system of level payments in place of declining payments in its sale contracts. The system of level payments is in common use in the business world, and the payment figures are easily set forth in a contract. The disadvantage of the present method is that interest must be recalculated every year and the payments decrease each year. From both the State's and the buyers' viewpoints, the level payment method would be preferred. The State would receive slightly more in interest payments over the contract terms and the buyer would not have to make as high initial payments. To provide level payments would require a change in AS 38.05.065 with the present system deleted and the level payment system adopted in its place.

Sections 2 and 3 of the attached bill would accomplish this.

3. The committee recommends that in Title 38.05 the term "fair market value" be used in place of "fair appraised market value" and "market value." The meaning is felt to be the same in all cases. The committee would like to see one standard term used to avoid confusion and misunderstanding.

   Sections 4, 5, 7, and 13 of the attached bill would accomplish this.

4. The current procedures for informing the public of state lands transactions are covered in AS 38.05.305 and AS 38.05.345. The two procedures do not mesh in a clear manner. The committee recommends that the procedures be clarified in a manner that will be flexible enough to inform the public fully and yet not require multiple advertising for minor negotiated transactions.

   Section 11 of the attached bill will accomplish this.

5. The committee recommends that the Director be given the authority to set the payment period from one to twenty years. This type of flexibility would allow the State and buyers greater market possibilities. To provide for this would require that the installment clause in AS 38.05.065 be deleted and replaced by the one to twenty year provision.

   Section 3 of the attached bill would accomplish this.

6. The committee recommends that the State be given more flexibility to resolve contract of sale violations. This is necessary to prevent foreclosures as the only remedy for minor contract violations.

   Section 3 of the attached bill would accomplish this.

To institute improvements in the <u>leasing system</u>, the following are recommended:

1. To implement the new lease provisions recommended by this committee new lease forms for various types of leases will be required. It is the committee's recommendation that the Division draft new lease forms to comply with the statutes adopted, and that the new forms be reviewed by this committee.

The recommended lease form and attachments in Appendix C accomplish this.

2. The committee recommends that all state leases to other public agencies be at the normal fair market value rate of payment.

   This reflects a regulation change.

3. The committee recommends that state government agencies get out of residential leasing.

   This reflects a policy change.

4. To provide the lessee insurance against a land boom or unexpected increase the committee recommends that rental increases at the five year reappraisal periods not exceed 100 percent of the prior existing annual rental rate. This action would increase the predictability of the lessee's payments. The stability thus created would add significant borrowing power for the lessee to finance improvements on the leased ground.

   Section 8 of the attached bill would accomplish this.

5. The duration of a lease and the economic life of substantial improvements, such as stores or factories, may not coincide. In order to see that state leased land is used in a rational, economically productive manner the committee recommends that lessees of long-term leases be given a renewal option for up to fifteen years. This type of option would grant the lessee more flexibility in maximizing his investment returns, especially during the final years of his lease. It would also increase the lessee's planning possibilities for use of the leased ground. This action would also soften the impact of termination of the lease. Specifically, this would permit a lessee to make substantial repairs to a building when the remaining term of the lease would not otherwise justify it.

   Section 6 of the attached bill would accomplish this.

6. The committee agrees that a lease should be converted at its present classification, and the leaseholder should then have the option to change classification subject to Division of Lands approval.

This is made possible under the attached lease document so that a conversion (assuming passage of HB 383) to a new lease form would permit the leaseholder to change classification at his option.

7. The committee recommends that a level term for recreational leases not be provided.

8. The Alaska Industrial Subdivision hearing panel recommends that in accord with the provisions of the lease, lessees should be encouraged to record expenses incurred in site preparation so that the "original condition" can be more adequately ascertained.

   The Ad Hoc committee concurs. This recommendation is handled in the attached lease document.

9. The Alaska Industrial Subdivision hearing panel recommends that lease language should be clarified to remove any possible inconsistencies with 11 AAC 58.520 (Adjustment of Rental).

   The Ad Hoc committee concurs.

10. The Alaska Industrial Subdivision hearing panel recommends eliminating the floating easement. The State could exercise the right of eminent domain to condemn. The condemnation would probably result in greater compensation for damages to the lessee, especially in view of the Supreme Court decision in State v. Hammer, 550 P.2d 830, thus the lease would be more attractive to the leasing market. Additionally, the language in the current lease is ambiguous as to damages compensable. This ambiguity only encourages litigation.

    The Ad Hoc committee concurs. This has been accomplished in the attached lease form.

11. The Alaska Industrial Subdivision hearing panel states that, if its recommendations are adopted, the State would be assured a competitive position in the lease market. The recommendations would encourage development of the leaseholds consistent with the intent of the leasing regulations and would be equitable to the lessee. The hearing panel also believes the State should be able to obtain a good return on its land. Accordingly, the rental rate should be changed to reflect the removal of the undesirable aspects of the state lease.

The Ad Hoc committee concurs. Continuing to include rate as an appraisal element will accomplish this objective.

This change is found in the attached lease form.

12. In order to set a fixed rental rate on a lease, the committee recommends an addition to A.S.38.05.085:

> amend to add the following sentence after ". . . to protect the interests of the state. The lease rental rate shall remain fixed for the term of the lease and any permitted extensions thereof, unless the leased premises or a portion thereof is reclassified pursuant to provisions of this chapter. A violation of any provision of this chapter . . . ."

To provide a vehicle for arbitrating protests and appeals involving land transactions, the following is recommended:

1. The Division of Lands has had many protests from private parties over the past few years leading the committee to believe that a board of appeals is highly desirable and needed at this time. At present there exists no arbitration board or board of appeals to handle appeals allowed by Division of Lands regulations. The creation of a board of appeals would effect a responsive mechanism for solving most problem cases arising from Division of Lands transactions that affect private parties. The board of appeals would be faster and less costly to private parties than legal recourse, which would still be available. The board is structured to maintain adequate expertise while attempting to eliminate bias in favor of the Division of Lands. This binding appeals board would substitute for the Commissioner in the present appeal process. (The Alaska Industrial Subdivision hearing panel also recommends such an appeal process.)

   Section 14 of the attached bill would accomplish this.

The committee recommends the following to improve trust land management:

1. The committee believes that state trust lands (school, mental health, and university) are now and have been managed at low intensity. These lands may be returning only a fraction of their potential value that could be

realized by a small, full-time management staff. The Division manages these lands at no charge to the various trust funds and receives no reimbursement for its services. Therefore, it has traditionally placed low priority on management of these lands. This committee recommends that the State Legislature authorize each trust board the authority to freely contract with any agency or private firm for the management of its lands for revenue production in accordance with the State's land act.

