Minnesota Department of Natural Resources

500 Lafayette Road
St. Paul, Minnesota 55155-40_45

December 22, 1995

Ms. Maryanne V. Hruby,
Executive Director
Legislative Commission to
Review Administrative Rules
55 State Office Building
St. Paul, MN 55155

RE: Proposed Permanent Rules Governing Lakeshore Leases

Dear Ms. Hruby:

The Minnesota Department of Natural Resources intends to adopt permanent rules relating to lakeshore leases. We plan to publish a Dual Notice of Intent to Adopt Rules in the December 26, 1995 issue of the State Register.

As required by Minnesota Statutes, sections 14.131 and 14.23, the Department has prepared a Statement of Need and Reasonableness, which is now available to the public. Also as required, a copy of this Statement is enclosed.

For your information, we are also enclosing a copy of the Dual Notice of Intent to Adopt Rules and a copy of the proposed rules.

If you have any questions on these rules, please contact Pat Kandakai (296-4495) or me (296-9564).

Sincerely,

Kathy A. Lewis

Kathy A. Lewis, Attorney
Mineral Leasing Manager

cc: P. Kandakai

STATE OF MINNESOTA

Department of Natural Resources
Bureau of Real Estate Management

In the Matter of Proposed Permanent Rules Relating to Lakeshore Leasing Parts 6122.0100 to 6122.0400

STATEMENT OF NEED
AND REASONABLENESS

Minnesota Statutes, section 92.46, subd. 1 authorized Department of Natural Resources officials to survey and plat state lakeshore lots and lease them to private parties.

The 1985 legislature directed the commissioner of natural resources to adopt rules to establish procedures for leasing such lakeshore lots. This legislation provided that the rules must address a method of appraising leased property and establish an appeal procedure for both the appraised values and lease rates. Since 1990 legislation established the lease rate at five percent of the appraised value of the leased land, it is no longer required that these rules make a determination as to lease rates. Therefore, the rules will address a method of appraising lakeshore leased lots and a procedure to appeal the appraised value of leased land.

In 1984 the Department administered 1,784 lakeshore leases on 90 lakes in 11 northern counties. The majority of leases were on school trust land. The remainder of these leases occurred on university trust lands and acquired forestry lands.

The major provisions of the present lakeshore lease include the following items: (1) the leases run for 10 years; (2) a 33-foot wide easement along the lakeshore is reserved for public travel; (3) only one residence can be built on the property; (4) either party may terminate the lease on 90 days notice; (5) any construction or remodeling requires state permission; (6) the state is not obligated to ensure access to the lot; (7) no timber will be cut on the property without the area forester's approval; (8) the lessee must pay taxes on the cabin; (9) the property is

subject to county and local zoning ordinances; (10) the grounds must be kept up to department standards; and (11) the lease sites are subject to periodic inspection.

All leases expired on Dec. 31, 1990 and were renewed on Jan. 1, 1991 under an interim agreement, the "Cabin Site Lease Renewal", subject to the adoption of lakeshore lease rules and the completion of lakeshore lot valuations. This agreement also provides that the current lease fee will remain the same and will not be adjusted until the new lease fees have been established. Once the new fees have been established, the current fees will be adjusted effective Jan. 1, 1991. The renewal is valid until a 20-year lease replaces it, but will not remain valid beyond Dec. 31, 2000.

After the 1985 Legislation directing the department to establish procedures for leasing state lakeshore lots, the department published Notice of Intent to Draft Rules and to Solicit Outside Information in the State Register, on Nov. 11, 1985 (Volume 10, #20, page 1128). A fact sheet and Notice of Intent were sent to all 1,784 lessees. That notice produced 164 letters commenting on the process.

The department delayed the drafting of lakeshore lease rules for several reasons. The succeeding years up to 1993 brought various legislative changes in the laws affecting the lease and sale of the lakeshore lots. The initial sales legislation directed the department to sell all lots requested for sale by the lessee. In 1988 legislation directed the department to sell all the lakeshore lease lots. If no leased lots remained, lakeshore lease rules would not be needed. In 1990, the department was again directed to sell only those lots requested for sale by the lessees. Under this arrangement there was again a need for lakeshore lease rules. Work on sales of lakeshore lease lots drained staff time and resources needed to complete the lakeshore lease rule process.

Nevertheless, Notice of Intent to Solicit Outside Information was published in the State Register in Dec. 1993. A copy of this notice and summary of proposed permanent lakeshore lease rules were distributed to approximately 665 interested or affected parties including all remaining lessees. Twenty-four letters were received commenting on the rules.

Another Notice of Intent to Solicit Outside Information was published in the State Register on July 3, 1995 due to changes in the Minnesota Procedures Act during the 1995 legislative session. A notice and summary of proposed permanent lakeshore lease rules were sent to approximately 1300 interested and affected parties including all lessees. Thirty-nine letters were received commenting on the rules.

The Minnesota Administrative Procedure Act and other associated statutes direct the commissioner to consider a number of issues during the process of rule development and adoption. During the rulemaking process the department has considered three such issues. These include:

1) impact of the rules on small businesses, as required by Minnesota Statutes, section 14.115:

2) impact of the rules on expenditure of public money by local public bodies, as required by Minnesota Statutes, section 14.11, subdivision 1; and

3) impact of the rules on agricultural land, as required by Minnesota Statutes, section 14.11, subdivision 2, and sections 17.80 to 17.84.

In accordance with the provisions of Minnesota Statutes, section 14.115, the commissioner has concluded that adoption of the proposed rule is not likely to affect small businesses. Department policy does not allow a business entity to hold a lakeshore lease. Private individuals hold all leases. Therefore, the adoption of the proposed rule will not affect small businesses.

In accordance with the provisions of Minnesota Statutes, section 14.11, subd.1, the commissioner has concluded that adoption of the proposed rule will not result in any additional expenditure of public money by local public bodies.

In accordance with the provisions of Minnesota Statutes section 14.11, subd.2, the commissioner has determined that adoption of the proposed rule will not affect agricultural lands in Minnesota. Currently, no leasing of lakeshore lots takes place on agricultural lands and none is expected in the future. The rules will only impact certain seasonal/recreational lands where leases have been issued under Minnesota Statutes, section 92.46.

In accordance with Minnesota Statutes, section 16A.1285, pertaining to departmental earnings from charges for goods and services, licenses, or regulation, the rules were submitted to the Commissioner of Finance for review and comment. The Commissioner of Finance's comments on the charges established or adjusted in these rules are attached to this statement.

In accordance with Minnesota Statutes, section 92.46, subdivision 1(c) the rules have been reviewed and approved by the commissioners of the Department of Administration and Revenue. The commissioner's comments are a part of the permanent record.

HISTORICAL PERSPECTIVE OF THE LAKESHORE LEASING PROGRAM

In the enabling act authorizing state government in Minnesota, Congress granted public lands in Sections 16 and 36 in every township in the state for school purposes. The state accepted this grant in its Constitution of 1857. Some of this land was lakeshore property. The leasing of lakeshore cabin sites on this state-owned land began in 1917 on Lake Vermilion.

The original rationale for this program was to put public land to use until it was needed for a future public benefit. It was also seen as an opportunity to increase the tax base in the northern counties, since the leased land was subject to real estate taxes on the land and the improvements.

This lease activity was based on Minnesota General Statutes of 1913, Section 65, which granted authority to the State Auditor to lease state lands. Lots on lakes were informally platted and leased under this authority through 1923.

In 1923, a law was passed which withdrew from sale all state land on meandered lakes and other public waters (now codified in Minnesota Statutes, section 92.45) and also granted authority to the state to lease these lands for cottage and camp purposes (now codified in Minnesota Statutes, section 92.46). The law stipulated that the leases be for no longer than ten years and the revenue received from these leases credited to the appropriate funds, e.g., school trust or university. This leasing program remained under the control of the state auditor until the creation of the Department of Conservation in 1931.

