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458



Alaska State Legislature

HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

JOHN RINGSTAD, CO-CHAIRMAN
RICHARD SHULTZ, CO-CHAIRMAN
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

MEMORANDUM

To: House Resource Committee members

From: Committee Staff

Date: April 10, 1984

Re: CSHB 458 (2nd draft)

Since the last committee meeting when concerns expressed about DNR's authority to convey agricultural land were raised, the committee staff has thoroughly re-examined existing provisions in statute, and consulted with DNR.

The net result of this research is that authority to convey agricultural lands already exists as per AS 38.05.045, and no additional authority is needed to accomplish the purposes of this legislation.

The technical changes that Sharon Barton requested at the last meeting were accomplished and a more appropriate section in the statute was chosen in preparing the CS that is presently before the committee. That section was entitled, " LIMITATION ON PURCHASES OF AGRICULTURAL LAND " and the new CS merely expands that title to include " CONDITIONS " as well as " LIMITATION ".

According to DNR, there are at this time no conflicts in title 38 language that would prevent or hinder the implementation of this legislation should it be signed into law. Other technical changes that may improve title 38 with regard to this subject should more appropriately be considered in SB 375 which was drafted as an omnibus clean-up bill and will soon be before this committee.

Legislative history reports. — For adoption of the House Finance Committee letter of intent on the shift of responsibil-

ity from the Department of Natural Resources to the Department of Revenue, see 1980 House Journal, pp. 1030, 1143.

Sec. 38.05.037. Zoning regulations in the unorganized borough to facilitate federal land sales.

Opinions of attorney general. — The zoning power vested in the Department of Natural Resources under this section is broad enough to encompass the creation of historical districts as a control over land use, but the exercise of that authority does

not make the property eligible for historic preservation loans under AS 45.98, which is aimed solely at historic districts established by municipalities. January 3, 1980, Op. Att'y Gen.

Article 2. Sale of Lands.

Section

- 45. Generally
- 47. [Repealed]
- 50. Disposal of land for private ownership
- 55. Auction sale procedures
- 57. Disposal of land by lottery
- 58. [Repealed]
- 59. Limitation on purchases of agricultural land

Section

- 65. Terms of contract of sale
- 66. [Repealed]
- 67. Veterans preference
- 68. Forest Service permittees' sales preference
- 69. Preference to persons for agricultural purposes

Editor's notes. — For provisions for preferences for occupants of land under a United States Forest Service timber

contract see ch. 47, SLA 1982 in the 1982 Temporary and Special Acts and Resolves.

Sec. 38.05.045. Generally. All lands owned in fee by the state or to which the state may become entitled, excepting tide, submerged or shorelands, and timber or grazing lands, may be sold as provided in AS 38.05.045 — 38.05.069 and 38.08.010 — 38.08.120. However, this section does not prevent the disposition of lands as provided in AS 38.05.300 — 38.05.348. (§ 1 art IV ch 169 SLA 1959; am § 50 ch 32 SLA 1971; am § 12 ch 85 SLA 1979)

Effect of amendments. — The 1979 amendment added "and 38.08.010 —

38.08.120" to the end of the first sentence.

Sec. 38.05.047. Classification and sale of state land in municipalities.

Repealed by § 45 ch 113 SLA 1981.

Cross references. — For provisions on the land disposal bank containing state land classified for disposal into private

ownership, see AS 38.04.020.

Editor's notes. — The repealed section derived from § 13, ch. 85, SLA 1979.

appraised fair market value, exclusive of value accruing from improvements or development, such as fill material, buildings or structures, by the occupant or his predecessor in interest or reflecting, equities of the occupant;

(8) "home rule cities and cities of the first class" do not include a borough. (§ 5 art III ch 169 SLA 1959; am § 6 ch 61 SLA 1960; am § 1 ch 18 SLA 1962; am §§ 1, 2 ch 81 SLA 1964; am § 1 ch 4 SLA 1966)

Editor's notes. — This section is set out above to correct an error in the main pamphlet.

NOTES TO DECISIONS

Purpose of section. — One purpose of the Alaska Land Act was to establish equitable methods of disposing of certain tidelands. Toward this end, and within the federal parameters requiring the recognition of "preference rights," this section was included in the Act. *City of Homer v. State*, Sup. Ct. Op. No. 1455 (File No. 3009), 566 P.2d 1314 (1977).

Due process required. — Private parties are entitled to due process of law before property rights may be removed; therefore, the minimal protection provided by adjudicatory procedures of the Department of Natural Resources must meet that standard. *City of Homer v. State*, Sup. Ct. Op. No. 1455 (File No. 3009), 566 P.2d 1314 (1977).

Municipalities are entitled to due process in the adjudication of claims to tide and submerged lands. *City of Homer v. State*, Sup. Ct. Op. No. 1455 (File No. 3009), 566 P.2d 1314 (1977).

With respect to the disposition of tidelands, municipal corporations are to be afforded the same rights of due process as are private parties. *City of Homer v. State*, Sup. Ct. Op. No. 1455 (File No. 3009), 566 P.2d 1314 (1977).

The language of subsection (b) is clear and unambiguous. *State Dep't of Nat'l Resources v. City of Haines*, Sup. Ct. Op. No. 2342 (File No. 5067), 627 P.2d 1047 (1981).

Scope of subsection (b) grant. — The

grant in subsection (b) of this section encompasses tideland adjacent to subsequently expanded municipal boundaries. *State, Dep't of Nat'l Resources v. City of Haines*, Sup. Ct. Op. No. 2342 (File No. 5067), 627 P.2d 1047 (1981).

In effect, this section gives the authorities of a city, etc.

In accord with original. See *Talbot's, Inc. v. Cessnun Enter., Inc.*, Sup. Ct. Op. No. 1462 (File Nos. 2561, 2671), 566 P.2d 1320 (1977).

In order for easement under subsection (b)(6) of this section to be established, it must appear that it is reasonably necessary for the enjoyment of the property, the term "necessary" meaning that there could be no other reasonable mode of enjoying the dominant tenement without the easement. An easement by implication does not arise merely because its use is convenient to the beneficial enjoyment of the dominant portion of the property. *Talbot's, Inc. v. Cessnun Enter., Inc.*, Sup. Ct. Op. No. 1462 (File Nos. 2561, 2671), 566 P.2d 1320 (1977).

While strict or absolute necessity is not required, something more than mere convenience must be shown before an occupant of tidelands is entitled to an easement under subsection (b)(6) of this section. *Talbot's, Inc. v. Cessnun Enter., Inc.*, Sup. Ct. Op. No. 1462 (File Nos. 2561, 2671), 566 P.2d 1320 (1977).

Sec. 38.05.321. Restriction on sale, lease or other disposal of agricultural land. (a) The sale, lease or other disposal of state land classified as agricultural land transfers only rights for agricultural purposes, and all other interests in the land remain with the state unless otherwise required by law.

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applicant who is entitled to receive a conveyance of the land by lottery. If the commissioner does not receive an application for a parcel of state land or if a purchaser fails to sign a lease agreement or contract of sale, the parcel shall be offered to the first eligible person to apply for the parcel. If the parcel was designated as a homestead and offered to the public under AS 38.05.047(f), the parcel shall be disposed of under the terms required by AS 38.08.010 — 38.08.120."

AS 38.05.047, referred to near the end of subsection (f), was repealed by § 15, ch. 113, SLA 1981.

AS 38.05.055, referred to in (g) of this section, was amended by § 15, ch. 113, SLA 1981. One of the changes was the deletion of language relating to the form of contract. See AS 38.05.065(b) for the terms required in contracts of sale for land sold under this section.

NOTES TO DECISIONS

Quoted in *Gilman v. Martin*, Sup. Ct. Op. No. 2652 (File No. 5937), 662 P.2d 120 (1983); *LeResche v. Lustig*, Sup. Ct. Op. No. 2656 (File No. 6058), P.2d (1983).

Sec. 38.05.058. Land discount program. [Repealed, § 19 ch 67 SLA 1983.]

Sec. 38.05.059. Limitation on purchases of agricultural land. A person may purchase from the state a total of not more than one parcel of land that is part of an agricultural development project under AS 44.33.475 during any eight-year period. (§ 3 ch 129 SLA 1982)

Sec. 38.05.060. Rejection of bids.

NOTES TO DECISIONS

Cited in *State v. University of Alaska*, Sup. Ct. Op. No. 2303 (File No. 4579), 624 P.2d 867 (1981).

Sec. 38.05.065. Terms of contract of sale. (a) The contract of sale for land sold at public auction under AS 38.05.055 shall require the remainder of the purchase price to be paid in monthly, quarterly or annual installments over a period of 20 years, with interest at the prevailing rate for real estate mortgage loans made by the federal land bank for the farm credit district for Alaska at the time the contract is signed. Installment payments plus interest shall be set on the level-payment basis.

(b) The contract of sale for land sold under AS 38.05.057 and under AS 38.05.078 shall require the remainder of the purchase price to be paid in monthly, quarterly, or annual installments over a period of not more than 20 years. Installment payments plus interest shall be set on the level-payment basis. The interest rate to be charged on installment payments is the prevailing rate for real estate mortgage loans made by the federal land bank for the farm credit district for Alaska at the time the contract is signed.

DRAFT

Version #2
Bradley
4/10/84

Original sponsors: Bettisworth and Shultz

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 458 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to agricultural rights to land."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 38.05.059 is repealed and reenacted to read:

9 Sec. 38.05.059. LIMITATIONS AND CONDITIONS ON SALE OR LEASE OF
10 AGRICULTURAL LAND. (a) A person may purchase from the state not more
11 than one parcel of land that is part of an agricultural development
12 project under AS 44.33.475 during any eight-year period.

13 (b) In a sale or other disposal of state land classified as
14 agricultural land the use of the land shall be restricted. The com-
15 missioner shall convey a fee simple conditional title to the surface
16 estate subject to a condition subsequent that the land be used only
17 for agricultural purposes. The commissioner shall reserve a right of
18 reentry after notice and an opportunity for a hearing if the land is
19 used for other than agricultural purposes. A reversion of title upon
20 reentry does not affect the validity of a prior lien or security
21 interest on the land.

22 (c) The lessee of state agricultural land shall receive a lease-
23 hold interest in the surface estate subject to the condition subse-
24 quent that the land leased be used only for agricultural purposes.

25 (d) As a condition to the issuance of a lease or a contract of
26 sale of state land classified as agricultural land, the commissioner
27 may require a farm development agreement and the submission of a
28 conservation plan that establish reasonable requirements based on
29 economic feasibility of development and sound agricultural principles.

1 (e) The commissioner may not convey title under (b) of this
2 section to a person who

3 (1) is in arrears on the purchase or lease of agricultural
4 land; or

5 (2) has not complied with a farm development agreement or
6 conservation plan required by the commissioner.

7 (f) In this section, "agricultural purposes" includes farming,
8 ranching, grazing, and storage or control of agricultural crops or
9 livestock, and the construction of the farm residence of the grantee
10 or lessee as well as other buildings commonly needed for agricultural
11 purposes on not more than 20 acres of the land transferred under this
12 section.

13 * Sec. 2. AS 38.05.321(a) is repealed.
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Original sponsors: Bettisworth and Shultz

DRAFT

IN THE HOUSE

BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 458 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to agricultural rights to land."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 38.05.321 is amended by adding new subsections to read:

(d) A grantee of title to state agricultural land shall receive fee simple conditional title to the surface estate in the land subject to the condition subsequent that the land be used only for agricultural purposes. The commissioner shall reserve the right of reentry after notice and an opportunity for a hearing in the event the grantee shall use the land for other than agricultural purposes. The reversion of title upon exercise of a right of reentry by the commissioner under this subsection shall be subject to valid prior liens and has no effect on the validity of a security interest on the land.

(e) The lessee of state agricultural land shall receive a leasehold interest in the surface estate subject to the condition that the land leased be used only for agricultural purposes.

(f) As a condition to the issuance of a grant under (d) of this section or to the issuance of a lease under (e) of this section, the commissioner may require a farm development agreement and the submission of a conservation plan. The farm development agreement and conservation plan shall be based on economically feasible and agriculturally viable department standards. The commissioner may not grant fee simple conditional title under (d) of the section to a

person who

(1) is in arrears on the purchase or lease of agricultural land; or

(2) has not complied with a farm development agreement or conservation plan required by the commissioner.

(g) In this section, "agricultural purposes" includes farming, ranching, grazing, and storage or control of agricultural crops or livestock, and the construction of the farm residence of the grantee or lessee as well as other buildings commonly needed for agricultural purposes on not more than 20 acres of the land transferred under this section.

* Sec. 2. AS 38.05.321(a) is repealed.

JAN 30 1984

Jan. 25, 1984

P.O.Box 313

Nenana, AK 99760

The Honorable Bob Bettisworth
Pouch V
Juneau, AK 99811

Dear Rep. Bettisworth:

This is in response to a letter to the Editor in the Jan. 24th edition of the News Miner regarding your intent to introduce legislation that would replace "Ag Rights" with Fee Simple Title for State Ag Land disposals. I fully support such legislation and if there is anything I can do to help with its passage please contact me.

"Ag Rights Only" creates many problems. A major one is the inability to secure financing from banks and other lending institutions to build a home because of that restrictive title. I have personal experience with that rejection.

Sincerely,

Don Kratzer

Don Kratzer

XC: Interior Delegation

1-25-84

Editorial Opinion and Comment of



Daily News - Miner

Independent in All Things Neutral in None

Other opinions expressed on this page do not necessarily reflect those of the Daily News-Miner.

Agriculture needs support

The question of whether we need to extend the life of our Alaska Agricultural Action Council will be before lawmakers and the public Wednesday when the Senate Resources Committee holds a teleconference hearing.

A more important question about agriculture is the one that really needs to be answered, however. Is our state going to help develop this industry to its full potential, or continue the lukewarm, off-again-on-again support of the last few years?

Whether or not we funnel agricultural development issues through the action council or some other administrative structure probably isn't going to make much difference in the long run. We got pretty disenchanted with the council under Gov. Hammond's appointee, Bob Palmer, when one boondoggle followed another. The Sheffield group didn't get off to a very good start, either, in the way it shut down construction of the Seward grain terminal.

We're willing to let bygones be bygones, however, if only the Sheffield administration would offer its full support to development of an industry with an outstanding potential.

Focusing on our state's agricultural self-sufficiency is too narrow a view for Alaskans interested in the future. In fact, one of the most exciting aspects of recognizing the world role we could play is that as a by-product we would, indeed, gain agricultural self-sufficiency as a state.

If that self-sufficiency is our only goal, however, we may never be able to take advantage of the needed economies of scale to make production and processing of farmstuffs for our own consumption practical and self-supporting.

