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An Inventory of State-owned Real Property and Subsurface Mineral Rights

Conducted Pursuant to Senate Resolution 2010-383

October 2011

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Summary and Recommendations

Senate Resolution 2010-383 calls on the Legislative Budget and Finance Committee to conduct a comprehensive review of the Commonwealth's inventory of real property, roadways, bridges, and waterways, including who owns the mineral rights under such properties, and to make recommendations for improving how real property is inventoried, how surplus property is identified and sold, and how mineral rights are identified.

We found:

- ***The Department of General Services (DGS) has an extensive, though not complete, inventory of the buildings and land owned by the Commonwealth.*** DGS maintains a computerized inventory of Commonwealth-owned buildings and land as part of its Enterprise Facility Management System (EFMS). The EFMS is relatively new, and several agencies have yet to provide their information to be entered and updated into the system.¹ The inventory includes over 19,000 different structures and properties totaling approximately 550 pages, with varying amounts of descriptive information. Most of the structures are small and of little value (e.g., storage sheds, cabins, pump houses, picnic pavilions, and garages). The inventory does not include market value information, but does include, at least for many structures, replacement value. Replacement value, which is collected primarily for insurance purposes, can, however, be misleading if used as a proxy for market value. For example, we found abandoned buildings that are scheduled to be demolished with replacement values in the tens of millions of dollars. The inventory also includes information on the acres of land owned and, in some cases, acquisition, but not market, values. The EFMS provides space for agencies to report how much of the building is occupied, but this information is not currently being reported. DGS personnel have stated that they are working towards updating the property list with information from the agencies.
- ***It is up to the various departments and agencies to identify and report surplus property.*** Under state law (Act 1981-48, 71 P.S. §§651.1-651.9), DGS is to compile an annual survey of all state-owned real property. As part of this survey, agencies are to identify any property surplus to the needs of the agency. Once identified as surplus, DGS then disposes of the property either through transfer to another agency or by sale, both of which require legislative approval. However, no criteria or guidelines

¹ DGS reports that the information from SSHE has recently been included within the EFMS online inventory and that the remaining agencies (State Police, Department of Corrections, Department of Military and Veterans Affairs, and the Pennsylvania Turnpike Commission) continue to make progress with their data loads.

exist for agencies to use when identifying surplus or underutilized properties, and very few properties (on the order of one or two a year) are sold through this process. More commonly, surplus properties are transferred through the legislative process, often to a local government. Also, as each department or agency tracks its own property, it makes it difficult to manage the properties in a centralized, coordinated manner.

- ***DGS's Property Inventory lists approximately 30 vacant properties consisting of 180 vacant structures.*** Most of these structures are owned by the Department of Public Welfare, primarily on the grounds of former state hospitals. The Department of Corrections also has a number of vacant structures, but their inventory has not yet been incorporated into the DGS inventory. Oftentimes, however, structural (e.g., shared utilities) and legal issues related to the land and buildings on these properties serve as impediments to the parcels being divided and sold as separate properties.
- ***Often real property is disposed of through transfer to another agency.*** We identified 58 stand-alone legislative acts authorizing real property conveyances in the last three years. Over half of these were to either another state agency or to a local government entity, often with little or no monetary benefit to the Commonwealth. In contrast, over the past four years only 10 properties were placed on the Commonwealth's Disposition Plan for sale. The most valuable of these properties is the Scotland School for Veterans' Children in Franklin County, with an estimated value of \$5 million.² The Mayview State Hospital in Allegheny County, a 335-acre property with an estimated value of \$2 million, was the only other property with an estimated value of over \$1 million. Of the ten properties listed on the Annual Property Disposition Plans over the past four years, only two have sold (as of mid 2011).
- ***DGS has sold 25 properties in the past three years, generating \$17.8 million for the Commonwealth.*** DGS reports having sold 25 properties for a total of \$17.8 million in the three-year period 2008-2010. Often (about one-third of the sales), however, these properties are sold to another state agency, a municipality, or a municipal development authority, not to the private sector. Typically these properties are transferred through separate legislative action, not as part of the Annual Property Disposition Plan.
- ***PennDOT maintains an inventory of the approximately 40,000 miles of state-owned roads and 25,300 state-owned bridges.*** Its system does not, however, capture the acreage of highway rights-of-way, nor who owns the mineral rights under the roadways or rights-of-way. PennDOT reported, however, that it generally does not own mineral rights under roadways or within its rights-of-way, except as necessary for support of the surface.

² The Scotland School was subsequently removed from the 2009 and 2010 Disposition Plan.

- ***Streambeds of navigable waterways and the mineral rights under them are publicly owned by the Commonwealth and held in trust for the public.*** Although a definitive list of the Commonwealth's navigable waters does not exist (the classification of some waterways are still subject to court decisions), several lists have been compiled that are generally accepted as comprehensive. The Commonwealth (through the Department of Conservation and Natural Resources) has recently leased land under the Susquehanna River for Marcellus Shale gas development, with the lease revenue going to the Oil and Gas Lease Fund.
- ***The Department of Conservation and Natural Resources (DCNR), which owns large tracts of land, owns the mineral rights under about 85 percent of its land. The Pennsylvania Game Commission, the Commonwealth's other major land owner, owns the mineral rights under about 30 percent of its land in the Marcellus Shale region. Little information is available, however, on who owns the mineral rights under the property owned by other Commonwealth agencies.*** Mineral rights can be sold separately from a property's surface rights, and it is quite possible that Commonwealth agencies may own the surface rights to a property but not the mineral rights. DCNR, which owns 2.2 million acres of property, owns about 85 percent of this land in fee simple, meaning that it owns both the surface and subsurface (mineral) rights. For the 15 percent of DCNR land that is not owned in fee simple, DCNR does not know who owns the mineral rights.

The Pennsylvania Game Commission (PGC) owns approximately 900,000 acres sitting over prospective Marcellus Shale gas, but for most (about 70 percent) of this acreage, the mineral rights have either been severed from the surface ownership or title to the mineral rights is unknown or in dispute. For land owned by other state agencies, mineral rights titles are less well documented and, typically, would have to be searched on a case-by-case basis. This can be a lengthy and expensive process, as mineral rights are recorded at the county level, and oftentimes an extensive title search is necessary to determine who owns the various rights.

- ***Unless otherwise specified in statute, the revenues generated by oil and gas leases on Commonwealth property must be deposited into the Oil and Gas Lease Fund.*** Revenue derived from rents and royalties from oil and gas leases of Commonwealth-owned land, except for leases on lands owned by the Game Commission and the Fish and Boat Commission, is to be deposited in the Oil and Gas Lease Fund. Fund monies are to be used for conservation, recreation, dams, or flood control projects. Furthermore, DGS and most other Executive Branch departments are not authorized to enter into oil and gas lease agreements, even if the revenue from those agreements would be deposited into the Oil and Gas Lease Fund.
- ***When the Commonwealth sells or otherwise disposes of land, it retains the mineral rights.*** DGS reported that for real property owned by the

state, mineral rights are not tracked primarily because Act 48, Pennsylvania's Disposition of Surplus Land Act, requires that any mineral rights in land being disposed of by the Commonwealth must be expressly reserved to the Commonwealth and not transferred. Because the mineral rights cannot be sold, DGS has not placed a priority on identifying Commonwealth ownership of those rights. (Mineral rights can, however, be transferred if the property is transferred by means of a direct conveyance pursuant to stand-alone legislative authority.)

Recommendations:

1. ***DGS should develop criteria for Executive Branch agencies to use to identify surplus and underutilized property.*** Executive Branch agencies are required to provide a listing of their surplus property to DGS annually. DGS, however, has not developed criteria for agencies to follow in identifying such property beyond "...surplus to the needs of the administering agency which has current use of the property...." Each agency manages that determination independently. As a starting point, we recommend agencies be required to report as surplus any property that is:
 - not utilized for any program-related purpose,
 - not included in any formal agency plans to meet its program objectives, and
 - free from deed restrictions and environmental problems limiting use.

As part of this review and in conjunction with the other recommendations in this report, DGS should consider requiring agencies to identify land in the Marcellus Shale region that could be leased for drilling without impeding the agency's mission. The Department of Corrections, in particular, has several large properties that may lie atop rich Marcellus Shale gas deposits.

2. ***DGS should further develop a more strategic and comprehensive approach to managing, identifying, and disposing of surplus and underutilized property.*** We recommend DGS develop a more effective process for actively managing, listing, advertising, and selling surplus and underutilized property. As part of this effort, DGS should consider utilizing interactive maps, such as is done in Texas and Georgia, to facilitate property sales. A more aggressive, strategic, and comprehensive approach to managing, identifying, and disposing of surplus and underutilized property, particularly if it was sold to the private sector rather than simply transferred to another state or local government agency, would not only generate immediate revenue for the Commonwealth, but could also result in the property being placed on the tax rolls. A centralized property

management system, such as DGS is working to develop, could facilitate the identification of surplus and underutilized property, promote a more efficient management of space, and result in lower annual maintenance and operating costs.

3. ***The General Assembly should consider authorizing certain Executive Branch agencies with significant property holdings in the Marcellus Shale region to enter into lease agreements for gas drilling and to deposit revenue from such agreements into accounts which, if not wholly, at least in part benefit those agencies.*** Agencies such as the Department of Corrections and the State System of Higher Education, both of which have sizable land holdings in the Marcellus Shale region, are not authorized to enter into lease agreements with drilling companies and would have little incentive to do so because any revenue generated must be deposited into the Oil and Gas Lease Fund. Under current law, agencies such as DGS are not even allowed to recover the costs they incur in developing such lease agreements. If agencies were allowed to retain at least a portion of these revenues, with any remainder going to the General Fund, Motor License Fund, or other fund with a statewide purpose, they would have a greater incentive to pursue such opportunities.³
4. ***If Recommendation 3 is adopted, DGS should take the lead in developing the expertise necessary to assist Commonwealth agencies in conducting title searches and developing natural gas lease agreements.*** Conducting title searches and negotiating lease agreements with drilling companies can be difficult. Both DCNR and the Game Commission have years of experience in addressing these issues, but it is unrealistic to expect them to provide significant ongoing assistance to other agencies, especially agencies with such diverse priorities and concerns as the Department of Corrections or the Department of Public Welfare. DGS would appear to be the most appropriate agency to serve as the lead agency and point of contact for both the drilling companies and the other Executive branch agencies (i.e., excluding DCNR and PGC). By concentrating these efforts in one department, there might be sufficient volume of activity to develop the necessary in-house expertise and a consistent approach in these specialized areas.
5. ***Counties in the Marcellus Shale region should take steps to update their title records.*** Determining ownership of mineral rights can be a complex

³ Senate Bill 367 of 2011 would give the Department of General Services the authority to lease, under certain conditions, land owned by the State System of Higher Education and state agencies (other than the Department of Conservation and Natural Resources, the PA Game Commission and the PA Fish and Boat Commission) for mining and natural gas removal. The bill also provides that not less than 50 percent of the payments or royalties received by the DGS is to be deposited into the Keystone Recreation, Park and Conservation Fund or the Environmental Stewardship Fund. The remaining payments are to be deposited in the General Fund.

task, often involving reviewing paper records dating back 100 years or more. Computerizing (or digital scanning) of these records would assist both landowners and the drilling companies, but would be costly to counties. Senate Bill 1100 of 2011 would allow counties to use Marcellus Shale impact fee revenue to update their record-keeping systems.