The leasing program was handled by two divisions within the Department of Conservation. The Division of Forestry managed the leasing of lands within the boundaries of state forests and the Division of Lands and Minerals administered the leasing of state lands outside of the state forests. The Division of Forestry issued one-year renewable leases at a rate of $10 per year. The Division of Lands and Minerals issued 10-year leases at an annual rate of $12. A few of the outstanding lake sites were leased for $18 and $24 per year. Mining engineers acted as land surveyors for the Division of Lands and Minerals informally platting and offering new sites for leasing.

The informal platting of new lakeshore lots slowed in both divisions in the 1940s and 1950s. However, from 1958 through 1961, the Division of Lands and Minerals informally platted and leased approximately 500 additional lakeshore lots under the funding of emergency Conservation Work Projects. In 1957, both divisions raised the rate charged for lakeshore lots to $25 annually, beginning with the next one-year or 10-year renewal period.

From 1964 through the present, no new lots have been established and leasing has only taken place on lots which were already established or had been leased previously because the commissioner of conservation directed the termination of the establishment of new lots until all state-owned lakeshore was classified. These directives remained in effect through 1973 when the Legislature passed a law terminating the issuance of new leases (Minnesota Statutes section, 92.46, subdivision 1a).

The Department of Conservation consolidated the leasing program in 1966. The Division of Lands and Minerals was placed in charge of administering the lease billings, funds, and renewals. The following year, 1967, the Department of Conservation reorganized and the Division of Lands and Forestry was created. Lands and Forestry administered the lakeshore program until 1974 when the Bureau of Lands was created.1

A major change in the lakeshore leasing program began in 1970. Two major actions led to this change: First, the University of Minnesota completed "Minnesota Lakeshore" a report funded by the legislature. Second, the Department of Conservation began an internal review of its leasing program.

The University of Minnesota study began in 1967 amid growing public interest in ecology and pollution. It stressed the fragile and precarious nature of Minnesota's lakeshore. The report dealt with lakeshore overall, not just state-leased lakeshore. It reported a number of problems related to pollution, incompatible recreation uses, crowding, public access, high density development, and aesthetics. The report recommended a reassessment of the state program:

> "A reappraisal of the state's leasing program seems in order. Its original rationale was to put surplus public land to use until it might be needed for a definite public benefit. Accordingly, high quality lakeshore, some on major recreational lakes, has been leased for

1.Bureau of Lands, renamed Bureau of Real Estate Management, 1987

development. Such leases border Namakan, Winnibigoshish and Pokegama lakes. An increasing population, with mounting affluence and, growing mobility has produced a rising demand for recreation in Minnesota. To accommodate this demand, the state has been purchasing lakeshore property for the last decade. Yet as more land has been needed, Minnesota has not reconverted to public recreational use any of the lakeshore that it already owns but has leased for private use. In addition, the state continues to lease previously vacant cabin lots in established lease areas. Further, the leasing fee has not been increased to reflect rising land values and inflation. In fact, the present fee for a lakeshore lot is only $25.00 a year - hardly enough to cover administrative costs, let alone provide a reasonable return to the state. Minnesota should reassess its lease program, keeping the following alternatives in mind.

> The cost of leases should be increased substantially (perhaps as much as 400 to 600 percent) in order to cover administrative costs and bring the state a reasonable return on its land investment.
>
> The potential value for public recreation of each lease site should be evaluated. Most sites will have a high potential. If additional recreation lands are needed in the vicinity of lease sites, the leases should be terminated and the areas made available for public use. There are two other options.
>
> The leased land could be sold to private parties and the proceeds invested in acquisition of alternate public recreation sites. Or, the lease sites could be replatted to allow both public and private recreational use. One way to accomplish this is by zoning for cluster development, which would leave the shore open for public use while providing lease sites for private homes."

The authors of the study made numerous public appearances in which they questioned the management of the state leasing program in light of increased recreational demand, and the state's need to acquire additional lakeshore property for recreational use. They also emphasized the need for greater economic return from

the lakeshore lots.

The second major occurrence which led to a period of disruption in the leasing program was a Department of Conservation internal review of the leasing program. This review was initiated by a December 1969 memo from Deputy Commissioner C.B. Buckman suggesting that the department explore the possibility of using a fee system based on 5 percent of fair market value, a system used by the U.S. Forest Service at that time. Department of Conservation staff discussed such a system with personnel from both the Chippewa and Superior National Forests.

In April 1970 the commissioner initiated an Ad Hoc Committee on Leasing and issued interim policy guidelines on the leasing of state lands. The major policy guidelines called for: (1) no further leasing of any lakeshore or river frontage for commercial or recreational uses except for unoccupied platted lakeshore; (2) no new platting of lakeshore or river frontage; (3) possible revision and termination of existing leases in critical areas where the general public's needs cannot be met because of private occupancy on state-owned land; (4) adjustment of lease rates to reflect the current value of comparable property and privileges; and (5) evaluations of new types of leasing that are compatible with a controlled environment.

The Ad Hoc Committee delivered its report in September 1970. The report included a short history of lakeshore leasing and a description of the present program. After briefly dealing with recreational and environmental issues, the remainder of the report concentrate on revenue and lease fee rates. The Committee embraced the fair market value idea for future lease fees. The report noted that a 6 to 8-1/2 percent rate of return on privately leased property is the norm, but due to the limitations included in the state leases, a 5 percent return would be acceptable. The committee presented four alternatives for consideration: (1) no lease rate adjustment; (2) across-the-board lease rate adjustment; (3) lease rates to 5 percent of appraised value based upon individual lot valuation; or (4) lease rates increased to 5 percent of appraised value based upon the average of the group valuation with local adjustments. The ad hoc committee recommended the third alternative.

The Division of Lands and Forestry proposed a rule based on the committee's report and recommendations in the fall of 1970. The proposed rule included four major provisions: (1) a lease fee of 5 percent of the appraised value of the cabin site property, with the fee not to be less than $50 per year; (2) a provision by which the annual rent is raised by no more than $25 per year until the 5% appraised value level is met; (3) a schedule for the termination and renewal of existing leases; and (4) a number of mandatory lease provisions dealing with public

access, improvements, sanitation, aesthetics, taxation, road maintenance, and termination notice.

The Department of Conservation scheduled two public hearings on the proposed changes, one in Duluth on Dec. 17, 1970 and one in St. Paul on Dec. 21, 1970. The response of lessees at these hearings was strong opposition to the proposed rules. At the Duluth hearing, speakers opposed the changes overall and especially the potentially great increase in lease fees, the cancellation of leases made in good faith, and the short notice of the proposed rule and public hearing. Speakers also stressed property taxes paid on the cabins, the lack of services received, and the personal effort and money they had put into improving the sites. The St. Paul hearing produced similar negative responses from more than 200 leaseholders who attended.

Opposition by lessees continued after the hearing in the form of letters and meetings. Over the next year, the renamed Department of Natural Resources (DNR) received approximately 100 letters concerning the proposed rule. A slight majority opposed any raise, while the remainder favored the DNR plan or did not oppose a reasonable increase. The majority of those opposing the increase were residents of the Iron Range of northeastern Minnesota. In fact, the Planning and Zoning Advisory Committee of St. Louis County held a series of hearings on the problem in the winter of 1971 and concluded that the projected state fee increases were unacceptable.

The DNR proposal was not without support. In addition to those lessees favoring some type of increase, the Izaak Walton League supported the program, and newspapers from the Twin Cities supported the DNR proposal. In fact, editorials in the Minneapolis Tribune, Minneapolis Star, and the St. Paul Pioneer Press suggested that the DNR proposal did not go far enough in raising rates and protecting public access.

