REPORT OF THE MUNICIPAL MASTER PLANNED DEVELOPMENT STUDY COMMITTEE

DECEMBER 1, 1989

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MUNICIPAL MASTER PLANNED DEVELOPMENT STUDY COMMITTEE

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I. INTRODUCTION/BACKGROUND

The catalyst for the HB 2019 Committee occurred in early 1987 when the Land Department instituted a series of meetings with staff from John F. Long Properties and the Phoenix law firm of Streich, Lang, Weeks and Cardon, and the Attorney General's office, in an effort to act on John F. Long's application to plan and develop a self-contained community in rural north central Maricopa County.

Since this was the first self-contained community application proposed under Article 5.2 of the Urban Lands Act, the goal of this series of meetings was to perform an in-depth review of the self-contained community statutes in order to gauge the viability and long-term financial impact of such a project, and to determine the requisite steps to implement a self-contained community on Trust land.

A further topic of discussion during this series of meetings was the implementation of planned infrastructure prior to Trust land disposition. The State Land Department is currently unable to implement a master planned development because of the necessity to provide for the construction of infrastructure associated with such a development. In the past, the Department has been criticized for disposing of planned Trust land in parcels that are too large. The criticism of selling land at wholesale prices (too cheaply) centered on those parcels purchased "today" but not ready for development for many years and without any provision for the infrastructure which will spur the development of this planned Trust land. Historically the value of land increases when infrastructure is installed and it has been the parcel end-users or developers that have captured this increased value rather than the Trust.

It became apparent that several issues regarding Article 5.2 needed extensive clarification and amendment. These amendments were proposed in conjunction with House Bill 2019 and became part of a session law that dealt with master planned developments on State Trust land within a municipality. This session law also required the State Land Commissioner to empanel a committee representing a broad cross-section of public and private sector development representatives to study four basic issues:

1. The definition of master planned development.

2. The methodology and funding of the planning phase.

3. The phasing of development and disposition of state trust lands under master development.

4. Issues related to infrastructure.

The HB 2019 Committee has been meeting on a regular basis since September, 1988, and has extensively studied and discussed the HB 2019 issues, as well as several infrastructure implementation "tools." This report serves to summarize the Committee's discussion, findings and final recommendations on each of the four HB 2019 issues, and to present to the Legislature several statutory change packages that will facilitate the implementation of master planned developments for Trust land located within a municipality.

II. HB 2019 COMMITTEE FINAL RECOMMENDATIONS

A. Issue #1: Definition of Master Planned Development

1. An approved development plan which includes a proposed master plan area must meet the following criteria:

    a. Is within the corporate boundaries of a city or town;

    b. Has inadequate infrastructure to utilize state land for its highest and best use; and

    c. Is a minimum of 160 acres in size.

2. A development plan which includes a master plan area may include:

    a. Proposed design guidelines and covenants, conditions and restrictions (CC&R's);

    b. Proposed infrastructure planning, implementation and funding;

    c. Proposed provisions for construction, maintenance and enforcement of a community identity package;

    d. Proposed phasing, timing and method of disposition and infrastructure placement;

    e. Conformance with municipal development ordinances, in addition to those requirements pursuant to A.R.S. §37-335 (I) and (M);

    f. Provisions for membership in a master property association which is governed by a board of directors and has the responsibility for the implementation and enforcement of the master plan area;

    g. Proposed marketing program description to promote the master plan area and provisions for its funding.

B. Issue #2: **Methodology and funding of the planning phase**

1. Legislature should adopt proposed amendments to Article 5.1 of the Urban Lands Act to provide a framework for preparation of a development plan which may include a master plan area.

2. State Land Department should utilize Article 5.1, if amended by the Legislature, to facilitate development plans which include master plan areas on Trust land.

3. State Land Department should utilize planning permits, currently allowed in Article 5.1, as the means for completing and funding the master planning phases.

4. Master plan permit applicants may be required to pay costs associated with the review and analysis of the application and that these costs are not reimbursable.

C. Issue #3: **Phasing of development and disposition of State Trust lands under master development.**

1. State Land Commissioner should have broader authority to enter into agreements that provide for implementation of master plan areas including the authority to approve subsequent appraisals and sales under a participation contract.

2. A development phasing plan should be mandatory in any master plan agreement.

3. Participation contract applicants may be required to pay costs associated with the review and analysis of the application and these costs are not reimbursable.

D. Issue #4: **Issues related to infrastructure.**

1. State Land Commissioner should have broader authority to enter into infrastructure implementation agreements in conjunction with master plan areas, and to negotiate the level of reimbursement for approved infrastructure and land acquisition on a case-by-case basis.

2. Legislature should adopt proposed legislation which will facilitate the use of participation contracts and infrastructure contracts used to implement master planned developments on Trust land.

3. Legislature should adopt proposed legislation which will facilitate the use of community facilities districts, provided that community facilities districts prove to be successful over a period of years and adequate safeguards are included in the proposed legislation to protect the interests of the Trust.

E. General Recommendation

1. Legislature should provide an increased level of staff and resources to the State Land Department to manage and monitor master plan agreements, long-term leases and infrastructure implementation agreements issued in conjunction with development plans which include master plan areas.

III. SUMMARY OF DISCUSSION AND FINDINGS FOR HB 2019 ISSUES

A. Issue #1: Definition of Master Planned Development

1. Discussion

The Committee's discussion on this HB 2019 issue centered on a paper addressing this issue prepared and presented at the request of the Committee by Committee member Bill Larson. This paper encompassed several topics including a number of possible definitions for master planned development, the timing of annexation and zoning for master planned developments and the minimum and maximum size for a master planned development. The paper also included a listing of Arizona counties and communities having master planning ordinances or zoning procedures that are compatible with the planning permit scope of work addressed in Articles 5.1 and 5.2 of the Urban Lands Act.

The possible definitions of master planned development resulted from a review of master planning and zoning ordinances from municipalities in Arizona, California, Colorado and Florida. Definitions varied widely from ordinance to ordinance, but similarities were extracted and were recomposed into the following definition for master planned development: "an integrated development plan which responds to social, economic and physical determinants of the site, while maximizing aesthetics through flexible design criteria."

Another topic contained in the paper, the timing of annexation and zoning for a master planned development, generated a great deal of discussion by the Committee. This discussion centered on whether the State's planning process could begin while all or a part of a master planned development parcel is located in an unincorporated area, and whether "hard" zoning for an entire master planned development should be obtained prior to the approval of the master plan by the State Land Commissioner.

The final topic encompassed by the paper and discussed by the Committee dealt with both the minimum and maximum size of a master planned development. A range of sizes were considered, and while a minimum size of 160 acres was the consensus of the Committee, it was decided that the maximum size for a master planned development should be predicated upon sound planning principals and market trends.

A related topic that generated a great deal of discussion by the Committee, but not covered by Mr. Larson's paper, was the difference between a master planned development and a master planned community. Many ingredients usually included in a master planned development are also common to master planned communities, such as community identity packages, urban design criteria and master infrastructure plans. From a definitional standpoint, master planned developments are generally smaller in scale but achieve the same goal as master planned communities.

As the Committee worked to finalize a definition of master planned development to address this issue, Mr. Larson also prepared and presented to the Committee a menu of items that could be included in a community identity package. This listing was grouped into several categories including architecture, landscape, lighting, street furniture, walls and signage. Mr. Larson hypothesized that this listing could be used by master developers when preparing a concept statement for the State's planning permit application.

2. Findings

After several discussions regarding this HB 2019 issue, the Committee determined that a master planned development must meet the following criteria:

a) is within the corporate boundaries of a city or town by the time zoning is obtained, if necessary, and the final development plan is approved by the Commissioner;

b) has inadequate infrastructure to utilize State land for its highest and best use, and;

c) is a minimum of 160 acres in size.

The Committee also determined that a development plan could contain one or several master plan areas, and that each master plan area may include design guidelines, plans for implementation and funding of infrastructure, a community identity package with provisions for implementation and enforcement, and a common marketing program with provisions for funding.

Finally, the Committee decided that the State's planning process for a master plan area, i.e., designation as suitable for urban planning and general planning, could be accomplished even though all or part of the master plan area had not yet been annexed. The Committee noted the

importance of coordinating these initial planning steps with the respective municipality. The Committee also decided that the third step in the State's planning process, development planning, could also commence, but determined that the entire master plan area must be annexed prior to the approval of zoning. The timing of annexation was deemed very crucial by the Committee to promote consistency during both planning and implementation of a master plan area on State Trust land.

B. Issue #2 Methodology and funding the planning phase

1. Discussion

The Committee's discussion on this issue initially centered on a draft Article 5.3, which was formulated by staff to serve as a methodology for planning master plan areas and to incorporate various means of implementing infrastructure. After several meetings, the Committee decided to extract the infrastructure implementation language so that the draft Article 5.3 dealt solely with the planning methodology for a master plan area. Once this extraction was made, it became evident that much of the text of the draft Article 5.3 was a repeat of the existing Article 5.1 with a master planning overlay consisting of terms and concepts germane to master plan areas.

After further debate, the Committee instructed staff to draft amendments to the existing Article 5.1 which would enable the State to prepare master plan areas under a planning permit or contract, or to utilize some master plan area components, i.e., provisions for implementation and funding of infrastructure, for projects completed or to be completed under Article 5.1. These amendments were then drafted and submitted to the Committee for further review and analysis.

Also discussed by the Committee were the advantages and disadvantages of utilizing planning permits or contracts to formulate development plans with one or several master plan areas. The biggest advantage to utilizing planning permits also turned out to be the biggest disadvantage to utilizing contracts to formulate these development plans: the availability of State funds. Under a contract, State appropriated funds are used to hire a planning and engineering consultant team to prepare a development plan according to a State-prepared Scope of Work. Under a planning permit, however, these planning costs are borne by the planning permittee also using a State-prepared Scope of Work with no State funds required.

The lack of State funds also spawned a discussion regarding the Land Department's current staffing levels and staff expertise and whether staff had the ability to review and analyze planning permit applications that will

be much more complex than those applications submitted for current planning projects completed under the existing Article 5.1. The Committee discussed this lack of resources and the need for additional analysis to be completed by outside consultants expert in the field of developer financial capabilities and master planned development feasibility.

2. Findings

Upon further review and analysis, the Committee determined that the amendments to Article 5.1 dealing with master plan areas would result in less confusion for those individuals using the statutes, and would clarify master planning techniques and components to be used for projects completed or to be completed under the existing Article 5.1.

The Committee also determined that the planning phase and its funding should be accomplished through the issuance of a planning permit with the provision that planning could be completed utilizing State appropriated funds if such funds were to become available. The Committee concluded that utilizing the existing planning permit or contract processes were adequate and would require only minor modification to the State's application forms.

Finally, the Committee recognized that applications to formulate plans for a master planned development would be more complex and would require more staff or resources to complete the review of these types of applications. In lieu of more staff and resources being appropriated by the Legislature, the Committee determined that each applicant should pay for the review and analysis of his application and that these costs would not be considered to be reimbursable. If the applicant was not willing to pay these costs, then the application would be rejected. These findings were also incorporated into the amendments to Article 5.1.

C. Issue #3: **Phasing of development and disposition of Trust lands under master development**

1. Discussion

At the request of Committee member Don Viehmann, Grady Gammage of Gammage & Burnham prepared and presented a paper to the Committee on the advantages of preparing master plans for large blocks of Trust land located adjacent to many of Arizona's cities and towns. Master plan areas would work well on Trust land planning projects for several reasons, i.e., higher land values are achieved, land use assurances are provided to potential end users and the State would be able to lease or sell smaller "development ready" parcels and be able to capture land values closer to

the retail value of the Trust land. In addition, master plan areas could be driven by large blocks of either commercial or residential land, but would work best on large residential projects surrounding a large commercial core.

The Committee then discussed disposition and development in the context of master planned developments. This discussion centered on master planning and the phased construction of infrastructure. Because all master plans contain this infrastructure component, Trust land dispositions could become a function of development phasing and infrastructure availability and could better respond to changing market conditions and trends over the life of the master plan.

2. Findings

The Committee determined that implementation of a master plan area is the most efficient way to get infrastructure installed for Trust land projects, and that value is added to land when infrastructure is installed prior to lease or sale. In order to facilitate dispositions based on the availability of infrastructure, the Committee determined that the planning phase for master plan area must address infrastructure installation, reimbursement and disposition schedules.

In spite of the fact that master plan areas would include components addressing infrastructure phasing and funding, the Committee recognized a potential problem that could arise in the event that the State and the master developer would want to construct infrastructure before the respective municipality is ready to accept the maintenance responsibility for that infrastructure. To address this potential problem, the Committee determined that the close relationship between the Land Department and the State's municipalities, which is fostered by the Urban Lands Act, would alleviate a problem of this nature during the planning phase. Once the planning phase has been completed, the Land Department, the master developer and the affected municipality would all know what to expect regarding infrastructure plans and implementation schedules.

D. Issue #4: **Issues related to infrastructure**

In order to fully address this issue, the Committee decided to explore and study a number of "tools" that would, if utilized, result in the installation of infrastructure for master planned developments prior to disposition. Since one of the Committee's findings under issue #3 was that value is added to land when infrastructure is installed, the Committee focused on a discussion of various tools as a way to garner these added values upon disposition.

A total of six (6) tools were examined by the Committee through the formulation of implementation process outlines[1] and a listing of advantages and disadvantages of each tool from the Trust's perspective. The six tools studied included:

* State of Washington Transition Lands Program;
* Municipal impact fees;
* Infrastructure contracts;
* Participation contracts;
* Community facilities districts, and;
* Master property associations.

The following narrative includes a summary of the Committee's discussion, the advantages and disadvantages of each tool and the Committee's findings for each tool. It should be noted that all the infrastructure tools, with the exception of the State of Washington Transition Land Program, could be used either separately or in conjunction with one another to implement infrastructure for master plan areas approved under the Urban lands planning process.

State of Washington Transition Lands Program

1. Discussion

The Committee gathered information on this program by receiving publications provided by the Real Estate Division of Washington's Department of Natural Resources and through a telephone conference call with division director Rod Hilden and project managers Pat Harper and Don Vogt. During this conference call, Mr. Hilden and his staff explained how the program's planning and implementation process works and how the State participates in various types of improvement districts which will benefit Trust lands.

The planning work done by Washington's Real Estate Division adheres very closely to local land use plans and the State prefers to dispose of a Trust land parcel prior to rezoning if that rezoning will be controversial. It became obvious from the discussion that the Arizona State Land Department places a much heavier emphasis on

[1] A process outline was not formulated for the State of Washington Transitions Lands Program. The process outline for each of the five other tools is included in the Appendix

planning and zoning through the Urban Lands Act than does the State of Washington because of the large acreages of urban land in Arizona. It also became evident that the difference in the two Enabling Acts (Washington Statehood preceded Arizona Statehood by 23 years) made much of Washington's process inapplicable to Arizona.

