

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of Proposed  
Permanent Rules Regarding  
Lake Shore Leases, Minnesota  
Rules, Parts 6122.0100 - 6122.0400.

**REPORT OF THE  
ADMINISTRATIVE LAW JUDGE**

The above-entitled matter came on for hearing before Administrative Law Judge Steve M. Mihalchick on March 5, 1996, at 9:00 a.m. at the Kelly Inn, 161 St. Anthony, St. Paul, Minnesota. The hearing resumed on March 7, 1996, at 9:00 a.m. at the Sawmill Inn, 2301 South Pokegama, Grand Rapids, Minnesota.

This Report is part of a rulemaking proceeding held pursuant to Minn. Stat. §§ 14.131 to 14.20 (1995 Supp.), to hear public comment, determine whether the Department of Natural Resources ("DNR" or "the Department") has fulfilled all relevant substantive and procedural requirements of law or rule applicable to the adoption of the rules, evaluate whether the proposed rules are needed and reasonable, and assess whether modifications to the rules proposed by the Department after initial publication are substantially different from the rule as originally proposed.

Andy Tourville, Assistant Attorney General, 900 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, appeared on behalf of the Department. The Department's hearing panel consisted of Patricia D. Kandakai, Lease Coordinator of the Lease Program, James Lawler, Administrator of the Bureau of Real Estate Management (at the St. Paul hearing), Jeffrey C. Hanson, Program Operations Manager (at the Grand Rapids hearing), and Dennis W. Jabs, Independent Fee Appraiser.

Approximately 40 people attended the St. Paul hearing, of which 29 signed the hearing register. In Grand Rapids, approximately 12 people attended the hearing, and 7 signed the hearing register. Twenty-four agency exhibits and three public exhibits were received during the hearings. The hearings continued until all interested persons, groups, or associations had had an opportunity to be heard.

The record remained open for the submission of written comments until March 14, 1996, five working days following the date of the hearing. Pursuant to Minn. Stat. § 14.15, subd. 1 (1994), an additional five working days were allowed for the filing of responsive comments. At the close of business on March 21, 1996, the rulemaking record closed for all purposes.

## NOTICE

The Commissioner must wait at least five working days before taking any final action on the rules; during that period, this Report must be made available to all interested persons upon request.

Pursuant to the provisions of Minn. Stat. § 14.15, subd. 3 and 4, this Report has been submitted to the Chief Administrative Law Judge for his approval. If the Chief Administrative Law Judge approves the adverse findings of this Report, he will advise the Commissioner of actions which will correct the defects and the Commissioner may not adopt the rule until the Chief Administrative Law Judge determines that the defects have been corrected. However, in those instances where the Chief Administrative Law Judge identifies defects which relate to the issues of need or reasonableness, the Commissioner may either adopt the Chief Administrative Law Judge's suggested actions to cure the defects or, in the alternative, if the Commissioner does not elect to adopt the suggested actions, he must submit the proposed rule to the Legislative Commission to Review Administrative Rules for the Commission's advice and comment.

If the Commissioner elects to adopt the actions suggested by the Chief Administrative Law Judge and makes no other changes and the Chief Administrative Law Judge determines that the defects have been corrected, then the Commissioner may proceed to adopt the rule and submit it to the Revisor of Statutes for a review of the form. If the Commissioner makes changes in the rule other than those suggested by the Administrative Law Judge and the Chief Administrative Law Judge, then he shall submit the rule, with the complete record, to the Chief Administrative Law Judge for a review of the changes before adopting it and submitting it to the Revisor of Statutes.

When the Commissioner files the rule with the Secretary of State, he shall give notice on the day of filing to all persons who requested that they be informed of the filing.

Based upon all the testimony, exhibits and written comments, the Administrative Law Judge makes the following:

## FINDINGS OF FACT

### Nature of the Proposed Rules and Statutory Authority

1. The proposed rules are entirely new rules governing lake shore leases and will be codified as Minn. R. 6122-0100 to 6122.0400. The State has leased lake shore lots to individuals since 1917. T. 10; Ex. 5 (SONAR) at 4. In 1964, the Department stopped platting and leasing additional lake shore lots. In 1973, the statute was changed to terminate the issuance of new leases. At that time there were approximately 1,800 lake shore leased lots.

2. Prior to 1985, Minn. Stat. § 92.46 subd. 1, (the "Lease Statute") had provided that the Department, or its predecessors, could lease the lots under such terms and conditions as it prescribed. In 1985, the Lease Statute was amended to provide that the lease rate be based upon the appraised value of the leased land. It was also amended to provide as follows:

(c) By July 1, 1986, the commissioner of natural resources shall adopt rules under chapter 14 to establish procedures for leasing land under this section. The rule shall be subject to review and approval by the commissioners of revenue and administration prior to the initial publication pursuant to chapter 14 and prior to their final adoption. The rules must address at least the following:

- (1) method of appraising the property;
- (2) determination of lease rates; and
- (3) an appeal procedure for both the appraised values and lease rates.

Laws of Minn. 1985, 1st Spec. Sess., Ch. 14, Art. 17, § 1. The legislation also created Minn. Stat. § 92.46, subd. 3, which provided that increased lease rates effective after January 1, 1986, must be phased in by three annual increments. It also required the Department to inventory the lake shore leases and prepare a report on any leased land that should be sold. Laws of Minn. 1985, 1st Spec. Sess. Ch. 14, Art. 17, §§ 3 and 4.

3. In 1986, a bill was passed creating Minn. Stat. § 92.67 (the "Sales Statute"), requiring the Department to sell lots recommended for sale under the Department's report when requested by the lessees. The Sales Statute required the sales to be completed by July 1, 1992, and required appraisals to be made of the lots being sold. Laws of Minn. 1986, Ch. 449, § 2. In 1987, the Sales Statute was amended, as it was again in 1988. Laws of Minn. 1987, Ch. 404, §§ 110 to 114; Laws of Minn. 1988, Ch. 718, Art. 7, §§ 4-7. The 1988 changes extended the last sale date to December 31, 1993. From 1988 to 1993, approximately 1,200 leased lots were sold at public auctions. SONAR at 10. Today, 583 leased lots remain on 86 lakes in 10 counties. T. 107.