The opposition at the public hearings and in the correspondence received by the DNR delayed adoption of the rules. The DNR concluded that further informational hearings were necessary and scheduled nine such hearings throughout the state. Notices of the hearings, to be held in August in St. Paul, Alexandria, Brainerd, Walker, Hibbing, International Falls, Grand Rapids, New London, and Grand Marais were sent to lessees and local officials. More than 1,000 people attended the hearings in St. Paul and Hibbing. Attendees, again primarily leaseholders, continued to strongly oppose the increased fees and the cancellation clause. No action was taken on the proposed leasing program changes for more than 1-1/2 years, during which time there was a change in the department's commissioner and head of the Division of Lands and Forestry.

In May 1973 the department again prepared to increase the

lease rates. In 1974 the Division of Lands and Forestry was split into the Bureau of Land and the Division of Forestry. The Bureau of Land administered the program with the cooperation of Division of Forestry field personnel to make site inspections and do other field duties. In 1974-75 a Land Lease Task Force developed a department-wide leasing policy. In March 1975, under some pressure from the Legislature, the commissioner approved the lease rate increase plan, and assessment work began. The commissioner approved the final increase plan in September 1975 and the program was immediately put into effect. The new lease rate of 5 percent of the appraised value of the unimproved lot was incorporated into each lease as it expired and was renewed. This action continued to draw severe criticism from lease holders, especially among the permanent residents of northeastern Minnesota even though the annual lease rates were very modest.

In 1980, the DNR undertook the task of establishing all of the lakeshore leases on a standard 10-year cycle. All leases were canceled on Dec. 31, 1980 and reissued on Jan. 1, 1981 for a 10-year period. The leases also included a clause allowing the state to readjust the lease fees as of Jan. 1, 1986.

In 1984 the department was in the process of appraising all 1,784 leased lakeshore lots. The leases were last appraised in 1975. Preliminary results indicated that land values had increased more than 300 percent, which translated into a tripling of lease fees in 1986.

In January 1985, an explanatory letter was sent to each lessee stating that on the average the new appraised values were 3-1/2 times higher than in 1975. Concerned leaseholders receiving information about the department's impending increase in the lease fees subsequently contacted their legislators to oppose the increases. As a result, this issue was the subject of a hearing before the House Environment Committee during the 1985 session.

A group of leaseholders persuaded legislators to introduce a bill delaying the new DNR lease rate for two years. The House Environment Committee passed the bill but it died in the House Education Committee. Ultimately, language was included in a tax bill during the 1985 special session which provided that: (1) by July 1986 the department must adopt rules to address a method of appraising the property, determination of lease rates, and an appeal procedure for appraised values and lease rates; (2) the term of the lease may be up to 20 years and the lease may be canceled by the DNR 90 days after written notice; (3) by July 1, 1986, 50 percent of the monies received from the lease of the permanent school fund lands will be deposited in the permanent school trust fund; (4) lakeshore lands leased by DNR are exempted from ad valorem property taxation, (lessees would still be liable for taxation on their personal property); (5) lease

fee increases for lands leased by the DNR which were effective Jan. 1 1986 will be phased-in in three equal annual increments; (6) the commissioner of the Department of Natural Resources must prepare an inventory of the lakeshore leases for possible sale and make recommendations to the Legislature by January 1987; and (7) counties may expend revenue from the property tax levy for the maintenance of roads serving the leased property.

In 1986, a bill was passed which required the department to sell the lakeshore lots at the request of lessees. The bill required sales to be held from 1987 through 1991 during the months of June, July or August and in June 1992. The bill also authorized leasing revenues to be used to survey the lots on school trust lands.

The Bureau of Land task force completed its inventory and recommendation to the legislature in Feb. 1987. In summary the report concluded that sales of lakeshore leased lots generated less revenue than continued leasing.

Due to a 1987 lawsuit brought against the DNR by a nominal plaintiff-an 8 year old public school pupil-implementation of the 1986 legislation was delayed. The suit alleged that the 1986 sales law was unconstitutional and that the lease fees were so low as to be unconstitutional and violative of fiduciary duties. It sought a class action on behalf of all public elementary school children. During the 1987 session the sales law was amended to be less favorable to lessees. Subsequently, the court ruled against the plaintiffs and ordered the suit dismissed on the grounds that the sales law, as amended was constitutional, and that the suit failed to state a claim on which relief could be granted, and that the plaintiff lacked standing. The 1988 law brought further changes to the sale procedures and from 1988 to 1993 approximately 1,200 leased lots were sold at public auctions.

Revenue From Lakeshore Leased Lots

The majority of DNR lakeshore leases occur on school trust lands. The administration of these lands is touched upon only briefly in the state constitution. Article XI, Section 8 of the constitution deals with the Permanent School Fund (PSF) and it states that "All funds arising from the sale or other disposition of the lands, or income accruing in any way before the sale or disposition thereof, will be credited to the permanent school fund." Section 11 of Article XI of the constitution states that all trust lands better adapted for the production of timber than for agriculture maybe set apart as state forests, the net revenue therefrom to be used for the purposes for which the lands were granted.

The 1935 legislature defined the concept of net revenue from the state forest (school) trust lands. That definition is currently found in Minnesota Statutes, Chapter 16A.125, Subds. 5 and 6 which establishes a suspense account for the receipts from state forest trust fund lands. After each fiscal year, the commissioner of natural resources is required to certify to the commissioner finance the costs for protection, improvement, administration and management of those lands. The commissioner of finance deducts those cost from the gross receipts and credits the balance to the trust. For state fiscal year 1995 22 percent of all state forest trust fund land receipts were deposited to the corpus of the trust.

Revenue from permanent school fund lakeshore leased lots was addressed by the 1986 and subsequent Legislatures. Under section 92.46 subdivision (d) 50 percent of the money received from the lease of permanent school fund lands was deposited into the permanent school trust fund. In fiscal years 1987 through 1995 the money received from the lease of permanent school fund lands that would otherwise be deposited into the permanent school fund was appropriated to cover surveys, appraisals and associated costs of selling the lots.

RULE BY RULE ANALYSIS

6122.0200 DEFINITIONS

Subpart 1. This section contains terms used in the proposed rule which may not be generally recognized and accepted and to which special and specific meanings are attached for the purposes of understanding the rule. It is reasonable to define any word that has a specialized meaning not normally associated with it, or when the word is a term of art used by a particular industry. When a word or term is used in the proposed rule, and does not appear in this section, it will be assumed to have the definition that is found in commonly used dictionaries.

Subp. 2. "Appraised value" is defined because it is the basis upon which the lease fee is determined. The appraised value of a leased lot is synonymous with its estimated market value because the appraised value is based upon a systematic analysis of market conditions.

Subp. 3. "Commissioner" is defined to include duly authorized field and office staff assigned to decide the adequacy of activities associated with lakeshore leasing. Since it is more likely that field and office staff, rather than the commissioner will be dealing directly with leases and the public, it is reasonable and necessary that the rule acknowledge that such staff is authorized to act on behalf of and with the same force and effect as the commissioner.

Subp. 4. "Department" is defined because it is necessary to distinguish the affected agency.

Subp. 5. "Fee simple estate" is defined to clarify the department's interest in a leased lot and the interest to be appraised. It is necessary to distinguish fee simple from other types of interests in real property, such as a life estate and a leasehold estate. Fee simple is the most complete title an owner can have to real estate.

Subp. 6. "Highest and best use" is defined because the highest and best use of a leased lot will maximize its value and guide the selection of comparable properties used in the estimation of market value. The appraisal process analyzes a property's highest and best use.