The discussion then shifted to infrastructure and the Committee learned that the State of Washington enacted legislation that allows the Department of Natural Resources to participate in local improvement, or assessing, districts when such participation will benefit adjacent Trust lands. These districts could install water or sewer lines, streets, drainage facilities or some other public facility, but there must be an obvious benefit to Trust lands before any State participation occurs. This also benefits the local jurisdictions by helping them to install infrastructure that will support and further their growth goals. The State does not participate in improvement districts if the benefit to Trust lands cannot be documented or if any undue risk to the Trust land is possible. The State's primary policy on improvement district participation is that the fee interest to the land not be jeopardized in any way.

The State of Washington's process for determining whether or not to participate in an improvement district is very rigid. The State uses a net present worth analysis for proposed improvement districts to determine if the investment is cost-effective and, in many cases, appraisal-oriented information is used to justify the Division's request for funds from the Legislature.

The State also utilizes funds from the Resource Management Cost Account (RMCA) to pay improvement district assessments. The funds in the RMCA come from the department's administration of leases and timber sales and the department can use up to 25 percent of this account on a biennial basis to participate in local improvement districts, although the amount usually averages 11 to 15 percent.

With respect to the improvement district bonding process, the fact that Washington Trust land is to be included in the improvement district has actually enhanced this bonding process. With State participation, the bonds become an obligation of the State in the event of default by a lessee. The district board would foreclose on the leasehold interest and send the assessment to the State for payment.

The final topic discussed was the timing of infrastructure installation. Typically, Washington's Trust lands are disposed of prior to the development of off-site and on-site infrastructure and the State normally does not install infrastructure. In some instances, the State has complied with local jurisdiction requirements to install facilities, such as a water storage tank or water and sewer lines because this requirement had to be fulfilled to get the desired increase in zoning. To date, this has not been done too frequently, but legally the State can make expenditures to fulfill these local requirements. Typically, the State gets all permits in hand, and then makes it the responsibility of the end-user of the parcel to install infrastructure as development proceeds.

2. Advantages/Disadvantages

The Washington Transition Lands program includes a number of advantages which could be transferred for use by Arizona. These advantages include the ability to participate in improvement districts, the ability to dedicate Trust land for rights-of-way, and the ability to utilize funds generated by the State's leasing and disposition programs for both regulatory functions and infrastructure implementation programs.

This program also has several disadvantages when applied to Arizona's current process. These disadvantages include a heavier reliance on local land use plans, and the State's ultimate responsibility to make improvement district assessment payments in the event of default by a lessee or purchaser. Also, while Washington is able to use funds from its RMCA, the Arizona Legislature has been reluctant to authorize a portion of funds generated by the Arizona State Land Department for regulatory and administrative functions. Finally, Arizona's Enabling Act and Constitution simply do not allow Arizona to implement infrastructure for Trust lands in the same manner now being done by the State of Washington.

3. Findings

The Committee found this process to be innovative and interesting but concluded that the Washington Department of Natural Resources in the context of its Transition Lands Program had a great deal more flexibility with respect to participating in improvement districts and using proceeds from land and product dispositions for regulatory and implementation activities. It became obvious from the Committee's discussion and from input from the Attorney General's office that the

Arizona State Land Department cannot currently follow Washington's lead due to Federal Enabling Act and State constitution restrictions.

Municipal Impact Fees

1. Discussion

The Committee heard a presentation on this infrastructure and public facility financing tool given by Bob Cafarella of the City of Phoenix. This impact fee system was established in 1988 in conjunction with the city's peripheral areas planning process, and will be utilized to fund infrastructure and other public improvements, such as police/fire stations and libraries.

The fees, which are based on the number of equivalent dwelling units (EDUs) contained in the Phoenix Peripheral Area Plans, are collected from developers when building permits are issued. The fees are then put into separate accounts and cannot be transferred from one account that may have a surplus to cover a deficit in another account.

The impact fee system also provides credits to a developer who installs the required infrastructure and public improvements. This installation can be accomplished utilizing private funds or through an improvement or community facilities district. Each development then receives credits to off-set development fees and utility hook-up fees. These adjustments are made based on developer contributions in the form of capital facilities, and the final net fee per EDU is then calculated by making these adjustments.

Finally, the City of Phoenix will update and revise the gross fee for each EDU, which is currently $4,496, on an annual basis to reflect increasing construction costs and general plan amendments. Because the system is relatively new, the city is in the process of phasing in the impact fees over a five year period.

After hearing the presentation, the Committee discussed the fact that only the City of Phoenix currently has an impact fee system, but that other Arizona communities may be following this city's lead in preparing and adopting such a system. Other topics of discussion included application of an impact fee system on developing vs. already developed areas and the use of community facilities districts in conjunction with an impact fee system.

2. Advantages/Disadvantages

Perhaps the greatest advantage to using municipal impact fee systems is that infrastructure and public facility costs are equally distributed for either large master plan areas or for smaller individual Trust land parcels. Another advantage is that impact fees are compatible with improvement or community facilities districts. In addition, impact fees are advantageous because each local jurisdiction administers the fee system instead of the State or the land owner.

The major disadvantage to impact fee systems is that many Arizona municipalities do not have the adequate staff expertise and resources to administer such a system. In addition, developer default could result in unmanageable political and financial burdens for these smaller communities. A final disadvantage that must be noted is that impact fee systems could differ from one municipality to another, and this could serve to impede the planning and development of Trust land.

3. Findings

The Committee found the use of municipal impact fees to be very compatible with and complementary to the State's urban lands planning process, as well as with the other infrastructure implementation tools studied by the Committee. The Committee concluded that no legislative changes were needed to facilitate the participation in impact fee systems by a master developer or by individual Trust land parcel end users.

The Committee also concluded that, because current State statutes allow each municipality to adopt impact fee systems, each municipality, and not the Land Department, should be responsible for instituting impact fee systems to implement and fund infrastructure for future development.

Infrastructure Contracts

1. Discussion

The infrastructure contract concept would include provisions for the installation of "backbone" infrastructure and could be used for Trust land projects planned under the urban lands process. The infrastructure contract would specify the type of infrastructure required, the location of that infrastructure based on the approved

development plan, a construction phasing plan, a methodology for calculating the infrastructure cost and interest, and a payback system. The contract would be issued in conjunction with a long-term lease or sale disposition and the lessee or certificate of purchase holder would have the obligation to install the "backbone" infrastructure according to the approved phasing plan.

The Committee's discussion of this tool centered on the payback system and how such a system would work. Once the infrastructure required by the contract has been installed, subsequent dispositions of parcels served by the new infrastructure would occur. The parcel developer, as a condition of the lease or certificate of purchase, would remit to the infrastructure contractor a pro rata share of the infrastructure costs and interest based on the size of the parcel leased or purchased.

The Committee also discussed the issues of default under an infrastructure contracts and how such contracts would be modified or amended.

2. Advantages/Disadvantages

One of the primary advantages of utilizing infrastructure contracts is that infrastructure would be installed at an early date, thus enhancing the value of surrounding unauctioned parcels. The early installation of infrastructure would also create a market demand for these unauctioned parcels. Another advantage is that infrastructure contracts could be used for large Trust land master plan areas and would be compatible with a municipal impact fee system.

The Committee also discussed several disadvantages for this type of infrastructure agreement. For instance, the phasing plan could become skewed by fluctuating market conditions thus making some parcels unmarketable despite the fact that infrastructure has already been installed. This situation would result in delay of paybacks to the infrastructure contractor.

Another disadvantage discussed by the Committee is that a large tract of Trust land would need to be disposed of to serve as an incentive to install the "backbone" infrastructure. This could fuel the already prevalent perception that the State already disposes of parcels that are so large that they negatively impact surrounding fee land values.

Other disadvantages include the current lack of Land Department staff and resources to negotiate, administer and monitor this type of infrastructure agreement, and the difficulty of replacing a master developer/infrastructure contractor in the event of default.

3. Findings

The Committee concluded that infrastructure contracts would be very useful for both master planned Trust land projects as well as for projects completed or to be completed under the existing Articles 5.1 and 5.2. Infrastructure contracts in conjunction with a long-term lease or certificate of purchase could achieve the construction of infrastructure to enhance the value of surrounding unauctioned parcels.

The Committee determined that an infrastructure contract should contain construction and reimbursement schedules, as well as provisions dealing with default and non-performance. The legislative changes drafted for various State statutes address these needs and concerns.

Finally, the Committee concluded that the Land Department will require more staff and resources to administer and monitor infrastructure contracts that are issued in conjunction with long-term leases, certificates of purchase, or participation contracts.

Participation Contracts

1. Discussion

Marriner Cardon of Streich, Lang, Weeks and Cardon, prepared and presented to the Committee a paper on the participation contract concept and explained to the Committee how such contract could be applied to master planned developments on Trust land.

The first step of the process would entail planning and rezoning the Trust land through the planning process under Article 5.1 or Article 5.2 of the Urban Lands Act. A participation contract would then be negotiated with a potential master developer and could contain a lease or a certificate of purchase, or both if no preference right existed, along with the responsibility to install infrastructure based on an infrastructure construction phasing plan.

As phases of the infrastructure construction are completed, the master developer conducts subsequent sales or lease assignments. After subtracting the approved infrastructure and initial disposition costs, the master developer would remit to the Land Department a share of the proceeds from these subsequent sales or lease assignments.

2. Advantages/Disadvantages

After the presentation, the Committee discussed the increased risk involved in utilizing a participation contract and how this risk could be counteracted by receiving a share of the master developer's proceeds that are generated as a result of the installation of infrastructure. The Committee also discussed the perceived loss of control of subsequent sales or lease assignments by the master developer and how some degree of control could be retained. The State statutes currently require Land Department approval for all lease assignments but not for subsequent sales.

Other topics of discussion included how to analyze a participation contract application and what such an application should include, how a participation contract would impact smaller parcel end-users, how to protect the Trust in the event that a master developer turns out to be dishonest or defaults on terms included in the contract and the current lack of Land Department staff and resources to negotiate and manage a participation contract.

3. Findings

This type of agreement between a master developer and the State Land Department, the Committee found, inherently involves a greater degree of risk than current disposition techniques. Each agreement must be carefully negotiated and must contain construction and reimbursement schedules as well as provisions dealing with master developer default and non-performance. The proposed legislative changes to facilitate the use of this tool addresses these needs and concerns.

The Committee also concluded that the planning and zoning for a master planned development must be finalized and approved by the Commissioner prior to the disposition of a participation contract.

In addition, because this tool is perhaps the most complex of any tool studied, all members of the Committee agreed that the Land Department will require more staff and resources to analyze participation contract applications and to negotiate, administer and monitor this type of agreement.

Community Facilities Districts

1. Discussion

Marriner Cardon and Steve Betts of Streich, Lang Weeks and Cardon gave a presentation to the Committee on the background of Arizona's Community Facilities District Act and how it could be applied to Trust land projects completed or to be completed under the Urban Lands Act planning process. Modeled after California's Mello-Roos Act, the Community Facilities District Act (the "Act") would be complementary to the Committee's mission to study master planned developments on Trust land within a municipality.

The Act currently is available to serve as a vehicle for constructing many types of infrastructure such as roads, water/sewer lines and drainage facilities for fee lands located within the corporate boundaries of Arizona's many municipalities. The district is generated by developers but the municipality has the final say on whether or not a district can be formed. There is no size limitation for such a district, but the project must be large enough to go out to the tax fee bond market.

2. Advantages/Disadvantages

The biggest advantage of forming a community facilities district is that tax free bonds are utilized so that the cost of installing infrastructure and the associated carrying costs are lower. Another advantage is that the formation of a district takes a portion of the infrastructure cost burden off both the developer and the municipality. The bonds are issued utilizing the fee interest in the land and the future development of the land as security.

The Act currently does not provide for the inclusion of Trust lands in a district because encumbering fee interest in Trust lands with assessments is prohibited by the Federal Enabling Act and State constitution. It was Mr. Betts' assertion, however, that the district could include Trust lands by utilizing the possessory interest associated with a long-term lease or certificate of purchase, and that

there is no constitutional prohibition to backing the district's bonds with this possessory interest.

The Committee then discussed the use of the possessory interest to back the district's bonds and whether this possessory interest is valuable enough to back both the district's bonds and to serve as collateral for financing the projects on-site improvements. The Committee also discussed the risk of participating in a district and how to protect the future marketability of a lease or certificate of purchase in the event of default.

Another disadvantage to utilizing this tool is the current lack of Land Department staff and resources to analyze the possible inclusion of Trust lands in a community facilities district and to monitor infrastructure activities once the district is in place and underway.

3. Findings

While the Committee concluded that community facility districts could be utilized for conventional or master planned Trust land projects, several concerns were discussed, i.e., avoiding the problem of a possessory interest lien becoming an encumbrance on the Trust land and, as a practical matter, whether a possessory interest in the form of a long-term lease, certificate of purchase or participation contract would be valuable enough to back bonds issued by the district and serve as collateral for funds borrowed to construct on-site improvements.

The proposed legislative changes relating to community facilities districts which are being forwarded to the Legislature for consideration (Section IV: Proposed Legislative Packages) attempt to address these concerns and to provide a more workable framework for the inclusion of Trust lands within these districts. More specifically, the Committee concurred with the proposed changes to the Community Facilities District Act [Title 48] and to the Urban Lands Act [A.R.S. §37-335.02 (A) through (C) and A.R.S. §37-335.03 (A) through (C)]. However, the Committee directed staff to further refine A.R.S. §37-335.03 (D) through (G) in order to complete the proposed legislative package for community facilities districts.

Master Property Associations

1. Discussion

Committee member Don Viehmann presented this infrastructure tool to the Committee for its review and consideration. This concept was devised in conjunction with the Desert Ridge urban lands project currently being prepared for 5,700 acres of Trust land in north Phoenix. This tool would provide for the retrieval of "backbone" infrastructure costs and interest by the master developer through a master property association. This type of association is already prevalent in most master planned developments, but using such an association to retrieve "backbone" infrastructure costs on Trust land would be an added obligation of the association.

The process would begin by master planning and zoning a large tract of Trust land through the existing urban lands process. Upon approval of the master plan by the Commissioner, the Land Department would auction a large tract of commercial or residential land with the obligation to install infrastructure and a community identity package, i.e., signage, entry features, etc.

The master developer would then install the infrastructure, and community identity package if one is included, based on an approved phasing plan and cost reimbursement schedule. When other parcels adjacent to the newly installed infrastructure are leased or sold, each end-user would be obligated to join the association and to reimburse the pro rata share of the infrastructure costs and interest to the master developer through this master property association mechanism. The association would also serve as the regulatory body for implementation of the master plan.

2. Advantages/Disadvantages

The Committee discussed further how this association would function, whether there would be a cap on the interest associated with the backbone infrastructure and community identity package installation costs, the advantages and disadvantages of a commercial land driven and residential land driven master planned development and the enforcement of infrastructure reimbursement. Many of these items would be addressed during the planning phase and would be included as components of the approved development plan.

3. Findings

The Committee concluded that the utilization of this tool in conjunction with any urban lands project would require no legislative changes and would perhaps be the easiest to administer since most, if not all, administrative tasks would be the responsibility of the master developer. However, the Committee also concluded that additional staff and resources would be needed to monitor such an agreement over the entire term of project buildout.

A final conclusion of the Committee was that general provisions for the use of a master property association should be addressed during the planning phase.