4. In 1990, the Lease Statute was amended to provide that for leases renewed in 1991 and following years, the lease rate would be 5 percent of the appraised value of the lease land and that the minimum appraised value assigned by the Department must be substantially equal to the county assessor's estimated market value of similar land. At the same time, the Lease Statute was amended by deleting the requirement that the rules to be adopted by the Department must address the determination of lease rates, although it left unchanged the requirement that the rules address "an appeal procedure for both the appraised value and lease rates." Laws of Minn. 1990, Ch. 452, § 1.

5. The Department has statutory authority under Minn. Stat. § 92.46, subd. 1(c) (1995 Supp.), to adopt the proposed rules. That statute specifically authorizes and directs the Department to adopt rules addressing at least the method of appraising the property and an appeal procedure. While it directs the Department to adopt the rules by July 1, 1986, the authority has not expired.

#### Procedural Requirements

6. On November 11, 1985, the Department published a Notice of Outside Opinion Sought Regarding Proposed Rules for Leasing State Land Bordering Public Waters for Cottage and Camp Purposes at 10 State Register 1128. On December 20, 1993, the Department published a Notice of Solicitation of Outside Information or Opinions at 18 State Register 1542, regarding the appraisal and appeal rule proposals. An additional Notice of Solicitation of Outside Information or Opinions was published at 20 State Register 9, on July 3, 1995. Ex. 13.

7. On December 4, 1995, the Department filed the following documents with the Chief Administrative Law Judge:

- a. A copy of the proposed rules certified by the Revisor of Statutes, Ex. 2;
- b. The proposed Order for Hearing, Ex. 4;
- c. The Notice of Hearing proposed to be issued, Ex. 3;
- d. The Statement of Need and Reasonableness ("SONAR"), Ex. 5;
- e. A statement by the Department of the anticipated duration and attendance at the hearing, and a notice that it intended to give discretionary additional public notice pursuant to Minn. Stat. §14.14, subd. 1a, to persons who held or are holding lake shore leases from 1991 to the present. Ex. 1.

8. On December 8, 1995, the Department filed a revised proposed Order for Hearing, Ex. 6, and a revised proposed Notice of Hearing, Ex. 7. The documents contained revisions suggested by the Office of Administrative Hearings.

9. On December 22, 1995, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Department for the purpose of receiving such notice, all persons who requested a hearing on these rules, and all persons to whom additional discretionary notice was given by the Department.

10. On December 26, 1995, the Department published the Notice of Hearing and the proposed rules at 20 State Register 1740-1746.

11. On February 5, 1996, the Department filed the following documents with the Administrative Law Judge:

- a. the Notice of Hearing as mailed, Ex. 9;
- b. a photocopy of the pages of the State Register containing the Notice of Hearing and the proposed rules, Ex. 10;
- c. the Department's certification that its mailing list was accurate and complete as of December 22, 1995, and the Affidavit of Mailing the Notice to all persons on the Department's mailing list, Ex. 11;
- d. the Affidavit of Mailing the Notice to those persons to whom the Department gave discretionary notice along with copies of the Notice, Order for Hearing and list of names, Ex. 12;
- e. a copy of each of the three Notices of Solicitation of Outside Opinion published in the State Register and all materials that were received in response to those Notices from interested persons, Ex. 13;
- f. the names of Agency personnel or others solicited by it to appear at the hearing in this matter, Ex. 8 (and SONAR); and;
- g. copies of the requests for hearing received by the Department, Ex. 14.

12. As allowed by Minn. Stat. § 14.225 (1994), the notice published by the Department provided for a hearing only if twenty-five persons requested a hearing within thirty days of the notice. More than twenty-five persons requested a hearing during that period.

13. At the hearing in St. Paul on March 5, 1996, the Department filed copies of letters it had written December 21, 1995, to the Governor, the Chair of the House Environment and Natural Resources Committee, the Chair of the Senate Environment and Natural Resources Committee, and the Chair of the Legislative Commission to Review Administrative Rules. The letters were written as required by Minn. Stat. § 14.12 (1994). That statute, which has since been repealed, required agencies to commence the rulemaking process within 180 days after the effective date of the law requiring rules to be promulgated and, if they fail to do so, to report to the Legislative Commission to Review Administrative Rules, other appropriate committees of the

Legislature and the Governor its failure to do so and the reasons for that failure.<sup>1</sup> The text of the letters was identical and stated that the delay in commencing the rulemaking process was caused by the various legislative changes affecting the lease and sale of lake shore lots since 1985, a lawsuit brought against the Department to declare the 1986 sales legislation unconstitutional, and the use of staff time and resources to complete the sales of the lake shore lots. Ex. 16.

14. Also at the hearing in St. Paul on March 5, 1996, the Department filed a copy of a December 22, 1995 letter it sent to the Legislative Commission to Review Administrative Rules, forwarding a copy of the Statement of Need and Reasonableness as required by Minn. Stat. § 14.23 (1994).

#### Approval by Commissioners of Finance and Administration

15. As noted above, Minn. Stat. § 92.46, subd. 1(c) (1995 Supp.), specifically requires that these rules be subject to review and approval by the Commissioners of Revenue and Administration prior to initial publication and prior to final adoption. On March 5, 1996, at the St. Paul hearing, the Department filed copies of office memoranda from the Department of Finance and Commissioner of Administration noting their approval of the proposed rules. Ex. 15. In an office memorandum of September 13, 1995, Elaine S. Hansen, Commissioner of Administration, states that she had reviewed and approves the proposed rules. In an office memorandum of February 10, 1995, Lyle Mueller, Budget Officer of the Department of Finance, states that the Department of Finance agrees with the proposed changes. However, he goes on to state:

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 values and notify current lease holders of the new lease amount for the current and future years only.