Subp. 7. "Improvements on a leased lot" is defined because it is necessary and reasonable to distinguish between improvements on a leased lot and improvements to a leased lot, since the manner in which the improvements are considered will affect the value of a lot. In the case of the subject lot, the residence (cabin) is considered an improvement on a lease lot. For appraisal

purposes, the residence is considered the lessee's personal property, or identified as a portable tangible object. Consequently, the residence will not be appraised and its presence and condition will not affect the appraised value of the leased lot.

Subp. 8. "Improvements to a leased lot" is defined because an appraiser must determine how well prepared the subject lot is for the highest and best use. An appraisal of the subject lot will exclude the personal property, but will include items necessary for the development of the subject lot, such as roadways, curbs, drains, excavations, fills, etc. These items are considered improvements to a leased lot and affect the value of the land. These items, even if constructed by the lessee, are considered part of the lot itself.

Subp. 9. "Lease" is defined because it is necessary and reasonable to define the affected legal contract. The lease represents the legal contract that prescribes the terms and conditions under which a subject lot may be used and outlines the commissioner's authority to permit such usage, subject to the limitations of Minnesota Statutes, section 92.46.

Subp. 10. "Lease fee" is defined because it reflects a percentage of the market value of the subject lot. It is necessary and reasonable to distinguish between the lease rate and the lease fee. The rate of percentage will be applied to the appraised value of a leased lot to obtain the lease fee.

Subp. 11. "Market value" is defined because it is necessary and reasonable to clarify the objective of the appraisal process. The definition of market value, as it is used in the rules, is found in the definition section of the Uniform Standards of Professional Appraisal Practice. Most real property appraisals are conducted to calculate market value. Although both economic and legal definitions of market value have been developed, the current economic definition established by U.S. federal agencies is used in the rules.

Subp. 12. "Mass appraisal" is defined because it is necessary to establish mass appraisal as set forth by the Appraisal Foundation's Standards of Professional Practice, as an accepted method of valuation. Mass appraisal will be the method of appraisal that will be used to determine the appraised value of leased lots except when a single leased lot appraisal is necessary. The mass appraisal method will be appropriate when valuing several properties simultaneously.

Subp. 13. "Minnesota Department of Revenue assessment data" is defined because it is reasonable and necessary to establish the use of the assessment data as a method of adjusting the appraised value of a leased lot. The data is developed by the Minnesota

Department of Revenue based on studies of annual increases and decreases in land values in various land classifications (agricultural, commercial, seasonal recreational, etc.), throughout the state. This assessment data information is published under the State Board of Equalization Summary of Board Orders.

Subp. 14. "Subject lot" is defined because it identifies a specific lot leased at the time of its appraisal. It is the property where the appraised value will be determined to establish the lease fee.

Subp. 15. "Uniform Standards" are defined because professional appraisers must arrive at and communicate their analyses, opinions, and advice in ways that will be meaningful to the client and will not be misleading in the marketplace. To maintain the highest level of professional practice, the appraiser must observe these standards. They reflect the current standards of the appraisal profession, and contain binding requirements, and specific appraisal guidelines. These standards have been incorporated in the appraiser licensing provisions of Minnesota Statutes, chapter 82B.

6122.0300 METHODS OF DETERMINING A LOT'S APPRAISED VALUE

Minnesota Statutes, section 92.46, requires the commissioner to develop a method of appraising lakeshore leased lots. The purpose of this section is to identify specific methods that the commissioner will follow to determine the appraised value of a leased lot. This section specifically states when and how the appraised value of a leased lot will be determined. This section sets forth the standards for appraisers and review appraisers who accept an appraisal assignment from the commissioner.

Subpart 1. Estimated market value. This subpart is needed because it establishes that the estimated market value of leased lots is the basis for calculating the lease fee. Market value, by definition, is understood to be fair to both sides of a transaction. Estimated market values based on appropriate appraisal techniques provide a reasonable basis for the calculation of lease fees.

Subp. 2. Appraiser and review appraiser standards. It is necessary to recognize that the performance of appraisers and review appraisers is subject to Minnesota Statutes chapter 82B.

This statute requires licensure of appraisers and establishes uniform standards of professional appraisal practice.

The rule requires appraisers to obtain at least a classification

2 appraisal license, and a review appraiser must have obtained at least a classification 3 appraisal license. To obtain a classification 2 appraisal license an individual must complete 75 hours of real estate appraisal education, 2,000 hours of real estate appraisal experience and successfully complete a license examination. To obtain a classification 3 appraisal license an individual must complete 165 hours of education, 2,000 hours of real estate appraisal experience and successfully complete a license examination.

The business of real estate appraisals is varied and intricate. Appraisers and review appraisers of leased lots need to be knowledgeable about markets and economic trends. It is therefore needed and reasonable that this rule requires that appraisers and review appraisers of leased lots be experts in the field.

Subp. 3. Frequency of adjustments. Minnesota Statutes, section 92.46 directs the frequency of adjusting appraised values of leased lots. It recognizes that the appraised value of leased lots must be adjusted from time to time and sets forth adjustments on five year intervals. It is needed to establish a baseline for the lease fee. Choosing 1991 is reasonable because it is the starting point for all existing leases.

Subp. 4. Adjustment of appraised value of leased lots. The appraisal process must be consistent. Appraisals determine market value as of a specific date. Because appraisals are costly, it is reasonable and necessary to have a way of adjusting the appraised value of a leased lot without completing a new appraisal.

The commissioner will use Department of Revenue assessment data to adjust the appraised value of leased lots. It is reasonable and necessary to use the department's data because it provides an adjustment factor that is readily obtained, reflects the real estate market, and is reliable and current. This is appropriate because lease rates are based upon current market value. It is fiscally responsible to adjust a previously established property value to reflect changes in market conditions rather than expend funds for a new appraisal.

Subp. 5. Appraisal of leased lots. The commissioner shall determine when the appraised value of the leased lots shall be based on new appraisals. The commissioner's decision to conduct a new appraisal will depend on staffing, the degree of fluctuation in real estate values in certain areas of the state, and fiscal constraints. This is reasonable and necessary because it may be too expensive for the commissioner to appraise 590 lots every five years. Therefore this rule allows the commissioner to consider funding and staff constraints as well as market factors when setting a schedule for the reappraisal of leased lots.

Subp. 6. Method of appraisal. The statutes direct the commissioner to develop a method of appraising the leased lots, therefore establishing the need. The methods selected are considered acceptable by the uniform standards of professional appraisal practice and are therefore considered reasonable. The commissioner will determine the appropriate methods to use to appraise the leased lots.

Although the statute establishes the frequency of adjusting the leased lots, the commissioner needs flexibility to determine how that can best be accomplished. The statute requires the lots to be adjusted in the 5th, 10th and 15th year of the lease. It is reasonable and necessary to allow the commissioner flexibility in the rule to determine when those adjustments will be based on applying a factor to previously appraised values or based on new appraisals.

Subp. 7. Mass appraisal of leased lots. When the commissioner determines that values of the leased lots must be reappraised mass appraisal is preferred. This method of appraisal is reasonable and necessary because the commissioner needs a prudent, reliable, cost-effective method of appraising a large number of leased lots. Presently, there are 590 leased lots that need periodic adjustments of their appraised values. Typically, in this situation leased lots are appraised in mass or an individual appraisal is completed for each leased lot. Appraising each lot separately will not be economically feasible for the department. It may cost $1,000 or more to appraise a lot leased at an annual fee of $500. Under the current statutory requirements, a prudent trust manager would look for a more cost effective way to determine lease fees. Therefore, mass appraisal is established as an acceptable approach to determine market value through its incorporation of standard six of The Uniform Standards of Professional Appraisal Practice. The mass appraisal method is appropriate when valuing a universe of properties, and it will be used to appraise the majority of the leased lots.