Section 1 of the attached bill would accomplish this.

2. In order to provide a uniform 55-year limit for all long-term leases the committee recommends deletion of the 99-year provision found in A.S.38.05.070(c) for school lands.

Section 6 of the attached bill would accomplish this.

FSLUPC Staff Paper
November, 1977

Leasing

The objective of this staff report is to make available information about State surface leasing policy, to analyze that policy as it has operated in the past, and to make suggestions which might promote thinking that will lead to more effective use of this land management tool in the future.

Unencumbered owner-operatorship seems to be the foremost goal in American land-tenure policy. This premise was the theme of western development. But an examination of the present tenure situation in the United States shows that at least 63 percent of the residential units are tenant occupied. Even in agriculture we find that tenants operate one out of every eight farms. If the analysis includes the fact that a high proportion of the pepole who do own property hold their rights subject to a real estate mortgage, it appears that unencumbered owner-operatorship is more a goal than a reality.

Is this an unhealthy situation? Not if we see property ownership as the end goal in a dynamic process or recognize that for many the end isn't even ownership but profitable use of the land. Millions of families find it both expedient and wise to use leasing or credit financing as a means to the attainment of their ownership goals. The tenant relationship can also be healthy when we consider that some tenants prefer long term leases to the alternative of actually buying their sites. Many valuable locations in large metropolitan centers have been developed by tenants operating under long-term leases. In these cases, the leases represent a method of real estate financing in which the tenant enjoys a 100 percent loan of the value of the landlord's property. So leasing arrangements can provide a valuable and serviceable function in enhancing the interests of both landlords and tenants. Landlords can lease surplus lands to others and receive a monetary return from properties they do not wish to occupy or operate. Tenants can acquire use and possession rights to the properties held by others.

The policy purpose behind State direction of the land settlement and disposal process is basically a desire to achieve rational, productive management of Alaska's lands. Land disposal regulations are lengthy and complex. But an emphasis is placed on classification and land use planning. The mineral estate can only be leased and never sold, and this disposal program is handled separate of the surface leasing and sales program. The Director of ADL decides which lands will be made available for sale or lease and the limitations, conditions, and terms are set by this officer. Generally land is sold or leased to the highest bidder at public auction, and the appraised value is the basement of acceptable prices. The framework is a rational one, and adequate authority has been placed in the hands of the administrator. Leasing policy is outlined in statute. Maximum term of leases is set at 55 years and they may be renewed for a like term. Until the last Legislature, the annual

rental payment on State leases was subject to adjustment at 5-year intervals based on a current appraisal of rental value. The Director can negotiate small size leases, under $250 annual rental, without the bother of a public sale or auction. Leases may be assigned and/or subleased with the Director's approval, but subleases are limited to improved properties. Finally, lands that are valuable for surface values of a Statewide interest are available only through leasing from the ADL. Tidelands, timber and grazing lands fall into the category of surface classifications which may never be permanently alienated from State ownership.

A review of State leasing activity shows that this tool has been actively used in the 15 years since Statehood.

Classification of Land	1961-71	1972	1973	1974	1975	Leases As Of Dec. 31, 1975
Commercial-Industrial	171	1	0	1	1	152
Residential	65	15	0	2	0	47
Agricultural	25	2	0	1	0	14
Grazing	84	3	8	14	0	66
Private Recreation	638	40	52	39	12	509
Reserved Use	69	2	0	4	0	37
Utility	66	12	12	51	11	127
Commercial	33	5	2	1	2	32
Industrial	41	9	4	22	21	69
Unclassified	35	8	3	9	6	42
Open To Entry	1,469	851	899	574	16	3,161
Resource Management	0	0	8	9	1	17
Total Leases	2,696	948	994	727	70	4,273

The figures terminate as of 1975 because recent data was not immediately available from ADL or published in its annual report. However, 26 new leases were issued in 1976 while 350 were closed, most by OTE. The value of the leases to the State of Alaska has shown a steady growth as well. The face value of State land leases is derived by capitalizing annual rental at 6 percent.

Effective On December 31	Leases Acreage	Value
1971	238,423	$10,589,083.00
1972	256,232	11,470,066.00
1973	182,854	14,868,867.00
1974	214,155	21,361,641.00

Figures for 1975 and 1976 were not available from ADL. The above values came from the 1974 ADL annual report.

The amount of acreage under lease can be compared to that under State land sales contract to put these figures in perspective. Since 1960, only 138,000 acres have been sold by the State while almost twice as many acres are under lease. This is not the perception of the average Alaskan citizen. For instance at the recent Anchorage meeting of the Statewide Public Forum there was wide support for leasing of State lands. But the supporters of leasing favored it as a "new deal", a method not currently used that could be useful in combatting certain abuses. The primary problem that drew attention at the Forum was land speculation. Forum attendees advocated leasing because it could curb speculation and return unearned value increments through the State to the people.

There are a number of reasons that leasing is a valuable tool for land use management. We have discussed some benefits to both the owner and the users of certain property. A primary appeal of leasing to State land management officers is that the State continues to own the land. This means that the State collects a steady stream of revenue from the use of its land, but most important of all, the State maintains some say over how the land is to be used. In comparison to all known methods of land use control, whether through suitability classification, local zoning powers, sale contract covenants, or reversionary clauses, there is no method more effective than ownership. The authority to direct land use is of considerable value to the State.

As Division records indicate, people are willing to lease land for a variety of uses in Alaska. Most of the school, mental health, and university lands in the State are leased rather than sold because the goal is a continuing source of revenue for the trustee. Under the old statute of 5-year reappraisal of lease rental, speculation in leased State land was frustrated because the State eliminated lease interest equity when they regularly readjusted the rental to current market value. To further discourage speculation, unimproved lands cannot be subleased according to the regulations.

These factors should add up to a sucessful program. There are benefits for both parties and a good deal of public acceptance of leasing as a disposal technique for public lands. Financial institutions who were slow to advance financing on land leased from the State have broadened their outlook and even residential development of considerable magnitude has been constructed on leased State lands in Anchorage. Certain adjustments to State land lease contracts would make bankers even more comfortable, but general acceptance of leasing as a land management tool in Alaska appears to be good.

Or so it appeared until the 1977 session of the Legislature. In this session a new land lease law was proposed. It came primarily as a response to ADL's efforts to perform its 5-year reappraisal task in the Alaska Industrial Subdivision near downtown Anchorage. ADL attempted to bring lease rates up to their current market value, and in some cases,

these increases amounted to more than 4,000 percent. This caused considerable consternation among the lease holders. When similar raises shocked lessees in other parts of the State, the political interest was strong enough to focus attention on ADL's leasing program and bring about sweeping changes in the manner in which leaseholds were revalued for rental purposes.