16. The Department also requested that the Commissioner of Revenue review the proposed rules. A copy of the Department of Revenue's response of September 12, 1995, was also filed as part of Exhibit 15. It suggested that the value of the leased lot should be adjusted at least once every four years, rather than the five proposed by the rules, because Minn. Stat. § 273.08 requires assessors to revise the value of real

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<sup>1</sup> Minn. Stat. § 14.12 (1994) was repealed in 1995. Laws of Minn. 1995, Ch. 233, Article 2, § 57. In its place, Minn. Stat. § 14.125 (Supp. 1995) was enacted which requires agencies to commence the rulemaking process within 18 months after the effective date of the law authorizing or requiring rules to be adopted. If it fails to do so, the authority for the rules expires. The statute is effective for laws enacted after January 1, 1996. Laws of Minn. 1995, Ch. 233, Article 2, §§ 12 and 58. Thus, because Minn. Stat. § 14.12 (1994) was repealed prior to the initiation of this rulemaking proceeding, neither it nor Minn. Stat. § 14.125 (Supp. 1995) applies to this proceeding.

property at least every four years and similar treatment of the lease holders would require a similar period.

#### Impact on Agricultural Land

17. Minn. Stat. § 14.11, subd. 2 imposes additional statutory requirements when rules are proposed that have a "direct and substantial adverse impact on agricultural land in this state." The statutory requirements referred to are found in Minn. Stat. §§ 17.80 to 17.84. The rules proposed by the Department will have no substantial adverse impact on agricultural land within the meaning of Minn. Stat. § 14.11, subd. 2.

#### Fiscal Note

18. Minn. Stat. § 14.11, subd. 1, requires state agencies proposing rules that will require the expenditure of public funds in excess of \$100,000 per year by local public bodies to publish an estimate of the total cost to local public bodies for the two years immediately following adoption of the rules. There will be no costs to local public bodies incurred due to the proposed rules.

#### Small Business Considerations in Rulemaking

19. Minn. Stat. § 14.115, subd. 2 requires state agencies proposing rules that may affect small businesses to consider methods for reducing adverse impact on those businesses. DNR noted in its SONAR and Notice of Hearing that the proposed rules are not likely to affect small businesses within the meaning of the statute. SONAR, at 3; Notice of Hearing, at 4. There were no comments from small business owners asserting any impact from the rules. DNR adequately considered the impact of the rules on small businesses.

#### Reasonableness of the Proposed Rules

20. The Administrative Law Judge must determine whether the need for and reasonableness of the proposed rules have been established by the Department by an affirmative presentation of facts. Minn. Stat. § 14.14, subd. 2. The question of whether a rule is reasonable focuses on whether it has a rational basis. The Minnesota Court of Appeals has held a rule to be reasonable if it is rationally related to the end sought to be achieved by the statute. Broen Memorial Home v. Minnesota Department of Human Services, 364 N.W.2d 436, 440 (Minn. App. 1985); Blocher Outdoor Advertising Company v. Minnesota Department of Transportation, 347 N.W.2d 88, 91 (Minn. App. 1984). The Supreme Court of Minnesota has further defined the burden by requiring that the agency "explain on what evidence it is relying and how the evidence connects rationally with the agency's choice of action to be taken." Manufactured Housing Institute v. Pettersen, 347 N.W.2d 238, 244 (Minn. 1984). An agency is entitled to make choices between possible standards as long as the choice it makes is rational. If commentators suggest approaches other than that selected by the agency, it is not the

proper role of the Administrative Law Judge to determine which alternative presents the "best" approach. Policy choices are left to the agency.

21. The Department prepared a Statement of Need and Reasonableness ("SONAR") in support of adoption of the proposed rules. At the hearing, the Department primarily relied upon the SONAR as its affirmative presentation of need and reasonableness for each provision. The SONAR was supplemented by comments regarding the history of lake shore lot leasing and specific portions of the rules made by the Department at the public hearings. DNR also submitted written post-hearing comments.

22. The Findings in this Report address each part of the proposed rules where issues have arisen from public commentary. The Department has proposed some changes to the rule since publication in the State Register. After careful review and consideration of the Department's Statement of Need and Reasonableness and based upon the Department's oral presentation at the hearing and comments submitted after the hearing, the Administrative Law Judge finds that the Department has affirmatively established the need and reasonableness of each part of the proposed rules except as otherwise qualified or determined in the following Findings and Conclusions.

23. Where changes are made to the rule after publication in the State Register, the Administrative Law Judge must determine if the new language is substantially different from that which was originally proposed. Minn. Stat. § 14.15, subd. 3 (1994). The standards to determine if the new language is substantially different are found in Minn. Rules Part 1400.1100. The Administrative Law Judge finds that the Department's proposed changes are not substantially different from the rules as originally proposed.

#### Proposed Rule 6122.0100 - Scope

24. The first sentence of proposed rule 6122.0100 identifies the proposed rules as providing "methods for appraising state lands adjacent to public waters that are leased under Minnesota Statutes, section 92.46, and procedures for a lessee to challenge the appraised value of the lands." The second sentence states that because Minn. Stat. § 92.46, subd. 1(b), sets the lease rate at five percent of the appraised value, a successful challenge to the appraised value will affect the annual rent. The third and last sentence states that over ninety percent of the leased lands are on "school trust lands" which must be managed by the Department under the Minnesota Constitution, article II, section 1, and article XI, section 8, and Minn. Stat. § 124.079.

25. The Department presented no justification for Rule 6122.0100 in the SONAR. Nonetheless, it is obviously necessary that there be some provision in the rules that describe their application. The use of an introductory "scope" rule is a reasonable and common way of doing so. Thus, in general, the first sentence of proposed rule 6122.0100 is necessary and reasonable because it defines the application of the remaining rules.



26. As noted above in Finding No. 4, in 1990, when the Lease Statute was amended to establish the lease rate statutorily at five percent of appraised value, it was also amended to delete the requirement that the Department's rules address the determination of lease rates, but left the requirement for the rules to address an appeal procedure for both the appraised values and lease rates. Thus, the current statute requires that the rules establish an appeal procedure for both the appraised value and the lease rates. It may have been a legislative oversight to leave the appeal of "lease rates" in the statute, but a reasonable interpretation is that the Legislature intended to allow appeals of individual lease rates, or what are called lease fees in the rules. It is possible that the application of the five percent lease rate to an appraised value will be done incorrectly by the Department, that the incremental annual increase amounts will be done incorrectly, or that other mistakes will be made. The Department has failed to propose a rule as directed by the statute, but that does not render the rules it did propose invalid on that ground. Nonetheless, it would require only a few minor, nonsubstantial changes to add provisions here and at other rule parts in order to provide an appeal mechanism when a lessee believes there is an error in the calculation of the lessee's individual lease rate. In this part, the change could be made by amending the last clause to read, ". . . and procedures for a lessee to challenge the appraised value of the land and annual lease fees." It is noted that such an appeal right was promised by the Department in the 1991 Cabin Site Renewal Forms. Ex. 24.