When Gov. Sheffield shared his agriculture policy with us last month, noticeably absent were any plans to move forward to develop high potential land in the Nenana area, or to complete work on the Seward grain terminal.

The grain terminal project is one of those chicken-and-egg questions that only needs to be settled if the other elements of agricultural development fall into place.

That won't happen unless we move to increase our land base in agriculture. The experts tell us there are 1.8 million acres of state or Native-owned potential agricultural land in the Tanana Valley.

Gov. Sheffield's goal for the next fiscal year is to sell another 27,000 acres of state land, 2,000 to 3,000 acre parcels scattered here and there between Delta Junction and Nenana. That simply isn't enough.

The Agricultural Action Council as early as February 1982 had proposed an aggressive land sale schedule for Nenana. Under that schedule, in fiscal year 1983, which ended last June, 75,000 acres would have been sold. Another 50,000 acre-sale was on the schedule for this fiscal year which ends in June, and yet another 50,000 acres were on the schedule for sale during fiscal year 1985.

With the lack of support from both the Hammond administration during its latter years and the Sheffield administration currently, it's little wonder farmers aren't forging aggressively ahead to pursue export markets. Unless we devise a land sale schedule that assures we'll get the needed acreage under production, farmers know they won't be producing enough grain to make exporting work.

Gov. Sheffield could show Alaskans that his commitment is to the future of our state by beefing up his support of agriculture. We've got a potential that's too rich to ignore. It's time to recognize that.

The argument for Ag Rights is that we are rapidly losing ag land to other forms of development. Not including Federal lands, 1.8 million acres of state or Native owned undeveloped ag. land in the Tanana Valley alone makes the above argument ridiculous.
Don Kratzer

Dubious position

Jan. 19, 1984
P.O. Box 1668
Fairbanks, AK 99707

To the Editor:

I'd like to urge all so-called winners of the state land lottery, to write to Rep. Bob Bettisworth, Pouch V, Juneau, Alaska 99811, and give him your support in introducing a bill giving us fee simple title to our property. As it stands now, we cannot get any-

thing but "Agriculture Rights" and we cannot get mortgage money to build, or money to develop our precious land, because we do not own it. We are in the dubious situation that should we spend thousands of our own money, and hours and hours of labor, we still do not own the property except rights to use it for agriculture. And with this situation, we have problems selling it, should we decide to do so at some time, because we cannot give a buyer title to it. It is as if we are expected to labor and spend our own money for the state. It is unfair.

The land that I "won" the opportunity to buy is appraised as is, at about the same as other land around it. If I clear it, and build on it, it still belongs to the state. Our hands are tied. What I thought was a great opportunity turns out to be an actual burden. Who wants to spend a great deal of money, and a great amount of labor developing something that will never belong to him? This is a dirty trick the state has pulled on the so-called winners. We are buying this land, and at a price that has been appraised high. Why should we not obtain title to it?

Please write and give your support to Bob Bettisworth's bill to help free us from this situation.

Sincerely,
P. Rhodes

Alaska State Legislature



REPRESENTATIVE

ROBERT H. "BOB" BETTISWORTH

211 CUSHMAN STREET
FARBANKS, ALASKA 99701

POUCH V
JUNEAU, ALASKA 99811

January 13, 1984

MEMORANDUM

To: Representative John Ringstad & Representative Dick Schultz,
Co-Chairs, House Resources Committee.

From: Representative Bob Bettisworth

PHB

Subject: Analysis of HB458 "An Act relating to agricultural rights to land."

1.) Purpose: It has become evident, since the Legislature enacted legislation allowing conveyance of designated agricultural land with only an agricultural easement, that the owner, lessees, and assigns have very little in the way of concrete, definable legal ownership in the traditional sense. What is actually conveyed by the state, when land classified as agricultural land is sold or leased, is in fact no more than an easement to utilize the land for agricultural purposes only and these restrictions result in the owner or legal occupant leaving traditional fee simple ownership rights and benefits with the state. As a direct result virtually no commercial lending institutions I contacted could really define agricultural rights land for lending purposes. In fact, only one instance of a commercial loan generated by a non-state lender was identified this past interim and that source expressed a distinct aversion to making another loan based on agricultural rights only. It is the view of experts queried that lending institutions will not generally lend where they know the state is ultimately ahead of them with respect to the security and in the case of agricultural land the state would be in such a position.

The situation wherein lands traditionally used for agriculture and related purposes are converted to residential or commercial use is a valid problem in many areas of the U.S. and has occurred near at least one urban center in Alaska. The problem of taxation and the classification of lands controlled by local government entities is also of concern but these problems should be dealt with in that local context where possible. Clearly some areas now identified and designated under Alaska Statutes as being primarily of agricultural character, presumably because it is perceived that this is their "highest and best use", are not likely candidates for conversion to residential or commercial development zones for urban centers. The geographic locations of most agricultural lands makes this conclusion self evident. Of course, exceptions can be found and may already exist among state designated agricultural lands already disposed of or planned for future disposal. It is my view that these potential problem areas should be dealt with on

a case-by-case basis; not through a wholesale prohibition of true fee ownership as currently exists in statute.

2.) MAJOR ELEMENTS IN HB458: The following major changes are affected in this legislation:

a. DNR shall convey remaining rights to agricultural lands if requested by the owner, lessee, etc. and certain conditions are met.

b. No additional compensation for the additional rights conveyed is to be required except for an administrative fee for normal costs of legal documentation etc.

c. covenants or other deed restrictions may be required of the requestor and the status of state purchase loans or lease agreements related to the unit must be essentially normal (not in arrears). A development plan may also be required.

d. The essential elements of preference rights to persons for agricultural purposes are retained but the upper limit of 320 acres is removed.

e. References to the value of improvements owned by the holder of a preference right are deleted as unnecessary for the additional acreage sought.

f. References in AS 38.05. (c) (1) and AS 38.05.321 (a) stating that the sale, lease or other disposal of state land classified as agricultural land transfers rights for agricultural purposes only, and all other rights remain with the state are deleted.

g. The commissioner is required to notify owners, lessees, etc. of designated agricultural land of the changes affected by this bill.

3.) SECTIONAL ANALYSIS--HB458

Section 1--Repeals AS 38.05.069 now entitled "Preference to persons for agricultural purposes" in its entirety and replaces it with a new section 069 entitled "Agricultural land". Section 069 is proposed for total repeal because several confusing, duplicative and unnecessary elements became apparent after careful review and legal analysis of its contents as a whole. Also, section 069 (c) (1) currently allows DNR officials too much discretion in making determinations as to whether a transfer "may be in the public interest". No standards are provided to guide DNR's decision makers when evaluating a proposed transfer of remaining interests from a public policy point of view.

AS 38.05.069, as currently enacted, deals with acquiring additional agricultural acreage located adjacent or in the approximate vicinity of already occupied agricultural holdings. The HB458 rewrite of AS 38.05.069 (a) replaces the current 069 (c) (1) & (2) which allowed the director total discretion in conveyance of remaining interests. Apparently, no transfers of remaining interests in agricultural land have been affected up to this point. Section 1 (in new 069 (a)) would require the commissioner--instead of the director--to convey remaining interest if conveyance is requested by the grantee etc. except that 069 (b) would prevent conveyance of the remaining interest if the requestor is in arrears on a state land purchase agreement. As a further protection to the state, the commissioner could require a development plan including covenants and/or deed restrictions. The proposed subsection 069 (c) contains the essential preference right elements now included in subsection 069 (a) and (c) (3) except that the commissioner may require a development plan with covenants on the additional land applied for.

The acreage ceiling on preference right options of 320 acres, now contained in subsection 069 (a), is removed but the current floor of 20 acres is retained.

069 (d) in HB458 reiterates that land acquired through the granting of a preference right option shall be used as specified in the development plan, covenants or deed restrictions.

069 (e) (1) through (4) is a rewrite of the elements contained currently in 069 (f) through (h) that deal with determination of priority for qualified applicants for the preference right.

069 (f) through (h) restate restrictions and definitions as contained in current statute.

Section 2--Requires the commissioner to notify current owners, lessees, etc. of agricultural rights land of the changes made by HB458.

Section 3--Repeals AS 38.05.321 (a) which currently prohibits the transfer of anything other than an easement to designated state agricultural lands (except of AS 38.05.321 included below). AS 38.05.321 (b) and (c) that deal with state designated agricultural land selected by or approved for patent to municipalities are not addressed in this legislation.

AS 38.05.069 and AS 38.05.321 (a) as currently set out in statute:

Sec. 38.05.069. Preference to persons for agricultural purposes. (a) If the director determines that the highest and best use

of unoccupied land is for agricultural purposes, and if he determines that it is in the best interests of the state to sell or lease the land, he shall grant to an Alaskan resident owning and using or leasing and using land for agricultural purposes a 60-day first option after the date of the auction to purchase or lease the unoccupied land situated adjacent to or in the approximate vicinity of his presently held land for the amount of the high bid received at public auction. A parcel of agricultural land sold under this section may not be less than 20 acres and a parcel of agricultural land which is acquired by exercise of the option granted in this subsection may not exceed 320 acres. Agricultural land which is acquired under this section must be used for agricultural purposes as required by law.

(b) If more than one person is eligible for a first option under (a) of this section, the director shall determine priority by granting precedence first to the person who demonstrates the greatest need for the unoccupied land in order to establish an economic unit and, secondly, to the eligible person who occupies land that is most readily accessible to unoccupied land to be sold or leased. In the event that two or more persons have approximately equal qualifications for priority under this section, the director shall grant priority to that person who is a veteran. If more than one person is approximately equally well qualified under this section, the director shall determine priority by lot.

(c) Under this section

(1) the director may convey or lease an interest in the land only for agricultural purposes, and all other interests in the land remain in the state; the sale or lease shall be at public auction;

(2) the remaining interests may subsequently be conveyed or leased by the director only upon the request of the grantee or lessee or his assigns and the determination of the director, with the written concurrence of the commissioner, that the conveyance or lease is in the public interest;

(3) the conveyance or lease of the remaining interests shall be at public auction; the original grantee or lessee or his assigns have a preference right to meet the high bid within 30 days after the day of the auction; if the right is exercised, the value of improvements owned by the holder of the preference right, included with the remaining interests sold, shall be deducted from the purchase price;

(4) by requesting the conveyance or lease of the remaining interest, the original grantee or lessee or his assigns

(A) consents to the sale or lease, and

(B) if the preference right provided by (3) of this subsection is not exercised, consents to sell at fair market value the improvements related to the remaining interest, as appraised by the director;

(5) the remaining interests in the land may not be conveyed or leased for less than their appraised value together with improvements except for the deduction allowed by (3) of this subsection.

AS 38.05.069 continued:

(d) When not in conflict with this section, other provisions of AS 38.05.045 — 38.05.105 apply to disposals under this section.

(e) For the purposes of this section,

(1) "agricultural purposes" includes farming, ranching, grazing, and storage or control of agricultural crops or livestock;

(2) "approximate vicinity" includes an area in which the land does not have a common boundary to presently held land or in which the land is physically separated from presently held land by any type of barrier.

(f) Nothing in (c) of this section affects the disposal of minerals under AS 38.05.135 — 38.05.183. (§ 1 ch 97 SLA 1965; am §§ 1, 2 ch 71 SLA 1976; am §§ 4 — 6 ch 257 SLA 1976; am § 30 ch 85 SLA 1979)

Effect of amendments. — The 1979 amendment, in subsection (a), deleted "provided the aggregate number of acres owned and acquired under the option shall not exceed 320 acres; and further provided

that the land acquired under this section is used for agricultural purposes as required by law" from the end of the first sentence and added the second and third sentences.

Sec. 38.05.321. Restriction on sale, lease or other disposal of agricultural land. (a) The sale, lease or other disposal of state land classified as agricultural land transfers only rights for agricultural purposes, and all other interests in the land remain with the state unless otherwise required by law.

(b) State land classified as agricultural land which has been selected by a municipality under AS 29.18.190 — 29.18.200 or 29.18.205(e) may be approved by the director for patent under AS 29.18.205(f); however, only rights in the land for agricultural purposes may be transferred and all other interests in the land will remain with the state. Agricultural land approved for patent to a municipality under AS 29.18.205(f) shall be credited, acre for acre, toward fulfillment of that municipality's entitlement under AS 29.18.201 — 29.18.203. If the director later determines it to be in the best interests of the state to transfer some or all of the additional rights in that approved or patented agricultural land, those rights shall pass without consideration to the municipality in which the land is located. The notice and review provisions of AS 38.05.305 and 38.05.345 are applicable to conveyance of rights under this section.

(c) The provisions of this section do not apply to state land classified as agricultural land which has been selected by a municipality under the provisions of AS 29.18.190 — 29.18.200 if the selection is an approved selection before April 1, 1978 and is otherwise valid under AS 29.18.205(b). (§ 3 ch 71 SLA 1976; am § 3 ch 120 SLA 1978)

Effect of amendments. — The 1978 amendment rewrote this section.

Editor's notes. — Sections 29.18.190 and 29.18.200, referred to in subsections (b) and (c), were repealed by § 5, ch. 180, SLA 1978.

AS 38.05.305, referred to in subsection (b), was repealed by § 45, ch. 113, SLA 1981.

Not addressed in
HB458



Alaska State Legislature

HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

MEMORANDUM

JOHN RINGSTAD, CO-CHAIRMAN
RICHARD SHULTZ, CO-CHAIRMAN
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

To: Rep. Ringstad
From: Committee staff
Date: April 4, 1984
Re: CS HB 458 (Resources)

This memorandum is to briefly explain how this proposed CS came about, and to review the major changes.

First, in studying HB 458, it became apparent that the bill was not accurate in addressing AS 38.05.069, which dealt with undisposed lands adjacent to agricultural lands. This was remedied by addressing the new cs to AS 38.05.321, to which we have added new sections.

Second, the main reason Rep. Bettisworth introduced the bill was to solve the problem with the "fee simple title" DNR said it would convey to ag parcel purchasers. The problem is that, because the title reverts to the State at any time the Director of the Division of Forest, Land and Water Management determines the grantee has not fulfilled the conditions of the title, the title is uninsurable, and financing is not possible to obtain. While the original solved this problem by giving all remaining rights to the landowner, the cs would change the title to "fee simple conditional" - with the condition that the land always be used for agricultural purposes. This language was worked out by Robin in Rep. Bussell's office, Dave, Sharon Barton, and Dick Bradley. It has been reviewed by Glen Prince at Title Insurance Agency and by Bruce Winton, who is on the Real Estate Commission.

The rest of the cs recognizes certain DNR policies regarding farm development plans, and provides a definition for the phrase "agricultural purposes".

