

ALASKA LEGISLATURE COMMITTEE FILLES, 1989-1990

8672

6499 SENATE RESOURCES

903

and, upon the Termination Date, shall become the sole and exclusive property of State, free of any and all claims of Lessee or any person or entity claiming by or through the Lessee. In the event Lessee or sublessees do not remove their personal property and trade fixtures which they are permitted by this Section 6.2 to remove from the Project within forty-five (45) days following the Termination Date, State may treat said personal property and trade fixtures as abandoned and (i) retain the personal property and treat the trade fixtures as part of the Property, or (ii) have the personal property and trade fixtures removed and stored at Lessee's expense. Lessee shall promptly reimburse State for any damage caused to the Property by the removal of personal property and trade fixtures whether removal is by Lessee or State.

6.3 Mechanics and Labor Liens.

(a) Lessee agrees that it will not permit any claim of lien made by any mechanic, materialman, laborer, or other similar liens to stand against the Property for work or materials furnished to Lessee or its sublessees in connection with any construction, improvements or maintenance or repair thereof made by Lessee or its agent or sublessees upon the Property. Lessee shall cause any such claim of lien to be fully discharged within thirty (30) days after the date of filing thereof; provided, however, that in the event Lessee, in good faith, disputes the validity or amount of any such claim of lien, and if Lessee shall give to State such security as State may reasonably require to insure payment thereof and prevent any sale, foreclosure, or forfeiture of the Property or any portion thereof by reason of such nonpayment, Lessee shall not be deemed to be in breach of this Section 6.3 so long as Lessee is diligently pursuing a resolution of such dispute with continuity and, upon entry of final judgment resolving the dispute, if litigation or arbitration results therefrom, discharges said lien within the time limits specified above.

(b) Lessee shall provide security for the completion of the Project, and all changes or alterations thereto, and for the payment in full of claims of all persons for work performed in or materials furnished for construction by either of the following methods:

(i) Posting a surety bond issued by a corporate surety acceptable to State in an amount equal to the cost of each improvement, said bond to be deposited with State and to remain in effect until the Project shall have been constructed and insured as provided in this Lease, and the entire cost of the Project, or any alterations thereto, shall have been paid in full, free from all liens and claims of contractors, subcontractors, mechanics, laborers and materialmen. Said bond shall be conditioned upon the faithful performance of the provisions of this Lease by Lessee, and shall give all claimants the right to action to recover upon such bond.

(ii) Any other method first approved in writing by State.

6.4 Development Rights. Lessee shall not undertake development of the Property other than to construct the Project and the changes and alterations thereto approved by State in accordance with Section 6.1 above. Lessee shall not represent to any person, governmental body or other entity that Lessee is the fee owner of the Property, Lessee shall not subject the Property, or any portion thereof, to the provisions of the Horizontal Property Regimes Act, nor shall Lessee execute any petition, application, permit, plat or other document on behalf of State, without State's express prior written consent, which may be

withheld for any reason whatsoever. Lessee shall notify State in writing of any proposed or pending governmental action of which Lessee becomes aware which affects the Property, its zoning or the right to develop the Property for any future use.

6.5 Hold Harmless. Lessee shall indemnify, protect and hold harmless State and the Property from and against all claims and liabilities arising by virtue of or relating to construction of the Project or repairs made at any time to the Project (including repairs, restoration and rebuilding). Lessee shall regularly and timely pay any and all amounts properly payable to third parties with respect to such work and will maintain its books and records in the State of Washington, with respect to all aspects of such work and materials therefore, and will make them available for inspection by State or its representatives as requested.

6.6 Permits, Compliance with Codes. All building permits and other permits, licenses, permissions, consents and approvals required to be obtained from governmental agencies or third parties in connection with construction of the Project and any subsequent improvements, repairs, replacements or renewals to the Property or Project shall be acquired as required by applicable laws, ordinances or regulations by and at the sole cost and expense of Lessee. Lessee shall cause all work on the Property during the Term to be performed in accordance with all applicable laws and all directions and regulations of all governmental agencies and the representatives of such agencies having jurisdiction.

6.7 Ownership of Improvements. During the Term of this Lease, the Project and all other improvements constructed by Lessee, including without limitation all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein, shall be the property of Lessee. At the expiration or earlier termination of this Lease, the Project and all improvements and all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein shall become the property of State. Throughout the term of this Lease, any liens, encumbrances or claims of third parties with respect to any of the foregoing, including any part of the Project's mechanical or electrical systems or the Project's elevators, shall be expressly subordinate and subject to the rights of State under this sentence.

6.8 Control and Indemnification. During the Term of this Lease, Lessee shall have exclusive control and possession of the Property, and State shall have no liabilities, obligations or responsibilities whatsoever with respect thereto or with respect to any plans or specifications submitted to State pursuant to this Lease. State's review of any plans or specifications is solely for its own purposes, and State does not make any warranty concerning the appropriateness of any such plans or specifications for any other purpose. State's approval of (or failure to disapprove) any such plans and specifications shall not render State liable therefore, and Lessee hereby covenants and agrees to indemnify, defend and hold State harmless from and against any and all claims arising out of or from the use of such plans and specifications.

7. LEASEHOLD MORTGAGES

7.1 Leasehold Mortgage Authorized. State consents to Lessee receiving a Purchase Money Leasehold Mortgage upon a sale and assignment of the leasehold estate created by this

Lease, subject to compliance by Lessee with this Section 7, if Lessee has obtained the prior written consent by State to the sale and assignment of the leasehold estate pursuant to the provisions of Section 13 below. State consents to Lessee mortgaging or otherwise encumbering Lessee's leasehold estate to an Institutional Investor (as hereinafter defined) under one or more Leasehold Mortgages, subject to compliance by Lessee with this Section 7. This Lease may be assigned as security for such Purchase Money Leasehold Mortgage(s) or Institutional Investor Mortgage(s). Except as specifically authorized in this Section 7 with respect to Purchase Money Leasehold Mortgage(s) and Institutional Investor Mortgage(s), Lessee shall not have the right to assign, hypothecate, mortgage or otherwise pledge the leasehold estate created hereby without State's express prior written consent, as provided in Section 13 below.

7.2 Notice to State.

(a) (i) If upon sale and assignment of the leasehold estate, Lessee shall, on one or more occasions, take back a Purchase Money Leasehold Mortgage for a term not beyond the Termination Date, Lessee shall provide State notice of such Purchase Money Leasehold Mortgage together with a true copy thereof. Any Purchase Money Leasehold Mortgage shall contain a statement which disclaims any interest or lien against State's fee interest in the Property and which provides that State shall have no liability whatsoever in connection with said Mortgage or the instruments and obligations secured thereby.

(ii) Upon receipt of such notice, State shall promptly acknowledge by an instrument in recordable form that State consents to such Purchase Money Leasehold Mortgage for so long as Lessee holds such instrument, or shall promptly notify Lessee that State does not consent to such Mortgage as not conforming to the requirements of Section 7.2(a)(i) above, and shall specify the specific basis of such nonconformity.

(b) (i) If Lessee shall mortgage Lessee's leasehold estate to an Institutional Investor for a term not beyond the Termination Date, and if the holder of such Leasehold Mortgage shall provide State with notice of such Leasehold Mortgage together with a true copy of such Leasehold Mortgage and the name and address of the Mortgagee, State and Lessee agree that, following receipt of such notice by State, the provisions of this Section 7 shall apply in respect to each such Leasehold Mortgage held by an Institutional Investor. In addition to the foregoing requirements, an Institutional Investor Leasehold Mortgage shall contain a statement which disclaims any interest or lien against State's fee interest in the Property and which provides that State shall have no liability whatsoever in connection with said Mortgage or the instruments and obligations secured thereby.

(ii) In the event of any assignment of a Leasehold Mortgage or in the event of a change of address of a Leasehold Mortgagee or of an assignee of such Leasehold Mortgage, notice of the new name and address shall be provided to State; provided, however, any such assignee shall be an Institutional Investor as defined herein.

(c) Promptly upon receipt of a communication purporting to constitute the notice provided for by Section 7.2 (b)(i) above, State shall acknowledge by an instrument in recordable form receipt of such communication as constituting the notice provided by Section 7.2(b)(i) above or, in the alternative, notify Lessee and the Leasehold Mortgagee of the rejection of such communication as not conforming with the provisions of Section 7.2(b)(i) above, and specify the specific basis of such nonconformity.

(d) After State has received the notice provided for by Section 7.2(a)(i) or Section 7.2(b)(i) above, Lessee shall with reasonable promptness provide State with copies of the note or other obligation secured by such Purchase Money Leasehold Mortgage or Leasehold Mortgage and of any other documents pertinent to the Purchase Money Leasehold Mortgage or Leasehold Mortgage as specified by State. Lessee shall thereafter also provide State from time to time with a copy of each amendment or other modification or supplement to such instruments. All recorded documents shall be accompanied by the appropriate certification of the appropriate official of the recording office as to their authenticity as true and correct copies of official records. All nonrecorded documents shall be accompanied by a certification by Lessee that such documents are true and correct copies of the originals. From time to time upon being requested to do so by State, Lessee shall also notify State of the date and place of recording and other pertinent recording data with respect to such instruments as have been recorded.

7.3 Definitions.

(a) The term "Institutional Investor" as used in this Section 7 shall refer to any reputable and solvent (i) savings bank, (ii) savings and loan association, (iii) commercial bank, (iv) trust company, (v) credit union, (vi) insurance company, (vii) college, (viii) university, (ix) real estate investment trust or (x) pension fund. The term "Institutional Investor" shall also include other reputable and solvent lenders of substance which perform functions similar to any of the foregoing, and which have assets in excess of Fifty Million Dollars (\$50,000,000) at the time the Leasehold Mortgage loan is made.

(b) The term "Leasehold Mortgage" as used in this Section 7 shall include a mortgage, a deed of trust, a deed to secure debt, or other security instrument by which Lessee's leasehold estate is mortgaged, conveyed, assigned, or otherwise transferred, to secure a debt or other obligation which is held by an Institutional Investor.

(c) The term "Leasehold Mortgagee" as used in this Section 7 shall refer to the Institutional Investor which is the holder of a Leasehold Mortgage in respect to which the notice provided for by Section 7.2 above, has been given and received and as to which the provisions of this Section 7 are applicable.

7.4 Consent of Leasehold Mortgagee Required. No cancellation, surrender or modification of this Lease shall be effective as to any Leasehold Mortgagee unless consented to in writing by such Leasehold Mortgagee; provided, however, that nothing in this Section 7.4 shall limit or derogate from State's rights to terminate this Lease in accordance with the provisions of this Section 7.

7.5 Default Notice. State, upon providing Lessee any notice of: (i) default under this Lease, or (ii) an intention to terminate this Lease, or (iii) demand to remedy a claimed default, shall contemporaneously provide a copy of such notice to every Leasehold Mortgagee. From and after such notice has been given to a Leasehold Mortgagee, such Leasehold Mortgagee shall have the same period, after the giving of such notice upon it, for remedying any default or causing the same to be remedied, as is given Lessee after the giving of such notice to Lessee, plus in each instance, the additional periods of time specified in Sections 7.6 and 7.7 below, to remedy, commence remedying or cause to be remedied the defaults specified in any such notice. State shall accept such performance by or at the instigation of such Leasehold Mortgagee as if the same had been done by Lessee.

Lessee authorizes each Leasehold Mortgagee to take any such action at such Leasehold Mortgagee's option and does hereby authorize entry upon the Property by the Leasehold Mortgagee for such purpose.

7.6 Notice to Leasehold Mortgagee.

(a) Anything contained in this Lease to the contrary notwithstanding, if any default shall occur which entitles State to terminate this Lease, State shall have no right to terminate this Lease unless State shall notify by a Termination Notice every Leasehold Mortgagee of which State has been notified pursuant to Section 7.2(b)(i) above, of Lessor's intent to so terminate at least thirty (30) days in advance of the proposed effective date of such termination, if such default is capable of being cured by the payment of money, and at least forty-five (45) days in advance of the proposed effective date of such termination, if such default is not capable of being cured by the payment of money. The provisions of Section 7.7 below shall apply if, during such thirty (30) or forty-five (45) day Termination Notice Period, any Leasehold Mortgagee shall:

(i) Notify State of such Leasehold Mortgagee's desire to nullify such notice; and

(ii) Pay or cause to be paid the Rent, additional rent, if any, and other monetary obligations then due and in arrears as specified in the Termination Notice to such Leasehold Mortgagee and which may become due during such thirty (30) or forty-five (45) day period; and

(iii) Comply with all non-monetary requirements of this Lease then in default and, as determined by State, reasonably susceptible of being complied with by such Leasehold Mortgagee (lack of or failure to expend funds not to adversely affect the susceptibility of cure), and proceed to comply with reasonable diligence and continuity with such requirements not reasonably susceptible of being complied with by such Leasehold Mortgagee within the notice period; provided, however, that such Leasehold Mortgagee shall not be required during such forty-five (45) day period to cure or commence to cure any default consisting of Lessee's failure to satisfy and discharge any lien, charge or encumbrance against the Lessee's interest in this Lease or the Property junior in priority to the lien of the Leasehold Mortgage held by such Leasehold Mortgagee.

(b) Any notice to be given by State to a Leasehold Mortgagee pursuant to any provision of this Section 7 shall be deemed properly addressed if sent to the Leasehold Mortgagee who served the notice referred to in Section 7.2(b)(i) above, unless notified of a change of Leasehold Mortgage ownership has been given to State pursuant to Section 7.2(b)(i) above.

7.7 Procedure on Default.

(a) If State shall elect to terminate this Lease by reason of any default of Lessee, and a Leasehold Mortgagee shall have proceeded in the manner provided for by Section 7.6 above, the specified date for the termination of this Lease as fixed by State in its Termination Notice shall be extended for a period of six (6) months, provided that such Leasehold Mortgagee shall during such six (6) month period:

(i) Pay or cause to be paid the Rent, additional rent, if any, and other monetary obligations of Lessee under this Lease as the same become due, and continue to perform all of Lessee's other obligations under this Lease, excepting (a)

obligations of Lessee to satisfy or otherwise discharge any lien, charge or encumbrance against Lessee's interest in this Lease or the Property junior in priority to the lien of the Leasehold Mortgage held by such Leasehold Mortgagee, and (b) past non-monetary obligations then in default and not reasonably susceptible of being cured by such Leasehold Mortgagee (lack of or failure to expend funds not to adversely affect the susceptibility of cure); and

(ii) If not enjoined or stayed, take steps to acquire or sell Lessee's interest in this Lease by foreclosure of the Leasehold Mortgage or other appropriate means and prosecute the same to completion with reasonable diligence and continuity. If such Leasehold Mortgagee is enjoined or stayed from taking such steps, the Leasehold Mortgagee shall use its best efforts to seek relief from such injunction or stay.

(b) If at the end of such six (6) month period such Leasehold Mortgagee is complying with Section 7.7(a) above, this Lease shall not then terminate, and the time for completion by such Leasehold Mortgagee of such proceedings shall continue so long as such Leasehold Mortgagee continues to comply with the provisions of Section 7.7(a) above and, is enjoined or stayed and thereafter for so long as such Leasehold Mortgagee proceeds to complete steps to acquire or sell Lessee's interest in this Lease by foreclosure of the Leasehold Mortgage or by other appropriate means with reasonable diligence and continuity. Nothing in this Section 7.7, however, shall be construed to extend this Lease beyond the original term, nor to require a Leasehold Mortgagee to continue such foreclosure proceedings after the default has been cured. If the default shall be cured and the Leasehold Mortgagee shall discontinue such foreclosing proceedings, this Lease shall continue in full force and effect as if Lessee had not defaulted under this Lease.

(c) If a Leasehold Mortgagee is complying with Section 7.7(a) above, upon (i) the acquisition of Lessee's estate herein by such Leasehold Mortgagee or any other purchaser at a foreclosure sale or otherwise and (ii) the discharge of any lien, charge or encumbrance against the Lessee's interest in this Lease or the Property which is junior in priority to the lien of the Leasehold Mortgage held by such Leasehold Mortgagee and which the Lessee is obligated to satisfy and discharge by reason of the terms of this Lease, this Lease shall continue in full force and effect as if Lessee had not defaulted under this Lease; provided, however, that such Leasehold Mortgagee or its designee or any other such party acquiring the Lessee's leasehold estate created hereby shall agree in writing to assume all obligations of the Lessee hereunder, subject to the provisions of this Section 7.

(d) For the purposes of this Section 7, the making of a Leasehold Mortgage shall not be deemed to constitute a complete assignment or transfer of this Lease or of the leasehold estate hereby created, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease or of the leasehold estate hereby created. The Leasehold Mortgagee, prior to foreclosure of the Leasehold Mortgage or other entry into possession of the leasehold estate, shall not be obligated to assume the performance of any of the terms, covenants or conditions on the part of Lessee to be performed hereunder. The purchaser (including any Leasehold Mortgagee) at any sale of this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignee or transferee in lieu of the

foreclosure of any Leasehold Mortgage shall be deemed to be an assignee or transferee within the meaning of this Section 7, and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Lessee to be performed hereunder from and after the date of such purchase and assignment.

(e) Any Leasehold Mortgagee of the leasehold estate of Lessee pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings may, upon acquiring Lessee's leasehold estate, without further consent of State, sell and assign the leasehold estate on such terms and to such persons and organizations as are acceptable to such Mortgagee; provided that such assignee has delivered to State its written agreement to be bound by all of the provisions of this Lease and the assignee has previously been approved in writing by State, which approval shall not be unreasonably withheld.

(f) Notwithstanding any other provisions of this Lease, any sale of this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignment or transfer of this Lease and of the leasehold estate hereby created in lieu of the foreclosure of any Leasehold Mortgage shall be deemed to be a permitted sale, transfer or assignment of this Lease and of the leasehold estate hereby created.

(g) Lessee shall not transfer, sell or assign any redemption rights from any foreclosure sale to any person which is not approved by State in accordance with the provisions of Section 13 below.