Subp. 8. Single leased lot appraisals. Due to their unique characteristics, it is anticipated that some lots will not lend themselves to mass appraisal techniques. Therefore, it is reasonable and necessary for the commissioner to use single leased lot appraisals. This method is justified and established through Standards 1 and 2 of the Uniform Standards of Professional Appraisal Practice and will be the alternative method used to adjust the appraised value of leased lots.

Subp. 9. Lots previously appraised.
The commissioner appraised approximately 1,100 lakeshore lease lots for sale purposes between 1988 and 1993. The sale appraisals were single leased lot appraisals. A number of the sale lots are next to existing leased lots. Those sale

appraisals are indicators of surrounding lot values, if the leased lots and sale lots are similar. Generally, using the appraised value of one property to establish the market value of a similar property is acceptable, within one to three years of a valuation, if market values have remained relatively stable during that period. Therefore, allowing the commissioner to use the values of lots previously appraised in connection with the lakeshore sales program is reasonable.

Subp. 10. Minimum appraised value. Minnesota Statutes, section 92.46 establishes that the minimum appraised value assigned to leased land must be substantially equal to the county assessor's estimated market value of similar land adjusted by the assessment/sales ratio as determined by the Department of Revenue. This is reasonable because it sets the low end for assigning market value to the leased lots. Also, the leased lots by way of this concept will continue to have values equalized by surrounding private lots.

6122.0400 APPEALS

Subpart 1. Right to Appeal. Minnesota Statutes, section 92.46 directs the commissioner to develop a procedure for a lessee to challenge the appraised value of the leased lot. The commissioner believes that the following method of appeal is the most impartial, objective environment to consider a lessee's dispute. An appeal procedure will ensure that a lessee who believes the value is in error will have a method of challenging the leased lot's appraised value.

The appeal process will have three steps. Lessees who go through the appeal process will incur some expenses. However, the commissioner believes that the process set forth is the most reasonable, cost-effective way to handle a lessee's challenge to the appraised value.

A lessee will need to decide if it will be worth it to go through the appeal process. Step 1 and 2 of the process could cost a lessee up to $1,000. The total cost depends on the cost of an appraisal obtained by the lessee. In addition, Step 3 of the appeal process, binding arbitration, will cost a lessee approximately $1,000 to $1,200. The cost will depend on whether or not a hearing is conducted. The major cost will be the arbitrator's time.

The commissioner anticipates that most appeals will be settled in Step 1 without additional appraisals and without great cost to lessees.

The commissioner realizes and lessees need to realize that the appraisal process is not an exact science. This section identifies a three-step process that the commissioner will follow

when a lessee's appeal is received. This process permits a lessee to seek a professional appraiser's opinion of the lot value established by the commissioner.

A request for an appeal must be signed by all parties to a lease and all persons owning an interest in the improvements on a leased lot, including contract vendors and vendees. This requirement is reasonable and necessary because the department allows a number of parties to hold an interest in a lakeshore lease lot and the improvements on it. By policy, anyone who holds an interest in the improvement on a leased lot should also hold an interest in the lease. However, that does not always occur. The department administers the lakeshore lease program to avoid involvement in the lessee's family conflicts. Department experience shows that lessees who hold an interest in the same lease frequently disagree among themselves. Also, when a lessee transfers interest in an improvement on the lease by way of contract for deed the interest in the lease is not transferred to the vendee until the contract is paid off. This rule therefore requires that a request for appeal must be signed by all parties to a lease and all owners of improvements on a lease. This will ensure that all parties agree to appeal and will abide by the commissioner's or the arbitrator's decision.

A lessee will be paying the fee based on the last appraised value of the leased lot while an appeal is being decided. This requirement is reasonable and necessary because the lease contract is subject to cancellation if a lease fee remains unpaid.

If an appeal results in a lower fee than paid previously by the lessee there will be a credit against future lease fee due. This is reasonable and necessary because it is administratively efficient and too costly for the commissioner to issue refunds by mail. Also, if enough time has passed, the rentals have been deposited into the Permanent School Fund where withdrawals cannot be made. The lessee's billing statement shall reflect the credit and change in the lease fee payment.

The lessee shall have 45 days from the date of mailing of notification of a lease fee adjustment to appeal the valuation. Appeals of decisions made under steps 1 or 2 must also be made within 45 days following mailing of notification of the decision. In order to react quickly to an appeal, the commissioner must be promptly notified of the lessee's intentions. It is reasonable to give the lessee 45 days from the date the commissioner mails the notification of a lease fee to appeal the valuation. This amount of time is consistent with the time allowed to appeal a final agency decision found in Minnesota Statutes, section 14.63.

This rule requires that if the lessee disagrees with the commissioner's decision, the lessee must contact the commissioner

in writing after each decision. However disagreeable, if the lessee does not act within the time specified, the commissioner shall proceed with the last decision issued. This requirement is reasonable and necessary as it puts the lessee on notice that if the lessee does not contact the commissioner within the time specified, the lessee will be obligated to accept the commissioner's last decision.

Subp. 2. Step 1 of Appeal. Through an appeal, a lessee will have the opportunity to have the commissioner review the appraised value of the leased lot. It is conceivable that a successful appeal could have a significant impact on a lot's value. If a lessee believes this is the case, it is reasonable for the commissioner to require the lessee to submit factual documentation that is not anecdotal or hearsay to support the lessee's request for a review of the appraised value.

The real estate appraisal industry recognizes recent comparable sales data and an appraisal report performed by an appraiser licensed by the State of Minnesota as reliable evidence in indicating a property's market value. Recent comparable sales may be obtained from real estate offices, county assessor's offices and can be as close as a lot located in the same plat or on the same lake as the leased lot. Appraisers licensed by the State of Minnesota can be found in the yellow pages and in appraisal journals which are available in local libraries.

Department experience shows that unqualified individuals sometimes did appraisals in the days before appraisers were licensed. Although these individuals were qualified to do statements of value for the purpose of listing real estate, they were usually unqualified to do narrative appraisal reports that would comply with the USPAP. Therefore, this rule requires that appraisals prepared for lessees under Step 1 and 2 be prepared by appraisers who have obtained at least a classification 2 appraisal license. It is necessary to hold a lessee's appraiser to the same standards as the commissioner's appraisers. This will ensure appraisals of comparable quality and standards.

If a lessee will be submitting an appraisal in step 1 and 2, by industry standards, 45 days is a reasonable amount of time to complete a narrative appraisal report. Throughout the appeal process the lessee will be required to pay for the appraisal of his/her leased lot. This requirement is reasonable and necessary

because the commissioner has already covered the cost of the initial appraisal.

When reviewing the lessee's documentation or appraisal for the appeal in Step 1 the commissioner may request assistance from sources outside the department. In the review process it is typical to verify information about zoning, sales and financing

with county officials and real estate professionals. The commissioner will need the assistance of outside resources to verify information provided by the lessee.

The commissioner anticipates numerous requests for appeal at step 1 of the process. To serve lessees properly the commissioner needs adequate time to review information provided by the lessee. Normally, 60 days will be a reasonable time to review a lessee's appeal and return a decision. Since the commissioner cannot predict the exact number of appeal requests, it may sometimes be necessary to notify the lessee of a delay in a decision.

The commissioner will review information provided by the lessee that supports the need to adjust the appraised value of a leased lot. If the evidence is sufficient to justify an adjustment of the appraised value, the commissioner will base the amount of the adjustment on that information. This part of the rule is reasonable and necessary because if the lessee's documentation is acceptable the commissioner is obligated to base the appraised value of the leased lot on the lessee's documentation or appraisal. If the lessee does not provide sufficient evidence, it is reasonable for the commissioner's appraised value to be upheld.