BRIEF SYNOPSIS
For COMMITTEE SUBSTITUTE For HB 458

The purpose of this committee substitute (as is the purpose of the bill as it was originally introduced) is to provide legislative direction for the disposition of state lands classified as agricultural lands. It is apparent that AS 38.05.321(a) contains the only such direction now in the law, although AS 38.05.069 has also been referred to by the Department of Natural Resources for guidance. However, that section of Title 38 appears to apply only to unoccupied land adjacent to land already being used for agricultural purposes.

The committee substitute expands AS 38.05.321 to clarify the nature of the title that will be transferred to a person who purchases, leases, or is otherwise entitled to receive state lands that have been classified as agricultural. The clarification is needed to clear up differences between the understanding of those who have purchased lands under the agricultural land disposal program and the understanding of DNR as to the nature and format of the interest or land title being conveyed. These differences have come to light as a result of the issuance by the State of a few patents in the format of the one issued to Mr. John A. Baker, a copy of which is in the members' packets.

All parties appear to be in agreement that the intent of the State was to transfer the land to be used for agricultural purposes only and that the title transferred was to be restricted to insure that this would be the only use.

The problem is that the type of patent, as issued to Mr. Baker, is too restrictive. The interest transferred by that document is little more than an agricultural easement subject to forfeiture if the Director of the Division of Forest, Land and Water Management so declares. This forfeitable interest cannot be insured by a Title company, and is not sufficient to provide security for any financing into which the recipient of the patent may wish to enter.

As originally written, HB 458 would have solved the problem by requiring the commissioner to convey the remaining interests retained by the State on request of the grantee or lessee. Taken literally, such conveyance would require the State to grant a fee simple absolute title to the land, subject only to the covenants in the development plan, which would eventually terminate. At that point, the land would no longer be restricted to agricultural use.

As now worded, the proposed CS for HB 458 provides that the title to be transferred will be a fee simple conditional - the condition being that the land will always be used for agricultural purposes only. There is also provided a right of re-entry by the State if the condition is broken. What this means is that if the owner of the property or his or her successors start using the property for something other than agriculture, the State can require that the other use be terminated or the owner may lose the property. This type of title should solve the title insurance and financeability problems.

The remainder of the CS recognizes the existing practice of requiring that a development plan be entered into and completed, and provides a definition of the phrase "agricultural purposes".

Original sponsors: Bettisworth and Shultz

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 458 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to agricultural rights to land."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 38.05.321 is amended by adding new subsections to read:

9 (d) A grantee of title to state agricultural land shall receive
10 fee title to the surface estate in the land subject to the condition
11 subsequent that the land be used only for agricultural purposes. The
12 commissioner shall reserve a right of reentry after notice and an
13 opportunity for a hearing in the event the grantee or the successors
14 in interest of a grantee shall fail to use the land for agricultural
15 purposes. The exercise of a right of reentry by the commissioner
16 under this subsection has no effect on the validity of a security
17 interest on the land.

18 (e) The lessee of state agricultural land shall receive a lease-
19 hold interest in the surface estate subject to the condition subse-
20 quent that the land leased be used only for agricultural purposes.
21 The commissioner shall reserve a right of reentry after notice and an
22 opportunity for a hearing in the event that the lessee shall fail to
23 use the land for agricultural purposes. The exercise of a right of
24 reentry by the commissioner under this subsection has no effect on the
25 validity of a security interest on the land.

26 (f) As a condition to the issuance of a grant under (d) of this
27 section or to the issuance of a lease under (e) of this section, the
28 commissioner may require the submission of an agricultural development
29 and conservation plan. The commissioner may not grant or lease an

1 interest under (d) or (e) of this section to a person who

2 (1) is arrears on the purchase or lease of agricultural
3 land; or

4 (2) has not complied with an agricultural development and
5 conservation plan required by the commissioner.

6 (g) The use of not to exceed five acres of the land transferred
7 under this section for the construction of the residence of the
8 grantee, lessee, or a successor in interest of a grantee or a lessee
9 and for other buildings used for agricultural purposes is an
10 agricultural purpose.

11 (h) In this section, "agricultural purposes" includes farming,
12 ranching, grazing, and storage or control of agricultural crops or
13 livestock.

14 * Sec. 2. AS 38.05.321(a) is repealed.
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Introduced: 1/9/84
Referred: Resources and
Finance

1 IN THE HOUSE

BY BETTISWORTH

2

HOUSE BILL NO. 458

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an act entitled: "An Act relating to agricultural rights to land."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 38.05.069 is repealed and reenacted to read:

9 Sec. 38.05.069. AGRICULTURAL LAND. (a) If the commissioner has
10 conveyed or leased state land only for agricultural purposes, the
11 remaining interests retained by the state shall be conveyed or leased
12 by the commissioner on the request of the grantee or lessee or the
13 assigns of the grantee or lessee. The commissioner shall convey or
14 lease the remaining interests without compensation to the state except
15 for administrative costs of the conveyance or lease.

16 (b) The commissioner may not transfer an interest under (a) of
17 this section to a person who is in arrears on the purchase or lease of
18 the land. Before conveying or leasing under (a) of this section, the
19 commissioner ^{shall} require the submission of a development plan ^{in accordance} with
20 covenants ^{specified} by the commissioner ^{to provide that} regarding agricultural use ^{be the sale is} of
21 the land. ^{established}

22 (c) An Alaska resident may submit to the commissioner a request
23 for the sale or lease for agricultural purposes of unoccupied state
24 land situated adjacent to or in the approximate vicinity of land
25 presently used for agricultural purposes and held by the resident. If
26 the resident submits with the request a development plan that contains
27 covenants ^{specified} by the commissioner ^{providing that} regarding the agricultural use ^{be the}
28 ^{of the} land and if the commissioner determines that it is in the best
29 interests of the state to sell or lease the unoccupied state land for

1 agricultural purposes, the commissioner shall grant to a resident
2 owning and using or leasing and using land for agricultural purposes a
3 60-day first option after the date of the public auction to purchase
4 or lease the unoccupied land for the amount of the high bid received
5 at public auction. A parcel of agricultural land transferred under
6 this subsection may not be less than 20 acres.

7 (d) Land that is acquired under (c) of this section shall be
8 used consistently with ^{the Agricultural} covenants required in the development plan
9 ^{established} specified by the commissioner.

10 (e) If more than one person files a request under (c) of this
11 section for the same land and each person owns or leases land situated
12 adjacent to or in the approximate vicinity of the state land, the
13 commissioner shall determine priority among the applicants for the
14 state land under the following standards:

15 (1) to the person who demonstrates the greatest need for
16 the unoccupied land in order to establish an economic unit;

17 (2) to the person who occupies land that is most readily
18 accessible to the unoccupied land to be sold or leased if two or more
19 persons have qualified under (1) of this subsection;

20 (3) to the veteran if two or more persons have qualified
21 under (1) and (2) of this subsection;

22 (4) by lot if two or more persons have qualified under (1),
23 (2) and (3) of this subsection.

24 (f) When not in conflict with this section, other provisions of
25 AS 38.05.045 - 38.05.105 apply to disposals under this section.

26 (g) Nothing in (a) of this section affects the disposal of
27 minerals under AS 38.05.135 - 38.05.183.

28 (h) For the purposes of this section,

29 (1) "agricultural purposes" includes farming, ranching,

1403 1/2 Alaska Highway
Delta Junction, Alaska
99737

Dear Sir:

I have been in and out of Alaska since 1960. In 1982 I took over Tract Q, of The Delta I Project with the intent to develop and produce in Alaska. I have developed many farms in Nebraska and have land in four States today.

I invested about \$200,000.00 in Tractors, machinery, equipment, Grain bin, Mobil Home, well, etc & etc. (My own personal money - I have not been able to get any Alaska money)

When I found out that we wouldn't get "fee simple title" after clearing I have put the project on hold waiting further developments.

Alaska has great potential and a bright future if it will develop free enterprise and let the best system in the world work. Everyone will benefit. The sooner the land gets into personal hands the better off we will all be. It is a very unique situation with great responsibilities and opportunities for all who want to work.

Sincerely yours,

P.S. Please find enclosed the letters from my Attorney - Abstractor & Banker.

K. D. Strong D.M.

PHILIP H. NYBERG

ATTORNEY AT LAW

March 20, 1984

**RONALD E. COLLING
ASSOCIATE**

**OSCEOLA, NEBRASKA 68651
PHONE 747-2401**

Kenneth D. Strong, DVM
Box 426
Stromsburg, Nebr 68666

Dear Dr. Strong:

I have considered your request for an opinion as to the quality of title granted by Patent issued by the State of Alaska covering Agricultural Interests only.

From my experience as an Abstracter of titles and examiner of titles in the State of Nebraska for more than 40 years, it is my opinion that title is limited by any future decision of the Director of land management of the Department of Natural Resources to declare a forfeiture of the conveyance and a reversion to the State of Alaska. It would not be wise to make any improvements of a long term nature as any decision to terminate and forfeit would at the least result in possible extensive litigation.

Your decision as to future payments might well be limited by the limitations on the title you are granted.

Very truly yours,

P

Philip H. Nyberg

MARCH 9, 1984

TO THE EDITOR,

HOUSE BILL 458, INTRODUCED BY BOB BETTISWORTH IS THE BIGGEST SCANDAL TO COME OUT OF THE BARLEY PROJECT SO FAR. IT WOULD TURN LAND VALUES IN THE DELTA AREA COMPLETELY UPSIDE-DOWN. IT WOULD CHANGE ALL ~~AG~~ AGRICULTURAL-
-RIGHT LAND TO FEE-SIMPLE LAND WITH NO HOMESITE OR SUBDIVISION RESTRICTIONS. AG RIGHT LAND WOULD GO UP IN VALUE AND ALL FEE-SIMPLE LAND VALUES WOULD GO DOWN DRASTICLY, DEPENDING ON LOCATION.

THE STATE PROMISED THE COMMUNITY, AT THE FIRST BARLEY PROJECT HEARINGS THAT THE LOCAL LAND VALUES WOULD NOT BE RUINED BECAUSE THE BARLEY PROJECT TRACTS COULD NEVER BE DIVIDED AND IT WAS JUST AG RIGHT LAND.

①

NOW, A FEW YEARS LATER, MOST OF THE BIG-SCALE BARLEY FARMERS ARE IN TROUBLE AND CAN'T MAKE THEIR LOAN PAYMENTS. THE STATE IS IN AS DEEP AS THE FARMERS WITH ALL THE MONEY SPENT FOR ROADS, ELECTRICITY AND LOANS THAT AREN'T BEING PAID BACK.

THE NON-AGRICULTURAL RIGHTS TO THE BARLEY PROJECT AREN'T WORTH MUCH TO THE STATE. BETTIS WORTH HAS PROPOSED A BAILOUT THAT WON'T COST THE STATE ANYTHING.

THE STATE GIVES THE FARMERS FEE-SIMPLE TITLE TO THE LAND AND THEN ^{THE FARMERS} ~~THEY~~ CAN SUB-DIVIDE IT AND PAY OFF THE STATE LOANS.

WHAT THEY ARE REALLY DOING IS TAKING THE FEE-SIMPLE LAND VALUES AWAY FROM THE ORIGINAL RESIDENTS OF THE COMMUNITY AND SPREADING THEM OUT OVER

THE BARLEY PROJECT TO PAY FOR THEIR MISTAKES.

I MISSED OUT ON THE BARLEY PROJECT BECAUSE IT WAS TOO LARGE. I MISSED OUT ON THE SMALLER AG RIGHT LOTTERIES BECAUSE I WAS NOT LUCKY ENOUGH TO WIN. I MISSED OUT ON THE AUCTIONS BECAUSE I THOUGHT IT WAS TOO EXPENSIVE, CONSIDERING WHAT YOU ARE BUYING AND WHAT IT COSTS TO MEET THE PRODUCTION SCHEDULES.

INSTEAD I HAVE WAITED AND DEVELOPED MY FEE-SIMPLE LAND WHILE WORKING AT JOBS ON THE SIDE. I FEEL I MADE THE RIGHT BUSINESS DECISION. MOST OF THE PEOPLE THAT PAID TOO MUCH FOR LAND AND EQUIPMENT CAN'T MAKE THEIR LOAN PAYMENTS.

IF HB 458 PASSES THEY WILL MAKE FORTUNES ON THEIR MISTAKES

(3)

AND I WILL SEE MY LAND VALUE CUT IN HALF OR WORSE. THE BASIC RULES OF ECONOMICS AND BUSINESS SURE DON'T SEEM TO APPLY TO FARMING AT DELTA.

MY LOSS WOULD BE SMALL COMPARED TO MANY OF THE OLDER PEOPLE WHO ORIGINALLY HOMESTEADED HERE AND PIONEERED THE FARMING INDUSTRY. IN MANY CASES THEIR LIFE SAVINGS ARE THEIR FEE-SIMPLE FARM LAND VALUES. HB 458 WOULD CUT THEIR LAND VALUES IN HALF, OR WORSE.

WHEN I TALK ABOUT LAND VALUES LOST, I MEAN REAL, 1984, PAID FOR, LAND VALUES. MOST OF THE AG-RIGHT LAND IS ONLY 10-20% PAID FOR.

IN MY NEIGHBORHOOD ON NISTLER ROAD THERE IS OVER 1,000 ACRES OF AG-LAND THAT WAS SOLD BY LOTTERY FOR ABOUT ~~\$100~~ AN ACRE.
④ 100

IT'S PROBABLY 10-20% PAID FOR AND NONE OF IT HAS EVER GROWN A CROP. FEE SIMPLE LAND VALUES HERE WERE ABOUT \$800 AN ACRE (BEFORE HB 458). YOU CAN SEE WHAT AN ECONOMIC SHAKE-UP WILL OCCUR IF THAT LAND TURNS FEE-SIMPLE AND IS SUBDIVIDED.

HB 458 WILL EVEN TURN GRAZING LEASES INTO FEE-SIMPLE LAND (IF I READ IT RIGHT). ~~MAYBE~~

~~THAT'S WHY THERE WAS A LOT OF INTEREST IN GRAZING LEASES ON THE WEST SIDE OF THE DELTA RIVER A COUPLE MONTHS AGO. I DON'T KNOW WHY THEY WOULD ISOTHER WITH THAT REMOTE LAND. THEY SHOULD GO TO HOMER WITH THEIR INSIDE INVESTIGATION AND TRY UP SOME OF THE STATE GRAZING LEASES THERE. NORTH OF HOMER~~

STATE GRAZING LEASES BORDER

① FEE-SIMPLE LAND THAT SELLS FOR \$7,000 AN ACRE AND UP. THE LEASES SELL PRETTY CHEAP.