7.8 New Lease. The provisions of this Section 7.8 shall apply in the event of the termination of this Lease after default by Lessee resulting from failure of a trustee in bankruptcy to assume the executory portion of the term of this Lease. If a Leasehold Mortgagee shall have waived in writing its rights under Sections 7.6 and 7.7 above within thirty (30) days after such Leasehold Mortgagee's receipt of notice required by Section 7.6 above, State shall provide each Leasehold Mortgagee with written notice that this Lease has been terminated ("Notice of Termination"), together with a statement of all sums which would at that time be due under this Lease for such termination, and of all other defaults, if any, then known to State. State agrees to enter into a new lease ("New Lease") of the Property with such Leasehold Mortgagee for the remainder of the term of this Lease, effective as of the date of termination, at the Rent and additional rent, if any, and upon the terms, covenants and conditions (including all escalations of Rent, but excluding requirements which are not applicable or which have already been fulfilled) of this Lease, provided:

(a) Such Leasehold Mortgagee shall make written request upon State for such New Lease within sixty (60) days after the date such Leasehold Mortgagee receives State's Notice of Termination of this Lease given pursuant to this Section 7.8.

(b) Such Leasehold Mortgagee shall pay or cause to be paid to State at the time of the execution and delivery of such New Lease any and all sums which would at the time of execution and delivery thereof be due pursuant to this Lease but for such termination and, in addition thereto, all reasonable expenses which State shall have incurred by reason of such termination and the execution and delivery of the New Lease and which have not otherwise been received by State from Lessee or other party in interest under Lessee. Upon execution of such New Lease, State shall allow to the Lessee named therein as an

offset against the sums otherwise due under this Section 7.8 or under the New Lease, an amount equal to the net income derived by State from the Property during the period from the date of termination of this Lease to the date of the beginning of the lease term of such New Lease. In the event of a controversy as to the amount to be paid to State pursuant to this Section 7.8, the payment obligation shall be satisfied if State shall be paid the amount not in controversy, and the Leasehold Mortgagee or its designee shall agree to pay any additional sum ultimately determined to be due pursuant to arbitration as provided in Section 14 below, plus interest as allowed by law, and such obligation shall be adequately secured.

(c) Such Leasehold Mortgagee or its designee shall agree to remedy any of Lessee's defaults of which said Leasehold Mortgagee was notified by State's Notice of Termination and which, as determined by State, are reasonably susceptible of being so cured by Leasehold Mortgagee or its designee (lack of or failure to expend funds not to adversely affect the susceptibility of cure).

7.9 New Lease Priorities. If more than one Leasehold Mortgagee shall request a New Lease pursuant to Section 7.8 above, State shall enter into such New Lease with the Leasehold Mortgagee whose mortgage is prior in lien, or with the designee of such Leasehold Mortgagee. State, without liability to Lessee or any Leasehold Mortgagee with an adverse claim, may rely upon a mortgagee's title insurance policy or preliminary commitment therefore, issued by a responsible title insurance company doing business within the State of Washington, as the basis for determining the appropriate Leasehold Mortgagee who is entitled to such New Lease.

7.10 Leasehold Mortgagee Need Not Cure Specified Default. Nothing herein contained shall require any Leasehold Mortgagee or its designee as a condition to its exercise of right hereunder to cure any default of Lessee determined by State not to reasonably be susceptible of being cured by such Leasehold Mortgagee or its designee (lack of or failure to expend funds not to adversely affect the susceptibility of cure), including but not limited to the default referred to in Section 15 below, in order to comply with the provisions of Sections 7.6 or 7.7 above, or as a condition of entering into a New Lease provided for by Section 7.8 above.

7.11 Eminent Domain. Lessee's share, as provided by Section 11 of this Lease, of the proceeds arising from an exercise of the power of Eminent Domain shall, subject to the provisions of Section 11 below, be disposed of as provided for by any Leasehold Mortgage.

7.12 Casualty Loss. A standard mortgagee clause naming each Leasehold Mortgagee may be added to any and all insurance policies required to be carried by Lessee hereunder on condition that the insurance proceeds are to be applied in the manner specified in this Lease, and the Leasehold Mortgagee shall so provide; except that the Leasehold Mortgagee may provide a manner for the disposition of such proceeds, if any, otherwise payable directly to Lessee (but not such proceeds, if any, payable jointly to State and Lessee or payable to the Trustee of Insurance as provided in Section 8.8 below) pursuant to the provisions of this Lease.

7.13 Arbitration/Legal Proceedings. State shall give each Leasehold Mortgagee prompt notice of any arbitration or legal proceedings between State and Lessee involving obligations under this Lease. Each Leasehold Mortgagee shall have the right to intervene in any such proceedings and be made a party to such

proceedings, and the parties hereto do consent to such intervention. In the event that any Leasehold Mortgagee shall not elect to intervene or become a party to any such proceedings, State shall give the Leasehold Mortgagee notice of, and a copy of any award or decision made in any such proceedings, which shall be binding on all Leasehold Mortgagees not intervening after receipt of notice of arbitration. In the event Lessee shall fail to appoint an arbitrator after notice from State, as provided in Section 14 below, a Leasehold Mortgagee (in order of seniority if there be more than one) shall have an additional period of thirty (30) days after notice by State that Lessee has failed to appoint such arbitrator to make such appointment, and the arbitrator so appointed shall thereupon be recognized in all respects as if the arbitrator had been appointed by Lessee. In the event a Leasehold Mortgagee commences any judicial or non-judicial action to foreclose its Leasehold Mortgage or otherwise realize upon its security granted therein, written notice of such proceedings shall be provided to State at the same time notice thereof is given Lessee.

7.14 No Merger. So long as any Leasehold Mortgage is in existence, unless all Leasehold Mortgagees shall otherwise expressly consent in writing, the fee title to the Property and the leasehold estate of Lessee therein created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by State or by Lessee or by a third party, by purchase or otherwise. The foregoing shall not apply in the event of termination of this Lease after default by Lessee; provided that no Leasehold Mortgagee shall have requested and been granted a New Lease pursuant to the provisions of Section 7.8 above.

7.15 Estoppel Certificate. State shall, without charge, any time and from time to time hereafter, but not more frequently than twice in any one-year period (or more frequently if such request is made in connection with any sale or mortgaging of Lessee's leasehold interest or permitted subletting by Lessee), within ten (10) days after written request of Lessee to do so, certify by written instrument duly executed and acknowledged to any Leasehold Mortgagee or purchaser, or proposed Leasehold Mortgagee or proposed purchaser, or any other person, firm or corporation specified in such request: (a) as to whether this Lease has been supplemented or amended, and if so, the substance and manner of such supplement or amendment; (b) as to whether this Lease remains in full force and effect; (c) as to the existence of any default hereunder; (d) as to the existence of any offsets, counterclaims or defenses hereto on the part of Lessee; and (e) as to the commencement and expiration dates of the Term of this Lease. Any Leasehold Mortgagee and any other holder of any indebtedness secured by Lessee's leasehold estate shall provide State, upon State's written request, a statement as to (i) the current amount secured by the Leasehold Mortgage held by such Leasehold Mortgagee, (ii) whether any default exists under said Leasehold Mortgage, (or whether any event has occurred which, with notice or lapse of time, or both, would constitute a default), and (iii) whether there exist any offsets, claims or disputes with respect to said Leasehold Mortgage and the instruments secured thereby.

7.16 Notices. Notices from State to the Leasehold Mortgagee shall be mailed to the address furnished State pursuant to Section 7.2 above and, those from the Leasehold Mortgagee to State shall be mailed to the address designated pursuant to the provisions of Section 19 below. Such notices, demands and requests shall be given in the manner described in Section 19 below and, shall in all respects be governed by the provisions of that section.

7.17 Erroneous Payments. No payment made to State by a Leasehold Mortgagee shall constitute agreement that such payment was, in fact, due under the terms of this Lease; and a Leasehold Mortgagee having made any payment to State pursuant to State's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof provided the Leasehold Mortgagee shall have made demand therefore not later than one year after the date of its payment.

8. LESSEE'S INDEMNITY; LIABILITY AND CASUALTY INSURANCE

8.1 Indemnity. State shall have no responsibility or control with respect to any aspect of the Property or any activity conducted thereon from and after the Commencement Date. Lessee shall indemnify and save harmless State from any and all liability, damage, expense, cause of action, suits, claims or judgments by any reason whatsoever caused, arising out of the use, occupation, and control of the Property by Lessee, its sublessees, invitees, agents, employees, licensees or permittees except as may arise solely out of the willful or grossly negligent act of State or State's agents or employees. To the extent that R.C.W. 4.24.115 is applicable to any indemnification provision of this Lease, State and Lessee agree that provision shall not require Lessee to indemnify and save State harmless from State's sole or concurrent negligence, if any.

8.2 Acquisition of Insurance Policies. Lessee shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained during the entire Term, the insurance described in this Section 8 (or if not available, then its available equivalent), issued by an insurance company or companies licensed to do business in the State of Washington satisfactory to State reasonably covering and protecting Lessee.

8.3 Types of Required Insurance. Lessee shall procure and maintain the following:

(a) Comprehensive General Liability Insurance. Comprehensive general liability insurance covering all claims with respect to injuries or damages to persons or property sustained in, or about the Property and the Project, and the appurtenances thereto, including the sidewalks and alleyways adjacent thereto, with limits of liability (which limits shall be adjusted as provided in Section 22.9 below) no less than the following:

Bodily Injury and Property Damage Liability -- _____
Million Dollars (\$ _____) each occurrence, _____
Million Dollars (\$ _____) aggregate.

Such limits may be achieved through the use of umbrella liability insurance sufficient to meet the requirements of this Section 8 for the Property and Project.

(b) Physical Property Damage Insurance. Physical damage insurance covering all real and personal property, other than the personal property of subtenants, located on or in, or constituting a part of, the Property (including but not limited to the Project) in an amount equal to at least one hundred percent (100%) of replacement value of all such property. Such insurance shall afford coverage for damages resulting from (i) fire, (ii) perils covered by extended coverage insurance as embraced in the Standard Bureau form used in the State of Washington, (iii) explosion of steam and pressure boilers and similar apparatus located in the Project, (iv) earthquake or the shifting or moving of the earth, and (v) flood damage if the Property is located within a flood plain. Lessee shall not be required to maintain insurance for war risks; provided, however,

if Lessee shall obtain any such coverage, then, for as long as such insurance is maintained by Lessee, State shall be entitled to the benefits of: (i) the first sentence of Section 8.4 below; and (ii) Section 8.4(c) below.

(c) Builder's Risk Insurance. Contingent liability and builder's all risk insurance in an amount reasonably satisfactory to State during construction of the Project and during any subsequent restorations, alterations or changes in the Project that may be made by Lessee at a cost in excess of Fifty Thousand Dollars (\$50,000) per job (adjusted every fifth Anniversary Date during the Term as provided in Section 22.9 below).

(d) Workmen's Compensation Insurance. Workmen's compensation and employer's liability insurance with respect to any work by employees of Lessee on or about the Property.

8.4 Terms of Insurance. The policies required under Section 8.3 above, shall name State as additional insured and Lessee shall provide promptly to State certificates of insurance and copies of policies obtained by Lessee hereunder. Further, all policies of insurance described in Section 8.3 above, shall:

(a) Be written as primary policies not contributing with and not in excess of coverage that State may carry.

(b) Contain an endorsement providing that such insurance may not be materially changed, amended or canceled with respect to State or the Trustee of Insurance except after thirty (30) days prior written notice from insurance company to State.

(c) Contain an endorsement containing express waiver of any right of subrogation by the insurance company against State's elected officials, agents and employees.

(d) Provide that the insurance proceeds of any loss will be payable notwithstanding any act or negligence of Lessee which might otherwise result in a forfeiture of said insurance.

(e) Expressly provide that State shall not be required to give notice of accidents or claims and that State shall have no liability for premiums.

(f) Provide that all proceeds shall be paid jointly to State and Lessee, or to the Trustee of Insurance.

8.5 State's Acquisition of Insurance. If Lessee at any time during the Term fails to procure or maintain such insurance or to pay the premiums therefore, State shall have the right to procure such substitute insurance as State deems appropriate (but shall be under no obligation to do so) and to pay any and all premiums thereon, and Lessee shall pay to State upon demand the full amount so paid and expended by State, together with interest thereon at the rate provided in Section 22.7 below, from the date of such expenditure by State until repayment thereof by Lessee. Any policies of insurance obtained by State covering physical damage to the Property or Project shall contain a waiver of subrogation against Lessee if and to the extent such waiver is obtainable and if Lessee pays to State on demand the additional costs, if any, incurred in obtaining such waiver.

8.6 Proceeds and Other Funds Held in Trust. All proceeds shall be received by the Trustee of Insurance, shall be held in trust, and, except as provided otherwise in Section 8.7 below, shall be applied in accordance with the provision of Section 11 below.

8.7 Application of Proceeds of Physical Damage Insurance. With respect to any insurance policies as described in Section 8.3(b) (Physical Property Damage Insurance) above, the application of insurance proceeds from damage or loss to property shall be determined in accordance with Section 11 below and, in the event of any repair, replacement, restoration or rebuilding, the Trustee of Insurance shall apply the proceeds of the insurance collected to the cost of such work upon certificate of progress and/or completion in form satisfactory to said Trustee by the licensed architect or engineer in charge of the work. Any amounts payable to Lessee or any affiliate of Lessee for work or services performed or materials provided as part of any such repair, replacement, restoration or rebuilding shall not exceed competitive rates for such services or materials and Lessee shall upon request of State, make available to State and its representatives at State's offices all books and records of Lessee relating to such work, services and materials.

8.8 Powers and Duties of the Trustee of Insurance.

(a) Trustee. The Trustee of Insurance shall be an Institutional Investor doing business in the State of Washington with authority to hold escrow funds and acceptable to State and Lessee. The Trustee shall not be a Leasehold Mortgagee. The Trustee shall retain in trust all policies of insurance or certificates thereof delivered to it as herein provided and shall not permit the withdrawal, termination or discontinuance of any such policy without State's consent, and, upon request, shall exhibit such policies or certificates to State or Lessee or any authorized representative of State or Lessee. Said Trustee of Insurance shall receive in trust only the proceeds of insurance specifically related to Physical Property Damage Insurance described in Section 8.3 above and shall make disbursements thereof as provided in Section 8.7 above and Section 11 below as determined, when applicable, in accordance with Section 8.7 above. The Trustee of Insurance shall recognize that one of the primary objectives of the parties is to insure that disbursements of funds held by the Trustee will be paid in a manner which will mitigate the imposition of liens or encumbrances upon the Property or the Project. Receipt and disbursement of other types of insurance proceeds may be undertaken by the Trustee upon written agreement with State and Lessee.

(b) Trustee's Liability. Neither State nor Lessee shall hold said Trustee liable for any mistake or error in judgment in the discharge of its duties, but the Trustee shall be liable only for willful neglect or breach of duty; and said Trustee shall not be liable or responsible for the collection of any monies or the failure or refusal of any insurance company or third person or corporation from whom money may be due to apply the same, but it shall be the duty of such Trustee, in case of failure or refusal of any insurance company or third person or corporation to pay any policies or money due, to use all proper and legal means in conjunction and cooperation with State and Lessee to recover the same but at the expense of Lessee.

(c) Trustee's Fees. All fees and charges of such Trustee of Insurance shall be paid by Lessee. Trustee's fees shall be based on its then current annual minimum fee plus out-of-pocket expenses. Administrative time is to be charged at the then prevailing hourly rate for such service.

(d) Trustee's Merger. If the Trustee of Insurance should merge into any other Institutional Investor or change its corporate name or should transfer its trust business to any other Institutional Investor, such successor institution shall succeed to all the powers, duties and authority given to the Trustee of Insurance hereunder.

(e) Trustee's Successors. The Trustee of Insurance may resign upon giving thirty (30) days notice in writing to State and Lessee of its desire to resign. Upon receipt of such written notice, or if the Trustee of Insurance named herein refuses to serve, State and Lessee shall promptly mutually agree upon a successor or alternate trustee and, in the event they are unable to agree upon a successor or alternate trustee during the said thirty (30) days, either State or Lessee may apply to the Presiding Judge of the Superior Court of the State of Washington for Thurston County, to name a successor or alternate trustee who shall be an Institutional Investor as defined in Section 7.3 above. The appointment of such successor or alternate trustee by said Judge in accordance herewith shall be binding upon both State and Lessee, and such successor or alternate trustee shall be entitled to receive from the former Trustee all securities or monies or policies held by it and shall be vested with all the rights and powers herein conferred upon the Trustee herein originally appointed.

(f) Investment of Proceeds. The Trustee of Insurance shall invest any insurance proceeds received as directed in writing jointly by State and Lessee; provided, however, if State and Lessee cannot agree to the investments to be made, the Trustee of Insurance may invest such funds in one or more of the following types of bonds and securities:

- (i) Bills, certificates, notes or bonds of the United States;
- (ii) Other obligations of the United States or its agencies;
- (iii) Obligations of any corporation wholly owned by the government of the United States;
- (iv) Indebtedness of the Federal National Mortgage Association; and
- (v) Time deposits fully insured by the Federal Deposit Insurance Corporation in commercial banks.

In making investments in one or more of the said types of bonds and securities, the Trustee of Insurance shall be mindful of the probable necessity of payments from time to time of portions of the insurance proceeds and shall select investments with appropriate maturities. Income from the investments shall be treated as part of the insurance proceeds held by the Trustee of Insurance.

8.9 Insurance Surveyor. The determinations required under Section 11 below and this Section 8, shall be made by an independent qualified insurance surveyor selected by the parties, whose decision shall not be subject to arbitration. If the parties cannot agree on the insurance surveyor within thirty (30) days after the date of such damage or destruction, then the same shall be appointed by the Presiding Judge of the Superior Court of Thurston County, Washington upon the application of either party.

9. REPAIRS

9.1 Acceptance of Property. Lessee accepts the Property and any improvements thereon in the condition they are in on the date this Lease is executed without the obligation of State to make any repairs, additions or improvements thereto.

9.2 State's Repairs. State shall not be required or obligated to make any changes, alterations, additions, improvements, or repairs in, on, or about the Property, or any part thereof, during the Term of this Lease or any extension thereof.