IV. PROPOSED LEGISLATION PACKAGES

A. Amendments to Article 5.1

B. Amendments to A.R.S. §37-101

C. Participation Contracts

D. Infrastructure Contracts

E. Community Facilities Districts **[A.R.S. §37-335.03 (D) through (G) still being refined by HB 2019 Subcommittee]**

A.

PROPOSED CHANGES TO

ARTICLE 5.1 OF THE URBAN LANDS ACT

The following proposed changes to Article 5.1 would facilitate the use of master plan areas within a development plan, and would establish procedures for selecting a planning permittee, and for master plan preparation and approval.

PROPOSED REVISIONS TO ARTICLE 5.1
URBAN LANDS ACT

A.R.S. §37-331 remains unchanged

A.R.S. §37-331.01, 332, 333, 334 A remain unchanged

A.R.S. §37-334 <u>Development plan; designation; preparation; approval</u>

B. After designating certain urban lands as suitable for a development plan, the Commissioner may cause a development OR SECONDARY plan to be prepared. The development OR SECONDARY plan may be submitted to the Department AFTER ISSUANCE OF A DEVELOPMENT PLANNING PERMIT OR A SECONDARY PLANNING PERMIT or may be prepared by a planning contract to the lowest and best bidder, with monies appropriated by the legislature for the purpose of urban lands development planning. A SECONDARY PLANNING PERMIT IS A PLANNING PERMIT ISSUED TO AN APPLICANT, ON A PARCEL OR PARCELS THAT HAVE NOT YET BEEN DISPOSED OF TO PREPARE A SECONDARY PLAN WHICH SUPPLEMENTS AND IMPLEMENTS THE APPROVED DEVELOPMENT PLAN.

A.R.S. §37-334 C through D remain unchanged

E. TO THE EXTENT the proposed development plan would require zoning inconsistent with any existing zoning, the commissioner shall submit ~~a request for rezoning~~ to the local government with jurisdiction over the lands in question A REQUEST FOR:

1. REZONING CONSISTENT WITH THE DEVELOPMENT PLAN; OR

2. APPROVAL OF A LAND USE PLAN PURSUANT TO STATUTE OR ORDINANCE WHICH WOULD INCLUDE DESIGNATIONS OF PROPOSED ZONING CATEGORIES AND LAND USE INTENSITIES AND WHICH WOULD BE CONSISTENT WITH THE DEVELOPMENT PLAN.

The local government shall act upon the request within six months, notifying the commissioner as to the acceptance or rejection of the commissioner's request for rezoning OR PLAN APPROVAL. Rejection of a request for rezoning OR PLAN APPROVAL may, at the commissioner's discretion, be appealed in the manner provided to any owner of land affected by a zoning decision. The local zoning GOVERNMENT'S decision shall govern the use of the lands unless the commissioner determines that such zoning OR PLAN is detrimental to the interests of the trust. If the commissioner so determines, the commissioner shall prepare a written statement of the reasons for the determination and shall within ten days of such decision provide a copy of the written statement to the

local planning authority. The local government within whose jurisdiction the lands are located has thirty days from receipt of this statement to appeal the commissioner's decision to the board of appeals as provided for in §37-215. If the local government fails to act upon the commissioner's request for rezoning OR PLAN APPROVAL within the time provided in this subsection, the commissioner may adopt the development plan, noting that the requested rezoning OR PLAN APPROVAL has not been obtained from the local government. The commissioner may, after compliance with the requirements of §37-335, reclassify the lands and proceed with its sale or lease, noting in the call for bids that the requested rezoning OR PLAN APPROVAL has not been obtained.

A.R.S. §37-334 F through H remain unchanged

I. FOLLOWING APPROVAL OF A SECONDARY PLAN BY THE COMMISSIONER, NO AMENDMENT OR REVISION MAY BE MADE WITHOUT APPROVAL BY THE COMMISSIONER. AFTER NOTICE TO THE DEVELOPMENT PLANNING PERMITTEE IF ONE EXISTS AND ANY MASTER PROPERTY ASSOCIATION FOR THE AFFECTED DEVELOPMENT PLAN, THE COMMISSIONER MAY APPROVE A PROPOSED AMENDMENT OF THE SECONDARY PLAN ONLY IF IT IS CONSISTENT WITH THE DEVELOPMENT PLAN. IF THE PROPOSED AMENDMENT IS INCONSISTENT WITH THE DEVELOPMENT PLAN, THE DEVELOPMENT PLAN MUST BE AMENDED PURSUANT TO A.R.S. §37-334.H.

A.R.S §37-334.01 MASTER PLANS; PREPARATION; APPROVAL

A. THE COMMISSIONER MAY APPROVE A DEVELOPMENT PLAN WHICH INCLUDES A PROPOSED MASTER PLAN AREA IF THE PROPOSED MASTER PLAN AREA:

1. IS WITHIN THE CORPORATE BOUNDARIES OF A CITY OR TOWN;
2. HAS INADEQUATE INFRASTRUCTURE TO UTILIZE STATE LAND FOR ITS HIGHEST AND BEST USE; AND
3. IS A MINIMUM OF 160 ACRES IN SIZE.

B. A DEVELOPMENT PLAN APPROVED PURSUANT TO THIS SECTION FOR A MASTER PLAN AREA MAY INCLUDE:

1. PROPOSED DESIGN GUIDELINES AND COVENANTS, CONDITIONS AND RESTRICTIONS (CC&R'S);
2. PROPOSED INFRASTRUCTURE PLANNING, IMPLEMENTATION AND FUNDING;
3. PROPOSED PROVISIONS FOR CONSTRUCTION, MAINTENANCE AND ENFORCEMENT OF A COMMUNITY IDENTITY PACKAGE;
4. PROPOSED PHASING, TIMING AND METHOD OF DISPOSITION AND INFRASTRUCTURE PLACEMENT;

5. CONFORMANCE WITH MUNICIPAL DEVELOPMENT ORDINANCES, IN ADDITION TO THOSE REQUIREMENTS PURSUANT TO A.R.S. §37-335 (I) AND (M);

6. PROVISIONS FOR MEMBERSHIP IN A MASTER PROPERTY ASSOCIATION WHICH IS GOVERNED BY A BOARD OF DIRECTORS AND HAS THE RESPONSIBILITY FOR THE IMPLEMENTATION AND ENFORCEMENT OF THE MASTER PLAN AREA;

7. PROPOSED MARKETING PROGRAM DESCRIPTION TO PROMOTE THE MASTER PLAN AREA AND PROVISIONS FOR ITS FUNDING.

A.R.S. §37-335 A through P remain unchanged

A.R.S. §37-335.01, 335.02, 335.03, 335.04, 37-336, 37-337 remain unchanged

A.R.S. §37-338 ~~Development plans; compensation~~ PLANNING PERMITS, PLAN COMPENSATION; APPLICANT SELECTION

~~If any interested party submits a development plan for state land to the department for consideration, and that plan is selected for implementation, no compensation from the department to the party may be made unless:~~

~~1. For a development plan that was initiated with the consent of the commissioner before the effective date of this article, the amount of compensation shall be determined by the commissioner based on the lessee's time, certified expenditures and other factors deemed relevant by the commissioner in preparing the development plan and zoning or rezoning required for implementation. The lessee is compensated for the development plan only when he is not the successful bidder for a new lease or purchase of state land implementing the development plan he prepared. If unsuccessful in obtaining by lease or purchase the land formerly leased, the lessee shall be compensated by the successful bidder at the time the new lease is granted or land sold.~~

~~2. For a development plan that was initiated after the effective date of this article, the commissioner may allow compensation for a development plan if the party has a planning permit issued by the department that specifically states what costs the commissioner will recognize as development planning costs and the maximum amount that will be allowed as compensation if the state land is subsequently let to bid based on that development plan. If the party is not the successful bidder for a lease or purchase of state land implementing the development plan, he shall be compensated by the successful bidder for the amount of compensation allowed by the commissioner at the time the new lease is granted or land sold.~~

A. PRIOR TO THE ISSUANCE OF A DEVELOPMENT PLANNING PERMIT OR SECONDARY PLANNING PERMIT, THE COMMISSIONER SHALL REVIEW ALL APPLICATIONS. THE APPLICATION SHALL CONTAIN INFORMATION REGARDING CONSULTANTS' EXPERIENCE AND EXPERTISE AND APPLICANT'S EXPERIENCE, EXPERTISE AND FINANCIAL CAPABILITY TO PREPARE AND COMPLETE THE DEVELOPMENT OR SECONDARY PLAN AND THE PROPOSED COST TO PREPARE THE DEVELOPMENT OR SECONDARY PLAN. EACH APPLICANT'S PROPOSAL SHALL ALSO INCLUDE A DEVELOPMENT CONCEPT STATEMENT SETTING FORTH THE PROPOSED OR POTENTIAL LAND USES FOR LAND INCLUDED WITHIN THE PROPOSED DEVELOPMENT OR SECONDARY PLAN AREA AND SUCH ADDITIONAL INFORMATION RELATIVE TO THE DISPOSITION FEASIBILITY AND SCHEDULING OF THE PROPOSED DEVELOPMENT PLAN AS THE STATE LAND COMMISSIONER MAY REQUIRE. THE STATE LAND COMMISSIONER MAY RETAIN ONE OR MORE INDEPENDENT EXPERTS TO ASSIST IN ASSESSING THE QUALIFICATIONS OF ANY APPLICANT AND CONSULTANTS OR IN EVALUATING THE BENEFITS OF ANY PROPOSED DEVELOPMENT CONCEPT. THE COMMISSIONER SHALL SELECT ANY SUCH INDEPENDENT EXPERTS AND MAY REQUIRE EACH APPLICANT TO PAY THE FEES, COSTS AND EXPENSES OF HIRING SUCH EXPERTS INCURRED IN THE ANALYSIS OF THAT APPLICANT'S QUALIFICATIONS AND PROPOSAL. IF THE APPLICANT IS UNWILLING TO PAY SUCH FEES, COSTS AND EXPENSES, THE APPLICANT SHALL NOTIFY THE COMMISSIONER IN WRITING, PRIOR TO THE TIME THE FEES, COSTS

EXPENSES ARE ACTUALLY INCURRED, IN WHICH EVENT THE APPLICANT'S APPLICATION SHALL BE AUTOMATICALLY WITHDRAWN FROM CONSIDERATION. THE FEES COLLECTED FOR THE ANALYSIS OF APPLICATIONS WILL BE COLLECTED AND DEPOSITED PURSUANT TO A.R.S. §37-338.01.

B. THE COMMISSIONER MAY DENY THE APPLICATIONS OR SELECT THE BEST APPLICANT, TAKING INTO CONSIDERATION EACH CONSULTANT OR APPLICANT'S EXPERIENCE AND EXPERTISE, THE COST TO COMPLETE THE DEVELOPMENT PLANNING UNDER THE PLANNING PERMIT OR SECONDARY PLANNING PERMIT, AND THE BEST INTEREST OF THE TRUST.

C. NO COMPENSATION FOR PLANNING SHALL BE MADE UNLESS THE DEVELOPMENT PLAN APPROVED PURSUANT TO THIS ARTICLE IS SELECTED FOR IMPLEMENTATION AND THE PARTY HAS A DEVELOPMENT PLANNING PERMIT OR A SECONDARY PLANNING PERMIT ISSUED BY THE DEPARTMENT THAT SPECIFICALLY STATES WHAT COSTS THE COMMISSIONER WILL RECOGNIZE AS DEVELOPMENT OR SECONDARY PLANNING COSTS AND THE MAXIMUM AMOUNT THAT WILL BE ALLOWED AS COMPENSATION IF THE STATE LAND IS SUBSEQUENTLY LET TO BID BASED ON THE DEVELOPMENT OR SECONDARY PLAN. IF THE PARTY IS NOT THE SUCCESSFUL BIDDER FOR LEASE OR PURCHASE OF STATE LAND IMPLEMENTING THE DEVELOPMENT OR SECONDARY PLAN, HE SHALL BE COMPENSATED BY THE

SUCCESSFUL BIDDER AT THE TIME LEASES ARE GRANTED OR LAND SOLD. THE COMMISSIONER SHALL DETERMINE THE AMOUNT OF COSTS TO BE RECOVERED FROM EACH LEASE OR SALE.

A.R.S. §37-338.01 - DEPOSIT AND USE OF EXPERT FEES

MONIES PAID PURSUANT TO A.R.S. §37-338(A) SHALL BE DEPOSITED IN A SPECIAL ACCOUNT TO BE USED TO PAY COSTS INCURRED IN HIRING INDEPENDENT EXPERTS PURSUANT THERETO.

NOTE: ADD AS SESSION LAW TO END OF PLANNING BILL PROPOSING REVISIONS TO ARTICLE 5.1:

THIS ACT SHALL NOT AFFECT THE VALIDITY OF ANY PLANNING PERMIT ISSUED BY THE DEPARTMENT PRIOR TO THE EFFECTIVE DATE OF THIS ACT; HOWEVER, BY MUTUAL CONSENT OF THE DEPARTMENT AND THE PLANNING PERMITTEE, A DEVELOPMENT PLAN BEING PREPARED PURSUANT TO A PLANNING PERMIT ISSUED PRIOR TO THE EFFECTIVE DATE OF THIS ACT FOR STATE LANDS MEETING THE DEFINITION OF A MASTER PLAN AREA UNDER A.R.S. §37-334.01(A) MAY INCLUDE THOSE ITEMS LISTED IN A.R.S. §37-334.01(B).

NOTE: ADD AS SESSION LAW SECTION 1 (LEGISLATIVE PURPOSE) TO BEGINNING OF ARTICLE 5.1 PROPOSING ADDITION OF MASTER PLANNING PROVISIONS:

A. TO FULFILL ITS COMMITMENT TO THE MANAGEMENT OF STATE LANDS IN THE BEST INTERESTS OF THE TRUST AND THE PEOPLE OF THIS STATE, THE ARIZONA LEGISLATURE FINDS THAT THE MASTER PLANNING OF UNDEVELOPED STATE LANDS IN THE PATH OF URBAN GROWTH WOULD SUBSTANTIALLY INCREASE THE VALUE OF THESE LANDS AND THEREBY THE POTENTIAL RETURN TO THE STATE TRUST FUND.

B. THE ARIZONA LEGISLATURE INTENDS BY THIS ACT:

1. TO CLARIFY THE COMMISSIONER'S AUTHORITY TO ENTER INTO AGREEMENTS WITH OTHER PARTIES, PUBLIC OR PRIVATE, TO FACILITATE MASTER PLANNING ON STATE LANDS; AND

2. TO ESTABLISH STANDARDS FOR PROVISIONS TO BE INCLUDED IN SUCH AGREEMENTS, INCLUDING PROVISIONS FOR THE REIMBURSEMENT OF THE COSTS OF THE MASTER PLANNING.

B.

PROPOSED ADDITIONS TO

TITLE 37 DEFINITIONS

The following definitions of "infrastructure" and "community identity package" are required in A.R.S. §37-101 because of the terms' proposed use in Statutes prior to Article 5.1.