I. Introduction

Senate Resolution 2010-383 directs the Legislative Budget and Finance Committee to conduct a comprehensive review resulting in a listing of all Commonwealth real property and improvements, including acreages, square footages of facilities, current usages, and market values, if known. The study also is to develop a list of all state roadways, bridges, and waterways, including rights-of-way. The report is to additionally list any known owners of mineral rights under state-owned land. Finally, the study seeks recommendations regarding the processes for identifying property mineral rights, tracking real property, and identifying and selling surplus real property owned by the Commonwealth.

Scope and Objectives Statement

1. To produce a listing of real property, including improvements, owned by the Commonwealth.
2. To identify the total acreage of the real property, square footage of any facility on the property, the current use of the property and facilities, and, if known, the current market value of the property.
3. To produce a listing of all state roadways and bridges, including rights-of-way.
4. To produce a listing of all state waterways.
5. To produce a listing of any owner, if known, with mineral rights in property where the Commonwealth is the surface owner.
6. To provide a description of the current system for tracking real property in the Commonwealth.
7. To develop recommended improvements in the process of identifying property mineral rights.
8. To develop recommendations on improving the Commonwealth's process for identifying and selling surplus property.
9. To develop other findings and recommendations, as appropriate.

Methodology

Most of the information in this report was provided by the Departments of General Services, Transportation, Conservation and Natural Resources, and Environmental Protection. Information on other states was collected through telephone interviews and through Internet searches.

We did not conduct on-site visits or otherwise attempt to assess the accuracy of the information contained in the various state agency inventories. Because of their length (the DGS inventory itself is over 550 pages), we did not include copies of the various inventories cited in this report. As noted in the report, some of these inventories are available on-line (the DGS inventory of land and structures and PennDOT's bridge inventory). Several other inventories are available upon request to our office (these include the inventory of the Commonwealth's navigable waters and the inventories of real property maintained by the Department of Corrections, State System of Higher Education, the state-related universities, and the Pennsylvania State Police). PennDOT's inventory of roadways and rights-of-way is only available through the RIMS system, which is not open to the public. We do not have inventories of the properties owned by the Pennsylvania Turnpike Commission or the Department of Military and Veterans Affairs, although it is our understanding that these properties will eventually be incorporated into the DGS inventory system, but no date certain was given for when this would occur.

Acknowledgements

We gratefully acknowledge the cooperation and assistance provided by the Departments of General Services, Transportation, Conservation and Natural Resources, and Environmental Protection during the conduct of this project.

Important Note

This report was developed by Legislative Budget and Finance Committee staff. The release of this report should not be construed as an indication that the Committee or its individual members necessarily concur with the report's findings and recommendations.

Any questions or comments regarding the contents of this report should be directed to Philip R. Durgin, Executive Director, Legislative Budget and Finance Committee, P.O. Box 8737, Harrisburg, Pennsylvania 17105-8737.

II. The Commonwealth's Inventory of State-owned Real Property, Roadways, Bridges, and Waterways

The Department of General Services compiles an annual survey of all state-owned real property. DGS gathers this information from the various agencies. Pursuant to Act 1981-48, 71 P.S. §§651.1-651.9, by January 1 each year, DGS distributes to all agencies a request to compile information for each parcel of property within the agency's jurisdiction as to the parcel's location, size, usage, improvements, condition, and other relevant attribute data. Also, Act 1972-117, 71 P.S. §1661.11-1661.12, requires DGS to maintain the latest inventory of state-owned or leased property in DGS's office to be available for public inspection by January 15 of each year. DGS maintains an online version of the inventory accessible to the public through the Department's website and can be accessed under the real estate tab, at http://www.state.pa.us/portal/server.pt/community/real_estate/1346.

Inventory of State-Owned Real Property

The DGS online property inventory is part of the Department's developing Enterprise Facility Management System (EFMS). Executive Order 2004-2 designates DGS as the central agency to manage the utilization of all Commonwealth-owned and leased space. DGS has, in conjunction with the Office of Administration, begun utilizing Plant Maintenance, an SAP module, in an effort to develop a consistent, consolidated, and complete repository for all facility and building data. Once complete, the EFMS will be comprised of the Land and Building Inventory, Work Order, and Flexible Real Estate. The EFMS is relatively new, and several agencies have yet to include and update their data into the system.¹

The Land and Building Inventory is the foundation of the EFMS. It provides the ability to house comprehensive facility information, as well as building data to the floor level. Access to images of each building and important documents such as Certificates of Occupancy and National Register information will be available. The Land and Building component, which supports all other modules and reporting capabilities, went live August 1, 2009. The Flexible Real Estate (FRE) module fine tunes plant maintenance by allowing agencies to track leased property, better segment property usage, provide finer detail of the building to include the contents of specific rooms within a building, and link to SAP employee information that will specifically assign individuals to a given area, office, or cubicle.

When FRE is interfaced with computer-aided design (CAD) drawings, even small details such as open work orders to a given cubical can be viewed. Additional

¹ DGS reports that the information from SSHE has recently been included within the EFMS online inventory and that the remaining agencies (State Police, Department of Corrections, Department of Military and Veterans Affairs, and the Turnpike Commission) continue to make progress with their data loads.

functionality provides for management of all aspects of leases and contracts, placement of room reservations, display of services available to a meeting room such as catering or audio visual equipment, move planning, and management of parking spaces. FRE will also accommodate GIS mapping capabilities.

DGS reports that the Flexible Real Estate module has now be implemented. In addition, DGS has also developed the associated reporting capability of a Bureau of Risk and Insurance Management (BRIM) report, which outlines information such as construction type, square footage, boiler data, and photographs for any building in the DGS system.

DGS's current real property inventory identifies over 19,600 separate parcels and structures. This results in over 550 pages of inventory online with varying amounts of descriptive information. The inventory identifies parcels by agency and by county and typically includes at least partial information relevant to the property or structure, such as the year built, square footage, replacement costs for both buildings and contents, acreage, and acquisition costs. Additional data is available (e.g., number of floors, street address, and type of construction), but not on the public website.

As shown in Table 1 below, about 12,000 (61 percent) of these listings have listed replacement values of between \$1,000-\$100,000, and an additional 4,700 (24 percent) parcels and structures have no listed acquisition or replacement value.

Table 1

Replacement Values of State-owned Real Property
As of February 1, 2011

<u>Listed Replacement Value</u>	<u>Number of Properties in DGS Inventory</u>
Over \$100 mm	5
\$50 mm-\$99 mm.....	15
\$25 mm-\$49 mm.....	23
\$10 mm-\$24 mm.....	103
\$5 mm-\$9 mm	130
\$1 mm-\$4 mm	493
\$500 k-\$1 mm	509
\$250 k-\$499 k	677
\$100 k-\$249 k	711
\$50 k-\$99 k	1,810
\$10 k-\$49 k	3,210
\$1 k-\$9 k	7,049
\$1-\$1 k	154
\$0	4,718

Source: Developed by LB&FC staff using information obtained from the Department of General Services.

Replacement value, which is collected primarily for insurance purposes, can, however, be very misleading if used as a proxy for market value. For example, we found abandoned buildings that are scheduled to be demolished with replacement values in the tens of millions of dollars. Moreover, some high-value buildings are listed on the inventory with no replacement value (for example, the East Wing of the Capitol and the Commonwealth Keystone Building). The inventory does not list market values of the properties or structures as market values fluctuate over time.

DGS's Property Inventory lists approximately 30 properties and 180 structures as being vacant. Most of these structures are owned by the Department of Public Welfare, primarily on the grounds of former state hospitals.

Several agencies had yet to list their properties on the EFMS. These agencies, the number of properties they own, and the reported replacement values are shown in Table 2 below:²

Table 2

Agencies That Have Not Yet Listed Their Properties on EFMS		
<u>Name</u>	<u>Count</u>	<u>Replacement Cost</u>
Dept. of Corrections.....	1,005	\$2,218,941,282
Other Colleges and Universities.....	72	859,357,915
State Police.....	51	112,113,592
State System of Higher Education	<u>789</u>	<u>4,649,335,464</u>
Total.....	1,917	\$7,839,748,253

Source: Developed by LB&FC staff using information obtained from the Department of General Services as reported by the various agencies.

State-owned Roadways and Bridges

Senate Resolution 383 asks us to inventory the Commonwealth's state-owned roadways and bridges (PennDOT's buildings and structures are included in the DGS inventory system as reported above).

PennDOT has an inventory of the state roads and bridges in the following systems:

- roadways are through the Roadway Management System (RMS) and
- bridges are through the Bridge Management System (BMS).

Included in these systems are approximately 40,000 miles of roadway (separately identified in approximately half-mile segments) and over 25,300 bridges. PennDOT

² Not included are the Pennsylvania Turnpike Commission and the Department of Military and Veterans Affairs.

also acquires approximately 2,600 parcels of land each year for its highway program, some with rights-of-way dating back to the time of William Penn.

PennDOT's bridge inventory can be viewed at <http://www.dot.state.pa.us/internet/web.nsf/secondary?openframeset&frame=main&src=infobridge?openform>, but the highway inventory (RMS) is not publicly available.

PennDOT's systems do not, however, capture the acreages of the highway rights-of-way nor the market values of its rights-of-way and bridges. There is also no inventory of whether the Commonwealth owns mineral rights under its roadways or in its highway rights-of-way. PennDOT reported, however, that it generally does not own mineral rights under its roadways or within its rights-of-way, except as necessary for support of the surface.

PennDOT reported that determining the acreage of its rights-of-way, whether it owns mineral rights under its roadways or within its rights-of-way and at facility locations, and the market values of its rights-of-way, bridges, and facility locations would be a "colossal task that would take an extreme amount of time and resources to determine."

Waterways

Senate Resolution 383 asks us to list all state waterways. There are thousands of miles of streams and hundreds of lakes in Pennsylvania. Many of the streams are considered navigable, but few of the lakes are.