9.3 Lessee's Repairs & Operation. At all times during the Term of this Lease or any extension thereof, Lessee shall neither commit nor suffer any waste to the Property and shall, at its sole cost and expense, keep and maintain the Property and all improvements thereon (including the Project) and all facilities appurtenant thereto in good order and repair and safe condition, and the whole of the Property, including all improvements (including the Project) and landscaping, in a clean, sanitary and attractive condition. Lessee shall make any and all additions to or alterations or repairs in and about the Property which may be required by, and shall otherwise observe and comply with, all public laws, ordinances and regulations which from time to time are applicable to the Property and/or the Project. All business operations conducted upon the Property shall comply with all applicable laws, statutes and ordinances. In no event shall Lessee undertake or suffer any activity to be conducted upon the Property or within the Project which constitutes a nuisance, which is immoral or obscene, or which is a threat to the welfare of the general public.

9.4 Condition at End of Lease. Upon vacating the Property on the termination date, Lessee shall leave the Property and all improvements thereon (including the Project) in the state of repair and cleanliness required to be maintained by Lessee during the Term of this Lease and shall peaceably surrender the same to State. At the option of State, Lessee shall at its sole expense remove all improvements constructed by Lessee upon the Property (including the Project) and return the Property to grade level free of all debris.

10. QUIET POSSESSION

State covenants that it has full right, power and authority to make this Lease. State covenants that Lessee, so long as Lessee is not in default hereunder and subject to the provisions of this Lease, shall have quiet and peaceful possession of the Property during the entire Term of this Lease.

11. DAMAGE OR DESTRUCTION

11.1 Effect of Damage or Destruction.

(a) In the event of any damage to or destruction of the Property or any improvements thereon from any causes whatever, Lessee shall promptly give written notice thereof to State. Lessee shall promptly repair or restore the Property as nearly as possible to its condition immediately prior to such damage or destruction unless State and Lessee mutually agree in writing that such repair and restoration is not feasible, in which event this Lease shall thereupon terminate. All such repair and restoration shall be performed in accordance with the requirements of Section 6 above. Lessee's duty to repair any damage or destruction of the Property or any

improvements thereon shall not be conditioned upon the availability of any insurance proceeds to Lessee from which the cost of repairs may be paid. Unless this Lease is so terminated by mutual agreement, there shall be no abatement or reduction in Rent during such repair and restoration. Any insurance proceeds payable by reason of such damage or destruction shall be made available by the Trustee of Insurance to pay the cost of such reconstruction; provided, however, in the event Lessee is in default under the terms of this Lease at the time such damage or destruction occurs, State may elect to terminate this Lease and State shall thereafter have the right to retain all insurance proceeds payable as a result of such damage or destruction. Funds held by the Trustee of Insurance in excess of the cost of such reconstruction shall be paid to State and Lessee pro-rata based upon the unexpired term of this Lease, with Lessee receiving the fraction thereof which is equal to the then remaining term divided by the original term of this Lease, and State receiving the remainder; provided, however, State shall have a lien on Lessee's share of such proceeds to the extent Lessee has failed to pay any monies to State under the terms of this Lease.

(b) In the event such damage or destruction occurs within the last ten (10) years of the term of this Lease, and if such damage or destruction cannot be substantially repaired within one hundred eighty (180) days, either State or Lessee may elect by written notice to the other, within ninety (90) days after the date of such damage or destruction, to terminate this Lease. If neither State nor Lessee elect to terminate this Lease, Lessee shall repair or restore the Property as nearly as possible to its condition immediately prior to such damage or destruction or construct thereon such other improvements as may be approved by State subject to the provisions of Section 11.1(a) above. In the event State or Lessee elects to terminate this Lease, the Term of this Lease shall terminate one hundred twenty (120) days after the date of such damage or destruction. Any insurance proceeds payable shall be allocated between State and Lessee pro-rata based upon the unexpired term of this Lease as specified in Section 11.1(a), above and, subject to State's claim against Lessee's share of such proceeds in an amount equal to sums due from Lessee hereunder. In the event Lessee elects to restore the Property, and State does not terminate this Lease, any insurance proceeds payable by reason of such damage or destruction shall be made available to Lessee to pay the costs of such reconstruction and any funds remaining shall be allocated between State and Lessee as stated in Section 11.1(a) above.

12. CONDEMNATION

12.1 Definitions.

(a) Total Taking. The term "total taking," as used in this Lease, means the taking of the entire Property and any improvements thereon under the power of Eminent Domain either by judgment or settlement in lieu of judgment, or the taking of so much of the Property and improvements as to prevent the use thereof by Lessee or render the Property commercially impossible to operate for the uses and purposes hereinabove provided. In the event of a dispute between State and Lessee as to whether so much of the Property and improvements thereon have been taken as to prevent the use or render impossible the commercial operation thereof by Lessee, State and Lessee agree that the issue shall be submitted to binding arbitration as provided in Section 14 below.

(b) Partial Taking. The term "partial taking" means either a temporary taking or the taking of a portion only of the Property which does not constitute a total taking as defined above.

(c) Volunteer Conveyance. The terms "total taking" and "partial taking" shall include a voluntary conveyance to any agency, authority, public utility, person or corporate entity empowered to condemn property in lieu of formal court proceedings.

(d) Date of Taking. The term "date of taking" shall mean the date upon which title to the Property or a portion thereof passes to and vests in the condemnor or the effective date of any order for possession if issued prior to the date title vests in the condemnor.

12.2 Effect of Taking. If during the Term hereof there shall be a total taking under the power of Eminent Domain, then the leasehold estate of Lessee in and to the Property shall cease and terminate as of the date of taking. If this Lease is so terminated, all rentals and other charges payable by Lessee to State hereunder shall be paid by Lessee up to the date of taking by the condemnor, and the parties thereupon shall be released from all further liability in relation thereto.

12.3 Allocation of Award. Any award or payment made in respect to a total taking shall be allocated between State and Lessee as follows:

(a) Total Taking.

(i) Lessee shall receive that portion of the award which is equal to all sums so paid attributable to the taking of the improvements made by Lessee upon the Property as described in Section 12.3(b) below, multiplied by a fraction, the numerator of which is the number of years remaining, as of the date of the taking, in the original term of this Lease, and the denominator of which is the number of the years remaining as of the date of completion of such improvements in the original Term of this Lease. In the event that the improvements shall have been completed in more than one (1) year, the amount of Lessee's award shall be computed separately with respect to each such work of improvement.

(ii) If the portion of the award attributable to the taking of the improvements is not determined at the time the payment or award is made, the portion of the award attributable to the taking of the improvements shall be that portion of the award as the value of the improvements made upon the Property bear to the total value of the Property as improved which has been taken. These amounts shall be determined by a qualified real estate appraiser (as defined in Section 14 below) mutually selected by State and Lessee.

(iii) The balance of the award or payment after deducting the above sums shall be paid to State.

(b) Partial Taking.

All awards from a partial taking shall be paid to State. There shall be no abatement of Rent as a result of any partial taking.

13. ASSIGNMENT

13.1 Assignment. Except as provided in Section 7 above, Lessee shall not hypothecate, mortgage, assign, transfer or otherwise alienate this Lease, or any interest therein or sublet all or substantially all the Property or space within the improvements constructed thereon to a single sublessee, without the prior written consent of State. In granting such consent, State shall be entitled to consider, among other items, the proposed assignee's financial condition, business reputation, nature of the proposed assignee's business and such other factors as may reasonably bear upon the suitability of the assignee as a lessee of the Property. If Lessee is a corporation, partnership or other association, (i) the transfer of more than fifty percent (50%) of the ownership interest in such entity, or (ii) the sale of all or substantially all of the assets of such Lessee shall be deemed to constitute an "assignment" of this Lease which requires approval of State. The consent of State to any one assignment shall not constitute a waiver of State's right to approve subsequent assignments, nor shall consent of State to any one assignment relieve any party previously liable as Lessee from any obligations under this Lease. The acceptance by State of the payment of Rent following an assignment shall not constitute consent to any assignment, and State's consent shall be evidenced only in writing.

13.2 Right to Sublet. Except as provided in Section 13.1 above, Lessee shall have the right to sublet any part or parts of the Property or Project, or both, and to assign, encumber or renew any sublease so long as:

(a) Each sublease shall contain a provision satisfactory to State and to each Leasehold Mortgagee having an interest at the time the sublease is executed, requiring the sublessee to attorn to State, or in the event of any proceeding to foreclose any Leasehold Mortgage, to the Leasehold Mortgagee, or any person designated in a notice from the Leasehold Mortgagee, if Lessee defaults under this Lease and if the sublessee is notified of Lessee's default and instructed to make sublessee's rental payments to State or Leasehold Mortgagee or designated person as provided in this Section 13.2(a).

(b) Lessee shall promptly after execution of each sublease, furnish State a true copy thereof.

(c) Lessee shall not accept directly or indirectly more than three (3) months' prepaid rent from any sublessee.

(d) Each sublease is expressly subordinate to the interests and rights of State in the Property and under this Lease, and requires the sublessee to take no action in contravention of the terms of this Lease.

(e) Each sublease is of a duration less than the Term of this Lease.

(f) Subject to the rights of any Leasehold Mortgagee, as additional security for the performance of Lessee's obligations hereunder, Lessee hereby grants to State a security interest in and to all of Lessee's right to receive any rentals or other payments under such subleases and this Lease shall constitute a security agreement for such purposes under laws of the State of Washington. Lessee shall execute such financing statements as may be reasonably required to perfect such security interest.

14. ARBITRATION

14.1 Issues Subject to Arbitration. Any controversy which shall arise between State and Lessee regarding the provisions hereof relating to the amount of insurance to be maintained by Lessee, the allocation of any condemnation award, the degree of damage or destruction suffered by the Project or any matter specifically made subject to arbitration in this Lease shall be settled by arbitration.

14.2 Appointment of Arbitrators. Such arbitration shall be before one (1) disinterested qualified arbitrator if one can be agreed upon, otherwise before three (3) disinterested qualified arbitrators, one named by State, one named by Lessee, and one by the two thus chosen; provided, that if said two arbitrators cannot agree upon a third arbitrator within fifteen (15) days, then said third arbitrator shall be appointed by the Presiding Judge of Thurston County Superior Court upon motion of either State or Lessee. The appointment of arbitrators shall be signified in writing by each party to the other. If State or Lessee shall fail to so appoint an arbitrator for a period of twenty-five (25) days after written notice from the other party to make such appointment, then the arbitrator appointed by the party not in default hereunder shall appoint a second arbitrator and the two so appointed shall appoint a third arbitrator. A "disinterested arbitrator" shall be a person who shall not have direct or indirect financial or other interest in the decisions to be made by the arbitrator(s) and who shall not be an officer, director, employee, or agent of State or Lessee. In the case of arbitrations relating to the determination of values of real property, a qualified arbitrator shall mean a real estate appraiser who has a professional designation as an "MAI" or "SREA," or a member of a similarly recognized professional organization. Otherwise, a qualified arbitrator shall mean a person generally familiar with the subject matter of the controversy.

14.3 Arbitration Procedure. The arbitrator or arbitrators shall determine the controversy in accordance with the laws of the State of Washington as applied to the facts found by arbitrator(s) and in accordance with the rules of the Uniform Arbitration Act and the American Arbitration Association. The arbitrator or arbitrators shall make awards in strict conformity with such rules and shall have no power to depart from or change any of the provisions thereof. All arbitration proceedings hereunder shall be conducted in the City of Seattle, Washington. The arbitrator or arbitrators, after being duly sworn to perform all duties with impartiality and fidelity shall proceed to determine the question or questions submitted. The decision of the arbitrator or arbitrators shall be rendered within thirty (30) days after appointment, and such decision shall be in writing and in duplicate, one counterpart thereof to be delivered to each of the parties hereto. The award of the arbitrator or arbitrators shall be binding, final and conclusive on the parties, and judgment on such award rendered may be entered in any court having jurisdiction thereof. Fees of the arbitrator or arbitrators and the expenses incident to the proceedings shall be borne equally between State and Lessee. Fees of the respective counsel engaged by the parties, and fees of expert witnesses or other witnesses called for the parties shall be paid by the respective party engaging such counsel or calling or engaging such witness. Except as specifically provided in this Section 14, no other dispute or controversy between State or Lessee shall be determined by arbitration.

15. INSOLVENCY

If a receiver or trustee is appointed to take possession of all or substantially all of the assets of Lessee; or if any action is taken or suffered by Lessee pursuant to an insolvency, bankruptcy or reorganization act; or if Lessee makes a general assignment for the benefit of its creditors; and if such appointment, action or assignment continues for a period of thirty (30) days, it shall, at State's option, constitute a default by Lessee and State shall be entitled to the remedies set forth in Section 16 below, which may be exercised by State without prior notice or demand upon Lessee.

16. BREACH BY LESSEE

16.1 Breach and Default. In the event of any breach of any provision of this Lease by Lessee, the breach shall be deemed a default entitling State to the remedies set forth in this Lease or otherwise available at law, after State has delivered to Lessee notice of the alleged breach and a demand that the same be remedied immediately; provided that, if the breach pertains to a matter other than the payment of rent, Lessee shall not be in default after receipt of the notice if Lessee shall promptly commence to cure the default and shall cure the default within forty-five (45) days after receipt of the notice, or if the breach pertains to the payment of rent Lessee shall have fifteen (15) days after receipt of the notice to cure the breach; provided, however, if such default is non-monetary in nature, and as determined by State, is not reasonably susceptible of being cured in said forty-five (15) days (lack of or failure to expend funds not to adversely affect the susceptibility of cure), Lessee shall commence to cure such default within said period and diligently pursue such action with continuity to completion. If a breach has been cured within the grace periods permitted by this Section 16.1, it shall no longer constitute a default.

16.2 Right of Re-entry. In the event of a default, State, in addition to any other rights or remedies that it may have, shall have the immediate right of re-entry. Should State elect to re-enter or take possession of the Property, it may either terminate this Lease, or from time to time, without terminating this Lease, relet the Property, or any part thereof for the account and in the name of Lessee or otherwise, for any such term or terms and conditions as State in its sole discretion may deem advisable with the right to complete construction or make alterations and repairs to the improvements. Lessee shall pay to State, as soon as ascertained, the cost and expenses incurred in such reletting, completion of construction, or in making such alterations and repairs. Rentals received by State from such reletting shall be applied: First, to the payment of any indebtedness, other than Rent, due hereunder from Lessee to State; Second, to the payment of Rent due and unpaid hereunder and to any other payments required to be made by the Lessee hereunder and the residue, if any, shall be held by State and applied in payment of future rent or damages in the event of termination as the same may become due and payable hereunder and the balance, if any, at the end of this Lease shall be paid to Lessee. Should such rentals received from time to time from such reletting during any month be less than that agreed to be paid during the month by Lessee hereunder, Lessee shall pay such deficiency to State. Such deficiency shall be calculated and paid monthly. At any time after such re-entry, whether or not State shall have collected any monthly deficiencies as aforesaid, State shall be entitled to recover from Lessee and Lessee shall pay to State, on demand, as and for liquidated and agreed final damages for Lessee's default, an amount equal to the difference

between the Rent and all additional rent reserved hereunder, if any, for the period to the date upon which the Term would have ended but for the default of Lessee and the then fair and reasonable rental value of the Property for the same period. Nothing contained herein shall limit or prejudice the right of State to prove for and obtain as liquidated damages by reason of such default in an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceeds in which, such damages are to be proved, whether or not such amount be greater, equal to or less than the amount of the difference referred to in this Section 16.

16.3 Reletting. No such reletting of the Property by State shall be construed as an election on its part to terminate this Lease unless a notice of such intention be given to Lessee or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, State may at any time thereafter elect to terminate this Lease for such previous breach, provided that it has not been cured. Should State at any time terminate this Lease for any breach, in addition to any other remedy it may have, it may recover from Lessee all damages it may incur by reason of such breach.

17. STATE MAY INSPECT THE PROPERTY

Lessee shall permit State and its agents to enter into and upon the Property and the Project at all reasonable times for the purpose of inspecting the same.

18. HOLDING OVER

This Lease shall terminate without further notice at the expiration of the Term. Any holding over by Lessee without the express written consent of State shall not constitute a renewal or extension of this Lease or give Lessee any rights in or to the Property, and such occupancy shall be construed to be a tenancy from month-to-month on all the same terms and conditions as set forth herein, insofar as they are applicable to a month-to-month tenancy, except that the rent shall increase to an amount equal to Two Hundred Percent (200%) of the amount of Rent due for the last month of the term of this Lease.

19. NOTICES

Any notice required or desired to be given under this Lease shall be in writing with copies directed as indicated herein and shall be personally served or given by mail. Any notice given by mail shall be deemed to have been given when seventy-two (72) hours have elapsed from the time when such notice was deposited in the United States mails, certified and postage prepaid, addressed to the party to be served at the last address given by that party to the other party under the provisions of this Section 19. Any change in address shall be promptly given in writing to the other party. At the date of the execution of this Lease, the address of State is:

Department of Natural Resources
Real Estate Division
1450 Metropolitan Park Building
1100 Olive Way
Seattle, WA 98101

and the address of Lessee is:

20. SUCCESSORS

The covenants and agreements contained in this Lease shall be binding on the parties hereto and on their respective successors and assigns, to the extent the Lease is assignable, and upon any person, firm, or corporation coming into ownership or possession of any interests in the Property by operation of law or otherwise, and shall be construed as covenants running with the land.

21. TERMINATION

Upon the termination of this Lease by expiration of time or otherwise, the rights of Lessee and of all persons, firms, corporations and entities claiming under Lessee in and to the Property (and all improvements thereon, unless specified otherwise in Section 6.2 above) shall cease.

22. MISCELLANEOUS

22.1 Section Headings. The section headings used in this Lease are for convenience only. They shall not be construed to limit or to extend the meaning of any part of this Lease.

22.2 Amendments. Any amendments or additions to this Lease shall be made in writing executed by the parties hereto, and neither State nor Lessee shall be bound by verbal or implied agreements.