27. Six or seven of the lots being leased are located on Horseshoe Bay on Lake Superior north of Grand Marais, Minnesota. That is a particularly beautiful area and the Department has been hesitant about selling the leased lots there to private parties rather than retaining them for public use. It did not sell the lots when the sales program was in operation. In 1993, the Department proposed, and the Legislature adopted, a statute postponing the sale of lands located on Horseshoe Bay until July 1, 1998. The statute requires the Department to "continue the existing leases until that time." It further requires the Department to work with Cook County to prepare an integrated resource management plan and make recommendations to the Legislature on the future use of the lands on Horseshoe Bay by July 1, 1997. Laws of Minn. 1993, Ch. 205, § 1, codified at Minn. Stat. § 92.67, subd. 1a (1995 Supp.)

28. At the hearing in Grand Rapids on March 7, 1996, John Gunther, the Department's Administrator for the northeastern zone of Minnesota, spoke on the development of the management plan and recommendation for the Legislature. Cook County decided not to participate actively in the development of the DNR plan. The initial draft DNR plan has been submitted to the Legislature. The Department's desire is to retain public ownership of the land; a survey of the leaseholders indicates that they want to be allowed to purchase their leased lots. Since the Department does not believe that should be done, the issue in the Department's view is to determine how long the existing leaseholders should be allowed to continue leasing. See, Ex. 22. The Department is awaiting legislative direction and legislation on that issue.

29. Two of the Horseshoe Bay lessees testified at the hearing in St. Paul. Lawrence Burda testified, among other things, to the fact that the statute excluding the land from the sales statute made the Horseshoe Bay lots unique and that the likely result of the state ultimately canceling their leases and buying their cabins, while at the same time suggesting to the lessees that they should not make improvements to the properties because they won't be compensated for that, suggests that they should be treated uniquely under these rules. T. 58-74.

30. Because Minn. Stat. § 92.67, subd. 1a (1995 Supp.) specifically requires that the existing leases be continued until July 1, 1998, it is contrary to the statute to impose the appraised values and individual lease fees that will result under the proposed rules upon the lots in Horseshoe Bay. Stated differently, it is beyond the statutory authority of the Department to impose the proposed rules upon the Horseshoe Bay lots. Unless proposed rule 61.22.0100 is modified to exclude the Horseshoe Bay lot leases, the rule is invalid. The Administrative Law Judge is aware that at the time the statute was adopted in 1993, the Horseshoe Bay lessees, as all the other lessees, were leasing under renewal agreements issued in 1991 that continued the annual lease fees that had existed in 1990 subject to a retroactive adjustment whenever these rules were adopted. However, as of the effective date of the statute, May 15, 1993, the rules had not been adopted. Therefore, it seems fairly clear that the legislative intent expressed by "continue the existing leases," was that the individual lease fees then in effect were to be continued until July 1, 1998, or until subsequent legislation was enacted. In order to cure the defect, a sentence substantially in the following form must be added to proposed rule 6122.0100:

However, these rules do not apply to lots whose existing leases are continued under Minnesota Statutes § 92.67, subdivision 1a (1995 Supp.).

31. The last two sentences of proposed rule 6122.0102 are descriptive of the effect of the proposed rules and the constitutional and statutory history surrounding the lake shore leasing program. There are no obvious reasons why they are necessary and the Department has failed to offer any. The last two sentences of proposed rule 6122.0100 should be deleted. This deletion will cure the defect and will not constitute a substantial change.

#### Proposed Rule 6122.0200 - Definitions

32. Definitions of terms to be used in the rules are proposed in part 6122.0200. Each of the definitions was justified in the SONAR and the proposed definitions are found to be needed and reasonable.

#### Proposed Rule 6122.0300 - Method of Determining a Lot's Appraised Value

33. To determine the lease payment amount for a lot, the appraised value must be known. Proposed rule 6122.0300 sets out the process to determine the appraised

value of each lot. Subpart 1 requires an estimate of the market value of the lot, including improvements "to" the lot itself (e.g. a road, cleared land, or improved beach), but excluding any improvements located "on" the lot (e.g. cabin, wells or septic system). The terms are defined in proposed rule 6122.0200, subps. 7 and 8. The distinction between improvements "to" and improvements "on" the lot is the Department's method of implementing the requirement of Minn. Stat. § 92.46, subd. 1(b), that the appraised value "be the value of the leased land without any private improvements."

34. Several public comments were received regarding "improvements". James Shaw, T. 40-43, and Walter Jaakkola, T. 178-179, spoke to "fairness" and the concept of "paying twice" for improvements such as roads, septic systems and similar improvements made by the lessees at their own expense which improved the value of the lot and thereby increased their lease fees. In fact, proposed rule 6122.0200, subp. 7, specifically includes septic systems as an improvement on a leased lot, which would exclude it from being included in the estimated market value. Nonetheless, there are several expensive improvements made to a leased lot that would be included in the estimated market value and which would be reflected in lease fees. In its post-hearing comments, Ex. 37, the Department stated that it believed that lessees received benefits that more than offset any detriments caused by increased value from improvements to the land. They note that, in general, improvements by a tenant to the landlord's land belong to the landlord absent an agreement to the contrary. *In Re Estate of Vangen*, 370 N.W.2d 479 (Minn. App. 1985). Moreover, the Department believes it would be difficult to determine what, if any, effect on value actions such as tree planting, filling and grading would have on a lot. They also refer to driveway work in the same sentence, but, again, driveways are specifically included within the definition of improvements on a leased lot and would be excluded from the market value. The use of the distinction between improvements to a leased lot and improvements on a leased lot is not an unreasonable method of excluding "private improvements" from the appraised value, is consistent with the statute and case law and does not unduly burden the lessees for improvements to the land they wish to make. The Department has demonstrated that proposed rule 6122.0300, subp. 1, is necessary and reasonable.