The beds on non-navigable waterways in Pennsylvania are privately owned by those who own the land beneath the water's surface and the lands abutting it. Streambeds of navigable waterways and the mineral rights under them, on the other hand, are publicly owned by the Commonwealth and held in trust for the public. The Commonwealth's ownership of these submerged lands extends to the ordinary low water mark (rivers and streams) or water's edge (lakes). The low water mark is the height of the water at ordinary stage of low water, unaffected by drought and unchanged by artificial means.

Navigable by Court Opinion or Law. In 1826, the Pennsylvania Supreme Court declared that it was already well-settled that the principal rivers of the Commonwealth are navigable as a matter of law. Finding it unnecessary to enumerate them all, the Court said it was safe to declare the Ohio, Monongahela, Allegheny, Susquehanna and its north and west branches, Juniata, Schuylkill, and Delaware Rivers as principal rivers. The Lehigh River has also been recognized as such. Lake Erie and Conneaut Lake have also been recognized as navigable by law.³ Smaller lakes and ponds, however, have generally not been deemed navigable.

³ DCNR notes that although by statute it has jurisdiction over the gas assets in Lake Erie, the 2007 Federal Energy Act expressly forbids Pennsylvania from gas leasing in the lake.

In the 18th and 19th centuries, the Pennsylvania Legislature passed numerous acts declaring certain rivers, creeks, and streams, or parts thereof, to be public streams or highways. The purpose of these acts was to allow public fishing, navigation, and other uses (even small and seasonal waterways played a major role in the movement of logs, sawn timber, and lumber, as well as commodities such as furs, salts, grains, and manufactured goods). In 1890, Frederick J. Geiger of the Philadelphia Bar prepared a list of the various acts declaring waterways to be public highways for the Pennsylvania Fish Protective Association. It lists the acts alphabetically by stream name.

Navigable in Fact. In addition to being declared navigable by the courts or General Assembly, waterways may be navigable in fact. Navigable in fact means that the waterway is used, or capable of being used, as a highway for commerce. The size of body of water and its capacity to float a boat are, in and of themselves, not determinative; the waterway must be used or have been used for commercial transportation, not just as a source of recreation. This is why only large lakes are considered navigable.

The waterway need not now be used for public commerce. If it met the navigability test at any point in its history, the waterway remains a legally navigable waterway subject to the public trust doctrine.

The Department of Environmental Protection (DEP) has created a list of navigable waterways entitled *Stream Beds Owned by the Commonwealth*. It was created in November 2003 and is an alphabetical list of waterways, the beds of which have been found through legal analysis, historical research, and/or Pennsylvania court decisions to be submerged lands of the Commonwealth.

Finally, both the United States Corps of Engineers and the United States Coast Guard have regulatory authority over “Navigable Waters of the United States.” Navigable waters of the United States are, generally, waters which form a continuous waterway on which boats may travel between two or more states. The Corps of Engineers and the U.S. Coast Guard maintains a listing of such navigable bodies of water in Pennsylvania over which they can exercise jurisdiction.

DEP cautions that despite all the effort that has gone into preparing these various lists (the 1890 Geiger list, the DEP list, and the U.S. Corps of Engineers/Coast Guard list), they should be treated as a starting point for determining their regulatory control and are not a final determination of all the legally navigable streams in Pennsylvania. Readers who would like a copy of DEP’s *Stream Beds Owned by the Commonwealth* may contact the LB&FC offices.

III. Commonwealth Process for Identifying and Disposing of Surplus Real Property

Executive Order 2004-2 designates the Department of General Services as the central agency to manage the utilization of all Commonwealth-owned and leased space. In accordance with EO 2004-2, DGS is responsible for the following aspects of managing Commonwealth-owned real property:

- the central management of the allocation of Commonwealth-owned and leased space and the authority to do so properly;
- maintaining an inventory of Commonwealth-owned and leased space and the regular inspection of these facilities to ensure that they are being fully and economically used by the agencies;
- evaluation of agency requests for additional space or the renewal of a lease for existing space;
- termination or amending of leases;
- decreasing of the amount of space leased;
- ordering the consolidation of space within or among facilities and agencies;
- moving agencies from leased space to owned space;
- declaring property surplus to the needs of an agency; and
- taking any other action that will result in the elimination of unnecessary or inefficiently used space and the comprehensive and economic use of all existing facilities and land.

Despite the mandate of EO 2004-2, the process for identifying and disposing of surplus real property remains generally reactive, comprised of both direct conveyances authorized by stand-alone legislation whereby a new owner is already identified mixed with the process for disposing of surplus real property required by law under Act 1981-48, 71 P.S. §§651.1–651.9, in situations where such direct conveyances have not been arranged.

We identified 58 stand-alone legislative acts authorizing real property conveyances in the last three years. Over half of these were to either another state agency or to a local government entity, often at little or no cost. DGS personnel explained that in most circumstances, state and local officials prefer to utilize the direct conveyance method of disposing of property known to be or expected to become surplus to Commonwealth needs because greater control can be exercised over the type of entity that acquires the property. Properties for which no direct conveyance has been or can be arranged then proceed through the statutory process for disposition under Act 48.

Act 1981-48 requires agencies, as part of an annual survey of real property holdings, to identify any property currently surplus to the needs of the agency. Management Directive 625.5 Amended, which details policy for reporting surplus property, requires agencies to review their real property in accordance with Act 48. “Surplus property” is defined under Act 48 as follows:

Any buildings, land or other real estate owned by the Commonwealth that has been deemed surplus to the needs of the administering agency which has current use of the property. The definition of and the designation of surplus property shall not apply to any lands designated as State parks or State forests or any lands acquired by the Pennsylvania Fish and Boat Commission or the Pennsylvania Game Commission.

MD 625.5 Amended requires agencies to use form GSRE-45 in reporting surplus property to DGS’s Bureau of Real Estate. Neither the law, nor management directive, nor DGS policy provides criteria for agencies to use to evaluate when a property is “surplus” to its needs. It simply provides for the certification of an agency representative that the listed property is deemed to be surplus to the needs of the agency and can therefore be disposed of, as follows:

PART I CERTIFICATION

1. This is to certify that the below named and described real property is surplus to the needs of this agency and can, therefore be disposed of by the Department of General Services in accordance with the provisions of Article XXIV-A of the Administrative Code of 1929, as amended.

Signature - Agency Head

Agencies then provide descriptive information in the remainder of GSRE-45 relative to the property deemed surplus. This includes general property information such as the property name, inventory identification numbers, and acquisition information. Agencies also give location data and descriptive data, such as acres, access, terrain, facilities, and natural resources. The form also asks for legal information and restrictions as well as special conditions relating to utilities. Attachments are allowed for surveys, plot plans, and photographs of the property.

The Division of Land Management in DGS reviews each GSRE-45 for completeness, notifies the agency that the property is accepted for disposition, and advises the Bureau of Real Estate, Space Management Division of any change in the status of the property. The agency that owns the property continues to maintain and secure the property pending its disposition. That agency also notifies the Bureau of Real Estate, Space Management Division, to correct the state inventory regarding the status of the property.

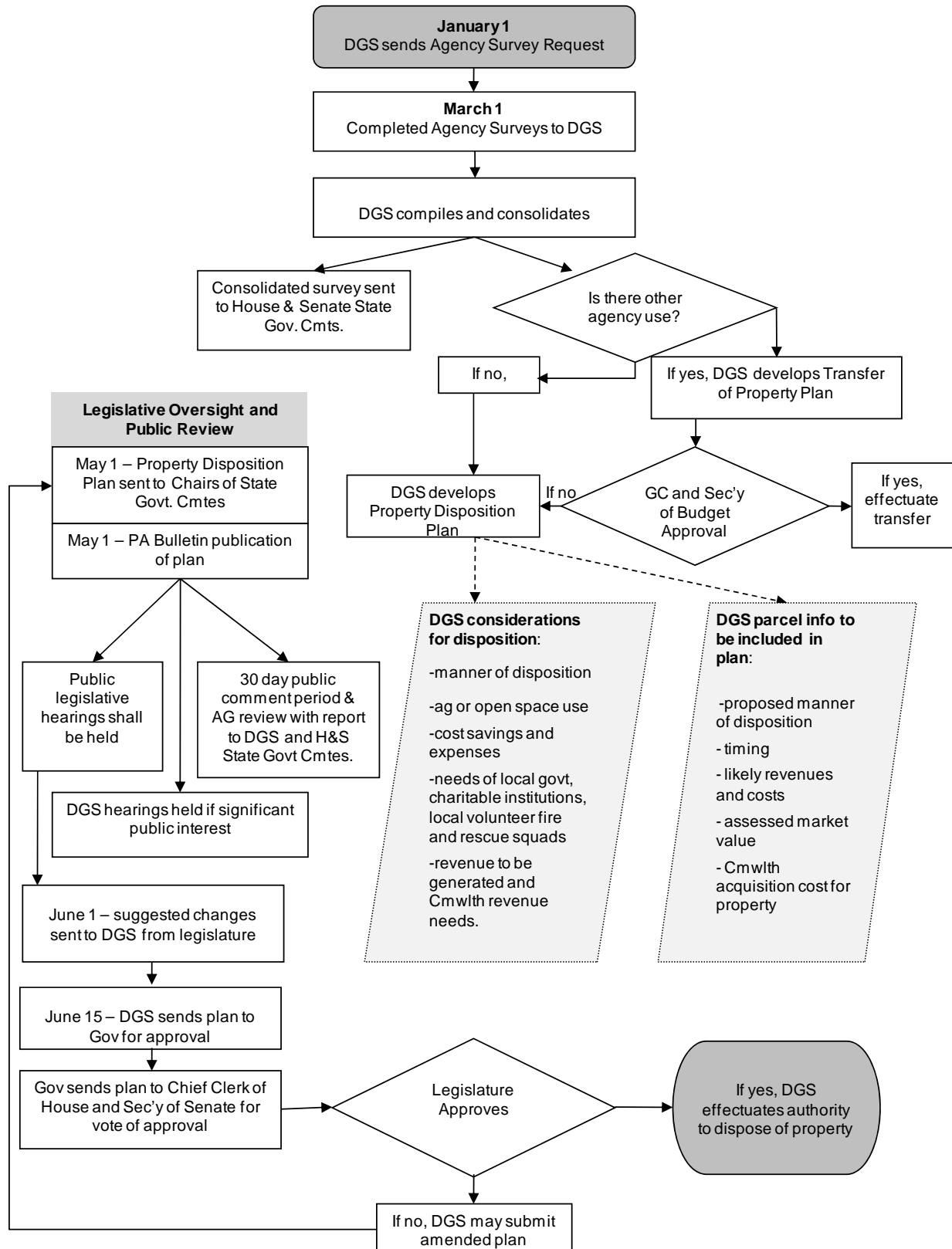
DGS then publishes Administrative Circulars to advise other agencies of the availability of the property and obtains information from agencies requesting a transfer of the property. If another agency is interested in a surplus property, DGS then prepares a plan for the transfer of the property to a requesting agency and forwards the plan to the Governor's General Counsel and the Secretary of the Budget for approval of the transfer. If approved, DGS effectuates the transfer. If not approved, DGS develops an annual plan for orderly disposition of the property, as described below.