THE BIG FORTUNES WILL BE MADE ~~TO~~ THERE IF HB 458 GOES THROUGH.

I WONDER IF BETSWORTH HAS HAS CONSIDERED THE IMPACT OF HB 458 ON THAT COMMUNITY? HOW ABOUT THE IMPACT ON WASILLA IF THE MCKENSIE DAIRY PROJECT IS SUBDIVIDED?

ONE MISLEADING EXCUSE FOR HB 458 IS THAT BANKS WON'T LOAN ANY MONEY FOR HOUSES ON AG-RIGHT LAND. A FARMER CAN GET LOANS FOR EVERYTHING BUT A HOUSE FROM THE AG-REVOLVING LOAN FUND, SO I SUPPOSE THEY EXPECT A LOAN FOR THEIR HOUSE TOO. MOST HOUSE LOANS IN ALASKA AREN'T FINANCED BY BANKS ANYWAY, BUT BY STATE HOUSING LOANS.

⑥

IT SEEMS IT WOULD BE EASIER TO CHANGE THE STATE HOUSING LOAN PROGRAM TO INCLUDE AG-RIGHT LAND RATHER THAN GOING TO AN EXTREME MEASURE LIKE HB 458 THAT WOULD UPSET LAND VALUES ALL OVER THE STATE.

I DON'T WANT TO SEE MY LAND VALUE RUINED TO BUY A HOUSE FOR A BARLEY FARMER, ESPECIALLY AFTER SEEING ALL THE HOUSE LOGS THAT WERE CHAINED DOWN AND BURNED ON THE PROJECT.

THE SECOND PART OF HB 458 DEALS WITH PREFERENCE RIGHTS ON LAND SALES AND I DON'T REALLY UNDERSTAND IT. THE ~~2ND~~ FIRST PART OF THE BILL TURNS AG-RIGHT LAND INTO FEE-SIMPLE LAND. THE SECOND PART IS A WAY TO GET MORE AG-RIGHT LAND USING PREFERENCE RIGHTS. I SUPPOSE THIS MEANS

⑦

A FARMER CAN BUY IT CHEAP, WITH
A BIDDING ADVANTAGE AT THE AUCTION
AND THEN TURN IT INTO FEE-SIMPLE
LAND LATER.

PREFERENCE RIGHTS SOUND LIKE
A GOOD DEAL IN SOME WAYS. HOW
THEY WORK OUT IS A DIFFERENT
STORY. A GOOD EXAMPLE IS THE
NOV. 19, 1983 CLEARWATER AG. LAND
SALE. ALL BUT TWO OF THE PARCELS
WERE TIED UP BY PREFERENCE
RIGHTS. THOSE TWO PARCELS WERE
MOSTLY GRAVEL, ROCK AND SAND DUNES
AND SHOULD NEVER ~~BE~~ HAVE BEEN
SOLD AS AG-LAND ANYWAY. THE
SALE WAS NEVER ADVERTIZED
STATE-WIDE LIKE OTHER SALES.
WHEN IT WAS ADVERTIZED THE
PREFERENCE RIGHTS HAD ALREADY
BEEN GIVEN OUT. THEN IT WAS
CANCELED TO CONFUSE THINGS
~~LESSER~~ MORE. THE CANCELATION

⑥

POSTERS WERE STILL UP AROUND
TOWN AT THE SALE WAS OVER.
ONE 146 ACRE PARCEL WAS SOLD
TO THE FAMILY HOLDING THE
PREFERENCE RIGHTS - SUPPOSEDLY
TO MAKE THEIR ~~FARM~~ FARM A MORE
"ECONOMICAL UNIT". TWO MONTHS
LATER IT WAS LISTED IN THE
DELTA PAPER FOR SALE AT \$75
AN ACRE OVER THE PURCHASE
PRICE. ANOTHER 324.8 ACRE
PARCEL WAS SOLD AND THE STATE
ASSISTANT ATTORNEY GENERAL
HAS BEEN INVESTIGATING BID-
RIGGING BY THE PREFERENCE
RIGHT HOLDER. THAT SCANDAL
MADE HEADLINES IN THE
ANCHORAGE TIMES. ~~IT HAS BEEN~~

~~READ PRETTY QUOTE HERE~~

PREFERENCE RIGHTS ARE
ABUSED TOO MUCH BY
SPECULATORS AND I HOPE THEY

ARE NEVER USED AGAIN.

I'M NOT OPPOSED TO THE STATE
SELLING FEE-SIMPLE FARMLAND.
JUST CALL IT THAT WHEN IT'S
SOLD AND GIVE ALL THE PEOPLE
A CHANCE AT IT IN USEFUL SIZE
PARCELS.

FARMING IS AN HONEST WAY
TO MAKE A LIVING IN MOST OF
THE COUNTRY. I'M REAL DISAPPOINTED
IN HOW IT'S TURNING OUT AT DELTA.
SOME CHANGES ARE CERTAINLY
DUE BUT HB458 IS NOT THE
ANSWER.

Sid Nelson

Box 553

DELTA JUNCTION

895-4962

My name is Joe Hittler
My mailing address is 6369 Hittler Rd.
Delta, Jct, ab 99737

My wife and I have a 240 acre farm and also own about 60 acres which we bought for investment.

I am opposed to HB 458, because I think it is bad for agriculture, it is bad for our area and it is wrong.

First: It is bad for agriculture.

When the "Delta Barley Project" was started we were told it had to be large to support the necessary infrastructure, "economy of scale" The tracts had to be large, 2 to 3,000 acres, an "economic unit." Smaller ag right units were set up for the Tavana Loop and Clearwater Areas, "more intensive agriculture."

We were told that ag rights only would be granted and this was good. It would insure that this best farm land would remain in agriculture. Because farming brings a low return per acre it was essential to keep land costs down, 50 to 200 dollars per acre.

"You cannot afford to farm \$2,000 per acre land," they said. The land couldn't be subdivided so it would remain in economic units. We were told that in many places the development rights to ag land were being bought up or farmers were entering into Top agreements to keep their land in agriculture. This was good for agriculture and was good for the country. Here we had the chance to do it right from the start.

If any of what we were told was true this is a bad bill for agriculture and for Alaska.

It changes the rules in mid game. If all the land no longer has to remain in agriculture, gone is your economy of scale. Gone are your grain elevators, dryers, storage and terminal facilities and much of the money already invested in them.

If they can be broken into smaller chunks or subdivided, gone is your economic unit. You no longer have to follow the rules for soil conservation,

wind breaks, etc.

Increase the price or value of land and you can no longer afford to farm it or the one who buys it cannot. Even those who wish to continue farming may be forced out. It will end all hope that the Delta Ag Project can succeed.

It ~~will~~ ^{would} help the few who own the large tracts now. It would make them millionaires, quite a few, about 36. That's good for them. It may ~~be~~ also be good for the 100 or so who have ag rights on smaller parcels.

What about the rest of us?

We were told this project wouldn't hurt land values, and it hasn't. We were told it would be good for the community and it has been, so far. But add 80 to 100,000 more acres of fee simple land and what happens to your land values. What about you who have land that you bought and paid for, you who have put in subdivisions

and are selling or plan to sell lots, you who made the down payment on land and are still paying and it suddenly becomes worth $\frac{1}{3}$ as much. What about the people who bought subdivision land from the state and paid 5 to 10 times as much for it as a right land in the same area. Is this fair?

I think the state made a commitment to all of us when it sold a right land, to those who bought, and to those who chose not to buy, and to everyone who owns property. To fail to honor that commitment is wrong!

I don't know the purpose behind this bill but suspect it was to help farmers in financial difficulty. What could the state do? What any good banker would, review the loan, if justified extend the terms or loan more. What about owners of small tracts who cannot build because they can't get loans. The state could loan to them if the banks won't. The state likes its 12% and if the loans are sound

in the first place the lender cannot lose. Ag rights have value too and there are hundreds of people who would love to own 20 to 100 ~~acres~~ inexpensive acres to farm, or raise horses or chickens and kids. This is what I thought ag rights were for.

Let's keep it that way!

Barbara Truitt in Fairbanks
would ~~would~~ like to testify



MSG 84-00023143 PRTY 1 03/10/84 15:28:19 ORIG: LD00 IN= 0007 OUT= 0019
FROM: LIZ IN DELTA TO: PAULA IN FBX
TARGET: LFH1 SUBJ: AG TC

OMNI #3

I NOW HAVE AN ADDITIONAL PERSON WHO WISHES TO TESTIFY IF THERE IS TIME:

5. JIM GOODMAN

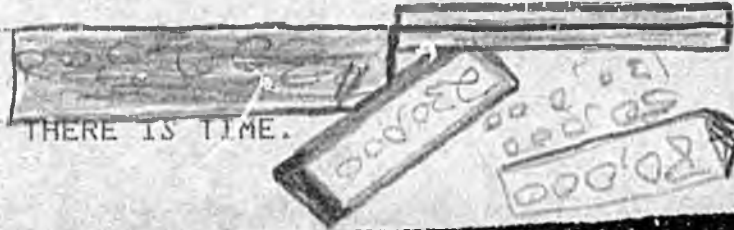
EOM



MSG 84-00023142 PRTY 1 03/10/84 15:09:02 ORIG: LM00 IN= 0006 OUT= 0018
FROM: MARTIE/MATSU TO: PAULA
TARGET: LFH1 SUBJ: H RESOURCES

OMNI NO 3, MATSU

TOM WILLIAMS WISHES TO SPEAK AGAIN, IF THERE IS TIME.



MSG 84-00023128 PRTY 1 03/10/84 13:24:45 ORIG: LD00 IN= 0005 OUT= 0007
FROM: LIZ IN DELTA TO: PAULA & ALL
TARGET: LFH1 SUBJ: HSE RES. HB 458

OMNI #1

TO TESTIFY:

1. MIKE CARLSON
2. HENRY MUTH
3. DWIGHT NISSEN

TO OBSERVE:

1. MARGARET CARLS
2. RANDY DAVENPORT
3. PAUL NISTLER
4. GLEN FRANKLIN

MSG 84-00023140 PRTY 1 03/10/84 14:50:39 ORIG: LD00 IN= 0006 OUT= 001
FROM: LIZ IN DELTA TO: PAULA
TARGET: LFH1 SUBJ: AG TC

OMNI #2

I NOW HAVE ONE ADDITIONAL PERSON WHO WISHES TO TESTIFY:

4. STEVE HOLCOMB

EOM

To TESTIFY

FBI

~~William W. ...~~

~~James ...~~

~~Robert ...~~

14. Pauline ...

15. Glenn ...

16. Bob ...

17. Larry ...

18. Al ...

19. Paul ...

1. Mike ...

2. Henry ...

3. Dwight ...

DELTA

TO TESTIFY

Fairbanks

Homer
~~Bella~~

m-5

20. John W. Peoples

1. Pete Roberts
2. Chris Rainwater
3. Chuck Jones

To Testify

Mat-su

Fairbanks

To testify:
① Wayne Burton

② Gene Carlson

Matsu

Fairbanks

② Tom Williams

② Roger C. Burggraf

MAT-SU / Martie

DEITA / Linda & Liz

HOMER

FATRANKS / Paula

1.

1. Henry Warner

2. Jack Coghill

3. Sid Nelson

4. Joe Nistler

5. Dean Waldo

6. Joe Vogler

7. Rudy Vetter

8. Don Kratzer

9. Robert Koon

10. Lavonne Koon

ANALYSIS - HB 458

The Division of Land and Water Management has analyzed HB 458. The fiscal impact is detailed as follows:

I.	Personal Services:	
	1 Clerk Typist III (Contract Administration) to amend contracts and miscellaneous case file related work - 3 months	\$ 6,150
	1 Attorney III to write regulations and covenants - 3 months	18,700
II.	Travel - regulations hearings and consultation with Commissioner's Office and other agencies	800
III.	Contractual - advertising, printing of forms, mailing, etc.	1,000
IV.	Supplies - paper, correspondence, supplies, etc.	<u>500</u>
	TOTAL	\$27,150

This analysis assumes converting contracts and patents and filing covenants for all agricultural parcels disposed since 1978: 314 non-project and 68 project agricultural parcels for a total of 382 parcels.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 3/28/84

REQUEST

Bill/Resolution No.: HB 458
Title: re: agricultural rights
to land
Sponsor: Bettisworth
Requestor:
Date of Request:

FISCAL DETAIL

Agency Affected: Natural Resources
Program Category Affected:
BRU, Program or Subprogram(s) Affected:
NRMEC, Management of Land & Water Resources,
Contract Administration

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		24.9				
200 TRAVEL		.8				
300 CONTRACTUAL		1.0				
400 SUPPLIES		.5				
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		27.2				
CAPITAL		N/A				
REVENUE		*				

FUNDING: (Thousands of Dollars)

GENERAL FUND		27.2				
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY		2				

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

- * If 382 parcels are processed @ \$75.00 fee, revenue would be \$28,650. Revenue lost to the State by conveying all rights with no further cost is estimated conservatively in excess of \$60 million.

ANALYSIS: Attach a separate page for analysis

Prepared By: Frank Mielke Phone: 263-4347
Division: Land and Water Management Date: 3/28/84

Approved by Commissioner: *[Signature]* Date: 3/28/84
Agency: Natural Resources

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83



POUCH V
JUNEAU, ALASKA 99811

REPRESENTATIVE
ROBERT H. "BOB" BETTISWORTH

211 CUSHMAN STREET
FARBANKS, ALASKA 99701

March 26, 1984

M E M O R A N D U M

To: Representatives Ringstad and Shultz, Co-chairmen, House
Resources Committee

From: Representative Bob Bettisworth *RHB*

Subject: HB458, "An Act relating to agricultural rights to land."

You will find attached a copy of a letter from Tom Williams, a farmer and attorney from the Mat-Su area that fairly describes the problem with "AGRICULTURAL INTEREST ONLY" patents. I have also provided copies of a current agricultural only state patent, a current state land patent, and an old federal homestead patent for the committee's perusal.

I think you will find the contrasting language in these documents interesting especially when considered from Mr. William's expressed point of view which I share. The attached materials are tabbed for your convenience in the following order by number:

- 1.) Tom Williams letter
- 2.) Agricultural Interest Only patent
- 3.) regular state land patent
- 4.) federal homestead patent

rob

Thomas E. Williams, Attorney

PROFESSIONAL CORPORATION

Centerfield Center
P.O. Box 1145 • Eagle River, Alaska 99577

Eagle River: (907) 694-4000
Palmer: (907) 745-4000

March 5, 1984

Ronald Schultz and Sons, Inc.
P.O. Box 1284
Delta Junction, AK 99737

Re: Point MacKenzie farms

Dear Mr. Schultz:

Enclosed is a copy of a State Agricultural Land Patent issued to Mr. John A. Baker, a farmer, who has paid the State.

