

# Summary and Guidance for Evaluation of Proposed Policy Changes

## REGENTS' POLICY PART V – FINANCE AND BUSINESS MANAGEMENT Chapter 05.11 – Real Property

The policy changes are meant to address state statute changes and improve clarity:

*Recommendations by the regents in attendance at the August 12, 2014 work session and comments received prior to that meeting have been incorporated into this version of the policy.*

### **PO5.11.010. Purpose.**

*No changes proposed.*

### **PO5.11.020. Definitions.**

Lists key definitions governing how to collect data, spend money and think about facilities. Changes made ensure consistency of language and intent with regard to industry practice, university and system office academic and strategic planning, and external communications with OMB and the legislature.

- A. Development Plan
- B. Development Project
- C. Disposal Plan
- D. Educational Facilities
- E. Educational Property
- F. Investment Property
- G. Trust Land
- H. University Real

*Proposed wording change to definitions B, C, and G for added clarity.*

### **PO5.11.030. Fiduciary Responsibility.**

Designates the chief financial officer as the sole authority for delegation of approval authority to others.

*No changes proposed.*

### **PO5.12.040. Classification of Real Property.**

*No changes proposed.*

### **PO5.11.041. Plans and Reports for University Real Property.**

*No changes proposed.*

### **PO5.11.042. Development Plan and Disposal Plan Notice Requirements.**

*Conforms this section to be consistent with the Supreme Court ruling which overturned the detailed requirements of this section originally contained in*

*AS14.40.366. The only remaining requirement in law is that the university must provide public notice. Removing these details that are no longer required allows the administration to have a more responsive and cost effective public notice process as appropriate to each transaction.*

**PO5.11.043. Offer of First Refusal to Nearest Municipality Pursuant to AS.14.40.366.**

*This whole provision can be removed as a result of the courts arguably striking down the related portions of AS14.40.366. (As per M. Hostina)*

**PO5.11.044. Fair Market Value and Other Considerations.**

*Proposed change clarifies that this analysis is the responsibility of the administration, not just the system office chief finance officer.*

**PO5.11.050. Real Property Acquisitions.**

*No changes proposed, one sentence is rearranged for improved clarity.*

**PO5.11.060. Negotiation, Approval and Execution of Real Property Transactions.**

*No changes proposed, statute reference added for clarity.*

**REGENTS' POLICY**  
**PART V – FINANCE AND BUSINESS MANAGEMENT**  
**Chapter 05.11 – Real Property**

**P05.11.010. Purpose and Scope.**

- A. This chapter establishes guidelines for the prudent management, including trust management, and use of all university real property.
- B. Except as provided in C. of this section, this policy applies to all real property owned by the university or in which the university has a substantial beneficial interest.
- C. This policy does not apply to university acquisitions of certain space leasehold interests that are administered in accordance with university regulation relating to procurement or to the development of educational facilities. Any third party use of such facilities is subject to this chapter.

(06-08-06)

**P05.11.020. Definitions.**

In this chapter, unless the context requires otherwise,

- A. “development plan” means a brief, general description of the major actions to be taken by or on behalf of the university as part of a development project, to include location, type of development, approximate acreage, and property map, and any amendments to the development plan.
- B. “development project” means a substantial, purposeful alteration of investment property. “Development project” includes activities occurring on investment property such as subdivision and related construction activities; commercial timber harvest, other than to clear the land or for personal use; materials extraction for commercial purposes; oil and gas leasing, exploration or development; mining leasing, exploration or development; or construction of significant structures, not including repairs, maintenance, expansion, or upgrade which does not materially change the essential character of the structure. “Development project” does not include: the grant of an easement or right-of-way or related construction activities; the development of educational facilities; activities to enhance the value of investment property where such activities are minor or incidental to the development of investment property; including such as but not limited to clearing land, investigating soils, incidental filling, drilling water wells, constructing driveways, installing utilities, landscaping, and-or minor construction; and “Development project” also does not include environmental remediation or other actions that are specifically required by government agencies.
- C. “disposal plan” means a brief, general description of university real property including location, acreage, property map, minimum price and the terms and conditions of the disposal, if available, of the real property for which a sale, lease, exchange or transfer of interest, excluding easements and rights-of-way, is proposed by the university, which

~~includes location, acreage, property map, minimum price, if appropriate, the terms and conditions of the disposal, and any amendments to the disposal plan.~~

- D. “educational facilities” means campus facilities, buildings, improvements, fixtures and major equipment items situated on educational property.
- E. “educational property” means all university real property designated for education, research, related support, or administrative purposes.
- F. “investment property” means all university real property not designated as educational property.
- G. “trust land” means all land and interests in land directly or indirectly acquired in connection with federal grants under the March 4, 1915 and January 29, 1929 Acts of Congress ~~and pursuant to AS 14.40.365~~, or otherwise received by or granted to the board for purposes of funding the land-grant endowment ~~trust fund~~ established pursuant to the 1929 Act of Congress and AS 14.40.400. For purposes of this definition, “indirectly acquired” land and interests in land include replacement land acquired from the State of Alaska and land exchanged for trust land. The ~~board~~Board of Regents, as a constitutionally created instrumentality of the State of Alaska, has been named by the legislature as trustee and holds such land in trust for the exclusive benefit of the university.
- H. “university real property” means all land and interests in land of any kind or nature, including all appurtenances, where title is held by either the board or the university, whether acquired through purchase, grant, gift, exchange, or other means.