DRAFT

PROPOSED ADDITIONS TO

TITLE 37 DEFINITIONS

A.R.S. §37-101(1) through (7) remain unchanged

8. "COMMUNITY IDENTITY PACKAGE" MEANS A DESIGN THEME WHICH MAY INCLUDE ARCHITECTURE, LANDSCAPE, LIGHTING, STREET FURNITURE, WALLS AND SIGNAGE.

A.R.S §37-101(8) through (11) are renumbered to (9) through (12)

13. "INFRASTRUCTURE" MEANS FACILITIES CONSTRUCTED OR AMENITIES LOCATED ON STATE LANDS WHICH ARE INTENDED TO BENEFIT MORE THAN THE LAND ON WHICH THEY ARE IMMEDIATELY LOCATED BY ENHANCING THE DEVELOPMENT POTENTIAL AND VALUE OF THE STATE LANDS IMPACTED BY THE INFRASTRUCTURE. EXAMPLES OF SUCH INFRASTRUCTURE MAY INCLUDE BUT ARE NOT LIMITED TO STREETS, UTILITIES, LANDSCAPING AND OPEN SPACE.

A.R.S. §37-101(12) through (17) are renumbered to (14) through (19)

C.

PROPOSED LEGISLATION FOR THE USE

OF PARTICIPATION CONTRACTS FOR STATE LANDS

The following proposed legislative additions and changes will facilitate the use of participation contracts for State lands. A participation contract would include a lease, sale, or lease and sale together with other rights and obligations (i.e., the installation of infrastructure and community identity package) by a master developer. The Department would then receive a share of the master developer's revenues from subsequent sales and lease assignments.

DRAFT

PROPOSED ARTICLE 3.1 - PARTICIPATION CONTRACTS FOR STATE LANDS

A.R.S. §37-270 - DEFINITIONS

A. "PARTICIPATION CONTRACT" MEANS A CONTRACT ARISING OUT OF A DISPOSITION TO A SUCCESSFUL BIDDER AT PUBLIC AUCTION OF A LEASE, SALE, OR LEASE AND SALE TOGETHER WITH OTHER RIGHTS AND OBLIGATIONS IN THE TRUST LANDS OBTAINED BY A MASTER DEVELOPER WHEREBY THE DEPARTMENT RECEIVES A SHARE OF THE MASTER DEVELOPER'S PROCEEDS GENERATED BY SUBSEQUENT SALES, LEASE ASSIGNMENTS, OR SUBLEASES.

B. "MASTER DEVELOPER" MEANS ANY PERSON WHO ASSUMES, AS A CONDITION OF A LAND DISPOSITION, THE RESPONSIBILITIES SPECIFIED BY THE DEPARTMENT FOR INFRASTRUCTURE OR COMMUNITY IDENTITY PACKAGE AMENITIES, OR A COMBINATION OF BOTH, AND FOR IMPLEMENTING THE DEVELOPMENT PLAN FOR THE MASTER PLANNED DEVELOPMENT

A.R.S §37-271 - SALE OR LEASE OF STATE LANDS IN DEVELOPMENT PLAN UNDER A PARTICIPATION CONTRACT

A. PARTICIPATION CONTRACTS MAY BE ENTERED INTO ONLY FOR LANDS SUBJECT TO A PLAN APPROVED PURSUANT TO ARTICLE 5.1 AND 5.2.

B. THE PREFERRED RIGHT GRANTED A LESSEE IN A.R.S. §37-335(C) SHALL APPLY ONLY TO PARTICIPATION CONTRACTS WHICH DO NOT INCLUDE A SALE.

C. BEFORE RECOMMENDING A PARTICIPATION CONTRACT TO THE BOARD OF APPEALS, IN ADDITION TO THE FACTORS LISTED IN A.R.S. §37-335(F), THE COMMISSIONER SHALL ALSO TAKE INTO CONSIDERATION AND REPORT ON:

1. THE METHODOLOGY FOR DETERMINING REIMBURSABLE INFRASTRUCTURE COSTS AND THE ESTIMATED AMOUNT THEREOF.

2. AN ANALYSIS OF THE STATE TRUST REVENUE TO BE DERIVED FROM THE PROPOSED PARTICIPATION CONTRACT.

3. THE HISTORICAL TRENDS IN LAND VALUES IN THE RELEVANT AREA BY TYPES OF PROPOSED LAND USES;

4. AN ANALYSIS OF THE FINANCIAL FEASIBILITY OF THE PLANNED DEVELOPMENT'S PROPOSED BUILD-OUT SCHEDULE;

5. AN EVALUATION OF THE POTENTIAL ECONOMIC RISKS AND BENEFITS TO THE TRUST ARISING FROM THE PARTICIPATION CONTRACT;

6. AN ANALYSIS OF THE ECONOMIC AND FINANCIAL IMPACT AND OTHER FACTORS AS DETERMINED BY THE STATE LAND COMMISSIONER, REGARDING ALTERNATIVE DISPOSITIONS OR NO DISPOSITIONS.

D. SUBSEQUENT SALES, LEASE ASSIGNMENTS OR SUBLEASES OF STATE LAND UNDER A PARTICIPATION CONTRACT SHALL BE BASED ON THE CRITERIA AND THE PHASING AND DISPOSITION PLAN INCLUDED IN THE PARTICIPATION CONTRACT AND THE FORMULA FOR DETERMINING THE AMOUNT OF REVENUE TO THE TRUST AS A RESULT OF THE SUBSEQUENT SALES, LEASE ASSIGNMENTS OR SUB-LEASES.

A.R.S §37-527 PARTICIPATION CONTRACT PROCEEDS

THE STATE'S SHARE OF THE PROCEEDS RECEIVED FROM THE SALE OF LAND UNDER A PARTICIPATION CONTRACT SHALL BE DEPOSITED IN THE APPROPRIATE PERPETUAL FUND, AND THE STATE'S SHARE OF THE PROCEEDS RECEIVED FROM THE LEASE OF LAND UNDER A PARTICIPATION CONTRACT SHALL BE USED.

A.R.S. §37-214. Board of appeals shall, before approving the sale, ~~or~~ lease, OR PARTICIPATION CONTRACT of land classified for commercial or homesite purposes after the completion of the planning process pursuant to article 5.1 or article 5.2 of this chapter, review the report submitted by the commissioner pursuant to §37-335, subsection F OR §37-339.03 AND §37-271 SUBSECTION C regarding the proposed sale,

or lease. A majority vote of the board is required for the adoption of the report. Upon the adoption of the report the proposed sale or lease, shall be approved. The board shall act within one hundred twenty days after receiving the report.

A.R.S. §37-272 CONDITIONS OF DEFAULT UNDER A PARTICIPATION CONTRACT

THE PARTICIPATION CONTRACT SHALL CONTAIN PROVISIONS FOR DEFAULT, RIGHTS TO CURE, AND FOR FORFEITURE AND OTHER APPROPRIATE REMEDIES IN THE EVENT OF DEFAULT.

D.

PROPOSED CHANGES TO ARTICLES 5.1 AND 5.2

OF THE URBAN LANDS ACT

The following proposed changes to Articles 5.1 and 5.2 of the Urban Lands Act would facilitate the use of infrastructure installation agreements, i.e., infrastructure contracts, for State land projects approved under Article 5.1 or Article 5.2. These infrastructure agreements would provide for the construction, operation and maintenance of infrastructure and community identity package and for reimbursement of costs and interest by subsequent purchasers or lessees.

PROPOSED CHANGES TO ARTICLES 5.1 AND 5.2
URBAN LANDS ACT

§37-335.05 (5.1)
§37-339.05 (5.2) FUNDING, INSTALLATION AND PAYBACK OF INFRASTRUCTURE ON STATE TRUST LANDS

THE COMMISSIONER SHALL HAVE THE AUTHORITY, BY AGREEMENT, TO PERMIT THE CONSTRUCTION, OPERATION AND MAINTENANCE OF INFRASTRUCTURE ON URBAN LANDS, INCLUDING A COMMUNITY IDENTITY PACKAGE FOR URBAN LANDS WITH A PLAN APPROVED PURSUANT TO ARTICLES 5.1 OR 5.2.

A. ANY SUCH AGREEMENTS MAY PROVIDE FOR REIMBURSEMENT BY SUBSEQUENT PURCHASERS OR LESSEES BASED UPON THE ACTUAL COSTS OF INFRASTRUCTURE-RELATED LAND ACQUISITION AND CONSTRUCTION AND MAY INCLUDE A REASONABLE RATE OF INTEREST TO FINANCE THE COSTS AS DETERMINED BY THE COMMISSIONER. THE COMMISSIONER SHALL IMPOSE SUCH LIMITATIONS IN THE AGREEMENT AS DEEMED NECESSARY TO PROTECT THE MARKETABILITY OF THE AFFECTED TRUST LAND.

B. ANY SUCH AGREEMENT SHALL IDENTIFY THE TYPE, QUALITY AND LOCATION OF INFRASTRUCTURE, THE SCHEDULE FOR INSTALLATION, AND THE

METHODS FOR CALCULATING THE REIMBURSABLE COSTS AND THE METHODS FOR REPAYMENT.

C. NO PARTY TO AN AGREEMENT UNDER THIS SECTION MAY DELEGATE THEIR OBLIGATIONS UNLESS WRITTEN APPROVAL IS OBTAINED FROM THE COMMISSIONER. THE COMMISSIONER MAY REQUIRE PERFORMANCE AND PAYMENT BONDS OR OTHER SUFFICIENT SURETY.

D. THE RIGHT TO REIMBURSEMENT FOR INFRASTRUCTURES INSTALLED PURSUANT TO AN AGREEMENT UNDER THIS SECTION IS LIMITED TO THIS SECTION, NOTWITHSTANDING THE PROVISIONS OF A.R.S. §37-342, A.R.S. §37-293 OR ANY SUCCESSOR STATUTES THERETO.

E. NO AGREEMENT ISSUED PURSUANT TO THIS SECTION GIVES RISE TO PREFERRED RIGHTS OR ANY OTHER RIGHTS GENERALLY ACQUIRED BY A LESSEE OF STATE LANDS UNLESS OTHERWISE STATED IN THE AGREEMENT.

F. ANY AGREEMENT UNDER THIS SECTION SHALL INCLUDE PROVISIONS FOR THE MAINTENANCE AND REPAIR OF THE INFRASTRUCTURE, AND ANY AGREEMENT SHALL ALSO ADDRESS THE ISSUE OF WHICH PARTY OR PARTIES

SHALL BE LIABLE FOR ANY DAMAGE OR ACCIDENTS RESULTING FROM THE DESIGN, CONSTRUCTION MAINTENANCE OR REPAIR OF THE INFRASTRUCTURE.

G. ANY AGREEMENT UNDER THIS SECTION SHALL INCLUDE PROVISIONS FOR AMENDMENT OF THE AGREEMENT AND SHALL ALSO ADDRESS DEFAULT UNDER THE AGREEMENT AND THE RIGHT TO CURE. THE PROVISIONS GENERALLY APPLICABLE TO DEFAULTS UNDER STATE LAND LEASES OR CERTIFICATES OF PURCHASE ARE INAPPLICABLE TO AGREEMENTS ISSUED PURSUANT TO THIS SECTION.

NOTE: ADD AS SESSION LAW SECTION 1 (LEGISLATIVE PURPOSE) TO BEGINNING OF INFRASTRUCTURE BILL PROPOSING ADDITION OF INFRASTRUCTURE PROVISIONS:

A. TO FULFILL ITS COMMITMENT TO THE MANAGEMENT OF STATE LANDS IN THE BEST INTERESTS OF THE TRUST AND THE PEOPLE OF THIS STATE, THE ARIZONA LEGISLATURE FINDS THAT THE INSTALLATION OF INFRASTRUCTURE ON UNDEVELOPED STATE LANDS IN THE PATH OF URBAN GROWTH WOULD SUBSTANTIALLY INCREASE THE VALUE OF THESE LANDS AND THEREBY THE POTENTIAL RETURN TO THE STATE TRUST FUND.

B. THE ARIZONA LEGISLATURE INTENDS BY THIS ACT:

1. TO CLARIFY THE COMMISSIONER'S AUTHORITY TO ENTER INTO AGREEMENTS WITH OTHER PARTIES, PUBLIC OR PRIVATE, TO FACILITATE THE INSTALLATION OF INFRASTRUCTURE ON STATE LANDS; AND

2. TO ESTABLISH STANDARDS FOR PROVISIONS TO BE INCLUDED IN SUCH AGREEMENTS, INCLUDING PROVISIONS FOR THE REIMBURSEMENT OF THE COSTS OF INSTALLING THE INFRASTRUCTURE.

NOTE: ADD AS SESSION LAW TO END OF INFRASTRUCTURE BILL PROPOSING ADDITION OF INFRASTRUCTURE PROVISIONS:

THIS ACT SHALL NOT AFFECT THE VALIDITY OF ANY AGREEMENTS RELATING TO INFRASTRUCTURE ENTERED INTO BY THE COMMISSIONER PRIOR TO THE EFFECTIVE DATE OF THIS ACT.

E.

PROPOSED CHANGES TO

COMMUNITY FACILITIES DISTRICT ACT

The following proposed amendments to the existing Community Facilities District Act will serve to facilitate the use of community facilities districts on State Trust land. Under the Enabling Act, Trust lands cannot be encumbered, therefore, these amendments would allow participation if the State Land Commissioner finds this in the best interests of the Trust, and the possessory interest of the State's long-term lease could be utilized to back the bonds issued by a community facilities district.

The HB 2019 Committee concurred with the proposed changes to the Community Facilities District Act [Title 48] and to the Urban Lands Act [A.R.S. §37-335.02 (A) through (C) and A.R.S. §37-335.03 (A) through (C)]. However, the Committee directed staff to further refine A.R.S. §37-335.03 (D) through (G) in order to complete the proposed legislative package for community facilities districts.

PROPOSED CHANGES TO

COMMUNITY FACILITIES DISTRICT ACT

1. Amend A.R.S. §42-684(7) to add the following underlined language:

"7. Except as provided in §48-723.01, leases or permits for lands under the jurisdiction of the State Land Department."

2. Amend A.R.S. §48-701(10) to include the underlined language:

"10. "Owner" means the person who, on the day the action, election or proceeding is begun or held, appears to be the owner of real property as shown on the assessment roll for state and county taxes, or in the case of state lands, the lessee under a long-term lease pursuant to §37-281.02 or other law."

3. Add definitions of "possessory interest" and "state lands" to A.R.S. §48-701 as follows:

"11. "Possessory interest" means an interest in state lands held under a certificate of purchase pursuant to §37-241 or a long-term lease pursuant to §37-281.02 or other law."

[Renumber accordingly] and add:

"15. "State lands" means state lands as defined in §37-101(15)."