35. Subpart 2 requires all appraisals and appraisal reviews to be done by licensed appraisers. Initial appraisers must have at least classification 2 licenses; review appraisers must have at least classification 3 licenses. The subpart also states: "Appraisers and review appraisers shall follow the standards contained in the most current edition of the Uniform Standards [Uniform Standards of Professional Appraisal Practice (1993 Edition and subsequent amendments)]." The requirement of licensure standards is needed and reasonable to ensure that appropriate standards are followed in determining lot values. The requirement of Uniform Standards is needed and reasonable to ensure that lot values are compared using similar methods to each other and similarly situated nonstate-owned land. The last sentence could be more clear that the Uniform Standards are to be used when appraisals and reviews on leased lots are performed. While most readers would infer that the Uniform Standards are to be used in appraisals, the rule would benefit from expressly stating that point. The language is not

so vague as to be a defect. Should the Department clarify the rule, the new language would not constitute a substantial change. Subpart 2 is needed and reasonable.

36. Subpart 3 is entitled Frequency of Adjustments, but the most significant provision of the rule states that the Commissioner shall determine the appraised value for each leased lot as of January 1, 1991. It then goes on to say that the lease fees shall be based upon the appraised value and adjusted at the fifth, tenth and fifteenth anniversaries of the lease if there is a change in the appraised value at those points. This is the most controversial provision of the proposed rules with most commentators arguing and testifying that the lease fee should not be made retroactive to 1991.

37. In the SONAR, the Department explains the need and reasonableness of subpart 3 as follows:

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.

SONAR, at 15.

38. The SONAR also includes the memorandum from the Department of Finance of February 10, 1995, strongly urging the Department to forego collecting the incremental increase calculated on a retroactive basis to 1991.

39. When the lot leases were renewed in 1991, the Department included the following language in the renewal agreement:

Until such time as the 1991 and subsequent year's lease fee is determined, the annual lease fee shall be unchanged from the 1990 lease fee, subject, however, to the fee being adjusted to an amount which represents five percent of the appraised value of the premises. The effective date of the adjustment shall be January 1, 1991. If the adjusted lease fee is an increase over the 1990 lease fee, lessee shall pay the difference between the adjusted lease fee and any fees previously paid under this lease renewal. The adjusted lease fee, if an increase, shall be phased in three equal annual increments. If the adjusted lease fee is less than the 1990 lease fee, Lessor shall credit any overpayment to current or future rent due, as appropriate. Lessee shall have the right to appeal the appraised value of the premises and the annual lease fee which is determined from the appraised value according to the rules to be adopted under M.S. Section 92.46, subd. 1(c).

Ex. 24, Cabin Site Lease Renewal, at 2.

40. The form to be used when a lessee sells the cabin on a leased lot and assigns the lease to a successor is attached to the lease renewal. That form contains the following language:

Assignee further acknowledges that Term 2 of the Cabin Site Lease Renewal provides that the 1991 and subsequent years' lease fee is subject to being adjusted following the adoption of rules under the provisions of Minn. Stat. § 92.46, subd. 1. Unless otherwise stated herein, Assignee agrees to assume all responsibility for compliance with the fee adjustment provisions of Term 2 and shall pay any increase or be credited with any decrease, as applicable. (If Assignor and Assignee desire alternative arrangements for determining responsibility for compliance with Term 2, they shall enter those arrangements in the space following.) \_\_\_\_\_

Ex. 24, Assignment of Cabin Site Lease Renewal, at 2.

41. John Leidig objected to the collection of fees as being a retroactive imposition of fees, as not being needed or reasonable, as being violative of Minn. Stat. § 92.46, and as contrary to the Administrative Procedure Act that make rules effective only after adoption. Joan and Walter Jaakkola objected to increasing lease payments back to 1991 as being a penalty on lessees. Ex. 34.

42. Vic and Betty Lilienkamp asserted that the DNR is being inconsistent when the sales auction notices identified the lots as "free of any previous taxes and assessment", but the Department pursues prior lessees for increases in lease payments from 1991 to the date of the sale. Ex. 36, Auction Notice at 2.

43. The Department continues to rely on the 1991 Cabin Site Renewal Agreements as its legal authority to apply these rules and use appraisals adjusted to 1991 to retroactively increase the lease fees to 1991. It states that this issue is not relevant to this rule proceeding, but is, rather, a matter that is a contractual obligation of the lessee under the terms of the Cabin Site Lease Renewal. Ex. 37 at 2. The Department's comment also states that Mr. Leidig's letter raises a new issue, that the rules are illegally retroactive, and that there is no such session law as the Ch. 220, § 89 referred to by Mr. Leidig in his letter. Ex. 37 at 4. Actually, Mr. Leidig was not the first person to raise the issue of illegal retroactivity, it was raised at the hearing by others. See, e.g., T. 58. Secondly, Laws of Minnesota 1995, Ch. 220, § 89, was indeed an amendment to Minn. Stat. § 92.46, subd. 1. Third, the rules are in fact proposed to be retroactive. While that is not necessarily clear from the text of the rules because they do not expressly state when and how the lease fees will be imposed, it becomes very clear when the Department describes how the fees will be established based upon the Cabin Site Renewal Agreements. The Department intends that the rules be used to

establish lease fees back to January 1, 1991. The vagueness in proposed rule 6122.0300, subp. 3, as to whether using appraised values as of January 1, 1991, also means that fees will be reset back to January 1, 1991, and the lack of any specific provision in the rules governing the implementation of the rules does not make them nonretroactive. On the contrary, it creates a vagueness that raises additional questions as to validity of the rules.

44. Minn. Stat. § 92.46, subd. 3 (1994), states:

State land leased under Minnesota Statutes, section 92.46, subdivision 1, that have increased lease rates effective on or after January 1, 1986, shall phase in the increased lease rates by three equal annual increments, except that the lease rate shall be adjusted to reflect changes in the lease rates resulting from rules adopted under subdivision 1.

The statute has not changed since it was adopted in 1985. Laws of Minn. 1985, 1st Spec. Sess., Ch. 14, Art. 7, § 3. It was in existence prior to the 1991 Cabin Site Lease Renewals and cannot be said to have incorporated or ratified any of the provisions of the renewal. The Cabin Site Lease Renewal Form cannot supersede the statute and contains no language waiving the lessees' rights under that statute. Thus, not only has the Legislature not provided the Department with authority to adopt retroactive rules, it has specifically directed that any lease rate increases must be phased in in three annual increments. The clear meaning of this is that the increases can only start at the time DNR gives notice of the fee increase and that it cannot be made retroactive.