The statutory changes have sparked interest in State leasing policy. The Alaska Advocate quoted real estate consultant Ken Gain as calling the new legislation, "a speculators dream". If this is the effect of the new law, it clearly opposes public sentiment against land speculation in the State, and it certainly doesn't represent the purposes of legislators who responded to the demand for changes in the State leasing program. The amended statute has worried the governing boards of Alaska's trust lands who went so far as to postpone action on a planned disposal in the Fairbanks area. The trust boards are analyzing the effect of the new law on their responsibilities at this time. With this level of interest and concern on the part of the administration, and a leasing program that promotes speculation rather than dampening it as was intended, the issue will provoke additional attention in future Legislative sessions.

What went wrong with the State leasing program? The key issues appear to be day-to-day management of the program and inappropriate application of the leasing technique. Earlier we reviewed the positive reasons for leasing State lands. They included increased public control of land use, a steady income stream, public capture of land value appreciation, and benefits to the lessee in reduced front-end costs and relatively low yearly rentals. But when the State retains ownership in land, it also retains an administrative obligation to manage the property in a competent fashion. This is particularly important with regard to lease management. Uncertainty is the bane of the business world. It has been suggested that State efforts to reappraise property were often executed in a casual manner. This resulted in land valuations that did not reflect current market situations. While lessees are often pleased when reappraisals are late and reflect little increase in value, they are also led into decision making patterns that are economically unrealistic. At first the lease lands are unfair competitors in the midst of property subject to the market system. But when they are finally evaluated in real current market terms, the results are chaotic. A leaseholder who develops property as though it were worth $.25 per foot is placed at a considerable disadvantage when a reappraisal jumps the value per foot to $4.

Property managers who had entered a series of subleases on developed properties based on below market land values were left holding the bag. Squeezed from the top and the bottom they went to Juneau. The rapid inflation of prices in Alaska, chronicled by writers in both of Anchorage's Daily newspapers, produced a situation of extremely volatile land values. In an active market of this kind, lease administrators are severely tested. ADL's response fell short. One reported example is the lease

of State school trust lands for the refinery at North Pole. The reappraisal was completed more than 18 months late. Further, it was arbitrarily halved at the suggestion that the soil conditions on the site were poor. However, soil conditions were never actually evaluated by the appraisal officer. A good leasing program requires good management in order to be effective. Reappraisals must be accurate reflections of current market conditions and they must be timely. Financial centers are understandably wary when a volatile market and ineffecient administration combine to promote uncertainty. When the State retains ownership, they assume an obligation to keep the leaseholder apprised of current conditions and value of the lands he will develop. The public deserves as much, too.

One frequently raised objection to State lease policy is that a lessee spends his money to improve the land, and then the State adds these improvements to the value and charges the lease holder even more at annual rental time. But, in fact, statute requires the State to appraise lands as though they were in their original condition. Often the increase in value will come from public expenditures for roadways, drainage, or sewer projects. Such improvements at public expense should be reflected in property value increases. But, actual site improvements cannot be counted against the developer. Yet memories are often short, and the exact "original conditions" are recollected differently by each side. Another probability is that a market for particular soil conditions will develop because their location is so valuable. As development techiques are mastered, comparable sales on well located bog lands become available and more accurate appraisals are possible. Each of these conditions require competent administration.

The number and caliber of ADL appraisal employees has not kept pace with this increasing responsibility. The appraisal section appears to be understaffed and underpaid if compared to similarly charged sections at the Department of Transportation and appraisers in private industry. This situation has been pointed out before, and thin staffing cannot assume the complete responsibility. It could be more appropriate for policy to spell out that the State will assume the value of site improvements over a 15 or 20 year period. This would provide sufficient time to amortize fill and drainage projects and other site improvements of this nature. It would also relieve ADL of the obligation to "remember" original condition long after the character of a locality might change.

The North Pole refinery lease program points up the arrangement between the trust boards and the Alaska Division of Lands. ADL serves as the management agent for the trust boards. Many have argued that the free services the trust boards receive are a bad deal for both sides. The trust boards believe they have an effecient setup because appraisal, survey, and other management tasks are provided to them at little or no cost. The ADL enjoys the role of servicing the trust lands because it provides a margin of control over lands that would otherwise be a wild card in the State's land ownership pattern. Mental health and university lands which represent most of the 1.2 million acres of trust lands was

to provide revenue for the mental health program, the common school trust fund, and the University of Alaska. The quality of management services available from ADL do not satisfy a revenue maximizing goal. In addition, ADL bears a broader administrative burden from which they earn no revenue, leading to the manpower problems we have already discussed. It appears that either ADL should be paid for their services to the trust boards, or that the trust board should obtain their management services from the private sector.

Another common feeling about leases is that by the end of the lease period, the lessee will have paid more for the land by installment than it would have cost him to buy it outright. This argument has certain red herring aspects. In the first place, few people actually buy land outright, instead they rely on credit arrangements to make purchase feasible. The fact is that, in land sales, interest payments can often exceed the actual price of parcel by the time a payoff period is completed. So this comparison can be misleading. If not interest costs, then opportunity costs must be considered. It is often a benefit to the lessee to be able to avoid large front-end committments of capital. If the lessee does not have to tie up his money in land, then he has the opportunity to put it to more productive use. A farmer might buy equipment or a developer might add another floor to his building. Leasing provides certain tax advantages as well. A lease can be depreciated over its term while fee simple land used for business purposes cannot.

Land ownership is repeatedly mentioned as the land use planners strongest hole card. Unfortunately, this strength has led the ADL to exercise the leasing option in areas unsuited for this technique. Leasing is a excellent means for land management in an active, lively market where land will be intensively used. Areas best suited for leasing are those classified for commercial and industrial purposes. Established residential neighborhoods and high demand recreational areas can also be good opportunities for leasing activity, but the strongest requirement is for good demand, and an active market. Leasing large parcels of rural lands where market activity and economic demand is limited will be less worthwhile. About the only action available to a leaseholder when the rent increases in this situation is minimum development followed by subdivision in order to make payments. (Then the State is forced with a large number of subleases and further administrative woes.) Large tracts are often leased in rural locations when a small tract lease would probably serve the needs of the lease holder. The situations caused by leasing improperly sized tracts for "utility" purposes are unnecessary. Leasing is good policy in the right place, (i.e. where there is an active market for use of the property.)