(06-08-06)

#### **P05.11.030. Fiduciary Responsibility.**

- A. The board affirms its fiduciary responsibility to prudently manage all university real property for the exclusive benefit of the university, subject to restrictions imposed by law, conveyance documents or gift instruments.
- B. All trust land shall be managed in accordance with sound trust management principles, consistent with the specific fiduciary duties and legal obligations applicable to such land. The chief finance officer is charged with the responsibility of managing trust land in a manner consistent with the fiduciary duties and legal obligations of the board, and shall be directly accountable to the board for the management of such land.

(06-08-06)

#### **P05.11.040. Classification of Real Property.**

The chief finance officer shall designate which university real property parcels will be managed as investment property and which will be managed as educational property. Such designations will not preclude the compatible use of such university real property parcels for both educational and investment purposes. The president will resolve any disputes regarding classification of properties for investment or educational purposes.

(06-08-06)

#### **P05.11.041. Plans and Reports for University Real Property.**

The ~~chief finance officer~~Office of Land Management shall:

- A. develop, maintain, and periodically update a general strategic plan for the comprehensive management and development of investment property that includes a statement of the goals and objectives to be accomplished;
- B. prepare and publish proposed development plans that describe development projects being considered for university real property;
- C. prepare and publish proposed disposal plans that describe university real property parcels being considered for disposal by sale, lease, exchange or transfer of interest; and
- D. prepare an annual report for the board that contains a summary of the financial performance of the university's land management operations for the prior fiscal year including a summary of receipts, land sales and acquisitions, and land-grant endowment trust fund balances. The report shall distinguish between receipts from trust land and from all other university real property.

(06-08-06)

#### **P05.11.042. Development Plan and Disposal Plan Notice Requirements.**

The ~~chief finance officer~~Office of Land Management shall provide public notice and seek public comment prior to approval of development plans and disposal plans. Notice shall be provided not less than 30 days before the proposed action, ~~and such notice shall be:~~

- ~~A. sent to local legislators, municipalities, and legislative information offices in the vicinity of the action and at other locations as the chief finance officer may designate;~~
- ~~B. published in newspapers of general circulation in the vicinity of the proposed action at least once each week for two consecutive weeks; and~~
- ~~C. published on the State of Alaska Online Public Notice Internet Website and the University of Alaska Land Management Internet Website.~~

(06-08-06)

#### **~~P05.11.043. Offer of First Refusal to Nearest Municipality Pursuant to AS 14.40.366.~~** (Deleted)

- ~~A. Before the university offers a parcel of land for sale that was acquired under AS 14.40.365, the chief finance officer will notify the closest municipality of the intention to sell the parcel of land and will, pursuant to AS 14.40.366, offer to such municipality the right to purchase the parcel of land on the terms and conditions applicable to the offering, for a period of 30 days.~~

~~B. As used in this section, “offers a parcel of land for sale” means the offer to sell the fee title interest in the surface estate of a parcel of land. It does not include the offer to lease or develop such land, or the sale, lease, or development of natural resources, including without limitation timber, sand, gravel or other materials, coal, ores, minerals, fissionable materials, geothermal resources, and fossils, oil and gas on or in such land. It also does not include the issuance of any permit, easement, license, contract, right of way, or other partial interest in the surface estate of such land.~~

~~(06-08-06)~~

#### **P05.11.044. Fair Market Value and Other Considerations.**

In exercising its fiduciary responsibility, the board must administer university real property for the exclusive benefit of the university. In the absence of conflict with the board’s fiduciary duties and responsibilities, the ~~chief finance officer~~administration will consider the following principles in managing and developing university real property:

A. Fair Market Value.

Disposals of university real property interests shall be at not less than fair market value, and acquisitions of real property or interests shall be at not more than fair market value, unless a direct and substantial benefit to the university can be documented, such as when adjacent university property will become more accessible, marketable, or valuable due to increased availability of utilities or access, or when the transaction offers other tangible benefits to the university. Reasonable fees may be established for routine transactions such as permits and temporary uses of university real property.

B. Economic Feasibility.

Development projects shall not be undertaken unless the estimated return exceeds the estimated cost of development in an amount commensurate with the risk involved or the project will position the university to benefit from future opportunities.