45. The Department stated at the hearing that it would give some consideration to allowing three payments under the provisions of the statute. In its post-hearing comments, the Department clarified that by stating that, "In order to deal with the lessee's obligation to pay the rent difference, DNR would be willing to allow lessees who face large payments to pay the difference in equal annual increments over a three-year period if they so request." Ex. 37 at 2. However, the statute is not optional or dependent upon the lessees' ability to make large payments. Increases must be phased in by three annual increments. Secondly, it is not clear from the statement that DNR understands what an incremental phase-in is because they would still require the "difference" to be paid in equal annual increments. Lastly, the fact that the statute refers to an exception for lease rates being adjusted to reflect changes in the lease rates resulting from the rules refers to changes in the overall lease rate which has since been established by statute at five percent. To read it as applying to changes in individual lease rates would render the entire section meaningless.

46. The Administrative Law Judge finds that proposed rule 6122.0300, subp. 3, which allows retroactive lease fees to be based upon appraisals as of January 1, 1991, is contrary to Minn. Stat. § 92.46, subd. 3 (1994), and Minn. Stat. § 14.38 (1994) and that the Department has failed to demonstrate its statutory authority to adopt such a rule and

to demonstrate the need for or reasonableness of the rule. In order to correct the defect, a provision such as the following must be added to the subpart or as a separate subpart which states:

The lease fees established by these rules shall be effective for lease periods after the effective date of these rules. Any increased fee shall be phased in by three annual increments as required by Minnesota Statutes, section 92.46, subdivision 3.

47. Proposed Rule 6122.0300, subp. 4, is entitled Adjustment of Appraised Value of Leased Lots and states that a lot's appraised value may be adjusted without actual reappraisal by applying the Department of Revenue's annual assessment data over the appropriate time period. As explained in the SONAR, appraisals are relatively expensive and this method provides a reasonable and cost-effective method of making the five-year adjustments required by the statute.

48. Proposed Rule 6122.0300, subp. 5, states that the Commissioner shall determine when the appraised value of the lot shall be based on new appraisals and that the decision will be based upon staffing, the degree of fluctuation in real estate values and fiscal constraints. Again, this rule is necessary and reasonable because it provides an economical and appropriate means of determining the value of the lots. It is the Department's present intent to do reappraisals every ten years and do the adjustment based upon Department of Revenue data for the intervening five-year periods. The rule is necessary and reasonable as proposed.

49. Proposed Minn. Rule 6122.0300, subp. 6, provides that the Commissioner shall determine the appropriate method to use to appraise the leased lots. Subsequent subparts provide standards governing the types of appraisal and when they should be used. This rule is necessary and reasonable in order to allow the Department the authority to select the appropriate appraisal method.

50. Proposed Rule 6122.0300, subp. 7, requires the use of the mass appraisal method rather than individual leased lot appraisals "whenever practicable," and requires that mass appraisals be done by an appraiser in compliance with the Uniform Standards of Professional Appraisal Practice. Proposed Rule 6122.0300, subp. 8, provides that a lot may be appraised individually when the Commissioner has sufficient reason to believe the expense of single lot appraisals are warranted or the mass appraisal method is not applicable. Again, single lot appraisals must be done by an appraiser in compliance with the uniform standards.

51. The mass appraisal method is a standard appraisal method used to appraise multiple pieces of similar property. Each individual piece of property is appraised separately, but the same background and comparative data can be used for several pieces of property and the degree of analysis on each piece of property is less than that that would be done on an individual lot appraisal. In 1991, the Department had Dennis Jabs, a licensed appraiser, complete a mass appraisal of the leased lots.

The appraisals determined at that time have not yet been used because the lease rules have not yet been completed. As discussed above, it is the Department's intention to use the 1991 mass appraisals once these rules are adopted. The Department has not made the results of the 1991 appraisals known generally, although a few people who have called Ms. Kandakai have been informed verbally of the 1991 appraised value. Actually, the 1991 mass appraisals are still incomplete as the Department is still considering doing additional single lot appraisals for certain lots or lots on certain lakes. As part of the mass appraisal process, a number of lots were individually appraised to serve as benchmarks for the mass appraisal determinations. Likewise, when many of the lots were individually appraised from 1988 to 1993 for purposes of being sold, those appraised values were also sampled and compared to the mass appraisal values. According to Mr. Jabs, the mass appraisal values corresponded very well with the individual appraisals that were checked.

52. A majority of the public comments in this manner dealt with the unreasonableness of valuation using mass appraisal methodology, especially when compared to available single-lot appraisals. For example, John Johnson testified that the purchase price for his lake shore lot was \$11,000 and that the mass appraisal done for the lease purposes resulted in a valuation of \$15,800. T. 43-45.

53. Dick Parr has a lot on Hay Lake and objected to mass appraisals. He conducted appraisals for Ramsey County for nineteen years. He believes mass appraisals are inaccurate and should not be used. Mr. Parr had an individual appraisal done for his purchase in 1993 at \$15,500. The mass appraisal for 1991 has valued the property at \$17,500. T. 46-47. Mr. Jabs responded that mass appraisals are highly reliable, but admitted that by their nature they were not as accurate as single property appraisals. T. 47.

54. Vic Lilliancamp had his lake shore lot property assessed for purchase in 1993. The DNR assessed the value of the lot for sale at \$10,500. The 1991 appraisal of the land indicates an appraised value of \$17,700. He had the land privately appraised in 1986 as being worth \$4,000. T. 83.

55. While the several instances of unusually high valuations based on the 1991 mass appraisal exist, the general use of the appraisal method is necessary and reasonable. It is a standard and reasonable appraisal method and generally appropriate to use in situations such as the appraisal of 500 lake lots in northern Minnesota. The lots usually have many characteristics in common with other lots on the same lake or in the same area and it is therefore reasonable to use the method. The method requires, as do the proposed rules, that single lot appraisals be done when there are unique characteristics to a lot. Moreover, the appeal process established by the rules provides a fairly easy and economical method for the lessees to bring in evidence of the uniqueness of their own lots so that the appropriate adjustments can be made. The Department has demonstrated that proposed rule 6122.0300, subps. 7 and 8, are necessary and reasonable.