DGS annually produces a property disposition plan in which the Department identifies for each parcel the proposed manner of and time frame for disposition, the likely revenue, cost savings, and expenses. Each year by May 1, the Property Disposition Plan is to be sent to the Chairs of the State Government Committees for both houses and is published by DGS in the PA Bulletin. There is a 30-day public comment period during which time the Attorney General undertakes a review of the plan and issues a written report to DGS and the legislative committees. Legislative hearings are held, and DGS hearings may be held in the vicinity of the site if there is significant public interest. By June 1, any suggested legislative changes to the plan are given to DGS.

By June 15, DGS forwards the disposition plan to the Governor for approval, who forwards the plan to the Chief Clerk of the House and the Secretary of the Senate. Either house may reject the plan as to a specific parcel. If there is no action by either house in 20 session days, then any five members of the Senate or 25 members of the House may petition the presiding officers to schedule a vote within fifteen calendar days. If approved, DGS then proceeds with the legislative authority granted to dispose of the property. A "mothball" policy exists for property that is not or cannot be disposed of and is instead closed and vacated. Under this mothball policy, responsibility for issues such as security and safety, preventive maintenance, and snow and ice removal, among other things are addressed. The statutory process for disposing of state-owned real property is set out in the flow chart in Exhibit 1.

In contrast, we reviewed the Commonwealth's Real Property Disposition Plans for years 2008-2011 and only identified 10 properties that were placed on the Commonwealth's Disposition Plan for sale. The most valuable of these properties is the Scotland School for Veterans' Children in Franklin County, with an estimated value of \$5 million, according to the plan. The Mayview State Hospital in Allegheny County, a 335-acre property with an estimated value of \$2 million, was the only other property with an estimated value of over \$1 million. During 2008-2011, the properties listed in Exhibit 2 were identified through the annual surplus property survey as being surplus to the Commonwealth agencies and proposed for disposition.

Process for Disposition of Surplus Real Property under Act 1981-48



Source: Developed by LB&FC staff from Act 48 and MD 625.5 Amended.

Exhibit 2

Properties Listed for Sale in Commonwealth's Annual Property Disposition Plan As of May 2011

2011:

- Scotland School for Veterans' Children – Franklin County
- Office of Employment Security – Chester County^a

2010:

- Scotland School for Veterans' Children – Franklin County^b
- Office of Employment Security – Chester County^a

2009:

- Scotland School for Veterans' Children – Franklin County^b
- Residence at 215 Avon Road, Chester – Delaware County
- Residence at 962 East 20th Street, Chester – Delaware County
- Edinboro University property – Erie County

2008:

- SCI-Graterford Residence – Montgomery County
- Slippery Rock University Residence – Butler County
- Office of Employment Security – Northampton County
- Mayview State Hospital – Allegheny County
- Philipsburg State General Hospital – Centre County

^a DGS reports that this property was subsequently removed from the disposition plan in these years.

^b These properties were subsequently removed from the disposition plan for that year.

Source: Developed by LB&FC staff using information obtained from the Department of General Services.

Of the properties in Exhibit 2, only two—the SCI-Graterford residence and the Mayview State Hospital—had been sold as of early 2011. DGS explained that many of the larger facilities on this list, such as the former state hospitals, are difficult to dispose of by sale due to physical, financial, and legal impediments. For most, the physical infrastructure of the property is often tied together (e.g., a common sewage system), requiring significant renovations to accommodate subdivision of the property. The legal costs to subdivide can also be prohibitive, and local zoning and other municipal rules may further hinder any interest in the properties.

DGS reports having closed on the sale of 34 properties for a total of \$17.8 million in the three year period 2008-2010. Often (about one-third of the sales), however, these properties are sold to another state agency, a municipality, or a municipal development authority, not to the private sector. Properties sold, sales prices, along with sale closure dates, are set forth in Table 3.

Table 3

Properties Sold or Conveyed by the Department of General Services 2008-2010

(Entity to which property was conveyed is in parentheses.)

	Sale Price	Closed
2008		
YDC Bensalem Parcel Quitclaim (PA Turnpike Commission)	\$ 10,000	Jan-08
Pennhurst Center (Pennhurst Acquisition, L.P.)	2,000,000	Feb-08
Laurelton Center House (David Iddings)	68,341	Mar-08
Connellsville National Guard Armory (City of Connellsville)	50,000	Mar-08
YDC Bensalem Parcel Quitclaim (PA Turnpike Commission)	-	Apr-08
Evansburg State Park Land Swap (Skipack Township)	-	May-08
Ligonier Armory	600,000	May-08
Ebensburg Center Parcel (CDM Ebensburg, LLC)	675,000	Jun-08
PA DOT Engineering District 5-0 Annex (Pitcock Company)	805,000	Aug-08
Pittston Office of Employment Security (Redevelopment Authority of the City of Pittston)	341,000	Sep-08
Allegheny Island State Park Parcel (PA Turnpike Commission)	-	Sep-08
PA DOT Engineering District 5-0 Lehigh Street	910,100	Nov-08
SCI Huntingdon Farm (Removal of Restrictions on Mason Spring Reservoir)	-	Dec-08
Admiral Peary Monument Parcel (Deed of Confirmation - Cresson Area Historical Assoc.) ..	-	Dec-08
Total 2008	<u>\$ 5,459,441</u>	
2009		
Ebensburg Center Parcel (PA DOT)	\$ 16,800	Feb-09
Blairsville Armory (Blairsville Borough)	125,000	Apr-09
SCI-Graterford Residence @ Norristown State Hospital (Leiter)	123,000	May-09
Harrisburg State Farm Parcel (PA State Employees Credit Union)	3,050,000	Aug-09
Allentown State Hospital Parcel (Allentown Commercial and Industrial Development Auth.)	1,050,000	Sep-09
DOC Training Academy Easement (Tad Hippensteel)	2,157	Sep-09
Altoona Center (Altoona Regional Hospital)	250,000	Oct-09
SEVC Parcel (East Vincent Township)	-	Oct-09
Pottsville Armory (YMCA)	160,000	Nov-09
SCI-Rockview Swap (CCIDC)	-	Dec-09
Total 2009	<u>\$ 4,776,957</u>	
2010		
Pittsburgh State Office Building (Rivervue Associates)	\$ 4,611,000	Mar-10
Harrisburg State Hospital Pedestrian Easement (Susquehanna Township)	-	Apr-10
SCI-Waymart Residence	13,000	Apr-10
Latrobe Armory	7,500	Jun-10
Pottstown Armory	127,513	Jul-10
Oil City Armory (G.O. Carlson, Inc.)	100,000	Oct-10
Trevese State Police Barracks (Bensalem Township)	1,875,000	Oct-10
Western Center Parcel (Washington County Authority)	675,000	Nov-10
Waynesburg Armory (Waynesburg University)	170,000	Nov-10
First Troop - Philadelphia (Quitclaim)	-	Nov-10
Total 2010	<u>\$ 7,579,013</u>	
Total Sales 2008-2010	<u><u>\$17,815,411</u></u>	

Source: Department of General Services.

Other States

Other states in the region have similar processes similar to Pennsylvania when disposing of surplus property. We gathered information as to the processes of disposing surplus property in the states of New Jersey, Delaware, Maryland, New York, Ohio, and West Virginia (see Exhibit 3). Most of these states operated under a similar structure to Pennsylvania, with individual agencies identifying properties surplus to their needs and then reporting those properties to a central agency. That central agency then seeks interest or need from other agencies before pursuing disposition of the property either through public auction or sealed bid. Maryland and West Virginia have some differences of interest.

Maryland's MDP clearinghouse applies criteria consistent with principles under Maryland's Smart Growth program. Maryland's Smart Growth program seeks to concentrate new development and redevelopment in areas that have existing or planned infrastructure to avoid sprawl. Ideally, such development is characterized by compact, transit-oriented, bicycle-friendly land use, with neighborhood schools, walkable streets, mixed-use development, and a wide range of housing choices. The purpose of "smart growth" is to conserve valuable natural resources through the efficient use of land, water, and air; create a sense of community and place; expand transportation, employment, and housing choices; distribute the costs and benefits of development in an equitable manner; and promote public health.

Maryland's Smart Growth initiative has four goals:

- support existing communities by targeting resources to support development in areas where infrastructure exists;
- save our most valuable natural resources before they are forever lost;
- save taxpayers from the high cost of building infrastructure to serve development that has spread far from our traditional population centers; and
- provide Marylanders with a high quality of life, whether they choose to live in a rural community, suburb, small town, or city.

Smart Growth principles are applied to the management of surplus state-owned property in that the Maryland Department of Planning evaluates an excess parcel of state-owned property by looking at the surrounding uses and designated priority funding areas to see if the proposed disposition of the parcel is consistent with directing growth to where growth is desired. The role of the MDP Clearinghouse in the process of evaluating excess state-owned real property is to "examine the proper disposition of the property, ascertain the interest of state agencies and local governments in the property, and make appropriate recommendation to the

using state agency and to the Board of Public Works” as part of the Maryland Inter-governmental Review & Coordination (MIRC) process.

In West Virginia, the Real Estate Division in the Department of Administration is tasked to develop policies and procedures for statewide real property management; to maintain a statewide real property management system; to develop and maintain a centralized repository of comprehensive space needs for all state agencies; to provide statewide policy leadership and coordinate master planning to guide and organize capital asset management; and to provide assistance to all state agencies in acquiring, leasing, and disposing of real property.

Exhibit 3

Disposition of Surplus State-Owned Real Property in Other States

<u>State</u>	<u>ID of Surplus Property by</u>	<u>Proposed Disposition Submitted to</u>	<u>To Other Agency First</u>	<u>Method of Sale</u>
New Jersey	Individual Agency	Treasury	Yes	Public Auction
Delaware.....	Individual Agency	Surplus Real Property Commission	Yes	Public Auction
Maryland	Individual Agency and MDP	MDP Clearinghouse ^a	Yes	Determined by DGS
New York	Individual Agency or OGS	OGS	Yes	Public Auction or Sealed Bid
Ohio	Individual Agency	Office of Real Estate Planning	Yes	Public Auction or Sealed Bid
West Virginia.....	Real Estate Division ^b	Governor and Secretary of Administration	Yes	Public Auction or Sealed Bid

^a The Maryland Department of Planning reviews excess properties by applying criteria consistent with Smart Growth principles.