Another opportunity for leasing is in the area of agricultural land. There is a limited amount of land which is actually suitable for agricultural activity in Alaska. Historically, agriculture has faced stiff competition from sources outside the State. It is often difficult to develop a market for agricultural production sufficiently lucrative to justify the use of the land for that purpose. But while current market

conditions are not particularly receptive to Alaskan agricultural efforts, it would be unwise to allow this fact to lead to the conversion of all of the soils which are suited for farming to other uses. If the State were to lease only the agricultural rights to land, it could accomplish two desired goals. First, by limiting the amount of development latitude available to the leaseholder, the market value of the property is reduced and the State can make suitable lands available for agriculture at a reduced or subsidized annual rental. This could foster agricultural activity at the present time while preserving the lands for agricultural use in the future as well. By leasing the State forecloses the conversion option and retains such a decision for public appraisal at some time in the future. The marketing of limited rights is a relatively new technique. Appraisal of only one of the bundle of rights presents new challenges to the administrators of State lands. The management requirements take on considerable importance in light of the problems caused by poor administration in the past.

Under the requirements of the new lease law, managers of State lands have evidenced reluctance to utilize the leasing tool. In the new leasing statute reappraisal comes after the first 25 years. While this may reduce the appraisal load by reducing the frequency of reappraisal, it also creates a situation in which the State will be unable to adjust lease rental to even keep pace with the rate of inflation. In the current case, the readjusted annual rental shall not exceed 50 percent more than the amount paid yearly during the highest of the initial or preceeding period. People familiar with the rate of inflation in Alaska can see that a 50 percent limitation after 25 years will effectively curb rental adjustments to even less than the rate of inflation. An example of this situation can be demonstrated if we look at what happens to a parcel of land leased by the State in 1977. Appraisal sets the present value at $10,000, and with a lease rate of 6 percent, the annual rental would be $600. The first reappraisal and annual rental adjustment would occur in 2002. If we assume a moderate rate of inflation of 4 percent, the inflated value of the parcel in 2002 would be $26,658. Now this is the value increase caused by inflation alone and does not take into account social overhead expenditures or any other factor which might have also enhanced the value. The annual rental at 6 percent of $26,658 would be approximately $1,600. But the 50 percent increase limitation would prevent the readjusted rate from exceeding $900. Thus, under current statute, the rental adjustment could not even keep pace with a moderate rate of inflation. This does not take into account the other factors which lead to the appreciation of land values. The new State lease law will not only hinder the expansion of the use of the leasing technique, but it will render current leases even less useful for avowed State purposes.

There are many reasons we can expect renewed interest in the leasing statute in upcoming legislatures. As a land management tool, leasing of surface lands demands our attention. The benefits of an active leasing program are many and when properly administered, such a program can

promote economic development that is compatible with the public interest. The thought of leasing public property does not have the same rhetorical zing as that associated with owning private property. But tenancy is common in the United States for a variety of healthy reasons. Additional support for the use of this technique can be heard when assembled Alaskans debate State land disposal policy and discuss means for curing certain abuses. Agriculturists, fighting an uphill battle against climate, market, and reality, want leases of limited land rights for both subsidy and conservation reasons.

However, inappropriate use of the leasing technique has limited its effectiveness in some cases. Oversize parcels leased in areas of limited market activity have led to leasehold abuses. Casual reappraisal and limited staffing have led to inappropriate development on certain lease parcels, and left businessmen uncertain and finally outraged. Over reliance on the lease rather than emphasis on strengthening local land use control institutions has misled administrators as well. Leasing is only one tool of many available to the manager of public lands. Let us take it out, dust it off, and develop policy that will ensure that it is properly used.

The comments, opinions, and facts represented in this report are drawn from a variety of sources. Conversations with a number of ADL officers and review of the Divisions annual report were useful. David McCabe, Don Karibullnikof, and Dr. G. Hayden-Green presented the leasing picture from the private sector. State statutes concerning land and the respective regulations were reviewed as was Commission publication, "Agenda For State Lands".

ANCHORAGE DAILY NEWS December 29, 1977

Education board sues over land lease law

By ROSEMARY SHINOHARA
Daily News Staff Writer

The state Board of Education went to court Wednesday to challenge a land lease law which the board believes threatens a trust fund for schools in Alaska.

The law, passed by the 1977 legislature at the urging of state leaseholders, limited the amount of money the state can charge for state land leases, particularly the amount the base rent can be increased.

The Board of Education lawsuit in state Superior Court said the law is unconstitutional because it would now allow the school trust to receive full market value and compensation for the leases.

CERTAIN state lands are set aside to benefit schools, others benefit mental health programs and universities, and others are "general grant" lands which benefit the state treasury.

The state Division of Lands has not yet converted any leases to comply with the new law. Ted Smith, director of the state Division of Land and Water Management, said he had expected to begin signing the long-awaited lease conversion forms by today.

An assistant state attorney general promised in court Wednesday that the Division of Lands will not process any applications from leaseholders to convert their leases until a decision is made in the Board of Education case.

THE COURT ACTION leaves a group of leaseholders in an industrial subdivision in Mountain View in the middle of a battle between two state entities.

The Mountain View leaseholders spearheaded the drive to change the law in the 1977 legislature, after they were hit with rent increases of as much as 800 percent in 1976.

In November, the leaseholders complained the state was too slow at implementing the law, and held a meeting to discuss what to do about it.

AT THE TIME, Smith said he was waiting for the Attorney General's Office to approve forms for converting the leases. Smith said Wednesday the forms were now at the printer's, and he was prepared to begin processing them until the court action occurred.

To further complicate the issue, the state Attorney General's Office has a conflict in the case, and it has hired a private attorney to argue it on behalf of the state Division of Lands.

When the new law was passed by the legislature, the state attorney general issued an opinion that it was unconstitutional, and recommended the governor veto it. The legislation became law without the governor's signature.

TOM MEACHAM, an assistant attorney general who represented the state Division of Lands in court Wednesday, said the state agreed to withhold converting any leases on school trust lands, including the Mountain View leases, to assure that the private attorney who will handle it would have adequate time to prepare for the case.

A hearing on a move by the Board of Education for a preliminary injunction to prevent the state from implementing the law has been scheduled for Jan. 30 in Anchorage.

Smith said there are about 100 applications from leaseholders seeking to convert their leases, and the bulk of them are on school trust lands in the Anchorage area.

Lowell MacNutt, spokesman for the Mountain View leaseholders, said he's certain the group will move to protect its members' interests, but the leaseholders haven't had time to decide what to do yet.

ANCHORAGE DAILY TIMES, December 29, 1977

State Lease Changes Await Court

By PATTI EPLER
Times Staff Writer

The state division of lands yesterday agreed to hold off issuing or converting leases on school trust land for about a month until a challenge of land lease laws is brought to court.

The state Board of Education yesterday filed suit in Anchorage Superior Court challenging the constitutionality of a land lease law passed by the legislature this year.