56. Proposed Rule 6122.0300, subp. 9, states that the Commissioner may rely upon the appraised value of lots that was determined for the lakeshore sales program from 1988 through 1993, and, whenever feasible, may assign the appraised value of a sale lot to similar lease lots located in the same plat or on the same lake. In response to the public comments, the Department, in its post-hearing comments, recommended that the originally proposed language be designated as subpart 9A and that a new subpart 9B be added to the rule as follows:

If the subject lot is a lot that was sold pursuant to Minnesota Statutes, section 92.67, then the basis for the appraised value for leasing purposes shall be the appraised value that was established for sale purposes. If the appraised value for sales purposes was determined for 1991, that value shall be the appraised value for leasing purposes. If the appraised value for sale purposes was determined for a year other than 1991, the appraised value shall be adjusted to a January 1, 1991, value based on the Minnesota Department of Revenue annual assessment data. The adjustment shall be in an amount equal to the percentage change in assessed value between the date of the sales appraisal and January 1, 1991.

The rule as modified is necessary and reasonable. The modification is not a substantial change.

57. Proposed Rule 6122.0300, subp. 10, states that the minimum appraised value of leased lots 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 a duplication of language found in the lease statute. It is usually not desirable to simply repeat statutory language. However, in this case, it is helpful to lessees and appraisers to have all of the standards effecting appraised values set forth in the rule and it is therefore necessary and reasonable.

### Expanding Lot Sizes

58. Surveys were done in the late 1980's of all the leased lots. Land that was adjacent to leased lots but was not itself under lease was added to some of the leased lots. This adjustment of lot size was done without input from lessees. In many cases, the land added is not suitable for designation as an individual lot, not suitable for placement of a cabin or outbuildings, and in a number of cases, not suitable for anything because the land was swamp. Nonetheless, the lots were appraised under a mass appraisal method in which Mr. Jabs placed 60% of the valuation from within the value range of comparable lots on lot size and amount of lake shore frontage. Ex. 28. Another 25% of the valuation was the lot's overall quality relative to the other lots in the comparable range.

59. One case of added land was presented by C.A. Fortier. His leasehold, Lot 1 on Midge Lake, was extended on the other side of the access roadway to reach Little

Midge Lake. Ex. 27. The Department's action appears to have almost doubled the size of Lot 1 and added shoreline frontage to that lot. Mr. Fortier characterized the additional land as "wetlands and undesirable shoreline." Similarly, Julie Crapser, in a letter of August 1, 1995, to the Department, which she submitted as a post-hearing exhibit, Ex. 30, stated:

Add the fact that the DNR changed the size of our lot without so much as a by-your-leave, doubling the size of our lot (DNR simply tacked on a piece of junk land along side our lot so they wouldn't be stuck with it) and THEN uses that lot size to base their appraisal on! UNFAIR!!!

60. In its post-hearing comments, Ex. 37, the Department replied:

C.A. Fortier (and Julie Crapser) raised the issue that the lots they lease were reconfigured during the survey process that was done to be able to sell the lots. They are worried that the reconfiguration will lead to a higher appraised value, thus a higher rent, than if the lot had not been reconfigured. In their specific cases, we believe their worries are unjustified because the extra land does not appear to have a significant effect on the appraised value.

As was mentioned, the decision to resurvey the lakeshore lots was done because the lakeshore lots were going to be auctioned off. Some lessees chose not to try to buy their lots, but all lessees were notified of the surveying activity on lakeshore lots in 1987. At that time most of DNR's plats contained various outlots, additional state-owned land, and public access sites. When lakeshore lands were surveyed, wherever it was possible additional land was added to existing leased lots to try to provide conformance with zoning requirements. This meant that after the surveys were completed a large number of lakeshore lease lots were longer or wider. This addition of land, in many cases, would not increase the value of the lots especially when lots were made longer. Generally, the value of a lakeshore lot is based on front feet. In the case of Midge Lake, the lots were made longer and contained less frontage. Our analysis of the appraisals on Midge Lake for sale purposes in 1993 indicates that the appraisals did not reflect an increased value due to the lots having access to Little Midge Lake. An appraisal for lease purposes would more than likely have a similar reflection. On Blind Lake where Julie Crapser's lot is located, unusable land was added to the frontage. In this situation the value of the frontage would be adjusted downward when compared to other lots.

We believe that any significant change in the value of Julie Crapser's lot and C.A. Fortier's lot is due to the fact that the lots were generally worth more in 1991 than in 1986. In either case, the rules provide a method

for a lessee to challenge the lot's appraised value via the appeals process.

61. As indicated above, the formula used by Mr. Jabs in his mass appraisal placed a large portion of the valuation on lot size and the amount of lakeshore frontage, contrary to the assertion of the Department. Nonetheless, the mass appraisal method does look to some degree to the overall quality of the property and the addition of the lands to the lots should not have a great impact upon their value. Obviously, the land added was of lesser quality and that should be reflected in the appraisals. DNR, as landlord, had the right to specify what property was included in the leases at the time of their renewal. As stated above, the appraisal method set forth in proposed rule 6122.0300, is necessary and reasonable, as modified. If it works correctly, it should provide only the appropriate value for the added land.

#### Proposed Rule 6122.0400 - Appeals

62. The purpose of this rule part is to set forth the procedure for a lessee to challenge the appraised value established for the leased lot, and thereby, the lease fees to be paid. It establishes a three-step process beginning with an informal and inexpensive written request to the Department.

63. Proposed 6122.0400, subp. 1, Right to Appeal, states that a lessee may appeal the appraised value when the lessee has good cause to believe the value is in error, that request for appeal must be signed by all parties to the lease, the lessee must follow the steps outlined in this part, that a lessee must pay the annual lease fee while the appeal is being decided and that if the appeal results in a lower lease fee than paid, the Department will issue a credit to the lessee's account. The proposed rule also states that the lessee has 45 calendar days from the date of mailing of notification of a lease fee adjustment to appeal the valuation and that further appeals must be made within 45 days following the notification of the decisions under the prior step.