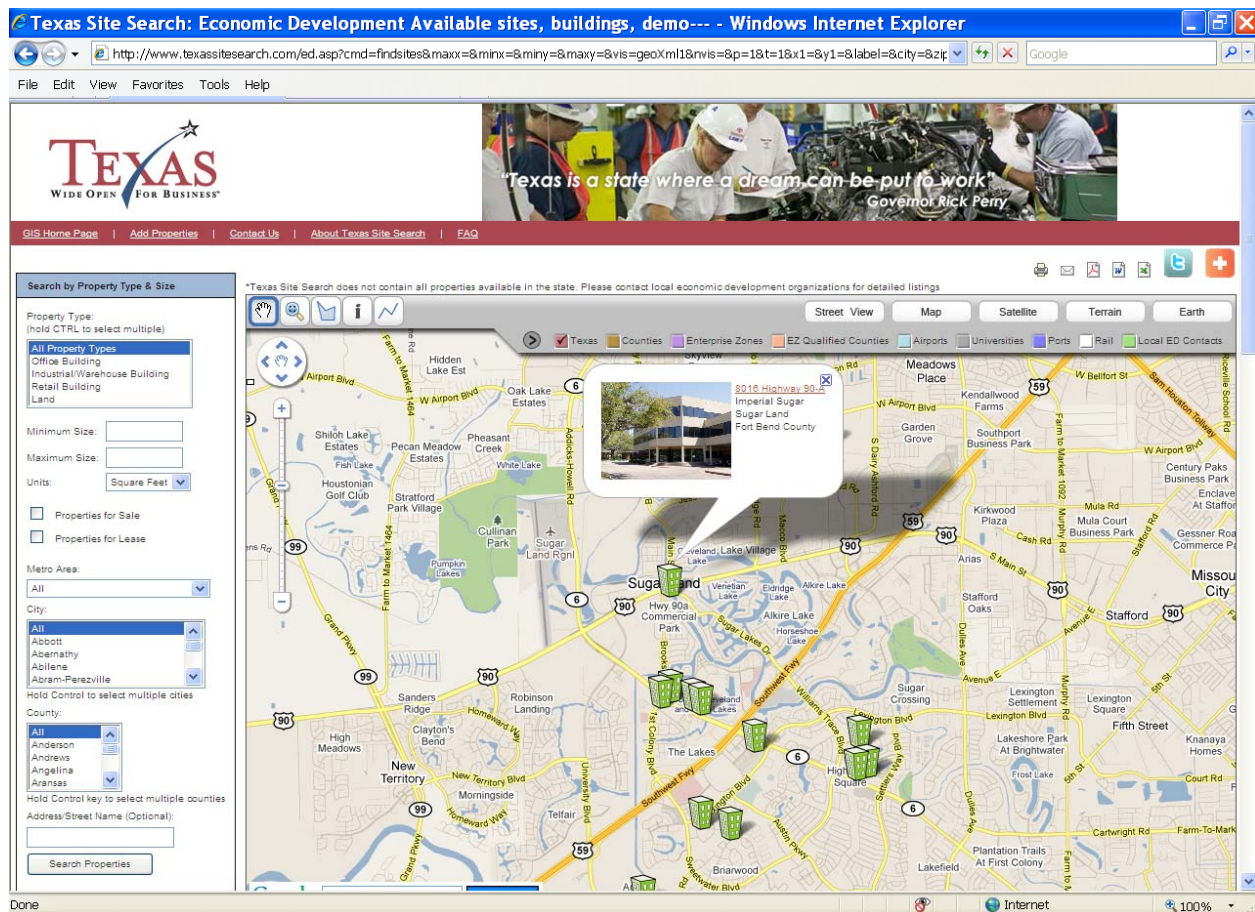
^b The West Virginia Real Estate Division is also tasked with the power to develop policies and procedures for statewide real property management; to maintain a statewide real property management system; to develop and maintain a centralized repository of comprehensive space needs for all state agencies; to provide statewide policy leadership and coordinate master planning to guide and organize capital asset management; and to provide assistance to all state agencies in acquiring, leasing and disposing of real property.

Source: Developed by LB&FC staff.

We also note that Texas, through its Texas Economic Development Corporation, actively promotes TexasSiteSearch.com, an interactive map tool and clearinghouse for commercial and industrial property listings in Texas. The site uses the Google Maps interface, which allows most users to easily begin using the site without need for a tutorial (see Exhibit 4).

Exhibit 4

Texas Interactive Map Tool and Clearinghouse for Commercial and Industrial Property Listings



Source: TexasSiteSearch.com.

Some other states have taken action to centralize management of their real property inventories, allowing for more strategic oversight. In Georgia, two task forces independently reached the conclusion that state property—real estate and space, both owned and leased, and capital construction projects—should be centrally governed to bring comprehensive and consistent statewide standards, practices and a strategic business approach to managing the state's largest capital investments. The Governor created the position of the State Property Officer and gave that position the authority to oversee capital asset management. Connecticut, North Carolina, and Virginia have also taken a more centralized approach to real property management.

IV. Identifying and Managing Mineral Rights on State-owned Real Property

In Pennsylvania, real property legal interests, or rights, can be separated between surface rights and mineral rights, meaning the ownership of each may be split between different owners. Surface rights generally include everything from the ground up, such as the right to harvest timber, cultivate crops, build houses, and make other uses of the surface. Mineral rights consist of everything beneath the surface (except water), including coal, hard rock minerals, oil, and gas. Moreover, ownership of the different minerals on the same tract of land may also be separated from each other. Therefore, on one parcel there could potentially be different owners for the surface as well as for each of the subsurface rights in minerals.

DEP's Role in Managing Oil and Gas Rights

Pennsylvania recognizes each mineral owner's right to recover the mineral to develop the resource. A surface owner may not prevent the mineral owner's reasonable access for development and production. The state Department of Environmental Protection (DEP), however, enforces Pennsylvania's oil and gas laws relating to resource management, well construction activities, and waste management practices and requires that an operator must secure a bond before applying for a well permit. In overseeing the exercise of a mineral owner's resource development, DEP approves bonds and well permits, inspects wells and environmental controls, and permits and inspects waste disposal facilities and waste management activities. Additionally, operators must submit reports on well completion, waste management, annual production, and well plugging. DEP has the authority to take action to enforce compliance with applicable laws and to seek civil penalties for violations of these laws.

Pennsylvania also recognizes the surface owner's right to protection from unreasonable encroachment or damage that may occur by way of a mineral owner's implementation of their subsurface rights. DEP recommends surface owners work with the driller on the location of the facilities, such as the well site, access road, and the gathering pipeline and negotiating a reasonable price for damage to crops, cropland, timber, and other aspects of surface ownership before any clearing work begins at the well site. DEP also advises that a surface owner request that the well operator hire a certified lab to analyze any source of water used as a water supply for people, animals, or crops before drilling begins in order to document the pre-drill conditions in case the water supply would be adversely affected by drilling. Surface owners may file an objection with DEP to the proposed location of drilling, based on location restrictions described in Pennsylvania's Oil and Gas Act, 58 Pa.C.S.A. §§101-607.

The courts have also recognized a separate right of subjacent support to protect against the subsidence—or gradual sinking—of surface estates in connection with mineral operations. Under the common law, a landowner has a right to have his or her land supported and protected in its natural condition by the adjoining land. (See, Pollock v. Pittsburgh, Bessemer & Lake Erie R.R. Co., 275 Pa. 467, 119 A. 547 (1923)). Pennsylvania statutory law has also addressed issues of subsidence. For example, there are the Anthracite and Bituminous Coal and Clay Mine Subsidence Insurance Fund, Act of Aug. 23, 1961, P.L. 1068, No. 484 (Reenacted and amended Nov. 27, 1972, P.L.1243, No.278; 52 P.S. §§3201-3241); and the Bituminous Mine Subsidence and Land Conservation Act, Act of Apr. 27, 1966, Special Session 1, P.L. 31, No. 1; 52 P.S. §§1406.1-1406.21

Marcellus Shale Gas Mineral Rights Owned by the Commonwealth

Marcellus Shale is a rock formation that underlies much of Pennsylvania and portions of New York and West Virginia at a depth of 5,000 to 8,000 feet and is believed to hold trillions of cubic feet of natural gas. This formation has long been considered prohibitively expensive to access, but recent advances in drilling technology and rising natural gas prices have attracted new interest in this previously untapped formation. In Pennsylvania, it is primarily located from the southwestern corner through to the northeastern corner of the state (see Exhibit 5). The geology of the Marcellus formation suggests that areas in the northcentral and northeastern regions of Pennsylvania that have not traditionally seen much gas well drilling might be especially productive.

Exhibit 5

Marcellus Shale Formation



Source: American Association of Petroleum Geologists.

Oil and gas exploration and drilling is regulated under all or part of the state oil and gas laws, the Clean Streams Law, the Dam Safety and Encroachments Act, the Solid Waste Management Act, the Water Resources Planning Act, and the Worker and Community Right to Know Act. The DEP is responsible for reviewing and issuing drilling permits, inspecting drilling operations, and responding to complaints about water quality problems. Other agencies directly responsible for monitoring the effects of drilling on water quality and aquatic life include the Pennsylvania Fish and Boat Commission, the Susquehanna and Delaware River Basin Commissions, and the U.S. Fish and Wildlife Service.¹