If the lessee does not agree with the commissioner's decision in Step 1, the lessee will have 30 calendar days to submit an objection to the commissioner. The commissioner believes that 30 days is a sufficient amount of time for the lessee to review the commissioner's decision and accept or reject the decision for the reason previously stated. Lessees who reject the decision will be given written notice that they have the right to proceed to Step 2 of the appeal and will have 45 days to submit an appraisal to the commissioner.

If the lessee who disagrees with the commissioner's decision has provided an appraisal in Step 1, the lessee will be advised to proceed to Step 3. The commissioner will return the lessee's appraisal subsequent to each decision so that the lessee will be able to proceed to Step 3 with the same appraisal.

Subp. 3. Step 2. The commissioner in adopting these rules assumes that the appraised values of the leased lots are correct as of the date of each appraisal. The department will not have a basis for changing its appraised value unless a similar appraisal process is performed to substantiate or disapprove the department's appraised value. Because the commissioner rejected the initial documentation provided by the lessee in Step 1 of the appeal process, the next level of documentation to dispute the commissioner's appraised value would be an appraisal of the leased lot. Therefore it is reasonable and necessary for this rule to require that the lessee submit an appraisal in Step 2 of the appeal process. That appraisal must be prepared by an

appraiser licensed in Minnesota who has obtained at least a classification 2 appraisal license. This is reasonable and necessary because of reasons previously stated.

In order to verify information provided by the lessee's appraiser, the commissioner may request assistance from sources outside the department. This is reasonable and necessary because of reasons previously stated.

Within 60 days of receiving the lessee's appraisal, the commissioner will review the appraisal, render a decision, and notify the lessee of the results. The commissioner expects fewer appeals in step 2 than in step 1. However, the commissioner will notify the lessee if a backlog of appraisals needing review causes a delay.

Subp. 4. Step 3 of Appeal.
Minnesota Statues, section 92.46, directs the commissioner as part of the rule to set forth an appeal mechanism that allows lessees the opportunity to appeal the appraised value of leased lots. This step lays out a step by step process that the commissioner and the lessee will follow if the parties are unable to reach an agreement in steps 1 and 2. Binding arbitration will be the third step in the appeal process. Under this step the commissioner and the lessee will have the option of holding a hearing or not holding a hearing. The arbitrator will be a neutral party. As part of the method of appeal, it is necessary and reasonable for the commissioner to develop a procedure that will be conducted by a neutral party and that will be binding on the commissioner and the lessee if the parties are unable to reach an agreement in the previous steps of the appeal. If the commissioner and the lessee are unable to settle the dispute in the previous steps of the appeal at some point in the process, a neutral party must become involved in settling the dispute. Therefore, it is reasonable and necessary to have binding arbitration.

If the lessee did not agree with the commissioner's decision in step 1 and step 2 and an appraisal was previously submitted, the lessee may submit a written appeal stating a desire to go to binding arbitration. The commissioner must receive the lessee's appeal within 30 calendar days after the lessee received the commissioner's decision in steps 1 or 2. This is a reasonable time frame for the lessee to decide to accept or reject the commissioner's decision in the previous steps. If the commissioner does not receive a written appeal from the lessee within the specified time period, the commissioner's last decision will be implemented.

It will be necessary for the commissioner and the lessee to discuss arbitration options. At that time the commissioner may point out the respective cost of the two procedures and the

commissioner and the lessee can decide whether to proceed with or without a hearing. The commissioner and the lessee will have 15 days to reach an agreement about whether to proceed with or without a hearing. Once the commissioner and the lessee decide on the process, the commissioner shall confirm in writing the parties' intentions. If the lessee does not express a preference, arbitration will proceed without a hearing. It is reasonable and necessary to request that lessees act upon their desire to go to arbitration. This forces lessees to act within a specified time frame. It is the department's experience that some lessees will not act, even though they have decided to go to arbitration. The lessee may expect the commissioner to make the decision.

A. This section deals with the cost of arbitration and the billing of a lessee after the commissioner and the lessee have decided to go to binding arbitration. It will be costly to retain an arbitrator. Both the commissioner and the lessee have a stake in the outcome of an arbitration. Therefore it is reasonable and necessary for the rule to require that the commissioner and the lessee split the cost of arbitration. Without a hearing, the primary expenses will be an arbitrator's time to review opposing appraisals. The estimated cost with a hearing includes the arbitrator's time to review appraisals, travel time to the location of the hearing, property inspection if necessary, and other associated cost. A mechanism is needed to ensure that lessees pay their portion of the arbitration cost. Therefore, if a lessee's amount remains unpaid, it will be added to the lease fee and become grounds for canceling the lease if the amount remains unpaid beyond the time specified.

B. Once the commissioner and the lessee decide to go to binding arbitration, this section sets out a time schedule that the commissioner and the lessee will follow when selecting an arbitrator to conduct a hearing. It is reasonable and necessary to allow the lessee the opportunity to be involved in the arbitration process by assisting in the selection of an arbitrator. The commissioner will recommend a list of professional appraisers. The list will be screened by the commissioner because limited number of professional appraisers licensed in Minnesota have an interest in or experience with real estate appraisal dispute resolution.

This section also sets the standard for individuals who will be conducting arbitration hearings. This rule requires that all appraisers selected to conduct hearings will have obtained at least a level 3 appraisal license based on state standards. Because conducting an arbitration hearing is a specialty, the commissioner has determined that individuals with a certain level of expertise will be needed to conduct an arbitration.

The time lines referenced in this section are necessary to ensure

that once the lessee decides to go to arbitration, the lessee will act promptly. Time is of the essence and the lessee will be paying the disputed lease fee while the fee is being decided.

C. This section deals with the arbitration hearing procedure once the commissioner and the lessee decide to waive a hearing. At this point the parties have selected an arbitrator to review both appraisals and agree that the arbitrator will reach a decision based on a review of opposing appraisals. Each party must submit an appraisal to the arbitrator within 15 calendar days of initial notification of the arbitrator. Both parties will have appraisals completed previously, so 15 days is a reasonable time period.

The rule gives the arbitrator 30 days to review both appraisals which the commissioner has determined is more than adequate. The rule requires the commissioner and the lessee to agree to a time extension if the arbitrator so requests. This is reasonable and necessary in order to avoid unnecessary delays by the arbitrator.

An arbitrator's decision is binding on the commissioner and the lessee and there shall be no further appeals. This is necessary to prevent further costs and delays for the commissioner and the lessee.

D. This section outlines steps the commissioner and the lessee must take after they agree to hold a hearing. The commissioner and the lessee must each submit appraisals to the arbitrator 30 days prior to the hearing. This amount of time will allow the arbitrator to review the appraisals and inspect the property, if necessary, prior to the hearing. The commissioner, lessee and arbitrator must consult on a time, date and location to hold the hearing. This section also sets out the time line for notification to all parties in advance of the hearing and limits the time a hearing will take. These requirements are reasonable and necessary because at some point in the process all parties need to be put on notice of the hearing. Also, restriction on the time a hearing can be held forces the parties to a decision. The commissioner wishes to expedite arbitration hearings because they are costly.

1. There may be circumstances when the commissioner or the lessee should be represented by counsel during a hearing. This section deals with the right of the commissioner and the lessee to be represented by counsel or other authorized representative. This section allows a reasonable amount of time for either party to notify the other of such representation. This requirement is reasonable and necessary because all parties to a hearing need to know who will be present and who will be represented by counsel.

2. Stenographic records, recordings, video tapes, transcriptions and all other forms of record keeping will not be allowed at the hearing. The arbitrator's findings shall be the official records of the hearing. This is reasonable and necessary to prevent conflicting and inconsistent hearing records. The commissioner has determined that the arbitrator's findings will be the only official records of the hearing issued to both parties at the close of the hearing.

3. This section deals with the authority and powers granted to the arbitrator conducting a hearing. The commissioner recognizes that a third party will sometimes be needed to help resolve disputes concerning the appraised value of leased lots. It is reasonable and necessary to grant the arbitrator sufficient powers to ensure the commissioner and the lessee an equal opportunity for a fair hearing.