That law limits the amount of money the state can charge for lessees and limits the amount of appraised increase. It gives lessees the option of converting their current lease to a new one with more favorable terms including 25 years between appraisals and a maximum lease increase of 50 percent.

The suit, filed shortly before lease conversions by the division were to begin, asks that the law be declared unconstitutional and alleges that the law does not allow the school trust to receive full compensation and fair market value for any sale or lease of school land.

Lease conversions were expected to be approved by the state before Jan. 1, said a division of lands letter on file in court records.

Judge Justin Ripley yesterday heard arguments on a motion by the board to temporarily halt the conversion process. But attorneys for the state agreed to stop the proceedings until preliminary hearings can take place. Those hearings are scheduled for the week of Jan. 30.

Tom Meacham, assistant attorney general who represented the state, said the state has hired private attorney to handle the case because of an apparent conflict. The state agreed to stop the conversions so the attorney would have time to familiarize himself with the case, he said.

Attorney General Avrum Gross said earlier this year that the land lease law might be unconstitutional and recommended that Gov. Jay Hammond veto the bill. However, the bill passed into law without the governor's signature.

The board, a state agency usually represented by the attorney general's office, also was forced to hire a private attorney to argue its case since the lawsuit was directed at the state itself.

(See Page 2, Col. 2)

Board Challenges Lease Law For Creating 'Unfair' Effects

(Continued From Page 1)

B. Richard Edwards, who is representing the board, said yesterday it is the schools themselves, not the board, that will lose money under the new law. But the board, as land trustee, is responsible for the schools financial welfare regarding leases.

An affidavit filed on behalf of the board indicates that large amounts of potential revenue will be lost if leases are converted. Paul Dirksen, a real estate appraiser, said the fixed base annual rent established by the new law "will result in far less than fair market value being received by the state.

"Under prior lease provisions of school land leases, the lease rental was based on appraised fair market value and it was required that the land be reappraised every five years. This process is much more in tune with determining a reasonable return and fair market value for school lands," he said.

Dirksen cited examples of lost revenue in his affidavit. Under the new law, one section of land that would rent for $28,000 per year in the market place, is leased by the state for $6,305 per year. That amount would remain the same for 25 years —until the year 2001 — at which time the lease could increase up to 50 percent or about $9,400. However, in the market place, rental would be about $120,000 in that year, Dirksen said.

ANCHORAGE DAILY NEWS January, 6, 1978

Leaseholders plan suit to implement law

People who hold state land leases in an industrial subdivision in Mountain View plan to file a lawsuit to attempt to require the state to implement a law passed by the 1977 legislature which will result in lower rental rates for them, a spokesman for the leaseholders said Thursday.

At the same time, the leaseholders plan to intervene in a lawsuit between the state Board of Education and the State Division of Land and Water Management, according to Lowell MacNutt of John Bagoy and Associates, spokesman for the leaseholders.

THE LEASES in Mountain View are on school trust lands, and the proceeds from them are earmarked for state educational purposes.

The Board of Education went to court in late December, just as the State Division of Land and Water Management was preparing to convert the leases to conform to the 1977 law.

The education board lawsuit in state Superior Court said the new lease law threatens the school trust fund, and is unconstitutional.

MacNUTT said leaseholders met Wednesday, and decided to intervene in that courtsuit to protect their interests.

The leaseholders believe that Ted Smith, director of the Division of Land and Water Management, tried to get the education board to file suit against him, MacNutt said.

"We feel Smith is arbitrarily dragging his feet."

SMITH WAS attending meetings in Juneau Thursday night and could not be reached for comment.

MacNutt said the leaseholders' hands are tied until the rental situation is resolved. Many of them protested increases assessed by the state before the legislature changed the law, and continued paying their pre-increase rates.

The question of whether they must pay the increased amount for any period of time is unresolved.

The question of how much the leaseholders must pay for the period after which the increase is still unresolved.

As a result, businesses that want to expand, or go out of business, can't do it, MacNutt said.

The Joint Federal-State Land Use Planning Commission for Alaska was created by Congress and the Alaska Legislature to provide a statewide land use planning process that will insure the economic development of the State in a manner that is compatible with the social and economic well-being of the public, their interests, and the environment.

The Commission also is to improve coordination and resolve conflicts between the State, Federal government, and private landowners in the State, and recommend laws, policies and programs to the President, Congress and the Governor of Alaska for a coordinated comprehensive statewide land use planning process.

The Commission, created by the Alaska Native Claims Settlement Act of 1971, is headed by the Governor of Alaska or his full-time Co-Chairman, and by a Federal Co-Chairman appointed by the President of the United States. Four Commissioners are appointed by the Secretary of the Interior, and four by the Governor of Alaska.

STATE
of ALASKA

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES

TO: House Resources Committee

DATE: 4/27/78

FILE NO:

TELEPHONE NO:

FROM: Alice L. Iliff ALI
Research Analyst

SUBJECT: HB 907: Repeal of AS 34.10 (Land Registration Act)

This vestige of territorial law requires that for any land situated outside a borough or city where local land ownership records are kept, its owner must file a "statement of real property ownership". The statute may have had a legitimate purpose as a temporary transitional device accompanying the installation of a recording system in territorial days, as it encouraged the introduction of land ownership information into the public record. Today, its reason for being is much more speculative.

To induce compliance with the filing requirement of the statute, it provides for modest financial penalties in the event of a failure to file. Once assessed, a penalty becomes a lien against the property. The lien is subject to foreclosure under the statute, but if (as is usually the case) the landowner fails to respond to the lien foreclusure action by answering the petition, the land owner may "redeem" the property during the first year following its "foreclosure". After the expiration of this one-year redemption period, the procedure departs from the usual foreclosure model. Instead of selling the property to satisfy the lien and turning the overage in proceeds back to the owner, the State simply keeps the property. The land may be "repurchased" by its owner, but that right of repurchase is extinguished if the land is disposed of into private ownership by the State or is held by the State for and devoted to a "public purpose" and improvements are constructed upon it. Since the existence of these rights of repurchase makes management of the land as public domain difficult and expensive (administrative costs exceeding $30,000 per year for approximately 140 parcels with negligible return), the State can only derive a benefit from this forfeited land by disposing of it into private ownership by sale. The parcels usually have changed hands since foreclosure, resulting in time consuming administrative problems for both the State and the innocent victims.

There is no longer any public purpose served by this statute. From the beginning, the only legitimate purpose of the law was to compel landowners to identify their land holdings and place them on the record. But where recordable transactions (conveyances, mortgages, and the like) take place, the advantages of recording alone induce the new owner or mortgagee to record. Another purpose commonly attributed to the law, that of providing a record of land ownership in the unorganized borough to satisfy various public and private information needs, is illusory. The recording system itself satisfies this purpose - incompletely, albeit, but just as effectively as the superfluous statement file requirement does.