4. Amend A.R.S §48-705(A) to include the underlined language:

"A. After the hearing, the governing body may adopt a resolution ordering the formation of the district, deleting any property determined not to be benefited by the district or modifying the general plan and then ordering the formation of the district or determining that the district not be formed. If state lands are included within the boundaries of the proposed district, such lands shall be deleted by the resolution unless (i) the governing body finds that such lands would be benefited by the district; (ii) such lands are under one or more long-term leases or certificates of purchase or will be under one or more long-term leases or certificates of purchase at the time the district is formed; and (iii) the governing body receives from the state land commissioner written approval of the inclusion of such lands within the district after a finding by the commissioner that such inclusion is in the best interests of the trust. A resolution ordering formation

of the district shall state whether the district will be governed by a district board comprised of the members of the governing body, ex officio, or, at the option of the governing body and if the total area included in the district is larger than six hundred acres, five directors appointed by the governing body. If the district board will be comprised of appointed directors, the resolution shall contain the names of the five initial directors and the terms of office of each."

5. Amend A.R.S. §48-707(B) to include the following underlined language:

"B. The district board or the governing body, as applicable, shall determine the polling places for the election and may consolidate county precincts. For other than a formation election pursuant to §48-705, subsection B, precinct registers shall be used. The county recorder shall submit precinct registers on the request of the clerk, and if the district includes land lying partly in and partly out of any county election precinct, the precinct registers may contain the names of all registered voters in the precinct and the

election boards at those precincts shall require that a prospective elector execute an affidavit stating that the elector is also a qualified elector of the district. For formation elections a prospective elector shall execute an affidavit stating that the elector is the owner of land in the proposed district, is a qualified elector of this state or otherwise qualified to vote pursuant to §48-3043 and stating the area of land in acres owned by the elector. For formation elections, a prospective elector who is a holder of a possessory interest in state lands located within the district shall execute an affidavit stating the area of land in acres possessed by the elector and further stating that the elector is the holder of a certificate of purchase or long-term leasehold in state lands located within the proposed district, is a qualified elector of this state or otherwise qualified to vote pursuant to §48-3043 and has not by proxy or otherwise relinquished its voting rights hereunder. If the formation election voting rights of a possessory interest holder in state lands within a proposed district are conveyed by written proxy to the state land department, the state land department shall be deemed

qualified and entitled to vote on behalf of the state lands trust in the manner provided in §48-707(B). Election board members may administer oaths or take all affirmations for these purposes.

6. Add a new provision to the Community Facilities District Act as follows:

"Section 48-723.01 Taxation and assessment of possessory interests; non-liability of state.

A. Notwithstanding §42-684, 48-582 and 48-920, any possessory interest in state lands located within the district shall be subject to all ad valorem taxes and special assessments levied by the district and any liens incident thereto in the same manner and to the same extent as the property of other owners under this article in accordance with §37-335.02 and 37-335.03.

B. Nothing in this article shall be construed as creating a lien against the interest of the state in any state lands, nor an obligation against the state to pay any taxes, charges, assessments or debts incurred by the district against state lands located within the district.

7. Amend A.R.S. §48-709(A)(11) to add the following underlined language:

> "11. By resolution, levy and assess the costs of any public infrastructure purpose on any land benefited in the District, or, in the case of state lands, on any certificate of purchase or long-term lease held pursuant to §37-281.02 or other law."

8. Amend A.R.S. §48-721 as follows:

§48-721 Special assessments; assessment lien bonds

A. The district board, by resolution and pursuant to the procedures prescribed by §§48-576 through 48-589, as nearly as practicable, and such additional procedures as the district board provides, may levy an assessment of the costs of any public infrastructure purpose, any operation and maintenance of public infrastructure or any enhanced municipal services on any lands OR POSSESSORY INTEREST in the district based on the benefit determined by the district board to be received by the land OR POSSESSORY INTEREST. The assessment may be based on estimated costs and amended to reflect actual costs. An owner of land OR HOLDER OF A POSSESSORY INTEREST on which an assessment has been levied may seek judicial review of whether the land OR POSSESSORY INTEREST is benefited by the proposed infrastructure, on the merits, by special action filed with the court of appeals pursuant to the procedures of §48-706, within thirty days of the effective date of the resolution.

B. After adoption by the district board of a resolution levying a special assessment on property in the district pursuant to §48-709, subsection A, paragraph 11 the district board may issue and sell special assessment lien bonds payable solely from amounts collected from the special assessments. The assessment shall be a first lien on the property assessed subject only to general property taxes and prior special assessments. In the event of nonpayment of an assessment the procedures for collection of delinquent assessments and sale of delinquent property prescribed by §§48-601 through 48-607 apply, as nearly as practicable, except that neither the district nor the municipality is required to purchase the delinquent land OR POSSESSORY INTEREST at the sale if there is no other purchaser.

C. On adoption of the resolution, but before issuance of the special assessment lien bonds, the district may direct the treasurer to make demand on the owners of the property so assessd, ~~as shown on the tax roll for state and county purposes,~~ for advance payment of the amount assessed. The demand shall state a date not less than twenty days after the date of adoption of the ordinance after which the

treasurer may refuse to accept advance payments of the assessment. The treasurer shall certify to the clerk on or after the date specified in the demand the amount collected and the assessments remaining unpaid against each parcel of land OR POSSESSORY INTEREST assessed. Special assessment lien bonds may not be issued in an amount in excess of the amount assessed in the ordnance or, if advance payments are demanded, the amount certified to the clerk.

9. Amend A.R.S. §37.335.02(A) as follows:

A.R.S. §37-335.02. Off-site improvement of urban lands

A. The governing body of an incorporated city or town or the board of directors of a county improvement district OR A COMMUNITY FACILITIES DISTRICT may submit to the commissioner for approval an improvement plan to be carried out by the city, town, or county improvement district OR COMMUNITY FACILITIES DISTRICT for some or all of the urban lands within its corporate or district boundaries. The plan shall be submitted before any assessment has been levied for construction of off-site improvements which will be on or adjacent to and benefit the urban land. The plan may provide for the imposition of TAXES OR special assessments only against the leasehold interest of the lessee or the interest in the certificate of purchase of the purchaser of urban lands which ARE OR will be subject to sale or long-term lease pursuant to §37-281.02 or other law. The plan shall include the following:

1. A description of the work proposed.

2. An estimate of the cost of such work and the costs to be imposed against the leasehold interest of the lessee or the interest in the certificate of purchase of the purchaser of urban land within the area of the plan.

3. A map and legal description of the area showing the urban lands benefited by the work proposed.

4. A method of charging the cost to any long-term lessee or certificate of purchase holder of the urban lands benefited.

5. A schedule or alternative schedules for payment of the costs so charged by ~~future~~ holders of certificates of purchase or lease on such urban land, including the manner in which charges under such schedules will be held in abeyance for urban lands not subject to a certificate of purchase or lease. The schedule for payments shall state the maximum TAX RATE OR assessment amount, excluding interest, which may be imposed against the leasehold interest of the lessee or the interest in the certificate of purchase of the purchaser of urban land involved in the plan.

6. The maximum interest rate to be charged on the unpaid charges, including the maximum rate at which interest, if any, will accrue for urban lands benefited but not subject to a certificate of purchase or lease.

7. Information showing that the urban land involved in the plan will be benefited in an amount equal to or greater than the proposed maximum TAX OR assessment amount.

8. Such other terms as the governing body deems necessary or appropriate.

9.1 Amend A.R.S. §37-335.02(C) as follows:

C. The commissioner shall cooperate if requested by the governing body of the city, town, COMMUNITY FACILITIES DISTRICT or county improvement district in the preparation and revision of the improvement plan. The commissioner may hold such public hearings as the commissioner determines are necessary and may approve the plan if it is in compliance with the development plan for the urban lands affected.

10. Amend A.R.S. §37-335.03 as follows:

A.R.S. §37-335.03 ~~Assessment~~ IMPROVEMENT district assessments and ~~city improvement plan assessments~~ TAXES as lien on urban lands within district; enforcement

A. Officially certified descriptions of all urban lands included within the boundaries of a city special assessment DISTRICT, A COMMUNITY FACILITIES DISTRICT or A county improvement district subject to an approved improvement plan, with the amounts of TAXES, assessments and charges of every character made against the leasehold interest of the lessee or the interest in the certificate of purchase of the purchaser of such lands, shall be furnished to the state land department as soon as the TAXES, assessments or charges are levied. A promise by the lessee or purchaser to make timely payment of all TAX OR assessment charges and an acknowledgement of the TAX OR assessment shall be inserted in any certificate of purchase or lease for such lands. ~~If assessments have been levied against urban lands prior to purchase or lease pursuant to an improvement plan, the commissioner shall require that all unpaid installments on assessments be paid to the city, town, or county improvement district before executing a lease or any instrument of sale.~~ ~~Thereafter~~ The proceedings leading to the LEVYING recording of A TAX OR an assessment by the city, town, COMMUNITY FACILITIES DISTRICT or county improvement district may treat the lessee's or purchaser's interest in state land as land subject to A TAX OR an assessment notwithstanding §42-684, §48-582 or 48-920.

B. IF AND TO THE EXTENT THE STATE AT ANY TIME SUBSEQUENT TO THE FORMATION OF THE DISTRICT ISSUES A PATENT OR PARTIAL PATENT ON LANDS LOCATED WITHIN THE DISTRICT, ALL OF THE BURDENS, OBLIGATIONS, LIABILITIES AND LIENS EXISTING AGAINST OTHER LANDS LOCATED WITHIN THE DISTRICT BY REASON OF THE FORMATION OF THE DISTRICT OR IN ANY MANNER CONNECTED WITH, INCIDENT TO OR ARISING FROM OR BY REASON OF THE EXISTENCE OF THE DISTRICT OR ANY OBLIGATION THEREOF SHALL IMMEDIATELY, BY OPERATION OF LAW, ATTACH TO AND THEREAFTER CONTINUE TO EXIST AGAINST AND UPON THE PATENTED LAND TO THE SAME EXTENT AND WITH LIKE FORCE AND EFFECT AS IF SUCH LAND HAD BEEN IN PRIVATE OWNERSHIP AT THE TIME OF THE FORMATION OF THE DISTRICT.

~~C.--All-charges-and-assessments-legally-imposed-against-the~~ leasehold interest of the lessee or the interest in the certificate of purchase of the purchaser of urban ~~lands~~ subject to an improvement plan approved by the commissioner which are not held under a certificate of purchase ~~or~~ lease by the assessment district or pursuant to an improvement plan shall be a continuing charge, and such land ~~shall~~ not be leased or sold until the purchaser or lessee ~~of~~ the land presents to the state land department a certificate from the superintendent of streets of the city or ~~town~~ or county improvement district in which the land is located showing that all assessments due have been paid as ~~provided-in-subsection-A-of-this-section.~~

C. If any TAX OR installment of any assessment or charge against the leasehold interest of the lessee or the interest in the certificate of purchase of the purchaser of urban land subject to an improvement plan is not paid when due, the superintendent of streets of the city or town or THE DISTRICT CLERK OF THE COMMUNITY FACILITIES DISTRICT OR county improvement district where the urban land is located SHALL ~~may~~, after not less than thirty days' notice to the named purchaser or lessee, notify the state land department of the nonpayment. Such nonpayment is a default under any certificate of purchase or long-term lease under which such lands are held AND MAY RESULT IN CANCELLATION OF SUCH CERTIFICATE OF PURCHASE OR LONG-TERM LEASE PURSUANT TO SUBSECTION D OF THIS SECTION. The interest of any purchaser or lessee of any urban lands within a municipal assessment district, OR COMMUNITY FACILITIES DISTRICT OR A COUNTY IMPROVEMENT DISTRICT is subject to the enforcement and sale, redemption and forfeiture provisions of title 48, chapter 4, article 2 or title 48, chapter 6, article 1. ~~Nonpayment-of-charges-due-pursuant-to-an-improvement-plan-subjects the-certificate-or-lease-to-default-proceedings-as-provided-by this-chapter.--If-the-delinquent-amounts-against-such-land-are-not paid-within-thirty-days-from-the-date-the-notice-is-received-by the--commissioner,--the--commissioner--shall--act--to--cancel--the certificate-of-purchase-or-lease.~~

D. NOTWITHSTANDING ANY OTHER STATUTE, THE COMMISSIONER SHALL NOT CANCEL ANY CERTIFICATE OF PURCHASE OR LEASE SUBJECT TO TAXATION OR ASSESSMENT FOR SO LONG AS ALL PAYMENTS DUE THE STATE UNDER SUCH CERTIFICATE OF PURCHASE OR LEASE ARE TIMELY MADE; AND BEFORE ANY CERTIFICATE OF PURCHASE OR LEASE SUBJECT TO TAXATION OR ASSESSMENT UNDER THIS SECTION IS CANCELLED:

1. THE COMMISSIONER SHALL CAUSE NOTICE OF DEFAULT TO BE SENT BY CERTIFIED MAIL TO THE CERTIFICATE OF PURCHASE HOLDER OR LESSEE AND TO THE CITY, TOWN OR DISTRICT THAT LEVIED THE APPLICABLE TAX OR ASSESSMENT. THE NOTICE SHALL INFORM THE CERTIFICATE OF PURCHASE HOLDER OR LESSEE AND THE CITY, TOWN OR DISTRICT OF THE SPECIFIC NATURE OF SUCH DEFAULT AND THEIR RIGHT TO CURE ANY CURABLE DEFAULT;

2. THE CERTIFICATE OF PURCHASE HOLDER OR LESSEE THAT IS IN DEFAULT AND THE AFFECTED CITY, TOWN OR DISTRICT SHALL HAVE SIXTY DAYS TO CURE THE DEFAULT. IN THE EVENT SUCH DEFAULT IS NOT CURED WITHIN THE SIXTY-DAY TIME PERIOD, THE AFFECTED CITY, TOWN OR DISTRICT SHALL HAVE AN ADDITIONAL THIRTY DAYS TO FILE WITH THE DEPARTMENT WRITTEN NOTICE OF ITS INTENT TO PROCEED WITH A FORECLOSURE ACTION;

3. IN THE EVENT THE AFFECTED CITY, TOWN OR DISTRICT TIMELY FILES NOTICE OF ITS INTENT TO PROCEED WITH A FORECLOSURE ACTION, SUCH CITY, TOWN OR DISTRICT SHALL HAVE SIXTY DAYS FROM THE DATE OF SUCH FILING TO COMMENCE A FORECLOSURE ACTION IN COURT AND TO PROVIDE THE DEPARTMENT WITH A CERTIFIED COPY OF THE COMPLAINT;

4. IN THE EVENT THE AFFECTED CITY, TOWN OR DISTRICT TIMELY FILES A FORECLOSURE ACTION IN COURT AND PROVIDES THE DEPARTMENT WITH A CERTIFIED COPY OF THE COMPLAINT, THE CITY, TOWN OR DISTRICT SHALL BE ENTITLED TO CURE THE DEFAULT BY BRINGING CURRENT ANY DELINQUENCIES UNTIL THE LATER OF:

(a) THE FINAL RESOLUTION OF THE FORECLOSURE ACTION;

(b) ONE YEAR FROM THE DATE OF THE NOTICE OF DEFAULT IN THE CASE OF A LONG-TERM LEASE, PROVIDED ANY RENTAL OR INSTALLMENT PAYMENT DELINQUENCIES HAVE BEEN CURED AND SUCH PAYMENTS ARE KEPT CURRENT FROM THE DATE OF THE FINAL RESOLUTION OF THE FORECLOSURE ACTION; OR

(c) TWO YEARS FROM THE DATE OF THE NOTICE OF DEFAULT IN THE CASE OF A CERTIFICATE OF PURCHASE, PROVIDED ANY RENTAL OR INSTALLMENT PAYMENT DELINQUENCIES HAVE BEEN CURED AND SUCH PAYMENTS ARE KEPT CURRENT FROM THE DATE OF THE FINAL RESOLUTION OF THE FORECLOSURE ACTION.