4. The arbitrator shall have the power to cross-examine any witness submitting evidence at the hearing. This is reasonable and necessary in order for the arbitrator to make an informed decision. It is necessary to permit the arbitrator to cross-examine any witness submitting evidence at the hearing.

5. This section recognizes that the commissioner or the lessee may request that the hearing be postponed due to an emergency. At that time the arbitrator shall grant a postponement. It is reasonable and necessary to allow such flexibility in the rule.

6. The rule allows an objective party, the arbitrator, to conduct a hearing. Fairness dictates that lessees will have equal opportunity to provide evidence.

7. Because arbitrations can be time consuming and costly, it is reasonable and necessary that the arbitrator proceeds in the absence of the commissioner or the lessee or any representative who, after due notice, fails to be present or fails to obtain a postponement after hearing arrangements have been made.

8. The expenses of any witness for either side shall be paid by the party procuring the witness. Any party who wants an interpreter shall make all arrangements directly with an interpreter and shall assume the cost of the service. All other reasonable expenses of the arbitrator, including required travel, shall be borne equally by the commissioner and the lessee, unless they agree otherwise. It is reasonable and necessary to expect the parties needing these services to cover the cost. All costs associated with the arbitrator and direct costs for the hearing shall be split between the commissioner and the lessee since both have a stake in the outcome of the hearing.

9. The arbitrator's findings must be submitted in writing to the commissioner and the lessee within 15 calendar days after the

close of the hearing. After the hearing concludes, 15 days is a reasonable time for the arbitrator's findings to be submitted to the commissioner and the lessee. The commissioner does not want any part of the process delayed. Since the arbitrator's decision will more than likely be made by the close of the hearing, 15 days is a reasonable amount of time for the arbitrator to submit his findings in writing to the commissioner and the lessee.

The arbitrator's decision in Step 3 shall be final and binding on the commissioner and the lessee. This is reasonable and necessary because appeals can be costly and time consuming, and the cost of further appeals beyond a three-step process may be disproportionate to the benefits to be derived from a successful appeal.

WITNESSES:

If these rules go to a public hearing, the witnesses listed below may testify on behalf of the department in support of the need and reasonableness of the rules. The witnesses will be available to answer questions about the development and content of the rules. Witness for the Department of Natural Resources include:

Patricia D. Kandakai, Lease Coordinator
500 Lafayette Road
St. Paul, MN 55155-4030
(612) 296-4496

Jeff Hanson, Operations Manager
500 Lafayette Road
St. Paul, MN 55155-4030
(612) 296-0625

James Lawler, Administrator
500 Lafayette Road
St. Paul, MN 55155-4030
(612) 297-2572

The department will supplement testimony by its own professional staff with expert testimony by the following individual:

Dennis W. Jabs
Dennis Jabs and Associates
20915 Raddison Inn Rd.
Shorewood, MN 55331

Dennis Jabs will supplement the department's testimony on appraisal theory. He will discuss acceptable industry standards and his own experience as a real estate appraiser and reviewer.

Based on the foregoing, the Department's proposed rules are both necessary and reasonable.

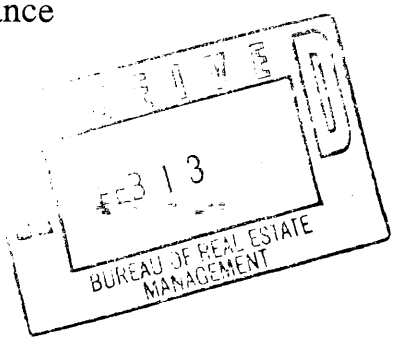
Rodney W. Sando, Commissioner
Department of Natural Resources

Gail Lewellan

by Gail Lewellan, Assistant Commissioner
Date: December 3, 1995

Minnesota

Department of Finance



Date: February 10, 1995

To: Pat Kandakai
Bureau of Real Estate Management
Department of Natural Resources

From: Lyle Mueller
Budget Officer

Pat, the additional information you provided answered my specific questions on your proposed rules for setting lease amounts for state-owned lakeshore lots. The Department of Finance agrees with the proposed changes in rule that relate to updating the market values of state-owned lakeshore properties currently under lease or available for lease.

The underlying lease rate structure is set in statute as a percentage of current property market value. The basic rate structure will not change under the proposed rules.

The annual lease cost will likely increase for all current leases of state-owned lakeshore lots since the market values of these properties have not been updated for five or more years. When all leases expired on December 31, 1990, lease rates were continued at 1990 levels with the understanding that new lease rates would go into effect when the market values were updated. The department informed leaseholders they would also be liable for the difference between the old and new lease rates retroactive to January 1, 1991.

While Finance approval is not conditioned on this point, I strongly urge you to forego collecting the incremental lease increase calculated on a retroactive basis to 1991. Rather, determine the new lease amounts based on updated market values and notify current leaseholders of the new lease amount for the current and future years only.

Pat, if you have questions on this approval notice and related recommendations please call me at 296-7642.

cc: Kathy Lewis, Minerals Division
John Heintz, Financial Management

FI-00399-01

Department of Finance
Departmental Earnings: Reporting/Approval

Part A: Explanation

Earnings Title: Lakeshore Lease Lots	***Statutory Authority:*** Minnesota Statutes 92.46	***Date:*** 1923

Brief Description of Item: Lease fees (rent) received for lease of lakeshore cabin sites on state owned lakeshore. Based on 5% of appraised land value. Proposed change will adjust appraisel values, last reviewed in 1983-1985.

Earnings Type (check one):

1. ___ Service/User 2. ___ Business/Industry Regulating 3. ___ Occupational Licensure
4. ___ Special Tax/Assessment 5. X Other (specify): Rent paid for lease of state land (Rev. Clss = 400)

Submission Purpose (check one):

1. X Chap. 14 Review and Comment 2. ___ Approval of Allowable Inflationary Adjustment
3. ___ Reporting of Agency Initiated Change in Departmental Earnings Rate
4. ___ Other (specify):

If reporting an agency initiated action (option 3 above), does agency have explicit authority to retain and spend receipts? ___ Yes ___ No
If yes, cite pertinent statutes:

Impact of Proposed Change (change in unit rate, number of payees impacted, etc.):

The proposed change will affect the annual lease fee of ~~588~~ 582 lakeshore lot lessees, including retro-active adjustment from 1/1/91.

Receipts split 50/50 between 31000-73-86 & 38104-62-86 (School Trust Land); also generates receipts in 38100-00-20 (con-con land), 38104-63-61 (Univ. Trust land), and 38105-00-10 (Acq. Forest land).

FI-00399-01

Department of Finance

Departmental Earnings: Reporting/Approval (Cont.)

($1,000,000 = 1,000)

Part B: Fiscal Detail

APID: 31000-73-86/3814-62-86	AID:	Rev. Code(s): 400		X Dedicated	___ Non-Dedicated	___ Both	
Item	F.Y. 1991	F.Y. 1992	F.Y. 1993	F.Y. 1994 As Shown in Biennial Budget	F.Y. 1995 As Shown in Biennial Budget	F.Y. 1994 As Currently Proposed	F.Y. 1995 As Currently Proposed
	Revenues:						
Land Rent	496.0	444.2	374.0	241.7	241.7	241.7	614.4
(lakeshore leases)							
(#Leases	1,105	978	798	530	530	530	530)
	Expenditures:						
Direct	237.3	217.3	183.5	126.2	130.6	126.2	130.6
Indirect	20.6	18.9	16.0	11.0	11.4	11.0	11.4
Total	257.9	236.2	199.5	137.2	142.0	137.2	142.0
Current Deficit/Excess	238.1	208.0	174.5	104.5	99.7	104.5	472.4
Accumulated Excess/Deficit* *	238.1	446.1	620.6	725.1	824.8	725.1	1,197.5

As necessary, attach detailed schedule/listing of proposed changes in departmental earnings rates. * Accumulated excessprior to F.Y. 1991 not known

Agency Signature:

* F.Y. 1991 beginning accumulated balance to include amount of accumulated excess/deficit (if any) carried forward from F.Y. 1990.