64. The proposed rule requires that requests for appeal must be signed by "all parties" to the lease and all parties having a property interest in the improvement on the lease, including contract vendors and vendees. While nobody objected to this provision, it could be an unnecessary burden and difficult to meet when interests are held by, for example, several family members. In the SONAR, the Department explained that its experience shows that such persons frequently disagree among themselves and that this provision will ensure that all the parties agree to appeal and will abide by the Commissioner's or the arbitrator's decision. For that reason, this particular provision is necessary and reasonable. However, the reference to "all parties" to the lease would include the DNR itself as the lessor. While this defect is not significant, it would be more correct to refer to "all parties to the lease other than the Commissioner."

65. Many people objected to having to pay the increased lease fees during the pendency of an appeal. This was particularly so based upon the fact that the Department intended to collect fees retroactively to 1991, which has previously been determined to be invalid. For example, Marvin Johnson testified at the hearing and submitted a post-hearing comment, Ex. 31. In his case, his lot was appraised in 1993 for sale purposes at \$4,800. He was informed by Ms. Kandakai by telephone, though she refused to send a written document, that his 1991 mass appraisal value was \$15,900. Using the 5 percent lease rate of the statute, his annual lease fee based upon the sale appraisal would be \$240 per year while the lease fee based upon the mass appraisal would be \$795 per year, a difference of \$550 per year. If the lease rates were established retroactively to 1991, that would be a difference of \$2,775. However, it must be noted now that the Department has proposed that the sale appraisals be used if they are available so that the difference would not exist. Nonetheless, the potential does exist that the amount to be refunded would exceed the annual amount determined after the appeal.

In response to Mr. Johnson's comment, the Department proposed to modify this provision of the rule to read as follows:

If the appeal results in a lower lease fee than paid, the Department shall issue a credit to the lessee's account in an amount not to exceed the current year's rent and issue a refund for any balance.

Ex. 37. As modified, the rule reasonably balances the interests of the lessees and the Department and is necessary and reasonable. This finding is specifically made in consideration of the fact that there will be no retroactive lease fee increases as originally proposed by the Department and that lease fee increase will be effective only on or after the date of notice of the lease fee increase and will include the three-year phase-in required by the statute.

66. Proposed Rule 6122.0400, subp. 2, describes Step 1 of the appeal. In Step 1 of the appeal process, the lessee is allowed to submit a written appeal to the Department stating its reason for requesting a review of the appraised value. The rule suggests that the documentation may include recent comparable sales data, an appraisal report, or other market evidence. An appraisal is not required, but is optional at this step of the process. The Department expects that most of the appeals will be resolved at this step. There was some concern expressed about the fairness of the process, but it is difficult to imagine a better or more efficient process than that established by the rule. It is necessary and reasonable as proposed.

67. Proposed Rule 6122.0400, subp. 3, describes Step 2 of the appeal. It is another written appeal addressed to the Commissioner stating the reason for disagreement or objection, but which must include an appraisal of the leased lot by

licensed appraiser. This step will require the payment of the appraiser by the lessee. The Department will review the appraisal and make a decision as to whether to modify the appraised value of the lot. While this step does require the lessee to spend some money, it is necessary and reasonable. It provides a method of providing evidence of the lot's value from an independent and qualified expert.

68. Proposed Rule 6122.0400, subp. 4, describes Step 3 of the appeal. It is binding arbitration before an independent review appraiser. The lessee and the Commissioner may agree to waive a hearing before the arbitrator and simply submit their appraisals to the arbitrator for review and decision, or they may agree to have a hearing before the arbitrator at which they submit their appraisals and additional evidence. The rule requires the cost of the arbitrator to be shared between the Department and the lessee equally. This is a fairly expensive process, but if the matter has not been resolved in the prior steps, it is an appropriate and reasonable method of resolving the dispute. The rule as proposed is necessary and reasonable.

69. As discussed above in Finding No. 26, the lease statute requires the rules to provide a method to appeal the lease rates as well as the appraised value. While this is not a defect on the proposed rules, some of the provisions in part 6122.0400 could be modified to refer to the appeal of the appraised value of the leased lot and the lease fee, and thus comply with the statute. Lease fee errors should generally be related to computational mistakes and could reasonably be limited to Step No. 1 of the appeal. Thus, proposed rule 6122.0400, subps. 1 and 2, should be so modified.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### CONCLUSIONS

1. The Minnesota Department of Natural Resources ("the Department") gave proper notice of this rulemaking hearing.
2. The Department has substantially fulfilled the procedural requirements of Minn. Stat. §§ 14.14, subds. 1, 1a and 14.14, subd. 2 (1992), and all other procedural requirements of law or rule so as to allow it to adopt the proposed rules.
3. The Department has demonstrated its statutory authority to adopt the proposed rules, and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1, 14.15, subd. 3, and 14.50 (i) and (ii) (1994), except as noted at Findings No. 30 and 46.
4. The Department has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, subd. 2 and 14.50 (iii) (1994), except as noted at Findings No. 31 and 46.

5. The additions or amendments to the proposed rules suggested by the Department after publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. §§ 14.05, subd. 2 and 14.15, subd. 3 (1994), and Minn. Rules pts. 1400.1000, subp. 1, and 1400.1100 (1991).

6. The Administrative Law Judge has suggested action to correct the defects cited in Conclusions No. 3 and 4 as noted at Findings No. 30, 31, and 46.

7. Due to Conclusions No. 3 and 4, this Report has been submitted to the Chief Administrative Law Judge for his approval pursuant to Minn. Stat. § 14.15, subd. 4.

8. Any Findings which might properly be termed Conclusions are hereby adopted as such.

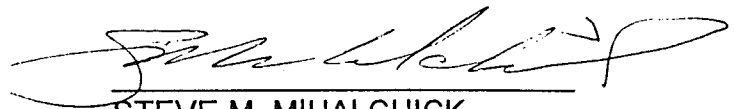
9. A Finding or Conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Department from further modification of the proposed rules based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### RECOMMENDATION

IT IS HEREBY RECOMMENDED that the proposed rules be adopted with the modifications suggested above.

Dated this 22<sup>nd</sup> day of April, 1996.



STEVE M. MIHALCHICK  
Administrative Law Judge

Reported: Tape Recorded; Transcript Prepared, Lynn Deines, Court Reporter