22.3 Waiver. The waiver by State of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The acceptance of Rent by State following a breach by Lessee of any provision of this Lease shall not constitute a waiver of any right of State with respect to such breach. State shall be deemed to have waived any right hereunder only if State shall expressly do so in writing.

22.4 Cumulative Remedies. Each right, power and remedy of State provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by State of any one or more of the rights, powers or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by State of any or all such other rights, powers or remedies.

22.5 Consent. In determining the reasonableness of any consent, approval or action by State hereunder, Lessee acknowledges that State is acting as a trustee of public lands and must observe a fiduciary duty in managing the Property in a manner which maximizes the benefit derived therefrom and which minimizes the risk incurred in connection therewith.

22.6 Time of Essence. Time is expressly declared to be of the essence of this Lease and each and every covenant of Lessee hereunder.

22.7 Late Charge and Interest. In the event Lessee fails to make any payment of Rent due hereunder upon the date due, State shall be entitled to collect from Lessee a late charge equal to six percent (6%) of the amount of the delinquent payment. In the event State pays any sum or incurs any expense which Lessee is obligated to pay hereunder, or which is made on behalf of Lessee, State shall be entitled to receive reimbursement thereof from Lessee upon demand, together with interest thereon from the date of expenditure at twice the maximum rate allowed by R.C.W. 19.52.020.

22.8 Entire Agreement. This Lease contains the entire agreement of the parties hereto with respect to the matters covered hereby, and no other agreement, statement or promise made by any party hereto, or to any employee, officer or agent of any party hereto, which is not contained herein, shall be binding or valid.

22.9 Escalation.

(a) Standard of Measurement. The dollar amount stated in Sections 6, 7 and 8 above, shall be adjusted on the fifth anniversary following the Commencement Date and every fifth anniversary date thereafter ("Anniversary Date") during the Term of this Lease to a dollar amount which bears the same ratio to the original dollar amount set forth herein as the following described index figure published for the latest date prior to the date such adjustment is to be effective bears to such index figure published for the latest month prior to the date hereof. The index figure to be utilized in calculating such adjustment shall be the Revised Consumer Price Index for Urban Wage Earners and Clerical Workers (All Items) for the Seattle-Everett, Washington Metropolitan Area (1967=100) (the "Index"), presently published by the United States Department of Labor. In the event the Index shall hereafter be converted to a different standard reference base or otherwise revised, the determination of the percentage increase shall be made with the use of such conversion factor, formula or table for converting the Index as may be published by the Bureau of Labor Statistics or, if said Bureau shall not publish the same, then with the use of such conversion factor, formula or table as may be published by Prentice Hall, Inc., or, failing such publication, by any other nationally recognized publisher of similar statistical information. In the event the Index shall cease to be published, then, for the purposes of this Lease, there shall be substituted for the Index such other index as State and Lessee shall agree upon, and if they are unable to agree within ninety (90) days after the Index ceases to be published, such matter shall be determined by arbitration in accordance with Section 14 of this Lease.

(b) Any provision in Section 22.9(a) above notwithstanding, under no circumstances shall the dollar amounts identified in Section 22.9(a) above, be less than stated in the sections referenced therein.

22.10 Language. The word "Lessee" when used herein, shall be applicable to one (1) or more persons, as the case may be, and the singular shall include the plural, and the neuter shall include the masculine and feminine, and if there be more than one (1), the obligations hereof shall be joint and several. The words "persons" whenever used shall include individuals, firms, associations and corporations. This Lease, and its terms,

have been freely negotiated by State and Lessee. The language in all parts of this Lease shall in all cases be construed as a whole and in accordance with its fair meaning, and shall not be construed strictly for or against State or Lessee.

22.11 Invalidity. If any provision of this Lease shall prove to be invalid, void or illegal, it shall in no way affect, impair or invalidate any other provision hereof.

22.12 Applicable Law. This Lease shall be interpreted and construed under and pursuant to the laws of the State of Washington. Any reference to a statute enacted by the State of Washington shall refer to that statute as presently enacted and any subsequent amendments thereto, unless the reference to said statute specifically provides otherwise.

22.13 Provisions Independent. Unless otherwise specifically indicated, all provisions set forth in this Lease are independent of one another, and the obligations or duty of either party hereto under any one provision is not dependent upon either party performing under the terms of any other provision.

22.14 Date of Execution. The date this Lease is executed shall be deemed to be the day and year first written above.

22.15 Survival. All obligations of Lessee to be performed after the Termination Date shall not cease upon the termination of this Lease, and but shall continue as obligations until fully performed.

22.16 Recordation. This Lease or a memorandum thereof shall be promptly recorded by Lessee in the county in which the Property is located. Lessee shall provide State with a true copy of the recorded document, showing the date of recordation and file number.

22.17 Conveyance by State. In the event State or any successor lessor shall convey or otherwise dispose of the Property, then that lessor shall thereupon be released from all liabilities and obligations under this Lease (except those accruing prior to such conveyance or other disposition) and such liabilities and obligations shall be binding solely on the then owner of the Property.

22.18 Net Lease.

(a) Fully Net Lease. This Lease is intended, and is hereby declared to be, a fully "net" lease, it being the intention of the parties hereto that State shall have and enjoy the rent herein reserved to it without deduction therefrom free of any expense, charge or other deduction whatsoever, with respect to the Property and the ownership, operation, management, maintenance, repair, use or occupation thereof during the Term. Nothing herein contained shall be construed, however, so as to require Lessee to pay or be liable for any gift, inheritance, estate, franchise, income, profit, capital or similar tax, or any other tax in lieu of any of the foregoing, imposed upon State, or the successors or assigns of State, unless such tax shall be imposed or levied upon or with respect to rents payable to State herein in lieu of real estate taxes upon the Property.

(b) No Reduction of Rent. No abatement, diminution or reduction of the rental or other charges payable by Lessee under this Lease shall be claimed by or allowed to Lessee for any inconvenience, interruption, cessation or loss of business or otherwise caused directly or indirectly by any present or future laws, rules, requirements, orders, directives,

ordinances or regulations of the United States of America or of the State, County or City government or any other municipal, government or lawful authority whatsoever, by damage to or destruction of any portion of or all of the improvements by fire, the elements or any other cause whatsoever, or by priorities, rationing, or curtailment of labor or materials or by war or any matter or things resulting therefrom or by any other cause or causes, except as otherwise specifically provided in this Lease.

23. HAZARDOUS SUBSTANCES.

23.1 Presence and Use of Hazardous Substances. Lessee shall not, without State's prior written consent, keep on or around the Property, for use, disposal, treatment, generation, storage or sale, any substance designated as, or containing components designated as hazardous, dangerous, toxic or harmful (collectively referred to as "Hazardous Substances"), and/or is subject to regulation, by federal, state, or local law, regulation statute or ordinance. With respect to any such Hazardous Substance, Lessee shall:

(a) Comply promptly, timely, and completely with all governmental requirements for reporting, keeping and submitting manifests, and obtaining and keeping current identification numbers;

(b) Submit to State true and correct copies of all reports, manifests, and identification numbers at the same time as they are required to be and/or are submitted to the appropriate governmental authorities;

(c) Within five (5) days of State's request, submit written reports to State regarding Lessee's use, storage, treatment, transportation, generation, disposal or sale of Hazardous Substances and provide evidence satisfactory to State of Lessee's compliance with the applicable government regulations;

(d) Allow State or State's agent or representative to come on the Premises at all times to check Lessee's compliance with all applicable governmental regulations regarding Hazardous Substances;

(e) Comply with minimum levels, standards or other performance standards or requirements which may be set forth or established for certain Hazardous Substances (if minimum standards or levels are applicable to Hazardous Substances present on the Property, such levels or standards shall be established by an on-site inspection by the appropriate governmental authorities and shall be set forth in an addendum to this Lease); and

(f) Comply with all applicable governmental rules, regulations and requirements regarding the proper and lawful use, sale, transportation, generation, treatment, and disposal of Hazardous Substances.

Any and all costs incurred by State and associated with State's inspection of the Property and State's monitoring of State's compliance with this Section 23, including State's attorneys; fees and costs, shall be additional rent and shall be due and payable to State immediately upon demand by State.

23.2 Cleanup Costs, Default and Indemnification.

(a) Lessee shall be fully and completely liable to State for any and all cleanup costs, and any and all other charges, fees, penalties (civil and criminal) imposed by any governmental authority with respect to Lessee's use, disposal, transportation, generation and/or sale of Hazardous Substances, in or about the Property.

(b) Lessee shall indemnify, defend and save State harmless from any and all of the costs, fees, penalties and charges assessed against or imposed upon State (as well as State's attorneys' fees and costs) as a result of Lessee's use, disposal, transportation, generation and/or sale of Hazardous Substances.

(c) Upon Lessee's default under this Section 23 in addition to the rights and remedies set forth elsewhere in this Lease, State shall be entitled to the following rights and remedies:

(i) At State's option, to terminate this Lease immediately; and/or

(ii) To recover any and all damages associated with the default, including, but not limited to cleanup costs and charges, civil and criminal penalties and fees, loss of business and sales by Lessee and other tenants of the Property, any and all damages and claims asserted by third parties and State's attorneys' fees and costs.

IN WITNESS WHEREOF, this Ground Lease is executed as of the day and year first above written.

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
BRIAN J. BOYLE
COMMISSIONER OF PUBLIC LANDS

By _____

Its _____

(Lessee Name)

By _____

Its (Title)

Approved as to form
this _____ day of
_____, 198____,

Assistant Attorney General

Department of Natural Resources Acknowledgment

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this _____ day of _____, 19____
_____, before me personally appeared _____
to me known to be the _____

of the Department of Natural Resources of the State of Washington, the Department that executed the within and foregoing instrument on behalf of the State of Washington, and acknowledged said instrument to be the free and voluntary act and deed of the State of Washington for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument and that the seal affixed is the official seal of the Commissioner of Public Lands for the State of Washington.

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

Notary Public in and for the State of Washington,

residing at _____.

My commission expires _____.

Corporate Acknowledgment

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 19_____,
before me personally appeared _____
to me known to be the _____
of the corporation that executed the within and foregoing
instrument, and acknowledged said instrument to be the free and
voluntary act and deed of said corporation, for the uses and
purposes therein mentioned, and on oath stated that he/she was
authorized to execute said instrument and that the seal affixed
is the corporate seal of said corporation.

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

Notary Public in and for the State of _____

residing at _____
My commission expires _____

EXHIBIT A

Address _____

Legal Description

EXHIBIT B

Percentage Rent

1.1 Definitions. These terms, when used in this Lease, shall have the following meanings:

(a) "Lease Year" shall mean the calendar year and "Month" shall mean each calendar month.

(b) "Affiliate" of any person, entity or party shall mean any affiliate of that person, entity or party as that term is defined in the United States Securities Act of 1933 and the rules and regulations promulgated thereunder.

(c) "Gross Revenue" shall mean all revenue received by Lessee or any Affiliate of Lessee with respect to the operation of the Property or any improvement thereon, including but not limited to sub-lessee reimbursement with respect to operation of the Property, but excluding:

(i) Insurance and other receipts from claims for losses or damages to property except for proceeds from business interruption insurance;

(ii) Proceeds from condemnation or settlements in lieu thereof except for proceeds attributable to a temporary taking pursuant to Section 12 above;

(iii) Receipts from sub-lessees as reimbursement of costs incurred for special capital improvements financed by Lessee separately from the construction financing for the improvements constructed upon the Property; and

(iv) Sub-lessee deposits which, and so long as, Lessee if required to, and does, maintain them in one or more separate cash (or equivalent) accounts.

(d) "Gross Income" shall mean Gross Revenue less "Costs of Operating the Property." Costs of Operating the Property shall consist of:

(i) Operating Expenses (as defined in paragraph (e) below);

(ii) The following costs paid by Lessee as a consequence of re-leasing space in the improvement after the initial occupancy thereof by a sub-lessee:

(1) Leasing fees not exceeding competitive rates for comparable services in the community in which the Property is located; and

(2) Costs incurred by Lessee in refurbishing and/or remodeling such space and making additional tenant improvements to the extent such costs are not paid or reimbursed by sub-lessees.

(iii) The direct costs of capital improvements, except those for which Lessee is reimbursed, made subsequent to the initial development of the Property, amortized on a straight-line basis over the estimated actual useful life or lives of such improvements (to be determined without reference to the Internal Revenue Code) together with financing costs, if any,

as incurred, which improvements are (a) required to comply with building, fire and other codes, statutes, rules or regulations then in effect or the order of any lawful authority having jurisdiction over the Property; or (b) part of a major rehabilitation or refurbishing of the Property, or are otherwise designed with a reasonable probability of increasing the income producing potential of the Property; provided such amortization costs shall not exceed the reasonably expected increased income resulting from such expenditures; and

(iv) Reasonable cash (or equivalent) reserves established by Lessee to pay expenses described in paragraph (i) or (ii) of this paragraph (d), under the following circumstances:

(1) State is notified thereof in writing at or before the time any such reserve is established, which notice shall state the amount, purpose and timing of anticipated expenditures, together with such additional information as may reasonably be required to establish that such reserve is in compliance with the terms of this Lease and Lessee shall give State prompt notice of all changes to the matters described in such notice and to other information furnished to State under this paragraph;

(2) Such reserve is designed to fund reasonably anticipated expenses described herein;

(3) Any earnings on such reserve not reasonably required to be added to such reserve shall be included in Gross Revenue;

(4) Costs reserved against and covered by any such reserve shall not thereafter be deducted from Gross Revenue pursuant to either paragraphs (d) or (e), or otherwise;

(5) Any amount or amounts in such reserve which are not reasonable to be maintained therein (whether upon completion of and payment for the costs to be funded, or earlier) shall be included in Gross Revenue;

(6) Such reserves shall be maintained in a separate, identifiable account or accounts and shall not be pledged or encumbered to secure the performance of any obligation other than the purpose for which reserved and shall not be used, directly or indirectly, for any purpose other than the purposes for which they are established and

(7) To the extent any amounts placed in reserve pursuant hereto are not utilized as intended within five (5) years after they are so placed in reserve, they shall be deemed returned to Gross Revenue upon the expiration of such period of five (5) years.

(v) It is the intent of the parties that any expense which is allowable as an exclusion from Gross Revenue under paragraph (c), or deductible in establishing Gross Income under paragraph (d), including items allowable as an Operating Expense under paragraph (e) shall, under any or all of such sections, be charged against Gross Revenue only once.

(vi) Prior to the incurrence of cost or the establishment of any reserves, Lessee shall submit to State for State's approval a plan for the improvements contemplated herein. In the event of a dispute as to the reasonableness of

the amount of amortization of costs or the amount to be reserved pursuant to paragraphs (d) or (e) hereof the dispute shall be resolved by arbitration pursuant to Section 14 above.

(e) "Operating Expenses" shall mean all expenses paid by Lessee (excluding such items as depreciation, amortization, interest, debt service, financing fees and loan participation costs) in connection with the Property (except Minimum and Percentage Rent, as hereinafter defined), for the following:

(i) Utilities, including any surcharges imposed thereon;

(ii) All reasonable expenses paid or incurred by Lessee for maintaining, operating and repairing the Property and the personal property used in conjunction therewith, including insurance premiums, licenses, permits and inspection fees (except those for construction of the Project and initial occupancy thereof), customary management fees, legal and accounting expenses and other costs, whether or not hereinabove described; provided that all such costs, in accordance with generally accepted accounting and management practices, would be considered an expense of maintaining, operating or repairing the Project and not a cost of constructing the Project; and further provided that any management fees or charges shall not exceed competitive rates for comparable services charged in the community in which the Property is located. Depreciation, as well as excessive, unreasonable or extraordinary expenses, shall not be included in the Cost of Operating the Property, and any dispute as to the reasonableness of an expenditure shall be resolved by arbitration pursuant to Section 14 above;

(iii) The Leasehold Tax as defined in Section 4.2 above;

(f) Except as defined herein, no other items shall be considered Operating Expenses.

1.2 Rent. Lessee covenants and agrees to pay State the following rent:

(a) Minimum Rent. Lessee shall pay as minimum rent ("Minimum Rent") hereunder the sum of _____ (\$ _____) per year in equal quarterly installments in advance on or before the first (1st) day of each calendar quarter, commencing on the Commencement Date.

(b) Percentage Rent. Commencing with the Commencement Date, in addition to the Minimum Rent provided for in Paragraph (a) above, Lessee shall pay to State percentage rent ("Percentage Rent") in an amount with respect to each Lease Year equal to the amount by which State's pro-rata share ("Pro-Rata Share") of Gross Income for such Lease Year exceeds Minimum Rent for such Lease Year. State's Pro-Rata Share shall be equal to _____ percent (_____ %).

(c) Calculation of Percentage Rent. Percentage Rent shall be calculated on an annualized calendar year basis, or pro-rata portion thereof, and losses shall not be carried forward from one year to the next in making such computation. Lessee shall provide State by February 1 of each year an estimated pro forma statement for that Lease Year showing the expected Gross Revenue, Gross Income, Operating Expenses, Minimum Rent, and the amount of expected Percentage Rent calculated in good faith on the basis of information then

available to Lessee. Within thirty (30) days following the end of each calendar quarter during the Term, Lessee shall furnish to State a statement of operations of the Project for the preceding calendar quarter, including all items of revenue and expenses required to determine Percentage Rent payable hereunder.

(d) Payment of Percentage Rent. Lessee shall pay to State on or before the 10th day after the end of each calendar quarter during the Term an amount equal to the Percentage Rent for such calendar quarter.

(e) Annual Audited Statement. Lessee shall furnish to State not later than May 1 of each year an annual audited statement ("Annual Audited Statement") prepared by a nationally recognized independent firm of certified public accountants approved in writing by State showing accurately the Gross Income for the preceding calendar year, in such detail as reasonably necessary to establish the calculation of Percentage Rent, including the amounts of any reserves established. In the event Lessee has paid more than the Percentage Rent due for the preceding year, the amount of the overpayment shall be deducted by Lessee from the next succeeding payment or payments of Percentage Rent due hereunder. In the event Lessee has paid less than the Percentage Rent for the preceding year, Lessee shall pay State on or before the tenth (10th) day of the following month the amount of Percentage Rent due for the preceding year, plus an amount equal to interest thereon from the date payment thereof should have been made at the rate determined in accordance with Section 22.7 above.