Assume that there were some legitimate public policy served by a law requiring land owners to file statements of real property ownership. It is clear that the penalty and lien foreclosure devices in the statute have not been effective in securing compliance with that filing requirement.

Filing a statement (or, more to the underlying objective, getting private land holdings on the record) can be encouraged by a "carrot", by a "stick", or by a combination of the two. The "carrot" in this case is the recording law itself - the landowner whose interest is recorded enjoys an important priority over he who does not record. This legal protection is a "carrot" sufficient to induce all who are aware of the recording law to use it, irrespective of the existence of any penalties for nonuse of the system.

The "stick" to induce filing is a penalty fee backed up by the lien foreclosure mechanism. This has apparently not been effective. People file because they want the benefits of the recording system; people fail to file because they are unaware of the existence of the system and the benefits which would inure to them from using it. A penalty mechanism will only encourage compliance by those who are already aware of the system but would not otherwise use it - a negligible class of persons.

A principal problem with the foreclosure action as a compliance mechanism is that it is only inflicted upon those landowners whose land holdings have been discovered due to the recordation of a conveyance. The recording of the conveyance itself, with or without an accompanying ownership statement, fulfills the legislative goal of getting land onto the public records. In these cases, the need for a statement is superfluous and the idea of penalizing the person for failing to file one borders on the absurd. In other words, when scrutinized against the actual operation of the statute, the reasoning underlying the foreclosure mechanism is seen to be circular: (1) the objective of the law is to get land holdings on the record; (2) the foreclosure process exists to encourage compliance with the law in order to satisfy that objective; (3) the only lands which are subjected to foreclosure are those whse existence comes to the attention of the Division of Lands when they are recoreded; (4) at that point, the lands have entered into the recording system and the legislative objective has been met.

In summary,

1. There is no valid public purpose served by the land registration statute. To the extent that there is any need to have a public record of land holdings in the unorganized borough, that need is fully met by the existing recording system, supplemented by the land status records of State and Federal governments.

2. The filing requirement of the land registration law imposes an undesirable paperwork burden and expense upon private landowners. This burden should not exist without some countervailing public policy.

3. Administration of the law costs the State $30,000 to $50,000 every year in employee time that could be better utilized for other efforts. Trying to administer AS 34.10 in light of Native lands conveyances, homesites, and any other upcoming programs of land disposal will be impossible due to lack of staff and monies, as well as inequities of this law that have been perpetrated for years to the disadvantage of the public. There is consensus among all agencies involved that the statute is unnecessary.

4. Because of the existence in perpetuity of rights of repurchase on foreclosed lands, the State cannot effectively manage these properties as public land. It can only derive benefit from them by disposing of them back into private ownership at the expense of innocent holders of repurchase rights.

5. Taking a person's land away for failure to file a superfluous piece of paper is bad public policy. It is even worse when the person failed to file simply because the person was ignorant of the filing requirement.

For all of these reasons, the statute should be repealed.

HB 907

March 24, 1978

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18 of the Alaska tution, and in accordance with AS 23.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill repealing the Land Registration Law, AS 34.10.

The Land Registration Law is a vestige of territorial days which requires that private owners of land outside cities and boroughs file statements of real property ownership. Modest penalties are imposed for failure to file. These penalties become liens against property which may be foreclosed, resulting in forfeiture of the land to the state. After foreclosure, the land may be redeemed for a period of one year, but it is also subject to a continuous "right of repurchase" by the former owner and his assigns. This right to repurchase is extinguished only by disposal of the land or construction of a public building upon it. These repurchase rights inhibit effective management of land gained by foreclosure and have been the subject of abuse by industrious opportunists who, although they have never had any relationship with either the foreclosed land or its owners, obtain some colorable interest in the land and attempt to reap a windfall by repurchasing it.

The requirement of filing statements of real property ownership is somewhat obscure and often ignored by landowners. It does not enhance the existing recording system and government records which, according to the Division of Lands, fully meet any need for public record of land holding outside of municipalities. Penalizing an individual for failure to file a superfluous document is, in my view, bad public policy, especially when the individual probably does not know of the requirement to file.

Administration of the Land Registration Law costs the state $30,000 - $50,000 per year with negligible return. Costs could easily triple with the huge amounts of land soon to be placed in private ownership, including native selections and state and municipal land disposals. It seems senseless to continue the burden of this law on taxpayers, land owners, and state agencies.

State agencies and staff involved concur in the desirability of repealing this law and incurring the substantial time and money savings which would result.

This bill would repeal the entire Land Registration Law (AS 34.10), except for one provision (AS 34.10.170) which states that land obtained by foreclosure under the chapter may be administered and disposed of in the same manner as other state land. The bill also includes a provision which continues, for three years after enactment, current rights to repurchase land lost by foreclosure; then, after published notice, those rights of formerly indefinite duration are terminated, thus clearing the state's title to that land.

The Land Registration Law is outdated, nearly universally unpopular, costly and burdensome to administer, often unfair, and yields little, if any, benefit to the state. Therefore, I urge its repeal by passage of this bill.

Sincerely,

JSH

Jay S. Hammond
Governor

TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HOUSE BILL NO. 907

Title Repeal of Land Registration Act

Requested by Governor Date 3/23/78

II. FISCAL DETAIL

Agency Affected Department of Natural Resources

Program Category Affected NRMEC

Budget Request Unit(s) Affected Land & Water Mgmt.

EXPENDITURES (Thousands of Dollars)

		FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
100	PERSONAL SERVICES						
200	TRAVEL						
300	CONTRACTUAL						
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify)						
	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Repeal of this law will not incur additional funds. It is estimated that approximately $30,000 to 50,000 will be saved by the various agencies which administer this statute, including the Dept. of Natural Resources, the Depatment of Law, the District Recrder's Office, and the Court System. These savings will be reallocated to existing programs.

IV. DATE 3/23/78 PREPARED BY Patrick W. Conbeady

AGENCY Department of Natural Resources

PHONE 465-2400

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/77)

for use of certain apartment or apartments to the exclusion of the other apartments;

(12) "majority" or "majority of apartment owners" means the apartment owners with 51 per cent or more of the votes in accordance with the percentages assigned in the recorded declaration, to the apartments for voting purposes;

(13) "property" means the land, the building, all its improvements and structures, all owned in fee simple absolute or qualified or by way of a periodic estate, or in any other manner in which real property may be owned in the state, and all easements, rights, and appurtenances belonging to it, none of which shall be considered as a security or security interest, and all articles of personalty intended for use in connection with it, which have been or are intended to be submitted to this chapter. (§ 1 ch 44 SLA 1963)

Sec. 34.07.460. Short title. This chapter may be cited as the Horizontal Property Regimes Act. (§ 1 ch 44 SLA 1963)

Chapter 10. Land Registration Law.