Please review the last two paragraphs and determine for yourself the quality of title offered to Mr. Baker. Most people agree that the land use should be restricted for agricultural purposes, but most people also agree that the title should offer some security and ownership to the farmer. I believe this title offers no security and very little ownership to Mr. Baker. I believe this title is no better than a temporary license to be on the land only so long as it pleases the state, and if the state orders the patentee off the farm, he will receive nothing for his improvements, including his home, barns, clearing, crops in the field, or refund moneys paid to purchase the farm. I believe that no responsible title insurance company will issue fee simple title policy on a patent of this quality. I believe that no bank will knowingly make a homeowner loan to a farmer to build a home on land titled in this manner.

I urge you to take this patent and letter to:

1. Your attorney for a written legal opinion as to the quality of this title;
2. Your title insurance company for a written opinion as to the quality of this title, and a commitment that they will issue fee simple title insurance policy on land titled in this manner;
3. Your banker for a written opinion as to the quality of this title, and a commitment that the quality of this title would not be an obstruction to obtaining a loan to build a home on the farm.

Ronald Schultz and Sons, Inc.
March 5, 1984
Page 2.

SEND THE STATEMENTS TO ME AND YOUR REPRESENTATIVES. Please do so immediatly because there is now a bill before our state Senate that would make this kind of title a constitutional requirement. That means it would be very difficult to change.

Time is critical, please hurry.

TYPICAL POINT MacKENZIE 600 ACRE DAIRY FARM LOAN PROGRAM

	<u>Purchase Price</u>	<u>State Loan</u>	<u>out of farmer's pocket</u>	
Land Purchase	\$ 70,000	\$ 66,500	\$ 3,500	+ interest
Chattle loans	200,000	150,000	50,000	+ interest
Long term loans	800,000	720,000	80,000	+ interest
Clearing loan	260,000	160,000	100,000	+ interest
Operating funds	120,000	60,000	60,000	+ interest
Home construction	100,000	-0-	<u>100,000</u>	+ interest
			\$393.500	Cash & int.

The 600 acre Point MacKenzie Dairy Farms can be proved up only by wealthy people who are able and willing to spend \$400,000 cash on real estate titled in this manner.

Please note that the retaking of your farm by the state does not require (1) notice to you; (2) any judicial proceeding what-so-ever; (3) any provision for you to remove your property or crops; (4) any time for redemption.

THIS IS NOT A FORECLOSURE: BUT SIMPLY A REPOSSESSION

All that is required is that the Director determine that you have failed to observe any condition in your soil conservation plan. He may then declare an immediate forfeiture and thereby take the above described improvements without even telling you.

Very truly yours,

Thomas E. Williams

TEW/nm

Enclosure



Patent

No. 5151

Know All Men By These Presents that the State of Alaska, in consideration of the sum of NINE THOUSAND SIX HUNDRED EIGHTY-ONE AND 00/100----- DOLLARS lawful money of the United States, and other good and valuable considerations, now paid, the receipt whereof is hereby acknowledged, docs hereby grant to _____

JOHN A. BAKER, a single man

Box 57, Talkeetna, Alaska 99676

and to

his heirs and assigns, all that real property situated in the Borough of Matanuska-Susitna

State of Alaska, and described as follows:

AGRICULTURAL INTEREST ONLY

TRACT 9 OF ALASKA STATE LAND SURVEY NO. 79-109, LOCATED WITHIN THE BARTLETT HILLS ALASKA SUBDIVISION, TOWNSHIPS 25 AND 26 NORTH, RANGE 4 WEST, SEWARD MERIDIAN, CONTAINING 196.81 ACRES, MORE OR LESS, ACCORDING TO THE SURVEY PLAT FILED IN THE TALKEETNA RECORDING DISTRICT ON MARCH 13, 1980 AS PLAT NO. 80-25.

SUBJECT TO:

PLATTED EASEMENTS.

CONDITIONS AND COVENANTS OF THE FARM CONSERVATION PLAN APPROVED BY THE DIRECTOR OF THE DIVISION OF AGRICULTURE OF THE DEPARTMENT OF NATURAL RESOURCES.

IF AT ANY TIME THE DIRECTOR OF THE DIVISION OF FOREST, LAND AND WATER MANAGEMENT OF THE DEPARTMENT OF NATURAL RESOURCES DETERMINES THAT THE GRANTEE OR HIS SUCCESSORS IN INTEREST HAS FAILED TO OBSERVE ANY PROVISION OR CONDITION OF THIS PATENT, THE DIRECTOR MAY DECLARE A FORFEITURE OF THIS CONVEYANCE AND TITLE HEREBY CONVEYED SHALL THEREUPON REVERT TO THE STATE OF ALASKA.

80 - 001522
11-

INDEXED
RECORDED

JUN 10 9 40 AM '80

RECORDED

ADDRESS

John A. Baker
Box 57
Talkeetna
AK 99676

93101

Township 25 & 26 NORTH, Range 4 WEST, SEWARD Meridian
Alaska, according to the official survey thereof numbered 79-109;

Save And Except those restrictions appearing in the Federal Patent or other conveyance by which the Grantor acquired title;

And Further, Alaska, as Grantor, expressly reserves out of the grant hereby made, unto itself, its lessees, successors and assigns forever, all oils, gases, coal, ores, minerals, fissionable materials, and fossils of every name, kind or description, and which may be in or upon said lands above described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, fissionable materials and fossils; and it also hereby expressly saves and reserves out of the grant hereby made, unto itself, its lessees, successors and assigns forever, the right to enter by itself, its or their agents, attorneys, and servants upon said lands, or any part or parts thereof, at any and all times, for the purpose of opening, developing, drilling and working mines or wells on these or other lands, and taking out and removing therefrom all such oils, gases, coal, ores, minerals, fissionable materials and fossils; and to that end it further expressly reserves out of the grant hereby made, unto itself, its lessees, successors and assigns forever, the right by its or their agents, servants and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads, pipelines, powerlines, and railroads, sink such shafts, drill such wells, remove such soil, and to remain on said lands or any part thereof for the foregoing purposes, and to occupy as much of said lands as may be necessary or convenient for such purposes, hereby expressly reserving to itself, its lessees, successors and assigns, as aforesaid, generally all rights and power in, to and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and rights hereby expressly reserved.

To Have And To Hold the said land, together with the tenements, hereditaments, and appurtenances thereunto appertaining, unto the said Grantee and his heirs and assigns forever.

In Testimony Whereof the State of Alaska has caused these presents to be executed by the Director of the Division of Lands, Department of Natural Resources, State of Alaska, this 29th day of May A.D. 1980

George S. Hollett
for Director, Division of Forest,
Land and Water Management

State of Alaska)
) ss.
THIRD Judicial District)

This Is To Certify that on the 29th day of May, 1980, appeared before me

GEORGE K. HOLLETT, who is known to me to be the Director of the Division of Lands, Department of Natural Resources, State of Alaska, or the person who has been lawfully delegated the authority of said Director to execute the foregoing document; that he executed said document under such legal authority and with knowledge of its contents; and that such act was performed freely and voluntarily upon the premises and for the purposes stated therein.



Phyllis A. K...
Notary Public in and for Alaska
My Commission Expires May 11, 1983

State Record of Patents

Vol. LII
Page 51
ADL No. 203274

State of Alaska



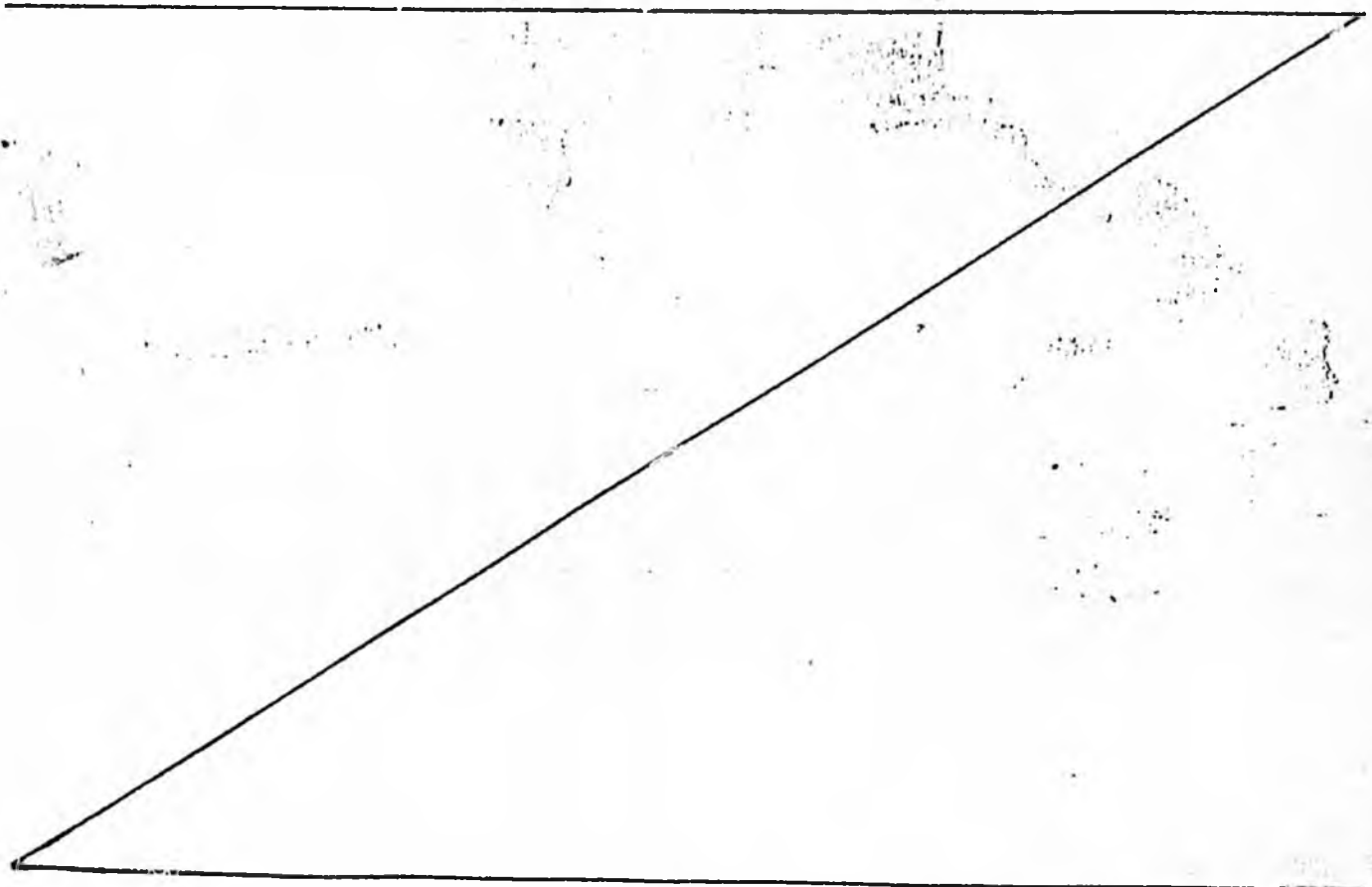
Patent

No. 7516

Know All Men By These Presents that the State of Alaska, pursuant to A.S. 38.05.068 and the regulations promulgated thereunder, in consideration of the sum of EIGHT HUNDRED AND NO/100 DOLLARS lawful money of the United States, and other good and valuable considerations, now paid, the receipt whereof is hereby acknowledged, does hereby grant to FRANK C. LANDERGEN, a single man, 6731 Wilderridge Road, Garberville, California 95440, his heirs and assigns, all that real property situated in the Petersburg Recording District, State of Alaska, and described as follows:

ALASKA STATE LAND SURVEY NO. 81-141, TRACT A, WITHIN UNSURVEYED SECTION 18, TOWNSHIP 64 SOUTH, RANGE 76 EAST, COPPER RIVER MERIDIAN, CONTAINING 1.85 ACRES, MORE OR LESS, ACCORDING TO THE SURVEY PLAT FILED IN THE PETERSBURG RECORDING DISTRICT ON SEPTEMBER 19, 1983 AS PLAT NO. 83-23.

Subject to platted easements and reservations; and further subject to Title VI of the Civil Rights Act of 1964.



Save And Except those restrictions appearing in the Federal Patent or other conveyance by which the Grantor acquired title;

And Further, Alaska, as Grantor, hereby expressly saves, excepts and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, all oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils of every name, kind or description, and which may be in or upon said lands above described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils, and it also hereby expressly saves and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right to enter by itself, its or their agents, attorneys, and servants upon said lands, or any part or parts thereof, at any and all times for the purpose of opening, developing, drilling, and working mines or wells on these or other lands and taking out and removing therefrom all such oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right by its or their agents, servants and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads, pipelines, powerlines, and railroads, sink such shafts, drill such wells, remove such soil, and to remain on said lands or any part thereof for the foregoing purposes and to occupy as much of said lands as may be necessary or convenient for such purposes hereby expressly reserving to itself, its lessees, successors, and assigns, as aforesaid, generally all rights and power in, to, and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and rights hereby expressly reserved.

To Have And To Hold the said land, together with the tenements, hereditaments, and appurtenances thereunto appertaining, unto the said Grantee and his heirs and assigns forever.

In Testimony Whereof the State of Alaska has caused these presents to be executed by the Director of the Division of Technical Services, Department of Natural Resources, State of Alaska, pursuant to delegated authority, this 1st day of March A.D., 1984

Warner T. May
For Director, Division of Technical Services

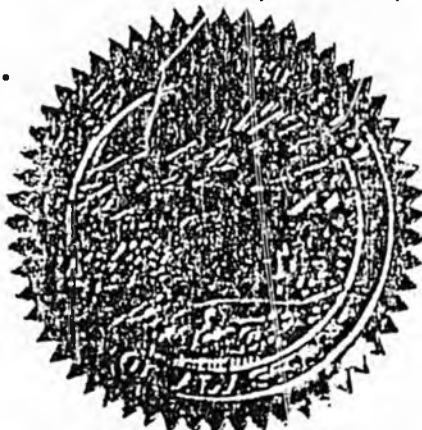
State of Alaska }
THIRD Judicial District } ss.

This I do Certify that on the 1st day of March 1984, appeared before me Warner T. May

who is known to me to be the Director of the Division of Technical Services, Department of Natural Resources, State of Alaska, or the person who has been lawfully delegated the authority of said Director to execute the foregoing document; that he executed said document under such legal authority and with knowledge of its contents; and that such act was performed freely and voluntarily upon the premises and for the purposes stated therein.