E. IF THE DEFAULT IS NOT CURED WITHIN THE APPLICABLE TIME PERIOD, THE COMMISSIONER MAY MAKE AN ORDER CANCELING THE CERTIFICATE OF PURCHASE OR LEASE, AND IF IT APPEARS THAT THE CERTIFICATE OF PURCHASE OR LEASE WAS PROCURED THROUGH FRAUD, DECEIT OR WILFUL MISREPRESENTATION, THE IMPROVEMENTS ON THE LAND SHALL BE FORFEITED TO THE STATE. IF THE CERTIFICATE OF PURCHASE OR LEASE IS CANCELED FOR ANY OTHER REASON, THE CERTIFICATE HOLDER OR LESSEE SHALL BE PERMITTED TO REMOVE HIS IMPROVEMENTS AT ANY TIME WITHIN SIXTY DAYS AFTER THE DATE OF CANCELLATION. A COPY OF THE CANCELLATION ORDER SHALL BE MAILED BY CERTIFIED MAIL TO THE LAST KNOWN POST-OFFICE ADDRESS OF THE CERTIFICATE OF PURCHASE HOLDER OR LESSEE AND THE AFFECTED CITY, TOWN OR DISTRICT.

F. IF A DEFAULT NOTICE HAS BEEN SENT TO A CERTIFICATE OF PURCHASE HOLDER OR LESSEE PURSUANT TO THIS SECTION AND THE CERTIFICATE OF PURCHASE HOLDER OR LESSEE OR THE AFFECTED CITY, TOWN OR DISTRICT THEREAFTER APPLIES TO ASSIGN THE CERTIFICATE OF PURCHASE OR LEASE TO THE CITY, TOWN OR DISTRICT HAVING A TAX OR ASSESSMENT LIEN THEREON BEFORE THE DATE A CANCELLATION ORDER BECOMES FINAL AND CONCLUSIVE, THE DEPARTMENT SHALL APPROVE THE ASSIGNMENT IF ALL RENT PAYMENTS ARE CURRENT.

G. THE CERTIFICATE OF PURCHASE HOLDER OR LESSEE AND THE AFFECTED CITY, TOWN OR DISTRICT MAY APPEAL A CANCELLATION ORDER PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6. IF NO APPEAL IS MADE WITHIN THE PRESCRIBED TIME, THE ORDER SHALL BECOME FINAL AND THE CERTIFICATE OF PURCHASE OR LEASE, TOGETHER WITH ANY TAX OR ASSESSMENT LIEN THEREON, SHALL BE CANCELED ON THE RECORDS OF THE DEPARTMENT.

APPENDIX A

INFRASTRUCTURE TOOL PROCESS OUTLINES

Impact Fee System

Process

1. Local jurisdiction formulates land use/infrastructure plan

2. Impact fee system established

3. Trust lands planned/rezoned via Urban Lands process/impact fees established

4. Trust lands long-term leased or sold at public auction to master developer

5. Master developer installs infrastructure per impact fee plan in lieu of payment or pays impact fees to local jurisdiction

6. Parcel developer: a) installs on-site infrastructure; b) pays parcel-specific impact fees or constructs planned community facilities, and c) pays back parcel-specific off-site infrastructure costs to master developer per impact fee schedule

APPROVED MAY 9, 1989

Impact Fee System

Evaluation from State Trust/Land Department Perspective

1. Pros:

-) Already in place for Phoenix

-) Results in equitable distribution of infrastructure costs for large scale master planned developments or individual parcel developments

-) Impact fees can serve as contributions towards infrastructure to be installed by an improvement district

-) Local jurisdictions already have legal authority to levy paybacks for future uses/developers

-) Results in greater reliance on local land use plans

-) Local jurisdictions regulate/administer impact fee/payback system rather than land owner

Impact Fee System

2. Cons:

-) Heavy front-end land use/infrastructure planning at local level

-) Might meet with low level of acceptance in smaller jurisdictions because of staffing/funding constraints

-) Results in greater reliance on local land use plans

-) Need master developer or individual parcel developer to get infrastructure installed

-) Developer default could result in unmanageable political/financial burden for smaller jurisdictions

Participation Lease

Process

1. Trust lands master planned/rezoned via Urban Lands process

2. Legal advertisement noticing participation lease negotiation period (includes listing of bidder qualifications)

3. Participation lease negotiated with potential master developer(s). Lease would include disposition schedule, profit sharing formula, flexible performance standards and default provisions

4. Participation lease and certificate of purchase disposed of at public auction (combined bid)

5. Master developer installs backbone infrastructure via community facilities district or some other mechanism

6. Master developer pays all carrying costs for parcels under certificate of purchase until secondary disposition (backbone infrastructure servicing parcel must be installed prior to secondary disposition)

7. Master developer expends own funds to market or "drive" project.

APPROVED JULY 18, 1989

8. Master developer assigns/subleases leased land or sells certificate of purchase land with net profits shared by Trust and master developer. One alternative for calculating net profit is:

Parcel bid price-(master developer initial pro-rata bid price + pre-approved infrastructure costs)-(pre-approved primary and secondary planning/zoning/administrative costs) = net profit to be split equally between Trust and master developer

Evaluation

1. Pros:
   - -) Trust/master developer share net profits as smaller parcels are subleased, assigned or sold
   - -) SLD maintains control of primary/secondary planning/rezoning
   - -) Master developer provides equity for master planned community by installing infrastructure/ amenities
   - -) Master developer applies private sector marketing expertise and dollars

-) Could result in more timely disposition of individual parcels after installation of "backbone" infrastructure

2. Cons:

-) Trust's real profits are speculative at time of participation lease disposition and at subsequent disposition

-) Potential economic loss because of default or marginal performance by participation lessee OR individual parcel developers

-) Could constitute excessive delegation of Commissioner's authority

-) SLD lacks resources to evaluate bidder qualifications

-) Negotiation of participation lease could prove difficult and time-consuming

-) SLD lacks auditing/monitoring resources

-) Could result in premature secondary disposition because of financial pressures on participation lessee

-) Would require substantial legislative changes i.e. provisions for and establishment of bidder qualifications

-) Master developer's infrastructure/planning costs (see process step #8) could be greater than parcel's actual appraised value, making disposition difficult

Infrastructure Lease

Process

1. Trust lands planned/rezoned via Urban Lands process

2. Development planning phase includes preparation of:

   a) C C & Rs (for architecture/landscaping/streetscape)
   b) Disposition strategy/schedule
   c) Infrastructure plans/approved infrastructure costs

3. Dispose of large commercial parcel through long-term lease

   and/or

   Dispose of large residential parcel

4. Require successful bidder, as part of long-term lease or sale agreement, to obtain infrastructure lease for purpose of installing "backbone" infrastructure (based on previously approved phasing schedule/infrastructure costs)

5. Infrastructure lease may require successful bidder to establish identity (landscaping/lighting/signage)/marketing program

APPROVED MAY 9, 1989

Infrastructure Lease

6. Infrastructure lessee installs infrastructure to open up parcels for subsequent development

7. Auction subsequent commercial and/or residential parcels with payback agreement attached

8. Parcel developer pays back previously approved infrastructure costs to infrastructure lessee

Evaluation from State Trust/Land Department Perspective

1. Pros:
   - -) Gets infrastructure installed at early date and enhances value of surrounding unauctioned parcels
   - -) Infrastructure lease serves as potential vehicle for master planned development identity/marketing program
   - -) Easily conforms to impact fee system concept
   - -) Applicable to large blocks of Trust land that are suitable for master planned developments

Infrastructure Lease

-) may result in enhanced long-term project viability

-) may create increased market demand for parcels adjacent to "backbone" infrastructure

2. Cons: -) Could result in infrastructure lessee carrying infrastructure costs for longer period of time than anticipated if market cycle turns downward

-) Installation of infrastructure could be too far ahead of future market if construction timetable is not established in infrastructure lease

-) Payback agreements may be cumbersome for SLD to track and administer

-) May result in negative public perception of SLD/master developer arrangement

-) Could be difficult to replace master developer in the event of default/new master developer may not like previous deal

Infrastructure Lease

-) Timing schedule and cost limits for "backbone" infrastructure could be difficult to negotiate

-) SLD lacks staff to evaluate/verify "backbone" infrastructure costs

-) Current statutes for reimbursement do not allow accrual of interest

-) May require disposition of large parcel as the incentive for a master developer to obtain infrastructure lease

-) Uncertainty in appraisal technique for reimbursement of infrastructure costs

Community Facilities District Act (Improvement Districts)

Process

1. Trust lands planned via Urban Lands Act process. Development Plan includes disposition schedule based on market timing in best interest of Trust and on phased installation of infrastructure.

2. Parcels sold or leased at public auction with commitments to install infrastructure as part of sale or lease.

3. Parcel end-users participate in improvement district

Evaluation from State Trust/Land Department Perspective

1. Pros:
   - -) Provides framework for parcel end-users to jointly install off-site infrastructure improvements
   - -) Results in equitable distribution of off-site infrastructure costs
   - -) Improvement district formation processed through local jurisdictions

APPROVED APRIL 4, 1989

Community Facilities
District Act

-) Conforms to master planned community concept

-) Patent holder can participate in improvement districts

-) Lessee may participate in improvement district if value of leasehold interest is determined to be sufficient for bonding purposes

-) Lessee could provide additional collateral in lieu of leasehold interest

2. <u>Cons</u>: -) Community Facilities District Act and Enabling Act/Constitution do not allow State to directly participate in improvement districts (fee interest in Trust land cannot be subordinated)

-) Leasehold interest may not be sufficient to back bonds at required value-to-debt ratios

-) Potential risk to Trust lessees/certificate of Purchase holders if any participant in improvement district fails to make assessment payments

-) A.R.S. §42-684 exempts State Trust leasehold interests from taxation or foreclosure if assessments or taxes for improvement district are not paid

-) Using leasehold interest to obtain funds for improvement district participation could inhibit lessee's ability to get financing for on-site improvements: a) because of insufficient or diluted value of leasehold interest, and b) lenders not willing to assume second position behind commitment already made to participate in improvement district

-) Community Facilities District Act still relatively <u>new</u> with "bugs" to be worked out during current negotiations for first districts to be formed.

Community Facilities
District Act

Summary Statement

Community Facilities District Act could work for Trust lands if:

a) leasehold interest is determined to be of sufficient value to secure bonds;

b) Community Facilities District Act is amended to allow inclusion of Trust land in districts;

c) A.R.S. §42-684 is amended to allow taxation and foreclosure of State Trust land leasehold interest. It has not been determined, however, that this is in the best interest of the Trust.

INFRASTRUCTURE INSTALLATION THROUGH MASTER ASSOCIATION

Process

1. Trust land master planned/rezoned via Urban Lands process, 5.1 or 5.3

2. SLD disposes of significant portion of land within master planned community at initial auction--either major commercial area or large block of residential land. Successful bidder at this auction is designated as "master developer" with specified obligations.

3. Master Property Association (MPA) is created, governed by Board of Directors controlled by master developer. All purchasers/lessees of land within master planned community are members.

4. Master developer causes installation of "backbone" infrastructure on phased schedule and with cost previously agreed to by SLD. Funding supplied by master developer.

5. SLD and master developer agree on infrastructure reimbursement formula to be applied when property within the master planned community is subsequently sold or disposed of by long-term lease. Formula is intended to reimburse master developer for its costs in installing infrastructure, plus appropriate interest rate, within reasonable time frame.

6. MPA also responsible for maintenance of infrastructure (unless dedicated to municipality) and for collecting monthly maintenance fees from parcels within master planned community after disposition of those parcels by SLD.

Evaluation

1. Pros:

   a) Enables SLD to benefit from enhanced land values within master planned community at an earlier time.

   b) Provides for installation of backbone infrastructure in timely manner.

   c) Apart from initial auction (which must include significant enough parcel to justify burdens going along with role as master developer), SLD is able to dispose of "retail-sized" parcels within master planned community, thus increasing return to Trust.

APPROVED 9/19/89

d) Utilizes same entity (MPA) for installation of infrastructure as would have to be created regardless to oversee maintenance of community identity infrastructure.

e) Does not require legislative change.

f) Is intended to approximate private sector model for installation and maintenance of infrastructure in master planned communities.

g) SLD does not split its "profits" with master developer, thus minimizing potential criticism and legal questions.

h) If municipality has impact fee system, reimbursement amounts at state land auctions can be relatively small because the backbone infrastructure can be installed by master developer, can be reimbursed through the impact fee mechanism.

2. Cons:

a) Requires substantial early disposition of land within master planned community to master developer, potentially subjecting SLD to criticism for what might appear to be "premature disposition."

b) SLD needs additional personnel to monitor master planned community process.

c) Interest on infrastructure costs might accumulate to a high level if disposition of land within master planned community develops more slowly than expected. Protection from this can be provided by proper phasing based on absorption.

APPENDIX B

NOVEMBER 9, 1989
PUBLIC MEETING
MINUTES/COMMENTS

PUBLIC MEETING MINUTES

MUNICIPAL MASTER PLANNED DEVELOPMENT
STUDY COMMITTEE

November 9, 1989

Present: M. H. Hassell, State Land Commissioner
Mike House, City of Phoenix
Don Viehmann, Viehmann, Martin & Associates
Joe Contadino, Coventry Homes
Bill Larson, G. William Larson & Associates

Absent: Speaker Jane Hull
Senator Jamie Sossaman
Mike Goyer, City of Sierra Vista
Jalma Hunsinger, Arizona Association of Realtors

1. Call To Order

Jean Hassell opened the public meeting by thanking those in attendance for coming to today's meeting and for showing an interest in how Trust lands, and in particular urban Trust lands, in Arizona will be utilized in the future.

2. Presentation on HB 2019 Background/Issues

Jean Hassell stated that State lands should be more appropriately referred to as Trust lands because the Federal government set aside four sections of each township to provide for a long-term revenue stream to support the State's common schools as well as the other thirteen beneficiaries.

These Trust lands came about when the U. S. Congress granted four sections out of each township to be held in Trust by the State of Arizona for the support of the public school system. At the same time other lesser grants were made to support the other beneficiaries. The current Trust encompasses 9.5 million acres, and 8.3 million acres of this total are in the School Trust. The Congress very specifically spelled out in the Federal Enabling Act how these Trust lands are to be used.

Jean Hassell continued by saying that revenues are generated for the beneficiaries through the sale, lease or use of the Trust land or its resources, such as minerals and timber. The revenues derived from leases go into the expendable fund while the revenues from the sale of Trust lands or its resources go into the permanent fund and it is the interest that the permanent fund generates that can be used by the

beneficiaries. In the past, the majority of these revenues came from farming and ranching operations on Trust land, or from the sale of raw, undeveloped land. This revenue generation picture has changed in the recent past, however, because an increasing amount of revenues are being generated by the lease or sale of planned and zoned Trust land.