C. Legally and Environmentally Sound Development.

University real property shall be developed consistent with local zoning and platting ordinances and in an environmentally responsible manner, consistent with applicable environmental laws and regulations, including those governing wetlands, water and wastewater, forests, wildlife and habitat, and the coastal zone.

D. Jobs for Alaskans.

To the extent economically feasible and prudent, development projects will provide an opportunity for the creation of jobs for Alaskans by encouraging development of in-state value-added industries.

E. Access Through University Real Property.

Subject to receipt of acceptable indemnification or tort immunity, the chief finance officer shall:

1. recognize, or provide alternative access for, RS 2477 rights-of-way and existing state-identified historic trails that cross university real property; and
2. consider the grant of access easements and rights-of-way at fair market value, including any diminution of value, provided such easements and rights-of-way do not interfere with the ability to develop or use such real property or other university real property.

F. Reasonable Public Uses of University Real Property.

To the extent practicable, the university shall permit reasonable activities of the public on university real property that do not interfere with the university's use or the management of such real property.

G. Compatible Research and Educational Uses of Investment Property.

Investment property shall be made available to faculty and staff for research and educational purposes provided such use is compatible with development plans and disposal plans and approved by the chief finance officer. Academic units will be responsible for all costs and liabilities associated with such research/educational use.

(06-08-06)

**P05.11.050. Real Property Acquisitions.**

A. Campus Land Acquisitions.

In order to provide an adequate land base to support current and future campus programs, the chief finance officer shall pursue strategic land acquisitions that meet the goals of the university's educational mission. To facilitate such real property acquisitions, the chief finance officer shall consider relevant campus land acquisition plans, as approved by the board as part of campus master plans.

B. Federal and State Land Grants.

~~To rectify inequities in the land grants to the State of Alaska compared to other states for their universities, the~~ The board will seek to acquire additional real property through state and federal grants in order to rectify inequities in the land grants to the State of Alaska compared to other states for their universities. When selecting new grant lands, the chief finance officer will attempt to acquire parcels where the selection:

1. is consistent with and enhances the goals of the university's educational mission;
2. is located near communities that have a need for expansion and economic development, provided that such selections do not conflict with selections under the Municipal Entitlements Act;

3. enhances or diversifies the university real property portfolio; and/or
4. has potential for residential, recreational or commercial development, timber harvesting, materials extraction, oil and gas development or mineral development.

C. Other Real Property Acquisitions.

The chief finance officer shall consider acquisitions or exchanges of property adjacent to existing university real property, when such property consolidates university real property holdings or enhances the access or development potential of other university real property. When economically feasible, and in the university's best interests, the chief finance officer may acquire or invest in real property that will enhance the university real property portfolio.

(06-08-06)

**P05.11.060. Negotiation, Approval, and Execution of University Real Property Transactions.**

All university real property transactions and agreements are subject to the following:

- A. Only individuals authorized under AS 36.30 to execute space leases or in writing by the chief finance officer to negotiate real property transactions may do so on behalf of the university or the board. These real property transactions include, without limitation, any transaction involving lease, sale, cooperative development, right of occupancy, use, permit, license, or contract relating to any real property, or any other real property transaction whether or not similar to the foregoing. All other persons or university officials discussing prospective real property transactions with potential third parties must disclose that they do not have authorization to negotiate or commit the university or the board to any transactions, terms, conditions, or diminution of an interest in real property.
- B. The board shall approve:
  1. strategic plans for the management and development of Investment Property;
  2. development plans that consist of:
    - a. subdivisions that will result in the development of 10 or more lots;
    - b. timber sales, unless the president determines the sale will have minimal impact;
    - c. material extractions that are anticipated to result in the sale of 100,000 cubic yards or more of material from a new source; or
    - d. oil and gas leases and mining leases encompassing 5,000 or more acres;
  3. development projects that are expected to result in disbursements of \$1,000,000 or more in value;

4. real property transactions that have not been approved as part of a development plan and are expected to result in receipts or disbursements of \$1,000,000 or more in value; and
  5. Real property transactions that require the subordination of an interest in university real property of \$1,000,000 or more in value.
- C. The chief finance officer or the officer's designee shall approve the following:
1. disposal plans;
  2. development plans that do not require the approval of the board ;
  3. development projects that are expected to result in disbursements of not more than \$1,000,000 in value;
  4. real property transactions that have been approved by the board as part of a development plan or are expected to result in receipts or disbursements of not more than \$1,000,000 in value;
  5. Real property transactions that require the subordination of an interest in university real property of not more than \$1,000,000 in value; and
  6. Project cost increases for development projects previously approved by the board, not to exceed 20 percent of the original project cost estimate.
- D. The chief finance officer is authorized to execute all properly approved real property transactions and may delegate signatory authority to other university officials, provided that any such delegation shall be in writing. Any further delegation must be approved, in writing, by the chief finance officer.

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