ADL No. 101756
Patent No. 7516
Location Index:
T. 64 S., R. 76 E., C.R.M.
Sec. 18

Leina J. Bilal
Notary Public in and for Alaska
My Commission expires February 8, 1987



THE FOLLOWING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, a Certificate of the Register of the Land Office at Anchorage, Alaska,

has been deposited in the General Land Office; whereby it appears that, pursuant to the Act of Congress of May 20, 1852, "To Secure Homesteads to Actual Settlers on the Public Domain," and the acts supplemental thereto, the claim of Frank A. Cloudy

has been established and duly consummated, in conformity to law, for the land embraced in H. E. Survey No. 98, New Series No. 1911, situate on the east shore of Hetta Inlet Prince of Wales Island, opposite Jumbo Island, Alaska, containing forty-five acres and fifty-four hundredths of an acre,

according to the Official Plat of the Survey of the said Land, on file in the GENERAL LAND OFFICE:

NOW KNOW YE, That there is, therefore, granted by the UNITED STATES unto the said claimant the tract of Land above described; TO HAVE AND TO HOLD the said tract of Land, with the appurtenances thereof, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; and there is reserved from the lands hereby granted a right of way thereon for ditches or canals constructed by the authority of the United States. And there is also reserved to the United States a right of way for the construction of railroads, telegraph and telephone lines, in accordance with the Act of March 12, 1914 (38 Stat. 305).

IN TESTIMONY WHEREOF, I, Herbert Hoover,

President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

GIVEN under my hand, at the City of Washington, the SIXTH day of JANUARY in the year of our Lord one thousand nine hundred and THIRTY-TWO and of the Independence of the United States the one hundred and FIFTY-SIXTH

By the President:

By

Herbert Hoover
Leafie E. Dietz Secretary
Emmanuel D. Peterson
Recorder of the General Land Office

(SEAL)

THE PRECEDING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, a certificate of the Land Office at Fairbanks, Alaska, is now deposited in the Bureau of Land Management, whereby it appears that pursuant to the act of Congress of May 20, 1862 (12 Stat. 392), and the acts supplemental thereto, the claim of [REDACTED] has been established and that the requirements of law pertaining to the claim have been met, for the following-described land:

Fairbanks Meridian, Alaska.
T. 1 S., R. 1 W.,
Sec. 19, SW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 20, NW $\frac{1}{4}$ SW $\frac{1}{4}$.

The area described contains 160 acres, according to the official plat of the survey of the said land, on file in the Bureau of Land Management:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, DOES HEREBY GRANT unto the said claimant and to the heirs of the said claimant the tract above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to (1) any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; (2) the reservation of a right-of-way for ditches or canals constructed by the authority of the United States, in accordance with the act of August 30, 1890 (26 Stat., 391, 43 U. S. C. sec. 945), and (3) the reservation of a right-of-way for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures constructed or to be constructed by or under authority of the United States or by any State created out of the Territory of Alaska, in accordance with the act of July 24, 1947 (61 Stat., 418, 48 U. S. C. sec. 321d). There is also reserved to the United States a right-of-way for the construction of railroads, telegraph and telephone lines, in accordance with section 1 of the act of March 12, 1914 (38 Stat., 305, 48 U. S. C. sec. 305).

INDEXED

Instrument No. 164,846
Filed for [REDACTED]
By [REDACTED]
on NOV 30 1956 at 10:44 a. M.
and recorded in Vol. 84 of 1 July
Page 179 Fairbanks Recording Precinct, Alaska
La Dena Nordell

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat., 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in the District of Columbia, the TWENTY-SEVENTH day of JUNE in the year of our Lord one thousand nine hundred and FIFTY-SIX and of the Independence of the United States the one hundred and EIGHTIETH.

For the Director, Bureau of Land Management.

By Rose M. Beall
Chief, Patents & M. Section



Patent Number 1161073

Thomas E. Williams, Attorney

A PROFESSIONAL CORPORATION

Centerfield Center
P.O. Box 1145 • Eagle River, Alaska 99577

Eagle River: (907) 694-4000
Palmer: (907) 745-4000

March 23, 1984

Dear Representative:

Enclosed you will find:

1. A copy of page 7 Point MacKenzie Sales Brochure which said that the state was offering the surface estate in fee simple subject to conditions subsequent and covenants;
2. A copy of the page from Black's Law Dictionary which defines estate in fee simple subject to conditions subsequent and covenants;
3. A copy of the patent the state is issuing to all purchasers in Bartlett Hills, Point MacKenzie, Delta I, Delta II, and all other agricultural sales.

Is the farmer getting what the state promised?

If not, use your office and influence to give the farmer what the state offered in the sales brochure -- fee simple --.

Thank you.

Very truly yours,



Thomas E. Williams

LATE PAYMENT PENALTY: A service charge plus annual interest (twice the interest rate charged on installment payments at the prevailing rate for real estate mortgage loans made by the Federal Land Bank for the farm credit district for Alaska) on the amount due will be charged on a past due account until payment is received by the State or until the contract termination date is reached.

SALE OF AGRICULTURAL INTEREST ONLY

The sale of State land classified as agricultural land transfers only rights for agricultural purposes, and all other interests in the land remain with the State and may not be trespassed upon by the purchaser. The State's sale of the agricultural interest is the conveyance of the surface estate in fee simple subject to the conditions subsequent and covenants relating to agricultural use and development. The development schedule will be incorporated into the sales contract and the conveyance documents as a covenant and condition and will be recorded in that form.

FARM CONSERVATION PLAN

Successful applicants are required to submit a Farm Conservation Plan for the parcel they are purchasing to the Division of Agriculture, Pouch A, Wasilla, AK 99687, within 30 days of being awarded the parcel. If the Division of Agriculture does not approve the initial plan, the applicant has 30 days from the rejection of the first Conservation Plan to file an acceptable plan with the Division of Agriculture. Failure to file a plan within the allotted time, or an extension thereof, will result in the automatic termination of the applicant's interest.

The Farm Conservation Plan must include:

A map of the farm showing:

1. the planned location of clearing and breaking of ground;
2. planned location and size of the farm's real property improvements, if authorized;
3. planned location of windbreaks, farm ponds, and similar conservation measures and improvements;
4. planned soil conservation measures.

This plan will be accepted or rejected by the Department of Natural Resources, Division of Agriculture, in conjunction with the local soil conservation subdistrict. The Farm Conservation Plan is a part of the sale contract and will be a permanent condition of the sale contract and title.

fees, conditional fees, and fees-tail. The term is opposed to "fee-simple."

Plowman's fee. In old English law, was a species of tenure peculiar to peasants or small farmers, somewhat like gavelkind, by which the lands descended in equal shares to all the sons of the tenant.

Qualified fee. In English law, a fee having a qualification subjoined thereto, and which must be determined whenever the qualification annexed to it is at an end; otherwise termed a "base fee." An interest which may continue forever, but is liable to be determined, without the aid of a conveyance, by some act or event, circumscribing its continuance or extent. An interest given to a man *and certain of his heirs* at the time of its limitation.

Quasi fee. An estate gained by wrong.

Feed. To lend additional support; to strengthen *ex post facto*. Similarly, a subsequent title acquired by the mortgagor is said "to feed the mortgage."

Fee-farm. A species of tenure, where land is held of another in perpetuity at a yearly rent, without fealty, homage, or other services than such as are specially comprised in the feoffment. It corresponds very nearly to the "emphyteusis" of the Roman law. Fealty, however, was incident to a holding in fee-farm, according to some authors.

Fee-farm is where an estate in fee is granted subject to a rent in fee of at least one-fourth of the value of the lands at the time of its reservation. Such rent appears to be called "fee-farm" because a grant of lands reserving so considerable a rent is indeed only letting lands to farm in fee-simple, instead of the usual method of life or years. Fee-farms are lands held in fee to render for them annually the true value, or more or less; so called because a farm rent is reserved upon a grant in fee. Such estates are estates of inheritance. They are classed among estates in fee-simple. No reversionary interest remains in the lessor, and they are therefore subject to the operation of the legal principles which forbid restraints upon alienation in all cases where no feudal relation exists between grantor and grantee.

Fee-farm rent. The rent reserved on granting a fee-farm. It might be one-fourth or one-third the value of the land. Fee-farm rent is a rent-charge issuing out of an estate in fee; a perpetual rent reserved on a conveyance in fee simple.

Fee simple.

Absolute. A fee simple absolute is an estate limited absolutely to a man and his heirs and assigns forever without limitation or condition. An absolute or fee-simple estate is one in which the owner is entitled to the entire property, with unconditional power of disposition during his life, and descending to his heirs and legal representatives upon his death intestate. Such estate is unlimited as to duration, disposition, and descendibility. *Slayden v. Hardin*, 257 Ky. 685, 79 S.W.2d 11, 12.

The estate which a man has where lands are given to him and to his heirs absolutely without any end or limit put to his estate. 2 Bl.Comm. 106. The word "fee," used alone, is a sufficient designation of this species of estate, and hence "simple" is not a neces-

sary part of the title, but it is added as a means of clearly distinguishing this estate from a fee-tail or from any variety of conditional estates. Fee-simple signifies a pure fee; an absolute estate of inheritance clear of any condition or restriction to particular heirs, being descendible to the heirs general, whether male or female, lineal or collateral. It is the largest estate and most extensive interest that can be enjoyed in land.

Conditional. Type of transfer in which grantor conveys fee simply on condition that something be done or not done. A defeasible fee which leaves grantor with right of entry for condition broken, which right may be exercised by some action on part of grantor when condition is breached.

At common law an estate in fee simple conditional was a fee limited or restrained to some particular heirs, exclusive of others. But the statute "De donis" converted all such estates into estates tail. 2 Bl. Comm. 110.

Defeasible. Type of fee grant which may be defeated on the happening of an event. An estate which may last forever, but which may end upon the happening of a specified event, is a "fee simple defeasible". *Newbern v. Barnes*, 3 N.C.App. 521, 165 S.E.2d 526, 530.

Determinable. A "fee simple determinable" is created by conveyance which contains words effective to create a fee simple and, in addition, a provision for automatic expiration of estate on occurrence of stated event. *Selectmen of Town of Nahant v. U. S.*, D.C.Mass., 293 F.Supp. 1076, 1978.

Fee simple title. See Fee simple.

Fee tail. A freehold estate in which there is a fixed line of inheritable succession limited to the issue of the body of the grantee or devisee, and in which the regular and general succession of heirs at law is cut off. *Coleman v. Shoemaker*, 147 Kan. 689, 78 P.2d 905, 907.

An estate tail; an estate of inheritance given to a man and the heirs of his body, or limited to certain classes of particular heirs. It corresponds to the *feudum talliatum* of the feudal law, and the idea is believed to have been borrowed from the Roman law, where, by way of *fidei commissa*, lands might be entailed upon children and freedmen and their descendants, with restrictions as to alienation. For the varieties and special characteristics of this kind of estate, see Tail, Estate in.

Fegangi /fægənjaj/. In old English law, a thief caught while escaping with the stolen goods in his possession.

Fehmgerichte /fəymgərikhtə/. The name given to certain secret tribunals which flourished in Germany from the end of the twelfth century to the middle of the sixteenth, usurping many of the functions of the governments which were too weak to maintain law and order, and inspiring dread in all who came within their jurisdiction. Such a court existed in Westphalia (though with greatly diminished powers) until finally suppressed by Jerome Bonaparte in 1811.

Felgned /fəlynd/. Fictitious; pretended; supposititious; simulated.

Felgned accomplice. One who acts with others in the crime, but only for the plans and confederates of them.

Felgned action. An act pretended right, whereof action, for some action the words of the false action, in which false. See also Felgned.

Felgned diseases. Similar cases are generally false—fear, shame, or the

Felgned issue. A proceeding by consent of parties, by consent of jury without actual Felgned action.

FELA. Federal Employ

Felagus /fəlygəs/. In old English law, a sworn decennary for the grantor who took the place of was murdered, the referent went to the *fela*, parents or lord.

Feld. A field; in comp

Fele, feal. L. Fr. Faith

Fellow. A co-worker; companion; one with whom another in some legal a college or corporat

Fellow-heir. A co-heir in succession.

Fellow servant. One who is employed by the same master. *W. S.W.2d 762, 764.* Term used in tort law to mean pursuit, under the doctrine of respondeat superior, where one who derive authority from the same common source or departments of it. *App.D.C. 21, 16 F.2d 211, 212.* Fellow employed and paid duties are such as that negligence of one or other in performance of the same common duty. See also *Employer's Liability Act*.

Fellow servant rule. A rule of law, generally abrogated, which held that an employer was not liable for damages because of the negligence of another fellow servant, unless the negligence of another was the proximate cause of the injury, and thus reducing o

Felo de se /fəlow də sē/.

Felon /fəlon/. Person who has committed a felony (q.v.).

Patent

No. 5151

Know All Men By These Presents that the State of Alaska, in consideration of the sum of NINE THOUSAND SIX HUNDRED EIGHTY-ONE AND 00/100----- DOLLARS lawful money of the United States, and other good and valuable considerations, now paid, the receipt whereof is hereby acknowledged, does hereby grant to _____

JOHN A. BAKER, a single man

Box 57, Talkeetna, Alaska 99676

and to

his heirs and assigns, all that real property situated in the Borough of Matanuska-Susitna,

State of Alaska, and described as follows:

AGRICULTURAL INTEREST ONLY

TRACT 9 OF ALASKA STATE LAND SURVEY NO. 79-109, LOCATED WITHIN THE BARTLETT HILLS ALASKA SUBDIVISION, TOWNSHIPS 25 AND 26 NORTH, RANGE 4 WEST, SEWARD MERIDIAN, CONTAINING 196.81 ACRES, MORE OR LESS, ACCORDING TO THE SURVEY PLAT FILED IN THE TALKEETNA RECORDING DISTRICT ON MARCH 13, 1980 AS PLAT NO. 80-25.

SUBJECT TO:

PLATTED EASEMENTS.

CONDITIONS AND COVENANTS OF THE FARM CONSERVATION PLAN APPROVED BY THE DIRECTOR OF THE DIVISION OF AGRICULTURE OF THE DEPARTMENT OF NATURAL RESOURCES.

IF AT ANY TIME THE DIRECTOR OF THE DIVISION OF FOREST, LAND AND WATER MANAGEMENT OF THE DEPARTMENT OF NATURAL RESOURCES DETERMINES THAT THE GRANTEE OR HIS SUCCESSORS IN INTEREST HAS FAILED TO OBSERVE ANY PROVISION OR CONDITION OF THIS PATENT, THE DIRECTOR MAY DECLARE A FORFEITURE OF THIS CONVEYANCE AND TITLE HEREBY CONVEYED SHALL THEREUPON REVERT TO THE STATE OF ALASKA.