Jean Hassell stated that this shift in revenue generation started in 1981 when the Urban Lands Act was approved by the Legislature. This Act provides a mechanism for the planning and development of Trust lands in cooperation with local governments. It also incudes provisions to ensure quality growth and development of Trust land and to capture the increased value of these planned Trust lands upon disposition. At this point in time, approximately 1,600 acres of planned and zoned Trust land have been sold and another 1,000 acres have been leased to the benefit of the beneficiaries. These parcels have been disposed of in a very discreet manner and have been relatively small in size. Mr. Hassell added that the planning and disposition provisions included in Article 5.1 of the Urban Lands Act have worked very well since the Act was adopted.

Jean Hassell added that the Urban Lands Act also contains an Article 5.2 with provisions for the planning and development of self-contained communities. The crafters of this article envisioned a large master planned development away from existing urban centers with well planned infrastructure and public facilities. John F. Long, a Phoenix-based developer, has had a long-standing application to master plan a large block of Trust land in north central Maricopa County, under Article 5.2. This was and continues to be the only application for a self-contained community. During a long series of meetings with Mr. Long, the Land Department staff formulated a list of steps necessary to implement this type of master planned development. Much of the discussion at these meetings centered on infrastructure and specific disposition methods which would be fair to both the master developer and the Trust, and it became apparent from these discussions that Article 5.2 needed clarification and amendment. These amendments were proposed as part of House Bill 2019 and became session law dealing with master planned developments on Trust land located within a municipality. This session law also required the State Land Commissioner to empanel a committee representing a broad cross-section of public and private development interests to study four issues related to master planned development. These issues included:

1. The definition of master planned development.

2. The methodology and funding of the planning phase.

3. The phasing of development and disposition of State Trust lands under master development.

4. Issues related to infrastructure.

Jean Hassell concluded his presentation by stating that the HB 2019 Committee has been conducting meetings on a regular basis since September of 1988, and the conclusions of the discussions held at these meetings are contained in the packets that were sent out prior to this public meeting. The Committee is here today to present an overview of its conclusions and recommendations and to address concerns and suggestions from those in attendance.

3. Presentation on Draft Committee Report Outline and Preliminary Recommendations

Committee member Bill Larson stated the HB 2019 Committee made every attempt to be comprehensive but concise during its study of the four HB 2019 issues over the past several months. Mr. Larson then presented a brief overview of the Committee's draft report, lending special emphasis to the Committee's preliminary recommendations (Handout #1). Mr. Larson read each of the Committee's issue-specific recommendations, and added that a final general recommendation was drafted by the Committee regarding the Land Department's need for more staff and resources to negotiate, manage and monitor infrastructure agreements issued in conjunction with master planned development projects.

4. Presentation on Draft Legislation for Article 5.1

Nicki Hansen presented the draft amendments to Article 5.1 (Handout #2) by first giving an overview of the Urban Lands Act. Ms. Hansen stated that the State's planning process begins with a designation as being under consideration as suitable for urban planning by the Commissioner. The State then addresses 16 issues encompassed by the statutes before the Trust lands are designated as suitable for urban planning, and some of these issues include potential revenue generation for the Trust, assured water supply, and local/regional growth and development trends.

Nicki Hansen continued by saying that the second step in the State's planning process is the formulation of a general plan if the lands have been designated as suitable for urban planning. The general plan incudes a general discussion of land uses based on the respective municipality's adopted general plan, as well as a series of policy statements regarding potential land uses. As was the case with the designation step, this general planning step requires a public hearing before approval by the State Land Commissioner.

Nicki Hansen stated that the next step in the State's process prior to disposition is development planning, typically done under Article 5.1 of the Urban Lands Act. This development planning is accomplished by contract utilizing State funds, or by permit utilizing the planning permittee's funds. Those monies expended by a planning permittee are then reimbursed at the time of disposition if the planning permittee is not the successful bidder. Ms. Hansen pointed out that a typical development plan includes a site and area analysis, a market and marketability study, alternative plans and a feasibility study, and that a public hearing is required before the Commissioner approves the development plan.

Nicki Hansen then referred to Handout #2 which includes the proposed changes to Article 5.1. Ms. Hansen pointed out that no modifications to ARS §37-331, 332 and 333 are proposed at this time, and that the proposed changes to article 5.1 will facilitate the use of master plan areas within a development plan. Ms. Hansen then briefly reviewed these changes which include new statutory language for development plan and secondary plan preparation, and approval (§37-334(B) and (I), master plan preparation and approval (§37-334.01), planning permit issuance, compensation and applicant selection (§37-338), and the deposit and use of expert fees (§37-338.01).

5. <u>Presentation on Draft Legislation for Participation Contracts, Infrastructure Contracts and Community Facilities Districts</u>

Greg Keller stated that legislative changes are being proposed for the various infrastructure tools which, after study by the Committee, were found to need such changes in order to work for Trust land projects (Handouts #3, #4, #5, and #6).

Greg Keller first addressed the proposed addition of definitions for "community identity package" and "infrastructure" (Handout #3), and stated that these definitions are needed in ARS §37-101 because the use of these terms will occur in several statutory sections within Title 37.

Greg Keller stated that the proposed legislative additions and changes for participation contracts (Handout #4) will facilitate the use of participation contracts for Trust land projects. Mr. Keller explained that a participation contract would include a lease, a sale, or a combined lease and sale if no preferential right exists, together with the obligation to install infrastructure. The proposed legislation includes criteria to be considered by the Commissioner prior to making a recommendation to the Board of Appeals, provisions for receiving a negotiated share of the master developer's proceeds generated by subsequent sales and lease assignments, and provisions dealing with default by a master developer under a participation contract.

Greg Keller then referred to the proposed legislative changes for infrastructure contracts (Handout #5) and stated that the proposed changes will provide the authority needed by the Land Commissioner to enter into infrastructure agreements. In addition, these proposed changes include a listing of the primary components required in any infrastructure agreement, i.e., identification of the type and location of infrastructure, and a method for determining the cost and interest of the infrastructure. The draft legislation also includes provisions for curing a default under an infrastructure agreement, and limits of State liability for the design, construction and maintenance of the proposed infrastructure.

Greg Keller then addressed the proposed legislative changes for community facilities districts (Handout #6). These proposed changes to the Community Facilities District Act include provisions for the inclusion of Trust land in a community facility district, and for taxation of the possessory interest associated with a long-term lease, certificate of purchase or participation contract.

6. Discussion/Public Comment

Guy Householder, representing Cabe-Pollack of Flagstaff, referred to the phrase contained in ARS §37-338(A) (Handout #2) which reads "and (the Commissioner) may require each applicant to pay the fees" associated with the review of planning permit applications. Mr. Householder stated that the word "may" should be changed to "shall" so that the State is not burdened with these costs.

Nicki Hansen responded that, the way the proposed language is written, the Commissioner would have the discretion to require each applicant to pay the fees or to use State appropriated funds, but, in either case, the State would hire these experts. Since the State does not currently have an appropriation for this purpose, the Commissioner needs the ability to charge the applicants if analysis is needed.

Patty Boland stated that it would also be at the Commissioner's discretion to hire such experts if the Land Department staff did not have the expertise to perform this review task. Ms. Boland added that, ideally, the Commissioner would use State funds so that there is no question as for whom these experts are working, but, if State funds are not available and the Land Department staff did not have the appropriate expertise, then the Committee wanted to provide the Commissioner with a way to get this analysis completed and paid for.

Dean Wingert, representing the Forest City Scottsdale Company, asked if secondary planning permits would be used to make modifications to the already approved development plan, if such modifications became necessary because of changing market conditions.

Nicki Hansen responded that a secondary planning permit could be utilized to address changing market conditions since the buildout for a master plan area could be 20--30 years and conditions and markets do change over time. Ms. Hansen added that secondary planning permits could also be used to obtain zoning prior to disposition for individual parcels within a master plan area after the initial development plan has been approved.

Dean Wingert then asked whether the various infrastructure tools, if approved by the Legislature, can only be used for projects planned as master plan areas.

Nicki Hansen responded that the proposed legislation facilitates the use of these tools for projects completed or to be completed under the existing Article 5.1 or Article 5.2 as well as for master plan areas if approved by the Legislature.

Dean Wingert also asked whether master plan areas have to be within a municipality to ensure that the associated infrastructure will be maintained once construction has been completed.

Greg Keller responded that the infrastructure tools studied by the Committee could be used in both incorporated or unincorporated areas, with the exception of community facilities districts which must be located in a municipality. Mr. Keller added that master plan areas and the associated planned infrastructure must be located within a municipality before any zoning and development plan approval by the Commissioner can occur.

Guy Householder stated that the legislative changes reviewed here today appear to provide the Land Department with the necessary authority and tools to get infrastructure installed on Trust land in conjunction with Article 5.1 or Article 5.2 projects and for master plan area-type projects.

Jean Hassell stated that the Land Department will accept written comments on the HB 2019 Committee's work until 5 p.m. on Thursday, November 16, 1989, and that any comments will be greatly appreciated by the Committee. Mr. Hassell added that the Committee will have at least one more meeting on Tuesday, November 14, 1989 at 9 a.m., and perhaps one more after that on November 28, 1989, also at 9 a.m. if needed.

Dean Wingert asked if the Department will submit the proposed legislative packages presented here today to the Legislature for consideration during the upcoming legislative session.

Jean Hassell responded that the Committee's final report must be submitted the Legislature by December 1, 1989, and that the legislative packages will be submitted to the Legislature by the Committee for consideration during the upcoming legislative session.

Jean Hassell thanked everyone for attending and adjourned the public meeting.

#1

HB 2019 COMMITTEE

REPORT OUTLINE

The following report outline contains the Committee's proposed recommendations and includes a synopsis of the Committee's discussion and findings regarding the four (4) HB 2109 issues.

NOTE: PLEASE REFER TO THE PROPOSED LEGISLATIVE PACKAGES CONTAINED IN SECTION IV OF THIS REPORT FOR THE TEXT OF THE FOLLOWING HANDOUTS: (NOS. 2 THROUGH 6).

#2

PROPOSED CHANGES TO

ARTICLE 5.1 OF THE URBAN LANDS ACT

The following proposed changes to Article 5.1 would facilitate the use of master plan areas within a development plan, and would establish procedures for selecting a planning permittee, and for master plan preparation and approval.

#3

PROPOSED ADDITIONS TO

TITLE 37 DEFINITIONS

The following definitions of "infrastructure" and "community identity package" are required in A.R.S. §37-101 because of the terms' proposed use in Statutes prior to Article 5.1.

#4

PROPOSED LEGISLATION FOR THE USE

OF PARTICIPATION CONTRACTS FOR STATE LANDS

The following proposed legislative additions and changes will facilitate the use of participation contracts for State lands. A participation contract would include a lease, sale, or lease and sale together with other rights and obligations (i.e., the installation of infrastructure and community identity package) by a master developer. The Department would then receive a share of the master developer's revenues from subsequent sales and lease assignments.

#5

PROPOSED CHANGES TO ARTICLES 5.1 AND 5.2

OF THE URBAN LANDS ACT

The following proposed changes to Articles 5.1 and 5.2 of the Urban Lands Act would facilitate the use of infrastructure installation agreements, i.e., infrastructure contracts, for State land projects approved under Article 5.1 or Article 5.2. These infrastructure agreements would provide for the construction, operation and maintenance of infrastructure and community identity package and for reimbursement of costs and interest by subsequent purchasers or lessees.

#6

PROPOSED CHANGES TO

COMMUNITY FACILITIES DISTRICT ACT

The following proposed amendments to the existing Community Facilities District Act will serve to facilitate the use of community facilities districts on State Trust land. Under the Enabling Act, Trust lands cannot be encumbered, therefore, these amendments would allow participation if the State Land Commissioner finds this in the best interests of the Trust, and the possessory interest of the State's long-term lease could be utilized to back the bonds issued by a community facilities district.

Arizona
State Land Department
1616 WEST ADAMS
PHOENIX, ARIZONA 85007

ROSE MOFFORD
GOVERNOR

M.J. HASSELL
STATE LAND COMMISSIONER

NOTICE OF PUBLIC MEETING
OF
ARIZONA STATE LAND DEPARTMENT
MUNICIPAL MASTER PLANNED DEVELOPMENT STUDY COMMITTEE

In conformance with Arizona Revised Statutes, Section 38-431.02, Notice is hereby given to the Municipal Master Planned Development Study Committee and the general public that there will be a public meeting conducted by the Master Planned Development Study Committee on **NOVEMBER 9, 1989** at 1:30 p.m. The meeting will be open to the public and is being held to gain public input on the Committee's preliminary recommendations and on proposed legislation which will address the issues called for in House Bill 2019 and as identified on the attached agenda.

The meeting will be held at the following location:

ARIZONA STATE LAND DEPARTMENT

BASEMENT AUDITORIUM

1616 WEST ADAMS

PHOENIX, AZ 85007

Information concerning this public meeting of the Committee may be obtained by calling 542-4621.

DATED THIS 31th day of October, 1989

ARIZONA STATE LAND DEPARTMENT

M. J. HASSELL
STATE LAND COMMISSIONER

AGENDA

PUBLIC MEETING
To be conducted by

MUNICIPAL MASTER PLANNED DEVELOPMENT
STUDY COMMITTEE
NOVEMBER 9, 1989 1:30 P.M.
BASEMENT AUDITORIUM–1616 W. ADAMS
PHOENIX, AZ

1. *Call To Order*

2. *Presentation on HB 2019 Background/Issues*

3. *Presentation on Draft Committee Report Outline and Preliminary Recommendations*

4. *Presentation on Draft Legislation for Article 5.1*

5. *Presentation on Draft Legislation for Participation Contracts, Infrastructure Contracts and Community Facilities Districts*

6. *Discussion/Public Comment*

Executive Session: The Committee may vote to go into Executive Session on any of the above-agenda items for discussion or consultation for legal advice with its Attorney, pursuant to ARS §38.431.03.A.3.