FI-00399-01

Department of Finance

Departmental Earnings: Reporting/Approval (Cont.)

($1,000,000 = 1,000)

Part B: Fiscal Detail

APID: 38105-00-10	AID:	Rev. Code(s): 400		X Dedicated	___ Non-Dedicated	___ Both
Item	F.Y. 1991	F.Y. 1992	F.Y. 1993	F.Y. 1994 As Shown in Biennial Budget	F.Y. 1995 As Shown in Biennial Budget	F.Y. 1994 As Currently Proposed	F.Y. 1995 As Currently Proposed
Land Rent	32.7	32.7	24.5	15.4	15.4	15.4	34.0
(lakeshore leases)							
# of Leases	82	82	63	41	41	41	41
	Expenditures:						
Direct	17.6	18.2	14.5	9.8	10.1	9.8	10.1
Indirect	1.5	1.6	1.3	0.8	0.9	0.8	0.9
Total	19.1	19.8	15.8	10.6	11.0	10.6	11.0
Current Deficit/Excess	13.6	12.9	8.7	4.8	4.4	4.8	23.0
Accumulated Excess/Deficit* *	13.6	26.5	35.2	40.0	44.4	40.0	63.0

As necessary, attach detailed schedule/listing of proposed changes in departmental earnings rates.

Agency Signature:

* F.Y. 1991 beginning accumulated balance to include amount of accumulated excess/deficit (if any) carried forward from F.Y. 1990. (unknown)

FI-00399-01

Department of Finance

Departmental Earnings: Reporting/Approval (Cont.)

($1,000,000 = 1,000)

Part B: Fiscal Detail

APID: 38104-63-61	AID:	Rev. Code(s): 400		X Dedicated	___ Non-Dedicated	___ Both
Item	F.Y. 1991	F.Y. 1992	F.Y. 1993	F.Y. 1994 As Shown in Biennial Budget	F.Y. 1995 As Shown in Biennial Budget	F.Y. 1994 As Currently Proposed	F.Y. 1995 As Currently Proposed
Revenues:							
Land Rent (Lakeshore leases)	6.9	6.9	3.2	2.3	2.3	2.3	2.7
# of Leases	23	23	11	8	8	8	8
Expenditures:							
Direct	4.9	5.1	2.5	1.9	2.0	1.9	2.0
Indirect	0.4	0.4	0.2	0.2	0.2	0.2	0.2
Total	5.3	5.5	2.7	2.1	2.2	2.1	2.2
Current Deficit/Excess	1.6	1.4	0.5	0.2	0.1	0.2	0.5
Accumulated Excess/Deficit*	1.6	3.0	3.5	3.7	3.8	3.7	4.2

As necessary, attach detailed schedule/listing of proposed changes in departmental earnings rates.

Agency Signature:

*F.Y. 1991 beginning accumulated balance to include amount of accumulated excess/deficit (if any) carried forward from F.Y. 1990. (unknown)

FI-00399-01

Department of Finance

Departmental Earnings: Reporting/Approval (Cont.)

($1,000,000 = 1,000)

Part B: Fiscal Detail

APID: 38100-00-20	AID:	Rev. Code(s): 400		X Dedicated	___ Non-Dedicated	___ Both
Item	F.Y. 1991	F.Y. 1992	F.Y. 1993	F.Y. 1994 As Shown in Biennial Budget	F.Y. 1995 As Shown in Biennial Budget	F.Y. 1994 As Currently Proposed	F.Y. 1995 As Currently Proposed
	Revenues:						
Land Rent (Lakeshore Leases)	1.2	1.2	1.2	.9	.9	.9	3.1
# of Leases	4	4	4	3	3	3	3
	Expenditures:						
Direct	0.9	0.9	0.9	0.7	0.7	0.7	0.7
Indirect	0.1	0.1	0.1	0.1	0.1	0.1	0.1
Total	1.0	1.0	1.0	0.8	0.8	0.8	0.8
Current Deficit/Excess	0.2	0.2	0.2	0.1	0.1	0.1	2.3
Accumulated Excess/Deficit* *	0.2	0.4	0.6	0.7	0.8	0.7	3.0

As necessary, attach detailed schedule/listing of proposed changes in departmental earnings rates.

Agency Signature:

* F.Y. 1991 beginning accumulated balance to include amount of accumulated excess/deficit (if any) carried forward from F.Y. 1990. (unknown)

Dept. Earnings Report - Lakeshore Lease Rules

Avg Direct Cost ('93$): $230
Avg Indirect Cost ('93$): $20

Fund	Fiscal Year 91	92	93	94	95	Proposed
PSF (31000-73-86 / 38104-62-86)						
Leases	1,105	978	798	530	530	530
Value ($000)	9,948.2	8,996.3	7,366.5	4,834.0	4,834.0	7,146.6
Fees ($000)	496.0	444.2	374.0	241.7	241.7	614.4
Direct Cost ($000)	237.3	217.3	183.5	126.2	130.6	130.6
Indirect Cost ($000)	20.6	18.9	16.0	11.0	11.4	11.4
Total Cost ($000)	257.9	236.2	199.5	137.2	142.0	142.0
Current Excess ($000)	238.1	208.0	174.5	104.5	99.7	472.4
Accum. Excess ($000)	238.1	446.1	620.6	725.1	824.8	1,197.5
PUF (38104-63-61)						
Leases	23	23	11	8	8	8
Value ($000)	137.7	137.7	63.6	46.4	46.4	43.1
Fees ($000)	6.9	6.9	3.2	2.3	2.3	2.7
Direct Cost ($000)	4.9	5.1	2.5	1.9	2.0	2.0
Indirect Cost ($000)	0.4	0.4	0.2	0.2	0.2	0.2
Total Cost ($000)	5.3	5.5	2.7	2.1	2.2	2.2
Current Excess ($000)	1.6	1.4	0.5	0.2	0.1	0.5
Accum. Excess ($000)	1.6	3.0	3.5	3.7	3.8	4.2
Con-Con (38100-00-20)						
Leases	4	4	4	3	3	3
Value ($000)	24.0	24.0	24.0	18.0	18.0	39.9
Fees ($000)	1.2	1.2	1.2	0.9	0.9	3.1
Direct Cost ($000)	0.9	0.9	0.9	0.7	0.7	0.7
Indirect Cost ($000)	0.1	0.1	0.1	0.1	0.1	0.1
Total Cost ($000)	1.0	1.0	1.0	0.8	0.8	0.8
Current Excess ($000)	0.2	0.2	0.2	0.1	0.1	2.3
Accum. Excess ($000)	0.2	0.4	0.6	0.7	0.8	3.0
Acquired (38105-00-10)						
Leases	82	82	63	41	41	41
Value ($000)	653.4	653.4	489.3	307.8	307.8	426.0
Fees ($000)	32.7	32.7	24.5	15.4	15.4	34.0
Direct Cost ($000)	17.6	18.2	14.5	9.8	10.1	10.1
Indirect Cost ($000)	1.5	1.6	1.3	0.8	0.9	0.9
Total Cost ($000)	19.1	19.8	15.8	10.6	11.0	11.0
Current Excess ($000)	13.6	12.9	8.7	4.8	4.4	23.0
Accum. Excess ($000)	13.6	26.5	35.2	40.0	44.4	63.0

DNR, Bureau of Real Estate Management (7/27/94)