(f) Audit by State. Lessee shall, upon reasonable notice from State, allow State or State's employees, agents or accountants to examine the books and records and review systems and procedures of Lessee for the purpose of verifying statements furnished or to be furnished pursuant hereto. To the extent expenses are unreasonable upon such an audit they shall not be deducted from the Gross Revenue to determine Gross Income, and any dispute as to the reasonableness of an expense shall be resolved by arbitration in accordance with Section 14 above. In the event State's examination shows that Lessee has underpaid the Percentage Rent during any Lease Year by an amount equal to the greater of Five Thousand Dollars (\$5,000) or three percent (3%) of the total Percentage Rent payable during such Lease Year, Lessee shall promptly pay to State the reasonable expense incurred by State in making such review.

(g) Adjustment of Payments. If State's audit thereof shows that the Percentage Rent paid to State was less than the amount due, then Lessee shall pay such deficiency to State within thirty (30) days after the date of such audit together with an amount equal to interest thereon from the date payment thereof should have been made at the rate determined in accordance with Section 22.7 above. If payment of Percentage Rent was greater than the amount owing, such excess shall be credited against the next payments of Percentage Rent due hereunder.

(h) Maintenance of Books and Records. Lessee shall keep complete books of accounts and records of all operations in and with respect to the Property, including specifically the detailed records necessary to establish Gross Income and other facts necessary to establish the amount of rental owing hereunder, in accordance with generally accepted accounting principles consistently applied. All of the books and records shall be retained for seven (7) years and shall be physically located in the State of Washington.

EXHIBIT B

CPI With No Maximum

For the period commencing on _____, 19____, through _____, 19____, the annual rent shall be the sum computed by increasing the \$ _____ per year annual rent paid during the prior _____ year period by the percentage increase in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers for All Items for the Seattle-Everett Metropolitan Area ("CPI") from the level of said CPI as of _____ to the level of the CPI as of _____ or in other words:

Rent for the period _____ to _____ equals
Date Date
\$ _____ times (CPI as of _____
(previous rent) (current date)
divided by CPI as of _____).
(previous date)

In the event the change in the CPI for such period is a negative value, the annual rent shall in no event be less than the annual rent for the preceding (_____) year period. Such annual rent for the _____ (_____) year period shall continue without adjustment through _____, (date)

payable in four (4) equal payments on the quarterly payment dates specified above. At the end of each subsequent _____ (_____) year period, a similar adjustment in the annual rent shall be made; namely, that the annual rent for each _____ (_____) year period shall be equal to the annual rent applicable in the preceding _____ (_____) year period, increased by the percentage increase in the CPI during such preceding _____ (_____) year period; provided, however, that in the event the change in the CPI is a negative value, the annual rent shall not be less than the annual rent applicable during the immediately preceding period. In the event such price index ceases to be published, the most nearly comparable price index then published by the United States Government shall be substituted in its place. If State and Lessee cannot agree as to a substitute index, then a new index shall be determined through arbitration in accordance with Section 14 above. Failure on the part of State to establish a new annual rent on any anniversary of the Commencement Date of this Lease on which such adjustment is to be made shall not preclude State from doing so anytime thereafter.

In the event a computation of an adjustment in the annual rent requires the use of published information which is not available as of the effective date of such rental adjustment, the adjustment shall be determined as soon as practical after the adjustment date, and Lessee shall continue to make periodic rental payments equal to the annual rent previously applicable. Any adjustment in such payments shall be paid by Lessee within thirty (30) days after a determination of the proper adjustment has been made.

EXHIBIT C

Appraisal Adjustment.

At the end of the _____ (_____) year following the Commencement Date, the Property shall be appraised by State. If Lessee does not agree with the fair market value of the Property determined by such appraisal, then the Property shall be appraised by three (3) real estate appraisers (qualified as defined in Section 14 above). One (1) shall be selected by State, one (1) shall be selected by Lessee, and the third appraiser shall be selected by the two appraisers so selected. State and Lessee shall either agree upon the fair market value of the Property or each select their separate appraisers by no later than six (6) months prior to the _____ (_____) anniversary of the Commencement Date. The appraisers so selected shall submit individual appraisal reports to State and Lessee in writing no later than six (6) months prior to the rental adjustment date. If either State or Lessee fails to appoint an appraiser within the time limit specified above, or if the two appraisers appointed fail to agree upon a third appraiser within the time limit specified above, such appraiser shall be appointed by the Presiding Judge of the Thurston County Superior Court, upon application by either party following ten (10) days notice to the other party. The appraisers shall determine the fair market value of the Property at its highest and best use, disregarding any improvements constructed thereon by Lessee. The fair market value determined by such appraisers, or in the event the appraisers fail to agree upon such a value, the majority decision of the appraisers shall be binding and conclusive upon State and Lessee. Each party shall bear the cost of the respective appraisers so selected, and the cost of the third appraiser shall be divided equally between State and Lessee. For the commencing _____ (_____) year period annual rent shall be equal to _____, _____, the percent of the fair market value of the Property so determined. Thereafter, during each succeeding _____ (_____) year period, the annual rent shall be adjusted again as provided in this paragraph. Notwithstanding submission of the evaluation to the appraisers, Lessee shall pay the rental amount as proposed by State on the due dates as required if no decision by the panel of appraisers has been made or if the panel has not yet formed. Failure on the part of State to establish a new rental on any anniversary of the Commencement Date of this Lease on which such adjustment is to be made shall not preclude State from doing so anytime thereafter.

EXHIBIT C

Appraisal Adjustment.

At the end of the _____ (_____) year following the Commencement Date, the Property shall be appraised by State. If Lessee does not agree with the fair market value of the Property determined by such appraisal, then the Property shall be appraised by three (3) real estate appraisers (qualified as defined in Section 14 above). One (1) shall be selected by State, one (1) shall be selected by Lessee, and the third appraiser shall be selected by the two appraisers so selected. State and Lessee shall either agree upon the fair market value of the Property or each select their separate appraisers by no later than six (6) months prior to the _____ (_____) anniversary of the Commencement Date. The appraisers so selected shall submit individual appraisal reports to State and Lessee in writing no later than six (6) months prior to the rental adjustment date. If either State or Lessee fails to appoint an appraiser within the time limit specified above, or if the two appraisers appointed fail to agree upon a third appraiser within the time limit specified above, such appraiser shall be appointed by the Presiding Judge of the Thurston County Superior Court, upon application by either party following ten (10) days notice to the other party. The appraisers shall determine the fair market value of the Property at its highest and best use, disregarding any improvements constructed thereon by Lessee. The fair market value determined by such appraisers, or in the event the appraisers fail to agree upon such a value, the majority decision of the appraisers shall be binding and conclusive upon State and Lessee. Each party shall bear the cost of the respective appraisers so selected, and the cost of the third appraiser shall be divided equally between State and Lessee. For the _____ (_____) year period commencing _____, _____, the annual rent shall be equal to _____ percent of the fair market value of the Property so determined. Thereafter, during each succeeding _____ (_____) year period, the annual rent shall be adjusted again as provided in this paragraph. Notwithstanding submission of the evaluation to the appraisers, Lessee shall pay the rental amount as proposed by State on the due dates as required if no decision by the panel of appraisers has been made or if the panel has not yet formed. Failure on the part of State to establish a new rental on any anniversary of the Commencement Date of this Lease on which such adjustment is to be made shall not preclude State from doing so anytime thereafter.

EXHIBIT B

Scheduled Rent

During the term of this Lease, annual rent shall be paid according to the following schedule, in equal quarterly installments, in advance, beginning on the Commencement Date of this Lease and due on the same day every third month thereafter during the Term.

Commencement Date through _____ 19__ \$ _____
(\$ _____ quarterly payment)

_____, 19__ through \$ _____
_____, 19__ (\$ _____ quarterly payment)

_____, 19__ through \$ _____
_____, 19__ (\$ _____ quarterly payment)

_____, 19__ through \$ _____
_____, 19__ (\$ _____ quarterly payment)

_____, 19__ through \$ _____
_____, 19__ (\$ _____ quarterly payment)

_____, 19__ through \$ _____
_____, 19__ (\$ _____ quarterly payment)

_____, 19__ through \$ _____
_____, 19__ (\$ _____ quarterly payment)

_____, 19__ through \$ _____
_____, 19__ (\$ _____ quarterly payment)

_____, 19__ through \$ _____
_____, 19__ (\$ _____ quarterly payment)

_____, 19__ through \$ _____
_____, 19__ (\$ _____ quarterly payment)

_____, 19__ through \$ _____
_____, 19__ (\$ _____ quarterly payment)

_____, 19__ through \$ _____
_____, 19__ (\$ _____ quarterly payment)

_____, 19__ through \$ _____
_____, 19__ (\$ _____ quarterly payment)

_____, 19__ through \$ _____
_____, 19__ (\$ _____ quarterly payment)

_____, 19__ through \$ _____
_____, 19__ (\$ _____ quarterly payment)

_____, 19__ through \$ _____
_____, 19__ (\$ _____ quarterly payment)

_____, 19__ through \$ _____
_____, 19__ (\$ _____ quarterly payment)

EXHIBIT B

CPI With No Maximum

For the period commencing on _____, 19____, through _____, 19____, the annual rent shall be the sum computed by increasing the \$ _____ per year annual rent paid during the prior _____ year period by the percentage increase in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers for All Items for the Seattle-Everett Metropolitan Area ("CPI") from the level of said CPI as of _____ to the level of the CPI as of _____ or in other words:

Rent for the period _____ to _____ equals
Date Date
\$ _____ times (CPI as of _____
(previous rent) (current date)
divided by CPI as of _____).
(previous date)

In the event the change in the CPI for such period is a negative value, the annual rent shall in no event be less than the annual rent for the preceding (_____) year period. Such annual rent for the _____ (_____) year period shall continue without adjustment through _____, (date) payable in four (4) equal payments on the quarterly payment dates specified above. At the end of each subsequent _____ (_____) year period, a similar adjustment in the annual rent shall be made; namely, that the annual rent for each _____ (_____) year period shall be equal to the annual rent applicable in the preceding _____ (_____) year period, increased by the percentage increase in the CPI during such preceding _____ (_____) year period; provided, however, that in the event the change in the CPI is a negative value, the annual rent shall not be less than the annual rent applicable during the immediately preceding period. In the event such price index ceases to be published, the most nearly comparable price index then published by the United States Government shall be substituted in its place. If State and Lessee cannot agree as to a substitute index, then a new index shall be determined through arbitration in accordance with Section 14 above. Failure on the part of State to establish a new annual rent on any anniversary of the Commencement Date of this Lease on which such adjustment is to be made shall not preclude State from doing so anytime thereafter.

In the event a computation of an adjustment in the annual rent requires the use of published information which is not available as of the effective date of such rental adjustment, the adjustment shall be determined as soon as practical after the adjustment date, and Lessee shall continue to make periodic rental payments equal to the annual rent previously applicable. Any adjustment in such payments shall be paid by Lessee within thirty (30) days after a determination of the proper adjustment has been made.

EXHIBIT C

Periodic Reappraisal.

On _____, 19____, and at intervals of not less than _____ (_____) years thereafter, a new annual rental will be established. The new annual rental will be based on the fair market value of the Property multiplied by State's then current capitalization rate. However, in no event will the adjusted annual rental be less than the previous annual rental. The fair market value will be determined, exclusive of Lessee's improvements, by State's appraiser. The fair market value will be established as of the beginning of the rental adjustment period. In the event that agreement cannot be reached between the parties on the fair market value of the Property, such valuation shall be submitted to a panel of three appraisers (qualified as defined in Section 14 above). One appraiser shall be selected by Lessee and this expense shall be borne by Lessee; one appraiser shall be selected by State and this expense shall be borne by State; these appraisers so selected shall mutually select a third appraiser and such expenses shall be shared equally by Lessee and State. The majority decision of this panel of appraisers shall be binding and conclusive upon State and Lessee. Notwithstanding submission of the evaluation to the appraisers, Lessee shall pay the rental amount as proposed by State on the due dates as required if no decision by the panel of appraisers has been made or if the panel has not yet been formed. If additional payments or refunds are required as a result of this review, such monies shall be due and payable within thirty (30) days after such decision. Failure on the part of State to establish a new rental on any anniversary of the Commencement Date of this Lease on which adjustment is to be made shall not preclude State from doing so anytime thereafter.

EXHIBIT C

Appraisal Adjustment.

At the end of the _____ (_____) year following the Commencement Date, the Property shall be appraised by State. If Lessee does not agree with the fair market value of the Property determined by such appraisal, then the Property shall be appraised by three (3) real estate appraisers (qualified as defined in Section 14 above). One (1) shall be selected by State, one (1) shall be selected by Lessee, and the third appraiser shall be selected by the two appraisers so selected. State and Lessee shall either agree upon the fair market value of the Property or each select their separate appraisers by no later than six (6) months prior to the _____ (_____) anniversary of the Commencement Date. The appraisers so selected shall submit individual appraisal reports to State and Lessee in writing no later than six (6) months prior to the rental adjustment date. If either State or Lessee fails to appoint an appraiser within the time limit specified above, or if the two appraisers appointed fail to agree upon a third appraiser within the time limit specified above, such appraiser shall be appointed by the Presiding Judge of the Thurston County Superior Court, upon application by either party following ten (10) days notice to the other party. The appraisers shall determine the fair market value of the Property at its highest and best use, disregarding any improvements constructed thereon by Lessee. The fair market value determined by such appraisers, or in the event the appraisers fail to agree upon such a value, the majority decision of the appraisers shall be binding and conclusive upon State and Lessee. Each party shall bear the cost of the respective appraisers so selected, and the cost of the third appraiser shall be divided equally between State and Lessee. For the _____ (_____) year period commencing _____, _____, the annual rent shall be equal to _____ percent of the fair market value of the Property so determined. Thereafter, during each succeeding _____ (_____) year period, the annual rent shall be adjusted again as provided in this paragraph. Notwithstanding submission of the evaluation to the appraisers, Lessee shall pay the rental amount as proposed by State on the due dates as required if no decision by the panel of appraisers has been made or if the panel has not yet formed. Failure on the part of State to establish a new rental on any anniversary of the Commencement Date of this Lease on which such adjustment is to be made shall not preclude State from doing so anytime thereafter.

S B

227

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE 4/7/89
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035

DATE TURNED INTO OFFICE 4-14-89

3/17/89

Mr. President:

Resources _____ Committee considered SB 227

inheritance of homesite entry permits

and recommended:

- replace with CS _____ same title
- attached amendment(s) and new title
- _____ letter of intent adopted
- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____

FISCAL NOTE(S) attached ^{DNR} zero fiscal impact
 appropriation no FN attached Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Rick Halford
J. Kraft
Donna
Cheryl
Carol

Arthur S. Fungulochi DoPasso
 Chairman signature (and recommendation)
Acting Chan

Committee backup attached

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB 227

PUBLISH DATE: 4/17/89

FISCAL NOTE

REQUEST:

Revision Date: 10-Apr-89 Agency Affected: Natural Resources
 Title: An Act relating to the inheritance of homesite entry permits. BRU: Land & Water Mgmt
 Sponsor: Senator Duncan Components: Land & Water Mgmt
 Requestor: Senate Resources

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0					

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Larry Ostrovsky Phone: 465-2400
 Division: Commissioner's Office Date: 10-Apr-89

Approved by Commissioner: Lennie Gorsuch Date: 10-Apr-89
 Agency: Department of Natural Resources

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

March 17, 1989

SENATE JOURNAL

p. 834

SB 227

SENATE BILL NO. 227 by Senator Duncan, entitled:

"An Act relating to the inheritance of homesite entry permits."

was read the first time and referred to the Resources Committee.

April 10, 1989

SENATE JOURNAL

p. 1161

SB 227

Senator Fahrenkamp, Chair, moved and asked unanimous consent that the five-day notice be waived on SENATE BILL NO. 227 (An Act relating to the inheritance of homesite entry permits) for the Resources Committee meeting on April 11. Without objection, it was so ordered.

April 17, 1989

SENATE JOURNAL

p. 1265

SB 227

The Resources Committee considered SENATE BILL NO. 227 (An Act relating to the inheritance of homesite entry permits) and a majority of the committee recommended do pass. The report was signed by Senator Sturgulewski, Acting Chair, and concurred in by Senators Halford, Kerttula, Frank, Eliason and Zharoff.

Zero fiscal note published today from Department of Natural Resources.

SENATE BILL NO. 227 was referred to the Rules Committee.

SB 227

Alaska State Legislature



SENATOR JIM DUNCAN

P. O. BOX V JUNEAU, ALASKA 99811-3100
(907) 465-4766

COMMITTEES:
FINANCE
VICE CHAIR -
HEALTH EDUCATION
& SOCIAL SERVICES
BUDGET & AUDIT
BANKING &
ECONOMIC
DEVELOPMENT

M E M O R A N D U M

April 5, 1989

TO: Senator Bettye Fahrenkamp, Chairperson
Senate Resources Committee

FROM: Senator Jim Duncan

SUBJECT: SB 227, An Act relating to the inheritance of homesite entry permits."

I would appreciate your scheduling SB 227, a bill concerning the inheritance of homesite entry permits, for a hearing before the Senate Resources Committee at your earliest convenience.

This legislation will help clarify the current statutes concerning the eligibility and conveyance of a homesite entry permit by testate or intestate succession. It is my hope that these changes will make it easier to interpret the homesite entry permit statutes.

I have attached some supporting information which you may wish to include in the Committee's bill files.

I look forward to seeing SB 227 on your Committee calendar soon.

BY SENATOR DUNCAN

Senate Bill 227

"An Act relating to the inheritance of homesite entry permits."

Section 1.

Provides that a person who has qualified for a homesite entry permit and inherits an unpatented homesite entry permit of another applicant may be issued a patent for both homesite entries if they can meet the standard requirements for issuance.

Section 2.

Allows for an a person who is holding a homesite patent to apply for and hold a homesite entry permit by inheritance as provided in section 1.