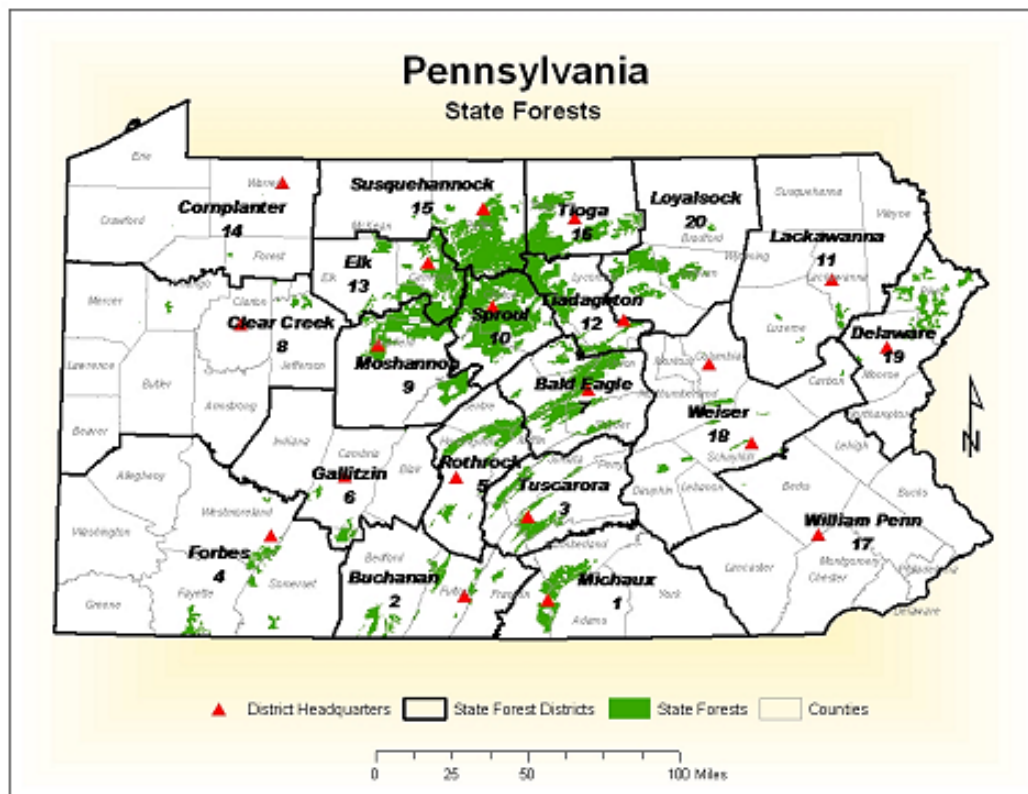
The two state agencies with the most significant acreage of real property located within the path of the Marcellus Shale gas region are the Department of Conservation and Natural Resources, with approximately 2.5 million acres, and the Pennsylvania Game Commission, with about 1.4 million acres. Pennsylvania's more than 2.2 million-acre state forest system, found in 48 of Pennsylvania's 67 counties, comprises 12 percent of the forested area in the Commonwealth (see Exhibit 6). Additionally, DCNR owns about 300,000 acres of state park lands.

The Pennsylvania Game Commission administers over 1.4 million acres of state game lands, comprised of 305 individual game lands of which about 1.2 million acres are classified as forest.

These approximate 4 million acres of land contain valuable resources such as timber, coal, oil, and gas. The potential value for gas and oil extraction, however, is dependent not only upon the extent of oil and gas under the surface, but also on the extent to which the Commonwealth owns the subsurface mineral rights.

Fee simple is the most basic type of ownership of real property. This is where the owner controls the surface and the subsurface of the property and the owner has the right to sell, lease, gift, or bequest these rights individually or entirely to others. DCNR owns approximately 85 percent of its 2.2 million acres of property in fee simple, of which approximately 1.7 million is located within the Marcellus Shale gas region. Fifteen percent of DCNR's 2.2 million acres contain a mixture of ownership interests, but DCNR has not identified who owns the mineral rights under these lands. Of DCNR's approximate 300,000 acres of state park land, only 20 percent is owned in fee simple, while 80 percent is either mixed or unknown.

¹ The Environmental Protection Agency recently announced a study of the potential human health and water quality threats from an oil and natural gas technique that injects massive amounts of water, sand, and chemicals underground. This process is known as "fracking" and is used to access the natural gas in Marcellus Shale. A report is expected to be completed by 2012.



Source: State Forest Resource Management Plan, 2007 Update, DCNR.

The Pennsylvania Game Commission owns only 25 percent of its 1.4 million acres in fee simple while 75 percent is mixed or unknown. Approximately 900,000 acres of state game land sits within the Marcellus Shale path in Pennsylvania. This results in approximately 1.6 million acres owned in fee simple by DCNR and PGC within the Marcellus Shale path.

The Department of Environmental Resources also controls extensive and potentially valuable mineral rights by virtue of its ownership of the mineral rights under the Commonwealth's navigable waterways. DCNR has the ability to enter into lease agreements for the extraction of minerals such as natural gas under these waterways, and has done so on at least one occasion. For example, in 2010, DCNR entered into a lease agreement for \$6.15 million to allow the extraction of gas from 1,500 acres under the Susquehanna River in Bradford County.

Mineral Rights Owned by Other State Agencies

For land owned by other state agencies, ownership of subsurface mineral rights are less well documented and, typically, would have to be searched on a case-by-case basis. This can be a lengthy and expensive process, typically involving a

title search agency. County governments—not the state—maintain records regarding mineral properties. Interests in each of these—surface rights and mineral rights either together or separated—may be transferred in whole or in part by instruments such as deeds, leases, grants of easements, or as part of an estate, either through will or intestacy. A thorough and extensive title search would be needed to identify the different ownership rights to the different interests in real property. Even then, competing parties may disagree, in which case the dispute might have to go to the courts.

We discussed the researching of mineral right titles with several Records of Deeds officials in counties within the Marcellus Shale region. They concurred that researching mineral rights is often difficult and time-consuming. One Recorder reported that they often have lines of people waiting to gain access to paper records, some of which may be more than 100 years old. She noted that many of the records are fragile and are deteriorating to the point of being illegible.

DGS further reported that, for most state agencies, mineral rights are not generally tracked primarily because Act 48, Pennsylvania’s Disposition of Surplus Land Act, requires that any mineral rights in land being disposed of by the Commonwealth must be expressly reserved to the Commonwealth and not transferred (see 71 P.S. §651.5(6)). Moreover, Section 514 of the Administrative Code prohibits the sale or grant of any other interest in or over real estate without specific authority from the General Assembly (see 71 P.S. §194). (Mineral rights can, however, be transferred if the property is transferred by means of a direct conveyance.) Only a few agencies have specific authority in their enabling legislation to convey oil and gas rights through lease agreements.²

Two other agencies that own significant acreage atop the Marcellus Shale fairway are the Pennsylvania Fish and Boat Commission (PFBC) and the Department of Corrections. The PFBC controls approximately 33,500 acres of land through direct ownership, lease, or easement. Similar to PGC, the Commission has only partial information on who owns the subsurface mineral rights relating to particular parcels. The PFBC has focused primarily on obtaining the surface rights, not necessarily subsurface rights.

As Table 4 shows, the PFBC rights to the majority of its land holdings are undetermined. Although over the last 10 years, the PFBC has been identifying the

² Such authority is granted to the Department of Environmental Protection, the Department of Conservation and Natural Resources, the Game Commission, the Fish & Boat Commission, and the State Armory Board. Senate Bill 367 of 2011, however, would give the Department of General Services the authority to lease, under certain conditions, land owned by the State System of Higher Education and state agencies other than the Department of Conservation and Natural Resources, the PA Game Commission and the PA Fish and Boat Commission, for mining and natural gas removal. The bill also provides that not less than 50 percent of the payments or royalties received by the DGS is to be deposited into the Keystone Recreation, Park and Conservation Fund or the Environmental Stewardship Fund. The remaining payments are to be deposited in the General Fund.

subsurface rights of property it acquires, the Commission reports it does not currently have the staff resources to determine these rights for all properties since it would require searching title to each individual tract of land to determine the rights applicable. Since cataloguing all properties at this time appears to be unlikely, the Commission plans to target their larger properties to determine the subsurface rights in order to issue them for competitive bid to the drilling companies.

Table 4

PFBC Oil/Gas/Mineral Ownership*				
<u>PFBC Oil/Gas/Mineral Ownership</u>	<u>Number of Properties</u>	<u>Total Fee Acres</u>	<u>Number of Individual Tracts</u>	<u>Lake Surface Acres</u>
0 Percent.....	10	867.03	22	96.30
Various Percentages	3	1,500.70	11	60.05
100 Percent	23	1,842.76	38	519.70
Undetermined	<u>173</u>	<u>17,568.79</u>	<u>582</u>	<u>4,676.09</u>
Total	209	21,779.28	653	22,641.28

*Known PFBC sensitive areas are excluded from this table.

Source: Pennsylvania Fish and Boat Commission.

In March 2011, the PFBC approved a new Natural Gas Leasing Program policy that requires the Commission to approve any leases before they are executed and that does not permit any surface development on PFBC land. According to published reports, approval of this policy suggests the PFBC may soon be signing agreements with natural gas companies for the removal of gas from beneath PFBC properties.³

The Department of Corrections also owns several large properties in the Marcellus Shale fairway (see Exhibits 7 and 8).

³ In July 2011, a PFBC spokesperson reported that the PFBC plans to lease 43,000 acres of waterways in Westmoreland County and that PFBC property has also been leased in Clinton County and is seeking proposals to lease property in Lycoming County.

Potential Marcellus Shale Opportunities at Pennsylvania State Prisons

Pennsylvania State Prisons Within the Marcellus Fairway

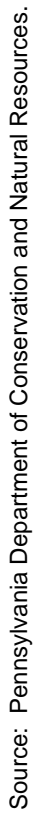
Albion
Cambridge Springs
Forest
Mercer
Pittsburgh
Greensburg
Fayette
Somerset
Waynesburg
Greene
Pine Grove
Cresson
Houtzdale
Boot Camp
Muncy
Waymart

Pennsylvania State Prisons Near the Marcellus Fairway

Laurel Highlands
Rockview
Dallas
Retreat

Pennsylvania State Prisons Outside the Marcellus Fairway

Smithfield
Huntingdon
Camp Hill
Coal Township
Mahanoy
Fracville
Greaterford
Chester



Commonwealth Lease Processes for Oil and Gas Drilling

DCNR has been using Commonwealth-owned oil and natural gas resources on state forest lands for over 60 years. The Bureau of Forestry issued its first oil and gas lease in 1947. Unlike other Commonwealth agencies (other than the PA Game Commission and the Fish and Boat Commission), DCNR has express statutory authority to lease oil, gas, and mineral rights on state forest land with leases awarded to the highest and best bidder.

DCNR may also lease state forests for the underground storage of natural gas. DCNR's *Guidelines for Administering Oil and Gas Activity on State Forest Lands* explains that "[t]he Bureau of Forestry (BOF) manages Pennsylvania's State Forest lands (SFL) for an array of resources and values including plant and animal habitats, recreation, timber, and oil and gas production." A key component of State Forest management is the environmentally sound utilization of mineral resources, which includes oil and gas. DCNR's policy regarding oil and gas exploration on state forest land was expressed in a 2008 policy statement, as follows:

DCNR supports the continued economic development of oil and gas resources beneath State Forest lands in a manner that minimizes potential negative impacts to other forest resources and values. The department favors the development of deeper oil and gas reservoirs due to the increased production potential, wider well site spacing, and reduced surface impact that can be achieved. The likely proliferation of well sites, rights-of-way, and roads associated with shallow gas development is less compatible with other forest values across much of the State Forest. DCNR will consider leasing for shallow gas if it is found during the development of deeper gas fields, or on a limited, case-by-case basis. DCNR will continue to honor existing leases and will continue to provide access to areas where it does not own the subsurface rights. DCNR will seek to purchase outstanding oil and gas rights when opportunities exist.