League of Women Voters of Alaska

HB 458: LAND GIVEAWAY TO AGRICULTURAL LESSEES/GRANTEES

The League of Women Voters of Alaska strongly opposes House Bill 458, which would require the DNR Commissioner (upon request by a grantee or lessee of agricultural land obtained from the State) to convey to that grantee or lessee without compensation to the State all remaining interests in the land.

This bill violates one of the most basic elements of our position on disposal of state owned land: that lands should be disposed of only "for value"; i.e., for fair market value, or for some lesser amount with "sweat equity" added, as was the case with the homestead legislation enacted last session (HB 130, Chapter 103 SLA 1983). We greatly prefer the present text of AS 38.05.069, or the amended version that appears in Section 48 of CS SB 222 (2d Resources).

The League of Women Voters of Alaska adopted a land use position in 1975 and a land disposal position in 1980, and has been active in legislative matters on these issues ever since. Land is one of the most valuable resources our State has, and we should dispose of it neither unwisely nor inequitably.

Elizabeth Cuadra
Natural Resources Portfolio
9151 Skywood Lane
Juneau, Alaska 99801

3/22/84

1403 1/2 Alaska Highway
Delta Junction, Alaska
99737

Dear Sir:

I have been in and out of Alaska since 1960. In 1982 I took over Tract Q, of The Debt I Project with the intent to develop and produce in Alaska. I have developed many farms in Nebraska and have land in four States today.

I invested about \$200,000.00 in Tractors, machinery, equipment, Grain bin, Mobil Home, well, etc etc. (My own personal money - I have not been able to get any Alaska money)

When I found out that we wouldn't get "free simple title" after clearing I have put the project on hold waiting further developments.

Alaska has great potential and a bright future if it will develop free enterprise and let the best system in the world work. Everyone will benefit. The sooner the land gets into personal hands the better off we will all be. It is a very unique situation with great responsibilities and opportunities for all who want to work.

P.S. Please find enclosed
the letters from my Attorney -
Abstractor and Banker.

Sincerely yours,

Richard Strong D.M.

1st
THE NATIONAL BANK of YORK

529 LINCOLN AVENUE
YORK, NEBRASKA 68467-0069
402/352-7411

March 21, 1984

Kenneth D. Strong, DVM
Box 426
Stromsburg, NE 68666

Dear K. D.:

In line with your request I have reviewed the information you furnished concerning the rights of ownership on land granted by the State of Alaska Patents.

In my opinion, your rights of ownership would be so fragile that a prudent lender would not be comfortable in lending money to you based upon collateral offered in the form of this Patent.

You will probably find that until you are able to obtain fee simple title, the rights of ownership will be questionable. Among the unacceptable limitations is the failure to compensate you for any expenditures you have made or improvements you have added in the event the Director declares a forfeiture. This title offers little protection to the purchaser or lender.

Sincerely,

G. Roger Burgess

G. Roger Burgess
Vice President

GRB/jlp

PHILIP H. NYBERG

ATTORNEY AT LAW

March 20, 1984

RONALD E. COLLING
ASSOCIATE

OSCEOLA, NEBRASKA 68601
PHONE 747-2401

Kenneth D. Strong, DVM
Box 426
Stromsburg, Nebr 68666

Dear Dr. Strong:

I have considered your request for an opinion as to the quality of title granted by Patent issued by the State of Alaska covering Agricultural Interests only.

From my experience as an Abstracter of titles and examiner of titles in the State of Nebraska for more than 40 years, it is my opinion that title is limited by any future decision of the Director of land management of the Department of Natural Resources to declare a forfeiture of the conveyance and a reversion to the State of Alaska. It would not be wise to make any improvements of a long term nature as any decision to terminate and forfeit would at the least result in possible extensive litigation.

Your decision as to future payments might well be limited by the limitations on the title you are granted.

Very truly yours,

P

Philip H. Nyberg

Alaska State Legislature

RONALD L. LARSON
DISTRICT 16B

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3727



BOX 53
PALMER, ALASKA 99645
(907) 745-3826

House of Representatives

March 21, 1984

TO: Members of the House Resources Committee
FROM: Representative Ron Larson *R.L.*
SUBJECT: HB 458

The enclosed document is from the testimony of Wayne E. Burton, PhD, Agricultural Development Economist, which was given during the teleconference hearing on March 10th. Dr. Burton has also provided some additional comments which we forwarded to me in relation to his testimony and I would like to offer this information for your information in relation to HB 458 and agricultural preference lands.

P.O. Box 871750
Wasilla, AK 99687
March 12, 1984

Honorable Ronald L. Larson
Alaska Legislature
Pouch V (mail stop 3100)
Juneau, Alaska 99811

Dear Ron:

I am sending along my prepared statement regarding HB 458 (03/10/84) as per your request. The brief delay has resulted from hunting up some additional materials you might find of interest.

I would note that my critical assessment of the testimony given during the teleconference would indicate those testifying in favor of HB 458 were addressing that which I identified (page 2, lines 2 & 3) as "asset viability of state conveyed agricultural-rights lands". The "patent" (exhibit 1) given is, in fact, not a 'fee simple' title, but is a unique 'agricultural profit a prendre' (similar in nature to an "oil" lease). The unique features of the so-called "patent" are: (1) the "conditions and covenants of the farm conservation plan ..." (exhibit 1) and (2) the "reverter clause" also found on the so-called "patent": "If at any time the Director of the Division of (Forest) Land and Water Management of the Department of Natural Resources determines that the grantee or his successors in interest has failed to observe any provisions or conditions of this patent, the Director may declare a forfeiture of this conveyance and title hereby conveyed shall thereupon revert to the State of Alaska" (exhibit 1). [underline added] A perceptive reading of the relevant statutes (exhibit 2) should illustrate quite well why lenders and title insurers do not recognize any asset viability what-so-ever for said "agricultural-rights patents".

Tom Williams did a very effective job of focusing on the absolute jeopardy incurred by each and every "agricultural interest only" purchaser, and on the resulting void of asset viability. As the present statutes stand, each and every recipient of state "agricultural interests only" holds said land from day-to-day at the absolute sufferance of the Director (11 AAC 67.162) and (11 AAC 67.165). The "forfeiture" (reverter) clause (11 AAC 67.165 (d)) includes all permanent structures and growing crops. The only things which could be removed by the "prior owner" (farmer) would be household goods, rolling stock (vehicles, machinery, equipment & tools), livestock & stored crops - if they were removed within the allowable 60 days! Now, to back up just a bit, the title and interest conveyed (11 AAC 67.162 a.) is the conveyance of the surface estate in fee simple subject to the conditions subsequent and covenants relating to agricultural use and development. It is my very considered professional judgement that there isn't a single attorney in the state of Alaska, except perhaps my son Dan, that can perceptively define "the conditions subsequent and covenants relating to agricultural use and development" as stated! I can assure you, however, that they include the Director's interpretation of each and every statement in both the "Farm Conservation Plan" and the "Farm Development Plan", both of which must be prepared within a 30 day period subsequent to the relevant lottery or sale by the state.

Tom Williams noted in his testimony that the "Farm Conservation Plan", as prepared by the District (Federal) Soil Conservation Service personnel, was overly detailed, to the extent of detailed "practices", and was seven (7) pages long. I do not believe this was the type of "Farm Conservation Plan" intended by the legislature to begin with, but they are "title covenants" as a intergal part of the title conveyed! I would seriously welcome the opportunity to challenge the Soil Conservation Service district personnel on their technical competency and validity of each and every inclusion in the "Farm Conservation Plans" prepared for "agricultural interests only" purchasers. While I have a great admiration for the Soil Conservation Service, and have had a long and productive working relationship with them, I have found on various occasions that district conservationists can take off on tangents, being quite authoritative, where they have no substantiative Alaska research data to back up their positions, i.e., Burt Clifford, 1970, went to great lengths to criticize the use of a breaking disc in the Delta Junction area. His expressed position was that no "real" would attempt to break agricultural land with other than a mole-board plow. There is a long technical explanation of why this would have been the worst possible tillage method for that soil and location. Burt later changed his mind and recommendations. There are other illustrations of the same type of instances. Any way, this situation regarding the "Farm Conservation Plan" must be changed! Since the present situation has been institutionalized, it will be necessary to amment the statutes to alleviate this unnecessary constraint on farm development.

The "Farm Development Plan", with its statutory requirements of 40% or class II and III lands being developed within 3 years & 75% being developed within 6 years, poses an undue hardship on all farm operators, and in some instances is certainly not in the best interests of either individual or state interests in said farm development. It is my considered judgement that the initial period should be increased to five years, and the second period should be increased to either nine (9) or ten (10) years. Reasons: it will take one or more years to develop a viable farm organization and development plan, and develop and arrange for a viable financial package; it would allow time for considered utilization of timber found on the prospective farm lands in the construction of needed housing and farm buildings; it would allow for the continued part or full time employment of the prospective farmer, or spouse, thus reducing materially the initial needed capitalization (in the form of hard cash or loan money which could not be repaid during the several year development period due to no farm product sales). While I certainly do not disagree with the need for a farm organizational and development plan, I heartilly disagree with such being included as a covenant on the title. Further, the "conditions subsequent" inclusion provides a "sword of Damocles" for the prospective farmer; it allows the state, via the vagaries of inclination of a Division Director, to add any requirement or 'regulation' to the covenants - after the fact - at any time!

Ron, much of the disappointment, born from "agricultural interests only" farmers and from state and other public interests, in the rate and nature of agricultural production development has resulted from the lack of recognition of the fore-mentioned statutory and regulatory or administrative constraints. It will get no better until the above mentioned statutes have been changed to a more realistic fit. It is inconceivable to me that no-one has previously recognized and addressed the "forfeiture" clause! Some of the other statutes are equally bad. While I am the first to recognize that the legislature which enacted such legislation had the best of intentions, it is time to readdress the whole topic from the farmer's viewpoint! It is my considered judgement that the initial statutes

were overly influenced by agency bureaucrats - to protect "the land" at all costs, and that the "people" factor was completely forgotten. I would respectfully suggest that the Alaskan "agricultural interests only" farmer, particularly the project farmer, will in time find that he or she has less "rights" than did the traditional "plantation" share-cropper! This situation will never be conducive to building a viable agricultural industry!

I was very serious in my testimony suggestion that someone "hold the feet of agency and institutional professionals to the fire" until they provide perceptive and knowledgeable answers to current and prospective problems of modern agricultural development being expressed today. I am grossly disappointed in recent agency and institutional reports regarding Alaskan agricultural development. Not one has addressed the problems of the "real world", or the technical production system and data needs on developing commercial farmers. No comprehensive assessment has been made, that I have heard of, of the Delta I farming project. One Ag. Action Council report on agri. finance, didnt even mention the critical problems caused by the "forfeiture clause" in the statutes and so-called patents for "agricultural interests only". I have yet to see any recent Alaska study of farm organization and development of "new lands" farming efforts. Research and service efforts, that are conspicuous by their absence, are legion. I have often heard the statement: "There isn't a single research effort being carried out that is of any use what ever to Alaska's commercial farmers!" That's not to say there isn't some good work being done, but it just isn't perceived as relevant, and in most instances for very good reasons. One could probably identify several millions of dollars of state money being spent each year, on things considered agriculture, with out one iota of beneficial effect to the developing farmers. What a waste!!

I am enclosing a few things for your perusal: (1) Exhibit 1. a blanked copy of an "agricultural interests only" patent (note the marked sections); (2) Exhibit 2 relevant parts of the Alaska Statutes (note the marked sections); (3) exhibit 3. a copy of my 1976 critique of the first plan draft for the Delta barley project; and Exhibit 4. a copy of my 1977 critique of the second planning draft for the Delta barley project. While several changes were made in plans for that project before it was actually started, I would suggest much of the basic philosophy remains to-day through out the agricultural interests only development efforts by the state.

Ron, I hope I have sufficiently identified the fact that even with the passage of the existing HB 458 nothing would change regarding asset viability of agricultural interests only farms. As long as the "forfeiture" (reverter) terminology and concept remains part of the statutes, there is no real asset value to the agricultural interests! Regarding the second emphasis of HB 458, all of those "purchase preference" clauses are found within current Alaska statutes! Some one's legislative assistant just didn't do a very comprehensive job!

I suppose I tend to be a wee bit sadistic on rare occassions, but, from time to time, I get a real chuckle thinking what fun it would be to select, by lottery, one or more of our agricultural agency and/or institutional professionals that prospective farmers must deal with, and assign them to a state "agricultural interests only tract, for a period of three years, giving them the full time assignment to plan, organize, and develop/operate an demonstration farm (only one staff member to a semi-remote tract location) - without state budget other than salary and a small office budget. Require that they go through the same activities, on the same terms, as a prospective farmer acquiring such agricul-

tural interests only tract(s). A comprehensive report on such an effort(s) should provide most interesting and very enlightening!

Sincerely,

Wayne E. Burton

Wayne E. Burton, PhD
Agricultural Development Economist

enc: (5)

Sorry for being so slow but ran into a few additional interruptions

Wayne

House sub-committee on agriculture
Teleconference hearing
March 10, 1984, 1:30-4:30 pm

A STATEMENT OFFERED AS TESTIMONY FOR THE PUBLIC RECORD ON HOUSE
BILL NO. 458 "An Act relating to agricultural rights in land."

Mr. Chairman and Members of the Sub-Committee: My name is Wayne E. Burton. My address is P.O. Box 871750, Wasilla, and I reside at Lot 9, Block 1, Woodside Estates near Wasilla. I am an agricultural development economist by training and experience. I am testifying in my own behalf. I would further note that I have practiced my profession of agricultural economist in Alaska for the past twenty (20) years.

I would first express my unalterable opposition to HOUSE BILL 458, and strongly recommend rejection of the Bill for further consideration since it provides for the "give-away" of hundreds of millions in State assets and provides for preferential treatment in acquiring State agricultural lands to those who have already benefitted greatly by State lands disposals. I am certain that I am not alone in my frustrations regarding the unequal distribution of State gratuities, and my inability to acquire agricultural lands.