ATTORNEYS AT LAW

BAXTER & MARKS

PROFESSIONAL CORPORATION

P. O. BOX 32819
JUNEAU, ALASKA 99803
(907) 789-3166 (Telephone)
(907) 789-1913 (Telecopier)

FRED J. BAXTER
STEVEN G. MARKS
DANIEL G. BRUCE
CHRISTAL SOMMERS BRAND

July 26, 1988

Mr. Dale Staley
Senator Duncan's Office
P. O. Box V
Juneau, Alaska 99811

Dear Dale:

A client of mine has requested that I contact your office requesting Senator Duncan's assistance in obtaining a statutory interpretation as to AS 38.08.050, and AS 38.08.060. Our specific concern has to do with AS 38.08.060(c). This provision provides that a person may not be issued more than one patent for a homesite during a 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.

The situation my client is confronted with is that while he currently is a patent-holder, AS 38.08.060 appears to prohibit him from having issued any further patents in his name. My client has now been bequeathed an interest in a homesite entry permit by his aunt. While I can understand the intent of the Legislature prohibiting an individual and/or family members from multiple filings, it seems rather harsh to prohibit a patent holder of a homesite from receiving a homesite entry permit which he would then be entitled to prove up on. If the language of AS 38.08.060(c) is taken at face value, my client would not be able to receive a bequest left to him.

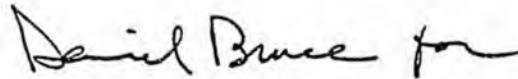
Mr. Dale Staley
July 26, 1988
PAGE 2

I am requesting your assistance in contacting the Attorney General's Office in an attempt to determine whether it was actually the legislative intent of this statutory section to prohibit an individual from inheriting a homesite entry permit when in fact he has already been issued a patent. The statute specifically provides that a homesite entry permit may be assigned by testate or intestate succession. Allowing the conveyance by testate or intestate succession without a limitation set forth in AS 38.08.040, seems to be contradictory of the language in AS 38.08.060(c).

Your assistance in attempting to obtain a clarification of the legislative intent in this regard would be helpful. Should you desire additional information, please feel free to contact me.

Very truly yours,

BAXTER & MARKS



Fred J. Baxter

FJB/pc

WPS 1.33



Alaska State Legislature

SENATOR JIM DUNCAN

P. O. Box V JUNEAU, ALASKA 99811

(907) 465-4766

COMMITTEES:
FINANCE
RESOURCES
BUDGET AND AUDIT

August 10, 1988

Grace Berg Schaible
Attorney General
State of Alaska
P.O. Box K
Juneau, Alaska 99811

Dear Attorney General Schaible:

I am requesting a formal opinion concerning the proper interpretation of AS 38.08.040 thru AS38.08.060(c) as those sections pertain to a patent holder of a homesite receiving a bequeath of a homesite entry permit.

My first reading of the statutes is that a person may not hold more than one homesite entry permit or patent. However, the statute does provide for transfer by testate or intestate succession. This form of conveyance without statutory limitation seems to be contradictory to the provisions of AS 38.08.060(c) that reads in part, "A person may not be issued more than one patent during a lifetime..."

I would like to know if this statute is contradictory or not. Does it prohibit an individual from inheriting a homesite entry permit when in fact he has already been issued a patent or is that a misinterpretation of the statute?

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jim Duncan".

Jim Duncan
Senator

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

September 23, 1988

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

The Honorable Jim Duncan
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: Homesite entry permits
AG File No. 663-89-0071

Dear Senator Duncan:

This is a belated response to your August 10, 1988, inquiry regarding the proper interpretation of AS 38.08.040 -- 38.08.060(c) as those sections pertain to a homesite permittee or patentee receiving a bequest of a homesite entry permit. As I explained to Dale Staley of your staff on September 16, 1988, I have been unable to address this matter before now because of the press of defensive litigation -- i.e., defending the state in actions brought by others. (These cases include, among others, United States v. Alaska, the "Dinkum Sands" case; Weiss v. State, the mental health trust land case; and USAG v. State, a challenge to the state's management of the Southeast Alaska seine and gillnet fleets on the basis of area, time, and gear restrictions.)

I nonetheless have briefly looked at AS 38.08.040 -- 38.08.060(c), and agree with your initial conclusion that the statutes are somewhat inconsistent. AS 38.08.040(c) provides for the transfer of a homesite permit "by testate or intestate succession, to a spouse during marriage, by order of a court as part of a divorce settlement, or to either a member of the immediate family or a grantee of the applicant in the case of an extreme emergency or illness that disables the applicant." At the same time, AS 38.08.040(d) provides in part that "a person may not simultaneously hold more than one homesite entry permit." In addition, AS 38.08.060(c) provides that a person may not be issued more than one homesite patent in a lifetime.

From the statutes, we cannot conclude which provisions would control if a homesite entry permittee or patentee also

The Honorable Jim Duncan
Our File No. 663-89-0071

September 23, 1988
Page 2

received a transfer of a homesite entry permit under the methods authorized in AS 38.08.040(c). The transfer provisions of that subsection would seem to authorize a transfer; the prohibitions in AS 38.08.040(d) and AS 38.08.060(c) would appear to prohibit it.

We have been unable to find any administrative regulation addressing this situation, and we are not aware of any instance in which this situation has been addressed by the Department of Natural Resources. You may wish to contact that department directly to determine whether such a situation has occurred in the past and, if so, how the department handled it administratively.

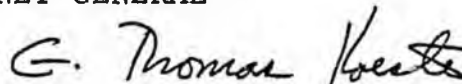
In the meantime, and looking only at the statutes, it would appear that an amendment to clarify the legislature's intent in this regard might be appropriate.

If we can answer further questions, please contact us at your convenience.

Sincerely,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By:



G. Thomas Koester
Assistant Attorney General

GTK:d1m

cc: Hon. Judith M. Brady
Commissioner
Department of Natural Resources

FROM: MARY KAY HESSION
TO: NALEMBI --JDCVM:

DATE AND TIME: 10/10/82 11:00
NRSCJBU --JDCVM:

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LAND & WATER MANAGEMENT
POLICY & PROCEDURE COORDINATION

SUBJECT: Attn. Larry D and Janet B re SB 227

I see no big problem with the bill, though it needs some fine-tuning. The sentence added to .040(c) in Section i of the bill is not strictly necessary and confuses the issue somewhat. Adding the "except as provided" language to .040(d) already ensures that inheriting a homestead won't make someone ineligible to get another one, so it would be best to drop the .040(c) addition. If not dropped, fix: permittees don't qualify under BOTH .060(a) and (e); (e) is an alternative to (a). Just refer to AS 38.08.060 plain vanilla. Also, the stress on "the individual" (new language in .040(c)) then has to be counteracted by the wording being added in the new .060(f): we really mean to count the original permittee's efforts too, & why should this opportunity be restricted to inheritance cases? If a father falls gravely ill and has to transfer his permit to his son, shouldn't the father's construction of a dwelling and two years' occupancy of the permit site count toward the son's eventual patent?

This was done very hastily; I'll give it some more thought and call you on Monday.

MARY KAY HESSION
762-2680

SB

241

U

FURTHER

4/10/89

DATE TURNED INTO OFFICE 5-5-89

Mr. President:

Resources Committee considered SB 241

authorizing the Department of Community and Regional Affairs to accept land conveyed by a state or federal agency and to receive land from dissolved municipalities

and recommended

- replace with _____ CS SB 241 (Resources)) same title
- or adopt _____ CS _____) new title
- attached amendment(s) and technical title change (HB only)
- _____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

FISCAL NOTE(S) zero fiscal impact appropriation no FN
 new updated previous
 same as previous fiscal note(s) published _____

MEMBERS SIGNING DO PASS

[Signature]
[Signature]

OTHER RECOMMENDATIONS

[Signature]

[Signature]
Chairman signature and recommendation

Committee Backup attached

- a municipality under AS 29.06.450 - 29.06.530.

* Sec. 2. AS 44.47.150(d) is amended to read:

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE 3.30.89
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER

RES

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035

3/28/89

DATE TURNED INTO OFFICE 4.08.89

Mr. President:

C&RA

Committee considered

SB 241

authorizing the Department of Community and Regional Affairs to accept land conveyed by a state or federal agency and to receive land from dissolved municipalities

and recommended:

- replace with CS C&RA same title
- attached amendment(s) and new title
- _____ letter of intent adopted

- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____

FISCAL NOTE(S) attached ^{PREVIOUS CERT} zero fiscal impact
 appropriation no N attached Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

1 new member
Pat Bourke

no rec

Al Adams - DO PASS

Chair's signature and recommendation

Committee backup attached

Original sponsor: Adams

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 241 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act authorizing the commissioner of community and
7 regional affairs to accept land conveyed by a state
8 or federal agency and to receive land from dissolved
9 municipalities; requiring the commissioner of commu-
10 nity and regional affairs to transfer certain land to
11 the commissioner of natural resources; and providing
12 for an effective date."

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

14 * Section 1. AS 44.47.150(a) is amended to read:

15 Sec. 44.47.150. [VILLAGE] LAND CONVEYED IN TRUST. (a) The
16 commissioner

17 (1) shall [IS DESIGNATED TO] accept, administer, and dis-
18 pose of land conveyed to the state in trust by village corporations
19 under 43 U.S.C. 1613(c)(3) (sec. 14(c)(3) of the Alaska Native Claims
20 Settlement Act) for the purposes specified in that section;

21 (2) may, with the concurrence of an appropriate village
22 entity recognized by the commissioner under (b) of this section or, in
23 the absence of an appropriate village entity, under procedures pre-
24 scribed by regulations of the commissioner, accept, administer, and
25 dispose of land conveyed in trust by a state or federal agency and by
26 the dissolution of a municipality under AS 29.06.450 - 29.06.530.

27 * Sec. 2. AS 44.47.150(d) is amended to read:

28 (d) Separate accounts shall be maintained in the name of each
29 village for the land, including [THE] revenues generated from the

1 land, acquired [FROM EACH VILLAGE CORPORATION] under this section, and
2 within 90 days after [OF] the close of each state fiscal year a state-
3 ment of the account for each village [MUNICIPALITY] shall be prepared
4 by the commissioner and be made available to the village and to the
5 public upon request.

6 * Sec. 3. AS 44.47.150(e) is amended to read:

7 (e) Upon the conveyance of land to a municipality under this
8 section, the commissioner shall account to the municipality for all
9 profits including interest generated from the land. The [, AND THE]
10 municipality may then request [THAT] the governor to submit a request
11 to the legislature for an appropriation for the amount due the munic-
12 ipality [IT].

13 * Sec. 4. AS 44.47.150(f) is amended to read:

14 (f) Title to [A TITLE] or an interest in land [TO LANDS] acquir-
15 ed by the department under this section may not be acquired by adverse
16 possession or prescription. Notwithstanding (a) - (e) of this sec-
17 tion, on the dissolution of a municipality under AS 29.06.450 - 29.-
18 06.530, unimproved land owned by the municipality that was received by
19 the municipality from the state under a municipal land grant entitle-
20 ment program shall be transferred by the commissioner to the commis-
21 sioner of natural resources. — *shall succeed directly to DNR*

22 * Sec. 5. AS 44.47.150(g) is amended to read:

23 (g) For the purposes of this section, "municipality" [THE TERM
24 MUNICIPALITY] includes only first and second class cities incorporated
25 under the laws of the state.

26 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).
27
28
29

6-1089H✓
Bradley
5/4/89

Original sponsor: Adams

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 241 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act authorizing the commissioner of community and
7 regional affairs to accept land conveyed by a state
8 or federal agency and to receive land from dissolved
9 municipalities; requiring the commissioner of commu-
10 nity and regional affairs to transfer certain land to
11 the commissioner of natural resources; and providing
12 for an effective date."

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

14 * Section 1. AS 44.47.150(a) is amended to read:

15 Sec. 44.47.150. [VILLAGE] LAND CONVEYED IN TRUST. (a) The
16 commissioner

17 (1) shall [IS DESIGNATED TO] accept, administer, and dis-
18 pose of land conveyed to the state in trust by village corporations
19 under 43 U.S.C. 1613(c)(3) (sec. 14(c)(3)) of the Alaska Native Claims
20 Settlement Act) for the purposes specified in that section;

21 (2) may, with the concurrence of an appropriate village
22 entity recognized by the commissioner under (b) of this section or, in
23 the absence of an appropriate village entity, under procedures pre-
24 scribed by regulations of the commissioner, accept, administer, and
25 dispose of land conveyed in trust by a state or federal agency and by
26 the dissolution of a municipality under AS 29.06.450 - 29.06.530.

27 * Sec. 2. AS 44.47.150(d) is amended to read:

28 (d) Separate accounts shall be maintained in the name of each
29 village for the land, including [THE] revenues generated from the

1 land, acquired [FROM EACH VILLAGE CORPORATION] under this section, and
2 within 90 days after [OF] the close of each state fiscal year a state-
3 ment of the account for each village [MUNICIPALITY] shall be prepared
4 by the commissioner and be made available to the village and to the
5 public upon request.

6 * Sec. 3. AS 44.47.150(e) is amended to read:

7 (e) Upon the conveyance of land to a municipality under this
8 section, the commissioner shall account to the municipality for all
9 profits including interest generated from the land. The [, AND THE]
10 municipality may then request [THAT] the governor to submit a request
11 to the legislature for an appropriation for the amount due the munic-
12 ipality [IT].

13 * Sec. 4. AS 44.47.150(f) is amended to read:

14 (f) Title to [A TITLE] or an interest in land [TO LANDS] acquir-
15 ed by the department under this section may not be acquired by adverse
16 possession or prescription. Notwithstanding (a) - (e) of this sec-
17 tion, on the dissolution of a municipality under AS 29.06.450 - 29.-
18 06.530, unimproved land that was owned by the municipality on the date
19 of its dissolution and received by the municipality from the state
20 under a municipal land grant entitlement program is transferred to the
21 commissioner of natural resources.

22 * Sec. 5. AS 44.47.150(g) is amended to read:

23 (g) For the purposes of this section, "municipality" [THE TERM
24 MUNICIPALITY] includes only first and second class cities incorporated
25 under the laws of the state.

26 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).
27
28
29

ALASKA FEDERATION OF NATIVES, INC.



411 W. 4th Avenue, Suite 301 • Anchorage, Alaska 99501 • Phone (907) 274-3511

April 24, 1989

The Honorable Al Adams
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Dear Senator Adams:

This letter is in support of Senate Bill No. 241 and thus your efforts to resolve land conveyance problems it addresses. Included in these comments are suggested amendments to the committee substitute that emerged from Senate CRA.

The purpose of SB 241 is to broaden Department of Community and Regional Affairs (DCRA) authority, specifically that of the Municipal Lands Trust Program, to accept and administrator land other than land reconveyed under provisions of Section 14(c)(3) of the Alaska Native Claims Settlement Act (ANCSA).

Should the bill become law as currently written, the Municipal Lands Trust (MLT) Program within DCRA would have the statutory authority to accept and administer (manage) land conveyed by the State of Alaska, Federal Government (Federal Townsite Program) and municipal dissolution, in addition to its current ANCSA 14(c)(3) obligations.

Acceptance and administration of such land would be subject to established policy and regulations that govern the MLT Program.

Section 14(c)(3) of ANCSA establishes the Municipal Lands Trust. Alaska Statute 44.47.150 accepts the trust and defines its structure. 19 AAC 90 establishes regulations under which the trust program is administered.

The intent of the trust program is to serve as trustee for land reconveyed under ANCSA 14(c)(3) for future municipalities. Trust villages are those communities currently unincorporated and thus subject to future incorporation as municipalities under state law.

Land conveyed to the MLT Program is administered or managed by DCRA in conjunction with a local advisory entity known as an "Appropriate Village Entity" (AVE). Regulations require that such an entity be established through a local petition process.

Integrity • Pride in Heritage • Progress

Communities not having a recognized AVE may provide input through a representative association or a public hearing process conducted in the respective community.

The MLT Program maintains records and accounts of all land transactions. Upon incorporation as a municipality all records, accounts, revenues and land title is turned over to the new city and the trust responsibility for that particular community is removed from the State.

It is important to note that extraordinary relationships and policies exist with respect to community land conveyed to the State in trust. This arises from the language of Section 14(c)(3) of ANCSA establishing the trust, the acceptance of the trust by the State legislature in AS 44.47.150 and the expectations of rural people affected by the land trust.

The State is expected to assume and maintain a constructive trust role by the Congress, the legislature, and affected rural people. The Commissioner of DCRA, as trustee, accepts the adoption of legal trust principles as the underlying policy of the MLT Program. As trustee, the State does not acquire title to, nor administer, municipal trust land for its own sovereign use and benefit. Rather, land is conveyed and administered "in trust" for any municipal corporation established in the Native village in the future.

The trust administered through the MLT Program is quite different from the Department of Natural Resources (DNR) trust role over State land. In DNR's case the State is a sovereign and interests to be protected extend beyond individual community interests.

Senate Bill 241 is intended to address three land conveyance related problems.

The first problem relates to the conveyance of land title when a municipality elects to dissolve its incorporated status.

Current law (AS 29.06) directs that assets, including land, and liabilities of a dissolved municipality succeed to the State of Alaska. The DNR is the only State land managing agency with authority to accept land assets in the case of municipal dissolution.

This presents the problem of an agency (DNR) acquiring land that a community needs for public purposes without a mandate or structure that allows it to accommodate said community needs. The DNR is not structured to accommodate land management with respect to individual community interests nor, I suspect, does it want that responsibility.

Since the MLT Program is specifically designed to accommodate such a role, ie administrative structure is in place and policies and regulations established, it is logical to convey the land to the MLT Program. Senate Bill 241 provides DCRA/MLT the authority to accept and administer land succeeding to the State via municipal dissolution.

The second problem Senate Bill 241 addresses relates to the Federal Townsite Program.

Under 1891 and 1926 Acts of Congress, federal land in and around certain communities was made available for individual and community purposes. A municipality could acquire land for a public purpose. Individuals could "prove-up" and claim a parcel for a residence and/or business.