As with its decision-making related to managing other forest resources, such as harvesting timber and providing recreational opportunities, DCNR's management of oil and gas development involves evaluating the impacts to the resource and balancing trade-offs. DCNR's intent is to capitalize on the utilization of oil and gas reserves in a manner consistent with ecosystem management principles and Forest Stewardship Council certification standards. Considerations include:

- review of industry nominations to ensure that it makes sense regarding pipeline and road access;
- aesthetics and recreation impacts;

- Wild and Natural Areas and State Parks are excluded from surface development activities;
- ecological impacts such as fragmentation, water quality, and plant and animal habitats of concern;
- coordination with other State Forest operations such as timber harvesting;
- Comprehensive Environmental Review conducted as part of a lease sale planning process; and
- continued comprehensive and strong Oil and Gas Lease terms, which provide optimal control of activities.

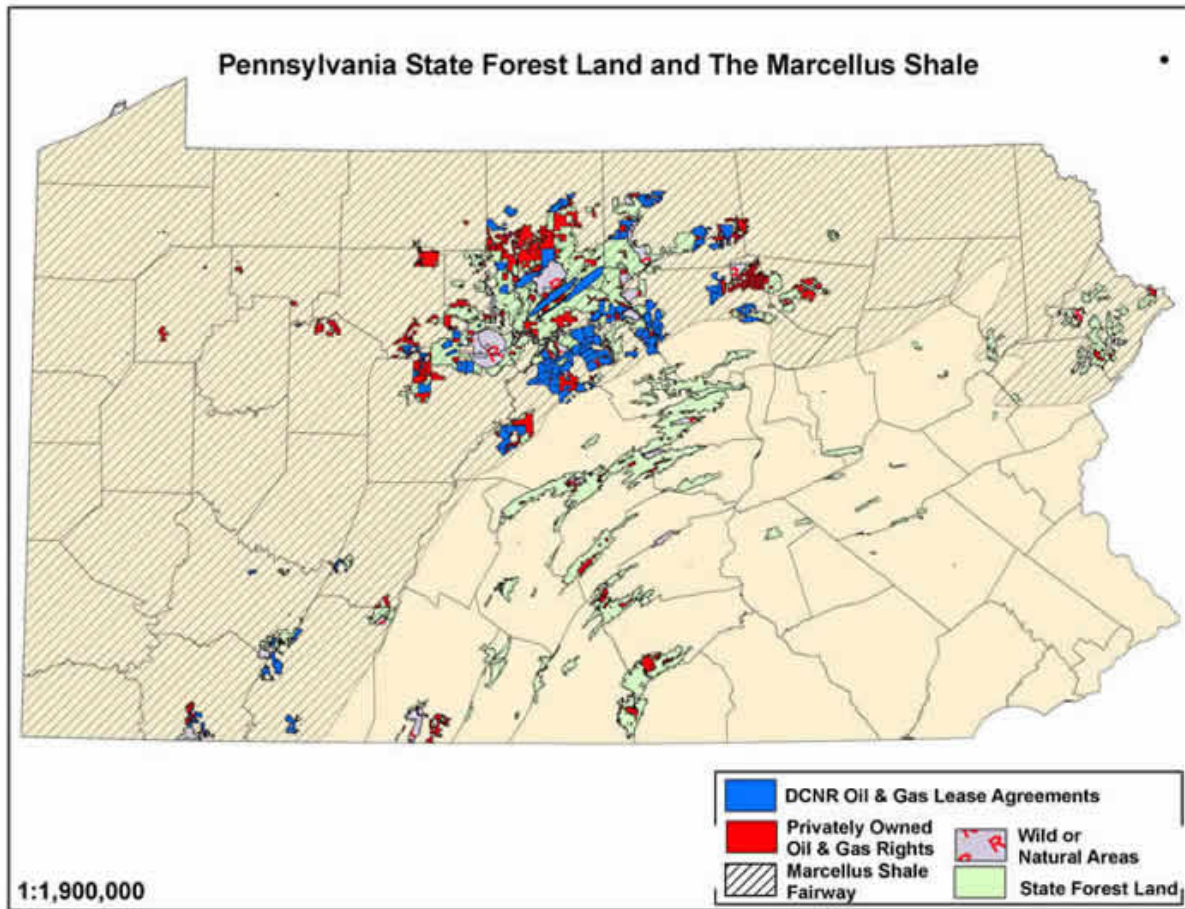
DCNR oil and gas lease sales are developed by first receiving nominations for the acreage from gas companies, which may be taken into consideration. DCNR does a review as described above to determine which tracts and how many acres to lease. A lease sale is announced and sealed bids are accepted, usually over a two-month period. All bids received are opened at the same time. DCNR then reviews the bids, and the winning companies then deposit their bids to the Oil and Gas Lease Fund. Currently, 675,000 acres of state forest land are under lease for gas development.⁴ DCNR reports, however, that it is not currently having any more lease sales. Exhibit 9 shows Pennsylvania state forest lands and the Marcellus Shale fairway.

The Pennsylvania Game Commission owns more than 1.4 million acres of land, with just under 900,000 acres sitting over prospective Marcellus Shale gas (see Table 5). The Game and Wildlife Code, §734, allows PGC to lease minerals, oil and gas, or rights therein, including natural gas storage on game lands. Title to the mineral rights in a significant fraction (i.e., 69 percent) of game land has either been severed from the surface ownership or the title to the mineral rights is unknown or in dispute within the judiciary system at the state or federal level. PGC has clear title to approximately 250,000 acres in the Marcellus Shale fairway.

The PGC currently manages 54 companies operating a total of 102 lease agreements on 61 Game Lands. The PGC reported that total revenue generated from oil/gas and mineral recovery operations was \$2.59 million in FY 2009-10.

⁴ 385,000 acres are under lease with a Commonwealth lease agreement or inherited agreement; 290,000 acres of severed rights, with the assumption that near all is under a private lease.

Exhibit 9



Source: DCNR.

Table 5

Estimated OGM Acreage on PGC Lands

Region	Acreage of SGL in Marcellus Fairway	Total Acres of SGL With PGC Partial Ownership of Gas	Acres Gas Owned by PGC	% of Total Acreage Owned by PGC
NW.....	186,694	27,268	11,667	6
NC	311,673	305,477	149,144	48
NE.....	202,998	92,661	49,482	24
SW	188,991	168,898	66,420	35
SC.....	0	0	0	
SE	0	0	0	
PA Totals	890,356	594,304	276,714	31

Source: LB&FC Report, *Examination of Current and Future Costs and Revenues from Forest Products and Oil, Gas, and Mineral Extraction on Pennsylvania Game Commission Lands*, January 2010.

Similar to DCNR, PGC does not seek to designate tracts for drilling, but tracts are nominated by drilling companies. PGC then reviews the nominations and determines which are to set out for lease. Once a tract has been nominated, PGC staff evaluates whether to allow drilling, considering adverse environmental consequences and timing. Once a tract is designated for leasing, PGC considers whether or not to use a public bidding process or work directly with one firm. If a particular tract is recommended for bidding, PGC staff seeks Commission approval. Upon approval, bidding packages are made available to potential bidders.

The PGC reports that in response to Marcellus Shale drilling activity, it has taken additional actions to research and update its oil/gas and mineral ownership rights. In FY 2009-10, the PGC reported conducting OGM ownership research on 131 parcels (more than 127,000 acres) among 21 different Game Land complexes.

Our 2010 study *Examination of Current and Future Costs and Revenues from Forest Products and Oil, Gas, and Mineral Extraction on Pennsylvania Game Commission Lands* undertook an interagency comparison for gas leasing between DCNR and PGC, which is summarized, in pertinent part, below:

DCNR lease policy differs from PGC lease policy because the former prefers not to accept operator risk. This practice largely means a lease sale in which the signing bonus (money up front) is the variable with royalty being fixed ahead of time. Traditionally PGC has adapted a leasing practice in which the bonus is fixed, and the successful bid is based on the highest royalty return. Either practice in theory has the same expected return, but at different points in time. In particular, a high bonus means that more of the funds will come at the initial stage of the lease, and are not a function of the natural gas extracted. The form chosen by the PGC, with higher royalty rates, spreads the returns to the agency across time. They also act to make the PGC “partners” with the exploration company, as the more gas is extracted, the higher the returns to the PGC. Thus, in this scenario, the PGC bears some of the risk of the drilling operator.

Best management of the development of Marcellus gas on PGC lands requires that the agency be proactive. A minimum of three functions must be occur to achieve a proactive posture by the PGC minerals division: 1) maintenance of land records to the extent that ownership of mineral rights is clear; 2) maintenance of production data and a continuous analysis of the correlation between that data and the specifics of the local geology; and 3) evaluation of assets. To manage their minerals (mainly oil, gas, and coal) and attempt to maintain a proactive posture, DCNR Bureau of Forestry currently has three geologists whereas the PGC is operating with one person. Neither agency is

adequately staffed to take full advantage of the wealth of the Marcellus gas shale. It is the opinion of this report that an adequate Office and Gas Management staff at the PGC consists of five people: 1) a full-time land records person; 2) three geologists to deal with production data and geological evaluation; and 3) a person to evaluate assets. Presently the PGC has one person to serve all these functions. In addition, the PGC will require more legal resources to evaluate Marcellus claims. Presently, the agency is in more of a reactive mode. This trend will become acute as the Marcellus gas shale play continues to develop.

Revenues Generated by Oil and Gas Leases

Pennsylvania's Oil and Gas Lease Fund, Act of Dec. 15, 1955, P.L. 865, No. 256, requires that all rents and royalties from oil and gas leases of Commonwealth land, except for game or fish lands, be placed in a special fund to be used exclusively for conservation, recreation, dams, or flood control or to match federal grants for these purposes. The Game Code and the Fish and Boat Code each provide that oil and gas lease revenue on PGC and PFBC lands is to go into their respective funds for their respective purposes. Money from this fund has purchased land for many of Pennsylvania's state parks, acquired critical tracts for state forests, and helped to maintain the parks and forestry infrastructure. The General Appropriations Act of 2009 and Act 2010-46, however, authorized a transfer of monies in the fund to the General Fund (see Table 6).

A DCNR official explained that the drop in funding for FY 2010-11 and FY 2011-12 occurs because the revenues for FY 2008-09 and FY 2009-10 include the bonus bids received during the lease sales those years. DCNR is currently not entering into new Marcellus Shale leases, so the revenue after FY 2009-10 only reflects ongoing royalty income.