COMMITTEE ADJOURNS

ARIZONA STATE LAND DEPARTMENT
1616 West Adams
Phoenix, Arizona 85007

DATE: NOVEMBER 9, 1989

MEETING REGARDING: MUNICIPAL MASTER PLANNED DEVELOPMENT STUDY COMMITTEE

ROOM: BASEMENT AUDITORIUM, 1616 W. ADAMS PHX, AZ

ATTENDANCE

Please sign in below:

NAME	BUSINESS, FIRM, AGENCY	ADDRESS	PHONE
JOE CONTADINO	COVENTRY HOMES	3875 N 44TH ST PHX	952-0098
Lora Moody	ASLD		
Don Uehlein	VMA & Assoc	2402 E Ung Brelan Rd	957-0660
MIKE HOUSE	CITY OF PHOENIX		262-6261
MIKE PHALEN	AG for ASLD	1275 W. Washington	542-1401
Patrick Boland	"	"	"
NICKI HANSEN	ASLD - URBAN	1616 W. ADAMS	542-3671
Gregory V. Keller	" "	" " "	"

ARIZONA STATE LAND DEPARTMENT
1616 West Adams
Phoenix, Arizona 85007

PAGE 2

DATE: NOVEMBER 9, 1989

MEETING REGARDING: MUNICIPAL MASTER PLANNED DEVELOPMENT STUDY COMMITTEE

ROOM: BASEMENT AUDITORIUM, 1616 W. ADAMS, PHX AZ

ATTENDANCE

Please sign in below:

NAME	BUSINESS, FIRM, AGENCY	ADDRESS	PHONE
TIM BRAY	Southwest COMMUNITY RESOURCES	8787 E. PINNACLE PEAK Rd #200 SCOTTSDALE 85255	585-5644
PAT DODDS	CITY OF SCOTTSDALE	3939 CIVIC CENTER PLAZA SCOTTSDALE AZ 85251	994-2423
GARY DUBROCK	SUNCOR DEVELOPMENT COMP.	555 E. PLAZA CIRCLE LITCHFIELD PARK, AZ 85201	935-2700
LARRY CERATO	CHASE BANK	4533 E. CORTEZ PH AZ 85028	947940-4
Jane Johnson	Town Center Sierra Vista	3503 N Campbell, Ste 127 Tucson, Az 85719	323-0573
MIKE SPRINGFIELD	CITY OF AVONDALE	1212 S. 4TH ST. Avondale Az	932-1900
Jim Bakkedahl	BRW, Inc.	2700 N. Central, Suite 1000 Phoenix, AZ 85004	234-1591
Tamra Nelson	The Richard Ward Co	1345 E Main, Mesa 85203	964-1745
Nils H. Hill	ASLD	1616 W. Adams	542-3396

ARIZONA STATE LAND DEPARTMENT
1616 West Adams
Phoenix, Arizona 85007

DATE: NOVEMBER 9, 1989

MEETING REGARDING: MUNICIPAL MASTER PLANNED DEVELOPMENT STUDY COMMITTEE

ROOM: BASEMENT AUDITORIUM, 1616 W. ADAMS, PHX AZ

ATTENDANCE

Please sign in below:

NAME	BUSINESS, FIRM, AGENCY	ADDRESS	PHONE
BARRY COPELAND	STREICH, LANG	100 W. WASHINGTON 2100	229 5200
Gary Householder	CAVE-Pollock + AAR	518 N Beaver St Flag 86001	774 7117
Leslie Cerrigh	AG		
Irma Belanger	MAG	1820 W. Washington	257-6308
Dean Wingert	Forest City	333 E. Wetmore TUCSON #250	888-3962
Don Sheta	House Research		3146
Steve Gervais	SUNCOR	555 E. Plaza Cir Litchfield Park	935-2700
Mark Bomnlb	UDC HOMES		
Courtney Sisk	BURNS INT.		264-4800
Lillian Mosley	ASLD	1616 W. Adams	23671

STREICH, LANG, WEEKS & CARDON
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

2100 FIRST INTERSTATE BANK PLAZA
100 WEST WASHINGTON
PHOENIX, ARIZONA 85003-1897
(602) 229-5200
TWX 910 951 1504 STRI LANG PHX
FAX: (602) 229-5690

TUCSON OFFICE
1500 SECURITY PACIFIC BANK PLAZA
33 NORTH STONE AVENUE
TUCSON, ARIZONA 85701-1413
(602) 628-1419
FAX (602) 623-2418

PLEASE REPLY TO PHOENIX OFFICE

WRITER'S DIRECT LINE
229-5615

November 16, 1989

VIA TELECOPIER

Greg Keller
STATE LAND DEPARTMENT
State Compensation Building
1616 West Adams, First Floor
Phoenix, Arizona 85007

Re: Comments on the Report of the Municipal Master Planned Development Study Committee

Dear Greg:

I finally had a chance to read through the final report of the 2019 Study Committee, and, having been unable to reach you by phone, I thought I would provide you with a few written comments.

As you might have already guessed, my comments relate to the discussion of community facilities districts commencing on page 19 of the report. Generally, I think that this section reads fairly well. You may wish to correct what I believe is a typographical error in the last line of the second paragraph of the discussion ("fee" should be "free").

The only substantive comments that I have relate to the "Findings" section. It appears that the description of the Committee's findings may have been drafted prior to some of our more recent discussions. While the Committee members and the Land Department staff have raised several concerns about the use of CFD's on State lands, I had hoped that by now there would be few, if any, "unanswered questions." I fear that a reader might conclude that the Committee must not have been doing its job if, after a year's time, there remained "many unanswered questions." We both know this is not the case. Also, the report, as it now reads, implies that the liening of a possessory interest on State lands may be unconstitutional. There should be no question about

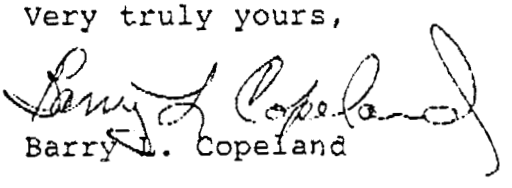
this. Leasehold and certificate of purchase interests in State lands are lienable. What may not be encumbered is the underlying fee interest. Finally, in the second paragraph of the Committee's findings on community facilities districts, the report appears to recommend that legislation not be submitted to the Legislature until "more study and legal analysis" are performed. I was under the impression that the draft legislation on which I am currently working was, upon approval by the Committee, to be submitted as part of the CFD legislative package. In other words, I thought we were trying to wrap up the additional study and analysis prior to submitting this report. Please let me know if I am mistaken.

With the foregoing comments in mind, I would suggest revising the "Findings" section of the Committee's report on CFD's to read as follows:

> While the Committee concluded that community facilities districts could be utilized for conventional or master planned Trust land projects, several concerns were discussed, i.e., avoiding the problem of a possessory interest lien becoming an encumbrance on the trust's fee title and, as a practical matter, whether a possessory interest in the form of a long-term lease, certificate of purchase or participation contract would be valuable enough to both back bonds issued by the district and serve as collateral for funds borrowed to construct on-site improvements.
>
> The proposed legislative changes relating to community facilities districts attempt to address these concerns and to provide a more workable framework for the inclusion of Trust lands within improvement districts generally.

If you have any questions concerning any of the foregoing comments or these suggested revisions, please contact me. Thank you for your consideration.

Very truly yours,



Barry L. Copeland

BLC:cla
cc: Jim Rothschild

CAPE-POLLOCK, INC.
REALTY & MANAGEMENT

NOVEMBER 16, 1989

RECEIVED
NOV 17 1989
COMMISSIONER
STATE LAND DEPT.

MR. M. J. HASSELL
STATE LAND COMMISSIONER
STATE LAND DEPARTMENT
1616 WEST ADAMS
PHOENIX, AZ 85007

DEAR MR. HASSELL:

I WAS PRESENT AT THE NOVEMBER 9TH MEETING AT YOUR OFFICE AND VOICED CONCERNS ABOUT VERBIAGE WHICH ALLOWS DISCRETION IN CHARGING FEES FOR MASTER PLAN PERMIT APPLICANTS.

IT IS MY FEELING THAT ALL APPLICANTS SHOULD PAY FEES AND CONSIDER THESE FEES AS A PART OF MASTER PLAN COSTS. WITH THE DEVELOPERS ABSORBING THIS COST, YOUR OFFICE MAY NOT BE DEPENDENT UPON APPROPRIATIONS FOR THESE EXPENSES.

THANK YOU FOR ALLOWING ME TO EXPRESS MY FEELINGS ON THIS MATTER.

RESPECTFULLY,

GUY R. HOUSEHOLDER

/ADP

518 North Beaver Street, Flagstaff, Arizona 86001, 602/774-7115
3625 N. 16th Street, Suite D100, Phoenix, Arizona 85016 602/274-1934

Southwest Community Resources, Inc.

November 16, 1989

Mrs. Nicki Hansen
Arizona State Land Department
1616 W. Adams
Phoenix, AZ 85007

FAX: 542-2590

Dear Mrs. Hansen:

Southwest Community Resources compliments you and your staff for the professional effort put forth in developing a response to issues addressed in House Bill 2019. Your presentation of the issues and recommended solutions during the November 9, 1989 public hearing was well done.

I wholeheartedly support the legislature proposals contained in the final recommendations of the Municipal Master Planned Development Study Committee. Legislative approval of the recommended additions and modifications to current State Statutes will significantly enhance the Land Department's ability to professionally manage development of Arizona State Trust Lands while maximizing the economic value of those lands for the benefit of education in Arizona.

During the 1990 legislature session I will actively support adoption of the study committee's recommendations to the State Legislature.

Sincerely,

SOUTHWEST COMMUNITY RESOURCES, INC.

Timothy R. Bray

Timothy R. Bray
President

TRB:rw(55S/47)

8787 E. Pinnacle Peak Road, Suite 200, Scottsdale, Arizona 85255 • 602-585-5644 • FAX 602-585-0643

NOV 16 '89 11:55 SECURITY TITLE#8016025555 P.4

FOREST CITY
SOUTHWEST

November 14, 1989

Gregory Keller, Project Manager
Urban Planning Division
STATE LAND DEPARTMENT
1616 W. Adams Street
Phoenix, AZ 85007

Re: MUNICIPAL MASTER PLANNED DEVELOPMENT STUDY COMMITTEE

Dear Mr. Keller:

Forest City is a national development company that has been involved with the Arizona State Land Department on several parcels of land throughout the past four years. As their representative, I have been following the activities of the Study Committee with great interest.

We support the basic premise of the Committee's report, that legislative changes are recommended to facilitate the ability to install infrastructure within State Trust Urban Lands, and believe that the new legislation proposed by the Committee will achieve that goal and benefit the Trust.

We look forward to progress on the Committee's recommendations.

Sincerely,

FOREST CITY SOUTHWEST

Dean F. Wingert
Project Director

DFW:dl
6450.036

333 E. Wetmore Rd., Suite 250, Tucson, Arizona 85705-1758 (602) 888-3962

CITY OF
MESA

November 13, 1989

Ms. Nicki Hansen
Director Urban Planning Division
Arizona State Land Department
1616 West Adams
Phoenix, Arizona 85007

Dear Nicki:

We have been following the activities of your HB 2019 Committee, via the material you have been sending to our office. (See, someone actually reads it.)

I have read the report of the Municipal Master Planned Development Study Committee dated November 1989, and am writing to tell you of our support for the recommendations of the HB 2019 Committee it contains.

When we were working with your office to prepare and approve a Development Master Plan for your Highlands project, the weaknesses of your current system were clearly apparent. The State did a good job of helping to develop a plan for the property, but it quickly became clear that without funding for the infrastructure, the sale of the property would be more difficult. In addition, although both the State and Mesa desired some kind of a vehicle to keep both the plan and the unique character of the project intact over the lengthy development process, there could be none under your current process, save for zoning stipulations that the City would attempt to enforce on future buyers. I am pleased to see that the recommendations address both of these issues.

The ability to fund and build the needed infrastructure and phase the sale and development of the property would seem to me to be critical to the success of large scale projects -- and to return the maximum revenue to the State.

The ability to develop CC&R's to regulate the quality and character of the project (in addition to the State staying involved as a key player during the development cycle), will provide a presently lacking assurance that "what you see is what you'll get". This, in my opinion, is critical to show the public, and private investment communities, that both their interests will be protected as the project evolves.

In total, I believe the changes your Committee proposes are necessary to the success of your program, and realistic to address the concerns that have been raised about your process over the years.

Sincerely,

Wayne Balmer

WAYNE BALMER, AICP
Community Development Manager

WB:pmb

e:StateLnd.ltr

Planning and Community Development
55 North Center Street • P.O. Box 1466 • Mesa, Arizona 85211-1466 • (602) 644-2185

SunCor
Development
Company

RECEIVED
NOV 13 1989
COMMISSIONER
STATE LAND DEPT.

November 13, 1989

Arizona State Land Department
Municipal Master Planned Development
Study Committee
1616 West Adams
Phoenix, Arizona 85007

RE: Proposed Legislation, Urban Lands Act

Dear Committee Members:

In response to the invitation extended by Commissioner Hassell during the November 9 Public Hearing, I would like to submit the following questions for consideration at the next committee meeting.

1). Participation Contracts

A). How will the participation percentages be determined? (ie: does the department have the expertise to formulate the sophisticated financial models needed to make these decisions?)

B). Why would the Department/Trust want to participate in the "net profit" rather than a "percentage of the gross"?

C). Has consideration been given to what effect a participation clause might have on the initial appraisal of the land? (This question can be coupled with "A" above which might include a discussion of net present/future value analysis?)

2). Infrastructure

The reimbursement provisions seem rather subjective and nebulous. In order for this to be effective and equitable, shouldn't the guidelines be more specific and defined?

2828 N. Central Ave. • Suite 1212 • Phoenix, Arizona 85004 • P.O. Box 52160 • Phoenix, Arizona 85072
(602) 285-6800 • Fax (602) 285-6801

3). Community Facilities Districts

Does the Department/Trust really want to be a "pioneer" in attempting to utilize a CFD in a Master Planned Community? I would think that it would be advisable for the department to "sit back" for a couple of years and let others "work out the bugs" which are inevitable with a legislative tool like the CFD.

Thank you in advance for your consideration of these questions. I might add that I think the committee and SLD staff have done a commendable job with a very difficult and complex assignment.

Sincerely,

Gary G. DuBrock
Vice President

GGD:dlm

cc: John Ogden
Steve Gervais

THE PLANNING CENTER

950 NORTH FINANCE CENTER DRIVE, SUITE 210, TUCSON, AZ 85710 (602) 623-6146

November 14, 1989

M.J. Hassell
State Land Commissioner
Arizona State Land Department
1616 W. Adams
Phoenix, Arizona 85007

RECEIVED NOV 16 1989 COMMISSIONER STATE LAND DEPT.

RE: House Bill 2019

Dear Commissioner Hassell:

I was not able to attend the Study Committee's public meeting on November 9, 1989, but I have attended some of the Committee meetings and have reviewed the Committee's report and draft legislation regarding H.B. 2019. I offer the following statements in support of this legislation.

The proposed legislation recommended by the Committee reflects comprehensive and necessary changes that are required in order to maintain the highest and best use of the Trust lands and to maximize land values. The critical issue with the planned development of Trust lands has been with the provision of infrastructure. The proposed legislation provides a mechanism, through a public/private partnership, to equitably resolve this issue without placing the burden on the local jurisdiction.

I have one suggestion for the Committee's consideration regarding proposed revisions to Article 5.1. I believe the requirement that a Master Plan area must be within the corporate boundaries of a city or town is too restrictive and will prevent planned development in an area that may be highly appropriate and desirable by the local jurisdictions. One suggestion may be to add language that would permit Master Plans outside of incorporated areas but only with the concurrence of the affected jurisdictions. I also am aware of the Committee having reservations regarding changes to the Community Facility District Act to allow Trust lands to participate in these Districts. The ability to be included in CFDs, while possibly cumbersome and complex, does provide another tool for financing improvements and may be the best solution in certain situations.

My congratulations on an excellent job on a difficult and complex subject and I hope all goes well through the legislative process.

Thank you for the opportunity to provide these comments.

Sincerely,

THE PLANNING CENTER

Charles B. Deans
Project Manager