Ninety nine rural Alaska communities are affected by the Federal Townsite Program. Communities petitioned the Bureau of Land Management (BLM) to be subdivided or platted into lots, rights of ways, etc. The plats were recorded and title provided as appropriate.

The Federal Townsite Program was repealed in 1976 by the Federal Land Policy and Management Act (FLPMA). The FLPMA requires that the Federal Townsite Program be terminated as soon as possible.

As previously stated, the Bureau of Land Management has the authority to convey townsite lots to individuals and municipalities. An obstacle to terminating the program is that twenty six unincorporated communities have approximately seven hundred and eighty three vacant parcels remaining within their settlement areas and BLM lacks the tools to transfer title to other than incorporated municipalities.

Senate Bill 241, as written, addresses this problem by providing an option which allows DCRA/MLT to accept federal townsite land. BLM needs parallel legislation at the federal level to authorize the Federal Townsite Trustee to convey land to the State. Such legislation is being considered by BLM.

Again, providing DCRA/MLT the authority to accept and administer federal townsite land on behalf of an unincorporated community is logical. Of the remaining twenty-six unincorporated communities in the program, nineteen are in the MLT Program and have established an appropriate village entity to foster local control over land management decisions. One of the twenty-six communities is non-Native and thus has no ANCSA 14(c)(3) reconveyance and no entry to the MLT Program.

The third problem Senate Bill 241 addresses relates to scattered parcels of State land within unincorporated communities.

Capitol projects funded by State appropriations require site control. Site control is achieved by acquiring an interest in the land on which the project is to be built. In a small number of past situations (Stony River, Egegik and Iliamna) the DNR has acquired an interest in land so as to facilitate the construction and use of a community facility for an unincorporated community. This action was necessary as DCRA/MLT authority to accept and administer land did not extend beyond ANCSA 14(c)(3) reconveyances and the land in question was not 14(c)(3) land.

If given the authority as proposed in Senate Bill 241, DCRA would be in a position to accept a transfer of these lands from the DNR to the MLT Program, thus resolving the problem of having community land in an agency that has neither the mandate nor administrative structure to protect community interests as does DCRA.

As a final note, it is my understanding that the DNR is concerned about the recovery of municipal land entitlements when a municipality dissolves its corporate status. This concern appears reasonable since, to some extent, municipal land entitlements are intended as an incentive to municipal incorporation. However, while it appears reasonable for the State to recover land entitlements in the case of municipal dissolution, I strongly recommend that such recovery be limited to undeveloped land.

The incorporated or unincorporated status of a community does not eliminate the factors that create physical growth and thus the need for public and private land. Unincorporated communities will continue to need a land base for public service facilities. If entitlement land, or a portion thereof, is developed for public use it is logical that it be entered into the MLT Program and thus administered for the benefit of the community.

The issue of recovery of municipal land entitlements may be of minor importance. Municipalities receiving such entitlements are larger communities where dissolution is very unlikely. Smaller rural municipalities that are considering dissolution do not have entitlements and in almost all cases the State has no land ownership presence in the area.

With regard to amendments to the version of Senate Bill 241 which passed out of Senate CRA Committee, I offer the following recommendations and explanations.

1. Section 1, (2) line 23 - the term recognized village entity should be changed to "appropriate" village entity. This is consistent with the term used throughout the MLT Program. Retaining the term "recognized" may imply a desire to create an entity other than an AVE.

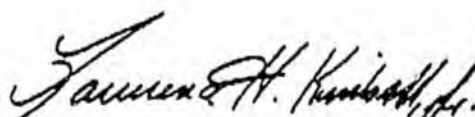
I believe the problem is a drafting oversight.

2. Section 4, (f) lines 16 through 21 - the Committee amendment should be redrafted to read "notwithstanding any other section of this act, and in the case of municipal dissolution, municipal land acquired pursuant to a municipal entitlement grant and undeveloped on the date of dissolution shall succeed directly to the Department of Natural Resources".

The intent of this recommended language is to convey only the undeveloped portion of an entitlement grant to the DNR with the portion developed for public use being entered into the MLT Program.

Secondly, land succeeding to the DNR would do so directly to avoid the administrative cost of an additional transfer step, ie, from DCRA to DNR.

Best regards,


Lawrence H. Kimball, Jr.
Land Manager

ALASKA FEDERATION OF NATIVES, INC.



411 W. 4th Avenue, Suite 301 • Anchorage, Alaska 99501 • Phone (907) 274-3611

April 26, 1989

The Honorable Bettye M. Fahrenkamp
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

Please accept this letter as written testimony on Senate Bill 241 which has now been referred to the Senate Resources Committee.

Copies of previous correspondence on the bill from the Alaska Federation of Natives to Senator Adams, the sponsor of the bill, was forwarded to your office via telecopy. The correspondence I refer to provides background information as to why the legislation is needed.

The version of Senate Bill 241 which passed out of Senate CRA is, in my opinion, in need of two amendments. The recommended amendments are as follows:

1. Section 1, (2) line 23 - the term "recognized" village entity should be amended to read "appropriate" village entity. The term appropriate village entity is consistent with language used throughout the Municipal Lands Trust Program (policy and regulations). Retaining the term "recognized" may imply that an entity other than an appropriate village entity is being created.

I believe the term "recognized" is a drafting error generated from legislative counsel.

2. Section 4, (f) lines 16 through 21 - the Committee amendment should be redrafted to read "not withstanding any other section of this act, and in the case of municipal dissolution, municipal land acquired pursuant to a municipal entitlement grant and undeveloped on the date of dissolution shall succeed directly to the Department of Natural Resources".

The intent of this recommended language is to convey only the undeveloped portion of an entitlement grant to the DNR with the portion developed for public use being conveyed directly to the DCRA and entered into the Municipal Lands Trust Program.

Secondly, land succeeding to the DNR would do so directly to avoid the administrative cost of an additional transfer step, ie, from DCRA to DNR.

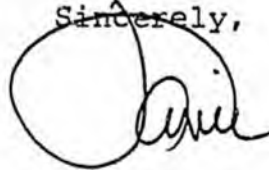
(A copy of Senate Bill 241 with reference to lines of suggested amendments is enclosed.)

I would appreciate your entering these comments into the Resource Committee record. I further request that you consider scheduling the bill for committee hearings this session. There are two rural municipalities that have initiated proceeding toward dissolution. It would be beneficial to these communities and the State if DCRA's authority to accept and administer the land assets was in place when dissolution occurs.

Thank you.

*Thanks
Betty!*

Sincerely,



Janie Leask
President

cc: Tom Hawkins, DNR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

April 5, 1989

POSITION PAPER

RE: Senate Bill 241

SPONSOR: Senator Adams

Departmental Position

The department strongly supports this bill.

Program Effects of Bill

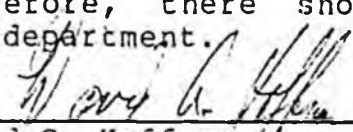
This bill would expressly authorize the Department of Community and Regional Affairs to accept, in trust, land conveyed by a state or federal agency or from dissolution of a municipality.

Comments

The State currently acts as trustee for land conveyed under section 14(c)(3) of the Alaska Native Claims Settlement Act (ANCSA) in unincorporated communities. That section of ANCSA requires village corporations to convey certain land to municipalities or to the state in trust for future municipalities. In rural communities of the state, there is often a local community need for land held by other state or federal agencies. However, without a municipality there is no recognized governing entity to which the land may be transferred for community purposes. Under this bill, a state or federal agency could transfer land to the state in trust to administer for community purposes.

This legislation also identifies the department as a possible recipient and administrator of land from a dissolved municipality. Such lands generally are subject to the same types of administrative program concerns as lands already under the Municipal Lands Trustee Program.

The department would administer land conveyed under this bill along with section 14(c)(3) land received from village corporations and placed under the Municipal Lands Trustee Program. The department would accept land only for ANCSA villages that the department would be working with under the current provisions of law. Therefore, there should be no additional costs or burdens on the department.



David G. Hoffman
Commissioner

- P.O. BOX 8
JUNEAU, ALASKA 99811-2100
PHONE: (907) 465-4700
- 949 E. 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508-4302
PHONE: (907) 563-1073

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act..DCRA..accept land..receive
 land from dissolved municipalities."
 Sponsor: Senator Adams
 Requestor: _____

Agency Affected: Community & Regional Affairs
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Jim Plasman

Prepared by: Jim Plasman, Deputy Director Phone: 465-4750
 Division: Municipal & Regional Assistance Date: 4/5/89
 Approved by Commissioner: [Signature] Date: 4-7-89
 Agency: Community & Regional Affairs

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

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

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

April 6, 1989

The Honorable Al Adams
Chair, Senate Community
and Regional Affairs Committee
P.O. Box V
Juneau, AK 99801

Dear Senator Adams:

Subject: SB 241, An Act authorizing the Department of Community and Regional Affairs (DCRA) to accept land conveyed by a State or Federal agency and to receive land from dissolved municipalities.

Position: DNR supports the concept of this bill as a method to resolve specific problems related to village expansion that are difficult to address under current statute. The ANCSA 14(c) (3) Municipal Trust program within DCRA is the logical entity to accept and hold title for villages for land and improvements for communities in non-incorporated municipalities. However, the department suggests changes to the language in Section 1, AS 44.47.150(a) (2) which applies to the dissolution of a municipality under AS 29.06.450 - 29.06.530.

Background: In most cases DNR is the designated landowner for all state land. In many cases a municipality acquires its land via municipal entitlement authority as administered by DNR and if it dissolves, the land should revert to DNR as the landowner. If improvements are involved, a determination is made by the Department of Administration as to their disposition.

This bill would alter the arrangement to allow DCRA to administer land for communities in the event a municipality dissolves. If a municipality dissolves, the land should revert to the department as the landowner with a determination made by the Department of Administration as to the proper disposal of improved properties.

Recommendation: We suggest the following change be made to the bill in Sec. 1, AS 44.47.150(a) (2). Add at the end of the subsection "except that land acquired through the municipal

Senator Adams

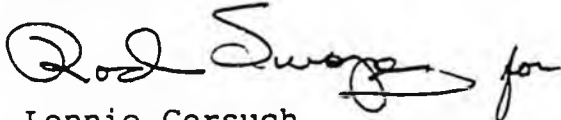
-2-

April 6, 1989

entitlement program under AS 29.65 reverts ~~back~~ to the Department of Natural Resources as general grant land to be managed under Title 38."

Thank you for the opportunity to comment. We look forward to working with the committee and staff on this legislation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lennie Gorsuch for".

Lennie Gorsuch
Commissioner

Enclosure

cc: Committee Members
Bill Sponsor
Denby Lloyd, Special Staff Assistant
Office of the Governor
Bob Evans, Legislative Liaison
Office of the Governor
Gary Gustafson, Director
Division of Land and Water Management
Jim Plasman
Department of Community and Regional Affairs

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB 241

PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Authorizing the DCRA to accept land
land conveyed by agencies and receive land
Sponsor: Senator Adams
Requestor: Senate C&RA Committee

Agency Affected: Natural Resources
BRU: Division of Land and Water Mgt.

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Larry Ostrovsky 

Division: Commissioner's Office

Phone: 465-2400

Date: 5-Apr-89

Approved by Commissioner: Lennie Gorsuch 

Agency: Department of Natural Resources

Date: _____

Distribution (by preparer) :

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

BRIEFING PAPER
ALASKA UNINCORPORATED TOWNSITES

Originally Prepared for: Assistant Secretary Steve Griles
December 10, 1987

ISSUE: The Alaska BLM Townsite Trustee lacks title transfer tools to satisfactorily address community development and expansion needs in 29 unincorporated Alaska villages. The issues of technical trespass and disposal of residual lands are the principal problems. Proposed legislative solutions are complicated by a July 1987 Federal court ruling and the potential that sovereignty claims may be enhanced by the legislation.

DEPARTMENT OR ADMINISTRATION POSITION: The Department seeks to dispose of lands in Alaska expeditiously where the law intends transfer from the Federal government to private individuals or local communities. Solving community needs has been identified as a possible initiative for recommendation to the Domestic Council. Interaction with the Alaska public has been high in developing possible solutions to the townsite issues. Limiting future litigation has also been an underlying premise of administration action. Moderating the Department position on favoring community over Federal control of land decisions has been a concern that the concept of Native sovereignty would be enhanced. The Department has appealed a District Court decision authorizing disposals of residual townsite land to the local Native governing body in unincorporated communities. Assistant Secretary Swimmer has been briefed on aspects of the townsite issue by Alaska BIA Liason Officer. The Solicitor Office is receiving briefings on this issue. The most recent to Tom Sansonetti on December 7, 1987.

POSITION OF MAJOR CONSTITUENCIES: The State of Alaska and Native organizations are supportive of the Bureau's efforts to resolve the issues associated with unincorporated townsites in Alaska. Each constituent group has varying concerns about possible solutions. Tanana Chiefs Conference a non-profit organization representing central Alaska Natives communities has taken the lead on this issue. They have communicated frequently with Assistant Secretary Griles. The State of Alaska has pending legislation which would permit the State Municipal Land Trustee to receive title to former townsite land. Hearings on the legislation will take place in the next months. In October a draft of Federal legislation to resolve the townsite issues was jointly developed by the State of Alaska and Tanana Chiefs Conference.

CONGRESSIONAL POSITION: Congressman Young has taken a pragmatic view of resolving these issues and has been highly flexible in alternative solutions. Senator Stevens has taken a more cautious approach to the disposal of land to traditional councils or Indian Reorganization Act governments as a solution. Senator Murkowski's office has not played an active role in the discussions. All members recognize this is a long standing problem and that some solution needs to be determined.

Townsite Briefing Paper

ISSUE BACKGROUND: Existing townsite procedures call for transfers to incorporated villages. There are 29 townsite communities which have not incorporated under State law and may never do so. Also, transfers of lots to individuals can only be made if entry to the lot occurred before the date the survey plat for the townsite was approved or 1976 (date of repeal of the townsite laws by FLPMA) whichever date is earlier. At present the BLM Townsite Trustee can only dispose of lots through public auction under regulations found at 43 CFR 2565.5. This sale mechanism is strongly opposed by the communities and is critically viewed by the State of Alaska. The villages in comments state that local control would be lost to land speculators outbidding local people of limited resources. The BLM Alaska State Office commenced an initiative in the summer of 1986 to determine the specific nature of title transfer problems that existed in the unincorporated communities of rural Alaska. A townsite action plan was prepared by the Alaska State Director on January 1, 1987. Based upon these recommendations, discussions started involving Alaska Natives and the State to develop a concensus legislative solution. In July a court decision in the Aleknagik appeal addressed unincorporated townsite communities. The court stated transfers to the local governmental bodies could take place. Future disposals by those bodies would be without regard to race or nationality. The Department has filed a protective appeal to the 9th Circuit and a request for a continuance of the case for 6 months in order to pursue legislation. Tanana Chiefs Conference has written Assistant Secretary Griles indicating a desire to pursue a legislative solution but also signaling that they would intervene in the appeal. A November 4 meeting with Congressional and Departmental representatives discussed the concepts of the State-Native draft. An effort to identify alternative legislative concepts which calm sovereignty concerns is to be developed.

PROGRAM CONTACT: Robert Faithful or David E. Wickstrom
Alaska Programs Staff 343-6511

Tundra Times

Alaska's Oldest Statewide Newspaper

50¢

March 20, 1989

Vol. XXVI

Photo by Chris Cushman

Akiachak plans for dissolution of government November election

by Steve Pilkington
Tundra Times reporter

If next November's election goes as voters in Akiachak plan, their city government will dissolve after a five-year power struggle with the state, leaving the welfare and safety of Akiachak entirely up to its tribal members.

And according to state officials, the Akiachak plan could provoke five other Yukon-Kuskokwim Delta communities, which are seriously considering dissolving their own city governments, to follow suit.

Moses Peter, a former mayor of Akiachak, said it is too difficult to run a traditional Native government together with the state government.

"We tried to put both governments together, but it didn't work," Peter said.

"One of them has to go. We have to go by what people want," he said.

Willie Kasayulie, chairman of the Akiachak Indian Reorganization Act Council, said the main reason



Game Board members Nicholas Jackson of Gukona, foreground, and Sidney Huntington of Galena listen to testimony given last week by Arnold Melchiemer of English Bay. Melchiemer was discussing a request for goat and moose subsistence season date changes in the Port Graham-English Bay area. The Game Board met in Anchorage last week at the William A. Egan Civic & Convention Center.

• Akiachak faces vote in November

(Continued from Page One)

residents want to dissolve the city government is to avoid state and tribal conflicts.

"What we wanted to achieve was to have one responsible village government instead of two," Kasayulie said.

But the process of getting the state to allow the election has been long and difficult.

It began in 1985 when the Akiachak City Council members jointly resigned.

The village IRA council tried to abolish the city government once before by a popular vote from the residents, he said, but state law and the Local Boundary Commission only allowed that in rare circumstances.

Before the 1988 session of the Legislature, cities could dissolve only if they had become ghost towns. If a city grew out of the exploitation of a resource which had dried up, the state and boundary commission would allow it to dissolve.

But last year, legislators passed a dissolution statute which says a city can be dissolved if:

- A petition is signed by at least 50 percent of the residents who voted in the last election.

- The city owes no debts.

The commissioner of the Department of Community and Regional Affairs must also believe that residents will be better off before the city can be dissolved.

Marty Rutherford, director of the department's Municipal and Regional

Assistance Division, said the state supports the dissolution. The department is assisting the village, she said.

Akiachak has also met the first two parts of the statute, and the Local Boundary Commission recently set the date for the election for Nov. 7.

"I had hoped that the vote would take place in March or April," Kasayulie said.

One of the conflicts which arises between the two forms of government is criminal procedures, Kasayulie said.

"One of our concerns was that whenever one of our tribal members or community residents broke a law, they were taken out of the village without the council or anyone hearing about it," he said.

Bart Garber, an attorney with the Native American Rights Fund, said the November election will definitely dissolve the city government.

"Not a problem," he said.

The petition for an election was signed by 99 residents. This equals 72.8 percent of the number of votes cast in the last general election in the city — well over the statutory 50 percent needed for the city to be dissolved.