Article 1. Administration.

Sec. 34.10.010. Administration. (a) The Department of Natural Resources shall administer this chapter. The department shall make rules and regulations considered necessary to carry out this chapter.

(b) The department has custody of all land registration records assembled under this chapter, and of those records in the Department of Revenue pertaining to or arising from the levying of a general property tax. The department shall have access to other public records which relate to its duties under this chapter. (§ 3 ch 134 SLA 1953; am § 1 ch 135 SLA 1955)

Am. Jur. and C.J.S. references. — 1 Am. Jur., Acknowledgments, § 1 et seq.; 16 Am. Jur., Deeds, § 1 et seq.; 26 Am. Jur., Husband and Wife, §§ 34 to 224, 274 to 325; 36 Am. Jur., Mortgages, § 1 et seq.; 42 Am. Jur., Property, § 1 et seq.; 45 Am. Jur., Records and Recording Laws, § 1 et seq. 91 C.J.S. Vendor and Purchaser § 1.

Sec. 34.10.020. Collection of penalties. (a) The Department of Natural Resources shall collect all penalties due under this chapter and transmit them to the Department of Revenue for deposit into the general fund.

(b) The department may appoint the recorder of each recording district as its agent for purposes of collecting penalties from the persons

who are subject to the penalty payment and who personally file a statement in the office of the department. When the appointments are made, the recorder shall collect the penalty, if possible, issue receipts for the payment in duplicate, attach the duplicate receipt to the original filing statement, and, transmit to the department at the time of transmitting the monthly ownership statements 90 per cent of the penalty collected. The recorder shall retain 10 per cent of the penalty collected as his commission.

(c) For the purpose of this chapter an error in the description, area or acreage of property does not invalidate the assessment of the penalty against the property if the description is sufficiently accurate to identify the property. (§ 6 ch 134 SLA 1953; am § 4 ch 135 SLA 1955)

Sec. 34.10.030. Funds for administration. Funds for administration of this chapter are those provided in the appropriation for the department. (§ 10 ch 135 SLA 1955)

Article 2. Registration.

Sec. 34.10.040. Filing statement. (a) The owner of real property in the state but outside an incorporated city, public utility district, school district or other political subdivision where record of ownership of real property is kept shall file in the office of the recorder of the recording district in which the property is located, before January 1, 1956, a sworn statement in duplicate giving his name, his post office address, an accurate legal description of the tract of land, its area or acreage, the date acquired, and other information necessary for the purposes of this chapter.

(b) The provisions of (a) of this section do not apply to

(1) an owner who acquired title to his property before July 1, 1949, and has complied with the registration provisions of § 22-2-1, ACLA 1949;

(2) an owner who has complied with this chapter before March 28, 1955; or

(3) property to which the United States or the state holds title.

(c) Upon transfer of title to real property after December 31 1955, within the localities described in (a) of this section where filing is required, a similar statement must be filed by the owner of the newly acquired tract before January 1 of the year after the transfer occurs.

(d) An owner of real property who has filed the statement required by this section need not file another statement under this chapter. (§ 4 ch 134 SLA 1953; am § 2 ch 135 SLA 1955)

Revisor's note. — Section 22-2-1 ACLA 1949 was repealed by § 2 ch 134 SLA 1953 but was referred to in (b) (1) of the above section which was § 4 ch 134 SLA 1953.

Am. Jur. and C.J.S. references. — 45 Am. Jur., Records and Recording Laws, § 1 et seq.

91 C.J.S. Vendor and Purchaser § 1 et seq.

Sec. 34.10.050. Penalty and lien for failure to file statement. (a) Upon failure to file the statement required in § 40 of this chapter, the owner is subject to a penalty of $5. For property acquired after December 31, 1955, the owner is subject to a penalty of $10 for failure to file each required statement. A penalty for failure to file a statement becomes a lien upon the property on January 1 of the year after the failure to file. The lien is subject to collection as provided in §§ 70 — 170 of this chapter.

(b) If a penalty is not paid before the date the delinquent list is published in accordance with § 70 of this chapter, a penalty of $5 attaches to each tract listed in the delinquent list of September 1, 1956, and a penalty of $10 attaches to each tract listed in the delinquent list compiled after September 1, 1956. (§ 4 ch 134 SLA 1953; am § 2 ch 135 SLA 1955)

Sec. 34.10.060. Duties of recorder. (a) When a statement is filed, the recorder shall file a duplicate copy or prepare and enter a copy in a special registration law book to be provided by him for that purpose. The recorder shall enter the name of the owner in an alphabetical index together with the date and hour of filing the statement. The recorder shall number the original filing statements in consecutive order, and enter on the statements the date received and customary filing information, and shall, before the eleventh day of each month, transmit to the department all original statements filed with him for the preceding calendar month together with 90 per cent of the receipts collected for penalty payments as provided for in § 20 of this chapter.

(b) When a recorder receives a document for recording evidencing a transaction of real property for which a filing statement is required by § 40 of this chapter, he shall notify the new owner of the filing requirements, and if not so filed, he shall notify the department on a special form provided for the purpose. (§ 5 ch 134 SLA 1953; am § 3 ch 135 SLA 1955)

Article 3. Enforcement.

Sec. 34.10.070. Procedure for foreclosing lien. (a) The department shall file in the office of the clerk of the superior court in the judicial district in which the property subject to the lien is located a list of all parcels of property subject to the lien, and upon which penalties are

unpaid for a period of at least one year after they are due and payable.

(b) The lien on the parcels contained in the list shall be foreclosed by appropriate proceedings by the department in the name of the state in the manner provided in §§ 70 — 170 of this chapter. The parcels affected by the lien shall be numbered serially. The department shall (1) post a certified copy of the list in its office; (2) mail to the last known owner at his last known address a registered letter advising him of the lien; (3) either post a notice of the lien upon the real property involved, or post notice of the lien in the nearest post office, whichever the department determines is best calculated to provide actual notice to the owner of the land; and (4) publish the list once each week for four consecutive weeks in a newspaper of general circulation in the judicial district in which the property is situated. The action shall be entitled "In the matter of foreclosure of liens under the Land Registration Law of 1953, as amended."