Section (a) of the proposed HB 458 disturbs me greatly. This section states: "... the remaining interests retained by the state shall be conveyed or leased by the commissioner on the request of the grantee or lessee ...", and "The commissioner shall convey or lease the remaining interests without compensation to the state except for administrative costs ...". A cursory perusal of probable asset value transfer from the state to purchasers of "agricultural-rights" lands (1978-1984 period), without compensation to the state, would probably exceed \$129,000,000 and could run as high as \$250,000,000. Recognizing that state agricultural-rights lands lottery recipients have already received very substantial gratuities from the state through severely discounted prices, residency and veterans discounts, and heavily subsidized clearing loans on project lands (also development credits against purchase price on Delta I project lands), I find the inclusions of section (a) totally unacceptable. The very thought of the state conveying assets, without cost, at an average rate of \$338,000 to each of the 382 state agricultural-rights land purchasers leaves me cold!!!

Section (c) of the proposed HB 458 makes me exceedingly angry!! I have been trying to acquire state agricultural lands through sale and/or lottery since 1964, and have as yet been unable to do so. My interest in doing so has not diminished one whit!! The "preference right" inclusion of this section is an insidious discrimination against each and every Alaskan who desires to acquire agricultural lands to farm or ranch, but has as yet been unable to do so. It is a classic example of "those who has gets, and those who ain't dont!!". One personal example: I sat in the Delta Junction sale of 1970 where some very excellent and accessible state agricultural land was being sold, with an acute desire to buy; every tract in the sale but one fell under a "preference right" filing. In recent years, every agricultural-rights land lottery tract that I have applied for has been applied for by from 200 to 800 other people. More than 3,000 people went away from the Point MacKenzie agricultural-right; land lottery without agricultural land. I cannot conceive of the committee continuing with this preferential treatment of so few at the expense of so many!!

The proposed Bill, H.B. 458, would appear to tacitly address two critical problems of present day Alaskan farm development: (1) asset viability of state conveyed agricultural-rights land, and (2) economic viability of present and prospective farm development in Alaska. H.B. 458 will not contribute to the resolution of structural deficiencies associated with either problem. Moreover, each and every individual purchaser of state agricultural-rights land entered into the present situation with full knowledge of state imposed deficiencies and constraints; each recipient's signature is on documents noting their awareness and understanding. I would respectfully suggest a more viable and productive approach, to the resolution of noted problems, would be to "hold the feet of agency and institutional professionals to the fire" until the committee received viable and constructive answers, data, and recommendations regarding the above noted problems. It is my professional judgement that recent reports by state agencies, regarding agricultural development topics, display voids in understanding, incomplete and inaccurate data, ineptness in the treatment of data, and, on occasions, impotence in the reporting effort.

In closing, I would again urge the committee to terminate further consideration of H.B. 458. The proposed Bill would provide for a "give-away" of untold millions of dollars worth of state assets to not more than 382 individual state agricultural-rights land purchasers - with absolutely no benefit to the state's agricultural development efforts. Moreover, the proposed Bill, H.B. 458, would provide for the totally unwarranted "purchase preference" of state agricultural-rights land by existing agricultural land holders at the expense of those thousands of landless Alaskans who are now prospective farmers and agriculturalists. I would further suggest that prospective development of viable agricultural lands has now fallen to less than 800,000 acres, from the some 20 million acres identified some 10 years ago. I would again reiterate the conclusion that I reached in 1977; "Alaska will be unable to respond in any manner to any national food emergency within any foreseeable future (50 years)". I would ask this committee: "What are you going to do about this unfortunate situation?"

Thank you for your kind attention.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 3/28/84

REQUEST
Bill/Resolution No.: HB 458
Title: re: agricultural rights
to land
Sponsor: Bettisworth
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Natural Resources
Program Category Affected:
BRU, Program or Subprogram(s) Affected:
NRMEC, Management of Land & Water Resources,
Contract Administration

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		24.9				
200 TRAVEL		.8				
300 CONTRACTUAL		1.0				
400 SUPPLIES		.5				
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		27.2				
CAPITAL		N/A				
REVENUE		*				

FUNDING: (Thousands of Dollars)

GENERAL FUND		27.2				
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY		2				

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

- * If 382 parcels are processed @ \$75.00 fee, revenue would be \$28,650. Revenue lost to the State by conveying all rights with no further cost is estimated conservatively in excess of \$60 million.

ANALYSIS: Attach a separate page for analysis

Prepared By: Frank Mielke Phone: 263-4347
Division: Land and Water Management Date: 3/28/84

MH Approved by Commissioner: *William D. Arnold* Date: 3/28/84
Agency: Natural Resources

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

ANALYSIS - HB 458

The Division of Land and Water Management has analyzed HB 458. The fiscal impact is detailed as follows:

I.	Personal Services:	
	1 Clerk Typist III (Contract Administration) to amend contracts and miscellaneous case file related work - 3 months	\$ 6,150
	1 Attorney III to write regulations and covenants - 3 months	18,700
II.	Travel - regulations hearings and consultation with Commissioner's Office and other agencies	800
III.	Contractual - advertising, printing of forms, mailing, etc.	1,000
IV.	Supplies - paper, correspondence, supplies, etc.	<u>500</u>
	TOTAL	\$27,150

This analysis assumes converting contracts and patents and filing covenants for all agricultural parcels disposed since 1978: 314 non-project and 68 project agricultural parcels for a total of 382 parcels.

Alaska State Legislature

RONALD L. LARSON
DISTRICT 16B

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3727



BOX 53
PALMER, ALASKA 99645
(907) 745-3826

House of Representatives

April 4, 1984

TO: REP. JOHN RINGSTAD & REP. DICK SCHULTZ, CO-CHAIRMEN, HOUSE
RESOURCE COMMITTEE

FROM: REP. RON LARSON *R.L.*

RE: LETTER OF INFORMATION REGARDING HB 458 FROM WAYNE BURTON, PH.D.,
AGRICULTURAL DEVELOPMENT ECONOMIST

Attached please find a letter from Dr. Wayne Burton in which he addresses many of the concerns that have been expressed by many individuals in relation to HB 458. I think his suggestion merit consideration and just may offer a solution to the concerns expressed over state disposal of agricultural interest only lands.

P.O. Box 871750
Wasilla, Alaska 99687
March 28, 1984

Honorable Ronald L. Larson
Alaska Legislature
Pouch V (mail stop 3100)
Juneau, Alaska 99811

Dear Ron:

As usual, I am a bit slow in getting around, but am sending this letter to confirm my permission to copy and use the March 12, 1984 letter and enclosed materials as you see fit. Sure did appreciate your call.

After considerable thought, I have decided to offer a few suggestions regarding what might be done to resolve some of the immediate problems faced by "agriculture interest only" buyers, and some needed efforts directed to longer-term farm and/or ranch production development within Alaska. The immediate problems of "title" could be addressed by developing a committee substitute for HB 458, deleting all but the title, and then addressing the following:

- ° Amend present statutes to redefine 'agricultural interests only' to "agricultural lands" with title and interest conveyed being surface agricultural estate in fee simple, with exclusive possession; with alienation of 'non-agricultural development rights' in the same manner as has been the case with 'mineral rights', 'oil rights', 'subsurface water rights', etc.
- ° Amend present statutes to delete both concept and terminology of 'forfeiture' and 'revert' regarding "agricultural lands". [There are sufficient other legal avenues to protect degradation of agricultural lands to make the 'forfeiture' and 'reverter' concepts a redundancy anyway]
- 501 ° Amend present statutes to remove 'Farm Conservation Plan' from inclusion as a covenant to "agricultural lands" title; substitute a "Soil Conservation Service Cooperator Agreement" as a condition for the "agricultural lands" purchase contract only. [A meaningful farm conservation plan can only be developed as a working agreement between S.C.S. and the farm operator over a several year period of time, and must be quite flexible to allow for unforeseen events and circumstances.] Also, remove all references and inclusions regarding 'under Farm Conservation Plan' from present statutes.
- ° Amend present statutes (and regulations) to increase initial 'farm development' period from 3 years to 5 years (40% of Class II & III soils), and final 'farm development' period from 6 to 9 years (75% of Class II & III soils). Also, delete verbage regarding 'leaving other land in its undisturbed natural state'. [Much of the "other land" may have critical farm uses such as hay lands, improved pastures, woodlots, etc.]
- ° Amend present statutes to delete verbage and acreage constraints regarding 'the construction of fixed, permanent, or immovable structures' reasonably required for or relating to agricultural production; replace this with language which prohibits only non-agricultural (commercial and non-commercial) temporary or fixed, permanent, or immovable structures.

- Amend present statutes and regulations to remove 'Farm Development Plan' from inclusion as a covenant to "agricultural lands" title, allowing only the requirement of a "preliminary farm development and operational plan" as a condition of purchase contract; delete '30 days' requirement and substitute "90 days" for "preliminary farm development plan". [It would probably take up to 2 years to develop a meaningful farm development and operational plan in the first place, and such a plan should be revised annually; a five or more years plan revised annually dropping the first year and adding a new end year.]
- Amend present statutes to clearly define timber, control of public access, and "recreation" rights (including hunting and trapping) as part of the surface estate of "agricultural land" being sold and transferred by the state. Also, amend present statutes to allow the mining of gravel for farm development use and use in constructing access roads to the farm from which the gravel is taken. I would further suggest that provision be made for the commercial mining of gravel under permit from the state where said mining will contribute to land leveling, drainage enhancement, road site enhancement, or structures site enhancement which will improve agricultural characteristics of the farm unit.

It is my considered judgement that the above mentioned suggestions would restore asset viability to state agricultural lands disposals since 1978 - if these factors were made retroactive to those tracts sold as 'agricultural interests only'. I am quite sure the group of suggestions would accomplish the intent of HB 458 as it was initially introduced. A quick check with lenders and title insurance people should confirm my assessment.

Ron, there are a number of comprehensive assessments, studies, or what ever you might want to call them, which are badly needed to document and evaluate recent (since 1977) agricultural development programs, projects, and activities. Particular emphasis should be directed to impacts of said programs, projects, and activities on individual farm development during the 1977-84 period. I would respectfully suggest the following:

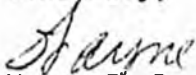
- 1) A detailed, perceptive, and comprehensive treatment of experiences, problems, and impacts of present statutes, regulations, and public programs on individual farm development for 'project farms', small tract farms, and non-project farms, primarily dependent on "agricultural interests only" tracts. This assessment should include scenarios of "best case", "typical case", and "worst case" situations. [this is long overdue -should have been done at least 3 years ago - would have identified title and other problems as structural problems of state approach to agricultural development]
- 2) A comprehensive assessment to document and analyze a broad range of aspects regarding the development of individual farm units in the Delta I (barley) project, along with a concurrent assessment of the agency/institutional - farm development interrelationship experiences in that project. A second thrust in such an assessment should be directed to 'small tract farm' disposals of 'agricultural interests only' tracts. in several areas of the state. Particular attention should be directed to farm organizational (planning and managerial), developmental (technical and financial), and operational (technology, production systems, informational flows, and services) activities. [successes and failures of both public and private inputs into this

agricultural development equation must be identified and evaluated if meaningful actions are to be taken by the Legislature, the Administration, agencies/institutions, and farm operators to alleviate present constraints and enhance the prospective success and productivity of farm food and services efforts in Alaska]

- 3) A comprehensive assessment to document and evaluate a broad range of aspects regarding research, technology, and 'public' services now available, and needed, to address commercial and 'non-commercial' farm development, by farmers and prospective farmers, in Alaska's new lands settlement/development situation - by geographic regions. [this would be a particularly difficult assignment, and there are very few who have the perspective and fortitude to successfully carry out such an assignment.]

It is my critical judgement that the forementioned studies cannot be objectively carried out by existing agencies and institutions. For them to attempt to do so would be analogous to the fox studying and evaluating the hen house! Moreover, none of the existing agencies and institutions have demonstrated either perspective or competencies to carry out such efforts and provide comprehensive and objective reporting of same.

Sincerely,



Wayne E. Burton, Pd.D.
Agricultural Development Economist

MEMORANDUM

TO: State of Alaska
House of Representatives
Resources Committee

FROM: Glen Prince *Glen Prince*
Title Insurance Agency, Inc.
Juneau, Alaska

DATE: April 4, 1984

RE: Committee Substitute for House Bill No. 458 (Resources)

The above Committee Substitute appears to be a positive approach to resolving the private mortgage problem currently troubling AS 38.05.321.

It is my opinion the title insurance industry would be willing to insure a lender as to the security of Mortgages or Deeds of Trust if the substitute were enacted.

BANK OF THE NORTH

April 25, 1984

TO: State of Alaska
House of Finance Committee

Subject: CSHB 458 (Resources)

Following are observations of a banker as they pertain to CSHB 458. I have had 27 years experience in banking including agricultural lending in California with Wells Fargo Bank.

In response to your questions regarding particulars of the proposed bill, I would like to offer:

1. Banks traditionally lend to borrowers for agriculture purposes taking a secured position involving land, equipment and crops as collateral. The only collateral with sustaining real value is land. If it is owned, title is transferred and held by the lending institution. If it is leased, the lease is assigned to the Bank. Depending on the circumstances of the particular borrowing, other collateral - equipment and crops (including proceeds of the sale of the harvest) is pledged to the bank.

Under the conditions imposed by the present statute the title of the property (land) is conveyed and reverts to the State of Alaska if the grantee has failed to observe certain provisions or conditions of the Patent. Any financial institution, using prudent banking policies and practices, would not accept title to property as collateral with this condition for a loan.

2. The proposed change to the Act is worded sufficiently in my opinion, to protect and support a lien placed by a financial institution to perfect a security interest in land being used by the borrower as collateral for a loan for agricultural purposes. If leased by the State of Alaska to a lessor for agricultural purposes, the financial institution would insist that the lease of the land be assigned to the lender. It is presumed that the State would not oppose such assignment.
3. Your question addresses a situation that occurs frequently by lenders - financial institutions or individuals. In this case the financial institution would be faced with the problem of assuming the responsibility of the grantee of the land - to maintain the land for agricultural purposes.

First, the lender would have to foreclose on the loan, and to the extent possible:

1. Harvest and sell the crops, applying the net proceeds of the sale to the loan balance.
2. Secure all equipment pledged by the borrower for the loan and sell it to obtain cash to apply to any balance remaining.

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If a balance were to remain after the above actions, this amount would probably be charged off as a loss.

Your question #3 presumes the State reentered the land because the land was not being used for agricultural purposes. This situation raises other questions - for the financial institution:


1. Who is responsible for clearing away any and all improvements that are not agriculturally related?
2. Who is responsible to find and qualify another grantee for the land?
Who has approval authority - the State or the financial institution?

Note: In both questions above, I have assumed that the financial institution still holds title to the land as collateral for a loan not paid in full.

If the loan were to be paid in full from the sale of crops and equipment the land would presumably revert to the State of Alaska and title released to the State, providing the grantee has no legal claim to the land.

I hope these observations and comments have been helpful.

ALASKA NATIONAL BANK OF THE NORTH


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