According to the state's schedule, the Department of Community and Regional Affairs will release its decision about the dissolution June 5. The boundary commission will conduct a hearing in Akiachak June 26.

Dan Bockhorst, supervisor of the boundary commission under the community affairs department, said

'What we wanted to achieve was to have one responsible village government instead of two.'

—Willie Kasayulie

Akiachak's election may affect other villages on the Yukon-Kuskokwim Delta.

"There are other communities that are potentially interested in dissolu-

tion," he said.

The five other communities seeking dissolution, according to the boundary commission, are Atmautluak, Cheforak, Kasigluk, Tununak and Newtok.

ATTENTION

Former Food Stamp Recipients

Some Alaskans were not given enough food stamps during the May 1985 through July 1987 period if they received Alaska Native Claims Settlement Act (ANCSA) dividend payments or land from Native corporations. Households participating in the Food Stamp Program which received ANCSA dividends or land during this period may be eligible for restored food stamp benefits. This advertisement seeks to find affected households which are no longer receiving food stamps.

To be considered eligible for these food stamp benefits, you must send your name, Social Security Number, and current address no later than May 30, 1989 to: Department of Health and Social Services, Division of Public Assistance, Claims Unit, 130 Seward Street, Suite 314, Juneau, Alaska 99801, Attn: ANCSA Project.

NOTE: If you are now receiving food stamps or other Public Assistance benefits DO NOT write to the address above. Any additional food stamps to which you are entitled will be sent directly to you.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Community & Regional Affairs
 Title: "An Act..DCRA..accept land..receive land from dissolved municipalities." BRU: _____
 Sponsor: Senator Adams Components: _____
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: *Jim Plasman* Jim Plasman, Deputy Director Phone: 465-4750
 Division: Municipal & Regional Assistance Date: 4/5/89
 Approved by Commissioner: *Walter Kelly* Date: 4-5-89
 Agency: Community & Regional Affairs

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

*Changes in the Resources CS
 have no fiscal effect.*

page 1 of 1

This fiscal note is appropriate.

DC 5/5/89

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Natural Resources
 Title: Authorizing the DCRA to accept land BRU: Division of Land and Water Mgt.
land conveyed by agencies and receive land
 Sponsor: Senator Adams Components: _____
 Requestor: Senate C&RA Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Larry Ostrovsky Phone: 465-2400
 Division: Commissioner's Office Date: 5-Apr-89

Approved by Commissioner: Lennie Gorsuch Date: _____
 Agency: Department of Natural Resources

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

*Changes in the Resources CS have
no fiscal impact.*

This fiscal note is appropriate.

DC 5/5/89

ALASKA FEDERATION OF NATIVES, INC.

411 W 4th Avenue, Suite 301 • Anchorage, Alaska 99501 • Phone (907) 274-3611

April 24, 1989



The Honorable Al Adams
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Dear Senator Adams:

This letter is in support of Senate Bill No. 241 and thus your efforts to resolve land conveyance problems it addresses. Included in these comments are suggested amendments to the committee substitute that emerged from Senate CRA.

The purpose of SB 241 is to broaden Department of Community and Regional Affairs (DCRA) authority, specifically that of the Municipal Lands Trust Program, to accept and administrator land other than land reconveyed under provisions of Section 14(c)(3) of the Alaska Native Claims Settlement Act (ANCSA).

Should the bill become law as currently written, the Municipal Lands Trust (MLT) Program within DCRA would have the statutory authority to accept and administer (manage) land conveyed by the State of Alaska, Federal Government (Federal Townsite Program) and municipal dissolution, in addition to its current ANCSA 14(c)(3) obligations.

Acceptance and administration of such land would be subject to established policy and regulations that govern the MLT Program.

Section 14(c)(3) of ANCSA establishes the Municipal Lands Trust. Alaska Statute 44.47.150 accepts the trust and defines its structure. 19 AAC 90 establishes regulations under which the trust program is administered.

The intent of the trust program is to serve as trustee for land reconveyed under ANCSA 14(c)(3) for future municipalities. Trust villages are those communities currently unincorporated and thus subject to future incorporation as municipalities under state law.

Land conveyed to the MLT Program is administered or managed by DCRA in conjunction with a local advisory entity known as an "Appropriate Village Entity" (AVE). Regulations require that such an entity be established through a local petition process.

Integrity • Pride in Heritage • Progress

Communities not having a recognized AVE may provide input through a representative association or a public hearing process conducted in the respective community.

The MLT Program maintains records and accounts of all land transactions. Upon incorporation as a municipality all records, accounts, revenues and land title is turned over to the new city and the trust responsibility for that particular community is removed from the State.

It is important to note that extraordinary relationships and policies exist with respect to community land conveyed to the State in trust. This arises from the language of Section 14(c)(3) of ANCSA establishing the trust, the acceptance of the trust by the State legislature in AS 44.47.150 and the expectations of rural people affected by the land trust.

The State is expected to assume and maintain a constructive trust role by the Congress, the legislature, and affected rural people. The Commissioner of DCRA, as trustee, accepts the adoption of legal trust principles as the underlying policy of the MLT Program. As trustee, the State does not acquire title to, nor administer, municipal trust land for its own sovereign use and benefit. Rather, land is conveyed and administered "in trust" for any municipal corporation established in the Native village in the future.

The trust administered through the MLT Program is quite different from the Department of Natural Resources (DNR) trust role over State land. In DNR's case the State is a sovereign and interests to be protected extend beyond individual community interests.

Senate Bill 241 is intended to address three land conveyance related problems.

The first problem relates to the conveyance of land title when a municipality elects to dissolve its incorporated status.

Current law (AS 29.06) directs that assets, including land, and liabilities of a dissolved municipality succeed to the State of Alaska. The DNR is the only State land managing agency with authority to accept land assets in the case of municipal dissolution.

This presents the problem of an agency (DNR) acquiring land that a community needs for public purposes without a mandate or structure that allows it to accommodate said community needs. The DNR is not structured to accommodate land management with respect to individual community interests nor, I suspect, does it want that responsibility.

Since the MLT Program is specifically designed to accommodate such a role, ie administrative structure is in place and policies and regulations established, it is logical to convey the land to the MLT Program. Senate Bill 241 provides DCRA/MLT the authority to accept and administer land succeeding to the State via municipal dissolution.

The second problem Senate Bill 241 addresses relates to the Federal Townsite Program.

Under 1891 and 1926 Acts of Congress, federal land in and around certain communities was made available for individual and community purposes. A municipality could acquire land for a public purpose. Individuals could "prove-up" and claim a parcel for a residence and/or business.

Ninety nine rural Alaska communities are affected by the Federal Townsite Program. Communities petitioned the Bureau of Land Management (BLM) to be subdivided or platted into lots, rights of ways, etc. The plats were recorded and title provided as appropriate.

The Federal Townsite Program was repealed in 1976 by the Federal Land Policy and Management Act (FLPMA). The FLPMA requires that the Federal Townsite Program be terminated as soon as possible.

As previously stated, the Bureau of Land Management has the authority to convey townsite lots to individuals and municipalities. An obstacle to terminating the program is that twenty six unincorporated communities have approximately seven hundred and eighty three vacant parcels remaining within their settlement areas and BLM lacks the tools to transfer title to other than incorporated municipalities.

Senate Bill 241, as written, addresses this problem by providing an option which allows DCRA/MLT to accept federal townsite land. BLM needs parallel legislation at the federal level to authorize the Federal Townsite Trustee to convey land to the State. Such legislation is being considered by BLM.

Again, providing DCRA/MLT the authority to accept and administer federal townsite land on behalf of an unincorporated community is logical. Of the remaining twenty-six unincorporated communities in the program, nineteen are in the MLT Program and have established an appropriate village entity to foster local control over land management decisions. One of the twenty-six communities is non-Native and thus has no ANCSA 14(c)(3) reconveyance and no entry to the MLT Program.

The third problem Senate Bill 241 addresses relates to scattered parcels of State land within unincorporated communities.

Capitol projects funded by State appropriations require site control. Site control is achieved by acquiring an interest in the land on which the project is to be built. In a small number of past situations (Stony River, Egegik and Iliamna) the DNR has acquired an interest in land so as to facilitate the construction and use of a community facility for an unincorporated community. This action was necessary as DCRA/MLT authority to accept and administer land did not extend beyond ANCSA 14(c)(3) reconveyances and the land in question was not 14(c)(3) land.

If given the authority as proposed in Senate Bill 241, DCRA would be in a position to accept a transfer of these lands from the DNR to the MLT Program, thus resolving the problem of having community land in an agency that has neither the mandate nor administrative structure to protect community interests as does DCRA.

As a final note, it is my understanding that the DNR is concerned about the recovery of municipal land entitlements when a municipality dissolves its corporate status. This concern appears reasonable since, to some extent, municipal land entitlements are intended as an incentive to municipal incorporation. However, while it appears reasonable for the State to recover land entitlements in the case of municipal dissolution, I strongly recommend that such recovery be limited to undeveloped land.

The incorporated or unincorporated status of a community does not eliminate the factors that create physical growth and thus the need for public and private land. Unincorporated communities will continue to need a land base for public service facilities. If entitlement land, or a portion thereof, is developed for public use it is logical that it be entered into the MLT Program and thus administered for the benefit of the community.

The issue of recovery of municipal land entitlements may be of minor importance. Municipalities receiving such entitlements are larger communities where dissolution is very unlikely. Smaller rural municipalities that are considering dissolution do not have entitlements and in almost all cases the State has no land ownership presence in the area.

With regard to amendments to the version of Senate Bill 241 which passed out of Senate CRA Committee, I offer the following recommendations and explanations.

1. Section 1, (2) line 23 - the term recognized village entity should be changed to "appropriate" village entity. This is consistent with the term used throughout the MLT Program. Retaining the term "recognized" may imply a desire to create an entity other than an AVE.

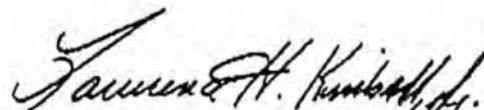
I believe the problem is a drafting oversight.

2. Section 4, (f) lines 16 through 21 - the Committee amendment should be redrafted to read "notwithstanding any other section of this act, and in the case of municipal dissolution, municipal land acquired pursuant to a municipal entitlement grant and undeveloped on the date of dissolution shall succeed directly to the Department of Natural Resources".

The intent of this recommended language is to convey only the undeveloped portion of an entitlement grant to the DNR with the portion developed for public use being entered into the MLT Program.

Secondly, land succeeding to the DNR would do so directly to avoid the administrative cost of an additional transfer step, ie, from DCRA to DNR.

Best regards,


Lawrence H. Kimball, Jr.
Land Manager

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

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

April 6, 1989

The Honorable Al Adams
Chair, Senate Community
and Regional Affairs Committee
P.O. Box V
Juneau, AK 99801

Dear Senator Adams:

Subject: SB 241, An Act authorizing the Department of Community and Regional Affairs (DCRA) to accept land conveyed by a State or Federal agency and to receive land from dissolved municipalities.

Position: DNR supports the concept of this bill as a method to resolve specific problems related to village expansion that are difficult to address under current statute. The ANCSA 14(c)(3) Municipal Trust program within DCRA is the logical entity to accept and hold title for villages for land and improvements for communities in non-incorporated municipalities. However, the department suggests changes to the language in Section 1, AS 44.47.150(a)(2) which applies to the dissolution of a municipality under AS 29.06.450 -- 29.06.530.

Background: In most cases DNR is the designated landowner for all state land. In many cases a municipality acquires its land via municipal entitlement authority as administered by DNR and if it dissolves, the land should revert to DNR as the landowner. If improvements are involved, a determination is made by the Department of Administration as to their disposition.

This bill would alter the arrangement to allow DCRA to administer land for communities in the event a municipality dissolves. If a municipality dissolves, the land should revert to the department as the landowner with a determination made by the Department of Administration as to the proper disposal of improved properties.

Recommendation: We suggest the following change be made to the bill in Sec. 1, AS 44.47.150(a)(2). Add at the end of the subsection "except that land acquired through the municipal

Senator Adams

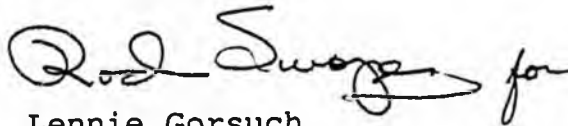
-2-

April 6, 1989

entitlement program under AS 29.65 reverts back to the Department of Natural Resources as general grant land to be managed under Title 38."

Thank you for the opportunity to comment. We look forward to working with the committee and staff on this legislation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lennie Gorsuch for". The signature is written in dark ink and is positioned above the typed name.

Lennie Gorsuch
Commissioner

Enclosure

cc: Committee Members
Bill Sponsor
Denby Lloyd, Special Staff Assistant
Office of the Governor
Bob Evans, Legislative Liaison
Office of the Governor
Gary Gustafson, Director
Division of Land and Water Management
Jim Plasman
Department of Community and Regional Affairs

BRIEFING PAPER
ALASKA UNINCORPORATED TOWNSITES

Originally Prepared for: Assistant Secretary Steve Griles
December 10, 1987

ISSUE: The Alaska BLM Townsite Trustee lacks title transfer tools to satisfactorily address community development and expansion needs in 29 unincorporated Alaska villages. The issues of technical trespass and disposal of residual lands are the principal problems. Proposed legislative solutions are complicated by a July 1987 Federal court ruling and the potential that sovereignty claims may be enhanced by the legislation.

DEPARTMENT OR ADMINISTRATION POSITION: The Department seeks to dispose of lands in Alaska expeditiously where the law intends transfer from the Federal government to private individuals or local communities. Solving community needs has been identified as a possible initiative for recommendation to the Domestic Council. Interaction with the Alaska public has been high in developing possible solutions to the townsite issues. Limiting future litigation has also been an underlying premise of administration action. Moderating the Department position on favoring community over Federal control of land decisions has been a concern that the concept of Native sovereignty would be enhanced. The Department has appealed a District Court decision authorizing disposals of residual townsite land to the local Native governing body in unincorporated communities. Assistant Secretary Swimmer has been briefed on aspects of the townsite issue by Alaska BIA Liaison Officer. The Solicitor Office is receiving briefings on this issue. The most recent to Tom Sansonetti on December 7, 1987.

POSITION OF MAJOR CONSTITUENCIES: The State of Alaska and Native organizations are supportive of the Bureau's efforts to resolve the issues associated with unincorporated townsites in Alaska. Each constituent group has varying concerns about possible solutions. Tanana Chiefs Conference a non-profit organization representing central Alaska Native communities has taken the lead on this issue. They have communicated frequently with Assistant Secretary Griles. The State of Alaska has pending legislation which would permit the State Municipal Land Trustee to receive title to former townsite land. Hearings on the legislation will take place in the next months. In October a draft of Federal legislation to resolve the townsite issues was jointly developed by the State of Alaska and Tanana Chiefs Conference.

CONGRESSIONAL POSITION: Congressman Young has taken a pragmatic view of resolving these issues and has been highly flexible in alternative solutions. Senator Stevens has taken a more cautious approach to the disposal of land to traditional councils or Indian Reorganization Act governments as a solution. Senator Murkowski's office has not played an active role in the discussions. All members recognize this is a long standing problem and that some solution needs to be determined.

Townsite Briefing Paper

ISSUE BACKGROUND: Existing townsite procedures call for transfers to incorporated villages. There are 29 townsite communities which have not incorporated under State law and may never do so. Also, transfers of lots to individuals can only be made if entry to the lot occurred before the date the survey plat for the townsite was approved or 1976 (date of repeal of the townsite laws by FLPMA) whichever date is earlier. At present the BLM Townsite Trustee can only dispose of lots through public auction under regulations found at 43 CFR 2565.5. This sale mechanism is strongly opposed by the communities and is critically viewed by the State of Alaska. The villages in comments state that local control would be lost to land speculators outbidding local people of limited resources. The BLM Alaska State Office commenced an initiative in the summer of 1986 to determine the specific nature of title transfer problems that existed in the unincorporated communities of rural Alaska. A townsite action plan was prepared by the Alaska State Director on January 1, 1987. Based upon these recommendations, discussions started involving Alaska Natives and the State to develop a consensus legislative solution. In July a court decision in the Aleknagik appeal addressed unincorporated townsite communities. The court stated transfers to the local governmental bodies could take place. Future disposals by those bodies would be without regard to race or nationality. The Department has filed a protective appeal to the 9th Circuit and a request for a continuance of the case for 6 months in order to pursue legislation. Tanana Chiefs Conference has written Assistant Secretary Griles indicating a desire to pursue a legislative solution but also signaling that they would intervene in the appeal. A November 4 meeting with Congressional and Departmental representatives discussed the concepts of the State-Native draft. An effort to identify alternative legislative concepts which calm sovereignty concerns is to be developed.

PROGRAM CONTACT: Robert Faithful or David E. Wickstrom
Alaska Programs Staff 343-6511

Tundra Times

Alaska's Oldest Statewide Newspaper

50¢

March 20, 1989

Vol. XXVI

Photo by Chris Cushman

Akiachak plans for dissolution of government November election

by Steve Pilkington
Tundra Times reporter

If next November's election goes as voters in Akiachak plan, their city government will dissolve after a five-year power struggle with the state, leaving the welfare and safety of Akiachak entirely up to its tribal members.

And according to state officials, the provoke five other Yukon-Kuskokwim Delta communities, which are seriously considering dissolving their own city governments, to follow suit.

Moses Peter, a former mayor of Akiachak, said it is too difficult to run a traditional Native government together with the state government.

"We tried to put both governments together, but it didn't work," Peter said.

"One of them has to go. We have to go by what people want," he said.

Willie Kasayulie, chairman of the Akiachak Indian Reorganization Act Council, said the main reason



Game Board members Nicholas Jackson of Gakona, foreground, and Sidney Huntington of Galena listen to testimony given last week by Arnold Melchiemer of English Bay. Melchiemer was discussing a request for goat and moose subsistence season date changes in the Port Graham-English Bay area. The Game Board met in Anchorage last week at the William A. Egan Civic & Convention Center.