(c) The filing of the list, the mailing of notice to the lienee, and the posting of the notice on the land involved or in the nearest post office constitute and have the same effect as the filing of a separate complaint and service of summons to foreclose a lien. (§ 7 ch 134 SLA 1953; am § 5 ch 135 SLA 1955; am § 3 ch 179 SLA 1959)

Sec. 34.10.075. Release of prior liens. A lien or lien right on property which accrued under this chapter before March 28, 1955, is released, and no action to enforce the lien may be sustained. (§ 8 ch 135 SLA 1955)

Sec. 34.10.080. Redemption. (a) A person who has a right, title or interest in or lien upon a parcel described in the list of delinquent penalties may redeem the parcel by paying to the Department of Revenue the amount shown in the list of delinquent penalties within 60 days from the date of the filing of the list in the office of the clerk of the court, or may serve a verified answer upon the attorney general, setting out in detail the nature, character and amount of his interest and a defense or objection to the foreclosure of the lien.

(b) The caption of the answer shall contain a reference to the serial number of each parcel concerned. The answer must be served on the attorney general or filed in the office of the clerk of the judicial district within 20 days after the last day for redemption.

(c) If a person fails to redeem or answer, the person is in default and is barred from all his right, title and interest in the parcel described in the list of delinquent penalties, and a judgment of foreclosure may be taken as provided in this chapter. Upon redemption the person redeeming is entitled to a certificate from the Department of Revenue describing the property in the same manner as it is described in the list of delinquent penalties. Upon the filing of the certificate with the clerk of the court, the clerk shall note the word "redeemed" and the date of filing opposite the description of the parcel on the list. The notice operates to cancel the notice of pendency of action with respect to the

parcel. (§ 22-2
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parcel. (§ 22-2-9 ACLA 1949; am § 1 ch 106 SLA 1949; am § 9 ch 134 SLA 1953)

Sec. 34.10.090. Affidavits in foreclosure action. Affidavits of filing, publication, posting, mailing or other acts required by this chapter in connection with an action to foreclose liens shall be filed in the office of the clerk of the superior court in the judicial district in which the property subject to the lien is situated and shall, together with all other documents required by this chapter to be filed in the office of the clerk, constitute a part of the judgment roll in a foreclosure action. (§ 22-2-10 ACLA 1949; am § 1 ch 106 SLA 1949; am § 9 ch 134 SLA 1953)

Sec. 34.10.100. Burden of proof. (a) It is not necessary for the plaintiff to plead or prove the various steps, procedures and notices for the assessment of the penalties or other lawful charges against the lands set out in the list of delinquent penalties. The penalties or other lawful charges and the lien for them are presumed valid. A defendant alleging an irregularity in the lien must particularly specify in his answer the irregularity and must affirmatively establish the defense.

(b) This chapter applies to all defendants even though one or more of them are infants, incompetents, absentees or nonresidents of the state. (§ 22-2-12 ACLA 1949; am § 1 ch 106 SLA 1949; am § 9 ch 134 SLA 1953)

Sec. 34.10.110. Powers and duties of the court. (a) The court may determine and enforce the priorities, rights, claims and demands of the parties to the action as they exist according to law, including those of the defendants as between themselves.

(b) In a proper case the court may direct a sale of the lands and the distribution or other disposition of the proceeds of the sale.

(c) The court shall make a final judgment, in relation to a parcel included in the list of delinquent penalties,

(1) directing the sale of the parcel when an answer is filed by a party, and the court determines that the party has a right, title, interest, claim, lien or equity of redemption in the parcel;

(2) awarding to the state the possession of a parcel when no answer is filed and the parcel is not redeemed. (§§ 22-2-13, 22-2-14 ACLA 1949; am § 1 ch 106 SLA 1949; am § 9 ch 134 SLA 1953)

Sec. 34.10.120. Procedure for foreclosure sale. (a) A sale directed by the court shall be a public auction by the Department of Revenue.

(b) Public notice of the auction shall be given once a week for at least three successive weeks in a newspaper published in the judicial district. The notice shall be posted in a conspicuous place at the United States post office nearest the land to be sold.

(c) The description in the notice of the parcel offered for sale shall be the description contained in the list of delinquent penalties, with the other descriptions the court directs. (§ 22-2-13 ACLA 1949; am § 1 ch 106 SLA 1949; am § 9 ch 134 SLA 1953)

Sec. 34.10.130. Deed directed by judgment. (a) A judgment directing a conveyance under this chapter shall contain a direction to the Department of Revenue to prepare, execute and have recorded a deed conveying full and complete title to the parcel

(1) to the grantee in a foreclosure sale;

(2) to the state when the state is awarded possession of an unredeemed parcel.

(b) Upon the execution of the deed the grantee or state is seized of an estate in fee in the land, and all persons (including infants, incompetents, absentees and nonresidents) who may have had a right, title, interest, claim, lien or equity of redemption in the land are barred from the right, title, interest, claim, lien or equity of redemption. (§§ 22-2-13, 22-2-14 ACLA 1949; am § 1 ch 106 SLA 1949; am § 9 ch 134 SLA 1953)

Sec. 34.10.140. Right to possession. A party who acquires title to premises under this chapter is entitled to possession as if the person had obtained a judgment in an action for forcible entry and detainer of the property. (§ 22-2-15 ACLA 1949; am § 1 ch 106 SLA 1949; am § 9 ch 134 SLA 1953)

Sec. 34.10.150. Conveyance in lieu of foreclosure. Instead of prosecuting an action to foreclose a lien on a parcel, the state may accept a conveyance of the interest of a person having a right, title, interest, claim, lien or equity of redemption in the parcel. (§ 22-2-17 ACLA 1949; am § 1 ch 106 SLA 1949; am § 9 ch 134 SLA 1953)

Sec. 34.10.160. Answer. (a) If a verified answer is served upon the attorney general within the period specified in § 80 of this chapter, the court shall immediately hear and determine the issues raised by the complaint and answer in the same manner and under the same rules as it hears and determines other actions, except as provided otherwise in this chapter.

(b) Upon trial, proof that the statement required by § 40 of this chapter was filed when due or that the penalty was paid, together with interest due, constitutes a complete defense.

(c) When an answer is filed as provided in this section, the defendant has an absolute right to the severance of the action as to a parcel of land in which he has an interest, upon written demand filed with or made a part of his answer. (§ 8 ch 134 SLA 1953)

Sec. 34.10.170. State administration of lands. The Department of Natural Resources may sell, lease or administer all real property to which the state obtains title under this chapter in the same manner as it is authorized to sell, lease or administer other state land. Proceeds derived from the sales, leases or administration shall be remitted to the Department of Revenue and deposited into the general fund of the state. (§ 10 ch 134 SLA 1953; am § 6 ch 135 SLA 1955)

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