Other States

We looked at OGM leasing programs in other states affected by the Marcellus Shale opportunities. Ohio's Department of Natural Resources informed us that ODNR has authority to lease forestry lands for mineral drilling, but they do not do so. They currently do not have authority to lease land in state parks for drilling, but House Bill 133 in the current session of the Ohio General Assembly would expand ODNR's authority to allow for drilling in state parks and create an Oil and Gas Leasing Commission.

Table 6

Statement of Cash Receipts and Disbursements

(Dollar Amounts in Thousands)

	2008-09 <u>Actual</u>	2009-10 <u>Actual</u>	2010-11 <u>Available</u>	2011-12 <u>Estimated</u>
Cash Balance, Beginning.....	\$ 8,652	\$161,634	\$217,763	\$124,272
Receipts:				
Rents and Royalties	\$164,651	\$277,271	\$120,000	\$120,000
Interest	487	402	1,509	750
Other	<u>0</u>	<u>5</u>	<u>0</u>	<u>0</u>
Total Receipts	<u>165,138</u>	<u>277,678</u>	<u>121,509</u>	<u>120,750</u>
Total Funds Available.....	\$173,790	\$439,312	\$339,272	\$245,022
Disbursements:				
Conservation and Natural Resources	\$ 12,156	\$ 18,549	\$ 35,000	\$ 50,000
Transfer to the General Fund.....	0	203,000	180,000	0
State Parks.....	<u>0</u>	<u>0</u>	<u>0</u>	<u>15,000</u>
Total Disbursements	<u>-12,156</u>	<u>-221,549</u>	<u>-215,000</u>	<u>-65,000</u>
Cash Balance, Ending.....	<u>\$161,634</u>	<u>\$217,763</u>	<u>\$124,272</u>	<u>\$180,022</u>

Source: Governor's Executive Budget Documents.

While West Virginia's Department of Natural Resources has authority to lease land for drilling and mineral extraction, it is rarely done, according to DNR personnel with whom we spoke. The process would involve having the land appraised, competitively bidding the property, and then holding hearings.

New York State has leased state lands for oil and gas drilling since the 1930s. The Department of Environmental Conservation is authorized to lease state lands for oil and gas exploration and development and for underground gas storage. State park lands, including the Adirondack and Catskill Forest Preserves, lands under the waters of Lake Ontario, and certain other lands are excluded from leasing. The New York Division of Mineral Resources acts as leasing agent for large tracts of state land, working with state surface managers to identify areas suitable for leasing and to develop area-specific special conditions and stipulations to provide for exploration and development in a safe, environmentally sound manner consistent with surface management objectives. At the end of 2009, DEC administered 93 leases on 63,676 acres of New York state land, which are mostly leased by way of a public, competitive bid process.

Maryland does not yet have any gas leases on public land. Before any wells could be approved on Maryland public lands, the state Board of Public Works, which includes the governor, would have to approve regulations for granting gas leases on state property.

V. Appendices

APPENDIX A

PRIOR PRINTER'S NO. 2184

PRINTER'S NO. 2282

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE RESOLUTION

No. 383 Session of
2010

INTRODUCED BY ORIE, ALLOWAY, VOGEL AND EARLL, SEPTEMBER 15, 2010

AS AMENDED, OCTOBER 13, 2010

A RESOLUTION

Directing the Legislative Budget and Finance Committee to ~~complete~~ CONDUCT a comprehensive review of State real property, roadways, bridges and waterways.

WHEREAS, A comprehensive inventory of State real property and resources is part of a necessary effort to improve fiscal efficiency; and

WHEREAS, Such an inventory will help determine whether State property should be sold or leased for purposes such as natural gas extraction; therefore be it

RESOLVED, That the Senate direct the Legislative Budget and Finance Committee to ~~complete~~ CONDUCT a comprehensive review of State real property, roadways, bridges and waterways; and be it further

Appendix A (Continued)

RESOLVED, That the report contain the following elements:

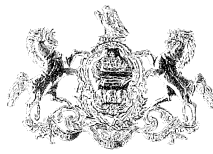
- (1) A listing of real property, including improvements, owned by the Commonwealth.
- (2) The total acreage of the real property, square footage of any facility on the property, the current use of the property and facilities and, IF KNOWN, the current market value of the property.
- (3) A listing of all State roadways and bridges, including rights-of-way.
- (4) A listing of State waterways.
- (5) A listing of any owner, IF KNOWN, with mineral rights in property where the Commonwealth is the surface owner.
- (6) RECOMMENDED IMPROVEMENTS IN THE PROCESS OF IDENTIFYING PROPERTY MINERAL RIGHTS.
- (7) A DESCRIPTION OF THE CURRENT SYSTEM FOR TRACKING REAL PROPERTY IN THIS COMMONWEALTH.

~~+6+~~ (8) Recommendations on improving the Commonwealth's process for identifying and selling surplus property; and be it further

RESOLVED, That the Legislative Budget and Finance Committee report its findings and recommendations to the Senate as soon as possible.

APPENDIX B

Response to This Report



RECEIVED SEP 22 2011

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF GENERAL SERVICES**

OFFICE OF THE SECRETARY

717-787-5996

September 20, 2011

Philip R. Durgin, Executive Director
Legislative Budget and Finance Committee
Room 400 Finance Building
Harrisburg, PA 17105-8737

Re: Senate Resolution 2010-383
An Inventory of State-Owned Real Property
And Subsurface Mineral Rights

Dear Mr. Durgin:

Thank you for affording the Department of General Services the opportunity to comment on the draft report referenced above. Most of our comments are editorial in nature.

Summary and Recommendations Section

1. S-1 and Section II (Page 3) footnote: All of the State System of Higher Education data has been loaded into EFMS. The remaining agencies continue to make progress with their data loads.¹
2. The report notes that the current inventory lists 180 vacant "properties and structures". We believe the report should separate "properties and structures". We have approximately 30 vacant properties consisting of 180 vacant structures.¹

On Page S-2, 1st paragraph, we recommend changing it to "DGS Property Inventory lists approximately 30 vacant properties consisting of 180 vacant structures. Most of these structures are owned by the Department of Public Welfare, primarily on the grounds of former state hospitals. The Department of Corrections also has a number of vacant structures, but their inventory has not yet been incorporated into the DGS inventory. Oftentimes, however, structural (e.g., shared utilities) and legal issues related to the land and buildings on these properties serve as impediments to the parcels being divided and sold as separate properties."¹

On Page 5, 2nd paragraph, we recommend changing it to "The DGS Property Inventory lists approximately 30 vacant properties and 180 structures as being vacant. Most of these structures are owned by the Department of Public Welfare, primarily on the grounds of former state hospitals."¹

3. The report indicates that over half of the conveyances were to either another state agency or to a local governmental entity. Please refer to the chart on page 13 which indicates that this is not the case. You also note that there is little or no monetary benefit to the Commonwealth. Again, referring to the chart on page 13, the sale of surplus property netted \$17,815,411 to the Commonwealth over a specific 3-year period.²

4. The report indicates that 25 properties were sold in the last 3 years. The chart on page 13 indicates that 34 properties were sold (20 to private entities).³
5. The word advertising is misspelled in #2 on S-4.¹
6. On the first line of page S-5, we recommend changing the word “attempting” to “working” since the Department is actively working on this.¹

Recommendation Section

1. The report indicates in Recommendation #1 that DGS should develop criteria for Executive Branch agencies to use to identify surplus and underutilized property. The Department of General Services does have authority under Executive Order 2004-2 to declare property surplus on behalf of Executive agencies of the Commonwealth. That said, DGS exercises great discretion over exercising this authority as we do not always feel that DGS is in the best position to determine agencies operating requirements.
2. In Recommendation #2, DGS does not agree with the assertion that it does not aggressively market surplus real estate. DGS consistently works with local legislators, local governments and interested parties in effectively and efficiently marketing and selling surplus property.

The DGS Bureau of Real Estate is actively looking at the Commonwealth's real estate occupancy levels. To save additional money, we plan to move employees out of leased space into owned space. However, due to budget shortfalls over the past several years, significant capital improvements have not been made available making it difficult to renovate existing Commonwealth-owned buildings and relocate staff from leased buildings into Commonwealth-owned buildings.

In cases where DGS feels that it does not have the necessary tools and manpower to handle the sale or acquisition of a particular property, we have the ability to utilize brokers on retainer in a marketing capacity.

3. DGS agrees with Recommendation #4 so long as the General Assembly provides DGS with adequate funding to administer this effort.

Section 2

Page 3:

1. The DGS website listed in paragraph 1 is incorrect. It should read: www.dgs.state.pa.us.⁴
2. SSHE is now loaded in EFMS.¹

Page 4:

1. 2nd Paragraph: The Flexible Real module has been implemented. The report states: “slated for implementation by summer 2011.”¹

Page 5:

1. The second paragraph in the report references "180 separate sites". This should read "180 structures".¹

Section 3

Page 8:

1. The last paragraph of the report indicates that over half of the properties sold went to another state agency or a local government entity, "often at little or no cost". Please refer to the spreadsheet provided by DGS in Table 3 of the report, which clearly indicates that there were 34 properties sold over a specific three-year period in which DGS collected, on behalf of the Commonwealth, over \$17.8 million dollars. Twenty of the 34 conveyances were to private entities.²

Page 10:

1. 3rd paragraph, 3rd sentence – we recommend adding "session" after the number 20.¹

Page 12:

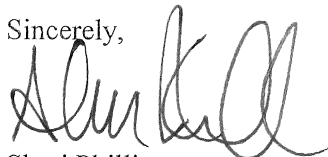
1. Exhibit 2 – The Office of Employment Security in Chester County was removed from the disposition plan in 2011 & 2010.¹
2. The last paragraph of the report indicates that DGS closed on the sale of "25 properties". The report should read "34 properties".¹

Page 13:

1. Add an "s" in the Source section: Department of General Services.¹

Again, thank you for allowing the Department the opportunity to review and comment on this report while it was still in draft form. Should you have any questions or concerns relative to our comments, please do not hesitate to contact me at 787-5996.

Sincerely,



Sheri Phillips
Secretary

cc: Hon. James Henning
Holly Lubart
Elizabeth N. Woods
Bradley Swartz
File

¹LB&FC NOTE: The final report has been changed to incorporate this information.

²LB&FC NOTE: The report refers to two different sets of properties. Our statement that over half of the conveyances were to either another state agency or to a local governmental entity, often at little or no monetary benefit to the Commonwealth, refers to the 58 stand-alone legislative conveyances we identified, not to the properties listed on page 13.

³LB&FC NOTE: This appears to be a matter of semantics: 25 properties were "sold" for monetary consideration; the other 9 properties were conveyed without monetary considerations.

⁴LB&FC NOTE: The website listed is to the DGS property inventory report, not the DGS general website.